LAWS AND RESOLUTIONS

OF THE

STATE OF MONTANA

Enacted by the

FIFTY-SIXTH LEGISLATURE
IN REGULAR SESSION

Held at Helena, the Seat of Government
January 4, 1999, through April 21, 1999

AND IN SPECIAL SESSION

Held at Helena, the Seat of Government
June 15 and 16, 1999

Published and Distributed by
Montana Legislative Services Division
PO Box 201706
Helena MT 59620-1706

Robert B. Person
Executive Director

Printed and Bound by
Rose Printing Co
2503 Jackson Bluff Rd
PO Box 5078
Tallahassee FL 32314-5078

HeinOnline -- 1999 vol. I [i] 1999

Table of Contents

Volume I
Officers and Members of the Montana Senate
Officers and Members of the Montana House of Representatives
Title Contents of Bills and Resolutions
Chapters 1 - 310

Volume II
Chapters 311 - 539

Volume III
Chapters 540 -
Senate Joint Resolutions
Senate Resolutions
House Joint Resolutions
House Resolutions
Ballot Issues
Index to Appropriations
General Index
Tables
Code Sections Affected
Session Laws Affected
Senate Bill to Chapter Number
House Bill to Chapter Number
Chapter Number to Bill Number
Effective Dates
By Chapter Number
By Date
Session Law to Code

June 1999 Special Session Material

Volume I

Officers and Members of the Montana Senate i
Officers and Members of the Montana House of Representatives iii
Title Contents of Bills and Resolutions
Senate and House Bills v
Senate Joint Resolutions xcviii
Senate Resolutions ic
House Joint Resolutions c
House Resolutions ciii
Chapters 1 - 310 1

OFFICERS AND MEMBERS OF THE MONTANA SENATE 1999

50 Members

32 Republicans 18 Democrats

OFFICERS

President . . . . . Bruce D. Crippen
President Pro Tempore . . . . . Tom Beck
Majority Floor Leader . . . . . John G. Harp
Majority Whips . . . . . Don Hargrove, Fred Thomas
Minority Floor Leader . . . . . Steve Doherty
Minority Whip . . . . . Linda J. Nelson
Secretary of the Senate . . . . . Rosana Skelton

MEMBERS

Name	Preferred Mailing Address	Dist No	Party
Bartlett, Sue	416 N Beattie St Helena MT 59601-3701	27	Democrat
Beck, Tom	792 Yellowstone Trail Deer Lodge MT 59722	28	Republican
Berry, Dale E.	708 S 1st Hamilton MT 59840-3014	30	Republican
Bishop, Al	3020 Leeann Blvd Billings MT 59102-0442	9	Republican
Bohlinger, John	2233 Remington Sq Billings MT 59102-2489	7	Republican
Christiaens, B.F. "Chris"	PO Box 2871 Great Falls MT 59403-2871	23	Democrat
Cocchiarella, Vicki	535 Livingston Ave Missoula MT 59801	32	Democrat
Cole, Mack	PO Box 286 Hysham MT 59038	4	Republican
Crippen, Bruce D.	PO Box 80747 Billings MT 59108-0747	10	Republican
Crismore, William S. "Bill"	237 Airfield Rd Libby MT 59923-8600	41	Republican
DePratu, Bob	PO Box 1217, 6331 Hwy 93 S Whitefish MT 59937-8236	40	Republican
Devlin, Gerry	PO Box 186 Terry MT 59349	2	Republican
Doherty, Steve	1531 3rd Ave SW Great Falls MT 59404-2715	24	Democrat
Eck, Dorothy	10 W Garfield St Bozeman MT 59715	15	Democrat
Ekegren, E.P. "Pete"	PO Box 862 Choteau MT 59422-0862	44	Republican
Ellingson, Jon	430 Ryman St Missoula MT 59801-4208	33	Democrat
Ellis Jr., Alvin A.	HC 50 Box 4840 Red Lodge MT 59068-9724	12	Republican
Franklin, Eve	1713 1st Ave S Great Falls MT 59401-3847	21	Democrat
Glaser, Wm. E. "Bill"	1402 Indian Creek Rd Huntley MT 59037	8	Republican
Grimes, Duane	#4 Hole In The Wall Rd Clancy MT 59634-9516	20	Republican
Grosfield, Lorents	HC 87 Box 2145 Big Timber MT 59011-9703	13	Republican
Halligan, Mike	PO Box 9121 Missoula MT 59807-9121	34	Democrat
Hargrove, Don	PO Box 1 Bolgrade MT 59714-0001	16	Republican
Harp, John G.	53 Willow Dr Kalispell MT 59901	42	Republican
Hertel, John R.	RR 1 Box 30 Moore MT 59464-9703	47	Republican
Holden, Ric	164 Rd 253 Glendive MT 59330-9438	1	Republican
Jabs, Reiny	HCR 36 Hardin MT 59034-9613	3	Republican
Jergeson, Greg	PO Box 1568 Chinook MT 59523-1568	46	Democrat
Keating, Thomas F.	PO Box 20522 Billings MT 59104-0522	5	Republican
Keenan, Bob	PO Box 697 Bigfork MT 59911-0697	38	Republican
Lynch, John "J.D."	527 W Mercury St Butte MT 59701	19	Democrat
Mahlum, Dale	10955 Hwy 93 N Missoula MT 59808-9227	35	Republican
McCarthy, Bea	1906 Ogden St Anaconda MT 59711-1706	29	Democrat
McNutt, Walter L.	110 12th Ave SW Sidney MT 59270-3614	50	Republican
Mesaros, Kenneth "Ken"	2191 Milligan Rd Cascade MT 59421-8001	25	Republican
Miller, Ken	PO Box 186 Laurel MT 59044-0186	11	Republican
Mohl, Arnie A.	3303 Hwy 2 E Kalispell MT 59901-6653	39	Republican
Nelson, Linda J.	469 Griffin Rd Medicine Lake MT 59247-9708	49	Democrat
Reush, Glenn A.	PO Box 185 Cut Bank MT 59427-0185	43	Democrat
Shea, Debbie	100 Moon Ln Butte MT 59701	18	Democrat

HeinOnline -- 1999 vol. I i 1999

Sprague, Mike	174 Erickson Crt Billings MT 59105-2310	6	Republican
Stang, Barry "Spook"	2 Mt Hwy 135 S Box 277 St Regis MT 59866-9716	36	Democrat
Swysgood, Charles "Cbuck"	506 S Atlantic St Dillon MT 59725	17	Republican
Taylor, Mike	PO Box 152 Proctor MT 59929-0152	37	Republican
Tester, Jon	RR 1 Box 709 Big Sandy MT 59520-9708	45	Democrat
Thomas, Fred	3566 Holly Ln Stevensville MT 59870-6634	31	Republican
Toews, Daryl	HC 66 Box 34 Lustre MT 59225-9703	48	Republican
Waterman, Mignon	530 Hazelgreen Crt Helena MT 59601-5410	26	Democrat
Wells, Jack	150 Coulee Dr Bozeman MT 59715-7717	14	Republican
Wilson, Bill	1305 2nd Ave N Great Falls MT 59401-3265	22	Democrat

HeinOnline -- 1999 vol. I ii 1999

OFFICERS AND MEMBERS
OF THE MONTANA HOUSE OF REPRESENTATIVES
1999

100 Members

59 Republicans 41 Democrats

OFFICERS

Speaker . . . . . John Mercer
Speaker Pro Tempore . . . . . Doug Mood
Majority Floor Leader . . . . . Larry Hal Grinde
Majority Whips . . . . . Karl Ohs, Paul Sliter
Minority Floor Leader . . . . . Emily Swanson
Minority Whip . . . . . Dan W. Harrington
Chief Clerk of the House . . . . . Marilyn Miller

MEMBERS

Name	Preferred Mailing Address	Dist No	Party
Adams, Darrel	155 Eastland Crossroad Columbia Falls MT 59912	84	Republican
Ahner, Chris	1470 Boston Rd Helena MT 59602-7330	51	Republican
Andersen, Joan	Rte 1 Box 1012 Fromberg MT 59029-9701	23	Republican
Anderson, Shiell W.	738 Hwy 89 N Livingston MT 59047-1234	25	Republican
Barnett, Joe	201 Spooner Rd Belgrade MT 59714-3429	32	Republican
Barnhart, Beverly	614 S 6th Bozeman MT 59715-4566	29	Democrat
Beck, Gary	93 Eastside Rd Deer Lodge MT 59722-9762	56	Democrat
Bergsagel, Ernest	HC 84 Box 8045 Malta MT 59538	95	Republican
Bergsagel, Peggy	1512 Colorado St Billings MT 59102-3250	20	Republican
Bitney, Rod	PO Box 10501 Kalispell MT 59904-3501	77	Republican
Bookout-Reinicke, Sylvia	PO Box 327 Alberton MT 59820-0327	71	Republican
Brainard, Matt	818 Woody St Missoula MT 59802-3632	62	Republican
Brown, Rey	PO Box 22273 Billings MT 59104-2273	14	Republican
Buzzas, Rosalie "Rosie"	233 University Ave Missoula MT 59801-4351	65	Democrat
Clark, Edith J.	PO Box 34 Sweetgrass MT 59484-0034	88	Republican
Clark, Paul	20 Fox Ln Trout Creek MT 59874-9510	72	Democrat
Clark, Robert "Bob"	PO Box 216 Ryegate MT 59074-0216	8	Republican
Cobb, John	PO Box 388 Augusta MT 59410-0388	50	Republican
Curtiss, Aubyn	PO Box 216 Fortine MT 59918-0216	81	Republican
Dale, Rick	175 Yellowstone Trail Whitehall MT 59759-9644	39	Republican
Davies, Bob	PO Box 3634 Bozeman MT 59772-3634	27	Republican
Dell, Tom	212 S Santa Fe Dr Billings MT 59102-5750	19	Democrat
Eggers, Bill	PO Box 1000 Crow Agency MT 59022-1000	6	Democrat
Erickson, Ron	3250 Pattee Canyon Rd Missoula MT 59803-1703	64	Democrat
Ewer, David	1016 5th Ave Helena MT 59601-4444	53	Democrat
Facey, Tom	418 Plymouth St Missoula MT 59801-4133	67	Democrat
Fisher, Stanley M.	76 Golf Terrace Dr Bigfork MT 59911-6323	75	Republican
Fuchs, Daniel C.	395 Windsor Circle N Billings MT 59105-2409	15	Republican
Gallus, Steven J.	2701 Phillips St Butta MT 59701-4135	35	Democrat
Galvin-Halcro, Kathleen M.	101 Riverview Dr E Great Falls MT 59404-1547	48	Democrat
Gillan, Kim	750 Judicial Ave Billings MT 59105-2130	11	Democrat
Golie, George	316 20th Ave S Great Falls MT 59405-4131	44	Democrat
Grinde, Larry Hal	Rt 3 Box 3018 Lewistown MT 59457-9803	94	Republican
Guggenheim, Mary Anne	7575 Priest Pass Rd Helena MT 59601-9617	55	Democrat
Gutsche, Gail	1530 Cooper St Missoula MT 59802-2220	66	Democrat
Hagener, Antoinette R.	612 17th St Havre MT 59501-5509	90	Democrat
Haines, Dick	5935 St Francis Dr Missoula MT 59803-2945	63	Republican

Hanson, Marian W.	PO Box 237 Ashland MT 59003-0237	1	Republican
Harper, Hal	#9 Comstock Rd Helena MT 59601	52	Democrat
Harrington, Dan W.	1201 N Excelsior Butte MT 59701	38	Democrat
Hedges, Donald	PO Box 144 Antelope MT 59211-0144	97	Republican
Hibbard, Chase	PO Box 835 Helena MT 59624-0835	54	Republican
Holden, John L.	170 Dupuyer Cuteff Valier MT 59486-5256	86	Republican
Hurdle, Joan	PO Box 1991 Billings MT 59103-1991	13	Democrat
Jackson, Verdell	555 Wagner Ln Kalispell MT 59901-8079	79	Republican
Johnson, Royal C.	2915 Illinois Billings MT 59102-0814	10	Republican
Jore, Rick	5200 Cheff Ln Renan MT 59864-9806	73	Republican
Juneau, Carol C.	128 9th Ave SE Browning MT 59417	85	Democrat
Kasten, Betty Lou	HC 77 Bex A-14 Brockway MT 59214	99	Republican
Kitzenberg, Sam	130 Bonnie St #1 Glasgow MT 59230-2101	96	Republican
Krenzler, Billie I.	4537 Ryan Ave Billings MT 59101-4940	17	Democrat
Lawson, Bob	PO Box 686 Whitefish MT 59937-0686	80	Republican
Lenhart, Ralph	PO Box 1225 Glendive MT 59330-1225	2	Democrat
Lindeen, Monica J.	1626 Heath St Huntley MT 59037-9137	7	Democrat
Mangan, Jeff	PO Box 1196 Great Falls MT 59403-1196	45	Democrat
Masolo, Gay Ann	20 Buck Dr Townsend MT 59644-9649	40	Republican
Matthews, Gary	814 Yellowstone Miles City MT 59301-4235	4	Democrat
McCann, Matt	PO Box 1093 Harlem MT 59526-1093	92	Democrat
McCulloch, Linda	5205 Deschamps Ln Missoula MT 59808	70	Democrat
McGee, Daniel W. "Dan"	1925 Pinyon Dr Laurel MT 59044-9381	21	Republican
McKenney, Joe	1140 18th Ave SW Great Falls MT 59404-3426	49	Republican
Menahan, William "Red"	1304 West 5th St Anaconda MT 59711	57	Democrat
Mercer, John	PO Box 460 Polson MT 59860-0460	74	Republican
Molnar, Brad	PO Box 517 Laurel MT 59044-0517	22	Republican
Mood, Doug	PO Box 42 Seeley Lake MT 59868-0042	58	Republican
Noennig, Mark E.	3441 Powderhorn Circle Billings MT 59102-0332	9	Republican
Ohs, Karl	PO Box 212 Harrison MT 59735	33	Republican
Orr, Scott J.	PO Box 1318 Libby MT 59923-1318	82	Republican
Pavlovich, Robert J. "Bob"	2751 Yale Ave Butte MT 59701-4205	37	Democrat
Peck, Ray	729 Fourth Ave Havre MT 59501-4020	91	Democrat
Quilici, Joe	3040 Kossuth Butte MT 59701-6336	36	Democrat
Raney, Bob	212 S 6th St Livingston MT 59047-3023	26	Democrat
Rehbein Jr., William "Bill"	PO Box 155 Lambert MT 59243	100	Republican
Rose, John "Sam"	PO Box 604 Choteau MT 59422-0604	87	Republican
Ryan, Brennan	PO Box 116 Stockett MT 59480-0116	41	Democrat
Schmidt, Trudi	4029 6th Ave S Great Falls MT 59405-3746	42	Democrat
Shockley, Jim	PO Box 608, 2386 Hwy 93 Victor MT 59875-9657	61	Republican
Simon, Bruce T.	217 Clark Ave Billings MT 59101-6040	18	Republican
Sliter, Paul	PO Box 118 Somers MT 59932-9713	76	Republican
Smith, Frank J.	PO Box 729 Poplar MT 59255-0729	98	Democrat
Soft, Loren L.	161 Norris Ct Billings MT 59105-2340	12	Republican
Somerville, Roger	PO Bex 1104 Kalispell MT 59903-1104	78	Republican
Squires, Carolyn	2111 S 10th St W Missoula MT 59801	68	Democrat
Story Jr., Robert R.	133 Valley Creek Rd Park City MT 59063-9801	24	Republican
Stovall, Jay	8325 Pryor Rd Billings MT 59101-9013	16	Republican
Swanson, Emily	15042 Kelly Canyon Rd Bezeman MT 59715-9625	30	Democrat
Tash, Bill	240 Vista Dr Dillon MT 59725-3111	34	Republican
Taylor, Lila V.	Box 595 Kirby Rte Busby MT 59016	5	Republican
Thomas, Bill	HC 81 Box 7 Hobson MT 59452-9701	93	Republican
Trexler, Cliff	1930 Mountainview Orchard Corvallis MT 59828	59	Republican
Tropila, Joe	209 2nd St NW Great Falls MT 59404-1301	47	Democrat
Tuss, Carley	1910 Colorado Ave Black Eagle MT 59414	46	Democrat
Vick, Steve	5875 Thorpe Rd Belgrade MT 59714	31	Republican
Wagner, Douglas T.	PO Bex 190021 Hungry Horse MT 59919-0021	83	Republican
Walters, Allan	416 Grantsdale Rd Hamilton MT 59840-3335	60	Republican
Williams, Carol	PO Bex 9025 Missoula MT 59807-9025	69	Democrat
Witt, John E.	HC 65 Box 30 Carter MT 59420-9502	89	Republican
Wyatt, Diana E.	300 31st St S Great Falls MT 59405-3356	43	Democrat
Younkin, Cindy	1115 N Spruce Dr Bezeman MT 59715-5948	28	Republican
Zook, Tom	HC 40 Miles City MT 59301-9806	3	Republican

HeinOnline -- 1999 vol. I iv 1999

TITLE CONTENTS

SENATE AND HOUSE BILLS

Chapter		Page
1	*(House Bill No. 1; Zook)* APPROPRIATING MONEY FOR THE OPERATION OF THE LEGISLATURE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	3
2	*(Senate Bill No. 80; Swysgood)* SUBMITTING A 6-MILL LEVY FOR SUPPORT OF THE UNIVERSITY SYSTEM TO THE ELECTORATE; PROVIDING A CONTINGENT VOIDNESS PROVISION; AND PROVIDING AN EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND A TERMINATION DATE	3
3	*(Senate Bill No. 194; Halligan)* REVISING GENERAL OBLIGATION BOND LAWS TO REMOVE THE PLEDGE OF THE TAXING POWER; PROVIDING FOR A FIRST LIEN ON GENERAL FUND REVENUE FOR THE PAYMENTS OF GENERAL OBLIGATION BONDS AND RELATED CHARGES; ALLOWING THE BOARD OF EXAMINERS TO CREATE NECESSARY FUNDS AND ACCOUNTS FOR THE ISSUANCE OF GENERAL OBLIGATION BONDS; AMENDING SECTIONS 17-1-204, 17-5-402, 17-5-415, 17-5-501, 17-5-802, 17-5-803, 75-5-1121, 75-6-225, 75-10-623, 85-1-617, 85-1-619, 85-1-620, AND 90-4-611, MCA; PROVIDING A CONTINGENT VOIDNESS PROVISION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	4
4	*(Senate Bill No. 56; McCarthy)* PROVIDING FINANCIAL SUPPORT FOR THE MONTANA UNIVERSITY SYSTEM WITH A STATEWIDE MILL LEVY AS PROVIDED FOR IN REFERENDUM MEASURE NO. 113; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND A TERMINATION DATE	13
5	*(Senate Bill No. 7; Jabs)* REVISING THE METHOD OF LEASING STATE GRAZING AND AGRICULTURAL LANDS; REQUIRING A RENTAL GUARANTEE FOR BIDS OVER A ONE-THIRD CROP SHARE; ALLOWING FOR REINSTATEMENT OF LEASES CANCELED FOR NONPAYMENT; AMENDING SECTIONS 77-6-501 AND 77-6-506, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE	14
6	*(Senate Bill No. 17; Franklin)* CLARIFYING PROGRAM TRANSFERS BY PROHIBITING THE SUBSEQUENT TRANSFER OF MONEY TRANSFERRED TO ANOTHER FISCAL YEAR; AMENDING SECTION 17-7-139, MCA; AND PROVIDING AN EFFECTIVE DATE .	16
7	*(Senate Bill No. 26; Hargrove)* CHANGING THE COMPOSITION OF THE BOARD OF REVIEW FOR BUSINESS REGISTRATION AND LICENSING; ALLOWING ADDITIONAL STATE AGENCIES TO PARTICIPATE IN STREAMLINED BUSINESS REGISTRATION AND LICENSING PLANS; AUTHORIZING A TRANSFER OF FUNDS FROM PARTICIPATING AGENCIES FOR ADMINISTERING THE STREAMLINED BUSINESS REGISTRATION AND LICENSING	

HeinOnline -- 1999 vol. I v 1999

PLANS; AMENDING SECTIONS 30-16-302 AND 30-16-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 17

8 *(Senate Bill No. 50; Swysgood)* REVISING THE LAWS GOVERNING THE REVIEW OF LAWS CONTAINING DEDICATED REVENUE PROVISIONS AND STATUTORY APPROPRIATIONS; PROVIDING FOR DISCRETION IN WHICH LAWS TO REVIEW; AND AMENDING SECTIONS 17-1-501, 17-1-503, 17-1-505, 17-1-508, AND 17-2-111, MCA 18

9 *(House Bill No. 55; Peck)* EXTENDING THE APPLICATION OF THE BOND VALIDATING ACT; AMENDING SECTION 17-5-205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 22

10 *(Senate Bill No. 4; Mahlum)* REVISING THE DEPARTMENT OF COMMERCE'S RESPONSIBILITY TO OFFER EMPLOYEE OWNERSHIP DEVELOPMENT SERVICES; AMENDING SECTION 90-5-305, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 22

11 *(Senate Bill No. 34; Jergeson)* CLARIFYING THAT ONLY LOANS TO THE GENERAL FUND MUST BE REPAID WITH INTEREST AND THAT A GENERAL FUND LOAN FOR BUDGET AMENDMENT PURPOSES DOES NOT CONSTITUTE A SIGNIFICANT ASCERTAINABLE COMMITMENT OF PRESENT GENERAL FUND SUPPORT; AMENDING SECTIONS 17-2-105, 17-2-107, AND 17-7-402, MCA; AND PROVIDING AN EFFECTIVE DATE 23

12 *(Senate Bill No. 51; Keating)* ELIMINATING REGULATION OF CONDOMINIUM UNITS PRIOR TO CONSTRUCTION; ELIMINATING THE DEPARTMENT OF COMMERCE'S ROLE IN INVESTIGATING AND ENFORCING THE UNIT OWNERSHIP ACT; AMENDING SECTIONS 70-23-102 AND 70-23-308, MCA; AND REPEALING SECTIONS 70-23-201, 70-23-202, 70-23-203, 70-23-204, 70-23-205, 70-23-206, 70-23-1001, AND 70-23-1002, MCA 27

13 *(Senate Bill No. 141; Cole)* EXEMPTING IN-STATE PIPELINES USED EXCLUSIVELY FOR IRRIGATION OF AGRICULTURAL CROPS FROM THE DEFINITION OF "FACILITY" IN THE MONTANA MAJOR FACILITY SITING ACT; AMENDING SECTION 75-20-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 29

14 *(House Bill No. 29; Ohs)* INCREASING TO $20 MILLION THE AUTHORITY TO ISSUE GENERAL OBLIGATION BONDS TO MAKE LOANS TO INDIVIDUALS AND WATER ASSOCIATIONS UNDER THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM; AUTHORIZING THE CREATION OF A STATE DEBT; AMENDING SECTION 85-1-624, MCA; AND PROVIDING AN EFFECTIVE DATE . 32

15 *(House Bill No. 30; Peck)* ELIMINATING UNNECESSARY REGULATIONS THAT LIMIT THE UNIT SIZE IN WHICH CERTAIN COMMODITIES, INCLUDING BREAD, BUTTER, MILK, FLOUR, AND LIKE PRODUCTS, MAY BE SOLD; REPEALING SECTIONS 30-12-402, 30-12-403, 30-12-404, AND 30-12-405, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 32

16 *(House Bill No. 35; Ahner)* REMOVING THE TERMINATION DATE FOR THE PROVISION THAT ALLOWS A 3 PERCENT STATE LANDS RESOURCE DEVELOPMENT ACCOUNT DEDUCTION; REPEALING SECTION 4, CHAPTER 247, LAWS OF 1997; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 33

17 *(House Bill No. 51; Harper)* CHANGING A MEETING DATE REQUIREMENT AND THE REPORT DEADLINE FOR THE DROUGHT ADVISORY COMMITTEE; AMENDING SECTION 2-15-3308, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 33

HeinOnline -- 1999 vol. I vi 1999

18 *(House Bill No. 80; Cobb)* GENERALLY REVISING LAWS GOVERNING STATE LANDS TO REMOVE PROVISIONS DECLARED INVALID; AMENDING SECTIONS 20-6-621, 20-15-403, 77-2-106, 77-2-211, 77-2-303, 77-2-311, AND 77-3-132, MCA; AND REPEALING SECTIONS 7-35-4104, 77-3-321, AND 77-5-213, MCA 34

19 *(Senate Bill No. 11; Halligan)* IMPROVING THE LEGISLATIVE OVERSIGHT AND REVIEW OF GOVERNMENTAL OPERATIONS BY GENERALLY REVISING THE FUNCTIONS OF INTERIM COMMITTEES; LIMITING THE NUMBER OF INTERIM COMMITTEES; ASSIGNING ADMINISTRATIVE RULE REVIEW RESPONSIBILITY AND SPECIFIC EXECUTIVE BRANCH AGENCY MONITORING AND REVIEW TO SPECIFIC COMMITTEES; REVISING THE INTERIM STUDY PROCESS; PROVIDING MEMBERSHIP FLEXIBILITY IN INTERSTATE ORGANIZATIONS BY ELIMINATING SPECIFIC REQUIREMENTS; ELIMINATING THE ADMINISTRATIVE CODE COMMITTEE, THE REVENUE OVERSIGHT COMMITTEE, THE COMMITTEE ON INDIAN AFFAIRS, THE JOINT COMMITTEE ON POSTSECONDARY EDUCATION POLICY AND BUDGET, THE COMMITTEE ON PUBLIC EMPLOYEE RETIREMENT SYSTEMS, THE JOINT OVERSIGHT COMMITTEE ON CHILDREN AND FAMILIES, AND THE COMMITTEE ON STATE MANAGEMENT SYSTEMS; AMENDING SECTIONS 2-4-102, 2-4-110, 2-4-302, 2-4-305, 2-4-306, 2-4-307, 2-4-308, 2-4-311, 2-4-312, 2-4-313, 2-4-402, 2-4-404, 2-4-405, 2-4-406, 2-4-410, 2-4-412, 5-2-503, 5-2-504, 5-5-202, 5-5-211, 5-5-212, 5-5-213, 5-5-214, 5-5-215, 5-11-101, 5-11-105, 5-11-107, 5-11-301, 5-12-302, 5-16-102, 5-18-107, 15-1-230, 15-36-324, 15-70-234, 17-6-511, 17-7-140, 69-3-1409, 72-16-447, 72-16-448, 72-16-450, 75-1-324, AND 90-8-311, MCA; REPEALING SECTIONS 2-4-401, 5-11-302, 5-11-701, 5-11-702, 5-11-703, 5-11-704, 5-14-101, 5-14-102, 5-14-103, 5-14-104, 5-18-101, 5-18-102, 5-18-103, 5-18-104, 5-18-105, 5-18-106, 5-18-108, 5-18-109, 5-18-110, 5-18-115, 5-19-101, 5-19-102, 5-19-103, 5-19-104, 5-19-105, 5-19-106, 5-19-107, 5-19-108, 5-20-201, 5-20-202, 5-20-203, 5-20-204, 5-20-205, 5-20-206, 5-20-207, 5-20-208, 5-21-101, 5-21-102, 5-21-103, 5-21-104, 5-21-105, 5-22-101, 5-22-102, 5-23-101, 5-23-102, 5-23-103, 5-23-104, 5-23-105, 5-23-106, 5-23-107, 5-23-108, AND 5-23-109, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 37

20 *(Senate Bill No. 55; M. Taylor)* REVISING BUDGET REQUIREMENTS FOR CERTAIN ENTERPRISE FUNDS; PROVIDING THAT CERTAIN ENTERPRISE FUNDS ARE SUBJECT TO APPROPRIATION; AMENDING SECTIONS 17-7-111, 17-7-123, AND 17-8-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 69

21 *(Senate Bill No. 93; Hargrove)* REVISING THE LAWS RELATING TO SUBSIDIZED ADOPTIONS; AMENDING SECTIONS 42-10-102, 42-10-103, 42-10-106, 42-10-107, 42-10-108, 42-10-109, AND 53-6-131, MCA; AND REPEALING SECTION 42-10-110, MCA 73

22 *(House Bill No. 254; Somerville)* CLARIFYING THE POWERS OF THE MONTANA MINT COMMITTEE TO CONTRACT TO PROMOTE RESEARCH OF AND MARKET DEVELOPMENT FOR MINT; AMENDING SECTION 80-11-403, MCA; AND PROVIDING AN EFFECTIVE DATE 77

23 *(House Bill No. 284; Story)* REVISING LAWS GOVERNING CONSERVATION DISTRICTS; PROVIDING IMMUNITY TO CONSERVATION DISTRICTS AND THEIR SUPERVISORS AND EMPLOYEES; AUTHORIZING CONSERVATION DISTRICTS AND OTHER POLITICAL SUBDIVISIONS TO SATISFY A SETTLEMENT

HeinOnline -- 1999 vol. I vii 1999

USING FUNDS AUTHORIZED BY 2-9-316; AUTHORIZING CONSERVATION DISTRICTS TO EXECUTE THEIR DUTIES AND RESPONSIBILITIES RELATING TO STREAMBED PRESERVATION UNDER THE PROCEDURES OF TITLE 76, CHAPTER 15; AUTHORIZING CONSERVATION DISTRICTS TO BE INVOLVED IN THE DEVELOPMENT OF VARIOUS WATER PROJECTS; AUTHORIZING CONSERVATION DISTRICTS TO APPLY FOR, ACCEPT, AND EXPEND FUNDS, GRANTS, AND LOANS; AMENDING SECTIONS 2-9-316, 76-15-320, 76-15-403, AND 76-15-501, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 79

24 *(Senate Bill No. 6; Hargrove)* EXPANDING THE LIST OF PRECURSORS TO DANGEROUS DRUGS FOR PURPOSES OF THE OFFENSE OF CRIMINAL POSSESSION OF PRECURSORS TO DANGEROUS DRUGS; AND AMENDING SECTION 45-9-107, MCA . 82

25 *(Senate Bill No. 21; Shea)* TRANSFERRING THE RESPONSIBILITIES UNDER THE OCCUPATIONAL HEALTH ACT OF MONTANA FROM THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO THE DEPARTMENT OF LABOR AND INDUSTRY; MAKING CERTAIN MANDATORY FUNCTIONS PERMISSIVE; CLARIFYING THAT ADMINISTRATIVE RULEMAKING AND CONTESTED CASE HEARINGS ARE PURSUANT TO THE MONTANA ADMINISTRATIVE PROCEDURE ACT; AMENDING SECTIONS 50-70-103, 50-70-105, AND 50-70-111, MCA; REPEALING SECTION 50-70-110, MCA; AND PROVIDING AN EFFECTIVE DATE 83

26 *(Senate Bill No. 28; DePratu)* PROVIDING FOR AUTOMATIC EXTENSIONS OF TIME FOR FILING A MONTANA INDIVIDUAL INCOME TAX RETURN; AMENDING SECTION 15-30-144, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 86

27 *(Senate Bill No. 30; Hargrove)* REMOVING TERMINATION PROVISIONS RELATED TO FEDERAL REQUIREMENTS FROM THE CHILD SUPPORT LAWS; REQUIRING, AS MANDATED BY THE FEDERAL GOVERNMENT, A SOCIAL SECURITY NUMBER ON A DEATH CERTIFICATE UNLESS THE FEDERAL GOVERNMENT EXEMPTS MONTANA FROM THAT REQUIREMENT; AMENDING SECTION 50-15-403, MCA, AND SECTION 104, CHAPTER 552, LAWS OF 1997; AND PROVIDING EFFECTIVE DATES 87

28 *(Senate Bill No. 62; Keenan)* EXTENDING FROM JANUARY 1, 2001, TO OCTOBER 1, 2001, THE TERMINATION DATE OF THE PILOT PROJECT TESTING THE USE OF MEDICAL SAVINGS ACCOUNTS IN CONJUNCTION WITH THE MONTANA MEDICAID PROGRAM; AND AMENDING SECTION 13, CHAPTER 380, LAWS OF 1997 . . . 89

29 *(Senate Bill No. 76; T. Beck)* REVISING PROVISIONS RELATING TO THE ASSIGNMENT OF MONETARY AND MEDICAL SUPPORT BY PERSONS ON PUBLIC ASSISTANCE TO THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; REQUIRING CERTAIN LICENSE APPLICATIONS TO INCLUDE THE APPLICANT'S SOCIAL SECURITY NUMBER; PROVIDING CONFIDENTIALITY FOR THE SOCIAL SECURITY NUMBERS; AMENDING SECTIONS 53-2-613, 61-5-107, 61-5-111, 87-2-106, AND 87-2-202, MCA; AND PROVIDING EFFECTIVE DATES AND APPLICABILITY DATES 89

30 *(Senate Bill No. 77; Keenan)* EXCLUDING FROM THE PREVAILING WAGE LAWS CONTRACTS ENTERED INTO BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES FOR THE PROVISION OF HUMAN SERVICES; AMENDING SECTION 18-2-401, MCA; AND

PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 95

31 *(Senate Bill No. 106; Ekegren)* CLARIFYING THE TAXATION OF LOTTERY WINNINGS; AND AMENDING SECTIONS 15-30-101 AND 15-30-105, MCA 97

32 *(House Bill No. 3; Zook)* APPROPRIATING MONEY TO VARIOUS STATE AGENCIES FOR THE FISCAL YEAR ENDING JUNE 30, 1999; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 100

33 *(House Bill No. 36; Quilici)* ADOPTING THE MOST RECENT VERSION OF FEDERAL LAWS, REGULATIONS, FORMS, PRECEDENTS, AND USAGES, INCLUDING THE UNIFORM CODE OF MILITARY JUSTICE, FOR USE BY THE NATIONAL GUARD; AND AMENDING SECTION 10-1-104, MCA 101

34 *(House Bill No. 85; Simon)* REVISING THE SCOPE OF PRACTICE OF OPTOMETRY; ALLOWING FOR THE USE OF CERTAIN DRUGS AND FOR THE TREATMENT OF GLAUCOMA; AND AMENDING SECTION 37-10-101, MCA 102

35 *(House Bill No. 93; Pavlovich)* ENTITLING A RESIDENT OR NONRESIDENT LEGION OF VALOR MEMBER TO FISH WITH A CONSERVATION LICENSE ISSUED BY THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS; AND AMENDING SECTION 87-2-801, MCA 103

36 *(House Bill No. 137; Anderson)* ESTABLISHING NEW PROCEDURES FOR RESOLVING DISPUTES BETWEEN THE DEPARTMENT OF REVENUE AND PERSONS OR OTHER ENTITIES; PROVIDING FOR AN OFFICE OF DISPUTE RESOLUTION WITHIN THE DEPARTMENT OF REVENUE; PROVIDING THAT THE DEPARTMENT SHALL BY RULE IMPLEMENT THE NEW UNIFORM DISPUTE REVIEW PROCEDURE; AMENDING SECTIONS 15-1-211, 15-1-406, 15-23-102, 15-23-107, AND 39-51-1109, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 103

37 *(House Bill No. 138; Harper)* ELIMINATING THE ANNUAL LICENSE RENEWAL FEE FOR WHOLESALE GASOLINE AND SPECIAL FUEL DISTRIBUTORS; ELIMINATING THE LICENSING REQUIREMENT THAT APPLIES TO A PERSON WHO SELLS GASOLINE OR SPECIAL FUEL FOR WHICH A REFUND MAY BE CLAIMED; AMENDING SECTIONS 15-70-202, 15-70-223, 15-70-341, AND 75-11-314, MCA; REPEALING SECTIONS 15-70-203 AND 15-70-342, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 109

38 *(House Bill No. 139; Harper)* CHANGING FROM MONTHLY TO QUARTERLY THE FREQUENCY WITH WHICH LIQUEFIED PETROLEUM GAS AND COMPRESSED NATURAL GAS DEALERS MUST FILE TAX RETURNS; AMENDING SECTIONS 15-70-704 AND 15-70-714, MCA; AND PROVIDING AN EFFECTIVE DATE 112

39 *(House Bill No. 141; Hagener)* REMOVING THE REQUIREMBNT THAT A FORM EXPLAINING VOTER REGISTRATION QUALIFICATIONS, DEADLINES, AND PURGE INFORMATION BE DISTRIBUTED WITH EACH APPLICATION FOR VOTER REGISTRATION FORM; AMENDING SECTION 13-2-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 113

40 *(House Bill No. 175; Gillan)* PROVIDING THAT A DECLARATION FOR NOMINATION AND A DECLARATION OF INTENT FOR A WRITE-IN CANDIDATE MAY BE SENT BY FACSIMILE TRANSMISSION,

HeinOnline -- 1999 vol. I ix 1999

DELIVERED IN PERSON, OR MAILED TO THE ELECTION ADMINISTRATOR OR TO THE SECRETARY OF STATE; AMENDING SECTIONS 13-10-201 AND 13-10-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 114

41 *(House Bill No. 194; Cobb)* PROVIDING THAT AN AGENCY THAT PROPOSES BY RULE TO INCREASE, DECREASE, OR ADOPT A MONETARY AMOUNT THAT PERSONS ARE REQUIRED TO PAY OR WILL RECEIVE SHALL, IF KNOWN, INCLUDE IN THE PROPOSAL NOTICE AN ESTIMATE OF THE NUMBER OF PAYING OR RECEIVING PERSONS AND THE CUMULATIVE AMOUNT THAT THOSE PERSONS WILL PAY OR RECEIVE; AMENDING SECTION 2-4-302, MCA; AND PROVIDING AN EFFECTIVE DATE 116

42 *(Senate Bill No. 9; McNutt)* LIMITING THE REQUIREMENT THAT THE LEGISLATURE AFFIRM CERTAIN LARGE-SCALE CHANGES OF WATER RIGHT AUTHORIZATION TO ONLY THOSE CHANGES THAT INVOLVE OUT-OF-STATE TRANSPORTATION AND USE; AMENDING SECTION 85-2-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 118

43 *(Senate Bill No. 133; Mohl)* ENHANCING THE PUBLIC SAFETY ON MONTANA ROADWAYS BY IMPOSING SPEED LIMITS ON FEDERAL-AID INTERSTATE AND OTHER PUBLIC HIGHWAYS OF THE STATE; IMPOSING A SPECIAL SPEED LIMIT ON U.S. HIGHWAY 93; ELIMINATING THE FUEL CONSERVATION SPEED LIMIT; INCREASING NIGHTTIME SPEED LIMITS; ALTERING THE SPEED LIMITS LOCAL AUTHORITIES CAN SET; ESTABLISHING A PENALTY SCHEDULE AND PROVIDING MISDEMEANOR PENALTIES FOR VIOLATIONS; PROVIDING THAT CERTAIN VIOLATIONS DO NOT COUNT AGAINST A DRIVER'S RECORD AND CANNOT BE USED TO INCREASE INSURANCE PREMIUMS; CHANGING THE METHOD BY WHICH TRUCKS ARE RATED FOR SPEED LIMIT PURPOSES; AMENDING SECTIONS 7-14-2113, 61-8-303, 61-8-309, 61-8-310, 61-8-312, AND 61-11-203, MCA; REPEALING SECTIONS 61-8-304, 61-8-305, 61-3-306, 61-8-307, 61-8-718, AND 61-11-103, MCA; AND PROVIDING AN EFFECTIVE DATE 128

44 *(House Bill No. 56; Menahan)* ELIMINATING THE LEGISLATIVE PAY OPTION OF REMUNERATION FOR SERVICES PERFORMED; AMENDING SECTION 5-2-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 133

45 *(House Bill No. 89; Guggenheim)* REVISING THE LAWS CONCERNING THE STATE EMERGENCY RESPONSE COMMISSION; REDUCING THE MEMBERS OF THE COMMISSION FROM 20 TO 19; PROVIDING FOR THE TERMS OF OFFICE OF THE MEMBERS; PROVIDING FOR THE AFPOINTMENT OF TWO PRESIDING OFFICERS OF THE COMMISSION; AMENDING SECTION 10-3-1204, MCA; AND PROVIDING AN APPLICABILITY DATE 134

46 *(House Bill No. 198; Cobb)* PROVIDING FOR AN ECONOMIC IMPACT STATEMENT ON A RULE PROPOSAL UPON THE REQUEST OF 15 LEGISLATORS; AMENDING SECTIONS 2-4-405 AND 5-18-107, MCA; AND PROVIDING AN EFFECTIVE DATE 136

47 *(House Bill No. 319; Dale)* EXTENDING AUTHORITY TO JOINTLY CREATE CITY-COUNTY BOARDS OF HEALTH TO ALL CLASSES OF CITIES; AND AMENDING SECTION 50-2-106, MCA 139

48 *(Senate Bill No. 171; Mesaros)* PROVIDING THAT LANDOWNER PERMISSION IS REQUIRED FOR ALL HUNTING ON PRIVATE PROPERTY; PROVIDING A PENALTY FOR A FIRST OFFENSE;

REQUIRING THE COOPERATIVE DEVELOPMENT OF LAND OWNERSHIP MAPS TO ASSIST IN BOUNDARY IDENTIFICATION; AMENDING SECTION 87-3-304, MCA; AND PROVIDING AN EFFECTIVE DATE 140

49 *(House Bill No. 10; Quilici)* APPROPRIATING OIL OVERCHARGE MONEY FOR PROGRAMS ADMINISTERED BY THE STATE OF MONTANA; AND PROVIDING AN EFFECTIVE DATE 141

50 *(House Bill No. 12; Quilici)* AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS TO FUND THE STATE BUILDING ENERGY CONSERVATION PROGRAM; APPROVING ENERGY CONSERVATION PROJECTS FOR FISCAL YEARS 2000 AND 2001; APPROPRIATING BOND PROCEEDS TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY; PLEDGING THE CREDIT OF THE STATE OF MONTANA TO SECURE THE BONDS TO BE ISSUED; REAPPROPRIATING STRIPPER-WELL PAYMENTS CONTAINED IN THE FEDERAL SPECIAL REVENUE FUND; AMENDING THE PROCEDURE FOR IDENTIFYING BUILDINGS THAT HAVE A POTENTIAL FOR ENERGY SAVINGS AND THE AUTHORITY TO TRANSFER FUNDS FOR DESIGNING AND CONSTRUCTING ENERGY IMPROVEMENTS; AMENDING SECTIONS 90-4-605 AND 90-4-607, MCA; AND PROVIDING AN EFFECTIVE DATE 144

51 *(House Bill No. 38; Peck)* GENERALLY REVISING AND CLARIFYING THE MONTANA CODE ANNOTATED; DIRECTING THE CODE COMMISSIONER TO CORRECT ERRONEOUS REFERENCES CONTAINED IN MATERIAL ENACTED BY THE 56TH LEGISLATURE; AMENDING SECTIONS 2-11-103, 2-16-403, 2-16-405, 2-16-619, 2-17-803, 3-5-211, 5-4-301, 5-12-302, 7-4-2506, 7-4-2512, 7-6-2317, 7-7-2203, 7-22-2144, 10-2-601, 13-1-112, 13-2-122, 13-2-221, 13-27-204, 13-27-206, 13-27-207, 13-27-302, 13-27-307, 13-36-203, 13-37-250, 15-1-112, 15-6-135, 15-17-323, 15-24-602, 15-24-1401, 15-24-2402, 15-31-121, 15-31-124, 15-31-702, 15-35-103, 15-36-314, 15-36-315, 15-50-101, 15-61-102, 15-62-204, 16-4-202, 16-4-207, 16-10-403, 17-1-505, 17-1-508, 17-3-222, 17-7-502, 18-3-110, 18-4-242, 18-8-202, 19-3-316, 19-3-412, 19-3-509, 19-6-802, 19-7-802, 19-8-105, 20-15-203, 25-13-701, 25-31-119, 25-35-508, 25-35-602, 25-35-606, 27-1-306, 27-1-704, 30-10-115, 30-10-209, 30-16-201, 32-1-440, 32-8-314, 32-8-403, 35-2-429, 37-13-316, 39-71-116, 40-5-225, 40-5-273, 40-5-413, 41-5-347, 42-2-608, 46-23-302, 50-3-109, 50-78-102, 61-3-448, 61-3-506, 61-3-721, 61-4-101, 61-8-404, 69-14-112, 70-1-301, 70-20-103, 70-21-203, 70-28-207, 71-1-306, 72-2-524, 72-3-104, 72-31-201, 75-10-743, 81-4-307, AND 81-4-510, MCA; REPEALING SECTIONS 7-2-2301, 7-2-2302, 7-2-2303, 7-2-2311, 7-2-2312, 7-2-2313, 7-2-2314, 7-2-2315, 7-2-2316, 7-2-2317, 7-2-2318, 7-2-2319, 15-35-201, 15-35-202, 15-35-203, 15-35-204, AND 15-35-205, MCA; AND PROVIDING EFFECTIVE DATES AND A RETROACTIVE APPLICARILITY DATE 148

52 *(House Bill No. 48; McGee)* GENERALLY REVISING AND CLARIFYING CERTAIN SENTENCING-RELATED CRIMINAL PROCEDURES STATUTES; AND AMENDING SECTIONS 45-9-205, 46-18-201, 46-18-202, 46-18-203, 46-18-219, 46-18-220, 46-18-222, 46-18-225, 46-18-231, 46-18-303, 46-18-502, AND 46-23-1011, MCA 229

53 *(House Bill No. 66; Cobb)* REQUIRING STATE AGENCIES TO INCLUDE WITH AN APPLICATION FOR A LICENSE OR PERMIT THE ESTIMATED TIME IT WILL TAKE FOR THE AGENCY TO PROCESS AND ACT ON THE APPLICATION 242

54 *(House Bill No. 73; Rose)* GENERALLY REVISING LICENSE LAWS; REQUIRING THE DEPARTMENT OF JUSTICE TO PERFORM A

HeinOnline -- 1999 vol. I xi 1999

BACKGROUND INVESTIGATION RATHER THAN A THOROUGH INVESTIGATION PRIOR TO THE ISSUANCE OF AN OFF-PREMISES BEER AND WINE LICENSE; REMOVING THE NOTARY REQUIREMENT FOR LIQUOR LICENSE AND NURSERY LICENSE APPLICATIONS; PROVIDING THAT THE DEPARTMENT OF REVENUE RATHER THAN THE DEPARTMENT OF COMMERCE ADMINISTER THE MONTANA SMALL BUSINESS LICENSING COORDINATION ACT ESTABLISHED IN TITLE 30, CHAPTER 16, MCA; PROVIDING ANNIVERSARY DATES FOR PETROLEUM DEALERS AND LIQUOR LICENSEES; PROVIDING FOR LICENSING AND PERMITTING BY THE DEPARTMENT OF REVENUE RATHER THAN THE DEPARTMENT OF ENVIRONMENTAL QUALITY OF UNDERGROUND STORAGE TANKS PURSUANT TO THE PROVISIONS OF TITLE 30, CHAPTER 16, MCA; AMENDING SECTIONS 16-4-115, 16-4-402, 16-4-407, 16-4-501, 30-16-103, 30-16-301, 80-7-106, AND 82-15-105, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 242

55 *(House Bill No. 75; Ahner)* COMBINING THE STATUTORY APPROPRIATION FOR MITIGATING DISASTERS AND EMERGENCIES CAUSED BY FIRE WITH THE STATUTORY APPROPRIATION FOR MITIGATING DISASTERS CAUSED BY ALL OTHER CAUSES; AMENDING SECTION 10-3-312, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 249

56 *(House Bill No. 82; Harper)* GENERALLY REVISING PROCEDURES REGARDING COUNTY TAX APPEAL BOARDS; PROVIDING THAT COUNTY TAX APPEAL BOARDS ARE IN SESSION FROM JULY 1 TO DECEMBER 31 OF THE CURRENT TAX YEAR; CHANGING THE DATE FOR NOTICE OF THE TIME THE COUNTY TAX APPEAL BOARD WILL MEET; PROVIDING FOR THE SUBMISSION OF APPLICATIONS FOR REDUCTION OF PROPERTY TAXES WITH THE COUNTY CLERK AND RECORDER; AND AMENDING SECTIONS 15-7-102, 15-15-101, 15-15-102, AND 15-15-103, MCA . . . 35+

57 *(House Bill No. 101; Bookout-Reinicke)* REVISING THE MEMBERSHIP OF THE BOARD OF PLUMBERS; REPLACING THE MEMBER FROM THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES WITH A MEMBER FROM THE DEPARTMENT OF ENVIRONMENTAL QUALITY; AMENDING SECTION 2-15-1875, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 253

58 *(House Bill No. 119; Mood)* RELATING TO PUBLIC RETIREMENT SYSTEMS; AMENDING RETIREMENT SYSTEM-RELATED STATUTES TO COMPLY WITH INTERNAL REVENUE CODE REQUIREMENTS FOR TAX-DEFERRED QUALIFIED RETIREMENT PLANS; PROVIDING FOR WITHHOLDING AND EMPLOYER PICKUP OF AMOUNTS USED BY PUBLIC EMPLOYEES TO QUALIFY OR PURCHASE RETIREMENT SERVICE; REMOVING MENTAL HEALTH CORPORATIONS FROM THE ENTITIES THAT ARE ALLOWED TO JOIN PUBLIC EMPLOYEE RETIREMENT SYSTEMS; AMENDING SECTIONS 19-1-102, 19-1-202, 19-1-602, 19-2-303, 19-2-505, 19-2-602, 19-2-704, 19-2-706, 19-2-902, 19-2-908, 19-2-1001, 19-2-1006, 19-2-1007, 19-2-1010, 19-3-108, 19-3-318, 19-3-412, 19-3-503, 19-3-504, 19-3-505, 19-3-512, 19-3-513, 19-5-409, 19-6-101, 19-6-801, 19-6-803, 19-6-804, 19-7-101, 19-7-803, 19-7-804, 19-8-101, 19-8-904, 19-8-905, 19-9-104, 19-9-403, 19-9-411, 19-13-104, 19-13-403, 19-13-405, AND 53-21-204, MCA; REPEALING SECTIONS 19-2-705 AND 19-3-520, MCA; AND PROVIDING EFFECTIVE DATES 254

59 *(House Bill No. 120; Brown)* REVISING THE RESTRICTION ON USING PRIORITY RECLAMATION AND DEVELOPMENT GRANT

HeinOnline -- 1999 vol. I xii 1999

FUNDS FOR PERSONNEL COSTS OR OPERATING EXPENSES INCURRED WHILE PERFORMING OIL AND GAS RECLAMATION PROJECTS; AMENDING SECTION 90-2-1113, MCA; AND PROVIDING AN EFFECTIVE DATE 283

60 *(House Bill No. 151; Witt)* CLARIFYING THAT IN THE CASE OF A CONSOLIDATED COUNTY OFFICE, A PERSON MAY BE AN ELECTOR OF ANY COUNTY IN WHICH THE DUTIES OF THE OFFICE ARE TO BE PERFORMED TO BE ELIGIBLE FOR THE OFFICE; AND AMENDING SECTION 7-4-2201, MCA 284

61 *(House Bill No. 179; Sliter)* REVISING CERTAIN LABOR LAWS PERTAINING TO UNEMPLOYMENT BENEFITS; PROVIDING FOR WITHHOLDING OF A PORTION OF BENEFITS FROM CERTAIN DELINQUENT TAXPAYERS FOR THE PAYMENT OF FEDERAL TAX OBLIGATIONS; CLARIFYING THE DEFINITION OF AGRICULTURAL LABOR; CLARIFYING THE ELIGIBILITY OF CERTAIN EDUCATIONAL EMPLOYEES FOR UNEMPLOYMENT BENEFITS; SPECIFYING THAT QUALIFYING WORK MUST MEET THE STATUTORY DEFINITION OF EMPLOYMENT; PROVIDING FOR THE WAIVER OF OVERPAYMENTS UNDER CERTAIN CIRCUMSTANCES; AMENDING SECTIONS 39-51-204, 39-51-301, 39-51-302, 39-51-2108, 39-51-2302, 39-51-2303, 39-51-2304, 39-51-3105, AND 39-51-3206, MCA; AND PROVIDING AN EFFECTIVE DATE . . 284

62 *(House Bill No. 214; McGee)* CLARIFYING THAT LAND SURVEYING, WITH OR WITHOUT OTHER IMPROVEMENTS TO REAL PROPERTY, IS SUBJECT TO THE LIMITATIONS ON ACTIONS; DEFINING "LAND SURVEYING"; AND AMENDING SECTION 27-2-208, MCA 293

63 *(House Bill No. 233; Schmidt)* ALLOWING MUNICIPAL AND CITY COURTS TO ASSIGN THE COLLECTION OF FINES TO PRIVATE PERSONS OR ENTITIES; AND AMENDING SECTIONS 25-30-102, 46-17-303, AND 46-17-402, MCA 294

64 *(House Bill No. 237; Swanson)* REDUCING THE BOARD OF INVESTMENTS MINIMUM INFRASTRUCTURE LOAN AMOUNT FROM $500,000 TO $250,000; REDUCING THE MINIMUM NUMBER OF JOBS CREATED FROM 50 TO 15 THAT ARE REQUIRED FOR A MINIMUM INFRASTRUCTURE LOAN AMOUNT; INCREASING THE MAXIMUM LOAN AMOUNT FROM $20 MILLION TO $50 MILLION; REMOVING THE REQUIREMENT THAT ONLY SMALL BUSINESSES MAY RECEIVE A JOB CREDIT INTEREST RATE REDUCTION FOR PARTICIPATING IN THE JOB CREATION LOAN PROGRAM; AMENDING SECTIONS 17-6-309, 17-6-311, AND 17-6-318, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 295

65 *(House Bill No. 391; Hedges)* GENERALLY REVISING THE PESTICIDE LAWS; DIRECTING THAT CIVIL PENALTIES COLLECTED PURSUANT TO SECTION 80-8-306, MCA, BE DEPOSITED INTO A SPECIAL REVENUE ACCOUNT FOR PESTICIDE CLEANUP; ALLOWING FOR ELECTRONIC VERIFICATION OF A RESTRICTED PESTICIDE PURCHASER'S LICENSE OR PERMIT; ALLOWING THE DEPARTMENT OF AGRICULTURE TO ADOPT RULES CONCERNING DEALER VERIFICATION OF A RESTRICTED PESTICIDE PURCHASER'S LICENSE OR PERMIT; AMENDING SECTIONS 80-8-116 AND 80-8-207, MCA; AND PROVIDING AN EFFECTIVE DATE 297

66 *(House Bill No. 480; Johnson)* PROVIDING THAT THE REPAYMENT OF ALL INVESTMENTS MADE BY THE FORMER MONTANA BOARD OF SCIENCE AND TECHNOLOGY DEVELOPMENT FROM THE

HeinOnline -- 1999 vol. I xiii 1999

COAL SEVERANCE TAX TRUST FUND MUST BE REDEPOSITED IN THE COAL SEVERANCE TAX PERMANENT FUND WITH 7 PERCENT INTEREST; TRANSFERRING MANAGEMENT OF THE INVESTMENTS FROM THE DEPARTMENT OF COMMERCE TO THE BOARD OF INVESTMENTS; AMENDING SECTION 17-6-308, MCA; AND PROVIDING AN EFFECTIVE DATE 29:

67 *(Senate Bill No. 52; DePratu)* MAKING THE INDIVIDUAL INCOME TAX THRESHOLD FILING REQUIREMENT FOR NONRESIDENT TAXPAYERS THE SAME AS THE THRESHOLD FILING REQUIREMENT FOR RESIDENT TAXPAYERS; AMENDING SECTION 15-30-142, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 302

68 *(Senate Bill No. 53; DePratu)* REQUIRING TAXPAYERS TO FILE AN AMENDED MONTANA RETURN WHEN THEIR FEDERAL TAXES ARE ADJUSTED OR THEY FILE AN AMENDED RETURN; AMENDING SECTIONS 15-1-206, 15-30-304, 15-31-506, AND 15-31-509, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 303

69 *(Senate Bill No. 84; Halligan)* PROVIDING FOR THE ISSUANCE OF A CORPORATE DISSOLUTION OR WITHDRAWAL CERTIFICATE VERIFYING THAT A CORPORATION HAS FILED ALL RETURNS AND PAID ALL TAXES CURRENTLY OWING TO THE STATE OF MONTANA PRIOR TO VOLUNTARY DISSOLUTION OR WITHDRAWAL; CLARIFYING THAT CORPORATE DISSOLUTION DOES NOT RELIEVE A CORPORATION OF ITS TAX LIABILITIES; AMENDING SECTIONS 15-31-143, 15-31-552, 35-1-935, AND 35-1-944, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 305

70 *(House Bill No. 23; Kitzenberg)* DEFINING ETHANOL-BLENDED FUEL; ELIMINATING THE REQUIREMENT THAT THE OPERATOR OF A STATE-OWNED MOTOR VEHICLE REPORT HAVING USED ETHANOL-BLENDED FUEL; ELIMINATING THE REQUIREMENT THAT A STATE AGENCY RETAIN RECORDS OF ETHANOL USE IN THE VEHICLES OWNED OR OPERATED BY ITS EMPLOYEES; ELIMINATING THE REQUIREMENT THAT THE LEGISLATIVE AUDITOR REVIEW ETHANOL PURCHASE RECORDS; AND AMENDING SECTION 2-17-414, MCA 307

71 *(House Bill No. 41; Hagener)* EXTENDING THE TERMINATION DATE FOR THE USER SURCHARGE IN CRIMINAL, CIVIL, AND PROBATE PROCEEDINGS FOR STATE FUNDING OF COURT INFORMATION TECHNOLOGY; AMENDING SECTION 4, CHAPTER 361, LAWS OF 1995; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 309

72 *(House Bill No. 94; Cobb)* MAKING PERMANENT THE ATTORNEY GENERAL'S DUTY TO REPRESENT THE STATE IN BANKRUPTCY PROCEEDINGS IN WHICH THE STATE'S INTEREST MAY BE AFFECTED; ALLOWING THE ATTORNEY GENERAL'S REPRESENTATION TO INCLUDE OTHER DEBT COLLECTION PROCEEDINGS; PROVIDING AUTHORITY FOR THE COLLECTION OF FEES TO COVER THE COSTS OF THE BANKRUPTCY PROGRAM; AMENDING SECTION 2-15-501, MCA; REPEALING SECTION 4, CHAPTER 196, LAWS OF 1995, AND SECTION 1, CHAPTER 82, LAWS OF 1997; AND PROVIDING AN EFFECTIVE DATE 309

73 *(House Bill No. 110; Johnson)* AUTHORIZING AN ADDITIONAL $15 MILLION IN GENERAL OBLIGATION BONDS TO PROVIDE THE STATE MATCHING FUNDS FOR THE WATER POLLUTION CONTROL STATE REVOLVING FUND; AUTHORIZING THE

CREATION OF STATE DEBT; AMENDING SECTION 75-5-1122, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 312

74 *(House Bill No. 121; Krenzler)* PROHIBITING PYRAMID PROMOTION SCHEMES AND PROVIDING CRIMINAL PENALTIES; AND REQUIRING MULTILEVEL DISTRIBUTION COMPANIES TO FILE A NOTICE OF ACTIVITY WITH THE SECURITIES COMMISSIONER AND TO CONSENT TO SERVICE OF PROCESS 312

75 *(House Bill No. 123; Menahan)* PROVIDING THAT THE STATE'S SHARE OF COUNTY ATTORNEY SALARIES BE PAID EVERY 2 WEEKS INSTEAD OF MONTHLY; ALLOWING A COUNTY'S SHARE OF A COUNTY ATTORNEY'S OR DEPUTY COUNTY ATTORNEY'S SALARY TO BE PAID MONTHLY, TWICE MONTHLY, OR EVERY 2 WEEKS; AMENDING SECTION 7-4-2502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 315

76 *(House Bill No. 171; Matthews)* REQUIRING THE INSURANCE COMMISSIONER TO ADOPT RULES PERTAINING TO LIFE INSURANCE POLICY ILLUSTRATIONS, ANNUITY DISCLOSURE, AND SALES ILLUSTRATIONS; AND AMENDING SECTION 33-20-101, MCA 316

77 *(House Bill No. 172; Hibbard)* PROVIDING FOR THE USE OF ELECTRONIC FUNDS TRANSFER IN PAYMENT OF FUEL TAXES AND ASSOCIATED FEES, PENALTIES, AND INTEREST; ALLOWING AN EXTRA 3 DAYS FOR PAYMENT IF ELECTRONIC FUNDS TRANSFER IS USED; ALLOWING THE DEPARTMENT OF TRANSPORTATION TO REQUIRE THAT INDIVIDUALS WHO RECEIVE OR DISPENSE FUEL FILE FUEL TAX RETURNS ELECTRONICALLY; AND AMENDING SECTIONS 15-70-112, 15-70-113, 15-70-114, 15-70-115, 15-70-205, 15-70-344, AND 15-70-352, MCA 317

78 *(House Bill No. 200; Cobb)* REVISING THE PENALTY FOR VIOLATING SPECIAL CONDITIONS AND LABOR PRACTICE PROVISIONS FOR PUBLIC CONSTRUCTION CONTRACTS; AND AMENDING SECTION 18-2-432, MCA 321

79 *(House Bill No. 231; Witt)* EXEMPTING EX-PRISONERS OF WAR FROM THE LIGHT VEHICLE TAX, THE VEHICLE REGISTRATION FEE, AND THE FEE ASSOCIATED WITH SPECIAL LICENSE PLATES; ALLOWING THE SURVIVING SPOUSE OF AN EX-PRISONER OF WAR TO RETAIN THE PLATES UNDER CERTAIN CIRCUMSTANCES; AND AMENDING SECTIONS 61-3-321, 61-3-332, 61-3-426, AND 61-3-504, MCA 322

80 *(House Bill No. 241; Ryan)* ALLOWING ELECTION ADMINISTRATORS TO ACCOMPLISH REGISTRATION AND VOTING ACTIONS THROUGH THE INTERNET FOR OVERSEAS ELECTORS IN THE UNITED STATES SERVICE; REMOVING AN EXCEPTION FOR ACCEPTING FACSIMILE BALLOTS AFTER THE POLLS CLOSE; AMENDING SECTIONS 13-13-276, 13-13-277, AND 13-13-278, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 329

81 *(House Bill No. 274; Hanson)* TO ELIMINATE THE REQUIREMENT THAT PUBLIC UTILITIES REPORT MINOR INJURIES TO THE PUBLIC SERVICE COMMISSION; AMENDING SECTION 69-3-107, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 330

82 *(Senate Bill No. 1; Mahlum)* AMENDING LAW ENFORCEMENT RESERVE OFFICER RESIDENCY REQUIREMENTS; ADDING A SPECIAL SERVICES OFFICER CATEGORY TO THE LAWS

HeinOnline -- 1999 vol. I xv 1999

GOVERNING LOCAL LAW ENFORCEMENT RESERVE AND AUXILIARY OFFICERS; AND AMENDING SECTIONS 7-32-201, 7-32-203, AND 7-32-234, MCA 331

83 *(Senate Bill No. 18; Nelson)* ENABLING MONTANA AGRICULTURAL COMMODITY GROUPS TO ADOPT COMMODITY CHECKOFF PROGRAMS FOR THE PURPOSE OF CONDUCTING COMMODITY RESEARCH AND MARKET DEVELOPMENT PROGRAMS; PROVIDING FOR A COMMODITY GROUP REFERENDUM PROCESS TO ADOPT OR ELIMINATE CHECKOFF PROGRAMS; PROVIDING FOR CREATION OF COMMODITY ADVISORY COMMITTEES AND SETTING OUT COMMITTEE DUTIES; CREATING AN ACCOUNT AND PROVIDING FOR EXPENDITURE AND INVESTMENT OF ACCOUNT FUNDS; PROVIDING PENALTIES; STATUTORILY APPROPRIATING CHECKOFF PROGRAM FUNDS; AMENDING SECTION 17-7-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 332

84 *(Senate Bill No. 32; Grimes)* PROVIDING THAT CONSENT OF A VICTIM OF SEXUAL ASSAULT OR SEXUAL INTERCOURSE WITHOUT CONSENT IS INEFFECTIVE IF THE VICTIM IS INCARCERATED IN AN ADULT OR JUVENILE CORRECTIONAL, DETENTION, OR TREATMENT FACILITY AND THE PERPETRATOR IS AN EMPLOYEE, CONTRACTOR, OR VOLUNTEER OF THE FACILITY AND HAS SUPERVISORY OR DISCIPLINARY AUTHORITY OVER THE VICTIM, UNLESS THE ACT IS PART OF A LAWFUL SEARCH; PROVIDING A PENALTY FOR SEXUAL INTERCOURSE WITHOUT CONSENT COMMITTED UNDER THOSE CIRCUMSTANCES; AND AMENDING SECTIONS 45-5-501, 45-5-502, AND 45-5-503, MCA 341

85 *(Senate Bill No. 88; Stang)* PROVIDING THAT THE DEPARTMENT OF JUSTICE IS THE PROPER PARTY TO DEFEND TAX APPEALS INVOLVING MOTOR VEHICLE TAXES OR FEES IN LIEU OF TAX; CREATING A PROCEDURE FOR MOTOR VEHICLE TAX APPEALS; PROVIDING THAT PROTESTED MOTOR VEHICLE TAXES AND FEES NEED NOT BE PAID INTO THE PROPERTY TAX PROTEST FUND; PROVIDING FOR THE REFUND OF MOTOR VEHICLE TAXES AND FEES WHEN THE TAXPAYER PREVAILS IN AN APPEAL; AMENDING SECTIONS 15-8-115, 15-8-202, 15-15-103, AND 15-16-603, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 343

86 *(Senate Bill No. 95; Grosfield)* AUTHORIZING COUNTIES TO VOLUNTARILY APPROPRIATE AND TRANSFER FUNDS TO MUNICIPALITIES TO SUPPLEMENT THE COST OF INFRASTRUCTURE DEVELOPMENT AND MAINTENANCE; AMENDING SECTIONS 7-11-104 AND 7-11-1102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 347

87 *(Senate Bill No. 115; Stang)* PROHIBITING CERTAIN SMALL EMPLOYER HEALTH INSURANCE CARRIERS FROM CONSIDERING AS ELIGIBLE EMPLOYEES THOSE EMPLOYEES WHO HAVE WAIVED COVERAGE UNDER THE EMPLOYER'S PLAN BECAUSE OF OTHER EXISTING HEALTH INSURANCE COVERAGE; AND AMENDING SECTION 33-22-1811, MCA 349

88 *(Senate Bill No. 120; Bartlett)* RELATING TO THE FLEXIBLE SPENDING ACC(UNT PROGRAM; REQUIRING THAT AMOUNTS WITHHELD FROM PUBLIC EMPLOYEE SALARIES ALONG WITH ANY EMPLOYER CONTRIBUTIONS FOR THE PURPOSES OF THE FLEXIBLE SPENDING ACCOUNT PROGRAM BE DEPOSITED INTO

AN ACCOUNT WITHIN THE STATE SELF-INSURANCE RESERVE FUND AND USED FOR THE PURPOSES OF THE PROGRAM; REQUIRING THAT EXCESS PORTIONS OF THE EMPLOYER CONTRIBUTION TO THE STATE INSURANCE PROGRAM ALSO BE USED FOR THE FLEXIBLE SPENDING ACCOUNT PROGRAM IF REQUESTED BY AN EMPLOYEE; REQUIRING INCOME EARNED ON THE FLEXIBLE SPENDING ACCOUNT BE RETAINED WITHIN THE ACCOUNT AND USED FOR PURPOSES OF THE FLEXIBLE SPENDING ACCOUNT PROGRAM; AMENDING SECTIONS 2-18-809 AND 2-18-812, MCA; AND PROVIDING AN EFFECTIVE DATE . . . 352

89 *(Senate Bill No. 203; Bartlett)* REVISING THE LAWS GOVERNING EXECUTION OF JUDGMENT; PROVIDING A PROCEDURE FOR THE JUDGMENT DEBTOR TO CLAIM AN EXEMPTION FROM AN EXECUTION OF JUDGMENT; PROVIDING A PROCEDURE FOR ISSUANCE OF A WARRANT OF EXECUTION; ALLOWING A SHERIFF OR LEVYING OFFICER TO ACCEPT PAYMENT BY A METHOD OTHER THAN CASH AT THE SALE OF THE PROPERTY; AMENDING SECTIONS 25-13-301, 25-13-402, 25-13-708, AND 25-13-709, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 353

90 *(Senate Bill No. 231; Jabs)* CLARIFYING THE TERM OF OFFICE FOR A JUSTICE OF THE PEACE; AMENDING SECTION 3-10-205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 357

91 *(House Bill No. 24; Soft)* REPLACING THE UNIFORM CHILD CUSTODY JURISDICTION ACT WITH THE UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT; AMENDING SECTIONS 40-1-105, 40-4-103, 40-7-101, 40-7-103, 40-7-105, 40-7-106, 40-7-107, 40-7-108, 40-7-109, 40-7-110, 40-7-112, 40-7-119, AND 40-7-125, MCA; AND REPEALING SECTIONS 40-7-102, 40-7-104, 40-7-111, 40-7-113, 40-7-114, 40-7-115, 40-7-116, 40-7-117, 40-7-118, 40-7-120, 40-7-121, 40-7-122, 40-7-123, AND 40-7-124, MCA 357

92 *(House Bill No. 170; Masolo)* REVISING THE LAW GOVERNING THE PROVISION OF TREATMENT AND FINANCIAL ASSISTANCE TO PERSONS NEEDING RENAL TREATMENT; DELETING THE DUTY OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO PROVIDE TREATMENT; REQUIRING ADOPTION OF RULES PROVIDING STANDARDS FOR FINANCIAL AND MEDICAL ASSISTANCE TO ENSURE ASSISTANCE FOR THOSE INDIVIDUALS MOST IN NEED OF ASSISTANCE; AMENDING SECTION 50-44-102, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE 375

93 *(House Bill No. 392; Tash)* EXPANDING THE REQUIREMENTS FOR THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO CONSULT WITH THE STATEWIDE TMDL ADVISORY GROUP ON MATTERS RELATED TO WATER QUALITY MONITORING, ASSESSMENT, AND TMDL DEVELOPMENT; AMENDING SECTIONS 75-5-702 AND 75-5-703, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 376

94 *(House Bill No. 454; Soft)* PROVIDING FOR A VOLUNTARY CHECKOFF ON VEHICLE REGISTRATION APPLICATIONS FOR A DONATION FOR THE PURPOSES OF PROMOTING GENERAL PUBLIC AWARENESS AND EDUCATION FOR THE PROCUREMENT OF ORGAN AND TISSUE DONATIONS FOR ANATOMICAL GIFTS; AMENDING SECTION 61-3-303, MCA; AND PROVIDING AN EFFECTIVE DATE 380

95 *(House Bill No. 467; Hibbard)* RELATING TO OFF-HIGHWAY VEHICLE USE; ALLOWING OFF-HIGHWAY VEHICLES TO USE CERTAIN FOREST DEVELOPMENT ROADS; EXEMPTING CERTAIN

YOUNG DRIVERS FROM LICENSING REQUIREMENTS FOR USE OF OFF-HIGHWAY VEHICLES ON CERTAIN FOREST DEVELOPMENT ROADS; AND AMENDING SECTIONS 23-2-821 AND 61-5-104, MCA . 382

96 *(House Bill No. 531; Gillan)* INCREASING FROM $2,500 TO $10,000 THE MINIMUM VALUE OF A CONTRACT THAT MUST BE AWARDED BY COMPETITIVE BID BY A DRAINAGE DISTRICT; AMENDING SECTION 85-8-361, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE 384

97 *(Senate Bill No. 8; Hargrove)* PROVIDING THAT A PROSECUTOR MAY OBTAIN A COURT ORDER ALLOWING A TELEPHONE SERVICE PROVIDER TO WORK WITH A LAW ENFORCEMENT AGENCY AS PART OF A CRIMINAL INVESTIGATION FOR THE PURPOSE OF RECORDING AND PROVIDING THE LAW ENFORCEMENT AGENCY WITH TELEPHONE NUMBERS THAT ARE DIALED FROM A PARTICULAR TELEPHONE AND THE TELEPHONE NUMBERS OF PARTICULAR TELEPHONES USED TO DIAL A TELEPHONE NUMBER 384

98 *(Senate Bill No. 116; Glaser)* GENERALLY REVISING STATUTES RELATING TO HEALTH CARE FACILITIES; DEFINING AND REQUIRING THE LICENSURE OF AN "OUTPATIENT CENTER FOR PRIMARY CARE" AND AN "OUTPATIENT CENTER FOR SURGICAL SERVICES"; DELETING THE REQUIREMENT THAT AN AMBULATORY SURGICAL FACILITY AND AN OUTPATIENT FACILITY BE LICENSED; CLARIFYING THAT THE DEFINITION OF "HEALTH CARE FACILITY" EXCLUDES THE OFFICES OF PRIVATE PHYSICAL OR MENTAL HEALTH CARE PROFESSIONALS FOR PURPOSES OF LICENSURE; AMENDING SECTIONS 7-34-2102, 7-34-2201, 37-6-107, 50-5-101, AND 50-5-301, MCA; AND PROVIDING AN APPLICABILITY DATE 387

99 *(Senate Bill No. 155; Berry)* REVISING DISCLOSURE LAWS APPLICABLE TO REAL ESTATE BROKERS AND SALESPERSONS WITH REGARD TO THE PROXIMITY OF A SEXUAL OR VIOLENT OFFENDER; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 394

100 *(Senate Bill No. 162; Crismore)* EXPANDING THE POWERS OF BANKS TO ENGAGE IN OTHER TYPES OF LAWFUL BUSINESS; ALLOWING A BANK TO CONDUCT BUSINESS ACTIVITIES DIRECTLY OR INDIRECTLY THROUGH AFFILIATES AND SUBSIDIARIES; DEFINING "SUBSIDIARY"; AUTHORIZING A BANK TO ENGAGE IN CERTAIN INSURANCE ACTIVITIES; ALLOWING A BANK TO MAKE CERTAIN TYPES OF INVESTMENTS TO PROMOTE PUBLIC WELFARE; PROVIDING A MEANS FOR A STATE-CHARTERED BANK TO COME UNDER NATIONAL BANKING REGULATIONS, WITH APPROVAL FROM THE DEPARTMENT OF COMMERCE; ALLOWING A BANK TO RECOVER COSTS FOR PROVIDING BANK RECORDS ON REQUEST; AND AMENDING SECTIONS 32-1-105, 32-1-109, 32-1-362, 32-1-422, 32-1-432, AND 32-1-492, MCA 395

101 *(Senate Bill No. 191; Jabs)* CONFORMING THE STATUTE OF LIMITATIONS FOR COMMENCEMENT OF AN ACTION UPON A JUDGMENT OR DECREE RENDERED IN A COURT NOT OF RECORD TO OTHER LIMITATION PERIODS; AND AMENDING SECTION 27-2-201, MCA 401

102 *(Senate Bill No. 246; Mahlum)* AUTHORIZING A SCHOOL DISTRICT TO POOL AND INDEPENDENTLY INVEST DISTRICT FUNDS FOR COMPLIANCE WITH INVESTMENT LAWS APPLICABLE TO SCHOOL DISTRICT FUNDS; AMENDING SECTIONS 20-9-212 AND 20-9-213, MCA; AND PROVIDING AN EFFECTIVE DATE 401

HeinOnline -- 1999 vol. I xviii 1999

103 *(Senate Bill No. 347; Stang)* ELIMINATING THE RIGHT OF A SMALL GROUP CARRIER, UNDER THE SMALL EMPLOYER HEALTH INSURANCE AVAILABILITY ACT, TO CEDE NEW ENROLLEES UNDER THE REINSURANCE PROGRAM; ELIMINATING THE SMALL EMPLOYER HEALTH REINSURANCE PROGRAM AND ITS BOARD ON JULY 1, 2001; PROVIDING FOR A TRANSITION FOR THOSE PERSONS ALREADY CEDED TO THE REINSURANCE PROGRAM; AMENDING SECTIONS 33-22-1803 AND 33-22-1819, MCA; REPEALING SECTIONS 33-22-1818 AND 33-22-1819, MCA; AND PROVIDING EFFECTIVE DATES 404

104 *(House Bill No. 52; Menahan)* PROVIDING THAT THE 6-MONTH LIMITATION APPLICABLE TO FAMILY CARE POWERS OF ATTORNEY DOES NOT APPLY TO CERTAIN MEMBERS OF THE MONTANA NATIONAL GUARD, THE ACTIVE DUTY MILITARY FORCES, AND THE FEDERAL RESERVES; AMENDING SECTION 72-5-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 412

105 *(House Bill No. 168; Kasten)* REVISING STATUTES RELATING TO THE COLLECTION OF CERTAIN DEBTS BY THE STATE; TRANSFERRING THE AUTHORITY FOR DEBT COLLECTION FROM THE DEPARTMENT OF ADMINISTRATION TO THE DEPARTMENT OF REVENUE; SPECIFYING A HEARING PROCEDURE FOR COLLECTION OF DEBTS; AUTHORIZING THE DEPARTMENT OF REVENUE TO ENTER INTO AGREEMENTS WITH THE UNITED STATES, WITH OTHER STATES, AND WITH AGENCIES OF OTHER STATES FOR THE OFFSET OF TAXES OWED TO THOSE ENTITIES AGAINST MONTANA TAX REFUNDS; REQUIRING RECIPROCITY IN OFFSET AGREEMENTS; AMENDING SECTIONS 17-4-101, 17-4-105, AND 17-4-111, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE 413

106 *(House Bill No. 176; E. Bergsagel)* REVISING THE DISPOSITION OF YOUTH COURT RECORDS FOR THE PURPOSES OF RESEARCH AND PROGRAM EVALUATION; DEFINING "YOUTH COURT RECORDS", "LAW ENFORCEMENT RECORDS", AND "DEPARTMENT RECORDS"; AMENDING SECTIONS 41-5-103, 41-5-215, AND 41-5-216, MCA; AND REPEALING SECTION 41-5-217, MCA 415

107 *(House Bill No. 352; Brainard)* ENSURING CONTINUED ACCESS ACROSS PUBLIC LAND TO PRIVATE AND PUBLIC LAND; AMENDING SECTIONS 7-14-2615 AND 60-2-107, MCA; AND PROVIDING EFFECTIVE DATES 421

108 *(House Bill No. 387; Jore)* ALLOWING A PERSON WHO OWNS OR LAWFULLY CONTROLS AN ARTIFICIAL LAKE OR POND OR A PRIVATE FISH POND TO QUALIFY FOR A FISH POND LICENSE IF THE LICENSE CONDITIONS ARE MET; REVISING THE DEFINITION OF "ARTIFICIAL LAKE OR POND" TO INCLUDE A PRIVATE FISH POND; AMENDING SECTION 87-4-603, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 423

109 *(Senate Bill No. 91; Swysgood)* EXTENDING FOR 4 YEARS THE TERMINATION DATE ON THE REQUIREMENT THAT AT LEAST 50 PERCENT OF FISHING LICENSE FEES RESERVED FOR FISHING ACCESS SITES BE ALLOCATED FOR THE OPERATION AND MAINTENANCE OF FISHING ACCESS SITES AND STREAM, RIVER, AND LAKE FRONTAGES AND BE PRIORITIZED AND EXPENDED FOR WEED CONTROL, STREAMBANK RESTORATION, AND GENERAL OPERATION AND MAINTENANCE; REQUIRING A

HeinOnline -- 1999 vol. I xix 1999

REPORT ON PROGRAM SUCCESS TO THE 58TH LEGISLATURE; AMENDING SECTIONS 2 AND 4, CHAPTER 428, LAWS OF 1995; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 425

110 *(Senate Bill No. 201; McNutt)* CLARIFYING THAT IN A CRIMINAL PROSECUTION, JEOPARDY ATTACHES WHEN A JURY IS EMPANELED AND SWORN; AND AMENDING SECTION 46-11-503, MCA 425

111 *(House Bill No. 118; Mood)* REVISING STATUTES GOVERNING THE TEACHERS' RETIREMENT SYSTEM TO COMPLY WITH THE REQUIREMENTS OF THE INTERNAL REVENUE CODE FOR A QUALIFIED GOVERNMENTAL RETIREMENT PLAN; CLARIFYING THE AUTHORITY OF THE TEACHERS' RETIREMENT BOARD TO COMPLY WITH THE INTERNAL REVENUE CODE; CLARIFYING THE MEMBERSHIP RIGHTS OF LEGISLATORS WHO ARE ALSO MEMBERS OF THE TEACHERS' RETIREMENT SYSTEM; GRANTING EMPLOYERS PARTICIPATING IN THE TEACHERS' RETIREMENT SYSTEM THE OPTION OF WITHHOLDING EMPLOYEE CONTRIBUTIONS UNDER THE PROVISIONS OF THE INTERNAL REVENUE CODE FOR THE PURPOSE OF PURCHASING SERVICE; PERMITTING CONTRIBUTIONS WITHHELD ON TERMINATION PAY AND REPORTED TO THE TEACHERS' RETIREMENT SYSTEM TO BE WITHHELD UNDER THE PROVISIONS OF THE INTERNAL REVENUE CODE; CLARIFYING ELIGIBILITY PROVISIONS; CLARIFYING DUTIES OF THE TEACHERS' RETIREMENT BOARD REPRESENTATIVE; AMENDING SECTIONS 5-2-304, 19-20-101, 19-20-106, 19-20-302, 19-20-404, 19-20-405, 19-20-414, 19-20-502, 19-20-602, 19-20-603, 19-20-702, 19-20-703, 19-20-710, 19-20-716, 19-20-801, 19-20-802, 19-20-804, 19-20-901, AND 19-20-902, MCA; REPEALING SECTIONS 19-20-412, 19-20-413, 19-20-704, 19-20-707, 19-20-708, AND 19-20-709, MCA; AND PROVIDING EFFECTIVE DATES 427

112 *(House Bill No. 349; B. Thomas)* INCREASING THE AMOUNT FOR WHICH GOVERNMENTAL ENTITIES MAY WAIVE CERTAIN SECURITY REQUIREMENTS FOR BUILDING OR CONSTRUCTION PROJECTS FROM $25,000 TO $50,000; AND AMENDING SECTION 18-2-201, MCA 445

113 *(House Bill No. 357; Cobb)* EXPANDING THE EXEMPTION OF THOSE WHO MUST FILE AN APPLICATION FOR DETERMINATION OF TAX IN JOINT TENANCY TO INCLUDE LINEAL DESCENDANTS AND STEPCHILDREN OF THE DECEDENT; AMENDING SECTIONS 72-16-502, AND 72-16-503, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE . 447

114 *(House Bill No. 360; R. Clark)* ELIMINATING THE REQUIREMENT THAT A DEPUTY SIGN AN AFFIDAVIT AS TO THE SERVICES PROVIDED BEFORE THE DEPUTY MAY RECEIVE A PAYCHECK; REPEALING SECTION 7-4-2506, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 448

115 *(House Bill No. 371; Cobb)* INCREASING THE DOLLAR AMOUNT OF PROPERTY DAMAGE THAT MUST BE SUSTAINED IN AN ACCIDENT BEFORE A MOTOR VEHICLE OPERATOR IS REQUIRED TO IMMEDIATELY OR IN WRITING REPORT THE ACCIDENT; INCREASING THE DOLLAR AMOUNT OF PROPERTY DAMAGE THAT MUST BE SUSTAINED BEFORE AN INVESTIGATING LAW ENFORCEMENT OFFICER IS REQUIRED TO SUBMIT A WRITTEN REPORT; AMENDING SECTIONS 61-7-108 AND 61-7-109, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE 448

HeinOnline -- 1999 vol. I xx 1999

116 *(House Bill No. 442; Stovall)* ALLOWING A SMALL BREWER TO CHARGE FOR SAMPLES OF BEER MANUFACTURED ON THE PREMISES; LIMITING THE PLACE, QUANTITIES, AND PERIODS OF TIME THAT THE BEER MAY BE PROVIDED; AMENDING SECTIONS 16-3-213 AND 16 3-214, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 449

117 *(House Bill No. 468; Brainard)* REQUIRING FINANCIAL DISCLOSURE REPORTS TO BE FILED WITH THE COMMISSIONER OF POLITICAL PRACTICES BY PERSONS WHO EMPLOY PAID SIGNATURE GATHERERS; PROVIDING CERTAIN POWERS AND DUTIES OF THE COMMISSIONER OF POLITICAL PRACTICES; PROVIDING PENALTIES; AND PROVIDING EFFECTIVE DATES 451

118 *(House Bill No. 494; Squires)* EXTENDING INDEFINITELY A PROVISION REQUIRING THE EMPLOYER TO HELP PURCHASE RETIREMENT SERVICE FOR ELIGIBLE STATE OR UNIVERSITY EMPLOYEES WHOSE POSITIONS ARE ELIMINATED BY A REDUCTION IN FORCE, PRIVATIZATION, OR AGENCY REORGANIZATION; AMENDING SECTION 19-2-706, MCA; AND PROVIDING AN EFFECTIVE DATE 452

119 *(House Bill No. 514; Somerville)* PROHIBITING A CONSTRUCTION CONTRACT FROM INCLUDING PROVISIONS REQUIRING A SUBCONTRACTOR TO WAIVE RIGHTS TO A LIEN OR PAYMENT BOND BEFORE PAYMENT FOR LABOR OR MATERIALS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 453

120 *(Senate Bill No. 29; Hertel)* REMOVING OBSOLETE STATUTORY DIRECTIVES AND PROCEDURES RELATED TO CANAL PROJECTS OWNED BY THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; APPLYING THE CANAL PROJECT PURCHASE PREFERENCE FOR EXISTING WATER USERS' ASSOCIATIONS TO ALL DEPARTMENT WATER PROJECTS PROPOSED FOR DISPOSAL; AMENDING SECTION 85-1-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 454

121 *(Senate Bill No. 44; Ellis)* EXTENDING THE ALLOWED LEASE TERM FOR STATE WATER PROJECT LANDS LEASED TO THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS FOR PUBLIC RECREATIONAL USE; DELETING AN EXPIRED PROVISION OF THE CABIN SITE LEASING LAW; AMENDING SECTION 85-1-802, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 456

122 *(Senate Bill No. 48; Swysgood)* AUTHORIZING THE FUNDING OF THE TRUST LAND MANAGEMENT FUNCTIONS OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FROM ALL SOURCES OF REVENUE GENERATED BY THE ADMINISTRATION OF TRUST LANDS AND FROM A PORTION OF THE INTEREST INCOME OF THE PERMANENT LAND GRANT FUNDS; CREATING AN ACCOUNT TO RECORD AND ADMINISTER RECEIPTS AND DISBURSEMENTS; AMENDING SECTIONS 17-3-1003, 18-2-107, 20-9-341, 20-9-601, AND 20-25-422, MCA; AND PROVIDING AN EFFECTIVE DATE 456

123 *(Senate Bill No. 98; Mesaros)* ALLOWING BROADER LEASING OF SALVAGE WATER CREATED THROUGH CONSERVATION PROJECTS; EXTENDING FOR 10 YEARS THE TERM OF THE INSTREAM FLOW LEASING PROGRAM OPERATED BY THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS; ALLOWING A LONGER LEASE TERM FOR LEASES ASSOCIATED WITH DEPARTMENT INVESTMENTS IN WATER CONSERVATION

HeinOnline -- 1999 vol. I xxi 1999

PROJECTS; INCREASING THE NUMBER OF STREAM REACHES THAT CAN BE LEASED FROM; AMENDING SECTIONS 85-2-419, 85-2-436, 85-2-437, AND 85-2-438, MCA, SECTION 11, CHAPTER 658, LAWS OF 1989, AND SECTIONS 4 AND 7, CHAPTER 740, LAWS OF 1991; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE 459

124 *(Senate Bill No. 114; F. Thomas)* REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO PURCHASE WORKERS' COMPENSATION COVERAGE FOR AN INDIVIDUAL PARTICIPATING AT A WORKSITE IN EMPLOYMENT TRAINING FOR THE PURPOSES OF THE FAMILIES ACHIEVING INDEPENDENCE IN MONTANA (FAIM) PROJECT; PROVIDING THAT PUBLIC AND PRIVATE ENTITIES PROVIDING TRAINING IN EMPLOYMENT SKILLS AS PART OF THE FAIM PROJECT ARE NAMED INSUREDS OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES FOR THE PURPOSES OF WORKERS' COMPENSATION COVERAGE; PROVIDING FOR THE EXCLUSION OF PUBLIC ASSISTANCE BENEFITS FROM THE DEFINITION OF WAGES FOR PURPOSES OF WORKERS' COMPENSATION; AMENDING SECTIONS 39-71-118, 39-71-123, AND 53-4-603, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE 462

125 *(Senate Bill No. 136; Jergeson)* CLARIFYING THAT CERTAIN FEES COLLECTED BY THE SECRETARY OF STATE ARE DEPOSITED TO AN ACCOUNT IN THE PROPRIETARY FUND TO THE CREDIT OF THE SECRETARY OF STATE; PROVIDING THAT INCOME AND INTEREST ON THE MONEY MUST BE CREDITED TO THE ACCOUNT; AMENDING SECTION 2-6-103, MCA; AND PROVIDING AN EFFECTIVE DATE 470

126 *(Senate Bill No. 188; T. Beck)* CLARIFYING THAT CERTAIN CRIMINAL OFFENSES APPLY TO CRIMES COMMITTED WHILE IN OFFICIAL DETENTION AND ARE NOT LIMITED TO CRIMES COMMITTED IN THE STATE PRISON; AND AMENDING SECTIONS 46-18-220 AND 46-18-303, MCA 471

127 *(Senate Bill No. 197; Christiaens)* PROVIDING REIMBURSEMENT FOR MENTAL HEALTH OUTPATIENT COUNSELING SERVICES FOR FOSTER PARENTS WHO EXPERIENCE THE DEATH OF A FOSTER CHILD WHO HAS BEEN PLACED IN THEIR HOME THAT IS LICENSED AS A YOUTH CARE FACILITY; AMENDING SECTION 41-3-1103, MCA; AND PROVIDING AN EFFECTIVE DATE 472

128 *(Senate Bill No. 230; Grimes)* CLARIFYING THE PLACE OF TRIAL FOR AN ACTION AGAINST A COUNTY; AND AMENDING SECTION 25-2-126, MCA 474

129 *(Senate Bill No. 291; Crismore)* REVISING THE FILING AND VOTE COUNTING REQUIREMENTS FOR PRECINCT OFFICERS; AND AMENDING SECTIONS 13-10-211 AND 13-15-202, MCA 474

130 *(Senate Bill No. 296; Nelson)* GENERALLY REVISING THE COOPERATIVE MARKETING ACT; PROVIDING THAT AN OFFER OR SALE OF SECURITIES BY AN ASSOCIATION ORGANIZED UNDER THE COOPERATIVE MARKETING ACT IS AN EXEMPT TRANSACTION UNDER MONTANA SECURITIES LAWS; AND AMENDING SECTIONS 30-10-105, 35-17-103, 35-17-202, 35-17-203, 35-17-301, 35-17-302, 35-17-304, 35-17-312, 35-17-314, AND 35-17-315, MCA 476

131 *(Senate Bill No. 396; Bartlett)* REVISING THE STARTING POINT OF THE CREDIT SCALE FOR COMPUTING PREMIUM RATES FOR THE

CONSTRUCTION INDUSTRY; AMENDING SECTION 39-71-2211, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE 484

132 *(Senate Bill No. 325; Hertel)* AUTHORIZING THE TRUSTEES OF A SCHOOL DISTRICT TO DECLARE A TRUSTEE CANDIDATE ELECTED BY ACCLAMATION WHEN THE NUMBER OF CANDIDATES FILING FOR A POSITION OR FILING A DECLARATION OF INTENT AS A WRITE-IN CANDIDATE IS EQUAL TO THE NUMBER OF POSITIONS TO BE ELECTED AND WHEN NO OTHER REASON FOR THE ELECTION EXISTS; AMENDING SECTIONS 20-3-306, 20-3-307, AND 20-20-416, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 485

133 *(House Bill No. 70; Hurdle)* PROVIDING THAT ADULT FOSTER CARE FACILITIES MAY BE LICENSED TO PROVIDE RESIDENTIAL SERVICES TO CERTAIN PERSONS, INCLUDING THOSE IN THE STATE-FUNDED DEVELOPMENTAL DISABILITIES PROGRAM; AMENDING THE DEFINITION OF "ADULT FOSTER CARE HOME"; AMENDING THE PROVISIONS FOR CERTIFICATION OF APPROPRIATENESS FOR RESIDENTIAL PLACEMENT; AMENDING SECTIONS 50-5-101 AND 50-5-216, MCA; AND PROVIDING AN EFFECTIVE DATE 486

134 *(House Bill No. 156; Tropila)* REQUIRING INSURERS, HEALTH SERVICE CORPORATIONS, AND HEALTH MAINTENANCE ORGANIZATIONS THAT LIMIT HEALTH CARE SERVICE PAYMENTS BASED ON STANDARDS DESCRIBED AS USUAL AND CUSTOMARY, REASONABLE AND CUSTOMARY, PREVAILING FEE, ALLOWABLE CHARGES, A RELATIVE VALUE SCHEDULE, OR OTHER COMPARABLE TERMS TO INCLUDE IN THE POLICY, CERTIFICATE, MEMBERSHIP CONTRACT, OR SUBSCRIBER CONTRACT AN EXPLANATION O ' HOW THE CHARGES ARE DETERMINED; AND AMENDING SECTION 33-15-308, MCA 492

135 *(House Bill No. 190; Soft)* ALLOWING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO ISSUE DAY-CARE LICENSES AND REGISTRATION CERTIFICATES THAT REMAIN IN EFFECT FOR UP TO 3 YEARS; AND AMENDING SECTION 52-2-721, MCA . 493

136 *(House Bill No. 210; Johnson)* ALLOWING INCLUSION OF CLASS EIGHT PROPERTY IN THE DEBT LIMIT FOR VARIOUS CULTURAL, SOCIAL, AND RECREATIONAL PURPOSES; AMENDING SECTION 7-16-4104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 494

137 *(House Bill No. 331; Ahner)* AUTHORIZING LOCAL BOARDS OF HEALTH TO ADOPT AND ENFORCE INSTITUTIONAL CONTROLS AT FEDERAL SUPERFUND SITES AND AT SITES REGULATED UNDER THE MONTANA COMPREHENSIVE ENVIRONMENTAL CLEANUP AND RESPONSIBILITY ACT; AMENDING SECTIONS 50-2-101 AND 50-2-116, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 494

138 *(House Bill No. 373; Younkin)* CLARIFYING HERD DISTRICT LAW BY ESTABLISHING A PETITION PROCESS FOR ANNEXING CONTIGUOUS PROPERTIES INTO AN EXISTING HERD DISTRICT; AND AMENDING SECTION 81-4-301, MCA 497

139 *(House Bill No. 476; Johnson)* PROVIDING FOR THE ISSUANCE OF MUNICIPAL GENERAL OBLIGATIONS; EXPANDING THE PERMISSIBLE PURPOSES OF MUNICIPAL GENERAL OBLIGATION FINANCING; AUTHORIZING MUNICIPALITIES TO INCUR LIMITED AMOUNTS OF GENERAL OBLIGATIONS WITHOUT

HeinOnline -- 1999 vol. I xxiii 1999

SUBMITTING THE QUESTION TO THE ELECTORS; AUTHORIZING A FIRST LIEN ON GENERAL FUND REVENUE FOR THE PAYMENT OF THE OBLIGATIONS AND RELATED CHARGES; ALLOWING THE GOVERNING BODY OF A MUNICIPALITY TO CREATE NECESSARY FUNDS AND ACCOUNTS; AMENDING SECTIONS 7-5-4304, 7-5-4306, AND 7-7-4101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 498

140 *(House Bill No. 479; Johnson)* REVISING THE VALUATION FOR TAX PUBPOSES OF NEWLY ACQUIRED AIRCRAFT AND SUPPORTING EQUIPMENT ACQUIRED BY CERTAIN SCHEDULED AIRLINES; PROVIDING DEFINITIONS OF "NEWLY ACQUIRED AIRCRAFT" AND "NEWLY ACQUIRED EQUIPMENT"; AMENDING SECTIONS 15-23-401 AND 15-23-403, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND RETROACTIVE APPLICABILITY DATES . 501

141 *(House Bill No. 492; Harper)* CRIMINALIZING DESECRATION OF A PLACE OF WORSHIP, CEMETERY, OR PUBLIC MEMORIAL; AND AMENDING SECTION 45-6-104, MCA 502

142 *(House Bill No. 495; Pavlovich)* APPROPRIATING FUNDS TO THE DEPARTMENT OF LABOR AND INDUSTRY TO INCREASE SILICOSIS BENEFITS BY $25 A MONTH FOR EACH INDIVIDUAL RECEIVING BENEFITS; AND PROVIDING AN EFFECTIVE DATE . 503

143 *(House Bill No. 571; McCann)* PROVIDING THAT A MEMBER AT LARGE OF A BOARD OF CONTROL OF MULTIPLE IRRIGATION DISTRICTS MAY BE A NONLANDOWNER REPRESENTATIVE OF A PERSON OR ENTITY RECEIVING WATER FROM ONE OF THE MEMBER DISTRICTS; AMENDING SECTION 85-7-1611, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 504

144 *(Senate Bill No. 49; Swysgood)* CHANGING THE ALLOCATION OF THE RESOURCE INDEMNITY TRUST AND GROUND WATER TAX PROCEEDS AND OF THE METAL MINES TAX PROCEEDS; CHANGING THE DISTRIBUTION OF THE INTEREST EARNINGS FROM THE RESOURCE INDEMNITY TRUST FUND; AMENDING SECTIONS 7-6-2225, 7-6-2226, 15-37-117, 15-38-106, 15-38-202, 20-9-231, 85-1-332, 85-1-604, 85-1-631, 85-2-905, AND 90-2-1104, MCA; AND PROVIDING AN EFFECTIVE DATE 504

145 *(Senate Bill No. 87; Hargrove)* REVISING STATUTES REGARDING SNOWMOBILE SAFETY AND LIARILITY BY CLARIFYING THE DUTIES OF SNOWMOBILERS AND SNOWMOBILE AREA OPERATORS; CLARIFYING THE INHERENT RISKS OF SNOWMOBILING; ELIMINATING THE PROVISION REGARDING THE EFFECT OF MONTANA COMPARATIVE NEGLIGENCE LAW ON RECOVERY FROM SNOWMOBILE AREA OPERATORS FOR DEATH OR INJURY RESULTING FROM AN INHERENT SNOWMOBILING RISK; AMENDING SECTIONS 23-2-651, 23-2-652, 23-2-653, AND 23-2-654, MCA; REPEALING SECTION 23-2-656, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 514

146 *(Senate Bill No. 101; Franklin)* CLARIFYING THE STATUTES CONCERNING EXPOSURE OF EMERGENCY SERVICES PROVIDERS TO INFECTIOUS DISEASES; REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO ADOPT RULES CONCERNING NOTIFICATION AND RECORDKEEPING; AMENDING SECTIONS 50-16-701, 50-16-702, 50-16-703, 50-16-704, 50-16-705, AND 50-16-711, MCA; AND PROVIDING EFFECTIVE DATES 516

147 *(Senate Bill No. 112; Franklin)* DEFINING "FINGERPRINTS" FOR PURPOSES OF THE CRIMINAL JUSTICE INFORMATION ACT;

EXPANDING THE GROUP OF PERSONS SUBJECT TO THE DNA TESTING LAW; DEFINING TERMS USED IN THE DNA TESTING LAW; AMENDING SECTIONS 44-5-103, 44-6-101, 44-6-102, 44-6-103, 46-18-202, AND 46-23-215, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE . 520

148 *(Senate Bill No. 127; Waterman)* REQUIRING A BUSINESS ENTITY THAT OWNS A LIQUOR LICENSE TO OBTAIN APPROVAL FROM THE DEPARTMENT OF REVENUE PRIOR TO CHANGING THAT BUSINESS ENTITY'S OWNERSHIP; REQUIRING A BUSINESS ENTITY THAT OWNS A LIQUOR LICENSE TO OBTAIN APPROVAL FROM THE DEPARTMENT PRIOR TO CHANGING THE BUSINESS ENTITY; REQUIRING ALL INDIVIDUALS WHO CONTROL THE OPERATION OF A CORPORATE LIQUOR LICENSE TO BE QUALIFIED BY THE DEPARTMENT; AMENDING SECTION 16-4-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 526

149 *(Senate Bill No. 128; Christiaens)* MAKING PERMANENT THE MONTANA LIVING TRUST ACT; REPEALING SECTION 18, CHAPTER 348, LAWS OF 1997; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 529

150 *(Senate Bill No. 131; Swysgood)* GENERALLY REVISING THE LAWS RELATING TO THE MONTANA COMMUNITY SERVICE ACT; AND AMENDING SECTIONS 23-1-301, 90-14-102, 90-14-103, 90-14-104, 90-14-105, 90-14-106, AND 90-14-108, MCA 530

151 *(Senate Bill No. 140; Nelson)* REMOVING CERTAIN RESTRICTIONS ON ABSENTEE VOTING; AND AMENDING SECTIONS 13-13-201, 13-13-211, 13-13-222, 13-13-225, 18-13-229, AND 13-13-232, MCA . . . 535

152 *(Senate Bill No. 187; Tester)* REVISING CROP DUSTING LIEN PROCEDURE BY REMOVING THE REQUIREMENT THAT 30 DAYS' NOTICE OF INTENT BE GIVEN PRIOR TO FILING OF A LIEN; AMENDING SECTION 71-3-902, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 537

153 *(Senate Bill No. 196; Mesaros)* REPEALING THE STATUTORY REQUIREMENTS FOR BRUCELLOSIS VACCINATION OF IMPORTED LIVESTOCK; ALLOWING BRUCELLOSIS VACCINATION REQUIREMENTS TO BE ADOPTED BY RULE RATHER THAN BY STATUTE; AND REPEALING SECTIONS 81-2-801 AND 81-2-805, MCA 538

154 *(Senate Bill No. 227; Hertel)* CHANGING THE DEFINITION OF A SMALL TELECOMMUNICATIONS PROVIDER; PROVIDING FOR RATE DECREASES AS WELL AS RATE INCREASES; PROVIDING FOR REGULATORY FLEXIBILITY UPON PETITION BY A SMALL TELECOMMUNICATIONS PROVIDER; AND AMENDING SECTIONS 69-3-901, 69-3-903, 69-3-904, 69-3-906, AND 69-3-907, MCA 538

155 *(Senate Bill No. 289; Doherty)* ALLOWING TELEPHONE CUSTOMERS TO SUE OPERATOR SERVICE PROVIDERS FOR CHARGING EXORBITANT RATES FOR INTRASTATE PHONE CALLS; PROVIDING THE PUBLIC SERVICE COMMISSION WITH AUTHORITY TO SET RATE CAPS FOR CERTAIN CALLS; REQUIRING OPERATOR SERVICE PROVIDERS TO DISCLOSE RATES TO CUSTOMERS; ESTABLISHING A PENALTY FOR RATE VIOLATIONS; PROVIDING COSTS AND ATTORNEY FEES TO THE PREVAILING PARTY IN A COURT ACTION; AND REQUIRING DISCLOSURE ON CUSTOMER BILLS 541

156 *(Senate Bill No. 290; Lynch)* PROVIDING THAT THE DETERMINATION OF A DISABILITY OF A PERSON FOR PARKING

HeinOnline -- 1999 vol. I xxv 1999

PERMIT PURPOSES MAY BE PERFORMED BY A LICENSED ADVANCED PRACTICE REGISTERED NURSE; AMENDING SECTIONS 49-4-301, 49-4-303, AND 49-4-305, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 543

157 *(Senate Bill No. 299; Hertel)* ALLOWING A SCHOOL DISTRICT TO PURCHASE ADDITIONAL BUSES FROM THE BUS DEPRECIATION RESERVE FUND FOR TRANSPORTATION BETWEEN HOME AND SCHOOL; AMENDING SECTION 20-10-147, MCA; AND PROVIDING AN EFFECTIVE DATE 545

158 *(Senate Bill No. 317; T. Beck)* ALLOWING A LETTER OF CREDIT FROM A FEDERAL HOME LOAN BANK AS COLLATERAL FOR PUBLIC FUNDS; AND AMENDING SECTION 17-6-103, MCA 546

159 *(House Bill No. 17; Lawson)* LIMITING THE RATE THAT A SOLID WASTE MANAGEMENT DISTRICT MAY CHARGE A FAMILY RESIDENTIAL UNIT IN WHICH A HOME-BASED BUSINESS IS OPERATED; AMENDING SECTION 7-13-232, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 548

160 *(House Bill No. 44; Johnson)* AUTHORIZING THE MONTANA HEALTH FACILITY AUTHORITY TO ADMINISTER $15 MILLION OF THE PERMANENT COAL TAX TRUST FUND FOR CAPITAL PROJECTS; AMENDING SECTIONS 17-6-308 AND 90-7-202, MCA; AND PROVIDING AN EFFECTIVE DATE 549

161 *(House Bill No. 65; Ahner)* EXTENDING THE INTERVENTION IN DELINQUENCY PILOT PROGRAM; AUTHORIZING THE DEPARTMENT OF CORRECTIONS TO CREATE UP TO 10 ADDITIONAL ACCOUNTS FOR JUDICIAL DISTRICTS, WHICH MAY BE USED TO DEVELOP THE INCREMENTAL COSTS SCALE; AMENDING SECTIONS 73 AND 82, CHAPTER 550, LAWS OF 1997; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 553

162 *(House Bill No. 228; Ewer)* ELIMINATING THE REQUIREMENT THAT THE FIRST ELECTION OF OFFICERS FOR A NEWLY INCORPORATED CITY OR TOWN BE HELD IN CONJUNCTION WITH A REGULAR OR PRIMARY ELECTION; AMENDING SECTION 7-2-4106, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 555

163 *(House Bill No. 230; J. Holden)* ALLOWING COUNTY COMMISSIONERS THE DISCRETION TO SET THE NUMBER OF MEMBERS OF A COUNTY BOARD OF HEALTH AT FIVE OR MORE; AND AMENDING SECTION 50-2-104, MCA 555

104 *(House Bill No. 362; Schmidt)* CLARIFYING FEDERAL WRITE-IN ABSENTEE BALLOT PROVISIONS FOR OVERSEAS UNITED STATES SERVICE MEMBERS; ALLOWING THE FEDERAL WRITE-IN ABSENTEE BALLOT TRANSMISSION ENVELOPE TO BE USED AS A VOTER REGISTRATION FORM AND AS AN APPLICATION FOR A REGULAR ABSENTEE BALLOT IN CERTAIN CIRCUMSTANCES; AMENDING SECTIONS 13-2-212, 13-13-212, 13-13-271, AND 13-13-273, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 556

165 *(House Bill No. 414; Johnson)* REVISING THE ALLOCATION OF FEES FOR TEACHER AND SPECIALIST CERTIFICATES; AMENDING SECTION 20-4-109, MCA; AND PROVIDING AN EFFECTIVE DATE . 558

166 *(House Bill No. 419; McCulloch)* AUTHORIZING THE TRUSTEES OF A SCHOOL DISTRICT TO ENTER INTO A CONTRACT WITH THE GOVERNING BODY OF ANOTHER POLITICAL SUBDIVISION WITHIN ITS COUNTY OR IN AN ADJOINING COUNTY FOR JOINT

HeinOnline -- 1999 vol. I xxvi 1999

CONSTRUCTION OF A FACILITY; AMENDING SECTIONS 20-9-404 AND 20-9-405, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE 559

167 *(Senate Bill No. 60; Halligan)* ALLOWING DISTRICT COURT JUDGES TO APPOINT STANDING MASTERS WITH APPROVAL OF A GOVERNING BODY; REQUIRING COMPENSATION OF STANDING MASTERS TO BE PAID BY THE COUNTIES; AND PROVIDING AN EFFECTIVE DATE 560

168 *(Senate Bill No. 90; Stang)* AMENDING THE VETERANS' PUBLIC EMPLOYMENT PREFERENCE LAW; PROVIDING FOR THE APPLICATION OF VETERANS' PREFERENCE BY AN EMPLOYER USING A NONSCORED PROCEDURE WHEN APPLICANTS HOLD SUBSTANTIALLY EQUAL QUALIFICATIONS; REQUIRING A PUBLIC EMPLOYER TO APPLY VETERANS' PREFERENCE WHEN NO APPLICANT MEETS THE MINIMUM QUALIFICATIONS AND THE PUBLIC EMPLOYER FILLS A TRAINING POSITION; AND AMENDING SECTIONS 89-29-102, 39-29-103, AND 39-29-104, MCA . 562

169 *(Senate Bill No. 165; Lynch)* CREATING A POSSESSORY LIEN FOR THE PAYMENT OF TOWING AND STORAGE CHARGES; REVISING THE AGISTERS' LIEN LAWS TO INCLUDE TOWING AND STORAGE LIENS; AND AMENDING SECTION 71-3-1201, MCA 564

170 *(Senate Bill No. 189; Berry)* REVISING CERTAIN LICENSING LAWS APPLICABLE TO REAL ESTATE BROKERS AND SALESPERSONS; ALLOWING A BROKER TO PAY A COMMISSION TO A LICENSED BROKER OF ANOTHER COUNTRY; REVISING THE DISCLOSURE OF RELATIONSHIPS IN REAL ESTATE TRANSACTIONS; PROVIDING FOR SUSPENSION OF REAL ESTATE LICENSES FOR NONCOMPLIANCE WITH CONTINUING EDUCATION REQUIREMENTS; ELIMINATING THE REQUIREMENT THAT A BROKER OPERATING A FRANCHISE DISCLOSE INDEPENDENT OPERATION; DELETING THE REQUIREMENT THAT OUT-OF-STATE SALES OF IN-STATE SUBDIVISIONS BE REGISTERED WITH THE BOARD OF REALTY REGULATION; AMENDING SECTIONS 37-51-306, 37-51-310, 37-51-313, 37-51-314, AND 37-51-321, MCA; REPEALING SECTIONS 76-4-1101, 76-4-1102, 76-4-1103, 76-4-1104, 76-4-1105, 76-4-1106, 76-4-1107, 76-4-1108, 76-4-1109, 76-4-1110, 76-4-1111, 76-4-1112, 76-4-1113, 76-4-1114, 76-4-1115, 76-4-1116, AND 76-4-1117, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 564

171 *(Senate Bill No. 351; Jergeson)* ALLOWING CASH PRIZES AT A CASINO NIGHT; ALLOWING A CASINO NIGHT TO BE HELD ON TWO SEPARATE OCCASIONS, NOT TO EXCEED 6 CONSECUTIVE HOURS EACH; ESTABLISHING LIMITS FOR CASH PRIZES; AND AMENDING SECTION 23-5-710, MCA 575

172 *(Senate Bill No. 394; Tester)* REQUIRING THE DEPARTMENT OF AGRICULTURE TO PREPARE A PLAN FOR THE ESTARLISHMENT OF A STATE ORGANIC CERTIFICATION PROGRAM, IN CONFORMITY WITH APPLICABLE FEDERAL LAW, UPON PETITION BY CERTIFIED ORGANIC MONTANA PRODUCERS, PROCESSORS, AND HANDLERS; REQUIRING THAT WHEN THE PLAN IS DEVELOPED IT MUST BE SUBMITTED BY THE GOVERNOR TO THE U.S. SECRETARY OF AGRICULTURE FOR APPROVAL; PROVIDING THAT WHEN A STATE PLAN IS APPROVED BY THE U.S. SECRETARY OF AGRICULTURE, THE STATE ORGANIC CERTIFICATION PROGRAM MUST BE IMPLEMENTED IN MONTANA UPON THE REQUEST OF A

HeinOnline -- 1999 vol. I xxvii 1999

PERCENTAGE OF ORGANIC PRODUCERS, PROCESSORS, AND HANDLERS; REQUIRING THAT THE PROGRAM BE ADMINISTERED BY THE DEPARTMENT OF AGRICULTURE ACCORDING TO RULES ADOPTED BY THE DEPARTMENT WITH ADVICE FROM AN ORGANIC COMMODITY ADVISORY COUNCIL; ESTABLISHING AN ACCOUNT; AMENDING SECTIONS 50-31-103 AND 50-31-203, MCA; REPEALING SECTIONS 50-31-221, 50-31-222, 50-31-223, AND 50-31-231; AND PROVIDING EFFECTIVE DATES . 576

173 *(House Bill No. 136; Williams)* DECREASING THE LOOKBACK PERIOD FOR PREEXISTING CONDITION EXCLUSIONS; PROVIDING FOR INFLATIONARY ADJUSTMENTS FOR CERTAIN SPECIFIED BENEFITS; GRANTING EXPLICIT AUTHORITY TO BORROW MONEY TO THE COMPREHENSIVE HEALTH ASSOCIATION; SUBSTITUTING ANNUAL ASSESSMENTS FOR FISCAL YEAREND ASSESSMENTS; PROVIDING VOTING AUTHORITY FOR THE PUBLIC INTEREST MEMBER OF THE COMPREHENSIVE HEALTH ASSOCIATION BOARD; ALLOWING THE COMMISSIONER OF INSURANCE TO REMOVE BOARD MEMBERS OF THE COMPREHENSIVE HEALTH ASSOCIATION BOARD THAT DO NOT ACTIVELY PARTICIPATE IN THE AFFAIRS OF THE BOARD; PROVIDING A NOTIFICATION REQUIREMENT FOR HEALTH MAINTENANCE ORGANIZATIONS; REQUIRING THE COMMISSIONER OF INSURANCE TO INCLUDE THE PREMIUM VOLUME OF AFFILIATES WHEN DETERMINING BOARD MEMBERSHIP FOR THE COMPREHENSIVE HEALTH ASSOCIATION; AMENDING SECTIONS 33-22-1501, 33-22-1503, 33-22-1504, 33-22-1513, 33-22-1515, 33-22-1516, AND 33-22-1521, MCA; AND PROVIDING AN EFFECTIVE DATE 585

174 *(House Bill No. 154; Gallus)* CLARIFYING THE PROHIBITION AGAINST OFFERING ANY FORM OF INCENTIVE OR REBATE TO PAY ALL OR PART OF A CASUALTY OR PROPERTY INSURANCE DEDUCTIBLE RELATED TO THE SALE, REPAIR, OR REPLACEMENT OF AUTOMOBILE GLASS; MAKING THE PROHIBITION APPLICABLE TO AUTOMOBILE REPAIR BUSINESSES; DEFINING A VIOLATION OF THE PROHIBITION AS AN UNFAIR TRADE PRACTICE AND RENDERING THE VIOLATOR SUBJECT TO INSURANCE FRAUD STATUTES; AND AMENDING SECTION 30-14-225, MCA 593

175 *(House Bill No. 173; Somerville)* ADOPTING THE EMERGENCY MANAGEMENT ASSISTANCE COMPACT AS AN INTERSTATE COMPACT; PROVIDING THE TERMS OF THE COMPACT; AUTHORIZING REQUESTS FOR AND RESPONSES TO REQUESTS FROM OTHER STATES FOR THE PURPOSE OF INTERSTATE SHARING OF EQUIPMENT AND PERSONNEL TO RESPOND TO NATURAL AND HUMAN-CAUSED DISASTERS AND EMERGENCIES; APPOINTING THE ADMINISTRATOR OF THE DISASTER AND EMERGENCY SERVICES DIVISION OF THE DEPARTMENT OF MILITARY AFFAIRS AS THE ADMINISTRATOR OF THE COMPACT; PROVIDING FOR SUPPLEMENTARY AGREEMENTS TO IMPLEMENT THE COMPACT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 594

176 *(House Bill No. 474; Hibbard)* ALLOWING THE PUBLIC EMPLOYER REPRESENTATIVE TO PETITION BOARD OF PERSONNEL APPEALS TO REDETERMINE THE APPROPRIATE UNIT FOR COLLECTIVE BARGAINING IN THE EVENT THAT A STATE AGENCY OR FACILITY OF A STATE AGENCY UNDERGOES SIGNIFICANT REORGANIZATION; PROHIBITING THE BOARD

HeinOnline -- 1999 vol. I xxviii 1999

FROM DESIGNATING A FORMERLY UNDESIGNATED LABOR ORGANIZATION AS THE EXCLUSIVE BARGAINING AGENT IN THE ABSENCE OF A PETITION FOR DESIGNATION; AMENDING SECTION 39-31-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 599

177 *(House Bill No. 561; Gallus)* ALLOWING THE TRANSPORTATION COMMISSION TO TRANSFER APPORTIONED PRIMARY HIGHWAY SYSTEM FUNDS WITHIN AND BETWEEN FINANCIAL DISTRICTS; AND AMENDING SECTION 60-3-205, MCA 600

178 *(Senate Bill No. 99; Tester)* REQUIRING INSURERS, HEALTH SERVICE CORPORATIONS, AND HEALTH MAINTENANCE ORGANIZATIONS ISSUING GROUP DISABILITY COVERAGE TO RENEW OR CONTINUE COVERAGE FOR THE SPOUSE OR DEPENDENTS OF A PEACE OFFICER, GAME WARDEN, FIREFIGHTER, OR VOLUNTEER FIREFIGHTER WHO DIES WITHIN THE COURSE AND SCOPE OF EMPLOYMENT; AMENDING SECTIONS 33-22-101 AND 33-31-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 601

179 *(Senate Bill No. 245; Waterman)* EXEMPTING FROM THE STATE MINIMUM WAGE AND OVERTIME LAWS AN EMPLOYEE EMPLOYED IN DOMESTIC SERVICE EMPLOYMENT TO PROVIDE LIVE-IN HOME COMPANIONSHIP SERVICES FOR INDIVIDUALS WHO, BECAUSE OF AGE OR INFIRMITY, ARE UNABLE TO CARE FOR THEMSELVES; AMENDING SECTION 39-3-406, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 604

180 *(Senate Bill No. 260; Glaser)* REDUCING THE TAXES ON LIGHT VEHICLES AND FLEET VEHICLES; PROVIDING THAT THE TAX RATE DECREASES AS THE STATEWIDE VALUE OF LIGHT AND FLEET VEHICLES INCREASES; PROVIDING THAT THE AMOUNT OF MONEY DISTRIBUTED TO THE DISTRICT COURT FUND FROM LIGHT VEHICLE TAXES REMAIN UNCHANGED; CHANGING THE DISTRIBUTION FORMULA FOR MOTOR VEHICLE TAX COLLECTIONS; INCREASING THE PERMISSIBLE TAX RATE ALLOWED UNDER THE LOCAL OPTION VEHICLE TAX; REQUIRING A VOTE FOR IMPOSITION OF THE LOCAL OPTION VEHICLE TAX; PROVIDING FOR THE TRANSFER OF FUNDS FROM THE STATE GENERAL FUND TO THE STATE SPECIAL REVENUE ACCOUNTS FOR PURPOSES OF THE 6-MILL UNIVERSITY LEVY AND THE 9-MILL COUNTY PUBLIC ASSISTANCE LEVY; AMENDING SECTIONS 20-9-141, 61-3-504, 61-3-509, AND 61-3-537, MCA; AND PROVIDING AN APPLICABILITY DATE 607

181 *(Senate Bill No. 428; Stang)* TRANSFERRING THE MOTORCYCLE SAFETY TRAINING PROGRAM FROM THE SUPERINTENDENT OF PUBLIC INSTRUCTION TO THE BOARD OF REGENTS; AMENDING SECTIONS 20-7-501, 20-7-502, 20-7-504, 20-7-510, 20-7-511, 20-7-512, 20-7-513, 20-7-514, 61-5-110, AND 61-5-121, MCA; AND PROVIDING AN EFFECTIVE DATE 611

182 *(House Bill No. 96; Grinde)* ALLOWING FOR RECIPROCAL ACCESS AGREEMENTS TO BE NEGOTIATED ON ALL ISOLATED STATE LAND CLASSIFICATIONS; REPEALING SECTION 77-5-115, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 618

183 *(House Bill No. 125; Johnson)* RELATING TO LIBRARIES AND LIBRARY SYSTEMS; SPECIFYING INTERLIBRARY LOANS NOT ELIGIBLE FOR REIMBURSEMENT; AUTHORIZING THE STATE LIBRARY COMMISSION TO ADOPT RULES; MODIFYING THE DEFINITION OF "LIBRARY FEDERATION" AND ADDING PARTIES

HeinOnline -- 1999 vol. I xxix 1999

WHO MAY CONTRACT FOR THE FORMATION OF LIBRARY FEDERATIONS; REQUIRING LIBRARY FEDERATIONS TO SUBMIT ANNUAL PLANS FOR THE EXPENDITURE OF STATE FUNDS; AMENDING SECTIONS 22-1-328, 22-1-330, 22-1-402, 22-1-404, AND 22-1-413, MCA; AND PROVIDING EFFECTIVE DATES 618

184 *(House Bill No. 167; Johnson)* REVISING STATUTES IMPACTED BY THE BUDGET DIRECTOR'S CERTIFICATION OF THE TERMINATION OF THE OLD FUND LIABILITY TAX EFFECTIVE JANUARY 1, 1999; REDUCING THE TOTAL EXPENDITURES ALLOWED TO THE STATE FUND FOR ADMINISTERING OLD FUND CLAIMS FROM $3 MILLION TO $1.25 MILLION; AUTHORIZING THE TRANSFER OF FUNDS BETWEEN ACCOUNTS FOR PAYMENT OF CLAIMS; AMENDING SECTIONS 15-30-204, 15-30-207, 15-30-210, 15-30-248, 15-30-304, 39-71-2321, AND 39-71-2352, MCA; REPEALING SECTIONS 39-71-2505 AND 39-71-2507, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 621

185 *(House Bill No. 211; Johnson)* ALLOWING A CITY, COUNTY, OR CONSOLIDATED GOVERNMENT TO BECOME A DEFAULT ELECTRICITY SUPPLIER TO RESIDENTIAL AND COMMERCIAL CUSTOMERS OF A PUBLIC UTILITY WITHIN THE CITY'S, COUNTY'S, OR CONSOLIDATED GOVERNMENT'S JURISDICTION; AMENDING SECTION 69-8-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 625

186 *(House Bill No. 250; Rehbein)* ALLOWING COUNTIES, CITIES, OR TOWNS TO CONSIDER EMPLOYEES OF NONPROFIT ECONOMIC DEVELOPMENT ORGANIZATIONS AS EMPLOYEES SOLELY FOR THE PURPOSE OF PARTICIPATION IN HEALTH INSURANCE CONTRACTS OR PLANS; AND AMENDING SECTION 2-18-702, MCA 626

187 *(House Bill No. 306; Anderson)* EXTENDING THE STATE UNIVERSAL SERVICE FUND FOR TELECOMMUNICATIONS; AMENDING SECTIONS 69-3-843, 69-3-844, AND 69-3-845, MCA; AMENDING SECTION 41, CHAPTER 349, LAWS OF 1997; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE . . 627

188 *(House Bill No. 336; Gillan)* EXPANDING THE DEFINITION OF "MAINTENANCE" AND CLARIFYING THE DEFINITION OF "IMPROVEMENTS" WITH RESPECT TO STREET MAINTENANCE DISTRICTS; CLARIFYING NOTICE REQUIREMENTS FOR ASSESSMENTS; AND AMENDING SECTIONS 7-12-4401, 7-12-4405, AND 7-12-4426, MCA 630

189 *(House Bill No. 411; Ewer)* ALLOWING THE BOARD OF DIRECTORS OF A BUSINESS IMPROVEMENT DISTRICT TO ALSO BE APPOINTED TO SERVE AS THE MEMBERS OF A PARKING COMMISSION; AND AMENDING SECTIONS 7-14-4609 AND 7-14-4610, MCA 631

190 *(House Bill No. 443; Bookout-Reinicke)* PROVIDING THAT A MAJORITY VOTE OF THE ELECTORS OF A CITY OR TOWN IS REQUIRED FOR THE ISSUANCE OF BONDS; AMENDING SECTION 7-7-4235, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 632

191 *(House Bill No. 508; Harrington)* REQUIRING THE ATTORNEY GENERAL TO DETERMINE WHETHER A PETITION FOR AN INITIATIVE MEASURE IS LEGALLY SUFFICIENT; PROHIBITING THE SECRETARY OF STATE FROM APPROVING A PETITION FOUND LEGALLY INSUPFICIENT BY THE ATTORNEY GENERAL; PROVIDING FOR A JUDICIAL REVIEW OF THE ATTORNEY GENERAL'S CONCLUSION; ALLOWING 30 DAYS FOR THE ATTORNEY GENERAL'S SUBMISSION TO THE SECRETARY OF

STATE OF A DETERMINATION REGARDING LEGAL SUFFICIENCY; AMENDING SECTIONS 13-27-202, 13-27-208, 13-27-312, AND 13-27-316, MCA; AND PROVIDING AN APPLICABILITY DATE 633

192 *(House Bill No. 522; Pavlovich)* DELETING THE DISTINCTION BETWEEN IN-STATE AND OUT-OF-STATE BREWERS IN THE SALE OF CERTAIN BEER THROUGH WHOLESALERS; AND AMENDING SECTION 16-3-230, MCA 637

193 *(House Bill No. 585; Jore)* REVISING THE REQUIREMENTS FOR NOMINATION OF CERTAIN CANDIDATES FOR ELECTION FOR THE OFFICES OF PRESIDENT AND VICE PRESIDENT OF THE UNITED STATES; PROVIDING THAT AN INDIVIDUAL WHO WISHES TO RUN AS AN INDEPENDENT CANDIDATE OR AS A CANDIDATE OF A PARTY NOT RECEIVING AUTOMATIC RECOGNITION MAY BE NOMINATED BY PETITION SIGNED BY EITHER 5 PERCENT OF THE ELECTORS VOTING FOR THE SUCCESSFUL CANDIDATE IN THE LAST GUBERNATORIAL ELECTION OR BY 5,000 ELECTORS, WHICHEVER IS FEWER; AND AMENDING SECTIONS 13-10-504 AND 13-10-601, MCA 637

194 *(House Bill No. 615; Harrington)* REVISING THE MANDATORY PROVISIONS IN AGREEMENTS BETWEEN BREWERS OR BEER IMPORTERS AND BEER WHOLESALERS AND BETWEEN TABLE WINE SUPPLIERS AND DISTRIBUTERS; AND AMENDING SECTIONS 16-3-222 AND 16-3-416, MCA 638

195 *(Senate Bill No. 72; Keenan)* GENERALLY REVISING THE WATER QUALITY, PUBLIC WATER SUPPLY, AND WATER AND WASTEWATER TREATMENT OPERATORS LAWS; EXEMPTING CERTAIN WATER DISTRIBUTION SYSTEMS FROM THE REQUIREMENT TO USE A CERTIFIED OPERATOR; AMENDING THE NONDEGRADATION NITRATE SIGNIFICANCE THRESHOLD FOR MULTIFAMILY, PUBLIC, AND MUNICIPAL SEWAGE SYSTEMS; AMENDING PUBLIC WATER SUPPLY LAWS BY INCREASING THE MAXIMUM ADMINISTRATIVE PENALTY; DELETING THE REQUIREMENT TO OBTAIN APPROVAL TO CONDUCT CERTAIN ACTIVITIES IN MUNICIPAL WATERSHEDS; REPEALING PROVISIONS RELATED TO THE BOARD OF ENVIRONMENTAL REVIEW'S CONTROL OF CERTAIN FUNDS; AMENDING SECTIONS 37-42-103, 37-42-302, 37-42-304, 37-42-308, 75-5-301, 75-6-109, AND 75-6-112, MCA; REPEALING SECTION 75-5-501, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 640

196 *(Senate Bill No. 176; Bohlinger)* REVISING THE MONTANA ELDER AND PERSONS WITH DEVELOPMENTAL DISABILITIES ABUSE PREVENTION ACT; AMENDING THE DEFINITIONS OF "EXPLOITATION", "MENTAL INJURY", AND "NEGLECT"; INCLUDING ALLEGED EXPLOITATION AS A GROUNDS FOR THE DEPABTMENT TO PERFORM ITS DUTIES AND IN EVIDENTIARY REQUIREMENTS; ALLOWING ADDITIONAL PERSONS TO REPORT ABUSE, SEXUAL ABUSE, NEGLECT, AND EXPLOITATION WITH IMMUNITY FROM LIABILITY; INCREASING PENALTIES FOR THE FIRST OFFENSE OF ABUSE, SEXUAL ABUSE, NEGLECT, OR EXPLOITATION; AND AMENDING SECTIONS 52-3-802, 52-3-803, 52-3-804, 52-3-811, 52-3-813, 52-3-815, AND 52-3-825, MCA 646

197 *(Senate Bill No. 214; Bartlett)* REVISING THE LAWS RELATING TO A SHERIFF'S LEVY AND SALE FOR THE COLLECTIONS OF TAXES; ALLOWING A SHERIFF TO CHARGE REGULAR FEES, MILEAGE, AND COSTS WHETHER OR NOT PROPERTY IS SEIZED;

HeinOnline -- 1999 vol. I xxxi 1999

CLARIFYING THE MANNER OF CONDUCTING A SALE OF SEIZED PERSONAL PROPERTY; AMENDING SECTIONS 15-16-119, 15-16-401, AND 15-17-911, MCA; AND PROVIDING AN APPLICABILITY DATE 652

198 *(Senate Bill No. 222; Doherty)* ELIMINATING CERTAIN STATUTES THAT CONFLICT WITH SUPREME COURT RULES GOVERNING ADMISSION TO THE BAR AND THE PRACTICE OF LAW; REPEALING SECTIONS 37-61-101, 37-61-202, 37-61-204, 37-61-205, 37-61-206, 37-61-208, AND 37-61-209, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 655

199 *(House Bill No. 196; Cobb)* ALLOWING THE ELECTRIC ENERGY PRODUCERS' LICENSE TAX TO BE ITEMIZED ON A CUSTOMER'S BILL; AMENDING SECTION 15-51-102, MCA; AND PROVIDING AN APPLICABILITY DATE 655

200 *(House Bill No. 201; Cobb)* AMENDING THE STATE COOPERATIVE PURCHASING LAWS TO INCLUDE PARTICIPATION BY A MONTANA TRIBAL PROCUREMENT UNIT; DEFINING "TRIBAL PROCUREMENT UNIT"; AMENDING SECTION 18-4-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 656

201 *(House Bill No. 205; Tash)* PROVIDING FOR WATER RIGHTS DELIVERY SYSTEM EASEMENTS IN PROPOSED SURDIVISIONS; AND AMENDING SECTION 76-3-504, MCA 657

202 *(House Bill No. 353; Tash)* AUTHORIZING A COUNTY, CITY, OR TOWN THAT OWNS PROPERTY CONTAINING A HISTORICALLY SIGNIFICANT BUILDING OR MONUMENT TO SELL OR GIVE THE PROPERTY TO A NONPROFIT ORGANIZATION OR GROUP THAT AGREES TO RESTORE OR PRESERVE THE PROPERTY; AMENDING SECTIONS 7-8-2211, 7-8-2212, 7-8-2213, AND 7-8-4201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 658

203 *(House Bill No. 390; Lawson)* PERMITTING THE BOARD OF PLUMBERS AND THE STATE ELECTRICAL BOARD TO RENEW A TEMPORARY PRACTICE PERMIT ON A CASE-BY-CASE BASIS; AND AMENDING SECTIONS 37-1-305, 37-68-311, AND 37-69-306, MCA . . 660

204 *(House Bill No. 418; Pavlovich)* CLARIFYING THE EXEMPTION FROM PROPERTY TAXES FOR BUILDINGS AND PERSONAL PROPERTY OF A SOCIETY OR ORGANIZATION OF HONORABLY DISCHARGED UNITED STATES MILITARY PERSONNEL; AMENDING SECTION 15-6-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 661

205 *(House Bill No. 429; Shockley)* TEMPORARILY CLOSING SUBBASINS OF THE BITTERROOT RIVER BASIN TO FURTHER APPROPRIATIONS AND RESERVATIONS, EXCEPT FOR GROUND WATER, MUNICIPAL, AND EMERGENCY APPROPRIATIONS AND SOME SEASONAL STORAGE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 662

206 *(House Bill No. 509; Gutsche)* CODIFYING THE PROCEDURE USED FOR SELECTING A STUDENT MEMBER FOR THE BOARD OF REGENTS; AND AMENDING SECTION 2-15-1508, MCA 663

207 *(House Bill No. 227; Molnar)* PROVIDING THAT A CORPORATION SUING OR DEFENDING A SUIT ON A DEBT MAY BE REPRESENTED IN A CITY, MUNICIPAL, JUSTICE'S, OR SMALL CLAIMS COURT BY A CORPORATE DIRECTOR OR OFFICER; AND AMENDING SECTION 25-35-505, MCA 664

HeinOnline -- 1999 vol. I xxxii 1999

208 *(House Bill No. 632; Bitney)* REVISING ELECTION LAWS RELATING TO THE IMPLEMENTATION OF THE NATIONAL VOTER REGISTRATION ACT; AMENDING SECTIONS 13-1-101, 13-2-222, 13-2-402, AND 13-27-410, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 665

209 *(Senate Bill No. 40; Grimes)* REMOVING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION'S POWER SALE RESTRICTIONS FOR POWER GENERATED BY A STATE FACILITY; AMENDING SECTION 85-1-509, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 669

210 *(Senate Bill No. 70; Stang)* CLARIFYING VETERANS' BURIAL LAWS; SUBSTITUTING THE TERM "INTERMENT" FOR THE TERM "BURIAL" TO PROVIDE BENEFITS FOR VETERANS WHOSE REMAINS ARE CREMATED; DEFINING THE TERM "RESIDENCE" FOR DETERMINING PAYMENT OF INTERMENT BENEFITS BY THE COUNTY OF RESIDENCE; PROVIDING FOR INTERMENT REIMBURSEMENT FOR A VETERAN WHO DIES AT A FEDERAL INSTITUTION OR AT A PRIVATE FACILITY; CLARIFYING THAT THE COUNTY OF RESIDENCE IS RESPONSIBLE FOR PAYING THE FIRST $30 OF THE COSTS FOR SHIPPING AND RAISING THE HEADSTONE ON A VETERAN'S GRAVE; AMENDING SECTIONS 10-2-501 AND 10-2-503, MCA; REPEALING SECTIONS 10-2-502 AND 10-2-505, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 670

211 *(Senate Bill No. 100; Harp)* INCREASING THE TOTAL PER-ANB AND BASIC ENTITLEMENTS FOR PUBLIC SCHOOLS FOR SCHOOL FISCAL YEARS 2000 AND 2001; INCREASING THE TOTAL PER-ANB ENTITLEMENT FOR AN ELEMENTARY SCHOOL DISTRICT OR A K-12 DISTRICT ELEMENTARY PROGRAM TO $3,529 FOR SCHOOL FISCAL YEAR 2000 AND TO $3,653 FOR SCHOOL FISCAL YEAR 2001; INCREASING THE TOTAL PER-ANB ENTITLEMENT FOR A HIGH SCHOOL DISTRICT OR A K-12 DISTRICT HIGH SCHOOL PROGRAM TO $4,821 FOR SCHOOL FISCAL YEAR 2000 AND TO $4,869 FOR SCHOOL FISCAL YEAR 2001; INCREASING THE DIRECT STATE AID PERCENTAGE TO 41.1 PERCENT FOR FISCAL YEAR 2000 AND TO 41.8 PERCENT FOR FISCAL YEAR 2001; DECREASING THE GUARANTEED TAX BASE AID PERCENTAGE TO 38.9 PERCENT FOR FISCAL YEAR 2000 AND TO 38.2 PERCENT FOR FISCAL YEAR 2001; PROVIDING APPROPRIATIONS; AMENDING SECTIONS 20-9-306, 20-9-366, 20-9-367, AND 20-9-368, MCA; AND PROVIDING EFFECTIVE DATES, APPLICABILITY DATES, AND A TERMINATION DATE 672

212 *(Senate Bill No. 103; Franklin)* AMENDING THE INSURANCE INFORMATION AND PRIVACY PROTECTION ACT; CLARIFYING THE DEFINITION OF INSURANCE FUNCTION AND MEDICAL RECORD INFORMATION; REQUIRING CONSENT BEFORE AN INSURANCE INSTITUTION, INSURANCE PRODUCER, OR INSURANCE-SUPPORT ORGANIZATION COLLECTS PERSONAL OR PRIVILEGED INFORMATION ABOUT AN INDIVIDUAL; PROVIDING AN EXCEPTION FOR INDIVIDUAL INSURANCE PRODUCERS; RESTRICTING DISCLOSURE OF MEDICAL RECORD INFORMATION; ALLOWING DISCLOSURE OF INFORMATION THAT IS NOT MEDICAL RECORD INFORMATION ABOUT AN INDIVIDUAL BY AN INSURANCE INSTITUTION, INSURANCE PRODUCER, OR INSURANCE-SUPPORT ORGANIZATION TO ANY AFFILIATE FOR MARKETING OF INSURANCE OR FINANCIAL PRODUCTS; PROVIDING INDIVIDUALS ACCESS TO RECORDS OF

HeinOnline -- 1999 vol. I xxxiii 1999

UNAUTHORIZED DISCLOSURE OF THEIR PERSONAL OR PRIVILEGED INFORMATION BY AN INSURANCE INSTITUTION, INSURANCE PRODUCER, OR INSURANCE-SUPPORT ORGANIZATION; AMENDING SECTIONS 33-19-104, 33-19-202, 33-19-204, AND 33-19-306, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE 678

213 *(Senate Bill No. 235; Wells)* SPECIFYING CRITERIA FOR A PRESUMPTION OF NONABANDONMENT FOR MUNICIPAL WATER RIGHTS IN WATERS CLASSIFIED AS "A-CLOSED"; AMENDING SECTION 85-2-227, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 689

214 *(Senate Bill No. 288; Nelson)* REVISING THE DISPOSITION OF CASH WHEN A SCHOOL DISTRICT CEASES TO EXIST TO REQUIRE THAT WHEN THE TERRITORY IS ASSUMED BY MORE THAN ONE DISTRICT, THE CASH REMAINING, AFTER PAYMENT OF DEBTS, MUST BE PRORATED BETWEEN THE DISTRICTS ON THE BASIS OF THE TAXABLE VALUE OF THE TERRITORY ASSUMED BY EACH DISTRICT; AMENDING SECTION 20-6-413, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 690

215 *(Senate Bill No. 364; Eck)* REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO DEVELOP AND IMPLEMENT A SIMPLIFIED APPLICATION AND PROCESS FOR ELIGIBILITY FOR VARIOUS PROGRAMS FOR CHILDREN FOR MEDICAL ASSISTANCE, MEDICAL BENEFITS, HEALTH CARE BENEFITS OR COVERAGE, AND HEALTH CARE SERVICES PROGRAMS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 691

216 *(Senate Bill No. 374; Lynch)* ALLOWING CLASS D MOTOR CARRIERS TO EXCEED TOTAL GROSS WEIGHT LIMITATIONS BY 10 PERCENT WHEN HAULING GARBAGE ON THE HIGHWAY; AND AMENDING SECTION 61-10-144, MCA 692

217 *(Senate Bill No. 457; Cocchiarella)* PROVIDING THAT CERTAIN OPTIONAL RETIREMENT BENEFITS SELECTED BY A RETIRED MEMBER OF THE PUBLIC EMPLOYEES', JUDGES', SHERIFFS', AND GAME WARDENS' AND PEACE OFFICERS' RETIREMENT SYSTEMS WILL REVERT BACK TO THE REGULAR RETIREMENT BENEFIT UPON THE MEMBER'S REQUEST IF THE MEMBER'S CONTINGENT ANNUITANT DIES OR IF THE MEMBER'S MARRIAGE TO THE CONTINGENT ANNUITANT IS DISSOLVED AND THE DISSOLUTION SETTLEMENT OR FAMILY LAW ORDER DOES NOT ENTITLE THE CONTINGENT ANNUITANT TO THE OPTIONAL BENEFIT; AND AMENDING SECTIONS 19-3-1501, 19-5-701, 19-7-1001, AND 19-8-801, MCA 693

218 *(Senate Bill No. 466; Halligan)* CLARIFYING WORKERS' COMPENSATION LAWS TO PROVIDE THAT A LICENSED OCCUPATIONAL THERAPIST MAY CONDUCT A FUNCTIONAL CAPACITIES EVALUATION; AMENDING SECTION 39-71-605, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 698

219 *(House Bill No. 76; Somerville)* PROVIDING THAT THE ADDRESS OF A REGISTERED SEXUAL OR VIOLENT OFFENDER IS PUBLIC CRIMINAL JUSTICE INFORMATION; ALLOWING A LAW ENFORCEMENT AGENCY TO DISSEMINATE A LEVEL 2 OFFENDER'S EXACT ADDRESS; AND AMENDING SECTION 46-23-508, MCA 699

220 *(House Bill No. 106; McCulloch)* ADOPTING AND IMPLEMENTING THE NATIONAL CRIME PREVENTION AND PRIVACY COMPACT . 700

HeinOnline -- 1999 vol. I xxxiv 1999

221 *(Senate Bill No. 64; Mohl)* REVISING THE AIR QUALITY LAWS; EXEMPTING THE TRANSFER OF PERMITS FOR PORTABLE EMISSION SOURCES FROM THE MONTANA ENVIRONMENTAL POLICY ACT REVIEW PROCESS; PLACING CONSTRUCTION AND OPERATING PERMIT FEES INTO THE SAME ACCOUNT; AMENDING SECTIONS 75-2-211 AND 75-2-221, MCA; AND PROVIDING EFFECTIVE DATES 709

222 *(Senate Bill No. 240; Grimes)* REQUIRING A GOVERNMENT ENTITY THAT WITHHOLDS FROM A CONSTRUCTION CONTRACTOR MONEY OWED THE CONTRACTOR FOR CONSTRUCTION SERVICES OR MATERIALS TO PAY INTEREST TO THE CONSTRUCTION CONTRACTOR; ALLOWING SUBCONTRACTORS TO PARTICIPATE IN MAKING REQUIRED DEPOSIT OBLIGATIONS AND TO RECEIVE A PRO RATA SHARE OF THE INTEREST EARNED ON THOSE DEPOSITS; PROVIDING FOR ENFORCEMENT; AMENDING SECTION 18-1-301, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE 712

223 *(House Bill No. 142; Anderson)* CLARIFYING THE TREATMENT OF A TRANSFER OF OWNERSHIP PURSUANT TO THE MONTANA ENVIRONMENTAL POLICY ACT; LIMITING A COURT'S SCOPE OF REVIEW FOR AN ACTION OR CHALLENGE THAT AN ENVIRONMENTAL STATEMENT OR REVIEW IS NOT REQUIRED OR THAT THE STATEMENT OR REVIEW IS INADEQUATE; CREATING EXEMPTIONS FROM THE PROVISIONS OF THE MONTANA ENVIRONMENTAL POLICY ACT FOR ACTION TAKEN UNDER TITLE 77, MCA; AMENDING SECTION 75-1-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 713

224 *(House Bill No. 485; Anderson)* PROVIDING FOR A TIMBER CONSERVATION LICENSE IN LIEU OF THE SALE OF TIMBER ON STATE TRUST LANDS AND ESTABLISHING A BID PROCESS FOR CONSERVATION LICENSES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 716

225 *(House Bill No. 583; B. Thomas)* ALLOWING A STATE AGENCY TO GRANT PAID LEAVE TO AN EMPLOYEE WHO IS A CERTIFIED AMERICAN RED CROSS VOLUNTEER PROVIDING DISASTER RELIEF VOLUNTEER SERVICE FOR THE AMERICAN RED CROSS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 717

226 *(Senate Bill No. 57; Stang)* REQUIRING THE DEPARTMENT OF ADMINISTRATION TO ADOPT RULES FOR THE ACCEPTABLE USES OF STATE-OWNED OR LEASED MOTOR VEHICLES; AMENDING SECTION 2-17-421, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 717

227 *(Senate Bill No. 63; Nelson)* REVISING THE SEXUAL AND VIOLENT OFFENDER REGISTRATION LAW BY CHANGING THE DEFINITIONS OF "SEXUAL OFFENSE" AND "VIOLENT OFFENSE"; PROVIDING THAT CERTAIN SEXUAL OFFENDERS MAY NOT PETITION, AFTER 10 YEARS OF REGISTRATION, FOR AN ORDER RELIEVING THE OFFENDER FROM THE DUTY TO REGISTER; AND AMENDING SECTIONS 46-23-502 AND 46-23-506, MCA 718

228 *(Senate Bill No. 369; Miller)* REVISING THE LAW RELATING TO CONVERSION OF GROUP DISABILITY INSURANCE AND GROUP HOSPITAL OR MEDICAL SERVICE PLANS; LOWERING THE MAXIMUM PREMIUM RATE AFTER CONVERSION FOR AN INDIVIDUAL WHO HAS BEEN INSURED MORE THAN 3 YEARS FROM 200 PERCENT TO 150 PERCENT OF THE CUSTOMARY RATE

HeinOnline -- 1999 vol. I xxxv 1999

FOR GROUP OR INDIVIDUAL INSURANCE OR AN INDIVIDUAL HOSPITAL OR MEDICAL SERVICE PLAN; AMENDING SECTIONS 33-22-508 AND 33-30-1007, MCA; AND PROVIDING AN APPLICABILITY DATE 721

229 *(House Bill No. 264; Wyatt)* GENERALLY REVISING BUSINESS LAWS; GENERALLY REVISING LAWS RELATING TO ASSUMED BUSINESS NAMES; GENERALLY REVISING CORPORATE LAW; ALLOWING PROXIES TO BE ESTABLISHED BY MEANS OTHER THAN BY WRITING; REQUIRING REGISTERED AGENTS TO MANIFEST CONSENT TO BEING A REGISTERED AGENT; REQUIRING ARTICLES OF DISSOLUTION TO INDICATE IF DISSOLUTION WAS ADOPTED WITHOUT SHAREHOLDER ACTION; CLARIFYING REQUIREMENTS FOR RESTATED ARTICLES OF INCORPORATION FOR NONPROFIT CORPORATIONS; GENERALLY REVISING LIMITED LIABILITY COMPANY LAWS; AMENDING SECTIONS 30-13-203, 30-13-207, 30-13-209, 30-13-210, 30-13-211, 35-1-308, 35-1-313, 35-1-525, 35-1-931, 35-1-933, 35-1-934, 35-1-1032, 35-1-1207, 35-2-226, 35-2-309, 35-8-103, 35-8-104, 35-8-202, 35-8-203, 35-12-505, AND 35-12-507, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 722

230 *(Senate Bill No. 108; Berry)* GENERALLY REVISING PROFESSIONAL LICENSING LAWS; PROVIDING FOR A FULL RANGE OF INVESTIGATIVE AND PROSECUTORIAL AUTHORITY IN CASES OF UNLICENSED PRACTICE; CHANGING THE PHYSICIAN LICENSE REQUIREMENT FROM A 1-YEAR INTERNSHIP TO A 2-YEAR POSTGRADUATE PROGRAM; ELIMINATING THE REQUIREMENT OF A PERSONAL INTERVIEW OF AN APPLICANT FOR A TEMPORARY LICENSE TO PRACTICE MEDICINE; ADDING AN ADDITIONAL PRIVATE PRACTICE PSYCHOLOGIST TO THE BOABD OF PSYCHOLOGISTS; ALLOWING DENTISTS TO WORK IN UNIVERSITY CLINICS, CORRECTIONAL FACILITY CLINICS, COMMUNITY HEALTH CENTERS, MIGRANT HEALTH CARE CENTERS, OR PROGRAMS FOR HEALTH SERVICES FOR THE HOMELESS; SUBSTITUTING THE WORD "FORFEIT" FOR "REVOKE" IN DENTISTRY LAWS; GENERALLY REVISING LAWS RELATING TO DENTURISTS; REVISING DISPENSING FEES FOR HEARING AIDS AND SIMILAR DEVICES; REQUIRING VETERINARY LICENSE APPLICANTS TO PRESENT CERTIFIED TRANSCRIPTS AND REVISING VETERINARY EXAMINATIONS; REQUIRING RESUSCITATION CERTIFICATION FOR MIDWIVES; CHANGING THE REQUIRED NUMBER OF MEETINGS FOR THE BOARD OF SANITARIANS; MODIFYING EXAMINATION PROCEDURES FOR ACCOUNTANTS; CLARIFYING STANDARDS THAT ARE APPLICABLE TO APPRAISERS; AMENDING SECTIONS 2-15-1851, 37-1-307, 37-1-317, 37-1-411, 37-1-412, 37-3-305, 37-4-103, 37-4-307, 37-4-406, 37-16-304, 37-18-302, 37-18-303, 37-27-201, 37-27-205, 37-29-301, 37-29-305, 37-29-401, 37-29-404, 37-40-201, 37-50-308, AND 37-54-403, MCA; AND PROVIDING EFFECTIVE DATES 735

231 *(House Bill No. 27; Noennig)* REVISING PROVISIONS RELATING TO THE TIME FOR APPEARING AND ANSWERING A SUMMONS AND COMPLAINT FOR FORCIBLE ENTRY OR FORCIBLE OR UNLAWFUL DETAINER; AMENDING SECTIONS 70-27-113, 70-27-114, AND 70-27-117, MCA; AND REPEALING SECTION 70-27-115, MCA 747

232 *(House Bill No. 229; Ewer)* REMOVING THE BUILDING INSPECTOR RESPONSIBILITY TO ENFORCE THE GENERAL PROVISIONS OF CONSTRUCTION SITE HEALTH AND SAFETY; REPEALING

HeinOnline -- 1999 vol. I xxxvi 1999

SECTION 50-77-106, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 748

233 *(House Bill No. 244; Facey)* REVISING THE COMPENSATION FOR RETIRED JUDGES OR JUSTICES CALLED FOR DUTY; AMENDING SECTION 19-5-103, MCA; AND PROVIDING AN EFFECTIVE DATE . 749

234 *(House Bill No. 283; Younkin)* INCREASING THE VALUE OF SMALL ESTATES FOR WHICH PERSONAL PROPERTY CAN BE COLLECTED BY AFFIDAVIT; AND AMENDING SECTION 72-3-1101, MCA 749

235 *(House Bill No. 296; Shockley)* REVISING THE COMPENSATION PAID TO A PUBLIC ADMINISTRATOR WHO IS APPOINTED CONSERVATOR OF AN ESTATE; AND AMENDING SECTION 72-15-301, MCA 750

236 *(House Bill No. 300; Ohs)* CLARIFYING THE TIME LIMITS FOR A GOVERNING BODY TO TAKE ACTION ON A PRELIMINARY PLAT OR A MINOR SUBDIVISION; AMENDING SECTIONS 76-3-604 AND 76-3-609, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 750

237 *(House Bill No. 308; Hagener)* INCREASING THE VALUE OF AN AUTOMOBILE EXEMPT FROM EXECUTION OF JUDGMENT FROM $1,200 TO $2,500; AND AMENDING SECTION 25-13-609, MCA . . . 751

238 *(House Bill No. 325; Brainard)* ALLOWING THE REGULATION OF BARKING DOGS BY COUNTY ORDINANCE 752

239 *(House Bill No. 338; Masolo)* ALLOWING COUNTIES TO CONTRACT FOR THE PURCHASE OF A VEHICLE, ROAD MACHINERY OR OTHER MACHINERY, APPARATUS, APPLIANCE, EQUIPMENT, OR MATERIALS OR SUPPLIES IN AN AMOUNT OF UP TO $50,000 WITHOUT PUTTING THE CONTRACT OUT TO BID; AMENDING SECTIONS 7-5-2301, 7-5-2304, AND 7-8-2211, MCA; REPEALING SECTION 7-5-2302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 752

240 *(House Bill No. 361; Shockley)* REVISING THE LAWS RELATING TO LIENS; PROVIDING THAT IN CERTAIN CASES A LIENHOLDER IS REQUIRED TO PAY ATTORNEY FEES IN ADDITION TO COSTS IF THE LIENHOLDER REJECTS A DEFENDANT'S OFFER OF JUDGMENT; PROVIDING THAT A LIEN MAY NOT BE RELEASED UNTIL COSTS AND ATTORNEY FEES ARE PAID; AND AMENDING SECTIONS 71-3-124 AND 71-3-131, MCA 754

241 *(House Bill No. 382; Rose)* CLARIFYING PROVISIONS RELATED TO JURY LISTS AND JURORS; DELETING OUT-OF-DATE PROVISIONS; AMENDING SECTIONS 3-15-402, 3-15-403, 3-15-404, 3-15-501, 3-15-503, 3-15-506, AND 3-15-507, MCA; AND REPEALING SECTIONS 3-15-502 AND 3-15-505, MCA 755

242 *(House Bill No. 437; Kasten)* CLARIFYING THE INFORMATION THAT A TELEPHONE COMPANY MAY RELEASE TO EMERGENCY COMMUNICATIONS SYSTEMS PERSONNEL; AMENDING SECTION 27-1-735, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 758

243 *(House Bill No. 539; Sliter)* REMOVING THE REQUIREMENT THAT THE MEMBER FROM THE GOVERNOR'S STAFF APPOINTED TO THE FLATHEAD BASIN COMMISSION SERVE AS THE COMMISSION'S EXECUTIVE DIRECTOR; ALLOWING THE COMMISSION TO HIRE STAFF; ELIMINATING THE FLATHEAD BASIN COMMISSION ACCOUNT; AMENDING SECTIONS 2-15-213

HeinOnline -- 1999 vol. I xxxvii 1999

AND 2-15-215, MCA; REPEALING SECTION 75-7-306, MCA; AND PROVIDING AN EFFECTIVE DATE 759

244 *(House Bill No. 598; Quilici)* PROHIBITING A TELECOMMUNICATIONS CARRIER OR OTHER ENTITY FROM CHARGING OR ATTEMPTING TO CHARGE FOR A PRODUCT OR SERVICE NOT AUTHORIZED OR RECEIVED BY THE CUSTOMER; AUTHORIZING THE PUBLIC SERVICE COMMISSION TO IMPOSE CIVIL PENALTIES FOR UNAUTHORIZED CHANGES IN A CUSTOMER'S TELECOMMUNICATIONS CARRIER OR FOR CHARGES FOR PRODUCTS OR SERVICES NOT AUTHORIZED OR RECEIVED BY A CUSTOMER; AUTHORIZING THE SECRETARY OF STATE TO REVOKE A REPEAT VIOLATOR'S RIGHT TO TRANSACT BUSINESS IN THIS STATE; AND AMENDING SECTIONS 69-3-1301, 69-3-1303, AND 69-3-1305, MCA 760

245 *(Senate Bill No. 15; Cole)* CLARIFYING THE COMPUTATION OF THE BUSINESS EQUIPMENT TAX RATE REDUCTION REIMBURSEMENT TO LOCAL GOVERNMENT TAXING JURISDICTIONS; AMENDING SECTION 15-1-112, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 762

246 *(Senate Bill No. 71; Nelson)* EXEMPTING VEHICLES OWNED BY CERTAIN HEALTH CARE PROFESSIONALS WHO PRACTICE IN RURAL, MEDICALLY UNDERSERVED AREAS FROM FOREIGN VEHICLE REGISTRATION; PROVIDING FOR A DECAL; AMENDING SECTIONS 15-24-301 AND 61-3-707, MCA; AND PROVIDING AN EFFECTIVE DATE 766

247 *(Senate Bill No. 124; T. Beck)* GENERALLY REVISING LAWS RELATING TO MENTAL HEALTH; DELETING THE REQUIREMENT FOR DEPARTMENT APPROVAL OF VOLUNTARY ADMISSION FORMS; SPECIFYING THE CONTENT OF VOLUNTARY ADMISSION FORMS AND SPECIFYING THE REQUIREMENTS FOR A VALID VOLUNTARY ADMISSION; PROVIDING TRANSFER PROVISIONS FOR A PERSON IN THE CUSTODY OF THE DEPARTMENT OF CORRECTIONS; AMENDING TIME PROVISIONS RELATED TO NONRESIDENT COMMITMENT; CLARIFYING THE CRITERIA FOR DIVERSION FROM A DETENTION CENTER OF CERTAIN PERSONS SUFFERING FROM A MENTAL DISORDER; REQUIRING A STATEMENT OF FINANCIAL RESOURCES NEEDED FOR DISCHARGE PLANNING; AMENDING THE FUNCTION OF THE MONTANA STATE HOSPITAL; AMENDING SECTIONS 53-21-111, 53-21-130, 53-21-134, 53-21-138, 53-21-180, AND 53-21-601, MCA; REPEALING SECTION 53-21-188, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 768

248 *(Senate Bill No. 207; Roush)* ALLOWING A BOARD OF COUNTY COMMISSIONERS TO DONATE LAND THAT THE COUNTY HAS ACQUIRED BY TAX DEED TO A NONPROFIT CORPORATION SO THAT THE NONPROFIT CORPORATION WILL CONSTRUCT OR REPAIR IMPROVEMENTS ON THE DONATED LAND AND SELL, LEASE, RENT, OR OTHERWISE USE THE PROPERTY TO FURTHER THE PURPOSES FOR WHICH THE NONPROFIT CORPORATION WAS FORMED; AND AMENDING SECTION 7-8-2301, MCA 771

249 *(Senate Bill No. 348; Bartlett)* PROVIDING FOR THE DECRIMINALIZATION OF MUNICIPAL VIOLATIONS; CREATING A CATEGORY OF MUNICIPAL INFRACTIONS WITH CIVIL PENALTIES AND PROVIDING PROCEDURES FOR ENFORCING MUNICIPAL INFRACTIONS; AUTHORIZING MUNICIPALITIES TO

HeinOnline -- 1999 vol. I xxxviii 1999

CLASSIFY VIOLATIONS OF MUNICIPAL ORDINANCES AS MUNICIPAL INFRACTIONS; AND AMENDING SECTION 7-1-4124, MCA 773

250 *(Senate Bill No. 371; Mesaros)* REQUIRING A PERSON DEVELOPING A GROUND WATER SOURCE OF 35 GALLONS A MINUTE OR LESS, WHEN THE SOURCE IS ON ANOTHER PERSON'S LAND, TO NOTIFY THE OTHER LANDOWNER IN ADVANCE OF THE PROPOSED DEVELOPMENT AND APPROPRIATION; AMENDING SECTION 85-2-306, MCA; AND PROVIDING AN EFFECTIVE DATE . 776

251 *(Senate Bill No. 386; Mahlum)* PROVIDING FOR THE TRANSFER AND ADMINISTRATION OF LIQUOR LICENSES THAT WERE PURCHASED BY THE STATE WITH VIRGINIA CITY AND NEVADA CITY; PROVIDING THAT THE LICENSES BE HELD BY THE MONTANA HERITAGE PRESERVATION AND DEVELOPMENT COMMISSION; PROVIDING THAT THE LICENSES MAY BE LEASED TO PERSONS OR ENTITIES APPROVED BY THE DEPARTMENT OF REVENUE; PROVIDING THAT THE LICENSES ARE SUBJECT TO THE SAME LAWS GOVERNING THE USE AND OPERATION OF ALL OTHER RETAIL LIQUOR LICENSES; AMENDING SECTION 16-4-205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 778

252 *(Senate Bill No. 415; Jabs)* PROVIDING A RESIDENT BIDDING PREFERENCE FOR COUNTY CONTRACTS; AND AMENDING SECTIONS 7-5-2301 AND 7-5-2302, MCA 779

253 *(Senate Bill No. 438; Christiaens)* ALLOWING IMMEDIATE ACCESSIBILITY OF EPHEDRINE BY A LICENSED PHYSICIAN FOR PATIENT CARE; AMENDING SECTION 50-32-229, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 780

254 *(Senate Bill No. 488; Bartlett)* REVISING THE LAW RELATING TO THE ELECTION OR APPOINTMENT OF THE GOVERNING BODIES OF COUNTY WATER AND SEWER DISTRICTS, URBAN TRANSPORTATION DISTRICTS, COUNTY PARK DISTRICTS, RURAL FIRE DISTRICTS, FIRE SERVICE AREAS, HOSPITAL DISTRICTS, CONSERVATION DISTRICTS, AND IRRIGATION DISTRICTS; AND AMENDING SECTIONS 7-1-201, 7-13-2258, 7-13-2262, 7-14-212, 7-16-2421, 7-33-2106, 7-33-2403, 7-34-2117, 7-34-2121, 76-15-303, AND 85-7-1702, MCA 783

255 *(House Bill No. 8; McCann)* APPROVING RENEWABLE RESOURCE PROJECTS AND AUTHORIZING LOANS; REAUTHORIZING RENEWABLE RESOURCE PROJECTS AUTHORIZED BY THE 55TH LEGISLATURE; APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR LOANS UNDER THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM; AUTHORIZING THE ISSUANCE OF COAL SEVERANCE TAX BONDS; AUTHORIZING THE CREATION OF A STATE DEBT AND APPROPRIATING COAL SEVERANCE TAXES; PLACING CERTAIN CONDITIONS UPON LOANS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 790

256 *(House Bill No. 421; Younkin)* AUTHORIZING THE COMMISSIONER OF HIGHER EDUCATION TO DEVELOP GROUP BENEFITS PLANS FOR MONTANA UNIVERSITY SYSTEM EMPLOYEES; ESTABLISHING AN ADVISORY COMMITTEE TO ASSIST THE COMMISSIONER; CLARIFYING THAT THE DESIGN OR MODIFICATION OF GROUP BENEFITS PLANS AND THE ESTABLISHMENT OF EMPLOYEE PREMIUM LEVELS ARE NOT MANDATORY SUBJECTS FOR COLLECTIVE BARGAINING; AND PROVIDING AN EFFECTIVE DATE 794

HeinOnline -- 1999 vol. I xxxix 1999

257 *(House Bill No. 455; Soft)* GENERALLY REVISING THE LAWS RELATING TO ADOPTION; AMENDING SECTIONS 42-1-105, 42-2-206, 42-2-217, 42-2-412, 42-2-607, 42-2-609, 42-2-610, 42-2-619, 42-3-203, 42-3-212, 42-3-213, 42-4-302, 42-4-303, 42-4-304, 42-4-309, 42-4-310, 42-5-101, 42-5-109, AND 42-5-202, MCA; REPEALING SECTION 42-4-305, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 796

258 *(House Bill No. 527; Harper)* REQUIRING IMPOSITION OF THE RESTRICTION OF DRIVING A MOTOR VEHICLE EQUIPPED WITH A FUNCTIONING IGNITION INTERLOCK DEVICE AS A CONDITION FOR ISSUANCE OF A PROBATIONARY DRIVER'S LICENSE UPON A SECOND OR SUBSEQUENT VIOLATION OF DRIVING WHILE INTOXICATED OR UNDER THE INFLUENCE OF ALCOHOL; AND AMENDING SECTIONS 61-2-302, 61-5-208, AND 61-8-442, MCA 806

259 *(House Bill No. 617; Ohs)* RESTRUCTURING THE MEMBERSHIP OF THE PETROLEUM TANK RELEASE COMPENSATION BOARD; REVISING THE AUTHORITY OF THE BOARD; AMENDING SECTIONS 2-15-2108 AND 75-11-318, MCA; AND PROVIDING AN EFFECTIVE DATE 809

260 *(Senate Bill No. 13; McNutt)* EXPANDING THE SCOPE AND DURATION OF THE MOTOR VEHICLE ELECTRONIC RECORD PILOT PROGRAM OF THE DEPARTMENT OF JUSTICE; AMENDING SECTION 61-3-109, MCA, AND SECTION 4, CHAPTER 90, LAWS OF 1997; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 810

261 *(Senate Bill No. 239; Roush)* REQUIRING THE DEPARTMENT OF REVENUE TO AID SOLID WASTE MANAGEMENT DISTRICT BOARDS BY PROVIDING INFORMATION TO BE USED TO DETERMINE RATES FOR SERVICE CHARGES; AND AMENDING SECTION 7-13-231, MCA 811

262 *(Senate Bill No. 404; McNutt)* PROVIDING THAT THE ASSETS OF AN INDIVIDUAL RETIREMENT ACCOUNT ARE EXEMPT FROM EXECUTION OF JUDGMENT TO THE EXTENT OF CONTRIBUTION LIMITS TO THE ACCOUNT; PROVIDING THAT THE EXCEPTION DOES NOT APPLY TO CHILD SUPPORT AND CERTAIN FAMILY SUPPORT ORDERS; AMENDING SECTION 25-13-608, MCA; AND PROVIDING AN APPLICABILITY DATE 812

263 *(Senate Bill No. 419; Shea)* CLARIFYING THAT CERTAIN PUBLICLY OWNED LICENSES ARE ELIGIBLE FOR GAMBLING ACTIVITIES; PROVIDING THAT LESSEES OF LICENSES ISSUED TO AIRPORT AUTHORITIES AND PUBLIC GOLF COURSES ARE ALSO ELIGIBLE TO OFFER CERTAIN GAMBLING ACTIVITIES; CLARIFYING THAT OWNERS OF RESORT LICENSES ARE ELIGIBLE TO OFFER CERTAIN GAMBLING ACTIVITIES; AMENDING SECTION 23-5-119, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 813

264 *(Senate Bill No. 439; Hertel)* REVISING THE DEFINITIONS OF "SEASONAL ESTABLISHMENT" AND "SMALL ESTABLISHMENT" AS THE DEFINITIONS APPLY TO THE LICENSURE OF GUEST RANCHES AND OUTFITTING AND GUIDE FACILITIES TO ENSURE THAT THE NUMBER OF GUESTS FOR WHOM ACCOMMODATIONS ARE PROVIDED DURING THE ESTABLISHMENT'S SEASON OF OPERATION IS DETERMINED BY USING AN AVERAGE; AND AMENDING SECTION 50-51-102, MCA 814

265 *(House Bill No. 277; Pavlovich)* REPEALING THE PROVISION THAT ALLOWS LICENSING OF CHIROPRACTORS FROM OTHER STATES

WITHOUT EXAMINATION; REPEALING SECTION 37-12-305, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 815

266 *(House Bill No. 316; Raney)* DESIGNATING CERTAIN STATE PARKS AS MOST AT RISK AND AS PRIORITIES FOR THE PROTECTION, PRESERVATION, AND RESTORATION OF HISTORICAL, CULTURAL, AND NATURAL ASSETS 816

267 *(House Bill No. 523; McKenney)* CLARIFYING THE QUALIFIED PRIVILEGE FOR MANDATORY REPORTING OF EMPLOYMENT-RELATED INFORMATION BY BROKER-DEALERS; AND AMENDING SECTION 30-10-310, MCA 816

268 *(House Bill No. 524; Eggers)* ALLOWING A TRIBAL GOVERNMENT TO PARTICIPATE IN THE CERTIFIED COMMUNITIES PROGRAM AND THE TREASURE STATE ENDOWMENT PROGRAM; AND AMENDING SECTIONS 90-1-116 AND 90-6-701, MCA 817

269 *(House Bill No. 555; McKenney)* AUTHORIZING THE ESTABLISHMENT AND CREATION OF AN AEROSPACE TRANSPORTATION AND TECHNOLOGY DISTRICT TO ACCOMMODATE AND SUPPORT A REUSABLE SPACE LAUNCH VEHICLE SPACEPORT; AUTHORIZING THE ISSUANCE OF UP TO $20 MILLION OF STATE GENERAL OBLIGATION BONDS TO PAY THE COSTS OF SPACEPORT INFRASTRUCTURE DEVELOPMENT PROJECTS; AMENDING SECTIONS 7-15-4283, 7-15-4288, AND 7-15-4301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 819

270 *(House Bill No. 558; Bitney)* CLARIFYING WHICH PERSONS MAY ENGAGE IN THE CONSUMER LOAN BUSINESS; ESTABLISHING GUIDELINES FOR PREPAYMENT CHARGES ON CONSUMER LOANS; INCREASING THE BAD CHECK CHARGE FROM $10 TO $25; MODIFYING WHICH PAST DUE PROVISIONS APPLY TO OPEN-END LOANS; AND AMENDING SECTIONS 32-5-103, 32-5-301, 32-5-407, AND 32-5-506, MCA 823

271 *(House Bill No. 581; Cobb)* GENERALLY REVISING THE MONTANA SMALL BUSINESS PURCHASING ACT; REVISING THE DEFINITION OF "SMALL BUSINESS"; ELIMINATING CERTAIN REQUIREMENTS RELATED TO THE DESIGNATION OF SMALL BUSINESS SET-ASIDES AND TO THE ADVERTISEMENT FOR BIDS AND NOTIFICATION OF BIDDERS; REPEALING THE PREFERENCE FOR THE MONTANA SMALL BUSINESS WHEN THERE IS A TIE FOR LOW BID; AMENDING SECTIONS 18-5-303, 18-5-304, AND 18-5-305, MCA; REPEALING SECTIONS 18-5-301, 18-5-302, 18-5-303, 18-5-304, 18-5-305, 18-5-306, 18-5-307, AND 18-5-308, MCA; AND PROVIDING EFFECTIVE DATES 826

272 *(House Bill No. 629; Mood)* DIRECTING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO CONDUCT A COMPREHENSIVE STUDY OF BLACKFOOT RIVER USE AND CONFLICT AND REPORT THE DEPARTMENT'S FINDINGS AND CONCLUSIONS TO THE 57TH LEGISLATURE 828

273 *(Senate Bill No. 478; Christiaens)* REQUIRING THE BOARD OF PHARMACY TO ADOPT RULES PROVIDING FOR THE REGISTRATION OF AMBULATORY SURGICAL FACILITIES AS ENTITIES ALLOWED TO POSSESS DANGEROUS DRUGS PURSUANT TO TITLE 50, CHAPTER 32, PART 3, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 329

274 *(House Bill No. 212; Hagener)* PROVIDING THAT THE GOVERNING BODY OF A POLITICAL SUBDIVISION RATHER THAN THE

HeinOnline -- 1999 vol. I xli 1999

MANAGER OR PERSON IN CHARGE OF THE OFFICE OR WORK AREA MAY ESTABLISH SMOKE-FREE BUILDINGS OR SMOKING AND NONSMOKING AREAS; PROVIDING THAT SMOKING RESTRICTIONS IMPOSED BY THE GOVERNING BODY OF A POLITICAL SUBDIVISION APPLY EQUALLY TO EMPLOYEES OF THE POLITICAL SUBDIVISION AND THE PUBLIC; AMENDING SECTION 50-40-201, MCA; AND PROVIDING AN EFFECTIVE DATE . 831

275 *(House Bill No. 458; Ohs)* ADDING ASSISTANCE WITH INTERAGENCY COORDINATION TO THE WATER POLICY DUTIES OF THE ENVIRONMENTAL QUALITY COUNCIL; TEMPORARILY REQUIRING THE COUNCIL TO COORDINATE THE COMPILATION, EVALUATION, AND DISSEMINATION OF EDUCATIONAL INFORMATION RELATED TO BEST MANAGEMENT PRACTICES FOR STREAMSIDE CORRIDORS AND RIPARIAN MANAGEMENT; AMENDING SECTION 85-2-105, MCA; AND PROVIDING A TERMINATION DATE 831

276 *(Senate Bill No. 210; Lynch)* CLARIFYING THE PRACTICE OF HOME INSPECTIONS; SETTING FORTH GUIDELINES AND DEFINITIONS; LISTING EXCLUSIONS; SPECIFYING A REQUIREMENT FOR A WRITTEN HOME INSPECTION REPORT; IDENTIFYING PROHIBITED PRACTICES; AND SUBJECTING HOME INSPECTION SERVICE PROVIDERS WHO VIOLATE HOME INSPECTION TRADE PRACTICES LAWS TO UNFAIR TRADE PRACTICES PROVISIONS 833

277 *(Senate Bill No. 276; Berry)* ALLOWING AN APPLICATION FOR AN EASEMENT ACROSS STATE LAND TO BE ACCOMPANIED BY A SURVEY PREPARED USING DATA COLLECTED THROUGH THE USE OF ALTERNATIVE SURVEY METHODS; AND AMENDING SECTION 77-2-102, MCA 835

278 *(Senate Bill No. 362; Keating)* AUTHORIZING THE USE OF A SURETY BOND IN ADDITION TO THE OTHER METHODS OF GUARANTEE TO ENSURE THE PROPER CLOSURE OF OIL AND GAS WELLS; AND AMENDING SECTION 82-11-163, MCA 836

279 *(Senate Bill No. 412; Stang)* GENERALLY REVISING THE REQUIREMENTS FOR CONTROL AND MANAGEMENT OF TIMBER SLASH; CLARIFYING THAT FIRE HAZARD REDUCTION AGREEMENTS APPLY ONLY TO PRIVATE FOREST LANDS; REQUIRING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO ADOPT FIRE HAZARD REDUCTION RULES; REVISING THE BOND PROVISION AND RELEASE PROCEDURES; AMENDING SECTIONS 76-13-401, 76-13-403, 76-13-408, 76-13-409, 76-13-410, 76-13-411, 76-13-412, 76-13-414, AND 76-13-415, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY PROVISION 837

280 *(Senate Bill No. 452; T. Beck)* CLARIFYING SECURITY INTERESTS IN LIQUOR LICENSES; REQUIRING THAT THE DEPARTMENT OF REVENUE BE GIVEN NOTICE WITHIN 7 DAYS OF A DEFAULT OF A SECURITY INTEREST IN A LIQUOR LICENSE; PROVIDING FOR THE TRANSFER OF OWNERSHIP OR LAPSE TO NONUSE STATUS OF DEFAULTED LIQUOR LICENSES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 842

281 *(Senate Bill No. 468; Cocchiarella)* TEMPORARILY CLOSING THE CLARK FORK RIVER BASIN TO FURTHER APPROPRIATIONS AND RESERVATIONS FOR CONSUMPTIVE USES, EXCEPT FOR GROUND WATER, DOMESTIC, MUNICIPAL, LIVESTOCK, AND EMERGENCY APPROPRIATIONS; AND PROVIDING AN

IMMEDIATE EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE 843

282 *(Senate Bill No. 471; Cole)* REQUIRING THAT RESPONSES TO REQUESTS FOR BIDS FOR CONSTRUCTION CONTRACTS WITH STATE AGENCIES INCLUDE BID SECURITY FROM AN INDIVIDUAL AUTHORIZED TO SUBMIT THAT SECURITY, UNIT PRICE, AND A SIGNATURE OF THE INDIVIDUAL AUTHORIZED TO SUBMIT THE BID; AMENDING SECTION 18-2-302, MCA; AND PROVIDING AN APPLICABILITY DATE 844

283 *(Senate Bill No. 501; Hertel)* CREATING A MAUSOLEUM-COLUMBARIUM ACT PROVIDING FOR THE ESTABLISHMENT AND REGULATION OF NONPROFIT MAUSOLEUM-COLUMBARIUM AUTHORITIES IN THIS STATE . . 846

284 *(Senate Bill No. 521; Hargrove)* ALLOWING FIREWORKS TO BE SOLD ON DECEMBER 30 AND 31, 1999; AMENDING SECTION 50-37-106, MCA; AND PROVIDING A TERMINATION DATE 857

285 *(Senate Bill No. 200; M. Taylor)* STIMULATING ECONOMIC GROWTH AND ENCOURAGING BUSINESS RETENTION; PROVIDING A PHASED-IN RATE REDUCTION AND A PROGRESSIVE EXEMPTION FROM TAXATION OF CLASS EIGHT PROPERTY; PROVIDING LIMITED REPORTING REQUIREMENTS FOR EXEMPT BUSINESS EQUIPMENT; PROVIDING EXEMPTIONS FOR CLASS SIX PROPERTY; REDUCING INCREMENTALLY THE TAX RATE ON CLASS SIX PROPERTY FROM 4 PERCENT TO 1 PERCENT BEGINNING IN TAX YEAR 2000; ELIMINATING THE PROPERTY TAX ON CLASS SIX PROPERTY IN 2003; REIMBURSING LOCAL TAXING JURISDICTIONS FOR THE PHASED-IN RATE REDUCTION AND ELIMINATION OF CLASS SIX PROPERTY; REIMBURSING LOCAL TAXING JURISDICTIONS FOR THE EXEMPTIONS AND PHASED-IN RATE REDUCTION FOR CLASS EIGHT PROPERTY; REVISING THE INDEBTEDNESS LIMITATIONS OF LOCAL TAXING JURISDICTIONS TO OFFSET CLASS SIX PROPERTY TAX RATE REDUCTIONS; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTIONS 7-7-107, 7-7-108, 7-7-2101, 7-7-2203, 7-14-2524, 7-14-2525, 7-16-2327, 15-1-101, 15-6-136, 15-6-138, 15-6-201, 15-6-207, 15-8-301, 15-24-301, 15-24-303, 15-24-902, 15-24-903, 15-24-904, 15-24-922, 17-7-502, 20-9-406, 81-7-303, AND 81-7-603, MCA; REPEALING SECTIONS 15-6-136, 15-6-138, 15-24-901, 15-24-920, 15-24-926, 15-24-927, AND 15-24-931, MCA; AND PROVIDING EFFECTIVE DATES AND APPLICABILITY DATES 857

286 *(Senate Bill No. 5; Tester)* RELATING TO FEES ASSESSED FOR THE ADMINISTRATIVE EXPENSES OF RETIREMENT SYSTEMS; ELIMINATING THE $1 MEMBERSHIP FEE CONTRIBUTED BY EACH EMPLOYER ON BEHALF OF EACH MEMBER OF THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; ELIMINATING A FEE FROM THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS USED TO DEFRAY CERTAIN ADMINISTRATIVE EXPENSES OF THE PUBLIC EMPLOYEES' RETIREMENT BOARD; AMENDING SECTION 19-2-408, MCA; AND PROVIDING AN EFFECTIVE DATE 883

287 *(Senate Bill No. 179; R. Holden)* CLARIFYING THAT A TEMPORARY DRIVING PERMIT ISSUED TO A PERSON ARRESTED FOR DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS IS NOT EFFECTIVE UNTIL 12 HOURS AFTER ISSUANCE; AND AMENDING SECTION 61-8-402, MCA 884

288 *(Senate Bill No. 257; Grimes)* REVISING CERTAIN LAWS RELATING TO SEX OFFENSES; PROVIDING THAT CERTAIN REASONS OTHER

HeinOnline -- 1999 vol. I xliii 1999

THAN SOLELY SEXUAL GRATIFICATION CAN FORM THE BASIS FOR SEXUAL CRIMES; REVISING THE DEFINITIONS OF "SEXUAL CONTACT" AND "SEXUAL INTERCOURSE"; REVISING THE OFFENSE OF INDECENT EXPOSURE; AND AMENDING SECTIONS 45-2-101 AND 45-5-504, MCA 886

289 *(Senate Bill No. 365; Mohl)* CLARIFYING THE SCOPE OF CONSTRUCTION SERVICES PERFORMED ON A PUBLIC WORKS CONTRACT FOR WHICH THE PREVAILING RATE OF WAGES MUST BE PAID; AMENDING SECTIONS 18-2-401 AND 18-2-403, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE 894

290 *(Senate Bill No. 473; Doherty)* GENERALLY REVISING THE LAWS RELATING TO ESTATES, TRUSTS, AND FIDUCIARY RELATIONSHIPS; CLARIFYING THE DEFINITION OF PARENT-CHILD RELATIONSHIP; CLARIFYING COMPUTATION OF THE AUGMENTED ESTATE; CONFORMING DISCLAIMER RULES TO FEDERAL REGULATIONS; ALLOWING A PERSONAL REPRESENTATIVE TO CONTINUE AN UNINCORPORATED BUSINESS; CLARIFYING CIRCUMSTANCES IN WHICH A GUARDIAN OF A MINOR MAY BE APPOINTED; EXTENDING THE EXEMPTION FROM INHERITANCE TAXES FOR STEPCHILDREN; ALLOWING CERTAIN PERSONAL PROPERTY OWNED BY A TRUST TO BE DISPOSED OF BY SEPARATE WRITING; PROVIDING AN OBJECTIVE STANDARD GOVERNING INVESTMENTS BY TRUSTEES BY CLARIFYING THE PRUDENT INVESTOR RULE; PROVIDING FOR DISTRIBUTION OF CHARITABLE TRUSTS' ASSETS UPON TERMINATION OF THE TRUST; REQUIRING A STATEMENT OF PURPOSE OF TRUST JUDICIAL PROCEEDINGS IN A NOTICE OF HEARING; AMENDING SECTIONS 72-2-124, 72-2-221, 72-2-222, 72-2-811, 72-3-613, 72-5-222, 72-34-113, 72-34-114, 72-34-205, AND 72-35-306, MCA, AND SECTION 3, CHAPTER 464, LAWS OF 1997; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 898

291 *(House Bill No. 645; Cobb)* GENERALLY REVISING FUND STRUCTURE LAWS TO INCLUDE INVESTMENT TRUST FUND TYPES WITHIN THE FIDUCIARY FUND CATEGORY; ALLOWING A FUND TYPE RATHER THAN AN ACCOUNTING ENTITY TO HAVE A NEGATIVE BALANCE AT ANY POINT IN A FISCAL YEAR; PROVIDING THAT, IF POSSIBLE, LONG-TERM LOANS MUST BE MADE FROM FUNDS OTHER THAN THE GENERAL FUND; AMENDING SECTIONS 17-2-102 AND 17-2-107, MCA; AND PROVIDING AN EFFECTIVE DATE 912

292 *(Senate Bill No. 122; T. Beck)* MAKING PERMANENT THE THIRD-PARTY COMMERCIAL DRIVER TESTING PROGRAM; ALLOWING A THIRD-PARTY COMMERCIAL DRIVER EXAMINER FROM ANOTHER JURISDICTION TO CERTIFY AN APPLICANT'S COMPLETION OF A ROAD OR SKILLS TEST; AMENDING SECTION 61-5-118, MCA; REPEALING SECTION 12, CHAPTER 53, LAWS OF 1995; AND PROVIDING AN EFFECTIVE DATE 916

293 *(Senate Bill No. 314; Grimes)* GENERALLY REVISING THE LAWS RELATING TO THE ENFORCEMENT OF THE ASBESTOS ABATEMENT LAWS; REVISING THE LAWS RELATING TO DENIAL, SUSPENSION, AND REVOCATION OF ACCREDITATION; AUTHORIZING INSPECTIONS; PROVIDING FOR CLEANUP ORDERS, ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES, AND INJUNCTIONS; AMENDING SECTIONS 75-2-508 AND 75-2-514, MCA; AND CONTINGENTLY REPEALING SECTION 75-2-514, MCA . 917

HeinOnline -- 1999 vol. I xliv 1999

294 *(Senate Bill No. 321; Jabs)* REVISING THE DEFINITION OF "CONTAINER SITE"; AND AMENDING SECTION 75-10-103, MCA . 921

295 *(Senate Bill No. 346; Hargrove)* REQUIRING THAT FUEL PUMPS DISPENSING DYED FUEL BE IDENTIFIED WITH A DECAL; AND PROVIDING AN EFFECTIVE DATE 922

296 *(Senate Bill No. 352; Mahlum)* DESIGNATING THE MISSOULA MEMORIAL ROSE GARDEN AS A STATE VETERANS' MEMORIAL ROSE GARDEN AND AS A STATE KOREAN CONFLICT VETERANS' MEMORIAL; AND PROVIDING FOR REFERENCES ON STATE MAPS 923

297 *(Senate Bill No. 355; Mohl)* ELIMINATING THE USE OF THE STATE SPECIAL REVENUE FUND FOR FUNDING FOOTPATHS AND BICYCLE TRAILS; AMENDING SECTION 60-3-303, MCA; AND PROVIDING AN EFFECTIVE DATE 924

298 *(Senate Bill No. 397; Stang)* ALLOWING THE TRANSPORTATION COMMISSION TO AUTHORIZE THE USE OF FEDERAL SECONDARY HIGHWAY AND URBAN HIGHWAY FUNDS FOR THE FEDERAL SURFACE TRANSPORTATION PROGRAM; AND AMENDING SECTION 60-2-127, MCA 924

299 *(Senate Bill No. 398; Bohlinger)* PROTECTING THE RIGHT OF A MOTHER TO NURSE HER CHILD IN PUBLIC; PROHIBITING A UNIT OF LOCAL GOVERNMENT FROM ADOPTING AN ORDINANCE PROHIBITING BREASTFEEDING IN PUBLIC; AND PROVIDING THAT BREASTFEEDING MAY NOT BE CONSIDERED A NUISANCE, INDECENT EXPOSURE, SEXUAL CONDUCT, OR OBSCENITY 925

300 *(Senate Bill No. 399; Jabs)* PROVIDING A CAP ON THE AMOUNT A HEALTH CARE PROVIDER MAY CHARGE FOR COPYING HEALTH CARE INFORMATION; AND AMENDING SECTIONS 50-16-504, 50-16-526, 50-16-536, 50-16-541, AND 50-16-545, MCA 926

301 *(Senate Bill No. 416; Grosfield)* CLARIFYING THAT AFTER A VERDICT OR FINDING OF GUILTY, A COURT MAY ORDER A NEW TRIAL IF REQUIRED IN THE INTEREST OF JUSTICE; AND AMENDING SECTION 46-16-702, MCA 930

302 *(Senate Bill No. 435; Waterman)* GENERALLY REVISING THE MONTANA LIMITED LIABILITY COMPANY ACT BY ADOPTING THE UNIFORM LIMITED LIABILITY COMPANY ACT; AMENDING SECTIONS 35-8-102, 35-8-201, 35-8-202, 35-8-203, 35-8-209, 35-8-304, 35-8-405, 35-8-501, 35-8-502, 35-8-601, 35-8-605, 35-8-703, 35-8-705, 35-8-801, 35-8-901, 35-8-902, 35-8-904, 35-8-905, 35-8-906, 35-8-908, 35-8-909, 35-8-1201, AND 35-8-1302, MCA; REPEALING SECTIONS 35-8-303, 35-8-401, 35-8-402, 35-8-403, 35-8-404, 35-8-602, 35-8-704, 35-8-706, 35-8-801, 35-8-802, 35-8-907, AND 35-8-1102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 930

303 *(House Bill No. 649; McCann)* GENERALLY REVISING THE LAWS RELATING TO STATE CONSTRUCTION CONTRACTS; CLARIFYING THE REQUIREMENT THAT CONTRACTS MUST BE AWARDED TO CONTRACTORS REGISTERED IN MONTANA; REVISING PECUNIABY INTEREST PROHIBITIONS FOR DEPARTMENT OF ADMINISTRATION EMPLOYEES; ELIMINATING THE REQUIREMENT TO FILE A COPY OF A SURETY BOND WITH THE CLERK AND RECORDER OF THE COUNTY IN WHICH THE WORK WILL BE PERFORMED; EXEMPTING CERTAIN CONSTRUCTION PROJECTS FROM CERTAIN STATE LAWS GOVERNING CONSTRUCTION CONTRACTS; AMENDING SECTIONS 18-2-103,

HeinOnline -- 1999 vol. I xlv 1999

18-2-106, AND 18-2-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE 963

304 *(Senate Bill No. 107; Mahlum)* GENERALLY REVISING THE LAWS GOVERNING INVESTMENTS BY INSURERS; AMENDING SECTIONS 33-2-202, 33-2-213, 33-2-502, 33-2-531, 33-2-534, 33-2-603, 33-2-1217, 33-3-432, 33-6-101, 33-20-603, 33-25-211, 33-27-115, AND 33-31-215, MCA; REPEALING SECTIONS 33-2-801, 33-2-802, 33-2-803, 33-2-804, 33-2-805, 33-2-806, 33-2-811, 33-2-812, 33-2-813, 33-2-814, 33-2-815, 33-2-816, 33-2-817, 33-2-818, 33-2-819, 33-2-820, 33-2-821, 33-2-822, 33-2-823, 33-2-824, 33-2-825, 33-2-826, 33-2-827, 33-2-828, 33-2-829, 33-2-830, 33-2-831, 33-2-832, 33-2-833, 33-2-841, 33-2-842, 33-2-843, 33-2-851, AND 33-2-852, MCA; AND PROVIDING AN EFFECTIVE DATE 966

305 *(Senate Bill No. 153; Halligan)* GENERALLY REVISING THE PROVISIONS OF THE UNIFORM COMMERCIAL CODE GOVERNING SECURED TRANSACTIONS; REPLACING ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE WITH THE MOST RECENT VERSION OF ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE; AMENDING SECTIONS 2-6-109, 7-4-2631, 25-10-302, 30-1-105, 30-1-201, 30-1-206, 30-2-103, 30-2-210, 30-2-326, 30-2-502, 30-2-716, 30-2A-103, 30-2A-303, 30-2A-307, 30-2A-309, 30-4-208, 30-7-503, 30-8-113, 30-8-116, 30-8-120, 30-8-331, 30-8-332, 30-8-510, 40-5-242, 40-5-243, 69-8-503, 70-24-430, 71-3-125, 71-3-205, 71-3-206, 71-3-408, 71-3-704, 71-3-713, 71-3-808, AND 71-3-908, MCA; REPEALING SECTIONS 30-9-102, 30-9-103, 30-9-104, 30-9-105, 30-9-106, 30-9-107, 30-9-108, 30-9-109, 30-9-110, 30-9-112, 30-9-113, 30-9-114, 30-9-115, 30-9-116, 30-9-201, 30-9-202, 30-9-203, 30-9-204, 30-9-205, 30-9-206, 30-9-207, 30-9-208, 30-9-301, 30-9-302, 30-9-303, 30-9-304, 30-9-305, 30-9-306, 30-9-307, 30-9-308, 30-9-309, 30-9-310, 30-9-311, 30-9-312, 30-9-313, 30-9-314, 30-9-315, 30-9-316, 30-9-317, 30-9-318, 30-9-401, 30-9-402, 30-9-403, 30-9-404, 30-9-405, 30-9-406, 30-9-407, 30-9-409, 30-9-410, 30-9-411, 30-9-412, 30-9-421, 30-9-423, 30-9-431, 30-9-501, 30-9-502, 30-9-503, 30-9-504, 30-9-505, 30-9-506, 30-9-507, 30-9-508, AND 30-9-511, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE . 1022

306 *(Senate Bill No. 330; Mohl)* PROHIBITING THE DEPARTMENT OF TRANSPORTATION AND THE TRANSPORTATION COMMISSION FROM ENTERING INTO CONTRACTS FOR HIGHWAY OR CONSTRUCTION PROJECTS WITH BIDDERS WHOSE OPERATIONS ARE NOT HEADQUARTERED IN THE UNITED STATES UNLESS A RECIPROCITY AGREEMENT IS IN PLACE; PROVIDING A CONTINGENT VOIDNESS PROVISION IF FEDERAL FUNDS ARE AT RISK; AMENDING SECTIONS 18-1-102 AND 60-2-112, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1142

307 *(House Bill No. 412; Juneau)* REQUIRING STATE LANDHOLDING AND LANDMANAGING AGENCIES TO IDENTIFY ALL GEOGRAPHIC FEATURES AND PLACES UNDER THEIR JURISDICTION USING THE WORD "SQUAW"; REQUIRING THE AGENCIES TO REMOVE THE WORD "SQUAW" FROM ANY MAPS, SIGNS, OR MARKERS WHENEVER AGENCIES UPDATE MAPS OR REPLACE SIGNS AND MARKERS BECAUSE OF WEAR OR VANDALISM; AND PROVIDING FOR APPOINTMENT OF AN ADVISORY GROUP TO DEVELOP REPLACEMENT NAMES AND NOTIFY APPROPRIATE AGENCIES 1145

308 *(Senate Bill No. 31; Stang)* REVISING THE SCHEDULE OF BASE AID PAYMENTS TO SCHOOL DISTRICTS TO COMPLETE THE DISTRIBUTION IN FULL PRIOR TO THE END OF THE SCHOOL

HeinOnline -- 1999 vol. I xlvi 1999

FISCAL YEAR; AMENDING SECTION 20-9-344, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE 1146

309 *(Senate Bill No. 94; Nelson)* GENERALLY REVISING THE LAWS GOVERNING THE LICENSING OF NONCOMMERCIAL AND COMMERCIAL DRIVERS; AUTHORIZING THE ISSUANCE OF A MEDICAL ASSESSMENT AND REHABILITATION DRIVING PERMIT; DEFINING "DRIVER REHABILITATION SPECIALIST"; CLARIFYING RESIDENCY REQUIREMENTS FOR LICENSURE AND EXTENDING FROM 90 DAYS TO 120 DAYS THE NONCOMMERCIAL RESIDENCE REQUIREMENT; MAKING INELIGIBLE FOR LICENSURE A PERSON WHO LACKS CERTAIN FUNCTIONAL ABILITIES; REQUIRING A DRIVER'S LICENSE APPLICANT TO DISCLOSE ANY PHYSICAL OR MENTAL CONDITION THAT MAY IMPAIR THE APPLICANT'S DRIVING ABILITIES; REQUIRING DISCLOSURE OF ANY ADAPTIVE EQUIPMENT OR OPERATIONAL RESTRICTIONS THAT ASSIST AN APPLICANT IN SAFELY OPERATING A MOTOR VEHICLE; DEFINING "JURISDICTION"; REQUIRING AN APPLICANT SURRENDERING A VALID LICENSE FROM ANOTHER JURISDICTION OR RENEWING A MONTANA DRIVER'S LICENSE TO SUBMIT TO KNOWLEDGE AND SKILLS TESTS IN CERTAIN SITUATIONS; ALLOWING A PERSON TO RETAIN A LICENSE FROM ANOTHER JURISDICTION FOR IDENTIFICATION PURPOSES; REQUIRING DRIVER'S LICENSES TO CONTAIN A PERSON'S FULL LEGAL NAME; CLARIFYING LAWS GOVERNING LICENSE RENEWAL BY MAIL; REQUIRING THE DEPABTMENT TO ADOPT RULES GOVERNING ISSUANCE OF COMMERCIAL DRIVER'S LICENSES, DRIVER'S LICENSE EXAMINATIONS AND REEXAMINATIONS, THE STANDARDS CONCERNING A DRIVER'S FUNCTIONAL ABILITIES AND SKILLS, VISUAL ACUITY REQUIREMENTS, AND OTHER LICENSING RESTRICTIONS; ALLOWING A PEACE OFFICER TO SEIZE A SUSPENDED LICENSE DURING AN INVESTIGATIVE STOP OR ARREST; REQUIRING A PERSON TO SUBMIT PROOF OF COMPLIANCE WITH 61-6-301 IN CERTAIN INSTANCES; CLARIFYING WHEN A PERSON IS CONSIDERED TO HAVE COMMITTED A SECOND, THIRD, OR SUBSEQUENT OFFENSE OF DRIVING WITH AN ALCOHOL CONCENTRATION OF 0.10 OR MORE; DEFINING "MOVING VIOLATION" FOR PURPOSES OF HABITUAL TRAFFIC OFFENDER PROVISIONS; ALLOWING THE DEPARTMENT OF JUSTICE TO USE CERTIFIED REPRODUCTIONS OF DRIVING RECORDS CONTAINED IN COMPUTER STORAGE DEVICES; AMENDING SECTIONS 61-5-102, 61-5-103, 61-5-105, 61-5-106, 61-5-107, 61-5-108, 61-5-110, 61-5-111, 61-5-112, 61-5-113, 61-5-125, 61-5-207, 61-5-208, 61-6-112, 61-6-122, 61-6-123, 61-6-125, 61-11-203, AND 61-11-204, MCA; REPEALING SECTION 61-6-141, MCA; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE 1147

310 *(Senate Bill No. 134; Mahlum)* REVISING THE LAWS RELATING TO SCHOOL TRUSTEES; CLARIFYING THE APPLICATION OF INDIVIDUAL LIABILITY FOR SCHOOL TRUSTEES FOR LOSS OF MONEY; AMENDING SECTION 20-3-332, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1164

311 *(Senate Bill No. 258; Grimes)* REVISING THE LAWS RELATED TO VICTIMS OF PARTNER AND FAMILY MEMBER ASSAULT, VICTIMS OF SEXUAL ASSAULT, AND VICTIMS OF STALKING; CLARIFYING TEMPORARY ORDER OF PROTECTION LAWS RELATING TO CONTINUANCES; ELIMINATING THE TERMINATION DATE ON CIVIL FILING FEES ON DIVORCE AND SEPARATION FILINGS

HeinOnline -- 1999 vol. I xlvii 1999

THAT FUND THE PARTNER AND FAMILY MEMBER ASSAULT INTERVENTION AND TREATMENT FUND ACCOUNT; AMENDING SECTIONS 40-15-202 AND 40-15-301, MCA; REPEALING SECTION 14, CHAPTER 484, LAWS OF 1997; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1165

312 *(Senate Bill No. 349; Christiaens)* ESTABLISHING AN AFFORDABLE HOUSING LOAN FUND ADMINISTERED BY THE MONTANA BOARD OF HOUSING; PROVIDING RULEMAKING AUTHORITY AND DIRECTION TO THE BOARD; AND PROVIDING AN EFFECTIVE DATE 1167

313 *(Senate Bill No. 367; F. Thomas)* REVISING AND CLARIFYING THE LAW GOVERNING NEW MOTOR VEHICLE DEALERS, MANUFACTURERS, DISTRIBUTORS, AND CERTAIN OTHER PARTIES; AMENDING SECTIONS 61-4-201, 61-4-204, AND 61-4-208, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1169

314 *(Senate Bill No. 14; Ellis)* AUTHORIZING THE DEPARTMENT OF REVENUE TO CONTRACT WITH THE U.S. DEPARTMENT OF THE INTERIOR OR ANOTHER FEDERAL AGENCY TO PERFORM FEDERAL ROYALTY AUDITS AND RELATED FUNCTIONS UNDER THE FEDERAL OIL AND GAS ROYALTY SIMPLIFICATION AND FAIRNESS ACT OF 1996; AND AMENDING SECTION 15-1-201, MCA 1174

315 *(Senate Bill No. 22; Mohl)* INCLUDING PROBATION AND PAROLE OFFICERS, CORRECTIONS OFFICERS, AND COMMERCIAL VEHICLE INSPECTORS AS OFFICERS FOR WHOM THE BOARD OF CRIME CONTROL MAY ESTABLISH MINIMUM QUALIFYING STANDARDS FOR EMPLOYMENT; INCLUDING PROBATION AND PAROLE OFFICERS, CORRECTIONS OFFICERS, AND COMMERCIAL VEHICLE INSPECTORS AS OFFICERS FOR WHOM THE BOARD MAY REVOKE OR SUSPEND CERTIFICATION; AUTHORIZING THE BOARD TO ESTABLISH MINIMUM STANDARDS FOR TRAINING CORRECTIONS OFFICERS AND COMMERCIAL VEHICLE INSPECTORS; REQUIRING THAT ALL PROBATION AND PAROLE OFFICERS, CORRECTIONS OFFICERS, AND COMMERCIAL VEHICLE INSPECTORS HIRED AFTER SEPTEMBER 30, 1999, ATTEND AN APPROPRIATE BASIC COURSE; ALLOWING APPOINTING AUTHORITIES TO TERMINATE PROBATION AND PAROLE OFFICERS, CORRECTIONS OFFICERS, OR COMMERCIAL VEHICLE INSPECTORS FOR FAILURE TO SATISFACTORILY COMPLETE THE APPROPRIATE BASIC COURSE; DEFINING "CORRECTIONS OFFICER" AND "COMMERCIAL VEHICLE INSPECTOR"; AND AMENDING SECTIONS 44-4-301 AND 44-4-302, MCA 1175

316 *(Senate Bill No. 132; Hertel)* REMOVING MOST INSURANCE FEES AND INSURANCE LICENSE FEES AND REPLACING THEM WITH A FLAT FEE FOR INSURERS APPLYING FOR OR RENEWING A CERTIFICATE OF AUTHORITY; ESTABLISHING CONTINUING EDUCATION COURSE REVIEW AND LATE RENEWAL FEES IN STATUTE RATHER THAN BY RULE WITHOUT INCREASING THE FEES; AMENDING SECTIONS 33-2-117, 33-2-126, 33-2-701, 33-2-703, 33-3-202, 33-3-203, 33-4-505, 33-17-211, 33-17-212, 33-17-214, 33-17-216, 33-17-221, 33-17-231, 33-17-301, 33-17-505, 33-17-1204, AND 33-17-1205, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE 1177

317 *(Senate Bill No. 154; Mohl)* ELIMINATING THE RESTRICTION THAT THE LONG SEMITRAILER CARGO UNIT OF A ROCKY MOUNTAIN DOUBLE VEHICLE COMBINATION MAY NOT EXCEED 48 FEET IN LENGTH; ESTABLISHING A $125 ANNUAL FEE FOR A

HeinOnline -- 1999 vol. I xlviii 1999

NONDIVISIBLE LOAD PERMIT; DEFINING "NONDIVISIBLE LOAD"; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE . . 1191

318 *(Senate Bill No. 221; Doherty)* CLARIFYING THE SHOWING NECESSARY FOR THE DISCOVERY OF CONSTITUTIONALLY PROTECTED MATERIAL; AMENDING SECTION 46-4-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1194

319 *(Senate Bill No. 225; Hertel)* EXPANDING THE AUTHORITY OF A BOARD OF COUNTY COMMISSIONERS TO INCLUDE ROAD CONSTRUCTION IN ROAD IMPROVEMENT DISTRICTS; CLARIFYING THE TYPE OF ROAD THAT CAN BE INCLUDED IN A ROAD IMPROVEMENT DISTRICT; AND AMENDING SECTION 7-14-2901, MCA 1195

320 *(Senate Bill No. 226; Hertel)* CLARIFYING THAT A BOARD OF COUNTY COMMISSIONERS MAY LEVY TAXES FOR THE ESTABLISHMENT AND MAINTENANCE OF COUNTY ROADS AND BRIDGES WITHIN THE COUNTY; CLARIFYING THAT A BOARD OF COUNTY COMMISSIONERS MAY LEVY TAXES FOR ROAD AND BRIDGE ESTABLISHMENT AND MAINTENANCE IN ADJACENT COUNTIES IF A ROAD OR BRIDGE PROJECT IS SHARED AMONG COUNTIES; AND AMENDING SECTION 7-14-2101, MCA 1195

321 *(Senate Bill No. 380; Lynch)* REVISING THE INCOME TAX CHECKOFF SYSTEM BY REDUCING FROM $20,000 TO $10,000 THE THRESHOLD AMOUNT THAT TRIGGERS TERMINATION OF CERTAIN TAX CHECKOFFS; AMENDING SECTION 12, CHAPTER 581, LAWS OF 1993, AND SECTION 1, CHAPTER 12, LAWS OF 1995; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 1196

322 *(Senate Bill No. 384; Mesaros)* REVISING STATUTES RELATED TO ROADSIDE MENAGERIES AND ZOOS; CREATING WILD ANIMAL MENAGERIES AND PROVIDING FOR TERMS OF OPERATION OF WILD ANIMAL MENAGERIES, INCLUDING THE KEEPING OF BEARS AND LARGE CATS; CLARIFYING PERMIT APPLICATION REQUIREMENTS; PROVIDING THAT ROADSIDE AND WILD ANIMAL MENAGERIES AND ZOOS MAY OBTAIN CAPTIVE-BRED WILD ANIMALS FROM A LICENSED ZOO, ROADSIDE OR WILD ANIMAL MENAGERIE, GAME FARM, FUR FARM, GAME BIRD FARM, OR ANIMAL REHABILITATION CENTER; REVISING DEFINITIONS; AMENDING SECTIONS 87-4-406, 87-4-801, 87-4-802, 87-4-803, 87-4-804, AND 87-4-806, MCA; AND REPEALING SECTION 87-4-805, MCA 1197

323 *(Senate Bill No. 409; Ellingson)* AUTHORIZING NET METERING FOR CERTAIN ENERGY SYSTEMS; AMENDING SECTION 69-8-103, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY PROVISION 1200

324 *(Senate Bill No. 446; M. Taylor)* CHANGING THE PROVISIONS RELATING TO RESTAURANT BEER AND WINE LICENSES; REDUCING THE PERCENTAGE OF REVENUE THAT MUST BE DERIVED FROM FOOD SALES TO 65 PERCENT FROM 75 PERCENT; INCREASING THE NUMBER OF LICENSES AVAILABLE IN THE SMALLEST QUOTA AREA; AUTHORIZING A ONE-TIME QUOTA ADJUSTMENT; GIVING A PREFERENCE TO UNSUCCESSFUL LOTTERY APPLICANTS; ESTABLISHING THAT THE APPLICATION FEE FOR A LICENSE IS 20 PERCENT OF THE INITIAL LICENSE FEE; REQUIRING THE DEPABTMENT TO PAY INTEREST ON AN APPLICATION FEE IF A LICENSE IS NOT GRANTED OR REJECTED WITHIN 4 MONTHS OF APPLICATION

FOR A LICENSE; AMENDING SECTIONS 16-4-111 AND 16-4-420, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 1206

325 *(Senate Bill No. 453; T. Beck)* CLARIFYING THE REQUIREMENTS FOR ISSUANCE OF RESORT RETAIL ALL-BEVERAGES LICENSES; LIMITING GAMBLING MACHINE PERMITS IN RESORT AREAS; AMENDING SECTION 16-4-202, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE 1211

326 *(Senate Bill No. 481; F. Thomas)* DEFINING THE TERM "JUVENILE HOME ABREST OFFICER"; PROVIDING THAT A JUVENILE HOME ARREST OFFICER MAY TAKE A YOUTH INTO CUSTODY UPON VIOLATION OF A PLACEMENT UNDER THE HOME ARREST PROGRAM; PROVIDING FOR A PROBABLE CAUSE HEARING; AMENDING SECTIONS 41-5-103, 41-5-321, AND 41-5-332, MCA; AND PROVIDING AN EFFECTIVE DATE 1213

327 *(Senate Bill No. 522; Cole)* ALLOWING MARRIED TAXPAYERS TO FILE SEPARATE MONTANA INCOME TAX RETURNS TO DEFER FROM MONTANA ADJUSTED GROSS INCOME RATABLY FOR 4 TAX YEARS THE CONVERSION AMOUNT FROM A TRADITIONAL IRA TO A ROTH IRA; AMENDING SECTION 15-30-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 1218

328 *(House Bill No. 4; L. Taylor)* APPROPRIATING MONEY THAT WOULD USUALLY BE APPROPRIATED BY BUDGET AMENDMENT TO VARIOUS STATE AGENCIES FOR THE FISCAL YEAR ENDING JUNE 30, 1999; PROVIDING THAT CERTAIN APPROPRIATIONS CONTINUE INTO STATE AND FEDERAL FISCAL YEAR 2000; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1221

329 *(House Bill No. 9; McCann)* ESTABLISHING PRIORITIES FOR CULTURAL AND AESTHETIC PROJECT GRANT AWARDS; APPROPRIATING GENERAL FUND AND OTHER MONEY FOR CULTURAL AND AESTHETIC GRANTS; AND PROVIDING AN EFFECTIVE DATE 1226

330 *(House Bill No. 32; Johnson)* GENERALLY REVISING THE LAWS GOVERNING THE BOARD OF INVESTMENTS; CLARIFYING THE NUMBER OF POSITIONS FOR WHICH THE BOARD MAY ESTABLISH SALARIES; CLARIFYING THAT PERSONS IN THOSE POSITIONS SERVE AT THE PLEASURE OF THE BOARD; ELIMINATING AUTHORITY TO REPAIR PROPERTY OWNED BY THE BOARD; AMBNDING SECTIONS 2-15-1808 AND 17-6-201, MCA; AND PROVIDING AN EFFECTIVE DATE 1230

331 *(House Bill No. 47; Anderson)* CREATING A STATUTE OF LIMITATIONS FOR ACTIONS BROUGHT BY THE STATE AUDITOR FOR VIOLATIONS OF THE STATE INSURANCE CODE; AND AMENDING SECTION 33-1-701, MCA 1234

332 *(House Bill No. 64; McCann)* REQUIRING AGENCY PROGRAM BUDGETS TO CONTAIN A PRIORITIZED PLAN TO REDUCE BASE BUDGETS BY 15 PERCENT; AND AMENDING SECTION 17-7-111, MCA 1235

333 *(House Bill No. 107; McCulloch)* REVISING THE LIBRARY MILL LEVY ELECTION LAW; PROVIDING THAT THE BALLOT MUST SPECIFY THE AMOUNT OF TIME DURING WHICH THE LEVY IS TO BE IN EFFECT; CLARIFYING THE PURPOSES FOR WHICH BONDS MAY BE ISSUED FOR A LIBRARY; AND AMENDING SECTION 22-1-304, MCA 1237

HeinOnline -- 1999 vol. I l 1999

334 *(House Bill No. 111; Guggenheim)* ESTABLISHING STANDARDS FOR THE COLLECTION, USE, AND DISCLOSURE OF GENETIC INFORMATION IN ISSUING INSURANCE; PROHIBITING INSURERS FROM REQUIRING GENETIC TESTING EXCEPT AS OTHERWISE REQUIRED BY LAW; PROHIBITING DISCRIMINATION ON THE BASIS OF GENETIC TRAITS BY INSURERS, HEALTH SERVICE CORPORATIONS, HEALTH MAINTENANCE ORGANIZATIONS, FRATERNAL BENEFIT SOCIETIES, AND OTHER ISSUERS OF INDIVIDUAL OR GROUP POLICIES OR CERTIFICATES OF INSURANCE; PROHIBITING THE SOLICITATION OF GENETIC INFORMATION FOR NONTHERAPEUTIC PURPOSES; AND AMENDING SECTIONS 2-18-812 AND 33-31-111, MCA 1238

335 *(House Bill No. 126; Johnson)* PROVIDING FOR THE USE OF AUTOMATED EXTERNAL DEFIBRILLATORS (AEDS) BY PUBLIC AND PRIVATE ENTITIES; PROVIDING THAT USE OF AN AED IS NOT PROHIBITED AND A LICENSE IS NOT REQUIRED BY STATUTES PROHIBITING THE PRACTICE OF MEDICINE WITHOUT A LICENSE; REQUIRING THE PREPARATION OF AN AED PROGRAM PLAN; REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO ADOPT RULES; PROVIDING FOR ENFORCEMENT BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; PROVIDING IMMUNITY FOR INDIVIDUALS AND ENTITIES PARTICIPATING IN AN AED PROGRAM; EXEMPTING CERTAIN USES OF AEDS; AMENDING SECTION 37-3-103, MCA; AND PROVIDING EFFECTIVE DATES . . 1242

336 *(House Bill No. 153; Hedges)* REVISING THE LAWS GOVERNING FUNERAL SERVICES; DEFINING "ARRANGEMENTS", "AT-NEED ARRANGEMENTS", "BRANCH ESTABLISHMENT", "INTERN", AND "PRENEED ARRANGEMENTS"; MODIFYING THE DEFINITION OF "AUTHORIZING AGENT", "EMBALMING", AND "MORTUARY"; REQUIRING THE RECORDING OF THE SALE OF BURIAL PLOTS WITH THE COUNTY CLERK AND RECORDER; ESTABLISHING FUNERAL PLAN TRUSTS; AMENDING SECTIONS 37-19-101 AND 37-19-824, MCA; AND REPEALING SECTIONS 37-19-826, 72-37-101, 72-37-102, 72-37-103, AND 72-37-104, MCA 1247

337 *(House Bill No. 192; Andersen)* PROVIDING THAT CITIES AND TOWNS MAY CONTRACT WITH A POLICE OFFICER TO BE REIMBURSED FOR THE COST OF AN APPOINTED POLICE OFFICER'S TRAINING IF THE OFFICER LEAVES EMPLOYMENT BEFORE FULFILLING A MINIMUM SERVICE REQUIREMENT; AND PROVIDING FOR REASONABLE ATTORNEY FEES AND COSTS TO THE PREVAILING PARTY IN AN ACTION TO ENFORCE ANY PROVISION OF THE CONTRACT 1252

338 *(House Bill No. 339; Sliter)* PROVIDING FOR AN INTERIM STUDY OF THE NECESSITY OF REDISTRICTING THE STATE'S JUDICIAL DISTRICTS; PROVIDING FOR THE PREPARATION OF PROPOSED REDISTRICTING LEGISLATION IF THE STUDY COMMITTEE DETERMINES THAT REDISTRICTING IS NECESSARY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1253

339 *(House Bill No. 625; P. Bergsagel)* PROVIDING FOR FAMILY IMPACT NOTES FOR CERTAIN BILLS INTRODUCED IN THE LEGISLATURE AND FOR CERTAIN PROPOSED ADMINISTRATIVE RULES; AMENDING SECTION 2-4-405, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE . . 1254

HeinOnline -- 1999 vol. I li 1999

340 *(House Bill No. 630; Rose)* GENERALLY REVISING STATUTES RELATING TO GASOLINE AND SPECIAL FUEL TAXES TO CLARIFY LANGUAGE; INCREASING THE PENALTY FROM $25 TO $100 FOR FAILURE TO FILE A STATEMENT RELATING TO INTERSTATE SHIPMENT OF GASOLINE; PROVIDING A PRESUMPTION FOR MILES PER GALLON USED IN DETERMINING CERTAIN PUBLIC ROAD USE FOR FUEL TAX PURPOSES; INCREASING THE TIME FOR APPLYING FOR CERTAIN TAX REFUNDS; AND AMENDING SECTIONS 15-70-123, 15-70-209, 15-70-210, 15-70-221, 15-70-224, 15-70-225, 15-70-343, 15-70-356, 15-70-363, AND 15-70-364, MCA . . . 1258

341 *(House Bill No. 676; Witt)* RELATING TO NONASSUMED COUNTIES' SHARES OF PUBLIC ASSISTANCE EXPENDITURES; REQUIRING THE DEPARTMENT OF PUELIC HEALTH AND HUMAN SERVICES TO PAY SALARIES AND TRAVEL EXPENSES OF CERTAIN COUNTY PUBLIC ASSISTANCE PERSONNEL; REQUIRING COUNTIES TO REIMBURSE THE DEPARTMENT FOR CERTAIN ADMINISTRATIVE COSTS OF PUBLIC ASSISTANCE AND OTHER COSTS; REVISING THE LAW GOVERNING THE DEPARTMENT'S MAINTENANCE OF EFFORT REQUIREMENT TO REQUIRE THE DEPARTMENT TO MAINTAIN A SPECIFIED LEVEL OF ASSISTANCE; REQUIRING THE COUNTIES TO REIMBURSE THE DEPARTMENT FOR A PORTION OF TEMPORARY ASSISTANCE FOR NEEDY FAMILIES GRANTS TO INDIVIDUALS; AMENDING SECTIONS 53-2-304, 53-4-211, AND 53-4-246, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE 1264

342 *(Senate Bill No. 27; Hertel)* ESTABLISHING THE MONTANA TELEMARKETING REGISTRATION AND FRAUD PREVENTION ACT; REQUIRING TELEMARKETERS TO REGISTER WITH THE STATE, POST A BOND, AND PROVIDE CERTAIN INFORMATION TO CONSUMERS; ESTABLISHING A TELEMARKETING FRAUD CONSUMER AWARENESS PROGRAM; PROVIDING CIVIL AND CRIMINAL PENALTIES FOR TELEMARKETING FRAUD; INCREASING THE CIVIL FINES FOR UNLAWFUL, UNFAIR, OR DECEPTIVE ACTS OR PRACTICES; AMENDING SECTION 30-14-142, MCA; AND PROVIDING EFFECTIVE DATES 1266

343 *(Senate Bill No. 69; Stang)* GENERALLY REVISING LAWS RELATED TO PUBLIC ELEMENTARY AND SECONDARY SCHOOLS; REVISING THE DEFINITIONS RELATED TO SCHOOLS; CHANGING VARIOUS ANNUAL REPORTING DATE REQUIREMENTS FROM SEPTEMBER 1 TO THE SECOND MONDAY IN SEPTEMBER; REVISING THE REPORTING TIME REQUIREMENTS OF A DISTRICT SUPERINTENDENT OR COUNTY HIGH SCHOOL PRINCIPAL REGARDING PUPIL ATTENDANCE, ABSENCE, AND ENROLLMENT; AUTHORIZING TRUSTEES TO DEPOSIT PROCEEDS FROM INSURANCE SETTLEMENTS ON REAL OR PERSONAL PROPERTY INSURED BY THE DISTRICT INTO AN APPROPRIATE FUND; CLARIFYING THAT THE COUNTY OF RESIDENCY PAY COSTS OF TUITION AND TRANSPORTATION FOR A CHILD WITH DISABILITIES PLACED BY A STATE AGENCY IN AN OUT-OF-COUNTY SCHOOL; CLARIFYING CALCULATION OF AVERAGE NUMBER BELONGING PROVISIONS; ELIMINATING THE REQUIREMENT THAT TRUSTEES ESTABLISH OR CREDIT THE BUILDING FUND WHEN A DISTRICT RECEIVES AN INSURANCE SETTLEMENT FOR DESTROYED PROPERTY INSURED BY THE DISTRICT; UPDATING REFERENCES REGARDING SCHOOL TRANSPORTATION GROUPS; CLARIFYING INFORMATION THAT TRUSTEES MAY INCLUDE IN A TRANSPORTATION FUND BUDGET AS A CONTINGENCY

HeinOnline -- 1999 vol. I lii 1999

AMOUNT; AUTHORIZING STATE REIMBURSEMENT FOR TRANSPORTATION BUDGET AMENDMENTS; ELIMINATING THE REFERENCE TO 6-YEAR HIGH SCHOOL FROM THE DEFINITION OF SCHOOL; AMENDING SECTIONS 20-3-106, 20-3-209, 20-4-402, 20-6-501, 20-6-608, 20-7-420, 20-9-134, 20-9-166, 20-9-307, 20-9-311, 20-9-313, 20-9-508, 20-10-111, 20-10-143, AND 20-10-145, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE 1278

344 *(Senate Bill No. 137; Franklin)* AMENDING STATUTES NECESSARY TO IMPLEMENT ISSUANCE OF THE NATIONAL GUARD VETERANS' OR LEGION OF VALOR MEMBERS' LICENSE PLATES; AMENDING SECTIONS 61-3-332, 61-3-407, AND 61-3-446, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE 1290

345 *(Senate Bill No. 183; Nelson)* REVISING LAWS REGARDING AGRICULTURAL SEED; CLARIFYING LABELING REQUIREMENTS AND PACKAGING PROHIBITIONS; CLARIFYING AND REVISING DEFINITIONS; REVISING CERTAIN SEED DEALER LICENSING REQUIREMENTS AND FEES; ESTABLISHING REPORTING REQUIREMENTS AND AN ASSESSMENT ON SEED DEALERS LOCATED OUTSIDE MONTANA BASED ON GROSS ANNUAL SALES IN MONTANA; AMENDING SECTIONS 80-5-105, 80-5-110, 80-5-120, 80-5-121, 80-5-202, 80-5-206, 80-5-207, 80-5-208, 80-5-301, AND 80-5-305, MCA; REPEALING SECTIONS 80-5-102, 80-5-104, 80-5-107, 80-5-112, 80-5-113, AND 80-5-205, MCA; AND PROVIDING AN EFFECTIVE DATE 1295

346 *(Senate Bill No. 190; Halligan)* CLARIFYING THAT A DEFENDANT IS NOT LIMITED TO A SINGLE JURY TRIAL IN MISDEMEANOR CASES FILED IN A JUSTICE'S OR CITY COURT; AMENDING SECTIONS 46-7-102, 46-17-201, AND 46-17-311, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1307

347 *(Senate Bill No. 216; Swysgood)* RATIFYING A RESERVED WATER RIGHTS COMPACT BETWEEN THE UNITED STATES FISH AND WILDLIFE SERVICE AND THE STATE OF MONTANA FOR FEDERALLY RESERVED WATERS ASSOCIATED WITH THE RED ROCK LAKES NATIONAL WILDLIFE REFUGE AND WILDERNESS AREA 1308

348 *(Senate Bill No. 219; Waterman)* DEFINING "SEVERE MENTAL ILLNESS"; PROVIDING PARITY OF INSURANCE COVERAGE FOR SEVERE MENTAL ILLNESS; AMENDING SECTIONS 33-22-701, 33-22-702, 33-22-704, AND 33-31-111, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE 1321

349 *(Senate Bill No. 232; DePratu)* CLARIFYING THE TYPES OF ACTS OR PROCEEDINGS THAT ARE NOT PROHIBITED BY THE ONE-ACTION LIMITATION IN FORECLOSURE SUITS; AND AMENDING SECTION 71-1-222, MCA 1325

350 *(Senate Bill No. 236; Doherty)* GENERALLY REVISING THE OFFENSE OF CRIMINAL SYNDICALISM; RENAMING THE OFFENSE AS CRIMINAL INCITEMENT; REDEFINING ELEMENTS OF THE OFFENSE TO BE CONSISTENT WITH CONSTITUTIONAL MANDATES; ELIMINATING CONSTITUTIONALLY PROTECTED ACTIVITIES FROM INCLUSION IN THE OFFENSE; AMENDING SECTION 45-8-105, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 1326

351 *(Senate Bill No. 269; Toews)* REVISING AND CLARIFYING THE LAWS RELATING TO THE FINANCE OF COUNTY WATER AND SEWER DISTRICTS; AUTHORIZING THE LEVYING OF SPECIAL

HeinOnline -- 1999 vol. I liii 1999

ASSESSMENTS TO PAY COSTS OF IMPROVEMENTS; AMENDING SECTIONS 7-13-2221 AND 7-13-2301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1327

352 *(Senate Bill No. 292; Bishop)* CLARIFYING THE APPLICABILITY OF CERTAIN CAMPAIGN LAWS DECLARED TO BE INVALID; ELIMINATING RESTRICTIONS ON SEEKING VOTES ON ELECTION DAY; ELIMINATING WILLFUL OR NEGLIGENT MISREPRESENTATION OF A CANDIDATE'S VOTING RECORD AS A CRIME; AMENDING SECTION 13-37-131, MCA; AND REPEALING SECTION 13-35-233, MCA 1333

353 *(Senate Bill No. 294; Cole)* AUTHORIZING A COUNTY TO RETAIN THE PROPERTY WITHIN A NEWLY INCORPORATED CITY OR TOWN AS A PART OF THE TAX BASE OF THE COUNTY FOR PURPOSES OF LEVYING TAXES AGAINST THE PROPERTY FOR THE MAINTENANCE OF PROPERTY WITHIN THE CITY OR TOWN UNTIL THE CITY OR TOWN IMPOSES AND COLLECTS A SIMILAR LEVY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 1334

354 *(Senate Bill No. 326; Tester)* PROVIDING THAT, WITH CERTAIN EXCEPTIONS, IT IS A CRIMINAL OFFENSE TO INTERCEPT A COMMUNICATION OVER ANY TYPE OF TELEPHONE, INCLUDING BUT NOT LIMITED TO A CORDED, UNCORDED, CELLULAR, OR SATELLITE PHONE; DEFINING "TELEPHONE" FOR PURPOSES OF THE CRIMINAL CODE; PROVIDING THAT IT IS A CRIME TO PUBLISH CERTAIN INFORMATION BY COMPUTER TO AID IN THE AVOIDANCE OF PAYMENT OF A FEE FOR TELECOMMUNICATIONS SERVICES; AND AMENDING SECTIONS 45-2-101, 45-6-307, AND 45-8-213, MCA 1334

355 *(Senate Bill No. 423; Mahlum)* MODIFYING PROCEDURES FOR CONDUCTING A HEARING ON ANNEXATION IN CONJUNCTION WITH A HEARING ON ZONING; AND AMENDING SECTION 76-2-303, MCA 1344

356 *(Senate Bill No. 470; Eck)* REMOVING THE LIMITATION ON THE AMOUNT OF MONEY THAT MAY BE DEPOSITED IN THE ENDOWMENT FOR CHILDREN; AND AMENDING SECTION 41-3-705, MCA 1345

357 *(Senate Bill No. 476; Bishop)* REVISING THE LAWS RELATING TO CONSTRUCTION LIENS; REVISING THE FORM FOR GIVING NOTICE OF THE RIGHT TO CLAIM A CONSTRUCTION LIEN; PROVIDING THAT THE COUNTY CLERK AND RECORDER MAY ALLOW THE LIEN AND A NOTICE OF THE RIGHT TO CLAIM A LIEN TO BE FILED ELECTRONICALLY; AND AMENDING SECTIONS 71-3-531, 71-3-532, AND 71-3-535, MCA 1345

358 *(House Bill No. 59; Mood)* AUTHORIZING PLEA AGREEMENTS SUBJECTING OFFENDERS TO THE SEXUAL AND VIOLENT OFFENDER REGISTRATION LAWS; REQUIRING THE DEPARTMENT OF CORRECTIONS TO APPLY LEVEL DESIGNATIONS TO OFFENDERS SUBJECT TO REGISTRATION REQUIREMENTS IF LEVELS WERE NOT DESIGNATED AT SENTENCING; AND AMENDING SECTION 46-23-509, MCA 1350

359 *(House Bill No. 71; Rose)* AUTHORIZING A SCHOOL DISTRICT WHOSE CURRENT YEAR GENERAL FUND BUDGET EXCEEDS THE ENSUING YEAR'S MAXIMUM GENERAL FUND BUDGET AMOUNT TO ADOPT A GENERAL FUND BUDGET FOR THE ENSUING YEAR UP TO THE ENSUING YEAR'S MAXIMUM GENERAL FUND AMOUNT OR UP TO 94 PERCENT OF THE CURRENT YEAR'S

HeinOnline -- 1999 vol. I liv 1999

GENERAL FUND BUDGET, WHICHEVER IS GREATER; ALLOWING ADOPTION OF A GENERAL FUND BUDGET THAT EXCEEDS THE MAXIMUM GENERAL FUND BUDGET FOR A MAXIMUM OF 5 CONSECUTIVE YEARS; PROVIDING AN EXCEPTION REQUIRING A SCHOOL DISTRICT WHOSE BUDGET EXCEEDS THE MAXIMUM GENERAL FUND BUDGET BECAUSE THE AVERAGE NUMBER BELONGING DECLINES 30 PERCENT OR MORE TO REDUCE ITS GENERAL FUND BUDGET PROPORTIONATELY OVER 5 CONSECUTIVE YEARS; ELIMINATING THE PROVISION FOR TRUSTEES TO ADOPT A BUDGET BASED ON THE PREVIOUS YEAR'S GENERAL FUND BUDGET PER-ANB; PROVIDING THAT A VOTE IS REQUIRED FOR ANY INCREASE IN LOCAL PROPERTY TAXES; AMENDING SECTIONS 20-9-308 AND 20-9-353, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE 1351

360 *(House Bill No. 72; Mercer)* PROVIDING A GUARANTEED ANNUAL BENEFIT ADJUSTMENT FOR CERTAIN BENEFIT RECIPIENTS IN THE TEACHERS' RETIREMENT SYSTEM; INCREASING EMPLOYEE CONTRIBUTION RATES; PROVIDING A STATE CONTRIBUTION; PROVIDING FOR A MINIMUM MONTHLY BENEFIT ALLOWANCE; ELIMINATING CURRENT POSTRETIREMENT ADJUSTMENT PROVISIONS; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTIONS 17-7-502 AND 19-20-602, MCA; REPEALING SECTIONS 19-20-711, 19-20-712, 19-20-713, AND 19-20-714, MCA; AND PROVIDING AN EFFECTIVE DATE AND A CONTINGENT TERMINATION DATE 1355

361 *(House Bill No. 98; Simon)* CLARIFYING WHEN A LICENSE TO PERFORM PLUMBING WORK IS REQUIRED; AND AMENDING SECTIONS 37-69-102 AND 37-69-301, MCA 1359

362 *(House Bill No. 130; Story)* EXTENDING THE TERMINATION DATE FOR THE WASTE PESTICIDE AND PESTICIDE CONTAINER COLLECTION, DISPOSAL, AND RECYCLING PROGRAM; ELIMINATING THE VOLUNTARY WASTE PESTICIDE REPORTING SYSTEM; PROVIDING FOR EXPENDITURE OF REVENUE IN THE PROGRAM ACCOUNT; AMENDING SECTION 14, CHAPTER 465, LAWS OF 1993; REPEALING SECTIONS 80-8-111 AND 80-8-112, MCA; AND PROVIDING EFFECTIVE DATES 1360

363 *(House Bill No. 150; Menahan)* REQUIRING A FOREIGN CORPORATION OR A FOREIGN LIMITED LIABILITY COMPANY CONTRACTING WITH THE STATE, AN AGENCY OF THE STATE, OR A POLITICAL SUBDIVISION OF THE STATE TO APPLY FOR AND RECEIVE A CERTIFICATE OF AUTHORITY TO TRANSACT BUSINESS BEFORE ENTERING INTO THE CONTRACT; REQUIRING THE SECRETARY OF STATE TO PROVIDE NOTICE TO CONTRACTING PARTIES OF THE REQUIREMENT; ALLOWING 30 DAYS TO BRING VOIDABLE CONTRACTS INTO COMPLIANCE; AMENDING SECTIONS 35-1-1026, 35-1-1027, 35-8-1001, AND 35-8-1002, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1361

364 *(House Bill No. 155; Pavlovich)* PROHIBITING THE CANCELLATION OR NONRENEWAL OF PROPERTY AND CASUALTY INSURANCE ON THE BASIS OF A SINGLE LOSS UNLESS THE INSURER HAS PREVIOUSLY DISCLOSED THIS CRITERION TO THE INSURED; AMENDING SECTION 33-15-1105, MCA; AND PROVIDING AN APPLICABILITY DATE 1364

865 *(House Bill No. 188; Tuss)* PROVIDING FOR THE USE OF ELECTRONIC RECORDS AND ELECTRONIC SIGNATURES IN

HeinOnline -- 1999 vol. I lv 1999

TRANSACTIONS WITH STATE AGENCIES AND LOCAL GOVERNMENT UNITS; PROVIDING FOR LEGAL RECOGNITION OF ELECTRONIC RECORDS, ELECTRONIC SIGNATURES, AND ELECTRONIC CONTRACTS IN STATE AGENCY PROCEEDINGS; PROVIDING EXCEPTIONS; PROHIBITING A PERSON FROM ACTING AS A CERTIFICATION AUTHORITY OR REPOSITORY OF CERTAIN ELECTRONIC DATA WITHOUT REGISTERING WITH THE SECRETARY OF STATE; REQUIRING CERTAIN STATE AGENCIES AND THE SECRETARY OF STATE TO ADOPT RULES; PROVIDING FOR MANAGEMENT OF ELECTRONIC RECORDS; PROVIDING A PENALTY; AND PROVIDING EFFECTIVE DATES . 1365

366 *(House Bill No. 215; Ewer)* PROHIBITING THE USE OF ELECTRONIC MOTION-TRACKING DEVICES WHILE HUNTING 1372

367 *(House Bill No. 301; McCann)* ALLOWING SCHOOL DISTRICTS AND SPECIAL EDUCATION COOPERATIVES TO HIRE UNLICENSED SPEECH-LANGUAGE PATHOLOGISTS UNDER CERTAIN CONDITIONS; LIMITING THE LENGTH OF TIME AN UNLICENSED SPEECH-LANGUAGE PATHOLOGIST MAY BE EMPLOYED; AMENDING SECTIONS 37-15-103, 37-15-301, AND 37-15-313, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND A TERMINATION DATE 1372

368 *(House Bill No. 304; Noennig)* CLARIFYING THE BIDDING REQUIREMENTS FOR PROFESSIONAL SERVICES RENDERED TO A SCHOOL DISTRICT; AMENDING SECTION 20-9-204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 1375

369 *(House Bill No. 379; Tash)* REQUIRING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO IMPLEMENT DEPARTMENT PROGRAMS IN A MANNER THAT ASSISTS IN THE MAINTENANCE OR RECOVERY OF SENSITIVE OR RARE SPECIES; REQUIRING THAT THE DEPARTMENT ENSURE THAT THE STATE'S INTEREST IN BALANCING SPECIES RECOVERY WITH ECONOMIC AND SOCIAL IMPACTS WHEN ENTERING INTO ANY FEDERAL COOPERATIVE AGREEMENT OR WHEN COMMENTING ON FEDERAL RECOVERY PLANS IS FULLY PROTECTED; AMENDING SECTION 87-1-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1376

370 *(House Bill No. 396; Masolo)* REGULATING OPERATORS OF AMUSEMENT RIDES; DESCRIBING THE RESPONSIBILITIES OF PASSENGERS AND OPERATORS OF AMUSEMENT RIDES; AND PROVIDING FOR INJURY REPORTS BY PASSENGERS 1378

371 *(House Bill No. 399; Guggenheim)* PROHIBITING THE PRACTICE OF TELEMEDICINE WITHOUT A TELEMEDICINE CERTIFICATE ISSUED BY THE BOARD OF MEDICAL EXAMINERS; PROVIDING LEGISLATIVE FINDINGS; PROVIDING A DEFINITION AND EXCEPTIONS; PROVIDING QUALIFICATIONS FOR A TELEMEDICINE CERTIFICATE; SPECIFYING POWERS AND DUTIES OF THE BOARD; PROVIDING FOR DISCIPLINARY ACTION BY THE BOARD; ESTABLISHING JURISDICTION FOR THE MEDICAL LEGAL PANEL AND THE COURTS; AMENDING SECTION 37-3-301, MCA; AND PROVIDING EFFECTIVE DATES 1331

372 *(House Bill No. 404; B. Thomas)* INCREASING THE LEGISLATIVE MEMBERSHIP OF THE TRANSITION ADVISORY COMMITTEE ON ELECTRIC UTILITY INDUSTRY RESTRUCTURING; APPROPRIATING FUNDS FOR THE ACTIVITIES OF THE

HeinOnline -- 1999 vol. I lvi 1999

TRANSITION ADVISORY COMMITTEE ON ELECTRIC UTILITY INDUSTRY RESTRUCTURING; AMENDING SECTION 45, CHAPTER 505, LAWS OF 1997; AND PROVIDING EFFECTIVE DATES 1385

373 *(House Bill No. 435; P. Clark)* REVISING THE POWERS OF THE FISH, WILDLIFE, AND PARKS COMMISSION TO ALLOW THE COMMISSION TO ADOPT RULES REGARDING THE ESTABLISHMENT OF SPECIAL LICENSES OR PERMITS, SEASONS, CONDITIONS, PROGRAMS, OR OTHER PROVISIONS THAT THE COMMISSION CONSIDERS APPROPRIATE TO PROMOTE OR ENHANCE HUNTING BY PERSONS WITH DISABILITIES; AMENDING SECTION 87-1-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1389

374 *(House Bill No. 502; Ohs)* CLARIFYING THE CONTENT OF ARGUMENTS PREPARED ON BALLOT MEASURES FOR INCLUSION IN THE VOTER INFORMATION PAMPHLET; REVISING THE APPOINTMENT OF COMMITTEES PREPABING ARGUMENTS; AND AMENDING SECTIONS 13-27-402, 13-27-406, AND 13-27-407, MCA 1390

375 *(House Bill No. 580; Schmidt)* PROVIDING THAT COMPLAINTS OF UNPROFESSIONAL CONDUCT BY LICENSED OR CERTIFIED HEALTH CARE OR REHABILITATIVE SERVICES PROVIDERS FROM PERSONS DETAINED IN COUNTY DETENTION CENTERS OR INCARCERATED UNDER LEGAL CUSTODY OF THE DEPABTMENT OF CORRECTIONS MUST BE SUBMITTED TO A REVIEW TEAM ADMINISTERED BY THE DEPARTMENT OF COMMERCE PRIOR TO BEING FILED WITH A LICENSING BOARD; AMENDING SECTION 37-1-308, MCA; AND PROVIDING AN EFFECTIVE DATE 1392

376 *(House Bill No. 644; L. Taylor)* CREATING THE GOVERNOR'S LOCAL COAL IMPACT REVIEW COUNCIL; DESCRIBING THE COMPOSITION, PURPOSE, AND AUTHORITY OF THE COUNCIL; APPROPRIATING FUNDS FOR THE EXPENSES OF THE COUNCIL; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE 1394

377 *(Senate Bill No. 117; F. Thomas)* REVISING CERTAIN LAWS WITHIN THE WORKERS' COMPENSATION ACT THAT ARE ADMINISTERED BY THE DEPARTMENT OF LABOR AND INDUSTRY; PROVIDING A CHANGE IN THE WORKERS' COMPENSATION REGULATORY ASSESSMENT; PROVIDING THE DEPARTMENT OF LABOR AND INDUSTRY WITH RULEMAKING AUTHORITY FOR DATA COLLECTION FOR THE WORKERS' COMPENSATION DATABASE SYSTEM; PROVIDING FOR ELECTRONIC SUBMITTAL OF REPORTS BY INSURERS; ESTABLISHING THE UNINSURED EMPLOYERS' FUND AS A STATE SPECIAL REVENUE ACCOUNT; ESTABLISHING THAT A PURPOSE OF THE UNINSURED EMPLOYERS' FUND IS PAYMENT OF ADMINISTRATIVE EXPENSES; PROVIDING FOR CONFIDENTIALITY OF UNINSURED EMPLOYERS' FUND RECORDS IN THE WORKERS' COMPENSATION ACT; CLARIFYING THE QUALIFICATIONS FOR AN EXAMINATION PANEL MEMBER; PROVIDING FOR PAYMENT OF BENEFITS IN A DISPUTED CLAIM PRIOR TO MEDIATION; SPECIFYING TERMINATION OF BENEFITS AFTER MEDIATION; AUTHORIZING REIMBURSEMENT FOR BENEFITS PAID AFTER A HEARING BEFORE THE WORKERS' COMPENSATION COURT; INCREASING THE AMOUNT PAYABLE FOR BURIAL EXPENSES FROM $1,400 TO $4,000; AUTHORIZING THE CERTIFICATION OF A DISABILITY ON THE DATE THE APPLICATION IS APPROVED;

HeinOnline -- 1999 vol. I lvii 1999

CHANGING THE PERIOD USED FOR ASSESSMENTS FOR THE INDUSTRIAL ACCIDENT REHABILITATION ACCOUNT FROM FISCAL YEAR TO CALENDAR YEAR; AUTHORIZING THE DETERMINATION OF ADVISABILITY OF CONTINUED EMPLOYMENT FOR OCCUPATIONAL DISEASE CLAIMANTS BY PERSONS OTHER THAN THE MEDICAL PANEL; REQUIRING THAT THE COSTS OF EXAMINATIONS AND REPORTS BE BORNE BY THE REQUESTING PARTY; PROVIDING THAT AN INSURER MAY REDUCE OR SUSPEND COMPENSATION FOR A CLAIMANT ENGAGING IN AN UNSANITARY OR INJURIOUS PRACTICE THAT IMPERILS RECOVERY AND REQUIRING MEDIATION OF DISPUTES WHEN BENEFITS ARE TERMINATED DUE TO UNSANITARY OR INJURIOUS PRACTICES; ELIMINATING REDUNDANT LANGUAGE BY COMBINING STATUTES RELATING TO THE CREATION AND ADMINISTRATION OF THE UNINSURED EMPLOYERS' FUND; REQUIRING THAT PLAN NO. 2 INSURERS AND PLAN NO. 3, THE STATE FUND, IDENTIFY THE COSTS OF THE REGULATORY ASSESSMENT THAT IS COLLECTED FROM INSURERS AS A POLICYHOLDER SURCHARGE BASED ON PREMIUM; AMENDING THE SUBSEQUENT INJURY FUND ASSESSMENT TO PROVIDE THE STATE FUND WITH THE ABILITY TO IDENTIFY THE COST OF THE ASSESSMENT AS A POLICYHOLDER SURCHARGE BASED ON PREMIUM; AMENDING SECTIONS 39-9-401, 39-71-123, 39-71-201, 39-71-225, 39-71-432, 39-71-501, 39-71-503, 39-71-510, 39-71-517, 39-71-519, 39-71-605, 39-71-610, 39-71-725, 39-71-905, 39-71-915, 39-71-1004, 39-72-405, 39-72-608, AND 39-72-714, MCA; REPEALING SECTION 39-71-502, MCA; AND PROVIDING EFFECTIVE DATES, A RETROACTIVE APPLICABILITY DATE, AND A TERMINATION DATE 1396

378 *(Senate Bill No. 126; Crismore)* ESTABLISHING REQUIREMENTS FOR THE DISPOSAL OF SEPTAGE AND REQUIRING LICENSURE OF THOSE ENGAGED IN THAT BUSINESS; PROVIDING THE DEPARTMENT OF ENVIRONMENTAL QUALITY WITH RULEMAKING AUTHORITY; ESTABLISHING A LICENSE AND LICENSE RENEWAL FEE; PROVIDING FOR INJUNCTIVE RELIEF; PROVIDING THE DEPABTMENT WITH THE AUTHORITY TO REVOKE OR DENY A LICENSE; PROVIDING THE DEPARTMENT WITH ADMINISTRATIVE ENFORCEMENT AUTHORITY; AUTHORIZING CRIMINAL FINES AND CIVIL PENALTIES; CREATING A SEPTAGE SPECIAL REVENUE ACCOUNT; TRANSFERRING CERTAIN FUNDS; REPEALING SECTIONS 37-41-101, 37-41-103, 37-41-104, 37-41-105, 37-41-201, 37-41-202, 37-41-205, 37-41-211, AND 37-41-212, MCA; AND PROVIDING EFFECTIVE DATES 1411

379 *(Senate Bill No. 151; Toews)* CLARIFYING THAT THE RETIREMENT LEVY FOR A COMMUNITY COLLEGE DISTRICT MAY BE IMPOSED ONLY ON PROPERTY WITHIN THE COMMUNITY COLLEGE DISTRICT; AMENDING SECTION 20-9-501, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1415

380 *(Senate Bill No. 178; Nelson)* IMPLEMENTING A MORATORIUM ON THE HARVEST OR REMOVAL OF WILD MEDICINAL PLANTS FROM STATE LANDS; ESTABLISHING A TASK FORCE ON WILD MEDICINAL PLANTS TO ACQUIRE THE NECESSARY TECHNICAL INFORMATION TO DETERMINE SUSTAINABLE COLLECTING OF WILD MEDICINAL PLANTS ON STATE LANDS AND TO RECOMMEND LEGISLATION IF APPROPRIATE; REQUIRING THE GOVERNOR TO NOTIFY FEDERAL AGENCIES AND TRIBAL GOVERNMENTS REGARDING THE MORATORIUM AND

HeinOnline -- 1999 vol. I lviii 1999

ALLOWING THE GOVERNOR, WHEN APPROPRIATE, TO ENTER INTO A MEMORANDUM OF UNDERSTANDING WITH A FEDERAL AGENCY OR TRIBAL GOVERNMENT TO HELP ENSURE THE SUSTAINABILITY OF WILD MEDICINAL PLANTS THROUGHOUT MONTANA; PROVIDING DEFINITIONS AND A PENALTY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE 1417

381 *(Senate Bill No. 215; Bartlett)* INCREASING THE NEGLIGENT HOMICIDE INCARCERATION PENALTY; AND AMENDING SECTION 45-5-104, MCA 1421

382 *(Senate Bill No. 241; Doherty)* REVISING THE LAWS GOVERNING LICENSES FOR DISABLED HUNTERS; ALLOWING A PERSON WHO HAS PURCHASED CERTAIN LICENSES FOR A LICENSE YEAR AND WHO IS SUBSEQUENTLY CERTIFIED AS DISABLED TO BE ELIGIBLE FOR A REFUND OR REISSUANCE OF THE LICENSES AT THE STATUTORY RATE; REQUIRING THAT A DESIGNATED COMPANION ASSIST A BLIND HUNTER IN HUNTING AND FIELD DRESSING GAME; PROVIDING DEFINITIONS; GRANTING RULEMAKING AUTHORITY FOR ESTABLISHMENT OF REVIEW BOARDS TO RESOLVE DISPUTES; AND AMENDING SECTION 87-2-803, MCA 1421

383 *(Senate Bill No. 293; Bishop)* PROHIBITING FALCONERS FROM USING CERTAIN LISTED SPECIES FOR THE SPORT OF FALCONRY; AMENDING SECTION 87-5-205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1423

384 *(Senate Bill No. 331; Shea)* GENERALLY REVISING THE LAW RELATING TO THE FRANCHISING, SALE, AND WARRANTY OF PERSONAL WATERCRAFT, SNOWMOBILES, AND OFF-HIGHWAY VEHICLES; AND AMENDING SECTIONS 23-2-619, 23-2-818, 61-4-201, 61-4-202, 61-4-204, 61-4-205, 61-4-222, AND 61-4-402, MCA 1424

385 *(Senate Bill No. 477; Mahlum)* PROVIDING IMMUNITY FOR EMPLOYERS FOR INJURIES OR DAMAGES SUSTAINED BY EMPLOYEES IN RIDESHARING ARRANGEMENTS 1433

386 *(Senate Bill No. 505; Grimes)* ESTABLISHING THE CIVIL LEGAL ASSISTANCE FOR INDIGENT VICTIMS OF DOMESTIC VIOLENCE ACCOUNT; PROVIDING THAT THE MONTANA SUPREME COURT ADMINISTRATOR SHALL ESTABLISH PROCEDURES FOR DISTRIBUTION AND ACCOUNTABILITY OF THE MONEY IN THE ACCOUNT; INCREASING CERTAIN DISTRICT COURT FEES TO FUND THE ACCOUNT; AMENDING SECTION 25-1-201, MCA; AND PROVIDING AN EFFECTIVE DATE 1434

387 *(House Bill No. 53; R. Clark)* SPECIFYING THAT A CORONER OR DEPUTY CORONER SHALL PRONOUNCE THE DEATH OF A DEFENDANT AT AN EXECUTION; CLARIFYING THE NUMBER OF WITNESSES AT AN EXECUTION; REQUIRING THAT ALL WITNESSES BE SUBJECT TO THE APPROVAL OF THE DEPARTMENT OF CORRECTIONS; AND AMENDING SECTION 46-19-103, MCA 1439

388 *(House Bill No. 54; Menahan)* CREATING THE CRIMINAL OFFENSE OF ASSAULT WITH A BODILY FLUID; PROVIDING PENALTIES FOR THE OFFENSE; AND DEFINING "BODILY FLUID" 1440

389 *(House Bill No. 69; McCann)* GENERALLY REVISING THE LAWS GOVERNING STATUTORY APPROPRIATIONS AND DEDICATED REVENUE; AMENDING SECTIONS 3-7-204, 3-7-222, 3-7-302, 10-3-203, 10-4-301, 10-4-311, 15-30-195, 15-35-108, 16-1-404, 16-11-308, 17-3-212,

HeinOnline -- 1999 vol. I lix 1999

17-7-502, 18-2-407, 20-26-1501, 20-26-1502, 20-26-1503, 39-71-502, 39-71-503, 39-71-901, 39-71-907, 39-71-2321, 44-12-206, 61-10-148, 77-1-131, 80-2-103, 85-2-123, 85-2-213, 85-2-225, 85-2-232, 85-20-402, 87-1-601, 90-4-103, 90-4-106, 90-4-109, 90-4-215, 90-6-304, AND 90-6-331, MCA; REPEALING SECTION 85-2-241, MCA; AND PROVIDING AN EFFECTIVE DATE 1441

390 *(House Bill No. 81; Menahan)* PROVIDING THAT A YOUTH TRANSFERRED FROM THE YOUTH COURT TO THE DISTRICT COURT AND FOUND GUILTY OF CERTAIN OFFENSES MAY BE COMMITTED FOR LONGER THAN 5 YEARS TO THE DEPARTMENT OF CORRECTIONS FOR INCARCERATION IN AN APPROPRIATE CORRECTIONAL FACILITY; AND AMENDING SECTION 46-18-201, MCA 1463

391 *(House Bill No. 116; McGee)* REVISING THE PENALTIES FOR FOURTH OFFENSE DUI AND DRIVING WITH EXCESSIVE ALCOHOL CONCENTRATION; ALLOWING AN OFFENDER TO SERVE INITIAL IMPRISONMENT IN A STATE-APPROVED PUBLIC OR PRIVATE TREATMENT FACILITY THAT PROVIDES APPROPRIATE CHEMICAL DEPENDENCY TREATMENT; PROVIDING THAT ONLY THE FIRST 6 MONTHS OF MANDATORY IMPRISONMENT ON A FOUBTH OFFENSE DUI MAY NOT BE SUSPENDED; AND AMENDING SECTION 61-8-731, MCA 1465

392 *(House Bill No. 135; Stovall)* PROVIDING AN APPROPRIATION FOR PAY INCREASES FOR CERTAIN DEPARTMENT OF JUSTICE PROTECTIVE SERVICE PROFESSIONALS; AND PROVIDING AN EFFECTIVE DATE 1467

393 *(House Bill No. 204; Shockley)* AUTHORIZING CERTAIN COURT FINANCIAL ACCOUNTS TO BE KEPT IN INTEREST-BEARING ACCOUNTS IN FINANCIAL INSTITUTIONS, WITH THE INTEREST TO BE USED TO HELP DEFRAY THE COURT'S ADMINISTRATION COSTS; INCREASING THE ALLOWABLE NUMBER OF JUSTICES OF THE PEACE; INCREASING THE DOLLAR AMOUNT JURISDICTION OF JUSTICES' COURTS TO $7,000; PROVIDING THAT IF A REQUIRED UNDERTAKING IS NOT FILED WITHIN 10 DAYS AFTER A NOTICE OF APPEAL IS FILED, THE COURT FROM WHICH THE APPEAL WAS TAKEN SHALL DISMISS THE NOTICE OF APPEAL; REVISING CRIMINAL JURISDICTION OF JUSTICES' COUBTS; AND AMENDING SECTIONS 3-10-101, 3-10-301, AND 3-10-303, MCA . . . 1469

394 *(House Bill No. 207; Johnson)* PROVIDING THAT THE DISTRICT COURT REIMBURSEMENT PROGRAM PAY FOR CERTAIN EXPENSES INCURRED IN STATE DISTRICT COURT FOR PROCEEDINGS INVOLVING ABUSED AND NEGLECTED CHILDREN; ELIMINATING THE CONTINGENCY FOR PAYMENT OF YOUTH COURT FOSTER CARE PLACEMENTS BY THE DEPARTMENT OF CORRECTIONS IF THERE WAS AN EXCESS BALANCE IN THE DISTRICT COUBT REIMEURSEMENT FUND; STATUTORILY APPROPRIATING THE EXPENSE PAYMENTS AND DISTRICT COUBT GRANTS; AMENDING SECTIONS 3-5-604 AND 3-5-901, MCA; AND PROVIDING AN EFFECTIVE DATE 1471

395 *(House Bill No. 209; Shockley)* SPECIFICALLY PROVIDING FOR A PLEA OF NOLO CONTENDERE IN A CRIMINAL PROSECUTION; AND AMENDING SECTIONS 41-3-609, 45-2-101, 45-5-222, 45-5-621, 45-8-212, 46-1-202, 46-12-201, 46-12-204, 46-12-210, 46-12-211, 46-12-212, 46-13-108, 46-13-109, 46-14-311, 46-16-103, 46-16-105, 46-17-203, 46-18-104, 46-18-201, 46-18-204, 46-18-231, 46-24-203, 53-30-303, 61-11-203, AND 87-1-112, MCA 1473

396 *(House Bill No. 232; Rose)* GENERALLY REVISING LAWS RELATED TO COMMERCIAL FEEDS; CREATING AND REVISING APPLICABLE DEFINITIONS; CLARIFYING THE DEPARTMENT OF AGRICULTURE'S RULEMAKING AUTHORITY; MAKING PUBLICATION OF THE DEPARTMENT'S REPORT ON COMMERCIAL FEED DISCRETIONARY RATHER THAN MANDATORY; REVISING LICENSING PROCEDURES AND LABELING REQUIREMENTS; REVISING THE CRITERIA FOR DETERMINING WHAT CONSTITUTES ADULTERATED FEED; CLARIFYING PROHIBITIONS AND REVISING PENALTIES; PROVIDING FOR DEPOSIT AND EXPENDITURE OF ADMINISTRATIVE PENALTY FEES; REVISING ENFORCEMENT PROCEDURES; CLARIFYING PROVISIONS REGARDING CONFIDENTIALITY OF INFORMATION; AMENDING SECTIONS 80-9-101, 80-9-103, 80-9-105, 80-9-201, 80-9-202, 80-9-204, 80-9-205, 80-9-206, 80-9-207, 80-9-301, 80-9-302, 80-9-303, AND 80-9-304, MCA; AND PROVIDING AN APPLICABILITY DATE 1499

397 *(House Bill No. 255; Anderson)* INCREASING TO $1,000 THE AMOUNT REQUIRED TO BE INVOLVED IN VARIOUS CRIMES BEFORE PENALTIES FOR THOSE CRIMES ARE ENHANCED; INCREASING TO $1,000 THE POSSIBLE FINE FOR THOSE CRIMES WHEN THE AMOUNT INVOLVED IN THOSE CRIMES IS LESS THAN $1,000; AND AMENDING SECTIONS 27-1-718, 45-2-101, 45-6-101, 45-6-103, 45-6-301, 45-6-309, 45-6-311, 45-6-312, 45-6-313, 45-6-316, 45-6-317, 45-6-325, AND 45-7-210, MCA 1510

398 *(House Bill No. 257; Younkin)* IMPOSING AN ADDITIONAL SURCHARGE UPON CRIMINAL CONVICTIONS TO FINANCE LOCAL VICTIM AND WITNESS ADVOCATE PROGRAMS; PROVIDING THAT A PORTION OF THE SURCHARGE MUST BE RETAINED BY THE ASSESSING COURT FOR ADMINISTRATIVE EXPENSES; AMENDING SECTIONS 46-18-236 AND 46-18-251, MCA; AND PROVIDING AN EFFECTIVE DATE 1525

399 *(House Bill No. 282; Johnson)* REALLOCATING TAX RATES AND REVENUE COLLECTED FROM EMPLOYERS TO FUND THE EMPLOYMENT SECURITY ACCOUNT AND TO MAINTAIN LOCAL DELIVERY OF EMPLOYMENT SERVICES; INCREASING THE TAX RATE ON TAXABLE WAGES FOR EXPERIENCE-RATED EMPLOYERS FROM 0.1 PERCENT TO 0.13 PERCENT; CHANGING THE ROUNDING CALCULATION OF THE TAX RATE FOR AN EMPLOYER WHO HAS FAILED TO FILE PAYROLL REPORTS FROM THE NEAREST ONE-TENTH OF 1 PERCENT TO THE NEAREST ONE-HUNDREDTH OF 1 PERCENT; DECREASING THE UNEMPLOYMENT INSURANCE TAX RATE ON TAXABLE WAGES FOR EXPERIENCE-RATED EMPLOYERS BY 0.03 PERCENT; AMENDING SECTIONS 39-51-404, 39-51-409, 39-51-1213, AND 39-51-1218, MCA; AND PROVIDING A DELAYED APPLICABILITY DATE 1527

400 *(House Bill No. 395; Facey)* REVISING ELIGIBILITY FOR UNEMPLOYMENT INSURANCE BENEFITS FOR PART-TIME WORKERS; AMENDING SECTIONS 39-51-2101 AND 39-51-2202, MCA; AND PROVIDING AN EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE 1533

401 *(House Bill No. 444; B. Thomas)* REVISING CERTAIN PROVISIONS OF THE GRASS CONSERVATION ACT; CREATING THE MONTANA GRASS CONSERVATION COMMISSION; PRESCRIBING THE MEMBERSHIP AND DUTIES OF THE COMMISSION; TRANSFERRING PRIMARY ADMINISTRATION OF THE GRASS

HeinOnline -- 1999 vol. I lxi 1999

CONSERVATION ACT FROM THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO THE MONTANA GRASS CONSERVATION COMMISSION; REVISING DEFINITIONS; REVISING THE ADMINISTRATIVE FEE FOR IMPLEMENTING THE GRASS CONSERVATION ACT FROM 15 CENTS PER ANIMAL UNIT TO 10 CENTS PER ANIMAL UNIT MONTH OF PREFERENCE; ELIMINATING THE 40-YEAR LIMIT ON THE TERM OF INCORPORATION OF A STATE GRAZING DISTRICT; REQUIRING UPDATE AND REVIEW OF THE BYLAWS OF INCORPORATED STATE DISTRICTS; ALLOWING CERTAIN MEMBERS OF A DISTRICT THAT IS BEING LIQUIDATED TO MEET THE HIGHEST BID ON DISTRICT ASSETS; REVISING DISTRICT VOTING PROCEDURES; REVISING PROCEDURES FOR AND INCREASING THE FEE ASSOCIATED WITH TRESPASSING LIVESTOCK; AMENDING SECTIONS 76-16-103, 76-16-106, 76-16-107, 76-16-108, 76-16-109, 76-16-111, 76-16-201, 76-16-202, 76-16-203, 76-16-204, 76-16-206, 76-16-207, 76-16-208, 76-16-209, 76-16-210, 76-16-211, 76-16-212, 76-16-302, 76-16-303, 76-16-304, 76-16-307, 76-16-308, 76-16-311, 76-16-315, 76-16-316, 76-16-319, 76-16-323, 76-16-325, 76-16-403, 76-16-406, 76-16-418, AND 76-16-414, MCA; AND PROVIDING AN EFFECTIVE DATE 1533

402 *(House Bill No. 461; Simon)* ALLOWING STATE PLUMBING BOARD AND STATE ELECTRICAL BOARD COMPLIANCE OFFICERS TO ISSUE CITATIONS TO AND COLLECT FINES FROM PERSONS WHO FAIL TO DISPLAY A PLUMBER'S LICENSE OR AN ELECTRICIAN'S LICENSE AT A JOB SITE; ESTABLISHING CIVIL FINES FOR VIOLATIONS; AMENDING SECTIONS 37-1-317, 37-68-301, 37-68-313, 37-68-315, 37-69-301, 37-69-308, AND 37-69-319, MCA; AND PROVIDING AN EFFECTIVE DATE 1545

403 *(House Bill No. 504; Ohs)* PROVIDING THAT THE SMALL EMPLOYER HEALTH CARE INSURANCE AVAILABILITY ACT DOES NOT APPLY TO AN INDIVIDUAL HEALTH BENEFIT PLAN IF THE EMPLOYEE OR DEPENDENT ELIGIBLE FOR COVERAGE UNDER THAT PLAN IS REIMBURSED BY THE SMALL EMPLOYER FOR ANY PART OF THE PLAN PREMIUMS UNLESS THE EMPLOYER HAS HAD IN PLACE AN EMPLOYER-SPONSORED GROUP HEALTH BENEFIT PLAN IN THE 12 MONTHS PRECEDING THE REIMBURSEMENT; AND AMENDING SECTION 33-22-1804, MCA 1549

404 *(House Bill No. 526; Mangan)* CREATING A MONTANA DEFERRED DEPOSIT LOAN ACT TO BE ADMINISTERED BY THE DEPARTMENT OF COMMERCE; PROVIDING FOR LICENSURE, LICENSE AND EXAMINATION FEES, DISCLOSURE REQUIREMENTS, COMPLAINT PROCEDURES, CONTRACT PROVISIONS, RULEMAKING AUTHORITY, CIVIL REMEDIES, AND CRIMINAL PENALTIES; AND AMENDING SECTION 82-5-103, MCA . 1550

405 *(House Bill No. 578; Anderson)* REVISING PUBLIC RECORD LAWS RELATED TO PUBLIC ACCESS TO NONPRINT RECORDS; AND AMENDING SECTION 2-6-110, MCA 1557

406 *(Senate Bill No. 36; Keenan)* PROVIDING LIMITS ON LIABILITY FOR MEDICAL PRACTITIONERS AND DENTAL HYGIENISTS WHO PROVIDE CARE OR ASSISTANCE FOR CHARITABLE PURPOSES; AMENDING SECTION 27-1-736, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE . 1558

407 *(Senate Bill No. 68; Mahlum)* REVISING CERTAIN STATUTES RELATING TO THE STATE COMPENSATION INSURANCE FUND; PROVIDING AN EXEMPTION FROM THE MONTANA

PROCUREMENT ACT FOR INSURANCE-RELATED SERVICES; CLARIFYING CURRENT LAW RELATING TO PAYMENT OF DIVIDENDS BY THE STATE COMPENSATION INSURANCE FUND; REQUIRING USE OF NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS' RISK-BASED CAPITAL REQUIREMENTS IN SETTING RATES; ELIMINATING AN ADDITIONAL PRICING LEVEL WITH A HIGHER RATE FOR EMPLOYERS WHO DO NOT SATISFACTORILY IMPLEMENT SAFETY PROGRAMS; ELIMINATING THE STATE FUND'S AUTHORITY TO ASSESS AN ADDITIONAL 20 PERCENT SURCHARGE ON PREMIUMS PAYABLE TO THE STATE FUND BY HIGH-LOSS EMPLOYERS; AMENDING SECTIONS 18-4-132, 39-71-2315, 39-71-2323, 39-71-2330, AND 39-71-2341, MCA; AND PROVIDING EFFECTIVE DATES 1559

408 *(Senate Bill No. 79; Swysgood)* IMPOSING A 6-MILL LEVY FOR SUPPORT OF THE UNIVERSITY SYSTEM; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND A TERMINATION DATE 1562

409 *(Senate Bill No. 113; Mahlum)* GENERALLY REVISING THE LAWS GOVERNING THE LICENSING OF DEALERS AND WHOLESALERS OF MOTOR VEHICLES, RECREATIONAL VEHICLES, MOTORCYCLES, QUADRICYCLES, TRAILERS, AND SPECIAL MOBILE EQUIPMENT BY THE DEPARTMENT OF JUSTICE; DEFINING THE TERMS "NEW MOTOR VEHICLE", "ESTABLISHED PLACE OF BUSINESS", AND "RETAIL SALE"; AUTHORIZING COMPLIANCE SPECIALISTS DESIGNATED BY THE DEPARTMENT AND TRAINED AS PEACE OFFICERS TO ISSUE CITATIONS FOR VIOLATIONS OF DEALER LAWS AND CERTAIN VEHICLE TITLE AND REGISTRATION LAWS; REQUIRING DEALERS TO DISPLAY ON A SALES LOT NEW OR USED MOTOR VEHICLES BEARING EITHER A MONRONEY LABEL OR BUYER'S GUIDE LABEL AS APPROPRIATE; REQUIRING DEALERS TO INSTALL AND MAINTAIN LISTED TELEPHONE SERVICE AND TO POST WRITTEN NOTICE OF REGULAR AND CUSTOMARY BUSINESS HOURS AT THE DEALER'S ESTABLISHED PLACE OF BUSINESS; REQUIRING DEALERS AND WHOLESALERS TO MAINTAIN GARAGE KEEPERS LIABILITY INSURANCE; CLARIFYING THE DUTY OF AN APPLICANT FOR A DEALER'S LICENSE TO DISCLOSE FELONY OFFENSES FOR WHICH A DETERMINATION OF GUILT WAS MADE AND TO SUMMARIZE CONDUCT GIVING RISE TO THE CHARGE; REQUIRING DEALER'S LICENSE OR WHOLESALER'S LICENSE APPLICANTS TO PROVIDE CERTAIN INFORMATION ABOUT GARAGE KEEPERS LIABILITY COVERAGE OBTAINED BY THE APPLICANT; CONDITIONING USED MOTOR VEHICLE DEALER LICENSE RENEWAL ON A MINIMUM OF 12 RETAIL SALES OF USED MOTOR VEHICLES IN A PRIOR LICENSE TERM; RETAINING SEPARATE LICENSE RENEWAL REQUIREMENTS FOR A USED MOTOR VEHICLE DEALER WHO IS ALSO A QUALIFIED TOW TRUCK OPERATOR OR A LICENSED MOTOR VEHICLE WRECKING FACILITY; DENYING LICENSE RENEWAL TO USED MOTOR VEHICLE DEALERS WHO FAIL TO MEET MINIMUM RETAIL SALES REQUIREMENTS IN THE PRECEDING LICENSE YEAR AND WITHHOLDING DEALER LICENSE ELIGIBILITY FROM THOSE DEALERS FOR THE SUCCEEDING 12-MONTH PERIOD; EXEMPTING USED MOTOR VEHICLE DEALERS LICENSED BY THE DEPABTMENT OF JUSTICE ON OR BEFORE DECEMBER 31, 1999, FROM THE MINIMUM RETAIL SALES REQUIREMENTS FOR LICENSE RENEWAL; CONDITIONING WHOLESALER'S LICENSE RENEWAL ON A

MINIMUM OF 12 SALES OF VEHICLES OF THE TYPE AUTHORIZED UNDER THE LICENSE TO A LICENSED DEALER, AUTO AUCTION, OR ANOTHER WHOLESALER IN THE PRECEDING LICENSE YEAR; DENYING LICENSE RENEWAL TO WHOLESALERS WHO FAIL TO MEET MINIMUM SALES REQUIREMENTS IN THE PRECEDING LICENSE YEAR AND WITHHOLDING WHOLESALER LICENSE ELIGIBILITY FROM THOSE WHOLESALERS FOR THE SUCCEEDING 12-MONTH PERIOD; CLARIFYING THE DEFINITION OF DEALER TO INCLUDE THE BUSINESS OF ACCEPTING VEHICLES ON CONSIGNMENT AND OTHERWISE BUYING, SELLING, EXCHANGING, OR ACTING AS A BROKER OF VEHICLES NOT TITLED AND REGISTERED IN THE DEALER'S NAME; EXTENDING ABATEMENT OF VEHICLE TAXES ON PROPERLY REPORTED DEALER INVENTORY TO TRANSFERS TO OR FROM OTHER MONTANA-LICENSED DEALERS, WHOLESALERS, OR AUTO AUCTIONS PRIOR TO RETAIL SALE; REDUCING CERTAIN DEALER LICENSE FEES; CODIFYING THE CURRENT FEE CHARGED FOR DEMONSTRATOR PLATES; AMENDING SECTIONS 20-7-514, 61-1-132, 61-1-314, 61-3-101, 61-3-103, 61-3-206, 61-3-301, 61-3-432, 61-3-501, 61-3-502, 61-3-508, 61-3-602, 61-4-101, 61-4-102, 61-4-104, 61-4-105, 61-4-107, 61-4-108, 61-4-120, 61-4-205, AND 61-10-214, MCA; REPEALING SECTION 61-4-103, MCA; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE . 1563

410 *(Senate Bill No. 169; M. Taylor)* REVISING THE LAWS GOVERNING SMALL BUSINESS INVESTMENT COMPANIES TO ENSURE THEIR COMPLIANCE WITH FEDERAL LAW AND REGULATIONS; AUTHORIZING ADDITIONAL MONTANA SMALL BUSINESS INVESTMENT CAPITAL COMPANIES; AMENDING SECTIONS 32-1-422, 90-8-104, 90-8-106, 90-8-201, 90-8-202, 90-8-203, 90-8-301, 90-8-302, 90-8-303, 90-8-304, 90-8-305, 90-8-311, 90-8-312, 90-8-313, AND 90-8-321, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 1594

411 *(Senate Bill No. 233; Bohlinger)* PROVIDING A DISCRETIONARY LONGEVITY SALARY ADJUSTMENT FOR COUNTY ATTORNEYS; AMENDING SECTIONS 7-4-2503 AND 46-18-236, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE . 1606

412 *(Senate Bill No. 359; Franklin)* REQUIRING THE CREATION OF A RESERVE FUND FOR PAYMENT OF CERTAIN CLAIMS BY MANUFACTURERS OF TORACCO PRODUCTS WHO HAVE NOT PREVIOUSLY SETTLED WITH THE STATE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1609

413 *(Senate Bill No. 463; Wells)* PROVIDING THAT THE STATE'S LIABILITY FOR INTEREST AND ATTORNEY FEES IN A JUDGMENT ON A CONTRACT, PROVIDED FOR IN CHAPTER 508, LAWS OF 1997, IS RETROACTIVE TO AND APPLIES TO CONTRACTS IN EFFECT ON MAY 1, 1997, THE DATE ON WHICH CHAPTER 508 TOOK EFFECT; AMENDING SECTION 18-1-404, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 1613

414 *(Senate Bill No. 486; Halligan)* REVISING THE LAWS RELATING TO PARENTING MATTERS BETWEEN NATURAL PARENTS AND THIRD PARTIES; AUTHORIZING COURTS TO MAKE A DETERMINATION THAT A PARENTAL INTEREST OR VISITATION RIGHT MAY BE AWARDED TO A THIRD PARTY WHEN THE PARENT'S CONDUCT IS CONTRARY TO A CHILD-PARENT RELATIONSHIP AND THE DETERMINATION SERVES THE BEST

INTERESTS OF THE CHILD; AND AMENDING SECTIONS 40-4-211 AND 40-4-221, MCA 1613

415 *(Senate Bill No. 504; Lynch)* AUTHORIZING THE DEPARTMENT OF TRANSPORTATION TO APPROVE REVISED URBAN BOUNDARIES FOR A CONSOLIDATED CITY-COUNTY GOVERNMENT FOR THE PURPOSE OF ALLOCATION OF GASOLINE AND VEHICLE FUEL TAX REVENUE; AMENDING SECTION 15-70-101, MCA; AND PROVIDING AN EFFECTIVE DATE 1617

416 *(Senate Bill No. 82; Doherty)* GENERALLY REVISING STATUTES RELATING TO THE PUBLIC'S RIGHT TO EXAMINE DOCUMENTS AND OBSERVE THE DELIBERATIONS OF GOVERNMENT; CLARIFYING THE PROCEDURE FOR OPENING COMPETITIVE SEALED PROPOSALS; AMENDING SECTIONS 5-3-106, 18-4-304, 23-5-115, 23-5-116, 30-10-107, 33-1-409, 33-2-1116, 33-2-1701, 33-16-205, 33-20-1310, 44-4-203, 44-5-301, 50-15-121, 50-15-122, 61-3-101, 61-11-105, AND 81-23-302, MCA 1619

417 *(Senate Bill No. 89; Stang)* REQUIRING THE DEPARTMENT OF COMMERCE TO DESIGN AND THE DEPARTMENT OF TRANSPORTATION TO ERECT SIGNS IDENTIFYING VISITOR INFORMATION CENTERS 1636

418 *(House Bill No. 6; McCann)* APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR GRANTS UNDER THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM; PRIORITIZING GRANTS AND AMOUNTS; ESTABLISHING CONDITIONS FOR GRANTS; PROVIDING FOR CONTINGENT APPROPRIATIONS; AND PROVIDING EFFECTIVE DATES 1637

419 *(House Bill No. 7; McCann)* APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR GRANTS FOR DESIGNATED PROJECTS UNDER THE RECLAMATION AND DEVELOPMENT GRANTS PROGRAM; PRIORITIZING GRANTS AND AMOUNTS; ESTABLISHING CONDITIONS FOR GRANTS; AMENDING SECTION 2, CHAPTER 552, LAWS OF 1991, SECTION 2, CHAPTER 454, LAWS OF 1995, AND SECTION 2, CHAPTER 108, LAWS OF 1997; AND PROVIDING AN EFFECTIVE DATE 1642

420 *(House Bill No. 58; Younkin)* MODIFYING THE ELIGIBILITY REQUIREMENTS FOR REIMBURSEMENT FROM THE PETROLEUM TANK RELEASE CLEANUP FUND; AMENDING SECTIONS 75-11-302 AND 75-11-308, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE . 1645

421 *(House Bill No. 74; Mood)* GENERALLY REVISING THE LAWS RELATING TO THE WASTEWATER TREATMENT AND SAFE DRINKING WATER TREATMENT REVOLVING FUNDS; AUTHORIZING THE CREATION OF STATE DEBT; AMENDING SECTIONS 75-5-1106, 75-5-1113, 75-5-1121, 75-6-211, 75-6-224, 75-6-225, MCA, AND SECTION 16, CHAPTER 553, LAWS OF 1995; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 1649

422 *(House Bill No. 95; Story)* GENERALLY REVISING THE MONTANA WATER USE LAWS; CLARIFYING PROCEDURES FOR CORRECT AND COMPLETE PERMIT APPLICATIONS; CLARIFYING WHAT CONSTITUTES A VALID OBJECTION; CHANGING PROCEDURAL ASPECTS OF CERTAIN HEARINGS AND MAILINGS; ALTERING PROCEDURES FOR REQUESTING AN EXTENSION TO COMPLETE THE REQUIREMENTS FOR A WATER RIGHT PERMIT; AMENDING

HeinOnline -- 1999 vol. I lxv 1999

SECTIONS 85-2-302, 85-2-308, 85-2-309, 85-2-310, AND 85-2-312, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1658

423 *(House Bill No. 99; Hagener)* CHANGING THE FINAL DATE THAT NOTICE MUST BE GIVEN BY THE CITY TREASURER OR TOWN CLERK TO PROPERTY OWNERS FOR DELINQUENT SEWER CHARGES FROM JULY 15 TO JULY 7; ALLOWING A CITY TREASURER OR TOWN CLERK TO FILE A DELINQUENT SEWER SERVICE ASSESSMENT LIST WITH THE DEPARTMENT OF REVENUE AT THE TIME THAT THE ANNUAL TAX LEVY IS CERTIFIED TO THE COUNTY CLERK; AND AMENDING SECTION 7-13-4309, MCA 1662

424 *(House Bill No. 109; Mercer)* AUTHORIZING THE DEPARTMENT OF JUSTICE TO OPERATE AND MAINTAIN AN AUTOMATED ACCOUNTING AND REPORTING SYSTEM FOR VIDEO GAMBLING MACHINES; ELIMINATING THE REQUIREMENT THAT MACHINE SPECIFICATIONS BE SUBSTANTIALLY THE SAME AS THE SPECIFICATIONS REQUIRED ON SEPTEMBER 30, 1989; ASSIGNING RESPONSIBILITY FOR PAYMENT OF MACHINE TAXES TO THE OWNER OF THE MACHINE; AUTHORIZING STATE PARTICIPATION IN LOANS TO MACHINE OWNERS TO COVER COSTS OF CONVERTING MACHINES TO THE AUTOMATED SYSTEM; PROVIDING A MACHINE CONVERSION COST TAX CREDIT TO MACHINE OWNERS WHO CONVERT MACHINES TO THE AUTOMATED SYSTEM; PLEDGING AN AMOUNT OF THE STATE'S SHARE OF MACHINE TAX REVENUE TO GUARANTEE LOANS MADE TO MACHINE OWNERS WHO CONVERT MACHINES TO THE AUTOMATED SYSTEM; AMENDING SECTIONS 23-5-116, 23-5-602, 23-5-610, AND 23-5-621, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE 1663

425 *(House Bill No. 113; Younkin)* PROVIDING THE DEPARTMENT OF ENVIRONMENTAL QUALITY WITH CORRECTIVE ACTION ORDER AUTHORITY UNDER THE MONTANA HAZARDOUS WASTE ACT . 1670

426 *(House Bill No. 128; Gillan)* GENERALLY REVISING THE TAXATION OF TELECOMMUNICATIONS SERVICES PROVIDERS; IMPOSING A 3.75 PERCENT STATEWIDE RETAIL TELECOMMUNICATIONS EXCISE TAX TO REPLACE REVENUE LOST FROM MOVING TELECOMMUNICATIONS SERVICES PROVIDERS' PROPERTY FROM CLASS NINE TO A NEW PROPERTY TAX CLASS THIRTEEN AND FROM THE REPEAL OF THE TELEPHONE COMPANY LICENSE TAX; REQUIRING THAT RURAL TELEPHONE COOPERATIVES AND RURAL ELECTRIC COOPERATIVES OFFERING SERVICE IN AN AREA SERVED BY AN INCUMBENT LOCAL EXCHANGE PROVIDER COLLECT THE RETAIL TELECOMMUNICATIONS EXCISE TAX FROM CUSTOMERS IN THE INCUMBENT LOCAL EXCHANGE AREA; PROVIDING FOR THE DISTRIBUTION OF TAX REVENUE; PROVIDING THAT A PERCENTAGE OF THE RETAIL TELECOMMUNICATIONS EXCISE TAX BE USED TO REPLACE PROPERTY TAX REVENUE LOST FROM REDUCING THE TAX RATE ON TELECOMMUNICATIONS SERVICES PROVIDERS' PROPERTY FROM 12 PERCENT TO 6 PERCENT; TAXING TELECOMMUNICATIONS PROPERTY AT 6 PERCENT OF ITS MARKET VALUE; MOVING CLASS SEVEN TELECOMMUNICATIONS PROPERTY TO CLASS FIVE; CREATING A SEPARATE CLASS OF PROPERTY FOR CENTRALLY ASSESSED TELECOMMUNICATIONS PROPERTY; REVISING THE DEBT LIMITS OF TAXING JURISDICTIONS; AMENDING SECTIONS 7-1-2111, 7-7-107, 7-7-2101, 7-7-2203, 7-7-4201, 7-7-4202, 7-14-2524,

7-14-2525, 7-16-2327, 7-16-4104, 15-1-501, 15-6-135, 15-6-137, 15-6-141, 17-7-502, 20-9-406, 35-18-503, AND 69-3-861, MCA; REPEALING SECTIONS 15-53-101, 15-53-102, 15-53-103, 15-53-104, 15-53-105, 15-53-106, 15-53-111, 15-53-112, 15-53-113, 15-53-114, 15-53-115, AND 69-3-860, MCA; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE 1671

427 *(House Bill No. 132; Kasten)* SIMPLIFYING THE DETERMINATION OF PENALTY AND INTEREST APPLIED TO TAXES, FEES, AND OTHER ASSESSMENTS COLLECTED BY THE DEPARTMENT OF REVENUE UNDER TITLES 15 AND 16; PROVIDING UNIFORM PROVISIONS FOR ASSESSING PENALTIES FOR LATE FILED TAX RETURNS, REPORTS, OR STATEMENTS; PROVIDING UNIFORM PROVISIONS FOR ASSESSING PENALTY AND INTEREST FOR DELINQUENT TAXES AND FEES; PROVIDING EXCEPTIONS; REVISING THE WAIVER OF PENALTY PROVISIONS; REVISING THE PENALTY PROVISIONS FOR DELINQUENT PROPERTY TAXES; AMENDING SECTIONS 15-1-206, 15-8-309, 15-24-904, 15-24-1207, 15-30-142, 15-30-209, 15-30-241, 15-30-321, 15-30-323, 15-31-510, 15-31-543, 15-31-545, 15-35-105, 15-35-112, 15-35-113, 15-36-311, 15-36-313, 15-36-314, 15-36-315, 15-36-325, 15-37-105, 15-37-108, 15-37-109, 15-37-114, 15-37-115, 15-37-205, 15-37-210, 15-37-211, 15-38-107, 15-50-309, 15-51-103, 15-51-109, 15-51-110, 15-51-111, 15-53-105, 15-53-106, 15-53-111, 15-59-106, 15-59-112, 15-59-113, 15-60-204, 15-60-208, 15-65-115, 15-65-116, 16-1-403, 16-1-409, 16-1-411, 16-11-143, 16-11-203, 39-51-1301, 75-2-220, 75-5-516, AND 87-2-903, MCA; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE . 1691

428 *(House Bill No. 180; Soft)* ALLOWING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES OR A GUARDIAN AD LITEM TO PETITION FOR APPOINTMENT OF A GUARDIAN FOR A CHILD FOUND TO BE A YOUTH IN NEED OF CARE EITHER AS PART OR NOT AS PART OF A TERMINATION OF PARENTAL RIGHTS; PROVIDING FOR REVOCATION OF GUARDIANSHIPS; CLARIFYING THE AUTHORITY OF THE DEPARTMENT TO PROVIDE FINANCIAL SUBSIDIES FOR GUARDIANSHIPS MEETING DEPARTMENT CRITERIA; AND AMENDING SECTIONS 41-3-401, 41-3-406, 41-3-412, 41-3-607, AND 41-3-1103, MCA 1725

429 *(House Bill No. 186; Peck)* ALLOWING A PAY-ON-DEATH BENEFICIARY TO BE DESIGNATED AND A SERVICE FEE TO BE DEDUCTED FOR A MEDICAL CARE SAVINGS ACCOUNT AND A FIRST-TIME HOME BUYER SAVINGS ACCOUNT; CLARIFYING RESPONSIBILITY OF A FINANCIAL INSTITUTION ACTING AS AN ACCOUNT ADMINISTRATOR OF MEDICAL CARE SAVINGS ACCOUNTS; AND AMENDING SECTIONS 15-61-202, 15-61-204, 15-63-202, AND 15-63-204, MCA 1731

430 *(House Bill No. 187; Tropila)* REQUIRING THE DEPARTMENT OF TRANSPORTATION, A LOCAL AUTHORITY, A UTILITY COMPANY, OR A PRIVATE CONTRACTOR TO POST WORK ZONE AND CONSTRUCTION ZONE SPEED LIMIT SIGNS IF THOSE ENTITIES DETERMINE THAT SPECIAL SPEED LIMITS ARE WARRANTED; REQUIRING REMOVAL OR COVERING OF SIGNS WHEN NO WORK IS IN PROGRESS AND NO HAZARD EXISTS; AND AMENDING SECTION 61-8-314, MCA 1736

431 *(House Bill No. 189; Barnett)* GENERALLY REVISING THE LAWS RELATING TO STATE-OWNED OR LEASED MOTOR VEHICLES; CLARIFYING STATE IDENTIFICATION REQUIREMENTS; CLARIFYING DEPARTMENT OF TRANSPORTATION RESPONSIBILITIES; CLARIFYING RESPONSIBILITIES OF OTHER

HeinOnline -- 1999 vol. I lxvii 1999

STATE AGENCIES; AMENDING SECTIONS 2-17-402, 2-17-411, 2-17-421, 2-17-422, AND 2-17-423, MCA; AND REPEALING SECTIONS 2-17-413 AND 2-17-431, MCA 1737

432 *(House Bill No. 203; Shockley)* REVISING CERTAIN CRIMINAL LAW PROVISIONS RELATING TO ASSAULT AND THE CRIMINAL DISTRIBUTION OF DANGEROUS DRUGS; CREATING THE OFFENSE OF ASSAULT ON A MINOR; RENAMING "FELONY ASSAULT" TO "ASSAULT WITH A WEAPON" AND INCREASING THE PENALTY FOR THE OFFENSE; AND AMENDING SECTIONS 40-15-102, 41-5-206, 45-5-102, 45-5-201, 45-5-202, 45-5-206, 45-5-627, 45-8-405, 45-9-101, 45-9-103, 45-9-109, 45-9-112, 45-9-113, 46-18-201, 46-18-219, 46-18-231, 46-23-502, AND 50-32-405, MCA 1739

433 *(House Bill No. 221; Trexler)* CLARIFYING RESPONSIBILITY FOR WEED CONTROL ALONG A STATE OR COUNTY HIGHWAY OR ROAD BY PROVIDING THAT A LANDOWNER WHO OWNS PROPERTY BORDERING A STATE OR COUNTY HIGHWAY OR ROAD AND DOES NOT WISH TO ENTER A VOLUNTARY AGREEMENT FOR WEED CONTROL, BUT WHO OBJECTS TO WEED CONTROL MEASURES, IS RESPONSIBLE FOR ALTERNATIVE WEED CONTROL ON THAT PROPERTY; PROVIDING PENALTIES FOR A LANDOWNER WHO OBJECTS TO WEED DISTRICT CONTROL MEASURES BUT DOES NOT PROVIDE ALTERNATIVE WEED CONTROL; REQUIRING THE DISTRICT WEED BOARD TO PROVIDE WEED CONTROL IF THE LANDOWNER DOES NOT PROVIDE ALTERNATIVE WEED CONTROL WITHIN 30 DAYS AFTER NOTIFICATION; AMENDING SECTION 7-22-2153, MCA; AND PROVIDING EFFECTIVE DATES 1753

434 *(House Bill No. 266; Guggenheim)* REVISING INSURANCE COVERAGE FOR PHENYLKETONURIA TO INCLUDE ALL INBORN ERRORS OF METABOLISM; DEFINING "MEDICAL FOODS"; REQUIRING COVERAGE FOR MEDICAL FOODS, MEDICAL SUPPLIES, PRESCRIPTION DRUGS, AND CERTAIN CORRECTIVE LENSES; REQUIRING THAT MANDATORY COVERAGE FOR INBORN ERRORS OF METABOLISM APPLY TO COVERAGE BY HEALTH MAINTENANCE ORGANIZATIONS, COVERAGE OF STATE AND LOCAL GOVERNMENT EMPLOYEES, AND TO COVERAGE OFFERED BY MULTIPLE EMPLOYER WELFARE ARRANGEMENTS; AMENDING SECTIONS 2-18-704, 33-22-131, 33-31-102, 33-31-111, AND 33-35-306, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE 1755

435 *(House Bill No. 275; Barnhart)* ESTABLISHING STATEWIDE AND COMMUNITY LONG-TERM PLANNING FOR THE AGING POPULATION; REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO REPORT BIENNIALLY, WITH ANNUAL UPDATES, ON STATEWIDE AND COMMUNITY ISSUES ON AGING; INCLUDING STAKEHOLDER IDENTIFICATION IN QUALIFICATIONS FOR AREA AGENCIES ON AGING; PROVIDING TECHNICAL ASSISTANCE TO AREA AGENCIES ON AGING AND COMMUNITIES FOR LONG-TERM PLANNING; AND AMENDING SECTIONS 52-3-101, 52-3-103, 52-3-503, AND 52-3-504, MCA; AND PROVIDING A TERMINATION DATE 1761

436 *(House Bill No. 405; Fuchs)* CHANGING THE LINEAL YARDS REQUIREMENT FOR GOLF COURSES TO BE TAXED AT ONE-HALF THE RATE OF OTHER CLASS FOUR PROPERTY; AMENDING SECTION 15-6-134, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE . 1763

HeinOnline -- 1999 vol. I lxviii 1999

437 *(House Bill No. 486; Anderson)* DEFINING "INSTITUTIONAL CONTROL"; CLARIFYING THE DEFINITION OF "ORPHAN SHARE"; REQUIRING THAT THE DEPARTMENT OF ENVIRONMENTAL QUALITY GIVE DUE CONSIDERATION TO INSTITUTIONAL CONTROLS IN SELECTING REMEDIAL ACTIONS; ESTABLISHING AN INSTITUTIONAL CONTROL PROCESS; PROPORTIONATELY REDUCING THE ORPHAN SHARE IF A POTENTIALLY RESPONSIBLE PERSON RECOVERS REMEDIAL ACTION COSTS FROM A FINANCIALLY RESPONSIBLE PARTY; AMENDING SECTIONS 75-10-701, 75-10-715, AND 75-10-721, MCA; REPEALING SECTION 27, CHAPTER 584, LAWS OF 1995; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1765

438 *(House Bill No. 513; Witt)* PROVIDING THAT AGRICULTURAL PROPERTY THAT IS USED TO PRODUCE UNRELATED BUSINESS TAXABLE INCOME DOES NOT QUALIFY AS PROPERTY USED PURELY FOR PUBLIC CHARITABLE PURPOSES OF QUALIFYING FOR A PROPERTY TAX EXEMPTION; REVISING THE DEFINITION OF "INSTITUTIONS OF PURELY PUBLIC CHARITY"; AMENDING SECTION 15-6-201, MCA; AND PROVIDING AN APPLICABILITY DATE 1776

439 *(House Bill No. 532; Anderson)* REQUIRING GOVERNMENT ENTITIES TO DECIDE WITHIN 10 DAYS AFTER A REQUEST FOR FINAL ACCEPTANCE BY THE CONSTRUCTION CONTRACTOR WHETHER OR NOT TO FINALLY ACCEPT THE CONSTRUCTION OF A BUILDING AND TO MAKE FINAL PAYMENT OF THE PRICE OF CONSTRUCTION CONTRACTS WITHIN 30 DAYS OF FINAL ACCEPTANCE OF THE CONSTRUCTION OF THE BUILDING; REQUIRING PAYMENT OF INTEREST; AND PROVIDING AN APPLICABILITY DATE 1779

440 *(House Bill No. 560; Hanson)* GENERALLY REVISING COUNTY ROAD LAWS; CLARIFYING THE DUTIES OF A BOABD OF COUNTY COMMISSIONERS REGARDING COUNTY ROADS; ESTABLISHING THE CONDITIONS UNDER WHICH A ROAD MAY BE DESIGNATED AS A COUNTY ROAD; ALLOWING A BOARD OF COUNTY COMMISSIONERS TO TEMPORARILY CLOSE A ROAD UNDER ITS JURISDICTION; ALLOWING A BOARD OF COUNTY COMMISSIONERS TO MAINTAIN A ROAD TO THE DEGREE THAT IT DETERMINES IS APPROPRIATE; REQUIRING THAT PUBLIC NOTICE BE GIVEN AND A PUBLIC HEARING BE HELD BEFORE A ROAD MAY BE ABANDONED BY THE STATE; AND AMENDING SECTIONS 7-14-2101, 7-14-2103, 7-14-2127, 60-1-201, AND 60-2-107, MCA 1780

441 *(House Bill No. 584; Juneau)* AUTHORIZING SURPLUS STATE PROPERTY TO BE DONATED TO SCHOOL DISTRICTS FOR CLASSROOM USE PURSUANT TO PROCEDURES IMPLEMENTED BY THE OFFICE OF PUBLIC INSTRUCTION TO ENSURE ADEQUATE NOTICE OF THE AVAILABILITY OF STATE SURPLUS PROPERTY AND EQUAL ACCESS AND FAIR DISTRIBUTION OF THE PROPERTY TO SCHOOL DISTRICTS; AMENDING SECTIONS 2-17-202, 18-4-226, AND 18-6-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1783

442 *(House Bill No. 592; Hibbard)* IMPLEMENTING HOUSE JOINT RESOLUTION NO. 10 TO REVISE THE PROCESSES FOR RESOLVING EMPLOYMENT-RELATED DISPUTES; ELIMINATING THE APPELLATE ROLE OF THE BOARD OF PERSONNEL APPEALS IN REVIEWING WAGE CLAIM DISPUTES; PROVIDING FOR THE APPEAL OF DEPARTMENT HEARINGS EXAMINERS' DECISIONS

HeinOnline -- 1999 vol. I lxix 1999

IN WAGE CLAIMS CASES TO THE DISTRICT COURT; ESTABLISHING A TIMEFRAME FOR RECOVERY OF IMPROPERLY PAID WAGES; TRANSFERRING FROM THE DEPARTMENT OF LABOR AND INDUSTRY TO THE WORKERS' COMPENSATION COURT EXCLUSIVE JURISDICTION OVER COMPENSATION AND BENEFIT ISSUES ARISING UNDER THE OCCUPATIONAL DISEASE ACT, THE WORKERS' COMPENSATION ACT, AND THE APPLICATION OF INDEPENDENT CONTRACTOR STATUS; AUTHORIZING THE WORKERS' COMPENSATION COURT TO COLLECT A PENALTY FOR WORKERS' COMPENSATION BENEFIT THEFT; REQUIRING THAT CASES INVOLVING WAGE AND HOUR, THE UNINSURED EMPLOYER FUND, AND INDEPENDENT CONTRACTOR ISSUES INCLUDE MEDIATION PRIOR TO CONTESTED CASE PROCEEDINGS; PROVIDING A COLLATERAL ESTOPPEL PROVISION TO PROHIBIT DECISIONS PERTAINING TO UNEMPLOYMENT INSURANCE BENEFITS FROM BEING USED IN RELATED DISPUTES; AMENDING SECTIONS 15-30-248, 39-3-201, 39-3-207, 39-3-212, 39-3-216, 39-9-401, 39-51-810, 39-51-1109, 39-71-304, 39-71-315, 39-71-316, 39-71-317, 39-71-401, 39-71-415, 39-71-601, 39-71-610, 39-71-613, 89-71-704, 39-71-1032, 39-72-403, 39-72-601, 39-72-602, 39-72-607, AND 39-72-608, MCA; REPEALING SECTIONS 39-3-217, 39-72-609, 39-72-610, 39-72-611, 39-72-612, AND 39-72-613, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 1784

448 *(House Bill No. 621; Witt)* APPROPRIATING FUNDS TO THE DEPARTMENT OF COMMERCE FOR GRANTS TO LOCAL GOVERNMENTS SUBMITTING PROPOSALS TO LOCATE THE VENTURE STAR PROJECT IN MONTANA; PROVIDING CONDITIONS FOR THE RECEIPT AND USE OF GRANT FUNDS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1801

444 *(House Bill No. 638; Somerville)* PROVIDING A TAX CREDIT FOR QUALIFIED RESEARCH EXPENSES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 1802

445 *(House Bill No. 652; Guggenheim)* REVISING THE DEFINITION OF "INCOME" AS IT RELATES TO THE RESIDENTIAL PROPERTY TAX CREDIT FOR THE ELDERLY; EXCLUDING THE TAXPAYER'S BASIS IN THE DETERMINATION OF INCOME; AMENDING SECTION 15-30-171, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 1803

446 *(House Bill No. 656; Bookout-Reinicke)* GENERALLY REVISING THE TAX DEED PROCESS BY PROVIDING A FORM TO RECORD OR FILE CANCELLATIONS OF TAX SALES CERTIFICATES; PROVIDING A FORM FOR A CERTIFICATE OF REDEMPTION; REQUIRING THAT THE CANCELLATION OF A TAX SALE CERTIFICATE AND A CERTIFICATE OF REDEMPTION BE FILED OR RECORDED WITH THE COUNTY CLERK AND RECORDER; PROHIBITING THE IMPOSITION OF A CHARGE FOR FILINGS OR RECORDINGS RELATED TO THE TAX DEED PROCESS; AMENDING SECTIONS 15-18-113 AND 15-18-212, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 1805

447 *(House Bill No. 657; Davies)* REVISING THE TAXATION OF ESTATE OR TRUST INCOME BASED ON THE TAXABLE DISTRIBUTION OF THE ESTATE OR TRUST; AMENDING SECTION 15-30-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 1809

448 *(House Bill No. 659; Menahan)* ELIMINATING THE NEED TO PROCESS A NEW TAX BILL OR TO ISSUE A REFUND AS THE RESULT OF A REVISED PROPERTY TAX ASSESSMENT WHEN THE ADDITIGNAL TAX OR REFUND IS $5 OR LESS; AMENDING SECTIONS 15-1-402, 15-16-101, 15-16-102, AND 15-16-605, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, AN APPLICABILITY DATE, AND A RETROACTIVE APPLICABILITY DATE 1812

449 *(Senate Bill No. 10; Mohl)* REVISING THE LAWS RELATING TO THE MOVEMENT OF SLOW-MOVING VEHICLES; REQUIRING A SLOW-MOVING VEHICLE TRAVELING ON AN INTERSTATE OR A FOUR-LANE HIGHWAY TO TRAVEL IN THE RIGHT LANE AS FAR TO THE RIGHT AS POSSIBLE; REQUIRING A FARM VEHICLE THAT EXCEEDS 16 1/2 FEET IN WIDTH AND THAT IS TRAVELING ON AN INTERSTATE OR A FOUR-LANE HIGHWAY TO BE FOLLOWED BY A FLAG VEHICLE ESCORT; AND AMENDING SECTIONS 61-9-415 AND 61-10-102, MCA 1816

450 *(Senate Bill No. 20; Shea)* DEFINING "INITIAL APPEARANCE"; CLARIFYING WHEN A PRISONER SHALL MAKE AN INITIAL APPEARANCE BEFORE THE BOARD OF PARDONS AND PABOLE; AUTHORIZING THE BOARD TO ADOPT RULES FOR VIDEO HEARINGS, PROGRESS REVIEWS, REVOCATION PROCEEDINGS, AND CLEMENCY PROCEEDINGS; PROVIDING FOR INTERACTIVE VIDEOCONFERENCING PAROLE AND REVOCATION HEARINGS AND ADMINISTRATIVE REVIEWS BY TELEPHONE; CLARIFYING THE LAWS RELATING TO PUBLIC ACCESS TO BOARD RECORDS; AMENDING SECTIONS 46-23-103, 46-23-202, AND 46-23-218, MCA; REPEALING SECTION 46-23-108, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1818

451 *(Senate Bill No. 46; Swysgood)* GENERALLY REVISING AND CLARIFYING THE SETTLEMENT AUTHORITY AND PROCEDURE OF STATE AGENCIES; PROVIDING FOR THE RECORDING AND USE OF SETTLEMENT PROCEEDS; CLARIFYING THAT A SETTLEMENT BY THE DEPARTMENT OF REVENUE MAY NOT BIND A FUTURE LEGISLATURE; AMENDING SECTIONS 2-4-603, 15-1-211, AND 18-1-413, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 1820

452 *(Senate Bill No. 167; Tester)* EXEMPTING FROM TAXATION QUALIFYING LOW-INCOME RENTAL HOUSING PROPERTY; ESTABLISHING CRITERIA FOR QUALIFICATION, INCLUDING THE REQUIREMENT THAT THE BOARD OF HOUSING MUST HAVE ALLOCATED LOW-INCOME HOUSING TAX CREDITS TO THE OWNER UNDER FEDERAL LAW; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 1824

453 *(Senate Bill No. 170; M. Taylor)* REVISING THE CRITERIA AND PRIORITIES FOR AWARDING FUNDING; AMENDING SECTION 90-6-710, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE 1825

454 *(Senate Bill No. 273; Jabs)* CREATING THE 22ND JUDICIAL DISTRICT; PROVIDING FOR AN ADDITIONAL DISTRICT COURT JUDGE FOR THE 11TH JUDICIAL DISTRICT AND THE 20TH JUDICIAL DISTRICT; AMENDING SECTIONS 3-5-101 AND 3-5-102, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE 1827

455 *(Senate Bill No. 251; Halligan)* CLARIFYING A COURT'S AUTHORITY TO REQUIRE AN ASSESSMENT OF CHEMICAL DEPENDENCY

HeinOnline -- 1999 vol. I lxxi 1999

PRIOR TO SENTENCING A PERSON FOR DRIVING UNDER THE INFLUENCE OR WITH AN ILLEGAL BLOOD ALCOHOL CONTENT; CLARIFYING THAT AN ASSESSMENT OF CHEMICAL DEPENDENCY IS SEPARATE FROM CHEMICAL DEPENDENCY EDUCATION OR TREATMENT; PROVIDING FOR CONSISTENCY OF TERMS USED TO DESCRIBE ASSESSMENT, EDUCATION, AND TREATMENT PROGRAMS; ALLOWING NONMANDATORY PORTIONS OF SENTENCES TO BE SUSPENDED PENDING COURT-ORDERED CHEMICAL DEPENDENCY ASSESSMENT, EDUCATION, OR TREATMENT; AND AMENDING SECTIONS 61-5-208, 61-8-410, 61-8-714, 61-8-731, 61-8-732, AND 61-11-101, MCA . 1828

456 *(Senate Bill No. 342; Hargrove)* CREATING THE MONTANA AGRICULTURAL HERITAGE PROGRAM; CREATING A 12-MEMBER MONTANA AGRICULTURAL HERITAGE COMMISSION; AUTHORIZING THE STATE AND APPROVED NONPROFIT ORGANIZATIONS TO ACQUIRE AND HOLD AGRICULTURAL EASEMENTS; PROVIDING AGRICULTURAL EASEMENT ACQUISITION CRITERIA; REQUIRING NINE MEMBERS OF THE COMMISSION TO APPROVE AGRICULTURAL EASEMENT ACQUISITIONS; PROVIDING FOR PERPETUAL AND RENEWABLE TERM AGRICULTURAL EASEMENTS AND AGRICULTURAL EASEMENT ENFORCEMENT; PROVIDING THAT STATE FUNDS MAY BE USED TO PURCHASE, MONITOR, AND ENFORCE AGRICULTURAL EASEMENT AGREEMENTS; PROVIDING FOR DONATIONS, GIFTS, AND OTHER FUNDS; CREATING AN ACCOUNT IN THE STATE SPECIAL REVENUE FUND; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE . 1834

457 *(Senate Bill No. 345; Shea)* PROVIDING FOR THE CONTINUATION OF A MINE OR ANY AMENDED PERMIT FOR THAT MINE THAT IS NECESSARY FOR THE CONTINUED OPERATION OF THAT MINE; AMENDING SECTION 82-4-390, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1839

458 *(Senate Bill No. 353; Franklin)* ESTABLISHING LIMITS ON SANCTIONS FOR THE FAIM PROJECT; PROVIDING FOR A STUDY OF THE EFFECT OF THE FAIM SANCTION POLICIES ON MONTANA'S LOW-INCOME FAMILIES; AMENDING SECTION 53-4-717, MCA; AND PROVIDING AN EFFECTIVE DATE 1840

459 *(Senate Bill No. 388; Christiaens)* ADDING NATUROPATHIC PHYSICIANS TO THE HEALTH CARE PROVIDERS FOR WHICH FREEDOM OF CHOICE IN SELECTION MUST BE PROVIDED UNDER DISABILITY INSURANCE POLICIES OR CERTIFICATES; REQUIRING HEALTH SERVICES CORPORATIONS TO COVER SERVICES PROVIDED BY A NATUROPATHIC PHYSICIAN; AMENDING SECTION 33-22-111, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE 1841

460 *(Senate Bill No. 393; Waterman)* DESIGNATING THE BOARD OF REGENTS AS THE ELIGIBLE AGENCY FOR ADMINISTERING THE CARL D. PERKINS ACT VOCATIONAL EDUCATION PROGRAMS IN MONTANA; REQUIRING THE SUPERINTENDENT OF PUBLIC INSTRUCTION AND THE COMMISSIONER OF HIGHER EDUCATION TO WORK COOPERATIVELY ON THE VOCATIONAL AND TECHNICAL EDUCATION STATE PLAN; REQUIRING THE BOARD OF REGENTS TO MEET WITH INTERESTED PERSONS AND ENTITIES REGARDING THE IMPLEMENTATION AND EVALUATION OF THE STATE PLAN; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE 1841

461 *(Senate Bill No. 401; R. Holden)* REVISING THE DEFINITION OF "AGRICULTURAL USE" FOR GASOLINE AND SPECIAL FUEL TAX REFUND PURPOSES; ALLOWING A PERSON WHO EARNS INCOME WHILE ENGAGING IN THE BUSINESS OF FARMING OR RANCHING TO RECEIVE GASOLINE AND SPECIAL FUEL TAX REFUNDS ACCORDING TO THE RATIO OF THE PERSON'S GROSS EARNED FARM INCOME TO TOTAL GROSS EARNED INCOME; ALLOWING THE DEPARTMENT OF TRANSPORTATION TO VERIFY THAT A PERSON QUALIFIES AS AN AGRICULTURAL USER OF GASOLINE AND SPECIAL FUEL; AMENDING SECTIONS 15-30-303, 15-70-201, 15-70-223, 15-70-301, AND 15-70-362, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE . 1843

462 *(Senate Bill No. 411; Crismore)* REQUIRING THE BOARD OF LAND COMMISSIONERS TO PROVIDE ANNUAL REPORTS REGARDING THE AVERAGE RETURN OF REVENUE ON ASSET VALUE TO TRUST BENEFICIARIES OF FORESTED LANDS; DESCRIBING THE METHOD FOR CALCULATING AVERAGE RETURN AND ASSET VALUE; AND PROVIDING AN EFFECTIVE DATE 1851

463 *(Senate Bill No. 434; Waterman)* REDUCING THE MEMBER CONTRIBUTION FOR THE POLICE RETIREMENT STATEWIDE PLAN; PROVIDING FOR AN ELECTION ON GUARANTEED ANNUAL BENEFIT ADJUSTMENTS; AMENDING SECTION 19-9-710, MCA; AND PROVIDING EFFECTIVE DATES 1852

464 *(Senate Bill No. 502; Grosfield)* GENERALLY REVISING LAWS RELATING TO HARD-ROCK MINING IMPACTS; PROVIDING THAT A PAYMENT GUARANTEE FOR A FACILITY IMPACT BOND MUST BE MADE THROUGH A THIRD-PARTY FINANCIAL INSTITUTION; CLARIFYING THE MINIMUM ALLOCATION OF TAXABLE VALUATION OF GROSS PROCEEDS TO UNITS OF LOCAL GOVERNMENT; REVISING THE ALLOCATION OF THE METAL MINES LICENSE TAX; REVISING THE TIME AND MINIMUM DISTRIBUTION OF REVENUE TO TRUST ACCOUNTS; AMENDING SECTIONS 15-37-117, 90-6-302, 90-6-310, 90-6-331, AND 90-6-404, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1854

465 *(Senate Bill No. 533; Devlin)* MAKING IT UNLAWFUL TO IMPORT INTO THIS STATE FOR SALE OR DISTRIBUTION CIGARETTES OR TOBACCO PRODUCTS MANUFACTURED FOR USE OUTSIDE THE UNITED STATES; MAKING IT UNLAWFUL TO AFFIX A TAX INSIGNIA ON CIGARETTES OR TO SELL OR ATTEMPT TO SELL CIGARETTES OR TOBACCO PRODUCTS MANUFACTURED FOR USE OUTSIDE THE UNITED STATES OR LABELED CONTRARY TO FEDERAL LAW; AND PROVIDING A PENALTY 1858

466 *(Senate Bill No. 472; Wells)* REVISING CRIMINAL CODE PROVISIONS RELATING TO MACHINE GUNS AND SILENCERS; AMENDING SECTIONS 45-8-301, 45-8-302, 45-8-305, 45-8-307, AND 45-8-337, MCA; AND REPEALING SECTIONS 45-8-306, 45-8-308, AND 45-8-309, MCA 1859

467 *(House Bill No. 348; Facey)* CHANGING ONE OF THE MONTHS IN WHICH SCHOOL TRUSTEES MUST HOLD A MEETING FROM JULY TO AUGUST; AMENDING SECTION 20-3-322, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1861

468 *(House Bill No. 430; Squires)* CLARIFYING THAT A WORKER MAY CHOOSE AN INITIAL TREATING PHYSICIAN EVEN IF A PREFERRED PROVIDER ORGANIZATION IS IN PLACE; PROVIDING FOR WRITTEN NOTICE TO THE INJURED WORKER AFTER THE DATE OF INJURY; AND AMENDING SECTIONS 39-71-1101 AND 39-71-1102, MCA 1862

HeinOnline -- 1999 vol. I lxxiii 1999

469 *(House Bill No. 482; Mangan)* EXEMPTING JUVENILE DETENTION OFFICERS WHO ARE EMPLOYED IN A JUVENILE DETENTION CENTER FROM BASIC DETENTION OFFICER TRAINING OVER THE NEXT 2 YEARS UNDER CERTAIN CONDITIONS; DEFINING "JUVENILE DETENTION CENTER" AND "JUVENILE DETENTION OFFICER"; AMENDING SECTION 44-4-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE . 1863

470 *(Senate Bill No. 490; Glaser)* REQUIRING PROMPT PAYMENT FOR CONSTRUCTION CONTRACTORS AND SUBCONTRACTORS; PROVIDING FOR THE PAYMENT OF INTEREST FOR DELAYED PAYMENTS; ALLOWING COSTS AND ATTORNEY FEES IN CIVIL ACTIONS TO ENFORCE PAYMENT; ALLOWING OTHER REMEDIES; PROVIDING EXCEPTIONS; SUPERCEDING THE UNFUNDED MANDATE LAW; AMENDING SECTION 18-2-101, MCA; AND PROVIDING AN APPLICARILITY DATE 1865

471 *(House Bill No. 79; Brainard)* RELATING TO THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; ESTABLISHING A DEFINED CONTRIBUTION PLAN WITHIN THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM AND SPECIFYING THE PLAN'S PROVISION OF RIGHTS, BENEFITS, AND FEATURES; TRANSFERRING ADMINISTRATION OF THE STATE DEFERRED COMPENSATION PROGRAM TO THE PUBLIC EMPLOYEES' RETIREMENT BOARD; ELIMINATING CERTAIN INVESTMENT RESTRICTIONS IN THE UNIFIED INVESTMENT PROGRAM; PROVIDING FOR THE POWERS AND DUTIES OF THE PUBLIC EMPLOYEES' RETIREMENT BOARD IN IMPLEMENTING AND ADMINISTERING THE NEW PLAN; ALLOWING CURRENT AND NEW SYSTEM MEMBERS TO CHOOSE WHETHER TO JOIN THE NEW DEFINED CONTRIBUTION PLAN OR STAY IN THE DEFINED BENEFIT PLAN; SPECIFYING PLAN CHOICE, MEMBERSHIP, AND VESTING CRITERIA; ALLOWING RETIREMENT SYSTEM MEMBERS EMPLOYED BY THE UNIVERSITY SYSTEM TO CHOOSE THE OPTIONAL RETIREMENT PLAN; PROVIDING FOR ACTUARIAL FUNDING OF DEFINED BENEFIT PLAN UNFUNDED LIABILITIES AND PLAN CHOICE COSTS; ESTABLISHING CRITERIA FOR THE INVESTMENT ALTERNATIVES THAT MAY BE OFFERED IN THE NEW PLAN; SPECIFYING THE PAYOUT AND BENEFIT OPTIONS AVAILABLE WITHIN THE DEFINED CONTRIBUTION PLAN; PROVIDING FOR DEATH BENEFITS IN THE NEW PLAN; REQUIRING AND SPECIFYING THE COMPONENTS OF MEMBER EDUCATIONAL PROGRAMS; ESTABLISHING AN IMPLEMENTATION SCHEDULE; PROVIDING FOR AN IMPLEMENTATION TEAM, ADVISORY COUNCIL, AND OVERSIGHT COMMITTEE; PROVIDING FOR PAYMENT OF CERTAIN LOCAL GOVERNMENT ADMINISTRATIVE EXPENSES; REQUIRING THAT THE PUBLIC EMPLOYEES' RETIREMENT BOARD FILE FOR AN INTERNAL REVENUE SERVICE DETERMINATION; EXPANDING CERTAIN RETIREMENT BENEFITS TO COVER LEGISLATORS TERMINATED FROM SERVICE BECAUSE OF TERM LIMITS; AUTHORIZING A LONG-TERM LOAN FROM THE DEPARTMENT OF ADMINISTRATION TO THE PUBLIC EMPLOYEES' RETIREMENT BOARD TO PAY FOR DEFINED CONTRIBUTION PLAN STARTUP COSTS; AMENDING SECTIONS 2-15-1009, 2-18-704, 17-6-201, 19-2-302, 19-2-303, 19-2-401, 19-2-403, 19-2-405, 19-2-406, 19-2-407, 19-2-408, 19-2-409, 19-2-501, 19-2-503, 19-2-504, 19-2-505, 19-2-603, 19-2-706, 19-2-902, 19-2-906, 19-2-907, 19-2-908, 19-2-909, 19-2-1001, 19-2-1002, 19-2-1003, 19-2-1005, 19-2-1006, 19-2-1007, 19-3-103, 19-3-108,

HeinOnline -- 1999 vol. I lxxiv 1999

19-3-201, 19-3-203, 19-3-315, 19-3-316, 19-3-401, 19-21-102, 19-21-201, 19-21-202, 19-21-203, 19-50-101, 19-50-102, 19-50-201, 19-50-202, AND 19-50-203, MCA; REPEALING SECTION 19-50-206, MCA; AND PROVIDING EFFECTIVE DATES, AN APPLICABILITY PROVISION, AND TERMINATION DATES 1868

472 *(House Bill No. 100; Simon)* GENERALLY REVISING LAWS ADMINISTERED BY THE STATE AUDITOR; GENERALLY REVISING STATE SECURITY LAWS; GENERALLY REVISING STATE INSURANCE LAWS; DEFINING "INVOLUNTARY UNEMPLOYMENT INSURANCE"; DEFINING "GAP INSURANCE" AND "GAP AMOUNT"; DEFINING "SERVICE CONTRACT INSURANCE"; DEFINING "MECHANICAL BREAKDOWN INSURANCE"; DEFINING "PREPAID LEGAL PLAN"; PROVIDING FOR EXCLUSIONS FROM THE DEFINITION OF "PREPAID LEGAL PLAN"; AMENDING SECTIONS 27-1-306, 30-10-103, 30-10-104, 30-10-105, 30-10-107, 80-10-115, 30-10-201, 30-10-210, 31-1-233, 33-1-311, 33-1-411, 33-2-109, 33-2-502, 33-2-521, 33-2-701, 33-2-806, 33-3-202, 33-3-307, 33-4-101, 33-4-203, 33-4-311, 33-4-313, 33-5-402, 33-10-102, 33-15-336, 33-15-1107, 33-16-102, 33-16-104, 33-16-1021, 33-16-1022, 33-16-1026, 33-17-212, 33-17-236, 83-17-505, 33-17-507, 33-17-1203, 33-18-301, 33-18-1006, 33-20-121, 33-20-1201, 33-22-101, 33-22-111, 33-22-140, 33-22-307, 33-22-514, 33-22-523, 33-22-524, 33-22-1803, 33-22-1809, 33-22-1811, 33-22-1813, 33-22-1815, 33-22-1816, 33-23-212, 33-30-107, 33-30-201, 33-31-111, 33-31-202, 33-31-211, 33-31-216, 33-81-301, 33-31-401, 39-8-207, AND 61-12-303, MCA; REPEALING SECTIONS 33-2-1311, 33-7-526, 33-22-801, 33-22-802, 33-22-803, 33-22-804, 33-22-805, 33-22-806, 33-22-811, 33-22-812, 33-22-813, 33-22-814, 33-22-815, AND 33-22-816, MCA; AND PROVIDING EFFECTIVE DATES 1911

473 *(House Bill No. 245; Simon)* IMPLEMENTING RECOMMENDATIONS OF THE AFFORDABLE HOUSING AND LAND USE INITIATIVE; ESTABLISHING A BUILDING CODES COUNCIL; ESTABLISHING A CONTINUING EDUCATION PROGRAM ADMINISTERED BY THE DEPARTMENT OF COMMERCE AND FUNDED BY A PORTION OF INSPECTION FEES; MANDATING THE CREATION OF A CENTRAL REGISTRY OF AUTHORITATIVE INTERPRETATIONS OF BUILDING CODES; PROVIDING FOR STATEWIDE APPROVAL OF MODEL PLANS AND A CHECKLIST FOR THE EXAMINATION OF SINGLE-FAMILY DWELLING CONSTRUCTION PLANS; AND AMENDING SECTIONS 50-60-103, 50-60-106, 50-60-201, AND 50-60-301, MCA 1983

474 *(House Bill No. 314; Raney)* IMPLEMENTING A "GOOD NEIGHBOR POLICY" ON PUBLIC RECREATIONAL LANDS TO PROVIDE MINIMUM IMPACT ON ADJOINING PRIVATE PROPERTY; REQUIRING THAT MAINTENANCE IN STATE PARKS AND FISHING ACCESS SITES HAVE PRIORITY OVER ADDITIONAL DEVELOPMENT; REQUIRING LEGISLATIVE APPROVAL OF DEVELOPMENT PROJECTS; DEFINING "MAINTENANCE"; PROTECTING RIPARIAN VEGETATION BY DISCOURAGING MOTORIZED CAMPING WITHIN 25 FEET OF A RIVER OR STREAM IN STATE PARKS AND FISHING ACCESS SITES; AND DISALLOWING THE USE OF CERTAIN MOTORIZED OFF-HIGHWAY VEHICLES IN STATE PARKS AND FISHING ACCESS SITES 1989

475 *(House Bill No. 389; Davies)* APPROPRIATING MONEY TO THE DEPARTMENT OF FISH, WILDLIFE, AND PABKS FOR GRANTS FOR THE ESTABLISHMENT AND IMPROVEMENT OF SHOOTING

HeinOnline -- 1999 vol. I lxxv 1999

RANGES; ESTABLISHING SHOOTING RANGE DEVELOPMENT GRANTS AND CRITERIA FOR GRANTS; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE 1991

476 *(House Bill No. 459; R. Clark)* PROVIDING THAT A RESIDENT OF ANOTHER STATE WHO HAS BEEN ISSUED A CONCEALED WEAPON PERMIT BY THAT STATE MAY CARRY A CONCEALED WEAPON IN THIS STATE; ELIMINATING THE AUTHORITY OF THE GOVERNOR TO NEGOTIATE CONCEALED WEAPON PERMIT RECIPROCITY AGREEMENTS; AND AMENDING SECTIONS 45-8-317 AND 45-8-329, MCA 1993

477 *(House Bill No. 512; Soft)* REVISING THE MANDATORY INSURANCE BENEFIT FOR CHEMICAL DEPENDENCY BY CHANGING THE INPATIENT, OUTPATIENT, AND LIFETIME BENEFITS; EXCLUDING MEDICAL DETOXIFICATION FROM THE BENEFITS; FURTHER DEFINING INPATIENT BENEFITS; AMENDING SECTIONS 33-22-703 AND 33-22-705, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE . . . 1995

478 *(House Bill No. 515; Grinde)* PROVIDING FOR AN INTERIM STUDY OF THE EFFECTS OF COMPETITION BY STATE POLITICAL SUBDIVISIONS WITH THE PRIVATE SECTOR; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 1998

479 *(House Bill No. 530; McGee)* REVISING CERTAIN LAWS RELATING TO ABORTION TO REMOVE OR CLARIFY CERTAIN PROVISIONS DECLARED INVALID BY THE JUDICIARY; REMOVING RESTRICTIONS ON THE PLACE OF PERFORMING AN ABORTION AND ADVERTISING; REVISING THE DEFINITION OF "PARTIAL-BIRTH ABORTION"; AND AMENDING SECTIONS 50-20-102, 50-20-109, AND 50-20-401, MCA 1999

480 *(House Bill No. 557; Ewer)* CLARIFYING THE DISCLOSURE OF HEALTH CARE INFORMATION RELATED TO A WORKERS' COMPENSATION CLAIM; AMENDING SECTION 50-16-527, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2001

481 *(House Bill No. 593; Harper)* PROVIDING FOR CONFIDENTIALITY IN MEDIATION PROCEEDINGS; CREATING A MEDIATION PRIVILEGE FOR MEDIATORS AND PARTIES TO MEDIATION; AMENDING SECTIONS 40-4-303 AND 41-3-404, MCA; AND REPEALING SECTION 26-1-811, MCA 2002

482 *(House Bill No. 607; Soft)* REGULATING HEALTH CARRIERS AND MANAGED CARE ENTITIES; PROVIDING THAT HEALTH CARRIERS AND MANAGED CARE ENTITIES ARE RESPONSIBLE FOR HEALTH CARE TREATMENT DECISIONS; PROVIDING FOR INDEPENDENT REVIEW OF HEALTH CARE TREATMENT DECISIONS; PROHIBITING CERTAIN INDEMNIFICATION CLAUSES IN PROVIDER CONTRACTS; PROHIBITING EARLY TERMINATION OF PROVIDER CONTRACTS WITHOUT JUST CAUSE; AND PROVIDING APPLICABILITY PROVISIONS 2004

483 *(House Bill No. 614; Wagner)* PROVIDING LANDLORDS WITH A METHOD OF DISPOSING OF ABANDONED MOBILE HOMES AFTER GIVING NOTICE TO THE OWNER AND LIENHOLDER; AND PROVIDING AN EFFECTIVE DATE 2007

484 *(House Bill No. 616; Lindeen)* PROVIDING FOR THE RECEIPT OF PUBLIC COMMENT BY ELECTRONIC MAIL; REQUIRING AGENCIES USING ELECTRONIC MAIL TO DISSEMINATE AN ELECTRONIC MAIL ADDRESS TO WHICH PUBLIC COMMENT MAY BE MADE; REQUIRING AGENCIES CREATING OR RECEIVING

HeinOnline -- 1999 vol. I lxxvi 1999

ELECTRONIC DOCUMENTS TO DISSEMINATE THEM ELECTRONICALLY IF REQUESTED; PROHIBITING AGENCIES FROM CHARGING A FEE FOR DISSEMINATION OF ELECTRONIC DOCUMENTS; AND PROVIDING A DELAYED EFFECTIVE DATE . 2008

485 *(House Bill No. 620; Tuss)* CLARIFYING THE PUBLIC'S CONSTITUTIONAL RIGHT TO EXAMINE PUBLIC DOCUMENTS; CLARIFYING THAT THE RIGHT DOES NOT EXTEND TO INFORMATION IN WHICH THERE IS A PRIVACY INTEREST, INCLUDING LEGITIMATE TRADE SECRETS AND MATTERS RELATING TO INDIVIDUAL OR PUBLIC SAFETY; AND AMENDING SECTIONS 2-6-101, 2-6-102, AND 2-6-104, MCA 2009

486 *(House Bill No. 641; Squires)* CLARIFYING THE ENFORCEMENT OF LAWS AND RULES PERTAINING TO MEDICAL GAS PIPING; REQUIRING THE DEPARTMENT OF COMMERCE TO ADOPT CERTAIN PROVISIONS OF A NATIONAL FIRE PROTECTION ASSOCIATION CODE; MANDATING THAT STATE AND LOCAL COMPLIANCE OFFICERS REQUEST PROOF OF ENDORSEMENT FOR PERSONS PERFORMING MEDICAL GAS PIPING SYSTEM WORK AT A JOB SITE; AMENDING SECTION 50-60-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2010

487 *(House Bill No. 651; Hanson)* REVISING THE MONTANA DEDUCTION ALLOWED FOR A NET OPERATING LOSS FROM A TRADE OR BUSINESS TO INCORPORATE MONTANA ITEMS THAT CHANGE THE AMOUNT OF THE FEDERAL CALCULATION OF NET OPERATING LOSS; AMENDING SECTION 15-30-117, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 2012

488 *(House Bill No. 658; E. Clark)* EXEMPTING FROM THE OIL PRODUCTION TAX THAT IS ATTRIBUTABLE TO COUNTY AND SCHOOL TAXING UNITS OIL PRODUCTION FROM A STRIPPER WELL THAT PRODUCES 3 BABRELS A DAY OR LESS IF THE AVERAGE PRICE OF A BARREL OF OIL DURING A CALENDAB QUABTER IS LESS THAN $30; PROVIDING A DEFINITION OF "STRIPPER WELL EXEMPTION"; AMENDING SECTIONS 15-36-303, 15-36-304, AND 15-36-324, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 2013

489 *(House Bill No. 660; Menahan)* PROVIDING SEVERANCE BENEFITS TO EMPLOYEES OF THE MONTANA STATE HOSPITAL WHO ARE INVOLUNTARILY TERMINATED FROM EMPLOYMENT BECAUSE OF A REDUCTION IN FORCE; PROVIDING AN APPROPRIATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2024

490 *(House Bill No. 674; Hibbard)* REVISING THE DISTRIBUTION OF LODGING FACILITY USE TAX REVENUE PAID BY STATE AGENCIES FOR IN-STATE LODGING; PROVIDING THAT THE LODGING FACILITY USE TAX ATTRIBUTABLE TO STATE AGENCIES BE RETURNED TO THE STATE AGENCY FUND FROM WHICH THE TAX WAS PAID; AMENDING SECTIONS 15-65-121 AND 15-65-131, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE 2024

491 *(Senate Bill No. 33; F. Thomas)* GENERALLY REVISING LAWS GOVERNING PRISONS AND PRISONERS; CLARIFYING THAT A PRIVATE PRISON FACILITY LICENSED BY THE DEPABTMENT OF CORRECTIONS IS A STATE PRISON; CLARIFYING THE PROCEDURE FOR THE ISSUANCE OF A LICENSE TO A PRIVATE PRISON FACILITY; CLARIFYING THE DEFINITION OF "REGIONAL CORRECTIONAL FACILITY"; CLARIFYING THAT PRIVATELY

HeinOnline -- 1999 vol. I lxxvii 1999

OPERATED OR PRIVATELY OWNED AND OPERATED REGIONAL CORRECTIONAL FACILITIES ARE SUBJECT TO DEPARTMENT AUTHORIZATION AND LICENSURE; CLARIFYING THAT A PRIVATE PRISON MAY HOUSE ONLY INMATES CHARGED OR CONVICTED IN MONTANA; CLARIFYING THAT FOR PURPOSES OF DETERMINING AGGRAVATING CIRCUMSTANCES IN CRIMINAL CASES CERTAIN CRIMES COMMITTED IN FACILITIES OTHER THAN THE STATE PRISON IN DEER LODGE APPLY; AMENDING SECTIONS 1-1-207, 19-8-301, 45-8-318, 46-18-220, 46-18-303, 46-19-103, 46-23-201, 46-23-215, 46-23-217, 53-1-102, 53-1-103, 53-1-104, 53-1-108, 53-1-202, 53-30-101, 53-30-132, 53-30-151, 53-30-503, 53-30-504, 53-30-507, 53-30-602, 53-30-603, AND 87-2-802, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 2027

492 *(Senate Bill No. 96; Stang)* MODIFYING PROVISIONS GOVERNING PROTEST OF CHANGES TO MUNICIPAL ZONING REGULATIONS; AND AMENDING SECTION 76-2-305, MCA 2040

493 *(Senate Bill No. 164; Mesaros)* REVISING STATUTES RELATED TO NOXIOUS WEED MANAGEMENT AND PROVIDING ALTERNATIVE FUNDING SOURCES; TRANSFERRING $1,125,000 ANNUALLY FROM THE HIGHWAY NONRESTRICTED ACCOUNT TO NOXIOUS WEED MANAGEMENT PROGRAMS; DIRECTING THE PROCEEDS TO THE NOXIOUS WEED MANAGEMENT TRUST FUND; REVISING THE MEMBERSHIP OF THE NOXIOUS WEED MANAGEMENT ADVISORY COUNCIL TO INCLUDE COUNTY REPRESENTATIVES; INCREASING THE CAP FOR THE NOXIOUS WEED MANAGEMENT TRUST FROM $2.5 MILLION TO $10 MILLION; AMENDING SECTIONS 80-7-805, 80-7-810, 80-7-811, AND 80-7-814, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE . 2041

494 *(Senate Bill No. 195; Lynch)* PROVIDING FOR QUALIFICATION OF CERTAIN ACTIVE MILITARY SERVICE IN THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; EXEMPTING MILITARY SERVICE PURCHASES FROM THE LIMIT ON ADDITIONAL SERVICE; AMENDING SECTIONS 19-3-503 AND 19-3-513, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE . 2043

495 *(Senate Bill No. 220; Toews)* ALLOCATING A PORTION OF THE COAL SEVERANCE TAX TRUST FUND FOR THE TREASURE STATE ENDOWMENT REGIONAL WATER SYSTEM FUND; PROVIDING THAT THE EARNINGS ON THE FUND MUST BE USED FOR REGIONAL WATER SYSTEMS; AMENDING SECTION 17-5-703, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE 2045

496 *(Senate Bill No. 229; F. Thomas)* EXEMPTING CERTAIN SCHOOL DISTRICTS FROM NONCONSTRUCTION SERVICES JOB CLASSIFICATIONS; AMENDING SECTION 18-2-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 2048

497 *(Senate Bill No. 301; Keating)* ELIMINATING THE STATUTORY APPROPRIATION OF INTEREST FROM THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM STATE SPECIAL REVENUE ACCOUNT TO MONTANA STATE UNIVERSITY-NORTHERN; ALLOWING MONTANA STATE UNIVERSITY-NORTHERN TO USE THE APPROPRIATION TO ESTABLISH A TRUST FUND PRIOR TO TERMINATION; AMENDING SECTIONS 15-38-202 AND 17-7-502, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE . . 2051

HeinOnline -- 1999 vol. I lxxviii 1999

498 *(Senate Bill No. 302; Toews)* PROVIDING FOR THE ESTABLISHMENT OF REGIONAL WATER AND WASTEWATER AUTHORITIES; SETTING FORTH THE PURPOSE OF THE AUTHORITIES AS ENABLING PUBLIC AGENCIES TO JOIN TOGETHER TO SECURE AND PROVIDE WATER FOR RESALE AND OTHER PURPOSES OR TO JOIN TOGETHER FOR THE TRANSPORTATION AND TREATMENT OF WASTEWATER; PROVIDING DEFINITIONS; SETTING FORTH REQUIREMENTS FOR AGREEMENTS BETWEEN PUBLIC AGENCIES; PROHIBITING COMPETING SERVICES BY PUBLIC AGENCIES IN AN AGREEMENT; REQUIRING OUTSTANDING BOND INDEBTEDNESS TO BE RETIRED BEFORE A PUBLIC AGENCY MAY WITHDRAW FROM AN AGREEMENT; AUTHORIZING PUBLIC AGENCIES TO PROVIDE FUNDS, PERSONNEL, AND SERVICES TO REGIONAL WATER AUTHORITIES, REGIONAL WASTEWATER AUTHORITIES, AND REGIONAL WATER AND WASTEWATER AUTHORITIES; AUTHORIZING AGREEMENTS BETWEEN PURLIC AGENCIES AND AUTHORITIES; ESTABLISHING AN AUTHORITY AS A PUBLIC BODY, CORPORATE AND POLITIC; ESTABLISHING REQUIREMENTS FOR THE GOVERNING BODY OF AN AUTHORITY; REQUIRING MEETINGS AND AN AUDIT OF AN AUTHORITY; ESTABLISHING POWERS OF AN AUTHORITY; AUTHORIZING THE SALE OF BONDS FOR CONSTRUCTING OR ACQUIRING WATER SUPPLY SYSTEMS OR FOR CONSTRUCTING OR ACQUIRING WASTEWATER TRANSPORTATION AND TREATMENT FACILITIES; AUTHORIZING ITEMS TO BE INCLUDED AS COSTS OF PROPERTIES; PROVIDING THAT THE BONDS MAY BE SECURED BY TRUST INDENTURE; REQUIRING THE ESTABLISHMENT OF A SINKING FUND; ESTABLISHING ENFORCEMENT PROVISIONS FOR BONDHOLDERS; ESTABLISHING A STATUTORY MORTGAGE LIEN IN FAVOR OF BONDHOLDERS; PROVIDING THE REQUIREMENT THAT THE AUTHORITY ESTABLISH APPROPRIATE RATES AND CHARGES FOR THE USE OF SERVICES RENDERED; PROVIDING FOR REFUNDING ISSUED BONDS; EXEMPTING BONDS AND BOND INTEREST FROM TAXATION; ESTABLISHING THAT BONDS ISSUED BY AUTHORITIES ARE LEGAL INVESTMENTS; PROVIDING THAT AUTHORITIES ARE ELIGIBLE FOR FINANCING UNDER STATE PROGRAMS; AMENDING SECTIONS 17-5-1604, 75-5-1102, 75-6-202, 85-1-605, AND 90-6-701, MCA; AND PROVIDING AN IMMEDIATE EFt CTIVE DATE 2057

499 *(Senate Bill No. 381; Grimes)* GENERALLY REVISING HUNTER EDUCATION LAWS AND PENALTIES FOR HUNTING VIOLATIONS; ESTABLISHING MANDATORY SENTENCING GUIDELINES FOR REPEAT OFFENDERS OF HUNTING LAWS; PROVIDING PENALTIES FOR VIOLATORS OF FISH, WILDLIFE, AND PARKS COMMISSION OR DEPARTMENT ORDERS AND RULES; ALLOWING THE DEPARTMENT TO ESTABLISH AN ADULT HUNTER EDUCATION CLASS; ESTABLISHING A REMEDIAL HUNTER EDUCATION COURSE FOR HUNTING LAW VIOLATORS; AMENDING SECTIONS 27-1-721, 87-1-102, 87-1-114, 87-2-102, AND 87-2-105, MCA; AND PROVIDING EFFECTIVE DATES 2070

500 *(Senate Bill No. 417; Waterman)* REQUIRING BOARDS OF COUNTY COMMISSIONERS TO BUDGET AND EXPEND FUNDS FOR INMATE MEDICAL COSTS OF INMATES IN COUNTY DETENTION FACILITIES; AND ALLOWING BOARDS OF COUNTY COMMISSIONERS TO LEVY UP TO 2 MILLS TO FUND THE MEDICAL CGSTS 2078

HeinOnline -- 1999 vol. I lxxix 1999

501 *(Senate Bill No. 426; Sprague)* DISTRIBUTING APPROXIMATELY ONE-HALF OF THE FOREIGN CAPITAL DEPOSITORY ASSESSMENT PAYMENTS EQUALLY TO INDIVIDUAL INCOME TAXPAYERS FOR INCOME TAX RELIEF; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE . 2079

502 *(Senate Bill No. 458; F. Thomas)* REVISING THE RESTITUTION AND PENALTIES FOR ILLEGALLY KILLING OR POSSESSING GAME ANIMALS; AND AMENDING SECTIONS 87-1-102, 87-1-111, 87-1-112, 87-1-113, 87-1-114, 87-1-803, 87-1-804, AND 87-3-118, MCA 2079

503 *(Senate Bill No. 462; Grosfield)* GENERALLY AUTHORIZING ENVIRONMENTAL CONTROL EASEMENTS; ALLOWING THE ACQUISITION OF ENVIRONMENTAL CONTROL SITES; LIMITING THE CONVERSION OR DIVERSION OF ENVIRONMENTAL CONTROL SITES FROM THE PURPOSES SPECIFIED IN THE ENVIRONMENTAL CONTROL EASEMENT; RESTRICTING THE CONVEYANCE OR LEASE OF ENVIRONMENTAL CONTROL SITES; AUTHORIZING PUBLIC BODY POWERS IN CONNECTION WITH ENVIRONMENTAL CONTROL EASEMENTS; PROVIDING FOR THE CREATION AND APPROVAL OF ENVIRONMENTAL CONTROL EASEMENTS; SPECIFYING THE DURATION OF ENVIRONMENTAL CONTROL EASEMENTS; PROVIDING FOR PERMISSIBLE EASEMENTS; DESIGNATING GRANTEES OF ENVIRONMENTAL CONTROL EASEMENTS; PROVIDING FOR REPORTING REQUIREMENTS BY QUALIFIED PRIVATE ORGANIZATIONS; AUTHORIZING THE ASSIGNABILITY OF EASEMENTS; PROVIDING FOR COORDINATION WITH LOCAL PLANNING AUTHORITIES; REQUIRING THE RECORDING AND DESCRIPTION OF ENVIRONMENTAL CONTROL EASEMENTS; EXEMPTING CERTAIN INTEREST HELD BY A GRANTEE FROM PROPERTY TAXES; PROVIDING FOR EASEMENT ENFORCEMENT AND LIABILITY; AND PROVIDING AN EFFECTIVE DATE 2085

504 *(House Bill No. 92; Somerville)* APPROPRIATING MONEY FROM THE COAL SEVERANCE TAX PERMANENT FUND TO THE DEPARTMENT OF JUSTICE FOR TECHNICAL, LEGAL, AND ADMINISTRATIVE ACTIVITIES FOR THE STATE OF MONTANA NATURAL RESOURCE DAMAGE ASSESSMENT, LITIGATION, AND SETTLEMENT IMPLEMENTATION IN THE CLARK FORK RIVER BASIN; REQUIRING REPAYMENT OF THE EXPENDED AMOUNTS FROM ANY RECOVERY IN THE LITIGATION; CLARIFYING THAT RECOVERED FUNDS ARE NOT DEPOSITED IN THE HAZARDOUS WASTE/CERCLA SPECIAL REVENUE ACCOUNT OR THE ENVIRONMENTAL QUALITY PROTECTION FUND; AMENDING SECTIONS 5 AND 6, CHAPTER 154, LAWS OF 1997; REQUIRING A THREE-FOURTHS VOTE; AND PROVIDING EFFECTIVE DATES AND A RETROACTIVE APPLICABILITY DATE 2093

505 *(House Bill No. 115; McGee)* INCREASING THE MAXIMUM COMMITMENT TO THE DEPARTMENT OF CORRECTIONS; REQUIRING THAT ALL BUT THE FIRST 5 YEARS OF A COMMITMENT TO THE DEPARTMENT BE SUSPENDED; ALLOWING THE COURT TO SENTENCE AN OFFENDER DIRECTLY TO THE BOOT CAMP INCARCERATION PROGRAM; ALLOWING A PROBATION AND PAROLE OFFICER TO PROVIDE ORAL AUTHORIZATION TO ANOTHER OFFICER WITH THE POWER TO ARREST A PROBATIONER OR A PAROLEE IF THE PROBATION AND PAROLE OFFICER DELIVERS A WRITTEN STATEMENT TO THE PLACE OF DETENTION WITHIN 12 HOURS OF THE ARREST; ALLOWING A PROBATION AND PAROLE OFFICER TO IMPOSE NO

HeinOnline -- 1999 vol. I lxxx 1999

MORE THAN A 30-DAY SANCTION FOR DEFENDANTS WHO HAVE VIOLATED CONDITIONS OF PROBATION; PROVIDING FOR A PROBATION VIOLATOR PRISON DIVERSION PROGRAM; SPECIFYING THAT AN ONSITE HEARING IS NOT REQUIRED IF A DEFENDANT HAS BEEN CHARGED WITH A VIOLATION OF THE LAW; ESTABLISHING A $360 A YEAR MAXIMUM SUPERVISORY FEE PAYABLE BY A PROBATIONER OR PAROLEE; ALLOWING THE IMPOSITION OF A SUSPENDED SENTENCE UPON SUCCESSFUL COMPLETION OF THE BOOT CAMP INCARCERATION PROGRAM; CHANGING THE ELIGIBILITY REQUIREMENTS FOR PARTICIPATION IN THE BOOT CAMP INCARCERATION PROGRAM; AMENDING SECTIONS 46-18-201, 46-23-1011, 46-23-1012, 46-23-1023, 46-23-1024, 46-23-1031, 53-30-401, AND 53-30-403, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 2095

506 *(House Bill No. 158; Ohs)* AMENDING THE MONTANA UNDERGROUND STORAGE TANK INSTALLER LICENSING AND PERMITTING LAW TO INCLUDE TANK INSPECTORS AND AUTHORIZING LICENSURE OF TANK INSPECTORS; AMENDING THE MONTANA UNDERGROUND STORAGE TANK LAW TO REQUIRE UNDERGROUND STORAGE TANK INSPECTIONS; AUTHORIZING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO CLOSE CERTAIN UNDERGROUND STORAGE TANKS; CREATING A LIEN IN FAVOR OF THE STATE FOR COSTS INCURRED IN CLOSING A TANK; INCREASING THE FEE FOR CERTAIN UNDERGROUND STORAGE TANKS; AMENDING SECTIONS 75-11-201, 75-11-202, 75-11-203, 75-11-204, 75-11-211, 75-11-212, 75-11-218, 75-11-223, 75-11-504, 75-11-505, AND 75-11-512, MCA; AND PROVIDING EFFECTIVE DATES 2103

507 *(House Bill No. 183; Dale)* GENERALLY REVISING THE OPENCUT MINING ACT AND THE METAL MINE RECLAMATION LAWS; TRANSFERRING THE REGULATION OF SOIL AND PEAT MINING TO THE OPENCUT MINING ACT; REGULATING PHOSPHATE MINING UNDER THE METAL MINE RECLAMATION LAWS; CLARIFYING DREDGE OPERATION EXEMPTIONS; LIMITING THE USE OF MERCURY AND ORE-PROCESSING REAGENTS AND SOLVENTS BY METAL MINERS; MODIFYING THE DEFINITION OF "PLACER DEPOSIT"; AUTHORIZING THE DEPARTMENT TO REQUIRE RECLAMATION OF CERTAIN METAL MINES AFTER 5 YEARS OF INACTIVITY; REQUIRING ISSUANCE OF SUMMONS AND SERVICE OF PROCESS WITHIN 60 DAYS AFTER FILING OF LEGAL ACTIONS SEEKING REVIEW OF CERTAIN DEPARTMENT DECISIONS; MODIFYING METAL MINE BONDING AND PURLIC PARTICIPATION PROVISIONS AND OPENCUT MINE BONDING PROVISIONS; LIMITING THE PURPOSES OF THE OPENCUT MINE REGULATIONS; MODIFYING OPENCUT PERMITTING THRESHOLDS; REQUIRING A COMPLETE OPENCUT RECLAMATION PLAN AT THE TIME OF APPLICATION; INCREASING ANNUAL REPORTING REQUIREMENTS; AMENDING SECTIONS 82-4-303, 82-4-305, 82-4-310, 82-4-335, 82-4-338, 82-4-341, 82-4-349, 82-4-402, 82-4-403, 82-4-405, 82-4-422, 82-4-423, 82-4-427, 82-4-431, 82-4-432, 82-4-433, 82-4-434, AND 82-4-441, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICARILITY DATES 2111

508 *(House Bill No. 185; Menahan)* PROVIDING FOR A DETENTION CENTER INSPECTION PROGRAM; REQUIRING DETENTION CENTERS AND HOLDING FACILITIES TO COMPLY WITH THE PROGRAM; PROVIDING THE BOARD OF CRIME CONTROL

HeinOnline -- 1999 vol. I lxxxi 1999

ADMINISTRATIVE AND RULEMAKING AUTHORITY; PROVIDING FOR DELAYED ENFORCEMENT AUTHORITY; AMENDING SECTIONS 7-32-2222, 7-32-2241, 44-4-301, 44-4-302, 50-1-202, 50-1-203, AND 50-2-118, MCA; PROVIDING A CONTINGENT VOIDNESS PROVISION; AND PROVIDING EFFECTIVE DATES 2132

509 *(House Bill No. 551; Cobb)* PROVIDING FOR STATE FUNDING TO INDIAN TRIBES THAT IMPLEMENT A FAMILY ASSISTANCE PLAN UNDER THE PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT OF 1996; REQUIRING THE STATE TO PROVIDE LIMITED TECHNICAL ASSISTANCE TO AN INDIAN TRIBE; ALLOWING A COUNTY TO REDUCE ITS REIMBURSEMENT TO THE STATE WHEN A TRIBAL FAMILY ASSISTANCE PLAN IS IMPLEMENTED; REQUIRING THAT GENERAL FUND MONEY BE TRANSFERRED TO TRIBES STARTING FAMILY ASSISTANCE PLANS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2139

510 *(House Bill No. 586; Dale)* AUTHORIZING CITIES OR TOWNS TO CREATE A PARK MAINTENANCE DISTRICT; AUTHORIZING COUNTIES TO ASSESS A FEE ON EACH HOUSEHOLD FOR OPERATION OF A PARK DISTRICT; AND AMENDING SECTIONS 7-16-2411, 7-16-2412, 7-16-2423, 7-16-2431, AND 7-16-2443, MCA . . . 2140

511 *(House Bill No. 596; Somerville)* INCORPORATING USE OF NEW TECHNOLOGY INTO THE RESEARCH AND INFORMATION RESPONSIBILITIES OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY; REQUIRING THE DEPARTMENT TO MAKE AVAILABLE FOR ELECTRONIC ACCESS A COMPILATION OF UPDATED WATER QUALITY INFORMATION; REQUIRING RULES RESTRICTING CHANGES TO DESIGN AND CONSTRUCTION CRITERIA FOR 36 MONTHS FOLLOWING DEPARTMENT APPROVAL OF CERTAIN WATER AND WASTE SYSTEMS OR FACILITIES; AMENDING SECTIONS 75-5-212 AND 75-6-103, MCA; AND PROVIDING AN EFFECTIVE DATE 2143

512 *(House Bill No. 670; Eggers)* ESTABLISHING A STATE-TRIBAL ECONOMIC DEVELOPMENT COMMISSION THAT IS ADMINISTRATIVELY ATTACHED TO THE GOVERNOR'S OFFICE; SPECIFYING THE PURPOSE AND DUTIES OF THE COMMISSION; ESTABLISHING SPECIAL REVENUE ACCOUNTS AND PROVIDING AN APPROPRIATION TO THE COMMISSION; MANDATING AN ASSESSMENT OF ECONOMIC CONDITIONS ON INDIAN RESERVATIONS IN THE STATE; ENABLING THE MICROBUSINESS LOAN PROGRAM TO SERVE A QUALIFIED ORGANIZATION OPERATING ON AT LEAST FOUR INDIAN RESERVATIONS; FURTHER CLARIFYING THE RESPONSIBILITIES OF THE COMMERCE DEPARTMENT AND THE STATE COORDINATOR OF INDIAN AFFAIRS TO ASSIST TRIBES IN ECONOMIC DEVELOPMENT; REQUIRING THE COORDINATOR OF INDIAN AFFAIRS TO REPORT IN DETAIL AT EVERY MEETING OF A CERTAIN LEGISLATIVE INTERIM COMMITTEE THE ACTIONS TAKEN BY THE COMMISSION TO CARRY OUT ITS DUTIES; AMENDING SECTIONS 2-15-217, 17-6-406, 17-6-407, 17-6-408, 90-1-105, 90-9-202, AND 90-11-102, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE 2145

513 *(Senate Bill No. 166; Lynch)* REVISING COUNTY SHERIFF AND CITY POLICE RESPONSIBILITIES FOR HANDLING ABANDONED VEHICLES; PROVIDING FOR PAYMENT OF CERTAIN ABANDONED VEHICLE REMOVAL CHARGES FROM MOTOR VEHICLE DISPOSAL FEES, SUBJECT TO THE AVAILABILITY OF

HeinOnline -- 1999 vol. I lxxxii 1999

FUNDING; TRANSFERRING RESPONSIBILITY FOR DETERMINING VALUE OF A JUNK VEHICLE FROM THE STATE TO COUNTIES; AMENDING SECTIONS 61-12-401, 61-12-402, 61-12-403, 61-12-404, 75-10-503, AND 75-10-532, MCA; AND PROVIDING AN EFFECTIVE DATE 2155

514 *(Senate Bill No. 460; Ellis)* GENERALLY REVISING THE SCHOOL LAWS; ESTABLICHING THE FIRST TUESDAY AFTER THE FIRST MONDAY IN MAY AS THE REGULAR SCHOOL ELECTION AND TRUSTEE ELECTION DATE; LIMITING A SCHOOL DISTRICT TO ONE LEVY ELECTION IN A CALENDAR YEAR; ADJUSTING CERTAIN MEETING AND REPORTING DATES TO CONFORM WITH THE MAY ELECTION DATE; CLARIFYING TEACHER NOTICE AND HEARING TIME LIMIT PROVISIONS; REQUIRING A DISTRICT WHOSE BUDGET EXCEEDS THE MAXIMUM AND THAT LOSES ANB TO REDUCE ITS CURRENT GENERAL FUND BUDGET BY THE PERCENTAGE OF ANB DECREASE; AMENDING SECTIONS 13-1-104, 20-3-304, 20-3-305, 20-3-321, 20-4-207, 20-9-308, 20-9-353, 20-20-105, AND 20-20-401, MCA; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE 2158

515 *(House Bill No. 540; Grinde)* REVISING THE TAXATION OF CERTAIN VEHICLES; REPLACING THE CURRENT SYSTEM OF TAXATION OF AUTOMOBILES, VANS, SPORT UTILITY VEHICLES, AND LIGHT TRUCKS WITH A REGISTRATION FEE ON LIGHT VEHICLES; ALLOWING THE OWNER OF A LIGHT VEHICLE TO REGISTER THE VEHICLE FOR A 24-MONTH PERIOD; ALLOWING VEHICLES, INCLUDING MOTORCYCLES AND QUADRICYCLES, 11 YEARS OLD AND OLDER TO BE PERMANENTLY REGISTERED; REVISING THE FEE IN LIEU OF TAX ON MOTORCYCLES AND QUADRICYCLES; PROVIDING FOR DISTRIBUTION OF THE REGISTRATION FEE; REPEALING THE SALES TAX ON NEW MOTOR VEHICLES; ALLOWING A COUNTY TO IMPOSE A LOCAL OPTION FEE ON MOTOR VEHICLES WITH VOTER APPROVAL; PROVIDING THAT THE PROPOSED ACT BE SUBMITTED TO THE QUALIFIED ELECTORS OF MONTANA; AMENDING SECTIONS 7-1-2111, 15-6-201, 15-6-215, 15-8-202, 15-24-301, 15-24-302, 15-30-121, 15-50-207, 15-70-101, 15-70-125, 20-9-141, 20-9-331, 20-9-333, 20-9-360, 20-9-501, 20-10-144, 20-10-146, 27-1-306, 61-3-101, 61-3-301, 61-3-303, 61-3-314, 61-3-315, 61-3-316, 61-3-317, 61-3-332, 61-3-431, 61-3-456, 61-3-503, 61-3-506, 61-3-509, 61-3-520, 61-3-527, 61-3-537, 61-3-701, 61-3-707, 61-3-736, 61-3-737, 61-3-738, 61-4-112, AND 61-10-231, MCA; REPEALING SECTIONS 61-3-502, 61-3-504, AND 61-3-605, MCA; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE . 2169

516 *(Senate Bill No. 23; F. Thomas)* SUBMITTING TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE VIII, SECTION 13, OF THE MONTANA CONSTITUTION REGARDING INVESTMENT OF STATE COMPENSATION INSURANCE FUND ASSETS; AND PROVIDING AN EFFECTIVE DATE 2209

517 *(House Bill No. 11; McCann)* APPROPRIATING MONEY TO THE DEPARTMENT OF COMMERCE FOR FINANCIAL ASSISTANCE TO LOCAL GOVERNMENT INFRASTRUCTURE PROJECTS UNDER THE TREASURE STATE ENDOWMENT PROGRAM; AUTHORIZING GRANTS FROM THE TREASURE STATE ENDOWMENT SPECIAL REVENUE ACCOUNT; PLACING CONDITIONS UPON GRANTS; AND PROVIDING EFFECTIVE DATE 2210

518 *(House Bill No. 14; Johnson)* AUTHORIZING THE CREATION OF STATE DEBT THROUGH THE ISSUANCE OF GENERAL OBLIGATION BONDS; APPROPRIATING THE PROCEEDS OF THE

HeinOnline -- 1999 vol. I lxxxiii 1999

BONDS FOR CAPITAL PROJECTS FOR THE BIENNIUM ENDING JUNE 30, 2001; PROVIDING FOR MATTERS RELATING TO APPROPRIATIONS; AMENDING SECTION 17-7-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE 2215

519 *(House Bill No. 15; Zook)* AUTHORIZING THE CREATION OF STATE DEBT THROUGH THE ISSUANCE OF GENERAL OBLIGATION BONDS; APPROPRIATING THE PROCEEDS OF THE BONDS FOR INFORMATION TECHNOLOGY PROJECTS FOR THE BIENNIUM ENDING JUNE 30, 2001; PROVIDING FOR DEBT SERVICE PAYMENTS FROM THE GENERAL FUND; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2219

520 *(House Bill No. 129; Stovall)* REVISING THE LAWS PERTAINING TO HIGHWAY HAZARDS, AUTHORIZED EMERGENCY VEHICLES, AND EMERGENCY SERVICE VEHICLES, INCLUDING COMMERCIAL TOW TRUCKS; PROVIDING LOCAL EMERGENCY RESPONSE AUTHORITIES WITH IMMUNITY; DEFINING THE TERM "INCIDENT COMMANDER"; PROVIDING CERTAIN PERSONS IMMUNITY FROM LIABILITIES ARISING FROM A MOTORIST VIOLATING PROVISIONS REGARDING SLOWING DOWN AT THE SCENE OF A HIGHWAY HAZARD; PROVIDING A PENALTY FOR VIOLATING HIGHWAY WARNING SIGNS POSTED AT A HAZARD ON THE HIGHWAY; AND AMENDING SECTIONS 10-3-111, 10-3-1203, 10-3-1216, 10-3-1217, 61-9-402, AND 61-9-416, MCA 2221

521 *(House Bill No. 302; Krenzler)* REQUIRING ALL INTEREST EARNED ON DEVELOPMENT LOANS TO MICROBUSINESS DEVELOPMENT CORPORATIONS TO BE DEPOSITED INTO THE MICROBUSINESS FINANCE PROGRAM ADMINISTRATIVE ACCOUNT; ALLOWING A MICROBUSINESS DEVELOPMENT CORPORATION TO CHOOSE THE INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT FOR ITS ANNUAL AUDIT; CLARIFYING THAT THE DEPARTMENT OF COMMERCE HAS A FIRST LIEN ON ALL FUNDS AND RECEIVABLES OF A MICROBUSINESS DEVELOPMENT CORPORATION RECEIVING A DEVELOPMENT LOAN; AND AMENDING SECTION 17-6-407, MCA 2227

522 *(House Bill No. 341; Lenhart)* PROHIBITING OIL OR GAS EXPLORATION AND DEVELOPMENT IN MAKOSHIKA STATE PARK FROM DISTURBING THE SURFACE OF THE STATE PARK; ALLOWING OIL AND GAS DEVELOPMENT IN CERTAIN INSTANCES; AMENDING SECTION 82-11-127, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2230

523 *(House Bill No. 374; Hurdle)* REQUIRING THAT THE DISTRICT COURT HOLD A HEARING BEFORE MAKING ITS DECISION THAT A YOUTH SHOULD BE TRIED AS AN ADULT; AROLISHING THE DEATH PENALTY FOR OFFENDERS LESS THAN 18 YEARS OF AGE AT THE TIME OF THE COMMISSION OF A CAPITAL OFFENSE; AND AMENDING SECTIONS 41-5-206, 41-5-1501, 45-5-102, AND 45-5-503, MCA 2231

524 *(House Bill No. 420; Dale)* REVISING THE DEFINITION OF "RECEIPTS RECEIVED" TO INCLUDE TRANSPORTATION COSTS AS A DEDUCTION FOR THE PURPOSES OF DETERMINING THE GROSS PROCEEDS TAX OF METAL MINES AND THE METALLIFEROUS MINES LICENSE TAX; AMENDING SECTION 15-23-801, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 2235

HeinOnline -- 1999 vol. I lxxxiv 1999

525 *(House Bill No. 478; Golie)* ALLOWING THE FISH, WILDLIFE, AND PARKS COMMISSION TO SET THE NUMBER OF NONRESIDENT UPLAND GAME BIRD LICENSES SOLD IF CERTAIN CONDITIONS ARE MET; PROVIDING THAT THE LICENSES MAY BE AWARDED THROUGH A DRAWING; ALLOWING THE COMMISSION TO DEVELOP RULES FOR GROUP LICENSE APPLICATIONS; INCREASING THE LICENSE FEE TO $110; AMENDING SECTION 87-2-402, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND A TERMINATION DATE 2236

526 *(House Bill No. 506; Sliter)* PROVIDING CONSUMERS CLEARER CHOICE IN AUTO GLASS INSTALLATION AND OTHER REPAIRS BY CLARIFYING WHAT INFORMATION AN INSURER MAY GIVE AN INSURED OR CLAIMANT; MAKING THE DIRECTING OF CONSUMERS BY INSURERS TO PARTICULAR AUTOMOBILE REPAIR BUSINESSES AN UNFAIR TRADE PRACTICE; PROHIBITING CERTAIN PERSONS FROM PROCESSING AUTO GLASS AND OTHER REPAIR CLAIMS; PROHIBITING DISCRIMINATION AGAINST INSURED CUSTOMERS FOR AUTOMOBILE GLASS REPLACEMENT SERVICES; PROVIDING FOR INJUNCTIONS AGAINST PROHIBITED PRACTICES; AND AMENDING SECTIONS 30-14-225, 33-18-221, 33-18-222, 33-18-223, 33-18-224, AND 33-18-1006, MCA 2237

527 *(House Bill No. 528; Juneau)* IMPLEMENTING ARTICLE X, SECTION 1(2), OF THE MONTANA CONSTITUTION REGARDING THE STATE OF MONTANA'S RECOGNITION OF THE DISTINCT AND UNIQUE CULTURAL HERITAGE OF AMERICAN INDIANS AND THE STATE'S COMMITMENT TO ESTABLISH EDUCATIONAL GOALS THAT WILL PRESERVE THE CULTURAL INTEGRITY OF AMERICAN INDIANS; REPEALING SECTIONS 20-4-211, 20-4-212, 20-4-213, AND 20-4-214, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2242

528 *(House Bill No. 536; Kasten)* ESTABLISHING A FIXED ANNUAL ASSESSMENT AMOUNT FOR THE MONTANA COMPREHENSIVE HEALTH ASSOCIATION; AUTHORIZING THE ASSOCIATION TO ABATE ASSESSMENTS; ALLOWING THE ASSOCIATION TO BORROW FROM THE BOARD OF INVESTMENTS; ALLOCATING FUNDS FROM TOBACCO SETTLEMENT PROCEEDS TO SUPPORT THE ASSOCIATION'S HEALTH INSURANCE PLANS; REQUIRING HEALTH MAINTENANCE ORGANIZATIONS TO BE MEMBERS OF THE ASSOCIATION; PROVIDING FOR A SEMIANNUAL REPORT TO THE LEGISLATIVE FINANCE COMMITTEE; AMENDING SECTIONS 33-22-1503, 33-22-1504, 33-22-1513, AND 33-22-1514, MCA; AND PROVIDING EFFECTIVE DATES 2244

529 *(House Bill No. 647; Raney)* CREATING THE BULL TROUT AND CUTTHROAT TROUT ENHANCEMENT PROGRAM; PROVIDING FOR THE ENHANCEMENT OF MONTANA BULL TROUT AND CUTTHROAT TROUT POPULATIONS THROUGH VOLUNTARY ENHANCEMENT OF SPAWNING AREAS AND OTHER HABITATS FOR THE NATURAL REPRODUCTION OF BULL TROUT AND CUTTHROAT TROUT; DIRECTING THAT A PORTION OF FUNDING FROM VARIOUS SOURCES, INCLUDING FUNDS APPROPRIATED OR AVAILABLE TO THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS AND FROM THE INTEREST ON THE RESOURCE INDEMNITY TRUST FUND, BE USED TO FUND THE BULL TROUT AND CUTTHROAT TROUT ENHANCEMENT PROGRAM; DIRECTING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO ADMINISTER THE PROGRAM; APPROPRIATING FUNDS FOR THE ENHANCEMENT PROGRAM; REVISING THE MEMBERSHIP

HeinOnline -- 1999 vol. I lxxxv 1999

OF THE FUTURE FISHERIES REVIEW PANEL AND EXTENDING THE TERMINATION DATE OF THE FUTURE FISHERIES IMPROVEMENT PROGRAM; AMENDING SECTIONS 15-38-202 AND 87-1-273, MCA, AND SECTION 5, CHAPTER 463, LAWS OF 1995; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE . . 2249

530 *(House Bill No. 661; Rehbein)* REVISING THE TAXATION OF OIL PRODUCTION PRODUCED FROM A STRIPPER WELL; REVISING THE DEFINITION OF "STRIPPER OIL"; REDUCING THE TAX RATE ON CERTAIN STRIPPER OIL PRODUCTION; CLARIFYING THE REQUIREMENTS FOR REPORTING OIL AND NATURAL GAS PRODUCTION FROM PRE-1985 WELLS AND POST-1985 WELLS; AMENDING SECTIONS 15-36-303, 15-36-304, 15-36-311, AND 15-36-324, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 2254

531 *(House Bill No. 669; Story)* REVISING AND CLARIFYING THE VALUATION OF RAILROAD TRANSPORTATION PROPERTY FOR THE PURPOSES OF PROPERTY TAXATION; SPECIFYING THE METHODS TO BE USED BY THE DEPARTMENT OF REVENUE IN THE VALUATION OF RAILROAD TRANSPORTATION PROPERTY; PROVIDING DEFINITIONS; AMENDING SECTIONS 15-8-111, 15-23-101, AND 15-23-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE . 2266

532 *(Senate Bill No. 54; Halligan)* GENERALLY REVISING THE YOUTH COURT ACT; GRANTING GREATER AUTHORITY OVER CERTAIN JUVENILES TO THE DISTRICT COURT; GRANTING THE DEPARTMENT OF CORRECTIONS AUTHORITY TO DETERMINE AN EMERGENCY CAPACITY FOR STATE YOUTH CORRECTIONAL FACILITIES AND SYSTEMS; CREATING THE CRIMINALLY CONVICTED YOUTH ACT GRANTING ADDITIONAL DUE PROCESS TO JUVENILE CRIMINAL OFFENDERS; AMENDING SECTIONS 41-5-103, 41-5-121, 41-5-206, 41-5-332, 41-5-348, 41-5-1301, 41-5-1302, 41-5-1415, 41-5-1501, 41-5-1503, 41-5-1513, 41-5-1803, 46-24-211, AND 52-5-129, MCA 2270

533 *(Senate Bill No. 59; Wells)* GENERALLY REVISING FISH AND GAME LICENSING STATUTES; AUTHORIZING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO ESTABLISH HUNTING LICENSE PREFERENCE SYSTEMS; CLARIFYING WHEN A 12-YEAR-OLD PERSON MAY HUNT; ESTABLISHING ADDITIONAL APPLICATION FEES APPLICABLE TO RESIDENT AND NONRESIDENT HUNTING LICENSE APPLICANTS WHO CHOOSE TO PARTICIPATE IN A COMMISSION-ADOPTED PREFERENCE SYSTEM; ALLOWING A NONRESIDENT TO PAY $25 TO PARTICIPATE IN A PREFERENCE SYSTEM FOR DEER AND ELK PERMITS; AMENDING SECTIONS 87-1-301, 87-2-113, 87-2-401, 87-2-402, 87-2-404, 87-2-501, 87-2-504, 87-2-505, 87-2-507, 87-2-508, 87-2-510, 87-2-701, AND 87-2-711, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE 2285

534 *(Senate Bill No. 172; Waterman)* AUTHORIZING A 20 PERCENT TELEPHONE COMPANY LICENSE TAX CREDIT FOR ACCELERATED DEPLOYMENT OF ADVANCED TELECOMMUNICATIONS INFRASTRUCTURE IMPROVEMENTS; PROVIDING FOR A COMPETITIVE ADVANCED TELECOMMUNICATIONS INFRASTRUCTURE GRANT PROCESS; AND PROVIDING A DELAYED EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE 2294

535 *(Senate Bill No. 192; Bohlinger)* CLARIFYING THAT INTERNET ACCESS SERVICES ARE NOT TAXABLE UNDER THE LICENSE TAX

ON TELEPHONE COMPANIES; AMENDING SECTION 15-53-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND A CONTINGENT TERMINATION DATE 2297

536 *(Senate Bill No. 199; Christiaens)* REQUIRING A YOUTH DETENTION FACILITY TO PROVIDE AN EDUCATIONAL PROGRAM FOR YOUTH HELD IN THE FACILITY; ALLOWING A YOUTH DETENTION CENTER TO CONTRACT WITH A SCHOOL DISTRICT TO PROVIDE THE EDUCATIONAL PROGRAM; ESTABLISHING A METHOD OF FUNDING THE EDUCATIONAL PROGRAM; AMENDING SECTIONS 7-6-501, 41-5-1802, 41-5-1803, 41-5-1804, AND 41-5-1807, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2298

537 *(Senate Bill No. 243; F. Thomas)* PROVIDING THAT IF A YOUTH IS PROSECUTED IN YOUTH COURT AND LATER TRANSFERRED TO DISTRICT COURT, THE YOUTH MAY NOT BE SENTENCED TO AN ADULT CORRECTIONAL FACILITY; REVISING THE PURPOSE OF THE YOUTH COURT ACT; REVISING THE EXTENDED JURISDICTION PROSECUTION ACT; PROVIDING THAT THE ACT DOES NOT APPLY TO CERTAIN OFFENSES; PROVIDING THAT THE COMBINED TIME OF SENTENCE UNDER AN EXTENDED JURISDICTION PROSECUTION MAY NOT EXCEED THE TIME OF IMPRISONMENT THAT AN ADULT COULD RECEIVE UNDER AN ADULT PROSECUTION; PROVIDING THAT PLACEMENT WITH THE DEPARTMENT OF CORRECTIONS CANNOT EXCEED THAT AMOUNT OF TIME THAT AN ADULT CAN BE SENTENCED TO THE DEPARTMENT; CLARIFYING THAT A SENTENCE UNDER THE EXTENDED JURISDICTION PROSECUTION ACT IS A SINGLE SENTENCE; AMENDING SECTIONS 41-5-102, 41-5-206, 41-5-208, 41-5-1602, 41-5-1604, AND 41-5-1605, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2301

538 *(Senate Bill No. 265; Grimes)* PROVIDING FOR EXPLORATION INCENTIVE CREDITS FOR ACTIVITIES INVOLVING EXPLORATION FOR MINERAL AND COAL DEPOSITS IN THE STATE; PROVIDING A TAX DEDUCTION FOR DONATED EXPLORATION INFORMATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 2307

539 *(Senate Bill No. 274; Wilson)* EXEMPTING SPACE VEHICLES AND BUSINESS PERSONAL PROPERTY USED TO DESIGN, MANUFACTURE, AND LAUNCH SPACE VEHICLES FROM PROPERTY TAXATION; AMENDING SECTION 15-6-201, MCA; AND PROVIDING AN APPLICABILITY DATE 2312

540 *(Senate Bill No. 305; F. Thomas)* PROHIBITING A REQUIREMENT FOR PROJECT LABOR AGREEMENTS AND OTHER TYPES OF PREHIRE AGREEMENTS ON PUBLIC WORKS CONTRACTS 2315

541 *(Senate Bill No. 306; Grimes)* REVISING THE SHOWING REQUIRED IN AN AFFIDAVIT IN SUPPORT OF A MOTION FOR AN INTERIM PARENTING PLAN; AMENDING SECTION 40-4-220, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2315

542 *(Senate Bill No. 333; Swysgood)* GENERALLY REVISING LAWS CONCERNING PAVED SECONDARY ROADS; REVISING THE APPORTIONMENT TO DISTRICTS OF CAPITAL CONSTRUCTION FUNDS FOR SECONDARY ROADS; REVISING THE FUNDING DISTRIBUTION FORMULA; ESTABLISHING A PRIORITIZATION PROCESS FOR CAPITAL CONSTRUCTION PROJECTS; REQUIRING THE DEPARTMENT OF TRANSPORTATION TO ASSUME MAINTENANCE RESPONSIBILITY FOR PAVED SECONDARY

HeinOnline -- 1999 vol. I lxxxvii 1999

ROADS; AMENDING SECTIONS 60-2-203, 60-2-204, AND 60-3-206, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2316

543 *(Senate Bill No. 334; Mesaros)* REVISING LAWS RELATED TO OUTFITTERS; REVISING THE MEMBERSHIP AND APPOINTMENT PROCEDURES OF THE BOARD OF OUTFITTERS; DEFINING "NET CLIENT HUNTER USE" AND ESTABLISHING CRITERIA TO BE APPLIED BY THE BOARD OF OUTFITTERS AND THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS IN DETERMINING WHETHER AN EXPANSION OF NET CLIENT HUNTER USE IS ALLOWABLE; PROVIDING ADDITIONAL DEFINITIONS; ESTABLISHING FEES; PROVIDING FOR ALLOCATION OF THE REVENUE GENERATED BY THE FEES; AMENDING SECTIONS 2-15-1833, 37-47-101, 37-47-201, AND 37-47-306, MCA; AND PROVIDING EFFECTIVE DATES 2318

544 *(Senate Bill No. 338; Mesaros)* REVISING THE HUNTER MANAGEMENT AND HUNTING ACCESS ENHANCEMENT MANAGEMENT PROGRAMS; EXTENDING THE TERMINATION DATE REGARDING THOSE PROGRAMS AND EXTENDING THE MORATORIUM ON LICENSING OF NEW OUTFITTERS; CAPPING THE NUMBER OF AVAILABLE LAND-BASED HUNTING OUTFITTER LICENSES; REVISING THE ADVISORY AUTHORITY OF THE PROGRAM REVIEW COMMITTEE; INCREASING THE COST OF NONRESIDENT UPLAND GAME BIRD LICENSES AND PROVIDING THAT THE FEE INCREASE BE USED BY THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO ENCOURAGE PUBLIC ACCESS TO PRIVATE LANDS FOR HUNTING PURPOSES; PROVIDING THAT THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS ISSUE UP TO TWO RESIDENT-SPONSORED CLASS B-11 LICENSES TO TWO APPLICANTS SPONSORED BY ANY RESIDENT LANDOWNER WHO OWNS 640 OR MORE CONTIGUOUS ACRES AND REQUESTS THE LICENSES AS A RESIDENT SPONSOR; AMENDING SECTIONS 37-47-315, 87-1-269, 87-2-402, AND 87-2-511, MCA; AMENDING SECTION 18, CHAPTER 459, LAWS OF 1995; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE . . 2326

545 *(Senate Bill No. 372; Halligan)* REVISING CERTAIN LAWS RELATING TO TERMINATION OF MARRIAGE, SEPARATION, AND CHILD CUSTODY; PROVIDING THAT FEES FOR FILING AN AMENDMENT TO FINAL PARENTING PLANS MAY NOT BE COLLECTED IF THE AMENDMENT IS NOT CONTESTED; PROVIDING THAT THE CLERK OF COURT NEED NOT KEEP SOCIAL SECURITY NUMBERS CONFIDENTIAL, UNLESS REQUESTED; PROVIDING THAT PARENTING PLANS BE KEPT CONFIDENTIAL ONLY UPON REQUEST; REVISING ASSET CRITERIA FOR SUMMARY DISSOLUTION PROCEDURES; ALLOWING PARTIES TO WAIVE EXCHANGE OF PRELIMINARY DISCLOSURE STATEMENTS; AMENDING SECTIONS 25-1-201, 40-4-105, 40-4-130, 40-4-204, 40-4-234, AND 40-4-252, MCA; AND PROVIDING AN EFFECTIVE DATE 2330

546 *(Senate Bill No. 421; Mahlum)* CREATING THE SCENIC-HISTORIC BYWAYS PROGRAM; OUTLINING THE DUTIES OF THE ADVISORY COUNCIL; REQUIRING THE DEPARTMENT OF TRANSPORTATION TO ADOPT RULES REGARDING APPLICATION FORMS, PROCEDURES, AND CRITERIA THAT WILL BE USED TO DETERMINE ELIGIBILITY FOR PARTICIPATION IN THE SCENIC-HISTORIC BYWAYS PROGRAM; AMENDING SECTION 60-1-103, MCA; AND PROVIDING EFFECTIVE DATES 2342

HeinOnline -- 1999 vol. I lxxxviii 1999

547 *(Senate Bill No. 424; Cocchiarella)* EXPANDING THE HOUSEHOLD INCOME THRESHOLD FOR ELIGIBILITY FOR THE ELDERLY HOMEOWNER AND RENTER PROPERTY TAX CREDIT; PHASING OUT THE CREDIT FOR CLAIMANTS WHOSE INCOME IS $35,000 OR MORE; PROVIDING THAT THE CREDIT MAY NOT BE CLAIMED BY A PERSON WHOSE HOUSEHOLD INCOME IS $45,000 OR MORE; AMENDING SECTIONS 15-30-171, 15-30-172, AND 15-30-176, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 2346

548 *(Senate Bill No. 429; Shea)* EXEMPTING FROM LOCAL SUBDIVISION REGULATION CERTAIN LEASES OR RENTALS OF AIRPORT-RELATED LAND BY A CITY, COUNTY, STATE AGENCY, OR AIRPORT AUTHORITY; AND AMENDING SECTION 76-3-205, MCA 2349

549 *(Senate Bill No. 430; Roush)* CLARIFYING THAT FEES RECEIVED BY AN OIL PRODUCER OR OPERATOR TO ADMINISTER ROYALTY PAYMENTS DOES NOT CONSTITUTE VALUE OF OIL PRODUCTION FOR TAX PURPOSES; AMENDING SECTION 15-36-305, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 2349

550 *(Senate Bill No. 454; T. Beck)* REQUIRING A STATE PAYMENT TO POWELL COUNTY FOR LAND ON WHICH THE STATE CONDUCTS A FARMING OR RANCHING OPERATION; REQUIRING THE INTERIM LOCAL GOVERNMENT FUNDING AND STRUCTURE COMMITTEE TO CONDUCT A REVIEW OF STATE PAYMENTS IN LIEU OF TAXES; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE 2350

551 *(Senate Bill No. 487; Roush)* CLARIFYING THAT SKIDABLE, PORTABLE, OR MOVABLE OIL FIELD EQUIPMENT IS CLASS EIGHT EQUIPMENT; AMENDING SECTION 15-6-138, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE 2351

552 *(Senate Bill No. 492; Grosfield)* ALLOCATING THE RESOURCE INDEMNITY AND GROUND WATER ASSESSMENT TAX PROCEEDS TO MINERAL DEVELOPMENT RECLAMATION PROJECTS WHEN THE BALANCE IN THE RESOURCE INDEMNITY TRUST TOTALS $100 MILLION; REVISING THE DISTRIBUTION OF RESOURCE INDEMNITY AND GROUND WATER ASSESSMENT PROCEEDS; REQUIRING RECLAMATION AND DEVELOPMENT GRANT PRIORITIZATION FOR RECLAMATION PROJECTS; AMENDING SECTIONS 7-6-2225, 7-6-2226, 15-37-117, 15-38-106, 20-9-231, 85-1-604, 85-2-905, 90-2-1104, 90-2-1112, AND 90-2-1113, MCA; AND PROVIDING EFFECTIVE DATES 2352

553 *(Senate Bill No. 500; Berry)* INCREASING FROM 4 PERCENT TO 10 PERCENT OF TAXABLE VALUATION THE MAXIMUM AMOUNT THAT MAY BE MAINTAINED BY A CITY OR TOWN BY USE OF A SPECIAL TAX IN A FIRE DEPARTMENT DISABILITY AND PENSION FUND; PROVIDING FOR SUBMITTING A TAX INCREASE TO THE ELECTORATE OF CITIES AND TOWNS UNDER CERTAIN CONDITIONS; AMENDING SECTIONS 19-18-503 AND 19-18-504, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE 2360

554 *(Senate Bill No. 530; Bishop)* GENERALLY REVISING THE TAXATION OF OIL AND NATURAL GAS PRODUCTION; REVISING THE DEFINITION OF "QUALIFYING PRODUCTION" AND DEFINITIONS RELATED TO WELLS; SHORTENING THE TIME PERIOD FOR LOWER TAX RATES FOR QUALIFYING PRODUCTION; REVISING

HeinOnline -- 1999 vol. I lxxxix 1999

TAX RATES APPLIED TO OIL AND NATURAL GAS PRODUCTION; PROVIDING A TAX INCENTIVE FOR HORIZONTALLY COMPLETED NATURAL GAS WELLS; ESTABLISHING UNIFORM TAX RATES FOR NONWORKING INTEREST OWNERS; REVISING THE DISTRIBUTION OF OIL AND GAS PRODUCTION TAXES; PROVIDING A 1-YEAR PHASEIN OF CERTAIN PROVISIONS; AMENDING SECTIONS 15-36-303, 15-36-304, 15-36-324, 15-36-326, 17-7-502, 20-9-104, 20-9-161, 20-9-331, 20-9-333, 20-9-501, AND 20-9-507, MCA; REPEALING SECTIONS 15-36-323 AND 15-36-325, MCA; AND PROVIDING EFFECTIVE DATES, APPLICABILITY DATES, AND A TERMINATION DATE 2361

555 *(Senate Bill No. 532; McNutt)* EXEMPTING BUSINESS PERSONAL PROPERTY AND LIVESTOCK USED BY AN INDUSTRIAL DAIRY FROM PROPERTY TAXATION; EXEMPTING BUSINESS PERSONAL PROPERTY USED BY AN INDUSTRIAL MILK PROCESSOR FROM PROPERTY TAXATION; DEFINING "INDUSTRIAL DAIRY" AND "INDUSTRIAL MILK PROCESSOR"; PROVIDING THAT MILK AND MILK PRODUCTS PROCESSED BY AN INDUSTRIAL DAIRY OR AN INDUSTRIAL MILK PROCESSOR BE FOR EXPORT FROM THE STATE; AMENDING SECTIONS 15-6-136, 15-6-138, AND 15-6-201, MCA; AND PROVIDING AN APPLICABILITY DATE 2393

556 *(House Bill No. 174; Hibbard)* GENERALLY REVISING THE TAXATION OF ELECTRICAL GENERATION FACILITIES TO COMPORT WITH THE EMERGING COMPETITIVE MARKETS IN THE SUPPLY OF ELECTRICITY; CREATING CLASS THIRTEEN PROPERTY TO INCLUDE ELECTRICAL GENERATION FACILITIES; PROVIDING A DEFINITION OF "ELECTRICAL GENERATION FACILITIES"; PROVIDING AN EXCEPTION FOR QUALIFYING SMALL POWER PRODUCTION FACILITIES; TAXING ALL ELECTRICAL GENERATION FACILITIES THAT WERE PREVIOUSLY TAXED UNDER CLASS NINE AS CLASS THIRTEEN PROPERTY; TAXING CLASS THIRTEEN PROPERTY AT 6 PERCENT OF ITS MARKET VALUE; IMPOSING A 0.015 CENT PER KILOWATT-HOUR WHOLESALE ENERGY TRANSACTION TAX ON THE TRANSMISSION OF ELECTRICITY IN THE STATE; PROVIDING EXEMPTIONS FROM THE WHOLESALE ENERGY TRANSACTION TAX; ALLOWING THE ELECTRIC ENERGY PRODUCERS' LICENSE TAX TO BE ITEMIZED ON A CUSTOMER'S BILL; PROVIDING FOR THE DISTRIBUTION OF WHOLESALE ENERGY TRANSACTION TAX REVENUE TO TAXING JURISDICTIONS; PROVIDING A STATUTORY APPROPRIATION FOR THE DISTRIBUTION OF TAX REVENUE TO TAXING JURISDICTIONS; REVISING THE CLASSIFICATION OF COUNTIES; REVISING THE DEBT LIMITS OF TAXING JURISDICTIONS; AMENDING SECTIONS 7-1-2111, 7-7-107, 7-7-2101, 7-7-2203, 7-7-4201, 7-7-4202, 7-14-2524, 7-14-2525, 7-16-2327, 7-16-4104, 15-6-141, 15-51-102, 17-7-502, 20-9-406, AND 69-8-211, MCA; AND PROVIDING EFFECTIVE DATES, APPLICABILITY DATES, AND A TERMINATION DATE . . 2398

557 *(House Bill No. 5; McCann)* APPROPRIATING MONEY FOR CAPITAL PROJECTS FOR THE BIENNIUM ENDING JUNE 30, 2001; PROVIDING FOR OTHER MATTERS RELATING TO THE APPROPRIATIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2419

558 *(House Bill No. 13; Johnson)* PROVIDING FOR PAY AND BENEFITS FOR STATE EMPLOYEES IN THE STATEWIDE AND BLUE-COLLAR PAY PLANS; INCREASING THE LONGEVITY ALLOWANCE AT THE 15- AND 20-YEAR INCREMENTS; REVISING THE MILEAGE

REIMBURSEMENT RATE; INCREASING THE STATE CONTRIBUTION TO THE EMPLOYEE GROUP BENEFIT PROGRAM; DIRECTING THE DEPARTMENT OF ADMINISTRATION TO DEVELOP AND IMPLEMENT AN ALTERNATIVE PAY AND CLASSIFICATION PLAN THROUGH DEMONSTRATION PROJECTS FOR CERTAIN CLASSES, OCCUPATIONS, AND WORK UNITS; PROVIDING FOR PAY INCREASES FOR LEGISLATORS; PROVIDING HEALTH INSURANCE BENEFITS FOR LEGISLATORS WHO ARE INVOLUNTARILY TERMINATED FROM LEGISLATIVE SERVICE BECAUSE OF TERM LIMITS; PROVIDING APPROPRIATIONS; AMENDING SECTIONS 2-18-101, 2-18-301, 2-18-303, 2-18-304, 2-18-312, 2-18-313, 2-18-315, 2-18-503, 2-18-703, AND 5-2-301, MCA; AND PROVIDING EFFECTIVE DATES AND A RETROACTIVE APPLICABILITY DATE 2425

559 *(House Bill No. 20; Kitzenberg)* ESTABLISHING A MULTISPECIES FISH HATCHERY NEAR FORT PECK DAM; CREATING THE WARM WATER GAME FISH SURCHARGE AND WARM WATER GAME FISH STAMP THAT WILL ALLOW A LICENSEE TO FISH IN DESIGNATED WATERS FOR WARM WATER GAME FISH; DEDICATING SURCHARGE REVENUE; CREATING ACCOUNTS AND PROVIDING FOR ADMINISTRATION OF THE ACCOUNTS BY THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS; PROHIBITING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS FROM USING FOR THE HATCHERY MORE MONEY THAN IS IN THE ACCOUNTS ESTABLISHED FOR THE HATCHERY; AND PROVIDING A CONTINGENT VOIDNESS PROVISION 2445

560 *(House Bill No. 57; Mercer)* AUTHORIZING THE UNIVERSITY SYSTEM TO ELECT WORKERS' COMPENSATION UNDER PLAN NO. 1, PLAN NO. 2, OR PLAN NO. 3 TO IMPROVE HIGHER EDUCATION QUALITY FOR STUDENTS BY CONTROLLING COSTS AND UTILIZING SAVINGS; AMENDING SECTION 39-71-403, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE 2447

561 *(House Bill No. 90; Hagener)* AUTHORIZING A SCHOOL DISTRICT TO ANTICIPATE THE AMOUNT OF CERTAIN NONLEVY REVENUE FOR COMPUTATION OF THE GENERAL FUND LEVY REQUIREMENT; CLARIFYING THE TAXABLE VALUATION USED TO CALCULATE THE NUMBER OF MILLS LEVIED; AUTHORIZING A DISTRICT TO IMPOSE A LEVY TO ELIMINATE ANY NEGATIVE FUND BALANCE AND RESTORE RESERVES TO THE PRIOR YEAR'S OPERATING RESERVE; AMENDING SECTION 20-9-141, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE 2449

562 *(House Bill No. 182; Ahner)* GENERALLY REVISING LAWS RELATING TO PURLIC RETIREMENT; PROVIDING FOR THE PURCHASE OF SERVICE FOR PERIODS OF ILLNESS OR INJURY BY MEMBERS OF THE HIGHWAY PATROL OFFICERS' RETIREMENT SYSTEM AND THE SHERIFFS' RETIREMENT SYSTEM; PROVIDING THAT A STATUTORY REVOCATION THROUGH DIVORCE OR CONTRACT OF THE DISPOSITION OF PROPERTY IS INAPPLICABLE TO FUNDS GOVERNED BY A RETIREMENT SYSTEM LAW; AMENDING SECTIONS 2-15-1009, 7-32-4132, 19-2-302, 19-2-303, 19-2-403, 19-2-404, 19-2-406, 19-2-407, 19-2-408, 19-2-503, 19-2-505, 19-2-506, 19-2-507, 19-2-602, 19-2-701, 19-2-703, 19-2-801, 19-2-802, 19-2-1101, 19-3-103, 19-3-201, 19-3-319, 19-3-401, 19-3-403, 19-3-412, 19-3-505, 19-3-509, 19-3-512, 19-3-521, 19-3-904, 19-3-1005, 19-3-1015, 19-3-1103, 19-3-1106, 19-3-1204, 19-3-1210, 19-3-1501, 19-3-1605, 19-5-102, 19-5-401, 19-5-503, 19-5-701, 19-5-802, 19-5-901, 19-6-102, 19-6-503, 19-6-505, 19-6-612,

HeinOnline -- 1999 vol. I xci 1999

19-6-709, 19-6-710, 19-6-801, 19-6-802, 19-6-803, 19-7-102, 19-7-402, 19-7-503, 19-7-711, 19-7-802, 19-7-804, 19-7-1001, 19-8-102, 19-8-501, 19-8-712, 19-8-801, 19-8-901, 19-8-902, 19-8-1002, 19-8-1105, 19-9-103, 19-9-405, 19-9-702, 19-9-703, 19-9-706, 19-9-1007, 19-9-1009, 19-9-1101, 19-9-1102, 19-13-103, 19-13-104, 19-13-404, 19-13-604, 19-13-605, 19-13-607, 19-13-704, 19-13-903, 19-13-1007, 19-13-1010, 19-17-102, 19-17-106, 19-17-108, 19-17-204, 19-19-201, 19-19-205, AND 72-2-814, MCA; REPEALING SECTION 19-9-401, MCA; AND PROVIDING AN EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE . 2451

563 *(House Bill No. 260; Mood)* ENCOURAGING ECONOMIC DEVELOPMENT THROUGH INVESTMENT IN RESEARCH AND COMMERCIALIZATION PROJECTS; ESTABLISHING A RESEARCH AND COMMERCIALIZATION EXPENDABLE TRUST FUND; ESTABLISHING A COAL PRODUCER'S LICENSE TAX; ALLOCATING COAL PRODUCER'S LICENSE TAX REVENUE; PROVIDING FOR A CREDIT AGAINST COAL SEVERANCE TAXES FOR COAL PRODUCER'S LICENSE TAXES PAID; STATUTORILY APPROPRIATING COAL PRODUCER'S LICENSE TAXES TO SUPPORT RESEARCH AND COMMERCIALIZATION CENTERS AND TO BE USED AS MATCHING FUNDS; AMENDING SECTIONS 17-5-703, 17-5-709, AND 17-7-502, MCA; AND PROVIDING AN EFFECTIVE DATE 2502

564 *(House Bill No. 310; Molnar)* ESTABLISHING DRUG-FREE AND CRIME-FREE SCHOOLS; REQUIRING THE YOUTH COURT TO NOTIFY A SCHOOL WHEN A JUVENILE PROBATION OFFICER HAS REASON TO BELIEVE THAT A YOUTH IS CURRENTLY INVOLVED IN DRUG USE OR OTHER CRIMINAL ACTIVITY BEARING ON THE SAFETY OF CHILDREN; AUTHORIZING A SCHOOL TO PROVIDE TO YOUTH COURT AND LAW ENFORCEMENT AUTHORITIES EDUCATION RECORDS THAT PERTAIN TO VIOLATIONS OF THE MONTANA YOUTH COURT ACT OR CRIMINAL LAWS BY PUPILS; AND AMENDING SECTIONS 41-5-215 AND 52-2-211, MCA 2513

565 *(House Bill No. 321; Fuchs)* REQUIRING THE DEPARTMENT OF COMMERCE TO INSPECT ELEVATORS, ESCALATORS, DUMBWAITERS, INCLUDING DUMBWAITERS WITH AUTOMATIC TRANSFER DEVICES, MOVING WALKS, MATERIAL LIFTS, WHEELCHAIR LIFTS, AND STAIRWAY CHAIRLIFTS TO ENSURE COMPLIANCE WITH THE STATE BUILDING CODE; EXCEPTING PRIVATE RESIDENCES AND FARM AND RANCH OPERATIONS FROM THE REQUIREMENT; AND AMENDING SECTIONS 50-60-701, 50-60-702, AND 50-60-703, MCA; AND PROVIDING AN EFFECTIVE DATE 2516

566 *(House Bill No. 366; Kasten)* REVISING THE LAWS GOVERNING CHILD PROTECTIVE SERVICES; IMPLEMENTING THE FEDERAL ADOPTION AND SAFE FAMILIES ACT; CLARIFYING WHEN EFFORTS MUST BE MADE TO REUNIFY CHILDREN WITH ABUSIVE PARENTS; CLARIFYING WHEN PARENTAL RIGHTS MAY BE JUDICIALLY TERMINATED; AND AMENDING SECTIONS 41-3-101, 41-3-102, 41-3-108, 41-3-202, 41-3-203, 41-3-205, 41-3-303, 41-3-401, 41-3-403, 41-3-404, 41-3-406, 41-3-412, 41-3-607, 41-3-609, 41-3-1103, AND 42-2-608, MCA 2518

567 *(House Bill No. 470; Kasten)* REVISING THE MAINTENANCE OF EFFORT NECESSARY TO DRAW DOWN THE TEMPORARY ASSISTANCE TO NEEDY FAMILIES BLOCK GRANT; APPROPRIATING UP TO $1 MILLION IN GENERAL FUND MONEY FOR THE MONTANA STATE HOSPITAL IN THE 2001 BIENNIUM FROM GENERAL FUND APPROPRIATIONS REVERTED IN FISCAL

HeinOnline -- 1999 vol. I xcii 1999

YEAR 1999; AMENDING SECTION 53-4-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2542

568 *(House Bill No. 533; Gallus)* ESTABLISHING A YOUTH COMBINATION SPORTS LICENSE TO ALLOW A RESIDENT MINOR TO FISH AND HUNT UPLAND AND MIGRATORY GAME BIRDS, DEER, AND ELK; PROVIDING PENALTIES FOR AN ADULT WHO USES A YOUTH COMBINATION SPORTS LICENSE; ALLOWING A RESIDENT MINOR TO FISH AND HUNT UPLAND AND MIGRATORY GAME BIRDS WITH ONLY A CONSERVATION LICENSE; AMENDING SECTIONS 87-2-411 AND 87-2-805, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND A TERMINATION DATE 2543

569 *(House Bill No. 626; Harper)* REDUCING POTENTIAL CONFLICTS BETWEEN RECREATIONAL USERS OF MONTANA WATERS BY REVISING CERTAIN LAWS ON MOTORBOAT AND PERSONAL WATERCRAFT OPERATION; REVISING THE RESTRICTION ON OPERATION OF A VESSEL IN PROXIMITY TO AN ANGLER, WATERFOWL HUNTER, OR DIVER; DESIGNATING CERTAIN RIVER STRETCHES AS NO-WAKE ZONES; PROHIBITING THE USE OF PERSONAL WATERCRAFT ON DESIGNATED RIVER STRETCHES AND ON WATERS RESTRICTED BY RULE OF THE FISH, WILDLIFE, AND PARKS COMMISSION; ALLOWING THE FISH, WILDLIFE, AND PARKS COMMISSION TO ADOPT RULES FOR THE OPERATION OF PERSONAL WATERCRAFT AND THE RESOLUTION OF CONFLICTS BETWEEN USERS OF MOTORIZED AND NONMOTORIZED BOATS ON MONTANA WATERS; AND AMENDING SECTIONS 23-2-525, 23-2-531, AND 87-1-303, MCA; AND PROVIDING AN EFFECTIVE DATE 2544

570 *(House Bill No. 648; Menahan)* REQUIRING THE DEPARTMENT OF JUSTICE TO ISSUE NEW NUMBER PLATES FOR MOTOR VEHICLES EVERY 4 YEARS BEGINNING JANUARY 1, 2000; AMENDING SECTION 61-3-332, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE 2547

571 *(Senate Bill No. 81; Harp)* ESTABLISHING THE CHILDREN'S HEALTH INSURANCE PROGRAM; PROHIBITING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES FROM USING FUNDS APPROPRIATED FOR THE PROGRAM TO EXPAND MEDICAID ELIGIBILITY CRITERIA; PROVIDING ELIGIBILITY CRITERIA; LISTING THE BENEFITS TO BE PROVIDED; ALLOWING THE DEPARTMENT TO ALTER ELIGIBILITY REQUIREMENTS IF FUNDING IS INSUFFICIENT; ALLOWING THE DEPARTMENT TO CONTRACT WITH INSURANCE PROVIDERS; ALLOWING THE DEPARTMENT TO ESTABLISH COST-SHARING MECHANISMS; PROVIDING RULEMAKING AUTHORITY AND GUIDELINES TO THE DEPARTMENT; ALLOWING DISCLOSURE OF INFORMATION NECESSARY FOR THE ADMINISTRATION OF THE PROGRAM; REQUIRING THAT RULES BE REVIEWED BY AN APPROPRIATE INTERIM COMMITTEE; REQUIRING THAT TOBACCO SETTLEMENT PROCEED FUNDS BE DEPOSITED INTO THE GENERAL FUND; APPROPRIATING TOBACCO SETTLEMENT PROCEEDS TO FUND THE PROGRAM; PROVIDING A CONTINGENT APPROPRIATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A CONTINGENT TERMINATION PROVISION 2552

572 *(Senate Bill No. 186; Wells)* REVISING THE PLACES INSIDE OF WHICH A CONCEALED WEAPON MAY NOT BE CARRIED; AND AMENDING SECTION 45-8-328, MCA 2555

HeinOnline -- 1999 vol. I xciii 1999

573 *(Senate Bill No. 271; M. Taylor)* PROVIDING LIMITS ON LIABILITY FOR EMPLOYERS WHO DISCLOSE INFORMATION ABOUT A FORMER OR CURRENT EMPLOYEE'S EMPLOYMENT-RELATED PERFORMANCE TO A PROSPECTIVE EMPLOYER; PROVIDING THAT AN EMPLOYER'S ANSWER TO A REQUEST FROM A DISCHARGED EMPLOYEE FOR THE REASONS FOR DISCHARGE MAY NOT LIMIT THE EMPLOYER'S RIGHT TO PRESENT A FULL DEFENSE IN ANY WRONGFUL DISCHARGE ACTION; AMENDING SECTION 39-2-801, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE 2556

574 *(Senate Bill No. 361; Mesaros)* REVISING DEFINITIONS AND TERMINOLOGY RELATED TO GAME FARMS AND GAME FARM ANIMALS TO MEAN ALTERNATIVE LIVESTOCK RANCHES AND ALTERNATIVE LIVESTOCK; INCREASING ANNUAL LICENSE RENEWAL FEES; REVISING LICENSING REQUIREMENTS, REQUIREMENTS FOR REMOVAL OF GAME ANIMALS FROM ALTERNATIVE LIVESTOCK RANCHES AND RULEMAKING REQUIREMENTS; RENAMING THE GAME FARM ADVISORY COUNCIL AS THE ALTERNATIVE LIVESTOCK ADVISORY COUNCIL AND REVISING COUNCIL DUTIES WITH REGARD TO REVIEW OF LICENSE APPLICATIONS; REQUIRING ADOPTION OF A PROGRAMMATIC REVIEW PROCESS TO ASSESS ENVIRONMENTAL IMPACTS ASSOCIATED WITH A NEW ALTERNATIVE LIVESTOCK RANCH; AMENDING SECTIONS 81-1-102, 81-2-102, 81-2-702, 81-3-102, 81-9-217, 87-4-406, 87-4-407, 87-4-408, 87-4-409, 87-4-410, 87-4-411, 87-4-412, 87-4-413, 87-4-414, 87-4-415, 87-4-416, 87-4-417, 87-4-418, 87-4-419, 87-4-420, 87-4-422, 87-4-423, 87-4-424, 87-4-426, 87-4-427, 87-4-428, AND 87-4-432, MCA; AND PROVIDING EFFECTIVE DATES 2557

575 *(Senate Bill No. 406; Doherty)* AUTHORIZING THE FORMATION OF BUYING COOPERATIVES TO PURCHASE ELECTRICITY FOR RESIDENTIAL AND SMALL COMMERCIAL CUSTOMERS IN INVESTOR-OWNED DISTRIBUTION UTILITY SERVICE TERRITORIES IN WHICH THOSE CUSTOMERS CAN CHOOSE AN ELECTRICITY SUPPLIER; AUTHORIZING THE PUBLIC SERVICE COMMISSION TO DESIGNATE ONE OR MORE DEFAULT SUPPLIERS FOR ELECTRICITY WITHIN AN INVESTOR-OWNED DISTRIBUTION UTILITY'S SERVICE TERRITORY; AMENDING SECTIONS 69-8-103, 69-8-201, AND 69-8-403, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2575

576 *(Senate Bill No. 482; Mesaros)* REQUESTING AN INTERIM STUDY OF MORTGAGE LENDING AND THE ADVISABILITY OF REQUIRING LICENSURE FOR MORTGAGE LENDERS; AND PROVIDING AN EFFECTIVE DATE 2593

577 *(Senate Bill No. 534; Keenan)* GENERALLY REVISING LAWS REGARDING PUBLIC MENTAL HEALTH DELIVERY; REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO INCREMENTALLY IMPLEMENT A MENTAL HEALTH MANAGED CARE SYSTEM; REQUIRING A MENTAL HEALTH MANAGED CARE CONTRACTOR THAT ASSUMES RISK TO COMPLY WITH MEDICAID MANAGED CARE LAWS; PROVIDING FOR DEPARTMENT RESPONSIBILITIES; PROVIDING RULEMAKING AUTHORITY; CREATING THE OFFICE OF A MENTAL HEALTH MANAGED CARE OMBUDSMAN; AMENDING SECTIONS 33-1-102, 33-31-115, 33-31-202, 53-1-413, 53-6-131, 53-6-703, 53-6-704, 53-6-706, AND 53-6-709, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE 2595

HeinOnline -- 1999 vol. I xciv 1999

578 *(House Bill No. 2; Zook)* APPROPRIATING MONEY TO VARIOUS STATE AGENCIES FOR THE BIENNIUM ENDING JUNE 30, 2001; AND PROVIDING AN EFFECTIVE DATE 2606

579 *(House Bill No. 127; Johnson)* GENERALLY REVISING CHILD SUPPORT LAWS TO IMPROVE SERVICES; ELIMINATING OBSOLETE PROVISIONS; CONFORMING THE PROVISION FOR JURISDICTION OVER A NONRESIDENT TO FEDERAL FULL FAITH AND CREDIT REQUIREMENTS; MAKING THE DEFINITIONS OF "SUPPORT ORDER" CONSISTENT WITH EACH OTHER; CONFORMING WARRANT FOR DISTRAINT PROVISIONS WITH A MONTANA SUPREME COURT DECISION; ALLOWING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO SUBSTITUTE A SUPPORT ORDER MADE IN ACCORDANCE WITH THE CHILD SUPPORT GUIDELINES FOR AN ADMINISTRATIVE DEFAULT ORDER; ALLOWING FOR AMENDMENT OF AN ADMINISTRATIVE SUPPORT ORDER; REVISING PROVISIONS FOR SERVICE OF PROCESS; PROVIDING FOR DEPARTMENT RECEIPT OF INFORMATION BY PARTIES TO A SUPPORT ORDER; DELETING THE REQUIREMENT THAT AN ALTERNATIVE ARRANGEMENT FOR CHILD SUPPORT BE SIGNED BY THE PARTIES; DELETING THE REQUIREMENT FOR A MONTHLY MEDICAID REIMBURSEMENT IF PARENTS ARE NOT ELIGIBLE FOR HEALTH INSURANCE AT REASONABLE COST; AMENDING SECTIONS 40-4-210, 40-5-201, 40-5-202, 40-5-207, 40-5-210, 40-5-224, 40-5-225, 40-5-247, 40-5-253, 40-5-273, 40-5-315, 40-5-403, 40-5-701, 40-5-806, 40-5-807, AND 40-5-901, MCA; REPEALING SECTIONS 40-5-211, 40-5-212, AND 40-5-223, MCA; AND PROVIDING EFFECTIVE DATES 2668

580 *(House Bill No. 337; E. Bergsagel)* GENERALLY REVISING UNIVERSAL SYSTEM BENEFITS ELECTRIC LAWS; DEFINING "INTERESTED PERSON", "LARGE CUSTOMER", AND "QUALIFYING LOAD" FOR UNIVERSAL SYSTEM BENEFITS PROGRAMS PURPOSES; ESTABLISHING UNIVERSAL SYSTEM BENEFITS RATES FROM JANUARY 1, 1999, THROUGH JULY 1, 2003; ELIMINATING ACCESS RECIPROCITY BETWEEN DISTRIBUTION SERVICES PROVIDERS; ESTABLISHING UNIVERSAL SYSTEM BENEFITS PROGRAMS FUNDS; ESTABLISHING THE DEPARTMENT OF ENVIRONMENTAL QUALITY AND THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES AS FUND ADMINISTRATORS AND PROVIDING EACH AGENCY WITH RULEMAKING AUTHORITY TO ADMINISTER THE FUNDS; REQUIRING THE DEPARTMENT OF REVENUE TO REVIEW UNIVERSAL SYSTEM BENEFITS PROGRAMS CREDITS IF THE CREDITS ARE CHALLENGED; PROVIDING THE DEPARTMENT OF REVENUE WITH RULEMAKING AUTHORITY; AMENDING SECTIONS 18-4-132, 69-8-103, 69-8-402, AND 69-8-411, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2692

581 *(House Bill No. 566; Brainard)* AUTHORIZING AN INTERIM STUDY OF METHODS FOR A STATE LAW ALTERNATIVE METHOD FOR FIREARMS RECORDS CHECKS OF PURCHASERS; RESERVING TO THE STATE THE GOVERNMENTAL RIGHT TO SUE FIREARMS AND AMMUNITION MANUFACTURERS, TRADE ASSOCIATIONS, AND DEALERS TO THE STATE IN CERTAIN TYPES OF CASES; REVISING LAWS RELATING TO CONCEALED WEAPONS PERMITS, SILENCERS, AND THE POSSESSION OF A WEAPON IN A SCHOOL BUILDING WITH THE PURPOSE TO COMMIT A CRIMINAL OFFENSE; AND AMENDING SECTIONS 45-8-321, 45-8-322, 45-8-337, AND 45-8-361, MCA 2701

HeinOnline -- 1999 vol. I xcv 1999

582 *(Senate Bill No. 97; Stang)* GENERALLY REVISING THE LAWS RELATING TO LOCAL PLANNING AND SUBDIVISION REVIEW; CHANGING THE TERMS "MASTER PLAN", "COMPREHENSIVE PLAN", AND "COMPREHENSIVE DEVELOPMENT PLAN" AS USED IN TITLE 76 TO "GROWTH POLICY"; REQUIRING CERTAIN ELEMENTS AND AUTHORIZING ADDITIONAL ELEMENTS TO BE ADDRESSED IN GROWTH POLICIES; REQUIRING URBAN RENEWAL PLANS TO BE CONSISTENT WITH GROWTH POLICIES; MODIFYING PROVISIONS RELATING TO SUMMARY REVIEW OF SUBDIVISIONS; MODIFYING PROVISIONS RELATING TO REVIEW OF MINOR SUBDIVISIONS BY PLANNING BOARDS; MODIFYING PROVISIONS RELATING TO EXEMPTION FROM THE ENVIRONMENTAL ASSESSMENT REQUIREMENT FOR SUBDIVISIONS; AUTHORIZING GOVERNING BODIES TO ESTABLISH AN EXEMPTION FROM REVIEW OF CERTAIN CRITERIA FOR SUBDIVISIONS WHEN CERTAIN REQUIREMENTS ARE MET; AMENDING SECTIONS 7-2-4734, 7-15-4206, 7-15-4213, 76-1-103, 76-1-106, 76-1-107, 76-1-110, 76-1-601, 76-1-602, 76-1-603, 76-1-604, 76-1-605, 76-1-606, 76-2-201, 76-2-203, 76-2-206, 76-2-304, 76-2-310, 76-2-311, 76-3-210, 76-3-504, 76-3-505, 76-3-601, 76-3-604, 76-3-605, 76-3-608, 76-3-621, 76-4-111, 76-4-122, 76-4-123, 76-4-124, 76-4-127, AND 76-9-104, MCA; AND PROVIDING AN APPLICABILITY DATE 2708

583 *(Senate Bill No. 111; DePratu)* EXEMPTING INTANGIBLE PERSONAL PROPERTY FROM PROPERTY TAXATION; PHASING IN THE EXEMPTION FOR PROPERTY THAT IS CENTRALLY ASSESSED; REQUIRING RULEMAKING TO DETERMINE THE VALUATION METHODOLOGY FOR INTANGIBLE PERSONAL PROPERTY; REQUIRING REPORTS TO THE LEGISLATURE; AMENDING SECTIONS 15-1-101, 15-8-201, 15-8-404, 15-8-405, 15-8-406, 15-8-407, 15-23-101, 15-23-202, AND 15-23-303, MCA; REPEALING SECTION 15-8-403, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES 2728

584 *(Senate Bill No. 184; Grosfield)* GENERALLY REVISING PROPERTY TAX LAWS; ESTABLISHING A PROCEDURE BY WHICH MILL LEVIES MUST BE ESTABLISHED IN ORDER TO COMPLY WITH TAX LIMITATIONS; PROVIDING AN EXEMPTION FOR A PORTION OF THE VALUE OF CERTAIN CLASS FOUB PROPERTY; PHASING IN THE VALUE CHANGE IN CLASS FOUR PROPERTY OVER 4 YEARS; PHASING IN A RATE REDUCTION FOR CLASS TEN PROPERTY; ALLOWING AN EXTENSION OF 1999 STATUTORY DEADLINES RELATING TO PROPERTY TAXES; PROVIDING FOR PERIODIC REAPPRAISAL ON A 6-YEAR CYCLE AND THE PHASING IN OF NEW VALUES; PROVIDING FOR REIMBURSEMENT TO LOCAL GOVERNMENTS, SCHOOLS, AND TAX INCREMENT DISTRICTS FOR LOSS OF PROPERTY TAX REVENUE; PROVIDING FOR AN INTERIM LOCAL GOVERNMENT FUNDING AND STRUCTURE STUDY COMMITTEE AND AN INTERIM COURT FUNDING AND STRUCTURE STUDY COMMITTEE; PROVIDING APPROPRIATIONS; AMENDING SECTIONS 2-9-212, 7-1-112, 7-1-114, 7-1-2103, 7-1-4123, 7-3-184, 7-3-1104, 7-3-1227, 7-3-1310, 7-3-1311, 7-6-2319, 7-6-2321, 7-6-2501, 7-6-2502, 7-6-2511, 7-6-2512, 7-6-2513, 7-6-2522, 7-6-4232, 7-6-4259, 7-6-4261, 7-6-4401, 7-6-4406, 7-6-4407, 7-6-4421, 7-6-4438, 7-6-4452, 7-6-4453, 7-11-1106, 7-11-1112, 7-14-111, 7-14-2302, 7-14-1111, 7-14-1131, 7-14-2101, 7-14-2205, 7-14-2501, 7-14-2502, 7-14-2503, 7-14-2801, 7-14-2807, 7-14-4703, 7-14-4713, 7-14-4734, 7-15-4281, 7-15-4324, 7-16-101, 7-16-2102, 7-16-2108, 7-16-2109, 7-16-2205, 7-16-2411, 7-16-2423, 7-16-2431, 7-16-2443,

HeinOnline -- 1999 vol. I xcvi 1999

7-16-4105, 7-16-4113, 7-16-4114, 7-21-3203, 7-21-3410, 7-21-3432, 7-21-3433, 7-22-2142, 7-22-2222, 7-22-2306, 7-22-2432, 7-22-2512, 7-32-4117, 7-33-2109, 7-33-2209, 7-33-4111, 7-33-4130, 7-34-102, 7-34-2122, 7-34-2133, 7-34-2417, 7-35-2122, 13-13-230, 15-1-402, 15-2-301, 15-6-134, 15-6-143, 15-6-201, 15-7-102, 15-7-103, 15-7-111, 15-7-403, 15-8-111, 15-10-204, 15-10-205, 15-10-401, 15-10-402, 15-16-117, 15-16-203, 15-23-214, 15-24-1402, 15-24-1501, 15-24-1603, 15-36-323, 20-3-205, 20-3-324, 20-7-705, 20-7-714, 20-9-131, 20-9-141, 20-9-142, 20-9-151, 20-9-152, 20-9-168, 20-9-331, 20-9-333, 20-9-360, 20-9-404, 20-10-147, 20-15-305, 20-15-311, 20-15-313, 20-15-314, 20-15-326, 20-25-423, 20-25-439, 22-1-304, 22-1-316, 23-4-303, 41-5-1804, 50-2-111, 50-2-114, 53-2-322, 53-2-813, 53-20-208, 67-10-402, 67-11-201, 67-11-301, 67-11-302, 75-10-112, 76-1-111, 76-1-403, 76-1-404, 76-1-405, 76-1-406, 76-1-407, 76-2-102, 76-5-1116, 76-6-109, 76-15-501, 76-15-516, 76-15-518, 76-15-623, 81-8-504, 85-3-422, 85-7-206, 85-7-307, 85-7-1953, 85-7-1973, 85-7-2104, 85-7-2117, 85-7-2134, 85-7-2136, 85-8-601, 85-8-615, 85-8-618, 90-5-112, AND 90-6-403, MCA; AMENDING SECTION 1, SENATE BILL NO. 79, 1999; REPEALING SECTIONS 7-6-2514, 7-6-4405, AND 15-10-412, MCA; PROVIDING AN IMMEDIATE EFFECTIVE DATE, A TERMINATION DATE, AND A RETROACTIVE APPLICABILITY DATE 2734

585 *(Senate Bill No. 205; McNutt)* INCREASING THE AVIATION GASOLINE LICENSE TAX FROM 3 CENTS TO 4 CENTS A GALLON; PROVIDING THAT 50 PERCENT OF THE 1 CENT INCREASE COLLECTED FROM PASSENGER AIR CARRIERS BE DEPOSITED IN THE STATE SPECIAL REVENUE FUND TO THE CREDIT OF THE DEPARTMENT OF TRANSPORTATION FOR AIRPORT PAVEMENT PRESERVATION PROJECTS; EXCLUDING FUEL SOLD TO THE FEDERAL DEFENSE FUEL SUPPLY CENTER; AMENDING SECTIONS 15-70-204, 15-70-205, 15-70-221, AND 67-1-301, MCA; AND PROVIDING AN EFFECTIVE DATE 2819

586 *(Senate Bill No. 270; Devlin)* ALLOWING A COUNTY TO CHARGE THE DEPARTMENT OF REVENUE FOR SPACE PROVIDED IN A COUNTY COURTHOUSE OR OTHER COUNTY BUILDING; LIMITING THE AMOUNT THAT CAN BE CHARGED; AND AMENDING SECTION 15-8-102, MCA 2825

587 *(Senate Bill No. 356; Mohl)* REQUIRING THAT ONE MEMBER OF THE TRANSPORTATION COMMISSION HAVE SPECIFIC KNOWLEDGE OF INDIAN CULTURE AND TRIBAL TRANSPORTATION NEEDS; AMENDING SECTION 2-15-2502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY PROVISION 2826

588 *(Senate Bill No. 499; Grosfield)* AMENDING THE WATER QUALITY ACT TO ENSURE CONSISTENCY WITH FEDERAL REQUIREMENTS; AMENDING NONDEGRADATION SIGNIFICANCE CRITERIA; REVISING ACTIVITIES FOR WHICH SHORT-TERM EXEMPTIONS FROM WATER QUALITY STANDARDS MAY BE AUTHORIZED; AMENDING NONDEGRADATION REQUIREMENTS FOR OUTSTANDING RESOURCE WATERS; PROVIDING FOR SHORT-TERM TURBIDITY STANDARDS; AMENDING SECTIONS 75-5-301, 75-5-308, 75-5-316, 75-5-317, AND 75-5-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE 2827

589 *(Senate Bill No. 441; Christiaens)* REQUIRING THE DEPARTMENT OF REVENUE, UNDER CERTAIN CONDITIONS, TO USE TWO OF THE THREE METHODS OF DETERMINING THE MARKET VALUE OF PROPERTY, WHICH INCLUDE THE CAPITALIZATION OF NET INCOME METHOD, THE SALES OF COMPARABLE PROPERTY

HeinOnline -- 1999 vol. I xcvii 1999

METHOD, AND THE COST-LESS-DEPRECIATION METHOD, THAT PROVIDE A SIMILAR MARKET VALUE AS THE BETTER INDICATORS OF MARKET VALUE; AMENDING SECTION 15-8-111, MCA; AND PROVIDING AN APPLICABILITY DATE 2836

SENATE JOINT RESOLUTIONS

SJR Page

1 *(Harp)* REVISING THE JOINT LEGISLATIVE RULES 2841

2 *(Bartlett)* URGING THE BOARD OF PUBLIC EDUCATION TO INTEGRATE BASIC ECONOMIC AND CONSUMER PRINCIPLES AND PERSONAL FINANCIAL PLANNING COURSEWORK INTO THE MODEL LEARNER GOALS OR CONTENT AND PERFORMANCE STANDARDS ESTABLISHED FOR MONTANA'S PUBLIC SCHOOLS 2856

3 *(Cocchiarella)* RECOMMENDING THAT STATE AGENCIES SERVE AS ROLE MODELS FOR THE IMPLEMENTATION AND REFINEMENT OF BEST MANAGEMENT PRACTICES TO REDUCE NONPOINT SOURCE POLLUTION OF MONTANA'S WATERS; AND RECOMMENDING THAT RELEVANT AGENCIES REPORT RELATED PROGRESS AND ACCOMPLISHMENTS TO THE ENVIRONMENTAL QUALITY COUNCIL PRIOR TO THE NEXT LEGISLATIVE SESSION 2857

4 *(T. Beck)* AUTHORIZING THE PERMANENT PLACEMENT OF CERTAIN MEMORIALS IN THE CAPITOL 2858

5 *(Tester)* URGING THE UNITED STATES CONGRESS AND THE EXECUTIVE BRANCH OF THE UNITED STATES GOVERNMENT TO TAKE ACTION TO REQUIRE COVERAGE OF THE COST OF LONG-TERM CARE AND PRESCRIPTION DRUGS BY THE FEDERAL MEDICARE PROGRAM 2859

7 *(Bohlinger)* REQUESTING CONGRESS TO FUND A FEASIBILITY STUDY AND IMPLEMENT THE STUDY'S FINDINGS TO RESOLVE PROBLEMS IN BILLINGS ASSOCIATED WITH THE RAILROAD TRACKS THAT DIVIDE THE CITY 2860

9 *(Cole)* REQUESTING AN INTERIM STUDY OF THE STATE'S LAWS AND PROCEDURES THAT GOVERN THE DEVELOPMENT, ADMINISTRATION, AND ENFORCEMENT OF CONTRACTS WITH PRIVATE SECTOR VENDORS TO COMPLETE GOVERNMENT PROJECTS OR DELIVER GOVERNMENT SERVICES 2861

10 *(Cole)* RECOGNIZING THE STELLAR CAREER OF MIKE MANSFIELD AND THE ESSENTIAL SUPPORT OF HIS WIFE MAUREEN AND AUTHORIZING THE PLACEMENT OF A COMMEMORATIVE STATUE ON THE CAPITOL COMPLEX 2862

11 *(Jergeson)* URGING AN INVESTIGATION INTO THE CAUSES OF ONGOING DEPRESSED MARKET PRICES FOR AGRICULTURAL PRODUCTS; AND URGING THE INITIATION OF ACTIONS THAT WILL STABILIZE THE NATION'S FOOD PRODUCERS, MAIN STREET BUSINESSES, AND RURAL AMERICA AS A WHOLE . . . 2863

12 *(Cole)* OBJECTING TO ANY ATTEMPT BY THE FEDERAL GOVERNMENT TO TAKE FROM THE STATES, TERRITORIES, COMMONWEALTHS, AND THE DISTRICT OF COLUMBIA, ANY OF THE PROCEEDS OF THE TOBACCO SETTLEMENT RECENTLY REACHED WITH THE TOBACCO COMPANIES AND URGING THE

HeinOnline -- 1999 vol. I xcviii 1999

U.S. CONGRESS TO ACT TO PREVENT FURTHER ASSERTION OF THAT CLAIM 2865

14 *(Bartlett)* REQUESTING AN APPROPRIATE INTERIM COMMITTEE TO STUDY SENTENCING STATUTES, SENTENCING DATA INFORMATION COLLECTION AND MANAGEMENT, AND ISSUES RELATED TO SENTENCING 2866

15 *(F. Thomas)* REQUESTING THAT THE LEGISLATIVE COUNCIL DIRECT THE APPROPRIATE INTERIM COMMITTEE TO STUDY THE CURRENT LEVEL OF BENEFITS PAID TO INJURED WORKERS UNDER THE WORKERS' COMPENSATION ACT AND THE FREQUENCY OF INDEMNITY CLAIMS UNDER THE WORKERS' COMPENSATION ACT; AND REQUIRING A REPORT OF THE FINDINGS OF THE STUDY AND RECOMMENDATIONS TO THE 57TH LEGISLATURE 2868

16 *(Miller)* REQUESTING THE EDUCATION INTERIM COMMITTEE TO STUDY THE ADMINISTRATION AND FUNDING OF THE MONTANA UNIVERSITY SYSTEM; AND REQUIRING A REPORT TO THE 57TH LEGISLATURE 2869

18 *(McCarthy)* REQUESTING THAT THE ENVIRONMENTAL QUALITY COUNCIL CONDUCT AN INTERIM STUDY OF THE MONTANA ENVIRONMENTAL POLICY ACT 2870

20 *(McCarthy)* SUPPORTING THE BALANCE OF THE NEEDS OF NATIVE ANADROMOUS FISH AND RESIDENT FISH AND WILDLIFE THROUGH THE USE OF SCIENCE-BASED INTEGRATED RULE CURVES 2871

21 *(Hargrove)* REQUESTING AN INTERIM STUDY OF OPTIONS THAT COULD BE IMPLEMENTED BY LOCAL GOVERNMENTS TO PROVIDE INCENTIVES FOR CLUSTER DEVELOPMENT AND PRESERVATION OF AGRICULTURAL LAND OR OPEN SPACE; AUTHORIZING THE COMMITTEE TO REQUEST ASSISTANCE IN THE CONDUCT OF THE STUDY; AND REQUIRING THE COMMITTEE TO REPORT ON ITS FINDINGS AND RECOMMENDATIONS 2872

SENATE RESOLUTIONS

SR Page

1 *(Harp)* ADOPTING AND REVISING THE SENATE RULES 2875

2 *(Harp)* CLARIFYING CERTAIN SENATE RULES 2890

3 *(Grosfield)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION AND APPOINTMENT, MADE BY THE CHIEF JUSTICE OF THE MONTANA SUPREME COURT AND SUBMITTED TO THE SENATE, OF THE HONORABLE C. BRUCE LOBLE AS CHIEF WATER JUDGE 2892

4 *(Cole)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATIONS OF APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 14, 1999, TO THE SENATE 2893

5 *(Cole)* CONCUBRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATIONS OF APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED FEBRUARY 3, 1999, TO THE SENATE 2902

HeinOnline -- 1999 vol. I xcix 1999

6 *(Grosfield)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION AND APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED TO THE SENATE OF HONORABLE RICHARD A. SIMONTON AS DISTRICT JUDGE, SEVENTH JUDICIAL DISTRICT, GLENDIVE, MONTANA 2905

7 *(Cole)* CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATIONS OF APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATIONS DATED APRIL 5 AND APRIL 9, 1999, TO THE SENATE 2906

HOUSE JOINT RESOLUTIONS

HJR Page

1 *(McCulloch)* SUPPORTING THE FUNDING OF PUBLIC EDUCATION THAT IS COMMENSURATE WITH THE GROWTH OF MONTANA'S ECONOMY AND INFLATION, THAT ADEQUATELY COMPENSATES TEACHERS, AND THAT MEETS THE STATE'S OBLIGATION UNDER ARTICLE X, SECTION 1(3), OF THE MONTANA CONSTITUTION TO FUND THE STATE'S SHARE OF THE COST OF THE BASIC ELEMENTARY AND SECONDARY SCHOOL SYSTEM . 2909

2 *(Story)* ESTABLISHING AN OFFICIAL ESTIMATE OF THE STATE'S ANTICIPATED REVENUE FOR EACH YEAR OF THE 2000-01 BIENNIUM FOR THE PURPOSE OF ACHIEVING A BALANCED BUDGET AS MANDATED BY ARTICLE VIII, SECTION 9, OF THE MONTANA CONSTITUTION; ACCEPTING THE JUNE 30, 1998, GENERAL FUND BALANCE THAT WAS ESTABLISHED BASED ON GENERALLY ACCEPTED ACCOUNTING PRINCIPLES; ESTABLISHING OFFICIAL ESTIMATES OF CERTAIN NONGENERAL FUND REVENUE; AND REQUESTING THE GOVERNOR'S OFFICE OF BUDGET AND PROGRAM PLANNING TO USE THE REVENUE ESTIMATES CONTAINED IN THIS RESOLUTION AS OFFICIAL REVENUE ESTIMATES FOR FISCAL YEARS 1999-2000 AND 2000-01 2910

3 *(Ohs)* REQUESTING THE ENVIRONMENTAL QUALITY COUNCIL TO COORDINATE WITH OTHER APPROPRIATE AGENCIES TO STUDY THE NEED FOR AND UTILITY OF TAX AND OTHER TYPES OF FINANCIAL INCENTIVES TO ENCOURAGE VOLUNTARY CLEANUP AND REDEVELOPMENT OF CONTAMINATED PROPERTIES WITHIN MONTANA 2920

4 *(Walters)* OBJECTING TO THE RELEASE OF GRIZZLY BEARS INTO THE SELWAY-BITTERROOT WILDERNESS AND FRANK CHURCH RIVER-OF-NO-RETURN WILDERNESS; URGING AN END TO CONTROL OF GRIZZLY BEAR POPULATION MANAGEMENT BY THE UNITED STATES FISH AND WILDLIFE SERVICE AND THE RETURN OF GRIZZLY BEAR MANAGEMENT TO THE FISH AND GAME AGENCIES OF THE AFFECTED STATES; REQUESTING REMOVAL OF THE GRIZZLY BEAR FROM THE LIST OF THREATENED OR ENDANGERED SPECIES BASED UPON EVIDENCE OF POPULATION VIABILITY; AND URGING THE ACCEPTANCE OF LIABILITY FOR DAMAGES FROM THE GRIZZLY BEAR RECOVERY PROGRAM BY THE UNITED STATES GOVERNMENT IF INTRODUCTION MEASURES ARE UNDERTAKEN SUCCESSFULLY 2921

HeinOnline -- 1999 vol. I c 1999

5 *(Jore)* URGING THE UNITED STATES CONGRESS TO REPEAL A FEDERAL ACT KNOWN AS THE BRADY LAW 2923

6 *(Mood)* URGING THE BOARD OF INVESTMENTS TO REACH THE STATUTORY LIMIT FOR INVESTING THE AVAILABLE COAL TAX TRUST FUNDS IN MONTANA ECONOMIC ACTIVITIES 2924

7 *(Curtiss)* SUPPORTING THE AMERICAN LAND SOVEREIGNTY PROTECTION ACT; AND REQUIRING THE SECRETARY OF STATE TO TRANSMIT COPIES OF THE RESOLUTION 2925

8 *(Curtiss)* OPPOSING DESIGNATION OF ANY RIVER IN MONTANA AS AN AMERICAN HERITAGE RIVER UNDER THE FEDERAL AMERICAN HERITAGE RIVERS INITIATIVE 2926

9 *(Tuss)* URGING THE FORMAL ESTABLISHMENT OF SISTER RELATIONS BETWEEN THE STATE OF MONTANA AND THE GOVERNMENT OF GUANGXI ZHUANG AUTONOMOUS REGION TO ENCOURAGE COOPERATION, FRIENDSHIP, UNDERSTANDING, AND COMMUNICATION 2927

11 *(Curtiss)* ENCOURAGING THAT ANY NEW OR REVISED FEDERAL POLICY RECOGNIZE AND INCORPORATE WESTERN STATE AUTHORITIES AND INTERESTS IN WATER RESOURCE POLICIES AND ISSUES 2928

12 *(Juneau)* REQUESTING THE COMMITTEE ON INDIAN AFFAIRS TO STUDY A PROPOSAL TO CREATE A STATE COMMISSION ON INDIAN AFFAIRS; AND REQUIRING A REPORT TO THE 57TH LEGISLATURE 2929

13 *(McKenney)* URGING THE BOARD OF PUBLIC EDUCATION, THE OFFICE OF PUBLIC INSTRUCTION, AND SCHOOL DISTRICT TRUSTEES TO ENSURE THAT SCHOOL DISTRICT PERSONNEL TRAINED IN FIRST AID AND CPR BE PRESENT IN EVERY PUBLIC SCHOOL AND REQUESTING THE OFFICE OF PUBLIC INSTRUCTION TO REPORT ON THESE EFFORTS TO THE 57TH LEGISLATURE 2930

14 *(Adams)* ENCOURAGING THE SUPERINTENDENT OF PUBLIC INSTRUCTION AND LOCAL SCHOOL DISTRICTS TO ADOPT THE EDDIE EAGLE ELEMENTARY GUN SAFETY EDUCATION PROGRAM 2931

15 *(Stovall)* URGING MONTANA TO PARTICIPATE IN, SUPPORT, AND ENCOURAGE THE LOCATION OF A 21ST CENTURY SPACEPORT AND TECHNOLOGY FACILITY IN MONTANA, TO NURTURE AN ECONOMIC AND REGULATORY ENVIRONMENT THAT WILL ATTRACT VENTURESTAR AND ITS SPACE-RELATED BUSINESSES TO MONTANA, AND TO WELCOME LOCKHEED MARTIN, ITS PARTNERS, AND OTHER SPACE-RELATED INDUSTRIES TO MONTANA 2931

17 *(Curtiss)* URGING THE FEDERAL GOVERNMENT TO TAKE CERTAIN ACTIONS CONCERNING THE INTERIOR COLUMBIA BASIN ECOSYSTEM MANAGEMENT PROJECT 2933

18 *(Facey)* DIRECTING THE ASSIGNMENT TO AN APPROPRIATE INTERIM COMMITTEE OF A STUDY OF THE POSSIBILITY OF BROADCASTING THE DELIBERATIONS OF THE MONTANA LEGISLATURE 2936

19 *(Curtiss)* URGING THE FULL FUNDING OF PAYMENTS IN LIEU OF TAXES ON FEDERAL LAND IN MONTANA, THE PROPER HARVEST OF THE ALLOWABLE SALE QUOTA FOR TIMBER, AND A RENEWAL OF THE FEDERAL GOVERNMENT'S COMPACT WITH

HeinOnline -- 1999 vol. I ci 1999

STATE AND LOCAL GOVERNMENTS TO CONTRIBUTE A FAIR SHARE OF TAXES ON FEDERAL LAND IN MONTANA 2937

20 *(Quilici)* ENCOURAGING SCHOOLS ACCREDITED BY THE BOARD OF PUBLIC EDUCATION TO COOPERATE AND COORDINATE WITH STATE AND LOCAL EMERGENCY SERVICES AGENCIES IN IDENTIFYING LOCAL HAZARDS, DESIGNING APPROPRIATE DRILLS, AND DEVELOPING SCHOOL EMERGENCY MANAGEMENT PLANS 2938

21 *(Lawson)* ENCOURAGING SCHOOL DISTRICTS TO IMPLEMENT INTERGENERATIONAL SCHOOL VOLUNTEER PROGRAMS . . . 2939

22 *(Masolo)* URGING HOSPITALS AND HEALTH CARE FACILITIES TO PROVIDE HEALTH CONSUMERS WITH SIMPLE AND STRAIGHTFORWARD BILLING INFORMATION TO ASSIST CONSUMERS IN UNDERSTANDING THE TRUE COSTS OF HEALTH CARE AND THE GOODS AND SERVICES THAT THEY RECEIVE . 2940

23 *(Lindeen)* EXPRESSING SUPPORT FOR RETAINING THE HISTORIC NAME OF POMPEYS PILLAR AND RESISTING A REQUEST TO CHANGE IT 2941

24 *(Juneau)* ENCOURAGING GOVERNOR RACICOT AND THE DEPARTMENT OF COMMERCE TO INCLUDE REPRESENTATION FROM THE MONTANA TRIBAL COMMUNITY ON TRADE MISSIONS AND ON STATE BOARDS AND COMMISSIONS PROMOTING MONTANA'S GROWTH AND DEVELOPMENT 2942

25 *(Gillan)* ENCOURAGING THE MONTANA DEPARTMENT OF TRANSPORTATION AND LOCAL GOVERNMENTS TO ESTABLISH A UNIFORM SPEED LIMIT OF 15 MILES AN HOUR IN SCHOOL ZONES 2942

26 *(Bitney)* REQUESTING THAT THE CURRENT FEDERAL GOVERNMENT POLICIES ON NATIONAL FOREST ROAD CLOSURES AND OBLITERATION BE SUSPENDED AND THAT CONGRESS REAFFIRM ITS DIRECTIVES THAT FOREST LANDS BE MANAGED IN ACCORDANCE WITH FOREST PLANS THAT PROVIDE FOR MULTIPLE-USE MANAGEMENT 2943

27 *(Story)* REQUESTING THAT CONGRESS, THE BUREAU OF RECLAMATION, AND THE WESTERN AREA POWER ADMINISTRATION BE ENCOURAGED TO KEEP ENERGY RATES STABLE FOR MONTANA'S VITALLY IMPORTANT MISSOURI BASIN IRRIGATION POWER AND DEVELOPMENT PROJECTS 2945

28 *(Grinde)* URGING THE UNITED STATES CONGRESS AND PRESIDENT BILL CLINTON TO INCREASE FUNDING FOR SPECIAL EDUCATION TO MEET THE FEDERAL COMMITMENT UNDER THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT 2945

29 *(Barnhart)* REQUESTING AN INTERIM STUDY OF LAWS AFFECTING LOCAL GOVERNMENTS AND LOCAL OFFICIALS; AUTHORIZING THE COMMITTEE TO REQUEST ASSISTANCE IN THE CONDUCT OF THE STUDY; REQUESTING THAT DRAFT LEGISLATION BE PREPARED TO PROVIDE CONSISTENCY IN THE CONDUCT OF COUNTY AND CITY BUSINESS; AND REQUESTING A COMPREHENSIVE DESCRIPTION OF THE COMMITTEE'S FINDINGS AND CONCLUSIONS 2946

31 *(Menahan)* URGING THE DEPARTMENT OF ADMINISTRATION TO DEVELOP A POLICY AND PROVIDE FOR TRAINING ON THE APPROPRIATE USE BY STATE AGENCIES OF PRERECORDED VOICE MENU ANSWERING SYSTEMS 2948

HeinOnline -- 1999 vol. I cii 1999

33 *(Haines)* REQUESTING THE LEGISLATIVE COUNCIL TO DESIGNATE AN APPROPRIATE INTERIM COMMITTEE TO STUDY SOURCES AND LEVELS OF FUNDING FOR THE CONSERVATION AND MANAGEMENT OF FISH AND WILDLIFE RESOURCES AND TO STUDY THE HISTORIC AND CURRENT RESPONSIBILITIES OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS 2949

34 *(Tuss)* REQUESTING THE LEGISLATIVE COUNCIL TO DESIGNATE AN APPROPRIATE INTERIM COMMITTEE TO STUDY USE OF THE POWER OF EMINENT DOMAIN AND THE EXISTING STATUTES RELATED TO EMINENT DOMAIN AND REQUIRING THAT COMMITTEE TO REPORT ON ITS FINDINGS AND RECOMMENDATIONS 2950

35 *(Wyatt)* REQUESTING THAT THE LEGISLATIVE FINANCE COMMITTEE BE ASSIGNED TO STUDY AND OVERSEE THE PRIVATIZATION OF MANAGED MENTAL HEALTH CARE 2951

36 *(Harper)* HONORING THE LIFE AND CAREER OF J.D. HOLMES . . 2953

37 *(Hurdle)* REQUESTING THE LEGISLATIVE COUNCIL TO APPOINT AN APPROPRIATE INTERIM COMMITTEE TO STUDY WOMEN'S PRISON ISSUES 2954

38 *(Barnhart)* REQUESTING THE LEGISLATIVE COUNCIL TO DESIGNATE AN APPROPRIATE INTERIM COMMITTEE TO STUDY, REPORT ITS FINDINGS, AND DEVELOP LEGISLATION ADDRESSING JUVENILE PROBATION OFFICER EMPLOYMENT AND SALARY ISSUES 2956

HOUSE RESOLUTIONS

HR Page

1 *(Grinde)* REVISING THE HOUSE RULES 2957

2 *(Hurdle)* REQUESTING THAT THE FEDERAL GOVERNMENT REPEAL RESTRICTIONS ON THE PRODUCTION OF INDUSTRIAL HEMP AS AN AGRICULTURAL AND INDUSTRIAL PRODUCT . . . 2980

HeinOnline -- 1999 vol. I ciii 1999

SESSION LAWS

Enacted by the

FIFTY-SIXTH LEGISLATURE
IN REGULAR SESSION

Held at Helena, the Seat of Government
January 4, 1999, through April 21, 1999

Expianatory Note: Section 5-11-205, MCA, provides that new parts of existing statutes be printed in italics and that deleted provisions be shown as stricken.

COMPILED BY MONTANA
LEGISLATIVE SERVICES DIVISION

HeinOnline -- 1999 vol. I 1 1999

HeinOnline -- 1999 vol. I 2 1999

CHAPTER NO. 1

[HB 1]

AN ACT APPROPRIATING MONEY FOR THE OPERATION OF THE LEGISLATURE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Appropriation. The following amounts are appropriated from the general fund for fiscal years 1999, 2000, and 2001 for the operation of the 56th legislature and costs of preparing for the 57th legislature:

LEGISLATIVE BRANCH (1104)

1. Senate (25)	$1,715,020
2. House of Representatives (26)	2,815,977
3. Legislative Services Division Feed Bill (22)	611,604
4. House of Representatives (26)	282,970

The amount appropriated must be used solely for the purpose of retirement contributions for house members reaching term limits in the year 2000.

5. Senate (25)	124,395

The amount appropriated must be used solely for the purpose of retirement contributions for senate members reacbing term limits in the year 2000.

6. Senate (25)	7,239.50

The amount appropriated must be used solely for the purpose of paying the judgment for costs and fees in the caucus litigation.

7. House of Representatives (26)	7,239.50

The amount appropriated must be used solely for the purpose of paying the judgment for costs and fees in the caucus litigation.

Section 2. Effective date. [This act] is effective on passage and approval.

Approved January 14, 1999

CHAPTER NO. 2

[SB 80]

AN ACT SUBMITTING A 6-MILL LEVY FOR SUPPORT OF THE UNIVERSITY SYSTEM TO THE ELECTORATE; PROVIDING A CONTINGENT VOIDNESS PROVISION; AND PROVIDING AN EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Seetion 1. Tax levy for university system. Subject to the provisions of 20-25-423, there is levied upon the taxable value of all real estate and personal proporty subject to taxation in the state of Montana 6 mills or so much of 6 mills as is necessary to raise the amount appropriated by the legislature from tbe state special revenue fund for tbe support, maintenance, and improvement of the Montana university system, as provided in referendum measure No. 113, passed

HeinOnline -- 1999 vol. I 3 1999

by a vote of the people at the general election held November 3, 1998. The funds raised from the levy must be deposited in the state special revenue fund.

Section 2. Submission of 6-mill levy to electorate. This act shall be submitted to the qualified electors of Montana at the tax election to be held in 1999 by printing on the ballot the full title of this act and the following:

SHALL THE TAX LEVY FOR THE UNIVERSITY SYSTEM BE INCREASED ANNUALLY BY 6 MILLS IN THE FOLLOWING MANNER?

☐ FOR extending the 6-mill levy for the support, maintenance, and improvement of the Montana university system.

☐ AGAINST extending the 6-mill levy for the support, maintenance, and improvement of the Montana university system.

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 15, chapter 10, part 1, and the provisions of Title 15, chapter 10, part 1, apply to [section 1].

Section 4. Contingent voidness. (1) If Constitutional Initiative No. 75, enacting Article VIII, section 17, of the Montana constitution, is declared invalid, then this act is void.

(2) If a court of competent jurisdiction determines that Constitutional Initiative No. 75 does not require a second election before the tax authorized by referendum measure No. 113 may he imposed, then this act is void.

Section 5. Effective date — retroactive applicability. If approved by the electorate, this act is effective upon the date of approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

Section 6. Termination. If approved by the electorate, this act terminates January 1, 2009.

Approved February 2, 1999

CHAPTER NO. 3

[SB 194]

AN ACT REVISING GENERAL OBLIGATION BOND LAWS TO REMOVE THE PLEDGE OF THE TAXING POWER; PROVIDING FOR A FIRST LIEN ON GENERAL FUND REVENUE FOR THE PAYMENTS OF GENERAL OBLIGATION BONDS AND RELATED CHARGES; ALLOWING THE BOARD OF EXAMINERS TO CREATE NECESSARY FUNDS AND ACCOUNTS FOR THE ISSUANCE OF GENERAL OBLIGATION BONDS; AMENDING SECTIONS 17-1-204, 17-5-402, 17-5-415, 17-5-501, 17-5-802, 17-5-803, 75-5-1121, 75-6-225, 75-10-623, 85-1-617, 85-1-619, 85-1-620, AND 90-4-611, MCA; PROVIDING A CONTINGENT VOIDNESS PROVISION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-1-204, MCA, is amended to read:

"17-1-204. Payment — pledge of taxes and revenue — costs of issuance. (1) The notes and interest on the notes must be paid from taxes and ~~revenues~~ *revenue* not later than the end of the fiscal year in which issued.

(2) The full faith and credit and taxing power of the state is pledged for the payment of all notes issued under this part. *However, the state may not be required to exercise its taxing power except to the extent and in the manner permitted by the constitution.* In furtherance of this pledge, if there are insufficient funds in the general fund to pay the notes and interest on the notes when due, the department shall transfer available funds from any fund of the state, except pension trust funds, to the general fund to pay the notes and interest. The transfer is considered a loan to the general fund subject to the provisions of 17-2-105.

(3) The department may pay all costs of issuance of notes issued under this part, including without limitation interest, rating agency fees, printing costs, legal fees, bank or trust company fees, costs to employ persons or firms to assist in the sale of the notes, line of credit fees and charges, and all other amounts related to the costs of issuing the notes. Payment of costs must be made from amounts available from the proceeds of the notes upon deposit in the general fund."

Section 2. Section 17-5-402, MCA, is amended to read:

"17-5-402. Authority to issue long-range building program bonds. (1) When authorized by the vote of two-thirds of the members of each house of the legislature or of a majority of the electors voting ~~thereon~~ *on the issue*, if so provided by law, and *when* within the limits of ~~such~~ *the* authorization and the further limitations in ~~this section and~~ 17-5-403 *and this section*, the board may issue and sell bonds of the state in ~~such~~ *the* manner ~~as~~ *that* it ~~shall deem~~ *considers* necessary and proper to provide funds to finance the long-range building program. Bonds may be issued ~~hereunder~~ to provide funds for the payment or redemption of long-range building program bonds issued under this section.

(2) The full faith and credit and taxing powers of the state ~~shall be~~ *are* pledged for the payment of all bonds issued pursuant to this part after January 1, 1973, with all interest ~~thereon~~ *on the bonds* and premiums payable upon the redemption ~~thereof~~ *of the bonds. However, the state may not be required to exercise its taxing power except to the extent and in the manner permitted by the constitution.*"

Section 3. Section 17-5-415, MCA, is amended to read:

"17-5-415. Authorization for refunding bonds. The board of examiners is authorized to issue and sell refunding bonds in an amount necessary to refund any or all long-range building program bonds ~~heretofore~~ issued under Title 17, chapter 5, part 8. The refunding honds are to be issued in accordance with the terms and in the manner required by Title 17, chapter 5, part 3. The refunding bonds ~~shall~~ *must* be general ohligations secured by a pledge of the full faith and credit and taxing powers of the state. *However, the state may not be required to exercise its taxing power except to the extent and in the manner permitted by the constitution.* Any money ~~which~~ *that* may he released from the debt service account provided for in 17-5-405 as a result of the issuance of refunding bonds ~~shall~~ *must* revert to the fund of origin to the extent not required to provide for the debt service on the refunded honds. Money required for payment of deht service on the refunded bonds may be held in trust in a special escrow account at a bank or trust company for the benefit of the refunded bonds."

HeinOnline -- 1999 vol. I 5 1999

Section 4. Section 17-5-501, MCA, is amended to read:

"17-5-501. Authority for general obligation highway bonds. The board of examiners is authorized to issue and sell general obligation highway bonds of the state for the purpose of acquiring a suitable site for and erecting and equipping a department of transportation headquarters building and complex at or near Helena, Montana, to replace the present laboratory and administration buildings ~~which~~ *that* are declared to be inadequate for ~~such~~ *that* purpose. The full faith and credit and taxing powers of the state ~~shall~~ *must* be pledged for the payment of all bonds issued pursuant to this part. *However, the state may not be required to exercise its taxing power except to the extent and in the manner permitted by the constitution.*"

Section 5. Section 17-5-802, MCA, is amended to read:

"17-5-802. Authority to issue general obligation bonds and notes. (1) When authorized by and *when* within the limits of a bond act and as provided in this part, the board may issue and sell bonds of the state in ~~such~~ *the* manner ~~as~~ *that* it considers necessary and proper to provide funds for the purpose set forth in the bond act.

(2) The full faith and credit and taxing powers of the state must be pledged for the payment of all bonds and notes issued pursuant to this part, with all interest ~~thereon~~ *on the bonds and notes* and premiums payable upon the redemption ~~thereof~~ *of the bonds and notes. However, the state may not be required to exercise its taxing power except to the extent and in the manner permitted by the constitution.* All principal, interest, and redemption premium, if any, becoming due during a fiscal year must be included in the state budget for ~~such~~ *that* year, and sufficient ~~revenues~~ *revenue* must be appropriated for payment ~~thereof~~ *of the amounts due* from the general fund and, if the general fund is not sufficient, from any other funds of the state legally available for payment ~~thereof~~ *of the amounts due. The payment of principal, interest, and redemption premium, if any, on bonds or notes issued pursuant to this part have a first lien on all revenue collected and deposited in the general fund and, subject to prior pledges of the funds, other funds of the state legally available for the payment of principal, interest, and redemption premium.* ~~No bonds~~ *Bonds* may *not* be issued to cover deficits incurred because appropriations exceeded anticipated revenue. Money transferred for the payment of bonds and notes must be deposited in the debt service account.

(3) No additional long-range building bonds may be issued under Title 17, chapter 5, part 4.

(4) Bonds of the state previously authorized by and within the limits of a bond act, but not issued prior to [the effective date of this act], must be issued pursuant to this part, as amended."

Section 6. Section 17-5-803, MCA, is amended to read:

"17-5-803. Form — principal and interest — fiscal agent — bond registrar and transfer agent — deposit of proceeds. (1) In furtherance of each bond act, bonds may be issued by the board upon request of the department in ~~such~~ *the* denominations and form, whether payable to bearer or registered as to principal or both principal and interest, with ~~such~~ *the* provisions for conversion or exchange, and for the issuance of temporary bonds bearing interest at ~~such~~ *the* rate or rates, maturing at ~~such~~ *the* times not exceeding 30 years from date of issue, subject to redemption at ~~such~~ earlier times and prices and on ~~such~~ notice,

and payable at the office of ~~such~~ *the* fiscal agency of the state as the board shall determine, subject to the limitations contained in this part and in the bond act.

(2) In all other respects, the board is authorized to prescribe the form and terms of the bonds and do whatever is lawful and necessary for their issuance and payment. Bonds and any interest coupons appurtenant ~~thereto~~ *to the bonds* must be signed by the members of the board, and the bonds must be issued under the great seal of the state of Montana. The bonds and coupons may be executed with facsimile signatures and seal in the manner and subject to the limitations prescribed by law. Action taken by the board under this part must be by a majority vote of its members. The state treasurer shall keep a record of all ~~such~~ bonds issued and sold.

(3) The board is authorized to employ a fiscal agent and a bond registrar and transfer agent to assist in the performance of its duties under this part.

(4) The board is authorized to pay all costs of issuance of bonds, including without limitation rating agency fees, printing costs, legal fees, bank or trust company fees, costs to employ persons or firms to assist in the sale of the bonds, line of credit fees and charges, and all other amounts related to the costs of issuing the bonds from amounts available ~~therefor~~ *for payment* in the general fund or from the proceeds of the bonds, in the discretion of the board.

(5) All proceeds of bonds and notes issued under this part must be deposited in the capital projects account, except that any premiums and accrued interest received and the proceeds of refunding bonds or notes must be deposited in the debt service account.

(6) The board may establish other funds and accounts for bonds and notes issued under this part as may be necessary to provide for the priority and segregation of revenue deposited in the general fund and pledged to the payment of bonds."

Section 7. Section 75-5-1121, MCA, is amended to read:

"75-5-1121. Authorization of bonds — appropriation of proceeds. (1) Upon request of the department of natural resources and conservation and upon certification by the department that the state has entered into a capitalization grant agreement or other agreement with the United States government pursuant to 75-6-204 and that federal capitalization grants have been made to the state for the program, the board of examiners is authorized to issue and sell bonds of the state as authorized by the legislature to provide money for the program. The bonds are general obligations on which the full faith, credit, and taxing powers of the state are pledged for payment of the principal and interest. *However, the state may not be required to exercise its taxing power except to the extent and in the manner permitted by the constitution.* The bonds must be issued as provided by Title 17, chapter 5, part 8.

(2) The proceeds of the bonds, other than any premium and accrued interest received or amounts to be used to pay interest on the bonds or the costs of issuing the bonds, are appropriated to the state allocation account of the revolving fund. Any premium and accrued interest and bond proceeds to be used to pay interest must be deposited in the debt service account. Proceeds of bonds to be used to pay the costs of issuing the bonds must be deposited in a cost of issuance account established outside of the revolving fund by the board of examiners in the resolution or trust indenture authorizing the issuance of the bonds. For purposes of ~~sections~~ 17-5-803 and 17-5-804, the state allocation account and the cost of

HeinOnline -- 1999 vol. I 7 1999

issuance account constitute a capital projects account. The proceeds must be available to the department and the department of natural resources and conservation and may be used for the purposes authorized in this part without further budgetary authorization.

(3) In the resolution authorizing the sale and issuance of the bonds, the board of examiners, upon the request of the department of natural resources and conservation, may create separate accounts or subaccounts to provide for the payment security of the bonds and may pledge the interest component of the loan repayments credited to the revolving fund and the revolving fund as security for the bonds.

(4) *(a)* The board of examiners may allow bonds issued under this section to be secured by a trust indenture between the board of examiners and a trustee. The trustee may be a trust company or bank having the powers of a trustee inside or outside the state.

~~(a)~~*(b)* If the board of examiners elects to issue bonds pursuant to a trust indenture, the trustee may, as determined by the board of examiners, hold one or more of the funds and accounts created pursuant to this chapter.

~~(b)~~*(c)* In addition to provisions that the board of examiners determines to be necessary and appropriate to secure the bonds, provide for the rights of the bondholders, and ensure compliance with all applicable law, the trust indenture must contain provisions that:

(i) govern the custody, safeguarding, and disbursement of all money held by the trustee under the trust indenture; and

(ii) permit representatives of the state treasurer, department, or department of natural resources and conservation, upon reasonable notice and at reasonable times, to inspect the trustee's books and records concerning the trust indenture.

~~(c)~~*(d)* A trust indenture or an executed counterpart of a trust indenture developed pursuant to this chapter must be filed with the secretary of state."

Section 8. Section 75-6-225, MCA, is amended to read:

"75-6-225. Authorization of bonds — appropriation of proceeds. (1) The board of examiners is authorized, upon request of the department of natural resources and conservation, to issue and sell bonds of the state as authorized by the legislature to provide money for the program. The bonds are general obligations on which the full faith, credit, and taxing powers of the state are pledged for payment of the principal and interest. *However, the state may not be required to exercise its taxing power except to the extent and in the manner permitted by the constitution.* The bonds must be issued as provided by Title 17, chapter 5, part 8.

(2) The proceeds of the bonds, other than any premium and accrued interest received, the amounts to be used to pay interest on the bonds, or the costs of issuing the bonds, are appropriated to the state allocation account of the revolving fund. Any premium and accrued interest and bond proceeds to be used to pay interest must be deposited in the debt service account of the revolving fund. Proceeds of bonds to be used to pay the costs of issuing the bonds must be deposited in a cost of issuance account established outside of the revolving fund by the board of examiners in the resolution or trust indenture authorizing the issuance of the bonds. For purposes of 17-5-803 and 17-5-804, the state allocation account and the cost of issuance account constitute a capital projects account.

HeinOnline -- 1999 vol. I 8 1999

The proceeds must be available to the department and the department of natural resources and conservation and may be used for the purposes authorized in this part without further hudgetary authorization.

(3) In the resolution authorizing the sale and issuance of the bonds, the hoard of examiners, upon the request of the department of natural resources and conservation, may create separate accounts or subaccounts to provide for the payment security of the bonds and may pledge the revolving fund and the interest component of the loan repayments credited to the revolving fund as security for the honds.

(4) (a) The board of examiners may allow bonds issued under this section to be secured by a trust indenture between the board of examiners and a trustee. The trustee may be a trust company or bank having the power of a trustee inside or outside the state.

(b) If the board of examiners elects to issue bonds pursuant to a trust indenture, the trustee may, as determined by the board of examiners, hold one or more of the funds and accounts created pursuant to this chapter.

(c) In addition to provisions that the board of examiners determines to be necessary and appropriate to secure the bonds, to provide for the rights of the hondholders, and to ensure compliance with all applicable law, the trust indenture must contain provisions tbat:

(i) govern the custody, safeguarding, and disbursement of all money held by the trustee under the trust indenture; and

(ii) pormit representatives of the state treasurer, department, or department of natural resources and conservation, upon reasonable notice and at reasonable times, to inspect the trustee's books and records concerning the trust indenture.

(d) A trust indenture or an executed counterpart of a trust indenture developed pursuant to this chapter must be filed with the secretary of state."

Section 9. Section 75-10-623, MCA, is amended to read:

"75-10-623. CERCLA bonds. (1) When authorized by the legislature and *when* within limits of the authorization and the further limitations estahlished in this section, the board of examiners may issue and sell CERCLA bonds of the state in the amount and manner it considers necessary and proper to finance the match requirements under section 104 of CERCLA and to finance the matcb requirements for federal money for underground storage tank corrective action. The full faith and credit and taxing powers of the state are pledged for the prompt and full payment of all bonds issued and interest and redemption premiums payable on the bonds according to their terms. *However, the state may not be required to exercise its taxing power except to the extent and in the manner permitted by the constitution.*

(2) Each series of CERCLA bonds may be issued by the board of examiners upon request of the department of environmental quality, at puhlic or private sale, in the denomimations and forms, whetber payable to bearer with attached interest coupons or registered as te principal or as to both principal and interest, with provisions for conversion or exchange and for the issuance of notes in anticipation of the issuance of definitive bonds, bearing interest at a rate or rates, maturing at a rate or rates, maturing at the time or times not exceeding 30 years from date of issue, subject to optional or mandatory redemption at earlier times and prices and upon notice, with provisions for payment and discharge by the

HeinOnline -- 1999 vol. I 9 1999

deposit of funds or securities in escrow for that purpose, and payable at the office of the banking institution or institutions within or outside the state, as the board of examiners determines, subject to the limitations contained in 17-5-731 and this section.

(3) In the issuance of each series of CERCLA bonds, the interest rates, maturities, and any mandatory redemption provisions of the bonds must be established in a manner that the funds then specifically pledged and appropriated by law to the CERCLA match debt service fund will, in the judgment of the board of examiners, be received in an amount sufficient in each year to pay all principal, redemption premiums, and interest due and payable in that year with respect to that and all prior series of the bonds, except outstanding bonds as to which the obligation of the state has been discharged by the deposit of funds or securities sufficient for their payment in accordance with the terms of the resolutions by which they are authorized to be issued.

(4) In all other respects, the board of examiners is authorized to prescribe the form and terms of the bonds and notes and shall do whatever is lawful and necessary for their issuance and payment. The bonds, notes, and any interest coupons appurtenant to the bonds and notes must be signed by the members of the board of examiners, and the bonds and notes must be issued under the great seal of the state of Montana. The bonds, notes, and coupons may be executed with facsimile signatures and seal in the manner and subject to the limitations prescribed by law. The state treasurer shall keep a record of all the bonds and notes issued and sold.

(5) All proceeds of bonds or notes issued under this section must be deposited in the hazardous waste/CERCLA special revenue account established in 75-10-621.

(6) All actions taken by the board of examiners under this section must be authorized by a vote of a majority of the members."

Section 10. Section 85-1-617, MCA, is amended to read:

"85-1-617. Issuing renewable resource bonds — renewable resource loan proceeds account. (1) When authorized by the legislature and *when* within the limits of the authorization and within the further limitations established in this section, the board of examiners may issue and sell renewable resource bonds of the state in the amount and manner it considers necessary and proper to finance the renewable resource grant and loan program. The full faith and credit and taxing powers of the state are pledged for the prompt and full payment of all bonds issued and interest and redemption premiums payable on the bonds according to their terms. *However, the state may not be required to exercise its taxing power except to the extent and in the manner permitted by the constitution.*

(2) Each series of renewable resource bonds may be issued by the board of examiners, upon request of the department, at public or private sale, in denominations and forms, whether payable to bearer with attached interest coupons or registered as to principal or as to both principal and interest, with provisions for conversion or exchange and for the issuance of notes in anticipation of the issuance of definitive bonds, bearing interest at a rate or rates, maturing at a rate or rates, maturing at a time or times not exceeding 30 years from date of issue, subject to optional or mandatory redemption at earlier times and prices and upon notice, with provisions for payment and discharge by the deposit of

HeinOnline -- 1999 vol. I 10 1999

funds or securities in escrow for that purpose, and payable at the office of a banking institution or institutions within or outside the state that the board of examiners shall determine subject to the limitations contained in ~~this section and~~ 17-5-731 *and this section.*

(3) In the issuance of each series of renewable resource bonds, the interest rates and the maturities and mandatory redemption provisions contained in the bonds must be established in a manner that the funds then specifically pledged and appropriated by law to the renewable resource loan debt service fund will, in the judgment of the board of examiners, be received in an amount sufficient in each year to pay all principal, redemption premiums, and interest due and payable in that year with respect to that and all prior series of bonds, except outstanding bonds as to which the obligation of the state has been discharged by the deposit of funds or securities sufficient for their payment in accordance with the terms of the resolutions by which they are authorized to be issued.

(4) In all other respects, the board of examiners is authorized to prescribe the form and terms of the bonds and notes and shall do whatever is lawful and necessary for their issuance and payment. The bonds, notes, and interest coupons appurtenant to the bonds or notes must be signed by the members of the board of examiners, and the bonds and notes must be issued under the great seal of the state of Montana. The bonds, notes, and coupons may be executed with facsimile signatures and seal in the manner and subject to the limitations prescribed by law. The state treasurer shall keep a record of all bonds and notes issued and sold.

(5) There is created a renewable resource loan proceeds account within the state special revenue fund estahlished in 17-2-102.

(6) All proceeds of bonds or notes issued under this section, other than refunding bonds, must be deposited in the renewable resource loan proceeds account established in subsection (5), except that any principal and accrued interest received in repayment of a loan made from the proceeds of bonds issued under this section must be deposited in the renewable resource loan debt service fund and the renewable resource loan loss reserve fund pursuant to 85-1-603. All proceeds of refunding bonds must be deposited in the renewable resource loan debt service fund and applied to the payment and redemption of outstanding bonds issued under this section as directed by the board of examiners, whether at maturity or on any earlier date on which they may be prepaid according to their terms.

(7) All actions taken by the board of examiners under ~~this section or~~ 85-1-619 *or this section* must be authorized by a vote of a majority of the members of the board of examiners."

Section 11. Section 85-1-619, MCA, is amended to read:

"85-1-619. Debt service fund — pledge and administration of sufficient balance. (1) The legislature may levy, impose, assess, and pledge and appropriate to the renewable resource loan debt service fund any tax, charge, fee, rental, or other income from any designated source. The state reserves the right to modify from time to time the nature and amount of special taxes and other ~~revenues~~ *revenue* pledged and appropriated to the renewable resource loan debt service fund, provided that the aggregate resources ~~so~~ pledged and appropriated are determined by the legislature to be sufficient for the prompt and full payment of the principal of and interest and redemption premiums when due on all bonds

HeinOnline -- 1999 vol. I 11 1999

payable from that fund and provided that the pledge of the full faith and credit and taxing powers of the state for the security of all bonds ~~shall be~~ *are* and remain irrevocable until they are fully paid.

(2) Money in the renewable resource loan debt service fund must be used to pay interest, principal, and redemption premiums when due and payable with respect to renewable resource bonds, and for bonds issued prior to 1985, to accumulate a reserve for the further security of the payments. *However, the state may not be required to exercise its taxing power except to the extent and in the manner permitted by the constitution.*

(3) After the reserve provided for in subsection (2) for bonds issued prior to 1985 has been accumulated in the renewable resource loan debt service fund, money at any time received in the renewable resource loan debt service fund in excess of that amount must be transferred by the treasurer to the renewable resource grant and loan program state special revenue account."

Section 12. Section 85-1-620, MCA, is amended to read:

"**85-1-620. Renewable resource refunding bonds.** (1) The board of examiners may issue refunding bonds at times and in amounts, if any, as may be necessary to pay principal or interest due that cannot be paid from funds then on hand in the renewable resource loan debt service fund. The board of examiners may also issue refunding bonds to refund outstanding bonds before maturity for the purpose of extending the maturities of the outstanding bonds determined by the board of examiners to be necessary to ~~assure~~ *ensure* that the funds then pledged to the renewable resource loan debt service fund will be sufficient for payment of principal and interest due in subsequent years. The board of examiners may also issue refunding bonds to refund outstanding bonds before maturity for the purpose of reducing the interest cost or the total amount of principal and interest payable on the outstanding bonds.

(2) Refunding bonds may not be issued and sold more than 3 months before all of the bonds refunded mature or are called for redemption unless the proceeds of the refunded bonds, with any other funds in the renewable resource loan debt service fund that are needed and available for the purpose or securities purchased from proceeds and other funds, are deposited with a suitable banking institution within or outside the state, in escrow, for the retirement of the refunded bonds at maturity or at a prior date or dates on which they have been called for redemption in accordance with their terms, in an amount and in a manner sufficient under the provisions securing the refunded bonds, so that the state's obligation to pay the same, from sources other than the escrow fund, is discharged.

(3) New debt may not be created by the issuance of refunding bonds in accordance with this section, but the refunding bonds must evidence the debt previously created and must be secured by the pledge of the full faith and credit and taxing powers of the state and secured in the same manner as the bonds refunded by other provisions of this part. *However, the state may not be required to exercise its taxing power except to the extent and in the manner permitted by the constitution.*"

Section 13. Section 90-4-611, MCA, is amended to read:

"**90-4-611. Authority to issue energy conservation program bonds.** (1) When authorized by the vote of two-thirds of the members of each house of the legislature, at the request of the department, and pursuant to this part, the

HeinOnline -- 1999 vol. I 12 1999

board may issue and sell bonds or bond anticipation notes of the state in a manner it considers necessary and proper to finance the energy conservation program and to pay costs associated with the sale and issuance of the bonds. Bonds may be issued to provide funds for the payment or redemption of energy conservation building program bonds issued under this section.

(2) The full faith and credit and taxing powers of the state are pledged for the prompt and full payment of all bonds ~~so~~ issued and interest and redemption premiums payable on the bonds according to their terms. *However, the state may not be required to exercise its taxing power except to the extent and in the manner permitted by the constitution.*"

Section 14. Pledge of state. In accordance with the constitutions of the United States and the state of Montana, the state pledges that it will not in any way impair the obligations of any agreement between the state and the holders of notes and bonds issued by the state.

Section 15. Codification instruction. [Section 14] is intended to be codified as an integral part of Title 17, chapter 5, and the provisions of Title 17, chapter 5, apply to [section 14].

Section 16. Contingent voidness. If Constitutional Initiative No. 75, enacting Article VIII, section 17, of the Montana constitution, is declared invalid, then [this act] is void.

Section 17. Effective date. [This act] is effective on passage and approval.

Approved February 5, 1999

CHAPTER NO. 4

[SB 56]

AN ACT PROVIDING FINANCIAL SUPPORT FOR THE MONTANA UNIVERSITY SYSTEM WITH A STATEWIDE MILL LEVY AS PROVIDED FOR IN REFERENDUM MEASURE NO. 113; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Tax levy for university system. There is levied upon the taxable value of all real estate and personal property subject to taxation in the state of Montana 6 mills or so much of 6 mills as is necessary to raise the amount appropriated by the legislature from the state special revenue fund for the support, maintenance, and improvement of the Montana university system, as provided in referendum measure No. 113 passed by a vote of the people at the general election held November 3, 1998. The funds raised from the levy must be deposited in the state special revenue fund.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 15, chapter 10, part 1, and the provisions of Title 15, chapter 10, part 1, apply to [section 1].

Section 3. Three-fourths vote required. Because [section 1] levies a new tax without a vote of the electorate as an emergency provision, Article VIII, section 17, of the Montana constitution requires a vote of three-fourths of the members of each house of the legislature for passage.

HeinOnline -- 1999 vol. I 13 1999

Section 4. Effective date. [This act] is effective on passage and approval.

Section 5. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after Decemher 31, 1998.

Section 6. Termination. [This act] terminates January 1, 2001.

Approved February 8, 1999

CHAPTER NO. 5

[SB 7]

AN ACT REVISING THE METHOD OF LEASING STATE GRAZING AND AGRICULTURAL LANDS; REQUIRING A RENTAL GUARANTEE FOR BIDS OVER A ONE-THIRD CROP SHARE; ALLOWING FOR REINSTATEMENT OF LEASES CANCELED FOR NONPAYMENT; AMENDING SECTIONS 77-6-501 AND 77-6-506, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 77-6-501, MCA, is amended to read:

"77-6-501. Agricultural lcases. (1) As to agricultural lands, all leases except lease renewals upon which the lessee has made improvements at the lessee's expense, as provided in subsection (3), must be continued or made upon a crop share rental basis of not less than one-fourth of the annual crops to the state or the usual landlord's share prevailing in the district, whichever is greater. The board may, however, approve special crop share rentals of less than one-fourth for high production cost crops, such as but not limited to potatoes and sugar beets, or for high production cost methods when these methods would result in more income to the state. The board may not delegate the authority to approve special crop share rentals.

(2) Except in the case of cash lease renewals under subsection (3), if it is in the best interests of the state, the department may authorize a lease upon other ~~basis~~ *bases* than crop share, but in these cases, the rental must at least equal the value of the usual landlord's share prevailing in the district under similar circumstances, and the department shall set forth in the records the conditions of the case and tbe rental to be charged.

(3) In ~~eases~~ *a case* in which the lessee has made substantial improvements for irrigation purposes to the lease at the lessee's own expense, the department shall authorize a cash lease renewal at not less than $15 an acre on the portion of the lease that has been improved.

(4) For all agricultural leases issued through competitive bidding provided for under 77-6-202 or 77-6-205, the department shall require on any competitive bid greater than a one-third crop share a minimum annual guarantee of not less than $15 an acre."

Section 2. Section 77-6-506, MCA, is amended to read:

"77-6-506. Date when rental due — penalty — cancellation for nonpayment. (1) For *a* grazing ~~leases~~ *lease, for* the grazing portion of ~~leases~~ *a lease* containing both agricultural and grazing land, and *for* agricultural leases not based on a crop share, the *grazing* rental for the first year of the lease ~~shall~~

HeinOnline -- 1999 vol. I 14 1999

must be paid at or before the time of the execution of the lease; however, in the case of ~~leases which take~~ *a lease that takes* effect on and after October 1 and before the expiration of the coming February, both the rental for the fractional year and for the next full year beginning March 1 ~~shall~~ *must* be paid and collected at the time of issuing the lease. If the United States is the lessee of state lands for grazing purposes, the rental ~~shall be~~ *is* payable at the end of each year of the lease. The rental for each succeeding year on ~~leases hereafter~~ *a lease* issued *after [the effective date of this act],* with the exception of ~~leases wherein~~ *a lease that involves* the United States ~~is~~ *as* the lessee, is due and payable before March 1. If the rental is not paid before March 1, a $25 penalty ~~shall~~ *must* be imposed on the lessee. If the full rental and the $25 penalty are not paid by April 1, the entire lease is canceled.

(2) For *an* agricultural ~~leases~~ *lease* and *for* the agricultural portion of ~~leases~~ *a lease* containing both grazing and agricultural land, when the rental is paid on a crop share basis or on a crop share/cash basis, the rental is due in cash on or before November 15 of the year in which the crop is harvested. If the rental is not paid on or before November 15 of the year of crop harvest, a $25 penalty ~~shall~~ *must* be imposed on the lessee. If the full rental and the $25 penalty are not paid on or before December 31 of the year in which the crop is harvested, the entire lease is canceled. The department may extend the deadline in writing. If the lessee does not make the rental payment by the date of extension, the entire lease is canceled. Any rental payment made after November 15 of the year in which the crop is harvested, including payment made after an extension of the deadline, must include the $25 penalty.

(3) For all state land leases and licenses other than those described in subsections (1) and (2), the department shall impose a $25 penalty for failure to make a rental payment by any deadline established by statute, *by* rule, or in the lease or license.

(4) At least 2 weeks prior to the final deadline for payment under subsection (1) or (2), the department shall send by certified mail to each lessee who has not made payment a letter notifying the lessee that the lease is canceled if payment and the $25 ponalty are not received by the final deadline. The notice ~~shall~~ *must* be sent to the lessee at the address given in the lease.

(5) When a lease is canceled under subsection (1) or (2), the department shall notify the lessee of the cancellation by letter at the address given in the lease. ~~The land is then open for lease to applicants.~~

(6) The department may, within 30 days of cancellation, reinstate a canceled agricultural, grazing, or other surface lease upon payment of the rental that is owing, plus a penalty not to exceed three times the annual rental, except that a penalty imposed under this subsection may not be less than $500.

(7) A canceled lease that is not reinstated must be made available for lease as provided in 77-6-202.

~~(6)~~*(8)* The penalties collected pursuant to this section must be deposited into the same trust account as the rentals from the state land to which the penalties apply."

Section 3. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 4. Effective date. [This act] is effective July 1, 1999.

HeinOnline -- 1999 vol. I 15 1999

Section 5. Applicability. (1) [Section 1] applies to all agricultural leases made or renewed on or after [the effective date of this act].

(2) [Section 2] applies to all rentals due on or after [the effective date of this act].

Approved February 11, 1999

CHAPTER NO. 6

[SB 17]

AN ACT CLARIFYING PROGRAM TRANSFERS BY PROHIBITING THE SUBSEQUENT TRANSFER OF MONEY TRANSFERRED TO ANOTHER FISCAL YEAR; AMENDING SECTION 17-7-139, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-7-139, MCA, is amended to read:

"17-7-139. Program transfers. (1) Unless prohibited by law, the approving authority may approve agency requests to transfer appropriations between programs within each fund type within each fiscal year. An explanation of any transfer that involves a significant change in agency or program scope, objectives, activities, or expenditures must be submitted to the legislative fiscal analyst for review and comment by the legislative finance committee prior to any implementation of the change. If the approving authority certifies that a request for a transfer representing a significant change in agency or program scope, objectives, activities, or expenditures is time-sensitive, the approving authority may approve the transfer prior to the next regularly scheduled meeting of the legislative finance committee. The approving authority shall submit all proposed time-sensitive changes to the legislative fiscal analyst prior to approval. If the legislative fiscal analyst determines that notification of the legislative finance committee is warranted, the legislative fiscal analyst shall immediately notify as many members as possible of the proposed change and communicate any concerns expressed to the approving authority. The approving authority shall present a report fully explaining the reasons for the action to the next meeting of the legislative finance committee. All program transfers must be completed within the same fund from which the transfer originated. A request for a transfer accompanied by a justification explaining the reason for the transfer must be submitted by the requesting agency to the approving authority and the office of budget and program planning. Upon approval of the transfer, the approving authority shall inform the legislative fiscal analyst of the approved transfer and the justification for the transfer. *If money appropriated for a fiscal year is transferred to another fiscal year, the money may not be retransferred.*

(2) For the purposes of subsection (1), an agency or program is considered to have a significant change in its scope, objectives, activities, or expenditures if:

(a) the budget transfer exceeds $1 million; or

(b) the budget transfer exceeds 25% of a program's total operating plan and the transfer is greater than $25,000. If there have been other transfers to or from the program in the current fiscal year, all the transfers, including the transfer

HeinOnline -- 1999 vol. I 16 1999

under consideration, must be used in determining the 25% and $25,000 threshold."

Section 2. Effective date. [This act] is effective July 1, 1999.

Approved February 11, 1999

CHAPTER NO. 7

[SB 26]

AN ACT CHANGING THE COMPOSITION OF THE BOARD OF REVIEW FOR BUSINESS REGISTRATION AND LICENSING; ALLOWING ADDITIONAL STATE AGENCIES TO PARTICIPATE IN STREAMLINED BUSINESS REGISTRATION AND LICENSING PLANS; AUTHORIZING A TRANSFER OF FUNDS FROM PARTICIPATING AGENCIES FOR ADMINISTERING THE STREAMLINED BUSINESS REGISTRATION AND LICENSING PLANS; AMENDING SECTIONS 30-16-302 AND 30-16-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 30-16-302, MCA, is amended to read:

"30-16-302. Board of review. (1) There is a board of review. The board of review's duty is to provide policy direction to the department of revenue in the establishment and operation of the system. The board of review includes the directors of the departments of agriculture, commerce, environmental quality, *livestock,* revenue, justice, and public health and human services, the secretary of state, ~~the director of the office of budget and program planning, the commissioner of labor and industry,~~ the president of the senate or a designee, and the speaker of the house or a designee. *If an agency that is not a member of the board of review requests inclusion in the streamlined registration and licensing plan as provided in 30-16-303, that agency's director must be appointed to the board of review.*

(2) The governor shall appoint a presiding officer from among the members of the board of review.

(3) The board of review shall meet at the call of the presiding officer at least once each calendar quarter to:

(a) establish interagency policy and guidelines for the plan;

(b) review the findings, status, and problems of system operations and recommend courses of action; *and*

(c) receive reports from industry and agency task forces that the board of review may request to inquire into particular issues~~;~~. ~~and~~

~~(d) recommend, in questionable cases, whether a particular license falls within the scope of this chapter.~~

(4) ~~In developing a recommended plan for streamlined registration and licensing procedures, the board of review shall consider the experience gained from the consolidated employer registration process implemented by the department of revenue and the department of labor and industry.~~ *The board of review may implement a plan for streamlined registration and licensing to include licenses not specified in 30-16-301, as provided in 30-16-303.*"

HeinOnline -- 1999 vol. I 17 1999

Section 2. Section 30-16-303, MCA, is amended to read:

"30-16-303. Participation of state agencies. *(1)* The legislature directs full participation in the implementation of this chapter hy:

~~(1)~~*(a)* the departments of agriculture, commerce, environmental quality, revenue, justice, labor and industry, and public health and human services;

~~(2)~~*(b)* the secretary of state;

~~(3)~~*(c)* the public service commission; and

~~(4)~~*(d)* other agencies as directed by the governor.

(2) The board of review may include licenses not specified in 30-16-301 in a plan for streamlined registration and licensing if:

(a) the agency administering the license requests that the license be included in the plan;

(b) the board of review approves including the license by a majority vote of a quorum of the board of review; and

(c) licensees affected by the license's inclusion in the plan are given 60 days' notice of the plan's implementation and the notice sets forth in detail the changes in the licensing procedures.

(3) If a license is included in a streamlined registration and licensing plan pursuant to subsection (2):

(a) the agency administering the license may provide for a variance in the timing of the payment of the license fee and a variance in the application form, filing date, and penalty provisions in order to conform with the plan's criteria;

(b) the board of review shall provide for the equitable proration to the agency administering the license of any fees paid by a licensee prior to the plan's implementation; and

(c) the license must be processed and issued by the department of revenue as provided in this chapter.

(4) In order to defray the costs associated with administering a streamlined registration and licensing plan, the department may require a transfer of funds from the participating agencies. The amount of funds transferred by an agency must be based on the number of licenses processed and issued on behalf of that agency versus the total number of licenses processed and issued undsr the streamlined registration and licensing plan."

Section 3. Effective date. [This act] is effective on passago and approval.

Approved February 11, 1999

CHAPTER NO. 8

[SB 50]

AN ACT REVISING THE LAWS GOVERNING THE REVIEW OF LAWS CONTAINING DEDICATED REVENUE PROVISIONS AND STATUTORY APPROPRIATIONS; PROVIDING FOR DISCRETION IN WHICH LAWS TO REVIEW; AND AMENDING SECTIONS 17-1-501, 17-1-503, 17-1-505, 17-1-508, AND 17-2-111, MCA.

HeinOnline -- 1999 vol. I 18 1999

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-1-501, MCA, is amended to read:

"17-1-501. Legislative ~~findings~~ *intent.* ~~(1) The legislature finds that provisions for dedicating state revenue and statutorily appropriating funds have increased in number, reduce legislative control over state spending, complicate the state funding structure, and increase the effort required to budget, appropriate, and monitor public funds. The dedication and statutory appropriation of funds result in the inability of the legislature to practically and systematically conduct reasoned prioritization of programs or funds.~~

~~(2)~~*(1)* It is the intent of the legislature, by establishing criteria for the review and evaluation of revenue dedication provisions, to ensure that provisions for revenue dedication:

(a) are based on sound principles of revenue dedication as described in 17-1-507;

(b) reflect present circumstances and legislative priorities for state spending;

(c) are terminated when they are no longer necessary or appropriate; and

(d) are subject to the same legislative scrutiny as programs or activities funded from the general fund.

~~(3)~~*(2)* It is the intent of the legislature, by establishing criteria for the review and evaluation of statutory appropriation provisions, to ensure that provisions with statutory appropriations:

(a) reflect present circumstances and legislative priorities for state spending;

(b) are terminated when they are no longer necessary or appropriate; and

(c) are subject to the same legislative scrutiny as other appropriations."

Section 2. Section 17-1-503, MCA, is amended to read:

"17-1-503. Transfer of fund balances to general fund. ~~(1)~~ The balance remaining in each special revenue account terminated pursuant to legislative review must be deposited in the general fund.

~~(2) If the legislative finance committee concurs, the department may transfer the unobligated balance in a special revenue account to the general fund based upon the survey conducted pursuant to 17-2-111.~~"

Section 3. Section 17-1-505, MCA, is amended to read:

"17-1-505. Review of dedicated revenue provisions. (1) Each interim, the legislative finance committee shall review ~~each~~ dedicated revenue ~~provision not exempted~~ *provisions based upon procedures established* under subsection (4) and the principles of revenue dedication set forth in 17-1-507 to ensure that legislative policy is clearly stated. ~~The committee shall also carry out the review prescribed by subsection (4).~~

(2) The legislature recognizes that dedicated revenue provisions are subject to review by:

(a) the office of budget and program planning in the development and implementation of the executive budget and analysis of legislation;

(b) the legislative finance division in analyzing the executive budget;

(c) the legislative services division in drafting legislation;

HeinOnline -- 1999 vol. I 19 1999

(d) the legislative auditor in auditing agencies; and

(e) the department of administration in performing the functions provided for in 17-2-106 and 17-2-111.

(3) To avoid unnecessary use of dedicated revenue provisions, the entities listed in subsection (2) shall, in the course of current duties, consider the principles in 17-1-507 and the criteria listed in this subsection for each new or existing dedicated revenue provision. A dedicated revenue provision should not give a program or activity an unfair advantage for funding. The expenditures from a dedicated revenue provision must be based on requirements for meeting a legislatively established outcome. Statutorily mandated programs or activities funded through dedicated revenue provisions from general revenue sources must be reviewed to the same extent as programs or activities funded from the general fund. The use of a dedicated revenue provision may be justified if it satisfies one or more of the following:

(a) The program or activity funded provides direct benefits for those who pay the dedicated tax, fee, or assessment, and the tax, fee, or assessment is commensurate with the costs of the program or activity.

(b) The use of the dedicated revenue provision provides special information or other advantages that could not be obtained if the revenue were allocated to the general fund.

(c) The dedicated revenue provision provides program funding at a level equivalent to the expenditures established by the legislature.

(d) The dedicated revenue provision involves collection and allocation formulas that are appropriate to the present circumstances and current priorities in state government.

(e) The dedicated revenue provision does not impair the legislature's ability to scrutinize budgets, control expenditures, and establish priorities for state spending.

(f) The dedicated revenue provision results in an appropriate projected ending fund balance.

(g) The dedicated revenue provision fulfills a continuing, legislatively recognized need.

(h) The dedicated revenue provision does not result in accounting or auditing inefficiency.

(4) The committee shall establish procedures to facilitate a biennial review and evaluation of dedicated revenue provisions. ~~If the review determines that the revenue dedication is constitutionally mandated, is for debt service, funds emergency services, or is a user fee that is designed to provide direct benefits for those who pay the dedicated tax, fee, or assessment in an amount commensurate with the benefits provided, the revenue dedication may be exempt from future review.~~

(5) Upon completion of the review, the committee shall report a summary of its findinge to the legislature, including its recommendation of termination or extension, with or without modification, of the dedicated revenue provision. ~~The summary must include the purpose of the revenue dedication, the source of funding, the activity funded, the number of personnel associated with the~~

~~activity, and any balance in the dedicated revenue fund. The summary must state the reason why the revenue dedication is exempt from future review.~~"

Section 4. Section 17-1-508, MCA, is amended to read:

"**17-1-508. Review of statutory appropriations.** (1) Each interim, the legislative finance committee shall, *based upon procedures established pursuant to subsection (5),* review ~~each~~ statutory ~~appropriation~~ *appropriations* that ~~is~~ *are* contained in ~~a section~~ *the sections* listed in 17-7-502 ~~and that is not exempted under subsection (6) of this section and shall review the guidelines set forth in subsection (4)~~ to eliminate ~~statutory appropriations~~ *those* that no longer fulfill a legislativo need and to ensure that legislative policy is clearly stated concerning the use of statutory appropriations.

(2) Each hiennium, the office of hudget and program planning shall, in development of the executive budget, identify instances in which statutory appropriations in current law do not appear consistent with the guidelines set forth in subsection ~~(4)~~ *(3).*

~~(3) As part of each agency audit, the legislative auditor shall review statutory appropriations to the agency and report instances in which they do not appear consistent with the guidelines set forth in subsection (4).~~

~~(4)~~*(3)* The review of statutory appropriations must determine whether a statutory appropriation meets the requirements of 17-7-501. A statutory appropriation from a continuing and reliable source of revenue may not be used to fund administrative costs. In reviewing and establishing statutory appropriations, the legislature shall consider the following guidelines. A statutory appropriation may be considered appropriate if:

(a) the fund or use requires an appropriation;

(b) the money is not from a continuing, reliable, and estimable source;

(c) the use of the appropriation or the expenditure occurrence is not predictable and reliable;

(d) tbe authority does not exist elsewhere;

(e) an alternative appropriation method is not available, practical, or effective;

(f) other than for emergency purposes, it does not appropriate money from the state general fund;

(g) the money is dedicated for a specific use;

(h) the legislature wishes the activity to be funded on a continual basis; and

(i) when feasible, an expenditure cap and sunset date are included.

~~(5)~~*(4)* The office of budget and program planning shall prepare a fiscal note for each piece of legislation that proposes to create or amend a statutory appropriation. It shall, consistent with the guidelines in this section, review each of these pieces of legislation. Its findings concerning the statutory appropriation must be contained in the fiscal note accompanying that legislation.

~~(5)~~*(5)* The legislative finance committee shall establish procedures to facilitate a biennial review and evaluation of statutory appropriations. ~~If the review determines that continual review of a statutory appropriation is not necessary, the statutory appropriation may be exempt from future review.~~ *Upon*

completion of the review, the committee shall report a summary of its findings to the legislature, including a recommendation for terminating, extending, or modifying the statutory appropriations reviewed."

Section 5. Section 17-2-111, MCA, is amended to read:

"17-2-111. ~~Survey of state~~ *State* special revenue accounts — report. Each biennium, the department shall ~~conduct a survey of~~ *provide information on* all state special revenue accounts ~~not exempt under 17-1-505 and coordinate with~~ *as requested by* the legislative finance committee ~~to provide information necessary to complete the review required by 17-1-505~~. The department shall provide the ~~survey~~ information to the legislative finance committee not later than February 1 of the year preceding a regular session of the legislature."

Approved February 11, 1999

CHAPTER NO. 9

[HB 55]

AN ACT EXTENDING THE APPLICATION OF THE BOND VALIDATING ACT; AMENDING SECTION 17-5-205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-5-205, MCA, is amended to read:

"17-5-205. Application. The application of the Bond Validating Act, Title 17, chapter 5, part 2, is extended to bonds issued and proceedings taken prior to ~~February 24, 1997~~ *[the effective date of this act]*."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved February 12, 1999

CHAPTER NO. 10

[SB 4]

AN ACT REVISING THE DEPARTMENT OF COMMERCE'S RESPONSIBILITY TO OFFER EMPLOYEE OWNERSHIP DEVELOPMENT SERVICES; AMENDING SECTION 90-5-305, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-5-305, MCA, is amended to read:

"90-5-305. Department to offer employee ownership development ~~services~~ *assistance and counseling*. ~~The~~ *Upon request by an employee group or organization, the* department of commerce shall:

~~(1) compile, organize, and make available to the public a library of resources on the subject of employee ownership and participatory management;~~

~~(2) research the role of employee ownership in successful state and local economic development programs of other states;~~

HeinOnline -- 1999 vol. I 22 1999

~~(3) provide public education on the beneficial aspects of employee-owned enterprises;~~

~~(4) conduct seminars, workshops, and conferences to increase awareness of the benefits found to be common to employee-owned enterprises. At least one seminar must be held annually for public officials dealing with economic development, business assistance, and business financing programs.~~

~~(5)~~ provide technical assistance and counseling on the establishment and management of employee-owned enterprises."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved February 16, 1999

CHAPTER NO. 11

[SB 34]

AN ACT CLARIFYING THAT ONLY LOANS TO THE GENERAL FUND MUST BE REPAID WITH INTEREST AND THAT A GENERAL FUND LOAN FOR BUDGET AMENDMENT PURPOSES DOES NOT CONSTITUTE A SIGNIFICANT ASCERTAINABLE COMMITMENT OF PRESENT GENERAL FUND SUPPORT; AMENDING SECTIONS 17-2-105, 17-2-107, AND 17-7-402, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-2-105, MCA, is amended to read:

"17-2-105. Maintenance of fund and account records and interfund loans. (1) The state treasurer shall record receipts and disbursements for treasury funds and shall maintain fund records in a manner that reflects the total cash and invested balance of each fund. The state treasurer shall also maintain records of individual funds within the debt service, agency, capital projects, and trust fund types in a manner that reflects the total cash and invested balance of each fund. When necessary to meet federal or other requirements that money be segregated in the treasury, the state treasurer may establish accounts, funds, or subfunds within any fund type listed in 17-2-102.

(2) (a) For the purpose of supplying deficiencies in the general fund, the state treasurer may temporarily borrow from other treasury funds, excluding pension trust funds, providing that the loan is recorded in the state accounting records. Except as provided in subsection (2)(b), the loan does not bear interest. A fund may not be so impaired that all proper demands on the fund cannot be met.

(b) If a loan *to the general fund* is made from a fund that retains its own interest, the department shall repay the loan with interest at a rate established by the state treasurer based on the estimated interest rate the funds would have earned if the funds had not been borrowed."

Section 2. Section 17-2-107, MCA, is amended to read:

"17-2-107. Accurate accounting records and interentity loans. (1) The department ~~of administration~~ shall record receipts and disbursements for treasury funds and for accounting entities within treasury funds and shall maintain records in a manner that reflects the total cash and invested balance of each fund and each accounting entity. The department ~~of administration~~ shall

adopt the necessary procedures to ensure that interdepartmental or intradepartmental transfers of money or loans do not result in inflation of figures reflecting total governmental costs and revenue.

(2) (a) ~~When~~ *Subject to 17-2-105, when* the expenditure of an appropriation from a fund designated in 17-2-102(1)(a) through (1)(c) is necessary and the cash balance in the accounting entity from which the appropriation was made is insufficient, the department ~~of administration~~ may authorize a temporary loan, bearing no interest, of unrestricted money from other accounting entities if there is reasonable evidence that the income will be sufficient to repay the loan within 1 calendar year and if the loan is recorded in the state accounting records. An accounting entity receiving a loan or an accounting entity from which a loan is made may not be so impaired that all proper demands on the accounting entity cannot be met even if the loan is extended.

(b) (i) When an expenditure from a fund or subfund designated in 17-2-102(1)(d) is necessary and the cash balance in the fund or subfund from which the expenditure is to be made is insufficient, the commissioner of higher education may authorize a temporary loan, bearing interest as provided in subsection (4), of money from the agency's other funds or subfunds if there is reasonable evidence that the income will be sufficient to repay the loan within 1 calendar year and if the loan is recorded in the state accounting records. A fund or subfund receiving a loan or from which a loan is made may not be so impaired that all proper demands on the fund or subfund cannot be met even if the loan is extended.

(ii) One accounting entity within each fund or subfund designated in 17-2-102(1)(d) must be established for the sole purpose of recording loans between the funds or subfunds. This accounting entity is the only accounting entity within each fund or subfund that may receive a loan or from which a loan may be made.

(c) A loan made under subsection (2)(a) or (2)(b) must be repaid within 1 calendar year of the date on which the loan is approved unless it is extended under subsection (3) or by specific legislative authorization.

(3) Under unusual circumstances, the director of the department ~~of administration~~ or the board of regents may grant one extension for up to 1 year for a loan made under subsection (2)(a) or (2)(b). The director or board shall prepare a written justification and proposed repayment plan for each loan extension authorized and shall furnish a copy of the written justification and proposed repayment plan to the house appropriations and senate finance and claims committees at the next legislative session.

(4) Any loan from the current unrestricted subfund to funds designated in 17-2-102(1)(d)(i)(D) and (1)(d)(ii) through (1)(d)(vi) must bear interest at a rate equivalent to the previous fiscal year's average rate of return on the board of investments' short-term investment pool.

(5) If for 2 consecutive fiscal yearends a loan or an extension of a loan has been authorized to the same accounting entity as provided in subsection (2) or (3), the department ~~of administration~~ or the commissioner of higher education shall submit to the legislative finance committee by September 1 of the following fiscal year a written report containing an explanation as to why the second loan or extension was made, an analysis of the solvency of the accounting entity or

HeinOnline -- 1999 vol. I 24 1999

accounting entities within the university fund or subfund, and a plan for repaying the loans.

(6) If for 2 consecutive fiscal yearends an accounting entity in a fund or subfund designated in 17-2-102(1)(d) has a negative cash balance, the commissioner of higher education shall submit to the legislative finance committee by September 1 of the following fiscal year a written report containing an explanation as to why the accounting entity has a negative cash balance, an analysis of the solvency of the accounting entity, and a plan to address any problems concerning the accounting entity's negative cash balance or solvency.

(7) (a) An accounting entity in a fund designated in 17-2-102(1)(a) through (1)(c) may not have a negative cash balance at fiscal yearend. The department ~~of administration~~ may, however, allow an accounting entity to carry a negative balance at any point during the fiscal year if the negative cash balance does not exist for more than 7 working days.

(b) (i) Except as provided in subsection (7)(b)(ii), a unit of the university system shall maintain a positive cash balance in the funds and subfunds designated in 17-2-102(1)(d).

(ii) If a fund or subfund inadvertently has a negative cash balance, the department ~~of administration~~ may allow the fund or subfund to carry the negative cash balance for no more than 7 working days. If the negative cash balance exists for more than 7 working days, a transaction may not be processed through the statewide accounting system for that fund or subfund.

(8) Notwithstanding the provisions of subsections (2) through (4), the department ~~of administration~~ may authorize loans to accounting entities in the federal and state special revenue funds with long-term repayment whenever necessary because of the timing of the receipt of ~~agreed upon~~ *agreed-upon* reimbursements from federal, private, or other governmental entity sources for disbursements made. The department ~~of administration~~ may approve the loans if the requesting agency can demonstrate that the total loan balance does not exceed total receivables from federal, private, or other governmental entity sources and receivables have been billed on a timely basis. The loan must be repaid under terms and conditions that may be determined by the department ~~of administration~~ or by specific legislative authorization."

Section 3. Section 17-7-402, MCA, is amended to read:

"17-7-402. Budget amendment requirements. (1) Except as provided in subsection ~~(6)~~ *(7)*, a budget amendment may not be approved:

(a) by the approving authority, except a budget amendment to spend:

(i) additional federal revenue;

(ii) additional tuition collected by the Montana university system;

(iii) additional revenue deposited in the internal service funds within the department or the office of the commissioner of higher education as a result of increased service demands by state agencies;

(iv) Montana historical society enterprise revenue resulting from sales to the public;

(v) additional revenue that is deposited in funds other than the general fund and that is from the sale of fuel for those agencies participating in the Montana public vehicle fueling program established by Executive Order 22-91;

HeinOnline -- 1999 vol. I 25 1999

(vi) revenue resulting from the sale of goods produced or manufactured by the industries program of an institution within the department of corrections; or

(vii) revenue collected for the administratien of the state grain laboratory under the provisions of Title 80, chapter 4, part 7;

(b) by the approving authority if the budget amendment contains any significant ascertainable commitment for any present or future increased general fund support;

(c) by the approving authority for the expenditure of money in the state special revenue fund unless an emergency justifies the expenditure or the expenditure is exempt under subsection ~~(4)~~ *(5)*;

(d) by the approving authority unless it will provide additional services;

(e) hy the approving authority for any matter of which the requesting agoncy had knowledge at a time when the proposal could have been presented to an appropriation subcommittee, the house appropriations committee, or the senate finance and claims committee of the most recent legislative session open to that matter, except when the legislative finance committee is given specific notice by the approving authority that significant identifiable events, specific to Montana and pursuant to provisions or requirements of Montana state law, have occurred since the matter was raised with or presented for consideration by the legislature; or

(f) to extend beyond June 30 of the last year of any biennium.

(2) A general fund loan made pursuant to 17-2-107 does not constitute a significant ascertainable commitment of present general fund support.

~~(2)~~*(3)* All budget amendments must itemize planned expenditures by fiscal year.

~~(3)~~*(4)* Each budget amendment must be submitted by the approving authority to the budget director and the legislative fiscal analyst. The proposed expenditure of money from nonstate or nonfederal sources that is restricted by law must be submitted to the legislative fiscal analyst.

~~(4)~~*(5)* Money from nonstate or nonfederal sources that would be deposited in the state special revenue fund and that is restricted by law or by the terms of a written agreement, such as a contract, trust agreement, or donation, is exempt from the requirements of this part.

~~(5)~~*(6)* An appropriation that would usually be tbe subject of a budget amendment tbat is submitted to the legislature for approval during a legislative session may not include authority to spend money beyond the first fiscal year of the next biennium.

~~(6)~~*(7)* A budget amendment to spend state funds, other than from the general fund, required for matching funds in order to receive a grant is exempt from the provisions of subsection (1)."

Section 4. Effeetive date. [This act] is effective July 1, 1999.

Approved February 16, 1999

HeinOnline -- 1999 vol. I 26 1999

CHAPTER NO. 12

[SB 51]

AN ACT ELIMINATING REGULATION OF CONDOMINIUM UNITS PRIOR TO CONSTRUCTION; ELIMINATING THE DEPARTMENT OF COMMERCE'S ROLE IN INVESTIGATING AND ENFORCING THE UNIT OWNERSHIP ACT; AMENDING SECTIONS 70-23-102 AND 70-23-308, MCA; AND REPEALING SECTIONS 70-23-201, 70-23-202, 70-23-203, 70-23-204, 70-23-205, 70-23-206, 70-23-1001, AND 70-23-1002, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 70-23-102, MCA, is amended to read:

"70-23-102. Definitions. In this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Association of unit owners" means all the unit owners acting as a group in accordance with the declaration and bylaws.

(2) "Building" means a multiple-unit building or buildings comprising a part of the property.

(3) "Common elements" means the general common elements and the limited common elements.

(4) "Common expenses" means:

(a) expenses of administration, maintenance, repair, or replacement of the common elements;

(b) expenses agreed upon as common by all the unit owners; and

(c) expenses declared common by 70-23-610 and 70-23-612 or by the declaration or the bylaws of the particular condominium.

(5) "Condominium" means the ownership of single units with common elements located on property submitted to the provisions of this chapter.

(6) "Declaration" means the instrument by which the property is submitted to the provisions of this chapter.

~~(7) "Department" means the department of commerce.~~

~~(8)~~*(7)* "General common elements", unless otherwise provided in a declaration or by consent of all the unit owners, means:

(a) the land on which the building is located, except any portion ~~thereof~~ *of the land* included in a unit or made a limited common element by the declaration;

(b) the foundations, columns, girders, beams, supports, mainwalls, roofs, halls, corridors, lobbies, stairs, fire escapes, entrances, and exits of the building;

(c) the basements, yards, gardens, parking areas, and outside storage spaces, private pathways, sidewalks, and private roads;

(d) installations of central services such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning, waste disposal, and incinerating;

(e) the elevators, tanks, pumps, motors, fans, compressors, ducts, and in general all apparatus and installations existing for common use;

(f) the premises for the lodging of janitors or caretakers of the property; and

HeinOnline -- 1999 vol. I 27 1999

(g) all other elements of the building necessary or convenient to its existence, maintenance, and safety or normally in common use.

~~(9)~~*(8)* "Limited common elements" means those common elements designated in the declaration or by agreement of all the unit owners as reserved for the use of a certain unit or number of units to the exclusion of the other units.

~~(10)~~*(9)* "Majority" or "majority of the unit owners", unless otherwise provided in the declaration, means the owners of more than 50% in the aggregate of the undivided ownership interests in the general common elements as the percentage of interest in ~~such~~ *the* element appertaining to each unit is expressed in the declaration. Whenever a percentage of the unit owners is specified, percentage means ~~such~~ *the* percentage in the aggregate of ~~such~~ undivided ownership.

~~(11)~~*(10)* "Manager" means the manager, board of managers, or other person in charge of the administration of or managing the property.

~~(12)~~*(11)* "Project" means a real estate condominium project~~, a plan~~ whereby a condominium of two or more units located on property submitted to the provisions of this chapter are offered or proposed to be offered for sale.

~~(10)~~*(12)* "Property" means the land, all buildings, improvements, and structures ~~thereon~~ *on the land,* and all easements, rights, and appurtenances belonging ~~thereto~~ *to the land* ~~which~~ *that* are submitted to the provisions of this chapter.

~~(14)~~*(13)* "Recording officer" means the county officer charged with the duty of filing and recording deeds and mortgages or ~~any~~ other instruments or documents affecting the title to real property.

~~(15)~~*(14)* "Unit" means a part of the property including one or more rooms occupying one or more floors or a part or parts ~~thereof~~ *of the property* intended for any type of independent use and with a direct exit to a public street or highway or to a common area or area leading to a public street or highway.

~~(10)~~*(15)* "Unit designation" means the number, letter, or combination ~~thereof~~ *of numbers and letters* designating a unit in the declaration.

~~(17)~~*(16)* "Unit owner" means the person owning a unit in fee simple absolute individually or as co-owner in any real estate tenancy relationship recognized under the laws of this state. However, for all purposes, including the exercise of voting rights, provided by lease filed with the presiding officer of the association of unit owners, a lessee of a unit ~~shall~~ *must* be considered a unit owner."

Section 2. Section 70-23-308, MCA, is amended to read:

"**70-23-308. Contents of bylaws.** The bylaws ~~shall~~ *must* provide for:

(1) the election from among the unit owners of a board of directors, the number of persons constituting the board, and that the terms of at least one-third of the directors ~~shall expire~~ *expire* annually; the powers and duties of the board; the compensation, if any, of the directors; the method of removal from office of the directors; and whether or not the board may engage the services of a manager or managing agent;

(2) the method of calling meetings of the unit owners and the percentage, if other than a majority as defined by 70-23-102~~(10)~~, that ~~shall constitute~~ *constitutes* a quorum;

HeinOnline -- 1999 vol. I 28 1999

(3) the election of a ~~chairman~~ *presiding officer*, a secretary, and a treasurer;

(4) the maintenance, upkeep, and repair of the common elements and payment for ~~the expense thereof~~ *those expenses*, including the method of approving payment vouchers;

(5) the employment of personnel necessary for the maintenance, upkeep, and repair of the common elements;

(6) the manner of collecting from the unit owners their share of the common expenses;

(7) the method of adopting and of amending administrative rules governing the details of the operation and use of the common elements;

(8) ~~such~~ restrictions on and requirements respecting the use and maintenance of the units and the use of the common elements, not included in the declaration, as are designed to prevent unreasonable interference with the use of ~~their~~ *the unit owners'* respective units and of the common elements by the several unit owners;

(9) the method of amending the bylaws subject to 70-23-307."

Section 3. Repealer. Sections 70-23-201, 70-23-202, 70-23-203, 70-23-204, 70-23-205, 70-23-206, 70-23-1001, and 70-23-1002, MCA, are repealed.

Approved February 16, 1999

CHAPTER NO. 13

[SB 141]

AN ACT EXEMPTING IN-STATE PIPELINES USED EXCLUSIVELY FOR IRRIGATION OF AGRICULTURAL CROPS FROM THE DEFINITION OF "FACILITY" IN THE MONTANA MAJOR FACILITY SITING ACT; AMENDING SECTION 75-20-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-20-104, MCA, is amended to read:

"75-20-104. Definitions. In this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Addition thereto" means the installation of new machinery and equipment that would significantly change the conditions under which the facility is operated.

(2) "Application" means an application for a certificate submitted in accordance with this chapter and the rules adopted under this chapter.

(3) "Associated facilities" includes but is not limited to transportation links of any kind, aqueducts, diversion dams, pipelines, transmission substations, storage ponds, reservoirs, and any other device or equipment associated with the production or delivery of the energy form or product produced by a facility, except that the term does not include a facility or a natural gas or crude oil gathering line 17 inches or less in inside diameter.

HeinOnline -- 1999 vol. I 29 1999

(4) "Board" means the board of environmental review provided for in 2-15-3502.

(5) "Certificate" means the certificate of environmental compatibility issued by the department under this chapter that is required for the construction or operation of a facility.

(6) "Commence to construct" means:

(a) any clearing of land, excavation, construction, or other action that would affect the environment of the site or route of a facility but does not mean changes needed for temporary use of sites or routes for nonutility purposes or uses in securing geological data, including necessary borings to ascertain foundation conditions;

(b) the fracturing of underground formations by any means if the activity is related to the possible future development of a gasification facility or a facility employing geothermal resources but does not include the gathering of geological data by boring of test holes or other underground exploration, investigation, or experimentation;

(c) the commencement of eminent domain proceedings under Title 70, chapter 30, for land or rights-of-way upon or over which a facility may be constructed;

(d) the relocation or upgrading of an existing facility defined by subsection (8)(c) or (8)(d), including upgrading to a design capacity covered by subsection (8)(c), except that the term does not include normal maintenance or repair of an existing facility.

(7) "Department" means the department of environmental quality provided for in 2-15-3501.

(8) "Facility" means:

(a) except for crude oil and natural gas refineries and those facilities subject to The Montana Strip and Underground Mine Reclamation Act, each plant, unit, or other facility and associated facilities designed for or capable of:

(i) generating 250 megawatts of electricity or more or any addition thereto, except pollution control facilities approved by the department and added to an existing plant;

(ii) producing 25 million cubic feet or more of gas derived from coal per day or any addition thereto, except pollution control facilities approved by the department and added to an existing plant;

(iii) producing 25,000 barrels of liquid hydrocarbon products per day or more or any addition thereto, except pollution control facilities approved by the department and added to an existing plant;

(iv) enriching uranium minerals or any addition thereto; or

(v) for purposes of 75-20-204 only, generating 50 megawatts of hydroelectric power or more or any addition thereto;

(b) each plant, unit, or other facility and associated facilities generating less than 250 megawatts that would be defined in subsection (8)(a):

(i) emitting 300 tons a year of particulate matter at 10 microns or less;

HeinOnline -- 1999 vol. I 30 1999

(ii) that is not employing best available control technology pursuant to 42 U.S.C. 7479 or is not employing lowest achievable emission rates as required by Title 75, chapter 2, or rules adopted under Title 75, chapter 2;

(iii) directly affecting:

(A) a class I airshed as designated pursuant to 42 U.S.C. 7470, et seq.;

(B) a class I river or stream as designated pursuant to 33 U.S.C. 1251, et seq.;

(C) habitat used by a threatened or endangered species of plant or animal as designated pursuant to 16 U.S.C. 1531, et seq.; or

(D) one of the following exclusion areas:

(I) national wilderness areas designated pursuant to 16 U.S.C. 1131, et seq.;

(II) national primitive areas;

(III) national parks as designated pursuant to 16 U.S.C. 1a-1, et seq.;

(IV) rivers in the national wild and scenic river system as designated pursuant to 16 U.S.C. 1271, et seq.; or

(V) national wildlife refuges and ranges as designated pursuant to 16 U.S.C. 668dd, et seq.; or

(iv) that would require a permanent workforce greater than 300 workers.;

(c) each electric transmission line and associated facilities of a design capacity of more than 69 kilovolts, except that the term:

(i) does not include an electric transmission line and associated facilities of a design capacity of 230 kilovolts or less and 10 miles or less in length; and

(ii) does not include an electric transmission line with a design capacity of more than 69 kilovolts but less than 230 kilovolts for which the person planning to construct the line has obtained right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively own more than 75% of the property along the centerline;

(d) *except pipelines within the boundaries of the state that are used exclusively for the irrigation of agricultural crops,* each pipeline, whether partially or wholly within the state, greater than 17 inches in inside diameter and 30 miles in length, and associated facilities;

(e) any use of geothermal resources, including the use of underground space in existence or to be created, for the creation, use, or conversion of energy, designed for or capable of producing geothermally derived pewer equivalent to 25 million Btu's per hour or more or any addition thereto, except pollution control facilities approved by the department and added to an existing plant;

(f) any underground in situ gasification of coal; or

(g) an energy-related project for which the department has granted a petition pursuant to 75-20-201(5).

(9) "Person" means any individual, group, firm, partnership, corporation, limited liability company, cooperative, association, gevernment subdivision, government agoncy, local government, or other organization or entity.

(10) "Transmission substation" means any structure, devico, or equipment assemblage, commonly located and designed for voltago regulation, circuit

HeinOnline -- 1999 vol. I 31 1999

protection, or switching necessary for the construction or operation of a proposed transmission line.

(11) "Utility" means any person engaged in any aspect of the production, storage, sale, delivery, or furnishing of heat, electricity, gas, hydrocarbon products, or energy in any form for ultimate public use."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved February 16, 1999

CHAPTER NO. 14

[HB 29]

AN ACT INCREASING TO $20 MILLION THE AUTHORITY TO ISSUE GENERAL OBLIGATION BONDS TO MAKE LOANS TO INDIVIDUALS AND WATER ASSOCIATIONS UNDER THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM; AUTHORIZING THE CREATION OF A STATE DEBT; AMENDING SECTION 85-1-624, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-1-624, MCA, is amended to read:

"85-1-624. Authorization of bonds. The board of examiners is authorized to issue and sell general obligation renewable resource bonds for the renewable resource grant and loan program created under Title 85, chapter 1, part 6, in accordance with the terms and conditions and in the manner provided in 85-1-617 from time to time and in amounts that, taking into consideration the principal amount of any renewable resource bonds then outstanding, will not cause the total aggregate principal amount of renewable resource bonds outstanding at any time to exceed ~~$10~~ *$20* million."

Section 2. Two-thirds vote required. Because [section 1] authorizes the creation of state debt, Article VIII, section 8, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage.

Section 3. Effective date. [This act] is effective July 1, 1999.

Approved February 17, 1999

CHAPTER NO. 15

[HB 30]

AN ACT ELIMINATING UNNECESSARY REGULATIONS THAT LIMIT THE UNIT SIZE IN WHICH CERTAIN COMMODITIES, INCLUDING BREAD, BUTTER, MILK, FLOUR, AND LIKE PRODUCTS, MAY BE SOLD; REPEALING SECTIONS 30-12-402, 30-12-403, 30-12-404, AND 30-12-405, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Repealer. Sections 30-12-402, 30-12-403, 30-12-404, and 30-12-405, MCA, are repealed.

HeinOnline -- 1999 vol. I 32 1999

Section 2. Effective date. [This act] is effective on passage and approval.

Approved February 17, 1999

CHAPTER NO. 16

[HB 35]

AN ACT REMOVING THE TERMINATION DATE FOR THE PROVISION THAT ALLOWS A 3 PERCENT STATE LANDS RESOURCE DEVELOPMENT ACCOUNT DEDUCTION; REPEALING SECTION 4, CHAPTER 247, LAWS OF 1997; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Repcaler. Section 4, Chapter 247, Laws of 1997, is repealed.

Section 2. Effective date. [This act] is effective on passage and approval.

Approved February 17, 1999

CHAPTER NO. 17

[HB 51]

AN ACT CHANGING A MEETING DATE REQUIREMENT AND THE REPORT DEADLINE FOR THE DROUGHT ADVISORY COMMITTEE; AMENDING SECTION 2-15-3308, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-3308, MCA, is amended to read:

"2-15-3308. Drought advisory committee. (1) There is a drought advisory committee in the department of natural resources and conservation.

(2) The drougbt advisory committee is chaired by a representative of the governor and consists of representatives of the departments of natural resources and conservation; agriculture; commerce; fisb, wildlife, and parks; military affairs; environmental quality; and livestock. The governor's representative must be appointed hy the governor, and the representative of each department must be appointed by the head of that department. Additional, nonvoting members who represent drought-affected federal and local government agencies and public and private interests may also be appointed by the gevernor.

(3) Tbe drought advisory committee shall:

(a) with the approval of the governor, develop and implement a state drought plan;

(b) review and report drought monitoring information to the public;

(c) coordinate timely drought impact assessments;

(d) identify areas of the state with a high probability of drought and target reporting and assistance efforts to those areas;

(e) upon request, assist in organizing local drought advisory committees for the areas identified under subsection (3)(d);

HeinOnline -- 1999 vol. I 33 1999

(f) request state agency staff to provide technical assistance to local drought advisory committees; and

(g) promote ideas and activities for groups and individuals to consider that may reduce drought vulnerability.

(4) The drought advisory committee shall meet, at a minimum, on or around October 15 and ~~February~~ *March* 15 of each year to assess moisture conditions and, as appropriate, hegin preparations for drought mitigation.

(5) By ~~March~~ *April* 15 of each year, the drought advisory committee shall submit a report to the gevernor describing the potential for drought in the coming year. If the potential for drought merits additional activity by the drought advisory committee, tlie report must also describe:

(a) activities to be taken by the drought advisory committee for informing the public about the potential for drought;

(b) a schedule for completing activities;

(c) geographic areas for which the creation of local drought advisory committees will be suggested to local governments and citizens; and

(d) requests for the use of any available state resources that may be necessary to prevent or mimmize drought impacts.

(6) Nothing in this section is intended te remove or interfere with the duties and responsibilities of the governor or the division of disaster and emergency services for disaster coordination and emergency response, as provided in Title 10, chapter 3, part 1. The duties and responsibilities of the drought advisory committee supplement and are consistent with these of the division of disaster and emergency services for drought planning, preparation, coordination, and mitigation."

Section 2. Effective date. [This act] is effective on passago and approval.

Approved February 17, 1999

CHAPTER NO. 18

[HB 80]

AN ACT GENERALLY REVISING LAWS GOVERNING STATE LANDS TO REMOVE PROVISIONS DECLARED INVALID; AMENDING SECTIONS 20-6-621, 20-15-403, 77-2-106, 77-2-211, 77-2-303, 77-2-311, AND 77-3-132, MCA; AND REPEALING SECTIONS 7-35-4104, 77-3-321, AND 77-5-213, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-6-621, MCA, is amended te read:

"20-6-621. Selection of school sites, — approval election, ~~and lease of state lands~~. (1) (a) Except as provided in subsection (1)(b), the trustees of a district may select the sites for school buildings or for other school purposes, but the selection must first be approved by the qualified electers of the district before a contract for the purchase of a site is entered into by the trustees.

(b) The trustees may purchase or otherwise acquire property contiguous to an existing site that is in use for school purposes without a site approval election. The trustees may take an option on a site prior to the site approval election.

HeinOnline -- 1999 vol. I 34 1999

(2) The election for the approval of a site must be called under the provisions of 20-20-201 and must be conducted in the manner prescribed by this title for school elections. An elector who may vote at a school site election is qualified to vote under the provisions of 20-20-301. If a majority of those voting at the election approve the site selection, the trustees may purchase the site. A site approval election is not required when the site was specifically identified in an election at which an additional levy or the issuance of bonds was approved for the purchase of the site.

(3) Any site for a school building or other building of the district that is selected or purchased by the trustees must:

(a) be in a place that is convenient, accessible, and suitable;

(b) comply with the minimum size and other requirements prescribed by the department of public health and human services; and

(c) comply with the statewide building regulations, if any, promulgated by the department of commerce.

~~(4) The board of land commissioners may sell, at the appraised value, or lease for any period of time less than 99 years, at an amount of $1 per year, to a district any tract of state land of not more than:~~

~~(a) 25 acres to be used as a site in the district for an elementary school; or~~

~~(b) 50 acres to be used as a site in the district for a high school.~~"

Section 2. Section 20-15-403, MCA, is amended to read:

"**20-15-403. Applications of other school district provisions.** (1) When the term "school district" appears in the following sections outside of Title 20, the term includes community college districts and the provisions of those sections applicable to school districts apply to community college districts: 2-9-101, 2-9-111, 2-9-316, 2-16-114, 2-16-602, 2-16-614, 2-18-703, 7-3-1101, 7-6-2604, 7-6-2801, 7-7-123, 7-8-2214, 7-8-2216, 7-11-103, 7-12-4106, 7-13-110, 7-13-210, 7-15-4206, 10-1-703, 15-1-101, 15-6-204, 15-16-101, 15-16-605, 15-70-301, 17-5-101, 17-5-202, 17-6-103, 17-6-204, 17-6-213, 17-7-201, 18-1-201, 18-2-101, 18-2-103, 18-2-113, 18-2-114, 18-2-401, 18-2-404, 18-2-432, 18-5-205, 19-1-102, 19-1-811, 22-1-309, 25-1-402, 27-18-406, 33-20-1104, 39-3-104, 39-4-107, 39-31-103, 39-31-304, 39-71-116, 39-71-117, 39-71-2106, 40-6-237, 41-3-1132, 49-3-101, 49-3-102, 53-20-304, ~~77-3-321,~~ 82-10-201 through 82-10-203, 85-7-2158, and 90-6-208 and Rules 4D(2)(g) and 15(c), M.R.Civ.P., as amended.

(2) When the term "school district" appears in a section outside of Title 20 but the section is not listed in subsection (1), the school district provision does not apply to a community college district."

Section 3. Section 77-2-106, MCA, is amended to read:

"**77-2-106. Charge for granting of easement.** The board shall charge and ~~cause to be collected~~ *collect* the full market value of the estate or interest disposed of through the granting of any ~~such~~ easement and also fix, charge, and ~~cause to be collected~~ *collect* the amount of the actual damages resulting to the remaining land or lands from the granting of ~~such~~ *an* easement as nearly as the ~~same~~ *damages* can be ascertained. ~~Where a road follows the section lines of state lands, the increased value accruing to said lands on account of construction of a road on said right-of-way easement shall be taken into consideration by the board in determining compensation, if any, for the easement.~~"

HeinOnline -- 1999 vol. I 35 1999

Section 4. Section 77-2-211, MCA, is amended to read:

"77-2-211. Exchange of timbered, cut-over, or burned-over lands. The board may accept on behalf of the state title in fee simple to any timbered lands or lands from which the timber has been cut or burned and in exchange ~~therefor~~ may convey *lands* not to exceed an equal value, as determined by the board after appraisal by a qualified land appraiser, of similar state land. However, ~~no such~~ *an* exchange may *not* be made ~~except that which in~~ *unless the exchange, in* the opinion of the board, will benefit the public interest. For the purpose of ~~such~~ an exchange, all state lands, including those referred to in ~~77-2-303(3)~~ *77-2-303(2)*, 77-2-311, and 77-5-101, are subject to be offered for ~~such~~ exchange, and any restrictions against their sale or disposal are, for the purpose of ~~such~~ an exchange, released."

Section 5. Section 77-2-303, MCA, is amended to read:

"77-2-303. Restrictions on land available for sale. ~~(1) Except as provided in 77-2-318, lands classified as timberlands are not subject to sale, but timber thereon may be sold and disposed of in the manner provided by law.~~

~~(2)~~*(1)* Lands ~~which~~ *that* in the judgment of the board are likely to contain valuable deposits of coal, oil, oil shale, phosphate, metals, sodium, or other valuable mineral deposits are not subject to sale~~,~~ *of* either the surface land or any of ~~such~~ *the mineral* deposits ~~therein~~. However, this does not prohibit the sale of lands containing sand, gravel, building stone, brick clay, or similar materials.

~~(3)~~*(2)* (a) There is ~~also~~ reserved from sale from all state lands bordering on navigable lakes, ~~or bordering on~~ nonnavigable meandered lakes, and ~~from all state lands bordering on~~ navigable streams, ~~as~~ *that* the board ~~may deem~~ *considers* in the best interests of the state, a strip of land ~~which shall include~~ *that includes* all the land lying between low-water mark and high-water mark and ~~which in addition shall extend~~ *that extends* in width landward from the line of high-water mark of ~~such~~ *the* lake or stream the full width of the 40-acre tract or government lot abutting the line of high-water mark. If the width of ~~such~~ *the* abutting government lot at its narrowest point is less than 100 feet, then the strip ~~hereby~~ reserved ~~shall~~ *must* extend to and include the next adjoining 40-acre tract or government lot. The land reserved from sale by this subsection ~~shall be~~ *is* subject to the granting of easements the same as other state lands.

(b) ~~Such strips~~ *Strips* of land bordering on meandering lakes or on navigable streams, except the strip lying between low-water and high-water mark, whether surveyed and platted into blocks and lots or not, may~~, however,~~ be leased as provided in this title for the leasing of other state lands."

Section 6. Section 77-2-311, MCA, is amended to read:

"77-2-311. Survey and plat of shore lands. The board may ~~in its discretion~~ cause any part of the lands bordering on lakes described in ~~77-2-303(3)~~ *77-2-303(2)* and on navigable streams ~~which~~ *that* are reserved from sale to be surveyed and platted into blocks and lots~~, the~~. *The* lots ~~to~~ *may not* be ~~not~~ less than 125 feet in width, ~~the width to be~~ measured in the general direction of the abutting water front~~, but in~~. *In* all ~~such~~ surveys and plats the strip of 100 feet in width along the water front, referred to in ~~77-2-303(3)(a)~~ *77-2-303(2)(a)*, ~~shall~~ *must* be reserved for the use and enjoyment of the public."

Section 7. Section 77-3-132, MCA, is amended to read:

HeinOnline -- 1999 vol. I 36 1999

"**77-3-132. Leasing privileges of permittee.** (1) During the life of any permit the permittee may apply for a lease of the lands or mineral rights covered by the permit, and if a lease is granted it ~~shall~~ *must* be in the form and subject to all the terms and conditions specified in this part, as in the case of a mining lease issued under this part. ~~The permittee has the preference right to a lease, upon such terms as the board considers just, subject to this part, and in any event the permittee has preference without competitive bidding and upon the most favorable terms permitted under this part to 40 contiguous acres.~~

(2) If some other person makes a better bid for a mining lease upon the land covered by the permit and if the board awards a mining lease to a better bidder, the board shall also require ~~such~~ *the* mining lessee to pay to the permittee, prior to the issuance of the lease, the full value of all the work the permittee has performed upon the land under ~~his~~ *the* permit in connection with ~~his~~ prospecting and exploration work. Within 30 days from the date the board gives the permittee notice of the issuance of the mining lease or within ~~such~~ *a* further time as the board upon good cause shown allows, the permittee may remove ~~from the land~~ any machinery, equipment, improvements, and other property placed ~~thereon by him~~ *on the land by the permittee.*"

Section 8. Repealer. Sections 7-35-4104, 77-3-321, and 77-5-213, MCA, are repealed.

Approved February 17, 1999

CHAPTER NO. 19

[SB 11]

AN ACT IMPROVING THE LEGISLATIVE OVERSIGHT AND REVIEW OF GOVERNMENTAL OPERATIONS BY GENERALLY REVISING THE FUNCTIONS OF INTERIM COMMITTEES; LIMITING THE NUMBER OF INTERIM COMMITTEES; ASSIGNING ADMINISTRATIVE RULE REVIEW RESPONSIBILITY AND SPECIFIC EXECUTIVE BRANCH AGENCY MONITORING AND REVIEW TO SPECIFIC COMMITTEES; REVISING THE INTERIM STUDY PROCESS; PROVIDING MEMBERSHIP FLEXIBILITY IN INTERSTATE ORGANIZATIONS BY ELIMINATING SPECIFIC REQUIREMENTS; ELIMINATING THE ADMINISTRATIVE CODE COMMITTEE, THE REVENUE OVERSIGHT COMMITTEE, THE COMMITTEE ON INDIAN AFFAIRS, THE JOINT COMMITTEE ON POSTSECONDARY EDUCATION POLICY AND BUDGET, THE COMMITTEE ON PUBLIC EMPLOYEE RETIREMENT SYSTEMS, THE JOINT OVERSIGHT COMMITTEE ON CHILDREN AND FAMILIES, AND THE COMMITTEE ON STATE MANAGEMENT SYSTEMS; AMENDING SECTIONS 2-4-102, 2-4-110, 2-4-302, 2-4-305, 2-4-306, 2-4-307, 2-4-308, 2-4-311, 2-4-312, 2-4-313, 2-4-402, 2-4-404, 2-4-405, 2-4-406, 2-4-410, 2-4-412, 5-2-503, 5-2-504, 5-5-202, 5-5-211, 5-5-212, 5-5-213, 5-5-214, 5-5-215, 5-11-101, 5-11-105, 5-11-107, 5-11-301, 5-12-302, 5-16-102, 5-18-107, 15-1-230, 15-36-324, 15-70-234, 17-6-511, 17-7-140, 69-3-1409, 72-16-447, 72-16-448, 72-16-450, 75-1-324, AND 90-8-311, MCA; REPEALING SECTIONS 2-4-401, 5-11-302, 5-11-701, 5-11-702, 5-11-703, 5-11-704, 5-14-101, 5-14-102, 5-14-103, 5-14-104, 5-18-101, 5-18-102, 5-18-103, 5-18-104, 5-18-105, 5-18-106, 5-18-108, 5-18-109, 5-18-110, 5-18-115, 5-19-101, 5-19-102, 5-19-103, 5-19-104, 5-19-105, 5-19-106, 5-19-107, 5-19-108, 5-20-201, 5-20-202, 5-20-203, 5-20-204, 5-20-205, 5-20-206, 5-20-207, 5-20-208,

HeinOnline -- 1999 vol. I 37 1999

5-21-101, 5-21-102, 5-21-103, 5-21-104, 5-21-105, 5-22-101, 5-22-102, 5-23-101, 5-23-102, 5-23-103, 5-23-104, 5-23-105, 5-23-106, 5-23-107, 5-23-108, AND 5-23-109, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-4-102, MCA, is amended to read:

"2-4-102. Definitions. For purposes of this chapter, the following definitions apply:

(1) "Administrative ~~code~~ *rule review* committee" or "committee" means the *appropriate* committee ~~provided for~~ *assigned subject matter jurisdiction* in Title 5, chapter ~~14~~ *5, part 2*.

(2) (a) "Agency" means an agency, as defined in 2-3-102, of the state government, except that the provisions of this chapter do not apply to the following:

(i) the state board of pardons and parole, except that the board is subject to the requirements of 2-4-103, 2-4-201, 2-4-202, and 2-4-306 and its rules must be published in the ARM and the register;

(ii) the supervision and administration of a penal institution with regard to the institutional supervision, custody, control, care, or treatment of youths or prisoners;

(iii) the board of regents and the Montana university system;

(iv) the financing, construction, and maintenance of public works;

(v) the public service commission when conducting arbitration proceedings pursuant to 47 U.S.C. 252 and 69-3-837.

(b) Agency does not include a school district, unit of local government, or any other political subdivision of the state.

(3) "ARM" means the Administrative Rules of Montana.

(4) "Contested case" means a proceeding before an agency in which a determination of legal rights, duties, or privileges of a party is required by law to be made after an opportunity for hearing. The term includes but is not restricted to ratemaking, price fixing, and licensing.

(5) "Interested person" means a person who has expressed to the agency an interest concerning agency actions under this chapter and has requested to be placed on the agency's list of interested persons as to matters of which the person desires to be given notice. The term does not extend to contested cases.

(6) "License" includes the whole or part of an agency permit, certificate, approval, registration, charter, or other form of permission required by law but does not include a license required solely for revenue purposes.

(7) "Licensing" includes an agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, limitation, transfer, or amendment of a license.

(8) "Party" means a person named or admitted as a party or properly seeking and entitled as of right to be admitted as a party, but this chapter may not be construed to prevent an agency from admitting any person as a party for limited purposes.

HeinOnline -- 1999 vol. I 38 1999

(9) "Person" means an individual, partnership, corporation, association, governmental subdivision, agency, or public organization of any character.

(10) "Register" means the Montana Administrative Register.

(11) "Rule" means each agency regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice requirements of an agency. The term includes the amendment or repeal of a prior rule but does not include:

(a) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public;

(b) formal opinions of the attorney general and declaratory rulings issued pursuant to 2-4-501;

(c) rules relating to the use of public works, facilities, streets, and highways when the substance of the rules is indicated to the public by means of signs or signals;

(d) seasonal rules adopted annually or biennially relating to hunting, fishing, and trapping when there is a statutory requirement for the publication of the rules and rules adopted annually or biennially relating to the seasonal recreational use of lands and waters owned or controlled by the state when the substance of the rules is indicated to the public by means of signs or signals;

(e) rules implementing the state personnel classification plan, the state wage and salary plan, or the statewide budgeting and accounting system;

(f) uniform rules adopted pursuant to interstate compact, except that the rules must be filed in accordance with 2-4-306 and must be published in the ARM.

(12) "Significant interest to the public" means agency actions under this chapter regarding matters that the agency knows to be of widespread citizen interest. These matters include issues involving a substantial fiscal impact to or controversy involving a particular class or group of individuals. The term does not extend to contested cases.

(13) "Substantive rules" are either:

(a) legislative rules, which if adopted in accordance with this chapter and under expressly delegated authority to promulgate rules to implement a statute have the force of law and when not so adopted are invalid; or

(b) adjective or interpretive rules, which may be adopted in accordance with this chapter and under express or implied authority to codify an interpretation of a statute. The interpretation lacks the force of law."

Section 2. Section 2-4-110, MCA, is amended to read:

"2-4-110. Departmental review of rule notices. (1) The head of each department of the executive branch shall appoint an existing attorney, paralegal, or other qualified person from that department to review each departmental rule proposal notice, adoption notice, or other notice relating to administrative rulemaking. Notice of the name of the person appointed under this subsection and of any successor must be given to the secretary of state and the *appropriate* administrative ~~code~~ *rule review* committee within 10 days of the appointment.

(2) The person appointed under subsection (1) shall review each notice by any division, bureau, or other unit of the department, including units attached to the department for administrative purposes only under 2-15-121, for

HeinOnline -- 1999 vol. I 39 1999

compliance with this chapter before the notice is filed with the secretary of state. The reviewer shall pay particular attention to 2-4-302 and 2-4-305. The review must include hut is not limited to consideration of:

(a) the adequacy of the rationale for the intended action and whether the intended action is reasonably necessary to effectuate the purpose of the code section or sections implemented;

(b) whether the proper statutery authority for the rule is cited;

(c) whether the citation of the code section or sections implemented is correct; and

(d) whether the intended action is contrary to the code section or sections implemented or to other law.

(3) The person appeinted under subsection (1) shall sign each notice for which this section requires a review. The act of signing is an affirmation that the review required by this section has been performed to the best of the reviewer's ability. The secretary of state may not accept for filing a notice that does not have the signature required hy this section."

Section 3. Section 2-4-302, MCA, is amended to read:

"**2-4-302. Notice, hearing, and submission of views.** (1) Prior to the adoption, amendment, or repeal of any rule, the agency shall give written notice of its intended action. The notice must include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, the rationale for the intended action, and the time when, place where, and manner in which interested persons may present their views on the intended action. The rationale must be written in plain, easily understood language.

(2) (a) The notice must be filed with the secretary of state for publication in the register, as provided in 2-4-312, and mailed within 3 days of publication to the sponsor of the legislative bill that enacted the section that is cited as implemented in the notice if the notice is the initial proposal to implement the section, to interested persons who have made timely requests to the agency to be informed of its rulemaking proceedings, and to the office of any professional, trade, or industrial society or organization or member of those entities who has filed a request with the *appropriate* administrative ~~code~~ *rule review* committee when the request has been forwarded to the agency as provided in subsection (2)(b). Each agency shall create and maintain a list of interested persons and the subject or subjects in which each person on the list is interested. A person who submits a written comment or attends a hearing in regard to proposed agency action under this part must be informed of the list by the agency. An agency complies with this subsection if it includes in the notice an advisement explaining how persons may be placed on the list of interested persons and if it complies with subsection (7).

(b) The *appropriate* administrative ~~code~~ *rule review* committee shall forward a list of all organizations or persons who have submitted a request to he informed of agency actions to ~~all~~ *the* agencies *that the committee oversees* ~~publishing~~ *that publish* rulemaking notices in tbe register. The list must be amended by the agency upon request of any person requesting to be added to or deleted from the list.

(c) The notice required by suhsections (1) and (2)(a) must be published and mailed at least 30 days in advance of the agency's intended action. In addition to

HeinOnline -- 1999 vol. I 40 1999

publishing and mailing the notice under subsection (2)(a) ~~of this section~~, the agency shall post the notice on the state electronic bulletin board or other electronic communications system available to the public.

(d) The agency shall also, at the time that its personnel begin to work on the substantive content and the wording of the initial rule proposal to implement one or more statutes, notify the sponsor of the legislative bill that enacted the section.

(3) If a statute provides for a method of publication different from that provided in subsection (2), the affected agency shall comply with the statute in addition to the requirements contained in this section. However, the notice period may not be less than 30 days or more than 6 months.

(4) Prior to the adoption, amendment, or repeal of any rule, the agency shall afford interested persons at least 20 days' notice of a hearing and at least 28 days from the day of the original notice to submit data, views, or arguments, orally or in writing. If an amended or supplemental notice is filed, additional time may be allowed for oral or written submissions. In the case of substantive rules, the notice of proposed rulemaking must state that opportunity for oral hearing must be granted if requested by either 10% or 25, whichever is less, of the persons who will be directly affected by the proposed rule, by a governmental subdivision or agency, by the *appropriate* administrative ~~code~~ *rule review* committee, or by an association having not less than 25 members who will be directly affected. If the proposed rulemaking involves matters of significant interest to the public, the agency shall schedule an oral hearing.

(5) An agency may continue a hearing date for cause. In the discretion of the agency, contested case procedures need not be followed in hearings held pursuant to this section. If a hearing is otherwise required by statute, nothing in this section alters that requirement.

(6) If an agency fails to publish a notice of adoption within the time required by 2-4-305(7) and the agency again proposes the same rule for adoption, amendment, or repeal, the proposal must be considered a new proposal for purposes of compliance with this chapter.

(7) At the commencement of a hearing on the intended action, the person designated by the agency to preside at the hearing shall:

(a) read aloud the "Notice of Function of Administrative ~~Code~~ *Rule Review* Committee" appearing in the register; and

(b) inform the persons at the hearing of the provisions of subsection (2)(a) and provide them an opportunity to place their names on the list.

(8) For purposes of notifying sponsors under subsections (2)(a) and (2)(d) who are no longer members of the legislature, a former legislator who wishes to receive notice may keep the former legislator's name, address, and telephone number on file with the secretary of state. An agency proposing rules shall consult the register when providing sponsor notice."

Section 4. Section 2-4-305, MCA, is amended to read:

"2-4-305. Requisites for validity — authority and statement of reasons. (1) The agency shall fully consider written and oral submissions respecting the proposed rule. Upon adoption of a rule, an agency shall issue a concise statement of the principal reasons for and against its adoption, incorporating in the statement the reasons for overruling the considerations urged against its adoption. If substantial differences exist between the rule as

HeinOnline -- 1999 vol. I 41 1999

proposed and as adopted and the differences have not been described or set forth in the adopted rule as that rule is printed in the register, the differences must be described in the statement of reasons for and against agency action. When written or oral submissions have not been received, an agency may omit the statement of reasons.

(2) Rules may not unnecessarily repeat statutory language. Whenever it is necessary to refer to statutory language in order to convey the meaning of a rule interpreting the language, the reference must clearly indicate the portion of the language that is statutory and the portion that is an amplification of the language.

(3) Each proposed and adopted rule must include a citation to the specific grant of rulemaking authority pursuant to which the rule or any part of the rule is adopted. In addition, each proposed and adopted rule must include a citation to the specific section or sections in the Montana Code Annotated that the rule purports to implement. A substantive rule may not be proposed or adopted unless:

(a) a statute granting the agency authority to adopt rules clearly and specifically lists the subject matter of the rule as a subject upon which the agency shall or may adopt rules; or

(b) the rule implements and relates to a subject matter or an agency function that is clearly and specifically included in a statute to which the grant of rulemaking authority extends.

(4) Each rule that is proposed and adopted by an agency and that implements a policy of a governing board or commission must include a citation to and description of the policy implemented. Each agency rule implementing a policy and the policy itself must be based on legal authority and otherwise comply with the requisites for validity of rules established hy this chapter.

(5) To be effective, each substantive rule adopted must be within the scope of authority conferred and in accordance with standards prescribed by other provisions of law.

(6) Whenever by the express or implied terms of any statute a state agency has authority to adopt rules to implement, interpret, make specific, or otherwise carry out the provisions of the statute, an adoption, amendment, or repeal of a rule is not valid or effective unless it is:

(a) consistent and not in conflict with the statute; and

(b) reasonably necessary to effectuate the purpose of the statute. A statute mandating that the agency adopt rules establishes the necessity for rules but does not, standing alone, constitute reasonable necessity for a rule. The agency shall also address the reasonableness component of the reasonable necessity requirement by, as indicated in 2-4-302(1) and subsection (1) of this section, stating the principal reasons and the rationale for its intended action and for the particular approach that it takes in complying with the mandate to adopt rules. Subject to the provisions of subsection (8), reasonable necessity must be clearly and thoroughly demonstrated for each adoption, amendment, or repeal of a rule in the agency's notice of proposed rulemaking and in the written and oral data, views, comments, or testimony submitted by the public or the agency and considered by the agency.

(7) A rule is not valid unless notice of it is given and it is adopted in substantial compliance with 2-4-302, 2-4-303, or 2-4-306 and this section and

HeinOnline -- 1999 vol. I 42 1999

unless notice of adoption of the rule is published within 6 months of the publishing of notice of the proposed rule. If an amended or supplemental notice of either proposed or final rulemaking, or both, is published concerning the same rule, the 6-month limit must be determined with reference to the latest notice in all cases.

(8) An agency may use an amended proposal notice or the adoption notice to correct deficiencies in citations of authority for rules and in citations of sections implemented by rules. An agency may use an amended proposal notice but, except for clerical corrections, may not use the adoption notice to correct deficiencies in a statement of reasonable necessity.

(9) If a majority of the members of the *appropriate* administrative ~~code~~ *rule review* committee notify the committee presiding officer that those members object to a notice of proposed rulemaking, the committee shall notify the agency in writing that the committee objects to the proposal notice and will address the objections at the next committee meeting. Following notice by the committee to the agency, the proposal notice may not be adopted until publication of the last issue of the register that is published before expiration of the 6-month period during which the adoption notice must be published, unless prior to that time, the committee meets and does not make the same objection. A copy of the committee's notification to the agency must be included in the committee's records."

Section 5. Section 2-4-306, MCA, is amended to read:

"2-4-306. Filing, format, and effective date — dissemination of emergency rules. (1) Each agency shall file with the secretary of state a copy of each rule adopted by it.

(2) The secretary of state may prescribe a format, style, and arrangement for notices and rules that are filed pursuant to this chapter and may refuse to accept the filing of any notice or rule that is not in compliance with this chapter. The secretary of state shall keep and maintain a permanent register of all notices and rules filed, including superseded and repealed rules, that must be open to public inspection and shall provide copies of any notice or rule upon request of any person. Unless otherwise provided by statute, the secretary of state may require the payment of the cost of providing copies.

(3) In the event that the *appropriate* administrative ~~code~~ *rule review* committee has conducted a poll of the legislature in accordance with 2-4-403 ~~or the revenue oversight committee has conducted a poll in accordance with 5-18-109~~, the results of the poll must be published with the rule.

(4) Each rule is effective after publication in the register, as provided in 2-4-312, except that:

(a) if a later date is required by statute or specified in the rule, the later date is the effective date;

(b) subject to applicable constitutional or statutory provisions:

(i) a temporary rule is effective immediately upon filing with the secretary of state or at a stated date following publication in the register; and

(ii) an emergency rule is effective at a stated date following publication in the register or immediately upon filing with the secretary of state if the agency finds that this effective date is necessary because of imminent peril to the public health, safety, or welfare. The agency's finding and a brief statement of reasons for the

HeinOnline -- 1999 vol. I 43 1999

finding must be filed with the rule. The agency shall, in addition to the required publication in the register, take appropriate and extraordinary measures to make emergency rules known to each person who may be affected by them.

(c) if, following written administrative ~~code~~ *rule review* committee notification to an agency under 2-4-305(9), the committee meets and under 2-4-406(1) objects to all or some portion of a proposed rule before the rule is adopted, the rule or portion of the rule objected to is not effective until the day after final adjournment of the regular session of the legislature that begins after the notice proposing the rule was published by the secretary of state, unless, following the committee's objection under 2-4-406(1):

(i) the committee withdraws its objection under 2-4-406 before the rule is adopted; or

(ii) the rule or portion of a rule objected to is adopted with changes that in the opinion of a majority of the committee members, as communicated in writing to the committee presiding officer and staff, make it comply with the committee's objection and concerns."

Section 6. Section 2-4-307, MCA, is amended to read:

"**2-4-307. Omissions from ARM or register.** (1) An agency may adopt by reference any model code, federal agency rule, rule of any agency of this state, or other similar publication if the publication of the model code, rule, or other publication would be unduly cumbersome, expensive, or otherwise inexpedient.

(2) The model code, rule, or other publication must be adopted by reference in a rule adopted under the rulemaking procedure required by this chapter. The rule must contain a citation to the material adopted by reference and a statement of the general subject matter of the omitted rule and must state where a copy of the omitted material may be obtained. Upon request of the secretary of state, a copy of the omitted material must be filed with the secretary of state.

(3) ~~No~~ *A* rule originally adopting by reference any model code or rule provided for in subsection (1) ~~of this section~~ may *not* adopt any later amendments or editions of the material adopted. Except as provided in subsection (5), each later amendment or edition may be adopted by reference only by following the rulemaking procedure required by this chapter.

(4) If requested by a three-fourths vote of the *appropriate* administrative ~~code~~ *rule review* committee, an agency ~~must~~ *shall* immediately publish the full or partial text of any pertinent material adopted by reference under this section. The committee may not require the publication of copyrighted material. Publication of the text of a rule previously adopted does not affect the date of adoption of the rule, but publication of the text of a rule before publication of the notice of final adoption must be in the form of and is considered to be a new notice of proposed rulemaking.

(5) Whenever later amendments of federal regulations must be adopted to comply with federal law or to qualify for federal funding, only a notice of incorporation by reference of ~~such~~ *the* later amendments ~~shall~~ *must* be filed in the ~~Montana Administrative Register~~ *register*. This notice ~~shall~~ *must* contain the information required by subsection (2) ~~of this section~~ and ~~shall~~ *must* state the effective date of ~~such~~ *the* incorporation. The effective date may be no sooner than 30 days after the date upon which the notice is published unless the 30 days causes a delay that jeopardizes compliance with federal law or qualification for federal

HeinOnline -- 1999 vol. I 44 1999

funding, in which event the effective date may be no sooner than the date of publication. A hearing is not required unless requested under 2-4-315 by either 10% or 25, whichever is less, of the persons who will be directly affected by the incorporation, by a governmental subdivision or agency, or by an association having not less than 25 members who will be directly affected. ~~No further~~ *Further* notice of adoption or preparation of a replacement page for the ~~Administrative Rules of Montana~~ *ARM* is *not* required.

(6) If a hearing is requested under subsection (5), the petition for hearing ~~shall~~ *must* contain a request for an amendment and may contain suggested language, reasons for an amendment, and any other information pertinent to the subject of the rule."

Section 7. Section 2-4-308, MCA, is amended to read:

"2-4-308. Adjective or interpretive rule — statement of implied authority and legal effect. (1) Each adjective or interpretive rule or portion of ~~such a~~ *an adjective or interpretive* rule to be adopted ~~after October 1, 1983,~~ under implied rulemaking authority ~~shall~~ *must* contain a statement in the historical notations of the rule that the rule is advisory only but may be a correct interpretation of the law. ~~Such~~ *The* statement must be placed in the ARM when the rule in question is ~~next~~ scheduled for reprinting.

(2) The *appropriate* administrative ~~code~~ *rule review* committee may file with the secretary of state, for publication with any rule or portion ~~thereof~~ *of a rule that* it considers to be adjective or interpretive, a statement indicating that it is the opinion of the *appropriate* administrative ~~code~~ *rule review* committee that the rule or portion ~~thereof~~ *of a rule* is adjective or interpretive and therefore advisory only. If the committee requests the statement to be published for an adopted rule not scheduled for reprinting in the ARM, the cost of publishing the statement in the ARM ~~shall~~ *must* be ~~borne~~ *paid* by the committee."

Section 8. Section 2-4-311, MCA, is amended to read:

"2-4-311. Publication and arrangement of ARM. (1) The secretary of state shall compile, index, arrange, rearrange, correct errors or inconsistencies without changing the meaning, intent, or effect of any rule, and publish *in the appropriate format* all rules filed pursuant to this chapter in *the* ARM. The secretary of state shall supplement, revise, and publish *the* ARM or any part ~~thereof~~ *of the ARM* as often as ~~he~~ *the secretary of state* considers necessary. ~~He~~ *The secretary of state* may include ~~such~~ editorial notes, cross-references, and other matter ~~as he and the administrative code committee consider~~ *that the secretary of state considers* desirable or advantageous. ~~He~~ *The secretary of state* shall publish supplements to *the* ARM at ~~such~~ *the* times and in ~~such~~ *the* form ~~as he~~ *that the secretary of state* considers appropriate.

(2) *The* ARM ~~shall~~ *must* be arranged, indexed, and printed or duplicated in ~~such~~ *a* manner ~~as to permit~~ *that permits* separate publication of portions ~~thereof~~ relating to individual agencies. An agency may make arrangements with the secretary of state for the printing of as many copies of ~~such~~ *the* separate publications as it may require. The cost of any ~~such~~ separate publications, determined in accordance with 2-4-313(4), ~~shall~~ *must* be paid by the agency."

Section 9. Section 2-4-312, MCA, is amended to read:

"2-4-312. Publication and arrangement of register. (1) The secretary of state shall publish in the register all notices, rules, and interpretations filed

HeinOnline -- 1999 vol. I 45 1999

with ~~him~~ *the secretary of state* at least once a month ~~or as directed by the administrative code committee~~ but not more often than twice a month.

(2) ~~He~~ *The secretary of state* shall send the register without charge to each person listed in 2-4-313(1) and to each member of the legislature requesting the ~~same~~ *register*. ~~He~~ *The secretary of state* shall send the register to any other person who pays a subscription fee ~~which he shall fix in accordance with~~ *established as provided in* 2-4-313(4).

(3) The register must contain three sections, a rules section, a notice section, and an interpretation section, *as follows*:

(a) The rules section of the register must contain all rules filed since the compilation and publication of the preceding issue of the register, together with the concise statement of reasons required under 2-4-305(1).

(b) The notice section of the register must contain all rulemaking notices filed with the secretary of state pursuant to 2-4-302 since the compilation and publication of the preceding register.

(c) The interpretation section of the register must contain all opinions of the attorney general and all declaratory rulings of agencies issued since the publication of the preceding register.

(4) Each issue of the register must contain the issue number and date of the register and a table of contents. Each page of the register must contain the issue number and date of the register of which it is a part. The secretary of state may include with the register information to help the user in relating the register to *the* ARM."

Section 10. Section 2-4-313, MCA, is amended to read:

"**2-4-313. Distribution, costs, and maintenance.** (1) The secretary of state shall distribute copies of *the* ARM and supplements or revisions to *the* ARM to the following:

(a) attorney general, one copy;

(b) clerk of United States district court for the district of Montana, one copy;

(c) clerk of United States court of appeals for the ninth circuit, one copy;

(d) county commissioners or governing body of each county of this state, for use of county officials and the public, at least one but not more than two copies, which may be maintained in a public library in the county seat or in the county offices as the county commissioners or governing body of the county may determine;

(e) state law library, one copy;

(f) state historical society, one copy;

(g) each unit of the Montana university system, one copy;

(h) law library of the university of Montana-Missoula, one copy;

(i) legislative services division, two copies;

(j) library of congress, one copy;

(k) state library, one copy.

(2) The secretary of state, each county in the state, and the librarians for the state law library and the university of Montana-Missoula law library shall

HeinOnline -- 1999 vol. I 46 1999

maintain a complete, current set of *the* ARM, including supplements or revisions to *the* ARM. The designated persons shall also maintain the register issues published during the preceding 2 years. The secretary of state shall maintain a permanent set of the registers.

(3) The secretary of state shall make copies of and subscriptions to *the* ARM and supplements or revisions to *the* ARM and the register available to any person at prices fixed in accordance with subsection (4).

(4) The secretary of state~~, in consultation with the administrative code committee,~~ shall determine the cost of supplying copies of *the* ARM and supplements or revisions to *the* ARM and the register to persons not listed in subsection (1). The cost must be the approximate cost of publication of the copies, including indexing, printing or duplicating, and mailing. However, a uniform price per page or group of pages may be established without regard to differences in *the* cost of printing different parts of *the* ARM and supplements or revisions to *the* ARM and the register. Fees are not refundable.

(5) The secretary of state shall deposit all fees in a proprietary fund.

(6) The secretary of state may charge agencies a filing fee for all material to be published in *the* ARM or the register. The secretary of state shall fix~~, in consultation with the administrative code committee,~~ the fee to cover the costs of supplying copies of *the* ARM and supplements or revisions to *the* ARM and the register to the persons listed in subsection (1). The cost must be the approximate cost of publication of the copies, including indexing, printing or duplicating, and mailing. However, a uniform price per page or group of pages may be established without regard to differences in *the* cost of printing different parts of *the* ARM and supplements or revisions to *the* ARM and the register."

Section 11. Section 2-4-402, MCA, is amended to read:

"2-4-402. Powers of ~~the committee~~ *committees* — duty to review rules ~~— exception for revenue rules.~~ (1) ~~Except for rules proposed by the department of revenue, the~~ *The* administrative ~~code committee~~ *rules review committees* shall review all proposed rules filed with the secretary of state.

~~(2) The revenue oversight committee shall review all rules proposed by the department of revenue.~~

~~(3)~~*(2)* The *appropriate* administrative ~~code~~ *rule review* committee may:

(a) request and obtain an agency's rulemaking records for the purpose of reviewing compliance with 2-4-305;

(b) prepare written recommendations for the adoption, amendment, or rejection of a rule and submit those recommendations to the department proposing the rule and submit oral or written testimony at a rulemaking hearing;

(c) require that a rulemaking hearing be held in accordance with the provisions of 2-4-302 through 2-4-305;

(d) institute, intervene in, or otherwise participate in proceedings involving this chapter in the state and federal courts and administrative agencies;

(e) review the incidence and conduct of administrative proceedings under this chapter."

Section 12. Section 2-4-404, MCA, is amended to read:

HeinOnline -- 1999 vol. I 47 1999

"**2-4-404. Evidentiary value of legislative poll.** In the event that the *appropriate* administrative ~~code~~ *rule review* committee has conducted a poll of the legislature in accordance with 2-4-403, the results of the poll ~~shall~~ *must* be admissible in any court proceeding involving the validity of the rule. In the event that the poll determines that a majority of the members of both houses find *that* the proposed rule is contrary to the intent of the legislature, the rule ~~shall~~ *must* be conclusively presumed to be contrary to the legislative intent in any court proceeding involving its validity."

Section 13. Section 2-4-405, MCA, is amended to read:

"**2-4-405. Economic impact statement.** (1) Upon written request of the *appropriate* administrative ~~code~~ *rule review* committee based upon the affirmative request of ~~at least five~~ *a majority of the* members of the committee at an open meeting, an agency shall prepare a statement of the economic impact of the adoption, amendment, or repeal of a rule as proposed. As an alternative, the *appropriate* administrative ~~code~~ *rule review* committee may, by contract, prepare ~~such an~~ *the* estimate. Except to the extent that the request expressly waives any one or more of the following, the requested statement must include and the statement prepared by the committee may include:

(a) a description of the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule;

(b) a description of the probable economic impact of the proposed rule upon affected classes of persons and quantifying, to the extent practicable, that impact;

(c) the probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state ~~revenues~~ *revenue*;

(d) an analysis comparing the costs and benefits of the proposed rule to the costs and benefits of inaction;

(e) an analysis that determines whether there are less costly or less intrusive methods for achieving the purpose of the proposed rule;

(f) an analysis of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule;

(g) a determination as to whether the proposed rule represents an efficient allocation of public and private resources; and

(h) a quantification or description of the data upon which subsections (1)(a) through (1)(g) are based and an explanation of how the data was gathered.

(2) A request to an agency for a statement or a decision to contract for the preparation of a statement must be made by the committee prior to the final agency action on the rule. The statement must be filed with the *appropriate* administrative ~~code~~ *rule review* committee within 3 months of the committee's request or decision. The committee may withdraw its request or decision for an economic impact statement at any time.

(3) Upon receipt of an impact statement, the committee shall determine the sufficiency of the statement. If the committee determines that the statement is insufficient, the committee may return it to the agency or other person who prepared the statement and request that corrections or amendments be made. If

HeinOnline -- 1999 vol. I 48 1999

the committee determines that the statement is sufficient, a notice indicating where a copy of the statement may he ohtained must be filed with tbe secretary of state for publication in the register hy the agency preparing the statement or by the committee, if the statement is prepared under contract by the committee, and must be mailed to persons who have registered advance notice of the agency's rulemaking proceedings.

(4) This section does not apply to rulemaking pursuant to 2-4-303.

(5) The final adoption, amendment, or repeal of a rule is not subject to challenge in any court as a result of tbe inaccuracy or inadequacy of a statement required under this section.

(6) An environmental impact statement prepared pursuant to 75-1-201 that includes an analysis of the factors listed in this section satisfies the provisions of this section."

Seetion 14. Section 2-4-406, MCA, is amended to read:

"2-4-406. Committee objection to violation of autbority for rule — effect. (1) If the *appropriate* administrative ~~code~~ *rule review* committee objects to all or some portion of a proposed or adopted rule because the committee considers it not to have been proposed or adopted in substantial compliance with 2-4-302, 2-4-303, and 2-4-305, the committee shall send a written objection to the agency ~~which~~ *that* promulgated the rule. The objection must contain a concise statement of the committee's reasons for its action.

(2) Within 14 days after the mailing of a committee objection to a rule, the agency promulgating the rule shall respond in writing to the committee. After receipt of the response, the committee may withdraw or modify its objection.

(3) If the committee fails to withdraw or substantially modify its objection to a rule, it may vote to send the objection to the secretary of state, who shall, upon receipt ~~thereof~~ *of the objection*, publish the objection in the ~~Montana Administrative Register~~ *register* adjacent to any notice of adoption of the rule and in the ARM adjacent to the rule, provided an agency response must also be published if requested by the agency. Costs of publication of the objection and the agency response ~~shall~~ *must* be ~~borne~~ *paid* by the committee.

(4) If an objection to all or a portion of a rule has been published pursuant to subsection (3), the agency bears the burden, in any action challenging the legality of tbe rule or portion of a rule objected to by the committee, of proving that the rule or portion of the rule objected to was adopted in substantial compliance with 2-4-302, 2-4-303, and 2-4-305. If a rule is invalidated by court judgment because the agency failed to meet its burden of proof iinposed by this subsection and the court finds that the rule was adopted in arbitrary and capricious disregard for the purposes of the authorizing statute, the court may award costs and reasonable attorney fees against the agency."

Section 15. Section 2-4-410, MCA, is amended to read:

"2-4-410. Report of litigation. Each agency shall report to the *appropriate* administrative ~~code~~ *rule review* committee any judicial proceedings in which the construction or interpretation of any provision of this chapter is in issue and may report to tbe committee any proceeding in which the construction or interpretation of any rule of the agency is in issue. Upon request of the committee, copies of documents filed in any proceeding in which the construction or

HeinOnline -- 1999 vol. I 49 1999

interpretation of either this chapter or an agency rule is in issue must be made available to the committee by the agency involved."

Section 16. Section 2-4-412, MCA, is amended to read:

"**2-4-412. Legislative review of rules — effect of failure to object.** (1) The legislature may, by bill, repeal any rule in *the* ARM. If a rule is repealed, the legislature shall in the bill state its objections to the repealed rule. If an agency adopts a new rule to replace the repealed rule, the agency shall adopt the new rule in accordance with the objections stated by the legislature in the bill. If the legislature does not repeal a rule filed with it before the adjournment of that regular session, the rule remains valid.

(2) The legislature may also by joint resolution request or advise or by bill direct the adoption, amendment, or repeal of any rule. If a change in ~~any~~ *a* rule or the adoption of an additional rule is advised, requested, or directed to be made, the legislature shall in the joint resolution or bill state the nature of the change or the additional rule to be made and its reasons ~~therefor~~ *for the change or addition*. The agency shall, in the manner provided in the Montana Administrative Procedure Act, adopt a new rule in accordance with the legislative direction in a bill.

(3) Rules and changes in rules made by agencies under subsection (2) ~~of this section shall~~ *must* conform and be pursuant to statutory authority.

(4) Failure of the legislature or the *appropriate* administrative ~~code~~ *rule review* committee to object in any manner to the adoption, amendment, or repeal of a rule is inadmissible in the courts of this state to prove the validity of any rule."

Section 17. Section 5-2-503, MCA, is amended to read:

"**5-2-503. Consolidation of legislative branch entities for specified purposes.** (1) An entity of the legislative branch that is consolidated ~~with the legislative council~~ as provided in 5-2-504 shall:

(a) exercise its substantive functions independently as provided by law;

(b) adhere to administrative policies, including personnel policies, adopted by the legislative council;

(c) submit its budget proposals through the legislative council; and

(d) submit reports required of it as provided in 5-11-210.

(2) The legislative ~~council~~ *services division* shall:

(a) coordinate budgeting, recordkeeping, reporting, and related administrative and clerical functions as a consolidated entity, including acknowledgment of actions by the approving authority of the consolidated entity;

(b) include within ~~the~~ legislative ~~council budget~~ *branch budgets* the budget proposals for the legislature and the consolidated entities, separately identified;

(c) provide separate identification for appropriations and expenditures for the legislature and for each of the consolidated entities;

(d) establish procedures for approval of expenditures by the legislature and by each of the consolidated entities; and

(e) provide personnel administration for the legislative branch. The senate and the house of representatives or a consolidated entity with statutory hiring

HeinOnline -- 1999 vol. I 50 1999

authority may hire its own personnel, subject to administrative procedures established by the legislature and legislative council.

(3) The legislative council shall allocate office space occupied by the legislative branch for the use of a consolidated entity as necessary. Space occupied by the senate or the house of representatives may not be reallocated except as provided in 2-17-108. The location of the chambers of the house of representatives and the senate must be determined as provided by 2-17-101."

Section 18. Section 5-2-504, MCA, is amended to read:

"**5-2-504. Legislative branch consolidated.** The following legislative branch entities are consolidated, as provided in 5-2-503 and this section~~, with the legislative council established by 5-11-101~~:

(1) the senate and the house of representatives provided for in Article V, section 1, of the Montana constitution;

(2) the legislative council established by 5-11-101;

~~(2)~~*(3)* the legislative services division established by 5-11-111;

~~(3)~~*(4)* the legislative finance committee established by 5-12-201;

~~(4)~~*(5)* the legislative fiscal division established by 5-12-301;

~~(5)~~*(6)* the legislative audit committee established by 5-13-201;

~~(6)~~*(7)* the legislative audit division established by 5-13-301; *and*

~~(7) the administrative code committee established by Title 5, chapter 14, part 1;~~

(8) the environmental quality council established by 5-16-101~~;~~

~~(9) the revenue oversight committee established by 5-18-102; and~~

~~(10) the committee on Indian affairs established by 5-19-102~~."

Section 19. Section 5-5-202, MCA, is amended to read:

"**5-5-202. Interim ~~activities of~~ committees.** *(1)* During an interim when the legislature is not in session, ~~all regularly appointed standing or select committees of either house not formally discharged prior to the final adjournment of the preceding session shall continue as such~~ *the* committees *listed in subsection (2) are the interim committees of the legislature.* They are empowered to ~~continue to~~ sit as ~~such~~ committees and may act ~~through their joint subcommittees~~ *in their respective areas of responsibility. The functions of the legislative council, legislative audit committee, legislative finance committee, and environmental quality council are provided for in the statutes governing those committees.*

(2) The following are the interim committees of the legislature:

(a) business and labor committee;

(b) education committee;

(c) children, families, health, and human services committee;

(d) law, justice, and Indian affairs committee;

(e) revenue and taxation committee; and

(f) state administration, public retirement systems, and veterans' affairs committee.

HeinOnline -- 1999 vol. I 51 1999

(3) An interim committee or the environmental quality council may refer an issue to another committee that the referring committee determines to be more appropriate for the consideration of the issue. Upon the acceptance of the referred issue, the accepting committee shall consider the issue as if the issue were originally within its jurisdiction. If the committee that is referred an issue declines to accept the issue, the original committee retains jurisdiction.

(4) If there is a dispute between committees as to which committee has proper jurisdiction over a subject, the legislative council shall determine the most appropriate committee and assign the subject to that committee."

Section 20. Section 5-5-211, MCA, is amended to read:

"5-5-211. Appointment and composition of ~~joint subcommittees~~ *interim committees.* (1) Senate ~~joint subcommittee~~ *interim committee* members must be appointed by the committee on committees.

(2) House ~~joint subcommittee~~ *intcrim committee* members must be appointed by tbe speaker of the house.

(3) ~~Unless otherwise indicated by the legislative council, all appointments to joint subcommittees~~ *Appointments to intcrim committees* must be made ~~within 30 days after~~ *by* the ~~presiding officer of the committee on committees and the speaker of the house have been notified that an interim joint subcommittee has been created~~ *time of adjournment of the legislative session.*

(4) A legislator may not serve on more than two interim ~~joint subcommittees~~ *committees unless no other legislator is available or is willing to serve.*

(5) *(a)* ~~The~~ *Subject to subsection (5)(b), the* composition of each ~~subcommittee~~ *interim committee* must be as fellows:

~~(a)~~*(i)* four members of the house, no more than two of whom may he of one political party; and

~~(b)~~*(ii)* four members of the senate, no more than two of whom may be of one political party.

(b) If the committee workload requires, the legislative council may request the appointing authority to appoint one or two additional interim committee members from each political party.

(6) The membership of the interim committees must be provided for by legislative rules. The rules must identify the committees from which members are selected, and the appointing authority shall attempt to select not less than 50% of the members from the standing committees that consider issues within the jurisdiction of the interim committee. In making the appointments, the appointing authority shall take into account term limits of members so that committee members will be available to follow through on committee activities and recommendations in the next legislative session.

(7) An interim committee may, with the approval of the legislative council, create subcommittees. Nonlegislative members may serve on a subcommittee. Unless the person is a full-time salaried officer or employee of the state or a political subdivision of the state, a nonlegislative member appointed to a subcommittee is entitled to salary and expenses to the same extent as a legislative member. If the appointee is a full-time salaried officer or employee of the state or of a political subdivision of the state, the appointee is entitled to reimbursement for travel expenses as provided for in 2-18-501 through 2-18-503."

HeinOnline -- 1999 vol. I 52 1999

Section 21. Section 5-5-212, MCA, is amended to read:

"5-5-212. Implied resignation of ~~subcommittee~~ member — vacancies. If a ~~subcommittee~~ *an interim committee* member misses more than two committee meetings or hearings without just cause when the legislature is not in session, the member is considered to have resigned and the vacancy ~~shall~~ *must* be filled in the same manner as the original appointment. Any other vacancy ~~shall~~ *must* be filled in the same manner."

Section 22. Section 5-5-213, MCA, is amended to read:

"5-5-213. Officers of ~~subcommittees~~ *interim committees*. Each ~~subcommittee~~ *interim committee* shall elect its ~~chairman~~ *presiding officer* and ~~vice-chairman~~ *vice presiding officer* from among its members. The ~~chairman and vice-chairman~~ *officers* may not be members of the same political party."

Section 23. Section 5-5-214, MCA, is amended to read:

"5-5-214. Interim activity. The ~~subcommittees may~~ *interim committees shall* perform their functions when the legislature is not in session. The personnel, data, and facilities of the legislative services division *and other appropriate legislative entities* must be made available to the ~~subcommittees~~ *interim committees*."

Section 24. Section 5-5-215, MCA, is amended to read:

"5-5-215. Duties of ~~subcommittees~~ *interim committees*. (1) Each ~~subcommittee~~ *interim committee* shall:

(a) review administrative rules within its jurisdiction;

(b) conduct interim studies as assigned;

(c) monitor the operation of assigned executive branch agencies with specific attention to the following:

(i) identification of issues likely to require future legislative attention;

(ii) opportunities to improve existing law through the analysis of problems experienced with the application of the law by an agency; and

(iii) experiences of the state's citizens with the operation of an agency that may be amenable to improvement through legislative action; and

(d) accumulate, compile, analyze, and furnish information bearing upon its assignment and relevant to existing or prospective legislation as it determines, on its own initiative, to be pertinent to the adequate completion of its work.

(2) Each ~~subcommittee~~ *interim committee* shall prepare bills and resolutions that, in its opinion, the welfare of the state may require for presentation to the next regular session of the legislature.

(3) The legislative services division shall keep accurate records of the activities and proceedings of each ~~subcommittee~~ *interim committee*."

Section 25. Business and labor interim committee. The business and labor interim committee has administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes:

(1) department of agriculture;

(2) department of commerce;

HeinOnline -- 1999 vol. I 53 1999

(3) department of labor and industry;

(4) department of livestock;

(5) department of public service regulation; and

(6) office of the state auditor and insurance commissioner.

Section 26. Education interim committee. (1) The education interim committee has administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes:

(a) state board of education;

(b) board of puhlic education;

(c) board of regents of higher education; and

(d) office of public instruction.

(2) The committee shall:

(a) provide information to the board of regents in the following areas:

(i) annual budget allocations;

(ii) annual geal statement development;

(iii) long-range planning;

(iv) outcome assessment programs; and

(v) any other area that the committee considers to have significant educational or fiscal policy impact;

(b) periodically review the success or failure of the university system in meeting its annual goals and long-range plans;

(c) periodically review the results of outcome assessment programs;

(d) develop niechanisms to ensure strict accountability of the revenues and expenditures of the university system;

(e) study and report to the legislature on the advisability of adjustments to the mechanisms used to determine funding for the university system, including criteria for determining appropriate levels of funding;

(f) act as a liaison between both the legislative and executive branches and the board of regents: and

(g) encourage cooperation between the legislative and executive branches and the board of regents.

Section 27. Children, families, health, and human services interim committee. The children, families, health, and human services interim committee has administrative rule review, program evaluation, and monitoring functions for the department of public health and human services and the entities attached to the department for administrative purposes.

Section 28. Law, justice, and Indian affalrs interim committee. The law, justice, and Indian affairs interim committee has administrative rule review, program evaluation, and monitoring functions for the department of corrections and the department of justice and the entities attached to the departments for

HeinOnline -- 1999 vol. I 54 1999

administrative purposes. The committee shall act as a liaison with the judiciary and shall act as a liaison and forum for state and tribal relations.

Section 29. Revenue and taxation interim committee. The revenue and taxation interim committee has administrative rule review, program evaluation, and monitoring functions for the department of revenue and the department of transportation and the entities attached to the departments for administrative purposes.

Section 30. State administration, public retirement systems, and veterans' affairs interim committee. The state administration, public retirement systems, and veterans' affairs interim committee has administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to the agencies for administrative purposes:

(1) department of administration;

(2) department of military affairs; and

(3) office of the secretary of state.

Section 31. Section 5-11-101, MCA, is amended to read:

"5-11-101. Appointment and composition of council. (1) There is a legislative council. *Subject to subsection (3), the legislative council* ~~that~~ consists of:

(a) the speaker of the house, the minority leader of the house, and four members chosen by the speaker of the house, no more than two of whom may be of the same political party; and

(b) the president of the senate, the minority leader of the senate, and four members chosen by the committee on committees, no more than two of whom may be of the same political party.

(2) No more than three members of each house may be of the same political party.

(3) If a legislator is or would be a member of the legislative council by virtue of a legislative leadership position and the legislator will not serve in the following legislative session because of term limits, the legislator may designate another member of the same house and the same political party to serve on the legislative council in the legislator's place."

Section 32. Section 5-11-105, MCA, is amended to read:

"5-11-105. Powers and duties of council. (1) The legislative council shall:

(a) employ and, in accordance with the rules for classification and pay established as provided in this section, set the salary of an executive director of the legislative services division, who serves at the pleasure of and is responsible to the legislative council;

(b) with the concurrence of the legislative audit committee and the legislative finance committee, adopt rules for classification and pay of legislative branch employees, other than those of the office of consumer counsel;

(c) with the concurrence of the legislative audit committee and the legislative finance committee, adopt rules governing personnel management of branch employees, other than those of the office of consumer counsel;

HeinOnline -- 1999 vol. I 55 1999

(d) adopt procedures to administer legislator claims for reimbursements authorized by law for interim activity;

(e) establish time schedules and deadlines for the interim committees of the legislature, including dates for requesting bills and completing interim work; and

~~(e)~~*(f)* perform other duties assigned by law.

(2) If a question of statewide importance arises when the legislature is not in session and a legislative *interim* committee has not been assigned to consider the question, the legislative council shall assign the question to an appropriate ~~subcommittee~~ *interim committee* as provided in ~~Title 5, chapter 5, part 2,~~ *5-5-202* or to the appropriate statutorily created committee."

Section 33. Section 5-11-107, MCA, is amended to read:

"5-11-107. Powers relating to hearings. (1) In the discharge of its duties, ~~or on behalf of~~ *a* statutory ~~committees~~ *committee* or ~~subcommittees, the legislative council~~ *an interim committee* may hold hearings, administer oaths, issue subpoenas, compel the attendance of witnesses and the production of papers, books, accounts, documents, and testimony, and cause depositions of witnesses to be taken in the manner prescribed by law for taking depositions in civil actions in district court.

(2) If a porson disobeys a subpoena issued by ~~the council~~ *a statutory committee or an interim committee* or if a witness refuses to testify on any matters regarding which tbe witness may be lawfully interrogated, the district court of any county shall, on application of tbe ~~legislative council~~ *committee*, coinpel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from a district court or a refusal to testify in the district court."

Section 34. Section 5-11-301, MCA, is amended to read:

"5-11-301. Functions of legislative council — interstate and international cooperatiou. It is a function of the legislative council, within the limits of appropriations, to:

(1) carry forward tbe participation of the state of Montana as a member of ~~the council of state governments and the national conference of state legislatures~~ *appropriate interstate organizations*, and the legislative council is designated as the Montana commission on interstate and international cooperation;

(2) encourage and assist the gevernment of this state to develop and inaintain friendly contact by correspondence, by conference, and otherwise with the other states, with the federal government, and with local units of government, as well as tribal governments, bordering Canadian provinces, and regions designated as sister states by the legislature;

(3) establish delegations and committees as inay be considered advisahle to confer with similar delegations and committees from other states, provinces, and countries concerning problems of mutual interest. The membership of the delegations and committees may consist of legislators and employees of the state other than members of the legislative council. Legislative members of the delegations and committees must be reiinbursed and coinpensated as provided in 5-2-302.

(4) endeavor to advance cooperation between this state and other units of government whenever it seems advisable to do so by formulating proposals for

HeinOnline -- 1999 vol. I 56 1999

interstate compacts and reciprocal or uniform legislation and hy facilitating the adoption of uniform or reciprocal administrative rules and regulations, informal cooperation of governmental offices, personal cooperation among governmental officials and employees, interchango and clearance of research and information, and any other suitable process~~;~~

~~(5) make appointments to any policy committee established by the Pacific Northwest economic region as provided in 5-11-703(2).~~"

Section 35. Section 5-12-302, MCA, is amended to read:

"**5-12-302. Fiscal analyst's duties.** The legislative fiscal analyst shall:

(1) provide for fiscal analysis of state government and accumulate, compile, analyze, and furnisb information bearing upon the financial matters of the state that is relevant to issues of policy and questions of statewide importance, including but not limited to investigation and study of the possibilities of effecting economy and efficiency in state government;

(2) estimate revenue from existing and proposed taxes;

(3) analyze the executive budgot and budget requests of selected state agoncies and institutions, including proposals for the construction of capital improvements;

~~(4) for the legislative session convening in January 1997, following receipt of the information required in 17-7-122 from the governor and in 17-7-123 from the budget director in a mutually prescribed format, publish the governor's budget and incorporate the information required by 17-7-123 in a combined governor's budget and legislative fiscal analyst's budget analysis presentation. The combined budget and budget analysis presentation must be made available to the legislature prior to the convening date set for a regular session of the legislature. The cost of printing the combined budget and budget analysis presentation must be shared proportionally by the office of budget and program planning and the legislative finance division. This section does not prohibit the legislative fiscal analyst from including any analysis and comments on any portion of the executive budget in the combined budget and budget analysis presentation.~~

~~(5)~~*(4)* make the reports and recommendations that the legislative fiscal analyst considers desirable to the legislature and make reports and recommendations as requested by the legislative finance committee and the legislature;

~~(6)~~*(5)* assist committees of the legislature and individual legislators in compiling and analyzing financial information; and

~~(7)~~*(6)* assist the revenue ~~oversight~~ *and taxation interim* committee in performing its revenue estimating duties ~~under 5-18-107(5)~~."

Section 36. Section 5-16-102, MCA, is amended to read:

"**5-16-102. Qualifications.** *(1)* In considering the appointments under ~~subsections (2) and (3) of~~ 5-16-101*(2) and (3)*, consideration ~~shall~~ *must* he given to ~~their~~ *the appointees'* qualifications to:

~~(1)~~*(a)* analyze and interpret environmental trends and information of all kinds;

~~(2)~~*(b)* appraise programs and activities of the state government in the light of the policy set forth in 75-1-103;

~~(3)~~*(c)* he conscious of and responsive to the scientific, economic, social, aesthetic, and cultural needs and interests of the state; and

~~(4)~~*(d)* formulate and recommend state policies to premote the improvement of the quality of the environment.

(2) At least 50% of the members appointed pursuant to 5-16-101(2) must be selected from the standing committees that consider issues within the jurisdiction of the environmental quality council."

Section 37. Section 5-18-107, MCA, is amended to read:

"5-18-107. Powers and duties of committee — ~~duty to review revenue rules — legislative oversight of department of revenue — committee reports~~ — revenue estimating and use of estimates — ~~coal tax oversight~~. (1) The *revenue and taxation interim* committee ~~shall review all proposed rules of the department of revenue filed with the secretary of state.~~

~~(2) The committee may:~~

~~(a) request and obtain the department's rulemaking records for the purpose of reviewing compliance with 2-4-305;~~

~~(b) prepare written recommendations for the adoption, amendment, or rejection of a rule and submit the recommendations to the department;~~

~~(c) submit oral or written testimony at a rulemaking hearing;~~

~~(d) require the department to appear before the committee and respond to the committee's recommendations for the adoption, amendment, or rejection of a rule;~~

~~(e) require that a rulemaking hearing be held in accordance with the provisions of 2-4-302 through 2-4-305;~~

~~(f) recommend to the legislature the repeal, amendment, or adoption of a rule as provided in 2-4-412;~~

~~(g) institute, intervene in, or otherwise participate in proceedings involving the legality of a rule under the Montana Administrative Procedure Act in the state and federal courts and administrative agencies;~~

~~(h) review the incidence and conduct of the department's administrative proceedings;~~

~~(i) require the department to publish the full or partial text of any pertinent material adopted by reference under 2-4-307;~~

~~(j) by an affirmative vote of at least six members of the committee, contract for the preparation of an economic impact statement or require the department to prepare an economic impact statement, following the provisions of 2-4-405;~~

~~(k) petition the department to promulgate, amend, or repeal a rule. Within 60 days after submission of a petition, the department shall either deny the petition in writing, stating its reasons for the denial, or initiate rulemaking proceedings in accordance with 2-4-302 through 2-4-305.~~

~~(l) make written objection to a proposed rule of the department for lack of substantial compliance with 2-4-302 through 2-4-305. The provisions of 2-4-406 govern the objection procedure, the department's response, and the procedure for and effect of publication of the objection in the Montana Administrative Register and the Administrative Rules of Montana.~~

~~(m) petition the department for a declaratory ruling as to the applicability of any statutory provision or of any rule or order of the department. A copy of a declaratory ruling must be filed with the secretary of state for publication in the register. A declaratory ruling or the refusal to issue a ruling is subject to judicial review in the same manner as decisions or orders in contested cases under the Montana Administrative Procedure Act.~~

~~(n) petition for judicial review of the sufficiency of the reasons for the department's finding of imminent peril to the public health, safety, or welfare, cited in support of an emergency or temporary rule proposed by the department under 2-4-303; and~~

~~(o) require the department to conduct the biennial review of its rules as required in 2-4-314 and report its findings to the committee.~~

~~(3) The committee shall exercise legislative oversight of the department of revenue, including without limitation the review of:~~

~~(a) proposed budgets;~~

~~(b) proposed legislation;~~

~~(c) pending litigation; and~~

~~(d) major contracts and personnel actions of the department.~~

~~(4) The committee may investigate and issue reports on any matter concerning taxation or the department of revenue.~~

~~(5) (a) The committee shall~~ *must* have prepared by December 1 for introduction during each regular session of the legislature in which a revenue bill is under consideration an estimate of the amount of revenue projected to be available for legislative appropriation.

~~(b)~~*(2)* The committee's estimate, as introduced in the legislature, constitutes the legislature's current revenue estimate until amended or until final adoption of the estimate by both houses. It is intended that the legislature's estimates and the assumptions underlying the estimates will be used by all agencies with responsibilities for estimating ~~revenues~~ *revenue* or costs, including the preparation of fiscal notes.

~~(c)~~*(3)* The legislative services division shall provide staff assistance to the committee. The committee may request the assistance of the staffs of the office of the legislative fiscal analyst, the legislative auditor, the department of revenue, and any other agency that has information regarding any of the tax or revenue bases of the state.

~~(6) The committee may:~~

~~(a) review the programs financed by coal severance tax funds;~~

~~(b) consider any matters relating to coal taxation; and~~

~~(c) prepare for the legislature a report, as provided in 5-11-210, on potential uses of the coal tax trust fund to develop a stable, strong, and diversified Montana economy that meets the needs of present and future generations of Montanans while maintaining and improving a clean and healthful environment as required by Article IX, section 1, of the Montana constitution.~~"

Section 38. Section 15-1-230, MCA, is amended to read:

HeinOnline -- 1999 vol. I 59 1999

"15-1-230. (Temporary) Report on income tax credit to committee. The department shall report to the revenue ~~oversight~~ *and taxation interim* committee at least once each year the number and type of taxpayers claiming the credit under 15-30-166, the total amount of the credit claimed, and the department's cost associated with administering the credit. (Terminates December 31, 2001—sec. 9, Ch. 537, L. 1997.)"

Section 39. Section 15-36-324, MCA, is amended to read:

"15-36-324. Distribution of taxes — rules. (1) For each calendar quarter, the department ~~of revenue~~ shall determine the amount of tax, late payment interest, and penalty collected under this part. For purposes of distribution of the taxes to county and school taxing units, the department shall determine the amount of oil and natural gas production taxes paid on production from pre-1985 wells, post-1985 wells, and horizontally completed wells located in the taxing unit.

(2) Except as provided in subsections (3) through (5), oil production taxes must be distributed as follows:

(a) The amount equal to 39.3% of the oil production taxes, including late payment interest and penalty, collected under this part must be distributed as provided in subsection (8).

(b) The remaining 60.7% of the oil production taxes, plus accumulated interest earned on the amount allocated under this subsection (2)(b), must be deposited in the state special revenue fund in the state treasury and transferred to the county and school taxing units for distribution as provided in subsection (11).

(3) (a) The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on production from post-1985 wells occurring during the first 12 months of production must be distributed as provided in subsection (9).

(b) (i) The amount equal to 10.25% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on production from post-1985 wells occurring during the next 12 months of production must be distributed as provided in subsection (9).

(ii) The remaining 89.75% of the oil production taxes, plus accumulated interest earned on the amount allocated under this subsection (3)(b), must be deposited in the state special revenue fund in the state treasury and transferred to the county and school taxing units for distribution as provided in subsection (11).

(4) (a) The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected under this part on production from horizontally completed wells occurring during the first 18 months of production must be distributed as provided in subsection (9).

(b) (i) The amount equal to 10.25% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on production from horizontally completed wells occurring during the next 6 months of production must be distributed as provided in subsection (9).

(ii) The remaining 89.75% of the oil production taxes, plus accumulated interest earned on the amount allocated under this subsection (4)(b), must be deposited in the state special revenue fund in the state treasury and transferred

HeinOnline -- 1999 vol. I 60 1999

to the county and school taxing units for distribution as provided in subsection (11).

(c) The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected under this part on the incremental production from horizontally recompleted wells occurring during the first 18 months of production must be distributed as provided in subsection (8).

(5) (a) The amount equal to 13.8% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on stripper exemption production from pre-1985 wells and post-1985 wells must be distributed as provided in subsection (9).

(b) The remaining 86.2% of the oil production taxes, plus accumulated interest earned on the amount allocated under this subsection (5)(b), must be deposited in the state special revenue fund in the state treasury and transferred to the county and school taxing units for distribution as provided in subsection (11).

(6) Except as provided in subsection (7), natural gas production taxes must be allocated as follows:

(a) The amount equal to 14% of the natural gas production taxes, including late payment interest and penalty, collected under this part must be distributed as provided in subsection (10).

(b) The remaining 86% of the natural gas production taxes, plus accumulated interest earned on the amount allocated under this subsection (6)(b), must be deposited in the state special revenue fund in the state treasury and transferred to the county and school taxing units for distribution as provided in subsection (11).

(7) (a) The amount equal to 100% of the natural gas production taxes, including late payment interest and penalty, collected from working interest owners under this part on production from post-1985 wells occurring during the first 12 months of production must be distributed as provided in subsection (9).

(b) (i) The amount equal to 6.25% of the natural gas production taxes, including late payment interest and penalty, collected from working interest owners on production from post-1985 wells occurring during the next 12 months of production must be distributed as provided in subsection (9).

(ii) The remaining 93.75% of the oil production taxes, plus accumulated interest earned on the amount allocated under this subsection (7)(b), must be deposited in the state special revenue fund in the state treasury and transferred to the county and school taxing units for distribution as provided in subsection (11).

(8) The department shall, in accordance with the provisions of 15-1-501, distribute the state portion of oil production taxes specified in subsections (2)(a) and (4)(c), including late payment interest and penalty collected, as follows:

(a) 86.21% to the state general fund;

(b) 5.17% to the state special revenue fund for the purpose of paying expenses of the board as provided in 82-11-135; and

(c) 8.62% to be distributed as provided ~~by~~ *in* 15-38-106(2).

HeinOnline -- 1999 vol. I 61 1999

(9) The department shall distribute the state portion of oil and natural gas production taxes specified in subsections (3)(a), (3)(b)(i), (4)(a), (4)(b)(i), (5)(a), (7)(a), and (7)(b)(i), including late payment interest and penalty collected, as follows:

(a) 37.5% to the state special revenue fund for the purpose of paying expenses of the board as provided in 82-11-135; and

(b) 62.5% to be distributed as provided ~~by~~ *in* 15-38-106(2).

(10) The department shall, in accordance with the provisions of 15-1-501, distribute the state portion of natural gas production taxes specified in subsection (6)(a), including late payment interest and penalty collected, as follows:

(a) 76.8% to the state general fund;

(h) 8.7% to the state special revenue fund for the purpose of paying expenses of the board as provided in 82-11-135; and

(c) 14.5% te be distributed as provided ~~by~~ *in* 15-38-106(2).

(11) (a) For the purpose of distribution of the oil and natural gas production taxes from pre-1985 wells, the department shall each calendar quarter adjust the unit value determined under 15-36-323 according to the ratio that the oil and natural gas production taxes from pre-1985 wells collected during the calendar quarter for which the distribution occurs plus penalties and interest on delinquent oil and natural gas production taxes from pre-1985 wells bears to the total liability for the oil and natural gas production taxes from pre-1985 wells for the quarter for which the distribution occurs. The amount of oil and natural gas production taxes distributions must be calculated and distributed as follows:

(i) By the dates referred to in subsection (12), the department shall calculate and distribute to each eligible county the amount of oil and natural gas production taxes from pre-1985 wells for the quarter, determined by multiplying the unit value, as adjusted in this subsection (11)(a), by the units of production on which oil and natural gas production taxes from pre-1985 wells were owed for the calendar quarter for which the distribution occurs.

(ii) Any amount by which the total tax liability exceeds or is less than the total distributions determined in this subsection (11)(a) must be calculated and distributed in tbe following manner:

(A) The excess amount or shortage must be divided hy the total distribution determined for that period to obtain an excess or shortage percentage.

(B) The excess percentage must be multiplied by the distrihution to each taxing unit, and this amount must he added te the distribution to each respective taxing unit.

(C) The shortage percentage must be multiplied by the distribution to each taxing unit, and this amount must be subtracted from the distribution te each respective taxing unit.

(b) Except as provided in subsection (11)(c), the county treasurer shall distribute the money received under subsection (12) from pro-1985 wells te the taxing units that levied mills in fiscal year 1990 against calendar year 1988 production in the same manner that all other property tax proceeds were distributed during fiscal year 1990 in the taxing unit, except that a distribution may not be made te a municipal taxing unit.

HeinOnline -- 1999 vol. I 62 1999

(c) The board of county commissioners of a county may direct the county treasurer to reallocate the distribution of oil and natural gas production tax money that would have gone to a taxing unit, as provided in subsection (11)(b), to another taxing unit or taxing units, other than an elementary school or high school, within the county under the following conditions:

(i) The county treasurer shall first allocate the oil and natural gas production taxes to the taxing units within the county in the same proportion that all other property tax proceeds were distributed in the county in fiscal year 1990.

(ii) If the allocation in subsection (11)(c)(i) exceeds the total budget for a taxing unit, the commissioners may direct the county treasurer to allocate the excess to any taxing unit within the county.

(d) The board of trustees of an elementary or high school district may reallocate the oil and natural gas production taxes distributed to the district by the county treasurer under the following conditions:

(i) The district shall first allocate the oil and natural gas preduction taxes to the budgeted funds of the district in the same proportion that all other property tax proceeds were distributed in the district in fiscal year 1990.

(ii) If the allocation under subsection (11)(d)(i) exceeds tbe total budget for a fund, the trustees may allocate the excess to any budgeted fund of the school district.

(e) For all production from post-1985 wells and horizontally drillod wells completed after December 31, 1993, the county treasurer shall distribute oil and natural gas production taxes received under subsections (2)(b), (3)(b)(ii), (4)(b)(ii), (5)(b), (6)(b), and (7)(b)(ii) between county and school taxing units in the relative proportions required by the levies for state, county, and school district purposes in the same manner as proporty taxes were distrihuted in the preceding fiscal year.

(f) The allocation to the county in subsection (11)(e) must be distributed by the county treasurer in the relative proportions required by the levies for county taxing units and in the same manner as property taxes were distributed in the preceding fiscal year.

(g) The money distributed in subsection (11)(e) that is required for the county mill levies for school district retirement obligations and transportation schedules must be deposited to the funds established for these purposes.

(h) The oil and natural gas production taxes distributed under subsection (11)(b) that are required for the 6-mill university levy imposod under 20-25-423 and for the county equalization levies imposed under 20-9-331 and 20-9-333, as those sections read on July 1, 1989, must be remitted by the county treasurer to the state treasurer.

(i) The oil and natural gas production taxes distributed under subsection (11)(e) that are required for the 6-mill university levy imposed under 20-25-423, for the county equalization levies imposed under 20-9-331 and 20-9-333, and for the state equalization aid levy imposod under 20-9-360 must be remitted by the county treasurer to the state treasurer.

(j) The amount of oil and natural gas production taxes remaining after the treasurer has remitted the amounts determined in subsections (11)(h) and (11)(i) is for the exclusive use and benefit of the coimty and school taxing units.

HeinOnline -- 1999 vol. I 63 1999

(12) The department shall remit the amounts to be distributed in subsection (11) to the county treasurer by the following dates:

(a) On or before August 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending March 31 of the current year.

(b) On or before November 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending June 30 of the current year.

(c) On or before February 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending September 30 of the previous year.

(d) On or before May 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending December 31 of the previous calendar year.

(13) The department shall provide to each county hy May 31 of each year the amount of gross taxable value represented by all types of production taxed under 15-36-304 for the previous calendar year multiplied by 60%. The resulting value must be treated as taxable value for county classification purposes and for county bonding purposes.

(14) (a) In the event that the board of oil and gas conservation revises the privilege and license tax pursuant to 82-11-131, the department shall, by rule, change the formula under this section for distribution of taxes collected under 15-36-304. The revised formula must provide for the distribution of taxes in an amount equal to the rate adopted hy the board of oil and gas conservation for the expenses of the board.

(b) Before the department adopts a rule pursuant to subsection (14)(a), it shall present the proposed rule to the ~~revenue oversight~~ *appropriate administrative rule review* committee.

(15) The distribution to taxing units under this section is statutorily appropriated as provided in 17-7-502."

Section 40. Section 15-70-234, MCA, is amended to read:

"**15-70-234. Cooperative agreement — motor fuels taxes.** In order to prevent the possibility of dual taxation of motor fuels purchased by Montana citizens and businesses on Indian reservations, the department ~~of transportation~~ and an Indian tribe may enter into a cooperative agreement. The department ~~of transportation~~ may, with the concurrence of the attorney general, include as a member of the negotiating team a representative of the department of justice who has expertise in Indian matters. The department of transportation shall report the status of cooperative agreement negetiations to ~~each meeting of~~ the revenue ~~oversight~~ *and taxation interim* committee. After negotiations are complete *and if the legislature is not in session*, the agreement must be presented to the ~~revenue oversight~~ committee for review and comment before the final agreement is submitted to tbe attorney general for approval pursuant to 18-11-105."

Section 41. Section 17-6-511, MCA, is amended to read:

"**17-6-511. Legislative oversight.** The department shall report to the ~~revenue oversight~~ *appropriate legislative interim* committee annually on the

performance of the job investment program. The report to the committee must include:

(1) a summary of all loans made during the year;

(2) an analysis of job creation goals and performance;

(3) a summary of loan terms and conditions;

(4) a summary of funds leveraged with job investment loans; and

(5) an analysis of the job investment portfolio performance, including calculations for returns on investments."

Section 42. Section 17-7-140, MCA, is amended to read:

"17-7-140. Reduction in spending. (1) (a) As the chief budget officer of the state, the governor shall ensure that the expenditure of appropriations does not exceed available revenue. Except as provided in subsection (2), in the event of a projected general fund budget deficit, the governor, taking into account the criteria provided in subsection (1)(b), shall direct agencies to reduce spending in an amount that ensures that the projected ending general fund balance for the biennium will be at least 1% of all general fund appropriations during the biennium. An agency may not be required to reduce general fund spending for any program, as defined in each general appropriations act, by more than 10% during a biennium. Departments or agencies headed by elected officials or the board of regents may not be required to reduce general fund spending by a percentage greater than the percentage of general fund spending reductions required for the total of all other executive branch agencies. The legislature may exempt from a reduction an appropriation item within a program or may direct that the appropriation item may not be reduced by more than 10%.

(b) The governor shall direct agencies to manage their budgets in order to reduce general fund expenditures. Prior to directing agencies to reduce spending as provided in subsection (1)(a), the governor shall direct each agency to analyze the nature of each program that receives a general fund appropriation to determine whether the program is mandatory or permissive and to analyze the impact of the proposed reduction in spending on the purpose of the program. An agency shall submit its analysis to the office of budget and program planning and shall at the same time provide a copy of the analysis to the legislative fiscal analyst. The office of budget and program planning shall review each agency's analysis, and the budget director shall submit to the governor a copy of the office of budget and program planning's recommendations for reductions in spending. The budget director shall provide a copy of the recommendations to the legislative fiscal analyst at the time *that* the recommendations are submitted to the governor and shall provide the legislative fiscal analyst with any proposed changes to the recommendations. The legislative finance committee shall meet within 20 days of the date that the proposed changes to the recommendations for reductions in spending are provided to the legislative fiscal analyst. The legislative fiscal analyst shall provide a copy of the legislative fiscal analyst's review of the proposed reductions in spending to the budget director at least 5 days before the meeting of the legislative finance committee. The committee may make recommendations concerning the proposed reductions in spending. The governor shall consider each agency's analysis and the recommendations of the office of budget and program planning and the legislative finance committee in determining the agency's reduction in spending. Reductions in spending must be

HeinOnline -- 1999 vol. I 65 1999

designed to have the least adverse impact on the provision of services determined to be most integral to the discharge of the agency's statutory responsibilities.

(2) Reductions in sponding for the following may not be directed by the gevernor:

(a) payment of interest and principal on state deht;

(b) the legislative branch;

(c) the judicial branch;

(d) the school BASE funding program, including special education; and

(e) salaries of elected officials during their terms of office.

(3) (a) As used in this section, "projected general fund budget deficit" means an amount, certified by the budget director to the governor, by which the projected ending general fund balance for tbe biennium is less than 2% of the general fund appropriations for the second fiscal year of the biennium. In determining the amount of the projected general fund budget deficit, the budget director shall take into account revenue, established levels of appropriation, anticipated supplemental appropriations for school equalization aid, and anticipated reversions.

(b) If the budget director determines that an amount of actual or projected receipts will result in an amount less than the amount projected to be received in the revenue estimate established pursuant to 5-18-107, the budget director shall notify the revenue ~~oversight~~ *and taxation interim* committee of the estimated amount. Within 20 days of notification, the revenue ~~oversight~~ *and taxation interim* committee shall provide the budget director with any recommendations concerning the amount. The budget director shall consider any recommendations of the revenue ~~oversight~~ *and taxation interim* committee prior to certifying a projected general fimd budget deficit to the governor."

Section 43. Section 69-3-1409, MCA, is amended to read:

"69-3-1409. Tax revenue analysis. ~~(1)~~ The revenue ~~oversight~~ *and taxation interim* committee, as provided for in ~~5-18-102~~ *5-5-202*, shall analyze the amount of state and local tax revenue derived from previously regulated natural gas suppliers that will enter the competitive market and shall report to the legislature on how revenue to the state or local gevernment is changed by restructuring and competition.

~~(2) On or before November 30, 1998, the revenue oversight committee shall recommend to the 56th legislature legislative changes to address the establishment of comparable state and local taxation burdens on all market participants in the supply of natural gas.~~"

Section 44. Section 72-16-447, MCA, is amended to read:

"72-16-447. Application for in-kind payment — in-kind review committee — review process. (1) Upon written application from a receiving entity, the department of revenue shall notify the revenue ~~oversight~~ *and taxation interim* committee that ~~such~~ an application has been received.

(2) Upon receipt of ~~such~~ *the* notification, the revenue ~~oversight~~ *and taxation interim* committee shall appoint an in-kind review committee. The in-kind review committee must be ~~comprised~~ *composed* of the following persons~~, appointed by the revenue oversight committee~~:

HeinOnline -- 1999 vol. I 66 1999

(a) a representative of the receiving entity; and

(b) six members representing the county in which the property proposed for in-kind payment lies or was situated at the time of death of the person whom the donor represents, as follows:

(i) one member of the county commission;

(ii) one state senator;

(iii) one state representative; and

(iv) three residents from the community at large.

(3) The in-kind review committee is a voluntary review committee and is entitled to no compensation or reimbursement of expenses for its review, recommendation, or any other activity.

(4) The in-kind review committee will advise the department and the revenue ~~oversight~~ *and taxation interim* committee as to the following:

(a) proposed and potential uses of the property;

(b) ~~where~~ *when* applicable, methods and potential sources for rehabilitation, maintenance, and general support of the property alternative to the statement submitted by the receiving entity pursuant to 72-16-448.

(5) Upon completion of its review, the in-kind review committee shall submit a report in written form to the revenue ~~oversight~~ *and taxation interim* committee and the department, which must be considered in determining whether to recommend that the legislature approve the in-kind payment.

(6) The in-kind review committee has 180 days from the date *that* written application is received by the department from the receiving entity within which to make its report.

(7) The department shall, as provided in 72-16-438, defer payment of inheritance or estate tax that is under review for in-kind payment, so that the tax due is exempt from the interest penalty imposed under 72-16-441."

Section 45. Section 72-16-448, MCA, is amended to read:

"72-16-448. Receipt of application for in-kind payment — limitations. (1) Upon receipt of the written application of a receiving entity and the report, if any, of the in-kind review committee, the department of revenue, after consultation with the revenue ~~oversight~~ *and taxation interim* committee, may recommend that the legislature approve acceptance by the department as in-kind payment of all or a portion of estato or inheritance taxes proporty consisting of any object of significant artistic merit, any site of significant historical interest, or any interest in real property having recreational, conservation, or wildlife value.

(2) A written application pursuant to subsection (1) must be accompanied by a statement from the receiving entity concerning the methods available for the maintenance, supervision, and care of the object, sito, or interest in real property.

(3) The department may accept an in-kind payment if:

(a) the total estate and inheritance taxes due exceed $100,000;

(b) the value of the in-kind payment does not exceed $400,000; and

(c) it has received the approval of the legislature."

HeinOnline -- 1999 vol. I 67 1999

Section 46. Section 72-16-450, MCA, is amended to read:

"72-16-450. Receipts of in-kind payments — recording. Title or possession of the in-kind payment must be taken in the name of the state of Montana by the receiving entity. The receiving entity shall promptly notify the department of revenue and the revenue ~~oversight~~ *and taxation interim* committee of the receipt of the in-kind payment and the proper recording of any interest in real property. Upon ~~such~~ notification, the department shall notify the county treasurer and state treasurer of the in-kind payment. The in-kind payment must be recorded and credited as if money had been received for payment of the inheritance or estate tax."

Section 47. Section 75-1-324, MCA, is amended to read:

"75-1-324. Duties of environmental quality council. The environmental quality council shall:

(1) gather timely and authoritative information concerning the conditions and trends in the quality of the environment, both current and prospective, analyze and interpret the information for the purpose of determining whether the conditions and trends are interfering or are likely to interfere with the achievement of the policy set forth in 75-1-103, and compile and submit to the governor and the legislature studies relating to the conditions and trends;

(2) review and appraise the various programs and activities of the state agencies, in the light of the policy set forth in 75-1-103, for the purpose of determining the extent to which the programs and activities are contributing to the achievement of the policy and make recommendations to the governor and the legislature with respect to the policy;

(3) develop and recommend to the governor and the legislature state policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the state;

(4) conduct investigations, studies, surveys, research, and analyses relating to ecological systems and environmental quality;

(5) document and define changes in the natural environment, including the plant and animal systems, and accumulate necessary data and other information for a continuing analysis of these changes or trends and an interpretation of their underlying causes;

(6) make and furnish studies, reports on studies, and recommendations with respect to matters of policy and legislation as the legislature requests;

(7) analyze legislative proposals in clearly environmental areas and in other fields ~~where~~ *in which* legislation might have environmental consequences and assist in preparation of reports for use by legislative committees, administrative agencies, and the public;

(8) consult with and assist legislators who are preparing environmental legislation to clarify any deficiencies or potential conflicts with an overall ecologic plan; ~~and~~

(9) review and evaluate operating programs in the environmental field in the several agencies to identify actual or potential conflicts, both among the activities and with a general ecologic perspective, and suggest legislation to remedy the situations; *and*

HeinOnline -- 1999 vol. I 68 1999

(10) perform the administrative rule review, program evaluation, and monitoring functions of an interim committee for the:

(a) department of environmental quality;

(b) department of fish, wildlife, and parks; and

(c) department of natural resources and conservation."

Section 48. Section 90-8-311, MCA, is amended to read:

"**90-8-311. Legislative review and oversight.** The department shall report on an annual basis to the ~~revenue oversight~~ *appropriate legislative interim* committee ~~of the legislature~~ concerning Montana capital companies and the Montana small business investment capital company."

Section 49. Repealer. Sections 2-4-401, 5-11-302, 5-11-701, 5-11-702, 5-11-703, 5-11-704, 5-14-101, 5-14-102, 5-14-103, 5-14-104, 5-18-101, 5-18-102, 5-18-103, 5-18-104, 5-18-105, 5-18-106, 5-18-108, 5-18-109, 5-18-110, 5-18-115, 5-19-101, 5-19-102, 5-19-103, 5-19-104, 5-19-105, 5-19-106, 5-19-107, 5-19-108, 5-20-201, 5-20-202, 5-20-203, 5-20-204, 5-20-205, 5-20-206, 5-20-207, 5-20-208, 5-21-101, 5-21-102, 5-21-103, 5-21-104, 5-21-105, 5-22-101, 5-22-102, 5-23-101, 5-23-102, 5-23-103, 5-23-104, 5-23-105, 5-23-106, 5-23-107, 5-23-108, and 5-23-109, MCA, are repealed.

Section 50. Transitional provision. The interim committees established in [sections 25 through 30] shall consider and if necessary follow through on any unresolved issues of a prior interim committee or statutory committee eliminated by [this act] over which the interim committee has subject matter jurisdiction.

Section 51. Codification instruction. [Sections 25 through 30] are intended to be codified as an integral part of Title 5, chapter 5, part 2, and the provisions of Title 5, chapter 5, part 2, apply to [sections 25 through 30].

Section 52. Effective date. [This act] is effective on passage and approval.

Approved February 17, 1999

CHAPTER NO. 20

[SB 55]

AN ACT REVISING BUDGET REQUIREMENTS FOR CERTAIN ENTERPRISE FUNDS; PROVIDING THAT CERTAIN ENTERPRISE FUNDS ARE SUBJECT TO APPROPRIATION; AMENDING SECTIONS 17-7-111, 17-7-123, AND 17-8-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-7-111, MCA, is amended to read:

"**17-7-111. Preparation of state budget — agency program budgets — form distribution and contents.** (1) (a) To prepare a state budget, the executive branch, the legislature, and the citizens of the state need information that is consistent and accurate. Necessary information includes detailed disbursements by fund type for each agency and program for the appropriate time period, recommendations for creating a balanced budget, and recommended disbursements and estimated receipts by fund type and fund category.

HeinOnline -- 1999 vol. I 69 1999

(b) Subject to the requirements of this chapter, the budget director and the legislative fiscal analyst sball by agreement:

(i) establish necessary standards, formats, and other matters necessary to share information between the agencies and to ensure that information is consistent and accurate for the preparation of the state's budget; and

(ii) provide for the collection and provision of budgetary and financial information that is in addition to or different from the information otherwise required to be provided pursuant to this section.

(2) In tbe preparation of a state budget, the budget director shall, not later than the date specified in 17-7-112(1), distribute to all agencies tbe proper forms and instructions necessary for the preparation of budget estimates by the budget director. These forms must be prescribed by the budget director to procure tbe information required by subsection (3). The forms must be submitted to the budget director by the date provided in 17-7-112(2) or the agency's budget is subject to preparation based upon estimates as provided in 17-7-112(5). The budget director may refuse to accept forms tbat do not comply with the provisions of this section or tbe instructions given for completing the forms.

(3) Tbe agency budget request must set forth a balanced financial plan for the agency completing the forms for each fiscal year of the ensuing biennium. The plan must consist of:

(a) a consolidated agency budget summary of funds subject to appropriation *or enterprise funds that transfer profits to the general fund or to an account subject to appropriation* for the current base budget expenditures, including statutory appropriations, and for each present law adjustment and new proposal request setting forth the aggregate figures of the full-time equivalent personnel positions (FTE) and tbe budget, showing a balance between the total proposed disbursements and the total anticipated receipts, together with the other means of financing the hudget for each fiscal year of the ensuing hienmium, contrasted with the corresponding figures for the last completed fiscal year and the fiscal year in progress;

(b) a schedule of the actual and projected receipts, disbursements, and solvency of each accounting entity within each fund for the current bienmium and estimated for the subsequent biemiium;

(c) a statement of the agency mission and a statement of geals and objectives for each program of the agency. The geals and objectives must include, in a concise form, sufficient specific information and quantifiable information to enable the legislature to formulate an appropriations policy regarding the agency and its programs and to allow a determination, at some future date, on whether tbe agency has succeeded in attaining its goals and objectives.

(d) actual FTE and disbursements for the completed fiscal year of the current biennium, estimated FTE and disbursements for the current fiscal year, and the agency's request for the ensuing biennium, by program;

(e) actual disbursements for the completed fiscal year of the current biennium, estimated disbursements for the current fiscal year, and the agency's recommendations for the ensuing hiennium, by disbursement category;

(f) a reference, for each program included in the agency budget request, identifying whether the program may be operated at the discretion of the agency or whether the agency is required by federal or state law to operate, administer, or manage the program; and

HeinOnline -- 1999 vol. I 70 1999

(g) other information the budget director feels is necessary for the preparation of a budget.

(4) The budget director shall prepare and submit to the legislative fiscal analyst in accordance with 17-7-112:

(a) detailed recommendations for the state long-range building program. Each recommendation must be presented by institution, agency, or branch, by funding source, with a description of each proposed project.

(b) the proposed pay plan schedule for all executive branch employees at the program level by fund, with the specific cost and funding recommendations for each agency. Submission of a pay plan schedule under this subsection is not an unfair labor practice under 39-31-401.

(c) agency proposals for the use of cultural and aesthetic project grants under Title 22, chapter 2, part 3, the renewable resource grant and loan program under Title 85, chapter 1, part 6, the reclamation and development grants program under Title 90, chapter 2, part 11, and the treasure state endowment program under Title 90, chapter 6, part 7.

(5) The board of regents shall submit, with its budget request for each university unit in accordance with 17-7-112, a report on the university system bonded indebtedness and related finances as provided in this subsection (5). The report must include the following information for each year of the biennium, contrasted with the same information for the last completed fiscal year and the fiscal year in progress:

(a) a schedule of estimated total bonded indebtedness for each university unit by bond indenture;

(b) a schedule of estimated revenue, expenditures, and fund balances by fiscal year for each outstanding bond indenture, clearly delineating the accounts relating to each indenture and the minimum legal funding requirements for each bond indenture; and

(c) a schedule showing the total funds available from each bond indenture and its associated accounts, with a list of commitments and planned expenditures from such accounts, itemized by revenue source and project for each year of the current and ensuing bienniums.

(6) The budget director may not obtain copies of individual income tax records protected under 15-30-303. The department of revenue shall make individual income tax data available by removing names, addresses, occupations, social security numbers, and taxpayer identification numbers. The department of revenue may not alter the data in any other way. The data is subject to the same restrictions on disclosure as are individual income tax returns."

Section 2. Section 17-7-123, MCA, is amended to read:

"**17-7-123. Form of executive budget.** The budget submitted must set forth a balanced financial plan ~~of~~*for* funds subject to appropriation *and enterprise funds that transfer profits to the general fund or to accounts subject to appropriation* for each accounting entity and for the state government for each fiscal year of the ensuing biennium. The base level plan must consist of:

(1) a consolidated budget summary setting forth the aggregate figures of the budget in a manner that shows a balance between the total proposed disbursements and the total anticipated receipts, together with the other means of financing the budget for each fiscal year of the ensuing biennium, contrasted with

HeinOnline -- 1999 vol. I 71 1999

the corresponding figures for the last completed fiscal year and the fiscal year in progress. The consolidated budget summary must he supported hy explanatory schedules or statements.

(2) hudget and full-time equivalent personnel position comparisons by agency, program, and appropriated funds for the current and subsequent biennium;

(3) the departmental mission and a statement of goals and objectives for each program of the department;

(4) base budget disbursements for the completed fiscal year of the current biennium, estimated comparable dishursements for the current fiscal year, and the proposed present law base budget plus new proposals, if any, for each department and each program of the department;

(5) a statement containing recommendations of the governor for the ensuing biennium by program and disbursement category, including:

(a) explanations of appropriation and revenue measures included in the budget tbat involve policy changes; and

(b) matters not included as a part of the budget bill but included as a part of the executive budget, such as the state employee pay plan, programs funded through separate appropriations measures, and otber matters considered necessary for comprehensive public and legislative consideration of the state budget;

(6) a report on:

(a) enterprise funds *not subject to the requirements of subsections (1) through (5)*, including retained earnings and contributed capital, projected operations and charges, and projected fund balances; and

(b) fees and charges in the internal service fund type, including changes in the level of fees and charges, projected use of the fees and charges, and projected fund balances. Fees and charges in the internal service fund type must be approved by the legislature in the general appropriations act. Fees and charges in a biennium may not exceed the level approved by the legislature in the general appropriations act effective for that biennium.

(7) any other financial or budgetary material agreed to by the budget director and the legislative fiscal analyst."

Seetion 3. Section 17-8-101, MCA, is amended to read:

"17-8-101. Appropriation and disbursement of money from treasury. (1) For purposes of complying with Article VIII, section 14, of the Montana constitution, money deposited in the general fund, the special revenue fund type (except money deposited in the treasury from nonstate and nonfederal sources restricted by law or by the terms of an agreement, such as a contract, trust agreement, or donation), and the capital projects fund type, with the exception of refunds authorized in subsection (4), may be paid out of the treasury only on appropriation made by law.

(2) Subject to tbe provisions of subsection (8), money deposited in the enterprise fund type, debt service fund type, internal service fund type, expendable trnst fund type, agency fund type, and state special revenue fund from nonstate and nonfederal sources restricted by law or by the terms of an agreement, such as a contract, trust agreement, or donation, may be paid out of the treasury:

HeinOnline -- 1999 vol. I 72 1999

(a) by appropriation; or

(b) under general laws, or contracts entered into in pursuance of law, permitting the disbursement.

(3) The pension trust fund type is not considered a part of the state treasury for appropriation purposes. Money deposited in the pension trust fund type may be paid out of the treasury pursuant to general laws, trust agreement, or contract.

(4) Money paid into the state treasury through error or under circumstances such that the state is not legally entitled to retain it and a refund procedure is not otherwise provided by law may be refunded upon the submission of a verified claim approved by the department ~~of administration~~.

(5) Authority to expend appropriated money may be transferred from one state agency to another, provided that the original purpose of the appropriation is maintained. The office of budget and program planning shall report semiannually to the legislative finance committee concerning all appropriations transferred under the provisions of this section.

(6) Fees and charges for services deposited in the internal service fund type must be based upon commensurate costs. The legislative auditor, during regularly scheduled audits of state agencies, shall audit and report on the reasonableness of internal service fund type fees and charges and on the fund equity balances.

(7) The creation of accounts in the enterprise fund or the internal service fund must be approved by the department, using conformity with generally accepted accounting principles as the primary approval criteria. The department shall report annually to the office of budget and program planning and the legislative finance committee on the nature, status, and justification for all new accounts in the enterprise fund and the internal service fund.

(8) Enterprise and internal service funds must be appropriated if they are used as a part of a program that is not an enterprise or internal service function and that otherwise requires an appropriation. *An enterprise fund that transfers its ending fund balance to the general fund is subject to appropriation.* The payment of funds into an internal service fund must be authorized by law."

Section 4. Effective date. [This act] is effective on passage and approval.

Section 5. Applicability. [This act] applies to fiscal years beginning on or after July 1, 2001.

Approved February 17, 1999

CHAPTER NO. 21

[SB 93]

AN ACT REVISING THE LAWS RELATING TO SUBSIDIZED ADOPTIONS; AMENDING SECTIONS 42-10-102, 42-10-103, 42-10-106, 42-10-107, 42-10-108, 42-10-109, AND 53-6-131, MCA; AND REPEALING SECTION 42-10-110, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 42-10-102, MCA, is amended to read:

"42-10-102. Purpose. The purpose of this part is to encourage and promote the adoption of children ~~who are hard to place~~ *with special needs* by providing

HeinOnline -- 1999 vol. I 73 1999

information and assistance in completing the adoption process and financial assistance when necessary to ensure the health and welfare of the ~~hard-to-place~~ child *with special needs*."

Section 2. Section 42-10-103, MCA, is amended to read:

"42-10-103. Definitions. As used in this part, the following definitions apply:

(1) *"Child with special needs" means a child who is a dependent of a public or voluntary licensed child placement agency and meets at least one of the following criteria as a child who is:*

(a) diagnosed as having a physical, mental, or emotional disability;

(b) recognized to be at high risk of developing a physical, mental, or emotional disability;

(c) a member of a minority group;

(d) six years of age or older; or

(e) a member of a sibling group to be placed together for adoption.

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

~~(2) "Hard-to-place child" means a minor, as defined by 41-1-101, who is a dependent of a public or voluntary licensed child-placing agency, legally free for adoption, and is not likely to be adopted because of:~~

~~(a) physical or mental disease or disability;~~

~~(b) recognized high risk of physical or mental disease or disability; or~~

~~(c) sibling relationship to another child who is eligible for adoption.~~"

Section 3. Section 42-10-106, MCA, is amended to read:

"42-10-106. Certification as ~~hard-to-place~~ *child with special needs*. (1) Whenever the conditions of 42-10-103 are found to exist and the foster parents seek to adopt the child, the child ~~shall~~ *must* be certified as ~~hard-to-place~~ *a child with special needs*.

(2) In all other cases in which the conditions of 42-10-103 are found to exist and after reasonable efforts have been made and without ~~the use of~~ subsidy no appropriate adoptive family has been found for a child, the department shall certify the child as ~~hard-to-place~~ *a child with special needs*.

(3) If the child is the dependent of a ~~voluntary~~ licensed child-placing agency, that agency shall present to the department evidence of inability to place the child for adoption due to any of the conditions specified in 42-10-103. The agency shall present evidence that reasonable efforts have been made to place the child without subsidy~~, such as recruitment of potential parents, use of adoption resource exchanges, and referral to appropriate specialized adoption agencies~~. Upon such a showing, the department shall certify the child as ~~hard-to-place~~ *a child with special needs*."

Section 4. Section 42-10-107, MCA, is amended to read:

"42-10-107. Eligibility for subsidy. Any family ~~which~~ *that* applies for an adoption subsidy, is approved by the department *or a licensed child placement agency* as a suitable adoptive family, ~~is or may be financially unable to meet the~~

~~special needs of a hard to place child as determined by the department,~~ and adopts a ~~hard to place~~ child *with special needs* is eligible for subsidy regardless of the domicile or residence of the family at the time of application for adoption, placement, legal decree of adoption, or thereafter."

Section 5. Section 42-10-108, MCA, is amended to read:

"42-10-108. Subsidy agreement. (1) When parents are approved for adoption of a child certified as ~~hard to place~~ *a child with special needs* and before the final decree of adoption is issued, there ~~shall~~ *must* be a written agreement between the family ~~entering into the subsidized adoption~~ and the department. The terms of the adoption subsidy agreement may commence with the adoption placement or at an appropriate time after the adoption decree.

(2) The subsidy agreement ~~shall~~ *must* continue in accordance with its terms until the child reaches majority or ~~for as long as the adopted child is the legal dependent of the adoptive parents and the child's condition continues~~, *in the case of a child with a mental or physical handicap, until 21 years of age.* Termination or modification of the subsidy agreement may be requested by the adoptive parents or the department at any time."

Section 6. Section 42-10-109, MCA, is amended to read:

"42-10-109. Amount, duration, and scope of subsidy. The amount, duration, and scope of the subsidy may vary with the special needs of the child as well as the availability of other resources~~, including those of the adoptive parents,~~ to meet these needs. The subsidy may be for services only or for the money payments, but in no case may the amount of the subsidy exceed:

(1) ~~in the case of a sibling relationship,~~ that which would be allowable for ~~such~~ *maintenance costs such as payments to cover the cost of food, clothing, shelter, daily supervision, school supplies, and a child's personal incidentals, not to exceed the foster care rate established by the department for a* child under foster ~~family~~ care; or

(2) in the case of a *state* medical subsidy, the reasonable fee for the services rendered, not to exceed the amount of $2,600 annually."

Section 7. Section 53-6-131, MCA, is amended to read:

"53-6-131. Eligibility requirements. (1) Medical assistance under the Montana medicaid program may be granted to a person who is determined by the department of public health and human services, in its discretion, to be eligible as follows:

(a) The person receives or is considered to be receiving supplemental security income benefits under Title XVI of the Social Security Act, 42 U.S.C. 1381, et seq., and does not have income or resources in excess of the applicable medical assistance limits or receive from FAIM financial assistance, as defined in 53-4-702, benefits under Title IV of the federal Social Security Act, 42 U.S.C. 601, et seq.

(b) The person would be eligible for assistance under a program described in subsection (1)(a) if that person were to apply for that assistance.

(c) The person is in a medical facility that is a medicaid provider and, but for residence in the facility, the person would be receiving assistance under one of the programs in subsection (1)(a).

HeinOnline -- 1999 vol. I 75 1999

(d) The person is under 19 years of age and meets the conditions of eligibility in the state plan, as defined in 53-4-201, other than with respect to age and school attendance.

(e) The person is under 21 years of age and in foster care under the supervision of the state or was in foster care under the supervision of the state and has been adopted as a ~~hard-to-place~~ child *with special needs*.

(f) The person meets the nonfinancial criteria of the categories in subsections (1)(a) through (1)(e) and:

(i) the person's income does not exceed the income level specified for federally aided categories of assistance and the person's resources are within the resource standards of the federal supplemental security income program; or

(ii) the person, while having income greater than the medically needy income level specified for federally aided categories of assistance:

(A) has an adjusted income level, after incurring medical expenses, that does not exceed the medically needy income level specified for federally aided categories of assistance or, alternatively, has paid in cash to the department the amount by which the person's income exceeds the medically needy income level specified for federally aided categories of assistance; and

(B) has resources that are within the resource standards of the federal supplemental security income program.

(g) The person is a qualified pregnant woman or child as defined in 42 U.S.C. 1396d(n).

(2) The department may establish income and resource limitations. Limitations of income and resources must be within the amounts permitted by federal law for the medicaid program.

(3) The Montana medicaid program shall pay, as required by federal law, the premiums necessary for medicaid-eligible persons participating in the medicare program and may, within the discretion of the department, pay all or a portion of the medicare premiums, deductibles, and coinsurance for a qualified medicare-eligible person or for a qualified disabled and working individual, as defined in section 6408(d)(2) of the federal Omnibus Budget Reconciliation Act of 1989, Public Law 101-239, who:

(a) has income that does not exceed income standards as may be required by the Social Security Act; and

(b) has resources that do not exceed standards that the department determines reasonable for purposes of the program.

(4) The department may pay a medicaid-eligible person's expenses for premiums, coinsurance, and similar costs for health insurance or other available health coverage, as provided in 42 U.S.C. 1396b(a)(1).

(5) In accordance with waivers of federal law that are granted by the secretary of the U.S. department of health and human services, the department of public health and human services may grant eligibility for basic medicaid benefits as described in 53-6-101 to an individual receiving FAIM financial assistance, as defined in 53-4-702, as the specified caretaker relative of a dependent child under the FAIM project and to all adult recipients of medical assistance only who are covered under a group related to the program of FAIM financial assistance. A recipient who is pregnant, meets the criteria for disability

HeinOnline -- 1999 vol. I 76 1999

provided in Title II of the Social Security Act, 42 U.S.C. 416, et seq., or is less than 21 years of age is entitled to full medicaid coverage as provided in 53-6-101.

(6) The department, under the Montana medicaid program, may provide, if a waiver is not available from the federal government, medicaid and other assistance mandated by Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as may he amended, and not specifically listed in this part to categories of persons that may be designated by the act for receipt of assistance.

(7) Notwithstanding any other provision of this chapter, medical assistance must be provided to infants and pregnant women whose family income does not exceed 133% of the federal poverty threshold, as provided in 42 U.S.C. 1396a(a)(10)(A)(ii)(IX) and 42 U.S.C. 1396a(l)(2)(A)(i), and whose family resources do not exceed standards that the department determines reasonahle for purposes of the program.

(8) Subject to appropriations, the department may cooperate with and make grants to a nonprofit corporation that uses donated funds to provide basic preventive and primary health care medical benefits to children whose families are ineligible for the Montana medicaid program and who are ineligible for any other health care coverage, are under 19 years of age, and are enrolled in school if of school age.

(9) A person described in subsection (7) must be provided continuous eligibility for medical assistance, as authorized in 42 U.S.C. 1396a(e)(5) through a(e)(7).

(10) The department may establish resource and income standards of eligibility for mental health services that are more liberal than the resource and income standards of eligibility for physical health services. The standards for eligibility for mental health services may provide for eligibility for households with family income that does not exceed 200% of the federal poverty threshold or that does not exceed a lesser amount determined in the discretion of the department. The department may by rule specify under what circumstances deductions for medical expenses sbould be used to reduce countable family income in determining eligibility. The department may also adopt rules establishing fees to be charged recipients for services. The fees may vary according to family income."

Section 8. Repealer. Section 42-10-110, MCA, is repealed.

Approved February 17, 1999

CHAPTER NO. 22

[HB 254]

AN ACT CLARIFYING THE POWERS OF THE MONTANA MINT COMMITTEE TO CONTRACT TO PROMOTE RESEARCH OF AND MARKET DEVELOPMENT FOR MINT; AMENDING SECTION 80-11-403, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-11-403, MCA, is amended to read:

"80-11-403. Powers of the committee. The committee may:

(1) provide for the administration and enforcement of this part;

(2) enter into contracts~~, in the name of the committee, to:~~

~~(a) improve the quality of mint;~~

~~(b) develop and improve control measures for diseases and pests that attack mint;~~

~~(c) improve mint growing culture;~~

~~(d) disseminate appropriate information among mint growers and dealers of the state; and~~

~~(e)~~ *or agreements with units of the Montana university system and other local, state, or national organizations, public or private, for purposes of:*

(a) improving mint quality;

(b) increasing the efficiency of production;

(c) developing marketing knowledge;

(d) developing markets;

(e) determining new uses for mint;

(f) developing alternative crops compatible with mint;

(g) carrying out all research and marketing contemplated by this part; and

(h) ~~carry~~ *carrying* out the purposes of this part;

(3) authorize the purchase of office equipment and supplies and incur other reasonable and necessary expenses and obligations required to carry out this part;

(4) become a member of and purchase membership in trade organizations and subscribe to and purchase trade bulletins, journals, and other trade publications;

(5) adopt rules and orders for the exercise of its power and the performance of its duties in accordance with the Montana Administrative Procedure Act;

(6) cooperate with any local, state, or national organization or agency, whether voluntary or created by the law of any state or the United States, engaged in work or activities similar to the work and activities of the committee and enter into contracts with those organizations or agencies for conducting joint campaigns of research, education, disease control, product protection, and reciprocal enforcement of objectives;

(7) accept grants, donations, and gifts from any source for expenditure for any purpose consistent with this part and spend the proceeds in compliance with the conditions of the grants, donations, and gifts; and

(8) establish by rule an integrated pest management program, complete with field scouting services. The purpose of the program is to identify, as early as possible, any potentially damaging diseases, weeds, or pests that could inhibit the long-term health of the Montana mint industry."

Section 2. Effective date. [This act] is effective July 1, 1999.

Approved February 18, 1999

HeinOnline -- 1999 vol. I 78 1999

CHAPTER NO. 23

[HB 284]

AN ACT REVISING LAWS GOVERNING CONSERVATION DISTRICTS; PROVIDING IMMUNITY TO CONSERVATION DISTRICTS AND THEIR SUPERVISORS AND EMPLOYEES; AUTHORIZING CONSERVATION DISTRICTS AND OTHER POLITICAL SUBDIVISIONS TO SATISFY A SETTLEMENT USING FUNDS AUTHORIZED BY 2-9-316; AUTHORIZING CONSERVATION DISTRICTS TO EXECUTE THEIR DUTIES AND RESPONSIBILITIES RELATING TO STREAMBED PRESERVATION UNDER THE PROCEDURES OF TITLE 76, CHAPTER 15; AUTHORIZING CONSERVATION DISTRICTS TO BE INVOLVED IN THE DEVELOPMENT OF VARIOUS WATER PROJECTS; AUTHORIZING CONSERVATION DISTRICTS TO APPLY FOR, ACCEPT, AND EXPEND FUNDS, GRANTS, AND LOANS; AMENDING SECTIONS 2-9-316, 76-15-320, 76-15-403, AND 76-15-501, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-9-316, MCA, is amended to read:

"2-9-316. Judgments against governmental entities except state. Except as provided in 15-1-402, a political subdivision of the state shall satisfy a final judgment *or settlement* out of funds that may be available from the following sources:

(1) insurance;

(2) the general fund or any other funds legally available to the governing body;

(3) a property tax, otherwise properly authorized by law, collected by a special levy authorized by law, in an amount necessary to pay any unpaid portion of the judgment *or settlement*, except that ~~such~~ *the* levy may not exceed 10 mills;

(4) proceeds from the sale of bonds issued by a county, city, or school district for the purpose of deriving revenue for the payment of the judgment *or settlement* liability. The governing body of a county, city, or school district ~~is hereby authorized to~~ *may* issue ~~such~~ bonds pursuant to procedures established by law. Property taxes may be levied to amortize ~~such~~ *the* bonds, provided the levy for payment of any ~~such~~ bonds, *settlements,* or judgments may not exceed, in the aggregate, 10 mills annually."

Section 2. Section 76-15-320, MCA, is amended to read:

"76-15-320. Legal status of district — *immunity.* *(1)* A conservation district and the supervisors ~~thereof~~ *of a conservation district* ~~shall have the power~~ *may:*

(a) ~~to~~ sue and be sued in the name of the district;

(b) satisfy a judgment or settlement pursuant to 2-9-316;

(c) ~~to~~ have a seal~~, which seal shall be~~ *that is* judicially noticed;

(d) ~~to~~ have perpetual succession unless terminated as ~~hereinafter~~ provided *in this chapter*;

(e) implement Title 75, chapter 7, part 1; and

HeinOnline -- 1999 vol. I 79 1999

(f) ~~to~~ make and execute contracts and other instruments necessary or convenient to the exercise of its powers.

(2) A conservation district, conservation district supervisor, or conservation district employee is immune from suit for any liability that might otherwise be incurred or imposed for an act or omission committed while engaged in conservation district activities pursuant to Title 75, chapter 7, part 1, or this chapter, unless the act or omission constitutes gross negligence, was committed in bad faith, or was committed with malicious purpose."

Section 3. Section 76-15-403, MCA, is amended to read:

"76-15-403. Operation of projects and works. A conservation district and the supervisors ~~thereof shall have the power to~~ *of the conservation district may*:

(1) conduct soil, vegetation, and water resources conservation projects on lands within the districts upon obtaining the consent of the owner of ~~such~~ *the* lands or the necessary rights or interest in ~~such land~~ *the lands*;

(2) carry out preventive and control measures and works of improvement for flood prevention and the conservation, development, utilization, and disposal of water ~~within the district~~, including but not limited to engineering operations, range management, methods of cultivation, ~~the~~ growing ~~of~~ vegetation, changes in use of land, and the measures listed in 76-15-101(3) on ~~lands~~:

(a) lands within the district and owned or controlled by ~~this~~ *the* state ~~or any of its agencies~~ with the cooperation of the agency administering and having jurisdiction ~~thereof~~ *of the lands; or*

(b) ~~and on~~ any other lands within the district upon obtaining the consent of the occupier of ~~such~~ *the* lands or the necessary rights or interests in ~~such~~ *the* lands;

(3) cooperate or enter into agreements with and, within the limits of appropriations duly made available to it by law, furnish financial or other aid to any *governmental or other* agency~~, governmental or otherwise,~~ or any occupier of lands within the district ~~in the carrying on of~~, *subject to any conditions that the supervisors consider necessary to advance the purposes of this chapter, to conduct or complete:*

(a) erosion control and prevention operations~~;~~*; and*

(b) works of improvement for flood prevention~~,~~ and the conservation, development, utilization, and disposal of water within the district~~, subject to such conditions as the supervisors may deem necessary to advance the purposes of this chapter~~;

(4) construct, improve, operate, and maintain ~~such~~ *any* structures ~~as may be~~ *that are* necessary or convenient for the performance of any of the operations authorized in this chapter;

(5) ~~take over, by~~ purchase, lease, or otherwise *take over*~~,~~ and administer *projects undertaken by the United States or the state within the district boundaries for:* ~~any~~

(a) soil conservation~~,~~*;*

(b) flood prevention~~,~~*;*

(c) drainage~~,~~*;*

(d) irrigation~~,~~;

(e) water management~~,~~;

(f) erosion control~~,~~; or

(g) erosion prevention ~~project, or combinations thereof, located within its boundaries undertaken by the United States or any of its agencies or by this state or any of its agencies~~;

(6) manage, as agent of the United States ~~or any of its agencies~~ or of ~~this~~ *the* state ~~or any of its agencies,~~ any ~~soil conservation, flood prevention, drainage, irrigation, water management, erosion control, or erosion prevention project, or combination thereof,~~ *of the types of projects identified in subsection (5)* within its boundaries;

(7) act as agent for the United States ~~or any of its agencies~~ or for ~~this~~ *the* state ~~or any of its agencies~~ in connection with the acquisition, construction, operation, or administration of any ~~soil conservation, flood prevention, drainage, irrigation, water management, erosion control, or erosion prevention projects, or combination thereof,~~ *of the types of projects identified in subsection (5)* within its boundaries;

(8) accept donations, gifts, and contributions in money, services, materials, or otherwise from the United States, ~~or any of its agencies or~~ from ~~this~~ *the* state, ~~or any of its agencies~~ *or from any other source* and use or expend ~~such moneys, services, materials,~~ *funds* or other contributions ~~in carrying on~~ *to conduct* its operations;

(9) execute its duties and responsibilities under Title 75, chapter 7, part 1, pursuant to the procedures of this chapter; or

(10) execute projects for the conservation, dsvelopment, storage, distribution, and utilization of water, including but not limited to projects for the following purposes:

(a) irrigation;

(b) flood prevention;

(c) drainage;

(d) fish and wildlife;

(e) recreation;

(f) development of power; or

(g) supplying water for fire protection, livestock, or public, domestic, industrial, or other uses."

Section 4. Section 76-15-501, MCA, is amended to read:

"76-15-501. Financial management. A conservation district and the supervisors ~~thereof shall have the power to~~ *of a conservation district may:*

(1) borrow money and incur indebtedness and issue bonds or other evidence of ~~such~~ indebtedness;

(2) ~~also~~ refund or retire an indebtedness or lien ~~that may exist~~ against the district or property ~~thereof~~ *of the district*;

(3) ~~fix and revise as necessary~~ *establish* and collect rates, fees, tolls, rents, or other charges for the use of ~~or for services,~~ facilities~~, and~~ *or for services or*

HeinOnline -- 1999 vol. I 81 1999

materials ~~furnished or~~ provided~~, and revenues~~. *Revenue* from these sources may be expended in carrying out the purposes and provisions of this chapter~~;~~.

(4) ~~cause taxes to be levied in the same manner~~ *levy taxes as* provided ~~for~~ in this part ~~for the purpose of paying~~ *to pay* any obligation of the district and to accomplish the purposes of this chapter ~~in the manner herein~~ *as* provided *in this chapter*;

(5) apply for and receive federal revenue sharing funds in order to carry out the purposes and provisions of this chapter;

(6) establish a conservation practice loan program as provided in this part; *or*

(7) apply for, accept, administer, and expend funds, grants, and loans from the state or federal government or any other source."

Section 5. Two-thirds vote required — contingent voidness. (1) Because [section 2] limits governmental liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage.

(2) If [this act] is not approved by at least two-thirds of the members of each house, then [section 2] is void.

Section 6. Effective date. [This act] is effective on passago and approval.

Section 7. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, te all occurrences prior to [the effective date of this act] for which a cause of action has not been filed and served upon a conservation district.

Approved February 18, 1999

CHAPTER NO. 24

[SB 6]

AN ACT EXPANDING THE LIST OF PRECURSORS TO DANGEROUS DRUGS FOR PURPOSES OF THE OFFENSE OF CRIMINAL POSSESSION OF PRECURSORS TO DANGEROUS DRUGS; AND AMENDING SECTION 45-9-107, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-9-107, MCA, is amended to read:

"**45-9-107. Criminal possession of precursors to dangerous drugs.** (1) A person commits the offense of criminal possession of precursors to dangorous drugs if ~~he~~ *the person* possesses *any material, compound, mixture, or preparation that contains any combination of the following with intent to manufacture dangerous drugs*:

(a) phenyl-2-propanone (phenylacetone) ~~with the intent to manufacture amphetamine or methamphetamine, or both~~;

(b) ~~both~~ piperidine ~~and~~ *in conjunction with* cyclohexanone ~~at the same time, or a combination product thereof, with the intent to manufacture phencyclidine (PCP);~~

HeinOnline -- 1999 vol. I 82 1999

(c) ephedrine;

(d) lead acetate;

(e) methylamine;

(f) methylformamide;

(g) n-methylephedrine;

(h) phenylpropanolamine;

(i) pseudoephedrine;

(j) anhydrous ammonia;

(k) hydriodic acid;

(l) red phosphorus;

(m) iodine in conjunction with ephedrine, pseudoephedrine, or red phosphorus;

(n) lithium in conjunction with anhydrous ammonia.

(2) A person convicted of criminal possession of precursors to dangerous drugs shall be imprisoned in the state prison for a term not less than 2 years or more than 20 years or be fined an amount not to exceed $50,000, or both."

Approved February 18, 1999

CHAPTER NO. 25

[SB 21]

AN ACT TRANSFERRING THE RESPONSIBILITIES UNDER THE OCCUPATIONAL HEALTH ACT OF MONTANA FROM THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO THE DEPARTMENT OF LABOR AND INDUSTRY; MAKING CERTAIN MANDATORY FUNCTIONS PERMISSIVE; CLARIFYING THAT ADMINISTRATIVE RULEMAKING AND CONTESTED CASE HEARINGS ARE PURSUANT TO THE MONTANA ADMINISTRATIVE PROCEDURE ACT; AMENDING SECTIONS 50-70-103, 50-70-105, AND 50-70-111, MCA; REPEALING SECTION 50-70-110, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-70-103, MCA, is amended to read:

"50-70-103. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Air contaminant" means fumes, dust, mist, smoke, other particulate matter, vapor, gas, odorous substances, or any combination thereof.

~~(2) "Board" means the board of environmental review provided for in 2-15-3502.~~

~~(3)~~*(2)* "Department" means the department of ~~environmental quality~~ *labor and industry* provided for in ~~2-15-3501~~ *2-15-1701*.

~~(4)~~*(3)* "Emission" means a release into the work space atmosphere of air contaminants or pollutants.

HeinOnline -- 1999 vol. I 83 1999

~~(5)~~*(4)* "Occupational disease" means an illness, impairment, or disability that:

(a) arises from the person's employment;

(b) is caused by exposure to a substance or industrial practice that is hazardous to health;

(c) has symptoms of an industrial disease that is known to have resulted from the same type of exposure in other cases;

(d) is not the result of a person's contact or activities outside the person's employment.

~~(6)~~*(5)* "Occupational health" is a field of specialization concerned with the problems of health maintenance, productivity, and well-being of industrial workers that are related to and affected by the conditions of work and by the stress of the industrial environment.

~~(7)~~*(6)* "Person" means an individual, partnership, firm, association, municipality, public or private corporation, subdivision or agency of the state, trust, estate, or any other legal entity.

~~(8)~~*(7)* "Pollutant" means air contaminants, heat, noise, vibration, ionizing radiation, and nonionizing radiation.

~~(9)~~*(8)* "Sanitary facilities" means toilets, showers, dressing rooms, lunchrooms, sewage disposal systems, and potable water systems.

~~(10)~~*(9)* "Threshold limit values" means airborne concentrations of substances that, it is believed, nearly all workers may be repeatedly exposed to day after day without adverse effect.

~~(11)~~*(10)* "Worker" is a person gainfully employed at any place.

~~(12)~~*(11)* "Workplace" is a place or location where a person is gainfully employed."

Section 2. Section 50-70-105, MCA, is amended to read:

"50-70-105. ~~Duties~~ *Authority* of department — rules. The department ~~shall~~ *may*:

(1) enforce orders by appropriate administrative and judicial proceedings;

(2) secure necessary scientific, technical, administrative, and operational service by contract or otherwise;

(3) prepare and develop a comprehensive plan for the prevention, abatement, and control of occupational disease;

(4) encourage voluntary cooperation by persons and affected groups to achieve the purpose of this chapter;

(5) encourage and conduct studies, investigations, and research relating to occupational diseases and their causes, effects, prevention, abatement, and control;

(6) determine by means of field studies and sampling the degree of health hazard at any workplace in the state;

(7) collect and disseminate information and conduct educational and training programs relating to the prevention and control of occupational diseases;

HeinOnline -- 1999 vol. I 84 1999

(8) advise, consult, contract, and cooperate with other agencies of the state, local governments, industries, other states, interstate and interlocal agencies, the United States, and interested persons or groups;

(9) accept, receive, and administer grants or other funds or gifts from public or private agencies, including the United States, for the purpose of carrying out this chapter. Funds received by the department under this section must he deposited in the state treasury to the account of the department.

(10) adopt, amend, and repeal rules implementing and consistent with this chapter;

(11) hold hearings that relate to any aspect of or matter in the administration of this chapter at any place designated by the department;

(12) designate an attorney to assist in conducting hearings and appoint a reporter who must he present at all hearings and who shall take full stenographic notes of all proceedings, transcripts of which are available to the public at cost;

(13) issue orders necessary to carry out this chapter;

(14) require access to records relating to emissions;

(15) establish threshold limit values of airborne contaminants for the state as a whole."

Seetion 3. Section 50-70-111, MCA, is amended to read:

"50-70-111. Hearings. (1) A rule, amendment, or repeal may not take effect except ~~after public hearing on due notice. The notice must be given by public advertisement not less than 20 or more than 30 days prior to the date set for the hearing~~ *as provided by the Montana Administrative Procedure Act.*

(2) This section does not require a hearing prior to the issuance of an emergency order pursuant to 50-70-117.

(3) ~~(a)~~ Any person aggrieved hy any order of the department may ~~apply for rehearing upon one or more of the following grounds and upon no other grounds:~~

~~(i) The department acted without or in excess of its powers.~~

~~(ii) The order was procured by fraud.~~

~~(iii) The order is contrary to the evidence.~~

~~(iv) The applicant has discovered new evidence material to the applicant that the applicant could not, with reasonable diligence, have discovered and produced at the hearing.~~

~~(v) Competent evidence was excluded to the prejudice of the applicant.~~

~~(b) The petition must be in a form and filed in the time that the department may prescribe~~ *request a contested case hearing pursuant to the provisions of Title 2, chapter 4, part 6."*

Section 4. Repealer. Section 50-70-110, MCA, is repealed.

Section 5. Saving clausc. [This act] does not affect rights and duties tbat matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Seetion 6. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid

HeinOnline -- 1999 vol. I 85 1999

in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 7. Effective date. [This act] is effective July 1, 1999.

Approved February 18, 1999

CHAPTER NO. 26

[SB 28]

AN ACT PROVIDING FOR AUTOMATIC EXTENSIONS OF TIME FOR FILING A MONTANA INDIVIDUAL INCOME TAX RETURN; AMENDING SECTION 15-30-144, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-144, MCA, is amended to read:

"15-30-144. Time for filing — extensions of time. (1) ~~Returns~~ *A return* must be made to the department on or before the 15th day of the 4th month following the close of the taxpayer's fiscal year, or if the return is made on the basis of the calendar year, then the return must be made on or before the 15th day of April following the close of the calendar year. Each return must set forth those facts that the department considers necessary for the proper enforcement of this chapter. There must be annexed to the return the affidavit or affirmation of the persons making the return to the effect that the statements contained in the return are true. Blank forms of return must be furnished by the department upon application, but failure to secure the form does not relieve any taxpayer of the obligation to make any return required under this ~~law~~ *chapter*. Each taxpayer liable for a tax under this ~~law~~ *chapter* shall pay a minimum tax of $1.

(2) An automatic 4-month extension of time for filing a return is allowed, provided that:

(a) on or before the due date of the return, ~~an application is made on forms available from the department or in writing to the department. If the application is made in writing, it must include substantially the same information as is required on the department's forms~~ *the taxpayer has applied with the internal revenue service for a 4-month extension of time for filing the taxpayer's federal individual income tax return for the same tax year. The extension of time for filing a return is not an extension of time for the payment of taxes.*

(b) the ~~applicant~~ *taxpayer* has paid by estimated tax payments, withholding tax, or a combination of estimated tax payments and withholding tax 90% of the current year's tax liability or 100% of the previous year's tax liability.

(3) ~~Before the expiration date of the automatic 4-month extension, an applicant may request in writing an~~ *An* additional 2-month extension of time for filing a return. ~~The department may, in its discretion, grant the request upon a showing of good cause by the applicant,~~ *is automatically allowed* provided that the ~~applicant~~ *taxpayer has applied with the internal revenue service for an additional 2-month extension of time for filing the taxpayer's federal individual income tax return for the same tax year and* has satisfied the requirements of subsection (2)(b). *The extension of time for filing a return is not an extension of time for the payment of taxes.*"

HeinOnline -- 1999 vol. I 86 1999

Section 2. Effective date — retroactive applicability. [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

Approved February 18, 1999

CHAPTER NO. 27

[SB 30]

AN ACT REMOVING TERMINATION PROVISIONS RELATED TO FEDERAL REQUIREMENTS FROM THE CHILD SUPPORT LAWS; REQUIRING, AS MANDATED BY THE FEDERAL GOVERNMENT, A SOCIAL SECURITY NUMBER ON A DEATH CERTIFICATE UNLESS THE FEDERAL GOVERNMENT EXEMPTS MONTANA FROM THAT REQUIREMENT; AMENDING SECTION 50-15-403, MCA, AND SECTION 104, CHAPTER 552, LAWS OF 1997; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 104, Chapter 552, Laws of 1997, is amended to read:

"**Section 104. Contingent termination — request for federal exemptions.** (1) [Sections 9, 11, 22 through 24, ~~93,~~ and 95] and the bracketed language in [sections 1 through 3, 10, 25, 45, and 89] terminate on the date of the suspension if the federal government suspends federal payments to this state for this state's child support enforcement program and for this state's program relating to temporary assistance to needy families because of this state's failure to enact law as required by the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

(2) [Sections 9, 11, 22 through 24, ~~93,~~ and 95] and the bracketed language in [sections 1 through 3, 10, 25, 45, and 89] terminate on the date that a final decision is rendered in federal court invalidating the child support provisions of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

(3) If the director of the department of public health and human services certifies to the governor and the secretary of state in writing that one of the following provisions is no longer required by federal law because of repeal of or amendment to federal statutes that require that provision, the provision terminates on the date the certification takes effect:

(a) [section 9];

(b) [section 11];

(c) [sections 22 through 24];

(d) ~~[section 93];~~

~~(e)~~ [section 95];

~~(f)~~ *(e)* the bracketed provisions in [sections 1 through 3, 10, 25, 45, and 89].

~~(4) If the director of the department of public health and human services certifies to the governor and the secretary of state in writing that the federal government has granted this state an exemption from one of the following provisions, the provision terminates on the date the exemption takes effect:~~

HeinOnline -- 1999 vol. I 87 1999

~~(a) [section 9];~~

~~(b) [section 11];~~

~~(c) [sections 22 through 24];~~

~~(d) [section 93];~~

~~(e) [section 95];~~

~~(f) the bracketed provisions in [sections 1 through 3, 10, 25, 45, and 89].~~

~~(5) (a) The department of public health and human services shall do everything reasonably within its power to obtain, as soon as possible, federal government exemptions from the provisions listed in subsection (4).~~

~~(b) Because section 395(c) of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) allows a grace period for states to amend their constitutions in order to comply with PRWORA and because the Montana legislature believes that the section of PRWORA prohibiting a jury trial in a paternity proceeding violates Article II, section 26, of the Montana constitution and is therefore rejected, the department of public health and human services shall seek a federal government exemption from the jury trial prohibition in PRWORA as the first exemption it seeks under subsection (5)(a).~~

~~(6) [Sections 9, 11, 22 through 24, 93, and 95] and the bracketed language in [sections 1 through 3, 10, 25, 45, and 89] terminate July 1, 1999.~~

~~(7)~~*(4)* If the bracketed language in [sections 1 through 3, 10, 25, 45, and 89] terminates, the code commissioner is instructed to renumber subsections, adjust internal references, and correct grammar and arrangement."

Section 2. Section 50-15-403, MCA, is amended to read:

"50-15-403. Preparation and filing of death or fetal death certificate. (1) A person in charge of disposition of a dead body or fetus that weighs at least 350 grams at death or, if the weight is unknown, has reached 20 completed weeks of gestation at death shall obtain personal data on the deceased, *including the deceased's social security number, if any,* or, in the case of a fetal death, on the parents that is required by the department from persons hest qualified to supply the data and enter it on the death or fetal death certificate.

(2) The person in charge of disposition of the dead body or fetus shall present the death certificate to the certifying physician or the coroner having jurisdiction for medical certification of the cause of death. The medical certification must he completed by the physician or the coroner within the timeframe established by the department by rule. The porson in charge of disposition shall obtain the completed certification of the cause of death from the physician or the coroner and shall, within the time that the department may prescribe by rule, file the death or fetal death certificate with the local registrar in the registration area where the death occurred or, if the place of death is unknown, where the dead body was discovered.

(3) If a dead body is found in this state but the place of death is unknown, the place where the body is found must be shown as the place of death on the death certificate. If the date of death is unknown, then the approximate date must be entered on the certificate. If the date cannot be approximated, the date that the body was found must be entered as the date of death, and the certificate must indicate that fact.

HeinOnline -- 1999 vol. I 88 1999

(4) When a death occurs in a moving vehicle, as defined in 45-2-101, in the United States and the body is first removed from the vehicle in this state, the death must be registered in this state and the place where the body is first removed is considered the place of death. When a death occurs in a moving vehicle while in international air space or in a foreign country or its air space and the body is first removed from the vehicle in this state, the death must be registered in this state, but the actual place of death, insofar as it can be determined, must be entered on the death certificate."

Section 3. Effective dates — contingent voidness. (1) [Section 1 and this section] are effective on passage and approval.

(2) [Section 2] is effective January 1, 2001, unless prior to that date the director of the department of public health and human services certifies to the governor and the secretary of state in writing that the federal government has granted this state an exemption from the requirement to have a social security number on a death certificate and the exemption covers the period January 1, 2001, through July 1, 2001, in which case [section 2] is void.

Approved February 18, 1999

CHAPTER NO. 28

[SB 62]

AN ACT EXTENDING FROM JANUARY 1, 2001, TO OCTOBER 1, 2001, THE TERMINATION DATE OF THE PILOT PROJECT TESTING THE USE OF MEDICAL SAVINGS ACCOUNTS IN CONJUNCTION WITH THE MONTANA MEDICAID PROGRAM; AND AMENDING SECTION 13, CHAPTER 380, LAWS OF 1997.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13, Chapter 380, Laws of 1997, is amended to read:

"**Section 13. Termination.** [This act] terminates ~~January~~ *October* 1, 2001."

Approved February 18, 1999

CHAPTER NO. 29

[SB 76]

AN ACT REVISING PROVISIONS RELATING TO THE ASSIGNMENT OF MONETARY AND MEDICAL SUPPORT BY PERSONS ON PUBLIC ASSISTANCE TO THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; REQUIRING CERTAIN LICENSE APPLICATIONS TO INCLUDE THE APPLICANT'S SOCIAL SECURITY NUMBER; PROVIDING CONFIDENTIALITY FOR THE SOCIAL SECURITY NUMBERS; AMENDING SECTIONS 53-2-613, 61-5-107, 61-5-111, 87-2-106, AND 87-2-202, MCA; AND PROVIDING EFFECTIVE DATES AND APPLICABILITY DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-2-613, MCA, is amended to read:

HeinOnline -- 1999 vol. I 89 1999

"53-2-613. Application for assistance — assignment of support rights. (1) Applications for public assistance, including but not limited to FAIM financial assistance, as defined in 53-2-902, and medical assistance, must be made to the county department of public welfare in the county in which the person is residing. The application must be submitted, in the manner and form prescribed by the department, and must contain information required by the department.

(2) A person who signs an application for FAIM financial assistance, as defined in 53-2-902, or related medical assistance assigns to the state, to the department, and to the county welfare department all rights that the applicant may bave to monetary and medical support from any other person in the applicant's own behalf or in behalf of any other family member for whom application is made. A person who signs an application for public assistance other than FAIM financial assistance, as defined in 53-2-902, or related medical assistance may, in accordance with rules adopted by the department, be required to assign to the state, to the department, and to the county welfare department all rights tbat the applicant may bave to monetary and medical support from any other person in the applicant's own behalf or on behalf of any other family member for whom application is made.

(3) The assignment:

(a) is effective for both current and accrued support, *including unpaid support that accrued before the applicant received public assistance,* and medical obligations;

(b) takes effect upon a determination that the applicant is eligible for public assistance; *and*

(c) remains in effect with respect to the amount of any unpaid support and medical obligation accrued under the assignment that was owed prior to the termination of public assistance to a recipient~~; and~~

~~(d) does not apply to support that accrued before the applicant received public assistance~~.

(4) If a person who is the legal custodian and child support obligee under a support order relinquishes pbysical custody of a child to a caretaker relative without obtaining a modification of legal custody and the caretaker relative is determined eligible for public assistance on behalf of the child, the child support obligation is transferred by operation of law to the caretaker relative and may be assigned as provided in subsection (2). The transfer and assignment terminate when the caretaker relative no longer has physical custody of the child, except for any unpaid support still owing under the assignment at that time.

(5) Whenever a child support or spousal support obligation is assigned to the department pursuant to this section, tbe following provisions apply:

(a) If the support obligation is based upon a judgment or decree or an order of a court of competent jurisdiction, the department may retain assigned support amounts in an amount sufficient to reimburse *the cumulative total of* public assistance money expended.

(b) A recipient or former recipient of public assistance may not commence or maintain an action to recover or enforce a delinquent support obligation or make any agreements with any other person or agency concerning the support obligation, except as provided in 40-5-202.

HeinOnline -- 1999 vol. I 90 1999

(c) If a notice of assigned interest is filed with the district court, the clerk of the court may not pay over or release for the benefit of any recipient or former recipient of public assistance any amounts received pursuant to a judgment or decree or an order of the court until the department's child support enforcement division has filed a written notice that:

(i) the assignment of current support amounts has been terminated; and

(ii) all assigned support delinquencies, if any, are satisfied or released.

(d) A recipient or former recipient of public assistance may not take action to modify or make any agreement to modify, settle, or release any past, present, or future support obligation unless the department's child support enforcement division is given written notice under the provisions of 40-5-202. Any modifications or agreements entered into without the participation of the department are void with respect to the state, the department, and the county welfare department.

(e) A support obligation assigned under this section may not be terminated, invalidated, waived, set aside, or considered uncollectible by the conduct, misconduct, or failure of a recipient or former recipient of public assistance to take any action or to cease any action required under a decree, judgment, support order, custody order, visitation order, restraining order, or other similar order."

Section 2. Section 61-5-107, MCA, is amended to read:

"61-5-107. (Braeketed language terminates on occurrence of contingency or July 1, 1999) Application for license, instruction permit, or motorcycle endorsement. (1) Each application for an instruction permit, driver's license, or motorcycle endorsement must be made upon a form furnished by the department. A motorcycle endorsement is required for the operation of a quadricycle. Each application must be accompanied by the proper fee, and payment of the fee entitles the applicant to not more than three attempts to pass the examination within a period of 6 months from the date of application. A voter registration form for mail registration as prescribed by the secretary of state must be attached to each driver's license application. If the applicant wishes to register to vote, the department shall accept the registration and forward the form to the election administrator.

(2) Each application must state the full name, date of birth, sex, residence address of the applicant[~~, and if the application is for a commercial vehicle operator's license~~, *and the applicant's* social security number], must briefly describe the applicant, and must state whether:

(a) the applicant has previously been licensed as a driver or commercial vehicle operator, and, if so, when and by what state or country;

(b) any commercial operator license has ever been suspended or revoked; or

(c) an application has ever been refused, and, if so, the date of and reason for suspension, revocation, or refusal.

[(3) The department shall keep the applicant's social security number from this source confidential, except that the number may be used for purposes of subtitle VI of Title 49 of the U.S.C. or as otherwise permitted by state law administered by the department and may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.]

(4) When application is received from an applicant previously licensed by another jurisdiction, the department shall request a copy of the applicant's

HeinOnline -- 1999 vol. I 91 1999

driving record from the previous licensing jurisdiction. The driving record may be transmitted manually or by electronic medium. When received, the driving records become a part of the driver's record in this state with the same force and effect as though entered on the driver's record in this state in the original instance. (Bracketed language terminates on occurrence of contingency or July 1, 1999—sec. 104, Ch. 552, L. 1997.)"

Section 3. Section 61-5-111, MCA, is amended to read:

"61-5-111. Renewals, expirations, and fees for licenses, permits, and endorsements — notice of expiration. (1) The department may appoint county treasurers and other qualified officers to act as its agents for the sale of driver's licenses receipts and shall make necessary rules governing sales. In areas in which the department provides driver licensing services 3 days or more a week, the department is responsible for sale of receipts and may, in its discretion, appoint an agent to sell receipts. The department, upon receipt of payment of the fees specified in this section, shall issue a driver's license to each qualifying applicant. The license must contain a full-face photograph of the licensee in the size and form prescribed by the department; a distinguishing number issued to the licensee; the full name, date of birth, Montana mailing address, and a brief description of the licensee; and either the licensee's signature or a digital reproduction of the licensee's signature. *The department may not use the licensee's social security number as the distinguishing number unless the licensee expressly authorizes the use.* A license is not valid until it is signed by the licensee.

(2) (a) When a person applies for renewal of a driver's license, the department shall test the applicant's eyesight and, in the department's discretion, may have the applicant complete a road test demonstrating the applicant's ability to operate and to exercise ordinary and reasonable care in the operation of a motor vehicle.

(b) In the case of a commercial driver's license, the department may also require that the applicant successfully complete a written examination as required by federal regulations.

(c) A person is considered to have applied for renewal of a Montana driver's license if the application is made within 6 months before or 3 months after the expiration of the person's license.

(d) The department shall mail a driver's license renewal notice no earlier than 60 days and no later than 30 days prior to the expiration date of a commercial driver's license if the licensee has previously submitted a written request for the notice, either at the time of initial application or of renewal of the license.

(3) (a) Except as provided in subsections (3)(b) and (3)(c), a license expires on the anniversary of the licensee's birthday 8 years or less after the date of issue or on the licensee's 75th birthday, whichever occurs first. The department may adopt rules to stagger the implementation of the conversion to an 8-year license cycle over a 4-year period.

(b) A license issued to a person who is 75 years of age or older expires on the anniversary of the licensee's birthday 4 years or less after the date of issue.

(c) A license issued to a person who is under 21 years of age expires on the licensee's 21st birthday.

(4) Whenever the department issues an original license to a person under the age of 18 years, the license must be designated and clearly marked as a

HeinOnline -- 1999 vol. I 92 1999

"provisional license". Any license designated and marked as provisional may be suspended by the department for a period of not more than 12 months when its records disclose that the licensee, subsequent to the issuance of the license, has been gnilty of careless or negligent driving.

(5) It is unlawful for any person to have in the person's possession or under the person's control more than one valid Montana driver's license at any one time. A license is not valid for the operation of a motorcycle or quadricycle unless the holder of the license has completed the requirements of 61-5-110 and the license has been clearly marked with the words "motorcycle endorsement". A license is not valid for the operation of a commercial vehicle unless the holder of the license has completed the requirements of 61-5-110 and the license has been clearly marked with the words "commercial driver's license".

(6) Fees for driver's licenses are:

(a) driver's license, except a commercial driver's license — $4 per year or fraction of a year;

(b) motorcycle endorsement — 50 cents per year or fraction of a year;

(c) commercial driver's license:

(i) interstate — $5 per year or fraction of a year;

(ii) intrastate — $3.50 per year or fraction of a year.

(7) The holder of a valid chauffeur's license may convert or renew the chauffeur's license to a commercial driver's license by paying the appropriate fee and complying with the requirements established by the department."

Section 4. Section 87-2-106, MCA, is amended to read:

"87-2-106. Application for license — penalties for violation — forfeiture of privileges. (1) A license may be procured from the director, a warden, or an authorized agent of the director. The applicant shall state the applicant's name, age, *social security number,* occupation, street address of permanent residence, mailing address, qualifying length of time as a resident in the state of Montana, and status as a citizen of the United States or as an alien and other facts, data, or descriptions as may be required by the department. An applicant for a resident license shall present a valid Montana driver's license, Montana driver's examiner's identification card, or other identification specified by the department to substantiate the required information. It is the applicant's burden to provide documentation establishing the applicant's identity and qualifications to purchase a license. It is unlawful and a misdemeanor for a license agent to sell a hunting, fishing, or trapping license to an applicant who fails to produce the required identification at the time of application for licensure. Except as provided in subsections (2) through (4), the statements made by the applicant must be subscribed to before the officer or agent issuing the license.

(2) Except as provided in subsection (3), department employees or officers may issue licenses by mail. Statements on an application for a license to be issued by mail need not be subscribed to before the employee or officer.

(3) To apply for a license under the provisions of 87-2-102(7), the applicant shall apply to the director and shall submit at the time of application a notarized affidavit that attests to fulfillment of the requirements of 87-2-102(7). The director shall process the application in an expedient manner.

HeinOnline -- 1999 vol. I 93 1999

(4) A resident may apply for and purchase a wildlife conservation license, hunting license, or fishing license for the resident's spouse, parent, child, hrother, or sister who is otherwise qualified to obtain the license.

(5) A license is void unless subscribed to by the licensee and by an employee or officer of the departinent or by a license agent or an authorized representative of the license agent.

(6) It is unlawful to subscribe to any statement, on an application or license, that is materially false. Any material false statement contained in an application renders the license issued pursuant to it void. A person violating any provision of this subsection is guilty of a misdemeanor.

(7) (a) A person not meeting the residency criteria set out in 87-2-102 who is convicted of affirming to a false statement to obtain a resident license shall be:

(i) fined not less than the greater of $100 or twice the cost of the nonresident license that autborized the sought-after privilege or more than $1,000;

(ii) iinprisoned in the county jail for not more than 6 months; or

(iii) both fined and imprisoned.

(b) In addition to the penalties specified in subsection (7)(a), upon conviction or forfeiture of hond or bail, the person shall forfeit any current hunting, fishing, and trapping licenses and the privilege to hunt, fish, and trap in Montana for not less than 18 months.

(8) It is unlawful and a misdemeanor for a person to purposely or knowingly assist an unqualified applicant in obtaining a resident license in violation of this section.

(9) The department shall keep the applicant's social security number confidential, except that the number may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.

(10) The department shall delete an applicant's social security number in any electronic database 5 ycars after the date that application is made for the most recent license."

Seetion 5. Section 87-2-202, MCA, is amended to read:

"87-2-202. Application — fee — expiration. (1) A wildlife conservation license inust be sold upon written application. The application must contain the applicant's name, age, *social security number,* occupation, street address of permanent residence, mailing address, qualifying length of time as a resident in the state of Montana, and status as a citizen of the United States or as an alien and must be signed by tlie applicant. The applicant shall present a valid Montana driver's license, a Montana driver's examiner's identification card, or other identification specified by the department to substantiate the required information when applying for a wildlife conservation license. It is the applicant's burden to provide documentation establishing the applicant's identity and qualifications to purchase a wildlife conservation license. It is unlawful and a misdemeanor for a license agent to sell a wildlife conservation license to an applicant who fails to produce the required identification at the time of application for licensure.

HeinOnline -- 1999 vol. I 94 1999

(2) Hunting, fishing, or trapping licenses issued in a form determined by the department must be recorded according to rules that the department may prescribe.

(3) (a) Resident wildlife conservation licenses may be purchased for a fee of $4.

(b) Nonresident wildlife conservation licenses may be purchased for a fee of $5.

(4) Licenses issued are void after the last day of February next succeeding their issuance.

(5) The department shall keep the applicant's social security number confidential, except that the number may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.

(6) The department shall delete the applicant's social security number in any electronic database 5 years after the date that application is made for the most recent license."

Section 6. Effective dates. (1) [Sections 1 and 7 and this section] are effective on passage and approval.

(2) [Sections 2 and 3] are effective October 1, 2000.

(3) [Sections 4 and 5] are effective July 1, 1999.

Section 7. Applicability. (1) [Sections 2 and 3] apply to driver's licenses issued on or after October 1, 2000.

(2) [Sections 4 and 5] apply to license years beginning on or after March 1, 2000.

Approved February 18, 1999

CHAPTER NO. 30

[SB 77]

AN ACT EXCLUDING FROM THE PREVAILING WAGE LAWS CONTRACTS ENTERED INTO BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES FOR THE PROVISION OF HUMAN SERVICES; AMENDING SECTION 18-2-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 18-2-401, MCA, is amended to read:

"18-2-401. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) A "bona fide resident of Montana" is a person who, at the time of employment and immediately prior to the time of employment, has lived in this state in a manner and for a time that is sufficient to clearly justify the conclusion that the person's past habitation in this state has been coupled with an intention to make it the person's home. Sojourners or persons who come to Montana solely in pursuance of any contract or agreement to perform labor may not be considered

HeinOnline -- 1999 vol. I 95 1999

to he bona fide residents of Montana within the meaning and for the purpose of this part.

(2) "Commissioner" means tho commissioner of labor and industry provided for in 2-15-1701.

(3) (a) "Construction services" means work performed by an individual in construction, heavy construction, highway construction, and remodeling work.

(b) The term does not include:

(i) engineering, superintendence, management, office, or clerical work on a public works contract; or

(ii) consulting contracts, contracts with commercial suppliers for goods and supplies, or contracts with professionals licensed under state law.

(4) "Department" means the department of labor and industry provided for in 2-15-1701.

(5) "District" means a prevailing wage rate district established as provided in 18-2-411.

(6) "Heavy and highway construction wage rates" means wago rates, including fringe benefits for health and welfare and pension contributions, that meet the requirements of the Employee Retirement Income Security Act of 1974 and other bona fide programs approved by the United States department of labor and travel allowance that are determined and establisbed statewide for heavy and highway construction projects, such as alteration or repair of roads, streets, highways, alleys, runways, trails, parking areas, or utility rights-of-way.

(7) "Nonconstruction services" means work performed by an individual, not including management, office, or clerical work, for:

(a) the maintenance of publicly owned buildings and facilities, including public highways, roads, streets, and alleys;

(b) custodial or security services for publicly owned buildings and facilities;

(c) grounds maintenance for publicly owned property;

(d) the operation of public drinking water supply, waste collection, and waste disposal systems;

(e) law enforcement, including janitors and prison guards;

(f) fire protection;

(g) public or school transportation driving;

(h) nursing, nurse's aid services, and medical laboratory technician services;

(i) material and mail handling;

(j) food service and cooking;

(k) motor vehicle and construction equipment repair and servicing; and

(l) appliance and office machine repair and servicing.

(8) *(a)* "Public works contract" means a contract for construction services or nonconstruction services let by the state, county, municipality, school district, or political subdivision in which the total cost of the contract is in excess of $25,000.

HeinOnline -- 1999 vol. I 96 1999

(b) The term does not include contracts entered into by the department of public health and human services for the provision of human services.

(9) (a) "Standard prevailing rate of wages" or "standard prevailing wage" means:

(i) the heavy and highway construction wage rates applicable to heavy and highway construction projects; or

(ii) those wages, other than heavy and highway construction wages, including fringe benefits for health and welfare and pension contributions, that meet the requirements of the Employee Retirement Security Act of 1974 and other bona fide programs approved by the United States department of labor and travel allowance that are paid in the district by other contractors for work of a similar character performed in that district by each craft, classification, or type of worker needed to complete a contract under this part. In each district, the standard prevailing rate of wages must he computed from a weighted average wage rate based on all of the hours worked on work of a similar character performed in the district unless the survey of employers in the district does not generate sufficient data. If the survey produces insufficient data, the rate may be established by the use of other information or methods that the commissioner determines fairly establish the standard prevailing rate of wages. The commissioner shall establish by rule the method or methods by which the standard prevailing rate of wages is determined. The rules must establish a process for determining if there is insufficient data generated by a survey of employers in the district that requires the use of other methods of determining the standard prevailing rate of wages. The rules must identify the amount of data that constitutes insufficient data and require the commissioner of labor to use other methods of determining the standard prevailing rate of wages when insufficient data exists. The alternative methods of determining the prevailing rate of wages must provide for review and the incorporation of data from work of a similar character that is conducted as near as possible to the original district.

(b) When work of a similar character is not being performed in the district, the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions, that meets the requirements of the Employee Retirement Security Act of 1974 and other bona fide programs approved by the United States department of labor and the rate of travel allowance must be those rates established by collective bargaining agreements in effect in the district for each craft, classification, or type of worker needed to complete the contract.

(10) "Work of a similar character" means work on private or commercial projects as well as work on public projects."

Section 2. Effeetive date — applicability. [This act] is effective on passage and approval and applies to contracts entered into on or after [the effective date of this act].

Approved February 18, 1999

CHAPTER NO. 31

[SB 106]

AN ACT CLARIFYING THE TAXATION OF LOTTERY WINNINGS; AND AMENDING SECTIONS 15-30-101 AND 15-30-105, MCA.

HeinOnline -- 1999 vol. I 97 1999

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-101, MCA, is amended to read:

"15-30-101. Definitions. For the purpose of this chapter, unless otherwise required by the context, the following definitions apply:

(1) "Base year structure" means the following elements of the income tax structure:

(a) the tax brackets established in 15-30-103, but unadjusted by 15-30-103(2), in effect on June 30 of the taxable year;

(b) the exemptions contained in 15-30-112, but unadjusted by 15-30-112(6), in effect on June 30 of the taxable year;

(c) the maximum standard deduction provided in 15-30-122, but unadjusted by 15-30-122(2), in effect on June 30 of the taxable year.

(2) "Consumor price index" means the consumer price indox, United States city average, for all items, using the 1967 base of 100 as published by the bureau of labor statistics of the U.S. department of labor.

(3) "Department" means the department of revenuo.

(4) "Dividend" means any distribution made by a corporation out of its earnings or profits to its shareholders or members, whether in cash or in other property or in stock of the corporation, other than stock dividends.

(5) "Fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person, whether individual or corporate, acting in any fiduciary capacity for any person, trust, or estate.

(6) "Foreign government" means any jurisdiction other than the one embraced within the United States, its territories, and its possessions.

(7) "Gross income" means the taxpayer's gross income for federal income tax purposes as defined in section 61 of the Internal Revenue Code of 1954 (26 U.S.C. 61) or as that section may be labeled or amended, excluding unemployment compensation included in federal gross income under the provisions of section 85 of the Internal Revenue Code of 1954 (26 U.S.C. 85) as amended.

(8) "Inflation factor" means a number determined for each taxable year by dividing the consumer price index for June of the taxable year by the consumer price index for June 1980.

(9) "Information agents" includes all individuals, corporations, associations, and partnerships, acting in whatever capacity, including lessees or mortgagors of real or personal property, fiduciaries, brokers, real estate brokers, employers, and all officers and employees of the state or of any municipal corporation or political subdivision of the state, having the control, receipt, custody, disposal, or payment of interest, rent, salaries, wagos, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income with respect to which any person or fiduciary is taxable under this chapter.

(10) "Knowingly" is as defined in 45-2-101.

(11) "Montana lottery winnings" means income paid either in lump sum or in annual payments to:

(i) a resident taxpayer on a lottery ticket; or

(ii) a nonresident taxpayer on a lottery ticket purchased in Montana.

~~(11)~~*(12)* "Net income" means the adjusted gross income of a taxpayer less the deductions allowed by this chapter.

~~(12)~~*(13)* "Paid", for the purposes of the deductions and credits under this chapter, means paid or accrued or paid or incurred, and the terms "paid or accrued" and "paid or incurred" must be construed according to the method of accounting upon tbe basis of wbich the taxable income is computed under this chapter.

~~(13)~~*(14)* "Pension and annuity income" means:

(a) systematic payments of a definitely determinable amount from a qualified pension plan, as that term is used in section 401 of the Internal Revenue Code (26 U.S.C. 401), or systematic payments received as the result of contributions made to a qualified pension plan that are paid to the recipient or recipient's beneficiary upon the cessation of employment;

(b) payments received as the result of past service and cessation of employment in the uniformed services of the United States;

(c) lump-sum distributions from pension or profit-sbaring plans to the extent tbat the distributions are included in federal adjusted gross income;

(d) distributions from individual retirement, deferred compensation, and self-employed retirement plans recognized under sections 401 through 408 of the Internal Revenue Code (26 U.S.C. 401 through 408) to the extent tbat the distributions are not considered to be premature distributions for federal income tax purposes; or

(e) amounts received from fully matured, privately purchased annuity contracts after cessation of regular employment.

~~(14)~~*(15)* "Purposely" is as defined in 45-2-101.

~~(15)~~*(16)* "Received", for the purpose of computation of taxable income under this chapter, means received or accrued, and the term "received or accrued" must be construed according to the method of accounting upon the basis of which the taxable income is computed under this chapter.

~~(13)~~*(17)* "Resident" applies only te natural persons and includes, for the purpose of determining liability to the tax imposed by this chapter with reference to the income of any taxable year, any person domiciled in the state of Montana and any other person who maintains a permanent place of abode within the state even though temporarily absent from the state and who has not established a residence elsewhere.

~~(17)~~*(18)* "Stock dividends" means new steck issued, for surplus or profits capitalized, to shareholders in propertion to their previous holdings.

~~(13)~~*(19)* "Taxable income" means the adjusted gross income of a taxpayer less the deductions and exemptions provided for in this chapter.

~~(10)~~*(20)* "Taxable year" or "tax year" means the taxpayer's taxable year for federal income tax purposes.

~~(20)~~*(21)* "Taxpayer" includes any person or fiduciary, resident or nonresident, subject to a tax imposed by this chapter and does not include corporations."

HeinOnline -- 1999 vol. I 99 1999

Section 2. Section 15-30-105, MCA, is amended to read:

"15-30-105. Tax on nonresident ~~—alternative tax based on gross sales~~. (1) A ~~like~~ tax *on income earned in Montana* is imposed upon ~~every~~ *each* person not *a* resident of this state~~, which~~. *The* tax ~~shall~~ *must* be levied, collected, and paid annually at the rates specified in 15-30-103 with respect to ~~his~~ *the nonresident's* entire net income. After calculating the tax imposed, the tax due and payable must be determined based upon the ratio of income earned in Montana to total income. Interest income from installment sales of real or tangible commercial or business property located in Montana is considered income earned in Montana. *Income derived from Montana lottery winnings is considered income earned in Montana.*

(2) Pursuant to the provisions of Article III, section 2, of the Multistate Tax Compact, ~~every~~ *each* nonresident taxpayer required to file a return and whose only activity in Montana consists of making sales and who does not own or rent real estate or tangible personal property within Montana and whose annual gross volume of sales made in Montana during the taxable year does not exceed $100,000 may elect to pay an income tax of 1/2 of 1% of the dollar volume of gross sales made in Montana during the taxable year. ~~Such~~ *The* tax ~~shall be~~ *is* in lieu of the tax imposed under 15-30-103. The gross volume of sales made in Montana during the ~~taxable~~ *tax* year ~~shall~~ *must* be determined according to the provisions of Article IV, sections 16 and 17, of the Multistate Tax Compact."

Approved February 18, 1999

CHAPTER NO. 32

[HB 3]

AN ACT APPROPRIATING MONEY TO VARIOUS STATE AGENCIES FOR THE FISCAL YEAR ENDING JUNE 30, 1999; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Time limits. The appropriations contained in [section 3] are intended to provide only necessary and ordinary expenditures for the fiscal year ending June 30, 1999. The unspent balance of any appropriation must revert to the fund from which it was appropriated, unless the appropriation is continued by [section 3].

Section 2. Totals not appropriations. The totals shown in [section 3] are for informational purposes only and are not appropriations.

Section 3. Appropriations. The following money is appropriated, subject to the terms and conditions of [sections 1 and 2].

Agency and Program	FY	Amount	Fund
Judiciary			
Judges' Retirement System	1999	$485,000	General Fund
District Court Reimbursement	1999	$691,130	State Special Revenue

HeinOnline -- 1999 vol. I 100 1999

Commissioner of Political Practices	1999	$125,479	General Fund
Department of Natural Resources and Conservation			
Forestry Program	1999	$10,545,963	General Fund
Department of Justice			
Legal Services Program	1999	$75,737	General Fund
Department of Labor and Industry			
Human Rights Program	1999	$226,348	General Fund

Section 4. Effective date. [This act] is effective on passage and approval.

Approved February 24, 1999

CHAPTER NO. 33

[HB 36]

AN ACT ADOPTING THE MOST RECENT VERSION OF FEDERAL LAWS, REGULATIONS, FORMS, PRECEDENTS, AND USAGES, INCLUDING THE UNIFORM CODE OF MILITARY JUSTICE, FOR USE BY THE NATIONAL GUARD; AND AMENDING SECTION 10-1-104, MCA.

Be it enacted by the Legislature of the State of Montana:

Seetion 1. Section 10-1-104, MCA, is amended to read:

"**10-1-104. Federal regulations to govern.** (1) Federal laws and regulations, forms, precedents, and usages relating to and governing the armed forces of the United States and the ~~militia~~ *national guard*, as in effect on October 1, ~~1997~~ *1999*, insofar as they are applicable and not inconsistent with the constitution of this state, apply to and govern the ~~military forces~~ *national guard* of this state, including all members ~~of the national guard~~ on active duty within the state as active duty guard/reserve (AGR) personnel under Title 32 of the United States Code.

(2) The Uniform Code of Military Justice, as in effect on October 1, ~~1997~~ *1999*, including the regulations, manuals, forms, precedents and usages implementing, interpreting, and complementing the code, is adopted for use by the ~~military forces~~ *national guard* of this state and applies, insofar as the code is not otherwise inconsistent with the constitution of this state and except as otherwise provided by this title or by rule adopted by the department, to the greatest extent practicable to govern the ~~military forces~~ *national guard* of this state, including all members ~~of the national guard~~ on active duty within the state as active duty guard/reserve (AGR) personnel under Title 32 of the United States Code when the members are serving other than in a federal capacity under Title 10 of the United States Code."

Approved February 24, 1999

HeinOnline -- 1999 vol. I 101 1999

CHAPTER NO. 34

[HB 85]

AN ACT REVISING THE SCOPE OF PRACTICE OF OPTOMETRY; ALLOWING FOR THE USE OF CERTAIN DRUGS AND FOR THE TREATMENT OF GLAUCOMA; AND AMENDING SECTION 37-10-101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-10-101, MCA, is amended to read:

"**37-10-101. Definitions — practice of optometry.** (1) The practice of optometry is the profession constituting the art and science of visual care and includes any one of the following acts:

(a) the optometric examination or optometric diagnosis of all of those physiological or anatomical parts or functions that consummate the process of human vision to ascertain the presence of abnormal conditions or functions that may be optometrically diagnosed, corrected, remedied, or relieved;

(b) the employment of any optometric means~~, excluding the use of surgery,~~ for the purpose of detecting any condition of the process of vision that may have any significance in a complete optometric eye and vision examination, including the employment and administration of drugs topically applied for examination purposes, limited to cycloplegics, mydriatics, topical anesthetics, dyes such as fluorescein, and for emergency use only, miotics;

(c) the application or prescription of ophthalmic lenses, contact lenses, prisms, orthoptics, visual training, and any physical, mechanical, or physiological therapy and the furnishing or application of any prosthetic or therapeutic devices for the correction or relief of visual anomalies~~, excluding surgery~~;

(d) the administration, dispensation, and prescription of the oral analgesics codeine, propoxyphene, hydrocodone, and dihydrocodeine, alone or in combination with nonscheduled or nonregulated drugs; and

(e) the administration, dispensation, and prescription of those ~~topical~~ drugs approved by the board for use in ocular treatment limited to the anterior segment of the eye and adnexa. Glaucoma may ~~not~~ be treated.

(2) Subsection (1) does not prohibit an optometrist from removing from the eye or adnexa a foreign body that is not intraocular.

(3) Subsection (1) does not allow an optometrist to perform surgery or laser surgery for any purpose.

~~(3)~~*(4)* Unless the context requires otherwise, in this chapter:

(a) "board" means the board of optometry provided for in 2-15-1846; and

(b) "department" means the department of commerce provided for in Title 2, chapter 15, part 18."

Approved February 24, 1999

HeinOnline -- 1999 vol. I 102 1999

CHAPTER NO. 35

[HB 93]

AN ACT ENTITLING A RESIDENT OR NONRESIDENT LEGION OF VALOR MEMBER TO FISH WITH A CONSERVATION LICENSE ISSUED BY THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS; AND AMENDING SECTION 87-2-801, MCA.

WHEREAS, the Legion of Valor is composed of recipients of the Congressional Medal of Honor, the Army Distinguished Service Cross, the Navy Cross, and the Air Force Cross; and

WHEREAS, memhers of the Legion of Valor have hravely served their country above and beyond the call of duty; and

WHEREAS, there are approximately 800 memhers of the Legion of Valor, 5 of whom reside in Montana; and

WHEREAS, pursuant to Article II, section 35, of the Montana Constitution, special considerations that the Legislature may give the five Montana Legion of Valor members should he extended to their distinguished out-of-state colleagues; and

WHEREAS, the people of Montana can show their appreciation to these medal recipients hy allowing resident and nonresident Legion of Valor members to fish with a conservation license issued by the Departtnent of Fish, Wildlife, and Parks.

Be it enacted by the Legislature of the State of Montana:

Seetion 1. Section 87-2-801, MCA, is amended to read:

"87-2-801. Residents over sixty-two years of age — *resident or nonresident legion of valor members.* (1) A resident, ~~under the definition of~~ *as defined in* 87-2-102, who is 62 years of age or older is entitled to fish and hunt game birds with a conservation license issued by the department. The form of ~~such~~ *the* license ~~shall~~ *must* he prescribed by the department.

(2) A resident who is 62 years of age or older is also entitled to purchase regular resident deer and elk tags at a price that is one-half of tlie fee paid by a resident wbo is 15 years old or older and who is under 62 years of age.

(3) Regardless of age, a resident, as defined in 87-2-102, or a nonresident who is a legion of valor member is entitled to fish with a conservation license issued by the department."

Approved February 24, 1999

CHAPTER NO. 36

[HB 137]

AN ACT ESTABLISHING NEW PROCEDURES FOR RESOLVING DISPUTES BETWEEN THE DEPARTMENT OF REVENUE AND PERSONS OR OTHER ENTITIES; PROVIDING FOR AN OFFICE OF DISPUTE RESOLUTION WITHIN THE DEPARTMENT OF REVENUE; PROVIDING THAT THE DEPARTMENT SHALL BY RULE IMPLEMENT THE NEW UNIFORM

HeinOnline -- 1999 vol. I 103 1999

DISPUTE REVIEW PROCEDURE; AMENDING SECTIONS 15-1-211, 15-1-406, 15-23-102, 15-23-107, AND 39-51-1109, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-1-211, MCA, is amended to read:

"15-1-211. Uniform ~~tax~~ *dispute* review procedure — notice — appeal. (1) The department of revenue shall provide a uniform ~~tax~~ review procedure for all ~~taxpayers~~ *persons or other entities*, except as provided in subsection (1)(a).

(a) The ~~tax~~ *department's dispute* review procedure ~~described in this section~~ *must be adopted by administrative rule and* applies to all ~~taxes~~ *matters* administered by the department and to all issues arising from the administration of ~~taxes~~ *the department*, except inheritance taxes, estate taxes, property taxes, and the issue of whether an employer-employee relationship existed between the ~~taxpayer~~ *person or other entity* and individuals subjecting the ~~taxpayer~~ *person or other entity* to the requirements of chapter 30, part 2, or whether the employment relationship was that of an independent contractor. ~~The procedure applies to any revised assessment of centrally assessed property taxed pursuant to chapter 23.~~ *The procedure applies to assessments of centrally assessed property taxed pursuant to chapter 23.*

(b) *(i)* The term ~~"taxpayers"~~ *"other entity"*, as used in this section, includes all ~~persons determined by the department to have a potential tax liability~~ *businesses, corporations, and similar enterprises.*

(ii) The term "person" as used in this section includes all individuals.

~~(2) (a) If the department determines that a request for a refund should be denied in whole or part, it shall notify the taxpayer of the determination. If the department determines that a person has failed to pay a sufficient tax, interest, or penalty, it shall provide the taxpayer with notice. The notice stops the running of any applicable statute of limitations regarding the assessment of the tax.~~

~~(b) A notice under this section must clearly state:~~

~~(i) the reasons for the department's determination that a refund is not due or that tax plus interest and penalty, if any, are due;~~

~~(ii) the taxpayer's right to a review by the department, the taxpayer's right to appeal after a final department decision, and the taxpayer's right to a review of determinations by the department of labor and industry and board of labor appeals of whether an employer-employee relationship existed between the taxpayer and certain individuals or whether the employment relationship was that of an independent contractor;~~

~~(iii) failure to notify the department within 30 days will result in a forfeiture of the taxpayer's right to contest the department's determination under this section or to file an appeal with the state tax appeal board;~~

~~(iv) that the taxpayer has 30 days to either notify the department in writing that the taxpayer does not agree with an assessment or pay the amount assessed;~~

~~(v) that a warrant for distraint placing a lien on the taxpayer's property may be issued unless the taxpayer notifies the department that the taxpayer disagrees with an assessment or pays within 30 days; and~~

~~(vi) that the notice stops the running of the statute of limitations regarding the assessment of the tax.~~

(2) (a) Persons or other entities having a dispute with the department have the right to have the dispute resolved by appropriate means, including consideration of alternative dispute resolution procedures such as mediation.

(b) The department shall establish a dispute resolution office to resolve disputes between the department and persons or other entities.

(c) Disputes must be resolved by a final department decision within 180 days of the referral to the dispute resolution office, unless extended by mutual consent of the parties. If a final department decision is not issued within the required time period, the remedy is an appeal to the appropriate forum as provided by law.

~~(3)(a) A taxpayer shall notify the department, in writing, that the taxpayer objects to the determination within 30 days from the date that the notice is mailed. The notification by the taxpayer is not required to specify the reasons for the disagreement or be in any particular form unless the taxpayer is objecting to a determination that an employer-employee relationship existed between the taxpayer and individuals, subjecting the taxpayer to the requirements of chapter 30, part 2. If the taxpayer does not notify the department within 30 days:~~

~~(i) an assessment becomes final and the assessed tax, plus any interest and penalty, must be paid;~~

~~(ii) the taxpayer waives any further right to review under this section or to appeal to the state tax appeal board; and~~

~~(iii) a warrant for distraint may be issued without further opportunity to be heard on the assessment.~~

~~(b) (i) A taxpayer who notifies the department pursuant to subsection (3)(a) that the taxpayer disagrees with a tax assessment shall present the objections, the reasons for the objections, and any other information to the administrator of the division that administers the tax or to the administrator's designee within 60 days after the notice referred to in subsection (3)(a) is mailed. The reasons for objections may be provided in writing, by telephone, or, if requested by the taxpayer, at an informal conference. An informal conference is not subject to the Montana Administrative Procedure Act.~~

~~(ii) An objection received by the department pursuant to subsection (3)(a) stating that the taxpayer disagrees with the department's determination that an employer-employee relationship existed between the taxpayer and certain individuals, subjecting the taxpayer to the requirements of chapter 30, part 2, must be referred to the department of labor and industry for appeal procedures pursuant to 39-51-2402 and 39-51-2410.~~

~~(c) Within 60 days after the taxpayer has presented the taxpayer's objections, as provided in subsection (3)(b), the administrator or a designee shall issue a written decision addressing the taxpayer's objections and describing the reasons for the determination. The administrator's decision must also clearly set forth the taxpayer's review rights. The administrator's decision must be provided to the taxpayer and the director of revenue.~~

(3) (a) The department shall provide written notice to a person or other entity advising them of a dispute over matters administered by the department.

(b) The person or other entity shall have the opportunity to resolve the dispute with the department employee who is responsible for the notice, as indicated on the notice.

(c) If the dispute cannot be resolved, either the department or the other party may refer the dispute to the dispute resolution office.

(d) The notice must advise the person or other entity of their opportunity to resolve the dispute with the person responsible for the notice and their right to refer the dispute to the dispute resolution office.

(4) Written notice must be sent to the persons or other entities involved in a dispute with the department indicating that the matter has been referred to the dispute resolution office. The written notice must include:

(a) a summary of the department's position regarding the dispute;

(b) an explanation of the right to the resolution of the dispute with a clear description of all procedures and options available;

(c) the right to obtain a final department decision within 180 days of the date that the dispute was referred to the dispute resolution office;

(d) the right to appeal should the department fail to meet the required deadline for issuing a final department decision; and

(e) the right to have the department consider alternative dispute resolution methods, including mediation.

(5) The department shall:

(a) develop guidelines that must be followed by employees of the department in dispute resolution matters;

(b) develop policies concerning the authority of an employee to resolve disputes; and

(c) establish procedures for reviewing and approving disputes resolved by an employee or the dispute resolution office.

~~(4) (a) A taxpayer shall notify the department in writing that the taxpayer objects to the administrator's decision within 30 days from the date that the decision is mailed, or the taxpayer may appeal to the state tax appeal board as provided in subsection (6). If an objection is not made within 30 days, the administrator's decision and any assessment become final. By failing to object, the taxpayer waives any further right to review or appeal and a warrant for distraint may be issued without further opportunity to be heard on the assessment.~~

~~(b) Except as provided in subsection (6), a taxpayer who objects to the administrator's decision pursuant to subsection (4)(a) shall present the taxpayer's objections, the reasons for the objections, and any other information to the director of revenue or the director's designee within 60 days after the notice referred to in subsection (4)(a) is mailed. The director or the designee may consider written information, hold a telephone conference, or conduct an informal conference, none of which are subject to the Montana Administrative Procedure Act.~~

~~(c) Within 60 days after the taxpayer has presented the objections, the director or the designee shall issue a written decision addressing the objections~~

~~and describing the reasons for the decision. The director's decision is the final decision and assessment of the department.~~

~~(5) The taxpayer shall pay the assessment within 30 days after being mailed a copy of the final decision and assessment unless an appeal is filed with the state tax appeal board. If an appeal with the board is filed within 30 days after the final decision is mailed, payment is not due until final resolution by the board or, if further appeals are filed, by the appropriate court. However, any interest required by law must continue to accrue.~~

~~(6) (a) A taxpayer who validly objects to the administrator's decision may elect to file an appeal with the state tax appeal board. The appeal must be filed within 30 days after mailing an objection to the administrator's decision. If an appeal is filed, the administrator's decision is the final decision of the department.~~

~~(b) If the director notifies the board within 30 days after an appeal is filed that the director has not had an opportunity to review the administrator's decision and the director believes that a review may be helpful in resolving the controversy, the board shall stay the appeal for a time that the board considers reasonable, not to exceed 90 days except by the mutual consent of both parties. The taxpayer shall provide the taxpayer's objections and reasons for the objections to the director so that the director or the director's designee may review the controversy and issue a decision within the period of the stay granted by the board. If the taxpayer is dissatisfied with the director's decision, the stay must be lifted and the appeal resumed.~~

~~(7) The time limits in this section must be applied and interpreted as provided in Rule 6 of the Montana Rules of Civil Procedure, including additional time for mailing. Any time limit may be extended by mutual consent of the department and the taxpayer. The department shall consent to all reasonable requests for extension of deadlines.~~

~~(8) (a)~~*(6) (a)* The director of revenue or the director's designee is authorized to enter into an agreement with ~~any taxpayer~~ *a person or other entity* relating ~~to the taxpayer's liability with respect~~ to a ~~tax~~ *matter* administered hy the department ~~for any taxable period~~.

(b) An agreement under the provisions of subsection ~~(8)(a)~~ *(4)* is final and conclusive, and, except upon a showing of fraud, malfeasance, or misrepresentation of a material fact:

(i) the agreement may not be reopened as to matters agreed upon or be modified by any officer, employee, or agent of this state; and

(ii) in any suit, action, or proceeding under the agreement or any determination, assessment, collection, payment, ahatement, refund, or credit made in accordance with the agreement, the agreement may not be annulled, modified, set aside, or disregarded."

Seetion 2. Section 15-1-406, MCA, is amended to read:

"15-1-406. Declaratory judgment. (1) An aggrieved taxpayer may hring a declaratory judgment action in the district court seeking a declaration that:

(a) an administrative rule or method or procedure of assessment or imposition of tax adopted or used by the department of revenue is illegal or improper; or

HeinOnline -- 1999 vol. I 107 1999

(b) a tax authorized by the state or one of its subdivisions was illegally or unlawfully imposed or exceeded the taxing authority of the entity imposing the tax.

(2) The action must be brought within 90 days of the date the notice of the tax due was sent to the taxpayer or, in the case of an assessment covered by the uniform ~~tax~~ *dispute* review procedure set forth in 15-1-211, within 90 days of the date of the department director's final decision. The court shall consolidate all actions brought under subsection (1) that challenge the same tax. The decision of the court applies to all similarly situated taxpayers, except those taxpayers who are excluded under 15-1-407.

(3) The taxes that are being challenged under this section must be paid under protest when due as a condition of continuing the action. Property taxes are paid under protest as provided in 15-1-402. All other taxes administered by the department, except inheritance and estate taxes, are paid under protest by filing timely claims for refund and by following the uniform ~~tax~~ *dispute* review procedures of 15-1-211. Inheritance and estate taxes are paid under protest by following the procedures set forth in Title 72.

(4) The remedy authorized by this section may not be used to challenge the:

(a) market value of property under a property tax unless the challenge is to the legality of a particular methodology that is being applied to similarly situated taxpayers; or

(b) legality of a tax other than a property tax, inheritance tax, or estate tax unless the review pursuant to 15-1-211 has been completed.

(5) The remedy authorized by this section is the exclusive method of obtaining a declaratory judgment concerning a tax authorized by the state or one of its subdivisions. The remedy authorized by this section supersedes the Uniform Declaratory Judgments Act established in Title 27, chapter 8. This section does not affect actions for declaratory judgments under 2-4-506."

Section 3. Section 15-23-102, MCA, is amended to read:

"15-23-102. Independent appraisal option ~~—notice of assessment—opportunity for conference—appeal~~. (1) The department of revenue may have property subject to the provisions of this chapter assessed by a qualified independent appraiser when both the department and the owner of the property subject to the assessment agree in writing:

(a) on a particular independent appraiser to do an appraisal;

(b) to share the costs of the independent appraisal; and

(c) to accept the results of the appraisal.

~~(2) (a) After assessing property under 15-23-101, the department shall notify the owner and any purchaser under contract for deed of such property, in writing, of the assessed value it has determined.~~

~~(b) Within 20 days following notification, the taxpayer may demand a review of the validity of the department's assessment. The department shall conduct an assessment review conference, which is not subject to the contested case procedures of the Montana Administrative Procedure Act. However, a party has the right of discovery prior to any assessment revision review conference. Upon consideration following such conference, the department may revise the assessment.~~

HeinOnline -- 1999 vol. I 108 1999

~~(c) Appeals from the final decision may be taken to the state tax appeal board.~~

(2) Appeals from the decision of the department pursuant to 15-1-211 may be taken to the state tax appeal board."

Section 4. Section 15-23-107, MCA, is amended to read:

"15-23-107. Amended assessment. Whenever the valuation of centrally assessed property is revised under 15-8-601 or 15-23-102~~(2)~~, the department shall, within 15 days following the final decision or order, enter the revision in the property tax record for each applicable county."

Section 5. Section 39-51-1109, MCA, is amended to read:

"39-51-1109. Tax appeals — procedure. (1) A decision, determination, or redetermination of the department involving an employer-employee relationship or the charging of benefit payments to employers is final unless an interested party entitled to notification submits a written appeal of the decision, determination, or redetermination. The appeal must be made in the same manner as provided in 39-51-2402 for the appeal of a decision relating to a claim for unemployment insurance benefits. Statutory rules of evidence and civil procedure do not apply to a hearing on the appeal. A hearing may be conducted by telephone or by videoconference. The decision of the appeals referee and any subsequent appeal must he made in the same manner as prescribed in 39-51-2403 through 39-51-2410.

(2) A decision, determination, or redetermination involving contribution liability, contribution rate, application for refund, subject wages, or other tax-related issues must be issued by the department of revenue as provided in Title 15, chapter 1, part 2, and 15-30-257, if applicable. The decision is final unless an interested party entitled to notification follows the uniform ~~tax~~ *dispute* review procedures as prescribed in 15-1-211 and 15-30-257, if applicable."

Section 6. Applicability. [This act] applies to disputes arising with the department after June 30, 1999.

Section 7. Effective date. [This act] is effective on passage and approval.

Approved February 24, 1999

CHAPTER NO. 37

[HB 138]

AN ACT ELIMINATING THE ANNUAL LICENSE RENEWAL FEE FOR WHOLESALE GASOLINE AND SPECIAL FUEL DISTRIBUTORS; ELIMINATING THE LICENSING REQUIREMENT THAT APPLIES TO A PERSON WHO SELLS GASOLINE OR SPECIAL FUEL FOR WHICH A REFUND MAY BE CLAIMED; AMENDING SECTIONS 15-70-202, 15-70-223, 15-70-341, AND 75-11-314, MCA; REPEALING SECTIONS 15-70-203 AND 15-70-342, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-70-202, MCA, is amended to read:

"15-70-202. License~~, fee,~~ and security of gasoline distributors. (1) (a) All gasoline distributors, including exporters, as defined in 15-70-201, and a

HeinOnline -- 1999 vol. I 109 1999

person who imports, as defined in 15-70-201, prior to the commencement of doing business, shall file:

(i) an application for a license with the department of transportation on forms prescribed and furnished by the department setting forth the information as may be requested by the department; and

(ii) security with the department in an amount to be determined by the department. The required amount of security may not exceed twice the estimated amount of gasoline taxes the distributor will pay to this state each month.

(b) Upon approval of the application, the department sball issue to the distributor a nonassignable license that is in force until surrendered or canceled.

~~(2) A person who engages in the wholesale distribution of gasoline in this state exercising the option under 15-70-201(6)(c) shall pay an annual license fee of $200.~~

~~(3)~~*(2)* "Security" means:

(a) a bond executed by a distributor as principal with a corporate surety qualified under the laws of Montana, payable to the state of Montana, and conditioned upon faithful performance of all requirements of this part, including the payment of all taxes and penalties; or

(b) a deposit made by the distributor with the department, under conditions as the department may prescrihe, of certificates of deposit or irrevocable letters of credit issued by a bank and insured by the federal deposit insurance corporation.

~~(4)~~*(3)* Failure to obtain a gasoline distributor license as required in this section subjects the distributor to the provisions of 15-70-233 allowing for the seizure, confiscation, and possible forfeiture of the fuel."

Section 2. Section 15-70-223, MCA, is amended to read:

"15-70-223. Estimate allowed for agricultural use — seller's signed statement acceptable on keylock or cardtrol purchases. (1) An applicant whose use qualifies as agricultural use may apply for a refund of 60% of the applicable tax on the gallons of gasoline as indicated by bulk delivery invoices or by evidence of keylock or cardtrol purchases as an estimate of off-roadway use. To ensure tlıat the applicant's use qualifies as agricultural use, the department of transportation may request from the department of revenue information on the ratio of tlıe applicant's gross farm incoıne to total gross income, provided that the departmnent of transportation gives notice to the applicant.

(2) For purposes of application for a refund under subsection (1), the department shall accept, as evidence of keylock or cardtrol purchases, a statement of the sale of gasoline witlı applicable tax tlıat identifies the purchaser and that is signed by a licensed distributor ~~or a person licensed under 15-70-203 from whom the gasoline was purchased~~.

(3) If ~~any~~ *an* invoice or evidence is either lost or destroyed, the purchaser may support ~~his~~ *a* claim for refund by suhmitting an affidavit relating the circumstances of ~~such~~ *the* loss or destruction and by producing ~~such~~ other evidence as may be required by the departmnent of transportation.

(4) An applicant wlıose use does not qualify as agricultural use may not estimate and ~~must~~ *shall* maintain records as required by 15-70-222."

Section 3. Section 15-70-341, MCA, is amended to read:

HeinOnline -- 1999 vol. I 110 1999

"15-70-341. License, *reissuance* fee, and security of special fuel distributors. (1) (a) All special fuel distributors, including importers and exporters as defined in 15-70-301, prior to the commencement of doing business, shall file:

(i) an application for a license with the department, on forms prescribed and furnished by the department, setting forth the information that may be requested by the department; and

(ii) security with the department in an amount to be determined by the department.

(b) The required amount of security may not exceed twice the estimated amount of special fuel taxes the distributer will pay to this state each month.

(c) Upon approval of the application, the department shall issue to the distributor a nonassignable license that continues in force until surrendered or revoked.

~~(2) A person who engages in the wholesale distribution of special fuel in this state exercising the option under 15-70-301(7)(c) and not already licensed under 15-70-202 shall pay an annual license fee of $200.~~

~~(3)~~*(2)* If the distributor's license is surrendered or revoked, the distributor shall pay a reissuance fee of $100.

~~(4)~~*(3)* Failure to obtain a special fuel distributor license as required in this section subjects the distributer to the provisions of 15-70-357 allowing for the seizure, confiscation, and possible forfeiture of the fuel.

~~(5)~~*(4)* As used in this section, "security" means:

(a) a bond executed by a distributor as principal with a corporate surety qualified under the laws of Montana, payable to the state of Montana, and conditioned upon faithful performance of all requirements of this part, including the payment of all taxes and penalties; or

(b) (i) a deposit made by the distributor with the department, under the conditions that the department may prescribe; or

(ii) certificates of deposit or irrevocable letters of credit issued by a bank and insured by the federal deposit insurance corporation."

Section 4. Section 75-11-314, MCA, is amended to read:

"75-11-314. Petroleum storage tank cleanup fee — collection — penalties — warrant for distraint — statute of limitations. (1) Except as provided in subsection (4), each distributor shall pay to the department of transportation a petroleum storage tank cleanup fee for each gallon of gasoline, aviation gasoline, special fuel, or heating oil distributed by the distributor within the state and upon which the fee has not been paid by any other distributor. The fee must equal:

(a) 1 cent for each gallon of gasoline distributed from July 1, 1989, through June 30, 1991;

(b) 0.75 cent for each gallon of gasoline distributed after July 1, 1991;

(c) 0.75 cent for each gallon of aviation gasoline distributed after July 1, 1993;

(d) 0.75 cent for each gallon of special fuel distributed after July 1, 1993; and

(e) 0.75 cent for each gallon of heating oil distributed after July 1, 1993.

HeinOnline -- 1999 vol. I 111 1999

(2) Gasoline, aviation gasoline, special fuel, and heating oil exported or sold for export out of the state must be included in the measure of a distributor's fee.

(3) Alcohol that is blended with gasoline to be sold as gasohol is subject to the fee provided in subsection (1).

(4) A fee may not be imposed or collected beginning on the first day of the first month in the first calendar quarter after the unobligated balance in the fund equals or exceeds $8 million. Whenever the unobligated fund balance, less claims anticipated for board approval within the next 90 days, is less than $4 million, the department of transportation shall, within 30 days, notify distributors by mail that the fee is reinstated beginning on the first day of the first month that begins no less than 30 days after the date of the notice. Once reinstated, the fee must be imposed and collected until the unobligated fund balance again equals or exceeds $8 million.

(5) The department of transportation shall collect the fee in the same manner as the basic gasoline license tax under Title 15, chapter 70, part 2. The provisions of 15-70-103, 15-70-111, 15-70-202, 15-70-205, 15-70-206, 15-70-208 through 15-70-212, 15-70-221(2), and 15-70-232 apply to the fee. The provisions of ~~15-70-203,~~ 15-70-204, 15-70-207, 15-70-221(1), and 15-70-222 through 15-70-224 do not apply to the fee."

Section 5. Repealer. Sections 15-70-203 and 15-70-342, MCA, are repealed.

Section 6. Effective date. [This act] is effective on passage and approval.

Section 7. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to the license year after December 31, 1998.

Approved February 24, 1999

CHAPTER NO. 38

[HB 139]

AN ACT CHANGING FROM MONTHLY TO QUARTERLY THE FREQUENCY WITH WHICH LIQUEFIED PETROLEUM GAS AND COMPRESSED NATURAL GAS DEALERS MUST FILE TAX RETURNS; AMENDING SECTIONS 15-70-704 AND 15-70-714, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-70-704, MCA, is amended to read:

"15-70-704. Bonding, release of surety, and additional bond. (1) Except as provided in this section, a compressed natural gas dealer's license or a liquefied petroleum gas dealer's license may not be issued to a person and may not be continued in force unless the person has furnished a bond, in a form prescribed by the department, to secure the dealer's compliance with this part and has paid all taxes, interest, and penalties due under this part. The department shall waive the bond requirement of a compressed natural gas dealer or a liquefied petroleum gas dealer who is not subject to the provisions of subsection (2)(a) or (2)(b).

(2) The total amount of the bond or bonds required must be equivalent to twice the compressed natural gas dealer's or the liquefied petroleum gas dealer's

estimated ~~monthly~~ *quarterly* tax payments but may not be less than $1,000 for any compressed natural gas dealer or liquefied petroleum gas dealer who:

(a) requests a compressed natural gas dealer's or a liquefied petroleum gas dealer's license to be reissued after the license was canceled for cause; or

(b) fails to file timely reports and pay the tax due as required by 15-70-714.

(3) A surety on a bond furnished as provided in this section must be released and discharged from any liability to the state accruing on the bond after 30 days from the date when the surety has provided to the department a written request to be released and discharged. However, this provision may not operate to relieve, release, or discharge the surety from any liability already accrued or that accrues before the expiration of the 30-day period. Upon receiving a release request, the department shall promptly notify the compressed natural gas dealer or the liquefied petroleum gas dealer who furnished the bond, and unless the dealer, on or before the expiration of the 30-day period, files a new bond in accordance with the requirements of this section or makes a deposit in lieu of a bond as described in 15-70-701(1)(b), the department shall cancel the dealer's license.

(4) The department may require a compressed natural gas dealer or a liquefied petroleum gas dealer to give a new or additional surety bond or to deposit additional securities pursuant to 15-70-701(1)(b) if the department determines that the security of the surety bond previously filed by the dealer or the market value of the property deposited as security by the dealer is impaired or inadequate. If the compressed natural gas dealer or the liquefied petroleum gas dealer fails to give an additional surety bond or to deposit additional securities within 30 days after being requested to do so by the department, the department shall cancel the dealer's license."

Section 2. Section 15-70-714, MCA, is amended to read:

"15-70-714. Returns required — payment. (1) For the purpose of determining the amount of liability for the tax due under this part, ~~each~~ *a* compressed natural gas dealer and ~~each~~ *a* liquefied petroleum gas dealer shall file with the department a ~~monthly~~ *quarterly* tax return on forms prescribed by the department.

(2) The dealer shall file the return on or before the last day of the next calendar month following the ~~month for which the tax is due~~ *quarter to which it relates*. For good cause, the department may grant a taxpayer a reasonable extension of time for filing, but the extension may not exceed 30 days.

(3) The tax return must be accompanied by payment of the amount of tax due under 15-70-711 for compressed natural gas or liquefied petroleum gas sold during the preceding ~~month~~ *quarter*."

Section 3. Effective date. [This act] is effective July 1, 1999.

Approved February 24, 1999

CHAPTER NO. 39

[HB 141]

AN ACT REMOVING THE REQUIREMENT THAT A FORM EXPLAINING VOTER REGISTRATION QUALIFICATIONS, DEADLINES, AND PURGE INFORMATION BE DISTRIBUTED WITH EACH APPLICATION FOR

HeinOnline -- 1999 vol. I 113 1999

VOTER REGISTRATION FORM; AMENDING SECTION 13-2-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-2-203, MCA, is amended to read:

"**13-2-203. Registration by mail.** (1) A qualified individual may register by mailing, postage paid, a properly completed application for voter registration form to the election administrator in the county in which the individual resides.

(2) The election administrator shall send applications for voter registration forms for mail registrations to all qualified individuals requesting them and shall, in addition, arrange for the forms to be widely and conveniently available within the county. The secretary of state shall make applications for voter registration forms available to governmental entities, private entities, and organized voter registration efforts. The application for voter registration form must be designed as prescribed by the secretary of state. ~~A form prescribed by the secretary of state explaining voter registration qualifications, deadlines, and purge information must be distributed with the application for voter registration form.~~

(3) The elector shall complete, sign, and return the application for voter registration form.

(4) The application for voter registration form must be received by the election administrator on or before the day of the close of registration and must be returned to the administrator no later than 15 days after the date it is signed.

(5) Application for voter registration forms properly executed before the close of registration must be accepted for 3 days after the close of registration."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved February 24, 1999

CHAPTER NO. 40

[HB 175]

AN ACT PROVIDING THAT A DECLARATION FOR NOMINATION AND A DECLARATION OF INTENT FOR A WRITE-IN CANDIDATE MAY BE SENT BY FACSIMILE TRANSMISSION, DELIVERED IN PERSON, OR MAILED TO THE ELECTION ADMINISTRATOR OR TO THE SECRETARY OF STATE; AMENDING SECTIONS 13-10-201 AND 13-10-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-10-201, MCA, is amended to read:

"**13-10-201. Declaration for nomination.** (1) Each candidate in the primary election, except nonpartisan candidates filing under the provisions of chapter 14, shall send a declaration for nomination to the secretary of state or election administrator. Each candidate for governor shall send a joint declaration for nomination with a candidate for lieutenant governor.

(2) A declaration for nomination must be filed in the office of:

(a) the secretary of state for placement of a name on the ballot for the presidential preference primary, a congressional office, a state or district office

to be voted for in more than one county, a member of the legislature, or a judge of the district court;

(b) the election administrator for a county, municipal, precinct, or district office (other than a member of the legislature or judge of the district court) to he voted for in only one county.

(3) Each candidate shall sign the declaration and send with it the required filing fee or, in the case of an indigent candidate, send with it the documents required by 13-10-203. The declaration for nomination must be acknowledged by an officer empowered to acknowledge signatures ~~if sent by mail~~ or by the officer of the office at which the filing is made.

(4) The declaration, when filed, is conclusive evidence that the elector is a candidate for nomination by the elector's party.

(5) (a) The declaration for nomination must be in the form and contain the information prescribed by the secretary of state.

(b) A person seeking nomination to the legislature shall provide the secretary of state with a street address, legal description, or road designation to indicate the person's place of residence. If a candidate for the legislature changes residence, the candidate sball, within 15 days after the change, notify the secretary of state on a form prescribed by the secretary of state.

(c) The secretary of state and election administrator shall furnish declaration for nomination forms to individuals requesting them.

(6) Declarations for nomination must be filed no sooner tban 135 days before the election in which the office first appears on the ballot and no later than 5 p.m., 75 days before the date of the primary election.

(7) A declaration for nomination form may be sent by facsimile transmission, if a facsimile facility is available for use by the election administrator or by the secretary of state, delivered in person, or mailed to the election administrator or to the secretary of state."

Seetion 2. Section 13-10-211, MCA, is amended to read:

"13-10-211. Declaration of intent for write-in candidates. (1) Except as provided in subsection (4), a person seeking to become a write-in candidate for an office in any election shall file a declaration of intent. The declaration of intent must be filed with the secretary of state or election administrator, depending on where a declaration of nomination fer the desired office is required to be filed under 13-10-201, or with the school district clerk for a school district office. Except as provided in subsection (2), the declaration must be filed no later than 5 p.m. on the 15th day before the election and must contain:

(a) (i) the candidate's first and last names;

(ii) the candidate's initials, if any, used instead of a first name, or first and middle name, and the candidate's last name;

(iii) the candidate's nickname, if any, used instead of a first name, and the candidate's last name; and

(iv) a derivative or diminutive name, if any, used instead of a first name, and the candidate's last name;

(b) the candidate's mailing address;

HeinOnline -- 1999 vol. I 115 1999

(c) a statement declaring the candidate's intention to he a write-in candidate;

(d) the title of the office sought;

(e) the date of the election;

(f) the date of the declaration; and

(g) the candidate's signature.

(2) A declaration of intent may be filed after the deadline provided for in subsection (1) but no later than 5 p.m. on the day before the election if, less than 15 days hefore the election, a candidate for the office that the write-in candidate is seeking:

(a) dies;

(b) withdraws from the election; or

(c) is charged with a felony offense.

(3) The secretary of state shall notify each election administrator of the names of write-in candidates who have filed a declaration of intent with the secretary of state. Each election administrator and school district clerk shall notify the election judges in the county or district of the names of write-in candidates who have filed a declaration of intent.

(4) The requirements in subsection (1) do not apply to a write-in candidate seeking election:

(a) as a precinct officer in a primary election; or

(b) to an office for which no candidate bas filed a declaration or petition for nomination or a declaration of intent.

(5) A declaration of intent may be sent by facsimile transmission, if a facsimile facility is available for use by the election administrator or by the secretary of state, delivered in person, or mailed to the election administrator or to the secretary of state."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved Februaty 24, 1999

CHAPTER NO. 41

[HB 194]

AN ACT PROVIDING THAT AN AGENCY THAT PROPOSES BY RULE TO INCREASE, DECREASE, OR ADOPT A MONETARY AMOUNT THAT PERSONS ARE REQUIRED TO PAY OR WILL RECEIVE SHALL, IF KNOWN, INCLUDE IN THE PROPOSAL NOTICE AN ESTIMATE OF THE NUMBER OF PAYING OR RECEIVING PERSONS AND THE CUMULATIVE AMOUNT THAT THOSE PERSONS WILL PAY OR RECEIVE; AMENDING SECTION 2-4-302, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-4-302, MCA, is amended to read:

"2-4-302. Notice, hearing, and submission of views. (1) Prior to the adoption, amendment, or repeal of any rule, the agency shall give written notice

HeinOnline -- 1999 vol. I 116 1999

of its intended action. The notice must include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, the rationale for the intended action, and the time when, place where, and manner in which interested persons may present their views on the intended action. The rationale must be written in plain, easily understood language. *If the agency proposes to adopt, increase, or decrease a monetary amount that a person shall pay or will receive, such as a fee, cost, or benefit, the notice must include an estimate, if known, of:*

(a) the cumulative amount for all persons of the proposed increase, decrease, or new amount; and

(b) the number of persons affected.

(2) (a) The notice must be filed with the secretary of state for publication in the register, as provided in 2-4-312, and mailed within 3 days of publication to the sponsor of the legislative bill that enacted the section that is cited as implemented in the notice if the notice is the initial proposal to implement the section, to interested persons who have made timely requests to the agency to be informed of its rulemaking proceedings, and to the office of any professional, trade, or industrial society or organization or member of those entities who has filed a request with the administrative code committee when the request has been forwarded to the agency as provided in subsection (2)(b). Each agency shall create and maintain a list of interested persons and the subject or subjects in which each person on the list is interested. A person who submits a written comment or attends a hearing in regard to proposed agency action under this part must be informed of the list by the agency. An agency complies with this subsection if it includes in the notice an advisement explaining how persons may be placed on the list of interested persons and if it complies with subsection (7).

(b) The administrative code committee shall forward a list of all organizations or persons who have submitted a request to be informed of agency actions to all agencies publishing rulemaking notices in the register. The list must be amended by the agency upen request of any person requesting to be added to or deleted from the list.

(c) The notice required by subsections (1) and (2)(a) must be published and mailed at least 30 days in advance of the agency's intended action. In addition to publishing and mailing the notice under subsection (2)(a) ~~of this section~~, the agency shall post the notice on *a* ~~the~~ state electronic ~~bulletin board~~ *access system* or other electronic communications system available to the public.

(d) The agency shall also, at the time that its personnel begin to work on the substantive content and the wording of the initial rule proposal to implement one or more statutes, notify the sponsor of the legislative bill that enacted the section.

(3) If a statute provides for a method of publication different from that provided in subsection (2), the affected agency shall comply with the statute in addition to the requirements contained in this section. However, the notice period may not be less than 30 days or more than 6 months.

(4) Prior to the adoption, amendment, or repeal of any rule, the agency shall afford interested persons at least 20 days' notice of a hearing and at least 28 days from the day of the original notice to submit data, views, or arguments, orally or in writing. If an amended or supplemental notice is filed, additional time may be allowed for oral or written submissions. In the case of substantive rules, the notice of proposed rulemaking must state that opportunity for oral hearing must

HeinOnline -- 1999 vol. I 117 1999

be granted if requested by either 10% or 25, whichever is less, of the persons who will be directly affected by the proposed rule, by a governmental subdivision or agency, hy the administrative code committee, or by an association having not less than 25 members who will be directly affected. If the proposed rulemaking involves matters of significant interest to the public, the agency shall schedule an oral hearing.

(5) An agency may continue a hearing date for cause. In the discretion of the agency, contested case procedures need not be followed in hearings held pursuant to this section. If a hearing is otherwise required by statute, nothing in this section alters that requirement.

(6) If an agency fails to publish a notice of adoption within the time required by 2-4-305(7) and the agency again proposes the same rule for adoption, amendment, or repeal, the proposal must be considered a new proposal for purposes of compliance with this chapter.

(7) At the commencement of a hearing on the intended action, the person designated by the agency to preside at the hearing shall:

(a) read aloud the "Notice of Function of Administrative Code Committee" appearing in the register; and

(b) inform the persons at the hearing of the provisions of subsection (2)(a) and provide them an opportunity to place their names on the list.

(8) For purposes of notifying spensors under subsections (2)(a) and (2)(d) who are no longer members of the legislature, a former legislator who wishes to receive notice may keep the former legislator's name, address, and telephone number on file with the secretary of state. An agency proposing rules shall consult the register when providing sponsor notice."

Section 2. Effective date. [This act] is effective July 1, 1999.

Approved February 24, 1999

CHAPTER NO. 42

[SB 9]

AN ACT LIMITING THE REQUIREMENT THAT THE LEGISLATURE AFFIRM CERTAIN LARGE-SCALE CHANGES OF WATER RIGHT AUTHORIZATION TO ONLY THOSE CHANGES THAT INVOLVE OUT-OF-STATE TRANSPORTATION AND USE; AMENDING SECTION 85-2-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-2-402, MCA, is amended to read:

"85-2-402. (Temporary) Changes in appropriation rights. (1) The right to make a change subject to the provisions of this section in an existing water right, a permit, or a state water reservation is recognized and confirmed. In a change proceeding under this section, there is no presumption that an applicant for a change in appropriation right cannot establish lack of adverse effect prior to the adjudication of other rights in the source of supply pursuant to this chapter. An appropriator may not make a chango in an appropriation right except, as permitted under this section, by applying for and receiving the approval

of the department or, if applicable, of the legislature. An applicant shall submit a correct and complete application.

(2) Except as provided in subsections (4) through (6), the department shall approve a change in appropriation right if the appropriator proves by a preponderance of evidence that the following criteria are met:

(a) The proposed change in appropriation right will not adversely affect the use of the existing water rights of other persons or other perfected or planned uses or developments for which a permit or certificate has heen issued or for which a state water reservation has been issued under part 3.

(b) Except for a lease authorization pursuant to 85-2-436, a temporary change authorization for instream use to benefit the fishery resource pursuant to 85-2-408, or water use pursuant to 85-2-439 when authorization does not require appropriation works, the proposed means of diversion, construction, and operation of the appropriation works are adequate.

(c) The proposed use of water is a beneficial use.

(d) Except for a lease authorization pursuant to 85-2-436 or a temporary change authorization pursuant to 85-2-408 or 85-2-439 for instream flow to benefit the fishery resource, the applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use.

(e) If the change in appropriation rigbt involves salvaged water, the proposed water-saving methods will salvage at least the amount of water asserted hy the applicant.

(f) The water quality of an appropriator will not he adversely affected.

(g) The ability of a discharge permitholder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will not be adversely affected.

(3) The applicant is required to prove that the criteria in subsections (2)(f) and (2)(g) have been met only if a valid objection is filed. A valid objection must contain substantial credible information establishing to the satisfaction of the department that the criteria in subsection (2)(f) or (2)(g), as applicable, may not be met.

(4) The department may not approve a change in purpose of use or place of use of an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the appropriator proves by a preponderance of evidence that:

(a) the criteria in subsection (2) are met; and

(h) the proposed change is a reasonable use. A finding of reasonable use must be based on a consideration of:

(i) the existing demands on the state water supply, as well as projected demands for water for future beneficial purposes, including municipal wator supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the effects on the quantity and quality of wator for existing uses in the source of supply;

HeinOnline -- 1999 vol. I 119 1999

(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(5) The department may not approve a change in purpose of use or place of use for a diversion that results in 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water being consumed unless:

(a) the applicant proves by clear and convincing evidence and the department finds that the criteria in subsections (2) and (4) are met; and

(b) *for the withdrawal and transportation of appropriated water for out-of-state use,* the department then petitions the legislature and the legislature affirms the decision of the department after one or more public hearings.

(6) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for federal non-Indian and Indian reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the following criteria must be met before out-of-state use may occur:

(a) The department and, if applicable, the legislature may not approve a change in appropriation right for the withdrawal and transportation of appropriated water for use outside the state unless the appropriator proves by clear and convincing evidence and, if applicable, the legislature approves after one or more public hearings that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (2) or (4) are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(b) In determining whether the appropriator has proved by clear and convincing evidence that the requirements of subsections (6)(a)(ii) and (6)(a)(iii) will be met, the department and, if applicable, the legislature shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the proposed change in appropriation might feasibly be transported to alleviate water shortages within the state of Montana;

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

HeinOnline -- 1999 vol. I 120 1999

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(c) When applying for a change in appropriation right to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation and use of water.

(7) For any application for a change in appropriation right involving 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water, the department shall give notice of the proposed change in accordance with 85-2-307 and shall hold one or more hearings in accordance with 85-2-309 prior to its approval or denial of the proposed change. The department shall provide notice and may hold one or more hearings upon any other proposed change if it determines that a *the proposed* change might adversely affect the rights of other persons.

(8) The department or the legislature, if applicable, may approve a change subject to terms, conditions, restrictions, and limitations as it considers necessary to satisfy the criteria of this section, including limitations on the time for completion of the change. The department may extend time limits specified in the change approval under the applicable criteria and procedures of 85-2-312(3).

(9) Upon actual application of water to the proposed beneficial use within the time allowed, the appropriator shall notify the department that the appropriation has been completed. The notification must contain a certified statement by a person with experience in the design, construction, or operation of appropriation works describing how the appropriation was completed.

(10) If a change is not completed as approved by the department or legislature or if the terms, conditions, restrictions, and limitations of the change approval are not complied with, the department may, after notice and opportunity for hearing, require the appropriator to show cause why the change approval should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may modify or revoke the change approval.

(11) The original of a change approval issued by the department must be sent to the applicant, and a duplicate must be kept in the office of the department in Helena.

(12) A person holding an issued permit or change approval that has not been perfected may change the place of diversion, place of use, purpose of use, or place of storage by filing an application for change pursuant to this section.

(13) A change in appropriation right contrary to the provisions of this section is invalid. An officer, agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized change in appropriation right. A person or corporation may not, directly or indirectly, personally or through an agent, officer, or employee, attempt to change an appropriation right except in accordance with this section.

(14) The department may adopt rules to implement the provisions of this section. (Terminates June 30, 1999—sec. 4, Ch. 740, L. 1991.)

85-2-402. (Effective July 1, 1999) Changes in appropriation rights. (1) The right to make a change subject to the provisions of this section in an existing water right, a permit, or a state water reservation is recognized and confirmed. In a change proceeding under this section, there is no presumption

HeinOnline -- 1999 vol. I 121 1999

that an applicant for a change in appropriation right cannot establish lack of adverse effect prior to the adjudication of other rights in the source of supply pursuant to this chapter. An appropriator may not make a change in an appropriation right except, as permitted under this section, by applying for and receiving the approval of the department or, if applicable, of the legislature. An applicant shall submit a correct and complete application.

(2) Except as provided in subsections (4) through (6), the department shall approve a change in appropriation right if the appropriator proves by a preponderance of evidence that the following criteria are met:

(a) The proposed change in appropriation right will not adversely affect the use of the existing water rights of other persons or other perfected or planned uses or developments for which a permit or certificate has been issued or for which a state water reservation has been issued under part 3.

(b) Except for a temporary change authorization pursuant to 85-2-408 or for water use pursuant to 85-2-439 that does not require appropriation works, the proposed means of diversion, construction, and operation of the appropriation works are adequate.

(c) The proposed use of water is a beneficial use.

(d) Except for a temporary change authorization pursuant to 85-2-408 or 85-2-439 for instream flow to benefit the fishery resource, the applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use.

(e) If the change in appropriation right involves salvaged water, the proposed water-saving methods will salvage at least the amount of water asserted by the applicant.

(f) The water quality of an appropriator will not be adversely affected.

(g) The ability of a discharge permitholder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will not be adversely affected.

(3) The applicant is required to prove that the criteria in subsections (2)(f) and (2)(g) have been met only if a valid objection is filed. A valid objection must contain substantial credible information establishing to the satisfaction of the department that the criteria in subsection (2)(f) or (2)(g), as applicable, may not be met.

(4) The department may not approve a change in purpose of use or place of use of an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the appropriator proves by a preponderance of evidence that:

(a) the criteria in subsection (2) are met; and

(b) the proposed change is a reasonable use. A finding of reasonable use must be based on a consideration of:

(i) the existing demands on the state water supply, as well as projected demands for water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

(iii) the effects on the quantity and quality of water for existing uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application bas been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(5) The department may not approve a change in purpose of use or place of use for a diversion that results in 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water being consumed unless:

(a) the applicant proves by clear and convincing evidence and the department finds that the criteria in subsections (2) and (4) are met; and

(b) *for the withdrawal and transportation of appropriated water for out-of-state use,* the department then petitions the legislature and the legislature affirms tbe decision of the department after one or more public bearings.

(6) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for federal non-Indian and Indian reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the following criteria must be met before out-of-state use may occur:

(a) The department and, if applicable, the legislature may not approve a change in appropriation right for the withdrawal and transportation of appropriated water for use outside the state unless the appropriator proves by clear and convincing evidence and, if applicable, the legislature approves after one or more public hearings that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (2) or (4) are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the propesed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(b) In determining wbetber the appropriator has proved by clear and convincing evidence that tbe requirements of subsections (6)(a)(ii) and (6)(a)(iii) will be met, the departinent and, if applicable, the legislature shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the proposed change in appropriation might feasibly be transported to alleviate water shortages within the state of Montana;

HeinOnline -- 1999 vol. I 123 1999

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(c) When applying for a change in appropriation right to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation and use of water.

(7) For any application for a change in appropriation right involving 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water, the department shall give notice of the proposed change in accordance with 85-2-307 and shall hold one or more hearings in accordance with 85-2-309 prior to its approval or denial of the proposed change. The department shall provide notice and may hold one or more hearings upon any other proposed change if it determines that ~~such a~~ *the proposed* change might adversely affect the rights of other persons.

(8) The department or the legislature, if applicable, may approve a change subject to ~~such~~ *the* terms, conditions, restrictions, and limitations ~~as~~ *that* it considers necessary to satisfy the criteria of this section, including limitations on the time for completion of the change. The department may extend time limits specified in the change approval under the applicable criteria and procedures of 85-2-312(3).

(9) Upon actual application of water to the proposed beneficial use within the time allowed, the appropriator shall notify the department that the appropriation has been completed. The notification must contain a certified statement by a person with experience in the design, construction, or operation of appropriation works describing how the appropriation was completed.

(10) If a change is not completed as approved by the department or legislature or if the terms, conditions, restrictions, and limitations of the change approval are not complied with, the department may, after notice and opportunity for hearing, require the appropriator to show cause why the change approval should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may modify or revoke the change approval.

(11) The original of a change approval issued by the department must be sent to the applicant, and a duplicate must be kept in the office of the department in Helena.

(12) A person holding an issued permit or change approval that has not been perfected may change the place of diversion, place of use, purpose of use, or place of storage by filing an application for change pursuant to this section.

(13) A change in appropriation right contrary to the provisions of this section is invalid. An officer, agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized change in appropriation right. A person or corporation may not, directly or indirectly, personally or through an agent, officer, or employee, attempt to change an appropriation right except in accordance with this section.

(14) The department may adopt rules to implement the provisions of this section. (Terminates June 30, 2005—sec. 6, Ch. 322, L. 1995.)

HeinOnline -- 1999 vol. I 124 1999

85-2-402. (Effective July 1, 2005) Changes in appropriation rights. (1) The right to make a change subject to the provisions of this section in an existing water right, a permit, or a state water reservation is recognized and confirmed. In a change proceeding under this section, there is no presumption that an applicant for a change in appropriation right cannot establish lack of adverse effect prior to the adjudication of other rights in the source of supply pursuant to this chapter. An appropriator may not make a change in an appropriation right except, as permitted under this section, by applying for and receiving the approval of the department or, if applicable, of the legislature. An applicant shall submit a correct and complete application.

(2) Except as provided in subsections (4) through (6), the department shall approve a change in appropriation right if the appropriator proves by a preponderance of evidence that the following criteria are met:

(a) The proposed change in appropriation right will not adversely affect the use of the existing water rights of other persons or other perfected or planned uses or developments for which a permit or certificate has been issued or for which a state water reservation has been issued under part 3.

(b) The proposed means of diversion, construction, and operation of the appropriation works are adequate.

(c) The propesed use of water is a beneficial use.

(d) The applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use.

(e) If the change in appropriation right involves salvaged water, the proposed water-saving methods will salvage at least the amount of water asserted by the applicant.

(f) The water quality of an appropriator will not be adversely affected.

(g) The ability of a discharge permitholder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will not be adversely affected.

(3) The applicant is required to prove that the criteria in subsections (2)(f) and (2)(g) have been met only if a valid objection is filed. A valid objection must contain substantial credible information establishing to the satisfaction of the department that the criteria in subsection (2)(f) or (2)(g), as applicable, may not be met.

(4) The department may not approve a change in purpose of use or place of use of an appropriation of 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water unless the appropriator proves by a preponderance of evidence that:

(a) the criteria in subsection (2) are met;

(b) the propesed change is a reasonable use. A finding of reasonable use must be based on a consideration of:

(i) the existing demands on the state water supply, as well as projected demands for water for future beneficial purposes, including municipal water supplies, irrigation systems, and minimum streamflows for the protection of existing water rights and aquatic life;

(ii) the benefits to the applicant and the state;

HeinOnline -- 1999 vol. I 125 1999

(iii) the effects on the quantity and quality of water for existing uses in the source of supply;

(iv) the availability and feasibility of using low-quality water for the purpose for which application has been made;

(v) the effects on private property rights by any creation of or contribution to saline seep; and

(vi) the probable significant adverse environmental impacts of the proposed use of water as determined by the department pursuant to Title 75, chapter 1, or Title 75, chapter 20.

(5) The department may not approve a change in purpose of use or place of use for a diversion that results in 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water being consumed unless:

(a) the applicant proves by clear and convincing evidence and the department finds that the criteria in subsections (2) and (4) are met; and

(b) *for the withdrawal and transportation of appropriated water for out-of-state use,* the department then petitions the legislature and the legislature affirms the decision of the department after one or more public hearings.

(6) The state of Montana has long recognized the importance of conserving its public waters and the necessity to maintain adequate water supplies for the state's water requirements, including requirements for reserved water rights held by the United States for federal reserved lands and in trust for the various Indian tribes within the state's boundaries. Although the state of Montana also recognizes that, under appropriate conditions, the out-of-state transportation and use of its public waters are not in conflict with the public welfare of its citizens or the conservation of its waters, the following criteria must be met before out-of-state use may occur:

(a) The department and, if applicable, the legislature may not approve a change in appropriation right for the withdrawal and transportation of appropriated water for use outside the state unless the appropriator proves by clear and convincing evidence and, if applicable, the legislature approves after one or more public hearings that:

(i) depending on the volume of water diverted or consumed, the applicable criteria and procedures of subsection (2) or (4) are met;

(ii) the proposed out-of-state use of water is not contrary to water conservation in Montana; and

(iii) the proposed out-of-state use of water is not otherwise detrimental to the public welfare of the citizens of Montana.

(b) In determining whether the appropriator has proved by clear and convincing evidence that the requirements of subsections (6)(a)(ii) and (6)(a)(iii) will be met, the department and, if applicable, the legislature shall consider the following factors:

(i) whether there are present or projected water shortages within the state of Montana;

(ii) whether the water that is the subject of the proposed change in appropriation might feasibly be transported to alleviate water shortages within the state of Montana;

HeinOnline -- 1999 vol. I 126 1999

(iii) the supply and sources of water available to the applicant in the state where the applicant intends to use the water; and

(iv) the demands placed on the applicant's supply in the state where the applicant intends to use the water.

(c) When applying for a change in appropriation right to withdraw and transport water for use outside the state, the applicant shall submit to and comply with the laws of the state of Montana governing the appropriation and use of water.

(7) For any application for a change in appropriation right involving 4,000 or more acre-feet of water a year and 5.5 or more cubic feet per second of water, the department shall give notice of the proposed change in accordance with 85-2-307 and shall hold one or more hearings in accordance with 85-2-309 prior to its approval or denial of the proposed change. The department shall provide notice and may hold one or more hearings upon any other proposed change if it determines that ~~such a~~ *the proposed* change might adversely affect the rights of other persons.

(8) The department or the legislature, if applicable, may approve a change subject to ~~such~~ *the* terms, conditions, restrictions, and limitations ~~as~~ *that* it considers necessary to satisfy the criteria of this section, including limitations on the time for completion of the change. The department may extend time limits specified in the change approval under the applicable criteria and procedures of 85-2-312(3).

(9) Upon actual application of water to the proposed beneficial use within the time allowed, the appropriator shall notify the department that the appropriation has been completed. The notification must contain a certified statement by a person with experience in the design, construction, or operation of appropriation works describing how the appropriation was completed.

(10) If a change is not completed as approved by the department or legislature or if the terms, conditions, restrictions, and limitations of the change approval are not complied with, the department may, after notice and oppertunity for hearing, require the appropriator to show cause why the change approval should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may modify or revoke the change approval.

(11) The original of a change approval issued by the department must be sent to the applicant, and a duplicate must be kept in the office of the department in Helena.

(12) A person holding an issued permit or change approval that has not been perfected may change the place of diversion, place of use, purpose of use, or place of storage by filing an application for change pursuant to this section.

(13) A change in appropriation right contrary to the provisions of this section is invalid. An officer, agent, agency, or employee of the state may not knowingly permit, aid, or assist in any manner an unauthorized change in appropriation right. A person or corporation may not, directly or indirectly, personally or through an agent, officer, or employee, attempt to change an appropriation right except in accordance with this section.

(14) The department may adopt rules to implement the provisions of this section."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved February 24, 1999

HeinOnline -- 1999 vol. I 127 1999

CHAPTER NO. 43

[SB 133]

AN ACT ENHANCING THE PUBLIC SAFETY ON MONTANA ROADWAYS BY IMPOSING SPEED LIMITS ON FEDERAL-AID INTERSTATE AND OTHER PUBLIC HIGHWAYS OF THE STATE; IMPOSING A SPECIAL SPEED LIMIT ON U.S. HIGHWAY 93; ELIMINATING THE FUEL CONSERVATION SPEED LIMIT; INCREASING NIGHTTIME SPEED LIMITS; ALTERING THE SPEED LIMITS LOCAL AUTHORITIES CAN SET; ESTABLISHING A PENALTY SCHEDULE AND PROVIDING MISDEMEANOR PENALTIES FOR VIOLATIONS; PROVIDING THAT CERTAIN VIOLATIONS DO NOT COUNT AGAINST A DRIVER'S RECORD AND CANNOT BE USED TO INCREASE INSURANCE PREMIUMS; CHANGING THE METHOD BY WHICH TRUCKS ARE RATED FOR SPEED LIMIT PURPOSES; AMENDING SECTIONS 7-14-2113, 61-8-303, 61-8-309, 61-8-310, 61-8-312, AND 61-11-203, MCA; REPEALING SECTIONS 61-8-304, 61-8-305, 61-8-306, 61-8-307, 61-8-718, AND 61-11-103, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-14-2113, MCA, is amended to read:

"7-14-2113. County authority to establish speed limits. A board of county commissioners may, by ordinance, establish a special speed limit in accordance with ~~61-8-306 and~~ 61-8-310 on any county road."

Section 2. Section 61-8-303, MCA, is amended to read:

"61-8-303. Speed restrictions ~~—basic rule~~. (1) ~~A~~ *Except as provided in 61-8-309, 61-8-310, 61-8-312, and subsection (2) of this section, the speed limit for vehicles traveling:*

(a) on a federal-aid interstate highway outside an urbanized area of 50,000 population or more is 75 miles an hour at all times and the speed limit for vehicles traveling on federal-aid interstate highways within an urbanized area of 50,000 population or more is 65 miles an hour at all times;

(b) on any other public highway of this state is 70 miles an hour during the daytime and 65 miles an hour during the nighttime.

(2) The speed limit for vehicles traveling on U.S. highway 93 between the Canadian and Idaho borders is 65 miles an hour at all times. The speed limit imposed by this subsection ceases to be effective if U.S. highway 93 is upgraded to a continuous four-lane highway.

(3) A vehicle subject to the speed limits imposed in subsection (1) traveling on a two-lane road may exceed the speed limits imposed in subsection (1) by 10 miles an hour in order to overtake and pass a vehicle and return safely to the right-hand lane.

(4) Subject to the maximum speed limits set forth in subsections (1) and (2), a person ~~operating or driving~~ *shall operate* a vehicle ~~of any character on a public highway of this state shall drive the vehicle~~ in a careful and prudent manner and at a *reduced* rate of speed no greater than is reasonable and ~~proper~~ *prudent* under the conditions existing at the peint of operation, taking into account tho amount and character of traffic, ~~condition of brakes, weight of vehicle, grade and width of highway, condition of surface, and freedom of obstruction to the view ahead~~

visibility, weather, and roadway conditions. ~~The person operating or driving the vehicle shall drive the vehicle so as not to unduly or unreasonably endanger the life, limb, property, or other rights of a person entitled to the use of the street or highway.~~

~~(2)~~*(5)* When no special hazard exists that requires lower speed for compliance with ~~subsection~~ *subsections* (1) *and (2)*, the speed of a vehicle not in excess of the limits specified in this section or established as authorized in 61-8-309 through 61-8-311 and 61-8-313 is lawful, but a speed in excess of ~~the following limits~~ *25 miles an hour in an urban district* is unlawful~~:~~

~~(a) 25 miles per hour in an urban district;~~

~~(b) 55 miles per hour in other locations during the nighttime, except that the nighttime speed limit on completed sections of interstate highways is 65 miles per hour~~.

~~(3) "Daytime" means from one-half hour before sunrise to one-half hour after sunset. "Nighttime" means at any other hour.~~

(6) "Daytime" means from one-half hour before sunrise to one-half hour after sunset. "Nighttime" means at any other hour.

~~(4)~~*(7)* The speed limits set forth in this section may be altered by the transportation commission or a local authority as authorized in 61-8-309, 61-8-310, 61-8-313, and 61-8-314.

~~(5) The driver of a vehicle shall, consistent with subsection (1), drive at an appropriate reduced speed when approaching and crossing an intersection or railway grade crossing, when approaching and going around a curve, when approaching a hill crest, when traveling upon a narrow or winding roadway, and when a special hazard exists with respect to pedestrians or other traffic or by reason of weather or highway condition.~~"

Section 3. Penalty for violation of speed limits — no record for certain violations. (1) Subject to subsection (2), a person violating the speed limit imposed pursuant to [section 2] is guilty of a misdemeanor and shall be fined in accordance with the following schedule:

Amount of Fine	MPH in Excess of Speed Limit
$20	1 - 10 (daytime)
20	1 - 10 (nighttime)
40	11 - 20
70	21 - 30
100	31+

(2) A violation of a speed limit impesed pursuant to [section 2] may not be recorded or cbarged against a driver's record, and an insurance company may not hold a violation of a speed limit against the insured or increase premiums because of the violation if the speed limit is exceeded by no more than:

(a) 10 miles an hour during the daytime; or

(b) 5 miles an hour during the nighttime.

HeinOnline -- 1999 vol. I 129 1999

Section 4. Section 61-8-309, MCA, is amended to read:

"61-8-309. Establishment of special speed zones. (1) (a) If the commission determines upon the basis of an engineering and traffic investigation that a speed limit set by 61-8-303 is greater or less than is reasonable or safe under the conditions found to exist at an intersection, curve, *or* dangerous location~~, or any other part~~ *on a segment* of a highway *less than 50 miles in length* under its jurisdiction, the commission may set a reasonable and safe special speed limit at that location.

(b) If a local authority requests the department of transportation or an engineer, as provided in subsection (1)(c)(i), to conduct an engineering and traffic investigation based on the belief that a speed limit on a highway under the department's jurisdiction is greater than is reasonable or safe, the commission may not increase the speed limit under consideration as a result of the investigation.

(c) (i) A local authority may request at its own expense that an engineering and traffic investigation be completed by a licensed professional engineer selected from a list compiled and approved by a committee as provided in subsection (1)(c)(ii).

(ii) A committee containing two department of transportation staff appointed by the director and two representatives of associations whose membership comprises cities, towns, and counties, as authorized by 7-5-2141 and 7-5-4141, shall review credentials submitted by licensed professional engineers and shall determine who appears on the list of individuals authorized to conduct engineering and traffic investigations for local governments. The list ~~must be completed by October 1, 1997, and~~ must be updated every 2 years.

(iii) Upon completion of an engineering and traffic investigation conducted for a local government, the department of transportation shall submit a report to the commission with findings and recommendations. The commission shall decide on an appropriate speed limit based on the traffic investigation within 120 days from the date the investigation is submitted to the department.

(2) The department of transportation shall erect and maintain appropriate signs giving notice of these special limits. When they are erected, the limits are effective at that part at all times or at other times that the commission sets.

(3) The authority of the commission under this section includes the authority to set reduced nighttime speed limits on curves and other dangerous locations.

(4) This section does not authorize the commission to set a statewide speed limit."

Section 5. Section 61-8-310, MCA, is amended to read:

"61-8-310. When local authorities may and shall alter limits. (1) If a local authority in its jurisdiction determines on the basis of an engineering and traffic investigation that the speed permitted under 61-8-303 and 61-8-309 through 61-8-313 is greater or less than is reasonable and safe under the conditions found to exist upon a highway or part of a highway, the local authority may set a reasonable and safe limit that:

(a) decreases the limit at an intersection;

HeinOnline -- 1999 vol. I 130 1999

(b) increases the limit within an urban district, but not to more than ~~55~~ *65* miles ~~per~~ *an* hour during the nighttime;

(c) decreases the limit outside an urban district, but not to less than ~~15~~ *35* miles ~~per~~ *an* hour; or

(d) decreases the limit in an area near a school, a senior citizen center, as defined in 23-5-112, or a designated crosswalk, as crosswalk is defined in 61-1-209, that is close to a school or a senior citizen center to not less than 80%, rounded down to the nearest whole number evenly divisible by 5, of the limit that would be set on the basis of an engineering and traffic investigation, but not less than 15 miles an hour. If warranted by an engineering and traffic investigation, a local authority may adopt variable speed limits to adapt to traffic conditions by time of day, provided that the variable limits comply with the provisions of 61-8-206.

(2) A board of county commissioners may set limits, as provided in subsection (1)(c), without an engineering and traffic investigation on a county road, as defined in 60-1-103.

(3) A local authority in its jurisdiction may determine the proper speed for all arterial streets and shall set a reasonable and safe limit on arterial streets that may be greater or less than the speed permitted under 61-8-303 for an urban district.

(4) An altered limit established as authorized under this section is effective at all times or at other times determined by the authority when appropriate signs giving notice of the altered limit are erected upon the highway.

(5) Except as provided in subsection (1)(d), the commission has exclusive jurisdiction to set special speed limits on all federal-aid highways or extensions of federal-aid highways in all municipalities or urban areas. The commission shall set these limits in accordance with 61-8-309."

Section 6. Section 61-8-312, MCA, is amended to read:

"61-8-312. Special speed limitations on trucks, truck tractors, *and* motor-driven cycles~~, and vehicles towing housetrailers~~. (1) ~~A person may not operate a truck or truck tractor, the gross weight of which exceeds 8,000 pounds, at a speed greater than 65 miles an hour~~ *Except as provided in 61-8-303, 61-8-309, 61-8-310, and subsection (2) of this section, the speed limit for a truck or truck tractor of more than 1 ton "manufacturer's rated capacity" traveling* on:

(a) ~~those~~ completed sections of interstate *is 65 miles an hour;* and

(b) four-lane divided highways and ~~60 miles an hour on those~~ completed sections of primary and secondary highways *is 60 miles an hour during the daytime and 55 miles an hour during the nighttime as those terms are defined in [section 2].* ~~However, the truck nighttime speed limit may not exceed that of automobiles, as stated in 61-8-303.~~

(2) ~~A person may not operate~~ *Except as provided in 61-8-303, 61-8-309, and 61-8-310, the speed limit for* a vehicle subject to a term permit under 61-10-124(2)(d) or a truck-trailer-trailer or truck tractor-semitrailer-trailer-trailer combination of vehicles subject to special permits under 61-10-124(4) ~~at a speed greater than~~ *is* 55 miles an hour *unless otherwise stated in the permit.*

HeinOnline -- 1999 vol. I 131 1999

(3) A person may not operate a motor-driven cycle at any time mentioned in 61-9-201 at a speed greater than 35 miles an hour unless the motor-driven cycle is equipped with a headlamp or lamps that are adequate to reveal a person or vehicle at a distance of 300 feet ahead.

~~(4) A person may not operate a vehicle that is towing a housetrailer at a speed greater than a maximum of 50 miles an hour.~~"

Section 7. Section 61-11-203, MCA, is amended to read:

"**61-11-203. Definitions.** As used in this part, the following definitions apply:

(1) "Conviction" means a finding of guilt by duly constituted judicial authority, a plea of guilty, or a forfeiture of bail, bond, or other security deposited to secure appearance by a person charged with having committed any offense relating to the use or operation of a motor vehicle ~~which~~ *that* is prohibited by law, ordinance, or administrative order.

(2) "Habitual traffic offender" means any person who within a 3-year period accumulates 30 or more conviction points according to the schedule specified in this subsection:

(a) deliberate homicide resulting from the operation of a motor vehicle, 15 points;

(b) mitigated deliberate homicide, negligent homicide resulting from operation of a motor vehicle, or negligent vehicular assault, 12 points;

(c) any offense punishable as a felony under the motor vehicle laws of Montana or any felony in the commission of which a motor vehicle is used, 12 points;

(d) driving while under the influence of intoxicating liquor or narcotics or drugs of any kind or operation of a motor vehicle by a person with alcohol concentration of 0.10 or more, 10 points;

(e) operating a motor vehicle while the license to do so has been suspended or revoked, 6 points;

(f) failure of the driver of a motor vehicle involved in an accident resulting in death or injury to any porson to stop at the scene of the accident and give the required information and assistance, as defined in 61-7-105, 8 peints;

(g) willful failure of the driver involved in an accident resulting in property damage of $250 to stop at the scene of the accident and give the required information or failure to otherwise report an accident in violation of the law, 4 points;

(h) reckless driving, 5 points;

(i) illegal drag racing or engaging in a speed contest in violation of the law, 5 points;

(j) any of the mandatory motor vehicle liability protection offenses under 61-6-301 and 61-6-302, 5 points;

(k) operating a motor vehicle without a license to do so, 2 points (this subsection (k) does not apply to operating a motor vehicle within a period of 180 days from the date the license expired);

(l) speeding, *except as provided in [section 3(2)],* 3 points;

(m) all other moving violations, 2 points.

(3) There may not be multiple application of cumulative points when two or more charges are filed invoiving a single occurrence. If there are two or more convictions involving a single occurrence, oniy the number of points for the specific conviction carrying the highest points is chargeable against that defendant.

(4) "License" means any type of license or permit to operate a motor vehicle."

Section 8. Severability. If a part of [this act] is invaiid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 9. Codification instruction. [Section 3] is intended to be codified as an integral part of Title 61, chapter 8, part 7, and the provisions of Title 61, chapter 8, part 7, apply to [section 3].

Section 10. Repealer. Sections 61-8-304, 61-8-305, 61-8-306, 61-8-307, 61-8-718, and 61-11-103, MCA, are repealed.

Section 11. Effective date. [This act] is effective May 28, 1999.

Approved February 24, 1999

CHAPTER NO. 44

[HB 56]

AN ACT ELIMINATING THE LEGISLATIVE PAY OPTION OF REMUNERATION FOR SERVICES PERFORMED; AMENDING SECTION 5-2-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5-2-301, MCA, is amended to read:

"5-2-301. Compensation and expenses for members while in session. (1) ~~Except as provided in subsection (8), legislators~~ *Legislators* are entitled to a salary commensurate to that of the daily rate of an entry grade 8 classified state employee in effect when the regular session of the legislature in which they serve is convened under 5-2-103 for those days during which the legislature is in session. The president of the senate and the speaker of the house shall receive an additional $5 a day in salary for those days during which the legislature is in session.

(2) Legislators may serve for no salary.

(3) Subject to subsection (4), iegislators are entitled to a daily allowance, 7 days a week, during a legislative session, as reimbursement for expenses incurred in attending a session. Expense payments must stop when the legislature recesses for more than 3 days and resume when the legislature reconvenes.

(4) After November 15, and prior to December 15 of each even-numbered year, the department of administration shall conduct a survey of the allowance for daily expenses of legislators for the states of North Dakota, South Dakota, Wyoming, and Idaho. The department shall include the average daily expense allowance for Montana legislaters in determining the average daily rate for

HeinOnline -- 1999 vol. I 133 1999

legislators. The department shall include only states with specific daily allowances in the calculation of the average. If the average daily rate is greater than the daily rate for legislators in Montana, the average is the new daily rate for legislators for those days during which the legislature is in session. The expense allowance is effective when the next regular session of the legislature in which the legislators serve is convened under 5-2-103.

(5) Legislators are entitled to a mileage allowance as provided in 2-18-503 for each mile of travel to the place of the holding of the session and te return to their place of residence at the conclusion of the session.

(6) In addition to the mileage allowance provided for in subsection (5), legislators, upon submittal of an appropriate claim for mileage reimbursement to the legislative services division, are entitled to:

(a) three additional round trips to their place of residence during each regular session; and

(b) additional round trips as authorized by the legislature during special session.

(7) Legislators are not entitled to any additional mileage allowance under subsection (5) for a special session if it is convened within 7 days of a regular session.

~~(8) In lieu of the salary provided for in subsection (1) and the expense allowance provided for in subsection (4), a legislator may receive remuneration for services performed during a legislative session. A legislator choosing to receive remuneration for services performed shall file a request to receive payment under this subsection with the legislative services division. A legislator exercising the option to receive remuneration for services performed may not receive more remuneration than legislators paid pursuant to subsections (1) and (4). Remuneration for services performed must be reduced by an amount a day equal to the daily expense allowance for a legislator established under this section when the legislature recesses for more than 3 days.~~"

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 8, 1999

CHAPTER NO. 45

[HB 89]

AN ACT REVISING THE LAWS CONCERNING THE STATE EMERGENCY RESPONSE COMMISSION; REDUCING THE MEMBERS OF THE COMMISSION FROM 20 TO 19; PROVIDING FOR THE TERMS OF OFFICE OF THE MEMBERS; PROVIDING FOR THE APPOINTMENT OF TWO PRESIDING OFFICERS OF THE COMMISSION; AMENDING SECTION 10-3-1204, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-3-1204, MCA, is amended to read:

"**10-3-1204. State emergency response commission.** (1) There is a state emergency response commission that is attached to the department for administrative purposes. The commission ~~must consist~~ *consists* of ~~20~~ *19* members

appointed by the governor. The commission must include representatives of the national guard, air force, state and local fire organizations, state and local emergency medical responders, state and local law enforcement agencies, local emergency planning committees, a Montana utility company, and a railroad company doing business in the state, representatives from the department of ~~public health and human services~~ *environmental quality*, the division, the department of transportation, ~~the department of administration,~~ the department of justice, the department of fish, wildlife, and parks, and the office of the governor, and any other representatives that the governor appoints. *Members of the commission serve a term of 4 years and may be reappointed.* The members shall serve without compensation. The governor shall appoint ~~a~~ *two* presiding ~~officer~~ *officers* from the appointees, *who shall act as copresiding officers*.

(2) The commission shall implement the provisions of this part, and in so doing, the commission may create and implement a state hazardous material incident response team to respond to incidents. The members of the team must be certified in accordance with the plan.

(3) The commission may enter into written agreements with each entity or person providing equipment or services to the state hazardous material incident response team.

(4) The commission or its desiguee may direct that the state hazardous material incident response team be available and respond, when requested by a local emergency response authority, to incidents according to the plan.

(5) The commission may contract with persons to meet state emergency response needs for the state hazardous material incident response team.

(6) The commission may advise, consult, cooperate, and enter into agreements with agencies of the state and federal government, other states and their state agencies, cities, counties, tribal governments, and other persons concerned with emergency response and matters relating to and arising out of incidents.

(7) The commission may encourago, participate in, or conduct studies, investigations, training, research, and demonstrations for and with the state bazardous material incident response team, local emergency responders, and other interested persons.

(8) The commission may collect and disseminate information relating to emergency response to incidents.

(9) The commission may accept and administer grants, gifts, or other funds, conditional or otherwise, made to the state for emergency response activities provided for in this part.

(10) The commission may prepare, coordinate, implement, and update a plan, which coordinates state and local emergency authorities, to respond to incidents within the state. The plan must be consistent with this part. All state emergency response responsibilities relating to an incident must be defined by the plan.

(11) The commission has the powers and duties of a state emergency response commission under the federal Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. 11001, et seq., except that the division shall oversee the creation, annual local review, and exercise and revision of the local emergency operations plan as provided by state law.

HeinOnline -- 1999 vol. I 135 1999

(12) The commission shall promulgate rules and procedures limited to cost recovery procedures, certification of state response team members, and deployment of the state hazardous material incident response team, which must be a part of the plan.

(13) All state agencies and institutions shall cooperate with the commission in the commission's efforts to carry out its duties under this part."

Section 2. Applicability. [Section 1] applies to memhers of the state emergency response commission who are members on Octoher 1, 1999.

Approved March 8, 1999

CHAPTER NO. 46

[HB 198]

AN ACT PROVIDING FOR AN ECONOMIC IMPACT STATEMENT ON A RULE PROPOSAL UPON THE REQUEST OF 15 LEGISLATORS; AMENDING SECTIONS 2-4-405 AND 5-18-107, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-4-405, MCA, is amended to read:

"**2-4-405. Economic impact statement.** (1) Upon written request of the administrative code committee based upon the affirmative request of at least five members of the committee at an open meeting, an agency shall prepare a statement of tbe economic impact of the adoption, amendment, or repeal of a rule as proposed. *The agency shall also prepare a statement upon receipt by the agency or the committee of a written request for a statement made by at least 15 legislators. If the request is received by the committee, the committee shall give the agency a copy of the request, and if the request is received by the agency, the agency shall give the committee a copy of the request.* As an alternative, the ~~administrative code~~ committee may, by contract, prepare ~~such an~~ *the* estimate. Except to the extent that the request expressly waives any one or more of the following, the requested statement must include and the statement prepared by the committee may include:

(a) a description of the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule;

(b) a description of the probable economic impact of the proposed rule upon affected classes of porsons and quantifying, to the extent practicable, that impact;

(c) the prohable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state ~~revenues~~ *revenue*;

(d) an analysis comparing the costs and benefits of the proposed rule to the costs and benefits of inaction;

(e) an analysis that determines whether there are less costly or less intrusive methods for achieving the purpose of the proposed rule;

(f) an analysis of any alternative methods for achieving the purpose of the proposed rule that were seriously considered hy the agency and the reasons why they were rejected in favor of the proposed rule;

(g) a determination as to whether the proposed rule represents an efficient allocation of public and private resources; and

(h) a quantification or description of the data upon which suhsections (1)(a) through (1)(g) are based and an explanation of how the data was gathered.

(2) A request to an agency for a statement or a decision to contract for the preparation of a statement must he made ~~by the committee~~ prior to the final agency action on the rule. The statement must be filed with the administrative code committee within 3 months of the ~~committee's~~ request or decision. ~~The committee may withdraw its~~ *A* request or decision for an economic impact statement *may be withdrawn* at any time.

(3) Upon receipt of an impact statement, the committee shall determine the sufficiency of the statement. If the committee determines that the statement is insufficient, the committee may return it to the agency or other person who preparod the statement and request that corrections or amendments be made. If the committee determines that the statement is sufficient, a notice *including a summary of the statement and* indicating where a copy of the statement ınay be obtained must be filed with the secretary of state for publication in the register by the agency preparing the statement or by the committee, if the statement is prepared under contract by the committee, and must be mailed to persons who have registered advance notice of the agency's rulemaking proceedings.

(4) This section does not apply to rulemaking pursuant to 2-4-303.

(5) The final adoption, amendment, or repoal of a rule is not suhject to challenge in any court as a result of the inaccuracy or inadequacy of a statement required under this section.

(6) An environmental impact statement prepared pursuant to 75-1-201 that includes an analysis of the factors listed in this section satisfies the provisions of this section."

Section 2. Section 5-18-107, MCA, is amended to read:

"5-18-107. Powers and duties of committee — duty to review revenue rules — legislative oversight of department of revenue — committee reports — revenue estimating and use of estimates — coal tax oversight. (1) The committee shall review all proposed rules of the department of revenue filed with the secretary of state.

(2) The committee may:

(a) request and obtain the department's rulemaking records for the purpose of reviewing compliance with 2-4-305;

(b) prepare written recommendations for the adoption, amendment, or rejection of a rule and submit the recommendations to the department;

(c) submit oral or written testimony at a rulemaking hearing;

(d) require the department to appear before the committee and respond to the committee's recommendations for the adoption, amendment, or rejection of a rule;

(e) require that a rulemaking hearing be held in accordance with the provisions of 2-4-302 through 2-4-305;

HeinOnline -- 1999 vol. I 137 1999

(f) recommend to the legislature the repeal, amendment, or adoption of a rule as provided in 2-4-412;

(g) institute, intervene in, or otherwise participate in proceedings involving the legality of a rule under the Montana Administrative Procedure Act in the state and federal courts and administrative agencies;

(h) review the incidence and conduct of the department's administrative proceedings;

(i) require the department to publish the full or partial text of any pertinent material adopted by reference under 2-4-307;

(j) by an affirmative vote of at least six members of the committee, contract for the preparation of an economic impact statement or require the department to prepare an economic impact statement, following the provisions of 2-4-405~~;~~. *The department shall also prepare a statement upon written request as provided in 2-4-405.*

(k) petition the department to promulgate, amend, or repeal a rule. Within 60 days after submission of a petition, the department shall either deny the petition in writing, stating its reasons for the denial, or initiate rulemaking proceedings in accordance with 2-4-302 through 2-4-305.

(l) make written objection to a proposed rule of the department for lack of substantial compliance with 2-4-302 through 2-4-305. The provisions of 2-4-406 govern the objection procedure, the department's response, and the procedure for and effect of publication of the objection in the Montana Administrative Register and the Administrative Rules of Montana.

(m) petition the department for a declaratory ruling as to the applicability of any statutory provision or of any rule or order of the department. A copy of a declaratory ruling must be filed with the secretary of state for publication in the ~~register~~ *Montana Administrative Register*. A declaratory ruling or the refusal to issue a ruling is subject to judicial review in the same manner as decisions or orders in contested cases under the Montana Administrative Procedure Act.

(n) petition for judicial review of the sufficiency of the reasons for the department's finding of imminent peril to the public health, safety, or welfare, cited in support of an emergency or temporary rule proposed by the department under 2-4-303; and

(o) require the department to conduct the biennial review of its rules as required in 2-4-314 and report its findings to the committee.

(3) The committee shall exercise legislative oversight of the department ~~of revenue~~, including without limitation the review of:

(a) proposed budgets;

(b) proposed legislation;

(c) pending litigation; and

(d) major contracts and personnel actions of the department.

(4) The committee may investigate and issue reports on any matter concerning taxation or the department ~~of revenue~~.

(5) (a) The committee ~~shall~~ *must* have prepared by December 1 for introduction during each regular session of the legislature in which a revenue bill

is under consideration an estimate of the amount of revenue projected to he available for legislative appropriation.

(b) The committee's estimate, as introduced in the legislature, constitutes the legislature's current revenue estimate until amended or until final adoption of the estimate by both houses. It is intended that the legislature's estimates and the assumptions underlying the estimates will be used by all agencies with responsibilities for estimating ~~revenues~~ *revenue* or costs, including the preparation of fiscal notes.

(c) The legislative services division shall provide staff assistance to the committee. The committee may request the assistance of the staffs of the office of the legislative fiscal analyst, the legislative auditor, the department ~~of revenue~~, and any other agency that has information regarding any of the tax or revenue bases of the state.

(6) The committee may:

(a) review tbe programs financed by coal severance tax funds;

(b) consider any matters relating te coal taxation; and

(c) prepare for the legislature a report, as provided in 5-11-210, on potential uses of the coal tax trust fund to develop a stable, strong, and diversified Montana economy that meets the needs of present and future generations of Montanans while maintaining and improving a clean and healthful environment as required by Article IX, section 1, of the Montana constitution."

Section 3. Effective date. [This act] is effective July 1, 1999.

Approved March 8, 1999

CHAPTER NO. 47

[HB 319]

AN ACT EXTENDING AUTHORITY TO JOINTLY CREATE CITY-COUNTY BOARDS OF HEALTH TO ALL CLASSES OF CITIES; AND AMENDING SECTION 50-2-106, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-2-106, MCA, is amended to read:

"50-2-106. City-county boards of bealtb. (1) By mutual agreement between the county commissioners and the governing body of the city *or cities*, the county and a ~~first-or second-class~~ city or cities may form a city-county board of health.

(2) A city-county board of health consists of:

(a) one person appointed by the county commissioners who serves at their pleasure;

(b) one person appeinted by the governing body of each city that participates in the city-county board who serves at the pleasure of the appointing governing body;

(c) additional members appointed by the county commissioners and governing body or bodies of the city or cities participating in the city-county board

HeinOnline -- 1999 vol. I 139 1999

as mutually agreed upon who serve at the pleasure of the appointing commissioners or governing body.

(3) The hoard ~~shall~~ *must* be composed of at least five persons. Terms of appointed members ~~shall~~ *must* he staggered and ~~shall~~ *must* be for 3 years each.

(4) By mutual agreement hetween the county commissioners and the geverning body of the city *or cities*, they shall establish the staggered order of terms and all regulations necessary to establish and maintain the board."

Approved March 8, 1999

CHAPTER NO. 48

[SB 171]

AN ACT PROVIDING THAT LANDOWNER PERMISSION IS REQUIRED FOR ALL HUNTING ON PRIVATE PROPERTY; PROVIDING A PENALTY FOR A FIRST OFFENSE; REQUIRING THE COOPERATIVE DEVELOPMENT OF LAND OWNERSHIP MAPS TO ASSIST IN BOUNDARY IDENTIFICATION; AMENDING SECTION 87-3-304, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the act of hunting on private land is a privilege and not a right; and

WHEREAS, it is common courtesy to ask permission before entering private property; and

WHEREAS, increased communication normally leads to less confrontation; and

WHEREAS, with increased hunting pressure placed on private land, it is essential to maintain good rapport between landowners and hunters.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-3-304, MCA, is amended to read:

"**87-3-304. Landowner's permission required for ~~big game~~ hunting — *penalty.*** *(1)* Every resident and nonresident must have obtained permission of the landowner, *the* lessee, or their agents before ~~hunting~~ *taking or attempting to take nongame wildlife or predatory animals or hunting* ~~big game animals~~ on private property.

(2) Except for hunting big game animals on private property, a person who violates this section shall, upon conviction for a first offense, be fined an amount not to exceed $25."

Section 2. Development of maps identifying land ownership boundaries. In recognition of potential problems associated with identifying property boundaries in the field when seeking permission for hunting, the department shall work cooperatively with all state and federal land management agencies, state and local organizations representing hunters, state and local landowner organizations, and other interested persons to develop accurate land ownership maps that identify land ownership boundaries in the state.

HeinOnline -- 1999 vol. I 140 1999

Section 3. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 87, chapter 3, part 3, and the provisions of Title 87, chapter 3, part 3, apply to [section 2].

Section 4. Effective date. [This act] is effective July 1, 1999.

Approved March 10, 1999

CHAPTER NO. 49

[HB 10]

AN ACT APPROPRIATING OIL OVERCHARGE MONEY FOR PROGRAMS ADMINISTERED BY THE STATE OF MONTANA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Policy. [Sections 1 through 13] implement the policy stated in 90-4-210.

Section 2. Definitions. As used in [sections 1 through 13], the following definitions apply:

(1) "Carryover" means unspent oil overcharge funds previously appropriated and incorporated into an approved program plan for one of the federal energy conservation programs, but not included in unspent project funds as defined in subsection (8).

(2) "Cities service payments" means the oil overcharge payments made to the U.S. treasury for distribution to the state of Montana pursuant to the consent agreement between cities service oil and gas and the U.S. department of energy, as affirmed by the federal energy regulatory commission, and any interest accrued on the payments.

(3) "Diamond shamrock payments" means the oil overcharge payments made to the U.S. treasury for distribution to the state of Montana as the result of the final settlement agreement in the U.S. district court for the southern district of Ohio eastern division in civil action No. C2-84-1432 and any interest accrued on the payments.

(4) "Exxon payments" means the oil overcharge payments made by the exxon corporation to the U.S. treasury for distribution to the state of Montana pursuant to the order of the U.S. district court for the District of Columbia in civil action No. 78-1035 and any interest accrued on the payments.

(5) "Getty oil payments" means the oil overcharge payments made to the U.S. treasury for distribution to the state of Montana pursuant to the order of disbursement issued in civil action No. 77-347 (MMS) in the U.S. district court for the district of Delaware and any interest accrued on the payments.

(6) "Stripper well payments" means the oil overcharge payments made to the U.S. treasury for distribution to the state of Montana as the result of the final settlement agreement in the U.S. district court for the district of Kansas, Cause No. M.D.L. 378, and any interest accrued on the payments. The term also includes but is not limited to cities service payments, as defined in subsection (2), getty oil payments, as defined in subsection (5), texaco payments, as defined in subsection (7), and any unspent project funds, as defined in subsection (8).

HeinOnline -- 1999 vol. I 141 1999

(7) "Texaco payments" means the oil overcharge payments made to the U.S. treasury for distribution to the state of Montana pursuant to the texaco final consent order, 53 Fed. Reg. 32929, August 29, 1988, and any interest accrued on the payments.

(8) "Unspent project funds" means stripper well payments that were not expended or otherwise legally obligated during the 1999 biennium but were appropriated for the 1999 biennium in Chapter 526, Laws of 1997, in:

(a) section 4;

(b) section 5;

(c) section 6;

(d) section 7;

(e) section 8;

(f) section 9;

(g) section 10;

(h) section 11;

(i) section 12; and

(j) section 13.

Section 3. Deposit of oil overcharge revenue. All funds from stripper well and exxon payments must be deposited by the state treasurer in the federal special revenue fund. All interest earned on any of these funds or payments also must be deposited in the federal special revenue fund.

Section 4. Matching funds for low-income energy assistance — appropriation. (1) There is appropriated $300,000 from the stripper well payments contained in the federal special revenue fund to the department of public health and human services for the purpose described in subsection (2) and under the restrictions contained in subsection (3).

(2) The department of public health and human services shall match private contributions to energy share, inc. to be used to address home heating emergencies encountered by households with incomes between 0% and 150% of federal peverty guidelines who are not eligible for federal low-income energy assistance or who have not received federal low-income energy assistance in the current program year. All of the funds appropriated to the department for this purpose under subsection (1) must be used for clients' emergency energy needs.

(3) In the event a combination of the oil overcharge funds appropriated in subsection (1) and universal system benefits funds designated to energy share, inc. exceeds $400,000 in fiscal year 2000 or in fiscal year 2001, the excess amount must be subtracted from the appropriation of oil overcharge funds provided in subsection (1) for that fiscal year and a like amount shall be added to the oil overcharge funds appropriated in [section 5] for low-income home weatherization, except that the biennial appropriation for low-income home weatherization provided in [section 5] shall not exceed $695,000 under any condition.

Section 5. Low-income home weatherization — appropriation. There is appropriated $500,000 from the stripper well payments contained in the federal special revenue fund to the department of public health and human services for use in the home weatherization program created in 90-4-201.

HeinOnline -- 1999 vol. I 142 1999

Section 6. Affordable, efficient housing plan book — appropriation. There is appropriated $40,000 from the stripper well payments contained in the federal special revenue fund to the department of environmental quality to assist in the preparation, production, and distribution of a plan book containing affordable, energy-efficient house designs developed in cooperation with the Montana building industries association, the department of commerce, local building code officials, and other entities.

Section 7. Food bank network transportation — appropriation. There is appropriated $15,000 from the stripper well payments contained in the federal special revenue fund to the department of public health and human services for use in assisting the Montana food bank network with coordinated energy-efficient transportation of food to drop sites and local food banks statewide.

Section 8. Transportation to nutrition sites — appropriation. There is appropriated $11,000 from the stripper well payments contained in the federal special revenue fund to the department of public health and human services for grants to the area agencies on aging to provide transportation for seniors to nutrition sites. The area agencies on aging shall apply to the department of public health and human services for these funds.

Section 9. Low-income weatherization — appropriation. In addition to the appropriations in [sections 4 and 5], there is appropriated $200,000 from the stripper well payments contained in the federal special revenue fund to the department of public health and human services for use in the home weatherization program created in 90-4-201.

Section 10. Montana public and private organizations becoming consortium partners — appropriation. There is appropriated $50,000 from the stripper well payments contained in the federal special revenue fund to the department of environmental quality to provide a grant to the national center for appropriate technology to initiate the formation of a Montana advanced transportation technologies consortium focusing on vehicles traditionally powered by two-stroke engines. The national center for appropriate technology will integrate its transportation technology development services with other western regional consortium and national programs, as recommended by the western governors' association and the western interstate energy board, to provide specialized business assistance, to attract development financing and production capital, and to promote regional industrial growth for the clean transportation technologies fostered by the consortium.

Section 11. Carryover — reappropriations. There is reappropriated $28,000 from the stripper well payments, $51,000 from the exxon payments, and $66,000 from the diamond shamrock payments contained in the federal special revenue fund to the department of environmental quality to fund the state energy program administered by the department pursuant to 10 CFR 420. There is reappropriated up to $40,000 of stripper well payments contained in the federal special revenue fund at the department of administration to help establish a refueling infrastructure that will support the use of ethanol-fueled vehicles.

Section 12. Conditions applied to appropriations. (1) The appropriations made in [sections 4 through 10] are biennial appropriations. One-half of the total amount appropriated to each program in [sections 4 through 10] is appropriated in fiscal year 2000, and the remainder is appropriated in fiscal year 2001. As biennial appropriations, the unexpended funds appropriated in fiscal

HeinOnline -- 1999 vol. I 143 1999

year 2000 may be carried forward within each program to fiscal year 2001, subject to the specific conditions governing each appropriation.

(2) The appropriations in [section 11] are limited to available funds. Expenditures of carryover funds for the state energy program may not exceed the actual amount of unspent funds available at the department of environmental quality. Total expenditures of stripper well funds to help establish a refueling infrastructure that will support the use of ethanol-fueled vehicles may not exceed $70,000 for the 1999 and 2001 biennia.

Section 13. Appropriations prioritized. (1) The appropriations in [sections 4 through 10] are approved in order of priority as they appear in [sections 4 through 10], with the appropriation in [section 4] having the highest priority and the appropriation in [section 10] having the lowest priority. If the U.S. department of energy does not approve one or more of the programs that are funded by [sections 4 through 10], any stripper well payments that are not used to fund the higher priority program must be provided to the lower-ranked program up to the amounts appropriated in [sections 4 through 10].

(2) If stripper well payments are insufficient to fully fund the appropriations made in [sections 4 through 10], allocations to the lowest ranking program must be reduced until the deficiency is eliminated. If the deficiency is in excess of the appropriation to the lowest ranking program, the next lowest ranking program must have its appropriation reduced until the deficiency is eliminated and so forth as the programs are prioritized. These priorities must be applied to one-half of the total amount appropriated in [sections 4 through 10] for fiscal year 2000 and to the remaining appropriation for fiscal year 2001.

(3) In order to provide continuity for the programs when establishing the appropriations for each fiscal year of the 2001 biennium, anticipated stripper well payments that will be received under terms of the stripper well agreement during the biennium may be considered as available to fund the activities.

(4) The expenditure of money appropriated by [sections 4 through 10] may not exceed the amount of the stripper well payments available in the biennium.

Section 14. Coordination instruction. If House Bill No. 12 is passed and approved, the stripper well payments appropriated in House Bill No. 12 have a higher priority than any appropriation of stripper well payments in [sections 4 through 11].

Section 15. Effective date. [This act] is effective July 1, 1999.

Approved March 15, 1999

CHAPTER NO. 50

[HB 12]

AN ACT AUTHORIZING THE ISSUANCE OF GENERAL OBLIGATION BONDS TO FUND THE STATE BUILDING ENERGY CONSERVATION PROGRAM; APPROVING ENERGY CONSERVATION PROJECTS FOR FISCAL YEARS 2000 AND 2001; APPROPRIATING BOND PROCEEDS TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY; PLEDGING THE CREDIT OF THE STATE OF MONTANA TO SECURE THE BONDS TO BE ISSUED; REAPPROPRIATING STRIPPER-WELL PAYMENTS CONTAINED IN THE FEDERAL SPECIAL REVENUE FUND; AMENDING THE

HeinOnline -- 1999 vol. I 144 1999

PROCEDURE FOR IDENTIFYING BUILDINGS THAT HAVE A POTENTIAL FOR ENERGY SAVINGS AND THE AUTHORITY TO TRANSFER FUNDS FOR DESIGNING AND CONSTRUCTING ENERGY IMPROVEMENTS; AMENDING SECTIONS 90-4-605 AND 90-4-607, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-4-605, MCA, is amended to read:

"**90-4-605. Proparation of energy conservation program.** (1) ~~Before June 30 of each odd-numbered year, the department shall inform, in writing, each state agency of the energy conservation program and request agencies interested in participating in the program to contact the department.~~ The department shall work with ~~these~~ *state* agencies to identify buildings that have a potential for energy savings, based on age, energy use, function, and condition of the building.

(2) Based on the criteria in subsection (1) and on the feasibility of leveraging other funds, such as federal and utility energy conservation program money, the department shall select certain facilities for ~~in-depth~~ *indepth* energy analyses to identify the technical and financial feasibility of making energy conservation improvements to the facilities.

(3) During the energy analyses, the department shall consult with the utilities that serve the selected facilities to discuss potential impacts on the utilities and their customers of making energy conservation improvements to these facilities.

(4) Upon completion of the energy analyses, the department shall submit to the governor its findings and a list of projects recommended for funding under the energy conservation program. The department shall identify estimated costs and savings to the state based on these analyses.

(5) The department shall compile a report that must include the following:

(a) a listing of contacts between the department and other state agencies;

(b) a summary of the department's review of agency requests and a selection of projects for ~~in-depth~~ *indepth* analysis;

(c) a summary of the energy analyses conducted by the department, including the estimated cost of each proposed project and the estimated energy cost savings of each proposed project;

(d) a description of measures taken by the department to address the issues that were raised in the consultation with the affected utilities; and

(e) if a fuel switching measure is proposed, an analysis of the costs to the affected utility and its customers and of the benefits to the state.

(6) If a fuel switching measure is proposed, the department shall demonstrate through the analysis required by subsection (5)(e) that the benefits to the state exceed the costs to the utility and its customers.

(7) The department shall submit the report required by subsection (5) to the governor before September 1 of each even-numbered year."

Section 2. Section 90-4-607, MCA, is amended to read:

"**90-4-607. Duties of department.** In addition to the duties set forth in 90-4-605, the department is authorized to:

HeinOnline -- 1999 vol. I 145 1999

(1) analyze state utility data to identify high-potential energy conservation projects;

(2) perform comprehensive energy analyses on state-owned buildings, structures, and facilities, contracting with private engineers when necessary;

(3) transfer funds and authority to the department of administration to:

(a) procure design and construction of cost-effective energy improvements; *and*

(b) transfer funds and authority to other agencies to procure, design, and construct cost-effective energy improvements; and

(4) train facility maintenance staff in energy saving techniques and maintenance of energy improvements and monitor energy conservation projects to ensure that cost savings are realized and are adequate to cover the debt service if bonds have been issued to fund the improvements."

Section 3. Stripper-well payments — reappropriation — definition — priority. (1) There is reappropriated from the stripper-well payments contained in the federal special revenue fund to the department of environmental quality $100,000 to fulfill duties authorized by 90-4-605 and 90-4-607. The original appropriation was contained in section 9, Chapter 597, Laws of 1989. The reappropriation is a biennial appropriation.

(2) (a) "Stripper-well payments" means the oil overcharge payments made to the United States treasury for distribution to the state of Montana as the result of the final settlement agreement in Cause No. M.D.L. 378, United States district court for the district of Kansas, and any interest accrued on the payments.

(b) The term does not include stripper-well payments that have been expended or legally obligated or that have been incorporated into any of the existing federal energy programs as the result of prior appropriations by the legislature.

(3) The stripper-well payments reappropriated in this section have a higher priority than any other appropriation of stripper-well payments for fiscal years 2000 and 2001.

Section 4. Appropriations of bond proceeds. There is appropriated from bond proceeds authorized by Chapter 571, Laws of 1991, Chapter 350, Laws of 1993, Chapter 61, Laws of 1995, Chapter 81, Laws of 1997, and [section 6], $450,000 to the department of environmental quality to fulfill duties under 90-4-605 and 90-4-607. This appropriation is a biennial appropriation.

Section 5. Approval of energy conservation projects — definition. (1) Pursuant to Title 90, chapter 4, part 6, the legislature approves the following energy conservation projects for fiscal years 2000 and 2001.

University of Montana

Science Complex, Missoula

Montana State University

Cowan Hall Remodel, Havre

Special Education Building, Billings

Department of Administration

Justice Building

Department of Transpertation

HeinOnline -- 1999 vol. I 146 1999

Signal Light Retrofit Project

University of Montana

Grizzly Pool

Department of Military Affairs

Maintenance Shop Building, Helena

(2) In addition to the energy conservation projects listed in subsection (1), the department of environmental quality may expend funds appropriated under [section 6] to respond to lost energy saving opportunities. This includes coordination of energy improvement projects with the long-range building program's capital improvement projects.

(3) For purposes of this section, a "lost energy saving opportunity" means an opportunity to improve energy use that would provide significant energy and cost savings to the state and that will be technically infeasible or uneconomical if the department of environmental quality is delayed in providing the necessary funds until specific legislative approval can be obtained.

(4) If the costs of the projects authorized in subsections (1) and (2) are substantially below the bond amount authorized in [section 6], the department of environmental quality may fund projects that otherwise would be proposed as part of the state building energy conservation package for fiscal years 2002 and 2003.

Section 6. Bond authorization — appropriation of bond proceeds. (1) The board of examiners may, pursuant to 90-4-611, issue and sell bonds of the state in an aggregate principal amount not to exceed $3 million for fiscal years 2000 and 2001 for the projects approved in [section 5] and to fulfill duties authorized by 90-4-605 and 90-4-607, as provided in [section 4]. The bonds are general obligations for which the full faith and credit and taxing powers of the state are pledged for payment of the principal and interest on the bonds. The bonds must be issued as provided by Title 17, chapter 5, part 8.

(2) The proceeds of the bonds, other than any premiums and accrued interest received, must be deposited in the energy conservation program account established by 90-4-612. Premiums and accrued interest must be deposited in the debt service fund established in 17-2-102. Proceeds of bonds deposited in the energy conservation program account may be used to pay the costs of issuing the bonds, to fulfill duties authorized by 90-4-605 and 90-4-607, and to fund the projects approved in [section 5]. For purposes of 17-5-803 and 17-5-804, the energy conservation program account constitutes a capital projects account. The bond proceeds must be available to the department of environmental quality and may be used for the purposes authorized in this section without further budgetary authorization.

Section 7. Requirements for approval of state debt. Because [section 6] authorizes the creation of state debt, Article VIII, section 8, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for enactment of [section 6].

Section 8. Effective date. [This act] is effective July 1, 1999.

Approved March 15, 1999

HeinOnline -- 1999 vol. I 147 1999

CHAPTER NO. 51

[HB 38]

AN ACT GENERALLY REVISING AND CLARIFYING THE MONTANA CODE ANNOTATED; DIRECTING THE CODE COMMISSIONER TO CORRECT ERRONEOUS REFERENCES CONTAINED IN MATERIAL ENACTED BY THE 56TH LEGISLATURE; AMENDING SECTIONS 2-11-103, 2-16-403, 2-16-405, 2-16-619, 2-17-803, 3-5-211, 5-4-301, 5-12-302, 7-4-2506, 7-4-2512, 7-6-2317, 7-7-2203, 7-22-2144, 10-2-601, 13-1-112, 13-2-122, 13-2-221, 13-27-204, 13-27-206, 13-27-207, 13-27-302, 13-27-307, 13-36-203, 13-37-250, 15-1-112, 15-6-135, 15-17-323, 15-24-602, 15-24-1401, 15-24-2402, 15-31-121, 15-31-124, 15-31-702, 15-35-103, 15-36-314, 15-36-315, 15-50-101, 15-61-102, 15-62-204, 16-4-202, 16-4-207, 16-10-403, 17-1-505, 17-1-508, 17-3-222, 17-7-502, 18-3-110, 18-4-242, 18-8-202, 19-3-316, 19-3-412, 19-3-509, 19-6-802, 19-7-802, 19-8-105, 20-15-203, 25-13-701, 25-31-119, 25-35-508, 25-35-602, 25-35-606, 27-1-306, 27-1-704, 30-10-115, 30-10-209, 30-16-201, 32-1-440, 32-8-314, 32-8-403, 35-2-429, 37-13-316, 39-71-116, 40-5-225, 40-5-273, 40-5-413, 41-5-347, 42-2-608, 46-23-302, 50-3-109, 50-78-102, 61-3-448, 61-3-506, 61-3-721, 61-4-101, 61-8-404, 69-14-112, 70-1-301, 70-20-103, 70-21-203, 70-28-207, 71-1-306, 72-2-524, 72-3-104, 72-31-201, 75-10-743, 81-4-307, AND 81-4-510, MCA; REPEALING SECTIONS 7-2-2301, 7-2-2302, 7-2-2303, 7-2-2311, 7-2-2312, 7-2-2313, 7-2-2314, 7-2-2315, 7-2-2316, 7-2-2317, 7-2-2318, 7-2-2319, 15-35-201, 15-35-202, 15-35-203, 15-35-204, AND 15-35-205, MCA; AND PROVIDING EFFECTIVE DATES AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-11-103, MCA, is amended to read:

"2-11-103. Definitions. As used in this part, the following definitions apply:

~~(1) "Aggrieved" means that a person can demonstrate a specific personal and legal interest, as distinguished from a general interest, that has been adversely affected.~~

~~(2)~~*(1)* (a) "Government act" means the denial or issuance with conditions of a permit, certificate, license, or the equivalent of a permit, certificate, or license issued by a government entity.

(b) The term does not mean:

(i) litigation in which a government entity or other person litigates the authority of the government entity to take an act provided in subsection ~~(2)(a)~~ *(1)(a)*;

(ii) an act provided in subsection ~~(2)(a)~~ *(1)(a)* for which a citation or warning is issued, other than the statement required by 2-11-104, on which a reference clearly appears to the legal authority for the government action; or

(iii) a legislative act by the state of Montana.

~~(3)~~*(2)* "Government entity" means a state agency or a local government unit.

~~(4)~~*(3)* "Local government unit" means a city, county, town, unincorporated municipality or village, or special taxing unit or district and any commission, board, bureau, or other office of the unit.

~~(5)~~*(4)* "Rule" has the meaning provided in 2-4-102.

HeinOnline -- 1999 vol. I 148 1999

~~(6)~~*(5)* "State agency" has the meaning provided in 2-4-102(2)(a).

~~(7)~~*(6)* "Statement of government authority" or "statement" means the statement required by 2-11-104."

Section 2. Section 2-16-403, MCA, is amended to read:

"2-16-403. Salaries of supreme court justices. ~~(1) Subject to subsection (3), the salary of the chief justice of the supreme court is as follows:~~

~~(a) $67,595 beginning July 1, 1995;~~

~~(b) $70,231 beginning January 1, 1996.~~

~~(2) Subject to subsection (3), the salary of a justice of the supreme court is as follows:~~

~~(a) $66,280 beginning July 1, 1995;~~

~~(b) $68,874 beginning January 1, 1996.~~

~~(3)~~ Prior to June 30~~, 1996, and prior to June 30~~ of each even-numbered year ~~thereafter~~, the department of administration shall conduct a salary survey of justices and chief justices of the highest appellate courts similar to the Montana supreme court for the states of North Dakota, South Dakota, Wyoming, and Idaho. The department shall include the salary for a Montana supreme court justice or the chief justice in determining the average salary for a justice and the average salary for the chief justice. If the average salaries are greater than the salaries for a supreme court justice or the chief justice in Montana, then beginning July 1~~, 1997~~ *of the year following the year in which the survey is conducted*, the average salaries are the new salaries for a supreme court justice or the chief justice. ~~In each year following the year in which a survey is conducted, the average salary is the new salary for the position.~~ A justice's salary or the chief justice's salary may not be reduced."

Section 3. Section 2-16-405, MCA, is amended to read:

"2-16-405. Salaries of certain elected state officials. (1) ~~Subject to subsection (2), the~~ *The* salaries paid to ~~certain~~ *the following* elected officials ~~of the state of Montana~~ are *determined as provided in subsection (2)*:

(a) ~~Governor, $59,310.~~ *governor;*

(b) ~~Lieutenant~~ *lieutenant* governor;~~, $43,242.~~

(c) ~~Attorney~~ *attorney* general;~~, $54,329.~~

(d) ~~State~~ *state* auditor;~~, $40,101.~~

(e) ~~Superintendent~~ *superintendent* of public instruction;~~, $47,208.~~

(f) ~~Public~~ *public* service commission presiding officer;~~, $44,615.~~

(g) ~~Public~~ *public* service commissioners, other than presiding officer;~~, $43,242.~~

(h) ~~Secretary~~ *secretary* of state;~~, $40,101.~~

(i) ~~Clerk~~ *clerk* of the supreme court~~, $39,044~~.

(2) Before June 30 of each even-numbered year, the department of administration shall conduct a salary survey of executive branch officials with similar titles to the Montana officials listed in subsection (1) for the states of North Dakota, South Dakota, Wyoming, and Idaho. The department shall include

HeinOnline -- 1999 vol. I 149 1999

the salary for the Montana official in determining the average salary for the officials with similar titles. If the average salary is greater than the salary for the official in Montana, then beginning July 1~~, in each~~ *of the* year following the year in which ~~a~~ *the* survey is conducted, the average salary is the new salary for the official."

Section 4. Section 2-16-619, MCA, is amended to read:

"2-16-619. Submission of circulation sheets — certification of signatures. (1) Signed circulation sheets or sections of a petition for recall must he submitted to the officer responsible for registration of electors in the county in which the signatures were obtained within 3 months of the date the form of the petition was approved under 2-16-617.

(2) An affidavit, in substantially the following form, ~~shall~~ *must* be attached to each circulation sheet or section submitted to the county officer:

(Name of person circulating petition), being first sworn, deposes and says: I circulated or assisted in circulating the petition to which this affidavit is attached, and I believe *that* the signatures ~~thereon~~ *on the petition* are genuine~~,~~ *and* are the signatures of the persons whose names they purport to be~~,~~ and that the signers knew the contents of the petition before signing the ~~same~~ *petition.*

..... (Signature)

Subscribed and sworn before me this .... day of ....., ~~19...~~ *20...*

..... (Person authorized to take oaths)

Seal ..... (Title or notarial information)"

Section 5. Section 2-17-803, MCA, is amended to read:

"2-17-803. Capitoi complex advisory council establishcd — membership — staff services — compensation. (1) There is a capitol complex advisory council.

(2) The council consists of nine members as follows:

(a) two members of the house of representatives appointed by the speaker on a bipartisan basis;

(b) two members of the senate appointed by tbe committee on committees on a bipartisan basis;

(c) a public representative appointed by the governor; and

(d) the director or the director's designee of each of the following agencies:

(i) the Montana historical seciety established in 22-3-101;

(ii) the Montana arts council established in 2-15-1513;

(iii) the department of administration established in 2-15-1001; and

(iv) the department of fish, wildlife, and parks established *in* 2-15-3401.

(3) The council shall select a presiding officer, who may call meetings to conduct council business. The departments of administration and fish, wildlife, and parks shall provide staff services to the council.

(4) (a) The council member appointed under subsection (2)(c) is entitled to compensation not to exceed the ~~amount~~ *daily allowance* provided for in 5-2-301(3) for compensation of legislators for each day in which the member is

HeinOnline -- 1999 vol. I 150 1999

actually and necessarily engaged in performing council duties and to travel expense reimbursement as provided in 2-18-501 through 2-18-503.

(b) A council member designated under subsection (2)(d) is not entitled to compensation for services as a member of the council.

(c) A council member appointed under ~~subsections~~ *subsection* (2)(a) or (2)(b) is entitled to compensation and expenses as provided in 5-2-302."

Section 6. Section 3-5-211, MCA, is amended to read:

"3-5-211. Salaries and expenses of district *court* judges. ~~(1) Subject to subsection (2), the annual salary of each district judge is as follows:~~

~~(a) $63,178;~~

~~(b) $64,979 beginning July 1, 1995;~~

~~(c) $67,513 beginning January 1, 1996.~~

~~(2)~~*(1)* Prior to June 30~~, 1996, and prior to June 30~~ of each even-numbered year ~~thereafter~~, the department of administration shall conduct a salary survey of judges of courts of general jurisdiction similar to the Montana district courts for the states of North Dakota, South Dakota, Wyoming, and Idaho. The department shall include the salary for a Montana district court judge in determining the average salary. If the average salary is greater than the salary for a district court judge in Montana, then beginning July 1~~, 1997~~ *of the year following the year in which the survey is conducted*, the average *salary* is the new salary for that position. ~~In each year following the year in which a survey is conducted, the average salary is the new salary for the position.~~ A district court judge's salary may not be reduced.

~~(3)~~*(2)* Actual and necessary expenses for each district *court* judge ~~shall be~~ *are* the travel expenses, as defined and provided in 2-18-501 through 2-18-503, incurred in the performance of ~~his~~ *the district court judge's* official duties."

Section 7. Section 5-4-301, MCA, is amended to read:

"5-4-301. Bills received by ~~the~~ governor — how endorsed. Each bill passed by the legislature, except bills proposing amendments to the Montana constitution, bills ratifying proposed amendments to the United States constitution, resolutions, and initiative and referendum measures, ~~shall~~ *must* be submitted to the governor for ~~his~~ *the governor's* signature. Each bill must, as soon as *it is* delivered to the governor, be endorsed as follows: "This bill was received by the governor this .... day of ...., ~~19..~~ *20...*". The endorsement must be signed by *the governor or by* an assistant authorized by the governor ~~or by the governor himself~~."

Section 8. Section 5-12-302, MCA, is amended to read:

"5-12-302. Fiscal analyst's duties. The legislative fiscal analyst shall:

(1) provide for fiscal analysis of state government and accumulate, compile, analyze, and furnish information bearing upon the financial matters of the state that is relevant to issues of policy and questions of statewide impertance, including but not limited to investigation and study of the possibilities of effecting economy and efficiency in state government;

(2) estimate revenue from existing and proposed taxes;

HeinOnline -- 1999 vol. I 151 1999

(3) analyze the executive budget and budget requests of selected state agencies and institutions, including proposals for the construction of capital improvements;

~~(4) for the legislative session convening in January 1997, following receipt of the information required in 17-7-122 from the governor and in 17-7-123 from the budget director in a mutually prescribed format, publish the governor's budget and incorporate the information required by 17-7-123 in a combined governor's budget and legislative fiscal analyst's budget analysis presentation. The combined budget and budget analysis presentation must be made available to the legislature prior to the convening date set for a regular session of the legislature. The cost of printing the combined budget and budget analysis presentation must be shared proportionally by the office of budget and program planning and the legislative finance division. This section does not prohibit the legislative fiscal analyst from including any analysis and comments on any portion of the executive budget in the combined budget and budget analysis presentation.~~

~~(5)~~*(4)* make the reports and recommendations that the legislative fiscal analyst considers desirable to the legislature and make reports and recommendations as requested by the legislative finance committee and the legislature;

~~(6)~~*(5)* assist committees of the legislature and individual legislators in compiling and analyzing financial information; and

~~(7)~~*(6)* assist the revenue oversight committee in performing its revenue estimating duties under 5-18-107(5)."

Section 9. Section 7-4-2506, MCA, is amended to read:

"7-4-2506. Affidavit required for deputy to receive salary. The board ~~must~~ *may* not order the payment of the compensation of ~~any~~ *a* deputy until ~~he~~ *the deputy* has signed and filed with the county clerk the following affidavit:

State of Montana

County of .....

I ~~do~~ swear that I have rendered services as deputy .... for the month of ...., ~~19..~~ *20...*, ~~and~~ that I am entitled to receive the full sum of my compensation for ~~the same~~ *those services* for my own use and benefit, and that I have not paid, deposited, or assigned or contracted to pay, deposit, or assign any part of ~~such~~ *my* compensation for the use of any other person or in any way, directly or indirectly, paid or given or contracted to pay or give any reward or compensation for my appointment to office or the emoluments thereof to my principal or to any other person.

.....

Subscribed and sworn to before me this .... day of ...., ~~19..~~ *20...*

....."

Section 10. Section 7-4-2512, MCA, is amended to read:

"7-4-2512. Statement and affidavit of fees collected. (1) The fees and compensation collected and chargeable for the use of the county in each month must be paid to the county treasurer by the 10th day of the following month and must be accompanied by a statement and copy of the fee book for the preceding month, ~~duly~~ verified by the officer making the payment.

HeinOnline -- 1999 vol. I 152 1999

(2) The affidavit must be in the following form:

State of Montana

County of .....

I, ..., of the county of ....., do swear that the fee book in my office contains a true statement in detail of all fees and compensations of every kind and nature for official services rendered by me, paid or chargeable, or by my deputies or assistants for the month of ....., ~~19...~~ *20...*, and that this fee book shows the full amount received or chargeable in ~~said~~ *that* month and since my last monthly payment; ~~and~~ *that* neither myself nor, to my knowledge or belief, any of my deputies or assistants have rendered any official service, except for the county or state, ~~which~~ *that* is not fully set out in this fee book; and that the foregoing statement is a ~~full, true, and~~ correct copy ~~thereof~~ *of the statement*.

..... (Signature)

Subscribed and sworn to before me this ..... day of ....., ~~19...~~ *20...*

Seal ..... (Person authorized to take oaths)

..... (Title or notarial information)"

Section 11. Section 7-6-2317, MCA, is amended to read:

"7-6-2317. Hearing on county proposed budget — exception. (1) At least 3 days prior to the adoption of the final budget, the county commissioners shall meet at the time and place designated in the notice provided for in 7-6-2316, at which time any taxpayer or resident of the county may appear and be heard for or against any part of the budget.

(2) The hearing must be continued from day to day and must he concluded and the budget approved and adopted on or before the second Monday in August, before the fixing of the ~~tax~~ *mill* levies by the board.

(3) This section does not apply to a county that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6."

Section 12. Section 7-7-2203, MCA, is amended to read:

"7-7-2203. Limitation on amount of bonded indebtedness. (1) Except as provided in subsections (2) ~~through (4)~~ *and (3)*, a county may not issue general obligation bonds for any purpose that, with all outstanding bonds and warrants except emergency bonds, will exceed 11.25% of the total of the taxable value of the property in the county, plus the value provided by the department of revenue under 15-36-324(13), to be ascertained by the last assessment for state and county taxes prior to the proposed issuance of bonds, plus, for general obligation bonds to be issued during fiscal year 1997, an additional 11% of the taxable value of class eight property within the county for tax year 1995, for general obligation bonds to be issued during fiscal year 1998, an additional 22% of the taxable value of class eight property within the county for tax year 1995, and for general obligation bonds to be issued during fiscal years 1999 through 2008, an additional 33% of the taxable value of class eight property within the county for tax year 1995, in each case of class eight property, multiplied by 11.25%.

~~(2) In addition to the bonds allowed by subsection (1), a county may issue bonds that, with all outstanding bonds and warrants, will not exceed 27.75% of the total of the taxable value of the property in the county subject to taxation, plus the value provided by the department of revenue under 15-36-324(13), when~~

~~necessary to do so, to be ascertained by the last assessment for state and county taxes, plus, for bonds to be issued during fiscal year 1997, an additional 11% of the taxable value of class eight property within the county for tax year 1995, and for bonds to be issued during fiscal year 1998, an additional 22% of the taxable value of class eight property within the county for tax year 1995.~~

~~(3)~~*(2)* In addition to the bonds allowed by ~~subsections (1) and (2)~~ *subsection (1)*, a county may issue bonds for the construction or improvement of a jail that will not exceed 12.5% of the taxable value of the property in the county subject to taxation, plus the adjustments permitted by 7-7-2101.

~~(4)~~*(3)* The limitation in subsection (1) does not apply to refunding bonds issued for the purpose of paying or retiring county bonds lawfully issued prior to January 1, 1932, or to bonds issued for the repayment of tax protests lost by the county."

Section 13. Section 7-22-2144, MCA, is amended to read:

"7-22-2144. Payment of cost of weed control program. The total cost of ~~such~~ *weed* control ~~shall~~ *within the district must* be paid from the noxious weed fund. The cost of controlling ~~such~~ weeds growing along the right-of-way of a state or federal highway ~~shall~~ *must*, upon the presentation by the board of a verified account of the expenses incurred, be paid from the state highway fund in compliance with 7-14-2132 and any agreement between the board and the department of transportation. Costs attributed to other lands within the district ~~shall~~ *must* be assessed to and collected from the responsible person as set forth in ~~7-22-2116~~ *7-22-2124*."

Section 14. Section 10-2-601, MCA, is amended to read:

"10-2-601. State veterans' cemeteries. The department of military affairs shall establish state veterans' cemeteries. A cemetery must be located at Fort William Henry Harrison, Lewis and Clark County, Montana, and at ~~the location chosen pursuant to sections 1 through 6, Chapter 109, Laws of 1997~~ *Miles City*."

Section 15. Section 13-1-112, MCA, is amended to read:

"13-1-112. Rules for determining residence. For registration, voting, or seeking election to the legislature, the residence of ~~any~~ *an* individual must be determined by the following rules as far as they are applicable:

(1) The residence of an individual is where the individual's habitation is fixed and to which, whenever the individual is absent, the individual has the intention of returning.

(2) An individual may not gain or lose a residence while kept involuntarily at any public institution, not necessarily at public expense; as a result of being confined in any ~~public~~ prisen; or solely as a result of residing on a military reservation.

(3) An individual in the armed forces of the United States may not become a resident solely as a result of being stationed at a military facility in the state. An individual may not acquire a residence solely as a result of being employed or stationed at a training or other transient camp maintained by the United States within the state.

(4) An individual does not lose residence if the individual goes into another state or other district of this state for temperary purposes with the intention of

returning, unless the individual exercises the election franchise in the other state or district.

(5) An individual may not gain a residence in a county if the individual comes in for temporary purposes without the intention of making that county the individual's home.

(6) If an individual moves to another state with the intention of making it the individual's residence, the individual loses residence in this state.

(7) The place where an individual's family resides is presumed te he that individual's place of residence. However, an individual who takes up or continues a residence at a place other than where the individual's family resides with the intention of remaining is a resident of the place where the individual resides.

(8) A change of residence may be made only by the act of removal joined with intent to remain in another place."

Section 16. Section 13-2-122, MCA, is amended to read:

"**13-2-122. Charges for registers, elector lists, and mailing labels made available to public.** (1) Except as provided in subsections (2) and (3), upon written request, the registrar shall furnish to any elector, for noncommercial use, a copy of the official precinct registers, a current list of registered electors, or mailing labels for registered electors. Upon delivery, the registrar may collect a charge not te exceed the actual cost of the register, list, or mailing labels.

(2) If the registrar receives in writing from a law enforcement officer or reserve officer, as defined in 7-32-201, a request that, for security reasons, the officer's and the officer's spouse's residential address, if the same as the officer's, not be disclosed, the registrar may not include the address on any register, list, or mailing labels disseminated pursuant to subsection (1).

(3) An election administrator may not include an individual's residential address on any register, list, or mailing labels but shall list only the name or names if the individual requests that the individual's address not be used and the individual proves to the election administrator those matters described in 13-2-115~~(6)(a)(i) or (6)(a)(ii)~~*(7)(a)(i) or (7)(a)(ii)*."

Section 17. Section 13-2-221, MCA, is amended te read:

"**13-2-221. Agency-based registration.** (1) Qualified individuals must be given the opportunity to register to vote when applying for or receiving services or assistance:

(a) at an agency that provides public assistance;

(b) at or through an agency that provides state-funded programs primarily engaged in providing services to persons with disabilities; or

(c) at another agency designated by the secretary of state with the consent of the agency.

(2) Agency-based registration sites must:

(a) distribute application for voter registration forms with each application for services or assistance; and

(b) assist an applicant in completing an application for voter registration form, unless the applicant refuses assistance.

HeinOnline -- 1999 vol. I 155 1999

(3) The completed application for voter registration form must be transmitted by the agency to the election administrator of the county of the elector's residence within the time period specified by 42 U.S.C. 1973gg, et seq.

(4) As used in this section, the following definitions apply:

(a) "Agency" means a state agency as defined in 2-4-102~~(1)(a)~~*(2)(a)* or an office of a political subdivision.

(b) "Political subdivision" means a city, county, consolidated city-county government, or ~~a~~ town."

Section 18. Section 13-27-204, MCA, is amended to read:

"13-27-204. Petition for ~~the~~ initiative. (1) The following is substantially the form for a petition calling for a vote to enact a law by ~~the~~ initiative:

PETITION TO PLACE INITIATIVE NO.____
ON THE ELECTION BALLOT

(a) If 5% of the voters in each of 34 legislative representative districts sign this petition and the total number of voters signing this petition is ....., this measure will appear on the next general election ballot. If a majority of voters vote for this measure at that election, it will become law.

(b) We, the undersigned Montana voters, propose that the secretary of state place the following measure on the ...., ~~19...~~ *20...*, general election ballot:

(Title of measure written pursuant to 13-27-312)
(Statement of implication written pursuant to 13-27-312)

(c) Voters are urged to read the complete text of the measure, which appears (on the reverse side of, attached to, etc., as applicable) ~~on~~ this sheet. A signature on this petition is only to put the measure on the ballot and does not necessarily mean the signer agrees with the measure.

(d)

WARNING

A person who purposefully signs a name other than ~~his/her~~ *the person's* own to this petition, ~~or~~ who signs more than once for the same issue at one election, or *who* signs when not a legally registered Montana voter is subject to a $500 fine, 6 months in jail, or both.

(e) Each person ~~must~~ *is required to* sign ~~his/her~~ *the person's* name and address in substantially the same manner as on ~~his/her~~ *the person's* voter ~~registry~~ *registration* card or the signature will not be counted.

(2) Numbered lines ~~shall~~ *must* follow the above heading. Each numbered line ~~shall~~ *must* contain spaces for the signature, post-office address, legislative representative district number, and printed last name of the signer."

Section 19. Section 13-27-206, MCA, is amended to read:

"13-27-206. Petition for initiative for constitutional convention. (1) The following is substantially the form for a petition to direct the secretary of state to submit to the qualified voters the question of whether there ~~shall~~ *will* be a constitutional convention:

HeinOnline -- 1999 vol. I 156 1999

PETITION TO PLACE
INITIATIVE NO.___, CALLING FOR
A CONSTITUTIONAL CONVENTION, ON
THE ELECTION BALLOT

(a) If 10% of the voters in each of 40 legislative districts sign this petition and the total number of voters signing this petition is ....., the question of whether to have a constitutional convention will appear on the next general election ballot. If a majority of voters vote for the constitutional convention, the legislature ~~will~~ *shall* call for a constitutional convention at its next session.

(b) We, the undersigned Montana voters, propose that the secretary of state place the question of whether to hold a constitutional convention on the ...., ~~19...~~ *20...*, general election ballot:

(Title of the initiative written pursuant to 13-27-312)

(Statement of implication written pursuant to 13-27-312)

(c) A signature on this petition is only to put the call for a constitutional convention on the ballot and does not necessarily mean the signer is in favor of calling a constitutional convention.

(d)

WARNING

A person who purposefully signs a name other than ~~his/her~~ *the person's* own to this petition, ~~or~~ who signs more than once for the same issue at one election, or *who* signs when not a legally registered Montana voter is subject to a $500 fine or 6 months in jail, or both.

(e) Each person ~~must~~ *is required to* sign ~~his/her~~ *the person's* name and address in substantially the same manner as on ~~his/her~~ *the person's* voter ~~registry~~ *registration* card~~,~~ or the signature will not be counted.

(2) Numbered lines ~~shall~~ *must* follow the above heading. Each numbered line ~~shall~~ *must* also contain spaces for the signature, post-office address, legislative representative district number, and printed last name of the signer."

Section 20. Section 13-27-207, MCA, is amended to read:

"13-27-207. Petition for initiative for constitutional amendment. (1) The following is substantially the form for a petition for ~~the~~ *an* initiative to amend the constitution:

PETITION TO PLACE CONSTITUTIONAL
AMENDMENT NO.___ ON
THE ELECTION BALLOT

(a) If 10% of the voters in each of 40 legislative districts sign this petition and the total number of voters signing the petition is ....., this constitutional amendment will appear on the next general election ballot. If a majority of voters vote for this amendment at that election, it will become part of the constitution.

(b) We, the undersigned Montana voters, propose that the secretary of state place the following constitutional amendment on the ....., ~~19...~~ *20...*, general election ballot:

HeinOnline -- 1999 vol. I 157 1999

(Title of the proposed constitutional amendment
written pursuant to 13-27-312)
(Statement of implication written pursuant to 13-27-312)

(c) Voters are urged to read the complete text of the measure, which appears (on the reverse side of, attached to, etc., as applicable) ~~on~~ this sheet. A signature on this petition is only to put the constitutional amendment on the hallot and does not necessarily mean the signer agrees with the amendment.

(d)

WARNING

A person who purposefully signs a name other than ~~his/her~~ *the person's* own to this petition, ~~or~~ who signs more than once for the same issue at one election, or *who* signs when not a legally registered Montana voter is subject to a $500 fine, 6 months in jail, or both.

(e) Each person ~~must~~ *is required to* sign ~~his/her~~ *the person's* name and address in substantially the same manner as on ~~his/her~~ *the person's* voter ~~registry~~ *registration* card or the signature will not he counted.

(2) Numbered lines ~~shall~~ *must* follow the above heading. Each numbered line ~~shall~~ *must* contain spaces for the signature, post-office address, legislative representative district number, and printed last name of the signer."

Section 21. Section 13-27-302, MCA, is amended to read:

"13-27-302. Certification of signatures. An affidavit, in suhstantially the following form, ~~shall~~ *must* he attached to each sheet or section submitted to the county official:

I, (~~Name~~ *name* of person who circulated this petition), ~~affirm, or being first sworn, depose and say:~~ *swear* that I circulated or assisted in circulating the petition to which this affidavit is attacbed, ~~and~~ *that* I believe tbe signatures ~~thereon~~ *on the petition* are genuine, are the signatures of the persons whose names they purport to be, *and* are the signatures of Montana electors who are registered at the address following their signature, and that the signers knew the contents of the petition before signing the ~~same~~ *petition*.

.....
(Signature of petition circulator)

.....
(Address of potition circulator)

Subscribed and sworn to before me this ... day of ....., ~~19...~~ *20...*

.....
Seal (Person authorized to take oaths)

.....
(Title or notarial information)"

Section 22. Section 13-27-307, MCA, is amended to read:

"13-27-307. Consideration and tabulation of signatures by secretary of statc. (1) The secretary of state shall consider and tabulate only ~~such~~ *the* signatures on potitions ~~as~~ *that* are certified by the proper county official, and each

~~such~~ certificate is prima facie evidence of the facts stated ~~therein~~ *in the certificate*. However, the secretary of state may consider and tabulate any signature not certified by the county official that is certified by a notary public of the county in which the signer resides to he the genuine signature of an elector legally qualified to sign the petition.

(2) The official certificate of the notary public for any signature not certified as valid by the county official ~~shall~~ *must* be in substantially the following form:

State of Montana)
) ss.
County of.....)

I, ... (name), a duly qualified and acting notary public in and for the above-named county and state, ~~do hereby~~ certify that I am personally acquainted with ~~each~~ *all* of the following-named electors whose signatures are affixed to the ~~annexed~~ *attached* (petition) (copy of a petition) and I know ~~of my own knowledge~~ that they are registered electors of the state of Montana and of the county and legislative district written after their names in the petition and that their post-office addresses are correctly stated ~~therein~~ *in the petition*.

..... (Names of ~~such~~ electors)

In testimony whereof, I have ~~hereunto~~ set my hand and official seal this.... day of....., ~~19..~~ *20*...

..... (Signature)

Seal..... (Notarial information)"

Section 23. Section 13-36-203, MCA, is amended to read:

"13-36-203. Form of complaint. (1) A petition or complaint filed under the provisions of this chapter ~~shall be~~ *is* sufficient if it is *in* substantially ~~in~~ the following form:

In the District Court of the
.... Judicial District,
for the County of ...., State of Montana.

A B (or A B and C D), Contestants,

vs.

E F, Contestee.

The petition of *the* contestant (or contestants) ~~above~~ named *above* alleges:

That an election was held (in the state, district, county, or city of ....), on the .... day of ...., ~~A. D. 19..~~ *20*..., for the (nomination of a candidate for) (or election of a) (state the office).

That .... and .... were candidates at ~~said~~ *the* election~~,~~ and the board of canvassers has returned ~~the said~~.... as being ~~duly~~ nominated (or elected) at ~~said~~ *the* election.

That contestant A B voted (or had a right te vote, as the case may be) at ~~said~~ *the* election (or claims to have had a right to be returned as the nominee or officer elected or nominated at ~~said~~ *the* election~~,~~ or was a candidate at ~~said~~ *the* election, as the case may be)~~,~~ and ~~said~~ *that* contestant C D (here state in ~~like~~ *a similar* manner the right of each contestant).

HeinOnline -- 1999 vol. I 159 1999

~~And said~~ *The* contestant (or contestants) further allege (here state the facts and grounds on which the contestants rely).

~~Wherefore, your~~ *The* contestants ~~pray~~ *ask* that it ~~may~~ he determined hy the court that ~~said~~.... was not ~~duly~~ nominated (or elected)~~,~~ and that ~~said~~ *the* election was void or that ~~said~~ A B or C D, as the case may he, was ~~duly~~ nominated (or elected)~~,~~ and *ask* for ~~such~~ other ~~and further~~ relief ~~as to~~ *that* the court may ~~seem just and legal in the premises~~ *find appropriate.*

(2) ~~Said~~ *The* complaint ~~shall~~ *must* be verified by the affidavit of one of the petitioners in the manner required by law for the verification of complaints in civil cases."

Seetion 24. Section 13-37-250, MCA, is amended to read:

"13-37-250. Voluntary spending limits. (1) (a) The following statement may be used in printed matter and in broadcast advertisements and may appear in the voter information pamphlet prepared by the secretary of state: "According to the Office of the Commissioner of Political Practices, ... is in compliance with the voluntary expenditure limits established under Montana law."

(b) The treasurer of each political committee, as defined in 13-1-101~~(12)(b)~~*(18)(b),* who files a certification on a hallot issue pursuant to 13-37-201 may also file with the commissioner a sworn statement that the committee will not exceed the voluntary expenditure limits of this section. If a sworn statement is made, it must be filed with the commissioner within 30 days of the certification of the political committee.

(c) A political committee that has not filed a sworn statement with the commissioner may not distribute any printed matter or pay for any broadcast claiming to he in compliance with the voluntary expenditure limits of this section.

(d) A political committee may not use evidence of compliance with the voluntary expenditure limits of this section to imply to the public that the committee has received endorsement or approval by the state of Montana.

(2) For the purposes of this section, the expenditures made by a political committee consist of the aggregate total of the following during tlie calendar year:

(a) all committee loans or expenditures made by check or cash; and

(b) the dollar value of all in-kind contributions made or received by tlie committee.

(3) In order to be identified as a political committee in compliance with the voluntary expenditure limits of this section, the committee's expenditures, as described in subsection (2), may not exceed $150,000.

(4) A political committee that files with the commissioner a sworn statement to abide by the voluntary expenditure limits of this section but that exceeds those limits shall pay a fine of $5,000 to the commissioner. This money must be deposited in a separate fund to be used to support the enforcement programs of the office of tlie commissioner."

Section 25. Section 15-1-112, MCA, is amended to read:

"15-1-112. Business equipment tax rate reduction reimbursement to local government taxing jurisdictions. (1) On or before January 1, 1996, for the reduction in payment under subsection (4) and by June 1 of 1996, 1997, and 1998~~,~~ for all other reimbursements in this section, the department of revenue

HeinOnline -- 1999 vol. I 160 1999

shall determine a reimbursement amount associated with reducing the tax rate in 15-6-138 and provide that information to each county treasurer. The reimbursement amount must be determined for each local government taxing jurisdiction that levied mills on the taxable value of property described in 15-6-138 in the corresponding tax year. However, the reimbursement does not apply to property described in 15-6-138 that has a reduced tax rate under 15-24-1402.

(2) (a) The reimbursement amount to be used as the basis for the payment reduction under subsection (4) is the product of multiplying the tax year 1995 taxable value of property described in 15-6-138 for each local government taxing jurisdiction hy tbe tax year 1995 mill levy for the jurisdiction and then multiplying by 1/9th.

(b) (i) The reimbursement amount for each local government taxing jurisdiction for tax year 1996 is the amount determined under subsection (2)(a) unless the tax year 1996 market value of property described in 15-6-138, for the particular local government taxing jurisdiction, is more than the tax year 1995 market value for property described in 15-6-138 in the same jurisdiction.

(ii) If the tax year 1996 market value is greater than the tax year 1995 market value for a particular jurisdiction, then the reimbursement amount for tax year 1996 is the result of subtracting the simulated 1996 tax from the 1995 tax. The 1995 tax is the tax for the particular jurisdiction, determined hy multiplying the actual taxable valuation of property described in 15-6-138, for tax year 1995, by the tax year 1995 mill levy for the jurisdiction. The simulated 1996 tax for the particular jurisdiction is the actual tax year 1996 taxable value of property described in 15-6-138 multiplied hy the tax year 1995 mill levy for the particular jurisdiction. If the simulated 1996 tax is greater than the 1995 tax, the reimbursement amount is zero.

(c) (i) The reimbursement amount for each local government taxing jurisdiction for tax year 1997 is the amount determined under subsection (2)(a) multiplied by two unless the tax year 1997 market value of property described in 15-6-138, for the particular local government taxing jurisdiction, is more than the tax year 1995 market value for property described in 15-6-138 in the same jurisdiction.

(ii) If the tax year 1997 market value is greater than the tax year 1995 market value for a particular jurisdiction, then the reimbursement amount for tax year 1997 is the result of subtracting the simulated 1997 tax from the 1995 tax. The 1995 tax is the tax for the particular jurisdiction, determined by multiplying the actual taxable valuation of property described in 15-6-138, for tax year 1995, hy the tax year 1995 mill levy for the jurisdiction. The simulated 1997 tax for the particular jurisdiction is the actual tax year 1997 taxable value of property described in 15-6-138 multiplied by the tax year 1995 mill levy for the particular jurisdiction. If the simulated 1997 tax is greater than the 1995 tax, the reimhursement amount is zero.

(d) (i) The reimbursement amount for each local government taxing jurisdiction for tax year 1998 is the amount determined under subsection (2)(a) multiplied by three unless the tax year 1998 market value of property described in 15-6-138, for the particular local government taxing jurisdiction, is more than the tax year 1995 market value for property described in 15-6-138 in the same jurisdiction.

HeinOnline -- 1999 vol. I 161 1999

(ii) If the tax year 1998 market value is greater than the tax year 1995 market value for a particular jurisdiction, then the reimbursement amount for tax year 1998 is the result of subtracting the simulated 1998 tax from the 1995 tax. The 1995 tax is the tax for the particular jurisdiction, determined by multiplying the actual taxable valuation of property described in 15-6-138, for tax year 1995, by the tax year 1995 mill levy for the jurisdiction. The simulated 1998 tax for the particular jurisdiction is the actual tax year 1998 taxable value of property described in 15-6-138 multiplied by the tax year 1995 mill levy for the particular jurisdiction. If the simulated 1998 tax is greater than the 1995 tax, the reimbursement amount is zero.

(3) (a) For purposes of this section, "local government taxing jurisdiction" means a local government rather than a state taxing jurisdiction that levied mills against property described in 15-6-138, including county governments, incorporated city and town governments, consolidated county and city governments, tax increment financing districts, local elementary and high school districts, local community college districts, miscellaneous districts, and special districts. The term includes countywide mills levied for equalization of school retirement or transportation.

(b) The term does not include county or state school equalization levies provided for in 20-9-331, 20-9-333, and 20-9-360 ~~or the university levy provided for in 15-10-106~~. It also does not include any state levy for welfare programs provided for in 53-2-813.

(c) Each tax increment financing district must receive the benefit of the state mill on the incremental taxable value of the district.

(4) County treasurers shall reduce the county payment to the state for the levy imposed under 20-9-360 in June of 1996 by an amount equal to 38% of the reimbursement amount determined under subsection (2)(a) for all of the local government taxing jurisdictions in the county.

(5) County treasurers shall reduce the county payment to the state for the levy imposed under 20-9-360 in December of 1996 by an amount equal to 31% of the reimbursement amount for tax year 1996 for all of the local government taxing jurisdictions in the county, as determined by the department under subsection (2).

(6) County treasurers shall reduce the county payment to the state for the levy imposed under 20-9-360 in June of 1997 by an amount equal to 31% of the reimbursement amount for tax year 1996 for all of the local government taxing jurisdictions in the county and by an amount equal to 38% of the reimbursement amount for tax year 1997 for all of the local government taxing jurisdictions in the county, as determined by the department under subsection (2).

(7) County treasurers shall reduce the county payment to the state for the levy imposed under 20-9-360 in December of 1997 by an amount equal to 31% of the reimbursement amount for tax year 1997 for all of the local government taxing jurisdictions in the county, as determined by the department under subsection (2).

(8) County treasurers shall reduce the county payment to the state for the levy imposed under 20-9-360 in June of 1998 by an amount equal to 31% of the reimbursement amount for tax year 1997 for all of the local government taxing jurisdictions in the county and by an amount equal to 38% of the reimbursement

HeinOnline -- 1999 vol. I 162 1999

amount for tax year 1998 for all of the local government taxing jurisdictions in the county, as determined by the department under subsection (2).

(9) County treasurers shall reduce the county payment to the state for the levy imposed under 20-9-360 in December of 1998 by an amount equal to 31% of the reimbursement amount for tax year 1998 for all of the local government taxing jurisdictions in the county, as determined by the department under subsection (2).

(10) County treasurers shall reduce the county payment to the state for the levy imposed under 20-9-360 in June of 1999 by an amount equal to 69% of the reimbursement amount for tax year 1998 for all of the local government taxing jurisdictions in the county, as determined by the department under subsectien (2).

(11) County treasurers shall reduce the county payment te the state for the levy imposed under 20-9-360 in December of the years 1999 through 2007 by an amount equal to 31% of the reimbursement amount determined in subsection (13) for all of the local government taxing jurisdictions in the county, as determined by the department under subsection (2).

(12) County treasurers shall reduce the county payment to the state for the levy imposed under 20-9-360 in June of the years 2000 through 2008 by an amount equal to 69% of the reimbursement amount determined in subsection (13) for all of the local government taxing jurisdictions in the county, as determined by the department under subsection (2).

(13) (a) The reimbursement amount for tax year 1999 and each subsequent tax year for 9 years must be progressively reduced each year by 10% of the reimbursement amount for tax year 1999, according to the following schedule:

Tax Year	Percentago of 1999 Reimbursement Amount
1999	90
2000	80
2001	70
2002	60
2003	50
2004	40
2005	30
2006	20
2007	10
2008 and following years	0

(b) The reimbursement amount for each tax year must be the basis for reducing the amount remitted to the state for the levy imposed under 20-9-360 in December of the same year and June of the following year.

(14) The county treasurer shall use the funds from the reduced payment to the state for the levy imposed under 20-9-360 to reimburse each local government taxing jurisdiction in the amount determined by the department under subsection (2). The reimbursement must be distributed to funds within local governmnent taxing jurisdictions in the same manner as taxes on property

described in 15-6-138 are distributed. The reimbursement in June must be distributed based on the prior year's mill levy, and the reimbursement in December must be based on the current year's mill levy.

(15) Each local government taxing jurisdiction receiving reimbursements shall consider the amount of reimbursement that will be received and lower the mill levy otherwise necessary to fund the budget by the amount that would otherwise have to be raised by the mill levy.

(16) A local government taxing jurisdiction that ceases to exist after October 1, 1995, will no longer be considered for revenue loss or reimbursement purposes. A local government taxing jurisdiction that is created after January 1, 1996, will not be considered for revenue loss or reimbursement purposes. If a local government taxing jurisdiction that existed prior to January of 1996 is split between two or more taxing jurisdictions or is annexed to or is consolidated with another taxing jurisdiction, the department shall determine how much of the revenue loss and reimbursement is attributed to the new jurisdictions."

Section 26. Section 15-6-135, MCA, is amended to read:

"15-6-135. Class five property — description — taxable percentage. (1) Class five property includes:

(a) all property used and owned by cooperative rural electrical and cooperative rural telephone associations organized under the laws of Montana, except property owned by cooperative organizations described in 15-6-137(1)(b);

(b) air and water pollution control equipment as defined in this section;

(c) new industrial property as defined in this section;

(d) any personal or real property used primarily in the production of gasohol during construction and for the first 3 years of its operation;

(e) all land and improvements and all personal property owned by a research and development firm, provided that the property is actively devoted to research and development;

(f) machinery and equipment used in electrolytic reduction facilities.

(2) (a) "Air and water pollution control equipment" means that portion of identifiable property, facilities, machinery, devices, or equipment designed, constructed, under construction, or operated for removing, disposing, abating, treating, eliminating, destroying, neutralizing, stabilizing, rendering inert, storing, or preventing the creation of air or water pollutants that, except for the use of the item, would be released to the environment. Reduction in pollutants obtained through operational techniques without specific facilities, machinery, devices, or equipment is not eligible for certification under this section.

(b) Requests for certification must be made on forms available from the department of revenue. Certification may not be granted unless the applicant is in substantial compliance with all applicable rules, laws, orders, or permit conditions. Certification remains in effect only as long as substantial compliance continues.

(c) The department of environmental quality shall promulgate rules specifying procedures, including timeframes for certification application, and definitions necessary to identify air and water pollution control equipment for certification and compliance. The department of revenue shall promulgate rules pertaining to the valuation of qualifying air and water pollution control

HeinOnline -- 1999 vol. I 164 1999

equipment. The department of environmental quality shall identify and track compliance in the use of certified air and water pollution control equipment and report continuous acts or patterns of noncompliance at a facility to the department of revenue. Casual or isolated incidents of noncompliance at a facility do not affect certification.

(d) A person may appeal the certification, classification, and valuation of the property to the state tax appeal board. Appeals on the property certification must name the department of environmental quality as the respondent, and appeals on the classification or valuation of the equipment must name the department of revenue as the respondent.

(3) (a) "New industrial property" means any new industrial plant, including land, buildings, machinery, and fixtures, used by new industries during the first 3 years of their operation. The property may not have been assessed within the state of Montana prior to July 1, 1961.

(b) New industrial property does not include:

(i) property used by retail or wholesale merchants, commercial services of any type, agriculture, trades, or professions unless the business or profession meets the requirements of subsection (4)(b)(v);

(ii) a plant that will create adverse impact on existing state, county, or municipal services; or

(iii) property used or employed in an industrial plant that has been in operation in this state for 3 years or longer.

(4) (a) "New industry" means any person, corporation, firm, partnership, association, or other group that establishes a new plant in Montana for the operation of a new industrial endeavor, as distinguisbed from a mere expansion, reorganization, or merger of an existing industry.

(b) New industry includes only those industries that:

(i) manufacture, mill, mine, produce, process, or fabricate materials;

(ii) do similar work, employing capital and labor, in which materials unserviceable in their natural state are extracted, processed, or made fit for use or are substantially altered or treated so as to create commercial products or materials;

(iii) engage in the mecbanical or cbemical transformation of materials or substances into new products in the manner defined as manufacturing in the ~~1987 Standard Industrial~~ *North American Industry* Classification *System* Manual prepared by the United States office of management and budget;

(iv) engage in the transportatiou, warehousing, or distribution of commercial products or materials if 50% or more of an industry's gross sales or receipts are earned from outside the state; or

(v) earn 50% or more of their annual gross income from out-of-state sales.

(5) Class five property is taxed at 3% of its market value."

Seetion 27. Section 15-17-323, MCA, is amended to read:

"15-17-323. Assignment of rights — form. (1) ~~Any~~ *A* tax sale certificate or other official record in which the county is listed as the purchaser must be assigned by the county treasurer to any person who pays to the county the

amount of the delinquent taxes, including penalties, interest, and costs, accruing from the date of delinquency.

(2) The assignment made under subsection (1) must he in the form of an assignment certificate in substantially the following form:

I, ..., the treasurer of ..... County, state of Montana, hereby certify that a tax sale for tax year ~~19..~~ *20...*, in the county of ....., was held on ..... (date), for the purpose of liquidating delinquent assessments, and I further certify that a property tax lien for delinquent taxes in the following property ..... (insert property description) was offered for sale and that there was no purchaser of the property tax lien. Accordingly, the county was listed as the purchaser as required by 15-17-214, MCA. As of the date of this certificate, the delinquency, including penalties, interest, and costs amounting to $....., has not been liquidated by the person to whom the property was assessed, nor has the delinquency been otherwise redeemed.

~~There having been~~ *Because there has been* no liquidation of the delinquency or other redemption, I hereby assign all rights, title, and interest of the county of ....., state of Montana, acquired in such property by virtue of the sale to ..... (name and address of assignee) to proceed to obtain a tax deed to the property or receive payment in case of redemption as provided by law.

Witness my hand and official seal of office this ..... day of ....., ~~19..~~ *20...*

..... County Treasurer

..... County

(3) An assignment made by a purchaser other than the county, by an assignee of the county, or by a previous assignee may be made for any consideration whatsoever. An assignment so made is legal and binding only upon filing with the county treasurer a statement that the purchaser's or other assignee's interest in the property has been assigned. The statement must contain:

(a) the name and address of the new assignee;

(b) the name and address of the original purchaser of the tax sale certificate;

(c) the name and address of each previous assignee, if any;

(d) a description of the property upon which the property tax lien was issued, which description must contain the same information as contained in the tax sale certificate or assignment certificate, as appropriate;

(e) the signature of the party, be it purchaser or assignee, making the assignment;

(f) the signature of the new assignee; and

(g) the date on which the statement was signed.

(4) If the certificate described in subsection (1) or the statoment described in subsection (3) is lost or destroyed, the county treasurer shall, upen adequate proof and signed affidavit by the assignee that loss or destruction has occurred, issue a duplicate certificate to the assignee.

(5) The provisions of this section apply to any sale of land for which a treasurer's deed was not issued on or before March 5, 1917, or for which a tax deed was not issued on or before April 23, 1987, and the holder of any certificate

HeinOnline -- 1999 vol. I 166 1999

described in subsection (1) has the same rights, powers, and privileges with regard to securing a deed as any purchaser of land at a tax sale may now have."

Section 28. Section 15-24-602, MCA, is amended to read:

"**15-24-602. Determining insurance company taxable property.** In computing the taxable property of insurance companies organized under the laws of Montana, there must be deducted ~~therefrom~~:

(1) the value of the real property on which the company pays taxes, if the real estate is assessed to the company as other real estate;

(2) the legal reserve required by the laws of Montana or by the insurance department of Montana for the protection of policyholders;

(3) all assets not admitted as such by the state or by the insurance department of Montana;

(4) debts and liabilities ~~as may be~~ *that are* due or owing by the company; and

(5) the value of a title plant owned by a title insurer or a title ~~agent~~ *insurance producer*, as those terms are defined in 33-25-105."

Section 29. Section 15-24-1401, MCA, is amended to read:

"**15-24-1401. Definitions.** The following definitions apply to 15-24-1402 unless the context requires otherwise:

(1) "Expansion" means that the industry has added after July 1, 1987, at least $50,000 worth of qualifying improvements or modernized processes to its property within the same jurisdiction either in the first tax year in which the benefits provided for in 15-24-1402 are to be received or in the preceding tax year.

(2) "Industry" includes but is not limited to a firm that:

(a) engages in the mechanical or chemical transformation of materials or substances into products in the manner defined as manufacturing in the ~~1972 Standard Industrial~~ *North American Industry* Classification *System* Manual prepared by the United States office of management and budget;

(b) engages in the extraction or harvesting of minerals, ore, or forestry products;

(c) engages in the processing of Montana raw materials such as minerals, ore, agricultural products, and forestry products;

(d) engages in the transportation, warehousing, or distribution of commercial products or materials if 50% or more of the industry's gross sales or receipts are earned from outside the state; or

(e) earns 50% or more of its annual gross income from out-of-state sales.

(3) "New" means that the firm is new to the jurisdiction approving the resolution provided for in 15-24-1402(2) and has invested after July 1, 1987, at least $125,000 worth of qualifying improvements or modernized processes in the jurisdiction either in the first tax year in which the benefits provided for in 15-24-1402 are to be received or in the preceding tax year. New industry does not include property treated as new industrial property under 15-6-135.

(4) "Qualifying" means meeting all the terms, conditions, and requirements for a reduction in taxable value under ~~15-24-1401 and~~ 15-24-1402 *and this section*."

HeinOnline -- 1999 vol. I 167 1999

Section 30. Section 15-24-2402, MCA, is amended to read:

"15-24-2402. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Expansion" means that after December 31, 1991, the industry has added qualifying property within the jurisdiction either in the first tax year in which the taxable value decrease provided for in 15-24-2403 is to be received or in the preceding tax year. Expansion does not include property that:

(a) has qualified for the tax exemption under 15-24-1402; or

(b) will create an adverse impact on existing state, county, or municipal services.

(2) "Industry" is a firm that engages in the mechanical or chemical transformation of materials or substances into new products in the manner defined as manufacturing in the ~~1987 Standard Industrial~~ *North American Industry* Classification *System* Manual prepared by the United States office of management and budget and that engages in the:

(a) processing of Montana raw materials, such as minerals, ore, oil, gas, coal, agricultural products, and forestry products; or

(b) processing of semifinished products produced in Montana that are used by the industry as a raw material in further manufacturing.

(3) "Qualifying employee" means a person:

(a) whose job was created as a result of expansion; and

(b) whose position pays not less than three-quarters of the amount of the average wage as determined by the quarterly statistical report published by the department of labor and industry.

(4) "Qualifying property" means machinery and equipment that result in the hiring of qualifying employees used for the manufacture or processing of products described in subsection (2)."

Section 31. Section 15-31-121, MCA, is amended to read:

"15-31-121. Rate of tax — minimum tax ~~— surtax~~. (1) Except as provided in subsection (2), the percentage of net income to be paid under 15-31-101 ~~shall be~~ *is* 6 3/4% of all net income for the taxable period. ~~The rate set forth in this subsection (1) shall be effective for all taxable years ending on or after February 28, 1971. This rate is retroactive to and effective for all taxable years ending on or after February 28, 1971.~~

(2) For a taxpayer making a water's-edge election, the percentage of net income to be paid under 15-31-101 ~~shall be~~ *is* 7% of all taxable net income for the taxable period.

(3) ~~Every~~ *Each* corporation subject to taxation under this part shall~~, in any event,~~ pay a minimum tax of not less than $50.

~~(4) After the amount of tax liability has been computed under subsections (1) through (3), each corporation subject to taxation under this part shall add, as a surtax for tax year 1988, 4% of the tax liability, and the amount so derived is the amount due the state.~~"

Section 32. Section 15-31-124, MCA, is amended to read:

"15-31-124. New or expanded industry credit — definitions. As used in 15-31-124 through 15-31-127, the following definitions apply:

(1) "Department" means the department of revenue.

(2) "Expanding" means to expand or diversify a present operation to increase total full-time jobs by 30% or more.

(3) "Manufacturing" means the process of mechanical or chemical transformation of materials or substances into new products, as described in the ~~standard industrial classification manual of 1972~~ *North American Industry Classification System Manual prepared* by the *United States* office of management and budget ~~of the United States~~.

(4) (a) "New corporation" means a corporation engaging in manufacturing for the first time in this state. A new corporation includes:

(i) a manufacturing corporation existing outside of Montana that enters into manufacturing in the state;

(ii) a nonmanufacturing corporation within the state that enters into manufacturing in the state; or

(iii) a corporation newly formed in Montana and entering into manufacturing operations in the state.

(b) A new corporation does not include:

(i) a corporation reorganized from a previously existing corporation that has been engaged in manufacturing in this state; or

(ii) a corporation created as a parent, subsidiary, or affiliate of an existing corporation that has been engaged in manufacturing in this state of which 20% or more of the ownership is held by the corporation or by the stockholders of the corporation."

Section 33. Section 15-31-702, MCA, is amended to read:

"15-31-702. Distribution of corporation license taxes collected from banks or savings and loan associations. (1) All corporation license taxes, interest, and penalties collected from banks and savings and loan associations must, in accordance with the provisions of 15-1-501, be distributed in the following manner:

(a) Twenty percent must be allocated as provided in 15-1-501~~(3)~~*(1)(b)*.

(b) Eighty percent is statutorily appropriated, as provided in 17-7-502, for allocation to the various taxing jurisdictions within the county in which a bank or savings and loan association is located.

(2) The corporation license taxes, interest, and penalties distributed under subsection (1)(b) must be allocated to each taxing jurisdiction in the proportion that its mill levy for that fiscal year bears to the total mill levy of the taxing authorities of the district in which the bank or savings and loan association is located.

(3) "Taxing jurisdictions" means, for the purposes of this section, all taxing authorities within a county permitted under state law to levy mills against the taxable value of property in the taxing district in which the bank or savings and loan association is located.

HeinOnline -- 1999 vol. I 169 1999

(4) If a return filed by a bank or savings and loan association involves branches or offices in more than one taxing jurisdiction, the department shall provide a method by rule for equitable distribution among those taxing jurisdictions.

(5) All corporation license taxes paid from consolidated returns in which 50% or more of the income is from banks or savings and loan associations must be distributed as provided in subsection (1).

(6) (a) The department shall annually distribute to each county having a bank or savings and loan association a percentage of the total amount collected pursuant to subsection (1), including penalties, interest, or additional taxes from assessments and less any refunds, from July 1 of the previous year through June 30 of the current year. The distribution must be sent to each county treasurer for distribution to the taxing jurisdictions in each district on or before August 1 of each year.

(b) The percentage for distribution must be calculated by taking an average of the ratios of total bank tax liability within a school district to total bank tax liability for all school districts in which a bank or savings and loan association is located in each of the 5 years preceding the current year. The total tax liability must be computed for each year by including all returns filed during that year and all amended returns and adjustments to tax filings made by the department during that year, no matter to which tax year the amended return actually applied."

Section 34. Section 15-35-103, MCA, is amended to read:

"15-35-103. (Temporary) Severance tax — rates imposed. (1) ~~Subject to the provisions of 15-35-202 allowing a new coal production incentive tax credit, a~~ *A* severance tax is imposed on each ton of coal produced in the state in accordance with the following schedule:

Heating quality (Btu per pound of coal):	Surface Mining	Underground Mining
Under 7,000	10% of value	3% of value
7,000 and over	15% of value	4% of value

(2) "Value" means the contract sales price.

(3) The formula that yields the greater amount of tax in a particular case must be used at each point on the schedule.

(4) A person is not liable for any severance tax upon 50,000 tons of the coal that the person produces in a calendar year, except that if more than 50,000 tons of coal are produced in a calendar year, the producer is liable for severance tax upon all coal produced in excess of the first 20,000 tons.

(5) In addition to the exemption described in subsection (4), a porson is not liable for any severance tax upon up to 2 million tons of coal that the person produces as feedstock for coal enhancement facilities in a calendar year, except if more than 2 million tons of coal are produced as feedstock for coal enhancement facilities in a calendar year, the producer is liable for severance tax on all coal produced as feedstock for these facilities in excess of the first 2 million tons.

HeinOnline -- 1999 vol. I 170 1999

~~(6) A new coal production incentive tax credit may be claimed on certain coal as provided in 15-35-202.~~ (Terminates December 31, 2005—sec. 5, Ch. 318, L. 1995.)

15-35-103. (Effective January 1, 2006) Severance tax — rates imposed. (1) ~~Subject to the provisions of 15-35-202 allowing a new coal production incentive tax credit, a~~ *A* severance tax is imposed on each ton of coal produced in the state in accordance with the following schedule:

~~(a) After June 30, 1988, and before July 1, 1990:~~

~~Heating quality (Btu per pound of coal):~~	~~Surface Mining~~	~~Underground Mining~~
~~Under 7,000~~	~~17% of value~~	~~3% of value~~
~~7,000 and over~~	~~25% of value~~	~~4% of value~~

~~(b) After June 30, 1990, and before July 1, 1991:~~

~~Heating quality (Btu per pound of coal):~~	~~Surface Mining~~	~~Underground Mining~~
~~Under 7,000~~	~~13% of value~~	~~3% of value~~
~~7,000 and over~~	~~20% of value~~	~~4% of value~~

~~(c) After June 30, 1991:~~

Heating quality (Btu per pound of coal):	Surface Mining	Underground Mining
Under 7,000	10% of value	3% of value
7,000 and over	15% of value	4% of value

(2) "Value" means the contract sales price.

(3) The formula ~~which~~ *that* yields the greater amount of tax in a particular case ~~shall~~ *must* be used at each point on ~~these schedules~~ *the schedule*.

(4) A person is not liable for any severance tax upon 50,000 tons of the coal ~~he~~ *that the person* produces in a calendar year, except that if ~~he produces~~ more than 50,000 tons of coal *are produced* in a calendar year, ~~he will be~~ *the producer is* liable for severance tax upen all coal produced in excess of the first 20,000 tons.

~~(5) A new coal production incentive tax credit may be claimed on certain coal as provided in 15-35-202.~~"

Section 35. Section 15-36-314, MCA, is amended to read:

"15-36-314. Deficiency assessment — local government severance tax deficiency assessment — review — interest. (1) When the department determines that the amount of the tax due, including the amount due for the local government severance tax, is greater than the amount disclosed by a return, it shall mail to the taxpayer a notice, pursuant to 15-1-211, of the additional tax proposed to be assessed. The notice must contain a statement that if payment is

HeinOnline -- 1999 vol. I 171 1999

not made, a warrant for distraint may be filed. The taxpayer may seek review of the determination pursuant to 15-1-211.

(2) (a) The department shall collect deficiency assessments of the local government severance tax in the same manner as it collects oil and natural gas production tax deficiency assessments.

(b) Any local government severance taxes that are collected on oil and natural gas production occurring after December 31, 1988, and before January 1, 1995, must be treated as current revenue for the purposes of distribution and must be distributed pursuant to 15-36-324~~(8)(a)~~*(11)(a)*.

(3) A deficiency assessment must bear interest until paid at the rate of 1% a month or fraction of a month, computed from the original due date of the return."

Section 36. Section 15-36-315, MCA, is amended to read:

"15-36-315. Credit or refund for overpayment — refund from county — interest on overpayment. (1) If the department determines that the amount of tax, penalty, or interest due for any taxable period is less than the amount paid, the amount of the overpayment must be credited against any tax, penalty, or interest then due from the taxpayer and the balance refunded to the taxpayer or its successor through reorganization, merger, or consolidation or to its shareholders upon dissolution.

(2) (a) The amount of an overpayment credited against any tax, penalty, or interest due for any tax period or any refund or portion of a refund, which has not been distributed pursuant to 15-36-324, must be withheld from the current distribution made pursuant to 15-36-324.

(b) If the amount of the refund reduces the amount of tax previously distributed pursuant to 15-36-324 and if the current distribution, if any, is insufficient to offset the refund, then the department shall demand the amount of the refund from the county to which the tax was originally distributed. The county treasurer shall remit the amount demanded within 30 days of the receipt of notice from the department.

(3) A refund that is paid by the department for an overpayment of the local government severance tax for oil or natural gas production occurring after December 31, 1988, and before January 1, 1995, must be treated as issued for the current distribution period for distribution purposes, and the refund must be apportioned in the same manner as taxes are distributed pursuant to 15-36-324~~(8)(a)~~*(11)(a)*.

(4) Except as provided in subsection (5), interest must be allowed on overpayments at the same rate as is charged on deficiency assessments provided in 15-36-314 beginning from the due date of the return or from the date of overpayment, whichever date is later, to the date on which the department approves refunding or crediting of the overpayment.

(5) (a) Interest may not accrue during any period in which the processing of a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department for the purpose of verifying the amount of the overpayment.

(b) Interest is not allowed:

HeinOnline -- 1999 vol. I 172 1999

(i) if the overpayment is refunded within 6 months from the date on which the return is due or from the date on which the return is filed, whichever is later; or

(ii) if the amount of interest is less than $1."

Section 37. Section 15-50-101, MCA, is amended to read:

"15-50-101. Definitions. As used in this chapter, the following definitions apply:

(1) "Department" means the department of revenue as provided in 2-15-1301.

(2) "Gross receipts" means all receipts from sources within the state, whether in the form of money, credits, or other valuable consideration, received from, engaging in, or conducting a business, without deduction on account of the cost of the property sold, the cost of the materials used, labor or service cost, interest paid, taxes, losses, or any other expense whatsoever. However, gross receipts does not include cash discounts allowed and taken on sales and sales refunds, either in cash or by credit, uncollectible accounts written off from time to time, or payments received in final liquidation of accounts included in the gross receipts of any previo· return made by the person.

(3) (a) "Public contractor" means any person who submits a proposal to perform or enters into a contract for performing public construction work in the state with the federal government or state of Montana; with any board, commission, or department of the state; with any board of county commissioners, any city or town council, or any agency of any of them; or with any other public board, body, commission, or agency authorized to let or award contracts for any public work when the contract cost, value, or price ~~of which~~ exceeds the sum of $5,000.

(b) The term public contractor includes subcontractors undertaking to perform work ~~within their field of contracting and within the limits of their class of license~~ covered by the original contract or any part of the contract when the contract cost, value, or price ~~of which~~ exceeds the sum of $5,000."

Section 38. Section 15-61-102, MCA, is amended to read:

"15-61-102. Definitions. As used in this chapter, unless it clearly appears otherwise, the following definitions apply:

(1) "Account administrator" means:

(a) a state or federally chartered bank, savings and loan association, credit union, or trust company;

(b) a health care insurer as defined in 33-22-125;

(c) a certified pul·lic accountant licensed to practice in this state pursuant to Title 37, chapter 50;

(d) an employer if the employer has a self-insured health plan under ERISA;

(e) the account holder ~~of~~ or an employee for whose benefit the account in question is established;

(f) a broker, insurance producer, or investment adviser regulated by the commissioner of insurance;

(g) an attorney licensed to practice law in this state;

HeinOnline -- 1999 vol. I 173 1999

(h) a licensed public accountant or a person who is an enrolled agent allowed to practice before the United States internal revenue service.

(2) "Account holder" means an individual who is a resident of this state and who establishes a medical care savings account or for whose benefit the account is established.

(3) "Dependent" means the spouse of the employee or account holder or a child of the employee or account holder if the child is:

(a) under 23 years of age and enrolled as a full-time student at an accredited college or university or is under 19 years of age;

(b) legally entitled to the provision of proper or necessary subsistence, education, medical care, or other care necessary for the health, guidance, or well-being of the child and is not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States; or

(c) mentally or physically incapacitated to the extent that the child is not self-sufficient.

(4) "Eligible medical expense" means an expense paid by the employee or account holder for medical care defined by 26 U.S.C. 213(d) for the employee or account holder or a dependent of the employee or account holder.

(5) "Employee" means an employed individual for whose benefit or for the benefit of whose dependents a medical care savings account is established. The term includes a self-employed individual.

(6) "ERISA" means the Employee Retirement Income Security Act of 1974, Public Law 93-406.

(7) "Medical care savings account" or "account" means an account established with an account administrator in this state pursuant to 15-61-201."

Section 39. Section 15-62-204, MCA, is amended to read:

"15-62-204. Higher education expenses — exemption from taxable income. A person may in any year deposit into an individual trust or savings account up to $3,000 that is deductible for tax purposes under 15-30-111~~(2)(k)~~*(2)(l)* to pay the qualified higher education expenses for the benefit of a desiguated beneficiary."

Section 40. Section 16-4-202, MCA, is amended to read:

"16-4-202. Resort retail all-beverages licenses. (1) It is the intent and purpose of this section to encourage the growth of quality recreational resort facilities in undeveloped areas of the state and to provide for the orderly growth of existing recreational sites by the establishment of resort areas within which retail all-beverages licenses may be issued by the department under the terms of this section. In addition to the licenses set forth in this code, the department may issue resort retail all-beverages licenses in a resort area.

(2) (a) For the purposes of this section, "resort area" means a recreational facility meeting the qualifications determined by the department and as otherwise provided in this section.

(b) The term does not include any land or improvements that lie wholly within the boundaries of an incorporated city or town.

HeinOnline -- 1999 vol. I 174 1999

(3) The department shall determine that the area for which licenses are to be issued is a resort area pursuant to rules.

(4) (a) In addition to the other requirements of this code, a resort area, for the purposes of qualification for the issuance of a resort retail all-beverages license, must:

(i) have a current actual valuation of resort or recreational facilities, including land and improvements, of not less than $500,000, at least half of which valuation must be for a structure or structures within the resort area;

(ii) be under the sole ownership or control of one person or entity at the time of the filing of the resort area plat referred to in subsection (5); and

(iii) contain a minimum of 50 acres of land.

(b) For the purposes of this section, "control" means land or improvements that are owned or that are held under contract, lease, option, or permit.

(5) The resort area must be determined by the resort area developer or landowner by a plat setting forth the resort area boundaries and designating the ownership of the lands within the resort area. The plat must be verified by the resort area developer or landowner and must be filed with the department prior to the filing of any applications for resort retail all-beverages licenses within the resort area. The plat must show the location and general design of the buildings and other improvements existing or to be built in the resort area. A master plan for the development of the resort area may be filed by the resort area developer in satisfaction of this section.

(6) Within 7 days after the plat is filed, the department shall schedule a public hearing to be held in the proposed area to determine whether the facility proposed by the resort area developer or landowner is a resort area. At least 30 days prior to the date of the hearing, the department shall publish notice of the hearing in a newspaper published in the county or counties in which the resort area is located, once a week for 4 consecutive weeks. The notice must include a description of the proposed resort area. Each resort area developer or landowner shall, at the time of filing an application, pay to the department an amount sufficient to cover the costs of publication.

(7) Any person may present, in person or in writing, a statement to the department at the hearing in opposition to or support of the plat.

(8) Within 30 days after the hearing, the department shall accept or reject the plat. If the plat is rejected, the department shall state its reasons and set forth the conditions, if any, under which the plat will be accepted. The decision of the department may be reviewed pursuant to the review procedure set forth in 16-4-406.

(9) Once filed with the department, the boundaries of a resort area may not be changed without:

(a) a hearing, noticed and conducted in the same manner as provided in subsections (6) and (7); and

(b) the prior approval of the department, determined according to public convenience and necessity.

(10) (a) When the department has accepted a plat and a given resort area has been determined, applications may be filed with the department for the issuance of resort retail all-beverages licenses within the resort area.

HeinOnline -- 1999 vol. I 175 1999

(b) Each applicant shall submit plans showing the location, appearance, and floor plan of the premises for which application for a resort retail all-beverages license is made.

(c) If an applicant otherwise qualifies for a resort retail all-beverages license but the premises to be licensed are still in construction or are otherwise incomplete at the time that application is made, the department shall issue a letter stating that the license will be issued at the time that the qualifications for a licensed premises have been met. The letter must set forth specific time limitations and requirements that the department may establish.

(11) In addition to the restrictions on sale or transfer of a license as provided in 16-4-204 and 16-4-404, a resort retail all-beverages license may not be sold or transferred for operation at a location outside of the boundaries of the resort area.

(12) A resort retail all-beverages license is ~~[not]~~ *not* subject to the quota limitations set forth in 16-4-201, and if the requirements of this section have been met, a resort retail all-beverages license must be issued by the department on the basis that the department has determined that the license is justified by public convenience and necessity, in accordance with the procedure required in 16-4-207."

Section 41. Section 16-4-207, MCA, is amended to read:

"16-4-207. Notice of application — investigation — publication — protest. (1) When an application has been filed with the department for a license to sell alcoholic beverages at retail or to transfer the location of a retail license, the department shall review the application for completeness and, based upon review of the application and any other information supplied to the department, determine whether the applicant or the premises to be licensed meets criteria provided by law. The department may make one request for additional information necessary to complete the application. The application is considered complete when the applicant furnishes the application information requested by the department. If the applicant does not provide the additional application information within 60 days of the department's request, the department shall terminate the application and return it to the applicant with an explanation of why the application was terminated. The terminated application is not a denial, and the premises identified in the application ~~is~~ *are* not subject to the provisions of 16-4-413. An applicant whose application is terminated may subsequently submit a new application. When the application is complete, the department shall request that the department of justice investigate the application as provided in 16-4-402. If the department does not discover a basis to deny the application within 30 days after the department requests the investigation by the department of justice, the department shall publish in a newspaper of general circulation in the city, town, or county from which the application comes a notice that the applicant has made application for a retail on-premises license or a transfer of location and that protests may be made against the approval of the application by a person who has extended credit to the transferor or by residents of the county from which the application comes or adjoining Montana counties. Protests may be mailed to a named administrator in the department of revenue within 10 days after the final notice is published. Notice of application for a new license must be published once a week for 4 consecutive weeks. Notice of application for transfer of ownership or location of a license must be published once a week for 2 consecutive weeks. Notice may be substantially in the following form:

HeinOnline -- 1999 vol. I 176 1999

NOTICE OF APPLICATION FOR RETAIL ALL-BEVERAGES LICENSE

Notice is given that on the .... day of ...., ~~19..~~ *20...*, one (name of applicant) filed an application for a retail all-beverages license with the Montana department of revenue~~,~~ to be used at (describe location of premises where beverages are to be sold). A person who has extended credit to the transferor and residents of ..... counties may protest against the approval of the application. Each protestor is required to mail a letter that contains in legible print the protestor's full name, mailing address, and street address. Each letter must be signed hy the protestor. A protest petition bearing the names and signatures of persons opposing the approval of an application may not be considered as a protest. Protests may be mailed to ...., department of revenue, Helena, Montana, on or before the .... day of ...., ~~19..~~ *20...*

Dated .....

Signed

.....

ADMINISTRATOR

(2) Each applicant shall, at the time of filing an application, pay to the department an amount sufficient to cover the costs of publishing the notice.

(3) (a) If the administrator receives no written protests, the department may approve the application without holding a public hearing.

(b) A response to a notice of opportunity to protest an application may not be considered unless the response is a letter satisfying all the requirements contained in the notice in subsection (1).

(c) If the department receives sufficient written protests that satisfy the requirements in subsection (1) against the approval of the application, the department shall hold a public hearing as provided in subsection (4).

(4) (a) If the department receives at least one protest but less than the number of protests required for a public convenience and necessity determination as specified in subsection (4)(c), the department shall schedule a public hearing to be held in Helena, Montana, to determine whether the protest presents sufficient cause to deny the application based on the qualifications of the applicant as provided in 16-4-401 or on the grounds for denial of an application provided for in 16-4-405, exclusive of public convenience and necessity. The hearing must be governed by the provisions of Title 2, chapter 4, part 6.

(b) If the department receives the number of protests required for a public convenience and necessity determination as specified in subsection (4)(c) and the application is for an original license or for a transfer of location, the department shall schedule a public hearing to be held in the county of the proposed location of the license to determine whether the protest presents sufficient cause to deny the application based on the qualifications of the applicant as provided in 16-4-401 or on the grounds for denial of an application provided for in 16-4-405 including public convenience and necessity. The hearing must be governed by the provisions of Title 2, chapter 4, part 6.

(c) The minimum number of protests necessary to initiate a public hearing to determine whether an application satisfies the requirements for public convenience and necessity, as specified in 16-4-203, for the proposed premises

HeinOnline -- 1999 vol. I 177 1999

located within a quota area described in 16-4-201 must be 25% of the quota for all-beverages licenses determined for that quota area according to 16-4-201(1), (2), and (5) but in no case less than two. The minimum number of protests determined in this manner will apply only to applications for either on-premises consumption beer or all-beverages licenses."

Section 42. Section 16-10-403, MCA, is amended to read:

"16-10-403. Revocation or suspension of license — civil penalty. (1) The department may revoke or suspend the license of, impose a civil penalty not to exceed $500 on, or order any combination of revocation, suspension, and penalty to be imposed on any licensed wholesaler or retailer upon sufficient cause appearing of the violation of this chapter or upon the failure of the licensee to comply with any of the provisions of this chapter.

(2) A license may not be suspended or revoked except upon notice to the licensee and after a hearing prescribed by the department at its principal office. The department, upon a finding by it that the licensee has failed to comply with any provisions of this chapter or any rule promulgated under this chapter, shall, in the case of a first offender, suspend the license of the licensee for a period of not less than 5 or more than 20 consecutive business days, impose a civil penalty in an amount not to exceed $500, or order both the suspension and the penalty. In the case of a second or plural offender, the department shall suspend the license for a period of not less than 20 consecutive business days or more than 12 months, impose a civil penalty in an amount not to exceed $500, or order both the suspension and the penalty. In the event the department finds the offender has been guilty of willful and persistent violations, it may revoke the licensee's license and, in its discretion, may impose a civil penalty in an amount not to exceed $500.

(3) Any person whose license has been revoked may apply to the department at the expiration of 1 year for a reinstatement of the license. The license may be reinstated by the department if it appears to the satisfaction of the department that the licensee will comply with the provisions of this chapter and the rules promulgated under this chapter.

(4) A person whose license has been suspended or revoked may not sell cigarettes or permit cigarettes to be sold during the period of the suspension or revocation on the premises occupied by the person or upon other premises controlled by the person or others or in any other manner or form whatever. A disciplinary ~~proceedings~~ *proceeding* or action is not barred or abated by the expiration, transfer, surrender, continuance, renewal, or extension of any license issued under the provisions of the cigarette tax law~~, as provided in [articles of chapter 11 of the Revised Codes of Montana, 1947]~~.

(5) Any determination by the department and any order of suspension or revocation of a license or refusal to reinstate a license after revocation is reviewable by the court in a proper case and in proceedings as provided by the procedural law of this jurisdiction."

Section 43. Section 17-1-505, MCA, is amended to read:

"17-1-505. Review of dedicated revenue provisions. (1) Each interim, the legislative finance committee shall review each dedicated revenue provision not exempted under subsection (4) and the principles of revenue dedication set forth in 17-1-507 to ensure that legislative policy is clearly stated. The committee shall also carry out the review prescribed by subsection (4).

HeinOnline -- 1999 vol. I 178 1999

(2) The legislature recognizes that dedicated revenue provisions are subject to review by:

(a) the office of budget and program planning in the development and implementation of the executive budget and analysis of legislation;

(b) the legislative ~~finance~~ *fiscal* division in analyzing the executive budget;

(c) the legislative services division in drafting legislation;

(d) the legislative auditor in auditing agencies; and

(e) the department of administration in performing the functions provided for in 17-2-106 and 17-2-111.

(3) To avoid unnecessary use of dedicated revenue provisions, the entities listed in subsection (2) shall, in the course of current duties, consider the principles in 17-1-507 and the criteria listed in this subsection for each new or existing dedicated revenue provision. A dedicated revenue provision should not give a program or activity an unfair advantage for funding. The expenditures from a dedicated revenue provision must be based on requirements for meeting a legislatively established outcome. Statutorily mandated programs or activities funded through dedicated revenue provisions from general revenue sources must be reviewed to the same extent as programs or activities funded from the general fund. The use of a dedicated revenue provision may be justified if it satisfies one or more of the following:

(a) The program or activity funded provides direct benefits for those who pay the dedicated tax, fee, or assessment, and the tax, fee, or assessment is commensurate with the costs of the program or activity.

(b) The use of the dedicated revenue provision provides special information or other advantages that could not be obtained if the revenue were allocated to the general fund.

(c) The dedicated revenue provision provides program funding at a level equivalent to the expenditures established by the legislature.

(d) The dedicated revenue provision involves collection and allocation formulas that are appropriate to the present circumstances and current priorities in state government.

(e) The dedicated revenue provision does not impair the legislature's ability to scrutinize budgets, control expenditures, and establish priorities for state spending.

(f) The dedicated revenue provision results in an appropriate projected ending fund balance.

(g) The dedicated revenue provision fulfills a continuing, legislatively recognized need.

(h) The dedicated revenue provision does not result in accounting or auditing inefficiency.

(4) The committee shall establish procedures to facilitate a biennial review and evaluation of dedicated revenue provisions. If the review determines that the revenue dedication is constitutionally mandated, is for debt service, funds emergency services, or is a user fee that is designed to provide direct benefits for those who pay the dedicated tax, fee, or assessment in an amount commensurate

HeinOnline -- 1999 vol. I 179 1999

with the benefits provided, the revenue dedication may be exempt from future review.

(5) Upon completion of the review, the committee shall report a summary of its findings to the legislature, including its recommendation of termination or extension, with or without modification, of the dedicated revenue provision. The summary must include the purpose of the revenue dedication, the source of funding, the activity funded, the number of personnel associated with the activity, and any balance in the dedicated revenue fund. The summary must state the reason why the revenue dedication is exempt from future review."

Section 44. Section 17-1-508, MCA, is amended to read:

"17-1-508. Review of statutory appropriations. (1) Each interim, the legislative finance committee shall review each statutory appropriation that is contained in a section listed in 17-7-502 and that is not exempted under subsection (6) of this section and shall review the guidelines set forth in subsection (4) to eliminate statutory appropriations that no longer fulfill a legislative need and to ensure that legislative policy is clearly stated concerning the use of statutory appropriations.

(2) Each biennium, the office of budget and program planning shall, in development of the executive budget, identify instances in which statutory appropriations in current law do not appear consistent with the guidelines set forth in subsection (4).

(3) As part of each agency audit, the legislative auditor shall review statutory appropriations to the agency and report instances in which they do not appear consistent with the guidelines set forth in subsection (4).

(4) The review of statutory appropriations must determine whether a statutory appropriation meets the requirements of ~~17-7-501~~ *17-7-502*. A statutory appropriation from a continuing and reliable source of revenue may not be used to fund administrative costs. In reviewing and establishing statutory appropriations, the legislature shall consider the following guidelines. A statutory appropriation may be considered appropriate if:

(a) the fund or use requires an appropriation;

(b) the money is not from a continuing, reliable, and estimable source;

(c) the use of the appropriation or the expenditure occurrence is not predictable and reliable;

(d) the authority does not exist elsewhere;

(e) an alternative appropriation method is not available, practical, or effective;

(f) other than for emergency purposes, it does not appropriate money from the state general fund;

(g) the money is dedicated for a specific use;

(h) the legislature wishes the activity to be funded on a continual basis; and

(i) when feasible, an expenditure cap and sunset date are included.

(5) The office of budget and program planning shall prepare a fiscal note for each piece of legislation that proposes to create or amend a statutory appropriation. It shall, consistent with the guidelines in this section, review each

HeinOnline -- 1999 vol. I 180 1999

of these pieces of legislation. Its findings concerning the statutory appropriation must be contained in the fiscal note accompanying that legislation.

(6) The legislative finance committee shall establish procedures to facilitate a biennial review and evaluation of statutory appropriations. If the review determines that continual review of a statutory appropriation is not necessary, the statutory appropriation may be exempt from future review."

Section 45. Section 17-3-222, MCA, is amended to read:

"17-3-222. Apportionment of money to counties. (1) It is the duty of the state treasurer to properly apportion and allocate the money received under 17-3-221 to the county treasurers, who shall allocate the money as follows:

(a) 50% to the county general fund; and

(b) 50% to the elementary *BASE funding programs of the school districts in the* county ~~equalization fund~~.

(2) The payments from the state to the county treasurers provided for in subsection (1) are statutorily appropriated as provided in 17-7-502."

Section 46. Section 17-7-502, MCA, is amended to read:

"17-7-502. (Temporary) Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 3-5-901; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706; 15-30-195; 15-31-702; 15-36-324; 15-36-325; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-406; 16-1-411; 16-11-308; 17-3-106; 17-3-212; 17-3-222; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-6-709; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 20-8-107; ~~20-8-111;~~ 20-26-1503; 22-3-1004; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 39-71-907; 39-71-2321; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 53-6-703; 53-24-206; 67-3-205; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-1-131; *77-1-505;* 80-2-103; 80-2-222; 80-4-416; 81-5-111; 82-11-161; 85-20-402; 87-1-513; 90-3-301; 90-4-215; 90-6-331; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 7,

HeinOnline -- 1999 vol. I 181 1999

Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; pursuant to sec. 7(2), Ch. 29, L. 1995, the inclusion of 15-30-195 terminates July 1, 2001; *pursuant to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed;* pursuant to sec. 5, Ch. 461, L. 1997, the inclusion of 77-1-131 terminates October 1, 2003; and pursuant to secs. 13, 16(1), Ch. 549, L. 1997, the inclusion of 90-3-301 terminates July 1, 1999.)

17-7-502. (Effective July 1, 2008) Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 3-5-901; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-23-706; ~~15-30-105;~~ 15-31-702; 15-36-324; 15-36-325; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; ~~[16-1-406;]~~ *16-1-406;* 16-1-411; 16-11-308; 17-3-106; 17-3-212; 17-3-222; ~~17-5-404; 17-5-804;~~ 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-6-709; 19-9-702; 19-13-604; 19-17-301; 19-18-512; ~~19-19-205;~~ 19-19-305; 19-19-506; 20-8-107; ~~20-9-361;~~ 20-26-1503; 22-3-1004; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; ~~32-1-537;~~ 37-43-204; 37-51-501; 39-71-503; 39-71-907; 39-71-2321; 42-2-105; 44-12-206; 44-13-102; 50-4-623; ~~50-5-232; 50-40-206; 53-6-150;~~ 53-6-703; 53-24-206; ~~60-2-220;~~ 67-3-205; 75-1-1101; 75-5-1108; 75-6-214; ~~75-5-1108; 75-6-214;~~ 75-11-313; 77-1-505; 80-2-103; 80-2-222; 80-4-416; 81-5-111; ~~82-11-136;~~ 82-11-161; ~~85-1-220;~~ 85-20-402; 87-1-513; 90-4-215; 90-6-331; ~~90-7-220; 90-7-221;~~ and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized hy the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant to sec. 68(2), Ch. 422, L. 1997, this version becomes effective July 1, 2008.)"

Section 47. Section 18-3-110, MCA, is amended to read:

"18-3-110. Requests for proposals. (1) The department, with the cooperation of the departments that will occupy the rental property, shall develop a request for proposals defining the state's program and building specification requirements. A request for proposals must be administered in accordance with 18-4-304(3) through ~~(7)~~ *(6)*.

HeinOnline -- 1999 vol. I 182 1999

(2) For projects valued at less than $2 million, the departments may develop the request for proposals. For projects valued at $2 million or more, the departments shall contract with a licensed architect or engineer selected in accordance with 18-2-112 for the development of the request for proposals.

(3) A successful proposer, general contractor, or subcontractor engaged in construction under this part shall pay the standard prevailing rate of wages to employees engaged in the construction of the leased property."

Section 48. Section 18-4-242, MCA, is amended to read:

"**18-4-242. Exclusive remedies for unlawful solicitation or award.** (1) This section estahlishes the exclusive remedies for a solicitation or award of a contract determined to be in violation of the law.

(2) Except for small purchases or limited solicitations made pursuant to 18-4-305, a bidder, offeror, or contractor aggrieved in connection with the solicitation or award of a contract may protest to the department. The protest must be submitted to the department in writing no later than 14 days after execution of the contract.

(3) If the protest is not resolved by mutual agreement, the department shall issue in writing a decision on the protest within 30 days after receipt of the protest. The decision must:

(a) state tbe reason for the action taken by tlie department with regard to the contract; and

(b) inform the aggrieved party of the party's right to request, within 14 days after the date of the department's written decision, a contested case hearing pursuant to the Montana Administrative Procedure Act.

(4) In a protest or contested case proceeding, the department may, in an appropriate case, order a remedy provided in subsection (5) or (6).

(5) If hefore an award it is determined that a solicitation or proposed award of a contract is in violation of law, the solicitation or proposed award may be:

(a) canceled; or

(b) revised to comply with the law.

(6) (a) If after an award it is determined that a solicitation or award of a contract is in violation of law and the person awarded the contract has not acted fraudulently or in bad faitli, the contract may be:

(i) ratified and affirmed, provided it is determined that doing so is in the best interests of the state; or

(ii) terminated, and the person awarded the contract must be compensated for the actual expenses reasonably incurred under the contract, plus a reasonahle profit, before the termination.

(b) If after an award it is determined tbat a solicitation or award of a contract is in violation of law and the person awarded the contract has acted fraudulently or in bad faith, the contract may be:

(i) declared void; or

(ii) ratified and affirmed if that action is in the best interests of the state, without prejudice to the state's rights to appropriate damages.

HeinOnline -- 1999 vol. I 183 1999

(7) The exclusive method of judicial review of a solicitation or award by the department pursuant to this chapter is by a petition for judicial review pursuant to 2-4-702. In a proceeding pursuant to that section, the court may, in an appropriate case, order a remedy provided by subsection (5) or (6) of this section. Except as provided in subsections (6)(a)(ii) and (6)(b)(ii), there is no right under any legal theory to recover a form of damages or expenses for a solicitation or award of a contract in violation of law. Any other claim, cause of action, or request for relief for solicitations ~~of~~ *or* awards allegedly made in violation of law may not be heard or granted by a district court other than as provided in this section.

(8) The state is not required to delay, halt, or modify the procurement process pending the result of a protest, contested case proceeding, or judicial review.

(9) The department may adopt rules governing the protest of solicitations ~~and~~ *or* awards."

Section 49. Section 18-8-202, MCA, is amended to read:

"**18-8-202. Definitions.** Unless the context clearly indicates otherwise, *in this part,* the following definitions apply ~~to this part~~:

(1) "Agency" means a state agency ~~as defined in subsection (7)~~, local agency ~~as defined in subsection (4)~~, or special district ~~as defined in subsection (6)~~.

(2) "Architectural, engineering, and land surveying" means services rendered by a person, other than as an employee of an agency, contracting to perform activities within the scope of the general definition of professional practice and licensed for the respective practice as an architect pursuant to Title 37, chapter 65, or an engineer or land surveyor pursuant to Title 37, chapter 67.

(3) "Licensed professional" or "licensed architect, professional engineer, professional land surveyor" means a person providing professional services who is not an employee of the agency for which the services are provided ~~and who is exempt under 18-8-103~~.

(4) "Local agency" means a city, town, county, special district, municipal corporation, agency, port district or authority, airport authority, political subdivision of any type, or any other entity or authority of local government, in corporate form or otherwise.

(5) "Person" means an individual, organization, group, association, partnership, firm, joint venture, or corporation.

(6) "Special district" means a unit of local government, other than a city, town, or county, authorized by law to perform a single function or a limited number of functions, including but not limited to water districts, irrigation districts, fire districts, school districts, community college districts, hospital districts, sewer districts, and transportation districts.

(7) "State agency" means a department, agency, commission, bureau, office, or other entity or authority of state government."

Section 50. Section 19-3-316, MCA, is amended to read:

"**19-3-316. Employer contribution rates.** (1) Each employer shall contribute to the cost of benefits under the system. Except as provided in subsection (2), the amount of the employer contribution as a percentage of the employer's covered payroll is ~~6.8% beginning July 1, 1997, and increases to~~ 6.9% beginning July 1, 1999.

HeinOnline -- 1999 vol. I 184 1999

(2) Local government and school district employer contributions must be the total employer contribution rate provided in subsection (1) minus the state contribution rate applied to their monthly covered payrolls under 19-3-319. ~~The payment is statutorily appropriated as provided in 17-7-502.~~"

Section 51. Section 19-3-412, MCA, is amended to read:

"**19-3-412. Optional membership.** (1) The following employees in covered employment may become members of the retirement system at their option at any time during their employment in a covered position by filing a membership card with the board:

(a) elected officials of the state or local governments who are paid on a salary or wage basis rather than on a per diem or other reimbursement basis;

(b) part-time employees serving in employment that does not exceed a total of 960 hours of employment covered by this chapter in any fiscal year;

(c) employees directly appointed by the governor;

(d) employees working 6 months or less for the legislative branch to perform work related to the legislative session;

(e) the chief administrative officer of any city or county;

(f) employees of county hospitals or rest homes in counties of the third, *fourth, fifth,* sixth, and seventh class.

(2) If an employee declines optional membership, the employee shall execute a statement waiving membership and the employer shall retain the statement."

Section 52. Section 19-3-509, MCA, is amended to read:

"**19-3-509. Qualification of other Montana public service.** (1) (a) A member may, at any time before retirement, make a written election with the board to qualify as service in this retirement system all or any portion of the member's service credit in the highway patrol officers', sheriffs', game wardens' *and peace officers'*, firefighters' unified, or municipal police officers' retirement system for which the member either has received or is eligible to receive a refund of membership contributions. To qualify this service, the member shall contribute to the pension trust fund the actuarial cost of granting the service in the public employees' retirement system, as determined by the board, based on the most recent actuarial valuation minus the employer contribution provided in subsection (1)(b). This service may not be credited in more than one retirement system under Title 19.

(b) Upon receiving the member's payment under subsection (1)(a), the division shall transfer from the member's former retirement system to the public employees' retirement system an amount equal to the employer contributions made during the member's service but no more than an amount equal to the normal cost contribution rate minus the employee contribution rate in the public employees' retirement system, according to the most recent actuarial valuation, based on the salaries earned by the employee as a member of the former system.

(2) (a) A member may, at any time before retirement, make a written election with the board to qualify any full-time public service employment performed for the state or a political subdivision of the state. The member shall provide salary and employment documentation certified by the member's former public employer. The board may grant service credit upon contribution by the employee of the actuarial cost of granting this service in the public employees' retirement

HeinOnline -- 1999 vol. I 185 1999

system, as determined by the board, based on the most recent actuarial valuation of the system.

(b) The board is the sole authority under this subsection (2) in determining what constitutes full-time public service.

(c) This service may not be credited in more than one retirement system under Title 19."

Section 53. Section 19-6-802, MCA, is amended to read:

"19-6-802. Qualification of other Montana public service. (1) (a) A member may, at any time before retirement, make a written election with the board to qualify all or any portion of the member's service in the public employees', sheriffs', game wardens' *and peace officers'*, firefighters' unified, or municipal police officers' retirement system for which the member either has received or is eligible to receive a refund of the member's membership contributions. To qualify this service, the member shall contribute to the pension trust fund the actuarial cost of granting the service credit in the highway patrol officers' retirement system, as determined by the board, based on the most recent actuarial valuation minus the employer contribution provided in subsection (1)(b). This service may not be credited in more than one retirement system under Title 19.

(b) Upon receiving the member's payment under subsection (1)(a), the division shall transfer from the member's former retirement system to the highway patrol officers' retirement system an amount equal to the employer contributions made during the member's service but no more than an amount equal to the normal contribution rate minus the employee contribution rate in the highway patrol officers' retirement system, according to the most recent actuarial valuation.

(2) (a) A member may, at any time before retirement, make a written election with the board to qualify any full-time public service employment performed for the state or a political subdivision of the state. The member shall provide compensation and employment documentation certified by the member's public employer. The board shall grant service credit subject to rules adopted by the board upon contribution by the employee of the actuarial cost of granting this service in the highway patrol officers' retirement system, as determined by the board, based on the most recent actuarial valuation of the system.

(b) The board is the sole authority under this subsection (2) in determining what constitutes full-time public service.

(c) This employment may not be credited in more than one retirement system under Title 19."

Section 54. Section 19-7-802, MCA, is amended to read:

"19-7-802. Qualification of other Montana public service. (1) (a) A member may, at any time before retirement, make a written election with the board to qualify all or any portion of the member's service in the public employees', highway patrol officers', firefighters' unified, game wardens' *and peace officers'*, or municipal police officers' retirement system for which the member either has received or is eligible to receive a refund of the member's membership contributions. To qualify this service, the member shall contribute to the pension trust fund the actuarial cost of granting the service in the sheriffs' retirement system, as determined by the board, based on the most recent

HeinOnline -- 1999 vol. I 186 1999

actuarial valuation minus the employer contribution provided in subsection (1)(b). This service may not be credited in more than one retirement system under Title 19.

(b) Upon receiving the member's payment under subsection (1)(a), the division shall transfer from the member's former retirement system to the sheriffs' retirement system an amount equal to the employer contributions made during the member's service but no more than an amount equal to the normal contribution rate minus the employee contribution rate in the sheriffs' retirement system, according to the most recent actuarial valuation, based on the compensation earned by the employee as a member of the former system.

(2) (a) A member may, at any time before retirement, make a written election with the board to qualify any full-time public service employment performed for the state or a political subdivision of the state. The member shall provide compensation and employment documentation certified by the member's public employer. The board shall grant service credit upon contribution by the employee of the actuarial cost of granting this service in the sheriffs' retirement system, as determined by the board, based on the most recent actuarial valuation of the system.

(b) The board is the sole authority under this subsection (2) in determining what constitutes full-time public service.

(c) This service may not be credited in more than one retirement system under Title 19."

Section 55. Section 19-8-105, MCA, is amended to read:

"19-8-105. Short title. This chapter may be cited as "The Game Wardens' *and Peace Officers'* Retirement Act"."

Section 56. Section 20-15-203, MCA, is amended to read:

"20-15-203. Call of community college district organization election — proposition statement. (1) A petition for the organization of a community college district ~~shall~~ *must* be presented to the regents. The regents shall examine the petition to determine if the petition satisfies the petitioning and community college district organizational requirements.

(2) If the regents determine that the petition satisfies ~~such~~ *the* requirements, the regents shall order the elementary districts encompassed by the proposed community college district to conduct an election on the community college district organization proposition. ~~Such~~ *The* election ~~shall~~ *must* be held on the next ~~succeeding~~ regular school election day, except that an election required by a petition received by the regents less than 60 days before the regular school election day ~~shall~~ *must* he held at the regular school eloction in the following school fiscal year.

(3) At ~~such~~ *the* election the proposition ~~shall~~ *must* be in substantially the following form:

PROPOSITION

Shall there be organized within the area comprising the School Districts of .... (elementary districts ~~shall~~ *must* be listed by county), State of Montana, a community college district for the offering of 13th- and 14th-year courses, to be known as the Community College District of ...., Montana, under the provisions of the laws authorizing community college districts in Montana, as ~~prayed~~

HeinOnline -- 1999 vol. I 187 1999

requested in the petition filed with the Board of Regents at Helena, Montana, on the .... day of ...., ~~19...~~ *20...*?

☐ FOR organization.

☐ AGAINST organization."

Section 57. Section 25-13-701, MCA, is amended to read:

"25-13-701. Notice of sale on exccution. (1) Before the sale of the property on execution, notice ~~thereof~~ must be given as follows:

(a) in case of perishable property, by posting written notice of the time and place of the sale in three public places in the county wbere the sale is to take place~~,~~ for ~~such~~ *a* time ~~as may be~~ *that is* reasonable considering the character and condition of the property;

(b) in case of other personal property, by posting a similar notice in three public places in the county where the sale is to take place~~,~~ for not less than 5 days or more than 10 days~~,~~ and by publishing a copy of the notice at least 1 week before the sale in a newspaper of general circulation published in the county~~,~~ if there ~~be~~ *is* one;

(c) in case of real property, by posting a similar notice, particularly describing the property, for 20 days in three public places in the county where the property is situated and also where the property is to he sold, which may be either at the courtbouse or on the premises, and publishing a copy ~~thereof~~ *of the notice* once a week for the same period in some newspaper published in the county~~,~~ if there ~~be~~ *is* one~~, which~~. *The* notice ~~shall~~ *must* be substantially as follows:

SHERIFF'S SALE

....., Plaintiff,

vs.

....., Defendant,

To be sold at sheriff's sale on the .... day of ...., ~~19...~~ *20...*, at ..... (Here insert brief description of property.)

Signed ....., Sheriff

(2) Any sheriff publishing a notice *that is* not in accordance with the form set forth in subsection (1)(c) and ~~which shall cost~~ *that costs* more than ~~such a~~ *that* notice ~~shall~~ *is* not ~~be~~ entitled to any costs for publication of the ~~same~~ *notice* but ~~shall be~~ *is* personally liable for tbe payment of ~~such~~ *the* publication."

Section 58. Section 25-31-119, MCA, is amended to read:

"25-31-119. Interpleader actions. (1) As used in this chapter, interpleader actions determine the rights of rival claimants to a fund held by a disinterested party and may be maintained in the justice's court wben any person appears before a justice of tbe peace and executes an affidavit setting forth the nature and basis of the claim.

(2) The person filing the interpleader affidavit shall deposit the funds with the justice of the peace at the same time the interpleader affidavit is filed.

(3) The interpleader must be substantially in the following form:

In the Justice's Court of the State of Montana in and for the County of ....., before ....., Justice of the Peace.

HeinOnline -- 1999 vol. I 188 1999

....., Plaintiff

vs.

....., Defendant

and

....., Defendant

INTERPLEADER AFFIDAVIT

)
State of Montana) ss
)

....., being duly sworn, deposes and says: That ....., a defendant, resides at ..... That ....., a defendant, resides at ..... That the plaintiff has custody or possession of money in the amount of $....., held pursuant to the following:

.....

.....

.....

.....

That the defendants claim or may claim to be entitled to the money. That the plaintiff deposits into the court $....., which represents the amount of money in dispute.

That the plaintiff resides at the address shown.

.....
Affiant

Subscribed and sworn to before me this .... day of ....., ~~19...~~ *20....*

.....
Justice of the Peace

.....
Clerk

ORDER

The State of Montana to the within named defendants, greeting:

You are ~~hereby~~ directed to appear and answer the ~~within and foregoing~~ *interpleader* claim at my office in ..... (name, building, or residence), in ....., County of ....., State of Montana, on the ..... day of ....., ~~19...~~ *20...*, at the hour of .....(AM)(PM)~~;~~ and to have with you ~~then and there,~~ all books, papers, and witnesses needed by you to establish your claim to ~~such~~ *the* money.

You are further notified that in case you do not ~~so~~ appear, judgment will be given against you as follows:

Determining or foreclosing your claim to the above-described money, as well as the disposition ~~thereof~~ *of the money*; and~~,~~ in addition, for costs of the action.

Dated this ..... day of ....., ~~19....~~ *20*...

.....

Justice of the Peace

.....

Clerk"

Section 59. Section 25-35-508, MCA, is amended to read:

"25-35-508. Interpleader actions. (1) As used in this chapter, interpleader actions determine the rights of rival claimants to a fund held by a disinterested party and may be maintained in the small claims division of the justice's court when any person appears before a justice of the peace and executes an affidavit setting forth the nature and basis of the claim.

(2) The person filing the interpleader affidavit shall deposit the funds with the justice of the peace at the same time the interpleader affidavit is filed.

(3) The interpleader must be substantially in the following form:

In the Small Claims Division of the Justice's Court of ..... County, Montana before ....., Justice of the Peace.

....., Plaintiff

vs.

....., Defendant

and

....., Defendant

INTERPLEADER AFFIDAVIT

State of Montana)) ss)

....., being duly sworn, deposes and says: That ....., a defendant, resides at ..... That ....., a defendant, resides at ..... That the plaintiff has custody or possession of money in the amount of $....., held pursuant to the following:

.....

.....

.....

.....

That the defendants claim or may claim to be entitled to the money. That the plaintiff deposits into the court $....., which represents the amount of money in dispute.

That the plaintiff resides at the address shown.

.....

Affiant

Subscribed and sworn to before me this .... day of ....., ~~19....~~ *20...*

.....

Justice of the Peace

.....

Clerk

ORDER

The State of Montana to the within named defendants, greeting:

You are ~~hereby~~ directed to appear and answer the ~~within and foregoing~~ *interpleader* claim at my office in ..... (name, building, or residence), in ....., County of ....., State of Montana, on the ..... day of ....., ~~19....~~ *20...*, at the hour of .....(AM)(PM)~~;~~ and to have with you ~~then and there,~~ all books, papers, and witnesses needed by you to establish your claim to ~~such~~ *the* money.

You are further notified that in case you do not ~~so~~ appear, judgment will be given against you as follows:

Determining or foreclosing your claim to the above-described money, as well as the disposition ~~thereof;~~ *of the money,* and~~,~~ in addition, for costs of the action.

Dated this ..... day of ....., ~~19....~~ *20...*

.....

Justice of the Peace

.....

Clerk"

Section 60. Section 25-35-602, MCA, is amended to read:

"25-35-602. Form of complaint and order of court/notice to defendant. The sworn complaint and order of the court ~~shall~~ *must* be made ~~on a blank~~ *in* substantially ~~in~~ the following form:

IN THE SMALL CLAIMS DIVISION OF THE JUSTICE'S
COURT OF ..... COUNTY, MONTANA
BEFORE ....., JUSTICE OF THE PEACE

.....

.....

Plaintiff

vs. Complaint

Case No. .....

.....

.....

Defendant(s)

Comes now the plaintiff, being first duly sworn, upon oath, and complains and alleges that *the* defendant is indebted to plaintiff in the sum of $....., for.....

.....

.....

which sum is now due, owing, and unpaid despite demands for the payment ~~thereof~~ *of the sum*, together with plaintiff's costs ~~herein~~ expended *in this action*.

Dated this ..... day of ....., ~~19...~~ *20...*

.....

Plaintiff

.....

Plaintiff's address

Subscribed and sworn to before me this ..... day of ....., ~~19...~~ *20...*

.....

Justice of the peace

By:.....

Clerk, small claims division

ORDER OF COURT/
NOTICE TO DEFENDANT

THE STATE OF MONTANA TO THE ABOVE-NAMED DEFENDANT(S):

You are ~~hereby~~ directed to appear and answer the ~~within and foregoing~~ complaint at:

.....

.....

on ..... at .....

Reset for ..... at .....

Reset for ..... at .....

Reset for ..... at .....

and to have with you~~, then and there,~~ all books, papers, and witnesses needed by you to establish your defense to the claim~~; and you~~. *You* are further notified that in case you do not appear, judgment will be taken against you hy default for the relief demanded in the complaint and for costs of this action, including costs of service of the complaint and order of the court/notice to defendant.

You are ~~hereby~~ further notified that~~,~~ within 10 days of service upon you of this complaint and order~~,~~ you may remove this action from the small claims court to justice's court~~,~~ and that your failure to remove ~~shall constitute~~ *constitutes* a waiver of your rights to trial hy jury and to representation hy counsel.

To the Sheriff, Constable, or Server of Process of ~~said~~ *the* county, greetings:

Make legal service and ~~due~~ return ~~thereof~~ on the defendant at .....

Dated this .... day of ....., ~~19...~~ *20...*

.....

Justice of the peace

By:.....

Clerk, small claims division"

Section 61. Section 25-35-606, MCA, is amended to read:

"25-35-606. Defendant's counterclaim. (1) The defendant may assert a counterclaim against the plaintiff arising out of the same transaction or occurrence that is the subject matter of the plaintiff's claim by appearing before the justice of the peace and executing a sworn small claims counterclaim in substantially the same form as set forth in subsection (3). The defendant shall cause the counterclaim to be served on the plaintiff not less than 72 hours before the date set for the hearing. Service ~~shall~~ *must* be made in the same manner in which service of the order of court/notice to defendant is made on the defendant. A defendant may not assert as a counterclaim any claim not arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim.

(2) A counterclaim or setoff may not exceed $2,500. If a counterclaim or setoff is asserted in excess of $2,500, the jurisdiction of the small claims court over the plaintiff's claim is not defeated, but the court shall limit its determination of the counterclaim or setoff to the question of whether the plaintiff's claim is discharged ~~thereby~~, leaving the defendant to prosecute the balance of ~~his~~ *the defendant's* claim in an appropriate justice or district court action.

(3) The counterclaim ~~shall~~ *must* be made ~~on a blank~~ *in* substantially ~~in~~ the following form:

IN THE SMALL CLAIMS DIVISION OF THE JUSTICE'S COURT OF
..... COUNTY, MONTANA
BEFORE ....., JUSTICE OF THE PEACE

.....

Plaintiff

vs. Counterclaim

Case No. .....

.....

.....

Defendant(s)

.....

Comes now the defendant, heing first duly sworn, ~~upon oath,~~ and alleges that *the* defendant is entitled to counterclaim against the plaintiff in the plaintiff's pending action in the sum of $....., for .....

.....

.....

which sum is now due, together with defendant's costs ~~herein~~ expended *in this action.*

Dated this ..... day of ....., ~~19...~~ *20...*

.....

Defendant

.....

Defendant's address

Subscribed and sworn to before me this..... day of....., ~~19...~~ *20...*

.....

Justice of the peace

By: .....

Clerk, small claims division"

Section 62. Section 27-1-306, MCA, is amended to read:

"27-1-306. When replacement value to be allowed. The measure of damages in a case in which the cost of repairing a motor vehicle exceeds its value is the actual replacement value of the motor vehicle rather than its "hook" value unless, after the damages arise, the parties agree to use the "book" value. "Book" value must be determined by referring to the ~~used car guides listed in 61-3-503(1)(c)~~ *most recent volume of the Mountain States Edition of the National Automobile Dealers Association (N.A.D.A.) Official Used Car Guide, the National Edition of N.A.D.A. Appraisal Guides Official Older Used Car Guide, or another nationally published used vehicle or appraisal guide approved by the department of revenue*. Actual replacement value is the actual cash value of the motor vehicle immediately prior to the damage. "Book" value may be used to assist in determining the actual replacement value of the motor vehicle."

Section 63. Section 27-1-704, MCA, is amended to read:

"27-1-704. Release — covenant not to sue. A release or covenant not to sue given to one of two or more persons liable in tort for the same injury, death, damage, or loss:

(1) does not discharge any other tortfeasor from liability for that tortfeasor's several pro rata share of liability for the injury, death, damage, or loss unless the release or covenant not to sue provides otherwise;

(2) reduces the aggregate claim against the other tortfeasors to the extent of any percentage of fault attributed by the trier of fact under 27-1-703~~(6)~~ to the tortfeasor to whom the release or covenant is given;

(3) discharges the tortfeasor to whom it is given from all liability for contribution."

Section 64. Section 30-10-115, MCA, is amended to read:

"30-10-115. Deposits to the general fund. (1) All fees, examination charges, and miscellaneous charges received by the commissioner pursuant to parts 1 through 3 of this chapter, except for portfolio ~~registration~~ *notice filing* fees described in 30-10-209(1)(d), must be deposited in the general fund.

(2) All portfolio ~~registration~~ *notice filing* fees collected under 30-10-209(1)(d) must be deposited in the state special revenue account to the credit of the state auditor's office. The funds allocated by this section to the state special revenue account may only be used to defray the expenses of the state auditor's office in discharging its administrative and regulatory powers and duties in relation to portfolio ~~registration~~ *notice filing*. Any excess fees must be deposited in the general fund."

HeinOnline -- 1999 vol. I 194 1999

Section 65. Section 30-10-209, MCA, is amended to read:

"30-10-209. Fees. The following fees must be paid in advance under the provisions of parts 1 through 3 of this chapter:

(1) (a) For the registration of securities by notification, coordination, or qualification, or for notice filing of a federal covered security, there must be paid to the commissioner for the initial year of registration or notice filing a fee of $200 for the first $100,000 of initial issue or portion of the first $100,000 in this state, based on offering price, plus 1/10 of 1% for any excess over $100,000, with a maximum fee of $1,000.

(b) Each succeeding year, a registration of securities or a notice filing of a federal covered security may be renewed, prior to its termination date, for an additional year upon consent of the commissioner and payment of a renewal fee to be computed at 1/10 of 1% of the aggregate offering price of the securities that are to be offered in this state during that year. The renewal fee may not be less than $200 or more than $1,000. The registration or the notice filing may be amended to increase the amount of securities to be offered.

(c) If a registrant or issuer of federal covered securities sells securities in excess of the aggregate amount registered for sale in this state, or for which a notice filing has been submitted, the registrant or issuer may file an amendment to the registration statement or notice filing to include the excess sales. If the registrant or issuer of a federal covered security fails to file an amendment before the expiration date of the registration order or notice, the registrant or issuer shall pay a filing fee for the excess sales of three times the amount calculated in the manner specified in subsection (1)(b). Registration or notice of the excess securities is effective retroactively to the date of the existing registration or notice.

(d) Each series, portfolio, or other subdivision of an investment company or similar issuer is treated as a separate issuer of securities. The issuer shall pay a portfolio notice filing fee to be calculated as provided in subsections (1)(a) through (1)(c). The portfolio notice filing fee collected by the commissioner must be deposited in the state special revenue account provided for in 30-10-115.

(2) (a) For registration of a broker-dealer or investment adviser, the fee is $200 for original registration and $200 for each annual renewal.

(b) For registration of a salesperson or investment adviser representative, the fee is $50 for original registration with each employer, $50 for each annual renewal, and $50 for each transfer. A salesperson who is dually registered as an investment adviser representative with a broker-dealer dually registered as an investment adviser is not required to pay the $50 fee to register as an investment adviser representative.

(c) For a federal covered adviser the fee is $200 for the initial notice filing and $200 for each annual renewal.

(3) For certified or uncertified copies of any documents filed with the commissioner, the fee is the cost to the department.

(4) For a request for an exemption under 30-10-105(15), the fee must be established by the commissioner by rule. For a request for any other exemption or an exception to the provisions of parts 1 through 3 of this chapter, the fee is $50.

HeinOnline -- 1999 vol. I 195 1999

(5) All fees are considered fully earned when received. In the event of overpayment, only those amounts in excess of $10 may be refunded.

(6) Except for portfolio ~~registration~~ *notice filing* fees established in this section, all fees, examination charges, miscellaneous charges, fines, and penalties collected by the commissioner pursuant to parts 1 through 3 of this chapter and the rules adopted under parts 1 through 3 of this chapter must be deposited in the general fund."

Section 66. Section 30-16-201, MCA, is amended to read:

"30-16-201. Designation of small business licensing coordination center — duties of center. The department shall administer a small business licensing coordination center. The small business licensing coordination center shall:

(1) document and analyze current licensing requirements, fees, and procedures;

(2) recommend elimination of unnecessary licensing requirements, administrative procedures, or forms or parts of forms that can be eliminated in the public interest;

(3) recommend efficient and effective improvements in the administration and enforcement of licensing laws, including gathering of information that facilitates the development of a permanent master license certificate;

(4) recommend revisions in the license fee structure to distribute the cost of licenses equitably and to provide financing for continuing improvements in licensing administration and enforcement;

(5) develop and upon request distribute information concerning state requirements for starting and operating a business in Montana;

(6) provide assistance to business enterprises to facilitate their compliance with state licensing requirements;

(7) maintain a supply of license and permit forms or applications for all licenses and actively assist the business community in answering application questions;

(8) maintain a master list of the business types existing in the state and a corresponding list of the licenses or permits needed to operate or start that type of business;

(9) maintain a copy of the Administrative Rules of Montana in order to provide an applicant with the basic rules of any agency with regard to licensing;

(10) encourage agencies to provide informational brochures through the center, especially in the case of complex licensing procedures;

(11) maintain contact with licensing agencies in order to enable the center to assist an applicant with setting up appointments or otherwise facilitate the application process; *and*

(12) perform other administrative tasks delegated to the center to improve state business license administration~~; and~~

~~(13) on January 4, 1993, present a report to the legislature containing its analysis and recommendations as required in subsections (1) through (4).~~"

Section 67. Section 32-1-440, MCA, is amended to read:

"32-1-440. Financial institntion's responsibility to provide notice when funds become available for withdrawal. (1) A depository bank shall provide clear and conspicuous written notice of the time periods and exceptions to the periods~~,~~ concerning when funds become available for withdrawal as of right on deposit by check or similar instrument in the customer's deposit account. The notice must state the cutoff hour, if any, fixed by the financial institution after which an item is treated as being received at the opening of the next business day.

(2) This notice must be:

(a) provided to a potential customer prior to opening a deposit account; *and*

~~(b) mailed to each of the financial institution's present customers on or before December 31, 1985; and~~

~~(c)~~*(b)* posted in a conspicuous manner at each financial institution, ~~automatic~~ *automated* teller machine location, or other device that accepts deposits.

(3) A deposit slip, ~~or~~ envelope, or any other printed form furnished by the depository financial institution ~~used~~ *for use* in connection with deposits~~,~~ must contain the following notice, printed in a conspicuous manner: "Your deposit may not be available for immediate witbdrawal. Consult posted notices for further information."

Section 68. Section 32-8-314, MCA, is amended to read:

"32-8-314. Depository services — allowed and mandated. (1) A depository may:

(a) accept deposits in any currency or electronic form convertible to U.S. dollars;

(b) provide safe deposit and other storage services for the purpose of protecting the security of a customer's tangible personal property;

(c) convert cash deposits to purchase orders for platinum, palladium, gold, or silver bullion on behalf of or at the direction of a customer;

(d) purchase, sell, and pay interest to the customer derived from tax-exempt federal, state, county, or municipal bonds on bebalf of or at the direction of a customer;

(e) provide a customer with foreign currency in exchange for U.S. dollars in an equivalent monetary amount;

(f) perform trust and related fiduciary services, as provided in 32-1-107, but only if the depository has obtained a certificate from the department authorizing the depository to act as a trust company or the subsidiary of a trust company prior to engaging in trust activities;

(g) issue a debit card or an ~~automatic~~ *automated* teller machine card to a customer;

(h) charge interest in relation to a customer's use of a debit or ~~automatic~~ *automated* teller machine card;

(i) establish different types of deposit accounts for customers;

(j) offer deposit or safe deposit insurance provided under contract with a financial guaranty insurer approved by the insurance commissioner;

HeinOnline -- 1999 vol. I 197 1999

(k) charge fees related to the opening, management, and insuring of deposit accounts, the storage and maintenance of tangible personal property, the estahlishment and administration of trust accounts, and other lawful investment, legal, or financial services;

(l) set underwriting standards for each type of account that it offers to a customer; and

(m) establish a minimum deposit amount for any type of account as long as the minimum is not less than $200,000.

(2) A depository may in its discretion refuse an application for an account of any type.

(3) A depository shall:

(a) exercise extraordinary diligence in determining the genuine identity of a customer;

(b) protect the privacy of each customer as provided in part 5 of this chapter;

(c) in accordance with Title 25, chapter 9, part 8, provide legal defense of a customer at the customer's request or on the request of the customer's legal representative in the event a civil judgment rendered against the depositor in a jurisdiction outside the United States is registered in Montana;

(d) with respect to precious metals accounts in part 4 of this chapter, comply with the statutory protections against securities fraud under Title 30, chapter 10;

(e) comply with federal reporting and recordkeeping requirements as provided in the Bank Secrecy Act, the Money Laundering Control Act of 1986, the Annunzio-Wylie Anti-Money Laundering Act, and implementing regulations of each of those acts concerning money laundering and other financial crimes."

Section 69. Section 32-8-403, MCA, is amended to read:

"**32-8-403. Account requirements — provisions.** (1) An agreement between the depository and a customer to establish a precious metals account must include the following provisions:

(a) a term of maturity that is not less than 36 months;

(b) a penalty for early withdrawal of an amount of precious metals that exceeds 20% of the monetary value of the total amount of precious metals in the account, with the monetary value to he equivalent to the spot market price of the precious metal listed in The Wall Street Journal on the date of the withdrawal;

(c) a requirement that the precious metals purchased by a customer be delivered to the depesitory within 7 days of verified payment of any part of the purchase price.

(2) A precious metals account may provide for limited withdrawal from the account by means of a debit card or an ~~automatic~~ *automated* teller machine card as long as the total amount withdrawn from the account prior to the maturity date established in subsection (1)(a) does not exceed 20% of the total monetary value of the precious metals in the account.

(3) A depository may charge a customer interest and a fee in relation to a cash witbdrawal made in accordance with subsection (2)."

Section 70. Section 35-2-429, MCA, is amended to read:

HeinOnline -- 1999 vol. I 198 1999

"**35-2-429. Call and notice of meetings.** (1) Unless the articles or bylaws provide otherwise or unless the provisions of subsection (3) apply, regular meetings of the board may be held without notice.

(2) Unless the articles, bylaws, or subsection (3) provide otherwise, ~~regular~~ *special* meetings of the board must be preceded by at least 2 days' notice to each director of the date, time, and place, but not the purpose, of the meeting.

(3) In a corporation without members, any board action to remove a director or to approve a matter that would require approval by the members if the corporation had members is not valid unless each director is given at least 7 days' written notice that the matter will be voted upon at a directors' meeting or unless notice is waived pursuant to 35-2-430.

(4) Unless the articles or bylaws provide otherwise, the presiding officer of the board, the president, or 20% of the directors then in office may call and give notice of a meeting of the board."

Section 71. Section 37-13-316, MCA, is amended to read:

"**37-13-316. Penalty.** ~~Any~~ *A* person who violates any of the provisions of this chapter or the rules of the *Montana* state board of ~~acupuncture shall be~~ *medical examiners is* guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding 6 months or by a fine not exceeding $500, or both."

Section 72. Section 39-71-116, MCA, is amended to read:

"**39-71-116. Definitions.** Unless the context otberwise requires, ~~words and phrases used~~ in this chapter, ~~have~~ the following ~~meanings~~ *definitions apply*:

(1) "Actual wage loss" means that the wages that a worker earns or is qualified to earn after the worker reaches maximum healing are less than the actual wages the worker received at the time of the injury.

(2) "Administer and pay" includes all actions by the state fund under the Workers' Compensation Act and the Occupational Disease Act of Montana necessary to:

(a) investigation, review, and settlement of claims;

(b) payment of benefits;

(c) setting of reserves;

(d) furnishing of services and facilities; and

(e) use of actuarial, audit, accounting, vocational rehabilitation, and legal services.

(3) "Aid or sustenance" means a public or private subsidy made to provide a means of support, maintenance, or subsistence for the recipient.

(4) "Average weekly wage" means the mean weekly earnings of all employees under covered employment, as defined and established annually by the department. It is established at the nearest whole dollar number and must be adopted by the department before July 1 of each year.

(5) "Beneficiary" means:

(a) a surviving spouse living with or legally entitled to be supported by the deceased at the time of injury;

(b) an unmarried child under 18 years of age;

(c) an unmarried child under 22 years of age who is a full-time student in an accredited school or is enrolled in an accredited apprenticeship program;

(d) an invalid child over 18 years of age who is dependent, as defined in 26 U.S.C. 152, upon the decedent for support at the time of injury;

(e) a parent who is dependent, as defined in 26 U.S.C. 152, upon the decedent for support at the time of the injury if a beneficiary, as defined in subsections (5)(a) through (5)(d), does not exist; and

(f) a brother or sister under 18 years of age if dependent, as defined in 26 U.S.C. 152, upon the decedent for support at the time of the injury but only until the age of 18 years and only when a beneficiary, as defined in subsections (5)(a) through (5)(e), does not exist.

(6) "Business partner" means the community, governmental entity, or business organization that provides the premises for work-based learning activities for students.

(7) "Casual employment" means employment not in the usual course of the trade, business, profession, or occupation of the employer.

(8) "Child" includes a posthumous child, a dependent stepchild, and a child legally adopted prior to the injury.

(9) "Construction industry" means the major group of general contractors and operative builders, heavy construction (other than building construction) contractors, and special trade contractors, listed in major ~~groups 15 through 17~~ *group 23* in the ~~1987 Standard Industrial~~ *North American Industry* Classification *System* Manual. The term does not include office workers, design professionals, salespersons, estimators, or any other related employment that is not directly involved on a regular basis in the provision of physical labor at a construction or renovation site.

(10) "Days" means calendar days, unless otherwise specified.

(11) "Department" means the department of labor and industry.

(12) "Fiscal year" means the period of time between July 1 and the succeeding June 30.

(13) "Household or domestic employment" means employment of persons other than members of the household for the purpose of tending to the aid and comfort of the employer or members of the employer's family, including but not limited to housecleaning and yard work, but does not include employment beyond the scope of normal household or domestic duties, such as home health care or domiciliary care.

(14) "Insurer" means an employer bound by compensation plan No. 1, an insurance company transacting business under compensation plan No. 2, or the state fund under compensation plan No. 3.

(15) "Invalid" means one who is physically or mentally incapacitated.

(16) "Limited liability company" is as defined in 35-8-102.

(17) "Maintenance care" means treatment designed to provide the optimum state of health while minimizing recurrence of the clinical status.

HeinOnline -- 1999 vol. I 200 1999

(18) "Medical stability", "maximum healing", or "maximum medical healing" means a point in the healing process when further material improvement would not be reasonably expected from primary medical treatment.

(19) "Objective medical findings" means medical evidence, including range of motion, atrophy, muscle strength, muscle spasm, or other diagnostic evidence, substantiated by clinical findings.

(20) "Order" means any decision, rule, direction, requirement, or standard of the department or any other determination arrived at or decision made by the department.

(21) "Palliative care" means treatment designed to reduce or ease symptoms without curing the underlying cause of the symptoms.

(22) "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average annual payroll of the employer for the preceding calendar year or, if the employer has not operated a sufficient or any length of time during the calendar year, 12 times the average monthly payroll for the current year. However, an estimate may be made hy the department for any employer starting in business if average payrolls are not available. This estimate must be adjusted by additional payment by the employer or refund by the department, as the case may actually be, on December 31 of the current year. An employer's payroll must be computed by calculating all wages, as defined in 39-71-123, that are paid by an employer.

(23) "Permanent partial disability" means a physical condition in which a worker, after reaching maximum medical healing:

(a) has a permanent impairment established by objective medical findings;

(b) is able to return to work in some capacity but the permanent impairment impairs the worker's ability to work; and

(c) has an actual wage loss as a result of the injury.

(24) "Permanent total disability" means a physical condition resulting from injury as defined in this chapter, after a worker reaches maximum medical healing, in which a worker does not have a reasonable prospect of physically performing regular employment. Regular employment means work on a recurring basis performed for remuneration in a trade, business, profession, or other occupation in this state. Lack of immediate job openings is not a factor to be considered in determining if a worker is permanently totally disabled.

(25) The "plant of the employer" includes the place of business of a third person while the employer has access to or control over the place of business for the purpose of carrying on the employer's usual trade, business, or occupation.

(26) "Primary medical services" means treatment prescribed by a treating physician, for conditions resulting from the injury, necessary for achieving medical stability.

(27) "Puhlic corporation" means the state or ~~any~~ *a* county, municipal corporation, school district, city, city under a commission form of gevernment or special charter, town, or village.

(28) "Reasonably safe place to work" means that the place of employment has been made as free from danger to the life or safety of the employee as the nature of the employment will reasonably permit.

HeinOnline -- 1999 vol. I 201 1999

(29) "Reasonably safe tools and appliances" are tools and appliances that are adapted to and that are reasonably safe for use for the particular purpose for which they are furnished.

(30) (a) "Secondary medical services" means those medical services or appliances that are considered not medically necessary for medical stability. The services and appliances include but are not limited to spas or hot tubs, work hardening, physical restoration programs and other restoration programs designed to address disability and not impairment, or equipment offered by individuals, clinics, groups, hospitals, or rehabilitation facilities.

(b) (i) As used in this subsection (30), "disability" means a condition in which a worker's ability to engage in gainful employment is diminished as a result of physical restrictions resulting from an injury. The restrictions may be combined with factors, such as the worker's age, education, work history, and other factors that affect the worker's ability to engage in gainful employment.

(ii) Disability does not mean a purely medical condition.

(31) "Sole proprietor" means the person who has the exclusive legal right or title to or ownership of a business enterprise.

(32) "Temporary partial disability" means a physical condition resulting from an injury, as defined in 39-71-119, in which a worker, prior to maximum healing:

(a) is temporarily unable to return to the position held at the time of injury because of a medically determined physical restriction;

(b) returns to work in a modified or alternative employment; and

(c) suffers a partial wage loss.

(33) "Temporary service contractor" means a person, firm, association, partnership, limited liability company, or corporation conducting business that hires its own employees and assigns them to clients to fill a work assignment with a finite ending date to support or supplement the client's workforce in situations resulting from employee absences, skill shortages, seasonal workloads, and special assignments and projects.

(34) "Temporary total disability" means a physical condition resulting from an injury, as defined in this chapter, that results in total loss of wages and exists until the injured worker reaches maximum medical healing.

(35) "Temporary worker" means a worker whose services are furnished to another on a part-time or temporary basis to fill a work assignment with a finite ending date to support or supplement a workforce in situations resulting from employee absences, skill shortages, seasonal workloads, and special assignments and projects.

(36) "Treating physician" means a person who is primarily responsible for the treatment of a worker's compensable injury and is:

(a) a physician licensed by the state of Montana under Title 37, chapter 3, and has admitting privileges to practice in one or more hospitals, if any, in the area where the physician is located;

(b) a chiropractor licensed by the state of Montana under Title 37, chapter 12;

(c) a physician assistant-certified licensed by the state of Montana under Title 37, chapter 20, if there is not a *treating* physician, as ~~defined~~ *provided for*

in subsection (36)(a), in the area where the physician assistant-certified is located;

(d) an osteopath licensed by the state of Montana under Title 37, chapter 5;

(e) a dentist licensed by the state of Montana under Title 37, chapter 4;

(f) for a claimant residing out of state or upon approval of the insurer, a treating physician defined in subsections (36)(a) through (36)(e) who is licensed or certified in another state; or

(g) an advanced practice registered nurse licensed by the state of Montana under Title 37, chapter 8, recognized hy the board of nursing as a nurse practitioner or a clinical nurse specialist, and practicing in consultation with a physician licensed under Title 37, cbapter 3, if there is not a treating physician, as ~~defined~~ *provided for* in subsection ~~(35)(a)~~ *(36)(a)*, in the area in which the advanced practice registered nurse is located.

(37) "Work-based learning activities" means job training and work experience conducted on the premises of a business partner as a cemponent of school-based learning activities authorized by an elementary, secondary, or postsecondary educational institution.

(38) "Year", unless otherwise specified, means calendar year."

Section 73. Section 40-5-225, MCA, is amended to read:

"40-5-225. Notice of financial responsibility — temporary and final support obligations — administrative procedure. (1) In the absence of an existing support order, when the requirements of tbis section are met, the department may enter an order requiring a child's parent or parents to pay an amount each month for tlie support of tbe child. Tlie support order must include a medical support order as required by 40-5-208.

(2) An action to establish a support order must be commenced by serving a notice of financial responsibility on the parent or parents. Tlie notice must include a statement:

(a) of the names of the child, the obligee, and if different than the obligee, the cbild's guardian or caretaker relative;

(b) of the dollar amount of tbe support obligation to be paid each month for the child;

(c) that in addition to child support, the parent or parents may be ordered to provide for tlie child's medical support needs;

(d) that any party may request a hearing to contest tbe amount of child support shown in tlie notice or to contest the establishment of a medical support order;

(e) that if a party does not timely file a request for hearing, support, including medical support, will be ordered as declared in tlie notice or in accordance with the child support gnidelines adopted under 40-5-209;

(f) that if a party does request a hearing, tlie other parties may refuse to participate in the proceedings, however, tlie child support and medical support order will be determined using tlie information available to the department or provided at tlie hearing;

HeinOnline -- 1999 vol. I 203 1999

(g) that a party's refusal to participate is a consent to entry of a child support and medical support order consistent with the department's determination; and

(h) that the parties are entitled to a fair hearing under 40-5-226.

(3) If a support action is pending in district court and a temporary or permanent support obligation has not been ordered or if a paternity action is pending and there is clear and convincing evidence of paternity based on paternity blood tests or other evidence, the department may enter an order requiring a child's parent or parents to pay an amount each month for the temporary support of the child pending entry of a support order by the district court. The temporary support order must include a medical support order as required by 40-5-208.

(4) An action to establish a temporary support order must be commenced by serving a notice of temporary support obligation on the parent or parents. In addition to the statements required in subsection (2), the notice must include a statement that:

(a) a party may request a hearing to show that a temporary support obligation is inappropriate under the circumstances; and

(b) the temporary support order will terminate upon the entry of a final support order or an order of nonpaternity. If the final order is retroactive, any amount paid for a particular period under the temporary support order must be credited against the amounts due under the final order for the same period, but excess amounts may not be refunded. If an order of nonpaternity is issued or if the final support order states that periodic support obligation is not proper, the obligee shall refund to the obligor any improper amounts paid under the temporary support order, plus any costs the ~~obligee [obligor]~~ *obligor* incurs in recovering the amount to be refunded.

(5) (a) If a temporary support order is entered or if proceedings are commenced under this section for a married obliger, the department shall vacate any support order or dismiss any proceeding under this part if it finds that the parties to the marriage have:

(i) reconciled without the marriage having been dissolved;

(ii) made joint application to the department to vacate the order or dismiss the proceeding; and

(iii) provided proof that the marriage has been resumed.

(b) The department may not vacate a support order or dismiss a proceeding under this subsection (5) if it determines that the rights of a third person or the child are affected. The department may issue a new notice of temporary support obligation under this section if the parties subsequently separate.

(6) A notice of financial responsibility and the notice of temporary support obligation may be served either by certified mail or in the manner prescribed for the service of a summons in civil action in accordance with the Montana Rules of Civil Procedure.

(7) If prior to service of a notice under this section, the department has sufficient financial information, the department's allegation of the obliger's monthly support responsibility, whether temporary or final, must be based on the child support guidelines established under 40-5-214. If the information is

HeinOnline -- 1999 vol. I 204 1999

unknown to the department, the allegations of the parent's or parents' monthly support responsibility must be based on the greater of:

(a) the maximum amount of public assistance that could be payable to the child under Title 53 if the child ~~were~~ *was* otherwise eligible for assistance; or

(b) the child's actual need as alleged by the custodial parent, guardian, or caretaker of the child.

(8) (a) A party who objects to a notice of financial responsibility or notice of temporary support obligation may file a written request for hearing with the department:

(i) within 20 days from the date of service of a notice of financial responsibility; and

(ii) within 10 days from the date of service of a notice of temporary support obligation.

(b) If the department receives a timely request for a hearing, it shall conduct one under 40-5-226.

(c) If the department does not receive a timely request for a hearing, it shall order the parent or parents to pay child support and to provide for the child's medical needs as stated in the notice. The child support obligation must be the amount stated in the notice or determined in accordance with the child support guidelines adopted under 40-5-209.

(9) A child support and medical support order under subsection (1) continues until the child ~~attains~~ *reaches* 18 years of age or *until* the child's graduation from high school, whichever occurs later, but not later than the child's 19tb birthday, unless the child is sooner emancipated by court order. A temporary support obligation established under subsection (3) continues until terminated as provided in subsection (5) or until the temporary order is superseded by a final order, judgment, or decree."

Section 74. Section 40-5-273, MCA, is amended to read:

"40-5-273. Administrative review of child support orders — modifying orders. (1) A review application setting forth facts meeting any of the criteria for review of a child support order established in 40-5-272 must be scheduled for an administrative review. Unless the department determines under rules of the department that an in-person review is necessary, the review must be conducted by teleconferencing methods. A notice that an administrative review will be conducted must be served on the obliger and the obligee. The notice must include the following information as an exception to 2-4-601:

(a) a statement of the purpose, objectives, and possible consequences of the review;

(b) a statement of the right of the obligor and the obligoe to request the department to issue subpoenas compelling the appearance of witnesses and the production of documents for a hearing; and

(c) a requirement that the obligor and the obligoe provide the department with telephone numbers at which they and their witnesses may be contacted for the review.

(2) Tbe department may issue an order commanding the obligor or the obligee, or botb, to produce financial information. The order must be personally

HeinOnline -- 1999 vol. I 205 1999

served with the notice that a review will be conducted. The department may also issue subpoenas ordering the parties to produce information in their possession about the obligor and the obligee that may be reasonably necessary for application of the guidelines. Any information so obtained by the department must be provided to the parties before a hearing.

(3) The requested modification of the order must be determined on the evidence submitted to the department under the following conditions:

(a) If an applicant other than the department fails to provide a telephone number for the review or fails to be at the number provided when telephoned for the review, the failure may be considered a withdrawal of the application.

(b) If a party other than the applicant fails to provide a telephone number for the review or fails to be at the number provided when telephoned for the review, the failure is considered to mean that the party does not oppose the modification.

(c) If the department is the applicant and if either the obligor or the obligee, or both, fails to provide a telephone number for the review or fails to be at the number provided when telephoned for the review, the failure may be considered an admission that the party or parties do not oppose the modification.

(4) (a) An order entered under the circumstances described in subsection (3)(a), (3)(b), or (3)(c) becomes final within 30 days of issuance unless a party provides the hearings officer an affidavit showing good cause for failure to provide a telephone number or failure to be available when telephoned.

(b) A proposed modification consent order or notice of proposed modification becomes final 30 days after issuance unless during that poriod a party files with the department a written request for further administrative proceedings.

(c) The department shall grant a modification hearing if it receives a timely written request by a party aggrieved by the department's determination. The hearing is subject to the provisions of this section relating to a review. The department may adopt rules regulating the fair and efficient conduct of the hearing. Unless the department determines under department rules that an in-person hearing is necessary, the hearing must be conducted by teleconferencing methods.

(5) A provision of law may not be construed to mean that an obligor or an obligee is a client of the department, and the department is not considered a party to the action.

(6) (a) In addition to the powers and duties provided by other law, the department shall, to ensure the equitable determination of a support obligation, during a review:

(i) question witnesses in a nonadversarial manner to elicit full disclosure of all pertinent facts;

(ii) introduce evidence on behalf of the parties;

(iii) apply the guidelines to the facts elicited from the review; and

(iv) inquire as to any circumstances that may require variance from the guidelines.

(b) If a party is represented by legal counsel, the department may allow the counsel to present that party's case.

HeinOnline -- 1999 vol. I 206 1999

(7) The department shall determine a support obligation in accordance with the guidelines and shall issue a modifying order. A stipulation by the parties in a proceeding under this section may not be contested before entry of the final department order. If the department determines that the difference between the existing support order and the amount determined under the guidelines is negligible under rules issued by the department, the modifying order may not change the amount of the support obligation. Even though the review may indicate that a modification of the support obligation is appropriate, the department may not modify the support order if the department determines, after the review, that to do so would not be in the best interests of the child under the rules issued by the department. An increase in child support is presumed to he in the best interests of the child unless, after a review, either the obliger or the obligee demonstrates it would not be in the best interests of the child. The modifying order may modify the underlying support order from the date of service of a notice that an administrative review will be conducted under this section and may modify the underlying order from the date found to be the date that the amount required for support decreased. The obligee may be ordered to repay the obliger for any support amount overpayment found to have been paid since the date that the amount required for support decreased. If the case is a IV-D case, the department sball, on request of the obliger, enforce the obligee's repayment of the overpaid amount using any procedure provided in this chapter for payment, enforcement, and collection of child support or a delinquency.

(8) The department shall consider whether or not health insurance for the child is available and shall include an appropriate requirement for the provision of the child's health insurance needs in a modifying order in accordance with part 8 of this chapter.

(9) In addition to complying with other requirements of law, the modifying order must include the following notices and warnings:

(a) that the obliger shall keep the department informed of the name and address of the obliger's current employer and information on health insurance available to the obliger through the obligor's employment or other group insurance; and

(b) tbat the modifying order is subject to future administrative review and modification by the department upon the request of the department or a party under 40-5-271 through 40-5-273 when the department is providing services under IV-D.

(10) An order entered under this section by the department is a final agency decision, subject to judicial review pursuant te the Montana Administrative Procedure Act, except as provided in 40-5-253. An order entered under this section must notify the parties that the order is subject to judicial review under Title 2, chapter 4, part 7. A final order entered under a stipulation of parties waives the stipulating parties' right to judicial review.

(11) The parties to the support order and the department when it is providing services under IV-D may enforce the support order or modify that order independently, as provided in 40-4-208 and 53-2-613~~(4)(d)~~*(5)(d)*."

Section 75. Section 40-5-413, MCA, is amended to read:

"40-5-413. Notice of income withholding. (1) The department shall serve the obligor with a notice if:

HeinOnline -- 1999 vol. I 207 1999

(a) income withholding is initiated because of a delinquency;

(b) additional arrearages accrued subsequent to the issuance of an order to withhold and the department proposes to add those arrearages to an existing withholding order; or

(c) immediate withholding or delinquency withholding has commenced for current support and there are arrearages due for a period prior to entry of the order to withhold that the department proposes to add to the withholding order.

(2) The notice must contain a statement:

(a) of the amount subject to withholding, including a computation showing the period and total amount of the arrearages as of the date of the notice;

(b) that withholding applies to all current and subsequent payors;

(c) of the procedures to follow if the obliger desires to contest income withholding on the grounds that the initiation of withholding or the modification of an existing withholding order is improper or that the amount to be withheld is in error due to a mistake of fact, as provided in 40-5-412;

(d) of the period of time within which the obligor is required to file a request for a hearing and that failure to file a request within the time limit will result in income withholding orders being served upon the payor for the amount stated in the notice; and

(e) in those cases in which withholding is being initiated at the request of an obligee without regard to whether there is ~~an arrearage~~ *a delinquency* as provided in 40-5-412(3), a statement that the obligor can require the obligee to appear and show proof that the obligor is not meeting the terms of the alternative arrangement.

(3) The notice must be served upon the obligor personally or by certified mail."

Section 76. Section 41-5-347, MCA, is amended to read:

"41-5-347. Place of shelter care. ~~(1)~~ Placement in shelter care means placement in one of the following:

~~(a)~~*(1)* in a licensed youth care facility as defined in 41-3-1102; or

~~(b)~~*(2)* under home arrest, with or without a monitoring device, as provided in Title 46, chapter 18, part 10, either in the youth's own home or in a facility described in subsection (1)~~(a)~~.

~~(2) All money in the account, except any amount required to be returned to federal or county sources, is allocated to the department of public health and human services to carry out its duties under 52-1-103.~~"

Section 77. Section 42-2-608, MCA, is amended to read:

"42-2-608. Finding of unfitness. (1) The court may terminate parental rights for purposes of making a child available for adoption on the grounds of unfitness if:

(a) the court makes a determination that the parent has been judicially deprived of custody of the child on account of abuse or neglect toward the child;

(b) the parent has ~~in the state of Montana or in any other jurisdiction of the United States~~ willfully abandoned the child, as defined in 41-3-102~~(7)(e)~~*(9)(f)*, in Montana or in any other jurisdiction of the United States;

HeinOnline -- 1999 vol. I 208 1999

(c) it is proven, to the satisfaction of the court, that the parent, if able, has not contributed to the support of the child for an aggregate period of 1 year before the filing of a petition for adoption;

(d) it is proven, to the satisfaction of the court, that the parent is in violation of a court order to support either the child that is the subject of the adoption proceedings or other children with the same birth mother;

(e) the parent has been found guilty by a court of competent jurisdiction of:

(i) aggravated assault on the adoptee, as provided in 45-5-202;

(ii) sexual assault on a child, as provided in 45-5-502;

(iii) sexual intercourse without consent, as provided in 45-5-503, if the victim was a child;

(iv) incest, as provided in 45-5-507, if the victim was a child;

(v) homicide of a child, as provided in 45-5-102 or 45-5-103;

(vi) sexual abuse of a child, as provided in 45-5-625; or

(vii) ritual abuse of a minor, as provided in 45-5-627;

(f) the child has been maintained by a public or private children's institution, a charitable agency, a licensed child-placing agency, or the department for a period of 1 year without the parent contributing to the support of the child during that period, if able;

(g) a finding is made for a parent who is given proper notice of hearing:

(i) that the parent has been convicted of a crime of violence or of violating a restraining or protective order; and

(ii) the facts of the crime or violation and the parent's behavior indicate that the parent is unfit to maintain a relationship of parent and child with the child;

(h) a finding is made for a parent who is given proper notice of hearing and is a respondent to the petition to terminate parental rights and:

(i) by a preponderance of the evidence, it is found that termination is in the best interests of the child; and

(ii) upon clear and convincing evidence, it is found that one of the following grounds exists:

(A) if the child is not in the legal and physical custody of the other parent, that the respondent is not able or willing to promptly assume legal and physical custody of the child and to pay for the child's support in accordance with the respondent's financial means;

(B) if the child is in the legal and physical custody of the other parent and a stepparent who is the prospective adoptive parent, that the respondent is not able or willing to promptly establish and maintain contact with the child and to pay for the child's support in accordance with the respondent's financial means;

(C) placing the child in the respondent's legal and physical custody would pose a risk of substantial harm to the physical or psychological well-being of the child because the circumstances of the child's conception, the respondent's behavior during the mother's pregnancy or since the child's birth, or the respondent's behavior with respect to other children indicates that the

respondent is unfit to maintain a relationship of parent and child with the child; or

(D) failure to terminate the relationship of parent and child would he detrimental to the child.

(2) In making a determination under subsection (1)(h)(ii)(D), the court shall consider any relevant factor, including the respondent's efforts to obtain or maintain legal and physical custody of the child, the role of other persons in thwarting the respondent's efforts to assert parental rights, the respondent's ability to care for the child, the age of the child, the quality of any previous relationship between the respondent and the child and between the respondent and any other children, the duration and suitability of the child's present custodial environment, and the effect of a change of physical custody on the child."

Section 78. Section 46-23-302, MCA, is amended to read:

"46-23-302. Order for hearing on application for executive elemency. After the board has ~~duly~~ considered an application for executive clemency and has by majority vote favored a hearing, it ~~must~~ *shall* pass an order in substance as follows:

"Whereas, the Board of Pardons and Parole has officially received an application for executive clemency concerning ...., a convict confined in the state prison (or ~~to one~~ *concerning* ...., who has been found guilty of an offense committed against the laws of the state), who was convicted of the crime of.... committed at ...., in the county of ...., State of Montana, on the .... day of ...., ~~19..~~ *20...*, and sentenced for a term of .... years.

Therefore, it is ordered that ...., the .... day of ...., ~~19..~~ *20...*, is set for the consideration of the executive clemency matter; and all persons having an interest in the matter ~~desiring~~ *who desire* to he heard either for or against the granting of the pardon, commutation, resteration of citizenship, or remission or suspension of fine or forfeiture are notified to be present at .... o'clock of that day, at .....

Further, *it is* ordered that a copy of this order he printed and published in the.... (here insert name of some newspapor of general circulation in the county where the crime was committed), a daily (or weekly) newspapor printed and puhlished at ...., in the county of ...., once each week for 2 weeks beginning ...., ~~19..~~ *20...*, and ending ....."

Section 79. Section 50-3-109, MCA, is amended to read:

"50-3-109. Tax on fire insurance premiums. (1) Each insurer authorized to effect insurance on risks enumerated in subsection (2) *that is* doing business in this state shall pay to the state auditor during the month of February or March in each year, in addition to the taxes on premiums required by law to he paid by it, taxes on the fire portion of the direct premiums on the enumerated risks received during the *previous* calendar year ~~next preceding~~ after deducting cancellations and return premiums. ~~The taxes are:~~

~~(a) 1% to~~ *A tax of 2 1/2% must* be deposited *in the general fund* as provided in 17-2-121~~; and~~

~~(b) 1 1/2% to be used for purposes of supplemental pensions~~.

(2) The risks referred to in subsection (1) are:

(a) insurance of houses, huildings, and all other kinds of property against loss or damage by fire or other casualty;

(h) all kinds of insurance on goods, merchandise, or other property in the course of transportation, whether by land, water, or air;

(c) insurance against loss or damage to motor vehicles resulting from accident, collision, or marine and inland navigation and transportation perils;

(d) insurance of growing crops against loss or damage resulting from hail or the elements;

(e) insurance against loss or damage by water to any goods or premises arising from the hreakage or leakage of sprinklers, pumps, or other apparatus;

(f) insurance against loss or legal liahility for loss because of damage to proporty caused hy the use of teams or vehicles, whether by accident or collision or by explosion of any engine, tank, boiler, pipe, or tire of any vehicle; and

(g) insurance against theft of the whole or any part of a vehicle."

Seetion 80. Section 50-78-102, MCA, is amended to read:

"50-78-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Chemical manufacturer" means an employer in ~~standard industrial classification codes 20 through 39~~ *codes 31 through 33*, as defined in the ~~federal Standard Industrial~~ *North American Industry* Classification *System* Manual, with a workplace where chemicals are produced for use or distribution.

(2) "Chemical name" means the scientific designation of a chemical in accordance with the nomenclature system developed by the international union of pure and applied chemistry or the chemical abstracts service rules of nomenclature or a name that will clearly identify the chemical for the purpose of conducting a hazard evaluation.

(3) "Common name" means any designation or identification, such as code name, code number, trade name, hrand name, or generic name, used to identify a chemical other than by its chemical name.

(4) "Department" means tbe department of environmental quality provided for in Title 2, chapter 15, part 35.

(5) "Designated representative" means:

(a) the individual or orgaiization to whoin an employee gives written authorization to exercise the employee's rights under this chapter; or

(b) a recognized or certified collective bargaining agent who is automatically a designated representative without regard to written employee authorization.

(6) "Distributor" means a business, other than a chemical manufacturer, that supplies hazardous chemicals to other distributors or to employers.

(7) "Employee" means a porson who may be exposed to hazardous chemicals in the workplace under normal operating conditions or possible emergencies.

(8) "Employer" means a person, firin, corporation, partnership, association, gevernmental agency, or other entity *that is* engaged in business or providing services *and* that employs workers.

HeinOnline -- 1999 vol. I 211 1999

(9) "Exposure" means ingestion, inhalation, absorption, or other contact in the workplace with a hazardous chemical and includes potential, accidental, or possihle exposure.

(10) "Hazardous chemical" means, except as provided in 50-78-103:

(a) any element, chemical compound, or mixture of elements or compounds that is a physical hazard or health bazard, as defined by subsection (c) of the OSHA standard, and that has been identified as such by the federal occupational safety and health administration or the manufacturer and has been filed with the federal occupational safety and health administration;

(h) any hazardous chemical, as defined by subsection (d)(3) of the OSHA standard; or

(c) any emitter of ionizing radiation.

(11) "Label" means any written, printed, or graphic material displayed on or affixed to containers of hazardous chemicals.

(12) "Local fire chief" means:

(a) the chief of the municipal fire department or the chief's agent, for any workplace located within a city or town; or

(b) the county rural fire cbief or the district rural fire chief or the chief's agent, for any workplace not located within a city or town.

(13) "Manufacturing employer" means an employer with a workplace classified in ~~any standard industrial classification code 20 through 39~~ *codes 31 through 33 of the North American Industry Classification System* who manufactures, uses, or stores a hazardous chemical.

(14) "Material safety data sheet" means a document prepared in accordance with the requirements of the OSHA standard and containing chemical hazard and safe handling information.

(15) "Nonmanufacturing employer" means an employer with a workplace *classified* in ~~any standard industrial classification~~ *a North American Industry Classification System* code other than ~~20 through 39~~ *31 through 33*.

(16) "OSHA standard" means the hazard communication standard issued hy the federal occupational safety and health administration, codified under 29 CFR 1910.1200, as that statute reads on January 1, 1985.

(17) "Trade secret" means a confidential formula, pattern, process, device, or information, including chemical name or other unique chemical identifier, that is used in an employer's business and tbat gives the employer an opportunity to obtain an advantage over competitors.

(18) "Work area" means a room or defined space in a workplace where hazardous chemicals are produced, used, or stored and where employees are present.

(19) "Workplace" means an establishment at one geographical location containing one or more work areas.

(20) "Workplace chemical list" means the list of hazardous chemicals developed under this chapter or under subsection (e)(1)(i) of the OSHA standard."

Section 81. Section 61-3-448, MCA, is amended to read:

HeinOnline -- 1999 vol. I 212 1999

"61-3-448. Commemorative centennial license plates — continued use and replacement authorized. (1) A person who owns and displays commemorative centennial license plates ~~issued under Title 2, chapter 89, part 3 [now terminated],~~ on a motor vehicle on or before June 30, 1996, may continue to display the commemorative centennial plates on the vehicle after that date as long as the plates remain legible or as long as replacement plates are availahle from the department, whichever is later.

(2) The department shall authorize the continued display of commemorative centennial license plates after June 30, 1996, as provided for in subsection (1), and shall replace commemorative centennial license plates for persons who owned and displayed the plates on or before June 30, 1996, as long as replacement stock owned by the department on October 1, 1993, remains available and usable."

Section 82. Section 61-3-506, MCA, is amended to read:

"61-3-506. Rules. (1) The department of transportation shall adopt rules for the payment of new car taxes under the provisions of 61-3-313 through 61-3-316, 61-3-501, and 61-3-520.

(2) The department of justice may adopt rules:

(a) for the assessment and collection of taxes and fees on light vehicles, including the proration of taxes under 61-3-520;

(b) for the impesition and collection of fees in lieu of tax, including the proration of fees in lieu of tax under 61-3-520, on buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors, including criteria for determining the vehicle's age and manufacturer's rated capacity; and

(c) ~~The department of justice may adopt rules~~ for the administration of fees for trailers, pole trailers, and semitrailers, including criteria for determining a trailer's age and weight."

Section 83. Section 61-3-721, MCA, is amended to read:

"61-3-721. Proportional registration of fleet vehicles, registration periods, application, fee formula, and payment — transfer of ownership — transfer of license plates. (1) An owner of one or more fleets may register and license each fleet for operation in this state hy filing an application with the department of transportation. The application must contain the information pertinent to vehicle registration that is required by the department of transportation.

(2) Each fleet subject to the provisions of 61-3-711 through 61-3-733 must, except as provided in 61-3-318(1) and subsection (6) of this section, be registered for an annual registration period based upon the date that the fleet is first registered in this state.

(3) There are four annual registration periods, each of which begins on the first day of a calendar quarter. As used in this subsection, "calendar quarter" means the period of 3 consecutive months ending March 31, June 30, September 30, or Decemher 31. The periods are:

(a) January 1 through March 31	1st period
(b) April 1 through June 30	2nd period
(c) July 1 through September 30	3rd period

HeinOnline -- 1999 vol. I 213 1999

(d) October 1 through December 31 4th period

(4) Registration of a fleet of apportionable vehicles under subsection (2) must be renewed on or before the last day of the month for the designated annual registration period unless a different registration period has been authorized pursuant to 61-3-716(2). The department shall provide for simultaneous registration of multiple fleets of appertionable vehicles in common ownership.

(5) Except as provided in subsection (6), the application for each fleet may be accompanied by a fee payment computed by:

(a) dividing in-state miles by total fleet miles as defined in the applicable agreement entered into pursuant to 61-3-711 through 61-3-733;

(b) determining the total amount necessary to register each vehicle in the fleet for which registration is requested, based on the regular annual registration fees prescribed by 61-3-321 and chapter 10, part 2, and the property taxes that are due on the fleet;

(c) multiplying the sum obtained under subsection (5)(b) by the fraction obtained under subsection (5)(a).

(6) (a) ~~Subject to section 4, Chapter 72, Laws of 1997, each~~ *Each* trailer and semitrailer fleet must be registered for a 5-year period based upon the date that the fleet is first registered in this state.

(b) ~~Subject to section 4, Chapter 72, Laws of 1997, each~~ *Each* trailer and semitrailer in the fleet for which registration is requested must be assessed a registration fee equal to five times the amount prescribed by 61-3-321.

(c) Each trailer or semitrailer must be issuod a license plate, a distinctive sticker, or other suitable identification device valid for 5 years from the date of the original application or renewal application.

(d) Registration of a trailer or semitrailer must be renewed on or before the last day of the month for the designated 5-year registration period.

(7) Upon the transfer of ownership of a trailer or semitrailer, the registration of the trailer or semitrailer expires and it is the duty of the transferor to immediately remove the license plates from the trailer or semitrailer.

(8) (a) If the transferor applies for the registration of another trailer or semitrailer at any time during the remainder of the current registration period as shown on the original registration, the transferor may file an application with the department of transpertation, accompanied by the original certificate of registration, for the transfer of the license plates. The application for transfer of the license plates must be made by the person or motor carrier in whose name the original license plates to the trailer or semitrailer were issued. The use of the license plates is not legal until the proper transfer of license plates has been made.

(b) License plates may be transferred pursuant to this section without transferring ownership of the trailer or semitrailer for which the license plates were originally issued.

(c) Upen transfer of the license plates, the registration of the trailer or semitrailer from which the license plates were transferred expires. The registration for the trailer or semitrailer must be surrendered to the department of transportation with the application for transfer.

HeinOnline -- 1999 vol. I 214 1999

(d) License plates issued for a trailer or semitrailer under this section may be transferred only to a replacement trailer or semitrailer. A license plate fee may not be assessed upon transfer of a license plate.

(9) Applications submitted with fees may be recomputed by the department of transportation. The department of transportation shall furnish a statement showing the overpayment or balance due.

(10) Applications submitted without fees must be computed by the department of transportation. The department of transportation shall furnish a statement showing the amount of fees due."

Section 84. Section 61-4-101, MCA, is amended to read:

"61-4-101. Application for dealer's license or wholesaler's license. (1) (a) A verified application for licensure as a dealer or wholesaler must be filed, by mail or otherwise, in the office of the department by each person, firm, corporation, or association that, for commission or profit, engages in:

(i) the business of buying, selling, exchanging, taking for consignment, or acting as a broker of new motor vehicles, recreational vehicles, used motor vehicles, trailers (except trailers having an unloaded weight of less than 500 pounds), semitrailers, mobile homes, or special mobile equipment as defined in 61-1-104; or

(ii) business as a wholesaler as defined in 61-1-319.

(b) A licensed real estate broker or agent lawfully buying, selling, exchanging, taking for consignment, or acting as a broker of mobile homes is exempt from licensure under this section.

(c) The sale of more than three motor vehicles or the offering for sale of more than three motor vehicles, if the motor vehicles are not titled in the seller's name, in any calendar year is prima facie evidence that a person is engaged in the business of dealing motor vehicles. Licensed wholesalers do not have the privilege of the use of dealer license plates as provided in subsection (2)(b) but are authorized to display and use demonstrator plates under the provisions of 61-4-102(2)(a)(ii).

(d) Each license application and all of the information contained in it must be verified by the department or an authorized representative of the department on a form to be furnished by the department for that purpose and must contain the information required. Each application must be accompanied by the license fee specified in 61-4-102. A dealer's or wholesaler's license must be renewed and paid for annually, and an application for relicensure must be filed not later than January 1 of each year. If an application for renewal of a license has been received by the department before the expiration of the license, the licensee may operate the business and display dealer or demonstrator plates under the expired license between January 1 and February 15 following expiration.

(2) To qualify for licensure and the issuance and use of "D", "UD", "RV", "DTR", or "MCD" plates as provided in this subsection, the applicant shall furnish the following information and qualify under the following provisions:

(a) To qualify as a new motor vehicle dealer and for the use of "D" plates, the applicant shall:

HeinOnline -- 1999 vol. I 215 1999

(i) state the name under which the business is to be conducted and the location of the premises (street address, city, county, and state) where records are kept, sales are made, and stock of motor vehicles is displayed;

(ii) state the name, address, date of birth, and social security number of all owners or persons having an interest in the business, provided that in the case of a corporation, the names and addresses of the president and secretary are sufficient;

(iii) identify other dealerships owned by the applicant, identify all persons in Montana or in another state having an interest in another dealership owned by tbe applicant, and disclose wbether the applicant or other person with interest in a dealersbip owned by the applicant has been convicted of a felony;

(iv) certify that the applicant has acquired and shall maintain motor vehicle liability insurance, pursuant to 61-6-301, for any vehicle offered for demonstration or loan to a customer;

(v) state the name and make of all motor vehicles bandled and the name and address of the manufacturer, importer, or distributor with whom the applicant has a written new motor vehicle franchise or sales agreement;

(vi) execute a certificate to the effect that the applicant has a permanent building for the display and sale of new motor vehicles at the location of the premises where sales are conducted;

(vii) execute a certificate to the effect tbat the applicant has a bona fide service department for the repair, service, and maintenance of motor vehicles; and

(viii) execute a certificate to the effect that the applicant is a bona fide dealer in new motor vehicles and that the dealer is recognized by a manufacturer, importer, or distributer as a dealer in new motor vehicles.

(b) To qualify as a used moter vehicle dealer and for the use of "UD" plates; as a recreational vehicle dealer and for the use of "RV" plates; as a trailer, semitrailer, or special mobile equipment dealer and for the use of "DTR" plates; as a motorcycle or quadricycle dealer and for the use of "MCD" plates; or as a wholesaler and for the use of demonstrator plates, the applicant sball, in addition to the matters set forth in subsections (2)(a)(i) through (2)(a)(iv), provide:

(i) a statement that the:

(A) applicant has an establisbed place of business consisting of one or more lots located within 200 feet of each other upon which motor vehicles may be displayed and a permanent nonresidential building on or within 1,000 feet of the lot or lots where records are kept and sales are made; or

(B) wholesaler applicant has an established place of business that includes a permanent nonresidential building or office where records are kept in order that those records may be inspected;

(ii) a certificate to the effect that the applicant is a bona fide dealer or wholesaler in used motor vehicles, recreational vehicles, trailers, semitrailers, special mobile equipment, motercycles, or quadricycles. An applicant for a recreational vehicle dealer license sball also indicate on the same certificate that the person is recognized by a manufacturer, importer, or distributor as a dealer in recreational vehicles.

HeinOnline -- 1999 vol. I 216 1999

(c) If two or more vehicle dealers or wholesaler businesses share a location, all records, office facilities, and inventory, if applicable, must be physically segregated and clearly identified. Each applicant's established place of business ~~may~~ *shall* display a sign that indicates the firm name and that vehicles are offered for sale. The letters of the sign must be clearly visible and readable to the major avenue of traffic at a minimum distance of 150 feet.

(d) To qualify for a used motor vehicle dealer's or wholesaler's license, a person shall submit an annual application for that license and comply with the provisions of 61-4-102(5) in addition to fulfilling the requirements of subsection (2)(b).

(e) The provisions of subsection (2)(d) do not apply to an applicant who is licensed as a motor vehicle wrecking facility under the provisions of Title 75, chapter 10, part 5.

(3) (a) The applicant for a dealer's or wholesaler's license shall also file with the application a bond of $25,000 for a license as a new motor vehicle dealer, a used motor vehicle dealer, a recreational vehicle dealer, a trailer dealer, or a wholesaler. However, applicants for a license as a trailer dealer or a trailer wholesaler shall file the $25,000 surety bond only if special mobile equipment, commercial trailers and semitrailers exceeding 6,000 pounds maximum gross loaded weight, mobile homes, or house trailers are sold. All other trailer dealer, motorcycle dealer, or wholesaler license applicants shall file a bond in the sum of $10,000. All bonds must be conditioned that the applicant shall conduct the business in accordance with the requirements of the law. The bond may extend to any other type of dealer license issued to the applicant at the same place of business, provided that all types of licenses are indicated on the face of the bond. All bonds must run to the state of Montana, must be approved by the department, must be filed in its office, and must be renewed annually.

(b) A person who suffers loss or damage due to the unlawful conduct of a dealer or wholesaler licensed under this section shall obtain a judgment from a court of competent jurisdiction prior to collecting on the bond. The judgment must determine a specific loss or damage amount and conclude that the licensee's unlawful operation caused the loss or damage before payment on the bond is required."

Section 85. Section 61-8-404, MCA, is amended to read:

"61-8-404. Evidence admissible — conditions of admissibility. (1) Upon the trial of a criminal action or other proceeding arising out of acts alleged to have been committed by a person in violation of 61-8-401, 61-8-406, 61-8-410, or 61-8-805:

(a) evidence of any measured amount or detected presence of alcohol, drugs, or a combination of alcohol and drugs in the person at the time of ~~the act alleged~~ *a test*, as shown by an analysis of the person's blood or breath, is admissible. A positive test result does not, in itself, prove that the person was under the influence of a drug or drugs at the time the person was in control of a motor vehicle. A person may not be convicted of a violation of 61-8-401 based upon the presence of a drug or drugs in the person unless some other competent evidence exists that tends to establish that the person was under the influence of a drug or drugs while driving or in actual physical control of a motor vehicle within this state.

HeinOnline -- 1999 vol. I 217 1999

(b) a report of the facts and results of one or more tests of a person's blood or breath is admissible in evidence if:

(i) a breath test or preliminary alcohol screening test was performed by a person certified by the ~~division of~~ forensic sciences *division* of the department to administer the test;

(ii) a blood sample was analyzed in a laboratory operated or certified by the department or in a laboratory exempt from certification under the rules of the department and the blood was withdrawn from the person by a person competent to do so under 61-8-405(1);

(c) a report of the facts and results of a physical, psychomotor, or physiological assessment of a person is admissihle in evidence if it was made by a person trained by the department or by a person who has received training recognized by the department.

(2) If the person under arrest refused to submit to one or more tests as provided in this section, proof of refusal is admissible in any criminal action or proceeding arising out of acts alleged to have been committed while the person was driving or in actual physical control of a vehicle upon the ways of this state open to the public, while under the influence of alcohol, drugs, or a combination of alcohoi and drugs.

(3) The provisions of tbis part do not limit the introduction of any other competent evidence bearing on the question of whether the person was under the influence of alcohol, drugs, or a combination of alcohol and drugs."

Section 86. Section 69-14-112, MCA, is amended to read:

"69-14-112. Investigatory authority. (1) The commission shall investigate any alleged neglect or violation of the laws of the state by any railroad doing business in this state. The commission shall examine and inspect or cause to be examined and inspected all books, records, files, and papers ~~referred to in 69-14-111~~ that pertain to any matter under investigation before the commission, and sball hear and take testimony in the progress of any inquiry or investigation autborized by this chapter.

(2) The commission shall, upon request, investigate and make inquiry into every accident, as defined in 49 CFR 225.5, occurrmg in tbe operation of any railroad in this state. The testimony taken must be transcribed and filed in the office of tbe commission."

Section 87. Section 70-1-301, MCA, is amended to read:

"70-1-301. Interests in real property specially named elsewhere. In respect to real or immovable property, the interests mentioned in this part are denominated estates and are specially named and classified in 70-15-202 through *70-15-216, in Titlc 70, chapter 15, part 3, in Title 70, chapter 16, in 70-17-101 through* 70-17-111, and in Title 72, chapter 34, part 3."

Section 88. Section 70-20-103, MCA, is amended to read:

"70-20-103. Form of grant. A grant of an estate in real property may be made in substance as follows:

"I, A.B., in consideration of .... dollars ~~now~~ paid, grant to C.D. all the real property situated in (insert name of county) County, state of Montana, ~~bounded (or described)~~ *described* as follows: (Here insert description, or if the land sought

to be conveyed has a descriptive name, it may be described hy the name as, for instance, "the Norris ranch".)

Witness my hand this (insert day) day of (insert month), ~~19...~~ *20...*

.....

A.B.""

Section 89. Section 70-21-203, MCA, is amended to read:

"70-21-203. Aeknowledgment of instruments required — exceptions. ~~Before an instrument can be recorded, unless it~~ *Unless an instrument* belongs to ~~the~~ *a* class provided for in either 70-21-205 or 70-21-207, *before the instrument can be recorded,* its execution must be~~:~~ *acknowledged as provided in subsection (1) or proved as provided in subsection (2).*

(1) *Execution of the instrument must be* acknowledged, *as acknowledgment is defined in 1-5-602:*

(a) by the person executing it; or~~,~~

(b) if executed by a corporation, by its president, vice president, secretary, or assistant secretary~~,~~ or *by any* other person duly authorized by resolution hy the corporation ~~executing the instrument~~ *to act* on behalf of the corporation~~; or~~.

(2) *Execution of the instrument must be* proved by~~:~~

~~(a)~~ a subscribing witness~~;~~ or

~~(b)~~ as provided in 1-5-302 and 1-5-303~~; and~~.

~~(c) the acknowledgment or proof certified in the manner prescribed by~~ *Proof of execution as provided for in this subsection must be notarized as provided in* Title 1, chapter 5."

Section 90. Section 70-28-207, MCA, is amended to read:

"70-28-207. Summons — issuance and form. Upon the filing of the complaint and affidavit, a summons must be issued under the seal of the court, which ~~shall~~ *must* contain the name of the court and county in which the action is brought, the name of the plaintiff, and tbe particular description of the real proporty involved and ~~shall~~ *must* be directed to "all persons claiming any intorest in or lien upon the real proporty ~~herein~~ described *in this summons* or any part ~~thereof~~ *of the real property*" as defendants and ~~shall~~ *must* be substantially in the following form:

"In the district court of the.... judicial district of the state of Montana, in and for the county of..... ~~Plaintiff~~ *plaintiff*, vs. all persons claiming any interest in or lien upon the real property ~~herein~~ described *in this summons* or any part ~~thereof~~ *of the real property*, defendants.

The state of Montana to all persons claiming any interest in or lien upon the real property ~~herein~~ described *in this summons* or any part ~~thereof~~ *of the real property*, defendants, Greeting:

You are ~~hereby~~ required to appear and answer the complaint of...., plaintiff, filed with the clerk of ~~the above-entitled~~ *this* court, within 60 days after the first publication of this summons, and set forth what intorest or lien, if any, you have in or upon that certain real property or any part ~~thereof~~ *of the real property* situated in tbe county of...., stato of Montana, particularly described as follows: (Here insert description.)

HeinOnline -- 1999 vol. I 219 1999

~~And you are hereby~~ *You are further* notified that, unless you ~~so~~ appear and answer, the plaintiff will apply to the court for the relief demanded in the complaint.~~, to wit:~~ (Here insert a statement of the relief ~~so~~ demanded.)

Witness my hand and the seal of ~~said~~ court this ..... day of ...., ~~A.D. 19...~~ *20...*

....., Clerk"~~"~~

Section 91. Section 71-1-306, MCA, is amended to read:

"71-1-306. Qualifications of trustee — successor trustee. (1) The trustee of a trust indenture under this part ~~shall~~ *must* be:

(a) an attorney who is licensed to practice law in Montana;

(b) a bank, trust company, or savings and loan association authorized to do business in Montana under the laws of Montana or the United States; or

(c) a title insurer or title insurance ~~agent~~ *producer* or agency authorized to do business in Montana under the laws of Montana.

(2) The beneficiary may appoint a successor trustee at any time by filing for record, in the office of the clerk and recorder of each county in which the trust property or some part ~~thereof~~ *of the trust property* is situated, a substitution of trustee. The substitution ~~shall~~ *must* identify the trust indenture hy stating the names of the original parties ~~thereto~~ *to the trust indenture* and the date of recordation and the book and page where the ~~same~~ *information* is recorded, ~~shall~~ *must* state the name and mailing address of the new trustee, and ~~shall~~ *must* be executed and acknowledged by all of the beneficiaries designated in the trust indenture or their successors in interest. From the time the substitution is filed for record, the new trustee ~~shall be~~ *is* vested with all the power, duties, authority, and title of the trustee named in the trust indenture and of any successor trustee."

Section 92. Section 72-2-524, MCA, is amended to read:

"72-2-524. Self-proved will. (1) A will may be simultaneously executed, attested, and made self-proved by acknowledgment ~~thereof~~ by the testator and affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state in which execution occurs and evidenced by the officer's certificate, under official seal, in substantially the following form:

I, ..., the testator, sign my name to this instrument this ..... day of ....., ~~19...~~ *20...*, and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my will, ~~and~~ that I sign it willingly (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes ~~therein~~ expressed *in it*, and that I am 18 years of age or older, of sound mind, and under no constraint or undue influence.

.....

Testator

We, ..., ..., the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the testator signs and executes this instrument as the testator's will, ~~and~~ that the testator signs it willingly (or willingly directs another to sign for the testator), that each of us, in the presence and hearing of the testator, hereby signs this will as witness to the testator's signing, and that to the best of our knowledge the

HeinOnline -- 1999 vol. I 220 1999

testator is 18 years of age or older, of sound mind, and under no constraint or undue influence.

.....

Witness

.....

Witness

THE STATE OF .....

COUNTY OF .....

Subscribed, sworn to, and acknowledged before me by ....., the testator, and subscribed and sworn to before me by ..... and ....., witnesses, this ..... day of ....., *20...*

(SEAL) (Signed).....

(Official capacity of officer)

.....

(2) An attested will may be made self-proved at any time after its execution by the acknowledgment thereof by the testator and the affidavits of the witnesses, each made before an officer authorized to administer oaths under the laws of the state in which the acknowledgment occurs and evidenced by the officer's certificate, under the official seal, attached or annexed to the will in substantially the following form:

THE STATE OF .....

COUNTY OF .....

We, ..., ..., and ....., the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the undersigned authority that the testator signed and executed the instrument as the testator's will, ~~and~~ that the testator signed willingly (or willingly directed another to sign for the testator), that the testator executed it as the testator's free and voluntary act for the purposes ~~therein~~ expressed *in it*, ~~and~~ that each of the witnesses, in the presence and hearing of the testator, signed the will as witness, and that to the best of the witness's knowledge the testator was at that time 18 years of age or older, of sound mind, and under no constraint or undue influence.

..... Testator

..... Witness

..... Witness

Subscribed, sworn to, and acknowledged before me by ....., the testator, and subscribed and sworn to before me by ..... and ....., witnesses, this ..... day of ....., ~~.....~~*20...*

(SEAL) (Signed) .....

(Official capacity of officer)

.....

HeinOnline -- 1999 vol. I 221 1999

(3) A signature affixed to a self-proving affidavit attached to a will is considered a signature affixed to the will if necessary to prove the will's due execution."

Section 93. Section 72-3-104, MCA, is amended to read:

"72-3-104. Claims against deeedent — necessity of administration. (1) ~~No~~ *A* proceeding to enforce a claim against the estate of a decedent or ~~his~~ *the decedent's* successors may *not* be revived or commenced before the appointment of a personal representative. After the appointment and until distribution, all proceedings and actions to enforce a claim against the estate are governed by the procedure prescribed by ~~72-3-101 through~~ *Title 72, chapter 3, parts 1 through 10, and 72-3-1101 through* 72-3-1103. After distribution, a creditor whose claim has not been barred may recover from the distributees as provided in 72-3-1012 or from a former personal representative individually liable as provided in 72-3-1014.

(2) This section has no application to a proceeding by a secured creditor of the decedent to enforce ~~his~~ *the secured creditor's* right to ~~his~~ security except as to any deficiency judgment ~~which~~ *that* might be sought ~~therein~~ *in the proceeding*."

Section 94. Section 72-31-201, MCA, is amended to read:

"72-31-201. Statutory form of power of attorney. (1) The following statutory form of power of attorney is legally sufficient:

NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE EXPLAINED IN THIS PART. IF YOU HAVE ANY QUESTIONS ABOUT THESE POWERS, OBTAIN COMPETENT LEGAL ADVICE. THIS DOCUMENT DOES NOT AUTHORIZE ANYONE TO MAKE MEDICAL AND OTHER HEALTH CARE DECISIONS FOR YOU. YOU MAY REVOKE THIS POWER OF ATTORNEY IF YOU LATER WISH TO DO SO.

I ..... (insert your name and address) appoint ..... (insert the name and address of the person appointed) as my agent (attorney-in-fact) to act for me in any lawful way with respect to the following initialed subjects:

TO GRANT ALL OF THE FOLLOWING POWERS, INITIAL THE LINE IN FRONT OF (N) AND IGNORE THE LINES IN FRONT OF THE OTHER POWERS.

TO GRANT ONE OR MORE, BUT FEWER THAN ALL, OF THE FOLLOWING POWERS, INITIAL THE LINE IN FRONT OF EACH POWER YOU ARE GRANTING.

TO WITHHOLD A POWER, DO NOT INITIAL THE LINE IN FRONT OF IT. YOU MAY, BUT NEED NOT, CROSS OUT EACH POWER WITHHELD.

INITIAL

..... (A) real property transactions;

..... (B) tangible personal property transactions;

..... (C) stock and bond transactions;

..... (D) commodity and option transactions;

..... (E) banking and other financial institution transactions;

..... (F) business operating transactions;

..... (G) insurance and annuity transactions;

HeinOnline -- 1999 vol. I 222 1999

..... (H) estate, trust, and other heneficiary transactions;

..... (I) claims and litigation;

..... (J) personal and family maintenance;

..... (K) benefits from social security, medicare, medicaid, or other governmental programs or from military service;

..... (L) retirement plan transactions;

..... (M) tax matters;

..... (N) ALL OF THE POWERS LISTED ABOVE. YOU NEED NOT INITIAL ANY OTHER LINES IF YOU INITIAL LINE (N).

SPECIAL INSTRUCTIONS:
ON THE FOLLOWING LINES, YOU MAY GIVE SPECIAL INSTRUCTIONS LIMITING OR EXTENDING THE POWERS GRANTED TO YOUR AGENT.

.....

.....

.....

.....

.....

.....

.....

UNLESS YOU DIRECT OTHERWISE ABOVE, THIS POWER OF ATTORNEY IS EFFECTIVE IMMEDIATELY AND WILL CONTINUE UNTIL IT IS REVOKED.

..... This power of attorney revokes all previous powers of attorney signed by me.

STRIKE THE PRECEDING SENTENCE IF YOU DO NOT WANT THIS POWER OF ATTORNEY TO REVOKE ALL PREVIOUS POWERS OF ATTORNEY SIGNED BY YOU.

IF YOU DO WANT THIS POWER OF ATTORNEY TO REVOKE ALL PREVIOUS POWERS OF ATTORNEY SIGNED BY YOU, YOU SHOULD READ THOSE POWERS OF ATTORNEY AND SATISFY THEIR PROVISIONS CONCERNING REVOCATION. THIRD PARTIES WHO RECEIVED COPIES OF THOSE POWERS OF ATTORNEY SHOULD BE NOTIFIED.

..... This power of attorney will continue to be effective if I become disabled, incapacitated, or incompetent.

STRIKE THE PRECEDING SENTENCE IF YOU DO NOT WANT THIS POWER OF ATTORNEY TO CONTINUE IF YOU BECOME DISABLED, INCAPACITATED, OR INCOMPETENT.

If it becomes necessary to appoint a conservator of my estate or guardian of my person, I nominate my agent.

STRIKE THE PRECEDING SENTENCE IF YOU DO NOT WANT TO NOMINATE YOUR AGENT AS CONSERVATOR OR GUARDIAN.

HeinOnline -- 1999 vol. I 223 1999

If any agent named by me dies, becomes incompetent, resigns or refuses to accept the office of agent, I name the following (each to act alone and successively, in the order named) as successor(s) to the agent:

1. .....

2. .....

3. .....

For purposes of this subsection, a person is considered to be incompetent if and while: (1) the person is a minor; (2) the person is an adjudicated incompetent or disabled person; (3) a conservator has been appointed to act for the person; (4) a guardian has been appointed to act for the person; or (5) the person is unable to give prompt and intelligent consideration to business matters as certified by a licensed physician.

I agree that any third party who receives a copy of this document may act under it. I may revoke this power of attorney by a written document that expressly indicates my intent to revoke. Revocation of the power of attorney is not effective as to a third party until the third party learns of the revocation. I agree to indemnify the third party for any claims that arise against the third party because of reliance on this power of attorney.

Signed this ..... day of ....., ~~19...~~ *20...*

.....

(Your Signature)

.....

(Your Social Security Number)

State of .....

(County) of .....

This document was acknowledged before me on

.....

(Date) by

.....

(Name of Principal)

.....

(Siguature of Notarial Officer)

.....

(Seal, if any) (Title (and Rank))

[My commission expires:.....]

BY ACCEPTING OR ACTING UNDER THE APPOINTMENT, THE AGENT ASSUMES THE FIDUCIARY AND OTHER LEGAL RESPONSIBILITIES OF AN AGENT.

(2) A statutory power of attorney is legally sufficient under this part if the wording of the form substantially complies with subsection (1), the form is properly completed, and the signature of the principal is acknowledged.

HeinOnline -- 1999 vol. I 224 1999

(3) If the line in front of (N) of the form under subsection (1) is initialed, an initial on the line in front of any other power does not limit the powers granted by line (N)."

Section 95. Section 75-10-743, MCA, is amended to read:

"75-10-743. (Temporary) Orphan share state special revenue account — reimbursement of claims — payment of department costs. (1) There is an orphan share account in the state special revenue fund established in 17-2-102 that is to be administered by the department. Money in the account is available to the department by appropriation and must be used to reimburse remedial action costs claimed pursuant to 75-10-742 through 75-10-752 and to pay costs incurred by the department in defending the orphan share.

(2) There must be deposited in the orphan share account:

(a) money allocated from the metalliferous mines license tax pursuant to 15-37-117;

(b) all penalties assessed pursuant to 75-10-750(12);

(c) funds received from the interest income of the resource indemnity trust fund pursuant to 15-38-202;

(d) funds allocated from the resource indemnity and ground water assessment tax proceeds provided for in 15-38-106;

(e) unencumbered funds remaining in the abandoned mines state special revenue account ~~provided in section 10, Chapter 584, Laws of 1995, as of [the termination date of section 10, Chapter 584, Laws of 1995, as may be amended]~~;

(f) interest income on the account;

(g) funds received from settlements pursuant to 75-10-719(7); and

(h) funds received from reimbursement of the department's orphan share defense costs pursuant to subsection (6).

(3) If the orphan share fund contains sufficient money, valid claims must be reimbursed subsequently in the order in which they were received by the department. If the orphan share fund does not contain sufficient money to reimburse claims for completed remedial actions, a reimbursement may not be made and the orphan share fund, the department, and the state are not liable for making any reimbursement for the costs. The department and the state are not liable for any penalties if the orphan share fund does not contain sufficient money to reimburse claims, and interest may not accrue on outstanding claims.

(4) Except as provided in subsection (8), claims may not be submitted and remedial action costs may not be reimbursed from the orphan share fund until all remedial actions, except for operation and maintenance, are completed at a facility.

(5) Reimbursement from the orphan share fund must be limited to actual documented remedial action costs incurred after the date of petition provided in 75-10-745. Reimbursement may not be made for attorney fees, legal costs, or operation and maintenance costs.

(6) (a) The department's costs incurred in defending the orphan share must be paid by the persons participating in the allocation under 75-10-742 through 75-10-752 in proportion to their allocated shares. The orphan share fund is

HeinOnline -- 1999 vol. I 225 1999

responsible for a portion of the department's costs incurred in defending the orphan share in proportion to the orphan share's allocated share, as follows:

(i) If sufficient funds are available in the orphan share fund, the orphan share fund must pay the department's costs incurred in defending the orphan share in proportion to the share of liability allocated to the orphan share.

(ii) If sufficient funds are not available in the orphan share fund, persons participating in the allocation under 75-10-742 through 75-10-752 shall pay all the orphan share's allocated share of the department's costs incurred in defending the orphan share in proportion to each person's allocated share of liability.

(h) A person who pays the orphan share's proportional share of costs has a claim against the orphan share fund and must be reimbursed as provided in subsection (3).

(7) If any money remains in the orphan share fund after June 30, 2005, and after outstanding claims are paid, the money must be depesited in the general fund.

(8) If the lead liable person under 75-10-746 presents evidence to the department that the person cannot complete the remedial actions without partial reimbursement and that a delay in reimbursement will cause undue financial hardship on the person, the department may allow the submission of claims and may reimburse the claims prior to the completion of all remedial actions. A person is not eligible for early reimbursement unless the person is in substantial compliance with all department-approved remedial action plans.

(9) A person participating in the allocation process who received funds under the mixed funding pilot program provided for in sections 14 through 20, Chapter 584, Laws of 1995, may not claim or receive reimbursement from the orphan share fund for the amount of funds received under the mixed funding pilot program that are later attributed to the orphan share under the allocation process. (Terminates June 30, 2005—sec. 30, Ch. 415, L. 1997.)"

Section 96. Section 81-4-307, MCA, is amended to read:

"81-4-307. Trespassing animals in herd district — retention for damages and ~~keep~~ *costs*. (1) If ~~any such~~ *an* animal ~~or animals~~ *referred to in 81-4-306* wrongfully ~~enter upon~~ *enters the* premises of ~~any~~ *a* person within ~~such~~ *a herd* district, the owner or person in control of ~~such~~ *the* animal ~~or animals shall be~~ *is* liable for care and ~~feed~~ *feeding of the animal* and for any damages ~~occasioned by such livestock to the landowner~~ *caused by the animal*. The owner or occupant of the land upen which ~~such~~ *the* wrongful entry is made may take into ~~his~~ possession ~~such~~ *the* animal, ~~or animals and~~ *may* reasonably care for the ~~same and~~ *animal*, may retain possession ~~thereof~~ *of the animal*, and ~~be~~ *is* entitled to a lien ~~thereon~~ *on the animal* as security for the payment of damages *caused by the animal* and ~~charges occasioned by such livestock~~ *costs incurred in caring for the animal*. If the owner of ~~such livestock~~ *the animal* or the person entitled to ~~the~~ possession ~~thereof~~ *of the animal* can be found or is known to the person who takes ~~it up~~ *possession of the animal* for trespass, it ~~shall be his~~ *is the* duty *of the person taking possession* to notify the owner~~, owners, or persons~~ *or person* in charge ~~thereof~~ *of the animal* within 48 hours after taking possession ~~thereof~~ by a notice in writing, ~~duly~~ mailed as a ~~registered or~~ certified letter, directed to ~~such~~ *the* owner or porson in charge at ~~his~~ *the owner's or person's* pest-office address or by serving ~~such~~ *the* notice on ~~him~~ *the owner or person* personally. The notice ~~shall~~

must give a particular description of the ~~livestock~~ *animal* and state the amount of damages *and costs* claimed and demand that within 48 hours after receipt of ~~such~~ *the* notice the damages and costs he paid and that the animal ~~or animals~~ he taken away from the property of the complainant.

(2) Upon demand and upen payment of the damages and ~~charges~~ *costs*, the owner or occupant of the land shall release and deliver possession of ~~such stock~~ *the animal* to the owner or person entitled ~~thereto~~ *to possession of the animal*. If the parties cannot agree upon the amount, then the owner or person entitled to ~~said stock~~ *possession of the animal* shall give a receipt to the owner or occupant of the land ~~having~~ *who has* pessession of the ~~same, which~~ *animal. The* receipt ~~shall~~ *must* fully describe the animal ~~or animals~~ so that ~~they~~ *the animal* may at any time he easily identified~~, and thereupon~~. *Upon receiving the receipt,* the owner or occupant of the land shall give possession of ~~such livestock~~ *the animal* to the owner or person entitled ~~thereto, making claim therefor~~ *to possession of the animal*. The owner or person ~~so~~ receiving possession of ~~such livestock shall~~ *the animal may* not dispose of the ~~same~~ *animal* hut shall retain and keep the ~~same~~ *animal* in ~~his~~ possession as the legal custodian ~~thereof~~ *of the animal* in order to meet and pay the amount of the lien ~~thereon~~ *on the animal* for damages and ~~charges~~ *costs* due in consequence of ~~any such~~ *the* trespass.

(3) The party entitled to ~~such~~ damages or ~~charges~~ *costs* shall within 10 days after delivery of possession of ~~such livestock~~ *the animal* commence an action in any court having jurisdiction to recover ~~such~~ *the* damages and ~~charges~~ *costs*, and ~~such livestock shall~~ *the animal must* be held for the payment of any judgment ~~as effectually~~ as thougb held under a writ of attachment. At any time after ~~such~~ *the* action is commenced, the owner or person entitled to *possession of* the ~~stock~~ *animal*, to whom delivery ~~of possession~~ was made, may furnish and file a bond conditioned to pay the damages~~, charges,~~ and costs incurred in the action, and upen approval of the bond by tbe justice of the peace, if tbe action is commenced in a justice court, or by tbe judge or clerk of the district court, if the action is commenced in the district court, tbe lien and claim upon the ~~livestock shall thereupon~~ *animal must* be discharged.

(4) If the owner or person entitled to ~~such livestock~~ *possession of the animal* does not furnish ~~such~~ a bond within 10 days after the service of summons in the action, an order may be issued authorizing and directing the constable or sheriff to take possession and hold the ~~stock~~ *animal* to satisfy any judgment ~~which~~ *that* may be recovered in the action~~, and such stock~~. *The animal*, when ~~so~~ taken pessession of by the officer, ~~shall~~ *must* be held, treated, and sold under execution ~~the same~~ as though seized ~~and held in the first instance~~ by writ of attachment.

(5) The owner or person entitled to *possession of* the ~~stock~~ *animal* may, in lieu of furnishing a bond, deposit an amount of money sufficient to pay any judgment ~~which~~ *that* may be recovered in ~~such~~ *the* action, tbe amount to be determined by the justice or judge of the court in which the action is pending. If the owner or person entitled to *possession of* the ~~livestock~~ *animal*, after delivery of pessession ~~to him~~ without payment of damages and ~~charges herein~~ *costs* provided for *in this section*, ~~shall sell or dispose~~ *sells or disposes* of the ~~same~~ *animal* or any part ~~thereof~~ ~~or permit~~ *of the animal, permits* the ~~same~~ *animal* to be taken from ~~his~~ *the person's* possession, or ~~shall~~ in any manner ~~prevent~~ *prevents* the seizure of the ~~same~~ *animal* by the constable or sheriff~~, as herein provided,~~ before the lien ~~thereon~~ *on the animal* is fully discbarged, ~~he shall be~~ *the owner or person entitled to possession of the animal is* guilty of a misdemeanor and in addition ~~thereto shall be~~ *is* liable to the party entitled to ~~such~~ damages and

HeinOnline -- 1999 vol. I 227 1999

~~charges in~~ *costs in an amount that is* double the value of the ~~stock~~ *animal*. At the time of delivery or possession of ~~such stock [to]~~ *the animal to* the owner or person entitled ~~thereto~~ *to possession of the animal*, a written statement of the amount of the damages and ~~charges shall~~ *costs must* he furnished to the owner or person entitled to the possession of the ~~stock~~ *animal* by the person claiming ~~such~~ *the* damages and ~~charges~~ *costs*.

(6) If the owner or claimant of ~~such stock~~ *the animal* is not known to the person taking ~~up such stock, he~~ *possession of the animal, the person* shall give notice ~~thereof~~ within 48 hours by posting a notice at the nearest post office and serving a ~~like~~ *similar* notice on the stock inspector of the district~~, which~~. *The* notice ~~shall~~ *must* describe ~~each~~ *the* animal ~~or animals,~~ *and* the brand ~~thereon,~~ *on the animal* and give a minute description ~~thereof~~ *of the animal*, together with the date of the trespass."

Section 97. Section 81-4-510, MCA, is amended to read:

"81-4-510. Notice of sale of abandoned horses — form — time of sale — title. (1) Before ~~any~~ *a* sale ~~shall be had~~ *may be held*, at least 10 days' notice ~~shall~~ *must* be given by publication and posting in the manner specified in 81-4-504, except that publication, if made in a newspaper, ~~shall~~ *must* be once ~~in~~ each week for ~~two~~ *2* successive weeks, and posting ~~shall~~ *must* be done at least 5 days before the date of sale. ~~Such~~ *The* notice ~~shall~~ *must* be in substantially the following form:

NOTICE OF SALE OF ABANDONED HORSES

Notice is ~~hereby~~ given that on .... day, the .... day of ...., ~~19..~~ *20...*, at .... in the county of ...., state of Montana, beginning at the hours of ....m., ~~on said day~~ the following described abandoned horses will be sold at public auction to the highest bidder for cash~~, to wit~~:

(Give general description of horses to be sold by brand, if any, color, approximate weight, and estimated age.)

Any horses not reclaimed before sale as provided by law and for which no bid is made at ~~said~~ *the* sale will be destroyed or otherwise disposed of in the discretion of the board of county commissioners of .... County, state of Montana.

Dated the .... day of ...., ~~19..~~ *20...*

By order of the board of county commissioners of .... County, Montana.

By ...., clerk of ~~said~~ *the* board.

(2) All ~~such~~ sales ~~shall~~ *must* be held between the hours of 8 a.m. and 6 p.m. and may be continued from time to time until all abandoned horses taken in ~~such~~ *the* roundup ~~shall~~ have been disposed of. On payment of the price bid for any ~~such~~ horse ~~or horses~~ sold, the delivery ~~thereof~~ *of the horse*, with a bill of sale, vests the title ~~thereto~~ *to the horse* in the purchaser."

Section 98. Repealer. Sections 7-2-2301, 7-2-2302, 7-2-2303, 7-2-2311, 7-2-2312, 7-2-2313, 7-2-2314, 7-2-2315, 7-2-2316, 7-2-2317, 7-2-2318, 7-2-2319, 15-35-201, 15-35-202, 15-35-203, 15-35-204, and 15-35-205, MCA, are repealed.

Section 99. Instructions to code commissioner. (1) The code commissioner is instructed to implement 1-11-101(2)(g)(ii) by correcting any clearly inaccurate references to other sections of the Montana Code Annotated contained in material enacted by the 56th legislature.

HeinOnline -- 1999 vol. I 228 1999

(2) The code commissioner is instructed to renumber 2-15-2007 as an integral part of Title 2, chapter 15, part 25, and to change all affected references accordingly.

(3) The code commissioner is instructed to renumber 35-21-901, 35-21-902, and 35-21-903 as a new part in Title 10, chapter 2, and to change all affected references accordingly.

(4) Whenever the phrase "child with disabilities" or "children with disabilities" appears in Title 20 of the Montana Code Annotated or in material enacted by the 56th legislature and codified in Title 20, the code commissioner is directed to change the phrase to "a child with a disability" and make appropriate grammatical adjustments to conform the use of the phrase to the defined term contained in 20-7-401.

Section 100. Effective dates. (1) Except as provided in subsections (2) and (3), [this act] is effective on passage and approval.

(2) [Sections 4, 7, 9, 10, 18 through 23, 27, 41, 56 through 61, 78, 88, 90, 92, 94, and 97] are effective January 1, 2000.

(3) [Section 72] is effective July 1, 2001.

Section 101. Retroactive applicability. [Sections 35 and 36] apply retroactively, within the meaning of 1-2-109, to April 17, 1997.

Approved March 15, 1999

CHAPTER NO. 52

[HB 48]

AN ACT GENERALLY REVISING AND CLARIFYING CERTAIN SENTENCING-RELATED CRIMINAL PROCEDURES STATUTES; AND AMENDING SECTIONS 45-9-205, 46-18-201, 46-18-202, 46-18-203, 46-18-219, 46-18-220, 46-18-222, 46-18-225, 46-18-231, 46-18-303, 46-18-502, AND 46-23-1011, MCA.

WHEREAS, the Correctional Standards and Oversight Committee was authorized by the Fifty-Fifth Legislature to conduct a study of correctional standards and to act as a correctional oversight committee; and

WHEREAS, the Committee contracted for a review of Title 46, chapter 18, MCA, sentencing statutes; and

WHEREAS, the Committee found that the statutes providing for sentencing and judgment regarding criminal procedures are confusing and rife with cross-references, internal references, and inconsistent terminology that make the statutes difficult to read and understand; and

WHEREAS, the Committee recommended that a bill be drafted to amend Title 46, chapter 18, MCA, to make nonsubstantive changes to clarify and streamline the statutes to eliminate contradictions, confusion, inconsistent terminology, and excessive internal references.

THEREFORE, the Legislature of the State of Montana finds it appropriate to so amend certain sentencing-related statutes.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-9-205, MCA, is amended to read:

HeinOnline -- 1999 vol. I 229 1999

"45-9-205. Exemption from mandatory minimum sentences. If a ~~court~~ *senteneing judge* imposes any of the sentencing alternatives specified in 45-9-202, the mandatory minimum sentences provided in ~~46-18-201(5)~~ *[section 3(2)]* do not apply."

Section 2. Section 46-18-201, MCA, is amended to read:

"46-18-201. Sentences that may be imposed. (1) *(a)* Whenever a person has been found guilty of an offense upon a verdict or a plea of guilty, ~~the court~~ *a sentencing judge* may:

~~(a)~~ defer imposition of sentence, except as *otherwise specifically* provided ~~in 61-8-734 for sentences for driving under the influence of alcohol or drugs or as provided in 61-6-304~~ *by statute*, for a period~~, except as otherwise provided,~~:

(i) not exceeding 1 year for ~~any~~ *a* misdemeanor or for a period not exceeding 3 years for ~~any~~ *a* felony.~~;~~ *; or*

(ii) not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony if a financial obligation is imposed as a condition of sentence for either the misdemeanor or the felony, regardless of whether any other conditions are imposed.

(b) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of an offender who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended. ~~The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Reasonable restrictions or conditions may include:~~

~~(i) jail base release;~~

~~(ii) jail time not exceeding 180 days;~~

~~(iii) conditions for probation;~~

~~(iv) payment of the costs of confinement;~~

~~(v) payment of a fine as provided in 46-18-231;~~

~~(vi) payment of costs as provided in 46-18-232 and 46-18-233;~~

~~(vii) payment of costs of court-appointed counsel as provided in 46-8-113;~~

~~(viii) with the approval of the facility or program, an order that the offender be placed in a community corrections facility or program as provided in 53-30-321;~~

~~(ix) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, an order that the offender be placed in a prerelease center or prerelease program for a period not to exceed 1 year;~~

~~(x) community service;~~

~~(xi) home arrest as provided in Title 46, chapter 18, part 10;~~

~~(xii) any other reasonable conditions considered necessary for rehabilitation or for the protection of society;~~

~~(xiii) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116; or~~

~~(xiv) any combination of the restrictions or conditions in subsections (1)(a)(i) through (1)(a)(xiii).~~

~~(b)~~*(2) Whenever a person has been found guilty of an offense upon a verdict or a plea of guilty, a sentencing judge may* suspend execution of sentence, *except as otherwise specifically provided by statute,* for a period up to the maximum sentence allowed or for a period of 6 months, whichever is greater, for each particular offense. ~~The sentencing judge may impose on the defendant any reasonable restrictions or conditions during the period of suspended sentence. Reasonable restrictions or conditions may include any of those listed in subsection (1)(a).~~

~~(c)~~*(3) Whenever a person has been found guilty of an offense upon a verdict or a plea of guilty, a sentencing judge may* impose *a sentence that may include:*

(a) a fine as provided by law for the offense;

~~(d)~~*(b)* ~~require~~ payment of costs, as provided in 46-18-232, or payment of costs of court-appointed counsel as provided in 46-8-113;

~~(e)~~*(c)* ~~impose~~ a *term of incarceration at a* county jail or state prison ~~sentence~~, as provided in Title 45, for the offense ~~or~~;

(d) ~~commit~~ *commitment of* the ~~defendant~~ *offender* to the department of corrections for a period not to exceed 5 years, *with a recommendation* for placement in an appropriate correctional facility or program;

~~(f)~~*(e)* with the approval of the facility or program, ~~order the offender to be placed~~ *placement of the offender* in a community corrections facility or program as provided in 53-30-321;

~~(g)~~*(f)* with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, ~~order the offender to be placed~~ *placement of the offender* in a prerelease center or prerelease program for a period not to exceed 1 year;

(g) chemical treatment of sex offenders, as provided in 45-5-512, if applicable, that is paid for by and for a period of time determined by the department of corrections, but not exceeding the period of state supervision of the person; or

(h) ~~impose~~ any combination of subsections ~~(1)(b)~~ *(2)* through ~~(1)(g)~~ *(3)(g).*

(4) When deferring imposition of sentence or suspending all or a portion of execution of sentence, the senteneing judge may impose upon the offender any reasonable restrictions or conditions during the period of the deferred imposition or suspension of sentence. Reasonable restrictions or conditions imposed under subsection (1)(a) or (2) may include but are not limited to:

(a) limited release during employment hours as provided in 46-18-701;

(b) jail time not exceeding 180 days;

(c) conditions for probation;

(d) payment of the costs of confinement;

(e) payment of a fine as provided in 46-18-231;

(f) payment of costs as provided in 46-18-232 and 46-18-233;

(g) payment of costs of court-appointed counsel as provided in 46-8-113;

HeinOnline -- 1999 vol. I 231 1999

(h) with the approval of the facility or program, an order that the offender be placed in a community corrections facility or program as provided in 53-30-321;

(i) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, an order that the offender be placed in a prerelease center or prerelease program for a period not to exceed 1 year;

(j) community service;

(k) home arrest as provided in Title 46, chapter 18, part 10;

(l) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;

(m) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of the victim or society; or

(n) any combination of the restrictions or conditions listed in subsections (4)(a) through (4)(m).

~~(2)~~*(5)* In addition to any penalties imposed pursuant to subsection (1), if the ~~court~~ *sentencing judge* finds that the victim of the offense has sustained a pecuniary loss, the ~~court~~ *sentencing judge* shall require payment of full restitution to the victim as provided in 46-18-241 through 46-18-249.

~~(3) If a financial obligation is imposed as a condition under subsection (1)(a), sentence may be deferred for a period not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony, regardless of whether any other conditions are imposed.~~

~~(4) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, the court shall consider any elapsed time and either expressly allow part or all of it as a credit against the sentence or reject all or part as a credit. The court shall state its reasons in the order. Credit, however, must be allowed for jail or home arrest time already served.~~

~~(5) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended: 45-5-103, 45-5-202(3) relating to aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).~~

~~(6) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102 may not be deferred or suspended.~~

~~(7) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of a defendant who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.~~

~~(8) If the victim was less than 16 years old, the imposition or execution of the first 30 days of a sentence of imprisonment imposed under 45-5-503, 45-5-504, 45-5-505, or 45-5-507 may not be deferred or suspended. Section 46-18-222 does not apply to the first 30 days of the imprisonment.~~

~~(9)~~*(6)* In imposing a sentence on ~~a defendant~~ *an offender* convicted of a sexual or violent offense, as defined in 46-23-502, the ~~court~~ *sentencing judge* may not waive the registration requirement provided in Title 46, chapter 23, part 5.

~~(10) A person convicted of a sexual offense, as defined in 46-23-502, and sentenced to imprisonment in the state prison shall enroll in and complete the educational phase of the prison's sexual offender program. If the person is subject to the provisions of 45-5-512, the person shall also, as provided in 45-5-512, undergo medically safe medroxyprogesterone acetate treatment or its chemical equivalent or other medically safe drug treatment that reduces sexual fantasies, sex drive, or both, paid for by and for a period of time determined by the department of corrections. The period may not exceed the period of state supervision of the person.~~

~~(11) In sentencing a nonviolent felony offender, the court shall first consider alternatives to imprisonment of the offender in the state prison, including placement of the offender in a community corrections facility or program or a prerelease center or prerelease program. In considering alternatives to imprisonment, the court shall examine the sentencing criteria contained in 46-18-225. If the court subsequently sentences the offender to a state prison, the court shall state the reasons why it did not select an alternative to imprisonment, based on the criteria contained in 46-18-225.~~

~~(12)~~*(7)* If a felony sentence includes probation, the department of corrections shall supervise the ~~defendant~~ *offender* unless the court specifies otherwise.

~~(13) Except as provided in 46-18-222, a provision of this section that conflicts with 46-18-219 does not apply to a person sentenced under 46-18-219.~~"

Section 3. Mandatory minimum sentences — restrictions on deferral or suspension. (1) If the victim was less than 16 years old, the imposition or execution of the first 30 days of a sentence of imprisonment imposed under the following sections may not be deferred or suspended and the provisions of 46-18-222 do not apply to the first 30 days of the imprisonment:

(a) 45-5-503, sexual intercourse without consent;

(b) 45-5-504, indecent exposure;

(c) 45-5-505, deviate sexual conduct; or

(d) 45-5-507, incest.

(2) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended:

(a) 45-5-103(4), mitigated deliberate homicide;

(b) 45-5-202(3)(a), aggravated assault;

(c) 45-5-302(2), kidnapping;

(d) 45-5-303(2), aggravated kidnapping;

(e) 45-5-401(2), robbery;

(f) 45-5-502(3), sexual assault;

(g) 45-5-503(2) and (3), sexual intercourse without consent;

(h) 45-9-101(2), (3), and (5)(d), criminal sale of dangerous drugs;

(i) 45-9-102(4), criminal possession of dangerous drugs; and

(j) 45-9-103(2), criminal possession with intent to sell dangerous drugs.

HeinOnline -- 1999 vol. I 233 1999

(3) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102, deliberate homicide, may not be deferred or suspended.

Section 4. Section 46-18-202, MCA, is amended to read:

"46-18-202. Additional restrictions on sentence. (1) The ~~court~~ *sentencing judge* may also impose any of the following restrictions or conditions on the sentence provided for in 46-18-201 that ~~it~~ *the judge* considers necessary to ohtain the objectives of rehabilitation and the protection of the victim and society:

(a) prohibition of the ~~defendant's~~ *offender's* holding public office;

(b) prohibition of the ~~defendant's~~ *offender's* owning or carrying a dangerous weapon;

(c) restrictions on the ~~defendant's~~ *offender's* freedom of association;

(d) restrictions on the ~~defendant's~~ *offender's* freedom of movement;

(e) any other limitation reasonably related to the objectives of rehabilitation and the protection of the victim and society.

(2) Whenever the ~~district court~~ *sentencing judge* imposes a sentence of imprisonment in ~~the~~ *a* state prison for a term exceeding 1 year, the ~~court~~ *sentencing judge* may also impose the restriction that the ~~defendant~~ *offender* is ineligible for parole and participation in the supervised release program while serving that term. If the restriction is to be imposed, the ~~court~~ *sentencing judge* shall state the reasons for it in writing. If the ~~court~~ *sentencing judge* finds that the restriction is necessary for the protection of society, ~~it~~ *the judge* shall impose the restriction as part of the sentence and the judgment must contain a statement of the reasons for the restriction.

~~(3) When the court imposes a sentence of probation, as defined in 46-23-1001, any probation agreement signed by the defendant may contain a clause waiving extradition.~~

(3) An offender convicted of a sexual offense, as defincd in 46-23-502, and sentenced to imprisonment in a state prison shall enroll in and complete the educational phase of the prison's sexual offender program.

~~(4) Whenever the district court imposes a sentence of imprisonment in the state prison for a violation of 45-5-502(3), 45-5-503, 45-5-504(2)(c), 45-5-507 (unless the act occurred between two consenting persons 16 years of age or older), or 45-5-625, the court may also impose the restriction that the defendant be ineligible for a good time allowance while serving that term. If such a restriction is to be imposed, the court shall state the reasons for it in writing. If the court finds that the restriction is necessary for the protection of society, it shall impose the restriction as part of the sentence and the judgment must contain a statement of the reasons for the restriction.~~"

Scction 5. Section 46-18-203, MCA, is amended to read:

"46-18-203. Revocation of suspended or deferred sentence. (1) Upon the filing of a petition for revocation showing probable cause that the ~~defendant~~ *offender* has violated any condition of a sentence or any condition of a deferred imposition of sentence, the ~~court~~ *judge* may issue an order for a hearing on revocation. The order must require the ~~defendant~~ *offcnder* to appoar at a specified time and place for the hearing and be served by delivering a copy of the petition

HeinOnline -- 1999 vol. I 234 1999

and order to the ~~defendant~~ *offender* personally. The ~~court~~ *judge* may also issue an arrest warrant directing any peace officer or a probation officer to arrest the ~~defendant~~ *offender* and bring the ~~defendant~~ *offender* before the court.

(2) The petition for a revocation must be filed with the sentencing court during the period of suspension or deferral. Expiration of the period of suspension or deferral after the petition is filed does not deprive the court of its jurisdiction to rule on the petition.

(3) The provisions pertaining to bail, as set forth in Title 46, chapter 9, are applicable to persons arrested pursuant to this section.

(4) Without unnecessary delay, the ~~defendant~~ *offender* must be brought before the ~~court~~ *judge*, and the ~~defendant~~ *offender* must be advised of:

(a) the allegations of the petition;

(b) the opportunity to appear and to present evidence in the ~~defendant's~~ *offender's* own behalf;

(c) the opportunity to question adverse witnesses; and

(d) the right to be represented by counsel at the revocation hearing pursuant to Title 46, chapter 8, part 1.

(5) A hearing is required before a suspended or deferred sentence can be revoked or the terms or conditions of the sentence can be modified, unless:

(a) the ~~defendant~~ *offender* admits the allegations and waives the right to a hearing; or

(b) the relief to be granted is favorable to the ~~defendant,~~ *offender* and the prosecutor, after having been given notice of the proposed relief and a reasonable opportunity to object, has not objected. An extension of the term of probation is not favorable to the ~~defendant~~ *offender* for the purposes of this subsection *(5)*(b).

(6) At the hearing, the prosecution shall prove, by a preponderance of the evidence, that there has been a violation of the terms and conditions of the suspended or deferred sentence. However, when a failure to pay restitution is the basis for the petition, the ~~defendant~~ *offender* may excuse the violation by showing sufficient evidence that the failure to pay restitution was not attributable to a failure on the ~~defendant's~~ *offender's* part to make a good faith effort to obtain sufficient means to make the restitution payments as ordered.

(7) *(a)* If the ~~court~~ *judge* finds that the ~~defendant~~ *offender* has violated the terms and conditions of the suspended or deferred sentence, the ~~court~~ *judge* may:

~~(a)~~*(i)* continue the suspended or deferred sentence without a change in conditions;

~~(b)~~*(ii)* continue the suspended sentence with modified or additional terms and conditions;

~~(c)~~*(iii)* revoke the suspension of sentence and require the ~~defendant~~ *offender* to serve either the sentence imposed or any lesser sentence; or

~~(d)~~*(iv)* if the sentence was deferred, impose any sentence that might have been originally imposed.

(b) If a suspended or deferred sentence is revoked, the judge shall consider any elapsed time and either expressly allow all or part of the time as a credit against the sentence or reject all or part of the time as a credit. The judge shall state the

HeinOnline -- 1999 vol. I 235 1999

reasons for the judge's determination in the order. Credit, however, must be allowed for jail or home arrest time already served.

(8) If the ~~court~~ *judge* finds that the prosecution has not proved, by a preponderance of the evidence, that there has been a violation of the terms and conditions of the suspended or deferred sentence, the petition must he dismissed and the ~~defendant~~ *offender*, if in custody, immediately released."

Section 6. Section 46-18-219, MCA, is amended to read:

"46-18-219. Life sentence without possibility of release. (1) (a) Except as provided in subsection (3), if ~~a person~~ *an offender* convicted of one of the following offenses was previously convicted of one of the following offenses or of an offense under the laws of another state or of the United States that, if committed in this state, would be one of the following offenses, the ~~person~~ *offender* must be sentenced to life in prison, unless the death penalty is applicable and imposed:

(i) 45-5-102, deliberate homicide;

(ii) 45-5-303, aggravated kidnapping;

(iii) 45-5-503, sexual intercourse without consent;

(iv) 45-5-625, sexual abuse of children; or

(v) 45-5-627, except subsection (1)(b), ritual abuse of a minor.

(b) Except as provided in subsection (3), if ~~a person~~ *an offender* convicted of one of the following offenses was previously convicted of two of the following offenses, two of any combination of the offenses listed in subsection (1)(a) or the following offenses, or two of any offenses under the laws of another state or of the United States that, if committed in this state, would be one of the offenses listed in subsection (1)(a) or this subsection, the ~~person~~ *offender* must be sentenced to life in prison, unless the death penalty is applicable and imposed:

(i) 45-5-103, mitigated deliberate homicide;

(ii) 45-5-202(1), aggravated assault;

(iii) 45-5-302, kidnapping; *or*

(iv) 45-5-401, robbery.

(2) Except as provided in 46-23-210 and subsection (3) of this section, ~~a person~~ *an offender* sentenced under subsection (1):

(a) shall serve the entire sentence;

(b) shall serve the sentence in prison;

(c) may not for any reason, except *a* medical ~~reasons~~ *reason*, be transferred for any length of time to another type of institution, facility, or program;

(d) may not be paroled; and

(e) may not be given time off for good behavior or otherwise be given an early release for any reason.

(3) If the ~~person~~ *offender* was previously sentenced for either of two or three offenses listed in subsection (1), ~~as applicable,~~ pursuant to any of the exceptions listed in 46-18-222, then the provisions of subsections (1) and (2) of this section do not apply to the ~~person's~~ *offender's* present sentence.

HeinOnline -- 1999 vol. I 236 1999

(4) The imposition or execution of the sentences prescribed by this section may not be deferred or suspended. In the event of a conflict between this section and any provision of 46-18-201 or [section 3], this section prevails.

~~(4)~~*(5)* (a) For purposes of this section, "prison" means a secure detention facility in which inmates are locked up 24 hours a day and that is operated by this state, another state, the federal government, or a private contractor.

(b) Prison does not include a work release center, prerelease center, boot camp, or any other type of facility that does not provide secure detention."

Section 7. Section 46-18-220, MCA, is amended to read:

"46-18-220. Sentences for certain offenses committed in state prison — death penalty. ~~A person serving a sentence of imprisonment in the state prison~~ *An offender* convicted of *having committed* ~~the offense of~~ attempted deliberate homicide, aggravated assault, or aggravated kidnapping ~~committed~~ while incarcerated at ~~the~~ *a* state prison shall be sentenced to death or life imprisonment as provided in 46-18-301 through 46-18-310."

Section 8. Section 46-18-222, MCA, is amended to read:

"46-18-222. Exceptions to mandatory minimum sentences and restrictions on deferred imposition and snspended execution of sentence. ~~All mandatory~~ *Mandatory* minimum sentences prescribed by the laws of this state, ~~and~~ *mandatory life sentences prescribed by* 46-18-219, and the restrictions on deferred imposition and suspended execution of sentence prescribed by 46-18-201~~(5) through (7)~~*(1)(b)*, 46-18-221(3), 46-18-224, ~~and~~ 46-18-502(3), *and [section 3]* do not apply if:

(1) the ~~defendant~~ *offender* was less than 18 years of age at the time of the commission of the offense for which the ~~defendant~~ *offender* is to be sentenced;

(2) the ~~defendant's~~ *offender's* mental capacity, at the time of the commission of the offense for which the ~~defendant~~ *offender* is to be sentenced, was significantly impaired, although not so impaired as to constitute a defense to the prosecution. However, a voluntarily induced intoxicated or drugged condition may not be considered an impairment for the purposes of this subsection.

(3) the ~~defendant~~ *offender*, at the time of the commission of the offense for which the ~~defendant~~ *offender* is to be sentenced, was acting under unusual and substantial duress, although not such duress as would constitute a defense to the prosecution;

(4) the ~~defendant~~ *offender* was an accomplice, the conduct constituting the offense was principally the conduct of another, and the ~~defendant's~~ *offender's* participation was relatively minor;

(5) in a case in which the threat of bodily injury or actual infliction of bodily injury is an actual element of the crime, no serious bodily injury was inflicted on the victim unless a weapon was used in the commission of the offense; or

(6) the offense was committed under 45-5-502(3) and the ~~court~~ *judge* determines that treatment of the ~~defendant~~ *offender* in a local community affords a better opportunity for rehabilitation of the ~~defendant~~ *offender* and for the ultimate protection of the victim and society, in which case the ~~court~~ *judge* shall include in its judgment a statement of the reasons for its determination."

Section 9. Section 46-18-225, MCA, is amended to read:

HeinOnline -- 1999 vol. I 237 1999

"46-18-225. ~~Criteria for sentencing~~ *Sentencing of* nonviolent felony offenders — *criteria — alternatives to be considered — court to state reasons for imprisonment.* *(1) In sentencing a nonviolent felony offender, the sentencing judge shall first consider alternatives to imprisonment of the offender in a state prison, including placement of the offender in a community corrections facility or program, a prerelease center, or a prerelease program. In considering alternatives to imprisonment, the sentencing judge shall examine the sentencing criteria contained in subsection (2).*

(2) Prior to sentencing a nonviolent felony offender to whom 46-18-219 does not apply to a term of imprisonment in a state prison, the ~~court~~ *sentencing judge* shall take into account whether:

~~(1)~~*(a)* the interests of justice and the needs of public safety truly require the level of security provided by imprisonment of the offender in a state prison;

~~(2)~~*(b)* the needs of the offender can be better served in the community or in a facility or program other than a state prison;

~~(3)~~*(c)* there are substantial grounds tending to excuse or justify the offense, though failing to establish a defense;

~~(4)~~*(d)* the offender acted under strong provocation;

~~(5)~~*(e)* the offender has made restitution or will make restitution to the victim of the offender's criminal conduct;

~~(5)~~*(f)* the offender has no prior history of conviction for a criminal act or, *if the offender has a prior history of conviction for a criminal act, the offender* has led a law-abiding life for a substantial period of time before the commission of the present crime;

~~(7)~~*(g)* the offender's criminal conduct was the result of circumstances that are unlikely to recur;

~~(3)~~*(h)* the character and attitude of the offender indicate that the offender is likely to commit another crime;

~~(9)~~*(i)* the offender is likely to respond quickly to correctional or rehabilitative treatment; and

~~(10)~~*(j)* imprisonment of the offender would create an excessive hardship on the offender or the offender's family.

(3) If the judge sentences the offender to a state prison, the judge shall state the reasons why the judge did not select an alternative to imprisonment, based on the criteria contained in subsection (2)."

Section 10. Section 46-18-231, MCA, is amended to read:

"46-18-231. Fines in felony and misdemeanor cases. (1) *(a)* ~~Whenever~~ *Except as provided in subsection (1)(b), whenever,* upon a verdict or a plea of guilty, ~~a person~~ *an offender* has been found guilty of an offense for which a felony penalty of imprisonment could be impesed, the ~~court~~ *sentencing judge* may, *in lieu of or in addition to a sentence of imprisonment,* impose a fine~~,~~ only in accordance with subsection (3)~~, and in lieu of or in addition to a sentence of imprisonment~~.

(b) For those crimes for which penalties are provided in ~~45-5-103, 45-5-202(3), 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), 45-9-103(2), and 45-9-109~~ *the following*

sections, a fine may be imposed in accordance with subsection (3) in addition to a sentence of imprisonment:

(i) 45-5-103(4), mitigated deliberate homicide;

(ii) 45-5-202(3), aggravated assault, felony assault;

(iii) 45-5-302(2), kidnapping;

(iv) 45-5-303(2), aggravated kidnapping;

(v) 45-5-401(2), robbery;

(vi) 45-5-502(3), sexual assault when the victim is less than 16 years old and the offender is 3 or more years older than the victim or the offender inflicts bodily injury in the course of committing the sexual assault;

(vii) 45-5-503(2) and (3), sexual intercourse without consent;

(viii) 45-9-101(2), (3), and (5)(d), criminal sale of a narcotic drug, criminal sale of a dangerous drug included in Schedule I or Schedule II, or other criminal sale of a dangerous drug;

(ix) 45-9-102(4), criminal possession of an opiate;

(x) 45-9-103(2), criminal possession of an opiate with an intent to sell; and

(xi) 45-9-109, criminal sale of dangerous drugs on or near school property.

(2) Whenever, upon a verdict or *a* plea of guilty, ~~a person~~ *an offender* has been found guilty of an offense for which a misdemeanor penalty of a fine could be imposed, the ~~court~~ *sentencing judge* may impose a fine only in accordance with subsection (3).

(3) The ~~court~~ *sentencing judge* may not sentence ~~a defendant~~ *an offender* to pay a fine unless the ~~defendant~~ *offender* is or will be able to pay the fine. In determining the amount and method of payment, the ~~court~~ *sentencing judge* shall take into account the nature of the crime committed, the financial resources of the ~~defendant~~ *offender*, and the nature of the burden that payment of the fine will impose.

(4) Any fine levied under this section in a felony case shall be in an amount fixed by the ~~court~~ *sentencing judge* not to exceed $50,000."

Section 11. Section 46-18-303, MCA, is amended to read:

"46-18-303. Aggravating circumstances. Aggravating circumstances are any of the following:

(1) *(a)* The offense was deliberate homicide and was committed:

(i) by ~~a person~~ *an offender* serving a sentence of imprisonment in ~~the~~ *a* state prison~~.~~*;*

~~(2)~~*(ii)* ~~The offense was deliberate homicide and was committed~~ by ~~a defendant~~ *an offender* who had been previously convicted of another deliberate homicide~~.~~*;*

~~(3)~~*(iii)* ~~The offense was deliberate homicide and was committed~~ by means of torture~~.~~*;*

~~(4)~~*(iv)* ~~The offense was deliberate homicide and was committed~~ by ~~a person~~ *an offender* lying in wait or ambush~~.~~*;*

HeinOnline -- 1999 vol. I 239 1999

~~(5)~~*(v)* ~~The offense was deliberate homicide and was committed~~ as a part of a scheme or operation that, if completed, would result in the death of more than one person~~;~~ *or*

(vi) by an offender during the course of committing sexual assault, sexual intercourse without consent, deviate sexual conduct, or incest, and the victim was less than 18 years of age.

~~(6)~~*(b)* The offense was deliberate homicide, as defined in 45-5-102(1)(a), and the victim was a peace officer killed while performing the officer's duty.

~~(7)~~*(2)* The offense was aggravated kidnapping that resulted in the death of the victim or the death hy direct action of the ~~defendant~~ *offender* of a person who rescued or attempted to rescue the victim.

~~(8)~~*(3)* The offense was attempted deliberate homicide, aggravated assault, or aggravated kidnapping committed while incarcerated at the state prison by ~~a person~~ *an offender* who has been previously:

(a) convicted of the offense of deliberate homicide; or

(h) found to be a persistent felony offender pursuant to part 5 of this chapter, and one of the convictions was for an offense against the person in violation of Title 45, chapter 5, for which the minimum prison term is not less than 2 years.

~~(9) The offense was deliberate homicide and was committed by a person during the course of committing sexual assault, sexual intercourse without consent, deviate sexual conduct, or incest, and the victim was less than 18 years of age.~~

~~(10)~~*(4)* The offense was sexual intercourse without consent ~~and~~, the ~~defendant~~ *offender* has a previous conviction of sexual intercourse without consent in this state or of an offense under the laws of another state or of the United States that if committed in this state would be the offense of sexual intercourse without consent, and the ~~defendant~~ *offender* inflicted serious hodily injury upon a person in the course of committing each offense."

Section 12. Section 46-18-502, MCA, is amended to read:

"46-18-502. Sentencing of persistent felony offender. (1) Except as provided in 46-18-219 and subsection (2) of this section, a persistent felony offender shall be imprisoned in the state prison for a term of not less than 5 years or more than 100 years or shall be fined an amount not to exceed $50,000, or both, if the offender was 21 years of age or older at the time of the commission of the present offense.

(2) ~~If~~ *Except as provided in 46-18-219, an offender shall be imprisoned in a state prison for a term of not less than 10 years or more than 100 years or shall be fined an amount not to exceed $50,000, or both, if:*

(a) the offender was a persistent felony offender, as defined in 46-18-501, at the time of the offender's previous felony conviction~~;~~*;*

(b) less than 5 years have elapsed between the commission of the present offense and ~~either~~*:*

(i) the previous felony conviction*;* or

(ii) the offender's release on parole, ~~or otherwise~~ from prison, or *from* other commitment impesed as a result of the previous felony conviction~~;~~*;* and

(c) the offender was 21 years of age or older at the time of the commission of the present offense~~, the offender shall, except as provided in 46-18-219, be imprisoned in the state prison for a term of not less than 10 years or more than 100 years or shall be fined an amount not to exceed $50,000, or both~~.

(3) Except as provided in 46-18-222, the imposition or execution of the first 5 years of a sentence imposed under subsection (1) *of this section* or the first 10 years of a sentence imposed under subsection (2) *of this section* may not be deferred or suspended.

(4) Any sentence imposed under subsection (2) must run consecutively to any other sentence imposed."

Section 13. Section 46-23-1011, MCA, is amended to read:

"**46-23-1011. Supervision on probation.** (1) The department shall supervise ~~persons~~ *offenders* during their probation poriod in accord with the conditions set by a ~~court~~ *sentencing judge*.

(2) A copy of the conditions of probation must be signed by the probationer and given to the probationer and the probationer's probation and parole officer, who shall report on the prohationer's progress under rules of the ~~court~~ *sentencing judge. Any probation agreement signed by the probationer may contain a clause waiving extradition.*

(3) The probation and parole officer shall regularly advise and consult with the probationer to encourage the probationer to improve the probationer's condition and conduct and shall inform the probationer of the restoration of rights on successful completion of the sentence.

(4) The probation and parole officer may recommend and a ~~court~~ *judge* may modify any condition of probation or suspension of sentence at any time. Notice must be given to the probation and parole officer before any condition is modified, and the officer must be given an opportunity to present the officer's ideas or recommendations on any modification. A copy of a modification of conditions must be delivered to the probation and parole officer and the probationer. Waiver or modification of restitution may be ordered only as provided under the provisions of 46-18-246.

(5) Tlie probation and parole officer shall keep records as the department or the ~~court~~ *sentencing judge* may require.

(6) (a) Upon recommendation of the probation and parole officer, a ~~court~~ *judge* may conditionally discharge a probationer from supervision before expiration of the probationer's sentence if the ~~court~~ *judge* determines that a conditional discharge from supervision is in the best interests of the probationer and society and will not present unreasonable risk of danger to the victim of the offense.

(b) Subsection (6)(a) does not prohibit a ~~court~~ *judge* from revoking the order suspending execution or deferring imposition of sentence, as provided in 46-18-203, for a probationer who bas been conditionally discharged from supervision.

(c) If the department certifies to the ~~court~~ *sentencing judge* that the workload of a district probation and parole office has exceeded the optimum workload for the district over the precedmg 60 days, the ~~court~~ *judge* may not place an offender on probation under supervision by tbat district office unless ~~it~~ *the judge* grants a conditional discharge to a probationer being supervised by that district office.

HeinOnline -- 1999 vol. I 241 1999

The department may recommend probationers to the ~~court~~ *judge* for conditional discharge. The ~~court~~ *judge* may accept or reject the recommendations of the department. The department shall determine the optimum workload for each district probation and parole office."

Section 14. Codification instruction. The code commissioner shall codify all material enacted by the 56th legislature that amends material affected by [this act] to reflect the provisions of [this act] and shall make corresponding changes in style and arrangement to accommodate the codification.

Approved March 15, 1999

CHAPTER NO. 53

[HB 66]

AN ACT REQUIRING STATE AGENCIES TO INCLUDE WITH AN APPLICATION FOR A LICENSE OR PERMIT THE ESTIMATED TIME IT WILL TAKE FOR THE AGENCY TO PROCESS AND ACT ON THE APPLICATION.

Be it enacted by the Legislature of the State of Montana:

Section 1. Notice of estimated turnaround time on application for permit or license. (1) Except as provided in subsection (3), an application form issued by an agency that is an application for a permit or a license must include, either as an attachment or directly on the form, the estimated time it will take for the agency to process and act on a correctly completed application form.

(2) In specifying the estimated turnaround time, an agency may use either the average turnaround time for applications or an estimate based on the percentage of applications processed within the most common turnaround time.

(3) This section does not apply to an application processed on the same day that the application is received.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 2, chapter 15, and the provisions of Title 2, chapter 15, apply to [section 1].

Approved March 15, 1999

CHAPTER NO. 54

[HB 73]

AN ACT GENERALLY REVISING LICENSE LAWS; REQUIRING THE DEPARTMENT OF JUSTICE TO PERFORM A BACKGROUND INVESTIGATION RATHER THAN A THOROUGH INVESTIGATION PRIOR TO THE ISSUANCE OF AN OFF-PREMISES BEER AND WINE LICENSE; REMOVING THE NOTARY REQUIREMENT FOR LIQUOR LICENSE AND NURSERY LICENSE APPLICATIONS; PROVIDING THAT THE DEPARTMENT OF REVENUE RATHER THAN THE DEPARTMENT OF COMMERCE ADMINISTER THE MONTANA SMALL BUSINESS LICENSING COORDINATION ACT ESTABLISHED IN TITLE 30, CHAPTER 16, MCA; PROVIDING ANNIVERSARY DATES FOR PETROLEUM DEALERS

HeinOnline -- 1999 vol. I 242 1999

AND LIQUOR LICENSEES; PROVIDING FOR LICENSING AND PERMITTING BY THE DEPARTMENT OF REVENUE RATHER THAN THE DEPARTMENT OF ENVIRONMENTAL QUALITY OF UNDERGROUND STORAGE TANKS PURSUANT TO THE PROVISIONS OF TITLE 30, CHAPTER 16, MCA; AMENDING SECTIONS 16-4-115, 16-4-402, 16-4-407, 16-4-501, 30-16-103, 30-16-301, 80-7-106, AND 82-15-105, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-4-115, MCA, is amended to read:

"16-4-115. Beer and wine licenses for off-premises consumption. (1) A retail license to sell beer or table wine, or both, in the original packages for off-premises consumption may be issued only to a person, firm, or corporation that is approved by the department as a person, firm, or corporation qualified to sell beer or table wine, or both, and whose premises proposed for licensing are operated as a bona fide grocery store or a drugstore licensed as a pharmacy. The number of licenses that the department may issue is not limited by the provisions of 16-4-105 but must be determined by the department in the exercise of its sound discretion, and the department may in the exercise of its sound discretion grant or deny an application for any license or suspend or revoke any license for cause.

(2) Upon receipt of a completed application for a license under this section, accompanied by the necessary license fee as provided in 16-4-501, the department shall request that the department of justice make a ~~thorough~~ *background* investigation of all matters relating to the application.

(3) Based on the results of the investigation or in exercising its sound discretion as provided in subsection (1), the department shall determine whether:

(a) the applicant is qualified to receive a license;

(b) the applicant's premises are suitable for the carrying on of the business; and

(c) the requirements of this code and the rules promulgated by the department are met and complied with.

(4) License applications submitted under this section are not subject to the provisions of 16-4-203 and 16-4-207.

(5) If the premises proposed for licensing under this section are a new or remodeled structure, the department may issue a conditional license prior to completion of the premises upon reasonable evidence that the premises will be suitable for the carrying on of business as a bona fide grocery store or a drugstore licensed as a pharmacy."

Section 2. Section 16-4-402, MCA, is amended to read:

"16-4-402. Application — investigation. (1) Prior to the issuance of a license under this chapter, the applicant shall file with the department an application ~~in writing, signed by the applicant and~~ containing information and statements relative to the applicant and the premises where the alcoholic beverage is to be sold as required by the department. ~~The application must be verified by the affidavit of the person making it before a person authorized to administer oaths.~~

(2) (a) Upon receipt of a completed application for a license under this code, accompanied by the necessary license fee or letter of credit as provided in

HeinOnline -- 1999 vol. I 243 1999

16-4-501(7)(f), the department shall request that the department of justice make a thorough investigation of all matters relating to the application. Based on the results of the investigation or on other information, the department shall determine whether:

(i) the applicant is qualified to receive a license;

(ii) the applicant's premises are suitable for the carrying on of the business; and

(iii) the requirements of this code and the rules promulgated by the department are met and complied with.

(b) This subsection (2) does not apply to a catering endorsement provided in 16-4-111 or 16-4-204(2), a retail beer and wine license for off-premises consumption as provided in 16-4-115, or a special permit provided in 16-4-301.

(c) For an original license application and an application for transfer of location of a license, the department of justice's investigation and the department's determination under this subsection (2) must be completed within 90 days of the request from the department to the department of justice. If information is requested from the applicant by either department, the time period in this subsection (2)(c) is tolled until the requested information is received by the requesting department. The basis for the tolling of the deadline must he documented.

(3) Upon proof that an applicant made a false statement in any part of the original application, in any part of an annual renewal application, or in any hearing conducted pursuant to an application, the application for the license may be denied, and if issued, the license may be revoked.

(4) The department shall issue a conditional approval letter upon the last occurrence of either:

(a) completion of the investigation and determination provided for in subsection (2) if the department has not received information that would cause the department to deny the application; or

(b) a final agency decision that either denies or dismisses a protest against the approval of an application pursuant to 16-4-207.

(5) The conditional approval letter must state the reasons upon which the future denial of the application may be based. The reasons for denial of the application after the issuance of the conditional approval letter are as follows:

(a) there is false or erroneous information in the application;

(b) the premises are not approved hy local huilding, health, or fire officials;

(c) there are physical changes to the premises that if known prior to the issuance of the conditional approval letter would have constituted grounds for the denial of the application or denial of the issuance of the conditional approval; or

(d) a final decision hy a court exercising jurisdiction over the matter either reverses or remands the department's final agency decision provided for in subsection (4)."

Section 3. Section 16-4-407, MCA, is amended to read:

HeinOnline -- 1999 vol. I 244 1999

"16-4-407. Snspension or revocation of licenses. Each July 1 *or, when applicable, on the licensee's anniversary date,* the department shall issue licenses to brewers, beer importers, wholesalers, or retailers or for the retail sale of alcoholic beverages on an annual basis and ~~at such~~ *with the* fees ~~as are~~ prescribed by law, and ~~such~~ *the* licenses are subject to suspension or revocation under 16-4-406 after midnight of June 30 of the succeeding year *or 1 year after the anniversary* if the annual renewal fees required by 16-4-501 are not paid. The department shall notify each applicant for an original license or renewal that ~~he should inform himself of~~ *it is the applicant's responsibility to determine if* applicable provisions of federal law ~~which may~~ require *the applicant to obtain* a permit from a federal agency."

Section 4. Section 16-4-501, MCA, is amended to read:

"16-4-501. License and permit fees. (1) Each beer licensee licensed to sell either beer or table wine only, or both beer and table wine, under the provisions of this code, shall pay an annual license fee as follows:

(a) each brewer and each beer importer, wherever located, whose product is sold or offered for sale within the state, $500; for each storage depot, $400;

(b) each beer wholesaler, $400; each table wine distributor, $400; each subwarebouse, $400;

(c) each beer retailer, $200;

(d) for a license to sell beer at retail for off-premises consumption only, the same as a retail beer license; for a license to sell table wine at retail for off-premises consumption only, either alone or in conjunction with beer, $200;

(e) any unit of a nationally chartered veterans' organization, $50.

(2) The permit fee under 16-4-301(1) is computed at the rate of $10 a day for each day that beer and table wine are sold at those events lasting 2 or more days, but the fee may not exceed $300 for a series of scheduled sporting events.

(3) The permit fee under 16-4-301(2) is $10 for the sale of beer and table wine only or $20 for tbe sale of all alcoholic beverages.

(4) Passenger carrier licenses must be issued upon payment by the applicant of an annual license fee in the sum of $300.

(5) The annual license fee for a license to sell wine on the premises, when issued as an amendment to a beer-only license pursuant to 16-4-105, is $200.

(6) The annual renewal fee for resort retail all-beverages licenses within a given resort area is $2,000 for each license.

(7) Each licensee licensed under tbe quotas of 16-4-201 shall pay an annual license fee as follows:

(a) except as provided in this section, for each license outside of incorporated cities and incorporated towns or in incorporated cities and incorporated towns with a population of less than 2,000, $250 for a unit of a nationally chartered veterans' organization and $400 for all other licensees;

(b) except as provided in this section, for each license in incorporated cities with a population of more than 2,000 and less than 5,000 or within a distance of 5 miles ~~thereof~~, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of the city, $350 for a unit of a nationally chartered veterans' organization and $500 for all other licensees;

HeinOnline -- 1999 vol. I 245 1999

(c) except as provided in this section, for each license in incorporated cities with a population of more than 5,000 and less than 10,000 or within a distance of 5 miles ~~thereof~~, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of the city, $500 for a unit of a nationally chartered veterans' organization and $650 for all other licensees;

(d) for each license in incorporated cities with a population of 10,000 or more or within a distance of 5 miles ~~thereof~~, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of the city, $650 for a unit of a nationally chartered veterans' organization and $800 for all other licensees;

(e) the distance of 5 miles from the corporate limits of any incorporated cities and incorporated towns is measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of the city or town; and where the premises of the applicant to be licensed are situated within 5 miles of the corporate boundaries of two or more incorporated cities or incorporated towns of different populations, the license fee chargeable by the larger incorporated city or incorporated town applies and must be paid by the applicant. When the premises of the applicant to be licensed are situated within an incorporated town or incorporated city and any portion of the incorporated town or incorporated city is without a 5-mile limit, the license fee chargeable by the smaller incorporated town or incorporated city applies and must be paid by the applicant.

(f) an applicant for the issuance of an original license to be located in areas described in subsections (6) and (7)(d) shall provide an irrevocable letter of credit from a financial institution that guarantees that applicant's ability to pay a $20,000 license fee. A successful applicant shall pay a one-time original license fee of $20,000 for a license issued. The one-time license fee of $20,000 may not apply to any transfer or renewal of a license issued prior to July 1, 1974. All licenses, however, are subject to the specified annual renewal fees.

(8) The fee for one all-beverages license to a public airport is $800. This license is nontransferable.

(9) The annual fee for a special beer and table wine license for a nonprofit arts organization under 16-4-303 is $250.

(10) The license fees provided in this section are exclusive of and in addition to other license fees chargeable in Montana for the sale of alcoholic beverages.

(11) In addition to other license fees, the department of revenue may require a licensee to pay a late fee of 33 1/3% of any license fee delinquent on July 1 of the renewal year *or 1 year after the licensee's anniversary date*, 66 2/3% of any license fee delinquent on August 1 of the renewal year *or 1 year and 1 month after the licensee's anniversary date*, and 100% of any license fee delinquent on September 1 of the renewal year *or 1 year and 2 months after the licensee's anniversary date*.

(12) All license and permit fees collected under this section must be deposited as provided in 16-2-108."

Section 5. Section 30-16-103, MCA, is amended to read:

"30-16-103. Definitions. As used in this chapter, the following definitions apply:

HeinOnline -- 1999 vol. I 246 1999

(1) "Board of review" means the body established to provide policy direction to the department of revenue in designing and recommending to the legislature the implementation of a plan for a business registration and licensing system.

(2) "Department" means the department of ~~commerce~~ *revenue* established in ~~2-15-1801~~ *2-15-1301*.

(3) (a) "License" means the whole or part of any agency permit, license, certificate, approval, registration, or charter or any form or permission required by law or administrative rule to engage in any retail, wholesale, consumer service, manufacturing, or distributing activity.

(b) License does not include licenses, permits, or registrations issued under Title 30, chapter 10, parts 1 through 3, Title 33, Title 37, and Title 75, *chapters 1 through 3, 5 through 7, 10, 15, 16, and 20,* which are excluded from the coverage of this chapter.

(4) "Person" means an individual, sole proprietorship, partnership, association, cooperative, limited liability company, corporation, nonprofit organization, state or local government agency, or any other organization required to register with the state to do business in Montana and to obtain one or more licenses from the state or any of its agencies.

(5) "Plan" means the business registration and licensing system and the procedures developed by the board of review that are under the administrative control of the department ~~of revenue~~."

Section 6. Section 30-16-301, MCA, is amended to read:

"30-16-301. Business registration and licensing plan — administration. (1) The provisions of 16-11-120, 16-11-122, 30-12-203, 30-13-203, 30-13-206, 30-13-210, 30-13-217, 30-16-104, 50-50-201, 50-50-203, 50-50-205, 50-50-207, 50-50-214, 80-7-106, 81-9-201, 81-20-201, and 82-15-105 constitute a means of implementing a preliminary plan for streamlined registration and licensing procedures. Sections 16-11-120, 16-11-122, 30-12-203, 30-13-203, 30-13-206, 30-13-210, 30-13-217, 30-16-104, 50-50-201, 50-50-203, 50-50-205, 50-50-207, 50-50-214, 80-7-106, 81-9-201, 81-20-201, and 82-15-105 provide that certain licenses selected by the board of review must allow for:

(a) an anniversary date for license renewal that is set by the board of review;

(b) an electronic means of verifying the information required in the license application; and

(c) credit card discounts in relation to fees required for licensure.

(2) The department ~~of revenue~~ shall designate ~~a deputy director~~ *an employee* in charge of administering the plan whose duties include those of executive secretary of the board of review."

Section 7. Section 80-7-106, MCA, is amended to read:

"80-7-106. License required — application and payment of license fee. (1) A firm engaging in the business of selling or distributing nursery stock in this state shall obtain a license for each nursery from the department.

(2) The license must be in the name of the firm seeking the license and expires on the anniversary date established by rule by the board of review established in 30-16-302. The applicant shall provide information that the department finds necessary to carry out the provisions and purposes of this chapter and in the form determined by rule by the board of review established in 30-16-302.

HeinOnline -- 1999 vol. I 247 1999

(3) (a) A nursery that earns less than $1,000 in gross annual sales of nursery stock and that submits ~~a notarized~~ *an* affidavit to that effect to the department is exempt from licensing.

(b) A nursery that earns $1,000 but less than $3,000 in gross annual sales of nursery stock and that submits ~~a notarized~~ *an* affidavit to that effect to the department shall pay a license fee of $30.

(c) A nursery that earns $3,000 or more in gross annual sales of nursery stock shall pay a license fee of $95.

(4) A new applicant or a firm failing to renew a license on or before the annual anniversary date provided for in subsection (2) shall pay an additional nonrefundable application fee of $25 for each license.

(5) An out-of-state firm that imports nursery stock into Montana for resale by a licensed Montana nursery is not required to obtain a license if the firm is licensed in the state of origin of the nursery stock and if that state extends a similar exemption to Montana firms.

(6) If the department determines that the revenue from the license fee is inadequate to accomplish the purposes of this chapter, the department may by rule increase the fee.

(7) The fees required by the provisions of this section may be paid by credit card and may be discounted for payment processing charges paid by the department to a third party."

Section 8. Section 82-15-105, MCA, is amended to read:

"82-15-105. Licenses and fees — status of license on transfer of ownership. (1) A petroleum dealer or liquefied petroleum dealer may not do business in this state until licensed by the department. The license must be obtained by the dealer by making application to the department upon blank forms provided by the department. A dealer who has not been issued a license and who is found selling, offering for sale, delivering, or distributing petroleum products shall upon conviction be punished as provided by this part.

(2) The department shall adopt rules establishing license fees based upon the measuring devices used by the dealer. The fees may be paid by credit card and may be discounted for payment processing charges paid by the department to a third party. The fees must be deposited in the state special revenue fund of the department for use in administrating and enforcing this part.

(3) All licenses are annual and expire on the anniversary date established by rule by the board of review established in 30-16-302. There is an additional charge of 50% on all license fees that are not paid ~~before March 1 of each year in which the vehicle tank, meter, or measuring device is in use~~ *within 60 days of the licensee's anniversary date.* If the fee is not paid, the equipment must be sealed and removed from service by the department. It is unlawful for anyone to use a device removed from service or to break the seal until all fees have been paid.

(4) If ownership of a measuring device changes and the device:

(a) remains at the same location, the license transfers to the new owner and remains in effect until December 31 of that year;

(b) is moved to a new location, the license is void, and the new owner shall:

(i) apply for a new license that will expire on the anniversary date of that year, as provided in subsection (3); and

HeinOnline -- 1999 vol. I 248 1999

(ii) pay the applicable fees."

Section 9. Effective date. [This act] is effective on passage and approval.

Approved March 15, 1999

CHAPTER NO. 55

[HB 75]

AN ACT COMBINING THE STATUTORY APPROPRIATION FOR MITIGATING DISASTERS AND EMERGENCIES CAUSED BY FIRE WITH THE STATUTORY APPROPRIATION FOR MITIGATING DISASTERS CAUSED BY ALL OTHER CAUSES; AMENDING SECTION 10-3-312, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-3-312, MCA, is amended to read:

"10-3-312. Maximum expenditure by governor — appropriation. (1) ~~(a)~~ Whenever an emergency or disaster is declared by the governor, there is statutorily appropriated to the office of the gevernor, as provided in 17-7-502, and the gevernor is authorized to expend from the general fund, an amount not to exceed ~~$2~~ *$12* million in any biennium, minus any amount appropriated pursuant to 10-3-310 in the same bienmium.

~~(b) Whenever an emergency or disaster due to fire is declared by the governor, there is statutorily appropriated to the office of the governor, as provided in 17-7-502, and the governor is authorized to expend from the general fund, an amount not to exceed $10 million in any biennium. The amount appropriated in this subsection (b) may be combined with the amount appropriated in subsection (1)(a) for an emergency or disaster due to fire.~~

(2) In the event of the recovery of money expended under this section, the spending autbority must be reinstated to a level reflecting the recovery.

(3) If a disaster is declared by the president of the United States, there is statutorily appropriated te the office of tbe gevernor, as provided in 17-7-502, and the governor is authorized to expend from the general fund, an amount not to exceed $500,000 during the bienmium to meet the state's share of the individual and family grant programs as provided in 42 U.S.C. 5178."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 15, 1999

CHAPTER NO. 56

[HB 82]

AN ACT GENERALLY REVISING PROCEDURES REGARDING COUNTY TAX APPEAL BOARDS; PROVIDING THAT COUNTY TAX APPEAL BOARDS ARE IN SESSION FROM JULY 1 TO DECEMBER 31 OF THE CURRENT TAX YEAR; CHANGING THE DATE FOR NOTICE OF THE TIME THE COUNTY TAX APPEAL BOARD WILL MEET; PROVIDING FOR THE SUBMISSION OF APPLICATIONS FOR REDUCTION OF PROPERTY

HeinOnline -- 1999 vol. I 249 1999

TAXES WITH THE COUNTY CLERK AND RECORDER; AND AMENDING SECTIONS 15-7-102, 15-15-101, 15-15-102, AND 15-15-103, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-7-102, MCA, is amended to read:

"15-7-102. Notice of classification and appraisal to owners — appeals. (1) (a) The department shall mail to each owner or purchaser under contract for deed a notice of the classification of the land owned or being purchased and the appraisal of the improvements on the land only if one or more of the following changes pertaining to the land or improvements have been made since the last notice:

(i) change in ownership;

(ii) change in classification;

(iii) except as provided in subsection (1)(b), change in valuation; or

(iv) addition or subtraction of personal property affixed to the land.

(b) After the first year, the department is not required to mail the notice provided for in subsection (1)(a)(iii) if the change in valuation is the result of an incremental change in valuation caused by the phasing in of a reappraisal.

(c) The notice must include the following for the taxpayer's informational purposes:

(i) the total amount of mills levied against the property in the prior year; and

(ii) a statement that the notice is not a tax bill.

(d) Any misinformation provided in the information required by subsection (1)(c) does not affect the validity of the notice and may not be used as a basis for a challenge of the legality of the notice.

(2) (a) Except as provided in subsection (2)(c), the department shall assign each assessment to the correct owner or purchaser under contract for deed and mail the notice of classification and appraisal on a standardized form, adopted by the department, containing sufficient information in a comprehensible manner designed to fully inform the taxpayer as to the classification and appraisal of the property and of changes over the prior tax year.

(b) The notice must advise the taxpayer that in order to be eligible for a refund of taxes from an appeal of the classification or appraisal, the taxpayer is required to pay the taxes under protest as provided in 15-1-402.

(c) The department is not required to mail the notice of classification and appraisal to a new owner or purchaser under contract for deed unless the department has received the transfer certificate from the clerk and recorder as provided in 15-7-304 and has processed the certificate before the notices required by subsection (2)(a) are mailed. The *department shall notify the county tax appeal board of the* date of *the* mailing ~~is the date reported to the county tax appeal board pursuant to 15-15-101~~.

(3) If the owner of any land and improvements is dissatisfied with the appraisal as it reflects the market value of the property as determined by the department or with the classification of the land or improvements, the owner may request an assessment review by submitting an objection in writing to the department, on forms provided by the department for that purpose, within 30

HeinOnline -- 1999 vol. I 250 1999

days after receiving the notice of classification and appraisal from the department. The review must be conducted informally and is not subject to the contested case procedures of the Montana Administrative Procedure Act. As a part of the review, the department may consider the actual selling price of the property, independent appraisals of the property, and other relevant information presented by the taxpayer in support of the taxpayer's opinion as to the market value of the property. The department shall give reasonable notice to the taxpayer of the time and place of the review. After the review, the department shall determine the correct appraisal and classification of the land or improvements and notify the taxpayer of its determination. In the notification, the department shall state its reasons for revising the classification or appraisal. When the proper appraisal and classification have been determined, the land must be classified and the improvements appraised in the manner ordered by the department.

(4) Whether a review as provided in subsection (3) is held or not, the department may not adjust an appraisal or classification upon the taxpayer's objection unless:

(a) the taxpayer has submitted an objection in writing; and

(b) the department has stated its reason in writing for making the adjustment.

(5) A taxpayer's written objection to a classification or appraisal and the department's notification to the taxpayer of its determination and the reason for that determination are public records. The department shall make the records available for inspection during regular office hours.

(6) If any property owner feels aggrieved by the classification or appraisal made by the department after the review provided for in subsection (3), the property owner has the right to first appeal to the county tax appeal board and then to the state tax appeal board, whose findings are final subject to the right of review in the courts. The appeal to the county tax appeal board must be filed within 30 days after notice of the department's determination is mailed to the taxpayer. A county tax appeal board or the state tax appeal board may consider the actual selling price of the property, independent appraisals of the property, and other relevant information presented by the taxpayer as evidence of the market value of the property. If the county tax appeal board or the state tax appeal board determines that an adjustment should be made, the department shall adjust the base value of the property in accordance with the board's order."

Section 2. Section 15-15-101, MCA, is amended to read:

"15-15-101. County tax appeal board — meetings and compensation. (1) The board of county commissioners of each county shall appoint a three-member county tax appeal board, with the members to serve staggered terms of 3 years each. The members of each county tax appeal board must be residents of the county in which they serve. The members receive compensation of $45 a day and travel expenses, as provided for in 2-18-501 through 2-18-503, only when the county tax appeal board ~~is in session~~ *meets* to hear taxpayers' appeals from property tax assessments or when they are attending meetings called by the state tax appeal board. Travel expenses and compensation must be paid from the appropriation to the state tax appeal board. Office space and equipment for the county tax appeal boards must be furnished by the county. All other incidental expenses must be paid from the appropriation of the state tax appeal board.

HeinOnline -- 1999 vol. I 251 1999

(2) The county tax appeal board shall hold an organizational meeting each year on the date of its first scheduled hearing, immediately before conducting the business for which the hearing was otherwise scheduled. It shall continue in session ~~from time to time~~ *from July 1 of the current tax year until December 31 of the current tax year* to hear protests concerning assessments made by the department until the business of hearing protests is disposed of~~, but, except~~ *and,* as provided in 15-2-201, *may meet after December 31* ~~not later than 60 days after the department:~~

~~(a) has mailed notice of classification and appraisal to all property owners and purchasers under contracts for deed as required in 15-7-102; and~~

~~(b) has notified the county tax appeal board that classification and appraisal notices have been mailed to all property owners and purchasers under contracts for deed.~~

(3) In connection with an appeal, the county tax appeal board may change any assessment or fix the assessment at some other level. ~~The~~ *Upon notification by the county tax appeal board, the* county clerk and recorder shall publish a notice to taxpayers, giving the time the county tax appeal board will ~~meet~~ *be in session* to hear *scheduled* protests concerning assessments and the latest date the county tax appeal board may take applications for the hearings. The notice must be published in a newspaper if any is printed in the county or, if none, then in the manner that the county tax appeal board directs. The notice must be published ~~at least 7 days prior to the first meeting of the county tax appeal board~~ *by May 15 of the current tax year.*

(4) Challenges to a department rule governing the assessment of property or to an assessment procedure apply only to the taxpayer bringing the challenge and may not apply to all similarly situated taxpayers unless an action is brought in the district court as provided in 15-1-406."

Section 3. Section 15-15-102, MCA, is amended to read:

"15-15-102. Application for reduction in valuation. The valuation of property may not be reduced by the county tax appeal board unless either the taxpayer or the taxpayer's agent makes and files a written application for reduction with the county tax appeal board. *The application for reduction may be obtained at the local appraisal office or from the county tax appeal board. The completed application must be submitted to the county clerk and recorder. The date of receipt is the date stamped on the appeal form by the county clerk and recorder upon receipt of the form. The county tax appeal board is responsible for obtaining the applications from the county clerk and recorder.* The application must be ~~filed~~ *submitted* on or before the first Monday in June or 30 days after receiving either a notice of classification and appraisal or determination after review under 15-7-102(3) from the department, whichever is later. If the department's determination after review is not made in time to allow the county tax appeal board to review the matter during the current tax year, the appeal must be reviewed during the next tax year, but the decision by the county tax appeal board is effective for the year in which the request for review was filed with the department. The application must state the post-office address of the applicant, specifically describe the property involved, and state the facts upon which it is claimed the reduction should be made."

Section 4. Section 15-15-103, MCA, is amended to read:

HeinOnline -- 1999 vol. I 252 1999

"15-15-103. Examination of applicant — failure to hear application. (1) Before the county tax appeal board grants any application or makes any reduction applied for, it shall examine on oath the person or agent making the application, touching the value of the property of each person. A reduction may not be made unless the applicant makes an application, as provided in 15-15-102, and attends the county tax appeal board hearing. An appeal of the board's decision may not be made to the state tax appeal board unless the person or the person's agent has exhausted the remedies available through the county tax appeal board. In order to exhaust the remedies, the person or the person's agent shall attend the county tax appeal board hearing. On written request by the person or the person's agent and on the written concurrence of the department of revenue, the county tax appeal board may waive the requirement that the person or the person's agent attend the hearing. The testimony of all witnesses at the hearing must be electronically recorded and preserved for 1 year. If the decision of the county tax appeal board is appealed, the record of the proceedings, including the electronic recording of all testimony, must be forwarded, together with all exhibits, to the state tax appeal board. The date of the hearing, the proceedings before the board, and the decision must be entered upon the minutes of the board, and the board shall notify the applicant of its decision by mail within 3 days. A copy of the minutes of the county tax appeal board must be transmitted to the state tax appeal board no later than 3 days after the board holds its final hearing of the year.

(2) If a county tax appeal board refuses or fails to hear a taxpayer's timely application for a reduction in valuation of property, the taxpayer's application is considered to be granted on the day following the board's final meeting for that year. The department shall enter the appraisal or classification sought in the application in the property tax record. An application is not automatically granted for the following appeals:

(a) those listed in 15-2-302; and

(b) if a taxpayer's appeal from the department's determination of classification or appraisal made pursuant to 15-7-102 was not received in time, as provided for in 15-15-102, to be considered by the board during its current ~~60-day~~ session."

Approved March 15, 1999

CHAPTER NO. 57

[HB 101]

AN ACT REVISING THE MEMBERSHIP OF THE BOARD OF PLUMBERS; REPLACING THE MEMBER FROM THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES WITH A MEMBER FROM THE DEPARTMENT OF ENVIRONMENTAL QUALITY; AMENDING SECTION 2-15-1875, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-1875, MCA, is amended to read:

"2-15-1875. Board of plumbers. (1) There is a board of plumbers.

HeinOnline -- 1999 vol. I 253 1999

(2) The board consists of nine members appointed by the governor with the consent of the senate. The members are:

(a) two master plumbers and two journeyman plumbers who are 18 years of age or older, who have been residents of this state for more than 1 year, and who have been duly licensed master or journeyman plumbers at least 5 out of the last 8 years immediately preceding their appointment;

(b) one registered professional engineer qualified in mechanical engineering;

(c) three representatives of the public who are not engaged in the business of installing or selling plumbing equipment; *and*

(d) one ~~appointed~~ representative of the department of ~~public health and human services~~ *environmental quality*, who must ~~be a sanitary engineer and who is secretary of the board~~ *have experience in the regulation of drinking water systems*.

(3) The appointed members of the board shall serve for terms of 4 years.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 15, 1999

CHAPTER NO. 58

[HB 119]

AN ACT RELATING TO PUBLIC RETIREMENT SYSTEMS; AMENDING RETIREMENT SYSTEM-RELATED STATUTES TO COMPLY WITH INTERNAL REVENUE CODE REQUIREMENTS FOR TAX-DEFERRED QUALIFIED RETIREMENT PLANS; PROVIDING FOR WITHHOLDING AND EMPLOYER PICKUP OF AMOUNTS USED BY PUBLIC EMPLOYEES TO QUALIFY OR PURCHASE RETIREMENT SERVICE; REMOVING MENTAL HEALTH CORPORATIONS FROM THE ENTITIES THAT ARE ALLOWED TO JOIN PUBLIC EMPLOYEE RETIREMENT SYSTEMS; AMENDING SECTIONS 19-1-102, 19-1-202, 19-1-602, 19-2-303, 19-2-505, 19-2-602, 19-2-704, 19-2-706, 19-2-902, 19-2-908, 19-2-1001, 19-2-1006, 19-2-1007, 19-2-1010, 19-3-108, 19-3-318, 19-3-412, 19-3-503, 19-3-504, 19-3-505, 19-3-512, 19-3-513, 19-5-409, 19-6-101, 19-6-801, 19-6-803, 19-6-804, 19-7-101, 19-7-803, 19-7-804, 19-8-101, 19-8-904, 19-8-905, 19-9-104, 19-9-403, 19-9-411, 19-13-104, 19-13-403, 19-13-405, AND 53-21-204, MCA; REPEALING SECTIONS 19-2-705 AND 19-3-520, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-1-102, MCA, is amended to read:

"19-1-102. Definitions. For the purposes of this chapter, the following definitions apply:

(1) The term "employee" includes an elective or appointive officer or employee of the state or a political subdivision of the state.

(2) (a) The term "employment" means any service performed by an employee in the employ of the state or any political subdivision of the state for the employer, except:

(i) service that in the absence of an agreement entered into under this chapter would constitute "employment" as defined in the Social Security Act; or

(ii) service that under the Social Security Act may not be included in an agreement between the state and the secretary of health and human services entered into under this chapter.

(b) Service porformed by civilian employees of national guard units is specifically included within the term "employment".

(c) Service that under the Social Security Act may be included in an agreement only upon certification by the governor in accordance with section 218(d)(3) of that act is included in the term "employment" if and when the governor issues, with respoct to the service, a certificate to the secretary of health and human services pursuant to 19-1-304.

(3) The term "Federal Insurance Contributions Act" means subchapter A of chapter 9 of the federal Internal Revenue Code of 1939 and subchapters A and B of chapter 21 of the federal Internal Revenue Code of 1954, as the codes have been and may from time to time be amended; and the term "employee tax" means the tax imposed by section 1400 of the Code of 1939 and section 3101 of the Code of 1954 and as the codes may from time to time be amended.

(4) The term "political subdivision" includes an instrumentality of the state, of one or more of its political subdivisions, or of the state and one or more of its political subdivisions, including leagues or associations, but only if the instrumentality is a juristic entity that is legally separate and distinct from the state or subdivision and only if its employees are not by virtue of their relation to the juristic entity employees of the state or subdivision. The term includes special districts or authorities created by the legislature or local governments, such as but not limited to school districts and housing authorities.

(5) The term "secretary of health and human services" means the secretary of the United States department of health and human services; includes any individual to whom the secretary of health and human services has delegated any functions under the Social Security Act with respect to coverago under that act of employees of states and their political subdivisions; and, with respect to any action taken prior to April 11, 1953, includes the federal security administrator and any individual to whom the administrator had delegated any function.

(6) The term "Social Security Act" means the act of congress approved August 14, 1935, chapter 531, 49 Stat. 620, officially cited as the "Social Security Act", including regulations and requirements issued pursuant te the act, as the act has been and may be amended.

(7) The term "state agency" means the ~~public employees' retirement board of the public employees' retirement system of the state of Montana~~ *department of administration provided for in 2-15-1001.*

(8) The term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash, except that the term does not include that part of remuneration that, even if it were for "employment" within the meaning of the Federal Insurance Contributions Act, would not constitute "wages" within the meaning of that act."

HeinOnline -- 1999 vol. I 255 1999

Section 2. Section 19-1-202, MCA, is amended to read:

"19-1-202. Costs of administration. All costs allocable to the administration of this chapter must be charged to the ~~pension trust fund of the public employees' retirement system. The amount of administrative costs not defrayed by interest and income earned upon the contribution account, which had been credited to the pension trust fund of the public employees' retirement system, as provided in 19-1-602, prior to July 1, 1987, must be paid to the state agency for deposit to the pension trust fund of the public employees' retirement system by each department of the state and by the participating divisions, instrumentalities, and political subdivisions of the state pro rata according to their respective contributions~~ *state agency*."

Section 3. Section 19-1-602, MCA, is amended to read:

"19-1-602. Management of account. (1) All money in the account must be mingled and undivided.

(2) Subject to the provisions of this chapter, the state agency has full power, authority, and jurisdiction over the account, including all money and property or securities belonging to the account. ~~It~~ *The state agency* may perform any acts, whether or not specifically designated, that are necessary to the administration of the account and that are consistent with the provisions of this chapter.

(3) The board of investments shall invest the account as part of the unified investment program described in Title 17, chapter 6, part 2. The state agency shall credit all interest and income earned on the account in excess of that which, in its judgment, may be needed for the purposes set forth in 19-1-603 to the state general fund.

(4) By the end of the fiscal year during which all payments determined to be due and payable from the state to the social security administration *and the state agency's administrative expenses necessary to administer this chapter* have been paid, the state agency shall transfer any funds remaining in the contribution account to the state general fund."

Section 4. Section 19-2-303, MCA, is amended to read:

"19-2-303. Definitions. Unless the context requires otherwise, for each of the retirement systems subject to this chapter, the following definitions apply:

(1) "Accumulated contributions" means the sum of all the regular and any additional contributions made by a member in a system, together with the regular interest on the contributions.

(2) "Active member" means a member who is a paid employee of an employer, is making the required contributions, and is properly reported to the division for the most current reporting period.

(3) "Actuarial cost" means the amount determined by the board in a uniform and nondiscriminatory manner to represent the present value of the benefits to be derived from the additional service to be credited based on the most recent actuarial valuation for the system and the age, years until retirement, and current salary of the member.

(4) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the 1971 Group Annuity Mortality Table, with ages set back 4 years and an interest rate of 8% compounded annually.

HeinOnline -- 1999 vol. I 256 1999

(5) "Actuarial liabilities" means the excess of the present value of all benefits payable under a retirement system over the present value of future normal costs in that retirement system.

(6) "Actuary" means the actuary retained by the board in accordance with 19-2-405.

(7) "Additional contributions" means contributions made by a member to purchase various types of optional service credit as allowed by the applicable retirement system.

(8) "Annuity" means equal and fixed payments for life that are the actuarial equivalent of a lump-sum payment under a retirement system and as such are not benefits paid hy a retirement system and are not suhject to periodic or one-time increases.

(9) "Benefit" means the service or disability retirement or survivorship benefit payment provided by a retirement system.

(10) "Board" means the public employees' retirement hoard provided for in 2-15-1009.

(11) "Contingent annuitant" means a person designated to receive a continuing monthly benefit after the death of a retired member.

(12) "Credited service" or "service credit" means the periods of time for which the required contributions have been made to a retirement system and that are used to calculate service or disahility retirement or survivorship benefits under a retirement system.

(13) "Department" means the department of administration.

(14) "Designated beneficiary" means the person designated by a member or payment recipient to receive any survivorship benefits or lump-sum payments upon the death of the member or payment recipient, including annuities derived from the benefits or payments.

(15) "Disability" means a total inability of the member to perform the member's duties by reason of physical or mental incapacity. The disability must be incurred while the member is an active member and must be one of permanent duration or of extended and uncertain duration, as determined by the board on the basis of competent medical opinion.

(16) "Division" means the public employees' retirement division of the department of administration.

(17) "Employee" means a person who is employed by an employer in any capacity and whose salary is paid by the employer.

(18) "Employer" means a governmental entity participating in a retirement system enumerated in 19-2-302 on behalf of its eligible employees.

(19) "Essential elements of the position" means fundamental job duties. An element may be considered essential because of hut not himited to the following factors:

(a) the position exists to perform the element;

(b) there are a limited number of employees to perform the element; or

(c) the element is highly specialized.

HeinOnline -- 1999 vol. I 257 1999

(20) "Fiscal year" means *a plan year, which is* any year commencing with July 1 and ending the following June 30.

(21) "Inactive member" means a member who is not an active or retired member.

(22) "Internal Revenue Code" means the federal Internal Revenue Code of 1954 or 1986, as applicable to a retirement system, as that code provided on July 1, 1999.

~~(22)~~*(23)* "Member" means any person with accumulated contributions and service credited with a retirement system or receiving a retirement benefit on account of the person's previous service credited in a retirement system.

~~(23)~~*(24)* "Membership service" or "years of service" means the periods of service that are used te determine eligibility for retirement or otber benefits.

~~(24)~~*(25)* "Normal cost" or "future normal cost" means an amount calculated under an actuarial cost method required te fund accruing benefits for members of a retirement system during any year in the future. Normal cost does not include any portion of the supplemental costs of a retirement system.

~~(25)~~*(26)* "Pension" means benefit payments for life derived from contributions to a system made from state- or employer-controlled funds.

~~(26)~~*(27)* "Pension trust fund" means a fund established to hold the contributions, income, and assets of a retirement system in public trust.

~~(27)~~*(28)* "Regular contributions" means contributions required from members under a retirement system.

~~(28)~~*(29)* "Regular interest" means interest at the rate set from time to time by the board.

~~(29)~~*(30)* "Retirement" or "retired" means the status of a member who has terminated from service and has received and accepted a retirement benefit from a retirement system.

~~(30)~~*(31)* "Retirement benefit" means the periodic benefit payable as a result of service, early, or disability retirement under a retirement system. An annuity is not a retirement benefit.

~~(31)~~*(32)* "Retirement system" ~~or~~, "system", *or "plan"* means one of the public employee retirement systems enumerated in 19-2-302.

~~(32)~~*(33)* "Service" means employment of an employee in a position covered by a retirement system.

~~(33)~~*(34)* "Statutory beneficiary" means the surviving spouse or dependent child or children of a member of the highway patrol officers', municipal police officers', or firefighters' unified retirement system who are statutorily designated to receive benefits upon the death of the member.

~~(34)~~*(35)* "Supplemental cost" means an element of the total actuarial cost of a retirement system arising from benefits payable for service performed prior to the inception of the retirement system or prior to the date of contribution rate increases, changes in actuarial assumptions, actuarial losses, or failure to fund or otherwise recognize normal cost accruals or interest on supplemental costs. These costs are included in the unfunded actuarial liabilities of the retirement system.

HeinOnline -- 1999 vol. I 258 1999

~~(35)~~*(36)* "Survivorship benefit" means payments for life to the statutory or designated beneficiary of a deceased member who died while in service under a retirement system.

~~(36)~~*(37)* "Termination of employment" or "termination of service" means that the member has severed the employment relationship with the employer and has been paid all compensation due upon termination of employment, including but not limited to payment of accrued annual leave credits, as provided in 2-18-617, and payment of accrued sick leave credits, as provided in 2-18-618. For purposes of this subsection, compensation as a result of legal action, court order, appeal, or settlement to which the board was not party is not a payment due upon termination.

~~(37)~~*(38)* "Unfunded actuarial liabilities" or "unfunded liabilities" means the excess of a retirement system's actuarial liabilities at any given point in time over the value of its cash and investments on that same date.

~~(38)~~*(39)* "Vested member" or "vested" means a member or the status of a member who has attained the minimum membership service requirements to be eligible for retirement benefits under a retirement system.

~~(39)~~*(40)* "Written application" means a written instrument duly executed and filed with the board and containing all information required by the board, including such proofs of age as the board considers necessary."

Section 5. Section 19-2-505, MCA, is amended to read:

"19-2-505. Restrictions on use of funds. (1) Except as provided in this section, a member or an employee of the ~~department~~ *board* or the board of investments may not:

(a) have any interest, direct or indirect, in the making of any investment or in the gains or profits accruing from the pension trust funds;

(b) directly or indirectly, for the member or employee or as an agent or partner of others, borrow from the pension trust funds or deposits;

(c) in any manner use the pension trust funds except to make current and necessary payments that are authorized by the division; ~~or~~

(d) become an endorser or surety as to or in any manner an obligor for investments for the pension trust funds; *or*

(e) engage in a transaction prohibited by section 503(b) of the Internal Revenue Code.

(2) The assets of the retirement systems may not be used for or diverted to any purpose other than for the exclusive benefit of the members and their beneficiaries and for paying the reasonable administrative expenses of the retirement systems administered by the board."

Section 6. Section 19-2-602, MCA, is amended to read:

"19-2-602. Refund of member's contributions on termination of service. (1) Except as provided in this section, any member whose service has been discontinued, other than by death or retirement, must be paid the member's accumulated contributions ~~at the member's request.~~ *on written application by the member. Prior to termination of service, a member may not receive a refund of any portion of the member's accumulated contributions.*

HeinOnline -- 1999 vol. I 259 1999

(2) A nonvested member who terminates from service with accumulated contributions of less than $200 must be paid the accumulated contributions in a lump sum as soon as administratively feasible after termination without a written application from the member.

(3) A nonvested member who terminates from service with accumulated contributions of $200 to $5,000 must be paid the accumulated contributions in a lump sum as soon as administratively feasible after termination, unless a written application is made pursuant to subsection (4).

~~(2)~~*(4)* Upon the written ~~request~~ *application* of a terminating member *with $200 or more of accumulated contributions*, the division sball make a direct rollover distribution as allowed under Internal Revenue Code section 401(a)(31) of the eligible portion of a refund of the member's accumulated contributions. The direct rollover distribution must be paid directly to an eligihle retirement plan allowed under applicable federal law. The terminating member shall designate the eligible retirement plan on forms provided by the division. Amounts of the member's accumulated contributions that are not eligible for direct rollover distribution must be paid to the terminating member. The terminating member is responsible to correctly designate an eligible retirement plan to receive the direct rollover distribution.

~~(3) The board may, in its discretion, withhold, for not more than 1 year after a member last rendered service, all or part of the member's accumulated contributions if after a previous discontinuance of service the member withdrew all or part of the member's contributions and failed to redeposit the withdrawn amount in the pension trust fund.~~

~~(4) An employer who has an employment-related claim against a terminating member may, within 30 days after the date of termination, submit to the board a written request, signed by the employer and the member, authorizing the payment of all or any part of the accumulated contributions of the member directly to the employer to satisfy the claim in whole or in part. The request, if timely submitted, is sufficient authority for the division to make the direct payment to the employer as part of the member's refund. The total of the payments made to the employer and those made to the member may not exceed the member's accumulated contributions.~~

~~(5) Prior to termination of service, a member may not receive a refund of any portion of the member's accumulated contributions, except that a member who does not complete an installment payment schedule for purchasing service must be paid the member's additional contributions, including any regular interest earned on those additional contributions, upon the member's written request.~~"

Section 7. Section 19-2-704, MCA, is amended to read:

"**19-2-704. Purchasing service credits allowed — *payroll deduction.*** (1) Subject to the rules promulgated by the board, an eligible member may elect to contribute amounts in addition te the mandatory employee contributions required by the retirement system in which the member participates for the purpose of purcbasing service credits as provided by the statutes governing the retirement system.

(2) ~~A member eligible to qualify service under the provisions of 19-3-509, 19-3-511, 19-6-802, 19-7-802, 19-8-902, 19-9-405, and 19-13-404 may, at any time prior to retirement, elect to transfer all or a portion of the member's accumulated contributions on deposit in a pension trust fund from which service is being~~

~~transferred to the pension trust fund of another plan in which service is being credited. The transfer of contributions may include both taxed contributions and tax-deferred contributions and interest. However, if less than all of the accumulated contributions on deposit in a pension trust fund is being transferred, the transfer of taxed and tax-deferred amounts must be made on a proportionate basis, with the remainder refunded to the member. The transferring agency shall identify at the time of the transfer the taxed and tax-deferred amounts being transferred.~~

~~(3)~~ Subject to any statutory provision establishing stricter limitations, only active or vested inactive members are eligible to purchase, qualify, or transfer service credits, membership service, or contributions.

(3) A member who wishes to redeposit amounts withdrawn under 19-2-602 or who is eligible to purchase service as provided by the statutes governing the retirement system to which the member belongs may make a lump-sum payment, installment payments, or a combination of a lump-sum payment and installment payments.

(4) Installment payments must be paid directly to the board, unless the member makes payments by irrevocable payroll deduction. The minimum installment period for payments made directly to the board is 3 months, and the maximum installment period is 5 years.

(5) To elect installment payments by irrevocable payroll deduction, the member shall file with the board and the member's employer a binding, irrevocable, written application and authorization for payroll deductions. The application and authorization:

(a) must be executed by the member and the member's employer;

(b) must specify the dollar amount of each deduction and the number of deductions to be made, subject to any maximum amounts or duration established by state or federal law;

(c) must provide that the deductions are to be made over a period of time of no less than 3 months and no more than 5 years in duration;

(d) may not give the member the option of receiving the deduction amounts directly instead of having them paid by the employer to the board; and

(e) must specify that the contributions being picked up, although designated as employee contributions, are being paid by the employer directly to the board in lieu of contributions paid directly by the employee.

(6) If the board notifies the employer that a proper written application and authorization has been received by the board, the employer shall initiate the payroll deduction as follows:

(a) An employer shall pick up the member's elective contributions made pursuant to a payroll deduction authorization. The contributions picked up by the employer must be paid from the same source as is used to pay compensation to the member and must be included as part of the member's earned compensation before the deduction is made.

(b) Employee contributions, even though designated as employee contributions for state law purposes, are paid by the member's employer in lieu of contributions paid directly by the member to the board.

HeinOnline -- 1999 vol. I 261 1999

(c) The member may not choose to receive the contributed amounts directly instead of having them paid by the employer to the board.

(d) The effective date of the employer pickup and payment pursuant to this section is the date on which the employee contribution is first deducted from the employee's compensation. However, the effective date may not be prior to the date that the member properly completes the written application and authorization for payroll deductions and files it with the board. The pickup may not apply to any contributions made before the effective date or to any contributions related to compensation earned for services rendered before the effective date.

(e) A contract for installment payments initiated before July 1, 1999, may be made only if the member executes a written application and authorization for payroll deductions pursuant to this section. If the member does not execute a written application and authorization for payroll deductions pursuant to this section, the installment contract payments agreed to by the member must be paid by the member directly to the board.

(f) A member may make more than one binding, irrevocable payroll deduction authorization as long as a subsequent deduction authorization does not amend a previous binding, irrevocable authorization. A member may not prepay an amount under a binding, irrevocable payroll deduction.

(7) If a member terminates service or dies before completing all payments required by a payroll deduction authorization made pursuant to this section, the deduction authorization expires and the board shall prorate the service credit based on the amount paid as of the date of termination unless further payment is made as provided in this subsection. In the case of a termination, the member may make a lump-sum payment for the balance of the service subject to the limitations of section 415 of the Internal Revenue Code. In the case of death of the member, the payment may be made from the member's estate subject to the limitations of section 415 of the Internal Revenue Code."

Section 8. Section 19-2-706, MCA, is amended to read:

"19-2-706. Additional service for member involuntarily terminated from membership service. (1) An employee of the state or university system is entitled to the involuntary termination provision provided in subsection (3) if:

(a) the employee is a member of the public employees', game wardens' and peace officers', sheriffs', or highway patrol officers' retirement system;

(b) the employee's active service is involuntarily terminated because of elimination of the employee's position as a result of privatization, reorganization of an agency, closure of or a reduction in force at an agency, or other actions by the legislature on or after July 1, 1997, but before July 1, 1999;

(c) the employee is eligible for a normal service retirement or early retirement under the applicable provisions of the retirement system to which the member belongs; and

(d) the employee waives termination benefits for which the employee would otherwise be eligible under the State Employee Protection Act.

(2) The cost of each year of service purchased under this section is the total actuarial cost of purchasing the service based on the most recent actuarial valuation of the retirement system.

HeinOnline -- 1999 vol. I 262 1999

(3) The employer of an eligible member under subsection (1) shall pay a portion of the total cost of purchasing up to 3 years of additional service that the member was qualified to purchase under 19-3-513, 19-6-804, 19-7-804, or 19-8-904. The employer-paid portion applied toward the service purchase must be calculated using the formula A x B x C when:

(a) A is equal to a maximum of 3 additional years of service that the member is eligible to purchase;

(b) B is equal to the sum of the employer and employee contribution rates in the member's retirement system; and

(c) C is equal to the member's gross compensation paid during the immediate preceding 12 months of membership service. The employer may not be charged more than the total actuarial cost of the service purchased by the terminated employee.

(4) The member shall pay the difference, if any, between the full actuarial cost of the service to be purchased and the amount contributed by the employer under subsection (3). ~~A member is entitled to a refund for that portion of previously purchased additional service that would otherwise cause the member to be unqualified to receive all or part of the additional service provided in this section.~~ A member may elect to purchase less than the full amount of service for which the member is eligible under this section, but the election may not reduce the amount of the employer's contribution as calculated under subsection (3).

(5) The board may allow an employer to pay the contributions required under subsection (3) in installments for up to 10 years and may charge interest at a rate set by the board pursuant to 19-2-403.

(6) A member who has received additional service under this section and who returns to employment for the same jurisdiction for 600 or more hours in a calendar year forfeits the additional service. The employer's contribution to purchase that member's additional service, minus any retirement benefits already paid, must be ~~refunded~~ *credited* to the employer. As used in this subsection, the same jurisdiction means all agencies of the state, including the university system."

Section 9. Qualified military service. Notwithstanding any other provision of state law governing a retirement system, contributions, benefits, and service credit for qualified military service are governed by section 414(u) of the Internal Revenue Code and the federal Uniformed Services Employment and Reemployment Rights Act of 1994.

Section 10. Rollover of contributions. (1) A member who wishes to and is eligible to qualify service from another retirement system or plan into a retirement system provided for in 19-2-302 may, prior to retirement, make written application to the board to roll over, in accordance with the requirements of this part, to the retirement system to which the member belongs all or a portion of the member's account with the other eligible retirement system or plan. The total amount of the rollover to the retirement system may not exceed the amount of service that the member is allowed to purchase as a member of that system. The rollover must be completed prior to the member's retirement.

(2) The board shall accept a direct rollover of eligible distributions from another eligible retirement plan as provided in subsection (1) only to the extent permitted by section 401(a)(31) of the Internal Revenue Code.

HeinOnline -- 1999 vol. I 263 1999

Section 11. Transfer of service and contributions from other Montana public employee retirement systems. (1) A member eligible to transfer service, pursuant to 9-3-509, 19-3-511, 19-6-802, 19-7-802, 19-8-902, 19-9-405, or 19-13-404, into the system to which the member belongs shall complete the transfer prior to the member's retirement.

(2) The accumulated contributions to be transferred by the member may include both taxed contributions and tax-deferred contributions and interest. However, if less than all of the member's accumulated contributions on deposit in a pension trust fund are being transferred, the transfer of taxed and tax-deferred amounts must be made on a proportionate basis, with the remainder refunded to the member. The transferring agency shall at the time of the transfer identify the taxed and tax-deferred amounts being transferred to the board.

Section 12. Section 19-2-902, MCA, is amended to read:

"**19-2-902. ~~Frequency of benefit payments~~ *Payment of benefits.*** *(1)* A retirement benefit or survivorship benefit granted under a retirement system subject to this chapter must be payable in monthly installments, except ~~that the board may elect to convert payments of at least $20 per year to a single sum of actuarial equivalent value~~ *as provided in this part.*

(2) If the total actuarial present value of a benefit payable to a member or beneficiary is equal to or less than $5,000, the board shall pay the present value of the benefit to the member or beneficiary in a single lump sum unless the member or beneficiary chooses to receive a monthly benefit. The lump sum must be paid at the time the initial monthly benefit would otherwise be payable. An election to receive a monthly benefit must be made at least 30 days prior to the first payment date.

(3) ~~A~~ *If a benefit recipient dies before the last day of the month, a* smaller pro rata amount ~~may~~ *otherwise payable to the payment recipient must* be paid ~~for part of a month when the retirement benefit ends before the last day of the month~~ *to the designated beneficiary, statutory beneficiary, or contingent annuitant or to the benefit recipient's estate, as appropriate.*"

Section 13. Section 19-2-908, MCA, is amended to read:

"**19-2-908. Time of commencement of benefit.** (1) (a) The board shall grant a benefit to any member, or the member's statutory or designated beneficiary, who has fulfilled all eligibility requirements, terminated covered service, and filed the appropriate written application. *However, the board may on its own accord and without a written application begin benefit payments to a member or beneficiary in order to comply with section 401(a)(9) of the Internal Revenue Code.*

(b) A member may apply for retirement benefits before terminating covered service, but commencement of the benefits must be as provided in this section.

(2) (a) Except as provided in subsection (2)(b), the service retirement benefit may commence on the first day of the month following the eligible member's last day of membership service or, if requested by the inactive member in writing, on the first day of a later month following receipt of the written application.

(b) If an elected official's term of office expires before the 15th day of the month, the official may elect that service retirement benefits commence on the first day of the month following the official's last full month in office. An official electing this option may not earn membership service, service credit, or

HeinOnline -- 1999 vol. I 264 1999

compensation for purposes of calculating final average salary under the retirement system in the partial month ending the official's term, and compensation earned in that partial month is not subject to employer or employee contributions.

(3) The disability retirement benefit payable to a member must commence on the day following the member's termination from service.

(4) Monthly survivorship benefits must commence on the day following the death of the member.

(5) Estimated and finalized benefit payments must be issued as provided in rules adopted by the board."

Section 14. Section 19-2-1001, MCA, is amended to read:

"**19-2-1001. Maximum *contribution and* benefit ~~limitation~~ *limitations.*** ~~A monthly benefit~~ *(1) Employee contributions paid to and retirement benefits* paid ~~under~~ *from* the retirement systems may not exceed the annual limits on *contributions and* benefits ~~as specified~~ in, *respectively, allowed by* section 415 of the Internal Revenue Code ~~of 1986 and adjusted annually by the commissioner of internal revenue~~.

(2) A member may not receive an annual benefit that exceeds the dollar amount specified in section 415(b)(1)(A) of the Internal Revenue Code, subject to the applicable adjustments in section 415(b) of the Internal Revenue Code.

(3) Notwithstanding any other provision of law to the contrary, the board may modify a request by a member to make a contribution to a retirement system if the amount of the contribution would exceed the limits provided in section 415 of the Internal Revenue Code, by using the following methods:

(a) If the retirement system's law requires a lump-sum payment for the purchase of service credit, the board may establish a periodic payment plan for the member in order to avoid a contribution in excess of the limits under section 415(c) or 415(n) of the Internal Revenue Code.

(b) If payment pursuant to subsection (3)(a) will not avoid a contribution in excess of the limits imposed by section 415(c) of the Internal Revenue Code, the board shall either reduce the member's contribution to an amount within the limits of that section or refuse the member's contribution.

(4) The limitation year for purposes of section 415 of the Internal Revenue Code is the calendar year beginning each January 1 and ending December 31.

(5) "Salary" or any other similar term used for the purposes of determining compliance with section 415 of the Internal Revenue Code includes the amount of an elective deferral, as defined in section 402(g) of the Internal Revenue Code, or any other contribution that is contributed or deferred by the employer at the election of the member and that is not includable in the gross income of the member because of sections 125, 403(b), or 457 of the Internal Revenue Code."

Section 15. Section 19-2-1006, MCA, is amended to read:

"**19-2-1006. Use of forfeitures.** A retirement system subject to this chapter may not apply forfeitures of benefits *resulting from the member's termination of employment, the death of the member, or another reason* to increase the benefits of any member in a manner not permitted in Internal Revenue Code section 401(a)(8). *However, forfeitures may be used to reduce the costs of administration of a retirement system subject to this chapter.*"

HeinOnline -- 1999 vol. I 265 1999

Section 16. Section 19-2-1007, MCA, is amended to read:

"19-2-1007. Required distributions. The benefits payable by the retirement systems subject to this chapter are subject to the requirements of section 401(a)(9) of the Internal Revenue Code as follows:

(1) Benefits must begin by *the later of* April 1 of the calendar year following the ~~plan~~ *calendar* year in which the member reaches 70 1/2 years of age or ~~retires, whichever is later~~ *April 1 of the calendar year following the calendar year in which the member terminates employment. If a member fails to apply for retirement benefits by April 1 of the year following the calendar year in which the member attains age 70 1/2 or April 1st of the year following the calendar year in which the member terminates employment, whichever is later, the board shall begin distribution of the benefit as required by the retirement system to which the member belongs or, subject to subsection (2), as an option 4 benefit in chapters 3, 5, 7, and 8 of this title.*

(2) The member's entire interest in the retirement system must be distributed over the life of the member or the lives of the member and a designated beneficiary, over a period not extending beyond the life expectancy of the member or the life expectancy of the member and designated beneficiary. *Death benefits must be distributed in accordance with section 401(a)(9) of the Internal Revenue Code and the regulations implementing that section.*

(3) The life expectancy of a member or the member's beneficiary may not be recalculated after payment of the benefits has begun.

~~(3)~~*(4)* When a member dies after distribution of benefits has begun, the remaining portion of the member's interest must be distributed *beginning within 3 months of notification to the board of the death of the member and, if necessary, the identification of the beneficiary pursuant to 19-2-802 and must be distributed* at least as rapidly as under the method of distribution prior to the member's death.

~~(4)~~*(5)* When a member dies before distribution of benefits has begun, the entire interest of the member must be distributed within 5 years of the member's death. The 5-year payment rule does not apply to any portion of the member's interest that is payable to a designated beneficiary over the life or life expectancy of the beneficiary and that begins within 1 year after the date of the member's death. The 5-year payment rule does not apply to any portion of the member's interest that is payable to a surviving spouse, payable over the life or life expectancy of the spouse, and that begins no later than the date the member would have reached 70 1/2 years of age. *Distributions to a member's beneficiary must begin as soon as administratively feasible, but must begin no later than December 31 of the calendar year immediately following the calendar year in which the member died. If the beneficiary has not elected the form of payment by that date, payment to the beneficiary must be made in the form of a lifetime monthly benefit payment if the beneficiary is eligible for a monthly benefit or in a lump sum if that is the only benefit payable to the beneficiary.*

~~(5)~~*(6)* The benefits payable must meet the minimum distribution incidental benefit requirements of section 401(a)(9)(G) of the Internal Revenue Code."

Section 17. Section 19-2-1010, MCA, is amended to read:

"19-2-1010. Retaining qualified plan status — *content of plan document* — board rulemaking authority. *(1) The board shall administer*

HeinOnline -- 1999 vol. I 266 1999

the plan in the manner required to satisfy the applicable qualification requirements for a qualified governmental plan, as provided in the Internal Revenue Code. If a statutory provision affecting a retirement plan administered by the board conflicts with a qualification requirement in section 401 of the Internal Revenue Code *or the retirement plan's status as a governmental plan under section 414(d) of the Internal Revenue Code* and *with* consequent federal regulations, the provision is either ineffective or must be interpreted to conform with the federal qualification requirements and allow the ~~system~~ *plan* to retain ~~tax-deferred~~ *its qualified* status.

(2) For the purposes of section 401(a) of the Internal Revenue Code, the plan document for each retirement system is composed of the applicable provisions of the Montana constitution, this chapter, the applicable chapter in Title 19 governing the system, and applicable rules adopted by the board.

(3) The board may adopt rules to implement this section."

Section 18. Section 19-3-108, MCA, is amended to read:

"19-3-108. Definitions. Unless the context requires otherwise, as used in this chapter, the following definitions apply:

(1) "Compensation" means remuneration paid out of funds controlled by an employer *before any pretax deductions allowed by state or federal law are made.* Compensation does not include the payments or contributions made in lieu of wages for an individual subject to 19-3-403(4)(a).

(2) "Contracting employer" means any political subdivision or governmental entity that has contracted to come into the system under this chapter.

(3) "Employer" means the state of Montana, its university system or any of the colleges, schools, components, or units of the university system for the purposes of this chapter, or any contracting employer, *except that a nonprofit mental corporation established pursuant to 53-21-204 may not be an employer with regard to employees hired after June 30, 1999.*

(4) "Employer contributions" means payments to the pension trust fund pursuant to 19-3-316 from appropriations of the state of Montana and from contracting employers.

(5) "Final average salary"~~, except as provided in 19-3-520,~~ means a member's highest average monthly compensation during any 36 consecutive months of membership service. Lump-sum payments for severance pay, sick leave, and annual leave paid to the member upon termination of employment may be used in the calculation of a retirement benefit only to the extent that they are used to replace, on a month-for-month basis, the regular compensation for a month or months included in the calculation of the final average salary. A lump-sum payment may not be added to a single month's compensation."

Section 19. Section 19-3-318, MCA, is amended to read:

"19-3-318. ~~Refund~~ *Credit* of employer contribution made after termination. Employer contributions on the basis of compensation earned by members after the effective date of termination of membership because of membership in another system, as provided in 19-3-403(4), must be ~~repaid~~ *credited* to the employer."

Section 20. Section 19-3-412, MCA, is amended to read:

HeinOnline -- 1999 vol. I 267 1999

"**19-3-412. Optional membership.** (1) The following employees in covered employment may become members of the retirement system at their option ~~at any time during their employment in a covered position~~ by filing ~~a membership card~~ *an irrevocable, written application* with the board *within 180 days of commencement of their employment*:

(a) elected officials of the state or local governments who are paid on a salary or wage basis rather than on a per diem or other reimbursement basis;

(b) part-time employees serving in employment that does not exceed a total of 960 hours of employment covered by this chapter in any fiscal year;

(c) employees directly appointed by the governor;

(d) employees working 6 months or less for the legislative branch to perform work related to the legislative session;

(e) the chief administrative officer of any city or county;

(f) employees of county hospitals or rest homes in counties of the third, sixth, and seventh class.

(2) Employees and officials described in subsections (1)(a) through (1)(f) who are employees or officials but not members on July 1, 1999, have until December 1, 1999, to file an irrevocable, written application with the board.

~~(2)~~*(3)* If an employee declines optional membership, the employee shall execute a statement waiving membership and the employer shall retain the statement.

(4) If an employee or official fails to file with the board an irrevocable written application within the time allowed in this section, the employee or official waives membership."

Section 21. Section 19-3-503, MCA, is amended to read:

"**19-3-503. Election to qualify military service.** (1) (a) Except as provided in subsection (2), a member with 10 years or more of service credits may, at any time prior to retirement, make a written election with the board to purchase service credits for all or any portion of the member's active service in the armed forces of the United States, including the first special service force or the American merchant marine in oceangoing service during the period of armed conflict, December 7, 1941, to August 15, 1945, up to a maximum of 5 years, if the member is not otherwise eligible to receive service credit for this same service pursuant to ~~19-2-705~~ *[section 9]* or is ineligible under subsection (2)~~(a)~~.

(b) To qualify this service, the member shall contribute to the pension trust fund the actuarial cost of the service credit based on the most recent actuarial valuation of the system.

(2) ~~(a)~~ If a member has retired from active duty in the armed forces of the United States, including the first special service force or the American merchant marine in oceangoing service during the period of armed conflict, December 7, 1941, to August 15, 1945, with a military service retirement benefit, the member may not qualify the member's military service under subsection (1).

~~(b) However, a member who is serving or has served in the military reserves with the expectation of receiving a military service pension may qualify the member's active military service under subsection (1) if the member's active duty in the armed forces of the United States, including the first special service force~~

~~or the American merchant marine in oceangoing service during the armed conflict, December 7, 1941, to August 15, 1945, is not more than 25% of the total sum of all years of military service including reserve and active duty time.~~"

Section 22. Section 19-3-504, MCA, is amended to read:

"**19-3-504. Absence due to illness or injury.** (1) Time, not to exceed 5 years, during which a member is absent from service because of injury or illness is considered membership service if, within 1 year after the end of the absence, the injury or illness is determined to have arisen out of and in the course of the member's employment. However, the member may not earn service credits for this period unless the member complies with subsections (2) ~~through (4)~~ *and (3)*, in which case the absence is considered as time spent in service for both service credits and membership service.

(2) (a) A member absent because of an employment-related injury entitling the member to workers' compensation payments may, upon the member's return to service, contribute to the retirement system an amount equal to the contributions that would have been made by the member to the system on the basis of the member's compensation at the commencement of the member's absence plus regular interest accruing from 1 year from the date after the member returns to covered service to the date the member contributes for the period of absence.

(b) Whenever a member elects to contribute under subsection (2)(a), the employer shall contribute employer contributions for the period of absence based on the salary as calculated in subsection (2)(a) and may pay interest on the employer's contribution calculated in the same manner as interest on the employee's contribution under subsection (2)(a). An employer electing to make an interest payment shall do so for all employees similarly situated. If the employer elects not to pay the interest costs, this amount must be paid by the employee.

(3) At some time after returning to covered service, a member shall file with the board a written notice of the member's intent to pay the contributions under subsection (2).

~~(4) Payment of the employee's contributions that are due because of the period of absence may be made in one sum at the time of filing the notice or on an installment basis before termination of covered service.~~

~~(5)~~ A member loses the right to contribute for an absence under this section if all of the member's accumulated contributions are refunded pursuant to 19-2-602 or for the period of time during which retirement benefits are received if the member retires during the absence."

Section 23. Section 19-3-505, MCA, is amended to read:

"**19-3-505. Qualification of previous employment with employer.** (1) Subject to the provisions of this section, any person who has employment with an employer that is not service may convert all or a portion of the employment to membership service by filing written notice with the board.

(2) (a) The person shall pay to the retirement system the sum of the amount that the person and the person's employer would have contributed during the period of service converted if the employer had been an employer covered by the retirement system and the regular interest that would have accumulated on the

HeinOnline -- 1999 vol. I 269 1999

amount to the time of payment. However, the employer may pay the employer's portion, including accrued regular interest as provided in subsection (2)(b).

(b) The employer shall establish a policy as to the payment of retroactive employer contributions and apply this policy indiscriminately for all employees and former employees. All employee appeals of discrimination are subject to the determination of the board. All successful appeals obligate the employer to pay the employer and employee contributions with accrued interest for that employee filing the appeal with the board. Each appeal must be heard on its individual merits and may not bind the employer to pay all retroactive payments for all former and present employees.

(3) A member may secure service credit not previously credited by submitting salary information certified by the member's employer or former employer to the board. The board shall determine the eligibility of all service credit requests.

~~(4) Payment may be made in one sum at the time of filing notice or by making additional contributions on an installment basis before retirement. Failure to make regular monthly payments in any month in which the member receives normal compensation forfeits the person's right to make any further installment payments, unless permission is granted by the board.~~"

Section 24. Section 19-3-512, MCA, is amended to read:

"**19-3-512. Qualification of service from other public retirement systems.** (1) A member with 5 or more years of membership service in the public employees' retirement system may qualify:

(a) public service employment covered under a public retirement system other than a system provided for in Title 19 for which the member received a refund of the member's membership contribution; and

(b) public service employment that occurred before the public employer adopted a public retirement system.

(2) A member may not qualify more than 5 years of service under this section. To qualify this service, a member shall:

(a) at any time before retirement make a written election with the board to qualify the service; and

(b) contribute to the pension trust fund the actuarial cost of granting the service in the public employees' retirement system, as determined by the board based on the most recent actuarial valuation of the system.

(3) ~~Contributions to qualify service under this section may be made in a lump sum payment or by making additional contributions in installments as agreed upon by the member and the board.~~

~~(4)~~ Service qualified under this section may not be:

(a) credited in any other retirement system under Title 19; or

(b) used to qualify a member to purchase military service under 19-3-503.

~~(5)~~*(4)* Service qualified under this section may not be used in calculating a member's retirement benefit unless the member's last 5 years of service credit were earned under the public employees' retirement system. If a member's qualified service may not be used in calculating the member's retirement benefit, the member may choose to receive a refund of the accumulated contributions made to qualify the service."

HeinOnline -- 1999 vol. I 270 1999

Section 25. Section 19-3-513, MCA, is amended to read:

"19-3-513. Election to purchase additional service. (1) At any time before retirement, a person who has 5 years or more of membership service may make a written election with the board to purchase additional service credit for the purpose of calculating the member's retirement benefit. Except as provided in subsection (3), the member may purchase 1 year of additional service credit for each 5 years of membership service that the member has qualified under the retirement system, up to a maximum of 5 years of additional service.

(2) For each year of service credit purchased under this section, a member shall contribute to the pension trust fund the actuarial cost of the service credit based on the most recent actuarial valuation of the system. ~~Contributions may be made in a lump-sum payment or by making additional contributions in installments as agreed upon by the member and the board.~~

(3) (a) Except as provided in subsection (3)(b), a member may elect to qualify a combined total of 5 years of service under 19-3-503, 19-3-512, or this section.

(b) A member who has purchased service under 19-3-503 or 19-3-512 on or before January 1, 1990, and who elects to purchase service under this section shall receive credit for the full months of service purchased on or before January 1, 1990.

(4) Service purchased under this section is not membership service and may not be used to qualify a member for service retirement."

Section 26. Section 19-5-409, MCA, is amended to read:

"19-5-409. Election to purchase additional service. (1) At any time before retirement, a member may make a written election with the board to purchase additional service credit for the purpose of calculating the member's retirement benefit. Except as provided in subsection (3), the member may purchase 1 year of additional service credit for every 5 years of membership service that the member has qualified under the retirement system.

(2) For each year of service credit purchased under this section, a member shall contribute to the pension trust fund an amount equal to the actuarial cost of granting the service, based on the most recent actuarial valuation of the system as determined by the board. ~~Contributions may be made in a lump-sum payment or by making additional contributions in installments as agreed upon by the member and the board.~~

(3) A member may elect to qualify no more than 5 years of service under ~~19-2-705~~ *[section 9]* and this section.

(4) Service purchased under this section is not membership service and may not be used to qualify a member for retirement or in the calculation of an actuarial reduction in benefits for a member who is not eligible for normal service retirement."

Section 27. Section 19-6-101, MCA, is amended to read:

"19-6-101. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) "Compensation" means remuneration paid for services to a member out of funds controlled hy an employer before any *pretax* deductions *allowed by the Internal Revenue Code* have been made and exclusive of maintenance, allowances, and expenses.

HeinOnline -- 1999 vol. I 271 1999

(2) "Dependent child" means an unmarried child of a deceased retired memher, who is:

(a) under 18 years of age; or

(b) under 24 years of age and attending an accredited postsecondary educational institution as a full-time student in anticipation of receiving a certificate or degree.

(3) "Final average salary" means the average monthly compensation received by a member for any 3 years of continuous service upon which contrihutions have heen made or, in the event a member has not served 3 years, the total compensation earned divided by the number of months served. Lump-sum payments for severance pay, sick leave, and annual leave paid to an employee upon termination of service may he used in the calculation of a retirement benefit only to the extent that they are used to replace, on a month-for-month hasis, the normal compensation for a month or months included in the calculation of the final average salary. A lump-sum payment may not he added to a single month's compensation.

(4) "Surviving speuse" means the spouse married to a retired member at the time of the retired member's death.

(5) "Survivor" means a surviving spouse or dependent child of a memher."

Section 28. Section 19-6-801, MCA, is amended to read:

"19-6-801. Election to qualify military service. (1) A memher with 15 years or more of service credit with the Montana highway patrol may, at any time prior to retirement, make a written election with the division to qualify all or any portion of the member's active service in the armed forces of the United States for the purpose of calculating retirement benefits, up to a maximum of 5 years, if the member is not otherwise eligihle to receive service credit for this same service pursuant to ~~19-2-705~~ *[section 9]*.

(2) To qualify this service:

(a) a member not covered by 19-6-710 shall contributo to the account the amount determined by the division to be due hased on the member's compensation and regular contribution rate as of the member's 16th year and as many succeeding years as are required to qualify this service, with interest from the date the member becomes eligible for this benefit to the date the member contributes. The member may not qualify more of this service than the member has service with the Montana highway patrol in excess of 15 years.

(b) a member covered by 19-6-710 shall contribute the actuarial cost of the service credit hased on the most recent actuarial valuation of the system."

Section 29. Section 19-6-803, MCA, is amended to read:

"19-6-803. Election to qualify law enforcement service performed in another state. (1) Except as provided in subsections ~~(4)~~ *(3)* through ~~(6)~~ *(5)*, a memher with 5 years or more of membership service in the retirement system may qualify 1 year of out-of-state law enforcement employment for each year of service credit under the retirement system, up to a maximum of 5 years, provided that the member is not eligible to receive a retirement benefit for tbat out-of-state law enforcement employment.

(2) To qualify this service, a member shall:

HeinOnline -- 1999 vol. I 272 1999

(a) at any time before the member's retirement, make a written election with the board to qualify the service; and

(b) contribute to the pension trust fund the actuarial cost of granting the service in the retirement system, as determined by the board, based on:

(i) the member's compensation for the 12 months immediately preceding the date of the member's election to cover the service under the retirement system; and

(ii) the total contribution rate in effect at the time of purchase of service.

~~(3) Contributions to qualify service under this section may be made in a lump-sum payment or in installments as agreed upon by the member and the board.~~

~~(4)~~*(3)* Service qualified under this section may not be:

(a) credited in any other retirement system under Title 19; or

(b) used to qualify a member to purchase military service under 19-6-801.

~~(5)~~*(4)* Service qualified under this section may not he used in calculating a member's retirement henefit unless the last 5 years of service credit were earned under the retirement system. If a member's qualified service may not be used in calculating the member's retirement benefit, the member may choose to receive a refund of the contributions made to qualify the service.

~~(6)~~*(5)* The combined total service qualified under this section and military service qualified under 19-6-801 may not exceed 5 years."

Section 30. Section 19-6-804, MCA, is amended to read:

"19-6-804. Election to purchase additional service. (1) At any time before retirement, a member may make a written election with the board to purchase additional service credit for the purpose of calculating the member's retirement benefit. Except as provided in subsection (3), the member may purchase 1 year of additional service credit for every 5 years of membership service that the member has qualified under the retirement system.

(2) For each year of service credit purchased under this section, a member shall contribute to the pension trust fund an amount equal to the actuarial cost of granting the service, based on the most recent actuarial valuation of the system as determined by the board. ~~Contributions may be made in a lump-sum payment or by making additional contributions in installments as agreed upon by the member and the board.~~

(3) A member may elect to qualify no more than a combined total of 5 years of service under ~~19-2-705~~ *[section 9]*, 19-6-801, 19-6-803, and this section.

(4) Service purchased under this section is not membership service and may not be used to qualify a member for retirement or in the calculation of an actuarial reduction in benefits for a member who is not eligible for normal service retirement."

Section 31. Section 19-7-101, MCA, is amended to read:

"19-7-101. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) "Compensation" means remuneration paid for services to a member out of funds controlled by an employer before any *pretax* deductions *allowed by the*

Internal Revenue Code are made and exclusive of maintenance, allowances, and expenses.

(2) "Final average salary" means the average monthly compensation received by a member for any 3 years of continuous service from which contributions were deducted or, in the event that a member has not served 3 years, the total compensation earned divided by the number of months served. Lump-sum payments for sick leave and annual leave paid to an employee upon termination of employment may be used in the calculation of a retirement benefit only to the extent that they are used to replace, on a month-for-month basis, the normal compensation for a month or months included in the calculation of the final average salary. A lump-sum payment may not be added to a single month's compensation.

(3) "Investigator" means a person who is employed as a criminal investigator or as a gambling investigator for the department of justice.

(4) "Sheriff" means any elected or appointed county sheriff or undersheriff or any appointed, lawfully trained, appropriately salaried, and regularly acting deputy sheriff. The board shall adopt rules incorporating both the peace officers standards and training council's current law enforcement training requirements and the legislatively authorized salary requirements as effective for deputy sheriffs who are eligible for membership in this retirement system."

Section 32. Section 19-7-803, MCA, is amended to read:

"19-7-803. Election to qualify previous military service. (1) A member with 15 years or more of service credit may, at any time prior to retirement, make a written election with the board to qualify all or any portion of the member's active service in the armed forces of the United States for the purpose of calculating retirement benefits, up to a maximum of 5 years, except as provided in subsection (3), if the member is not otherwise eligible to receive credit. To qualify military service, the member shall contribute to the account the actuarial cost of granting the service, to be determined by the board based on the most recent actuarial valuation of the system. The member may not qualify more of the member's military service than the member has service credits in the sheriffs' retirement system in excess of 15 years. Military service purchased under this section is not membership service and may not be used in determining eligibility for a service retirement benefit.

(2) If a member has retired from active duty in the armed forces of the United States with military retirement benefits, the member may not qualify the member's military service under subsection (1). ~~However, a member who is serving or has served in the military reserves with the expectation of receiving a military service pension may qualify the member's active military service under subsection (1) if the member's active duty in the armed forces of the United States is not more than 25% of the total of all the member's years of military service, including reserve and active duty time.~~

(3) The combined total purchase of additional years of service under the provisions of 19-7-804 and this section may not exceed 5 years."

Section 33. Section 19-7-804, MCA, is amended to read:

"19-7-804. Election to purchase additional service. (1) Except as provided in subsection ~~(6)~~ *(5)*, at any time before retirement, a member may make

a written election with the board to purchase 1 additional year of service credit for every 5 years of membership service.

(2) Service purchased under this section must he credited for the purpose of meeting retirement eligibility and for calculating retirement henefits.

(3) To qualify this service, a member shall:

(a) make a written election with the board to qualify the service; and

(b) contribute to the pension trust fund the actuarial cost of granting the service in tbe sheriffs' retirement system, as determined by the board, based on the most recent actuarial valuation of tbe system.

(4) ~~Contributions to qualify service under this section may be made in a lump sum payment or in installments as agreed upon by the member and the board. Payments must be completed prior to retirement.~~

~~(5)~~ Service qualified under this section may not be:

(a) credited in any other retirement system under Title 19; or

(b) used to qualify for tbe purchase of military service under 19-7-803.

~~(6)~~*(5)* The combined total of additional years of service purchased under the provisions of 19-7-803 and this section may not exceed 5 years."

Section 34. Section 19-8-101, MCA, is amended to read:

"19-8-101. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) "Compensation" means remuneration paid for services to a member out of funds controlled by an employer before any *pretax* deductions *allowed by the Internal Revenue Code* are made and exclusive of maintenance, allowances, and expenses.

(2) "Final average salary" means the average monthly compensation received by a member for any 3 years of continuous service upon which contributions were made or, in the event a member has not served 3 years, the total compensation earned divided by the number of months served. Lump-sum payments for severance pay, sick leave, and annual leave paid to an employee upon termination of employment may be used in the calculation of a retirement benefit only to the extent that they are used to replace, on a month-for-month basis, the normal compensation for a month or months included in the calculation of the final average salary. A lump-sum payment may not he added to a single month's compensation.

(3) "Game warden" means a state fish and game warden hired by the department of fish, wildlife, and parks and includes all warden supervisory personnel whose salaries or compensation is paid out of the department of fisb, wildlife, and parks money.

(4) "Motor carrier officer" means an employee of the department of transportation appeinted as a peace officer pursuant to 61-12-201.

(5) "Peace officer" or "state peace officer" means a person who by virtue of the person's employment with the state is vested by law with a duty to maintain public order or make arrests for offenses while acting within the scope of the person's authority or wbo is cbarged with specific law enforcement responsibilities on behalf of the state."

HeinOnline -- 1999 vol. I 275 1999

Section 35. Section 19-8-904, MCA, is amended to read:

"19-8-904. Election to purchase additional service. (1) At any time before retirement, a member may make a written election with the board to purchase additional service credit for the purpose of calculating the member's retirement benefit. Except as provided in subsection (3), the member may purchase 1 year of additional service credit for every 5 years of membership service that the member bas qualified under the retirement system.

(2) For each year of service credit purchased under this section, a member shall contribute to the pension trust fund an amount equal to the actuarial cost of granting the service, based on the most recent actuarial valuation of the system as determined by the board. ~~Contributions may be made in a lump-sum payment or by making additional contributions in installments as agreed upon by the member and the board.~~

(3) A member may elect to qualify no more than a combined total of 5 years of service under ~~19-2-705~~ *[section 9]*, 19-8-901, 19-8-903, and this section.

(4) Service purchased under this section is not membership service and may not be used to qualify a member for retirement or in the calculation of an actuarial reduction in benefits for a member who is not eligible for normal service retirement."

Section 36. Section 19-8-905, MCA, is amended to read:

"19-8-905. Absence due to injury or illness. (1) Time, not to exceed 5 years, during which a member is absent because of an injury or illness is considered membership service if, within 1 year after the end of the absence, the injury or illness is determined to have arisen out of and in the course of the member's employment. However, the member may not earn service credits for the absence unless the member complies with subsections (2) ~~through (4)~~ *and (3)*, in which case the absence is considered as time spent in service for both service credits and membership service.

(2) (a) A member absent because of an employment-related injury entitling the member to workers' compensation payments may, upon the member's return to service, contribute an amount equal to the contributions that the member would have made on the basis of the member's compensation at the commencement of the member's absence plus regular interest accruing from 1 year from the date after the member returns to covered service to the date the member contributes for the period of absence.

(b) Whenever a member elects to contribute under subsection (2)(a), the employer shall contribute employer contributions for the period of absence based on the salary as calculated in subsection (2)(a) and may pay interest on the employer's contribution calculated in the same manner as interest on the employee's contribution under subsection (2)(a). An employer electing to make an interest payment shall do so for all employees similarly situated. If the employer elects not to pay the interest costs, this amount must be paid by the employee.

(3) At some time after returning to covered service, a member shall file with the board a written notice of the member's intent to pay the contributions under subsection (2).

HeinOnline -- 1999 vol. I 276 1999

(4) ~~Payment of the employee's contributions due because of the period of absence may be made in one sum at the time of filing the notice or on an installment basis before termination of covered service.~~

~~(5)~~ A member loses the right to contribute for an absence under this section if all of the member's accumulated contributions are refunded pursuant to 19-2-602 or for the period of time during which benefits are received if the member retires during the absence."

Section 37. Section 19-9-104, MCA, is amended to read:

"19-9-104. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) "Compensation" means the remuneration, excluding overtime, holiday payments, shift differential payments, compensation time payments, and payments in lieu of sick leave and annual leave, ~~that a member receives as an active police officer~~ *paid for services to a member out of funds controlled by an employer before any pretax deductions allowed by the Internal Revenue Code have been made.*

(2) "Dependent child" means a child of a deceased member:

(a) who is unmarried and under 18 years of age; or

(b) who is unmarried, under 24 years of age, and attending an accredited postsecondary educational institution as a full-time student in anticipation of receiving a certificate or degree.

(3) "Employer" means any city that participated in a prior plan or that elects to join this retirement system under 19-9-207.

(4) "Final average compensation" means the monthly compensation of a member, averaged over the last 36 months of the member's service or, in the event a member has not been a member that long, over the period of membership.

(5) "Minimum retirement date" means the first day of the month coinciding with or, if none coincides, the date on which a member both becomes age 50 and completes 5 years of membership service.

(6) Any reference to "municipality", "city", or "town" includes those jurisdictions that, prior to the effective date of a county-municipal consolidation, were incorporated municipalities, suhsequent districts created for urban law enforcement services, or the entire county included in the county-municipal consolidation.

(7) "Prior plan" means the local police reserve or pension trust fund of a city that elects to join the retirement system under 19-9-207.

(8) "Retirement date" means the date on which the first payment of the retirement, disahility, or survivorship benefits of a member or a survivor is payable.

(9) "Surviving spouse" means the spouse married to a member at the time of tbe member's death.

(10) "Survivor" means a surviving spouse or dependent child of the member."

Section 38. Section 19-9-403, MCA, is amended to read:

"19-9-403. Election to qualify previous military service. (1) A member with 15 years or more of service credit may, at any time prior to retirement, make

HeinOnline -- 1999 vol. I 277 1999

a written election with the board to qualify up to a maximum of 5 years of the member's active duty service in the armed forces of the United States for the purpose of calculating retirement benefits if the member is not otherwise eligible to receive credit. To qualify this service the member shall contribute to the pension trust fund the actuarial cost of granting the service to be determined by the board based on the most recent actuarial valuation of the system. The member may not qualify more of the member's military service than the member has service credit in excess of 15 years.

(2) If a member has retired from active duty in the armed forces of the United States with a normal military service retirement benefit, the member may not qualify the member's military service under subsection (1). ~~However, a member who is serving or has served in the military reserves with the expectation of receiving a military service pension may qualify the member's active duty military service under subsection (1) if the member's active duty in the armed forces of the United States is not more than 25% of the total of all the member's years of military service, including reserve and active duty time.~~"

Section 39. Section 19-9-411, MCA, is amended to read:

"**19-9-411. Election to purchase additional service.** (1) At any time before retirement, a member may make a written election with the board to purchase additional service credit for the purpose of calculating the member's retirement benefit. Except as provided in subsection (3), the member may purchase 1 year of additional service credit for every 5 years of membership service that the member has qualified under the retirement system.

(2) For each year of service credit purchased under this section, a member shall contribute to the pension trust fund an amount equal to the actuarial cost of granting the service, based on the most recent actuarial valuation of the system as determined by the board. ~~Contributions may be made in a lump-sum payment or by making additional contributions in installments as agreed upon by the member and the board.~~

(3) A member may elect to qualify no more than a combined total of 5 years of service under ~~19-2-705~~ *[section 9]*, 19-9-403, and this section.

(4) Service purchased under this section is not membership service and may not be used to qualify a member for retirement or in the calculation of an actuarial reduction in benefits for a member who is not eligible for normal service retirement."

Section 40. Section 19-13-104, MCA, is amended to read:

"**19-13-104. Definitions.** Unless the context requires otherwise, the following definitions apply in this chapter:

(1) Any reference to "city" or "town" includes those jurisdictions that, before the effective date of a county-municipal consolidation, were incorporated municipalities, subsequent districts created for urban firefighting services, or the entire county included in the county-municipal consolidation.

(2) "Compensation" means:

(a) for a full-paid firefighter, the regular remuneration, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid ~~by an employer~~ for the firefighter's service as a firefighter *out of funds controlled by an employer before any pretax deductions allowed under the Internal Revenue Code have been made*;

HeinOnline -- 1999 vol. I 278 1999

(b) for a part-paid firefighter employed by a city of the second class:

(i) 15% of the regular remuneration, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid on July 1 of each year to a newly confirmed, full-paid firefighter of the city that employs the part-paid firefighter; or

(ii) if that city does not employ a full-paid firefighter, 15% of the average regular remuneration, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid on July 1 of each year to all newly confirmed, full-paid firefighters employed by cities of the second class.

(3) "Dependent child" means a child of a deceased member who is:

(a) unmarried and under age 18; or

(b) unmarried, under age 24, and attending an accredited postsecondary educational institution as a full-time student in anticipation of receiving a certificate or degree.

(4) "Employer" means any city that is of the first or second class or that elects to join this retirement system under 19-13-211.

(5) "Final average compensation" means the monthly compensation of a member averaged over the last 36 months of the member's active service or, if the member has not been a member that long, over the period of the member's service. Lump-sum payments for annual leave paid to the member upon termination of service may be used to replace, on a month-for-month basis, the normal compensation for a month or months included in the calculation of final average compensation.

(6) "Firefighter" means a person employed as a full-paid or part-paid firefighter by an employer.

(7) "Full-paid firefighter" means a person appointed as a firefighter under 7-33-4106.

(8) "Minimum retirement date" means the first day of the month coinciding with or immediately following, if none coincides, the date on which a member becomes both age 50 or older and completes 10 or more years of membership service.

(9) "Part-paid firefighter" means a person employed under 7-33-4109 who receives compensation in excess of $300 a year for service as a firefighter.

(10) "Prior plan" means the fire department relief association plan of a city that elects to join the retirement system under 19-13-211 or the fire department relief association plan of a city of the first or second class.

(11) "Retirement date" means the date on which the first payment of benefits is payable.

(12) "Surviving spouse" means the spouse married to a member at the time of the member's death."

Section 41. Section 19-13-403, MCA, is amended to read:

"19-13-403. Election to qualify previous military service. (1) A member with 15 years or more service credit may, at any time prior to retirement, make a written election with the board to qualify all or any portion of the

HeinOnline -- 1999 vol. I 279 1999

member's active duty service in the armed forces of the United States for the purpose of calculating retirement benefits, up to a maximum of 5 years, if the member is not otherwise eligible to receive credit for this service under ~~19-2-705~~ *[section 9]*. To qualify this service the member shall contribute to the pension trust fund the actuarial cost of granting the service to be determined by the board based on the most recent actuarial valuation of the system. A member may not qualify more of the member's military service than the member has service credit in excess of 15 years. Military service purchased under this section may not be used in determining the member's eligibility for a service retirement.

(2) If a member has retired from active duty in the armed forces of the United States with military retirement benefits, the member may not qualify military service under subsection (1). ~~However, a member who is serving or has served in the military reserves with the expectation of receiving a military service pension may qualify the member's active duty military service under subsection (1) if the active duty in the armed forces of the United States is not more than 25% of the total of all the member's years of military service, including reserve and active duty time.~~"

Section 42. Section 19-13-405, MCA, is amended to read:

"**19-13-405. Election to purchase additional service.** (1) At any time before retirement, a member may make a written election with the board to purchase additional service credit for the purpose of calculating the member's retirement benefit. Except as provided in subsection (3), the member may purchase 1 year of additional service credit for every 5 years of membership service that the member has qualified under the retirement system.

(2) For each year of service credit purchased under this section, a member shall contribute to the pension trust fund an amount equal to the actuarial cost of granting the service, based on the most recent actuarial valuation of the system as determined by the board. ~~Contributions may be made in a lump-sum payment or by making additional contributions in installments as agreed upon by the member and the board.~~

(3) A member may elect to qualify no more than a combined total of 5 years of service under ~~19-2-705~~ *[section 9]*, 19-13-403, and this section.

(4) Service purchased under this section is not membership service and may not be used to qualify a member for retirement or in the calculation of an actuarial reduction in benefits for a member who is not eligible for normal service retirement."

Section 43. Section 53-21-204, MCA, is amended to read:

"**53-21-204. Mental health corporations.** (1) Mental health regions must be established in the state mental health plan and must conform to the mental health regions as established in the state mental health construction plan promulgated by the department under the federal Community Mental Health Centers Act.

(2) The mental health regions must be established under Title 35, chapter 2. Upon incorporation, a mental health region may enter into contracts with the department in order to carry out the department's comprehensive plan for mental health. These nonprofit corporations may not be considered agencies of the department or the state of Montana. ~~However, they may retain and enter into retirement programs as established under Title 19, chapter 3.~~

HeinOnline -- 1999 vol. I 280 1999

(3) Upon the establishment of the mental health regions, the county commissioners in each of the counties in the region designated as participating counties pursuant to subsection (8) shall appoint a person from their respective county to serve as a representative of the county on the regional mental health corporation board. In addition, unless the groups in subsections (3)(a) and (3)(b) are already represented, the board consists of three members-at-large who must be chosen according to the corporate bylaws, as follows:

(a) Two members must be chosen, one from each of the following groups:

(i) persons with severe and disabling mental illnesses; and

(ii) family members of persons with severe and disabling mental illnesses.

(b) One person must be chosen from among the following four groups:

(i) parents of children with emotional disturbances;

(ii) advocates of mental health services for the elderly;

(iii) health care professionals; or

(iv) organizations that provide community support services, such as food, housing, and clothing, to persons with severe and disabling mental illnesses.

(4) This section does not prohibit a regional mental health corporation from voluntarily expanding its board membership to include members-at-large, appointed by the board, from any of the groups described in subsections (3)(a) and (3)(b).

(5) The board must be established under guidelines adopted by the bylaws of the corporation. All appointments to the board must be for terms of 2 years, and the department must be notified in writing of all appointments.

(6) The duties of an organized regional mental health corporation board include:

(a) annual review and evaluation of mental health needs and services within the region;

(b) preparation and submission to the department and to each of the counties in the region of plans and budget proposals to provide and support mental health services within the region;

(c) establishment of a recommended proportionate level of financial participation of each of the counties within the region in the provision of mental health services within the limits of this section;

(d) receipt and administration of money and other support made available for the purposes of providing mental health services by the participating agencies, including grants from the United States government and other agencies, receipts for established fees for services rendered, taxes, gifts, donations, and any other type of support or income. All funds received by the board in accordance with this part must be used to carry out the purposes of this part.

(e) supervision of appropriate administrative staff personnel of the operation of community mental health services within the region;

(f) keeping all records of the board and making reports required by the department.

HeinOnline -- 1999 vol. I 281 1999

(7) Regional mental health board members must be reimbursed from funds of the board for actual and necessary expenses incurred in attending meetings and in the discharge of board duties when assigned by the board.

(8) Prior to June 10 of each year, the board of mental health shall submit to the board of county commissioners of each of the counties within the constituted mental health region an annual budget, specifying each county's recommended proportionate share. If the board of county commissioners includes in the county budget the county's proportionate share of the regional board's budget, it must be designated as a participating county. Funds for each participating county's proportionate share for the operation of mental health services within the region must be derived from the county's general fund. If the general fund is insufficient to meet the approved budget, a levy not to exceed 1 mill may be made on the taxable valuation of the county in addition to all other taxes allowed by law to be levied on that property.

(9) The regional board of mental health, with the approval of the department, shall establish a schedule of fees for mental health services. The fees may be received by the board and used to implement the budget in accordance with subsection (6)(d)."

Section 44. Repealer. Sections 19-2-705 and 19-3-520, MCA, are repealed.

Section 45. Codification instruction. [Sections 9, 10, and 11] are intended to be codified as an integral part of Title 19, chapter 2, part 7, and the provisions of Title 19, chapter 2, part 7, apply to [sections 9, 10, and 11].

Section 46. Coordination instruction. If House Bill No. 79 and [this act] are both passed and approved, then:

(1) subsection (32) in [section 4] of [this act], amending the definition of "Retirement system" in 19-2-303, must read as follows: "(32) "Retirement system" or "system" means one of the public employee retirement systems enumerated in 19-2-302."

(2) [section 23], amending 19-2-1001, in House Bill No. 79 is void.

(3) [section 15] of [this act], amending 19-2-1006, must read as follows:

"Section 15. Section 19-2-1006, MCA, is amended to read:

"19-2-1006. Use of forfeitures. A retirement ~~system~~ *plan* subject to this chapter may not apply forfeitures of benefits *resulting from the member's termination of employment, the death of the member, or any other reason* to increase the benefits of any member in a manner not permitted in Internal Revenue Code section 401(a)(8). *However, forfeitures may be used to reduce the costs of administration of a retirement plan subject to this chapter.*""

Section 47. Effective dates — contingent effective date. (1) Except as provided in subsections (2) and (3), [this act] is effective July 1, 1999.

(2) [Sections 3 and 45 and this section] are effective on passage and approval.

(3) The provisions in [section 7] providing for the making of contributions required to purchase service by employer pickup are effective on the date that the internal revenue service determines in a private letter ruling that the creation and use of the employer pickup method of making contributions provided in that section comply with the requirements of the Internal Revenue Code regarding a qualified retirement plan.

Approved March 15, 1999

HeinOnline -- 1999 vol. I 282 1999

CHAPTER NO. 59

[HB 120]

AN ACT REVISING THE RESTRICTION ON USING PRIORITY RECLAMATION AND DEVELOPMENT GRANT FUNDS FOR PERSONNEL COSTS OR OPERATING EXPENSES INCURRED WHILE PERFORMING OIL AND GAS RECLAMATION PROJECTS; AMENDING SECTION 90-2-1113, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-2-1113, MCA, is amended to read:

"90-2-1113. Evaluation criteria — priority. (1) Except as provided in subsection (2), the department shall consider the following criteria in evaluating eligible applications and in selecting projects to be recommended to the governor for funding:

(a) the degree to which the project will provide benefits in its eligibility category or categories;

(b) the degree to whicb the project will provide public benefits;

(c) the degree to which the project will promote, enhance, or advance the policies and purposes of the reclamation and development grants program;

(d) the degree to which the project will provide for the conservation of natural resources;

(e) the degree of need and urgency for the project;

(f) the extent to which the project sponsor or local entity is contributing to the costs of the project or is generating additional nonstate funds;

(g) the degree to which jobs are created for persons who need job training, receive public assistance, or are chronically unemployed; and

(h) any other criteria *that* the department considers necessary to carry out the policies and purposes of the reclamation and development grants program.

(2) (a) Subject to the conditions of this part, tbe department shall give priority to grant requests, not to exceed $600,000 in total for the biennium, from the board of oil and gas conservation. The board of oil and gas conservation shall use a grant that received priority under this subsection *(2)*(a) ~~only~~ for oil and gas reclamation projects. ~~A grant may not be used for personnel costs or general operating expenses of the board of oil and gas conservation.~~ *The board may use a maximum of 2.5% of the amount of a grant for administrative costs associated with implementing the projects covered in the grant.*

(b) Any unobligated fund balance of a grant that received priority under subsection (2)(a) remaining at the end of the current biennium must be included as part of the $600,000 limitation for the next biennium.

(c) The priority given to the board of oil and gas conservation under subsection (2)(a) does not preclude the board of oil and gas conservation from submitting additional grant requests. The department shall evaluate additional grant requests from the board of oil and gas conservation in accordance with the provisions of subsection (1)."

Section 2. Effective date. [This act] is effective July 1, 1999.

Approved March 15, 1999

HeinOnline -- 1999 vol. I 283 1999

CHAPTER NO. 60

[HB 151]

AN ACT CLARIFYING THAT IN THE CASE OF A CONSOLIDATED COUNTY OFFICE, A PERSON MAY BE AN ELECTOR OF ANY COUNTY IN WHICH THE DUTIES OF THE OFFICE ARE TO BE PERFORMED TO BE ELIGIBLE FOR THE OFFICE; AND AMENDING SECTION 7-4-2201, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-4-2201, MCA, is amended to read:

"7-4-2201. General qualifications for county office. ~~No~~ *A* person is *not* eligible ~~to~~ *for* a county office who at the time of ~~his~~ election is not:

(1) of the *voting* age ~~of voting as~~ required by the Montana constitution;

(2) a citizen of the state; and

(3) *(a)* an elector of the county in which the duties of the office are to be exercised; or ~~for which he is elected~~

(b) in the case of an office consolidated between two or more counties, an elector in one of the counties in which the duties of the office are to be exercised."

Approved March 15, 1999

CHAPTER NO. 61

[HB 179]

AN ACT REVISING CERTAIN LABOR LAWS PERTAINING TO UNEMPLOYMENT BENEFITS; PROVIDING FOR WITHHOLDING OF A PORTION OF BENEFITS FROM CERTAIN DELINQUENT TAXPAYERS FOR THE PAYMENT OF FEDERAL TAX OBLIGATIONS; CLARIFYING THE DEFINITION OF AGRICULTURAL LABOR; CLARIFYING THE ELIGIBILITY OF CERTAIN EDUCATIONAL EMPLOYEES FOR UNEMPLOYMENT BENEFITS; SPECIFYING THAT QUALIFYING WORK MUST MEET THE STATUTORY DEFINITION OF EMPLOYMENT; PROVIDING FOR THE WAIVER OF OVERPAYMENTS UNDER CERTAIN CIRCUMSTANCES; AMENDING SECTIONS 39-51-204, 39-51-301, 39-51-302, 39-51-2108, 39-51-2302, 39-51-2303, 39-51-2304, 39-51-3105, AND 39-51-3206, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Internal revenue levy — withholding of unemployment benefits to repay federal tax obligations. (1) The internal revenue service may levy against an individual's unemployment benefits if the individual:

(a) is liable for taxes, interest, or penalties owed to the internal revenue service; and

(b) has not paid the taxes, interest, or penalties in subsection (1)(a) within 10 days of receiving a notice and demand for repayment from the internal revenue service.

(2) Pursuant to 26 U.S.C. 6331(h)(2)(c), any amount payable as unemployment benefits may be levied against until the levy is released.

HeinOnline -- 1999 vol. I 284 1999

(3) The levy may be implemented electronically by the department and the internal revenue service.

(4) After receiving notice of a levy from the internal revenue service, the department shall deduct and withhold up to 15% from any unemployment benefits payable to the individual owing money to the internal revenue service. The amount withheld must be determined by the internal revenue service in accordance with 26 U.S.C. 6331(h)(2)(c).

(5) The department shall pay any amount deducted and withheld pursuant to this section to the internal revenue service on behalf of the individual. Any amount deducted and withheld must be treated as if it were paid to the individual as unemployment benefits and then paid by the individual to the internal revenue service in satisfaction of the individual's federal tax obligations.

Section 2. Section 39-51-204, MCA, is amended to read:

"39-51-204. Exclusions from definition of employment. (1) The term "employment" does not include:

(a) domestic or household service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in 39-51-202(3). If an employer is otherwise subject to this chapter and has domestic or household service employment, all employees engaged in domestic or household service must be excluded from coverage under this chapter if the employer:

(i) does not meet the monetary payment test in any quarter or calendar year, as applicable, for the subject wages attributable to domestic or household service; and

(ii) keeps separate books and records to account for the employment of persons in domestic or household service.

(b) service performed by a dependent member of a sole proprietor for whom an exemption may be claimed under 26 U.S.C. 152 or service performed by a sole proprietor's spouse for whom an exemption based on marital status may be claimed by the sole proprietor under 26 U.S.C. 7703;

(c) service performed as a freelance correspondent or newspaper carrier if the person performing the service, or a parent or guardian of the person performing the service in the case of a minor, has acknowledged in writing that the person performing the service and the service are not covered. As used in this subsection:

(i) "freelance correspondent" is a person who submits articles or photographs for publication and is paid by the article or by the photograph; and

(ii) "newspaper carrier" means a person who provides a newspaper with the service of delivering newspapers singly or in bundles. The term does not include an employee of the paper who, incidentally to the employee's main duties, carries or delivers papers.

(d) service performed as a real estate broker or salesperson who is licensed pursuant to Title 37, chapter 51;

(e) service performed by a cosmetologist who is licensed under Title 37, chapter 31, or a barber who is licensed under Title 37, chapter 30, and:

(i) who has acknowledged in writing that the cosmetologist or barber is not covered by unemployment insurance and workers' compensation;

HeinOnline -- 1999 vol. I 285 1999

(ii) who contracts with a cosmetology salon, as defined in 37-31-101, or a barbershop, as defined in 37-30-101, which contract must show that the cosmetologist or barber:

(A) is free from all control and direction of the owner in the contract;

(B) receives payment for service from individual clientele; and

(C) leases, rents, or furnishes all of the cosmetologist's or barber's own equipment, skills, or knowledge; and

(iii) whose contract gives rise to an action for breach of contract in the event of contract termination. The existence of a single license for the cosmetology salon or barbershop may not be construed as a lack of freedom from control or direction under this subsection.

(f) casual labor not in the course of an employer's trade or business performed in any calendar quarter, unless the cash remuneration paid for the service is $50 or more and the service is performed by an individual who is regularly employed by the employer to perform the service. "Regularly employed" means that the service is performed during at least 24 days in the same quarter.

(g) service performed by sole proprietors, working members of a partnership, members of a member-managed limited liability company that has filed with the secretary of state, or partners in a limited liability partnership that has filed with the secretary of state;

(h) service performed for the installation of floor coverings if the installer:

(i) bids or negotiates a contract price based upon work performed by the yard or by the job;

(ii) is paid upon completion of an agreed-upon portion of the job or after the job is completed;

(iii) may perform service for anyone without limitation;

(iv) may accept or reject any job;

(v) furnishes substantially all tools and equipment necessary to provide the service; and

(vi) works under a written contract that:

(A) gives rise to a breach of contract action if the installer or any other party fails to perform the contract obligations;

(B) states that the installer is not covered by unemployment insurance; and

(C) requires the installer to provide a current workers' compensation policy or to obtain an exemption from workers' compensation requirements;

(i) service performed as a direct seller as defined by 26 U.S.C. 3508;

(j) service performed by a petroleum land professional. As used in this subsection, "petroleum land professional" means a person who:

(i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in negotiating a business agreement for the exploration or development of minerals;

(ii) is paid for service that is directly related to the completion of a contracted specific task rather than on an hourly wage basis; and

HeinOnline -- 1999 vol. I 286 1999

(iii) performs all services as an independent contractor pursuant to a written contract.

(k) service performed by an ordained, commissioned, or licensed minister of a church in the exercise of the church's ministry or by a member of a religious order in the exercise of duties required by the order;

(l) service performed by an individual receiving rehabilitation or remunerative work in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who, because of impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market;

(m) service performed as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by a federal agency or any agency of a state or political subdivision of the state by an individual receiving work relief or work training;

(n) service performed for a state prison or other state correctional or custodial institution by an inmate of that institution;

(o) service performed by an individual who is sentenced to perform court-ordered community service or similar work;

(p) service performed by elected public officials;

(q) agricultural labor, except as provided in 39-51-202(2), *(4), or (6).* If an employer is otherwise subject to this chapter and has agricultural employment, all employees engaged in agricultural labor must be excluded from coverage under this chapter if the employer:

(i) in any quarter or calendar year, as applicable, does not meet either of the tests relating to the monetary amount or number of employees and days worked for the subject wages attributable to agricultural labor; and

(ii) keeps separate books and records to account for the employment of persons in agricultural labor.

(r) service performed in the employ of any other state or its political subdivisions or of the United States government or of an instrumentality of any other state or states or their political subdivisions or of the United States, except that national banks organized under the national banking law are not entitled to exemption under this subsection and are subject to this chapter the same as state banks, if the service is excluded from employment as defined in section 3306(c)(7) of the Federal Unemployment Tax Act;

(s) service in which unemployment insurance is payable under an unemployment insurance system established by an act of congress if the department enters into agreements with the proper agencies under an act of congress and those agreements become effective in the manner prescribed in the Montana Administrative Procedure Act for the adoption of rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment insurance under an act of congress or who have, after acquiring potential rights to unemployment insurance under the act of congress, acquired rights to benefits under this chapter;

HeinOnline -- 1999 vol. I 287 1999

(t) service performed in the employ of a school or university if the service is performed by a student who is enrolled and is regularly attending classes at a school or university or by tbe spouse of a student if the spouse is advised, at the time that the spouse commences to perform the service, that the employment of the spouse to perform the service is provided under a program to provide financial assistance to the student by the school or university and that the employment is not covered by any program of unemployment insurance;

(u) service performed by an individual who is enrolled at a nonprofit or public educational institution that normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program taken for credit at an institution that combines academic instruction with work experience if the service is an integral part of the program and the institution has certified that fact to the employer, except tbat tbis subsection (1)(u) does not apply to service performed in a program established for or on behalf of an employer or group of employers;

(v) service performed as an officer or member of the crew of a vessel on the navigable waters of the United States; or

(w) service performed by an alien admitted to the United States to perform agricultural labor pursuant to sections 214(c) and 1101(a)(H)(ii)(a) of the Immigration and Nationality Act.

(2) An individual found to be an independent contractor by the department under the terms of 39-71-401(3) is considered an independent contractor for the purposes of this chapter. An independent contractor is not precluded from filing a claim for benefits and receiving a determination pursuant to 39-51-2402.

(3) This section does not apply to a state or local governmental entity or a nonprofit organization defined under section 501(c)(3) of the Internal Revenue Code unless the service is excluded from employment as defined in the Federal Unemployment Tax Act."

Section 3. Section 39-51-301, MCA, is amended to read:

"39-51-301. Administration — duties and powers of department. (1) It is the duty of the department to administer this chapter and it may adopt, amend, or rescind rules, to employ persons, make expenditures, require reports, make investigations, and take action as it considers necessary or suitable in administering this chapter.

(2) The department shall determine its own organization and methods of procedure in accordance with the provisions of this chapter and shall have an official seal, which is judicially noticed.

(3) Whenever the department believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, it shall promptly inform the governor and the legislature and make recommendations with respect to the change.

(4) The department and the board may issue subpoenas and compel testimony and the production of evidence, including books and records, in regard to any investigation or proceeding under this chapter.

(5) The department shall delegato to the department of revenue duties associated with the administration of unemployment insurance contributions and the employment security account so long as the duties are carried out in

HeinOnline -- 1999 vol. I 288 1999

conformity with the requirements of the program budget plan with the United States department of labor. The delegated duties do not include oversight duties such as revenue quality control, risk management, and trust fund management. The department of revenue must receive funds from the department for the performance of the delegated duties. *The department of revenue has rulemaking authority with respect to any function or duty delegated to the department of revenue pursuant to this section.*

(6) Employees transferring from the department to the department of revenue as a result of a delegation of duties in subsection (5) are entitled to all rights including those under 2-15-131, possessed as a state officer or employee before transferring, including rights to tenure in office and of rank or grade, rights to vacation and sick pay and leave, rights under any retirement or personnel plan or labor union contract, rights to compensatory time earned, and any other rights under any law or administrative policy including the State Employee Protection Act. Employees transferring must be considered internal applicants by the department for recruitment purposes for the period from July 1, 1997, through June 30, 1998.

(7) The department of revenue shall succeed the department in its rights to property relating to the delegation of duties in subsection (5) to the extent that is consistent with federal property transfer policy. The property includes real property, records, office equipment, forms, supplies, and contracts other than the program budget plan with the United States department of labor.

(8) (a) The delegation of duties in subsection (5) does not affect the validity of any pending judicial or administrative proceeding.

(b) Appeals that were filed with the board of labor appeals or the department's hearings bureau before July 1, 1997, must follow the procedures and processes in effect when the appeal was first taken. An appeal that is filed on or after July 1, 1997, must be taken in accordance with the procedures and processes in effect on the date the appeal is filed.

(c) The department of revenue must be substituted for the department and succeed to all audits, determinations, and other actions that have not been appealed to the board of labor appeals or the department's hearings bureau prior to July 1, 1997.

(9) The rights, privileges, and duties of the holders of bonds and other obligations issued and of the parties to contracts, leases, indentures, and other transactions entered into before the delegation of duties in subsection (5) remain in effect, and none of those rights, privileges, duties, covenants, or agreements are impaired or diminished by reason of the delegation of duties. The department of revenue is substituted for the department and, subject to the provisions of subsection (5), succeeds to the rights and duties under the provisions of those bonds, contracts, leases, indentures, and other transactions. The provisions of this subsection (9) do not apply to the program budget plan agreement between the department and the United States department of labor."

Section 4. Section 39-51-302, MCA, is amended to read:

"39-51-302. Administrative rules. *(1)* The department may adopt procedural and substantive rules necessary to implement this chapter.

(2) The department shall delegate rulemaking authority to the department of revenue with respect to any function or duty delegated to the department of revenue pursuant to 39-51-301(5)."

HeinOnline -- 1999 vol. I 289 1999

Section 5. Section 39-51-2108, MCA, is amended to read:

"39-51-2108. Payment of benefits based on ~~service~~ *services* in public, charitable, or educational organizations. (1) Benefits based on ~~service~~ *services* in employment defined in 39-51-203(5) and (6) are payable in the same amount, on the same terms, and subject to the same conditions as ~~compensation~~ *benefits* payable on the basis of other ~~service~~ *services* subject to this chapter, except that benefits based on ~~service~~ *services* in an instructional, research, or principal administrative capacity for an educational institution may not be paid to an individual for any week of unemployment which begins during the period between two successive academic years or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract *if the individual performs the services in the first of the academic years or terms and* if the individual has a contract ~~or reasonable assurance of a contract~~ to perform ~~services~~ *services or a reasonable assurance of performing services* in any instructional, research, or principal administrative capacity for ~~the~~ *any* educational institution ~~for both~~ *in the second of the* academic years or ~~both~~ terms.

(2) Benefits based on services in any other capacity for an educational institution must be denied to any individual for any week which commences during a period between 2 successive academic years or terms if the individual performs the services in the first of the academic years or terms and there is a reasonable assurance that the individual will perform the services in the second of the academic years or terms. If any individual is denied benefits and was not offered an opportunity to perform the ~~service~~ *services* for the educational institution for the second of the academic years or terms, the individual is entitled to a retroactive payment of the benefits for each week for which the individual filed a timely claim for benefits and for which benefits were denied solely by reason of the denial provided for in this section.

(3) Benefits based on services described in subsections (1) and (2) of this section must be denied to any individual for any week that commences during an established and customary vacation period or holiday recess if the individual performs the services in the period immediately before the vacation period or holiday recess and there is reasonable assurance that the individual will perform the service in the period immediately following the vacation period or holiday recess.

(4) Benefits based on services described in subsections (1) and (2) to an individual who performed the services for an educational institution while in the employ of an educational service agency must be denied as specified in subsections (1) through (3). The term "educational service agency" means a governmental agency or governmental entity which is established and operated exclusively for the purpose of providing the service to one or more educational institutions."

Section 6. Section 39-51-2302, MCA, is amended to read:

"39-51-2302. Disqualification for leaving work without good cause. (1) An individual must be disqualified for benefits if the individual has left work without good cause attributable to the individual's employment.

(2) The individual may not be disqualified if the individual leaves:

(a) employment because of personal illness or injury not associated with misconduct upon the advice of a licensed and practicing physician and, after

HeinOnline -- 1999 vol. I 290 1999

recovering from the illness or injury when recovery is certified by a licensed and practicing physician, the individual returned to and offered service to the individual's employer and the individual's regular or comparable suitable work was not available, as determined by the department, provided the individual is otherwise eligible; or

(b) temporary work accepted during a period of unemployment caused by a lack of work with the individual's regular employer if upon leaving the temporary work the individual returned immediately to work for the individual's regular employer, provided that the individual is unemployed for nondisqualifying reasons.

(3) To requalify for benefits, an individual shall perform services ~~other than self-employment~~ for which remuneration is received equal to or in excess of six times the individual's weekly benefit amount subsequent to the week in which the act causing the disqualification occurred unless the individual has been in regular attendance at an educational institution accredited by the state of Montana for at least 3 consecutive months from the date of the individual's enrollment. *The services must constitute employment as defined in 39-51-203 and 39-51-204.*"

Section 7. Section 39-51-2303, MCA, is amended to read:

"**39-51-2303. Disqualification for discharge due to misconduct.** An individual ~~shall~~ *must* be disqualified for benefits after being discharged:

(1) for misconduct connected with the individual's work or affecting the individual's employment until the individual has performed services~~, other than self-employment,~~:

(a) for which remuneration is received equal to or in excess of eight times the individual's weekly benefit amount subsequent to the week in which the act causing the disqualification occurred; *and*

(b) which constitute employment as defined in 39-51-203 and 39-51-204; or

(2) for gross misconduct connected with the individual's work or committed on the employer's premises, as determined by the department, for a period of 52 weeks."

Section 8. Section 39-51-2304, MCA, is amended to read:

"**39-51-2304. Disqualification for failure to apply for or to accept suitable work.** (1) An individual is disqualified for benefits if the individual fails without good cause either to apply for available and suitable work when ~~so~~ directed *to do so* by the employment office or the department or to accept an offer of suitable work which the individual is physically able and mentally qualified to perform or to return to customary self-employment, if any, when ~~so~~ directed *to do so* by the department. ~~Such~~ *The* disqualification continues for the week in which ~~such~~ *the* failure occurs and until the individual has performed services~~, other than self-employment,~~ for which remuneration is received equal to or in excess of six times that individual's weekly benefit amount subsequent to the ~~date~~ *week* the act causing the disqualification occurred, with a reduction in the individual's maximum benefit amount equal to six times the weekly benefit amount, as determined by the department, provided the individual has not left this work under disqualifying circumstances. *The services must constitute employment as defined in 39-51-203 and 39-51-204.*

HeinOnline -- 1999 vol. I 291 1999

(2) In determining whether or not any work is suitable for an individual, the department shall consider:

(a) the degree of risk involved to the individual's health, safety, and morals;

(b) the individual's physical fitness and prior training;

(c) the individual's experience and previous earnings;

(d) the individual's length of unemployment and prospects for securing local work in the customary occupation; and

(e) the distance of the available work from the individual's residence.

(3) Notwithstanding any other provisions of this chapter, including subsection (4), no work may be considered suitable and benefits may not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(a) if the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(b) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

(c) if, as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

(4) Subject to subsection (3), after 13 weeks of unemployment, suitable work is work that meets the criteria in this section and that offers 75% of the individual's earnings in previous insured work in the individual's customary occupation. No individual, however, is required to accept a job paying less than the federal minimum wage."

Section 9. Section 39-51-3105, MCA, is amended to read:

"39-51-3105. Assignment, pledge, or encumbrance of right to benefits void — benefits exempt from levy, execution, attachment, or other remedy for collection of debt — exception. Any assignment, pledge, or encumbrance of any right to benefits that are or may become due or payable under this chapter is void, and the rights to benefits are exempt from levy, execution, attachment, or any other remedy provided for the collection of debt. Benefits received by an individual, as long as they are not mingled with other funds of the recipient, are exempt from any remedy for the collection of all debts except as provided in 39-51-2207, 39-51-2208, 39-51-3106, *[section 1]*, and 39-51-3206. Any waiver of an exemption provided for in this section is void."

Section 10. Section 39-51-3206, MCA, is amended to read:

"39-51-3206. Collection of benefit overpayments. A person who receives benefits not authorized by this chapter shall repay to the department either directly or, as authorized by the department, by offset of future benefits to which the claimant may be entitled, or by a combination of both methods, a sum equal to the amount of the overpayment. A benefit offset may not exceed 50% of the weekly benefits to which a claimant is entitled unless the claimant gives written consent, *except in cases of theft or fraud, when benefits may be offset by as much as 100% of the weekly benefits to which a claimant is entitled.* The sum is collectible in the manner provided in this chapter for the collection of

HeinOnline -- 1999 vol. I 292 1999

past-due contributions ~~unless the department finds that the benefits were received through no fault of the person and the recovery of the benefits would be against equity and good conscience~~. *The department may waive the benefit overpayment if the department finds that the claimant did not conceal or misrepresent material facts to obtain the overpaid benefits and that recovery of the benefit overpayment would cause a long-term financial hardship on the claimant.* An action for collection of overpaid benefits must be brought within 5 years after the date of the overpayment. Notwithstanding any other provision of this chapter, the department may recover an overpayment of benefits paid to any individual under the laws of this state or another state or under an unemployment benefit program of the United States."

Section 11. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 39, chapter 51, part 31, and the provisions of Title 39, chapter 51, part 31, apply to [section 1].

Section 12. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 13. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 14. Effective date. [This act] is effective July 1, 1999.

Approved March 15, 1999

CHAPTER NO. 62

[HB 214]

AN ACT CLARIFYING THAT LAND SURVEYING, WITH OR WITHOUT OTHER IMPROVEMENTS TO REAL PROPERTY, IS SUBJECT TO THE LIMITATIONS ON ACTIONS; DEFINING "LAND SURVEYING"; AND AMENDING SECTION 27-2-208, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 27-2-208, MCA, is amended to read:

"27-2-208. Actions for damages arising out of work on improvements to real property *or land surveying*. (1) Except as provided in subsections (2) and (3), ~~no~~ *an* action to recover damages (other than an action upon any contract, obligation, or liability founded upon an instrument in writing) resulting from or arising out of the design, planning, supervision, inspection, construction, or observation of construction of *any improvement to real property* or *resulting from or arising out of* land surveying ~~done in connection with any improvement to~~ *of* real property ~~shall~~ *may not* be commenced more than 10 years after completion of ~~such~~ *the* improvement *or land surveying*.

(2) Notwithstanding the provisions of subsection (1), an action for ~~such~~ damages for an injury ~~which~~ *that* occurred during the 10th year after ~~such~~ *the* completion *of the improvement or land surveying* may be commenced within 1 year after the occurrence of ~~such~~ *the* injury.

HeinOnline -- 1999 vol. I 293 1999

(3) The limitation prescribed by this section ~~shall~~ *may* not affect the responsibility of any owner, tenant, or person in actual possession and control of the improvement *or real property that is surveyed* at the time a right of action arises.

(4) As used in this section~~, the term~~:

(a) "completion" means that degree of completion at which tbe owner can utilize the improvement for the purpose for which it was intended or when a completion certificate is executed, whichever is earlier;

(b) "land surveying" means the practice of land surveying, as defined in 37-67-101.

(5) ~~Nothing in this~~ *This* section ~~shall~~ *may not* be construed as extending the period prescribed by the laws of this state for the bringing of any action."

Approved March 15, 1999

CHAPTER NO. 63

[HB 283]

AN ACT ALLOWING MUNICIPAL AND CITY COURTS TO ASSIGN THE COLLECTION OF FINES TO PRIVATE PERSONS OR ENTITIES; AND AMENDING SECTIONS 25-30-102, 46-17-303, AND 46-17-402, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 25-30-102, MCA, is amended to read:

"25-30-102. Fees and fines. *(1)* The fees and fines in municipal court ~~shall~~ *must* be the same as the fees and fines provided by law or ordinance, and *except as provided in subsection (2),* all fees and fines collected by the court ~~shall~~ *must* be paid into the city treasury.

(2) (a) If a final judgment is entered for a fine and the fine is immediately due, the municipal court may contract with a private person or entity for the collection of the fine.

(b) In the event that a private person or entity is retained to collect a fine, the municipal court is authorized to assign the judgment for the fine to the private person or entity and the private person or entity may, as an assignee, institute suit or other lawful colleetion procedure in its own name.

(c) The municipal court, after deducting the charges provided for in 46-18-236, is authorized to pay to the private person or entity a reasonable fee for collecting the fine."

Section 2. Section 46-17-303, MCA, is amended to read:

"46-17-303. Deposit of fines. *(1) Except as provided in subsection (2), all* ~~All~~ fines imposed and collected by a city court must be paid to the treasurer of the county, city, or town, as the case may be, within 30 days ~~after the~~ *of* receipt ~~of the same~~. The city judge ~~must take duplicate receipts therefor, one of which he must deposit~~ *shall file a copy of any receipt given for a collected fine* with the county, city, or town clerk, as the case may be.

HeinOnline -- 1999 vol. I 294 1999

(2) (a) If a final judgment is entered for a fine and the fine is immediately due, the city court may contract with a private person or entity for the collection of the fine.

(b) In the event that a private person or entity is retained to collect a fine, the city court is authorized to assign the judgment for the fine to the private person or entity and the private person or entity may, as an assignee, institute suit or other lawful collection procedure in its own name.

(c) The city court, afier deducting the charges provided for in 46-18-236, is authorized to pay to the private person or entity a reasonable fee for collecting the fine."

Section 3. Section 46-17-402, MCA, is amended to read:

"46-17-402. Fees and fines. *(1)* The fees and fines in municipal court ~~shall~~ *must* be the same as the fees and fines provided by law or ordinance, and *except as provided in subsection (2),* all fees and fines collected by the court ~~shall~~ *must* be paid into the city treasury.

(2) (a) If a final judgment is entered for a fine and the fine is immediately due, the municipal court may contract with a private person or entity for the collection of the fine.

(b) In the event that a private person or entity is retained to collect a fine, the municipal court is authorized to assign the judgment for the fine to the private person or entity and the private person or entity may, as an assignee, institute suit or other lawful collection procedure in its own name.

(c) The municipal court, after deducting the charges provided for in 46-18-236, is authorized to pay to the private person or entity a reasonable fee for collecting the fine."

Approved March 15, 1999

CHAPTER NO. 64

[HB 237]

AN ACT REDUCING THE BOARD OF INVESTMENTS MINIMUM INFRASTRUCTURE LOAN AMOUNT FROM $500,000 TO $250,000; REDUCING THE MINIMUM NUMBER OF JOBS CREATED FROM 50 TO 15 THAT ARE REQUIRED FOR A MINIMUM INFRASTRUCTURE LOAN AMOUNT; INCREASING THE MAXIMUM LOAN AMOUNT FROM $20 MILLION TO $50 MILLION; REMOVING THE REQUIREMENT THAT ONLY SMALL BUSINESSES MAY RECEIVE A JOB CREDIT INTEREST RATE REDUCTION FOR PARTICIPATING IN THE JOB CREATION LOAN PROGRAM; AMENDING SECTIONS 17-6-309, 17-6-311, AND 17-6-318, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-6-309, MCA, is amended to read:

"17-6-309. Investment preferenees. (1) Subject to the provisions of subsection (2), in deciding wbich of several investments of equal or comparable security and return are to be made when sufficient funds are not available to fund all possible investments, the board shall give preference to the business investments that:

HeinOnline -- 1999 vol. I 295 1999

(a) assist employee-owned enterprises in providing new jobs or in preserving existing jobs for Montana residents or in otherwise contributing to the long-term benefit of the Montana economy, *including raising the per capita income of Montana jobholders*;

(b) are for locally owned enterprises that are either expanding or establishing new operations;

(c) provide jobs that will be substantially filled by current Montana residents as opposed to providing jobs that will be filled by nonresidents coming into the state to fill such jobs;

(d) maintain and improve a clean and healthful environment, with emphasis on energy efficiency;

(e) encourage or benefit the processing, refining, marketing, and innovative use and promotion of Montana's agricultural products; or

(f) benefit small- and medium-sized businesses as defined in rules adopted by the board.

(2) The board may make a loan to enhance economic development and create jobs in the basic sector of the economy, as defined by the board by rule, if the loan will result in the creation of a business estimated to employ at least ~~50~~ *15* people in Montana on a permanent, full-time basis or result in the expansion of a business estimated to employ at least an additional ~~50~~ *15* people in Montana on a permanent, full-time basis *or raise salaries, wages, and business incomes of existing employees and employers*."

Section 2. Section 17-6-311, MCA, is amended to read:

"**17-6-311. Limitation on size of investments.** (1) Except as provided in subsections (2) through (4), an investment may not be made that will result in any one business enterprise or person receiving a benefit from or incurring a debt to the permanent coal tax trust fund the total current accumulated amount of which exceeds 1% of the permanent coal tax trust fund.

(2) Subsection (1) does not limit the board's authority to make loans to the capital reserve account as provided in 17-6-308(2).

(3) Subsection (1) does not apply to the purchase of debentures issued by a capital company; however, the total amount of such debentures purchased by the board may not exceed 1% of the Montana permanent coal tax trust fund at the time of purchase.

(4) The total amount of loans made pursuant to 17-6-309(2) may not exceed ~~$20~~ *$50* million, and a single loan may not be less than ~~$500,000~~ *$250,000*. A loan may not exceed ~~$10,000~~ *$16,666* per job that is estimated to be created. In determining the size of a loan made pursuant to 17-6-309(2), the board shall consider:

(a) the estimated number of jobs to be created by the project within a 4-year period from the time that the loan is made and the impact of the jobs on the state and the community where the project will be located;

(b) the long-term effect of corporate and personal income taxes estimated to be paid by the business and its employees;

(c) the current and projected ability of the community to provide necessary infrastructure for economic and community development purposes; ~~and~~

HeinOnline -- 1999 vol. I 296 1999

(d) the amount of increased salaries, wages, and business incomes of existing jobholders and businesses; and

~~(d)~~*(e)* other matters that the board considers necessary."

Section 3. Section 17-6-318, MCA, is amended to read:

"17-6-318. Job credit interest rate reduction for ~~small~~ business loan participations. (1) A borrower who uses the proceeds of a ~~small~~ business loan participation funded under the provisions of this part to create jobs employing Montana residents is entitled to a job credit interest rate reduction for each job created over a 2-year period to employ a Montana resident. A borrower who used the proceeds of a loan made pursuant to 17-6-309(2) to create jobs is entitled to a job credit interest rate reduction for each job created in the 4-year period provided for in 17-6-311(4)(a). The date of the formal written interim or permanent loan application to the financial institution will be used as a beginning date for counting the number of jobs created. The job credit interest rate reduction may not apply to a loan participation of more than 1% of the total of the permanent coal tax trust fund determined at the end of the last-completed fiscal year. The job credit interest rate reduction is equal to 0.05% for each job created to employ a Montana resident, up to a maximum interest rate reduction of 2.5%.

(2) If the salary or wage of the job created:

(a) exceeds the average weekly wage, as defined in 39-71-116, the amount of the job credit interest rate reduction may be increased proportionately for each increment of 25% above the average weekly wage to a maximum of two times the average weekly wage; or

(b) is less than the average weekly wage, as defined in 39-71-116, the job credit interest rate reduction is reduced proportionately for each 25% increment below the average wage.

(3) A job credit interest rate reduction may not be allowed for a job created by the borrower using the proceeds of the loan for which the salary or wage is less than the minimum wage provided for in 39-3-409.

(4) A job credit may not be given unless one whole job is created.

(5) To qualify for the job credit interest rate reduction, the borrower shall provide satisfactory evidence of the creation of jobs and make application in writing, through its financial institution, to the board when the loan is delivered to the board or not later than 45 days after the applicable anniversary dates of the loan."

Section 4. Effective date. [This act] is effective on passage and approval.

Approved March 15, 1999

CHAPTER NO. 65

[HB 391]

AN ACT GENERALLY REVISING THE PESTICIDE LAWS; DIRECTING THAT CIVIL PENALTIES COLLECTED PURSUANT TO SECTION 80-8-306, MCA, BE DEPOSITED INTO A SPECIAL REVENUE ACCOUNT FOR PESTICIDE CLEANUP; ALLOWING FOR ELECTRONIC VERIFICATION OF A RESTRICTED PESTICIDE PURCHASER'S LICENSE OR PERMIT; ALLOWING THE DEPARTMENT OF AGRICULTURE TO ADOPT RULES

HeinOnline -- 1999 vol. I 297 1999

CONCERNING DEALER VERIFICATION OF A RESTRICTED PESTICIDE PURCHASER'S LICENSE OR PERMIT; AMENDING SECTIONS 80-8-116 AND 80-8-207, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-8-116, MCA, is amended to read:

"80-8-116. Pesticide management account — deposit of fees and penalties — investment. (1) There is a pesticide management account within the state special revenue fund established in 17-2-102.

(2) ~~(a)~~ All licensing, permit, registration, and devices and blending plant fees collected under parts 1 and 2 of this chapter must be deposited in the pesticide management account for the purpose of administering this chapter, including but not limited to:

~~(i)~~*(a)* the cost of equipment and facilities;

~~(ii)~~*(b)* the cost of inspecting, investigating, analyzing, and examining:

~~(A)~~*(i)* pesticide products;

~~(B)~~*(ii)* applicators, operators, and other users of pesticides;

~~(C)~~*(iii)* dealers and retailers selling pesticides;

~~(D)~~*(iv)* pesticide equipment, storage, disposal, and operational facilities; and

~~(iii)~~*(c)* related pest and pesticide activities authorized by Title 80, chapter 7, part 5, and 80-7-711 through 80-7-714 and 80-7-720.

~~(b) Any civil penalties collected under 80-8-306 must be deposited in the general fund.~~

(3) The department may direct the board of investments to invest the funds collected under this section, pursuant to the provisions of 17-6-201. The income from the investments must be credited to the pesticide management account within the state special revenue fund."

Section 2. Pesticide cleanup special revenue account. (1) There is a pesticide cleanup special revenue account in the state special revenue fund established in 17-2-102.

(2) There must be deposited in the pesticide cleanup account any civil penalties collected under 80-8-306.

(3) The funds must be used by the department for cleanup and associated costs when a responsible party cannot be identified and located or if the responsible party is unable or unwilling to clean up the pesticide contamination and there is an imminent need to protect agriculture, health, or the environment.

(4) Unencumbered and unexpended funds remaining in the posticide cleanup account at the end of the fiscal year may not lapse but must be carried forward for the stated purpose unless appropriated by subsequent legislative action.

(5) If a responsible party is identified and located after expenditure of the funds in the pesticide cleanup account, the department may initiate recovery of the funds through a voluntary agreement or in district court.

Section 3. Section 80-8-207, MCA, is amended to read:

"80-8-207. Dealers. (1) It is unlawful for a person to sell, offer for sale, deliver, or have delivered within the stato a pesticide without first obtaining a

HeinOnline -- 1999 vol. I 298 1999

license from the department ~~of agriculture~~ for each calendar year or portion of a year. A separate dealer's license aud fee is required for each location or outlet from which pesticides are distributed, sold, held for sale, or offered for sale. Pesticide field personnel or salespeople employed directly out of the same location or outlet and under a licensed dealer are not required to obtain a license. The dealer sball furnish the department with the names and addresses of its field personnel and salespeople selling pesticides within the state.

(2) The application for a license must be accompanied by a fee of $45. Dealers applying for renewal of a license shall do so on or bofore March 1 of the calendar year. A dealer applying for renewal of a license after March 1 must be assessed a $25 late licensing fee.

(3) The dealer shall require the purchaser of a restricted pesticide to exhibit the purchaser's license or permit issued under authority of this chapter, *or the dealer may verify, under procedures authorized by the department, the purchaser's license or permit through a department list or by electronic means* before completing a sale. *The department may adopt rules concerning dealer verification of licenses and permits.*

(4) The department shall assess an additional annual license fee of $30 on dealers to fund the waste pesticide and pesticide container collection, disposal, and recycling program. Fees collected under this subsection must be deposited in the state special revenue account pursuant to 80-8-112.

(5) Pharmacists licensed as provided for in 37-7-302 and 37-7-303, veterinarians licensed as provided for in 37-18-302 and 37-18-303, and certified pharmacies licensed under 37-7-321 are not required to be licensed to sell pesticides, provided that the certified pharmacies and veterinarians register with the department each year. However, the certified pharmacies and veterinarians ~~must~~ *shall* meet all otber requirements concerning the commercial sale of pesticides. The department shall take into account the professional licensing requirements of pharmacists, certified pharmacies, and veterinarians when adopting rules. (Subsection (4) terminates June 30, 1999—sec. 14, Ch. 465, L. 1993.)"

Section 4. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 80, chapter 8, and the provisions of Title 80, chapter 8, apply to [section 2].

Section 5. Effective date. [This act] is effective July 1, 1999.

Approved March 15, 1999

CHAPTER NO. 66

[HB 480]

AN ACT PROVIDING THAT THE REPAYMENT OF ALL INVESTMENTS MADE BY THE FORMER MONTANA BOARD OF SCIENCE AND TECHNOLOGY DEVELOPMENT FROM THE COAL SEVERANCE TAX TRUST FUND MUST BE REDEPOSITED IN THE COAL SEVERANCE TAX PERMANENT FUND WITH 7 PERCENT INTEREST; TRANSFERRING MANAGEMENT OF THE INVESTMENTS FROM THE DEPARTMENT OF COMMERCE TO THE BOARD OF INVESTMENTS; AMENDING SECTION 17-6-308, MCA; AND PROVIDING AN EFFECTIVE DATE.

HeinOnline -- 1999 vol. I 299 1999

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-6-308, MCA, is amended to read:

"17-6-308. (Temporary) Authorized investments. (1) Except as provided in subsections (2) and (3) and subject to the provisions of 17-6-201, the Montana permanent coal tax trust fund must he invested as authorized hy rules adopted by the board.

(2) The board may make loans from the permanent coal tax trust fund to the capital reserve account created pursuant to 17-5-1515 to establisb balances or restore deficiencies in the account. The board may agree in connection with the issuance of bonds or notes secured by the account or fund to make the loans. Loans must be on terms and conditions determined by the board and must be repaid from revenue realized from the exercise of the board's powers under 17-5-1501 through 17-5-1518 and 17-5-1521 through 17-5-1529, subject to the prior pledge of the revenue to the bonds and notes.

(3) The board shall allow the Montana board of science and technology development, provided for in 2-15-1818, to administer $12.5 million of the permanent coal tax trust fund for seed capital project loans or mezzanine financing loans and $11.1 million of the permanent coal tax trust fund for research and development project matching funds for projects at Montana public universities. The board may grant up to $2 million of interest and income from investments to research and development projects at Montana public universities. The research and development projects may include grant matching fund purposes. This authority does not extend beyond June 30, 1999, for seed capital project loans and beyond June 30, 1999, for research and development projects. Except for $915,000, all uncommitted seed capital funds must revert to the coal severance tax permanent fund. The department may use up to $75,000 each year of the seed capital funds for administrative purposes. The board of science and technology development, with tbe concurrence of the director of the department, may extend an additional loan to an existing seed capital portfolio company by up to $700,000. In the fiscal year ending June 30, 1998, the department shall transfer $250,000 of interest and earnings to the Montana supreme court to be used to fund the judges' retirement system. Until the Montana board of science and technology development makes a loan pursuant to the provisions of Title 90, chapter 3, the funds under its administration must be invested by the board pursuant to the provisions of 17-6-201. As seed capital and mezzanine financing loans made pursuant to this subsection are repaid, the proceeds of the seed capital portion of the Montana board of science and technology development loans must be deposited in the coal severance tax permanent fund until all loans have been repaid plus the amount of 7% simple interest for the years that the loans have been outstanding. The board shall calculate the amount of the interest charge. The board may use up to $25,000 of the repayments for administrative costs in the fiscal year ending June 30, 1997.

(4) The board shall adopt rules to allow a nonprofit corporation to apply for economic assistance. The rules must recognize that different criteria may be needed for nonprofit corporations than for for-profit corporations.

(5) Beginning July 1, 1999, all repayments proceeds in excess of $4.395 million must be deposited in the coal severance tax permanent fund. In the fiscal year ending June 30, 1998, the department shall transfer $250,000 from the interest and earnings from job investment loans to the Montana supreme court to be used to fund the judges' retirement system.

HeinOnline -- 1999 vol. I 300 1999

17-6-308. (Effective July 1, 1999) Authorized investments. (1) Except as provided in subsections (2) and (3) and subject to the provisions of 17-6-201, the Montana permanent coal tax trust fund must be invested as authorized by rules adopted by the board.

(2) The board may make loans from the permanent coal tax trust fund to the capital reserve account created pursuant to 17-5-1515 to establish balances or restore deficiencies in the account. The board may agree in connection with the issuance of bonds or notes secured by the account or fund to make the loans. Loans must be on terms and conditions determined by the board and must be repaid from revenue realized from the exercise of the board's powers under 17-5-1501 through 17-5-1518 and 17-5-1521 through 17-5-1529, subject to the prior pledge of the revenue to the bonds and notes.

(3) The ~~department~~ *board* shall manage the seed capital and research and development loan portfolios created by the former Montana board of science and technology development. The ~~department~~ *board* shall establish an appropriate repayment schedule for all outstanding research and development loans made to the university system. ~~The department shall report the schedule to the 56th legislature. The department shall develop a business investment strategy for investing in Montana business and shall present the proposal to the 56th legislature.~~ The ~~department~~ *board* is the successor in interest to all agreements, contracts, loans, notes, or other instruments entered into by the Montana board of science and technology development as part of the seed capital and research and development loan portfolios, *except agreements, contracts, loans, notes, or other instruments funded with coal tax permanent trust funds. The board shall administer the agreements, contracts, loans, notes, or other instrumcnts funded with coal tax permanent trust funds.* Until the department makes a loan pursuant to the provisions of part 5 of this chapter, the $915,000 in funds under its administration must be invested by the board pursuant to the provisions of 17-6-201. As loans made pursuant to part 5 of this chapter are repaid, the ~~department may reinvest the principal in new loans pursuant to part 5 of this chapter~~ *board shall deposit the proceeds or loans made from the coal severance tax trust fund in the coal severance tax permanent fund until all investments are paid back with 7% interest.*

(4) The board shall adopt rules to allow a nonprofit corporation to apply for economic assistance. The rules must recognize that different criteria may be needed for nonprofit corporations than for for-profit corporations.

(5) Beginning July 1, 1999, all repayments *of* proceeds ~~in excess of $4.395 million~~ *of investments made from the coal severance tax trust fund* must be deposited in the coal severance tax permanent fund. ~~In the fiscal year ending June 30, 1998, the department shall transfer $250,000 from the interest and earnings from job investment loans to the Montana supreme court to be used to fund the judges' retirement system.~~"

Section 2. Effective date. [This act] is effective July 1, 1999.

Approved March 15, 1999

HeinOnline -- 1999 vol. I 301 1999

CHAPTER NO. 67

[SB 52]

AN ACT MAKING THE INDIVIDUAL INCOME TAX THRESHOLD FILING REQUIREMENT FOR NONRESIDENT TAXPAYERS THE SAME AS THE THRESHOLD FILING REQUIREMENT FOR RESIDENT TAXPAYERS; AMENDING SECTION 15-30-142, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-142, MCA, is amended to read:

"15-30-142. Returns and payment of tax — penalty and interest — refunds — credits. (1) ~~Each~~ *For both resident and nonresident taxpayers, each* single individual and each married individual not filing a joint return with a spouse and having a gross income for the tax year of more than $1,500, as adjusted under the provisions of subsection (7), and married individuals not filing separate returns and having a combined gross income for the tax year of more than $3,000, as adjusted under the provisions of subsection (7), are liable for a return to be filed on forms and according to rules that the department may prescribe. The gross income amounts referred to in the preceding sentence must be increased by $800, as adjusted under the provisions of 15-30-112(6), for each additional personal exemption allowance that the taxpayer is entitled to claim for the taxpayer and the taxpayer's spouse under 15-30-112(3) and (4). ~~A nonresident shall file a return if the taxpayer's gross income for the tax year derived from sources within Montana exceeds the amount of the personal exemption that the taxpayer is entitled to claim for the taxpayer and the taxpayer's spouse under the provisions of 15-30-112(2) through (4).~~

(2) In accordance with instructions set forth by the department, each taxpayer who is married and living with husband or wife and is required to file a return may, at the taxpayer's option, file a joint return with husband or wife even though one of the spouses has neither gross income nor deductions. If a joint return is made, the tax must be computed on the aggregate taxable income and the liability with respect to the tax is joint and several. If a joint return has been filed for a tax year, the spouses may not file separate returns after the time for filing the return of either has expired unless the department consents.

(3) If a taxpayer is unable to make the taxpayer's own return, the return must be made by an authorized agent or by a guardian or other person charged with the care of the person or property of the taxpayer.

(4) All taxpayers, including but not limited to those subject to the provisions of 15-30-202 and 15-30-241, shall compute the amount of income tax payable and shall, at the time of filing the return required by this chapter, pay to the department any balance of income tax remaining unpaid after crediting the amount withheld, as provided by 15-30-202, and any payment made by reason of an estimated tax return provided for in 15-30-241. However, the tax computed must be greater by $1 than the amount withheld and paid by estimated return as provided in this chapter. If the amount of tax withheld and the payment of estimated tax exceed by more than $1 the amount of income tax as computed, the taxpayer is entitled to a refund of the excess.

(5) As soon as practicable after the return is filed, the department shall examine and verify the tax.

HeinOnline -- 1999 vol. I 302 1999

(6) If the amount of tax as verified is greater than the amount paid, the excess must be paid by the taxpayer to the department within 60 days after notice of the amount of the tax as computed, with interest added at the rate of 9% a year or fraction of a year on the additional tax. In that case, there may not be a penalty because of the understatement if the deficiency is paid within 60 days after the first notice of the amount is mailed to the taxpayer.

(7) By November 1 of each year, the department shall multiply the minimum amount of gross income necessitating the filing of a return by the inflation factor for the tax year. These adjusted amounts are effective for that tax year, and persons who have gross incomes less than these adjusted amounts are not required to file a return.

(8) Individual income tax forms distributed by the department for each tax year must contain instructions and tables based on the adjusted base year structure for that tax year."

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

Approved March 15, 1999

CHAPTER NO. 68

[SB 53]

AN ACT REQUIRING TAXPAYERS TO FILE AN AMENDED MONTANA RETURN WHEN THEIR FEDERAL TAXES ARE ADJUSTED OR THEY FILE AN AMENDED RETURN; AMENDING SECTIONS 15-1-206, 15-30-304, 15-31-506, AND 15-31-509, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-1-206, MCA, is amended to read:

"15-1-206. Waiver and abatement of penalties — interest. (1) The department may, in its discretion, waive the assessment of penalty for the late filing of ~~any~~ *a* tax statement or return required to be filed with the department when the filing is done within 5 days of the date specified for filing the return or statement and for the late payment of ~~any~~ *a* tax collected by the department when the payment is made within 5 days of the date specified for payment of the tax.

(2) Whenever the department waives or abates a penalty provided for in this title, it also may, in its discretion, waive or abate interest not to exceed $100 due upon the tax.

(3) Whenever the department is notified of a change in federal taxable income ~~as the result of a federal adjustment or~~ upon filing an amended ~~federal~~ *Montana* return, as provided for in 15-30-304, the department shall abate the interest on the additional tax liability from the date the department is notified until the department sends the statement of increased tax liability to the taxpayer."

Section 2. Section 15-30-304, MCA, is amended to read:

"15-30-304. Furnishing copy of federal return — copy of share of income, credit, and deductions schedule — copies of federal corrections

HeinOnline -- 1999 vol. I 303 1999

— **filing amended return required.** Each taxpayer shall, upon request of the department, furnish a copy of the return for the corresponding year that the taxpayer has filed or may file with the federal government, showing the taxpayer's net income and how obtained and the several sources from which derived. Partners of a partnership, shareholders of a subchapter S. corporation, and members or managers of a limited liability company who are subject to the workers' compensation old fund liability tax shall attach to their Montana individual income tax return a copy of the share of income, credit, and deductions schedule that the partner, shareholder, or member or manager received from the entity that reports income to the federal government for the corresponding year. If the amount of a taxpayer's taxable income is changed or corrected by the United States internal revenue service or other competent authority, the taxpayer shall ~~report the change or correction to~~ *file an amended Montana return with* the department within 90 days after receiving notice of the change or correction. If a taxpayer files an amended federal income tax return changing or correcting the taxpayer's federal taxable income for ~~any~~ *a* tax year, the taxpayer shall also file an amended *Montana* return with the department within 90 days after filing an amended federal income tax return. The department shall supply all necessary forms and shall, upon the request of the taxpayer, return all forms to the taxpayer after they have been examined by the department."

Section 3. Section 15-31-506, MCA, is amended to read:

"15-31-506. Copy of federal return required — report of amended federal return. Every corporation shall, upon request of the department of revenue, furnish a copy of its federal income tax return and the computation schedule filed for ~~such~~ *the* taxable year or years ~~as~~ *that* the department may specify in its request. If the amount of a corporation's taxable income reported on its federal income tax return or the computation schedule filed for ~~any~~ *a* taxable year is changed or corrected by the United States internal revenue service or other competent authority, the corporation shall ~~report such proposed change or correction to~~ *file an amended Montana return with* the department within 90 days after receiving official notice ~~thereof~~ *of the change or correction.* ~~Any~~ *A* corporation filing an amended federal income tax return changing or correcting its taxable income for ~~any~~ *a* taxable year shall also file an amended *Montana* return with the department within 90 days ~~thereafter~~ *after filing an amended federal income tax return.*"

Section 4. Section 15-31-509, MCA, is amended to read:

"15-31-509. Periods of limitation. (1) Except as otherwise provided in 15-31-544 and this section, a deficiency may not be assessed or collected with respect to the year for which a return is filed unless the notice of additional tax proposed to be assessed is mailed within 3 years from the date that the return was filed. For the purposes of this section, a return filed before the last day prescribed for filing is considered as filed on the last day. When, before the expiration of the period prescribed for assessment of the tax, the taxpayer consents in writing to an assessment after the time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The limitations prescribed for giving notice of a proposed assessment of additional tax may not apply when:

(a) the taxpayer has by written agreement suspended the federal statute of limitations for collection of federal tax if the suspension of the limitation set forth in this section lasts:

HeinOnline -- 1999 vol. I 304 1999

(i) only ~~so~~ *as* long as the suspension of the federal statute of limitation; or

(ii) until 1 year after ~~any~~ *the* federal changes have become final or ~~any~~ *an* amended federal return is filed as a result of the suspension of the federal statute, whichever is the latest in time; or

(b) a taxpayer has failed to file ~~a report of changes in federal taxable income or~~ an amended *Montana* return, as required by 15-31-506, until 3 years after the federal changes become final or the amended federal return was filed, whichever the case may be.

(2) A refund or credit may not be allowed or paid with respect to the year for which a return is filed after 3 years from the last day prescribed for filing the return or after 1 year from the date of the overpayment, whichever period expires the later, unless before the expiration of the period the taxpayer files a claim for the refund or credit or the department has determined the existence of the overpayment and has approved the refund or credit. If the taxpayer has agreed in writing under the provisions of subsection (1) to extend the time within which the department may propose an additional assessment, the period within which a claim for refund or credit may be filed or a credit or refund allowed in the event a claim is not filed must automatically be extended.

(3) If a claim for refund or credit is based upon an overpayment attributable to a net loss carryback adjustment as provided in 15-31-119, in lieu of the 3-year period provided for in subsection (1), the period must be the period that ends with the expiration of the 15th day of the 41st month following the end of the tax year of the net loss that results in the carryback.

(4) If the year of the net operating loss is open under either state or federal waivers, the year to which the loss is carried back will remain open for the purposes of the loss carryback and for 12 months following the expiration of the state or federal waiver, even though the claim would otherwise be barred under this section."

Section 5. Effective date. [This act] is effective on passage and approval.

Section 6. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

Approved March 15, 1999

CHAPTER NO. 69

[SB 84]

AN ACT PROVIDING FOR THE ISSUANCE OF A CORPORATE DISSOLUTION OR WITHDRAWAL CERTIFICATE VERIFYING THAT A CORPORATION HAS FILED ALL RETURNS AND PAID ALL TAXES CURRENTLY OWING TO THE STATE OF MONTANA PRIOR TO VOLUNTARY DISSOLUTION OR WITHDRAWAL; CLARIFYING THAT CORPORATE DISSOLUTION DOES NOT RELIEVE A CORPORATION OF ITS TAX LIABILITIES; AMENDING SECTIONS 15-31-143, 15-31-552, 35-1-935, AND 35-1-944, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-31-143, MCA, is amended to read:

HeinOnline -- 1999 vol. I 305 1999

"15-31-143. Return and payment on corporate dissolution. (1) ~~It is hereby declared that the policy of the state of Montana, both at the time of the enactment of the corporation license tax law and at all times since, has been and still is that every~~ *Each* corporation doing business in Montana shall pay an excise tax for the exercise of ~~such~~ *that* privilege, and ~~that~~ the amount of ~~such~~ *the excise* tax ~~shall~~ *must* be based upon the total taxable net income of ~~such corporations~~ *a corporation* during the entire period of time ~~they are~~ *that it is* engaged in business in this state. No remission of that obligation for the last year in which a corporation engages in business in Montana was intended by the original enactment of this section.

(2) ~~Therefore, every~~ *Each* corporation ~~which shall be~~ *that is* dissolved or ~~cease~~ *ceases* to do business in Montana ~~at any time during any year~~ shall, ~~before such~~ *upon the* dissolution or cessation of business, make a return and pay the corporation license tax determined on the basis of its net income for the final period in which it did business in this state at the rate provided in 15-31-121 and 15-31-122, in addition to all other corporation license taxes for which ~~such~~ *the* corporation may then be liable."

Section 2. Section 15-31-552, MCA, is amended to read:

"15-31-552. Corporation license *dissolution or withdrawal certificates and* tax clearance certificates furnished. *(1)* ~~Upon~~ *For purposes of voluntary withdrawal or dissolution as set forth in section 35-1-944, upon* request of a corporation, the department of revenue may furnish to it a *dissolution or withdrawal* certificate ~~to the effect that all taxes have been paid, that a return has been filed, and that all information has been supplied as required by the provisions of this chapter~~ *verifying that the corporation has filed all applicable returns and has paid all taxes owing the state up to the date of the request for dissolution or withdrawal.*

(2) Upon final withdrawal or dissolution, the department may furnish to a corporation a tax clearance certificate verifying that the corporation has filed all applicable returns and that all taxes have been paid through and including the corporation's final year of existence in Montana."

Section 3. Section 35-1-935, MCA, is amended to read:

"35-1-935. Effect of dissolution. (1) A dissolved corporation continues its corporate existence but may not carry on any business except that appropriate to wind up and liquidate its business and affairs, including:

(a) collecting its assets;

(b) disposing of its properties that will not be distributed in kind to its shareholders;

(c) discharging or making provision for discharging its liabilities;

(d) distributing its remaining property among its shareholders according to their interests; and

(e) doing every other act necessary to wind up and liquidate its business and affairs.

(2) Dissolution of a corporation does not:

(a) transfer title to the corporation's property;

HeinOnline -- 1999 vol. I 306 1999

(b) prevent transfer of its shares or securities, although the authorization to dissolve may provide for closing the corporation's share transfer records;

(c) subject its directors or officers to standards of conduct different from those prescribed in part 4;

(d) change quorum or voting requirements for its board of directors or shareholders; change provisions for selection, resignation, or removal of its directors or officers, or both; or change provisions for amending its bylaws;

(e) prevent commencement of a proceeding by or against the corporation in its corporate name;

(f) abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution; ~~or~~

(g) terminate the authority of the registered agent of the corporation; *or*

(h) discharge, abate, or forgive any tax liability of the corporation."

Section 4. Section 35-1-944, MCA, is amended to read:

"35-1-944. State ~~tax clearance~~ *dissolution or withdrawal* certificate. ~~No~~ *A* decree of voluntary dissolution ~~shall~~ *may not* be made and entered by ~~any~~ *a* court, nor shall the clerk of the district court of ~~any~~ *a* county or secretary of state file ~~any such~~ *a voluntary dissolution* decree or file any other document by which the term of existence of ~~any~~ *a* corporation is terminated, except a decree of involuntary dissolution in an action brought by the secretary of state~~, nor shall the~~. *The* secretary of state *may not* file ~~any~~ *an* application for a certificate of withdrawal by a foreign corporation of its right to do intrastate business in the state unless the corporation obtains from the department of revenue and files with ~~said~~ *the* court, clerk of the district court, or secretary of state, as part of the original instrument effecting the dissolution or withdrawal, a *dissolution or withdrawal* certificate ~~to the effect the department of revenue is satisfied from the available evidence that all taxes imposed by Title 15 have been paid~~ *issued pursuant to 15-31-552(1) verifying that the corporation has filed all applicable returns and has paid all taxes owing the state up to the date of the request for dissolution or withdrawal.* The issuance of the *dissolution or withdrawal certificate or tax clearance* certificate ~~shall~~ *does* not relieve the corporation from liability for ~~any~~ taxes, penalties, or interest due the state of Montana *including taxes, penalties, or interest incurred after the date of dissolution.*"

Section 5. Effective date. [This act] is effective on passage and approval.

Approved March 15, 1999

CHAPTER NO. 70

[HB 23]

AN ACT DEFINING ETHANOL-BLENDED FUEL; ELIMINATING THE REQUIREMENT THAT THE OPERATOR OF A STATE-OWNED MOTOR VEHICLE REPORT HAVING USED ETHANOL-BLENDED FUEL; ELIMINATING THE REQUIREMENT THAT A STATE AGENCY RETAIN RECORDS OF ETHANOL USE IN THE VEHICLES OWNED OR OPERATED BY ITS EMPLOYEES; ELIMINATING THE REQUIREMENT THAT THE

HeinOnline -- 1999 vol. I 307 1999

LEGISLATIVE AUDITOR REVIEW ETHANOL PURCHASE RECORDS; AND AMENDING SECTION 2-17-414, MCA.

WHEREAS, agriculture is a vital component of Montana's economy; and

WHEREAS, Governor Racicot has initiated Vision 2005, challenging a group of Montanans to devise strategies to increase the value of the state's raw agricultural products, specifically grain and wood; and

WHEREAS, raw agricultural materials, such as grain and wood, can he processed into high-octane fuel called ethanol; and

WHEREAS, ethanol is a clean, efficient, high-performance octane enhancer that replaces lead in motor fuel; and

WHEREAS, widespread use of ethanol could result in reducing the United States' reliance on imported oil; and

WHEREAS, eliminating the requirement that ethanol use in state vehicles he reported will reduce paperwork, making it easier for state employees to use ethanol-blended fuel, thus creating a larger market for the product and encouraging the establishment of ethanol production facilities.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-17-414, MCA, is amended to read:

"2-17-414. State vehicles to use ~~gasohol~~ *ethanol-blended fuel* — definition ~~— record of purchase required — audit~~. (1) ~~Each~~ *A* department, agency, institution, office, board, and commission of the executive, legislative, and judicial branches of state government and ~~each~~ *a* state institution of higher education owning or operating a motor vehicle capable of burning ~~gasohol~~ *ethanol-blended fuel* shall take all reasonable steps to ensure that the operators of those vehicles use ~~gasohol~~ *ethanol-blended fuel* in the vehicles if ~~gasohol~~ *ethanol-blended fuel* is ~~reasonably and~~ commercially available within the operating area of the vehicle and is priced competitively with the motor vehicle fuel otherwise used by the vehicle.

(2) For purposes of this section, ~~"gasohol" means all products commonly or commercially known or sold as gasohol and~~ *"ethanol-blended fuel" means a fuel mixture that is 90% gasoline and 10% anhydrous ethanol produced from agricultural products, including grain and wood or wood products, and that is* used for the purpose of effectively and efficiently operating internal combustion engines~~, consisting of not less than 10% anhydrous ethanol produced from agricultural products, including wood or wood products~~.

~~(3) An entity subject to the requirements of subsection (1) shall require that each purchase of gasohol by the operator of a motor vehicle using gasohol is reported to that entity by the motor vehicle operator.~~

~~(4)~~*(3)* An entity subject to the requirements of subsection (1) may not take any disciplinary, judicial, administrative, or other adverse action against the operator of a motor vehicle for failing to purchase ~~gasohol~~ *ethanol-blended fuel* for the operation of the motor vehicle.

~~(5) An entity subject to the requirements of subsection (1) shall retain for the period of time required by law the record of the purchase of gasohol used. The purchase records must be reviewed by the legislative auditor during every financial audit of the entity.~~"

Approved March 16, 1999

HeinOnline -- 1999 vol. I 308 1999

CHAPTER NO. 71

[HB 41]

AN ACT EXTENDING THE TERMINATION DATE FOR THE USER SURCHARGE IN CRIMINAL, CIVIL, AND PROBATE PROCEEDINGS FOR STATE FUNDING OF COURT INFORMATION TECHNOLOGY; AMENDING SECTION 4, CHAPTER 361, LAWS OF 1995; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 4, Chapter 361, Laws of 1995, is amended to read:

"Section 4. Effective date — termination ~~date~~. (1) [This act] is effective July 1, 1995.

(2) [This act] terminates June 30, ~~1999~~ *2003*."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 16, 1999

CHAPTER NO. 72

[HB 94]

AN ACT MAKING PERMANENT THE ATTORNEY GENERAL'S DUTY TO REPRESENT THE STATE IN BANKRUPTCY PROCEEDINGS IN WHICH THE STATE'S INTEREST MAY BE AFFECTED; ALLOWING THE ATTORNEY GENERAL'S REPRESENTATION TO INCLUDE OTHER DEBT COLLECTION PROCEEDINGS; PROVIDING AUTHORITY FOR THE COLLECTION OF FEES TO COVER THE COSTS OF THE BANKRUPTCY PROGRAM; AMENDING SECTION 2-15-501, MCA; REPEALING SECTION 4, CHAPTER 196, LAWS OF 1995, AND SECTION 1, CHAPTER 82, LAWS OF 1997; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-501, MCA, is amended to read:

"2-15-501. ~~(Temporary)~~ General duties. It is the duty of the attorney general:

(1) to prosecute or defend all causes in the supreme court in which the state or any officer of the state in the officer's official capacity is a party or in which the state has an interest;

(2) to represent the state in all bankruptcy proceedings in which the state's interest may be affected *and in other debt collection proceedings at the request of a state agency*;

(3) after judgment in any of the causes referred to in subsections (1) and (2), to direct the issuing of a process as may be necessary to carry the judgment into execution;

(4) to keep a register of all cases prosecuted or defended by tbe attorney general. The register must be open to the inspection of the public during business hours. The attorney general shall deliver the register to the attorney general's successor in office.

HeinOnline -- 1999 vol. I 309 1999

(5) to exercise supervisory powers over county attorneys in all matters pertaining to the duties of their offices and from time to time require of them reports as to the condition of public business entrusted to their charge. The supervisory powers granted to the attorney general by this subsection include the power to order and direct county attorneys in all matters pertaining to the duties of their office. The county attorney shall, when ordered or directed by the attorney general, promptly institute and diligently prosecute in the proper court and in the name of the state of Montana any criminal or civil action or special proceeding.

(6) when required by the public service or directad by the governor, to assist the county attorney of any county in the discharge of the county attorney's duties or to prosecute or defend appropriate cases in which the state or any officer of the state in the officer's official capacity is a party or in which the state has an interest;

(7) to give an opinion in writing, without fee, to the legislature or either house of the legislature, to any state officer, board, or commission, to any county attorney, to the city attorney of any city or town, or to the board of county commissioners of any county of the state when required upon any question of law relating to their respective offices. The attorney general shall give the opinion within 3 months following the date that it is requested unless the attorney general certifies in writing to the requesting party that the question is of sufficient complexity to require additional time. If an opinion issued by the attorney general conflicts with an opinion issued by a city attorney, county atterney, or an attorney employed or retained by any state officer, board, commission, or departinent, the attorney general's opinion is controlling unless overruled by a state district court or the supreme court.

(8) to discharge the duties of a member of the board of examiners and state board of land commissioners;

(9) to perform all other duties as required by law. ~~(Terminates June 30, 1999—sec. 1, Ch. 82, L. 1997.)~~

~~**2-15-501. (Effective July 1, 1999) General duties. It is the duty of the attorney general:**~~

~~**(1) to prosecute or defend all causes in the supreme court in which the state or any officer of the state in his official capacity is a party or in which the state has an interest;**~~

~~**(2) after judgment in any of the causes referred to in subsection (1), to direct the issuing of a process as may be necessary to carry the judgment into execution;**~~

~~**(3) to keep a register of all cases prosecuted or defended by him, which must during business hours be open to the inspection of the public. The attorney general must deliver the register to his successor in office.**~~

~~**(4) to exercise supervisory powers over county attorneys in all matters pertaining to the duties of their offices and from time to time require of them reports as to the condition of public business entrusted to their charge. The supervisory powers granted to the attorney general by this subsection include the power to order and direct county attorneys in all matters pertaining to the duties of their office. The county attorney shall, when ordered or directed by the attorney general, promptly institute and diligently prosecute in the proper court**~~

~~and in the name of the state of Montana any criminal or civil action or special proceeding.~~

~~(5) when required by the public service or directed by the governor, to assist the county attorney of any county in the discharge of his duties or to prosecute or defend appropriate cases in which the state or any officer of the state in his official capacity is a party or in which the state has an interest;~~

~~(6) to give his opinion in writing, without fee, to the legislature or either house of the legislature, to any state officer, board, or commission, to any county attorney, to the city attorney of any city or town, and to the board of county commissioners of any county of the state when required upon any question of law relating to their respective offices. He shall give any such opinion within 3 months following the date it is requested unless he certifies in writing to the requesting party that the question is of sufficient complexity to require additional time. If an opinion issued by the attorney general conflicts with an opinion issued by a city attorney, county attorney, or an attorney employed or retained by any state officer, board, commission, or department, the attorney general's opinion is controlling unless overruled by a state district court or the supreme court.~~

~~(7) to discharge the duties of a member of the board of examiners and state board of land commissioners;~~

~~(8) to perform all other duties as required by law.~~"

Section 2. Representation of state in bankruptcy and debt collection proceedings — collection of fees from state agencies. (1) In all matters involving bankruptcy or collection of debts owed to the state in which the attorney general provides legal assistance to a state agency, the attorney general may charge a fee to the agency plus reimbursement for actual expenses reasonably incurred. The fee may be an hourly charge, or the attorney general may designate a percentage of collected proceeds to be retained for the costs of providing legal assistance. The fees and expenses must be reasonably related to the costs of the attorney general in providing legal assistance to state agencies in bankruptcy and debt collection matters.

(2) Fees and expenses retained by the attorney general under subsection (1) must be deposited in an account in the internal service fund for the costs of providing legal assistance in bankruptcy and debt collection matters. Any funds in excess of the amount appropriated for operation of the bankruptcy program must be carried forward into the next fiscal year for continued operation of the program. Any excess funds carried forward into the next fiscal year, after meeting a 60-day working capital reserve, must be used to reduce the designated percentage of the collected proceeds charged to the various agencies. All amounts collected that are not applied to fees must be depesited to the account or fund of the agency to which the debt was originally owed.

Section 3. Repealer. Section 4, Chapter 196, Laws of 1995, and section 1, Chapter 82, Laws of 1997, are repealed.

Section 4. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 2, chapter 15, part 5, and the provisions of Title 2, chapter 15, part 5, apply to [section 2].

Section 5. Effective date. [This act] is effective June 30, 1999.

Approved March 16, 1999

HeinOnline -- 1999 vol. I 311 1999

CHAPTER NO. 73

[HB 110]

AN ACT AUTHORIZING AN ADDITIONAL $15 MILLION IN GENERAL OBLIGATION BONDS TO PROVIDE THE STATE MATCHING FUNDS FOR THE WATER POLLUTION CONTROL STATE REVOLVING FUND; AUTHORIZING THE CREATION OF STATE DEBT; AMENDING SECTION 75-5-1122, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, Chapter 678, Laws of 1989, created the wastewater treatment works revolving fund (later renamed as the water pollution control state revolving fund), authorized the issuance and sale of general obligation bonds to provide a state match to federal program funds, and created a related state debt ceiling of $10 million; and

WHEREAS, section 21, Chapter 553, Laws of 1995, increased this debt ceiling to $15 million, but was not codified; and

WHEREAS, the federal government has continued to contribute te the program beyond the 5 to 10 years envisioned in 1989, and the state is approaching its debt ceiling for this program; and

WHEREAS, the deht ceiling should be raised to $30 million and the result codified.

Be it enacted by the Legislature of the State of Montana:

Seetion 1. Section 75-5-1122, MCA, is amended to read:

"75-5-1122. Creation of debt. The legislature, tbrough the enactment of this law by a two-thirds vote of the members of each house, authorizes the creation of state debt in an amount not to exceed ~~$10~~ *$30* million and the issuance and sale of general obligation bonds in this amount for the purpose of providing the state's sbare of the program."

Seetion 2. Two-thirds vote required. Because [section 1] authorizes the creation of state deht, Article VIII, section 8, of the Montana constitution requires a vote of two-thirds of the members of each house of tbe legislature for passage.

Section 3. Effective date. [This act] is effective on passage and approval.

Approved March 16, 1999

CHAPTER NO. 74

[HB 121]

AN ACT PROHIBITING PYRAMID PROMOTION SCHEMES AND PROVIDING CRIMINAL PENALTIES; AND REQUIRING MULTILEVEL DISTRIBUTION COMPANIES TO FILE A NOTICE OF ACTIVITY WITH THE SECURITIES COMMISSIONER AND TO CONSENT TO SERVICE OF PROCESS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. As used in [sections 1 through 3], the following definitions apply:

HeinOnline -- 1999 vol. I 312 1999

(1) (a) "Compensation" means the receipt of money, a thing of value, or a financial benefit.

(b) Compensation does not include:

(i) payments to a participant based upon the sale of goods or services by the participant to third persons when the goods or services are purchased for actual use or consumption; or

(ii) payments to a participant based upon the sale of goods or services to the participant that are used or consumed by the participant.

(2) (a) "Consideration" means the payment of money, the purchase of goods or services, or the purchase of intangible property.

(b) Consideration does not include:

(i) the purchase of goods or services furnished at cost that are used in making sales and that are not for resale; or

(ii) a participant's time and effort expended in the pursuit of sales or in recruiting activities.

(3) (a) "Multilevel distribution company" means a person that:

(i) sells, distributes, or supplies goods or services through independent agents, contractors, or distributors at different levels of distribution;

(ii) may recruit other participants in the company; and

(iii) is eligible for commissions, cross-commissions, override commissions, bonuses, refunds, dividends, or other consideration that is or may be paid as a result of the sale of goods or services or the recruitment of or the performance or actions of other participants.

(b) The term does not include an insurance producer, real estate broker, or salesperson or an investment adviser, investment adviser representative, broker-dealer, or salesperson, as defined in 30-10-103, operating in compliance with this chapter.

(4) "Participant" means a person involved in a sales plan or operation.

(5) "Person" means an individual, corporation, partnership, limited liability company, or other business entity.

(6) (a) "Pyramid promotional scheme" means a sales plan or operation in which a participant gives consideration for the opportunity to receive compensation derived primarily from obtaining the participation of other persons in the sales plan or operation rather than from the sale of goods or services by the participant or the other persons induced to participate in the sales plan or operation by the participant.

(b) A pyramid promotional scheme does not include a sales plan or operation that:

(i) does not compensate a participant solely for obtaining the participation of other persons in the sales plan or operation;

(ii) subject to the provisions of subsection (6)(b)(vi), provides compensation to a participant based primarily upon the sale of goods or services by the participant, including goods or services used or consumed by the participant, and provides compensation to the participant based upon the sale of goods or services

by persons whose participation in the sales plan or operation has been obtained by the participant;

(iii) does not require a participant to purchase goods or services in an amount that unreasonably exceeds an amount that can be expected to be resold or consumed within a reasonable period of time;

(iv) is authorized to use a federally registered trademark or servicemark that identifies the company promoting the sales plan or operation, the goods or services sold, or the sales plan or operation;

(v) (A) provides each person joining the sales plan or operation with a written agreement containing or a written statement describing the material terms of participating in the sales plan or operation;

(B) allows a person at least 15 days to cancel the person's participation in the sales plan or operation plan; and

(C) provides that if the person cancels participation within the time provided and returns any required items, the person is entitled to a refund of any consideration given to participate in the sales plan or operation; and

(vi) (A) provides for, upon the request of a participant deciding to terminate participation in the sales plan or operation, the repurchase, at not less than 90% of the amount paid by the participant, of any currently marketable goods or services sold to the participant within 12 months of the request that have not been resold or consumed by the participant; and

(B) if disclosed to the participant at the time of purchase, provides that goods or services are not considered currently marketable if the goods have been consumed or the services rendered or if the goods or services are seasonal, discontinued, or special promotional items. Sales plan or operation promotional materials, sales aids, and sales kits are subject to the provisions of this subsection (6)(b)(vi) if they are a required purchase for the participant or if the participant has received or may receive a financial benefit from their purchase.

Section 2. Operating pyramid promotional scheme unlawful. (1) A person may not conduct or promote or cause to be conducted or promoted a pyramid promotional scheme.

(2) A person who violates the provisions of subsection (1) shall be fined an amount not more than $10,000 or be imprisoned for not more than 10 years, or both.

Section 3. Notice of activity — consent to service. (1) A multilevel distribution company with a participant that is a resident of this state shall file annually with the securities commissioner on a form prescribed by the commissioner and designating the commissioner as its agent for service of process for any alleged violation of [section 2]. Compliance with this section may not by itself subject a company to the provisions of any other statute of this state or to any taxes, licenses, or fees.

(2) The commissioner may require a multilevel distribution company to disclose only the following substantive information:

(a) the names, addresses, and titles of the multilevel distribution company's officers, directors, and trustees;

HeinOnline -- 1999 vol. I 314 1999

(b) the corporate name; the headquarters street, mailing, and e-mail addresses, as well as telephone and telefax numbers; and the state of domicile and state of incorporation of the multilevel distrihution company; and

(c) a detailed description of the levels of distribution in the multilevel distribution company, the manner of compensating participants, and the compensation structure of the marketing plan.

(3) This section does not preclude the commissioner from ohtaining information required of participants during the course of an investigation or proceeding initiated under this chapter.

Section 4. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 30, chapter 10, part 3, and the provisions of Title 30, chapter 10, part 3, apply to [sections 1 through 3].

Approved March 16, 1999

CHAPTER NO. 75

[HB 123]

AN ACT PROVIDING THAT THE STATE'S SHARE OF COUNTY ATTORNEY SALARIES BE PAID EVERY 2 WEEKS INSTEAD OF MONTHLY; ALLOWING A COUNTY'S SHARE OF A COUNTY ATTORNEY'S OR DEPUTY COUNTY ATTORNEY'S SALARY TO BE PAID MONTHLY, TWICE MONTHLY, OR EVERY 2 WEEKS; AMENDING SECTION 7-4-2502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-4-2502, MCA, is amended to read:

"7-4-2502. Payment of salaries of county officials and assistants. (1) ~~Except as provided in subsection (2), the~~ *The* salaries of the county officers and their assistants may be paid monthly, twice monthly, or every 2 weeks out of the general fund of the county and upon the order of the board of county commissioners.

(2) (a) The ~~salaries of the county attorney and deputy county attorneys authorized by 7-4-2703 are payable monthly, with the~~ salary of the county attorney *is* payable one-half from the general fund of the county and, if the county has supplied the information to the department of justice for inclusion in its budget, the other one-half from the state treasury upon the warrant of the state treasurer. If the county has not supplied information concerning any scheduled or proposed increase in salary for the county attorney te the department of justice for inclusion in material submitted to the budget director under Title 17, chapter 7, part 1, the county is responsihle for any increased salary. *The state's share of the county attorney's salary is payable every 2 weeks.*

(b) The county commissioners of each county shall, within 30 days after the election or appointment to fill a vacancy for any cause in the office of county attorney, certify the election or appointment to the department of justice. The department shall notify the state treasurer of the salary of the county attorney. The state treasurer shall draw warrants for the county attorney salaries in the same manner as for state officers. In case of a vacancy, the county commissioners

HeinOnline -- 1999 vol. I 315 1999

shall immediately notify the department of justice, and the department shall compute the salary due on the basis of the notification.

(3) The board ~~has jurisdiction and power~~ *may*, under limitations and restrictions prescribed by law, ~~to~~ fix the compensation of all county officers not otherwise fixed by law and ~~to~~ provide for the payment of the compensation and may, for all or the remainder of each fiscal year, in conjunction with setting salaries for other officers as provided in 7-4-2504(1), set their salaries at the prior fiscal year level."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 16, 1999

CHAPTER NO. 76

[HB 171]

AN ACT REQUIRING THE INSURANCE COMMISSIONER TO ADOPT RULES PERTAINING TO LIFE INSURANCE POLICY ILLUSTRATIONS, ANNUITY DISCLOSURE, AND SALES ILLUSTRATIONS; AND AMENDING SECTION 33-20-101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Life insurance policy and sales illustrations — annuity disclosure — rules. (1) (a) The commissioner shall adopt rules providing for and regulating life insurance policy illustrations, annuity disclosure, and sales illustrations that are marketed, issued, or issued for delivery to Montana residents.

(b) The rules must specify any types of life insurance or annuities that are exempt from the provisions of the rules.

(2) The rules must be designed to:

(a) protect life insurance and annuity consumers;

(b) foster consumer education;

(c) improve consumers' ability to understand the basic features of life insurance policies and annuities; and

(d) improve consumers' ability to select the most appropriate plan of life insurance or annuity.

(3) Rules that are adopted by the commissioner may not go beyond the scope of, or contain material differences from, the national association of insurance commissioners' life insurance illustrations, annuity disclosure, and sales model regulations.

(4) After the effective date of rules that are adopted pursuant to this section, a group or individual life insurance policy, certificate, or annuity may not be marketed, issued, or issued for delivery to a Montana resident unless the policy, certificate, or annuity conforms to the rules that are adopted pursuant to this section.

Section 2. Section 33-20-101, MCA, is amended to read:

HeinOnline -- 1999 vol. I 316 1999

"**33-20-101. Scope.** (1) Except as provided in subsection (2), parts 1 through 5 of this chapter apply only to contracts of life insurance and annuities, other than reinsurance, group life insurance, and group annuities.

(2) Sections 33-20-114, ~~and~~ 33-20-131, *and [section 1]* also apply to group life insurance and group annuities."

Section 3. Codification instruction. [Section 1] is intended to he codified as an integral part of Title 33, chapter 20, and the provisions of Title 33, chapter 20, apply to [section 1].

Approved March 16, 1999

CHAPTER NO. 77

[HB 172]

AN ACT PROVIDING FOR THE USE OF ELECTRONIC FUNDS TRANSFER IN PAYMENT OF FUEL TAXES AND ASSOCIATED FEES, PENALTIES, AND INTEREST; ALLOWING AN EXTRA 3 DAYS FOR PAYMENT IF ELECTRONIC FUNDS TRANSFER IS USED; ALLOWING THE DEPARTMENT OF TRANSPORTATION TO REQUIRE THAT INDIVIDUALS WHO RECEIVE OR DISPENSE FUEL FILE FUEL TAX RETURNS ELECTRONICALLY; AND AMENDING SECTIONS 15-70-112, 15-70-113, 15-70-114, 15-70-115, 15-70-205, 15-70-344, AND 15-70-352, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-70-112, MCA, is amended to read:

"**15-70-112. Definitions.** As used in this chapter, the following definitions apply:

(1) "Departnient" nieans the department of transportation as provided for in 2-15-2501.

(2) "Electronic funds transfer" means any transfer of funds, other than a transaction originated by check, draft, or sinnilar paper instrunient, that is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, histruct, or authorize a financial institution to debit or credit an account.

(3) "Taxes" means the taxes provided for in this chapter.

(4) "Total remittance" means taxes, interest, and penalties collected under this chapter and cleanup fees collcted by the department as provided in 75-11-314."

Section 2. Section 15-70-113, MCA, is amended to read:

"**15-70-113. ~~Taxes~~ *Total remittance* payable by electronie funds transfer.** ~~Taxes~~ *(1) Total remittance* due the state may be paid by electronic funds transfer.

(2) If the payment of ~~taxes~~ *total remittance* is by electronic funds transfer under this section and the due date falls on a Saturday, Sunday, or legal holiday, the payment must be made on the first business day following the Saturday, Sunday, or legal holiday.

HeinOnline -- 1999 vol. I 317 1999

(3) If the payment of the tax due on gasoline or special fuel pursuant to 15-70-205 and 15-70-344 is made by electronic funds transfer, the payment due date is the 28th day of each calendar month."

Section 3. Section 15-70-114, MCA, is amended to read:

"15-70-114. Electronic filing of tax returns and required information. The department may require ~~any~~ *a* person, including an importer, exporter, common carrier, private carrier, or contract carrier, who receives or dispenses ~~taxable fuels~~ *fuel* and who is licensed or not licensed under this chapter, to file tax returns and information required by the department in an approved, computer-generated, magnetic media data format."

Section 4. Section 15-70-115, MCA, is amended to read:

"15-70-115. Rules. The department shall adopt rules necessary to implement 15-70-112 through 15-70-115, including but not limited to rules:

(1) coordinating the filing of tax returns by electronic means with the payment of ~~taxes~~ *total remittance* by electronic funds transfer;

(2) specifying the form and content of electronic funds transfer messages in order to ensure the proper receipt and crediting of the ~~tax~~ payment *of total remittance*; and

(3) specifying the form and content of information required by the department in an approved, computer-generated, magnetic media data format in order to ensure the propor receipt of the information."

Section 5. Section 15-70-205, MCA, is amended to read:

"15-70-205. (Temporary) Distributor's statement and payment — confidentiality. (1) Each distributor shall, not later than the 25th day of each calendar month, *except as provided in 15-70-113(3),* render a true signed statement to the department of transportation of all gasoline distributed and received by the distributor in this state during the preceding calendar month and containing any other information that the department may reasonably require in order to administer the gasoline license tax law. The statement must be accompanied by a payment in an amount equal to the tax imposed by 15-70-204 less any refund credit issued under 15-70-226 and less 1% of the total tax that may be deducted by the distributor as an allowance for collecting the tax. An allowance may not be deducted from the 3-cent tax on aviation fuel.

(2) A distributor engaged in or carrying on a business at more than one place or location in this state may include all places of business in one statement.

(3) The department or a deputy, assistant, agent, clerk, or other employee of the department may not publish or otherwise disseminate information contained in a statement required under this section in a form that allows identification of a distributor or a purchaser of gasoline. This section ~~may not be construed to~~ *does not* prohibit:

(a) the delivery to a distributor or the distributor's authorized representative of a certified copy of any return or report filed in connection with the tax;

(b) the inspoction by the attorney general or other legal representative of the state of the report or return of a distributor who brings an action to set aside or review the tax based on the report or return or against whom an action or proceeding has been instituted in accordance with the provisions of Title 15;

HeinOnline -- 1999 vol. I 318 1999

(c) the publication of statistics classified to prevent the identification of particular reports or returns and the items in the reports or returns;

(d) the inspection by the commissioner of internal revenue of the United States or the proper officer or any representative of either officer of the report or return of any distributor or the furnishing to the officer or authorized representative of an abstract of the repert or return, but permission must be granted or information must be furnished to the officer or the officer's representative if the statutes of the United States or tbe other state grant substantially similar privileges to the proper officer of this state charged with the administration of this chapter or in compliance with 15-70-121 and 15-70-122; or

(e) the compliance of tbe department with any order of a court of competent jurisdiction. (Terminates on occurrence of contingency—sec. 17, Ch. 642, L. 1993.)

15-70-205. (Effective on occurrence of contingency) Distributor's statement and payment — confidentiality. (1) Each distributor shall, not later than the 25th day of each calendar month, *except as provided in 15-70-113(3),* render a true signed statement to the department of transportation of all gasoline distributed and received by the distributor in this state during the preceding calendar month and containing any other information that the department may reasonably require in order to administer the gasoline license tax law. The statement must be accompanied by a payment in an amount equal to the tax impesed by 15-70-204 less any refund credit issued under 15-70-226 and less 1% of tbe total tax that may be deducted by the distributor as an allowance for collecting the tax. An allowance may not be deducted from the 2-cent tax on aviation fuel.

(2) A distributor engaged in or carrying on a business at more than one place or location in this state may include all places of business in one statement.

(3) The department or a deputy, assistant, agent, clerk, or other employee of the department may not publish or otherwise disseminate information contained in a statement required under this section in a form that allows identification of a distributor or a purchaser of gasoline. This section ~~may not be construed to~~ *does not* prohibit:

(a) the delivery to a distributor or the distributor's authorized representative of a certified copy of any return or repert filed in connection with the tax;

(b) the inspection by the attorney ganeral or other legal representative of the state of the report or return of a distributor who brings an action to set aside or review the tax based on tbe report or return or against whom an action or proceeding has been instituted in accordance witb the provisions of Title 15;

(c) the publication of statistics classified to prevent the identification of particular reports or returns and the items in the reports or returns;

(d) the inspection by the commissioner of internal revenue of the United States or the propor officer or any representative of eitber officer of the report or return of any distributor or the furnishing to the officer or authorized representative of an abstract of the report or return, but pormission must be granted or information must be furnished to the officer or the officer's representative if the statutes of the United States or tbe other state grant substantially similar privileges to the proper officer of this state charged with the administration of tbis cbapter or in compliance with 15-70-121 and 15-70-122; or

(e) the compliance of the department with any order of a court of competent jurisdiction."

Section 6. Section 15-70-344, MCA, is amended to read:

"15-70-344. Distributor's statement and payment — confidentiality. (1) Each distributor shall, not later than the 25th day of each calendar month, *except as provided in 15-70-113(3),* render to the department of transportation a signed statement that specifies all special fuel distributed and received by the distributor in this state during the preceding calendar month and that contains other information the department may reasonably require in order to administer the special fuel license tax law. The statement must be accompanied by a payment in an amount equal to the tax imposed by 15-70-343, less any refund credit issued under 15-70-356 and less 1% of the total tax that may be deducted by the distributor as an allowance for collection.

(2) A distributor engaged in or carrying on a business at more than one location in this state may include all places of business in one statement.

(3) The department or a deputy, assistant, agent, clerk, or other employee of the department may not publish or otherwise disseminate information contained in a statement required under this section in a form that allows identification of a distributor or a purchaser of special fuel. This section ~~may not be construed to~~ *does not* prohibit:

(a) the delivery to a distributor or a distributor's authorized representative of a certified copy of any return or report filed in connection with the distributor's tax;

(b) the inspection by the attorney general or by another legal representative of the state of the report or return of a distributor who brings an action to set aside or review the tax based on the report or return or against whom an action or proceeding has been instituted in accordance with the provisions of Title 15;

(c) the publication of statistics classified to prevent the identification of particular reports or returns and the items in the reports or returns;

(d) the inspection by the commissioner of internal revenue of the United States or by the proper officer of any state imposing a tax on special fuel or by any representative of either officer of the report or return of any distributor or the furnishing to the officer or authorized representative of an abstract of the report or return, but permission must be granted or information must be furnished to the officer or the officer's representative only if the statutes of the United States or the other state grant substantially similar privileges to the proper officer of this state charged with the administration of this chapter or in compliance with 15-70-121 and 15-70-122; or

(e) the compliance of the department with any order of a court of competent jurisdiction."

Section 7. Section 15-70-352, MCA, is amended to read:

"15-70-352. Penalties for delinquency. (1) Any license tax not paid within the time provided in *15-70-113(3) and* 15-70-344 is delinquent, a penalty of 10% is added to the tax, and the tax bears interest at the rate of 1% on the tax due for each calendar month or fraction of a month. Upon a showing of good cause by the distributor, the department of transportation may waive penalty.

(2) If any distributor or other person subject to the payment of the license tax willfully fails, neglects, or refuses to make any statement required by this

HeinOnline -- 1999 vol. I 320 1999

part or willfully fails to make payment of the license tax within the time provided, the department may revoke any license issued under this part.

(3) The department shall set forth the information it requires in the statement and determine the amount of the license tax due from the distrihutor and shall add a penalty of $25 or 10% of the amount due, whichever is greater, together with an interest rate of 1% per month or fraction of a month from the date the statements should have been made and the license tax should have heen paid.

(4) The department shall proceed to collect the license tax, with penalties and interest. At the request of the department, the attorney general shall commence and prosecute to final determination in any court of competent jurisdiction an action to collect the license tax."

Approved March 16, 1999

CHAPTER NO. 78

[HB 200]

AN ACT REVISING THE PENALTY FOR VIOLATING SPECIAL CONDITIONS AND LABOR PRACTICE PROVISIONS FOR PUBLIC CONSTRUCTION CONTRACTS; AND AMENDING SECTION 18-2-432, MCA.

Be it enacted by the Legislature of the State of Montana:

Seetion 1. Section 18-2-432, MCA, is amended to read:

"18-2-432. **Penalty for violation.** (1) *(a)* If a person, firm, or corporation fails to comply with tbe provisions of this part, the state, county, municipality, school district, or officer of a political subdivision that executed the public works contract shall retain $1,000 of the contract price as liquidated damages for the violation of the terms of the public works contract, and the money must be credited to the proper funds of the state, county, municipality, school district, or political subdivision.

(b) If a person, firm, or corporation fails to comply with the provisions of this part due to gross negligence, as determined by the commissioner, the commissioner may retain up to an additional $10,000 above the amount provided for in subsection (1)(a) as a penalty for the violation of the terms of the public works contract. The money retained pursuant to this subsection (1)(b) must be credited to the proper funds of the state, county, municipality, school district, or other political subdivision.

(2) Whenever a contractor or subcontractor is found by the commissioner to have aggravatedly or willfully violated the labor standards provisions of this chapter, the contractor or subcontractor or any firm, corporation, partnership, or association in which the contractor or suhcontractor has a substantial interest is ineligible, for a period not to exceed 3 years after the date of the final judgment, to receive any public works contracts or subcontracts that are subject to the provisions of this chapter.

(3) Whenever an action has been instituted in a district court in this state against any person, firm, or corporation for the violation of this part, the court in which the action is pending is authorized to issue an injunction to restrain the person, firm, or corporation from proceeding with a puhlic works contract with

HeinOnline -- 1999 vol. I 321 1999

the state, county, municipality, school district, or political subdivision, pending the final determination of the instituted action."

Approved March 16, 1999

CHAPTER NO. 79

[HB 231]

AN ACT EXEMPTING EX-PRISONERS OF WAR FROM THE LIGHT VEHICLE TAX, THE VEHICLE REGISTRATION FEE, AND THE FEE ASSOCIATED WITH SPECIAL LICENSE PLATES; ALLOWING THE SURVIVING SPOUSE OF AN EX-PRISONER OF WAR TO RETAIN THE PLATES UNDER CERTAIN CIRCUMSTANCES; AND AMENDING SECTIONS 61-3-321, 61-3-332, 61-3-426, AND 61-3-504, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-3-321, MCA, is amended to read:

"**61-3-321. Registration fees of vehicles — ~~public-owned~~ *certain* vehicles exempt from license or registration fees — disposition of fees.** (1) Registration or license fees must be paid upon registration or reregistration of motor vehicles, trailers, housetrailers, and semitrailers, in accordance with this chapter, as follows:

(a) motor vehicles weighing 2,850 pounds or under (other than motortrucks), $5;

(b) motor vehicles weighing over 2,850 pounds (other than motortrucks), $10;

(c) electrically driven passenger vehicles, $10;

(d) all motorcycles and quadricycles, $2;

(e) tractors or trucks, $10;

(f) buses, which are classed as motortrucks, licensed accordingly;

(g) trailers and semitrailers less than 2,500 pounds declared weight and housetrailers of all weights, $2;

(h) trailers and semitrailers over 2,500 up to 6,000 pounds declared weight (except housetrailers), $5;

(i) trailers and semitrailers over 6,000 pounds declared weight, $10, except trailers and semitrailers registered in other jurisdictions through a proportional registration agreement;

(j) trailers used exclusively in the transportation of logs in the forest or in the transportation of oil and gas well machinery, road machinery, or bridge materials, new and secondhand, $15 annually, regardless of size or capacity.

(2) All rates are 25% higher for motor vehicles, trailers, and semitrailers that are not equipped with pneumatic tires.

(3) "Tractor", as specified in this section, means any motor vehicle, except a passenger car, that is used for towing a trailer or semitrailer.

HeinOnline -- 1999 vol. I 322 1999

(4) If a motor vehicle, housetrailer, trailer, or semitrailer is originally registered 6 months after the time of registration as set by law, the registration or license fee for the remainder of the year is one-half of the regular fee except for trailers or semitrailers registered as provided in 61-3-721(6).

(5) An additional fee of $5.25 a year for each registration of a vehicle, except trailers and semitrailers registered in other jurisdictions and registered through a proportional registration agreement, must be collected as a registration fee. Revenue from this fee must be forwarded by the respective county treasurers to the state treasurer for deposit in the general fund. The department shall pay an amount equal to 25 cents from each moter vehicle registration fee from the general fuiid to the pension trust fund for payment of supplemental benefits provided for in 19-6-709.

(6) A fee of $2 for each set of new number plates must be collected when number plates provided for under 61-3-332(3) are issued. Revenue from this fee must be deposited as provided in subsection (5).

(7) The provisions of this part with respect to the payment of registration fees do not apply to and are not binding upon motor vehicles, trailers, semitrailers, or tractors owned or controlled by the United States of America or any state, county, city, or special district, as defined in 18-8-202.

(8) The provisions of this section relating to tbe payment of registration fees or new number plate fees do not apply when number plates are transferred to a replacement vehicle under 61-3-317, 61-3-332, or 61-3-335.

(9) A person qualifying under 61-3-332(10)(d) or [section 4] is exempt from the fees required under subsections (1) and (5). (See compiler's comments for contingent termination of certain text.)"

Section 2. Section 61-3-332, MCA, is amended to read:

"61-3-332. Number plates. (1) A motor vehicle that is driven upon the streets or highways of Montana must display both front and rear number plates, bearing the distinctive number assigned to the vehicle. The number plates are in 10 series: one series for owners of motorcars, one for owners of motor vehicles of the motorcycle or quadricycle type, one for trailers, one for trucks, one for dealers in vehicles of the motorcycle or quadricycle type that bear the distmctive letters "MCD" or the letters "MC" and tbe word "DEALER", one for franchised dealers in new motorcars (including trucks and trailers) or new and used motorcars (including trucks and trailers) tbat bear tbe distinctive letter "D" or the word "DEALER", one for dealers in used motercars only (including used trucks and trailers) that bear tbe distinctive letters "UD" or the letter "U" and the word "DEALER", one for dealers in trailers and/or semitrailers (new or used) that bear the distinctive letters "DTR" or the letters "TR" and the word "DEALER", one for dealers in recreational vehicles that bear the distinctive letters "RV" or the letter "R" and the word "DEALER", and one for special license plates. All markings for the various kinds of dealers' plates must be placed on the number plates assigued to the dealer, in the position that the department designates.

(2) All number plates for motor vehicles must be issued for a minimum poriod of 4 years, bear a distinctive marking, and be furnished by the state. In years when number plates are not issued, the department shall provide nonremovable stickers bearing appropriate registration numbers that must be affixed to the license plates in use.

HeinOnline -- 1999 vol. I 323 1999

(3) Subject to the provisions of this section, the department shall create a new design for number plates as provided in this section.

(4) In the case of motorcars and trucks, plates must be of metal 6 inches wide and 12 inches in length. The outline of the state of Montana must be used as a distinctive border on the license plates, and the word "Montana" and the year must be placed across the plates. Registration plates must be treated with a reflectorized background material according to specifications prescribed by the department.

(5) The distinctive registration numbers must begin with a number one or with a letter-number combination, such as "A 1" or "AA 1", or any other similar combination of letters and numbers. The distinctive registration number or letter-number combination assigned to the vehicle must appear on the plate preceded by the number of the county and appearing in horizontal order on the same horizontal baseline. The county number must be separated from the distinctive registration number by a separation mark unless a letter-number combination is used. The dimensions of the numerals and letters must be determined by the department, and all county and registration numbers must be of equal height.

(6) For the use of tax-exempt motor vehicles, in addition to the markings provided in this section, number plates must bear the following distinctive markings:

(a) For vehicles owned by the state, the department may designate the prefix number for the various state departments. All numbered plates issued to state departments must bear the words "State Owned", and a year number may not be indicated on the plates because these numbered plates are of a permanent nature and will be replaced by the department only when the physical condition of numbered plates requires it.

(b) For vehicles that are owned by the counties, municipalities, and special districts, as defined in 18-8-202, organized under the laws of Montana and not operating for profit, and that are used and operated by officials and employees in the line of duty and for vehicles on loan from the United States government or the state of Montana to, or owned by, the civil air patrol and used and operated by officials and employees in the line of duty, there must be placed on the number plates assigned, in a position that the department may designate, the letter "X" or the word "EXEMPT". Distinctive registration numbers for plates assigned to motor vehicles of each of the counties in the state and those of the municipalities and special districts that obtain plates within each county must begin with number one and be numbered consecutively. Because these number plates are of a permanent nature, they are subject to replacement by the department only when the physical condition of the number plates requires it and a year number may not be displayed on the number plates.

(7) On all number plates assigned to motor vehicles of the truck and trailer type, other than tax-exempt trucks and tax-exempt trailers, there must appear the letter "T" or the word "TRUCK" on plates assigned to trucks and the letters "TR" or the word "TRAILER" on plates assigned to trailers and housetrailers. The letters "MC" or the word "CYCLE" must appear on plates assigned to vehicles of the motorcycle or quadricycle type.

(8) Number plates issued to a passengor car, truck, trailer, or vehicle of the motorcycle or quadricycle type may be transferred only to a replacement

HeinOnline -- 1999 vol. I 324 1999

passenger car, truck, trailer, or motorcycle- or quadricycle-type vehicle. A registration or license fee may not be assessed upon a transfer of a number plate under 61-3-317 and 61-3-335.

(9) For the purpose of this chapter, the several counties of the state are assigned numbers as follows: Silver Bow, 1; Cascade, 2; Yellowstone, 3; Missoula, 4; Lewis and Clark, 5; Gallatin, 6; Flathead, 7; Fergus, 8; Powder River, 9; Carbon, 10; Phillips, 11; Hill, 12; Ravalli, 13; Custer, 14; Lake, 15; Dawson, 16; Roosevelt, 17; Beaverhead, 18; Chouteau, 19; Valley, 20; Toole, 21; Big Horn, 22; Musselshell, 23; Blaine, 24; Madison, 25; Pondera, 26; Richland, 27; Powell, 28; Rosebud, 29; Deer Lodge, 30; Teton, 31; Stillwater, 32; Treasure, 33; Sheridan, 34; Sanders, 35; Judith Basin, 36; Daniels, 37; Glacier, 38; Fallon, 39; Sweet Grass, 40; McCone, 41; Carter, 42; Broadwater, 43; Wheatland, 44; Prairie, 45; Granite, 46; Meagher, 47; Liberty, 48; Park, 49; Garfield, 50; Jefferson, 51; Wibaux, 52; Golden Valley, 53; Mineral, 54; Petroleum, 55; Lincoln, 56. Any new counties must be assigned numbers by the department as they may be formed, beginning with the number 57.

(10) Each type of special license plate approved by the legislature, except collegiate license plates authorized in 61-3-463, must be a separate series of plates, numbered as provided in subsection (5), except that the county number must be replaced by a nonremovable design or decal designating the group or organization to which the applicant belongs. Unless otherwise specifically stated in this section, the special plates are subject to the same rules and laws as govern the issuance of regular license plates, must be placed or mounted on a vehicle owned by the person who is eligible to receive them, and must be removed upon sale or other disposition of the vehicle. The special license plates must be issued to national guard members, former prisoners of war, persons with disabilities, reservists, disabled veterans, survivors of the Pearl Harbor attack, veterans of the armed services, or veterans of the armed services who were awarded the purple heart medal, who comply with the following provisions:

(a) An active member of the Montana national guard may be issued special license plates with a design or decal displaying the letters "NG". The adjutant general shall issue to each active member of the Montana national guard a certificate authorizing the department to issue national guard plates, numbered in sets of two with a different number on each set, and the member shall surrender the plates to the department upon becoming ineligible to use them.

(b) An active member of the reserve armed forces of the United States of America who is a resident of this state may be issued special license plates with a design or decal displaying the following: United States army reserve, AR (symbol); United States naval reserve, NR (anchor); United States air force reserve, AFR (symbol); and United States marine corps reserve, MCR (globe and anchor). The commanding officer of each armed forces reserve unit shall issue to each eligible member of the reserve unit a certificate authorizing the issuance of special license plates, numbered in sets of two with a different number on each set. The member shall surrender the plates to the department upon becoming ineligible to use them.

(c) (i) A resident of Montana who is a veteran of the armed forces of the United States and who is 100% disabled because of an injury that has been determined by the department of veterans affairs to be service-connected may, upon presentation to the department of proof of the 100% disability, be issued:

HeinOnline -- 1999 vol. I 325 1999

(A) a special license plate under this section with a design or decal displaying the letters "DV"; or

(B) one set of any other military-related plates that the disahled veteran is eligible to receive under this section.

(ii) The fee for original or renewal registration by a 100% disabled veteran for a passenger vehicle or a truck with a GVW-rated capacity of 1 ton or less is $5 and is in lieu of all other fees and taxes for that vehicle under this chapter.

(iii) Special license plates issued to a disabled veteran are not transferable to another person.

(iv) A disabled veteran is not entitled to a special disabled veteran's license plate for more than one vehicle.

(v) A vehicle lawfully displaying a disabled veteran's plate and that is conveying a 100% disabled veteran is entitled to the parking privileges allowed a person with a disability's vehicle under this title.

(d) A Montana resident who is a veteran of the armed forces of the United States and was captured and held prisoner by a military force of a foreign nation, documented hy the veteran's service record, may upon application and presentation of proof be issued special license plates, numbered in sets of two with a different number on each set, with a design or decal displaying the words "ex-prisoner of war" or an abbreviation that the department considers appropriate.

(i) Fees required under 61-3-321(1) and (5) may not be assessed upon one set of license plates issued to an ex-prisoner of war under this subsection (10)(d).

(ii) A special license plate fee may not be assessed upon one set of special license plates issued to an ex-prisoner of war under this subsection (10)(d).

(iii) An ex-prisoner of war is exempt from the light vehicle taxes imposed under 61-3-504 for one vehicle that displays a set of ex-prisoner of war license plates.

(iv) A surviving spouse of an ex-prisoner of war may retain the special license plates that have been issued to the ex-prisoner of war if the spouse complies with the provisions of [section 4].

(e) Except as provided in ~~subsection~~ *subsections* (10)(c) *and (10)(d)*, upon payment of all taxes and fees required hy parts 3 and 5 of this chapter and upon furnishing proof satisfactory to the department that the applicant meets the requirements of this subsection (10)(e), the department shall issue to a Montana resident who is a veteran of the armed services of the United States special license plates, numbered in sets of two with a different number on each set, designed to indicate that the applicant is a survivor of the Pearl Harbor attack if the applicant was a member of the United States armed forces on December 7, 1941, was on station on December 7, 1941, during the hours of 7:55 a.m. to 9:45 a.m. (Hawaii time) at Pearl Harbor, the island of Oahu, or offshore at a distance of not more than 3 miles, and received an honorable discharge from the United States armed forces. If special license plates issued under *subsection (10)(d) and* this subsection are lost, stolen, or mutilated, the recipient of the plates is entitled to replacement plates upon request and without charge.

(f) A motor vehicle owner and resident of this state who is a veteran or the surviving spouse of a veteran of the armed services of the United States may be issued license plates inscribed as provided in subsection (10)(f)(i) if the veteran

was separated from the armed services under other than dishonorable circumstances or was awarded the purple heart medal:

(i) Upon submission of a department of defense form 214(DD-214) or its successor or documents showing an other-than-dishonorable discharge or a reenlistment, proper identification, and other relevant documents to show an applicant's qualification under this subsection, there must be issued to the applicant, in lieu of the regular license plates prescribed by law, special license plates numbered in sets of two with a different number on each set. The plates must display:

(A) the word "VETERAN" and a symbol signifying the United States army, United States navy, United States air force, United States marine corps, or United States coast guard, according to the record of service verified in the application; or

(B) a symbol representing the purple heart medal.

(ii) Plates must be furnished by the department to the county treasurer, who shall issue them to a qualified veteran or to the veteran's surviving spouse. The plates must be placed or mounted on the vehicle owned by the veteran or the veteran's surviving spouse designated in the application and must be removed upon sale or other disposition of the vehicle.

(iii) Except as provided in ~~subsection~~ *subsections* (10)(c) *and (10)(d)*, a veteran or surviving spouse who receives special license plates under this subsection (10)(f) is liable for payment of all taxes and fees required under parts 3 and 4 of this chapter and a special veteran's or purple heart medal license plate fee of $10. Upon an original application for a license under this subsection (10)(f), the county treasurer shall:

(A) deposit $3 of the special fee in the county general fund;

(B) remit $1 for deposit in the state general fund; and

(C) deposit the remainder of the special fee in the state special revenue account established in 10-2-603 for administration, construction, operation, and maintenance of the state veterans' cemeteries.

(iv) Upon subsequent annual renewal of registration, the county treasurer shall deposit all of the special fee as provided in subsection (10)(f)(iii)(C).

(g) A Montana resident who is eligible to receive a special parking permit under 49-4-301 may, upon written application on a form prescribed by the department, be issued a special license plate with a design or decal bearing a representation of a wheelchair as the symbol of a person with a disability.

(11) The provisions of this section do not apply to a motor vehicle, trailer, or semitrailer that is registered as part of a fleet, as defined in 61-3-712, and that is subject to the provisions of 61-3-711 through 61-3-733."

Section 3. Section 61-3-426, MCA, is amended to read:

"61-3-426. Combined license plates. (1) An application for license plates for amateur radio operators may be combined with an application for the special license plates issued to veterans of the armed services who comply with the provisions in 61-3-332(10)(d), (10)(e), and (10)(f) or with an application for special license plates issued to a person with a disability who complies with the provisions in 61-3-332(10)(g). The applicant for the combined license plates is liable for the payment of all taxes and fees applicable to regular motor vehicle license plates

HeinOnline -- 1999 vol. I 327 1999

and shall pay an additional fee of $5 for the original issuance as provided in 61-3-422.

(2) An application for license plates for amateur radio operators may be combined with an application for license plates for disabled veterans as provided in 61-3-332(10)(c). The fees for the registration of the combined license plates are the fees provided for in 61-3-332(10)(c) and in 61-3-422. The fees are in lieu of all other fees and taxes for that vehicle under this chapter.

(3) An application for license plates for amateur radio operators may be combined with an application for license plates for ex-prisoners of war as provided in 61-3-332(10)(d). The fees required under 61-3-321(1) and (5) may not be assessed upon one set of combination license plates issued to an ex-prisoner of war. An ex-prisoner of war receiving combination license plates under this section is liable for the fees required under 61-3-422.

~~(3)~~*(4)* The combined license plates must be stamped with the official amateur radio call letters of the owner as assigned to the owner by the federal communications commission. The plates must also be stamped with the design or decal provided for in 61-3-332(10)(c), (10)(d), (10)(e), (10)(f), or (10)(g)."

Section 4. Section 61-3-504, MCA, is amended to read:

"61-3-504. Computation of tax. (1) The amount of taxes on a light vehicle, except ~~for vehicles registered under 61-3-456 or owned by disabled veterans qualifying for special license plates under 61-3-332(10)(c) or 61-3-426(2)~~ *as provided in subsection (2)*, is 2% of the value determined under 61-3-503.

(2) The following are exempt from taxation under subsection (1):

(a) a vehicle registered under 61-3-456;

(b) a vehicle owned by a disabled veteran qualifying for one set of special license plates under 61-3-332(10)(c) or 61-3-426; and

(c) a vehicle owned by an ex-prisoner of war under 61-3-332(10)(d) or a surviving spouse of an ex-prisoner of war under [section 5].

~~(2)~~*(3)* The amount of tax on fleet vehicles subject to the provisions of 61-3-318 is 1% of the value determined under 61-3-503."

Section 5. Ex-prisoner of war license plates transferable to spouse — conditions. Upon the death of an ex-prisoner of war and providing that the surviving spouse does not remarry, the spouse of an ex-prisoner of war may retain and renew the one set of special license plates issued under 61-3-332(10)(d) and is not liable for light vehicle taxes under 61-3-504, for the fees required under 61-3-321(1) and (5), or for the special license plate fees required under 61-3-332.

Section 6. Codification instruction. [Section 5] is intended to be codified as an integral part of Title 61, chapter 3, part 4, and the provisions of Title 61, chapter 3, part 4, apply to [section 5].

Approved March 16, 1999

HeinOnline -- 1999 vol. I 328 1999

CHAPTER NO. 80

[HB 241]

AN ACT ALLOWING ELECTION ADMINISTRATORS TO ACCOMPLISH REGISTRATION AND VOTING ACTIONS THROUGH THE INTERNET FOR OVERSEAS ELECTORS IN THE UNITED STATES SERVICE; REMOVING AN EXCEPTION FOR ACCEPTING FACSIMILE BALLOTS AFTER THE POLLS CLOSE; AMENDING SECTIONS 13-13-276, 13-13-277, AND 13-13-278, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-13-276, MCA, is amended to read:

"13-13-276. Legislative findings and purpose. The legislature finds that the increased use of facsimile transmissions *and the internet* has encouraged the possibility of absentee voter registration and the sending and receiving of absentee ballots by facsimile *and electronically through the internet.* The legislature also finds that while federal law encourages but does not require the use of facsimile transmissions *and the internet* in federal elections, there is sufficient reliability in facsimile *and internet* technology and ~~there is~~ sufficient evidence that absentee facsimile *and internet* voting would be of benefit to electors in the United States service to provide for absentee registration and voting by facsimile *and electronically through the internet.* It is the purpose of 13-13-276 through 13-13-278 to allow for absentee voter registration and voting by facsimile *and electronically through the internet for overseas electors in the United States service,* while recognizing that state and local election officials have the responsibility to maintain the accuracy, integrity, and secrecy of the election process and the individual election ballot. It is the purpose of the legislature to allow facsimile *and internet* voting for electors in the United States service but to continue to ensure that voting security is maintained for the ultimate purpose of preventing election fraud and maintaining the validity of the election process."

Section 2. Section 13-13-277, MCA, is amended to read:

"13-13-277. Registration and voting by facsimile *and internet* authorized. Notwithstanding other provisions of this title, each election administrator may, in any primary election, general election, and special election, take the following acts by facsimile transmission, if facsimile facilities are available, *or electronically through the internet for overseas electors in the United States service, if internet facilities that provide for secrecy are available,* in place of ~~the use of~~ the public mails ~~when requested by an elector or, for the purposes of registration under subsection (1), an individual intending to become an elector, in the United States service, as defined in 13-2-211~~:

(1) register an individual to voto;

(2) give notice of registration;

(3) receive requests for an absentee ballot;

(4) transmit absentee ballots to electors; and

(5) receive absentee ballots from electors."

Section 3. Section 13-13-278, MCA, is amended to read:

"13-13-278. Adoption of rules — acceptance of funds. (1) The secretary of state shall adopt reasonable rules under the rulemaking provisions of tbe

HeinOnline -- 1999 vol. I 329 1999

Montana Administrative Procedure Act to implement 13-13-277. The rules are binding upon election administrators. The rules must require compliance with the same time requirements or deadlines as for registration and voting by absentee ballot by use of the public mails~~, except that the rules may provide for different times for the acceptance of facsimile ballots after the closing of the polls~~. The rules must maintain the accuracy, integrity, and secrecy of the ballot process and must allow registration and voting by facsimile through use of a private corporation or other private entity for transmission of facsimile messages only if the secretary of state finds that the use is essential to the purposes of 13-13-276 through 13-13-278.

(2) The secretary of state may apply for and receive a grant of funds from any agency or office of the United States government or from any other public or private source and may use the money for the purpose of implementing 13-13-276 through 13-13-278."

Section 4. Effective date. [This act] is effective on passage and approval.

Approved March 16, 1999

CHAPTER NO. 81

[HB 274]

AN ACT TO ELIMINATE THE REQUIREMENT THAT PUBLIC UTILITIES REPORT MINOR INJURIES TO THE PUBLIC SERVICE COMMISSION; AMENDING SECTION 69-3-107, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-3-107, MCA, is amended to read:

"69-3-107. Investigation and reports of accidents. (1) The commission, some member ~~thereof~~ *of the commission*, or some person deputed by it shall investigate and make inquiry into every accident occurring in the operation of any public utility in this state resulting in death or injury to any person ~~of such gravity as to require~~ *that requires* 3 days or more of hospitalization. The report of the accident ~~shall~~ *must* be filed in the office of the commission.

(2) ~~It is hereby made the duty of every~~ *A* public utility operating within this state~~,~~ *shall* promptly upon the occurrence of any accident in the public utility's operation and resulting in death or injury to any porson ~~of such gravity as to require~~ *that requires* hospitalization~~, to~~ repert the accident within the next 2 business days, followed by *a* written report ~~in which shall be stated~~ *that states* the time and place of *the* accident, the names of persons killed or injured, and in concise form the nature and cause of ~~such~~ *the* accident. ~~For any other accident occurring in a public utility's operation and resulting in injury, a public utility shall submit a written report to the commission within the 20 days after the occurrence of the accident.~~ The commission shall prescribe forms for the purpose of making ~~such~~ *these* written reports."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 16, 1999

HeinOnline -- 1999 vol. I 330 1999

CHAPTER NO. 82

[SB 1]

AN ACT AMENDING LAW ENFORCEMENT RESERVE OFFICER RESIDENCY REQUIREMENTS; ADDING A SPECIAL SERVICES OFFICER CATEGORY TO THE LAWS GOVERNING LOCAL LAW ENFORCEMENT RESERVE AND AUXILIARY OFFICERS; AND AMENDING SECTIONS 7-32-201, 7-32-203, AND 7-32-234, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Reserve officer change in residency. A reserve officer may change permanent residency to another county and remain a member of the reserve officer unit to which the reserve officer was appointed provided that:

(1) the statutory basic training requirements have been met;

(2) the probationary period established by the law enforcement agency is completed; and

(3) approval for continuing membership is granted by the chief law enforcement administrator controlling the reserve unit.

Section 2. Special services officers — authorization — role. (1) Special services officers:

(a) are subordinate to full-time law enforcement officers;

(b) must be supervised by a law enforcement officer;

(c) shall complete specialized training and must possess specialized skills required by the chief law enforcement administrator; and

(d) may be authorized by the chief law enforcement administrator to carry a weapon while on assigned duty only upon successful completion of training in the laws and procedures governing use of force and upon demonstration of proficiency with that weapon.

(2) A local government may authorize special services officers only on the orders and at the direction of the chief law enforcement administrator of the local government.

Section 3. Section 7-32-201, MCA, is amended to read:

"7-32-201. Definitions. As used in this part, the following definitions apply:

(1) "Auxiliary officer" means an unsworn, part-time, volunteer member of a law enforcement agency who may perform but is not limited to the performance of such functions as civil defense, search and rescue, office duties, crowd and traffic control, and crime prevention activities.

(2) "General law enforcement duties" means patrol operations performed for detection, prevention, and suppression of crime and the enforcement of criminal and traffic codes of this state and its local governments.

(3) "Law enforcement agency" means a law enforcement service provided directly by a local government.

(4) "Law enforcement officer" means a sworn, full-time, employed member of a law enforcement agency who is a peace officer as defined in 46-1-202 and has arrest authority as described in 46-6-210.

HeinOnline -- 1999 vol. I 331 1999

(5) "Reserve officer" means a sworn, part-time, volunteer memher of a law enforcement agency who is a peace officer as defined in 46-1-202 and has arrest authority as described in 46-6-210 only when authorized to perform these functions as a representative of the law enforcement agency.

(6) "Special services officer" means an unsworn, part-time, volunteer member of a law enforcement agency who may perform functions, other than general law enforcement duties, that require specialized skills, training, and qualifications, who may be required to train with a firearm, and who may carry a firearm while on assigned duty as provided in [section 2]."

Section 4. Section 7-32-203, MCA, is amended to read:

"7-32-203. Provision of workers' compensation coverage. (1) Each law enforcement agency that utilizes reserve officers *or special services officers* shall provide full workers' compensation coverage for the officers while they are providing actual service for a law enforcement agency. The law enforcement agencies shall pay to the insurer an appropriate premium, as established by the insurer, to cover the insurance risk of providing coverage to the officers.

(2) Each law enforcement agency that utilizes auxiliary officers shall provide full workers' compensation coverage for the officers while they are providing actual service for a law enforcement agency."

Section 5. Section 7-32-234, MCA, is amended to read:

"7-32-234. Exceptions. Provisions of 7-32-211, 7-32-213, and 7-32-214 do not apply to auxiliary officers, *to special services officers,* to sworn volunteer peace officers who are not assigned to general law enforcement duties, or to members of a posse organized to quell public disturhance or domestic violence in accordance with 7-32-2121(6)."

Section 6. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 7, chapter 32, part 2, and the provisions of Title 7, chapter 32, part 2, apply to [sections 1 and 2].

Approved March 16, 1999

CHAPTER NO. 83

[SB 18]

AN ACT ENABLING MONTANA AGRICULTURAL COMMODITY GROUPS TO ADOPT COMMODITY CHECKOFF PROGRAMS FOR THE PURPOSE OF CONDUCTING COMMODITY RESEARCH AND MARKET DEVELOPMENT PROGRAMS; PROVIDING FOR A COMMODITY GROUP REFERENDUM PROCESS TO ADOPT OR ELIMINATE CHECKOFF PROGRAMS; PROVIDING FOR CREATION OF COMMODITY ADVISORY COMMITTEES AND SETTING OUT COMMITTEE DUTIES; CREATING AN ACCOUNT AND PROVIDING FOR EXPENDITURE AND INVESTMENT OF ACCOUNT FUNDS; PROVIDING PENALTIES; STATUTORILY APPROPRIATING CHECKOFF PROGRAM FUNDS; AMENDING SECTION 17-7-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 13] may be cited as the "Agricultural Commodity Research and Market Development Enabling Act".

HeinOnline -- 1999 vol. I 332 1999

Section 2. Findings — purpose. (1) The legislature finds that:

(a) agriculture is the leading industry in Montana, based on cash receipts, and that agricultural commodities are resources of the first magnitude in the economy of Montana residents;

(b) agricultural commodities are prime factors in the production of wealth and in the development and stabilization of property values and of activities and enterprises that form the bases and sources of important contributions by taxation to the public revenue; and

(c) Montana agricultural commodities enter a world market that is highly competitive in character.

(2) In order to protect and foster the health, prosperity, and general welfare of the people of Montana, it is declared to be the public policy of this state to encourage and promote intensive, scientific, and practical research into all phases of agricultural commodity culture, production, marketing, and use and into the development of markets for commodities grown or produced in Montana.

Section 3. Definitions. As used in [sections 1 through 13], unless the context requires otherwise, the following definitions apply:

(1) "Advisory committee" means a committee created by the department under authority of [section 5] for the purpose of advising the department on the implementation and administration of a commodity research and market development program established in [section 7].

(2) "Commercial channels" means the sale of agricultural commodities for any use when sold to:

(a) a commercial buyer, dealer, processor, or cooperative;

(b) a person, public or private, who resells any agricultural commodity or product produced from crops grown in Montana; or

(c) a first purchaser in Montana.

(3) "Commodity" means any agricultural crop, forage used by livestock, livestock, bird, fish, or value-added agricultural product that is grown or produced in or imported into Montana.

(4) "First purchaser" means a person, public or private, corporation, association, or partnership that buys, accepts for shipment, or otherwise acquires the property in or to agricultural commodities from a grower or producer. The term includes a mortgagee, pledgee, lienor, or other person, public or private, that has a claim against a grower or producer, when the actual or constructive possession of a commodity is taken as part payment or in satisfaction of a mortgage, pledge, lien, or claim.

(5) "Grower" or "producer" means a person or landowner who is personally engaged in growing or producing agricultural commodities, a tenant of the landowner who is personally engaged in growing or producing commodities, or both the landowner and the tenant jointly. The term includes a person, partnership, association, corporation, cooperative, trust, sharecropper, and all other business units, devices, and arrangements.

(6) "Person" means a natural person, individual, firm, partnership, association, corporation, company, or organized group of persons and any trustee, receiver, assignee, or similar representative.

HeinOnline -- 1999 vol. I 333 1999

(7) "Sale" includes any mortgage or pledge of agricultural commodities to a person, public or private.

Section 4. Powers of department — rulemaking. (1) In consultation with respective commodity advisory committees, the department may:

(a) adopt commodity research and market development programs pursuant to [section 7];

(b) adopt rules necessary for the implementation and administration of [sections 1 through 13] and commodity research and market development programs;

(c) hire employees or enter into contracts or agreements for the administration of commodity research and market development programs;

(d) enter into reciprocal agreements with analogous agricultural commodity research and market development programs outside of Montana for the collection and transfer of assessments on commodities sold across state borders;

(e) conduct audits of first purchaser commodity businesses to ensure collection and payment of commodity assessments in accordance with [section 10];

(f) place stop purchase or sale orders on commodities and apply for and obtain injunctions against first purchaser commodity businesses when it is determined that the first purchaser has not been collecting and paying required commodity assessments in accordance with [section 10];

(g) provide for the enforcement of [sections 1 through 13];

(h) provide for the conduct of marketing and research into the production and uses of agricultural commodities;

(i) enter into contracts or agreements with units of the Montana university system and other university systems and other organizations, public or private, for purposes of:

(i) improving commodity quality;

(ii) increasing the efficiency of production;

(iii) developing marketing knowledge and markets;

(iv) determining new uses for commodities;

(v) developing alternative and rotation crops; and

(vi) carrying out all research and market development contemplated by [sections 1 through 13].

(2) In administering the provisions of [sections 1 through 13], the department may adopt rules establishing guidelines for:

(a) the petition and hearing process regarding adoption or elimination of commodity research and market development programs as set out in [sections 7 and 8];

(b) the creation of commodity advisory committees as set out in [section 5];

(c) the adoption, collection, and enforcement of commodity assessments as set out in [sections 9 and 10];

HeinOnline -- 1999 vol. I 334 1999

(d) policies and procedures for administration of commodity research and market development programs suggested by commodity advisory committees pursuant to [section 6]; and

(e) conducting or contracting for commodity research and market development projects and guidelines for procedures for entering into reciprocal agreements with analogous commodity research and market development programs outside of Montana, as contemplated in this section.

Section 5. Creation of commodity advisory committees. (1) The department may create commodity advisory committees.

(2) Each advisory committee created under this section must be known as the"... advisory committee".

(3) The department shall prescribe the composition and advisory functions of each advisory committee created and appoint advisory committee members, who shall serve at the pleasure of the director. The majority of members on a crop or livestock commodity advisory committee must be producers of the commodity.

(4) Unless the advisory committee member is a full-time salaried officer or employee of this state or of any political subdivision of this state, each member is entitled to be paid an amount to be determined by the department, not to exceed the daily amount established in 2-15-122(5) for each day in which the member is actually and necessarily engaged in the performance of advisory committee duties. Each member is also entitled to be reimbursed for travel expenses, as provided for in 2-18-501 through 2-18-503, incurred while in the performance of advisory committee duties. Members who are full-time salaried officers or employees of this state or of any political subdivision of this state are not entitled to be compensated for their service as members, but are entitled to be reimbursed for travel expenses as provided for in 2-18-501 through 2-18-503.

(5) Unless otherwise specified by the department, at its first meeting each year, each advisory committee shall elect a presiding officer and other officers whom it considers necessary.

(6) Unless otherwise specified by the department, each advisory committee shall meet at least annually. An advisory committee shall also meet on the call of the department and may meet at other times on the call of the presiding officer or a majority of its members.

(7) A majority of the membership of an advisory committee constitutes a quorum to do business.

(8) In order for the creation of an advisory committee to be effective, the governor shall file in the governor's office and in the office of the secretary of state a record of the advisory committee created showing the advisory committee's:

(a) name, in accordance with subsection (2);

(b) composition;

(c) names and addresses of the appointed members; and

(d) purpose.

HeinOnline -- 1999 vol. I 335 1999

Section 6. Duties of commodity advisory committees. (1) Each commodity advisory committee created in [section 5] shall advise the department regarding:

(a) policies and procedures to be followed by the department when administering a commodity research and market development program associated with each respective advisory committee;

(b) adoption of rules implementing and administering respective commodity research and market development programs;

(c) annual assessments on agricultural commodities associated with a respective research and market development program;

(d) assessment collection and enforcement procedures to be followed with each respective research and market development program; and

(e) the awarding of research and marketing contracts.

(2) None of the powers or duties provided for in [sections 1 through 13] permit participation in state or federal political action by an advisory committee.

Section 7. Adoption of commodity research and market development program — petition — hearing. The department shall adopt commodity research and market development programs subject to the following:

(1) Twenty-five or more producers of a commodity may petition the department to adopt a research and market development program. The format, information required, and criteria of valid petitions must be established by department rule.

(2) Within 60 days of receipt and verification of a qualified petition, the department shall hold a hearing to receive relevant input from growers, producers, and first purchasers regarding the proposed commodity research and market development program.

(3) After considering the facts and information received at the hearing, the department may hold a referendum of affected growers and producers. The referendum must include, among other informational items, the amount of the assessment and the method of collection. The referendum must be by paper ballot mailed to the last-known address of known growers and producers of the relevant commodity, obtained from lists provided by the petitioner and other sources known to the department. To be eligible to vote on a referendum, an individual must be a producer who is 18 years of age or older and a Montana resident.

(4) Based on the facts and information from the hearing and an affirmative majority referendum vote, the department shall adopt a commodity research and market development program. In doing so, the department shall appoint an advisory committee in accordance with [section 5].

Section 8. Elimination of commodity research and market development program — petition — hearing. The department shall eliminate a commodity research and market development program subject to the following:

(1) After 2 years from the date on which a commodity research and market development program is adopted, the department may, upon its own accord or upon receipt of a verified petition from 15% or more of the growers or producers of a commodity requesting elimination of a research and market development program, call a hearing to determine if the program should be eliminated. The

HeinOnline -- 1999 vol. I 336 1999

format, information required, and criteria of valid petitions must be established by department rule.

(2) After considering the facts and information received at the hearing, the department may, within 60 days of the hearing, hold a referendum of affected growers and producers. The referendum must be by paper ballot mailed to the last-known address of known growers and producers of the relevant commodity, obtained from lists provided by the petitioner and other sources known to the department. To be eligible to vote on a referendum, an individual must be a producer who is 18 years of age or older and a Montana resident.

(3) Based on a majority referendum vote in favor of elimination, the department shall repeal all rules and administrative procedures and policies associated with the relevant commodity research and market development program and dissolve the associated advisory committee.

(4) All funds of a former commodity research and market development program remaining in the account established in [section 12] revert to the general fund.

Section 9. Annual commodity assessment — collection. (1) The department, in consultation with each commodity advisory committee, shall, for each commodity associated with a research and marketing program, adopt by rule an annual assessment on program commodities grown, delivered, or stored in Montana and sold through commercial channels.

(2) The assessments are levied and impesed:

(a) at the time of first sale of any commodity by a seller and must be collected by the first purchaser of the commodity from the seller at the time of each settlement for the commodity purchased;

(b) in the case of a mortgage or pledge of a commodity as security for a loan under any federal price support program, other than the commodity credit corporation, at the time that the loan is made and must be collected by the agency or person making the loan by deducting the amount of the assessment from the proceeds of the loan;

(c) in the case of a commodity pledged under the federal commodity credit corporation, at the time of purchase and must be collected at the time of purchase, not at the time that a lease or loan is made under the program; or

(d) as otherwise provided by department rule for the specific research or market development program.

(3) The assessments levied under the provisions of this section must be deducted and collected as provided by [sections 1 through 13], whether the commodity is stored in Montana or any other state. The assessment attaches to each transaction, but a seller is not subject to assessment more than once regardless of the number of times that the commodity is the subject of a sale, mortgage, pledge, or other transaction. The assessment is imposed and attaches on the initial sale, mortgege, pledge, or other transaction in which the commodity seller parts with title to the commodity or creates some interest in the commodity in a mortgagee, pledgee, or other person.

(4) If the first purchaser is a foreign entity, the producer shall make a good faith effort to ensure that the assessment is collected as provided in this section and paid to the department as provided in [section 10].

HeinOnline -- 1999 vol. I 337 1999

Section 10. Delivery of invoice — form — filing of sworn statement — payment of assessment — refund. (1) The first purchaser of a commodity at the time of sale or the mortgagee, pledgee, or other lender at the time of the loan or advance shall give separate invoices for each purchase, delivery, or storage charge to the seller or person delivering the commodity or entering it into storage. The invoices must be on forms approved by the department and must show:

(a) the name and address of the seller or of the person delivering the commodity or entering it into storage;

(b) the name and address of the purchaser or the lender;

(c) the quantity of commodity sold, mortgaged, pledged, delivered, or stored; and

(d) the date of the purchase, mortgage, pledge, delivery, or storage and the amount of assessment collected and remitted to the department.

(2) (a) Within 20 days after the end of a month in which a first purchaser purchases a commodity or in which a lender makes a loan or advance on a commodity, the first purchaser, mortgagee, or pledgee shall file with the department, on forms prescribed by the department, a sworn statement of:

(i) the quantity of a commodity purchased in Montana;

(ii) the quantity mortgaged or plodged or otherwise transferred or lienod as security for a loan during the preceding calendar month; or

(iii) the quantity delivered or stored.

(b) At the time that the sworn statement is filed, the first purchaser or lender shall pay to the department the assessment provided for in [section 9] for deposit in the appropriate account in the state special revenue fund.

(3) The statements referred te in subsections (1) and (2) must be legible and without corrections or erasures. A person may not alter any part of a statement.

(4) If the first purchaser fails to pay the department the assessment prescribed in subsection (2) within 60 days, the amount of the uncollected assessment must be considered a lien upon the assets of the first purchaser. The department, in its discretion, may:

(a) suspend or revoke any license authorizing the first purchaser to purchase the commodity;

(b) place a stop purchase or step sale order on commodities being purchased by the first purchaser;

(c) apply for and obtain an injunction; or

(d) seek a penalty set forth in [section 13].

(5) After 30 days and before 90 days following the deduction of the assessment by the first purchaser or the first lender under [section 9] or as otherwise provided by department rule, the seller may, upon the submission of a written, verified request to the department, obtain a refund of the assessment. The request must be accompanied by the original invoices received by the seller at the time of settlement. The department shall keep complete records of all refunds made under the provisions of this section for 2 years after the refund is made, after which records of refunds may be destroyed. All original invoices must be returned to the seller with the refund payment.

HeinOnline -- 1999 vol. I 338 1999

Section 11. Receipt of gifts, grants, and donations for research and marketing purposes. The department may receive gifts, grants, and donations for any commodity research and market development conducted pursuant to [sections 1 through 13].

Section 12. Account established — sources — use — expenditures. (1) There is an account in the state special revenue fund into which must be placed:

(a) the proceeds of all commodity assessments and penalties collected under [sections 1 through 13]; and

(b) the proceeds from all gifts, grants, and donations to the department for commodity research and market development received under [section 11].

(2) Funds deposited in the account for a specific commodity research and market development program may be expended only for the purposes of that program.

(3) Money deposited in the account is statutorily appropriated, as provided in 17-7-502, to the department for purposes of [sections 1 through 13].

(4) The department may direct the board of investments to invest funds from the account pursuant to the provisions of the unified investment program for state funds. Income from the investments must be credited to the account.

(5) The department may assess costs for the services that it provides to each commodity research and market development program. However, the costs assessed must be commensurate to the cost of the services provided.

Section 13. Penalty for violation. A person who violates any provision of [sections 1 through 13] is guilty of a misdemeanor and upon conviction shall be fined an amount not less than $25 or more than $1,000. All fines collected must be deposited as provided in [section 12].

Section 14. Section 17-7-502, MCA, is amended to read:

"17-7-502. (Temporary) Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 3-5-901; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706; 15-30-195; 15-31-702; 15-36-324; 15-36-325; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-406; 16-1-411; 16-11-308; 17-3-106; 17-3-212; 17-3-222; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-6-709; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 20-8-107; 20-8-111; 20-26-1503; 22-3-1004; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503;

HeinOnline -- 1999 vol. I 339 1999

39-71-907; 39-71-2321; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 53-6-703; 53-24-206; 67-3-205; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-1-131; 80-2-103; 80-2-222; 80-4-416; *[section 12];* 81-5-111; 82-11-161; 85-20-402; 87-1-513; 90-3-301; 90-4-215; 90-6-331; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; pursuant to sec. 7(2), Ch. 29, L. 1995, the inclusion of 15-30-195 terminates July 1, 2001; pursuant to sec. 5, Ch. 461, L. 1997, the inclusion of 77-1-131 terminates October 1, 2003; and pursuant to secs. 13, 16(1), Ch. 549, L. 1997, the inclusion of 90-3-301 terminates July 1, 1999.)

17-7-502. (Effective July 1, 2008) Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 3-5-901; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-23-706; 15-30-195; 15-31-702; 15-36-324; 15-36-325; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; [16-1-406;] 16-1-411; 16-11-308; 17-3-106; 17-3-212; 17-3-222; 17-5-404; 17-5-804; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-6-709; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-205; 19-19-305; 19-19-506; 20-8-107; 20-9-361; 20-26-1503; 22-3-1004; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 32-1-537; 37-43-204; 37-51-501; 39-71-503; 39-71-907; 39-71-2321; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 50-5-232; 50-40-206; 53-6-150; 53-6-703; 53-24-206; 60-2-220; 67-3-205; 75-1-1101; 75-5-1108; 75-6-214; 75-5-1108; 75-6-214; 75-11-313; 77-1-505; 80-2-103; 80-2-222; 80-4-416; *[section 12];* 81-5-111; 82-11-136; 82-11-161; 85-1-220; 85-20-402; 87-1-513; 90-4-215; 90-6-331; 90-7-220; 90-7-221; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that bave entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by tbe state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory

HeinOnline -- 1999 vol. I 340 1999

appropriation authority for the payments. (In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant to sec. 68(2), Ch. 422, L. 1997, this version becomes effective July 1, 2008.)"

Section 15. Codification instruction. [Sections 1 through 13] are intended to be codified as an integral part of Title 80, chapter 11, and the provisions of Title 80, chapter 11, apply to [sections 1 tbrougb 13].

Section 16. Effective date. [This act] is effective on passage and approval.

Approved March 16, 1999

CHAPTER NO. 84

[SB 32]

AN ACT PROVIDING THAT CONSENT OF A VICTIM OF SEXUAL ASSAUI T OR SEXUAL INTERCOURSE WITHOUT CONSENT IS INEFFECTIVE IF THE VICTIM IS INCARCERATED IN AN ADULT OR JUVENILE CORRECTIONAL, DETENTION, OR TREATMENT FACILITY AND THE PERPETRATOR IS AN EMPLOYEE, CONTRACTOR, OR VOLUNTEER OF THE FACILITY AND HAS SUPERVISORY OR DISCIPLINARY AUTHORITY OVER THE VICTIM, UNLESS THE ACT IS PART OF A LAWFUL SEARCH; PROVIDING A PENALTY FOR SEXUAL INTERCOURSE WITHOUT CONSENT COMMITTED UNDER THOSE CIRCUMSTANCES; AND AMENDING SECTIONS 45-5-501, 45-5-502, AND 45-5-503, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-5-501, MCA, is amended to read:

"45-5-501. Definition. (1) As used in 45-5-503, the term "without consent" means:

(a) the victim is compelled to submit by force against ~~himself~~ *the victim* or another; or

(b) the victim is incapable of consent because ~~he~~ *the victim* is:

(i) mentally defective or incapacitated;

(ii) physically helpless; ~~or~~

(iii) less than 16 years old*; or*

(iv) incarcerated in an adult or juvenile correctional, detention, or treatment facility and the perpetrator is an employee, contractor, or volunteer of the facility and has supervisory or disciplinary authority over the victim, unless the act is part of a lawful search.

(2) As used in subsection (1), the term "force" means:

(a) the infliction, attempted infliction, or threatened infliction of bodily injury or the commission of a forcible felony by the offender; or

(b) the threat of substantial retaliatory action tbat causes the victim to reasonably believe that the offender has the ability to execute the threat."

Section 2. Section 45-5-502, MCA, is amended to read:

HeinOnline -- 1999 vol. I 341 1999

"**45-5-502. Sexual assault.** (1) A person who knowingly subjects another person to any sexual contact without consent commits the offense of sexual assault.

(2) A person convicted of sexual assault shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(3) If the victim is less than 16 years old and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual assault, the offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 2 years or more than 100 years and may be fined not more than $50,000.

(4) An act "in the course of committing sexual assault" includes an attempt to commit the offense or flight after the attempt or commission.

(5) Consent is ineffective under this section *if:*

(a) the victim is incarcerated in an adult or juvenile correctional, detention, or treatment facility and the perpetrator is an employee, contractor, or volunteer of the facility and has supervisory or disciplinary authority over the victim, unless the act is part of a lawful search; or ~~if~~

(b) the victim is less than 14 years old and the offender is 3 or more years older than the victim."

Section 3. Section 45-5-503, MCA, is amended to read:

"**45-5-503. Sexual intercourse without consent.** (1) A person who knowingly has sexual intercourse without consent with another person commits the offense of sexual intercourse without consent. A person may not be convicted under this section based on the age of the person's spouse, as provided in 45-5-501(1)(b)(iii).

(2) A person convicted of sexual intercourse without consent shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 2 years or more than 100 years and may be fined not more than $50,000, except as provided in 46-18-219 and 46-18-222.

(3) (a) If the victim is less than 16 years old and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual intercourse without consent, the offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and may be fined not more than $50,000, except as provided in 46-18-219 and 46-18-222.

(b) If two or more persons are convicted of sexual intercourse without consent with the same victim in an incident in which each offender was present at the location where another offender's offense occurred during a time period in which each offender could have reasonably known of the other's offense, each offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 5 years or more than 100 years and may he fined not more than $50,000, except as provided in 46-18-219 and 46-18-222.

(c) If the offender was previously convicted of an offense under this section or of an offense under the laws of another state or of the United States that if committed in this state would be an offense under this section and if the offender inflicted serious bodily injury upon a person in the course of committing each offense, the offender shall be:

HeinOnline -- 1999 vol. I 342 1999

(i) punished by death as provided in 46-18-301 through 46-18-310; or

(ii) punished as provided in 46-18-219.

(d) If the victim was incarcerated in an adult or juvenile correctional, detention, or treatment facility at the time of the offense and the offender had supervisory or disciplinary authority over the victim, the offender shall be punished by imprisonment in the state prison for a term of not more than 5 years or fined an amount not to exceed $50,000, or both.

(4) In addition to any sentence imposed under subsection (2) or (3), after determining the financial resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable medical and counseling costs that result from the offense. The amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244.

(5) As used in subsection (3), an act "in the course of committing sexual intercourse without consent" includes an attempt to commit the offense or flight after the attempt or commission."

Approved March 16, 1999

CHAPTER NO. 85

[SB 88]

AN ACT PROVIDING THAT THE DEPARTMENT OF JUSTICE IS THE PROPER PARTY TO DEFEND TAX APPEALS INVOLVING MOTOR VEHICLE TAXES OR FEES IN LIEU OF TAX; CREATING A PROCEDURE FOR MOTOR VEHICLE TAX APPEALS; PROVIDING THAT PROTESTED MOTOR VEHICLE TAXES AND FEES NEED NOT BE PAID INTO THE PROPERTY TAX PROTEST FUND; PROVIDING FOR THE REFUND OF MOTOR VEHICLE TAXES AND FEES WHEN THE TAXPAYER PREVAILS IN AN APPEAL; AMENDING SECTIONS 15-8-115, 15-8-202, 15-15-103, AND 15-16-603, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICARILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Motor vehicle tax appeals — payment and protest of taxes or fees in lieu of tax on motor vehicles. (1) (a) A taxpayer who seeks to appeal the imposition of taxes or fees in lieu of tax assessed against a motor vehicle and imposed by the department of justice under authority of 15-8-202 shall file a written application for the appeal not later than 30 days after the anniversary date for reregistration, as determined by 61-3-315, of the vehicle that is the subject of the appeal. The application must be on a form prescribed by the department of justice in consultation with the state tax appeal board.

(b) The application must include a specific explanation of the basis for the taxpayer's appeal. The basis for appeal must be related to the factors to he considered and applied by the department of justice under 61-3-502 through 61-3-504, 61-3-506, 61-3-528, and 61-3-529.

(2) (a) The treasurer of the county or municipality is not required to deposit property taxes or fees in lieu of tax on a motor vehicle paid under protest in the special fund designated as a protest fund as required for property taxes under

HeinOnline -- 1999 vol. I 343 1999

15-1-402. The taxes or fees paid under protest may be reported and distributed in the same manner as those received without protest.

(b) If a refund is payable as a result of the taxpayer prevailing in a tax appeal or court proceeding concerning the protested motor vehicle taxes or fees, a refund may be made in accordance with 15-16-603.

(3) (a) A motor vehicle tax appeal may be heard by the county tax appeal board during its next regularly scheduled session if the application for the appeal was filed at least 30 days prior to the commencement of that session. If a county tax appeal board refuses or fails to hear a taxpayer's application that was timely filed at least 30 days prior to the commencement of its next regularly scheduled session, then the taxpayer's application is considered to be granted on the day following the board's final meeting for that year.

(b) A motor vehicle tax appeal filed less than 30 days prior to the commencement of the board's next regularly scheduled session or after the session has commenced may be held over by the board to a session in the following year. If a taxpayer's application that was timely filed less than 30 days prior to the commencement of the next regularly scheduled session of the county tax appeal board is held over to a session in the following year and if the county tax appeal board refuses or fails to hear the application during the following session, then the application is considered to be granted on the day following the board's final meeting for that year.

Section 2. Section 15-8-115, MCA, is amended to read:

"15-8-115. Department to defend property tax appeals — costs and judgments. (1) ~~The~~ *Except as provided in 15-8-202, the* department is the party defendant in any proceeding before a county tax appeal board, the state tax appeal board, or a court of law that seeks to dispute or adjust an action of the department under 15-8-101 arising from the exercise of the department's duties as prescribed by law or administrative rule. For the purposes of proceedings before county tax appoal boards, service on the department may be obtained by serving the person designated to receive service for the department.

(2) Costs, if any, must be assessed against the department and not against a local taxing unit.

(3) In ~~any~~ *a* suit brought in ~~the courts~~ *a court* of this state for the refund of taxes paid under protest ~~and those funds~~ *in which the taxes paid* are held by the treasurer of a unit of local government in a protest fund, the court shall enter judgment, exclusive of costs, against the treasurer if the court finds the taxes should be refunded."

Section 3. Section 15-8-202, MCA, is amended to read:

"15-8-202. Motor vehicle assessment by department of justice. (1) (a) The department of justice shall assess all light vehicles, subject to 61-3-313 through 61-3-316 and 61-3-501, for taxation in accordance with 61-3-503.

(b) The department of justice shall determine the fee in lieu of tax for all buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors in accordance with 61-3-528 and 61-3-529.

(c) Taxes or fees in lieu of tax on *a* motor ~~vehicles~~ *vehicle* under this subsection (1) must be assessed or imposed in each year on the ~~persons~~ *person* who owned or claimed the motor vehicles or in whose possession or control the motor vehicle was on the anniversary registration date.

HeinOnline -- 1999 vol. I 344 1999

(2) A tax or fee in lieu of tax may not be assessed or imposed against motor vehicles subject to taxation or to a fee in lieu of tax that constitute inventory of motor vehicle dealers as of January 1. These vehicles and all other motor vehicles subject to taxation or a fee in lieu of tax that are brought into the state after January 1 as motor vehicle dealers' inventories must be assessed to their respective purchasers as of the dates the vehicles are registered by the purchasers.

(3) "Purchasers" includes dealers who apply for registration or reregistration of motor vehicles, except as otherwise provided by 61-3-502.

(4) Goods, wares, and merchandise of motor vehicle dealers, other than new motor vehicles and new mobile homes, must be assessed at market value as of January 1.

(5) (a) The department of justice is authorized to appear in any proceeding before a county tax appeal board, the state tax appeal board, or a court that seeks to dispute an assessment made by the department pursuant to the authority granted under this section.

(b) For the purposes of proceedings before county tax appeal boards or the state tax appeal board, service of the application required under [section 1] must be made on the attorney general. A copy of any application giving rise to a proceeding before a county tax appeal board or the state tax appeal board must also be served on the county treasurer of the county in which the vehicle that is the subject of the proceeding was registered."

Section 4. Section 15-15-103, MCA, is amended to read:

"15-15-103. Examination of applicant — failure to hear application. (1) Before the county tax appeal board grants any application or makes any reduction applied for, it shall examine on oath the person or agent making the application~~, touching~~ *with regard to* the value of the property of ~~each~~ *the* person. A reduction may not be made unless the applicant makes an application, as provided in 15-15-102, and attends the county tax appeal board hearing. An appeal of the board's decision may not be made to the state tax appeal board unless the person or the person's agent has exhausted the remedies available through the county tax appeal board. In order to exhaust the remedies, the person or the person's agent shall attend the county tax appeal board hearing. On written request by the person or the person's agent and on the written concurrence of the department of revenue, the county tax appeal board may waive the requirement that the person or the person's agent attend the hearing. The testimony of all witnesses at the hearing must be electronically recorded and preserved for 1 year. If the decision of the county tax appeal board is appealed, the record of the proceedings, including the electronic recording of all testimony, must be forwarded, together with all exhibits, to the state tax appeal board. The date of the hearing, the proceedings before the board, and the decision must be entered upon the minutes of the board, and the board shall notify the applicant of its decision by mail within 3 days. A copy of the minutes of the county tax appeal board must be transmitted to the state tax appeal board no later than 3 days after the board holds its final hearing of the year.

(2) ~~If~~ *Except as provided in [section 1], if* a county tax appeal board refuses or fails to hear a taxpayer's timely application for a reduction in valuation of property, the taxpayer's application is considered to be granted on the day following the board's final meeting for that year. The department shall enter the

HeinOnline -- 1999 vol. I 345 1999

appraisal or classification sought in the application in the property tax record. An application is not automatically granted for the following appeals:

(a) those listed in 15-2-302; and

(b) if a taxpayer's appeal from the department's determination of classification or appraisal made pursuant to 15-7-102 was not received in time, as provided for in 15-15-102, to be considered by the board during its current 60-day session."

Section 5. Section 15-16-603, MCA, is amended to read:

"15-16-603. Refund of taxes — limitations on refunds. (1) Subject to the provisions in subsections (2) and (3), a board of county commissioners shall order a refund:

(a) on a tax, penalty, interest, or cost paid more than once or erroneously or illegally collected if an appeal pursuant to 15-1-402 was not available;

(b) on a tax paid for which a refund is allowed under 15-16-612 or 15-16-613;

(c) on a tax, penalty, or interest collected as a result of an error in the description or location of real property or improvements or for duplicate taxes paid as determined by the department of revenue;

(d) on net or gross proceeds tax, centrally assessed property tax, or local government severance tax, penalty, or interest when the department of revenue notifies the board of county commissioners of an assessment revision completed pursuant to 15-8-601; ~~or~~

(e) upon entry of a decision either by the district court or by the state tax appeal board under 15-2-306 that has not been appealed to a higher court; *or*

(f) on a decision that a refund is payable as a result of a taxpayer prevailing in a motor vehicle tax or fee proceeding under [section 1].

(2) The taxpayer shall prove that a refund is due under subsection (1)(a) or (1)(b).

(3) (a) A refund may not be granted under subsection (1)(a) or (1)(b) unless the taxpayer or a representative of the taxpayer files a written claim with the board of county commissioners within 10 years after the date when the second half of the taxes would have become delinquent if the taxes had not been paid.

(b) The refund required under subsection (1)(c) must be made for 5 tax years or for the duration of the error, whichever period is shorter.

(c) A refund may not be made under subsection (1)(c) unless the taxpayer allowed the department of revenue access to the taxpayer's property for the purposes of appraising the property."

Section 6. Coordination instruction. If House Bill No. 82 is passed and approved and amends 15-15-101 to establish county tax appeal board sessions that end December 31, then [section 1(3) of this act] must read as follows:

"(3) (a) A motor vehicle tax appeal may be heard by the county tax appeal board during its next regularly scheduled session if the application for the appeal was filed ~~at least 30 days prior to the commencement of that sess~~ *on by December 1. If during its current session, a county tax appeal board refuses or fails to hear a taxpayer's application that was timely filed by December 1, then the taxpayer's*

application is considered to be granted on the day following the board's final meeting for that year.

(b) A motor vehicle tax appeal filed ~~less than 30 days prior to the commencement of the board's next regularly scheduled session or after the session has commenced~~ *after December 1* may be held over by the board to a session in the following year. *If a taxpayer's application that was timely filed after December 1 of the current session of the county tax appeal board is held over to a session in the following year and if the county tax appeal board refuses or fails to hear the application during the following session, then the application is considered to be granted on the day following the board's final meeting for that year."*

Section 7. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 15, chapter 15, and the provisions of Title 15, chapter 15, apply to [section 1].

Section 8. Effective date. [This act] is effective on passage and approval.

Section 9. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

Approved March 16, 1999

CHAPTER NO. 86

[SB 95]

AN ACT AUTHORIZING COUNTIES TO VOLUNTARILY APPROPRIATE AND TRANSFER FUNDS TO MUNICIPALITIES TO SUPPLEMENT THE COST OF INFRASTRUCTURE DEVELOPMENT AND MAINTENANCE; AMENDING SECTIONS 7-11-104 AND 7-11-1102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, the Legislature encourages cooperation between local governments; and

WHEREAS, many communities are experiencing rapid growth and development outside the limits of incorporated municipalities and beyond the infrastructure facilities that they provide; and

WHEREAS, local governments may wish to cooperate to provide for and maintain public facilities that would encourage growth and development in certain geographic areas; and

WHEREAS, a willingness of local gevernments to participate in cooperative efforts to provide for public services or facilities may be restricted by uncertainties about governmental authority.

Be it enacted by the Legislature of the State of Montana:

Section 1. Transfer of appropriations to municipalities. (1) The board of county commissioners is autborized to appropriate and transfer any funds not otherwise restricted by statute to municipalities for the purpose of supplementing the cost of construction or maintenance of public infrastructure facilities, projects, or services impacted by or made necessary by activities outside the jurisdiction of the municipalities.

HeinOnline -- 1999 vol. I 347 1999

(2) Transfer of funds between governing bodies must be voluntary and made only upon mutual agreement of the governing bodies.

(3) Funds transferred between governing bodies must be used only for the purpose agreed to, and the use of the funds must be fully accounted for and reported to the parties to the agreement.

Section 2. Section 7-11-104, MCA, is amended to read:

"7-11-104. Authorization to create interlocal agreements — issuance of bonds for joint construction. One or more public agencies may contract with any one or more other public agencies to perform any administrative service, activity, or undertaking *or to participate in the provision or maintenance of any public infrastructure facility, project, or service*, including the issuance of bonds for the joint construction of a facility under 20-9-404, that any of the public agencies entering into the contract is authorized by law to perform. The contract must be authorized and approved by the governing body of each party to the contract. The contract must outline fully the purposes, powers, rights, obligations, and responsibilities of the contracting parties."

Section 3. Section 7-11-1102, MCA, is amended to read:

"7-11-1102. Services that may be provided. (1) A multijurisdictional service district may provide only those services that are authorized to be provided by local governments.

(2) The services that a multijurisdictional service district may provide are:

(a) recreation programs other than park and recreation programs in a county park district established under Title 7, chapter 16, part 24;

(b) road, street, and highway maintenance;

(c) libraries;

(d) jails;

(e) dog control programs;

(f) ambulance service;

(g) dispatch service;

(h) protection of human health and the environment, including scenic concerns and recreational activities for areas requiring or involving environmental reclamation; ~~and~~

(i) health services and health department functions*; and*

(j) maintenance or provision of any public infrastructure facility, project, or service."

Section 4. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 7, chapter 6, part 23, and the provisions of Title 7, chapter 6, part 23, apply to [section 1].

Section 5. Effective date. [This act] is effective on passage and approval.

Approved March 16, 1999

HeinOnline -- 1999 vol. I 348 1999

CHAPTER NO. 87

[SB 115]

AN ACT PROHIBITING CERTAIN SMALL EMPLOYER HEALTH INSURANCE CARRIERS FROM CONSIDERING AS ELIGIBLE EMPLOYEES THOSE EMPLOYEES WHO HAVE WAIVED COVERAGE UNDER THE EMPLOYER'S PLAN BECAUSE OF OTHER EXISTING HEALTH INSURANCE COVERAGE; AND AMENDING SECTION 33-22-1811, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-22-1811, MCA, is amended to read:

"33-22-1811. Availability of coverage — required plans. (1) (a) As a condition of transacting business in this state with small employers, each small employer carrier must have approved for issuance to small employer groups at least two health benefit plans. One plan must be a basic health benefit plan, and one plan must be a standard health benefit plan.

(b) (i) A small employer carrier shall issue a basic health benefit plan or a standard health benefit plan to any eligible small employer that applies for either plan and agrees to make the required premium payments and to satisfy the other reasonable provisions of the health benefit plan not inconsistent with this part. If, pursuant to Public Law 104-191, an agency of the United States or a court does not prohibit a small employer carrier from doing so, a small employer carrier may offer and issue a group health benefit plan other than a basic or standard plan on an underwritten basis.

(ii) In the case of a small employer carrier that establishes more than one class of business pursuant to 33-22-1808, the small employer carrier shall maintain and offer to eligible small employers at least one basic health benefit plan and at least one standard health benefit plan in each established class of business. A small employer carrier may apply reasonable criteria in determining whether to accept a small employer into a class of business, provided that:

(A) the criteria are not intended to discourage or prevent acceptance of small employers applying for a health benefit plan;

(B) the criteria are not related to the health status or claims experience of the small employers' employees;

(C) the criteria are applied consistently to all small employers that apply for coverage in that class of business; and

(D) the small employer carrier provides for the acceptance of all eligible small employers into one or more classes of business.

(iii) The provisions of subsection (1)(b)(ii) may not be applied to a class of business into which the small employer carrier is no longer enrolling new small businesses.

(c) A small employer carrier that elects not to comply with the requirements of subsections (1)(a) and (1)(b) may continue to provide coverage under health benefit plans previously issued to small employers in this state for a period of no more than 7 years from October 1, 1995, if the carrier:

(i) complies with all other applicable provisions of this part, except 33-22-1810, 33-22-1813, and subsections (2) through (4) of this section; and

HeinOnline -- 1999 vol. I 349 1999

(ii) does not amend or alter the benefits and coverages of the previously issued health benefit plans unless required to do so by law or rule.

(2) (a) A small employer carrier shall, pursuant to 33-1-501, file the basic health benefit plans and the standard health benefit plans to be used by the small employer carrier.

(b) The commissioner may at any time, after providing notice and an opportunity for a hearing to the small employer carrier, disapprove the continued use by a small employer carrier of a basic or standard health benefit plan on the grounds that the plan does not meet the requirements of this part.

(3) Health benefit plans covering small employers must comply with the following provisions:

(a) A health benefit plan may not:

(i) because of a preexisting condition, deny, exclude, or limit benefits for a covered individual for losses incurred more than 12 months following the effective date of the individual's coverage. A health benefit plan may not define a preexisting condition exclusion more restrictively than 33-22-140.

(ii) use a preexisting condition exclusion more restrictive than exclusions allowed under 33-22-514.

(b) A health benefit plan must waive any time period applicable to a preexisting condition exclusion or limitation period with respect to particular services for the period of time that an individual was previously covered by creditable coverage that provided benefits with respect to those services if the creditable coverage was continuous to a date not more than 63 days prior to the submission of an application for new coverage. This subsection (3)(b) does not preclude application of any waiting period applicable to all new enrollees under the health benefit plan.

(c) A health benefit plan may exclude coverage for late enrollees for 18 months or for an 18-month preexisting condition exclusion, provided that if both a period of exclusion from coverage and a preexisting condition exclusion are applicable to a late enrollee, the combined period may not exceed 18 months from the date the individual enrolls for coverage under the health benefit plan.

(d) (i) Requirements used by a small employer carrier in determining whether to provide coverage to a small employer, including requirements for minimum participation of eligible employees and minimum employer contributions, must be applied uniformly among all small employers that have the same number of eligible employees and that apply for coverage or receive coverage from the small employer carrier. *For the purpose of meeting minimum participation requirements of groups of four or more, a small employer carrier may not consider employees who, because they are covered under another health plan, waive coverage under the small employer's plan as part of the group of eligible employees. However, a small employer carrier may require at least two eligible employees to participate in a plan.*

(ii) A small employer carrier may vary the application of minimum participation requirements and minimum employer contribution requirements only by the size of the small employer group.

(e) (i) If a small employer carrier offers coverage to a small employer, the small employer carrier shall offer coverage to all of the eligible employees of a small employer and their dependents. A small employer carrier may not offer

coverage only to certain individuals in a small employer group or only to part of the group, except in the case of late enrollees as provided in subsection (3)(c).

(ii) A small employer carrier may not modify a basic or standard health benefit plan with respect to a small employer or any eligible employee or dependent, through riders, endorsements, or otherwise, to restrict or exclude coverage for certain diseases or medical conditions otherwise covered by the health benefit plan.

(iii) A small employer carrier shall secure a waiver of coverage from each eligible employee who declines, at the sole discretion of the eligible employee, an offer of coverage under a health benefit plan provided by the small employer. The waiver must be signed by the eligible employee and must certify that the employee was informed of the availability of coverage under the health benefit plan and of the penalties for late enrollment. The waiver may not require the eligible employee to disclose the reasons for declining coverage.

(iv) A small employer carrier may not issue coverage to a small employer if the carrier or a producer for the carrier has evidence that the small employer induced or pressured an eligible employee to decline coverage due to the health status or risk characteristics of the eligible employee or of the dependents of the eligible employee.

(4) (a) A small employer carrier may not be required to offer coverage or accept applications pursuant to subsection (1) in the case of the following:

(i) to an employer whose employees do not work or reside within the small employer carrier's established geographic service area for a network plan, as defined in 33-22-140; or

(ii) within an area where the small employer carrier reasonably anticipates and demonstrates to the satisfaction of the commissioner that it will not have the capacity within its established geographic service area to deliver service adequately to the members of a group because of its obligations to existing group policyholders and enrollees. The small employer carrier may not deny coverage under this subsection unless the small employer carrier acts uniformly without regard to claims experience or health status-related factors of employers, employees, or dependents.

(b) A small employer carrier may not be required to provide coverage to small employers pursuant to subsection (1) for which the commissioner determines that the small employer carrier does not have the financial reserves necessary to underwrite additional coverage and that the small employer carrier has denied coverage of small employers uniformly throughout the state and without regard to the claims experience and health status-related factors of the applicant small employer groups. The small employer carrier exempted from providing coverage under this subsection may not offer coverage to small employer groups in this state for 180 days after the date on which coverage is denied or until the small employer carrier has demonstrated to the commissioner that the small employer carrier has sufficient financial reserves to underwrite additional coverage, whichever is later."

Approved March 16, 1999

HeinOnline -- 1999 vol. I 351 1999

CHAPTER NO. 88

[SB 120]

AN ACT RELATING TO THE FLEXIBLE SPENDING ACCOUNT PROGRAM; REQUIRING THAT AMOUNTS WITHHELD FROM PUBLIC EMPLOYEE SALARIES ALONG WITH ANY EMPLOYER CONTRIBUTIONS FOR THE PURPOSES OF THE FLEXIBLE SPENDING ACCOUNT PROGRAM BE DEPOSITED INTO AN ACCOUNT WITHIN THE STATE SELF-INSURANCE RESERVE FUND AND USED FOR THE PURPOSES OF THE PROGRAM; REQUIRING THAT EXCESS PORTIONS OF THE EMPLOYER CONTRIBUTION TO THE STATE INSURANCE PROGRAM ALSO BE USED FOR THE FLEXIBLE SPENDING ACCOUNT PROGRAM IF REQUESTED BY AN EMPLOYEE; REQUIRING INCOME EARNED ON THE FLEXIBLE SPENDING ACCOUNT BE RETAINED WITHIN THE ACCOUNT AND USED FOR PURPOSES OF THE FLEXIBLE SPENDING ACCOUNT PROGRAM; AMENDING SECTIONS 2-18-809 AND 2-18-812, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-18-809, MCA, is amended to read:

"2-18-809. Definitions. As used in this part, the following definitions apply:

(1) "Advisory council" means the state employee group benefits advisory council provided for in 2-15-1016.

(2) "Department" means the department of administration provided for in 2-15-1001.

(3) "Flexible spending account" means a funding and accounting arrangement allowed by federal law that:

(a) gives a state employee a choice between receiving taxable salary or having a part of the employee's salary withheld; and

(b) provides for depositing any portion of the state employee's salary withheld and any employer contribution designated by the employee into an account and receiving from that account nontaxable reimbursement for certain out-of-pocket medical expenses of the state employee or a dependent of the employee.

~~(3)~~*(4)* "Group benefits" means group hospitalization, health, medical, surgical, disability, life, and other similar and related group benefits provided to officers and employees of the state, *including flexible spending account benefits.* The term "group benefits" does not include casualty insurance, defined in 33-1-206; marine insurance, authorized in 33-1-209 and 33-1-221 through 33-1-229; property insurance, defined in 33-1-210; surety insurance, defined in 33-1-211; and title insurance, defined in 33-1-212.

~~(4)~~*(5)* "State employee" means an employee of the state, specifically including a member or employee of the legislative branch of state government. The term "state employee" does not include employees of counties, cities, towns, school districts, or the Montana university system."

Section 2. Section 2-18-812, MCA, is amended to read:

"2-18-812. Alternatives to conventional insurance for providing state employee group benefits authorized — requirements. The department may establish alternatives to conventional insurance for providing

HeinOnline -- 1999 vol. I 352 1999

state employee group benefits. The requirements for providing alternatives to conventional insurance are as follows:

(1) The department shall maintain state employee group benefit plans on an actuarially sound basis.

(2) The department shall maintain reserves sufficient to liquidate the unrevealed claims liability and other liabilities of state employee group benefit plans.

(3) The department shall deposit all reserve funds and premiums paid to a state employee group benefit plan *account within the state self-insurance reserve fund*, and the deposits must be expended for claims under the plan.

(4) The department shall deposit income earned from the investment of a state employee group benefit plan's reserve fund into the account established under subsection (3) in order to offset the costs of administering the plan. Expenditures for actual and necessary expenses required for the efficient administration of the plan must be made from temporary appropriations, as described in 17-7-501(1) or (2), made for that purpose.

(5) The department shall deposit into the account provided for in subsection (3) all portions of a state employee's salary designated by the employee to be withheld for the purposes of flexible spending account benefits as well as any employee-designated portion of the employer contribution for group benefits provided for in 2-18-703 that is not required to be used for mandatory or elected benefits. Income earned on the deposits must be retained within the account and used for the purposes provided in this subsection. The money deposited and income earned on the deposits must be used for:

(a) payment of claims made by the employee;

(b) payment of reasonable costs of administration of the flexible spending account program;

(c) offsetting losses of the flexible spending account program; and

(d) reducing administration fees collected from participants in the program.

~~(5)~~*(6)* The department shall, prior to implementation of any alternative to conventional insurance, present to the advisory council the evidence upon which the department has concluded that the alternative method will be more efficient, less costly, or otherwise superior to contracting for conventional insurance.

~~(6)~~*(7)* The provisions of Title 33 do not apply to the department when exercising the powers and duties provided for in this section."

Section 3. Effective date. [This act] is effective July 1, 1999.

Approved March 16, 1999

CHAPTER NO. 89

[SB 203]

AN ACT REVISING THE LAWS GOVERNING EXECUTION OF JUDGMENT; PROVIDING A PROCEDURE FOR THE JUDGMENT DEBTOR TO CLAIM AN EXEMPTION FROM AN EXECUTION OF JUDGMENT; PROVIDING A PROCEDURE FOR ISSUANCE OF A WARRANT OF EXECUTION;

HeinOnline -- 1999 vol. I 353 1999

ALLOWING A SHERIFF OR LEVYING OFFICER TO ACCEPT PAYMENT BY A METHOD OTHER THAN CASH AT THE SALE OF THE PROPERTY; AMENDING SECTIONS 25-13-301, 25-13-402, 25-13-708, AND 25-13-709, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Notification of seizure. (1) After the sheriff or levying officer has executed upon the property of a judgment debtor, a notice of seizure must be served by the sheriff or levying officer upon the judgment debtor within 5 days of seizure. The notification must:

(a) inform the judgment debtor that certain described property or money of the judgment debtor's was seized to satisfy a judgment against the debtor;

(b) state the case name, the date of judgment, and the name of the judgment creditor;

(c) advise the judgment debter that the judgment debtor may be entitled to claim an exemption from execution on the property as described in part 6 of this chapter or other provisions of state or federal law; and

(d) state the procedure by which the judgment debtor may claim an exemption and file a request for an exemption hearing.

(2) The notification may be made by personal service or by United States mail, postage prepaid, to the judgment debtor's last-known address. If service is by mail, service is completed on the date the sheriff or levying officer places the notification in the mail.

Section 2. Claiming exemption — process — time for hearing. (1) To claim an exemption from execution, a judgment debtor shall file a request for a hearing with the court that issued the execution. The request must be in writing, and a copy of the request must he mailed by the judgment debtor on the date of filing to the judgment creditor or the judgment creditor's attorney and to the sheriff or levying officer. The request must be filed within 10 days, excluding weekends and holidays, of the date of:

(a) the judgment debtor's receipt of notification of execution, if notification was by personal service; or

(b) the date notification was mailed to the judgment debtor pursuant to [section 1(2)].

(2) If the judgment debtor does not file a request for an exemption hearing within the period provided for in subsection (1), the judgment debter may not claim an exemption in the seized property.

(3) A court that receives a request for an exemption hearing shall conduct the hearing within 10 days, excluding weekends and holidays, from the date of receipt of the request.

(4) The court shall forward the order determining the judgment debtor's exemption claim to the sheriff or levying officer.

Section 3. Warrant of execution — requirements — penalties. (1) If there is reason to believe that there is personal property subject to execution that is located in the judgment debtor's residence, the judgment creditor or the

HeinOnline -- 1999 vol. I 354 1999

judgment creditor's attorney may file an application for a warrant of execution with the court.

(2) The application must be supported by an affidavit from the judgment creditor or the judgment creditor's attorney:

(a) stating that a writ of execution has been issued and returned unsatisfied in whole or in part;

(b) stating that the affiant has reason to believe that there is property subject to execution in the possession of the judgment debtor in the judgment debtor's residence;

(c) stating that there is no other property of the judgment debtor available for levy and execution; and

(d) describing the property sought and the place and the purpose of the execution.

(3) If the judge determines that reasonable cause exists, the judge may issue a warrant of execution authorizing the sheriff or levying officer to enter the residence and levy upon property subject to execution.

(4) A sheriff or levying officer may condition service of a writ of execution and levy on property located in an area other than the judgment debtor's residence upon the judgment creditor's securing a warrant of execution in accordance with subsection (1) when the sheriff or levying officer believes the area is subject to a reasonable expectation of privacy.

Section 4. Section 25-13-301, MCA, is amended to read:

"25-13-301. Form and contents of writ. (1) The writ of execution must:

(a) be issued in the name of the state of Montana, sealed with the seal of the court, and subscribed by the clerk;

(b) be directed to the sheriff or levying officer;

(c) intelligibly refer to the judgment, stating the court and the county where it was entered and, if it is for money, the amount ~~thereof~~ *of money* and the amount actually due ~~thereon~~ *on the judgment*; and

(d) require the sheriff or levying officer to act substantially as provided in this part.

(2) In executions, the amount ~~thereof~~ *of the execution* must be computed and stated as near as may be *possible* in dollars and cents, rejecting fractions of a cent.

(3) A writ of execution served upon an employer of the judgment debtor must be accompanied by a document that reasonably describes the exemptions from execution provided in 25-13-614."

Section 5. Section 25-13-402, MCA, is amended to read:

"25-13-402. How writ executed. *(1)* The sheriff or levying officer ~~must~~ *shall* execute the writ against the property of the judgment debtor no later than 60 days after receipt of the writ by:

(a) levying on a sufficient amount of property, if there ~~be~~ *is* sufficient *property*~~,~~;

(b) collecting or selling the things in action~~,~~; and

(c) selling the other property and paying to the ~~plaintiff~~ *judgment creditor* or ~~his~~ *the judgment creditor's* attorney ~~so~~ *as* much of the proceeds as will satisfy the judgment.

(2) Any *proceeds in* excess ~~in the proceeds over~~ *of* the judgment and accruing costs must be returned to the judgment debtor unless otherwise directed by the judgment or order of the court. When *the sheriff or levying officer determines that* there is more property of the judgment debtor than is sufficient to satisfy the judgment and accruing costs, ~~within the view of~~ the sheriff or levying officer~~, he must~~ *shall* levy only on ~~such~~ *the* part of the property ~~as~~ *that* the judgment debtor may indicate if the property indicated ~~be amply~~ *is* sufficient to satisfy the judgment and costs.

(3) With respect to earnings of a judgment debtor, an employer shall respond to the levy based upon the earnings accrued to the end of the regular pay period in which the levy occurred.

(4) Except for perishable property, the sheriff or levying officer shall hold any property or money levied upon for 10 days, excluding weekends and holidays, following notification of execution upon the judgment debtor. After that time, the sheriff or levying officer may sell the property and pay the money to the judgment creditor.

(5) If the first levy is not sufficient to satisfy the writ, the sheriff or levying officer may levy, from time to time and as often as necessary, within the 60 days until the judgment is satisfied or the writ expires."

Section 6. Section 25-13-708, MCA, is amended to read:

"25-13-708. Conveyance of personal property capable of manual delivery. When the purchaser of any personal property capable of manual delivery pays the purchase ~~money~~ *price*, the officer making the sale ~~must~~ *shall* deliver to the purchaser the property and, if desired, execute and deliver to ~~him~~ *the purchaser* a certificate of ~~the~~ sale. ~~Such~~ *The* certificate conveys to the purchaser all ~~the right which~~ *rights that* the debtor had in ~~such~~ *the* property on the day the execution or attachment was levied."

Section 7. Section 25-13-709, MCA, is amended to read:

"25-13-709. Conveyance of personal property not capable of manual delivery. When the purchaser of any personal property not capable of manual delivery pays the purchase ~~money~~ *price*, the officer making the sale ~~must~~ *shall* execute and deliver to the purchaser a certificate of sale. ~~Such~~ *The* certificate conveys to the purchaser all ~~the right which~~ *rights that* the debtor had in ~~such~~ *the* property on the day the execution or attachment was levied."

Section 8. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 25, chapter 13, and the provisions of Title 25, chapter 13, apply to [sections 1 through 3].

Section 9. Effective date. [This act] is effective on passage and approval.

Section 10. Applicability. [This act] applies to an execution of judgment commenced on or after [the effective date of this act].

Approved March 16, 1999

HeinOnline -- 1999 vol. I 356 1999

CHAPTER NO. 90

[SB 231]

AN ACT CLARIFYING THE TERM OF OFFICE FOR A JUSTICE OF THE PEACE; AMENDING SECTION 3-10-205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-10-205, MCA, is amended to read:

"3-10-205. Term of office. The term of office of justices of *the* peace is 4 ~~years from the first Monday in January next succeeding their election~~ *as provided in 7-4-2205.*"

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 16, 1999

CHAPTER NO. 91

[HB 24]

AN ACT REPLACING THE UNIFORM CHILD CUSTODY JURISDICTION ACT WITH THE UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT; AMENDING SECTIONS 40-1-105, 40-4-103, 40-7-101, 40-7-103, 40-7-105, 40-7-106, 40-7-107, 40-7-108, 40-7-109, 40-7-110, 40-7-112, 40-7-119, AND 40-7-125, MCA; AND REPEALING SECTIONS 40-7-102, 40-7-104, 40-7-111, 40-7-113, 40-7-114, 40-7-115, 40-7-116, 40-7-117, 40-7-118, 40-7-120, 40-7-121, 40-7-122, 40-7-123, AND 40-7-124, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-1-105, MCA, is amended to read:

"40-1-105. Application of ~~the~~ Montana Rules of Civil Proceedure. (1) Except for proceedings under the Uniform Child Custody Jurisdiction *and Enforcement* Act, the Montana Rules of Civil Procedure apply to all proceedings under this chapter, except as otherwise provided in this chapter.

(2) A proceeding for declaration of invalidity of marriage must be entitled, "In re the Marriage of..... and.....". A parenting or support proceeding must be entitled, "In re tbe (parenting) (support) of.....".

(3) The initial pleading in all proceedings under tbis cbapter must be denominated a petition. A responsive pleading must be denominated a response. Other pleadings, and all pleadings in other matters under this chapter, must be denominated as provided in the Montana Rules of Civil Procedure.

(4) In this chapter, "decree" includes "judgment"."

Section 2. Section 40-4-103, MCA, is amended to read:

"40-4-103. Application of ~~the~~ Montana Rules of Civil Procedure. (1) Except for proceedings ~~coming~~ under tbe Uniform Child Custody Jurisdiction *and Enforcement* Act, tbe Montana Rules of Civil Procedure apply to all proceedings under tbis cbapter, except as otherwise provided in this chapter.

HeinOnline -- 1999 vol. I 357 1999

(2) A proceeding for dissolution of marriage or legal separation must be entitled, "In re the Marriage of..... and.....". A parenting or support proceeding must be entitled, "In re the (parenting) (support) of.....".

(3) The initial pleading in all proceedings under this chapter must be denominated a petition. A responsive pleading must be denominated a response. Other pleadings, and all pleadings in other matters under this chapter, must be denominated as provided in tbe Montana Rules of Civil Procedure.

(4) In this chapter, "decree" includes "judgment".

(5) A decree of dissolution or of legal separation, if made, may not be awarded to one of the parties but must provide that it affects the status previously existing between the parties in the manner decreed."

Section 3. Section 40-7-101, MCA, is amended to read:

"40-7-101. Short title. This chapter may be cited as tbe "Uniform Child Custody Jurisdiction *and Enforcement* Act"."

Section 4. Section 40-7-103, MCA, is amended to read:

"40-7-103. Definitions. As used in this chapter, the following definitions apply:

~~(1) "Contestant" means a person, including a parent, who claims a right to custody or visitation rights with respect to a child.~~

~~(2) "Custody determination" means a court decision and court orders and instructions providing for the custody of a child, including visitation rights. It does not include a decision relating to child support or any other monetary obligation of any person.~~

~~(3) "Custody proceeding" includes proceedings in which a custody determination is one of several issues, such as an action for divorce or separation, and includes issues of custody in adoption proceedings. A "custody proceeding" is not a proceeding pursuant to Title 41, chapter 3 or 5.~~

~~(4) "Decree" or "custody decree" means a custody determination contained in a judicial decree or order made in a custody proceeding and includes an initial decree and a modification decree.~~

(1) "Abandoned" means left without provision for reasonable and necessary care or supervision.

(2) "Child" means an individual who has not attained 18 years of age.

(3) (a) "Child custody determination" means a judgment, decree, or other order of a court providing for the legal custody, physical custody, or visitation with respect to a child. The term includes a permanent, a temporary, an initial, and a modification order.

(b) The term does not include an order relating to child support or other monetary obligation of an individual.

(4) (a) "Child custody proceeding" means a proceeding in which legal custody, physical custody, or visitation with respect to a child is an issue. The term includes a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence, in which the issue may appear.

(b) The term does not include a proceeding involving juvenile delinquency, contractual emancipation, or enforcement under [sections 25 through 41].

HeinOnline -- 1999 vol. I 358 1999

(5) "Commencement" means the filing of the first pleading in a proceeding.

(6) "Court" means an entity authorized under the law of a state to establish, enforce, or modify a child custody determination.

~~(5)~~*(7)* "Home state" means the state in which ~~the~~ a child~~, immediately preceding the time involved,~~ lived with ~~his parents,~~ a parent~~,~~ or a person acting as parent~~,~~ for at least 6 consecutive months *immediately before the commencement of a child custody proceeding.* ~~and in~~ *In* the case of a child less than 6 months ~~old~~ *of age, the term means* the state in which the child lived from birth with any of the persons mentioned. ~~Periods~~ *A period* of temporary absence of any of the ~~named~~ *mentioned* persons ~~are counted as~~ *is* part of the ~~6-month or other~~ period.

~~(6)~~*(8)* ~~"Initial decree"~~ *"Initial determination"* means the first ~~custody decree~~ *child custody determination* concerning a particular child.

(9) "Issuing court" means the court that makes a child custody determination for which enforcement is sought under this chapter.

(10) "Issuing state" means the state in which a child custody determination is made.

~~(7)~~*(11)* "Modification ~~decree~~" means a ~~custody decree which modifies or~~ *child custody determination that changes,* replaces, *supersedes, or is otherwise made after a previous determination concerning the same child,* ~~a prior decree,~~ whether *or not it is* made by the court ~~which rendered the prior decree or by another court~~ *that made the previous determination.*

(12) "Person" includes a government, a governmental subdivision, an agency, an instrumentality, or any other legal or commercial entity.

(13) "Person acting as a parent" means a person, other than a parent, who:

(a) has physical custody of the child or has had physical custody for a period of 6 consecutive months, including any temporary absence, within 1 year immediately before the commencement of a child custody proceeding; and

(b) has been awarded legal custody by a court or claims a right to legal custody under the law of this state.

~~(6)~~*(14)* "Physical custody" means ~~actual possession and control~~ *the physical care and supervision* of a child.

~~(9) "Person acting as parent" means a person other than a parent who has physical custody of a child and who has either been awarded custody by a court or claims a right to custody.~~

~~(10)~~*(15)* "State" means ~~any~~ a state *of the United States,* ~~territory, or possession of the United States, the Commonwealth of Puerto Rico, and~~ the District of Columbia, *Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.*

(16) "Tribe" means an Indian tribe or band or Alaskan Native village that is recognized by federal law or formally acknowledged by a state.

(17) "Warrant" means an order issued by a court authorizing law enforeement officers to take physical custody of a child."

Section 5. Section 40-7-105, MCA, is amended to read:

"40-7-105. Notice ~~and~~ — opportunity to be heard —*joinder.* *(1)* Before ~~making a decree~~ *a child custody determination is made* under this chapter, ~~reasonable~~ notice and opportunity to be heard ~~shall~~ *in accordance with the*

HeinOnline -- 1999 vol. I 359 1999

standards of 40-7-106 must be given to ~~the contestants~~ *all persons entitled to notice under the law of this state as in child custody proceedings between residents of this state*, any parent whose parental rights have not been previously terminated, and any person who has physical custody of the child. ~~If any of these persons are outside this state, notice and opportunity to be heard shall be given pursuant to 40-7-106.~~

(2) This chapter does not govern the enforceability of a child custody determination made without notice or an opportunity to be heard.

(3) The obligation to join a party and the right to intervene as a party in a child custody proceeding under this chapter are governed by the law of this state as in child custody proceedings between residents of this state."

Section 6. Section 40-7-106, MCA, is amended to read:

"**40-7-106. Notice to persons outside ~~this~~ state ~~—submission to jurisdiction~~.** (1) Notice required for the exercise of jurisdiction ~~over~~ *when* a person *is* outside this state ~~shall~~ *may* be given in a manner ~~reasonably calculated to give actual notice and may be:~~

~~(a) by personal delivery outside this state in the manner prescribed for service of process within this state;~~

~~(b) in the manner~~ prescribed by *the law of this state for the service of process or by* the law of the ~~place~~ *state* in which the service is made. ~~for service of process in that place in an action in any of its courts of general jurisdiction;~~

~~(c) by any form of mail addressed to the person to be served and requesting a receipt; or~~

~~(d) as directed by the court, including~~ *Notice must be given in a manner reasonably calculated to give actual notice but may be by* publication, if other means ~~of notification~~ are ineffective.

(2) ~~Notice under this section shall be served, mailed, or delivered or last published at least 10 days before any hearing in this state.~~

~~(3)~~ Proof of service ~~outside this state~~ may be made ~~by affidavit of the individual who made the service or~~ in the manner prescribed hy the law of this state~~, the order pursuant to which the service is made,~~ or *by* the law of the ~~place~~ *state* in which the service is made. ~~If service is made by mail, proof may be a receipt signed by the addressee or other evidence of delivery to the addressee.~~

~~(4)~~*(3)* Notice is not required ~~if~~ *for the exercise of jurisdiction with respect to* a person *who* submits to the jurisdiction of the court."

Section 7. Section 40-7-107, MCA, is amended to read:

"**40-7-107. Simultaneous proceedings ~~in other states~~.** (1) ~~A~~ *Except as otherwise provided in [section 24], a* court of this state may not exercise its jurisdiction under ~~this chapter~~ *40-7-105, 40-7-107 through 40-7-110, 40-7-112, and [sections 21 through 23]* if at the time of ~~filing the petition~~ *commencement of the proceeding* a proceeding concerning the custody of the child ~~was pending~~ *had been previously commenced* in a court of another state ~~exercising~~ *having* jurisdiction substantially in conformity with this chapter unless the proceeding *has been terminated or* is stayed by the court of the other state because *a court of* this state is a more ~~appropriate~~ *convenient* forum ~~or for other reasons~~ *under 40-7-108.*

HeinOnline -- 1999 vol. I 360 1999

(2) ~~Before~~ *Except as otherwise provided in [section 24], a court of this state, before* hearing ~~the petition in a custody~~ *a child custody* proceeding, ~~the court~~ shall examine the ~~pleadings~~ *court documents* and other information supplied by the parties ~~under 40-7-110 and shall consult the child custody registry established under 40-7-117 concerning the pendency of proceedings with respect to the child in other states~~ *pursuant to 40-7-110*. If the court ~~has reason to believe that proceedings may be pending~~ *determines that a child custody proceeding was previously commenced in a court* in another state *having jurisdiction substantially in accordance with this chapter*, ~~it~~ *the court of this state* shall ~~direct an inquiry to the state court administrator or other appropriate official of the other state~~.

~~(3) If the court is informed during the course of the proceeding that a proceeding concerning the custody of the child was pending in another state before the court assumed jurisdiction, it shall~~ stay ~~the~~ *its* proceeding and communicate with the court ~~in which the other proceeding is pending to the end that the issue may be litigated in the more appropriate forum and that information be exchanged in accordance with 40-7-120 through 40-7-123. If a court of this state has made a custody decree before being informed of a pending proceeding in a court of another state, it shall immediately inform that court of the fact. If the court is informed that a proceeding was commenced in another state after it assumed jurisdiction, it shall likewise inform the other court to the end that the issues may be litigated in the~~ *of the other state. If the court of the state having jurisdiction substantially in accordance with this chapter does not determine that the court of this state is a* more appropriate forum, *the court of this state shall dismiss the proceeding.*

(3) In a proceeding to modify a child custody determination, a court of this state shall determine whether a proceeding to enforce the determination has been commenced in another state. If a proceeding to enforce a child custody determination has been commenced in another state, the court may:

(a) stay the proceeding for modification pending the entry of an order of a court of the other state enforcing, staying, denying, or dismissing the proceeding for enforcement;

(b) enjoin the parties from continuing with the proceeding for enforcement; or

(c) proceed with the modification under conditions that it considers appropriate."

Section 8. Section 40-7-108, MCA, is amended to read:

"40-7-108. Inconvenient forum. (1) A court ~~which~~ *of this state that* has jurisdiction under this chapter to make ~~an initial or modification decree~~ *a child custody determination* may decline to exercise its jurisdiction *at* any time ~~before making a decree~~ if it ~~finds~~ *determines* that it is an inconvenient forum ~~to make a custody determination~~ under the circumstances ~~of the case~~ and that a court of another state is a more appropriate forum. *The issue*

~~(2) A finding~~ of inconvenient forum may be ~~made~~ *raised* upon the court's own motion, *request of another court*, or ~~upon~~ motion of a party ~~or a guardian ad litem or other representative of the child~~.

~~(3)~~*(2)* ~~In~~ *Before* determining ~~if~~ *whether* it is an inconvenient forum, ~~the~~ *a* court *of this state* shall consider ~~if~~ *whether* it is ~~in the interest of the child~~ *appropriate* that *a court of* another state ~~assume~~ *exercise* jurisdiction. For this purpose, ~~it may take into account the following~~ *the court shall allow the parties*

HeinOnline -- 1999 vol. I 361 1999

to submit information and shall consider all relevant factors, ~~among others~~ *including*:

~~(a) if another state is or recently was the child's home state;~~

~~(b) if another state has a closer connection with the child and his family or with the child and one or more of the contestants;~~

~~(c) if substantial evidence concerning the child's present or future care, protection, training, and personal relationships is more readily available in another state;~~

~~(d) if the parties have agreed on another forum which is no less appropriate; and~~

~~(e) if the exercise of jurisdiction by a court of this state would contravene any of the purposes stated in 40-7-102.~~

(a) whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child;

(b) the length of time that the child has resided outside this state;

(c) the distance between the court in this state and the court in the state that would assume jurisdiction;

(d) the relative financial circumstances of the parties;

(e) any agreement of the parties as to which state should assume jurisdiction;

(f) the nature and location of the evidence required to resolve the pending litigation, including testimony of the child;

(g) the ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence; and

(h) the familiarity of the court of each state with the facts and issues in the pending litigation.

~~(4) Before determining whether to decline or retain jurisdiction, the court may communicate with a court of another state and exchange information pertinent to the assumption of jurisdiction by either court with a view to assuring that jurisdiction will be exercised by the more appropriate court and that a forum will be available to the parties.~~

~~(5)~~*(3)* If ~~the~~ *a* court ~~finds~~ *of this state determines* that it is an inconvenient forum and that a court of another state is a more appropriate forum, ~~it may dismiss the proceedings or~~ it ~~may~~ *shall* stay the proceedings upon condition that a ~~custody~~ *child custody* proceeding be promptly commenced in another ~~named~~ *designated* state ~~or upon~~ *and may impose* any other ~~conditions which may be~~ *condition that the court considers* just and proper~~, including the condition that a moving party stipulate his consent and submission to the jurisdiction of the other forum~~.

~~(6)~~*(4)* ~~The~~ *A* court *of this state* may decline to exercise its jurisdiction under this chapter if a ~~custody~~ *child custody* determination is incidental to an action for divorce or another proceeding while *still* retaining jurisdiction over the divorce or other proceeding.

~~(7) If it appears to the court that it is clearly an inappropriate forum, it may require the party who commenced the proceedings to pay, in addition to the costs of the proceedings in this state, necessary travel and other expenses, including~~

~~attorneys' fees, incurred by other parties or their witnesses. Payment is to be made to the clerk of the court for remittance to the proper party.~~

~~(8) Upon dismissal or stay of proceedings under this section the court shall inform the court found to be the more appropriate forum of this fact or, if the court which would have jurisdiction in the other state is not certainly known, transmit the information to the court administrator or other appropriate official for forwarding to the appropriate court.~~

~~(9) Any communication received from another state informing this state of a finding of inconvenient forum because a court of this state is the more appropriate forum shall be filed in the custody registry of the appropriate court. Upon assuming jurisdiction, the court of this state shall inform the original court of this fact.~~"

Section 9. Section 40-7-109, MCA, is amended to read:

"**40-7-109. Jurisdiction declined by reason of conduct.** (1) ~~If the petitioner for an initial decree has wrongfully taken the child from another state or~~ *Except as otherwise provided in [section 22], if a court of this state has jurisdiction under this chapter because a person invoking the jurisdiction* has engaged in ~~similar reprehensible~~ *unjustifiable* conduct, the court ~~may~~ *shall* decline to exercise jurisdiction ~~if this is just and proper under the circumstances~~ *unless:*

(a) the parents and all persons acting as parents have acquiesced in the exercise of jurisdiction;

(b) a court of the state otherwise having jurisdiction under [sections 19 through 21] determines that this state is a more appropriate forum under 40-7-108; or

(c) no other state would have jurisdiction under [sections 21 through 23].

~~(2) Unless required in the interest of the child, the court may not exercise its jurisdiction to modify a custody decree of another state if the petitioner, without consent of the person entitled to custody, has improperly removed the child from the physical custody of the person entitled to custody or has improperly retained the child after a visit or other temporary relinquishment of physical custody. If the petitioner has violated any other provision of a custody decree of another state, the court may decline to exercise its jurisdiction if this is just and proper under the circumstances.~~

(2) If a court of this state declines to exercise its jurisdiction pursuant to subsection (1), it may fashion an appropriate remedy to ensure the safety of the child and prevent a repetition of the wrongful conduct, including staying the proceeding until a child custody proceeding is commenced in a court having jurisdiction under [sections 21 through 23].

(3) ~~In appropriate cases~~ *If* a court ~~dismissing a petition under this section may~~ *dismisses a petition or stays a proceeding because it declines to exercise its jurisdiction pursuant to subsection (1), it shall* charge the ~~petitioner~~ *party invoking the jurisdiction of the court* with necessary ~~travel~~ and ~~other~~ *reasonable* expenses, including ~~attorneys' fees, incurred by other parties or their~~ *costs, communication expenses, attorney fees, investigative fees, expenses for* witnesses, *travel expenses, and child care during the course of the proceedings, unless the party from whom fees are sought establishes that the award would be clearly inappropriate. The court may not assess fees, costs, or expenses against this state except as otherwise provided by law other than this chapter.*"

HeinOnline -- 1999 vol. I 363 1999

Section 10. Section 40-7-110, MCA, is amended to read:

"**40-7-110. Information ~~under oath~~ to be submitted to ~~the~~ court.** (1) ~~Each~~ *In a child custody proceeding, each* party, ~~in a custody proceeding~~ in ~~his~~ *its* first pleading or in an *attached* affidavit, ~~attached to that pleading~~ shall give information, *if reasonably ascertainable,* under oath as to the child's present address, the places where the child has lived ~~within~~ *during* the last 5 years, and the names and present addresses of the persons with whom the child has lived during that period. ~~In this~~ *The* pleading or affidavit ~~each party shall further declare under oath~~ *must state* whether *the party*:

(a) ~~he~~ has participated, ~~(~~as a party~~,~~ *or* witness~~,~~ or in any other capacity~~)~~, in any other ~~litigation~~ *proceeding* concerning the custody of *or visitation with* the ~~same~~ child ~~in this or any other state~~ *and, if so, identify the court, the case number of the proceeding, and the date of the child custody determination, if any*;

(b) ~~he has information~~ *knows* of any ~~custody~~ proceeding ~~concerning the child pending in a court of this or any other state~~ *that could affect the current proceeding, including proceedings for enforcement and proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions, and, if so, identify the court, the case number, and the nature of the proceeding*; and

(c) ~~he~~ knows *the name and address* of any person *who is* not a party to the ~~proceedings~~ *proceeding* who has physical custody of the child or *who* claims ~~to have~~ *rights of legal custody or physical* custody *of,* or visitation ~~rights~~ with ~~respect to~~, the child *and, if so, the party shall provide the names and addresses of those persons.*

(2) If the information required by subsection (1) is not furnished, the court, upon motion of a party or its own motion, may stay the proceeding until the information is furnished.

~~(2)~~*(3)* If the declaration as to any of the ~~above~~ items *described in subsections (1)(a) through (1)(c)* is in the affirmative, the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and ~~as to~~ other matters pertinent to the court's jurisdiction and the disposition of the case.

~~(3)~~*(4)* Each party has a continuing duty to inform the court of any ~~custody~~ proceeding ~~concerning the child~~ in this or any other state ~~of which he obtained information during this~~ *that could affect the current* proceeding."

Section 11. Section 40-7-112, MCA, is amended to read:

"**40-7-112. Appearance of parties and child.** (1) ~~The~~ *A* court *of this state* may order ~~any~~ *a* party to ~~the~~ *a child custody* proceeding who is in this state to appear ~~personally~~ before the court *personally with or without the child.* ~~If that party~~ *The court may order any person who is in this state and who* has physical custody *or control* of the child~~, the court may order that he~~ *to* appear ~~personally~~ *physically* with the child.

(2) If a party to ~~the~~ *a child custody* proceeding whose presence is desired by the court is outside this state ~~with or without the child~~, the court may order that ~~the~~ *a* notice given ~~under~~ *pursuant to* 40-7-106 include a statement directing ~~that~~ *the* party to appear personally with or without the child and declaring that failure to appear may result in a decision adverse to ~~that~~ *the* party.

(3) The court may enter any orders necessary to ensure the safety of the child and of any person ordered to appear under this section.

HeinOnline -- 1999 vol. I 364 1999

~~(3)~~*(4)* If a party to ~~the~~ *a child custody* proceeding who is outside this state is directed to appear under subsection (2) or desires to appear personally before the court with or without the child, the court may require another party to pay ~~to the clerk of the court travel~~ *reasonable* and ~~other~~ necessary *travel and other* expenses of the party so appearing and of the child~~, if this is just and proper under the circumstances~~."

Section 12. Section 40-7-119, MCA, is amended to read:

"40-7-119. Taking testimony in another state. *(1)* In addition to other ~~procedural devices~~ *procedures* available to a party, ~~any~~ *a* party to ~~the~~ *a child custody* proceeding ~~or a guardian ad litem or other representative of the child~~ may ~~adduce~~ *offer* testimony of witnesses *who are located in another state*, including *testimony of the* parties and the child, by deposition or ~~otherwise~~, *other means allowable in this state for testimony taken* in another state. The court on its own motion may ~~direct~~ *order* that the testimony of a person he taken in another state and may prescribe the manner in which and the terms upon which the testimony ~~shall be~~ *is* taken.

(2) A court of this state may permit an individual residing in another state to be deposed or to testify by telephone, audiovisual means, or other electronic means before a designated court or at another location in that state. A court of this state shall cooperate with courts of other states in designating an appropriate location for the deposition or testimony.

(3) Documentary evidence that is transmitted from another state to a court of this state by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the means of transmission."

Section 13. Section 40-7-125, MCA, is amended to read:

"40-7-125. Priority. ~~A custody proceeding which raises~~ *If* a question of existence or exercise of jurisdiction under this chapter ~~shall~~ *is raised in a child custody proceeding, the question, upon request of a party, must* be given ~~calendar~~ priority *on the calendar* and handled expeditiously."

Section 14. Proceedings governed by other law. This chapter does not govern an adoption proceeding or a proceeding pertaining to the authorization of emergency medical care for a child.

Section 15. Application to Indian tribes. (1) A child custody proceeding that pertains to an Indian child as defined in the Indian Child Welfare Act, 25 U.S.C. 1901, et seq., is not subject to this chapter to the extent that it is governed by the Indian Child Welfare Act.

(2) A court of this state shall treat a tribe as if it were a state of the United States for the purpose of applying 40-7-101, 40-7-103, 40-7-105 through 40-7-110, 40-7-112, 40-7-119, 40-7-125, and [sections 14 through 24].

(3) A child custody determination made by a tribe under factual circumstances in substantial conformity with the jurisdictional standards of this chapter must be recognized and enforced under [sections 25 through 41].

Section 16. International application. (1) A court of this state shall treat a foreign country as if it were a state of the United States for the purpose of applying 40-7-101, 40-7-103, 40-7-105 through 40-7-110, 40-7-112, 40-7-119, 40-7-125, and [sections 14 through 24].

HeinOnline -- 1999 vol. I 365 1999

(2) A child custody determination made in a foreign country under factual circumstances in suhstantial conformity with the jurisdictional standards of this chapter must be recognized and enforced under [sections 25 through 41].

(3) A court of this state need not apply this chapter if the child custody law of a foreign country violates fundamental principles of human rights.

Section 17. Binding force of child eustody determination. A child custody determination made hy a court of this state that had jurisdiction under this chapter binds all persons who have been served in accordance with the laws of this state or notified in accordance with 40-7-106 or who have submitted to tbe jurisdiction of the court, and who have been given an opportunity to he heard. As to those persons, the determination is conclusive as to all decided issues of law and fact except to the extent that the determination is modified.

Section 18. Appearance and limited immunity. (1) A party to a child custody proceeding who is not subject to personal jurisdiction in this state and who is a responding party under 40-7-105, 40-7-107 through 40-7-110, 40-7-112, and [sections 21 through 24], a party in a proceeding to modify a child custody determination under 40-7-105, 40-7-107 through 40-7-110, 40-7-112, and [sections 21 through 24], or a petitioner in a proceeding to enforce or register a child custody determination under [sections 25 through 41] may appear and participate in the proceeding without submitting to porsonal jurisdiction over the party for another proceeding or purpose.

(2) A party is not subject to porsonal jurisdiction in this state solely by being physically present for the purpose of participatmg in a proceeding under this chapter. If a party is subject to personal jurisdiction in this state on a basis other thaii physical presence, the party may he served with process in this state. If a party present in this state is subject to the jurisdiction of another state, service of process allowable under tbe laws of that state may be accomplished in this state.

(3) The immunity granted by this section does not extend to civil litigation hased on acts unrelated to the participation in a proceeding under this chapter committed by an individual while present in this state.

Section 19. Communieation between courts. (1) A court of this state may communicate with a court in another state concerning a proceeding arising under this chapter.

(2) The court may allow the parties to participate in the communication. If the parties are not able to participate in the communication, they must be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made.

(3) Communication between courts on schedules, calendars, court records, and similar matters may occur without informing the parties. A record need not be made of the communication.

(4) Except as otherwise provided in subsection (3), a record must be made of a communication under this section. The parties must be informed promptly of the communication and granted access to the record.

(5) For the purposes of this section, "record" means information that is inscribed on a tangihle medium or that is stored in an electronic or other medium and is retrievable in perceivable form. A record includes notes or transcripts of a court reporter who listened to a conference call between the courts, an electronic recording of a telephone call, a memorandum or an electronic record of the

HeinOnline -- 1999 vol. I 366 1999

communication between the courts, or a memorandum or an electronic record made by a court after the communication.

Section 20. Cooperation between courts — preservation of records. (1) A court of this state may request the appropriate court of another state to:

(a) hold an evidentiary hearing;

(b) order a person to produce or give evidence pursuant to procedures of that state;

(c) order that an evaluation be made with respect to the custody of a child involved in a pending proceeding;

(d) forward to the court of this state a certified copy of the transcript of the record of the hearing, the evidence otherwise presented, and any evaluation prepared in compliance with the request; and

(e) order a party to a child custody proceeding or any person having physical custody of the child to appear in the proceeding with or without the child.

(2) Upon request of a court of another state, a court of this state may hold a hearing or enter an order described in subsection (1).

(3) Travel and other necessary and reasonable expenses incurred under subsections (1) and (2) may be assessed against the parties according to the law of this state.

(4) A court of this state sball preserve the pleadings, orders, decrees, records of hearings, evaluations, and otber pertinent records with respect to a child custody proceeding until the child attains 18 years of age. Upon appropriate request by a court or law enforcement official of another state, the court shall forward a certified copy of those records.

Section 21. Initial child custody jurisdiction. (1) Except as otherwise provided in [section 24], a court of this state has jurisdiction to make an initial child custody determination only if:

(a) this state is the home state of the cbild on the date of the commencement of the proceeding or was the home state of the child within 6 months before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state;

(b) a court of another state does not have jurisdiction under subsection (1)(a), or a court of the home state of the child has declined to exercise jurisdiction on the ground that this state is the more appropriate forum under 40-7-108 or 40-7-109, and:

(i) the child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this state other than mere physical presence; and

(ii) substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships;

(c) all courts having jurisdiction under subsection (1)(a) or (1)(b) have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child under 40-7-108 or 40-7-109; or

(d) no state would have jurisdiction under subsection (1)(a), (1)(b), or (1)(c).

HeinOnline -- 1999 vol. I 367 1999

(2) Subsection (1) is the exclusive jurisdictional basis for making a child custody determination by a court of this state.

(3) Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child custody determination.

Section 22. Exclusive, continuing jurisdiction. (1) Except as otherwise provided in [section 24], a court of this state that has made a child custody determination consistent with [section 21 or 23] has exclusive, continuing jurisdiction over the determination until:

(a) a court of this state determines that neither the child, the child and one parent, nor the child and a person acting as a parent have a significant connection with this state and that substantial evidence is no longer available in this state concerning the child's care, protection, training, and personal relationships; or

(b) a court of this state or a court of another state determines that neither the child, a parent, nor any person acting as a parent presently resides in this state.

(2) A court of this state that has exclusive, continuing jurisdiction under this section may decline to exercise jurisdiction if the court determines that it is an inconvenient forum under 40-7-108.

(3) A court of this state that has made a child custody determination and does not have exclusive, continuing jurisdiction under this section may modify that determination only if it has jurisdiction to make an initial determination under [section 21].

Section 23. Jurisdiction to modify determination. Except as otherwise provided in [section 24], a court of this state may not modify a child custody determination made by a court of another state unless a court of this state has jurisdiction to make an initial determination under [section 21(1)(a) or (1)(b)] and:

(1) the court of the other state determines it no longer has exclusive, continuing jurisdiction under [section 22] or that a court of this state would be a more convenient forum under 40-7-108; or

(2) a court of this state or a court of the other state determines that the child, the child's parents, and any person acting as a parent do not presently reside in the other state.

Section 24. Temporary emergency jurisdiction. (1) A court of this state has temporary emergency jurisdiction if the child is present in this state and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.

(2) If there is no previous child custody determination that is entitled to be enforced under this chapter and a child custody proceeding has not been commenced in a court of a state having jurisdiction under [sections 21 through 23], a child custody determination made under this section remains in effect until an order is obtained from a court of a state having jurisdiction under [sections 21 through 23]. If a child custody proceeding has not been or is not commenced in a court of a state having jurisdiction under [sections 21 through 23], a child custody determination made under this section becomes a final determination if it so provides and this state becomes the home state of the child.

HeinOnline -- 1999 vol. I 368 1999

(3) If there is a previous child custody determination that is entitled to be enforced under this chapter or a child custody proceeding has been commenced in a court of a state having jurisdiction under [sections 21 through 23], any order issued by a court of this state under this section must specify in the order a period of time that the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction under [sections 21 through 23]. The order issued in this state remains in effect until an order is obtained from the other state within the period specified or until the period expires.

(4) A court of this state that has been asked to make a child custody determination under this section, upon being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of a state having jurisdiction under [sections 21 through 23], shall immediately communicate with the other court. A court of this state that is exercising jurisdiction pursuant to [sections 21 through 23], upon being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of another state under a statute similar to this section, shall immediately communicate with the court of that state. The purpose of the communication is to resolve the emergency, to protect the safety of the parties and the child, and to determine a period for the duration of the temporary order.

Section 25. Definitions. In [sections 25 through 41]:

(1) "Petitioner" means a person who seeks enforcement of an order for the return of a child under the Hague Convention on the Civil Aspects of International Child Abduction or enforcement of a child custody determination.

(2) "Respondent" means a person against whom a proceeding has been commenced for enforcement of an order for return of a child under the Hague Convention on the Civil Aspects of International Child Abduction or enforcement of a child custody determination.

Section 26. Enforcement under Hague Convention. Under [sections 25 through 41], a court of this state may enforce an order for the return of the child that was made under the Hague Convention on the Civil Aspects of International Child Abduction as if it were a child custody determination.

Section 27. Duty to enforce. (1) A court of this state shall recognize and enforce a child custody determination of a court of another state if the latter court exercised jurisdiction in substantial conformity with this chapter or the determination was made under factual circumstances meeting the jurisdictional standards of this chapter and the determination has not been modified in accordance with this chapter.

(2) A court of this state may utilize any remedy available under other law of this state to enforce a child custody determination made by a court of another state. The procedure provided by [sections 25 through 41] does not affect the availability of other remedies to enforce a child custody determination.

Section 28. Temporary visitation. (1) A court of this state that does not have jurisdiction to modify a child custody determination may issue a temporary order enforcing:

(a) a visitation schedule made by a court of another state; or

(b) the visitation provisions of a child custody determination of another state that does not provide for a specific visitation schedule.

HeinOnline -- 1999 vol. I 369 1999

(2) If a court of this state makes an order under subsection (1)(b), it shall specify in the order a period of time that it considers adequate to allow the petitioner to obtain an order from a court having jurisdiction under the criteria specified in 40-7-105, 40-7-107 through 40-7-110, 40-7-112, and [sections 21 through 24]. The order remains in effect until an order is obtained from the other court or the period expires.

Section 29. Registration of child custody determination. (1) A child custody determination issued by a court of another state may be registered in this state, with or without a simultaneous request for enforcement, by sending to district court in this state:

(a) a letter or other document requesting registration;

(b) two copies, including one certified copy, of the determination sought to be registered and a statement under penalty of perjury that to the best of the knowledge and belief of the person seeking registration, the order has not been modified; and

(c) the name and address of the person seeking registration and any parent or person acting as a parent who has been awarded custody or visitation in the child custody determination sought to be registered.

(2) On receipt of the documents required by subsection (1), the registering court shall:

(a) cause the determination to be filed as a foreign judgment, together with one copy of any accompanying documents and information, regardless of their form; and

(b) serve notice upon the persons named pursuant to subsection (1)(c) and provide them with an opportunity to contest the registration in accordance with this section.

(3) The notice required by subsection (2)(b) must state that:

(a) a registered determination is enforceable as of the date of the registration in the same manner as a determination issued by a court of this state;

(b) a hearing to contest the validity of the registered determination must be requested within 20 days after service of notice; and

(c) failure to contest the registration will result in confirmation of the child custody determination and preclude further contest of that determination with respect to any matter that could have been asserted.

(4) A person seeking to contest the validity of a registered order shall request a hearing within 20 days after service of the notice. At that hearing, the court shall confirm the registered order unless the person contesting registration establishes that:

(a) the issuing court did not have jurisdiction under 40-7-105, 40-7-107 through 40-7-110, 40-7-112, and [sections 21 through 24];

(b) the child custody determination sought to be registered has been vacated, stayed, or modified by a court having jurisdiction to do so under 40-7-105, 40-7-107 through 40-7-110, 40-7-112, and [sections 21 through 24]; or

(c) the person contesting registration was entitled to notice, but notice was not given in accordance with the standards of 40-7-106, in the proceedings before the court that issued the order for which registration is sought.

HeinOnline -- 1999 vol. I 370 1999

(5) If a timely request for a hearing to contest the validity of the registration is not made, the registration is confirmed as a matter of law and the person requesting registration and all persons served must be notified of the confirmation.

(6) Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes furtber contest of the order with respect to any matter that could have been asserted at the time of registration.

Section 30. Enforcement of registered determination. (1) A court of this state may grant any relief normally available under the law of this state to enforce a registered child custody determination made by a court of another state.

(2) A court of this state shall recognize and enforce, but may not modify, except in accordance with 40-7-105, 40-7-107 through 40-7-110, 40-7-112, and [sections 21 through 24], a registered child custody determination of a court of another state.

Section 31. Simultaneous proceedings. If a proceeding for enforcement under [sections 25 through 41] is commenced in a court of this state and the court determines that a proceeding to modify the determination is commenced in a court of another state having jurisdiction to modify the determination under 40-7-105, 40-7-107 through 40-7-110, 40-7-112, and [sections 21 through 24], the enforcing court shall immediately communicate with the modifying court. The proceeding for enforcement continues unless the enforcing court, after consultation with the modifying court, stays or dismisses the proceeding.

Section 32. Expedited enforcement of child custody determination. (1) A petition under [sections 25 through 41] must be verified. Certified copies of all orders sought to be enforced and of any order confirming registration must be attached to the petition. A copy of a certified copy of an order may be attached instead of the original.

(2) A petition for enforcement of a child custody determination must state:

(a) whether the court that issued the determination identified the jurisdictional basis that it relied upon in exercising jurisdiction and, if so, what the basis was;

(b) whether the determination for which enforcement is sought has been vacated, stayed, or modified by a court whose decision must be enforced under this chapter or federal law and, if so, identify the court, the case number of the proceeding, and the action taken;

(c) whether any proceeding has been commenced that could affect the current proceeding, including proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions, and if so, identify the court, the case number, and the nature of the proceeding;

(d) the present physical address of the child and the respondent, if known;

(e) whether relief in addition to the immediate physical custody of the child and attorney fees is sought, including a request for assistance from law enforcement officials and, if so, the relief sought; and

(f) if the child custody determination has been registered and confirmed under [section 29], the date and place of registration.

(3) Upon the filing of a petition, the court shall issue an order directing the respondent to appear in person with or without the child at a hearing and may enter any order necessary to ensure the safety of the parties and the child. The

HeinOnline -- 1999 vol. I 371 1999

hearing must be held on the next judicial day after service of the order unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The court may extend the date of hearing at the request of the petitioner.

(4) The order must state the time and place of the hearing and must advise the respondent that at the hearing, the court will order the delivery of the child and the payment of fees, costs, and expenses under [section 36] and may set an additional hearing to determine whether further relief is appropriate, unless the respondent appears and establishes that:

(a) the child custody determination has not been registered and confirmed under [section 29] and that:

(i) the issuing court did not have jurisdiction under 40-7-105, 40-7-107 through 40-7-110, 40-7-112, and [sections 21 through 24];

(ii) the child custody determination for which enforcement is sought has been vacated, stayed, or modified by a court having jurisdiction to do so under 40-7-105, 40-7-107 through 40-7-110, 40-7-112, and [sections 21 through 24] or federal law; or

(iii) the respondent was entitled to notice, but notice was not given in accordance with the standards of 40-7-106, in the proceedings before the court that issued the order for which enforcement is sought; or

(b) the child custody determination for which enforcement is sought was registered and confirmed under [section 29], but has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under 40-7-105, 40-7-107 through 40-7-110, 40-7-112, and [sections 21 through 24] or federal law.

Section 33. Service of petition and order. Except as otherwise provided in [section 35], the petition and order must be served, hy any method authorized by the law of this state, upon the respondent and any person who has physical custody of the child.

Section 34. Hearing and order. (1) Unless the court issues a temporary emergency order pursuant to [section 24], upon a finding that a petitioner is entitled to the physical custody of the child immediately, the court shall order the child delivered to the petitioner unless the respondent establishes that:

(a) the child custody determination has not been registered and confirmed under [section 29] and that:

(i) the issuing court did not have jurisdiction under 40-7-105, 40-7-107 through 40-7-110, 40-7-112, and [sections 21 through 24];

(ii) the child custody determination for which enforcement is sought has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under 40-7-105, 40-7-107 through 40-7-110, 40-7-112, and [sections 21 through 24] or federal law; or

(iii) the respondent was entitled to notice, but notice was not given in accordance with the standards of 40-7-106, in the proceedings before the court that issued the order for which enforcement is sought; or

(b) the child custody determination for which enforcement is sought was registered and confirmed under [section 29], but has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under 40-7-105, 40-7-107 through 40-7-110, 40-7-112, and [sections 21 through 24] or federal law.

HeinOnline -- 1999 vol. I 372 1999

(2) The court shall award the fees, costs, and expenses authorized under [section 36] and may grant additional relief, including a request for the assistance of law enforcement officials, and may set a further hearing to determine whether additional relief is appropriate.

(3) If a party called to testify refuses to answer on the ground that the testimony may be self-incriminating, the court may draw an adverse inference from tbe refusal.

(4) A privilege ageinst disclosure of communications between spouses and a defense of immunity based on the relationship of husband and wife or parent and child may not be invoked in a proceeding under [sections 25 through 41].

Seetion 35. Warrant to take physieal custody of child. (1) Upon the filing of a petition seeking enforcement of a child custody determination, the petitioner may file a verified application for the issuance of a warrant to take physical custody of the child if the child is imminently likely to suffer serious physical harm or to be removed from this state.

(2) If the court, upon the testimony of the petitioner or other witness, finds that the child is imminently likely to suffer serious physical harm or to be removed from this state, it may issue a warrant to take physical custody of the child. The petition must be heard on the next judicial day after the warrant is executed unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The application for the warrant must include the statements required by [section 32(2)].

(3) A warrant to take physical custody of a child must:

(a) recite the facts upon which a conclusion of imminent serious physical harm or removal from the jurisdiction is based;

(b) direct law enforcement officers to take physical custody of the child immediately; and

(c) provide for the placement of the child, pending final relief.

(4) The respondent must be served with the petition, warrant, and order immediately after the child is taken into physical custody.

(5) A warrant to take physical custody of a child is enforceable throughout this state. If the court finds on the basis of the testimony of the petitioner or other witness that a less intrusive remedy is not effective, it may authorize law enforcement officers to enter private property to take physical custody of the child. If required by exigent circumstances of the case, the court may authorize law enforcement officers to make a forcible entry at any hour.

(6) The court may impose conditions upon placement of a child to ensure the appearance of the child and the child's custodian.

Section 36. Costs, fccs, and expenses. (1) The court shall award the prevailing party, including a state, necessary and reasonable expenses incurred by or on behalf of the party, including costs, communication expenses, attorney fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings, unless the party from whom fees or expenses are sought establishes that the award would be clearly inappropriate.

(2) The court may not assess fees, costs, or expenses against a state unless authorized by law other than this chapter.

HeinOnline -- 1999 vol. I 373 1999

Section 37. Recognition and enforcement. A court of this state shall accord full faith and credit to an order issued hy another state and consistent with this chapter that enforces a child custody determination hy a court of another state unless the order has been vacated, stayed, or modified hy a court having jurisdiction to do so under 40-7-105, 40-7-107 through 40-7-110, 40-7-112, and [sections 21 through 24].

Section 38. Appeals. An appeal may be taken from a final order in a proceeding under [sections 25 through 41]. Unless the court enters a temporary emergency order under [section 24], the enforcing court may not stay an order enforcing a child custody determination pending appeal.

Section 39. Rele of prosecutor. (1) In a case arising under this chapter or involving the Hague Convention on the Civil Aspects of International Child Abduction, the prosecutor may take any lawful action, including resorting to a proceeding under [sections 25 through 41] or any other available civil proceeding, to locate a child, obtain the return of a child, or enforce a child custody determination if there is:

(a) an existing child custody determination;

(b) a request to do so from a court in a pending child custody proceeding;

(c) a reasonable belief that a criminal statute has been violated; or

(d) a reasonahle belief that the child has been wrongfully removed or retained in violation of the Hague Convention on the Civil Aspects of International Child Abduction.

(2) A prosecutor acts on behalf of the court and may not represent any party to a child custody determination.

Section 40. Role of law enforcement. At the request of a prosecutor acting under [section 39], a law enforcement officer may take any lawful action reasonably necessary to locate a child or a party and to assist a prosecutor with responsibilities under [section 39].

Section 41. Costs and expenses. If the respondent is not the prevailing party, the court may assess against tbe respondent all direct expenses and costs incurred by the prosecutor and law enforcement officers under [section 39 or 40].

Section 42. Application and construction. In applying and construing this chapter, consideration must he given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Section 43. Repealer. Sections 40-7-102, 40-7-104, 40-7-111, 40-7-113, 40-7-114, 40-7-115, 40-7-116, 40-7-117, 40-7-118, 40-7-120, 40-7-121, 40-7-122, 40-7-123, and 40-7-124, MCA, are repealed.

Section 44. Transitional provision. A motion or other request for relief made in a child custody proceeding or to enforce a child custody determination that was commenced before [the effective date of this act] is governed by the law in effect at the time the motion or other request was made.

Section 45. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

Section 46. Codification instruetion. [Sections 14 through 41] are intended to be codified as an integral part of Title 40, chapter 7, and the provisions of Title 40, chapter 7, apply to [sections 14 through 41].

HeinOnline -- 1999 vol. I 374 1999

Section 47. Severability. If a part of [this act] is invalid, all valid parts that are severahle from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved March 17, 1999

CHAPTER NO. 92

[HB 170]

AN ACT REVISING THE LAW GOVERNING THE PROVISION OF TREATMENT AND FINANCIAL ASSISTANCE TO PERSONS NEEDING RENAL TREATMENT; DELETING THE DUTY OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO PROVIDE TREATMENT; REQUIRING ADOPTION OF RULES PROVIDING STANDARDS FOR FINANCIAL AND MEDICAL ASSISTANCE TO ENSURE ASSISTANCE FOR THOSE INDIVIDUALS MOST IN NEED OF ASSISTANCE; AMENDING SECTION 50-44-102, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Seetion 1. Section 50-44-102, MCA, is amended to read:

"50-44-102. Establishment of program. (1) The department of public bealth and human services shall establish a program to provide ~~treatment to persons suffering from chronic renal diseases, including dialysis and other medical procedures and techniques, that may have a lifesaving effect in the care and treatment of the persons. The department shall extend~~ financial assistance to persons suffering from chronic renal diseases in obtaining the medical, nursing, pharmaceutical, and technical services necessary to care for the diseases, including the rental or purchase of home dialysis equipment and supplies.

(2) The department shall by rule establish standards for determining the amount or duration of financial assistance to be extended to individuals under this program ~~in order that treatment is provided to those who are financially unable to obtain services without causing severe economic imbalance in the family economic unit. The standards must be established without reference to maximum or minimum income levels~~. *The rules must include standards to ensure that those individuals most in financial or medical need, or both, are the first to receive financial assistance.*

(3) The department is not liable to any person for a failure to provide financial assistance to that person under this section if sufficient funds are not appropriated by the legislature."

Section 2. Effective date. [This act] is effective July 1, 2000.

Approved March 17, 1999

HeinOnline -- 1999 vol. I 375 1999

CHAPTER NO. 93

[HB 392]

AN ACT EXPANDING THE REQUIREMENTS FOR THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO CONSULT WITH THE STATEWIDE TMDL ADVISORY GROUP ON MATTERS RELATED TO WATER QUALITY MONITORING, ASSESSMENT, AND TMDL DEVELOPMENT; AMENDING SECTIONS 75-5-702 AND 75-5-703, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-5-702, MCA, is amended to read:

"75-5-702. Monitoring — water quality assessment listing — *statewide advisory group.* (1) The department shall monitor state waters to assess the quality of those waters and to identify surface water bodies or segments of surface water bodies that are threatened or impaired. The department shall use the monitoring results to revise the list of water bodies that are identified as threatened or impaired and to establish a priority ranking for TMDL development for those waters in accordance with subsections (4) and (7).

(2) In revising the list prepared pursuant to this section, the department shall use all currently available data, including information or data obtained from federal, state, and local agencies, private entities, or individuals with an interest in water quality protection. Except as provided in subsection (6), the department may modify the list only if there is sufficient credible data to support the modification. Prior to publishing a final list, the department shall provide public notice and allow 60 days for public comment on the draft list. The department shall make available for public review, upon request, documentation used in the determination to list or delist a particular water body, including, at a minimum, a description of the information, data, and methodology used. The department may charge a reasonable fee for the documentation, commensurate with the cost of providing the documentation to the requestor.

(3) A person may request that the department add or remove a water body or reprioritize a water body on a draft or published list by providing the data or information necessary to support the request. The department shall review the data within 60 days from its submittal. If the department determines that there is sufficient credible data to grant the request, the department shall provide public notice of its intended action and allow 60 days for public comment prior to taking action on the request. A person aggrieved by the department's decision to grant or deny the request may appeal the department's decision to the board.

(4) The department shall, in consultation with local conservation districts and watershed advisory groups pursuant to 75-5-704, review and revise the list and priority rankings of water bodies identified as threatened or impaired. The department shall review and revise the list at intervals not to exceed 5 years. The department shall make available for public review the data and information used in making any changes in its list of threatened or impaired water bodies that is developed and maintained pursuant to this section.

(5) By October 1, 1999, *and in consultation with the statewide TMDL advisory group established pursuant to subsection (9),* the department shall develop and maintain a data management system that can be used to assess the validity and reliability of the data used in the listing and priority ranking process.

HeinOnline -- 1999 vol. I 376 1999

The department shall make available to the public, upon request, data from its data management system. The department may charge a reasonable fee for the data, commensurate with its cost of providing the data to the requestor.

(6) By October 1, 1999, *and in consultation with the statewide TMDL advisory group,* the department shall use the data management system developed and maintained pursuant to subsection (5) to revise the list and to remove any water body that lacks sufficient credible data to support its listing. If the department removes a water body because there is a lack of sufficient credible data to support its listing, the department shall monitor and assess that water body during the next field season or as soon as possible thereafter to determine whether it is a threatened water body or an impaired water body.

(7) In prioritizing water bodies for TMDL development, the department shall, in consultation with the statewide TMDL advisory group ~~established pursuant to subsection (9)~~, take into consideration the following:

(a) the beneficial uses established for a water body;

(b) the extent that natural factors over which humans have no control are contributing to any impairment;

(c) the impacts to human health and aquatic life;

(d) the degree of public interest and support;

(e) the character of the pollutant and the severity and magnitude of water quality standard noncompliance;

(f) whether the water body is an important high-quality resource in an early stage of degradation;

(g) the size of the water body not achieving standards;

(h) immediate programmatic needs, such as waste load allocations for new permits or permit renewals and load allocations for new nonpoint sources;

(i) court orders and decisions relating to water quality;

(j) state policies and priorities, including the protection and restoration of native fish when appropriate;

(k) the availability of technology and resources to correct the problems;

(l) whether actions or voluntary programs that are likely to correct the impairment of a particular water body are currently in place; and

(m) the recreational, economic, and aesthetic importance of a particular water body.

(8) The department shall, in consultation with the statewide TMDL advisory group, develop a method of rating water bodies according to the criteria and considerations described in subsection (7) in order to rank the listed water bodies as high priority, moderate priority, or low priority for TMDL development. The department may not rank a water body as a high priority under this section without first validating the data necessary to support the ranking.

(9) (a) The department shall establish a statewide TMDL advisory group to serve in the consultation capacity set forth in *75-5-703,* 75-5-704~~(2)(a)~~, and ~~subsections (7) and (8) of~~ this section. Fourteen members, *and any replacement members that may be necessary,* must be appointed by the director, based upon one nomination from each of the following interests:

HeinOnline -- 1999 vol. I 377 1999

(i) livestock-oriented agriculture;

(ii) farming-oriented agriculture;

(iii) conservation or environmental interests;

(iv) water-based recreationists;

(v) the forestry industry;

(vi) municipalities;

(vii) point source dischargers;

(viii) mining;

(ix) federal land management agencies;

(x) state trust land management agencies;

(xi) supervisors of soil and water conservation districts for counties east of the continental divide;

(xii) supervisors of soil and water conservation districts for counties west of the continental divide;

(xiii) the hydroelectric industry; and

(xiv) fishing-related businesses.

(b) If the director receives more than one nomination from a particular interest, the director shall notify the respective nominators and request that they agree on one nominee.

(10) The department shall provide public notice of meetings of the statewide TMDL advisory group and shall solicit, document, and consider public comments provided during the deliberations of the advisory group."

Section 2. Section 75-5-703, MCA, is amended to read:

"75-5-703. Development and implementation of total maximum daily loads. (1) The department shall, in consultation with local conservation districts and watershed advisory groups, develop total maximum daily loads or TMDLs for threatened or impaired water bodies or segments of water bodies in order of the priority ranking established by the department under 75-5-702. Each TMDL must be established at a level that will achieve compliance with applicable water quality standards and must include a reasonable margin of safety that takes into account any lack of knowledge concerning the relationship between the TMDL and water quality standards. The department shall consider applicable guidance from the federal environmental protection agency, as well as the environmental, economic, and social costs and benefits of developing and implementing a TMDL.

(2) In establishing TMDLs under subsection (1), the department may establish waste load allocations for point sources~~,~~ and *may establish* load allocations for nonpoint sources, as set forth in subsection (8), and may allow for effluent trading. The department shall, in consultation with local conservation districts and watershed advisory groups, develop reasonable land, soil, and water conservation practices specifically recognizing established practices and programs for nonpoint sources.

(3) Within 10 years from May 5, 1997, the department shall develop TMDLs for all water bodies on the list of waters that are threatened or impaired, as that

HeinOnline -- 1999 vol. I 378 1999

list ~~reads~~ *read* on May 5, 1997. This provision does not apply to water bodies that are subsequently added or removed from the list according to the provisions of 75-5-702. ~~Within 1 year from May 5, 1997, the~~ *The* department shall establish a schedule for completing the TMDLs within the 10-year period established by this subsection. The schedule must also provide a reasonable timeframe for TMDL development for impaired and threatened water bodies that are listed subsequent to May 5, 1997, and are prioritized as set forth in 75-5-702.

(4) The department shall provide guidance for TMDL development on any threatened or impaired water body, regardless of its priority ranking, if the necessary funding and resources from sources outside the department are available to develop the TMDL and to monitor the effectiveness of implementation efforts. The department shall review the TMDL and either approve or disapprove the TMDL. If the TMDL is approved by the department, the department shall ensure implementation of the TMDL according to the provisions of subsections (6) through (8).

(5) For water bodies listed under 75-5-702, the department shall provide assistance and support to landowners, local conservation districts, and watershed advisory groups for interim measures that may restore water quality and remove the need to establish a TMDL, such as informational programs regarding control of nonpoint source pollution and voluntary measures designed to correct impairments. When a source implements voluntary measures to reduce pollutants prior to development of a TMDL, those measures, whether or not reflected in subsequently issued waste discharge permits, must be recognized in development of the TMDL in a way that gives credit for the pollution reduction efforts.

(6) After development of a TMDL and upon approval of the TMDL, the department shall:

(a) incorporate the TMDL into its current continuing planning process;

(b) incorporate the waste load allocation developed for point sources during the TMDL process into appropriate water discharge permits; and

(c) assist and inform landowners regarding the application of a voluntary program of reasonable land, soil, and water conservation practices developed pursuant to subsection (2).

(7) Once the control measures identified in subsection (6) have been implemented, the department shall, *in consultation with the statewide TMDL advisory group,* develop a monitoring program to assess the waters that are subject to the TMDL to determine whether compliance with water quality standards has been attained for a particular water body or whether the water body is no longer threatened. The monitoring program must be designed based on the specific impairments or pollution sources. The department's monitoring program must include long-term monitoring efforts for the analysis of the effectiveness of the control measures developed.

(8) The department shall support a voluntary program of reasonable land, soil, and water conservation practices to achieve compliance with water quality standards for nonpeint source activities for water bodies that are subject to a TMDL developed and implemented pursuant to this section.

(9) If the monitoring program provided under subsection (7) demonstrates that the TMDL is not achieving compliance with applicable water quality standards within 5 years after approval of a TMDL, the department shall conduct a formal evaluation of progress in restoring wator quality and the status of

HeinOnline -- 1999 vol. I 379 1999

reasonable land, soil, and water conservation practice implementation to determine if:

(a) the implementation of a new or improved phase of voluntary reasonable land, soil, and water conservation practice is necessary;

(b) water quality is improving but a specified time is needed for compliance with water quality standards; or

(c) revisions to the TMDL are necessary to achieve applicable water quality standards.

(10) Pending completion of a TMDL on a water body listed pursuant to 75-5-702:

(a) point source discharges to a listed water body may commence or continue, provided that:

(i) the discharge is in conformance with a discharge permit that reflects, in the manner and to the extent applicable for the particular discharge, the provisions of 75-5-303;

(ii) the discharge will not cause a decline in water quality for parameters by which the water body is impaired; and

(iii) minimum treatment requirements adopted pursuant to 75-5-305 are met;

(b) the issuance of a discharge permit may not be precluded because a TMDL is pending;

(c) new or expanded nonpoint source activities affecting a listed water body may commence and continue ~~their activities~~ provided those activities are conducted in accordance with reasonable land, soil, and water conservation practices;

(d) for existing nonpoint source activities, the department shall continue to ~~utilize~~ *use* educational nonpoint source control programs and voluntary measures as provided in subsections (5) and (6).

(11) This section may not be construed to prevent a person from filing an application or petition under 75-5-302, 75-5-310, or 75-5-312."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved March 17, 1999

CHAPTER NO. 94

[HB 454]

AN ACT PROVIDING FOR A VOLUNTARY CHECKOFF ON VEHICLE REGISTRATION APPLICATIONS FOR A DONATION FOR THE PURPOSES OF PROMOTING GENERAL PUBLIC AWARENESS AND EDUCATION FOR THE PROCUREMENT OF ORGAN AND TISSUE DONATIONS FOR ANATOMICAL GIFTS; AMENDING SECTION 61-3-303, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-3-303, MCA, is amended to read:

HeinOnline -- 1999 vol. I 380 1999

"**61-3-303. Application for registration.** (1) Each owner of a motor vehicle operated or driven upon the public highways of this state shall for each motor vehicle owned, except as otherwise provided in this section, file ~~or cause to be filed~~ in the office of the county treasurer *in the county* where the owner permanently resides at the time of making the application or, if the vehicle is owned by a corporation or used primarily for commercial purposes, in the taxing jurisdiction of the county where the vehicle is permanently assigned an application for registration or reregistration on a form prescribed by the department. The application must contain:

(a) the name and address of the owner, giving the county, school district, and town or city within whose corporate limits the motor vehicle is taxable, if taxable, or within whose corporate limits the owner's residence is located if the motor vehicle is not taxable;

(b) the name and address of the holder of any security interest in the motor vehicle;

(c) a description of the motor vehicle, including make, year model, engine or serial number, manufacturer's model or letter, gross weight, declared weight on all trucks for which the manufacturer's rated capacity is 1 ton or less, and type of body and, if a truck, the manufacturer's rated capacity;

(d) the declared weight on all trailers operating intrastate, except travel trailers or trailers and semitrailers registered as provided in 61-3-711 through 61-3-733;

(e) a space in which the person registering the vehicle may indicate the person's desire to donate $1 or more to promote awareness and education efforts for procurement of organ and tissue donations for anatomical gifts; and

~~(e)~~*(f)* other information that the department may require.

(2) A person who files an application for registration or reregistration of a motor vehicle, except of a mobile home or a manufactured home as those terms are defined in 15-1-101(1), shall upon the filing of the application pay to the county treasurer:

(a) the registration fee, as provided in 61-3-311 and 61-3-321 or 61-3-456; ~~and~~

(b) except as provided in 61-3-456 or unless it has been previously paid:

(i) the motor vehicle taxes or fees in lieu of tax assessed or imposed against the vehicle for the current year of registration and the immediately previous year; or

(ii) the new motor vehicle sales tax against the vehicle for the current year of registration*; and*

(c) a donation of $1 or more if the person has indicated on the application that the person wishes to donate to promote awareness and education efforts for procurement of organ and tissue donations in Montana to favorably impact anatomical gifts.

(3) The application may not be accepted by the county treasurer unless the payments required by subsection (2) accompany the application. The department may not assess or impose and the county treasurer may not collect taxes or fees for a period other than:

HeinOnline -- 1999 vol. I 381 1999

(a) the current year; and

(b) the immediately previous year if the vehicle was not registered or operated on the highways of the state, regardless of the period of time since the vehicle was previously registered or operated.

(4) The department may make full and complete investigation of the tax status of the vehicle. An applicant for registration or reregistration shall submit proof from the tax or other appropriate records of the proper county at the request of the department.

(5) Revenue that accrues from the voluntary donation provided in subsection (2)(c) must be forwarded by the respective county treasurer for deposit in the state special revenue fund to the credit of an account established by the department of public health and human services to support activities related to awareness and education efforts for procurement of organ and tissue donations for anatomical gifts."

Section 2. Effective date. [This act] is effective July 1, 1999.

Approved March 17, 1999

CHAPTER NO. 95

[HB 467]

AN ACT RELATING TO OFF-HIGHWAY VEHICLE USE; ALLOWING OFF-HIGHWAY VEHICLES TO USE CERTAIN FOREST DEVELOPMENT ROADS; EXEMPTING CERTAIN YOUNG DRIVERS FROM LICENSING REQUIREMENTS FOR USE OF OFF-HIGHWAY VEHICLES ON CERTAIN FOREST DEVELOPMENT ROADS; AND AMENDING SECTIONS 23-2-821 AND 61-5-104, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-2-821, MCA, is amended to read:

"23-2-821. Off-highway crossings of public roads — *use of certain forest development roads.* (1) Except as provided in subsection (2), an off-highway vehicle may make a direct crossing of a public road when the crossing is necessary to get to another authorized area of operation. The crossing must be made at an angle of approximately 90 degrees to the direction of traffic at a place where no obstruction prevents a quick and safe crossing. The off-highway vehicle must make a complete stop before entering upon any part of the traffic way, and the operator shall yield the right-of-way to all oncoming traffic.

(2) An off-highway vehicle may not he operated on or across a highway that is part of the federal-aid interstate system.

(3) An off-highway vehicle may be operated on or across a forest development road in this state, as defined in 61-8-110, if the road has been designated and approved for off-highway vehicle use by the United States forest service."

Section 2. Section 61-5-104, MCA, is amended to read:

"61-5-104. Exemptions. (1) The following persons are exempt from licensure under this chapter:

(a) a person who is a memher of the armed forces of the United States while operating a motor vehicle owned hy or leased to the United States government and being operated on official business;

(h) a person who is a member of the armed forces of the United States on active duty in Montana who holds a valid license issued by another state and the spouse of the person who holds a valid license issued hy another state and who is not employed in Montana, except as a memher of the armed forces. If a spouse of a member of the armed forces becomes gainfully employed in Montana, the spouse must be licensed, as required by 61-5-102, within 90 days of becoming employed.

(c) a person on active duty in the armed forces of the United States and in immediate possession of a valid license issued to that person in a foreign country by the armed forces of the United States, for a period of 45 days from the date of the person's return to the United States;

(d) a person who temporarily drives, operates, or moves a road machine, farm tractor, or implement of husbandry for use in intrastate commerce on a highway;

(e) a person who is a locomotive engineer, assistant engineer, conductor, brakeman, railroad utility person, or other memher of the crew of a railroad locomotive or train being operated upon rails, including operation on a railroad crossing a public street, road, or highway. A person employed as described in this subsection is not required to display a driver's license to a law enforcement officer in connection with the operation of a railroad locomotive or train within Montana.

(f) a person who temporarily drives, operates, or moves an off-highway vehicle, as defined in 23-2-801, on a forest development road in this state, as defined in 61-8-110, that has been designated and approved for off-highway vehicle use by the United States forest service if the person:

(i) is under 16 years of age but at least 12 years of age; and

(ii) at the time of driving, operating, or moving the off-highway vehicle, has in the person's possession a certificate showing the successful completion of an off-highway vehicle safety education course approved by the department of fish, wildlife, and parks and is in the physical presence of a person who possesses a license issued under this chapter.

(2) A nonresident who is at least 15 years of age and who is in immediate possession of a valid operator's license issued to the nonresident by the nonresident's home state or country may operate a motor vehicle, except a commercial motor vehicle, in this state.

(3) A nonresident not otherwise exempt from the licensing requirements of 49 CFR, part 383, and in immediate possession of a valid commercial driver's license issued to the nonresident by the nonresident's home state or country may operate a commercial motor vehicle in this state.

(4) A nonresident who is at least 18 years of age, whose home state or country does not require the licensing of operators, may operate a motor vehicle as an operator only, for a period of not more than 90 days in any calendar year, if the motor vehicle is registered in the home state or country of the nonresident.

(5) A driver's license issued under this chapter to a person who enters the United States armed forces, if valid and in effect at the time that the person enters the service, continues in effect so long as the service continues, unless the license is suspended, revoked, or canceled for a cause as provided hy law, and for up to

HeinOnline -- 1999 vol. I 383 1999

30 days following the date on which the licensee is honorably separated from the service. During the 30-day period, the license is valid only when the license and the licensee's discharge, separation, leave, or furlough papers are in the licensee's immediate possession."

Approved March 17, 1999

CHAPTER NO. 96

[HB 531]

AN ACT INCREASING FROM $2,500 TO $10,000 THE MINIMUM VALUE OF A CONTRACT THAT MUST BE AWARDED BY COMPETITIVE BID BY A DRAINAGE DISTRICT; AMENDING SECTION 85-8-361, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-8-361, MCA, is amended to read:

"85-8-361. Contracts. In all cases ~~where~~ *when* the work to be done at any one time under the direction of the commissioners ~~shall~~, in their opinion, ~~cost to exceed $2,500~~ *will cost more than $10,000*, the ~~same shall~~ *work must* be ~~let~~ *awarded* to the lowest responsible bidder~~, and the~~. *The* commissioners shall advertise for sealed bids, by notice published in ~~some~~ *a* newspaper published in the county in which the petition is filed, and may advertise in one or more newspapers published elsewhere. If there ~~be~~ *is* no newspaper published in the county in which the petition is filed, ~~they~~ *the commissioners* shall advertise in ~~some~~ *a* newspaper published in an adjoining county~~, which~~. *The* notice ~~shall particularly set forth~~ *must specify* the time and place when and where the bids advertised will be opened, the kind of work to be ~~let~~ *contracted for*, and the terms of payment. ~~Said~~ *The* commissioners may continue the ~~letting~~ *awarding of contracts* from time to time, if in their judgment the ~~same shall be~~ *contracts are* necessary, and shall reserve the right to reject any and all bids."

Section 2. Effective date. [This act] is effective July 1, 1999.

Section 3. Applicability. [This act] applies to contracts awarded after July 1, 1999.

Approved March 17, 1999

CHAPTER NO. 97

[SB 8]

AN ACT PROVIDING THAT A PROSECUTOR MAY OBTAIN A COURT ORDER ALLOWING A TELEPHONE SERVICE PROVIDER TO WORK WITH A LAW ENFORCEMENT AGENCY AS PART OF A CRIMINAL INVESTIGATION FOR THE PURPOSE OF RECORDING AND PROVIDING THE LAW ENFORCEMENT AGENCY WITH TELEPHONE NUMBERS THAT ARE DIALED FROM A PARTICULAR TELEPHONE AND THE TELEPHONE NUMBERS OF PARTICULAR TELEPHONES USED TO DIAL A TELEPHONE NUMBER.

Be it enacted by the Legislature of the State of Montana:

HeinOnline -- 1999 vol. I 384 1999

Section 1. Definitions. As used in [sections 1 through 5], the following definitions apply:

(1) "Pen register" means a device that records or decodes electronic or other impulses that identify a number dialed or otherwise transmitted on a telephone line to which the pen register is attached. The term does not include a device used by a provider or customer of a wire or electronic communication service for billing, or recording as an incident to billing, for communications services, such as but not limited to caller identification services, or used for cost accounting or similar purposes in the ordinary course of business.

(2) "Trap and trace device" means a device that records or decodes incoming electronic or other impulses that identify the originating number of an instrument or device from which a wire or electronic communication was transmitted. The term does not include a device used by a provider or customer of a wire or electronic communication service for billing, or recording as an incident to billing, for communications services, such as but not limited to caller identification services, or used for cost accounting or similar purposes in the ordinary course of business.

Section 2. Limitations on nse of pen register or trap and trace device. (1) A person may not install or use a pen register or trap and trace device without a court order obtained under [section 3], except as provided in subsection (2). Subsection (2) may not be construed to permit a law enforcement agent to operate a pen register or trap and trace device without a court order obtained under [section 3]. The use of a pen register or trap and trace device that has the ability to record conversations is prohibited.

(2) Subsection (1) does not apply to the installation or use of a pen register or trap and trace device by a provider of a wire or electronic communication service:

(a) for the:

(i) operation, maintenance, or testing of the service;

(ii) protection of the rights and property of the provider; or

(iii) protection of a user of the service from abuse of or unlawful use of the service;

(b) to record the fact that a wire or electronic communication was initiated or completed in order to protect the provider, another provider furnishing service toward the completion of the communication, or a user of the service from fraudulent, unlawful, or abusive use of the service; or

(c) if the consent of each person whose originating or transmitted number is recorded or decoded is obtained.

(3) A person who knowingly violates subsection (1) commits a criminal offense punishable upon conviction by incarceration for a period of up to 6 months and a fine of up to $500.

Section 3. Order for pen register or trap and trace device —installation — disclosures. (1) A prosecutor may apply to the district court for an order, or for the extension of an existing order, for the installation and use of a pen register or a trap and trace device. The application must he in writing and under oath. The application must name the prosecutor and must also name the law enforcement agency that will use the pen register or trap and trace device. The applicant shall show probable cause for the order.

HeinOnline -- 1999 vol. I 385 1999

(2) If the court is satisfied that the applicant has shown probable cause for the order, the court shall issue the order. The order must state:

(a) the name, if known, of each person to whom the telephone line is leased or in whose name the telephone line to which a pen register or trap and trace device is to be attached is listed;

(b) the name, if known, of each person who is the subject of the criminal investigation;

(c) the number and, if known, the physical location of each telephone line to which a pen register or trap and trace device is to be attached and, for a trap and trace device, the geographic limits of the court order; and

(d) the offense or offenses to which the information that might be obtained relates.

(3) The order must direct the provider of the telephone service and a landlord, custodian, or other person to furnish the prosecutor and law enforcement agency with the information, facilities, and technical assistance necessary to install and operate the pen register or trap and trace device. The installation and operation must create the most minimal interference with the telephone service of each person whose originating or transmitted telephone number is recorded or decoded. Information received by the service provider from the operation of the pen register or trap and trace device must be given to the law enforcement agency at reasonable intervals during regular business hours.

(4) The order may cover a period not to exceed 60 days and may be extended for periods not to exceed 60 days for each extension. An extension may be granted only if the court is satisfied that probable cause for the extension has been shown.

(5) A person leasing or owning a telephone line that is subject to the order, the provider of the service, and any other person with knowledge of the order, pen register, or trap and trace device may not disclose the existence of the order, pen register, or trap and trace device to any person without the court's permission.

(6) A service provider, landlord, custodian, or other person must be reasonably compensated by the law enforcement agency for expenses incurred in furnishing facilities or assistance relating to the order.

(7) Proceedings conducted under this section are subject to the secrecy and disclosure provisions relating to grand jury proceedings. Any information obtained pursuant to an order issued under this section is confidential criminal justice information subject to the provisions of Title 44, chapter 5.

Section 4. Immunity from suit. Except for gross negligence or willful or wanton misconduct, there is no cause of action against a service provider, landlord, or custodian or their officers, employees, or agents or other nongevernmental person for injury or damage caused in furnishing facilities or assistance under the order or against a service provider or its officers, employees, or agents for providing the law enforcement agency with information received from the operation of the pen register or trap and trace device. The immunity provided by this section does not extend to any gevernmental agency, law enforcement agent, or prosecutor.

Section 5. Procedural irregularity — rule of evidence. An irregularity in a proceeding under [sections 1 through 4] may not be used to exclude evidence

HeinOnline -- 1999 vol. I 386 1999

obtained under an order unless the irregularity affects substantial rights of the accused.

Section 6. Codification instruction. [Sections 1 through 5] are intended to be codified as an integral part of Title 46, and the provisions of Title 46 apply to [sections 1 through 5].

Approved March 17, 1999

CHAPTER NO. 98

[SB 116]

AN ACT GENERALLY REVISING STATUTES RELATING TO HEALTH CARE FACILITIES; DEFINING AND REQUIRING THE LICENSURE OF AN "OUTPATIENT CENTER FOR PRIMARY CARE" AND AN "OUTPATIENT CENTER FOR SURGICAL SERVICES"; DELETING THE REQUIREMENT THAT AN AMBULATORY SURGICAL FACILITY AND AN OUTPATIENT FACILITY BE LICENSED; CLARIFYING THAT THE DEFINITION OF "HEALTH CARE FACILITY" EXCLUDES THE OFFICES OF PRIVATE PHYSICAL OR MENTAL HEALTH CARE PROFESSIONALS FOR PURPOSES OF LICENSURE; AMENDING SECTIONS 7-34-2102, 7-34-2201, 37-6-107, 50-5-101, AND 50-5-301, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-34-2102, MCA, is amended to read:

"7-34-2102. Definition. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Hospital facilities" means a hospital or a hospital-related facility, including outpatient ~~facilities~~ *centers for primary care, outpatient centers for surgical services*, rehabilitation facilities, long-term care facilities, infirmaries, and health care facilities, all as defined in 50-5-101. The term includes public health centers.

(2) "Public health center" means a publicly owned facility providing health services, including laboratories, clinics, and administrative offices."

Section 2. Section 7-34-2201, MCA, is amended to read:

"7-34-2201. Erection and management of county health care facilities — definition — provision of health care services. (1) The board of county commissioners has jurisdiction and power, under the limitations and restrictions prescribed by law, to erect, furnish, equip, expand, improve, and maintain health care facilities and to provide health care services in those facilities as permitted by law.

(2) The board of county commissioners of a county that has or may acquire title to a site and building or buildings suitable for county health care purposes has jurisdiction and power, under the limitations and restrictions prescribed by law, to erect, furnish, equip, expand, improve, maintain, and operate the building or buildings for health care purposes as provided by this section.

(3) As used in parts 21~~,~~ *and* 23~~, 24, and~~ *through* 25 and this part, unless the context clearly requires otherwise, the term "health care facility" means a hospital, a medical assistance facility, ~~an ambulatory surgical facility,~~ a hospice, an end-stage renal dialysis facility, an outpatient ~~facility~~ *center for surgical*

services, an outpatient center for primary care, a rehabilitation facility, a long-term care facility, or an adult day-care center, as defined in 50-5-101, a public health center, as defined in 7-34-2102, or any combination and related medical facilities, including offices for physicians or other health care professionals providing outpatient, rehabilitative, emergency, nursing, or preventive care."

Section 3. Section 37-6-107, MCA, is amended to read:

"37-6-107. Certification required for ankle surgery — places of performance of surgery. (1) Notwithstanding any other provisions in this title, a podiatrist may not perform surgical treatments of the ankle unless certified to do so by the board. The board shall certify a podiatrist whom it considers qualified by education, training, and experience or who is certified by the American board of podiatric surgery.

(2) A surgical treatment of the ankle performed in accordance with subsection (1) must be performed in a hospital or ~~ambulatory~~ *outpatient center for* surgical ~~center~~ *services* licensed under Title 50."

Section 4. Section 50-5-101, MCA, is amended to read:

"50-5-101. Definitions. As used in parts 1 through 4 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accreditation" means a designation of approval.

(2) "Adult day-care center" means a facility, freestanding or connected to another health care facility, that provides adults, on a regularly scheduled basis, with the care necessary to meet the needs of daily living but that does not provide overnight care.

(3) (a) "Adult foster care home" means a private home that offers light personal care or custodial care to four or fewer disabled adults or aged persons who are not related by blood or marriage to the owner of the home.

(b) As used in this subsection (3), the following definitions apply:

(i) "Aged person" means a person as defined by department rule as aged.

(ii) "Custodial care" means providing a sheltered, family-type setting for an aged person or disabled adult so as to provide for the person's basic needs of food and shelter and to ensure that a specific person is available to meet those basic needs.

(iii) "Disabled adult" means a person who is 18 years of age or older and who is defined by department rule as disabled.

(iv) "Light personal care" means assisting the aged person or disabled adult in accomplishing such personal hygiene tasks as bathing, dressing, *and* hair grooming~~,~~ and supervision of prescriptive medicine administration. The term does not include the administration of prescriptive medications.

(4) "Affected person" means an applicant for a certificate of need, a health care facility located in the geographic area affected by the application, an agency that establishes rates for health care facilities, or a third-party payer who reimburses health care facilities in the area affected by the proposal.

~~(5) "Ambulatory surgical facility" means a facility that provides surgical treatment to patients not requiring hospitalization. This type of facility may include observation beds for patient recovery from surgery or other treatment.~~

~~(6)~~ "Capital expenditure" means:

HeinOnline -- 1999 vol. I 388 1999

(a) an expenditure made by or on behalf of a health care facility that, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance; or

(b) a lease, donation, or comparable arrangement that would be a capital expenditure if money or any other property of value had changed hands.

~~(7)~~*(6)* "Certificate of need" means a written authorization by the department for a person to proceed with a proposal subject to 50-5-301.

~~(8)~~*(7)* "Chemical dependency facility" means a facility whose function is the treatment, rehabilitation, and prevention of the use of any chemical substance, including alcohol, that creates behavioral or health problems and endangers the health, interpersonal relationsbips, or economic function of an individual or the public health, welfare, or safety.

~~(9)~~*(8)* "Clinical laboratory" means a facility for the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of a disease or assessment of a medical condition.

~~(10)~~*(9)* "College of American pathologists" means the organization nationally recognized by that name that surveys clinical laboratories upon their requests and accredits clinical laboratories that it finds meet its standards and requirements.

~~(11)~~*(10)* "Commission on accreditation of rehabilitation facilities" means the organization nationally recognized by that name that surveys rehabilitation facilities upon their requests and grants accreditation status to a rehabilitation facility that it finds meets its standards and requirements.

~~(12)~~*(11)* "Comparative review" means a joint review of two or more certificate of need applications that are determined by the department to be competitive in that the granting of a certificate of need to one of the applicants would substantially prejudice the department's review of the other applications.

~~(13)~~*(12)* "Construction" means the physical erection of a health care facility and any stage of the physical erection, including groundbreaking, or remodeling, replacement, or renovation of an existing health care facility.

~~(14)~~*(13)* "Department" means the department of public health and human services provided for in 2-15-2201.

~~(15)~~*(14)* "End-stage renal dialysis facility" means a facility that specializes in the treatment of kidney diseases and includes freestanding hemodialysis units.

~~(13)~~*(15)* "Federal acts" means federal statutes for the construction of health care facilities.

~~(17)~~*(16)* "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision of the state, or an agency of a political subdivision.

~~(13)~~*(17)* "Health care facility" or "facility" means all or a portion of an institution, building, or agency, private or public, excluding federal facilities, whether organized for profit or not, that is used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any individual. The term does not include offices of private physicians ~~or~~, dentists, *or other physical or mental health care workers regulated under Title 37, including chemical dependancy counselors.* The term includes ~~ambulatory~~

HeinOnline -- 1999 vol. I 389 1999

~~surgical facilities,~~ chemical dependency facilities, end-stage renal dialysis facilities, health maintenance organizations, home health agencies, home infusion therapy agencies, hospices, hospitals, infirmaries, long-term care facilities, medical assistance facilities, mental health centers, outpatient ~~facilities~~ *centers for primary care, outpatient centers for surgical services*, rehabilitation facilities, residential care facilities, and residential treatment facilities.

~~(19)~~*(18)* "Health maintenance organization" means a public or private organization that provides or arranges for health care services to enrollees on a prepaid or other financial basis, either directly through provider employees or through contractual or other arrangements with a provider or group of providers.

~~(20)~~*(19)* "Home health agency" means a public agency or private organization or subdivision of the agency or organization that is engaged in providing home health services to individuals in the places where they live. Home health services must include the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.

~~(21)~~*(20)* "Home infusion therapy agency" means a health care facility that provides home infusion therapy services.

~~(22)~~*(21)* "Home infusion therapy services" means the preparation, administration, or furnishing of parenteral medications or parenteral or enteral nutritional services to an individual in that individual's residence. The services include an educational component for the patient, the patient's caregiver, or the patient's family member.

~~(23)~~*(22)* "Hospice" means a coordinated program of home and inpatient health care that provides or coordinates palliative and supportive care to meet the needs of a terminally ill patient and the patient's family arising out of physical, psychological, spiritual, social, and economic stresses experienced during the final stages of illness and dying and that includes formal bereavement programs as an essential component. The term includes:

(a) an inpatient hospice facility, which is a facility managed directly by a medicare-certified hospice that meets all medicare certification regulations for freestanding inpatient hospice facilities; and

(b) a residential hospice facility, which is a facility managed directly by a licensed hospice program that can house three or more hospice patients.

~~(24)~~*(23)* "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals. Services provided may or may not include obstetrical care, emergency care, or any other service allowed by state licensing authority. A hospital has an organized medical staff that is on call and available within 20 minutes, 24 hours ~~per~~ *a* day, 7 days ~~per~~ *a* week, and provides 24-hour nursing care by licensed registered nurses. The term includes hospitals specializing in providing health services for psychiatric, mentally retarded, and tubercular patients.

~~(25)~~*(24)* "Infirmary" means a facility located in a university, college, government institution, or industry for the treatment of the sick or injured, with the following subdefinitions:

(a) an "infirmary—A" provides outpatient and inpatient care;

(b) an "infirmary—B" provides outpatient care only.

HeinOnline -- 1999 vol. I 390 1999

~~(26)~~*(25)* "Intermediate developmental disability care" means the provision of nursing care services, health-related services, and social services for persons with developmental disabilities, as defined in 53-20-102, or for individuals with related problems.

~~(27)~~*(26)* "Intermediate nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.

~~(26)~~*(27)* "Joint commission on accreditation of healthcare organizations" means the organization nationally recognized by that name that surveys health care facilities upon their requests and grants accreditation status to a health care facility that it finds meets its standards and requirements.

~~(26)~~*(28)* (a) "Long-term care facility" means a facility or part of a facility that provides skilled nursing care, residential care, intermediate nursing care, or intermediate developmental disability care to a total of two or more individuals or that provides personal care.

(b) The term does not include community homes for persons with developmental disabilities licensed under 53-20-305; community homes for persons with severe disabilities, licensed under 52-4-203; youth care facilities, licensed under 41-3-1142; hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or individuals who do not require institutional health care; or juvenile and adult correctional facilities operating under the authority of the department of corrections.

~~(30)~~*(29)* "Medical assistance facility" means a facility that meets both of the following:

(a) provides inpatient care to ill or injured individuals before their transportation to a hospital or that provides inpatient medical care to individuals needing that care for a period of no longer than 96 hours unless a longer period is required because transfer to a hospital is precluded because of inclement weather or emergency conditions. The department or its designee may, upon request, waive the 96-hour restriction *retroactively and* on a case-by-case basis~~;~~ *if the individual's attending physician, physician assistant-certified, or nurse practitioner determines that the transfer is medically inappropriate and would jeopardize the health and safety of the individual.*

(b) either is located in a county with fewer than six residents ~~per~~ *a* square mile or is located more than 35 road miles from the nearest hospital.

~~(31)~~*(30)* "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill patients, the rehabilitation of mentally ill individuals, or any combination of these services.

~~(32)~~*(31)* "Nonprofit health care facility" means a health care facility owned or operated by one or more nonprofit corporations or associations.

~~(33)~~*(32)* "Observation bed" means a bed occupied by a patient recovering from surgery or other treatment.

~~(34)~~*(33)* "Offer" means the representation by a health care facility that it can provide specific health services.

~~(35)~~*(34)* "Outpatient ~~facility~~ *center for primary care*" means a facility~~, located in or apart from a hospital,~~ that provides, under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients ~~in need~~

HeinOnline -- 1999 vol. I 391 1999

~~of medical, surgical, or mental care. An outpatient facility may have observation beds. An ambulatory surgical facility is also an outpatient facility~~ *and that is not an outpatient center for surgical services.*

(35) "Outpatient center for surgical services" means a clinic, infirmary, or other institution or organization that is specifically designed and operated to provide surgical services to patients not requiring hospitalization and that may include observation beds.

(36) "Patient" means an individual obtaining services, including skilled nursing care, from a health care facility.

(37) "Person" means an individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

(38) "Personal care" means the provision of services and care for residents who need some assistance in performing the activities of daily living.

(39) "Personal-care facility" means a facility in which personal care is provided for residents in either a category A facility or a category B facility as provided in 50-5-227.

(40) "Rehabilitation facility" means a facility that is operated for the primary purpose of assisting in the rehabilitation of disabled individuals by providing comprehensive medical evaluations and services, psychological and social services, or vocational evaluation and training or any combination of these services and in which the major portion of the services is furnished within the facility.

(41) "Resident" means an individual who is in a long-term care facility or in a residential care facility.

(42) "Residential care facility" means an adult day-care center, an adult foster care home, a personal-care facility, or a retirement home.

(43) "Residential psychiatric care" means active psychiatric treatment provided in a residential treatment facility to psychiatrically impaired individuals with persistent patterns of emotional, psychological, or behavioral dysfunction of such severity as to require 24-hour supervised care to adequately treat or remedy the individual's condition. Residential psychiatric care must be individualized and designed to achieve the patient's discharge to less restrictive levels of care at the earliest possible time.

(44) "Residential treatment facility" means a facility operated for the primary purpose of providing residential psychiatric care to individuals under 21 years of age.

(45) "Retirement home" means a building or buildings in which separate living accommodations are rented or leased to individuals who use those accommodations as their primary residence.

(46) "Skilled nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a 24-hour basis.

(47) "State health care facilities plan" means the plan prepared by the department to project the need for health care facilities within Montana and approved by the governor and a statewide health coordinating council appointed by the director of the department."

Section 5. Section 50-5-301, MCA, is amended to read:

HeinOnline -- 1999 vol. I 392 1999

"50-5-301. When certificate of need is required — definitions. (1) Unless a person has submitted an application for and is the holder of a certificate of need granted by the department, the person may not initiate any of the following:

(a) the incurring of an obligation by or on behalf of a health care facility for any capital expenditure that exceeds $1.5 million, other than to acquire an existing health care facility. The costs of any studies, surveys, designs, plans, working drawings, specifications, and other activities (including staff effort, consulting, and other services) essential to the acquisition, improvement, expansion, or replacement of any plant with respect to which an expenditure is made must be included in determining if the expenditure exceeds $1.5 million.

(b) a change in the bed capacity of a health care facility through an increase in the number of beds or a relocation of beds from one health care facility or site to another, unless:

(i) the number of beds involved is 10 or less or 10% or less of the licensed beds, if fractional, rounded down to the nearest whole number, whichever fignre is smaller, and no beds have been added or relocated during the 2 years prior to the date *on which* the letter of intent for the proposal is received;

(ii) a letter of intent is submitted to the department; and

(iii) the department determines that the proposal will not significantly increase the cost of care provided or exceed the bed need projected in the state health care facilities plan;

(c) the addition of a health service that is offered by or on behalf of a health care facility that was not offered by or on behalf of the facility within the 12-month period before the month in which the service would be offered and that will result in additional annual operating and amortization expenses of $150,000 or more;

(d) the incurring of an obligation for a capital expenditure by any person or persons to acquire 50% or more of an existing health care facility unless:

(i) the person submits the letter of intent required by 50-5-302(2); and

(ii) the department finds that the acquisition will not significantly increase the cost of care provided or increase bed capacity;

(e) the construction, development, or other establishment of a health care facility that is being replaced or that did not previously exist, by any person, including another type of health care facility;

(f) the expansion of the geographical service area of a home health agency;

(g) the use of hospital beds in excess of five to provide services to patients or residents needing only skilled nursing care, intermediate nursing care, or intermediate developmental disability care, as those levels of care are defined in 50-5-101; or

(h) the provision by a hospital of services for ambulatory surgical care *through an outpatient center for surgical services, as defined in subsection (2)(a),* home health care, long-term care, inpatient chemical dependency treatment, or inpatient rehabilitation.

(2) For purposes of this part, the following definitions apply:

(a) "Health care facility" or "facility" means a nonfederal ~~ambulatory surgical facility,~~ home health agency, long-term care facility, inpatient chemical

HeinOnline -- 1999 vol. I 393 1999

dependency facility, ~~or~~ rehabilitation facility with inpatient services, *or outpatient center for surgical services that has or is intended to qualify for medicare certification as an ambulatory surgical center pursuant to 42 CFR, part 416.* The term does not include:

(i) a hospital, except to the extent that a hospital is subject to certificate of need requirements pursuant to subsection (1)(h); or

(ii) an office of a private physician, dentist, or other physical or mental health care professionals, including chemical dependency counselors.

(b) (i) "Long-term care facility" means an entity that provides skilled nursing care, intermediate nursing care, or intermediate developmental disability care, as defined in 50-5-101, to a total of two or more individuals.

(ii) The term does not include residential care facilities, as defined in 50-5-101; community homes for persons with developmental disabilities, licensed under 53-20-305; community homes for persons with severe disabilities, licensed under 52-4-203; boarding or foster homes for children, licensed under 41-3-1142; hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or individuals not requiring institutional health care; or juvenile and adult correctional facilities operating under the authority of the department of corrections.

(3) This section may not be construed to require a health care facility to obtain a certificate of need for a nonreviewable service that would not be subject to a certificate of need if undertaken by a person other than a health care facility."

Section 6. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 7. Applicability. [This act] applies to health care facility licenses or certificates of need issued pursuant to Title 50, chapter 5, after October 1, 1999.

Approved March 17, 1999

CHAPTER NO. 99

[SB 155]

AN ACT REVISING DISCLOSURE LAWS APPLICABLE TO REAL ESTATE BROKERS AND SALESPERSONS WITH REGARD TO THE PROXIMITY OF A SEXUAL OR VIOLENT OFFENDER; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Sexual or violent offender registration information — responsibility of broker or salesperson. The responsibility of a broker or salesperson with respect to sexual or violent offender registration information maintained by a governmental entity under Title 46, chapter 23, part 5, is limited to disclosure of:

(1) the fact that the information may be maintained and by whom; and

(2) the actual knowledge, if any, that the broker or salesperson has of sexual or violent offender registration information that pertains to the property in question.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 37, chapter 51, part 1, and the provisions of Title 37, chapter 51, part 1, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Approved March 17, 1999

CHAPTER NO. 100

[SB 162]

AN ACT EXPANDING THE POWERS OF BANKS TO ENGAGE IN OTHER TYPES OF LAWFUL BUSINESS; ALLOWING A BANK TO CONDUCT BUSINESS ACTIVITIES DIRECTLY OR INDIRECTLY THROUGH AFFILIATES AND SUBSIDIARIES; DEFINING "SUBSIDIARY"; AUTHORIZING A BANK TO ENGAGE IN CERTAIN INSURANCE ACTIVITIES; ALLOWING A BANK TO MAKE CERTAIN TYPES OF INVESTMENTS TO PROMOTE PUBLIC WELFARE; PROVIDING A MEANS FOR A STATE-CHARTERED BANK TO COME UNDER NATIONAL BANKING REGULATIONS, WITH APPROVAL FROM THE DEPARTMENT OF COMMERCE; ALLOWING A BANK TO RECOVER COSTS FOR PROVIDING BANK RECORDS ON REQUEST; AND AMENDING SECTIONS 32-1-105, 32-1-109, 32-1-362, 32-1-422, 32-1-432, AND 32-1-492, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-1-105, MCA, is amended to read:

"32-1-105. Commercial bank defined. The term "commercial bank" means any bank authorized by law to:

(1) receive deposits of money;

(2) deal in commercial paper or make loans ~~thereon~~ *on commercial paper*;

(3) lend money on real or personal property;

(4) ~~sell credit life and disability insurance on loans to its borrowers~~ *engage in business activities directly or indirectly through affiliates or subsidiaries*;

(5) discount bills, notes, or other commercial papers; and

(6) buy and sell securities, geld and silver bullion, foreign coins, or bills of exchange."

Section 2. Section 32-1-109, MCA, is amended to read:

"32-1-109. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Affiliate" has the meaning given that term in 12 U.S.C. 1841(k).

(2) "Bank holding company" means a bank holding company registered under the federal Bank Holding Company Act of 1956, as amended.

(3) "Board" means the state banking board provided for in 2-15-1803.

(4) "Branch bank" means:

HeinOnline -- 1999 vol. I 395 1999

(a) a banking house, other than the main banking house, maintained and operated by a bank doing business in the state and at which deposits are received, checks are paid, or money is lent, but does not include a satellite terminal, as defined in 32-6-103, or the office of an affiliated depository institution acting as an agent; and

(b) in the case of a trust company, any office at which trust services are provided.

(5) "Capital", "capital stock", and "paid-in capital" mean that fund for which certificates of stock are issued to stockholders.

(6) "Consolidate" and "merge" mean the same thing and may be used interchangeahly in this chapter.

(7) "Demand deposits" means all deposits, the payment of which can legally be required when demanded.

(8) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(9) "Depository institution" means a bank or savings association organized under the laws of a state or the United States.

(10) "Division" means the division of banking and financial institutions of the department.

(11) "Insured depository institution" means a bank or savings association in which the deposits are insured by the federal deposit insurance corporation.

(12) "Main banking house" means the designated principal place of business of a bank in the state.

(13) "Net earnings" means the excess of the gross earnings of a hank over expenses and losses chargeable against those earnings during any 1 year.

(14) "Principal shareholder" means a person who directly or indirectly owns or controls, individually or through others, more than 10% of any class of voting stock.

(15) "Profit and loss account" or "profit and loss" means that account carried on the books of the bank into which all earnings accounts and recoveries are closed, thus exhibiting "gross earnings", and against which all loss and other disbursement items are charged, revealing "net earnings", which are then properly closed to "undivided profits accounts" or "undivided profits", out of which dividends are paid and reserves set aside.

(16) "Savings association" means a savings association or savings bank organized under the laws of the United States or a building and loan association, savings and loan association, or similar entity organized under the laws of a state.

(17) "Shell bank" means a bank organized solely for the purpose of, and that does not conduct any banking business prior to, acquiring control of, merging with, or acquiring all or substantially all of the assets of an existing bank or savings association.

(18) "Subsidiary" means a company 25% or more of whose voting shares or equity interests are owned and controlled by a bank.

~~(18)~~*(19)* "Surplus" means a fund paid in or created under this chapter by a bank from its net earnings or undivided profits that, when set apart and designated as surplus, is not available for the payment of dividends and cannot

be used for the payment of expenses or losses so long as the bank has undivided profits.

~~(19)~~*(20)* "Time deposits" means all deposits, the payment of which cannot legally be required within 7 days.

~~(20)~~*(21)* "Undivided profits" means the credit balance of the profit and loss account of a bank."

Section 3. Section 32-1-362, MCA, is amended to read:

"32-1-362. National bank powers extended to state banks. (1) A bank organized under the laws of ~~the~~ *this* state may engage in any activity or business in which the bank could engage if it were operating as a national bank if the power or activity is not expressly prohibited or limited by the laws of this state and:

(a) if the power or activity is clearly authorized to national banks by federal statute, ~~or by~~ regulations, *or interpretive ruling issued or* adopted by a federal banking regulator having jurisdiction over national banks; and

(b) upon application to and approval by the department.

(2) The department may adopt rules to govern the application procedure under this section. The department shall act upon an application under this section within 15 days of receipt of the application. The department may, for good cause, extend the time period for processing an application under this section for an additional 15 days."

Section 4. Section 32-1-422, MCA, is amended to read:

"32-1-422. Restriction on investment in corporate stock — rulemaking authority. (1) Except as provided in subsections (2) and (3), a commercial or savings bank may not purchase or invest its capital or surplus or money of its depositors, or any part of ~~either~~ *its capital or surplus or money of its depositors*, in the capital stock of any corporation unless the purchase or acquisition of capital stock is necessary to prevent loss to the bank on a debt previously contracted in good faith. Any capital stock ~~so~~ purchased or acquired *to prevent the loss* must be sold by the bank within 6 months after purchase or acquisition if it can be sold for the amount of the claim of the bank against it. All capital stock purchased or acquired must be sold for the best price obtainable by the bank within 1 year after purchase or acquisition, or if the stock is unmarketable, it must be charged off as an investment loss, which is equivalent to the stock's sale. A person or corporation violating any provision of this section shall forfeit to the state twice the nominal amount of the stock.

(2) A bank may acquire and hold for its own account:

(a) up to 20% of its capital and surplus in the capital stock of a bank service corporation organized solely for the purpose of providing services to banks;

(b) shares of stock of a federal reserve bank, without limitation of amount; ~~and~~

(c) shares of stock in a Montana capital company or the Montana small business investment capital company within limits prescribed by the Montana Capital Company Act~~.~~*; and*

(d) shares of stock or financial interests in an affiliate or a subsidiary, the business activities of which are limited to those allowed by law for a bank.

(3) A bank may invest any amount up to the limit established by the department of its unimpaired capital and surplus in shares of stock of:

HeinOnline -- 1999 vol. I 397 1999

(a) the federal national mortgage association;

(b) the federal home loan mortgage corporation;

(c) the federal agricultural mortgage corporation; ~~and~~

(d) the federal home loan bank; and

~~(d)~~*(e)* other corporations created pursuant to acts of congress to meet the agricultural, housing, health, transit, educational, environmental, or similar needs of the nation when the department determines that the investment is in the public interest.

(4) A bank may, upon written application and approval of the department, make an investment in an amount permitted by the department by rule so long as the investment serves primarily to promote the public welfare, including the welfare of low- and moderate-income families and communities in need of jobs, housing, and public services. A bank may also, with the department's approval, purchase interests in an entity, as defined in 35-1-113(9), that makes investments for similar public welfare purposes.

~~(4)~~*(5)* The department shall adopt rules to implement this section. *The rules pertaining to the investments allowed in subsection (4) may be substantially equivalent to or more stringent than the eleventh power provided for in 12 U.S.C. 24 and the policy guidelines on community development issued by the office of the comptroller of the currency.*"

Section 5. Section 32-1-432, MCA, is amended to read:

"**32-1-432. Limitations on loans — rulemaking.** (1) (a) The total loans or extensions of credit to a person, partnership, or corporation by a bank, including loans to a partnership and to the members of the partnership, may not exceed 20% of the amount of the unimpaired capital and surplus of that bank.

(b) The discount of bills of exchange drawn in good faith against actual existing values, the discount of bankers, acceptances of other banks, the discount of commercial or business paper actually owned by the person negotiating it and the obligations of the United States, general obligations of any state or of any political subdivision, or obligations issued under authority of the Federal Farm Loan Act may not be considered as money borrowed.

(c) The limitations imposed on total loans and extensions of credit by this section do not apply to loans and investments secured by obligations of the United States having a current market value of 100% of the amount loaned or invested.

(d) Loans or obligations are not subject under this section to any limitation based upon that unimpaired capital and surplus to the extent that they are secured or covered by guaranties, or by commitments or agreements to take over or to purchase them, made by a federal reserve bank or by the United States or a department, bureau, board, commission, or establishment of the United States, including a corporation wholly owned, directly or indirectly, by the United States.

(2) The combined liabilities of the members of a firm, partnership, or unincorporated association to the loaning bank must be included in the liabilities of the firm, partnership, or unincorporated association. The portion of the liabilities of the firm, partnership, or unincorporated association for which a member individually is legally responsible must be included in the liabilities of the member in determining the limitations imposed by this section. In determining the limitation for loans or extensions of credit to a limited partner

HeinOnline -- 1999 vol. I 398 1999

of a limited partnership, the portions of the liabilities of the limited partnership for which the limited partner is free from liability must be excluded.

(3) When, in the judgment of the department, the liabilities of a corporation or the combined liabilities of a corporation and one or more of its stockholders to a bank are excessive, it shall require the reduction to the limits and within the time it prescribes.

(4) The limitations of this section do not apply to the extent that the loan or extension of credit is secured by pledged deposits in the lending bank.

(5) The limitations of this section do not apply to a loan of funds or an extension of credit made by a bank to another bank if the term of the loan or extension of credit does not exceed 2 business days.

(6) The limitations of this section do not apply to the extent that a loan is covered by a guaranty or by commitments or agreements to take over or purchase the loan made by an agency or board of the state of Montana authorized by law to provide ~~such~~ *the* guaranties, commitments, or agreements.

(7) (a) A state-chartered bank may be exempted from the limitations of this section by applying to the department for a written waiver stipulating that the bank will be subject to the limitations imposed on national banks under 12 U.S.C. 84 and the regulations of the office of the comptroller of the currency.

(b) A written waiver provided to a state-chartered bank in accordance with subsection (7)(a) may not be changed by the bank or revoked by the department for 2 years from the date of issue or for a different period determined by the department by rule.

~~(7)~~*(8)* The department may adopt rules to carry out the purposes of this section.

~~(8)~~*(9)* For purposes of this section, the terms "loan" and "extension of credit" include all direct or indirect advances of funds to a person on the basis of an obligation of the person to repay the funds. The terms also include a liability of a ~~state-chartered~~ *state-chartered* bank to advance funds to or on behalf of a person pursuant to a contractual commitment. The department may adopt a rule differentiating between discretionary and nondiscretionary contractual commitments."

Section 6. Section 32-1-492, MCA, is amended to read:

"32-1-492. Definitions — reproduction of bank records — admissibility in evidence — *cost recovery*. (1) (a) For the purposes of this section, "bank records" includes any document, paper, letter, book, map, photograph, sound or video recording, maguetic tape, electronic-storage medium, or other information- recording medium used in a bank's normal course of business.

(b) (i) For the purposes of this section, "electronic storage" means the recording, storage, retention, maintenance, and reproduction of documents using microfilm, microfiche, data processing, computers, or other electronic process that correctly and legibly stores and reproduces documents.

(ii) A photographic, photostatic, miniature photographic copy, or reproduction of any kind, including electronic or computer-generated data that has been electronically stored and is capable of being converted into written form, must be considered an original record for all purposes and must be treated as an

HeinOnline -- 1999 vol. I 399 1999

original record in all courts and administrative agencies for the purposes of admissibility in evidence.

(iii) A facsimile, exemplification, or certified copy of any reproduction referred to in subsection (1)(b)(ii) must, for all purposes, be considered a facsimile, exemplification, or certified copy of the original record.

(2) Except as provided in subsection (6), banks are authorized to make, at any time, photographic or photostatic copies or microfilm reproductions of any records or documents, including photographic enlargements and prints of microfilms, to be preserved, stored, used, and employed in carrying on business.

(3) In an action or proceeding in which bank records may be called in question or be demanded of a bank or any officer or employee of a bank, a showing that the records have been destroyed in the regular course of business is a sufficient excuse for the failure to produce the records.

(4) Upon the showing required in subsection (3), secondary evidence of the form, text, and contents of the original records, including photostatic, photographic, or microfilm reproductions, photographic enlargements, and prints of microfilm reproductions, when made in the regular course of business, is admissible in evidence in any court of competent jurisdiction or in any administrative proceeding.

(5) Any photostatic, photographic, or microfilm reproductions, including enlargements of the microfilm reproductions, made in the regular course of business of any original files, records, books, cards, tickets, deposit slips, or memoranda tbat were in existence on July 1, 1951, are admissible in evidence as proof of the form, text, and content of the originals that were destroyed in the regular course of business.

(6) The reproduction of records of a foreign capital depository is subject to the provisions of Title 32, chapter 8, part 5.

(7) A bank may, as a condition of providing bank records to a third party in response to a subpoena or to another legal procedure or request, charge and collect the actual costs incurred in locating, reproducing, and providing the bank records."

Scction 7. Insurance activitics. (1) A bank or a bank's subsidiary or affiliate may:

(a) except title insurance, sell insurance of all types, including annuities, credit life insurance, and disability insurance; and

(b) act as an insurance producer, adjuster, consultant, or administrator as defmed in Title 33, chapter 17.

(2) A bank or a bank's subsidiary or affiliate that engages in insurance activities authorized in subsection (1) is subject to the provisions of Title 33.

Section 8. Codification instruction. [Section 7] is intended to be codified as an integral part of Title 32, chapter 1, and the provisions of Title 32, chapter 1, apply to [section 7].

Approved March 17, 1999

HeinOnline -- 1999 vol. I 400 1999

CHAPTER NO. 101

[SB 191]

AN ACT CONFORMING THE STATUTE OF LIMITATIONS FOR COMMENCEMENT OF AN ACTION UPON A JUDGMENT OR DECREE RENDERED IN A COURT NOT OF RECORD TO OTHER LIMITATION PERIODS; AND AMENDING SECTION 27-2-201, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 27-2-201, MCA, is amended to read:

"27-2-201. Actions upon judgments. (1) Except as provided in subsections (3) through (5), the period prescribed for the commencement of an action upon a judgment or decree of any court of record of the United States or of any state within the United States is within 10 years.

(2) The period prescribed for the commencement of an action upon a judgment or decree rendered in a court not of record is within ~~5~~ *6* years. The cause of action is considered, in that case, to have accrued when final judgment was rendered.

(3) The period prescribed for the commencement of an action to collect past-due child support that has accrued after October 1, 1993, under an order entered by a court of record or administrative authority is within 10 years of the termination of support obligation or within 10 years from entry of a lump-sum judgment or order for support arrears, whichever is later.

(4) The poriod prescribed for the commencement of an action to collect past-due child support that has accrued under a support order issued in another state, in a foreign country, or in a tribal court is as provided in subsection (3) or as provided in the law of the issuing jurisdiction, whichever period is longer.

(5) An action under 46-18-247(3) to enforce an order of restitution entered by a court of record may be commenced at any time within the offender's lifetime during which restitution remains unpaid."

Approved March 17, 1999

CHAPTER NO. 102

[SB 246]

AN ACT AUTHORIZING A SCHOOL DISTRICT TO POOL AND INDEPENDENTLY INVEST DISTRICT FUNDS FOR COMPLIANCE WITH INVESTMENT LAWS APPLICABLE TO SCHOOL DISTRICT FUNDS; AMENDING SECTIONS 20-9-212 AND 20-9-213, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-212, MCA, is amended to read:

"20-9-212. Duties of county treasurer. The county treasurer of each county shall:

(1) receive and hold all school money subject to apportionment and keep a separate accounting of its apportionment to the several districts that are entitled

HeinOnline -- 1999 vol. I 401 1999

to a portion of the money according to the apportionments ordered by the county superintendent or by the superintendent of public instruction. A separate accounting must be maintained for each county fund supported by a countywide levy for a specific, authorized purpose, including:

(a) the basic county tax for elementary equalization;

(b) the basic county tax for high school equalization;

(c) the county tax in support of the transportation schedules;

(d) the county tax in support of the elementary and high school district retirement obligations; and

(e) any other county tax for schools, including the community colleges, that may be authorized by law and levied hy the county commissioners.

(2) whenever requested, notify tbe county superintendent and the superintendent of public instruction of the amount of county school money on deposit in each of the funds enumerated in subsection (1) and the amount of any other school money subject to apportionment and apportion the county and other school money to the districts in accordance with the apportionment ordered by the county superintendent or the superintendent of public instruction;

(3) keep a separate accounting of the receipts, expenditures, and cash balances for each fund;

(4) except as otherwise limited by law, pay all warrants properly drawn on the county or district school money;

(5) receive all revenue collected by and for each district and deposit these receipts in the fund designated by law or by the district if a fund is not designated by law. Interest and penalties on delinquent school taxes must be credited to the same fund and district for which the original taxes were levied.

(6) send all revenue received for a joint district, part of which is situated in the county, to tbe county treasurer designated as the custodian of the revenue, no later than December 15 of each year and every 3 months after that date until the end of the school fiscal year;

(7) at the direction of the trustees of a district, assist the district in the issuance and sale of tax and revenue anticipation notes as provided in Title 7, chapter 6, part 11;

(8) register district warrants drawn on a budgeted fund in accordance with 7-6-2604 when there is insufficient money available in all funds of the district to make payment of the warrant. Redemption of registered warrants must be made in accordance with 7-6-2116, 7-6-2605, and 7-6-2606.

(9) *when directed by the trustees of a district,* invest the money of ~~any~~ *the* district ~~as directed by the trustees of the district~~ within 3 working days of the direction;

(10) each month give to the trustees of each district an itemized repert for each fund maintained by the district, showing the paid warrants, registered warrants, interest distribution, amounts and types of revenue received, and the cash balance;

(11) remit promptly to the state treasurer receipts for the county tax for a vocational-technical program within a unit of the university system when levied by the board of county commissioners under the provisions of 20-25-439;

HeinOnline -- 1999 vol. I 402 1999

(12) invest the money received from the basic county taxes for elementary and high school equalization, the county levy in support of the elementary and high school district retirement obligations, and the county levy in support of the transportation schedules within 3 working days of receipt. The money must be invested until the working day before it is required to be distributed to school districts within the county or remitted to the state. Permissible investments are specified in 20-9-213(4). All investment income must be deposited, and credited proportionately, in the funds established to account for the taxes received for the purposes specified in subsections (1)(a) through (1)(d).

(13) remit on a monthly basis to the state treasurer, in accordance with the provisions of 15-1-504, all county equalization revenue received under the provisions of 20-9-331 and 20-9-333, including all interest earned and excluding any amount required for high school out-of-county tuition under the provisions of 20-9-334, in repayment of the state advance for county equalization prescribed in 20-9-347. Any funds in excess of a state advance must be used as required in 20-9-331(1)(b) and 20-9-333(1)(b)."

Section 2. Section 20-9-213, MCA, is amended to read:

"20-9-213. Duties of trustees. The trustees of each district have the authority to transact all fiscal business and execute all contracts in the name of the district. A porson other than the trustees acting as a governing board may not expond money of the district. In conducting the fiscal business of the district, the trustees shall:

(1) cause the keeping of an accurate, detailed accounting of all receipts and expenditures of school money for each fund maintained by the district in accordance with generally accepted accounting principles and the rules prescribed by the superintendent of public instruction. The record of the accounting must be opon to public inspection at any meeting of the trustees.

(2) authorize all expenditures of district money and cause warrants to be issued for the payment of lawful obligations;

(3) issue warrants on any budgoted fund in anticipation of budgated revenue, except that the expenditures may not exceed the amount budgated for the fund;

(4) invest any money of the district, whenever in the judgment of the trustees the investment would be advantageous to the district, by *either* directing the county treasurer to invest any money of the district *or by directly investing the money of the district* in eligible securities, as ~~authorized~~ *identified* in 7-6-202~~;~~, in savings or time depesits in a state or national bank, building or loan association, savings and loan association, or credit union insured by the FDIC or NCUA located in the state~~;~~, or in a repurchase agreement~~, as authorized~~ *that meets the criteria provided for* in 7-6-213. All interest collected on the deposits or investments must be credited to the fund from which the money was withdrawn, except that interest earned on account of the investment of money realized from the sale of bonds must be credited to the debt service fund or the building fund, at the discretion of the board of trustees. The placement of the investment by the county treasurer is not subject to ratable distribution laws and must be done in accordance with the directive from the board of trustees. A district may invest money under the state unified investment program established in Title 17, chapter 6, or in a unified investment program with the county treasurer ~~that meets~~, *with other school districts, or with any other political subdivision if the unified investment program is limited to investments that meet* the requirements

of this subsection (4). *A school district that enters into a unified investment program with another school district or political subdivision other than the state shall do so under the auspices of and by complying with the provisions governing interlocal cooperative agreements authorized under Title 7, chapter 11, and educational cooperative agreements authorized under Title 20, chapter 9, part 7. A school district shall either contract for investment services with any company licensed to do business in Montana under the provisions of Title 30, chapter 10, or shall contract with the state board of investments for investment services.*

(5) cause the district to record each transaction in the appropriate account before the accounts are closed at the end of the fiscal year in order to properly report the receipt, use, and disposition of all money and property for which the district is accountahle;

(6) report annually to the county superintendent, not later than August 15, the financial activities of each fund maintained by the district during the last-completed school fiscal year, on the forms prescribed and furnished by the superintendent of public instruction. Annual fiscal reports for joint school districts must he submitted not later than September 1 to the county superintendent of each county in which part of tbe joint district is situated.

(7) whenever requested, report any other fiscal activities to the county superintendent, superintendent of public instruction, or board of public education;

(8) cause the accounting records of the district to be audited as required by 2-7-503; and

(9) perform, in the manner permitted by law, other fiscal duties that are in the hest interests of the district."

Section 3. Effective date. [This act] is effective July 1, 1999.

Approved March 17, 1999

CHAPTER NO. 103

[SB 347]

AN ACT ELIMINATING THE RIGHT OF A SMALL GROUP CARRIER, UNDER THE SMALL EMPLOYER HEALTH INSURANCE AVAILABILITY ACT, TO CEDE NEW ENROLLEES UNDER THE REINSURANCE PROGRAM; ELIMINATING THE SMALL EMPLOYER HEALTH REINSURANCE PROGRAM AND ITS BOARD ON JULY 1, 2001; PROVIDING FOR A TRANSITION FOR THOSE PERSONS ALREADY CEDED TO THE REINSURANCE PROGRAM; AMENDING SECTIONS 33-22-1803 AND 33-22-1819, MCA; REPEALING SECTIONS 33-22-1818 AND 33-22-1819, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-22-1803, MCA, is amended to read:

"33-22-1803. Definitions. As used in this part, the following definitions apply:

(1) "Actuarial certification" means a written statement by a member of the American academy of actuaries or other individual acceptable to the

commissioner that a small employer carrier is in compliance with the provisions of 33-22-1809, based upon the person's examination, including a review of the appropriate records and of the actuarial assumptions and methods used by the small employer carrier in establishing premium rates for applicable health benefit plans.

(2) "Affiliate" or "affillated" means any entity or person who directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with a specified entity or person.

(3) "Assessable carrier" means all carriers of disability insurance, including excess of loss and stop loss disability insurance.

(4) "Base premium rate" means, for each class of business as to a rating period, the lowest premium rate charged or that could have been charged under the rating system for that class of business by the small employer carrier to small employers with similar case characteristics for health benefit plans with the same or similar coverage.

(5) "Basic health benefit plan" means a health benefit plan, except a uniform health benefit plan, developed by a small employer carrier, that has a lower benefit value than the small employer carrier's standard benefit plan and that provides the benefits required by 33-22-1827.

(6) "Benefit value" means a numerical value based on the expected dollar value of benefits payable to an insured under a health benefit plan. The benefit value must be calculated by the small employer carrier using an actuarially based method and must take into account all health care expenses covered by the health benefit plan and all cost-sharing features of the health benefit plan, including deductibles, coinsurance, copayments, and the insured individual's maximum out-of-pocket expenses. The benefit value must apply equally to indemnity-type health benefit plans and to managed care health benefit plans, including health maintenance organization-type plans.

~~(7) "Board" means the board of directors of the program established pursuant to 33-22-1818.~~

~~(8)~~*(7)* "Bona fide association" means an association that:

(a) has been actively in existence for at least 5 years;

(b) was formed and has been maintained in goed faith for purposes other than obtaining insurance;

(c) does not condition membership in the association on a health status-related factor relating to an individual, including an employee of an employer or a dependent of an employee;

(d) makes health insurance coverage offered through the association available to a member regardless of a health status-related factor relating to the member or an individual eligible for coverage through a member;

(e) does not make health insurance coverage offered through the association available other than in connection with a member of the association; and

(f) meets any additional requirements required by law.

~~(9)~~*(8)* "Carrier" means any person who provides a health benefit plan in this state subject to state insurance regulation. The term includes but is not limited to an insurance company, a fraternal benefit society, a health service corporation,

and a health maintenance organization. For purposes of this part, companies that are affiliated companies or that are eligible to file a consolidated tax return must be treated as one carrier, except that the following may be considered as separate carriers:

(a) an insurance company or health service corporation that is an affiliate of a health maintenance organization located in this state;

(b) a health maintenance organization located in this state that is an affiliate of an insurance company or health service corporation; or

(c) a health maintenance organization that operates only one health maintenance organization in an established geographic service area of this state.

~~(10)~~*(9)* "Case characteristics" means demographic or other objective characteristics of a small employer that are considered by the small employer carrier in the determination of premium rates for the small employer, provided that gender, claims experience, health status, and duration of coverage are not case characteristics for purposes of this part.

~~(11)~~*(10)* "Class of business" means all or a separate grouping of small employers established pursuant to 33-22-1808.

~~(12)~~*(11)* "Dependent" means:

(a) a spouse or an unmarried child under 19 years of age;

(b) an unmarried child, under 23 years of age, who is a full-time student and who is financially dependent on the insured;

(c) a child of any age who is disabled and dependent upon the parent as provided in 33-22-506 and 33-30-1003; or

(d) any other individual defined as a dependent in the health benefit plan covering the employee.

~~(13)~~*(12)* "Eligible employee" means an employee who works on a full-time basis with a normal workweek of 30 hours or more, except that at the sole discretion of the employer, the term may include an employee who works on a full-time basis with a normal workweek of between 20 and 40 hours as long as this eligibility criteria is applied uniformly among all of the employer's employees. The term includes a sole proprietor, a partner of a partnership, and an independent contractor if the sole proprietor, partner, or independent contractor is included as an employee under a health benefit plan of a small employer. The term does not include an employee who works on a part-time, temporary, or substitute basis.

~~(14)~~*(13)* "Established geographic service area" means a geographic area, as approved by the commissioner and based on the carrier's certificate of authority to transact insurance in this state, within which the carrier is authorized to provide coverage.

~~(15)~~*(14)* "Health benefit plan" means any hospital or medical policy or certificate providing for physical and mental health care issued by an insurance company, a fraternal benefit society, or a health service corporation or issued under a health maintenance organization subscriber contract. Health benefit plan does not include coverage of excepted benefits if coverage is provided under a separate policy, certificate, or contract of insurance.

HeinOnline -- 1999 vol. I 406 1999

~~(16)~~*(15)* "Index rate" means, for each class of business for a rating period for small employers with similar case characteristics, the average of the applicable base premium rate and the corresponding highest premium rate.

~~(17)~~*(16)* "New business premium rate" means, for each class of business for a rating period, the lowest premium rate charged or offered or that could have been charged or offered by the small employer carrier to small employers with similar case characteristics for newly issued health benefit plans with the same or similar coverage.

~~(18) "Plan of operation" means the operation of the program established pursuant to 33-22-1818.~~

~~(19)~~*(17)* "Premium" means all money paid by a small employer and eligible employees as a condition of receiving coverage from a small employer carrier, including any fees or other contributions associated with the health benefit plan.

~~(20) "Program" means the Montana small employer health reinsurance program created by 33-22-1818.~~

~~(21)~~*(18)* "Rating period" means the calendar period for which premium rates established by a small employer carrier are assumed to be in effect.

~~(22) "Reinsuring carrier" means a small employer carrier participating in the reinsurance program pursuant to 33-22-1819.~~

~~(23)~~*(19)* "Restricted network provision" means a provision of a health benefit plan that conditions the payment of benefits, in whole or in part, on the use of health care providers that have entered into a contractual arrangement with the carrier pursuant to Title 33, chapter 22, part 17, or Title 33, chapter 31, to provide health care services to covered individuals.

~~(24)~~*(20)* "Small employer" means a person, firm, corporation, partnership, or bona fide association that is actively engaged in business and that, with respect to a calendar year and a plan year, employed at least 2 but not more than 50 eligible employees during the preceding calendar year and employed at least two employees on the first day of the plan year. In the case of an employer that was not in existence throughout the preceding calendar year, the determination of whether the employer is a small or large employer must be based on the average number of employees reasonably expected to be employed by the employer in the current calendar year. In determining the number of eligible employees, companies are considered one employer if they:

(a) are affiliated companies;

(b) are eligible to file a combined tax return for purposes of state taxation; or

(c) are members of a bona fide association.

~~(25)~~*(21)* "Small employer carrier" means a carrier that offers health benefit plans that cover eligible employees of one or more small employers in this state.

~~(25)~~*(22)* "Standard health benefit plan" means a health benefit plan that is developed by a small employer carrier and that contains the provisions required pursuant to 33-22-1828."

Section 2. Section 33-22-1819, MCA, is amended to read:

"33-22-1819. Program plan of operation — treatment of losses — exemption from taxation. (1) Within 180 days after the appointment of the

HeinOnline -- 1999 vol. I 407 1999

initial board, the board shall submit to the commissioner for review a plan of operation and may at any time submit amendments to the plan necessary or suitable to ensure the fair, reasonable, and equitable administration of the program. The commissioner may review the plan of operation to determine if it is suitable to ensure the fair, reasonable, and equitable administration of the program and if the plan of operation provides for the sharing of program gains or losses on an equitable and proportionate basis in accordance with the provisions of this section. The commissioner may make recommendations to the board if the commissioner determines the plan of operation does not meet the criteria of this subsection.

(2) The plan of operation must:

(a) establish procedures for the handling and accounting of program assets and money and for an annual fiscal reporting to the commissioner;

(b) establish procedures for selecting an administering carrier and setting forth the powers and duties of the administering carrier;

(c) establish procedures for reinsuring risks in accordance with the provisions of this section;

(d) establish procedures for collecting assessments from assessable carriers to fund claims incurred by the program;

(e) establish procedures for allocating a portion of premiums collected from reinsuring carriers to fund administrative expenses incurred or to be incurred by the program; and

(f) provide for any additional matters necessary for the implementation and administration of the program.

(3) The program has the general powers and authority granted under the laws of this state to insurance companies and health maintenance organizations licensed to transact business, except the power to issue health benefit plans directly to either groups or individuals. In addition, the program may:

(a) enter into contracts as are necessary or proper to carry out the provisions and purposes of this part, including the authority, with the approval of the commissioner, to enter into contracts with similar programs of other states for the joint performance of common functions or with persons or other organizations for the performance of administrative functions;

(b) sue or be sued, including taking any legal actions necessary or proper to recover any premiums and penalties for, on behalf of, or against the program or any reinsuring carriers;

(c) take any legal action necessary to avoid the payment of improper claims against the program;

(d) define the health benefit plans for which reinsurance will be provided and to issue reinsurance policies in accordance with the requirements of this part;

(e) establish conditions and procedures for reinsuring risks under the program;

(f) establish actuarial functions as appropriate for the operation of the program;

(g) appoint appropriate legal, actuarial, and other committees as necessary to provide technical assistance in operation of the program, policy and other contract design, and any other function within the authority of the program;

(h) to the extent permitted by federal law and in accordance with subsection ~~(7)(c)~~ *(8)(c)*, make annual assessments against assessable carriers and make interim assessments to fund claims incurred by the program; ~~and~~

(i) borrow money to effect the purposes of the program, *including borrowing from the general fund at prevailing interest rates for a period not to exceed 2 years any funds necessary for the continued operation of the reinsurance plan.* Any notes or other evidence of indebtedness of the program not in default are legal investments for carriers and may be carried as admitted assets.

(j) provide for the termination of and transition plan for the small employer health reinsurance program and its board by July 1, 2001.

(4) A ~~reinsuring~~ carrier may *not* reinsure *any new or additional employees or dependents* with the program ~~as provided for in this subsection:~~ *after [the effective date of this section].*

~~(a) With respect to a basic health benefit plan or a standard health benefit plan, the program shall reinsure the level of coverage provided and, with respect to other plans, the program shall reinsure up to the level of coverage provided in a basic or standard health benefit plan.~~

~~(b) A small employer carrier may reinsure an entire employer group within 60 days of the commencement of the group's coverage under a health benefit plan.~~

~~(c) A reinsuring carrier may reinsure an eligible employee or dependent within a period of 60 days following the commencement of coverage with the small employer. A newly eligible employee or dependent of the reinsured small employer may be reinsured within 60 days of the commencement of coverage.~~

~~(d)(i)~~ *(5) (a)* The program may not reimburse a reinsuring carrier with respect to the claims of a reinsured employee or dependent *in the program at the time of [the effective date of this section]* until the carrier has incurred an initial level of claims for the employee or dependent of $5,000 in a calendar year for benefits covered by the program. In addition, the reinsuring carrier is responsible for 20% of the next $100,000 of benefit payments during a calendar year and the program shall reinsure the remainder. A reinsuring carrier's liability under this subsection ~~(4)(d)(i)~~ *(5)(a)* may not exceed a maximum limit of $25,000 in any calendar year with respect to any reinsured individual.

~~(ii)~~*(b)* The board annually shall adjust the initial level of claims and maximum limit to be retained by the carrier to reflect increases in costs and utilization within the standard market for health benefit plans within the state. The adjustment may not be less than the annual change in the medical component of the consumer price index for all urban consumers of the United States department of labor, bureau of labor statistics, unless the board proposes and the commissioner approves a lower adjustment factor.

~~(e)~~*(c)* A small employer carrier may terminate reinsurance with the program for one or more of the reinsured employees or dependents of a small employer on any anniversary of the health benefit plan *and shall terminate reinsurance with the program for all reinsured employees or dependents of a small employer on a date set by the board but no later than July 1, 2001.*

HeinOnline -- 1999 vol. I 409 1999

~~(f) A small employer group health benefit plan in effect before January 1, 1994, may not be reinsured by the program until the board determines that sufficient funding sources are available.~~

~~(g)~~*(d)* A reinsuring carrier shall apply all managed care and claims-handling techniques, including utilization review, individual case management, preferred provider provisions, and other managed care provisions or methods of operation consistently witb respect to reinsured and nonreinsured business.

~~(5)~~*(6)* (a) As part of the plan of operation, the board shall establish a methodology for determining premium rates to be charged by the program for reinsuring small employers and individuals pursuant to this section. The methodology must include a system for classification of small employers that reflects the types of case characteristics commonly used by small employer carriers in the state. The metbodology must provide for the development of base reinsurance premium rates that must be multiplied by the factors set forth in subsection ~~(5)(b)~~ *(6)(b)* to determine the premium rates for the program. The base reinsurance premium rates must he established by tbe board, subject to the approval of the commissioner, and must he set at levels that reasonably approximate the premiums necessary to recover one-half of the expenses for the calendar year. For purposes of this section, expenses include administrative expenses and the actuarially anticipated claims to be incurred, adjusted to reflect retention levels required under this part.

(b) Premiums for the program are as follows:

(i) An entire small employer group may be reinsured for a rate that is one and one-half times tbe base reinsurance premium rate for the group established pursuant to this subsection ~~(5)~~ *(6)*.

(ii) An eligible employee or dependent may be reinsured for a rate that is five times the base reinsurance premium rate for the individual established pursuant to this subsection ~~(5)~~ *(6)*.

(c) The board sball annually review the methodology established under subsection ~~(5)(a)~~ *(6)(a)*, including the system of classification and any rating factors, to ensure that it is actuarially sound and tbat it reasonably reflects the claims experience of the program. The board may propose changes to the methodology that are subject to the approval of the commissioner.

(d) The board may consider adjustments to the premium rates charged by the program to reflect the use of effective cost containment and managed care arrangements.

~~(6)~~*(7)* If a health benefit plan for a small employer is entirely or partially reinsured with the program, the premium charged to tbe small employer for any rating period for the coverage issued must meet the requirements relating to premium rates set forth in 33-22-1809.

~~(7)~~*(8)* (a) Before March 1 of each year, the board shall determine and report to the commissioner the program net loss for the previous calendar year, including administrative expenses and incurred losses for the year, taking into account investment income and otber appropriate gains and losses, and the actuarially anticipated losses for the calendar year. The sum of the program net ioss for the previous calendar year plus one-half of the actuarially anticipated claims to be incurred during the current calendar year and one-half of anticipated

administrative expenses during the current calendar year must equal the total assessment amount.

(b) (i) Each assessahle carrier shall share in the program in an amount determined by multiplying the total assessment amount by a fraction, the numerator of which is the number of individuals in this state covered under disability insurance by the assessable carrier and the denominator of which is the number of all individuals in this state covered under disability insurance by all assessable carriers.

(ii) The board shall make a reasonable effort to ensure that each insured individual is counted only once for the purpose of assessment. The board shall require each assessable carrier that provides excess of loss or step loss insurance to include in its count of insured individuals all individuals whose coverage is reinsured in whole or in part, including coverage under excess of loss or stop loss insurance. The board shall allow an assessable carrier who is an excess of loss or stop loss insurer to exclude from its count of insured individuals those who have been counted by a primary disability insurer or by a primary reinsurer.

(iii) The board may use any reasonable method of estimating the number of individuals insured by an assessable carrier if the specific number is unknown.

(c) The board shall make an annual determination in accordance with this section of each assessable carrier's liahility for its share of the contribution to the program and, except as otherwise provided by this section, make an annual assessment against each assessable carrier to the extent of that liability. Payment of an assessment is due within 30 days of receipt by the assessable carrier of written notice of tlie assessment. An assessable carrier that ceases doing business within the state is liable for assessments until the end of the calendar year in which the assessable carrier ceased doing business. The board may determine not to assess an assessable carrier if the assessable carrier's liability determined in accordance with this section does not exceed $10.

(d) The board may establish and maintain program reserves not to exceed five times the actuarially anticipated losses for the calendar year.

(e) If the sum of the reinsurance premiums and assessments in any calendar year exceeds the sum of the administrative expenses and incurred claims for that year, the board may proportionately credit the excess to assessable carriers or it may place the excess in program reserves, subject to the limits in subsection ~~(7)(d)~~ *(8)(d)*.

~~(8)~~*(9)* The participation in the program as reinsuring carriers; the establishment of rates, forms, or procedures; or any other joint collective action required by this part may not be the basis of any legal action, criminal or civil liability, or penalty against the program or any of its reinsuring carriers, either jointly or separately.

~~(9) The board, as part of the plan of operation, shall develop standards setting forth the minimum levels of compensation to be paid to producers for the sale of basic and standard health benefit plans. In establishing the standards, the board shall take into consideration the need to ensure the broad availability of coverages, the objectives of the program, the time and effort expended in placing the coverage, the need to provide ongoing service to small employers, the levels of compensation currently used in the industry, and the overall costs of coverage to small employers selecting these plans.~~

HeinOnline -- 1999 vol. I 411 1999

(10) The program is exempt from taxation.

(11) On or before July 1 of each year, the commissioner shall evaluate the operation of the program and report to the governor and the legislature in writing the results of the evaluation. The report must include an estimate of future costs of the program, assessments necessary to pay those costs, the appropriateness of premiums charged by the program, the level of insurance retention under the program, the cost of coverage of small employers, and any recommendations for change to the plan of operation.

(12) All premiums and other money paid to the small employer carrier reinsurance program and all property and securities acquired through the use of money and interest and dividends earned on money belonging to the small employer carrier reinsurance program are solely the property of the program and must be used exclusively for the operations and obligations of the program. Money collected by the program is not subject to legislative appropriation."

Section 3. Repealer. Sections 33-22-1818 and 33-22-1819, MCA, are repealed.

Section 4. Effective dates. (1) [Section 2 and this section] are effective on passage and approval.

(2) [Sections 1 and 3] are effective July 1, 2001.

Approved March 17, 1999

CHAPTER NO. 104

[HB 52]

AN ACT PROVIDING THAT THE 6-MONTH LIMITATION APPLICABLE TO FAMILY CARE POWERS OF ATTORNEY DOES NOT APPLY TO CERTAIN MEMBERS OF THE MONTANA NATIONAL GUARD, THE ACTIVE DUTY MILITARY FORCES, AND THE FEDERAL RESERVES; AMENDING SECTION 72-5-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 72-5-103, MCA, is amended to read:

"72-5-103. Delegation of powers by parent or guardian. *(1)* A parent or a guardian of a minor or incapacitated person, by a properly executed power of attorney, may delegate to another person, for a period not exceeding 6 months, any ~~of his~~ powers regarding care, custody, or property of the minor child or ward, except ~~his~~ *the* power to consent to marriage or adoption of a minor ward.

(2) The 6-month limitation provided in subsection (1) does not apply to:

(a) a member of the Montana national guard who serves for more than 180 continuous days on duty pursuant to Title 10 or 32 of the United States Code or on state active duty pursuant to Article VI, section 13, of the Montana constitution;

(b) a member of the active duty military forces of the United States; or

(c) a member of the federal reserves who serves for more than 180 continuous days on duty pursuant to Title 10 of the United States Code.

(3) As used in this section, "federal reserves" means the United States air force reserve, army reserve, navy reserve, marine corps reserve, or coast guard reserve."

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Retroactive applicability. [Section 1] applies retroactively, within the meaning of 1-2-109, to powers of attorney executed before [the effective date of this act].

Approved March 18, 1999

CHAPTER NO. 105

[HB 168]

AN ACT REVISING STATUTES RELATING TO THE COLLECTION OF CERTAIN DEBTS BY THE STATE; TRANSFERRING THE AUTHORITY FOR DEBT COLLECTION FROM THE DEPARTMENT OF ADMINISTRATION TO THE DEPARTMENT OF REVENUE; SPECIFYING A HEARING PROCEDURE FOR COLLECTION OF DEBTS; AUTHORIZING THE DEPARTMENT OF REVENUE TO ENTER INTO AGREEMENTS WITH THE UNITED STATES, WITH OTHER STATES, AND WITH AGENCIES OF OTHER STATES FOR THE OFFSET OF TAXES OWED TO THOSE ENTITIES AGAINST MONTANA TAX REFUNDS; REQUIRING RECIPROCITY IN OFFSET AGREEMENTS; AMENDING SECTIONS 17-4-101, 17-4-105, AND 17-4-111, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Seetion 1. Section 17-4-101, MCA, is amended to read:

"17-4-101. Definitions. In this part, the following definitions apply *unless the context indicates otherwise*:

(1) "Agency" includes:

(a) all ~~state~~ offices, departments, divisions, boards, commissions, councils, committees, institutions, university units, *political subdivisions,* and other entities or instrumentalities of *this* state government;

(b) with respect to delinquent taxes that the department is requested to collect, state and local entities whose personal property taxes are collected by the county treasurer; and

(c) the *federal* internal revenue service.

(2) "Department" means the department of ~~administration~~ *revenue provided for in 2-15-1301.*"

Section 2. Section 17-4-105, MCA, is amended to read:

"17-4-105. Autbority to collect debt — offsets. (1) Once a debt of an agency has been transferred to the department, the department may collect it. The department may contract with commercial collection agents for recovery of debts owed to agencies.

(2) The department shall, when appropriate, offset any amount due an agency from a person or entity against any amount, including refunds of taxes, owing the person or entity by an agency. The department may not exercise this

HeinOnline -- 1999 vol. I 413 1999

right of offset until the debtor bas first been notified by the department and been given an opportunity for a hearing *pursuant to 15-1-211*. An offset may not be made against any amount paid out as child support collected by the department of public health and human services. The department shall deduct from the claim and draw warrants for the amounts offset in favor of the respective agencies to which the debt is due and for any balance in favor of the claimant. Whenever insufficient to offset all amounts due the agencies, the amount available must be applied first to debts owed by reason of the nonpayment of child support and then in the manner determined appropriate by the department.

(3) (a) ~~The department of revenue retains the power to offset tax refunds due individuals against taxes owed the state. The department of revenue may not exercise this right of offset until the taxpayer has been notified by the department of revenue and been given the opportunity to request a review.~~

~~(b) Within 30 days following mailing of notification, the taxpayer may request a review of the asserted liability. If a review is requested, the department of revenue shall conduct an informal review conference, which is not subject to the contested case procedures of the Montana Administrative Procedure Act.~~

~~(c) Appeal from the decision of the department of revenue after the review conference may be taken to the state tax appeal board.~~

~~(d) A taxpayer is not entitled to a review conference for a tax offset if the tax liability has been the subject matter of any proceeding conducted for the purpose of determining its validity and a decision made as a result of that proceeding has become final.~~ *The department may enter into an agreement with the federal government to offset against tax refunds payable by the federal government and pay to this state those taxes or other debts owed to an agency of this state.*

(b) (i) The department may enter into an agreement with another state or an agency of another state to offset against tax refunds payable by the other state or agency of the other state and pay to this state those taxes or other debts owed to this state or an agency of this state.

(ii) To facilitate an agreement of the kind authorized by subsection (3)(b)(i), the department may enter into an agreement that allows the other state or agency of the other state to offset against tax refunds payable by this state the whole or part of an amount owed for taxes to the other state or agency of the other state. However, the department may enter into an agreement of the type authorized by this subsection (3)(b)(ii) only if the other state or agency of the other state allows this state or an agency of this state to offset against tax refunds owed by the other state or agency of the other state taxes or other debts owed to this state or an agency of this state.

(c) A state or agency of another state entering into an agreement with the department pursuant to subsection (3)(b)(ii) may not exercise the offset against tax refunds unless the other state or agency of the other state has notified the taxpayer of the taxes due and has given the taxpayer an opportunity for review or appeal of the tax debt. Another state or agency of another state intending to offset taxes shall provide the department with proof of notification and opportunity for review or appeal before the offset is exercised.

(4) (a) A debt owed to the department of public health and human services or being collected by the department of public health and human services on behalf of any person or agency may be offset by the department if tbe debt is

being enforced or collected by the department of public health and human services under Title IV-D of the Social Security Act.

(b) The debt need not be determined to be uncollectible as provided for in 17-4-104 before being transferred to the department for offset. The debt must have accrued through written contract, court judgment, or administrative order.

(c) Within 30 days following the notification provided for in subsection (2), the person owing a debt described in subsection (4)(a) may request a hearing. The request must he in writing and be mailed to the department. The person owing a debt is not entitled to a hearing if the amount of the debt bas heen the subject matter of any proceeding conducted for tbe purpose of determining the validity of the debt and a decision made as a result of that proceeding has become final. The hearing must initially be conducted by teleconferencing metbods and is subject to the provisions of the Montana Administrative Procedure Act. The department of public health and human services shall adopt rules governing the hearing procedures.

(5) If the department determines that a person or entity has refused or neglected te file a claim within a reasonable time, the head of the state agency owing the amount shall file the claim on behalf of the person or entity. If the claim is approved by the department, the claim has the same force and effect as though filed by the person or entity. The amount due any person or entity from the state or any agency of tbe state is the net amount otherwise owing tbe person or entity after any offset, as provided in this section."

Section 3. Section 17-4-111, MCA, is amended to read:

"**17-4-111. Right of hearing to aggrieved persons.** ~~Any~~ *A* person aggrieved from a decision or an action taken under this part ~~shall have~~ *has* the right to present ~~his~~ *the* grievances in the same manner as provided by ~~17-4-105(3)~~ *17-4-105(4)(c)* and subject to the contested case procedures of the Montana Administrative Procedure Act for taxpayer appeals."

Section 4. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 5. Effective date. [This act] is effective July 1, 1999.

Seetion 6. Applicability. [This act] applies to refunds or payments made after December 31, 1999.

Approved March 18, 1999

CHAPTER NO. 106

[HB 176]

AN ACT REVISING THE DISPOSITION OF YOUTH COURT RECORDS FOR THE PURPOSES OF RESEARCH AND PROGRAM EVALUATION; DEFINING "YOUTH COURT RECORDS", "LAW ENFORCEMENT RECORDS", AND "DEPARTMENT RECORDS"; AMENDING SECTIONS 41-5-103, 41-5-215, AND 41-5-216, MCA; AND REPEALING SECTION 41-5-217, MCA.

Be it enacted by the Legislature of the State of Montana:

HeinOnline -- 1999 vol. I 415 1999

Section 1. Section 41-5-103, MCA, is amended to read:

"41-5-103. Definitions. As used in the Montana Youth Court Act, unless the context requires otherwise, the following definitions apply:

(1) "Adult" means an individual who is 18 years of age or older.

(2) "Agency" means any entity of state or local government authorized by law to be responsible for the care or rehabilitation of youth.

(3) "Assessment officer" means a person who is authorized by the court to provide initial intake and evaluation for a youth who appears to be in need of intervention or an alleged delinquent youth.

(4) "Commit" means to transfer to legal custody.

(5) "Correctional facility" means a public or private residential facility used for the placement of delinquent youth or individuals convicted of criminal offenses.

(6) "Court", when used without further qualification, means the youth court of the district court.

(7) "Custodian" means a person, other than a parent or guardian, to whom legal custody of the youth has been given but does not include a person who has only physical custody.

(8) "Delinquent youth" means a youth who is adjudicated under formal proceedings under the Montana Youth Court Act as a youth:

(a) who has committed an offense that, if committed by an adult, would constitute a criminal offense; or

(b) who has been placed on probation as a delinquent youth or a youth in need of intervention and who has violated any condition of probation.

(9) "Department" means the department of corrections provided for in 2-15-2301.

(10) "Department records" means information or data, either in written or electronic form, maintained by the department pertaining to youth who are committed to the department under 41-5-1512(3) or 41-5-1513(1)(b) or (1)(c) or who are under parole supervision. Department records do not include information provided by the department to the department of public health and human services' management information system.

~~(10)~~*(11)* "Detention" means the holding or temporary placement of a youth in the youth's home under home arrest or in a facility other than the youth's own home for:

(a) the purpose of ensuring the continued custody of the youth at any time after the youth is taken into custody and before final disposition of the youth's case; or

(b) contempt of court or violation of a valid court order.

~~(11)~~*(12)* "Detention facility" means a physically restricting facility designed to prevent a youth from departing at will. The term includes a youth detention facility, short-term detention center, and regional detention facility.

~~(10)~~*(13)* "Family" means the parents, guardians, legal custodians, and siblings or other youth with whom a youth ordinarily lives.

HeinOnline -- 1999 vol. I 416 1999

~~(13)~~*(14)* "Final disposition" means the implementation of a court order for the disposition or placement of a youth as provided in 41-5-1422, 41-5-1503, 41-5-1504, 41-5-1512, 41-5-1513, and 41-5-1522 through 41-5-1525.

~~(14)~~*(15)* "Foster home" means a private residence licensed by the department of public health and human services for placement of a youth.

~~(15)~~*(16)* "Guardian" means an adult:

(a) who is responsible for a youth and has the reciprocal rights, duties, and responsibilities with the youth; and

(b) whose status is created and defined by law.

~~(16)~~*(17)* "Habitual truancy" means recorded absences of 10 days or more of unexcused absences in a semester or absences without prior written approval of a parent or a guardian.

~~(17)~~*(18)* "Holdover" means a room, office, building, or other place approved by the board of crime control for the temporary detention and supervision of youth in a physically unrestricting setting for a period not to exceed 24 hours while the youth is awaiting a probable cause hearing, release, or transfer to an appropriate detention or shelter care facility. The term does not include a jail.

~~(16)~~*(19)* "Jail" means a facility used for the confinement of adults accused or convicted of criminal offenses. The term includes a lockup or other facility used primarily for the temporary confinement of adults after arrest but does not include a collocated juvenile detention facility that complies with 28 CFR, part 31.

~~(16)~~*(20)* "Judge", when used without further qualification, means the judge of the youth court.

(21) "Law enforcement records" means information or data, either in written or electronic form, maintained by a law enforcement agency, as defined in 7-32-201, pertaining to a youth covered by this chapter.

~~(20)~~*(22)* (a) "Legal custody" means the legal status created by order of a court of competent jurisdiction that gives a person the right and duty to:

(i) have physical custody of the youth;

(ii) determine with whom the youth shall live and for what period;

(iii) protect, train, and discipline the youth; and

(iv) provide the youth with food, shelter, education, and ordinary medical care.

(b) An individual granted legal custody of a youtb shall personally exercise the individual's rights and duties as guardian unless otherwise authorized by the court entering the order.

~~(21)~~*(23)* "Necessary parties" includes the youth and the youth's parents, guardian, custodian, or speuse.

~~(22)~~*(24)* "Parent" means the natural or adoptive parent but does not include a person whose parental rights have been judicially terminated, nor does it include the putative father of an illegitimate youth unless the putative father's paternity is estahlished by an adjudication or by other clear and convincing proof.

~~(22)~~*(25)* "Probable cause hearing" means the hearing provided for in 41-5-332.

HeinOnline -- 1999 vol. I 417 1999

~~(24)~~*(26)* "Regional detention facility" means a youth detention facility established and maintained by two or more counties, as authorized in 41-5-1804.

~~(25)~~*(27)* "Restitution" means payments in cash to the victim or with services to the victim or the general community when these payments are made pursuant to a consent adjustment, consent decree, or other youth court order.

~~(25)~~*(28)* "Running away from home" means that a youth has heen reported to have run away from home without the consent of a parent or guardian or a custodian having legal custody of the youth.

~~(27)~~*(29)* "Secure detention facility" means a public or private facility that:

(a) is used for the temporary placement of youth or individuals accused or convicted of criminal offenses or as a sanction for contempt of court, violation of a parole agreement, or violation of a valid court order; and

(b) is designed to physically restrict the movements and activities of youth or other individuals held in lawful custody of the facility.

~~(28)~~*(30)* "Serious juvenile offender" means a youth who has committed an offense that would be considered a felony offense if committed by an adult and that is an offense against a person, an offense against property, or an offense involving dangerous drugs.

~~(29)~~*(31)* "Shelter care" means the temporary substitute care of youth in physically unrestricting facilities.

~~(30)~~*(32)* "Shelter care facility" means a facility used for the shelter care of youth. The term is limited to tbe facilities enumerated in 41-5-344.

~~(31)~~*(33)* "Short-term detention center" means a detention facility licensed hy the department for the temporary placement or care of youth, for a period not to exceed 10 days excluding weekends and legal holidays, pending a probable cause hearing, release, or transfer of the youth to an appropriate detention facility, youth assessment center, or shelter care facility.

~~(32)~~*(34)* "State youth correctional facility" means a residential facility used for the placement and rehabilitation of delinquent youth, such as the Pine Hills youth correctional facility in Miles City.

~~(33)~~*(35)* "Substitute care" means full-time care of youth in a residential setting for the purpose of providing food, shelter, security and safety, gnidance, direction, and, if necessary, treatment to youth who are removed from or are without the care and suporvision of their parents or guardians.

~~(34)~~*(36)* "Victim" means:

(a) a person who suffers property, physical, or emotional injury as a result of an offense committed by a youth that would be a felony offense if committed by an adult;

(b) an adult relative of tbe victim as defined in subsection ~~(34)(a)~~ *(36)(a)* if the victim is a minor; and

(c) an adult relative of a homicide victim.

~~(35)~~*(37)* "Youth" means an individual who is less than 18 years of age without regard to sex or emancipation.

~~(36)~~*(38)* "Youth assessment" means a multidisciplinary assessment of a youth as provided in 41-5-1201.

HeinOnline -- 1999 vol. I 418 1999

~~(37)~~*(39)* "Youth assessment center" means a staff-secured location that is licensed by the department of public health and human services to hold a youth for up to 10 days for the purpose of providing an immediate and comprehensive community-based youth assessment to assist the youth and the youth's family in addressing the youth's behavior.

~~(38)~~*(40)* "Youth care facility" has the meaning provided in 41-3-1102.

~~(39)~~*(41)* "Youth court" means the court established pursuant to this chapter to hear all proceedings in which a youth is alleged to be a delinquent youth, a youth in need of intervention, or a youth in need of care and includes the youth court judge, probation officers, and assessment officers.

(42) "Youth court records" means information or data, either in written or electronic form, maintained by the youth court pertaining to a youth under jurisdiction of the youth court and includes reports of preliminary inquiries, petitions, motions, other filed pleadings, court findings, verdicts, orders and decrees, youth assessment materials, predispositional studies, and supervision records of probationers. Youth court records do not include information provided by the youth court to the department of public health and human services' management information system.

~~(40)~~*(43)* "Youth detention facility" means a secure detention facility licensed by the department for the temporary substitute care of youth that:

(a) is operated, administered, and staffed separately and independently of a jail; and

(b) is used exclusively for the lawful detention of alleged or adjudicated delinquent youth or as a sanction for contempt of court, violation of a parole agreement, or violation of a valid court order.

~~(41)~~*(44)* "Youth in need of care" has the meaning provided for in 41-3-102.

~~(40)~~*(45)* "Youth in need of intervention" means a youth who is adjudicated as a youth and who commits an offense prohibited by law that if committed by an adult would not constitute a criminal offense, including but not limited to a youth who:

(a) violates any Montana municipal or state law regarding alcoholic beverages;

(b) continues to exhibit behavior, including running away from home or habitual truancy, beyond the control of the youth's parents, foster parents, physical custodian, or guardian despite the attempt of the youth's parents, foster parents, physical custodian, or guardian to exert all reasonable efforts to mediate, resolve, or control the youth's behavior; or

(c) has committed any of the acts of a delinquent youth but whom the youth court, in its discretion, chooses to regard as a youth in need of intervention."

Section 2. Section 41-5-215, MCA, is amended to read:

"41-5-215. Youth court ~~and department~~ records — notification of school. (1) ~~Except as provided in subsection (2), all youth court records on file with the clerk of court, including reports~~ *Reports* of preliminary inquiries, petitions, motions, other filed pleadings, court findings, verdicts, *and* orders~~,~~ and decrees~~,~~ *on file with the clerk of court are public records and* are open to public inspection until the records are sealed under 41-5-216.

HeinOnline -- 1999 vol. I 419 1999

(2) Social, medical, and psychological records, youth assessment materials, predispositional studies, and supervision records of probationers are open only to the following:

(a) the youth court and its professional staff;

(b) representatives of any agency providing supervision and having legal custody of a youth;

(c) any other person, by order of the court, having a legitimate interest in the case or in the work of the court;

(d) any court and its probation and other professional staff or the attorney for a convicted party who had been a party to proceedings in the youth court when considering the sentence to be imposed upon the party;

(e) the county attorney;

(f) the youth who is the subject of the report or record, after emancipation or reaching the age of majority;

(g) a member of a county interdisciplinary child information team formed under 52-2-211 who is not listed in this subsection (2);

(h) memhers of a local interagency staffing group provided for in 52-2-203;

(i) persons allowed access to the records referred to under 45-5-624(7); and

(j) persons allowed access under 42-3-203.

(3) In all cases, a victim is entitled to all information concerning the identity and disposition of the youth, as provided in 41-5-1416.

(4) The identity of a youth who for the second or subsequent time admits violating or is adjudicated as having violated a statute must be disclosed by youth court officials to the administrative officials of the school in which the youth is a student. The administrative officials may enforce any school disciplinary procedures that existed at the time of the admission or adjudication. The information may not be further disclosed and may not be made part of the student's permanent records.

(5) Any part of records information secured from records listed in subsection (2), when presented to and used by the court in a proceeding under this chapter, must also be made available to the counsel for the parties to the proceedings.

~~(6) After youth court and department records, reports of preliminary inquiries, predispositional studies, and supervision records of probationers are sealed, they are not open to inspection except, upon order of the youth court, for good cause to:~~

~~(a) those persons and agencies listed in subsection (2); and~~

~~(b) adult probation professional staff preparing a presentence report on a youth who has reached the age of majority.~~"

Section 3. Section 41-5-216, MCA, is amended to read:

"41-5-216. Disposition of *youth court, law enforcement, and department* records. (1) ~~Except as provided in subsections (2) and (5), youth~~ *Youth* court records ~~and~~, law enforcement records ~~pertaining~~, *and department records that are not exempt from sealing under subsections (4) and (6) and that pertain* to a youth covered by this chapter must be physically sealed 3 years after

supervision for an offense ends. ~~The records may be unsealed if a new offense is committed.~~

~~(2)~~ In those cases in which jurisdiction of the court or any agency is extended beyond the youth's 18th birthday, the records ~~and files not exempt from sealing under subsection (5)~~ must be physically sealed upon termination of the extended jurisdiction.

~~(3)~~*(2)* ~~Upon the physical sealing of~~ *Except as provided in subsection (6), when* the records pertaining to a youth pursuant to this section *are sealed*, an agency, ~~or~~ *other than the* department, that has in its possession copies of the sealed records shall ~~also seal or~~ destroy the copies of the records. Anyone violating the provisions of this subsection is subject to contempt of court.

~~(4)~~*(3)* ~~This~~ *Except as provided in subsection (6), this* section does not prohibit the destruction of records with the consent of the youth court judge or county attorney after 10 years from the date of sealing.

~~(5)~~*(4)* The requirements for sealed records in this section do not apply to fingerprints, DNA records, photographs, youth traffic records, records in any case in which the youth did not fulfill all requirements of the court's judgment or disposition, or records referred to in 42-3-203 or 45-5-624(7).

(5) After youth court records, law enforcement records, and department records are sealed, they are not open to inspection except, upon order of the youth court, for good cause, including when a youth commits a new offense, to:

(a) those persons and agencies listed in 41-5-215(2); and

(b) adult probation professional staff preparing a presentence report on a youth who has reached the age of majority.

(6) (a) When youth court records, law enforcement records, and department records are sealed under subsection (1), the electronic records of the management information system maintained by the department of public health and human services relating to the youth whose records are being sealed must be preserved for the express purpose of research and program evaluation as provided in subsection (6)(b).

(b) The department of public health and human services shall disassociate the offense and disposition information from the name of the youth in the management information system. The offense and disposition information must be maintained separately and may be used only:

(i) for research and program evaluation authorized by the department of public health and human services and subject to any applicable laws; and

(ii) as provided in Title 5, chapter 13."

Section 4. Repealer. Section 41-5-217, MCA, is repealed.

Approved March 18, 1999

CHAPTER NO. 107

[HB 352]

AN ACT ENSURING CONTINUED ACCESS ACROSS PUBLIC LAND TO PRIVATE AND PUBLIC LAND; AMENDING SECTIONS 7-14-2615 AND 60-2-107, MCA; AND PROVIDING EFFECTIVE DATES.

HeinOnline -- 1999 vol. I 421 1999

Be it enacted by the Legislature of the State of Montana:

Section 1. Purchase of historic easement across state land for benefit of private land. If a historic easement or right-of-way for access to private land exists across state land, the person owning the private land may purchase the nonexclusive easement as a permanent, nonexclusive easement. Upon receipt of the fair market value of the easement and proof of the existence of the easement or right-of-way and the purpose and proposed purchaser's use of the nonexclusive easement, the board may sell a permanent nonexclusive easement if it is across school land or other land granted to the state for the support and benefit of a state institution and shall sell a permanent nonexclusive easement if it is across other state land.

Section 2. Purchase of historic easement across county land for benefit of private land. If a historic easement or right-of-way for access to private land exists across county land, the person owning the private land may purchase the nonexclusive easement as a permanent, nonexclusive easement. The board of county commissioners shall sell a permanent, nonexclusive easement upon receipt of the fair market value of the easement and proof of the existence of the easement or right-of-way and the purpose and propesed purchaser's use of the nonexclusive easement.

Section 3. Section 7-14-2615, MCA, is amended to read:

"7-14-2615. Abandonment or vacation of county roads. (1) All county roads once established must continue to be county roads until abandoned or vacated by:

(a) operation of law;

(b) judgment of a court of competent jurisdiction; or

(c) the order of the board.

(2) ~~No~~ *An* order to abandon ~~any~~ *a* county road ~~shall be~~ *is not* valid unless preceded by notice and public hearing.

(3) The board may not abandon a county road or right-of-way used to access public land unless another public road or right-of-way provides substantially the same access.

(4) The board may not abandon a county road or right-of-way used to access private land if the access benefits two or more landowners unless all of the landowners agree to the abandonment."

Section 4. Section 60-2-107, MCA, is amended to read:

"60-2-107. Abandonment of highways — exchange of roadways. (1) The commission may abandon highways on the federal-aid systems and state highways.

(2) The commission may enter into an agreement with a unit of local government, on mutually beneficial terms, to exchange property interests or responsibilities, including maintenance, on any pertion of a federal-aid or state highway and on any portion of a county road or city street.

(3) The commission may not abandon a highway, road, or right-of-way used to access public land unless another highway, road, or right-of-way provides substantially the same access.

HeinOnline -- 1999 vol. I 422 1999

(4) The commission may not abandon a highway, road, or right-of-way used to access private land if the access benefits two or more landowners unless all the landowners agree to the abandonment."

Section 5. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 77, chapter 1, part 1, and the provisions of Title 77 apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 7, chapter 14, and the provisions of Title 7, chapter 14, apply to [section 2].

Section 6. Effective date — contingent effective date. (1) [Sections 2 through 5 and this section] are effective on passage and approval.

(2) If the Montana Supreme Court invalidates subsection (4)(a) of 77-1-130, [section 1] is effective on the date of the decision. If the Montana Supreme Court does not invalidate subsection (4)(a) of 77-1-130, then [section 1] is void.

Approved March 18, 1999

CHAPTER NO. 108

[HB 387]

AN ACT ALLOWING A PERSON WHO OWNS OR LAWFULLY CONTROLS AN ARTIFICIAL LAKE OR POND OR A PRIVATE FISH POND TO QUALIFY FOR A FISH POND LICENSE IF THE LICENSE CONDITIONS ARE MET; REVISING THE DEFINITION OF "ARTIFICIAL LAKE OR POND" TO INCLUDE A PRIVATE FISH POND; AMENDING SECTION 87-4-603, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-4-603, MCA, is amended to read:

"87-4-603. Fish pond license for artificial lake or pond — records. (1) A person who owns or lawfully controls an artificial lake or pond *or a private fish pond* may apply to the director for a fish pond license. The holder of a private fish pond license may stock the fish pond with fish procured from a lawful source. The department may designate the species of fish that may be released in the pond and otherwise condition the license if there is a possibility of fish escaping from the pond into adjacent streams or lakes. The license holder may take fish from the lake or pond in any manner. Before a license holder may sell fish or eggs or fry from the lake or pond, the license holder shall furnish a corporate surety bond to the state for $500, conditioned to the effect that the license holder will not sell fish or spawn from any of the public waters of this state or violate the conditions of the license and also conditioned to the effect that the license holder will submit an annual report on transactions to the director.

(2) *(a)* "Artificial lake or pond" *or "private fish pond"*, as used in this section, ~~does not include a natural pond or body of water, including streams and rivers, created by natural means or any portion of the streambed or lakebed of a natural pond or body of water. It includes only bodies of water created by artificial means or diversion of water that do not exceed 500 acres of surface area.~~ *means a body of water that is:*

(i) created by artificial means or by a diversion of water that does not exceed 500 acres in surface area; or

(ii) an instream pond that does not exceed 500 acres with a tributary spring or stream that does not support game fish or fish species of special concern; and

(iii) not determined by the department to pose an unacceptable risk to game fish or fish species of special concern in adjacent waters.

(b) The term does not include all other natural ponds or bodies of water, including streams or rivers and impoundments or reservoirs of or on a natural stream, river, lake, or pond.

(3) An applicant for licensing of an instream private fish pond shall present to the department verification that game fish or fish species of special concern do not occur in the tributary, spring, or stream and that the instream private fish pond does not pose an unacceptable risk to game fish or fish species of special concern in adjacent waters. Verification must be in the form of:

(a) a formal report from a department-approved professional fisheries consultant; or

(b) other reliable data and documentation.

~~(3)~~*(4)* The department may condition the license to require the construction, implementation, and maintenance of measures or devices to prevent fish in an artificial lake or pond from escaping into adjacent waters.

~~(4)~~*(5)* (a) A licensee who sells fish or eggs shall keep accurate records of:

(i) the species and quantities of fish or eggs sold or purchased;

(ii) dates of sales or purchases;

(iii) names of purchasers or sellers; and

(iv) locations to or from which fish or eggs are transferred.

(b) On or before January 31 of each year, a licensee who sells fish or eggs shall file a report with the department, on forms made available by the department, summarizing the records required under subsection (4)(a).

~~(5)~~*(6)* A person who owns or controls an artificial lake or pond may request an inspection hy the department to ascertain the presence of disease in fish or the illegal introduction of fish species. Whenever the department has reasonable cause to believe that a fish species in the body of water may have been illegally introduced or may have a disease that may affect fish in another body of water, the department shall notify the landowner or landowner's agent by mail or in person of the intention to enter upen the land and shall enter only after notice has heen given to the landowner or agent or after every reasonable effort has been made to notify the landowner and receive permission to enter upon the land. Thereafter, the department may enter upon land under the provisions of this subsection for the purposes of inspecting the pond or the body of water, the species of fish in the pond or the body of water, the presence of disease in a fish species, the construction of any impoundment, dam, or fish barrier, and the physical connection of an artificial lake or pond to an adjacent natural lake, pond, or body of water, including a stream or river. The department is responsible for actual damages to any property.

~~(6)~~*(7)* If the department finds an illegal introduction of fish or the presence of disease in fish in a licensed fish pond, an artificial lake or pond, or a natural lake, pond, or body of water, the department shall consult with the landowner or the landowner's agent to determine the appropriate action unless an emergency

HeinOnline -- 1999 vol. I 424 1999

exists. In an emergency situation, the department may order or take appropriate action to address any threat to the state's fisheries resources, including quarantine or destruction of fish, eggs, or the source of a disease. Whenever privately owned fish are destroyed and the private owner is not responsible for an illegal introduction or the introduction of fish with a disease, the department may replace the destroyed fish without charge to the private owner. A landowner or agent who has granted permission for the department to enter is not considered responsible for an illegal intreduction of fish or disease unless ~~proven~~ *proved* otherwise."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 18, 1999

CHAPTER NO. 109

[SB 91]

AN ACT EXTENDING FOR 4 YEARS THE TERMINATION DATE ON THE REQUIREMENT THAT AT LEAST 50 PERCENT OF FISHING LICENSE FEES RESERVED FOR FISHING ACCESS SITES BE ALLOCATED FOR THE OPERATION AND MAINTENANCE OF FISHING ACCESS SITES AND STREAM, RIVER, AND LAKE FRONTAGES AND BE PRIORITIZED AND EXPENDED FOR WEED CONTROL, STREAMBANK RESTORATION, AND GENERAL OPERATION AND MAINTENANCE; REQUIRING A REPORT ON PROGRAM SUCCESS TO THE 58TH LEGISLATURE; AMENDING SECTIONS 2 AND 4, CHAPTER 428, LAWS OF 1995; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 4, Chapter 428, Laws of 1995, is amended to read:

"**Section 4. Termination.** [This act] terminates July 1, ~~1999~~ *2003*."

Section 2. Section 2, Chapter 428, Laws of 1995, is amended to read:

"**Section 2. Report to legislature.** Because [section 1] terminates July 1, ~~1999~~ *2003*, the department of fish, wildlife, and parks sball report to the ~~56th~~ *58th* legislature by December 1, ~~1998~~ *2002*, regarding the success of the operation and maintenance program required by [section 1] and on the status of weed management and streambank restoration at fishing access sites and frontages."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved March 18, 1999

CHAPTER NO. 110

[SB 201]

AN ACT CLARIFYING THAT IN A CRIMINAL PROSECUTION, JEOPARDY ATTACHES WHEN A JURY IS EMPANELED AND SWORN; AND AMENDING SECTION 46-11-503, MCA.

WHEREAS, in Keating v. Sherlock, 278 Mont. 218, 924 P.2d 1297, 53 St. Rep. 855 (1996), the Montana Supreme Court held that section 46-11-503(1)(d)(i),

HeinOnline -- 1999 vol. I 425 1999

MCA, has been unconstitutional since the decision in Crist v. Bretz, 437 U.S. 28 (1978).

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-11-503, MCA, is amended to read:

"46-11-503. Prosecution based on same transaction barred by former prosecution. (1) When two or more offenses are known to the prosecutor, are supported by probable cause, and are consummated prior to the original charge and jurisdiction and venue of the offenses lie in a single court, a prosecution is barred if:

(a) the former prosecution resulted in an acquittal. There is an acquittal whenever the prosecution results in a finding of not guilty by the trier of fact or in a determination that there is insufficient evidence to warrant a conviction. A finding of guilty of a lesser included offense that is subsequently set aside is an acquittal of the greater offense that was charged.

(b) the former prosecution resulted in a conviction that has not been set aside, reversed, or vacated;

(c) after a charge had been filed, the prosecution was terminated by a final order or judgment for the defendant that has not been set aside, reversed, or vacated; or

(d) the former prosecution was terminated for reasons not amounting to an acquittal and takes place:

(i) in a jury trial, ~~after the first witness is sworn but before a verdict is returned~~ *when the jury is empaneled and sworn*; or

(ii) in a nonjury trial, after the first witness is sworn but before a judgment as to guilt or innocence is reached.

(2) A prosecution based upon the same transaction as a former prosecution is not barred under subsection (1)(d) when:

(a) the defendant consents to the termination or waives ~~his~~ *the* right to object to the termination; or

(b) the trial court finds that the termination is necessary because:

(i) it is physically impossible to proceed with the trial in conformity with law;

(ii) there is a legal defect in the proceedings that would make any judgment entered upon a verdict reversible as a matter of law;

(iii) prejudicial conduct makes it impossible to proceed with the trial without manifest injustice to either the defendant or the state;

(iv) the jury is unable to agree upon a verdict; or

(v) false statements of a juror on voir dire prevent a fair trial."

Approved March 18, 1999

HeinOnline -- 1999 vol. I 426 1999

CHAPTER NO. 111

[HB 118]

AN ACT REVISING STATUTES GOVERNING THE TEACHERS' RETIREMENT SYSTEM TO COMPLY WITH THE REQUIREMENTS OF THE INTERNAL REVENUE CODE FOR A QUALIFIED GOVERNMENTAL RETIREMENT PLAN; CLARIFYING THE AUTHORITY OF THE TEACHERS' RETIREMENT BOARD TO COMPLY WITH THE INTERNAL REVENUE CODE; CLARIFYING THE MEMBERSHIP RIGHTS OF LEGISLATORS WHO ARE ALSO MEMBERS OF THE TEACHERS' RETIREMENT SYSTEM; GRANTING EMPLOYERS PARTICIPATING IN THE TEACHERS' RETIREMENT SYSTEM THE OPTION OF WITHHOLDING EMPLOYEE CONTRIBUTIONS UNDER THE PROVISIONS OF THE INTERNAL REVENUE CODE FOR THE PURPOSE OF PURCHASING SERVICE; PERMITTING CONTRIBUTIONS WITHHELD ON TERMINATION PAY AND REPORTED TO THE TEACHERS' RETIREMENT SYSTEM TO BE WITHHELD UNDER THE PROVISIONS OF THE INTERNAL REVENUE CODE; CLARIFYING ELIGIBILITY PROVISIONS; CLARIFYING DUTIES OF THE TEACHERS' RETIREMENT BOARD REPRESENTATIVE; AMENDING SECTIONS 5-2-304, 19-20-101, 19-20-106, 19-20-302, 19-20-404, 19-20-405, 19-20-414, 19-20-502, 19-20-602, 19-20-603, 19-20-702, 19-20-703, 19-20-710, 19-20-716, 19-20-801, 19-20-802, 19-20-804, 19-20-901, AND 19-20-902, MCA; REPEALING SECTIONS 19-20-412, 19-20-413, 19-20-704, 19-20-707, 19-20-708, AND 19-20-709, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5-2-304, MCA, is amended to read:

"5-2-304. Continued participation in public retirement systems. (1) The purpose of this section is to provide a means whereby persons serving in the Montana legislature may continue their participation in public retirement systems governed by state law. This section is not intended to provide duplicate credit for the same service in two retirement systems supported wholly or in part by public funds. This section does not affect contribution rates or benefit payments specifically provided for in the laws governing the operation of individual retirement systems.

(2) A person who is engaged in official duties as a member of the Montana legislature and who is ~~otherwise eligible to participate as~~ a member ~~or contributor~~ of a public retirement system governed by state law may but is not required to continue ~~his~~ *the person's* participation in ~~such~~ *that* public retirement system while engaged in ~~his~~ official duties as a legislator. *A legislator shall make an irrevocable election within 180 days of taking office whether to continue participation in the public retirement system. A person who is a member of the Montana legislature on July 1, 1999, has until January 1, 2000, to file a written application with the teachers' or public employees' retirement board that is the irrevocable election required by this section.*

(3) A legislator who elects to continue participation as provided in subsection (2) shall:

HeinOnline -- 1999 vol. I 427 1999

~~(a)~~ continue ~~his~~ *the* payments into the fund of the retirement system at the rate currently in effect in ~~such~~ *the* system based on ~~his~~ *the legislator's* monthly salary as a member of that system~~; or~~

~~(b) continue his payments into the fund of the retirement system at the rate currently in effect in such system based on his monthly salary as a legislator~~.

(4) The state contribution ~~shall~~ *must* be *made* by legislative appropriation. It ~~shall~~ *must* equal the appropriate employer contribution at the rate currently in effect in the system."

Section 2. Section 19-20-101, MCA, is amended to read:

"**19-20-101. Definitions.** As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accumulated contributions" means the sum of all the amounts deducted from the compensation of a member or paid by a member and credited to the member's individual account in the annuity savings fund, together with interest. Regular interest must be computed and allowed to provide a benefit at the time of retirement.

(2) "Actuarial equivalent" means a benefit of equal value when computed, with regular interest, on the basis of the 1971 Group Annuity Mortality Table, with ages set back 4 years and an interest rate of 8% compounded annually.

(3) "Average final compensation" means the average of a member's earned compensation during the 3 consecutive years of full-time service or as provided under 19-20-805 that yield the highest average and on which contributions have been made as required by 19-20-602 ~~or 19-20-413~~. If amounts defined in subsection (6)(b) have been converted by an employer to earned compensation for all members and have been continuously reported as earned compensation in a like amount for at least the 5 fiscal years preceding the member's retirement, the amounts may be included in the calculation of average final compensation. If amounts defined in subsection (6)(b) have been reported as earned compensation for less than 5 fiscal years or if the member has been given the option to have amounts reported as earned compensation, any amounts reported in the 3-year period that constitute average final compensation must be included in average final compensation as provided under ~~19-20-716(2)~~ *19-20-716(1)(b)*.

(4) "Beneficiary" means a person formally desiguated by a member, retiree, or benefit recipient to receive a retirement allowance or payment upon the death of the member, retiree, or benefit recipient.

(5) "Creditable service" is that service defined by 19-20-401.

(6) (a) "Earned compensation" means, except as limited by 19-20-715, remuneration, exclusive of maintenance, allowance, and expenses, paid for services by a member out of funds controlled by an employer before any pretax deductions allowed under the Internal Revenue Code are deducted from the member's compensation.

(b) Earned compensation does not mean:

(i) direct employer premium payments on behalf of members for health or dependent care expense accounts or any employer contribution for health, medical, pharmaceutical, disability, life, vision, dental, or any other insurance;

(ii) any direct employer payment or reimbursement for professional membership dues; maintenance; housing; day care; ~~or~~ automobile, travel,

HeinOnline -- 1999 vol. I 428 1999

lodging, or entertaining expenses; or any similar payment for any form of maintenance, allowance, or expenses;

(iii) the imputed value of health, life, or disability insurance or any other fringe benefits; or

(iv) any noncash benefit provided by an employer to or on behalf of an employee.

(c) ~~Earned~~ *Unless included pursuant to 19-20-716, earned* compensation does not include ~~lump-sum payments in respect to unused, accumulated sick or annual leave, excess leave balance payments, or bonuses or any sort of early retirement incentive or severance payment contingent upon the employee terminating employment~~ *termination pay*.

(d) Adding a direct employer-paid or noncash benefit to an employee's contract or subtracting the same or like amount as a pretax deduction is considered a fringe benefit and not earned compensation.

(e) Earned compensation does not include compensation paid to a member from a plan for the deferral of compensation under section 457(f) of the Internal Revenue Code.

(7) "Employer" means the state of Montana, the trustees of a district, or any other agency or subdivision of the state that employs a person who is designated a member of the retirement system.

(8) "Full-time service" means service that is full-time and that extends over a normal academic year of at least 9 months. With respect to those members employed by the office of the superintendent of public instruction, any other state agency or institution, or the office of a county superintendent, full-time service means service that is full-time and that totals at least 9 months in any year.

(9) *"Internal Revenue Code" means the federal Internal Revenue Code of 1954 or 1986, as applicable to a governmental plan, as the code provided on July 1, 1999.*

(10) "Member" means a person who has an individual account in the annuity savings fund. An active member is a person included under the provisions of 19-20-302. An inactive member is a person included under the provisions of 19-20-303.

~~(10)~~*(11)* "Part-time service" means service that is less than full-time or that totals less than 9 months in a normal academic year. Part-time service must be credited in the proportion that tbe actual time worked compares to full-time service.

~~(11)~~*(12)* "Prior service" means employment of the same nature as service but rendered before September 1, 1937.

~~(12)~~*(13)* "Regular interest" means interest at 4% a year compeunded annually or at a rate as may be set by the retirement board in accordance with 19-20-501(2).

(14) "Retired member" means a person who has terminated employment that is eligible for membership under 19-20-302 and who has received at least one monthly retirement benefit paid pursuant to this chapter.

~~(13)~~*(15)* "Retirement allowance" means a payment due monthly to a person who has qualified for service or disability retirement or due to a beneficiary as provided in 19-20-1001.

HeinOnline -- 1999 vol. I 429 1999

~~(14)~~*(16)* "Retirement board" or "board" means the retirement system's governing board provided for in 2-15-1010.

~~(15)~~*(17)* "Retirement system" ~~or~~, "system", *or "plan"* means the teachers' retirement system of the state of Montana provided for in 19-20-102.

~~(16)~~*(18)* "Service" means the performance of instructional duties or related activities that would entitle the person to active membership in the retirement system under the provisions of 19-20-302.

~~(17)~~*(19)* "Termination" *or "terminate"* means that the member has severed the employment relationship with the member's employer and *that* all, if any, payments due upon termination of employment, including but not limited to accrued sick and annual leave balances, have been paid to the member.

~~(16)~~*(20) (a)* "Termination pay" means any form of ~~termination pay made at the time of retirement or death;~~ *bona fide vacation leave, sick leave, severance pay, amounts provided under a window or early retirement incentive plan, or other* payments contingent on the employee terminating employment~~; any lump sum payment for deferred compensation, sick leave, or accumulated vacation credit; or any other payment for time not worked other than compensation received while on sick leave or authorized leave of absence~~.

(b) Termination pay does not include:

(i) amounts that are not wages under section 3121 of the Internal Revenue Code, determined without regard to the wage base limitation; and

(ii) amounts that are payable to a member from a plan for the deferral of compensation under section 457(f) of the Internal Revenue Code.

~~(19)~~*(21)* "Vested" means that a member has been credited with at least 5 full years of membership service upon which contributions have been made, as required by 19-20-602 and 19-20-605, and who has a right to a future retirement benefit.

(22) "Written application" means a written instrument, specified by the board, properly executed, and filed with the board that contains all the information required by the board, including documentation as the board considers necessary."

Section 3. Section 19-20-106, MCA, is amended to read:

"19-20-106. Retaining qualified plan status — board rulemaking authority. *(1) The board shall administer the plan in the manner required to satisfy the applicable qualification requirements for a qualified governmental plan, as specified in the Internal Revenue Code.* If a provision in this chapter conflicts with a qualification requirement in section 401 of the Internal Revenue Code applicable to public retirement systems *or with the plan's status as a qualified governmental plan under section 414(d) of the Internal Revenue Code* and consequent federal administrative regulations, the provision is either ineffective or must be interpreted to conform to the federal qualification requirements and allow the ~~system~~ *plan* to retain tax-deferred status. The board may adopt rules to implement this section.

(2) For the purpose of section 401(a) of the Internal Revenue Code, the plan document for the retirement plan is composed of the applicable provisions of the Montana constitution, this chapter, and applicable rules adopted by the board."

HeinOnline -- 1999 vol. I 430 1999

Section 4. General internal revenue service qualification rules. (1) The board shall distribute the corpus and income of the system to the members and their beneficiaries in accordance with the system's law. The corpus and income may not, at any time before the satisfaction of all liabilities with respect to members and their beneficiaries, be used for, or diverted to, purposes other than the exclusive benefit of the members and their beneficiaries.

(2) Forfeitures arising from severance of employment, from death, or for any other reason may not be applied to increase the benefits that any member would otherwise receive under the state's law. However, forfeitures may be used to reduce the costs of administration.

(3) Distributions from the system may be made only upon retirement, separation from service, disability, or death.

(4) Notwithstanding any provision of law to the contrary, contributions, benefits, and service credit with respect to qualified military service must be provided in accordance with section 414(u) of the Internal Revenue Code and the federal Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. 4301, et seq.

(5) The board may maintain a qualified governmental excess benefit arrangement under section 415(m) of the Internal Revenue Code. The board shall adopt rules for the necessary and appropriate procedures for the administration of the benefit arrangement in accordance with the Internal Revenue Code. The amount of any annual benefit that would exceed the limitations imposed by section 415 of the Internal Revenue Code must be paid from the benefit arrangement. The amount of a contribution that would exceed the limitation imposed by section 415 of the Internal Revenue Code must be credited to the benefit arrangement. The benefit arrangement must be a separate part of the system. The benefit arrangement is subject to the following requirements:

(a) The benefit arrangement must be maintained solely for the purpose of providing to members in the system that part of the member's annual benefit or contribution otherwise payable under the terms of this chapter that exceeds the limitations on benefits or contributions imposed by section 415 of the Internal Revenue Code.

(b) Members may not elect, directly or indirectly, to defer compensation to the benefit arrangement.

(6) The limitation year for purposes of section 415 of the Internal Revenue Code is the school year beginning September 1 and ending August 31.

(7) The plan year is the fiscal year beginning July 1 and ending June 30.

Section 5. Section 19-20-302, MCA, is amended to read:

"19-20-302. Active membership. (1) Unless otherwise provided by this chapter, the following persons must be active members of the retirement system, with the exception that those persons who became eligible for membership on September 1, 1937, or on September 1, 1939, and who elected not to become members under the provisions of the law at that time are not required to be members:

(a) any person who is a teacher, principal, or district superintendent as defined in 20-1-101;

HeinOnline -- 1999 vol. I 431 1999

(b) any person who is an administrative officer or a member of the instructional or scientific staff of a unit of the Montana university system and who has not elected or is not required to participate in the optional retirement program under Title 19, chapter 21;

(c) any person employed as a speech-language pathologist, school nurse, or school psychologist or in an instructional services capacity by the office of the superintendent of public instruction, the office of a county superintendent, a special education cooperative, a public institution of the state of Montana, the Montana state school for the deaf and blind, or a school district;

(d) any person who is an administrative officer or a member of the instructional staff of the board of public education;

(e) any person who has elected not to become a member of the retirement system and is reentering service in a capacity prescribed by subsection (1)(a), (1)(b), (1)(c), or (1)(d);

(f) any person who has elected not to become a member of the retirement system, who has been continuously employed in a capacity prescribed by subsection (1)(a), (1)(b), (1)(c), or (1)(d) since the time of the election, and who may elect to become a member of the retirement system.

(2) A person elected to the office of county superintendent of schools after July 1, 1995, is not eligible for optional membership in the public employees' retirement system under the provisions of 19-3-412 and may, within 30 days of taking office, elect to become an active member of the teachers' retirement system. The retirement system membership of an elected county superintendent of schools as of June 30, 1995, must remain unchanged for as long as the person continues to serve in the capacity of county superintendent of schools.

(3) In order to be eligible for active membership, a person described in subsection (1) or (2) must:

(a) be employed in the capacity prescribed for the person's eligibility for at least 30 days in any fiscal year; and

(b) have the compensation for the person's creditable service totally paid by an employer.

(4) (a) A substitute teacher:

(i) ~~may elect~~ *shall make an irrevocable election whether* to become an active member of the retirement system on the first day of employment ~~in any fiscal year~~; or

(ii) is required to become an active member of the retirement system on the 31st day of employment in any fiscal year if the substitute teacher has not elected membership under subsection (4)(a)(i).

(b) *A person employed as a substitute teacher on July 1, 1999, who has not elected to become a member by that date shall make an irrevocable election as required by subsection (4)(a)(i) on the first day of employment as a substitute in the next school year after July 1, 1999.*

(c) The employer shall give written notification to a substitute teacher on the first day of employment ~~in any fiscal year~~ of the option to elect membership under subsection (4)(a)(i).

HeinOnline -- 1999 vol. I 432 1999

(d) If a substitute teacher declines to elect membership during the election period, the teacher shall execute a written statement waiving membership and the employer shall retain the statement.

(5) ~~A substitute teacher who did not elect membership under subsection (4)(a)(i) and who subsequently becomes a member must be awarded creditable service for substitute teaching service if the substitute teacher contributes:~~

~~(a) an amount equal to the combined employee and employer contributions that would have been made if the substitute teacher had elected membership; plus~~

~~(b) interest at the rate that the contributions would have earned if they had been on deposit with the retirement system.~~

~~(6)~~ At any time that a person's eligibility to become a member of the retirement system is in doubt, the retirement board shall determine the person's eligibility for membership. All persons in similar circumstances must be treated alike."

Section 6. Section 19-20-404, MCA, is amended to read:

"19-20-404. Creditable service for active service in military, red cross, or merchant marine. (1) A member may receive up to 4 years of creditable service without cost for active service in the armed forces of the United States, which includes the army, navy, marine corps, air force, and coast guard, during the Korean conflict between June 1, 1950, and January 31, 1955, and the Vietnam conflict between December 22, 1961, and May 7, 1975, dates inclusive, if the member has 5 years or more of creditable service in the retirement system. To qualify this service, a member shall submit to the board a ~~completed~~ *written* application form and proper certification of the member's military service.

(2) ~~(a)~~ If a member is ineligible for service credit under subsection (1), the member may apply under the provisions of this subsection ~~(a)~~ for creditable service in the retirement system~~, except as provided in subsection (2)(b),~~ for active service in the armed forces of the United States, which includes the army, navy, marine corps, air force, and coast guard, or in the American red cross or merchant marine. The person must be awarded creditable service, conditional upon the person's completing 5 years of active membership in Montana, for the number of years, not exceeding 2, that the retirement board determines to be creditable service, if the person contributes to the retirement system an amount equal to the combined employer and employee contributions for the person's first full year's teaching salary earned in Montana following the active service in the armed forces of the United States, the American red cross, or the merchant marine for each year of creditable service plus interest at the rate the contribution would have earned had the contribution been in the person's account upon completion of 5 years of membership service in Montana. The contribution rate is that rate in effect at the time the person is eligible for the service.

~~(b) If a member elects to purchase additional service under 19-20-412, service purchased under this subsection (2) may be used only for the purpose of calculating the member's retirement allowance and may not be considered creditable service for the purpose of determining eligibility under 19-20-801 or 19-20-802.~~

(3) The contribution required under subsection (2) may be made in a lump-sum payment or in installments as agreed between the person and the retirement board."

Section 7. Section 19-20-405, MCA, is amended to read:

HeinOnline -- 1999 vol. I 433 1999

"19-20-405. Limit on creditable service that may be awarded. The total creditable service for service purchased under 19-20-402 through 19-20-404, 19-20-408, *and* 19-20-410(1)~~, and 19-20-412~~ may not exceed 5 years."

Section 8. Section 19-20-414, MCA, is amended to read:

"19-20-414. Rollover or transfer of public employee accumulated contributions. (1) A member who is eligible to qualify service under this chapter may at any time before retirement apply to roll over or transfer the member's accumulated contributions on deposit with any other ~~qualified~~ *eligible* retirement plan. The total amount transferred to the retirement system may not exceed the amount due to purchase service.

(2) If, *in the case of a transfer, the transferred* ~~the~~ account includes both tax-deferred and taxed ~~contributions~~ *amounts*, the transferring agency shall identify the member's tax-deferred and taxed ~~contribution and interest balances~~ *amounts* at the time the transfer is made.

(3) To the extent permitted by section 401(a)(31) of the Internal Revenue Code and as limited by subsection (1), the board shall accept a direct rollover of eligible distributions from another eligible retirement plan."

Section 9. Procedure for purchase of service credit and pick up. (1) A member who wishes to redeposit pursuant to 19-20-602(2) amounts previously withdrawn or who is eligible to purchase service credit pursuant to this part shall make the following series of elections to accomplish the redeposit or purchase:

(a) The member may elect a lump-sum payment, a series of installment payments, or a combination of lump-sum payments and installment payments.

(b) If a series of installment payments are elected by the member, the member may elect to pay the installments directly to the board or to have the installments paid by payroll deduction or the member may select a combination of both.

(c) With respect to installments payable by payroll deduction, if the member's employer has adopted the resolution described in subsection (2), the member shall elect the irrevocable payroll deduction authorization provided in subsection (4). If the member's employer has not adopted the resolution, the member may elect only a revocable payroll deduction authorization.

(2) An employer may adopt a resolution to pick up and pay the member's elective contributions made pursuant to a binding, irrevocable payroll deduction authorization. The contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member. The resolution must contain the following statements:

(a) that the member contributions, even though designated as member contributions for state law purposes, are being paid by the employer in lieu of the contributions by the member; and

(b) that the member may not choose to receive the contributed amounts directly instead of having them paid by the employer to the system.

(3) (a) With respect to any member's elective contributions, the effective date of the employer pick up is the later of:

(i) the adoption of the employer's resolution; or

(ii) the execution of the irrevocable payroll deduction authorization form.

HeinOnline -- 1999 vol. I 434 1999

(b) The pick up does not apply to a contribution made before the effective date of the employer's resolution. An irrevocable payroll deduction authorization in effect on the effective date of the employer's resolution is void and the provisions of subsection (1) apply.

(4) If the irrevocable payroll deduction authorization is elected by the member, it must be executed by the member and the member's employer. Subject to any maximum amounts or duration established by state or federal law, the irrevocable payroll deduction authorization must specify:

(a) the amount of the deduction;

(b) the number of installments;

(c) the number of years and type of service that the member is purchasing; and

(d) that the contributions being picked up, although designated as member contributions, are being paid by the employer directly to the board in lieu of contributions by the member.

(5) The minimum duration of the irrevocable payroll deduction authorization is 3 months, and the maximum duration is 5 years. The minimum number of years specified to be purchased may not be less than 1 year or the total number of years that the member is eligible to purchase. The maximum may not exceed the total number of years that the member is eligible to purchase.

(6) The irrevocable payroll deduction authorization may not give the member the option of receiving the deduction amounts directly instead of having them paid by the employer to the system. A member may make more than one binding, irrevocable payroll deduction authorization so long as a subsequent deduction authorization does not amend a previous binding, irrevocable payroll deduction authorization. A member may not prepay any amounts under a binding, irrevocable payroll deduction authorization.

(7) If a member terminates or dies prior to completion of the installment payments, the binding, irrevocable payroll deduction authorization expires and the board shall prorate the service credit purchased based upon the amount paid as of the date of termination or death. In the case of a termination, the member may make a lump-sum contribution for the balance of the service subject to the limitations of section 415 of the Internal Revenue Cede. In the case of the member's death, the payment to purchase service may be made from the member's estate subject to the limitations of section 415 of the Internal Revenue Code.

Section 10. Credit for legislative service required. (1) A legislater who did not elect to continue to participate in the system, as provided under 5-2-304, and who subsequently participates as a member must be awarded creditable service for legislative service if the legislator contributes:

(a) an amount equal to the member contributions that would have been made if the legislator had elected membership; and

(b) interest at the rate that the contributions would have earned if they had been on deposit with the retirement system.

(2) The employer contribution must be made by the legislative branch in the amount that would have been contributed if the legislator had elected

HeinOnline -- 1999 vol. I 435 1999

membership plus interest at the rate that the contributions would have earned if they had been on deposit with the retirement system.

Section 11. Credit for substitnte teaching service required. A substitute teacher who did not elect membership under 19-20-302 and who subsequently becomes a member must be awarded creditable service for substitute teaching service if the substitute teacher contributes:

(1) an amount equal to the combined member and employer contributions that would have been made if the substitute teacher had elected membership; and

(2) interest at the rate that the contributions would have earned if they had been on deposit with the retirement system.

Section 12. Section 19-20-502, MCA, is amended to read:

"19-20-502. Restrictions on use of ~~moneys~~ *money*. (1) ~~No~~ *A* member of the retirement board ~~or any of its employees~~ *or an employee of the board* may *not*:

(a) have an interest, direct or indirect, in the gains or profits of any investment of ~~moneys~~ *money* of the retirement system, except as ~~herein~~ provided *in this section*;

(b) directly or indirectly, for ~~himself~~ *the member or employee* or as an agent, in any manner use the ~~moneys~~ *money* or deposits of the retirement system except to make ~~such~~ current and necessary expenditures ~~as are~~ authorized by the retirement board; *or*

(c) become an endorser or surety or in any manner an obligor for ~~moneys~~ *money* loaned by or borrowed from the retirement system.

(2) The assets of the retirement system may not be used for or diverted to any purpose other than for the exclusive benefit of the members and their beneficiaries and for paying the reasonable expenses of administering the retirement system.

(3) The board may not engage in a transaction prohibited by section 503(b) of the Internal Revenue Code."

Section 13. Section 19-20-602, MCA, is amended to read:

"19-20-602. Annuity savings fund — member's contribution. *(1)* The annuity savings fund is a fund in which the contributions for the members to provide for their retirement allowance or benefits must be accumulated in individual accounts for each member. The normal contribution of each member is 7.044% of the member's earned compensation. Contributions te and payments from the annuity savings fund must be made in the following manner:

~~(1)~~ (a) Each employer, pursuant to section 414(h)(2) of the ~~federal~~ Internal Revenue Code ~~of 1954, as amended and applicable on July 1, 1985, shall~~*:*

(i) shall pick up and pay the contributions that would be payable by the member under this ~~section~~ *subsection (1)* for service rendered after June 30, 1985*;*

(ii) shall pick up and pay the contributions that would be paid in the manner provided in 19-20-716; and

(iii) may pick up and pay the contributions that would be payable by the member pursuant to [section 9].

HeinOnline -- 1999 vol. I 436 1999

(b) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system. These contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(c) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's earned compensation as defined in 19-20-101. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the retirement board.

(d) The deductions must be made notwithstanding that the minimum compensation provided by law for a member may be reduced by the deductions. Each member is considered to consent to the deductions prescribed by this section, and payment of salary or compensation less the deductions is a complete discharge of all claims for the services rendered by the member during the period covered by the payment, except as to the benefits provided by the retirement system.

(2) In addition to the normal contributions, ~~and~~ subject to the approval of the retirement board, *and to the extent permitted by section 415(k)(3) of the Internal Revenue Code,* a member may redeposit in the annuity savings fund, by a single payment or by an increased rate of contribution, an amount equal to accumulated contributions that the member has previously withdrawn, plus interest in the amount the contributions would have earned had the contributions not been withdrawn. *The redeposit must be made in accordance with [section 9].*

(3) The accumulated contributions of a member withdrawn by the member or paid to the member's estate or to the member's designated beneficiary in event of the member's death must be paid from the annuity savings fund. Upon the retirement of a member, the member's accumulated contributions must be transferred from the annuity savings fund to the pension accumulation fund."

Section 14. Section 19-20-603, MCA, is amended to read:

"19-20-603. Withdrawal of accumulated contributions — options. An inactive member electing to do so or a person whose membership terminates without a prospect or anticipation that the member will return to work for an employer within 60 days of termination may withdraw the member's accumulated contributions from the annuity savings fund in the retirement system in accordance with the following provisions:

(1) An inactive member under the provisions of 19-20-303(1) or (3) may elect, without right of revocation, to withdraw the member's accumulated contributions. If the member does not withdraw the accumulated contributions, the member remains an inactive member of the retirement system with the right to qualify for its benefits.

(2) Upon recovery from a disabling illness or separation from the armed forces, a person qualifying as an inactive member under the provisions of 19-20-303(2) may withdraw the member's accumulated contributions unless the member returns to active membership.

HeinOnline -- 1999 vol. I 437 1999

~~(3) A person whose membership terminates under the provisions of 19-20-304(4) may withdraw the person's accumulated contributions.~~

~~(4)~~ Upon written ~~request~~ *application to the board*, a terminating member may have the payment of all or any portion of the member's accumulated contributions rolled over or transferred into another qualified plan designated by the member. The portion not rolled over or transferred must be paid directly to the terminating member. The board shall provide forms for making the written ~~request~~ *application*. The terminating member is responsible for correctly designating an account or plan eligible to receive the tax-deferred amount in order to continue the tax-deferred status of the amount. *To the extent required by section 401(a)(31) of the Internal Revenue Code, the board shall allow members and qualified beneficiaries to elect a direct rollover of eligible distributions to another eligible retirement plan.*

(4) If a nonvested member terminates with accumulated contributions of less than $200, the board shall pay the accumulated contributions in a lump sum as soon as administratively feasible without a written application from the member unless there is a return to service. Upon the payment of accumulated contributions, the member is considered to have withdrawn from the system."

Section 15. Section 19-20-702, MCA, is amended to read:

"19-20-702 Optional allowances. (1) Until the first payment on account of any benefit becomes normally due, any member may elect to receive one of the optional allowances described in subsection (2) in lieu of the normal form of retirement allowance, which is provided for in 19-20-902 and part 8 of this chapter. If a member dies within 30 days after retirement, the member's election to receive an optional allowance is void and the member's death will be considered as that of an active member.

(2) An optional allowance is the actuarial equivalent of the member's service retirement or disability retirement allowance at the time of the member's retirement effective date and provides an allowance payable to the member throughout the member's lifetime and, upon the member's death, an allowance payable to the person that the member nominated by written designation, duly acknowledged and filed with the retirement board at the time of the member's retirement, in accordance with one of the following options:

(a) Option A—the optional allowance will be paid to the member throughout the member's lifetime and, upon the member's death, continue throughout the lifetime of the member's designated beneficiary.

(b) Option B—the optional allowance will be paid to the member throughout the member's lifetime, and upon the member's death, one-half of the optional allowance will be continued throughout the lifetime of the member's designated beneficiary.

(c) Option C—the optional allowance will be paid to the member throughout the member's lifetime, and upon the member's death, two-thirds of the optional allowance will be continued throughout the lifetime of the member's designated beneficiary.

(d) Period certain and life—a retirement allowance will be paid for a certain period of time or for the member's lifetime, whichever is greater.

(i) The member shall elect one of the following certain time periods:

HeinOnline -- 1999 vol. I 438 1999

(A) 10 years if the member is 75 years of age or younger at the time of retirement; or

(B) 20 years if the member is 65 years of age or younger at the time of retirement.

(ii) At the time of retirement, the member shall file with the board a written nomination of beneficiaries to receive payments if the member dies before the end of the certain period elected. Unless limited by a family law order, the nominated beneficiary may be changed by the member at any time by filing with the board a written notice designating different beneficiaries.

(3) (a) Upon written ~~request~~ *application* to the retirement board, a retired member whose effective date of retirement is before October 1, 1993, and who is receiving an optional retirement allowance may designate a different beneficiary, select a different option, or convert the member's optional retirement allowance to a ~~regular retirement or disability allowance~~ *normal form of retirement allowance* if:

(i) the original beneficiary has died~~;or~~. *The benefit must convert to the normal form of retirement allowance effective the first of the month following the death of the designated beneficiary.*

(ii) the member has been divorced from the original beneficiary and the original beneficiary has not been granted the right to receive the optional retirement allowance as part of the divorce settlement. *The benefit must convert to the normal form of retirement allowance effective the first of the month following receipt of a written application and verification that the original beneficiary has not been granted the right to receive the optional retirement allowance as part of the divorce settlement.*

(h) Upon receipt of the ~~request~~ *written application*, the board shall actuarially adjust the member's monthly retirement or disability allowance to reflect the change.

(4) ~~Effective on the first of the month following the death of a person nominated as the designated beneficiary under subsection (2)(a), (2)(b), or (2)(c), any~~ *A retired member receiving an* optional retirement allowance *pursuant to subsection (2)(a), (2)(b), or (2)(c)* that is effective after October 1, 1993, ~~will revert~~ *may file a written application to revert the optional retirement allowance* to the full normal form of retirement allowance available at the time of retirement *if:*

(a) the original beneficiary has died. The benefit must revert to the full normal form of retirement allowance effective the first of the month following the death of the designated beneficiary.

(b) the member has been divorced from the original beneficiary and the original beneficiary has not been granted the right to receive the optional retirement allowance as part of the divorce settlement. The benefit must revert to the full normal form of retirement allowance effective the first of the month following receipt of a written application and verification that the original beneficiary has not been granted the right to receive the optional retirement allowance as part of the divorce settlement.

(5) The normal form of retirement allowance available must be increased by the value of any postretirement adjustments received by the member since the effective date of retirement.

HeinOnline -- 1999 vol. I 439 1999

(6) The retired member ~~may, within 18 months of the death of the designated beneficiary,~~ *shall* file ~~a~~ *the* written application *required by subsection (3) or (4)* with the board to designate a different beneficiary ~~and~~ *or* to select an actuarially equivalent optional allowance, *or both, within 18 months of the death or divorce of the designated beneficiary.* ~~The optional allowance is effective on the first day of the month following receipt of the retiree's application.~~"

Section 16. Section 19-20-703, MCA, is amended to read:

"**19-20-703. Payments to be monthly.** (1) All retirement allowances must be paid in equal monthly installments.

(2) The retirement allowance may commence:

(a) no earlier than the first day of the month following the member's termination date or on the first day of the month following the date when the member first becomes eligible, whichever date is later; or

(b) if requested by the inactive member in writing:

(i) on the first day of a later month; or

(ii) on the first day of the month following the member's 60th birthday.

(3) Distribution of a member's benefit must begin by the later of the April 1 following the calendar year in which a member attains age 70 1/2 or April 1 of the year following the calendar year in which the member terminates. If a member fails to apply for retirement benefits by the later of either of those dates, the board shall begin distribution of the monthly benefit as provided in 19-20-702(2)(d)(i)(A).

(4) The life expectancy of a member or the member's beneficiary may not be recalculated after benefits commence."

Section 17. Section 19-20-710, MCA, is amended to read:

"**19-20-710. Maximum benefit limitation.** ~~No~~ *A* monthly benefit paid under the retirement system provided for in this chapter may *not* exceed the annual limits on benefits as specified in section 415 of the Internal Revenue Code ~~of 1986 and adjusted annually by the commissioner of internal revenue~~ for calendar years 1988 and thereafter. *However, benefits in excess of those limits may be paid from an excess benefit arrangement subject to [section 19].*"

Section 18. Section 19-20-716, MCA, is amended to read:

"**19-20-716. Termination pay.** *(1)* If a member *terminates and* receives termination pay ~~at the time of termination and elects to retire~~ at ~~that~~ *the* time *of retirement,* the member shall select, *subject to subsection (4) and by executing a binding, irrevocable written election at least 90 days before the member's termination date,* one of the following options:

~~(1)~~*(a) Option 1*—The member may use *the total* termination pay in the calculation of the member's average final compensation. The member and the employer shall pay contributions to the retirement system as determined by the board to adequately compensate the system for the additional retirement benefit. The contributions must be made at the time of termination.

~~(2)~~*(b) Option 2*—The member may use a yearly amount of *the total* termination pay added to each of the 3 consecutive years' salary used in the calculation of the member's average final compensation. To determine the amount of termination pay used in the calculation of average final compensation, termina-

HeinOnline -- 1999 vol. I 440 1999

tion pay must be divided by the total number of years of creditable service to determine a yearly amount. The member and the employer shall pay contributions on the termination pay according to the rates provided for in 19-20-602 and 19-20-605(1). *The contributions must be made at the time of termination.*

~~(3)~~*(c) Option 3*—The member may exclude the termination pay from the average final compensation. A contribution is not required of either the member or the employer~~, and any contributions made under 19-20-602 and 19-20-605 must be refunded~~.

(2) A binding, irrevocable election required by this section must be executed by both the member and the employer and must contain statements with regard to the contributions required to be made by the member under subsections (1)(a) and (1)(b) that:

(a) the contributions being picked up, although designated as member contributions, are being paid by the employer directly to the system in lieu of contributions by the member and that the picked up contributions are paid from the same source as compensation is paid;

(b) the member may not choose to directly receive the amounts deducted from the member's termination pay instead of having them paid by the employer to the system;

(c) the member may not prepay any portion of the contributions; and

(d) the effective date of the pick up is the date of execution of the binding, irrevocable election by both the member and employer. The pick up does not apply to a contribution made before the effective date of the pick up.

(3) Pursuant to subsection (2), contributions required under subsection (1)(a) or (1)(b) must be:

(a) deducted from the portion of termination pay that:

(i) constitutes wages for the purposes of section 3121 of the Internal Revenue Code, determined without regard to the wage base limitation; and

(ii) can be included in the member's gross income for federal tax purposes; and

(b) picked up by the employer.

(4) If a member fails to make the written election within the time period required in subsection (1) or if the member contribution is greater than the total amount of termination pay, the member may contribute for the purposes specified in subsections (1)(a) and (1)(b) all or any part of the termination pay received. A contribution made pursuant to this subsection cannot be picked up by the employer and is subject to the limitations of section 415 of the Internal Revenue Code."

Section 19. Maximum contribution limitation. (1) Notwithstanding any other provision of law to the contrary, the board may modify a request by a participant to make a contribution to the system if the amount of the contribution would exceed the limits in section 415(c) or 415(n) of the Internal Revenue Code by using the following methods:

(a) If the system's law requires a lump-sum payment for purchase of service credit, the board may establish a periodic payment plan in order to avoid a contribution in excess of the limits of section 415(c) or 415(n) of the Internal Revenue Code.

HeinOnline -- 1999 vol. I 441 1999

(b) If the board's option in subsection (1)(a) will not avoid a contribution in excess of the limits in section 415(c) of the Internal Revenue Code, the board may direct the excess contribution to the qualified excess benefit arrangement pursuant to section 415(m) of the Internal Revenue Code.

(2) If the board's options in subsections (1)(a) and (1)(b) will not avoid a contribution in excess of the limits of section 415(c) of the Internal Revenue Code, the hoard shall reduce or refuse the contribution.

(3) The board shall use the provisions of section 415(n) of the Internal Revenue Code, as the provisions apply to a government plan, to facilitate member's service purchases. An eligible participant in a retirement plan, as defined by section 1526 of the Taxpayer Relief Act of 1997, 26 U.S.C. 415, may purchase service credit without regard to the limitations of section 415(c)(1) of the Internal Revenue Code under the Montana statutes in effect on August 5, 1997.

(4) For the purpose of calculating the maximum contribution under section 415 of the Internal Revenue Code, the definitions of "compensation", "wages", and "salary" include the amount of any elective deferral, as defined in section 402(g) of the Internal Revenue Code, or any contribution that is contributed or deferred by the employer at the election of the member and that is not includable in the gross income of the member by reason of sections 125, 403(b), or 457 of the Internal Revenue Code.

Section 20. Section 19-20-801, MCA, is amended to read:

"19-20-801. Eligibility for service retirement. A member who has at least 5 full years of creditable service~~, whose last 5 years of creditable service were in this state,~~ and who has attained the age of 60 or has been credited with full-time or part-time *creditable* service in 25 or more years may retire from service if the member has terminated employment in all positions from which the member is eligible to retire and files with the retirement board a written application ~~setting forth the fact of the member's retirement~~."

Section 21. Section 19-20-802, MCA, is amended to read:

"19-20-802. Early retirement. (1) A member who *is not eligible for service retirement but who* has at least 5 years of creditable service~~, whose last 5 years of creditable service were in this state,~~ and who has attainod the age of 50 may retire from service and be eligible for an early retirement allowance if ~~he~~ *the member* files with the retirement board ~~his~~ *the member's* written application ~~setting forth the fact of his retirement~~.

(2) The early retirement allowance ~~shall~~ *must* be determined as prescrihed in 19-20-804(1) and section 5, Chapter 549, Laws of 1981, with tbe exception tbat the allowance will be reduced as follows:

(a) by 1/2 of 1% multiplied by the number of months up to a maximum of 60 months by which the retirement date precedes the date on which ~~he~~ *the member* would have retired had ~~he~~ *the member* attained 60 years of age or had ~~he~~ *the member* completed 25 years of creditable service; and

(b) by 3/10 of 1% multiplied by tbe number of months in excess of the 60 months in subsection (2)(a) but not to exceed 60 additional months that the retirement date precedes the date on which ~~he~~ *the member* would have retired had ~~he~~ *the member* attained 60 years of age or had ~~he~~ *the member* completed 25 years of creditable service."

HeinOnline -- 1999 vol. I 442 1999

Section 22. Section 19-20-804, MCA, is amended to read:

"19-20-804. Allowance for service retirement. (1) Upon termination, an eligible member must receive a retirement allowance equal to one-sixtieth of the member's average final compensation, as limited by 19-20-715, multiplied by the sum of the number of years of creditable service~~,~~ *and* service transferred under 19-20-409~~, and additional service purchased under 19-20-412~~.

(2) Except as provided in subsection ~~(3)~~ *(4)*, a retired member may be employed ~~as a part-time or substitute teacher in Montana~~ *part-time in a position specified in 19-20-302* and may earn, without loss of retirement benefits, an amount not to exceed the greater of:

(a) one-third of the sum of the member's average final compensation plus normal annual salary increases for teaching personnel employed by the school district, state agency, political subdivision, or university unit that employed the member at the time of retirement; or

(b) one-third of the median of the average final compensation for members retired during the preceding fiscal year as determined by the retirement board.

(3) *(a) Except as provided in subsection (4), the retirement benefit of a retired member employed in a full-time position or earning more than allowed by subsection (2) must be canceled beginning the month in which the retired member returns to full-time employment or earns more than allowed.*

(b) The retirement benefits of a retired member who was employed in a full-time position or who exceeded the amount that the retired member was eligible to earn under subsection (2) and who was reemployed for less than 1 year must, upon termination of employment, be reinstated beginning the later of either the month following termination or July 1 of the school year following the date on which the retired member was reemployed. The reinstated retirement benefit is the amount that the retired member would have been entitled to receive had the retired member not returned to employment.

(c) Upon retirement after cancellation of a retired member's benefit pursuant to subsection (3)(a), a retired member who is reemployed as an active member for a minimum of 1 year of full-time service must receive a recalculated benefit. The recalculated benefit is based on the service credit accumulated at the time of the member's previous retirement plus any service credit accumulated subsequent to reemployment.

(4) If an early-retired member under 19-20-802 is reemployed with the same employer within 30 days from the member's effective data of retirement or if the early-retired member is guaranteed reemployment with the same employer, the member must be considered to have continued in the status of an active member and not to have separated from service. Any retirement allowance payments received by the member must be repaid to the system, together with interest, at the actuarially assumed rate, and the retirement allowance must be terminated."

Section 23. Section 19-20-901, MCA, is amended to read:

"19-20-901. Eligibility for disability retirement — determination by board. (1) Upon the application of a member or of the member's employer for a disability retirement allowance, any member who has 5 or more years of creditable service and who has become disabled while being an active member may be retired by the retirement board the month immediately following the month in which employment is terminated. In order for a member to be eligible for disability retirement, the retirement board *or its representative* shall certify that

HeinOnline -- 1999 vol. I 443 1999

the member is mentally or physically incapacitated for the further performance of the member's duties, that the incapacity is likely to be permanent, and that the member should be retired. *The board's representative shall report to the board the representative's findings and any action taken by the representative, and the action must be presented to the board for approval by the board.*

(2) In making a determination under subsection (1), the retirement board or its representative may:

(a) order examinations by a physician, psychologist, or vocational rehabilitation counselor;

(h) conduct hearings, administer oaths and affirmations, take depositions, and certify to official acts; and

(c) issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memorandums, and other records considered necessary as evidence in connection with a claim for disability retirement. The subpoenas issued under tbis subsection *(2)*(c) are enforceable as provided in 2-4-104.

(3) The retirement board may secure and pay reasonable compensation for professional services and advice *that* the board determines necessary to carry out the purposes of this part."

Section 24. Section 19-20-902, MCA, is amended to read:

"**19-20-902. Allowance for disability retirement.** (1) Upon retirement for disability, a member must receive a disability retirement allowance equal to the greater of:

(a) one-sixtieth of the member's average final compensation multiplied by the sum of the number of years of creditable service, *including* service transferred under 19-20-409~~, and additional service purchased under 19-20-412~~; or

(b) one-fourth of the member's average final compensation.

(2) The earned compensation in the year of termination that is included in the calculation of average final compensation of a member who is awarded a disability retirement allowance prior to the completion of a full year is the compensation, pay, or salary that tbe member would have received under the member's contract had the member completed the full year. Any termination pay received by the member is limited to the amount actually paid and is not the amount that the member would have earned had the member completed the full year."

Section 25. Payment of death benefits. (1) Death benefits paid from the system are subject to the requirements of this section.

(2) Death benefits must be distributed in accordance with section 401(a)(9) of the Internal Revenue Code and the regulations adopted under that section.

(3) The amount of benefits payable to a member's beneficiary may not exceed the maximum determined under the incidental death benefit requirements of tbe Internal Revenue Code.

(4) If the member dies before retirement benefits commence and a benefit is payable pursuant to 19-20-1001, distributions to the member's beneficiaries must begin as soon as administratively feasible and must begin no later than December 31 of the calendar year immediately following the calendar year in which the member died. If the beneficiary has not elected the form of payment

HeinOnline -- 1999 vol. I 444 1999

by the date on which the beneficiary is to receive the benefit and the beneficiary is eligible for a monthly benefit, the benefit must be paid as provided in 19-20-702(2)(d)(i)(A) or a lump sum must be paid if that is the only benefit due the beneficiary.

Section 26. Repealer. Sections 19-20-412, 19-20-413, 19-20-704, 19-20-707, 19-20-708, and 19-20-709, MCA, are repealed.

Section 27. Codification instruction. (1) [Section 4] is intended to be codified as an integral part of Title 19, chapter 20, part 2, and the provisions of Title 19, chapter 20, part 2, apply to [section 4].

(2) [Sections 9 through 11] are intended to be codified as an integral part of Title 19, chapter 20, part 4, and the provisions of Title 19, chapter 20, part 4, apply to [sections 9 through 11].

(3) [Section 19] is intended to be codified as an integral part of Title 19, chapter 20, part 7, and the provisions of Title 19, chapter 20, part 7, apply to [section 19].

(4) [Section 25] is intended to be codified as an integral part of Title 19, chapter 20, part 10, and the provisions of Title 19, chapter 20, part 10, apply to [section 25].

Section 28. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before July 1, 1999.

Section 29. Effective date — contingent effeetive dates. (1) Except as provided in subsections (2) and (3), [this act] is effective July 1, 1999.

(2) The provisions in [sections 4 and 19], providing for the creation and use of an excess benefit arrangement, are effective on the later of July 1, 1999, or the date that the internal revenue service determines in a private letter ruling that the creation and use of the excess benefit arrangement provided in those sections comply with the requirements of the Internal Revenue Code regarding a qualified retirement plan.

(3) The provisions in [sections 9, 13, and 18], providing for the making of contributions required to purchase service or for purposes of termination pay by employer pick up, are effective on the later of July 1, 1999, or the date that the internal revenue service determines in a private letter ruling that the creation and use of the employer pick up method of making contributions provided in those sections comply with the requirements of the Internal Revenue Code regarding a qualified retirement plan.

Approved March 19, 1999

CHAPTER NO. 112

[HB 349]

AN ACT INCREASING THE AMOUNT FOR WHICH GOVERNMENTAL ENTITIES MAY WAIVE CERTAIN SECURITY REQUIREMENTS FOR BUILDING OR CONSTRUCTION PROJECTS FROM $25,000 TO $50,000; AND AMENDING SECTION 18-2-201, MCA.

Be it enacted by the Legislature of the State of Montana:

HeinOnline -- 1999 vol. I 445 1999

Section 1. Section 18-2-201, MCA, is amended to read:

"18-2-201. Security requirements. (1) Except as otherwise provided in 85-1-219 and subsections (4) through (6) of this section, whenever any board, council, commission, trustees, or body acting for the state or any county, municipality, or any public body contracts with a person or corporation to do work for the state, county, or municipality or other public body, city, town, or district, the board, council, commission, trustees, or body shall require the corporation, person, or persons with whom the contract is made to make, execute, and deliver to the board, council, commission, trustees, or body a good and sufficient bond with a licensed surety company as surety, conditioned that the corporation, person, or persons shall:

(a) faithfully perform all of the provisions of the contract;

(b) pay all laborers, mechanics, subcontractors, and material suppliers; and

(c) pay all persons who supply the corporation, person or persons, or subcontractors with provisions, provender, material, or supplies for performing the work.

(2) A copy of the bond must be filed with the county clerk and recorder of the county in which the work is to be performed or the improvement is to be made or, if the work is to be performed or the improvement is to be made in more than one county, with the county clerk of either county, except in cases of cities and towns, in which case the bond must be filed with the city or town clerk.

(3) Notwithstanding the provisions of subsections (1) and (2), the state or other governmental entity may, in lieu of a surety bond, permit the deposit with the contracting governmental entity or agency of the following securities in an amount at least equal to the contract sum to guarantee the faithful performance of the contract and the payment of all laborers, suppliers, material suppliers, mechanics, and subcontractors:

(a) lawful money of the United States; or

(b) a cashier's check, certified check, bank money order, certificate of deposit, money market certificate, or bank draft, drawn or issued by:

(i) any federally or state-chartered bank or savings and loan association that is insured by or for which insurance is administered by the federal deposit insurance corporation; or

(ii) a credit union insured by the national credit union share insurance fund.

(4) Notwithstanding the provisions of subsections (1) and (2), any board, council, commission, trustee, or body acting for any county, municipality, or any public body other than the state may, in lieu of a bond from a licensed surety company, accept good and sufficient bond with two or more sureties acceptable to the governmental body.

(5) Except as provided in subsection (6), the state or other governmental entity may waive the requirements contained in subsections (1) through (4) for building or construction projects, as defined in 18-2-101, that cost less than ~~$25,000~~ *$50,000*.

(6) A school district may waive the requirements contained in subsections (1) through (4) for building or construction projects, as defined in 18-2-101, that cost less than $7,500."

Approved March 19, 1999

HeinOnline -- 1999 vol. I 446 1999

CHAPTER NO. 113

[HB 357]

AN ACT EXPANDING THE EXEMPTION OF THOSE WHO MUST FILE AN APPLICATION FOR DETERMINATION OF TAX IN JOINT TENANCY TO INCLUDE LINEAL DESCENDANTS AND STEPCHILDREN OF THE DECEDENT; AMENDING SECTIONS 72-16-502, AND 72-16-503, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 72-16-502, MCA, is amended to read:

"72-16-502. Determination and payment of tax when no personal representative — procedure — exception. (1) For the purposes of this section, a decedent is one who dies leaving no property that requires the appointment of a personal representative and who:

(a) was the owner of a life estate that terminated at death;

(b) was the owner of property with another or others as a joint tenant with right of survivorship and not as a tenant in common; or

(c) was the owner of any other interest in property requiring the determination of inheritance tax because of death.

(2) Except as provided in subsection (6), a remainderman, surviving joint tenant, or other interested party shall, upon the death of a decedent, file with the department of revenue:

(a) a copy of the death certificate;

(b) a verified application, in a form prescribed by the department, containing information that the department considers necessary; and

(c) evidence of the instruments that created the life estate, joint tenancy, or other interest requiring determination of inheritance tax, if required by the department.

(3) Upon receipt of the application, the department shall:

(a) stamp the filing date upon the application;

(b) issue a certificate showing the inheritance tax due, if any;

(c) affix the certificate to a certified copy of the application and return the certificate and copy to the applicant or the applicant's attorney; and

(d) affix a copy of the certificate to the original application and keep it on file with the department.

(4) The applicant shall pay the inheritance tax determined to the county treasurer for transmittal to the stato treasurer. The county treasurer shall issue a receipt for the payment of the tax.

(5) If disputes arise as to tax computation, they must be resolved as provided under the laws applicable to the determination of inheritance taxes in estates.

(6) A surviving joint tenant ~~who is the surviving spouse~~ *described in 72-16-313(1) or (2)* of a decedent whose aggregate value of the interest in the joint property is less than the federal estate tax filing requirement is not required to file under subsection (2)."

HeinOnline -- 1999 vol. I 447 1999

Section 2. Section 72-16-503, MCA, is amended to read:

"72-16-503. Additional filings required when real property involved and no representative — release of lien. (1) If an interest in real property is involved under 72-16-502, the applicant shall record with the clerk and recorder of each county in which the real property or any part of the property is located a document containing those matters required by 7-4-2613(3). A surviving joint tenant ~~who is the surviving spouse~~ *described in 72-16-313(1) or (2)* is not subject to the recording requirements under 7-4-2613(3).

(2) ~~The~~ *A* surviving joint tenant ~~who is the surviving spouse~~ *deseribed in 72-16-313(1) or (2)* with an interest in real property under 72-16-502 shall record with the clerk and recorder of each county in which the real property is located an acknowledged statement that the holder of the nonprobate interest has died and that the holder's interest in the property is terminated. The acknowledged statement must include a legal description of the real property.

(3) The recording of the documents under subsection (1) or (2) constitutes release of any lien for inheritance taxes."

Section 3. Effective date. [This act] is effective on passage and approval.

Section 4. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to estates of persons dying after December 31, 1998.

Approved March 19, 1999

CHAPTER NO. 114

[HB 360]

AN ACT ELIMINATING THE REQUIREMENT THAT A DEPUTY SIGN AN AFFIDAVIT AS TO THE SERVICES PROVIDED BEFORE THE DEPUTY MAY RECEIVE A PAYCHECK; REPEALING SECTION 7-4-2506, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Repealer. Section 7-4-2506, MCA, is repealed.

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 19, 1999

CHAPTER NO. 115

[HB 371]

AN ACT INCREASING THE DOLLAR AMOUNT OF PROPERTY DAMAGE THAT MUST BE SUSTAINED IN AN ACCIDENT BEFORE A MOTOR VEHICLE OPERATOR IS REQUIRED TO IMMEDIATELY OR IN WRITING REPORT THE ACCIDENT; INCREASING THE DOLLAR AMOUNT OF PROPERTY DAMAGE THAT MUST BE SUSTAINED BEFORE AN INVESTIGATING LAW ENFORCEMENT OFFICER IS REQUIRED TO SUBMIT A WRITTEN REPORT; AMENDING SECTIONS 61-7-108 AND 61-7-109, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

HeinOnline -- 1999 vol. I 448 1999

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-7-108, MCA, is amended to read:

"61-7-108. Immediate notice of accidents. The driver of a vehicle involved in an accident resulting in injury to or death of any person or property damage to an apparent extent of ~~$250~~ *$500* or more shall immediately by the quickest means of communication give notice of ~~such~~ *the* accident to the local police department if ~~such~~ *the* accident occurs within a municipality, otherwise to the office of the county sheriff or the nearest office of the highway patrol."

Section 2. Section 61-7-109, MCA, is amended to read:

"61-7-109. Written reports of accidents — additional information — form of report. (1) The operator of ~~any~~ *a* motor vehicle ~~which~~ *that* is in any manner involved in an accident within this state in which ~~any~~ *a* person is killed or injured or in which damage to the property of ~~any one~~ *a* person in excess of ~~$400~~ *$1,000* is sustained shall, within 10 days after ~~such~~ *the* accident, report the matter in writing to the department unless the accident was investigated and reported by a law enforcement officer as provided in subsection (3).

(2) The department may require ~~any~~ *the* driver of a vehicle involved in an accident of which report must be made as provided in this section to file supplemental reports whenever the original report is insufficient and may require witnesses of accidents to render reports.

(3) ~~Every~~ *A* law enforcement officer who in the regular course of duty investigates a motor vehicle accident in which ~~any~~ *a* person is killed or injured or in which damage to the property of ~~any~~ *a* person exceeds ~~$400~~ *$1,000*, either at the time of and at the scene of the accident or ~~thereafter~~ *after the accident* by interviewing participants or witnesses, shall within 10 days after completing the investigation forward a written report of the accident to the department.

(4) The form of the accident report required under this section ~~shall~~ *must* contain information sufficient to enable the department to determine whether the requirements for the deposit of security for safety responsibility are inapplicable by reason of the existence of insurance or other exemptions specified in chapter 6 of this title.

(5) A report required by subsection (1) or (2) may not be used as evidence in any trial, civil or criminal, arising out of an accident."

Section 3. Effective date. [This act] is effective January 1, 2000.

Approved March 19, 1999

CHAPTER NO. 116

[HB 442]

AN ACT ALLOWING A SMALL BREWER TO CHARGE FOR SAMPLES OF BEER MANUFACTURED ON THE PREMISES; LIMITING THE PLACE, QUANTITIES, AND PERIODS OF TIME THAT THE BEER MAY BE PROVIDED; AMENDING SECTIONS 16-3-213 AND 16-3-214, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-3-213, MCA, is amended to read:

HeinOnline -- 1999 vol. I 449 1999

"16-3-213. Brewers or beer importers not to retail beer — ~~original package and taproom~~ *small brewery* exceptions. *(1)* ~~It shall be unlawful~~ *Except as provided for small breweries in subsection (2), it is unlawful* for any brewer or breweries or beer importer to have or own any permit to sell or retail beer at any place or premises.~~, it being the declared~~ *It is the* intention *of this section* to prohibit brewers and beer importers from engaging in the retail ~~dispensation~~ *sale* of beer.~~; provided, however, that this shall not be so construed as to~~ *This section does not* prohibit breweries from ~~making sale~~ *selling* and ~~delivery of~~ *delivering* beer manufactured by them, in original packages, at either wholesale or retail~~, or from providing, without charge, their products for consumption on their licensed premises~~.

(2) (a) For the purposes of this section, a "small brewery" is a brewery that has an annual nationwide production of not less than 100 barrels or more than 10,000 barrels.

(b) A small brewery may, at one location for each brewery license, provide samples of beer that were brewed and fermented on the premises in a sample room located on the licensed premises. The samples may be provided with or without charge between the hours of 10 a.m. and 8 p.m. No more than 48 ounces of malt beverage may be sold or given to each individual customer during a business day."

Section 2. Section 16-3-214, MCA, is amended to read:

"16-3-214. Beer sales by brewers — ~~taproom~~ *sample room* exception. (1) Subject to the limitations and restrictions contained in this code, a brewer who manufactures less than 60,000 barrels of beer a year, upon payment of the annual license fee imposed by 16-4-501 and upon presenting satisfactory evidence to the department as required by 16-4-101, must be licensed by the department, in accordance with the provisions of this code and rules prescribed by the department, to:

(a) sell and deliver beer from its storage depot or brewery located in Montana to:

(i) a wholesaler;

(ii) any retail licensees who are entitled to purchase beer from a brewer under this code; or

(iii) the public; or

(b) provide~~, without charge,~~ its own products for consumption on its licensed premises *without charge or, if it is a small brewery, provide its own products at a sample room as provided in 16-3-213*; or

(c) do any one or more of the acts of sale and delivery of beer.

(2) An additional license fee may not be imposed on a brewery providing~~, without charge,~~ its own products on its licensed premises for consumption on the premises.

(3) This section does not prohibit a brewer located outside of Montana from shipping and selling beer directly to a wholesaler in this state under the provisions of 16-3-230."

Section 3. Effective date. [This act] is effective on passage and approval.

Approved March 19, 1999

HeinOnline -- 1999 vol. I 450 1999

CHAPTER NO. 117

[HB 468]

AN ACT REQUIRING FINANCIAL DISCLOSURE REPORTS TO BE FILED WITH THE COMMISSIONER OF POLITICAL PRACTICES BY PERSONS WHO EMPLOY PAID SIGNATURE GATHERERS; PROVIDING CERTAIN POWERS AND DUTIES OF THE COMMISSIONER OF POLITICAL PRACTICES; PROVIDING PENALTIES; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. As used in [sections 2 and 3] and this section, unless otherwise indicated by the context, the following definitions apply:

(1) "Commissioner" means the commissioner of political practices provided for in 13-37-101.

(2) "Paid signature gatherer" means a signature gatherer who is compensated in money for the collection of signatures.

(3) "Person" has the meaning provided in 13-1-101, but does not include a candidate and includes a political committee.

(4) "Signature gatherer" means an individual who collects or intends to collect signatures on a petition for the purpose of an initiative, a referendum, or the calling of a constitutional convention.

Section 2. Required reports — time and manner of reporting — exceptions — penalty. (1) Except as provided in this section, a person who employs a paid signature gatherer shall file with the commissioner reports containing those matters required by Title 13, chapter 37, part 2, for a political committee organized to support or oppose a ballot issue or for an independent committee that receives contrihutions and makes expenditures in connection with a ballot issue, as applicable. If a person who employs a paid signature gatherer is required by Title 13, chapter 37, part 2, to file a report pursuant to those provisions, the person need not file a duplicate report pursuant to this section, but shall report the matter required by subsection (2) as part of that report. As used in this section, "a person who employs a paid signature gatherer" means a political party, political committee, or other person seeking to place a ballot issue before the electors and does not mean an individual who is part of the same signature gathering company, partnership, or other business organization that directly hires, suporvises, and pays an individual who is a signature gatherer.

(2) The reports required by subsection (1) must include the amount paid to a paid signature gatherer.

(3) Reports filed pursuant to this section must be filed at the same time, in the same manner, including the certification required by 13-37-231, and upon the same forms as required for reports filed pursuant to Title 13, chapter 37, part 2, except as the rules of the commissioner may otherwise provide.

(4) A person who violates subsection (1) is guilty of a misdemeanor and upon conviction shall be punished as provided by law.

Section 3. Powers and duties of commissioner. (1) The commissioner has the same powers and duties regarding the regulation of signature gatherers,

HeinOnline -- 1999 vol. I 451 1999

as provided in [sections 2] and this section, as the commissioner has regarding the control of campaign practices as provided in Title 13, chapter 37, including the investigation of alleged violations of [section 2] and the issuance of orders of noncompliance for and prosecution of violations of [section 2].

(2) The commissioner may adopt rules to implement [section 2].

Section 4. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 13, chapter 27, part 1, and the provisions of Title 13, chapter 27, part 1, apply to [sections 1 through 3].

Section 5. Effective dates. (1) [Sections 3(2) and 4 and this section] are effective on passage and approval.

(2) [Sections 1, 2, and 3(1)] are effective October 1, 1999.

Approved March 19, 1999

CHAPTER NO. 118

[HB 494]

AN ACT EXTENDING INDEFINITELY A PROVISION REQUIRING THE EMPLOYER TO HELP PURCHASE RETIREMENT SERVICE FOR ELIGIBLE STATE OR UNIVERSITY EMPLOYEES WHOSE POSITIONS ARE ELIMINATED BY A REDUCTION IN FORCE, PRIVATIZATION, OR AGENCY REORGANIZATION; AMENDING SECTION 19-2-706, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-2-706, MCA, is amended to read:

"19-2-706. Additional service for member involuntarily terminated from membership service. (1) An employee of the state or university system is entitled to the involuntary termination provision provided in subsection (3) if:

(a) the employee is a member of the public employees', game wardens' and peace officers', sheriffs', or highway patrol officers' retirement system;

(b) the employee's active service is involuntarily terminated because of elimination of the employee's position as a result of privatization, reorganization of an agency, closure of or a reduction in force at an agency, or other actions by the legislature ~~on or after July 1, 1997, but before July 1, 1999~~;

(c) the employee is eligible for a normal service retirement or early retirement under the applicable provisions of the retirement system to which the member belongs; and

(d) the employee waives termination benefits for which the employee would otherwise be eligible under the State Employee Protection Act.

(2) The cost of each year of service purchased under this section is the total actuarial cost of purchasing the service based on the most recent actuarial valuation of the retirement system.

(3) The employer of an eligible member under subsection (1) shall pay a portion of the total cost of purchasing up to 3 years of additional service that the member was qualified to purchase under 19-3-513, 19-6-804, 19-7-804, or

HeinOnline -- 1999 vol. I 452 1999

19-8-904. The employer-paid portion applied toward the service purchase must he calculated using the formula A x B x C when:

(a) A is equal to a maximum of 3 additional years of service that the member is eligible to purchase;

(b) B is equal to the sum of tbe employer and employee contribution rates in the member's retirement system; and

(c) C is equal to the member's gross compensation paid during the immediate preceding 12 months of membership service. The employer may not be charged more than the total actuarial cost of the service purchased by the terminated employee.

(4) The member shall pay tbe difference, if any, between the full actuarial cost of the service to be purchased and the amount contributed by the employer under subsection (3). A member is entitled to a refund for that portion of previously purchased additional service that would otherwise cause the member to be unqualified to receive all or part of the additional service provided in this section. A member may elect to purchase less than the full amount of service for which the member is eligible under this section, but the election may not reduce the amount of the employer's contribution as calculated under subsection (3).

(5) The board may allow an employer to pay the contributions required under subsection (3) in installments for up to 10 years and may charge interest at a rate set by the board pursuant to 19-2-403.

(6) A member who has received additional service under this section and who returns to employment for the same jurisdiction for 600 or more hours in a calendar year forfeits the additional service. The employer's contribution to purchase that member's additional service, minus any retirement benefits already paid, must be refunded to the employer. As used in this subsection, the same jurisdiction means all agencies of the state, including the university system."

Section 2. Effcctive date. [This act] is effective July 1, 1999.

Approved March 19, 1999

CHAPTER NO. 119

[HB 514]

AN ACT PROHIBITING A CONSTRUCTION CONTRACT FROM INCLUDING PROVISIONS REQUIRING A SUBCONTRACTOR TO WAIVE RIGHTS TO A LIEN OR PAYMENT BOND BEFORE PAYMENT FOR LABOR OR MATERIALS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Construetion contracts requiring lien or bond waiver void. A construction contract may not contain provisions requiring a contractor, subcontractor, or material supplier to waive tbe right to a construction lien or a right to a claim against a payment bond before the contractor, subcontractor, or material supplier has been paid for the labor, materials, or both labor and materials, furnished by the contractor, subcontractor, or material supplier.

HeinOnline -- 1999 vol. I 453 1999

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 28, chapter 2, part 7, and the provisions of Title 28, chapter 2, part 7, apply to [section 1].

Section 3. Effective date — applicability. [This act] is effective on passage and approval and applies to construction contracts entered into on or after [the effective date of this act].

Approved March 19, 1999

CHAPTER NO. 120

[SB 29]

AN ACT REMOVING OBSOLETE STATUTORY DIRECTIVES AND PROCEDURES RELATED TO CANAL PROJECTS OWNED BY THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; APPLYING THE CANAL PROJECT PURCHASE PREFERENCE FOR EXISTING WATER USERS' ASSOCIATIONS TO ALL DEPARTMENT WATER PROJECTS PROPOSED FOR DISPOSAL; AMENDING SECTION 85-1-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-1-211, MCA, is amended to read:

"85-1-211. Management of property — water contracts. (1) Subject to this chapter, the department may fix and establish the prices, rates, and charges at which the resources and facilities made available under this chapter may be sold and disposed of and enter into contracts and agreements and do those things that in its judgment are necessary, convenient, or expedient for the accomplishment of the purposes and objects of this chapter, under general rules and upon terms, limitations, and conditions as it prescribes.

(2) The department shall enter into the contracts and fix and establish the prices, rates, and charges to provide at all times funds that are sufficient to pay all costs of operation and maintenance of the works authorized by this chapter, together with necessary repairs to the works, and that will provide at all times sufficient funds to meet and pay the principal and interest of all bonds or loans as they severally become due and payable.

(3) This chapter does not authorize any change, alteration, or revision of the rates, prices, or charges as established by a contract entered into under this chapter except as provided by the contract.

(4) A contract made by the department for the sale of water, use of water, water storage, or other service or for the sale of property or facilities must provide that, in the event of a failure or default in the payment of money specified in the contract to be paid to the department, the department may, upon notice as is prescribed in the contract, terminate the contract and all obligations under the contract. The act of the department in ceasing on default to furnish or deliver water, use of water, water storage, or other service under the contract does not deprive the department of or limit a remedy provided by the contract or by law for the recovery of money due or that may become due under the contract.

(5) The department may sell, transfer to water users' associations, abandon, lease or rent, or otherwise dispose of any rights-of-way, easements, properties,

HeinOnline -- 1999 vol. I 454 1999

or interests or otherwise take and receive the income or profit and revenue from property without regard to other laws providing for the disposition of state property. Except for a water project for which no water management contracts are managed by the department and for which no money is collected by the department, prior to the department's sale, transfer, or other disposition, a determination must be made by the department as to the market value of the rights-of-way, easements, properties, or interests to be sold, transferred, abandoned, or otherwise disposed of. The department's determination of market value must consider all liens, encumbrances, and other limitations on the project properties or interests. *In the disposal of a project, the department shall comply with the provisions of 85-6-109 and shall give purchase preference to existing water users' associations operating and maintaining the project proposed for disposal.*

~~(6) (a) The department shall attempt to dispose of its canal projects by June 30, 1995. The canal projects to be disposed of include the:~~

~~(i) Columbus canal;~~

~~(ii) Delphia-Melstone canals;~~

~~(iii) Hysham pumping canals;~~

~~(iv) Lewistown ditch;~~

~~(v) Livingston ditch;~~

~~(vi) Florence canal;~~

~~(vii) Paradise canal;~~

~~(viii) Park Branch canal;~~

~~(ix) Sidney pumping canals;~~

~~(x) South Side canal;~~

~~(xi) Vigilante canal; and~~

~~(xii) West Bench canal.~~

~~(b) The department may dispose of a canal project by sale, transfer to a water users' association, abandonment, or other legal conveyance. If there is an existing water users' association on the canal project, the provisions of 85-6-109 must be complied with in the disposal of the canal project. The department shall give preference to existing water users' associations operating and maintaining the canal project.~~

~~(c) Upon the sale or transfer of a canal project, the department shall either cancel or write off from the accounts receivable carried on the books of the department a sum not to exceed any previous 1-year cost of operating and maintaining the canal project or make a payment not to exceed any previous 1-year cost of operating and maintaining the canal project. For a canal project not disposed of by June 30, 1995, the water users of the canal project are responsible for the department's administrative costs and the actual costs of operation and maintenance of the canal project.~~

~~(7)~~*(6)* An employee or agent of the department authorized by the director may enter upon any land to carry out the purposes of this section, including but not limited to entry to make an inspection of the ~~canal~~ project that the department considers necessary, entry to salvage or remove project property, and

HeinOnline -- 1999 vol. I 455 1999

entry to make physical alterations to ~~canal~~ project property. The department shall give reasonable notice to the landowner of its intention to enter upon the land. The department is respensible for actual damages done to property."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 19, 1999

CHAPTER NO. 121

[SB 44]

AN ACT EXTENDING THE ALLOWED LEASE TERM FOR STATE WATER PROJECT LANDS LEASED TO THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS FOR PUBLIC RECREATIONAL USE; DELETING AN EXPIRED PROVISION OF THE CABIN SITE LEASING LAW; AMENDING SECTION 85-1-802, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-1-802, MCA, is amended to read:

"**85-1-802. Leases authorized.** (1) The department may lease all project lands appurtenant to a state-owned water project for purposes that the department considers appropriate.

(2) A lease of project lands *to the department of fish, wildlife, and parks for public recreational use may not exceed 30 years. Other leases of project lands* may not exceed 10 years.

~~(3) All cabin site leases issued prior to July 1, 1994, expire March 31, 1996.~~"

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 19, 1999

CHAPTER NO. 122

[SB 48]

AN ACT AUTHORIZING THE FUNDING OF THE TRUST LAND MANAGEMENT FUNCTIONS OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FROM ALL SOURCES OF REVENUE GENERATED BY THE ADMINISTRATION OF TRUST LANDS AND FROM A PORTION OF THE INTEREST INCOME OF THE PERMANENT LAND GRANT FUNDS; CREATING AN ACCOUNT TO RECORD AND ADMINISTER RECEIPTS AND DISBURSEMENTS; AMENDING SECTIONS 17-3-1003, 18-2-107, 20-9-341, 20-9-601, AND 20-25-422, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Trust land administration account. (1) There is a trust land administration account in the state special revenue fund. Money in the account is available to the department by appropriation and must be used to pay the costs of administering state trust lands.

HeinOnline -- 1999 vol. I 456 1999

(2) Appropriations from the account for each fiscal year may not exceed the sum of 1 1/8% of the book value balance in the nine nonexpendable trust funds administered by the department on the first day of January preceding the new biennium and 10% of the revenue deposited in the capitol building land grant trust fund in the last completed fiscal year prior to the new biennium.

(3) Unreserved funds remaining in the account at the end of a fiscal year must be transferred to each of the nonexpendable trust funds in proportionate shares to each trust's contribution to the account as calculated in [section 2(3)].

Section 2. Deposits of proceeds in trust land administration account. (1) The department shall, until the deposit equals the amount appropriated for the fiscal year pursuant to [section 1], deposit into the trust land administration account created by [section 1], the following:

(a) mineral royalties;

(b) the proceeds or income from the sale of easements and timber, except timber from public school lands; and

(c) 5% of the interest and income annually credited to the public school fund in accordance with 20-9-341.

(2) After the deposits in subsection (1) have been made, the remainder of the proceeds must be deposited in the permanent fund for the appropriate trust and the capitol building land grant trust fund.

(3) The amount of money that is deposited into the trust land administration account may not exceed 1 1/8% of the book value balance in each of the nine nonexpendable trust funds administered by the department on the first day of January preceding the new biennium and 10% of the previous fiscal year revenue deposited into the capitol building land grant trust fund.

Section 3. Section 17-3-1003, MCA, is amended to read:

"17-3-1003. Support of state institutions. (1) For the support and endowment of each state institution, there is annually and perpetually appropriated, after any deductions made under *[section 2] and* Title 77, chapter 1, part 6, the income from all permanent endowments for the institution and from all land grants as provided by law. All money received or collected in connection with permanent endowments by all higher educational institutions, reformatory, custodial and penal institutions, state hospitals, and sanitariums, for any purpose whatever, except ~~revenues~~ *revenue* pledged to secure the payment of principal and interest of obligations incurred for the purchase, construction, equipment, or improvement of facilities at units of the Montana university system and for the refunding of obligations or money that constitutes temporary deposits, all or part of which may be subject to withdrawal or repayment, must be paid over to the state treasurer who shall deposit the money to the credit of the proper fund.

(2) Except as provided in ~~subsection~~ *subsections (1) and* (3), all money received from the investment of grants of a state institution and all money received from the leasing of lands granted to a state institution must be deposited with the state treasurer of Montana for each institution, to the credit of the state special revenue fund.

(3) ~~All~~ *Except as provided in [section 2], all* money received from the sale of timber from lands granted to a state institution must be deposited to the credit of the permanent trust fund for the support of the institution."

HeinOnline -- 1999 vol. I 457 1999

Section 4. Section 18-2-107, MCA, is amended to read:

"18-2-107. Deposit of capitol building grant ~~revenues~~ *revenue*. (1) The state treasurer shall deposit in a capital projects fund all revenue from the capitol building land grant after any deductions made under *[section 2] and* Title 77, chapter 1, part 6.

(2) The funds must be held and dedicated for the purpose of constructing capitol buildings or additions to buildings in accordance with the provisions of section 12 of The Enabling Act."

Section 5. Section 20-9-341, MCA, is amended to read:

"20-9-341. Definition of interest and income money. (1) As used in this title, the term "interest and income money" means the total of the following revenue, as provided for by Article X, section 5, of the 1972 Montana constitution:

(a) 95% of the interest received from the investment of the public school fund;

(b) 95% of the interest received from the investment of any other school funds held in trust by the state board of land commissioners;

(c) 95% of the income received from the leasing of or sale of timber from state school lands after any deductions that may be made under the provisions of Title 77, chapter 1, part 6; and

(d) 95% of any other income derived from any other covenant affecting the use of state school lands.

(2) The remaining 5% of the revenue described in subsections (1)(a) through (1)(d) must be annually credited to the public school fund *after any deductions made under [section 2]*."

Section 6. Section 20-9-601, MCA, is amended to read:

"20-9-601. Public school fund. The public school fund ~~shall~~ *must* be maintained by the state treasurer as a fund in the nonexpendable trust fund type, and the principal amount of ~~such~~ *the* fund ~~shall be~~ *is* irreducible and permanent. The following ~~moneys shall~~ *money must* be credited to ~~such~~ *the* fund as an addition to the irreducible and permanent principal amount:

(1) appropriations and donations by the state;

(2) donations and bequests by individuals to the state or schools;

(3) the proceeds of land and other property ~~which~~ *that* revert to the state by escheat and forfeiture;

(4) the proceeds of all property granted to the state, when the purpose of the grant is not specified or is uncertain;

(5) funds accumulated in the treasury of the state for the disbursement of which provision has not been made by law;

(6) *except as provided in [section 2],* the proceeds of the sale of stone, materials, or other property from school lands other than those granted for specific purposes and all ~~moneys~~ *money* other than rental recovered from persons trespassing on ~~such~~ *the* lands;

(7) the principal of all ~~moneys~~ *money* arising from the sale of lands and other property ~~which have~~ *that has* been and may be ~~hereafter~~ granted to the state for the support of common schools;

HeinOnline -- 1999 vol. I 458 1999

(8) *except as provided in [section 2],* the amount earmarked for deposit in this fund under the provisions of 20-9-341; and

(9) ~~such~~ other ~~moneys~~ *money* as may be provided by the legislature."

Section 7. Section 20-25-422, MCA, is amended to read:

"20-25-422. Support of university of Montana-Missoula. (1) For the support and endowment of the university, there is annually and perpetually appropriated:

(a) the university fund income, the proceeds and revenue from the grant of any estate or interest disposed of pursuant to 20-25-307, and all other sums of money appropriated by law to the university fund after any deductions made under *[section 2] and* Title 77, chapter 1, part 6;

(b) all tuition and matriculation fees; and

(c) all contributions derived from puhlic or private bounty.

(2) The entire income of all the funds must he placed at the disposal of the board of regents by transfer to its treasurer and must be kept separate and distinct from all other funds. The income must be used solely for the support of the colleges and departments of the university or those connected with the colleges and departments.

(3) All means derived from other public or private bounty must be exclusively devoted to the specific objects designated by the donor."

Section 8. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 77, chapter 1, part 1, and the provisions of Title 77, chapter 1, part 1, apply to [sections 1 and 2].

Section 9. Effective date. [This act] is effective July 1, 1999.

Approved March 19, 1999

CHAPTER NO. 123

[SB 98]

AN ACT ALLOWING BROADER LEASING OF SALVAGE WATER CREATED THROUGH CONSERVATION PROJECTS; EXTENDING FOR 10 YEARS THE TERM OF THE INSTREAM FLOW LEASING PROGRAM OPERATED BY THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS; ALLOWING A LONGER LEASE TERM FOR LEASES ASSOCIATED WITH DEPARTMENT INVESTMENTS IN WATER CONSERVATION PROJECTS; INCREASING THE NUMBER OF STREAM REACHES THAT CAN BE LEASED FROM; AMENDING SECTIONS 85-2-419, 85-2-436, 85-2-437, AND 85-2-438, MCA, SECTION 11, CHAPTER 658, LAWS OF 1989, AND SECTIONS 4 AND 7, CHAPTER 740, LAWS OF 1991; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-2-419, MCA, is amended to read:

"85-2-419. Salvaged water. It is the declared policy of the state in 85-1-101 to encourage the conservation and full use of water. Consistent with this policy, holders of appropriation rights who salvage water~~, as defined in 85-2-102,~~ may

HeinOnline -- 1999 vol. I 459 1999

retain the right to the salvaged water for heneficial use. Any use of the right to salvaged water for any purpose or in any place other than that associated with the original appropriation right must be approved by the department as a change in appropriation right in accordance with 85-2-402. Sale of the right to salvaged water must also be in accordance with 85-2-403, and the lease of the right to salvaged water for instream flow purposes must be in accordance with *85-2-408,* 85-2-436, *or 85-2-439.*"

Section 2. Section 85-2-436, MCA, is amended to read:

"**85-2-436. (Temporary) Water leasing study.** (1) The department of fish, wildlife, and parks and the department, in consultation with the environmental quality council, shall conduct and coordinate a study that, at a minimum:

(a) provides the following data for each designated stream reach and each pilot lease entered into under subsection (2):

(i) the length of the stream reach and how it is determined;

(ii) technical methods and data used to determine critical streamflow or volume needed to preserve fisheries;

(iii) legal standards and technical data used to determine and substantiate the amount of water available for instream flows through leasing of existing rights;

(iv) contractual parameters, conditions, and other steps taken to ensure that each lease in no way harms other appropriators, particularly if the stream is one that experiences natural dewatering; and

(v) methods and technical means used to monitor use of water under each lease;

(b) based on the data provided under subsection (1)(a), develops a complete model of a water lease and lease authorization that includes a step-by-step explanation of the process from initiation to completion.

(2) *(a)* For purposes of undertaking the study described in subsection (1) and as authorized by law, the department of fish, wildlife, and parks and the department may engage in the activities described in this subsection *(2).* Except as provided in 85-2-439, for purposes of this study, this section is the exclusive means by which the department of fish, wildlife, and parks may seek to change an appropriation right to an instream flow purpose.

~~(a)~~*(b)* The department of fish, wildlife, and parks, with the consent of the commission, may lease existing rights for the purpose of maintaining or enhancing streamflows for the benefit of fisheries in stream reaches determined eligible by the department pursuant to 85-2-437.

~~(b)~~*(c)* Upon receipt of a correct and complete application for a lease from the department of fish, wildlife, and parks, the department shall publish notice of the application as provided in 85-2-307. Parties who believe that they may be adversely affected by the proposed lease may file an objection as provided in 85-2-308. A lease may not be approved until all objections are resolved. After resolving all objections filed under 85-2-308, the department shall authorize a lease of an existing right for the purpose of maintaining or enhancing streamflows for the benefit of fisheries if the applicant submits a correct and complete application and meets the requirements of 85-2-402.

HeinOnline -- 1999 vol. I 460 1999

~~(c)~~*(d)* The application for a lease authorization must include specific information on the length and location of the stream reach in which the streamflow must be maintained or enhanced and must provide a detailed streamflow measuring plan that describes the points where and the manner in which the streamflow must be measured.

~~(d)~~*(e)* The maximum quantity of water that may be leased is the amount historically diverted by the lessor. However, only the amount historically consumed, or a smaller amount if specified by the department in the lease authorization, may be used to maintain or enhance streamflows below the lessor's point of diversion.

~~(e)~~*(f)* The lease may not be issued for a term of more than 10 years, hut it may be renewed once for up to 10 years, except that a lease of water made available from the development of a water conservation or storage project is restricted to a term *equal to the expected life* of *the project but to* not more than ~~20~~ *30* years. Upon receiving notice of a lease renewal, the department shall notify other appropriators potentially affected by the lease and shall allow 30 days for submission of new evidence of adverse effects to other water rights. A lease authorization is not required for a renewal unless an appropriator other than an appropriator described in subsection ~~(2)(i)~~ *(2)(j)* submits evidence of adverse effects to the appropriator's rights that has not been considered previously. If new evidence is submitted, a lease authorization must be obtained according to the requirements of 85-2-402.

~~(f)~~*(g)* During the term of the lease, the department may modify or revoke the lease authorization if an appropriator other than an appropriator described in subsection ~~(2)(i)~~ *(2)(j)* proves by a preponderance of evidence that the appropriator's water right is adversely affected.

~~(g)~~*(h)* The priority of appropriation for a lease under this section is the same as the priority of appropriation of the right that is leased.

~~(h)~~*(i)* Neither a change in appropriation right nor any other authorization is required for the reversion of the appropriation right to the lessor's previous use.

~~(i)~~*(j)* A person issued a water use permit with a priority of appropriation after the date of filing of an application for a lease authorization under this section may not object to the exercise of the lease according to its terms or the reversion of the appropriation right to the lessor according to the lessor's previous use.

~~(j)~~*(k)* The department of fish, wildlife, and parks shall pay all costs associated with installing devices or providing personnel to measure streamflows according to the measuring plan submitted under this section.

(3) (a) The department of fish, wildlife, and parks shall complete and submit to the department, commission, and environmental quality council an annual study progress report by December 1 of each year. This report must include the applicable information listed in subsection (1) for each lease, a summary of stream reach designation activity under 85-2-437, and a summary of leasing activity on all designated streams. If the department of fish, wildlife, and parks has not leased additional water rights under this section by December 1 of any year, the department of fish, wildlife, and parks shall provide compelling justification for that fact in the study progress report.

(b) A final study report must be adopted by the department and commission and submitted to the environmental quality council, which shall complete the final report by December 1, ~~1998~~ *2008*.

HeinOnline -- 1999 vol. I 461 1999

(4) This section does not create the right for a person to bring suit to compel the renewal of a lease that has expired. (Terminates June 30, ~~1999~~ *2009—sec. 4, Ch. 740, L. 1991.*)"

Section 3. Section 85-2-437, MCA, is amended to read:

"**85-2-437. (Temporary) Department designation of eligible stream reaches.** (1) The department of fish, wildlife, and parks, with the consent of the commission, may apply to the department for designation of stream reaches for which water leasing to maintain or enhance streamflows pursuant to 85-2-436 may occur.

(2) The department may declare a stream reach eligible for leasing pursuant to 85-2-436 only if it finds that water leasing is necessary to maintain or enhance streamflows for fisheries.

(3) The department may designate no more than ~~20~~ *40* stream reaches in the state where water leasing pursuant to 85-2-436 may occur. If the department of fish, wildlife, and parks determines that a water lease cannot be reasonably obtained on a designated stream reach, the department may remove the designation from that stream reach and designate another stream reach pursuant to this section. (Terminates June 30, ~~1999~~ *2009—sec. 4, Ch. 740, L. 1991.*)"

Section 4. Section 85-2-438, MCA, is amended to read:

"**85-2-438. (Temporary) Lease validity.** All leases entered into prior to June 30, ~~1999,~~ *2009,* remain valid until the expiration date of the lease. (Terminates June 30, ~~1999~~ *2009—sec. 7, Ch. 740, L. 1991.*)"

Section 5. Section 11, Chapter 658, Laws of 1989, is amended to read:

"**Section 11. Termination.** [This act] terminates June 30, ~~1993~~ *2009.*"

Section 6. Section 4, Chapter 740, Laws of 1991, is amended to read:

"**Section 4.** Section 11, Chapter 658, Laws of 1989, is amended to read:

"**Section 11. Termination.** [This act] terminates June 30, ~~1993~~ *2009.*""

Section 7. Section 7, Chapter 740, Laws of 1991, is amended to read:

"**Section 7. Termination.** [This act] terminates June 30, ~~1999~~ *2009.*"

Section 8. Effective date. [This act] is effective on passage and approval.

Section 9. Termination. [Sections 2 through 8 and this section] terminate June 30, 2009.

Approved March 19, 1999

CHAPTER NO. 124

[SB 114]

AN ACT REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO PURCHASE WORKERS' COMPENSATION COVERAGE FOR AN INDIVIDUAL PARTICIPATING AT A WORKSITE IN EMPLOYMENT TRAINING FOR THE PURPOSES OF THE FAMILIES ACHIEVING INDEPENDENCE IN MONTANA (FAIM) PROJECT; PROVIDING THAT PUBLIC AND PRIVATE ENTITIES PROVIDING TRAINING IN EMPLOYMENT SKILLS AS PART OF THE FAIM PROJECT

HeinOnline -- 1999 vol. I 462 1999

ARE NAMED INSUBEDS OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES FOR THE PURPOSES OF WORKERS' COMPENSATION COVERAGE; PROVIDING FOR THE EXCLUSION OF PUBLIC ASSISTANCE BENEFITS FROM THE DEFINITION OF WAGES FOR PURPOSES OF WORKERS' COMPENSATION; AMENDING SECTIONS 39-71-118, 39-71-123, AND 53-4-603, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-118, MCA, is amended to read:

"39-71-118. Employee, worker, volunteer, and volunteer firefighter defined. (1) The term "employee" or "worker" means:

(a) each person in this state, including a contractor other than an independent contractor, who is in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire, expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully employed, and all of the elected and appointed paid public officers and officers and members of boards of directors of quasi-public or private corporations, except those officers identified in 39-71-401(2), while rendering actual service for the corporations for pay. Casual employees, as defined by 39-71-116, are included as employees if they are not otherwise covered by workers' compensation and if an employer has elected to be bound by the provisions of the compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic employment is excluded.

(b) any juvenile who is performing work under authorization of a district court judge in a delinquency prevention or rehabilitation program;

(c) a person who is receiving on-the-job vocational rehabilitation training or other on-the-job training under a state or federal vocational training program, whether or not under an appointment or contract of hire with an employer, as defined in this chapter, and, except as provided in subsection (9), whether or not receiving payment from a third party. However, this subsection does not apply to students enrolled in vocational training programs, as outlined in this subsection, while they are on the premises of a public school or community college.

(d) an aircrew member or other person who is employed as a volunteer under 67-2-105;

(e) a person, other than a juvenile as defined in subsection (1)(b), who is performing community service for a nonprofit organization or association or for a federal, state, or local government entity under a court order, or an order from a hearings officer as a result of a probation or parole violation, whether or not under appointment or contract of hire with an employer, as defined in this chapter, and whether or not receiving payment from a third party. For a person covered by the definition in this subsection (1)(e):

(i) compensation benefits must be limited to medical expenses pursuant to 39-71-704 and an impairment award pursuant to 39-71-703 that is based upon the minimum wage established under Title 39, chapter 3, part 4, for a full-time employee at the time of the injury; and

(ii) premiums must be paid by the employer, as defined in 39-71-117(3), and must be based upon the minimum wage established under Title 39, chapter 3,

HeinOnline -- 1999 vol. I 463 1999

part 4, for the number of hours of community service required under the order from the court or hearings officer.

(f) an inmate working in a federally certified prison industries program authorized under 53-1-301;

(g) a person who is an enrolled member of a volunteer fire department, as described in 7-33-4109, or a person who provides ambulance services under Title 7, chapter 34, part 1; and

(h) a person placed at ~~the employer's~~ *a public or private entity's* worksite ~~as a participant in a public assistance program authorized by Title 53, chapter 4, parts 6 and 7,~~ *pursuant to [section 4] is considered an employee* for workers' compensation purposes only. ~~A person placed at an employer's worksite under Title 53, chapter 4, parts 6 and 7, may not be considered an independent contractor under 39-71-120. An employer may be reimbursed for the premium cost as provided in 53-4-603.~~ *The department of public health and human services shall provide workers' compensation coverage for participants in the FAIM project who are placed at public or private worksites through an endorsement to the department of public health and human services' workers' compensation policy naming the public or private worksite entities as named insureds under the policy. The endorsement may cover only the entity's FAIM participants and may only be for the duration of each participant's training in the FAIM project under a written agreement between the department of public health and human services and each public or private entity. The department of public health and human services may not provide workers' compensation coverage for individuals who are covered for workers' compensation purposes by another state or federal employment training program. Premiums and benefits must be based upon the wage that a probationary employee is paid for work of a similar nature at the assigned worksite.*

(2) The terms defined in subsection (1) do not include a person who is:

(a) participating in recreational activity and who at the time is relieved of and is not performing prescribed duties, regardless of whether the person is using, by discount or otherwise, a pass, ticket, permit, device, or other emolument of employment;

(b) performing voluntary service at a recreational facility and who receives no compensation for those services other than meals, lodging, or the use of the recreational facilities;

(c) performing services as a volunteer, except for a person who is otherwise entitled to coverage under the laws of this state. As used in this subsection (2)(c), "volunteer" means a person who performs services on behalf of an employer, as defined in 39-71-117, but who does not receive wages as defined in 39-71-123.

(d) serving as a foster parent, licensed as a foster care provider in accordance with 41-3-1141, and providing care without wage compensation to no more than six foster children in the provider's own residence. The person may receive reimbursement for providing room and board, obtaining training, respite care, leisure and recreational activities, and providing for other needs and activities arising in the provision of in-home foster care.

(3) With the approval of the insurer, an employer may elect to include as an employee under the provisions of this chapter any volunteer as defined in subsection (2)(c).

HeinOnline -- 1999 vol. I 464 1999

(4) (a) The term "volunteer firefighter" means a firefighter who is an enrolled and active member of a fire company organized and funded by a county, a rural fire district, or a fire service area.

(b) The term "volunteer hours" means all the time spent by a volunteer firefighter in the service of an employer, including but not limited to training time, response time, and time spent at the employer's premises.

(5) (a) If the employer is a partnership, limited liability partnership, sole proprietor, or a member-managed limited liability company, the employer may elect to include as an employee within the provisions of this chapter any member of the partnership or limited liability partnership, the owner of the sole proprietership, or any member of the limited liability company devoting full time to the partnership, limited liability partnership, proprietorship, or limited liability company business.

(b) In the event of an election, the employer shall serve upon the employer's insurer written notice naming the partners, sole proprietor, or members to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (5)(d). A partner, sole proprietor, or member is not considered an employee within this chapter until notice has been given.

(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection. For premium ratemaking and for the determination of weekly wage for weekly compensation benefits, the electing employer may elect not less than $900 a month and not more than 1 1/2 times the average weekly wage, as defined in this chapter.

(6) (a) If the employer is a quasi-public or a private corporation or a manager-managed limited liability company, the employer may elect to include as an employee within the provisions of this chapter any corporate officer or manager exempted under 39-71-401(2).

(b) In the event of an election, the employer shall serve upon the employer's insurer written notice naming the corporate officer or manager to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (5)(d). A corporate officer or manager is not considered an employee within this chapter until notice has been given.

(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection. For premium ratemaking and for the determination of the weekly wage for weekly compensation benefits, the electing employer may elect not less than $200 a week and not more than 1 1/2 times the average weekly wage, as defined in this chapter.

(7) (a) The trustees of a rural fire district, a county governing body providing rural fire protection, or the county commissioners or trustees for a fire service area may elect to include as an employee within the provisions of this chapter any volunteer firefighter. A volunteer firefighter who receives workers'

HeinOnline -- 1999 vol. I 465 1999

compensation coverage under this section may not receive disability benefits under Title 19, chapter 17.

(b) In the event of an election, the employer shall report payroll for all volunteer firefighters for premium and weekly benefit purposes based on the number of volunteer hours of each firefighter times the average weekly wage divided by 40 hours, subject to a maximum of 1 1/2 times the average weekly wage.

(8) Except as provided in chapter 8 of this title, an employee or worker in this state whose services are furnished by a person, association, contractor, firm, limited liability company, limited liability partnership, or corporation, other than a temporary service contractor, to an employer, as defined in 39-71-117, is presumed to be under the control and employment of the employer. This presumption may be rebutted as provided in 39-71-117(3).

(9) A student currently enrolled in an elementary, secondary, or postsecondary educational institution who is participating in work-based learning activities and who is paid wages by the educational institution or business partner is the employee of the entity that pays the student's wages for all purposes under this chapter. A student who is not paid wages by the business partner or the educational institution is a volunteer and is subject to the provisions of this chapter.

(10) For purposes of this section, an "employee or worker in this state" means:

(a) a resident of Montana who is employed by an employer and whose employment duties are primarily carried out or controlled within this state;

(b) a nonresident of Montana whose principal employment duties are conducted within this state on a regular basis for an employer;

(c) a nonresident employee of an employer from another state engaged in the construction industry, as defined in 39-71-116, within this state; or

(d) a nonresident of Montana who does not meet the requirements of subsection (10)(b) and whose employer elects coverage with an insurer that allows an election for an employer whose:

(i) nonresident employees are hired in Montana;

(ii) nonresident employees' wages are paid in Montana;

(iii) nonresident employees are supervised in Montana; and

(iv) business records are maintained in Montana.

(11) An insurer may require coverage for all nonresident employees of a Montana employer who do not meet the requirements of subsection (10)(b) or (10)(d) as a condition of approving the election under subsection (10)(d)."

Section 2. Section 39-71-123, MCA, is amended to read:

"39-71-123. Wages defined. (1) "Wages" means all remuneration paid for services performed by an employee for an employer, or income provided for in subsection (1)(d). Wages include the cash value of all remuneration paid in any medium other than cash. The term includes but is not limited to:

(a) commissions, bonuses, and remuneration at the regular hourly rate for overtime work, holidays, vacations, and sickness periods;

(b) backpay or any similar pay made for or in regards to previous service by the employee for the employer, other than retirement or pension benefits from a qualified plan;

(c) tips or other gratuities received by the employee, to the extent that tips or gratuities are documented by the employee to the employer for tax purposes;

(d) income or payment in the form of a draw, wage, net profit, or substitute for money received or taken by a sole proprietor or partner, regardless of whether the sole proprietor or partner has performed work or provided services for that remuneration;

(e) board, lodging, rent, or housing if it constitutes a part of the employee's remuneration and is based on its actual value; and

(f) payments made to an employee on any basis other than time worked, including but not limited to piecework, an incentive plan, or profit-sharing arrangement.

(2) The term "wages" does not include any of the following:

(a) employee expense reimbursements or allowances for meals, lodging, travel, subsistence, and other expenses, as set forth in department rules;

(b) the amount of the payment made by the employer for employees, if the payment was made for:

(i) retirement or pension pursuant to a qualified plan as defined under the provisions of the Internal Revenue Code;

(ii) sickness or accident disability under a workers' compensation policy;

(iii) medical or hospitalization expenses in connection with sickness or accident disability, including health insurance for the employee or the employee's immediate family; ~~or~~

(iv) death, including life insurance for the employee or the employee's immediate family;

(c) vacation or sick leave benefits accrued but not paid; ~~or~~

(d) special rewards for individual invention or discovery; *or*

(e) monetary and other benefits paid to a person as part of public assistance provided through the FAIM project, as defined in 53-4-702.

(3) (a) Except as provided in subsection (3)(b), for compensation benefit purposes, the average actual earnings for the four pay periods immediately preceding the injury are the employee's wages, except that if the term of employment for the same employer is less than four pay periods, the employee's wages are the hourly rate times the number of hours in a week for which the employee was hired to work.

(b) For good cause shown, if the use of the last four pay periods does not accurately reflect the claimant's employment history with the employer, the wage may be calculated by dividing the total earnings for an additional period of time, not to exceed 1 year prior to the date of injury, by the number of weeks in that period, including periods of idleness or seasonal fluctuations.

(4) (a) For the purpose of calculating compensation benefits for an employee working concurrent employments, the average actual wages must be calculated as provided in subsection (3). As used in this subsection, "concurrent

employment" means employment in which the employee was actually employed at the time of the injury and would have continued to be employed without a break in the term of employment if not for the injury.

(h) The compensation benefits for a covered volunteer must be based on the average actual wages in the volunteer's regular employment, except self-employment as a sole proprietor or partner who elected not to be covered, from which the volunteer is disabled by the injury incurred.

(c) The compensation benefits for an employee working at two or more concurrent remunerated employments must be based on the aggregate of average actual wages of all employments, except self-employment as a sole proprietor or partner who elected not to he covered, from which the employee is disabled by the injury incurred."

Section 3. Section 53-4-603, MCA, is amended to read:

"53-4-603. FAIM project — eomponents. (1) The FAIM financial assistance part of the FAIM project consists of three components referred to as the job supplement program, pathways, and the community services program.

(2) The job supplement program is an alternative to the components of the FAIM project that provide cash assistance. An eligible family may receive assistance under the job supplement program instead of receiving assistance under pathways or the community services program or may receive assistance under the job supplement program either prior to or after receiving assistance under pathways or the community services program.

(3) Services that may be provided to eligible individuals in the job supplement program include:

(a) full medicaid benefits for dependent children, as provided in 53-6-101, and basic medicaid benefits for specified caretaker relatives, as provided in 53-6-101, pursuant to waivers of federal law that are granted by the secretary of the U.S. department of health and human services that permit limited benefits. However, a specified caretaker relative who is pregnant is entitled to full medicaid benefits.

(b) child-care assistance, as provided in 53-4-611 and as specified hy the department by rule;

(c) assistance in obtaining child support; and

(d) a one-time only cash payment to meet special employment-related needs of the family. In order to receive a one-time cash payment, the family is required to agree not to receive cash assistance for a period of time based on the size of the one-time cash payment received.

(4) (a) Pathways may provide eligible individuals with job training and education; resource referrals; assistance in obtaining child support; one-time cash payments for special employment-related needs; child-care assistance, as provided in 53-4-611 and as specified by department rule; cash assistance payments; supportive services, if funding is available; full medicaid benefits for dependent children, as provided in 53-6-101; and basic medicaid benefits for specified caretaker relatives, as provided in 53-6-101, pursuant to waivers of federal law that are granted by the secretary of the U.S. department of health and human services that permit limited benefits. However, a specified caretaker relative who is pregnant is entitled to full medicaid benefits.

HeinOnline -- 1999 vol. I 468 1999

(b) A specified caretaker relative in either a single-parent family or a two-parent family may receive assistance under pathways for a maximum of 24 months, subject to the time limitation on assistance provided in 53-4-231. The 24 months do not need to be consecutive.

(5) (a) In the community services program, a specified caretaker relative who has received 24 months of assistance under pathways may continue to receive assistance for the specified caretaker relative's needs for an additional 36 months or longer period, as specified by department rule, if the specified caretaker relative performs community service work as required by the department, subject to the time limitation on assistance provided in 53-4-231.

(b) A specified caretaker relative who performs community service work as required is entitled to cash assistance for the specified caretaker relative's needs and basic medicaid benefits, as provided in 53-6-101, pursuant to waivers of federal law that are granted by the secretary of the U.S. department of health and human services that permit limited benefits. However, a specified caretaker relative who is pregnant is entitled to full medicaid benefits.

(c) Job training and education, resource referrals, and assistance in obtaining child support may also be provided if determined by the department to be appropriate. Child-care assistance may be provided to participants in the community services program as set forth in 53-4-611 and as specified by department rule.

(6) Failure of a caretaker relative to participate in community service work as required must result in the needs of the specified caretaker relative being removed from the cash assistance payment.

(7) A dependent child who meets all eligibility requirements for FAIM financial assistance is not subject to the time limits on assistance in pathways and the community services program that are provided for specified caretaker relatives in this section. However, a dependent child may be ineligible for FAIM financial assistance because of the 60-month limitation on assistance provided in 53-4-231.

~~(8) The department may enter into an agreement to reimburse a private or local governmental employer for the premium cost of workers' compensation coverage for a participant of the program who is placed at the employer's worksite for developing employment skills.~~"

Section 4. Placement of FAIM participants for purpose of training. (1) The department or a person designated by the department may place an individual participating in the FAIM project into a position of employment with a public or private entity for the purpose of training the individual in the knowledge and skills necessary for the individual to become successfully employed.

(2) The department may, pursuant to subsection (1), place an individual participating in the FAIM project into a position at a worksite only with the permission and assistance of the public or private entity at the worksite under a written training agreement between the department of public health and human services and the entity.

(3) The placement of an individual into a position at a public or private worksite pursuant to subsection (1) is only for the purpose of training the individual in employment knowledge and skills and is not for the purpose of

HeinOnline -- 1999 vol. I 469 1999

providing paid employment for the individual. The placement may not supplant an existing employment position or another individual already employed at the worksite. Placement of the individual at the public or private worksite pursuant to subsection (1) should last no longer than is necessary to achieve the employment training purposes of the FAIM project.

(4) The private or public entity where an individual is placed pursuant to subsection (1) may choose whether or not to later employ the individual after the conclusion of the individual's training.

Section 5. Codification instruction. [Section 4] is intended to be codified as an integral part of Title 53, chapter 4, part 7, and the provisions of Title 53, chapter 4, part 7, apply to [section 4].

Section 6. Effective date. [This act] is effective July 1, 1999.

Section 7. Applicability. [This act] applies to individuals participating in the FAIM project on and after July 1, 1999.

Approved March 19, 1999

CHAPTER NO. 125

[SB 136]

AN ACT CLARIFYING THAT CERTAIN FEES COLLECTED BY THE SECRETARY OF STATE ARE DEPOSITED TO AN ACCOUNT IN THE PROPRIETARY FUND TO THE CREDIT OF THE SECRETARY OF STATE; PROVIDING THAT INCOME AND INTEREST ON THE MONEY MUST BE CREDITED TO THE ACCOUNT; AMENDING SECTION 2-6-103, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-6-103, MCA, is amended to read:

"**2-6-103. Filing and copying fees.** (1) The secretary of state, for services performed in the office, shall charge and collect fees commensurate with costs for filing and copying services.

(2) A member of the legislature or state or county officer may not be charged for any search relative to matters appertaining to the duties of the member's office or for a certified copy of any law or resolution passed by the legislature relative to the member's official duties.

(3) The secretary of state may not charge a fee, other than the fees authorized in 2-6-110, for providing electronic information.

(4) Fees must be collected in advance and, when collected by the secretary of state, are not refundable and must be deposited into a *an account in the* proprietary fund *to the credit of the secretary of state. All income and interest earned on money in the account must be credited to the account.*"

Section 2. Effective date. [This act] is effective July 1, 1999.

Approved March 19, 1999

HeinOnline -- 1999 vol. I 470 1999

CHAPTER NO. 126

[SB 188]

AN ACT CLARIFYING THAT CERTAIN CRIMINAL OFFENSES APPLY TO CRIMES COMMITTED WHILE IN OFFICIAL DETENTION AND ARE NOT LIMITED TO CRIMES COMMITTED IN THE STATE PRISON; AND AMENDING SECTIONS 46-18-220 AND 46-18-303, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-18-220, MCA, is amended to read:

"46-18-220. Sentences for certain offenses committed in ~~state prison~~ *official detention* — death penalty. A person ~~serving a sentence of imprisonment in the state prison~~ convicted of *having committed* the offense of attempted deliberate homicide, aggravated assault, or aggravated kidnapping ~~committed~~ while ~~incarcerated at the state prison~~ *in official detention, as defined in 45-2-101,* shall be sentenced to death or life imprisonment as provided in 46-18-301 through 46-18-310."

Section 2. Section 46-18-303, MCA, is amended to read:

"46-18-303. Aggravating circumstances. Aggravating circumstances are any of the following:

(1) *(a)* The offense was deliberate homicide and was committed:

(i) by a person ~~serving a sentence of imprisonment in the state prison~~ *while in official detention, as defined in 45-2-101*~~,~~*;*

~~(2)~~*(ii)* ~~The offense was deliberate homicide and was committed~~ by a ~~defendant~~ *person* who had been previously convicted of another deliberate homicide~~.~~*;*

~~(3)~~*(iii)* ~~The offense was deliberate homicide and was committed~~ by means of torture~~.~~*;*

~~(4)~~*(iv)* ~~The offense was deliberate homicide and was committed~~ by a person lying in wait or ambush~~;~~

~~(5)~~*(v)* ~~The offense was deliberate homicide and was committed~~ as a part of a scheme or operation that, if completed, would result in the death of more than one person~~;~~ *or*

(vi) by a person during the course of committing sexual assault, sexual intercourse without consent, deviate sexual conduct, or incest, and the victim was under 18 years of age.

~~(6)~~*(b)* The offense was deliberate homicide, as defined in 45-5-102 (1)(a), and the victim was a peace officer killed while performing the officer's duty.

~~(7)~~*(2)* The offense was aggravated kidnapping that resulted in the death of the victim or the death by direct action of the defendant of a person who rescued or attempted to rescue the victim.

~~(8)~~*(3)* The offense was attempted deliberate homicide, aggravated assault, or aggravated kidnapping committed while ~~incarcerated at the state prison~~ *in official detention, as defined in 45-2-101,* by a person who has been previously:

(a) convicted of the offense of deliberate homicide; or

HeinOnline -- 1999 vol. I 471 1999

(b) found to be a persistent felony offender pursuant to part 5 of this chapter and one of the convictions was for an offense against the person in violation of Title 45, chapter 5, for which the minimum prison term is not less than 2 years.

~~(9) The offense was deliberate homicide and was committed by a person during the course of committing sexual assault, sexual intercourse without consent, deviate sexual conduct, or incest, and the victim was less than 18 years of age.~~

~~(10)~~*(4)* The offense was sexual intercourse without consent ~~and~~, the defendant has a previous conviction of sexual intercourse without consent in this state or of an offense under the laws of another state or of the United States that if committed in this state would be the offense of sexual intercourse without consent, and the defendant inflicted serious bodily injury upon a person in the course of committing each offense."

Approved March 19, 1999

CHAPTER NO. 127

[SB 197]

AN ACT PROVIDING REIMBURSEMENT FOR MENTAL HEALTH OUTPATIENT COUNSELING SERVICES FOR FOSTER PARENTS WHO EXPERIENCE THE DEATH OF A FOSTER CHILD WHO HAS BEEN PLACED IN THEIR HOME THAT IS LICENSED AS A YOUTH CARE FACILITY; AMENDING SECTION 41-3-1103, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Purpose. The intent of [section 2] is to provide reimbursement for mental health outpatient counseling services to foster parents who experience the death of a foster child placed with them by the department or a licensed child placing agency. Many of the children have disabilities, terminal illnesses, or other special needs, and often these children spend their childhood in the homes of foster parents. The death of a child is a traumatic experience, and the legislature finds that providing reimbursement for counseling is a necessary support to those persons who are willing to open their homes to foster children who need a stable and safe environment.

Section 2. Foster parent counseling services. (1) A person who provides substitute care to a foster child who dies while residing in a youth care facility must be offered reimbursement for mental health outpatient counseling services at the expense of the department.

(2) Upon the death of a foster child in substitute care, the department shall provide information about available reimbursement for mental health outpatient counseling services for the person or persons who were providing care to the foster child.

(3) The reimbursement for mental health outpatient counseling services must be available for up to 1 year in duration by a provider of the person's choice at an amount equivalent to that offered as a benefit to state employees under 2-18-702, subject to the same maximum benefit levels and copayments.

Section 3. Section 41-3-1103, MCA, is amended to read:

HeinOnline -- 1999 vol. I 472 1999

"**41-3-1103. Powers and duties of department.** (1) The department shall:

(a) administer all state and federal funds allocated to the department for youth foster homes, youth group homes, child-care agencies, and youth assessment centers for youth in need of care, as defined in 41-3-102;

(b) exercise licensing authority over all youth foster homes, youth group homes, child-care agencies, and youth assessment centers;

(c) collect and disseminate information relating to youth in need of care;

(d) provide for training of program personnel delivering services;

(e) in cooperation with youth care facility providers, develop and implement standards for youth care facilities;

(f) maintain adequate data on placements it funds in order to keep the legislature properly informed of the following:

(i) the number of youth in need of care in out-of-home care facilities;

(ii) the cost per facility for services rendered;

(iii) the type and level of care of services provided by each facility;

(iv) a profile of out-of-home care placements by level of care; and

(v) a profile of public institutional placements; ~~and~~

(g) administer all funds allocated to the department for residential alcohol and drug abuse treatment for indigent youths in need of care, indigent youths in need of intervention, and indigent delinquent youths who require treatment; *and*

(h) provide reimbursement for mental health outpatient counseling services for persons who experience the death of a foster child while providing substitute care to the foster child in a youth care facility.

(2) The department may:

(a) enter into contracts with nonprofit corporations or associations or private organizations to provide substitute care for youth in need of care in youth care facilities;

(b) accept gifts, grants, and donations of money and property from public and private sources to initiate and maintain community-based services to youth;

(c) adopt rules to carry out the administration and purposes of this part.

(3) The department shall pay for room, board, clothing, personal needs, transportation, and treatment in youth foster care homes and youth group homes for youths committed to the department who need to be placed in the facilities. Payments for the clothing of a child placed in a youth foster home must be provided to the extent the child needs a basic wardrobe or has a special clothing need. Payments under this subsection may not exceed appropriations for the purposes of this subsection."

Section 4. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 41, chapter 3, part 11, and the provisions of Title 41, chapter 3, part 11, apply to [sections 1 and 2].

Section 5. Effective date. [This act] is effective July 1, 1999.

Approved March 19, 1999

HeinOnline -- 1999 vol. I 473 1999

CHAPTER NO. 128

[SB 230]

AN ACT CLARIFYING THE PLACE OF TRIAL FOR AN ACTION AGAINST A COUNTY; AND AMENDING SECTION 25-2-126, MCA.

WHEREAS, in Wentz v. Montana Power Co., 280 Mont. 14, 928 P.2d 237, 53 St. Rep. 1277 (1996), the Montana Supreme Court held that section 25-2-126(2), MCA, is superseded by section 25-2-126(3), MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 25-2-126, MCA, is amended to read:

"25-2-126. Against state~~, county,~~ and political subdivisions. (1) The proper place of trial for an action against the state is in the county in which the claim arose or in Lewis and Clark County. In an action brought by a resident of the state, the county of ~~his~~ *the plaintiff's* residence is also a proper place of trial.

~~(2) The proper place of trial for an action against a county is that county unless such action is brought by a county, in which case any county not a party thereto is also a proper place of trial.~~

~~(3)~~*(2)* The proper place of trial for an action against a political subdivision is in the county in which the claim arose or in any county where the political subdivision is located."

Approved March 19, 1999

CHAPTER NO. 129

[SB 291]

AN ACT REVISING THE FILING AND VOTE COUNTING REQUIREMENTS FOR PRECINCT OFFICERS; AND AMENDING SECTIONS 13-10-211 AND 13-15-202, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-10-211, MCA, is amended to read:

"13-10-211. Declaration of intent for write-in candidates. (1) Except as provided in subsection (4), a person seeking to become a write-in candidate for an office in any election shall file a declaration of intent. The declaration of intent must be filed with the secretary of state or election administrator, depending on where a declaration of nomination for the desired office is required to be filed under 13-10-201, or with the school district clerk for a school district office. Except as provided in subsection (2), the declaration must be filed no later than 5 p.m. on the 15th day before the election and must contain:

(a) (i) the candidate's first and last names;

(ii) the candidate's initials, if any, used instead of a first name, or first and middle name, and the candidate's last name;

(iii) the candidate's nickname, if any, used instead of a first name, and the candidate's last name; and

HeinOnline -- 1999 vol. I 474 1999

(iv) a derivative or diminutive name, if any, used instead of a first name, and the candidate's last name;

(b) the candidate's mailing address;

(c) a statement declaring the candidate's intention to be a write-in candidate;

(d) the title of the office sought;

(e) the date of the election;

(f) the date of the declaration; and

(g) the candidate's signature.

(2) A declaration of intent may be filed after the deadline provided for in subsection (1) but no later than 5 p.m. on the day before the election if, less than 15 days before the election, a candidate for the office that the write-in candidate is seeking:

(a) dies;

(b) withdraws from the election; or

(c) is charged with a felony offense.

(3) The secretary of state shall notify each election administrator of the names of write-in candidates who have filed a declaration of intent with the secretary of state. Each election administrator and school district clerk shall notify the election judges in the county or district of the names of write-in candidates who have filed a declaration of intent.

(4) The requirements in subsection (1) do not apply to a write-in candidate seeking election:

~~(a) as a precinct officer in a primary election; or~~

~~(b)~~ to an office for which ~~no~~ *a* candidate has *not* filed a declaration or petition for nomination or a declaration of intent."

Section 2. Section 13-15-202, MCA, is amended to read:

"13-15-202. Counting votes cast — pollbook. (1) (a) When the procedures required by 13-15-201 are completed, the election judges shall count and determine the votes cast for each individual, except as provided in subsection (1)(b).

(b) The judges may not count or record write-in votes for candidates who have not filed a declaration of intent as provided in 13-10-211, except for write-in votes cast:

~~(i) for the office of precinct committeeman or committeewoman in a primary election;~~

~~(ii)~~*(i)* for an office for which ~~no~~ *a* candidate has *not* filed a declaration or petition for nomination or a declaration of intent; or

~~(iii)~~*(ii)* on a federal write-in absentee ballot as provided in 13-13-273.

(2) In counting, the ballots ~~shall~~ *must* be opened singly by one of the election judges and the contents read aloud to the other judges.

(3) A ballot or part of a ballot is void and may not be counted if the elector's choice cannot be determined. If part of a ballot is sufficiently plain to determine the elector's intention, the election judges shall count that part. Except as

HeinOnline -- 1999 vol. I 475 1999

provided in 13-10-211(4), a write-in vote may be counted only if the write-in vote identifies an individual by any of the designations filed pursuant to 13-10-211(1)(a).

(4) As the ballots are read, two judges ~~must~~ *shall* write on a tally sheet the name of every individual and the office voted for and keep tallies of the number of votes for each individual, except as provided in subsection (1)(b).

(5) The tally sheets ~~shall~~ *must* be compared and their correctness ascertained, and the judges shall immediately write in the pollbook:

(a) the names of all individuals who received votes;

(b) the offices for which they received votes;

(c) *the* total votes received by each individual as shown by the tally sheets.

(6) In making the count in precincts where voting machines are used, the votes cast by absentee ballot ~~shall~~ *must* be added to the votes cast on the voting machines.

(7) A ballot or vote rejected by the election judges may not be included in the count."

Approved March 19, 1999

CHAPTER NO. 130

[SB 296]

AN ACT GENERALLY REVISING THE COOPERATIVE MARKETING ACT; PROVIDING THAT AN OFFER OR SALE OF SECURITIES BY AN ASSOCIATION ORGANIZED UNDER THE COOPERATIVE MARKETING ACT IS AN EXEMPT TRANSACTION UNDER MONTANA SECURITIES LAWS; AND AMENDING SECTIONS 30-10-105, 35-17-103, 35-17-202, 35-17-203, 35-17-301, 35-17-302, 35-17-304, 35-17-312, 35-17-314, AND 35-17-315, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 30-10-105, MCA, is amended to read:

"30-10-105. Exempt transactions — rulemaking. Except as expressly provided in this section, 30-10-201 through 30-10-207 do not apply to the following transactions:

(1) a nonissuer isolated transaction, whether effected through a broker-dealer or not. A transaction is presumed to be isolated if it is one of not more than three transactions during the prior 12-month period.

(2) (a) a nonissuer distribution of an outstanding security by a broker-dealer registered pursuant to 30-10-201 if:

(i) quotations for the securities to be offered or sold (or the securities issuable upon exercise of any warrant or right to purchase or subscribe to the securities) are reported by the automated quotations system operated by the national association of securities dealers, inc.~~,~~ (NASDAQ), or by any other quotation system approved by the commissioner by rule; or

(ii) the security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year or within the 3 preceding fiscal years or if the issuer and any predecessors have been in existence for less than 3 years and there has been no default in the payment of principal, interest, or dividends on the security.

(b) The commissioner may by order deny or revoke the exemption specified in subsection (2)(a) with respect to a specific security. Upon the entry of an order, the commissioner shall promptly notify all registered broker-dealers that it has been entered and give the reasons for the order and shall notify them that within 15 days of the receipt of a written request, the matter will be set for hearing. If a hearing is not requested and is not ordered by the commissioner, the order remains in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination. An order under this subsection may not operate retroactively. A person may not be considered to have violated parts 1 through 3 of this chapter by reason of any offer or sale effected after the entry of an order under this subsection if the person sustains the burden of proof that the person did not know and in the exercise of reasonable care could not have known of the order.

(3) a nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy, but the commissioner may require that the customer acknowledge upon a specified form that the sale was unsolicited and that a signed copy of each form be preserved by the broker-dealer for a specified period;

(4) a transaction between the issuer or other person on whose behalf the offering is made and an underwriter or between underwriters;

(5) a transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, gnardian, or conservator in the performance of official duties;

(6) a transaction executed by a bona fide pledgee without any purpose of evading parts 1 through 3 of this chapter;

(7) an offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer or to a broker-dealer, whether the purchaser is acting for itself or in a fiduciary capacity;

(8) (a) a transaction pursuant to an offer made in this state directed by the offeror to not more than 10 persons (other than those designated in subsection (7)) during any period of 12 consecutive months~~,~~ if:

(i) the seller reasonably believes that all the buyers are purchasing for investment; and

(ii) a commission or other remuneration is not paid or given directly or indirectly for soliciting a prospective buyer~~; provided, however, that~~. *However*, a commission may be paid to a registered broker-dealer if the securities involved are registered with the United States securities and exchange commission under the federal Securities Act of 1933, as amended~~;~~.

HeinOnline -- 1999 vol. I 477 1999

(b) any transaction pursuant to an offer made in this state directed by the offeror to not more than 25 persons, other than those designated in subsection (7), during any period of 12 consecutive months if:

(i) the seller reasonably believes that all the buyers are purchasing for investment;

(ii) a commission or other remuneration is not paid or given directly or indirectly for soliciting any prospective buyer; ~~provided,~~ however, ~~that~~ a commission may he paid to a registered broker-dealer if the securities involved are registered with the United States securities and exchange commission under the federal Securities Act of 1933, as amended; and

(iii) the offeror applies for and ohtains the written approval of the commissioner prior to making any offers in this state and pays a filing fee that must accompany the application for approval. The commissioner may deny an application.

(c) For the purpose of the exemptions provided for in this subsection (8), an offer to sell is made in tbis state, whether or not the offeror or any of the offerees ~~is~~ *are* then present in this state, if the offer either originates from this state or is directed by the offeror to this state and received at tbe place to which it is directed (or at any post office in this state in the case of a mailed offer).

(9) an offer or sale of a preorganization certificate or subscription if:

(a) a commission or other remuneration is not paid or given directly or indirectly for soliciting a prospective subscriber;

(b) the number of subscribers does not exceed 25; and

(c) a payment is not made by a subscriber;

(10) a transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than 90 days of their issuance, if:

(a) a commission or other remuneration (other than a standby commission) is not paid or given directly or indirectly for soliciting any security holder in this state; or

(b) the issuer first files a notice specifying the terms of the offer and the commissioner does not by order disallow either subsection (10)(a) or the notice specifying the terms of the offer;

(11) an offer, but not a sale, of a security for which registration statements have been filed under both parts 1 through 3 of this chapter and the Securities Act of 1933 if a stop, refusal, denial, suspension, or revocation order is not in effect and a public proceeding or examination looking toward an order is not pending under either law;

(12) an offer, but not a sale, of a security for which a registration statement has been filed under parts 1 through 3 of this chapter and the commissioner does not disallow the offer in writing within 10 days of the filing;

(13) the issuance of a stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the distribution other than the surrender of a right to a cash dividend when the stockholder can elect to take a dividend in cash or stock;

HeinOnline -- 1999 vol. I 478 1999

(14) a transaction incident to a right of conversion or a statutory or judicially approved reclassification, recapitalization, reorganization, quasi-reorganization, stock split, reverse stock split, merger, consolidation, or sale of assets;

(15) a transaction in compliance with rules that the commissioner may adopt to serve the purposes of 30-10-102. The commissioner may require that 30-10-201 through 30-10-207 apply to any ~~or all~~ transactional exemptions adopted by rule.

(16) a transaction in the securities of a certified Montana capital company or a certified Montana small business investment capital company as defined in 90-8-104, provided that the company first files all disclosure documents, along with a consent to service of process, with the commissioner. The commissioner may not charge a fee for the filing.

(17) the sale of a commodity investment contract traded on a commodities exchange recognized by the commissioner at the time of sale;

(18) a transaction within the exclusive jurisdiction of the commodity futures trading commission as granted under the Commodity Exchange Act;

(19) a transaction that:

(a) involves the purchase of one or more precious metals;

(b) requires, and under which the purchaser receives within 7 calendar days after payment in geod funds of any portion of the purcbase price, physical delivery of the quantity of the precious metals purchased. For the purposes of this subsection, physical delivery is considered to have occurred if, within the 7-day period, the quantity of precious metals, whetber in specifically segregated or fungible bulk, purchased by the payment is delivered into the possession of a depository, other than the seller, that:

(i) (A) is a financial institution, meaning a bank, savings institution, or trust company organized under or supervised pursuant to the laws of the United States or of this state;

(B) is a depository the warehouse receipts of which are recognized for delivery purposes for any commodity on a contract market designated by the commodity futures trading commission; or

(C) is a storage facility licensed by the United States or any agency of the United States; and

(ii) issues, and the purchaser receives, a certificate, document of title, confirmation, or other instrument evidencing that the quantity of precious metals bas been delivered to the depository and is being and will continue to be held on the purchaser's behalf, free and clear of all liens and encumbrances other than:

(A) liens of the purchaser;

(B) tax liens;

(C) liens agreed to by the purchaser; or

(D) liens of the depository for fees and expenses that previously have been disclosed to the purchaser.

(c) requires the quantity of precious metals purchased and delivered into the possession of a depository, as provided in subsection (19)(b), to be physically located within Montana at all times after the 7-day delivery period provided in

HeinOnline -- 1999 vol. I 479 1999

subsection (19)(b), and the precious metals are in fact physically located within Montana at all times after that delivery period;

(20) a transaction involving a commodity investment contract solely between persons engaged in producing, processing, using commercially, or handling as merchants each commodity subject to the contract or any byproduct of the commodity;

(21) an offer or sale of a security to an employee of the issuer, pursuant to an employee stock ownership plan qualified under section 401 of the Internal Revenue Code; or

(22) (a) an offer or sale of securities by a cooperative association organized under the provisions of Title 35, chapter 15 *or 17*, or under the laws of another state that are substantially the same as the provisions of Title 35, chapter 15 *or 17*, if the offer and sale are only to members of the cooperative association or the purchase of the securities is necessary or incidental to establishing membership in the cooperative association;

(b) a cooperative organized under the laws of another state may not take advantage of the exemption created by this subsection (22) unless, not less than 10 days before the issuance or delivery of the securities, the cooperative has furnished the commissioner with a general written description of tbe transaction and any other information the commissioner may require by rule or otherwise. The commissioner shall promulgate rules establishing a list of states whose laws are considered substantially the same as Title 35, chapter 15 *or 17*, for the purposes of this subsection (22)."

Section 2. Section 35-17-103, MCA, is amended to read:

"35-17-103. Definitions and associations as nonprofit entities. (1) The term "agricultural products" ~~shall include~~ *includes* horticultural, viticultural, forestry, dairy, livestock, poultry, bee, and any farm products.

(2) The term "association" means any corporation organized under this chapter.

(3) The term "member" ~~shall include actual members of associations without capital stock and holders of common stock in associations organized with capital stock~~ *means a person who has been qualified and accepted for membership in an association*.

(4) The term "person" ~~shall include~~ *includes* individuals, firms, partnerships, corporations, and associations.

(5) Associations organized ~~hereunder shall be deemed~~ *under this chapter must be considered* nonprofit ~~inasmuch as~~ *because* they are not organized to make profits for themselves~~, as such,~~ or for their members~~, as such~~, but only for their members as producers."

Section 3. Section 35-17-202, MCA, is amended to read:

"35-17-202. Articles of incorporation — contents — filing — articles or copies as prima facie evidence. (1) Each association formed under this chapter ~~must~~ *shall* prepare and file articles of incorporation setting forth:

(a) the name of the association;

(b) the purposes for which it is formed;

(c) the place where its principal business will be transacted;

(d) the term for which it is to exist, which may be perpetual;

HeinOnline -- 1999 vol. I 480 1999

(e) the number of its directors or trustees~~, which shall not be less than 5 or more than 13,~~ and the names and residences of those who are appointed for the first 3 months and until their successors are elected and qualified;

(f) if organized without capital stock, whether the property rights and interest of each member ~~shall be~~ *are* equal or unequal, and if unequal, the articles ~~shall~~ *must* set forth the general rule or rules applicable to all members by which the property rights and interests, respectively, of each member ~~may and shall~~ *must* be determined and fixed. The association ~~shall have~~ *has* the power to admit new members who ~~shall~~ *must* be entitled to share in the property of the association with the old members, in accordance with ~~such~~ *the* general ~~rule or~~ rules~~.~~*;*

(g) the designation of classes of members, if more than one;

(h) the number and par value of shares of each authorized class of stock and, if more than one class is authorized:

(i) the designation, preferences, limitations, and relative rights of each class;

(ii) which classes of stock are membership stock;

(iii) as to each class of stock, the rate of dividend, if any, or a statement that the rate of dividend may be fixed by the board; and

(iv) any reservation of a right to acquire or recall any stock.

(2) In addition to provisions required in subsection (1), the articles of incorporation may also contain provisions not inconsistent with law regarding liability as set forth in 35-1-216.

(3) The articles must be subscribed by the incorporators and ~~shall~~ *must* be filed in accordance with the provisions of the general corporation law of this state, and when so filed, the articles of incorporation or certified copies ~~thereof shall~~ *must* be ~~received in all the courts of this state and other places~~ *accepted* as prima facie evidence of the facts contained ~~therein~~ *in the articles* and of the due incorporation of ~~such~~ *the* association."

Section 4. Section 35-17-203, MCA, is amended to read:

"35-17-203. Amendments to articles of incorporation. At any time after filing, the articles of incorporation may be amended. Any amendment of the articles of incorporation ~~shall~~ *must* be approved by ~~two-thirds~~ *a majority* of the directors and then adopted by vote of ~~not less than two-thirds~~ *a majority* of those ~~stockholders~~ *members* voting ~~thereon~~ at any regular meeting of the ~~stockholders~~ *association* or at a special meeting ~~of the stockholders~~ called for ~~that~~ *the* purpose *of amending the articles, unless the articles require approval by a larger number of directors or members.* A statement setting forth the amendment ~~shall~~ *must* be executed *and attested to* on behalf of the association by its ~~president or vice president and its corporate seal affixed thereto and attested by its secretary~~ *appropriate officers.* The statement ~~shall~~ *must* be filed in the office of the secretary of state who shall ~~thereupon~~ issue a certificate of amendment of the articles of incorporation. A certified copy of ~~such~~ *the* certificate *of amendment* ~~shall~~ *must* be filed in the office of the county clerk for the county in which the principal office of the association is located."

Section 5. Section 35-17-301, MCA, is amended to read:

"35-17-301. Who may be members. (1) Under the terms and conditions prescribed in its bylaws, an association may admit as members or issue ~~common~~

HeinOnline -- 1999 vol. I 481 1999

stock only to persons engaged in the production of the agricultural products to he handled hy or through the association, including the lessees and tenants of land used for the production of ~~such~~ *the* products and any lessors and landlords who receive as rent part of the crop raised on the leased premises.

(2) If a member of a nonstock association ~~be~~ *is* other than a natural person, ~~such~~ *that* member may be represented by any individual, associate, officer, or member ~~thereof duly~~ authorized in writing.

(3) One association organized ~~hereunder~~ *under this chapter* may become a member or stockholder of any other association or associations organized ~~hereunder~~ *under this chapter.*"

Section 6. Section 35-17-302, MCA, is amended to read:

"35-17-302. Stock — issuance — limitations on ownership and transfer — repurchase hy association. (1) When a member of an association established without capital stock has paid ~~his~~ *the member's* membership fee in full, ~~he shall~~ *the member must* receive a certificate of membership.

(2) (a) An association organized with capital stock may issue the amount of stock stated in its articles. The stock may be divided into two or more classes with the designations, preferences, limitations, and relative rights as stated in the articles, except that stock without par value may not be issued.

(b) The articles may require that members own one or more shares of membership stock. The membership stock may be issued or transferred only to a person eligible to become a member and only when that person satisfies the other requisites for membership. Unless restricted by the articles, stock other than membership stock may be issued or transferred to any person.

~~(2)~~*(3)* ~~No~~ *An* association ~~shall~~ *may not* issue stock to a member until it has been fully paid for. The promissory notes of the members may be accepted by the association as full or partial payment. The association shall hold the stock as security for the payment of the note, but ~~such~~ retention as security ~~shall~~ *does* not affect the members' rigbt to vote.

~~(3)~~*(4)* ~~No stockholder of a cooperative association shall own more than one twentieth of the issued common stock of the association, and an~~ *An* association, in its bylaws, may limit the amount of common stock ~~which~~ *that* one member may own ~~to any amount less than one twentieth of the issued common stock.~~

~~(4) The bylaws shall prohibit the transfer of the common stock of the association to persons not engaged in the production of the agricultural products handled by the association, and such restrictions must be printed upon every certificate of stock subject thereto.~~

~~(5) The association may at any time, except when the debt of the association exceeds 50% of the assets thereof, buy in or purchase its common stock at book value thereof as conclusively determined by the board of directors and pay for it in cash within 1 year thereafter.~~

(5) (a) Unless the articles provide otherwise, an association may acquire, recall, exchange, redeem, and reissue its own stock. Provisions in the articles and on the stock certificate may reserve to the association a prior right to acquire any stock offered for sale or the right to recall the stock of any stockholder, or both rights.

HeinOnline -- 1999 vol. I 482 1999

(b) The consideration paid by the association for recalled stock must be its par value and accrued unpaid dividends. However, if the book value of the stock is less than the par value, the consideration must be the book value.

(c) An association may set off obligations of a stockholder to the association.

(d) If the remaining assets of an association would be less than the aggregate amount payable to creditors and persons holding stock with preferential rights upon liquidation, the association may not acquire, recall, exchange, or redeem any stock for consideration other than stock or certificates of equity interest of equal or subordinatc rank.

(6) (a) If stock is acquired, recalled, exchanged, or redeemed by an association, the stock is restored to the status of authorized but unissued stock.

(b) Stockholders do not have a preemptive right to purchase additional stock."

Section 7. Section 35-17-304, MCA, is amended to read:

"35-17-304. ~~Withdrawal or expulsion~~ *Expulsion* of member. In case of the ~~withdrawal or~~ expulsion of a member, the board of directors shall equitably and conclusively appraise ~~his~~ *the member's* property interests in the association and shall fix the amount ~~thereof~~ *of the interest* in money, which ~~shall~~ *must* be paid to ~~him~~ *the member* within 1 year after ~~such~~ expulsion ~~or withdrawal~~."

Seetion 8. Section 35-17-312, MCA, is amended to read:

"35-17-312. Officers — election — bank as treasurer. *(1)* The directors shall elect from their number a president and one or more ~~vice presidents~~ *vice presidents*. They shall also elect a secretary and treasurer who need not be directors, and they may combine the two latter offices and designate the comhined office as secretary-treasurer. The treasurer may he a bank or any depositary ~~and as such shall~~, *in which case it may* not be considered ~~as~~ an officer but ~~as~~ *instead* a function of the board of directors~~. In such case~~, *and* the secretary shall perform the usual accounting duties of the treasurer, ~~excepting~~ *except* that the funds ~~shall~~ *must* be deposited only as authorized hy the board of directors.

(2) (a) If the bylaws provide, the directors may also elect from their number a presiding officer and one or more vice presiding officers, in which case the president and vice presidents need not be directors or stockholders.

(b) Any other officer may be chosen as provided in the bylaws."

Section 9. Section 35-17-314, MCA, is amended to read:

"35-17-314. Referendum to membership of matters passed by board. Upon demand of ~~40%~~ *a majority* of the entire board of directors, any matter that has been approved or passed by tbe board must be referred to the entire membership or the stockholders for *a* decision at the next special or regular meeting. However, a special meeting may be called for the purpose."

Seetion 10. Section 35-17-315, MCA, is amended to read:

"35-17-315. Creation of capital reserve — distribution of net earnings. *At least once annually, the directors shall determine and distribute net proceeds as follows:*

(1) *(a)* An association organized under this chapter may set aside ~~such~~ part of its net earnings as its board of directors considers advisable for the purpose of creating or maintaining a capital reserve. In addition to ~~such~~ *the* capital reserve, the directors may set aside a sum not to exceed 5% of the annual net earnings of the association, which ~~shall~~ *must* be used for the purposes of promoting and

HeinOnline -- 1999 vol. I 483 1999

teaching cooperative organization and principles. The directors may establish and accumulate reserves for buildings, machinery and equipment, depreciation, losses, and other proper purposes.

(b) A share of the net proceeds may be set aside for or paid to employees. This amount for all purposes, except the computation of net proceeds, must be considered an expense of the association.

(c) In an association with capital stock, a dividend may be paid on the capital stock as authorized in the articles. A dividend may not be paid if the association's capital is impaired or the payment of the dividend would result in an impairment of capital.

(2) Net earnings in excess of any ~~such~~ deductions *in subsection (1)* ~~shall~~ *must* be distributed annually to patrons on the basis of patronage. An association subject to the provisions of this chapter may distribute net earnings in *the following or a combination of the following:* cash, credits, stock, revolving fund certificates, other certificates, or securities of the association or of other associations~~, or in any combination thereof.~~"

Approved March 19, 1999

CHAPTER NO. 131

[SB 396]

AN ACT REVISING THE STARTING POINT OF THE CREDIT SCALE FOR COMPUTING PREMIUM RATES FOR THE CONSTRUCTION INDUSTRY; AMENDING SECTION 39-71-2211, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-2211, MCA, is amended to read:

"**39-71-2211. Premium rates for construction industry — filing required.** (1) With respect to each classification of risk in the construction industry under plan No. 2, the advisory organization designated under 33-16-1023 shall file with the commissioner of insurance a method of computing premiums that does not impose a higher insurance premium solely because of an employer's higher rate of wages paid.

(2) The commissioner shall accept a filing under subsection (1) that includes a reasonable method of recognizing differences in rates of pay. This method must use a credit scale with the starting point set at ~~one and one-half times~~ *1.168 times* the Montana average weekly wage as reported by the department.

(3) The advisory organization shall file a revenue neutral plan for new and renewed policies for prompt and orderly transition to a method of computing premiums that is in compliance with the requirements of this section.

(4) The state compensation insurance fund, plan No. 3, shall adopt the plan filed by the designated advisory organization or adopt a credit scale plan that meets the requirements of this section."

Section 2. Effective date. [This act] is effective July 1, 1999, and applies to premium rates computed for the construction industry beginning July 1, 2000.

Approved March 19, 1999

HeinOnline -- 1999 vol. I 484 1999

CHAPTER NO. 132

[SB 325]

AN ACT AUTHORIZING THE TRUSTEES OF A SCHOOL DISTRICT TO DECLARE A TRUSTEE CANDIDATE ELECTED BY ACCLAMATION WHEN THE NUMBER OF CANDIDATES FILING FOR A POSITION OR FILING A DECLARATION OF INTENT AS A WRITE-IN CANDIDATE IS EQUAL TO THE NUMBER OF POSITIONS TO BE ELECTED AND WHEN NO OTHER REASON FOR THE ELECTION EXISTS; AMENDING SECTIONS 20-3-306, 20-3-307, AND 20-20-416, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Election by acclamation. (1) If the number of candidates filing for a position or filing a declaration of intent to be a write-in candidate under 13-10-211 is equal to the number of positions to be elected and there is no other reason for the election, the trustees may give notice that an election will not be held. Notice must be given no later than 14 days before the election.

(2) If an election is not held, the trustees shall declare elected by acclamation the candidate who filed for the position or who filed a declaration of intent to be a write-in candidate and issue a certificate of election to the candidate.

Section 2. Section 20-3-306, MCA, is amended to read:

"20-3-306. Conduct of election. (1) The trustees of each district shall call a trustee election on the regular school election day of each school fiscal year under the provisions of 20-20-201, except as provided in 20-3-344 *and [section 1]*. The trustees shall call and conduct the trustee election in the manner prescribed in this title for school elections and Title 13. Any elector qualified to vote under the provisions of 20-20-301 may vote at a trustee election.

(2) The trustee election ballots ~~shall~~ *must* be substantially in the following form:

OFFICIAL BALLOT
SCHOOL TRUSTEE ELECTION

INSTRUCTIONS TO VOTERS: Make an X or similar mark in the vacant square before the name of the candidate for whom you wish to vote.

Vote for (indicate number to be elected) for a 3-year term:

☐ (List the names of the candidates for a 3-year term with a vacant square in front of each name.)

Vote for (indicate number to be elected) for a 2-year term:

☐ (List the names of the candidates for a 2-year term with a vacant square in front of each name.)

Vote for (indicate number to be elected) for a 1-year term:

☐ (List the names of the candidates for a 1-year term with a vacant square in front of each name.)"

Section 3. Section 20-3-307, MCA, is amended to read:

"20-3-307. Qualification and oath. (1) ~~Any~~ *A* person who receives a certificate of election as a trustee under the provisions of 20-20-416 ~~shall~~ *or*

[section 1] may not assume the trustee position until ~~he~~ *the person* has qualified. ~~Such~~ *The* person shall qualify by completing and filing an oath of office with the county superintendent not more than 15 days after the receipt of the certificate of election. After a person has qualified for a trustee position, ~~he shall hold such~~ *the person holds the* position ~~for the term of the position and~~ until ~~his~~ *a* successor has been elected or appointed and has been qualified.

(2) If the elected person does not qualify in accordance with this requirement, a person ~~shall~~ *must* be appointed in the manner provided by 20-3-309 and shall serve until the next regular election."

Section 4. Section 20-20-416, MCA, is amended to read:

"20-20-416. Certificate of election. After the canvass of the total votes cast, the trustees shall issue a certificate of election. In the case of a trustee election, *either by vote or by acclamation,* the certificate ~~shall~~ *must* be issued to the elected trustee and the county superintendent designating the term of the trustee position to which ~~he~~ *the trustee* has been elected. In the case of an election on a proposition, the trustees shall issue a certificate specifying the outcome of the election. The certificate ~~shall~~ *must* be issued to the official or public body ~~which~~ *that* ordered the election within 15 days after the election. When the election has been ordered by resolution of the trustees, the canvassed results ~~shall~~ *must* be published immediately in a newspaper that will give notice to the largest number of people of the district."

Section 5. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 20, chapter 3, part 3, and the provisions of Title 20, chapter 3, part 3, apply to [section 1].

Section 6. Effective date. [This act] is effective on passage and approval.

Approved March 23, 1999

CHAPTER NO. 133

[HB 70]

AN ACT PROVIDING THAT ADULT FOSTER CARE FACILITIES MAY BE LICENSED TO PROVIDE RESIDENTIAL SERVICES TO CERTAIN PERSONS, INCLUDING THOSE IN THE STATE-FUNDED DEVELOPMENTAL DISABILITIES PROGRAM; AMENDING THE DEFINITION OF "ADULT FOSTER CARE HOME"; AMENDING THE PROVISIONS FOR CERTIFICATION OF APPROPRIATENESS FOR RESIDENTIAL PLACEMENT; AMENDING SECTIONS 50-5-101 AND 50-5-216, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-5-101, MCA, is amended to read:

"50-5-101. Definitions. As used in parts 1 through 4 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accreditation" means a desiguation of approval.

(2) "Adult day-care center" means a facility, freestanding or connected to another health care facility, that provides adults, on a regularly scheduled basis,

HeinOnline -- 1999 vol. I 486 1999

with the care necessary to meet the needs of daily living but that does not provide overnight care.

(3) (a) "Adult foster care home" means a private home *or other facility* that offers, *except as provided in 50-5-216, only* light personal care or custodial care to four or fewer disabled adults or aged persons who are not related ~~by blood or marriage~~ to the owner *or manager* of the home *by blood, marriage, or adoption or who are not under the full guardianship of the owner or manager.*

(b) As used in this subsection (3), the following definitions apply:

(i) "Aged person" means a person as defined by department rule as aged.

(ii) "Custodial care" means providing a sheltered, family-type setting for an aged person or disabled adult so as to provide for the person's basic needs of food and shelter and to ensure that a specific person is available to meet those basic needs.

(iii) "Disabled adult" means a person who is 18 years of age or older and who is defined by department rule as disabled.

(iv) "Light personal care" means assisting the aged person or disabled adult in accomplishing such personal hygiene tasks as bathing, dressing, hair grooming, and supervision of prescriptive medicine administration. The term does not include the administration of prescriptive medications.

(4) "Affected person" means an applicant for a certificate of need, a health care facility located in the geographic area affected by the application, an agency that establishes rates for health care facilities, or a third-party payer who reimburses health care facilities in the area affected by the proposal.

(5) "Ambulatery surgical facility" means a facility that provides surgical treatment to patients not requiring hospitalization. This type of facility may include observation beds for patient recovery from surgery or other treatment.

(6) "Capital expenditure" means:

(a) an expenditure made by or on behalf of a health care facility that, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance; or

(b) a lease, donation, or comparable arrangement that would be a capital expenditure if money or any other property of value had changed hands.

(7) "Certificate of need" means a written authorization by the department for a person to proceed with a proposal subject to 50-5-301.

(8) "Chemical dependency facility" means a facility whose function is the treatment, rehabilitation, and prevention of the use of any chemical substance, including alcohol, that creates behavioral or health problems and endangers the health, interpersonal relationships, or economic function of an individual or the public healtb, welfare, or safety.

(9) "Clinical laboratory" means a facility for the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of a disease or assessment of a medical condition.

(10) "College of American pathologists" means the organization nationally recognized by that name tbat surveys clinical laboratories upon their requests

HeinOnline -- 1999 vol. I 487 1999

and accredits clinical laboratories that it finds meet its standards and requirements.

(11) "Commission on accreditation of rehabilitation facilities" means the organization nationally recognized by that name that surveys rehabilitation facilities upon tbeir requests and grants accreditation status to a rehabilitation facility that it finds meets its standards and requirements.

(12) "Comparative review" means a joint review of two or more certificate of need applications that are determined by the department to be competitive in that the granting of a certificate of need to one of the applicants would substantially prejudice tbe department's review of the other applications.

(13) "Construction" means the pbysical erection of a bealth care facility and any stage of the physical erection, including groundbreaking, or remodeling, replacement, or renovation of an existing health care facility.

(14) "Department" means the department of public health and human services provided for in 2-15-2201.

(15) "End-stage renal dialysis facility" means a facility that specializes in the treatment of kidney diseases and includes freestanding hemodialysis units.

(16) "Federal acts" means federal statutes for the construction of health care facilities.

(17) "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision of the state, or an agency of a political subdivision.

(18) "Health care facility" or "facility" means all or a portion of an institution, building, or agency, private or public, excluding federal facilities, whether organized for profit or not, that is used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any individual. The term does not include offices of private pbysicians or dentists. The term includes ambulatory surgical facilities, chemical dependency facilities, end-stage renal dialysis facilities, health maintenance organizations, home health agencies, home infusion tberapy agencies, hospices, hospitals, infirmaries, long-term care facilities, medical assistance facilities, mental health centers, outpatient facilities, rehabilitation facilities, residential care facilities, and residential treatment facilities.

(19) "Health maintenance organization" means a public or private organization that provides or arranges for bealth care services to enrollees on a prepaid or other financial basis, either directly through provider employees or through contractual or other arrangements with a provider or group of providers.

(20) "Home health agency" means a public agency or private organization or subdivision of the agency or organization that is engaged in providing home health services to individuals in the places where tbey live. Home health services must include the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.

(21) "Home infusion therapy agency" means a health care facility that provides home infusion therapy services.

(22) "Home infusion therapy services" means the preparation, administration, or furnishing of parenteral medications or parenteral or enteral nutritional services to an individual in that individual's residence. The services

include an educational component for the patient, the patient's caregiver, or the patient's family member.

(23) "Hospice" means a coordinated program of home and inpatient health care that provides or coordinates palliative and supportive care to meet the needs of a terminally ill patient and the patient's family arising out of physical, psychological, spiritual, social, and economic stresses experienced during the final stages of illness and dying and that includes formal bereavement programs as an essential component. The term includes:

(a) an inpatient hospice facility, which is a facility managed directly by a medicare-certified hospice that meets all medicare certification regulations for freestanding inpatient hospice facilities; and

(b) a residential hospice facility, which is a facility managed directly by a licensed hospice program that can house three or more hospice patients.

(24) "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick individuals. Services provided may or may not include obstetrical care, emergency care, or any other service allowed by state licensing authority. A hospital has an organized medical staff that is on call and available within 20 minutes, 24 hours per day, 7 days per week, and provides 24-hour nursing care by licensed registered nurses. The term includes hospitals specializing in providing health services for psychiatric, mentally retarded, and tubercular patients.

(25) "Infirmary" means a facility located in a university, college, government institution, or industry for the treatment of the sick or injured, with the following subdefinitions:

(a) an "infirmary—A" provides outpatient and inpatient care;

(b) an "infirmary—B" provides outpatient care only.

(26) "Intermediate developmental disability care" means the provision of nursing care services, health-related services, and social services for persons with developmental disabilities, as defined in 53-20-102, or for individuals with related problems.

(27) "Intermediate nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.

(28) "Joint commission on accreditation of healthcare organizations" means the organization nationally recognized by that name that surveys health care facilities upon their requests and grants accreditation status to a health care facility that it finds meets its standards and requirements.

(29) (a) "Long-term care facility" means a facility or part of a facility that provides skilled nursing care, residential care, intermediate nursing care, or intermediate developmental disability care to a total of two or more individuals or that provides personal care.

(b) The term does not include community homes for persons with developmental disabilities, licensed under 53-20-305; community homes for persons with severe disabilities, licensed under 52-4-203; youth care facilities, licensed under 41-3-1142; hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or individuals who

HeinOnline -- 1999 vol. I 489 1999

do not require institutional health care; or juvenile and adult correctional facilities operating under the authority of the department of corrections.

(30) "Medical assistance facility" means a facility that meets both of the following:

(a) provides inpatient care to ill or injured individuals before their transportation to a hospital or that provides inpatient medical care to individuals needing that care for a period of no longer than 96 hours unless a longer period is required because transfer to a hospital is precluded because of inclement weather or emergency conditions. The department or its designee may, upon request, waive the 96-hour restriction on a case-by-case basis;

(b) either is located in a county with fewer than six residents per square mile or is located more than 35 road miles from the nearest hospital.

(31) "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill patients, the rehabilitation of mentally ill individuals, or any combination of these services.

(32) "Nonprofit health care facility" means a health care facility owned or operated by one or more nonprofit corporations or associations.

(33) "Observation bed" means a bed occupied by a patient recovering from surgery or other treatment.

(34) "Offer" means the representation by a health care facility that it can provide specific health services.

(35) "Outpatient facility" means a facility, located in or apart from a hospital, that provides, under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients in need of medical, surgical, or mental care. An outpatient facility may have observation beds. An ambulatory surgical facility is also an outpatient facility.

(36) "Patient" means an individual obtaining services, including skilled nursing care, from a health care facility.

(37) "Person" means an individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

(38) "Personal care" means the provision of services and care for residents who need some assistance in performing the activities of daily living.

(39) "Personal-care facility" means a facility in which personal care is provided for residents in either a category A facility or a category B facility as provided in 50-5-227.

(40) "Rehabilitation facility" means a facility that is operated for the primary purpose of assisting in the rehabilitation of disabled individuals by providing comprehensive medical evaluations and services, psychological and social services, or vocational evaluation and training or any combination of these services and in which the major portion of the services is furnished within the facility.

(41) "Resident" means an individual who is in a long-term care facility or in a residential care facility.

HeinOnline -- 1999 vol. I 490 1999

(42) "Residential care facility" means an adult day-care center, an adult foster care home, a personal-care facility, or a retirement home.

(43) "Residential psychiatric care" means active psychiatric treatment provided in a residential treatment facility to psychiatrically impaired individuals with persistent patterns of emotional, psychological, or behavioral dysfunction of such severity as to require 24-hour supervised care to adequately treat or remedy the individual's condition. Residential psychiatric care must be individualized and designed to achieve the patient's discharge to less restrictive levels of care at the earliest possible time.

(44) "Residential treatment facility" means a facility operated for the primary purpose of providing residential psychiatric care to individuals under 21 years of age.

(45) "Retirement home" means a building or buildings in which separate living accommodations are rented or leased to individuals who use those accommodations as their primary residence.

(46) "Skilled nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a 24-hour basis.

(47) "State health care facilities plan" means the plan prepared by the department to project the need for health care facilities within Montana and approved by the gevernor and a statewide health coordinating council appointed by the director of the department."

Section 2. Section 50-5-216, MCA, is amended to read:

"50-5-216. Limitation on care provided in adult foster care home. (1) Except as provided in this section, the types of care offered by adult foster care homes are limited to light personal care or custodial care and may not include skilled nursing care.

(2) An adult foster care home may be licensed to provide care for *an adult receiving state-funded services through the developmental disabilities program of the department or for* an adult who resided in the home ~~for at least 1 year~~ before reaching 18 years of age, even though the adult is:

(a) in need of skilled nursing care;

(b) in need of medical, physical, or chemical restraint;

(c) nonambulatory or bedridden;

(d) incontinent to the extent that bowel or bladder control is absent; or

(e) unable to self-administer medications.

(3) An adult foster care home that applies for a license under subsection (2) ~~must have a signed statement from a physician agreeing that the care needed by the adult may be provided in the home~~ *shall provide the department with a copy of the statement required in subsection (4).*

(4) A resident of an adult foster care home licensed under subsection (2) must have a *certification in the form of a* signed statement, renewed on an annual basis, from a physician, a physician assistant-certified, a nurse practitioner, or a registered nurse, whose work is unrelated to the operation of the home and who:

HeinOnline -- 1999 vol. I 491 1999

~~(a)~~ *has* actually visited the home within the year covered by the statement~~;~~ *and certifies that:*

~~(b) has certified that the particular needs of the resident can be adequately met in the home~~

(a) the services available to the resident in the home or in the community, or services that may be brought into the home from the community, including nursing services or therapies, are appropriate for meeting the health care or other needs of the resident; and

~~(c) has certified that there has been no significant change in health care status that would require another level of care~~

(b) the health care status of the resident does not necessitate placing the resident in a more intensive residential service setting.

(5) As used in this section, "skilled nursing care" means 24-hour care supervised by a registered nurse or a licensed practical nurse under the orders of an attending physician."

Section 3. Effective date. [This act] is effective July 1, 1999.

Approved March 23, 1999

CHAPTER NO. 134

[HB 156]

AN ACT REQUIRING INSURERS, HEALTH SERVICE CORPORATIONS, AND HEALTH MAINTENANCE ORGANIZATIONS THAT LIMIT HEALTH CARE SERVICE PAYMENTS BASED ON STANDARDS DESCRIBED AS USUAL AND CUSTOMARY, REASONABLE AND CUSTOMARY, PREVAILING FEE, ALLOWABLE CHARGES, A RELATIVE VALUE SCHEDULE, OR OTHER COMPARABLE TERMS TO INCLUDE IN THE POLICY, CERTIFICATE, MEMBERSHIP CONTRACT, OR SUBSCRIBER CONTRACT AN EXPLANATION OF HOW THE CHARGES ARE DETERMINED; AND AMENDING SECTION 33-15-308, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-15-308, MCA, is amended to read:

"33-15-308. Explanation of charges. ~~A disability~~ *An* insurer, health service corporation, or health maintenance organization that issues policies, certificates, ~~or~~ *membership* contracts, *or subscriber contracts* ~~that issues policies, certificates, or contracts~~ for delivery in this state~~, or that renews, extends, or modifies policies, certificates, or contracts on or after October 1, 1995, shall include in the disability policies, certificates, or contracts definitions for terms that limit~~ *on or after January 1, 2000, and that limits* payment of health care services based on standards described as usual and customary, reasonable and customary, prevailing fee, allowable charges, ~~or~~ a relative value schedule~~.~~*, or other comparable terms shall include, displayed in the schedule page or elsewhere in the policy, certificate, membership contract, or subscriber contract:*

(1) a definition of the term or terms and an explanation of how the limitation of payment based on the term or terms is derived;

(2) if the standard of the term or terms is derived by the use of a database, a description of the database reasonably calculated to inform the insured or certificate holder of the method used to define the geographic or demographic area from which the data used to determine the term or terms is derived; and

(3) ~~These definitions must inform~~ *a statement informing* the insured that the insured's health care provider may charge more than the limits established by the defined terms and that ~~such~~ *the* additional charges may not be covered by the policy, certificate, ~~or~~ *membership* contract, *or subscriber contract*."

Approved March 23, 1999

CHAPTER NO. 135

[HB 190]

AN ACT ALLOWING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO ISSUE DAY-CARE LICENSES AND REGISTRATION CERTIFICATES THAT REMAIN IN EFFECT FOR UP TO 3 YEARS; AND AMENDING SECTION 52-2-721, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 52-2-721, MCA, is amended to read:

"**52-2-721. Licenses required — registration required — term of license or registration certificate — no fee charged.** (1) ~~No~~ *A* person, group of persons, or corporation ~~shall~~ *may not*:

(a) establish or maintain a day-care center for children unless licensed to do so by the department;

(b) operate a family day-care home or group day-care home without first procuring a family day-care or group day-care registration certificate from the department.

(2) The license and registration certificate ~~shall set forth~~ *must contain* the ages and numbers of children for whom day care may be provided.

(3) The applicant's own children must be included in the manner provided for in department regulations in the total number of children to be cared for under the license or registration certificate.

(4) ~~Licenses or registration certificates shall be issued for periods not to exceed 1 year.~~ The department:

(a) may issue a license or registration certificate that remains in effect for a period not to exceed 3 years; and

(b) may not charge a fee to issue a license or registration certificate.

(5) A 3-year license may be issued only to a provider who has not received notice of any deficiencies on the licensing criteria and implementing guidelines that are provided in department rule."

Approved March 23, 1999

HeinOnline -- 1999 vol. I 493 1999

CHAPTER NO. 136

[HB 210]

AN ACT ALLOWING INCLUSION OF CLASS EIGHT PROPERTY IN THE DEBT LIMIT FOR VARIOUS CULTURAL, SOCIAL, AND RECREATIONAL PURPOSES; AMENDING SECTION 7-16-4104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-16-4104, MCA, is amended to read:

"7-16-4104. Authorization for municipal indebtedness for various cultural, social, and recreational purposes. (1) A city or town council or commission may contract an indebtedness on behalf of the city or town, upon the credit of the city or town, by borrowing money or issuing bonds:

(a) for the purpose of purchasing and improving lands for public parks and grounds;

(b) for procuring by purchase, construction, or otherwise *a* swimming pool ~~facilities~~ *facility*, athletic ~~fields~~ *field*, skating ~~rinks~~ *rink*, ~~playgrounds~~ *playground*, ~~museums~~ *museum*, ~~a~~ golf course, ~~a~~ site and building for a civic center, ~~a~~ youth center, or combination of these facilities; and

(c) for furnishing, equipping, repairing, or rehabilitating a swimming pool facility, athletic field, skating rink, playground, museum, golf course, civic center, or youth center.

(2) The total amount of indebtedness authorized to be contracted in any form, including the then-existing indebtedness, may not at any time exceed 16.5% of the taxable value of the taxable property of the city or town as ascertained by the last assessment for state and county taxes previous to the incurring of the indebtedness *plus, for general obligation bonds to be issued during fiscal year 1998, an additional 22% of the taxable value of class eight property within the county for tax year 1995 and, for general obligation bonds to be issued during fiscal years 1999 through 2008, an additional 33% of the taxable value of class eight property within the city for tax year 1995, in each case of class eight property, multiplied by 16.5%.* Money may not be borrowed for any purpose on bonds issued for the purchase of lands and improving the land until the proposition has been submitted to the vote of the qualified electors of the city or town and a majority vote is cast in favor of the proposition."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 23, 1999

CHAPTER NO. 137

[HB 331]

AN ACT AUTHORIZING LOCAL BOARDS OF HEALTH TO ADOPT AND ENFORCE INSTITUTIONAL CONTROLS AT FEDERAL SUPERFUND SITES AND AT SITES REGULATED UNDER THE MONTANA COMPREHENSIVE ENVIRONMENTAL CLEANUP AND RESPONSIBILITY ACT; AMENDING SECTIONS 50-2-101 AND 50-2-116, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

HeinOnline -- 1999 vol. I 494 1999

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-2-101, MCA, is amended to read:

"50-2-101. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Communicable disease" means a disease designated as communicable by the department.

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

(3) "Institutional control" means a legal or regulatory mechanism designed to protect public health and safety or the environment that:

(a) limits access to or limits or conditions the use of environmentally contaminated property or media;

(b) provides for the protection or preservation of environmental cleanup measures; or

(c) informs the public that property is or may be environmentally impaired or that there are limitations on the access to or use of environmentally contaminated properties or media.

~~(3)~~*(4)* "Local board" means a county, city, city-county, or district board of health.

~~(4)~~*(5)* "Local health officer" means a county, city, city-county, or district health officer appointed by the local board.

~~(5)~~*(6)* "Physician" means a physician legally authorized to practice medicine in this state."

Section 2. Section 50-2-116, MCA, is amended to read:

"50-2-116. Powers and duties of local boards. (1) Local boards shall:

(a) appoint a local health officer who is a physician or a person with a master's degree in public health or the equivalent and with appropriate experience, as determined by the department, and shall fix the health officer's salary;

(b) elect a presiding officer and other necessary officers;

(c) employ necessary qualified staff;

(d) adopt bylaws to govern meetings;

(e) hold regular meetings quarterly and hold special meetings as necessary;

(f) supervise destruction and removal of all sources of filth that cause disease;

(g) guard against the introduction of communicable disease;

(h) supervise inspections of public establishments for sanitary conditions;

(i) subject to the provisions of 50-2-130, adopt necessary regulations that are not less stringent than state standards for the control and disposal of sewage from private and public buildings that is not regulated by Title 75, chapter 6, or Title 76, chapter 4. The regulations must describe standards for granting variances from the minimum requirements that are identical to standards promulgated by the board of environmental review and must provide for appeal of variance decisions to the department as required by 75-5-305.

(2) Local boards may:

(a) quarantine persons who have communicable diseases;

HeinOnline -- 1999 vol. I 495 1999

(b) require isolation of persons or things that are infected with communicable diseases;

(c) furnish treatment for persons who have communicable diseases;

(d) prohibit the use of places that are infected with communicable diseases;

(e) require and provide means for disinfecting places that are infected with communicable diseases;

(f) accept and spend funds received from a federal agency, the state, a school district, or other persons;

(g) contract with another local board for all or a part of local health services;

(h) reimburse local health officers for necessary expenses incurred in official duties;

(i) abate nuisances affecting public health and safety or bring action necessary to restrain the violation of public health laws or rules;

(j) adopt necessary fees to administer regulations for the control and disposal of sewage from private and public buildings. The fees must be deposited with the county treasurer.

(k) adopt rules that do not conflict with rules adopted by the department:

(i) for the control of communicable diseases;

(ii) for the removal of filth that migbt cause disease or adversely affect public health;

(iii) subject to the provisions of 50-2-130, on sanitation in public buildings that affects public health;

(iv) for heating, ventilation, water supply, and waste disposal in public accommodations tbat might endanger human lives;

(v) subject to the provisions of 50-2-130, for the maintenance of sewage treatment systems that do not discharge an effluent directly into state waters and that are not required to have an operating permit as required by rules adopted under 75-5-401; and

(vi) for the regulation, as necessary, of the practice of tattooing, wbich may include registering tattoo artists, inspecting tattoo establishments, adopting fees, and also adopting sanitation standards that are not less stringent than standards adopted by the department pursuant te 50-1-202. For the purposes of this subsection, "tattoo" means making permanent marks on the skin by puncturing the skin and inserting indelible colors.

(l) adopt regulations for the establishment of institutional controls that have been selected or approved by the:

(i) United States environmental protection agency as part of a remedy for a facility under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq.; or

(ii) department of environmental quality as part of a remedy for a facility under the Montana Comprehensive Environmental Cleanup and Responsibility Act, Title 75, chapter 10, part 7."

Section 3. Effeetive date. [This act] is effective on passage and approval.

Approved March 23, 1999

HeinOnline -- 1999 vol. I 496 1999

CHAPTER NO. 138

[HB 373]

AN ACT CLARIFYING HERD DISTRICT LAW BY ESTABLISHING A PETITION PROCESS FOR ANNEXING CONTIGUOUS PROPERTIES INTO AN EXISTING HERD DISTRICT; AND AMENDING SECTION 81-4-301, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 81-4-301, MCA, is amended to read:

"81-4-301. Herd districts — creation, size, and location. (1) Herd districts may be created in any county in the state of Montana upon petition of owners or possessors of 55% of the land in ~~such~~ *the* district and providing *that* 25% or more of the land in ~~such~~ *the* district is in actual cultivation or being used for residential purposes. ~~Such~~ *Herd* districts must contain 12 square miles or more, lying not less than 1 mile in width, outside of the incorporated cities, except that berd districts may be created containing not less tban 6 or more than 54 square miles, lying not less than 2 miles in width, when ~~such~~ *the* territory joins and is contiguous with the boundaries of a city having a population of 10,000 or more and ~~such~~ *the* territory ~~so~~ to be created in a herd district has a suburban population of not less than 200 people.

(2) In formation of ~~such~~ a *herd* district the entire bolding of any owner or lessee must be included unless ~~such~~ *the* owner or lessee consents that less than ~~his~~ *the owner or lessee's* entire contiguous holdings be included in the petition.

(3) ~~Such~~ *The* petition ~~shall~~ *must* designate the months of the year when the berd district is effective, and upon presentation and filing of ~~such~~ *the* potition, properly signed, giving the outside boundaries and description of the proposed district and the post-office address of the *petition* signers ~~thereto~~, with the clerk and recorder in the county in which the ~~said~~ district is being created, the county commissioners of ~~such~~ *that* county, upon receipt ~~thereof~~ *of the petition*, shall set a date for hearing protests and verifying tbe *petition* signatures ~~thereto~~ and shall give not less than 20 days' notice of the ~~same~~ *hearing* by three publications in a newspapor of general circulation in the county of the proposed district. At the hearing held pursuant to ~~such~~ *the* notices, the county commissioners shall examine the petition and sball cause a map to be made in order to determine tbe shape and regularity of the boundaries of the proposed district. The commissioners may then establish the district, but ~~such~~ *the* district sball be established only in ~~such~~ *a* manner tbat the district will be reasonably regnlar and symmetrical in sbape or practicable in relation to the geograpbical features of ~~such~~ *the* district. It is not required tbat tbe boundaries of ~~any~~ *a* district follow section lines to meet the requirement of reasonably regnlar and symmetrical boundaries.

(4) Sbould it appear to ~~such~~ *the* county commissioners after ~~such~~ *the* hearing tbat tbe siguatures attached to ~~such~~ *the* potition were genuine, tbey shall immediately declare ~~such~~ *the* berd district created and established~~; after which~~. *After making the declaration,* the county commissioners ~~must~~ *shall* give notice by four weekly publications in ~~some~~ *a* newspaper nearest the district of the creation of ~~such~~ *the* ~~districts~~ *district*, also stating tbe poriod ~~such~~ *that the* ~~districts~~ *district* will be in effect. ~~Such districts shall~~ *A district may* not be in effect until 30 days have expired after tbe order.

(5) ~~Upon petition of any owner or possessor of lands lying contiguous and adjoining any herd district theretofore created and upon like hearing and notice~~

HeinOnline -- 1999 vol. I 497 1999

~~as hereinabove provided for, such lands shall be included in said herd district and become a part thereof. Should~~ *If* the signature of lessee ~~appear~~ *appears* on the petition creating or abolishing any herd district, the owner or owners of ~~said~~ *the* land may appear either in person or agent and enter their protest and the board of county commissioners shall remove the name of the lessee from ~~said~~ *the* petition, and ~~no~~ *a* person ~~shall be permitted to~~ *may not* withdraw ~~his~~ *the person's* name after the hour set for hearing ~~same~~ *the protest.*"

Section 2. Annexation into existing herd district. (1) Owners or possessors of land that is contiguous to a herd district may petition to have their property annexed to that district. The petition must be properly signed by all affected owners or possessors of land and must include the post-office address of all petition signers. The petition must state the outside boundaries and a description of the property to be annexed to the existing district. When the petition is filed with the clerk and recorder in the county in which the existing district lies, the county commissioners of that county shall set a date for hearing protests and verifying petition signatures. The county commissioners shall provide notice of the hearing by publishing the hearing date and a list of the properties proposed to be annexed, at least three times in a newspaper of general circulation in the county, not less than 20 days prior to the hearing date.

(2) At the hearing held pursuant to subsection (1), the county commissioners shall examine the petition and have a map drawn up in order to determine the shape and regularity of the boundaries of the property proposed for annexation. If the county commissioners determine that the boundaries are reasonably regular and symmetrical in shape in relation to the geographical features of the properties proposed for annexation, the county commissioners may declare that those properties are annexed into the existing herd district.

(3) If the county commissioners declare the properties annexed to the existing herd district, they shall give notice of the annexation by four weekly publications in a newspaper of general circulation in the county. Annexation does not become effective until 30 days after the declaration of annexation is made, as provided in subsection (2).

Section 3. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 81, chapter 4, part 3, and the provisions of Title 81, chapter 4, part 3, apply to [section 2].

Approved March 23, 1999

CHAPTER NO. 139

[HB 476]

AN ACT PROVIDING FOR THE ISSUANCE OF MUNICIPAL GENERAL OBLIGATIONS; EXPANDING THE PERMISSIBLE PURPOSES OF MUNICIPAL GENERAL OBLIGATION FINANCING; AUTHORIZING MUNICIPALITIES TO INCUR LIMITED AMOUNTS OF GENERAL OBLIGATIONS WITHOUT SUBMITTING THE QUESTION TO THE ELECTORS; AUTHORIZING A FIRST LIEN ON GENERAL FUND REVENUE FOR THE PAYMENT OF THE OBLIGATIONS AND RELATED CHARGES; ALLOWING THE GOVERNING BODY OF A MUNICIPALITY TO CREATE NECESSARY FUNDS AND ACCOUNTS; AMENDING SECTIONS 7-5-4304,

HeinOnline -- 1999 vol. I 498 1999

7-5-4306, AND 7-7-4101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-5-4304, MCA, is amended to read:

"7-5-4304. Certain contracts to be submitted to voters. ~~No~~ *A* contract may *not* be let pursuant to 7-5-4302 that extends over a period of 5 years or more, except contracts for solid waste management systems as defined in 75-10-103, which may not exceed 10 years, *or obligations issued pursuant to [section 4]*, without first submitting the question to a vote of the electors of the city or town."

Seetion 2. Section 7-5-4306, MCA, is amended to read:

"7-5-4306. Use of installment purchase contract. When the amount to be paid under an installment purchase contract exceeds $4,000, the council may provide for the payment of the amount in installments extending over a period of not more than 10 years if at the time of entoring into the contract, there is an unexpended balance of appropriation in the budget for the then-current fiscal year available and sufficient to pay for the portion of the contract price payable during the then-current fiscal year. The budget for each following year in which any portion of the purchase price is to be paid must contain an appropriation for the purpose of paying that pertion. *The limitations contained in this section do not apply to installment purchase contracts entered into pursuant to [section 4].*"

Section 3. Section 7-7-4101, MCA, is amended to read:

"7-7-4101. Purposes for which indebtedness may be incurred. The city or town council has power to contract an indebtedness on behalf of a city or town, upon the credit ~~thereof~~ *of the city or town*, by borrowing money, ~~or~~ issuing bonds, *issuing notes, entering into leases, entering into lease-purchase agreements, or entering into installment purchase contracts* for the following purposes:

(1) *acquiring land for and designing and* ~~erection of~~ *erecting* public buildings;

(2) *acquiring land for and designing and* ~~construction of~~ *constructing* sewers, sewage treatment and dispesal plants, waterworks, reservoirs, reservoir sites, and lighting plants;

(3) supplying the city or town with water by contract and the construction or purchase of canals or ditches and water rights for supplying the city or town with water;

(4) *designing and* ~~construction of~~ *constructing* bridges, docks, wharves, breakwaters, piers, jetties, and moles;

(5) ~~to acquire, open, and/or widen~~ *acquiring, opening, or widening* any street and ~~to improve~~ *improving* the ~~same~~ *street* by constructing, reconstructing, and repairing pavement, guttors, curbs, and vehicle parking strips and to pay all or any portion of the cost ~~thereof~~ *relating to the project*;

(6) ~~the purchase~~ *purchasing or leasing* ~~of~~ fire apparatus, ~~and~~ street and other equipment, *and personal property, including without limitation, vehicles, telephone systems, and photocopy and office equipment, including computer hardware and software*;

HeinOnline -- 1999 vol. I 499 1999

(7) building, purchasing, *designing,* constructing, and maintaining devices intended to protect the safety of the public from open ditches carrying irrigation or other water;

(8) ~~the~~ funding ~~of~~ outstanding warrants and maturing bonds; and

(9) ~~the repayment of~~ *repaying* tax protests lost by the city, town, or other municipal corporation."

Section 4. Incurrence of certain general obligations. (1) A municipality may enter into or incur an obligation for any purpose authorized by law, including the purposes set forth in 7-7-4101. An obligation may be in the form of bonded indebtedness, note indebtedness, a lease, a lease-purchase agreement, an installment purchase contract, or other legal form. An obligation constitutes a general obligation of the municipality but is not secured by a pledge of the taxing power of the municipality.

(2) The obligation provided for in subsection (1) may be authorized by a resolution adopted by the governing body of the municipality. The resolution must establisb the terms, covenants, and conditions of the obligation. It is not necessary to submit the question of incurring the obligation to the electors of the municipality. The obligation may be incurred or sold at public or private sale, on terms and at prices that the governing body determines to be advantageous. The obligation does not constitute indebtedness for the purpose of statutory debt limitations.

(3) An obligation may be issued only if:

(a) the principal amount of the obligation does not exceed 10% of the general fund budget of the municipality in each of the 2 immediately preceding fiscal years;

(b) at the time the obligation is to be incurred, the debt services in the current or in any future fiscal year on the obligation and any other outstanding obligation issued pursuant to this section do not exceed 2% of the revenue deposited in the general fund of the municipality in each of the 2 immediately preceding fiscal years; and

(c) the term of the obligation does not exceed 20 years.

(4) The obligation must clearly state that it is not secured by a pledge of the municipality's taxing pewer but that it is payable solely from revenue in the general fund in any fiscal year that is pledged to the payment of the obligation.

(5) In order to secure the payment of principal of or interest on an obligation and related charges, the municipality may grant a first lien on all revenue collected and depesited in the general fund subject to or on a parity with any prior pledges. The municipality may establish other funds and accounts for obligations issued under this section that may be necessary to provide for the priority and segregation of revenue depesited in the goneral fund and pledged to the payment of obligations. For purposes of this section, related charges include the fees and expenses of registrars and paying agents and the amounts, if any, that must be rebated to the federal government under 26 U.S.C. 148.

(6) All obligations incurred under this section are legal and valid obligations of the municipality issuing the obligations, and the general credit of the municipality is irrevocably pledged for the prompt payment of both the principal of and interest on the obligations as tbey become due. However, the municipality

HeinOnline -- 1999 vol. I 500 1999

may not be obligated to levy taxes for the payment of any obligation or interest on the obligation.

(7) The powers conferred on a municipality by this section are in addition to and are supplemental to the powers conferred by any other general, special, or local law. To the extent that the provisions of this section are inconsistent with provisions of any other general, special, or local law, the provisions of this section are controlling.

Section 5. Codification instruction. [Section 4] is intended to be codified as an integral part of Title 7, chapter 7, part 41, and the provisions of Title 7, chapter 7, part 41, apply to [section 4].

Section 6. Effective date. [This act] is effective on passage and approval.

Approved March 23, 1999

CHAPTER NO. 140

[HB 479]

AN ACT REVISING THE VALUATION FOR TAX PURPOSES OF NEWLY ACQUIRED AIRCRAFT AND SUPPORTING EQUIPMENT ACQUIRED BY CERTAIN SCHEDULED AIRLINES; PROVIDING DEFINITIONS OF "NEWLY ACQUIRED AIRCRAFT" AND "NEWLY ACQUIRED EQUIPMENT"; AMENDING SECTIONS 15-23-401 AND 15-23-403, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND RETROACTIVE APPLICABILITY DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-23-401, MCA, is amended to read:

"15-23-401. Definitions. ~~The following words and phrases when~~ *As* used in this part, unless the context ~~clearly indicates~~ *requires* otherwise, ~~shall have the meanings ascribed to them in this section~~ *the following definitions apply*:

(1) "Air commerce" means the transportation by aircraft of persons or property for hire in interstate, intrastate, or international transportation on regularly scheduled flights.

(2) "Aircraft" means ~~any contrivance now known or hereafter invented,~~ *a conveyance* used~~,~~ or designed for navigation ~~of~~ or flight ~~in~~ *through* the air.

(3) "Equated plane hours" means hours spent by aircraft in flight or on the ground weighted according to the cargo capacity of each aircraft.

(4) "Flight property" means aircraft fully equipped, ready for flight used in air commerce.

(5) "Newly acquired aircraft" means an aircraft acquired and placed into service within the calendar year immediately preceding the current calendar year in which the report that is required by 15-23-402 is filed regardless of whether the aircraft acquired is new or used. Newly acquired aircraft includes an aircraft acquired and placed in service in calendar year 1997 provided that the aircraft was included in the report and the report was timely filed.

(6) "Newly acquired equipment" means equipment acquired and placed into service within the calendar year immediately preceding the current calendar year

HeinOnline -- 1999 vol. I 501 1999

in which the report that is required by 15-23-402 is filed regardless of whether the equipment acquired is new or used. Newly acquired equipment includes equipment acquired and placed in service in calendar year 1997 provided that the equipment was included in the report and the report was timely filed.

~~(5)~~*(7)* "Operating" or "operated" means landings or takeoffs during interstate flight.

~~(6)~~*(8)* "Scheduled airline company" means any person who undertakes directly or indirectly to engage in the business of scheduled air commerce."

Section 2. Section 15-23-403, MCA, is amended to read:

"15-23-403. Determination of value — exception for new aircraft and supporting equipment — notice. (1) The department of revenue shall determine the full and true valuation of all property of ~~all airlines~~ *each airline* operating in this state or used by ~~every~~ *each* scheduled airline company in air commerce. Except as provided in subsection (2), this valuation may be ascertained by:

(a) determining the full and true valuation of all property owned and operated by ~~every~~ *each* scheduled airline company; and

(b) allocating to the state of Montana from ~~this~~ *the* total valuation a valuation ~~which~~ *that* represents this state's proper share of the valuation of the property, through the application of *the* ratios ~~which~~ *that* are ~~indicated~~ *described* in ~~subsections (8), (9), (10), and (11) of~~ 15-23-402*(8), (9), (10), and (11)* against the total valuation.

(2) For a scheduled airline company operating within this state whose allocation of valuation within this state, as determined under subsection (1)(b), is 50% or more, the department shall determine the valuation of a ~~new~~ *newly acquired* aircraft ~~acquired~~ and ~~new~~ *newly acquired* equipment ~~acquired~~ to support that aircraft at 28% of full and true valuation for the first year after acquisition. For each succeeding year, the department shall increase the valuation by 8% over the previous year's valuation until the valuation equals full and true valuation.

(3) After making the assessment as provided in subsection (1) or (2), the department shall give written notice ~~thereof~~ *of the assessment* to the person or persons to whom the assessment is made."

Section 3. Effective date. [This act] is effective on passage and approval.

Section 4. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to newly acquired aircraft and equipment acquired after December 31, 1996, and to property tax years beginning after December 31, 1998.

Approved March 23, 1999

CHAPTER NO. 141

[HB 492]

AN ACT CRIMINALIZING DESECRATION OF A PLACE OF WORSHIP, CEMETERY, OR PUBLIC MEMORIAL; AND AMENDING SECTION 45-6-104, MCA.

HeinOnline -- 1999 vol. I 502 1999

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-6-104, MCA, is amended to read:

"45-6-104. Desecration of capitol, *place of worship, cemetery, or public memorial.* (1) In this section, "capitol" means the Montana state capitol building and any permanent monuments on the capitol grounds.

(2) A person commits the offense of desecration ~~of the capitol~~ if the person purposely ~~or knowingly~~:

(a) defiles or defaces the capitol *or a place of worship, cemetery, or public memorial*;

(b) places on or attaches to the capitol *or a place of worship, cemetery, or public memorial* any mark, design, or material not properly a part of the capitol, *place of worship, cemetery, or public memorial*; or

(c) injures, damages, or destroys any portion of the capitol *or of a place of worship, cemetery, or public memorial.*

(3) A person convicted of the offense of desecration ~~of the capitol~~ shall be:

(a) incarcerated for any term not to exceed 6 months or be fined an amount not to exceed $500, or both, if the damage does not exceed $1,000; or

(b) imprisoned in the state prison for any term not to exceed ~~20~~ *10* years or be fined an amount not to exceed ~~$100,000~~ *$50,000*, or both, *if there is $1,000 or more of damage.*

(4) ~~This~~ *With regard to the capitol, this* section does not apply to displays or actions authorized by the department of administration."

Approved March 23, 1999

CHAPTER NO. 142

[HB 495]

AN ACT APPROPRIATING FUNDS TO THE DEPARTMENT OF LABOR AND INDUSTRY TO INCREASE SILICOSIS BENEFITS BY $25 A MONTH FOR EACH INDIVIDUAL RECEIVING BENEFITS; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Appropriation. The following money is appropriated from the general fund to the department of labor and industry to fund an increase of $25 a month for each individual who receives silicosis benefits:

Fiscal year 2000	$27,300
Fiscal year 2001	$27,300

Section 2. Effective date. [This act] is effective July 1, 1999.

Approved March 23, 1999

HeinOnline -- 1999 vol. I 503 1999

CHAPTER NO. 143

[HB 571]

AN ACT PROVIDING THAT A MEMBER AT LARGE OF A BOARD OF CONTROL OF MULTIPLE IRRIGATION DISTRICTS MAY BE A NONLANDOWNER REPRESENTATIVE OF A PERSON OR ENTITY RECEIVING WATER FROM ONE OF THE MEMBER DISTRICTS; AMENDING SECTION 85-7-1611, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-7-1611, MCA, is amended to read:

"85-7-1611. Board of control — composition and vacancies. (1) The board of control ~~shall~~ *must* be composed of one or more irrigation commissioners from each district involved *and one member at large.* ~~, who shall be~~ *Each irrigation commissioner must be* appointed *for 1 year* by the board of commissioners of the district ~~which he or they~~ *that the commissioner represents* ~~represent for a term of 1 year, and one member at large~~. The member at large ~~shall~~ *must* be a landowner from one of the districts involved *or a person representing any person or entity that receives water delivery from the irrigation project that delivers water to the member districts.* ~~and shall be~~ *The member at large must be* appointed by the commissioner members to serve for a poriod of 1 year and shall ~~be required to~~ give *a* bond, the same as an irrigation district commissioner. The member at large ~~shall~~ *may* not be an employee, agent, water commissioner, or servant of any of the districts involved. At no time ~~shall~~ *may* the board membership be less than three members. Each member of the board of control and the manager, if hired, before ~~entering upon his~~ *beginning* duties shall give a bond to the board of control in the amount of $5,000, conditioned upon the faithful performance of ~~his~~ *the member's* duties.

(2) Vacancies occurring during the term in the position of *a* commissioner member ~~shall~~ *must* be filled for the remainder of the unexpired term by appointment of the board of commissioners of the district involved. Vacancies occurring in the position of member at large ~~shall~~ *must* be filled for the remainder of the unexpired term in the same manner as the original appointment."

Section 2. Effeetive date. [This act] is effective on passage and approval.

Approved March 23, 1999

CHAPTER NO. 144

[SB 49]

AN ACT CHANGING THE ALLOCATION OF THE RESOURCE INDEMNITY TRUST AND GROUND WATER TAX PROCEEDS AND OF THE METAL MINES TAX PROCEEDS; CHANGING THE DISTRIBUTION OF THE INTEREST EARNINGS FROM THE RESOURCE INDEMNITY TRUST FUND; AMENDING SECTIONS 7-6-2225, 7-6-2226, 15-37-117, 15-38-106, 15-38-202, 20-9-231, 85-1-332, 85-1-604, 85-1-631, 85-2-905, AND 90-2-1104, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

HeinOnline -- 1999 vol. I 504 1999

Section 1. Section 7-6-2225, MCA, is amended to read:

"7-6-2225. County hard-rock mine trust reserve account — expenditure restrictions. (1) The governing body of a county receiving an allocation under ~~15-37-117(1)(f)~~ *15-37-117(1)(e)* shall establish a county hard-rock mine trust reserve account.

(2) Money received by a county pursuant to 15-37-117 or 90-6-331 must remain in the account and may not be appropriated by the governing hody until:

(a) a mining operation has permanently ceased all mining related activity; or

(b) the number of persons employed full-time in mining activities by the mining operation is less than one-half of the averago number of persons employed full-time in mining activities by the mining operation during the immediately preceding 5-year period.

(3) If the circumstances described in subsection (2)(a) or (2)(b) occur, the governing body of the county ~~must~~ *shall* allocate at least one-third of the funds proportionally to affected high school districts and elementary school districts in the county, and may use the remaining funds in the account to:

(a) pay for outstanding capital project bonds or other expenses incurred prior to the end of mining activity or the reduction in the mining work force described in subsection (2)(b);

(b) decrease property tax mill levies that are directly caused by the cessation or reduction of mining activity;

(c) promote diversification and development of the economic base within the jurisdiction of a local government unit;

(d) attract new industry to the impact area;

(e) provide cash incentives for expanding the employment base of the area impacted by the changes in mining activity described in subsection (2); or

(f) provide grants or loans to other local government jurisdictions to assist with impacts caused by the cbanges in mining activity described in subsection (2).

(4) Except as provided in subsection (3)(b), money held in the account may not be considered as cash balance for the purpose of reducing mill levies.

(5) Money in the reserve account must be invested as provided hy law. Interest and income from the investment of funds in the account must be credited to the account."

Section 2. Section 7-6-2226, MCA, is amended to read:

"7-6-2226. Metal mines tax reserve account. (1) The governing body of a county receiving tax collections under ~~15-37-117(1)(f)~~ *15-37-117(1)(e)* may establish a metal mines tax reserve account to be used to hold the collections. The governing body may hold money in the account for any time period considered appropriate by the governing body. Money held in the account may not he considered as cash balance for the purpose of reducing mill levies.

(2) Money may be expended from the account for any purpose provided by law.

HeinOnline -- 1999 vol. I 505 1999

(3) Money in the account must be invested as provided by law. Interest and income from the investment of the metal mines tax reserve account must be credited to the account."

Section 3. Section 15-37-117, MCA, is amended to read:

"**15-37-117. Disposition of metalliferons mines license taxes.** (1) Metalliferous mines license taxes collected under the provisions of this part must, in accordance with the provisions of 15-1-501, be allocated as follows:

(a) to the credit of the general fund of the state, 58% of total collections each year;

(b) to the state special revenue fund to the credit of a hard-rock mining impact trust account, 1.5% of total collections each year;

(c) to the orphan share state special revenue account established in 75-10-743, 8.5% of total collections each year;

(d) *to the reclamation and development grants program state special revenue account, 7% of total collections each year; and* ~~to the ground water assessment account established in 85-2-905, 2.2% of total collections each year;~~

~~(e) to the reclamation and development grants program state special revenue account, 4.8% of total collections each year; and~~

~~(f)~~*(e)* to the county or counties identified as experiencing fiscal and economic impacts, resulting in increased employment or local government costs, under an impact plan for a large-scale mineral development prepared and approved pursuant to 90-6-307, in direct proportion to the fiscal and economic impacts determined in the plan, or, if an impact plan has not been prepared, to the county in which the mine is located, 25% of total collections each year, to be allocated by the county commissioners as follows:

(i) not less than 40% to the county hard-rock mine trust reserve account established in 7-6-2225; and

(ii) all money not allocated to the account pursuant to subsection ~~(1)(f)(i)~~ *(1)(e)(i)* to be further allocated as follows:

(A) 33 1/3% is allocated to the county for planning or economic development activities;

(B) 33 1/3% is allocated to the elementary school districts within the county that have been affected by the development or operation of the metal mine; and

(C) 33 1/3% is allocated to the high school districts within the county that have been affected by the development or operation of the metal mine.

(2) When an impact plan for a large-scale mineral development approved pursuant to 90-6-307 identifies a jurisdictional revenue disparity, the county shall distribute the proceeds allocated under subsection ~~(1)(f)~~ *(1)(e)* in a manner similar to that provided for property tax sharing under Title 90, chapter 6, part 4.

(3) The department shall return to the county in which metals are produced the tax collections allocated under subsection ~~(1)(f)~~ *(1)(e)*. The allocation to the county described by subsection ~~(1)(f)~~ *(1)(e)* is a statutory appropriation pursuant to 17-7-502."

Section 4. Section 15-38-106, MCA, is amended to read:

HeinOnline -- 1999 vol. I 506 1999

"15-38-106. Payment of tax — records — collection of taxes — refunds. (1) The tax imposed by this chapter must be paid by each person to which the tax applies, on or before March 31, on the value of product in the year preceding January 1 of the year in which the tax is paid. The tax must be paid to the department at the time that the statement of yield for the preceding calendar year is filed with the department.

(2) The department shall, in accordance with the provisions of 15-1-501, deposit *in the following order:*

(a) 50% of the proceeds of the tax in the resource indemnity trust fund of the nonexpendable trust fund type; ~~, except that:~~

~~(a) 14.1%~~

(b) $300,000 of the *remaining* proceeds ~~must be deposited~~ in the ground water assessment account established hy 85-2-905;

(c) 50% of the remaining proceeds in the reclamation and development grants account established by 90-2-1104; and

~~(b) 10% of the proceeds must be deposited in the renewable resource grant and loan program state special revenue account established by 85-1-604; and~~

~~(c) 30% of the proceeds must be deposited in the reclamation and development grants account established by 90-2-1104; and~~

~~(d) at the beginning of each fiscal year, there is allocated from the proceeds of the tax up to $200,000 to be deposited~~

(d) all remaining procceds in the orphan share account established in 75-10-743.

(3) Each person to whom the tax applies shall keep records in accordance with 15-38-105, and the records are subject to inspection by the department upon reasonable notice during normal business hours.

(4) The department shall examine the statement and compute the taxes to be imposed, and the amount computed by the department is the tax imposed, assessed against, and payable by the taxpayer. If the tax found to be due is greater than the amount paid, the excess must be paid by the taxpayer to the department within 30 days after written notice of the amount of deficiency is mailed hy the department to the taxpayer. If the tax imposed is less than the amount paid, the difference must be applied as a tax credit against tax liability for subsequent years or refunded if requested by the taxpayer."

Section 5. Section 15-38-202, MCA, is amended to read:

"15-38-202. (Temporary) Investment of resource indemnity trust fund — expenditure — minimum balance. (1) All money paid into the resource indemnity trust fund, including money payable into the fund under the provisions of 15-36-324 and 15-37-117, must be invested at the discretion of the board of investments. Only the net earnings may be appropriated and expended until the fund reaches $100 million. Thereafter, all net earnings and all receipts may be appropriated by the legislature and expended, provided that the balance in the fund may never be less than $100 million.

(2) (a) At the beginning of each fiscal year, there is allocated from the interest income of the resource indemnity trust fund:

HeinOnline -- 1999 vol. I 507 1999

(i) $240,000, which is statutorily appropriated, as provided in 17-7-502, from the renewahle resource grant and loan program state special revenue account to support the operations of the environmental science-water quality instructional programs at Montana state university-northern, to be used for support costs, for matching funds necessary to attract additional funds to further expand statewide impact, and for enhancement of the facilities related to the programs;

(ii) $1 million to be deposited into the renewahle resource grant and loan program state special revenue account, created by 85-1-604, for the purpose of making grants; and

(iii) $1.5 million to be deposited into the reclamation and development grants special revenue account, created by 90-2-1104, for the purpose of making grants.

(b) At the beginning of eacb bienniuin, there is allocated from the interest income of the resource indemnity trust fund:

(i) an amount not to exceed $175,000 to the environmental contingency account pursuant to the conditions of 75-1-1101;

(ii) an amount not to exceed $50,000 to the oil and gas production damage mitigation account pursuant to the conditions of 82-11-161; and

(iii) $500,000 to be deposited into the water storage state special revenue account created hy 85-1-631.

(c) The remainder of the interest income is allocated as follows:

(i) Thirty-six percent of the interest income of the resource indemnity trust fund must be allocated to the renewable resource grant and loan program state special revenue account created by 85-1-604.

(ii) Eighteen percent of the interest income of the resource indemnity trust fund must he allocated to the hazardous waste/CERCLA special revenue account provided for in 75-10-621.

(iii) Forty percent of the interest income from the resource indemnity trust fund must be allocated to the reclamation and development grants account provided for in 90-2-1104.

(iv) Six percent of the interest income of the resource indemnity trust fund must be allocated to the environmental quality protection fund provided for in 75-10-704.

(3) Any formal budget document prepared by the legislature or the executive branch that proposes to appropriate funds other than as provided for by the allocations in subsection (2) must specify the amount of money from each allocation that is proposed to be diverted and the proposed use of the diverted funds. A formal budget document includes a printed and publicly distributed budget proposal or recommendation, an introduced bill, or a hill developed during the legislative appropriation process or otherwise during a legislative session.

15-38-202. (Effective July 1, 1999) Investment of resource indemnity trust fund — expenditure — minimum balance. (1) All money paid into the resource indemnity trust fund, including money payable into the fund under the provisions of 15-36-324 and 15-37-117, must be invested at the discretion of the hoard of investments. Only the net earnings may he appropriated and expended until the fund reaches $100 million. Thereafter, all net earnings and all receipts may be appropriated by the legislature and expended, provided that the balance in the fund may never be less than $100 million.

HeinOnline -- 1999 vol. I 508 1999

(2) (a) At the heginning of each fiscal year, there is allocated from the interest income of the resource indemnity trust fund:

(i) $240,000, which is statutorily appropriated, as provided in 17-7-502, from the renewable resource grant and loan program state special revenue account to support the operations of the environmental science-water quality instructional programs at Montana state university-northern, to be used for support costs, for matching funds necessary to attract additional funds to further expand statewide impact, and for enhancement of the facilities related to the programs;

(ii) ~~$1~~ *$2* million to be deposited into the renewable resource grant and loan program state special revenue account, created by 85-1-604, for the purpose of making grants; ~~and~~

(iii) $1.5 million to be deposited into the reclamation and devolopment grants special revenue account, created by 90-2-1104, for the purpose of making grants; *and*

(iv) $300,000 to be deposited into the ground water assessment account created by 85-2-905.

(b) At the beginning of each biennium, there is allocated from the interest income of the resource indemnity trust fund:

(i) an amount not to exceed $175,000 to the environmental contingency account pursuant to the conditions of 75-1-1101;

(ii) an amount not to exceed $50,000 to the oil and gas production damage mitigation account pursuant to the conditions of 82-11-161; and

(iii) $500,000 to be deposited into the water storage state special revenue account created by 85-1-631.

~~(c) At the beginning of each fiscal year, there is allocated from the interest income of the resource indemnity trust fund up to $200,000 to be deposited in the orphan share account established in 75-10-743.~~

~~(d)~~*(c)* The remainder of the interest income is allocated as follows:

(i) ~~Thirty-six~~ *Thirty* percent of the interest income of the resource indemnity trust fund must be allocated to the renewable resource grant and loan program state special revenue account created by 85-1-604.

(ii) ~~Eighteen~~ *Twenty-six* percent of the interest income of the resource indemnity trust fund must be allocated to the hazardous waste/CERCLA special revenue account provided for in 75-10-621.

(iii) ~~Forty~~ *Thirty-five* percent of the interest income from the resource indemnity trust fund must be allocated to the reclamation and development grants account provided for in 90-2-1104.

(iv) ~~Six~~ *Nine* percent of the interest income of tbe resource indemnity trust fund must be allocated to the environmental quality protection fund provided for in 75-10-704.

(3) Any formal budget document prepared by the legislature or the executive branch that proposes to appropriate funds other than as provided for by the allocations in subsection (2) must specify the amount of money from each allocation that is proposod to be diverted and the proposed use of the diverted funds. A formal budget document includes a printed and publicly distributed

HeinOnline -- 1999 vol. I 509 1999

budget proposal or recommendation, an introduced bill, or a bill developed during the legislative appropriation process or otherwise during a legislative session."

Section 6. Section 20-9-231, MCA, is amended to read:

"20-9-231. Metal mines tax reserve fund. (1) The governing body of a local school district receiving tax collections under ~~15-37-117(1)(f)~~ *15-37-117(1)(e)* may establish a metal mines tax reserve fund to be used to hold the collections. The governing body may hold money in the fund for any time period considered appropriate by the governing body. Money held in the fund may not be considered as fund balance for the purpose of reducing mill levies.

(2) Money may be expended from the fund for any purpose provided by law.

(3) Money in the fund must be invested as provided by law. Interest and income from the investment of the metal mines tax reserve fund must be credited to the fund.

(4) The fund must be financially administered as a nonbudgeted fund under the provisions of this title."

Section 7. Section 85-1-332, MCA, is amended to read:

"85-1-332. Disposition of ~~moneys~~ *money* collected. (1) For the purpose of carrying out the provisions of this chapter and ~~such~~ other water resource authority, powers, and duties ~~as~~ *that* are conferred upen the department by law, the following ~~moneys shall~~ *money must* be deposited in the ~~renewable resource grant and loan program state special revenue~~ *water storage state special revenue* account created by ~~85-1-604~~ *85-1-631*:

(a) all gifts, donations, bequests, and devises made to the state ~~therefor~~ *for purposes of this chapter* and proceeds of the sale ~~thereof~~ *of the gifts, donations, bequests, and devises*; and the proceeds of the sale or redemption of and the interest earned by the securities purchased or acquired with money received under this subsection;

(b) all reimbursements for money advanced for the payment of the assessments upon state, scheol-granted, and other public lands for the improvement ~~thereof~~ *of the lands* as provided by law;

(c) all reimbursements for money advanced for the investigation and survey of reclamation, electrification, and rehabilitation systems or projects proposed to be financed in whole or in part by the reclamation of lands and diking, drainage, and diking and drainage dams for conservation of water to be used in reclamation of land or stock reservoirs or for tbe construction, maintenance, and operation of plants or projects for the manufacture or distribution of electric current;

(d) all reimbursements for costs of surveys and investigations for ~~moneys~~ *money* advanced to counties, cities, or tewns or their proportion of the cost ~~thereof~~ *of the surveys and investigations* or from any other sources;

(e) except as otherwise provided by law, all income or profit and revenue of the works and all money received from the sale or disposal of water, use of water, water storage, or other service and from the operation, lease, sale, or other disposition of the works, property, and facilities acquired under this chapter; and

(f) except as otherwise provided by law, all sums received hy the department for the use of eiectricity in excess of the maintenance and operation of the electrification system or project.

HeinOnline -- 1999 vol. I 510 1999

(2) All sums of money donated or contributed by the federal government or any department or agency ~~thereof shall~~ *of the federal government must* be deposited in a federal special revenue account."

Section 8. Section 85-1-604, MCA, is amended to read:

"85-1-604. Renewable resource grant and loan program state special revenue account created — revenue allocated — limitations on appropriations from account. (1) There is a renewable resource grant and loan program state special revenue account within the state special revenue fund established in 17-2-102.

(2) Except to the extent that they are required to be credited to the renewable resource loan debt service fund pursuant to 85-1-603, there must he paid into the renewable resource grant and loan program state special revenue account:

(a) ~~all revenue of the works and other money as provided in 85-1-332;~~

~~(b)~~ the interest income of the resource indemnity trust fund as provided in and subject to the conditions of 15-38-202;

~~(c)~~*(b)* the excess of the coal severance tax proceeds allocated by 85-1-603 to the renewable resource loan debt service fund above debt service requirements as provided in and subject to tbe conditions of 85-1-619; *and*

~~(d)~~*(c)* any fees or charges collected by the department pursuant to 85-1-616 for the servicing of loans, including arrangements for obtaining security interests~~; and~~

~~(e) the resource indemnity and ground water assessment tax proceeds as provided in 15-38-106(2)(b).~~

(3) Appropriations may be made from the renewable resource grant and loan program state special revenue account for ~~the following purposes and subject to the following conditions~~:

(a) ~~The amount of resource indemnity trust fund interest earnings allocated to the special revenue account under 15-38-202(2)(a)(ii) must be used for renewable resource grants.~~

~~(b) An amount less than or equal to that paid into the account under 85-1-332 and only that amount may be appropriated for the operation and maintenance of state-owned projects and works. If the amount of money available for appropriation under this subsection (3)(b) is greater than that necessary for operation and maintenance expenses, the excess may be appropriated as provided in subsection (3)(c).~~

~~(c) An amount less than or equal to that paid into the account from the resource indemnity trust account plus any excess from subsection (3)(b) and only that amount may be appropriated from the account for expenditures that meet the policies and objectives of the renewable resource grant and loan program. If the amount of money available for appropriation under this subsection (3)(c) is greater than that necessary for operation and maintenance expenses, the excess may be appropriated as provided in subsection (3)(d).~~

~~(d) An amount less than or equal to that paid into the account from the sources provided for in subsections (2)(c) and (2)(d) and any excess from subsection (3)(c) and only that amount may be appropriated from the account for loans and grants for renewable resource projects; for purchase of liens and operation of property as provided in 85-1-615; for administrative expenses,~~

~~including but not limited to the salaries and expenses of personnel, equipment, and office space; for the servicing of loans, including arrangements for obtaining security interests; and for other necessities incurred in administering the loans and~~ grants *for designated projects; and*

(b) administrative expenses, including salaries and expenses for personnel, equipment, office space, and other expenses necessarily incurred in the administration of the grant and loan program. The expenses under this subsection (3)(b) may be funded before funding of projects."

Section 9. Section 85-1-631, MCA, is amended to read:

"**85-1-631. Water storage state special revenue account created — revenues allocated — appropriations from account.** (1) There is a water storage state special revenue account within the state special revenue fund established in 17-2-102.

(2) There must be paid into the water storage state special revenue account money allocated from the resource indemnity trust fund interest earnings pursuant to 15-38-202 *and all revenue of the works and other money as provided in 85-1-332.*

(3) All revenue provided from 85-1-332(1)(e) and (1)(f) deposited in the water storage state special revenue account must be appropriated solely for the construction, operation, maintenance, and rehabilitation of the works.

~~(3)~~*(4)* Money that was not encumbered or expended from the water storage state special revenue account during the previous biennium must remain in the account.

~~(4)~~*(5)* Deposits to the water storage state special revenue account are to be placed in short-term investments and accrue interest, which must be deposited in the water storage state special revenue account.

~~(5)~~*(6)* The purpose of the water storage state special revenue account is to provide money for loans and grants exclusively for:

(a) water storage projects, including the purchase or lease of property;

(b) planning, feasibility, and design studies; and

(c) other costs related to construction, rehabilitation, expansion, and modification of water storage projects.

~~(6)~~*(7)* The department shall administer this section as an integral part of the renewable resource grant and loan program, using, to the extent possible, the same procedures for soliciting, determining eligibility, and rating water storage project proposals and for administering grants and loans, subject to the same limitations, as applied to other renewable resource grants and loans.

~~(7)~~*(8)* The following preferences must be considered in ranking proposals for water storage grants and loans:

(a) first preference is for the rehabilitation of water storage projects that resolve threats to life and property;

(b) second preference is for the improvement or expansion of existing water storage projects; and

(c) third preference is for the development of new water storage projects."

Section 10. Section 85-2-905, MCA, is amended to read:

HeinOnline -- 1999 vol. I 512 1999

"85-2-905. Ground water assessment account. (1) There is a ground water assessment account within the special revenue fund established in 17-2-102. The Montana bureau of mines and geology is authorized to expend amounts from the account necessary to carry out the purposes of this part.

(2) The account may be used hy the Montana bureau of mines and geology only to carry out the provisions of this part.

(3) Subject to the direction of the ground water assessment steering committee, the Montana bureau of mines and geology shall investigate opportunities for the participation and financial contribution of agencies of federal and local gevernments to accomplish the purposes of this part.

(4) There must be deposited in the account:

(a) at the beginning of each fiscal year, ~~14.1%~~ *$300,000* of the proceeds from the resource indemnity and ground water assessment tax, as authorized by 15-38-106, and ~~2.2% of the proceeds from the metalliferous mines license taxes, as authorized by 15-37-117~~ *$300,000 of the interest earnings from the resource indemnity trust fund, as authorized by 15-38-202*, unless at the beginning of the fiscal year the unobligated cash balance in the ground water assessment account:

(i) equals or exceeds ~~$666,000~~ *$600,000*, in which case an allocation may not be made and the proceeds must be depesited in the resource indemnity trust fund established by 15-38-201; or

(ii) is less than ~~$666,000~~ *$600,000*, in which case an amount equal to the difference between the unobligated cash balance and ~~$666,000~~ *$600,000* must be allocated to the ground water assessment account and any remaining amount must be deposited in the resource indemnity trust fund established by 15-38-201;

(b) funds provided by state gevernment agencies and by local governments to carry out the purposes of this part;

(c) proceeds allocated to the account as provided in 15-36-324, ~~and~~ 15-38-106, *and 15-38-202*; and

(d) funds provided by any other public or private sector organization or person in the form of gifts, grants, or contracts specifically designated to carry out the purposes of this part."

Section 11. Section 90-2-1104, MCA, is amended to read:

"90-2-1104. Reclamation and development grants account. (1) There is a reclamation and development grants special revenue account within the state special revenue fund established in 17-2-102.

(2) There must be paid into tbe reclamation and development grants account money allocated from:

~~(a)~~*(a)* the interest income of the resource indemnity trust fund under the provisions of 15-38-202~~;~~;

~~(b) the resource indemnity and ground water assessment tax under the provisions of 15-38-106;~~

~~(c) the the metal mines license tax proceeds as provided in 15-37-117(1)(c); and~~

~~(d) the oil and gas production tax as provided in 15-36-324 and 15-38-106~~

HeinOnline -- 1999 vol. I 513 1999

(b) the resource indemnity and ground water assessment tax under provisions of 15-38-106;

(c) the metal mines license tax proceeds as provided in 15-37-117(1)(d); and

(d) the oil and gas production tax as provided in 15-36-324 and 15-38-106.

(3) Appropriations may be made from the reclamation and development grants account for the following purposes:

(a) grants for designated projects; and

(b) administrative expenses, including ~~the~~ salaries and expenses ~~of~~ *for* personnel, equipment, office space, and other expenses necessarily incurred in the administration of the grants program. These expenses may be funded before funding of projects."

Section 12. Coordination instruction. If Senate Bill No. 48 is not passed and approved, then [this act] is void.

Section 13. Effective date. [This act] is effective July 1, 1999.

Approved March 23, 1999

CHAPTER NO. 145

[SB 87]

AN ACT REVISING STATUTES REGARDING SNOWMOBILE SAFETY AND LIABILITY BY CLARIFYING THE DUTIES OF SNOWMOBILERS AND SNOWMOBILE AREA OPERATORS; CLARIFYING THE INHERENT RISKS OF SNOWMOBILING; ELIMINATING THE PROVISION REGARDING THE EFFECT OF MONTANA COMPARATIVE NEGLIGENCE LAW ON RECOVERY FROM SNOWMOBILE AREA OPERATORS FOR DEATH OR INJURY RESULTING FROM AN INHERENT SNOWMOBILING RISK; AMENDING SECTIONS 23-2-651, 23-2-652, 23-2-653, AND 23-2-654, MCA; REPEALING SECTION 23-2-656, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-2-651, MCA, is amended to read:

"23-2-651. Purpose. The legislature *finds that snowmobiling is a major recreational sport and a major industry in this state and* recognizes that ~~there are inherent risks in the sport of snowmobiling that are essentially impossible for a snowmobile area operator to eliminate but that should be known by a reasonable and prudent snowmobiler. The purpose of 23-2-651 through 23-2-656 is to define those areas of responsibility and the acts for which a snowmobile area operator is liable for death or injury to any person or property and those risks for which a snowmobiler expressly assumes or must be considered to have voluntarily assumed the risk of death or injury and for which there can be no recovery~~ *among the attractions of the sport are risks, inherent and otherwise. The state has a legitimate interest in:*

(1) maintaining the economic viability of the snowmobiling industry by discouraging claims based on damages resulting from risks inherent in the sport;

(2) clarifying what the inherent risks of snowmobiling are; and

(3) establishing the duties of snowmobilers and snowmobile area operators."

Section 2. Section 23-2-652, MCA, is amended to read:

"23-2-652. Definitions. As used in 23-2-651 through ~~23-2-656~~ *23-2-655*, the following definitions apply:

(1) "Snowmobile" means a vehicle defined in 23-2-601(10).

(2) "Snowmobile area" means those areas designated as snowmobile trails or areas open to the operation of snowmobiles.

(3) "Snowmobile area operators" means those persons responsible for the maintenance of snowmobile trails and *for the designation of* open areas or those persons providing rental snowmobile equipment. Operators may include but are not limited to the United States forest service, the Montana department of fish, wildlife, and parks, the Montana snowmobile association, individual snowmobile clubs, landowners or their tenants, persons who offer snowmobile equipment for rent, and private trail grooming contractors.

(4) "Snowmobiler" means any person operating or riding a snowmobile."

Section 3. Section 23-2-653, MCA, is amended to read:

"23-2-653. Snowmobile area operators — duties ~~— restriction on liability~~. (1) ~~The~~ *Consistent with the duty of reasonable care owed by a snowmobile area operator to a snowmobiler, the* person responsible for the maintenance of or operation of a snowmobile area shall mark all trail maintenance vehicles and furnish the vehicles with flashing or rotating lights that must be in operation whenever the vehicles are working or are in movement in the snowmobile area.

~~(2) A snowmobile area operator is liable for death or injury to a snowmobiler or other person or property only for an act or omission that constitutes gross negligence.~~

(2) The snowmobile area operator owes a duty of reasonable care, as required by 27-1-701, to a snowmobiler except for the risks inherent in the sport of snowmobiling.

(3) Except as provided in this section, a snowmobile area operator has no duty to eliminate, alter, control, or lessen the ~~risk~~ *risks* inherent in the sport of snowmobiling. ~~A snowmobile area operator who attempts to eliminate, alter, control, or lessen the risk inherent in the sport of snowmobiling is liable only for an act or omission that constitutes gross negligence.~~"

Section 4. Section 23-2-654, MCA, is amended to read:

"23-2-654. Snowmobiler's assumption of responsibility — duties. (1) A snowmobiler ~~shall accept all legal responsibility for injury or damage of any kind to the extent that the injury or damage results from risks inherent in the sport of snowmobiling and has the duty to regulate personal conduct at all times so that injury to self or other persons or property that results from the risks inherent in the sport of snowmobiling is avoided. The risks inherent in the sport of snowmobiling include variations in terrain, surface or subsurface snow or ice conditions, cornices, avalanches, poor visibility, bare spots, rocks, trees, other forms of forest growth or debris, and plainly marked trail maintenance equipment~~ *shall operate a snowmobile at all times in a manner that avoids injury to self and others and must be aware of the inherent risks in the sport of snowmobiling.*

HeinOnline -- 1999 vol. I 515 1999

(2) A snowmobiler ~~is responsible for~~ *shall*:

(a) ~~knowing~~ *know* the range of the snowmobiler's ~~own~~ ability ~~to snowmobile any slope, trail, or area~~ and ~~for snowmobiling~~ *snowmobile safely* within the limits of ~~the snowmobiler's~~ *that* ability ~~considering the conditions;~~ *and the snowmobiler's equipment so as to negotiate any section of terrain or snowmobile trail safely and without injury or damage. A snowmobiler must be aware that the snowmobiler's ability may vary because of terrain or trail changes caused by weather, grooming changes, or snowmobile use.*

(b) ~~maintaining~~ *maintain* control of speed and course at all times while snowmobiling *so as to prevent injury to self and others*;

(c) ~~heeding~~ *heed* all posted warnings; and

(d) ~~refraining~~ *refrain* from acting in a manner that may cause or contribute to the injury of anyone.

(3) *A snowmobiler shall accept all legal responsibility for injury or damage of any kind to the extent that the injury or damage results from risks inherent in the sport of snowmobiling. Risks inherent in the sport of snowmobiling are:*

(a) variations in terrain, including surface or subsurface snow or ice conditions naturally occurring or resulting from weather changes, snowmobile use, or grooming or snowmaking operations;

(b) bare spots or thin snow cover caused by limited snowfall, melting, wind erosion, snowmobile action, grooming, or unconsolidated base;

(c) rocks, trees, or other forms of forest growth or debris;

(d) clearly visible or plainly marked improvements or trail maintenance equipment; and

(e) avalanches.

(4) The provisions of this section do not affect a products liability cause of action based upon the design or manufacture of snowmobile equipment or products or safety equipment used incidental to the operation of a snowmobile."

Section 5. Repealer. Section 23-2-656, MCA, is repealed.

Section 6. Effective date. [This act] is effective on passage and approval.

Approved March 23, 1999

CHAPTER NO. 146

[SB 101]

AN ACT CLARIFYING THE STATUTES CONCERNING EXPOSURE OF EMERGENCY SERVICES PROVIDERS TO INFECTIOUS DISEASES; REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO ADOPT RULES CONCERNING NOTIFICATION AND RECORDKEEPING; AMENDING SECTIONS 50-16-701, 50-16-702, 50-16-703, 50-16-704, 50-16-705, AND 50-16-711, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-16-701, MCA, is amended to read:

HeinOnline -- 1999 vol. I 516 1999

"50-16-701. Definitions. As used in this part, the following definitions apply:

(1) "Airborne infectious disease" means an infectious disease transmitted from person to person by an aerosol, including but not limited to infectious tuberculosis.

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

(3) "Designated officer" means the emergency services organization's representative and the alternate whose names are on record with the department as the persons responsible for notifying ~~the~~ *an* emergency services provider of exposure.

(4) "Emergency services organization" means a public or private organization that provides emergency services to the public.

~~(4)~~*(5)* "Emergency services provider" means a person employed by or acting as a volunteer with ~~a public or private organization that provides~~ *an* emergency services ~~to the public~~ *organization*, including but not limited to a law enforcement officer, firefighter, emergency medical technician, paramedic, corrections officer, or ambulance service attendant.

~~(5)~~*(6)* "Exposure" means the subjecting of a person to a risk of transmission of an infectious disease through the commingling of the blood or bodily fluids of the person and a patient or in another manner as defined by department rule.

~~(6)~~*(7)* "Health care facility" has the meaning provided in 50-5-101 and includes a public health center as defined in 7-34-2102.

~~(7)~~*(8)* "Infectious disease" means ~~a communicable disease transmittable through an exposure, including the diseases of~~ human immunodeficiency virus *infection*, hepatitis B, hepatitis C, hepatitis D, communicable pulmonary tuberculosis, meningecoccal meningitis, and *any* other ~~diseases that may be~~ *disease capable of being transmitted through an exposure that has been* designated by department rule.

~~(6)~~*(9)* "Infectious disease control officer" means the person designated by the health care facility as the person who is responsible for notifying the emergency services provider's designated officer and the department of an infectious disease as provided for in this ~~chapter~~ *part* and by rule.

~~(9)~~*(10)* "Patient" means an individual who is sick, injured, wounded, or otherwise incapacitated or helpless."

Section 2. Section 50-16-702, MCA, is amended to read:

"50-16-702. Notification of exposure to infections disease — report of exposure to disease. (1) (a) If an emergency services provider acting in an official capacity attends a patient prior to or during transport or assists in transporting a patient to a health care facility and the emergency services provider has had an exposure, the emergency services provider may request the designated officer to submit the ~~required~~ form *required by department rule* to the health care facility on the emergency services provider's behalf. The form must be provided for in rules adopted by the department and must include the emergency services provider's name and other information required by the department, including a description of the exposure. ~~A~~ *The* designated officer shall submit the *completed* form ~~verifying that there was an exposure~~ *to the health*

care facility receiving the patient as soon as possible after the request for submission by the emergency services provider. Submission of the form to the health care facility is an indication that the emergency services provider was exposed and a verification that the designated officer and the emergency services provider believe that the emergency services provider was exposed.

(b) If the exposure described on the form occurred in a manner that may allow infection by HIV, as defined in 50-16-1003, by a mode of transmission recognized by the centers for disease control *and prevention*, then submission of the form to the health care facility constitutes a request to the patient's physician to seek consent for performance of an HIV-related test pursuant to 50-16-1007(10).

(c) Upon receipt of ~~a request~~ *the report of exposure* from a designated officer, the health care facility shall notify the designated officer in writing:

~~(i) whether or not the patient was infected with an infectious disease;~~

~~(ii) whether or not a determination has been made; and~~

~~(iii) the name of the disease and the date of transport if the patient was infected.~~

~~(d) The designated officer shall then notify the emergency services provider.~~ *whether or not a determination has been made that the patient has or does not have an infectious disease. If a determination has been made and the patient has been found:*

(i) to have an infectious disease, the information required by 50-16-703 must be provided by the health care facility;

(ii) to not have an infectious disease, the date on which the patient was transported to the health care facility must be provided by the health care facility.

(2) If a health care facility receiving a patient determines that the patient has an airborne infectious disease, the health care facility shall, *within 48 hours after the determination was made,* notify the designated officer and the department ~~within 48 hours after the determination has been made~~ *of that fact. The notice to the department must include the name of the emergency services organization that transported the patient to the health care facility.* The department shall, within 24 hours *after receiving the notice*, notify the designated officer of the emergency services provider who transported the patient.

(3) A designated officer who receives the notification from a health care facility required by 50-16-703(2) or by subsection (1)(c) of this section shall immediately provide the information contained in the notification to the emergency services provider for whom the report of exposure was filed or who was exposed to a patient with an airborne infectious disease."

Section 3. Section 50-16-703, MCA, is amended to read:

"50-16-703. Notification of precautions after exposure to infectious disease. (1) After a patient is transported to a health care facility~~, a physician shall inform the health care facility within 24 hours~~ *and* if ~~the~~ *a* physician determines that the transported patient has an infectious disease, *the physician shall inform the infectious disease control officer of the health care facility of the determination within 24 hours after the determination is made.*

(2) ~~The~~ *If it is determined that the infectious disease is airborne or a report of exposure was filed concerning the patient under 50-16-702, the* health care

facility shall ~~orally notify~~ *provide the notification required by subsection (3) orally* within 48 hours after the time of diagnosis and ~~notify~~ in writing within 72 hours after diagnosis *to* the designated officer of ~~the~~ *each* emergency services ~~provider who attended~~ *organization known to the health care facility to have provided emergency services to* the patient prior to or during ~~transport or who transported the patient with the infectious disease~~ *transportation to the health care facility*.

(3) The notification must state the disease to which the emergency services provider was exposed ~~and~~, the appropriate medical precautions and treatment that the exposed person needs to take, *the date on which the patient was transported to the health care facility, and the time that the patient arrived at the facility*."

Section 4. Section 50-16-704, MCA, is amended to read:

"**50-16-704. Confidentiality — penalty for violation — immunity from liability.** (1) The ~~names~~ *name* of the person ~~who suffered the exposure and the person~~ diagnosed as having an infectious disease may not be released to anyone, including the emergency services provider who was exposed, *nor may the name of the emergency services provider who was exposed be released to anyone other than the emergency services provider,* except as required by *this part, by* department rule concerning reporting of communicable disease, or as allowed by Title 50, chapter 16, part 5.

(2) A person who violates the provisions of this section is guilty of a misdemeanor and upon conviction shall be fined not less than $500 or more than $10,000, *be* imprisoned in the county jail not less than 3 months or more than 1 year, or both.

(3) A health care facility, a representative of a health care facility, a physician, or the designated officer of an emergency services provider's organization may not be held jointly or severally liable for providing the notification required by 50-16-703 when the notification is made in good faith or for failing to provide the notification if good faith attempts to contact an exposed person of exposure are unsuccessful."

Section 5. Section 50-16-705, MCA, is amended to read:

"**50-16-705. Rulemaking authority.** The department shall adopt rules to:

(1) define what constitutes an exposure to an infectious disease;

(2) specify the infectious diseases subject to this part;

(3) specify the information about an exposure that must be included in a report of exposure; ~~and~~

(4) specify recommended medical precautions and treatment for each infectious disease subject to this part*; and*

(5) specify recordkeeping and reporting requirements necessary to ensure compliance with the notification requirements of this part."

Section 6. Section 50-16-711, MCA, is amended to read:

"**50-16-711. Health care facility and emergency services organization responsibilities for tracking exposure to infectious disease.** (1) The health care facility and the emergency services organization shall develop internal procedures for implementing the provisions of this ~~chapter~~ *part* and department rules.

HeinOnline -- 1999 vol. I 519 1999

(2) The health care facility ~~shall~~ *must* have available at all times a person to receive the form provided for in 50-16-702 containing a report of exposure to infectious disease.

(3) The health care facility shall designate an infectious disease control officer and an alternate who will be responsible for maintaining the required records and notifying designated officers in accordance with the provisions of this ~~chapter~~ *part* and the rules promulgated under this ~~chapter~~ *part and shall provide the names of the designated officer and the alternate to the department.*

(4) The emergency services organization shall name a designated officer and an alternate *and shall provide their names to the department.*"

Section 7. Effective dates. (1) [Section 5 and this section] are effective on passage and approval.

(2) [Sections 1 through 4 and 6] are effective October 1, 1999.

Approved March 23, 1999

CHAPTER NO. 147

[SB 112]

AN ACT DEFINING "FINGERPRINTS" FOR PURPOSES OF THE CRIMINAL JUSTICE INFORMATION ACT; EXPANDING THE GROUP OF PERSONS SUBJECT TO THE DNA TESTING LAW; DEFINING TERMS USED IN THE DNA TESTING LAW; AMENDING SECTIONS 44-5-103, 44-6-101, 44-6-102, 44-6-103, 46-18-202, AND 46-23-215, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 44-5-103, MCA, is amended to read:

"44-5-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Access" means the ability to read, change, copy, use, transfer, or disseminate criminal justice information maintained by criminal justice agencies.

(2) "Administration of criminal justice" means the performance of any of the following activities: detection, apprehension, detention, pretrial release, posttrial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. It includes criminal identification activities and the collection, storage, and dissemination of criminal justice information.

(3) "Confidential criminal justice information" means:

(a) criminal investigative information;

(b) criminal intelligence information;

(c) fingerprints and photographs;

(d) criminal justice information or records made confidential by law; and

(e) any other criminal justice information not clearly defined as public criminal justice information.

HeinOnline -- 1999 vol. I 520 1999

(4) (a) "Criminal history record information" means information about individuals collected by criminal justice agencies consisting of identifiable descriptions and notations of arrests; detentions; the filing of complaints, indictments, or informations and dispositions arising therefrom; sentences; correctional status; and release. It includes identification information, such as fingerprint records or photographs, unless the information is obtained for purposes other than the administration of criminal justice.

(b) Criminal history record information does not include:

(i) records of traffic offenses maintained by the department of justice; or

(ii) court records.

(5) (a) "Criminal intelligence information" means information associated with an identifiable individual, group, organization, or event compiled by a criminal justice agency:

(i) in the course of conducting an investigation relating to a major criminal conspiracy, projecting potential criminal operation, or producing an estimate of future major criminal activities; or

(ii) in relation to the reliability of information, including information derived from reports of informants or investigators or from any type of surveillance.

(b) Criminal intelligence information does not include information relating to political surveillance or criminal investigative information.

(6) "Criminal investigative information" means information associated with an individual, group, organization, or event compiled by a criminal justice agency in the course of conducting an investigation of a crime or crimes. It includes information about a crime or crimes derived from reports of informants or investigators or from any type of surveillance. It does not include criminal intelligence information.

(7) "Criminal justice agency" means:

(a) any court with criminal jurisdiction;

(b) any federal, state, or local government agency designated by statute or by a governor's executive order to perform as its principal function the administration of criminal justice;

(c) any local government agency not included under subsection (7)(b) that performs as its principal function the administration of criminal justice pursuant to an ordinance or local executive order; or

(d) any agency of a foreign nation that has been designated by that nation's law or chief executive officer to perform as its principal function the administration of criminal justice and that has been approved for the receipt of criminal justice information by the Montana attorney general, who may consult with the United States department of justice.

(8) "Criminal justice information" means information relating to criminal justice collected, processed, or preserved by a criminal justice agency. It does not include the administrative records of a criminal justice agency.

(9) "Criminal justice information system" means a system, automated or manual, operated by foreign, federal, regional, state, or local governments or governmental organizations for collecting, processing, preserving, or

HeinOnline -- 1999 vol. I 521 1999

disseminating criminal justice information. It includes equipment, facilities, procedures, and agreements.

(10) (a) "Disposition" means information disclosing that criminal proceedings against an individual have terminated and describing the nature of the termination or information relating to sentencing, correctional supervision, release from correctional supervision, the outcome of appellate or collateral review of criminal proceedings, or executive clemency. Criminal proceedings have terminated if a decision has been made not to bring charges or criminal proceedings have been concluded, abandoned, or indefinitely postponed.

(b) Particular dispositions include but are not limited to:

(i) conviction at trial or on a plea of guilty;

(ii) acquittal;

(iii) acquittal by reason of mental disease or defect;

(iv) acquittal by reason of mental incompetence;

(v) the sentence imposed, including all conditions attached to the sentence by the sentencing judge;

(vi) deferred imposition of sentence with any conditions of deferral;

(vii) nolle prosequi;

(viii) a nolo contendere plea;

(ix) deferred prosecution or diversion;

(x) bond forfeiture;

(xi) death;

(xii) release as a result of a successful collateral attack;

(xiii) dismissal of criminal proceedings by the court with or without the commencement of a civil action for determination of mental incompetence or mental illness;

(xiv) a finding of civil incompetence or mental illness;

(xv) exercise of executive clemency;

(xvi) correctional placement on probation or parole or release; or

(xvii) revocation of probation or parole.

(c) A single arrest of an individual may result in more than one disposition.

(11) "Dissemination" means the communication or transfer of criminal justice information to individuals or agencies other than the criminal justice agency that maintains the information. It includes confirmation of the existence or nonexistence of criminal justice information.

(12) "Fingerprints" means the recorded friction ridge skin of the fingers, palms, or soles of the feet.

~~(12)~~*(13)* "Public criminal justice information" means ~~information~~:

(a) *information* made public by law;

(b) *information* of court records and proceedings;

(c) *information* of convictions, deferred sentences, and deferred prosecutions;

(d) *information* of postconviction proceedings and status;

(e) *information* originated by a criminal justice agency, including:

(i) initial offense reports;

(ii) initial arrest records;

(iii) bail records; and

(iv) daily jail occupancy rosters;

(f) *information* considered necessary by a criminal justice agency to secure public assistance in the apprehension of a suspect; or

(g) statistical information.

~~(13)~~*(14)* "State repository" means the recordkeeping systems maintained by the department of justice pursuant to 44-2-201 in which criminal history record information is collected, processed, preserved, and disseminated.

~~(14)~~*(15)* "Statistical information" means data derived from records in which individuals are not identified or identification is deleted and from which neither individual identity nor any other unique characteristic that could identify an individual is ascertainable."

Section 2. Section 44-6-101, MCA, is amended to read:

"44-6-101. Definitions. As used in this part, the following definitions apply:

(1) "Biological sample" means cheek cells removed by using a buccal swab of a type authorized by the department or a vial or other container of blood.

~~(1)~~*(2)* "Department" means the department of justice provided for in 2-15-2001.

~~(2)~~*(3)* "DNA" means deoxyribonucleic acid.

~~(3)~~*(4)* "DNA identification index" means the DNA identification record system established under 44-6-102.

~~(4)~~*(5)* "DNA record" means DNA identification information stored in the DNA identification index for purposes of establishing identification in connection with law enforcement investigations or supporting statistical interpretation of the results of DNA analysis. The DNA record is considered the objective form of the results of a DNA analysis, such as the numerical representation of DNA fragment lengths, autoradiographs and the digital image of autoradiographs, and discrete allele assignment numbers.

~~(5)~~*(6)* "DNA testing" means DNA analysis of materials derived from the human body for the purposes of identification consistent with this part.

~~(6)~~*(7)* "Forensic DNA laboratory" means any laboratory operated by state government that performs DNA analysis on materials derived from the human body for use as evidence in a criminal proceeding or for purposes of identification.

~~(7)~~*(8)* "Marker" means a method of describing individuals by genetic profile, such as blood or DNA type, and has the specific meaning given to the word by department rule, which must take into account the meaning generally given to the word for forensic typing by DNA technologists.

HeinOnline -- 1999 vol. I 523 1999

~~(8)~~*(9)* "Sexual offense" means the offenses contained in the definition of that term in 46-23-502.

~~(9)~~*(10)* "Violent offense" has the meaning contained in 46-23-502."

Section 3. Section 44-6-102, MCA, is amended to read:

"44-6-102. Establishment of DNA identification index. (1) The department shall establish a computerized DNA identification index for the receipt, storage, and exchange of DNA records. The DNA identification index is the central repository for DNA records in the state of Montana.

(2) The DNA identification index must include:

(a) DNA records for an individual convicted of, *or a youth found under 41-5-1502 to have committed,* a sexual *offense* or violent offense; ~~and~~

(b) DNA records for a person upon order of a sentencing judge under 46-18-202; and

~~(b)~~*(c)* analyses of DNA samples recovered from crime scenes, medical examinations, and unidentified human remains. For purposes of identification of missing persons, the DNA identification index may include DNA records of close biological relatives of a missing person.

(3) The DNA identification index and the DNA testing done by a forensic DNA laboratory must be compatible with the systems of DNA identification used by other criminal justice agencies or private testing laboratories to the extent necessary to permit the exchange of DNA information.

(4) The DNA records collected and stored in the DNA identification index may contain only information relating to the identification of individuals. Information that identifies a person that is the subject of a record must be limited to the information that is necessary to pursue criminal investigations and to support statistical interpretation of results.

(5) The DNA identification index may be used:

(a) by law enforcement agencies for purposes of identification in the course of criminal investigations and proceedings;

(b) to assist in the identification of human remains, including identification of missing persons; and

(c) if information allowing a person to be identified is removed, for a population statistics database and for identification, research, and protocol development for forensic DNA analysis and quality control."

Section 4. Section 44-6-103, MCA, is amended to read:

"44-6-103. Collection of samples and maintenance of data. (1) Following entry of judgment, a person convicted of a sexual *offense* or violent offense, ~~or~~ a youth found under 41-5-1502 to have committed a sexual *offense* or violent offense, *or a defendant ordered under 46-18-202 to provide a biological sample for DNA testing* shall provide ~~to a person or entity designated by the county attorney~~ a *biological* sample ~~of blood~~ for DNA analysis to determine identification characteristics specific to the person. *The sample must be provided to the department of corrections if the person is incarcerated in a facility administered by the department of corrections. If the person is not incarcerated in a facility administered by the department of corrections, the sample must be provided to a person or entity designated by the county sheriff.*

HeinOnline -- 1999 vol. I 524 1999

(2) The ~~blood~~ *biological* sample must be collected, stored, and sent by the *department of corrections or the* person or entity designated by the county ~~attorney~~ *sheriff* under subsection (1) to the department for entry in the DNA identification index in accordance with rules adopted by the department with the advice of the department of public health and human services.

(3) The forensic DNA laboratory may perform DNA analysis only for those markers that have value for law enforcement identification purposes.

(4) The knowing refusal or failure to provide a biological sample under this part is grounds for revocation of a suspended or deferred imposition of sentence."

Section 5. Section 46-18-202, MCA, is amended to read:

"46-18-202. Additional restrictions on sentence. (1) The court may also impose any of the following restrictions or conditions on the sentence provided for in 46-18-201 that it considers necessary to obtain the objectives of rehabilitation and the protection of the victim and society:

(a) prohibition of the defendant's holding public office;

(b) prohibition of the defendant's owning or carrying a dangerous weapon;

(c) restrictions on the defendant's freedom of association;

(d) restrictions on the defendant's freedom of movement;

(e) a requirement that the defendant provide a biological sample for DNA testing for purposes of Title 44, chapter 6, part 1, if an agreement to do so is part of the plea bargain;

~~(e)~~*(f)* any other limitation reasonably related to the objectives of rehabilitation and the protection of the victim and society.

(2) Whenever the district court imposes a sentence of imprisonment in the state prison for a term exceeding 1 year, the court may also impose the restriction that the defendant is ineligible for parole and participation in the supervised release program while serving that term. If the restriction is to be imposed, the court shall state the reasons for it in writing. If the court finds that the restriction is necessary for the protection of society, it shall impose the restriction as part of the sentence and the judgment must contain a statement of the reasons for the restriction.

(3) When the court imposes a sentence of probation, as defined in 46-23-1001, any probation agreement signed by the defendant may contain a clause waiving extradition.

(4) Whenever the district court imposes a sentence of imprisonment in the state prison for a violation of 45-5-502(3), 45-5-503, 45-5-504(2)(c), 45-5-507 (unless the act occurred between two consenting persons 16 years of age or older), or 45-5-625, the court may also impose the restriction that the defendant be ineligible for a good time allowance while serving that term. If such a restriction is to be imposed, the court shall state the reasons for it in writing. If the court finds that the restriction is necessary for the protection of society, it shall impose the restriction as part of the sentence and the judgment must contain a statement of the reasons for the restriction."

Section 6. Section 46-23-215, MCA, is amended to read:

HeinOnline -- 1999 vol. I 525 1999

"**46-23-215. Conditions of parole.** (1) A prisoner while on parole remains in the legal custody of the correctional facility from which the prisoner was released but is subject to the orders of the board.

(2) When an order for parole is issued, it must recite the conditions of parole. If restitution was imposed as part of the sentence under 46-18-201, the order of parole must contain a condition to pay restitution to the victim. *The prisoner may not be paroled until the prisoner provides a biological sample for purposes of Title 44, chapter 6, part 1, if the prisoner has not already done so under 44-6-103 and if the prisoner was convicted of, or was found under 41-5-1502 to have committed, a sexual offense or violent offense as defined in 46-23-502.* An order for parole or any parole agreement signed by a prisoner may contain a clause waiving extradition.

(3) Whenever a prisoner in the Montana state prison or the Montana women's prison has been approved for parole on condition that the prisoner obtain employment or secure suitable living arrangements or on any other condition that is difficult to fulfill while incarcerated, the warden may grant the prisoner a furlough, not to exceed 10 days, for purposes of fulfilling the condition. While on furlough, the prisoner remains in the legal custody of the prison and is subject to all other conditions recited by the board."

Section 7. Retroactive applicability. [Section 6] applies retroactively, within the meaning of 1-2-109, to persons sentenced or in the custody or under the supervision of the department of corrections on or after March 27, 1995, the effective date of the original DNA testing and identification law.

Section 8. Effective date. [This act] is effective on passage and approval.

Approved March 23, 1999

CHAPTER NO. 148

[SB 127]

AN ACT REQUIRING A BUSINESS ENTITY THAT OWNS A LIQUOR LICENSE TO OBTAIN APPROVAL FROM THE DEPARTMENT OF REVENUE PRIOR TO CHANGING THAT BUSINESS ENTITY'S OWNERSHIP; REQUIRING A BUSINESS ENTITY THAT OWNS A LIQUOR LICENSE TO OBTAIN APPROVAL FROM THE DEPARTMENT PRIOR TO CHANGING THE BUSINESS ENTITY; REQUIRING ALL INDIVIDUALS WHO CONTROL THE OPERATION OF A CORPORATE LIQUOR LICENSE TO BE QUALIFIED BY THE DEPARTMENT; AMENDING SECTION 16-4-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Changes in business entity ownership — department approval required. (1) In the case of corporate licensees, a person or entity that does not own stock or owns less than 10% of the stock in the corporation may not receive stock that results in the person or entity's share of stock in the corporation being 10% or greater unless the department reviews and determines that the person or entity qualifies for ownership of a liquor license as provided in 16-4-401.

HeinOnline -- 1999 vol. I 526 1999

(2) In the case of all other business entities, when a proposed transfer of ownership would result in a party who prior to the transfer owned no interest in the license owning an interest in the license, the proposed transfer must be submitted to the department for review. The proposed new party must qualify for ownership of a liquor license as provided in 16-4-401.

(3) In the case of a proposed change in business entity, the proposed new business entity shall apply for a transfer of ownership of the license with the department prior to changing the business entity. The proposed new business entity must qualify for ownership of a liquor license as provided in 16-4-401.

Section 2. Section 16-4-401, MCA, is amended to read:

"16-4-401. License as privilege — criteria for decision on application. (1) A license under this code is a privilege ~~which~~ *that* the state may grant to an applicant and is not a right to which any applicant is entitled.

(2) Except as provided in subsection (6), in the case of a license that permits on-premises consumption, the department ~~must~~ *shall* find in every case in which it makes an order for the issuance of a new license or for the approval of the transfer of a license that:

(a) in the case of an individual applicant:

(i) the applicant will not possess an ownership interest in more than one establishment licensed under this chapter for all-beverages sales;

(ii) the applicant does not possess an ownership interest in an agency liquor store as defined in 16-1-106;

(iii) the applicant or any member of the applicant's immediate family is without financing from or any affiliation to a manufacturer, importer, bottler, or distributor of alcoholic beverages;

(iv) the applicant is a resident of the state and is qualified to vote in a state election;

(v) the applicant's past record and present status as a purveyor of alcoholic beverages and as a business person and citizen demonstrate that the applicant is likely to operate the establishment in compliance with all applicable laws of the state and local governments; and

(vi) the applicant is not under ~~the age of~~ 19 years *of age*; and

(b) in the case of a corporate applicant:

(i) the owners of at least 51% of the outstanding stock meet the requirements of subsection (2)(a)(iv);

(ii) each owner of 10% or more of the outstanding stock meets the requirements for an individual applicant listed in subsection (2)(a);

(iii) each individual who has control over the operation of the license or shares in the profits or liabilities of the license meets the requirements for an individual applicant listed in subsection (2)(a);

~~(iii)~~*(iv)* the corporation is authorized to do business in Montana; and

~~(iv)~~*(v)* in the case of a corporation not listed on a national stock exchange, each owner of stock meets the requirements of subsections (2)(a)(i) and (2)(a)(ii); and

(c) in the case of any other business entity as applicant:

HeinOnline -- 1999 vol. I 527 1999

(i) if the applicant consists of more than one individual, all must meet the requirements of subsection (2)(a); and

(ii) if the applicant consists of more than one corporation, all must meet the requirements of subsection (2)(b).

(3) In the case of a license that permits only off-premises consumption, the department ~~must~~ *shall* find in every case in which it makes an order for the issuance of a new license or for the approval of the transfer of a license that:

(a) in the case of an individual applicant:

(i) the applicant will not possess an ownership interest in more than one establishment licensed under this chapter for all-beverages sales;

(ii) the applicant does not possess an ownership interest in an agency liquor store as defined in 16-1-106;

(iii) the applicant or any member of the applicant's immediate family is without financing from or any affiliation to a manufacturer, importer, bottler, or distributor of alcoholic beverages;

(iv) the applicant has not been convicted of a felony or, if the applicant has been convicted of a felony, the applicant's rights have been restored;

(v) the applicant's past record and present status as a purveyor of alcoholic beverages and as a business person and citizen demonstrate that the applicant is likely to operate the establishment in compliance with all applicable laws of the state and local governments; and

(vi) the applicant is not under ~~the age of~~ 19 years *of age*; and

(b) in the case of a corporate applicant:

(i) the owners of at least 51% of the outstanding stock meet the requirements of subsection (3)(a)(iv);

(ii) each owner of 10% or more of the outstanding stock meets the requirements for an individual listed in subsection (3)(a) ~~of this section~~; and

(iii) the corporation is authorized to do business in Montana; and

(c) in the case of any other business entity as applicant:

(i) if the applicant consists of more than one individual, all must meet the requirements of subsection (3)(a); and

(ii) if the applicant consists of more than one corporation, all must meet the requirements of subsection (3)(b).

(4) In the case of a license that permits the manufacture, importing, or wholesaling of an alcoholic beverage, the department ~~must~~ *shall* find in every case in which it makes an order for the issuance of a new license or for the approval of the transfer of a license that:

(a) in the case of an individual applicant:

(i) the applicant has no ownership interest in any establishment licensed under this chapter for retail alcoholic beverages sales;

(ii) the applicant does not possess an ownership interest in an agency liquor store as defined in 16-1-106;

(iii) the applicant has not been convicted of a felony or, if the applicant has been convicted of a felony, rights have been restored;

HeinOnline -- 1999 vol. I 528 1999

(iv) the applicant's past record and present status as a purveyor of alcoholic beverages and as a business person and citizen demonstrate that the applicant is likely to operate the establishment in compliance with all applicable laws of the state and local governments;

(v) the applicant is not under ~~the age of~~ 19 years *of age*; and

(vi) an applicant for a wholesale license is neither a manufacturer of an alcoholic beverage nor is owned or controlled hy a manufacturer of an alcoholic beverage; and

(b) in the case of a corporate applicant:

(i) the owners of at least 51% of the outstanding stock meet tbe requirements of subsection (4)(a)(iii);

(ii) each owner of 10% or more of the outstanding stock meets the requirements for an individual listed in subsection (4)(a) ~~of this section~~;

(iii) an applicant for a wholesale license is neither a manufacturer of an alcoholic beverage nor is owned or controlled by a manufacturer of an alcoholic beverage; and

(iv) the corporation is authorized to do business in Montana; and

(c) in the case of any other business entity as applicant:

(i) if the applicant consists of more than one individual, all must meet the requirements of subsection (4)(a); and

(ii) if the applicant consists of more than one corporation, all must meet the requirements of subsection (4)(b).

(5) In the case of a corporate applicant, the requirements of subsections (2)(b), (3)(b), and (4)(b) apply separately to each class of stock.

(6) The provisions of subsection (2) do not apply to an applicant for or holder of a license pursuant to 16-4-302."

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 16, chapter 4, part 4, and the provisions of Title 16, chapter 4, part 4, apply to [section 1].

Section 4. Effective date. [This act] is effective on passage and approval.

Approved March 23, 1999

CHAPTER NO. 149

[SB 128]

AN ACT MAKING PERMANENT THE MONTANA LIVING TRUST ACT; REPEALING SECTION 18, CHAPTER 348, LAWS OF 1997; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Repealer. Section 18, Chapter 348, Laws of 1997, is repealed.

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 23, 1999

HeinOnline -- 1999 vol. I 529 1999

CHAPTER NO. 150

[SB 131]

AN ACT GENERALLY REVISING THE LAWS RELATING TO THE MONTANA COMMUNITY SERVICE ACT; AND AMENDING SECTIONS 23-1-301, 90-14-102, 90-14-103, 90-14-104, 90-14-105, 90-14-106, AND 90-14-108, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-1-301, MCA, is amended to read:

"23-1-301. Montana conservation corps — purpose and intent. (1) There is a Montana conservation corps within the parks division of the department of fish, wildlife, and parks. The corps ~~is part of the Montana community service corps provided for under Title 90, chapter 14, part 1, and~~ is subject to the oversight of the office of community service.

(2) The purpose of the corps is to accomplish labor-intensive improvements to the state park system and to other public lands and to perform community service activities for which specific responsibilities are accepted through service contracts.

(3) It is the intent of the legislature that the corps grow in productive ways and that state agencies involved with the corps provide coordination of the conservation corps program and the programs established under Title 90, chapter 14, part 1. The legislature also intends that the Montana conservation corps program have the authority to contract with the job service or the human resource development council, as defined in 53-10-501."

Section 2. Section 90-14-102, MCA, is amended to read:

"90-14-102. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) ~~"Advisory council"~~ *"Commission"* means the ~~advisory council~~ *commission* on community service appointed by the governor to assist in implementation of this part.

(2) "Community service" means any kind of public service that provides a benefit to the state of Montana, any of its political subdivisions, or a tribal government or that benefits disadvantaged or low-income persons, disabled persons, or senior citizens of Montana.

(3) ~~"Coordinator"~~ *"Director"* means the person appointed by the governor as the community service ~~coordinator~~ *director* to administer and coordinate the provisions of this part.

~~(4) "Corps" means the Montana community service corps, which includes any organization established to provide community services under this part and the Montana conservation corps created under 23-1-301.~~

~~(5) "Corpsmember" means a participant in the corps.~~

~~(6) "Crewleader" means a participant in the corps who supervises corpsmembers.~~

~~(7)~~*(4)* "Program" means the Montana community service ~~corps~~ program, which includes all of the ~~corps, educational projects, and~~ volunteer projects established under this part ~~and under the Montana conservation corps in 23-1-301~~.

HeinOnline -- 1999 vol. I 530 1999

~~(8)~~*(5)* "Volunteer" means a person performing services under this part for an association, not-for-profit corporation, hospital, school, or state, local, or tribal governmental entity without compensation, except that partial or full reimbursement may be made for actual expenses incurred."

Section 3. Section 90-14-103, MCA, is amended to read:

"90-14-103. Office of community service. (1) There is an office of community service, which is headed by a ~~coordinator~~ *director* and established in the office of the governor.

(2) The purpose of tbis office is to:

(a) renew the ethic of civic responsibility in the state;

(b) encourage the citizens of the state, regardless of age or income, to engago in full-time or part-time service to the state;

(c) call young people to serve in projects that will benefit the state and improve tbeir life chances through tbe acquisition of literacy, job skills, and interpersonal skills;

(d) build on the existing organizational framework of state and local governmental entities to expand full-time and part-time service opportunities in a wide variety of programs for all citizens, particularly youth and older Montanans;

(e) involve participants in activities that would not otherwise be performed by employed workers; and

(f) establish ~~corps~~ *programs* to accomplish labor-intonsive improvements to public or low-income properties or to provide services for the benefit of the state, its communities, and its people through service contracts that specify the work to be performed ~~by the corps~~.

(3) The ~~coordinator~~ *director* must be appointed by the governor, after consultation with the ~~advisory council~~ *commission*. The ~~coordinator~~ *director* serves at the pleasure of the governor.

(4) The ~~coordinator~~ *director* shall, with the advice of the ~~advisory council~~ *commission*, assist the governor in the planning, coordination, operation, and evaluation of programs within state government or under grants, donations, bequests, or other resources received by and administered through state government for Montana community services.

(5) The ~~coordinator~~ *director* is responsible for the submission of applications for federal grants and for funding from any other sources for the creation or operation of ~~corps and~~ volunteer projects. The ~~coordinator~~ *director* shall ensure accountability for all resources received.

(6) The ~~coordinator~~ *director*, together with the ~~advisory council~~ *commission*, shall integrate and develop state plans for all services provided under this part, including but not limited to the office of public instruction's ~~serve America~~ *service learning* program, the Montana university system innovative projects, the Montana conservation corps established in 23-1-301, the department of military affairs' ~~corps~~ *service* involvement, and other community and volunteer service programs."

Section 4. Section 90-14-104, MCA, is amended to read:

"90-14-104. ~~Advisory council~~ *Commission* on community service. (1) The governor shall appoint ~~an advisory council~~ *a commission* on community service composed of up to 15 members.

HeinOnline -- 1999 vol. I 531 1999

(2) Members must include a representative from a trihal government and from at least four state agencies in the following functional areas:

(a) natural resources;

(b) human services;

(c) labor;

(d) K-12 education;

(e) higher education; and

(f) military affairs.

(3) Members may include representatives from local government, not-for-profit agoncies, federal agencies, business, labor unions, volunteer groups, and private citizens.

(4) To the extent possible, membership of the ~~advisory council~~ *commission* must be balanced according to race, ethnicity, age, gonder, and disabilities.

(5) The ~~advisory council~~ *commission* shall assist in the development and coordination of state community service programs, integration of services, dissemination of information, recruitment of ~~corpsmembers and~~ volunteers, recruitment and training of *volunteer* crewleaders, development of materials, and evaluation of and accountability for the services provided.

(6) Commission members are entitled to payment and reimbursement as provided in 2-15-122(5)."

Section 5. Section 90-14-105, MCA, is amended to read:

"**90-14-105. Duties and powers of state agencies.** (1) ~~In addition to the office of community service in the governor's office, the~~ *The* following state agencies are responsible for developing and implementing community service opportunities consistent witb the mission and functions of each agency:

(a) The office of public instruction ~~is the agency for corps and~~ *implements* volunteer projects in elementary and secondary public, private, and home schools in Montana, including activities sponsored by schools or community-based agencies, to involve school-age youth, including dropouts and out-of-school youtb, in service to the community, as well as for programs that involve adult volunteers in the schools. A school district is expected to be the first agency that informs students about the many opportunities to participate in broader community service under tbis part through ~~the~~ federal ~~serve America~~ *service learning* grants and any other revenue received for purposes consistent with this part.

(b) The Montana university system ~~is the agency to assist~~ *assists* institutions of higher education in Montana, ~~explore~~ *explores* new ways to integrate service into the curriculum, ~~support~~ *supports* model community service programs on campus, ~~develop~~ *develops* teacher and volunteer training programs, and ~~involve~~ *involves* students in community service. The community service may complement a student's course of study through the federal higher education innovative projects grants and any other revenue received for purposes consistent with this part.

(c) The ~~department of fish, wildlife, and parks is the agency for corps, community,~~ *departments of environmental quality, natural resources and conservation, transportation, and fish, wildlife, and parks are the agencies for community* and volunteer projects in conservation and natural resource settings that are designed to support and enhance state parks, wildlife, watcbable wildlife, produc-

HeinOnline -- 1999 vol. I 532 1999

tivity of state lands, streams and lakes, county and city *parks, tribal* parks, scenic beauty and access, trails and signs, visitor information centers and rest areas, fairgrounds, and any other ~~conservation-related~~ projects *related to conservation or the environment* that involve teenagers, young adults, or special community service members, such as adults or senior citizens who provide special skills for a project. *Other projects may include bicycle paths and pedestrian trails, landscaping and scenic enhancements, historical and cultural preservation, roadside and stream restoration and enhancement, erosion control, disability enhancement, and experimental and research projects.*

(d) The department of military affairs ~~is the agency for corps,~~ *may support* community, and volunteer projects that are designed to involve the national gnard in leadership or support roles for service through the provision of organizational and leadership skills, equipment, *volunteer* crewleaders, and other support, as well as the command and coordination of ~~corps~~ *activities* that may be mobilized for emergency projects, such as fire suppression or search and rescue.

(e) The governor may designate other agencies, after consultation with the ~~coordinator~~ *director* and the ~~advisory council~~ *commission*, for community service projects that focus on improving the quality of life for all Montanans, particularly low-income persons, senior citizens, homebound persons, disabled persons, or institutionalized persons, through preparing and delivering meals, assisting with shopping or other tasks, repairing and painting *or otherwise modifying* homes of qualifying persons, providing transportation to and from health care and other appointments, providing respite care, cataloging library books, assisting rural health care providers, providing recreational aides, arranging for tutoring and literacy training, restoring historical photographs, and offering other human service support and community services.

(2) Each agency ~~listed in this section~~ *designated by the governor* shall ensure that service opportunities that result in a public value are developed for everyone, regardless of race, creed, national origin, or geographical location, by providing leadership through its own network and by forming partnerships with other public or private, nonprofit entities.

(3) Each agency ~~listed in this section~~ *involved in community service* shall coordinate and integrate its plans with and through the office of community service.

(4) Projects developed or approved under this part and funded by an agency must be limited to service projects that provide community service, conservation service, educational service, or other public service and that provide documented public value or benefit.

(5) The state agencies ~~listed in this section~~ *engaged in community service* may:

(a) designate an agency volunteer coordinator to implement its responsibilities under this part;

(b) develop and approve work experience and volunteer projects that meet the requirements of this part;

(c) execute contracts or cooperative agreements that contain the terms and conditions necessary and desirable for the employment of *volunteer* crewleaders and ~~corpsmembers~~ *other volunteers* in approved work experience projects with federal, state, or local agencies, persons, firms, partnerships, associations, or corporations;

HeinOnline -- 1999 vol. I 533 1999

(d) execute contracts or cooperative agreements with federal, state, or local agencies, persons, firms, partnerships, associations, or corporations for the purpose of administering the requirements of this part;

(e) under the supervision of the office of community service, apply for and accept grants or contributions of services, funds, or lands from any public or private donors, including appropriations;

(f) develop procedures for participants to achieve incentive vouchers, education, credit toward education, skill training, scholarships, housing benefits, or other benefits upen completion of their term of service;

(g) purchase, rent, acquire, or obtain personal property, supplies, instruments, tools, or equipment necessary to complete work experience or volunteer projects;

(h) authorize use of ~~the corps~~ *volunteers* for emergency projects, including hut not limited to natural disasters, fire prevention and suppression, and rescue of lost or injured persons, and provide adequate training to ~~corpsmembers~~ *volunteers* prior to participation in an emergency project; and

(i) adopt rules and guidelines necessary to implement the provisions of this part and to effectively administer the program."

Section 6. Section 90-14-106, MCA, is amended to read:

"**90-14-106. Prohibited activities.** (1) The office of community service and agencies listed in 90-14-105~~,~~ *that are designated by the governor and engaged* in developing and approving work experience and volunteer projects~~,~~ shall ensure that:

(a) work available to participants is not available as the result of a labor dispute, strike, or lockout and will not be assigued to cause a layoff or downgrading of a position or to prevent the return to work of an available competent employee; and

(b) a work experience project:

(i) does not impair existing contracts for service or collective bargaiming agreements; and

(ii) is not inconsistent with the terms of a collective bargaining agreement without written concurrence of the labor organization and employer concerned.

(2) It is unlawful for a person to demand from any public officer, agency, employee, ~~corpsmember~~ *volunteer*, or *volunteer* crewleader an assessment or percentage of any money or profit or its equivalent in support, service, or any other thing of value, with the express or implied understanding that it will be used for political purposes. This part may not be construed to prohibit voluntary contributions to any political committee or organization for legitimate political purposes to the extent allowed by law."

Section 7. Section 90-14-108, MCA, is amended to read:

"**90-14-108. Indemnification for Montana community service act.** The provisions of 2-9-305 apply to community service ~~crewleaders, corpsmembers, and~~ volunteers for actions arising from the discharge of assigued community service functions or duties."

HeinOnline -- 1999 vol. I 534 1999

Section 8. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

Approved March 23, 1999

CHAPTER NO. 151

[SB 140]

AN ACT REMOVING CERTAIN RESTRICTIONS ON ABSENTEE VOTING; AND AMENDING SECTIONS 13-13-201, 13-13-211, 13-13-222, 13-13-225, 13-13-229, AND 13-13-232, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-13-201, MCA, is amended to read:

"13-13-201. Voting by absentee ballot — ~~qualifications —~~ procedures. (1) A qualified registered elector is entitled to vote by absentee ballot~~,~~ as provided *for* in this part~~, if the elector:~~

~~(a) expects to be absent from the county or precinct and unable to vote in person at the time of holding the election;~~

~~(b) is physically incapacitated and unable to go to the polls on election day;~~

~~(c) suffers from chronic illness or general ill health; or~~

~~(d) is prevented from voting at the polls as a result of an illness or health emergency occurring between 5 p.m. on the Friday preceding the election and noon on election day. The health emergency must arise from unforeseen circumstances that require the elector to seek health care or medical assistance.~~

(2) The elector may vote *the absentee ballot* by:

(a) marking the ballot in the manner specified;

(b) placing the marked ballot in the secrecy envelope, free of any identifying marks;

(c) placing the secrecy envelope containing one ballot for each election being held in the return and verification envelope;

(d) executing the affidavit printed on the return and verification envelope; and

(e) returning the return and verification envelope with the secrecy envelope containing the ballot or ballots enclosed, as provided in 13-13-221."

Section 2. Section 13-13-211, MCA, is amended to read:

"13-13-211. ~~Application of absentee, chronically ill, elderly, or physically incapacitated elector or elector with a disability for ballot — special absentee ballot application~~ *Time period for application.* ~~(1) Except as provided in 13-2-214,~~ *An application for an absentee ballot must be made* during a period beginning 75 days before the day of election and ending at noon on the day before the election~~, an individual may apply to the election administrator for an absentee ballot if the individual is:~~

HeinOnline -- 1999 vol. I 535 1999

~~(a) an elector expecting to be absent from the county in which the elector's voting precinct is situated;~~

~~(b) an elector who is chronically ill or in general ill health;~~

~~(c) an elector with a disability or an elderly elector who has been assigned to an inaccessible polling place; or~~

~~(d) an elector who will be unable to go to the polls because of physical incapacity~~. *However, a qualified elector who is prevented from voting at the polls as a result of illness or health emergency occurring between 5 p.m. of the Friday preceding the election and noon on election day may request to vote by absentee ballot.*

~~(2) A qualified elector who is prevented from voting at the polls as a result of an illness or health emergency occurring between 5 p.m. on the Friday preceding the election and noon on election day may request to vote by absentee ballot. The election administrator shall honor a request received up to and including noon on election day. The election administrator is not required to comply with a request by an elector who is absent from the county.~~"

Section 3. Section 13-13-222, MCA, is amended to read:

"**13-13-222. ~~Voting~~ *Marking ballot* before election day ~~by prospective absentee, chronically ill, or physically incapacitated elector~~.** (1) As soon as the official ballots are available, the election administrator shall permit an elector ~~who is present in his county and who has reason to believe that he will be absent from the county, ill, or physically incapacitated on election day~~ to ~~vote~~ *mark the ballot* before election day before the election administrator.

(2) The provisions of this chapter apply to ~~such~~ voting *under this section*.

(3) If the ballot is marked before the election administrator, ~~he~~ *the election administrator* shall deal with it in the same manner as if it had come by mail."

Section 4. Section 13-13-225, MCA, is amended to read:

"**13-13-225. Special absentee election boards — members — appointment.** (1) The election administrator shall designate and appoint a number of special absentee election boards as needed to serve in various places to deliver ballots to electors who are entitled to vote by absentee ballot as ~~a result of illness or health emergency under 13-13-201~~ *provided in 13-13-229*.

(2) In a partisan election, each special absentee election board ~~shall~~ *must* consist of two members, one from each of the two political parties receiving the highest votes in the state during the last preceding general election. Board members shall reside in the county in which they serve.

(3) A member of a special absentee election board may not be a candidate or a spouse, ascendant, descendant, brother, or sister of a candidate or of a candidate's spouse or the spouse of any one of these if the candidate's name appears on a ballot in the county."

Section 5. Section 13-13-229, MCA, is amended to read:

"**13-13-229. Voting performed before special absentee election board.** (1) ~~As provided in 13-13-201, a qualified elector who becomes ill or is prevented from voting at the polls because of a health emergency may vote by absentee ballot.~~ Pursuant to 13-13-212(3), the elector may request that a special absentee election board personally deliver a ballot to the elector.

HeinOnline -- 1999 vol. I 536 1999

(2) The manner and procedure of voting by use of an absentee ballot under this section must he the same as provided in 13-13-221, except that the elector shall hand the marked ballot in the sealed return envelope to the special absentee election board, and the board shall deliver the sealed return envelope to the election administrator or to the election judges of the precinct in which the elector is registered.

(3) An absentee hallot cast by a qualified elector pursuant to this section may not be rejected by the election administrator if the ballot was in the possession of the board before the time designated for the closing of the polls.

(4) An elector who needs assistance in marking the elector's ballot because of physical incapacity or inability to read or write may receive assistance from the special absentee election hoard appointed to personally deliver the hallot. Any assistance given an elector pursuant to this section must be provided in substantially the same manner as required in 13-13-119."

Section 6. Section 13-13-232, MCA, is amended to read:

"13-13-232. Delivery of ballots, secrecy envelopes, and return envelopes to election judges — ballots to be rejected. (1) If the absentee ballot is received prior to delivery of the official ballots to the election judges, the election administrator shall deliver the unopened return envelope to the judges at the same time that the ballots are delivered. The return envelopes must be opened and the ballots processed according to the procedures described in 13-13-241.

(2) If absentee ballots are received after the hallots are delivered to the election judges but prior to the close of the polls, the election administrator shall immediately deliver the unopened return envelopes to the judges. The return envelopes must be opened and the ballots processed according to the procedures described in 13-13-241.

(3) If the election administrator receives an absentee ballot for which an application or request was not *made or* received as required by ~~13-13-211 or if an absentee ballot is received by the election administrator after the close of the polls and was not issued to an elector pursuant to 13-13-201(1)(d)~~ *this part*, the election administrator shall enderse upon the elector's envelope the date and exact time of receipt and the words "to be rejected". Absentee ballots endorsed in this manner must be retained by the election administrator and placed with the proper records when they are returned to the election administrator."

Approved March 23, 1999

CHAPTER NO. 152

[SB 187]

AN ACT REVISING CROP DUSTING LIEN PROCEDURE BY REMOVING THE REQUIREMENT THAT 30 DAYS' NOTICE OF INTENT BE GIVEN PRIOR TO FILING OF A LIEN; AMENDING SECTION 71-3-902, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 71-3-902, MCA, is amended to read:

HeinOnline -- 1999 vol. I 537 1999

"**71-3-902. How lien obtained.** (1) ~~Any~~ *A* person, firm, corporation, or partnership that is entitled to a lien under this part shall, within 90 days after the last labor or service was performed or material furnished in crop dusting or spraying grains or crops, file in the office of the secretary of state a statement of agricultural lien as provided in 71-3-125.

(2) A person, firm, corporation, or partnership that is entitled to a lien and that intends to file a lien under this part shall give ~~30-days'~~ notice, by certified mail, of intent to file to the person, firm, corporation, or partnership for which labor or service was performed or materials furnished."

Section 2. Effeetive date. [This act] is effective on passage and approval.

Approved March 23, 1999

CHAPTER NO. 153

[SB 196]

AN ACT REPEALING THE STATUTORY REQUIREMENTS FOR BRUCELLOSIS VACCINATION OF IMPORTED LIVESTOCK; ALLOWING BRUCELLOSIS VACCINATION REQUIREMENTS TO BE ADOPTED BY RULE RATHER THAN BY STATUTE; AND REPEALING SECTIONS 81-2-801 AND 81-2-805, MCA.

WHEREAS, the pilot program to clarify and standardize regulations regarding the brucellosis vaccination of cattle imported into Montana has been successful; and

WHEREAS, requirements for the brucellosis vaccination of imported cattle may be more appropriately addressed through tbe rulemaking authority in 81-2-102 through 81-2-104, rather than by statute.

Be it enacted by the Legislature of the State of Montana:

Section 1. Repealer. Sections 81-2-801 and 81-2-805, MCA, are repealed.

Approved March 23, 1999

CHAPTER NO. 154

[SB 227]

AN ACT CHANGING THE DEFINITION OF A SMALL TELECOMMUNICATIONS PROVIDER; PROVIDING FOR RATE DECREASES AS WELL AS RATE INCREASES; PROVIDING FOR REGULATORY FLEXIBILITY UPON PETITION BY A SMALL TELECOMMUNICATIONS PROVIDER; AND AMENDING SECTIONS 69-3-901, 69-3-903, 69-3-904, 69-3-906, AND 69-3-907, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-3-901, MCA, is amended to read:

"**69-3-901. Definitions.** As used in this part, the following definitions apply:

(1) "Commission" means tlie Montana public service commission.

HeinOnline -- 1999 vol. I 538 1999

(2) "Rate" means a charge by a small telecommunications provider to a subscriber for the initiation or continued provision of regulated telecommunications service. The term includes but is not limited to charges for installations, local service, toll service, directory assistance, and late payment.

(3) "Rate increase" means an increase in the rates for regulated telecommunications services provided by a small telecommunications provider and the creation of new rates.

(4) "Regulated telecommunications service" is as defined in 69-3-803.

(5) "Small telecommunications provider" means a person, partnership, corporation, or other entity providing regulated telecommunications service to less than ~~5,000~~ *12,000* subscribers in Montana. Rural telephone cooperatives organized under Title 35, chapter 18, are not small telecommunications providers.

(6) "Subscriber" means a person, partnership, corporation, or other entity acquiring regulated telecommunications service from a small telecommunications provider. There is one subscriber for each billed line of a small telecommunications provider."

Section 2. Section 69-3-903, MCA, is amended to read:

"69-3-903. Notice of rate increase *or decrease*. (1) At least 60 days before the effective date of any rate increase *or decrease* proposed by a small telecommunications provider, the small telecommunications provider shall mail notice of the proposed rate increase *or decrease* to each affected subscriber, the commission, and the Montana consumer counsel.

(2) Notice to the commission and consumer counsel must include:

(a) a summary of the justification for the proposed rate increase;

(b) a list of the number of affected subscribers in each category of rates proposed to be increased *or decreased*; and

(c) if requested by the commission, a list of the names of the affected subscribers.

(3) The notice to affected subscribers may be included with regular subscriber billings and must include:

(a) a schedule of the proposed rates;

(b) the effective date of the proposed rates; and

(c) a description of the petition procedure in 69-3-906 for seeking commission review and determination of the proposed rates. If the small telecommunications provider publishes the petition procedure in a telephone directory, a reference to the location of the procedure in the directory is adequate notice."

Section 3. Section 69-3-904, MCA, is amended to read:

"69-3-904. Commission review and determination of rate increases *or decreases*. (1) When a small telecommunications provider proposes a rate increase *or decrease*, the commission shall review and determine the rates pursuant to the applicable procedures in this chapter if:

(a) the affected subscribers have successfully petitioned for commission review as described in 69-3-906;

HeinOnline -- 1999 vol. I 539 1999

(b) the small telecommunications provider requests the commission to review and determine the rates; or

(c) by the 60th day following notice of the proposed increase *or decrease*, the consumer counsel petitions the commission to review and determine the rates.

(2) An order of the commission issued under this section establishes the effective rate for the regulated telecommunications services covered by the order. Rates established by commission order may not be increased for a period of 6 months, except as ordered by the commission.

(3) The order of the commission is subject to review pursuant to part 4 of this chapter."

Section 4. Section 69-3-906, MCA, is amended to read:

"69-3-906. Petition for review of proposed rate increase *or decrease*. Subscribers affected by a proposed rate increase *or decrease* for regulated telecommunications services by a small telecommunications provider may petition the commission to review and determine the rates. The petition must identify the proposed rate increase *or decrease* and must be in writing and sigued by a subscriber or the authorized person if the subscriber is a business account."

Section 5. Section 69-3-907, MCA, is amended to read:

"69-3-907. Proposed increase *or decrease* effective unless requisite petitions received by commission. (1) If by the 60th day following notice to subscribers of a proposed rate increase *or decrease* the commission has not received petitions containing signatures from at least 10% of the affected subscribers in any rate category or a potition for review from the consumer counsel, the commission shall certify this fact to the small telecommunications provider and the proposed rate increase *or decrease* becomes effective as publisbed in the notice of proposed increase *or decrease.*

(2) If by the 60th day following notice to subscribers of a proposed rate increase *or decrease* the commission has received potitions containing siguatures from 10% or more of the affected subscribers in any rate category or a petition for review from the consumer counsel, the commission shall notify the small telecommunications provider of this fact and shall indicate that the proposed rate increase *or decrease* in tbat rate category will not take effect as noticed. The commission shali then review and determine the rates in that category pursuant to 69-3-904.

(3) In the case of a proposed increase *or decrease* in rates for access services provided to interexchango carriers, a valid petition for commission review and determination of rates consists of a signature of an authorized representative of any interexchange carrier that would be affected by the access rates that are proposed to be increased *or decreased.*"

Section 6. Regulatory flexibility upon petition by small telccommunications provider. (1) Upon application by a small telecommunications provider, the commission shall forebear from applying any regulation or any provision of this chapter to a small telecommunications provider in all or some of the small telecommunications provider's geographic markets, as stated in the application, if the commission determines that:

(a) enforcement of a regulation or provision is not necessary to ensure:

(i) that the charges, practices, or classifications are just and reasonable; or

HeinOnline -- 1999 vol. I 540 1999

(ii) that regulations hy, for, or in connection with the small telecommunications provider are just and reasonable;

(b) enforcement of a regulation or provision is not necessary for the protection of consumers; or

(c) forbearance from regulation is consistent with the public interest.

(2) (a) A small telecommunications provider providing regulated telecommunications services may submit an application to the commission requesting that the commission exercise the authority granted in this section with respect to that small telecommunications provider or any service offered by that small telecommunications provider.

(b) A petition must be considered granted within 90 days if the commission does not deny the petition upon making specific findings under subsection (1).

(c) The commission may extend the initial 90-day period if the commission finds that the extension is necessary in order to make the findings required in subsection (1).

(3) The commission may not forbear from applying the requirements of 69-3-831 through 69-3-840.

Section 7. Codification instruction. [Section 6] is intended to be codified as an integral part of Title 69, chapter 3, part 9, and the provisions of Title 69, chapter 3, part 9, apply to [section 6].

Approved March 23, 1999

CHAPTER NO. 155

[SB 289]

AN ACT ALLOWING TELEPHONE CUSTOMERS TO SUE OPERATOR SERVICE PROVIDERS FOR CHARGING EXORBITANT RATES FOR INTRASTATE PHONE CALLS; PROVIDING THE PUBLIC SERVICE COMMISSION WITH AUTHORITY TO SET RATE CAPS FOR CERTAIN CALLS; REQUIRING OPERATOR SERVICE PROVIDERS TO DISCLOSE RATES TO CUSTOMERS; ESTABLISHING A PENALTY FOR RATE VIOLATIONS; PROVIDING COSTS AND ATTORNEY FEES TO THE PREVAILING PARTY IN A COURT ACTION; AND REQUIRING DISCLOSURE ON CUSTOMER BILLS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Purpose. The purpose of [sections 1 through 6] is to provide aggrieved customers and the commission a course of action against operator service providers that charge customers exorbitant rates for intrastate calls from a pay telephone or certain other telephones in commercial establishments and public facilities and to ensure that customers are fully aware of which charges on their monthly bill are owed to an operator service provider and of how a customer can reach the operator service provider for the purpose of contesting the amount charged.

Section 2. Definitions. As used in [sections 1 through 6], the following definitions apply:

HeinOnline -- 1999 vol. I 541 1999

(1) "Aggregetor surcharge" means a charge to a customer by an entity that, in the ordinary course of its operations, makes telephones available to the public or to transient users of its premises for intrastate telephone calls using an operator service provider.

(2) "Customer" means a person who makes an intrastate telephone call through an operator service provider or the person accepting a collect telephone call made through an operator service provider.

(3) " Exorbitant rate" means a rate for an intrastate telephone call completed by an operator service provider that is greater than the allowable rate established by the commission. The allowable rate is inclusive of the call rato and any aggregetor surcharge or other calling fee collected from a customer by the operator service provider.

(4) "Operator service provider" means any person, cempany, or entity that provides autemated or live assistance to a customer to arrange for billing or completion, or both, of an intrastate telephone call through a method other than:

(a) automatic completion, with billing to the telephone from which the call originated; or

(b) completion through an access code used by the customer, witli billing to an account previously established with a tolecommunications carrier by the customer.

(5) "Telecommunications carrier" means the same as provided in 69-3-1302(5).

Section 3. Administrative rules. The commission may adopt rules that it determines are necessary to implement [sections 1 through 6].

Section 4. Disclosure requirements. An operator service provider shall:

(1) identify itself, audibly and distinctly, to the customer at the beginning of each telephone call and before the customer incurs any charges. Each operator service provider shall also identify itself to the billed party when verifying third-party billed calls.

(2) disclose, audibly and distinctly te the customer, at no charge and before connecting any intrastate call, how to obtain the total cost of the call, including any aggregator surcharge, or the maximum possible total cost of the call, including any aggregator surcharge, before providing further advice to the customer on liow to proceed to make the call. The voice disclosure required in this section must instruct each customer that the customer may obtain applicable rate and surcharge amounts by dialing not more than two digits or by remaining on the line.

(3) upon request, fully and immediately disclose to the customer, at no charge, the operator service provider's metliod of collecting its charges, a description of the operator service provider's metliod of resolving customer complaints, a toll-free telephone number that can be used to report complaints to or contest charges of the operater service provider, and all other requested information pertinent to tlie customer's use of the operator service provider's services. Tlie provisions of this subsection apply to the called party on collect calls.

(4) permit the customer to terminate the telephone call at no charge before the call is connected to the called party.

HeinOnline -- 1999 vol. I 542 1999

Section 5. Operator service provider liability — penalty — costs and fees entitlement — jurisdiction. (1) An operator service provider that charges a customer more than the allowable rato is liable:

(a) to the customer for three times the cost of the call charged to the customer or $500, whichever is greater; and

(b) to the state for the penalty prescribed in 69-3-206, for other commission enforcement actions pursuant to 69-3-110, and for a violation of applicable rules authorized by [section 3].

(2) In a suit or enforcement action brought against an operator service provider, the prevailing party is entitled to recover costs and attorney fees in a sum that the court finds reasonable.

(3) A customer has the right to seek remedy in a Montana court.

Section 6. Billing disclosure requirements. A telecommunications carrier that enters into a contract with an operator service provider for the purpose of providing billing services for operator service providers shall include a disclosure in each customer's bill that:

(1) plainly and clearly identifies the operator service provider charges as distinct from those of the telecommunications carrier; and

(2) includes accurate information about the operator service provider so that the customer may contact the operator service provider by telephone for the purpose of contesting the charge or bringing an action against the oporator service provider, or both. Upon request of the customer, the local service provider shall provide mailing address information about the operator service provider.

Section 7. Codification instruction. [Sections 1 through 6] are intended to be codified as an integral part of Title 69, chaptor 3, and the provisions of Title 69, chapter 3, apply to [sections 1 through 6].

Approved March 23, 1999

CHAPTER NO. 156

[SB 290]

AN ACT PROVIDING THAT THE DETERMINATION OF A DISABILITY OF A PERSON FOR PARKING PERMIT PURPOSES MAY BE PERFORMED BY A LICENSED ADVANCED PRACTICE REGISTERED NURSE; AMENDING SECTIONS 49-4-301, 49-4-303, AND 49-4-305, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, advanced practice registered nurses (APRNs) provide care in a multitude of primary care settings; and

WHEREAS, APRNs in those settings provide care to people with disabilities; and

WHEREAS, for many patients, an APRN is often the only health care provider that they see regularly; and

WHEREAS, tbe determination of a disability for the purposes of issuing a special parking permit is based on specific predetermined criteria provided for in law; and

HeinOnline -- 1999 vol. I 543 1999

WHEREAS, it is within the scope and practical ability of APRNs to determine if a person meets any of the specified criteria.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 49-4-301, MCA, is amended to read:

"49-4-301. Eligibility for special parking permit. (1) The department of justice shall issue a special parking permit to a person who has a disability that limits or impairs the person's mobility and who, as determined by a licensed physician ~~or~~, a licensed chiropractor, *or a licensed advanced practice registered nurse, as provided in 37-8-202,* meets one of tbe following criteria:

(a) cannot walk 200 feet without stopping to rest;

(b) is severely limited in ability to walk because of an arthritic, neurological, or orthopedic condition;

(c) is so severely disahled tbat the person cannot walk witbout the use of or assistance from a brace, cane, another person, prosthetic device, wheelchair, or other assistive device;

(d) uses portable oxygen;

(e) is restricted by lung disease to the extent that forced expiratory respiratory volume, when measured by spirometry, is less than 1 liter per second or the arterial oxygen tension is less than 60 mm/hg on room air at rest;

(f) has impairment because of cardiovascular disease or a cardiac condition to the extent that the person's functional limitations are classified as class III or IV under standards accepted by tbe American heart association; or

(g) has a disability resulting from an acute sensitivity to automohile emissions or from another disease or physical condition that limits or impairs the person's mobility and that is documented by the licensed physician ~~or~~, the licensed chiropractor, *or the licensed advanced practice registered nurse* as being comparable in severity to the other conditions listed in this subsection (1).

(2) A person who has a condition expected to improve within 6 months may be issued a temporary placard for a poriod not to exceed 6 months but may not he issued a special license plato under 61-3-332(10)(g). If the condition exists after 6 months, a new temporary placard must be issued for the time period prescribed by the applicant's physician ~~or~~, chiropractor, *or advanced practice registered nurse,* not to exceed 24 months, upon receipt of a new certification from tlie disabled person's physician ~~or~~, chiropractor, *or advanced practice registered nurse* that the conditions specified in subsection (1) continue to exist and are expected to continue for the time specified.

(3) The department of justice may issue special parking permits to an agency or husiness that provides transportation as a service for persons with a disability. The permits must be used only to load and unload persons with a disahility in the special parking place provided for in 49-4-302. As used in this subsection, "disahility" means a physical impairment that severely limits a person's ahility to walk.

(4) Except as provided in subsection (3), an applicant may not receive more than one permit."

Section 2. Section 49-4-303, MCA, is amended to read:

HeinOnline -- 1999 vol. I 544 1999

"49-4-303. Applications for permit. (1) Applications for a special parking permit may be made to the department of justice on forms provided by the department that require sufficient information to determine eligibility for a permit. The application must be accompanied by:

(a) a certificate from a licensed physician ~~or~~, a licensed chiropractor, *or a licensed advanced practice registered nurse, as provided in 37-8-202,* describing the extent of the applicant's disability; and

(b) a fee of $1.

(2) Applications must be available at the office of the county treasurer in each county and directly from the department."

Section 3. Section 49-4-305, MCA, is amended to read:

"49-4-305. Expiration of permit. (1) Except as provided in subsection (2), a permit expires on the occurrence of either of the following:

(a) 3 years from the date of issuance, unless the permit was issued to a person who has a condition expected to improve within 6 months. A person may renew a permit if a licensed physician ~~or~~, a licensed chiropractor, *or a licensed advanced practice registered nurse, as provided in 37-8-202,* certifies that the person's mobility disability still exists and that one of the criteria specified in 49-4-301 continues to be met.

(b) certification by a licensed physician ~~or~~, a licensed chiropractor, *or a licensed advanced practice registered nurse* that the person's mobility disability no longer exists or that the criteria specified in 49-4-301 can no longer be met.

(2) A permit issued before October 1, 1993, expires on:

(a) the death of the permittee; or

(b) certification by a licensed physician ~~or~~, a licensed chiropractor, *or a licensed advanced practice registered nurse* that the person's mobility disability no longer exists or that the criteria specified in 49-4-301 can no longer be met."

Section 4. Effective date. [This act] is effective on passage and approval.

Approved March 23, 1999

CHAPTER NO. 157

[SB 299]

AN ACT ALLOWING A SCHOOL DISTRICT TO PURCHASE ADDITIONAL BUSES FROM THE BUS DEPRECIATION RESERVE FUND FOR TRANSPORTATION BETWEEN HOME AND SCHOOL; AMENDING SECTION 20-10-147, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-10-147, MCA, is amended to read:

"20-10-147. Bus depreciation reserve. (1) The trustees of a district owning a bus or a two-way radio used for purposes of transportation, as defined in 20-10-101, or for purposes of conveying pupils to and from school functions or activities may establish a bus depreciation reserve fund to be used for the conversion, remodeling, or rebuilding of a bus or for the replacement of a bus or

HeinOnline -- 1999 vol. I 545 1999

radio. *The trustees of a district may also use the bus depreciation reserve fund to purchase an additional bus for purposes of transportation, as defined in 20-10-101.*

(2) Whenever a bus depreciation reserve fund is established, the trustees may include in the district's budget, in accordance with the school budgeting provisions of this title, an amount each year that does not exceed 20% of the original cost of a bus or a two-way radio. The amount budgeted may not, over time, exceed 150% of the original cost of a bus or two-way radio. The annual revenue requirement for each district's bus depreciation reserve fund, determined within the limitations of this section, must be reported by the county superintendent to the county commissioners on the fourth Monday of August as the bus depreciation reserve fund levy requirement for that district, and a levy must be made by the county commissioners in accordance with 20-9-142.

(3) Any expenditure of bus depreciation reserve fund money must be within the limitations of the district's final bus depreciation reserve fund budget and the school financial administration provisions of this title and may be made only to convert, remodel, or rebuild buses, ~~or~~ to replace the buses or radios, *or for the purchase of an additional bus as provided in subsection (1),* for which the bus depreciation reserve fund was created.

(4) Whenever the trustees of a district maintaining a bus depreciation reserve fund sell all of the district's buses and consider it to be in the best interest of the district to transfer any portion or all of the bus depreciation reserve fund balance to any other fund maintained by the district, the trustees shall submit the proposition to the electors of the district. The electors qualified to vote at the election shall qualify under 20-20-301, and the election must be called and conducted in the manner prescribed by this title for school elections. If a majority of those electors voting at the election approve the proposed transfer from the bus depreciation reserve fund, the transfer is approved and the trustees shall immediately order the county treasurer to make the approved transfer."

Section 2. Effective date. [This act] is effective July 1, 1999.

Approved March 23, 1999

CHAPTER NO. 158

[SB 317]

AN ACT ALLOWING A LETTER OF CREDIT FROM A FEDERAL HOME LOAN BANK AS COLLATERAL FOR PUBLIC FUNDS; AND AMENDING SECTION 17-6-103, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-6-103, MCA, is amended to read:

"17-6-103. Security for deposits of public funds. The following kinds of securities may be pledged or guarantees may be issued to secure deposits of public funds:

(1) direct obligations of the United States;

(2) securities as to which the payment of principal and interest is guaranteed by the United States;

HeinOnline -- 1999 vol. I 546 1999

(3) securities issued or fully guaranteed by the following agencies of the United States or their successors, whether or not guaranteed by the United States:

(a) commodity credit corporation;

(b) federal intermediate credit banks;

(c) federal land bank;

(d) hank for cooperatives;

(e) federal home loan banks, *including a letter of credit from a federal home loan bank*;

(f) federal national mortgage association;

(g) government national mortgage association;

(h) small business administration;

(i) federal housing administration; and

(j) federal home loan mortgaga corporation;

(4) securities of or other interests in an open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 through 80a-64), as amended, if:

(a) the portfolio of the investment company or investment trust is limited to United States government obligations and repurchase agreements fully collateralized hy United States gevernment obligations; and

(h) the investment company or investment trust takes delivery of the collateral for any repurchase agreement, either directly or through an authorized custodian;

(5) general obligation honds of the state or of any county, city, school district, or otlier political subdivision of tlie state;

(6) revenue bonds of any county, city, or other political subdivision of the state, when backed by the full faitli and credit of the subdivision or when tlie revenue pledged to the payment of the bonds is derived from a water or sewer system and the issuer lias covenanted to estahlish and maintain rates and charges for the system in an amount sufficient to produce revenue equal to at least 125% of the average annual principal and interest due on all honds payahle from the revenue during the outstanding term of the bonds;

(7) interest-bearing warrants of the state or of any county, city, school district, or other political subdivision of the state issued in evidence of claims in an amount tliat, witli all other claims on the same fund, does not exceed the amount validly appropriated in the current budget for expenditure from the fund in the year in which they are issued;

(8) obligations of housing authorities of tlie state secured by a pledge of annual contrihutions or by a loan agreement made by the United States or any agency of the United States providing for contributions or a loan sufficient with other funds pledged to pay the principal of and interest on the obligations when due. The bonds and other obligations made eligible for investment in 7-15-4505 and 32-1-424(1)(a) may be used as security for all deposits of public funds or ohligations for whicli depository bonds or any kind of bonds or other securities are required or may hy law he deposited as security.

HeinOnline -- 1999 vol. I 547 1999

(9) general obligation bonds of other states and of municipalities, counties, and school districts of other states;

(10) undertaking or guarantees issued by a surety company authorized to do business in the state;

(11) first mortgages and trust indentures on real property. The depository shall, on a quarterly basis, certify to the state treasurer that sufficient first mortgages and trust indentures on real property are available and segregated to secure deposits of public funds. The board of investments shall determine the amount of security required.

(12) bonds issued pursuant to Title 7, chapter 12, parts 21, 41, and 42;

(13) bonds issued pursuant to Title 90, chapter 6, part 1;

(14) revenue bonds issued by any unit of the university system of the state of Montana; and

(15) advance refunded bonds secured by direct obligations of the United States treasury held in irrevocable escrow."

Approved March 23, 1999

CHAPTER NO. 159

[HB 17]

AN ACT LIMITING THE RATE THAT A SOLID WASTE MANAGEMENT DISTRICT MAY CHARGE A FAMILY RESIDENTIAL UNIT IN WHICH A HOME-BASED BUSINESS IS OPERATED; AMENDING SECTION 7-13-232, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-13-232, MCA, is amended to read:

"7-13-232. Determination of service charge. (1) The board may establish, by resolution, rates for service charges, which may not be less than the actual cost of providing services. For solid waste management districts other than joint districts, the rates must be subject to the approval of the county commissioners.

(2) Service charges may take into account:

(a) the character, kind, and quality of service; and

(b) the cost of providing the service, including but not limited to depreciation and the payment of principal and interest on money borrowed by the district for the acquisition and improvement of facilities and equipment.

(3) *(a)* Service charges may be assessed per family residential unit or based on the size of a vehicle used to dispose of the waste; the volume or weight of the waste; or the cost, incentives, or penalties applicable to waste management practices.

(b) The service charge assessed to a family residential unit in which a home-based business is operated may not exceed the service charge assessed to a family residential unit without a home-based business unless there is a finding

HeinOnline -- 1999 vol. I 548 1999

by the solid waste management district or joint district that the family residential unit with a home-based business is generating at least 20% more waste than the average for family residential units in the district that do not contain home-based businesses.

(4) The initial rate for any solid waste *management* district or joint ~~solid waste management~~ district may not exceed the rate provided in the resolution creating the district.

(5) Fees for mobile home park accounts must be paid by the registered owner of each mobile home in the mobile home park.

(6) A notice of intention to enact a resolution to increase rates must be published as provided in 7-1-4128, and the district shall hold a public hearing prior to the meeting at which the resolution is considered."

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Applicability. [This act] applies to service charges assessed by solid waste management districts or joint solid waste districts after [the effective date of this act].

Approved March 24, 1999

CHAPTER NO. 160

[HB 44]

AN ACT AUTHORIZING THE MONTANA HEALTH FACILITY AUTHORITY TO ADMINISTER $15 MILLION OF THE PERMANENT COAL TAX TRUST FUND FOR CAPITAL PROJECTS; AMENDING SECTIONS 17-6-308 AND 90-7-202, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-6-308, MCA, is amended to read:

"17-6-308. (Temporary) Authorized investments. (1) Except as provided in subsections (2) and (3) and subject to the provisions of 17-6-201, the Montana permanent coal tax trust fund must be invested as authorized by rules adopted by the board.

(2) The board may make loans from the permanent coal tax trust fund to the capital reserve account created pursuant to 17-5-1515 to establish balances or restore deficiencies in the account. The board may agree in connection with the issuance of bonds or notes secured by the account or fund to make the loans. Loans must be on terms and conditions determined by the board and must be repaid from revenue realized from the exercise of the board's powers under 17-5-1501 through 17-5-1518 and 17-5-1521 through 17-5-1529, subject to the prior pledge of the revenue to the bonds and notes.

(3) The board shall allow the Montana board of science and technology development, provided for in 2-15-1818, to administer $12.5 million of the permanent coal tax trust fund for seed capital project loans or mezzanine financing loans and $11.1 million of the permanent coal tax trust fund for research and development project matching funds for projects at Montana public universities. The board may grant up to $2 million of interest and income from investments to research and development projects at Montana public universi-

HeinOnline -- 1999 vol. I 549 1999

ties. The research and development projects may include grant matching fund purposes. This authority does not extend beyond June 30, 1999, for seed capital project loans and beyond June 30, 1999, for research and development projects. Except for $915,000, all uncommitted seed capital funds must revert to the coal severance tax permanent fund. The department may use up to $75,000 each year of the seed capital funds for administrative purposes. The board of science and technology development, with the concurrence of the director of the department, may extend an additional loan to an existing seed capital portfolio company by up to $700,000. In the fiscal year ending June 30, 1998, the department shall transfer $250,000 of interest and earnings to the Montana supreme court to be used to fund the judges' retirement system. Until the Montana board of science and technology development makes a loan pursuant to the provisions of Title 90, chapter 3, the funds under its administration must be invested by the board pursuant to the provisions of 17-6-201. As seed capital and mezzanine financing loans made pursuant to this subsection are repaid, the proceeds of the seed capital portion of the Montana board of science and technology development loans must be deposited in the coal severance tax permanent fund until all loans have been repaid plus the amount of 7% simple interest for the years that the loans have been outstanding. The board shall calculate the amount of the interest charge. The board may use up to $25,000 of the repayments for administrative costs in the fiscal year ending June 30, 1997.

(4) The board shall adopt rules to allow a nonprofit corporation to apply for economic assistance. The rules must recognize that different criteria may be needed for nonprofit corporations than for for-profit corporations.

(5) Beginning July 1, 1999, all repayments proceeds in excess of $4.395 million must be deposited in the coal severance tax permanent fund. In the fiscal year ending June 30, 1998, the department shall transfer $250,000 from the interest and earnings from job investment loans to the Montana supreme court to be used to fund the judges' retirement system.

17-6-308. (Effective July 1, 1999) Authorized investments. (1) Except as provided in subsections (2) ~~and (3)~~ *through (4)* and subject to the provisions of 17-6-201, the Montana permanent coal tax trust fund must be invested as authorized by rules adopted by the board.

(2) The board may make loans from the permanent coal tax trust fund to the capital reserve account created pursuant to 17-5-1515 to establish balances or restore deficiencies in the account. The board may agree in connection with the issuance of bonds or notes secured by the account or fund to make the loans. Loans must be on terms and conditions determined by the board and must be repaid from revenue realized from the exercise of the board's powers under 17-5-1501 through 17-5-1518 and 17-5-1521 through 17-5-1529, subject to the prior pledge of the revenue to the bonds and notes.

(3) The department shall manage the seed capital and research and development loan portfolios created by the former Montana board of science and technology development. The department shall establish an appropriate repayment schedule for all outstanding research and development loans made to the university system. ~~The department shall report the schedule to the 56th legislature. The department shall develop a business investment strategy for investing in Montana business and shall present the proposal to the 56th legislature.~~ The department is the successor in interest to all agreements, contracts, loans, notes, or other instruments entered into by the Montana board of science and technology development as part of the seed capital and research

HeinOnline -- 1999 vol. I 550 1999

and development loan portfolios. Until the department makes a loan pursuant to the provisions of part 5 of this chapter, the $915,000 in funds under its administration must be invested by the board pursuant to the provisions of 17-6-201. As loans made pursuant to part 5 of this chapter are repaid, the department may reinvest the principal in new loans pursuant to part 5 of this chapter.

(4) The board shall allow the Montana health facility authority to administer $15 million of the permanent coal tax trust fund for capital projects. Until the authority makes a loan pursuant to the provisions of Title 90, chapter 7, the funds under its administration must be invested by the board pursuant to the provisions of 17-6-201. As loans for capital projects made pursuant to this subsection are repaid, the principal and interest payments on the loans must be deposited in the coal severance tax permanent fund until all principal and interest have been repaid. The board and the authority shall calculate the amount of the interest charge. Individual loan amounts may not exceed 10% of the amount administered under this subsection.

~~(4)~~*(5)* The board shall adopt rules to allow a nonprofit corporation to apply for economic assistance. The rules must recognize that different criteria may be needed for nonprofit corporations than for for-profit corporations.

~~(5)~~*(6)* ~~Beginning July 1, 1999, all~~ *All* repayments proceeds *pursuant to subsection (3)* in excess of $4.395 million must be deposited in the coal severance tax permanent fund. ~~In the fiscal year ending June 30, 1999, the department shall transfer $250,000 from the interest and earnings from job investment loans to the Montana supreme court to be used to fund the judges' retirement system.~~"

Section 2. Section 90-7-202, MCA, is amended to read:

"**90-7-202. Powers of authority.** The authority may:

(1) sue and be sued;

(2) have a seal;

(3) adopt all procedural and substantive rules necessary for the administration of this chapter;

(4) issue bonds or incur other debt as described in this chapter, including the issuance of notes or refunding bonds;

(5) *except as provided in 17-6-308,* invest any funds that are not required for immediate use, subject to any agreements with its bondholders and noteholders, as provided in Title 17, chapter 6, except that all investment income from funds invested by the authority, less the cost for investment, must be deposited in an enterprise fund to the credit of the authority to be used to carry out the purposes of this chapter;

(6) contract in its own name for the investment of funds, borrowing of funds, or any other purposes it considers appropriate to carry out the purposes of this chapter;

(7) participate with any financial institution in the purchase or guarantee of any loan or obligation;

(8) issue bond anticipation notes or any other anticipatory financial obligations to secure funding of eligible facilities;

HeinOnline -- 1999 vol. I 551 1999

(9) enter into agreements or make advance commitments to insure repayments required by loan agreements made by a lender. These agreements are subject to terms and conditions established by the authority.

(10) establish programs to make, sell, purchase, or insure loans to finance the costs of eligible facilities from any funds;

(11) accept gifts, grants, or loans from a federal agency, an agency or instrumentality of the state, a municipality, or any other source;

(12) enter into contracts or other transactions with a federal agency, an agency or instrumentality of the state, a municipality, a private organization, or any other entity consistent with the exercise of any power under this chapter;

(13) with regard to property:

(a) acquire real or personal property or any right, interest, or easement in real or personal property by gift, purchase, transfer, foreclosure, lease, or otherwise;

(b) hold, sell, assign, lease, encumber, mortgege, or otherwise dispose of property;

(c) hold, sell, assign, or otherwise dispese of any mortgage or loan owned by it or in its control or custody;

(d) release or relinquish any right, title, claim, interest, easement, or demand, however acquired, including any equity or right of redemption;

(e) make any disposition by public or private sale, with or without public bidding;

(f) commence any action to protect or enforce any right conferred upon it by any law, mortgage, contract, or other agreement;

(g) bid for and purchase property at any foreclosure or other sale or acquire or take possession of it in lieu of foreclosure; and

(h) operate, manage, lease, dispose of, and otherwise deal with property in any manner necessary or desirable to protect its interests or the holders of its bonds or notes if that action is consistent with any agreement with the bolders;

(14) service, contract, and pay for the servicing of loans;

(15) provide general technical services in the analysis, planning, design, processing, construction, rehabilitation, and management of eligible facilities whenever considered appropriate;

(16) consent, whenever it considers necessary or desirable in fulfilling its purposes, to the modification of the rate of interest, time, or payment of any installment of principal, interest, or security or any other term of any contract, lease agreement, loan agreement, mortgage, mortgage loan, mortgage loan commitment, construction loan, advance contract, or agreement of any kind, subject to any agreement with bondholders and noteholders;

(17) collect reasonable interest, fees, and charges from participating institutions in connection with making and servicing its lease agreements, loan agreements, mortgage loans, notes, bonds, commitments, and other evidences of indebtedness. ~~The~~ *Except as provided in 17-6-308, the* interest, fees, and charges must be deposited to an enterprise fund to the credit of the authority. Interest, fees, and charges are limited to the amounts required to pay the costs of the

HeinOnline -- 1999 vol. I 552 1999

authority, including operating and administrative expenses, reasonable allowances for losses that may be incurred, and bond financing costs, and to provide funds to make loans to finance the costs of eligible facilities.

(18) make loans pursuant to 17-6-308;

~~(18)~~*(19)* perform any other acts necessary and convenient to carry out the purposes of this chapter."

Section 3. Effective date. [This act] is effective July 1, 1999.

Approved March 24, 1999

CHAPTER NO. 161

[HB 65]

AN ACT EXTENDING THE INTERVENTION IN DELINQUENCY PILOT PROGRAM; AUTHORIZING THE DEPARTMENT OF CORRECTIONS TO CREATE UP TO 10 ADDITIONAL ACCOUNTS FOR JUDICIAL DISTRICTS, WHICH MAY BE USED TO DEVELOP THE INCREMENTAL COSTS SCALE; AMENDING SECTIONS 73 AND 82, CHAPTER 550, LAWS OF 1997; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 73, Chapter 550, Laws of 1997, is amended to read:

"Section 73. Intervention in delinquency pilot program — department study of youth placement costs — development of incremental scale — report to legislature — department responsibilities. (1) The department of corrections may conduct a pilot project, the results of which may be used as the basis for developing the incremental costs scale provided for in subsection (3). As a part of the pilot project, the department may identify each judicial district as a high-spending district, an average-spending district, or a low-spending district for youth placements. The department may analyze each category of district and identify the reasons for the spending characteristics in each category of district, such as types of youth, types of crimes committed, effectiveness of programs (including but not limited to the rates of recidivism), community sentiment, availability or lack of availability of placements, length of stay in placements, and case management. The department may target the high-spending districts and work with them in identifying and creating appropriate, lower-cost, and less restrictive placements.

(2) The department may create an account for a high-spending rural judicial district and a high-spending urban judicial district that is based on expenditures for fiscal year 1996 and fiscal year 1997 and may credit each with a proportion of appropriated placement funds. *In fiscal year 1998 and fiscal year 1999, the department may create accounts for up to 10 additional judicial districts of which at least 2 judicial districts must have a historically high ratio of adjudication to secure commitment, as determined by the past 3 years of those judicial districts' commitment histories.* The proportionate share of the appropriations must be based on the types of youth, types of placements, youth population from 10 to 18 years of age, and a measure of the youth crime rate. The department may work with the regional supervisor, the chief juvenile probation officer, and the youth

HeinOnline -- 1999 vol. I 553 1999

placement committees in the respective judicial districts to educate them regarding their allocation, to identify all potential placements and funding sources, and to consider the lowest-cost option that is in the best interests of the youth, the victim, and the safety of the community.

(3) The department may study the expenditures for placements for youth offenders for the fiscal years 1996, 1997, ~~and~~ 1998, *1999, and 2000* and develop an incremental costs scale for the purposes of developing a system to charge each judicial district account with the costs of a placement and to credit a judicial district account for using the least restrictive placements and developing community-based programs. The proportional share allocated to each judicial district must be based on the types of youth, types of placements, youth population from 10 to 18 years of age, and a measure of the youth crime rate.

(4) If the department conducts a pilot program under this section, the department shall present a proposal to the ~~56th~~ *57th* legislature that includes the following elements:

(a) The information gathered from the pilot program, as provided in subsections (2) and (3), must be used in the development of the incremental costs scale.

(b) There must be a recommendation for a method to return any balance remaining at the end of a fiscal year to the judicial districts for the explicit purposes of developing additional community programs for youth court purposes.

(c) The assumptions in subsection (5) must be incorporated as a part of the proposed incremental costs scale.

(d) There must be a recommendation and justification for whether to include the state youth correctional facilities and correctional facilities and programs operated by the department in the incremental costs scale.

(5) For purposes of a pilot program, the department shall assume that the department is responsible for:

(a) the payment of residential and treatment costs for adjudicated youth placed in an out-of-home residence or committed to the department for purposes of funding a private residential placement under 41-5-523 or [section 34];

(b) all placement costs of a youth adjudicated in youth court for an offense listed in 41-5-206;

(c) education costs as provided in 20-5-323 and Title 20, chapter 7, part 4; and

(d) treatment costs that are over and above the costs of treatment for which the:

(i) youth is qualified under the public mental health system and medicaid; and

(ii) parent or guardian has third-party coverage.

(6) If the department conducts a pilot program under this section, the department shall prepare a summary of the results of the study and report to the ~~56th~~ *57th* legislature."

Section 2. Section 82, Chapter 550, Laws of 1997, is amended to read:

"Section 82. Termination. [Section 73] terminates December 31, ~~1998~~ *2000*."

HeinOnline -- 1999 vol. I 554 1999

Section 3. Effective date. [This act] is effective on passage and approval.

Section 4. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to all occurrences after January 1, 1999.

Approved March 24, 1999

CHAPTER NO. 162

[HB 228]

AN ACT ELIMINATING THE REQUIREMENT THAT THE FIRST ELECTION OF OFFICERS FOR A NEWLY INCORPORATED CITY OR TOWN BE HELD IN CONJUNCTION WITH A REGULAR OR PRIMARY ELECTION; AMENDING SECTION 7-2-4106, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-2-4106, MCA, is amended to read:

"7-2-4106. First election for officers. (1) When the incorporation of a city or town is completed, the board of county commissioners shall give notice for 30 days in a newspaper published within the limits of the city or town or, if none is published within the limits, by posting notices in six public places within the limits of the city or town of the time and place or places of holding the first election for offices of the city or town. ~~The election must be held in conjunction with a regular or primary election.~~ *The election may be held in conjunction with a regular or primary election.*

(2) At the election, all the electors qualified by the general election laws of the state who have resided within the limits of the city or town for 6 months and within the limits of the ward for 30 days preceding the election are qualified electors and may choose officers for the city or town, to hold office as prescribed in 7-2-4107.

(3) The board shall appoint election judges and canvass and declare the result of the election. The election must be conducted in the manner required by law for the election of county officers.

(4) If the first election of officers is not held in conjunction with a regular or primary election, the offices filled in the election may be occupied only until the next election regularly scheduled for those offices."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 24, 1999

CHAPTER NO. 163

[HB 230]

AN ACT ALLOWING COUNTY COMMISSIONERS THE DISCRETION TO SET THE NUMBER OF MEMBERS OF A COUNTY BOARD OF HEALTH AT FIVE OR MORE; AND AMENDING SECTION 50-2-104, MCA.

Be it enacted by the Legislature of the State of Montana:

HeinOnline -- 1999 vol. I 555 1999

Section 1. Section 50-2-104, MCA, is amended to read:

"50-2-104. County boards of health. (1) There is a county board of health in each county consisting of:

(a) the county commissioners and two members who are appointed by the county commissioners and serve at their pleasure; or

(b) *a minimum of* five persons who are appointed by the county commissioners and serve at their pleasure.

(2) Terms of appointed members ~~shall~~ *must* be staggered and be for 3 years each.

(3) The county commissioners shall establish the staggered order of terms and all rules necessary to establish and maintain the board."

Approved March 24, 1999

CHAPTER NO. 164

[HB 362]

AN ACT CLARIFYING FEDERAL WRITE-IN ABSENTEE BALLOT PROVISIONS FOR OVERSEAS UNITED STATES SERVICE MEMBERS; ALLOWING THE FEDERAL WRITE-IN ABSENTEE BALLOT TRANSMISSION ENVELOPE TO BE USED AS A VOTER REGISTRATION FORM AND AS AN APPLICATION FOR A REGULAR ABSENTEE BALLOT IN CERTAIN CIRCUMSTANCES; AMENDING SECTIONS 13-2-212, 13-13-212, 13-13-271, AND 13-13-273, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-2-212, MCA, is amended to read:

"13-2-212. Registration of electors in ~~the~~ United States service. (1) An elector in the United States service who is absent from the state and the county of which ~~he~~ *the elector* is a resident may register ~~by mailing to the election administrator:~~ *with the election administrator in the elector's county of residence as follows:*

(a) by the close of registration provided for in 13-2-301, by using:

~~(a)~~*(i)* the *voter* registration form~~, filled out and signed~~; ~~or~~

~~(b)~~*(ii)* the federal post card application~~, filled out and signed~~*; or*

(iii) if eligible, the federal write-in ballot as provided in 13-13-271(3).~~;~~

(b) after the close of registration, only by federal post card application, which must be received by the election administrator by noon on the day before the election.

(2) The form of the federal post card application~~, which may be used both as an application for registration and for a ballot, shall~~ *must* be prescribed by the secretary of state.

~~(3) An elector in the United States service who is absent from the state and county of which he is a resident may register to vote by federal post card~~

~~application and vote by federal write-in absentee ballot for the next primary or general election up to noon on the day before the election.~~"

Section 2. Section 13-13-212, MCA, is amended to read:

"**13-13-212. Application for absentee ballot — *special provisions.*** (1) ~~Application~~ *An elector may apply* for *an* absentee ~~ballots~~ *ballot* ~~must be made~~ by ~~a~~ *making a* written request, signed by the applicant, ~~and addressed to or transmitted by facsimile~~ to the election administrator of the applicant's county of residence *within the time period specified in 13-13-211.*

(2) ~~Application for an absentee ballot may be made by any~~ *An* elector in the United States service *absent from the state and county in which the elector is registered may apply for an absentee ballot as follows:*

(a) as provided in subsection (1);

(b) by *using* the federal postcard application ~~or by any written request~~ signed by the applicant ~~and addressed to or transmitted by facsimile to the election administrator of the applicant's county of residence~~ *and made within the time period specified in 13-13-211; or*

(c) if eligible, by using the federal write-in ballot as provided in 13-13-271(3).

(3) *(a)* If an elector requests an absentee ballot because of a sudden illness or health emergency, the application for an absentee ballot may be made by written request signed hy the elector at the time that the ballot is delivered in person by the special absentee election board provided for in 13-13-225.

(b) The elector may request by telephone, facsimile transmission, or other means to have a ballot and application personally delivered by the special absentee election board at the elector's place of confinement, hospitalization, or residence within the county.

(c) A request ~~may be made no later than~~ *under this subsection (3) must be received by the election administrator by* noon on election day.

(4) An elector who has made a request for an absentee ballot by one of the methods provided in this section may, in the event of the death of a candidate after the primary election but before the general election, make a request for a replacement ballot. The request for a replacement ballot may be made orally to the election administrator."

Section 3. Section 13-13-271, MCA, is amended to read:

"**13-13-271. Federal write-in absentee ballot — qualifications.** (1) An elector ~~qualified by~~ *in the United States service, as defined in* 13-2-211, who *is overseas, has applied for a regular absentee ballot as provided in 13-13-212 or subsection (3) of this section, and* fears ~~his regular absentee~~ *that the elector might not receive a regular* ballot ~~might not arrive~~ in time to vote and return *it* to the election administrator ~~of the county of his residence and registration~~ may ~~also~~ vote a federal write-in absentee ballot *as provided in 13-13-272.*

(2) The federal write-in absentee ballot is available to military personnel and civilians overseas through the same source that provides federal post card application forms and is only valid for federal elections.

(3) ~~Except as provided in 13-2-212(3), the elector shall apply for a regular absentee ballot as provided in 13-13-212(2) not less than 30 days before the general election~~ *An overseas elector in the United States service may use a federal*

write-in absentee ballot transmission envelope to register to vote and to apply for a regular absentee ballot if the envelope is received by the election administrator not less than 30 days before the election and the envelope has been properly completed and signed.

(4) As used in this section, "overseas" means outside the territorial limits of the United States and does not mean any location within the continental United States, Alaska, Hawaii, or Guam."

Section 4. Section 13-13-273, MCA, is amended to read:

"13-13-273. Counting of federal write-in absentee ballots. (1) A federal write-in absentee ballot must be counted if:

(a) the ~~condition in 13-13-271(3) has been met~~ *election administrator received the elector's application for a regular absentee ballot not less than 30 days before the election*;

(b) the *election administrator has not received a* regular absentee ballot ~~has not been received~~ *from the elector* by 8 p.m. election day;

(c) it has not been submitted from any location within the continental United States, Alaska, Hawaii, or Guam; and

(d) it is received by 8 p.m. election day.

(2) Federal write-in absentee ballots received before the close of the polls election day will not be counted until the polls have closed."

Section 5. Effective date. [This act] is effective on passage and approval.

Approved March 24, 1999

CHAPTER NO. 165

[HB 414]

AN ACT REVISING THE ALLOCATION OF FEES FOR TEACHER AND SPECIALIST CERTIFICATES; AMENDING SECTION 20-4-109, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-4-109, MCA, is amended to read:

"20-4-109. Fees for teacher and specialist certificates. (1) A person applying for the issuance or renewal of a teacher or specialist certificate shall pay a fee not to exceed $6 for each school fiscal year that the certificate is valid. In addition to this fee, a person who has never held any class of Montana teacher or specialist certificate or for whom an emergency authorization of employment has never been issued shall pay a filing fee of $6. The fees must be paid to the superintendent of public instruction, who shall deposit the fees with the state treasurer to the credit of the state special revenue fund account, created in subsection (2), to be used in the following manner:

(a) ~~$3~~ *$4* for expenses of the certification standards and practices advisory council created in 2-15-1522;

(b) ~~$3~~ $2 to the board of public education to be used by the certification standards and practices advisory council for research in accordance with the duties of the council provided for in 20-4-133.

(2) There is an account in the state special revenue fund. Money from fees for teacher or specialist certificates required in subsection (1) must be deposited in the account."

Section 2. Effeetive date. [This act] is effective July 1, 1999.

Approved March 24, 1999

CHAPTER NO. 166

[HB 419]

AN ACT AUTHORIZING THE TRUSTEES OF A SCHOOL DISTRICT TO ENTER INTO A CONTRACT WITH THE GOVERNING BODY OF ANOTHER POLITICAL SUBDIVISION WITHIN ITS COUNTY OR IN AN ADJOINING COUNTY FOR JOINT CONSTRUCTION OF A FACILITY; AMENDING SECTIONS 20-9-404 AND 20-9-405, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-404, MCA, is amended to read:

"20-9-404. Contracts and bonds for joint construction. *(1)* The trustees of a school district may enter into a contract with the trustees of any school district within the county ~~or~~, with any school district in an adjoining county, *with the governing body of another political subdivision within the county in which the school district is located, or with the governing body of a political subdivision of a county adjoining the school district* to provide for the joint construction of a facility upon terms and conditions mutually agreed upon between the districts.

(2) The trustees of any district executing a contract in accordance with tbis section may levy taxes and issue bonds for the purpose of constructing the facilities authorized by tbis section."

Section 2. Section 20-9-405, MCA, is amended to read:

"20-9-405. Proportional joint ownership — disposition of money. The facility constructed under 20-9-404 inust be jointly owned by the school districts *or other political subdivisions* contributing to its construction in proportion to the contribution of each ~~district~~ *political subdivision*. The sale or other disposition of a district's intorest in the facility must be made in accordance with 20-6-604. Money received from the sale or disposition of a district's interest in a facility must be credited to the debt service fund, building fund, general fund, or any coinbination of these three funds, at the discretion of the trustees."

Section 3. Effective date — applicability. [This act] is effective July 1, 1999, and applies to contracts entered into on or after [the effective date of this act].

Approved March 24, 1999

HeinOnline -- 1999 vol. I 559 1999

CHAPTER NO. 167

[SB 60]

AN ACT ALLOWING DISTRICT COURT JUDGES TO APPOINT STANDING MASTERS WITH APPROVAL OF A GOVERNING BODY; REQUIRING COMPENSATION OF STANDING MASTERS TO BE PAID BY THE COUNTIES; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Standing masters — appointment and removal — compensation — qualifications. (1) With approval of the governing body of the county or counties served by the district court or with the approval of a consolidated city-county government, a district court may appoint one or more standing masters. A standing master serves at the pleasure of the district court and may be removed hy the appointing judge. The compensation to be paid to a standing master must be set by the appointing judgo and must be paid by the counties served by the district court.

(2) A standing master must be admitted to practice law in Montana for at least 3 years prior to the date of appointment and must be a member of good standing of the state bar of Montana.

Section 2. Standing masters — reference — powers. (1) A reference to a standing master must be made at the judge's discretion or by standing order of the district court.

(2) (a) The order of reference to the standing master may specify or limit the standing master's powers and may direct the standing master to present findings of fact and conclusions of law upon particular issues. Subject to the specifications and limitations stated in tbe order, the standing master shall regulate all proceedings in every hearing before the standing master and implement measures necessary for the efficient performance of the standing master's duties under the order.

(b) The standing master may:

(i) require the production of evidence upon all matters embraced in the reference, including the production of all hooks, papers, vouchers, documents, and writings that are applicable;

(ii) rule upon the admissibility of evidence unless otherwise directed by the order of reference;

(iii) put witnesses on oath and examine them;

(iv) call the parties to the action and examine them on oath; and

(v) issue temporary orders that are subject to review by the district court, upon objection by a party to the action.

(c) The standing master shall make a record of the evidence offered and excluded in the same manner and subject to the same limitations as provided in the Montana Rules of Evidence for a court sitting without a jury. Audio and video recordings are acceptable means of record so long as a master recording is properly preserved and can be transcribed for district court and appellate review.

Section 3. Standing masters — proceedings — meetings — witnesses — statements of account. (1) When a reference is made, the clerk

HeinOnline -- 1999 vol. I 560 1999

shall immediately furnish the standing master with a copy of the order of reference. Unless the order of reference otherwise provides, the standing master shall set a time and place for the first meeting of the parties or their attorneys to be held within 20 days after the date of the order of reference and shall notify the parties or their attorneys. The standing master shall proceed with all reasonable diligence. Either party, on notice to the parties and standing master, may apply to the court for an order requiring the standing master to speed the proceedings and to make the report. If a party fails to appear at the time and place appointed, the standing master may proceed ex parte or, in the standing master's discretion, adjourn the proceedings to a future day, giving notice to the absent party of the adjournment.

(2) The parties may procure the attendance of witnesses before the standing master by the issuance and service of subpoenas as provided in Rule 45 of the Montana Rules of Civil Procedure. If, without adequate excuse, a witness fails to appear or give evidence, the witness may be punished for a contempt and be subjected to the consequences, penalties, and remedies provided in Rules 37 and 45 of the Montana Rules of Civil Procedure.

(3) When matters of accounting are in issue before the standing master, the standing master may prescribe the form in which the accounts must be submitted and may require or receive in evidence a statement by a certified public accountant who is called as a witness. Upon objection of a party to any of the items submitted or upon a showing that the form of statement is insufficient, the standing master may require a different form of statement to be furnished or the accounts or specific items to be proved by oral examination of the accounting parties or upon written interrogatories or in such other manner as the standing master directs.

Section 4. Standing masters — findings of fact and conclusions of law — orders — contents and filing — review — stipulations as to findings. (1) Subject to the order of reference, the standing master shall submit findings of fact and conclusions of law, following a hearing upon the matters submitted to the standing master by the order of reference. When a hearing is not required, the standing master shall submit an order upon the matters submitted to the standing master by the order of reference. The standing master shall file the findings and conclusions or order with the clerk of the court and serve copies on all parties. All contested proceedings before the standing master must be recorded. The standing master shall, at the expense of the district court, file a recording of the proceedings and of the evidence and the original exhibits. The cost of the preparation of a duplicate of the recording is the responsibility of the objecting party. The objecting party shall serve a copy of the duplicate recording on adverse parties at the objecting party's expense.

(2) Within 10 days after being served with notice of the filing of the findings and conclusions or order, any party may serve written specific objections upon the other parties or may apply to the court for an extension to serve. Application to the court for action upon the findings and conclusions or order and upon the filing of specific objections to the findings and conclusions or order must be by motion and upon notice as prescribed in Rule 6(d) of the Montana Rules of Civil Procedure. The court, after a hearing, may adopt the findings and conclusions or order and may modify, reject in whole or in part, receive further evidence, or recommit the findings and conclusions or order with instructions.

HeinOnline -- 1999 vol. I 561 1999

(3) The effect of a standing master's report is the same whether or not the parties have consented to the reference, but when the parties stipulate that a standing master's findings of fact are final, only questions of law arising upon the findings and conclusions may be considered.

Section 5. Codification instruction. [Sections 1 through 4] are intended to be codified as an integral part of Title 3, chapter 5, part 1, and the provisions of Title 3, chapter 5, part 1, apply to [sections 1 through 4].

Section 6. Effective date. [This act] is effective July 1, 1999.

Approved March 24, 1999

CHAPTER NO. 168

[SB 90]

AN ACT AMENDING THE VETERANS' PUBLIC EMPLOYMENT PREFERENCE LAW; PROVIDING FOR THE APPLICATION OF VETERANS' PREFERENCE BY AN EMPLOYER USING A NONSCORED PROCEDURE WHEN APPLICANTS HOLD SUBSTANTIALLY EQUAL QUALIFICATIONS; REQUIRING A PUBLIC EMPLOYER TO APPLY VETERANS' PREFERENCE WHEN NO APPLICANT MEETS THE MINIMUM QUALIFICATIONS AND THE PUBLIC EMPLOYER FILLS A TRAINING POSITION; AND AMENDING SECTIONS 39-29-102, 39-29-103, AND 39-29-104, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-29-102, MCA, is amended to read:

"39-29-102. Point preference *or alternative preference* in initial hiring for certain applicants — *substantially equivalent selection procedure.* (1) Subject to the restrictions in subsections (2) and (3), whenever a public employer uses a scored procedure, an applicant for an initial hiring, as defined in 39-30-103, must have added to ~~his~~ *the applicant's* score the following percentage points of the total possible points that may be granted in the scored procedure:

(a) 5 percentage points if the applicant is a veteran; and

(b) 10 percentage points if the applicant is a disabled veteran or an eligible relative.

(2) A veteran, disabled veteran, or eligible relative may not receive the percentage points provided for in subsection (1) unless the person:

(a) is a United States citizen; and

(b) ~~received 70 or more percentage points of the total possible points that may be granted in the scored procedure.~~ *meets the minimum qualifications required for the position. If no applicant meets the minimum qualifications and the public employer fills a training position, veterans' preference must be applied.*

(3) A disabled veteran who receives 10 percentage points under subsection (1)(b) may not receive an additional 5 percentage points under subsection (1)(a).

(4) Whenever a public employer uses a selection procedure other than a scored procedure, the public employer shall give preference to a disabled veteran, eligible

relative, or veteran, in that order, over any nonpreferred applicant holding substantially equal qualifications, as defined in 39-30-103."

Section 2. Section 39-29-103, MCA, is amended to read:

"39-29-103. Notice and claim of preference. (1) A public employer shall, by posting or on the application form, give notice of the ~~point~~ preference provided in 39-29-102.

(2) A job applicant who believes ~~he~~ *that the applicant* is eligible to receive a ~~point~~ preference shall claim the preference in writing before the time for filing applications for the position involved has passed. Failure to make a timely preference claim for a position is a complete defense to an action instituted by an applicant under 39-29-104 with regard to that position.

(3) If an applicant for a position makes a timely written preference claim, the public employer shall give written notice of its hiring decision to the applicant claiming preference."

Section 3. Section 39-29-104, MCA, is amended to read:

"39-29-104. Enforcement of preference. (1) An applicant who believes ~~he~~ *that the applicant* is entitled to but has not been given the ~~point~~ preference provided in 39-29-102 may, within 30 days of receipt of the notice of the hiring decision provided for in 39-29-103, submit to the public employer a written request for an explanation of the public employer's hiring decision. Within 15 days of receipt of the request, the public employer shall give the applicant a written explanation.

(2) After following the procedure described in subsection (1), the applicant may, within 90 days after receipt of notice of the hiring decision, file a petition in the district court in the county in which ~~his~~ *the* application was received by the public employer. The potition must state facts that on their face entitle the applicant to a ~~point~~ preference.

(3) (a) Upon filing of the petition, the court shall order the public employer to appear in court at a specified time not less than 5 or more than 10 days after the day the petition was filed and show cause why the applicant was not hired for the position. At the hearing, the public employer has the burden of proving by a preponderance of the evidence that the *public* employer applied the ~~points~~ *preference* under 39-29-102 and made a reasonable hiring decision. The applicant has the burden of proving by a preponderance of the evidence that ~~he~~ *the applicant* is a preference-eligible applicant.

(b) The time to appear provided in subsection (3)(a) may be waived by stipulation of the parties. If a time to appear has been specified pursuant to subsection (3)(a), the court may, on motion of one of the parties or on stipulation of all of the parties, grant a continuance.

(c) If the public employer does not carry its burden of proof under subsection (3)(a) and the court finds that the applicant is a preference-eligible applicant, the court shall order the public employer to comply with the provisions of 39-29-102. In addition, the court shall, upon proper proof, grant an award of backpay, reasonable attorney fees, and costs.

(4) Failure of an applicant to file a petition under subsection (2) within 90 days bars the filing of a petition. If a public employer fails to provide an explanation under subsection (1) within 15 days and a petition is filed under

HeinOnline -- 1999 vol. I 563 1999

subsection (2), the court shall order the public employer to comply with the provisions of 39-29-102.

(5) The Montana Rules of Civil Procedure apply to a proceeding under this section to the extent that they do not conflict with this section."

Approved March 24, 1999

CHAPTER NO. 169

[SB 165]

AN ACT CREATING A POSSESSORY LIEN FOR THE PAYMENT OF TOWING AND STORAGE CHARGES; REVISING THE AGISTERS' LIEN LAWS TO INCLUDE TOWING AND STORAGE LIENS; AND AMENDING SECTION 71-3-1201, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 71-3-1201, MCA, is amended to read:

"71-3-1201. Who may have lien — *agisters' lien — lien for service — towing and storage lien.* (1) If there is an express or implied contract for keeping, feeding, herding, pasturing, or ranching stock, a ranchman, farmer, agister, herder, hotelkeeper, livery, or stablekeeper to whom any horses, mules, cattle, sheep, hogs, or other stock are entrusted has a lien upon ~~such~~ *the* stock for the amount due for keeping, feeding, herding, pasturing, or ranching the stock and may retain possession ~~thereof~~ *of the stock* until the sum due is paid.

(2) Every person who, while lawfully in possession of an article of personal property, renders any service to the owner or lawful claimant ~~thereof~~ *of the article* by labor or skill employed for the making, repairing, protection, improvement, safekeeping, ~~or~~ carriage ~~thereof~~, *towing, or storage of the article or tows or stores the article as directed under authority of law* has a special lien ~~thereon,~~ *on it. The lien is* dependent on possession, *and is* for the compensation, if any, that is due to ~~him~~ *the person* from the owner or lawful claimant for ~~such~~ *the* service and for material, if any, furnished in connection ~~therewith~~ *with the service. If the service is towing or storage, the lien is for the reasonable cost of the towing or storage.*"

Approved March 24, 1999

CHAPTER NO. 170

[SB 189]

AN ACT REVISING CERTAIN LICENSING LAWS APPLICABLE TO REAL ESTATE BROKERS AND SALESPERSONS; ALLOWING A BROKER TO PAY A COMMISSION TO A LICENSED BROKER OF ANOTHER COUNTRY; REVISING THE DISCLOSURE OF RELATIONSHIPS IN REAL ESTATE TRANSACTIONS; PROVIDING FOR SUSPENSION OF REAL ESTATE LICENSES FOR NONCOMPLIANCE WITH CONTINUING EDUCATION REQUIREMENTS; ELIMINATING THE REQUIREMENT THAT A BROKER OPERATING A FRANCHISE DISCLOSE INDEPENDENT OPERATION; DELETING THE REQUIREMENT THAT OUT-OF-STATE SALES OF IN-STATE SUBDIVISIONS BE REGISTERED WITH THE BOARD OF

HeinOnline -- 1999 vol. I 564 1999

REALTY REGULATION; AMENDING SECTIONS 37-51-306, 37-51-310, 37-51-313, 37-51-314, AND 37-51-321, MCA; REPEALING SECTIONS 76-4-1101, 76-4-1102, 76-4-1103, 76-4-1104, 76-4-1105, 76-4-1106, 76-4-1107, 76-4-1108, 76-4-1109, 76-4-1110, 76-4-1111, 76-4-1112, 76-4-1113, 76-4-1114, 76-4-1115, 76-4-1116, AND 76-4-1117, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-51-306, MCA, is amended to read:

"37-51-306. Transactions with nonresidents and with nonlicensed brokers or salespersons — consent to legal process. (1) A licensed broker may not employ or compensate, directly or indirectly, a person for performing the acts regulated by this chapter who is not a licensed broker or licensed salesperson. However, a licensed broker may pay a commission to a licensed broker of another state *or jurisdiction* if the nonresident broker has not conducted and does not conduct in this state a service for which a fee, compensation, or commission is paid.

(2) A nonresident licensee shall file an irrevocable written consent that legal actions arising out of a commenced or completed transaction may be commenced against the nonresident licensee in a county of this state that may be appropriate and designated by Title 25, chapter 2, part 1. The consent must provide that service of summons in this action may be served on the department for and on behalf of the nonresident licensee, and this service is sufficient to give the court jurisdiction over the licensee conducting a transaction in a county. The consent must be acknowledged and, if made by a corporation, must be authenticated by its seal."

Section 2. Section 37-51-310, MCA, is amended to read:

"37-51-310. Renewal. (1) License fees are due and payable for the ensuing licensure period at a time prescribed by department rule. Failure to remit renewal fees before the expiration date of the licensure period automatically cancels the license, but otherwise the license remains in effect continuously from the date of issuance unless suspended or revoked by the board for just cause.

(2) A licensee who allows the license to lapse by failing to remit the fees before the expiration date may have the license reinstated by the board by:

(a) within 45 days after the expiration date, providing a satisfactory explanation to the board for the licensee's failure to renew the license; and

(b) paying the current renewal fee prescribed by the board.

(3) The board may also charge a late fee equal to twice the current renewal fee, but ~~no~~ *not* less than $100, to a licensee who does not renew the license as required by subsection (1).

(4) A licensee shall submit proof of completion of continuing education within the time and in the manner required by the board. If a licensee fails to submit the proof, the board shall notify the licensee of the failure and provide the licensee the opportunity to present to the board the reasons for the failure. Upon failure of the licensee to show good cause for failing to submit timely proof of completion of continuing education, the board may suspend the individual's license. After suspension, the licensee is entitled to a hearing on the suspension in accordance with the provisions of chapter 1, part 3, of this title and the contested case provisions of the Montana Administrative Procedure Act."

HeinOnline -- 1999 vol. I 565 1999

Section 3. Section 37-51-313, MCA, is amended to read:

"37-51-313. Duties, duration, and termination of relationship between broker or salespersou and buyer or seller. (1) The provisions of this chapter and the duties described in this section govern the relationships between brokers or salespersons and buyers or sellers and are intended to *replace the duties of agents as provided elsewhere in state law and* replace the common law as applied to these relationships. *The terms "buyer agent", "dual agent" and "seller agent", as used in this chapter, are defined in 37-51-102 and are not related to the term "agent" as used elsewhere in state law.* The duties of a broker or salesperson vary depending upon the relationship with a party to a real estate transaction and are as provided in this section.

(2) A ~~seller's~~ *seller* agant is obligated to the seller to:

(a) act solely in the best interests of the seller;

(b) obey promptly and efficiently all lawful instructions of the seller;

(c) disclose all relevant and material information that concerns the real estate transaction and that is known to the ~~seller's~~ *seller* agent and not known or discoverable by the seller, unless the information is subject to confidentiality arising from a prior or existing agency relationship on the part of the ~~seller's~~ *seller* agent;

(d) safeguard the seller's confidences;

(e) exercise reasonable care, skill, and diligence in pursuing the seller's objectives and in complying with the terms established in the listing agreement;

(f) fully account to the seller for any funds or property of the seller that comes into the ~~seller's~~ *seller* agent's possession; and

(g) comply with all applicable federal and state laws, rules, and regulations.

(3) A ~~seller's~~ *seller* agent is obligated to the buyer to:

(a) disclose to a buyer or the ~~buyer's~~ *buyer* agent any adverse material facts that concern the property and that are known te the ~~seller's~~ *seller* agent, except that the ~~seller's~~ *seller* agent is not required to inspect the property or verify any statements made by the seller;

(b) disclose to a buyer or the ~~buyer's~~ *buyer* agent when the ~~seller's~~ *seller* agent has no personal knowledge of the veracity of information regarding adverse material facts that concern the property;

(c) act in good faith with a buyer and a ~~buyer's~~ *buyer* agent; and

(d) comply with all applicable federal and state laws, rules, and regulations.

(4) A ~~buyer's~~ *buyer* agent is obligated te the buyer to:

(a) act solely in the best interests of the buyer;

(b) obey promptly and efficiently all lawful instructions of the buyer;

(c) disclose all relevant and material information that concerns the real estate transaction and that is known to the ~~buyer's~~ *buyer* agent and not known or discoverable by the buyer, unless the information is subject to confidentiality arising from a prior or existing agency relationship on the part of the ~~buyer's~~ *buyer* agent;

(d) safeguard the buyer's confidences;

HeinOnline -- 1999 vol. I 566 1999

(e) exercise reasonable care, skill, and diligence in pursuing the buyer's objectives and in complying with the terms established in the buyer broker agreement;

(f) fully account to the buyer for any funds or property of the buyer that comes into the ~~buyer's~~ *buyer* agent's possession; and

(g) comply with all applicable federal and state laws, rules, and regulations.

(5) A ~~buyer's~~ *buyer* agent is obligated to the seller to:

(a) disclose any adverse material facts that are known to the ~~buyer's~~ *buyer* agent and that concern the ability of the buyer to porform on any purchase offer;

(b) disclose to the seller or the ~~seller's~~ *seller* agent when the ~~buyer's~~ *buyer* agent has no personal knowledge of the veracity of information regarding adverse material facts that concern the proporty;

(c) act in geod faith with a seller and a ~~seller's~~ *seller* agent; and

(d) comply with all applicable federal and state laws, rules, and regulations.

(6) A statutory broker is not the agent of the buyer or seller but nevertheless is obligated to them to:

(a) disclose to:

(i) a buyer or a ~~buyer's~~ *buyer* agent any adverse material facts that concern the property and that are known to the statutory broker, except that the statutory broker is not required to inspect the property or verify any statements made by the seller;

(ii) a seller or a ~~seller's~~ *seller* agent any adverse material facts that are known to the statutory broker and that concern the ability of the buyer to perform on any purchase offer;

(b) exercise reasonable care, skill, and diligence in putting together a real estate transaction; and

(c) comply with all applicable federal and state laws, rules, and regulations.

(7) A dual agent is obligated to a seller in the same manner as a ~~seller's~~ *seller* agent and is obligated to a buyer in the same manner as a ~~buyer's~~ *buyer* agent under this section, except as follows:

(a) a dual agent has a duty to disclose to a buyer or seller any adverse material facts that are known to the dual agent, regardless of any confidentiality considerations; and

(b) a dual agent may not disclose the following information without the written consent of the porson to whom the information is confidential:

(i) the fact that the buyer is willing to pay more than the offered purchase price;

(ii) the fact that the seller is willing to accept less than the purchase price that the seller is asking for the property;

(iii) factors motivating either party to buy or sell; and

(iv) any information that a party indicates in writing to the dual agent is to be kept confidential.

HeinOnline -- 1999 vol. I 567 1999

(8) (a) The agency relationship of a buyer agent, seller agent, or dual agent continues until the earliest of the following dates:

(i) completion of performance by the agent;

(ii) the expiration date agreed to in the listing agreement or buyer broker agreement; or

(iii) the occurrence of any authorized termination of the listing agreement or buyer broker agreement.

(b) A statutory broker's relationship continues until the completion, termination, or abandonment of the real estate transaction giving rise to the relationship.

(9) Upon termination of an agency relationship, a broker or salesperson does not have any further duties to the principal, except as follows:

(a) to account for all money and property of the principal;

(b) to keep confidential all information received during the course of the agency relationship that was made confidential at the principal's direction, except for:

(i) subsequent conduct by the principal that authorizes disclosure;

(ii) disclosure required by law or to prevent the commission of a crime;

(iii) the information being disclosed by someone other than the broker or salesperson; and

(iv) the disclosure of the information being reasonably necessary to defend the conduct of the broker or salesperson, including employees, independent contractors, and subagents.

(10) Consistent with the licensee's duties as a buyer agent, a seller agent, a dual agent, or a statutory broker, a licensee shall endeavor to ascertain all pertinent facts concerning each property in any transaction in which the licensee acts so that the licensee may fulfill the obligation to avoid error, exaggeration, misrepresentation, or concealment of pertinent facts."

Section 4. Section 37-51-314, MCA, is amended to read:

"37-51-314. Relationship disclosure requirements. (1) A broker or salesperson shall disclose the existence and nature of relevant agency or other relationships to the parties to a real estate transaction as provided in this section.

(2) A seller agent shall make the required relationship disclosures *as follows*:

(a) *The initial disclosure, as provided in subsection (6), must be made* to the seller at the time the listing agreement is executed. ~~or, if the seller agent is acting as a seller subagent, at the time negotiations commence; and~~

(b) If a broker or salesperson is acting as a seller subagent, a subsequent disclosure, as provided in subsection (7), must be made to the seller at the time negotiations commence.

~~(b)~~*(c) The subsequent disclosure established in subsection (7) must be made* to the buyer or buyer agent at the time negetiations commence.

(3) A buyer agent shall make the required relationship disclosures *as follows*:

HeinOnline -- 1999 vol. I 568 1999

(a) *The initial disclosure, as provided in subsection (6), must be made* to the buyer at the time the buyer broker agreement is executed. ~~or, if the buyer agent is acting as a buyer subagent, at the time negotiations commence; and~~

(b) If a broker or a salesperson is acting as a buyer subagent, a subsequent disclosure, as provided in subsection (7), must be made to the buyer at the time negotiations commence.

~~(b)~~*(c) The subsequent disclosure established in subsection (7) must be made* to the seller or seller agent at the time negotiations commence.

(4) A statutory broker shall make the required relationship ~~disclosure to the buyer and seller at the time negotiations commence.~~ *disclosures as follows:*

(a) The initial disclosure, as provided in subsection (6), must be made to the buyer at the time the statutory broker first endeavors to locate property for the buyer.

(b) The subsequent disclosure, as provided in subsection (7), must be made to the seller or seller agent at the time negotiations commence.

(5) A buyer agent or seller agent who *contemplates becoming or* subsequently becomes a dual agent shall disclose the *potential or actual* relationship to the buyer and seller and receive their consent prior to the time or at the time that the dual agency arises. *If the buyer agent or seller agent who contemplates becoming a dual agent has not previously given the buyer or seller the initial disclosure, as provided in subsection (6), the initial disclosure must be used, but if the initial disclosure has been given, any subsequent disclosures must take the form of the disclosure provided in subsection (7).*

(6) ~~A disclosure required by this section must be signed and dated by the party to whom the disclosure is directed and by the broker or salesperson. A~~ *The initial* disclosure ~~must contain~~ *as required by subsections (2)(a), (3)(a), (4)(a), and (5) must be written and contain* substantially the following information:

(a) a description of the duties owed by the broker and the salesperson as set forth in 37-51-313;

(b) a statement that reads as follows: "IF A SELLER AGENT IS ALSO REPRESENTING A BUYER OR A BUYER AGENT IS ALSO REPRESENTING A SELLER WITH REGARD TO A PROPERTY, THEN A DUAL AGENCY RELATIONSHIP MAY BE ESTABLISHED. IN A DUAL AGENCY RELATIONSHIP, THE DUAL AGENT IS EQUALLY OBLIGATED TO BOTH THE SELLER AND THE BUYER. THESE OBLIGATIONS MAY PROHIBIT THE DUAL AGENT FROM ADVOCATING EXCLUSIVELY ON BEHALF OF THE SELLER OR BUYER AND MAY LIMIT THE DEPTH AND DEGREE OF REPRESENTATION THAT YOU RECEIVE. A BROKER OR A SALESPERSON MAY NOT ACT AS A DUAL AGENT WITHOUT THE SIGNED, WRITTEN CONSENT OF BOTH THE SELLER AND THE BUYER".

(c) a definition of "adverse material fact";

(d) identification of the type of relationship disclosed;

(e) the signature of the seller or the buyer to whom the disclosure is given;

(f) the signature of the broker or the salesperson making the disclosure; and

(g) the date of the disclosure.

HeinOnline -- 1999 vol. I 569 1999

~~(a) Seller agent disclosure to the seller:"(Name of seller agent) will be representing you as your agent or subagent in the sale of your property located at (address of property). Your seller agent is obligated to you as enumerated below. If your seller agent is also representing a buyer who becomes interested in your property, a dual agency may be created. In a dual agency relationship, the seller agent is obligated to the buyer in the same way as to you. This conflict will prohibit the seller agent from advocating exclusively on your behalf or the buyer's behalf and may limit the level of representation you receive. If the potential for a dual agency arises, the seller agent shall provide you with a dual agent disclosure. A seller agent cannot act as a dual agent without your consent and that of the buyer. This consent is given by you and the buyer signing the dual agent disclosure. If you or the buyer declines to give this consent, your opportunity to sell your property to that buyer may be lost.~~

~~Your seller agent is obligated to you as follows:~~

~~(1) to act solely in the best interests of the seller to the exclusion of all other interests, including those of the seller agent;~~

~~(2) to obey promptly and efficiently all lawful instructions of the seller;~~

~~(3) to disclose to the seller all relevant and material information that concerns the real estate transaction and that is known by the seller agent and not known by the seller, unless the information is subject to confidentiality arising from a prior or existing agency relationship;~~

~~(4) to safeguard the seller's confidences;~~

~~(5) to exercise reasonable skill, care, and diligence in pursuing the seller's objectives as established in the listing agreement;~~

~~(6) to fully account to the seller for all funds or property of the seller coming into the seller agent's possession;~~

~~(7) to comply with all applicable federal and state laws, rules, and regulations; and~~

~~(8) to carry out the terms of the listing agreement."~~

~~(b) Seller agent disclosure to the buyer:"(Name of seller agent) is the agent of the seller with respect to the seller's property located at (address of property). Although the seller agent is primarily obligated to the seller, the seller agent is obligated to you as specified below.~~

~~A seller agent is obligated to a buyer as follows:~~

~~(1) to disclose to a buyer any adverse material facts that concern the property and that are known to the seller agent;~~

~~(2) to deal in good faith with the buyer; and~~

~~(3) to comply with all applicable federal and state laws, rules, and regulations.~~

~~"Adverse material fact" means a fact that should be recognized by a broker as being of enough significance as to affect a person's decision to enter into a contract to buy or sell real property and may be a fact that materially affects the value or structural integrity or presents a documented health risk to occupants of the property. The term may not include the fact that an occupant of the property has or has had a communicable disease or that the property was the site of a suicide or felony."~~

~~(c) Buyer agent disclosure to the buyer:"(Name of buyer agent) will be representing you as your agent or subagent in the purchase of real property of the nature described in the buyer broker agreement. Your buyer agent is obligated to you as enumerated below. If your buyer agent is also representing a seller of property that you become interested in, a dual agency may be created. In a dual agency relationship, the buyer agent is obligated to the seller in the same way as to you. This conflict will prohibit the buyer agent from advocating exclusively on your behalf or on the seller's behalf and may limit the level of representation you receive. If the potential for a dual agency arises, the buyer agent shall provide you with a dual agent disclosure. A buyer agent cannot act as a dual agent without your consent and that of the seller. This consent is given by you and the seller signing the dual agent disclosure. If you or the seller declines to give this consent, your opportunity to acquire the seller's property may be lost.~~

~~Your buyer agent is obligated to you as follows:~~

~~(1) to act solely in the best interests of the buyer to the exclusion of all other interests, including those of the buyer agent;~~

~~(2) to obey promptly and efficiently all lawful instructions of the buyer;~~

~~(3) to disclose to the buyer all relevant and material information that concerns the real estate transaction and that is known by the buyer agent and not known by the buyer, unless the information is subject to confidentiality arising from a prior or existing agency relationship;~~

~~(4) to safeguard the buyer's confidences;~~

~~(5) to exercise reasonable skill, care, and diligence in pursuing the buyer's objectives as established in the buyer broker agreement;~~

~~(6) to fully account to the buyer for all funds or property of the buyer coming into the buyer agent's possession;~~

~~(7) to comply with all applicable federal and state laws, rules, and regulations; and~~

~~(8) to carry out the terms of the buyer broker agreement."~~

~~(d) Buyer agent disclosure to the seller:"(Name of buyer agent) is representing the buyer with respect to the seller's property located at (address of property). Although the buyer agent is primarily obligated to the buyer, the buyer agent is obligated to you as specified below.~~

~~A buyer agent is obligated to a seller as follows:~~

~~(1) to disclose to a seller any adverse material facts that concern the ability of the buyer to perform on any purchase offer and that are known to the buyer agent;~~

~~(2) to deal in good faith with the seller; and~~

~~(3) to comply with all applicable federal and state laws, rules, and regulations.~~

~~"Adverse material fact" means a fact that should be recognized by a broker as being of enough significance as to affect a person's decision to enter into a contract to buy or sell real property and may be a fact that materially affects the buyer's ability or intent to perform the buyer's obligations under a proposed or existing contract."~~

HeinOnline -- 1999 vol. I 571 1999

~~(e) Statutory broker disclosure to the buyer and seller: "(Name of statutory broker) will be involved as a statutory broker with respect to the purchase and sale of real property located at (address). A statutory broker is not the agent of the buyer or seller but is only assisting the parties in executing a sale of the property. A statutory broker is obligated to the buyer and seller as specified below.~~

~~A statutory broker is obligated to the parties as follows:~~

~~(1) to disclose to a buyer any adverse material fact that concerns the property and that is known to the statutory broker and not known to the buyer. However, the statutory broker is not required to conduct an independent inspection of the property or to verify any representation made by the seller.~~

~~(2) to disclose to the seller any adverse material fact that concerns the buyer's intent or ability to perform on the purchase offer and that is known to the statutory broker and not known to the seller;~~

~~(3) to exercise reasonable skill, care, and diligence in facilitating the purchase and sale of the property; and~~

~~(4) to comply with all applicable federal and state laws, rules, and regulations.~~

~~"Adverse material fact" means a fact that should be recognized by a broker as being of enough significance as to affect a person's decision to enter into a contract to buy or sell real property. It may be a fact that materially affects the value or structural integrity or presents a documented health risk to occupants of the property, but may not include the fact that an occupant of the property has or has had a communicable disease or that the property was the site of a suicide or felony, or it may be a fact that materially affects the buyer's ability or intent to perform the buyer's obligations under a proposed or existing contract."~~

~~(f) Dual agent disclosure to the buyer and seller: "(Name of dual agent) is the agent of the buyer interested in purchasing the property and of the seller of the property located at (address of property). A dual agent is obligated to the buyer and seller as follows:~~

~~(1) to act solely in the best interests of the buyer and seller to the exclusion of all other interests including the dual agent's;~~

~~(2) to obey promptly and efficiently all lawful instructions of the buyer and seller;~~

~~(3) to disclose to the buyer and seller all relevant and material information that concerns the real estate transaction and that is known by the dual agent and not known by the buyer or seller, unless the information is subject to confidentiality arising from a prior or existing agency relationship;~~

~~(4) to exercise reasonable skill, care, and diligence in pursuing the buyer's and seller's objectives as established in the listing agreement and buyer broker agreement;~~

~~(5) to fully account to the buyer and seller for all funds or property of the buyer and seller coming into the dual agent's possession;~~

~~(6) to comply with all applicable federal and state laws, rules, and regulations;~~

~~(7) to carry out the terms of the buyer broker agreement; and~~

~~(8) to safeguard the buyer's and seller's confidences, subject to the obligation to disclose to a buyer or a seller any adverse material facts that are known to the dual agent, regardless of any confidentiality considerations. The following may not be disclosed without the written consent of the party to whom the information is confidential:~~

~~(a) that the buyer is willing to pay more than the buyer has offered for the property;~~

~~(b) that the seller is willing to accept less than the asking price for the property;~~

~~(c) factors motivating the buyer to buy or the seller to sell; and~~

~~(d) any other information that a party specifically indicates in writing to the dual agent is to be kept confidential and that is not an adverse material fact.~~

~~"Adverse material fact" means a fact that should be recognized by a broker as being of enough significance as to affect a person's decision to enter into a contract to buy or sell real property. It may be a fact that materially affects the value or structural integrity or presents a documented health risk to occupants of the property, but may not include the fact that an occupant of the property has or has had a communicable disease or that the property was the site of a suicide or felony, or it may be a fact that materially affects the buyer's ability or intent to perform the buyer's obligations under a proposed or existing contract.~~

~~Upon signing this disclosure form, the buyer and seller acknowledge that they understand the obligations owed by a dual agent to them and consent to the dual agent representing them as a dual agent."~~

(7) The subsequent disclosure required by subsections (2)(b), (2)(c), (3)(b), (3)(c), (4)(b), and (5) or otherwise necessitated by a change or prospective change in a relationship described in a previous disclosure must be written, must contain the information required in subsections (6)(d), (6)(e), and (6)(g), and may be included in other documents involved in the real estate transaction. If a seller or buyer has not previously consented to the entry of the broker or the salesperson into a dual agency relationship, a subsequent disclosure must include all the information required in subsection (6), including the seller's or buyer's written consent to the dual agency relationship.

(8) Any disclosure required by this section may contain the following information:

(a) a description of the other relationships and corresponding duties available under this part, as long as the disclosure clearly indicates the relationship being disclosed;

(b) a consent to the creation of a dual agency relationship;

(c) other definitions in or provisions of this chapter; and

(d) other information not inconsistent with the information required in the disclosure.

~~(7)~~*(9)* A written disclosure that complies with the provisions of this section must be construed as a sufficient disclosure of the relationship between a broker or salesperson and a buyer or seller and must be construed as conclusively establishing the obligations owed by a broker or salesperson to a buyer or seller in a real estate transaction."

Section 5. Section 37-51-321, MCA, is amended to read:

HeinOnline -- 1999 vol. I 573 1999

"37-51-321. Revocation or suspension of license — initiation of proceedings — grounds. (1) The board may on its own motion and shall on the sworn complaint in writing of a person investigate the actions of a real estate broker or a real estate salesperson, subject to 37-1-101 and 37-1-121, and may revoke or suspend a license issued under this chapter when the broker or salesperson has been found guilty by a majority of the board of any of the following practices:

(a) intentionally misleading, untruthful, or inaccurate advertising, whether printed or by radio, display, or other nature, which advertising in any material particular or in any material way misrepresents any property, terms, values, policies, or services of the business conducted. A broker who operates under a franchise agreement engages in misleading, untruthful, or inaccurate advertising if in using the franchise name, the broker does not incorporate the broker's own name ~~in the franchise name or logotype or does not conspicuously display, on the broker's letterhead and other printed materials available to the public, a statement that the broker's office is independently owned and operated and~~ *or* the trade name, if any, by which the office is known *in the franchise name or logotype*. The board may not adopt advertising standards more stringent than those set forth in this subsection.

(b) making any false promises of a character likely to influence, persuade, or induce;

(c) pursuing a continued and flagrant course of misrepresentation or making false promises through agents or salespersons or any medium of advertising or otherwise;

(d) use of the term "realtor" by a person not authorized to do so or using another trade name or insignia of membership in a real estate organization of which the licensee is not a member;

(e) failing to account for or to remit money coming into the broker's or salesperson's possession belonging to others;

(f) accepting, giving, or charging an undisclosed commission, rebate, or profit on expenditures made for a principal;

(g) acting in a dual capacity of broker and undisclosed principal in a transaction, including failing to disclose in advertisements for real property the person's dual capacity as broker and principal;

(h) guaranteeing, authorizing, or permitting a person to guarantee future profits that may result from the resale of real property;

(i) offering real property for sale or lease without the knowledge and consent of the owner or the owner's authorized agent or on terms other than those authorized by the owner or the owner's authorized agent;

(j) inducing a party to a contract of sale or lease to break the contract for the purpose of substituting a new contract with another principal;

(k) accepting employment or compensation for appraising real property contingent on the reporting of a predetermined value or issuing an appraisal report on real property in which the broker or salesperson has an undisclosed interest;

(l) negotiating a sale, exchange, or lease of real property directly with a seller or buyer if the broker or salesperson knows that the seller or buyer has a written,

HeinOnline -- 1999 vol. I 574 1999

outstanding listing agreement or buyer broker agreement in connection with the property granting an exclusive agency to another broker;

(m) soliciting, selling, or offering for sale real property by conducting lotteries for the purpose of influencing a purchaser or prospective purchaser of real property;

(n) representing or attempting to represent a real estate broker other than the employer without the express knowledge or consent of the employer;

(o) failing voluntarily to furnish a copy of a written instrument to a party executing it at the time of its execution;

(p) paying a commission in connection with a real estate sale or transaction to a person who is not licensed as a real estate broker or real estate salesperson under this chapter;

(q) intentionally violating a rule adopted by the board in the interests of the public and in conformity with this chapter;

(r) failing, if a salesperson, to place, as soon after receipt as is practicably possible, in the custody of the salesperson's registered broker, deposit money or other money entrusted to the salesperson in tbat capacity by a person;

(s) demonstrating unworthiness or incompetency to act as a broker or salesperson; or

(t) conviction of a felony.

(2) (a) It is unlawful for a hroker or salesperson te openly advertise property belonging to otbers, wbether by means of printed material, radio, television, or display or by other means, unless the broker or salesperson has a signed listing agreement from the owner of the property. The listing agreement must be valid as of tbe date of advertisement.

(b) The provisions of subsection (2)(a) do not prevent a broker or salesperson from including information on properties listed by otber brokers or salespersons who will cooperate with tbe selling broker or salesperson in materials dispensed to prospective customers.

(c) The license of a broker or salesperson who violates this subsection (2) may be suspended or revoked as provided in subsection (1)."

Section 6. Repealer. Sections 76-4-1101, 76-4-1102, 76-4-1103, 76-4-1104, 76-4-1105, 76-4-1106, 76-4-1107, 76-4-1108, 76-4-1109, 76-4-1110, 76-4-1111, 76-4-1112, 76-4-1113, 76-4-1114, 76-4-1115, 76-4-1116, and 76-4-1117, MCA, are repealed.

Section 7. Effective date. [This act] is effective on passage and approval.

Approved March 24, 1999

CHAPTER NO. 171

[SB 351]

AN ACT ALLOWING CASH PRIZES AT A CASINO NIGHT; ALLOWING A CASINO NIGHT TO BE HELD ON TWO SEPARATE OCCASIONS, NOT TO EXCEED 6 CONSECUTIVE HOURS EACH; ESTABLISHING LIMITS FOR CASH PRIZES; AND AMENDING SECTION 23-5-710, MCA.

HeinOnline -- 1999 vol. I 575 1999

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-5-710, MCA, is amended to read:

"23-5-710. Requirements for conducting casino nights. A nonprofit organization that has obtained a permit under 23-5-706 shall conduct a casino night in compliance with the following conditions:

(1) ~~The~~ *(a) Except as provided in subsection (1)(b), a* casino night may not last more than 12 consecutive hours.

(b) A casino night may be split into two separate, 6-consecutive hour sessions that may not be held on the same day but must be held in the same calendar year.

(2) The casino night must be managed and operated only by members of the nonprofit organization that was issued the permit under 23-5-706. The members may not be compensated for their services.

(3) Only merchandise *or cash* may be awarded as prizes.

(4) Proceeds derived from the casino night, after payment of reasonable administrative expenses, may be used only for a civic, charitable, or educational purpose, and administrative expenses may not exceed 50% of tbe proceeds.

(5) If cash prizes are awarded, the prizes for bingo and keno may not exceed the prize limits established in 23-5-412. Live card games must be limited to those authorized in 23-5-311, and the prizes may not exceed the prize amount established in 23-5-312."

Approved March 24, 1999

CHAPTER NO. 172

[SB 394]

AN ACT REQUIRING THE DEPARTMENT OF AGRICULTURE TO PREPARE A PLAN FOR THE ESTABLISHMENT OF A STATE ORGANIC CERTIFICATION PROGRAM, IN CONFORMITY WITH APPLICABLE FEDERAL LAW, UPON PETITION BY CERTIFIED ORGANIC MONTANA PRODUCERS, PROCESSORS, AND HANDLERS; REQUIRING THAT WHEN THE PLAN IS DEVELOPED IT MUST BE SUBMITTED BY THE GOVERNOR TO THE U.S. SECRETARY OF AGRICULTURE FOR APPROVAL; PROVIDING THAT WHEN A STATE PLAN IS APPROVED BY THE U.S. SECRETARY OF AGRICULTURE, THE STATE ORGANIC CERTIFICATION PROGRAM MUST BE IMPLEMENTED IN MONTANA UPON THE REQUEST OF A PERCENTAGE OF ORGANIC PRODUCERS, PROCESSORS, AND HANDLERS; REQUIRING THAT THE PROGRAM BE ADMINISTERED BY THE DEPARTMENT OF AGRICULTURE ACCORDING TO RULES ADOPTED BY THE DEPARTMENT WITH ADVICE FROM AN ORGANIC COMMODITY ADVISORY COUNCIL; ESTABLISHING AN ACCOUNT; AMENDING SECTIONS 50-31-103 AND 50-31-203, MCA; REPEALING SECTIONS 50-31-221, 50-31-222, 50-31-223, AND 50-31-231; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Plan for estahlishment of state organic certification program — suhmission by governor to U.S. secretary of agriculture — administration by department. (1) Upon potition by 50% or more of certified

HeinOnline -- 1999 vol. I 576 1999

organic producers, processors, and handlers in Montana, the department shall develop a plan for a state organic certification program for producers and handlers of agricultural products that have been produced using organic methods. The plan must be developed in conformity with the requirements of the Organic Foods Production Act of 1990, 7 U.S.C. 6501, et seq. The state program must be designed to ensure that a product that is sold or labeled as organically produced is produced and handled using organic methods. The state organic certification program may contain requirements that are more restrictive than those contained in the federal act for the organic certification of farms and handling operations and the production and handling of agricultural products that are to be sold or labeled as organically produced.

(2) Once the plan is developed, the governor, as the governing state official, shall submit the plan for a Montana state organic certification program to the U.S. secretary of agriculture for approval.

(3) If the state program is approved by the U.S. secretary of agriculture, two-thirds of the certified organic producers, processors, and handlers who petitioned for development of a state plan pursuant to subsection (1) may petition the department for implementation of the Montana state organic certification program.

(4) Upon receipt and verification of the petition, the department shall implement the program. Implementation must include the establisbment of an organic commodity advisory council. The council must be composed of the director of the department, a consumer member of the public at large, and certified Montana organic producers, processors, and handlers, a majority of which must be organic producers, to advise the department regarding:

(a) the adoption of administrative rules to implement the organic certification program;

(b) appropriate research and market development programs for certified organic products;

(c) assessments on certified organic products payable hy certified organic producers, processors, and handlers certified under the state organic certification program, when approved by a majority of those producers, processors, and handlers, in an amount sufficient to fund the state organic certification program without negative fiscal impact on the state budget;

(d) assessment collection and enforcement procedures;

(e) appropriate penalty and enforcement provisions applicable to the state organic certification program;

(f) the awarding of research and marketing contracts; and

(g) any other issues the advisory council considers necessary for proper administration of the state organic certification program.

(5) A state organic certification program may not be construed to apply to organic producers, processors, and handlers certified solely hy other organic certification programs, whether public, private, foreign, or domestic, nor may the state organic certification program prohibit those other certifying organizations from certifying and collecting fees from organic producers, processors, handlers, or any other commercial entity in Montana. Organic producers, processors, and handlers may be certified under both the state organic certification program and programs administered by other certifying organizations.

HeinOnline -- 1999 vol. I 577 1999

Section 2. Account established — sources — use — expenditures. (1) There is an account in the state special revenue fund. The following must be placed in the account:

(a) the proceeds from all gifts, grants, or donations to the department for development and administration of the state organic certification plan and program authorized under [section 1];

(b) proceeds of assessments, penalties, and other money collected pursuant to a state organic certification program when implemented pursuant to [section 1].

(2) The account must be maintained for the purposes of [section 1] and must be separate from all other accounts of the department.

(3) The department may direct the board of investments to invest funds from the account pursuant to the provisions of the unified investment program for state funds. The income from those investments must be credited to the account established in this section.

Section 3. Section 50-31-103, MCA, is amended to read:

"50-31-103. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Advertisement" means representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing or that are likely to induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics.

(2) "Approved source" means water from a spring, artesian well, drilled well, municipal water supply, or other source that has been found by the department te be of a safe and sanitary quality.

(3) "Artesian water" means water that is forced from below the ground toward the surface through a well by natural underground pressure.

(4) "Beef patty mix" means "hamburger" or "ground beef" to which have been added binders or extenders as those terms are understood by general custom and usage in the food industry.

(5) "Bottled water" means carbonated, demineralized, distilled, fluoridated, mineral, purified, sparkling, or other water that is from an approved source and that is disinfected and placed in a sealed container or package for human consumption.

(6) "Carbonated water" or "sparkling water" means water that contains carbon dioxide.

(7) "Color" includes black, white, and intermediate grays.

(8) (a) "Color additive" means a material that:

(i) is a dye, pigment, or other substance made by a process of synthesis or similar artifice or that is extracted, isolated, or otherwise derived, with or without intermediate or final change of identity, from a vegetable, animal, mineral, or other source; or

(ii) when added or applied to a food, drug, or cosmetic or to the human body is capable (alone or through reaction with another substance) of imparting color to the human body.

HeinOnline -- 1999 vol. I 578 1999

(b) The term does not include material that has heen or is exempted under the federal act.

(9) "Consumer commodity", except as otherwise specifically provided by this subsection, means any food, drug, device, or cosmetic as those terms are defined by this chapter or by the federal act and regulations pursuant to the federal act. The term does not include:

(a) any tobacco or tohacco product;

(b) a commodity subject to packaging or labeling requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136, et seq.) or the provisions of the eighth paragraph under the heading "Bureau of Animal Industry" of the act of March 4, 1913 (37 Stat. 832-833; 21 U.S.C. 151 through 157), commonly known as the Virus-Serum-Toxin Act;

(c) a drug subject to 50-31-306(1)(m) or 50-31-307(2)(c) or section 503(b)(1) or 506 of the federal act (21 U.S.C. 353(b)(1) and 356);

(d) a beverage subject to or complying with packaging or labeling requirements imposed under the Federal Alcohol Administration Act (27 U.S.C. 201, et seq.); or

(e) a commodity subject to the Federal Seed Act (7 U.S.C. 1551 through 1610).

(10) "Contamimated with filth" applies to a food, drug, device, or cosmetic not securely protected from dust, dirt, and, as far as may be necessary by all reasonable means, from foreign or injurious contaminations.

(11) "Cosmetic" means:

(a) articles intended to be ruhbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body for cleansing, beautifying, promoting attractiveness, or altering the appearance;

(b) articles intended for use as a component of these articles, except that the term does not include soap.

(12) "Counterfeit drug" means a drug, drug container, or drug label that, without authorization, bears tlie trademark, trade name, or other identifying mark, imprint, or device or any likeness thereof of a drug manufacturer, processor, packer, or distributor other than the person who in fact manufactured, processed, packed, or distrihuted the drug and that falsely purports or is represented to be the product of or to have been packed or distributed by the other drug manufacturer, processor, packer, or distributor.

(13) "Demineralized water" means water that has been demineralized by distillation, deionization, reverse osmosis, or other methods and that contains not more than 10 parts per million total solids.

(14) "Department" means the department of public health and human services provided for in 2-15-2201.

(15) "Device" (except when used in 50-31-107(2), 50-31-203(6), 50-31-306(1)(c) and (1)(q), 50-31-402(3), and 50-31-501(10)) means instruments, apparatus, and contrivances, including their components, parts, and accessories, intended:

(a) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals;

HeinOnline -- 1999 vol. I 579 1999

(b) to affect the structure or function of the body of humans or other animals.

(16) "Distilled water" means purified water that has been vaporized and condensed.

(17) "Drinking water" means water that bas undergone purification, distillation, demineralization, mineralization, activated carbon or particulate filtration, fluoridation, carbonation, or other similar process or has undergone minimum treatment consisting of ozonization or an acceptable disinfection process.

(18) "Drug" means:

(a) articles recognized in tbe official United States Pharmacopoeia, official National Formulary, or a supplement to either of these;

(b) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in bumans or other animals;

(c) articles (otber than food) intended to affect the structure or function of the body of humans or other animals;

(d) articles intended for use as components of any article specified in subsection (18)(a), (18)(b), or (18)(c) but does not include devices or their components, parts, or accessories.

(19) "Federal act" means the Federal Food, Drug, and Cosmetic Act, as amended (21 U.S.C. 301, et seq.).

(20) "Fluoridated water" means water that contains, naturally or by addition, fluoride ions in quantities of not less tban 0.7 and not more than 1.4 milligrams per liter and that complies with the food and drug administration quality standards set fortb in 21 CFR 103.35.

(21) "Food" means:

(a) articles used for food or drink for humans or otber animals;

(b) cbewing gum; and

(c) articles used for components of these articles.

(22) (a) "Food additive" means a substance, the intended use of which results or may be reasonably expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of food (including a substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food and including a source of radiation intended for this use), if the substance is not generally recoguized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures (or, in the case of a substance used in a food prior to January 1, 1958, througb either scientific procedures or experience based on common use in food) to be safe under the conditions of its intended use.

(b) The term does not include:

(i) a pesticide chemical in or on a raw agricultural commodity;

(ii) a pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of a raw agricultural commodity;

(iii) a color additive;

HeinOnline -- 1999 vol. I 580 1999

(iv) a suhstance used in accordance with a sanction or approval granted prior to the enactment of the Food Additives Amendment of 1958, pursuant to the federal act, the Poultry Products Inspection Act (21 U.S.C. 451, et seq.), or the Meat Inspection Act of March 4, 1907 (34 Stat. 1260), as amended and extended (21 U.S.C. 603, et seq.).

(23) "Food service establishment" means a restaurant, catering vehicle, vending machine, delicatessen, fast-food retailer, or any other place that serves food to the public for consumption, either at or away from the point of service, and any facility operated by a governmental entity where food is served.

(24) "Ha.nburger" or "ground beef" means ground fresh or frozen beef or a combination of both fresh and frozen beef, with or without the addition of suet, to which no water, binders, or extenders are added. There are four grades of hamburger or ground beef:

(a) "regular hamburger" or "regular ground beef" may have:

(i) a fat content no greater than the federal standard set forth in 9 CFR 319.15; and

(ii) a lean content of no less than 70%;

(b) "lean hamburger" or "lean ground beef" may have:

(i) a fat content no greater than 22%; and

(ii) a lean content of no less than 78%;

(c) "extra lean hamburger" or "extra lean ground beef" may have:

(i) a fat content no greater than 16%; and

(ii) a lean content of no less than 84%; and

(d) "super lean hamburger" or "super lean ground beef" may have:

(i) a fat content no greater than 12%; and

(ii) a lean content of no less than 88%.

(25) "Honey" means the nectar and saccharine plant exudations, gathered, modified, and stored in the comb by honey bees, that are levorotatory and that contain not more than 25% of water, not more than 0.25% of ash, and not more than 8% sucrose.

(26) "Label" means a display of written, printed, or graphic matter on the immediate container of an article. "Immediate container" does not include packago liners.

(27) "Labeling" means labels and other written, printed, or graphic matter:

(a) on an article or its containers or wrappers;

(b) accompanying the article.

(28) "Menu" means a list presented to the patron that states the food items for sale in a food service establishment.

(29) "Mineral water" means water that contains more than 500 parts per million total dissolved mineral solids.

(30) "New drug" means a drug, the composition of which is such that:

HeinOnline -- 1999 vol. I 581 1999

(a) it is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs, as safe and effective for use under the conditions prescribed, recommended, or suggested in its labeling; or

(b) tbe drug, as a result of investigstions to determine its safety and effectiveness for use under the conditions prescribed, has become so recognized but that has not, other than in the investigations, been used to a material extent or for a material time under the conditions prescribed.

(31) "Official compendium" means the official United States Pharmacopoeia, official National Formulary, or a supplement to eitber of these.

~~(32) "Organic food" means food that conforms to the definition in 50-31-222.~~

~~(33)~~*(32)* (a) "Package" means a container or wrapping in wbich a consumer commodity is enclosed for use in the delivery or display of that consumer commodity to retail purchasers.

(b) The term does not include:

(i) shipping containers or wrappings used solely for the transportation of a consumer commodity in bulk or in quantity to manufacturers, packers, or processors or to wholesale or retail distributors;

(ii) shipping containers or outer wrappinga used by retailers to ship or deliver a commodity to retail customers if the containers and wrappings bear no printed matter pertaining to a particular commodity.

~~(34)~~*(33)* "Person" includes an individual, partnership, corporation, and association.

~~(33)~~*(34)* "Pesticide chemical" means a substance tbat alone, in chemical combination, or in formulation with one or more other substances is an "economic poison" under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136, et seq.), as amended, and that is used in the production, storage, or transportation of raw agricultural commodities.

~~(33)~~*(35)* "Placard" means a nonpermanent sign used to display or describe food items for sale in a food service establishment or retail establishment.

~~(37)~~*(36)* "Principal display panel" means that part of a label that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.

~~(33)~~*(37)* "Processing" means cooking, baking, heating, drying, mixing, grinding, churning, separating, extracting, cutting, freezing, or otherwise manufacturing a foed or changing the physical characteristics of a food, and the enclosure of tbe food in a package.

~~(39)~~*(38)* "Purified water" means water that is produced by distillation, deionization, reverse osmosis, or otber method and that meets the definition of purified water in the 20th edition of the Pharmacopoeia of tbe United States of America, 1980.

~~(40)~~*(39)* "Raw agricultural commodity" means food in its raw or natural state, including fruits tbat are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing.

HeinOnline -- 1999 vol. I 582 1999

~~(41)~~*(40)* "Retail establishment" means a commercial establishment at which meat or meat products are displayed for sale or provision to the public, with or without charge.

~~(42)~~*(41)* "Spring water" means water that originatos in an underground formation and flows naturally, without external force or vacuum, to a natural orifice in the surface of the earth.

~~(43)~~*(42)* "Synthetically compounded" means a product formulated by a process that chemically changes a material or substance extracted from naturally occurring plant, animal, or mineral sources, except for microbiological processes.

~~(44)~~*(43)* "Water-bottling plant" means a facility in which bottled water is produced.

~~(45)~~*(44)* "Well water" means water that:

(a) is taken from below the ground through a piping device or similar installed device using external force or vacuum;

(b) is not modified in its mineral content; and

(c) may have undergone minimum treatment consisting of ozonization or an acceptable disinfection process."

Section 4. Section 50-31-203, MCA, is amended to read:

"50-31-203. When food misbranded. A food is considered to be misbranded if:

(1) its labeling is false or misleading in any particular;

(2) it is offered for sale under the name of another food;

(3) it is an imitation of another food for which a definition and standard of identity has been prescribed by regulations as provided by 50-31-201 or if it is an imitation of another food that is not subject to subsection (7) of this section, unless its label bears in type of uniform size and prominence the word imitation and, immediately after that word, the name of the food imitated;

(4) its container is made, formed, or filled in a manner that is misleading;

(5) it is in package form, unless it bears a label containing:

(a) the name and place of business of the manufacturer, packer, or distributor;

(b) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; provided that reasonable variations must be permitted and exemptions as to small packages must be established by regulations prescribed by the department;

(6) any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed on the label or labeling with such conspicuousness (as compared with other words, statements, designs, or devices in the labeling) and in terms that render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(7) it purports to be or is represented as a food for which a definition and standard of identity have been prescribed by regulations as provided by 50-31-201, unless:

HeinOnline -- 1999 vol. I 583 1999

(a) it conforms to that definition and standard; and

(b) its label bears the name of the food specified in the definition and standard and, as may be required by the regulations, the common names of optional ingredients (other than spices, flavoring, and coloring) present in the food;

(8) it purports to be or is represented as:

(a) a food for which a standard of quality has been prescribed by regulations as provided by 50-31-201 and its quality falls below that standard, unless its label bears, in a manner and form that the regulations specify, a statement that it falls below that standard; or

(b) a food for which a standard or standards of fill of container have been prescribed by regulation as provided by 50-31-201 and it falls below the standard of fill of container applicable, unless its label bears, in a manner and form that the regulations specify, a statement that it falls below that standard;

(9) it is not subject to the provisions of subsection (7) unless it bears labeling clearly giving:

(a) the common or usual name of the food, if there is one; and

(b) in case it is fabricated from two or more ingredients, the common or usual name of each ingredient; except that spices, flavorings, and colorings, other than those sold as such, may be designated as spices, flavorings, and colorings without naming each. To the extent that compliance with the requirements of this subsection (9)(b) is impractical or results in deception or unfair competition, exemptions must be established by regulations promulgated by the department. The requirements of this subsection (9)(b) do not apply to food products that are packaged at the direction of purchasers at retail at the time of sale, the ingredients of which are disclosed to the purchasers by other means in accordance with regulations promulgated by the department.

(10) it purports to be or is represented for special dietary uses, unless its label bears information concerning its vitamin, mineral, and other dietary properties that the department determines to be and by regulations prescribes as necessary in order to fully inform purchasers as to its value for special dietary uses;

(11) it bears or contains any artificial flavoring, artificial coloring, or chemical preservative unless it bears labeling stating that fact. To the extent that compliance with the requirements of this subsection is impracticable, exemptions must be established by regulations promulgated by the department. Butter, cheese, ice cream, and frozen desserts as described in 81-22-101 are exempt from label statements for artificial flavoring and artificial coloring.

(12) it is a product intended as an ingredient of another food and when used according to the directions of the purveyor will result in the final food product being adulterated or misbranded;

(13) it is a color additive, unless its packaging and labeling are in conformity with packaging and labeling requirements applicable to that color additive prescribed under the provisions of the federal act;

~~(14) it is labeled "organic", "organically grown", "naturally grown", "ecologically grown", or "biologically grown" but does not conform to the definition in 50-31-222.~~"

Section 5. Repealer. Sections 50-31-221, 50-31-222, 50-31-223, and 50-31-231, MCA, are repealed.

HeinOnline -- 1999 vol. I 584 1999

Section 6. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 80, chapter 11, and the provisions of Title 80, chapter 11, apply to [sections 1 and 2].

Section 7. Effective dates. (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Sections 3 through 5] are effective upon the implementation of a state organic certification program pursuant to [section 1(3)].

Approved March 24, 1999

CHAPTER NO. 173

[HB 136]

AN ACT DECREASING THE LOOKBACK PERIOD FOR PREEXISTING CONDITION EXCLUSIONS; PROVIDING FOR INFLATIONARY ADJUSTMENTS FOR CERTAIN SPECIFIED BENEFITS; GRANTING EXPLICIT AUTHORITY TO BORROW MONEY TO THE COMPREHENSIVE HEALTH ASSOCIATION; SUBSTITUTING ANNUAL ASSESSMENTS FOR FISCAL YEAREND ASSESSMENTS; PROVIDING VOTING AUTHORITY FOR THE PUBLIC INTEREST MEMBER OF THE COMPREHENSIVE HEALTH ASSOCIATION BOARD; ALLOWING THE COMMISSIONER OF INSURANCE TO REMOVE BOARD MEMBERS OF THE COMPREHENSIVE HEALTH ASSOCIATION BOARD THAT DO NOT ACTIVELY PARTICIPATE IN THE AFFAIRS OF THE BOARD; PROVIDING A NOTIFICATION REQUIREMENT FOR HEALTH MAINTENANCE ORGANIZATIONS; REQUIRING THE COMMISSIONER OF INSURANCE TO INCLUDE THE PREMIUM VOLUME OF AFFILIATES WHEN DETERMINING BOARD MEMBERSHIP FOR THE COMPREHENSIVE HEALTH ASSOCIATION; AMENDING SECTIONS 33-22-1501, 33-22-1503, 33-22-1504, 33-22-1513, 33-22-1515, 33-22-1516, AND 33-22-1521, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-22-1501, MCA, is amended to read:

"33-22-1501. Definitions. As used in this part, the following definitions apply:

(1) "Association" means the comprehensive health association created by 33-22-1503.

(2) "Association plan" means a policy of insurance coverage that is offered by the association and that is certified by the association as required by 33-22-1521.

(3) "Association plan premium" means the charge determined pursuant to 33-22-1512 for membership in the association plan based on the benefits provided in 33-22-1521.

(4) "Association portability plan" means a policy of insurance coverage that is offered by the association to a federally defined eligible individual.

HeinOnline -- 1999 vol. I 585 1999

(5) "Association portability plan premium" means the charge determined by the association and approved by the commissioner for an association portability plan.

(6) "Block of business" means a separate risk pool grouping of covered individuals, enrollees, and dependents as defined by rules of the commissioner.

(7) "Eligible person" means an individual who:

(a) is a resident of this state and applies for coverage under the association plan;

(b) unless the individual's eligibility is waived by the association, has, within 6 months prior to the date of application, been rejected for disability insurance or health service benefits by at least two insurers, societies, or health service corporations or has had a restrictive rider or preexisting conditions limitation, which limitation is required by at least two insurers, societies, or health service corporations, ~~which~~ *that* has the effect of substantially reducing coverage from that received by a person considered a standard risk; and

(c) is not eligible for any other form of disability insurance or health service benefits.

(8) "Federally defined eligible individual" means a person who is an individual enrolling in the association portability plan:

(a) for whom, as of the date on which the individual seeks coverage under the association portability plan, the aggregate of the periods of creditable coverage is 18 months or more and whose most recent prior creditable coverage was under a group health plan, governmental plan, or church plan;

(b) who does not have other health insurance coverage;

(c) who is not eligible for coverage under:

(i) a group health plan;

(ii) Title XVIII, part A or B, of the Social Security Act, 42 U.S.C. 1395c through 1395i-4 or 42 U.S.C. 1395j through 1395w-4; or

(iii) a state plan under Title XIX of the Social Security Act, 42 U.S.C. 1396a through 1396u, or a successor program;

(d) for whom the most recent coverage was not terminated for factors relating to nonpayment of premiums or fraud;

(e) who, if offered the option of continuation coverage under a COBRA continuation provision or under a similar state program, elected that coverage; and

(f) who has exhausted continuation coverage under the COBRA continuation provision or program described in subsection (8)(e) if the individual elected the continuation coverage described in subsection (8)(e).

(9) "Health service corporation" means a corporation operating pursuant to Title 33, chapter 30, and offering or selling contracts of disability insurance.

(10) "Insurance arrangement" means any plan, program, contract, or other arrangement to the extent not exempt from inclusion by virtue of the provisions of the federal Employee Retirement Income Security Act of 1974 under which one or more employers, unions, or other organizations provide to their employees

HeinOnline -- 1999 vol. I 586 1999

or members, either directly or indirectly through a trust of a third-party administrator, health care services or benefits other than through an insurer.

(11) "Insurer" means a company operating pursuant to Title 33, chapter 2 or 3, and offering or selling policies or contracts of disability insurance, as provided in Title 33, chapter 22.

(12) "Lead carrier" means the licensed administrator or insurer selected by the association to administer the association plan.

(13) "Medicare" means coverage under both parts A and B of Title XVIII of the Social Security Act, 42 U.S.C. 1395, et seq., as amended.

(14) "Preexisting condition" means any condition for which an applicant for coverage under the association plan has received medical attention during the ~~6~~ *3* years immediately preceding the filing of an application.

(15) "Society" means a fraternal benefit society operating pursuant to Title 33, chapter 7, and offering or selling certificates of disability insurance."

Section 2. Section 33-22-1503, MCA, is amended to read:

"33-22-1503. Comprehensive health association — mandatory membership. (1) There is established a nonprofit legal entity, to be known as the Montana comprehensive health association, with participating membership consisting of all insurers, insurance arrangements, societies, and health service corporations licensed or authorized to do business in this state. The association is exempt from taxation under the laws of this state, and all property owned by the association is exempt from taxation.

(2) All participating members shall maintain their membership in the association as a condition for writing health care benefits policies or contracts in this state. The association shall submit its articles, bylaws, and operating rules to the commissioner for approval.

(3) The association may:

(a) exercise the powers granted to insurers under the laws of this state;

(b) sue or be sued;

(c) borrow money;

~~(c)~~*(d)* enter into contracts with insurers, administrators, similar associations in other states, or other persons for the performance of administrative functions;

~~(d)~~*(e)* establish administrative and accounting procedures for the operation of the association;

~~(e)~~*(f)* provide for the reinsuring of risks incurred as a result of issuing the coverages required by members of the association;

~~(f)~~*(g)* provide for the administration by the association of policies that are reinsured pursuant to subsection (3)~~(e)~~*(f)*; and

~~(g)~~*(h)* issue additional types of health insurance policies to provide optional coverage, including medicare supplemental health insurance."

Section 3. Section 33-22-1504, MCA, is amended to read:

"33-22-1504. Association board of directors — organization. (1) There is a board of directors of the association, consisting of eight individuals:

HeinOnline -- 1999 vol. I 587 1999

(a) one from each of the five participating members of the association with the highest annual premium volume of disability insurance contracts or health service corporation contracts, derived from or on behalf of residents in the previous calendar year, as determined by the commissioner;

(b) two members at large who must be participating members of the association, appointed by the commissioner; and

(c) a member at large, appointed by the commissioner to represent the public interest~~, who shall serve in an advisory capacity only~~.

(2) *The public interest board member is entitled to one board vote.* Each of the seven board members representing the association members is entitled to a weighted average vote, in person or by proxy, based on the association member's annual Montana premium volume. However, a board member may not have more than 50% of the vote.

(3) Members of the board may be reimbursed from the money of the association for expenses incurred by them because of their service as board members but may not otherwise be compensated by the association for their services. The costs of conducting the meetings of the association and its board of directors must be borne by participating members of the association in accordance with 33-22-1513.

(4) The commissioner may replace a board member if the commissioner determines that the board member is not actively participating in the affairs of the board or if the participating member does not appoint a board representative within a reasonable time period. A board member appointed under subsection (1)(a) must be replaced by a participating member of the association with the next highest annual Montana premium volume of disability insurance contracts, health maintenance organization health care service agreements, or health service corporation contracts, derived from or on behalf of residents in the previous calendar year, as determined by the commissioner.

(5) The commissioner shall include the applicable premium volume of all affiliates, as defined in 33-2-1101, in making the determination required by subsection (1)(a) or (4)."

Section 4. Section 33-22-1513, MCA, is amended to read:

"**33-22-1513. Operation of association plan and association portability plans.** (1) Upon acceptance by the lead carrier under 33-22-1516, an eligible person may enroll in the association plan by payment of the association plan premium to the lead carrier.

(2) Upon application by a federally defined eligible individual to the lead carrier for an association portability plan, the association may not:

(a) decline to offer an association portability plan; or

(b) impose a preexisting condition exclusion with respect to an individual's association portability plan coverage if application for association portability plan coverage is made within 63 days following termination of the applicant's most recent prior creditable coverage.

(3) Not less than 88% of the association plan premiums paid to the lead carrier may be used to pay claims and not more than 12% may be used for payment of the lead carrier's direct and indirect expenses as specified in 33-22-1514.

HeinOnline -- 1999 vol. I 588 1999

(4) Any income in excess of the costs incurred by the association in providing reinsurance or administrative services must be held at interest and used by the association to offset past and future losses due to claims expenses of the association plan and the association portability plan or be allocated to reduce association plan premiums.

(5) (a) Each participating member of the association shall share the losses due to claims expenses of the association plan and the association portability plan for plans issued or approved for issuance by the association and shall share in the operating and administrative expenses incurred or estimated to be incurred by the association incident to the conduct of its affairs. Claims expenses of the association plan and the association portability plan that exceed the premium payments allocated to the payment of benefits are the liability of the association members. Association members shall share in the claims expenses of the association plan and the association portability plan and operating and administrative expenses of the association in an amount equal to the ratio of the association member's total disability insurance premium received from or on behalf of Montana residents divided by the total disability insurance premium received by all association members from or on behalf of Montana residents as determined by the commissioner.

(b) For purposes of this subsection (5), "total disability insurance premium" does not include premiums received from disability income insurance, credit disability insurance, disability waiver insurance, or life insurance.

(6) The association shall make an annual determination of each association member's liability, if any, and may make an annual ~~fiscal-yearend~~ assessment if necessary. Assessments related to the operation and expenses of the association plan must be determined and levied separately from assessments related to the operation and expenses of the association portability plan. The association may also, subject to the approval of the commissioner, provide for interim assessments against the association members as may be necessary to ensure the financial capability of the association in meeting the incurred or estimated claims expenses of the association plan and the association portability plan and operating and administrative expenses of the association until the association's next annual ~~fiscal-yearend~~ assessment. Payment of an assessment is due within 30 days of receipt by an association member of a written notice of a ~~fiscal-yearend~~ *annual* or interim assessment. Failure by a contributing member to tender to the association the assessment within 30 days is grounds for termination of membership. An association member that ceases to do disability insurance business within the state remains liable for assessments through the calendar year during which disability insurance business ceased. The association may decline to levy an assessment against an association member if the assessment, as determined pursuant to this section, would not exceed $10.

(7) Any annual ~~fiscal-yearend~~ or interim assessment relating to the operation and expenses of the association plan levied against an association member may be offset, in an amount equal to the assessment paid to the association, against the premium tax payable by that association member pursuant to 33-2-705 for the year in which the annual ~~fiscal-yearend~~ or interim assessment is levied. The insurance commissioner shall report to the office of budget and program planning, as a part of the informatien required by 17-7-111, the total amount of premium tax offset claimed by association members during the preceding biennium. Assessments relating to the operation and expenses of the association

HeinOnline -- 1999 vol. I 589 1999

portability plan and levied against an association member may not be offset against the premium tax payable by that association member."

Section 5. Section 33-22-1515, MCA, is amended to read:

"33-22-1515. Solicitation of eligible persons. (1) The association, pursuant to a plan approved by the commissioner, shall disseminate appropriate information to the residents of this state regarding the existence of the association plan and the means of enrollment. Means of communication may include use of the press, radio, and television, as well as publication in appropriate state offices and publications.

(2) The association shall devise and implement means of maintaining public awareness of this part and shall administer this part in a manner that facilitates public participation in the association plan.

(3) All licensed disability insurance producers may engage in the selling or marketing of the association plan. The lead carrier shall pay an insurance producer's referral fee of at least $25 to each licensed disability insurance producer who refers an applicant to the association plan, if the applicant is accepted. The amount of the referral fee must be set by the board of directors of the association and is subject to the approval of the commissioner. The referral fees must be paid by the lead carrier from money received as premiums for the association plan.

(4) An insurer, society, *health maintenance organization,* or health service corporation that rejects or applies underwriting restrictions to an applicant for disability insurance shall notify the applicant of the existence of the association plan, requirements for being accepted in ~~it~~ *the association plan*, and the procedure for applying to ~~it~~ *the association plan.*"

Section 6. Section 33-22-1516, MCA, is amended to read:

"33-22-1516. Enrollment by eligible person. (1) The association plan must be open for enrollment by eligible persons. An eligible person may enroll in the plan by submission of a certificate of eligibility to the lead carrier. The certificate must provide:

(a) the name, address, and age of the applicant and length of the applicant's residence in this state;

(b) the name, address, and age of spouse and children, if any, if they are to be insured;

(c) written evidence that the person fulfills all of the elements of an eligible person, as defined in 33-22-1501; and

(d) a designation of coverage desired.

(2) Within 30 days of receipt of the certificate, the lead carrier shall either reject the application for failing to comply with the requirements of subsection (1) or forward the eligible person a notice of acceptance and billing information. Insurance is effective on the first of the month following acceptance.

(3) An eligible person may not purchase more than one policy from the association plan.

(4) A person who obtains coverage under the association plan may not be covered for any preexisting condition during the first 12 months of coverage under the association plan if the person was diagnosed or treated for that

HeinOnline -- 1999 vol. I 590 1999

condition during the ~~5~~ *3* years immediately preceding the filing of an application. The association may not apply a preexisting condition exclusion to coverage under the association portability plan if application for association portability plan coverage is made within 63 days following termination of the applicant's most recent prior creditable coverage. The association shall waive any time period applicable to a preexisting condition exclusion for the period of time that any other eligible individual was covered under the following types of coverage if the coverage was continuous to a date not more than 30 days prior to submission of an application for coverage under the association plan:

(a) an individual health insurance policy that includes coverage by an insurance company, a fraternal benefit society, a health service corporation, or a health maintenance organization that provides benefits similar to or exceeding the benefits provided by the association plan; or

(b) an employer-based health insurance benefit arrangement that provides benefits similar to or exceeding the benefits provided by the association plan."

Section 7. Section 33-22-1521, MCA, is amended to read:

"**33-22-1521. Association plan — minimum benefits.** A plan of health coverage must be certified as an association plan if it otherwise meets the requirements of Title 33, chapters 15, 22 (excepting part 7), and 30, and other laws of this state, whether or not the policy is issued in this state, and meets or exceeds the following minimum standards:

(1) (a) The minimum benefits for an insured must, subject to the other provisions of this section, be equal to at least 50% of the covered expenses required by this section in excess of an annual deductible that does not exceed $1,000 per person. The coverage must include a limitation of $5,000 per person on the total annual out-of-pocket expenses for services covered under this section. Coverage must be subject to a maximum lifetime benefit, but the maximums may not be less than $100,000.

(b) One association plan must be offered with coverage for 80% of the covered expenses provided in this section in excess of an annual deductible that does not exceed $1,000 per person. This association plan must provide a maximum lifetime benefit of *at least* $500,000.

(c) Covered expenses for plans under subsection (1)(a) and (1)(b) must be paid as specified in provider contracts or, in the absence of a provider contract, at the prevailing charge in the state where the service is provided.

(d) The board may authorize other association plans, including managed care plans as defined in 33-36-103.

(2) Covered expenses *for plans offered under subsections (1)(a) and (1)(b)* must be ~~the usual and customary charges~~ for the following medically necessary services and articles when prescribed by a physician or other licensed health care professional and when designated in the contract:

(a) hospital services;

(b) professional services for the diagnosis or treatment of injuries, illness, or conditions, other than dental;

(c) use of radium or other radioactive materials;

(d) oxygen;

HeinOnline -- 1999 vol. I 591 1999

(e) anesthetics;

(f) diagnostic x-rays and laboratory tests, except as specifically provided in subsection (3);

(g) services of a physical therapist;

(h) transportation provided by licensed ambulance service to the nearest facility qualified to treat the condition;

(i) oral surgery for the gums and tissues of the mouth when not performed in connection with the extraction or repair of teeth or in connection with TMJ;

(j) rental or purchase of durable medical equipment, which must be reimbursed after the deductible has been met at the rate of 50%, up to a maximum of $1,000;

(k) prosthetics, other than dental;

(l) services of a licensed home health agency, up to a maximum of 180 visits per year;

(m) drugs requiring a physician's prescription that are approved for use in human heings in the manner prescribed by the United States food and drug administration, covered at 50% of the expense, up to an annual maximum of $1,000;

(n) medically necessary, nonexperimental transplants of the kidney, pancreas, heart, heart/lung, lungs, liver, cornea, and high-dose chemotherapy bone marrow transplantation, limited to a lifetime maximum of $150,000, with an additional henefit not to exceed $10,000 for expenses associated with the donor;

(o) pregnancy, including complications of pregnancy;

(p) newborn infant coverage, as required by 33-22-301;

(q) sterilization;

(r) immunizations;

(s) outpatient rehabilitation therapy;

(t) foot care for diabetics;

(u) services of a convalescent home, as an alternative to hospital services, limited to a maximum of 60 days per year; and

(v) travel, other than transportation by a licensed ambulance service, to the nearest facility qualified to treat the patients medical condition when approved in advance by the insurer.

(3) (a) Covered expenses for the services or articles specified in this section do not include:

(i) home and office calls, except as specifically provided in subsection (2);

(ii) rental or purchase of durable medical equipment, except as specifically provided in subsection (2);

(iii) the first $20 of diagnostic x-ray and laboratory charges in each 14-day period;

(iv) oral surgery, except as specifically provided in subsection (2);

(v) that part of a charge for services or articles that exceeds the prevailing charge in the ~~locality~~ *state* where the service is provided; or

(vi) care that is primarily for custodial or domiciliary purposes that would not qualify as eligible services under medicare.

(b) Covered expenses for the services or articles specified in this section do not include charges for:

(i) care or for any injury or disease arising out of an injury in the course of employment and subject to a workers' compensation or similar law, for which benefits are payable under another policy of disability insurance or medicare;

(ii) treatment for cosmetic purposes other than surgery for the repair or treatment of an injury or congenital bodily defect to restore normal bodily functions;

(iii) travel other than transportation provided by a licensed ambulance service to the nearest facility qualified to treat the condition, except as provided by subsection (2);

(iv) confinement in a private room to the extent that it is in excess of the institution's charge for its most common semiprivate room, unless the private room is prescribed as medically necessary by a physician;

(v) services or articles the provision of which is not within the scope of authorized practice of the institution or individual rendering the services or articles;

(vi) room and board for a nonemergency admission on Friday or Saturday;

(vii) routine well baby care;

(viii) complications to a newborn, unless no other source of coverage is available;

(ix) reversal of sterilization;

(x) abortion, unless the life of the mother would be endangered if the fetus were carried to term;

(xi) weight modification or modification of the body to improve the mental or emotional well-being of an insured;

(xii) artificial insemination or treatment for infertility; or

(xiii) breast augmentation or reduction."

Section 8. Effective date. [This act] is effective July 1, 1999.

Approved March 25, 1999

CHAPTER NO. 174

[HB 154]

AN ACT CLARIFYING THE PROHIBITION AGAINST OFFERING ANY FORM OF INCENTIVE OR REBATE TO PAY ALL OR PART OF A CASUALTY OR PROPERTY INSURANCE DEDUCTIBLE RELATED TO THE SALE, REPAIR, OR REPLACEMENT OF AUTOMOBILE GLASS; MAKING THE PROHIBITION APPLICABLE TO AUTOMOBILE REPAIR BUSINESSES;

HeinOnline -- 1999 vol. I 593 1999

DEFINING A VIOLATION OF THE PROHIBITION AS AN UNFAIR TRADE PRACTICE AND RENDERING THE VIOLATOR SUBJECT TO INSURANCE FRAUD STATUTES; AND AMENDING SECTION 30-14-225, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 30-14-225, MCA, is amended to read:

"30-14-225. Prohibited practices — advertising allowed — *violations.* (1) A person engaged in the sale, repair, or replacement of automobile glass *or in the business of automobile repair* may not:

(a) advertise, promise to provide, or offer any coupon, credit, or rebate to pay all or part of an insurance deductible under a casualty or property insurance policy, *including any incentive to purchase automobile glass or automobile repairs offered to the customer in which the customer, in conjunction with the purchase of automobile glass or automobile repairs, receives cash or other valuable consideration*; or

(b) pay a sum or incentive to an individual or entity for directing glass replacement or repair or the purchase of a glass product.

(2) A person or association of persons engaged in the sale, repair, or replacement of automobile glass may advertise services as to quality, service, and safety.

(3) A glass broker, as defined in 33-18-223, may not managa, bandle, or arrange automobile glass replacement or glass repair work for which the glass broker retains a percentage of the claim.

(4) (a) A violation of subsection (1)(a) is an unfair and deceptive act under 30-14-103.

(b) A person engaged in the sale, repair, or replacement of automobile glass or in the business of automobile repair who violates subsection (1)(a) is also subject to the insurance fraud protection provisions of Title 33, chapter 1, part 12."

Approved March 25, 1999

CHAPTER NO. 175

[HB 173]

AN ACT ADOPTING THE EMERGENCY MANAGEMENT ASSISTANCE COMPACT AS AN INTERSTATE COMPACT; PROVIDING THE TERMS OF THE COMPACT; AUTHORIZING REQUESTS FOR AND RESPONSES TO REQUESTS FROM OTHER STATES FOR THE PURPOSE OF INTERSTATE SHARING OF EQUIPMENT AND PERSONNEL TO RESPOND TO NATURAL AND HUMAN-CAUSED DISASTERS AND EMERGENCIES; APPOINTING THE ADMINISTRATOR OF THE DISASTER AND EMERGENCY SERVICES DIVISION OF THE DEPARTMENT OF MILITARY AFFAIRS AS THE ADMINISTRATOR OF THE COMPACT; PROVIDING FOR SUPPLEMENTARY AGREEMENTS TO IMPLEMENT THE COMPACT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

HeinOnline -- 1999 vol. I 594 1999

Section 1. Enactment — provisions. The Emergency Management Assistance Compact is enacted into law and entered into with all other jurisdictions joining in the compact in the form substantially as follows:

Article I - Definitions, Purposes, and Authorities

(1) As used in this compact, the following definitions apply:

(a) "Party states" means the states that enact this compact.

(b) "States" means the several states, the Commonwealth of Puerto Rico, the District of Columbia, and all U.S. territorial possessions.

(2) This compact is made and entered into by and between the participating party states that enact this compact.

(3) The purpose of this compact is to provide for mutual assistance between the party states in managing any emergency or disaster that is declared by the governor of an affected state, whether arising from natural disaster, technological hazard, human-caused disaster, civil emergency aspects of resources shortages, community disorders, insurgency, or enemy attack.

(4) This compact also provides for mutual cooperation in emergency-related exercises, testing, or other training activities using equipment and personnel simulating performance of any aspect of the giving and receiving of aid by party states or subdivisions of party states during emergencies, those actions occurring outside actual declared emergency periods. Mutual assistance in this compact may include the use of the states' national guard forces, either in accordance with the National Guard Mutual Assistance Compact or by mutual agreement between party states.

Article II - General Implementation

(1) Each party state recognizes that many emergencies transcend political jurisdictional boundaries and that intergovernmental coordination is essential in managing these and other emergencies under this compact. Each party state further recognizes that there will be emergencies that require immediate access and present procodures to apply outside resources to make a prompt and effective response to an emergency. This is because few, if any, individual states have all the resources that they may need in all types of emergencies or the capability of delivering resources to areas where emergencies exist.

(2) The prompt, full, and effective utilization of resources of the participating states, including any resources on hand or available from the federal government or any other source, that are essential to the safety, care, and welfare of the people in the event of any emergency or disaster declared by a party state is the underlying principle on which all articles of this compact must be understood.

(3) On behalf of the governor of each party state, the legally designated state official who is assigned responsibility for emergency management is responsihle for formulation of the appropriate interstate mutual aid plans and procedures necessary to implement this compact.

Article III - Party State Responsibilities

(1) It is the responsibility of each party state to formulate procedural plans and programs for interstate cooperation in the performance of the responsibilities

HeinOnline -- 1999 vol. I 595 1999

listed in this article. In formulating those plans and in carrying them out, the party states, insofar as practical, shall:

(a) review individual party state hazards analyses and, to the extent reasonably possible, determine all those potential emergencies that the party states might jointly suffer, whether because of natural disaster, technological hazard, human-caused disaster, emergency aspects of resource shortages, civil disorders, insurgency, or enemy attack;

(b) review party states' individual emergency plans and develop a plan that will determine the mechanism for the interstate management and provision of assistance concerning any potential emergency;

(c) develop interstate procedures to fill any identified gaps and to resolve any identified inconsistencies or overlaps in existing or developed plans;

(d) assist in warning communities adjacent to or crossing the state boundaries;

(e) protect and ensure uninterrupted delivery of services, medicines, water, food, energy and fuel, search and rescue, and critical lifeline equipment, services, and resources, both human and material;

(f) inventory and set procedures for the interstate loan and delivery of human and material resources, together with procedures for reimbursement or forgiveness; and

(g) provide, to the extent authorized by law, for temporary suspension of any statutes.

(2) The authorized representative of a party state may request assistance of another party state by contacting the authorized representative of that state. The provisions of this agreement apply only to requests for assistance made by and to authorized representatives. Requests may be verbal or in writing. If a request is verbal, the request must be confirmed in writing within 30 days of the verbal request. Requests must provide the following information:

(a) a description of the emergency service function for which assistance is needed, such as fire services, law enforcement, emergency medical, transportation, communications, public works and engineering, building inspection, planning and information assistance, mass care, resource support, health and medical services, and search and rescue;

(b) the amount and type of personnel, equipment, materials, and supplies needed and a reasonable estimate of the length of time that will be needed; and

(c) the specific place and time for staging of the assisting party state's response and a point of contact at that location.

(3) There must be frequent consultation between state officials who have assigned emergency management responsibilities and other appropriate representatives of the party states with affected jurisdictions and the United States government, with free exchange of information, plans, and resource records relating to emergency capabilities.

Article IV - Limitations

A party state requested to render mutual aid or to conduct exercises and training for mutual aid shall take action necessary to provide and make available the resources covered by this compact in accordance with the terms of this

compact. However, it is understood that the state rendering aid may withhold resources to the extent necessary to provide reasonable protection for that state. Each party state shall afford to the emergency forces of any party state, while operating within its state limits under the terms and conditions of this compact, the same powers, except the power of arrest unless specifically authorized by the receiving state, duties, rights, and privileges as are afforded forces of the party state in which they are performing emergency services. Emergency forces shall continue under the command and control of their regular leaders, but the organizational units shall come under the operational control of the emergency services authorities of the state receiving assistance. These conditions may be activated, as needed, only subsequent to a declaration of a state of emergency or disaster by the gevernor of the party state that is to receive assistance or subsequent to commencement of exercises or training for mutual aid and must continue so long as the exercises or training for mutual aid is in progress, the state of emergency or disaster remains in effect, or loaned resources remain in the receiving state, whichever is longer.

Article V - Licenses and Permits

If a person holding a license, certificate, or other permit issued by a party state evidencing the meeting of qualifications for professional, mechanical, or other skills is requested for assistance by the receiving party state, that person is considered licensed, certified, or permitted by the party state requesting assistance to render aid involving that skill to meet a declared emergency or disaster. However, the person holding the license, certificate, or permit is subject to limitations and conditions tbat the governor of the requesting party state may prescribe by executive order or other means.

Article VI - Liability

Officers or employees of a party state rendering aid in another party state pursuant to this compact are considered agents of the requesting state for tort liability and immunity purposes. A party state or its officers or employees rendering aid in another party state pursuant to this compact are not liable on account of an act taken or omission made in good faith on the part of the forces giving that aid or on account of the maintenance or use of any equipment or supplies in connection with giving that aid. Good faith, as used in this article, does not include willful misconduct, gross negligence, or recklessness.

Article VII - Supplementary Agreements

Because it is probahle that the pattern and detail of the machinery for mutual aid among two or more states may differ from that among the states that are party to this compact, this compact contains elements of a broad base common to all states. This compact does not prevent a party state from making supplementary agreements with another state or affect any other agreements already in force between states. Supplementary agreements may include provisions for evacuation and reception of injured and other persons and the exchange of medical, fire, police, public utility, reconnaissance, welfare, transportation and communications personnel, and equipment and supplies.

Article VIII - Compensation

Each party state shall provide for the payment of compensation and death benefits to injured members of the emergency forces of that state and

HeinOnline -- 1999 vol. I 597 1999

representatives of deceased members of those forces in case those members sustain injuries or are killed while rendering aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within their own state.

Article IX - Reimbursement

A party state rendering aid in another party state pursuant to this compact must be reimbursed by the party state receiving that aid for any loss or damage to or expense incurred in the operation of any equipment and the provision of any service in answering a request for aid and for the costs incurred in connection with a request. However, an aiding party state may assume in whole or in part a loss, damage, expense, or other cost or may loan equipment or donate services to the receiving party state without charge or cost. Two or more party states may enter into supplementary agreements establishing a different allocation of costs among those states. Article VIII expenses are not reimbursable under this provision.

Article X - Evacuation

(1) Plans for the orderly evacuation and interstate reception of portions of the civilian population as the result of any emergency or disaster of sufficient proportions to require those plans, must he worked out and maintained hetween the party states and the emergency management or emergency services directors of the various jurisdictions where any type of incident requiring evacuations might occur. The plans must be put into effect hy request of the party state from which evacuees come and must include:

(a) the manner of transperting those evacuees;

(b) the number of evacuees to be received in different areas;

(c) the manner in which food, clothing, housing, and medical care will be provided;

(d) the registration of the evacuees;

(e) the providing of facilities for the notification of relatives or friends of evacuees;

(f) the forwarding of evacuees to other areas or the bringing in of additional materials or supplies; and

(g) all other relevant factors.

(2) The plans referred to in subsection (1) must provide that the party state receiving evacuees and the party state from which the evacuees come shall mutually agree as to reimbursement of out-of-pocket expenses incurred in receiving and caring for evacuees, for expenditures for transportation, food, clothing, medicines, and medical care, and for similar items. The exponditures must be reimbursed as agreed by the party state from which the evacuees come. After the termination of the emergency or disaster, the party state from which the evacuees come shall assume the responsibility for the ultimate support of repatriation of the evacuees.

Article XI - Implementation

(1) This compact becomes operative immediately upon its enactment into law by any two states. After it becomes operative, this compact is effective in any other state upon its enactment by that other state.

HeinOnline -- 1999 vol. I 598 1999

(2) A party state may withdraw from this compact by enacting a statute repealing the compact, but withdrawal does not take effect until 30 days after the governor of the withdrawing state has given notice in writing of the withdrawal to the governors of all other party states. Withdrawal does not relieve the withdrawing state from obligations assumed under this compact prior to the effective date of withdrawal.

(3) Authenticated copies of this compact and any supplementary agreements as may be entered into must, at the time of their approval, be deposited with each of the party states and with the federal emergency management agency and other appropriate agencies of the United States government.

Article XII - Validity

This compact must be construed to effectuate the purposes stated in Article I. If any provision of this compact is declared unconstitutional or if the applicability of a provision to any person or circumstances is held invalid, the constitutionality of the remainder of this compact and the applicability of this compact to other persons and circumstances are not affected.

Article XIII - Additional Provisions

This compact does not authorize or permit the use of military force by the national guard of a party state at any place outside that state in any emergency for which the president is authorized by law to call into federal service the militia or for any purpose for which the use of the army or the air force would in the absence of express statutory authorization be prohibited under 18 U.S.C. 1385.

Section 2. Compact administrator. The administrator of the disaster and emergency services division of the department of military affairs is the administrator of the compact provided for in [section 1].

Section 3. Supplementary agreements. The compact administrator provided for in [section 2] may enter into agreements with other officials in other states, as provided in Article VII of this compact, and in Montana that are necessary to implement the compact.

Section 4. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 10, chapter 3, and the provisions of Title 10, chapter 3, apply to [sections 1 through 3].

Section 5. Two-thirds vote required. Because Article VI of the compact provided for in [section 1] limits governmental liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage.

Section 6. Effective date. [This act] is effective on passage and approval.

Approved March 25, 1999

CHAPTER NO. 176

[HB 474]

AN ACT ALLOWING THE PUBLIC EMPLOYER REPRESENTATIVE TO PETITION BOARD OF PERSONNEL APPEALS TO REDETERMINE THE APPROPRIATE UNIT FOR COLLECTIVE BARGAINING IN THE EVENT THAT A STATE AGENCY OR FACILITY OF A STATE AGENCY

HeinOnline -- 1999 vol. I 599 1999

UNDERGOES SIGNIFICANT REORGANIZATION; PROHIBITING THE BOARD FROM DESIGNATING A FORMERLY UNDESIGNATED LABOR ORGANIZATION AS THE EXCLUSIVE BARGAINING AGENT IN THE ABSENCE OF A PETITION FOR DESIGNATION; AMENDING SECTION 39-31-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-31-202, MCA, is amended to read:

"39-31-202. Board to determine appropriate bargaining unit — factors to be considered. *(1)* In order to ~~assure~~ *ensure* employees the fullest freedom in exercising the rights guaranteed by this chapter, the board or an agent of the board shall decide the unit appropriate for the purpose of collective bargaining and shall consider such factors as community of interest, wages, hours, fringe benefits, and other working conditions of the employees involved, the history of collective bargaining, common supervision, common personnel policies, extent of integration of work functions and interchange among employees affected, and the desires of the employees.

(2) If a state agency or facility of a state agency is reorganized to the extent that the reorganization results in substantial changes to the factors listed in subsection (1), the public employer representative, as provided in 39-31-301, may petition the board to make a new determination of the appropriate unit for the purpose of collective bargaining. In making this determination, the board shall take into account the consequences of the reorganization on each position in the affected agency or facility.

(3) Unless the board has received a petition, as provided in 39-31-207, to consider a collective bargaining unit that was not designated as an appropriate unit prior to the reorganization described in subsection (2), the board may not consider any labor organization that was not designated to represent employees of the affected agency or facility at the time that the reorganization became effective."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 25, 1999

CHAPTER NO. 177

[HB 561]

AN ACT ALLOWING THE TRANSPORTATION COMMISSION TO TRANSFER APPORTIONED PRIMARY HIGHWAY SYSTEM FUNDS WITHIN AND BETWEEN FINANCIAL DISTRICTS; AND AMENDING SECTION 60-3-205, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 60-3-205, MCA, is amended to read:

"60-3-205. Apportionment of state funds to primary highway system. (1) Prior to the beginning of each biennium, the commission, referring to highway sufficiency ratings developed by the department, shall designate a level of sufficiency considered adequate and a lesser level of sufficiency considered critical, both to be used to compute the apportionment of federal-aid highway funds for the primary highway system during the succeeding biennium.

HeinOnline -- 1999 vol. I 600 1999

(2) The department shall then compute the ratio:

(a) between the mileage rated below adequate sufficiency in each financial district and the total mileage rated below adequate sufficiency of the primary highway system in the state; and

(b) between the mileage rated at or below critical sufficiency in each financial district and the total mileage rated at or below critical sufficiency of the primary highway system in the state.

(3) The department, subject to the limitation provided in subsection (4), shall then distribute three-fourths of the available federal-aid highway funds for the primary highway system among the financial districts according to the ratios computed in subsection (2)(a) and one-fourth of the available federal-aid highway funds for the primary highway system among the financial districts according to the ratios computed in subsection (2)(b).

(4) A financial district may not receive more than one-third of the total funds available for the primary highway system in any biennium. If a financial district would receive more than one-third of the total funds available under the formula in subsection (3), its apportionment is limited to the one-third maximum and any excess funds *that* it would have received must be redistributed among the other districts according to the formula.

(5) *(a)* To the extent necessary to permit the orderly programming and construction of projects, ~~obligations in any financial district may exceed the amount apportioned to that district by up to 25%. The amount of excess obligations must be deducted from future apportionments to that district.~~ *the commission may transfer and obligate apportioned primary system funds for any project located on the federal-aid interstate or national highway systems within a financial district. The commission may transfer and obligate any amount of apportioned primary system funds to any other financial district if the financial district receiving primary system funds transfers an equal amount of federal-aid interstate or national highway system funds to the financial district from which the transfer originated. This transferred amount is in addition to the federal-aid interstate and national highway system funds that would have been obligated on these systems within the federal fiscal year of transfer.*

(b) The intent of the provisions allowing transfers between financial districts is that a district may not receive less funding than the amount distributed by the formula of this subsection and that a district may not transfer more than is received by virtue of this formula for a given federal fiscal year."

Approved March 25, 1999

CHAPTER NO. 178

[SB 99]

AN ACT REQUIRING INSURERS, HEALTH SERVICE CORPORATIONS, AND HEALTH MAINTENANCE ORGANIZATIONS ISSUING GROUP DISABILITY COVERAGE TO RENEW OR CONTINUE COVERAGE FOR THE SPOUSE OR DEPENDENTS OF A PEACE OFFICER, GAME WARDEN, FIREFIGHTER, OR VOLUNTEER FIREFIGHTER WHO DIES WITHIN THE COURSE AND SCOPE OF EMPLOYMENT; AMENDING SECTIONS

HeinOnline -- 1999 vol. I 601 1999

33-22-101 AND 33-31-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Insurance for spouse and dependents of deceased peace officer, game warden, or firefighter. (1) Any insurer, health service corporation, or health maintenance organization issuing group disability coverage to the spouse or dependents of a peace officer as defined in 45-2-101, a game warden as defined in 19-8-101, a firefighter as defined in 19-13-104, or a volunteer firefighter as defined in 19-17-102 shall renew the coverage of the spouse or dependents if the peace officer, game warden, firefighter, or volunteer firefighter dies within the course and scope of employment. This section also applies to a state employee group insurance program, a university system group insurance program, an employee group insurance program of a city, town, county, school district, or other political subdivision of the state, and any self-funded multiple employer welfare arrangement not regulated by the Employee Retirement Income Security Act of 1974 that provides coverage for a peace officer, game warden, firefighter, or volunteer firefighter. Except as provided in subsection (2), the continuation of the coverage is at the option of the spouse or dependents. Renewals of coverage under this section must provide for the same level of benefits as are available to other members of the group. Premiums charged to a spouse or dependent under this section must be the same as premiums charged to other similarly situated members of the group. Dependent special enrollment must be allowed under the terms of 33-22-523(2) and (3). The provisions of this subsection are applicable to a spouse or dependent who is insured under a COBRA continuation provision.

(2) A disability insurance issuer subject to the provisions of subsection (1) may discontinue or not renew the coverage of a spouse or dependent only if:

(a) the spouse or dependent has failed to pay premiums or contributions in accordance with the terms of the disability insurance coverage or if the disability insurer has not received timely premium payments;

(b) the spouse or dependent has performed an act or practice that constitutes fraud or has made an intentional misrepresentation of a material fact under the terms of the coverage; or

(c) the disability insurance issuer is ceasing to offer coverage in the group disability market in accordance with applicable state law.

Section 2. Section 33-22-101, MCA, is amended to read:

"33-22-101. Exceptions to scope. Parts 1 through 4 of this chapter, except 33-22-107, 33-22-110, 33-22-111, 33-22-114, 33-22-125, 33-22-130 through 33-22-132, 33-22-134, 33-22-135, 33-22-141, 33-22-142, *[section 1]*, 33-22-243, and 33-22-304, and part 19 of this chapter, do not apply to or affect:

(1) any policy of liability or workers' compensation insurance with or without supplementary expense coverage;

(2) any group or blanket policy;

(3) life insurance, endowment, or annuity contracts or supplemental contracts that contain only those provisions relating to disability insurance as:

(a) provide additional benefits in case of death or dismemberment or loss of sight by accident or accidental means; or

HeinOnline -- 1999 vol. I 602 1999

(b) operate to safeguard contracts against lapse or to give a special surrender value or special benefit or an annuity in the event that the insured or annuitant becomes totally and permanently disabled, as defined by the contract or supplemental contract;

(4) reinsurance."

Section 3. Section 33-31-111, MCA, is amended to read:

"33-31-111. Statutory eonstruction and relationship to other laws. (1) Except as otherwise provided in this chapter, the insurance or health service corporation laws do not apply to any health maintenance organization authorized to transact business under this chapter. This provision does not apply to an insurer or health service corporation licensed and regulated pursuant to the insurance or health service corporation laws of this state except with respect to its health maintenance organization activities authorized and regulated pursuant to this chapter.

(2) Solicitation of enrollees by a health maintenance organization granted a certificate of authority or its representatives is not a violation of any law relating to solicitation or advertising by health professionals.

(3) A health maintenance organization authorized under this chapter is not practicing medicine and is exempt from Title 37, chapter 3, relating to the practice of medicine.

(4) This chapter does not exempt a health maintenance organization from the applicable certificate of need requirements under Title 50, chapter 5, parts 1 and 3.

(5) This section does not exempt a health maintenance organization from the prohibition of pecuniary interest under 33-3-308 or the material transaction disclosure requirements under 33-3-701 through 33-3-704. A health maintenance organization must be considered an insurer for the purposes of 33-3-308 and 33-3-701 through 33-3-704.

(6) This section does not exempt a health maintenance organization from:

(a) prohibitions against interference with certain communications as provided under chapter 1, part 8;

(b) the provisions of Title 33, chapter 22, part 19;

(c) the requirements of 33-22-134 and 33-22-135; or

(d) network adequacy and quality assurance requirements provided under chapter 36.

(7) Sections 33-22-141, 33-22-142, *[section 1]*, 33-22-246, 33-22-247, 33-22-514, 33-22-523, 33-22-524, and 33-22-526 apply to health maintenance organizations."

Section 4. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 33, chapter 22, part 1, and the provisions of Title 33, chapter 22, part 1, apply to [section 1].

Section 5. Effective date. [This act] is effective on passaga and approval.

Approved March 25, 1999

HeinOnline -- 1999 vol. I 603 1999

CHAPTER NO. 179

[SB 245]

AN ACT EXEMPTING FROM THE STATE MINIMUM WAGE AND OVERTIME LAWS AN EMPLOYEE EMPLOYED IN DOMESTIC SERVICE EMPLOYMENT TO PROVIDE LIVE-IN HOME COMPANIONSHIP SERVICES FOR INDIVIDUALS WHO, BECAUSE OF AGE OR INFIRMITY, ARE UNABLE TO CARE FOR THEMSELVES; AMENDING SECTION 39-3-406, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-3-406, MCA, is amended to read:

"39-3-406. Exclusions. (1) The provisions of 39-3-404 and 39-3-405 do not apply with respect to:

(a) students participating in a distributive education program established under the auspices of an accredited educational agency;

(b) persons employed in private homes whose duties consist of menial chores, such as babysitting, mowing lawns, and cleaning sidewalks;

(c) persons employed directly by the head of a household to care for children dependent upon the head of the household;

(d) immediate members of the family of an employer or persons dependent upon an employer for half or more of their support in the customary sense of being a dependent;

(e) persons who are not regular employees of a nonprofit organization and who voluntarily offer their services to a nonprofit organization on a fully or partially reimbursed basis;

(f) persons with disabilities engaged in work that is incidental to training or evaluation programs or whose earning capacity is so severely impaired that they are unable to engage in competitive employment;

(g) apprentices or learners, who may be exempted by the commissioner for a period not to exceed 30 days of their employment;

(h) learners under the age of 18 who are employed as farm workers, provided that the exclusion may not exceed 180 days from their initial date of employment and further provided that during this exclusion period, wages paid the learners may not be less than 50% of the minimum wage rate established in this part;

(i) retired or semiretired persons performing part-time incidental work as a condition of their residence on a farm or ranch;

(j) an individual employed in a bona fide executive, administrative, or professional capacity as these terms are defined by regulations of the commissioner;

(k) an individual employed by the United States of America;

(l) resident managers employed in lodging establishments or personal care facilities who, under the terms of their employment, live in the establishment or facility;

(m) an outside salesperson or marketing representative paid on a commission, contract, or salary basis who is primarily employed in selling or

marketing products or services in the food distribution industry for a food broker, wholesaler, or association;

(n) a direct seller as defined in 26 U.S.C. 3508;

(o) a person placed as a participant in a public assistance program authorized by Title 53 into a work setting for the purpose of developing employment skills. The placement may be with either a public or private employer. The exclusion does not apply to an employment relationship formed in the work setting outside the scope of the employment skills activities authorized by Title 53.

(p) a person serving as a foster parent, licensed as a foster care provider in accordance with 41-3-1141, and providing care without wage compensation to no more than six foster children in the provider's own residence. The person may receive reimbursement for providing room and board, obtaining training, respite care, leisure and recreational activities, and providing for other needs and activities arising in the provision of in-home foster care.

(q) an employee employed in domestic service employment to provide live-in companionship services, as defined in 29 CFR 552.6, for individuals who, because of age or infirmity, are unable to care for themselves as provided under section 213(a)(15) of the Fair Labor Standards Act (29 U.S.C. 213).

(2) The provisions of 39-3-405 do not apply to:

(a) an employee with respect to whom the United States secretary of transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of 49 U.S.C. 31502;

(b) an employee of an employer subject to 49 U.S.C. 10501 and 49 U.S.C. 60501, the provisions of part I of the Interstate Commerce Act;

(c) an individual employed as an outside buyer of poultry, eggs, cream, or milk, in their raw or natural state;

(d) an outside salesperson paid on a commission or contract basis who is primarily employed in selling advertising for a newspaper;

(e) a salesperson, parts person, or mechanic paid on a commission or contract basis and primarily engaged in selling or servicing automobiles, trucks, mobile homes, recreational vehicles, farm implements, or replacement parts if the salesperson, parts person, or mechanic is employed by a nonmanufacturing establishment primarily engaged in the business of selling the vehicles, implements, or replacement parts to wholesalers or ultimate purchasers;

(f) a salesperson primarily engaged in selling trailers, boats, or aircraft if the salesperson is employed by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats, or aircraft to ultimate purchasers;

(g) an outside salesperson paid on a commission or contract basis who is primarily employed in selling office supplies, computers, or other office equipment for an office equipment dealer;

(h) a salesperson paid on a commission or contract basis who is primarily engaged in selling advertising for a radio or television station employer;

(i) an employee employed as a driver or driver's helper making local deliveries who is compensated for the employment on the basis of trip rates or other delivery payment plan if the commissioner finds that the plan has the general purpose

HeinOnline -- 1999 vol. I 605 1999

and effect of reducing hours worked by the employees to or below the maximum workweek applicable to them under 39-3-405;

(j) an employee employed in agriculture or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways that are not owned or operated for profit, that are not operated on a sharecrop basis, and that are used exclusively for supply and storing of water for agricultural purposes;

(k) an employee employed in agriculture by a farmer, notwithstanding other employment of the employee in connection with livestock auction operations in which the farmer is engaged as an adjunct to the raising of livestock, either alone or in conjunction with other farmers, if the employee is:

(i) primarily employed during a workweek in agriculture by a farmer; and

(ii) paid for employment in connection with the livestock auction operations at a wage rate not less than that prescribed by 39-3-404;

(l) an employee of an establishment commonly recognized as a country elevator, including an establishment that sells products and services used in the operation of a farm if no more than five employees are employed by the establishment;

(m) a driver employed by an employer engaged in the business of operating taxicabs;

(n) an employee who is employed with the employee's spouse by a nonprofit educational institution to serve as the parents of children who are orphans or one of whose natural parents is deceased or who are enrolled in the institution and reside in residential facilities of the institution so long as the children are in residence at the institution and so long as the employee and the employee's spouse reside in the facilities and receive, without cost, board and lodging from the institution and are together compensated, on a cash basis, at an annual rate of not less than $10,000;

(o) an employee employed in planting or tending trees; cruising, surveying, or felling timber; or transporting logs or other forestry products to a mill, processing plant, railroad, or other transportation terminal if the number of employees employed by the employer in the forestry or lumbering operations does not exceed eight;

(p) an employee of a sheriff's department who is working under an established work period in lieu of a workweek pursuant to 7-4-2509(1);

(q) an employee of a municipal or county government who is working under a work period not exceeding 40 hours in a 7-day period established through a collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee when a bargaining unit is not recognized. Employment in excess of 40 hours in a 7-day, 40-hour work period must be compensated at a rate of not less than 1 1/2 times the hourly wage rate for the employee.

(r) an employee of a hospital or other establishment primarily engaged in the care of the sick, disabled, aged, or mentally ill or defective who is working under a work period not exceeding 80 hours in a 14-day period established through either a collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee when a bargaining unit is not recognized. Employment in excess of 8 hours a day

HeinOnline -- 1999 vol. I 606 1999

or 80 hours in a 14-day period must he compensated for at a rate of not less than 1 1/2 times the hourly wage rate for the employee.

(s) a firefighter who is working under a work period established in a collective bargaining agreement entered into between a public employer and a firefighters' organization or its exclusive representative;

(t) an officer or other employee of a police department in a city of the first or second class who is working under a work period established by the chief of police under 7-32-4118;

(u) an employee of a department of public safety working under a work period established pursuant to 7-32-115;

(v) an employee of a retail establishment if the employee's regular rate of pay exceeds 1 1/2 times the minimum hourly rate applicable under section 206 of the Fair Labor Standards Act of 1938 (29 U.S.C. 206) and if more than half of the employee's compensation for a period of not less tban 1 month is derived from commissions on goods and services;

(w) a person employed as a guide, cook, camp tender, or livestock handler by a licensed outfitter as defined in 37-47-101;

(x) an employee employed as a radio announcer, news editor, or chief engineer by an employer in a second- or third-class city or a town;

(y) an employee of the consolidated legislative branch as provided in 5-2-503."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 25, 1999

CHAPTER NO. 180

[SB 260]

AN ACT REDUCING THE TAXES ON LIGHT VEHICLES AND FLEET VEHICLES; PROVIDING THAT THE TAX RATE DECREASES AS THE STATEWIDE VALUE OF LIGHT AND FLEET VEHICLES INCREASES; PROVIDING THAT THE AMOUNT OF MONEY DISTRIBUTED TO THE DISTRICT COURT FUND FROM LIGHT VEHICLE TAXES REMAIN UNCHANGED; CHANGING THE DISTRIBUTION FORMULA FOR MOTOR VEHICLE TAX COLLECTIONS; INCREASING THE PERMISSIBLE TAX RATE ALLOWED UNDER THE LOCAL OPTION VEHICLE TAX; REQUIRING A VOTE FOR IMPOSITION OF THE LOCAL OPTION VEHICLE TAX; PROVIDING FOR THE TRANSFER OF FUNDS FROM THE STATE GENERAL FUND TO THE STATE SPECIAL REVENUE ACCOUNTS FOR PURPOSES OF THE 6-MILL UNIVERSITY LEVY AND THE 9-MILL COUNTY PUBLIC ASSISTANCE LEVY; AMENDING SECTIONS 20-9-141, 61-3-504, 61-3-509, AND 61-3-537, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-141, MCA, is amended to read:

"20-9-141. Computation of general fund net levy requirement by county superintendent. (1) The county superintendent shall compute the levy

HeinOnline -- 1999 vol. I 607 1999

requirement for each district's general fund on the basis of the following procedure:

(a) Determine the funding required for the district's final general fund budget less the sum of direct state aid and the special education allowable cost payment for the district by totaling:

(i) the district's nonisolated school BASE budget requirement to be met by a district levy as provided in 20-9-303; and

(ii) any general fund budget amount adopted by the trustees of the district under the provisions of 20-9-308 and 20-9-353, including any additional funding for a general fund budget that exceeds the maximum general fund budget.

(b) Determine the money available for the reduction of the property tax on the district for the general fund by totaling:

(i) the general fund balance reappropriated, as established under the provisions of 20-9-104;

(ii) amounts received in the last fiscal year for which revenue reporting was required for each of the following:

(A) tuition payments for out-of-district pupils under the provisions of 20-5-321 through 20-5-323, except the amount of tuition received for a pupil who is a child with disabilities in excess of the amount received for a pupil without disabilities, as calculated under 20-5-323(2);

(B) revenue from taxes and fees imposed under 23-2-517, 23-2-803, 61-3-504, 61-3-521, 61-3-527, 61-3-529, 61-3-537, and 67-3-204;

(C) oil and natural gas production taxes;

(D) interest earned by the investment of general fund cash in accordance with the provisions of 20-9-213(4);

(E) revenue from corporation license taxes collected from financial institutions under the provisions of 15-31-702; and

(F) any other revenue received during the school fiscal year that may be used to finance the general fund, excluding any guaranteed tax base aid;

(G) reimbursements for unrealized motor vehicle tax revenue, as provided in 61-3-509(1); and

(iii) pursuant to subsection (4), anticipated revenue from coal gross proceeds under 15-23-703.

(c) Notwithstanding the provisions of subsection (2), subtract the money available to reduce the property tax required to finance the general fund that has been determined in subsection (1)(b) from any general fund budget amount adopted by the trustees of the district, up to the BASE budget amount, to determine the general fund BASE budget levy requirement.

(d) Subtract any amount remaining after the determination in subsection (1)(c) from any additional funding requirement to be met by an over-BASE budget amount, a district levy as provided in 20-9-303, and any additional financing as provided in 20-9-353 to determine any additional general fund levy requirements.

(2) The county superintendent shall calculate the number of mills to be levied on the taxable property in the district to finance the general fund levy requirement for any amount that does not exceed the BASE budget amount for

HeinOnline -- 1999 vol. I 608 1999

the district by dividing the amount determined in subsection (1)(c) hy the sum of:

(a) the amount of guaranteed tax base aid that the district will receive for each mill levied, as certified by the superintendent of public instruction; and

(b) the taxable valuation of the district divided by 1,000.

(3) The net general fund levy requirement determined in subsections (1)(c) and (1)(d) must be reported to the county commissioners on the fourth Monday of August by the county superintendent as the general fund net levy requirement for the district, and a levy must be set by the county commissioners in accordance with 20-9-142.

(4) For each school district, the department of revenue shall calculate and report to the county superintendent the amount of revenue anticipated for the ensuing fiscal year from revenue from coal gross proceeds under 15-23-703."

Section 2. Section 61-3-504, MCA, is amended to read:

"61-3-504. Computation of tax. (1) The amount of taxes on a light vehicle, except for vehicles registered under 61-3-456 or owned by disabled veterans qualifying for special license plates under 61-3-332(10)(c) or 61-3-426(2), is ~~2%~~ *the percentage determined under subsection (3)* of the value determined under 61-3-503.

(2) The amount of tax on fleet vehicles subject to the provisions of 61-3-318 is ~~1%~~ *one-half of the percentage determined under subsection (3)* of the value determined under 61-3-503.

(3) For tax years beginning after December 31, 2000, the taxable percentage for the computation of taxes under this section is determined prior to the start of a tax year by multiplying the statewide total taxable value of motor vehicles subject to taxation under this section for the first half of the prior calendar year by the prior year tax rate and then dividing the product by the statewide total taxable value of motor vehicles subject to taxation under this section for the first half of the current calendar year. For the tax year beginning after December 31, 1999, the rate is 1.4%. To determine the rate for tax year 2001, the tax rate for the first half of calendar year 1999 is considered to be 1.4%."

Section 3. Section 61-3-509, MCA, is amended to read:

"61-3-509. Disposition of taxes. (1) Except as provided in subsection (2), the county treasurer shall, after deducting the district court fee, credit all taxes on motor vehicles and fees in lieu of tax on motorcycles, quadricycles, motor homes, travel trailers, campers, trailers, pole trailers, semitrailers, buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors, collected under 61-3-504, 61-3-521, 61-3-527, 61-3-529, and 61-3-537, to a motor vehicle suspense fund. At some time between March 1 and March 10 of each year and every 60 days after that date, the county treasurer shall distribute the money in the motor vehicle suspense fund. *Except for taxes collected under 61-3-504, the county treasurer shall distribute the money in the fund* in the relative proportions required by the levies for state, county, school district, and municipal purposes in the same manner as personal property taxes are distributed. *For money in the fund collected under 61-3-504, the county treasurer shall disregard the statewide mills levied for the university system and the mills levied for state equalization aid under 20-9-360 in determining distribution proportions of the money and may not distribute money from 61-3-504 to the state for either levy. If the distribution*

HeinOnline -- 1999 vol. I 609 1999

of money collected under 61-3-504 to a school district general fund results in a lower revenue than the district received in fiscal year 1999 and the district has, for all years after fiscal year 1999, received less revenue than fiscal year 1999, then the district general fund is entitled to state reimbursement for the amount of the difference between the fiscal year 1999 revenue and the current year distributions of collections under 61-3-504.

(2) The county treasurer shall deduct as a district court fee ~~7%~~ *10%* of the amount of the ~~2%~~ tax collected on light vehicles *under 61-3-504(1).* The county treasurer shall credit the fee for district courts to a separate suspense account and shall forward the amount in the account to the state treasurer at the time that the county treasurer distributes money from the motor vehicle suspense fund. The state treasurer shall credit amounts received under this subsection to the state special revenue fund to be used for purposes of state funding of district court expenses as provided in 3-5-901."

Section 4. Section 61-3-537, MCA, is amended to read:

"61-3-537. (Temporary) Local option vehicle tax. (1) A county may impose a local vehicle tax on vehicles subject to a tax under 61-3-504 at a rate of up to ~~0.5%~~ *0.7%* of the value determined under 61-3-503, in addition to the tax imposed under 61-3-504.

(2) A local vehicle tax is payable at the same time and in the same manner as the tax imposed under 61-3-504. The first priority of the local vehicle tax is for district court funding, and the tax is distributed as follows:

(a) 50% to the county; and

(b) the remaining 50% to the county and the incorporated cities and towns within the county, apportioned on the basis of population. The distribution to a city or town is determined by multiplying the amount of money available by the ratio of the population of the city or town to the total county population. The distribution to the county is determined by multiplying the amount of money available by the ratio of the population of unincorporated areas within the county to the total county population.

(3) The governing body of a county may impose, revise, or revoke a local vehicle tax ~~by adopting a resolution before July 1, after conducting a public hearing on the proposed resolution. The~~ *if the imposition, revision, or revocation of the tax is approved by the electorate of the county. The imposition, revision, or revocation of the tax is effective on January 1 following its approval by the electorate. The county governing body by* resolution may provide for the distribution of the local vehicle tax. (Terminates June 30, 2005—sec. 2, 3, Ch. 217, L. 1995.)

61-3-537. (Effective July 1, 2005) Local option vehicle tax. (1) A county may impose a local vehicle tax on vehicles subject to a tax under 61-3-504 at a rate of up to ~~0.5%~~ *0.7%* of the value determined under 61-3-503, in addition to the tax imposed under 61-3-504.

(2) A local vehicle tax is payable at the same time and in the same manner as the tax imposed under 61-3-504 and is distributed in the same manner, based on the registration address of the owner of the motor vehicle.

(3) The governing body of a county may impose, revise, or revoke a local vehicle tax ~~by adopting a resolution before July 1, after conducting a public hearing on the proposed resolution~~ *if the imposition, revision, or revocation of the tax is approved by the electorate of the county. The imposition, revision, or*

HeinOnline -- 1999 vol. I 610 1999

revocation of the tax is effective on January 1 following its approval by the electorate."

Section 5. Fund transfers. (1) There is transferred from the general fund to the state special revenue fund referred to in [section 1 of Senate Bill No. 79] $604,305 for fiscal year 2000 and $1,268,732 for fiscal year 2001.

(2) There is transferred from the general fund to the state special revenue fund referred to in 53-2-813(2) to the credit of the department of public health and human services, $87,471 for fiscal year 2000 and $183,644 for fiscal year 2001.

Section 6. Applicability. [This act] applies to registration periods beginning after December 31, 1999, and to fleet registrations after December 31, 1999.

Approved March 25, 1999

CHAPTER NO. 181

[SB 428]

AN ACT TRANSFERRING THE MOTORCYCLE SAFETY TRAINING PROGRAM FROM THE SUPERINTENDENT OF PUBLIC INSTRUCTION TO THE BOARD OF REGENTS; AMENDING SECTIONS 20-7-501, 20-7-502, 20-7-504, 20-7-510, 20-7-511, 20-7-512, 20-7-513, 20-7-514, 61-5-110, AND 61-5-121, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Instructor of motorcycle safety training" means an instructor approved by the board of regents to instruct motorcycle safety training.

(2) "Motorcycle safety training course" means a course for beginning and experienced motorcycle riders with both classroom and on-road components that has been approved by the board of regents and that is designed to teach motorcyclists how to safely operate their vehicles.

Section 2. State motorcycle safety account — proceeds earmarked for account. (1) There is a state motorcycle safety account in the treasury of the state of Montana.

(2) Money collected and accrued from motorcycle safety training courses, motorcycle endorsement fees, motorcycle registration fees, and designated grants or an amount equal to that amount must be deposited in the state motorcycle safety account and must be available to support only approved motorcycle safety training courses, appropriate instructor of motorcycle safety training, and other related motorcycle safety training activities.

Section 3. Section 20-7-501, MCA, is amended to read:

"20-7-501. Definitions. As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

~~(1) "Instructor of motorcycle safety training" means an instructor approved by the superintendent of public instruction to instruct motorcycle safety training.~~

HeinOnline -- 1999 vol. I 611 1999

~~(2) "Motorcycle safety training course" means a course for beginning and experienced motorcycle riders with both classroom and on-road components that has been approved by the superintendent of public instruction and that is designed to teach motorcyclists how to safely operate their vehicles.~~

~~(3)~~*(1)* "Teacher of traffic education" means an instructor approved by the superintendent of public instruction to teach traffic education.

~~(4)~~*(2)* "Traffic education" means instruction in motor vehicle, bicycle, pedestrian, and school bus traffic laws or motorcycle laws, in the acceptance of personal responsibility on the puhlic highways, in the causes and consequences of traffic accidents, and in the skills necessary for the safe operation of bicycles and motor vehicles or motorcycles. The instruction must he designed to improve public awareness of motor vehicle, pedestrian, and school bus safety with regard to protecting school-age children.

~~(5)~~*(3)* "Traffic education account" means the state treasury account in the state special revenue fund for the deposit and disbursement of state traffic education revenue.

~~(6)~~*(4)* "Traffic education course" means a course of traffic education ~~which~~ *that* has heen approved by the superintendent of public instruction."

Seetion 4. Section 20-7-502, MCA, is amended to read:

"20-7-502. Duties of superintendent of public instruction. The superintendent of public instruction shall:

(1) develop, administer, and supervise a program of instruction in traffic education;

(2) establish basic course requirements in instruction for traffic education;

(3) estahlish the qualifications for a teacher of traffic education ~~and an instructor of motorcycle safety training. Qualifications for an instructor of motorcycle safety training must be based upon national standards promulgated by the motorcycle safety foundation or a similar organization recognized by the superintendent.~~;

(4) approve teachers of traffic education ~~and instructors of motorcycle safety training~~ when the teachers ~~or instructors~~ are qualified;

(5) establish criteria for traffic education ~~and motorcycle safety training~~ course approval based on the basic course requirements, teacher of traffic education qualifications, and the requirements of law;

(6) approve traffic education courses when the courses meet the criteria for approval;

(7) promulgate a policy for the distribution of the traffic education money to approved traffic education courses and annually order the distribution of the proceeds of the traffic education account in the manner required by law;

(8) assist districts with the conduct of traffic education; and

(9) periodically conduct onsite driver education program reviews ~~and motorcycle safety training course monitoring~~."

Section 5. Section 20-7-504, MCA, is amended to read:

HeinOnline -- 1999 vol. I 612 1999

"20-7-504. State traffic education account — proceeds earmarked for ~~the~~ account — transmittal. (1) There is a traffic education account in the treasury of the state of Montana.

~~(2) Money collected and accrued from motorcycle safety training courses, designated grants, and motorcycle registration fees or an amount equal to that amount must be deposited in the state traffic education account as provided in 20-7-513 and 20-7-514 and must be available to support only approved motorcycle safety training courses, appropriate motorcycle safety instructor training, and other related motorcycle safety training activities.~~

~~(3)~~*(2)* When a court is required to transmit fees directly to the state treasurer, the gross proceeds, including the portion of the fees to he credited to the traffic education account, must be transmitted to the state treasurer and the appropriate portion must be deposited in the traffic education account."

Section 6. Section 20-7-510, MCA, is amended to read:

"20-7-510. Motorcycle safety promotion. In cooperation with other state, local government, and private agencies, the department of justice and the ~~superintendent of public instruction~~ *board of regents* are encouraged to promote safety and awareness in the use and operation of motorcycles through action appropriate to the agencies' purposes and goals, including advertising and encouraging *both publically and privately offered* motorcycle safety training."

Section 7. Section 20-7-511, MCA, is amended to read:

"20-7-511. Motorcycle safety advisory committee. (1) There is a motorcycle safety advisory committee. The committee is allocated to the office of the ~~superintendent of public instruction~~ *board of regents* for administrative purposes.

(2) The purpose of the motorcycle safety advisory committee is to advise the ~~superintendent of public instruction~~ *board of regents* and the department of justice concerning motorcycle rider safety issues, motorcycle safety training, motorcycle endorsement testing, and other matters relating to motorcycle safety.

(3) The motorcycle safety advisory committee consists of five members. Except as provided in subsection (5)(a), each member must be appointed for a term of 4 years. The committee consists of:

(a) one peace officer appointed by the governor;

(b) one certified *instructor of* motorcycle safety ~~instructor~~ *training*, as provided in 20-7-512, who is appointed by the ~~superintendent of public instruction~~ *board of regents*;

(c) two motorcycle riders representing motorcycle riding groups, such as the American motorcyclist association or American bikers aiming toward education (ABATE), to be nominated by these groups for appointment by the governor; and

(d) one representative from the department of justice who is appointed by the attorney general.

(4) A member may be removed for cause. If a vacancy occurs, a member must be appointed to fill the unexpired term by the authority that appointed the vacating member.

(5) (a) (i) To allow for staggered membership appointments, the initial terms of two committee members must be for 2 years. These members are:

HeinOnline -- 1999 vol. I 613 1999

(A) the peace officer provided for in subsection (3)(a); and

(B) one motorcycle rider, provided for in subsection (3)(c), to be chosen by lot at the organizational meeting.

(ii) The successors for the peace officer and motorcycle rider shall serve 4-year terms.

(h) The first *instructor of* motorcycle safety ~~instructor~~ *training* member appointed under subsection (3)(b) need not be certified by the ~~superintendent of public instruction~~ *board of regents*, but the member ~~shall~~ *must* have ~~a~~ *an instructor of* motorcycle safety ~~instructor~~ *training* certification awarded by a national organization concerned with motorcycle safety."

Section 8. Section 20-7-512, MCA, is amended to read:

"20-7-512. Standards for motorcycle safety training. The ~~superintendent of public instruction shall~~ *board of regents may* establish minimum motorcycle safety training standards, including instruction, courses, and instructor certification for conducting training authorized by 20-7-513. The standards must be based upon national standards promulgated by the motorcycle safety foundation or a similar organization recognized by the ~~superintendent~~ *board of regents*."

Section 9. Section 20-7-513, MCA, is amended to read:

"20-7-513. Motorcycle safety training course — ~~fee~~ *tuition*. (1) The ~~superintendent may charge a fee for the cost of conducting~~ *board of regents may prescribe tuition rates for the* motorcycle safety training courses. The ~~fee~~ *tuition collected* must be deposited in the ~~state traffic education~~ *state motorcycle safety* account, as provided in ~~20-7-504~~ *[section 2]*.

(2) The ~~superintendent~~ *board of regents* may ~~contract with qualified persons throughout the state~~ *delegate authority to a unit of the university system* to conduct motorcycle safety training courses ~~outside of the formal education system at times and places that will attract the greatest number of students~~ *and to approve instructors of motorcycle safety training*.

(3) State agencies and subdivisions of the state may provide facilities, such as classrooms and outdoor paved areas or other resources, for conducting motorcycle safety training courses.

(4) Subject to the availability of funds, the ~~superintendent~~ *board of regents* may pay for construction, repair, or purchases or award grants from the state ~~traffic education~~ *motorcycle safety* account to provide facilities for motorcycle safety training courses."

Section 10. Section 20-7-514, MCA, is amended to read:

"20-7-514. Motorcycle registration fee — exemptions. (1) A motorcycle safety training fee of $5 must be assessed on each motorcycle required by 61-3-301 to be registered for licensing.

(2) The county treasurer shall collect the fee and remit the fee to the state treasurer for deposit in the state ~~traffic education~~ *motorcycle safety* account, as provided in ~~20-7-504~~ *[section 2]*.

(3) Exempt from payment of the fee specified in subsection (1) are vehicles:

(a) leased or owned by the state or a county or municipality;

HeinOnline -- 1999 vol. I 614 1999

(b) used for transportation by a nonresident or migratory worker temporarily employed in agricultural work in this state; or

(c) displaying dealer or wholesaler plates, as provided in 61-4-103, while owned by a dealer or wholesaler."

Section 11. Section 61-5-110, MCA, is amended to read:

"61-5-110. (Temporary) Examination of applicants — cooperative driver testing programs. (1) The department shall examine each applicant for a driver's license or motorcycle endorsement, except as otherwise provided in this section. The examination must include a test of the applicant's eyesight, a knowledge test examining the applicant's ability to read and understand highway signs and the applicant's knowledge of the traffic laws of this state, and, except as provided in 61-5-118, a road test or a skills test demonstrating the applicant's ability to exercise ordinary and reasonable control in the operation of a motor vehicle, quadricycle, or motorcycle. The examination for the commercial driver's license may include additional items. The knowledge test and the road test or the skills test must be waived for an applicant who works in a farm-related service industry and who otherwise meets the requirements for a seasonal commercial driver's license as set forth in this title and rules adopted by the department. The knowledge test or road test, or both, may be waived by the department upon certification of the applicant's successful completion of the test by a certified cooperative driver testing program, as provided in subsection (2).

(2) The department is authorized to certify as a cooperative driver testing program any state-approved high school traffic education course offered by or in cooperation with a school district that employs an approved instructor who has current endorsement from the superintendent of public instruction as a teacher of traffic education *or any motorcycle safety training course approved by the board of regents and that employs an approved instructor of motorcycle safety training* and who agrees to:

(a) administer standardized knowledge and road tests required by the department to students participating in the district's high school traffic education courses~~:~~ *or motorcycle safety training courses approved by the board of regents;*

(b) certify the test results to the department; and

(c) comply with regulations of the department, ~~and~~ the superintendent of public instruction, *and the board of regents.*

(3) Except as otherwise provided by law, a resident who has a valid driver's license issued by another state may surrender that license for a Montana license of the same class, type, and endorsement upon payment of the required fees, successful completion of a vision examination, and, if requested by the examiner, completion of either the knowledge test or road test, or both. In addition, a resident surrendering a commercial driver's license issued by another state shall successfully complete any examination required by federal regulations before being issued a commercial driver's license by the department. (Terminates September 30, 1999—sec. 12, Ch. 53, L. 1995.)

61-5-110. (Effective October 1, 1999) Examination of applicants — cooperative driver testing programs. (1) The department shall examine each applicant for a driver's license or motorcycle endorsement, except as otherwise provided in this section. The examination must include a test of the applicant's

HeinOnline -- 1999 vol. I 615 1999

eyesight, a knowledge test examining the applicant's ability to read and understand highway signs and the applicant's knowledge of the traffic laws of this state, and a road test or a skills test demonstrating the applicant's ability to exercise ordinary and reasonable control in the operation of a motor vehicle, quadricycle, or motorcycle. The examination for the commercial driver's license may include additional items. The knowledge test and the road test or the skills test must he waived for an applicant who works in a farm-related service industry and who otherwise meets the requirements for a seasonal commercial driver's license as set forth in this title and rules adopted by the department. The knowledge test or road test, or hoth, may he waived hy the department upon certification of the applicant's successful completion of the test hy a certified cooperative driver testing program, as provided in subsection (2).

(2) The department is authorized to certify as a cooperative driver testing program any state-approved high school traffic education course offered hy or in cooperation with a school district that employs an approved instructor who has current endorsement from the superintendent of public instruction as a teacher of traffic education *or any motorcycle safety training course approved by the board of regents and that employs an approved instructor of motorcycle safety training* and who agrees to:

(a) administer standardized knowledge and road tests required by the department to students participating in the district's high school traffic education courses~~:~~ *or motorcycle safety training courses approved by the board of regents;*

(h) certify the test results to the department; and

(c) comply with regulations of the department, ~~and~~ the superintendent of public instruction, *and the board of regents.*

(3) Except as otherwise provided by law, a resident who has a valid driver's license issued by another state may surrender that license for a Montana license of the same class, type, and endorsement upon payment of the required fees, successful completion of a vision examination, and, if requested by the examiner, completion of either the knowledge test or road test, or both. In addition, a resident surrendering a commercial driver's license issued by another state shall successfully complete any examination required hy federal regulations before heing issued a commercial driver's license by the department."

Section 12. Section 61-5-121, MCA, is amended to read:

"61-5-121. Disposition of fees. (1) The disposition of the fees from driver's licenses, motorcycle endorsements, commercial driver's licenses, and duplicate driver's licenses provided for in 61-5-114 is as follows:

(a) The amount of 16.7% of each driver's license fee and 25% of each duplicate driver's license fee must be deposited into an account in the state special revenue fund. The department shall transfer the funds from this account to the Montana highway patrol officers' retirement pension trust fund as provided in 19-6-404.

(b) (i) If the fees are collected by a county treasurer or other agent of the department, the amount of 2.5% of each driver's license fee and 3.75% of each duplicate driver's license fee must he deposited into the county general fund.

(ii) If the fees are collected hy the department, the amount provided for in suhsection (1)(b)(i) must be deposited into the state general fund.

HeinOnline -- 1999 vol. I 616 1999

(c) (i) If the fee is collected by a county treasurer or other agent of the department, the amount of 3.34% of each motorcycle endorsement must be deposited into the county general fund.

(ii) If the fee is collected by the department, the amount provided for in subsection (1)(c)(i) must be deposited into the state general fund.

(d) The amount of 26.25% of each driver's license fee and 8.75% of each duplicate driver's license fee must be deposited into the state traffic education account.

(e) In addition to the amounts deposited pursuant to subsections (1)(b)(ii) and (1)(c)(ii), the amount of 54.55% of each driver's license fee and 62.5% of each duplicate driver's license fee must be deposited into the state general fund.

(f) If the fee is collected by the county treasurer or other agent of the department, the amount of 2.5% of each commercial driver's license fee must be deposited into the county general fund, otherwise all of the fee must be deposited ~~in~~ *into* the state general fund.

(g) The amount of 63.46% of each motorcycle endorsement fee must be deposited into the state ~~traffic education~~ *motorcycle safety* account in the state special revenue fund, and the amount of 33.2% of each motorcycle endorsement fee must be deposited into the state general fund.

(2) (a) If fees from driver's licenses, commercial driver's licenses, motorcycle endorsements, and duplicate driver's licenses are collected by a county treasurer or other agent of the department, the county treasurer or agent shall deposit the amounts provided for in subsections (1)(b)(i) and (1)(c)(i) into the county general fund. The county treasurer or agent shall then remit to the state treasurer all remaining fees, together with a statement indicating what portion of each fee is to be deposited into the account in the state special revenue fund, as provided in subsection (1)(a), and the state general fund. The state treasurer, upon receipt of the fees and statement, shall deposit the fees as provided in subsections (1)(a) and (1)(d) through (1)(g).

(b) If fees from driver's licenses, commercial driver's licenses, motorcycle endorsements, and duplicate driver's licenses are collected by the department, it shall remit all fees to the state treasurer, together with a statement indicating what portion of each fee is to be deposited into the account in the state special revenue fund as provided in subsection (1)(a), the state special revenue fund, and the state general fund. The state treasurer, upon receipt of the fees and statement, shall deposit the fees as provided in subsections (1)(a), (1)(b)(ii), (1)(c)(ii), and (1)(d) through (1)(g)."

Section 13. Transfer of fund balance and equipment. (1) On or before June 30, 1999, the superintendent of public instruction shall transfer from the traffic education account to the state motorcycle safety account provided for in [section 2] the balance remaining from money collected and accrued from motorcycle safety training courses, motorcycle registration fees, and motorcycle endorsement fees.

(2) On or before June 30, 1999, the superintendent of public instruction shall transfer to the board of regents any equipment or property used in the motorcycle safety training program.

Section 14. Codification instruction. (1) [Sections 1 and 2] are intended to be codified as an integral part of Title 20, chapter 25, and the provisions of Title 20, chapter 25, apply to [sections 1 and 2].

HeinOnline -- 1999 vol. I 617 1999

(2) Sections 20-7-510, 20-7-511, 20-7-512, 20-7-513, and 20-7-514 are intended to be renumbered and codified as an integral part of Title 20, chapter 25.

Section 15. Effective date. [This act] is effective July 1, 1999.

Approved March 25, 1999

CHAPTER NO. 182

[HB 96]

AN ACT ALLOWING FOR RECIPROCAL ACCESS AGREEMENTS TO BE NEGOTIATED ON ALL ISOLATED STATE LAND CLASSIFICATIONS; REPEALING SECTION 77-5-115, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Management of isolated trust lands — reciprocal access. (1) To facilitate the management of isolated tracts of all classifications of state lands, the department may negotiate reciprocal access agreements that may include easements. For an easement granted pursuant to this subsection, the board may waive all or a portion of the survey requirements of 77-2-102, subject to any conditions that the board may impose.

(2) In granting access, the department is not required to analyze or consider the potential impacts of activities that may occur on private or federal lands in conjunction with or as a result of granting access.

Section 2. Repealer. Section 77-5-115, MCA, is repealed.

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 77, chapter 1, part 6, and the provisions of Title 77, chapter 1, part 6, apply to [section 1].

Section 4. Effective date. [This act] is effective on passage and approval.

Approved March 26, 1999

CHAPTER NO. 183

[HB 125]

AN ACT RELATING TO LIBRARIES AND LIBRARY SYSTEMS; SPECIFYING INTERLIBRARY LOANS NOT ELIGIBLE FOR REIMBURSEMENT; AUTHORIZING THE STATE LIBRARY COMMISSION TO ADOPT RULES; MODIFYING THE DEFINITION OF "LIBRARY FEDERATION" AND ADDING PARTIES WHO MAY CONTRACT FOR THE FORMATION OF LIBRARY FEDERATIONS; REQUIRING LIBRARY FEDERATIONS TO SUBMIT ANNUAL PLANS FOR THE EXPENDITURE OF STATE FUNDS; AMENDING SECTIONS 22-1-328, 22-1-330, 22-1-402, 22-1-404, AND 22-1-413, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 22-1-328, MCA, is amended to read:

HeinOnline -- 1999 vol. I 618 1999

"**22-1-328. State interlibrary loan program — reimbursement — eligibility.** (1) Each Montana library eligible for reimbursement under this section for participation in the statewide interlibrary loan program must be reimbursed according to the rules adopted by the commission.

(2) Libraries eligible for interlibrary loan reimbursement under this section include public libraries, libraries operated by public schools or school districts, libraries operated by public colleges or universities, libraries operated by public agencies for institutionalized persons, and libraries operated by nonprofit, private *medical,* educational, or research institutions.

(3) Notwithstanding subsections (1) and (2), the following types of interlibrary loans are not eligible for reimbursement:

(a) a loan between public school libraries located within the same public school district;

(b) a loan between an elementary school library and a high school library located within school districts with overlapping school district boundaries;

(c) a loan between libraries administered by a public or private nonprofit college or university; and

(d) a loan between libraries administered by a public library."

Section 2. Section 22-1-330, MCA, is amended to read:

"**22-1-330. Commission rulemaking authority.** The commission may adopt rules and procedures for:

(1) the distribution of state aid to public libraries on a per capita and per square mile basis~~, for~~;

(2) issuance of state multilibrary cards~~, and for~~;

(3) reimbursement for interlibrary loan lending;

(4) distribution of base grants provided for in 22-1-331; and

(5) the composition of the library federation board of trustees, as provided in 22-1-404."

Section 3. Section 22-1-402, MCA, is amended to read:

"**22-1-402. Library systems — definition.** (1) Library systems must include library federations or library networks.

(2) (a) A library federation is a combination of libraries serving a multicounty, multicity, or city-county area within a federation area designated by the state library commission. Any other public, *school, special, college, or university* library or town, city, or county within the federation area may participate in a federation.

(b) Two or more cities, towns, *or* counties~~, or~~; a city and one or more counties; *or school, special, college, or university libraries* may agree by contract to form a federation by action of their respective governing bodies or duly created boards of library trustees~~, provided that~~ *if* one of the parties is or maintains a library that has been designated by the state library commission as a headquarters library for that federation area. The participating entities may retain the autonomy over their respective libraries ~~that~~ specified in the contract.

(c) The expense of providing library services for the library federation must be based on funds received from the state or participating libraries as agreed upon

HeinOnline -- 1999 vol. I 619 1999

in the contract. The funds of the federation must he maintained as a separate account as provided in the contract. Participating libraries shall transfer semiannually to the account all money collected for the federation in their respective jurisdiction.

(d) A participating entity may withdraw from a federation according to the terms for withdrawal provided in the contract by the action of its governing hody or by a majority of its qualified voters voting at a general or special election. A special election must be held in conjunction with a regular or primary election.

(3) A library network is an agreement between individual libraries or library systems, which may be intercity, intrastate, or interstate, for the exchango of information or to provide specific library services not provided in existing library federations."

Section 4. Section 22-1-404, MCA, is amended to read:

"22-1-404. Board of trustees — coordinator. (1) In a library federation, there ~~shall~~ *must* be a board of trustees with advisory powers only, the operation of the library federation having been specified by contract. The ~~board of trustees of each participating library shall name one of their members to the federation advisory board of trustees, and each participating entity without a duly appointed library board shall name a layman to represent that entity on the library federation board of~~ *state library commission, provided for in 22-1-101, shall adopt rules governing the composition of the federation board of trustees. A majority of the members of each federation board of trustees must be* trustees *of a public library, as defined in 22-1-326.*

(2) The librarian of the headquarters library shall serve as the coordinator of the federation and as a nonvoting member of tlie federation advisory board of trustees."

Section 5. Section 22-1-413, MCA, is amended to read:

"22-1-413. Administration by Montana state library commission. Tlie Montana state library commission ~~shall~~ *must* receive and *shall* administer the appropriation for state funding to public library federations. The commission shall allocate ~~such~~ *the* appropriation among ~~such types of~~ grant programs and shall allocate funds among federations according to ~~such~~ formulas for distribution as ~~it shall establish from time to time by~~ *the commission establishes in* rules adopted pursuant to 22-1-103. Federations receiving state funds from the commission shall *submit annual plans for the expenditure of state funds and* report semiannually to the commission concerning tbe progress of the various projects for which state funding was received~~, which~~. *The* reports ~~shall~~ *must* contain an accounting for all state funds received."

Section 6. Effective dates. (1) [Section 2 and this section] are effective on passage and approval.

(2) [Sections 1 and 3 through 5] are effective October 1, 1999.

Approved March 26, 1999

HeinOnline -- 1999 vol. I 620 1999

CHAPTER NO. 184

[HB 167]

AN ACT REVISING STATUTES IMPACTED BY THE BUDGET DIRECTOR'S CERTIFICATION OF THE TERMINATION OF THE OLD FUND LIABILITY TAX EFFECTIVE JANUARY 1, 1999; REDUCING THE TOTAL EXPENDITURES ALLOWED TO THE STATE FUND FOR ADMINISTERING OLD FUND CLAIMS FROM $3 MILLION TO $1.25 MILLION; AUTHORIZING THE TRANSFER OF FUNDS BETWEEN ACCOUNTS FOR PAYMENT OF CLAIMS; AMENDING SECTIONS 15-30-204, 15-30-207, 15-30-210, 15-30-248, 15-30-304, 39-71-2321, AND 39-71-2352, MCA; REPEALING SECTIONS 39-71-2505 AND 39-71-2507, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-204, MCA, is amended to read:

"15-30-204. Reporting and remittance requirements. (1) For the purposes of this section, employers shall remit their taxes in accordance with the appropriate remittance schedule as follows:

(a) Employers whose total liability for state income tax withholding during the preceding lookback period was $12,000 or more shall remit on an "accelerated schedule", which is the same as the employer's federal due dates for federal tax deposits.

(b) Employers whose total liability for state income tax withholding during the preceding lookback period was less than $12,000 but more than $1,199 shall remit on a "monthly schedule" for which the remittance due date is on or before the 15th day of the month following the payment of wages.

(c) Employers whose total liability for state income tax withholding during the preceding lookback period was less than $1,200 shall remit on a "quarterly schedule" for which the remittance due date is on or before the last day of the month following the close of each calendar quarter.

(d) Employers who are not subject under Title 39, chapter 51, for unemployment insurance and whose total liability for state income tax withholding~~, or if state income tax withholding is not required, whose total liability for old fund liability tax~~ during the preceding lookback period was less than $1,200~~,~~ may remit on an "annual schedule" for which the remittance is due on or before February 28 of the year following payment of wages.

(2) (a) Every employer is required to file a report quarterly in the form required by the department.

(b) The report is due on or before the last day of the month following the close of the calendar quarter.

(c) An employer who is not subject under Title 39, chapter 51, to unemployment insurance may elect to file an annual report on or before February 28 for the preceding calendar year.

(d) An employer who has no payroll during a quarter may elect to report "no wages paid this quarter" using alternative reporting methods provided in department rules.

HeinOnline -- 1999 vol. I 621 1999

(e) An employer, in addition to the scheduled reports and remittances, must file the annual report and wage statements as required by 15-30-207.

(3) (a) Except as provided in subsection (3)(g), payments are due as required according to the remittance schedule for each employer.

(b) If an employer subject to the provisions of subsection (1)(d) does not comply with the requirements of this section, the employer may be subject to the quarterly reporting schedule provided in subsection (2)(a) and to the quarterly remittance schedule provided in subsection (1)(c) until the department determines from the employer's subsequent filing and payment history that the employer will file and remit in a timely fashion.

(c) On or before November 1 of each year, the department shall notify the employers subject to the provisions of this section of the employers' remittance schedules for the following calendar year based upon the department's review of the preceding lookback period.

(d) Except as provided in subsection (3)(g), a new employer or an employer with no filing history is subject to the quarterly remittance schedule in subsection (1)(c) until the department is able to determine the employer's proper remittance schedule by a review of the employer's first complete lookback period.

(e) An employer who is subject to the quarterly schedule in subsection (1)(c) may elect to remit payments on a more frequent basis. An employer who is on an annual schedule may elect to remit monthly or quarterly payments.

(f) An employer who exceeds either threshold, as defined in 15-30-201(4)(b) and (4)(c), must begin withholding state income tax on or before the last day of the month following the quarter in which the wages paid exceeded the threshold requirements. The employer is subject to the quarterly remittance schedule until the department is able to determine the employer's proper remittance schedule by a review of the employer's first complete lookback period.

(g) An employer who is not subject to unemployment insurance under Title 39, chapter 51, and whose estimated annual state income tax withholding~~, or if state income tax withholding is not required, whose estimated old fund liability tax,~~ is not expected to exceed $1,199 for the calendar year may remit according to the annual schedule and repert annually on or before February 28.

(h) An employer may use alternative remittance methods in conjunction with the department's electronic remittance program in accordance with department rules.

(4) If the department has reason to believe that collection of the amount of any tax withheld is in jeopardy, it may proceed as provided for under 15-1-703.

(5) Each employer shall keep true and accurate payroll records containing the information that the department may prescribe by rule. Those records must be open to inspection and audit and may be copied by the department or its authorized representative at any reasonable time and as often as may be necessary. An employer who maintains its records outside Montana shall furnish copies of those records to the department at the employer's expense."

Section 2. Section 15-30-207, MCA, is amended to read:

"15-30-207. Annual statement by employer. (1) Every employer shall, on or before February 28 in each year, file with the department a wage and tax statement for each employee in the form and summarizing information as the

HeinOnline -- 1999 vol. I 622 1999

department requires, including the total wages paid to the employee during the preceding calendar year or any part of the calendar year and showing the total amount of the federal income tax deducted and withheld from the wages and the total amount of the tax deducted and withheld from the wages under the provisions of 15-30-201 through 15-30-209 ~~and 39-71-2503~~.

(2) The annual statement filed by an employer with respect to the wage payments reported constitutes full compliance with the requirements of 15-30-301 relating to the duties of information agents, and additional information return is not required with respect to the wage payments."

Section 3. Section 15-30-210, MCA, is amended to read:

"**15-30-210. Electronic funds transfer and electronic reporting — employer option.** (1) An employer, within 30 days of notification of the employer's remittance schedule as required by 15-30-204, may elect to remit and file state income tax withholding ~~and old fund liability tax~~ electronically. An election form must be provided with the notification of the employer's remittance schedule and, when returned to the department, is valid for the next 12 months. An employer may cancel the election provided in this section by providing written notice of the cancellation to the department.

(2) An employer who elects pursuant to subsection (1) to remit tax payments through electronic funds transfer shall electronically submit the returns required by 15-30-204 to the department in a format established and approved by the department."

Section 4. Section 15-30-248, MCA, is amended to read:

"**15-30-248. Determination of employer status.** A final determination by either the department of labor and industry or the board of labor appeals that an employer-employee relationship existed between the taxpayer and certain individuals subjecting the taxpayer to the requirements of chapter 30, part 2, which may be subject to judicial review, as provided in 39-51-2404, at the discretion of the taxpayer, is not subject to any further administrative or judicial challenge in any proceeding before or with the department of revenue concerning a determination of the proper amount of state income tax withholding ~~and old fund liability tax to be paid~~."

Section 5. Section 15-30-304, MCA, is amended to read:

"**15-30-304. Furnishing copy of federal return — copy of share of income, credit, and deductions schedule — copies of federal corrections — filing amended return required.** Each taxpayer shall, upon request of the department, furnish a copy of the return for the corresponding year that the taxpayer has filed or may file with the federal government, showing the taxpayer's net income and how obtained and the several sources from which derived. ~~Partners of a partnership, shareholders of a subchapter S corporation, and members or managers of a limited liability company who are subject to the workers' compensation old fund liability tax shall attach to their Montana individual income tax return a copy of the share of income, credit, and deductions schedule that the partner, shareholder, or member or manager received from the entity that reports income to the federal government for the corresponding year.~~ If the amount of a taxpayer's taxable income is changed or corrected by the United States internal revenue service or other competent authority, the taxpayer shall report the change or correction to the department within 90 days after receiving notice of the change or correction. If a taxpayer files an amended federal income

HeinOnline -- 1999 vol. I 623 1999

tax return changing or correcting the taxpayer's federal taxable income for any tax year, the taxpayer shall also file an amended return with the department within 90 days after filing an amended federal income tax return. The department shall supply all necessary forms and shall, upon the request of the taxpayer, return all forms to the taxpayer after they have been examined by the department."

Section 6. Section 39-71-2321, MCA, is amended to read:

"39-71-2321. What to be deposited in state fund. (1) All premiums, penalties, recoveries by subrogation, interest earned upon money belonging to the state fund, and securities acquired by or through use of money~~, taxes collected under 39-71-2503 and 39-71-2505,~~ and ~~the~~ *all* interest and penalties on the taxes in accordance with 15-1-501 must be deposited in the state fund. ~~They~~ *Except for a transfer authorized under 39-71-2352, the money* must be separated into two accounts based upon whether they relate to claims for injuries resulting from accidents that occurred before July 1, 1990, or claims for injuries resulting from accidents that occur on or after that date.

(2) All funds deposited in the state fund are statutorily appropriated as provided in 17-7-502."

Section 7. Section 39-71-2352, MCA, is amended to read:

"39-71-2352. Separate payment structure and sources for claims for injuries resulting from accidents that occurred before July 1, 1990, and on or after July 1, 1990 — spending limit — *authorizing transfer of money between accounts for payment of claims.* (1) Premiums paid to the state fund based upon wages payable before July 1, 1990, may be used only to administer and pay claims for injuries resulting from accidents that occurred before July 1, 1990. Premiums paid to the state fund based upon wages payable on or after July 1, 1990, may be used only to administer and pay claims for injuries resulting from accidents that occur on or after July 1, 1990.

(2) The state fund shall:

(a) determine the cost of administering and paying claims for injuries resulting from accidents that occurred before July 1, 1990, and separately determine the cost of administering and paying claims for injuries resulting from accidents that occur on or after July 1, 1990;

(b) keep adequate and separate accounts of the costs determined under subsection (2)(a); and

(c) fund administrative expenses and benefit payments for claims for injuries resulting from accidents that occurred before July 1, 1990, and claims for injuries resulting from accidents that occur on or after July 1, 1990, separately from the sources provided by law.

(3) The state fund may not spend more than ~~$3~~ *$1.25* million a year to administer claims for injuries resulting from accidents that occurred before July 1, 1990.

(4) As used in this section, "adequately funded" means the present value of:

(a) the total cost of future benefits remaining to be paid;

(b) the cost of administering the claims; and

(c) an additional amount equal to 10% of the total of the amounts in subsections (4)(a) and (4)(b).

(5) By October 1 of each year following the first full fiscal year after termination of the old fund liability tax, any funds in excess of the adequate funding amount established in subsection (4) must be returned to the account established in 39-71-2321 to pay claims for injuries resulting from accidents that occurred on or after July 1, 1990. The total amount of funds returned to the account under this section may not exceed $63.8 million.

(6) If in any fiscal year after the old fund liability tax is terminated claims for injuries resulting from accidents that occurred before July 1, 1990, are not adequately funded, any amount returned to the account in 39-71-2321 to pay claims for injuries resulting from accidents that occurred on or after July 1, 1990, must be transferred back to the account established in 39-71-2321 to pay claims for injuries resulting from accidents that occurred before July 1, 1990.

(7) The independent actuary engaged by the state fund pursuant to 39-71-2330 shall project the unpaid claims liability for claims for injuries resulting from accidents that occurred before July 1, 1990, each fiscal year until all claims are paid."

Section 8. Repealer. Sections 39-71-2505 and 39-71-2507, MCA, are repealed.

Section 9. Effective date. [This act] is effective on passage and approval.

Approved March 26, 1999

CHAPTER NO. 185

[HB 211]

AN ACT ALLOWING A CITY, COUNTY, OR CONSOLIDATED GOVERNMENT TO BECOME A DEFAULT ELECTRICITY SUPPLIER TO RESIDENTIAL AND COMMERCIAL CUSTOMERS OF A PUBLIC UTILITY WITHIN THE CITY'S, COUNTY'S, OR CONSOLIDATED GOVERNMENT'S JURISDICTION; AMENDING SECTION 69-8-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-8-203, MCA, is amended to read:

"69-8-203. Public utility — customer choice — continned service — edueation of customers. (1) A customer is permitted to choose an electricity supplier pursuant to the deadlines established in 69-8-201. Public utilities shall propose a method for customers to choose an electricity supplier.

(2) If a customer has not chosen an electricity supplier by the end of the transition period, *a city, county, or consolidated government that is licensed as an electricity supplier may, upon application to and approval by the commission, become the default supplier to residential and commercial customers of a public utility within its jurisdiction. For customers that are not within the jurisdiction of a licensed and approved city, county, or consolidated government electricity supplier area,* a public utility shall propose a method in the public utility's transition plans for assigning that customer to an electricity supplier. *The commission shall establish an application process and guidelines for the*

HeinOnline -- 1999 vol. I 625 1999

designation of one or more default suppliers for the distribution area of each public utility.

(3) A public utility may phase in customer choice to promote the orderly transition to a competitive market environment pursuant to the deadlines in 69-8-201.

(4) Public utilities shall educate their customers about customer choice so that customers may make an informed choice of an electricity supplier. This education process must give special emphasis to education efforts during the transition period."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 26, 1999

CHAPTER NO. 186

[HB 250]

AN ACT ALLOWING COUNTIES, CITIES, OR TOWNS TO CONSIDER EMPLOYEES OF NONPROFIT ECONOMIC DEVELOPMENT ORGANIZATIONS AS EMPLOYEES SOLELY FOR THE PURPOSE OF PARTICIPATION IN HEALTH INSURANCE CONTRACTS OR PLANS; AND AMENDING SECTION 2-18-702, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-18-702, MCA, is amended to read:

"**2-18-702. Group insurance for public employees and officers.** (1) *(a)* All counties, cities, towns, school districts, and the board of regents shall upon approval by two-thirds vote of their respective officers and employees enter into group hospitalization, medical, health, including long-term disability, accident, or group life insurance contracts or plans for the benefit of their officers and employees and their dependents. The laws prohibiting discrimination on the basis of marital status in Title 49 do not prohibit bona fide group insurance plans from providing greater or additional contributions for insurance benefits to employees with dependents than to employees without dependents or with fewer dependents.

(b) The governing body of a county, city, or town may, at its discretion, consider the employees of private, nonprofit economic development organizations to be employees of the county, city, or town solely for the purpose of participation in group hospitalization, medical, health, including long-term disability, accident, or group life insurance contracts or plans as provided in subsection (1)(a). The governing body of the county, city, or town may require an employee or organization to pay the actual cost of coverage required for participation or may, at its discretion and subject to any restriction on who may be a member of a group, pay all or part of the cost of coverage of the employee of the organization.

(2) State employees and elected officials, as defined in 2-18-701, may participate in state employee group benefit plans as are provided for under part 8 of this chapter.

(3) For state officers and employees, the premiums required from time to time to maintain the insurance in force must be paid by the insured officers and employees, and the state treasurer shall deduct the premiums from the salary or

wages of each officer or employee who elects to become insured, on the officer's or employee's written order, and issue a warrant for the premiums to the insurer.

(4) For the purpose of this section, the plans of health service corporations for defraying or assuming the cost of professional services of licentiates in the field of health or the services of hospitals, clinics, or sanitariums or both professional and hospital services must be construed as group insurance and the dues payable under the plans must be construed as premiums for group insurance.

(5) If the board of trustees of a school district implements a self-insured group health plan or if the board of regents implements an alternative to conventional insurance to provide group benefits to its employees, the board shall maintain the alternative plan on an actuarially sound basis."

Approved March 26, 1999

CHAPTER NO. 187

[HB 306]

AN ACT EXTENDING THE STATE UNIVERSAL SERVICE FUND FOR TELECOMMUNICATIONS; AMENDING SECTIONS 69-3-843, 69-3-844, AND 69-3-845, MCA; AMENDING SECTION 41, CHAPTER 349, LAWS OF 1997; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-3-843, MCA, is amended to read:

"69-3-843. (Temporary) Fund administrator. (1) A fiscal agent and daily administrator must be selected to receive and distribute funds under 69-3-841, 69-3-842, 69-3-844, 69-3-845, and this section.

(2) The fiscal agent must be selected by the commission based upon a competitive bidding process after an opportunity for public comment on the specific qualifications required of the fiscal agent. A telecommunications carrier is not eligible to be the fiscal agent. The duties of the fiscal agent must be determined by a contract consistent with 69-3-841, 69-3-842, 69-3-844, 69-3-845, and this section. The contract term of the fiscal agent must expire December 31, ~~1999~~ *2001*.

(3) The fiscal agent shall provide ~~quarterly~~ *monthly* reports of fund activities to the commission and shall provide audits annually by a certified public accountant in a manner determined by and under the direction of the commission.

(4) The *fund* financial accounts of the fiscal agent must he available at reasonable times to any telecommunications carrier in the state and to the public. The commission may investigate the accounts and practices of the fiscal agent and enter orders concerning the accounts and practices. (Terminates December 31, ~~1999~~ *2001—sec. 41, Ch. 349, L. 1997.*)"

Section 2. Section 69-3-844, MCA, is amended to read:

"69-3-844. (Temporary) Contributions to fund. (1) The fiscal agent shall collect contributions from all telecommunications carriers on a ~~quarterly~~

HeinOnline -- 1999 vol. I 627 1999

monthly basis, based on a July 1 to June 30 fiscal year. Initial contributions to the fund may only be collected for the 2-month period prior to the effective dato of distributions from the fund and must be calculated as follows:

(a) determine the total retail revenue for all telecommunications carriers for the iinmediateiy preceding calendar year;

(b) determine the total funds needed for distributions in the next fiscal year as authorized pursuant to 69-3-845;

(c) compute a uniform percentage of the amount determined in subsection (1)(a) that will produce an amount equal to the fund total calculated in subsection (1)(b);

(d) adjust the percentage multiplier computed in subsection (1)(c) to recover or reimburse any fund shortfalls or excesses in the previous fiscal year, *including uncollectibles, new providers seeking support, cost of administration, and auditing*; and

(e) send notice of the current uniform percentage and appropriate remittance forms to each telecommunications carrier at least 2 months prior to the effective date of the application of the percentage.

(2) The commission shall adopt procedural rules to govern collection of the contributions required by this section, as weli as rules allowing the fiscai agent and daily administrater to assess late fees and interest on delinquent payments from telecommunications carriers. The fiscal agent is specifically authorized to enforce the contribution requirements of this section through suit in the district courts of Montana.

(3) Any reduction in telecommunications carrier access expenses because of the removal of implicit subsidies inherent in telecommunications carrier access rates must be passed through to Montana end-user customer retail rates. (Terminates December 31, ~~1999~~ *2001*~~—sec. 41, Ch. 349, L. 1997.~~)"

Seetion 3. Section 69-3-845, MCA, is amended to read:

"69-3-845. (Temporary) Distributions from fund — calculation of eosts. (1) Subject to the requirements of this section, payments from the fund niust be made *from collected contributions* by the fiscal agent to qualifying eligible telecommunications carriers, on a monthly basis, pursuant to rules adopted by the coinmission.

(2) Only eiigible telecommunications carriers that offer the telecommunications services described in 69-3-842(1) to all customers in a designated support area and that advertise the availability of the telecommunications services and the charges for the telecommunications services using media of general distribution may receive support from the fund for the designated support area.

(3) Distributions must be calculated for the designated support areas established by the commission. In the case of an area served by a rural telephone company, the term "designated support area" means the rural telephone company's Montana service area unless the rural telephone company voluntarily adopts a proxy model for the calculation of the rural telephone company's cost of telecommunications services under subsection (6). After adoption of a proxy model, the rural telephone company's designated support area inust be an area designated by the commission, which may be smaller than a wire center. The term designated support area for all other telecommunications carriers means a

HeinOnline -- 1999 vol. I 628 1999

geographic area as established by the commission, which must he smaller than a wire center.

(4) Support for the services listed in 69-3-842(1) must he calculated as the difference hetween the costs determined in each designated support area and the affordabihity benchmark in that support area. The commission shall adopt rules to determine affordability benchmarks.

(5) Except as provided in subsection (6), for rural telephone companies and other eligible telecommunications carriers offering services in a designated support area served by a rural telephone company, the average cost for each line must be calculated and submitted, based on the preceding calendar year, to the fiscal agent as follows:

(a) If an additional eligible telecommunications carrier has not been designated pursuant to 69-3-840(3), the rural telephone company's total unseparated loop cost, as defined by federal separation rule methodology in effect on December 31, 1996, must be added to the switching costs, local transport costs, and customer operations costs assigned to the telecommunications services set forth in 69-3-842(1), which must be calculated using the methodology set forth in federal communications commission jurisdictional separation rules in effect as of December 31 of each calendar year. This total cost must be reduced by any federal universal service support, interstate allocation of loop costs, and loop costs recovered through intrastate telecommunications carrier common line charges to long-distance companies.

(b) Upon the designation of an additional eligible telecommunications carrier pursuant to 69-3-840(3) in a designated support area served by a rural telephone company, the additional eligible telecommunications carrier has access to the fund on the same basis as the rural telephone company. Upon the designation of the additional eligihle telecommunications carrier, both the carrier and the rural telephone company must receive distributions from the fund based upon the rural telephone company's average cost for each line disaggregated to geographic areas smaller than a wire center. The support for each line for each geographic area must be based upon the rural telephone company's costs, as determined in subsection (5)(a), distributed to each of the geographic areas on the basis of relative distribution factors established by a cost proxy model adopted by the commission.

(6) Except as provided in subsection (5)(h), for companies that are not rural telephone companies and for rural telephone companies voluntarily electing to use a cost proxy model, the average cost for each line in designated support areas must be calculated based on the cost proxy model adopted by the commission. This total per-line cost must be reduced by any federal universal service support, interstate allocation of loop costs, and loop costs recovered through intrastate telecommunications carrier common line charges to long-distance companies.

(7) In determining any proxy mechanism under this section, the commission shall use a model that:

(a) targets support to a geographic area smaller than a wire center;

(b) uses acceptable outside plant design and costing principles;

(c) uses reasonable switch design and costing principles;

(d) includes a reasonahle share of the joint and common costs of the telecommunications carrier;

HeinOnline -- 1999 vol. I 629 1999

(e) meets standards for documenting model logic and the sources of cost data input; and

(f) meets reasonahleness tests to ensure that model outputs are representative of costs that can be reasonably expected in the construction of a network and that the network is capable of providing telecommunications services that meet the telecommunications services quality standards of the commission and federal regulators.

(8) An eligible telecommunications carrier providing telecommunications services through resale of another telecommunications carrier's telecommunications services or facilities may not receive support for those telecommunications services or facilities if the rates charged to an eligihle telecommunications carrier by the other telecommunications carrier have been reduced by a contribution from universal service funds under this section.

(9) Costs of administering the fund must be paid from the fund. (Terminates December 31, ~~1999~~ *2001—sec. 41, Ch. 349, L. 1997.*)"

Section 4. Section 41, Chapter 349, Laws of 1997, is amended to read:

"**Section 41. Termination.** [Sections 11 through 15] terminate December 31, ~~1999~~ *2001.*"

Section 5. Effective date. [This act] is effective on passage and approval.

Section 6. Termination. [This act] terminates December 31, 2001.

Approved March 26, 1999

CHAPTER NO. 188

[HB 336]

AN ACT EXPANDING THE DEFINITION OF "MAINTENANCE" AND CLARIFYING THE DEFINITION OF "IMPROVEMENTS" WITH RESPECT TO STREET MAINTENANCE DISTRICTS; CLARIFYING NOTICE REQUIREMENTS FOR ASSESSMENTS; AND AMENDING SECTIONS 7-12-4401, 7-12-4405, AND 7-12-4426, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-12-4401, MCA, is amended to read:

"**7-12-4401. Strect maintenance district authorizcd — definition.** (1) Whenever the council of any city or town desires to create a district for the maintenance of all or any part of the streets or avenues of its city or town as provided in this part, it shall provide by ordinance a method of doing ~~said work~~ *the maintenance* and of paying for the ~~same~~ *maintenance* under the restrictions and regulations provided in this part.

(2) "Maintenance" as used in this part includes but is not limited to sprinkling, graveling, oiling, chip sealing, seal coating, overlaying, treating, general cleaning, sweeping, flushing, snow removal, ~~and~~ leaf and debris removal, *the operation, maintenance, and repair of traffic signal systems, the repair of traffic signs, the placcment and maintenance of pavement markings, and curb and gutter repair.*"

Scction 2. Section 7-12-4405, MCA, is amended to read:

"7-12-4405. Improvements within maintenance districts — ordinance required. (1) *(a)* Cities and towns ~~are hereby authorized and empowered to~~ *may* prepare and improve streets, avenues, and alleys within the maintenance districts so that the maintenance will be of a durable and continuing benefit. The city or town council shall provide by ordinance a method or methods of doing ~~said~~ *the* work and improvements.

(b) For the purposes of this section, "improvements" includes but is not limited to the installation of traffic signs, new curb and gutter construction, and widening of existing streets.

(2) Cities and towns are authorized to maintain the work and improvements made under subsection (1).

(3) At least 12 days must elapse between the day on which ~~said~~ *the* proposed ordinance is introduced and the day on which final action ~~thereon~~ *on the ordinance* is taken."

Section 3. Section 7-12-4426, MCA, is amended to read:

"7-12-4426. Notice of resolution for assessment. (1) A notice, signed by the city clerk, stating that the resolution levying a special assessment *or changing the method of assessment* to defray the cost of maintenance in the district or districts is on file in ~~his~~ *the city clerk's* office and subject to inspection for a period of 5 days, ~~shall~~ *must* be published at least once in a newspapor published in the city or town.

(2) The notice ~~shall~~ *must* state the time and place at which objections to the final adoption of the resolution will be heard hy the council *and must contain a statement setting out the method of assessment being proposed for adoption or the change in the method of assessment that is being proposed for adoption.* The time for the hearing ~~shall~~ *must* be not less than 5 days after the publication of the notice."

Approved March 26, 1999

CHAPTER NO. 189

[HB 411]

AN ACT ALLOWING THE BOARD OF DIRECTORS OF A BUSINESS IMPROVEMENT DISTRICT TO ALSO BE APPOINTED TO SERVE AS THE MEMEERS OF A PARKING COMMISSION; AND AMENDING SECTIONS 7-14-4609 AND 7-14-4610, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-14-4609, MCA, is amended to read:

"7-14-4609. Appointment of commission. (1) *Except as provided in subsection (3), when* ~~When~~ the legislative body of a city first adopts a resolution ~~declaring need~~ for a parking cemmission ~~to function~~, the mayor, with the approval of the legislative body, shall appeint not less than five or more than seven electors of the city as members of the commission.

(2) *Except as provided in subsection (3), the* ~~The~~ number of members of ~~such~~ *the* commission, once established, may be changed within ~~these~~ *the number* limits *established in subsection (1)* ~~from time to time as desired~~ hy subsequent resolu-

HeinOnline -- 1999 vol. I 631 1999

tions of the legislative body of the city. A resolution to reduce *the number of commission members* ~~shall~~ *may* not require resignation of any member prior to completion of ~~his~~ *the member's* appointed term.

(3) The legislative body of a city may designate the board of trustees of a business improvement district appointed pursuant to 7-12-1121 as the parking commission if the area of the business improvement district is generally coterminous with the area designated in the resolution creating the parking commission as being subject to the jurisdiction and control of the parking commission."

Section 2. Section 7-14-4610, MCA, is amended to read:

"7-14-4610. Term of office. (1) *Except as provided in subsection (3), three* ~~Three~~ of the members who are first appointed ~~shall~~ *must* be designated to serve for terms of 1, 2, and 3 years, respectively, from the date of their appointments, and two ~~shall~~ *must* be designated to serve for terms of 4 years from the date of their appointment. For a seven-member commission, there ~~shall~~ *must* be two additional appointments of 2 years and 3 years, respectively.

(2) *Except as provided in subsection (3), at the expiration of terms established in subsection (1),* ~~Thereafter~~ members ~~shall~~ *must* be appointed ~~as aforesaid~~ for a term of office of 4 years, except that all vacancies occurring during a term ~~shall~~ *must* be filled for the unexpired term. A member shall hold office until ~~his~~ *a qualified* successor has been appointed ~~and has qualified~~.

(3) If the board of trustees of a business improvement district has been appointed to serve as the parking commission, the term of office for a trustee serving as a commissioner must be the same as the trustee's term of office as a member of the business improvement district's board of trustees."

Approved March 26, 1999

CHAPTER NO. 190

[HB 443]

AN ACT PROVIDING THAT A MAJORITY VOTE OF THE ELECTORS OF A CITY OR TOWN IS REQUIRED FOR THE ISSUANCE OF BONDS; AMENDING SECTION 7-7-4235, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-7-4235, MCA, is amended to read:

"7-7-4235. Percentage of electors required to authorize ~~the~~ issuing of bonds. Whenever the question of issuing bonds for any purpose is submitted to the registered electors of a city or town at a general election, at an election that is conducted by mail ballot, as provided in Title 13, chapter 19, or at a special election that is held in conjunction with a regular or primary election, the determination of the approval or rejection of the bond proposition is made ~~in the following manner:~~

~~(1) determine the total number of electors who were qualified to vote in the bond election;~~

~~(2) determine the total number of qualified electors who voted in the bond election from the tally sheet or sheets for the election;~~

HeinOnline -- 1999 vol. I 632 1999

~~(3) calculate the percentage of qualified electors voting at the bond election by dividing the number determined in subsection (2) by the number determined in subsection (1); and~~

~~(4) when the calculated percentage in subsection (3) is 40% or more, the bond proposition is considered approved and adopted if a majority of the votes cast were in favor of the proposition, otherwise it is considered rejected; or~~

~~(5) when the calculated percentage in subsection (3) is more than 30% but less than 40%, the bond proposition is considered approved and adopted if 60% or more of the votes cast were in favor of the proposition, otherwise it is considered rejected; or~~

~~(6) when the calculated percentage in subsection (3) is 30% or less, the bond proposition is considered rejected~~ *by a majority of the votes cast on the issue.*"

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 26, 1999

CHAPTER NO. 191

[HB 508]

AN ACT REQUIRING THE ATTORNEY GENERAL TO DETERMINE WHETHER A PETITION FOR AN INITIATIVE MEASURE IS LEGALLY SUFFICIENT; PROHIBITING THE SECRETARY OF STATE FROM APPROVING A PETITION FOUND LEGALLY INSUFFICIENT BY THE ATTORNEY GENERAL; PROVIDING FOR A JUDICIAL REVIEW OF THE ATTORNEY GENERAL'S CONCLUSION; ALLOWING 30 DAYS FOR THE ATTORNEY GENERAL'S SUBMISSION TO THE SECRETARY OF STATE OF A DETERMINATION REGARDING LEGAL SUFFICIENCY; AMENDING SECTIONS 13-27-202, 13-27-208, 13-27-312, AND 13-27-316, MCA; AND PROVIDING AN APPLICARILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-27-202, MCA, is amended to read:

"**13-27-202. Recommendations — approval of form required.** (1) Before submission of a sample sheet to the secretary of state pursuant to subsection (3), the following requirements must be fulfilled:

(a) The text of the proposed measure must be submitted to the legislative services division for review.

(b) The legislative services division staff shall review the text for clarity, consistency, and any other factors that the staff considers when drafting proposed legislation.

(c) Within 14 days after submission of the text, the legislative services division staff shall make to the person submitting the text written recommendations for changes in the text or a statement that no changes are recommended.

(d) The person submitting the text shall consider the recommendations and respond in writing to the legislative services division, accepting, rejecting, or modifying each of the recommended changes. If no changes are recommended, no response is required.

HeinOnline -- 1999 vol. I 633 1999

(2) The legislative services division shall furnish a copy of the correspondence provided for in subsection (1) to the secretary of state, who shall make a copy of the correspondence available to any person upon request.

(3) Before a petition may be circulated for signatures, a sample sheet containing the text of the proposed measure must be submitted to the secretary of state in the form in which it will be circulated. The sample petition may not be submitted to the secretary of state more than 1 year prior to the final date for filing the signed petition with the ~~secretary of state~~ *county election administrator.* The secretary of state shall refer a copy of the petition sheet to the attorney general for approval. The secretary of state and attorney general shall each review the petition for sufficiency as to form and approve or reject the form of the petition, stating the reasons for rejection, if any. *The attorney general shall also review the petition as to its legal sufficiency. If the attorney general determines that the petition is legally deficient, the attorney general shall notify the secretary of state of that fact and provide a copy of the determination to the secretary of state and to the petitioner within the time provided in 13-27-312(8). The petition may not be given final approval by the secretary of state unless the attorney general's determination is overruled pursuant to 13-27-316. As used in this section, "legal sufficiency" means that the petition complies with the statutory prerequisites to submission of the proposed measure to the electors and that the text of the proposed measure complies with constitutional requirements governing submission of ballot measures to the electorate. Review of a petition for legal sufficiency does not include consideration of the merits or application of the measure if adopted by the voters.* The secretary of state or the attorney general may not reject the petition solely because the text contains material not submitted to the legislative services division unless the material not submitted to the legislative services division is a substantive change not suggested by the legislative services division.

(4) *(a)* The secretary of state shall review the comments and statements of the attorney general received pursuant to 13-27-312 and make a final decision as to the approval or rejection of the ~~form of the~~ petition.

(b) The secretary of state shall send written notice to the person who submitted the petition sheet of the approval or rejection *of the form of the petition* within 28 days after submission of the petition sheet. *The secretary of state shall send written notice to the person who submitted the petition sheet of the final approval or rejection of the petition within 5 days of:*

(i) the date on which a final court decision is entered under 13-27-316 if a challenge to the attorney general's review of the petition is filed pursuant to that section; or

(ii) the expiration of the time for filing a challenge to the attorney general's review under 13-27-316 if no challenge is filed. If the petition is rejected, the notice must include reasons for rejection.

(5) A petition with technical defects in form may be approved with the condition that those defects will be corrected before the petition is circulated for signatures.

(6) The secretary of state shall upon request provide the person submitting the petition with a sample petition form, including the text of the proposed measure, the statement of purpose, and the statements of implications, all as approved by the secretary of state and the attorney general. The petition may be circulated in the form of the sample prepared by the secretary of state. *The petition may be circulated upon approval of the form of the petition by the secretary*

of state and the attorney general pending a final determination of its legal sufficiency."

Section 2. Section 13-27-208, MCA, is amended to read:

"13-27-208. Petitions to be made available in each county election administrator's office. When the secretary of state sends written notice of the *final* approval of ~~the form of~~ a petition as required under 13-27-202(4), ~~he~~ *the secretary of state* shall forward a copy of the petition, along with signature sheets, to the election administrator of each county. The election administrator shall make a copy of each approved petition available for reading and signing in ~~his~~ *the administrator's* office during business hours in an election year until the petitions are submitted under 13-27-301. The secretary of state may charge the person who submitted the petition a fee sufficient to reimburse the secretary of state for the cost of providing copies of the petition and signature sheets to each county election administrator."

Section 3. Section 13-27-312, MCA, is amended to read:

"13-27-312. Review of petition by attorney general — preparation of statements — fiscal note. (1) Upon receipt of a petition from the office of the secretary of state pursuant to 13-27-202, the attorney general shall examine the petition as to form and *legal sufficieney, as provided in 13-27-202, and,* if the proposed ballot issue has an effect on the revenues, expenditures, or the fiscal liability of the state, shall order a fiscal note incorporating an estimate of ~~such~~ *the* effect, the substance of which must substantially comply with the provisions of 5-4-205. The budget director, in cooperation with the agency or agencies affected by the petition, is responsible for preparing the fiscal note and shall return it within 6 days unless the attorney general, for good cause shown, extends the time for completing the fiscal note.

(2) If the petition ~~form~~ *form* is approved, the attorney general shall endeavor to seek out parties on both sides of the issue and obtain their advice. The attorney general shall prepare:

(a) a statement, not to exceed 100 words, explaining the purpose of the measure; and

(b) statements, not to exceed 25 words each, explaining the implications of a vote for and a vote against the measure.

(3) The attorney general shall prepare a fiscal statement of no more than 50 words if a fiscal note was prepared for the proposed ballot issue, such statement to be used on the petition and ballot if the measure is placed on the ballot.

(4) The statement of purpose and the statements of implication must express the true and impartial explanation of the proposed ballot issue in plain, easily understood language and may not be arguments or written so as to create prejudice for or against the measure.

(5) The statement of purpose, unless altered by a court under 13-27-316, is the petition title for the measure circulated by the petition and the ballot title if the measure is placed on the ballot.

(6) The statements of implication ~~shall~~ *must* be placed beside the diagram provided for marking of the ballot in a manner similar to but not limited to the following example:

☐ FOR extending the right to vote to persons 18 years of age

☐ AGAINST extending the right te vote to persons 18 years of age

HeinOnline -- 1999 vol. I 635 1999

(7) If the petition is rejected as to form, the attorney general shall forward ~~his~~ *the* comments to the secretary of state within 21 days after receipt of the petition by the attorney general. If the petition is approved as to form, the attorney general shall forward the statement of purpose, the statements of implication, and the fiscal statement, if applicable, to the secretary of state within 21 days after receipt of the petition by the attorney general.

(8) If the petition is approved as to form, within 30 days of the approval, the attorney general shall forward to the secretary of state the determination regarding legal sufficieney, as provided in 13-27-202."

Seetion 4. Section 13-27-316, MCA, is amended to read:

"13-27-316. Court review of attorney general *opinion or* statements. (1) If the proponents of a ballot measure believe that the statement of purpose, the statements of implication of a vote, or the fiscal statement formulated by the attorney general pursuant to 13-27-312 do not satisfy the requirements of 13-27-312, *or believe that the attorney general was incorrect in determining that the petition was legally deficient,* they may, within 10 days of receipt of the notice from the secretary of state *or of the attorney general's determination regarding legal sufficiency* provided for in 13-27-202, file an action in the district court in and for the county of Lewis and Clark challenging the adequacy of the statement *or the attorney general's determination* and requesting the court to alter the statement *or modify the attorney general's determination.*

(2) If the opponents of a ballot measure believe that the statement of purpose, the statements of implication of a voto, or the fiscal statement formulated by the attorney general pursuant to 13-27-312 do not satisfy the requirements of 13-27-312, *or believe that the attorney general was incorrect in determining that the petition was legally sufficient,* they may, within 10 days of the date of certification to the governor that the completed petition has been officially filed, file an action in the district court in and for the county of Lewis and Clark challenging the adequacy of the statement *or the attorney general's conclusion* and requesting the court to alter the statement *or overrule the attorney general's determination concerning the legal sufficiency of the petition.*

(3) (a) Notice ~~shall~~ *must* be served upon the secretary of state and upon the attorney general. The action takes precedence over other cases and matters in the district court. The court shall examine the proposed measure and the challenged statement *or determination of the attorney general* and shall as soon as possible render a decision and certify to the secretary of state a statement which the court determines will meet the requirements of 13-27-312 *or an opinion as to the correctness of the attorney general's determination.*

(b) A statement certified by the court ~~shall~~ *must* be placed on the petition for circulation and on the official ballot.

(4) A copy of the petition in final form must be filed in the office of the secretary of state by the proponents.

(5) Any party may appeal the order of the district court to the Montana supreme court by filing a notice of appeal within 5 days of the date of the order of the district court."

Section 5. Applicability. [This act] applies to initiative petitions submitted to the secretary of state after October 1, 1999.

Approved March 26, 1999

HeinOnline -- 1999 vol. I 636 1999

CHAPTER NO. 192

[HB 522]

AN ACT DELETING THE DISTINCTION BETWEEN IN-STATE AND OUT-OF-STATE BREWERS IN THE SALE OF CERTAIN BEER THROUGH WHOLESALERS; AND AMENDING SECTION 16-3-230, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-3-230, MCA, is amended to read:

"16-3-230. ~~Out-of-state beer~~ *Beer* required to be shipped to wholesaler. ~~All~~ *Except as provided in 16-3-214, all* beer *that is to be distributed in Montana, whether* manufactured outside of *or within* the state of Montana, ~~and shipped into Montana shall~~ *must* be consigned to and shipped, either directly or via a licensed storage depot, to a licensed wholesaler and ~~by him~~ unloaded into ~~his~~ *the wholesaler's* warehouse in Montana or subwarehouse in Montana. A brewer or beer importer may sell only to wholesalers from a storage depot in Montana and shall maintain records of all beer, including the name or kind received, on hand, and sold~~;~~. *The* ~~which~~ records may at ~~all times~~ *any time* be inspected by ~~any~~ *a* representative of the department. ~~Said~~ *The* wholesaler shall distribute ~~said~~ *the* beer from ~~such~~ *the* warehouse or subwarehouse and shall keep records at ~~his~~ *the wholesaler's* principal place of business of all beer, including the name or kind received, on hand, sold, and distributed. ~~Said~~ *The* records may ~~at all times~~ be inspected by ~~any member or~~ *a* representative of the department *at any time.*"

Approved March 26, 1999

CHAPTER NO. 193

[HB 585]

AN ACT REVISING THE REQUIREMENTS FOR NOMINATION OF CERTAIN CANDIDATES FOR ELECTION FOR THE OFFICES OF PRESIDENT AND VICE PRESIDENT OF THE UNITED STATES; PROVIDING THAT AN INDIVIDUAL WHO WISHES TO RUN AS AN INDEPENDENT CANDIDATE OR AS A CANDIDATE OF A PARTY NOT RECEIVING AUTOMATIC RECOGNITION MAY BE NOMINATED BY PETITION SIGNED BY EITHER 5 PERCENT OF THE ELECTORS VOTING FOR THE SUCCESSFUL CANDIDATE IN THE LAST GUBERNATORIAL ELECTION OR BY 5,000 ELECTORS, WHICHEVER IS FEWER; AND AMENDING SECTIONS 13-10-504 AND 13-10-601, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-10-504, MCA, is amended to read:

"13-10-504. Independent or minor party candidates for president or vice president. (1) An individual who desires te run for president or vice president as an independent candidate or as a candidate of a party not qualified under 13-10-601 ~~must~~ *shall* file a potition for nomination with the secretary of state 90 days prior to the date of the general election.

(2) The petition and the affidavits of circulation required by 13-27-302 must first be submitted, at least 1 week before the deadline for filing, to the election

HeinOnline -- 1999 vol. I 637 1999

administrator in the county where the signer resides for verification and certification by the procedures provided in 13-27-303 through 13-27-306.

(3) The petition must have the signatures of electors equal to 5% or more of the total votes cast for the successful candidate for gevernor at the last general election *or 5,000 electors, whichever is less.* The names of the candidates for the required number of presidential electors allowable to Montana must be certified to the secretary of state when the petition for nomination is filed.

(4) A qualified independent presidential candidate may amend the petition and designate or choose a named vice presidential candidate until the filing date provided in 13-25-101."

Seetion 2. Section 13-10-601, MCA, is amended to read:

"13-10-601. Parties eligible for primary eiection — petitions by minor parties. (1) Each political party that had a candidate for a statewide office who received a tetal vote that was 5% or more of the total votes cast for the successful candidate for gevernor in either of tbe last two general elections shall nominate its candidates for public office, except for presidential electors, by a primary election as provided in this chapter.

(2) A political party that does not qualify to hold a primary election under subsection (1) may qualify to nominate its candidates by primary election by presenting a petition, in a form prescribed by the secretary of state, requesting the primary election and signed by a number of registered voters equal to 5% or more of the total votes cast for the successful candidate for gevernor at the last general election *or 5,000 electors, whichever is less*, which number must include the registered voters in more than one-third of the legislative districts equal to 5% or more of the tetal votes cast for the successful candidate for governor at the last general election in those districts *or 150 electors in those districts, whichever is less.* The petition and the affidavits of circulation required by 13-27-302 must be presented te the election administrater of the county in which the signatures were gathered to be verified under the procedures provided in 13-27-303 through 13-27-306. The election administrator shall forward the verified petition to the secretary of state at least 75 days before the date of the primary. The petition must be submitted to the election administrator at least 1 week before the deadline for submitting the verified potition to the secretary of state."

Approved March 26, 1999

CHAPTER NO. 194

[HB 615]

AN ACT REVISING THE MANDATORY PROVISIONS IN AGREEMENTS BETWEEN BREWERS OR BEER IMPORTERS AND BEER WHOLESALERS AND BETWEEN TABLE WINE SUPPLIERS AND DISTRIBUTERS; AND AMENDING SECTIONS 16-3-222 AND 16-3-416, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-3-222, MCA, is amended to read:

"16-3-222. Mandatory provisions of hrewer-wholesaler or beer importer-wholesaler contracts, agreements, and franchises. All contracts,

HeinOnline -- 1999 vol. I 638 1999

agreements, or franchises between a brewer and a wholesaler or a beer importer and a wholesaler ~~shall~~ *must* specifically set forth or contain the following:

(1) that the brewer or beer importer or any officer, agent, or representative of any brewer or beer importer and the wholesaler involved mutually shall determine the size or extent of the area in which the wholesaler may sell or distribute the products of the brewer or beer importer to the retail licensees. ~~Said~~ *The* territory ~~will~~ *must* be the territory agreed upon between the wholesaler and brewer or the wholesaler and beer importer and may not be changed without the mutual consent of both the wholesaler and brewer or the wholesaler and beer importer.

(2) the agreed-upon brands of the brewer or beer importer to be sold by the wholesaler;

(3) that the brewer or beer importer recognizes that the wholesaler is free to manage ~~his~~ *the wholesaler's* business in the manner *that* the wholesaler ~~deems~~ *considers* best and that this prerogative vests in the wholesaler the exclusive right to establish selling prices, to select the brands ~~he~~ *that the wholesaler* wishes to handle, *and* to determine the effort and resources *that* the wholesaler will exert to develop and premote the sale of the brewer's or beer importer's products handled by the wholesaler;

(4) a procedure for the review of alleged wholesaler deficiencies, including the submission in writing to the wholesaler by the brewer or beer importer of ~~said~~ *the* deficiencies, if the deficiencies are susceptible of correction and if the wholesaler desires to correct ~~said~~ *the* deficiencies, and that a reasonable poriod of time ~~shall~~ *must* be given the wholesaler for rectification of ~~said~~ *the* deficiencies prior to any notice of intent to terminate;

(5) a termination clause providing that the brewer or beer importer shall deliver, in writing, to the wholesaler a 60-day notice of intent to terminate the agreement, contract, or franchise;

(6) that all agreements between a brewer and a wholesaler are interpreted and governed by the laws of Montana;

(7) that in any dispute resulting in litigation between a brewer or a beer importer and a wholesaler, the litigation must occur in a Montana court, either federal or state, unless that forum would create an unreasonable burden on any party, as determined by the court in which the litigation is commenced;

(8) that all agreements between a brewer or a beer importer and a wholesaler must recognize the constitutional right to a jury trial as set forth in Article II, section 26, of the Montana constitution."

Section 2. Section 16-3-416, MCA, is amended to read:

"16-3-416. Table wine distributor provisions. (1) A supplier or table wine distributor must have a written agreement of distributorship that provides for purchase of the supplier's products from the supplier by the table wine distributor.

(2) An agreement of distributorship must provide that:

(a) a supplier shall notify a table wine distributor in writing at least 60 days prior to termination of an agreement of distributorship unless a termination without notice is permitted as provided in 16-3-417. The written notice must state the reasons for termination. Notice of termination is void if within 60 days of the notice, the table wine distributor rectifies the deficiency stated as the reason for

HeinOnline -- 1999 vol. I 639 1999

termination and if the deficiency was not stated as reason for termination in a notice previously voided under the provisions of this subsection.

(b) a supplier may not unreasonahly withhold or delay approval of a sale or transfer of the ownership, management, or control of a table wine distributorship. However, a table wine distributor shall give a supplier no less than 60 days' prior written notice of any material change in ownership, management, or control.

(3) Within 60 days after entering into an agreement of distributorship, the supplier shall advise the departinent of the agreement by filing a copy of the agreement that must include the sales area or areas designated for the table wine distributor.

(4) If a supplier terminates an agreement of distributorship under the provisions of subsection (2)(a), the table wine distributor subject to the termination is entitled to compensation for the laid-in cost of inventory. In the event of any termination of the agreement by the supplier other than termination for good cause or for any reason set forth in 16-3-417(3), the distributor is entitled to compensation for the laid-in cost of inventory and to liquidated damages based on the sales of the brand or brands involved, as may be provided in the agreement. If the supplier and the distributor are unable to agree on the amount of liquidated damages, tbe amount of liquidated damages inust be determined by an arhitrator appointed under subsection (5) of this section.

(5) If undertaken in good faith by a supplier, a supplier may terminato an agreement of distrihutorship for a legitimate business reason not within the definition of good cause if an arhitrator appointed by the department finds, after hearing the supplier and the table wine distributor, that the termination is in the best intorest of the tahle wine brand concerned. Arbitration under this section must be conducted under the provisions of Title 27, chapter 5.

(6) All agreeinents of distributorship are interpreted and governed by the laws of Montana.

(7) In any dispute resulting in litigation between a supplier and a distributor, the litigation must occur in a Montana court, federal or state, unless that forum would create an unreasonable burden on any party, as determined by the court in which the litigation is commenced.

(8) Agreements between a supplier and a distributor must recognize the constitutional right to a jury trial as set forth in Article II, section 26, of the Montana constitution.

~~(7)~~*(9)* A provision in an agreement of distributorship that is inconsistent with the requirements of this section is void."

Approved March 26, 1999

CHAPTER NO. 195

[SB 72]

AN ACT GENERALLY REVISING THE WATER QUALITY, PUBLIC WATER SUPPLY, AND WATER AND WASTEWATER TREATMENT OPERATORS LAWS; EXEMPTING CERTAIN WATER DISTRIBUTION SYSTEMS FROM THE REQUIREMENT TO USE A CERTIFIED OPERATOR; AMENDING THE

HeinOnline -- 1999 vol. I 640 1999

NONDEGRADATION NITRATE SIGNIFICANCE THRESHOLD FOR MULTIFAMILY, PUBLIC, AND MUNICIPAL SEWAGE SYSTEMS; AMENDING PUBLIC WATER SUPPLY LAWS BY INCREASING THE MAXIMUM ADMINISTRATIVE PENALTY; DELETING THE REQUIREMENT TO OBTAIN APPROVAL TO CONDUCT CERTAIN ACTIVITIES IN MUNICIPAL WATERSHEDS; REPEALING PROVISIONS RELATED TO THE BOARD OF ENVIRONMENTAL REVIEW'S CONTROL OF CERTAIN FUNDS; AMENDING SECTIONS 37-42-103, 37-42-302, 37-42-304, 37-42-308, 75-5-301, 75-6-109, AND 75-6-112, MCA; REPEALING SECTION 75-5-501, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-42-103, MCA, is amended to read:

"**37-42-103. Exemption.** Operators of plants or systems ~~serving less than 10 families~~ *that do not serve 15 or more service connections or 25 or more people for at least 60 days of the calendar year* are exempt from this chapter."

Section 2. Section 37-42-302, MCA, is amended to read:

"**37-42-302. Unlawful to operate plant or system without certified operator — department to issue temporary certificates — *exception.*** (1) ~~It~~ *Except as provided in subsection (3), it* is unlawful for a person, firm, or corporation, both municipal and private, operating a wastewater treatment plant, water treatment plant, or water distribution system to operate ~~it~~ *the plant or system* unless the competency of the operator is certified to by the department under this chapter.

(2) ~~Furthermore~~ *Except as provided in subsection (3),* it is unlawful for a person to perform the duties of an operator without being certified under this chapter.

(3) The prohibitions in subsections (1) and (2) do not pertain to a water distribution system that:

(a) does not contain a treatment facility;

(b) obtains all of its water from a public water supply system but is not owned or operated by the owner or operator of that public water supply system; and

(c) does not sell water.

~~(3)~~*(4)* For good cause shown, the department may issue temporary certificates that are valid for up to 1 year."

Section 3. Section 37-42-304, MCA, is amended to read:

"**37-42-304. Application for operator's certificate — fee.** A person desiring to engage in the operation of a water treatment plant, water distribution system, or wastewater treatment plant shall first file an application with the department for a proper certificate. The department shall charge a fee of the same amount as the license cost as established pursuant to 37-1-134 ~~and shall~~, *except that the department shall reduce the fee by the amount that the cost of processing the application is offset by federal funds received. The department may* not act on an application until the fee has been paid."

Section 4. Section 37-42-308, MCA, is amended to read:

"**37-42-308. Annual renewal — fees — revocation for failure to renew — reinstatement — notice of suspension.** (1) Certificates issued under

HeinOnline -- 1999 vol. I 641 1999

this chapter ~~shall~~ *must* be renewed annually before July 1. A certificate issued after July 1 expires the following June 30. After the payment of the initial fee under 37-42-304, a certificate holder shall pay before July 1 of each certificate year a renewal fee according to the schedule adopted by the department pursuant to 37-1-134, *except that the department shall reduce the fee by the amount that the cost of administering the certificate is offset by federal funds received to fund the administration of the program.*

(2) If a certificate holder does not apply for a renewal of ~~his~~ *the* certificate before July 1 and remit to the department the necessary renewal fee, ~~he~~ *the department* shall *suspend the* ~~have his~~ certificate ~~suspended by the department. If the~~ *The department shall revoke any* certificate *that* remains suspended for a period of more than 30 days~~, it shall be revoked by the department~~. However, the department, before this revocation, shall notify the certificate holder by certified mail at the address on the issued certificate of its intention to revoke, at least 10 days before the time set for action to be taken by the department on the certificate.

(3) A certificate once revoked may not be reinstated unless it appears that an injustice has occurred through error or omission or other fact or circumstances indicating to the department that the certificate holder was not guilty of negligence or laches.

(4) Notice of suspension ~~shall~~ *must* be given to the certificate holder when the suspension occurs and to the proper official or owner of the treatment works or distribution system.

(5) If a person whose certificate has been revoked through ~~his~~ *the person's* own fault desires to continue as a water or wastewater plant operator, ~~he must~~ *the person shall* make application to the department under 37-42-304. Successful completion of an examination may be required at the discretion of the department."

Section 5. Section 75-5-301, MCA, is amended to read:

"75-5-301. Classification and standards for state waters. Consistent with the provisions of 80-15-201 and this chapter, the board shall:

(1) establish the classification of all state waters in accordance with their present and future most beneficial uses, creating an appropriate classification for streams that, due to sporadic flow, do not support an aquatic ecosystem that includes salmonid or nonsalmonid fish;

(2) (a) formulate and adopt standards of water quality, giving consideration to the economics of waste treatment and prevention. When rules are adopted regarding temporary standards, they must conform with the requirements of 75-5-312.

(b) Standards adopted by the board must meet the following requirements:

(i) for carcinogens, the water quality standard for protection of human health must be the value associated with an excess lifetime cancer risk level, assuming continuous lifetime exposure, not to exceed 1 x 10-3 in the case of arsenic and 1 x 10-5 for other carcinogens. However, if a standard established at a risk level of 1 x 10-3 for arsenic or 1 x 10-5 for other carcinogens violates the maximum contaminant level obtained from 40 CFR, part 141, then the maximum contaminant level must be adopted as the standard for that carcinogen.

(ii) standards for the protection of aquatic life do not apply to ground water.

HeinOnline -- 1999 vol. I 642 1999

(3) review, from time to time at intervals of not more than 3 years and, to the extent permitted by this chapter, revise established classifications of waters and adopted standards of water quality;

(4) adopt rules governing the granting of mixing zones, requiring that mixing zones granted by the department be specifically identified and requiring that mixing zones have:

(a) the smallest practicable size;

(b) a minimum practicable effect on water uses; and

(c) definable boundaries;

(5) adopt rules implementing the nondegradation policy established in 75-5-303, including but not limited to rules that:

(a) provide a procedure for department review and authorization of degradation;

(b) establish criteria for the following:

(i) determining important economic or social development; and

(ii) weighing the social and economic importance to the public of allowing the proposed project against the cost to society associated with a loss of water quality;

(c) establish criteria for determining whether a proposed activity or class of activities, in addition to those activities identified in 75-5-317, will result in nonsignificant changes in water quality for any parameter in order that those activities are not required to undergo review under 75-5-303(3). These criteria must be established in a manner that generally:

(i) equates significance with the potential for harm to human health or the environment;

(ii) considers both the quantity and the strength of the pollutant;

(iii) considers the length of time the degradation will occur;

(iv) considers the character of the pollutant so that greater significance is associated with carcinogens and toxins that bioaccumulate or biomagnify and lesser significance is associated with substances that are less harmful or less persistent.

(d) provide that changes of nitrate as nitrogen in ground water are nonsignificant if the discharge will not cause degradation of surface water and the predicted concentration of nitrate as nitrogen at the boundary of the ground water mixing zone does not exceed:

(i) 7.5 milligrams per liter ~~for nitrate as nitrogen~~ *from* sources other than ~~domestic~~ sewage;

(ii) 5.0 milligrams per liter ~~for domestic~~ *from* sewage ~~effluent~~ discharged from a ~~conventional septic~~ system *that does not use level two treatment in an area where the ground water nitrate as nitrogen is 5.0 milligrams per liter or less*;

(iii) 7.5 milligrams per liter ~~for domestic~~ *from* sewago ~~effluent~~ discharged from a ~~septic~~ system using level two treatment, which must be defined in the rules; or

(iv) 7.5 milligrams per liter ~~for domestic~~ *from* sewage ~~effluent~~ discharged from a ~~conventional septic~~ system in areas where the ground water nitrate as nitrogen

HeinOnline -- 1999 vol. I 643 1999

level exceeds 5.0 milligrams per liter primarily from sources other than human waste.

(6) to the extent practicable, ensure that the rules adopted under subsection (5) establish objective and quantifiable criteria for various parameters. These criteria must, to the extent practicable, constitute guidelines for granting or denying applications for authorization to degrade high-quality waters under the policy established in 75-5-303(2) and (3).

(7) adopt rules to implement this section."

Section 6. Section 75-6-109, MCA, is amended to read:

"75-6-109. Administrative enforcement. (1) If the department believes that a violation of this part, a rule adopted under this part, or a condition of approval issued under this part has occurred, it may serve written notice of the violation, by certified mail, on the alleged violator or the violator's agent. The notice must specify the provision of this part, the rule, or the condition of approval alleged to have been violated and the facts alleged to constitute a violation. The notice must include an order to take necessary corrective action within a reasonable period of time. The time period must be stated in the order. Service by mail is complete on the date of filing.

(2) If the alleged violator does not request a hearing before the board within 30 days of the date of service, the order becomes final. Failure to comply with a final order may subject the violator to an action commenced pursuant to 75-6-104, 75-6-113, or 75-6-114.

(3) If the alleged violater requests a hearing before the board within 30 days of the date of service, the board shall schedule a hearing. After the hearing is held, the board may:

(a) affirm or medify the department's order issued under subsection (1) if the board finds that a violation has occurred; or

(b) rescind the department's order if the board finds that a violation has not occurred.

(4) An order issued by the department or the board may set a date by which the violation must cease and set a time limit for action to correct a violation.

(5) As an alternative to issuing an order pursuant to subsection (1), the department may:

(a) require the alleged violator to appear before the board for a hearing, at a time and place specified in the notice, to answer the charges complained of; or

(b) initiate an action under 75-6-111(2), 75-6-113, or 75-6-114.

(6) *(a)* An action initiated under this part may include an administrative penalty not to exceed: ~~$500 for each day of violation.~~

(i) $1,000 for each day of a violation pertaining to a public water system, other than a water hauler or a water bottling plant, that serves a population of more than 10,000; and

(ii) $500 for each day of violation for other violations.

(b) Administrative penalties collected under this section must be deposited in the state general fund.

(7) In determining the amount of penalty to be assessed to a person, the department or the board, as appropriate, shall consider the criteria stated in 75-6-114 and the rules promulgated under 75-6-103(2)(i).

(8) The contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply to a hearing under 75-6-108 or this section."

Section 7. Section 75-6-112, MCA, is amended to read:

"75-6-112. Prohibited acts. A person may not:

(1) discharge sewage, drainage, industrial waste, or other wastes that will cause pollution of state waters used by a person for domestic use or as a source for a public water supply system or water or ice company;

(2) discharge sewage, drainage, industrial waste, or other waste into state waters or on the banks of state waters or into an abandoned or operating water well unless the sewage, drainage, industrial waste, or other waste is treated as prescribed by the board;

~~(3) build or operate a railroad, logging road, logging camp, or electric or manufacturing plant of any kind on a watershed of a public water supply system unless:~~

~~(a) the water supply is protected from pollution by sanitary precautions prescribed by the board; and~~

~~(b) a permit has been issued by the department after approval of detailed plans and specifications for sanitary precautions;~~

~~(4)~~*(3)* commence construction, alteration, extension, or operation of a system of water supply or water distribution that is designed to be a public water supply system or a system of sewer, drainage, waste, or sewage disposal that is designed to be a public sewage system or industrial waste discharge system before the person submits to the department necessary maps, plans, and specifications for its review and the department approves those maps, plans, and specifications. However, any facility reviewed by the department under Title 75, chapter 5, is not subject to the provisions of this section.

~~(5)~~*(4)* operate or maintain a public water supply system that exceeds a maximum contaminant level established by the board unless the person has been granted or has an application pending for a variance or exemption pursuant to this part;

~~(5)~~*(5)* violate any provision of this part or a rule adopted under this part; or

~~(7)~~*(6)* violate any condition or requirement of an approval issued pursuant to this part."

Section 8. Repealer. Section 75-5-501, MCA, is repealed.

Section 9. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 10. Effective date. [This act] is effective on passage and approval.

Approved March 26, 1999

HeinOnline -- 1999 vol. I 645 1999

CHAPTER NO. 196

[SB 176]

AN ACT REVISING THE MONTANA ELDER AND PERSONS WITH DEVELOPMENTAL DISABILITIES ABUSE PREVENTION ACT; AMENDING THE DEFINITIONS OF "EXPLOITATION", "MENTAL INJURY", AND "NEGLECT"; INCLUDING ALLEGED EXPLOITATION AS A GROUNDS FOR THE DEPARTMENT TO PERFORM ITS DUTIES AND IN EVIDENTIARY REQUIREMENTS; ALLOWING ADDITIONAL PERSONS TO REPORT ABUSE, SEXUAL ABUSE, NEGLECT, AND EXPLOITATION WITH IMMUNITY FROM LIABILITY; INCREASING PENALTIES FOR THE FIRST OFFENSE OF ABUSE, SEXUAL ABUSE, NEGLECT, OR EXPLOITATION; AND AMENDING SECTIONS 52-3-802, 52-3-803, 52-3-804, 52-3-811, 52-3-813, 52-3-815, AND 52-3-825, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 52-3-802, MCA, is amended to read:

"52-3-802. Legislative findings and purpose. The legislature finds that a need exists to provide for cooperation among law enforcement officials and agencies, courts, and state and county agencies providing human services in preventing the abuse, sexual abuse, neglect, and exploitation of Montana's elderly persons and persons with developmental disabilities through the identification ~~and~~, reporting, *and prosecution* of acts of abuse, sexual abuse, neglect, and exploitation."

Section 2. Section 52-3-803, MCA, is amended to read:

"52-3-803. Definitions. As used in this part, the following definitions apply:

(1) "Abuse" means:

(a) the infliction of physical or mental injury; or

(b) the deprivation of food, shelter, clothing, or services necessary to maintain the physical or mental health of an older person or a person with a developmental disability without lawful authority. A declaration made pursuant to 50-9-103 constitutes lawful authority.

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

~~(2)~~*(3)* "Exploitation" means:

(a) the unreasonable use of *an older person or a person with a developmental disability or of a power of attorney, conservatorship, or guardianship with regard to* an older person or a person with a developmental disability~~,~~ *to obtain control of or to divert to the advantage of another the ownership, use, benefit, or possession of* the person's money, *assets,* or ~~the person's~~ property ~~to the advantage of another~~ by means of *deception,* duress, menace, fraud, ~~or~~ undue influence, *or intimidation with the intent or result of permanently depriving the older person or person with a developmental disability of the ownership, use, benefit, or possession of the person's money, assets, or property;*

(b) an act taken by a person who has the trust and confidence of an older person or a person with a developmental disability to obtain control of or to divert to the advantage of another the ownership, use, benefit, or possession of the person's money, assets, or property by means of deception, duress, menace, fraud, undue

HeinOnline -- 1999 vol. I 646 1999

influence, or intimidation with the intent or result of permanently depriving the older person or person with a developmental disability of the ownership, use, or benefit of the person's money, assets, or property.

~~(3)~~*(4)* "Incapacitated person" has the meaning given in 72-5-101.

~~(4)~~*(5)* "Long-term care facility" means a facility defined in 50-5-101.

~~(5)~~*(6)* "Mental injury" means an identifiable and substantial impairment of ~~an older~~ *a* person's intellectual or psychological functioning or well-being.

~~(6)~~*(7)* "Neglect" means the failure of ~~a guardian; an employee of a public or private residential institution, facility, home, or agency; or any person legally responsible in a residential setting for the welfare of~~ *a person who has assumed legal responsibility or a contractual obligation for caring for* an older person or a person with a developmental disability *or who has voluntarily assumed responsibility for the person's care, including an employee of a public or private residential institution, facility, home, or agency,* to provide~~, to the extent of legal responsibility,~~ food, shelter, clothing, or services necessary to maintain the physical or mental health of the older person or the person with a developmental disability.

~~(7)~~*(8)* "Older person" means a person who is at least 60 years of age. For purposes of prosecution under 52-3-825(2), the person 60 years of age or older must be unable to provide personal protection from abuse, sexual abuse, neglect, or exploitation because of a mental or physical impairment or because of frailties or dependencies brought about by advanced age.

~~(8)~~*(9)* "Person with a developmental disability" means a person 18 years of age or older who has a developmental disability, as defined in 53-20-102.

~~(8)~~*(10)* "Physical injury" means death, permanent or temporary disfigurement, or impairment of any bodily organ or function.

~~(10)~~*(11)* "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent, indecent exposure, deviate sexual conduct, or incest, as described in Title 45, chapter 5, part 5."

Section 3. Section 52-3-804, MCA, is amended to read:

"**52-3-804. Duties of department.** (1) The department shall investigate reports of abuse, sexual abuse, neglect, or exploitation received pursuant to 52-3-811(1)(a).

(2) The department ~~of public health and human services~~ shall prepare an annual report of the information obtained pursuant to the reporting requirement of this part.

(3) The department shall, when appropriate, provide protective services under Title 52, chapter 3, part 2, for an older person or a person with a developmental disability alleged to have been abused, sexually abused, neglected, or exploited.

(4) If a person alleged to be abused, sexually abused, neglected, or exploited pursuant to this part or the person's caretaker refuses to allow a representative of the department entrance to the premises for the purpose of investigating a report made pursuant to 52-3-811(1)(a), the district court in the county where the person is found may order a law enforcement officer or a department social worker to enter the premises to conduct an investigation upon finding that there is probable cause to believe that the person is abused, sexually abused, neglected, or exploited.

HeinOnline -- 1999 vol. I 647 1999

(5) If a representative of the department has reasonable grounds to believe that an older person or *a* person with a developmental disability alleged to be abused, sexually abused, ~~or~~ neglected, *or exploited* is suffering from abuse, sexual abuse, ~~or~~ neglect, *or exploitation* that presents a substantial risk of death or serious physical injury, the department may:

(a) provide voluntary protective services as provided in subsection (3); or

(b) if the department representative has reasonable grounds to believe that the person is incapacitated, provide emergency protective services as follows:

(i) arrange or facilitate an appropriate emergency protective service placement;

(ii) transport or arrange for the transport of the person to the appropriate placement;

(iii) not later than 2 judicial days following placement of the person, either:

(A) provide voluntary protective services as provided under subsection (3); or

(B) petition the district court to act as temperary guardian or appoint a temporary guardian as provided in 72-5-317."

Section 4. Section 52-3-811, MCA, is amended to read:

"52-3-811. Reports. (1) When the professionals and other persons listed in subsection (3) know or have reasonable cause to suspect that an older person or a person with a developmental disability known to them in their professional or official capacities has been subjected to abuse, sexual abuse, neglect, or exploitation, they shall:

(a) if the person is not a resident of a long-term care facility, report the matter to:

(i) the department ~~of public health and human services~~ or its local affiliate; *or*

(ii) the county attorney of the county in which the person resides or in which the acts that are the subject of the report occurred;

(b) if the person is a resident of a long-term care facility, report the matter to the long-term care ombudsman appointed under the provisions of 42 U.S.C. 3027(a)(12) and to the department ~~of public health and human services~~. The department shall investigate the matter pursuant to its authority in 50-5-204 and, if it finds any allegations of abuse, sexual abuse, neglect, or exploitation contained in the report to be substantially true, forward a copy of the report to the county attorney as provided in subsection (1)(a)(ii).

(2) If the repert required in subsection (1) involves an act or omission of the department ~~of public health and human services~~ that may be construed as abuse, sexual abuse, neglect, or exploitation, a copy of the report may not be sent to the department but must be sent instead to the county attorney of the county in which the older person or the person with a developmental disability resides or in which the acts that are the subject of the report occurred.

(3) Professionals and other persons required to report are:

(a) a physician, resident, intern, professional or practical nurse, physician's assistant, or member of a hospital staff engaged in the admission, examination, care, or treatment of persons;

HeinOnline -- 1999 vol. I 648 1999

(b) an osteopath, dentist, denturist, chiropractor, optometrist, podiatrist, medical examiner, coroner, or any other health or mental health professional;

(c) an ambulance attendant;

(d) a social worker or other employee of the state, a county, or a municipality assisting an older person or a person with a developmental disability in the application for or receipt of public assistance payments or services;

(e) a person who maintains or is employed by a roominghouse, retirement home *or complex*, nursing home, group home, ~~or~~ adult foster care home, *adult day-care center, or personal care facility or an agency or individual that provides home health services or personal care in the home*;

(f) an attorney, unless the attorney acquired knowledge of the facts required to be reported from a client and the attorney-client privilege applies;

(g) a peace officer or other law enforcement official; ~~and~~

(h) a person providing services to an older person or a person with a developmental disability pursuant to a contract with a state or federal agency*; and*

(i) an employee of the department while in the conduct of the employee's duties.

(4) Any other persons or entities may, but are not required to, submit a report in accordance with subsection (1).

~~(4) Any other person may submit a report as provided in subsection (1).~~"

Section 5. Section 52-3-812, MCA, is amended to read:

"**52-3-812. Content of report.** (1) The report required by 52-3-811 may be made in writing or orally, by telephone or in person. A person who receives an oral report ~~must~~ *shall* prepare it in writing as soon as possible.

(2) The report referred to under this section ~~shall~~ *must* contain:

(a) the names and addresses of the older person or the person with a developmental disability and the person, if any, responsible for ~~the~~ *that* person's care;

(b) the name and address, if available, of the person who is alleged to have abused, sexually abused, neglected, or exploited the older person or the person with a developmental disability;

(c) to the extent known, the person's age and the nature and extent of the abuse, sexual abuse, neglect, or exploitation, including any evidence of previous injuries, *abuse, sexual abuse, neglect, or exploitation* sustained by the older person or the person with a developmental disability *and any evidence of prior instances of abuse, sexual abuse, neglect, or exploitation of other older persons or persons with developmental disabilities committed by the person alleged to have committed abuse, sexual abuse, neglect, or exploitation*; and

(d) the name and address of the person making the report."

Section 6. Section 52-3-813, MCA, is amended to read:

"**52-3-813. Confidentiality.** (1) The case records of the department ~~of public health and human services~~, its local affiliate, the county attorney, and the court, concerning actions taken under this part, and all reports made pursuant to 52-3-811 must be kept confidential except as provided by this section. *For the purposes of this section, the term "case records" includes records of an investigation of a report of abuse, sexual abuse, neglect, or exploitation.*

HeinOnline -- 1999 vol. I 649 1999

(2) The records and reports required to be kept confidential by subsection (1) may be disclosed, upen request, to the following persons or entities in this or any other state:

(a) a physician who is caring for an older person or a person with a developmental disability who the physician reasonably believes was abused, sexually abused, neglected, or exploited;

(b) a legal guardian or conservator of the older person or the person with a developmental disability if the identity of the person who made the repert is protected and the legal guardian or conservator is not the person suspected of the abuse, sexual abuse, neglect, or exploitation;

(c) the person named in the repert as allegedly being abused, sexually abused, neglected, or exploited if that person is not legally incompetent;

(d) any person engaged in bona fide research if the person alleged in the report to have committed the abuse, sexual abuse, neglect, or exploitation is later convicted of an offense constituting abuse, sexual abuse, neglect, or exploitation and if the identity of the older person or the person with a developmental disability who is the subject of the report is not disclosed to the researcher;

(e) an adult protective service team. Members of the team are required to keep information about the subject individuals confidential.

(f) an authorized representative of a provider of services to a person alleged to be an abused, sexually abused, neglected, or exploited older person or person with a developmental disability if:

(i) the department and the provider are parties to a contested case proceeding under Title 2, chapter 4, part 6, resulting from action by the department adverse to the license of the provider and if information contained in the records or reports of the department is relevant to the case;

(ii) disclosure to the provider is determined by the department to be necessary to protect an interest of a person alleged to be an abused, sexually abused, neglected, or exploited older person or person with a developmental disability; or

(iii) the person is carrying out background screening or employment- or volunteer-related screening of current or prospective employees or volunteers who have or may have unsupervised contact with an older person or a person with a developmental disability through employment or volunteer activities if the disclosure is limited to information that indicates a risk to an older person or a person with a developmental disability posed by the employee or volunteer, as determined by the department. A request for information under this subsection must be made in writing.

(g) an employee of the department if disclosure of the record or report is necessary for administration of a program designed to benefit a person alleged to be an abused, sexually abused, neglected, or exploited older person or person with a developmental disability;

(h) an authorized representative of a gnardianship program approved by the department if the department determines that disclosure to the program or to a porson designated by the program is uecessary for the proper provision of guardianship services to a person alleged to be an abused, sexually abused, neglected, or exploited older person or porson with a developmental disability;

(i) protection and advocacy systems authorized under the provisions of 29 U.S.C. 794e, 42 U.S.C. 6042, and 42 U.S.C. 10805;

HeinOnline -- 1999 vol. I 650 1999

(j) the news media if disclosure is limited to confirmation of factual information regarding how the case was handled and does not violate the privacy rights of the older person, person with a developmental disability, or alleged perpetrator of abuse, sexual abuse, neglect, or exploitation, as determined by the department;

(k) a coroner or medical examiner who is determining the cause of death of an older person or a person with a developmental disability;

(l) a person about whom a report has been made and that person's attorney with respect to relevant records pertaining to that person only without disclosing the identity of the person who made the report or any other person whose safety might be endangered through disclosure;

(m) an agency, including a probation or parole agency, that is legally responsible for the supervision of an alleged perpetrator of abuse, sexual abuse, neglect, or exploitation of an older person or a person with a developmental disability; and

(n) a department, agency, or organization, including a federal agency, military reservation, or tribal organization, that is legally authorized to receive, inspect, or investigate reports of abuse, sexual abuse, neglect, or exploitation of an older person or a person with a developmental disability and that meets the disclosure criteria contained in this section.

(3) The records and reports required to be kept confidential by subsection (1) must be disclosed, upon request, to the following persons or entities in this or any other state:

(a) a county attorney or other law enforcement official who requires the information in connection with an investigation of a violation of this part;

(b) a court that has determined, in camera, that public disclosure of the report, data, information, or record is necessary for the determination of an issue before it;

(c) a grand jury upon its determination that the report, data, information, or record is necessary in the conduct of its official business.

(4) If the person who is reported to have abused, sexually abused, neglected, or exploited an older person or a person with a developmental disability is the holder of a license, permit, or certificate issued by the department of commerce under the provisions of Title 37 or issued by any other entity of state government, the report may be submitted to the entity that issued the license, permit, or certificate."

Section 7. Section 52-3-815, MCA, is amended to read:

"52-3-815. Evidence of abuse, sexual abuse, ~~or~~ neglect, *or exploitation* to be gathered and submitted. (1) A person or agency receiving a report of suspected abuse, sexual abuse, ~~or~~ neglect, *or exploitation* under 52-3-811 shall prepare a written description of the conditions regarded as evidence of abuse, sexual abuse, ~~or~~ neglect, *or exploitation* and may, with the consent of an allegedly abused, sexually abused, ~~or~~ neglected, *or exploited* older person or person with a developmental disability or without consent of the person if it appears that the person is an incapacitated person, take or cause to be taken photographs of an area of trauma visible on the body of the allegedly abused, sexually abused, ~~or~~ neglected, *or exploited* person and regarded as evidence of abuse, sexual abuse, ~~or~~ neglect, *or exploitation*.

HeinOnline -- 1999 vol. I 651 1999

(2) A physician required to report under 52-3-811 may, with the consent of an allegedly abused, sexually abused, ~~or~~ neglected, *or exploited* older person or person with a developmental disability or without consent of the person if it appears that the person is an incapacitated person, require x-rays or other appropriate medical tests or procedures that would, in the professional opinion of the physician, assist in establishing evidence related to the allegation of abuse, sexual abuse, ~~or~~ neglect, *or exploitation*.

(3) Evidence authorized to be gathered under this section must be submitted with the report required under 52-3-811 to the authorities designated in 52-3-811 as soon as possible after submission of the report."

Section 8. Section 52-3-825, MCA, is amended to read:

"52-3-825. Penalties. (1) Any person who purposely or knowingly fails to make a report required by 52-3-811 or discloses or fails to disclose the contents of a case record or report in violation of 52-3-813 is guilty of an offense and upon conviction is punishable as provided in 46-18-212.

(2) Any individual who purposely or knowingly abuses, sexually abuses, neglects, or exploits an older person or a person with a developmental disability is guilty of ~~an offense~~ *a misdemeanor* and upon a first conviction may be fined an amount not to exceed ~~$500~~ *$1,000* or be imprisoned in the county jail for a term not to exceed ~~6 months~~ *1 year*, or both~~, and upon~~. *Upon* a second or succeeding conviction, *an individual* may be imprisoned for a term not to exceed 10 years and may be fined an amount not to exceed $10,000, or both."

Approved March 26, 1999

CHAPTER NO. 197

[SB 214]

AN ACT REVISING THE LAWS RELATING TO A SHERIFF'S LEVY AND SALE FOR THE COLLECTIONS OF TAXES; ALLOWING A SHERIFF TO CHARGE REGULAR FEES, MILEAGE, AND COSTS WHETHER OR NOT PROPERTY IS SEIZED; CLARIFYING THE MANNER OF CONDUCTING A SALE OF SEIZED PERSONAL PROPERTY; AMENDING SECTIONS 15-16-119, 15-16-401, AND 15-17-911, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-16-119, MCA, is amended to read:

"15-16-119. Taxation of personal property — duty of department — collection by department of administration. (1) If the taxes on personal property are not a lien upon real property in the same county in an amount sufficient to secure the payment of the taxes, the department shall assess the property and compute the tax for the assessment. The department shall notify the county treasurer of the assessment and the amount of taxes due. To compute the taxes due on the personal property, the department shall use the appropriate mills levied during the previous year.

(2) The county treasurer shall notify the person against whom the tax is assessed and any other person having a properly perfected security interest of record of the amount and due date of the tax. The tax is due and payable 30 days

HeinOnline -- 1999 vol. I 652 1999

from the date the treasurer mails the notice. Taxes not paid within 30 days become delinquent, and the penalty and interest provisions of 15-16-101 must be applied.

(3) The county treasurer shall, after the tax becomes delinquent, either proceed under subsection (7) or levy upon and take into possession the personal property against which a tax is assessed or any other personal property in the hands of the delinquent taxpayer. The county treasurer may proceed to sell the property in the same manner as property is sold on execution by the sheriff.

(4) The county treasurer shall, for the purpose of making the levy and sale, direct the sheriff to make the levy and sale. The sheriff, undersheriff, or any deputy sheriff of the county is ex officio a deputy county treasurer for sale purposes and may receive payment of the taxes, penalty, and interest. The sheriff ~~may receive the same fees as for making a seizure and sale as provided in 15-17-911~~ *is entitled to the fees, mileage, and costs as provided in 7-32-2141 and 7-32-2143, which must be assessed against the delinquent taxpayer.*

(5) The county treasurer and the treasurer's sureties are liable on the treasurer's official bond for all taxes on personal property remaining uncollected by reason of the willful failure and neglect of the treasurer to levy upon and sell the personal property for the taxes levied upon the property, including penalty and interest.

(6) Failure by the sheriff, undersheriff, or deputy sheriff acting as a deputy county treasurer to make the levy and sale results in a levy against the official bond of the sheriff, undersheriff, or deputy sheriff for payment of the delinquent tax, including penalty and interest.

(7) The county treasurer shall give the board of county commissioners a list of delinquent personal property taxpayers and the taxes due. The board may order the county treasurer to verify the list under oath and to send a copy of the list to the department of administration for collection under Title 17, chapter 4, part 1.

(8) The provisions of this section do not apply to property for which delinquent property taxes have been suspended or canceled under the provisions of Title 15, chapter 24, part 17."

Section 2. Section 15-16-401, MCA, is amended to read:

"15-16-401. Tax due as a judgment or lien. Unless suspended or canceled under the provisions of Title 15, chapter 24, part 17, every tax has the effect of a judgment against the person, and every lien created by this title has the force and effect of an execution duly levied against all personal property in the possession of the person assessed from and after the date the assessment is made. The county treasurer may issue a writ of execution for delinquent personal property taxes, unless suspended or canceled under the provisions of Title 15, chapter 24, part 17, and deliver the writ to the sheriff *of any county in the state in which the property or some part of the property is located. Writs of execution may be issued at the same time to different counties.* The sheriff shall ~~thereupon~~ proceed upon the writ in all respects, with like effect, and in the same manner prescribed by law in respect to executions issued against property upon judgments of a court of record. ~~and shall be~~ *The sheriff is* entitled to the fees, ~~provided for in 15-17-911~~ *mileage, and costs as provided in 7-32-2141 and 7-32-2143, which must be assessed against the delinquent taxpayer.* The judgment is not satisfied

HeinOnline -- 1999 vol. I 653 1999

nor the lien removed until the taxes are paid or the property sold for the payment ~~thereof~~ *of the taxes.*"

Section 3. Section 15-17-911, MCA, is amended to read:

"15-17-911. Sale of personal property for delinquent taxes — fee — disposition of proceeds — unsold property. (1) The tax on personal property may be collected and payment enforced by the seizure and sale of any personal property in the possession of the person assessed. Seizure and sale are authorized at any time after the date the taxes become delinquent or by the institution of a civil action for its collection in any court of competent jurisdiction. A resort to one method does not bar the right to resort to any other method. Any of the methods provided may be used until the full amount of the tax is collected.

(2) The provisions of 15-16-119 and this section apply to a seizure and sale under subsection (1).

(3) *(a)* A sale under subsection (1) must be:

(i) conducted at public auction;

(ii) conducted under the provisions of 25-13-701(1)(b); and

(iii) noticed as a treasurer's sale of personal property seized for taxes.

(b) The return on the levy and sale must be signed by the sheriff or deputy sheriff as ex officio deputy county treasurer.

(4) *(a)* ~~For seizing and selling personal property, the~~ *The* county treasurer shall charge $25 *or a fee set by the county commissioners,* plus ~~the mileage allowance provided by law to the sheriff, plus reasonable expenses for seizing, handling, keeping, or caring for any property seized. The charge and other costs may be charged only when property is actually seized and offered for sale or sold~~ *the cost, as defined in 15-17-121, of the collection of delinquent personal property taxes. The cost must be assessed against the delinquent taxpayer and is in addition to any sheriff's fees, mileage, and costs charged under subsection (4)(b).*

(b) The sheriff is entitled to the fees, mileage, and costs as provided in 7-32-2141 and 7-32-2143, which must be assessed against the delinquent taxpayer.

(5) On payment of the price bid for any property sold as provided in this section, delivery of the property, with a bill of sale, vests the title of the property in the purchaser.

(6) (a) After sale of the property, the proceeds of the sale must be used first to reimburse the county for all costs and charges incurred in seizing the property and conducting the sale. Any excess, up to the total amount of the taxes owed, must be distributed proportionally to the funds that would have received the taxes if they had been paid before becoming delinquent. Any remaining excess, up to the amount of the penalty and interest owed, must then be distributed proportionally to the fund that would have received the penalty and interest if they had been paid in full.

(b) Any money collected in excess of the delinquent tax, penalties, interest, costs, and charges must be returned to the person owning the property prior to the sale, if known. If the porson does not claim the excess immediately following the sale, the treasurer shall deposit the money in the county treasury for a period of 1 year from the date of sale. If the porson has not claimed the excess within 1 year from the date of sale, the county treasurer shall deposit the amount in the county general fund and the porson has no claim to it.

HeinOnline -- 1999 vol. I 654 1999

(7) Any property seized for the purpose of liquidating a delinquency by a tax sale that remains unsold following a sale may be left at the place of sale at the risk of the owner.

(8) The provisions of this section do not apply to property for which delinquent property taxes have been suspended or canceled under the provisions of Title 15, chapter 24, part 17.

(9) The county commission, in its discretion, may cancel any personal property taxes, including penalty, interest, costs, and charges that remain unsatisfied after the property upon which the taxes were assessed had been seized and sold. If the taxes are canceled, one copy of the order of cancellation must be filed with the county clerk and recorder and one copy with the county treasurer."

Section 4. Applicability. [This act] applies to any levy and sale begun after September 30, 1999.

Approved March 26, 1999

CHAPTER NO. 198

[SB 222]

AN ACT ELIMINATING CERTAIN STATUTES THAT CONFLICT WITH SUPREME COURT RULES GOVERNING ADMISSION TO THE BAR AND THE PRACTICE OF LAW; REPEALING SECTIONS 37-61-101, 37-61-202, 37-61-204, 37-61-205, 37-61-206, 37-61-208, AND 37-61-209, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, Article VII, section 2, of the Montana Constitution provides that the Montana Supreme Court may make rules for admission to the bar and the conduct of its members.

Be it enacted by the Legislature of the State of Montana:

Section 1. Repealer. Sections 37-61-101, 37-61-202, 37-61-204, 37-61-205, 37-61-206, 37-61-208, and 37-61-209, MCA, are repealed.

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 26, 1999

CHAPTER NO. 199

[HB 196]

AN ACT ALLOWING THE ELECTRIC ENERGY PRODUCERS' LICENSE TAX TO BE ITEMIZED ON A CUSTOMER'S BILL; AMENDING SECTION 15-51-102, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-51-102, MCA, is amended to read:

"15-51-102. Payment of tax — ~~not to~~ *may* be ~~set out~~ *itemized* on customers' bills. The license tax ~~shall~~ *must* be remitted with the statement and paid on or before the 30th day of the month after each calendar quarter. ~~No~~ *A customer's* bill~~,~~ *or* statement~~, or account rendered or given any customer by any~~

HeinOnline -- 1999 vol. I 655 1999

~~organization affected by the provisions of this chapter shall set out or contain as a separate item any amount on account or by reason of the license tax imposed by this chapter~~ *may contain an itemized amount of the tax imposed by 15-51-101.*"

Section 2. Applicability. [This act] applies to customer bills or statements rendered to customers after September 30, 1999.

Approved March 29, 1999

CHAPTER NO. 200

[HB 201]

AN ACT AMENDING THE STATE COOPERATIVE PURCHASING LAWS TO INCLUDE PARTICIPATION BY A MONTANA TRIBAL PROCUREMENT UNIT; DEFINING "TRIBAL PROCUREMENT UNIT"; AMENDING SECTION 18-4-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 18-4-401, MCA, is amended to read:

"**18-4-401. Definitions.** As used in this part, the following definitions apply:

(1) "Cooperative purchasing" means procurement conducted by or on behalf of more than one public procurement unit.

(2) "Local public procurement unit" means a county, city, town, or other subdivision of the state or a public agency of any such subdivision; public authority; educational, health, or other institution; to the extent provided by law, any other entity that expends public funds for the procurement of supplies and services; and any nonprofit corporation operating a charitable hospital.

(3) "Public procurement unit" means a local or state public procurement unit of this or any other state, including an agency of the United States, *or a tribal procurement unit.*

(4) "State public procurement unit" means a state department, agency, or official that expends public funds for the procurement of supplies and services.

(5) "Tribal procurement unit" means a tribal government, tribal entity, or official of a tribal government located in Montana that expends tribal funds or funds administered by a tribe for the procurement of supplies and services to the extent provided by tribal or federal law."

Section 2. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Sbell band of Chippewa.

Section 3. Effective date. [This act] is effective on passage and approval.

Approved March 29, 1999

HeinOnline -- 1999 vol. I 656 1999

CHAPTER NO. 201

[HB 205]

AN ACT PROVIDING FOR WATER RIGHTS DELIVERY SYSTEM EASEMENTS IN PROPOSED SUBDIVISIONS; AND AMENDING SECTION 76-3-504, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-3-504, MCA, is amended to read:

"76-3-504. Minimum requirements for subdivision regulations. The subdivision regulations adopted under this chapter ~~shall~~ *must*, at a minimum:

(1) require the subdivider to submit to the governing body an environmental assessment as prescribed in 76-3-603;

(2) establish procedures consistent with this chapter for the submission and review of subdivision plats;

(3) prescribe the form and contents of preliminary plats and the documents to accompany final plats;

(4) provide for the identification of areas that, because of natural or human-caused hazards, are unsuitable for subdivision development and prohibit subdivisions in these areas unless the hazards can be eliminated or overcome by approved construction techniques;

(5) prohibit subdivisions for building purposes in areas located within the floodway of a flood of 100-year frequency, as defined by Title 76, chapter 5, or determined to he subject to flooding by the governing body;

(6) prescribe standards for:

(a) the design and arrangement of lots, streets, and roads;

(b) grading and drainage;

(c) subject to the provisions of 76-3-511, water supply and sewage and solid waste disposal that, at a minimum, meet the regulations adopted by the department of environmental quality under 76-4-104;

(d) the location and installation of utilities;

(7) provide procedures for the administration of the park and open-space requirements of this chapter;

(8) provide for the review of preliminary plats hy affected public utilities and those agencies of local, state, and federal gevernment having a substantial interest in a proposed subdivision. A utility or agency review may not delay the governing body's action on the plat beyond the time limits specified in this chapter, and the failure of any agency to complete a review of a plat may not be a basis for rejection of the plat by the governing body.

(9) require the subdivider to establish ditch easements in the subdivision, in locations of appropriate topographic characteristics and sufficient width, to allow the physical placement and unobstructed maintenance of open ditches or below-ground pipelines for the delivery of water for irrigation to persons and lands legally entitled to the water under an appropriated water right or permit of an irrigation district or other private or public entity formed to provide for the use of

HeinOnline -- 1999 vol. I 657 1999

the water right on the subdivision lots. Establishment of easements pursuant to this subsection (9) is not required if:

(a) the average lot size is 1 acre or less and the subdivider provides for disclosure, in a manner acceptable to the governing body, that adequately notifies potential buyers of lots that are classified as irrigated land and may continue to be assessed for irrigation water delivery even though the water may not be deliverable; or

(b) the water rights are removed or the process has been initiated to remove the water rights from the subdivided land through an appropriate legal or administrative process and if the removal or intended removal is denoted on the preliminary plat. If removal of water rights is not complete upon filing of the final plat, the subdivider shall provide written notification to prospective buyers of the intent to remove the water right and shall document that intent, when applicable, in agreements and legal documents for related sales transactions.

(10) require the subdivider, unless otherwise provided for under separate written agreement or filed easement, to file and record ditch easements for unobstructed use and maintenance of existing water delivery ditches, pipelines, and facilities in the subdivision that are necessary to convey water through the subdivision to lands adjacent to or beyond the subdivision boundaries in quantities and in a manner that are consistent with historic and legal rights."

Approved March 29, 1999

CHAPTER NO. 202

[HB 353]

AN ACT AUTHORIZING A COUNTY, CITY, OR TOWN THAT OWNS PROPERTY CONTAINING A HISTORICALLY SIGNIFICANT BUILDING OR MONUMENT TO SELL OR GIVE THE PROPERTY TO A NONPROFIT ORGANIZATION OR GROUP THAT AGREES TO RESTORE OR PRESERVE THE PROPERTY; AMENDING SECTIONS 7-8-2211, 7-8-2212, 7-8-2213, AND 7-8-4201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-8-2211, MCA, is amended to read:

"7-8-2211. Authorization to sell and exchange county property. (1) Boards of county commissioners of this state have the power to sell, trade, or exchange any real or personal property, however acquired, belonging to the county that is not necessary to the conduct of county business or the preservation of its property.

(2) Whenever a county purchases equipment, as provided in 7-5-2301 through 7-5-2308, county equipment ~~which~~ *that* is not necessary to the conduct of the county business may be traded in as part of the purchase price after appraisal, as provided in 7-8-2214, or may be sold at public auction, as provided in 7-8-2212, in the discretion of the board.

(3) Any sale, trade, or exchange of real or personal property ~~shall~~ *must* be accomplished under the provisions of ~~Title 7, and in~~ *this title. In* an exchange of real property, the properties ~~shall~~ *must* be appraised, and ~~no~~ *an* exchange of county property may *not* be made unless property received in exchange ~~therefor~~

for the county property ~~shall be~~ *is* of an equivalent value. ~~In the event~~ *If* the properties are not of equivalent values, the exchange may be completed if a cash payment is made in addition to the delivery of title for property having the lesser value.

(4) If a county owns property containing a historically significant building or monument, the county may sell or give the property to nonprofit organizations or groups that agree to restore or preserve the property. The contract for the transfer of the property must contain a provision that:

(a) requires the property to be preserved in its present or restored state upon any subsequent transfer; and

(b) provides for the reversion of the property to the county for noncompliance with conditions attached to the transfer."

Section 2. Section 7-8-2212, MCA, is amended to read:

"**7-8-2212. Notice of sale and public auction required for certain sales.** Unless otherwise provided, if real or personal property to be sold is reasonably of a value in excess of $2,500, the sale must be at public auction at a site determined by the board of county commissioners after notice by publication as provided in 7-1-2121. *Property described in 7-8-2211(4) is not subject to the requirements of this section.*"

Section 3. Section 7-8-2213, MCA, is amended to read:

"**7-8-2213. Terms of sale.** (1) ~~The~~ *Except as provided in 7-8-2211(4), a* sale ~~shall~~ *under this part must* be for cash or on ~~such~~ terms ~~as~~ *that* the board of county commissioners may approve, provided *that* at least 20% of the purchase price ~~shall be~~ *is* paid in cash. All deferred payments on the purchase price of any property sold ~~shall~~ *must* bear interest at the rate of 6% ~~per annum~~ *a year*, payable annually, and may be extended over a period of not more than 5 years.

(2) ~~No~~ *Subject to 7-8-2211(4), a* sale ~~shall~~ *may not* be made at public auction or to any school district without public auction for less than 90% of the appraised value.

(3) ~~No~~ *Subject to 7-8-2211(4), the* title to any property sold under the provisions of 7-8-2211 through 7-8-2220 ~~shall~~ *may not* pass from the county until the purchaser or ~~his~~ *the purchaser's* assigns ~~shall~~ have paid the full amount of the purchase price ~~therefor~~ into the county treasury for the use and benefit of the county."

Section 4. Section 7-8-4201, MCA, is amended to read:

"**7-8-4201. Disposal or lease of municipal property.** (1) Subject to the provisions of subsection (2), the city or town council may sell, dispose of, or lease any property belonging to the city or town.

(2) (a) ~~The~~ *Except for property described in subsection (3), the* lease or transfer must be made by an ordinance or resolution passed by a two-thirds vote of all the members of the council.

(b) Except for property acquired by tax deed *or property described in subsection (3)*, if the property is held in trust for a specific purpose, the sale or lease must be approved by a majority vote of the electors of the municipality voting at an election called for that purpose. The election must be held in conjunction with a regular or primary election.

HeinOnline -- 1999 vol. I 659 1999

(3) If a city or town owns property containing a historically significant building or monument, the city or town may sell or give the property to nonprofit organizations or groups that agree to restore or preserve the property. The contract for the transfer of the property must contain a provision that:

(a) requires the property to be preserved in its present or restored state upon any subsequent transfer; and

(b) provides for the reversion of the property to the city or town for noncompliance with conditions attached to the transfer.

~~(3)~~*(4)* This section may not be construed to abrogate the power of tbe board of park commissioners to lease all lands owned by the city tbat were acquired for parks within the limitations prescribed by 7-16-4223."

Seetion 5. Effective date. [This act] is effective on passage and approval.

Approved March 29, 1999

CHAPTER NO. 203

[HB 390]

AN ACT PERMITTING THE BOARD OF PLUMBERS AND THE STATE ELECTRICAL BOARD TO RENEW A TEMPORARY PRACTICE PERMIT ON A CASE-BY-CASE BASIS; AND AMENDING SECTIONS 37-1-305, 37-68-311, AND 37-69-306, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-1-305, MCA, is amended to read:

"37-1-305. Temporary practice permits. (1) A board may issue a temporary practice permit to a person licensed in another state that has licensing standards substantially equivalent to those of this state if the hoard determines that there is no reason to deny the license under the laws of this state governing the profession or occupation. The person may practice under the perınit until a license is granted or until a notice of proposal to deny a license is issued. The permit may not he issued until the board receives verification froın the state or states in which the person is licensed that the person is currently licensed and is not subject to pending charges or final disciplinary action for unprofessional conduct or impairment.

(2) A hoard ınay issue a temporary practice permit to a person seeking licensure in this state who has met all licensure requirements other than passage of the licensing examination. ~~The~~ *Except as provided in 37-68-311 and 37-69-306, a* permit is valid until the person either fails the first license examination for which the person is eligible following issuance of the permit or passes the exaınination and is granted a license."

Seetion 2. Section 37-68-311, MCA, is amended to read:

"37-68-311. Examination fee — license fee — specific exemption for apprentices. (1) Master electricians and journeyman or residential electricians installing or intending to install for luire electric wiring or equipment to convey electric current or apparatus to be operated by this current shall make application for a license to the department. The application must be on a form furnished by the department and must be accoınpanied by an examination fee set by the board.

HeinOnline -- 1999 vol. I 660 1999

The forms must state the applicant's full name and address, the extent of work experience, and other information required by the board. If the applicant has complied with the rules adopted by the board and, being qualified, has successfully completed the examination, the applicant shall pay to the department a license fee set by the board for a master electrician's license or for a journeyman or a residential electrician's license, and upon receipt of the fee the department shall issue the proper license to the applicant.

(2) A person serving a 4-year electrician apprenticeship under the supervision of a licensed electrician is exempt from the licensing provision of this section during training. Credit for the time spent in an electrical school must be given to the master electrician, journeyman electrician, residential electrician, or apprentice, up to a total of 2 years, on the 4-year requirement.

(3) In addition to the temporary permits authorized in 37-1-305, the board may, on a case-by-case basis at the board's discretion and in accordance with criteria determined by the board, renew a temporary practice permit for a person who fails the first license examination for which the person is eligible but who submits a temporary practice permit renewal application to the board stating that the person intends to retake the license examination on the next available date."

Section 3. Section 37-69-306, MCA, is amended to read:

"37-69-306. Examination — issuance of license. (1) An applicant for a license to work in the field of plumbing shall be examined as to his qualifications by the department, subject to 37-1-101(4). The department shall examine each applicant for a license to determine his skill and qualifications as a master plumber or journeyman plumber.

(2) The applicant, upon successfully passing the examination prescribed by the board, shall be issued a license authorizing him to engage in the field of plumbing as a master plumber or journeyman plumber in the state of Montana.

(3) In the case of a firm or corporation, the examination and issuance of a license to an individual of the firm or to a principal of the firm or corporation satisfies the requirements of this chapter as to master plumbers but not as to journeyman plumbers. No individual, firm, or corporation may do the work of a master plumber unless licensed under this chapter.

(4) In addition to the temporary permits authorized in 37-1-305, the board may, on a case-by-case basis at the board's discretion and in accordance with criteria determined by the board, renew a temporary practice permit for a person who fails the first license examination for which the person is eligible but who submits a temporary practice permit renewal application to the board stating that the person intends to retake the license examination on the next available date."

Approved March 29, 1999

CHAPTER NO. 204

[HB 418]

AN ACT CLARIFYING THE EXEMPTION FROM PROPERTY TAXES FOR BUILDINGS AND PERSONAL PROPERTY OF A SOCIETY OR ORGANIZATION OF HONORABLY DISCHARGED UNITED STATES MILITARY PERSONNEL; AMENDING SECTION 15-6-203, MCA; AND

HeinOnline -- 1999 vol. I 661 1999

PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Seetion 1. Section 15-6-203, MCA, is amended to read:

"15-6-203. Veterans' clubbonse exemption — ineompetent veterans' trusts. (1) ~~When a~~ *A* clubhouse or building erected by or belonging to any society or organization of honorably discharged United States military personnel *that* is used ~~exclusively~~ *primarily* for educational, fraternal, benevolent, or purely public charitable purposes rather than for gain or profit, together with the ~~library and furniture~~ *personal property* necessarily used in ~~any such~~ *the* building, ~~such property~~ is exempt from taxation. *The exemption provided for in this section applies even if a business, intended primarily for the use of the members, is required to be open to the public and is operated in a portion of the building.*

(2) All property, real or personal, in the possession of legal guardians of incompetent veterans of U.S. military service or minor dependents of ~~such~~ *the* veterans, ~~where such~~ *when the* property is funds or derived from funds received from the United States as pension, compensation, insurance, adjusted compensation, or gratuity, ~~shall be~~ *is* exempt from all taxation as property of the United States while held by the guardian, but not after title passes to the veteran or minor in ~~his or her~~ *the minor's* own right on account of removal of legal disability."

Section 2. Effective date. [Tbis act] is effective on passage and approval.

Section 3. Retroactive applicability. [This act] applies retroactively, witbin the meaning of 1-2-109, to tax years beginning on or after December 31, 1998.

Approved March 29, 1999

CHAPTER NO. 205

[HB 429]

AN ACT TEMPORARILY CLOSING SUBBASINS OF THE BITTERROOT RIVER BASIN TO FURTHER APPROPRIATIONS AND RESERVATIONS, EXCEPT FOR GROUND WATER, MUNICIPAL, AND EMERGENCY APPROPRIATIONS AND SOME SEASONAL STORAGE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Bitterroot River subbasin temporary closure — definitions — exceptions. (1) Unless the context requires otherwise, in this section, tbe following definitions apply:

(a) "Application" means an application for a beneficial water use permit pursuant to 85-2-302 or a state water reservation pursuant to 85-2-316.

(b) "Bitterroot River basin" means the drainage area of the Bitterroot River and its tributaries above the confluence of the Bitterroot River and Clark Fork of the Columbia River and designated as "Basin 76H".

(c) "Bitterroot River subbasin" means one of the following hydrologically related portions of the Bitterroot River basin:

HeinOnline -- 1999 vol. I 662 1999

(i) the mainstem subbasin, designated as "Subbasin 76HA";

(ii) the north end subbasin, designated as "Subbasin 76HB";

(iii) the east side subbasin, designated as "Subbasin 76HC";

(iv) the southeast subbasin, designated as "Subbasin 76HD";

(v) the south end subbasin, designated as "Subbasin 76HE";

(vi) the southwest subbasin, designated as "Subbasin 76HF";

(vii) the west central subbasin, designated as "Subbasin 76HG"; or

(viii) the northwest subbasin, designated as "Subbasin 76HH".

(2) As provided in 85-2-319, the department may not process or grant an application for a permit to appropriate water or for a state water reservation within a Bitterroot River subbasin until the closure for the basin is terminated pursuant to subsection (3) of this section, except for:

(a) an application for a permit to appropriate ground water;

(b) an application for a permit to appropriate water for a municipal water supply;

(c) temporary emergency appropriations pursuant to 85-2-113(3); or

(d) an application to store water during high spring flow in an impoundment with a capacity of 50 acre feet or more.

(3) Each Bitterroot River subbasin is closed to new appropriations and new state water reservations until 2 years after all water rights in the subbasin arising under the laws of the state are subject to an enforceable and administrable decree as provided in 85-2-406(4).

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 85, chapter 2, part 3, and the provisions of Title 85, chapter 2, part 3, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Section 4. Applicability. [This act] applies to all applications received by the department of natural resources and conservation after [the effective date of this act].

Approved March 29, 1999

CHAPTER NO. 206

[HB 509]

AN ACT CODIFYING THE PROCEDURE USED FOR SELECTING A STUDENT MEMBER FOR THE BOARD OF REGENTS; AND AMENDING SECTION 2-15-1508, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-1508, MCA, is amended to read:

"2-15-1508. Appointments to board of public education and board of regents — conditions — vacancy. (1) Appointments to the board of public education and to the board of regents are subject to the following qualifications:

(a) Not more than two may be from one district provided for in 5-1-102.

(b) Not more than four may be affiliated with the same political party.

(c) The terms of members appointed to each board are 7 years except as provided in subsection (3).

(d) When a vacancy occurs, the governor shall appoint a member for the remainder of the term of the incumbent, and the appointment must preserve the balance required by subsections (1)(a) and (1)(b).

(e) A person may not be appointed to concurrent memberships on the board of public education and the board of regents.

(2) An appointed member of either board shall take and subscribe to the constitutional oath of office and file it with the secretary of state before the person may serve as a member of either board.

(3) *(a)* One seat of the appointed members on the board of regents is reserved for membership by a student appointed by the governor. The student must be registered as a full-time student at a unit of higher education under jurisdiction of the board of regents. The length of term of the student member is determined by the governor and must be for not less than 1 year and not more than 4 years. *The term begins July 1 and ends June 30 of the years designated by the governor.* The provisions of subsections (1)(a) and (1)(b) do not apply to the student member and may not affect the balance of the remaining appointive membership on the board of regents.

(b) The governor shall appoint the student provided for in subsection (3)(a) based upon a nomination provided by a student organization designated by the board of regents. The student organization shall nominate no fewer than three qualified students. If the governor finds that none of the students nominated are acceptable, the governor may request a new slate of nominees. Nominations must be forwarded to the governor in March immediately preceding the end of a regular term, and the governor shall make the appointment before the end of the succeeding June. In the event of a vacancy, a replacement must be appointed as soon as is practicable and in the same manner as the original appointment."

Approved March 29, 1999

CHAPTER NO. 207

[HB 227]

AN ACT PROVIDING THAT A CORPORATION SUING OR DEFENDING A SUIT ON A DEBT MAY BE REPRESENTED IN A CITY, MUNICIPAL, JUSTICE'S, OR SMALL CLAIMS COURT BY A CORPORATE DIRECTOR OR OFFICER; AND AMENDING SECTION 25-35-505, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 25-35-505, MCA, is amended to read:

"25-35-505. Parties — representation. (1) Parties in the small claims court may be individuals, partnerships, corporations, unions, associations, or any other kind of organization or entity, except the state or any agency of the state.

(2) A party may not be represented by an attorney unless all parties are represented by an attorney in a small claims court.

HeinOnline -- 1999 vol. I 664 1999

(3) Individuals may represent themselves in a small claims court. A partnership may be represented by a partner or one of its employees. A union may be represented by a union member or union employee. A corporation may be represented by one of its *directors, officers, or* employees. An association may be represented by one of its members or by an employee of the association. Any other kind of organization or entity may be represented by one of its members or employees.

(4) Except as provided in subsection (5), only a party, natural or otherwise, who has been a party to the transaction with the defendant for which the claim is brought may file and prosecute a claim in the small claims court.

(5) A party may not file an assigned claim in the small claims court unless it has been assigned pursuant to 27-1-718.

(6) Except for claims under 27-1-718, a party may not file more than 10 claims in any calendar year.

(7) Notwithstanding any other provision of this section, a personal representative of a decedent's estate, a guardian, or a conservator may be a party in the small claims court."

Approved March 30, 1999

CHAPTER NO. 208

[HB 632]

AN ACT REVISING ELECTION LAWS RELATING TO THE IMPLEMENTATION OF THE NATIONAL VOTER REGISTRATION ACT; AMENDING SECTIONS 13-1-101, 13-2-222, 13-2-402, AND 13-27-410, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-1-101, MCA, is amended to read:

"13-1-101. Definitions. As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Active elector" means a qualified elector whose name is on the active list.

(2) "Active list" means a list of active electors maintained by an election administrator pursuant to 13-2-219.

(3) "Anything of value" means any goods that have a certain utility to the recipient that is real and that is ordinarily not given away free but is purchased.

(4) "Application for voter registration" means a completed voter registration card submitted to the election administrator and subject to confirmation, as provided in 13-2-207.

(5) "Candidate" means:

(a) an individual who has filed a declaration or petition for nomination, acceptance of nomination or appointment as a candidate for public office as required by law;

(b) for the purposes of ~~chapters~~ *chapter* 35, 36, or 37, an individual who has solicited or received and retained contributions, made expenditures, or given consent to an individual, organization, political party, or committee to solicit or receive and retain contributions or make expenditures on the individual's behalf to secure nomination or election to any office at any time, whether or not the office for which the individual will seek nomination or election is known when the:

(i) solicitation is made;

(ii) contribution is received and retained; or

(iii) expenditure is made; and

(c) an officeholder who is the subject of a recall election.

(6) (a) "Contribution" means:

(i) an advance, gift, loan, conveyance, deposit, payment, or distribution of money or anything of value to influence an election;

(ii) a transfer of funds between political committees;

(iii) the payment by a person other than a candidate or political committee of compensation for the personal services of another person that are rendered to a candidate or political committee.

(b) "Contribution" does not mean:

(i) services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or political committee or meals and lodging provided by individuals in their private residence for a candidate or other individual;

(ii) the cost of any bona fide news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication of general circulation;

(iii) the cost of any communication by any membership organization or corporation to its members or stockholders or employees, as long as the organization is not a primary political committee; or

(iv) filing fees paid by the candidate.

(7) "Election" means a ganeral, regular, special, or primary election held pursuant to the requirements of state law, regardless of the time or purpose.

(8) "Election administrator" means the county clerk and recorder or the individual designated by a county governing body to be responsible for all election administration duties, except that with regard to school elections, the term means the school district clerk.

(9) "Elector" means an individual qualified and registered to vote under state law.

(10) (a) "Expenditure" means a purchase, payment, distribution, loan, advance, promise, pledge, or gift of money or anything of value made for the purpose of influencing the results of an election.

(b) "Expenditure" does not mean:

(i) services, food, or lodging provided in a manner that they are not contributions under subsection (6);

(ii) payments by a candidate for a filing fee or for personal travel expenses, food, clothing, lodging, or personal necessities for the candidate and the candidate's family;

(iii) the cost of any bona fide news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication of general circulation; or

(iv) the cost of any communication by any membership organization or corporation to its members or stockholders or employees, as long as the organization is not a primary political committee.

(11) "Federal election" means a general *or primary* election in which an elector may vote for individuals for the office of president of the United States or for the United States congress.

(12) "General election" or "regular election" means an election held for the election of public officers throughout the state at times specified by law, including elections for officers of political subdivisions when the time of the election is set on the same date for all similar political subdivisions in the state. For ballot issues required by Article III, section 6, or Article XIV, section 8, of the Montana constitution to be submitted by the legislature to the electors at a general election, "general election" means an election held at the time provided in 13-1-104(1). For ballot issues required by Article XIV, section 9, of the Montana constitution to be submitted as a constitutional initiative at a regular election, regular election means an election held at the time provided in 13-1-104(1).

(13) "Inactive elector" means ~~a qualified elector~~ *an individual* ~~who~~ *whose name* is placed on an inactive list.

(14) "Inactive list" means a list of inactive electors maintained by an election administrator pursuant to 13-2-219.

(15) "Individual" means a human being.

(16) "Issue" or "ballot issue" means a proposal submitted to the people at an election for their approval or rejection, including but not limited to initiatives, referenda, proposed constitutional amendments, recall questions, school levy questions, bond issue questions, or a ballot question. For the purposes of chapters 35, 36, or 37, an issue becomes a "ballot issue" upon certification by the proper official that the legal procedure necessary for its qualification and placement upon the ballot has been completed, except that a statewide issue becomes an "issue" upon approval by the secretary of state of the form of the petition or referral.

(17) "Person" means an individual, corporation, association, firm, partnership, cooperative, committee, club, union, or other organization or group of individuals or a candidate as defined in subsection (5).

(18) "Political committee" means a combination of two or more individuals or a person other than an individual who makes a contribution or expenditure:

(a) to support or oppose a candidate or a committee organized to support or oppose a candidate or a petition for nomination; or

(b) to support or oppose a ballot issue or a committee organized to support or oppose a ballot issue; or

(c) as an earmarked contribution.

HeinOnline -- 1999 vol. I 667 1999

(19) "Political subdivision" means a county, consolidated municipal-county government, municipality, special district, or any other unit of government, except school districts, having authority to hold an election for officers or on a ballot issue.

(20) "Primary" or "primary election" means an election held throughout the state to nominate candidates for public office at times specified by law, including nominations of candidates for offices of political subdivisions when the time for nominations is set on the same date for all similar subdivisions in the state.

(21) "Public office" means a state, county, municipal, school, or other district office that is filled by the people at an election.

(22) "Registrar" means the county election administrator and any regularly appointed deputy or assistant election administrator.

(23) "Special election" means an election other than a statutorily scheduled primary or general election held at any time for any purpose provided by law. It may be held in conjunction with a statutorily scheduled election.

(24) "Voting machine or device" means any equipment used to record, tabulate, or in any manner process the vote of an elector."

Section 2. Section 13-2-222, MCA, is amended to read:

"13-2-222. Reactivation of elector. (1) The name of an elector must be moved by an election administrator from the inactive list to the active list of a county if an elector meets the requirements for registration provided in this chapter and:

(a) appears in order to vote in a federal election; ~~or~~

(b) notifies the county election administrator *in writing* of the elector's current residence, which must be in that county; *or*

(c) completes a reactivation form provided by the county election administrator that provides current address information in that county.

(2) After an elector has complied with ~~either~~ subsection (1)(a) ~~or~~, (1)(b), *or (1)(c)*, the county election administrator shall place the elector's name on the active voting list for that county.

(3) To be effective for a nonfederal election, a reactivation of an elector must be accomplished no later than 30 days before the election."

Section 3. Section 13-2-402, MCA, is amended to read:

"13-2-402. Reasons for cancellation. The election administrator shall cancel the registration of an elector:

(1) at the written request of the registered elector;

(2) if a certificate of the death of the elector is filed or if the elector is reported as deceased by the department of public health and human services in the department's reports submitted to the county under 72-16-217;

(3) if the elector is of unsound mind as established by a court;

(4) if the incarceration of the elector in a penal institution for a felony conviction is legally established;

(5) if a certified copy of a court order directing the cancellation is filed with the election administrator;

HeinOnline -- 1999 vol. I 668 1999

(6) if the elector is successfully challenged and not allowed to vote at an election upon determination of an election judge;

(7) if a notice is received from another county or state that the elector has registered in that county or state; or

(8) if the elector fails to respond to certain confirmation mailings and fails to vote in two subsequent federal *general* elections."

Section 4. Section 13-27-410, MCA, is amended to read:

"13-27-410. Printing and distribution of voter information pamphlet. (1) The secretary of state shall arrange with the department of administration by requisition for the printing and delivery of a voter information pamphlet for all ballot issues to be submitted to the people at least 110 days before the election at which they will be submitted. The requisition must include a delivery list providing for shipment of the required number of pamphlets to each county and to the secretary of state.

(2) The secretary of state shall estimate the number of copies necessary to furnish one copy to each voter in each county, except that two or more voters with the same mailing address and the same last name may be counted as one voter. The secretary of state shall provide for an extra supply of the pamphlets in determining the number of voter pamphlets to be ordered in the requisition.

(3) The department of administration shall call for bids and contract with the lowest bidder for the printing and delivery of the voter information pamphlet. The contract must require completion of printing and shipment, as specified on the delivery list, of the voter information pamphlets by not later than 45 days before the election at which the ballot issues will be voted on by the people.

(4) The county official responsible for voter registration in each county shall mail one copy of the voter information pamphlet to each registered voter in the county *who is on the active voter list*, except that two or more voters with the same mailing address and the same last name may be counted as one voter. The mailing must take place no later than 2 weeks before the election.

(5) Ten copies of the voter information pamphlet must be available at each precinct for use by any voter wishing to read the explanatory information and complete text before voting on the ballot issues."

Section 5. Effective date. [This act] is effective on passage and approval.

Approved March 30, 1999

CHAPTER NO. 209

[SB 40]

AN ACT REMOVING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION'S POWER SALE RESTRICTIONS FOR POWER GENERATED BY A STATE FACILITY; AMENDING SECTION 85-1-509, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-1-509, MCA, is amended to read:

HeinOnline -- 1999 vol. I 669 1999

"85-1-509. Power generation by department authorized. (1) If ~~no~~ lease applications are *not* received under 85-1-503 or if the department rejects all lease applications under 85-1-504, the department may proceed to obtain any necessary license, permit, or exemption under federal law and commence construction and operation of a small-scale hydroelectric generation facility pursuant to the provisions of this chapter. Construction may not commence until the department has clear and convincing evidence that construction is economically feasible and is the most practical means by which the facility could be developed.

(2) Financing of construction and operation of the facility must be accomplished in a manner determined by the department to be most feasible.

~~(3) The department may not sell power generated at a facility except to a public utility, a rural electric cooperative, or a federal power marketing agency organized in Montana and selling power to Montana customers.~~"

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 30, 1999

CHAPTER NO. 210

[SB 70]

AN ACT CLARIFYING VETERANS' BURIAL LAWS; SUBSTITUTING THE TERM "INTERMENT" FOR THE TERM "BURIAL" TO PROVIDE BENEFITS FOR VETERANS WHOSE REMAINS ARE CREMATED; DEFINING THE TERM "RESIDENCE" FOR DETERMINING PAYMENT OF INTERMENT BENEFITS BY THE COUNTY OF RESIDENCE; PROVIDING FOR INTERMENT REIMBURSEMENT FOR A VETERAN WHO DIES AT A FEDERAL INSTITUTION OR AT A PRIVATE FACILITY; CLARIFYING THAT THE COUNTY OF RESIDENCE IS RESPONSIBLE FOR PAYING THE FIRST $30 OF THE COSTS FOR SHIPPING AND RAISING THE HEADSTONE ON A VETERAN'S GRAVE; AMENDING SECTIONS 10-2-501 AND 10-2-503, MCA; REPEALING SECTIONS 10-2-502 AND 10-2-505, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-2-501, MCA, is amended to read:

"10-2-501. ~~Burial~~ *Interment* allowance for ~~military~~ *veterans — payment by county of residence — veterans' interment supervisor — definitions.* (1) The board of commissioners of each county in this state shall designate a person in the county, preferably a veteran, as veterans' ~~burial~~ *interment* supervisor.

(2) The veterans' ~~burial~~ *interment* supervisor shall cause to be decently interred the body *or cremated remains* of any veteran who was a resident of the state of Montana at the time of death. In performing this duty, the veterans' ~~burial~~ *interment* supervisor shall ensure that the desires of the veteran's personal representative or heirs are not violated. *The veterans' interment supervisor may not receive any compensation for duties performed in compliance with this part.*

HeinOnline -- 1999 vol. I 670 1999

(3) The ~~burial~~ *interment* may not be made in ~~any~~ *a* burial ~~grounds~~ *ground* or cemetery or in ~~any~~ *a* portion of ~~any~~ *a* hurial ~~grounds~~ *ground* or cemetery used exclusively for the ~~burial~~ *interment* of pauper dead.

(4) A sum not to exceed $250 to defer ~~burial~~ *interment* expenses must be paid hy the ~~county commissioners of the~~ *veteran's* county ~~in which the veteran was a bona fide resident at the time of death~~ *of residence*.

(5) The ~~burial~~ *interment* henefits are not available in the case of ~~any~~ *a* veteran whose personal representative or heirs waive the benefits.

(6) Whenever ~~burial~~ *interment* is of a resident of a Montana veterans' home, a sum not to exceed $250 to defer ~~burial~~ *interment* expenses must be paid by the ~~county commissioners of the~~ *veteran's* county ~~in which the veteran resided prior to admittance to a Montana veterans' home~~ *of residence*.

(7) If a veteran dies while temporarily absent from the state or county of residence, the provisions of this section apply and the ~~burial~~ *interment* expenses not exceeding the amount specified in this section must be paid in the same manner as provided in this section.

(8) ~~Whenever~~ *When* a veteran dies at ~~any public~~ *an* institution of the state of Montana, other than a Montana veterans' home, *at a federal institution, or at a private facility* and ~~burial~~ *interment* for any cause is not made in the *veteran's* county of ~~the former~~ residence ~~of the veteran~~, the officers of the ~~state~~ institution *or facility* shall provide the proper ~~burial~~ *interment* prescribed in this section. The reimbursement for the expense of each ~~burial~~ *interment* may not exceed $250. The expense must be paid by the *veteran's* county ~~in which the veteran resided at the time of entry into the institution~~ *of residence*.

(9) ~~A burial~~ *An interment* may not he covered by any special or standing contract ~~whereby~~ *under which* the cost of ~~burial~~ *interment* is reduced below the maximum amount fixed in this section, to the disparagement of proper interment.

(10) The veterans' ~~burial~~ *interment* supervisor shall, upon request of the deceased veteran's ~~next of kin or guardian~~ *personal representative or heirs*, assist in applying to the proper authority for a suitable headstone, as provided by act of congress, and in placing the headstone on the veteran's grave. ~~A sum not exceeding $70~~ *The reimbursement costs* for the shipping and raising of the headstone *may not exceed $70 and* must be paid by the ~~county commissioners of the~~ *vetcran's* county ~~in which the veteran was a resident~~ *of residence* at the time of death. The expense must be audited and paid as provided in this section for ~~burial~~ *interment* expenses.

(11) ~~The~~ *After payment of the first $30 from county funds, the* county treasurer may withhold an amount of the county total monthly remittance to the state treasurer equal to the actual cost paid, up to $40, for the shipping and raising of each headstone.

(12) As used in this part, the following definitions apply:

(a) "Interment" has the meaning provided in 37-19-101.

(b) "Residence" is determined as provided in 13-1-112. If the intent of the veteran regarding residence cannot be determined under 13-1-112, the costs of interment must be paid by the veteran's county of residence at the time of admittance into a Montana veterans' home, a state or federal institution, or a private facility."

HeinOnline -- 1999 vol. I 671 1999

Section 2. Section 10-2-503, MCA, is amended to read:

"10-2-503. Report of actions and expenses by ~~burial~~ *veterans' interment* supervisor. It is the duty of the person appointed as provided in 10-2-501 to cause the vetoran to be ~~buried~~ *interred* as provided in this part, and ~~he~~ *the veterans' interment supervisor* shall immediately report ~~his~~ *the* action to the clerk of the board of county commissioners, setting forth all the facts, together with the veteran's name and rank, the last command to which the veteran helonged, so far as is known, the date of death, the exact place of ~~burial~~ *interment*, and an itemized statement of the expenses incurred by reason of the ~~burial~~ *interment*. The board of county commissioners may direct that additional information be kept in the book required to be kept by the clerk of the board of county commissioners by 10-2-504."

Section 3. Repealer. Sections 10-2-502 and 10-2-505, MCA, are repealed.

Seetion 4. Effective date — applicability. [This act] is effective on passage and approval and applies to claims filed on or after [the effective date of this act].

Approved March 30, 1999

CHAPTER NO. 211

[SB 100]

AN ACT INCREASING THE TOTAL PER-ANB AND BASIC ENTITLEMENTS FOR PUBLIC SCHOOLS FOR SCHOOL FISCAL YEARS 2000 AND 2001; INCREASING THE TOTAL PER-ANB ENTITLEMENT FOR AN ELEMENTARY SCHOOL DISTRICT OR A K-12 DISTRICT ELEMENTARY PROGRAM TO $3,529 FOR SCHOOL FISCAL YEAR 2000 AND TO $3,653 FOR SCHOOL FISCAL YEAR 2001; INCREASING THE TOTAL PER-ANB ENTITLEMENT FOR A HIGH SCHOOL DISTRICT OR A K-12 DISTRICT HIGH SCHOOL PROGRAM TO $4,821 FOR SCHOOL FISCAL YEAR 2000 AND TO $4,869 FOR SCHOOL FISCAL YEAR 2001; INCREASING THE DIRECT STATE AID PERCENTAGE TO 41.1 PERCENT FOR FISCAL YEAR 2000 AND TO 41.8 PERCENT FOR FISCAL YEAR 2001; DECREASING THE GUARANTEED TAX BASE AID PERCENTAGE TO 38.9 PERCENT FOR FISCAL YEAR 2000 AND TO 38.2 PERCENT FOR FISCAL YEAR 2001; PROVIDING APPROPRIATIONS; AMENDING SECTIONS 20-9-306, 20-9-366, 20-9-367, AND 20-9-368, MCA; AND PROVIDING EFFECTIVE DATES, APPLICABILITY DATES, AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Seetion 1. Section 20-9-306, MCA, is amended to read:

"20-9-306. Definitions. As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "BASE" means base amount for school equity.

(2) "BASE aid" means:

(a) direct state aid for ~~40%~~ *41.1%* of the basic entitlement and ~~40%~~ *41.1%* of the total per-ANB entitlement for the general fund budget of a district; and

HeinOnline -- 1999 vol. I 672 1999

(b) guaranteed tax base aid for an eligible district for any amount up to ~~40%~~ *38.9%* of the basic entitlement, up to ~~40%~~ *38.9%* of the total per-ANB entitlement budgeted in the general fund budget of a district, and up to 40% of the special education allowable cost payment.

(3) "BASE budget" means the minimum general fund budget of a district, which includes 80% of the basic entitlement, 80% of the total per-ANB entitlement, and up to 140% of the special education allowable cost payment.

(4) "BASE budget levy" means the district levy in support of the BASE budget of a district, which may be supplemented by guaranteed tax base aid if the district is eligible under the provisions of 20-9-366 through 20-9-369.

(5) "BASE funding program" means the state program for the equitable distribution of the state's share of the cost of Montana's basic system of public elementary schools and high schools, through county equalization aid as provided in 20-9-331 and 20-9-333 and state equalization aid as provided in 20-9-343, in support of the BASE budgets of districts and special education allowable cost payments as provided in 20-9-321.

(6) "Basic entitlement" means:

(a) $200,000 for each high school district;

(b) $18,000 for each elementary school district or K-12 district elementary program without an approved and accredited junior high school or middle school; and

(c) the prorated entitlement for each elementary school district or K-12 district elementary program with an approved and accredited junior high school or middle school, calculated as follows:

(i) $18,000 times the ratio of the ANB for kindergarten through grade 6 to the total ANB of kindergarten through grade 8; plus

(ii) $200,000 times the ratio of the ANB for grades 7 and 8 to the total ANB of kindergarten through grade 8.

(7) "Direct state aid" means ~~40%~~ *41.1%* of the basic entitlement and ~~40%~~ *41.1%* of the total per-ANB entitlement for the general fund budget of a district and funded with state and county equalization aid.

(8) "Maximum general fund budget" means a district's general fund budget amount calculated from the basic entitlement for the district, the total per-ANB entitlement for the district, and up to 153% of special education allowable cost payments.

(9) "Over-BASE budget levy" means the district levy in support of any general fund amount budgeted that is above the BASE budget and below the maximum general fund budget for a district.

(10) "Total per-ANB entitlement" means the district entitlement resulting from the following calculations:

(a) for a high school district or a K-12 district high school program, a maximum rate of ~~$4,773~~ *$4,821* for the first ANB is decreased at the rate of 50 cents per ANB for each additional ANB of the district up through 800 ANB, with each ANB in excess of 800 receiving the same amount of entitlement as the 800th ANB;

HeinOnline -- 1999 vol. I 673 1999

(b) for an elementary school district or a K-12 district elementary program without an approved and accredited junior high school or middle school, a maximum rate of ~~$3,410~~ *$3,529* for the first ANB is decreased at the rate of 20 cents per ANB for each additional ANB of the district up through 1,000 ANB, with each ANB in excess of 1,000 receiving the same amount of entitlement as the 1,000th ANB; and

(c) for an elementary school district or a K-12 district elementary program with an approved and accredited junior high school or middle school, the sum of:

(i) a maximum rate of ~~$3,410~~ *$3,529* for the first ANB for kindergarten through grade 6 is decreased at the rate of 20 cents per ANB for each additional ANB up through 1,000 ANB, with each ANB in excess of 1,000 receiving the same amount of entitlement as the 1,000th ANB; and

(ii) a maximum rate of ~~$4,773~~ *$4,821* for the first ANB for grades 7 and 8 is decreased at the rate of 50 cents per ANB for each additional ANB for grades 7 and 8 up through 800 ANB, with each ANB in excess of 800 receiving the same amount of entitlement as the 800th ANB."

Section 2. Section 20-9-306, MCA, is amended to read:

"20-9-306. Definitions. As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "BASE" means base amount for school equity.

(2) "BASE aid" means:

(a) direct state aid for ~~40%~~ *41.8%* of the basic entitlement and ~~40%~~ *41.8%* of the total per-ANB entitlement for the general fund budget of a district; and

(b) guaranteed tax base aid for an eligible district for any amount up to ~~40%~~ *38.2%* of the basic entitlement, up to ~~40%~~ *38.2%* of the total per-ANB entitlement budgeted in the general fund budget of a district, and up to 40% of the special education allowable cost payment.

(3) "BASE budget" means the minimum general fund budget of a district, which includes 80% of the basic entitlement, 80% of the total per-ANB entitlement, and up to 140% of the special education allowable cost payment.

(4) "BASE budget levy" means the district levy in support of the BASE budget of a district, which may be supplemented by guaranteed tax base aid if the district is eligible under the provisions of 20-9-366 through 20-9-369.

(5) "BASE funding program" means the state program for the equitable distribution of the state's share of the cost of Montana's basic system of public elementary schools and high schools, through county equalization aid as provided in 20-9-331 and 20-9-333 and state equalization aid as provided in 20-9-343, in support of the BASE budgets of districts and special education allowable cost payments as provided in 20-9-321.

(6) "Basic entitlement" means:

(a) $200,000 for each high school district;

(b) $18,000 for each elementary school district or K-12 district elementary program without an approved and accredited junior high school or middle school; and

HeinOnline -- 1999 vol. I 674 1999

(c) the prorated entitlement for each elementary school district or K-12 district elementary program with an approved and accredited junior high school or middle school, calculated as follows:

(i) $18,000 times the ratio of the ANB for kindergarten through grade 6 to the total ANB of kindergarten through grade 8; plus

(ii) $200,000 times the ratio of the ANB for grades 7 and 8 to the total ANB of kindergarten through grade 8.

(7) "Direct state aid" means ~~40%~~ *41.8%* of the basic entitlement and ~~40%~~ *41.8%* of the total per-ANB entitlement for the general fund budget of a district and funded with state and county equalization aid.

(8) "Maximum general fund budget" means a district's general fund budget amount calculated from the basic entitlement for the district, the total per-ANB entitlement for the district, and up to 153% of special education allowable cost payments.

(9) "Over-BASE budget levy" means the district levy in support of any general fund amount budgeted that is above the BASE budget and below the maximum general fund budget for a district.

(10) "Total per-ANB entitlement" means the district entitlement resulting from the following calculations:

(a) for a high school district or a K-12 district high school program, a maximum rate of ~~$4,773~~ *$4,869* for the first ANB is decreased at the rate of 50 cents per ANB for each additional ANB of the district up through 800 ANB, with each ANB in excess of 800 receiving the same amount of entitlement as the 800th ANB;

(b) for an elementary school district or a K-12 district elementary program without an approved and accredited junior high school or middle school, a maximum rate of ~~$3,410~~ *$3,653* for the first ANB is decreased at the rate of 20 cents per ANB for each additional ANB of the district up through 1,000 ANB, with each ANB in excess of 1,000 receiving the same amount of entitlement as the 1,000th ANB; and

(c) for an elementary school district or a K-12 district elementary program with an approved and accredited junior high school or middle school, the sum of:

(i) a maximum rate of ~~$3,410~~ *$3,653* for the first ANB for kindergarten through grade 6 is decreased at the rate of 20 cents por ANB for each additional ANB up through 1,000 ANB, with each ANB in excess of 1,000 receiving the same amount of entitlement as the 1,000th ANB; and

(ii) a maximum rate of ~~$4,773~~ *$4,869* for the first ANB for grades 7 and 8 is decreased at the rate of 50 cents por ANB for each additional ANB for grades 7 and 8 up through 800 ANB, with each ANB in excess of 800 receiving the same amount of entitlement as the 800th ANB."

Section 3. Section 20-9-366, MCA, is amended to read:

"20-9-366. Definitions. As used in 20-9-366 through 20-9-369, the following definitions apply:

(1) "County retirement mill value per elementary ANB" or "county retirement mill value per high school ANB" means the sum of the taxable valuation in the previous year of all property in the county divided by 1,000, with the quotient divided by the total county elementary ANB count or the total county high school

HeinOnline -- 1999 vol. I 675 1999

ANB count used to calculate the elementary school districts' and high school districts' current year total per-ANB entitlement amounts.

(2) (a) "District guaranteed tax base ratio" for guaranteed tax base funding for the BASE budget of an eligible district means the taxable valuation in the previous year of all property in the district divided by the sum of the district's current year ~~direct state aid and 40% of the special education allowable cost payment~~ *BASE budget amount less direct state aid.*

(b) "District mill value per ANB", for school facility entitlement purposes, means the taxable valuation in the previous year of all property in the district divided by 1,000, with the quotient divided by the ANB count of the district used to calculate the district's current year total per-ANB entitlement amount.

(3) (a) "Statewide elementary guaranteed tax base ratio" or "statewide high school guaranteed tax base ratio", for guaranteed tax base funding for the BASE budget of an eligible district, means the sum of the taxable valuation in the previous year of all property in the state, multiplied by 175% and divided by the total sum of either the state elementary school districts' or the high school districts' current year ~~total direct state aid and 40% of special education allowable cost amounts~~ *BASE budget amounts less total direct state aid.*

(b) "Statewide mill value per elementary ANB" or "statewide mill value per high school ANB", for school facility entitlement and retirement guaranteed tax base purposes, means the sum of the taxable valuation in the previous year of all property in the state, multiplied by 121% and divided by 1,000, with the quotient divided by the total state elementary ANB count or the total state high school ANB amount used to calculate the elementary school districts' and high school districts' current year total per-ANB entitlement amounts."

Section 4. Section 20-9-367, MCA, is amended to read:

"20-9-367. Eligibility to receive guaranteed tax base aid or state advance or reimbursement for school facilities. (1) If the district guaranteed tax base ratio of any elementary or high school district is less than the corresponding statewide elementary or high school guaranteed tax base ratio, the district may receive guaranteed tax base aid based on the number of mills levied in the district in support of up to ~~40%~~ *38.9%* of the basic entitlement, up to ~~40%~~ *38.9%* of the total per-ANB entitlement, and up to 40% of the special education allowable cost payment budgeted within the general fund budget.

(2) If the county retirement mill value per elementary ANB or the county retirement mill value per high school ANB is less than the corresponding statewide mill value per elementary ANB or high school ANB, the county may receive guaranteed tax base aid based on the number of mills levied in the county in support of the retirement fund budgets of the respective elementary or high school districts in the county.

(3) For the purposes of 20-9-370 and 20-9-371, if the district mill value per elementary ANB or the district mill value per high school ANB is less than the corresponding statewide mill value per elementary ANB or statewide mill value per high school ANB, the district may receive a state advance or reimbursement for school facilities in support of the debt service fund."

Section 5. Section 20-9-367, MCA, is amended to read:

"20-9-367. Eligibility to receive guaranteed tax base aid or state advance or reimbursement for school facilities. (1) If the district guaranteed tax base ratio of any elementary or high school district is less than the

HeinOnline -- 1999 vol. I 676 1999

corresponding statewide elementary or high school guaranteed tax base ratio, the district may receive guaranteed tax base aid based on the number of mills levied in the district in support of up to ~~40%~~ *38.2%* of the basic entitlement, up to ~~40%~~ *38.2%* of the total per-ANB entitlement, and up to 40% of the special education allowable cost payment budgeted within the general fund budget.

(2) If the county retirement mill value per elementary ANB or the county retirement mill value per high school ANB is less than the corresponding statewide mill value per elementary ANB or high school ANB, the county may receive guaranteed tax base aid based on the number of mills levied in the county in support of the retirement fund budgets of the respective elementary or high school districts in the county.

(3) For the purposes of 20-9-370 and 20-9-371, if the district mill value per elementary ANB or the district mill value per high school ANB is less than the corresponding statewide mill value per elementary ANB or statewide mill value per high school ANB, the district may receive a state advance or reimbursement for school facilities in support of the debt service fund."

Section 6. Section 20-9-368, MCA, is amended to read:

"20-9-368. Amount of guaranteed tax base aid. (1) The amount of guaranteed tax base aid per ANB that a county may receive in support of the retirement fund budgets of the elementary school districts in the county is the difference between the county mill value per elementary ANB and the statewide mill value per elementary ANB, multiplied by the number of mills levied in support of the retirement fund budgets for the elementary districts in the county.

(2) The amount of guaranteed tax base aid per ANB that a county may receive in support of the retirement fund budgets of the high school districts in the county is the difference between the county mill value per high school ANB and the statewide mill value per high school ANB, multiplied by the number of mills levied in support of the retirement fund budgets for the high school districts in the county.

(3) The amount of guaranteed tax base aid that a district may receive in support of up to ~~40%~~ *38.9%* of the basic entitlement, up to ~~40%~~ *38.9%* of the total per-ANB entitlement budgeted within the general fund budget, and up to 40% of the special education payment is calculated in the following manner:

(a) multiply the sum of the district's direct state aid and 40% of the special education allowable cost payment by the corresponding statewide guaranteed tax base ratio;

(b) subtract the taxable valuation of the district from the product obtained in subsection (3)(a); and

(c) divide the remainder by 1,000 to determine the equivalent to the dollar amount of guaranteed tax base aid for each mill levied.

(4) Guaranteed tax base aid provided to any county or district under this section is earmarked to finance the fund or portion of the fund for which it is provided. If a county or district receives more guaranteed tax base aid than it is entitled to, the excess must be returned to the state as required by 20-9-344."

Section 7. Section 20-9-368, MCA, is amended to read:

"20-9-368. Amount of guaranteed tax base aid. (1) The amount of guaranteed tax base aid per ANB that a county may receive in support of the retirement fund budgets of the elementary school districts in the county is the

HeinOnline -- 1999 vol. I 677 1999

difference between the county mill value per elementary ANB and the statewide mill value per elementary ANB, multiplied by the number of mills levied in support of the retirement fund budgets for the elementary districts in the county.

(2) The amount of guaranteed tax base aid per ANB that a county may receive in support of the retirement fund budgets of the high school districts in the county is the difference between the county mill value per high school ANB and the statewide mill value per high school ANB, multiplied by the numher of mills levied in support of the retirement fund budgets for the high school districts in the county.

(3) The amount of guaranteed tax base aid that a district may receive in support of up to ~~40%~~ *38.2%* of the basic entitlement, up to ~~40%~~ *38.2%* of the total per-ANB entitlement budgeted witbin the general fund budget, and up to 40% of tbe special education payment is calculated in the following manner:

(a) multiply the sum of the district's ~~direct state aid and 40% of the special education allowable cost payment~~ *BASE budget amount less direct state aid* by the corresponding statewide guaranteed tax hase ratio;

(b) subtract the taxable valuation of the district from the product obtained in subsection (3)(a); and

(c) divide the remainder by 1,000 to determine the equivalent to the dollar amount of guaranteed tax base aid for each mill levied.

(4) Guaranteed tax base aid provided to any county or district under this section is earmarked to finance the fund or portion of the fund for which it is provided. If a county or district receives more guaranteed tax base aid than it is entitled to, the excess must be returned to the state as required by 20-9-344."

Section 8. Appropriations. (1) There is appropriated from tbe general fund $34,700,000 for school fiscal years beginning July 1, 1999, and July 1, 2000, to fund the per-ANB and basic entitlement increases provided for in [sections 1 and 2].

(2) There is appropriated from the general fund $1.5 million for school fiscal years beginning July 1, 1999, and July 1, 2000, to be used for special education, including any BASE aid.

Section 9. Effective dates — applicability. (1) Except as provided in subsection (2), [this act] is effective July 1, 1999, and applies to school budgets for the school fiscal year beginning July 1, 1999.

(2) [Sections 2, 3, 5, and 7] are effective July 1, 2000, and apply to school budgets for school fiscal years beginning on or after July 1, 2000.

Section 10. Termination. [Sections 1, 4, and 6] terminate June 30, 2000.

Approved March 30, 1999

CHAPTER NO. 212

[SB 103]

AN ACT AMENDING THE INSURANCE INFORMATION AND PRIVACY PROTECTION ACT; CLARIFYING THE DEFINITION OF INSURANCE FUNCTION AND MEDICAL RECORD INFORMATION; REQUIRING CONSENT BEFORE AN INSURANCE INSTITUTION, INSURANCE

HeinOnline -- 1999 vol. I 678 1999

PRODUCER, OR INSURANCE-SUPPORT ORGANIZATION COLLECTS PERSONAL OR PRIVILEGED INFORMATION ABOUT AN INDIVIDUAL; PROVIDING AN EXCEPTION FOR INDIVIDUAL INSURANCE PRODUCERS; RESTRICTING DISCLOSURE OF MEDICAL RECORD INFORMATION; ALLOWING DISCLOSURE OF INFORMATION THAT IS NOT MEDICAL RECORD INFORMATION ABOUT AN INDIVIDUAL BY AN INSURANCE INSTITUTION, INSURANCE PRODUCER, OR INSURANCE-SUPPORT ORGANIZATION TO ANY AFFILIATE FOR MARKETING OF INSURANCE OR FINANCIAL PRODUCTS; PROVIDING INDIVIDUALS ACCESS TO RECORDS OF UNAUTHORIZED DISCLOSURE OF THEIR PERSONAL OR PRIVILEGED INFORMATION BY AN INSURANCE INSTITUTION, INSURANCE PRODUCER, OR INSURANCE-SUPPORT ORGANIZATION; AMENDING SECTIONS 33-19-104, 33-19-202, 33-19-204, AND 33-19-306, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-19-104, MCA, is amended to read:

"33-19-104. Definitions. As used in this chapter, the following definitions apply:

(1) (a) "Adverse underwriting decision" means any of the following actions with respect to insurance transactions involving insurance coverage that are individually underwritten:

(i) a declination of insurance coverage;

(ii) a termination of insurance coverage;

(iii) failure of an insurance producer to apply for insurance coverage with a specific insurance institution that the insurance producer represents and that is requested by an applicant;

(iv) in the case of a property or casualty insurance coverage:

(A) placement by an insurance institution or insurance producer of a risk with a residual market mechanism, an unauthorized insurer, or an insurance institution that specializes in substandard risks; or

(B) the charging of a higher rate on the basis of information that differs from that which the applicant or policyholder furnished;

(v) in the case of a life, health, or disability insurance coverage, an offer to insure at higher than standard rates.

(b) The following actions are not adverse underwriting decisions, but the insurance institution or insurance producer responsible for their occurrence shall nevertheless provide the applicant or policyholder with the specific reason or reasons for their occurrence:

(i) the termination of an individual policy form on a class or statewide basis;

(ii) a declination of insurance coverage solely because the coverage is not available on a class or statewide basis; or

(iii) the rescission of a policy.

HeinOnline -- 1999 vol. I 679 1999

(2) "Affiliate" or "affiliated" means a person who directly, or indirectly through one or more intermediaries, controls, is controlled hy, or is under common control with another person.

(3) "Applicant" means a person who seeks to contract for insurance coverage other than a person seeking group insurance that is not individually underwritten.

(4) "Consumer report" means any written, oral, or other communication of information hearing on a natural person's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living that is used or expected to be used in connection with an insurance transaction.

(5) "Consumer reporting agency" means a person who:

(a) regularly engages, in whole or in part, in the practice of assembiing or preparing consumer reports for a monetary fee;

(b) obtains information primarily from sources other than insurance institutions; and

(c) furnishes consumer reports to other persons.

(6) "Control", including the terms "controlled by" or "under common control with", means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, hy contract other than a commercial contract for geods or nonmanagement services, or otherwise, unless the power is the result of an official pesition with or corporate office held by the person.

(7) "Declination of insurance coverage" means a denial, in whole or in part, by an insurance institution or insurance producer of requested insurance coverage.

(8) "Individual" means a natural person who:

(a) regarding property or casualty insurance, is a past, present, or proposed named insured or certificate holder;

(b) regarding life, health, or disability insurance, is a past, present, or proposed principal insured or certificate holder;

(c) is a past, present, or proposed pelicyowner;

(d) is a past or present applicant;

(e) is a past or present claimant; or

(f) derived, derives, or is propesed to derive insurance coverage under an insurance policy or certificate subject to this chapter.

(9) "Institutional source" means a person or governmental entity that provides information about an individual to an insurance producer, insurance institution, or insurance-support organization, other than:

(a) an insurance producer;

(h) the individual who is the subject of the information; or

(c) a natural person acting in a personal capacity rather than a business or professional capacity.

HeinOnline -- 1999 vol. I 680 1999

(10) "Insurance function" means claims administration, claims adjustment and management, fraud investigation, underwriting, loss control, ratemaking functions, reinsurance, risk management, case management, disease management, quality assessment, quality improvement, provider credentialing verification, utilization review, peer review activities, grievance procedures, and internal administration of compliance and policyholder service functions.

~~(10)~~*(11)* (a) "Insurance institution" means a corporation, association, partnership, reciprocal exchange, interinsurer, Lloyd's insurer, fraternal benefit society, or other person engaged in the business of insurance, including health maintenance organizations, and health service corporations as defined in 33-30-101.

(b) Insurance institution does not include insurance producers or insurance-support organizations.

~~(11)~~*(12)* "Insurance producer" means an insurance producer as defined in 33-17-102 and 33-30-311.

~~(12)~~*(13)* (a) "Insurance-support organization" means a person who assembles or collects information about natural persons for the purpose of providing the information to an insurance institution or insurance producer for insurance transactions, including:

(i) the furnishing of consumer reports or investigative consumer reperts to an insurance institution or insurance producer for use in connection with an insurance transaction; or

(ii) the collection of personal information from insurance institutions, insurance producers, or other insurance-support organizations for the purpose of detecting or preventing fraud, material misrepresentation, or material nondisclosure in connection with insurance underwriting or insurance claim activity.

(b) The following persons are not insurance-support organizations for purposes of this chapter: insurance producers, government institutions, medical care institutions, and medical professionals.

~~(13)~~*(14)* "Insurance transaction" means a transaction involving insurance primarily for personal, family, or household needs, rather than for business or professional needs, that entails:

(a) the determination of an individual's eligibility for an insurance coverage, benefit, or payment; or

(h) the servicing of an insurance application, policy, contract, or certificate.

~~(14)~~*(15)* "Investigative consumer report" means a consumer report or portion of a consumer report containing information about a natural person's character, general reputation, personal characteristics, or mode of living obtained through personal interviews with the person's neighbors, friends, associates, acquaintances, or others who may have knowledge concerning this type of information.

~~(13)~~*(16)* "Medical care institution" means a facility or institution that is licensed to provide health care services to natural persons, including but not limited to health maintenance organizations, home health agencies, hospitals, medical clinics, public health agencies, rehabilitation agencies, and skilled nursing facilities.

HeinOnline -- 1999 vol. I 681 1999

~~(16)~~*(17)* "Medical professional" means a person who is licensed or certified to provide health care services to natural persons, including but not limited to a chiropractor, clinical dietitian, clinical psychologist, dentist, nurse, occupational therapist, optometrist, pharmacist, physical therapist, physician, podiatrist, psychiatric social worker, or speech-language patbologist.

~~(17)~~*(18)* "Medical record information" means personal information that:

(a) relates to an individual's physical or mental condition, medical history, *medical claims history,* or medical treatment; and

(b) is obtained from a medical professional or medical care institution, from the individual, or from the individual's spouse, parent, or legal guardian.

~~(18)~~*(19)* "Person" means a natural person, corporation, association, partnership, or other legal entity.

~~(16)~~*(20)* "Personal information" means any individually identifiable information gathered in connection with an insurance transaction from which judgments can be made about an individual's character, habits, avocations, finances, occupation, general reputation, credit, health, or any other personal characteristics. Personal information includes an individual's name and address and medical record information but does not include privileged information.

~~(20)~~*(21)* "Policyholder" means a person who:

(a) in the case of individual property or casualty insurance, is a present named insured;

(b) in the case of individual life, health, or disability insurance, is a present policyowner; or

(c) in the case of group insurance that is individually underwritten, is a present group certificate holder.

~~(21)~~*(22)* "Pretext interview" means an interview during which a person, in an attempt to obtain information about a natural person, performs one or more of the following acts:

(a) pretends to be someone else;

(b) pretends to represent a person not in fact being represented;

(c) misrepresents the true purpose of the interview; or

(d) refuses to provide identification upon request.

~~(22)~~*(23)* "Privileged information" means any individually identifiable information that:

(a) relates to a civil or criminal proceeding involving an individual; and

(b) is collected in connection with or in reasonable anticipation of a claim for insurance benefits or civil or criminal proceeding involving an individual. Information otherwise meeting the requirements of privileged information under this subsection is considered personal information under this chapter if it is disclosed in violation of 33-19-306.

~~(22)~~*(24)* "Residual market mechanism" means an association, organization, or other entity defined or described in 61-6-144.

(25) (a) "Separate, written authorization" means an individual's written authorization that is:

HeinOnline -- 1999 vol. I 682 1999

(i) given to the recipient of personal or privileged information that has been disclosed pursuant to 33-19-306(3) through (17); and

(ii) separate from any written authorization obtained by the disclosing insurance institution, insurance producer, or insurance-support organization pursuant to 33-19-204.

(b) The term does not include the insurance institution, insurance producer, or insurance-support organization that discloses personal or privileged information pursuant to 33-19-306(3) through (17).

~~(24)~~*(26)* "Termination of insurance coverage" or "termination of an insurance policy" means either a cancellation or nonrenewal of an insurance policy, in whole or in part, for any reason other than the failure to pay a premium as required by the policy.

~~(25)~~*(27)* "Unauthorized insurer" means an insurance institution that has not been granted a certificate of authority by the commissioner to transact the business of insurance in this state."

Section 2. Section 33-19-202, MCA, is amended to read:

"33-19-202. Notice of insurance information practices. (1) An insurance institution or insurance producer shall provide a notice of information practices to all applicants or policyholders in connection with insurance transactions as provided below:

(a) in the case of an application for insurance, a notice ~~shall~~ *must* be provided no later than:

(i) at the time of the delivery of the insurance policy or certificate when personal information is collected only from the applicant or from public records; or

(ii) at the time the collection of personal information is initiated when personal information is collected from a source other than the applicant or public records;

(b) in the case of a policy renewal, a notice ~~shall~~ *must* be provided no later than the policy renewal date, except that ~~no~~ notice is *not* required in connection with a policy renewal if:

(i) personal information is collected only from the policyholder or from public records; or

(ii) a notice meeting the requirements of this section has been given within the previous 24 months; or

(c) in the case of a policy reinstatement or change in insurance benefits, a notice ~~shall~~ *must* be provided no later than the time a request for a policy reinstatement or change in insurance benefits is received by the insurance institution, except that ~~no~~ notice is *not* required if personal information is collected only from the policyholder or from public records.

(2) The notice must be in writing and must state:

(a) whether personal information may be collected from persons other than the individual or individuals proposed for coverage;

(b) the types of personal information that may be collected and the types of sources and investigative techniques that may be used to collect ~~such~~ *the* information;

HeinOnline -- 1999 vol. I 683 1999

(c) the types of disclosures identified in subsections (3), (4), (5), (6), (7), (10), (12), ~~(13),~~ and ~~(15)~~ *(14)* of 33-19-306 and the circumstances under which ~~such~~ *the* disclosures may be made without prior authorization. However, only those circumstances that occur with such frequency as to indicate a general business practice must be described.

(d) a description of the rights established under 33-19-301 and 33-19-302 and the manner in which those rights may be exercised; and

(e) that information obtained from a report prepared by an insurance-support organization may be retained by the insurance-support organization and disclosed to other persons.

(3) In lieu of the notice prescribed in subsection (2), the insurance institution or insurance producer may provide an abbreviated notice informing the applicant or policyholder that:

(a) personal information may be collected from persons other than the individual or individuals proposed for coverage;

(b) ~~such~~ *the* information as well as other personal or privileged information subsequently collected by the insurance institution or insurance producer may in certain circumstances be disclosed to third parties without authorization;

(c) a right of access and correction exists with respect to all personal information collected; and

(d) the notice prescribed in subsection (2) must be furnished to the applicant or policyholder upon request.

(4) The obligations imposed by this section upon an insurance institution or insurance producer may be satisfied by another insurance institution or insurance producer authorized to act on its behalf."

Section 3. Section 33-19-204, MCA, is amended to read:

"33-19-204. Content, *use,* and disclosure of authorization forms. Notwithstanding any other provision of law of this state, an insurance institution, insurance producer, *except as provided in subsection (10),* or insurance-support organization may not ~~utilize as its disclosure authorization form~~ *collect personal or privileged information about an individual* in connection with insurance transactions *except in conformance with* a form or statement that authorizes the disclosure of personal or privileged information about ~~an~~ *the* individual to the insurance institution, insurance producer, or insurance-support organization ~~unless~~ *and* the form or statement:

(1) is written in plain language;

(2) is dated *and signed by the individual or a person authorized to act on behalf of the individual*;

(3) specifies the types of persons authorized to disclose information about the individual;

(4) specifies the nature of the information authorized to be disclosed;

(5) names the insurance institution or insurance producer and identifies by generic reference representatives of the insurance institution to whom the individual is authorizing information to be disclosed;

(6) specifies the purposes for which the information is collected;

HeinOnline -- 1999 vol. I 684 1999

(7) specifies the length of time ~~such~~ *that the* authorization remains valid, which may be no longer than:

(a) in the case of authorizations signed for the purpose of collecting information in connection with an application for an insurance policy, a policy reinstatement, or a request for change in policy benefits:

(i) 30 months from the date the authorization is signed if the application or request involves life, health, or disability insurance;

(ii) 1 year from the date the authorization is signed if the application or request involves property or casualty insurance;

(b) in the case of authorizations signed for the purpose of collecting information in connection with a claim for benefits under an insurance policy:

(i) the term of coverage of the policy if the claim is for a health insurance benefit;

(ii) the duration of the claim if the claim is not for a health insurance benefit; and

(8) advises the individual or a person authorized to act on behalf of the individual that, *subject to the exception provided in subsection (9),* the individual or the individual's authorized representative is entitled to receive a copy of the authorization form *and, upon request, a record of any subsequent disclosures of personal or privileged information pursuant to 33-19-306(2) through (17) that must include:*

(a) the name, address, and institutional affiliation, if any, of each person receiving or examining the recorded health care information during the preceding 3 years;

(b) the date of the receipt or examination; and

(c) to the extent practicable, a description of the information disclosed.

(9) The provisions of subsection (8) do not require disclosure to the individual or person authorized to act on behalf of the individual when the disclosure has been made to a person whose identity could not be discovered under the applicable rules of civil procedure.

(10) An individual insurance producer may collect personal information from an applicant before obtaining a signed authorization form or statement from the applicant. However, the individual insurance producer may not disclose the personal information to any person before obtaining a signed authorization form or statement from the applicant."

Section 4. Section 33-19-306, MCA, is amended to read:

"**33-19-306. Disclosure limitations and conditions.** (1) Except as provided in this section, an insurance institution, insurance producer, or insurance-support organization may not disclose any personal or privileged information about an individual collected or received in connection with an insurance transaction.

(2) Disclosure may be made with the written authorization of the individual but:

(a) if the authorization is submitted by another insurance institution, insurance producer, or insurance-support organization, the authorization must meet the requirements of 33-19-204; or

HeinOnline -- 1999 vol. I 685 1999

(b) if the authorization is suhmitted by a person other than an insurance institution, insurance producer, or insurance-support organization, the authorization must be:

(i) dated;

(ii) signed by the individual; ~~and~~

(iii) sufficient to identify the nature of the information to be disclosed and the person to whom the information is to be disclosed; and

~~(iii)~~*(iv)* obtained 1 year or less prior to the date a disclosure is sought pursuant to this subsection.

(3) Disclosure may be made to a person other than an insurance institution, insurance producer, or insurance-support organization, provided ~~such~~ *that the* disclosure is *limited to that which is* reasonahly necessary:

(a) to enable ~~such~~ *the* person to perform ~~a business, professional, or~~ *an* insurance function for the disclosing insurance institution, insurance producer, or insurance-support organization and ~~such~~ *the* person agrees not to *further* disclose the information ~~further~~ without the individual's *separate,* written authorization ~~unless the further disclosure:~~ *; or*

~~(i) would otherwise be permitted by this section if made by an insurance institution, insurance producer, or insurance support organization; or~~

~~(ii) is reasonably necessary for such person to perform its function for the disclosing insurance institution, insurance producer, or insurance support organization; or~~

(b) to enable ~~such~~ *the* person *that has agreed not to further disclose the information without the individual's separate, written authorization* to provide information to the disclosing insuranco institution, insurance producer, or insurance-support organization for the purpose of:

(i) determining an individual's eligibility for an insurance benefit or payment; or

(ii) detecting or preventing criminal activity, fraud, material misrepresentation, or material nondisclosure in connection with an insurance transaction.

(4) Disclosure may be made to an insurance institution, insurance producer, insurance-support organization, or self-insurer *that has agreed not to further disclose the information without the individual's separate, written authorization* if the information disclosed is limited to that which is reasonably necessary:

(a) to detect or prevent criminal activity, fraud, material misrepresentation, or material nondisclosure in connection with insurance transactions; or

(b) for either the disclosing or receiving insurance institution, insurance producer, or insurance-support organization to perform its *insurance* function in connection with an insurance transaction involving the individual.

(5) Disclosure may be made to a medical care institution or medical professional of that information reasonably necessary for the following purposes:

(a) verifying insurance coverage or benefits;

(b) informing an individual of a medical problem of which the individual may not be aware; or

(c) conducting an operations or services audit.

HeinOnline -- 1999 vol. I 686 1999

(6) Disclosure may be made to an insurance regulatory authority *that agrees not to further disclose the information without the individual's separate, written authorization.*

(7) Disclosure may be made to a law enforcement or other government authority:

(a) to protect the interests of the insurance institution, insurance producer, or insurance-support organization in preventing or prosecuting the perpetration of fraud upon it; or

(b) if the insurance institution, insurance producer, or insurance-support organization reasonably believes that illegal activities have been conducted by the individual.

(8) Disclosure *that is limited to that which is reasonably necessary* may be made as otherwise permitted or required by law.

(9) Disclosure *that is limited to that which is reasonably necessary* may be made in response to a facially valid administrative or judicial order, including a search warrant or subpoena.

(10) ~~Disclosure~~ *(a) Except as provided in subsection (10)(b), disclosure that is limited to that which is reasonably necessary* may be made for the purpose of conducting actuarial or research studies, provided *that*:

~~(a)~~*(i)* no individual ~~may be~~ *is* identified in any actuarial or research report;

~~(b)~~*(ii)* materials allowing the individual to be identified are returned or destroyed as soon as they are no longer needed; and

~~(c)~~*(iii)* the actuarial or research organization agrees not to *further* disclose the information ~~unless the disclosure would otherwise be permitted by this section if made by an insurance institution, insurance producer, or insurance-support organization~~ *without the individual's separate, written authorization.*

(b) Disclosure of information may be made for:

(i) health research that is subject to the approval of an institutional review board and the requirements of federal law and regulations governing biomedical research; or

(ii) epidemiological or drug therapy outcomes research that requires information that has been made anonymous to protect the identity of the patient through coding or encryption.

(11) Disclosure may be made to a party or a representative of a party to a proposed or consummated sale, transfer, merger, or consolidation of all or part of the business of the insurance institution, insurance producer, or insurance-support organization, if:

(a) prior to the consummation of the sale, transfer, merger, or consolidation only ~~such~~ information is disclosed ~~as~~ *that* is reasonably necessary to enable the recipient to make business decisions about the purchase, transfer, merger, or consolidation; and

(b) the recipient agrees not to *further* disclose the information ~~unless the disclosure would otherwise be permitted by this section if made by an insurance institution, insurance producer, or insurance-support organization~~ *without the individual's separate, written authorization.*

~~(12) Disclosure may be made to a person whose only use of such information will be in connection with the marketing of a product or service, if:~~

HeinOnline -- 1999 vol. I 687 1999

~~(a) no medical record information, privileged information, or personal information relating to an individual's character, personal habits, mode of living, or general reputation is disclosed, and no classification derived from such information is disclosed;~~

~~(b) the individual has been given an opportunity to indicate that he does not want personal information disclosed for marketing purposes and has given no indication that he does not want the information disclosed; and~~

~~(c) the person receiving the information agrees not to use it except in connection with the marketing of a product or service.~~

~~(13)~~*(12) (a)* Disclosure *that is limited to that which is reasonably necessary* may be made to ~~an~~ *any* affiliate whose only use of the information will be in connection with an audit of the insurance institution or insurance producer ~~or the marketing of an insurance product or service~~ if the affiliate agrees not to disclose the information for any other purpose or to unaffiliated persons.

(b) Disclosure of personal information that is limited to an individual's name, age, sex, family composition, address, telephone number, occupation, and avocations may be made to any affiliate whose only use of the information is in connection with the marketing of insurance or financial products if the affiliate agrees not to disclose the information for any other purpose or to unaffiliated persons.

~~(14)~~*(13)* ~~Disclosure~~ *Except for medical record information, disclosure* may be made by a consumer reporting agency to a person other than an insurance institution or insurance producer.

~~(15)~~*(14)* Disclosure may be made to a group policyholder for the purpose of reporting claims experience or conducting an audit of the insurance institution's or insurance producer's operations or services if the information disclosed is reasonably necessary for the group policyholder to conduct the review or audit *and the group policyholder agrees not to further disclose the information without the individual's separate, written authorization.*

~~(16)~~*(15)* Disclosure *that is limited to that which is reasonably necessary* may be made to a professional peer review organization for the purpose of reviewing the service or conduct of a medical care institution or medical professional *if the professional peer review organization agrees not to further disclose the information without the individual's separate, written authorization.*

~~(17)~~*(16)* Disclosure *that is limited to that which is reasonably necessary* may be made to a gevernmental authority *as required by federal or state law or* for the purpose of determining the individual's eligibility for health benefits for which the governmental authority may be liable.

~~(18)~~*(17)* Disclosure *that is limited to that which is reasonably necessary* may be made to a certificate holder or policyholder for the purpose of providing information regarding the status of an insurance transaction.

(18) The commissioner may, after notice and hearing, adopt rules to carry out the provisions of this section. The rules may not define the recordkeeping requirements regarding authorized disclosures of personal or privileged information pursuant to subsections (2) through (17) but may define the requirements of any agreement obtained by an insurance institution, insurance producer, or insurance-support organization regarding disclosures of personal or privileged information."

HeinOnline -- 1999 vol. I 688 1999

Section 5. Effective date. [This act] is effective January 1, 2000.

Approved March 30, 1999

CHAPTER NO. 213

[SB 235]

AN ACT SPECIFYING CRITERIA FOR A PRESUMPTION OF NONABANDONMENT FOR MUNICIPAL WATER RIGHTS IN WATERS CLASSIFIED AS "A-CLOSED"; AMENDING SECTION 85-2-227, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, waters classified A-Closed pursuant to ARM 17.30.621 represent the highest quality waters in Montana; and

WHEREAS, almost all A-Closed drainages originate in remote, largely inaccessible, alpine settings that afford maximum natural protection for water quality; and

WHEREAS, there is either no hahitation or development or extremely limited habitation or development in A-Closed drainages; and

WHEREAS, the existing municipal water rights in each of those drainages have been used for municipal supply purposes and will he needed in many of the drainages; and

WHEREAS, the high elevation alpine settinge of A-Closed drainages provide gravity flowing systems that reduce the need for pumping facilities and related energy costs for Montana citizens; and

WHEREAS, the superior mineral, radiological, and microbiological quality of A-Closed waters renders them especially suitable as a raw source of municipal drinking water; and

WHEREAS, there are few gravity flow alternative sources for high quality municipal water, and therefore the loss of the right to use these high quality waters would result in the loss of a unique and irreplaceable natural resource.

THEREFORE, the 56th Legislature of tbe State of Montana finds that it is appropriate to enact legislation to establish a limited presumption of nonahandonment for municipal water rights situated in A-Closed basins.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-2-227, MCA, is amended to read:

"85-2-227. Claim to constitute prima facie evidence — relevant evidence — abandonment — *criteria for presumption of municipal nonabandonment.* (1) For purposes of adjudicating rights pursuant to this part, a claim of an existing right filed in accordance with 85-2-221 or an amended claim of existing right constitutes prima facie proof of its content until the issuance of a final decree. For purposes of administering water rights, the provisions of a temporary preliminary decree or a preliminary decree, as modified after objections and hearings, supersede a claim of existing right until a final decree is issued.

(2) A water judge may consider all relevant evidence in the determination and interpretation of existing water rights. Relevant evidence under this part may include admissible evidence arising before or after July 1, 1973.

HeinOnline -- 1999 vol. I 689 1999

(3) A *Subject to the provisions of subsection (4), a* water judge may determine all or part of an existing water right to be abandoned based on a consideration of all admissible evidence that is relevant, including, without limitation, evidence relating to acts or intent occurring in whole or in part after July 1, 1973.

(4) In a determination of abandonment made under subsection (3), the legislature finds that a water right that is claimed for municipal use from a water classified by the board of environmental review before January 1, 1999, as A-Closed under administrative rule is a unique water suited to municipal water use and that such a claim by a city, town, or other public or private entity that operates a public water supply system, as defined in 75-6-102, is presumed to not be abandoned if the city, town, or other private or public entity has used any part of the water right or municipal water supply and there is admissible evidence that the city, town, or other public or private entity also has:

(a) obtained a filtration waiver under the federal Safe Drinking Water Act, 42 U.S.C. 300(f), et seq.;

(b) acquired, constructed, or regularly maintained diversion or conveyance structures for the future municipal use of the water right;

(c) conducted a formal study, prepared by a registered professional engineer or qualified consulting firm, that includes a specific assessment that using the water right for municipal supply is feasible and that the amount of the water right is reasonable for foreseeable future needs; or

(d) maintained facilities connected to the municipal water supply system to apply the water right to an emergency or supplemental municipal water supply."

Section 2. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 3. Effective date. [This act] is effective on passage and approval.

Approved March 30, 1999

CHAPTER NO. 214

[SB 288]

AN ACT REVISING THE DISPOSITION OF CASH WHEN A SCHOOL DISTRICT CEASES TO EXIST TO REQUIRE THAT WHEN THE TERRITORY IS ASSUMED BY MORE THAN ONE DISTRICT, THE CASH REMAINING, AFTER PAYMENT OF DEBTS, MUST BE PRORATED BETWEEN THE DISTRICTS ON THE BASIS OF THE TAXABLE VALUE OF THE TERRITORY ASSUMED BY EACH DISTRICT; AMENDING SECTION 20-6-413, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-6-413, MCA, is amended to read:

"20-6-413. Cash disposition when district ceases to exist — special levy for tuition debt. Whenever a district ~~shall cease~~ *ceases* to exist in any manner prescribed in this title, except when districts are consolidated, the cash

HeinOnline -- 1999 vol. I 690 1999

on hand to the credit of the funds of the district and the debts of ~~such~~ *the former* district ~~shall~~ *must* be allocated in the following manner:

(1) Any cash to the credit of the district ~~shall~~ *must* be used to pay any debts of the district, including bonded indebtedness, except that any cash available in the debt service fund ~~shall~~ *must* be used first to pay bond interest and all outstanding bonds.

(2) If any cash remains to the credit of the district after paying its debts, the cash ~~shall~~ *must* be transferred by the county treasurer to the credit of the district or districts assuming its territory. When the territory is assumed by more than one district, the remaining cash ~~shall~~ *must* be prorated between the districts on the basis of ~~the number of children attending school and residing within~~ the *taxable value of the* territory assumed by each district as determined by the county superintendent.

(3) If any tuition debt remains as an obligation of the district, the tuition debt ~~shall be~~ *is* the obligation of the taxable property of the discontinued district, except when the tuition debt has been assumed by the consolidated or annexing district. The tuition debt ~~shall~~ *must* be financed by a mill levy on the property of the discontinued district and paid from these proceeds by the county superintendent.

(4) If any debts, other than bonded indebtedness and tuition, remain as an obligation of the district after the cash has been utilized under the provisions of subsection (1) ~~above~~, the debts ~~shall~~ *must* be assigned in the same manner prescribed for the transfer of cash under subsection (2) ~~above~~."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved March 30, 1999

CHAPTER NO. 215

[SB 364]

AN ACT REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO DEVELOP AND IMPLEMENT A SIMPLIFIED APPLICATION AND PROCESS FOR ELIGIBILITY FOR VARIOUS PROGRAMS FOR CHILDREN FOR MEDICAL ASSISTANCE, MEDICAL BENEFITS, HEALTH CARE BENEFITS OR COVERAGE, AND HEALTH CARE SERVICES PROGRAMS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Simplified application form for programs that provide medical assistance or benefits or health insurance to children. (1) The department of public health and human services shall develop and implement the use of a simplified application form and process to determine eligibility for children to receive:

(a) medical assistance or medical benefits as provided in 53-6-131;

(b) the child-only group health insurance plan provided through the federal Title IV-D program of the department; or

HeinOnline -- 1999 vol. I 691 1999

[(c) health care under the state children's health insurance program as provided in [Senato Bill No. 81]].

(2) The application for eligibility for medicai assistance may not presume that application is being made for other forms of public assistance. An appropriate resource test may be incorporated into the application. The department of public heaith and human services shall coordinate education and outreach efforts with any organization performing education and outreach for any of the programs that are included in the form.

Seetion 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 53, chapter 4, and the provisions of Title 53, chapter 4, apply to [section 1].

Scction 3. Coordination instruction. If Senate Biil No. 81 is not passed and approved, the bracketed language in [section 1 of this act] is void.

Section 4. Effective date. [This act] is effective on passage and approval.

Approved March 30, 1999

CHAPTER NO. 216

[SB 374]

AN ACT ALLOWING CLASS D MOTOR CARRIERS TO EXCEED TOTAL GROSS WEIGHT LIMITATIONS BY 10 PERCENT WHEN HAULING GARBAGE ON THE HIGHWAY; AND AMENDING SECTION 61-10-144, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-10-144, MCA, is amended to read:

"61-10-144. Violation of standards — tolerance. (1) It is a misdemeanor for a person, firm, or corporation to violate any provision of 61-10-101 through 61-10-104 and 61-10-106 through 61-10-110.

(2) ~~However, the~~ *The* operator of a vehicle or combination of vehicles may move over the highways to the first open state scale, pormanent or portabie, without incurring the excess weight penalties set forth in 61-10-145 if the total gross weight of the vehicle or combination of vehicles does not exceed allowable total gross weight limitations by moro tban 7%, *or 10% for garbage trucks,* and if the weight carried by any axle or combination of axles does not exceed the aliowable axle weight iimitations by more than 7%, *or 10% for garbage trucks.* If the vehicle or combination of vehicles is not in excess of the allowable total gross or axle weight limitations by more than 7%, *or 10% for garbage trucks,* the department may issue a single trip permit for the fee of $10, allowing tbe vehicle or combination of vehicles to move over the highways to the first facility where its load can be safely adjusted or to its destination. Violations of total gross or axle weight limitations in excess of 7%, *or 10% for garbage trucks,* are subject to the fines provided in 61-10-145, and all loads in excess of 7%, *or 10% for garbage trucks,* of the total gross or axle weight limitations:

(a) may be required to be adjusted or reduced to conform to the size and weight limitations before the vehicle or combination of vehicles is moved from the point of weighing; or

(b) may be issued a permit as authorized by 61-10-141.

HeinOnline -- 1999 vol. I 692 1999

(3) Farm vehicles transporting agricultural products from a harvesting combine or other harvesting machinery may move over a highway, except any highway that is part of the federal-aid interstate system, within a 50-mile radius of the harvested field to the point of first unloading without incurring the excess weight penalties set forth in 61-10-145 if the total gross weight of the farm vehicle or combination of vehicles does not exceed allowable weight limitations by more than 20% for each axle, but the maximum load for each inch of tire width may not exceed 670 pounds. The farm vehicle or combination of vehicles may not exceed 40 miles an hour. A single trip permit, as required in subsection (2), is not applicable to the farm vehicle or combination of vehicles. When a farm vehicle or combination of vehicles violates any of the provisions of this subsection, the fine or penalty imposed applies to that portion of the load above the legal limit.

(4) For the purposes of this section, a garbage truck means only a motor vehicle operated by a Class D motor carrier, as determined and regulated by the public service commission pursuant to 69-12-301(5)."

Approved March 30, 1999

CHAPTER NO. 217

[SB 457]

AN ACT PROVIDING THAT CERTAIN OPTIONAL RETIREMENT BENEFITS SELECTED BY A RETIRED MEMBER OF THE PUBLIC EMPLOYEES', JUDGES', SHERIFFS', AND GAME WARDENS' AND PEACE OFFICERS' RETIREMENT SYSTEMS WILL REVERT BACK TO THE REGULAR RETIREMENT BENEFIT UPON THE MEMBER'S REQUEST IF THE MEMBER'S CONTINGENT ANNUITANT DIES OR IF THE MEMBER'S MARRIAGE TO THE CONTINGENT ANNUITANT IS DISSOLVED AND THE DISSOLUTION SETTLEMENT OR FAMILY LAW ORDER DOES NOT ENTITLE THE CONTINGENT ANNUITANT TO THE OPTIONAL BENEFIT; AND AMENDING SECTIONS 19-3-1501, 19-5-701, 19-7-1001, AND 19-8-801, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-3-1501, MCA, is amended to read:

"19-3-1501. Optional forms of benefits. (1) The retirement benefit of a member or the survivorship benefit of a designated beneficiary who makes an election must be converted, in lieu of all other benefits under this chapter, into an optional retirement benefit that is the actuarial equivalent of the original benefit. The optional retirement benefit is initially payable during the member's or designated beneficiary's lifetime, with a subsequent benefit to the contingent annuitant whom the member or designated beneficiary nominated by written designation, executed and filed with the board on the application for benefits, as follows:

(a) Option 2—a continuation of the reduced amount after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(b) Option 3—a continuation of one-half of the reduced amount after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

HeinOnline -- 1999 vol. I 693 1999

(c) Option 4—upon the initial payee's death, other actuarially equivalent amounts as may be approved by the board.

(2) Election of an optional retirement benefit must be by written application filed prior to the first payment of the benefit.

(3) If a benefit recipient or the recipient's contingent annuitant dies before the first payment has been made under option 2 or 3, the election of the option is automatically canceled.

(4) If a member dies after retirement and within 30 days from the date the member's election or changed election of an optional retirement benefit is received by the board, then the election is void and the death is considered as that of a member before retirement.

(5) (a) Upon written request to the board, a retired member who is receiving an optional retirement benefit *that became effective before [the effective date of this act]* may designate a different contingent annuitant, select a different option, or convert the member's optional retirement benefit to a regular retirement benefit if:

(i) the original contingent annuitant has died; or

(ii) the ~~member has been divorced from~~ *member's marriage to* the original contingent annuitant *has been dissolved* and the original contingent annuitant has not been granted the right to receive the optional retirement benefit as part of the ~~divorce~~ *dissolution* settlement *or family law order.*

(b) Upon receipt of the request, the board shall actuarially adjust the member's monthly retirement benefit to reflect the change.

(6) (a) A retired member receiving an optional retirement benefit pursuant to subsection (1)(a) or (1)(b) that is effective after [the effective date of this act] may file a written application with the board to have the optional retirement benefit revert to the regular retirement benefit available at the time of the member's retirement if:

(i) the contingent annuitant has died, in which case the optional benefit must revert effective on the first day of the month following the contingent annuitant's death; or

(ii) the member's marriage to the contingent annuitant is dissolved and the beneficiary was not granted the right to receive the optional retirement benefit as part of the dissolution settlement or a family law order, in which case the benefit must revert effective on the first day of the month following receipt of the written application and verification that the dissolution settlement or family law order does not grant the optional benefit to the contingent annuitant.

(b) A regular retirement benefit provided pursuant to this subsection (6) must be increased by the value of any postretirement adjustments received by the member since the effective date of the member's retirement.

(7) A written application pursuant to subsection (5) or (6) must be filed with the board within 18 months of the death of or dissolution of marriage to the contingent annuitant."

Section 2. Section 19-5-701, MCA, is amended to read:

"19-5-701. Optional forms of benefits. (1) The retirement benefit of a member or the survivorship benefit of a desiguated beneficiary who so elects,

must be converted, in lieu of all other benefits under this chapter, into an optional retirement benefit that is the actuarial equivalent of the original benefit. The optional retirement benefit is initially payable during the member's or designated beneficiary's lifetime, with a subsequent benefit payable to the contingent annuitant that the member or designated beneficiary nominated by written designation, executed and filed with the hoard on the application for benefits, as follows:

(a) Option 2—a continuation of the reduced amount after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(b) Option 3—a continuation of one-half of the reduced amount after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(c) Option 4—upon tbe initial payee's death, other actuarially equivalent amounts as may be approved by the board.

(2) Election of an optional retirement benefit must be by written appiication filed prior to the first payment of the benefit.

(3) If a benefit recipient or the recipient's contingent annuitant dies before the first payment has been made under option 2 or 3, the election of the option is automatically canceled.

(4) If the member dies after retirement and within 30 days from the date the member's election or changed election of an optional retirement benefit is received by the board, the election is void and the death is considered as that of a member before retirement.

(5) (a) A retired member receiving an optional retirement benefit pursuant to subsection (1)(a) or (1)(b) that is effective after [the effective date of this act] may file a written application with the board to have the optional retirement benefit revert to the regular retirement benefit available at the time of the member's retirement if:

(i) the contingent annuitant has died, in which case the optional benefit must revert effective on the first day of the month following the contingent annuitant's death; or

(ii) the member's marriage to the contingent annuitant is dissolved and the beneficiary was not granted the right to receive the optional retirement benefit as part of the dissolution settlement or a family law order, in which case the benefit must revert effective on the first day of the month following receipt of the written application and verification that the dissolution settlement or family law order does not grant the optional benefit to the contingent annuitant.

(b) A regular retirement benefit provided pursuant to this subsection (5) must be increased by the value of any postretirement adjustments received by the member since the effective date of the member's retirement.

(6) A written application pursuant to subsection (5) must be filed with the board within 18 months of the death of or dissolution of marriage to the contingent annuitant."

Section 3. Section 19-7-1001, MCA, is amended to read:

"19-7-1001. Optionai forms of benefits. (1) The retirement benefit of a member or the survivorship benefit of a designated beneficiary who so elects must be converted, in lieu of all other benefits under this chapter, into an optional

HeinOnline -- 1999 vol. I 695 1999

retirement benefit that is the actuarial equivalent of the original benefit. The optional retirement benefit is initially payable during the member's or designated beneficiary's lifetime with a subsequent benefit to the contingent annuitant that the member or designated beneficiary nominated by written designation, executed and filed with the board on the application for benefits, as follows:

(a) Option 2—a continuation of the reduced amount after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(b) Option 3—a continuation of one-half of the reduced amount after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(c) Option 4—upon the initial payee's death, other actuarially equivalent amounts as may be approved by the board.

(2) Election of an optional retirement benefit must be by written application filed prior to the first payment of the benefit.

(3) If a benefit recipient or the recipient's contingent annuitant dies before the first payment has been made under option 2 or 3, the election of the option is automatically canceled.

(4) If the member dies after retirement and within 30 days from the date the member's election or changed election of an optional retirement benefit is received by the board, the election is void and the death is considered as that of a member before retirement.

(5) (a) A retired member receiving an optional retirement benefit pursuant to subsection (1)(a) or (1)(b) that is effective after [the effective date of this act] may file a written application with the board to have the optional retirement benefit revert to the regular retirement benefit available at the time of the member's retirement if:

(i) the contingent annuitant has died, in which case the optional benefit must revert effective on the first day of the month following the contingent annuitant's death; or

(ii) the member's marriage to the contingent annuitant is dissolved and the beneficiary was not granted the right to receive the optional retirement benefit as part of the dissolution settlement or a family law order, in which case the benefit must revert effective on the first day of the month following receipt of the written application and verification that the dissolution settlement or family law order does not grant the optional benefit to the contingent annuitant.

(b) A regular retirement benefit provided pursuant to this subsection (5) must be increased by the value of any postretirement adjustments received by the member since the effective date of the member's retirement.

(6) A written application pursuant to subsection (5) must be filed with the board within 18 months of the death of or dissolution of marriage to the contingent annuitant."

Section 4. Section 19-8-801, MCA, is amended to read:

"19-8-801. Optional forms of benefits. (1) The retirement benefit of a member or the survivorship benefit of a designated beneficiary who so elects must be converted in lieu of all other benefits under this chapter into an optional retirement benefit that is the actuarial equivalent of the original benefit. The optional retirement benefit is initially payable during the member's or designated

HeinOnline -- 1999 vol. I 696 1999

beneficiary's lifetime with a subsequent benefit to the contingent annuitant that the member or designated beneficiary nominated by written designation, executed and filed with the board on the application for benefits, as follows:

(a) Option 2—a continuation of the reduced amount after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(b) Option 3—a continuation of one-half of the reduced amount after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(c) Option 4—upon the initial payee's death, other actuarially equivalent amounts as may be approved by the board.

(2) Election of an optional retirement benefit must be by written application filed prior to the first payment of the benefit.

(3) If a benefit recipient or the recipient's contingent annuitant dies before the first payment has been made under option 2 or 3, the election of the option is automatically canceled.

(4) If the member dies after retirement and within 30 days from the date the member's election or changed election of an optional retirement benefit is received by the board, the election is void and the death is considered as that of a member before retirement.

(5) (a) A retired member receiving an optional retirement benefit pursuant to subsection (1)(a) or (1)(b) that is effective after [the effective date of this act] may file a written application with the board to have the optional retirement benefit revert to the regular retirement benefit available at the time of the member's retirement if:

(i) the contingent annuitant has died, in which case the optional benefit must revert effective on the first day of the month following the contingent annuitant's death; or

(ii) the member's marriage to the contingent annuitant is dissolved and the beneficiary was not granted the right to receive the optional retirement benefit as part of the dissolution settlement or a family law order, in which case the benefit must revert effective on the first day of the month following receipt of the written application and verification that the dissolution settlement or family law order does not grant the optional benefit to the contingent annuitant.

(b) A regular retirement benefit provided pursuant to this subsection (5) must be increased by the value of any postretirement adjustments received by the member since the effective date of the member's retirement.

(6) A written application pursuant to subsection (5) must be filed with the board within 18 months of the death of or dissolution of marriage to the contingent annuitant."

Approved March 30, 1999

CHAPTER NO. 218

[SB 466]

AN ACT CLARIFYING WORKERS' COMPENSATION LAWS TO PROVIDE THAT A LICENSED OCCUPATIONAL THERAPIST MAY CONDUCT A

HeinOnline -- 1999 vol. I 697 1999

FUNCTIONAL CAPACITIES EVALUATION; AMENDING SECTION 39-71-605, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-605, MCA, is amended to read:

"39-71-605. Examination of employee by physician — effect of refusal to submit to examination — report and testimony of physician — cost. (1) (a) Whenever in case of injury the right to compensation under this chapter would exist in favor of any employee, the employee shall, upon the written request of the insurer, submit from time to time to examination by a physician, psychologist, or panel that must be provided and paid for by the insurer and shall likewise submit to examination from time to time by any physician, psychologist, or panel selected by the department or as ordered by the workers' compensation judge.

(b) The request or order for an examination must fix a time and place for the examination, with regard for the employee's convenience, physical condition, and ability to attend at the time and place that is as close to the employee's residence as is practical. An examination that is conducted by a physician, psychologist, or panel licensed in another state is not precluded under this section. The employee is entitled to have a physician present at any examination. If the employee, after written request, fails or refuses to submit to the examination or in any way obstructs the examination, the employee's right to compensation must be suspended and is subject to the provisions of 39-71-607. Any physician, psychologist, or panel employed by the insurer or the department who makes or is present at any examination may be required to testify as to the results of the examination.

(2) In the event of a dispute concerning the physical condition of a claimant or the cause or causes of the injury or disability, if any, the department or the workers' compensation judge, at the request of the claimant or insurer, as the case may be, shall require the claimant to submit to an examination as it considers desirable by a physician, psychologist, or panel within the state or elsewhere that has had adequate and substantial experience in the particular field of medicine concerned with the matters presented by the dispute. The physician, psychologist, or panel making the examination shall file a written report of findings with the claimant and insurer for their use in the determination of the controversy involved. The requesting party shall pay the physician, psychologist, or panel for the examination.

(3) As used in this section, a panel includes a treating physician, as defined in 39-71-116, and may include a psychologist.

(4) A claimant is required, upon a written request of an insurer, to submit to a functional capacities evaluation conducted by a licensed physical *or occupational* therapist.

(5) This section does not apply to impairment evaluations provided for in 39-71-711."

Section 2. Effective date. [This act] is effective on passaga and approval.

Approved March 30, 1999

HeinOnline -- 1999 vol. I 698 1999

CHAPTER NO. 219

[HB 76]

AN ACT PROVIDING THAT THE ADDRESS OF A REGISTERED SEXUAL OR VIOLENT OFFENDER IS PUBLIC CRIMINAL JUSTICE INFORMATION; ALLOWING A LAW ENFORCEMENT AGENCY TO DISSEMINATE A LEVEL 2 OFFENDER'S EXACT ADDRESS; AND AMENDING SECTION 46-23-508, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-23-508, MCA, is amended to read:

"**46-23-508. Dissemination of information.** (1) Information maintained under this part is confidential criminal justice information, as defined in 44-5-103, except that:

(a) the name *and address* of a registered sexual or violent offender ~~is~~ *are* public criminal justice information, as defined in 44-5-103; and

(b) a law enforcement agency shall release any offender registration information relevant to the public if the agency determines that a registered offender is a risk to the safety of the community and that disclosure of the registration information may protect the public and, at a minimum:

(i) if an offender was given a level 1 designation under 46-23-509, the agency with which the offender is registered shall notify the agency in whose jurisdiction the offense occurred of the registration;

(ii) if an offender was given a level 2 designation under 46-23-509, the agency with which the offender is registered may disseminate the offender's name to the public with the notation that the offender is a sexual or violent offender and may notify a victim of the offense and any agency, organization, or group serving persons who have characteristics similar to those of a previous victim of the offender of:

(A) the offender's ~~approximate, but not exact,~~ address~~, such as by stating the neighborhood, town, or part of a county~~;

(B) the type of victim targeted hy the offense;

(C) the name, photograph, and physical description of the offender;

(D) the offenses for which the offender is required to register under this part; and

(E) any conditions imposed by the court upen the offender for the safety of the public; and

(iii) if an offender was given a level 3 designation under 46-23-509, the agency shall give the victim and the public notification that includes the information contained in subsection (1)(b)(ii)~~, except that the offender's exact address must be included~~. The agency sball also include the date of the offender's release from confinement or if not confined, the date the offender was sentenced, with a notation tbat the offender was not confined, and shall include the community in which the offense occurred.

(c) Prior to release of information under suhsection (1)(b), a law enforcement agency may, in its sole discretion, request an in camera review by a district court of the determination by the law enforcement agency under subsection (1)(b). The

HeinOnline -- 1999 vol. I 699 1999

court shall review a request under this subsection (1)(c) and shall, as soon as possible, render its opinion so that release of the information is not delayed beyond release of the offender from confinement.

(2) The identity of a victim of an offense for which registration is required under this part may not be released by a law enforcement agency without the permission of the victim."

Approved March 31, 1999

CHAPTER NO. 220

[HB 106]

AN ACT ADOPTING AND IMPLEMENTING THE NATIONAL CRIME PREVENTION AND PRIVACY COMPACT.

WHEREAS, it is in the interest of the state to facilitate the dissemination of criminal history records from other states for use in Montana as authorized hy state law; and

WHEREAS, the National Crime Prevention and Privacy Compact creates a legal framework for the cooperative exchange of criminal history records for noncriminal justice purposes; and

WHEREAS, the compact provides for the organization of an electronic information-sharing system among the federal government and the states to exchango criminal history records for noncriminal justice purposes authorized by federal or state law, such as background checks for governmental licensing and employment; and

WHEREAS, under tbe compact, the FBI and the party states agree to maintain detailed databases of their respective criminal history records, including arrests and dispositions, and to make them available to the federal gevernment and party states for authorized purposes; and

WHEREAS, the FBI shall manago the federal data facilities that provide a significant part of the infrastructure for the systeın; and

WHEREAS, entering into the compact would facilitate the interstate and federal-state exchange of criminal history information to streamline the processing of background cbecks for noncriminal justice purposes; and

WHEREAS, release and use of information obtained through the systeın for noncrininal justice purposes would be geverned by the laws of the receiving state; and

WHEREAS, entering into the compact will provide a mechanisın for establishiıg and enforcing uniform standards for record accuracy and for the confidentiality and privacy interests of record subjects.

Be it enacted by the Legislature of the State of Montana:

Section 1. Compact adopted — text. The National Crime Prevention and Privacy Compact is enacted into law and entered into with all jurisdictions legally joining in the compact in the form suhstantially as set fortb in this section.

Article I. Definitions

As used in this compact, the following definitions apply:

(1) "Attorney general" means the attorney general of the United States.

(2) "Compact officer" means:

(a) with respect to the federal government, an official so designated by the director of the FBI; and

(h) with respect to a party state, the chief administrator of the state's criminal history record repository or a designee of the chief administrator who is a regular full-time employee of the repository.

(3) "Council" means the compact council established under Article VI.

(4) "Criminal history record repository" means the state agency designated by the gevernor or other appropriate executive official or the legislature of a state to perform centralized recordkeeping functions for criminal history records and services in the state.

(5) (a) "Criminal history records" means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, or other formal criminal charges and any disposition arising therefrom, including acquittal, sentencing, correctional supervision, or release.

(h) The term does not include identification information such as fingerprint records if the information does not indicato involvement of the individual with the criminal justice system.

(6) "Criminal justice" includes activities relating to the detection, apprehension, detention, pretrial release, posttrial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. The administration of criminal justice includes criminal identification activities and the collection, storage, and dissemination of criminal history records.

(7) (a) "Criminal justice agency" means:

(i) courts; and

(ii) a governmental agency or any subunit of an agency that performs the administration of criminal justice pursuant to a statute or executive order and allocates a substantial part of its annual budget to the administration of criminal justice.

(b) The term includes federal and state inspector general offices.

(8) "Criminal justice services" means services provided by the FBI to criminal justice agencies in response to a request for information about a particular individual or as an update to information previously provided for criminal justice purposes.

(9) "Direct access" means access to the national identification index by computer terminal or other automated means not requiring the assistance of or intervention by any other party or agency.

(10) "Executive order" means an order of the president of the United States or the chief executive officer of a state that has the force of law and that is promulgated in accordance with applicable law.

(11) "FBI" means the federal bureau of investigation.

HeinOnline -- 1999 vol. I 701 1999

(12) (a) "III system" means the interstate identification index system, which is the cooperative federal-state system for the exchange of criminal history records.

(b) The term includes the national identification index, the national fingerprint file, and to the extent of their participation in the system, the criminal history record repositories of the states and the FBI.

(13) "National fingerprint file" means a database of fingerprints or of other uniquely porsonal identifying information that relates to an arrested or charged individual and that is maintained by the FBI to provide positive identification of record subjects indexed in the III system.

(14) "National identification index" means an index maintained by the FBI consisting of names, identifying numbers, and other descriptive information relating to record subjects about whom tbere are criminal history records in the III system.

(15) "National indices" means the national identification index and the national fingerprint file.

(16) "Noncriminal justice purposes" means uses of criminal history records for purposes authorized by federal or state law other than purposes relating to criminal justice activities, inciuding employment suitability, licensing determinations, immigration and naturalization matters, and national security clearances.

(17) "Nonparty state" means a state that has not ratified this compact.

(18) "Party state" means a state that has ratified this compact.

(19) "Positive identification" means a determination, based upon a comparison of fingerprints or other equally reliable biometric identification techniques, that the suhject of a record search is the same person as the subject of a criminal history record or records indexed in the III system. Identifications based solely upon a comparison of subjects' names or other nonunique identification characteristics or numbers, or combinations thereof, does not constitute positive identification.

(20) "Sealed record information" means:

(a) with respect to adults, that portion of a record that is:

(i) not available for criminal justice uses;

(ii) not supported by fingerprints or other accepted means of positive identification; or

(iii) subject to restrictions on dissemination for noncriminal justice purposes pursuant to a court order related to a particular subject or pursuant to a federal or state statute tbat requires action on a sealing potition filed by a particular record subject; and

(b) with respect to juveniles, whatever each state determines is a sealed record under its own law and procedure.

(21) "State" means any state, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

Article II. Purposes

The purposes of this compact are to:

(1) provide a legal framework for the establishment of a cooperative federal-state system for the interstate and federal-state exchange of criminal history records for noncriminal justice uses;

(2) require the FBI to permit use of the national identification index and the national fingerprint file by each party state and to provide, in a timely fashion, federal and state criminal history records to requesting states, in accordance with the terms of this compact and with rules, procedures, and standards established by the council under Article VI;

(3) require party states to provide information and records for the national identification index and the national fingerprint file and to provide criminal history records, in a timely fashion, to criminal history record repositories of other states and the federal government for noncriminal justice purposes, in accordance with the terms of this compact and with rules, procedures, and standards established by the council under Article VI;

(4) provide for the establishment of a council to monitor III system operations and to prescribe system rules and procedures for the effective and proper operation of the III system for noncriminal justice purposes; and

(5) require the FBI and each party state to adhere to III system standards concerning record dissemination and use, response times, system security, data quality, and other duly established standards, including those that enhance the accuracy and privacy of such records.

Article III. Responsibilities of Compact Parties

(1) The director of the FBI shall:

(a) appoint an FBI compact officer who shall:

(i) administer this compact within the department of justice and among federal agencies and other agencies and organizations that submit search requests to the FBI pursuant to Article V(3);

(ii) ensure that compact provisions and rules, procedures, and standards prescribed by the council under Article VI are complied with by the department of justice and the federal agencies and other agencies and organizations referred to in subsection (1)(a)(i) of this Article III; and

(iii) regulate the use of records received by means of the III system from party states when such records are supplied by the FBI directly to other federal agencies;

(b) provide to federal agencies and to state criminal history record repositories criminal history records maintained in its database for the noncriminal justice purposes described in Article IV, including:

(i) information from nonparty states; and

(ii) information from party states that is available from the FBI through the III system, but is not available from the party state through the III system;

(c) provide a telecommunications network and maintain centralized facilities for the exchange of criminal history records for both criminal justice purposes and the noncriminal justice purposes described in Article IV and ensure that the exchange of the records for criminal justice purposes has priority over exchange for noncriminal justice purposes; and

HeinOnline -- 1999 vol. I 703 1999

(d) modify or enter into user agreements with nonparty state criminal history record repositories to require them to establish record request procedures conforming to those prescribed in Article V.

(2) Each party state shall:

(a) appoint a compact officer who shall:

(i) administer this compact within that state;

(ii) ensure that compact provisions and rules, procedures, and standards established by the council under Article VI are complied with in the state; and

(iii) regulate the in-state use of records received by means of the III system from the FBI or from other party states;

(b) establish and maintain a criminal history record repository, which shall provide:

(i) information and records for the national identification index and the national fingerprint file; and

(ii) the state's III system-indexed criminal history records for noncriminal justice purposes described in Article IV;

(c) participate in the national fingerprint file; and

(d) provide and maintain telecommunications links and related equipment necessary to support the criminal justice services set forth in this compact.

(3) In carrying out their responsibilities under this compact, the FBI and each party state shall comply with III system rules, procedures, and standards duly established by the council concerning record dissemination and use, response times, data quality, system security, accuracy, privacy protection, and other aspects of III system operation.

(4) (a) Use of the III system for noncriminal justice purposes authorized in this compact must be managed so as not to diminish the level of services provided in support of criminal justice purposes.

(b) Administration of compact provisions may not reduce the level of service available to authorized noncriminal justice users on the effective date of this compact.

Article IV. Authorized Record Disclosures

(1) To the extent authorized by section 552a of Title 5, United States Code (commonly known as the Privacy Act of 1974), the FBI shall provide on request criminal history records, excluding sealed record information, to state criminal history record repositories for noncriminal justice purposes allowed by federal statute, federal executive order, or a state statute that has been approved by the attorney general to ensure that the state statute explicitly authorizes national indices checks.

(2) The FBI, to the extent authorized by section 552a of Title 5, United States Code (commonly known as the Privacy Act of 1974), and state criminal history record repositories shall provide criminal history records, excluding sealed record information, to criminal justice agencies and other governmental or nongovernmental agencies for noncriminal justice purposes allowed by federal statute, federal executive order, or a state statute that has been approved by the

HeinOnline -- 1999 vol. I 704 1999

attorney general to ensure that the state statute explicitly authorizes national indices checks.

(3) Any record obtained under this compact may be used only for the official purposes for which the record was requested. Each compact officer shall establish procedures, consistent with this compact and with rules, procedures, and standards established by the council under Article VI, which procedures shall protect the accuracy and privacy of the records and shall:

(a) ensure that records obtained under this compact are used only by authorized officials for authorized purposes;

(b) require that subsequent record checks are requested to obtain current information whenever a new need arises; and

(c) ensure that record entries that may not legally be used for a particular noncriminal justice purpose are deleted from the response and, if no information authorized for release remains, an appropriate "no record" response is communicated to the requesting official.

Article V. Record Request Procedures

(1) Subject fingerprints or other approved forms of positive identification must be submitted with all requests for criminal history record checks for noncriminal justice purposes.

(2) Each request for a criminal history record check utilizing the national indices made under any approved state statute must be submitted through that state's criminal history record repository. A state criminal history record repository shall process an interstate request for noncriminal justice purposes through the national indices only if the request is transmitted through another state criminal history record repository or the FBI.

(3) Each request for criminal history record checks utilizing the national indices made under federal authority must be submitted through the FBI or, if the state criminal history record repository consents to process fingerprint submissions, through the criminal history record repository in the state in which the request originated. Direct access to the national identification index by entities other than the FBI and state criminal history records repositories may not be permitted for noncriminal justice purposes.

(4) A state criminal history record repository or the FBI:

(a) may charge a fee, in accordance with applicable law, for handling a request involving fingerprint processing for noncriminal justice purposes; and

(b) may not charge a fee for providing criminal history records in response to an electronic request for a record that does not involve a request to process fingerprints.

(5) (a) If a state criminal history record repository cannot positively identify the subject of a record request made for noncriminal justice purposes, the request, together with fingerprints or other approved identifying information, must be forwarded to the FBI for a search of the national indices.

(b) If, with respect to a request forwarded by a state criminal history record repository under subsection (5)(a), the FBI positively identifies the subject as having a III system-indexed record or records:

(i) the FBI shall so advise the state criminal history record repository; and

HeinOnline -- 1999 vol. I 705 1999

(ii) the stato criminal history record repository is entitled to obtain the additional criminal history record information from the FBI or other state criminal history record repositories.

Article VI. Establishment Of Compact Council

(1) (a) There is established a council to be known as the compact council, which has the authority to promulgate rules and procedures governing the use of the III system for noncriminal justice purposes, not to conflict with FBI administration of the III system for criminal justice purposes.

(b) The council shall:

(i) continue in existence as long as this compact remains in effect;

(ii) be located, for administrative purposes, within the FBI; and

(iii) be organized and hold its first meeting as soon as practicable after the effective date of this compact.

(2) The council must be composed of 15 members, each of whom must be appointed by the attorney general, as follows:

(a) nine members, each of whom shall serve a 2-year term, who must be selected from among the compact officers of party states based on the recommendation of the compact officers of all party states, except that in the absence of the requisite number of compact officers available to serve, the chief administrators of the criminal history record repositories of nonparty states must be eligible to serve on an interim basis;

(b) two at-largo members, nominated by the director of the FBI, each of whom shall serve a 3-year term, of whom:

(i) one must be a representative of the criminal justice agencies of the federal government and may not be an employee of the FBI; and

(ii) one must be a representative of the noncriminal justice agencies of the federal government;

(c) two at-large members, nominated by the chairman of the council once the chairman is elected pursuant to subsection (3) of this Article VI, each of whom shall serve a 3-year term, of whom:

(i) one must be a representative of state or local criminal justice agencies; and

(ii) one must be a representative of state or local noncriminal justice agencies;

(d) one member who shall serve a 3-year term and who shall simultaneously be a member of the FBI's advisory policy board on criminal justice information services, nominated by the membership of that policy board;

(e) one member, nominated by the director of the FBI, who shall serve a 3-year term and who must be an employee of the FBI.

(3) (a) From its membership, the council shall elect a chairman and a vice chairman of the council. Both the chairman and vice chairman of the council:

(i) must be a compact officer, unless there is no compact officer on the council who is willing to serve, in which case the chairman may be an at-large member; and

(ii) shall serve 2-year terms and may be reelected to only one additional 2-year term.

(b) The vice chairman of the council shall serve as the chairman of the council in the absence of the chairman.

(4) (a) The council shall meet at least once each year at the call of the chairman. Each meeting of the council must be open to the public. The council shall provide prior public notice in the federal register of each meeting of the council, including the matters to be addressed at the meeting.

(b) A majority of the council or any committee of the council shall constitute a quorum of the council or of a committee, respectively, for the conduct of business. A lesser number may meet to hold hearings, take testimony, or conduct any business not requiring a vote.

(5) The council shall make available for public inspection and copying at the council office within the FBI and shall publish in the federal register any rules, procedures, or standards established by the council.

(6) The council may request from the FBI reports, studies, statistics, or other information or materials that the council determines to be necessary to enable the council to perform its duties under this compact. The FBI, to the extent authorized by law, may provide assistance or information upon a request.

(7) The chairman may establish committees as necessary to carry out this compact and may prescribe their membership, responsibilities, and duration.

Article VII. Ratification of Compact

This compact takes effect upon being entered into by two or more states as between those states and the federal government. When additional states subsequently enter into this compact, it becomes effective among those states and the federal government and each party state that has previously ratified it. When ratified, this compact has the full force and effect of law within the ratifying jurisdictions. The form of ratification must be in accordance with the laws of the executing state.

Article VIII. Miscellaneous Provisions

(1) Administration of this compact may not interfere with the management and control of the director of the FBI over the FBI's collection and dissemination of criminal history records and the advisory function of the FBI's advisory policy board chartered under the Federal Advisory Committee Act (5 U.S.C. App.) for all purposes other than noncriminal justice.

(2) Nothing in this compact may require the FBI to obligate or expend funds beyond those appropriated to the FBI.

(3) Nothing in this compact may diminish or lessen the obligations, responsibilities, and authorities of any state, whether a party state or a nonparty state, or of any criminal history record repository or other subdivision or component thereof, under the Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriation Act, 1973 (Public Law 92-544), or regulations and guidelines promulgated thereunder, including the rules and procedures promulgated by the council under Article VI(1), regarding the use and dissemination of criminal history records and information.

HeinOnline -- 1999 vol. I 707 1999

Article IX. Renunciation

(1) This compact shall bind each party state until renounced hy the party state.

(2) Any renunciation of this compact by a party state must:

(a) be effected in the same manner by which the party state ratified this compact; and

(b) become effective 180 days after written notice of renunciation is provided by the party state to each other party state and to the federal government.

Article X. Severability

The provisions of this compact must be severable. If any phrase, clause, sentence, or provision of this compact is declared to be contrary to tho constitution of any participating stato or to the Constitution of the United States or if the applicability of any phrase, clause, sentence, or provision of this compact to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability of the remainder of the compact to any government, agoncy, person, or circumstance may not be affected by the severability. If a portion of this compact is held contrary to the constitution of any party state, all other portions of this compact must remain in full force and effect as to the remaining party states and in full force and effect as to the party state affected, as to all other provisions.

Article XI. Adjudication of Disputes

(1) The council:

(a) has initial authority to make determinations with respect to any dispute regarding:

(i) interpretation of this compact;

(ii) any rule or standard established by the council pursuant to Article VI; and

(iii) any dispute or controversy between any parties to this compact; and

(b) shall hold a hearing concerning any dispute described in subsection (1)(a) at a regularly scheduled meeting of the council and only render a decision based upon a majority vote of the members of the council. The decision must be published pursuant to the requirements of Article VI(5).

(2) The FBI sball exercise immediate and necessary action te preserve the integrity of the III system, te maintain system policy and standarda, te protect the accuracy and privacy of records, and to prevent abuses until the council holds a hearing on the matters.

(3) The FBI or a party state may appeal any decision of the council to the attorney general and after that appeal may file suit in the appropriate district court of the United States that has original jurisdiction of all cases or controversies arising under this compact. Any suit arising under this compact and initiated in a state court must be removed to the appropriate district court of the United States in the manner provided by section 1446 of Title 28, United States Code, or other statutory authority.

Section 2. Appointment of compaet officer. The attorney goneral shall appoint a compact officer for the purpose of complying with Article III (2)(a) of the National Crime Prevention and Privacy Compact.

HeinOnline -- 1999 vol. I 708 1999

Section 3. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 44, chapter 5, and the provisions of Title 44, chapter 5, apply to [sections 1 and 2].

Approved March 31, 1999

CHAPTER NO. 221

[SB 64]

AN ACT REVISING THE AIR QUALITY LAWS; EXEMPTING THE TRANSFER OF PERMITS FOR PORTABLE EMISSION SOURCES FROM THE MONTANA ENVIRONMENTAL POLICY ACT REVIEW PROCESS; PLACING CONSTRUCTION AND OPERATING PERMIT FEES INTO THE SAME ACCOUNT; AMENDING SECTIONS 75-2-211 AND 75-2-221, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-2-211, MCA, is amended to read:

"75-2-211. Permits for construction, installation, alteration, or use. (1) The board shall hy rule provide for the issuance, modification, suspension, revocation, and renewal of a permit issued under this part.

(2) Not later than 180 days before construction, installation, or alteration begins or as a condition of use of any machine, equipment, device, or facility that the board finds may directly or indirectly cause or contribute to air pollution or that is intended primarily to prevent or control the emission of air pollutants, the owner or operator shall file with the department the appropriate permit application on forms available from the department.

(3) The permit program administered by the department pursuant to this section must include the following:

(a) requirements and procedures for permit applications, including standard application forms;

(b) requirements and procedures for submittal of information necessary to determine the location, quantity, and type of emissions;

(c) procedures for public notice and opportunity for comment or public hearing, as appropriate;

(d) procedures for providing notice and an opportunity for comment to contiguous states and federal agencies, as appropriate;

(e) requirements for inspection, monitoring, recordkeeping, and reporting;

(f) procedures for the transfer of permits;

(g) requirements and procedures for suspension, modification, and revocation of permits by the department;

(h) requirements and procedures for appropriate emission limitations and other requirements, including enforceable measures necessary to ensure compliance with those limitations and requirements;

(i) requirements and procedures for permit modification and amendment; and

(j) requirements and procedures for issuing a single permit authorizing emissions from similar operations at multiple temporary locations, which permit may include conditions necessary to ensure compliance with the requirements of this chapter at all authorized locations and a requirement that the owner or operator notify the department in advance of each change in location.

(4) This section does not restrict the board's authority to adopt regulations providing for a single air quality permit system.

(5) Department approval of an application to transfer a portable emission source from one location to another is exempt from the provisions of 75-1-201(1).

~~(5)~~*(6)* The department may, for good cause shown, waive or shorten the time required for filing the appropriate applications.

~~(6)~~*(7)* The department shall require that applications for permits be accompanied by any plans, specifications, and other information that it considers necessary.

~~(7)~~*(8)* An application is not considered filed until the applicant has submitted all fees required under 75-2-220 and all information and completed application forms required pursuant to subsections (2), (3), and ~~(6)~~ *(7)* of this section. If the department fails to notify the applicant in writing within 30 days after the purported filing of an application that the application is incomplete and fails to list the reasons why the application is considered incomplete, the application is considered filed as of the date of the purported filing.

~~(8)~~*(9)* (a) If an application for a permit requires the preparation of an environmental impact statement under the Montana Environmental Policy Act, Title 75, chapter 1, parts 1 through 3, the department shall notify the applicant in writing of the approval or denial of the application within:

(i) 180 days after the department's receipt of a filed application, as provided in subsection ~~(7)~~ *(8)*, if the department prepares the environmental impact statement;

(ii) 30 days after issuance of the final environmental impact statement by the lead agency if a state agency other than the department has been designated by the governor as lead agency for preparation of the environmental impact statement; or

(iii) if the application is for a machine, equipment, a device, or a facility at an operation that requires a permit under Title 82, chapter 4, part 1, 2, or 3, 30 days of issuance of the final environmental impact statement in accordance with time requirements of Title 82, chapter 4, part 1, 2, or 3.

(b) If an application does not require the preparation of an environmental impact statement, the department shall notify the applicant in writing within 60 days after its receipt of a filed application, as provided in subsection ~~(7)~~ *(8)*, of its approval or denial of the application. The time for notification may be extended for 30 days by written agreement of the department and the applicant. Additional 30-day extensions may be granted by the department on request of the applicant. Notification of approval or denial may be served personally or by certified mail on the applicant or the applicant's agent.

(c) If an application for a permit is for the construction, installation, alteration, or use of a source that is also required to obtain a license pursuant to 75-10-221 or a permit pursuant to 75-10-406, the department shall act on the permit application within the time period provided for in 75-2-215(3)(e).

HeinOnline -- 1999 vol. I 710 1999

(d) Failure by the department to act in a timely manner does not constitute approval or denial of the application. This does not limit or abridge the right of any person to seek available judicial remedies to require the department to act in a timely manner.

~~(9)~~*(10)* When the department approves or denies the application for a permit under this section, a person who is jointly or severally adversely affected by the department's decision may request a hearing before the board. The request for hearing must be filed within 15 days after the department renders its decision and must include an affidavit setting forth the grounds for the request. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection.

~~(10)~~*(11)* The department's decision on the application is not final unless 15 days have elapsed from the date of the decision and there is no request for a hearing under this section. The filing of a request for a hearing postpones the effective date of the department's decision until the conclusion of the hearing and issuance of a final decision by the board."

Section 2. Section 75-2-221, MCA, is amended to read:

"75-2-221. Deposit of air quality permitting fees. (1) All money collected by the department pursuant to 75-2-220 must be deposited in an account in the state special revenue fund to be appropriated by the legislature to the department for the development and administration of the permitting requirements of this chapter.

(2) ~~The operating permit fees and the construction permit fees must be maintained in separate accounts within the state special revenue fund.~~

~~(3)~~ Upon request, the expenditure by the department of funds in ~~these accounts~~ *this account* may be audited by a qualified auditor at the end of each fiscal year. The cost of the audit must be ~~borne~~ *paid* by the person requesting the audit."

Section 3. Effective dates. (1) [Section 1 and this section] are effective on passage and approval.

(2) [Section 2] is effective July 1, 1999.

Approved March 31, 1999

CHAPTER NO. 222

[SB 240]

AN ACT REQUIRING A GOVERNMENT ENTITY THAT WITHHOLDS FROM A CONSTRUCTION CONTRACTOR MONEY OWED THE CONTRACTOR FOR CONSTRUCTION SERVICES OR MATERIALS TO PAY INTEREST TO THE CONSTRUCTION CONTRACTOR; ALLOWING SUBCONTRACTORS TO PARTICIPATE IN MAKING REQUIRED DEPOSIT OBLIGATIONS AND TO RECEIVE A PRO RATA SHARE OF THE INTEREST EARNED ON THOSE DEPOSITS; PROVIDING FOR ENFORCEMENT; AMENDING SECTION 18-1-301, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

HeinOnline -- 1999 vol. I 711 1999

Section 1. Section 18-1-301, MCA, is amended to read:

"18-1-301. Contractor withdrawals — deposit of obligations. (1) The contractor under any contract made or awarded by the state of Montana or any department, agency, or political subdivision ~~thereof~~ *of the state of Montana, by any county, municipality, or political subdivision of a county or municipality, or by a school district,* including any contract for the construction, improvement, maintenance, or repair of any road or highway or the appurtenances ~~thereto~~ *to a road or highway,* may, from time to time, withdraw the whole or any portion of the sums otherwise due to the contractor under ~~such~~ *the* contract ~~which~~ *that* are retained by the state of Montana or any department, agency, or political subdivision ~~thereof~~ *of the state of Montana, by any county, municipality, or political subdivision of a county or municipality, or by a school district* pursuant to the terms of ~~such~~ *the* contract, provided the contractor shall deposit with the contracting agency:

(a) United States treasury bonds, United States treasury notes, United States treasury certificates of indebtedness, or United States treasury bills;

(b) bonds or notes of the state of Montana;

(c) bonds of any political subdivision of the state of Montana of a market value not exceeding par at the time of deposit; or

(d) certificates of deposit drawn and issued by a national banking association located in the state of Montana or by any banking corporation incorporated under the laws of the state of Montana.

(2) Deposited obligations ~~shall~~ *must* be at least equal in value to the amount so withdrawn from payments retained under ~~such~~ *the* contract.

(3) Except as provided in subsection (4), all interest accrued in the accounts of deposits required under this section must be paid to the contractor.

(4) The contractor shall extend to the contractor's subcontractors the opportunity to participate in making the deposits required in subsection (1). Interest accrued in deposit accounts in which subcontractors participate must be distributed on a pro rata basis by the contractor to the participating subcontractors. A subcontractor participating in making the deposits required in subsection (1) may not have additional retainage withheld by the contractor."

Section 2. Limit on retainage for public contracts. (1) The maximum retainage applied to construction contracts administered by the state of Montana or any department, agency, or political subdivision of the state of Montana, by any county, municipality, or political subdivision of a county or municipality, or by a school district may not exceed 5% if the contractor is performing by the terms of the contract.

(2) The retainage percentage withheld by a government entity, as provided for in subsection (1), from a contractor is the maximum retainage percentage that a contractor may withhold from a subcontractor.

(3) For the purposes for this section, "retainage" means tbe ratio, in percent, of funds retained to the total amount to be paid to the contractor by the government entity.

Section 3. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 18, chapter 2, part 3, and the provisions of Title 18, chapter 2, part 3, apply to [section 2].

HeinOnline -- 1999 vol. I 712 1999

Section 4. Effective date. [This act] is effective July 1, 1999.

Section 5. Applicability. [This act] applies to contracts entered into after July 1, 1999.

Approved March 31, 1999

CHAPTER NO. 223

[HB 142]

AN ACT CLARIFYING THE TREATMENT OF A TRANSFER OF OWNERSHIP PURSUANT TO THE MONTANA ENVIRONMENTAL POLICY ACT; LIMITING A COURT'S SCOPE OF REVIEW FOR AN ACTION OR CHALLENGE THAT AN ENVIRONMENTAL STATEMENT OR REVIEW IS NOT REQUIRED OR THAT THE STATEMENT OR REVIEW IS INADEQUATE; CREATING EXEMPTIONS FROM THE PROVISIONS OF THE MONTANA ENVIRONMENTAL POLICY ACT FOR ACTION TAKEN UNDER TITLE 77, MCA; AMENDING SECTION 75-1-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-1-201, MCA, is amended to read:

"75-1-201. General directions — environmental impact statements. (1) The legislature authorizes and directs that, to the fullest extent possible:

(a) the policies, regulations, and laws of the state must be interpreted and administered in accordance with the policies set forth in parts 1 through 3;

(b) all agencies of the state, except the legislature and except as provided in subsection (2), shall:

(i) use a systematic, interdisciplinary approach that will ensure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking that may have an impact on the human environment;

(ii) identify and develop methods and procedures that will ensure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking, along with economic and technical considerations;

(iii) identify and develop methods and procedures that will ensure that state government actions that may impact the human environment are evaluated for regulatory restrictions on private property, as provided in subsection (1)(b)(iv)(D);

(iv) include in each recommendation or report on proposals for projects, programs, and other major actions of state government significantly affecting the quality of the human environment a detailed statement on:

(A) the environmental impact of the proposed action;

(B) any adverse environmental effects that cannot be avoided if the proposal is implemented;

(C) alternatives to the proposed action;

HeinOnline -- 1999 vol. I 713 1999

(D) any regulatory impacts on private property rights, including whether alternatives that reduce, minimize, or eliminate the regulation of private property rights have heen analyzed. The analysis in this subsection (1)(b)(iv)(D) need not be prepared if the proposed action does not involve the regulation of private property.

(E) the relationship between local short-term uses of the human environment and the maintenance and enhancement of long-term productivity; and

(F) any irreversible and irretrievable commitments of resources that would be involved in the proposed action if it is implemented;

(v) study, develop, and describe appropriate alternatives to recommend courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources;

(vi) recognize the national and long-range character of environmental problems and, when consistent with the policies of the state, lend appropriate support to initiatives, resolutions, and programs designed to maximize national cooperation in anticipating and preventing a decline in the quality of the world environment;

(vii) make available to counties, municipalities, institutions, and individuals advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(viii) initiate and use ecological information in the planning and development of resource-oriented projects; and

(ix) assist the environmental quality council established by 5-16-101; ~~and~~

(c) prior to making any detailed statement as provided in subsection (1)(b)(iv), the responsible state official shall consult with and obtain the comments of any state agency that has jurisdiction by law or special expertise with respect to any environmental impact involved. The responsible state official shall also consult with and obtain comments from any state agency with respect to any regulation of private property involved. Copies of the statement and the comments and views of the appropriate state, federal, and local agencies that are authorized to develop and enforce environmental standards must he made available to the gevernor, the environmental quality council, and the public and must accompany the proposal through the existing agency review processes.

(d) a transfer of an ownership interest in a lease, permit, license, certificate, or other entitlement for use or permission to act by an agency, either singly or in combination with other state agencies, does not trigger review under subsection (1)(b)(iv) if there is not a material change in terms or conditions of the entitlement or unless otherwise provided by law.

(2) The department of public service regulation, in the exercise of its regulatory authority over rates and charges of railroads, motor carriers, and public utilities, is exempt from the provisions of parts 1 through 3.

(3) *(a)* In any action challenging or seeking review of an agency's ~~determination~~ *decision* that a statement pursuant to subsection (1)(b)(iv) is not required *or that the statement is inadequate*, the burden of proof is on the person challenging the decision. *Except as provided in subsection (3)(b), in a challenge to the adequacy of a statement, a court may not consider any issue or evidence that was not first presented to the agency for the agency's consideration prior to the agency's decision.* A court may not set aside the agency's decision unless it finds that there

is clear and convincing evidence that the decision was arbitrary or capricious or not in compliance with law.

(b) When new, material, and significant evidence is presented to the district court that had not previously been presented to the agency for its consideration, the district court shall remand the new evidence back to the agency for the agency's consideration and an opportunity to modify its findings of fact and administrative decision before the district court considers the evidence within the administrative record under review. Immaterial or insignificant evidence may not be remanded to the agency. The district court shall review the agency's findings and decision to determine whether they are supported by substantial, credible evidence within the administrative record under review."

Section 2. Environmental review — exemption. (1) The department and board are required to comply with the provisions of Title 75, chapter 1, parts 1 and 2, when implementing provisions within Title 77 only if the department is actively proposing to issue a sale, exchange, right-of-way, easement, placement of improvement, lease, license, permit, or other authorization for use of state lands or is acting in response to an application for an authorization.

(2) Except for rulemaking and as provided in subsection (1), the department and board are otherwise exempt from the provisions of Title 75, chapter 1, parts 1 and 2, when implementing provisions within Title 77, including but not limited to the issuance of lease renewals. The department and board do not have an obligation to comply with the provisions of Title 75, chapter 1, parts 1 and 2, when implementing provisions within Title 77 if the department or board choose not to take any action, even though either may have the authority to take an action.

Section 3. Codification instruction. [Section 2] is intended to he codified as an integral part of Title 77, chapter 1, part 1, and the provisions of Title 77, chapter 1, part 1, apply to [section 2].

Section 4. Effective date. [This act] is effective on passage and approval.

Section 5. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to all matters pending before an agency on [the effective date of this act].

Approved April 1, 1999

CHAPTER NO. 224

[HB 485]

AN ACT PROVIDING FOR A TIMBER CONSERVATION LICENSE IN LIEU OF THE SALE OF TIMBER ON STATE TRUST LANDS AND ESTABLISHING A BID PROCESS FOR CONSERVATION LICENSES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Timber conservation license in lieu of sale. (1) Under the direction of the board, the department may offer and provide a timber conservation license in lieu of the sale and harvesting of the timber to any person under all of the following conditions:

HeinOnline -- 1999 vol. I 715 1999

(a) During the environmental review process required by Title 75, chapter 1, for a proposed timber sale, an interested person shall provide to the department a written request that the department defer the sale or a specific portion of the sale and that a timber conservation license for the sale or portion of the sale be authorized.

(b) Upen receipt of a written request, the department shall prepare and recommend the timber sale for consideration by the hoard, using the altornatives of the sale with and the sale without a timber conservation license provision.

(c) The department shall solicit bids simultaneously for each alternative authorized by this section to ensure that the full, fair market value is secured for the heneficiaries.

(d) The successful purchaser of a timber conservation license is required to furnish a hond, as required by 77-5-202, to ensure the terms of the contract for a timber conservation license.

(e) The successful purchaser of a timber conservation license is required to pay the fees for forest improvement, as required by 77-5-204, that are included in the terms of the sale bid and applicable to the issuance of a timber conservation license.

(2) If a request for the timber sale analysis and authorization of a timber conservation license is not submitted to the department prior to the completion of the environmental review process for the sale, as required by Title 75, chapter 1, a timber conservation license may not be authorized.

Seetion 2. Saving clausc. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 77, chapter 5, part 2, and the provisions of Title 77, chapter 5, part 2, apply to [section 1].

Section 4. Effective date. [This act] is effective on passage and approval.

Approved April 1, 1999

CHAPTER NO. 225

[HB 583]

AN ACT ALLOWING A STATE AGENCY TO GRANT PAID LEAVE TO AN EMPLOYEE WHO IS A CERTIFIED AMERICAN RED CROSS VOLUNTEER PROVIDING DISASTER RELIEF VOLUNTEER SERVICE FOR THE AMERICAN RED CROSS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Paid leave for disaster relief volunteer service. (1) An agency may grant to a state employee up to 15 days in a calendar year of a paid leave of absence for the employee to participate in specialized disaster relief services for the American red cross if:

(a) the employee is a certified American red cross disaster relief volunteer; and

HeinOnline -- 1999 vol. I 716 1999

(b) the American red cross has requested the employee's services.

(2) Leave time granted pursuant to this section:

(a) must be paid at the regular rate of compensation, including regular group, retirement, or leave accrual benefits, for the regular work hours during which the employee is absent from the employee's regular duties;

(b) commences upon approval of the employee's employing agency; and

(c) may not be charged against any other leave to which the employee is entitled.

(3) For purposes of this section, the following definitions apply:

(a) "Agency" has the meaning provided in 2-18-101.

(b) "Employee" means any person employed by an agency, except an elected official.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 2, chapter 18, part 6, and the provisions of Title 2, chapter 18, part 6, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 1, 1999

CHAPTER NO. 226

[SB 57]

AN ACT REQUIRING THE DEPARTMENT OF ADMINISTRATION TO ADOPT RULES FOR THE ACCEPTABLE USES OF STATE-OWNED OR LEASED MOTOR VEHICLES; AMENDING SECTION 2-17-421, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Acceptable uses — rulemaking. (1) The department of administration shall adopt reasonable rules defining the acceptable uses for a state-owned or leased motor vehicle. The rules may allow for limited personal use of a state-owned or leased motor vehicle for emergency, travel-related purposes and other lawful activities that do not result in excessive mileage or excessive wear and tear on the motor vehicle. The rules may not permit the routine personal use of a state-owned or leased vehicle that is assigned to an employee on a 24-hour, 7-day-a-week basis.

(2) The department of administration shall adopt reasonable rules governing the determination of when the use of privately owned vehicles on state business may be justified as in the best interest of the state.

Section 2. Section 2-17-421, MCA, is amended to read:

"2-17-421. Use — state business only — exception — compensation for driving personal vehicle — penalty for private use. (1) ~~A~~ *Except as provided in [section 1], a* state officer or employee may not use a state-owned or leased motor vehicle for ~~his own~~ personal ~~and private~~ use~~,~~ nor ~~may he~~ be compensated for driving ~~his own~~ *a personal* motor vehicle unless that motor vehicle is used on state business.

HeinOnline -- 1999 vol. I 717 1999

(2) ~~The department of transportation may require that a~~ *Except for vehicles that have been approved for confidential license plates by the attorney general in accordance with 44-4-201, a* decal *must* be affixed to the ~~instrument panel~~ *windshield* of each state-owned *or leased* vehicle, with the following information contained on the decal:

"Any officer or employee of ~~the~~ state government who uses or authorizes the use of any state-owned ~~motor-propelled~~ *or leased motor* vehicle~~, or of any motor-propelled vehicle leased by the state government, for other than official purposes~~ *in violation of the acceptable use rules provided for in [section 1]* may be removed from office by the head of the department or establishment concerned."

~~(3) The private use of state-owned or leased motor vehicles for emergency travel-related purposes or exceptional circumstances by employees in a travel status may be approved by the head of the department or agency concerned.~~

~~(4)~~*(3)* The head of ~~the~~ *a* department or agency ~~concerned~~ may terminate the employment of any employee using state-owned or leased vehicles for personal ~~or private~~ use *in violation of the rules provided for in [section 1].*"

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 2, chapter 17, part 4, and the provisions of Title 2, chapter 17, part 4, apply to [section 1].

Section 4. Effective date. [This act] is effective on passago and approval.

Approved April 1, 1999

CHAPTER NO. 227

[SB 63]

AN ACT REVISING THE SEXUAL AND VIOLENT OFFENDER REGISTRATION LAW BY CHANGING THE DEFINITIONS OF "SEXUAL OFFENSE" AND "VIOLENT OFFENSE"; PROVIDING THAT CERTAIN SEXUAL OFFENDERS MAY NOT PETITION, AFTER 10 YEARS OF REGISTRATION, FOR AN ORDER RELIEVING THE OFFENDER FROM THE DUTY TO REGISTER; AND AMENDING SECTIONS 46-23-502 AND 46-23-506, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-23-502, MCA, is amended to read:

"46-23-502. Definitions. As used in 46-18-255 and this part, the following definitions apply:

(1) "Department" means the department of corrections provided for in 2-15-2301.

(2) "Mental abnormality" means a congenital or acquired condition that affects the mental, emotional, or volitional capacity of a person in a manner that predisposes the person to the commission of one or more sexual offenses to a degree that makes the person a menace to the health and safety of other persons.

(3) "Personality disorder" means a personality disorder as defined in the fourth edition of the Diagnostic and Statistical Manual of Mental Disorders adopted by the American psychiatric association.

HeinOnline -- 1999 vol. I 718 1999

(4) "Predatory sexual offense" means a sexual offense committed against a stranger or against a person with whom a relationship has been established or furthered for the primary purpose of victimization.

(5) "Sexual offender evaluator" means a person qualified under rules established by the department to conduct sexual offender and sexually violent predator evaluations.

(6) "Sexual offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-502(3), 45-5-503, *45-5-504(1) (if the victim is under 18 years of age and the offender is 18 years of age or older)*, 45-5-504(2)(c), 45-5-507 ~~(unless the act occurred between two consenting persons 16 years of age or older~~ *(if the victim is under 18 years of age and the offender is 3 or more years older than the victim)*, or 45-5-625; or

(b) any violation of a law of another state or the federal government reasonably equivalent to a violation listed in subsection (6)(a).

(7) "Sexual or violent offender" means a person who has been convicted of a sexual or violent offense.

(8) "Sexually violent predator" means a person who has been convicted of a sexual offense and who suffers from a mental abnormality or a personality disorder that makes the person likely to engage in predatory sexual offenses.

(9) "Violent offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-102, 45-5-103, 45-5-202, 45-5-206 (third or subsequent offense), *45-5-210(1)(b), (1)(c), or (1)(d)*, 45-5-301 (~~when~~ *if* the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-302, 45-5-303, 45-5-401, 45-5-603(1)(b), or 45-6-103; or

(b) any violation of a law of another state or the federal government reasonably equivalent to a violation listed in subsection (9)(a)."

Section 2. Section 46-23-506, MCA, is amended to read:

"46-23-506. Duration of registration. (1) A sexual offender required to register under this part shall register for the remainder of the offender's life, except as provided in subsection (3) or during a period of time during which the offender is in prison.

(2) A violent offender required to register under this part shall register:

(a) for the 10 years following release from confinement or, if not confined following sentencing, for the 10 years following the conclusion of the sentencing hearing; or

(b) if convicted during the 10-year period provided in subsection (2)(a) of failing to register or keep registration current or of a felony, for the remainder of the offender's life unless relieved of the duty to register as provided in subsection (3).

(3) ~~At~~ *Except as provided in subsection (5), at* any time after 10 years of registration, the offender may petition the sentencing court or the district court for the judicial district in which the offender resides for an order relieving the offender of the duty to register. The petition must be served on the county attorney in the county where the petition is filed. Prior to a hearing on the

HeinOnline -- 1999 vol. I 719 1999

petition, the county attorney shall mail a copy of the petition to the victim of the last offense for which the offender was convicted if the victim's address is reasonably available. The court shall consider any written or oral statements of the victim. The court may grant the petition upon finding that:

(a) the offender has remained a law-abiding citizen; and

(b) continued registration is not necessary for public protection and that relief from registration is in the best interests of society. ~~If the offender was designated as a sexually violent predator under 46-23-509, the court is also required to find that the offender no longer suffers from a mental abnormality or personality disorder that makes the offender likely to engage in a predatory sexual offense.~~

(4) The offender may move that all or part of the proceedings in a hearing under subsection (3) be closed to the public, or the judge may close them on the judge's own motion. If a proceeding is closed to the public, the judge shall permit a victim of the offense to be present unless the judge determines that exclusion of the victim is necessary to protect the offender's right of privacy or the safety of the victim. If the victim is present, the judge, at the victim's request, shall permit the presence of an individual to provide support to the victim unless the judge determines that exclusion of the individual is necessary to protect the offender's right to privacy.

(5) Subsection (3) does not apply to an offender who was convicted of:

(a) 45-5-503 if the victim was compelled to submit by force, as defined in 45-5-501, against the victim or another;

(b) 45-5-507 if at the time the offense occurred the victim was under 12 years of age and the offender was 3 or more years older than the victim;

(c) a second or subsequent sexual offense that requires registration; or

(d) a sexual offense and was designated as a sexually violent predator under 46-23-509."

Approved April 1, 1999

CHAPTER NO. 228

[SB 369]

AN ACT REVISING THE LAW RELATING TO CONVERSION OF GROUP DISABILITY INSURANCE AND GROUP HOSPITAL OR MEDICAL SERVICE PLANS; LOWERING THE MAXIMUM PREMIUM RATE AFTER CONVERSION FOR AN INDIVIDUAL WHO HAS BEEN INSURED MORE THAN 3 YEARS FROM 200 PERCENT TO 150 PERCENT OF THE CUSTOMARY RATE FOR GROUP OR INDIVIDUAL INSURANCE OR AN INDIVIDUAL HOSPITAL OR MEDICAL SERVICE PLAN; AMENDING SECTIONS 33-22-508 AND 33-30-1007, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-22-508, MCA, is amended to read:

"33-22-508. Conversion on termination of eligibility. (1) A group disability insurance policy or certificate of insurance delivered or issued for delivery

HeinOnline -- 1999 vol. I 720 1999

or renewed after October 1, 1981, must contain a provision that if the insurance or any portion of it on a person or the person's dependents or family members covered under the policy ceases because of termination of the person's employment or of the person's membership in the class or classes eligible for coverage under the policy or as a result of a person's employer discontinuing the employer's business or as a result of a person's employer discontinuing the group disability insurance policy and not providing for any other group disability insurance or plan and if the person had been insured for a period of 3 months and the person is not insured under another major medical disability insurance policy or plan, the person is entitled to have issued to the person by the insurer, without evidence of insurability, group coverage or an individual policy or, in the absence of an individual policy issued by the insurer, a group policy issued by the insurer, of hospital or medical service insurance on the person or the person's dependents or family members if application for the individual policy is made and the first premium tendered to the insurer within 31 days after the termination of group coverage.

(2) The individual policy or group policy, at the option of the insured, may be on any form then customarily issued by the insurer to individual or group policyholders, with the exception of a policy the eligibility for which is determined by affiliation other than by employment with a common entity. In addition, the insurer shall make available a conversion policy as required by subsection (4).

(3) The premium on the individual policy or group policy must be at no more than 200% of the insurer's then customary rate applicable to the coverage of the individual or group policy. *If the person entitled to conversion under this section has been insured for more than 3 years, the premium may not be more than 150% of the customary rate.* The customary rate is that rate that is normally issued for medically underwritten policies without discount for healthy lifestyles.

(4) The insurer shall also make available a conversion policy, certificate, or membership contract that provides at least the level of benefits provided by the insurer's lowest cost basic health benefit plan, as defined in 33-22-1803. If the insurer is not a small employer carrier under part 18, the insurer shall make available a conversion policy, certificate, or membership contract that provides equivalent benefits to a basic health benefit plan. The conversion rate may not exceed 150% of the highest rate charged for that plan."

Section 2. Section 33-30-1007, MCA, is amended to read:

"33-30-1007. Conversion on termination of eligibility. (1) The group hospital or medical service plan contract issued or renewed by a health service corporation after October 1, 1981, ~~shall~~ *must* contain a provision that if the insurance or any portion of it on a person~~,~~ or a person's dependents or family members covered under the policy ceases because of termination of the person's employment or of a person's membership in the class or classes eligible for coverage under the policy~~,~~ as a result of an employer discontinuing the employer's business~~,~~ or as a result of an employer discontinuing the policy issued by the health service corporation and not providing for any other group disability insurance or plan, a person ~~shall~~ *must*, ~~provided that~~ *if* the person has been insured for a period of 3 months and ~~that~~ *if* the person is not insured under another major medical disability insurance policy or plan, be entitled to have issued to the person by the insurer, without evidence of insurability, an individual policy of hospital or medical service insurance on the person or the person's dependents or family members. Application for the individual policy must be

HeinOnline -- 1999 vol. I 721 1999

made and the first premium tendered to the insurer within 31 days after the termination of group coverage.

(2) The individual policy ~~shall~~ *must*, at the option of the insured, be on any of the forms then customarily issued by the insurer to individual policyholders with the exception of those whose eligibility is determined by their affiliation other than by employment with a particuiar entity. In addition, the health service corporation shall make available a conversion policy as required by subsection (4).

(3) The premium on the individual policy must be at no more than 200% of the insurer's then customary rate applicable to the coverage of the individual policy. *If the person entitled to conversion under this section has been insured for more than 3 years, the premium may not be more than 150% of the customary rate.* The customary rate is that rate that is normally issued for medically underwritten poiicies without discount for healthy lifestyles.

(4) The health service corporation shall make available an individual conversion policy that provides the level of benefits provided by its lowest cost basic health benefit plan, as defined in 33-22-1803. If the insurer is not a small employer carrier under chapter 22, part 18, the insurer shall make available an individual conversion policy tbat provides equivalent benefits to a basic health benefit plan. The conversion rate may not exceed 150% of the highest rate charged for that plan."

Section 3. Applicability. [This act] applies to a policy, certificato, or contract of disability insurance and a health service membership contract entered into or renewed on or after January 1, 2000.

Approved April 1, 1999

CHAPTER NO. 229

[HB 264]

AN ACT GENERALLY REVISING BUSINESS LAWS; GENERALLY REVISING LAWS RELATING TO ASSUMED BUSINESS NAMES; GENERALLY REVISING CORPORATE LAW; ALLOWING PROXIES TO BE ESTABLISHED BY MEANS OTHER THAN BY WRITING; REQUIRING REGISTERED AGENTS TO MANIFEST CONSENT TO BEING A REGISTERED AGENT; REQUIRING ARTICLES OF DISSOLUTION TO INDICATE IF DISSOLUTION WAS ADOPTED WITHOUT SHAREHOLDER ACTION; CLARIFYING REQUIREMENTS FOR RESTATED ARTICLES OF INCORPORATION FOR NONPROFIT CORPORATIONS; GENERALLY REVISING LIMITED LIABILITY COMPANY LAWS; AMENDING SECTIONS 30-13-203, 30-13-207, 30-13-209, 30-13-210, 30-13-211, 35-1-308, 35-1-313, 35-1-525, 35-1-931, 35-1-933, 35-1-934, 35-1-1032, 35-1-1207, 35-2-226, 35-2-309, 35-8-103, 35-8-104, 35-8-202, 35-8-203, 35-12-505, AND 35-12-507, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 30-13-203, MCA, is amended to read:

"30-13-203. Application for registration of assumed business name. A person transacting business in this state under an assumed business name shall register with the secretary of state, on forms furnished by the secretary of stato

HeinOnline -- 1999 vol. I 722 1999

or by electronic means established by the board of review establisbed in 30-16-302, an application for registration of the assumed business name, including hut not limited to tbe following information:

(1) the name and address, including the street name and number, of applicant;

(2) the complete name of the proposed assumed business name;

(3) *the* date of first use, in commerce, of the proposed assumed business name; *and*

(4) *a* description of business transacted under the proposed assumed name~~; and~~

~~(5) the name of county or counties in which business is being transacted.~~"

Section 2. Section 30-13-207, MCA, is amended to read:

"**30-13-207. Application for renewal of assumed business name.** One original and one copy of an application for renewal of registration of an assumed business name ~~shall~~ *must* be executed and delivered to the secretary of state. The application ~~shall~~ *must* include but *is* not ~~be~~ limited to the following information:

(1) the complete assumed business name;

(2) the name and address, including street name and number, if any, of *the* applicant; *and*

(3) *a* description of business transacted~~; and~~

~~(4) the name of the county or counties in which business is being transacted.~~"

Section 3. Section 30-13-209, MCA, is amended to read:

"**30-13-209. Amendment.** An amendment to registration of an assumed business name must be filed with the secretary of state within 1 year after any one of the following events occurs:

(1) there is a change in the name or identity of the person or persons transacting or having interest in the business for which the name is registered;

(2) there is a change in the ~~identity of the county or counties in which the name is or is intended to be used~~ *description of the business transacted*;

(3) a person having an interest in the business with a registered assumed business name withdraws from the business or dies; or

(4) the registrant wishes to change the name of a registered assumed business name."

Section 4. Section 30-13-210, MCA, is amended to read:

"**30-13-210. Filing amendment to registration of assumed business name — issuance of certificate.** (1) One original and one copy of an amendment to the registration of an assumed business name must be delivered to the secretary of state. The application for amended registration of an assumed business name must include but is not limited to the following information:

(a) complete assumed business name prior to adoption of amendment;

(b) complete new assumed business name, if applicable;

(c) name and address of the registrant, including street name and number of the business office;

HeinOnline -- 1999 vol. I 723 1999

(d) if the name of any person having an interest in the business with a registered assumed business name is to be changed, the new name of the person having an interest in the business with the registered assumed business name;

~~(e) the name of the county or counties in which the name is being used;~~

~~(f) if there is a change in the identity of the county or counties or addition of a county or counties in which the assumed business name is being used or is to be used, the name of the new county or counties;~~

~~(g)~~*(e)* if a person or persons having an interest in a business with a registered assumed name withdraws or dies, a statement of that fact; and

~~(h)~~*(f)* a statement that the amended registration of assumed business name supersedes the original registration and all amendments to the original registration.

(2) If the secretary of state finds that the application for amended registration of the assumed business name complies with this part, the secretary of state shall, when all fees have been paid as provided in this part:

(a) endorse on the original and the copy the word "filed" and the month, day, and year of the filing;

(b) file the original in the secretary of state's office; and

(c) issue a certificate of amendment, to which the secretary of state shall affix the copy.

(3) The certificate of amendment, together with the copy of the amendment required in subsection (1), must be returned to the registrant.

(4) The failure of the registrant of an assumed business name to comply with the requirements of this section results in the cancellation by the secretary of state of the registration."

Section 5. Section 30-13-211, MCA, is amended to read:

"30-13-211. Reservation of proposed assumed business name. Any authorized person who has not commenced business but intends to commence business may reserve an assumed business name ~~which~~ *that* is not in conflict with the provisions of 30-13-202 for a term of 120 days by delivering to the secretary of state, on forms furnished by the secretary of state, an application for reservation of an assumed business name, including but not limited to the following information:

(1) the complete assumed business name to be reserved;

(2) the name and address, including street name and number, if any, of *the* applicant;

(3) the date *the* applicant intends to commence business; *and*

(4) *a* description of business *the* applicant intends to transact~~; and~~.

~~(5) the county or counties in which applicant intends to conduct business.~~"

Section 6. Section 35-1-308, MCA, is amended to read:

"35-1-308. Corporate name. (1) A corporate name:

(a) must contain the word "corporation", "incorporated", "company", or "limited"; the abbreviation "corp.", "inc.", "co.", or "ltd."; or words or abbreviations of similar meaning in another language; and

HeinOnline -- 1999 vol. I 724 1999

(b) may not contain language that states or implies that the corporation is organized for a purpose or purposes other than those permitted by 35-1-114 and its articles of incorporation.

(2) Except as authorized by subsections (3) and (4), a corporate name must be distinguishable in tbe records of the secretary of state from:

(a) the corporate name of another corporation incorporated or authorized to transact business in this state;

(h) a corporate name reserved or registered under 35-1-309 or 35-1-311;

(c) the fictitious name adopted by a foreigu corporation authorized to transact business in this state hecause its real name is unavailable;

(d) the corporate name of a not-for-profit corporation incorporated or authorized to transact business in this state;

(e) tbe corporate name of a domestic corporation that has dissolved, but only distinguishable for a period of 120 days after the effective date of its dissolution; and

(f) any assumed business name, limited partnership name, limited liahility company name, trademark, or service mark registered or reserved with the secretary of state.

(3) A corporation may apply to the secretary of state for authorization te use a name that is not distinguishable in the secretary of state's records from one or more of the names described in subsection (2). The secretary of state shall authorize use of the name applied for if:

(a) the other corporation consents to the use in writing and submits an undertaking in a form satisfactory to the secretary of state to change its name to a name that is distinguishable in the records of the secretary of state from the name of the applying corporation; or

(b) the applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in the state.

(4) A corporation, *limited liability company, or limited partnership* may use the name, including the fictitious name, of another domestic or foreign corporation, *limited liability company, or limited partnership* that is used in this state if the other corporation, *limited liability company, or limited partnership* is incorporated or authorized to transact business in this state and the proposed user corporation, *limited liability company, or limited partnership*:

(a) has merged with the other corporation, *limited liability company, or limited partnership*;

(b) has been formed by reorganization of the other corporation, *limited liability company, or limited partnership*; ~~or~~

(c) has acquired all or substantially all of the assets, including the corporate name, of the other corporation, *limited liability company, or limited partnership; or*

(d) has obtained written permission from the other corporation, limited liability company, or limited partnership for use of the name and has filed a copy of the grant of permission with the secretary of state.

(5) This chapter does not control the use of fictitious names."

Section 7. Section 35-1-313, MCA, is amended to read:

"35-1-313. Registered office — registered agent. *(1)* Each corporation shall continuously maintain in this state:

~~(1)~~*(a)* a registered office that may but need not be the same as any of its places of business; and

~~(2)~~*(b)* a registered agent, who must be one of the following:

~~(a)~~*(i)* an individual who resides in this state and whose business office is identical to the registered office;

~~(b)~~*(ii)* a domestic corporation or not-for-profit domestic corporation whose business office is identical to the registered office; or

~~(c)~~*(iii)* a foreign corporation or not-for-profit foreign corporation authorized to transact business in this state whose business office is identical to the registered office.

(2) Unless the registered agent signed the document making the appointment, the appointment of a registered agent or a successor registered agent on whom process may be served is not effective until the agent delivers a statement in writing to the secretary of state accepting the appointment."

Section 8. Section 35-1-525, MCA, is amended to read:

"35-1-525. Proxies. (1) A shareholder may vote ~~its~~ *the shareholder's* shares in person or by proxy.

(2) *(a)* A shareholder may appoint a proxy to vote or otherwise act for that shareholder by:

(i) signing an appointment form, either personally or by attorney-in-fact; *or*

(ii) transmitting or authorizing the transmission of an appointment by telegram, cablegram, telephone, fax, e-mail, internet, or other means of electronic transmission, provided that the transmission contains sufficient information to demonstrate that the transmission was authorized by the shareholder.

(b) The secretary or other officer or agent that receives the transmission shall determine whether or not the transmission was authorized by the shareholder based on the information contained in the transmission.

(c) The signature provisions of 35-1-527 pertaining to proxies do not apply to transmissions that are determined to be authorized under the provisions of this subsection (2).

(3) An appointment of a proxy is effective when received by the secretary or other officer or agent authorized to tabulate votes. An appointment is valid for 11 months unless a longer period is expressly provided in the appointment form *or transmission*.

(4) Except as provided in subsection (6), an appointment of a proxy is revocable by the shareholder unless the appointment form conspicuously states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest include the appointment of:

(a) a pledgee;

(b) a person who purchased or agreed to purchase the shares;

HeinOnline -- 1999 vol. I 726 1999

(c) a creditor of the corporation who extended it credit under terms requiring the appointment;

(d) an employee of the corporation whose employment contract requires the appointment; or

(e) a party to a voting agreement created under 35-1-533.

(5) The death or incapacity of the shareholder appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises the proxy's authority under the appointment.

(6) An appointment made irrevocable under subsection (4) is revoked when the interest with which it is coupled is extinguished.

(7) A transferee for value of shares subject to an irrevocable appointment may revoke the appointment if the transferee did not know of its existence when the transferee acquired the shares and the existence of the irrevocable appointment was not noted conspicuously on the certificate representing the shares or on the information statement for shares without certificates.

(8) Subject to 35-1-526 and to any express limitation on the proxy's authority appearing on the face of the appointment form, a corporation is entitled to accept the proxy's vote or other action as that of the shareholder making the appointment.

(9) A shareholder may not sell ~~his~~ *the shareholder's* vote or issue a proxy to vote to any person for any sum of money or anything of value except as authorized in 35-1-532 and this section."

Section 9. Section 35-1-931, MCA, is amended to read:

"**35-1-931. Dissolution by incorporators or initial directors.** A majority of the incorporators or initial directors of a corporation that has not issued shares or has not commenced business may dissolve the corporation by delivering to the secretary of state, for filing, articles of dissolution that set forth:

(1) the name of the corporation;

(2) the date of its incorporation;

(3) either that none of the corporation's shares have been issued or that the corporation has not commenced business;

(4) that ~~no~~ *any* debt of the corporation ~~remains~~ *does not remain* unpaid;

(5) if ~~issues~~ *shares* were ~~shared~~ *issued*, that the net assets of the corporation remaining after winding up of the corporation's business and affairs have been distributed to the shareholders; and

(6) that a majority of the incorporators or initial directors authorized the dissolution."

Section 10. Section 35-1-933, MCA, is amended to read:

"**35-1-933. Articles of dissolution.** (1)(a) At any time after dissolution is authorized, the corporation may dissolve by delivering to the secretary of state, for filing, articles of dissolution setting forth:

(i) the name of the corporation;

HeinOnline -- 1999 vol. I 727 1999

(ii) the date dissolution was authorized; ~~and~~

(iii) if the dissolution was adopted by the board of directors without shareholder action, a statement to the effect that shareholder action was not required; and

~~(iii)~~*(iv)* if dissolution was approved by the shareholders:

(A) the number of votes entitled to be cast on the proposal to dissolve; and

(B) either the total number of votes cast for and against dissolution or the total number of undisputed votes cast for dissolution and a statement that the number cast for dissolution was sufficient for approval.

(b) If voting by voting groups is required, the information required by subsection (1)(a)~~(iii)~~*(iv)* must be separately provided for each voting group entitled to vote separately on the plan to dissolve.

(2) A corporation is dissolved upon the effective date of its articles of dissolution."

Section 11. Section 35-1-934, MCA, is amended to read:

"35-1-934. Revocation of dissolution. (1) A corporation may revoke its dissolution within 120 days of the effective date of the articles of dissolution.

(2) Revocation of dissolution must be authorized in the same manner as the dissolution was authorized unless that authorization permitted revocation by action of the board of directors alone, in which event the board of directors may revoke the dissolution without ~~shareholders'~~ *shareholder* action.

(3) After the revocation of dissolution is authorized, the corporation may revoke the dissolution by delivering to the secretary of state, for filing, articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth:

(a) the name of the corporation;

(b) the effective date of the dissolution that was revoked;

(c) the date that the revocation of dissolution was authorized;

(d) if the corporation's board of directors or incorporators revoked the dissolution, a statement to that effect;

(e) if the corporation's board of directors revoked a dissolution authorized by the shareholders, a statement that revocation was permitted on action by the board of directors alone pursuant to that authorization; and

(f) if shareholder action was required to revoke the dissolution, the information required by 35-1-933(1)(a)~~(iii)~~*(iv)* or (1)(b).

(4) Unless a delayed effective date is specified, revocation of dissolution is effective when the articles of revocation of dissolution are filed.

(5) When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution and the corporation resumes carrying on its business as if dissolution had never occurred."

Section 12. Section 35-1-1032, MCA, is amended to read:

"35-1-1032. Registered office and registered agent of foreign corporation. *(1)* Each foreign corporation authorized to transact business in this state ~~must~~ *shall* continuously maintain in this state:

HeinOnline -- 1999 vol. I 728 1999

~~(1)~~*(a)* a registered office that may be the same as any of its places of business; and

~~(2)~~*(b)* a registered agent who may be:

~~(a)~~*(i)* an individual who resides in this state and whose business office is identical with the registered office;

~~(b)~~*(ii)* a domestic corporation or not-for-profit domestic corporation whose business office is identical with the registered office; or

~~(c)~~*(iii)* a foreign corporation or foreign not-for-profit corporation authorized to transact business in this state whose business office is identical with the registered office.

(2) Unless the registered agent signed the document making the appointment, the appointment of a registered agent or a successor registered agent on whom process may be served is not effective until the agent delivers a statement in writing to the secretary of state accepting the appointment."

Section 13. Section 35-1-1207, MCA, is amended to read:

"35-1-1207. License fee. (1) In addition to the filing fee authorized by 35-1-1206, the secretary of state shall charge and collect from each domestic corporation a license fee based upon the number of shares that it will have authority to issue ~~or the increase in the number of shares that it will have authority to issue,~~ at the time of:

(a) filing its articles of incorporation;

(b) filing articles of amendment increasing the number of authorized shares; and

(c) filing articles of merger or consolidation increasing the number of authorized shares that the surviving or new corporation, if a domestic corporation, will have authority to issue above the aggregate number of shares that the constituent domestic corporations and constituent foreign corporations authorized to transact business in this state have authority to issue.

(2) The license fee for domestic corporations is as follows:

(a) ~~0~~ *1* to 50,000 shares ..... $ 50

(b) ~~50,000~~ *50,001* to 100,000 shares 100

(c) ~~100,000~~ *100,001* to 250,000 shares 250

(d) ~~250,000~~ *250,001* to 500,000 shares 400

(e) ~~500,000~~ *500,001* to 1,000,000 sbares 600

(f) over 1,000,000 shares 1,000

(3) *If the domestic corporation is increasing the number of authorized shares either by amendment or by merger, the domestic corporation shall pay the difference in license fee between the fee based on the initial number of authorized shares and the amended number of shares.*

(4) In addition to the filing fee authorized by 35-1-1206, the secretary of state shall charge and collect from each foreign corporation a license fee of $100 at the time of filing an application for a certificate of authority to transact business."

Section 14. Section 35-2-226, MCA, is amended to read:

HeinOnline -- 1999 vol. I 729 1999

"**35-2-226. Restated articles of incorporation.** (1) A corporation's board of directors may restate its articles of incorporation at any time, with or without approval by members or any other person.

(2) The restatement may include one or more amendments to the articles. If the restatement includes an amendment requiring approval by the members or any other person, it must be adopted as provided in 35-2-223.

(3) If the restatement includes an amendment requiring approval by members, the board ~~must~~ *shall* submit the restatement to the members for their approval.

(4) If the board seeks to have the restatement approved by the members at a membership meeting, the corporation shall notify each of its members of the proposed membership meeting in writing in accordance with 35-2-530. The notice must also state that the purpose or one of the purposes of the meeting is to consider the proposed restatement and must contain or be accompanied by a copy or summary of the restatement that identifies any amendments or other change that the restatement would make in the articles.

(5) If the board seeks to have the restatement approved by the members by written ballot or written consent, the material soliciting the approval must contain or be accompanied by a copy or summary of the restatement that identifies any amendments or other change it would make in the articles.

(6) A restatement requiring approval by the members must be approved by the same vote as an amendment to articles under 35-2-223.

(7) If the restatement includes an amendment that requires approval pursuant to 35-2-232, the board ~~must~~ *shall* submit the restatement for this approval.

(8) A corporation that restates its articles shall deliver to the secretary of state, for filing, articles of restatement setting forth the name of the corporation and the text of the restated articles of incorporation, together with a certificate setting forth *a statement of whether the restated articles were approved by the board, the members, or any other person and*:

~~(a) whether the restatement contains an amendment to the articles requiring approval by the members or any other person other than the board of directors and, if it does not, that the board of directors adopted the restatement; or~~

~~(b)~~*(a)* if the restatement contains an amendment to the articles requiring approval by the members, the information required by 35-2-225; ~~and~~

~~(c)~~*(b)* if the restatement contains an amendment to the articles requiring approval by a person whose approval is required pursuant to 35-2-232, a statement that the approval was obtained; *and*

(c) if the restatement has an amendment that does not require member approval, a statement as to who approved the amendment, whether approval was made by the board or any other person.

(9) Adopted restated articles of incorporation supersede the original articles of incorporation and all amendments to them.

(10) The secretary of state may certify restated articles of incorporation as the articles of incorporation currently in effect without including the certificato information required by subsection (8)."

HeinOnline -- 1999 vol. I 730 1999

Section 15. Section 35-2-309, MCA, is amended to read:

"35-2-309. Registered name and registered agent. *(1)* Each corporation shall continuously maintain in this state:

~~(1)~~*(a)* a registered office with the same address as that of the registered agent; and

~~(2)~~*(b)* a registered agent, who must he one of the following:

~~(a)~~*(i)* an individual who resides in this state and whose office is identical to the registered office;

~~(b)~~*(ii)* a domestic business or nonprofit corporation whose office is identical to the registered office; or

~~(c)~~*(iii)* a foreign business or nonprofit corporation authorized to transact business in this state whose office is identical to the registered office.

(2) Unless the registered agent signed the document making the appointment, the appointment of a registered agent or a successor registered agent on whom process may be served is not effective until the agent delivers a statement in writing to the secretary of state accepting the appointment."

Section 16. Registered agent — registered office. (1) A corporation sole organized under the provisions of this chapter shall maintain a corporate office in this state and shall appoint a resident registered agent.

(2) Unless the registered agent signed the document making the appointment, the appointment of a registered agent or a successor registered agent on whom process may be served is not effective until the agent delivers a statement in writing to the secretary of state accepting the appointment.

Section 17. Section 35-8-103, MCA, is amended to read:

"35-8-103. Name. (1) The name of each limited liability company as set forth in its articles of organization must contain the words "limited liability company" or "limited company" or the abbreviations "l.l.c.", "l.c.", "llc", or "lc". The word "limited" may be abbreviated as "ltd.", and the word "company" may be abbreviated as "co.".

(2) A limited liability company name must be distinguishable on the records of the secretary of state from:

(a) the name of any business corporation, nonprofit corporation, limited partnership, or limited liability company organized or reserved under the laws of this state;

(b) the name of any foreign business corporation, foreign nonprofit corporation, foreign limited partnership, or foreign limited liability company registered or qualified to do business in this state;

(c) any assumed business name, limited partnership name, trademark, service mark, or other name registered or reserved with the secretary of state; and

(d) the corporate name of a domestic corporation that has dissolved but only for a period of 120 days after the effective date of its dissolution.

(3) The use of the name of a limited liability company by another limited liability company or limited partnership is governed by 35-1-308.

HeinOnline -- 1999 vol. I 731 1999

~~(3)~~*(4)* Contests over names registered under this section are governed hy 35-1-310."

Seetion 18. Section 35-8-104, MCA, is amended to read:

"35-8-104. Reservation of name. (1) The exclusive right to use a name may be reserved hy:

(a) a person intending to organize a limited liahility company and to adopt that name;

(b) a himited liability company or foreign limited hahility company registered in this state that intends to adopt that name;

(c) a foreign limited liability company intending to register in this state and to adopt that name; or

(d) a person intending to organize a foreign limited liability company and to have it registered in this state and te adopt that name.

(2) The reservation must be made by filing with the secretary of state an application, executed by the applicant, to reserve a specified name. If the secretary of state finds that the name is availahle for use hy a domestic or foreign limited liability company, the secretary of state shall reserve the name for the exclusive use of the applicant for a nonrenewable period of 120 days from the date the application is filed.

~~(3) The holder of a reserved limited liability company name may renew the reservation for successive periods of 120 days each from the date of renewal.~~

~~(4)~~*(3)* The right to the exclusive use of a reserved name may he transferred to another person by filing with the secretary of state a notice of the transfer, executed by the applicant for whom tlie name was reserved, and hy specifying the name to he transferred and the name and address of the transferee. The transfer may not extend the term during which the name is reserved."

Section 19. Registered name of foreign limited liability company — registration renewal. (1) A foreign limited liability company may register its name or its name with any addition required by 35-8-103 if the name is distingnishable from names that are not available under 35-8-103(2).

(2) A foreign limited liability company shall register its name or its name with any addition required by 35-8-103 by delivering to the secretary of state for filing an application:

(a) setting forth:

(i) its name or its name with any addition required by 35-8-103;

(ii) the state or country where it was organized;

(iii) the date of its organization; and

(iv) a brief description of the nature of its business;

(b) accompanied by a certificate of existence or a similar document from the state or country where it was organized.

(3) The name, if accepted by the secretary of state, is registered for the applicant's exclusive use as of tlie date the application is filed with the secretary of state.

HeinOnline -- 1999 vol. I 732 1999

(4) A foreign limited liability company may annually renew its registration for successive years by delivering to the secretary of state a renewal application that complies with the requirements of subsection (2). The renewal application must be received by the secretary of state for filing between October 1 and December 31 of the year preceding the year for which a renewal is sought. The renewal is effective until December 31 of the following year.

(5) A foreign limited liability company has the right to use its registered name until the registration of the name is canceled as a result of it consenting to the use of the registered name by another business entity authorized to do business in this state or until the foreign limited liability company applies for and receives a certificate of authority to transact business in this state or it organizes as a domestic limited liability company in tbis state. A foreign limited liability company receiving a certificate of authority to transact business in this state or that organizes as a domestic limited liability company may use the canceled registered name as its business name.

Seetion 20. Section 35-8-202, MCA, is amended to read:

"35-8-202. Articies of organization. (1) The articles of organization must set fortb:

(a) tbe name of the limited liability company that satisfies the requirements of 35-8-103;

(b) the latest date on which tbe limited liability company is to dissolve;

(c) the address of its principal place of business in this state and, if different, its registered office and the name and address of its ~~resident~~ *registered* agent at the registered office in this state;

(d) a statement of whetber the limited liability company is to be managed by a manager or by its members;

(e) (i) if the limited liability company is to be managed by a manager or managers, a statement that the company is to be managed in that fashion and the names and street addresses of managers who are to serve as managers until the first meeting of members or until tbeir successors are elected;

(ii) if the management of a limited liability company is reserved to the members, the names and street addresses of the initial members;

(f) if tbe limited liability company is a professional limited liability company, a statement to that effect and a statement of the professional service or services it will render; and

(g) any other provision, not inconsistent with law, tbat the members elect to set out in tbe articles, including but not limited to a statement of whether there are limitations on the autbority of members or management to bind the limited liability company.

(2) It is not necessary to set out in the articles of organization any of the powers enumerated in 35-8-107."

Section 21. Section 35-8-203, MCA, is amended to read:

"35-8-203. Amendment of articles of organization — restatement. (1) Tlie articles of organization of a limited liability company are amended by filing articles of amendment with the secretary of state. The articles of amendment must set forth:

HeinOnline -- 1999 vol. I 733 1999

(a) the name of the limited liability company;

(b) the date the articles of organization were filed; and

(c) the amendment to the articles of organization.

(2) The articles of organization may be amended as desired, so long as the amended articles of organization contain only provisions that may be lawfully contained in articles of organization at the time of making the amendment.

(3) Articles of organization may be restated at any time. Restated articles of organization must be filed with the secretary of state, must be specifically designated as such in the heading, and must state either in the heading or in an introductory paragraph the limited liability company's present name and, if it has been changed, all of its former names and the date of the filing of its articles of organization. *Restated articles of organization supercede the original articles of organization and any previous amendments to the original articles of organization.*

(4) An amendment to the articles of organization of a limited liability company must be in the form and manner designated by the secretary of state."

Section 22. Section 35-12-505, MCA, is amended to read:

"35-12-505. Name. *(1)* The name of each limited partnership as set forth in its certificate of limited partnership:

~~(1)~~*(a)* must contain the words "limited partnership", the abbreviation "l.p.", or the designation "lp";

~~(2)~~*(b)* may not contain the name of a limited partner unless:

~~(a)~~*(i)* it is also the name of a general partner; or

~~(b)~~*(ii)* the business of the limited partnership had been carried on under that name before the admission of that limited partner;

~~(3)~~*(c)* must be distinguishable on the record from the name of any corporation, limited partnership, or limited liability company organized under the laws of this state or licensed or registered as a foreign corporation or limited partnership in this state.

(2) The use of a limited partnership's name by another corporation, limited partnership, or limited liability company is governed by 35-1-308."

Section 23. Section 35-12-507, MCA, is amended to read:

"35-12-507. Specified office and agent. Each limited partnership shall continuously maintain in this state:

(1) an office, which may but need not be a place of its business in this state, at which must be kept the records required to be maintained by 35-12-508; and

(2) an agent for service of process on the limited partnership, which agent must be an individual resident of this state, a domestic corporation, or a foreign corporation authorized to do business in this state.

(3) Unless the registered agent signed the document making the appointment, the appointment of a registered agent or a successor registered agent on whom process may be served is not effective until the agent delivers a statement in writing to the secretary of state accepting the appointment."

HeinOnline -- 1999 vol. I 734 1999

Section 24. Codification instruction. (1) [Section 16] is intended to be codified as an integral part of Title 35, chapter 3, part 2, and the provisions of Title 35, chapter 3, part 2, apply to [section 16].

(2) [Section 19] is intended to be codified as an integral part of Title 35, chapter 8, part 1, and the provisions of Title 35, chapter 8, part 1, apply to [section 19].

Section 25. Effective date. [This act] is effective on passage and approval.

Approved April 2, 1999

CHAPTER NO. 230

[SB 108]

AN ACT GENERALLY REVISING PROFESSIONAL LICENSING LAWS; PROVIDING FOR A FULL RANGE OF INVESTIGATIVE AND PROSECUTORIAL AUTHORITY IN CASES OF UNLICENSED PRACTICE; CHANGING THE PHYSICIAN LICENSE REQUIREMENT FROM A 1-YEAR INTERNSHIP TO A 2-YEAR POSTGRADUATE PROGRAM; ELIMINATING THE REQUIREMENT OF A PERSONAL INTERVIEW OF AN APPLICANT FOR A TEMPORARY LICENSE TO PRACTICE MEDICINE; ADDING AN ADDITIONAL PRIVATE PRACTICE PSYCHOLOGIST TO THE BOARD OF PSYCHOLOGISTS; ALLOWING DENTISTS TO WORK IN UNIVERSITY CLINICS, CORRECTIONAL FACILITY CLINICS, COMMUNITY HEALTH CENTERS, MIGRANT HEALTH CARE CENTERS, OR PROGRAMS FOR HEALTH SERVICES FOR THE HOMELESS; SUBSTITUTING THE WORD "FORFEIT" FOR "REVOKE" IN DENTISTRY LAWS; GENERALLY REVISING LAWS RELATING TO DENTURISTS; REVISING DISPENSING FEES FOR HEARING AIDS AND SIMILAR DEVICES; REQUIRING VETERINARY LICENSE APPLICANTS TO PRESENT CERTIFIED TRANSCRIPTS AND REVISING VETERINARY EXAMINATIONS; REQUIRING RESUSCITATION CERTIFICATION FOR MIDWIVES; CHANGING THE REQUIRED NUMBER OF MEETINGS FOR THE BOARD OF SANITARIANS; MODIFYING EXAMINATION PROCEDURES FOR ACCOUNTANTS; CLARIFYING STANDARDS THAT ARE APPLICARLE TO APPRAISERS; AMENDING SECTIONS 2-15-1851, 37-1-307, 37-1-317, 37-1-411, 37-1-412, 37-3-305, 37-4-103, 37-4-307, 37-4-406, 37-16-304, 37-18-302, 37-18-303, 37-27-201, 37-27-205, 37-29-301, 37-29-305, 37-29-401, 37-29-404, 37-40-201, 37-50-308, AND 37-54-403, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-1851, MCA, is amended to read:

"2-15-1851. Board of psychologists. (1) There is a board of psychologists.

(2) The board consists of ~~five~~ *six* members appointed by the governor with the consent of the senate. ~~One member~~ *Two members* must be ~~a~~ licensed ~~psychologist~~ *psychologists* in private practice, one member must be a licensed psychologist in public health, one member must be a licensed psychologist engaged in the teaching of psychology, and two members must be from the goneral public. A member may not serve consecutive 5-year terms but may be

HeinOnline -- 1999 vol. I 735 1999

reappointed after 5 years following the termination of ~~his~~ *the* previous appointment.

(3) Members shall serve staggered 5-year terms."

Section 2. Section 37-1-307, MCA, is amended to read:

"37-1-307. (Bracketed ianguage terminates on occurrence of contingency or July 1, 1999) Board authority. (1) A board may:

(a) hold bearings as provided in this part;

(b) issue subpoenas and administer oaths in connection with investigations and disciplinary proceedings under this part. Subpoenas must be relevant to the complaint, issued by a majority vote of board members not serving on the screening panel described in subsection (1)(e), and signed by the presiding officer of the board. Subpoenas may be enforced as provided in 2-4-104.

(c) authorize depositions and other discovery procedures under the Montana Rules of Civil Procedure in connection with an investigation, hearing, or proceeding held under this part;

(d) compel attendance of witnesses and the production of documents. Subpoenas may be enforced as provided in 2-4-104.

(e) establish a screening panel that determines whether there is reasonable cause to believe that a licensee has violated a statute or rule justifying disciplinary proceedings. Tlie assigned board members may not subsequently participate in a hearing of the case. The final decision on the case must be made by a majority of the board members who did not serve on tlie screening panel for tlie case.

(f) grant or deny a license and, upon a finding of unprofessional conduct by an applicant or license holder, impose a sanction provided by this chapter.

(2) Each board is designated as a criminal justice agency within tlie meaning of 44-5-103 for the purpose of obtaining confidential criminal justice information regarding its licensees and license applicants *and regarding possible unlicensed practice.*

[(3) Each board shall require a license applicant to provide the applicant's social security number as a part of the application. Each board shall keep the social security number from this source confidential, except that a hoard may provide the number to the department of public health and human services for use in administering Title IV-D of the Social Security Act.] (Bracketed langnage terminates on occurrence of contingency or July 1, 1999—sec. 104, Ch. 552, L. 1997.)"

Scction 3. Section 37-1-317, MCA, is amended to read:

"37-1-317. Practice without license — investigation of eomplaint — injunction — penalties. (1) The department shall investigate complaints *or other information received* concerning practice by an unlicensed person of a profession or occupation for which a license is required by tliis title.

(2) *(a)* ~~A~~ *Unless otherwise provided by statute, a* board may file an action to enjoin a person from practicing, witliout a license, a profession or occupation for which a license is required by tliis title. *In addition to the penalty provided for in 37-1-318, a person violating an injunction issued pursuant to this section may be held in contempt of court.*

(b) A person subject to an injunction for practicing without a license may also be subject to criminal prosecution. In a complaint for an injunction or in an affidavit, information, or indictment alleging that a person has engaged in unlicensed practice, it is sufficient to charge that the person engaged in the unlicensed practice of a licensed profession or occupation on a certain day in a certain county without averring further or more particular facts concerning the violation.

(3) Unless otherwise provided by statute, a person practicing a licensed profession or occupation in this state without complying with the licensing provisions of this title is guilty of a misdemeanor punishable by a fine of not less than $250 or more than $1,000, imprisonment in the county jail for not less than 90 days or more than 1 year, or both. Each violation of the provisions of this chapter constitutes a separate offense."

Section 4. Department authority. For each licensing program regulated by the department under this part, the department is designated as a criminal justice agency within the meaning of 44-5-103 for the purpose of obtaining confidential criminal justice information regarding licensees and license applicants and regarding possible unlicensed practice.

Section 5. Section 37-1-411, MCA, is amended to read:

"37-1-411. Practice without license — investigation of complaint — injunction — penalties. (1) The department may investigate a complaint *or other information received* concerning practice by an unlicensed person of a profession or occupation governed by this part.

(2) The department may file an action to enjoin a person from practicing, without a license, a profession or occupation governed by this part."

Section 6. Section 37-1-412, MCA, is amended to read:

"37-1-412. Violation of injunction — penalty. *(1)* A person who *has been enjoined and who* violates an injunction issued pursuant to a proceeding under this part *may be held in contempt of court and* shall pay a civil penalty, as determined by the court, of not more that $5,000. Fifty percent of the penalty must be deposited in the general fund of the county in which the injunction is issued, and 50% must be deposited in the state general fund.

(2) A person subject to an injunction for practicing without a license may also be subject to criminal prosecution. In a complaint for an injunction or in an affidavit, information, or indictment alleging that a person has engaged in unlicensed practice, it is sufficient to charge that the person engaged in the unlicensed practice of a licensed profession or occupation on a certain day in a certain county without averring further or more particular facts concerning the violation.

(3) Unless otherwise provided by statute, a person practicing a licensed profession or occupation in this state without complying with the licensing provisions of this title is guilty of a misdemeanor punishable by a fine of not less than $250 or more than $1,000, imprisonment in the county jail for not less than 90 days or more than 1 year, or both. Each violation of the provisions of this chapter constitutes a separate offense."

Section 7. Section 37-3-305, MCA, is amended to read:

HeinOnline -- 1999 vol. I 737 1999

"**37-3-305. Qualifications for licensure.** (1) ~~A~~ *Except as provided in subsection (4), a* person may not be granted a physician's license to practice medicine in this state unless the person:

(a) is of good moral character, as determined by the board;

(b) is a graduate of an approved medical school as defined in 37-3-102;

(c) has completed an approved ~~internship~~ *postgraduate program* of at least ~~1 year~~ *2 years* or, in the opinion of the board, has had experience or training that is at least the equivalent of ~~1 year internship~~ *a 2-year postgraduate program*;

(d) has bad a completed application file reviewed by a board member and, at the discretion of the board member, has made a personal appearance before the board; and

(e) is able to communicate, in tbe opinion of the board, in the Englisb language.

(2) The board may authorize tbe department to issue tbe license subject to terms of probation or other conditions or limitations set by the board or may refuse a license if the applicant bas committed unprofessional conduct or is otherwise unqualified.

(3) A person may not be granted a temporary license to practice medicine in tbis stato unless the person:

(a) is of good moral character, as determined by the board;

(b) is a graduate of an approved medical scbool as defined in 37-3-102;

(c) has completed an approved ~~internship~~ *postgraduate program* of at least ~~1 year~~ *2 years* or, in the opinion of tlie board, bas had experience or training that is at least the equivalent of ~~1 year internship~~ *a 2-year postgraduate program; and*

~~(d) has made a personal appearance before at least one member of the board; and~~

~~(e)~~*(d)* is able, in the opinion of tbe board, to communicate in the English language.

(4) The 2-year minimum requirements in subsections (1)(c) and (3)(c) do not apply to a person who:

(a) has completed an approved internship of at least 1 year or in the opinion of the board has had experience or training that is at least the equivalent of a 1-year internship;

(b) is a resident in good standing with the Montana family practice residency program; and

(c) is seeing patients under the supervision of a physician who possesses a current, unrestricted license to practice medicine in this state."

Section 8. Section 37-4-103, MCA, is amended to read:

"**37-4-103. Exemptions.** (1) A dental laboratory or dental technician is not practicing dentistry under tbis chapter when engaged in the construction, making, alteration, or repairing of bridges, crowns, dentures, or other prostbetic appliances, surgical appliances, or orthodontic appliances if tbe casts, models, or impressions on wbicb the work is constructed have been made by a regularly licensed and practicing dentist and the crowns, bridges, dentures, prostbetic

HeinOnline -- 1999 vol. I 738 1999

appliances, surgical appliances, or orthodontic appliances are returned to the dentist on whose order the work was constructed.

(2) Section 37-4-101(2) and part 5 of this chapter do not apply to a legally qualified physician or surgeon or to a dental surgeon of the United States army, navy, public health service, or veterans' hureau or to a legal practitioner of anotber state making a clinical demonstration before a dental society, convention, or association of dentists or to a licensed dental hygienist performing an act authorized under 37-4-401 or 37-4-405.

(3) This chapter does not prevent a bona fide faculty member of a school, college, or department of a university recognized and approved by the board from performing dental procedures necessary to the faculty member's teaching functions. This cbapter does not prevent students from performing dental procedures under the supervision of a bona fide instructor of a school, college, or department of a university recognized and approved by the board if the dental procedures are a part of the assigned teacbing curriculum.

(4) This chapter does not prohibit or require a license with respect to the practice of denturitry under the conditions and limitations defined by Title 37, chapter 29. None of the regulations contained in this chapter apply to a person engaged in the lawful practice of denturitry.

(5) This chapter does not require the licensure of or prohibit the personal representative of the estate of a deceased dentist or the personal representative of a disabled dentist from contracting with a dentist to manage the dental practice at an establishment where dental operations, oral surgery, or dental services are provided if the personal representative in either case complies with the provisions of 37-4-104.

(6) Section 37-4-101(2)(b) does not prevent a licensee from entering into a contract with or being employed by the following clinics:

(a) university clinics for the purpose of providing dental care to registered students;

(b) correctional facilities for the purpose of providing dental care to inmates; and

(c) federally funded community health centers, migrant health care centers, or programs for health services for the homeless established pursuant to the Public Health Service Act, 42 U.S.C. 254b.

(7) A clinic that employs or otherwise contracts with a dentist under subsection (6) may not:

(a) govern the clinical sufficiency, suitability, reliability, or efficacy of a particular service, product, process, or activity as it relates to the delivery of dental care; or

(b) preclude or otherwise restrict a dentist's ability to exercise independent professional judgment over all qualitative and quantitative aspects of the delivery of dental care."

Section 9. Section 37-4-307, MCA, is amended to read:

"37-4-307. Renewal fee — default — local fees prohibited. (1) ~~Every~~ *Each* licensed dentist shall pay a renewal fee to the board. The renewal fee must be set by the board commensurate with costs. Notice of the change in the amount

of renewal fees must be given to each dentist registered in this state by the department.

(2) Payment of the renewal fee must be made on or before the license expiration date set by department rule, and a license renewal must be issued by the department. A reasonable late fee must be required by the department if the renewal fee is not paid in a timely manner.

(3) (a) In case of default in payment of the renewal fee by a licensee, the license must be ~~revoked by the board~~ *forfeited by the licensee*. The board shall give the licensee 30 days' notice of its proposed ~~revocation~~ *forfeiture* action. The notice must be sent by certified letter addressed to the last-known address of the licensee and must contain a statement of the time and place of the meeting at which the ~~revocation~~ *forfeiture* will be considered.

(b) If the licensee pays the renewal fee, plus a reasonable late fee set by the board, prior to the time set for ~~revocation~~ *forfeiture*, the license may not be ~~revoked~~ *forfeited*.

(c) A license ~~revoked~~ *forfeited* for nonpayment of the renewal fee may be reinstated within 5 years of ~~revocation~~ *forfeiture* if:

(i) renewal fees are paid for each renewal period *that* they were unpaid, plus a late penalty fee for each renewal period;

(ii) the applicant produces evidence, satisfactory to the board, of good standing with the dentistry regulatory agencies of any jurisdiction in which the applicant has engagod in the active practice of dentistry since the last payment of a renewal fee under this chapter; and

(iii) the applicant produces evidence, satisfactory to the board, of good character and competence.

(4) Eacb dentist shall give the board notice of any change in name, address, or status within 30 days of the change.

(5) A unit of local government, including those exercising self-government powers, may not impose a license fee on a dentist licensed under this chapter."

Section 10. Section 37-4-406, MCA, is amended to read:

"37-4-406. Renewal fee — default — ~~revocation~~ *forfeiture* of license — local fees prohibited. (1) Each licensed dental hygienist shall pay a renewal fee to the board. The renewal fee must be set by the board commensurate with costs.

(2) Payment of the renewal fee must be made on or before the license expiration date set by department rule, and a license renewal must be issued by the department. A reasonable late fee must be required if the renewal fee is not paid in a timely manner.

(3) In case of default in payment of the renewal fee by any licensee, the ~~board must revoke~~ *licensee shall forfeit* the license.

(a) The board shall give the licensee 30 days' notice of its proposed ~~revocation~~ *forfeiture* action. The notice must be sent by certified mail to the last-known address of the licensee and must contain a statement of the time and place of the meeting at which the ~~revocation~~ *forfeiture* will be considered.

(b) The payment of the renewal fee on or before the time set for ~~revocation~~ *forfeiture*, with a reasonable late fee set by the board, excuses the default.

HeinOnline -- 1999 vol. I 740 1999

(c) A license ~~revoked~~ *forfeited* for nonpayment of the renewal fee may be reinstated within 5 years of ~~revocation~~ *forfeiture* if:

(i) renewal fees are paid for each period *that* they were unpaid, plus a late penalty for each period;

(ii) the applicant produces evidence, satisfactory to the board, of good standing with the dental hygiene regulatory agencies of any jurisdiction in which tbe applicant has engaged in the active practice of dental bygiene since tbe last payment of a renewal fee under this chapter; and

(iii) the applicant produces evidence, satisfactory to the board, of good character and competence.

(4) Each dental hygienist shall give the board notice of any change in name, address, or status within 30 days of the change.

(5) The hoard may, after a hearing, revoke or suspend the license of a dental hygienist for violating this chapter.

(6) A unit of local government, including those exercising self-government powers, may not impose a license fee on a dental hygienist licensed under this chapter."

Seetion 11. Section 37-16-304, MCA, is amended to read:

"37-16-304. Right to cancel — return of hearing aid or related device — notice — refund — *dispensing fee rules*. (1) A purchaser of a hearing aid or related device may, for any reason, cancel the sale within 30 days of the date of delivery of the hearing aid or related device by providing written notice to the establishment that employed the licensed hearing aid dispenser at tlie time the hearing aid was purchased indicating the purchaser's intention not to he hound by the sale contract. The purchaser shall return or hold for the licensed hearing aid dispenser's disposal the hearing aid or related device in suhstantially the same condition as it was received by the purchaser.

(2) For the purpose of determining whetber cancellation has occurred within 30 days of the date of delivery, written notice:

(a) given by mail is considered given on the date mailed; and

(b) delivered in porson is considered given when delivered to the hearing aid dispenser's permanent place of business.

(3) A licensed bearing aid dispenser shall refund te tbe purchaser the amount paid for ~~the~~ *a* hearing aid or related device minus ~~the~~ *any authorized* dispensing fee within 10 days of receipt of written notice of cancellation. ~~For the purposes of this section, the dispensing fee may not exceed the actual cost of dispensing the hearing aid or related device to the purchaser. This cost must be substantiated by the dispenser, and regardless of the length of the trial period, the dispensing fee may not exceed 15% of the total cost of the hearing aid or related device. The licensed hearing aid dispenser shall also return any goods traded in contemplation of the sale, less any costs incurred by the licensee in making the goods ready for resale.~~ *If the board decides to authorize a dispensing fee, the form and manner of calculating a dispensing fee must be established by the board by rule. Dispensing fee rules adopted by the board may include but are not limited to consideration of business overhead and costs associated with initial hearing evaluations, consultations, fittings, and followup visits.*

HeinOnline -- 1999 vol. I 741 1999

(4) A licensed hearing aid dispenser may not sell a hearing aid in this state unless the seller provides the buyer with written notice of the 30-day trial period and money-back guarantee.

(5) If the hearing aid must be repaired, remade, or adjusted during the 30-day trial period, the running of the 30-day period must be suspended for each day that the hearing aid is not in the purchaser's possession. The provisions of this subsection may not be waived."

Section 12. Section 37-18-302, MCA, is amended to read:

"**37-18-302. Application — qualification — fee.** A person desiring to begin the practice of veterinary medicine or veterinary surgery in this state or who desires to hold ~~himself~~ out to the public ~~as~~ *that the person is* a practitioner of veterinary medicine or veterinary surgery, except as provided in 37-18-104, shall ~~make application~~ *apply* to the department for a license to do so. The application ~~shall~~ *must* be on a form furnished by the department, ~~and shall~~ *must* be accompanied by satisfactory evidence of the good moral character of the applicant, and ~~shall present~~ *must contain* evidence of ~~his~~ *the applicant's* having ~~graduated in and~~ received a degree from a legally authorized veterinary medical school having educational standards equal to those approved by the American veterinary medical association. On application, a ~~photostatic copy of the diploma~~ *certified transcript* of the applicant ~~shall~~ *must* be submitted to the department for inspection and verification. The ~~photostatic copy~~ *certified transcript* remains the property of the department. A person applying for a license to practice shall pay to the department a nonrefundable fee commensurate with the costs of the examinations and set by the board."

Section 13. Section 37-18-303, MCA, is amended to read:

"**37-18-303. Examination — temporary permit pending examination.** (1) Subject to 37-1-101, the board shall, by means of examination, ~~either oral, written, or practical or a combination of oral, written, or practical~~ as *prescribed by* the board ~~determines~~, ascertain the professional qualifications for license of applicants under this part. The department shall issue a license to ~~all~~ *applicants* who are found to be, in the judgment of the board, competent to practice. A license may not be issued to a person who is not found by the examination or investigation to be competent and qualified.

(2) ~~The examination~~ *Examinations* must be held ~~when~~ *as* determined necessary by the board, but not less frequently than once each year at a time and place specified by the board. ~~The examination must cover theory and practice, pharmacology and therapeutics, animal sanitation, surgery, communicable diseases, and other subjects chosen by the board which are ordinarily included in the curriculum of a school of veterinary medicine recognized and approved by the American veterinary medical association.~~ *The board may employ, cooperate with, or contract with any organization or consultant in the preparation, administration, and grading of an examination, but the board shall retain sole discretion and responsibility for determining which applicants have successfully passed an examination.*

(3) The department shall consecutively number applications received, note on each the disposition made of it, and preserve ~~them~~ *the applications* for reference ~~and~~. *The board* shall *also* number consecutively licenses issued.

(4) An applicant is required to achieve a *passing* grade, ~~of 70%~~ *as determined by the board by rule,* in order to obtain a license. An applicant who has failed an

examination may apply to he reexamined at a subsequent examination and shall pay another application fee commensurate with the costs of the examinations ~~and~~ *as* set by the board and sball take another complete examination in all subjects."

Section 14. Section 37-27-201, MCA, is amended to read:

"37-27-201. Qualifications of applicants for license — edueational and practieal experienee requirements. To be eligible for a license as a direct-entry midwife, an applicant:

(1) must possess a high school diploma or its equivalent;

(2) must be of geod moral character and be at least 21 years of age;

(3) shall satisfactorily complete educational requirements in pregnancy and natural childbirth, approved by the board, which must include but are not limited to tbe following:

(a) provision of care during the antepartum, intrapartum, postpartum, and newborn period;

(b) parenting education for prepared childbirth;

(c) observation skills;

(d) aseptic techniques;

(e) management of birth and immediate care of the mother and the newborn;

(f) recognition of early signs of possible abnormalities;

(g) recognition and management of emergency situations;

(b) special requirements for liome birtb;

(i) intramuscular and subcutaneous injections;

(j) suturing necessary for episiotomy repair;

(k) recognition of communicable diseases affecting the pregnancy, birth, newborn, and postpartum periods;

(l) assessment skills; and

(m) the use and administration of drugs autborized in 37-27-302;

(4) sball acquire practical experience, which may be attained in a home, clinic, or hospital setting. Practical experience attained in a hospital does not constitute training or supervision by the hospital, nor may a hospital be required to provide ~~sueh~~ practical experience. At a mimimum, this experience must include the following types and numbers of experlences acquired through an apprenticeship or other supervisory setting:

(a) provision of 100 prenatal examinations;

(b) observation of 40 births; and

(c) participation as the primary birth attendant at 25 births, 15 of whicb included continuous care, as evidenced by:

(i) birth certificates from Montana or another state;

(ii) a signed affidavit from the birthing mother; or

(iii) documented records from the person who supervised the births.;

HeinOnline -- 1999 vol. I 743 1999

(5) shall file documentation with the board that the applicant has been certified by the American heart association or American red cross to perform adult and infant cardiopulmonary resuscitation. Certification must be current at the time of application and remain valid throughout the license period; *and*

(6) shall file documentation with the board that the applicant has been certified by the American academy of pediatrics or the American heart association to perform neonatal resuscitation. The applicant's certification must be current at the time of application and remain valid throughout the license period."

Section 15. Section 37-27-205, MCA, is amended to read:

"**37-27-205. Provisional license — apprentice license.** ~~(1) Upon payment of a $200 fee to the department, the board may grant a provisional direct-entry midwife license only to a person who filed an affidavit required by section 2, Chapter 493, Laws of 1989.~~

~~(2) The provisional license is valid until the issuance of grades for the first examination administered pursuant to 37-27-202.~~

~~(3)~~*(1)* Upon payment of a $200 fee to the department *of commerce*, the board may grant an apprentice direct-entry midwife license to a person who:

(a) is working under the personal supervision of a licensed direct-entry midwife, a certified nurse-midwife, a *licensed* physician ~~licensed under Title 37, chapter 3~~, or a licensed naturopathic physician who is certified for the specialty practice of naturopathic childbirth attendance; and

(b) is seeking licensure as a direct-entry midwife under this chapter.

~~(4)~~*(2)* An apprentice direct-entry midwife license is valid for a period prescribed by department of commerce rule and must be renewed at an interval established by the department of commerce, with a limit of four renewals."

Section 16. Section 37-29-301, MCA, is amended to read:

"**37-29-301. License to practice required.** ~~(1) After April 1, 1985, a~~ *A* person ~~must~~ *shall* hold a license for the practice of denturitry in order to perform the following acts:

~~(a)~~*(1)* engaging or offering to engage in the practice of denturitry; or

~~(b)~~*(2)* use in connection with ~~his~~ *the person's* name the word or letters "denturist", "L.D.", or any other words, letters, abbreviations, or insignia implying that ~~such~~ *the* person is engaged in the practice of denturitry.

~~(2) The practice of denturitry within the context of this chapter requires that all work except cast frame work be performed at the address shown on the denturist's license.~~"

Section 17. Section 37-29-305, MCA, is amended to read:

"**37-29-305. Examinations.** The board shall administer the examinations for licensure, subject to the following requirements:

(1) Examinations must be of a character that determines the qualifications, fitness, and ability of the applicant to practice denturitry. ~~The form of the test must include written and oral examinations and a practical demonstration of skills.~~

~~(2) Examinations must be held at least annually on the second Monday in July. An applicant must obtain an average percentage score of 75% or better to~~

~~qualify for licensure. The written and practical examinations must carry equal weight. The oral examination results may adjust an average score only two percentage points.~~

~~(3)~~*(2)* ~~The~~ *A* written examination must include coverage of the following subjects:

(a) head and oral anatomy and physiology;

(b) oral pathology;

(c) partial denture construction and design;

(d) microbiology;

(e) radiology;

(f) clinical dental technology;

(g) dental laboratory technology;

(h) asepsis;

(i) clinical jurisprudence;

(j) medical emergencies.

~~(4)~~*(3)* Applicants who fail to ~~score a 75% average on the~~ *pass* written and practical examinations may, upon payment of the appropriate fee, have a second opportunity to take the written or practical examinations, or both."

Section 18. Section 37-29-401, MCA, is amended to read:

"37-29-401. Standards of conduct and practice. Each denturist ~~must~~ *shall* comply with the following standards ~~in his~~ *of* practice:

~~(1) There shall be at least three separate rooms:~~

~~(a) a reception room;~~

~~(b) an operatory room; and~~

~~(c) a laboratory.~~

~~(2) The operatory room must have a sink and cuspidor with running water and a disposal system.~~

~~(3) There must be a sterilization unit and cold disinfectant in every office to insure the protection of the public. Each denturist shall take care to use proper sterilization and sanitation techniques in all phases of his work.~~

~~(4) Floors, walls, ceilings, and benches must be kept in a sanitary condition.~~

~~(5) Every patient must have a separate and clean bib and a disposable cup.~~

~~(6) Every denturist shall wear a clean and professional garment.~~

~~(7) Every denturist shall wash his hands with germicidal or antiseptic soap and water in the presence of each patient.~~

~~(8)~~*(1)* ~~Every~~ *Each* licensed denturist ~~must~~ *shall* carry a current cardiopulmonary resuscitation card.

~~(9) Adequate and conveniently located toilet facilities must be provided within the building.~~

~~(10) A complete record of each patient must be kept.~~

~~(11)~~*(2)* ~~All teeth~~ *Teeth* and materials used ~~shall~~ *must* meet American dental association standards.

~~(12)~~*(3)* ~~All nonmetal~~ *Nonmetal* full dentures ~~shall~~ *must* be permanently identified with the first and last name of the owner at the time of processing the dentures."

Section 19. Section 37-29-404, MCA, is amended to read:

"**37-29-404. ~~Notice of board address — guarantee~~ *Guarantee.*** ~~(1) A notice must be posted in a conspicuous area on any premises where the practice of denturitry is conducted, with lettering of a size easily read by the average person and in substantially the following form:~~

~~ANY CONSUMER WHO HAS A COMPLAINT~~

~~RELATING TO PRACTICES OF THIS~~

~~ESTABLISHMENT MAY CONTACT THE MONTANA~~

~~BOARD OF DENTISTRY, DEPARTMENT OF~~

~~COMMERCE, 1424 NINTH AVENUE, HELENA,~~

~~MONTANA 59620.~~

~~(2) All denturist~~ *Denturist* services must be unconditionally guaranteed for a period of not less than 90 days."

Section 20. Section 37-40-201, MCA, is amended to read:

"**37-40-201. ~~Chairman~~ *Presiding officer* — meetings.** The board shall appoint one of its members ~~chairman~~ *presiding officer*. The board shall meet at least ~~four times annually~~ *once a year* and at ~~such~~ other times as agreed upon."

Section 21. Section 37-50-308, MCA, is amended to read:

"**37-50-308. Examination.** Except as provided in 37-1-101(4), the department shall administer ~~a written~~ *an* examination in accounting, auditing, and related subjects as the board determines appropriate. The grade determination of the board is final in each case. The board may use the examination and grading services of the American institute of certified public accountants *or other third parties to perform examination administrative services*. The examination must be held at least annually and at ~~such~~ other times as applications warrant. The board may determine the time and place of examination and may adopt rules necessary for the orderly conduct of the examination."

Section 22. Section 37-54-403, MCA, is amended to read:

"**37-54-403. Standards of professional appraisal practice.** (1) A licensed or certified real estate appraiser shall comply with generally accepted standards of professional appraisal practice, evidenced by the uniform standards of professional appraisal practice promulgated by the appraisal standards board of the appraisal foundation. *A licensed or certified real estate appraiser shall comply with these standards regardless of whether the appraisal is a federally related transaction or is capable of being performed by an unlicensed person under 37-54-201(3).*

(2) If the appraisal standards board of the appraisal foundation modifies the standards or issues supplemental standards that it considers appropriate for all classes of real estate appraisers, the modification is automatically adopted as

HeinOnline -- 1999 vol. I 746 1999

observable in this state unless the board determines that a public hearing is necessary to determine whether the modified or supplemented standards must be observed in tbis state. If following the hearing the board determines *that* the modified or supplemented standards are appropriate, the board shall adopt the standards by rule."

Section 23. Codification instruction. [Section 4] is intended to be codified as an integral part of Title 37, chapter 1, part 4, and the provisions of Title 37, chapter 1, part 4, apply to [section 4].

Section 24. Effective dates. (1) Except as provided in subsections (2) and (3), [this act] is effective October 1, 1999.

(2) [Sections 8, 11, and 23 and this section] are effective on passage and approval.

(3) [Section 7] is effective October 1, 2001.

Approved April 2, 1999

CHAPTER NO. 231

[HB 27]

AN ACT REVISING PROVISIONS RELATING TO THE TIME FOR APPEARING AND ANSWERING A SUMMONS AND COMPLAINT FOR FORCIBLE ENTRY OR FORCIBLE OR UNLAWFUL DETAINER; AMENDING SECTIONS 70-27-113, 70-27-114, AND 70-27-117, MCA; AND REPEALING SECTION 70-27-115, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 70-27-113, MCA, is amended to read:

"70-27-113. Complaint and summons. (1) The ~~plaintiff, in his~~ *plaintiff's* complaint, which must be in writing, must set forth the facts on which ~~he~~ *the plaintiff* seeks to recover and describe the premises with reasonable certainty. ~~and~~ *The complaint* may set forth ~~therein~~ any circumstances of fraud, force, or violence ~~which~~ *that* may have accompanied the alleged forcible entry or forcible or unlawful detainer and claim damages ~~therefor~~. ~~In case~~ *If* the unlawful detainer *is* charged ~~be~~ after default in the payment of rent, the complaint must state the amount of ~~such~~ rent.

(2) Upon filing the complaint, a summons must be issued ~~thereon~~ *on the complaint* as in other cases~~, returnable at a date designated therein, which shall not be less than 4 days or more than 12 days from its date~~."

Section 2. Section 70-27-114, MCA, is amended to read:

"70-27-114. Summons — contents — service. (1) The summons must:

(a) state the parties to tbe proceeding, the court in which the ~~same~~ *proceeding* is brought, the nature of tbe action in concise terms, and the relief sought ~~and also the return day~~; and

(b) notify the defendant to appear and answer within ~~the time designated or~~ *10 days of service and* that the relief sought will be taken against ~~him~~ *the defendant if the defendant does not appear.*

HeinOnline -- 1999 vol. I 747 1999

(2) The summons must he directed to the defendant ~~and be served at least 4 days before the return day designated therein~~ and must be served and returned in the same manner as *a* summons in civil actions is served and returned.

(3) The summons must be served personally upon tbe ~~defendants~~ *defendant* if the ~~defendants~~ *defendant* can be found with due diligence within the state, or if the ~~defendants~~ *defendant* cannot be found with due diligence within the state, the summons must be served in the same manner as notices are required to be served in 70-27-110. ~~The complaint need not be served.~~

(4) Upon the return of ~~any~~ *a* summons issued under this chapter~~, where the same has~~ *that was* not ~~for any reason been~~ served or not served in time, the plaintiff may have a new summons issued, ~~the same~~ as if no previous summons had been issued."

Section 3. Section 70-27-117, MCA, is amended to read:

"70-27-117. Judgment by default. If ~~at the time appointed~~ tbe defendant does not appear and defend *within 10 days of service*, the court ~~must~~ *shall* enter ~~his~~ *the defendant's* default and enter judgment in favor of the plaintiff as ~~prayed for~~ *requested* in the complaint."

Section 4. Repealer. Section 70-27-115, MCA, is repealed.

Approved April 5, 1999

CHAPTER NO. 232

[HB 229]

AN ACT REMOVING THE BUILDING INSPECTOR RESPONSIBILITY TO ENFORCE THE GENERAL PROVISIONS OF CONSTRUCTION SITE HEALTH AND SAFETY; REPEALING SECTION 50-77-106, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Repealer. Section 50-77-106, MCA, is repealed.

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 5, 1999

CHAPTER NO. 233

[HB 244]

AN ACT REVISING THE COMPENSATION FOR RETIRED JUDGES OR JUSTICES CALLED FOR DUTY; AMENDING SECTION 19-5-103, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-5-103, MCA, is amended to read:

"19-5-103. Call of retired judge for duty. (1) Every judge or justice who has voluntarily retired after 8 years of service must, if physically and mentally able, be subject to call for duty by the supreme court or the chief justice to aid and assist the supreme court, any district court, or any water court under

HeinOnline -- 1999 vol. I 748 1999

directions as the supreme court may give, including the examination of the facts, cases, and authorities cited and the preparation of opinions for and on behalf of the supreme court, district court, or water court~~,~~ or to serve as water judge. The opinions, when and if and to the extent approved by the court, may by the court be ordered to constitute the opinion of the court. The court and the retired judge or justice may, subject to any rule that the supreme court may adopt, perform any duties preliminary to the final disposition of cases that are not inconsistent with the constitution of the state.

(2) A retired judge or justice, when called to duty, must be reimbursed for actual expenses, if any, in responding to tbe call. In addition, ~~for each day of duty,~~ a retired justice or judge is entitled to receive compensation in an amount equal to:

(a) ~~one-twentieth of~~ the ~~monthly~~ *daily* salary then currently applicable to the judicial position in which the duty is rendered ~~minus an amount equal to one-twentieth of the monthly retirement benefit that the retired justice or judge is receiving, if any,~~ for each day of duty rendered, *up to a total of 180 days in a calendar year; and*

(b) for each day of duty after 180 days in a calendar year, one-twentieth of the monthly salary then current, applicable to the judicial position in which the duty is rendered minus an amount equal to one-twentieth of the monthly retirement benefit that the retired justice or judge is receiving, if any."

Section 2. Effective date. [This act] is effective July 1, 1999.

Approved April 5, 1999

CHAPTER NO. 234

[HB 283]

AN ACT INCREASING THE VALUE OF SMALL ESTATES FOR WHICH PERSONAL PROPERTY CAN BE COLLECTED BY AFFIDAVIT; AND AMENDING SECTION 72-3-1101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 72-3-1101, MCA, is amended to read:

"72-3-1101. Collcction of pcrsonal property by affidavit. (1) Thirty days after the death of a decedent, any person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock, or chose in action belonging to the decedent shall make payment of the indebtedness or deliver tbe tangible personal property or an instrument evidencing a debt, obligation, stock, or chose in action to a person claiming to be the successor of the decedent upon being presented an affidavit made by or on behalf of the successor stating tbat:

(a) the value of the entire estate, wherever located, less liens and encumbrances, does not exceed ~~$7,500~~ *$20,000*;

(b) 30 days have elapsed since the death of the decedent;

(c) no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction; and

(d) the claiming successor is entitled to payment or delivery of the property.

HeinOnline -- 1999 vol. I 749 1999

(2) A transfer agent of any security shall change the registered ownership on the books of a corporation from the decedent to the successor or successors upon the presentation of an affidavit as provided in subsection (1)."

Approved April 5, 1999

CHAPTER NO. 235

[HB 296]

AN ACT REVISING THE COMPENSATION PAID TO A PUBLIC ADMINISTRATOR WHO IS APPOINTED CONSERVATOR OF AN ESTATE; AND AMENDING SECTION 72-15-301, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 72-15-301, MCA, is amended to read:

"72-15-301. Compensation of public administrator. (1) The puhlic administrator ~~shall~~ *must* receive and *shall* collect for ~~his~~ *the administrator's* own use as full compensation for ~~his~~ services under this chapter, including ~~attorney's~~ *attorney* fees, the amounts provided for in 72-3-631 and 72-3-633.

(2) When the public administrator is appointed conservator of the estate of a protected person pursuant to chapter 5, part 4, of this title, the court may order that a reasonable sum be deducted from payments due to the protected person or from ~~his~~ *the protected person's* estate to be paid to the public administrator as full compensation for ~~his~~ *the public administrator's* services, excluding court costs and ~~attorney's~~ *attorney* fees. The total sum deducted as compensation for the public administrator may not ~~exceed 2 1/2% of the annual periodic payments or~~ *be less than* $100~~, whichever is less~~."

Approved April 5, 1999

CHAPTER NO. 236

[HB 300]

AN ACT CLARIFYING THE TIME LIMITS FOR A GOVERNING BODY TO TAKE ACTION ON A PRELIMINARY PLAT OR A MINOR SUBDIVISION; AMENDING SECTIONS 76-3-604 AND 76-3-609, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-3-604, MCA, is amended to read:

"76-3-604. Review of preliminary plat. (1) The governing body or its designated agent or agency shall review tbe preliminary plat to determine whether it conforms to the local master plan if one has been adopted pursuant to chaptor 1, to the provisions of this chapter, and to rules prescribed or adopted pursuant to this chapter.

(2) The governing hody shall approve, conditionally approve, or reject the preliminary plat within 60 *working* days of its presentation unless the subdivider consents to an extension of the review period.

HeinOnline -- 1999 vol. I 750 1999

(3) If the governing body rejects or conditionally approves the preliminary plat, it shall forward one copy of the plat to the subdivider accompanied by a letter over the appropriato signature stating the reason for rejection or enumerating the conditions ~~which~~ *that* must be met to ~~assure~~ *ensure* approval of the final plat."

Section 2. Section 76-3-609, MCA, is amended to read:

"76-3-609. Review procedure for minor subdivisions. Subdivisions containing five or fewer parcels in which proper access to all lots is provided and in which ~~no~~ *there is not any* land ~~is~~ to he dedicated to the public for parks or playgrounds are to be reviewed as follows:

(1) The governing body shall approve, conditionally approve, or disapprove the first minor subdivision from a tract of record within 35 *working* days of the submission of the application.

(2) The governing body shall state in writing the conditions that must be met if the subdivision is conditionally approved or what local regulations would not be met by the subdivision if it disapproves the subdivision.

(3) The requirements for holding a public hearing and preparing an environmental assessment do not apply to the first minor subdivision created from a tract of record.

(4) Subsequent subdivisions from a tract of record must be reviewed under 76-3-505 and regulations adopted pursuant to that section."

Section 3. Effective date. [This act] is effective on passage and approval.

Section 4. Applicability. [This act] does not apply to subdivision proposals submitted to a governing body prior to [the effective date of this act].

Approved April 5, 1999

CHAPTER NO. 237

[HB 308]

AN ACT INCREASING THE VALUE OF AN AUTOMOBILE EXEMPT FROM EXECUTION OF JUDGMENT FROM $1,200 TO $2,500; AND AMENDING SECTION 25-13-609, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 25-13-609, MCA, is amended to read:

"25-13-609. Personal property exempt subject to value limitations. A judgment debtor is entitled to exemption from execution of the following:

(1) the judgment debtor's interest, not to exceed $4,500 in aggregate value, to the extent of a value not exceeding $600 in any item of property, in household furnishings and goods, appliances, jewelry, wearing apparel, books, firearms and other sporting goods, animals, feed, crops, and musical instruments;

(2) the judgment debtor's interest, not to exceed ~~$1,200~~ *$2,500* in value, in one motor vehicle;

(3) the judgment debtor's interest, not to exceed $3,000 in aggregate value, in any implements, professional books, and tools, of the trade of the judgment debtor or a dependent of the judgment debtor; and

HeinOnline -- 1999 vol. I 751 1999

(4) the judgment debtor's interest, not to exceed $4,000 in value, in any unmatured life insurance contracts owned by ~~him~~ *the judgment debtor.*"

Approved April 5, 1999

CHAPTER NO. 238

[HB 325]

AN ACT ALLOWING THE REGULATION OF BARKING DOGS BY COUNTY ORDINANCE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Barking dog control. The governing body of a county may, by adoption of an ordinance that substantially complies with 7-5-103 through 7-5-107, regulate barking dogs. An ordinance adopted pursuant to this section may not apply to a dog that is owned, kept, or harbored as part of the business of a licensed veterinarian, animal boarding facility, or agricultural or livestock operation.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 7, chapter 23, part 21, and the provisions of Title 7, chapter 23, part 21, apply to [section 1].

Approved April 5, 1999

CHAPTER NO. 239

[HB 338]

AN ACT ALLOWING COUNTIES TO CONTRACT FOR THE PURCHASE OF A VEHICLE, ROAD MACHINERY OR OTHER MACHINERY, APPARATUS, APPLIANCE, EQUIPMENT, OR MATERIALS OR SUPPLIES IN AN AMOUNT OF UP TO $50,000 WITHOUT PUTTING THE CONTRACT OUT TO BID; AMENDING SECTIONS 7-5-2301, 7-5-2304, AND 7-8-2211, MCA; REPEALING SECTION 7-5-2302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-5-2301, MCA, is amended to read:

"7-5-2301. Competitive, advertised bidding required for certain large purchases or construction contracts. (1) Except as provided in 7-5-2304, a contract *must be entered into by a county* for the purchase of any vehicle, road machinery or other machinery, apparatus, appliances, equipment, or materials or supplies ~~in excess of $20,000~~ or for the construction, repair, or maintenance of any building, road, or bridge in excess of $50,000 *and* may not be entered into by a county governing body without first publishing a notice calling for bids.

(2) The notice must be published as provided in 7-1-2121.

(3) Every contract subject to bidding must he let to the lowest and best responsible bidder."

Section 2. Section 7-5-2304, MCA, is amended to read:

HeinOnline -- 1999 vol. I 752 1999

"**7-5-2304. Exemptions from competitive bidding requirements.** The provisions of 7-5-2301 ~~and 7-5-2302 shall~~ *do* not apply to contracts for:

(1) public printing entered into in accordance with the provisions of part 24; and

(2) purchases ~~which~~ *that*, in the opinion of the governing body, are made necessary by fire, flood, explosion, storm, earthquake, other elements, epidemic, *or* riot or insurrection~~, or~~; for the immediate preservation of order or the public health; ~~or~~ for the restoration of a condition of usefulness ~~which~~ *that* has been destroyed by accident, wear, tear, or mischief; or for the relief of a stricken community overtaken by calamity."

Section 3. Section 7-8-2211, MCA, is amended to read:

"**7-8-2211. Authorization to sell and exchange county property.** (1) Boards of county commissioners of this state have the power to sell, trade, or exchange any real or personal property, however acquired, belonging to the county that is not necessary to the conduct of county business or the preservation of its property.

(2) Whenever a county purchases equipment, as provided in 7-5-2301 *and 7-5-2303* through 7-5-2308, county equipment ~~which~~ *that* is not necessary to the conduct of the county business may be traded in as part of the purchase price after appraisal, as provided in 7-8-2214, or may be sold at public auction, as provided in 7-8-2212, in the discretion of the board.

(3) Any sale, trade, or exchango of real or personal property ~~shall~~ *must* be accomplished under the provisions of Title 7, and in an excbange of real property, the properties ~~shall~~ *must* be appraised and ~~no~~ *an* exchange of county property may *not* be made unless property received in exchange ~~therefor shall be~~ *is* of an equivalent value. In the event *that* the properties are not of equivalent values, the exchange may be completed if a cash payment is made in addition to the delivery of title for property having the lesser value."

Section 4. Repealer. Section 7-5-2302, MCA, is repealed.

Section 5. Effective date. [This act] is effective on passage and approval.

Approved April 5, 1999

CHAPTER NO. 240

[HB 361]

AN ACT REVISING THE LAWS RELATING TO LIENS; PROVIDING THAT IN CERTAIN CASES A LIENHOLDER IS REQUIRED TO PAY ATTORNEY FEES IN ADDITION TO COSTS IF THE LIENHOLDER REJECTS A DEFENDANT'S OFFER OF JUDGMENT; PROVIDING THAT A LIEN MAY NOT BE RELEASED UNTIL COSTS AND ATTORNEY FEES ARE PAID; AND AMENDING SECTIONS 71-3-124 AND 71-3-131, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 71-3-124, MCA, is amended to read:

"**71-3-124. Filing costs and ~~attorneys'~~ *attorney* fees to be recovered on foreclosure of liens — *offer of judgment.*** *(1)* In an action to foreclose any of the liens provided for by ~~parts~~ *part* 3, 4, 5, 6, 8, or 10 of this chapter, the court

HeinOnline -- 1999 vol. I 753 1999

~~must~~ *shall* allow as costs the money paid *and attorney fees incurred* for filing and recording the lien and ~~a~~ reasonable ~~attorney's fee~~ *attorney fees* in the district and supreme courts~~, and such~~. *The* costs and ~~attorneys'~~ *attorney* fees must be allowed to each claimant whose lien is established, and ~~such~~ *the* reasonable ~~attorneys'~~ *attorney* fees must be allowed to the defendant against whose property a lien is claimed~~,~~ if ~~such~~ *the* lien ~~be~~ *is* not establlshed.

(2) In an action to foreclose any of the liens provided for by part 3, 4, 5, 6, 8, or 10 of this chapter, a defendant may make an offer of judgment as authorized in Rule 68, M.R.Civ.P. If the lienholder rejects the offer to allow judgment to be taken against the defendant and the lienholder obtains a judgment that is not more favorable than the offer, the lienholder shall, in addition to the costs allowed under Rule 68, M.R.Civ.P., pay the attorney fees incurred after the offer is made."

Section 2. Section 71-3-131, MCA, is amended to read:

"71-3-131. Acknowledgment of lien satisfaction — penalty. ~~Whenever~~ *(1) Subject to subsection (2), when* a lien authorized under this chapter is paid and satisfied or the claim upon which it is based has been found invalid hy final order or judgment of a court of competent jurisdiction, ~~it is the duty of~~ the creditors ~~to~~ *shall* acknowledge satisfaction within 30 days and discharge the lien of record hy filing a release of the lien in the office of the county clerk and recorder in each county in which the notice of lien was filed. If any creditor fails to acknowledge satisfaction, ~~he~~ *the creditor* is liable to any person injured hy ~~such~~ *the* failure for a civil penalty of $100, plus any other damages provided by law.

(2) If the owner of the property against which a lien is filed pays the underlying claim before an action is filed on that claim or to foreclose the lien, the owner of the property against which the lien was filed shall pay the lienholder's costs and attorney fees incurred for filing and recording the lien before the lien may be released."

Approved April 5, 1999

CHAPTER NO. 241

[HB 382]

AN ACT CLARIFYING PROVISIONS RELATED TO JURY LISTS AND JURORS; DELETING OUT-OF-DATE PROVISIONS; AMENDING SECTIONS 3-15-402, 3-15-403, 3-15-404, 3-15-501, 3-15-503, 3-15-506, AND 3-15-507, MCA; AND REPEALING SECTIONS 3-15-502 AND 3-15-505, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Notice to jurors. The clerk of court shall serve notice by mail on the persons drawn as jurors and require the persons to respond by mail as to their qualifications to serve as jurors. The clerk of court may attach to the notice a jury questionnaire and a form for an affidavit claiming an excuse from service provided for in 3-15-313. If a person fails to respend to the notice, the clerk shall certify the failure to the sheriff, who shall serve the notice personally on the person and make reasonahle efforts to require the person to respond to the notice.

Section 2. Section 3-15-402, MCA, is amended to read:

"3-15-402. Selection of qualified persons. (1) Subject to subsection (2), at the meeting specified in 3-15-401, the officers present shall select from the

most recent list of all registered electors, as prepared by the county registrar, and make a list of the names of all persons qualified to serve as trial jurors, as prescribed in part 3 of this chapter. Each name appearing on the list must be assigned a number that must be placed opposite the name on the jury list and must be considered the number of the juror opposite whose name it appears. ~~The numbers must be consecutive from "1" to the total number of jurors.~~ A person's name may not appear on a jury list for more than one court during a 1-year term.

(2) The list prepared under subsection (1) may not include the name of a porson permanently excluded from jury service under 3-15-313."

Section 3. Section 3-15-403, MCA, is amended to read:

"3-15-403. Lists delivered to clerk. *(1)* A list of the names of the persons selected, showing the place of residence and other proper particulars regarding each of them, so far as those particulars can be conveniently ascertained, must be made out and signed by the officers or a majority of them. Within 15 days after the meeting, the list must be delivered by those officers to the clerk of the district court and filed by ~~him~~ *the clerk* in ~~his~~ *the clerk's* office.

(2) A copy of the latest jury list and a description of the approved computerized random selection process, if one is used, must be kept in the office of the clerk of court and be made available for public inspection during normal business hours.

(3) If the clerk of court is satisfied that a person whose name is drawn is deceased or mentally incompetent or has permanently moved from the county, the name of the person must be omitted from the jury list. The reason for the omission must be entered in the minutes of the court."

Section 4. Section 3-15-404, MCA, is amended to read:

"3-15-404. Duty of jury commissioner — jury box or computer database. *(1) The clerk of court is the jury commissioner and may appoint a deputy pursuant to 7-4-2401.*

~~(1)~~*(2)* A county jury commissioner may by order establish the use of either a jury box, as provided in subsection ~~(2)~~ *(3)*, or a computer database, as provided in subsection ~~(3)~~ *(4)*, as the means for selecting jurors in the county.

~~(2)~~*(3)* If a county uses a jury box for selection of jurors, the jury commissioner shall prepare and keep a jury box and contents as prescribed in this subsection. The number of each juror ~~shall~~ *must* be written, typed, or stamped on a slip of paper or other suitable material, identical in all respects to the slips used for the other numbers. The slips ~~shall~~ *must* be placed in a box of ample size to permit them to be thoroughly mixed. The box ~~shall~~ *must* be plainly marked "jury box". The slips may be used as often as necessary, except that none may be used ~~which~~ *that* is in any manner defaced or disfigured or so marked that it may be recognized or distinguished from the others in the jury box except by the number ~~thereon~~ *on the slip*. The box ~~shall~~ *may* contain only one slip for each number corresponding to the number before the name of each juror on the jury list.

~~(3)~~*(4)* If a county uses a computer database for selection of jurors, the jury commissioner shall cause the list of jurors prepared under the provisions of 3-15-402 to be entered into a computerized database."

Section 5. Section 3-15-501, MCA, is amended to read:

"3-15-501. Order directing that trial jury be drawn and summoned. (1) ~~At least once each year in each county, when~~ *If* a civil or criminal case has

been at issue and ready for trial for more than 6 months and the plaintiff or defendant ~~in such case~~ has requested a jury trial~~,~~ or whenever the business of a district court requires the attendance of a trial jury for the trial of civil or criminal cases and ~~no~~ *a* jury is *not* in attendance, tbe court ~~must make an~~ *shall* order ~~directing~~ a trial jury to be drawn and summoned to attend before ~~said~~ *the* court. ~~Such~~ *The* order must specify the number of jurors to be drawn. The time at which the jurors are required to attend ~~must be~~ *is* at tbe discretion of the court.

(2) The court may direct that ~~such causes, either~~ *a* criminal or civil~~,~~ *proceeding* in which a jury may be required or ~~in which a jury~~ may have been demanded be continued and fixed for trial *at a time* when a jury ~~shall~~ *will* be in attendance.

~~(3) A district court may draw more than one trial jury in a given year if, in the opinion of the judge or judges thereof, the service of the trial jury in attendance has been unduly demanding, and in such case the trial jury in attendance may be excused by the court from further jury duty in that year.~~

~~(4)~~*(3)* The judge or judges of a district or the judge of a department may designate that jury service in ~~his or their~~ *the* district or department is on a "one-day or one-trial" basis; that is, each individual juror is excused for the rest of the year after having attended for 1 day and not having been selected to serve at the trial of a particular cause or after having completed service at ~~such~~ a trial.

~~(5)~~*(4)* If tbe number of unexcused jurors is not sufficient to meet current requirements at any time, jurors excused under subsection (3) ~~or (4)~~ may be required to serve."

Section 6. Section 3-15-503, MCA, is amended to read:

"3-15-503. Drawing — how conducted. (1) (a) If the drawing of jurors is conducted by means of a jury box, the jury commissioner shall place the box on a rod so that it may readily revolve. The box must be revolved a sufficient number of times to ensure that the numbered slips in it become thoroughly mixed. ~~Thereafter the~~ *The* jury commissioner shall *then* draw from the box, one at a time, as many of the numbered slips as are ordered by the court.

(b) If the drawing of jurors is conducted by means of a computerized database, it must be conducted by use of a computerized random selection process that the judges of the district court of the county have approved in writing as satisfactorily fulfilling the requirements for the drawing of trial juries. ~~A copy of the latest jury list and a description of the approved computerized random selection process must be kept in the office of the clerk of court and be available for public inspection during normal business hours.~~

(2) A record of the drawing ~~shall~~ *must* be entered in the minutes of the court. It must show the names of the jurors corresponding to the numbers drawn from the jury box or the names drawn by means of the computerized random selection process.

~~(3) If the jury commissioner is satisfied that any person whose name is drawn is deceased or mentally incompetent or has permanently moved from the county, the name of the person shall be omitted from the list and another name shall be drawn in its place. The reason for the omission shall be entered upon the minutes of the court. The same procedure shall be followed as often as may be necessary, until the number of names of jurors required has been drawn.~~

HeinOnline -- 1999 vol. I 756 1999

~~(4) No person may be asked to serve for more than one term during any year unless all persons on the list established under 3-15-402 have been drawn and there are no other qualified jurors available.~~"

Section 7. Section 3-15-506, MCA, is amended to read:

"**3-15-506. Obtaining additional jurors when necessary.** (1) ~~Whenever~~ *If* it appears to a district judge that additional jurors will he needed for ~~any term or~~ *a* trial, the jury commissioner shall draw as many jurors as are necessary to secure the required number of additional jurors. Before the jury commissioner draws the jurors, the judge shall by appropriate order designate the number of jurors needed.

(2) ~~When~~ *If* the judge believes that securing the additional jurors from ~~all of~~ the *whole* county would cause unnecessary delay or expense, ~~he~~ *the judge* may order the jurors selected from only a designated portion of the county, which ~~portion shall never~~ *may not* be less than the corporate limits of the county seat. If, in the selection of the additional jurors, a juror is drawn who is a resident of an area outside the area designated by the court order, ~~that~~ *the* juror's name or number ~~shall~~ *must* be returned to the jury box or reinstated on the computer database and a new juror drawn.

(3) When the required number of names have been selected, the judge may order the prospective jurors notified by telephone or mail by the jury commissioner."

Section 8. Section 3-15-507, MCA, is amended to read:

"**3-15-507. Clerk to call list of jurors summoned and prepare ballots.** ~~(1) At the opening of court on~~ *On* the day *that* trial jurors have been summoned to appear, the clerk shall call the names of those summoned and not excused.

~~(2) The names of the jurors present and not excused must be written on separate ballots with the names concealed. The clerk shall deposit the ballots in a box large enough to hold all of the ballots without crowding. The box shall be so arranged that the judge or clerk drawing the ballots from the box is unable to see the ballots he is about to draw.~~"

Section 9. Repealer. Sections 3-15-502 and 3-15-505, MCA, are repealed.

Section 10. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 3, chapter 15, part 4, and the provisions of Title 3, chapter 15, apply to [section 1].

Approved April 5, 1999

CHAPTER NO. 242

[HB 437]

AN ACT CLARIFYING THE INFORMATION THAT A TELEPHONE COMPANY MAY RELEASE TO EMERGENCY COMMUNICATIONS SYSTEMS PERSONNEL; AMENDING SECTION 27-1-735, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 27-1-735, MCA, is amended to read:

HeinOnline -- 1999 vol. I 757 1999

"27-1-735. Emergency communications systems — lawful release of information. (1) It is lawful for a telephone company or telecommunications provider to release in good faith to personnel of emergency communications systems information not in the public record, including but not limited to unpublished or unlisted telephone numbers~~, provided that the subscriber information is released only in response to an emergency call involving an immediate threat to personal safety or property~~ *and subscribers' names and physical addresses.*

(2) A local exchange telephone company ~~with less than 15,000 subscribers~~ *registered as a Montana telecommunications service provider as provided in 69-3-805 or a provider of commercial mobile service, as defined in 47 U.S.C. 332(d)(1)* that provides emergency communications systems and related services and its employees and agents are not liable in tort to any person for damages alleged to have been caused hy the design, development, installation, maintenance, or provision of emergency communications systems or related services unless the acts or omissions of the entities or persons constitute gross negligence or willful or wanton misconduct. This subsection does not provide immunity from liability in a products liability action.

(3) For the purposes of this section, "subscrihers" means persons, partnerships, corporations, or other entities acquiring telecommunications services from a telecommunications provider. There is one subscriber for each billed line of a telecommunications provider."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 5, 1999

CHAPTER NO. 243

[HB 539]

AN ACT REMOVING THE REQUIREMENT THAT THE MEMBER FROM THE GOVERNOR'S STAFF APPOINTED TO THE FLATHEAD BASIN COMMISSION SERVE AS THE COMMISSION'S EXECUTIVE DIRECTOR; ALLOWING THE COMMISSION TO HIRE STAFF; ELIMINATING THE FLATHEAD BASIN COMMISSION ACCOUNT; AMENDING SECTIONS 2-15-213 AND 2-15-215, MCA; REPEALING SECTION 75-7-306, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-213, MCA, is amended to read:

"2-15-213. Flathead basin commission — membership — compensation. (1) There is a Flathead basin commission.

(2) The commission consists of 21 members selected as follows:

(a) seven members appointed by the governor from industrial, environmental, and other interests affected by Title 75, chapter 7, part 3, one of whom must be on the governor's staff ~~and who also serves as the executive director~~;

(b) one member who is the director of the department of natural resources and conservation or the director's designee;

(c) one member appointed by the Flathead County commissioners;

(d) one member appointed by the Lake County commissioners;

(e) one member appointed by the Confederated Salish and Kootenai Tribes;

(f) one member appointed by the United States department of agriculture, forest service regional forester for the northern region;

(g) one member appointed by the United States department of interior, national park service regional director for the Rocky Mountain region;

(h) one member appointed by the Flathead County conservation district board of supervisors;

(i) one member appointed by the Lake County conservation district board of supervisors;

(j) four ex officio members appointed respectively by the chief executive of the provincial government of the Province of British Columbia; the regional administrator of the United States environmental protection agency; the regional administrator of the United States department of the interior, bureau of reclamation; and the holder of a license issued for the Flathead project under the Federal Power Act;

(k) two ex officio members who are the director of the department of environmental quality and the director of the department of fish, wildlife, and parks or their designees.

(3) The commissioners shall serve without pay. The commissioners listed in subsection (2)(a), except the commissioner on the governor's staff, are entitled to reimbursement for travel, meals, and lodging while engaged in commission business, as provided in 2-18-501 through 2-18-503.

(4) The commission is attached to the governor's office for administrative purposes only."

Section 2. Section 2-15-215, MCA, is amended to read:

"**2-15-215. Flathead basin commission staff and office location.** (1) ~~The executive director of the commission shall be compensated on a pro rata basis from commission funds, calculated upon the time he is required by the governor to serve the commission~~ *The commission may hire staff for the purpose of carrying out its duties.*

(2) An office for the commission may be established at a community located in the basin~~, and sufficient and appropriate staff must be assigned to serve the commission~~."

Section 3. Repealer. Section 75-7-306, MCA, is repealed.

Section 4. Notification to tribal government. The secretary of state shall send a copy of [this act] to the Confederated Salish and Kootenai tribal government.

Section 5. Effective date. [This act] is effective July 1, 1999.

Approved April 5, 1999

HeinOnline -- 1999 vol. I 759 1999

CHAPTER NO. 244

[HB 598]

AN ACT PROHIBITING A TELECOMMUNICATIONS CARRIER OR OTHER ENTITY FROM CHARGING OR ATTEMPTING TO CHARGE FOR A PRODUCT OR SERVICE NOT AUTHORIZED OR RECEIVED BY THE CUSTOMER; AUTHORIZING THE PUBLIC SERVICE COMMISSION TO IMPOSE CIVIL PENALTIES FOR UNAUTHORIZED CHANGES IN A CUSTOMER'S TELECOMMUNICATIONS CARRIER OR FOR CHARGES FOR PRODUCTS OR SERVICES NOT AUTHORIZED OR RECEIVED BY A CUSTOMER; AUTHORIZING THE SECRETARY OF STATE TO REVOKE A REPEAT VIOLATOR'S RIGHT TO TRANSACT BUSINESS IN THIS STATE; AND AMENDING SECTIONS 69-3-1301, 69-3-1303, AND 69-3-1305, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-3-1301, MCA, is amended to read:

"**69-3-1301. Purpose.** The purpose of this part is to prohibit telecommunications carriers, including carriers not otherwise regulated by the commission, from switching a customer's telecommunications services from one telecommunications carrier to another without the customer's consent *and to prohibit charges for a product or service not requested by or provided to the customer from being placed on the customer's telephone bill.*"

Section 2. Section 69-3-1303, MCA, is amended to read:

"**69-3-1303. Prohibition — exceptions.** (1) A telecommunications carrier may not ~~honor a~~ request ~~by any person other than a customer to~~ *a* change ~~the~~ *in a* customer's primary interexchange ~~carriers~~ *carrier* or local exchange company except:

(a) when the requesting carrier has obtained from the customer a document signed by tbe customer tbat contains clear and conspicuous disclosure of the customer's request for a change in telecommunications carrier;

(b) when the customer affected by the change initiates tbe contact witb the carrier in order to request the change; or

(c) when the carrier who bas initiated the cbange bas obtained the customer's verbal authorization as verified by an independent third party or by electronic means in accordance with rules prescribed by the commission.

(2) The documentation required in subsection (1):

(a) must be signed by the customer responsible for paying the charges on the account held by the telecommunications carrier; and

(b) may not be a part of any sweepstakes, contest, or similar promotional program.

(3) A telecommunications carrier or other entity may not initiate charges to be placed on a customer's telecommunications bill unless the service or product has been requested by and provided to the customer. A customer request must be made in the following manner:

(a) by written authorization, in which the telecommunications provider or other entity has obtained a document signed by the customer containing a clear

and conspicuous disclosure of the customer's authorization or order of the product or service; or

(b) by verbal authorization, in which the telecommunications carrier or other entity has obtained the customer's verbal authorization as verified by an independent third party or by electronic means in accordance with commission rules.

(4) The documentation provided for in subsections (3)(a) and (3)(b):

(a) must be signed by the customer responsible for paying the charges on the telecommunications bill; and

(b) may not be a part of a sweepstakes, contest, or similar promotional program.

(5) A customer is not liable for any charges submitted for billing on the local exchange company's telephone bill by another carrier or entity for products or services that the customer did not authorize or that were not provided to the customer.

(6) The provisions of subsections (3), (4), and (5) do not apply to a transaction between a customer and that customer's selected providers of local exchange or interexchange service."

Section 3. Section 69-3-1305, MCA, is amended to read:

"69-3-1305. Telecommunications carrier liability — penalty for violation. (1) A telecommunications carrier who initiates an unauthorized change in the customer's telecommunications carrier in violation of 69-3-1303 is liable:

(a) to the customer for all intrastate long-distance charges, interstate long-distance charges, monthly service charges, carrier switching fees, and other relevant charges incurred by the customer during the period of the unauthorized change; and

(b) to the customer's original telecommunications carrier for all charges related to reinstating service to the customer.

(2) A telecommunications carrier who purposely or knowingly initiates an unauthorized change of a customer's telecommunications carrier under 69-3-1303 *or initiates charges to be billed on a customer's telephone bill for services or products not provided to or authorized by the customer* is guilty of a misdemeanor and shall be punished as provided in 46-18-212.

(3) (a) If, after a hearing held pursuant to the Montana Administrative Procedure Act, the commission finds that a person has initiated an unauthorized change of a customer's telecommunications carrier or has initiated charges to be billed on a customer's telephone bill for services or products not provided or authorized, the commission may impose for each change or charge made in violation of 69-3-1303, a civil fine not to exceed $1,000 for each violation, which must be deposited in the general fund.

(b) If, after a hearing held pursuant to the Montana Administrative Procedure Act, the commission finds that a person has, with a frequency to indicate a general business practice, initiated unauthorized changes of customers' telecommunications carriers or initiated charges to be billed on a customer's telephone bill for services or products not provided or authorized, the commission may notify the secretary of state and the secretary of state shall suspend or revoke

HeinOnline -- 1999 vol. I 761 1999

any license, registration, or other filing entitling that person to transact business in this state.

~~(3)~~*(4)* The remedies provided hy this section are in addition to any other remedies, *including injunctive relief,* availahle hy law."

Approved April 5, 1999

CHAPTER NO. 245

[SB 15]

AN ACT CLARIFYING THE COMPUTATION OF THE BUSINESS EQUIPMENT TAX RATE REDUCTION REIMBURSEMENT TO LOCAL GOVERNMENT TAXING JURISDICTIONS; AMENDING SECTION 15-1-112, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-1-112, MCA, is amended to read:

"15-1-112. Business cquipment tax rate reduction reimbursement to local government taxing jurisdictions. (1) On or before January 1, 1996, for the reduction in payment under subsection (4) and by June 1 of 1996, 1997, and 1998, for all other reimbursements in this section, the department of revenue shall determine a reimbursement amount associated with reducing the tax rate in 15-6-138 and provide that information to each county treasurer. The reimbursement amount must be determined for each local government taxing jurisdiction that levied mills on the taxable value of property described in 15-6-138 in the corresponding tax year. However, the reimbursement does not apply to property described in 15-6-138 that has a reduced tax rate under 15-24-1402.

(2) (a) The reimbursement amount to be used as the basis for the payment reduction under subsection (4) is the product of multiplying the tax year 1995 taxable value of property described in 15-6-138 for each local government taxing jurisdiction by the tax year 1995 mill levy for the jurisdiction and then multiplying by 1/9th.

(b) (i) The reimbursement amount for each local government taxing jurisdiction for tax year 1996 is the amount determined under subsection (2)(a) unless the tax year 1996 market value of property described in 15-6-138, for the particular local government taxing jurisdiction, is more than the tax year 1995 market value for property described in 15-6-138 in the same jurisdiction.

(ii) If the tax year 1996 market value is greater than the tax year 1995 market value for a particular jurisdiction, then the reimbursement amount for tax year 1996 is the result of subtracting the simulated 1996 tax from the 1995 tax. The 1995 tax is the tax for the particular jurisdiction, determined by multiplying the actual taxable valuation of property described in 15-6-138, for tax year 1995, by the tax year 1995 mill levy for the jurisdiction. The simulated 1996 tax for the particular jurisdiction is the actual tax year 1996 taxable value of property described in 15-6-138 multiplied by the tax year 1995 mill levy for the particular jurisdiction. If the simulated 1996 tax is greater than the 1995 tax, the reimbursement amount is zero.

HeinOnline -- 1999 vol. I 762 1999

(c) (i) The reimbursement amount for each local government taxing jurisdiction for tax year 1997 is the amount determined under subsection (2)(a) multiplied by two unless the tax year 1997 market value of property described in 15-6-138, for the particular local government taxing jurisdiction, is more than the tax year 1995 market value for property described in 15-6-138 in the same jurisdiction.

(ii) If the tax year 1997 market value is greater than the tax year 1995 market value for a particular jurisdiction, then the reimbursement amount for tax year 1997 is the result of subtracting the simulated 1997 tax from the 1995 tax. The 1995 tax is the tax for the particular jurisdiction, determined by multiplying the actual taxable valuation of property described in 15-6-138, for tax year 1995, by the tax year 1995 mill levy for the jurisdiction. The simulated 1997 tax for the particular jurisdiction is the actual tax year 1997 taxable value of property described in 15-6-138 multiplied by the tax year 1995 mill levy for tbe particular jurisdiction. If the simulated 1997 tax is greater than the 1995 tax, the reimbursement amount is zero.

(d) (i) The reimbursement amount for each local government taxing jurisdiction for tax year 1998 is the amount determined under subsection (2)(a) multiplied by three unless the tax year 1998 market value of property described in 15-6-138, for the particular local government taxing jurisdiction, is more tban the tax year 1995 market value for property described in 15-6-138 in the same jurisdiction.

(ii) If the tax year 1998 market value is greater than the tax year 1995 market value for a particular jurisdiction, then the reimbursement amount for tax year 1998 is the result of subtracting the simulated 1998 tax from the 1995 tax. The 1995 tax is the tax for the particular jurisdiction, determined by multiplying the actual taxable valuation of property described in 15-6-138, for tax year 1995, by the tax year 1995 mill levy for the jurisdiction. The simulated 1998 tax for the particular jurisdiction is the actual tax year 1998 taxable value of property described in 15-6-138 multiplied by the tax year 1995 mill levy for tbe particular jurisdiction. If the simulated 1998 tax is greater than the 1995 tax, the reimbursement amount is zero.

(3) (a) For purposes of this section, "local government taxing jurisdiction" means a local government rather than a state taxing jurisdiction that levied mills against property described in 15-6-138, including county governments, incorporated city and town governments, consolidated county and city governments, tax increment financing districts, local elementary and high school districts, local community collego districts, miscellaneous districts, and special districts. The term includes countywide mills levied for equalization of school retirement or transportation.

(b) The term does not include county or state school equalization levies provided for in 20-9-331, 20-9-333, and 20-9-360 or the university levy provided for in 15-10-106. It also does not include any state levy for welfare programs provided for in 53-2-813.

(c) Each tax increment financing district must receive the benefit of the state mill on the incremental taxable value of the district.

(4) County treasurers shall reduce the county payment to the state for the levy imposed under 20-9-360 in June of 1996 by an amount equal to 38% of the

reimbursement amount determined under subsection (2)(a) for all of the local government taxing jurisdictions in the county.

(5) County treasurers shall reduce the county payment to the state for the levy imposed under 20-9-360 in December of 1996 by an amount equal to 31% of the reimbursement amount for tax year 1996 for all of the local government taxing jurisdictions in the county, as determined by the department under subsection (2).

(6) County treasurers shall reduce the county payment to the state for the levy imposed under 20-9-360 in June of 1997 by an amount equal to 31% of the reimbursement amount for tax year 1996 for all of the local government taxing jurisdictions in the county and by an amount equal to 38% of the reimbursement amount for tax year 1997 for all of the local government taxing jurisdictions in the county, as determined by the department under subsection (2).

(7) County treasurers shall reduce the county payment to the state for the levy imposed under 20-9-360 in December of 1997 by an amount equal to 31% of the reimbursement amount for tax year 1997 for all of the local government taxing jurisdictions in the county, as determined by the department under subsection (2).

(8) County treasurers shall reduce the county payment to the state for the levy imposed under 20-9-360 in June of 1998 by an amount equal to 31% of the reimbursement amount for tax year 1997 for all of the local government taxing jurisdictions in the county and by an amount equal to 38% of the reimbursement amount for tax year 1998 for all of the local government taxing jurisdictions in the county, as determined by the department under subsection (2).

(9) County treasurers shall reduce the county payment to the state for the levy imposed under 20-9-360 in December of 1998 by an amount equal to 31% of the reimbursement amount for tax year 1998 for all of the local government taxing jurisdictions in the county, as determined by the department under subsection (2).

(10) County treasurers shall reduce the county payment to the state for the levy imposed under 20-9-360 in June of 1999 by an amount equal to 69% of the reimbursement amount for tax year 1998 for all of the local government taxing jurisdictions in the county, as determined by the department under subsection (2).

(11) County treasurers shall reduce the county payment to the state for the levy imposed under 20-9-360 in December of the years 1999 through 2007 by an amount equal to 31% of the reimbursement amount determined in subsection (13) for all of the local government taxing jurisdictions in the county, as determined by the department under subsection (2).

(12) County treasurers shall reduce the county payment to the state for the levy imposed under 20-9-360 in June of the years 2000 through 2008 by an ameunt equal to 69% of the reimbursement amount determined in subsection (13) for all of the local government taxing jurisdictions in the county, as determined by the department under subsection (2).

(13) (a) The reimbursement amount for tax year 1999 and each subsequent tax year for 9 years must be progressively reduced each year by 10% of the reimbursement amount for tax year ~~1999~~ *1998*, according to the follewing schedule:

Tax Year	Percentage of ~~1999~~ *1998* Reimbursement Amount
1999	90
2000	80
2001	70
2002	60
2003	50
2004	40
2005	30
2006	20
2007	10
2008 and following years	0

(b) The reimhursement amount for each tax year must be the hasis for reducing the amount remitted to the state for the levy imposed under 20-9-360 in December of the same year and June of the following year.

(14) The county treasurer shall use the funds from the reduced payment to the state for the levy imposed under 20-9-360 to reimburse each local government taxing jurisdiction in the amount determined by the department under subsection (2). The reimbursement must he distributed to funds within local government taxing jurisdictions in the same manner as taxes on property described in 15-6-138 are distributed. The reimbursement in June must be distributed based on the prior year's mill levy, and the reimbursement in December must be based on the current year's mill levy.

(15) Each local government taxing jurisdiction receiving reimbursements shall consider the amount of reimbursement that will be received and lower the mill levy otherwise necessary to fund the budget by the amount that would otherwise have to be raised by the mill levy.

(16) A local government taxing jurisdiction that ceases to exist after October 1, 1995, will no longor be considered for revenue loss or reimbursement purposes. A local government taxing jurisdiction that is created after January 1, 1996, will not be considered for revenue loss or reimbursement purposes. If a local government taxing jurisdiction that existed prior to January of 1996 is split between two or more taxing jurisdictions or is annexed to or is consolidated with another taxing jurisdiction, the department shall determine how much of the revenue loss and reimbursement is attributed to the new jurisdictions."

Seetion 2. Effeetive date. [This act] is effective on passago and approval.

Seetion 3. Retroaetive applieability. [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

Approved April 5, 1999

HeinOnline -- 1999 vol. I 765 1999

CHAPTER NO. 246

[SB 71]

AN ACT EXEMPTING VEHICLES OWNED BY CERTAIN HEALTH CARE PROFESSIONALS WHO PRACTICE IN RURAL, MEDICALLY UNDERSERVED AREAS FROM FOREIGN VEHICLE REGISTRATION; PROVIDING FOR A DECAL; AMENDING SECTIONS 15-24-301 AND 61-3-707, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-24-301, MCA, is amended to read:

"15-24-301. Personal property brought into ~~the~~ state — assessment — exeeptions — custom combine equipment. (1) Except as provided in subsections (2) through (5), property in the following cases is subject to taxation and assessment for all taxes levied that year in the county in which it is located:

(a) ~~any~~ personal property (including livestock) brought, driven, or coming into this state at any time during the year that is used in the state for hire, compensation, or profit;

(b) property whose owner or user is engaged in gainful occupation or business enterprise in the state; or

(c) property ~~which~~ *that* comes to rest and becomes a part of the general property of the state.

(2) The taxes on this property are levied in the same manner and to the same extent, except as otherwise provided, as though the property had been in the county on the regular assessment date, provided that the property has not been regularly assessed for the year in some other county of the state.

(3) ~~Nothing in this~~ *This* section ~~shall~~ *may not* be construed to levy a tax against a merchant or dealer within this state on goods, wares, or merchandise brought into the county to replenish the stock of the merchant or dealer.

(4) ~~Any~~ *Except as provided in [section 2], any* motor vehicle not subject to a fee in lieu of tax brought, driven, or coming into this state by any nonresident person temporarily employed in Montana and used exclusively for transportation of ~~such~~ *that* person is subject to taxation and assessment for taxes as follows:

(a) The motor vehicle is taxed by the county in which it is located.

(b) One-fourth of the annual tax liability of the motor vehicle must be paid for each quarter or portion of a quarter of the year that the motor vehicle is located in Montana.

(c) The quarterly taxes are due the first day of the quarter.

(5) Agricultural harvesting machinery classified under class eight, licensed in other states, and operated on the lands of persons other than the owner of the machinery under contracts for hire ~~shall be~~ *is* subject to a fee in lieu of taxation of $35 per machine for the calendar year in which the fee is collected. The machines ~~shall be~~ *are* subject to taxation under class eight only if they are sold in Montana."

HeinOnline -- 1999 vol. I 766 1999

Section 2. Exemption for vehicle of certain health care professionals. A motor vehicle that is brought, driven, or coming into this state that is registered in another state or country by a nonresident person who is a licensed health care professional, as provided in Title 37, chapter 3, 5, 8, 11, 14, 20, 21, 25, 28, or 34, and who is employed in Montana by a rural health care facility that is located in a medically underserved area is exempt from taxation as provided in 15-24-301.

Section 3. Section 61-3-707, MCA, is amended to read:

"61-3-707. Foreign vehicles used for transportation in connection with employment. (1) *(a)* Before a motor vehicle taxed pursuant to 15-24-301(4) may be operated in Montana for a calendar quarter, the person responsible for payment of taxes ~~must~~ *shall* apply for and obtain a window decal *provided by the department.*

~~(2)~~*(b)* Decals must be color-coded to distinguish the four quarterly registration periods of the year.

~~(3)~~*(c)* An applicant may purchase a decal for more than one registration quarter at a time by paying the appropriate amount.

~~(4)~~*(d)* There is a $2 fee for each decal, and money collected from this fee ~~shall~~ *must* be deposited to the county general fund. The $2 fee is in addition to the tax.

~~(5)~~*(e)* A current window decal must be displayed on the lower right-hand corner of the windshield.

(2) (a) Before a motor vehicle exempted pursuant to [section 2] may be operated in Montana, the person responsible for the motor vehicle shall apply for and obtain a window decal from the county treasurer. The department shall supply the decals to the county treasurers.

(b) An application approved by the department must include a verification from the employer that the person is employed by a health care facility in a rural, medically underserved area that experiences difficulty in recruiting and retention of health care professionals.

(c) Decals expire each year on December 31 of the year in which issued, and application for reregistration must be filed with the county treasurer no later than February 15 of each year. Decals must be color-coded to distinguish the year.

(d) A current window decal must be displayed on the lower right-hand corner of the windshield."

Section 4. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 15, chapter 6, part 2, and the provisions of Title 15, chapter 6, part 2, apply to [section 2].

Section 5. Effective date. [This act] is effective July 1, 1999.

Approved April 5, 1999

CHAPTER NO. 247

[SB 124]

AN ACT GENERALLY REVISING LAWS RELATING TO MENTAL HEALTH; DELETING THE REQUIREMENT FOR DEPARTMENT APPROVAL OF VOLUNTARY ADMISSION FORMS; SPECIFYING THE CONTENT OF

HeinOnline -- 1999 vol. I 767 1999

VOLUNTARY ADMISSION FORMS AND SPECIFYING THE REQUIREMENTS FOR A VALID VOLUNTARY ADMISSION; PROVIDING TRANSFER PROVISIONS FOR A PERSON IN THE CUSTODY OF THE DEPARTMENT OF CORRECTIONS; AMENDING TIME PROVISIONS RELATED TO NONRESIDENT COMMITMENT; CLARIFYING THE CRITERIA FOR DIVERSION FROM A DETENTION CENTER OF CERTAIN PERSONS SUFFERING FROM A MENTAL DISORDER; REQUIRING A STATEMENT OF FINANCIAL RESOURCES NEEDED FOR DISCHARGE PLANNING; AMENDING THE FUNCTION OF THE MONTANA STATE HOSPITAL; AMENDING SECTIONS 53-21-111, 53-21-130, 53-21-134, 53-21-138, 53-21-180, AND 53-21-601, MCA; REPEALING SECTION 53-21-188, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-21-111, MCA, is amended to read:

"53-21-111. Voluntary admission — *content of admission form — requirements for valid admission.* (1) *(a)* ~~Nothing in this~~ *This* part may *not* be construed to limit the right of ~~any~~ *a* person to make voluntary application for admission at any time to ~~any~~ *a* mental health facility or professional person.

(b) An application for admission to a mental health facility must be in writing on a form prescribed by the facility ~~and approved by the department. An application is not valid unless it is approved by a professional person and a copy is given to the person being voluntarily admitted.~~ *The form must explain:*

(i) the process for requesting release and that the request must be in writing;

(ii) that the individual applying for release may be held involuntarily for up to 5 days after requesting release; and

(iii) that the facility may request a court to involuntarily commit the applicant.

(c) A statement of the rights of the person voluntarily applying for admission, as set out in this part, ~~including the right to release,~~ must be furnished to the patient within 12 hours.

(2) ~~Any~~ *An* applicant who wishes to voluntarily apply for admission to the state hospital shall first obtain certification from a professional person that the applicant is suffering from a mental disorder. The professional person shall then obtain confirmation from the department or the department's designee that the facilities available to the mental health region in which the applicant resides are unable to provide adequate evaluation and treatment. The department shall adopt rules to establish a procedure whereby a professional person shall obtain the confirmation from the department or the department's designee as required in this section.

(3) An application for voluntary admission must give the facility the right to detain the applicant for no more than 5 days, excluding weekends and holidays, past the applicant's written request for release. A mental health facility may adopt rules providing for detention of the applicant for less than 5 days. The facility shall notify all applicants of the rules and post the rules as provided in 53-21-168.

(4) An individual applying for voluntary admission pursuant to this section may not be admitted unless:

HeinOnline -- 1999 vol. I 768 1999

(a) the admission is approved by a professional person;

(b) the individual applying for admission has been informed orally of the matters required by subsection (1)(b) to be stated in the written application for admission;

(c) a copy of the written application for admission has been given to the applicant; and

(d) the admission otherwise complies with the requirements of this section.

~~(4)~~*(5)* ~~Any~~ *A* person voluntarily entering or remaining in ~~any~~ *a* mental health facility shall enjoy all the rights secured to a person involuntarily committed to the facility."

Section 2. Section 53-21-130, MCA, is amended to read:

"53-21-130. Transfer or commitment to mental health facility from other institutions. *(1)* ~~No~~ *A* person who is in the custody of the department for any purpose other than treatment of severe mental illness may *not* be transferred or committed to a mental health facility for more than 10 days unless the transfer or commitment is effected according to the procedures set out in this part. However, proceedings for involuntary commitment may be commenced in the county of the mental health facility where the person is, in the county of the institution from which the person was transferred to the mental health facility, or in the county of the person's residence. Notice of a transfer ~~shall~~ *must* be given immediately to ~~any~~ *the* assigned counsel at the mental health facility and to the parents of minors, guardians, friends of respondent, or conservators~~, as the case may be~~.

(2) A person who is in the custody of the department of corrections may be transferred for placement in a mental health facility for a period of up to 10 days, subject to the approval of the mental health facility. A placement in excess of 10 days must be performed according to the procedures for voluntary admission or involuntary commitment as provided in this part. Proceedings for involuntary commitment may be commenced in the county of the mental health facility where the person is placed or in the county of the correctional facility from which the person was transferred. Notice of a transfer must be given to the legal counsel for the person and to the parents of minors, guardians, friends of respondent, or conservators."

Section 3. Section 53-21-134, MCA, is amended to read:

"53-21-134. Receipt of nonresident person suffering from a mental disorder pending return to home state. A person who is suffering from a mental disorder and in need of commitment and who is not a resident of this state may be ~~received into~~ *committed to* the state hospital ~~for a period not to exceed 30 days pending return to the state of the person's residence~~ *pursuant to this part. The state hospital shall make every effort to return the nonresident to the state of the person's residence as provided in chapter 22, part 1, of this title."*

Section 4. Section 53-21-138, MCA, is amended to read:

"53-21-138. Diversion of certain persons suffering from mental disorders from ~~jail~~ *detention center*. (1) The sheriff or administrator of a ~~jail~~ *detention center* in each county shall require screening of inmates to identify persons accused of minor misdemeanor offenses who appear to be suffering from mental disorders and who *may* require commitment, as defined in 53-21-102.

HeinOnline -- 1999 vol. I 769 1999

(2) If as a result of screening and observation it is believed that an inmate is suffering from a mental disorder and *may* ~~requires~~ *require* commitment, the sheriff or administrator of the ~~jail~~ *detention center* shall:

(a) request services from a crisis intervention program established by the department, as provided for in 53-21-139;

(b) refer the inmate to the nearest community mental health center, as defined in 53-21-201; or

(c) transfer the inmate to a private mental health facility or hospital equipped to provide treatment and care of persons who are suffering from a mental disorder and who require commitment.

(3) As used in this section, the term "minor misdemeanor offense" includes but is not limited to a nonserious misdemeanor, such as criminal trespass to property, loitering, vagrancy, disorderly conduct, and disturbing the public peace.

(4) A person intoxicated by drugs or alcohol who is accused of a minor misdemeanor offense may be detained in a jail until the level of intoxication is reduced to the point that screening for a mental disorder and the need for commitment can be performed."

Section 5. Section 53-21-180, MCA, is amended to read:

"53-21-180. Discharge plan. Each patient admitted as an inpatient to a mental health facility must have an individualized discharge plan developed within 10 days after admission. The discharge plan must be updated as necessary. Each individualized discharge plan must contain:

(1) an anticipated discharge date;

(2) criteria for discharge;

(3) identification of the facility staff member responsible for discharge planning;

(4) identification of the community-based agency or individual ~~that~~ *who* is assisting in arranging postdischarge services; ~~and~~

(5) *referrals for financial assistance needed by the patient upon discharge; and*

(6) other information necessary to ensure an appropriate discharge and adequate postdischarge services."

Section 6. Section 53-21-601, MCA, is amended to read:

"53-21-601. Location and primary function of hospital. (1) The facility providing mental health care services at Warm Springs, Montana, is the Montana state hospital and as its primary function provides care and treatment of mentally ill persons.

(2) (a) The Montana state hospital is a mental health facility, as defined in 53-21-102, of the department of public health and human services for the care and treatment of mentally ill persons.

(b) The role of ~~the Warm Springs facility~~ *Montana state hospital* is to provide intensive inpatient psychiatric services, *including those services necessary for transition to community care,* as ~~one component~~ *components* in a comprehensive continuum of publicly and privately provided programs that emphasize treatment in the least restrictive environment.

HeinOnline -- 1999 vol. I 770 1999

(c) The mission of ~~the Warm Springs facility~~ *Montana state hospital* is to stabilize persons with severe mental illness and to return them to the community as soon as possible if adequate community-based support services are available.

(3) The department shall adopt rules to manage the state hospital patient population in a manner that will ensure emergency access to services, protect public and individual safety, provide active treatment, implement effective discharge planning, and ensure access to appropriate community-based services."

Section 7. Repealer. Section 53-21-188, MCA, is repealed.

Section 8. Effective date. [This act] is effective on passage and approval.

Approved April 5, 1999

CHAPTER NO. 248

[SB 207]

AN ACT ALLOWING A BOARD OF COUNTY COMMISSIONERS TO DONATE LAND THAT THE COUNTY HAS ACQUIRED BY TAX DEED TO A NONPROFIT CORPORATION SO THAT THE NONPROFIT CORPORATION WILL CONSTRUCT OR REPAIR IMPROVEMENTS ON THE DONATED LAND AND SELL, LEASE, RENT, OR OTHERWISE USE THE PROPERTY TO FURTHER THE PURPOSES FOR WHICH THE NONPROFIT CORPORATION WAS FORMED; AND AMENDING SECTION 7-8-2301, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-8-2301, MCA, is amended to read:

"7-8-2301. Disposal of county tax-deed land. (1) Whenever the county acquires land by tax deed, it is the duty of the board of county commissioners, within 6 months after acquiring title, to enter an order to:

(a) sell the land at public auction;

(b) donate the land to a municipality, as provided in subsection (3), if the land is within the incorporated boundaries of the municipality;

(c) donate the land to a nonprofit corporation as provided in subsection (3); or

(d) retain the land for the county as provided in subsection (3).

(2) When tax-deed land is to be sold, the sale may not be made for a price less than the sales price determined and fixed by the board prior to making the order of sale. The sales price may be set in an amount sufficient to recover the full amount of taxes, assessments, penalties, and interest due at the time the tax deed was issued to the county plus the county's costs in taking the tax deed and in conducting the sale and additional taxes due, if any, at the time of the sale.

(3) A board of county commissioners may, upon expiration of the repurchase period provided for in 7-8-2303:

(a) sell the land as provided in subsections (2) and (4);

HeinOnline -- 1999 vol. I 771 1999

(b) donate the land to a municipality with the consent of the municipality;

(c) donate the land to a nonprofit corporation for the purpose of constructing:

(i) a multifamily housing development operated by the corporation; ~~or~~

(ii) single-family houses. Upon completion of a house, the nonprofit corporation shall sell the property to a low-income person who meets the eligibility requirements of the corperation. Once the sale is completed, the property hecomes subject to taxation.

(iii) improvements to real property or modifying, altering, or repairing improvemcnts to real property that will enable the nonprofit corporation, subject to the restrictions of Article X, section 6, of the Montana constitution, to pursue purposes specified in the articles of incorporation of the nonprofit corporation, including the sale, lease, rental, or othcr use of the donated land and improvements;

(d) retain the land for the county pursuant to 7-8-2501.

(4) If bids are not received at a sale of tax-deed land, the board shall order another auction sale of the land under this part within 6 months and may, if required by the circumstances, redetermine the sales price of the land determined under subsection (2). In the period of time between the auction conducted under subsection (1), in which there were not any qualifying bids for the land, and an auction held pursuant to this suhsection, the board may sell the land by negotiated sale at a price that is not less than the sales price that was fixed for tbe original auction under subsection (1)(a).

(5) If a bid is not received at the sale conducted under subsection (4), the board may dispose of the land as provided in 7-8-2218.

(6) Notwithstanding the amount of the sales price fixed by the board prior to the auction conducted under subsection (1)(a), if the successful sale bidder is the delinquent taxpayer or the taxpayer's successor in interest, the taxpayer's agent, or a member of the taxpayer's immediate family, the purchase price may not be less than the amount necessary to pay, in full, the taxes, assessments, penalties, and interest due on the land at the time of taking the tax deed plus interest on the full amount at the rate provided for in 15-16-102 from the date of the tax deed to the date of the repurchase as well as the costs of the county in taking the tax deed and additional taxes or assessments due, if any, at the time of repurchase."

Section 2. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 5, 1999

CHAPTER NO. 249

[SB 348]

AN ACT PROVIDING FOR THE DECRIMINALIZATION OF MUNICIPAL VIOLATIONS; CREATING A CATEGORY OF MUNICIPAL INFRACTIONS WITH CIVIL PENALTIES AND PROVIDING PROCEDURES FOR

HeinOnline -- 1999 vol. I 772 1999

ENFORCING MUNICIPAL INFRACTIONS; AUTHORIZING MUNICIPALITIES TO CLASSIFY VIOLATIONS OF MUNICIPAL ORDINANCES AS MUNICIPAL INFRACTIONS; AND AMENDING SECTION 7-1-4124, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-1-4124, MCA, is amended to read:

"7-1-4124. Powers. A municipality with general powers has the power, subject to the provisions of state law, to:

(1) enact ordinances and resolutions;

(2) sue and be sued;

(3) buy, sell, mortgage, rent, lease, hold, manage, or dispose of any interest in real or personal property;

(4) contract with persons, corporations, or any other governmental entity;

(5) pay debts and expenses;

(6) borrow money;

(7) solicit and accept bequests, donations, or grants of money, property, services, or other advantages and comply with any condition that is not contrary to the public interest;

(8) execute documents necessary to receive money, property, services, or other advantages from the state government, the federal government, or any other source;

(9) make grants and loans of money, property, and services for public purposes;

(10) require the attendance of witnesses and production of documents relevant to matters being considered by the governing body;

(11) hire, direct, and discharge employees and appoint and remove members of boards;

(12) ratify any action of the municipality or its officers or employees which could have been approved in advance;

(13) have a corporate seal and flag;

(14) acquire by eminent domain as provided in Title 70, chapter 30, any interest in property to provide any service or facility authorized by law;

(15) initiate a civil action to restrain or enjoin violation of an ordinance;

(16) enter private property, obtaining warrants when necessary, for the purpose of enforcing ordinances that affect the general welfare and public safety;

(17) conduct a census;

(18) conduct inventories of public property and preparatory studies;

(19) condemn and demolish hazardous structures;

(20) purchase insurance and establish self-insurance plans;

HeinOnline -- 1999 vol. I 773 1999

(21) impound animals and other private property creating a nuisance or obstructing a street or highway;

(22) establish quarantines; ~~and~~

(23) classify all violations of city ordinances as civil infractions, with civil penalties, as provided in [section 2]; and

~~(23)~~*(24)* exercise powers not inconsistent with law necessary for effective administration of authorized services and functions."

Section 2. Municipal infractions — civil offense. (1) A municipal infraction is a civil offense punishable by a civil penalty of not more than $300 for each violation or if the infraction is a repeat offense, a civil penalty not to exceed $500 for each repeat violation.

(2) A municipality may by ordinance provide that a violation of an ordinance is a municipal infraction.

(3) A municipality may not provide that a violation of an ordinance is a municipal infraction if the violation is a criminal offense under state law.

(4) An officer who is authorized by a municipality to enforce a municipal code or regulation may issue a civil citation to a person who commits a municipal infraction. The citation may be served by personal service, by certified mail addressed to the defendant at the defendant's last known mailing address, return receipt requested, or by publication, as provided in Rule 4D(5), M.R.Civ.P. A copy of the citation must be retained by the issuing officer and one copy must be sent to the clerk of the municipal or city court. The citation must serve as notification that a municipal infraction has been committed and must contain the following information:

(a) the name and address of the defendant;

(b) the name or description of the infraction attested to by the officer issuing the citation;

(c) the location and time of the infraction;

(d) the amount of civil penalty to be assessed or the alternate relief sought, or both;

(e) the manner, location, and time in which the penalty may be paid;

(f) the time and place of court appearance; and

(g) the penalty for failure to appear in court.

Section 3. Municipal infractions — proceedings. (1) In municipal infraction proceedings:

(a) the matter must be tried before a municipal court judge or city court judge in the same manner as a small claim if the total amount of civil penalties does not exceed $3,000. The matter may only be tried before a judge in district court if the total amount of civil penalties assessed exceeds $3,000.

(b) the city has the burden of proof that the municipal infraction occurred and that the defendant committed the infraction. The proof must be by clear and convincing evidence.

HeinOnline -- 1999 vol. I 774 1999

(c) the court shall ensure that the defendant has received a copy of the charges and that the defendant understands the charges. The defendant may question all witnesses who appear for the municipality and produce evidence or witnesses on the defendant's behalf.

(d) the defendant may be represented by counsel of the defendant's own choosing and at tbe defendant's own expense;

(e) the defendant may answer by admitting or denying the infraction;

(f) if a municipal infraction is proven, the court shall enter a judgment against the defendant. If the infraction is not proven, the court shall dismiss the charges. Eacb day that a violation occurs or is permitted to exist by the defendant constitutes a separate infraction.

(2) All penalties or forfeitures collected by the court for municipal infractions must be remitted to the municipality in the same manner as fines and forfeitures collected for criminal offenses. If the person named in the citation is served as provided in [section 2] and fails without good cause to appear in response to the civil citation, judgment must be entered against the person.

(3) A person against whom judgment is entered shall pay court costs and fees as in small claims court under Title 25, chapter 35. If the action is dismissed by the court, the municipality is liable for the court costs and court fees.

(4) Seeking a civil penalty as authorized in this section does not preclude a municipality from seeking alternative relief from the court in the same action.

(5) When judgment has been entered against a defendant, the court may do any of the following:

(a) impose a civil penalty by entry of a judgment against the defendant;

(b) direct that payment of the civil penalty be suspended or deferred under conditions imposed by the court;

(c) grant appropriate alternative relief ordering tbe defendant to abate or cease the violation;

(d) authorize the municipality to abate or correct the violation;

(e) order that the municipality's costs for abatement or correction of tbe violation be entered as a judgment against the defendant or assessed against the property where the violation occurred, or both.

(6) If a defendant willfully violates the terms of an order imposed by the court, the failure is contempt.

Section 4. Municipal infractions — jurisdiction — appeal. (1) A municipal court judge or city court judge has jurisdiction to assess or enter judgment for costs of abatement or correction in any amount not to exceed the jurisdictional amount for a money judgment in a civil action pursuant to 3-11-103. If the municipality seeks abatement or correction costs in excess of that amount, the matter must be referred to the district court for hearing and entry of an appropriate order. The procedure for hearing in the district court shall be the same procedure as that for a small claims appealed under 25-35-803.

(2) The defendant or the municipality may file a motion for a new trial or may appeal the decision to district court. A factual determination made by the trial court, supported by substantial evidence as shown in the record, is binding for purposes of appeal relating to the violation at issue, but is not admissible or

HeinOnline -- 1999 vol. I 775 1999

binding as to any future violations for the same or similar ordinance provision by the same defendant.

(3) Except for willful or wanton misconduct on the part of the municipality, the issuance of a civil citation for a municipal infraction or the ensuing court proceedings do not provide an action for false arrest, false imprisonment, or malicious prosecution.

(4) An action brought pursuant to this section for a municipal infraction that is an environmental violation does not preclude, and is in addition to, any other enforcement action that may be brought under state law.

Section 5. Codification instruction. [Sections 2 through 4] are intended to be codified as an integral part of Title 7, chapter 1, part 41, and the provisions of Title 7, chapter 1, part 41, apply to [sections 2 through 4].

Approved April 5, 1999

CHAPTER NO. 250

[SB 371]

AN ACT REQUIRING A PERSON DEVELOPING A GROUND WATER SOURCE OF 35 GALLONS A MINUTE OR LESS, WHEN THE SOURCE IS ON ANOTHER PERSON'S LAND, TO NOTIFY THE OTHER LANDOWNER IN ADVANCE OF THE PROPOSED DEVELOPMENT AND APPROPRIATION; AMENDING SECTION 85-2-306, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-2-306, MCA, is amended to read:

"**85-2-306. Exceptions to permit requirements.** (1) Ground water may be appropriated only by a person who has a possessory interest in the property where the water is to be put to beneficial use and exclusive property rights in the ground water development works or, if another person has rights in the ground water development works, with the written consent of the person with those property rights. *If the person does not have a possessory interest in the real property from which the ground water may be appropriated, the person shall provide to the owner of the real property written notification of the works and the person's intent to appropriate ground water from the works. The written notification must be provided to the landowner at least 30 days prior to constructing any associated works or, if no new or expanded works are proposed, 30 days prior to appropriating the water.* Outside the boundaries of a controlled ground water area, a permit is not required before appropriating ground water by means of a well or developed spring with a maximum appropriation of 35 gallons ~~per~~ *a* minute or less, not to exceed 10 acre-feet ~~per~~ *a* year, except that a combined appropriation from the same source from two or more wells or developed springs exceeding this limitation requires a permit. Within 60 days of completion of the well or developed spring and appropriation of the ground water for beneficial use, the appropriator shall file a notice of completion with the department on a form provided by the department at its offices and at the offices of the county clerk and recorders. Upon receipt of the notice, the department shall review the notice and may, before issuing a certificate of water right, return a defective notice for correction or completion, together with the reasons for

HeinOnline -- 1999 vol. I 776 1999

returning it. A notice does not lose priority of filing because of defects if the notice is corrected, completed, and refiled with the department within 30 days or within a further time as the department may allow, not to exceed 6 months. If a notice is not corrected and completed within the time allowed, the priority date of appropriation is the date of refiling a correct and complete notice with the department. A certificate of water right may not he issued until a correct and complete notice has been filed with the department, *including proof of landowner notification as necessary under this subsection.* The original of the certificate must be sent to the appropriator. The department shall keep a copy of the certificate in its office in Helena. The date of filing of the notice of completion is the date of priority of the right.

(2) An appropriator of ground water hy means of a well or developed spring first put to beneficial use between January 1, 1962, and July 1, 1973, who did not file a notice of completion, as required by laws in force prior to April 14, 1981, with the county clerk and recorder shall file a notice of completion, as provided in subsection (1), with the department to perfect the water right. The filing of a claim pursuant to 85-2-221 is sufficient notice of completion under this subsection. The priority date of the appropriation is the date of the filing of a notice, as provided in subsection (1), ~~of this section~~ or the date of the filing of the claim of existing water right. An appropriation under this subsection is an existing right, and a permit is not required~~; however~~. *However*, the department shall acknowledge the receipt of a correct and complete filing of a notice of completion, except that for an appropriation of 35 gallons ~~per~~ *a* minute or less, not to exceed 10 acre-feet ~~per~~ *a* year, the department shall issue a certificate of water right. If a certificate is issued under this section, a certificate need not be issued under the adjudication proceedings provided for in 85-2-236.

(3) A permit is not required before constructing an impoundment or pit and appropriating water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 acre-feet and the appropriation is less than 30 acre-feet ~~per~~ *a* year and is from a source other than a perennial flowing stream and the impoundment or pit is to be constructed on and will be accessible to a parcel of land that is owned or under the control of the applicant and that is 40 acres or larger. As used in this subsection, "perennial flowing stream" means a stream that historically has flowed continuously during all seasons of the year, during dry as well as wet years. However, within 60 days after constructing the impoundment or pit, the appropriator shall apply for a permit as prescribed by this part. Upon receipt of a correct and complete application for a stockwater provisional permit, the department shall then automatically issue a provisional permit. If the department determines after a hearing that the rights of other appropriators have been or will be adversely affected, it may revoke the permit or require the permittee to modify the impoundment or pit and may then make the permit subject to terms, conditions, restrictions, or limitations that it considers necessary to protect the rights of other appropriators.

(4) A person may also appropriate water without applying for or prior to receiving a permit under rules adopted by the department under 85-2-113."

Section 2. Effective date. [This act] is effective July 1, 1999.

Approved April 5, 1999

HeinOnline -- 1999 vol. I 777 1999

CHAPTER NO. 251

[SB 386]

AN ACT PROVIDING FOR THE TRANSFER AND ADMINISTRATION OF LIQUOR LICENSES THAT WERE PURCHASED BY THE STATE WITH VIRGINIA CITY AND NEVADA CITY; PROVIDING THAT THE LICENSES BE HELD BY THE MONTANA HERITAGE PRESERVATION AND DEVELOPMENT COMMISSION; PROVIDING THAT THE LICENSES MAY BE LEASED TO PERSONS OR ENTITIES APPROVED BY THE DEPARTMENT OF REVENUE; PROVIDING THAT THE LICENSES ARE SUBJECT TO THE SAME LAWS GOVERNING THE USE AND OPERATION OF ALL OTHER RETAIL LIQUOR LICENSES; AMENDING SECTION 16-4-205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Montana heritage retail alcoholic beverage licenses — use — quota. (1) (a) The Montana heritage preservation and development commission may use Montana heritage retail alcoholic beverage licenses within the quota area in which the licenses were originally issued, for the purpose of providing retail alcoholic beverage sales on property acquired by the state under Title 22, chapter 3, part 10. The licenses are to be considered when determining the appropriate quotas for issuance of other retail liquor licenses.

(b) The department may issue a wine amendment pursuant to 16-4-105(2) if the use of a Montana heritage retail alcoholic beverage license for the sale of beer meets all the requirements of that section.

(2) The Montana heritage preservation and development commission may lease a Montana heritage retail alcoholic beverage license to an individual or entity approved by the department.

(3) Montana heritage retail alcoholic beverage licenses are subject to all laws and rules governing the use and operation of retail liquor licenses.

(4) For the purposes of this section, "Montana heritage retail alcoholic beverage licenses" are all-beverages liquor licenses and retail on-premises beer licenses that have been transferred to the Montana heritage preservation and development commission under the provisions of [section 2].

Section 2. Transfer of certain liquor licenses to Montana heritage preservation and development commission. Notwithstanding the provisions of Title 16, chapter 4, the department shall transfer the ownership of the following alcoholic beverage licenses to the Montana heritage preservation and development commission:

(1) the all-beverages licenses owned by the Montana historical society foundation and by the Daly mansion trust; and

(2) the retail beer license for on-premises consumption owned by the Montana historical society foundation.

Section 3. Section 16-4-205, MCA, is amended to read:

"16-4-205. Limit one license to person — business in name of licensee. *(1)* ~~No~~ *A* person ~~shall~~ *may not* be issued more than one all-beverages license in any year, with the exception of a secured party issued an additional all-beverages license as the result of a default. ~~Such a~~ *A* secured party shall

transfer ownership of any additional all-beverages license within 180 days of issuance. ~~No~~ *A* business may *not* be carried on under any license issued under this chapter except in the name of the licensee.

(2) The provisions of this section do not apply to licenses held by the Montana heritage preservation and development commission under the provisions of [section 1]."

Section 4. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 16, chapter 4, part 3, and the provisions of Title 16, chapter 4, part 3, apply to [section 1].

Section 5. Effective date. [This act] is effective on passage and approval.

Approved April 5, 1999

CHAPTER NO. 252

[SB 415]

AN ACT PROVIDING A RESIDENT BIDDING PREFERENCE FOR COUNTY CONTRACTS; AND AMENDING SECTIONS 7-5-2301 AND 7-5-2302, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Optional bidding preference for county resident. (1) If there are no out-of-state bidders for a contract subject to competitive bid under this part, the contract may be awarded to the lowest and best responsible bidder that is a county resident and that makes a bid that is no more than $500 or 3% higher, whichever is less, than the bid of the lowest responsible bidder that is not a county resident.

(2) If there is one or more out-of-state bidders for a contract subject to competitive bid under this part, the state resident bid preference provided in 18-1-102 applies.

(3) For the purposes of this section, "county resident" means a person, corporation, business, or other entity whose principal business location is within the county.

Section 2. Section 7-5-2301, MCA, is amended to read:

"7-5-2301. Competitive, advertised bidding required for certain large purchases or construction contracts. (1) Except as provided in 7-5-2304, a contract for the purchase of any vehicle, road machinery or other machinery, apparatus, appliances, equipment, or materials or supplies in excess of $20,000 or for the construction, repair, or maintenance of any building, road, or bridge in excess of $50,000 may not be entered into by a county governing body without first publishing a notice calling for bids.

(2) The notice must be published as provided in 7-1-2121.

(3) ~~Every~~ *Subject to [section 1], every* contract subject to bidding must be let to the lowest and best responsible bidder."

Section 3. Section 7-5-2302, MCA, is amended to read:

"7-5-2302. Use of competitive, nonadvertised bidding for certain purchases. (1) Except as provided in 7-5-2303, a county governing body may enter a contract for the purchase of any vehicle, road machinery or other

HeinOnline -- 1999 vol. I 779 1999

machinery, apparatus, appliances, equipment, or materials or supplies in excess of $20,000 but less than $50,000 if bids are solicited without advertising from persons, firms, or corporations who have filed with the governing body of the county a request in writing that its name be listed with the governing body for solicitations on the particular items set forth in the request. The governing body shall solicit bids from listed prospective suppliers. The solicitation must contain the same information required to be set forth in advertisements. If a person, firm, or corporation whose name is listed fails for a period of 1 year to respond to any solicitation for bids, the listing may be canceled.

(2) ~~The~~ *Subject to [section 1], the* governing body of the county shall let a contract to the lowest and best responsible bidder.

(3) Compliance with the provisions of this section is considered as meeting the requirements of 7-5-2301."

Section 4. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 7, chapter 5, part 23, and the provisions of Title 7, chapter 5, part 23, apply to [section 1].

Section 5. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Approved April 5, 1999

CHAPTER NO. 253

[SB 438]

AN ACT ALLOWING IMMEDIATE ACCESSIBILITY OF EPHEDRINE BY A LICENSED PHYSICIAN FOR PATIENT CARE; AMENDING SECTION 50-32-229, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-32-229, MCA, is amended to read:

"50-32-229. Specific dangerous drugs included in Schedule IV. Schedule IV consists of the drugs and other substances, by whatever official, common, usual, chemical, or brand name designated, listed in this section.

(1) Narcotic drugs. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic is a drug, including its salts calculated as the free anhydrous base or alkaloid in the following limited quantities:

(a) not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit; and

(b) dextropropoxyphene (alpha-(+)-4-dimethylamino-1, 2-diphenyl-3-methyl-2-propionoxybutane).

(2) Depressants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances is a depressant, including salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

HeinOnline -- 1999 vol. I 780 1999

(a) alprazolam;
(b) barbital;
(c) bromazepam;
(d) camazepam;
(e) chloral betaine;
(f) chloral hydrate;
(g) chlordiazepoxide;
(h) clobazam;
(i) clonazepam;
(j) clorazepate;
(k) clotiazepam;
(l) cloxazolam;
(m) delorazepam;
(n) diazepam;
(o) estazolam;
(p) ethchlorvynol;
(q) ethinamate;
(r) ethyl loflazepate;
(s) fludiazepam;
(t) flunitrazepam;
(u) flurazepam;
(v) halazepam;
(w) haloxazolam;
(x) ketazolam;
(y) loprazolam;
(z) lorazepam;
(aa) lormetazepam;
(bb) mebutamate;
(cc) medazepam;
(dd) meprobamate;
(ee) methohexital;
(ff) methylphenobarbital, also known as mephoharbital;
(gg) midazolam;
(hh) nimetazepam;
(ii) nitrazepam;
(jj) nordiazepam;
(kk) oxazepam;

(ll) oxazolam;

(mm) paraldehyde;

(nn) petrichloral;

(oo) phenobarbital;

(pp) pinazepam;

(qq) prazepam;

(rr) quazepam;

(ss) temazepam;

(tt) tetrazepam;

(uu) triazolam; and

(vv) zolpidem.

(3) Fenfluramine. Any material, compound, mixture, or preparation that contains any quantity of fenfluramine, including its salts, isomers (whether optical, position, or geometric), and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible.

(4) Stimulants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances is a stimulant having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

(a) cathine;

(b) diethylpropion;

(c) fencamfamin;

(d) fenproporex;

(e) mazindol;

(f) mefenorex;

(g) pemoline, including organometallic complexes and chelates thereof;

(h) phentermine;

(i) pipradrol; and

(j) SPA ((-)-1-dimethylamino-1,2-diphenylethane).

(5) Ephedrine.

(a) Except as provided in subsection (5)(b), any material, compound, mixture, or preparation that contains any quantity of ephedrine having a stimulant effect on the central nervous system, including its salts, enantiomers (optical isomers), and salts of enantiomers (optical isomers) when ephedrine is the only active medicinal ingredient or is used in combination with therapoutically insignificant quantities of another active medicinal ingredient.

(b) Ephedrine does not include materials, compounds, mixtures, or preparations labeled in compliance with the Dietary Supplement Health and Education Act of 1994, 21 U.S.C. 321, et seq., that contain only natural ephedra alkaloids or extracts of natural ephedra alkaloids.

HeinOnline -- 1999 vol. I 782 1999

(c) Ephedrine may be immediately accessible for use by a licensed physician in a patient care area if it is under the physician's direct supervision.

(6) Other substances. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of ~~the following substances~~ *pentazocine*, including its salts~~:~~

~~(a) pentazocine~~."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 5, 1999

CHAPTER NO. 254

[SB 488]

AN ACT REVISING THE LAW RELATING TO THE ELECTION OR APPOINTMENT OF THE GOVERNING BODIES OF COUNTY WATER AND SEWER DISTRICTS, URBAN TRANSPORTATION DISTRICTS, COUNTY PARK DISTRICTS, RURAL FIRE DISTRICTS, FIRE SERVICE AREAS, HOSPITAL DISTRICTS, CONSERVATION DISTRICTS, AND IRRIGATION DISTRICTS; AND AMENDING SECTIONS 7-1-201, 7-13-2258, 7-13-2262, 7-14-212, 7-16-2421, 7-33-2106, 7-33-2403, 7-34-2117, 7-34-2121, 76-15-303, AND 85-7-1702, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-1-201, MCA, is amended to read:

"7-1-201. Boards. (1) A board of county commissioners may by resolution establish the administrative boards, districts, or commissions allowed by law or required by law to be established pursuant to 7-1-202, 7-1-203, and this section and listed in 7-1-202. The resolution creating an administrative board, district, or commission must specify:

(a) the number of board, district, or commission members;

(b) the terms of the members;

(c) whether members are entitled to mileage, por diem, expenses, and salary; and

(d) any special qualifications for membership in addition to those established by law.

(2) (a) An administrative board, district, or commission may be assigned responsibility for a department or service district.

(b) An administrative board, district, or commission may:

(i) exercise administrative powers as granted by resolution, except that it may not pledge the credit of the county or impose a tax unless specifically authorized by state law;

(ii) administer programs, establish policy, and adopt administrative and procedural rules.

(c) The resolution creating an administrative board, district, or commission must grant the board, district, or commission all powers necessary and proper to the establishment, oporation, improvement, maintenance, and administration of the department or district.

HeinOnline -- 1999 vol. I 783 1999

(d) If authorized by resolution, an administrative board, district, or commission may employ personnel to assist in its functions.

(3) *(a)* Administrative boards, districts, and commissions may be made elective.

(b) If an administrative board is made elective and if the number of candidates is equal to or less than the number of positions to be elected, the election administrator may cancel the election in accordance with 13-1-304. A position for which there were no nominees must be filled by appointment by the county commissioners for the same term as if the position were filled by election. If there is only one nominee for a position, the nominee may be declared elected by acclamation.

(4) Administrative boards, districts, and commissions may not sue or be sued independently of the local government unless authorized by state law.

(5) Members must be appointed by the county commissioners. The county commissioners shall post prospective membership vacancies at least 1 month prior to filling the vacancy.

(6) The county commissioners shall maintain a register of appointments, including:

(a) the name of the board, district, or commission;

(b) the date of appointment and confirmation, if any is required;

(c) the length of term;

(d) the name and term of the presiding officer and other officers of each administrative board, district, or commission; and

(e) the date, time, and place of regularly scheduled meetings.

(7) Terms of all members, except elected members, may not exceed 4 years. Unless otherwise provided by resolution, members shall serve terms beginning on July 1 and shall serve at the pleasure of the county commissioners.

(8) An administrative board, district, or commission must consist of a minimum of 3 members and must have an odd number of members.

(9) The resolution creating an administrative board, district, or commission may provide for voting or nonvoting ex officio members.

(10) Two or more local governments may provide for joint boards, districts, or commissions to be established by interlocal agreements.

(11) A majority of members constitutes a quorum for the purposes of conducting business and exercising powers and responsibilities. Action may be taken by a majority vote of members present and voting, unless the resolution creating the board, district, or commission specifies otherwise.

(12) An administrative board, district, or commission shall provide for the keeping of written minutes, including the final vote on all actions and the vote of each member.

(13) An administrative board, district, or commission shall provide by rule for the date, time, and place of regularly scheduled meetings and file the information with the county commissioners.

(14) Unless otherwise provided by law, a person must be a resident of the county to be eligible for appointment to an administrative board, district, or commission. The county commissioners may prescribe by resolution additional qualifications for membership.

HeinOnline -- 1999 vol. I 784 1999

(15) A person may he removed from an administrative hoard, district, or commission for cause by the county commissioners or as provided by resolution.

(16) A resolution creating an administrative board, district, or commission must contain, if applicable, budgeting and accounting requirements for which the board, district, or commission is accountable to the county commissioners."

Section 2. Section 7-13-2258, MCA, is amended to read:

"**7-13-2258. Effect of failure to qualify for office.** If a person elected fails to qualify, the office ~~shall~~ *must* be filled as if there were a vacancy in ~~such~~ *the* office as provided in 7-13-2262*(2)*."

Section 3. Section 7-13-2262, MCA, is amended to read:

"**7-13-2262. ~~Vacancies~~ *Insufficient candidates — vacancies* on board of directors — *appointment of entire board.*** *(1) If the number of candidates is equal to or less than the number of positions to be elected, the election administrator may cancel the election in accordance with 13-1-304. If an election is not held, the board of directors shall declare elected by acclamation the candidate who filed a nominating petition for the position. If no candidate filed a nominating petition for the position, the board of directors shall make an appointment to fill the position and the term is the same as if the director were elected.*

(2) ~~Any~~ *Except as provided in subsections (3) and (4), any* vacancy in the board of directors, whether the vacant office is elective or appointive, ~~shall~~ *must* be filled by the remaining directors.

(3) If there are no directors remaining on the board and no nominees for any director position to be elected, the county commissioners may appoint the number of directors specified in 7-13-2232(1). If the district lies in more than one county, the county commissioners of each county with territory included in the district shall jointly appoint the directors. The county eommissioners shall stagger the terms of the directors appointed.

(4) If the boundaries of the district include any municipality or municipalities and a new board must be appointed as provided in subsection (3), the board shall include one additional director to be appointed by the mayor of the municipality for which the additional director is allowed.

(5) Following the appointment of a board in aecordance with subsection (3), the directors must be elected as provided in this part."

Section 4. Section 7-14-212, MCA, is amended to read:

"**7-14-212. District to be governed by transportation board.** (1) The district must be governed by a transportation board. The commissioners and the governing bodies of each city or town included or partially included in the district shall determine if the board is to be elected or appointed.

(2) The commissioners and the governing body by resolution shall:

(a) determine the number of board members;

(b) set the term of office;

(c) determine the makeup of the board with respect to the number of appeinted members that will represent each county, city, or town;

(d) establish a procedure for selecting the initial members of an eiected board. The initial members shall serve until the first county goneral election after their appointment.

HeinOnline -- 1999 vol. I 785 1999

(e) determine the number of candidates for an elected board whose names must be placed on the ballot in the county general election, based on the results of the primary election; and

(f) establish a procedure for filling vacancies on the board, including a provision for public notice.

(3) The commissioners and the governing body may, at any time, adopt a resolution changing the method by which the members of the board are selected. The resolution must contain a provision that the term of office of the current members of the board may not be shortened.

(4) If the board is elected and if the number of candidates is equal to or less than the number of positions to be elected, the election administrator may cancel the election in accordance with 13-1-304. If an election is not held, the board shall declare elected by acclamation each candidate who filed a nominating petition for a position.

(5) If there are no nominees for an elective office of a member of the board, the vacancy must be filled as provided in subsection (2)(f).

(6) A member of the board taking office pursuant to subsection (4) or (5) serves a term of office as if elected to that office."

Section 5. Section 7-16-2421, MCA, is amended to read:

"7-16-2421. Election *or appointment* of commissioners. (1) After appointment of the initial commission and except in the case of vacancies, all members of the county park district commission must be elected by the electors of the district.

(2) The election of members to the commission must be held in conjunction with the school elections held pursuant to 20-3-304.

(3) Candidates for the office of member of the county park district commission must be nominated by petition filed with the office of the election administrator not earlier than 135 days or later than 75 days prior to the election day and signed by at least five electors of the district.

(4) If the county park district lies in more than one county, the petition for nomination must be presented to the election administrator whose county contains the largest percentage of the territory of the district.

(5) *If the number of candidates is equal to or less than the number of positions to be elected, the election administrator may cancel the election in accordance with 13-1-304. If an election is not held, the county governing body shall declare elected by acclamation each candidate who filed a nominating petition for a position.* If no nomination petition is filed for an office, the county governing body shall appoint a member to fill the term. A person appointed pursuant to this subsection has the same term and obligations as a person elected to fill the office. ~~If there are no petitions of nomination for members of the commission, no election need be held.~~

(6) The term of office of elected members commences upon their being elected and qualified. The term of office of an elected member of the county park district commission is 4 years, except that a simple majority of the members of the first elected board shall serve terms of 2 years, with a minority of the board serving terms of 4 years. The members serving 2-year terms must be selected by lot.

(7) A vacancy ~~in the~~ *occurring during the term of* office of a member must be filled by appointment by the remaining members of the commission. The term

of the appointed member expires upon the election and qualification of an elected successor or upon the election of a member to fill the unexpired term of the vacant office. The election must he held at the next scheduled school election held pursuant to 20-3-304."

Section 6. Section 7-33-2106, MCA, is amended to read:

"7-33-2106. Details relating to board of trustees of fire district. (1) (a) The five trustees initially appointed hy the county commissioners ~~shall~~ hold staggered terms of office until their successors are elected or appointed and qualified as ~~hereinafter~~ provided *in this seetion.*

(b) The initiai trustees' terms of office ~~shall~~ *must* he drawn hy lot and include:

(i) 3 years for one trustee;

(ii) 2 years for two trustees; and

(iii) 1 year for two trustees.

(c) Upon expiration of the terms provided in suhsection (1)(b), each trustee shall serve a 3-year term of office.

(2) Trustees ~~shall~~ *must* be elected as provided in ~~subsection (3) of this section,~~ 13-1-104(3), ~~and~~ 13-1-401, *and subsection (3) of this section* or appointed as provided in subsection (4) of this section. The term of office ~~shall be~~ *is* 3 years beginning at the first district meeting following their election or appointment and continuing until their successors are elected or appointed and qualified. Appointments to fill vacancies ~~shall~~ *occurring during the term of office of a trustee must* be made by the county governing body and appointees shall hold office until the next regular election. An elector, as defined in Title 13, who resides in the district or any holder of title to lands within the district who presents a proof of payment of taxes on the lands at the polling place is eligible to vote in the election.

(3) Candidates for the office of trustee of the fire district to be filled by election may be nominated hy potition filed with the election administrator or deputy election administrator at least 75 days before the election day and signed by at least five electors of the district.

(4) *If the number of candidates is equal to or less than the number of positions to be elected, the election administrator may cancel the election in accordance with 13-1-304. If an election is not held, the county governing body shall declare elected by acclamation each candidate who filed a nominating petition for a position.* If ~~no nominations are~~ *a nomination is not* made for one or more trustee offices, the county governing body shall appoint one or more trustees as necessary to fill those offices. *A trustee taking office pursuant to this subsection serves the trustee term of office as if that trustee had been elected.*

(5) The trustees shall organize by choosing a ~~chairman~~ *presiding officer* and appointing one member to act as secretary."

Section 7. Section 7-33-2403, MCA, is amended to read:

"7-33-2403. Operation of fire service area. (1) Whenever the hoard of county commissioners has established a fire service area, the commissioners may:

(a) govern and manage the affairs of the area;

(b) appoint five qualified trustees to gevern and manago the affairs of the area; or

(c) authorize the election of five qualified trustees to govern and manage the affairs of the area. The term of office and procedures for nomination and election

HeinOnline -- 1999 vol. I 787 1999

are the same as those provided for election of rural fire district trustees in 7-33-2106.

(2) If the commissioners appoint trustees under subsection (1), the provisions of 7-33-2105 *apply* and 7-33-2106 ~~shall apply~~ *applies whether the trustees are elected or appointed*, except that the trustees shall prepare annual budgets and request a schedule of rates ~~therefor~~ *for the budget*."

Section 8. Section 7-34-2117, MCA, is amended to read:

"**7-34-2117. Procedure for the conduct of election for trustees — *appointment of trustees.*** (1) All elections of trustees following the election of the first board of trustees ~~shall~~ *must* be conducted at the time provided in 13-1-104(3) and in the manner provided by 13-1-401.

(2) Candidates for the office of trustee must be nominated by petition filed with the election administrator or deputy election administrator at least 75 days before the election day and signed by at least five electors of the district.

(3) If there is no nomination petition filed, it ~~shall~~ *is* not ~~be~~ necessary to hold an election but the board of county commissioners shall appoint a trustee to fill the term~~, the term to be the same as if the trustee were elected~~. *If there is only one nominee for a ballot position, it is not necessary to hold an election for that position and the board of county commissioners shall declare elected by acclamation the candidate who filed a nominating petition for the position.*

(4) A member of the board taking office pursuant to subsection (3) serves a term of office as if elected to that office."

Section 9. Section 7-34-2121, MCA, is amended to read:

"**7-34-2121. Vacancies.** A vacancy upon the board of trustees *occurring during the term of office of a trustee* or in the office of clerk ~~shall~~ *must* be filled hy appointment by the remaining members, and the appointee shall serve until the next ensuing election for trustees."

Section 10. Section 76-15-303, MCA, is amended to read:

"**76-15-303. General election — election by acclamation — appointment.** (1) All qualified electors within the district are eligible to vote in the election.

(2) Except as provided in subsection (5), the candidate or, if more than one supervisor position is to be filled by the general election, the candidates who receive the largest number, respectively, of the votes cast in the election are the elected supervisors for the district.

(3) In the general election, the names of the individuals nominated must be printed, as provided under 13-12-205, upon ballots, with a square before each name and a direction to insert an "X" mark in the square hefore any three names to indicate the elector's preference.

(4) The election administrator in each county shall prepare suitable nonpartisan ballots or place the names of candidates on the regnlar general election ballot in the same manner as other nonpartisan candidates for the election of supervisors. The hallots must be delivered to the election judges in those precincts that contain registered electors prior to eacli general election and eacli primary election, if necessary. The election judges and otlier election officials in the precincts shall submit the ballots to qualified electors, conduct the election, and tabulate the results of the election in the manner provided in Title 13.

HeinOnline -- 1999 vol. I 788 1999

(5) (a) Except as provided in subsection (5)(b), if the number of candidates nominated is equal to or less than the number of positions to be elected, the election administrator shall give notice that an election will not be held.

(b) The governing body may require that an election be held if, not more than 10 days after the close of filing by candidates, the governing body passes a resolution to hold an election and notifies the election administrator.

(c) If an election is not held, the governing body shall declare elected by acclamation the candidate who filed a nominating petition for the position. If ~~a~~ *no* candidate has ~~not~~ filed a nominating petition for the position, the governing body shall make an appointment to fill the position. *Supervisors taking office pursuant to this subsection serve a term as if elected to the position.*"

Section 11. Section 85-7-1702, MCA, is amended to read:

"**85-7-1702. ~~Regular election~~ *Election or appointment of commissioners* — term of office.** (1) The regular election for commissioners in each district must be held annually in accordance with 13-1-104 and 13-1-401.

(2) Candidates for the office of commissioner may be nominated by petition filed with the election administrator or deputy election administrator at least 75 days before the election and signed by at least five electors of the district. If no nominations are made, the following procedures must be followed:

(a) For elections held in accordance with 13-1-401(1), the electors of the district shall write on the ballots the name of the person or persons for whom they desire to vote.

(b) For elections held in accordance with 13-1-401(2), the electors of the district may either accept nominations from the floor or write on the ballots the name of the person or persons for whom they desire to vote.

(3) ~~If there is only one nominee for a ballot position, the nominee may be declared elected by acclamation or in accordance with 13-1-304.~~ *If the number of candidates is equal to or less than the number of positions to be elected, the election administrator may cancel the election in accordance with 13-1-304. If an election is not held, the county governing body shall declare elected by acclamation the candidate who filed a nominating petition for the position. If no candidate filed a nominating petition for the position, the board of commissioners shall make an appointment to fill the position and the term is the same as if the commissioner were elected.*

(4) Within 40 days following their election, the commissioners shall meet and organize as a board by electing a president from their number and a secretary, who may or may not be a commissioner, and who shall each hold office at the pleasure of the board. The term of office of each commissioner begins on the date of the organizational meeting after the regular election and continues for 3 years and until the election and qualification of ~~his~~ *a* successor.

(5) Commissioners are elected by the electors of the entire district."

Approved April 5, 1999

HeinOnline -- 1999 vol. I 789 1999

CHAPTER NO. 255

[HB 8]

AN ACT APPROVING RENEWABLE RESOURCE PROJECTS AND AUTHORIZING LOANS; REAUTHORIZING RENEWABLE RESOURCE PROJECTS AUTHORIZED BY THE 55TH LEGISLATURE; APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR LOANS UNDER THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM; AUTHORIZING THE ISSUANCE OF COAL SEVERANCE TAX BONDS; AUTHORIZING THE CREATION OF A STATE DEBT AND APPROPRIATING COAL SEVERANCE TAXES; PLACING CERTAIN CONDITIONS UPON LOANS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Approval of renewable resource projects and authorizations to provide loans. The legislature finds that the renewable resource projects listed in this section meet the provisions of 17-5-702. The department of natural resources and conservation is authorized to make loans to the political subdivisions of state government and local governments listed below in amounts not to exceed the loan amounts listed for each project from the proceeds of the bonds authorized in [section 3].

(1) GROUP A: Notwithstanding the provisions of [section 6], the interest rate for the projects in this group must be at the rate at which the state bonds are sold for the anticipated 20-year term of the loan. The projects in this group are eligible for grants authorized under House Bill No. 6. If a grant is authorized but available grant funds are insufficient, the applicant must be offered the opportunity to receive a loan for up to the total amount of the authorized loan under [sections 1 through 8] plus the amount of the authorized grant approved in House Bill No. 6.

Loan	Amount
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION	
Deadman's Basin Water Quality Improvement	$434,700
BOULDER, TOWN OF	
Water System Improvements	907,000
DALY DITCHES IRRIGATION DISTRICT	
Republican Canal Diversion Dam Replacement	730,691
HEBGEN BASIN/WEST YELLOWSTONE REFUSE DISTRICT	
Composting Facility for Municipal Solid Waste	2,080,000

(2) GROUP B: Notwithstanding the provisions of [section 6], the interest rate for the projects in this group is 4.5% or the rate at which the state bonds are sold, whichever is lower, for up to 20 years.

Loan	Amount
CANYON CREEK IRRIGATION DISTRICT	
Canyon Lake and Wyant Lake Restoration Project	$227,000

HeinOnline -- 1999 vol. I 790 1999

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

Missouri Pipe Span Rehabilitation Project	509,426

(3) GROUP C: Notwithstanding the provisions of [section 6], the interest rate for the projects in this group is 4% or the rate at which the state bonds are sold, whichever is lower, for up to 20 years.

Loan	Amount
MALTA IRRIGATION DISTRICT	
Repair and Modification of Dodson Diversion Dam	$2,274,950

Section 2. Projects not completing requirements — projects reauthorized. The legislature finds that the following renewable resource projects that were approved by tbe 55th legislature in Chapter 80, Laws of 1997, may not complete the requirements necessary to obtain the loan funds prior to June 30, 1999. The projects described in this section are reauthorized. The department of natural resources and conservation is authorized to make loans to the political subdivisions of state government and local governments listed below in amounts not to exceed the lean amounts listed for each project from the proceeds of the bonds authorized in [section 3].

(1) GROUP A: Notwithstanding the provisions of [section 6], the interest rate for the project in this group may be 1% below the long-term bond rate at which the state bonds are sold for the first 5 years of an anticipated 20-year term and must be at the rate at which the state bonds are sold for the remaining 15 years.

Loan	Amount
ENNIS, TOWN OF	
Water Sterage and Distribution System Improvements	$350,000

(2) GROUP B: Notwithstanding the provisions of [section 6], the interest rate for the projects in this group may be 2% below the long-term bond rate at which the state bonds are sold for the first 5 years of an anticipated 20-year term and must be at the rate at which the state bonds are sold for the remaining 15 years.

Loan	Amount
GLENDIVE, CITY OF	
Water Treatment Plant Improvements	$2,240,762
HILL COUNTY WATER DISTRICT	
Water Treatment Plant	400,000
FORSYTH, CITY OF	
Water Treatment Plant Improvements	1,218,916
SEELEY LAKE-MISSOULA COUNTY WATER DISTRICT	
Water Treatment Plant	1,600,000

(3) GROUP C: Notwithstanding the provisions of [section 6], the interest rate for the project in this group may he 3% below the long-term bond rate at which the state bonds are sold for the first 5 years of an anticipated 20-year term

HeinOnline -- 1999 vol. I 791 1999

and must be at the rate at which the state bonds are sold for the remaining 15 years.

FORT PECK RURAL COUNTY WATER DISTRICT $1,325,000

(4) GROUP D: Notwithstanding the provisions of [section 6], the interest rate for the project in this group is 3.5% or the rate at which the state bonds are sold, whichever is lower, for up to 20 years.

Loan	Amount
HUNTLEY PROJECT IRRIGATION DISTRICT	
Irrigation System Improvements	$3,500,440

(5) GROUP E: Notwithstanding the provisions of [section 6], the interest rate for the project in this group is 4.5% or the rate at which the state bonds are sold, whichever is lower, for up to 20 years.

Loan	Amount
MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION	
North Fork of the Smith River Dam Rehabilitation	$1,035,467

Section 3. Coal severance tax bonds authorized. (1) The legislature finds that Title 17, chapter 5, part 7, provides for the issuance of coal severance tax bonds for financing specific approved renewable resource projects as part of the state renewable resource grant and loan program. Available funds from previous sales of coal severance tax bonds, plus any additional principal amount on bonds as may be necessary, pursuant to the conditions in 85-1-605, to fund emergency loans, as authorized and approved in accordance with 85-1-605(4), also may be used for the projects approved in [sections 1 through 8]. The board of examiners is authorized to issue coal severance tax bonds in an amount not to exceed $22,897,465, of which $18,834,352 is to be used to finance the projects approved in [sections 1 and 2], $1,981,525 is to be used to finance additional loans in lieu of grants for projects listed in [section 1] (if grant funds are not sufficient), and up to $2,081,588 is to be used to establish a reserve for the bonds. Proceeds of the bonds are appropriated to the department of natural resources and conservation for financing the projects identified in [sections 1 and 2] and may be used as authorized in 85-1-605(4). Loans made under 85-1-605(4) must bear interest at the rate borne by the state bonds unless the legislature in a subsequent session provides for a lower interest rate, in which case the rate must be reduced to the rate specified by the legislature.

(2) In connection with the issuance of coal severance tax bonds, the board of examiners may pay the principal and interest on the bonds when due from the debt service account and in all other respects manage and use the funds within each special bond account for the benefit of the bonds. The board of examiners shall exercise its discretion to enhance the marketability of the bonds and te secure the most advantageous financial arrangements for the state.

(3) Earnings on bond proceeds prior to the completion of any loan must be allocated to the debt service account to pay the debt service on the bonds during this period. Earnings in excess of debt service, if any, must be allocated to the renewable resource grant and loan state special revenue account.

HeinOnline -- 1999 vol. I 792 1999

(4) Loan repayments from loans financed with coal severance tax bonds are pledged, dedicated, and appropriated to the debt service account in the state treasury for the benefit of bonds approved for loans under this section.

Section 4. Creation of state debt — appropriation of coal severance tax — bonding provisions. (1) Because [section 3] authorizes the creation of a state debt, a vote of two-thirds of the members of each house is required for enactment of [section 3].

(2) The legislature, through the enactment of this section by a vote of three-fourths of the members of each house of the legislature, as required by Article IX, section 5, of the Montana constitution, pledges, dedicates, and appropriates from the coal severance tax bond fund all money necessary for the payment of principal and interest not otherwise provided for on the coal severance tax bonds authorized by [section 3] to he issued pursuant to Title 17, chapter 5, part 7, and pursuant to the provisions of [sections 1 through 7] and the general resolution for this bond program that has been adopted by the board of examiners under the authority provided in Title 17, chapter 5, part 7.

Section 5. Condition of loans. (1) Disbursement of funds under [sections 1 through 8] for loans is subject to the following conditions that must be met by project sponsors:

(a) approval of a scope of work and budget for the project by the department of natural resources and conservation. Reductions in a scope of work or budget may not affect priority activities or improvements.

(b) documented commitment of other funds required for project completion;

(c) satisfactory completion of conditions described in the recommendations section of the project narrative in the renewable resource grant and loan program project evaluations and recommendations report for the 1999 biennium;

(d) execution of a loan agreement with the department; and

(e) accomplishment of other specific requirements considered necessary by the department to accomplish the purpose of the loan as evidenced from the application to the department or from the proposal to the legislature.

(2) Each sponsor authorized for a loan from coal severance tax bond proceeds may be required to pay to the department a pro rata share of the bond issuance costs and the administrative costs incurred by the department to complete the loan transaction.

Section 6. Interest rates on loans. Loans made from proceeds of coal severance tax bonds must be at interest rates specified in [sections 1 through 3], except that when loan requests are reduced, interest rates must be recalculated based on the methodology described in the renewable resource grant and loan program project evaluations and recommendations report submitted to the 56th legislature for the 2001 biennium. If the bonds or notes bear interest at an adjustable rate, the department of natural resources and conservation shall establish, at the time of the sale of each bond, an assured rate of interest as if the bond bore interest at a fixed rate. The assured rate of interest must be the rate of interest on the bonds for the purpose of calculating the interest rates on the loans pursuant to [sections 1 through 3]. The department is authorized to reduce the interest rate for the Tin Cup Water District Loan Number WDL-98-3237 from 4.5% to 0.0% for the remainder of the term of the loan.

HeinOnline -- 1999 vol. I 793 1999

Section 7. Private and discount purchase of loans. Loans to political subdivisions and local government entities and bonds, warrants, and notes issued in evidence of the loans may be made, purchased by, and sold to the department of natural resources and conservation at a discount and at a private negotiated sale, notwithstanding the provisions of any other law applicable to political subdivisions or local government entities.

Section 8. Appropriations established. For any entity of state government that receives a loan under [sections 1 through 7], an appropriation is established for the amount of the loan upon award of the loan by the department of natural resources and conservation.

Section 9. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 10. Effective date. [This act] is effective on passage and approval.

Approved April 5, 1999

CHAPTER NO. 256

[HB 421]

AN ACT AUTHORIZING THE COMMISSIONER OF HIGHER EDUCATION TO DEVELOP GROUP BENEFITS PLANS FOR MONTANA UNIVERSITY SYSTEM EMPLOYEES; ESTABLISHING AN ADVISORY COMMITTEE TO ASSIST THE COMMISSIONER; CLARIFYING THAT THE DESIGN OR MODIFICATION OF GROUP BENEFITS PLANS AND THE ESTABLISHMENT OF EMPLOYEE PREMIUM LEVELS ARE NOT MANDATORY SUBJECTS FOR COLLECTIVE BARGAINING; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Purpose. The purpose of [sections 1 through 3, 5, and 6] is to establish the structure by which the Montana university system may develop group benefits plans for employees of the Montana university system and their dependents and to clarify that the plan design and employee premium levels are not mandatory subjects for collective bargaining under Title 39, chapter 31.

Section 2. Definitions. As used in [sections 1 through 3, 5, and 6], the following definitions apply:

(1) "Advisory committee" means the Montana university system interunit benefits advisory committee established in [section 4].

(2) "Group benefits" means group hospitalization, health, medical, surgical, disability, life, and other related group benefits provided to employees and dependents of the Montana university system. The term does not include casualty insurance, marine insurance, property insurance, surety insurance, and title insurance.

Section 3. Duties of commissioner — group benefits plans and employee premium levels not mandatory subjects for collective bargaining. (1) The commissioner shall:

HeinOnline -- 1999 vol. I 794 1999

(a) design group benefits plans and establish premium levels for employees;

(b) establish specifications for bids and accept or reject bids for administering group benefits plans;

(c) negotiate and administer contracts for group benefits plans;

(d) prepare an annual report that:

(i) describes the group benefits plans being administered; and

(ii) details the historical and projected program costs and the status of reserve funds; and

(e) adopt policies for the conduct of business of the advisory committee and to carry out the provisions of [sections 1 through 3, 5, and 6].

(2) The provisions of Title 33 do not apply to the commissioner when exercising the duties provided for in [sections 1 through 3, 5, and 6].

(3) The design or modification of group benefits plans and the establishment of employee premium levels are not mandatory subjects for collective bargaining under Title 39, chapter 31.

Section 4. Montana university system interunit benefits advisory committee — composition. (1) There is a Montana university system interunit benefits advisory committee with members appointed by the commissioner.

(2) The members must be selected from a diverse group in order to adequately represent the interests of the employees of the Montana university system.

(3) One-half of the members must be appointed based upon the recommendations of the labor organizations representing employees of the Montana university system.

(4) The provisions of 2-15-122(1) through (8) apply to the advisory committee and its members.

Section 5. Functions of advisory committee. (1) The commissioner shall consult with the advisory committee before modifying Montana university system group benefits plans or before adjusting employee premium levels.

(2) The advisory committee shall meet at least semiannually to:

(a) review the existing employee group benefits plans;

(b) review claims experience, projections, and problems;

(c) recommend changes in plan design;

(d) recommend employee premium rates; and

(e) advise the commissioner on employee group benefits matters.

(3) The advisory committee is the exclusive means by which collective bargaining agents may participate in the design or modification of group benefits plans and the establishment of employee premium levels.

Section 6. Alternatives to conventional insurance for providing employee group benefits — requirements. (1) The commissioner may establish alternative plans to conventional insurance for providing Montana university system employee group benefits. In developing an alternative plan, the commissioner shall:

HeinOnline -- 1999 vol. I 795 1999

(a) maintain an alternative group benefits plan on an actuarially sound basis;

(b) maintain reserves sufficient to liquidate the unrevealed claims liability and other liabilities of an alternative group benefits plan; and

(c) deposit all reserve funds, state contributions, interest earnings, and premiums paid to an alternative group benefits plan. The deposits must be expended for claims under the alternative plan and for costs for administering the alternative plan, including the costs of hiring consultants, actuaries, and auditors.

(2) Prior to implementation of an alternative group benefits plan, the commissioner shall present to the advisory committee evidence upon which the commissioner has concluded that the alternative method is more efficient, less costly, or otherwise superior to contracting for conventional insurance.

Section 7. Codification instruction. (1) [Section 4] is intended to be codified as an integral part of Title 2, chapter 15, part 15, and the provisions of Title 2, chapter 15, part 15, apply to [section 4].

(2) [Sections 1 through 3, 5, and 6] are intended to be codified as an integral part of Title 20, chapter 25, and the provisions of Title 20, chapter 25, apply to [sections 1 through 3, 5, and 6].

Section 8. Effective date. [This act] is effective July 1, 1999.

Approved April 10, 1999

CHAPTER NO. 257

[HB 455]

AN ACT GENERALLY REVISING THE LAWS RELATING TO ADOPTION; AMENDING SECTIONS 42-1-105, 42-2-206, 42-2-217, 42-2-412, 42-2-607, 42-2-609, 42-2-610, 42-2-619, 42-3-203, 42-3-212, 42-3-213, 42-4-302, 42-4-303, 42-4-304, 42-4-309, 42-4-310, 42-5-101, 42-5-109, AND 42-5-202, MCA; REPEALING SECTION 42-4-305, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 42-1-105, MCA, is amended to read:

"42-1-105. Who may be adopted. (1) A child is legally free for adoption if:

(a) the child does not have a living parent;

(b) the parental rights of the living parents of the child have been terminated according to the laws of this state or of another jurisdiction; or

(c) the living parents, guardian authorized by the court, or department or agency with custody of the child consent to the adoption.

(2) An adult may be adopted as provided in 42-4-401 through 42-4-405.

(3) A stepchild may be adopted as provided in 42-4-301 through ~~42-4-305~~ *42-4-304* and 42-4-309 through 42-4-312."

Section 2. Section 42-2-206, MCA, is amended te read:

"42-2-206. When putative father to register — actual knowledge of pregnancy not required. (1) In order to be entitled, because of registration, to

receive notice of a termination of parental rights proceeding, a putative father's registration form complying with the requirements of 42-2-205 must be received by the department not later than ~~5 days prior to a hearing to terminate parental rights~~ *72 hours after the child's birth.*

(2) A putative father may file all information required by 42-2-205 before a child's birth even though the putative father has no actual knowledge that a pregnancy has occurred or that a pregnancy has continued through gestation."

Section 3. Section 42-2-217, MCA, is amended to read:

"42-2-217. ~~(Effective October 1, 1999)~~ Registry search —request — affidavit. (1) The following persons may at any time request that the department search the registry to determine whether a putative father is registered in relation to a child who is or may be the subject of a proceeding to terminate parental rights:

(a) a representative of the department;

(b) a representative of an agency when the agency is or may be arranging an adoption;

(c) a prospective adoptive parent or an attorney representing a prospective adoptive parent in a direct parental placement adoption who has the notarized consent of the birth mother; or

(d) any woman who is the subject of a registration.

(2) ~~When a petition to terminate parental rights for purposes of an adoption is filed, the petitioner shall:~~

~~(a) request that the department search the registry at least 1 day after the expiration of the period specified under 42-2-206; and~~

~~(b) file an affidavit prepared by the department in response to a request under subsection (2)(a) with the court presiding over the termination of parental rights proceeding under 42-2-603. The affidavit must meet~~ *Upon request of a person listed in subsection (1), the department shall submit an affidavit pursuant to* the requirements of subsections (4) and (5).

(3) A request for information about a registration from the department must be in writing.

(4) Not later than 5 days after receiving a request ~~under subsection (2)(a)~~ *for a registry search*, the department shall submit an affidavit to the requestor verifying whether a putative father has registered within the period allowed under 42-2-206 in relation to a mother whose child or expected child is the subject of the termination proceeding.

(5) Whenever the department finds that one or more putative fathers are registered, the department shall:

(a) submit a copy of each registration form with the department's affidavit; and

(b) include in the affidavit the date that the department representative, agency, or attorney submitted the request for the search.

(6) A court may not issue an order terminating parental rights unless the department's affidavit under subsection (5) is filed with the court."

Section 4. Section 42-2-412, MCA, is amended to read:

HeinOnline -- 1999 vol. I 797 1999

"42-2-412. **Content of relinquishment and consent to adopt.** (1) A relinquishment and consent to adopt must be in writing and must contain:

(a) the date, place, and time of the execution of relinquishment and consent to adopt;

(b) the name, date of birth, and current mailing address of the individual executing the relinquishment and consent to adopt;

(c) the date of birth and the name of the child to be adopted; and

(d) the name, address, and telephone numbers of the department or agency to which the child is being relinquished or the name, address, and telephone numbers of the prospective adoptive parent ~~or the lawyer representing the prospective adoptive parent~~ with whom the individual executing the relinquishment and consent has placed or intends to place the child for adoption.

(2) A relinquishment and consent to adopt executed by a parent or guardian must state that the parent or guardian executing the document is voluntarily and unequivocally consenting to the:

(a) permanent transfer of legal and physical custody of the child to the department or agency for the purposes of adoption; or

(b) transfer of permanent legal and physical custody to, and the adoption of the child by, a specific identified adoptive parent whom the parent or guardian has selected.

(3) A relinquishment and consent to adopt must state:

(a) that after the document is signed or confirmed in substantial compliance with this section, it is final and, except under a circumstance stated in 42-2-411, may not be revoked or set aside for any reason, including the failure of an adoptive parent to permit the individual executing the relinquishment and consent to adopt to visit or communicate with the child;

(b) that the ~~adoption will extinguish~~ *relinquishment will result in the extinguishment of* all parental rights and obligations that the individual executing the relinquishment and consent to adopt has with respect to the child, except for arrearages of child support unless the arrearages are waived by the person to whom they are owed, and that the relinquishment will remain valid whether or not any agreement for visitation or communication with the child is later performed;

(c) that the individual executing the relinquishment and consent to ~~adoption~~ *adopt* has:

(i) received a copy of the relinquishment and consent to ~~adoption~~ *adopt*;

(ii) received a copy of a written agreement by the department, agency, or prospective adoptive parent to accept temporary custody and to provide support and care to the child until an adoption petition is granted or denied;

(iii) if required, received counseling services ~~and information about adoption~~ pursuant to 42-2-409 explaining the meaning and consequences of an adoption;

(d) in direct parental placement adoptions, that the individual has:

~~(i) been advised if the individual is:~~

~~(A)~~*(i) if* a minor parent, *been advised* by a lawyer who is not representing ~~an~~ *the* adoptive parent ~~or the agency to which the child is being relinquished~~; ~~or~~

~~(B)~~*(ii) if* an adult, *been advised* of the right to have a lawyer who is not representing ~~an~~ *the* adoptive parent ~~or the agency and whose~~;

(iii) been advised that the attorney fees are allowable expenses that can be paid by the prospective adoptive parents; *and*

~~(ii)~~*(iv)* been provided with a copy of the prospective adoptive parent's preplacement evaluation;

(e) in agency and direct parental placement adoptions, that the individual has:

(i) been advised of the obligation to provide the medical and social history information required under 42-3-101 pertaining to disclosures; and

(ii) not received or been promised any money or anything of value for execution of tbe relinquishment and consent to adopt, except for payments authorized by 42-7-101 and 42-7-102.

(4) A relinquishment and consent to adopt may provide that the individual who is relinquishing waives notice of any proceeding for adoption."

Section 5. Section 42-2-607, MCA, is amended to read:

"42-2-607. Grounds for termination of parental rights. The court may terminate a parent's rights to a child who is the subject of an adoption proceeding based upon:

(1) the voluntary acts of the parent in:

(a) executing a voluntary relinquishment and consent to adopt;

(b) submitting a notarized denial of paternity executed pursuant to 42-2-421; or

(c) submitting a notarized acknowledgment of paternity and denial of interest in custedy of the child executed pursuant to 42-2-422;

(2) a determination under 42-2-608 that the parent is unfit;

(3) a determination under 42-2-609 that the relationship of parent and child does not exist; ~~or~~

(4) a determination under 42-2-610 that a putative father has failed to cstablish and maintain a substantial relationship with the child; or

~~(4)~~*(5)* a determination that the parent has irrevocably waived parental rights by failing to timely act to protect tlie rights."

Section 6. Section 42-2-609, MCA, is amended to read:

"42-2-609. Determination that no parent and ehild relationship exists. For purposes of making a child available for adoption, the court may terminate the parental rights of a putative father on the grounds that the parent and cbild relationsbip does not exist if:

(1) a judicial determination is made under 40-6-107 tbat the parent and child relationship does not exist. This includes the termination of the parental rights of the husband of the mother who is placing the child for adoption or the parental rights of an individual who is a presumed father of the child.

(2) a determination is made that:

(a) an individual has not timely registered with the putative father registry;

HeinOnline -- 1999 vol. I 799 1999

(b) ~~a person~~ *an individual* has not been adjudicated, in Montana, to be the father of the child for the purpose of child support;

(c) ~~a person~~ *an individual* has not been recorded on the child's birth certificate as the child's father;

(d) ~~a person is~~ *an individual has* not openly ~~living~~ *lived* with the child and the child's mother at the time that the proceeding is initiated or at the time *that* the child was placed in the care of an authorized agency and ~~a person~~ *an individual* is not representing to the public that the ~~person~~ *individual* is the child's father; ~~or~~ *and*

(e) the child's mother was not married *to the person who is the subject of the termination proceedings* at the probable time of the child's conception or at the time *that* the child was born; or

(3) a putative father ~~who~~ appears at the hearing but is unable to establish by a preponderance of the evidence the minimum requirements provided in 42-2-610 for demonstrating the establishment of a substantial relationship with the child."

Section 7. Section 42-2-610, MCA, is amended to read:

"42-2-610. Putative father — termination based upon failure to establish substantial relationship. (1) The parental rights of a putative father may be terminated by the court if the putative father has failed to timely establish and maintain a substantial relationship with the child.

(2) A putative father who is not married to the child's mother but who has openly lived with the child since the child's birth or for a period of 6 months immediately preceding placement of the child with adoptive parents and has openly claimed to be the father of the child during that period is considered to have developed a substantial relationship with the child and to have otherwise met the requirements of this section.

(3) In order to meet the minimal showing of having established a substantial relationship with regard to a child who is the subject of an adoption proceeding, a putative father has the burden of showing that the putative father has:

(a) demonstrated a full commitment to the responsibilities of parenthood by providing financial support for the child in a fair and reasonable sum and in accordance with the putative father's ability and *by* either:

(i) visiting the child at least monthly when physically and financially able to do so; or

(ii) having regular contact with the child or with the person or agency having the care and custody of the child when physically and financially able to do so; and

(b) manifested an ability and willingness to assume legal and physical custody of the child if the child was not in the physical custody of the other parent.

(4) In order to meet the minimal showing of having established a substantial relationship with regard to a child who is the subject of an adoption proceeding involving a child who is under 6 months of age at the time *that* the child becomes the subject of adoption proceedings, a putative father has the burden to show that:

~~(a)~~ the putative father has manifested a full commitment to parental responsibilities by:

HeinOnline -- 1999 vol. I 800 1999

(a) performing all of the acts described in this subsection (4) prior to the time *that* tbe mother executed a relinquishment and consent ~~for adoption, including registering with the putative father registry~~ *to adopt*; ~~and~~

(b) if tbe putative father had actual knowledge of the pregnancy, paying a fair and reasonable amount of the expenses incurred in connection with the pregnancy and the child's birth in accordance with the putative father's means when not prevented from doing so by tbe person or authorized agency having lawful custody of the child;

(c) making reasonable and consistent payments, in accordance with the putative father's means, for the support of the child since birtb;

(d) visiting regnlariy with the chiid; and

(e) manifesting an ability and willingness to assume legal and physical custody of the child if, during this time, the child was not in the physical custody of the mother.

(5) The subjective intent of a putative father, whetber expressed or otherwise, unsupported by evidence of acts spocified in this section does not preclude a determination tbat the father failed to meet the requirements of this section."

Section 8. Section 42-2-619, MCA, is amended to read:

"42-2-619. Expediency. A contested termination of parental rights action must take precedence over other cases and matters in the court or on appeal. The court shall examine any issues raised in challenging termination of a parent's rights or regarding the validity of any ~~interlocutory or final~~ adoption decree and sball render a decision as soon as possible."

Section 9. Section 42-3-203, MCA, is amended to read:

"42-3-203. Information to be reviewed in conducting preplacement evaination. (1) A preplacement evaluation must include a review of the following information about the prospective adoptive parent:

(a) a check of criminal conviction data, data on substantiated abuse or neglect of a child under Title 41, cbapter 3, and data pertaining to any involvement in incidents of domestic violence ~~by any person over the age of 13 living in the prospective home~~;

(b) medical and social history and current health;

(c) assessment of potential parenting skills;

(d) assessment of abiiity to provide adequate financial support for a child; and

(e) assessment of the ievel of knowledge and awareness of adoption issues, including, when appropriate, matters relating to opon, interracial, cross-cuitural, and special needs adoptions.

(2) (a) The prospective adoptive parent, the department of justice, and other state, county, and local agencies, after written notice to the subject of the study, shall give the ~~department or agency~~ *evaluator* completing tbe adoption study substantiated data pertaining to criminal convictions and any reports concerning domestic violence and substantiated abuse or neglect of children or vulnerablo adults.

HeinOnline -- 1999 vol. I 801 1999

(b) The adoption study ~~must~~ *may* also include a check of the youth court records of ~~each~~ *any* person ~~over the age of 13~~ living in the prespective home. Pursuant to 41-5-215 and 41-5-216, the youth court shall release the requested information to the ~~agency or department~~ *evaluator* completing the adoption study. ~~The~~ *If applicable, the* study must include an evaluation of the effect of a conviction, adjudication, or finding of substantiated abuse or neglect on the ability to care for a child.

(3) The preplacement evaluation must include at least one in-home visit with the prospective adoptive parent and at least one interview with each family member."

Section 10. Section 42-3-212, MCA, is amended to read:

"**42-3-212. Court waiver for relatives.** ~~The~~ *In a direct parental placement adoption, if the court is satisfied that adoption is in the best interests of the child, the* court may waive the requirement of a preplacement evaluation when a parent or guardian places a child for adoption directly with an extended family member of the child. A postplacement evaluation must be conducted during the pendency of a proceeding for adoption."

Section 11. Section 42-3-213, MCA, is amended to read:

"**42-3-213. Filing of evaluation in adoption proceedings.** (1) In a direct parental placement adoption, the preplacement evaluation *report* must be filed with the court in support of the petition to terminate parental rights for purposes of adoption.

(2) In an adoption arranged by the department or a licensed child-placing agency, the preplacement evaluation *report* must be permanently maintained in the files of the department or the licensed child-placing agency."

Section 12. Section 42-4-302, MCA, is amended to read:

"**42-4-302. Standing to adopt stepchild.** (1) A stepparent has standing to file a petition for adoption of a minor ~~stepchild~~ *child* of the stepparent's spouse if:

(a) the spouse has ~~sole~~ legal and physical custody of the child and the child has been in the physical custody of the spouse and the stepparent during the 60 days preceding the filing of a petition for adoption;

(b) the speuse is deceased or mentally incompetent but, before dying or being judicially declared mentally incompetent, had legal and physical custody of the child, and the child has resided primarily with the stepparent during the 12 months preceding the filing of the petition; or

(c) the department or an agency placed the child with the stepparent.

(2) For good cause shown, a court may allow an individual who is not the stepparent but who has the consent of the custodial parent of a child to file a petition for adoption. The petition must be treated as if the petitioner were a stepparent.

(3) A petition for adoption by a stepparent may be joined with a petition for termination of parental rights."

Section 13. Section 42-4-303, MCA, is amended to read:

HeinOnline -- 1999 vol. I 802 1999

"**42-4-303. Consent to adoption.** (1) Upon the filing of the petition for adoption by the stepparent, the child's *custodial* parent shall file consent to adoption executed pursuant to 42-4-304 ~~or 42-4-305~~.

(2) If the child has attained 12 years of age, the child ~~must~~ *shall* consent to the adoption."

Section 14. Section 42-4-304, MCA, is amended to read:

"**42-4-304. Consent to adoption — stepparent's spouse.** (1) A consent to adoption executed by a parent who is the stepparent's spouse must be signed in the presence of an individual authorized to take acknowledgments.

(2) A consent must be in writing and must state that:

(a) the parent executing the consent has legal and physical custody of the ~~parent's~~ child and voluntarily and unequivocally consents to the adoption of the child by the stepparent;

(b) the adoption will not terminate the parental relationship between the parent executing the consent and the child; and

(c) the parent executing the consent understands and agrees that:

(i) the adoption will terminate the relationship of parent and child between the child's other parent and the child and will terminate any existing court order for custody, visitation, or communication with the child;

(ii) the child and any descendant of the child will retain rights of inheritance from or through the child's other parent; and

(iii) a court order for visitation or communication with the child by an individual related to the child through the parent executing the ~~consent~~ *relinquishment* or an agreement or order concerning another individual that is approved by the court survives the decree of adoption, but that failure to comply with the terms of the order or agreement is not a ground for revoking or setting aside the consent or the adoption."

Section 15. Section 42-4-309, MCA, is amended to read:

"**42-4-309. ~~Postplacement~~ *Preplacement and postplacement* evaluation period — waiver.** ~~If the child is a stepchild or a member of the extended family of the petitioner, the court may, if~~ *In a stepparent adoption, if the court is* satisfied that the adoption is in the best interests of the child, *the court may* waive *the requirement of a preplacement evaluation and* the 6-month postplacement evaluation ~~period~~ and ~~the postplacement evaluation~~ *report* and grant a decree of adoption."

Section 16. Section 42-4-310, MCA, is amended to read:

"**42-4-310. Petition for adoption — notice — hearing.** A stepparent who desires to adopt a stepchild ~~must file a~~ *shall obtain an order of termination of parental rights of the child's noncustodial parent prior to or contemporaneously with the petition to adopt. Any neccssary consents must be filed with the* petition for adoption.~~, any necessary consents, any required postplacement evaluation, give notice~~ *Notice* of the hearing on the petition~~,~~ *must be given,* and *the stepparent shall* attend ~~a~~ *the* hearing conducted by the court."

Section 17. Section 42-5-101, MCA, is amended to read:

HeinOnline -- 1999 vol. I 803 1999

"**42-5-101. Petition for adoption.** (1) A petition for adoption ~~must be filed in triplicate,~~ must be notarized by the petitioners~~,~~ and must specify:

(a) the full names, ages, and place and duration of residence of the petitioners;

(b) the current marital status of petitioners and, if married, the place and date of the marriage;

(c) the circumstances under which the petitioners obtained physical custody of the child and the name of the individual or agency ~~who~~ *that* placed the child;

(d) the date and place of birth of the child, if known;

(e) the name used for the child in the proceeding and, if a change in name is desired, the full name by which the child is to be known;

(f) that it is the desire of the petitioners that the relationship of parent and child be established between the petitioners and the child and to have all the rights and be subject to all the duties of that relationship;

(g) a full description and statement of value of all property owned or possessed by the child;

(h) the facts, if any, that excuse consent on the part of a person whose consent is required for the adoption;

(i) that any applicable law governing interstate or intercountry placement was complied with;

(j) that, if applicable, the Indian Child Welfare Act, 25 U.S.C. 1901, et seq., was complied with;

(k) whether a previous petition has been filed by *the* ~~petitioner~~ *petitioners* to adopt the child at issue or any other child in any court and the disposition of the petitions; and

(l) the name and address, if known, of any person who is entitled to receive notice of the petition for adoption.

(2) There must be attached to or accompanying the petition:

(a) any written consent required by ~~42-4-405 and 42-5-101 through 42-5-109~~ *42-2-301*;

(b) a certified copy of any court order terminating the rights of the child's parents;

(c) a certified copy of any existing court order in any pending proceeding concerning custody of or visitation with the child;

(d) a copy of any agreement with a public agency to provide a subsidy for the benefit of the child with a special need;

(e) the postplacement evaluation prepared pursuant to 42-4-113 or 42-4-209;

(f) a disclosure of any disbursements made in connection with the adoption proceeding.

(3) One copy of the petition must be retained by the court. A copy must be sent to:

(a) the department or to the agency participating in the adoption proceeding; or

(b) the parent placing the child for adoption in a direct parental placement adoption."

Section 18. Section 42-5-109, MCA, is amended to read:

"42-5-109. Decree of adoption. A decree of adoption must state:

(1) the original name of the child;

(2) the name of the petitioner for adoption;

(3) whether the petitioner is married or unmarried;

(4) whether the petitioner is a stepparent of the child;

(5) the name by which the child is to be known;

(6) for a child born in Montana, a direction to the vital statistics bureau to issue a new birth certificate unless the adoptee is 12 years of age or older and requests that a new certificate not be issued;

(7) the child's date and place of birth, if known;

(8) the effect of the decree of adoption as stated in 42-5-202;

(9) that the adoption is in the best interests of the child; and

(10) *if known,* whether ~~the~~ *either* birth ~~mother~~ *parent* objects to the release of the original birth certificate information upon the adoptee reaching 18 years of age."

Section 19. Section 42-5-202, MCA, is amended to read:

"42-5-202. Effect of decree. (1) After the decree of adoption is entered:

(a) the relationship of parent and child and all the rights, duties, and other legal consequences of the relation of parent and child exist between the adoptee and the adoptive parent and the kindred of the adoptive parent;

(b) the former parents and the kindred of the former parents of the adoptee, unless they are the adoptive parents or the spouse of an adoptive parent, are relieved of all parental responsibilities for the adoptee and have no rights over the adoptee except for a former parent's duty to pay arrearages for child support.

(2) A decree of adoption ~~should~~ *must* include ~~a~~ notice to the vital statistics bureau ~~as to the~~ *if it is known that either* birth ~~mother's consent~~ *parent objects* to release of the information on the original birth certificate upon the adoptee reaching 18 years of age.

(3) The relationship of parent and child for the purposes of intestate succession is governed by Title 72."

Section 20. Repealer. Section 42-4-305, MCA, is repealed.

Section 21. Effective date. [This act] is effective on passage and approval.

Approved April 5, 1999

CHAPTER NO. 258

[HB 527]

AN ACT REQUIRING IMPOSITION OF THE RESTRICTION OF DRIVING A MOTOR VEHICLE EQUIPPED WITH A FUNCTIONING IGNITION

HeinOnline -- 1999 vol. I 805 1999

INTERLOCK DEVICE AS A CONDITION FOR ISSUANCE OF A PROBATIONARY DRIVER'S LICENSE UPON A SECOND OR SUBSEQUENT VIOLATION OF DRIVING WHILE INTOXICATED OR UNDER THE INFLUENCE OF ALCOHOL; AND AMENDING SECTIONS 61-2-302, 61-5-208, AND 61-8-442, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-2-302, MCA, is amended to read:

"61-2-302. Establishment of driver *rehabilitation and* improvement program — participation by offending drivers. (1) The department may establish by administrative rules a driver rehabilitation and improvement program or programs that may consist of classroom instruction in rules of the road, driving techniques, defensive driving, driver attitudes and habits, actual on-the-road driver's training, and other subjects or tasks designed to contribute to proper driving attitudes, habits, and techniques.

(2) Official participation in the driver rehabilitation and improvement program is limited to those persons ~~who are not subject to an ignition interlock restriction imposed under 61-8-442 and~~ whose license to operate a motor vehicle in the state of Montana is:

(a) subject to suspension or revocation as a result of a violation of the traffic laws of this state or, unless otherwise provided by the sentencing court, a violation of 45-5-624; or

(b) revoked and they have:

(i) completed at least 3 months of a 1-year revocation *or, if revocation is for a second or subsequent violation of 61-8-401 or 61-8-406, have provided the department with proof of compliance with the ignition interlock device restriction imposed under 61-5-208*; or

(ii) completed 1 year of a 3-year revocation; and

(iii) met the requirements for reobtaining a Montana driver's license.

(3) Notwithstanding any provision of this part inconsistent with any other law of the state of Montana, the enforcement of any suspension or revocation order that constitutes the basis for any person's participation in the driver rehabilitation and improvement program provided for in this section may be stayed if that person complies with the requirements established for the driver improvement program and meets the eligibility requirements of subsection (2).

(4) In the event that a person's driver's license has been surrendered before the person's selection for participation in the driver rehabilitation and improvement program, the license may be returned upon receipt of the person's agreement to participate in the program.

(5) The stay of enforcement of any suspension or revocation order must be terminated and the order of suspension or revocation enforced if a person declines to participate in the driver rehabilitation and improvement program or fails to meet the attendance or other requirements established for participation in the program.

(6) This part does not create a right to be included in any program established under this part.

HeinOnline -- 1999 vol. I 806 1999

(7) The department may establish a schedule of fees that may be charged those persons participating in the driver improvement and rehabilitation program. The fees must be used to help defray costs of maintaining the program.

(8) A person may be referred to this program by a driver improvement analyst, city judge, justice of the peace, youth court judge, judge of a district court of the state, or a hearing examiner of the department.

(9) The department may issue a restricted probationary license to any person who enrolls and participates in the driver rehabilitation and improvement program. Upon issuance of a probationary license under this section, the licensee is subject to the restrictions set forth on the license.

(10) It is a misdemeanor for a person to operate a motor vehicle in any manner in violation of the restrictions impesed on a restricted license issued to the person under this section."

Section 2. Section 61-5-208, MCA, is amended to read:

"61-5-208. Period of suspension or revocation — *probationary license — ignition interlock device required on second or subsequent offense.* (1) The department may not suspend or revoke a driver's license or privilege to drive a motor vehicle on the public highways for a period of more than 1 year, except as otherwise permitted by law.

(2) A person whose license or privilege to drive a motor vehicle on the public highways has been suspended or revoked may not have the license, endorsement, or privilege renewed or restored unless the revocation was for a cause ~~which~~ *that* has been removed. After the expiration of the period of the revocation or suspension, the person may make application for a new license or endorsement as provided by law but the department may not issue a new license or endorsement unless and until it is satisfied, after investigation of the driving ability of the person and upon a showing by its records or other sufficient evidence, that the person is eligible to be licensed to drive in Montana. When any person is convicted or forfeits bail or collateral not vacated for the offense of operating or being in actual physical control of a moter vehicle while under the influence of alcobol or any drug or a combination of alcobol or drugs or for the offense of operation of a motor vehicle by a person with alcohol concentration of 0.10 or more, the department shall, upon receiving a report of conviction or forfeiture of bail or collateral not vacated, suspend the driver's license or driving privilege of the person for a period of 6 months. Upon receiving a repert of a conviction or forfeiture of bail or collateral for a second, third, or subsequent offense within 5 years of the first offense, the department shall revoke the license or driving privilege of the person for a period of 1 year~~, except that if~~ *and upon issuance of any restricted probationary license during the period of revocation, restrict the person to driving only a motor vehicle equipped with a functioning ignition interlock device. If* the 1-year period passes and the person has not completed an alcobol information course, treatment, or both, as ordered by the sentencing court, the license revocation remains in effect until the course, treatment, or both are completed.

(3) (a) If a person pays the reinstatement fee required in 61-2-107 and provides the department proof of compliance with any ignition interlock restriction imposed under 61-8-442, the department shall stay the license suspension ~~or revocation~~ of a person who has been convicted of a violation of 61-8-401 or 61-8-406 and return the person's driver's license. The stay must

HeinOnline -- 1999 vol. I 807 1999

remain in effect until the period of suspension ~~or revocation~~ has expired and any required alcohol information course, treatment, or both, have been completed.

(b) If the department receives notice from a court, peace officer, or ignition interlock vendor that the person has violated the *court-imposed* ignition interlock restriction by, including but not limited to, operating a motor vehicle not equipped with the device, tampering with the device, or removing the device before the period of restriction has expired, the department shall lift the stay and reinstate the license suspension ~~or revocation~~ for the remainder of the time period. The department may not issue a probationary driver's license to a person whose license suspension ~~or revocation~~ has been reinstated due to violation of an ignition interlock restriction.

(4) The period for all revocations made mandatory by 61-5-205 is 1 year except as provided in subsection (2).

(5) The period of revocation for ~~any~~ *a* person convicted of any offense ~~which~~ *that* makes mandatory the revocation of the *person's* driver's license commences from *the* date of conviction or forfeiture of bail.

(6) If a person is convicted of a violation of 61-8-401 or 61-8-406 while operating a commercial motor vehicle, the department shall suspend the person's driver's license as provided in 61-8-811 and subsection (2) of this section."

Section 3. Section 61-8-442, MCA, is amended to read:

"**61-8-442. Driving under the influence of alcohol or drugs — driving with excessive alcohol concentration — ignition interlock device ~~required~~ *discretionary on first offense.*** (1) In addition to the punishments provided in 61-8-714 and 61-8-722, regardless of disposition, the court may restrict a defendant to ~~only~~ driving *only* a motor vehicle equipped with a functioning ignition interlock device and require the defendant to pay the reasonable cost of leasing, installing, and maintaining the device if:

(a) the court determines that approved ignition interlock devices are reasonably available; ~~and~~

(b) ~~(i)~~ the defendant's blood alcohol concentration at the time of the arrest was 0.18% or greater; ~~or~~ *and*

~~(ii)~~*(c)* the defendant ~~previously~~ has *not* been *previously* convicted of a violation of 61-8-401 or 61-8-406.

(2) Any restriction imposed under this section must be included in a report of the conviction made by the court to the department in accordance with 61-11-101 and placed upon the person's driving record maintained by the department in accordance with 61-11-102.

(3) The duration of a restriction imposed under this section must run parallel to the time period for suspension ~~or revocation~~ of the driver's license of the defendant in accordance with 61-2-107, 61-5-205, and 61-5-208 and must be monitored by the department."

Approved April 5, 1999

HeinOnline -- 1999 vol. I 808 1999

CHAPTER NO. 259

[HB 617]

AN ACT RESTRUCTURING THE MEMBERSHIP OF THB PETROLEUM TANK RELEASE COMPENSATION BOARD; REVISING THE AUTHORITY OF THE BOARD; AMENDING SECTIONS 2-15-2108 AND 75-11-318, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-2108, MCA, is amended to read:

"2-15-2108. Petroleum tank release compensation board. (1) There is a petroleum tank release compensation board.

(2) The board consists of seven members appointed by the governor as follows:

(a) ~~the director of the department of environmental quality or the director's representative~~ *a representative of the financial or banking industry with experience in small business or property loans*;

(b) ~~a representative of the state fire prevention and investigation program of the department of justice~~ *an attorney licensed to practice law in Montana with experience in environmental law*;

(c) a representative of the petroleum services industry or a representative of tbe petroleum release remediation consultant industry;

(d) a representative of independent petroleum marketers and chain retailers;

(e) a representative of the general public;

(f) a representative of service station dealers; and

(g) a representative of the insurance industry.

(3) The board sball elect a presiding officer.

(4) The term of membership is 3 years.

(5) Members shall serve without pay, but are entitled to reimbursement for travel, meals, and lodging while engaged in board business, as provided in 2-18-501 through 2-18-503."

Section 2. Section 75-11-318, MCA, is amended to read:

"75-11-318. Powers and duties of board. (1) The board shall administer the petroleum tank release cleanup fund in accordance with the provisions of this part, including the payment of reimbursement to owners and operators.

(2) Tbe board shall determine whether to approve reimbursement of eligible costs under the provisions of 75-11-309(2), shall obligate money from the fund for approved costs, and shall act on requests for tbe guarantee of payments through the procedures and criteria provided in 75-11-309.

(3) Tbe board may conduct meetinge, bold hearings, undertake legal action, and conduct other business ~~as~~ *that* may be necessary to administer its responsibilities under this part. The board shall meet at least quarterly for tbe purpose of reviewing and approving claims for reimbursement from the fund and conducting other business as necessary.

HeinOnline -- 1999 vol. I 809 1999

(4) The ~~board may hire staff, and the~~ department shall provide staff support te the board as the department determines it is able. The board sball use the fund ~~to pay its staff expenses,~~ to pay:

(a) for department staff used:

(i) for the review or preparation of corrective action plans; ~~and~~

(ii) for the oversight of corrective action undertaken by owners and operators for the purposes of this part~~,~~; *and*

(iii) for the review and processing of claims for reimbursement submitted by owners and operators under this part; and ~~to pay~~

(b) for department of transportation staff used for the collection of the potroleum storage tank cleanup fee.

(5) The board shall adopt rules to administer this part, including:

(a) rules governing submission of claims by owners or oporators to the department and board;

(b) procedures for determining owners or operators who are eligible for reimbursement and determining the validity of claims;

(c) procedures for the review and approval of corrective action plans;

(d) procedures for conducting board meetings, hearings, and other business necessary for the implementation of this part; and

(e) other rules necessary for the administration of this part.

(6) The board may apply for, accept, and repay loans from the board of investments pursuant to 17-6-225."

Section 3. Effective date. [This act] is effective July 1, 1999.

Approved April 5, 1999

CHAPTER NO. 260

[SB 13]

AN ACT EXPANDING THE SCOPE AND DURATION OF THE MOTOR VEHICLE ELECTRONIC RECORD PILOT PROGRAM OF THE DEPARTMENT OF JUSTICE; AMENDING SECTION 61-3-109, MCA, AND SECTION 4, CHAPTER 90, LAWS OF 1997; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, under Chapter 90, Laws of 1997, the Department of Justice was authorized and empowered to undertake a pilot program for the electronic filing and porfection of motor vehicle liens; and

WHEREAS, the Department of Justice has established a pilot program and contracted with various parties for electronic and related services with supporting user fees; and

WHEREAS, section 61-3-101(5), MCA, authorizes the Department of Justice to maintain motor vehicle registration by electronic recording and storage; and

WHEREAS, the Legislature recognizes that electronic search, filing and perfection of liens, and registration of title on motor vehicles can result in more efficiency and cost savings; and

HeinOnline -- 1999 vol. I 810 1999

WHEREAS, the Legislature desires to expand the scope and duration of the current pilot program to determine feasibility before committing department resources of a more comprehensive and permanent program; and

WHEREAS, the pilot program will be supported by user fees and private capital investment.

THEREFORE, the Legislature of the State of Montana finds it appropriate to expand the scope and extend the duration of the motor vehicle electronic record pilot program.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-3-109, MCA, is amended to read:

"61-3-109. (Temporary) Electronic *search,* lien filing, *and registration.* (1) The department shall implement a pilot program allowing electronic *search of motor vehicle titles, electronic* filing and perfection of liens on motor vehicles, *and electronic registration of motor vehicles.*

(2) The department shall adopt rules to implement the pilot program. The rules must include procedures designed to constitute constructive notice of electronically filed and perfected liens *and electronically registered titles* to subsequent purchasers or encumbrancers from the date of a lien's perfection *or title registration.* (Terminates June 30, ~~2000—sec. 4, Ch. 90, L. 1997~~ *2008.*)"

Section 2. Section 4, Chapter 90, Laws of 1997, is amended to read:

"**Section 4. Termination.** [This act] terminates June 30, ~~2000~~ *2008.*"

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 5, 1999

CHAPTER NO. 261

[SB 239]

AN ACT REQUIRING THE DEPARTMENT OF REVENUE TO AID SOLID WASTE MANAGEMENT DISTRICT BOARDS BY PROVIDING INFORMATION TO BE USED TO DETERMINE RATES FOR SERVICE CHARGES; AND AMENDING SECTION 7-13-231, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-13-231, MCA. is amended to read:

"7-13-231. Authorization for charges for services. (1) To defray the cost of maintenance and operation of a solid waste management district, the board shall establish a fee for service, with approval of the county commissioners, provided that a public hearing has been held if written protest has been made as provided in 7-13-211. An increase in fees may not be approved and implemented unless notice of the increase is given as provided in 7-13-208(1) and (2) and an opportunity for protest is allowed as provided in 7-13-209 and 7-13-211.

(2) This fee must be assessed to all units in the district that are receiving a service, for the purpose of maintenance and operation of the district.

(3) An opportunity for protest or hearing is not required to increase fees for the purpose of paying fees imposed by the department of environmental quality

HeinOnline -- 1999 vol. I 811 1999

under 75-10-115. Notice must be provided to all units of the rate or portion of any rate that is directly attributable to the fee imposed.

(4) In order to aid in the determination of rates for service charges under 7-13-232, the department of revenue shall assist the board by providing the board with information pertaining to new construction, demolition, remodeling that changes the use of a building, and the location of mobile homes within the district boundaries."

Approved April 5, 1999

CHAPTER NO. 262

[SB 404]

AN ACT PROVIDING THAT THE ASSETS OF AN INDIVIDUAL RETIREMENT ACCOUNT ARE EXEMPT FROM EXECUTION OF JUDGMENT TO THE EXTENT OF CONTRIBUTION LIMITS TO THE ACCOUNT; PROVIDING THAT THE EXCEPTION DOES NOT APPLY TO CHILD SUPPORT AND CERTAIN FAMILY SUPPORT ORDERS; AMENDING SECTION 25-13-608, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 25-13-608, MCA, is amended to read:

"25-13-608. Property exempt without limitation — exceptions. (1) A judgment debtor is entitled to exemption from execution of the following:

(a) professionally prescribed health aids for the judgment debtor or a dependent of the judgment debtor;

(b) benefits the judgment debtor has received or is entitled to receive under federal social security or local public assistance legislation, except as provided in subsection (2);

(c) veterans' benefits, except as provided in subsection (2);

(d) disability or illness benefits, except as provided in subsection (2);

(e) except as provided in subsection (2), individual retirement accounts, as defined in 26 U.S.C. 408(a), to the extent of deductible contributions made before the suit resulting in judgment was filed and the earnings on those contributions, and Roth individual retirement accounts, as defined in 26 U.S.C. 408A, to the extent of qualified contributions made before the suit resulting in judgment was filed and the earnings on those contributions;

~~(e)~~*(f)* benefits paid or payable for medical, surgical, or hospital care to the extent they are used or will be used to pay for the care;

~~(f)~~*(g)* maintenance and child support; and

~~(g)~~*(h)* a burial plot for the judgment debtor and the debtor's family.

(2) Veterans' and social security legislation benefits based upon remuneration for employment, as defined in 42 U.S.C. 662(f), ~~and~~ disability benefits, *and assets of individual requirement accounts* are not exempt from execution if the debt for which execution is levied is for:

(a) child support; or

(h) maintenance to be paid to a spouse or former spouse if the spouse or former spouse is the custodial parent of a child for whom child support is owed or owing and the judgment debtor is the parent of the child."

Section 2. Applicability. [This act] applies to judgments filed after September 30, 1999.

Approved April 5, 1999

CHAPTER NO. 263

[SB 419]

AN ACT CLARIFYING THAT CERTAIN PUBLICLY OWNED LICENSES ARE ELIGIBLE FOR GAMBLING ACTIVITIES; PROVIDING THAT LESSEES OF LICENSES ISSUED TO AIRPORT AUTHORITIES AND PUBLIC GOLF COURSES ARE ALSO ELIGIBLE TO OFFER CERTAIN GAMBLING ACTIVITIES; CLARIFYING THAT OWNERS OF RESORT LICENSES ARE ELIGIBLE TO OFFER CERTAIN GAMBLING ACTIVITIES; AMENDING SECTION 23-5-119, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-5-119, MCA, is amended to read:

"23-5-119. Appropriate alcoholic beverage license for certain gambling activities. (1) *Except as provided in subsection (3), to* ~~To~~ be eligible to offer gambling under Title 23, chapter 5, part 3, 5, or 6, an applicant shall own in the applicant's name:

(a) a retail all-heverages license issued under 16-4-201;

(b) except as provided in subsection (1)(c), a license issued prior to October 1, 1997, under 16-4-105, authorizing the sale of beer and wine for consumption on the licensed premises; ~~or~~

(c) a beer and wine license issued in an area outside of an incorporated city or town as provided in 16-4-105(1)(e). The owner of the license whose premises are situated outside of an incorporated city or town may offer gambling, regardless of when the license was issued, if the owner and premises qualify under Title 23, chapter 5, part 3, 5, or 6~~.~~;

(d) a retail beer and wine license issued under 16-4-109;

(e) a retail all-beverages license issued under 16-4-202; or

(f) a retail all-beverages license issued under 16-4-208.

(2) For purposes of subsection (1)(b), a license issued under 16-4-105 prior to October 1, 1997, may he transferred to a new owner or to a new location or transferred to a new owner and location by the department of revenue pursuant to the applicable provisions of Title 16. The owner of the license that has been transferred may offer gambling if the owner and the premises qualify under Title 23, chapter 5, part 3, 5, or 6.

(3) Lessees of retail all-beverages licenses issued under 16-4-208 or beer and wine licenses issued under 16-4-109 who have applied for and been granted a gambling operator's license under 23-5-177 are eligible to offer and may be

granted permits for gambling authorized under Title 23, chapter 5, parts 3, 5, or 6."

Section 2. Effective date. [This act] is effective upon passage and approval.

Approved April 5, 1999

CHAPTER NO. 264

[SB 439]

AN ACT REVISING THE DEFINITIONS OF "SEASONAL ESTABLISHMENT" AND "SMALL ESTABLISHMENT" AS THE DEFINITIONS APPLY TO THE LICENSURE OF GUEST RANCHES AND OUTFITTING AND GUIDE FACILITIES TO ENSURE THAT THE NUMBER OF GUESTS FOR WHOM ACCOMMODATIONS ARE PROVIDED DURING THE ESTABLISHMENT'S SEASON OF OPERATION IS DETERMINED BY USING AN AVERAGE; AND AMENDING SECTION 50-51-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-51-102, MCA, is amended to read:

"50-51-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Bed and breakfast" means a private, owner- or manager-occupied residence that is used as a private residence but in which:

(a) breakfast is served and is included in the charge for a guest room; and

(b) the number of daily guests served does not exceed 18.

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

(3) "Establishment" means a bed and breakfast, hotel, motel, roominghouse, guest ranch, outfitting and guide facility, boardinghouse, or tourist home.

(4) "Guest ranch" means a facility that:

(a) uses one or more permanent structures, one or more of which have running water, sewage disposal, and a kitchen;

(b) furnishes sleeping accommodations on advance reservations for a minimum stay;

(c) provides hunting, horseback riding, fishing, or a working cattle ranch experience to its guests; and

(d) is a small establishment or a seasonal establishment.

(5) "Hotel" or "motel" includes:

(a) a building or structure kept, used, maintained as, advertised as, or held out to the public to be a hotel, motel, inn, motor court, tourist court, or public lodginghouse;

(b) a place where sleeping accommodations are furnished for a fee to transient guests, with or without meals.

(6) "Outfitting and guide facility" means a facility that:

HeinOnline -- 1999 vol. I 814 1999

(a) uses one or more permanent structures, one or more of which have running water, sewage dispesal, and a kitchen;

(b) furnishes sleeping accommodations to guests;

(c) offers hunting, fishing, or recreational services in conjunction with the services of an outfitter or guide, as defined in 37-47-101; and

(d) is a small establishment or a seasonal establishment.

(7) "Person" includes an individual, partnership, corporation, association, county, municipality, cooperative group, or other entity engaged in the business of operating, owning, or offering the services of a bed and breakfast, hotel, motel, boardinghouse, tourist home, guest ranch, outfitting and guide facility, or roominghouse.

(8) "Roominghouse" or "boardinghouse" means buildings in which separate sleeping rooms are rented that provide sleeping accommodations for three or more persons on a weekly, semimonthly, monthly, or permanent basis, whether or not meals or central kitchens are provided but without separated cooking facilities or kitchens within each room, and whose occupants do not need professional nursing or personal-care services provided by the facility.

(9) "Seasonal establishment" means a guest ranch or outfitting and guide facility operating for less than 120 days in a calendar year and offering accommodations to ~~at least 9 but no more than 40 people at one time~~ *between 9 and 40 people on average a day. The average number of people a day is determined by dividing the total number of guests accommodated during the year by the total number of days that the establishment operated as a guest ranch or outfitting and guide facility during the year.*

(10) "Small establishment" means a guest ranch or an outfitting and guide facility offering accommodations to ~~at least 9 but no more than 24 people at one time~~ *between 9 and 24 people on average a day. The average number of people a day is determined by dividing the total number of guests accommodated during the year by the total number of days that the establishment operated as a guest ranch or outfitting and guide facility during the year.*

(11) "Tourist home" means a private home or condominium that is not occupied by an owner or manager and that is rented, leased, or furnished in its entirety to transient guests on a daily or weekly basis.

(12) "Transient guest" means a guest for only a brief stay, such as the traveling public."

Approved April 5, 1999

CHAPTER NO. 265

[HB 277]

AN ACT REPEALING THE PROVISION THAT ALLOWS LICENSING OF CHIROPRACTORS FROM OTHER STATES WITHOUT EXAMINATION; REPEALING SECTION 37-12-305, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Repealer. Section 37-12-305, MCA, is repealed.

HeinOnline -- 1999 vol. I 815 1999

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 6, 1999

CHAPTER NO. 266

[HB 316]

AN ACT DESIGNATING CERTAIN STATE PARKS AS MOST AT RISK AND AS PRIORITIES FOR THE PROTECTION, PRESERVATION, AND RESTORATION OF HISTORICAL, CULTURAL, AND NATURAL ASSETS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Designation of certain parks as priorities for protection, preservation, and restoration. The legislature determines that the state parks assets at Chief Plenty Coups state park and Pictograph Cave state park are assets that are most at risk and vulnerable and that those assets must receive immediate priority for preservation and funding.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 23, chapter 1, part 1, and the provisions of Title 23, chapter 1, part 1, apply to [section 1].

Approved April 6, 1999

CHAPTER NO. 267

[HB 523]

AN ACT CLARIFYING THE QUALIFIED PRIVILEGE FOR MANDATORY REPORTING OF EMPLOYMENT-RELATED INFORMATION BY BROKER-DEALERS; AND AMENDING SECTION 30-10-310, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 30-10-310, MCA, is amended to read:

"**30-10-310. Reporting requirements.** (1) A broker-dealer, investment adviser, investment adviser representative, or other person who has reason to believe fraud has occurred shall report the suspected fraud to the commissioner within 60 days of discovery of the occurrence.

(2) A broker-dealer shall make complete disclosure of all employment-related information required to be reported to the national association of securities dealers pursuant to rules and related explanatory materials of that association.

~~(2)~~*(3)* ~~In the absence of malice, a~~ *A* broker-dealer, investment adviser, investment adviser representative, or other person ~~may not be subjected to civil liability for~~ *is not liable for any civil claim, including counterclaims, third-party claims, or cross-claims, related to* reporting or providing information or otherwise cooperating with an investigation of fraud under this chapter *unless the complainant shows by clear and convincing evidence that:*

(a) the party knew at the time that the statement was made that the statement was false in any material respect; or

(b) the party acted in reckless disregard as to the statement's truth or falsity."

Approved April 6, 1999

HeinOnline -- 1999 vol. I 816 1999

CHAPTER NO. 268

[HB 524]

AN ACT ALLOWING A TRIBAL GOVERNMENT TO PARTICIPATE IN THE CERTIFIED COMMUNITIES PROGRAM AND THE TREASURE STATE ENDOWMENT PROGRAM; AND AMENDING SECTIONS 90-1-116 AND 90-6-701, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-1-116, MCA, is amended to read:

"90-1-116. State matching funds program for economic development — distribution of proceeds — criteria for grants — local economic development matching funds. (1) As used in this section, the following definitions apply:

(a) "Certified community lead organization" means the entity that has been endorsed by resolution of a local governing body *or a tribal government, as defined in 90-6-701(3)(e),* and that meets and maintains requirements for certification established by the department.

(b) "Department" means the department of commerce provided for in 2-15-1801.

(2) The department shall create a program to provide state funds to match local economic development funds and to fund the certified communities program. The provision of state matching funds is contingent upon specific appropriations to the department for that purpose. The department shall distribute the funds in the following manner:

(a) 91% to certified community lead organizations, in the form of assistance grants;

(b) 8% to the department for administration of the certified communities program; and

(c) 1% to the department for certification assistance for noncertified communities. If there are no requests for certification assistance, the 1% allocation may be used by the department for administration of the certified communities program.

(3) An assistance grant to a certified community lead organization is based on an annual per capita payment for the area served by the organization, according to its population in the last completed federal census. The grant may not exceed $75,000 and may not be less than $3,000 a year.

(4) To be eligible to receive a grant, a certified community lead organization:

(a) must be designated as the lead organization by the local governing body;

(b) shall maintain department requirements for certification;

(c) shall match each $1 of the grant with $1 raised from public or private sources; and

(d) shall participate in regional meetings of certified communities.

HeinOnline -- 1999 vol. I 817 1999

(5) Grants under this section must be used to conduct economic development programs consistent with strategic plans that are adopted by the certified communities and that are filed with the department.

(6) The department shall use its portion of the proceeds to:

(a) administer the certified communities program;

(b) assist noncertified communities in seeking certification; and

(c) organize and conduct regional meetings of certified communities."

Section 2. Section 90-6-701, MCA, is amended to read:

"90-6-701. Treasure state endowment program created — definitions. (1) (a) There is a treasure state endowment program that consists of:

(i) the treasure state endowment fund established in 17-5-703;

(ii) the infrastructure portion of the coal severance tax bond program provided for in 17-5-701(2).

(b) The treasure state endowment program may borrow from the board of investments to provide additional financial assistance for local government infrastructure projects under this part, provided that no part of the loan may be made from retirement funds.

(2) Interest from the treasure state endowment fund and from proceeds of the sale of bonds under 17-5-701(2) may be used to provide financial assistance for local government infrastructure projects under this part and to repay loans from the board of investments.

(3) As used in this part, the following definitions apply:

(a) "Infrastructure projects" means:

(i) drinking water systems;

(ii) wastewater treatment;

(iii) sanitary sewer or storm sewer systems;

(iv) solid waste disposal and separation systems, including site acquisition, preparation, or monitoring; or

(v) bridges.

(b) "Local government" means an incorporated city or town, a county, a consolidated local government, *a tribal government,* or a county or multicounty water, sewer, or solid waste district.

(c) "Treasure state endowment fund" means the coal severance tax infrastructure endowment fund established in 17-5-703(1)(b).

(d) "Treasure state endowment program" means the local government infrastructure investment program established in subsection (1).

(e) "Tribal government" means a federally recognized Indian tribe within the state of Montana."

Section 3. Agreements with tribal governments. (1) Agreements with tribal governments in Montana entered into under this part must contain, in addition to other appropriate terms and conditions, the following conditions:

HeinOnline -- 1999 vol. I 818 1999

(a) a requirement that in the event that a dispute or claim arises under the agreement, state law will govern as to the interpretation and performance of the agreement and that any judicial proceeding concerning the terms of the agreement will be brought in the district court of the first judicial district of the state of Montana;

(b) an express waiver of the tribal government's immunity from suit on any issue specifically arising from the transaction of a loan or grant; and

(c) an express waiver of any right to exhaust trihal remedies signed by the trihal government.

(2) Agreements with tribal governments must be approved by the secretary of the United States department of the interior whenever approval is necessary.

Section 4. Notifieation to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations.

Section 5. Codification instruction. [Section 3] is intended to be codified as an integral part of Title 90, chapter 6, part 7, and the provisions of Title 90, chapter 6, part 7, apply to [section 3].

Approved April 6, 1999

CHAPTER NO. 269

[HB 555]

AN ACT AUTHORIZING THE ESTABLISHMENT AND CREATION OF AN AEROSPACE TRANSPORTATION AND TECHNOLOGY DISTRICT TO ACCOMMODATE AND SUPPORT A REUSABLE SPACE LAUNCH VEHICLE SPACEPORT; AUTHORIZING THE ISSUANCE OF UP TO $20 MILLION OF STATE GENERAL OBLIGATION BONDS TO PAY THE COSTS OF SPACEPORT INFRASTRUCTURE DEVELOPMENT PROJECTS; AMENDING SECTIONS 7-15-4283, 7-15-4288, AND 7-15-4301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-15-4283, MCA, is amended to read:

"7-15-4283. Definitions related to tax inerement financing. For purposes of 7-15-4282 through 7-15-4292 and 7-15-4297 through 7-15-4299, the following definitions apply unless otherwise provided or indicated hy the context:

(1) "Actual taxable value" means the taxable value of taxable property at any time, as calculated from the assessment roll last equalized.

(2) "Aerospace transportation and technology distriet" means a tax increment financing aerospace transportation teehnology district created pursuant to [section 4].

(3) "Aerospace transportation and technology infrastructure development projeet" means a project undertaken within or for an aerospace transportation and technology district that consists of any or all of the activities authorized by 7-15-4288.

~~(2)~~*(4)* "Base taxable value" means the actual taxable value of all taxable property within an urban renewal area, ~~or~~ industrial district, *or aerospace transportation and technology district* prior to the effective date of a tax increment financing provision. Tbis value may be adjusted as provided in 7-15-4287 or 7-15-4293.

~~(3)~~*(5)* "Incremental taxable value" means the amount, if any, by which the actual taxable value at any time exceeds the base taxable value of all property within an urban renewal area, ~~or~~ industrial district, *or aerospace transportation and technology district* subject to taxation.

~~(4)~~*(6)* "Industrial district" means a tax increment financing industrial district created pursuant to 7-15-4299.

~~(5)~~*(7)* "Industrial infrastructure development project" means a project undertaken within or for an industrial district that consists of any or all of the activities authorized by 7-15-4288.

~~(6)~~*(8)* "Municipality", for the purpose of an industrial district created pursuant to 7-15-4297 through 7-15-4299 and operating pursuant to 7-15-4282 through 7-15-4293 and part 43 of this chapter, means any incorporated city or town, county, or city-county consolidated local government.

~~(7)~~*(9)* "Tax increment" means the collections realized from extending the tax levies, expressed in mills, of all taxing hodies in which the urban renewal area, ~~or~~ industrial district, *aerospace transportation and technology district,* or a part ~~thereof~~ *of an area or district* is located against the incremental taxable value.

~~(8)~~*(10)* "Tax increment provision" means a provision for the segregation and application of tax increments as authorized by 7-15-4282 through 7-15-4292.

~~(9)~~*(11)* "Taxes" means all taxes levied by a taxing body against property on an ad valorem basis.

~~(10)~~*(12)* "Taxing body" means any city, town, county, school district, or other political subdivision or governmental unit of the state, including the state, which levies taxes against property within the urban renewal area, ~~or~~ industrial district, *or an acrospace transportation and technology district.*"

Section 2. Section 7-15-4288, MCA, is amended to read:

"7-15-4288. Costs that may be paid by tax increment financing. The tax increments may be used by the municipality to pay the following costs of or incurred in connection with an urban renewal project, ~~or~~ industrial infrastructure development project, *or aerospace transportation and technology infrastructure development project:*

(1) land acquisition;

(2) demolition and removal of structures;

(3) relocation of occupants;

(4) the acquisition, construction, and improvement of infrastructure, ~~or~~ industrial infrastructure, *or aerospace transportation and technology infrastructure,* ~~which~~ *that* includes streets, roads, curbs, gutters, sidewalks, pedestrian malls, alleys, parking lots and offstreet parking facilities, sewers, sewer lines, sewage treatment facilities, storm sewers, waterlines, waterways, water treatment facilities, natural gas lines, electrical lines, telecommunications lines, rail lines, rail spurs, bridges, *spaceports for reusable launch vehicles with*

HeinOnline -- 1999 vol. I 820 1999

associated runways and launch, recovery, fuel manufacturing, and cargo holding facilities, publicly owned huildings, and any public improvements authorized by parts 41 through 45 of chapter 12, parts 42 and 43 of chapter 13, and part 47 of chapter 14 and items of personal property to be used in connection with improvements for which the foregoing costs may be incurred;

(5) costs incurred in connection with the redevelopment activities allowed under 7-15-4233;

(6) acquisition of infrastructure-deficient areas or portions of areas;

(7) administrative costs associated with the management of the industrial district *or the aerospace transportation and technology district*;

(8) assemblage of land for development or redevelopment by private enterprise or public agencies, including sale, initial leasing, or retention by the municipality itself at its fair value;

(9) the compilation and analysis of pertinent information required to adequately determine the infrastructure needs of secondary, value-adding industries in the industrial district *or the needs of an aerospace transportation and technology infrastructure development project in the aerospace transportation and technology district*;

(10) the connection of the industrial district *or the aerospace transportation and technology district* to existing infrastructure outside tlie industrial district *or thc aerospace transportation and technology district*;

(11) the provision of direct assistance, through industrial infrastructure development projects *or aerospace transportation technology infrastructure development projects*, to secondary, value-adding industries to assist in meeting their infrastructure and land needs within the industrial district *or the aerospace transportation and technology district*; and

(12) the acquisition, construction, or improvement of facilities or equipment for reducing, preventing, abating, or eliminating pollution."

Section 3. Section 7-15-4301, MCA, is amended to read:

"7-15-4301. Authorization to issue urban renewal bonds, industrial infrastructure development bonds, *aerospace transportation and technology infrastructure development bonds,* and refunding bonds. (1) A municipality ~~shall have the power to~~ *may*:

(a) issue bonds from time to time in its discretion, to finance the undertaking of any urban renewal project, ~~or~~ industrial infrastructure development project, *or aerospace transportation and technology infrastructure development project* under this part and part 42, including, without limiting the generality ~~thereof~~ *of projects*, the payment of principal and interest upon any advances for surveys and plans for urban renewal projects, ~~and~~ industrial infrastructure development projects, *and aerospace transportation and technology infrastructure development projects*; and

(b) issue refunding bonds for the payment or retirement of ~~such~~ bonds previously issued by it.

(2) ~~Such~~ *The* bonds ~~shall~~ *may* not pledge the general credit of the municipality and ~~shall~~ *must* be made payable, as to both principal and interest, solely from the income, proceeds, revenues, and funds of the municipality derived from or held in connection with its undertaking and carrying out of urban renewal

HeinOnline -- 1999 vol. I 821 1999

projects, ~~or~~ industrial infrastructure development projects, *or aerospace transportation and technology infrastructure development projects* under ~~this part and~~ part 42 *and this part*, including the tax increment received and pledged by the municipality pursuant to 7-15-4282 through 7-15-4292, and, if ~~such~~ *the* income, proceeds, revenues, and funds of the municipality are insufficient for ~~such~~ *the* payment, from other revenues of the municipality pledged to ~~such~~ *the* payment. Payment of ~~such~~ *the* bonds, both as to principal and interest, may be further secured by a pledge of any loan, grant, or contribution from the federal government or other source in aid of any urban renewal projects, ~~or~~ industrial infrastructure development projects, *or aerospace transportation and technology infrastructure development projects* of the municipality under this part and part 42 or by a mortgage on all or part of any ~~such~~ projects.

(3) Bonds issued under this section ~~shall~~ *must* be authorized by resolution or ordinance of the local governing body."

Section 4. Aerospace transportation and technology districts. (1) A local governing body, by ordinance and following a public hearing, may authorize the creation of an aerospace transportation and technology district for aerospace transportation and technology infrastructure development projects if the proposed aerospace transportation and technology district:

(a) consists of a continuous area with an accurately described boundary;

(b) is zoned for use in accordance with the area master planning document;

(c) does not include any property included within an existing urban renewal area district or industrial infrastructure development district created pursuant to this part;

(d) is found to be deficient in infrastructure improvements for industrial development; and

(e) has as its purpose the development of infrastructure to encourage the location and retention of aerospace transportation and technology infrastructure development projects in the state.

(2) An aerospace transportation and technology district may use tax increment financing pursuant to the provisions of 7-15-4282 through 7-15-4293.

Section 5. Authorization of bonds. (1) The board of examiners is authorized to issue and sell general obligation bonds in an amount not exceeding $20 million for aerospace transportation and technology infrastructure development projects, as defined in 7-15-4283, except as provided in subsection (2) of this section, in accordance with the terms and in the manner required by Title 17, chapter 5, part 8, and upon the authority granted to the board by this section. The bonds are in addition to any other authorization to the board to issue and sell general obligation bonds and subject to the conditions set forth in this section.

(2) For purposes of the general obligation bonds authorized in this section, 7-15-4288(5) and (7) is excluded from the definition of aerospace transportation and technology infrastructure development projects.

(3) It is the intent of the legislature that debt service payments for the bonds authorized by this section will be covered by the increased taxes paid to the state by the venture star project. When requesting the board of examiners to issue the bonds, the department of commerce shall present to the department of administration for presentation to the board of examiners the following:

HeinOnline -- 1999 vol. I 822 1999

(a) evidence satisfactory to the hoard that venture star has committed itself to locate its project in Montana and has acquired a site for the project; and

(b) a certificate signed by the director of the office of budget and program planning that the tax revenue to be received by the state from the venture star project will be sufficient to pay the principal of and interest on the bonds.

Scction 6. Legislative consent. The appropriation authorized in [section 5] constitutes legislative consent, within the meaning of 18-2-102, for the aerospace transportation and technology infrastructure development project provided for in [section 5].

Section 7. Requirement for approval of state debt. Because [section 5] autborizes the creation of state debt, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage.

Section 8. Codification instruction. [Section 4] is intended to be codified as an integral part of Title 7, cbapter 15, part 42, and the provisions of Title 7, chapter 15, part 42, apply to [section 4].

Section 9. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 10. Effective date. [This act] is effective on passage and approval.

Approved April 6, 1999

CHAPTER NO. 270

[HB 558]

AN ACT CLARIFYING WHICH PERSONS MAY ENGAGE IN THE CONSUMER LOAN BUSINESS; ESTABLISHING GUIDELINES FOR PREPAYMENT CHARGES ON CONSUMER LOANS; INCREASING THE BAD CHECK CHARGE FROM $10 TO $25; MODIFYING WHICH PAST DUE PROVISIONS APPLY TO OPEN-END LOANS; AND AMENDING SECTIONS 32-5-103, 32-5-301, 32-5-407, AND 32-5-506, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-5-103, MCA, is amended to read:

"32-5-103. Engaging in business of making consumer loans restricted. (1) Except as provided in subsection (5), a person may not engage in the business of making consumer loans ~~or advances of money on credit~~ in any amount and contract for, charga, or receive directly or indirectly on or in connection witb any loan ~~or advance~~ any cbarges, whether for interest, compensation, consideration, or expense, except as provided in and authorized by this cbapter. A person engaged in business as a licensed pawnbroker may not become a licensee under this cbapter. The provisions of this chapter do not apply to any exempted person.

(2) A licensee may sell its business and assets to a bank, building and loan association, savings and loan association, trust company, credit union, credit association, development credit corporation, or bank holding company organized

HeinOnline -- 1999 vol. I 823 1999

pursuant to state or federal statutory authority and subject to supervision, control, or regulation by an agency of the state of Montana or an agency of the federal government. All contracts for loans and all other contracts entered into by the licensee pursuant to the provisions of this chapter that are sold and transferred to an acquiring organization continue to be governed by the provisions of this chapter.

(3) The provisions of subsection (1) apply to any person who seeks to evade its applications by any device, subterfuge, or pretense.

(4) Any act by a licensee in the making of a contract or in the collection of a loan made under the contract that violates the provisions of this chapter is void. The licensee has no right to collect, receive, or retain any principal, interest, or charges.

(5) A consumer loan licensee or a person who seeks a regulated lender exemption under 31-1-112 as a consumer loan licensee shall fully comply with this chapter. A regulated lender as defined in 31-1-111, other than a consumer loan licensee, or a lender who complies with the provisions of Title 31, chapter 1, part 1, is not required to comply with this chapter."

Section 2. Section 32-5-301, MCA, is amended to read:

"32-5-301. Charges, refunds, penalties, filing fees. (1) ~~Every~~ *A* licensee or holder of a supplementary license under this part may contract for and receive on any loan of money interest charges as provided under 31-1-112.

(2) Charges in subsection (1) must be computed at the applicable rates on the full, original principal amount of the loan from the date of the loan to the due date of the final scheduled installment irrespective of the fact that the loan is payable in installments. The charges must be added to the principal of the loan and may not be discounted or deducted from the principal or paid or received at the time the loan is made. For the purpose of computing charges for a fraction of a month, a day is considered one-thirtieth of a month.

(3) (a) When any loan contract, new loan, renewal, or otherwise for a period of not more than 61 months is paid in full by cash 1 month or more before the final installment date, the licensee shall refund or credit the borrower with that portion of the total charges that is due the borrower as determined by schedules prepared under the rule of 78ths or sum of the digits principle as follows: the amount of the refund or credit must be as great a proportion of the total charges originally contracted for as the sum of the consecutive monthly balances of the contract scheduled to follow the date of prepayment bears to the sum of all the consecutive monthly balances of the contract, both sums to be determined according to the payment schedule originally contracted for.

(b) When any loan contract, new loan, renewal, or otherwise for a period of more than 61 months is paid in full by cash 1 month or more before the final installment date, the licensee shall refund or credit the borrower with that portion of the total charges that is due the borrower that is applicable to all fully unexpired months in the contract as originally scheduled or, if deferred, as deferred, following the date of prepayment. For this purpose the applicable charge is the charge ~~which~~ *that* would have been earned for that contract if charges had not been precomputed, by applying to the unpaid principal balance, by the actuarial method, the annual percentage rate disclosed pursuant to federal law, based on the assumption that all payments were made as originally

HeinOnline -- 1999 vol. I 824 1999

scheduled. For all loans that may be subject to this section, charges are computed initially in the same manner used to determine the annual percentage rate.

(4) If the contract so provides, the additional charge for any amount past due according to the original torms of the contract, whether by reason of default or extension agreement, may be 5% of the amount past due, and that amount may be charged only once.

(5) (a) The licensee may include in the principal amount of any loan:

(i) the actual fees paid a public official or agency of the state for filing, recording, or releasing any instrument securing the loan; or

(ii) the premium for insurance in lieu of filing or recording any instrument securing the loan to the extent that the premium does not exceed the fees tbat would otherwise be payable for filing, recording, or releasing any instrument securing the loan.

(b) The licensee may include in the principal amount of any loan hona fide charges related to real estate security and paid to third parties, including:

(i) fees or premiums for title examination, title insurance, or similar purposes, including survey;

(ii) fees for preparation of a deed, settlement statement, or other documents;

(iii) fees for notarizing deeds and other documents;

(iv) appraisal fees;

(v) fees for credit reports; and

(vi) fees paid to a trustee for release of a trust deed.

(6) Further or other charges may not be directly or indirectly contracted for or received by any licensee except those specifically authorized by this chapter. A licensee may not divide into separato parts any contract made for the purpose of or with the effect of obtaining charges in excess of those authorized by this chapter. If any amount in excess of tbe charges permitted by this chapter is charged, contracted for, and received, except as the result of an accidental and bona fide error of computation, the licensee may not collect or receive any charges.

(7) Subsections (2), (3), and (6) of this section apply only to loans on which charges are made on an add-on basis and do not apply to loans on which charges are made on an interest-bearing basis.

(8) If a consumer loan is prepaid in whole or in part for any reason, including after a default, prior to the final payment due date and the amount of prepayment exceeds 10% of the then-outstanding principal balance of the loan, a licensee may charge a prepayment charge as follows:

(a) 10% of the then-outstanding principal balance of the loan if the prepayment occurs during the first 6 months after the date of the loan;

(b) 7% of the then-outstanding principal balance of the loan if the prepayment occurs more than 6 months after the date of the loan, but on or before 18 months after the date of the loan; or

(c) 3.5% of the then-outstanding principal balance of the loan if the prepayment occurs more than 18 months after the date of the loan, but before 61 monthe after the date of the loan.

HeinOnline -- 1999 vol. I 825 1999

(9) A prepayment charge may not be collected if:

(a) the prepayment results solely because of the enforcement of a "due on sale" clause in a real estate mortgage or deed of trust that secures the loan;

(b) the loan provided is prepaid by another loan made by the same licensee or an affiliate of the licensee; or

(c) prepayment occurs as a result of a payment made by a credit life insurance policy or other insurance policy."

Section 3. Section 32-5-407, MCA, is amended to read:

"32-5-407. Attorney fees — had check charge. (1) If the contract so provides, reasonable attorney fees may be awarded to the party in whose favor final judgment is rendered in any action on a contract entered into pursuant to the provisions of this chapter.

(2) In addition to any other charges authorized by this chapter, a licensee may charge a borrower the greater of ~~$10~~ *$25* or the licensee's actual expense for each check, received in payment of a loan, that is dishonored for any reason."

Section 4. Section 32-5-506, MCA, is amended to read:

"32-5-506. Provisions not applicable. The provisions of ~~subsections (3) and (4) of~~ 32-5-301*(3)* and the provisions of 32-5-304 do not apply to open-end loans."

Approved April 6, 1999

CHAPTER NO. 271

[HB 581]

AN ACT GENERALLY REVISING THE MONTANA SMALL BUSINESS PURCHASING ACT; REVISING THE DEFINITION OF "SMALL BUSINESS"; ELIMINATING CERTAIN REQUIREMENTS RELATED TO THE DESIGNATION OF SMALL BUSINESS SET-ASIDES AND TO THE ADVERTISEMENT FOR BIDS AND NOTIFICATION OF BIDDERS; REPEALING THE PREFERENCE FOR THE MONTANA SMALL BUSINESS WHEN THERE IS A TIE FOR LOW BID; AMENDING SECTIONS 18-5-303, 18-5-304, AND 18-5-305, MCA; REPEALING SECTIONS 18-5-301, 18-5-302, 18-5-303, 18-5-304, 18-5-305, 18-5-306, 18-5-307, AND 18-5-308, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 18-5-303, MCA, is amended to read:

"18-5-303. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Department" means any department, division, or agency of the state of Montana.

(2) "Small business" means a business ~~which~~ *that* is independently owned and operated ~~and which is not dominant in its field of operation~~. The department of administration shall establish a detailed definition by rule using, in addition to the foregoing criteria, other criteria. Small business shall further mean ~~all~~ *a* business domiciled in the state of Montana ~~or one~~ *and* that employs more than

50% of its total employed personnel within the boundaries of the state of Montana.

(3) "Small business set-aside" means a purchase request for which bids are to be invited and accepted only from small businesses by a department."

Section 2. Section 18-5-304, MCA, is amended to read:

"**18-5-304. Designation of small business set-asides.** (1) Each department has authority to designate as small business set-asides specified commodities, equipment, or services, except those services rendered and furnished by registered professions, such as but not limited to accountants, attorneys, architects, dentists, engineers, land surveyors, optometrists, physicians, and pharmacists, for which purchase has been requested under the Montana Small Business Purchasing Act. ~~Such a designation shall be made prior to the advertisement for bids in a daily state newspaper, and when the advertisement is published, it shall indicate the purchases which have been designated small business set asides. To effectuate the purposes of this part, a department shall exercise this authority whenever there is a reasonable expectation that bids will be obtained from at least three small businesses capable of furnishing the desired property or service at a fair and reasonable price.~~

(2) In the case of purchase designated as small business set-asides, invitations to bid ~~shall~~ *must* be confined to small businesses, and bids from other businesses ~~shall~~ *must* be rejected. The purchase, contract, or expenditure of funds ~~shall~~ *must* be awarded to the lowest responsible bidder among the small businesses, ~~(~~considering conformity with specifications and terms~~)~~, in accordance with the rules for purchasing published by the department."

Section 3. Section 18-5-305, MCA, is amended to read:

"**18-5-305. ~~Insufficient bids — withdrawal — reissue~~ *Withdrawal of small business set-aside designation.*** ~~(1)~~ If ~~the total number of small businesses responding to the invitation to bid and considered capable of meeting the specifications and terms of the invitation to bid is less than three or if~~ a department determines that acceptance of the best bid will result in the payment of an unreasonable price, the department shall reject all bids and withdraw the designation of small business set-aside.

~~(2) If a department withdraws the designation of small business set-aside, it shall notify the bidders of the reason why the bids were rejected. Invitations to bid containing the same or rewritten specifications and terms shall then be reissued under the Montana Small Business Purchasing Act, without the designation of small business set-aside.~~"

Section 4. Repealer. (1) Sections 18-5-306 and 18-5-307, MCA, are repealed.

(2) Sections 18-5-301, 18-5-302, 18-5-303, 18-5-304, 18-5-305, and 18-5-308, MCA, are repealed.

Section 5. Effective dates. (1) [Sections 1 through 4(1) and this section] are effective on passage and approval.

(2) [Section 4(2)] is effective June 30, 2003.

Approved April 6, 1999

HeinOnline -- 1999 vol. I 827 1999

CHAPTER NO. 272

[HB 629]

AN ACT DIRECTING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO CONDUCT A COMPREHENSIVE STUDY OF BLACKFOOT RIVER USE AND CONFLICT AND REPORT THE DEPARTMENT'S FINDINGS AND CONCLUSIONS TO THE 57TH LEGISLATURE.

WHEREAS, Montana's rivers are drawing people to the state to fish, float, and camp at an accelerating rate; and

WHEREAS, although the increasing popularity of Montana is beneficial to the state's economy, steps must be taken to ensure that escalating recreational use of natural resources does not degrade the resource, taint the experience, or threaten private property rights; and

WHEREAS, with the unparalleled scenery and the abundance of fish, osprey, bald eagles, deer, and other wildlife sustained by its waters, the Blackfoot River in western Montana offers recreationists a unique, pristine outdoor experience; and

WHEREAS, the same attributes that bring floaters, campers, and anglers to the banks of the Blackfoot River to visit have attracted Montana families to live, work, and recreate for over a hundred years; and

WHEREAS, increased use of the river has led to an increase in the frequency and intensity of conflicts among the landowner, the commercial outfitter, and the private recreationist, each of whom has a legitimate and legal interest in the Blackfoot River; and

WHEREAS, cooperation between private property owners and recreationists to resolve conflict along the Blackfoot River is not unprecedented; and

WHEREAS, the Legislature finds it appropriate and timely to direct the Department of Fish, Wildlife, and Parks te lead a comprehensive study of the Blackfoot River and its capacity to sustain recreational use, while ensuring that private property and water rights are retained with minimal conflict.

Be it enacted by the Legislature of the State of Montana:

Section 1. Blackfoot River study. (1) The department of fish, wildlife, and parks shall undertake a comprehensive study of the Blackfoot River, which may include ongoing department studies as well as findings derived from the draft Blackfoot River Recreation Management Direction of 1999.

(2) The study must address:

(a) the growing popularity of the Blackfoot River and ways to mitigate conflict among landowners, outfitters, and private recreationists;

(b) ways to protect the integrity of the river's resources, while continuing to accommodate recreational use;

(c) the amount and scope of use by recreationists that the river is capable of sustaining;

(d) easement, right-of-way, access, and trespass concerns between private landowners and public users of the river;

HeinOnline -- 1999 vol. I 828 1999

(e) the impact that heavy recreational use has on the river's fish, wildlife, streambanks, and water quality; and

(f) any other issue that the department determines needs to be examined in order to complete tbe study.

(3) During the course of the study, the department may enlist the assistance of the governor's consensus council, created pursuant to executive order, to organize discussions among all interested parties.

(4) The department shall report its findings and conclusions to the 57th legislature. The report must include but is not limited to:

(a) a suggested appropriate role for the department and tbe fish, wildlife, and parks commission in mitigating and mediatlng conflicts between recreationists and private landowners;

(b) the amount and type of use that is taking place on the river and how that use is changing from the historical recreational use of the river;

(c) the amount of use that tbe river is capable of sustaining before significant resource degradation occurs;

(d) a description of the amount, nature, and location of conflicts occurring on the river that have warranted intervention;

(e) the steps taken to ensure that landowners, outfitters, and members of the public were afforded the opportunity to comment and participate in the study; and

(f) suggosted legislation or department rules, if either are warranted, to alleviate conflict, preserve the integrity of the resource, protect private property rights, and ensure continued high-quality fishing, camping, and floating for commercial and private recreational users.

Approved April 6, 1999

CHAPTER NO. 273

[SB 478]

AN ACT REQUIRING THE BOARD OF PHARMACY TO ADOPT RULES PROVIDING FOR THE REGISTRATION OF AMBULATORY SURGICAL FACILITIES AS ENTITIES ALLOWED TO POSSESS DANGEROUS DRUGS PURSUANT TO TITLE 50, CHAPTER 32, PART 3, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, Title 50, chapter 32, MCA, requires the Department of Commerce to administer a program under rules adopted by the Board of Pharmacy providing for the registration of persons and institutions that may manufacture, distribute, or administer dangerous drugs; and

WHEREAS, it is the registration system under Title 50, chapter 32, part 3, MCA, that allows hospitals, physicians, and other porsons and health care institutions that have legitimate uses for dangerous drugs to possess or administer those drugs; and

WHEREAS, section 50-32-101(12), MCA, provides for a category of a possessor of dangerous drugs known as a "distributor", who is a person or facility

HeinOnline -- 1999 vol. I 829 1999

that receives dangerous drugs from one registered source and makes them available to another person who is also registered under the law; and

WHEREAS, institutions, such as hospitals and other health care facilities, that do not themselves prescribe or administer dangerous drugs but do receive those drugs from one source and make them available to a physician to administer to a patient are registered pursuant to Title 50, chapter 32, part 3, MCA, as a "distributor", as defined in section 50-32-101(12), MCA; and

WHEREAS, Montana is seeing the development of new and expanding types of health care facilities intended to fill the growing needs of a category of patients who require surgery but do not require hospitalization and who may therefore have surgery performed at an ambulatory surgical facility, soon to be called an "outpatient center for surgical services" pursuant to the terms of Senate Bill No. 116; and

WHEREAS, few if any of the existing ambulatory surgical facilities have themselves been registered for the possession of dangerous drugs because most existing facilities are operationally connected to hospitals or physicians who already have a registration issued by the Department of Commerce; and

WHEREAS, the rules adopted by the Board of Pharmacy pursuant to section 50-32-103(2), MCA, and administered by the Department of Commerce do not provide for the registration of ambulatory surgical facilities or outpatient centers for surgical services as distributors or any other class of registered entity; and

WHEREAS, the registration of ambulatory surgical facilities or outpatient centers for surgical services to allow the facilities or centers to make drugs available for preoperation, operation, and postoperation surgical purposes will provide health care consumers with greater options for the performance of outpatient surgery; and

WHEREAS, the registration of ambulatory surgical facilities or outpatient centers for surgical services will not increase the possibility that dangerous drugs will be used by unauthorized persons because an ambulatory surgical facility or outpatient center for surgical services must still receive those drugs from a registered distributor and because physicians or other persons registered to administer or prescribe drugs will still need to administer or prescribe the drugs possessed by an ambulatory surgical facility or outpatient facility for surgical services.

Be it enacted by the Legislature of the State of Montana:

Section 1. Board to adopt rules for registration of ambulatory surgical facilities. (1) The board shall, by October 1, 1999, adopt rules to provide for the registration of ambulatory surgical facilities pursuant to Title 50, chapter 32, part 3. The rules must categorize ambulatory surgical facilities as a "distributor" pursuant to 50-32-101(12) or other category of registrant as determined by the board.

(2) If the board determines that ambulatory surgical facilities require the services of a pharmacist in order to be registered, the board shall allow those facilities to use the services of a consulting pharmacist to satisfy the obligation imposed by the board.

(3) This section does not affect any existing requirement that persons providing dangerous drugs to an ambulatory surgical facility or persons administering dangerous drugs within or as the result of procedures performed

at an ambulatory surgical facility be registered pursuant to Title 50, chapter 32, part 3.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 50, chapter 32, and the provisions of Title 50, chapter 32, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 6, 1999

CHAPTER NO. 274

[HB 212]

AN ACT PROVIDING THAT THE GOVERNING BODY OF A POLITICAL SUBDIVISION RATHER THAN THE MANAGER OR PERSON IN CHARGE OF THE OFFICE OR WORK AREA MAY ESTABLISH SMOKE-FREE BUILDINGS OR SMOKING AND NONSMOKING AREAS; PROVIDING THAT SMOKING RESTRICTIONS IMPOSED BY THE GOVERNING BODY OF A POLITICAL SUBDIVISION APPLY EQUALLY TO EMPLOYEES OF THE POLITICAL SUBDIVISION AND THE PUBLIC; AMENDING SECTION 50-40-201, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-40-201, MCA, is amended to read:

"50-40-201. Reservation of smoking and nonsmoking areas in work areas in local government buildings. *(1)* In offices and work areas in buildings maintained by a political subdivision, except a school or community college facility designated as tobacco-free by the board of trustees of the school district or community college district, ~~in which seven or more employees of the political subdivision are employed, the manager or person in charge of the work area shall~~ *the governing body of the political subdivision shall, except as provided in subsection (2),* arrange nonsmoking and smoking areas in a convenient area.

(2) The governing body of a political subdivision may designate any building maintained by it as smoke-free.

(3) Restrictions authorized by this section and imposed by the governing body apply uniformly to the employees of the political subdivision and the public."

Section 2. Effective date. [This act] is effective July 1, 1999.

Approved April 7, 1999

CHAPTER NO. 275

[HB 458]

AN ACT ADDING ASSISTANCE WITH INTERAGENCY COORDINATION TO THE WATER POLICY DUTIES OF THE ENVIRONMENTAL QUALITY COUNCIL; TEMPORARILY REQUIRING THE COUNCIL TO COORDINATE THE COMPILATION, EVALUATION, AND DISSEMINATION OF EDUCATIONAL INFORMATION RELATED TO BEST MANAGEMENT PRACTICES FOR STREAMSIDE CORRIDORS AND RIPARIAN

HeinOnline -- 1999 vol. I 831 1999

MANAGEMENT; AMENDING SECTION 85-2-105, MCA; AND PROVIDING A TERMINATION DATE.

WHEREAS, Montana's river and stream corridors and associated riparian areas play a critical role in supporting beneficial uses of water, agricultural production, fish and wildlife values, recreation opportunities, and related economic and aesthetic benefits; and

WHEREAS, Montana's river and stream corridors are experiencing tremendous pressure from increased use and development; and

WHEREAS, owners of land along Montana's rivers and streams, water users, and recreationists recognize the importance of maintaining and conserving these corridors and would increase their efforts to do so if they had information on relevant and affordable voluntary best management practices (BMPs); and

WHEREAS, although there are a variety of efforts at the federal, state, local, and watershed levels to address river and stream corridor issues, there is a continuing need to pool scarce resources, increase effectiveness through improved coordination of policies, data, and implementation, and provide a greater opportunity for innovative solutions such as voluntary BMPs; and

WHEREAS, Montana is fortunate to have a successful BMP and streamside management policy model that was developed by Montana's forestry community, with the assistance of the Environmental Quality Council, that can serve as an example for other river and streamside land uses; and

WHEREAS, the Montana Legislature's bipartisan Environmental Quality Council has a 28-year history of helping Montanans constructively solve complex and divisive natural resource issues and has the capability and the unique perspective to facilitate the compilation and dissemination of BMP information for river and streamside land uses and to assist with interagency coordination.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-2-105, MCA, is amended to read:

"85-2-105. Environmental quality council — water policy duties. (1) The environmental quality council shall meet as often as necessary, including during the interim between sessions, to perform the duties specified within this section.

(2) On a continuing basis, the environmental quality council shall:

(a) advise the legislature on the adequacy of the state's water policy and on important state, regional, national, and international developments that affect Montana's water resources;

(b) oversee the policies and activities of the department, other state executive agencies, and other state institutions as those policies and activities affect the water resources of the state;

(e) assist with interagency coordination related to Montana's water resources; and

~~(c)~~*(d)* communicate with the public on matters of water policy as well as the water resources of the state.

(3) On a regular basis, the environmental quality council shall:

(a) analyze and comment on the state water plan required by 85-1-203, when filed by the department;

(b) analyze and comment on the report of the status of the state's renewable resource grant and loan program required by 85-1-621, when filed by the department;

(c) analyze and comment on water-related research undertaken by any state agency, institution, college, or university;

(d) analyze, verify, and comment on the adequacy of and information contained in the water information system maintained by the natural resource information system under 90-15-305; and

(e) report to the legislature as provided in 5-11-210.

(4) The legislative services division shall provide staff assistance to the environmental quality council to carry out its water policy duties."

Section 2. Streamside corridor and riparian management — coordination and dissemination of best management practice information. Consistent with its authorities set forth in Titles 75 and 85, the environmental quality council, in cooperation with affected and interested stakeholders, shall:

(1) review and summarize state, federal, and local policies and programs related to streamside corridor and riparian management in Montana and identify overlapping or conflicting goals or implementation mechanisms;

(2) coordinate with existing groups to evaluato existing streamside and riparian hest management practices and existing educational and informational programs regarding the dissemination of information regarding voluntary BMPs, to ensure coordination in water quality protection efforts and consistency with 75-5-702 and 75-5-703; and

(3) coordinate with others to develop cost-effective mechanisms to compile and disseminate the conclusions from activities conducted pursuant to subsections (1) and (2) and in doing so, maximize the likely implementation of the practices.

Section 3. Termination. [Section 2] terminates December 31, 2000.

Approved April 8, 1999

CHAPTER NO. 276

[SB 210]

AN ACT CLARIFYING THE PRACTICE OF HOME INSPECTIONS; SETTING FORTH GUIDELINES AND DEFINITIONS; LISTING EXCLUSIONS; SPECIFYING A REQUIREMENT FOR A WRITTEN HOME INSPECTION REPORT; IDENTIFYING PROHIBITED PRACTICES; AND SUBJECTING HOME INSPECTION SERVICE PROVIDERS WHO VIOLATE HOME INSPECTION TRADE PRACTICES LAWS TO UNFAIR TRADE PRACTICES PROVISIONS.

Be it enacted by the Legislature of the State of Montana:

HeinOnline -- 1999 vol. I 833 1999

Section 1. Short title. [Sections 1 through 5] may he cited as the "Home Inspection Trade Practices Act".

Section 2. Definitions. As used in [sections 1 through 5], the following definitions apply:

(1) "Home inspection" means a physical examination of a residential dwelling to identify major defects in various attributes of or attachments to the dwelling, including mechanical, electrical, and plumbing systems in addition to structural and other essential components. Home inspections are performed for compensation and employ visual observation and the testing of user controls but not mathematical or specialized engineering sciences.

(2) "Home inspection report" is a written document prepared by a home inspector for a client and issued to the client in exchange for compensation after a home inspection has been completed. The report must clearly identify and describe:

(a) the inspected systems, structures, and other relevant components of the dwelling;

(b) any major visihle defects in the inspected systems, structures, and other relevant components of the dwelling; and

(c) any recommendations for further evaluation of the property by other appropriate persons.

(3) "Home inspector" is a porson who performs a home inspection for compensation.

Section 3. Exclusions. The provisions of [sections 1 through 5] do not apply to a porson:

(1) inspecting a residential dwelling on behalf of a bank, a savings and loan association, or a credit union, unless otherwise required by federal law or regulation;

(2) employed by the state or a local government to enforce building codes;

(3) licensed in Montana and acting within the scope of the person's occupation or profession as:

(a) an architect;

(b) a professional engineer;

(c) an electrician;

(d) a master plumber;

(e) a real estate broker, broker-salesperson, or salesperson;

(f) a real estate appraiser or a certified general or residential real estate appraiser;

(g) an insurance adjuster;

(h) a pesticide applicator; or

(i) a licensed property manager.

Section 4. Requirement — prohibitions. (1) A home inspector shall issue a home inspection report to a client after completing a home inspection unless the client agrees in writing to release the home inspoctor from this obligation.

HeinOnline -- 1999 vol. I 834 1999

(2) A home inspector may not:

(a) disclose information concerning the results of a home inspection without the written approval of the home inspector's client or the client's representative;

(b) accept compensation from more than one party with a financial interest in the residential dwelling without written approval from all parties with a financial interest in the residential dwelling;

(c) accept a commission or allowance, directly or indirectly, from another person or business entity associated with the client in connection with work for which the home inspector is respensible to tbe client;

(d) refuse or otherwise fail to disclose promptly to a client information about any business interest or relationship of the home inspector that may affect the client in connection with a home inspection.

Section 5. Unfair trade practice. A person who provides home inspection services or purports to be a home inspector who does not coinply with the provisions of [sections 1 through 5] is engaging in an unfair trade practice and is subject to the provisions of Title 30, chapter 14, part 1.

Section 6. Codification instruction. [Sections 1 through 5] are intended to be codified as an integral part of Title 30, chapter 14, and the provisions of Title 30, chapter 14, apply to [sections 1 through 5].

Approved April 7, 1999

CHAPTER NO. 277

[SB 276]

AN ACT ALLOWING AN APPLICATION FOR AN EASEMENT ACROSS STATE LAND TO BE ACCOMPANIED BY A SURVEY PREPARED USING DATA COLLECTED THROUGH THE USE OF ALTERNATIVE SURVEY METHODS; AND AMENDING SECTION 77-2-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 77-2-102, MCA, is amended to read:

"77-2-102. Application for easement. (1) Application for an easement on state land must be made to the department. Except as provided in ~~subsection~~ *subsections* (3) *and (4)*, the application must describe the propesed right-of-way according to survey, show the necessity for the propesed highway or street or other easement, and give any additional information that the department requires.

(2) This application must be accompanied by two exact copies of tbe official plat of the proposed highway, street, or other easement, ~~duly~~ verified by the affidavit of the engineer or surveyor who prepared the application. These plats must show the quantity of land taken by tbe proposed highway or street or other easement for each 40-acre tract or government lot of state land over or through which it passes and also the amount of land remaining in each portion of that 40-acre tract or government lot. When considered necessary by the department, these plats inust sbow all these facts for smaller subdivisions as the circumstances may render desirable for the state.

HeinOnline -- 1999 vol. I 835 1999

(3) The application must include the affidavit of a licensed engineer or professional surveyor stating that the methodology used is known to be accurate to within 5 meters. The survey must be tied to an established section corner or 1/4 corner monument. The department may request greater accuracy if the department determines that the information is needed to adequately describe the easement.

~~(3)~~*(4)* If the purpose of the right-of-way applied for is the transmission or distribution of electric energy or the construction and operation of pipelines or telephone, telegraph, or radio systems, the plats and measurements need not be given. An exact geographical survey is not required, but the application must include the description of the location of the center line of the right-of-way that refers to an established monument within a filed corner recordation form, certificate of survey, or subdivision plat. *The accuracy requirements of subsection (3) must be met.* The entire right-of-way may be applied for in one application with only one plat of the entire right-of-way required. An archaeological survey is not required if, in the opinion of the department, ~~no~~ heritage ~~properties~~ *property* would *not* be impacted."

Approved April 8, 1999

CHAPTER NO. 278

[SB 362]

AN ACT AUTHORIZING THE USE OF A SURETY BOND IN ADDITION TO THE OTHER METHODS OF GUARANTEE TO ENSURE THE PROPER CLOSURE OF OIL AND GAS WELLS; AND AMENDING SECTION 82-11-163, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-11-163, MCA, is amended to read:

"82-11-163. Landowner's bond on noncommercial well. If the owner of the surface land upon which has been drilled a well that fails to produce oil or gas in commercial quantities acquires the well for domestic purposes, the board may cancel and absolve the bond required in 82-11-123 upon its acceptance of surety in the form of a certificate of deposit, *or a surety bond* in the amount of $5,000 for a single well, or in the amount of $10,000 for more than one well, or in the form of a property bond of two times the value of the required certificate of deposit *or surety bond*. The release of the certificate of deposit, *surety bond,* or property bond must be conditioned on proof provided by the landowner that the well has been properly plugged."

Section 2. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Approved April 8, 1999

HeinOnline -- 1999 vol. I 836 1999

CHAPTER NO. 279

[SB 412]

AN ACT GENERALLY REVISING THE REQUIREMENTS FOR CONTROL AND MANAGEMENT OF TIMBER SLASH; CLARIFYING THAT FIRE HAZARD REDUCTION AGREEMENTS APPLY ONLY TO PRIVATE FOREST LANDS; REQUIRING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO ADOPT FIRE HAZARD REDUCTION RULES; REVISING THE BOND PROVISION AND RELEASE PROCEDURES; AMENDING SECTIONS 76-13-401, 76-13-403, 76-13-408, 76-13-409, 76-13-410, 76-13-411, 76-13-412, 76-13-414, AND 76-13-415, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY PROVISION.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-13-401, MCA, is amended to read:

"76-13-401. Definitions. As used in this part, the following definitions apply:

~~(1) "Board" means the board of land commissioners provided for in Article X, section 4, of the Montana constitution.~~

~~(2)~~*(1)* ~~"Certification~~ *"Certificate* of clearance" means a ~~certification~~ *certificate* issued by the department acknowledging that the fire hazard has been reduced or managed in accordance with this part and the fire hazard reduction agreement or agreements.

~~(2)~~*(2)* "Contractor" means the person who executes the fire hazard reduction agreement and is responsible to fulfill the obligations established by the agreement.

~~(4)~~*(3)* "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(4) "Exemption certificate" means an exemption from the provisions of this part that must be granted by the department for the harvest of merchantable trees within the boundaries of an incorporated city or town.

(5) "Fire hazard" means slash and debris resulting from timber cutting, timber stand improvement, or right-of-way clearing operations that produce a cover of flammable material in which fire could spread through a cutting or adjacent area.

(6) "Fire hazard reduction agreement" means a contract made to ensure compliance with this part and with the rules adopted under 76-13-403 for fire hazard reduction or management *on private forest lands.*

(7) "Fire hazard reduction or management" means the abatement of a fire hazard *on private forest lands* by methods that include but are not limited to separation, removal, scattering, lopping, crushing, piling and burning, broadcast burning, burying, or chipping.

(8) "Forest product" means trees or their component parts, including but not limited to logs, poles, branches, or bark.

(9) "Master fire hazard reduction agreement" means a fire hazard reduction agreement between the department and persons engaged in continuing cutting

HeinOnline -- 1999 vol. I 837 1999

operations of sufficient numher and size to warrant covering these operations under a single agreement and a single hond.

(10) "Person" ıneans an individual, association, partnership, corporation, estate, or any other entity.

(11) "Private forest lands" means all lands of whatever character containing merchantable timber that are not owned by the state, a political subdivision of the state, the United States, any agency of the United States, or an Indian tribe.

~~(11)~~*(12)* "Purchaser" means a person who purchases or contracts to purchase any forest products cut froın private forest lands within the state. The term includes persons who purchase products manufactured on the cutting area."

Seetion 2. Section 76-13-403, MCA, is amended to read:

"76-13-403. Supervision by department. The department ~~may~~ *shall* adopt and enforce rules *by October 1, 2000,* to supervise and inspect the fire hazard reduction or management of all fire hazards created by forest products harvesting, timber stand improvement, and right-of-way clearing on private *forest* ~~land~~ *lands* in the state, *recognizing the benefits of slash retention.*"

Section 3. Section 76-13-408, MCA, is amended to read:

"76-13-408. Fire hazard reduction agreement and bond — *bond release and penalty.* (1) Before cutting any forest product, constructing or reconstructing any road in contemplation of cutting any forest product, or conducting timber stand improvement, such as but not limited to *precommercial* thinning, weeding, or pruning, upon private *forest* lands within the state, the person conducting the work *must be issued an exemption certificate by the department or* shall provide for the reduction or management of the fire hazard to be created by entering into a fire hazard reduction agreement or a master fire hazard reduction agreement with the department, providing for the full and faithful compliance with all requirements under this part and the faithful reduction or management of the fire bazard in tbe ınanner prescribed by law and by rules adopted under this part.

(2) Either the person conducting the work or the purchaser, as provided in 76-13-409(2), shall post a bond to the state in a form and for an amount as ınay be prescribed by the department, hut the amount ınay not exceed $6 for each 1,000 board feet (log scale) or the equivalent if forest products other than logs are cut. *Bond amounts for master fire hazard reduction agreements are calculated to cover the potential cost to the department for fire hazard abatement in case of default and are based on the average annual volume of uncompleted abatement. Master fire hazard reduction agreement bonds are to be administered as nonsite-specific umbrella bonds, for which the entire bond or any portion of the bond may be collected to pay for unabated fire hazards on any or all sites covered by the bond. The department shall review master fire hazard reduction agreement bond amounts at least annually. The bonds must be adjusted according to the volume of timber harvested and the level of compliance of the bond provider.*

~~(3) Either the person conducting the work or the purchaser, as provided in 76-13-409(2), shall pay 15 cents for each 1,000 board feet (log scale) or equivalent measure if forest products other than logs are cut. The assessment may not exceed $20,000 a year. The full amount of this money must be deposited in the forestry extension service account provided for in 76-13-415.~~

~~(4)~~*(3)* The agreement must provide that:

HeinOnline -- 1999 vol. I 838 1999

(a) all fire hazard reduction or management work comprising nonburning methods and preparations for burning must be completed within 18 months of commencement of cutting in the area covered by the agreement; and

(b) all burning work must be completed as specified in the agreement and in compliance with rules adopted under this part.

~~(5)~~*(4)* The bond must be released upon the issuance of the certificate of clearance. *At the request of the fire hazard reduction agreement holder, cash bonds for fire hazard reduction agreements exceeding 200,000 board feet, or the equivalent, must be partially released upon satisfactory completion of slash piling if the fire hazard reduction agreement holder has a record of compliance with the provisions of 76-13-407 or this section. The department may inspect the sites for which release or partial release is being requested, or it may rely on the submittal of a signed affidavit and relevant site photographs provided by the person posting the bond. A person that submits a fraudulent affidavit or photographs is subject to the penalty provisions of 45-7-202, may have other fire hazard reduction agreements revoked, or may be denied the issuance of fire hazard reduction agreements in the future.*"

Section 4. Section 76-13-409, MCA, is amended to read:

"**76-13-409. Duty of purchaser to ensure compliance — statement — bond.** (1) The initial purchaser of forest products ~~which~~ *that* have been cut or are about to be cut from any private *forest* lands within the state shall, before making the purchase or contract to purchase, determine that the person engaged or about to engage in the cutting of these forest products has provided for the reduction or management of the fire hazard by entering into a fire hazard reduction agreement *or that the person has been issued an exemption certificate* as provided in 76-13-408.

(2) The purchaser shall withhold sufficient money to meet the requirements of the bond provided for in 76-13-408 plus the fees for administration, inspection, and enforcement by the department as provided in the *fire* hazard reduction agreement. The purchaser shall transmit all money and fees that are withheld and a report of volumes of products purchased to the department on or before the 15th day of the following month, clearly identifying by number the fire hazard reduction agreement to which the withheld money, fees, and product volumes pertain. The purchaser shall keep accurate records of the purchase and the amounts withheld, which may be inspected by the department at any reasonable time.

(3) If forest products are not received or purchased in a given month, a report showing a zero balance and stating that products were not purchased must be submitted to the department.

(4) The department may require the purchaser to post a bond to the state in a form and for an amount as may be prescribed by the department to ensure faithful compliance with this part."

Section 5. Section 76-13-410, MCA, is amended to read:

"**76-13-410. Failure to comply.** (1) If a person fails, refuses, or neglects to properly reduce or manage the fire hazard in accordance with the requirements of 76-13-407 and 76-13-408, ~~he~~ *the person* may be enjoined from further cutting, clearing, and construction operations until *the department has found the person to be in compliance with* 76-13-407 and 76-13-408 ~~have been complied with~~. The

HeinOnline -- 1999 vol. I 839 1999

department may initiate the proceedings and may obtain a temporary restraining order, injunction, or writ of mandate. The proceedings ~~shall~~ *must* be conducted in the district court of the county where the land is located.

(2) If a person fails to comply with 76-13-407 or 76-13-408 and fails to comply within 30 days after being notified to do so by the department, the department may complete, direct, or authorize the fire hazard reduction or management at the expense of the contractor or of the owner of the timber or other forest products cut or produced from the land upon which the unabated fire hazard remains.

(3) The cost and expense of the fire hazard reduction or management work, plus 20% of the cost and expense of the work as a penalty, ~~constitutes~~ *constitute* a lien upon the forest products cut or produced from the land and upon the real and personal property of the contractor. If payment of the sum demanded is not made to the department within ~~10~~ *15* days of its written demand, *the performance bond required by 76-13-408 and 76-13-409, upon notice to the contractor, must be automatically forfeited to the extent needed to cover the cost and expenses of reducing or managing the fire hazard, plus a penalty of 20% of the cost and expenses. If the bond is insufficient to cover the cost, expenses, and penalty,* the department ~~shall~~ *may* bring legal action on behalf of the state to recover the ~~debt~~ *cost, expenses, and penalty.*

(4) In addition to other remedies provided in this part, the department may, after notice, require a person to show cause why the department should not withhold the issuance of any further fire hazard reduction agreement or exemption certificate to a person that:

(a) harvests timber without a valid fire hazard reduction agreement; or

(b) has forfeited the performance bond on a fire hazard reduction agreement within the 2 preceding years and fails, refuses, or neglects to properly reducc or manage the fire hazard in accordance with 76-13-407 or 76-13-408 within 30 days after being notified by the department.

(5) If the person fails to show sufficient cause as required by subsection (4), the department may withhold the issuance of any further fire hazard reduction agreement or exemption certificate for a period not to exceed 3 years."

Section 6. Section 76-13-411, MCA, is amended to read:

"76-13-411. ~~Certification~~ *Certificate* of clearance. When the department makes a determination of faithful compliance by the contractor with this part, the rules adopted under 76-13-403, and the *fire* hazard reduction agreement, the contractor must be issued a ~~certification~~ *certificate* of clearance by tbe department and be relieved of any furtber liability or responsibility for fire hazard reduction or management under the fire hazard reduction agreement."

Section 7. Section 76-13-412, MCA, is amended to read:

"76-13-412. Violations. A person convicted of violating this part, *except 76-13-408(4),* is guilty of a misdemeanor and shall be fined not less than $100 or more than $1,000."

Section 8. Section 76-13-414, MCA, is amended to read:

"76-13-414. Fees. (1) In addition to any bond, the department shall charge the contractor fees for administration, inspoctions, and enforcement work

HeinOnline -- 1999 vol. I 840 1999

conducted in the exercise of its duties under this part. The fees must be deposited in the state special revenue fund to the credit of the department.

(2) (a) The fee for a fire hazard reduction agreement is $25 and must be collected by the department upon issuance of the agreement.

(b) In addition, a fee of 60 cents for each 1,000 board feet (log scale) must be charged or an equivalent fee must be charged if products other than logs are cut. This fee must be withheld by the purchaser as provided in 76-13-409(2), except that any fee money withheld for product volumes exceeding 500,000 board feet ~~per~~ *for each* agreement in a calendar year must be returned to the contractor by the department.

(c) Either the person conducting the work or the purchaser, as described in 76-13-409, shall pay 15 cents for each 1,000 board feet (log scale) or the equivalent measure if forest products other than logs are cut. The assessment may not exceed $20,000 a year. The full amount of this money must be deposited in the forestry extension service account provided for in 76-13-415.

(3) (a) The fee for master fire hazard reduction agreements must be equal to 100% of the department's actual costs incurred in the *direct* administration, inspection, and enforcement of each agreement, and the department shall *submit a detailed* bill *to* the contractor annually to collect the fees.

(b) In addition, each contractor with a master fire hazard reduction agreement shall pay to the department 15 cents for each 1,000 board feet (log scale) or equivalent measure if forest products other than logs are cut. The assessment may not exceed $20,000 a year for each master fire hazard ~~attachment~~ *agreement*. The full amount of this money must be deposited in the forestry extension service account provided for in 76-13-415.

(c) The fee required under subsection (3)(b) must be paid annually in conjunction with the fee paid under subsection (3)(a). The department may, in its discretion, conduct an audit to determine the volume of forest products harvested by a contractor. If the department conducts an audit, the contractor shall cooperate and make available to the department all requested records, inventories, and other information relevant to the audit."

Section 9. Section 76-13-415, MCA, is amended to read:

"76-13-415. Forestry extension service account — pnrpose — appropriation. (1) There is a forestry extension service account in the current restricted fund provided for in 17-2-102.

(2) There must be deposited in the account:

(a) all revenue from the fire hazard reduction agreement provided for in ~~76-13-408(3)~~ *76-13-414(2)(c)*;

(b) all revenue from the master fire hazard reduction agreement provided for in 76-13-414(3)(b); and

(c) money received by the department in the form of legislative appropriations, reimbursements, gifts, federal funds, or appropriations from any source intended to be used for the purposes of this account.

(3) Money in the account is available to the Montana university system by appropriation for the uses set forth in subsection (4). Any unencumbered and unexpended balance ~~of this account~~ remaining *in this account* at the end of a

HeinOnline -- 1999 vol. I 841 1999

fiscal year does not lapse hut must be carried forward for the purposes of this section until expended or appropriated.

(4) Except as provided in subsection (5), money in the account may be used by the university system only to fund forestry services through the Montana cooperative extension service of Montana state university-Bozeman. The forestry services must be conducted at Montana state university-Bozeman, the university of Montana-Missoula, and Flathead Valley community college.

(5) The use of money in this account by the Montana university system is contingent upon the university system funding the extension service's forestry and natural resources program at a biennial level of at least $108,000 from sources otber than the account."

Section 10. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 11. Effective date. [This act] is effective July 1, 1999.

Section 12. Applicability. [This act] applies to any existing fire hazard agreement when violations of the existing fire hazard agreement have been identified by the department.

Approved April 8, 1999

CHAPTER NO. 280

[SB 452]

AN ACT CLARIFYING SECURITY INTERESTS IN LIQUOR LICENSES; REQUIRING THAT THE DEPARTMENT OF REVENUE BE GIVEN NOTICE WITHIN 7 DAYS OF A DEFAULT OF A SECURITY INTEREST IN A LIQUOR LICENSE; PROVIDING FOR THE TRANSFER OF OWNERSHIP OR LAPSE TO NONUSE STATUS OF DEFAULTED LIQUOR LICENSES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Security iuterest in liquor license. (1) (a) A security interest in a liquor license is an interest in the liquor license that secures payment or performance of an obligation. A contract for the sale of a liquor license, including a provision allowing the seller to retain an ownership interest in the license solely for the purpose of guaranteeing payment for the license, may, for the purposes of this section, be treated as a security interest.

(b) For the purposes of this section:

(i) "default" means that:

(A) the defaulting party has acknowledged in writing pursuant to the terms of a written security agreement or contract for sale that the defaulting party no longer has any ownership interest or any other rights to possess or control the liquor license; or

(B) a court of competent jurisdiction has made an order foreclosing all of the defaulting party's interests in the license; and

(ii) "liquor license" means a license issued under Title 16, chapter 4.

(2) The department, after review of the underlying documents creating the security interest, may approve a transfer of ownership of a liquor license subject to a security interest as provided in subsection (1). A person holding a security interest may not have any control in the operation of the business operated under a license subject to a security interest nor may that person share in the profits or the liabilities of the business other than the payment or performance of the licensee's obligation under a security agreement.

(3) (a) Within 7 days of a default by a licensee, the person holding the security interest shall give notice to the department of the licensee's default and either apply to have the license transferred to that person, subject to that person meeting the requirements of 16-4-401 and all other applicable provisions of this code, or the person shall place the license on nonuser status. Upon receipt of an application to transfer the license, the department may, pursuant to 16-4-404, grant the applicant temperary authority to operate the license. If the person holding the license places the license on nonuser status, the person shall transfer ownership of the license within 180 days from the date on which the notice of the default was given to the department. The operation of a business under a license by a person holding a security interest for more than 7 days after default of the licensee or without temporary authority issued by the department must be considered to be a violation of this code and constitutes grounds for the department to either deny an application for transfer of the license or for the revocation of the license pursuant to 16-4-406.

(b) If the person holding the security interest does not qualify for or cannot qualify for ownership of a liquor license under 16-4-401, the secured party shall transfer ownership of the liquor license within 180 days of the notice of the default of the licensee.

(c) The department, upon a showing of good cause, may in its discretion extend the time for sale of the license for an additional period of up to 180 days.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 16, chapter 4, and the provisions of Title 16, chapter 4, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 7, 1999

CHAPTER NO. 281

[SB 468]

AN ACT TEMPORARILY CLOSING THE CLARK FORK RIVER BASIN TO FURTHER APPROPRIATIONS AND RESERVATIONS FOR CONSUMPTIVE USES, EXCEPT FOR GROUND WATER, DOMESTIC, MUNICIPAL, LIVESTOCK, AND EMERGENCY APPROPRIATIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Clark Fork River temporary basin closure. (1) Unless the context requires otherwise, in this section, the following definitions apply:

HeinOnline -- 1999 vol. I 843 1999

(a) "Application" means an application for a beneficial water use permit pursuant to 85-2-302 or an application for a state water reservation pursuant to 85-2-316.

(b) "Clark Fork River basin" means the drainage area of the Clark Fork River and its tributaries above the Noxon Rapids hydropower facility.

(2) As provided in 85-2-319 and subject to the provisions of subsection (3) of this section, the department may not process or grant an application for a permit to appropriate water for consumptive use or for a reservation to reserve water for consumptive use within the Clark Fork River basin, except for:

(a) an application for a permit to appropriate ground water;

(b) an application for a permit to appropriate water for domestic use, stock use, or municipal supply; or

(c) temporary emergency appropriations as provided for in 85-2-113(3).

(3) The provisions of [section 1 of House Bill No. 429], the basin closure in the Upper Clark Fork pursuant to 85-2-335 through 85-2-337, and all administrative closures in the Clark Fork River basin supercede the provisions of this section.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 85, chapter 2, part 3, and the provisions of Title 85, chapter 2, part 3, apply to [section 1].

Section 3. Coordination instruction. If House Bill No. 429 is not passed and approved, then the bracketed language in [section 1(3) of this act] is void.

Seetion 4. Effective date. [This act] is effective on passage and approval.

Section 5. Applicability. [This act] applies to all applications received by the department of natural resources and conservation after [the effective date of this act].

Section 6. Termination. [This act] terminates February 28, 2001.

Approved April 8, 1999

CHAPTER NO. 282

[SB 471]

AN ACT REQUIRING THAT RESPONSES TO REQUESTS FOR BIDS FOR CONSTRUCTION CONTRACTS WITH STATE AGENCIES INCLUDE BID SECURITY FROM AN INDIVIDUAL AUTHORIZED TO SUBMIT THAT SECURITY, UNIT PRICE, AND A SIGNATURE OF THE INDIVIDUAL AUTHORIZED TO SUBMIT THE BID; AMENDING SECTION 18-2-302, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 18-2-302, MCA, is amended to read:

"18-2-302. Bid security ~~—waiver~~ — *waiver — authority to submit.* ~~(1) Except as provided in subsection (2), each~~ *(1) Except as provided in subsection (2), each* bid must be accompanied by bid security in the amount of 10% of the bid. The security may consist of cash, a cashier's check, a certified check, a bank

money order, a certificate of deposit, a money market certificate, or a bank draft. The security must be:

~~(a)~~*(a)* drawn and issued by a federally chartered or state-chartered bank or savings and loan association that is insured by or for which insurance is administered by the federal deposit insurance corporation;

~~(b)~~*(b)* drawn and issued by a credit union insured by the national credit union share insurance fund; or

~~(c)~~*(c)* a bid bond or bonds executed by a surety company authorized to do business in the state of Montana.

~~(2) The state or other governmental entity may waive the requirements for bid security on building or construction projects, as defined in 18-2-101, that cost less than $25,000.~~

(2) The state or other governmental entity may waive the requirements for bid security on building or construction projects, as defined in 18-2-101, that cost less than $25,000.

(3) The bid security must be signed by an individual authorized to submit the security by the corporation or other business entity on whose behalf the security is submitted. If the request for bid or other specifications provided by the state or other governmental entity specify the form or content of the bid security, the security submitted must comply with the requirements of that specification."

Section 2. Construction bids — minimum requirements — effect of failure to comply. (1) Each bid communicated to a state agency for the construction of a building must contain or be accompanied by the following items that may not be waived by the state agency:

(a) bid security, as required by 18-2-302;

(b) the unit price for each item required to be bid by unit price; and

(c) the signature of an individual authorized to submit the bid and authorized by that submission to agree to perform the contract if the bid is accepted. If the request for bid or other specifications provided by the state agency specify the individual required to submit the bid, the bid must comply with that requirement.

(2) The unit price must be expressly stated in the bid and may not have to be calculated by the state agency by dividing the total of the unit prices by the number of units specified or required.

(3) A bid that does not include the items required by subsection (1) as part of or along with the bid may not be accepted by the state agency.

(4) The following definitions apply to this section:

(a) "Building" has the meaning provided in 18-2-101.

(b) "Construction" has the meaning provided in 18-2-101.

(c) "State agency" means a department, board, commission, authority, or office of a branch of state government, including the board of regents and the Montana university system.

(d) "Unit price" means the price of lumber, concrete, earth, pipe, or other construction item, activity, or material for which the price is required by the request for bids to be bid on the basis of that item, a linear foot, square foot,

HeinOnline -- 1999 vol. I 845 1999

square yard, cubic yard, activity an hour or other measurement of time, or other standard unit of measurement for that material, item, or activity.

Section 3. Bids for contracts let by commission to contain security, unit price, and signature. Each bid communicated to the commission in response to a request for bids required by this part must comply with the unit price and signature requirements of [section 2] and the bid security requirements of 60-2-113 in order for the bid to be accepted.

Section 4. Codification instruction. (1) [Section 2] is intended to be codified as an integral part of Title 18, chapter 2, part 3, and the provisions of Title 18, chapter 2, part 3, apply to [section 2].

(2) [Section 3] is intended to be codified as an integral part of Title 60, chapter 2, part 1, and the provisions of Title 60, chapter 2, part 1, apply to [section 3].

Section 5. Applicability. [This act] applies to bids made in response to requests for bids made after October 1, 1999.

Approved April 8, 1999

CHAPTER NO. 283

[SB 501]

AN ACT CREATING A MAUSOLEUM-COLUMBARIUM ACT PROVIDING FOR THE ESTABLISHMENT AND REGULATION OF NONPROFIT MAUSOLEUM-COLUMBARIUM AUTHORITIES IN THIS STATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 27] may be cited as the "Mausoleum-Columbarium Act".

Section 2. Definitions. For the purposes of [sections 1 through 27], the following definitions apply:

(1) "Columbarium" means a structure, room, or other space in a permanent building or outdoor structure containing niches for permanent inurnment of cremated remains in a place used or intended to be used and dedicated for interment purposes.

(2) "Cremated remains" means all human remains recovered after the completion of cremation, including pulverization, that leaves only bone fragments that have been reduced to unidentifiable dimensions.

(3) "Crypt" or "vault" means a space in a mausoleum of sufficient size used or intended to be used to entomb uncremated human remains.

(4) "Directors" means the board of directors, board of trustees, or other governing body of a mausoleum-columbarium authority.

(5) "Entombment" means the placement of human remains in a crypt or vault.

(6) "Human remains" or "remains" means the body of a deceased person and includes the body in any stage of decomposition .

HeinOnline -- 1999 vol. I 846 1999

(7) "Interment" means the disposition of human remains by cremation and inurnment or entombment in a place used or intended to be used and dedicated for interment purposes.

(8) "Interment space" means any space in a crypt, vault, or niche of sufficient size for the entombment or inurnment of the remains of one human being.

(9) "Inurnment" means placing cremated remains in an urn or other permanent container and placing it in a niche.

(10) "Mausoleum" means a permanent building or outdoor structure suitable for the entombment of human remains in crypts or vaults in a place used or intended to be used and dedicated for interment purposes.

(11) "Mausoleum-columbarium" means a building or structure containing both a mausoleum and a columbarium.

(12) "Mausoleum-columbarium authority" means any corporation, not for profit, owning, controlling, or operating lands, buildings, or structures used or intended to be used and dedicated for interment purposes by entombment or inurnment but does not refer to any corporation, for profit or not for profit, or any association, corporation sole, or other person owning or controlling cemetery lands or property, including mausoleums or columbariums where interment is also made by ground burial.

(13) "Niche" means a space in a columbarium or urn garden used or intended to be used for inurnment of cremated human remains.

(14) "Plot" or "interment plot" means space in a mausoleum or columbarium used or intended to be used for the interment of human remains. The terms include one or more than one adjoining crypts or vaults or one or more than one adjoining niches.

(15) "Plot owner" or "owner" means a person who is on record as owner of an interment in the office of a mausoleum-columbarium authority.

Section 3. Exemptions and limitations on applicability. (1) The provisions of [sections 1 through 27] relating to private, nonprofit mausoleums and columbariums do not apply to any of the following:

(a) a religious corporation, church, religious society or denomination, or corporation sole administering temporalities of any church or religious society or denomination or any cemetery, mausoleum, or columbarium organized, controlled, and operated by a religious corporation, church, religious society or denomination, or corporation sole; or

(b) any county, town, or city cemetery, mausoleum, or columbarium.

(2) The provisions of [sections 1 through 27] do not affect the corporate existence or rights or powers of any cemetery corporation organized under the laws of this state in which a mausoleum or columbarium is situated, maintained, or operated in conjunction with a cemetery for the burial of dead human remains by ground interment. [Sections 1 through 27] apply only to mausoleums or columbariums owned, operated, or controlled by a nonprofit mausoleum-columbarium authority organized and govorned as provided in [sections 1 through 27] and owning, operating, or controlling lands, buildings, and structures solely for the entombment and inurnment of human remains.

HeinOnline -- 1999 vol. I 847 1999

Section 4. Incorporation required to trausact business. It is unlawful to engage in the business of a mausoleum-columbarium authority in this state except as an organized nonprofit corporation.

Section 5. General powers. (1) A mausoleum-columbarium authority has the same powers granted by law to nonprofit corporations in general, including the power to acquire property by purchase, donation, or devise.

(2) The powers, duties, and privileges conferred and imposed on a mausoleum-columbarium authority under the laws of this state are enlarged as each particular case may require to conform to the provisions of [sections 1 through 27].

(3) A nonprofit corporation organized under the laws of this state and authorized by its articles of incorporation to do so may as a mausoleum-columbarium authority establisb, maintain, manage, operate, or improve a mausoleum or columbarium.

(4) A mausoleum-columbarium authority may:

(a) adopt, amend, add to, revise, or modify and enforce rules for the use, care, control, management, restriction, and protection of all or any part of its mausoleum or columbarium;

(b) restrict and limit the use of all property within its mausoleum or columbarium;

(c) regulate the uniformity, class, and kind of all markers, monuments, and other structures within the mausoleum-columbarium;

(d) regulate or prohibit the erection of monuments, markers, effigies, and structures within any portion of the mausoleum-columbarium grounds;

(e) regulate or prevent the introduction or care of plants or shrubs within the mausoleum-columbarium grounds;

(f) prevent interment in any part of the mausoleum or columbarium of human remains not entitled to interment and prevent the use of interment plots for purposes violative of its restrictions or rules;

(g) regulate the conduct of persons and prevent improper assemblages in the mausoleum-columbarium or on the grounds; and

(h) make and enforce rules for all other purposes considered necessary by the mausoleum-columbarium authority for the proper conduct of the business of the mausoleum or columbarium, for the transfer of any plot or the right of interment, and for the protection and safeguarding of the premises and the principles, plans, and ideals on which the mausoleum or columbarium is conducted.

(5) Rules adopted pursuant to this section must be subject to inspection in the office of the mausoleum-columbarium authority.

Section 6. Disposition of remains — liability. (1) The right to control the disposition of the remalns of a deceased person, unless other directions have been given by the decedent, vests in, and the duty of interment and the liability for the reasonable cost of interment of the remains devolves upon, the following in the order named:

(a) a spouse;

(b) a majority of adult children;

HeinOnline -- 1999 vol. I 848 1999

(c) a parent;

(d) a close relative of the decedent; or

(e) in the absence of a person listed in subsections (3)(a) through (3)(d), a personal representative, a public administrator, the deceased through a preneed autborization, or others as designated hy the board of funeral service hy rule.

(2) The liability for tbe reasonable cost of interment devolves jointly and severally upon all kin of tbe decedent listed in subsection (1) in the same degree of kindred and upon the estate of the decedent.

(3) A person signing an authorization for the interment of any remains warrants the truthfulness of any fact set forth in the authorization, the identity of the person whose remains are sought to be interred, and the person's authority to order the interment. Tbe person signing the authorization is personally liable for all damage occasioned by or resulting from breach of the warranty.

(4) The mausoleum-columbarium authority may inter any remains upon the receipt of a written authorization of a person representing to be a person who has acquired the right to control the disposition of the remains. A mausoleum-columbarium authority is not liable for interring pursuant to the authorization unless it has actual notice that presentation is untrue.

Section 7. Limitations on actions — exemptions from liability. An action may not lie against any mausoleum-columbarium authority relating to the remains of a person that have been left in its possession for a period of 2 years unless a written contract has been entered into with the mausoleum-columbarium authority for care of the remains or unless permanent interment has been made. This section may not be construed as an extension of the existing statute prescribing the period within which an action based upon a tort must be commenced. A licensed mortician or funeral director is not liable in damages for any cremated human remains after tbe remains have been deposited with a mausoleum-columbarium authority in Montana.

Section 8. Removal of remains — when removal excepted. (1) The remains of a deceased person may be removed from a plot in a mausoleum or columbarium with the consent of the mausoleum-columbarium authority and the written consent of one of the following in the order named:

(a) a spouse;

(b) a majority of adult children;

(c) a parent;

(d) the surviving brotbers or sisters of the decedent;

(e) a close relative of the decedent; or

(f) in the absence of a person listed in suhsections (1)(a) through (1)(e), a personal representative, a public administrator, the decedent through a preneed authorization, or others designated by the board of funeral service by rule.

(2) If the required consent cannot be obtained, permission by the district court in the county where the mausoleum or columbarium is situated is sufficient if the permission does not violate the terms of a written contract or rules of the mausoleum-columbarium authority.

(3) Notice of application to the court for the permission provided for in subsection (2) must be given at least 15 days prior to a hearing on the application

HeinOnline -- 1999 vol. I 849 1999

to the mausoleum-columbarium authority and to persons listed in subsections (1)(a) through (1)(e) not consenting and to other persons on whom service of notice may be required by the court.

Section 9. Map or plat — filing — tax exemption. (1) Each mausoleum-columbarium authority, from time to time as its property may be required for interment purposes, shall prepare a map or plat that delineates the sections, halls, rooms, corridors, elevations, outdoor mausoleums, urn gardens, and other divisions with descriptive names or numbers.

(2) The mausoleum-columbarium authority shall file the map or plat in the office of the clerk and recorder of the county in which all or a portion of the property is situated. The mausoleum-columbarium authority shall also file for record in the county clerk's office a written declaration of dedication of the property delineated on the map or plat dedicating the property exclusively to interment purposes.

(3) Upon the filing of the map or plat and the filing of the declaration for record, the dedication is complete for all purposes. After filing, the property and all mausoleums and columbariums constructed on and burial plots located in the property must be held, occupied, and used exclusively for interment purposes and are exempt from all state, county, and municipal taxes to the same extent as cemetery property intended to be used for the burial of the human dead by ground interment.

(4) Any part or subdivision of the property mapped and plotted may, by order of the directors, be resurveyed and altered in shape and size and an amended map or plat filed, so long as the change does not disturb the interred remains of any deceased person.

Section 10. Effect of dedication. (1) The filed map or plat and the recorded declaration are constructive notice to all persons of the dedication of the property to interment purposes.

(2) After property is dedicated to interment purposes, neither the dedication nor the title of a plot owner may be affected by the dissolution of the mausoleum-columbarium authority, by nonuse on its part, by alienation of the property, by any encumbrances, by sale under execution, or otherwise, except as provided in [sections 1 through 27].

(3) Dedication to interment purposes pursuant to this section is not invalid as violating any laws against perpetuities or the suspension of the power of alienation of title to or use of property but is expressly permitted and must be considered to be in respect for the dead, a provision for the interment of human remains, and a duty to and for the benefit of the general public.

(4) After dedication and as long as the property remains dedicated to interment purposes, a railroad, street, road, alley, pipeline, pole line, or other public thoroughfare utility may not be laid out through, over, or across any part of the property without the consent of the mausoleum-columbarium authority owning and operating the property or of not less than two-thirds of the owners of interment plots within the property.

Section 11. Removal of dedication by court. (1) Property dedicated to interment purposes must be held and used exclusively for interment purposes, unless and until the dedication is removed from all or any part of the property by an order and decree of the district court in the county in which the property

HeinOnline -- 1999 vol. I 850 1999

is situated in a proceeding brought by the mausoleum-columbarium authority for that purpose and upon notice of hearing and proof satisfactory to the court:

(a) that interments were not made in or that all interments have been removed from that portion of the property from which dedication is sought to be removed; and

(b) that the pertion of the property from which dedication is sought to be removed is not being used for interment of human remains.

(2) The notice of hearing must be given by publication once a week for at least 3 consecutive weeks in a newspaper of general circulation in the county where the mausoleum or columbarium is located and by posting copies of the notice in three conspicuous places on that portion of the property from which the dedication is to be removed.

(3) The notice must:

(a) describe the portion of the mausoleum or columbarium property sought to be removed from dedication;

(b) state that all remains have been removed or that interments have not been made in the pertion of the mausoleum or columbarium property sought to be removed from dedication; and

(c) specify the time and place of the hearing.

Section 12. Sale of interment plots. (1) After filing the map or plat and recording the declaration of dedication, a mausoleum-columbarium authority may sell and convey interment plots, subject to the rules then in effect or adopted by the mausoleum-columbarium authority and subject to other limitations, conditions, and restrictions that may be inserted in or made a part of the declaration of dedication by reference or included in the instrument of conveyance of an interment plot.

(2) All conveyances made by a mausoleum-columbarium authority must be signed by an officer or officers as are authorized by the mausoleum-columbarium authority.

(3) All plots, the use of which has been conveyed by deed or certificate of ownership as a separate plot, are indivisible except with the consent of the mausoleum-columbarium authority or as provided by law.

Section 13. Resale of plots for profit — commissions — penalties. (1) It is unlawful for any person, firm, or corporation to sell or offer to sell a mausoleum-columbarium plot upon the promise, representation, or inducement of resale at a financial profit.

(2) It is unlawful for a mausoleum-columbarium authority to pay or offer to pay to any person, firm, or corporation, directly or indirectly, a commission, bonus, rebate, or other thing of value for the sale of a plot or services. This subsection does not apply to a person regularly employed by the mausoleum-columbarium authority or to any bona fide agent of the mausoleum-columbarium authority previously appointed for that purpose.

(3) A person who violates a provision of this section or who pays or causes to be paid or offers to pay to any other person, firm, or corporation, directly or indirectly, except as provided in subsection (2), any commission, bonus, rebate, or other thing of value in consideration of recommending or causing a dead

HeinOnline -- 1999 vol. I 851 1999

human body to be disposed of in any mausoleum or columbarium is guilty of a misdemeanor, and each violation constitutes a separate offense.

Section 14. Property interests in plot — inheritance tax. (1) All plots conveyed to individuals are presumed to be the sole and separate property of the owner named in the instrument of conveyance.

(2) The spouse of an owner of a plot containing more than one interment space has a vested right to be interred in the plot, and a person becoming the spouse of the plot owner has a vested right to be interred in the plot if an interment space not subject to the vested right of interment for previous spouses is unoccupied at the time that the person becomes the spouse of the owner.

(3) A conveyance or other action of the owner without the written consent or joinder of the spouse of the owner may not divest the spouse of a vested right of interment, except that a final decree of dissolution of marriage between the owner and the spouse terminates the vested right of interment unless otherwise provided in the decree.

(4) If an interment is not made in a plot that has been transferred by deed or certificate of ownership to an individual owner or if all remains previously interred in the plot are lawfully removed, the plot descends upon the death of the owner to the owner's heirs-at-law, subject to the rights of interment of the decedent and the owner's surviving spouse unless the owner has disposed of the plot either in a will by a specific devise or by a written declaration filed and recorded in the office of the mausoleum-columbarium authority.

(5) Mausoleum or columbarium property passing to an individual by reason of the death of the owner is exempt from all inheritance taxes.

Section 15. Family plots. (1) Whenever the remains of the record owner or of a member of the owner's family or of a relative of a member of the owner's family have been interred in a plot transferred by deed or certificate of ownership to an individual owner and the owner has died without making disposition of the plot either in a will by a specific devise or by a written declaration filed and recorded in the office of the mausoleum-columbarium authority, the plot becomes inalienable and must be held as the family plot of the owner.

(2) In a family plot, one crypt or one niche or interment space in the family plot may be used for the owner's interment and one for the owner's surviving spouse, if any, who by law has a vested right of interment in it. Of those crypts, niches, or spaces remaining, if any, the parents and children of the deceased owner in order of death may be interred without the consent of any person claiming an interest in the plot.

(3) If a parent or child is not surviving, the right of interment goes in the order of death first to the spouse of any child of the record owner and second in the order of death to the next heirs-at-law of the owner or the spouse of any heir-at-law.

(4) A surviving spouse, parent, child, or heir having a right of interment in a family plot may waive the right in favor of any other relative or spouse of a relative of the deceased owner, and upon the waiver, the remains of the person in whose favor the waiver is made may be interred in the plot.

Section 16. Termination of right of interment — limitation on right. (1) A vested right of interment is terminated upon interment elsewhere of the person with the vested right.

HeinOnline -- 1999 vol. I 852 1999

(2) A vested right of interment does not give to any person the right to have the person's remains interred in any interment space in which the remains of any deceased person having a prior vested right of interment have been interred or the right to have the remains of more than one deceased person interred in a single interment space in violation of the rules of the mausoleum-columbarium authority controlling the operation of the mausoleum or columbarium in which the interment space is located.

Section 17. Conveyance to mausoleum-columbarium authority by plot owner. A mausoleum-columbarium authority may take and hold any plot conveyed or devised to it by the plot owner so that it will be inalienable, and interments must be restricted to the persons designated in the conveyance or devise.

Section 18. Joint tenants. (1) In a conveyance to two or more persons as joint tenants, each joint tenant has a vested right of interment in the plot conveyed.

(2) Upon the death of a joint tenant, the title to the plot held in joint tenancy immediately vests in the survivors, subject to the vested right of interment of the remains of the deceased joint tenant.

(3) An affidavit by any person having knowledge of the facts setting forth the fact of the death of one joint tenant and establishing the identity of the surviving joint tenants named in the deed to any plot, when filed with the mausoleum-columbarium authority operating the mausoleum-columbarium in which the plot is located, is a complete authorization to the mausoleum-columbarium authority to permit the use of the unoccupied portion of the plot in accordance with the directions of the surviving joint tenants or their successors in interest.

Section 19. Co-owners — mausoleum-columbarium authority liability. (1) When there are several owners of a plot or of rights of interment in the plot, the owners may designate one or more persons to represent the plot and file written notice of the designation with the mausoleum-columbarium authority.

(2) In the absence of a notice provided for in subsection (1) or a written objection to an interment, the mausoleum-columbarium authority is not liable to any owner for interring or permitting an interment in the plot upon the request or direction of any co-owner of the plot.

Section 20. Records. (1) A record must be kept of the ownership of all plots in the mausoleum and columbarium that have been conveyed by the mausoleum-columbarium authority and of all transfers of plots. The transfer of any plot or any right of interment is not complete or effective until recorded on the books of the mausoleum-columbarium authority.

(2) The mausoleum-columbarium authority in charge of any mausoleum or columbarium in which interments are made shall keep a record of all remains, including cremated remains, interred on the premises under its charge, in each case stating the name of each deceased person, date of interment, and name and address of the funeral director.

(3) The records required under this section must be open to inspection during the customary office hours of the mausoleum-columbarium authority.

HeinOnline -- 1999 vol. I 853 1999

Section 21. Endowment care fund — investment of funds — use of income — permissible investment securities. (1) A mausoleum-columbarium authority may place its mausoleum or columbarium under endowment care and establish, maintain, and operate an irreducible endowment care fund.

(2) Endowment care and special care funds may be commingled for investment, and the income from the funds must be divided between the endowmert care and special care funds in the proportion that each fund contributed to the principal sum invested. The funds may be held in the name of the mausoleum-columbarium authority or its directors or in the name of the trustees appointed by the mausoleum-columbarium authority.

(3) The principal of all funds for endowment care must forever remain irreducible and inviolable and must he maintained separate and distinct from all other funds.

(4) The principal of all funds for endowment care must be invested, from time to time reinvested, and kept invested, and the income earned must be used solely for the general care, maintenance, and embellishment of the mausoleum or columbarium, or both, and the grounds on which they are situated and must be applied in a manner that the mausoleum-columbarium authority may from time to time determine to be for the best interests of the mausoleum-columbarium.

(5) The endowment care funds must be invested, reinvested, and kept invested in securities that are legal investments for public employees' retirement funds under the laws of the state of Montana.

Section 22. Plans for general care and endowment care. (1) The mausoleum-columbarium authority may from time to time adopt plans for the general care, maintenance, and emhellishment of its mausoleum-columbarium and charge and collect from all subsequent purchasers of plots reasonable sums as, in the judgment of the mausoleum-columbarium authority, will aggregate a fund, the reasonable income from whicb will provide reasonable care, maintenance, and emhellishment.

(2) Upon payment of the purcbase price and the amount fixed as a proportionate contribution for endowment care, there may be included in the deed of conveyance or in a separate instrument an agreement to care, in accordance with the plan adopted, for the mausoleum or columbarium and its appurtenances to the proportionate extent that the income received by the mausoleum-columbarium authority from the contribution will permit.

(3) Upon the application of the owner of any plot and upon the payment by the owner of the amount fixed as a reasonable and proportionate contribution for endowment care, a mausoleum-columbarium authority may enter into an agreement with the owner for the care of the owner's plot and its appurtenances.

Section 23. Fund trustces — compeusation — annual financial report. (1) The mausoleum-columbarium authority may appoint a board of trustees, of not less than five members, for its endowment care fund. The members of the board of trustees shall hold office subject to the discretion of the mausoleum-columbarium authority.

(2) The directors of a mausoleum-columbarium authority may be constituted as the trustees of its endowment care fund. When the fund is in the care of the directors as a board of trustees, the secretary of the mausoleum-columbarium authority shall act as secretary of the board of trustees and keep a true record of

HeinOnline -- 1999 vol. I 854 1999

all of its proceedings. The investments of the endowment care fund may be held in the name of the mausoleum-columbarium authority.

(3) In lieu of the appointment of a board of trustees of its endowment care fund, a mausoleum-columbarium authority may appoint as sole trustee of its endowment care fund any bank or trust company qualified to engage in the trust business in the state of Montana, and the bank or trust company is authorized to receive and accept the fund and all accretions to the fund, including any accumulated endowment care fund in existence at the time of the bank's or trust company's appointment.

(4) A sum in excess of 5% of the income derived from the fund in any year may not be paid as compensation to the board of trustees for its services as trustee, provided that if 5% of the income divided by the number of trustees is less than $100, each trustee is entitled to receive a minimum of $100 a year for serving as a trustee.

(5) The mausoleum-columbarium authority or the persons in whose names the endowment care funds are held shall, annually and within 90 days after the end of the calendar or fiscal year of the mausoleum-columbarium authority, make and file with the district court in the county in which the mausoleum-columbarium is located a true and correct written report, verified on oath by an officer of the mausoleum-columbarium authority or by the oath of one or more of the trustees, showing the actual financial condition of the endowment care fund.

Section 24. Endowment care fund gifts and contributions. (1) (a) A mausoleum-columbarium authority that has established an endowment care fund may take, receive, and hold as a part of or incident to the fund any property, real, personal, or mixed, bequeathed, devised, granted, given, or otherwise contributed to it for its endowment care fund.

(b) A mausoleum-columbarium authority that has established endowment care may also take and hold any property bequeathed, granted, or given to it in trust to apply the principal or proceeds or income to any of the following purposes:

(i) improvement or embellishment of all or any part of the mausoleum or columbarium or any plot in it;

(ii) planting or cultivation of trees, shrubs, or plants in or around any part of the grounds on which the mausoleum-columbarium is situated;

(iii) special care or ornamenting of any part of any plot, section, corridor, or other portion of the mausoleum-columbarium;

(iv) any purpose or use not inconsistent with the purpose for which the mausoleum-columbarium was established or is maintained.

(2) The endowment care fund and all payments or contributions to it are expressly permitted as and for charitable and eleemosynary purposes. Endowment care is a provision for the discharge of a duty from the persons contributing to the persons interred and to be interred in the mausoleum-columbarium and a provision for the benefit and protection of the public by preserving and keeping mausoleum-columbariums from becoming unkept and places of reproach and desolation in the communities in which they are situated.

(3) A payment, gift, grant, bequest, or other contribution for general endowment care is not invalid by reason of any indefiniteness or uncertainty of the persons designated as beneficiaries in the instruments creating the trust, and the

HeinOnline -- 1999 vol. I 855 1999

fund or any contribution to it is not invalid as violating any law against perpetuities or the suspension of the power of alienation of title to property.

Section 25. Signs required for nonendowment and endowment care — penalties. (1) A nonendowment care mausoleum-columbarium is one that does not deposit in an endowment care fund.

(2) Each mausoleum-columbarium authority operating an endowment care mausoleum or columbarium shall post in a conspicuous place in its office or offices where sales are conducted and in a conspicuous place at or near the entrance of the mausoleum or columbarium or its administration building and readily accessible to the public a legible sign with the following phrase: "This is an endowment care property".

(3) Each mausoleum-columbarium authority operating a nonendowment care mausoleum or columbarium shall post in a conspicuous place in its office or offices where sales are conducted and in a conspicuous place at or near the entrance of the mausoleum or columbarium or its administration building and readily accessible to the public a legible sign with the following phrase: "This is not an endowment care property". This phrase likewise must be printed or stamped at the beginning of all contracts, certificates of ownership, or deeds.

(4) Any corporation or its agents or representatives who violate any of the provisions of this section or make any false statement appearing on a sign, contract, agreement, receipt, statement, literature, or other publication are guilty of a misdemeanor.

Section 26. Annual report of endowment care mausoleum-columbarium. (1) Each mausoleum-columbarium authority operating an endowment care mausoleum or columbarium shall file in its principal office a written report that must be available to any plot owner and that must contain, as of the close of its last fiscal year:

(a) the amount of principal of the endowment care fund; and

(b) the total amount invested in bonds, securities, or other investments authorized by law and the total amount of cash on hand not invested, which must actually show the financial condition of the trust.

(2) All of the information appearing on the report filed in the mausoleum-columbarium authority office must be revised annually and verified by the president and secretary or two officers authorized hy the mausoleum-columbarium authority.

Section 27. Director, officer, or trustee loans — penalties. (1) A director or officer of the mausoleum-columbarium authority or trustee of the endowment care or special care fund may not borrow any endowment care or special care funds of the corporation, directly or indirectly.

(2) A director, officer, or trustee authorizing or consenting to a loan and the person who receives a loan in violation of this section are severally guilty of a misdemeanor.

Section 28. Codification instruction. [Sections 1 through 27] are intended to be codified as an integral part of Title 35, and the provisions of Title 35 apply to [sections 1 through 27].

Approved April 8, 1999

HeinOnline -- 1999 vol. I 856 1999

CHAPTER NO. 284

[SB 521]

AN ACT ALLOWING FIREWORKS TO BE SOLD ON DECEMBER 30 AND 31, 1999; AMENDING SECTION 50-37-106, MCA; AND PROVIDING A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-37-106, MCA, is amended to read:

"50-37-106. Sale of fireworks restricted to certain dates. *(1)* ~~No~~ *Except as provided in subsection (2), a* person, firm, or corporation may *not* offer fireworks of any kind for sale at retail before June 24 and after July 5.

(2) Fireworks may be sold on December 30 and 31, 1999."

Seetion 2. Termination. [Section 1] terminates January 1, 2000.

Approved April 8, 1999

CHAPTER NO. 285

[SB 200]

AN ACT STIMULATING ECONOMIC GROWTH AND ENCOURAGING BUSINESS RETENTION; PROVIDING A PHASED-IN RATE REDUCTION AND A PROGRESSIVE EXEMPTION FROM TAXATION OF CLASS EIGHT PROPERTY; PROVIDING LIMITED REPORTING REQUIREMENTS FOR EXEMPT BUSINESS EQUIPMENT; PROVIDING EXEMPTIONS FOR CLASS SIX PROPERTY; REDUCING INCREMENTALLY THE TAX RATE ON CLASS SIX PROPERTY FROM 4 PERCENT TO 1 PERCENT BEGINNING IN TAX YEAR 2000; ELIMINATING THE PROPERTY TAX ON CLASS SIX PROPERTY IN 2003; REIMBURSING LOCAL TAXING JURISDICTIONS FOR THE PHASED-IN RATE REDUCTION AND ELIMINATION OF CLASS SIX PROPERTY; REIMBURSING LOCAL TAXING JURISDICTIONS FOR THE EXEMPTIONS AND PHASED-IN RATE REDUCTION FOR CLASS EIGHT PROPERTY; REVISING THE INDEBTEDNESS LIMITATIONS OF LOCAL TAXING JURISDICTIONS TO OFFSET CLASS SIX PROPERTY TAX RATE REDUCTIONS; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTIONS 7-7-107, 7-7-108, 7-7-2101, 7-7-2203, 7-14-2524, 7-14-2525, 7-16-2327, 15-1-101, 15-6-136, 15-6-138, 15-6-201, 15-6-207, 15-8-301, 15-24-301, 15-24-303, 15-24-902, 15-24-903, 15-24-904, 15-24-922, 17-7-502, 20-9-406, 81-7-303, AND 81-7-603, MCA; REPEALING SECTIONS 15-6-136, 15-6-138, 15-24-901, 15-24-920, 15-24-926, 15-24-927, AND 15-24-931, MCA; AND PROVIDING EFFECTIVE DATES AND APPLICABILITY DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Class six tax rate reduetion and exemption reimbursement to local governments and schools. (1) By June 1 of 2000, 2001, and 2002 for all reimbursements in this section, the department shall determine a reimbursement amount associated with reducing the tax rate in 15-6-136 and provide that information to each county treasurer. The reimbursement amount must be determined for each taxing jurisdiction tbat

HeinOnline -- 1999 vol. I 857 1999

levied mills on the taxable value of property described in 15-6-136 in the corresponding tax year.

(2) (a) The reimbursement amount for each taxing jurisdiction for the current tax year is equal to the lesser of the maximum reimbursement amount determined in subsection (2)(b) or the amount calculated using the formula RA = (1999 TV - Current Year TV) x 1999 ML, where:

(i) RA is the reimbursement amount for the taxing jurisdiction;

(ii) 1999 TV is the tax year 1999 taxable value of property described in 15-6-136 in the taxing jurisdiction;

(iii) Current Year TV is the current year taxable value of property described in 15-6-136 in the taxing jurisdiction; and

(iv) 1999 ML is the mill levy applied to property described in 15-6-136 in the taxing jurisdiction in tax year 1999.

(b) The maximum reimbursement amount is calculated using the formula MRA = ((1999 TV x 1999 ML)/4) x Y, where:

(i) MRA is the maximum reimbursement amount for the taxing jurisdiction;

(ii) 1999 TV is the tax year 1999 taxable value of property described in 15-6-136 in the taxing jurisdiction;

(iii) 1999 ML is the mill levy applied to property described in 15-6-136 in the taxing jurisdiction in tax year 1999; and

(iv) (A) Y is 1 if the current tax year is 2000;

(B) Y is 2 if the current tax year is 2001; and

(C) Y is 3 if the current tax year is 2002.

(c) The reimbursement to a taxing jurisdiction as provided in this section may not be less than zero.

(d) Except as provided in subsection (2)(e), the reimbursement calculation must be based on the taxable valuations of property described in 15-6-136 in the taxing jurisdiction for tax years 1999, 2000, 2001, and 2002.

(e) The reimbursement amount for each taxing jurisdiction for tax year 2003 and tax years beginning after tax year 2003 is the amount determined by multiplying the 1999 taxable value by the 1999 mill levy.

(3) Each fiscal year, beginning in the fiscal year beginning July 1, 2000, as reimbursement for loss of property tax revenue, the department shall biannually remit, as adjusted by the result of dissolved or combined taxing jurisdictions, to each county treasurer 50% of the amount of county property tax revenue lost because of the annual property tax rate reduction of livestock and business personal property taxed under 15-6-136, as determined under subsection (1). The payments must be made on or before November 30 and May 31 of each fiscal year.

(4) Upon receipt of the reimbursement from the department, the county treasurer shall distribute the reimbursement to each taxing jurisdiction as calculated by the department.

(5) (a) For the purposes of this section and subject to subsection (6), "taxing jurisdiction" means a jurisdiction levying mills against class six property and includes but is not limited to a county, city, consolidated county and city government, school district, community college district, tax increment financing

district, and miscellaneous taxing district. The term includes countywide mills levied for equalization of retirement or transportation.

(b) The term does not include county or state school equalization levies provided for in 20-9-331, 20-9-333, and 20-9-360 or the 6-mill university levy. It also does not include any state levy for welfare programs provided for in 53-2-813.

(6) The following apply to taxing jurisdictions that were altered after tax year 1999:

(a) A taxing jurisdiction that existed in tax year 1999 and that no longer exists is not entitled to reimbursement under this section.

(b) A taxing jurisdiction that existed in tax year 1999 and that is split into two or more taxing jurisdictions or that is annexed to or is consolidated with another taxing jurisdiction is entitled to reimbursement based on the portion of 1999 taxable value within each new taxing jurisdiction. The department shall determine the portion of 1999 taxable value located in each taxing jurisdiction.

(c) A taxing jurisdiction that did not exist in tax year 1999 is not entitled to reimbursement under this section unless the taxing jurisdiction was created as described in subsection (6)(b).

(7) The amounts necessary for the administration of this section are statutorily appropriated, as provided in 17-7-502, from the general fund to reimburse eligible taxing jurisdictions for reductions in tax rates on business personal property.

Section 2. Exemption for canola facilities and malting barley facilities. (1) The following property is exempt from property taxation:

(a) machinery and equipment used in a canola seed oil processing facility; and

(b) machinery and equipment used in a malting barley facility.

(2) "Canola seed oil processing facility" means a facility that:

(a) extracts oil from canola seeds, refines the crude oil to produce edible oil, formulates and packages the edible oil into food products, or engages in any one or more of those processes; and

(b) employs at least 15 employees in a full-time capacity.

(3) "Malting barley facility" means a facility and integral machinery and equipment used principally to malt malting barley and includes machinery and equipment to mix, blend, transport, transfer, or process the barley and malt at the facility.

Section 3. Section 7-7-107, MCA, is amended to read:

"7-7-107. Limitation on amount of bonds for city-county consolidated units. (1) Except as provided in 7-7-108, ~~no~~ *a* city-county consolidated local government may *not* issue bonds for any purpose ~~which~~ *that*, with all outstanding indebtedness, ~~may exceed~~ *exceeds* 39% of the taxable value of the property ~~therein~~ *of the local government* subject to taxation as ascertained by the last assessment for state and county taxes *plus:*

(a) for bonds to be issued during fiscal year 2001, an additional 25% of the taxable value of class six property within the local government for tax year 1999, multiplied by 39%, and an additional 60% of the taxable value of class eight property within the local government for tax year 1999, multiplied by 39%;

(b) for bonds to be issued during fiscal year 2002, an additional 50% of the taxable value of class six property within the local government for tax year 1999, multiplied by 39%, and an additional 60% of the taxable value of class eight property within the local government for tax year 1999, multiplied by 39%;

(c) for bonds to be issued during fiscal year 2003, an additional 75% of the taxable value of class six property within the local government for tax year 1999, multiplied by 39%, and an additional 60% of the taxable value of class eight property within the local government for tax year 1999, multiplied by 39%;

(d) for bonds to be issued during fiscal years in which the tax rate for class eight property is 2%, an additional 100% of the taxable value of class six property within the local government for tax year 1999, in each case of class six property, multiplied by 39%, and an additional 77% of the taxable value of class eight property within the local government for tax year 1999, multiplied by 39%;

(e) for bonds to be issued during fiscal years in which the tax rate for class eight property is 1%, an additional 94% of the taxable value of former class eight property within the local government for tax year 1999, in each case of former class eight property, multiplied by 39%; and

(f) for bonds to be issued during the fiscal year and succeeding fiscal years in which 15-6-138 is repealed, an additional 100% of the taxable value of class eight property within the local government for tax year 1999, in each case of former class eight property, multiplied by 39%.

(2) The issuing of bonds for the purpose of funding or refunding outstanding warrants or bonds is not the incurring of a new or additional indebtedness but is merely the changing of the evidence of outstanding indebtedness."

Section 4. Section 7-7-108, MCA, is amended to read:

"7-7-108. Authorization for additional indebtedness for water or sewer systems. (1) For the purpose of constructing a sewer system or procuring a water supply or constructing or acquiring a water system for a city-county consolidated government ~~which shall own~~ *that owns* and ~~control~~ *controls* ~~such~~ *the* water supply and water system and ~~devote~~ *devotes* the ~~revenues therefrom~~ *revenue from the supply and system* to the payment of the debt, a city-county consolidated government may incur an additional indebtedness by borrowing money or issuing bonds.

(2) The additional indebtedness ~~which~~ *that* may be incurred by borrowing money or issuing bonds for the construction of a sewer system or for the procurement of a water supply or for both ~~such~~ purposes may not in the aggregate exceed 10% ~~over and above~~ *of* the ~~39%~~ *debt limitation, as adjusted,* referred to in 7-7-107 of the taxable value of the property ~~therein~~ *of the consolidated government* subject to taxation as ascertained by the last assessment for state and county taxes."

Section 5. Section 7-7-2101, MCA, is amended to read:

"7-7-2101. Limitation on amount of county indebtedness. (1) A county may not become indebted in any manner or for any purpose in an amount, including existing indebtedness, in the aggregate exceeding 23% of the total of the taxable value of the property in the county subject to taxation~~,~~ plus:

(a) the value provided by the department of revenue in 15-36-324(13), as ascertained by the last assessment for state and county taxes previous to the incurring of the indebtedness~~, plus,~~;

HeinOnline -- 1999 vol. I 860 1999

(b) ~~for indebtedness to be incurred during fiscal year 1997, an additional 11% of the taxable value of class eight property within the county for tax year 1995, for indebtedness to be incurred during fiscal year 1998, an additional 22% of the taxable value of class eight property within the county for tax year 1995, and~~ for indebtedness to be incurred during fiscal years 1999 through 2008, an additional 33% of the taxable value of class eight property within the county for tax year 1995, in each case of class eight property, multiplied by 23%;

(c) for indebtedness to be incurred during fiscal year 2001, an additional 25% of the taxable value of class six property within the county for tax year 1999, multiplied by 23%, and an additional 60% of the taxable value of class eight property within the county for tax year 1999, multiplied by 23%;

(d) for indebtedness to be incurred during fiscal year 2002, an additional 50% of the taxable value of class six property within the county for tax year 1999, multiplied by 23%, and an additional 60% of the taxable value of class eight property within the county for tax year 1999, multiplied by 23%;

(e) for indebtedness to be incurred during fiscal year 2003, an additional 75% of the taxable value of class six property within the county for tax year 1999, multiplied by 23%, and an additional 60% of the taxable value of class eight property within the county for tax year 1999, multiplied by 23%;

(f) for indebtedness to be incurred during fiscal years in which the tax rate for class eight property is 2%, an additional 100% of the taxable value of class six property within the county for tax year 1999, in each case of class six property, multiplied by 23%, and an additional 77% of the taxable value of class eight property within the county for tax year 1999, multiplied by 23%;

(g) for indebtedness to be incurred during fiscal years in which the tax rate for class eight property is 1%, an additional 94% of the taxable value of former class eight property within the county for tax year 1999, in each case of former class eight property, multiplied by 23%; and

(h) for indebtedness to be incurred during the fiscal year and succeeding fiscal years in which 15-6-138 is repealed, an additional 100% of the taxable value of former class eight property within the county for tax year 1999, in each case of former class eight property, multiplied by 23%.

(2) A county may not incur indebtedness or liability for any single purpose to an amount exceeding $500,000 without the approval of a majority of the electors of the county voting at an election to be provided by law, except as provided in 7-7-2402, 7-21-3413, and 7-21-3414.

(3) This section does not apply to the acquisition of conservation easements as set forth in Title 76, chapter 6."

Section 6. Section 7-7-2203, MCA, is amended to read:

"7-7-2203. Limitation on amount of bonded indebtedness. (1) Except as provided in subsections (2) ~~through (4)~~ *and (3)*, a county may not issue general obligation bonds for any purpose that, with all outstanding bonds and warrants except emergency bonds, will exceed 11.25% of the total of the taxable value of the property in the county~~,~~ plus:

(a) the value provided by the department of revenue under 15-36-324(13), to be ascertained by the last assessment for state and county taxes prior to the proposed issuance of bonds~~, plus,~~;

HeinOnline -- 1999 vol. I 861 1999

(b) ~~for general obligation bonds to be issued during fiscal year 1997, an additional 11% of the taxable value of class eight property within the county for tax year 1995, for general obligation bonds to be issued during fiscal year 1998, an additional 22% of the taxable value of class eight property within the county for tax year 1995, and~~ for general obligation bonds to be issued during fiscal years 1999 through 2008, an additional 33% of the taxable value of class eight property within the county for tax year 1995, in each case of class eight property, multiplied by 11.25%;

(c) for general obligation bonds to be issued during fiscal year 2001, an additional 25% of the taxable value of class six property within the county for tax year 1999, multiplied by 11.25%, and an additional 60% of the taxable value of class eight property within the county for tax year 1999, multiplied by 11.25%;

(d) for general obligation bonds to be issued during fiscal year 2002, an additional 50% of the taxable value of class six property within the county for tax year 1999, multiplied by 11.25%, and an additional 60% of the taxable value of class eight property within the county for tax year 1999, multiplied by 11.25%;

(e) for general obligation bonds to be issued during fiscal year 2003, an additional 75% of the taxable value of class six property within the county for tax year 1999, multiplied by 11.25%, and an additional 60% of the taxable value of class eight property within the county for tax year 1999, multiplied by 11.25%;

(f) for general obligation bonds to be issued during fiscal years in which the tax rate for class eight property is 2%, an additional 100% of the taxable value of class six property within the county for tax year 1999, in each case of class six property, multiplied by 11.25%, and an additional 77% of the taxable value of class eight property within the county for tax year 1999, multiplied by 11.25%;

(g) for general obligation bonds to be issued during fiscal years in which the tax rate for class eight property is 1%, an additional 94% of the taxable value of former class eight property within the county for tax year 1999, in each case of former class eight property, multiplied by 11.25%; and

(h) for general obligation bonds to be issued during the fiscal year and succeeding fiscal years in which 15-6-138 is repealed, an additional 100% of the taxable value of former class eight property within the county for tax year 1999, in each case of former class eight property, multiplied by 11.25%.

~~(2) In addition to the bonds allowed by subsection (1), a county may issue bonds that, with all outstanding bonds and warrants, will not exceed 27.75% of the total of the taxable value of the property in the county subject to taxation, plus the value provided by the department of revenue under 15-36-324(13), when necessary to do so, to be ascertained by the last assessment for state and county taxes, plus, for bonds to be issued during fiscal year 1997, an additional 11% of the taxable value of class eight property within the county for tax year 1995, and for bonds to be issued during fiscal year 1998, an additional 22% of the taxable value of class eight property within the county for tax year 1995.~~

~~(3)~~*(2)* In addition to the bonds allowed by ~~subsections~~ *subsection* (1) ~~and (2)~~, a county may issue bonds for the construction or improvement of a ~~jail~~ *detention center* that will not exceed 12.5% of the taxable value of the property in the county subject to taxation, plus the adjustments permitted by ~~7-7-2101~~ *subsection (1)*.

~~(4)~~*(3)* The limitation in subsection (1) does not apply to refunding bonds issued for the purpose of paying or retiring county bonds lawfully issued prior to

January 1, 1932, or to bonds issued for the repayment of tax protests lost by the county."

Section 7. Section 7-14-2524, MCA, is amended to read:

"7-14-2524. Limitation on amount of bonds issued — excess void. (1) Except as otherwise provided in 7-7-2203, 7-7-2204, and this section, a county may not issue bonds that, with all outstanding bonds and warrants except emergency bonds, will exceed 11.25% of the total of the taxable value of the property in the county, plus:

(a) the value provided by the department of revenue under 15-36-324(13). The taxable property and the amount of taxes levied on new production, production from horizontally completed wells, and incremental production must be ascertained by the last assessment for state and county taxes prior to the issuance of the bonds.

(b) for fiscal year 2001, an additional 25% of the taxable value of class six property within the county for tax year 1999, multiplied by 11.25%, and an additional 60% of the taxable value of class eight property within the county for tax year 1999, multiplied by 11.25%;

(c) for fiscal year 2002, an additional 50% of the taxable value of class six property within the county for tax year 1999, multiplied by 11.25%, and an additional 60% of the taxable value of class eight property within the county for tax year 1999, multiplied by 11.25%;

(d) for fiscal year 2003, an additional 75% of the taxable value of class six property within the county for tax year 1999, multiplied by 11.25%, and an additional 60% of the taxable value of class eight property within the county for tax year 1999, multiplied by 11.25%;

(e) for fiscal years in which the tax rate for class eight property is 2%, an additional 100% of the taxable value of class six property within the county for tax year 1999, in each case of class six property, multiplied by 11.25%, and an additional 77% of the taxable value of class eight property within the county for tax year 1999, multiplied by 11.25%;

(f) for fiscal years in which the tax rate for class eight property is 1%, an additional 94% of the taxable value of former class eight property within the county for tax year 1999, in each case of former class eight property, multiplied by 11.25%; and

(g) for the fiscal year and succeeding fiscal years in which 15-6-138 is repealed, an additional 100% of the taxable value of former class eight property within the county for tax year 1999, in each case of former class eight property, multiplied by 11.25%.

(2) A county may issue bonds that, with all outstanding bonds and warrants, ~~will exceed~~ *exceeds* 11.25% but ~~will~~ *does* not exceed 22.5% of the total of the taxable value of the property, ~~plus the value provided by the department of revenue under 15-36-324(13)~~ *as adjusted in subsection (1),* when necessary for the purpose of replacing, rebuilding, or repairing county buildings, bridges, or highways that have been destroyed or damaged by an act of God or by a disaster, catastrophe, or accident.

(3) The value of the bonds issued and all other outstanding indebtedness of the county may not exceed 22.5% of the total of the taxable value of the property within the county, ~~plus the value provided by the department of revenue under~~

~~15-36-324(13), as ascertained by the last preceding general assessment~~ *as adjusted in this section.*"

Section 8. Section 7-14-2525, MCA, is amended to read:

"**7-14-2525. Refunding agreements and refunding bonds authorized.** (1) Whenever the total indebtedness of a county exceeds 22.5% of the total of the taxable value of the property in the county, ~~plus the value provided by the department of revenue under 15-36-324(13)~~ *as adjusted in 7-14-2524*, and the board determines that the county is unable to pay the indebtedness in full, the board may:

(a) negotiate with the bondholders for an agreement under which the bondholders agree to accept less than the full amount of the bonds and the accrued unpaid interest in satisfaction of the bonds;

(b) enter into the agreement;

(c) issue refunding bonds for the amount agreed upon.

(2) These bonds may be issued in more than one series, and each series may be either amortization or serial bonds.

(3) The plan agreed upon between the board and the bondholders must be embodied in full in the resolution providing for the issuance of the bonds."

Section 9. Section 7-16-2327, MCA, is amended to read:

"**7-16-2327. Indebtedness for park purposes.** (1) Subject to the provisions of subsection (2), a county park board, in addition to powers and duties ~~now~~ given under law, may contract an indebtedness in behalf of a county, upon the credit of the county, in order to carry out its powers and duties.

(2) (a) The total amount of indebtedness authorized to be contracted in any form, including the then-existing indebtedness, may not at any time exceed 13% of the total of the taxable value of the taxable property in the county, *as ascertained by the last assessment for state and county taxes previous to the incurring of the indebtedness*, plus:

(i) the value provided by the department of revenue under 15-36-324(13)~~, ascertained by the last assessment for state and county taxes previous to the incurring of the indebtedness~~;

(ii) for fiscal year 2001, an additional 25% of the taxable value of class six property within the county for tax year 1999, multiplied by 13%, and an additional 60% of the taxable value of class eight property within the county for tax year 1999, multiplied by 13%;

(iii) for fiscal year 2002, an additional 50% of the taxable value of class six property within the county for tax year 1999, multiplied by 13%, and an additional 60% of the taxable value of class eight property within the county for tax year 1999, multiplied by 13%;

(iv) for fiscal year 2003, an additional 75% of the taxable value of class six property within the county for tax year 1999, multiplied by 13%, and an additional 60% of the taxable value of class eight property within the county for tax year 1999, multiplied by 13%;

(v) for fiscal years in which the tax rate for class eight property is 2%, an additional 100% of the taxable value of class six property within the county for tax year 1999, in each case of class six property, multiplied by 13%, and an additional

77% of the taxable value of class eight property within the county for tax year 1999, multiplied by 13%;

(vi) for fiscal years in which the tax rate for class eight property is 1%, an additional 94% of the taxable value of former class eight property within the county for tax year 1999, in each case of former class eight property, multiplied by 13%; and

(vii) for the fiscal year and succeeding fiscal years in which 15-6-138 is repealed, an additional 100% of the taxable value of former class eight property within the county for tax year 1999, in each case of former class eight property, multiplied by 13%.

(b) Money may not be borrowed on bonds issued for the purchase of lands and improving the land for any purpose until the proposition has been submitted to the vote of those qualified under the provisions of the state constitution to vote at the election in the affected county and a majority vote is cast in favor of the bonds."

Section 10. Section 15-1-101, MCA, is amended to read:

"15-1-101. Definitions. (1) Except as otherwise specifically provided, when terms mentioned in this section are used in connection with taxation, they are defined in the following manner:

(a) The term "agricultural" refers to:

(i) the production of food, feed, and fiber commodities, livestock and poultry, bees, fruits and vegetables, and sod, ornamental, nursery, and horticultural crops that are raised, grown, or produced for commercial purposes; and

(ii) the raising of domestic animals and wildlife in domestication or a captive environment.

(b) The term "assessed value" means the value of property as defined in 15-8-111.

(c) The term "average wholesale value" means the value to a dealer prior to reconditioning and the profit margin shown in national appraisal guides and manuals or the valuation schedules of the department.

(d) (i) The term "commercial", when used to describe property, means property used or owned by a business, a trade, or a corporation as defined in 35-2-114 or used for the production of income, except property described in subsection (1)(d)(ii).

(ii) The following types of property are not commercial:

(A) agricultural lands;

(B) timberlands and forest lands;

(C) single-family residences and ancillary improvements and improvements necessary to the function of a bona fide farm, ranch, or stock operation;

(D) mobile homes and manufactured homes used exclusively as a residence except when held by a distributor or dealer as stock in trade; *and*

(E) all property described in 15-6-135~~; and~~

~~(F) all property described in 15-6-136~~.

(e) The term "comparable property" means property that:

HeinOnline -- 1999 vol. I 865 1999

(i) has similar use, function, and utility;

(ii) is influenced hy the same set of economic trends and physical, governmental, and social factors; and

(iii) has the potential of a similar highest and best use.

(f) The term "credit" means solvent debts, secured or unsecured, owing to a person.

(g) (i) "Department", except as provided in subsection (1)(g)(ii), means the department of revenue provided for in 2-15-1301.

(ii) In chapters 70 and 71, department means the department of transportation provided for in 2-15-2501.

(h) The terms "gas" and "natural gas" are synonymous and mean gas as defined in 82-1-111(2). The terms include all natural gases and all other fluid hydrocarbons, including methane gas or any other natural gas found in any coal formation.

(i) The term "improvements" includes all buildings, structures, fences, and improvements situated upon, erected upon, or affixed to land. When the department determines that the permanency of location of a mobile home, manufactured home, or bousetrailer has been estahlished, the mobile home, manufactured home, or housetrailer is presumed to be an improvement to real property. A mobile home, manufactured home, or housetrailer may be determined to be permanently located only when it is attached to a foundation that cannot feasibly be relocated and only when the wheels are removed.

(j) The term "leasehold improvements" means improvements to mobile homes and mobile homes located on land owned by another person. This property is assessed under the appropriate classification, and the taxes are due and payable in two payments as provided in 15-24-202. Delinquent taxes on leasehold improvements are a lien only on the leasehold improvements.

(k) The term "livestock" means cattle, sheep, swine, goats, horses, mules, asses, llamas, alpacas, bison, ostriches, rbeas, emus, and domestic ungulates.

(l) The term "manufactured home" means a residential dwelling built in a factory in accordance with the United States department of housing and urban development code and the federal Manufactured Home Construction and Safety Standards. A manufactured home does not include a mobile home, as defined in 61-1-501 and in subsection (1)(m) of this section, a housetrailer, as defined in 61-1-501, or a mobile home or bousetrailer constructed before the federal Manufactured Home Construction and Safety Standards went into effect on June 15, 1976.

(m) The term "mobile home" means forms of housing known as "trailers", "housetrailers", or "trailer coaches" exceeding 8 feet in width or 45 feet in length, designed to be moved from one place to another by an independent power connected to them, or any trailer, housetrailer, or trailer coach up to 8 feet in width or 45 feet in length used as a principal residence.

(n) The term "personal property" includes everything that is the subject of ownership but that is not included within the meaning of the terms "real estate" and "improvements".

(o) The term "poultry" includes all chickens, turkeys, geese, ducks, and other birds raised in domestication to produce food or feathers.

HeinOnline -- 1999 vol. I 866 1999

(p) The term "property" includes money, credits, bonds, stocks, franchises, and all other matters and things, real, personal, and mixed, capable of private ownership. This definition may not be construed to authorize the taxation of the stocks of a company or corporation when the property of the company or corporation represented by the stocks is within the state and has been taxed.

(q) The term "real estate" includes:

(i) the possession of, claim to, ownership of, or right to the possession of land;

(ii) all mines, minerals, and quarries in and under the land subject to the provisions of 15-23-501 and Title 15, chapter 23, part 8;

(iii) all timber belonging to individuals or corporations growing or being on the lands of the United States; and

(iv) all rights and privileges appertaining to mines, minerals, quarries, and timber.

(r) "Recreational" means hunting, fishing, swimming, boating, waterskiing, camping, biking, hiking, and winter sports, including but not limited to skiing, skating, and snowmobiling.

(s) "Research and development firm" means an entity incorporated under the laws of this state or a foreign corporation authorized to do business in this state whose principal purpose is to engage in theoretical analysis, exploration, and experimentation and the extension of investigative findings and theories of a scientific and technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes.

(t) The term "stock in trade" means any mobile home, manufactured home, or housetrailer that is listed by the dealer as inventory and that is offered for sale, is unoccupied, and is not located on a permanent foundation. Inventory does not have to be located at the business location of a dealer or a distributor.

(u) The term "taxable value" means the percentage of market or assessed value as provided for in Title 15, chapter 6, part 1.

(2) The phrase "municipal corporation" or "municipality" or "taxing unit" includes a county, city, incorporated town, township, school district, irrigation district, or drainaga district or a person, persons, or organized body authorized by law to establish tax levies for the purpose of raising public revenue.

(3) The term "state board" or "board" when used without other qualification means the state tax appeal board."

Section 11. Section 15-6-136, MCA, is amended to read:

"15-6-136. Class six property — description — taxable percentage. (1) Class six property includes:

(a) livestock and other species of domestic animals and wildlife raised in domestication or a captive environment, except for cats, dogs, and other household pets not raised for profit;

(b) items of personal property intended for rent or lease in the ordinary course of business if each item of personal property satisfies all of the following:

(i) the acquired cost of the personal property is less than $15,000;

HeinOnline -- 1999 vol. I 867 1999

(ii) the personal property is owned by a business whose primary business income is from rental or lease of personal property to individuals wherein no one customer of the business accounts for more than 10% of the total rentals or leases during a calendar year;

(iii) the lease of the personal property is generally on an hourly, daily, or weekly basis; and

(c) machinery and equipment used in canola seed oil processing facilities if:

(i) the operators of those facilities employ a minimum of 15 full-time employees; and

(ii) a canola seed oil processing facility locates in the state of Montana after July 25, 1989; and

(d) machinery and equipment used in a malting barley facility.

(2) "Canola seed oil processing facility" means a facility that:

(a) extracts oil from canola seeds, refines the crude oil to produce edible oil, formulates and packages the edible oil into food products, or engages in any one or more of those processes; and

(b) employs at least 15 employees in a full-time capacity.

(3) "Malting barley facility" means a facility and integral machinery and equipment used principally to malt malting barley and includes machinery and equipment to mix, blend, transport, transfer, or process the barley and malt at the facility.

(4) Class six property is taxed at:

(a) 4% of its market value *for tax years ending on or before December 31, 1999;*

(b) 3% of its market value for tax year 2000;

(c) 2% of its market value for tax year 2001; and

(d) 1% of its market value for tax year 2002."

Section 12. Section 15-6-138, MCA, is amended to read:

"15-6-138. Class eight property — description — taxable percentage. (1) Class eight property includes:

(a) all agricultural implements and equipment;

(b) all mining machinery, fixtures, equipment, tools that are not exempt under 15-6-201(1)(r), and supplies except those included in class five;

(c) all manufacturing machinery, fixtures, equipment, tools that are not exempt under 15-6-201(1)(r), and supplies except those included in class five;

(d) all goods and equipment that are intended for rent or lease, except goods and equipment that are specifically included and taxed in another class;

(e) special mobile equipment as defined in 61-1-104;

(f) furniture, fixtures, and equipment, except that specifically included in another class, used in commercial establishments as defined in this section;

(g) x-ray and medical and dental equipment;

(h) citizens' band radios and mobile telephones;

HeinOnline -- 1999 vol. I 868 1999

(i) radio and television broadcasting and transmitting equipment;

(j) cable television systems;

(k) coal and ore haulers;

(l) theater projectors and sound equipment; and

(m) all other property that is not included in any other class in this part, except that property that is subject to a fee in lieu of a property tax.

(2) As used in this section, "coal and ore haulers" means nonhighway vehicles that exceed 18,000 pounds per axle and that are primarily designed and used to transport coal, ore, or other earthen material in a mining or quarrying environment.

(3) "Commercial establishment" includes any hotel; motel; office; petroleum marketing station; or service, wholesale, retail, or food-handling business.

(4) Class eight property is taxed at:

(a) ~~7% of its market value for tax year 1997; and~~

~~(b)~~ 6% of its market value for tax years beginning after December 31, 1997; *and*

(b) 3% of its market value for tax years beginning after December 31, 1999.

(5) (a) If, in any year beginning with tax year 2004, the percentage growth in inflation-adjusted Montana wage and salary income, in the last full year for which data is available, is at least 2.85% from the prior year, then the tax rate for class eight property will be reduced by 1% each year until the tax rate reaches zero.

(b) The department shall calculate the percentage growth in subsection (5)(a) by using the formula (W/CPI) -1, where:

(i) W is the Montana wage and salary income for the most current available year divided by the Montana wage and salary income for the year prior to the most current available year; and

(ii) CPI is the consumer price index for the most current available year used in subsection (5)(b)(i) divided by the consumer price index for the year prior to the most current available year as used in subsection (5)(b)(i).

(c) For purposes of determining the percentage growth in subsection (5)(a), the department shall use the wage and salary data series referred to as the bureau of economic analysis of the United States department of commerce Montana wage and salary disbursements. Inflation must be measured by the consumer price index, U.S. city average, all urban consumers (CPI-U), using the 1982-84 base of 100, as published by the bureau of labor statistics of the United States department of labor.

(6) Beginning with tax year 2000, the class eight property of a person or business entity that owns an aggregate of $5,000 or less in market value of class eight property is exempt from taxation."

Section 13. Section 15-6-201, MCA, is amended to read:

"**15-6-201. Exempt categories.** (1) The following categories of property are exempt from taxation:

(a) except as provided in 15-24-1203, the property of:

(i) the United States, except:

(A) if congress passes legislation that allows the state to tax property owned by the federal government or an agency created by congress; or

(B) as provided in 15-24-1103;

(ii) the state, counties, cities, towns, and school districts;

(iii) irrigation districts organized under the laws of Montana and not operating for profit;

(iv) municipal corporations;

(v) public libraries; and

(vi) rural fire districts and other entities providing fire protection under Title 7, chapter 33;

(b) buildings, with land that they occupy and furnishings in the buildings, that are owned by a church and used for actual religious worship or for residences of the clergy, together with adjacent land reasonably necessary for convenient use of the buildings;

(c) property used exclusively for agricultural and horticultural societies, for educational purposes, and for nonprofit health care facilities, as defined in 50-5-101, licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3. A health care facility that is not licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3, is not exempt.

(d) property that is:

(i) owned and held by an association or corporation organized under Title 35, chapter 2, 3, 20, or 21;

(ii) devoted exclusively to use in connection with a cemetery or cemeteries for which a permanent care and improvement fund has been established as provided for in Title 35, chapter 20, part 3; and

(iii) not maintained and operated for private or corporate profit;

(e) property that is owned or property that is leased from a federal, state, or local governmental entity by institutions of purely public charity if the property is directly used for purely public charitable purposes;

(f) evidence of debt secured by mortgages of record upon real or personal property in the state of Montana;

(g) public museums, art galleries, zoos, and observatories that are not used or held for private or corporate profit;

(h) all household goods and furniture, including but not limited to clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by the owner for personal and domestic purposes or for furnishing or equipping the family residence;

(i) truck canopy covers or toppers and campers;

(j) a bicycle, as defined in 61-1-123, used by the owner for porsonal transportation purposes;

(k) motor homes;

(l) all watercraft;

HeinOnline -- 1999 vol. I 870 1999

(m) motor vehicles, land, fixtures, buildings, and improvements owned by a cooperative association or nonprofit corporation organized to furnish potable water to its members or customers for uses other than the irrigation of agricultural land;

(n) the right of entry that is a property right reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise, or succession to enter land with a surface title that is held by another to explore, prospect, or dig for oil, gas, coal, or minerals;

(o) (i) property that is owned and used by a corporation or association organized and operated exclusively for the care of persons with developmental disabilities, persons with mental illness, or persons with physical or mental impairments that constitute or result in substantial impediments to employment and that is not operated for gain or profit; and

(ii) property that is owned and used by an organization owning and operating facilities that are for the care of the retired, aged, or chronically ill and that are not operated for gain or profit;

(p) all farm buildings with a market value of less than $500 and all agricultural implements and machinery with a market value of less than $100;

(q) property owned by a nonprofit corporation that is organized to provide facilities primarily for training and practice for or competition in international sports and athletic events and that is not held or used for private or corporate gain or profit. For purposes of this subsection (1)(q), "nonprofit corporation" means an organization that is exempt from taxation under section 501(c) of the Internal Revenue Code and incorporated and admitted under the Montana Nonprofit Corporation Act.

(r) the first $15,000 or less of market value of tools owned by the taxpayer that are customarily hand-held and that are used to:

(i) construct, repair, and maintain improvements to real property; or

(ii) repair and maintain machinery, equipment, appliances, or other personal property;

(s) harness, saddlery, and other tack equipment;

(t) a title plant owned by a title insurer or a title insurance producer, as those terms are defined in 33-25-105;

(u) timber as defined in 15-44-102;

(v) all trailers as defined in 61-1-111, semitrailers as defined in 61-1-112, pole trailers as defined in 61-1-114, and travel trailers as defined in 61-1-131;

(w) all vehicles registered under 61-3-456;

(x) (i) buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors, including buses, trucks, and truck tractors apportioned under Title 61, chapter 3, part 7; and

(ii) personal property that is attached to a bus, truck, or truck tractor that is exempt under subsection (1)(x)(i); ~~and~~

(y) motorcycles and quadricycles;

(z) items of personal property intended for rent or lease in the ordinary course of business if each item of personal property satisfies all of the following:

(i) the acquired cost of the personal property is less than $15,000;

(ii) the personal property is owned by a business whose primary business income is from rental or lease of personal property to individuals and no one customer of the business accounts for more than 10% of the total rentals or leases during a calendar year; and

(iii) the lease of the personal property is generally on an hourly, daily, or weekly basis;

(aa) all agricultural implements and equipment;

(bb) all mining machinery, fixtures, equipment, tools that are not exempt under 15-6-201(1)(r), and supplies except those included in class five;

(cc) all manufacturing machinery, fixtures, equipment, tools that are not exempt under 15-6-201(1)(r), and supplies except those included in class five;

(dd) all goods and equipment that are intended for rent or lease, except goods and equipment that are specifically included and taxed in another class;

(ee) special mobile equipment as defined in 61-1-104;

(ff) furniture, fixtures, and equipment, except that specifically included in another class, used in commercial establishments as defined in this section;

(gg) x-ray and medical and dental equipment;

(hh) citizens' band radios and mobile telephones;

(ii) radio and television broadcasting and transmitting equipment;

(jj) cable television systems;

(kk) coal and ore haulers; and

(ll) theater projectors and sound equipment.

(2) (a) For the purposes of subsection (1)(e), the term "institutions of purely public charity" includes any organization that meets the following requirements:

(i) The organization qualifies as a tax-exempt organization under the provisions of section 501(c)(3), Internal Revenue Code, as amended.

(ii) The organization accomplishes its activities through absolute gratuity or grants. However, the organization may solicit or raise funds by the sale of merchandise, memberships, or tickets to public performances or entertainment or by other similar types of fundraising activities.

(b) For the purposes of subsection (1)(g), the term "public museums, art galleries, zoos, and observatories" means governmental entities or nonprofit organizations whose principal purpose is to hold property for public display or for use as a museum, art gallery, zoo, or observatory. The exempt property includes all real and personal property reasonably necessary for use in connection with the public display or observatory use. Unless the property is leased for a profit to a governmental entity or nonprofit organization by an individual or for-profit organization, real and personal property owned by other persons is exempt if it is:

(i) actually used by the governmental entity or nonprofit organization as a part of its public display;

(ii) held for future display; or

HeinOnline -- 1999 vol. I 872 1999

(iii) used to house or store a public display.

(3) The following portions of the appraised value of a capital investment in a recognized nonfossil form of energy generation or low emission wood or biomass combustion devices, as defined in 15-32-102, are exempt from taxation for a period of 10 years following installation of the property:

(a) $20,000 in the case of a single-family residential dwelling;

(b) $100,000 in the case of a multifamily residential dwelling or a nonresidential structure."

Section 14. Section 15-6-207, MCA, is amended to read:

"15-6-207. Agricultural exemptions. (1) The following agricultural products are exempt from taxation:

(a) all unprocessed agricultural products on the farm or in storage and owned by the producer;

(b) all producer-held grain in storage;

(c) all unprocessed agricultural products~~, except livestock~~;

(d) ~~except as provided in subsection (1)(e),~~ *all* livestock ~~that have not attained the age of 24 months as of February 1 or as of the last day of any month of the prior tax year if assessed on the average inventory basis as provided in 15-24-902(2)~~ *and the unprocessed products of livestock*;

~~(e) swine that have not attained the age of 6 months as of January 1;~~

~~(f)~~*(e)* poultry and the unprocessed products of poultry; and

~~(g)~~*(f)* bees and the unprocessed product of bees.

(2) Any beet digger, beet topper, beet defoliator, beet thinner, beet cultivator, beet planter, or beet top saver designed exclusively to plant, cultivate, and harvest sugar beets is exempt from taxation if the implement has not been used to plant, cultivate, or harvest sugar beets for the 2 years immediately preceding the current assessment date and there are no available sugar beet contracts in the sugar beet grower's marketing area."

Section 15. Section 15-8-301, MCA, is amended to read:

"15-8-301. Statement — what to contain. (1) The department may require from a person a statement under oath setting forth specifically all the real and personal property owned by, in possession of, or under the control of the person at midnight on January 1. The statement must be in writing, showing separately:

(a) all property belonging to, claimed by, or in the possession or under the control or management of the person;

(b) all property belonging to, claimed by, or in the possession or under the control or management of any firm of which the person is a member;

(c) all property belonging to, claimed by, or in the pessession or under the control or management of any corporation of which the person is president, secretary, cashier, or managing agent;

(d) the county in which the property is situated or in which the property is liable to taxation and, if liable to taxation in the county in which the statement

HeinOnline -- 1999 vol. I 873 1999

is made, also the city, town, school district, road district, or other revenue districts in which the property is situated;

(e) an exact description of all lands, improvements, and personal property;

(f) all depots, shops, stations, buildings, and other structures erected on the space covered by the right-of-way and all other property owned by any person owning or operating any railroad within the county.

(2) The department shall notify the taxpayer in the statement for reporting personal property owned by a business or used in a business that the statement is for reporting business equipment and other business personal property described in Title 15, chapter 6, part 1. *A taxpayer owning exempt business equipment is subject to limited reporting requirements; however, all new businesses shall report their class eight property so that the department can determine the market value of the property. The department shall by rule develop reporting requirements for business equipment to limit the annual reporting of exempt business equipment to the extent feasible.*

(3) Whenever one member of a firm or one of the proper officers of a corporation has made a statement showing the property of the firm or corporation, another member of the firm or another officer is not required to include the property in that person's statement but the statement must show the name of the person or officer who made the statement in which the property is included.

(4) The fact that a statement is not required or that a person has not made a statement, under oath or otherwise, does not relieve the person's property from taxation."

Section 16. Section 15-24-301, MCA, is amended to read:

"15-24-301. Personal property brought into the state — assessment — exceptions — custom combine equipment. (1) Except as provided in subsections (2) through (5), property in the following cases is subject to taxation and assessment for all taxes levied that year in the county in which it is located:

(a) ~~any~~ personal property, ~~(including~~ *excluding* livestock~~)~~, brought~~, driven, or coming~~ into this state at any time during the year that is used in the state for hire, compensation, or profit;

(b) property whose owner or user is engaged in gainful occupation or business enterprise in the state; or

(c) property ~~which comes to rest and~~ *that* becomes a part of the general property of the state.

(2) The taxes on this property are levied in the same manner and to the same extent, except as otherwise provided, as though the property had been in the county on the regular assessment date, provided that the property has not been regularly assessed for the year in some other county of the state.

(3) ~~Nothing in this~~ *This* section ~~shall be construed to~~ *does not* levy a tax against a merchant or dealer within this state on goods, wares, or merchandise brought into the county to replenish the stock of the merchant or dealer.

(4) ~~Any~~ *A* motor vehicle not subject to a fee in lieu of tax brought, driven, or coming into this state by any nonresident person temporarily employed in Montana and used exclusively for transportation of ~~such~~ *the* person is subject to taxation and assessment for taxes as follows:

HeinOnline -- 1999 vol. I 874 1999

(a) The motor vehicle is taxed by the county in which it is located.

(b) One-fourth of the annual tax liability of the motor vehicle must be paid for each quarter or portion of a quarter of the year that the motor vehicle is located in Montana.

(c) The quarterly taxes are due the first day of the quarter.

(5) Agricultural harvesting machinery classified under class eight, licensed in ~~other states~~ *another state*, and operated on the ~~lands~~ *land* of ~~persons~~ *a person* other than the owner of the machinery under ~~contracts~~ *a contract* for hire ~~shall be~~ *is* subject to a fee in lieu of taxation of $35 ~~per~~ *for each* machine for the calendar year in which the fee is collected. The ~~machines~~ *machinery* ~~shall be~~ *is* subject to taxation under class eight only if ~~they are~~ *the machinery is* sold in Montana."

Section 17. Section 15-24-303, MCA, is amended to read:

"15-24-303. Proration of tax on personal property — refund. (1) The tax on personal property brought, driven, coming into, or otherwise located in the state on or after the assessment date must be prorated according to the ratio that the remaining number of months in the year bears to the total number of months in the year. This section does not apply to motor vehicles taxed under Title 61, chapter 3, part 5, or to livestock ~~assessed~~ *subject to the per capita levy* under ~~15-24-902(2)~~ *15-24-921*.

(2) If property upon which taxes have been paid is removed from the state, the taxpayer may obtain a refund of a prorated portion of the taxes, subject to the requirements of 15-16-613."

Section 18. Section 15-24-902, MCA, is amended to read:

"15-24-902. Assessment of livestock ~~— election for assessment on average inventory basis.~~ ~~(1) Except as provided in subsection (2), the~~ *The* department ~~of revenue~~ shall assess ~~all nonexempt~~ livestock *for the purposes of the per capita levy imposed under 15-24-921* in each county where they are located on February 1 of each year. The livestock must be assessed to the person by whom they were owned or claimed or in whose possession or control they were at midnight of February 1 in that year.

~~(2) An owner of livestock may elect to have nonexempt livestock assessed on the average inventory basis as provided in 15-24-927. The owner shall file an election with the department on the statement required under 15-24-903. An owner of livestock making an election to have nonexempt livestock assessed on the average inventory basis is bound by that election for 6 years. After 6 years, the election to have nonexempt livestock assessed on the average inventory basis remains in effect unless the owner otherwise notifies the department before February 1.~~"

Section 19. Section 15-24-903, MCA, is amended to read:

"15-24-903. Duty of owner to assist in assessment. (1) ~~(a) Except as provided in subsection (1)(b), the~~ *The* owner of livestock, as defined in ~~15-24-901~~ *15-24-921*, or the owner's agent shall at the time of assessment make and deliver to the department ~~of revenue~~ for the county or counties where the owner's livestock were located on February 1 a written statement, under oath, listing the owner's different kinds of livestock within the county or counties, together with a listing of their marks and brands.

HeinOnline -- 1999 vol. I 875 1999

~~(b) If the owner of livestock is assessed on the average inventory basis, as provided in 15-24-927, the owner or the owner's agent shall, in the manner and timeframe provided in subsection (1)(a), report to the department the county or counties where the livestock were located in the prior tax year and show the months during the prior tax year that the livestock were within the county or counties.~~

(2) As used in this section, "agent" means any person, persons, company, or corporation, including a feedlot operator or owner of grazing land, who has charge of livestock on the assessment date."

Section 20. Section 15-24-904, MCA, is amended to read:

"**15-24-904. Penalty for violation of law.** If ~~any~~ *a* person, persons, company, or corporation who is the owner or is in charge of ~~any~~ livestock within this state fails to make the statement or statements as provided in 15-24-903, the department may, after 10 days' notice to the person who failed to file the report, increase the ~~assessment~~ *per capita levy, as provided in 15-24-921,* by 10% as a penalty."

Section 21. Section 15-24-922, MCA, is amended to read:

"**15-24-922. Board of livestock to prescribe per capita levy — refunds ~~— per capita levy on average inventory~~.** (1) The board of livestock shall annually prescribe the amount of the per capita levy to be made against livestock of all classes for the purpose indicated in 15-24-921.

(2) The per capita tax levy must be calculated each year to provide not more than 110% of the average annual revenue that was generated in the 3 previous years. The calculation must apply a reasonable factor for nonpayment and late payment of taxes and for reimbursement to the counties pursuant to 15-24-925 for collection of the levy.

(3) (a) A livestock owner ~~taxed under 15-24-920~~ *who moves livestock between states* is entitled to a refund of the per capita levy collected under 15-24-921 based on the number of months *that* the livestock have taxable situs in ~~the state~~ *Montana*. The amount of the refund is equal to the ratio of the number of months that the livestock do not have taxable situs in the state to the number of months in the tax year, multiplied by the original per capita levy due. A taxpayer shall apply to the board of livestock on a form prescribed by the board for a refund allowed under this subsection by January 31 following the taxable year. The application must include a statement showing the date when the livestock were moved out of the state.

(b) ~~Except as provided in subsection (3)(c), for~~ *For* the purposes of 15-24-921 and this section, the per capita levy may not be prorated.

~~(c) A taxpayer whose livestock are taxed on the average inventory basis for property tax purposes must also be taxed on an average inventory basis for the purposes of 15-24-921 and this section. All other livestock subject to the per capita tax levy must be reported on February 1 of each year.~~"

Section 22. Section 17-7-502, MCA, is amended to read:

"**17-7-502. (Temporary) Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

HeinOnline -- 1999 vol. I 876 1999

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 3-5-901; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; *[section 1]; [section 26];* 15-23-706; 15-30-195; 15-31-702; 15-36-324; 15-36-325; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-406; 16-1-411; 16-11-308; 17-3-106; 17-3-212; 17-3-222; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-6-709; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 20-8-107; 20-8-111; 20-26-1503; 22-3-1004; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 39-71-907; 39-71-2321; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 53-6-703; 53-24-206; 67-3-205; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-1-131; 80-2-103; 80-2-222; 80-4-416; 81-5-111; 82-11-161; 85-20-402; 87-1-513; 90-3-301; 90-4-215; 90-6-331; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; pursuant to sec. 7(2), Ch. 29, L. 1995, the inclusion of 15-30-195 terminates July 1, 2001; pursuant to sec. 5, Ch. 461, L. 1997, the inclusion of 77-1-131 terminates October 1, 2003; and pursuant to secs. 13, 16(1), Ch. 549, L. 1997, the inclusion of 90-3-301 terminates July 1, 1999.)

17-7-502. (Effective July 1, 2008) Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 3-5-901; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; *[section 1]; [section 26];* 15-23-706; 15-30-195; 15-31-702; 15-36-324; 15-36-325; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; [16-1-406;] 16-1-411; 16-11-308; 17-3-106; 17-3-212; 17-3-222; 17-5-404; 17-5-804; 17-6-101; 17-7-304;

HeinOnline -- 1999 vol. I 877 1999

18-11-112; 19-3-319; 19-6-709; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-205; 19-19-305; 19-19-506; 20-8-107; 20-9-361; 20-26-1503; 22-3-1004; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 32-1-537; 37-43-204; 37-51-501; 39-71-503; 39-71-907; 39-71-2321; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 50-5-232; 50-40-206; 53-6-150; 53-6-703; 53-24-206; 60-2-220; 67-3-205; 75-1-1101; 75-5-1108; 75-6-214; 75-5-1108; 75-6-214; 75-11-313; 77-1-505; 80-2-103; 80-2-222; 80-4-416; 81-5-111; 82-11-136; 82-11-161; 85-1-220; 85-20-402; 87-1-513; 90-4-215; 90-6-331; 90-7-220; 90-7-221; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant to sec. 68(2), Ch. 422, L. 1997, this version becomes effective July 1, 2008.)"

Section 23. Section 20-9-406, MCA, is amended to read:

"20-9-406. Limitations on amount of bond issue. (1) (a) Except as provided in subsection ~~(1)(c)~~ *(1)(d)*, the maximum amount for which an elementary district or a high school district may become indebted by the issuance of bonds, including all indebtedness represented by outstanding bonds of previous issues and registered warrants, is 45% of the taxable value of the property subject to taxation to be ascertained by the last-completed assessment for state, county, and school taxes previous to the incurring of the indebtedness, plus~~,~~:

(i) ~~for bonds to be issued during fiscal year 1997, an additional 11% of the taxable value of class eight property within the district for tax year 1995, for bonds to be issued during fiscal year 1998, an additional 22% of the taxable value of class eight property within the district for tax year 1995, and~~ for bonds to be issued during fiscal years 1999 through 2008, an additional 33% of the taxable value of class eight property within the district for tax year 1995, ~~in each case of class eight property,~~ multiplied by 45%;

(ii) for bonds to be issued during fiscal year 2001, an additional 25% of the taxable value of class six property within the district for tax year 1999, multiplied by 45%, and an additional 60% of the taxable value of class eight property within the district for tax year 1999, multiplied by 45%;

(iii) for bonds to be issued during fiscal year 2002, an additional 50% of the taxable value of class six property within the district for tax year 1999, multiplied by 45%, and an additional 60% of the taxable value of class eight property within the district for tax year 1999, multiplied by 45%;

(iv) for bonds to be issued during fiscal year 2003, an additional 75% of the taxable value of class six property within the district for tax year 1999, multiplied by 45%, and an additional 60% of the taxable value of class eight property within the district for tax year 1999, multiplied by 45%;

HeinOnline -- 1999 vol. I 878 1999

(v) for bonds to be issued during fiscal years in which the tax rate for class eight property is 2%, an additional 100% of the taxable value of class six property within the district for tax year 1999, in each case of class six property, multiplied by 45%, and an additional 77% of the taxable value of class eight property within the district for tax year 1999, multiplied by 45%;

(vi) for bonds to be issued during fiscal years in which the tax rate for class eight property is 1%, an additional 94% of the taxable value of former class eight property within the district for tax year 1999, in each case of former class eight property, multiplied by 45%; and

(vii) for bonds to be issued during the fiscal year and succeeding fiscal years in which 15-6-138 is repealed, an additional 100% of the taxable value of former class eight property within the district for tax year 1999, in each case of former class eight property, multiplied by 45%.

(b) Except as provided in subsection ~~(1)(c)~~ *(1)(d)*, the maximum amount for which a K-12 school district, as formed pursuant to 20-6-701, may become indebted by the issuance of bonds, including all indebtedness represented by outstanding bonds of previous issues and registered warrants, is up to 90% of the taxable value of the property subject to taxation to be ascertained by the last-completed assessment for state, county, and school taxes previous to the incurring of the indebtedness, plus~~,~~:

(i) ~~for bonds to be issued during fiscal year 1997, an additional 11% of the taxable value of class eight property within the district for tax year 1995, for bonds to be issued during fiscal year 1998, an additional 22% of the taxable value of class eight property within the district for tax year 1995, and~~ for bonds to be issued during fiscal years 1999 through 2008, an additional 33% of the taxable value of class eight property within the district for tax year 1995, in each case of class eight property, multiplied by 90%;

(ii) for bonds to be issued during fiscal year 2001, an additional 25% of the taxable value of class six property within the district for tax year 1999, multiplied by 90%, and an additional 60% of the taxable value of class eight property within the district for tax year 1999, multiplied by 90%;

(iii) for bonds to be issued during fiscal year 2002, an additional 50% of the taxable value of class six property within the district for tax year 1999, multiplied by 90%, and an additional 60% of the taxable value of class eight property within the district for tax year 1999, multiplied by 90%;

(iv) for bonds to be issued during fiscal year 2003, an additional 75% of the taxable value of class six property within the district for tax year 1999, multiplied by 90%, and an additional 60% of the taxable value of class eight property within the district for tax year 1999, multiplied by 90%;

(v) for bonds to be issued during fiscal years in which the tax rate for class eight property is 2%, an additional 100% of the taxable value of class six property within the district for tax year 1999, in each case of class six property, multiplied by 90%, and an additional 77% of the taxable value of class eight property within the district for tax year 1999, multiplied by 90%;

(vi) for bonds to be issued during fiscal years in which the tax rate for class eight property is 1%, an additional 94% of the taxable value of former class eight property within the district for tax year 1999, in each case of former class eight property, multiplied by 90%; and

(vii) for bonds to be issued during the fiscal year and succeeding fiscal years in which 15-6-138 is repealed, an additional 100% of the taxable value of former class eight property within the district for tax year 1999, in each case of former class eight property, multiplied by 90%.

(c) The total indebtedness of the high school district with an attached elementary district must be limited to the sum of 45% of the taxable value of the property for elementary school program purposes and 45% of the taxable value of the property for high school program purposes, adjusted as provided in this section.

~~(c)~~*(d)* (i) The maximum amount for which an elementary district or a high school district with a district mill value per elementary ANB or per high school ANB that is less than the corresponding statewide mill value per elementary ANB or per high school ANB may become indebted by the issuance of bonds, including all indebtedness represented by outstanding bonds of previous issues and registered warrants, is 45% of the corresponding statewide mill value per ANB times 1,000 times the ANB of the district. For a K-12 district, the maximum amount for which the district may become indebted is 45% of the sum of the statewide mill value per elementary ANB times 1,000 times the elementary ANB of the district and the statewide mill value per high school ANB times 1,000 times the high school ANB of the district.

(ii) If mutually agreed upon by the affected districts, for the purpose of calculating its maximum bonded indebtedness under this subsection ~~(1)(c)~~ *(1)(d)*, a district may include the ANB of the district plus the number of students residing within the district for which the district or county pays tuition for attendance at a school in an adjacent district. The receiving district may not use out-of-district ANB for the purpose of calculating its maximum indebtedness if the out-of-district ANB has been included in the ANB of the sending district pursuant to the mutual agreement.

(2) The maximum amounts determined in subsection (1), however, may not pertain to indebtedness imposed by special improvement district obligations or assessments against the school district or to bonds issued for the repayment of tax protests lost by the district. All bonds issued in excess of the amount are void, except as provided in this section.

(3) When the total indebtedness of a school district has reached the limitations prescribed in this section, the school district may pay all reasonable and necessary expenses of the school district on a cash basis in accordance with the financial administration provisions of this chapter.

(4) Whenever bonds are issued for the purpose of refunding bonds, any money to the credit of the debt service fund for the payment of the bonds to be refunded is applied toward the payment of the bonds and the refunding bond issue is decreased accordingly."

Section 24. Section 81-7-303, MCA, is amended to read:

"81-7-303. County commissioners permitted to require per capita license fee on sheep. (1) To defray the expense of protection, the board of county commissioners of ~~any~~ *a* county may require all owners or persons in possession of ~~any~~ *a* sheep 1 year ~~old~~ *of age* or older in the county on the regular assessment date of each year *as provided in 15-24-903* to pay a per capita license fee in an amount to be determined by the board. All owners or persons in possession of ~~any~~ *a* sheep 1 year ~~old~~ *of age* or older coming into the county after

HeinOnline -- 1999 vol. I 880 1999

the regular assessment date and subject to ~~taxation~~ *the per capita levy* under the provisions of ~~15-24-301~~ *Title 15, chapter 24, part 9,* are subject to payment of the license fee.

(2) Upon the order of the board of county commissioners, the license fees may be imposed by entering the name of the licensee upon the ~~property tax~~ *assessment* record of the county by the department of revenue. The license fees are payable to and must be collected by the county treasurer. When levied, the fees are a lien upon the property, both real and personal, of the licensee. If the person against whom the license fee is levied does not own real estate against which the license fee is or may become a lien, then the license fee is payable immediately upon its levy and the treasurer shall collect the fee in the manner provided by law for the collection of personal property taxes that are not a lien upon real estate.

(3) When collected, the fees must be placed in the predatory animal control fund and the fund may be expended on order of the board of county commissioners of the county for predatory animal control only."

Section 25. Section 81-7-603, MCA, is amended to read:

"81-7-603. County commissioners permitted to levy per capita license fee on cattle. (1) To defray the expense of protection, the board of county commissioners may require all owners or persons in possession of any cattle 9 months old or older in the county on the regular assessment date of each year *as provided in 15-24-903* to pay a per capita license fee in an amount to be determined by the board. All owners or persons in possession of cattle 9 months old or older coming into the county after the regular assessment date and subject to ~~taxation~~ *the per capita levy* under the provisions of ~~15-24-301~~ *Title 15, chapter 24, part 9,* are subject to payment of the license fee.

(2) Upon the order of the board of county commissioners, the license fee may be imposed by entering the name of the licensee upon the ~~property tax~~ *assessment* record of the county by the department of revenue. The license fee is payable to the county treasurer. When levied, the fee is a lien upon the property, both real and personal, of the licensee. If the person against whom the license fee is levied does not own real estate against which the license fee is or may become a lien, then the license fee is payable immediately upon its levy and the treasurer shall collect the fee in the manner provided by law for the collection of personal property taxes that are not a lien upon real estate.

(3) The fees must be placed in a predatory animal control fund separate from the fund provided for in 81-7-303. The money in the predatory animal control fund may be expended by the board of county commissioners only for the predatory animal control program."

Section 26. Reimbursement for class eight exemption and rate reduction. (1) Except as otherwise provided in this section, a local government taxing jurisdiction must be reimbursed for losses of revenue due to the progressive tax exemption granted by 15-6-138. The reimbursement provided in this section is in addition to other statutory reimbursements.

(2) On or before June 1 of each tax year, the department of revenue shall determine a reimbursement amount associated with the loss in revenue caused by the exemption and tax rate reduction of class eight property and provide that information to each county treasurer. The department of revenue shall determine the reimbursement amount for each local government taxing jurisdiction that levied mills on the taxable value of property described in 15-6-138 in the

HeinOnline -- 1999 vol. I 881 1999

corresponding tax year. However, the reimbursement does not apply to property described in 15-6-138 that has a reduced tax rate under 15-24-1402.

(3) (a) The department shall calculate the reimbursement amount for each year by subtracting the estimated taxes that would have been assessed against class eight property for the corresponding tax year from the total taxes assessed against class eight property by a local government taxing jurisdiction for the 1999 tax year.

(b) The estimated taxes that would have been assessed against class eight property of a local government taxing jurisdiction for any given tax year are calculated as follows:

(i) For each taxpayer who reported class eight property in the local government taxing jurisdiction for the 1999 tax year, subtract the taxpayer's progressive exemption applicable to the corresponding tax year from the total market value of class eight property reported in the local government taxing jurisdiction during the 1999 tax year.

(ii) Multiply the amount determined in subsection (3)(b)(i) by the tax rate provided in 15-6-138 for the current tax year and the mills levied by each local government taxing jurisdiction for the 1999 tax year.

(4) (a) For purposes of this section, "local government taxing jurisdiction" means a local government rather than a state taxing jurisdiction that levied mills against property described in 15-6-138, including county governments, incorporated city and town governments, consolidated county and city governments, local elementary and high school districts, local community college districts, miscellaneous districts, and special districts. For purposes of calculating the reimbursement, the local government shall include countywide mills levied for equalization of school retirement or transpertation, but may not include tax increment financing districts or county or state school equalization levies provided for in 20-9-331, 20-9-333, and 20-9-360 or the university levy provided for in [section 1 of Senate Bill No. 79]. It also may not include any state levy for welfare programs provided for in 53-2-813.

(b) Tax increment financing districts may not receive a reimbursement under this section.

(c) The county treasurer shall use any reimbursement funds received under this section to reimburse each local government taxing jurisdiction in the amount determined by the department under subsection (2). The reimbursement must be distributed to funds within local government taxing jurisdictions in the same manner as taxes on property described in 15-6-138 are distributed.

(d) Each local government taxing jurisdiction receiving reimbursements shall consider the amount of reimbursement that will be received and lower the mill levy otherwise necessary to fund the budget by the amount that would otherwise have to be raised by the mill levy.

(5) A local government taxing jurisdiction that ceases to exist after December 31, 1999, will no longer be considered for revenue loss or reimbursement purposes. A local government taxing jurisdiction that is created after January 1, 2000, will not be considered for revenue loss or reimbursement purposes. If a local government taxing jurisdiction that existed prior to January 2000 is split between two or more taxing jurisdictions or is annexed to or is consolidated with

HeinOnline -- 1999 vol. I 882 1999

another taxing jurisdiction, the department shall determine how much of the revenue loss and reimbursement is attributed to the new jurisdictions.

(6) The reimbursement in this section is statutorily appropriated as provided in 17-7-502.

Section 27. Repealer. (1) Sections 15-6-136, 15-24-901, 15-24-920, 15-24-926, 15-24-927, and 15-24-931, MCA, are repealed.

(2) Section 15-6-138, MCA, is repealed.

Section 28. Codification instruction. [Sections 1 and 26] are intended to be codified as an integral part of Title 15, chapter 1, part 1, and the provisions of Title 15, chapter 1, part 1, apply to [sections 1 and 26].

Section 29. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 30. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 31. Effective dates. (1) [Sections 1, 11, 12, 15, 22, 26, 28 through 30, and 32 and this section] are effective on passage and approval.

(2) [Sections 3 through 9 and 23] are effective July 1, 2000.

(3) [Sections 2, 10, 13, 14, 16 through 21, 24, 25, and 27(1)] are effective January 1, 2003.

(4) [Sections 13(1)(aa) through (1)(ll) and 27(2)] are effective if the tax rate in [section 12], amending 15-6-138, reaches zero.

Section 32. Coordination. If [LC 1924] is passed and approved, then [sections 1 and 26 of this act] are void.

Approved April 11, 1999

CHAPTER NO. 286

[SB 5]

AN ACT RELATING TO FEES ASSESSED FOR THE ADMINISTRATIVE EXPENSES OF RETIREMENT SYSTEMS; ELIMINATING THE $1 MEMBERSHIP FEE CONTRIBUTED BY EACH EMPLOYER ON BEHALF OF EACH MEMBER OF THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; ELIMINATING A FEE FROM THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS USED TO DEFRAY CERTAIN ADMINISTRATIVE EXPENSES OF THE PUBLIC EMPLOYEES' RETIREMENT BOARD; AMENDING SECTION 19-2-408, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-2-408, MCA, is amended to read:

"19-2-408. Administrative expenses. (1) The legislature finds that proper administration of the pension trust funds benefits both employers and members and continues to benefit members after retirement.

HeinOnline -- 1999 vol. I 883 1999

(2) The administrative expenses of the retirement systems administered by the board must be paid from the investment earnings on the pension trust fund of the public employees' retirement system~~, except as provided in subsection (3)~~. Before the fiscal yearend closing, the board shall compute the administrative expenses attributable to each retirement system administered by the board for the immediately preceding fiscal year and transfer that amount from each retirement system's pension trust fund to the pension trust fund of the puhlic employees' retirement system. The total administrative expenses of the board, including the administration of the volunteer firefighters' pension plan, may not exceed 1.5% of the total retirement benefits paid.

~~(3) On January 1 of each year, each employer under the public employees' retirement system shall contribute on behalf of each member then in its service a membership fee of $1 in addition to other required contributions. The fees must be used for the purpose of defraying the administrative expense of chapters 2, 3, 5 through 9, and 13 and this chapter.~~

~~(4) The board may assess and the division may collect a fee from the department of fish, wildlife, and parks for the purpose of defraying the expenses of administering chapter 8 of this title.~~"

Section 2. Effective date. [This act] is effective July 1, 1999.

Approved April 9, 1999

CHAPTER NO. 287

[SB 179]

AN ACT CLARIFYING THAT A TEMPORARY DRIVING PERMIT ISSUED TO A PERSON ARRESTED FOR DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS IS NOT EFFECTIVE UNTIL 12 HOURS AFTER ISSUANCE; AND AMENDING SECTION 61-8-402, MCA.

WHEREAS, in City of Helena v. Danichek, 277 Mont. 461, 922 P.2d 1170, 53 St. Rep. 767 (1996), a concurring opinion by Justice Nelson noted that section 61-8-402, MCA, requires that a drunk driver be issued a temporary driving permit as the driver leaves the police station and even before the driver is sober.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-8-402, MCA, is amended to read:

"61-8-402. Blood or breath tests for alcohol, drugs, or both. (1) A person who oporates or is in actual physical control of a vehicle upon ways of this state open to the public is considered to have given consent to a test or tests of the person's blood or breath for the purpose of determining any measured amount or detected presence of alcohol or drugs in the person's body.

(2) (a) The test or tests must be administered at the direction of a peace officer when:

(i) the officer has reasonable grounds to believe that the porson has been driving or has been in actual physical control of a vehicle upon ways of this state open to the public while under the influence of alcohol, drugs, or a combination of the two and the person has been placed under arrest for a violation of 61-8-401;

HeinOnline -- 1999 vol. I 884 1999

(ii) the person is under the age of 21 and has been placed under arrest for a violation of 61-8-410; or

(iii) the officer has probable cause to believe that the person was driving or in actual physical control of a vehicle in violation of 61-8-401 and the person has been involved in a motor vehicle accident or collision resulting in property damage, bodily injury, or death.

(b) The arresting or investigating officer may designate which test or tests are administered.

(3) A person who is unconscious or who is otherwise in a condition rendering the person incapable of refusal is considered not to have withdrawn the consent provided by subsection (1).

(4) If an arrested person refuses to submit to one or more tests requested and designated by the officer as provided in subsection (2), the refused test or tests may not be given, but the officer shall, on behalf of the department, immediately seize the person's driver's license. The peace officer shall immediately forward the license to the department, along with a report certified under penalty of law stating which of the conditions set forth in subsection (2)(a) provides the basis for the testing request and confirming that the person refused to submit to one or more tests requested and designated by the peace officer. Upon receipt of the report, the department shall suspend the license for the period provided in subsection (6).

(5) Upon seizure of a driver's license, the peace officer shall issue, on behalf of the department, a temporary driving permit, which is *effective 12 hours after issuance and is* valid for 5 days following the date of issuance, and shall provide the driver with written notice of the license suspension or revocation and the right to a hearing provided in 61-8-403.

(6) The following suspension and revocation periods are applicable upon refusal to submit to one or more tests:

(a) upon a first refusal, a suspension of 6 months with no provision for a restricted probationary license;

(b) upon a second or subsequent refusal within 5 years of a previous refusal, as determined from the records of the department, a revocation of 1 year with no provision for a restricted probationary license.

(7) A nonresident driver's license seized under this section must be sent by the department to the licensing authority of the nonresident's home state with a report of the nonresident's refusal to submit to one or more tests.

(8) The department may recognize the seizure of a license of a tribal member by a peace officer acting under the authority of a tribal government or an order issued by a tribal court suspending, revoking, or reinstating a license or adjudicating a license seizure if the actions are conducted pursuant to tribal law or regnlation requiring alcohol or drug testing of motor vehicle operators and the conduct giving rise to the actions occurred within the exterior boundaries of a federally recognized Indian reservation in this state. Action by the department under this subsection is not reviewable under 61-8-403.

(9) A suspension under this section is subject to review as provided in this part.

HeinOnline -- 1999 vol. I 885 1999

(10) This section does not apply to blood and breath tests, samples, and analyses used for purposes of medical treatment or care of an injured motorist or related to a lawful seizure for a suspected violation of an offense not in tbis part."

Approved April 9, 1999

CHAPTER NO. 288

[SB 257]

AN ACT REVISING CERTAIN LAWS RELATING TO SEX OFFENSES; PROVIDING THAT CERTAIN REASONS OTHER THAN SOLELY SEXUAL GRATIFICATION CAN FORM THE BASIS FOR SEXUAL CRIMES; REVISING THE DEFINITIONS OF "SEXUAL CONTACT" AND "SEXUAL INTERCOURSE"; REVISING THE OFFENSE OF INDECENT EXPOSURE; AND AMENDING SECTIONS 45-2-101 AND 45-5-504, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-2-101, MCA, is amended to read:

"45-2-101. General definitions. Unless otherwise specified in the statute, ali words will be taken in the objective standard rather than in the subjective, and unless a different meaning plainly is required, the following definitions apply in this title:

(1) "Acts" has its usual and ordinary meaning and includes any bodily movement, any form of communication, and when relevant, a failure or omission to take action.

(2) "Administrative proceeding" means any proceeding the outcome of which is required to be based on a record or documentation prescribed by law or in which a law or a regulation is particularized in its application to an individual.

(3) "Another" means a person or persons~~, as defined in this code,~~ other than the offender.

(4) "Benefit" means gain or advantage or anything regarded by the beneficiary as gain or advantage, including benefit to any other person or entity in whose welfare the beneficiary is interested. Benefit does not include an advantage promised generally to a group or class of voters as a consequence of public measures that a candidate engeges to support or oppose.

(5) "Bodily injury" means physical pain, illness, or any impairment of physical condition and includes mental illness or impairment.

(6) "Cohabit" means to live together under the representation of being married.

(7) "Common scheme" means a series of acts or omissions motivated by a purpose to accomplish a single criminal objective or by a common purpose or plan that results in the repeated commission of the same offense or tbat affects the same person or the same persons or the property of the same person or persons.

(8) "Computer" means an electronic device that performs logical, arithmetic, and memory functions by the manipulation of electromic or magnetic impulses and includes all input, output, processing, storage, software, or communication facilities that are connected or related to that device in a system or network.

HeinOnline -- 1999 vol. I 886 1999

(9) "Computer network" means the interconnection of communication systems between computers or computers and remote terminals.

(10) "Computer program" means an instruction or statement or a series of instructions or statements, in a form acceptable to a computer, that in actual or modified form permits the functioning of a computer or computer system and causes it to perform specified functions.

(11) "Computer services" include but are not limited to computer time, data processing, and storage functions.

(12) "Computer software" means a set of computer programs, procedures, and associated documentation concerned with the operation of a computer system.

(13) "Computer system" means a set of related, connected, or unconnected devices, computer software, or other related computer equipment.

(14) "Conduct" means an act or series of acts and the accompanying mental state.

(15) "Conviction" means a judgment of conviction or sentence entered upon a plea of guilty or upen a verdict or finding of guilty of an offense rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury.

(16) "Correctional institution" means ~~the~~ *a* state prison, county or city jail, or other institution for the incarceration or custody of persons under sentence for offenses or awaiting trial or sentence for offenses.

(17) "Deception" means knowingly to:

(a) create or confirm in another an impression that is false and that the offender does not believe to be true;

(b) fail to correct a false impression that the offender previously has created or confirmed;

(c) prevent another from acquiring information pertinent to the disposition of the property involved;

(d) sell or otherwise transfer or encumber proporty without disclosing a lien, adverse claim, or other legal impediment to the enjoyment of the proporty, whether the impediment is or is not of value or is or is not a matter of official record; or

(e) promise performance that the offender does not intend to perform or knows will not be performed. Failure to porform, standing alone, is not evidence that the offender did not intend to perform.

(18) "Defamatory matter" means anything that exposes a person or a group, class, or association to hatred, contempt, ridicule, degradation, or disgrace in society or to injury to the person's or its business or occupation.

(19) "Deprive" means:

(a) to withhold property of another:

(i) permanently;

(ii) for such a period as to appropriate a portion of its value; or

HeinOnline -- 1999 vol. I 887 1999

(iii) with the purpose to restore it only upon payment of reward or other compensation; or

(b) to dispose of the property of another and use or deal with the property so as to make it unlikely that the owner will recover it.

(20) "Deviate sexual relations" means sexual contact or sexual intercourse between two persons of the same sex or any form of sexual intercourse with an animal.

(21) "Document" means, with respect to offenses involving the medicaid program, any application, claim, form, report, record, writing, or correspondence, whether in written, electronic, magnetic, microfilm, or other form.

(22) "Felony" means an offense in which the sentence imposed upon conviction is death or imprisonment in ~~the~~ *a* state prison for any term exceeding 1 year.

(23) "Forcible felony" means any felony that involves the use or threat of physical force or violence against any individual.

(24) A "frisk" is a search by an external patting of a person's clothing.

(25) "Government" includes any branch, subdivision, or agency of the government of the state or any locality within it.

(26) "Harm" means loss, disadvantage, or injury or anything so regarded by the person affected, including loss, disadvantage, or injury to ~~any~~ *a* person or entity in whose welfare the affected person is interested.

(27) A "house of prostitution" means any place where prostitution or promotion of prostitution is regnlarly carried on by one or more persons under the control, management, or supervision of another.

(28) "Human being" means a person who has been born and is alive.

(29) An "illegal article" is an article or thing that is prohibited by statute, rule, or order from being in the possession of a person subject to official detention.

(30) "Inmate" means a person who engages in prostitution in or through the agency of a house of prostitution.

(31) *(a)* "Intoxicating substance" means any controlled substance, as defined in Title 50, chapter 32, and any alcoholic beverage, including but not limited to any beverage containing 1/2 of 1% or more of alcohol by volume.

(b) Intoxicating substance does not include dealcoholized wine or any beverage or liquid produced by the process by which beer, ale, port, or wine is produced if it contains less tban 1/2 of 1% of alcohol by volume.

(32) An "involuntary act" means any act that is:

(a) a reflex or convulsion;

(b) a bodily movement during unconsciousness or sleep;

(c) conduct during hypnosis or resulting from hypnotic suggestion; or

(d) a bodily movement that otherwise is not a product of the effort or determination of the actor, either conscious or habitual.

(33) "Juror" means ~~any~~ *a* person who is a member of any jury, including a grand jury, impaneled by any court in this state in any action or proceeding or by any officer authorized by law te impanel a jury in any action or proceeding.

The term "juror" also includes a person who has been drawn or summoned to attend as a prospective juror.

(34) "Knowingly"—a person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when the person is aware of the person's own conduct or that the circumstance exists. A person acts knowingly with respect to the result of conduct described by a statute defining an offense when the person is aware that it is highly probable that the result will be caused by the person's conduct. When knowledge of the existence of a particular fact is an element of an offense, knowledge is established if a person is aware of a high probability of its existence. Equivalent terms, such as "knowing" or "with knowledge", have the same meaning.

(35) "Medicaid" means the Montana medical assistance program provided for in Title 53, chapter 6.

(36) "Medicaid agency" has the meaning in 53-6-155.

(37) "Medicaid benefit" means the provision of anything of pecuniary value to or on behalf of a recipient under the medicaid program.

(38) (a) "Medicaid claim" means a communication, whether in oral, written, electronic, magnetic, or other form:

(i) that is used to claim specific services or items as payable or reimbursable under the medicaid program; or

(ii) that states income, expense, or other information that is or may be used to determine entitlement to or the rate of payment under the medicaid program.

(b) The term includes any related documents submitted as a part of or in support of the claim.

(39) "Mentally defective" means that a person suffers from a mental disease or defect that renders the person incapable of appreciating the nature of the person's own conduct.

(40) "Mentally incapacitated" means that a person is rendered temporarily incapable of appreciating or controlling the person's own conduct as a result of the influence of an intoxicating substance.

(41) "Misdemeanor" means an offense for which the sentence imposed upon conviction is imprisonment in the county jail for any term or a fine, or both, or for which the sentence imposed is imprisonment in ~~the~~ *a* state prison for any term of 1 year or less.

(42) "Negligently"—a person acts negligently with respect to a result or to a circumstance described by a statute defining an offense when the person consciously disregards a risk that the result will occur or that the circumstance exists or when the person disregards a risk of which the person should be aware that the result will occur or that the circumstance exists. The risk must be of a nature and degree that to disregard it involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation. "Gross deviation" means a deviation that is considerably greater than lack of ordinary care. Relevant terms, such as "negligent" and "with negligence", have the same meaning.

(43) "Obtain" means:

HeinOnline -- 1999 vol. I 889 1999

(a) in relation te property, to bring about a transfer of interest or possession, whether to the offender or to another; and

(b) in relation to labor or services, to secure the performance of the labor or service.

(44) "Obtains or exerts control" includes but is not limited to the taking, the carrying away, or the sale, conveyance, or transfer of title to, interest in, or possession of property.

(45) "Occupied structure" means any building, vehicle, or other place suitable for human occupancy or night lodging of persons or for carrying on business, whether or not a person is actually present. Each unit of a building consisting of two or more units separately secured or occupied is a separate occupied structure.

(46) "Offender" means a person who has been or is liable to be arrested, charged, convicted, or punished for a public offense.

(47) "Offense" means a crime for which a sentence of death or of imprisonment or a fine is authorized. Offenses are classified as felonies or misdemeanors.

(48) "Official detention" means imprisonment resulting from a conviction for an offense, confinement for an offense, confinement of a person charged with an offense, detention by a peace officer pursuant te arrest, detention for extradition or deportation, or any lawful detention for the purpose of the protection of the welfare of the person detained or for the protection of society. Official detention does not include supervision of probation or parole, constraint incidental to release on bail, or an unlawful arrest unless the person arrested employed physical force, a threat of physical force, or a weapon to escape.

(49) "Official proceeding" means a proceeding heard or that may be heard before any legislative, judicial, administrative, or other governmental agency or official authorized to take evidence under oath, including any referee, ~~hearing~~ *hearings* examiner, commissioner, notary, or other person taking testimony or deposition in connection with the proceeding.

(50) "Other state" means any state or territory of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(51) "Owner" means a person other than the offender who has possession of or any other interest in the property involved, even though the interest or possession is unlawful, and without whose consent the offender has no authority to exert control over the property.

(52) "Party official" means a person who holds an elective or appointive pest in a political party in the United States by virtue of which the person directs or conducts or participates in directing or conducting party affairs at any level of responsibility.

(53) "Peace officer" means ~~any~~ *a* person who by virtue of the person's office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses while acting within the scope of the person's authority.

(54) "Pecuniary benefit" is benefit in the form of money, property, commercial interests, or anything else the primary significance of which is economic gain.

(55) "Person" includes an individual, business association, partnership, corporation, government, or other legai entity and an individual acting or

HeinOnline -- 1999 vol. I 890 1999

purporting to act for or on behalf of any government or subdivision of government.

(56) "Physically helpless" means that a person is unconscious or is otherwise physically unable to communicate unwillingness to act.

(57) "Possession" is the knowing control of anything for a sufficient time to be able to terminate control.

(58) "Premises" includes any type of structure or building and any real property.

(59) "Property" means any tangible or intangible thing of value. Property includes but is not limited to:

(a) real estate;

(b) money;

(c) commercial instruments;

(d) admission or transportation tickets;

(e) written instruments that represent or embody rights concerning anything of value, including labor or services, or that are otherwise of value to the owner;

(f) things growing on, affixed to, or found on land and things that are part of or affixed to any building;

(g) electricity, gas, and water;

(h) birds, animals, and fish that ordinarily are kept in a state of confinement;

(i) food and drink, samples, cultures, microorganisms, specimens, records, recordings, documents, blueprints, drawings, maps, and whole or partial copies, descriptions, photographs, prototypes, or models thereof;

(j) any other articles, materials, devices, substances, and any whole or partial copies, descriptions, photographs, prototypes, or models thereof that constitute, represent, evidence, reflect, or record secret scientific, technical, merchandising, production, or management information or a secret designed process, procedure, formula, invention, or improvement; and

(k) electronic impulses, electronically processed or produced data or information, commercial instruments, computer software or computer programs, in either machine-or human-readable form, computer services, any other tangible or intangible item of value relating to a computer, computer system, or computer network, and any copies thereof.

(60) "Property of another" means real or personal property in which a person other than the offender has an interest that the offender has no authority to defeat or impair, even though the offender may have an interest in the property.

(61) "Public place" means any place to which the public or any substantial group has access.

(62) "Public servant" means ~~any~~ *an* officer or employee of government, including but not limited to legislators, judges, and firefighters, and any person participating as a juror, ~~adviser~~ *adviser*, consultant, administrator, executor, guardian, or court-appointed fiduciary. The term does not include witnesses. The term "public servant" includes one who has been elected or designated to become a public servant.

HeinOnline -- 1999 vol. I 891 1999

(63) "Purposely"—a person acts purposely with respect to a result or to conduct described by a statute defining an offense if it is the person's conscious object to engage in that conduct or to cause that result. When a particular purpose is an element of an offense, the element is established although the purpose is conditional, unless the condition negatives the harm or evil sought to be prevented by the law defining the offense. Equivalent terms, such as "purpose" and "with the purpose", have the same meaning.

(64) (a) "Serious bodily injury" means bodily injury that:

(i) creates a substantial risk of death;

(ii) causes serious permanent disfigurement or protracted loss or impairment of the function or process of any bodily member or organ; or

(iii) at the time of injury, can reasonably be expected to result in serious permanent disfigurement or protracted loss or impairment of the function or process of any bodily member or organ.

(b) The term includes serious mental illness or impairment.

(65) "Sexual contact" means any touching of the sexual or other intimate parts of the person of another ~~for the purpose of arousing or gratifying~~, *directly or through clothing, in order to knowingly or purposely:*

(a) cause bodily injury to or humiliate, harass, or degrade another; or

(b) arouse or gratify the sexual *response or* desire *of* either party.

(66) *(a)* "Sexual intercourse" means penetration of the vulva, anus, or mouth of one person by the penis of another person, penetration of the vulva or anus of one person by any body member of another person, or penetration of the vulva or anus of one person by any foreign instrument or object manipulated by another person ~~for the purpose of arousing or gratifying~~ *to knowingly or purposely:*

(i) cause bodily injury or humiliate, harass, or degrade; or

(ii) arouse or gratify the sexual *response or* desire of either party.

(b) ~~Any~~ *For purposes of subsection (66)(a), any* penetration, however slight, is sufficient.

(67) "Solicit" or "solicitation" means to command, authorize, urge, incite, request, or advise another to commit an offense.

(68) "State" or "this state" means the state of Montana, all the land and water in respect to which the state of Montana has either exclusive or concurrent jurisdiction, and the air space above the land and water.

(69) "Statute" means any act of the legislature of this state.

(70) "Stolen property" means property over which control has been obtained by theft.

(71) A "stop" is the temporary detention of a person that results when a peace officer orders the person to remain in the peace officer's presence.

(72) "Tamper" means to interfere with something improperly, meddle with it, make unwarranted alterations in its existing condition, or deposit refuse upon it.

(73) "Threat" means a menace, however communicated, to:

HeinOnline -- 1999 vol. I 892 1999

(a) inflict physical harm on the person threatened or any other person or on property;

(b) subject any person to physical confinement or restraint;

(c) commit any criminal offense;

(d) accuse any person of a criminal offense;

(e) expose any person to batred, contempt, or ridicule;

(f) harm the credit or business repute of any person;

(g) reveal any information sought to be concealed by the person threatened;

(h) take action as an official against anyone or anything, withhold official action, or cause the action or withholding;

(i) bring about or continue a strike, boycott, or other similar collective action if the person making the threat demands or receives property that is not for the benefit of groups that the person purports to represent; or

(j) testify or provide information or withhold testimony or information with respect to another's legal claim or defense.

(74) (a) "Value" means the market value of the property at the time and place of the crime or, if the market value cannot be satisfactorily ascertained, the cost of the replacement of the property within a reasonable time after the crime. If the offender appropriates a portion of the value of the property, the value must be determined as follows:

(i) The value of an instrument constituting an evidence of debt, such as a check, draft, or promissory note, is considered the amount due or collectible. The figure is ordinarily the face amount of the indebtedness less any portion of the indebtedness that has been satisfied.

(ii) The value of any other instrument that creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation is considered the amount of economic loss that the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

(iii) The value of electronic impulses, electronically produced data or information, computer software or programs, or any other tangible or intangible item relating to a computer, computer system, or computer network is considered to be tbe amount of economic loss that the owner of the item might reasonably suffer by virtue of the loss of the item. The determination of the amount of economic loss includes but is not limited to consideration of the value of the owner's right to exclusive use or disposition of the item.

(b) When it cannot be determined if the value of the property is more or less than $500 by the standards set forth in subsection (74)(a), its value is considered to be an amount less than $500.

(c) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property.

(75) "Vehicle" means any device for transportation by land, water, or air or by mobile equipment, with provision for transport of an oporator.

HeinOnline -- 1999 vol. I 893 1999

(76) "Weapon" means any instrument, article, or substance that, regardless of its primary function, is readily capable of being used to produce death or serious bodily injury.

(77) "Witness" means a person whose testimony is desired in any official proceeding, in any investigation by a grand jury, or in a criminal action, prosecution, or proceeding."

Section 2. Section 45-5-504, MCA, is amended to read:

"45-5-504. Indecent exposure. (1) A person ~~who, for the purpose of arousing or gratifying the person's own sexual desire or the sexual desire of any person,~~ *commits the offense of indecent exposure if the person knowingly or purposely* exposes the person's genitals under circumstances in which the person knows the conduct is likely to cause affront or alarm ~~commits the offense of indecent exposure~~ *in order to:*

(a) abuse, humiliate, harass, or degrade another; or

(b) arouse or gratify the person's own sexual response or desire or the sexual response or desire of any person.

(2) (a) A person convicted of the offense of indecent exposure shall be fined an amount not to exceed $500 or be imprisoned in the county jail for a term of not more than 6 months, or both.

(b) On a second conviction, the person shall be fined an amount not to exceed $1,000 or be imprisoned in the county jail for a term of not more than 1 year, or both.

(c) On a third or subsequent conviction, the person shall he punished by life imprisonment or by imprisonment in ~~the~~ *a* state prison for a term of not less than 5 years or more than 100 years and may be fined not more than $10,000."

Approved April 9, 1999

CHAPTER NO. 289

[SB 365]

AN ACT CLARIFYING THE SCOPE OF CONSTRUCTION SERVICES PERFORMED ON A PUBLIC WORKS CONTRACT FOR WHICH THE PREVAILING RATE OF WAGES MUST BE PAID; AMENDING SECTIONS 18-2-401 AND 18-2-403, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 18-2-401, MCA, is amended to read:

"18-2-401. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) A "bona fide resident of Montana" is a person who, at the time of employment and immediately prior to the time of employment, has lived in this state in a manner and for a time that is sufficient to clearly justify the conclusion that the person's past habitation in this state has been coupled with an intention to make it the person's home. Sojourners or persons who come to Montana solely in pursuance of any contract or agreement to perform labor may not he considered

HeinOnline -- 1999 vol. I 894 1999

to be bona fide residents of Montana within the meaning and for the purpose of this part.

(2) "Commissioner" means the commissioner of labor and industry provided for in 2-15-1701.

(3) (a) "Construction services" means work performed by an individual in construction, heavy construction, highway construction, and remodeling work.

(b) The term does not include:

(i) engineering, superintendence, management, office, or clerical work on a public works contract; or

(ii) consulting contracts, contracts with commercial suppliers for goods and supplies, or contracts with professionals licensed under state law.

(4) "Department" means the department of labor and industry provided for in 2-15-1701.

(5) "District" means a prevailing wage rate district established as provided in 18-2-411.

(6) "Heavy and highway construction wage rates" means wago rates, including fringe benefits for health and welfare and pension contributions, that meet tbe requirements of tbe Employee Retirement Income Security Act of 1974 and other bona fide programs approved by tbe United States department of labor *and zone pay* and travel allowance that are determined and established statewide for heavy and highway construction projects, such as alteration or repair of roads, streets, bighways, alleys, runways, trails, parking areas, ~~or~~ utility rights-of-way, *staging yards located on or off the right-of-way, or new or reopened pits that produce aggregate, asphalt, concrete, or backfill when the pit does not normally sell to the general public.*

(7) "Nonconstruction services" means work performed by an individual, not including management, office, or clerical work, for:

(a) tbe maintenance of publicly owned buildings and facilities, including public highways, roads, streets, and alleys;

(b) custodial or security services for publicly owned buildings and facilities;

(c) grounds maintenance for publicly owned property;

(d) the operation of public drinking water supply, waste collection, and waste disposal systems;

(e) law enforcement, including janitors and prison guards;

(f) fire protection;

(g) public or school transportation driving;

(h) nursing, nurse's aid services, and medical laboratory technician services;

(i) material and mail handling;

(j) food service and cooking;

(k) motor vehicle and construction equipment repair and servicing; and

(l) appliance and office machine repair and servicing.

HeinOnline -- 1999 vol. I 895 1999

(8) "Project location" means the construction site where a public works project involving construction services is being built, installed, or otherwise improved or reclaimed, as specified on the project plans and specifications.

~~(8)~~*(9)* "Public works contract" means a contract for construction services or nonconstruction services let by the state, county, municipality, school district, or political subdivision in which the total cost of the contract is in excess of $25,000.

(10) "Special circumstances" means all work performed at a facility that is built or developed for a specific Montana public works project and that is located in a prevailing wage district that contains the project location or that is located in a contiguous prevailing wage district.

~~(9)~~*(11)* (a) "Standard prevailing rate of wages" or "standard prevailing wage" means:

(i) the heavy and highway construction wage rates applicable to heavy and highway construction projects; or

(ii) those wages, other than heavy and highway construction wages, including fringe benefits for health and welfare and pension contributions, that meet the requirements of the Employee Retirement Security Act of 1974 and other bona fide programs approved by the United States department of labor and travel allowance that are paid in the district by other contractors for work of a similar character performed in that district by each craft, classification, or type of worker needed to complete a contract under this part. In each district, the standard prevailing rate of wages must be computed from a weighted average wage rate based on all of the hours worked on work of a similar character performed in the district unless the survey of employers in the district does not generate sufficient data. If the survey produces insufficient data, the rate may he established by the use of other information or methods that the commissioner determines fairly establish the standard prevailing rate of wages. The commissioner shall estahlish by rule the method or methods by which the standard prevailing rate of wages is determined. The rules must establish a process for determining if there is insufficient data generated by a survey of employers in the district that requires the use of other methods of determining the standard prevailing rate of wages. The rules must identify the amount of data that constitutes insufficient data and require the commissioner of labor to use other methods of determining the standard prevailing rate of wages when insufficient data exists. The alternative methods of determining the prevailing rate of wages must provide for review and the incorporation of data from work of a similar character that is conducted as near as possible to the original district.

(b) When work of a similar character is not being performed in the district, the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions, that meets the requirements of the Employee Retirement Security Act of 1974 and other bona fide programs approved by the United States department of labor and the rate of travel allowance must be those rates established by collective bargaining agreements in effect in the district for each craft, classification, or type of worker needed to complete the contract.

~~(10)~~*(12)* "Work of a similar character" means work on private or commercial projects as well as work on public projects."

Section 2. Section 18-2-403, MCA, is amended to read:

HeinOnline -- 1999 vol. I 896 1999

"18-2-403. Preference of Montana labor in public works — wages — tax-exempt project — federal exception. (1) In every public works contract, there must be inserted in the bid specification and the public works contract a provision requiring the contractor to give preference to the employment of bona fide residents of Montana in the performance of the work.

(2) All public works contracts *for construction services* under subsection (1), except those for heavy and highway construction, *that are conducted at the project location or under special circumstances* must contain a provision requiring the contractor to pay:

(a) the travel allowance that is in effect and applicable to the district in which the work is being performed; and

(b) the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions, that:

(i) meets the requirements of the Employee Retirement Income Security Act of 1974 and other bona fide programs approved by the United States department of labor; and

(ii) is in effect and applicable to the district in which the work is being performed.

(3) In every public works contract for heavy and highway construction, there must be inserted a provision to require the contractor to pay the heavy and highway construction wage rates established statewide for ~~the project~~ *heavy and highway construction services conducted at the project location or under special circumstances.*

(4) All public works contracts for nonconstruction services under subsection (1) must contain a provision requiring the contractor to pay:

(a) the travel allowance that is in effect and applicable to the district in which the work is being performed; and

(b) the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions, that:

(i) meets the requirements of the Employee Retirement Income Security Act of 1974 and other bona fide programs approved by the United States department of labor; and

(ii) is in effect and applicable to the district in which the work is being performed.

(5) Transportation of goods, supplies, materials, and manufactured or fabricated items to or from the project location is not subject to payment of the standard prevailing rate of wages.

~~(4)~~*(6)* A contract, other than a public works contract, let for a project costing more than $25,000 and financed from the proceeds of bonds issued under Title 17, chapter 5, part 15, or Title 90, chapter 5 or 7, on or after July 1, 1993, must contain a provision requiring the contractor to pay the standard prevailing wage rate in effect and applicable to the district in which the work is being performed unless the contractor performing the work has entered into a collective bargaining agreement covering the work to be performed.

~~(5)~~*(7)* A public works contract may not be let to any person, firm, association, or corporation refusing to execute an agreement with the provisions described in

HeinOnline -- 1999 vol. I 897 1999

subsections (1) through ~~(4)~~*(6)* in it, provided that in public works contracts involving the expenditure of federal-aid funds, this part may not be enforced in a manner as to conflict with or be contrary to the federal statutes prescribing a labor preference to honorably discharged veterans of the armed forces and prohibiting as unlawful any other preference or discrimination among citizens of the United States.

~~(6)~~*(8)* Failure to include the provisions required by 18-2-422 in a public works contract relieves the contractor from the contractor's obligation to pay the standard prevailing wage rate and places the obligation on the public contracting agency."

Section 3. Effective date — applicability. [This act] is effective July 1, 1999, and applies to contracts entered into on or after [the effective date of this act].

Approved April 9, 1999

CHAPTER NO. 290

[SB 473]

AN ACT GENERALLY REVISING THE LAWS RELATING TO ESTATES, TRUSTS, AND FIDUCIARY RELATIONSHIPS; CLARIFYING THE DEFINITION OF PARENT-CHILD RELATIONSHIP; CLARIFYING COMPUTATION OF THE AUGMENTED ESTATE; CONFORMING DISCLAIMER RULES TO FEDERAL REGULATIONS; ALLOWING A PERSONAL REPRESENTATIVE TO CONTINUE AN UNINCORPORATED BUSINESS; CLARIFYING CIRCUMSTANCES IN WHICH A GUARDIAN OF A MINOR MAY BE APPOINTED; EXTENDING THE EXEMPTION FROM INHERITANCE TAXES FOR STEPCHILDREN; ALLOWING CERTAIN PERSONAL PROPERTY OWNED BY A TRUST TO BE DISPOSED OF BY SEPARATE WRITING; PROVIDING AN OBJECTIVE STANDARD GOVERNING INVESTMENTS BY TRUSTEES BY CLARIFYING THE PRUDENT INVESTOR RULE; PROVIDING FOR DISTRIBUTION OF CHARITABLE TRUSTS' ASSETS UPON TERMINATION OF THE TRUST; REQUIRING A STATEMENT OF PURPOSE OF TRUST JUDICIAL PROCEEDINGS IN A NOTICE OF HEARING; AMENDING SECTIONS 72-2-124, 72-2-221, 72-2-222, 72-2-811, 72-3-613, 72-5-222, 72-34-113, 72-34-114, 72-34-205, AND 72-35-306, MCA, AND SECTION 3, CHAPTER 464, LAWS OF 1997; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 72-2-124, MCA, is amended to read:

"72-2-124. Parent and child relationship. (1) Except as provided in subsections (2) and (3), for the purposes of intestate succession by, through, or from a person, an individual is the child of the child's natural parents, regardless of their marital status. The parent and child relationship may be established under Title 40, chapter 6, part 1.

(2) An adopted individual is the child of an adopting parent or parents and not of the natural parents, but adoption of a child by the spouse of either natural parent has no effect on:

(a) the relationship between the child and ~~either~~ *that* natural parent; or

(b) the right of the child or a descendant of the child to inherit from or through the other natural parent.

(3) Inheritance from or through a child by either natural parent or the parent's kindred is precluded unless that natural parent has openly treated the child as the parent's and has not refused to support the child."

Section 2. Section 72-2-221, MCA, is amended to read:

"72-2-221. Elective share. (1) The surviving spouse of a decedent who dies domiciled in this state has a right of election, under the limitations and conditions stated in this part, to take an elective-share amount equal to the value of the elective-share percentage of the augmented estate, determined by the length of time the spouse and the decedent were married to each other, in accordance with the following schedule:

If the decedent and the spouse were married to each other:	The elective-share percentage is:
Less than 1 year	supplemental amount only
1 year but less than 2 years	3% of the augmented estate
2 years but less than 3 years	6% of the augmented estate
3 years but less than 4 years	9% of the augmented estate
4 years but less than 5 years	12% of the augmented estate
5 years but less than 6 years	15% of the augmented estate
6 years but less than 7 years	18% of the augmented estate
7 years but less than 8 years	21% of the augmented estate
8 years but less than 9 years	24% of the augmented estate
9 years but less than 10 years	27% of the augmented estate
10 years but less than 11 years	30% of the augmented estate
11 years but less than 12 years	34% of the augmented estate
12 years but less than 13 years	38% of the augmented estate
13 years but less than 14 years	42% of the augmented estate
14 years but less than 15 years	46% of the augmented estate
15 years or more	50% of the augmented estate

(2) If the sum of the amounts described in 72-2-222(2)(d), 72-2-227(1)(a) *through (1)(c)*, and that part of the elective-share amount payable from the decedent's probate estate and nonprobate transfers to others under 72-2-227(2) and (3) is less than $50,000, the surviving spouse is entitled to a supplemental elective-share amount equal to $50,000, minus the sum of the amounts described in those sections. The supplemental elective-share amount is payable from the decedent's probate estate and from recipients of the decedent's nonprobate transfers to others in the order of priority set forth in 72-2-227(2) and (3).

(3) If the right of election is exercised by or on behalf of the surviving spouse, the surviving spouse's homestead allowance, exempt property, and family

HeinOnline -- 1999 vol. I 899 1999

allowance, if any, are not charged against but are in addition to the elective-share and supplemental elective-share amounts.

(4) The right, if any, of the surviving spouse of a decedent who dies domiciled outside this state to take an elective share in property in this state is governed by the law of the decedent's domicile at death."

Section 3. Section 72-2-222, MCA, is amended to read:

"72-2-222. Augmented estate. (1) (a) As used in this section, the following definitions apply:

(i) "Decedent's nonprohate transfers to others" means the decedent's nonprohate transfers to persons, other than the decedent's spouse, surviving spouse, the decedent, or the decedent's creditors, estate, or estate creditors, that are included in the augmented estate under subsection (2)(b).

(ii) "Fractional interest in property held in joint tenancy with the right of survivorship", whether the fractional interest is unilaterally severable or not, means the fraction, the numerator of which is one and the denominator of which, if the decedent was a joint tenant, is one plus the number of joint tenants who survive the decedent and which, if the decedent was not a joint tenant, is the number of joint tenants.

(iii) "Marriage", as it relates to a transfer by the decedent during marriage, means any marriage of the decedent to the decedent's surviving spouse.

(iv) "Nonadverse party" means a person who does not have a substantial beneficial interest in the trust or other property arrangement that would be adversely affected by the exercise or nonexercise of the power that person possesses respecting the trust or other property arrangement. A person having a general power of appointment over property is considered to have a beneficial interest in the property.

(v) "Power" or "power of appointment" includes a power to designate the beneficiary of a beneficiary designation.

(vi) "Presently exercisable general power of appointment" means a power of appointment under which, at the time in question, the decedent, whether or not the decedent then had the capacity to exercise the power, held a power to create a present or future interest in the decedent, the decedent's creditors, the decedent's estate, or the creditors of the decedent's estate and includes a power to revoke or invade the principal of a trust or other property arrangement.

(vii) "Probate estate" means property, whether real or personal, movable or immovable, wherever situated, that would pass by intestate succession if the decedent died without a valid will.

(viii) "Property" includes values subject to a beneficiary designation.

(ix) "Right to income" includes a right to payments under a commercial or private annuity, an annuity trust, a unitrust, or a similar arrangement.

(x) "Transfer", as it relates to a transfer hy or of the decedent, includes:

(A) an exercise or release of a presently exercisable general power of appointment held hy the decedent;

(B) a lapse at death of a presently exercisable general power of appointment held by the decedent; and

(C) an exercise, release, or lapse of a general power of appointment that the decedent created in the decedent and of a power described in suhsection (2)(b)(ii)(B) that the decedent conferred on a nonadverse party.

(b) (i) As used in subsection (2)(b)(iii)(A), "termination":

(A) with respect to a right or interest in property, means that the right or interest terminated by the terms of the governing instrument or that the decedent transferred or relinquished the right or interest; and

(B) with respect to a power over property, means that the power terminated by exercise, release, lapse, or default or otherwise.

(ii) With respect to a power described in subsection (2)(b)(i)(A), "termination" means that the power terminated by exercise or release, but not by lapse or by default or otherwise.

(2) The augmented estate consists of the sum of:

(a) the value of the decedent's probate estate, reduced by funeral and administration expenses, homestead allowance, family allowances, exempt property, and enforceable claims;

(b) the value of the decedent's nonprobate transfers to others, which are composed of all property, wbether real or personal, movable or immovable, wherever situated, not included in tbe decedent's probate estate, of any of the following types:

(i) property of any of the following types tbat passed outside probate at the decedent's death:

(A) property over which the decedent alone, immediately before death, held a presently exercisable general power of appeintment; the amount included is the value of the property subject to the power, to the extent that tbe property was passed at the decedent's death, by exercise, release, lapse, or default or otherwise, to or for the benefit of any person other than the decedent's estate or surviving spouse;

(B) the decedent's fractional interest in property held by the decedent in joint tenancy with the right of survivorship; the amount included is the value of the decedent's fractional interest, to the extent that the fractional interest was passed by right of survivorship at the decedent's death to a surviving joint tenant other than the decedent's surviving spouse; or

(C) the decedent's ownership interest in property or accounts held in POD, TOD, or co-ownership registration with the right of survivorship; the amount included is the value of tbe decedent's ownership interest, to the extent that the decedent's ownership interest passed at the decedent's death to or for the benefit of any person other than the decedent's estate or surviving spouse;

(ii) property transferred in any of tbe following forms by the decedent during marriage:

(A) any irrevocable transfer in which the decedent retained the right to the possession or enjoyment of, or to the income from, the property if and to the extent that the decedent's right terminated at or continued beyond the decedent's deatb; the amount included is the value of the fraction of the property to which the decedent's right related, to the extent that the fraction of the property was passed outside probate to or for the benefit of any person other than the decedent's estate or surviving speuse; or

HeinOnline -- 1999 vol. I 901 1999

(B) any transfer in which the decedent created a power over the income or principal of the transferred property, exercisable by the decedent alone or in conjunction with any other person, or exercisable by a nonadverse party, for the benefit of the decedent, the decedent's creditors, the decedent's estate, or the creditors of the decedent's estate; the amount included is the value of the property subject to the pewer, to the extent that the power was exercisable at the decedent's death to or for the benefit of any person other than the decedent's surviving spouse or to the extent that the property subject to the power passed at the decedent's death, by exercise, release, lapse, or default or otherwise, to or for the benefit of any person other than the decedent's estate or surviving spouse; and

(iii) property that passed during marriage and during the 2-year period preceding the decedent's death as a result of a transfer by the decedent if the transfer was of any of the following types:

(A) any property that passed as a result of the termination of a right or interest in, or power over, property that would have been included in the augmented estate under subsection (2)(b)(i)(A), (2)(b)(i)(B), (2)(b)(i)(C), or (2)(b)(ii) if the right, interest, or power had not terminated until the decedent's death; the amount included is the value of the property that would have been included under these subsections, except that that property is valued at the time tbat the right, interest, or power terminated, and is included only to the extent that the property passed upon termination to or for the benefit of any person other than the decedent or the decedent's estate, spouse, or surviving spouse; or

(B) any transfer of property, to the extent not otherwise included in the augmented estate, made to or for the benefit of a person other than the decedent's surviving spouse; the amount included is the value of the transferred property to the extent that the aggregate transfers to any one donee in either of the 2 years exceeded ~~$10,000~~ *the amount excluded from federal taxable gifts pursuant to section 2503(b) of the Internal Revenue Code in effect in the year of transfer*;

(c) the value of the decedent's nonprobate transfers to the decedent's surviving spouse, which are composed of all property that passed outside probate at the decedent's death from the decedent to the surviving spouse by reason of the decedent's death, including:

(i) the decedent's fractional interest in property held as a joint tenant with the right of survivorship, to the extent that the decedent's fractional interest passed to the surviving spouse as surviving joint tenant;

(ii) the decedent's ownership interest in property or accounts held in co-ownership registration with the rigbt of survivorship, to the extent the decedent's ownership interest passed to the surviving spouse as surviving co-owner;

(iii) proceeds of insurance, including accidental death benefits, on the life of the decedent if the decedent owned the insurance policy immediately before death or if and to the extent that the decedent alone and immediately before death held a presently exercisable general power of appointment over the policy or its proceeds; the amount included is the value of the proceeds, to the extent that they were payable at the decedent's death; and

(iv) all other property that would have been included in the augmented estate under subsection (2)(b)(i) or (2)(b)(ii) had it passed to or for the benefit of a person other than the decedent's spouse, surviving spouse, the decedent, or the

HeinOnline -- 1999 vol. I 902 1999

decedent's creditors, estate, or estate crediters, but excluding property passing to the surviving spouse under the federal social security system; and

(d) except to the extent included in the augmented estate under subsection (2)(a) or (2)(c), the value of:

(i) property that was owned by the decedent's surviving spouse at the decedent's death, including:

(A) the surviving spouse's fractional interest in property held in joint tenancy with the right of survivorship;

(B) the surviving spouse's ownership interest in property or accounts held in co-ownership registration with the right of survivorship; and

(C) property that passed to the surviving spouse by reason of the decedent's death, but not including the spouse's right to homestead allowance, family allowance, exempt property, or payments under the federal social security system; and

(ii) property that would have heen included in the surviving spouse's nonprobate transfers to others, other than the spouse's fractional and ownership interests included in subsections (2)(d)(i)(A) and (2)(d)(i)(B), had the spouse been the decedent. Proporty included under this subsection (2)(d)(ii) is valued at the decedent's death, taking into account tbe fact that the decedent predeceased the spouse, except that, for purposes of subsections (2)(d)(i)(A) and (2)(d)(i)(B), the values of the spouse's fractional and ownership interests are determined immediately before the decedent's death if the decedent was then a joint tenant or a co-owner of the property or accounts. The value of property included under this subsection (2)(d)(ii) is reduced in each category by enforceable claims against the included proporty and is reduced by enforceable claims against the surviving spouse.

(3) The value of any property is excluded from the decedent's nonprobate transfers to others:

(a) te the extent the decedent received adequate and full consideration in money or money's worth for a transfer of the proporty;

(b) if the property was transferred with the written joinder of, or if the transfer was consented to in writing by, the surviving spouse; or

(c) if the property is life insurance, accident insurance, pension, profit-sharing, retirement, and other benefit plans payable to persons other than the decedent's surviving spouse or the decedent's estate.

(4) The value of property includes the commuted value of any present or future interest and the commuted value of amounts payable under any trust, life insurance settlement option, annuity contract, public or private pension, disability compensation, death benefit or retirement plan, or any similar arrangement, exclusive of the federal social security system. *The commuted value of life and term interests in income, annuity, or unitrust amount must be determined in accordance with U.S. treasury regulations for internal revenue purposes in effect at the time of the decedent's death.*

(5) In case of overlapping application to the same property of the provisions of subsection (2), the proporty is included in the augmented estate under the provision yielding the highest value, but under any one, but only one, of the overlapping provisions if they all yield the same value."

HeinOnline -- 1999 vol. I 903 1999

Section 4. Section 72-2-811, MCA, is amended to read:

"72-2-811. Disclaimer of property interests. (1) (a) A person or the representative of a person to whom an interest in or with respect to property or an interest in the property devolves by whatever means may disclaim it in whole or in part by delivering or filing a written disclaimer under this section.

(b) The right to disclaim exists notwithstanding:

(i) any limitation on the interest of the disclaimant in the nature of a spendthrift provision or similar restriction; or

(ii) any restriction or limitation on the right to disclaim contained in the governing instrument.

(c) For purposes of this subsection (1), the "representative of a person" includes a personal representative of a decedent; a conservator of a disabled person; a guardian of a minor or incapacitated person; a guardian ad litem of a minor, an incapacitated person, an unborn person, an unascertained person, or a person whose identity or address is unknown; and an agent acting on behalf of the person within the authority of a power of atterney. The representative of a person may rely on a general family benefit accruing to the living members of the represented person's family as a basis for making a disclaimer.

(2) The following rules govern the time when a disclaimer must be filed or delivered:

(a) If the property or interest has devolved to the disclaimant under a testamentary instrument or by the laws of intestacy, the disclaimer must be filed, if of a present interest, not later than 9 months after the death of the deceased owner or deceased donee of a power of appointment and, if of a future interest, not later than 9 months after the event determining that the taker of the property or interest is finally ascertained and the taker's interest is indefeasibly vested. The disclaimer must be filed in the court of the county in which proceedings for the administration of the estate of the deceased owner or deceased donee of the power have been commenced. A copy of the disclaimer must be delivered in person or mailed by certified mail, return receipt requested, to any personal representative or other fiduciary of the decedent or donee of the power.

(b) If a property or interest has devolved to the disclaimant under a nontestamentary instrument or contract, the disclaimer must be delivered or filed, if of a present interest, not later than 9 months after the effective date of the nontestamentary instrument or contract and, if of a future interest, not later than 9 months after the event determining that the taker of the property or interest is finally ascertained and the taker's interest is indefeasibly vested. If the person entitled to disclaim does not know of the existence of the interest, the disclaimer must be delivered or filed not later than 9 months after the person learns of the existence of the interest. The effective date of a revocable instrument or contract is the date on which the maker no longer has power to revoke it or to transfer to the maker or another the entire legal and equitable ownership of the interest. The disclaimer or a copy of the disclaimer must be delivered in person or mailed by certified mail, return receipt requested, to the person who has legal title to or possession of the interest disclaimed.

(c) A surviving joint tenant may disclaim as a separate interest any property or interest in property devolving to the *surviving* joint tenant by right of survivorship *within 9 months after the death of the deceased joint owner,*

HeinOnline -- 1999 vol. I 904 1999

regardless of whether the surviving joint tenant contributed to the purchase of jointly held property or benefitted from the jointly held property prior to the other joint tenant's death. ~~A surviving joint tenant may disclaim the entire interest in any property or interest in the property that is the subject of a joint tenancy devolving to the joint tenant if the joint tenancy was created by act of a deceased joint tenant, the survivor did not join in creating the joint tenancy, and the survivor has not accepted a benefit under it.~~

(d) If real property or an interest in the property is disclaimed, a copy of the disclaimer may be recorded in the office of the clerk and recorder of the county in which the property or interest disclaimed is located.

(3) The disclaimer must:

(a) describe the property or interest disclaimed;

(h) declare the disclaimer and extent of the disclaimer; and

(c) be signed by the disclaimant.

(4) The following are the effects of a disclaimer:

(a) If property or an interest in property devolves to a disclaimant under a testamentary instrument, under a power of appointment exercised hy a testamentary instrument, or under the laws of intestacy and the decedent has not provided for another disposition of that interest, should it be disclaimed, or of disclaimed or failed interests in general, the disclaimed interest devolves as if the disclaimant had predeceased the decedent, but if by law or under the testamentary instrument the descendants of the disclaimant would share in the disclaimed interest by representation or otherwise were the disclaimant to predecease the decedent, then the disclaimed interest passes by representation, or passes as directed by the governing instrument, to the descendants of the disclaimant who survive the decedent. A future interest that takes effect in possession or enjoyment after the termination of the estate or interest disclaimed takes effect as if the disclaimant had predeceased the decedent. A disclaimer relates back for all purposes to the date of the death of the decedent.

(b) If property or an interest in property devolves to a disclaimant under a nontestamentary instrument or contract and the instrument or contract does not provide for another disposition of that interest, should it he disclaimed, or of disclaimed or failed interests in general, the disclaimed interest devolves as if the disclaimant had predeceased the effective date of the instrument or contract, but if by law or under the nontestamentary instrument or contract the descendants of the disclaimant would share in the disclaimed interest by representation or otherwise were the disclaimant to predecease the effective date of the instrument, then the disclaimed interest passes by representation, or passes as directed by the governing instrument, to the descendants of the disclaimant who survive the effective date of the instrument. A disclaimer relates back for all purposes to that date. A future interest that takes effect in possession or enjoyment at or after the termination of the disclaimed interest takes effect as if the disclaimant had died before the effective date of tbe instrument or contract that transferred the disclaimed interest.

(c) The disclaimer or the written waiver of the right to disclaim is binding upon the disclaimant or person waiving and on all persons claiming through or under either of them.

(5) The right to disclaim property or an interest in the property is barred by:

HeinOnline -- 1999 vol. I 905 1999

(a) an assignment, conveyance, encumbrance, pledge, or transfer of the property or interest or a contract therefor;

(b) a written waiver of the right to disclaim;

(c) an acceptance of the property or interest or benefit under it; or

(d) a sale of the property or interest under judicial sale made before the disclaimer is made.

(6) This section does not abridge the right of a person to waive, release, disclaim, or renounce property or an interest in property under any other statute.

(7) An interest in property that exists on October 1, 1993, as to which, if a present interest, the time for filing a disclaimer under this section has not expired or, if a future interest, the interest has not become indefeasibly vested or the taker finally ascertained may be disclaimed within 9 months after October 1, 1993."

Section 5. Section 72-3-613, MCA, is amended to read:

"72-3-613. Transactions authorized for personal representative. Except as restricted by this code or otherwise provided by the will or by an order in a formal proceeding and subject to the priorities stated in 72-3-901, a personal representative, acting reasonably for the benefit of the interested persons, may properly:

(1) retain assets owned by the decedent pending distribution or liquidation, including those in which the representative is personally interested or which are otherwise improper for trust investment;

(2) receive assets from fiduciaries or other sources;

(3) perform, compromise, or refuse performance of the decedent's contracts that continue as obligations of the estate, as ~~he~~ *the personal representative* may determine under the circumstances. In performing enforceable contracts by the decedent to convey or lease land, the personal representative, among other possible courses of action, may:

(a) execute and deliver a deed of conveyance for cash payment of all sums remaining due or the purchaser's note for the sum remaining due secured by a mortgage or deed of trust on the land; or

(b) deliver a deed in escrow with directions that the proceeds, when paid in accordance with the escrow agreement, be paid to the successors of the decedent, as designated in the escrow agreement;

(4) satisfy written charitable pledges of the decedent irrespective of whether the pledges constituted binding obligations of the decedent or were properly presented as claims, if in the judgment of the personal representative the decedent would have wanted the pledges completed under the circumstances;

(5) if funds are not needed to meet debts and expenses currently payable and are not immediately distributable, deposit or invest liquid assets of the estate, including money received from the sale of other assets, in federally insured interest-bearing accounts, readily marketable secured loan arrangements, or other prudent investments that would be reasonable for use by trustees generally. If the personal representative is authorized to invest funds in United States obligations, ~~he~~ *the personal representative* may invest in these obligations either directly or in the form of securities of or other interests in an open-end or

HeinOnline -- 1999 vol. I 906 1999

closed-end management type investment company or investment trust registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 through 80a-64), as amended, if:

(a) the portfolio of the investment company or investment trust is limited to United States government obligations and repurchase agreements fully collateralized by United States government obligations; and

(b) the investment company or investment trust takes delivery of the collateral for any repurchase agreement, either directly or through an authorized custodian.

(6) acquire or dispose of an asset, including land in this or another state, for cash or on credit, at public or private sale and manago, develop, improve, exchange, partition, chango the character of, or abandon an estate asset;

(7) make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any improvements, raze existing or erect new party walls or buildings;

(8) subdivide, develop, or dedicate land to public use; make or ohtain tbe vacation of plats and adjust boundaries; adjust differences in valuation on exchange or partition by giving or receiving considerations; or dedicate easements to public use witliout consideration;

(9) enter for any purpose into a lease as lessor or lessee, with or without option to purchase or renew, for a term within or extending beyond the period of administration;

(10) enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;

(11) with the consent of the heirs or devisees or the court, abandon property when in the opinion of the personal representative it is valueless or is so encumbered or is in condition that it is of no benefit to the estate;

(12) vote stocks or other securities in person or by goneral or limited proxy;

(13) pay calls, assessments, and other sums chargeable or accruing against or on account of securities, unless barred by the provisions relating to claims;

(14) hold a security in the name of a nominee or in other form without disclosure of the interest of the estate, but the porsonal representative is liable for any act of the nominee in connection with the security so held;

(15) insure the assets of the estate against damage, loss, and liability and ~~himself~~ *the personal representative* against liability as to third persons;

(16) horrow money with or without security to be repaid from the estate assets or otherwise and advance money for the protection of the estate;

(17) with the consent of the heirs or devisees or the court, effect a fair and reasonable compromise with any debtor or obliger or extend, renew, or in any manner modify the terms of any obligation owing to the estate. If the personal representative holds a mortgage, pledge, or other lien upon proporty of anotlier person, ~~he~~ *the personal representative* may, in lieu of foreclosure, accept a conveyance or transfer of encumbered assets from the owner thereof in satisfaction of the indehtedness secured hy lien.

(18) pay taxes, assessments, compensation of the personal representative, and other expenses incident to the administration of the estate;

HeinOnline -- 1999 vol. I 907 1999

(19) sell or exercise stock subscription or conversion rights; consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;

(20) allocate items of income or expense to either estate income or principal, as permitted or provided by law;

(21) employ persons, including attorneys, auditors, investment advisors, or agents, even if they are associated with the personal representative, to advise or assist the personal representative in the performance of ~~his~~ *the personal representative's* administrative duties; act without independent investigation upon their recommendations; and, instead of acting personally, employ one or more agents to perform any act of administration, whether or not discretionary;

(22) prosecute or defend claims or proceedings in any jurisdiction for the protection of the estate and of the personal representative in the performance of ~~his~~ *the personal representative's* duties;

(23) sell, mortgage, or lease any real or personal property of the estate or any interest therein for cash, credit, or for part cash and part credit and with or without security for unpaid balances; provided, however, a personal representative may not, without prior court approval in a supervised proceeding, either directly or indirectly purchase any property of the estate ~~he~~ *that the personal representative* represents, nor ~~may he~~ be interested in the sale. All sales must be fairly conducted and made for the best price obtainable.

(24) continue any unincorporated business or venture in which the decedent was engaged at the time of ~~his~~ death:

~~(a) in the same business form for a period of not more than 4 months from the date of appointment of a general personal representative if continuation is a reasonable means of preserving the value of the business, including good will;~~

~~(b) in the same business form for any additional period of time that may be approved by order of the court in a formal proceeding to which the persons interested in the estate are parties; or~~

~~(c) throughout the period of administration, if the business is incorporated by the personal representative and if none of the probable distributees of the business who are competent adults object to its incorporation and retention in the estate;~~ *in the same business form, including a sole proprietorship, partnership, or limited liability company, unless otherwise ordered by the court in a formal proceeding initiated by an interested person on the basis that continuation of the business is not in the best interests of the estate or its beneficiaries;*

(25) incorporate any business or venture in which the decedent was engaged at the time of ~~his~~ death;

(26) satisfy and settle claims and distribute the estate as provided in this code."

Section 6. Section 72-5-222, MCA, is amended to read:

"72-5-222. Court appointment of guardian of minor — when allowed — priority of testamentary appointment. (1) The court may appoint a guardian for an unmarried minor if all parental rights of custody have been terminated or *if parental rights have been* suspended *or limited* by circumstances or prior court order.

HeinOnline -- 1999 vol. I 908 1999

(2) A guardian appointed by will as provided in 72-5-211 and 72-5-212 whose appointment bas not been prevented or nullified under 72-5-213 has priority over any guardian who may be appointed by the court, but the court may proceed with an appointment upon a finding that the testamentary guardian has failed to accept the testamentary appointment within 30 days after notice of the guardianship proceeding."

Section 7. Section 72-34-113, MCA, is amended to read:

"**72-34-113. Duty not to delegate *entire administration of trust.*** (1) The trustee has a duty not to delegate ~~to others the performance of acts that the trustee can reasonably be required personally to perform and may not transfer the office of trustee to another person nor delegate~~ the entire administration of the trust to a cotrustee or other person.

~~(2) In a case where a trustee has properly delegated a matter to an agent, cotrustee, or other person, the trustee has a duty to exercise general supervision over the person performing the delegated matter.~~

(2) A trustee may delegate investment, management, and administrative functions that a prudent trustee of comparable skills could properly delegate under the circumstances. The trustee shall exercise reasonable care, skill, and caution in:

(a) selecting an agent;

(b) establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust;

(c) periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the delegation.

(3) In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

(4) A trustee who complies with the requirements of subsection (2) is not liable to the beneficiaries or to the trust for the decisions or actions of the agent to whom the function was delegated.

(5) By accepting the delegation of a trust function from the trustee of a trust that is subject to the laws of this state, an agent submits to the jurisdiction of the courts of this state."

Section 8. Section 72-34-114, MCA, is amended to read:

"**72-34-114. Duty to use ordinary skill and prudence.** (1) The trustee shall administer the trust with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person would use to accomplish the purposes of the trust as determined from the trust instrument.

~~(2) When investing, reinvesting, purchasing, acquiring, exchanging, selling, and managing trust property, the trustee shall act with the care, skill, prudence, and diligence under the circumstances then prevailing, including but not limited to the general economic conditions and the anticipated needs of the trust and its beneficiaries, that a prudent person would use to accomplish the purposes of the trust as determined from the trust instrument. In the course of administering the trust pursuant to this standard, individual investments shall be considered as part of an overall investment strategy.~~

(2) A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circum-

HeinOnline -- 1999 vol. I 909 1999

stances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution.

(3) A trustee's investment and management decisions respecting individual assets must be evaluated not in isolation but in the context of a trust portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the trust.

(4) Among circumstances that a trustee shall consider in investing and managing trust assets are any of the following that are relevant to the trust or its beneficiaries:

(a) general economic conditions;

(b) the possible effect of inflation or deflation;

(c) the expected tax consequences of investment decisions or strategies;

(d) the role that each investment or course of action plays within the overall trust portfolio, which may include financial assets, interests in closely held enterprises, tangible and intangible personal property, and real property;

(e) the expected total return from income and the appreciation of the capital;

(f) other resources of the beneficiaries;

(g) needs for liquidity, regularity of income, and preservation or appreciation of capital; and

(h) an asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries.

(5) A trustee shall make a reasonable effort to verify facts relevant to the investment and management of trust assets.

(6) A trustee may invest in any kind of property or type of investment consistent with the standards of this section.

~~(3)~~*(7)* The trustor may expand or restrict the standards provided in subsections (1) ~~and (2)~~ *through (6)* by express provisions in the trust instrument. A trustee is not liable to a beneficiary for the trustee's reliance on these express provisions.

(8) Compliance with the prudent investor rule is determined in light of the facts and circumstances existing at the time of a trustee's decision or action and not by hindsight."

Section 9. Section 72-34-205, MCA, is amended to read:

"**72-34-205. Incorporation in trust instruments.** The provisions of 72-34-202 through 72-34-204 *and [section 12]* shall be considered to be contained in the instrument creating every trust to which this part applies. Any provision of the instrument inconsistent with or contrary to this part is without effect."

Section 10. Section 72-35-306, MCA, is amended to read:

"**72-35-306. Notice.** *(1)* At least 14 days before the time set for the hearing on the petition, the petitioner shall cause notice of the time and place of hearing to be mailed to any of the following persons who are not petitioners:

~~(1)~~*(a)* all trustees;

~~(2)~~*(b)* all beneficiaries who are entitled to notice; and

~~(3)~~*(c)* the attorney general, if the petition is related to a charitable trust subject to the jurisdiction of the attorney general, unless the attorney general waives notice.

(2) The notice for a petition and hearing requesting the court to settle accounts or pass upon the acts of the trustee or that otherwise may affect substantive property rights of a beneficiary or other interested party must state that fact in the notice and must further state that failure to appear and object bars any further claims against the trustee relating to the subject matter of the petition."

Section 11. Separate writing identifying disposition of tangible personal property. (1) A trust may refer to a written statement or list to dispose of items of tangible personal property not otherwise specifically disposed of by the trust, other than money.

(2) To be admissible under this section as evidence of the intended disposition, the writing must be signed by the trustor and must describe the items and the devisees with reasonable certainty.

(3) The writing may be:

(a) referred to as one to be in existence at the time of the trustor's death;

(b) prepared before or after the execution of the trust;

(c) altered by the trustor after its preparation; and

(d) a writing that has no significance apart from its effect upon the dispositions made by the trust.

Section 12. Disposition of property upon termination of 501(c)(3) trust. At the termination of a charitable trust, private foundation, or any other trust described in section 501(c)(3) of the Internal Revenue Code, the trust property must be distributed for one or more exempt purposes or to organizations that are organized and operated exclusively for exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code or must be distributed to the federal government or to a state or local government for a public purpose. Any trust property not disposed of must be disposed of by the district court for the county in which the principal office of the trust is then located, exclusively for exempt purposes or to organizations, as the court determines, that are organized and operated exclusively for exempt purposes.

Section 13. Section 3, Chapter 464, Laws of 1997, is amended to read:

"**Section 3. ~~Termination—applicability~~ *Applicability*.** ~~(1) [Section 1] terminates July 1, 1999.~~

~~(2) Notwithstanding the provisions of subsection (1), [section~~ *[Section* 1] applies to all inheritance taxes arising from deaths occurring ~~between~~ *after* January 1, 1995~~, and July 1, 1999~~."

Section 14. Codification instruction. (1) [Section 11] is intended to be codified as an integral part of Title 72, chapter 33, part 2, and the provisions of Title 72, chapter 33, part 2, apply to [section 11].

(2) [Section 12] is intended to be codified as an integral part of Title 72, chapter 34, part 2, and the provisions of Title 72, chapter 34, part 2, apply to [section 12].

Section 15. Effective date. [This act] is effective on passaga and approval.

Approved April 9, 1999

HeinOnline -- 1999 vol. I 911 1999

CHAPTER NO. 291

[HB 645]

AN ACT GENERALLY REVISING FUND STRUCTURE LAWS TO INCLUDE INVESTMENT TRUST FUND TYPES WITHIN THE FIDUCIARY FUND CATEGORY; ALLOWING A FUND TYPE RATHER THAN AN ACCOUNTING ENTITY TO HAVE A NEGATIVE BALANCE AT ANY POINT IN A FISCAL YEAR; PROVIDING THAT, IF POSSIBLE, LONG-TERM LOANS MUST BE MADE FROM FUNDS OTHER THAN THE GENERAL FUND; AMENDING SECTIONS 17-2-102 AND 17-2-107, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-2-102, MCA, is amended to read:

"17-2-102. Fund structure. (1) For the purpose of ensuring strict accountability for all revenue received and spent, there are in the state treasury only the following fund categories and types:

(a) the governmental fund category, which includes:

(i) the general fund, which accounts for all financial resources except those required to be accounted for in another fund;

(ii) the special revenue fund type, which accounts for the proceeds of specific revenue sources (other than expendable trusts or major capital projects) that are legally restricted to expenditure for specified purposes. The financial activities of the special revenue fund type are subdivided, for operational purposes, into the following funds to serve the purpose indicated:

(A) The state special revenue fund consists of money from state and other nonfederal sources depesited in the state treasury that is earmarked for the purposes of defraying particular costs of an agency, program, or function of state government and money from other nonstate or nonfederal sources that is restricted by law or by the terms of an agreement, such as a contract, trust agreement, or donation.

(B) The federal special revenue fund consists of money deposited in the treasury from federal sources, including trust income, that is used for the operation of state government.

(iii) the capital projects fund type, which accounts for financial resources to be used for the acquisition or construction of major capital facilities, other than those financed by proprietary funds or trust funds; and

(iv) the debt service fund type, which accounts for the accumulation of resources for and the payment of general long-term debt principal and interest;

(b) the proprietary fund category, which includes:

(i) the enterprise fund type, which accounts for operations:

(A) that are financed and operated in a manner similar to private business enterprises whenever the intent of tbe legislature is tbat costs (i.e., expenses, including depreciation) of providing goods or services to the goneral public on a continuing basis are to be financed or recovered primarily through user charges; or

(B) whenever the legislature has decided that periodic determination of revenue earned, expenses incurred, or net income is appropriate for capital maintenance, public policy, management control, accountability, or other purposes; and

(ii) the internal service fund type, which accounts for the financing of goods or services provided by one department or agency to other departments or agencies of state government or to other governmental entities on a cost-reimbursed basis;

(c) the fiduciary fund category, which includes trust and agency fund types used to account for assets held by state government in a trustee capacity or as an agent for individuals, private organizations, other governmental entities, or other funds. These include the:

(i) expendable trust fund type;

(ii) nonexpendable trust fund type;

(iii) investment trust fund type;

~~(iii)~~*(iv)* pension trust fund type; and

~~(iv)~~*(v)* agency fund type.

(d) the higher education funds, which include:

(i) the current fund, which accounts for money deposited in the state treasury that is used to pay current operating costs relating to instruction, research, public service, and allied support operations and programs conducted within the Montana university system. The financial activities of the current fund are subdivided, for operational purposes, into the four following subfunds to serve the purpose indicated:

(A) The unrestricted subfund segregates that portion of the current fund's financial resources that can be expended for general operations and is free of externally imposed restrictions, except those imposed by the legislature.

(B) The restricted subfund segregates that portion of the current fund's financial resources that can be expended for general operations but only for purposes imposed by sources external to the board of regents and the legislature.

(C) The designated subfund segregates that portion of the current fund's financial resources that is associated with general operations but is separately classified in order to accumulate costs that are to be recharged as allocated to other funds or subfunds, identifies financial activities related to special organized activities of educational departments in which the activity is fully supported by supplemental assessments, and identifies special supply and facility fees that are approved for collections beyond normal course fees and their disposition.

(D) The auxiliary subfund segregates that portion of the current fund's financial resources that is devoted to providing essential on-campus services primarily to students, faculty, or staff wherein a fee, which is directly related to but does not necessarily equal the cost of the service provided, is charged to the consumer.

(ii) the student loan fund, which accounts for money deposited in the state treasury that may be loaned to students, faculty, or staff for purposes related to education, organized research, or public services by the Montana university system;

HeinOnline -- 1999 vol. I 913 1999

(iii) the endowment fund, which accounts for money deposited in the state treasury by the Montana university system wherein the principal portion of the amount received is nonexpendable but is available for investment, thus producing consumable income. Expendable earnings on endowment funds are to be transferred to appropriate operating funds pursuant to prevailing administrative requirements.

(iv) the annuity and life income fund, which accounts for money deposited in the state treasury by the Montana university system under an agreement whereby the money is made available on condition that the receiving unit of the Montana university system binds itself to pay stipulated amounts periodically to the donor or others designated by the donor over a specified period of time;

(v) the plant fund, which accounts for those financial resources allocated to or received by the Montana university system for capital outlay purposes or to retire long-term debts associated with construction or acquisition of fixed assets and the net accumulative results of these activities; and

(vi) the agency fund, which accounts for money deposited in the state treasury wherein the Montana university system acts in the capacity of a custodian or fiscal agent for individual students, faculty, staff, and qualified organizations.

(2) In addition to the funds provided for in subsection (1), there are in the state treasury the following account groups:

(a) the fixed assets account group, which is a self-balancing group of accounts set up to establish accounting control and accountability for the state's general fixed assets, except those accounted for in proprietary funds, trust funds, and the higher education funds designated in subsections (1)(d)(i)(D), (1)(d)(iii), and (1)(d)(v); and

(b) the long-term debt account group, which is a self-balancing group of accounts set up to establish accounting control and accountability for the state's unmatured general long-term liabilities, except those accounted for in proprietary funds, trust funds, and the higher education funds designated in subsections (1)(d)(i)(D), (1)(d)(iii), and (1)(d)(v)."

Section 2. Section 17-2-107, MCA, is amended to read:

"17-2-107. Accurate aecounting records and interentity loans. (1) The department of administration shall record receipts and disbursements for treasury funds and for accounting entities within treasury funds and shall maintain records in a manner that reflects the total cash and invested balance of each fund and each accounting entity. The department of administration shall adopt the necessary procedures to ensure that interdepartmental or intradepartmental transfers of money or loans do not result in inflation of figures reflecting total governmental costs and revenue.

(2) (a) When the expenditure of an appropriation from a fund designated in 17-2-102(1)(a) through (1)(c) is necessary and the cash balance in the accounting entity from which the appropriation was made is insufficient, the department of administration may authorize a temporary loan, bearing no interest, of unrestricted money from other accounting entities if there is reasonable evidence that the income will be sufficient to repay the loan within 1 calendar year and if the loan is recorded in the state accounting records. An accounting entity receiving a loan or an accounting entity from which a loan is made may not be so

HeinOnline -- 1999 vol. I 914 1999

impaired that all proper demands on the accounting entity cannot he met even if the loan is extended.

(h) (i) When an expenditure from a fund or suhfund designated in 17-2-102(1)(d) is necessary and the cash balance in the fund or subfund from wbich the expenditure is to be made is insufficient, the commissioner of higher education may authorize a temporary loan, bearing interest as provided in subsection (4), of money from the agency's other funds or subfunds if there is reasonable evidence tbat tbe income will be sufficient to repay the loan within 1 calendar year and if tbe loan is recorded in the state accounting records. A fund or subfund receiving a loan or from which a loan is made may not be so impaired that all proper demands on the fund or subfund cannot be met even if the loan is extended.

(ii) One accounting entity within each fund or subfund designated in 17-2-102(1)(d) must be established for the sole purpose of recording loans between the funds or subfunds. This accounting entity is tbe only accounting entity within each fund or subfund that may receive a loan or from which a loan may be made.

(c) A loan made under subsection (2)(a) or (2)(b) must be repaid within 1 calendar year of the date on which the loan is approved unless it is extended under subsection (3) or by specific legislative authorization.

(3) Under unusual circumstances, the director of the department of administration or the board of regents may grant one extension for up to 1 year for a loan made under subsection (2)(a) or (2)(b). The director or board shall prepare a written justification and proposed repayment plan for each loan extension authorized and shall furnish a copy of the written justification and proposed repayment plan to the house appropriations and senate finance and claims committees at the next legislative session.

(4) Any loan from the current unrestricted subfund to funds designated in 17-2-102(1)(d)(i)(D) and (1)(d)(ii) through (1)(d)(vi) must bear interest at a rate equivalent to the previous fiscal year's average rate of return on the board of investments' short-term investment pool.

(5) If for 2 consecutive fiscal yearends a loan or an extension of a loan has been autborized to the same accounting entity as provided in subsection (2) or (3), the department of administration or the commissioner of higher education shall submit to the legislative finance committee by September 1 of the following fiscal year a written report containing an explanation as to why the second loan or extension was made, an analysis of the solvency of the accounting entity or accounting entities within the university fund or subfund, and a plan for repaying the loans.

(6) If for 2 consecutive fiscal yearends an accounting entity in a fund or subfund designated in 17-2-102(1)(d) has a negative cash balance, the commissioner of higber education shall submit to the legislative finance committee by September 1 of the following fiscal year a written report containing an explanation as to why the accounting entity has a negative cash balance, an analysis of the solvency of the accounting entity, and a plan to address any problems concerning the accounting entity's negative cash balance or solvency.

(7) (a) An accounting entity in a fund designated in 17-2-102(1)(a) through (1)(c) may not have a negative cash balance at fiscal yearend. The department of administration may, however, allow ~~an accounting entity~~ *a fund type within each*

HeinOnline -- 1999 vol. I 915 1999

agency to carry a negative balance at any point during the fiscal year if the negative cash balance does not exist for more than 7 working days.

(b) (i) Except as provided in subsection (7)(b)(ii), a unit of the university system shall maintain a positive cash balance in the funds and subfunds designated in 17-2-102(1)(d).

(ii) If a fund or subfund inadvertently has a negative cash balance, the department of administration may allow the fund or suhfund to carry the negative cash balance for no more than 7 working days. If the negative cash balance exists for more than 7 working days, a transaction may not be processed through the statewide accounting system for that fund or subfund.

(8) Notwithstanding the provisions of subsections (2) through (4), the department of administration may authorize loans to accounting entities in the federal and state special revenue funds with long-term repayment whenever necessary because of the timing of the receipt of agreed upon reimbursements from federal, private, or other governmental entity sources for disbursements made. *If possible, the loans must be made from funds other than the general fund.* The department of administration may approve the loans if the requesting agency can demonstrate that the total loan balance does not exceed total receivables from federal, private, or other governmental entity sources and receivables have been billed on a timely basis. The loan must be repaid under terms and conditions that may be determined by the department of administration or by specific legislative authorization."

Section 3. Effective date. [This act] is effective July 1, 1999.

Approved April 12, 1999

CHAPTER NO. 292

[SB 122]

AN ACT MAKING PERMANENT THE THIRD-PARTY COMMERCIAL DRIVER TESTING PROGRAM; ALLOWING A THIRD-PARTY COMMERCIAL DRIVER EXAMINER FROM ANOTHER JURISDICTION TO CERTIFY AN APPLICANT'S COMPLETION OF A ROAD OR SKILLS TEST; AMENDING SECTION 61-5-118, MCA; REPEALING SECTION 12, CHAPTER 53, LAWS OF 1995; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the 54th Legislature approved a pilot project to establish a third-party commercial driver testing program; and

WHEREAS, tbe program has resulted in uniform testing standards and competent examiners, without adding full-time employees to the Department of Justice; and

WHEREAS, the Legislature desires to continue use of the program and to grant permanent authorization for the program.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-5-118, MCA, is amended to read:

"61-5-118. (Temporary) Third-party commercial driver testing program — test waiver. (1) The department may certify as a third-party commercial driver testing program any company that:

(a) in the course of its commercial enterprise, customarily transports or hauls any goods, including agricultural commodities, in company-owned class A commercial motor vehicles as prescribed by federal regulations;

(b) regularly and continuously employs a minimum number of drivers. The department shall determine the minimum number of drivers and whether they are regularly and continuously employed by the company.

(c) has a permanent Montana mailing address and maintains a place of business in this state that includes at least one permanent, regularly occupied structure with facilities and equipment to conduct offstreet skills testing;

(d) employs at least one examiner with qualifications required by rules of the department; and

(e) complies with rules adopted by the department under 61-5-117.

(2) The road test or the skills test required by 61-5-110 may be waived by the department for a commercial driver's license applicant upon certification of the applicant's successful completion of the road test or the skills test by:

(a) a ~~certified~~ third-party commercial driver testing program *certified under subsection (1); or*

(b) a third-party commercial driver examiner from a jurisdiction that has a comparable third-party commercial driver testing program, as determined by the department.

(3) An examiner for a certified third-party commercial driver testing program may administer a road test or a skills test only to a company employee who has applied to the department for a commercial driver's license and who has passed the knowledgo test required by 61-5-110 and by department or federal rules. (Terminates September 30, 1999—sec. 12, Ch. 53, L. 1995.)"

Section 2. Repealer. Section 12, Chapter 53, Laws of 1995, is repealed.

Section 3. Effective date. [This act] is effective July 1, 1999.

Approved April 12, 1999

CHAPTER NO. 293

[SB 314]

AN ACT GENERALLY REVISING THE LAWS RELATING TO THE ENFORCEMENT OF THE ASBESTOS ABATEMENT LAWS; REVISING THE LAWS RELATING TO DENIAL, SUSPENSION, AND REVOCATION OF ACCREDITATION; AUTHORIZING INSPECTIONS; PROVIDING FOR CLEANUP ORDERS, ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES, AND INJUNCTIONS; AMENDING SECTIONS 75-2-508 AND 75-2-514, MCA; AND CONTINGENTLY REPEALING SECTION 75-2-514, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-2-508, MCA, is amended to read:

"75-2-508. Asbestos control account. (1) There is an asbestos control account in the state special revenue fund. There must be deposited in the account all money received from:

HeinOnline -- 1999 vol. I 917 1999

~~(a)~~ fees collected under this part~~; and~~.

~~(b) civil penalties collected pursuant to 75-2-514.~~

(2) Funds in the account are allocated to the department for the purpose of funding the costs of implementing and operating the asbestos control program established under this part."

Section 2. Section 75-2-514, MCA, is amended to read:

"75-2-514. ~~Criminal and civil~~ *Civil* penalties — disposition of civil penalties. ~~(1) The department may suspend, deny, or revoke the accreditation of or reprimand a person who:~~

~~(a) fraudulently or deceptively obtains or attempts to obtain accreditation;~~

~~(b) fails to meet the qualifications for accreditation or comply with the requirements of this part or any rule adopted by the department; or~~

~~(c) fails to meet any applicable federal or state standard for asbestos projects.~~

~~(2) Notwithstanding the provisions of any other law, a person who purposely or knowingly violates any provision of this part or an adopted rule or order issued pursuant to this part is guilty of a misdemeanor.~~

~~(3) If the department determines that a violation of this part or a rule promulgated pursuant to this part has occurred, it may issue an order compelling the person receiving the order to end the violation immediately.~~

~~(4) In addition to or instead of the remedies listed in subsections (1) through (3), an accredited person who purposely or knowingly violates this part or a rule adopted pursuant to this part that concerns the conduct of an asbestos project may be assessed a civil penalty by the district court of not more than $1,000 a day for an initial violation and $5,000 a day for each subsequent violation occurring within a 3-year period from the date of the initial violation.~~

~~(5)~~*(1)* A district court may assess a civil penalty of not more than $25,000 a day upon a person ~~who engages in an asbestos project without valid accreditation or a permit~~ *that violates any provision of this part, a rule adopted under this part, or a permit or order issued under this part*. In the case of a continuing violation, each day the violation continues constitutes a separate violation.

~~(6) Civil penalties collected under this part must be deposited into the account established in 75-2-508.~~

(2) An action under this section is not a bar to enforcement by injunction or other appropriate civil or administrative remedies."

Section 3. Administrative enforcement. (1) The department may deny, suspend, or revoke the accreditation of a person that:

(a) fraudulently or deceptively obtains or attempts to obtain accreditation;

(b) fails to meet the qualifications for accreditation or fails to comply with the requirements of this part, a rule adopted under this part, or a permit or order issued under this part; or

(c) fails to meet an applicable federal or state standard for asbestos projects.

(2) When the department believes that a violation of this part, a rule adopted under this part, or a permit or order issued under this part has occurred, it may serve written notice of the violation personally or by certified mail on the alleged violator or the violator's agent. The notice must specify the provision of this part or the rule, permit, or order alleged to be violated and the facts alleged to

HeinOnline -- 1999 vol. I 918 1999

constitute a violation. The notice may include an order to take necessary corrective action within a reasonable period of time stated in the order, or an order to pay an administrative civil penalty, or both. An order becomes final unless, within 30 days after the order is received, the person that has heen named requests, in writing, a hearing before the board.

(3) On receipt of a hearing request, the board shall schedule a hearing. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to any hearing conducted under this section. If, after a hearing, the board finds that a violation has not occurred or is not occurring, it shall rescind the order.

(4) (a) An action initiated under this section may include an administrative civil penalty of not more than $10,000 for each day of each violation, not to exceed a total of $80,000. Any order issued hy the department under this section requiring payment of an administrative civil penalty must specify the basis for the penalty assessment.

(b) A penalty may not be assessed under this section for any day of violation that occurred more than 3 years prior to the department issuing the order requiring payment of the penalty.

(c) In determining the amount of a penalty assessed to a person under this section, the department shall consider:

(i) the seriousness of the violation;

(ii) the duration of the violation;

(iii) any economic benefit derived from the violation;

(iv) the person's good faith efforts to comply with the requirements in question;

(v) the person's compliance history;

(vi) the person's ability to pay a penalty; and

(vii) other matters as justice may require.

(5) In addition to or instead of issuing an order under subsection (2), the department may:

(a) require the alleged violator to appear before the board for a hearing at a time and place specified in the notice of hearing to answer the charges complained of; or

(b) initiate action under 75-2-514.

Section 4. Criminal penalties. (1) A person convicted of purposely or knowingly violating any provision of this part, a rule adopted under this part, or a permit or order issued under this part is guilty of a misdemeanor.

(2) A prosecution under this section is not a bar to enforcement by injunction or other appropriate civil or administrative remedies.

Section 5. Injunctions. The department may institute and maintain in the name of the state, actions for injunctive relief, as provided in Title 27, chapter 19, to:

(1) immediately restrain a person from engaging in an unauthorized activity that is endangering or causing damage to public health or the environment;

HeinOnline -- 1999 vol. I 919 1999

(2) enjoin a violation of this part, a rule adopted under this part, an order issued under this part, or a permit issued under this part, without the necessity of prior revocation of the permit; or

(3) require compliance with this part, a rule adopted under this part, or a permit or order issued under this part.

Section 6. Inspections — sampling. (1) (a) At any reasonable time and upon presentation of credentials, an employee or agent of the department may enter upon and inspect any place at which:

(i) an asbestos project is being conducted;

(ii) asbestos-containing material from an asbestos project is stored; or

(iii) records pertinent to an asbestos project are maintained.

(b) The employee or agent of the department may have access to and may copy any records relating to an asbestos project for the purpose of enforcing the provisions of this part, rules adopted under this part, or a permit or order issued under this part.

(2) During an inspection under this section, the employee or agent of the department may take samples of any suspected asbestos-containing material, including samples from any vehicle in which asbestos-containing waste materials are transported. If the employee or agent of the department takes a sample of any suspected asbestos-containing material, prior to leaving the premises, the employee or agent shall give to the person in charge of the asbestos project a receipt describing the sample taken and, if requested, a portion of each sample equal in volume or weight to the portion retained. If an analysis is made of the samples, a copy of the results of the analysis must he furnished to the person in charge of the asbestos project.

Section 7. Cleanup orders. The department may issue a cleanup order to any person that has deposited asbestos-containing material or that has disturbed asbestos-containing material or that owns any property where the asbestos-containing material is located when the material poses an immediate threat to public health or the environment or is likely to pose a threat to public health or the environment in the immediate future. The order may direct the person to clean up and transport the asbestos-containing material to an authorized disposal facility, to treat the material so as to render it nonhazardous, or to take other necessary actions.

Section 8. Repealer. Section 75-2-514, MCA, is repealed.

Section 9. Codification instruction. [Sections 3 through 7] are intended to be codified as an integral part of Title 75, chapter 2, part 5, and the provisions of Title 75, chapter 2, part 5, apply to [sections 3 through 7].

Section 10. Coordination instruction. (1) If Senate Bill No. 313 and [this act] are both passed and approved and if Senate Bill No. 313 amends Title 75, chapter 2, part 5, then [sections 2, 3, and 5 through 7 of this act] are void.

(2) If [this act] is passed and approved and Senate Bill No. 313 is not passed and approved or if [this act] is passed and approved and Senate Bill No. 313 is passed and approved but does not amend Title 75, chapter 2, part 5, then [section 8] is void.

Section 11. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

HeinOnline -- 1999 vol. I 920 1999

Section 12. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 12, 1999

CHAPTER NO. 294

[SB 321]

AN ACT REVISING THE DEFINITION OF "CONTAINER SITE"; AND AMENDING SECTION 75-10-103, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-10-103, MCA, is amended to read:

"75-10-103. Definitions. Unless the context clearly requires otherwise, in this part, the following definitions apply:

(1) "Board" means the board of environmental review provided for in 2-15-3502.

(2) "Container site" means a solid waste management facility that:

(a) is generally open to the public for the collection of solid waste that is generated by more than one household or firm and that is collected in a refuse container with a total capacity of not more than 50 cubic yards; or

(b) receives waste from waste collection vehicles and:

~~(i) is located in a fifth-, sixth-, or seventh-class county, as defined in 7-1-2111;~~

~~(ii)~~*(i)* receives no more than 3,000 tons of waste each year;

~~(iii)~~*(ii)* has control measures in place, including onsite staffing, to adequately contain solid wastes and blowing litter on the site and to minimize spills and leakage of liquid wastes; and

~~(iv)~~*(iii)* is a site at which a local government unit requires commercial waste haulers to deposit wastes at the site only during hours that the site is staffed.

(3) "Department" means the department of environmental quality provided for in 2-15-3501.

(4) "Front-end implementation funds" means the money granted to local governments for purchase of capital equipment to be used for a solid waste management system.

(5) "Front-end organizational funds" means the money to be loaned to local governments for initial operating capital, site evaluation and negotiation, final design engineering and cost estimates, construction contract documents, final contract negotiations with energy users, material markets, and waste suppliers, contract negotiations with private operational managers, and financial and legal consultations.

(6) "Front-end planning funds" means the money granted to local governments for contract negetiations between local governments, predesign engineering and cost estimates, administrative costs, preliminary contract negotiations with energy users and waste suppliers, financial feasibility analysis by a financial consultant, legal consultations, opinions, and review of contracts.

HeinOnline -- 1999 vol. I 921 1999

(7) "Local government" means a county, incorporated city or town, or refuse disposal district organized under the laws of this state.

(8) "Person" means any individual, firm, partnership, company, association, corporation, city, town, *or* local governmental entity~~,~~ or any other state, federal, or private entity, whether organized for profit or not.

(9) "Resource recovery facility" means any facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse.

(10) (a) "Solid waste" means all putrescible and nonputrescible wastes, including but not limited to garbage, rubbish, refuse, ashes, sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction and demolition wastes; dead animals, including offal; discarded home and industrial appliances; and wood products or wood byproducts and inert materials.

(b) Solid waste does not mean municipal sewage, industrial wastewater effluents, mining wastes regulated under the mining and reclamation laws administered by the department ~~of environmental quality~~, slash and forest debris regulated under laws administered by the department of natural resources and conservation, *or* marketable byproducts.

(11) "Solid waste management system" means any system that controls the storage, treatment, recycling, recovery, or disposal of solid waste. For the purposes of this definition, a container site is not a component of a solid waste management system.

(12) "State solid waste plan" means the statewide plan formulated by the department as authorized by this part."

Section 2. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Approved April 12, 1999

CHAPTER NO. 295

[SB 346]

AN ACT REQUIRING THAT FUEL PUMPS DISPENSING DYED FUEL BE IDENTIFIED WITH A DECAL; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Marking of dyed diesel fucl pumps. A fuel pump at a retail outlet that dispenses nontaxed dyed special fuel for off-road use must be identified by a decal designed by the department and affixed to each side of the fuel pump so as to be easily identified and read by any porson oporating the fuel pump.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 15, chapter 70, part 3, and the provisions of Title 15, chapter 70, part 3, apply to [section 1].

Seetion 3. Effective date. [This act] is effective July 1, 1999.

Approved April 12, 1999

HeinOnline -- 1999 vol. I 922 1999

CHAPTER NO. 296

[SB 352]

AN ACT DESIGNATING THE MISSOULA MEMORIAL ROSE GARDEN AS A STATE VETERANS' MEMORIAL ROSE GARDEN AND AS A STATE KOREAN CONFLICT VETERANS' MEMORIAL; AND PROVIDING FOR REFERENCES ON STATE MAPS.

WHEREAS, a memorial rose garden was officially estahlished on November 12, 1944, in Missoula, Montana; and

WHEREAS, on tha: date, six Missoula members of the American Rose Society suggested the garden as a means of honoring tbe memory of American service members killed in World War II; and

WHEREAS, in 1946, the first rose bushes were planted in the garden; and

WHEREAS, in 1968, the garden's name was changed from Sunset Memorial Rose Garden to Missoula Memorial Rose Garden because of confusion with the Sunset Memorial Garden Cemetery; and

WHEREAS, the Missoula Memorial Rose Garden horders a Blue Star Memorial Highway commemorating American veterans who served during World War II; and

WHEREAS, the Missoula Memorial Rose Garden has since served as the site for memorials commemorating the American combatants of Korea, Vietnam, Grenada, Panama, and the Persian Gulf; and

WHEREAS, the Missoula Memorial Rose Garden has become a living tribute to the veterans and casualties of America's 20th century conflicts.

Be it enacted by the Legislature of the State of Montana:

Seetion 1. State veterans' memorial rose garden. (1) The Missoula memorial rose garden, located in Missoula, Montana, is officially designated as a state veterans' memorial rose garden.

(2) In addition to the reference required under 1-1-512, the department of commerce and the department of transportation shall identify the Missoula memorial rose garden on official state maps as a state veterans' memorial rose garden.

Section 2. State Korean conflict veterans' memorial — Missoula. (1) The Missoula memorial rose garden, located in Missoula, Montana, is officially designated as a state Korean conflict veterans' memorial.

(2) The department of commerce and the department of transportation shall identify the Missoula memorial rose garden on official state maps as a state Korean conflict veterans' memorial.

Section 3. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 1, chapter 1, part 5, and the provisions of Title 1, chapter 1, part 5, apply te [sections 1 and 2].

Approved April 12, 1999

HeinOnline -- 1999 vol. I 923 1999

CHAPTER NO. 297

[SB 355]

AN ACT ELIMINATING THE USE OF THE STATE SPECIAL REVENUE FUND FOR FUNDING FOOTPATHS AND BICYCLE TRAILS; AMENDING SECTION 60-3-303, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 60-3-303, MCA, is amended to read:

"60-3-303. Footpaths and bicycle trails to be established — funding. (1) The ~~transportation~~ commission or a county or city, with funds received from the ~~state transportation~~ commission ~~state special revenue fund~~, may construct footpaths and bicycle trails. Footpaths and bicycle trails may be established and extended to the nearest city or town or termination point of the highway or road wherever a highway, road, or street is being constructed, reconstructed, or relocated. In addition, footpaths and bicycle trails may he established along all streets under state jurisdiction. Funds ~~received from the state special revenue fund~~ may also be expended to construct footpaths and bicycle trails along other highways, roads, and streets and in parks and recreation areas if the construction enhances traffic safety and convenience. Footpaths and bicycle trails may be constructed along all sections of the national defense interstate highway system.

(2) Footpaths and trails may not be established under subsection (1) ~~of this section~~:

(a) if the cost of establishing the paths and trails is excessively disproportionate to the need or probable use; or

(b) if sparsity of population, other available ways, or other factors indicate an absence of any need for the paths and trails.

(3) The ~~state transportation~~ commission shall let to contract in any period of 5 consecutive fiscal years not less than an average of $200,000 ~~per~~ *each* year for footpaths and bicycle trails. The department shall establish accounting procedures to document compliance with this subsection."

Section 2. Effective date. [This act] is effective July 1, 1999.

Approved April 12, 1999

CHAPTER NO. 298

[SB 397]

AN ACT ALLOWING THE TRANSPORTATION COMMISSION TO AUTHORIZE THE USE OF FEDERAL SECONDARY HIGHWAY AND URBAN HIGHWAY FUNDS FOR THE FEDERAL SURFACE TRANSPORTATION PROGRAM; AND AMENDING SECTION 60-2-127, MCA.

Be it enacted by the Legislature of the State of Montana:

Seetion 1. Section 60-2-127, MCA, is amended to read:

"60-2-127. Allocation of funds for projects. (1) Each year, out of federal-aid highway funds available for construction purposes, the commission shall allocate a portion of the funds for projects located on:

HeinOnline -- 1999 vol. I 924 1999

(a) the national highway system;

(b) the primary highway system;

(c) the secondary highway system;

(d) the urban highway system; and

(e) state highways.

(2) In making allocations under subsection (1), the commission shall comply with all applicable provisions relating to the use of federal-aid highway funds contained in Title 23, U.S.C.

(3) Notwithstanding the allocations made available to the secondary and urban highway systems in subsection (1), the commission may, with the concurrence of the appropriate local officials, authorize the use of federal-aid highway funds allocated under subsections (1)(c) and (1)(d) for any project eligible under 23 U.S.C. 133(b) relative to the surface transportation program."

Approved April 12, 1999

CHAPTER NO. 299

[SB 398]

AN ACT PROTECTING THE RIGHT OF A MOTHER TO NURSE HER CHILD IN PUBLIC; PROHIBITING A UNIT OF LOCAL GOVERNMENT FROM ADOPTING AN ORDINANCE PROHIBITING BREASTFEEDING IN PUBLIC; AND PROVIDING THAT BREASTFEEDING MAY NOT BE CONSIDERED A NUISANCE, INDECENT EXPOSURE, SEXUAL CONDUCT, OR OBSCENITY.

WHEREAS, there are benefits to the child, the mother, and society by encouraging and enabling mothers to breastfeed their children; and

WHEREAS, an infant who is breast-fed receives protection against infection, illness, and allergies and long-term positive effects on the development, intelligence, and health of breast-fed children have been found; and

WHEREAS, a protective effect against various types of cancer and greater emotional and physical health are found for mothers who breastfeed; and

WHEREAS, breastfeeding promotes sufficient birth spacing, improved vaccine effectiveness, and decreased food and medical expenses, which all have positive societal effects;

WHEREAS, the Montana Supplemental Nutrition Program for Women, Infants, and Children (WIC) promotes breastfeeding education and support; and

WHEREAS, legislation to clarify the right to breastfeed is necessary to promote breastfeeding by mothers and remove any stumbling block from influencing a mother's decision to breastfeed or continue breastfeeding out of fear of reprisal.

Be it enacted by the Legislature of the State of Montana:

Section 1. Nursing mother and infant protection. (1) The Montana legislature finds that breastfeeding a baby is an important and basic act of nurturing that must be protected in the interests of maternal and child health

HeinOnline -- 1999 vol. I 925 1999

and family values. A mother has a right to breastfeed the mother's child in any location, public or private, where the mother and child are otherwise authorized to be present, irrespective of whether or not the mother's breast is covered during or incidental to the breastfeeding.

(2) A unit of local government may not prohibit breastfeeding in public by local ordinance.

(3) The act of breastfeeding may not be considered:

(a) a nuisance as provided in Title 27, chapter 30;

(b) indecent exposure as provided for in 45-5-504;

(c) sexual conduct as defined in 45-5-620(1)(f); or

(d) obscenity as provided for in 45-8-201.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 50, chapter 19, and the provisions of Title 50, chapter 19, apply to [section 1].

Approved April 12, 1999

CHAPTER NO. 300

[SB 399]

AN ACT PROVIDING A CAP ON THE AMOUNT A HEALTH CARE PROVIDER MAY CHARGE FOR COPYING HEALTH CARE INFORMATION; AND AMENDING SECTIONS 50-16-504, 50-16-526, 50-16-536, 50-16-541, AND 50-16-545, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Reasonable fees allowed. A reasonable fee for providing health care information may not exceed 50 cents for each page for a paper copy or photocopy. A reasonable fee may include an administrative fee that may not exceed $15 for searching and handling recorded health care information.

Section 2. Section 50-16-504, MCA, is amended to read:

"50-16-504. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Audit" means an assessment, evaluation, determination, or investigation of a health care provider by a person not employed by or affiliated with the provider, to determine compliance with:

(a) statutory, regulatory, fiscal, medical, or scientific standards;

(b) a private or public program of payments to a health care provider; or

(c) requirements for licensing, accreditation, or certification.

(2) "Directory information" means information disclosing the presence and the general health condition of a patient who is an inpatient in a health care facility or who is receiving emergency health care in a health care facility.

(3) "General health condition" means the patient's health status described in terms of critical, poor, fair, good, excellent, or terms denoting similar conditions.

HeinOnline -- 1999 vol. I 926 1999

(4) "Health care" means any care, service, or procedure provided by a health care provider, including medical or psychological diagnosis, treatment, evaluation, advice, or other services that affect the structure or any function of the human body.

(5) "Health care facility" means a hospital, clinic, nursing home, laboratory, office, or similar place where a health care provider provides health care to patients.

(6) "Health care information" means any information, whether oral or recorded in any form or medium, that identifies or can readily be associated with the identity of a patient and relates to the patient's health care. The term includes any record of disclosures of health care information.

(7) "Health care provider" means a person who is licensed, certified, or otherwise authorized by the laws of this state to provide health care in the ordinary course of business or practice of a profession. The term does not include a person who provides health care solely through the sale or dispensing of drugs or medical devices.

(8) "Institutional review board" means a board, committee, or other group formally designated by an institution or authorized under federal or state law to review, approve the initiation of, or conduct periodic review of research programs to assure the protection of the rights and welfare of human research subjects.

(9) "Maintain", as related to health care information, means to hold, possess, preserve, retain, store, or control that information.

(10) "Patient" means an individual who receives or has received health care. The term includes a deceased individual who has received health care.

(11) "Peer review" means an evaluation of health care services by a committee of a state or local professional organization of health care providers or a committee of medical staff of a licensed health care facility. The committee must be:

(a) authorized by law to evaluate health care services; and

(b) governed by written bylaws approved by the governing board of the health care facility or an organization of health care providers.

(12) "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

(13) "Reasonable fee" means the charge, as provided for in [section 1], for duplicating, searching for, or handling recorded health care information."

Section 3. Section 50-16-526, MCA, is amended to read:

"50-16-526. Patient authorization to health care provider for disclosure. (1) A patient may authorize a health care provider to disclose the patient's health care information. A health care provider shall honor an authorization and, if requested, provide a copy of the recorded health care information unless the health care provider denies the patient access to health care information under 50-16-542.

(2) A health care provider may charge a reasonable fee, not to exceed ~~his actual cost for providing the health care information~~ *the fee provided for in [section 1]*, and is not required to honor an authorization until the fee is paid.

(3) To be valid, a disclosure authorization to a health care provider must:

(a) be in writing, dated, and signed by the patient;

HeinOnline -- 1999 vol. I 927 1999

(h) identify the nature of the information to be disclosed; and

(c) identify the person to whom the information is to be disclosed.

(4) Except as provided hy this part, the signing of an authorization by a patient is not a waivor of any rights a patient has under other statutes, the Montana Rules of Evidence, or common law."

Section 4. Section 50-16-536, MCA, is amended to read:

"50-16-536. Method of compulsory process. (1) Unless the court for good cause shown determines that the notification should be waived or modified, if health care information is sought under 50-16-535(1)(b), (1)(d), or (1)(e) or in a civil proceeding or investigation under 50-16-535(1)(i), the person seeking discovery or compulsory process shall mail a notice by first-class mail to the patient or the patient's attorney of record of the compulsory process or discovery request at least 10 days before presenting the certificate required under subsection (2) to the health care provider.

(2) Service of compulsory process or discovery requests upon a health care provider must be accompanied by a written certification, signed by the person seeking to obtain health care information or ~~his~~ *by the person's* authorized representative, identifying at least one subsection of 50-16-535 under which compulsory process or discovery is being sought. The certification must also state, in the case of information sought under 50-16-535(1)(b), (1)(d), or (1)(e) or in a civil proceeding under 50-16-535(1)(i), that the requirements of subsection (1) for notice have been met. A person may sign the certification only if the person reasonably believes that the subsection of 50-16-535 identified in the certification provides an appropriate basis for the use of discovery or compulsory process. Unless otherwise ordered by the court, the health care provider shall maintain a copy of the process and the written certification as a permanent part of the patient's health care information.

(3) In response to service of compulsory process or discovery requests, where authorized by law, a health care provider may deny access to the requested health care information. Additionally, a health care provider may deny access to the requested health care information under 50-16-542(1). If access to requested health care information is denied by the health care provider under 50-16-542(1), the health care provider shall submit to the court by affidavit or other reasonable means an explanation of why the health care provider believes the information should be protected from disclosure.

(4) ~~Where~~ *When* access to health care information is denied under 50-16-542(1), the court may order disclosure of health care information, with or without restrictions as to its use, as the court considers necessary. In deciding whether to order disclosure, the court shall consider the explanation submitted by the health care provider, the reasons for denying access to health care information set forth in 50-16-542(1), and any arguments presented by interested parties.

(5) A health care provider required to disclose health care information pursuant to compulsory process may charge a reasonable fee, not to exceed the ~~health care provider's actual cost for providing the information~~ *fee provided for in [section 1]*, and may deny examination or copying of the information until the fee is paid.

(6) Production of health care information under 50-16-535 and this section does not in itself constitute a waiver of any privilege, objection, or defense existing under other law or rule of evidence or procedure."

HeinOnline -- 1999 vol. I 928 1999

Section 5. Section 50-16-541, MCA, is amended to read:

"50-16-541. Requirements and procedures for patient's examination and copying. (1) Upon receipt of a written request from a patient to examine or copy all or part of ~~his~~ *the patient's* recorded health care information, a health care provider, as promptly as required under the circumstances but no later than 10 days after receiving the request, shall:

(a) make the information available to the patient for examination, *without charge,* during regular business hours or provide a copy, if requested, to the patient;

(b) inform the patient if the information does not exist or cannot be found;

(c) if the health care provider does not maintain a record of the information, inform the patient and provide the name and address, if known, of the health care provider who maintains the record;

(d) if the information is in use or unusual circumstances have delayed handling the request, inform the patient and specify in writing the reasons for the delay and the earliest date, not later than 21 days after receiving the request, when the information will be available for examination or copying or when the request will be otherwise disposed of; or

(e) deny the request in whole or in part under 50-16-542 and inform the patient.

(2) Upon request, the health care provider shall provide an explanation of any code or abbreviation used in the health care information. If a record of the particular health care information requested is not maintained by the health care provider in the requested form, ~~he~~ *the health care provider* is not required to create a new record or reformulate an existing record to make the information available in the requested form. The health care provider may charge a reasonable fee *for each request,* not to exceed the ~~health care provider's actual cost~~ *fee provided for in [section 1],* for providing the health care information and is not required to ~~permit examination or copying~~ *provide copies* until the fee is paid."

Section 6. Section 50-16-545, MCA, is amended to read:

"50-16-545. Dissemination of corrected or amended information or statement of disagreement. (1) A health care provider, upon request of a patient, shall take reasonable steps to provide copies of corrected or amended information or of a statement of disagreement to all persons designated by the patient and identified in the health care information as having examined or received copies of the information sought to be corrected or amended.

(2) A health care provider may charge the patient a reasonable fee, not exceeding the ~~provider's actual cost~~ *fee provided for in [section 1],* for distributing corrected or amended information or the statement of disagreement, unless the provider's error necessitated the correction or amendment."

Section 7. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 50, chapter 16, part 5, and the provisions of Title 50, chapter 16, part 5, apply to [section 1].

Approved April 12, 1999

HeinOnline -- 1999 vol. I 929 1999

CHAPTER NO. 301

[SB 416]

AN ACT CLARIFYING THAT AFTER A VERDICT OR FINDING OF GUILTY, A COURT MAY ORDER A NEW TRIAL IF REQUIRED IN THE INTEREST OF JUSTICE; AND AMENDING SECTION 46-16-702, MCA.

WHEREAS, in State v. Brummer, 1998 MT 11, __ Mont. __, 953 P.2d 250, 55 St. Rep. 30 (1998), the Montana Supreme Court determined that section 46-16-702, MCA, created an ambiguity as to whether a court could order a new trial sua sponte.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-16-702, MCA, is amended to read:

"46-16-702. Motion for a new trial. (1) Following a verdict or finding of guilty, the court may grant the defendant a new trial if required in the interest of justice. *A new trial may be ordered by the court without a motion or may be granted after motion and hearing.*

(2) The motion for a new trial must be in writing and must specify the grounds for a new trial. The motion must be filed by the defendant within 30 days following a verdict or finding of guilty and be served upon the prosecution.

(3) On hearing the motion for a new trial, if justified by law and the weight of the evidence, the court may:

(a) deny the motion;

(b) grant a new trial; or

(c) modify or change the verdict or finding by finding the defendant guilty of a lesser included offense or finding the defendant not guilty."

Approved April 12, 1999

CHAPTER NO. 302

[SB 435]

AN ACT GENERALLY REVISING THE MONTANA LIMITED LIABILITY COMPANY ACT BY ADOPTING THE UNIFORM LIMITED LIABILITY COMPANY ACT; AMENDING SECTIONS 35-8-102, 35-8-201, 35-8-202, 35-8-208, 35-8-209, 35-8-304, 35-8-405, 35-8-501, 35-8-502, 35-8-601, 35-8-605, 35-8-703, 35-8-705, 35-8-801, 35-8-901, 35-8-902, 35-8-904, 35-8-905, 35-8-906, 35-8-908, 35-8-909, 35-8-1201, AND 35-8-1302, MCA; REPEALING SECTIONS 35-8-303, 35-8-401, 35-8-402, 35-8-403, 35-8-404, 35-8-602, 35-8-704, 35-8-706, 35-8-801, 35-8-802, 35-8-907, AND 35-8-1102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 35-8-102, MCA, is amended to read:

"35-8-102. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

HeinOnline -- 1999 vol. I 930 1999

(1) "Articles of organization" means articles filed pursuant to 35-8-201 and those articles as amended or restated. *In the case of a foreign limited liability company, the term includes all records serving a similar function required to be filed under the laws of the state or country where it is organized.*

(2) "At-will company" means a limited liability company other than a term company.

(3) "Business" includes every trade, occupation, profession, or other lawful purpose, whether or not carried on for profit.

~~(2)~~*(4)* "Corporation" means a corporation formed under the laws of this state or a foreign corporation.

~~(3)~~*(5)* "Court" includes every court having jurisdiction in the case.

(6) "Debtor in bankruptcy" means a person who is the subject of an order for relief under Title 11 of the United States Code or a comparable order under federal, state, or foreign law governing insolvency.

~~(4)~~*(7)* "Disqualified person" means any person or entity that for any reason is or becomes ineligible under this chapter to become a member in a professional limited liability company.

(8) "Distribution" means a transfer of money, property, or other benefit to a member in that member's capacity as a member of a limited liability company or to a transferee of a member's distributional interest.

(9) "Distributional interest" means all of a member's interest in the distributions of a limited liability company.

~~(5)~~*(10)* "Event of dissociation" means an event that causes a person to cease to be a member~~, as provided in 35-8-802~~.

~~(5)~~*(11)* "Foreign corporation" means a corporation that is organized under the laws of a state other than Montana or under the laws of any foreign country.

~~(7)~~*(12)* "Foreign limited liability company" means an entity that is:

(a) an unincorporated ~~association~~ *entity*;

(b) organized under laws of a state other than Montana or under the laws of any foreign country;

(c) organized under a statute pursuant to which an ~~association~~ *entity* may be formed that affords to each of its members limited liability with respect to the liabilities of the entity; and

(d) not required to be registered or organized under any statute of this state other than this chapter.

~~(8)~~*(13)* "Foreign limited partnership" means a limited partnership formed under the laws of any state other than Montana or under the laws of any foreign country.

~~(9)~~*(14)* "Foreign professional limited liability company" means a limited liability company organized for the purpose of rendering professional services under the laws of any state other than Montana.

~~(10)~~*(15)* "Licensing authority" means an officer, board, agency, court, or other authority in this state that has the power to issue a license or other legal authorization to render a professional service.

HeinOnline -- 1999 vol. I 931 1999

~~(11)~~*(16)* "Limited liability company" or "domestic limited liability company" means an organization that is formed under this chapter.

~~(12) "Limited liability company interest" or "interest in the limited liability company" means the interest that can be assigned under 35-8-704 and that is available to creditors under 35-8-705.~~

~~(13)~~*(17)* "Limited partnership" means a limited partnership formed under the laws of this state or a foreign limited partnership.

~~(14)~~*(18)* "Manager" means~~, with respect to a limited liability company that has set forth in its articles of organization that it is to be managed by managers, the person designated in accordance with 35-8-302~~ *a person who, whether or not a member of a manager-managed company, is vested with authority under 35-8-301.*

(19) "Manager-managed company" means a limited liability company that is so designated in its articles of organization.

~~(15)~~*(20)* "Member" means a person who has been admitted to membership in a limited liability company, as provided in ~~35-8-801~~ *35-8-703*, and who has not dissociated from the limited liability company.

(21) "Member-managed company" means a limited liability company other than a manager-managed company.

~~(16)~~*(22)* "Operating agreement" means an agreement, *including amendments,* ~~written or oral,~~ as to the conduct of the business and affairs of a limited liability company *and the relations among the members, managers, and the company* that is binding upon all of the members.

~~(17)~~*(23)* "Person" means an individual, a general partnership, a limited partnership, a domestic or foreign limited liability company, a trust, an estate, an association, a corporation, or any other legal or commercial entity.

~~(18)~~*(24)* "Professional limited liability company" means a limited liability company designating itself as a professional limited liability company in its articles of organization.

~~(19)~~*(25)* "Professional service" means a service that may lawfully be rendered only by persons licensed under a licensing law of this state and that may not be lawfully rendered by a limited liability company that is not a professional limited liability company.

~~(20)~~*(26)* "Qualified person" means a natural person, limited liability company, general partnership, or professional corporation eligible under this chapter to own shares issued by a professional limited liability company.

(27) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is recoverable in a perceivable form.

(28) "Sign" means to identify a record by means of a signature, mark, or other symbol with the intent to authenticate it.

~~(21)~~*(29)* "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

~~(22)~~*(30)* "Surviving limited liability company" means the constituent entity surviving the merger, as identified in the articles of merger provided for in 35-8-1201.

HeinOnline -- 1999 vol. I 932 1999

(31) "Term company" means a limited liability company designated as a term company in its articles of organization."

Section 2. Effect of operating agreement — nonwaivable provisions. (1) Except as provided in subsection (2), all members of a limited liability company may enter into an operating agreement, which need not be in writing, to regulate the affairs of the company and the conduct of its business and to govern relations among the members, managers, and company. To the extent that the operating agreement does not otherwise provide, this chapter governs relations among the members, managers, and company.

(2) An operating agreement need not be in writing except as otherwise provided in this chapter to:

(a) vary the recordkeeping requirements under 35-8-405;

(b) vary the rights of members to share in distributions under 35-8-601 or 35-8-903; or

(c) vary the process for admission of members under [section 27] or 35-8-801.

(3) The operating agreement may not:

(a) unreasonably restrict a right to information or access to records under 35-8-405;

(b) eliminate the duty of loyalty under [section 17], but the agreement may:

(i) identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable; and

(ii) specify the number or percentage of members or disinterested managers that may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty;

(c) unreasonably reduce the duty of care under [section 17];

(d) eliminate the obligation of good faith and fair dealing under [section 17], but the operating agreement may determine the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable;

(e) vary the right to expel a member upon the occurrence of an event specified in [section 30];

(f) vary the requirement to wind up the limited liability company's business in a case specified in 35-8-901(1)(c) or 35-8-902; or

(g) restrict the rights of a person under this chapter, other than a manager, member, or transferee of a member's distributional interest.

Section 3. Purpose — supplemental principles of law — interest rate. (1) Unless displaced by particular provisions of this chapter, the principles of law and equity supplement this chapter.

(2) If an obligation to pay interest arises under the provisions of this chapter and the rate of interest is not specified, then the rate is the rate of interest specified in 31-1-106.

Section 4. Uniformity of application and construction. Unless otherwise provided in this chapter, this chapter must be applied and construed to effectuate its general purpose to make the law with respect to the subject of this chapter among states enacting the Uniform Limited Liability Company Act.

HeinOnline -- 1999 vol. I 933 1999

Section 5. Section 35-8-201, MCA, is amended to read:

"35-8-201. Formation. *(1)* One or more persons may form a limited liability company *consisting of one or more members* by signing and filing articles of organization with the secretary of state. The person or persons need not be members of the limited liability company at the time of formation or after formation has occurred. *A limited liability company is a legal entity distinct from its members.*

(2) Unless a delayed effective date is specified, the existence of a limited liability company begins when the articles of organization are filed.

(3) The filing of the articles of organization by the secretary of state pursuant to 35-8-205 is conclusive proof that the organizers have satisfied all conditions precedent to the creation of a limited liability company."

Section 6. Section 35-8-202, MCA, is amended to read:

"35-8-202. Articles of organization. (1) The articles of organization must set forth:

(a) the name of the limited liability company that satisfies the requirements of 35-8-103;

(b) ~~the latest date on which the limited liability company is to dissolve~~ *whether the company is a term company and, if so, the term specified*;

(c) the address of its principal place of business in this state and, if different, its registered office and the name and address of its resident agent at the registered office in this state;

~~(d) a statement of whether the limited liability company is to be managed by a manager or by its members;~~

~~(e)~~*(d)* (i) if the limited liability company is to be managed by a manager or managers, a statement that the company is to be managed in that fashion and the names and street addresses of managers who are to serve as managers until the first meeting of members or until their successors are elected;

(ii) if the management of a limited liability company is reserved to the members, *a statement that the company is to be managed in that fashion and* the names and street addresses of the initial members;

(e) whether one or more members of the company are to be liable for the limited liability company's debts and obligations under 35-8-304(3);

(f) if the limited liability company is a professional limited liability company, a statement to that effect and a statement of the professional service or services it will render; and

(g) any other provision, not inconsistent with law, that the members elect to set out in the articles, including but not limited to a statement of whether there are limitations on the authority of members or management to bind the limited liability company.

(2) It is not necessary to set out in the articles of organization any of the powers enumerated in 35-8-107.

(3) The articles of organization may not vary the nonwaivable provisions set out in [section 2]. As to all other matters, if any provision of an operating agreement is inconsistent with the articles of organization:

HeinOnline -- 1999 vol. I 934 1999

(a) the operating agreement controls as to managers, members, and a member's transferee; and

(b) the articles of organization control as to a person, other than a manager, member, and member's transferee, that reasonably relies on the articles of organization to that person's detriment."

Section 7. Section 35-8-208, MCA, is amended to read:

"35-8-208. Annual report for secretary of state. (1) A limited liability company or a foreign limited liability company authorized to transact business in this state shall deliver to the secretary of state, for filing, an annual report that sets forth:

(a) the name of the limited liability company and the state or country under whose law it is organized;

(b) the mailing address and, if different, street address of its registered office and the name of its registered agent at that office in this state;

(c) the address of its principal office;

(d) (i) if the limited liability company is managed by a manager or managers, a statement that the company is managed in that fashion and the names and street addresses of the managers;

(ii) if the management of a limited liability company is reserved to the members, a statement to that effect;

~~(e) the last date upon which the limited liability company is to be dissolved;~~

~~(f)~~*(e)* if the limited liability company is a professional limited liability company, a statement that all of its members and not less than one-half of its managers are qualified persons with respect to the limited liability company.

(2) Information in the annual report must be current as of the date the annual report is executed on behalf of the limited liability company.

(3) The first annual report must be delivered to the secretary of state between January 1 and April 15 of the year following the calendar year in which a domestic limited liability company is organized or a foreign limited liability company is authorized to transact business. Subsequent annual reports must be delivered to the secretary of state between January 1 and April 15.

(4) If an annual report does not contain the information required by this section, the secretary of state shall promptly notify the reporting domestic or foreign limited liability company in writing and return the report to it for correction.

(5) The annual report must be executed by at least one member of the limited liability company and must include the street address of the member.

(6) A domestic professional limited liability company or a foreign professional limited liability company authorized to transact business in this state shall annually file before April 15, with each licensing authority having jurisdiction over a professional service of a type described in its articles of orgenization, a statement of qualification setting forth the names and addresses of the members and managers of the company and additional information that the licensing authority may by rule prescribe as appropriate in determining whether the company is complying with the provisions of part 13 of this chapter and rules

HeinOnline -- 1999 vol. I 935 1999

promulgated under part 13 of this chapter. The licensing authority may charge a fee to cover the cost of filing a statement of qualification."

Section 8. Correcting filed record. (1) A limited liability company or foreign limited liability company may correct a record filed by the secretary of state if the record contains a false or erroneous statement or was defectively signed.

(2) A record must be corrected by:

(a) preparing articles of correction that:

(i) describe the record, including its filing date, or have attached a copy of the record to the articles of correction;

(ii) specify the incorrect statement and the reason that it is incorrect or the manner in which the signing was defective; and

(iii) correct the incorrect statement or defective signing; and

(b) delivering the corrected record to the secretary of state for filing.

(3) Articles of correction are effective retroactively on the effective date of the record that they correct except as to persons relying on the uncorrected record and adversely affected by the correction. As to those persons, the articles of correction are effective when filed.

Section 9. Certificate of existence or authorization. (1) A person may request the secretary of state to furnish a certificate of existence for a limited liability company or a certificate of authorization for a foreign limited liability company.

(2) A certificate of existence for a limited liability company must set forth:

(a) the company's name;

(b) that it is organized under the laws of this state, the date of organization, whether its duration is at-will or for a specified term, and, if for a specified term, the period specified;

(c) if payment is reflected in the records of the secretary of state and if nonpayment affects the existence of the company, that all fees, taxes, and penalties owed to this state have been paid;

(d) whether its most recent annual report required by 35-8-208 has been filed with the secretary of state;

(e) that articles of termination have not been filed; and

(f) other facts of record in the office of the secretary of state if requested by the applicant.

(3) A certificate of authorization for a foreign limited liability company must set forth:

(a) the company's name used in this state;

(b) that it is authorized to transact business in this state;

(c) whether its most recent annual report required by 35-8-208 has been filed with the secretary of state;

(d) that a certificate of cancellation has not been filed; and

HeinOnline -- 1999 vol. I 936 1999

(e) other facts of record in the office of the secretary of state if requested by the applicant.

(4) Subject to any qualification stated in the certificate, a certificate of existence or authorization issued by the secretary of state may be relied upon as conclusive evidence as of the date of the certificate that the domestic or foreign limited liability company is in existence or is authorized to transact business in this state.

Section 10. Liability for false statement in filed record. Subject to 35-8-304 and [section 15], if a record authorized or required to be filed under this chapter contains a false statement, a person who suffers loss by reliance on the statement may recover damages for the loss from the person who signed the record or caused another to sign it on that person's behalf and who knew the statement to be false at the time that the record was signed.

Section 11. Filing by judicial act. If a person required by 35-8-204 to execute any record or document fails or refuses to do so, a person who is adversely affected by the failure or refusal may petition a district court to direct the signing of the record or document. If the court finds that it is proper for the record or document to be signed and that a designated person has failed or refused to sign the record, it shall order the secretary of state to sign and file an appropriate record or document.

Section 12. Knowledge and notice. (1) A person knows a fact if the person has actual knowledge of the fact.

(2) A person has notice of a fact if the person:

(a) knows the fact;

(b) has received a notification of the fact; or

(c) has reason to know that the fact exists from other facts known to the person at the time in question.

(3) A person notifies or gives a notification of a fact to another by taking steps reasonably required to inform the other person, whether or not the other person knows the fact.

(4) A person receives a notification when the notification:

(a) comes to the person's attention; or

(b) is delivered at the person's place of business or at any other place held out by the person as a place for receiving communications.

(5) (a) An entity knows, has notice, or receives a notification of a fact for purposes of a particular transaction:

(i) when an individual conducting the transaction for the entity knows, has notice, or receives a notification of the fact; or

(ii) when the fact would have been brought to the individual's attention had the entity exercised reasonable diligence.

(b) (i) An entity exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the individual conducting the transaction for the entity and there is reasonable compliance with the routines.

HeinOnline -- 1999 vol. I 937 1999

(ii) Reasonable diligence does not require an individual acting for the entity to communicate information unless the communication is part of the individual's regular duties or the individual bas reason to know of the transaction and to know that the transaction would be materially affected by the information.

Section 13. Section 35-8-209, MCA, is amended to read:

"35-8-209. Administrative dissolution — rules. (1) A domestic limited liability company may be dissolved involuntarily by order of the secretary of state if the limited liability company ~~has failed~~:

(a) *(i) has failed* for 60 days after *a* change of its registered office or registered agent to file in the office of the secretary of state a statement of the change; *or*

(ii) has failed for 60 days to appoint and maintain a registered agent in this state;

(b) *has failed* for 140 days to file its annual report within the time required by law; ~~or~~

(c) *has failed* to remit any fees required by law;

(d) procured its certificate of existence through fraud; or

(e) has exceeded or abused the authority conferred upon it by law and the excesses or abuses have continued after a written notice of the alleged excesses or abuses has been received from the secretary of state by the registered agent of the limited liability company.

(2) ~~The secretary of state may adopt rules to establish procedures for administrative dissolutions consistent with subsection (1)~~ *If dissolution is sought under subsection (1)(d) or (1)(e), the secretary of state may dissolve a limited liability company when an alleged violation of subsection (1)(d) or (1)(e) is established by an order of a district court. In addition to any other person authorized by law, the secretary of state or the attorney general may maintain an action in district court to implement the provisions of this section.*"

Section 14. Section 35-8-304, MCA, is amended to read:

"35-8-304. Liability of members *and managers* to third parties. (1) *Except as provided in subsection (3), a* ~~A~~ person who is a member or manager, or both, of a limited liability company is not liable, solely by reason of being a member or manager, or both, under a judgment, decree or order of a court, or in any other manner, for a debt, obligation, or liability of the limited liability company, whether arising in contract, tort, or otherwise or for the acts or omissions of any other member, manager, agent, or employee of the limited liability company.

(2) The failure of a limited liability company to observe the usual company formalities or requirements relating to the exercise of its company powers or management of its business is not a ground for imposing personal liability on the members or managers of the limited liability company.

(3) All or specified members of a limited liability company are liable in their capacity as members for all or specified debts, obligations, or liabilities of the company if:

(a) a provision to that effect is contained in the articles of organization; and

(b) a member named as liable has consented in writing to the adoption of the provision or to be bound by the provision."

HeinOnline -- 1999 vol. I 938 1999

Section 15. Limited liability company liability for member's or manager's conduct. A limited liability company is liable for loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act or omission or other actionable conduct of a member or manager acting in the ordinary course of business of the company or with the authority of the company.

Section 16. Managemcnt and voting. (1) Unless the articles of organization or the operating agreement provide otherwise, in a member-managed company:

(a) each member has equal rights in the management and conduct of the company's business; and

(b) except as provided in suhsection (3), any matter relating to the husiness of the company may be decided by a majority of the members.

(2) Unless the articles of organization or the operating agreement provide otherwise, in a manager-managed company:

(a) each manager has equal rights in tbe management and conduct of the company's business;

(b) except as provided in subsection (3), any matter relating to the business of the company may be exclusively decided by the manager or, if there is more than one manager, by a majority of the managers; and

(c) a manager:

(i) must be designated, appointed, elected, removed, or replaced by a vote, approval, or consent of a majority of the members; and

(ii) holds office until a successor has been elected and qualified, unless the manager sooner resigns or is removed.

(3) Unless the articles of organization or the operating agreement provide otherwise, the only matters of a memher-managed or manager-managed company's business requiring the consent of all of the memhers are:

(a) the amendment of the operating agreement under [section 2];

(b) the authorization or ratification of acts or transactions under [section 2(3)(b)(ii)] that would otherwise violate the duty of loyalty;

(c) an amendment to the articles of organization under 35-8-203;

(d) the compromise of an obligation to make a contribution under 35-8-502;

(e) the compromise, as among members, of an obligation to make a contribution or return money or other property paid or distributed in violation of this chapter;

(f) the making of interim distributions under 35-8-601, including the redemption or repurchase of an interest;

(g) the admission of a new member;

(h) the use of the company's property to redeem an interest subject to a charging order;

(i) the consent to dissolve the company under 35-8-901;

(j) a waiver of the right to have the company's husiness wound up and the company terminated under 35-8-901;

HeinOnline -- 1999 vol. I 939 1999

(k) the consent of members to merge with another entity under 35-8-1201; and

(l) the sale, lease, exchange, or other disposal of all, or substantially all, of the company's property with or without geodwill.

(4) Action requiring the consent of members or managers under tbis chapter may be taken without a meeting.

(5) A member or manager may appoint a proxy to voto or otherwise act for the member or manager by signing an appointment instrument, either personally or by the member's or manager's attorney-in-fact.

Scction 17. General standards of membcr's and manager's conduct. (1) The only fiduciary duties that a member owes to a member-managed company and the other members are the duty of loyalty imposed by subsection (2) and the duty of care imposed by subsection (3).

(2) A member's duty of loyalty to a member-managed company and its other members is limited to the following:

(a) to account to the company and to hold as trustee for it any property, profit, or benefit derived by the member in the conduct or winding up of the company's business or derived from a use by tbe member of the company's property, including the appropriation of a company's opportunity;

(b) to refrain from dealing with the company in the conduct or winding up of the company's business on behalf of a party or as a person having an interest adverse to the company; and

(c) to refrain from compoting with the company in the conduct of the company's business before the dissolution of the company.

(3) A member's duty of care to a member-managed company and the other members in the conduct of and winding up of the company's business is limitod to refraining from engeging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

(4) A member sball discharge the duties under this chapter or the oporating agreement to a member-managed company and its other members and exercise any rights consistently with the obligation of geod faith and fair dealing.

(5) A member of a member-managed company does not violate a duty or obligation under this chapter or under the operating agreement merely because the member's conduct furthers the member's own interest.

(6) A member of a member-managed company may lend money to and transact other business with the company. As to each loan or transaction, the rights and obligations of the member are the same as those of a person who is not a member, subject to other applicable law.

(7) This section applies to a person winding up the limited liability company's business as the personal or legal representative of the last-surviving member as if the person were a member.

(8) In a manager-managed company:

(a) a member who is not also a manager owes no duties to the company or to the other members solely by reason of being a member;

HeinOnline -- 1999 vol. I 940 1999

(h) a manager is held to the same standards of conduct as those prescribed for members in subsections (2) through (6);

(c) a member who pursuant to the operating agreement exercises some or all of the rights of a manager in the management and conduct of the company's business is held to the standards of conduct prescribed for memhers in subsections (2) through (6) to the extent that the member exercises the managerial authority vested in a manager hy this chapter; and

(d) a manager is relieved of liability imposed by law for violation of the standards prescribed for members hy subsections (2) through (6) to the extent of the managerial authority delegated to the members by the operating agreement.

Section 18. Section 35-8-405, MCA, is amended to read:

"35-8-405. Records and information. (1) Unless otherwise provided in the articles of organization or a written operating agreement, a limited liahility company shall keep at its principal place of business the following:

(a) a current and past list, setting forth the full name and last-known mailing address of each member and manager, if any, set forth in alphabetical order;

(b) a copy of the articles of organization and all amendments to the articles, together with executed copies of any powers of attorney pursuant to which any articles have been executed;

(c) copies of the limited liability company's federal, state, and local income tax returns and financial statements, if any, for the 3 most recent years or, if the returns and statements were not prepared for any reason, copies of the information and statements provided to or that should have been provided to the members to enahle them to prepare their federal, state, and local tax returns for the period;

(d) copies of any effective written operating agreements and all amendments and copies of any written operating agreements no longer in effect;

(e) unless provided in writing in an operating agreement:

(i) a writing, if any, setting forth the amount of cash, the agreed value of other property or services contributed by each member, and the times or events upon which any additional contributions agreed to hy each member are to be made;

(ii) a writing, if any, stating events that require the limited liability company to be dissolved and its affairs wound up; and

(iii) other writings, if any, prepared pursuant to a requirement in an operating agreement.

(2) *(a)* A member may, at the member's own expense, inspect and copy any limited liability company record, wherever the record is located, upon reasonable request during ordinary business hours.

(b) A former member and agents or attorneys of a former member must be provided access and the same right to copy records pertaining to the period that the former member was a member.

(3) Members, if the management of the limited liability company is vested in the members, or managers, if management of the limited liability company is vested in the managers, shall render, to the extent the circumstances make it just and reasonable, true and full information of all things affecting the members to

HeinOnline -- 1999 vol. I 941 1999

any member and to the legal representative of any deceased member or of any member under legal disability.

(4) Failure of the limited liability company to keep or maintain any of the records or information required pursuant to this section may not be grounds for imposing liability on any person for the dehts and obligations of the limited liability company."

Section 19. Actions by members. (1) A member may maintain an action against a limited liability company or anotber member for legal or equitable relief, with or without an accounting as to the company's business, to enforce:

(a) the member's rights under the operating agreement;

(b) the member's rights under this chapter; or

(c) the rights and otherwise protect the interests of the member, including rights and interests arising independently of the member's relationship to the company.

(2) The accrual of a right of action under this section and any time limits for asserting the right of action for a remedy under this section are governed by the laws of this state. A right to an accounting upon a dissolution and winding up does not revive a claim barred by law.

Section 20. Continuation of term company after expiration of specified term. (1) If a term company is continued after the expiration of the specified term, the rights and duties of the members and managers remain the same as they were at the expiration of the term except to the extent inconsistent with rights and duties of members and managers of an at-will company.

(2) If the members in a member-managed term company or the managers in a manager-managed term company continue the business without any winding up of the business of the company, it continues as an at-will company.

Section 21. Section 35-8-501, MCA, is amended to read:

"35-8-501. Contributions to capital. An interest in a limited liability company may be issued in exchange for *tangible or intangible* property~~,~~ *or other benefit to the company, including money, promissory notes,* services ~~rendered~~ *performed*, or ~~a promissory note or~~ other ~~obligation~~ *agreements* to contribute cash or property or *contracts* ~~to perform~~ *for* services *to be performed.*"

Section 22. Section 35-8-502, MCA, is amended to read:

"35-8-502. Liability for contribution. (1) A promise by a member to contribute to the limited liability company is not enforceable unless set out in a writing signed by the member.

(2) (a) Except as provided in the articles of organization or the operating agreement, a member is obligated to the limited liability company to perform any enforceable promises to contribute cash or property or to perform services even if the member is unable to perform because of death, disability, or other reason.

(b) If a member does not make the required contribution of property or services, the member is obligated, at the option of the limited liability company, to contribute cash equal to that portion of value or the stated contribution that has not been made.

(3) (a) Unless otherwise provided in the articles of organization or the operating agreement, the obligation of a member to make a contribution or return

HeinOnline -- 1999 vol. I 942 1999

money or other property paid or distributed in violation of this chapter may be compromised only with the unanimous consent of the members.

(b) ~~Notwithstanding the compromise, the original obligation may be enforced by a creditor of a limited liability company who extends credit or otherwise acts in reliance on the obligation after the member signs a writing that reflects the obligation and before the amendment or compromise.~~ *A creditor of a limited liability company who extends credit or otherwise acts in reliance on an obligation described in subsection (1), and without notice of any compromise under [section 16(3)(d)], may enforce the original obligation.*"

Section 23. Member's and manager's rights to payments and reimbursement. (1) A limited liability company shall reimburse a member or manager for payments made and indemnify a member or manager for liabilities incurred by the member or manager in the ordinary course of the business of the company or for the preservation of the company's business or property.

(2) A limited liability company shall reimburse a member for an advance to the company beyond the amount of contribution that the member agreed to make.

(3) A payment or advance made by a member that gives rise to an obligation of a limited liability company under subsection (1) or (2) constitutes a loan to the company upon which interest accrues from the date of the payment or advance.

(4) A member is not entitled to remuneration for services performed for a limited liability company except for reasonable compensation for services rendered in winding up the business of the company.

Section 24. Section 35-8-601, MCA, is amended to read:

"**35-8-601. Sharing of distributions.** Except as provided in ~~35-8-602 and~~ 35-8-905, distributions of cash or other assets of a limited liability company must be shared among the members and among classes of members in the manner provided in writing in the articles of organization or the operating agreement. If the articles of organization or the operating agreement does not so provide in writing, each member shall share equally in any distribution. A member is entitled to receive distributions described in this section from a limited liability company to the extent and at the times or upon the happening of the events specified in the articles of organization or the operating agreement or at the times determined by the members or managers pursuant to ~~35-8-403~~ *[section 16(3)(f)]*."

Section 25. Section 35-8-605, MCA, is amended to read:

"**35-8-605. Liability upon wrongful distribution.** (1) A member or manager who votes for or assents to a distribution in violation of the articles of organization, the operating agreement, or 35-8-604 is personally liable to the limited liability company, but not to other persons, for the amount of the distribution that exceeds what could have been distributed without violating 35-8-604 or the articles of organization or the operating agreement if it is established that the member or manager did not ~~act~~ *perform the member's or manager's duties* in compliance with ~~35-8-604~~ *[section 17]*.

~~(2) A member or manager held liable under subsection (1) for an unlawful distribution is entitled to contribution:~~

~~(a) from each other member or manager who voted for or assented to the unlawful distribution; and~~

~~(b) from each member for the amount the member received, knowing that the distribution was made in violation of 35-8-604 or the articles of organization or the operating agreement.~~

(2) A member of a manager-managed company who knew a distribution was made in violation of 35-8-604, the articles of organization, or the operating agreement is personally liable to the company, but only to the extent that the distribution received by that member exceeded the amount that could have properly been paid to that member under 35-8-604.

(3) A member or manager against whom an action is brought under this section may implead in the action:

(a) other members and managers who voted for or assented to the distribution in violation of subsection (1) and may compel contribution from them; and

(b) members who received a distribution in violation of subsection (2) and may compel a contribution from the members in the amount received in violation of subsection (2).

(4) A proceeding under this section is barred unless it is commenced within 2 years after the date of the distribution."

Section 26. Section 35-8-703, MCA, is amended to read:

"35-8-703. Nature of ~~membership~~ *distributional* interest. *(1)* A ~~membership interest~~ *member is not a co-owner of, and does not have a transferable interest in, property of a limited liability company.*

(2) A member's distributional interest in a limited liability company is personal property *and, subject to the provisions of [section 25], may be transferred in whole or in part.*

(3) An operating agreement may provide that a member's distributional interest may be evidenced by a certificate of the interest issued by the limited liability company and, subject to the provisions of [section 25], may also provide for the transfer of any interest represented by the certificate."

Section 27. Transfer of distributional interest — rights of transferee. (1) A transfer of a member's distributional interest does not entitle the transferee to become a member or to exercise any rights of a member. A transfer entitles the transferee to receive, to the extent transferred, only the distributions to which the transferor would be entitled.

(2) A transferee of a distributional interest may become a member of a limited liability company if and to the extent that the transferor gives the transferee the right in accordance with authority described in writing in the operating agreement or if all other members consent.

(3) A transferee who has become a member, to the extent transferred, has the rights and powers, and is subject to the restrictions and liabilities, of a member under the operating agreement of a limited liability company and the provisions of this chapter. A transferee who becomes a member also is liable for the transferor member's obligations to make contributions under 35-8-502 and for obligations under 35-8-605 to return unlawful distributions, but the transferee is not obligated for the transferor member's liabilities unknown to the transferee at the time that the transferee becomes a member.

(4) Whether or not a transferee of a distributional interest becomes a member under subsection (2), the transferor is not released from liability to the limited

HeinOnline -- 1999 vol. I 944 1999

liability company under the operating agreement or the provisions of this chapter.

(5) A transferee who does not become a member is not entitled to participate in the management or conduct of the limited liability company's business, may not require access to information concerning the company's transactions, and may not inspect or copy any of the company's records.

(6) A transferee who does not become a member is entitled to:

(a) receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled;

(b) receive, upon dissolution and winding up of the limited liability company's business:

(i) in accordance with the transfer, the net amount otherwise distributable to the transferor; and

(ii) a statement of account only from the date of the latest statement of account agreed to by all the members; and

(c) seek under 35-8-902(2) a judicial determination that it is equitable to dissolve and wind up the company's business.

(7) A limited liability company does not have to give effect to a transfer until it has notice of the transfer.

Section 28. Section 35-8-705, MCA, is amended to read:

"**35-8-705. Rights of judgment creditor.** *(1)* On application to a court of competent jurisdiction by any judgment creditor of a member, the court may charge the ~~membership~~ *distributional* interest of the member with payment of the unsatisfied amount of judgment, with interest. To the extent charged, the judgment creditor has only the rights of an assignee of the ~~membership~~ *distributional* interest. This chapter does not deprive a member of the benefit of any exemption laws applicable to a ~~membership~~ *distributional* interest.

(2) The court may appoint a receiver of the share of the distributions due or to become due to a judgment debtor and make all other orders, directions, accounts, and inquiries that the judgment debtor may have made or that the circumstances require to give effect to the charging order.

(3) A charging order constitutes a lien on the judgment debtor's distributional interest. The court may order a foreclosure of a lien on a distributional interest subject to the charging order at any time. A purchaser of the distributional interest at a foreclosure sale has the rights of a transferee.

(4) At any time before foreclosure, a distributional interest that is charged may be redcemed:

(a) by the judgment debtor;

(b) by one or more of the other members with property other than the company's; or

(c) with the company's property if permitted by the operating agreement.

(5) This section provides the exclusive remedy by which a judgment creditor of a member or a transferee may satisfy a judgment out of the judgment debtor's distributional interest in a limited liability company."

Section 29. Section 35-8-801, MCA, is amended to read:

HeinOnline -- 1999 vol. I 945 1999

"35-8-801. **Admission of members.** (1) Subject to subsection (2), a person may become a member in a limited liability company:

(a) in the case of a person acquiring a ~~limited liability company~~ *distributional* interest directly from the limited liability company, upon compliance with the articles of organization or the operating agreement or, if the articles of organization or the operating agreement does not so provide in writing, upon the written consent of all members; and

(b) in the case of an assignee of a limited liability company interest, as provided in ~~35-8-704~~ *[section 27]*.

(2) The effective time of admission of a member to a limited liability company is the later of:

(a) the date the limited liability company is formed; or

(b) the time provided in the articles of organization or the operating agreement or, if no time is provided, when the person's admission is reflected in the records of the limited liability company."

Section 30. Events causing member's dissociation. A member is dissociated from a limited liability company upon the occurrence of any of the following events:

(1) the company's having notice of the member's express will to withdraw upon the date of notice or on a later date if specified by the member;

(2) an event agreed to in the operating agreement as causing the member's dissociation;

(3) upon transfer of all of a member's distributional interest, other than a transfer for security purposes or pursuant to a court order charging the member's distributional interest that has not been foreclosed;

(4) the member's expulsion pursuant to the operating agreement;

(5) the member's expulsion by unanimous vote of the other members if:

(a) it is unlawful to carry on the company's business with the member;

(b) there has been a transfer of substantially all of the member's distributional interest, other than a transfer for security purposes or pursuant to a court order charging the member's distributional interest, which has not been foreclosed;

(c) within 90 days after the company notifies a corporate member that it will be expelled because it has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been susponded by the jurisdiction of its incorporation, the member fails to obtain a revocation of the certificate of dissolution or a reinstatement of its charter or its right to conduct business; or

(d) a partnership or a limited liability company that is a member has been dissolved, and its business is being wound up;

(6) on application by the company or another member, the member's expulsion by judicial determination because the member:

(a) engaged in wrongful conduct that adversely and materially affected the company's business;

(b) willfully or persistently committed a material breach of the operating agreement or of a duty owed to the company or the other members under [section 17]; or

(c) engaged in conduct relating to the company's business that makes it not reasonably practicable to carry on the business with the member;

(7) the member's:

(a) becoming a debtor in bankruptcy;

(b) executing an assignment for the benefit of creditors;

(c) seeking, consenting to, or acquiescing in the appointment of a trustee, receiver, or liquidator of all or substantially all of the member's property; or

(d) failing, within 90 days after the appointment, to have vacated or stayed the appointment of a trustee, receiver, or liquidator of the member or of all or substantially all of the member's property obtained without the member's consent or acquiescence or failing within 90 days after the expiration of stay to have the appointment vacated;

(8) in the case of a member who is an individual:

(a) the member's death;

(b) the appointment of a guardian or general conservator for the member; or

(c) a judicial determination that the member has otherwise become incapable of performing the member's duties under the operating agreement;

(9) in the case of a member that is a trust or is acting as a member by virtue of being a trustee of a trust, distribution of the trust's entire rights to receive distributions from the company, except that this subsection does not apply to the substitution of a successor trustee;

(10) in the case of a member that is an estate or is acting as a member by virtue of being a personal representative of an estate, distribution of the estate's entire rights to receive distributions from the company, but not merely the substitution of a successor personal representative; or

(11) termination of the existence of a member if the member is not an individual, estate, or trust other than a business trust.

Section 31. Member's power to dissociate — wrongful dissociation. (1) Unless otherwise provided in the operating agreement, a member has the power to dissociate from a limited liability company at any time, rightfully or wrongfully, pursuant to [section (30)(1)].

(2) If the operating agreement has not eliminated a member's power to dissociate, the member's dissociation from a limited liability company is wrongful only if:

(a) it is in breach of an express provision of the agreement; or

(b) before the expiration of the specified term of a term company:

(i) the member withdraws by express will;

(ii) the member is expelled by judicial determination under [section (30)(6)];

(iii) the member is dissociated by becoming a debtor in bankruptcy; or

HeinOnline -- 1999 vol. I 947 1999

(iv) in the case of a member that is not an individual, trust, other than a business trust, or estate, the member is expelled or otherwise dissociated because it willfully dissolved or terminated its existence.

(3) A member that wrongfully dissociates from a limited liability company is liable to the company and to the other members for damages caused by the dissociation. The liability is in addition to any other obligation of the member to the company or to the other members.

(4) If a limited liability company does not dissolve and wind up its business as a result of a member's wrongful dissociation under subsection (2), damages sustained by the company for the wrongful dissociation must be offset against distributions otherwise due the member after the dissociation.

Section 32. Effect of member's dissociation. (1) Upon a member's dissociation:

(a) in an at-will company, the company shall cause the dissociated member's distributional interest to be purchased as provided under [sections 33 and 34]; and

(b) in a term company:

(i) if the company dissolves and winds up its business on or before the expiration of its specified term, part 9 of this chapter applies to determine the dissociated member's rights to distributions; and

(ii) if the company does not dissolve and wind up its business on or before the expiration of its specified term, the company shall ensure that the dissociated member's distributional interest is purchased under [sections 33 and 34] on the date that was specified for the expiration of the term at the time of the member's dissociation.

(2) Upon a member's dissociation from a limited liability company:

(a) the member's right to participate in the management and conduct of the company's business terminates, except as otherwise provided in 35-8-903, and the member ceases to be a member and must be treated the same as a transferee of a member;

(b) the member's duty of loyalty under [section 17(2)(c)] terminates; and

(c) the member's duty of loyalty under [section 17(2)(a) and (2)(b)] and duty of care under [section 17(3)] continue only with regard to matters arising and events occurring before the member's dissociation, unless the member participates in winding up the company's business pursuant to 35-8-903.

Section 33. Company purchase of distributional interest. (1) A limited liability company shall purchase a distributional interest of a:

(a) member of an at-will company for its fair value determined as of the date of the member's dissociation if the member's dissociation does not result in a dissolution and winding up of the company's business under 35-8-901; or

(b) member of a term company for its fair value determined as of the date of the expiration of the specified term that existed on the date of the member's dissociation if the expiration of the specified term does not result in a dissolution and winding up of the company's business under 35-8-903.

(2) A limited liability company shall deliver a purchase offer to the dissociated member whose distributional interest is entitled to be purchased not later than

HeinOnline -- 1999 vol. I 948 1999

30 days after the date determined under subsection (1). The purchase offer must be accompanied by:

(a) a statement of the company's assets and liabilities as of the date determined under subsection (1);

(b) the latest available balance sheet and income statement, if any; and

(c) an explanation of how the estimated amount of the payment was calculated.

(3) If the price and other terms of a purchase of a distributional interest are fixed or are to be determined by the operating agreement, the price and terms so fixed or determined govern the purchase unless the purchaser defaults. If a default occurs, the dissociated member is entitled to commence a proceeding to have the company dissolved under 35-8-902(1)(d).

(4) If an agreement to purchase the distributional interest is not made within 120 days after the date determined under subsection (1), the dissociated member, within another 120 days, may commence a proceeding against the limited liability company to enforce the purchase. The company, at its expense, shall notify in writing all of the remaining members and any other person that the court directs of the commencement of the proceeding. The jurisdiction of the court in which a proceeding is commenced under this subsection is plenary and exclusive.

(5) The court shall determine the fair value of the distributional interest in accordance with the standards set forth in [section 34], together with the terms for the purchase. Upon making these determinations, the court shall order the limited liability company to purchase or cause the purchase of the interest.

(6) Damages for wrongful dissociation under [section 31(2)] and all other amounts owing, whether or not currently due, from the dissociated member to a limited liability company, must be offset against the purchase price.

Section 34. Court action to determine fair value of distributional interest. (1) In an action brought to determine the fair value of a distributional interest in a limited liability company, the court shall:

(a) determine the fair value of the interest, considering among other relevant evidence the going concern value of the company, any agreement among some or all of the members fixing the price or specifying a formula for determining value of distributional interests for any other purpose, the recommendations of any appraiser appointed by the court, and any legal constraints on the company's ability to purchase the interest;

(b) specify the terms of the purchase, including, if appropriate, terms for installment payments, subordination of the purchase obligation to the rights of the company's other creditors, security for a deferred purchase price, and a covenant not to compete or other restriction on a dissociated member; and

(c) require the dissociated member to deliver an assignment of the interest to the purchaser upon receipt of the purchase price or the first installment of the purchase price.

(2) After the dissociated member delivers the assignment, the dissociated member has no further claim against the company, its members, officers, or managers, if any, other than a claim to any unpaid balance of the purchase price or a claim under any agreement with the company or the remaining members that is not terminated by the court.

HeinOnline -- 1999 vol. I 949 1999

(3) If the purchase is not completed in accordance with the court's specified terms, the company is to be dissolved upon application under 35-8-902(1)(d). If a limited liability company is so dissolved, the dissociated member has the same rights and priorities in the company's assets as if the sale of the distributional interest had not been ordered.

(4) If the court finds that a party to the proceeding acted arbitrarily, vexatiously, or not in good faith, it may award one or more other parties reasonable expenses, including attorney fees and the expenses of appraisers or other experts, incurred in the proceeding. The finding may be based on the company's failure to make an offer to pay or to comply with [section 33(2)].

(5) Interest must be paid on the amount awarded from the date determined under [section 33(1)] to the date of payment.

Section 35. Dissociated member's power to bind limited liability company. For 2 years after a member dissociates without the dissociation resulting in a dissolution and winding up of a limited liability company's business, the company, including a surviving company under part 12 of this chapter, is bound by an act of the dissociated member that would have bound the company under 35-8-301 before dissociation only if at the time of entering into the transaction the other party:

(1) reasonably believed that the dissociated member was then a member;

(2) did not have notice of the member's dissociation; and

(3) is not considered to have had notice under [section 36].

Section 36. Statement of dissociation. (1) A dissociated member or a limited liability company shall file in the office of the secretary of state a statement of dissociation, stating the name of the company and that the member is dissociated from the company.

(2) For the purposes of 35-8-301 and [section 35], a person not a member is considered to have notice of the dissociation 90 days after the statement of dissociation is filed.

Section 37. Section 35-8-901, MCA, is amended to read:

"35-8-901. Dissolution. *(1)* A limited liability company is dissolved and its affairs must be wound up when one of the following occurs:

~~(1)~~*(a)* at the time or upon the occurrence of events specified in writing in the articles of organization or operating agreement;

~~(2) the written consent of all members;~~

~~(3) an event of dissociation of a member, unless the business of the limited liability company is continued by the consent of all the remaining members within 90 days following the occurrence of an event of dissociation or as otherwise provided in writing in the articles of organization or operating agreement~~

(b) consent of the number or percentage of members specified in the operating agreement;

(c) an event that makes it unlawful for all or substantially all of the business of the company to be continued, but any cure of illegality within 90 days after notice to the company of the event is effective retroactively to the date of the event for purposes of this section;

(d) the expiration of the term specified in the articles of organization; or

~~(4)~~*(e)* entry of a decree of judicial dissolution under 35-8-902.

(2) Subject to subsection (3), a limited liability company continues after dissolution only for the purpose of winding up its business.

(3) At any time after the dissolution of a limited liability company and before the winding up of its business is completed, the members, including a dissociated member whose dissociation caused the dissolution, may unanimously waive the right to have the company's business wound up and the company terminated. In that case:

(a) the limited liability company resumes carrying on its business as if dissolution had never occurred, and any liability incurred by the company or a member after the dissolution and before the waiver is determined as if the dissolution had never occurred; and

(b) the rights of a third party accruing under the provisions of 35-8-904(1) or arising out of conduct by the third party in reliance on the dissolution before the third party knew or received a notification of the waiver are not adversely affected."

Section 38. Section 35-8-902, MCA, is amended to read:

"35-8-902. Judicial dissolution. *(1)* On application by or for a member *or a dissociated member*, a district court may order dissolution of a limited liability company, or other appropriate relief, when: ~~it is not reasonably practicable to carry on the business in conformity with the articles of organization or operating agreement.~~

(a) the economic purpose of the company is likely to be unreasonably frustrated;

(b) another member has engaged in conduct relating to the company's business that makes it not reasonably practicable to carry on the company's business with that member remaining as a member;

(c) it is not otherwise reasonably practicable to carry on the company's business in conformity with the articles of organization and the operating agreement;

(d) the company failed to purchase the petitioner's distributional interest as required by [section 32]; or

(e) the members or managers in control of the company have acted, are acting, or will act in a manner that is illegal, oppressive, fraudulent, or unfairly prejudicial to the petitioner.

(2) On application by a transferee of a member's interest, a district court may determine that it is equitable to wind up the company's business:

(a) after the expiration of the specified term, if the company was for a specified term at the time that the applicant became a transferee by member dissociation, transfer, or entry of a charging order that gave rise to the transfer; or

(b) at any time, if the company was at will at the time that the applicant became a transferee by member dissociation, transfer, or entry of a charging order that gave rise to the transfer."

Section 39. Section 35-8-904, MCA, is amended to read:

"35-8-904. Agency power *and liability* of members or managers after dissolution. (1) Except as provided in subsections (3) through (5), after

HeinOnline -- 1999 vol. I 951 1999

an event causing dissolution of the limited liability company, a member may bind the limited liability company:

(a) by an act appropriate for winding up the limited liability company's affairs or completing transactions unfinished at dissolution; and

(b) by any transaction that would have bound the limited liability company, if it had not been dissolved, if the other party to the transaction does not have notice of the dissolution.

(2) The filing of the articles of ~~dissolution~~ *termination* is presumed to constitute notice of dissolution for purposes of subsection (1)(b).

(3) An act of a member that would not otherwise be binding on the limited liability company under subsection (1) is binding if it is authorized by the limited liability company.

(4) An act of a member that would be binding under subsection (1) or would be otherwise authorized and that is in contravention of a restriction on authority may not bind the limited liability company to persons having knowledge of the restriction.

(5) If the articles of organization vest management of the limited liability company in managers, a manager may exercise the authority of a member under subsection (1) and a member may not exercise the authority if the member is acting solely in the capacity of a member.

(6) A member or manager who, with knowledge of the dissolution, subjects a limited liability company to liability by an act that is not appropriate for the winding up of the company's business is liable to the company for any damage caused by the act."

Section 40. Section 35-8-905, MCA, is amended to read:

"**35-8-905. Distribution of assets.** Upon the winding up of a limited liability company, the assets must be distributed as follows:

(1) to creditors, including members and managers who are creditors, to the extent otherwise permitted by law, in satisfaction of liabilities of the limited liability company, whether by payment or the making of reasonable provision for payment, other than liabilities to members for distributions under ~~35-8-602 or 35-8-603~~ *35-8-605*;

(2) unless otherwise provided in the articles of organization or an operating agreement, to members and former members in satisfaction of liabilities for distributions under ~~35-8-602 or 35-8-603~~ *35-8-605*; and

(3) unless otherwise provided *in writing* in the articles of organization or ~~an~~ *a written* operating agreement, to members first for the return of their contributions and second respecting their limited liability company interests, in the proportions in which the members share in distributions."

Section 41. Section 35-8-906, MCA, is amended to read:

"**35-8-906. Articles of ~~dissolution~~ *termination*.** ~~Upon the dissolution and the commencement of winding up of the limited liability company, articles of dissolution must be filed in the office of the secretary of state and must set forth:~~

(1) *At any time after dissolution and winding up, a limited liability company may terminate its existence by filing with the secretary of state articles of termination stating:*

(a) the name of the limited liability company;

~~(2) the date of filing of its articles of organization and all amendments to the articles;~~

~~(3)~~*(b)* the reason for filing the articles of ~~dissolution~~ *termination*;

~~(4)~~*(c)* the effective date of the articles of ~~dissolution~~ *termination*, which must be a date certain, if they are not to be effective upon the filing;

~~(5) any other information that the members or managers filing the articles determine necessary;~~

~~(6)~~*(d)* the name of the agent or agents authorized to receive service of process after dissolution *or termination* of the limited liability company; ~~and~~

~~(7)~~*(e)* the name of the person or persons authorized to wind up the business and authorized to execute documents on behalf of the limited liability company~~.~~;

(f) the date of the dissolution; and

(g) that the company's business has been wound up and the legal existence of the company has been terminated.

(2) The existence of a limited liability company is terminated upon the filing of the articles of termination or upon a later effective date, if specified in the articles of termination."

Section 42. Section 35-8-908, MCA, is amended to read:

"35-8-908. Known claims against dissolved *or terminated* limited liability companies. (1) A dissolved *or terminated* limited liability company may dispose of the known claims against it by ~~filing articles of dissolution pursuant to 35-8-906 and~~ following the procedure described in this section.

(2) The dissolved *or terminated* limited liability company shall notify its known claimants in writing of the dissolution *or termination* at any time after the effective date of the dissolution *or termination*. The written notice must:

(a) describe information that must be included in a claim;

(b) provide a mailing address where a claim may be sent;

(c) state the deadline, which may not be less than 120 days from the later of the effective date of the written notice or the filing of the articles of ~~dissolution~~ *termination* pursuant to 35-8-906, by which the dissolved *or terminated* limited liability company must receive the claim; and

(d) state that the claim will be barred if not received by the deadline.

(3) A claim against the dissolved *or terminated* limited liability company is barred:

(a) if a claimant who was given written notice under subsection (2) does not deliver the claim to the dissolved *or terminated* limited liability company by the deadline; or

(b) if a claimant whose claim was rejected by the dissolved *or terminated* limited liability company does not commence a proceeding to enforce the claim within 90 days from the effective date of the rejection notice.

HeinOnline -- 1999 vol. I 953 1999

(4) For purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of the dissolution *or termination*."

Section 43. Section 35-8-909, MCA, is amended to read:

"35-8-909. Unknown claims against dissolved *or terminated* limited liability companies. (1) Subject to 35-8-908 *and subsections (2) through (5) of this section*, the dissolution *or termination* of a limited liability company, including dissolution by the expiration of its term, does not take away or impair any remedy available to or against the limited liability company or its members or managers for any claim or right, whether or not the claim or right existed or accrued prior to dissolution *or termination*. A proceeding by or against the limited liability company may be prosecuted or defended hy the limited liability company in its name. The members and managers have power to take action as appropriate to protect the remedy, right, or claim.

(2) ~~A claim may be enforced under 35-8-908 or this section:~~

~~(a) against the dissolved limited liability company, to the extent of the undistributed assets; or~~

~~(b) if the assets have been distributed in liquidation, against a member of the dissolved limited liability company, to the extent of the member's pro rata share of the claim or the corporate assets distributed to the member in liquidation, whichever is less, but a member's total liability for all claims under this section may not exceed the total amount of assets distributed to the member.~~ *A dissolved or terminated limited liability company may publish notice of its dissolution or termination and request that persons having claims against it present the claims in accordance with the notice.*

(3) ~~Subsections (1) and (2) apply to foreign limited liability companies and their members transacting business in this state for any claims otherwise arising or accruing under Montana law.~~ *The notice must:*

(a) be published at least once in a newspaper of general circulation in the county in which the dissolved or terminated limited liability company's principal office is located or, if there is none in this state, then in the county in which its designated office is or was last located;

(b) describe the information required to be contained in a claim and provide a mailing address to which the claim is to be sent; and

(c) state that a claim against the limited liability company is barred unless a proceeding to enforce the claim is commenced within 5 years after publication of the notice.

(4) If a dissolved or terminated limited liability company publishes a notice in accordance with subsection (3), the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved or terminated company within 5 years after the publication date of the notice:

(a) a claimant who did not receive written notice under 35-8-908;

(b) a claimant whose claim was timely sent to the dissolved or terminated company but not acted on; and

(c) a claimant whose claim is contingent on or based on an event occurring after the effective date of dissolution or termination.

HeinOnline -- 1999 vol. I 954 1999

(5) A claim not barred under this section may be enforced:

(a) against the dissolved or terminated limited liability company, to the extent of its undistributed assets; or

(b) if the assets have been distributed in liquidation, against a member of the dissolved or terminated company to the extent of the member's proportionate share of the claim or the company's assets distributed to the member in liquidation, whichever is less, but a member's total liability for all claims under this section may not exceed the total amount of assets distributed to the member."

Section 44. Involuntary dissolution — procedure. (1) A limited liability company that is guilty of any of the actions or omissions described in 35-8-209(1) is in default. By reason of the default, the limited liability company may be involuntarily dissolved by order of the secretary of state, thereby forfeiting its right to transact any business in this state.

(2) On or before September 1 of each year, the secretary of state shall compile a list of defaulting limited liability companies, together with the amount of any filing fee, penalty, or costs remaining unpaid.

(3) The secretary of state shall give notice to the defaulting limited liability companies by:

(a) mailing a letter addressed to the limited liability company in care of its registered agent or any director or officer; or

(b) publication of a general notice to all Montana limited liability companies once a month for 3 consecutive months in a newspaper of general circulation in Lewis and Clark County.

(4) The notice referred to in subsection (3) must specify the fact of the proposed dissolution and state that unless the grounds for dissolution described in 35-8-209 have been rectified within 90 days following the mailing or publication of notice:

(a) the secretary of state will dissolve the defaulting limited liability companies;

(b) defaulting limited liability companies will forfeit the amount of any tax, penalty, or costs to the state of Montana; and

(c) defaulting limited liability companies will forfeit their rights to carry on business within the state.

(5) After 90 days following mailing or publication of each notice, the secretary of state may, by order, dissolve all limited liability companies that have not satisfied the requirements of applicable law and compile a full and complete list containing the names of all limited liability companies that have been so dissolved. The secretary of state shall immediately give notice to the dissolved limited liability companies as specified in subsection (3).

(6) In the case of involuntary dissolution, all the property and assets of the dissolved limited liability companies must be held in trust by the members or managers of the limited liability companies and the limited liability companies may carry on business only as necessary to wind up and liquidate their business and affairs under 35-8-901 and to notify claimants under 35-8-908 and 35-8-909.

(7) The administrative dissolution of a limited liability company does not terminate the authority of its registered agent for service of process.

HeinOnline -- 1999 vol. I 955 1999

Section 45. Reinstatement following administrative dissolution. (1) A limited liability company administratively dissolved may apply to the secretary of state for reinstatement within 5 years after the effective date of dissolution. The applicant shall file an official application and one copy of the application. The application must:

(a) recite the name of the company and the effective date of its administrative dissolution;

(b) state that the ground for dissolution either did not exist or has been eliminated;

(c) state that the company's name satisfies the requirements of 35-8-103; and

(d) contain a certificate from the department of revenue reciting that all taxes owed by the company have heen paid.

(2) If the secretary of state determines that the application contains the information required by subsection (1) and that the information is correct, the secretary of state shall cancel the certificate of dissolution, prepare a certificate of reinstatement that recites this determination and the effective date of reinstatement, file the original of the certificate, and serve the company with a copy of the certificate.

(3) When reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution, and the company may resume its business as if the administrative dissolution had not occurred.

Section 46. Appeal from denial of reinstatement. (1) If the secretary of state denies a limited liability company's application for reinstatement following administrative dissolution, the secretary of state shall serve the company with a record that explains the reason or reasons for the denial.

(2) The company may appeal the denial of reinstatement to a district court within 30 days after service of the notice of denial. The company shall appeal by petitioning the court to set aside the dissolution and attaching to the petition copies of the secretary of state's certificate of dissolution, tbe company's application for reinstatement, and the secretary of state's notice of denial.

(3) The court may summarily order the secretary of state to reinstate the dissolved company or may take other action that the court considers appropriate.

(4) The court's final decision may be appealed as in other civil proceedings.

Section 47. Service of process. (1) An agent for service of process appointed by a limited liability company or a foreign limited liability company is an agent of the company for service of any process, notice, or demand required or permitted by law to be served upon the company.

(2) If a limited liability company or foreign limited liability company fails to appoint or maintain an agent for service of process in this state or the agent for service of process cannot with reasonable diligence be found at the agent's address, the secretary of state is an agent of the company upon whom process, notice, or demand may be served.

(3) Service of any process, notice, or demand on the secretary of state may be made by delivering to and leaving with the secretary of state duplicate copies of the process, notice, or demand and, when applicable, pursuant to the provisions of Rule 4D(6) of the Montana Rules of Civil Procedure. If the process, notice, or demand is not served pursuant to the provisions of Rule 4D(6), the secretary of

HeinOnline -- 1999 vol. I 956 1999

state shall forward one of the copies by registered mail, return receipt requested, to the company at its designated office, and the secretary of state may require the person requesting the service to reimburse the secretary of state for mailing costs. Service is effected under this subsection at the earliest of:

(a) the date on which the company receives the process, notice, or demand;

(b) the date shown on the return receipt, if signed on behalf of the company; or

(c) 5 days after its deposit in the mail, if mailed postpaid and correctly addressed.

(4) The secretary of state shall keep a record of all processes, notices, and demands served pursuant to this section and record the time of and the action taken regarding the service.

(5) This section does not affect the right to serve process, notice, or demand in any manner otherwise provided by law.

Section 48. Derivative actions — proper plaintiff — pleading — expenses. (1) A member of a limited liability company may maintain an action in the right of the company if the members or managers having authority to bring the action have refused to commence the action or an effort to cause those members or managers to commence the action is not likely to succeed.

(2) In a derivative action for a limited liability company, the plaintiff must be a member of the company when the action is commenced and:

(a) must have been a member at the time of the transaction of which the plaintiff complains; or

(b) the plaintiff's status as a member must have devolved upon the plaintiff by operation of law or pursuant to the terms of the operating agreement from a person who was a member at the time of the transaction.

(3) In a derivative action for a limited liability company, the complaint must set forth with particularity the effort of the plaintiff to secure initiation of the action by a member or manager or the reasons for not making the effort.

(4) If a derivative action for a limited liability company is successful, in whole or in part, or if anything is received by the plaintiff as a result of a judgment, compromise, or settlement of an action or claim, the court may award the plaintiff reasonable expenses, including reasonable attorney fees, and shall direct the plaintiff to remit to the limited liability company the remainder of the proceeds received.

Section 49. Section 35-8-1201, MCA, is amended to read:

"35-8-1201. Merger. (1) Pursuant to ~~any agreement~~ *a plan of merger approved under subsection (3)*, a domestic limited liability company may merge with or into one or more limited liability companies, *foreign limited liability companies, partnerships, foreign partnerships, limited partnerships, foreign limited partnerships, or other domestic or foreign entities* ~~formed under the laws of this state or any other state. The surviving limited liability company is as provided in the merger agreement.~~ *In the case of a merger with a foreign business entity, the merger must be permitted by the laws of the jurisdiction in which the foreign entity is incorporated or organized.*

HeinOnline -- 1999 vol. I 957 1999

~~(2) A domestic limited liability company that is not the surviving limited liability company in the merger shall file articles of dissolution that must have an effective date not later than the effective date of the merger.~~

~~(3) If, following a merger of one or more domestic limited liability companies or one or more limited liability companies formed under the laws of any other state, the surviving limited liability company is not a domestic limited liability company, there must be attached to the articles of dissolution for each domestic limited liability company articles of merger executed by the surviving limited liability company:~~

~~(a) stating that the surviving limited liability company may be served with process in the state of Montana in any action, suit, or proceeding for the enforcement of any obligation of the domestic limited liability company;~~

~~(b) irrevocably appointing the secretary of state as the surviving limited liability company's agent to accept service of process in any action, suit, or proceeding; and~~

~~(c) specifying the address to which a copy of process must be mailed to the surviving limited liability company by the secretary of state.~~

~~(4) When the articles of dissolution required by subsection (2) have become effective, the following must be vested in and enforced against the surviving limited liability company as they were in each of the limited liability companies that merged:~~

~~(a) all of the rights, privileges, and powers of each of the limited liability companies that merged;~~

~~(b) all property, real, personal, and mixed;~~

~~(c) all debts due to any of the limited liability companies; and~~

~~(d) all other things and causes of action belonging to each of the limited liability companies.~~

(2) A plan of merger must set forth:

(a) the name of each entity that is a party to the merger;

(b) the name of the surviving entity into which the other entities will merge;

(c) the type of organization of the surviving entity;

(d) the terms and conditions of the merger;

(e) the manner and basis for converting the interests of each party to the merger into interests or obligations of the surviving entity or into money or other property, in whole or in part; and

(f) the street address of the surviving entity's principal place of business.

(3) A plan of merger must be approved:

(a) in the case of a limited liability company that is a party to the merger, by all of the members or by a number or percentage of members specified in the operating agreement;

(b) in the case of a foreign limited liability company that is a party to the merger, by the vote required for approval of a merger by the law of the state or foreign jurisdiction in which the foreign limited liability company is organized;

(c) in the case of a domestic partnership or domestic limited partnership that is a party to the merger, by the vote required for approval of a conversion under [section 53(2)]; and

(d) in the case of any other entities that are parties to the merger, by the vote required for approval of a merger by the law of this state or of the state or foreign jurisdiction in which the entity is organized and, in the absence of any requirement, by all the owners of interests in the entity.

(4) After a plan of merger is approved and before the merger takes effect, the plan may be amended or abandoned as provided in the plan.

(5) The merger is effective upon the filing of the articles of merger with the secretary of state or at a later date as the articles may provide."

Section 50. Articles of merger. (1) After approval of the plan of merger under 35-8-1201(3), unless the merger is abandoned under 35-8-1201(4), articles of merger must be signed on behalf of each limited liability company and other entity that is a party to the merger and delivered to the secretary of state for filing. The articles must set forth:

(a) the name and jurisdiction of formation or organization of each of the limited liability companies and other entities that are parties to the merger;

(b) for each limited liability company that is to merge, the date on which its articles of organization were filed with the secretary of state;

(c) that a plan of merger has been approved and signed by each limited liability company and other entity that is to merge;

(d) the name and address of the surviving limited liability company or other surviving entity;

(e) the effective date of the merger;

(f) if a limited liability company is the surviving entity, the changes in its articles of organization that are necessary by reason of the merger;

(g) if a party to a merger is a foreign limited liability company, the jurisdiction and date of filing of its initial articles of organization and the date when its application for authority was filed by the secretary of state or, if an application has not been filed, a statement to that effect; and

(h) if the surviving entity is not a limited liability company, the agreement that the surviving entity may be served with process in this state and is subject to liability in any action or proceeding for the enforcement of any liability or obligation of any limited liability company previously subject to suit in this state that is to merge and for the enforcement, as provided in this chapter, of the right of members of any limited liability company to receive payment for their interest against the surviving entity; and

(i) the name and address of the registered agent of the surviving entity.

(2) If a foreign limited liability company is the surviving entity of a merger, it may not do business in this state until an application for that authority is filed with the secretary of state.

(3) The surviving limited liability company or other entity shall furnish a copy of the plan of merger, on request and without cost, to any member of any limited liability company or any person holding an interest in any other entity that is subject to the merger.

HeinOnline -- 1999 vol. I 959 1999

(4) Articles of merger operate as an amendment to a surviving limited liability company's articles of organization.

Section 51. Effect of merger. (1) When a merger takes effect:

(a) the separate existence of each limited liability company and other entity that are a party to the merger, other than the surviving entity, terminates;

(b) all property owned by each of the limited liability companies and other entities that are a party to the merger vests in the surviving entity;

(c) all debts, liabilities, and other obligations of each limited liability company and other entity that are a party to the merger become the obligations of the surviving entity;

(d) an action or proceeding pending by or against a limited liability company or other entity that is a party to a merger may be continued as if the merger had not occurred or the surviving entity may be substituted as a party to the action or proceeding; and

(e) except as prohibited by other law, all the rights, privileges, immunities, powers, and purposes of every limited liability company and other entity that are a party to a merger vest in the surviving entity.

(2) The secretary of state is an agent for service of process in an action or proceeding against a surviving foreign entity to enforce an obligation of any party to the merger if the surviving foreign entity fails to appoint or maintain an agent designated for service of process in this state or if the agent for service of process cannot with reasonable diligence be found at the designated office. Upon receipt of process, the secretary of state shall send a copy of the process by registered mail, return receipt requested, to the surviving entity at the address set forth in the articles of merger. Service is effected under this subsection at the earliest of:

(a) the date on which the company receives the process, notice, or demand;

(b) the date shown on the return receipt, if signed on behalf of the company; or

(c) 5 days after its deposit in the mail, if mailed postpaid and correctly addressed.

(3) A member of the surviving limited liability company is liable for all obligations of a party to the merger for which the member was personally liable before the merger.

(4) Unless otherwise agreed, a merger of a limited liability company that is not the surviving entity in the merger does not require the limited liability company to wind up its business under this chapter or to pay its liabilities and distribute its assets pursuant to this chapter.

(5) Articles of merger serve as articles of dissolution for a limited liability company that is not the surviving entity in the merger.

Section 52. Definitions. As used in this part, the following definitions apply:

(1) "Corporation" means a corporation formed under the laws of this state or comparable law of another jurisdiction.

(2) "General partner" means a partner in a partnership and a general partner in a limited partnership.

HeinOnline -- 1999 vol. I 960 1999

(3) "Limited partner" means a limited partner in a limited partnership.

(4) "Limited partnership" means a limited partnership formed under the laws of this state or comparahle law of another jurisdiction.

(5) "Partner" means a general partner or a limited partner.

(6) "Partnership" means a general partnership formed under the laws of this state or comparable law of another jurisdiction.

(7) "Partnership agreement" means an agreement among the partners of a partnership or a limited partnerslip.

Section 53. Conversion of partnership or limited partnership to limited liability company. (1) A partnership or limited partnership may be converted to a limited liability company pursuant to this sectien.

(2) The terms and conditions of a conversion of a partnership or limited partnership to a limited liability company must be approved by all of the partners or by a number or percentage of the partners required for conversion in the partnership agreement.

(3) An agreement of conversion must set forth the terms and conditions of the conversion of the interests of partners of a partnership or of a limited partnership, as the case may be, into interests in the converted limited liahility company or cash or other consideration to be paid or delivered as a result of the conversion of the interests of the partners, or a combination of interests, cash, or other consideration.

(4) After a conversion is approved under subsection (2), the partnership or limited partnership shall file articles of organization and all filing fees in the office of the secretary of state that satisfy the requirements of 35-8-202 and that contain:

(a) a statement that the partnership or limited partnership was converted to a limited liability company from a partnership or limited partnership;

(b) its former name;

(c) a statement of the number of votes cast by the partners entitled to vote for and against the conversion and, if the vote is less than unanimous, the number or percentage required to approve the conversion under subsection (2); and

(d) in the case of a limited partnership, a statement that tlie certificate of limited partnership is to be canceled as of the date on which the conversion took effect.

(5) In the case of a limited partnership, the filing of articles of organization under subsection (4) cancels its certificate of limited partnership as of the date on which the conversion took effect.

(6) A conversion takes effect when the articles of organization are filed in the office of the secretary of state or at any later date specified in the articles of erganization.

(7) A general partner who becomes a member of a limited liability company as a result of a conversion remains liable as a partner for any obligation incurred by the partnership or iimited partnership before the conversion takes effect.

HeinOnline -- 1999 vol. I 961 1999

(8) A general partner's liability for all obligations of the limited liability company incurred after the conversion takes effect is that of a member of the company.

(9) A limited partner who becomes a member as a result of a conversion remains liable for obligations of the limited partnership only to the extent that the limited partner was liable for an obligation incurred by the limited partnership before the conversion takes effect.

Section 54. Effect of conversion — cntity unchanged — part not exclusive. (1) A partnership or limited partnership that has been converted pursuant to this part is for all purposes the same entity that existed before the conversion.

(2) When a conversion takes effect:

(a) all property owned by the converting partnership or limited partnership vests in the limited liability company;

(b) all debts, liabilities, and other obligations of the converting partnership or limited partnership continue as obligations of the limited liability company;

(c) an action or proceeding pending by or against the converting partnership or limited partnership may be continued as if the conversion had not occurred;

(d) except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of the converting partnership or limited partnership vest in the limited liability company; and

(e) except as otherwise provided in the agreement of conversion under [section 53(3)], all of the partners of the converting partnership continue as members of the limited liability company.

(3) The provisions of this part do not preclude an entity from being converted or merged under other provisions of law.

Section 55. Section 35-8-1302, MCA, is amended to read:

"35-8-1302. Profcssional limited liability company name. The name of a domestic or foreign professional limited liability company:

(1) must contain the words "professional limited liability company", *"professional limited company"*, "professional l.l.c.", *"professional llc"*, ~~or~~ "p.l.l.c.", *or "pllc"*; and

(2) must conform to rules promulgated by a licensing authority having jurisdiction of a professional service described in the articles of organization."

Section 56. Repealer. Sections 35-8-303, 35-8-401, 35-8-402, 35-8-403, 35-8-404, 35-8-602, 35-8-704, 35-8-706, 35-8-801, 35-8-802, 35-8-907, and 35-8-1102, MCA, are repealed.

Section 57. Codification instruction. (1) [Sections 2, 3, and 4] are intended to be codified as an integral part of Title 35, chapter 8, part 1, and the provisions of Title 35, chapter 8, part 1, apply to [sections 2, 3, and 4].

(2) [Sections 8 through 12] are intended to be codified as an integral part of Title 35, chapter 8, part 2, and the provisions of Title 35, chapter 8, part 2, apply to [sections 8 through 12].

HeinOnline -- 1999 vol. I 962 1999

(3) [Sections 15 through 17] are intended to be codified as an integral part of Title 35, chapter 8, part 3, and the provisions of Title 35, chapter 8, part 3, apply to [sections 15 through 17].

(4) [Sections 19 and 20] are intended to be codified as an integral part of Title 35, chapter 8, part 4, and the provisions of Title 35, chapter 8, part 4, apply to [sections 19 and 20].

(5) [Section 23] is intended to be codified as an integral part of Title 35, chapter 8, part 5, and the provisions of Title 35, chapter 8, part 5, apply to [section 23].

(6) [Section 27] is intended to be codified as an integral part of Title 35, chapter 8, part 7, and the provisions of Title 35, chapter 8, part 7, apply to [section 27].

(7) [Sections 30 through 36] are intended to be codified as an integral part of Title 35, chapter 8, part 8, and the provisions of Title 35, chapter 8, part 8, apply to [sections 30 through 36].

(8) [Sections 44 through 46] are intended to be codified as an integral part of Title 35, chapter 8, part 9, and the provisions of Title 35, chapter 8, part 9, apply to [sections 44 through 46].

(9) [Sections 47 and 48] are intended to be codified as an integral part of Title 35, chapter 8, part 11, and the provisions of Title 35, chapter 8, part 11, apply to [sections 47 and 48].

(10) [Sections 50 through 54] are intended to be codified as an integral part of Title 35, chapter 8, part 12, and the provisions of Title 35, chapter 8, part 12, apply to [sections 50 through 54].

Section 58. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 59. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 60. Effective date. [This act] is effective on passage and approval.

Approved April 12, 1999

CHAPTER NO. 303

[HB 649]

AN ACT GENERALLY REVISING THE LAWS RELATING TO STATE CONSTRUCTION CONTRACTS; CLARIFYING THE REQUIREMENT THAT CONTRACTS MUST BE AWARDED TO CONTRACTORS REGISTERED IN MONTANA; REVISING PECUNIARY INTEREST PROHIBITIONS FOR DEPARTMENT OF ADMINISTRATION EMPLOYEES; ELIMINATING THE REQUIREMENT TO FILE A COPY OF A SURETY BOND WITH THE CLERK AND RECORDER OF THE COUNTY IN WHICH THE WORK WILL BE PERFORMED; EXEMPTING CERTAIN CONSTRUCTION PROJECTS FROM CERTAIN STATE LAWS GOVERNING CONSTRUCTION CONTRACTS;

HeinOnline -- 1999 vol. I 963 1999

AMENDING SECTIONS 18-2-103, 18-2-106, AND 18-2-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 18-2-103, MCA, is amended to read:

"**18-2-103. Supervision of construction of buildings.** (1) For the construction of a building costing more than $150,000, the department ~~of administration~~ shall:

(a) review and accept all plans, specifications, and cost estimates prepared by architects or consulting engineers;

(b) approve all bond issues or other financial arrangements and supervise and approve the expenditure of all money;

(c) solicit, accept, and reject bids and award all contracts to the lowest qualified bidder considering conformity with specifications and terms and reasonableness of the bid amount;

(d) review and approve all change orders; and

(e) accept the building when completed according to accepted plans and specifications.

(2) The department may delegate on a project-by-project basis any powers and duties under subsection (1) to other state agencies, including units of the Montana university system, upon terms and conditions specified by the department.

(3) Before a contract under subsection (1) is awarded, two formal bids must have been received, if reasonably available.

(4) The department need not require the provisions of Montana law relating to advertising, bidding, or supervision when proposed construction costs are $75,000 or less. However, with respect to a project having a proposed cost of $75,000 or less but more than $25,000, the agency awarding the contract shall procure at least tbree informal bids from contractors ~~licensed~~ *registered* in Montana, if reasonably available.

(5) For the construction of buildings owned or to be owned by a school district, the department ~~of administration~~ shall, upon request, provide inspection to ensure compliance with the plans and specifications for the construction of the buildings. "Construction" includes construction, repair, alteration, equipping, and furnishing during construction, repair, or alteration. These services must be provided at a cost to be contracted for between the department ~~of administration~~ and the school district, with the receipts to be deposited in the ~~department of administration's~~ *department's* construction regulation account in a state special revenue fund.

(6) It is the intent of the legislature that student housing and other facilities constructed under the authority of the regents of the university system are subject to the provisions of subsections (1) through (3).

(7) The department of military affairs may act as tbe contracting agency for buildings constructed under the authority of 18-2-102(2)(d). However, the department of administration may agree to act as the contracting agency on

HeinOnline -- 1999 vol. I 964 1999

behalf of the department of military affairs. Montana law applies to any controversy involving a contract."

Section 2. Section 18-2-106, MCA, is amended to read:

"18-2-106. Pecuniary interest prohibited. *(1)* ~~Neither the~~ *The* director of administration ~~nor any employee of the department of administration shall~~ *and the state architect may not* have a direct or indirect pecuniary interest in any contract, transaction, or project involving the construction of a building.

(2) An employee of the department who is directly responsible for construction procurement may not have a direct pecuniary interest in a contract for the construction of a building unless the contract is awarded through a competitive procurement procedure."

Section 3. Section 18-2-201, MCA, is amended to read:

"18-2-201. Security requirements. (1) Except as otherwise provided in 85-1-219 and subsections ~~(4)~~ *(3)* through ~~(6)~~ *(5)* of this section, whenever any board, council, commission, trustees, or body acting for the state or any county, municipality, or ~~any~~ public body contracts with a person or corporation to do work for the state, county, or municipality or other public body, city, town, or district, the board, council, commission, trustees, or body shall require the corporation, person, or persons with whom the contract is made to make, execute, and deliver to the board, council, commission, trustees, or body a good and sufficient bond with a licensed surety company as surety, conditioned that the corporation, person, or persons shall:

(a) faithfully perform all of the provisions of the contract;

(b) pay all laborers, mechanics, subcontractors, and material suppliers; and

(c) pay all persons who supply the corporation, person or persons, or subcontractors with provisions, provender, material, or supplies for performing the work.

~~(2) A copy of the bond must be filed with the county clerk and recorder of the county in which the work is to be performed or the improvement is to be made or, if the work is to be performed or the improvement is to be made in more than one county, with the county clerk of either county, except in cases of cities and towns, in which case the bond must be filed with the city or town clerk.~~

~~(3)~~*(2)* Notwithstanding the provisions of ~~subsections~~ *subsection* (1) ~~and (2)~~, the state or other governmental entity may, in lieu of a surety bond, permit the deposit with the contracting governmental entity or agency of the following securities in an amount at least equal to the contract sum to guarantee the faithful performance of the contract and the payment of all laborers, suppliers, material suppliers, mechanics, and subcontractors:

(a) lawful money of the United States; or

(b) a cashier's check, certified check, bank money order, certificate of deposit, money market certificate, or bank draft, drawn or issued by:

(i) any federally or state-chartered bank or savings and loan association that is insured by or for which insurance is administered by the federal deposit insurance corporation; or

(ii) a credit union insured by the national credit union share insurance fund.

HeinOnline -- 1999 vol. I 965 1999

~~(4)~~*(3)* Notwithstanding the provisions of ~~subsections~~ *subsection* (1) ~~and (2)~~, any board, council, commission, trustee, or body acting for any county, municipality, or any public body other than the state may, in lieu of a bond from a licensed surety company, accept good and sufficient bond with two or more sureties acceptable to the governmental body.

~~(5)~~*(4)* Except as provided in subsection ~~(6)~~ *(5)*, the state or other governmental entity may waive the requirements contained in subsections (1) through ~~(4)~~ *(3)* for building or construction projects, as defined in 18-2-101, that cost less than $25,000.

~~(6)~~*(5)* A school district may waive the requirements contained in subsections (1) through ~~(4)~~ *(3)* for building or construction projects, as defined in 18-2-101, that cost less than $7,500."

Section 4. Exemption of certain projects — conditions. (1) If the nondenominational chapel project at Montana tech of the university of Montana is authorized in House Bill No. 5, then the design of this project is not subject to the requirements of 18-2-112 or Title 18, chapter 8, part 2.

(2) (a) It is the intent of the legislature, with regard to the classroom-laboratory building authorized in section 4, Chapter 469, Laws of 1997, that the department of administration contract as provided in this subsection (2). The department shall contract for combinations of services, materials, and labor related to innovative building technologies, not otherwise expressly allowed under Title 18, if the innovative technologies:

(i) have the potential to produce energy or operational savings for the state over the life cycle of the building;

(ii) demonstrate the use of recycled material; or

(iii) demonstrate the use of indigenous material for which a new local, regional, or national market may be developed.

(b) The conditions in subsection (2)(a) must specifically apply to individual building systems or components and not to the general contract for construction or for any project service, including design. The terms, guaranties, and conditions related to the innovations must be negotiated by the department in the best interests of the state and must provide that there is no express or implied commitment of state appropriations for construction, operations, or maintenance.

Section 5. Effective date. [This act] is effective on passage and approval.

Section 6. Termination. [Section 4] terminates June 30, 2003.

Approved April 14, 1999

CHAPTER NO. 304

[SB 107]

AN ACT GENERALLY REVISING THE LAWS GOVERNING INVESTMENTS BY INSURERS; AMENDING SECTIONS 33-2-202, 33-2-213, 33-2-502, 33-2-531, 33-2-534, 33-2-603, 33-2-1217, 33-3-432, 33-6-101, 33-20-603, 33-25-211, 33-27-115, AND 33-31-215, MCA; REPEALING SECTIONS 33-2-801, 33-2-802, 33-2-803, 33-2-804, 33-2-805, 33-2-806, 33-2-811, 33-2-812, 33-2-813,

HeinOnline -- 1999 vol. I 966 1999

33-2-814, 33-2-815, 33-2-816, 33-2-817, 33-2-818, 33-2-819, 33-2-820, 33-2-821, 33-2-822, 33-2-823, 33-2-824, 33-2-825, 33-2-826, 33-2-827, 33-2-828, 33-2-829, 33-2-830, 33-2-831, 33-2-832, 33-2-833, 33-2-841, 33-2-842, 33-2-843, 33-2-851, AND 33-2-852, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Purpose and scope. (1) The purpose of [sections 1 through 36] is to protect the interests of insureds by promoting insurer solvency and financial strength. Tbis purpose will be accomplished through the application of investment standards that facilitate a reasonable balance of the following objectives:

(a) to preserve principal;

(b) to ensure reasonable diversification as to type of investment, issuer, and credit quality; and

(c) to allow insurers to allocate investments in a manner consistent with principles of prudent investment management to achieve an adequate return so that obligations to insureds are adequately met and financial strength is sufficient to cover reasonably foreseeable contingencies.

(2) [Sections 1 through 36] apply only to investments and investment practices of domestic insurers and United States branches of alien insurers entered through this state. [Sections 1 through 36] do not apply to separate accounts of an insurer.

Section 2. Definitions. As used in [sections 1 through 36], the following definitions apply:

(1) "Acceptable collateral" means:

(a) (i) as to securities lending transactions and for the purpose of calculating the counterparty exposure amount, casb, cash equivalents, letters of credit, or direct obligations of or securities that are fully guaranteed as to principal and interest by the government of the United States, by any agency of the United States, by the federal national mortgage association, or by the federal home loan mortgage corporation; and

(ii) as to lending foreign securities, sovereign debt rated 1 by the SVO;

(b) as to repurchase transactions, cash, cash equivalents, and direct obligations of or securities that are fully guaranteed as to principal and interest by the government of the United States, by an agency of the United States, by the federal national mortgage association, or by the federal home loan mortgage corporation; and

(c) as to reverse repurchase transactions, cash and cash equivalents.

(2) "Acceptable private mortgage insurance" means insurance written by a private insurer protecting a mortgage lender against loss occasioned by a mortgage loan default and issued by a licensed mortgage insurance company, with an SVO 1 designation or a rating issued by a nationally recognized statistical rating organization equivalent to an SVO 1 designation, that covers losses up to an 80% loan-to-value ratio.

(3) "Accident and health insurance" means insurance protection that provides payment of benefits for covered sickness or accidental injury, excluding

HeinOnline -- 1999 vol. I 967 1999

credit insurance, disability insurance, accidental death and dismemherment insurance, and long-term care insurance.

(4) "Accident and health insurer" means a licensed life or health insurer or health service corporation whose insurance premiums and required statutory reserves for accident and health insurance constitute at least 95% of total premium considerations or total statutorily required reserves.

(5) (a) "Admitted assets" means, subj subsection (5)(b), assets determined in accordance with the requiremei ts 3-2-501.

(b) The term does not include assets of separate accounts. The investments of separate accounts are not subject to the provisions of [sections 1 through 36].

(6) "Affiliate" bas the meaning provided in 33-2-1101.

(7) (a) "Asset-backed security" means a security or other instrument, excluding a mutual fund, evidencing an interest in or the right to receive payments from or payable from distributions on an asset, a pool of assets, or specifically divisible cash flows that are legally transferred to a trust or another special purpose bankruptcy-remote business entity, on the following conditions:

(i) the trust or other business entity is established solely for the purpose of acquiring specific types of assets or rights to cash flows, issuing securities and other instruments representing an interest in or right to receive cash flows from those assets or rights, and engaging in activities required to service tbe assets or rights and any credit enhancement or support features held by the trust or other business entity; and

(ii) the assets of the trust or other business entity consist solely of interest-bearing obligations or other contractual obligations representing the right to receive payment from the cash flows from the assets or rights.

(b) However, the existence of credit enhancements, such as letters of credit, guarantees, or support features, such as swap agreements, may not cause a security or other instrument to be ineligible as an asset-backed security.

(8) "Business entity" includes a sole proprietorship, corporation, limited liability company, association, partnership, joint stock company, joint venture, mutual fund, trust, joint tenancy, or other similar form of business organization, whetber organized for profit or not for profit.

(9) "Cap" means an agreement obligating the seller to make payments to the buyer, with each payment based on the amount by which a reference price or level or the performance or value of one or more underlying interests exceeds a predetermined number. The predetermined number is sometimes called the strike rate or strike price.

(10) "Capital and surplus" means the sum of tbe capital and surplus of the insurer required to be shown on the most recent statutory financial statement of the insurer required to be filed with tbe commissioner.

(11) "Cash equivalents" means short-term, highly rated, and highly liquid investments or securities readily convertible to known amounts of casb without penalty and so near maturity that tbey present insignificant risk of change in value. Cash equivalents include gevernment money market mutual funds and class one money market mutual funds.

(12) "Class one bond mutual fund" means a mutual fund that at all times qualifles for investment using the bond class one reserve factor under the

Purposes and Procedures of the Securities Valuation Office or any successor publication.

(13) "Class one money market mutual fund" means a money market mutual fund that at all times qualifies for investment using the bond class one reserve factor under the Purposes and Procedures of the Securities Valuation Office or any successor publication.

(14) "Collar" means an agreement to receive payments as the buyer of an option, cap, or floor and to make payments as the seller of a different option, cap, or floor.

(15) "Construction loan" means a loan for a term of less than 3 years that is made for financing the cost of construction of a building or other improvement to real estate and that is secured by the real estate.

(16) "Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract (otber than a commercial contract for geods or nonmanagement services), or otherwise, unless the power is the result of an official position with a corporation or a corporate office held by the person. Presumption of control is pursuant to [section 8].

(17) "Counterparty exposure amount" means the net amount of credit risk attributable to a derivative instrument, pursuant to [section 9], entered into with a business entity other than through a qualified exchange or qualified foreign exchange or cleared through a qualified clearinghouse. The derivative instrument is also known as an over-the-counter derivative instrument.

(18) "Covered" means that an insurer:

(a) owns or can immediately acquire, through the exercise of options, warrants, or already-owned conversion rights, the underlying interest in order to fulfill or secure its obligations under a call option, cap, or floor it has written; or

(b) has set aside, under a custodial or escrow agreement, cash or cash equivalents with a market value equal to tbe amount required to fulfill its obligations under a put option it has written in an income generation transaction.

(19) "Credit tenant loan" means a mortgage loan that is made primarily in reliance on the credit standing of a major tenant, structured with an assignment of the rental payments to the lender with real estate pledged as collateral in the form of a first lien.

(20) (a) "Derivative instrument" means an agreement, an option, an instrument, or a series or combination of agreements, options, or instruments:

(i) to make or take delivery of or assume or relinquish a specified amount of one or more underlying interests or to make a cash settlement in lieu of delivery; or

(ii) that has a price, level, performance, value, or cash flow based primarily upon the actual or expected price, level, performance, value, or cash flow of one or more underlying interests.

(b) (i) Derivative instruments include options, warrants used in a hedging transaction and not attached to another financial instrument, caps, floors, collars, swaps, forwards, futures, and any otber agreements, options, or instruments substantially similar to the enumerated instruments or any series

HeinOnline -- 1999 vol. I 969 1999

or combination of the enumerated instruments and any agreements, options, or instruments permitted under rules adopted pursuant to [section 11].

(ii) Derivative instruments do not include an investment authorized by [sections 15 through 21, 23, and 29 through 33].

(21) "Derivative transaction" means a transaction involving the use of one or more derivative instruments.

(22) "Direct" or "directly", when used in connection with an obligation, means that the designated obligor is primarily liable on the instrument representing the obligation.

(23) "Dollar roll transaction" means two simultaneous transactions with different settlement dates that are no more than 96 days apart, so that in the transaction with the earlier settlement date, an insurer sells to a business entity, and in the other transaction, the insurer is obligated to purchase from the same business entity, substantially similar securities of the following types:

(a) asset-backed securities issued, assumed, or guaranteed by the government national mortgage association, the federal national mortgago association, or the federal home loan mortgage corporation or their successors; and

(b) other asset-backed securities referred to in section 106 of Title I of the Secondary Mortgage Market Enhancement Act of 1984 (15 U.S.C. 77r-1), as amended.

(24) "Domestic jurisdiction" means the United States, any state, Canada, any province of Canada, or any political subdivision of a state or province.

(25) "Equity interest" means any of the following that are not rated credit instruments:

(a) common stock;

(b) preferred stock;

(c) trust certificate;

(d) equity investment in an investment company other than a money market mutual fund or a class one bond mutual fund;

(e) investment in a common trust fund of a bank regulated by a federal or state agency;

(f) an ownership interest in minerals, oil, or gas, the rights to which have been separated from the underlying fee interest in the real estate where the minerals, oil, or gas is located;

(g) instruments that are mandatorily, or at the option of the issuer, convertible to equity;

(h) limited partnership interests and those general partnership interests authorized under [section 4(4)];

(i) member interests in limited liability companies;

(j) warrants or other rights to acquire equity interests that are created by the person that owns or would issue the equity to be acquired; or

(k) instruments that would be rated credit instruments except for the provisions of subsection (70)(b).

(26) "Equivalent securities" means:

(a) in a securities lending transaction, securities that are identical to the loaned securities in all features including the amount of the loaned securities, except as to certificate number if held in physical form, but if any different security is exchanged for a loaned security by recapitalization, merger, consolidation, or other corporate action, the different security is considered to be the loaned security;

(b) in a repurchase transaction, securities that are identical to the purchased securities in all features including the amount of the purchased securities, except as to the certificate number if held in physical form; or

(c) in a reverse repurchase transaction, securities that are identical to the sold securities in all features including the amount of the sold securities, except as to the certificate number if held in physical form.

(27) "Floor" means an agreement obligating the seller to make payments to the buyer in which each payment is based on the amount by which a predetermined number, sometimes called the floor rate or price, exceeds a price, level, performance, or value of one or more underlying interests.

(28) "Foreign currency" means a currency other than that of a domestic jurisdiction.

(29) (a) "Foreign investment" means an investment in a foreign jurisdiction, or an investment in a person, real estate, or asset domiciled in a foreign jurisdiction, that is substantially of the same type as those eligible for investment under [sections 1 through 30, 32, and 34 through 36].

(b) An investment may not be considered to be foreign if the issuing person, qualified primary credit source, or qualified guarantor is a domestic jurisdiction or a person domiciled in a domestic jurisdiction, unless:

(i) the issuing person is a shell business entity; and

(ii) the investment is not assumed, accepted, guaranteed or insured, or otherwise backed by a domestic jurisdiction or a person that is not a shell business entity and that is domiciled in a domestic jurisdiction.

(30) "Foreign jurisdiction" means a jurisdiction other than a domestic jurisdiction.

(31) "Forward" means an agreement, other than a future, to make or take delivery of or effect a cash settlement based on the actual or expected price, level, performance, or value of one or more underlying interests.

(32) "Future" means an agreement, traded on a qualified exchange or qualified foreign exchange, to make or take delivery of or effect a cash settlement based on the actual or expected price, level, performance, or value of one or more underlying interests.

(33) "Government money market mutual fund" means a money market mutual fund that at all times:

(a) invests only in obligations issued, guaranteed, or insured by the federal government of the United States or collateralized repurchase agreements composed of these obligations; and

(b) qualifies for investment without a reserve under the Purposes and Procedures of the Securities Valuation Office or any successor publication.

(34) "Government-sponsored enterprise" means a:

HeinOnline -- 1999 vol. I 971 1999

(a) governmental agency; or

(b) corporation, limited liability company, association, partnership, joint stock company, joint venture, trust, or other entity or instrumentality organized under the laws of any domestic jurisdiction to accomplish a public policy or other governmental purpose.

(35) "Guaranteed or insured", when used in connection with an obligation acquired under [sections 1 through 36], means that the guarantor or insurer has agreed to:

(a) perform or insure the obligation of the obligor or purchase the obligation; or

(b) be unconditionally obligated until the obligation is repaid to maintain in the obligor a minimum net worth, fixed charge coverage, stockholders' equity, or sufficient liquidity to enable the obligor to pay the obligation in full.

(36) "Hedging transaction" means a derivative transaction that is entered into and maintained to reduce:

(a) the risk of a change in the value, yield, price, cash flow, or quantity of assets or liabilities that the insurer has acquired or incurred or anticipates acquiring or incurring; or

(b) the currency exchange rate risk or the degree of exposure as to assets or liabilities that an insurer has acquired or incurred or anticipates acquiring or incurring.

(37) "High-grade investment" means a rated credit instrument rated 1 or 2 by the SVO.

(38) "Highly rated" means an investment rated "P-1" by Moody's investors service, inc. or "A-1" by Standard and Poor's division of the McGraw Hill companies, inc. or its equivalent rating by a nationally recognized statistical rating organization recognized by the SVO.

(39) "Income" means, as to a security, interest, accrual of discount, dividends, or other distributions, such as rights, tax or assessment credits, warrants, and distributions in kind.

(40) "Income generation transaction" means a derivative transaction involving the writing of covered call options, covered put options, covered caps, or covered floors that is intended to generate income or enhance return.

(41) "Insurance future" means a future relating to an index or pool that is based on insurance-related items.

(42) "Insurance futures option" means an option on an insurance future.

(43) "Investment company" means an investment company as defined in section 80a-3 of the Investment Company Act of 1940 (15 U.S.C. 80a-1, et seq.), as amended, and a person described in section 80a-3(c) of that act.

(44) "Investment company series" means an investment portfolio of an investment company that is organized as a series company and to which assets of the investment company have been specifically allocated.

(45) "Investment practices" means transactions of the types described in [sections 20, 22, 32, or 34].

HeinOnline -- 1999 vol. I 972 1999

(46) "Investment strategies" means the techniques and methods used hy an insurer to meet its investment objectives, sucb as active bond portfolio management, passive bond portfolio management, interest rate anticipation, growth investing, and value investing.

(47) "Investment subsidiary" means a subsidiary of an insurer engaged or organized to engage exclusively in the ownersbip and management of assets authorized as investments for the insurer if each subsidiary agrees to limit its investment in any asset so tbat its investments will not cause the amount of the total investment of the insurer to exceed any of the investment limitations or avoid any other provisions of [sections 1 through 36] applicable to the insurer.

(48) "Letter of credit" means a clean, irrevocable, and unconditional letter of credit issued or confirmed by and payable and presentahle at a financial institution on the list of financial institutions meeting the standards for issuing letters of credit under the Purposes and Procedures of the Securities Valuation Office or any successor publication.

(49) "Limited liability company" means a business organization, excluding partnerships and ordinary business corporations, organized or operating under the laws of the United States or any state that limits the personal liability of investors to the equity investment of the investor in the business entity.

(50) "Lower-grade investment" means a rated credit instrument rated 4, 5, or 6 by the SVO.

(51) "Market value" means:

(a) as to cash and letters of credit, the amounts of cash or a letter of credit; and

(b) as to a security, as of any date, the price for tbe security on that date obtained from a generally recognized source or the most recent quotation from a generally recognized source or, to the extent that a generally recognized source does not exist, the price for the security as determined in good faith by the parties to a transaction, plus accrued but unpaid income on a security to the extent not included in the price as of that date.

(52) "Medium-grade investment" means a rated credit instrument rated 3 by the SVO.

(53) "Money market mutual fund" means a mutual fund that meets the conditions of 17 CFR 270.2a-7, under the Investment Company Act of 1940 (15 U.S.C. 80a-1, et seq.), as amended or renumbered.

(54) "Mortgage loan" means an obligation secured by a mortgage, deed of trust, trust deed, or other consensual lien on real estate.

(55) "Multilateral development bank" means an international development organization of which the United States is a member.

(56) "Mutual fund" means an investment company or an investment company series that is registered with the United States securities and exchange commission under the Investment Company Act of 1940 (15 U.S.C. 80a-1, et seq.), as amended.

(57) "NAIC" means the national association of insurance commissioners.

(58) "Obligation" means a bond, note, debenture, trust certificate including an equipment certificate, production payment, negotiable hank certificate of

HeinOnline -- 1999 vol. I 973 1999

deposit, bankers' acceptance, credit tenant loan, loan secured by financing net leases, and other evidence of indebtedness for the payment of money (or participations, certificates, or other evidences of an interest in any of the foregeing), whether constituting a general obligation of the issuer or payable only out of certain revenue or certain funds pledged or otherwise dedicated for payment.

(59) "Option" means an agreement giving the buyer the right to buy or receive (a "call option"), sell or deliver (a "put option"), enter into, extend or terminate, or effect a cash settlement based on the actual or expected price, level, performance, or value of one or more underlying interests.

(60) "Person" has the meaning provided in 33-1-202.

(61) "Potential exposure" means the amount determined in accordance with the NAIC Annual Statement Instructions.

(62) "Preferred stock" means preferred, preference, or guaranteed stock of a business entity authorized to issue the stock that has a preference in liquidation over the common stock of the business entity.

(63) "Qualified bank" means:

(a) a national bank, state bank, or trust company that at all times is adequately capitalized as determined by standards adopted by United States banking regulators and that is either regulated by state banking laws or is a member of the federal reserve system; or

(b) a bank or trust company incorporated or organized under the laws of a country other than the United States that is regulated as a bank or trust company by that country's government or an agency of that government and that at all times is adequately capitalized as determined by the standards adopted by international banking authorities.

(64) "Qualified business entity" means a business entity that is:

(a) an issuer of obligations or preferred stock that is rated 1 or 2 by the SVO or an issuer of obligations, preferred stock, or derivative instruments that are rated the equivalent of 1 or 2 by the SVO or by a nationally recognized statistical rating organization recognized by the SVO; or

(b) a primary dealer in United States government securities recognized by the federal reserve bank of New York.

(65) "Qualified clearinghouse" means a clearinghouse for, and subject to the rules of, a qualified exchange or a qualified foreign exchange, which provides clearing services, including acting as a counterparty to each of the parties to a transaction so that the parties no longer have a credit risk as to each other.

(66) "Qualified exchange" means:

(a) a securities exchange registered as a national securities exchange or a securities market regulated under the Securities Exchange Act of 1934 (15 U.S.C. 78, et seq.), as amended;

(b) a board of trade or commodities exchange designated as a contract market by the commodity futures trading commission or its successor;

(c) private offerings, resales, and trading through automated linkages;

HeinOnline -- 1999 vol. I 974 1999

(d) a designated offshore securities market as defined in securities exchange commission regulation S, 17 CFR part 230, as amended; or

(e) a qualified foreign exchange.

(67) "Qualified foreign exchange" means a foreign exchange, board of trade, or contract market located outside the United States or its territories or possessions:

(a) that has received regulatory comparability relief under commodity futures trading commission rule 30.1 (as set forth in appendix C to part 30 of the regulations, 17 CFR part 30);

(b) that is, or its members are, subject to the jurisdiction of a foreign futures authority that has received regulatory comparability relief under commodity futures trading commission rule 30.1 (as set forth in appendix C to part 30 of the regulations, 17 CFR part 30) as to futures transactions in the jurisdiction where the exchange, board of trade, or contract market is located; or

(c) upon which foreign stock index futures contracts are listed that are the subject of no-action relief issued by the CFTC's office of general counsel, provided that an exchange, board of trade, or contract market that qualifies as a qualified foreign exchange only under this subsection (67) is a qualified foreign exchange as to foreign stock index futures contracts that are the subject of no-action relief.

(68) "Qualified guarantor" means a guarantor against which an insurer has a direct claim for full and timely payment, evidenced by a contractual right for which an enforcement action can be brought in a domestic jurisdiction.

(69) "Qualified primary credit source" means the credit source to which an insurer looks for payment as to an investment and against which an insurer has a direct claim for full and timely payment, evidenced by a contractual right for which an enforcement action can be brought in a domestic jurisdiction.

(70) (a) "Rated credit instrument" means a contractual right to receive cash or another rated credit instrument from another entity if the instrument:

(i) is rated or required to be rated by the SVO;

(ii) in the case of an instrument with a maturity of 397 days or less, is issued, guaranteed, or insured by an entity that is rated by, or another obligation of the entity is rated by, the SVO or by a nationally recognized statistical rating organization recognized by the SVO;

(iii) in the case of an instrument with a maturity of 90 days or less, is issued by a qualified bank;

(iv) is a share of a class one bond mutual fund; or

(v) is a share of a money market mutual fund.

(b) The term does not include:

(i) an instrument that is mandatorily or at the option of the issuer convertible to an equity interest; or

(ii) a security that has a par value and whose terms provide that the issuer's net obligation to repay all or part of the security's par value is determined by reference to the performance of an equity, a commodity, a foreign currency, an index of equities, commodities, foreign currencies, or combinations of equities, commodities, and foreign currency.

HeinOnline -- 1999 vol. I 975 1999

(71) (a) "Real estate" means:

(i) real property;

(ii) interests in real property, such as leaseholds, minerals, oil, and gas, that have not been separated from the underlying fee interest;

(iii) improvements and fixtures located on or in real property; and

(iv) the seller's equity in a contract providing for a deed of real estate.

(b) As to a mortgage on a leasehold estate, real estate includes the leasehold estate only if it has an unexpired term, including renewal options exercisable at the option of the lessee, extending beyond the scheduled maturity date of the obligation that is secured by a mortgage on the leasehold estate by a period equal to at least 20% of the original term of the obligation or 10 years, whichever is greater.

(72) "Replication transaction" means a derivative transaction that is intended to replicate the performance of one or more assets that an insurer is authorized to acquire under [sections 1 through 36]. A derivative transaction that is entered into as a hedging transaction may not be considered a replication transaction.

(73) "Repurchase transaction" means a transaction in which an insurer purchases securities from a business entity that is obligated to repurchase the purchased securities or equivalent securities from the insurer at a specified price, either within a specified period of time or upon demand.

(74) "Required liabilities" means total liabilities required to be reported on the statutory financial statement of the insurer most recently required to be filed with the commissioner.

(75) "Residential mortgage loan" means a loan primarily secured by a mortgage on real estate improved with a residence for no more than four families.

(76) "Reverse repurchase transaction" means a transaction in which an insurer sells securities to a business entity and is obligated to repurchase the sold securities or equivalent securities from the business entity at a specified price, either within a specified period of time or upon demand.

(77) "Secured location" means the contiguous real estate owned by one person.

(78) "Securities lending transaction" means a transaction in which securities are loaned by an insurer to a business entity that is obligated to return the loaned securities or equivalent securities to the insurer, either within a specified period of time or upon demand.

(79) "Series company" means an investment company that is organized as a series company, as defined in rules adopted under the Investment Company Act of 1940 (15 U.S.C. 80a-1, et seq.), as amended.

(80) "Shell business entity" means a business entity having no economic substance, except as a vehicle for owning interests in assets issued, owned, or previously owned by a person domiciled in a foreign jurisdiction.

(81) "Short-term" means investments with a remaining term to maturity of 90 days or less.

(82) "Sinking fund stock" means preferred stock that:

HeinOnline -- 1999 vol. I 976 1999

(a) is subject to a mandatory sinking fund or similar arrangement that will provide for the redemption or open market purchase of the entire issue over a period not longer than 40 years from the date of acquisition; and

(b) provides for mandatory sinking fund installments or open market purchases commencing not more than 10 1/2 years from the date of issue, with the sinking fund installments providing for the purchase or redemption, on a cumulative basis commencing 10 years from the date of issue, of at least 2.5% a year of the original number of shares of that issue of preferred stock.

(83) "State" has meaning provided in 33-1-201.

(84) "Substantially similar securities" means securities that meet all criteria for substantially similar specified in the NAIC Accounting Practices and Procedures Manual, as amended, and in an amount that constitutes geod delivery form as determined from time to time by the public securities administration.

(85) "SVO" means the securities valuation office of the NAIC or any successor office established by the NAIC.

(86) "Swap" means an agreement to exchange or to net payments at one or more times based on the actual or expected price, level, performance, or value of one or more underlying interests.

(87) "Total investment of the insurer" includes:

(a) direct investment hy the insurer in an asset; and

(b) the insurer's proportionate share of an investment in an asset by an investment subsidiary of the insurer, which must be calculated by multiplying the amount of the subsidiary's investment by the percentage of the insurer's ownership interest in the subsidiary.

(88) "Underlying interest" means the assets, liabilities, other interests, or a combination of assets, liabilities, or other interests underlying a derivative instrument, such as any one or more securities, currencies, rates, indices, commodities, or derivative instruments.

(89) "Unrestricted surplus" means the amount by which total admitted assets exceed 125% of the insurer's required liabilities.

(90) "Warrant" means an instrument that gives the holder the right to purchase an underlying financial instrument at a given price and time or at a series of prices and times outlined in the warrant agreement. Warrants may be issued alone or in connection with the sale of other securities, for example, as part of a merger or recapitalization agreement, or to facilitate divestiture of the securities of another business entity.

Seetion 3. General investment qualifications. (1) Insurers may acquire, hold, or invest in investments or engage in investment practices as set forth in [sections 1 through 36]. Investments not conforming to [sections 1 through 36] may not be admitted assets. Affiliate investments under 33-2-1113, other than those investments made by or on behalf of domestic insurers, are not subject to this provision.

(2) Subject to subsection (3), an insurer may not acquire or hold an investment as an admitted asset unless at the time of acquisition it is:

(a) (i) eligible for the payment or accrual of interest or discount, whether in cash or other securities;

HeinOnline -- 1999 vol. I 977 1999

(ii) eligible to receive dividends or other distributions; or

(iii) otherwise income-producing; or

(h) acquired under [sections 19(3), 20, 22, 24, 31(3), 32, 34, or 35] or under the authority of sections of Montana law other than [sections 1 through 36].

(3) An insurer may acquire or hold as admitted assets investments that do not otherwise qualify as provided in [sections 1 through 36] if the insurer has not acquired them for the purpose of circumventing any limitations contained in [sections 1 through 36] and if the insurer complies with the provisions of [sections 5 and 8] and acquires the investments in the following circumstances:

(a) as payment on account of existing indebtedness or in connection with the refinancing, restructuring, or workout of existing indebtedness if taken to protect the insurer's interest in that investment;

(b) as realization on collateral for an obligation;

(c) in connection with an otherwise qualified investment or investment practice, as interest on or a dividend or other distribution related to the investment or investment practice, or in connection with the refinancing of the investment, in each case for no additional or only nominal consideration;

(d) under a lawful and bona fide agreement of recapitalization or voluntary or involuntary reorganization in connection with an investment held by the insurer; or

(e) under a bulk reinsurance, merger, or consolidation transaction approved by the commissioner if the assets constitute admissible investments for the ceding, merged, or consolidated companies.

(4) An investment or portion of an investment acquired by an insurer under subsection (3) must become a nonadmitted asset 3 years, or 5 years in the case of mortgage loans and real estate, from the date of its acquisition, unless within that period the investment has become a qualified investment under a provision of [sections 1 through 36] other than subsection (3). However, an investment acquired under an agreement of bulk reinsurance, merger, or consolidation may be qualified for a longer period if provided for in the plan for reinsurance, merger, or consolidation as approved by the commissioner. Upon application by the insurer and a showing that the nonadmission of an asset held under subsection (3) would materially injure the interests of the insurer, the commissioner may extend the period for admissibility for an additional reasonable period of time.

(5) Except as provided in subsections (6) and (8), an investment must qualify under [sections 1 through 36] if, on the date the insurer committed to acquire the investment or on the date of its acquisition, it would have qualified under [sections 1 through 36]. For the purposes of determining limitations contained in [sections 1 through 36], an insurer shall give appropriate recognition to any commitments to acquire investments.

(6) (a) An investment held as an admitted asset by an insurer on [the effective date of this act] that qualified under former law remains qualified as an admitted asset under [sections 1 through 36].

(b) Each specific transaction constituting an investment practice of the type described in [sections 1 through 36] that was lawfully entered into by an insurer and was in effect on the [effective date of this act] continues to be permitted under [sections 1 through 36] until its expiration or termination under its terms.

HeinOnline -- 1999 vol. I 978 1999

(7) Unless otherwise specified, an investment limitation computed on the basis of an insurer's admitted assets or capital and surplus relates to the amount required to be shown on the most recent statutory balance sheet of the insurer required to be filed with the commissioner. For purposes of computing any limitation based upon admitted assets, the insurer shall deduct from the amount of its admitted assets the amount of the liability recorded on its statutory balance sheet for:

(a) the return of acceptable collateral received in a reverse repurchase transaction or a securities lending transaction;

(b) cash received in a dollar roll transaction; and

(c) the amount reported as borrowed money in the most recently filed financial statement to the extent not included in subsections (7)(a) and (7)(b).

(8) An investment qualified, in whole or in part, for acquisition or holding as an admitted asset may be qualified or requalified at the time of acquisition or a later date, in whole or in part, under any other section if the relevant conditions contained in the other section are satisfied at the time of qualification or requalification.

(9) An insurer shall maintain documentation demonstrating that investments were acquired in accordance with [sections 1 through 36].

(10) An insurer may not enter into an agreement to purchase securities in advance of their issuance for resale to the public as part of a distribution of the securities by the issuer or otherwise guarantee the distribution, except that an insurer may acquire privately placed securities with registration rights.

(11) Notwithstanding the provisions of [sections 1 through 36], the commissioner, for good cause, may under the Montana Administrative Procedure Act order an insurer to nonadmit, limit, dispose of, withdraw from, or discontinue an investment or investment practice. The authority of the commissioner under this subsection is in addition to any other authority of the commissioner.

(12) Insurance futures and insurance futures options are not considered investments or investment practices for purposes of [sections 1 through 36].

Section 4. Authorization of investments by board of directors. (1) An insurer's board of directors shall adopt a written plan for acquiring and holding investments and for engaging in investment practices that specifies guidelines as to the quality, maturity, and diversification of investments and that contains other specifications including investment strategies intended to ensure that the investments and investment practices are appropriate for the business conducted by the insurer, its liquidity needs, and its capital and surplus.

(2) The board of directors is ultimately responsible for investment decisions and shall review, at least annually, whether all investments acquired and held under [sections 1 through 36] have been made in accordance with delegations, standards, limitations, and investment objectives prescribed by the board or a committee of the board charged with the responsibility to direct its investments.

(3) An insurer's board of directors or committee of the board of directors shall:

(a) on no less than a quarterly basis and more often if considered appropriate, receive and review a summary report on the insurer's investment portfolio, its investment activities, and investment practices engaged in under delegated

HeinOnline -- 1999 vol. I 979 1999

authority, in order to determine whether the investment activity of the insurer is consistent with its written plan; and

(b) on no less than an annual basis and more often if considered appropriate, review and revise, as appropriate, the written plan.

(4) In discharging its duties under this section, the board of directors may require that records of any authorizations or approvals, other documentation as the board may require, and reports of any action taken under authority delegated under the plan referred to in subsection (1) may be made available on a regular basis to the board of directors.

(5) If an insurer does not have a board of directors, all references to the board of directors in [sections 1 through 36] are considered to be references to the governing body of the insurer having authority equivalent to that of a board of directors.

(6) In discharging their duties under this section, the directors of an insurer shall perform their duties as provided in 35-1-418.

Section 5. Prohibited investments. (1) An insurer may not, directly or indirectly, without the prior written approval of the commissioner:

(a) invest in an obligation or security or make a guarantee for the benefit of or in favor of an officer or director of the insurer, except as provided in [section 6];

(b) invest in an obligation or security of, make a guarantee for the benefit of or in favor of, or make other investments in a business entity of which 10% or more of the voting securities or equity interests are owned directly or indirectly by or for the benefit of one or more officers or directors of the insurer, except as authorized in Title 33, chapter 2, part 11, or as provided in [section 6];

(c) engage on its own behalf or through one or more affiliates in a transaction or series of transactions designed to evade the prohibitions of [sections 1 through 36]; or

(d) except as provided in subsection (2), invest in or lend its funds upon the security of shares of its own stock.

(2) (a) An insurer may acquire shares of its own stock for the following purposes:

(i) conversion of a stock insurer into a mutual or reciprocal insurer or conversion of a mutual or reciprocal insurer into a stock insurer; or

(ii) issuance to the insurer's officers, employees, or agents in connection with a plan approved by the commissioner in connection with stock option and employee benefit plans.

(b) Shares of stock that are subject to subsection (2)(a) may not be admitted assets of the insurer.

(3) (a) An insurer may not, directly or indirectly, without the prior written approval of the commissioner invest in a partnership as a general partner, except that an insurer may make an investment as a general partner:

(i) if all other partners in the partnership are subsidiaries of the insurer;

(ii) for the purpose of:

(A) meeting cash calls committed to prior to [the effective date of this act];

HeinOnline -- 1999 vol. I 980 1999

(B) completing those specific projects or activities of the partnership in which the insurer was a general partner as of [the effective date of this act] that had heen undertaken as of [the effective date of this act]; or

(C) making capital improvements to property owned by the partnership on [the effective date of this act] if the insurer was a general partner as of [the effective date of this act]; or

(iii) in accordance with [section 3(3)].

(b) Subsection (3)(a) does not prohibit a subsidiary or other affiliate of the insurer from becoming a general partner.

Section 6. Loans to officers and directors. (1) (a) Except as provided in subsection (2), an insurer may not, directly or indirectly, without the prior written approval of the commissioner:

(i) make a loan to an officer or director of the insurer or make another investment in a person in which the officer or director has any direct or indirect financial interest;

(ii) make a guarantee for the benefit of or in favor of an officer or director of the insurer or a person in which the officer or director has any direct or indirect financial interest; or

(iii) enter into an agreement for the purchase or sale of property from or to an officer or director of the insurer or a person in which the officer or director has any direct or indirect financial interest.

(b) For purposes of this section, an officer or director may not have a financial interest by reason of an interest that is held directly or indirectly through the ownership of equity interests representing less than 2% of all outstanding equity interests issued by a person that is a party to the transaction or solely by reason of that individual's position as a director or officer of a person that is a party to the transaction.

(c) This subsection (1) does not permit an investment that is prohibited by [section 5].

(d) This subsection (1) does not apply to a transaction between an insurer and any of its subsidiaries or affiliates that is entered into in compliance with Title 33, chapter 2, part 11, other than a transaction between an insurer and its officer or director.

(2) An insurer may, without the prior written approval of the commissioner, make any of the following:

(a) policy loans in accordance with the terms of the policy or contract and [section 23];

(b) advances to officers or directors for expenses reasonably expected to be incurred in the ordinary course of the insurer's business or guarantees associated with credit or charge cards issued or credit extended for the purpose of financing these expenses;

(c) loans secured by the principal residence of an existing or new officer of the insurer made in connection with the officer's relocation at the insurer's request if the loans comply with the requirements of [section 19 or 31] and the terms and conditions are the same as those generally available from unaffiliated third parties;

HeinOnline -- 1999 vol. I 981 1999

(d) secured loans to an existing or new officer of the insurer made in connection with the officer's relocation at the insurer's request if the loans:

(i) do not have a term exceeding 2 years;

(ii) are required to finance mortgage loans outstanding at the same time on the prior and new residences of the officer;

(iii) do not exceed an amount equal to the equity of the officer in the prior residence; and

(iv) are required to he fully repaid upon the earlier of the end of the 2-year period or the sale of the prior residence; or

(e) loans and advances to officers or directors made in compliance with state or federal law specifically related to the loans and advances by a regulated noninsurance subsidiary or affiliate of the insurer in the ordinary course of business and on terms no more favorable than available to other customers of the entity.

Section 7. Valuation of investments. For the purposes of [sections 1 through 36], the value or amount of an investment acquired or held under [sections 1 through 36] or an investment practice engaged in under [sections 1 through 36], unless otherwise specified in statute, must be the value at which assets of an insurer are required to be reported for statutory accounting purposes as determined in accordance with procedures prescribed in published accounting and valuation standards of the NAIC, including the Purposes and Procedures of the Securities Valuation Office, the Valuation of Securities Manual, the Accounting Practices and Procedures Manual, the Annual Statement Instructions, or any successor valuation procedures officially adopted by the NAIC.

Section 8. Presumption of control. Control is presumed to exist if a person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing 10% or more of the voting securities of another person. This presumption may be rebutted by a showing that control does not exist in fact. The commissioner may determine, after furnishing all interested persons notice and an opportunity to be heard and making specific findings of fact to support tbe determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

Section 9. Credit risk attributable to derivative statement. (1) The amount of credit risk equals:

(a) the market value of the over-the-counter derivative instrument if the liquidation of the derivative instrument would result in a final cash payment to the insurer; or

(b) zero if the liquidation of tlie derivative instrument would not result in a final cash payment to the insurer.

(2) If over-tlie-counter derivative instruments are entered into under a written master agreement that provides for netting of payments owed by the respective parties and the domiciliary jurisdiction of the counterparty is either within tlie United States or if not within the United States, within a foreign jurisdiction listed in the Purposes and Procedures of the Securities Valuation Office as eligible for netting, tlie net amount of credit risk must be the greater of zero or tbe net sum of:

HeinOnline -- 1999 vol. I 982 1999

(a) the market value of the over-the-counter derivative instruments entered into under the agreement, the liquidation of which would result in a final cash payment to the insurer; and

(b) the market value of the over-the-counter derivative instruments entered into under the agreement, the liquidation of which would result in a final cash payment by the insurer to the business entity.

(3) For open transactions, market value must be determined at the end of the most recent quarter of the insurer's fiscal year and must be reduced by the market value of acceptable collateral held by the insurer or placed in escrow by one or both parties.

Section 10. Special rated credit instrument. (1) (a) Subject to subsection (1)(b), a rated credit instrument is a special rated credit instrument if it is an instrument that is:

(i) structured so that if it is held until retired by or on behalf of the issuer, its rate of return, based on its purchase cost and any cash flow stream possible under the structure of the transaction, may become negative because of reasons other than the credit risk associated with the issuer of the instrument; or

(ii) an asset-backed security that:

(A) relies on cash flows from assets that are prepayable at par at any time;

(B) does not make payments of par that are fixed as to amount and timing; and

(C) has a negative rate of return at the time of acquisition if a prepayment threshold assumption is used with the prepayment threshold assumption defined as either:

(I) two times the prepayment expectation reported by a recognized, publicly available source as being the median of expectations contributed by broker dealers or other entities, except insurers, engaged in the business of selling or evaluating the securities or assets. The prepayment expectation used in this calculation must be, at the insurer's election, the prepayment expectation for passthrough securities of the federal national mortgage association, the federal home loan mortgage corporation, or the government national mortgage association or for other assets of the same type as the assets that underlie the asset-backed security, in either case with a gross weighted average coupon comparable to the gross weighted average coupon of the assets that underlie the asset-backed security.

(II) another prepayment threshold assumption specified by the commissioner by rule adopted under [section 11].

(b) A rated credit instrument may not be a special rated credit instrument under this section if it is:

(i) a share in a class one bond mutual fund;

(ii) an instrument, other than an asset-backed security, with payments of par value fixed as to amount and timing or callable but in any event payable only at par or greater and with interest or dividend cash flows that are based on either a fixed or variable rate determined by reference to a specified rate or index;

(iii) an instrument, other than an asset-backed security, that has a par value and is purchased at a price no greater than 110% of par;

HeinOnline -- 1999 vol. I 983 1999

(iv) an instrument, including an asset-backed security, with a rate of return that would become negative only as a result of a prepayment due to casualty, condemnation, economic obsolescence of collateral, or change of law;

(v) an asset-backed security that relies on collateral that meets the requirements of subsection (1)(h)(ii), the par value of which collateral:

(A) is not permitted to be paid sooner than one-half of the remaining term to maturity from the date of acquisition;

(B) is permitted to he paid prior to maturity only at a premium sufficient to provide a yield to maturity for the investment, considering the amount prepaid and reinvestment rates at the time of early repayment, at least equal to the yield to maturity of the initial investment; or

(C) is permitted to be paid prior to maturity at a premium at least equal to the yield of a treasury issue of comparable remaining life; or

(vi) an asset-backed security that relies on cash flows from assets that are not prepayable at any time at par, but is not otherwise governed by subsection (1)(b)(v), if the asset-backed security has a par value reflecting principal payments to be received if held until retired by or on behalf of the issuer and is purchased at a price no greater than 105% of the par amount.

(2) For purposes of subsection (1), if the asset-backed security is purchased in combination with one or more other asset-backed securities that are supported by identical underlying collateral, the insurer may calculate the rate of return for these specific combined asset-backed securities in combination. The insurer shall maintain documentation demonstrating that the securities were acquired and are continuing to be held in combination.

Seetion 11. Rules. The commissioner may adopt rules implementing the provisions of [sections 1 through 36].

Section 12. Foreign and alien insurers. A foreign insurer or an alien insurer, as those terms are defined in 33-1-201, shall maintain its investments according to the laws of its domicile. For purposes of this section, an alien insurer shall claim as its domicile the state where it maintains its principal deposit.

Section 13. Applicability. [Sections 13 through 24] apply to the investments and investment practices of life and health insurers, subject to the provisions of [section 1(2)].

Section 14. General three percent diversification — medium-grade and lower-grade investments — Canadian investments. (1) (a) Except as otherwise specified in [sections 1 through 36], an insurer may not acquire, directly or indirectly through an investment subsidiary, an investment under [sections 1 through 36] if, as a result of and after giving effect to the investment, the insurer would hold more than 3% of its admitted assets in investments of all kinds issued, assumed, accepted, insured, or guaranteed by a single person.

(b) The 3% limitation does not apply to the aggregate amounts insured by a single financial guaranty insurer with the highest ganeric rating issued by a nationally recognized statistical rating organization.

(c) Asset-backed securities are subject to the limitations of subsection (1)(a). However, an insurer may not acquire an asset-backed security if, as a result of and after giving effect to the investment, the aggregate amount of asset-backed securities secured by or evidencing an interest in a single asset or single pool of

HeinOnline -- 1999 vol. I 984 1999

assets held by a trust or other business entity then held by the insurer would exceed 3% of its admitted assets.

(2) (a) An insurer may not acquire, directly or indirectly through an investment subsidiary, an investment under [section 15, 18, or 21] or counterparty exposure under [section 22(4)] if, as a result of and after giving effect to the investment:

(i) the aggregate amount of medium-grade and lower-grade investments then held by the insurer would exceed 20% of its admitted assets;

(ii) the aggregate amount of lower-grade investments then held by the insurer would exceed 10% of its admitted assets;

(iii) the aggregate amount of investments rated 5 or 6 by the SVO then held by the insurer would exceed 3% of its admitted assets;

(iv) the aggregate amount of investments rated 6 by the SVO then held by the insurer would exceed 1% of its admitted assets; or

(v) the aggregate amount of medium-grade and lower-grade investments then held by the insurer that receive as cash income less than the equivalent yield for treasury issues with a comparative average life would exceed 1% of its admitted assets.

(b) An insurer may not acquire, directly or indirectly through an investment subsidiary, an investment under [section 15, 18, or 21] or counterparty exposure under [section 22(4)] if, as a result of and after giving effect to the investment:

(i) the aggregate amount of medium-grade and lower-grade investments issued, assumed, guaranteed, accepted, or insured by any one person or, as to asset-backed securities secured by or evidencing an interest in a single asset or pool of assets, then held by the insurer would exceed 1% of its admitted assets; or

(ii) the aggregate amount of lower-grade investments issued, assumed, guaranteed, accepted, or insured by any one person or, as to asset-backed securities secured by or evidencing an interest in a single asset or pool of assets, then held by the insurer would exceed 0.5% of its admitted assets.

(c) If an insurer attains or exceeds the limit of any one rating category referred to in this subsection (2), the insurer is precluded from acquiring investments in other rating categories subject to the specific and multicategory limits applicable to those investments.

(3) (a) An insurer may not acquire, directly or indirectly through an investment subsidiary, a Canadian investment authorized by [sections 1 through 36] if, as a result of and after giving effect to the investment, the aggregate amount of these investments then held by the insurer would exceed 40% of its admitted assets or if the aggregate amount of Canadian investments not acquired under [section 15(3)] then held by the insurer would exceed 25% of its admitted assets.

(b) However, as to an insurer that is authorized to do business in Canada or that has outstanding insurance, annuity, or reinsurance contracts on lives or risks resident or located in Canada and denominated in Canadian currency, the limitations of subsection (3)(a) must be increased by the greator of:

(i) the amount the insurer is required by Canadian law to invest in Canada or to be denominated in Canadian currency; or

HeinOnline -- 1999 vol. I 985 1999

(ii) 115% of the amount of the insurer's reserves and other obligations under contracts on lives or risks resident or located in Canada.

Section 15. Rated credit instruments. (1) Subject to the limitations of subsection (7), an insurer may acquire rated credit instruments in accordance with this section.

(2) Subject to the limitations of [section 14(2)], an insurer may acquire rated credit instruments issued, assumed, guaranteed, or insured by:

(a) the United States; or

(b) a government-sponsored enterprise of the United States, if the instruments of the government sponsored enterprise are assumed, guaranteed, or insured by the United States or are otherwise backed or supported by the full faith and credit of the United States.

(3) (a) Subject to the limitations of [section 14(2)], an insurer may acquire rated credit instruments issued, assumed, guaranteed, or insured by:

(i) Canada; or

(ii) a government-sponsored enterprise of Canada, if the instruments of the government sponsored enterprise are assumed, guaranteed, or insured by Canada or are otherwise backed or supported by the full faith and credit of Canada.

(b) An insurer may not acquire an instrument under this subsection (3) if, as a result of and after giving effect to the investment, the aggregate amount of investments then held by the insurer under this subsection (3) would exceed 40% of its admitted assets.

(4) (a) Subject to the limitations of [section 14(2)], an insurer may acquire rated credit instruments, excluding asset-backed securities:

(i) issued by a government money market mutual fund, a class one money market mutual fund, or a class one bond mutual fund;

(ii) issued, assumed, guaranteed, or insured by a government sponsored enterprise of the United States other than those eligible under subsection (2);

(iii) issued, assumed, guaranteed, or insured by a state, if the instruments are general obligations of the state; or

(iv) issued by a multilateral development bank.

(b) However, an insurer may not acquire an instrument of any one fund, enterprise, entity, or state under this subsection (4) if, as a result of and after giving effect to the investment, the aggregate amount of investments then held in any one fund, enterprise, entity, or state under this subsection (4) would exceed 10% of its admitted assets.

(5) Subject to the limitations of [section 14], an insurer may acquire preferred stocks that are not foreign investments and that meet the requirements of rated credit instruments if, as a result of and after giving effect to the investment:

(a) the aggregate amount of preferred stocks then held by the insurer under this subsection (5) does not exceed 20% of its admitted assets; and

(b) the aggregate amount of preferred stocks then held by the insurer under this subsection (5) that are not sinking fund stocks or rated P-1 or P-2 by the SVO does not exceed 10% of its admitted assets.

HeinOnline -- 1999 vol. I 986 1999

(6) Subject to the limitations of [section 14], in addition to those investments eligible under subsections (2) through (5) of this section, an insurer may acquire rated credit instruments that are not foreign investments.

(7) An insurer may not acquire special rated credit instruments under this section if, as a result of and after giving effect to the investment, the aggregate amount of special rated credit instruments then held by the insurer would exceed 5% of its admitted assets.

Section 16. Insurer investment pools. (1) An insurer may acquire investments in investment pools that invest only in:

(a) (i) obligations that are rated 1 or 2 by the SVO or a nationally recognized statistical rating organization recognized by the SVO or in the absence of a 1 or 2 or equivalent rating, the issuer has outstanding obligations with an SVO rating of 1 or 2 or an equivalent rating and that have:

(A) remaining maturity of 397 days or less or a put option that entitles the holder to receive the principal amount of the obligation and the put option may be exercised through maturity at specified intervals not exceeding 397 days; or

(B) remaining maturity of 3 years or less and:

(I) a floating interest rate that resets no less frequently than quarterly on the basis of a current short-term index such as federal funds, prime rate, treasury bills, London interbank offered rate, or commercial paper; and

(II) is subject to no maximum limit if the obligations do not have an interest rate that varies inversely to market interest rate changes;

(ii) government money market mutual funds or class one money market mutual funds; or

(iii) securities lending, repurchase, and reverse repurchase transactions that meet all the requirements of [section 20], except the quantitative limitations of [section 20(4)]; or

(b) investments that an insurer may acquire under [sections 1 through 36] if the insurer's proportionate interest in the amount invested in these investments does not exceed the applicable limits of [sections 1 through 36].

(2) For an investment in an investment pool to be qualified under [sections 1 through 36], the investment pool may not:

(a) acquire securities issued, assumed, guaranteed, or insured by the insurer or an affiliate of the insurer;

(b) borrow or incur any indebtedness for borrowed money, except for securities lending and reverse repurchase transactions that meet the requirements of [section 20], except the quantitative limitations of [section 20(4)]; or

(c) permit the aggregate value of securities then loaned, sold to, purchased from, or invested in any one business entity under this section to exceed 10% of the total assets of the investment pool.

(3) The limitations of [section 14(1)] do not apply to an insurer's investment in an investment pool. However, an insurer may not acquire an investment in an investment pool under this section if, as a result of and after giving effect to the investment, the aggregate amount of investments then held by the insurer under this section:

HeinOnline -- 1999 vol. I 987 1999

(a) in any one investment pool would exceed 10% of its admitted assets;

(b) in all investment pools investing in investments permitted under subsection (1)(b) would exceed 25% of its admitted assets; or

(c) in all investment pools would exceed 35% of its admitted assets.

(4) For an investment in an investment pool to be qualified under [sections 1 through 36], the manager of the investment pool:

(a) must be organized under the laws of the United States or a state and designated as the pool manager in a pooling agreement;

(b) must be:

(i) the insurer, an affiliated insurer, a business entity affiliated with the insurer, a qualified bank, or a business entity registered under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1, et seq.), as amended;

(ii) in the case of a reciprocal insurer or interinsurance exchange, its attorney-in-fact; or

(iii) in the case of a United States hranch of an alien insurer, its United States manager or affiliates or suhsidiaries of its United States manager;

(c) shall compile and maintain detailed accounting records setting forth:

(i) the cash receipts and disbursements reflecting each participant's proportionate investment in the investment pool;

(ii) a complete description of all underlying assets of the investment pool, including amount, interest rate, maturity date, if any, and other appropriate designations; and

(iii) other records that, on a daily basis, allow third parties to verify each participant's investment in the investment pool; and

(d) shall maintain the assets of the investment pool in one or more accounts, in the name of or on behalf of the investment pool, under a custody agreement with a qualified bank. The custody agreement must:

(i) state and recognize the claims and rights of each participant;

(ii) acknowledge that the underlying assets of the investment pool are held solely for the benefit of each participant in proportion to the aggregate amount of its investments in the investment pool; and

(iii) contain an agreement that the underlying assets of the investment pool may not he commingled with the general assets of the custodian qualified hank or any other person.

(5) The pooling agreement for each investment pool must be in writing and must provide that:

(a) an insurer and its affiliated insurers or, in the case of an investment pool investing solely in investments permitted under subsection (1)(a), the insurer and its subsidiaries or affiliates, any pension or profit-sharing plan of the insurer or its subsidiaries and affiliates, or in the case of a United States branch of an alien insurer, the affiliates or subsidiaries of its United States manager shall, at all times, hold 100% of the interests in the investment pooi;

(b) the underiying assets of the investment pool may not he commingled with the general assets of the pool manager or any other person;

HeinOnline -- 1999 vol. I 988 1999

(c) in proportion to the aggregate amount of each pool participant's interest in the investment pool:

(i) each participant owns an undivided interest in the underlying assets of the investment pool; and

(ii) the underlying assets of the investment pool are held solely for the benefit of each participant;

(d) a participant or, in the event of the participant's insolvency, bankruptcy, or receivership, its trustee, receiver, or other successor in interest may withdraw all or any portion of its investment from the investment pool under the terms of the pooling agreement;

(e) withdrawals may be made on demand without penalty or other assessment on any business day, but settlement of funds must occur within a reasonable and customary period not to exceed 5 business days. Distributions under this section must be calculated in each case net of all then-applicable fees and expenses of the investment pool. The pooling agreement must provide that the pool manager shall distribute to a participant, at the discretion of tbe pool manager:

(i) in cash, the then fair market value of the participant's pro rata share of each underlying asset of the investment pool;

(ii) in kind, a pro rata share of each underlying asset; or

(iii) in a combination of cash and in-kind distributions, a pro rata share in each underlying asset.

(f) the pool manager shall make the records of the investment pool available for inspection by the commissioner.

Seetion 17. Equity interests. (1) Subject to the limitations of [section 14], an insurer may acquire equity interests in husiness entities organized under the laws of any domestic jurisdiction.

(2) An insurer may not acquire an investment under this section if, as a result of and after giving effect to the investment, the aggregate amount of investments then held by the insurer under this section would exceed 20% of its admitted assets or the amount of equity interests then held by the insurer that are not listed on a qualified exchange would exceed 5% of its admitted assets. An accident and health insurer is subject to this section but is subject to the same aggregate limitation on equity interests as a property and casualty insurer under [section 29] and is also subject to tbe provisions of [section 36].

(3) An insurer may not acquire under the provisions of this section any investments that the insurer may acquire under [section 19].

(4) An insurer may not short sell equity investments unless the insurer covers the short sale by owning the equity investment or an unrestricted right to the equity instrument exercisable within 6 months of tlie short sale.

Section 18. Tangible personal property under lease. (1) (a) Subject to the limitations of [section 14], an insurer may acquire tangible personal property or equity interests in tangible personal property located or used wholly or in part within a domestic jurisdiction, either directly or indirectly through limited partnership interests and general partnership interests not otherwise prohibited by [section 4(4)], joint ventures, stock of an investment subsidiary, membership

HeinOnline -- 1999 vol. I 989 1999

interests in a limited liability company, trust certificates, or other similar instruments.

(b) Investments acquired under subsection (1)(a) are eligible oniy if:

(i) the property is subject to a lease or other agreement with a person whose rated credit instruments could be acquired by the insurer under [section 15] in the amount of the purchase price of tbe personal property; and

(ii) the lease or other agreement provides the insurer with the right to receive rental, purchase, or other fixed payments for the use or purchase of the property and the aggregate value of the payments, together with the estimated residual value of the property at the end of its usefui life and the estimated tax benefits to the insurer resulting from ownership of the property, are adequate to return the cost of the insurer's investment in the property, plus a return considered adequate by the insurer.

(2) The insurer shall compute tbe amount of each investment under this section on the basis of the out-of-pecket purchase price and applicable related expenses paid by the insurer for the investment, net of each borrowing made to finance the purchase price and expenses, to the extent the borrowing is without recourse to the insurer.

(3) An insurer may not acquire an investment under this section if, as a result of and after giving effect to the investment, the aggregate amount of ali investments then held by the insurer under this section would exceed:

(a) 2% of its admitted assets; or

(b) 0.5% of its admitted assets as to any single item of tangible personal property.

(4) For purposes of determining compliance with the limitations of [section 14], investments acquired by an insurer under this section must be aggregated with those acquired under [section 15] and each lessee of the property under a lease referred te in this section is considered the issuer of an obligation in the amount of the investment of the insurer in the property determined as provided in subsection (2).

(5) Nothing in this section is applicable te tangible personai property lease arrangements between an insurer and its subsidiaries and affiliates under a cost-sharing arrangement or agreement permitted under Title 33, chapter 2, part 11.

Seetion 19. Mortgage loans — incomc-producing real estate — real estate for the accommodation of husiness — quantitative limitations. (1) Subject to the limitations of [section 15], an insurer may acquire obligations secured by mortgages on reai estate situated within a domestic jurisdiction, either directly or indirectly through limited partnership interests and general partnership interests not otherwise prohibited by [section 4(4)], joint ventures, stock of an investment subsidiary, membership interests in a limited liability company, trust certificates, or other similar instruments. However, a mortgage loan that is secured by otber than a first iien may not be acquired unless the insurer is the holder of the first lien. The obligations held by the insurer and any obligations with an equal lien priority may not, at the time of acquisition of the obligation, exceed:

HeinOnline -- 1999 vol. I 990 1999

(a) 90% of the fair market value of the real estate if the mortgage loan is secured by a purchase money mortgage or similar security received hy the insurer upon disposition of the real estate;

(b) 80% of the fair market value of the real estate if the mortgage loan requires immediate scheduled payment in periodic installments of principal and interest, has an amortization period of 30 years or less, and has periodic payments made no less frequently than annually. Each periodic payment must be sufficient to ensure that at all times tbe outstanding principal balance of the mortgage loan is not greater tban the outstanding principal balance that would be outstanding under a mortgage loan witb the same original principal balance, witb the same interest rate, and requiring equal payments of principal and interest with tbe same frequency over the same amortization period. Mortgage loans permitted under tbis subsection (1)(b) are permitted notwithstanding the fact that they provide for a payment of the principal balance prior to the end of the period of amortization of the loan. For residential mortgage loans, tbe 80% liinitation may be increased to 97% if acceptable private mortgage insurance has heen ohtained.

(c) 75% of the fair market value of the real estate for inortgage loans that do not meet the requirements of subsection (1)(a) or (1)(b).

(2) For purposes of subsection (1)(a), the amount of an obligation required to be included in the calculation of the loan-to-value ratio may be reduced to tbe extent the obligation is insured by the federal housing administration, guaranteed by the administrator of veterans affairs, or insured or guaranteed by their successors.

(3) A mortgage loan that is held by an insurer under [section 3(6)] or that is acquired under this section and is restructured in a manner that meets the requirements of a restructured mortgage loan in accordance with the NAIC Accounting Practices and Procedures Manual or a successor publication continues to qualify as a mortgage loan under [sections 1 tbrough 36].

(4) Subject to the limitations of [section 14], credit lease transactions that do not qualify for investment under [section 15] with the following characteristics are exempt from the provisions of subsection (1)(a) of this section:

(a) the loan amortizes over the initial fixed lease term in at least an amount sufficient so that the loan balance at the end of the lease tern does not exceed the original appraised value of the real estate;

(b) the lease payments cover or exceed the total debt service over the life of the loan;

(c) a tenant or its affiliated entity with rated credit instruments that have an SVO 1 or 2 designation or a comparable rating from a nationally recoguized statistical rating organization recognized by the SVO has a full faith and credit obligation to make the lease payments;

(d) the insurer holds or is the beneficial holder of a first lien mortgage on the real estate;

(e) the expenses of the real estate are passed through to the tenant, excluding exterior, structural, parking, and heating, ventilation, and air conditioning replacement expenses, unless annual escrow contrihutions, from cash flows derived from the lease payments, cover the expense shortfall; and

(f) there is a perfected assigument of the rents due pursuant to the lease to or for the benefit of the insurer.

HeinOnline -- 1999 vol. I 991 1999

(5) (a) An insurer may acquire, manage, and dispose of real estate situated in a domestic jurisdiction, either directly or indirectly through limited partnership interests and general partnership interests not otherwise prohibited by [section 4(4)], joint ventures, stock of an investment subsidiary, membership interests in a limited liability company, trust certificates, or other similar instruments. The real estate must be income-producing or intended for improvement or development for investment purposes under an existing program, in which case the real estate is considered to be income-producing.

(b) The real estate may be subject to mortgages, liens, or other encumbrances, the amount of which must, to the extent that the obligations secured by the mortgages, liens, or encumbrances are without recourse to the insurer, be deducted from the amount of the investment of the insurer in the real estate for purposes of determining compliance with subsections (7)(b) and (7)(c).

(6) (a) An insurer may acquire, manage, and dispose of real estate for the convenient accommodation of the insurer's or the insurer's affiliates' business operations, including home office, branch office, and field office operations.

(b) Real estate acquired under this subsection (6) may include excess space for rent to others if the excess space, valued at its fair market value, would otherwise be a permitted investment under subsection (5) and is so qualified by the insurer.

(c) The real estate acquired under this subsection (6) may be subject to one or more mortgages, liens, or other encumbrances, the amount of which must, to the extent that the obligations secured by the mortgages, liens, or encumbrances are without recourse to the insurer, be deducted from the amount of the investment of the insurer in the real estate for purposes of determining compliance with subsection (7)(d).

(d) For purposes of this subsection (6), business operations may not include that portion of real estate used for the direct provision of health care services by an accident and health insurer for its insureds. An insurer may acquire real estate used for these purposes under subsection (5).

(7) (a) An insurer may not acquire an investment under subsection (1) if, as a result of and after giving effect to the investment, the aggregate amount of all investments then held by the insurer under subsection (1) would exceed:

(i) 1% of its admitted assets in mortgage loans covering any one secured location;

(ii) 0.25% of its admitted assets in construction loans covering any one secured location; or

(iii) 2% of its admitted assets in construction loans in the aggregate.

(b) An insurer may not acquire an investment under subsection (5) if, as a result of and after giving effect to the investment and any outstanding guarantees made by the insurer in connection with the investment, the aggregate amount of investments then held by the insurer under subsection (5) plus the guarantees then outstanding would exceed:

(i) 1% of its admitted assets in one parcel or group of contiguous parcels of real estate, except that this limitation does not apply to that portion of real estate used for the direct provision of health care services by an accident and health insurer for its insureds, such as hospitals, medical clinics, medical professional

HeinOnline -- 1999 vol. I 992 1999

buildings, or other health facilities used for the purpose of providing health services; or

(ii) 15% of its admitted assets in the aggregate, hut not more than 5% of its admitted assets as to properties that are to be improved or developed.

(c) An insurer may not acquire an investinent under subsection (5) or (6) if, as a result of and after giving effect to the investment and any outstanding guarantees made by the insurer in connection with the investment, the aggregate amount of all investments then held by tbe insurer under subsection (5) or (6) plus the guarantees then outstanding would exceed 45% of its admitted assets. However, an insurer may exceed this limitation by no more than 30% of its admitted assets if:

(i) this increased amount is invested only in residential mortgage loans;

(ii) the insurer has no more than 10% of its admitted assets invested in mortgage loans other than residential mortgage loans;

(iii) the loan-to-value ratio of each residential mortgage loan does not exceed 60% at the time the mortgage loan is qualified under this increased authority and the fair market value is supported by an appraisal no more than 2 years old prepared by an independent appraiser;

(iv) a single mortgage loan qualified under this increased authority may not exceed 0.5% of its admitted assets;

(v) the insurer files with the commissioner, and receives approval from the commissioner for, a plan tbat is desigued to result in a portfolio of residential mortgage loans that is sufficiently geographically diversified; and

(vi) the insurer agrees to file annually with the commissioner records that demonstrate that its portfolio of residential mortgage loans is geographically diversified in accordance with the plan.

(d) The limitations of [section 14] do not apply to an insurer's acquisition of real estate under subsection (6). An insurer may not acquire real estate under subsection (6) if, as a result of and after giving effect to the acquisition, the aggregate amount of real estate then held by the insurer under subsection (6) would exceed 10% of its admitted assets. With the permission of the commissioner, additional amounts of real estate may be acquired under subsection (6).

Seetion 20. Seeurities lending, repurchase, reverse purchase, and dollar roll transactions. (1) An insurer may enter into securities lending, repurcbase, reverse repurchase, and dollar roll transactions with business entities, subject to tlie following requirements:

(a) Tlie insurer's board of directors shall adopt a written plan that is consistent with the requirements of the written plan provided for in [section 4(1)] and that specifies guidelines and objectives to be followed, such as:

(i) a description of how cash received will be invested or used for general corporate purposes of the insurer;

(ii) operational procedures to manage interest rate risk, counterparty default risk, the conditions under which proceeds from reverse repurchase transactions may be used in the ordinary course of business, and the use of acceptable collateral in a manner that reflects the liquidity needs of the transaction; and

HeinOnline -- 1999 vol. I 993 1999

(iii) the extent to which the insurer may engage in these transactions.

(b) The insurer shall enter into a written agreement for all transactions authorized in this section other than dollar roll transactions. The written agreement must require that each transaction terminates no more than 1 year from its inception or upon the earlier demand of the insurer. The agreement must be with the business entity counterparty, but for securities lending transactions, the agreement may be with an agent acting on behalf of the insurer if the agent is a qualified business entity and if the agreement:

(i) requires the agent to enter into separate agreements with each counterparty that are consistent with the requirements of this section; and

(ii) prohibits securities lending transactions under the agreement with the agent or its affiliates.

(c) Cash received in a transaction under this section must be invested in accordance with [sections 1 through 36] and in a manner that recognizes the liquidity needs of the transaction or must be used by the insurer for its general corporate purposes. For as long as the transaction remains outstanding, the insurer or its agent or custodian shall maintain, as to acceptable collateral received in a transaction under this section, either physically or through the book entry systems of the federal reserve, depository trust company, participants trust company, or other securities depositories approved by the commissioner:

(i) possession of the acceptable collateral;

(ii) a perfected security interest in the acceptable collateral; or

(iii) in the case of a jurisdiction outside of the United States, title to or rights of a secured creditor to the acceptable collateral.

(d) The limitations of [sections 14 and 21] do not apply to the business entity counterparty exposure created by transactions under this section. For purposes of calculations made to determine compliance with this subsection (1)(d), effect may not be given to the insurer's future obligation to resell securities, in the case of a repurchase transaction, or to repurchase securities, in the case of a reverse repurchase transaction. An insurer may not enter into a transaction under this section if, as a result of and after giving effect to the transaction:

(i) the aggregate amount of securities then loaned, sold to, or purchased from any one business entity counterparty under this section would exceed 5% of the insurer's admitted assets. In calculating the amount sold to or purchased from a business entity counterparty under repurchase or reverse repurchase transactions, effect may be given to netting provisions under a master written agreement.

(ii) the aggregate amount of all securities then loaned, sold to, or purchased from all business entities under this section would exceed 40% of the insurer's admitted assets.

(e) In a securities lending transaction, the insurer shall receive acceptable collateral having a market value as of the transaction date at least equal to 102% of the market value of the securities loaned by the insurer in the transaction as of that date. If at any time the market value of the acceptable collateral is less than the market value of the loaned securities, the business entity counterparty is obligated to deliver additional acceptable collateral, the market value of which, together with the market value of all acceptable collateral then held in connection

HeinOnline -- 1999 vol. I 994 1999

with the transaction, equals at least 102% of the market value of the loaned securities.

(f) In a reverse repurchase transaction, other than a dollar roll transaction, the insurer shall receive acceptable collateral having a market value as of the transaction date at least equal to 95% of the market value of the securities transferred by the insurer in tbe transaction as of that date. If at any time tbe market value of the acceptable collateral is less tban 95% of the market value of the securities transferred, the business entity counterparty is obligated to deliver additional acceptable collateral, the market value of which, together with the market value of all acceptable collateral then held in connection witb the transaction, equals at least 95% of the market value of the transferred securities.

(g) In a dollar roll transaction, the insurer must receive cash in an amount at least equal to the market value of tbe securities transferred by the insurer in the transaction as of the transaction date.

(h) In a repurchase transaction, the insurer must receive as acceptable collateral transferred securities baving a market value at least equal to 102% of the purchase price paid by the insurer for the securities. If at any time the market value of the acceptable collateral is less than 100% of the purchase price paid by the insurer, the business entity counterparty is obligated to provide additional acceptable collateral, the market value of which, together with the market value of all acceptable collateral then held in connection with the transaction, equals at least 102% of the purchase price. Securities acquired by an insurer in a repurchase transaction may not be sold in a reverse repurchase transaction, loaned in a securities lending transaction, or otherwise pledged.

(2) To constitute acceptable collateral for the purposes of tbis section, a letter of credit must have an expiration date beyond the term of the subject transaction.

Section 21. Foreign investments and foreign currency exposure. (1) Subject to the limitations of [section 14], an insurer may acquire foreign investments or engage in investment practices with persons of or in foreign jurisdictions if the investments or investment practices are of substantially the same types as those that an insurer is permitted to acquire under [sections 1 through 36], other than of the type permitted under [section 16] and if, as a result of and after giving effect to the investment, the aggregate amount of foreign investments then beld by the insurer under this subsection (1):

(a) does not exceed 20% of its admitted assets; and

(b) in a single foreign jurisdiction does not exceed 10% of its admitted assets as to a foreign jurisdiction that has a sovereign debt rating of SVO 1 or 3% of its admitted assets as to any other foreign jurisdiction.

(2) (a) Subject to the limitations of [section 14], an insurer may acquire investments or engage in investment practices denominated in foreign currencies, whether or not they are foreign investments acquired under subsection (1) or additional foreign currency exposure as a result of the termination or expiration of a hedging transaction with respect to investments denominated in a foreign currency, if the aggregate amount of investments then held by the insurer under this subsection (2) denominated in:

(i) foreign currencies does not exceed 10% of its admitted assets; and

HeinOnline -- 1999 vol. I 995 1999

(ii) the foreign currency of a single foreign jurisdiction does not exceed 10% of its admitted assets as to a foreign jurisdiction that has a sovereign debt rating of SVO 1 or 3% of its admitted assets as to any other foreign jurisdiction.

(b) However, an investment under subsection (2)(a) may not be considered denominated in a foreign currency if the acquiring insurer enters into one or more contracts in transactions permitted under [section 22] and the business entity counterparty agrees under the contract or contracts to exchange all payments made on the foreign currency denominated investment for United States currency at a rate that effectively insulates the investment cash flows against future changes in currency exchange rates during the period the contract or contracts are in effect.

(3) (a) In addition to investments permitted under subsections (1) and (2), an insurer that is authorized to do business in a foreign jurisdiction and that has outstanding insurance, annuity, or reinsurance contracts on lives or risks resident or located in that foreign jurisdiction and denominated in foreign currency of that jurisdiction may acquire foreign investments respecting that foreign jurisdiction and may acquire investments denominated in the currency of that jurisdiction subject to the limitations of [section 14].

(b) However, investments made under this subsection (3) in obligations of foreign governments, their political subdivisions, and government-sponsored enterprises are not subject to the limitations of [section 14] if those investments carry an SVO rating of 1 or 2. The aggregate amount of investments acquired by the insurer under this subsection (3) may not exceed the greater of:

(i) the amount the insurer is required by the law of the foreign jurisdiction to invest in the foreign jurisdiction; or

(ii) 115% of the amount of its reserves, net of reinsurance, and other obligations under the contracts on lives or risks resident or located in the foreign jurisdiction.

(4) In addition to investments permitted under subsections (1) and (2), an insurer that is not authorized to do business in a foreign jurisdiction and that has outstanding insurance, annuity, or reinsurance contracts on lives or risks resident or located in that foreign jurisdiction and denominated in foreign currency of that jurisdiction may acquire foreign investments respecting that foreign jurisdiction and may acquire investments denominated in the currency of that jurisdiction subject to the limitations of [section 14]. However, investments made under this subsection in obligations of foreign governments, their political subdivisions, and government-sponsored enterprises are not subject to the limitations of [section 14] if those investments carry an SVO rating of 1 or 2. The aggregate amount of investments acquired by the insurer under this subsection may not exceed 105% of the amount of its reserves, net of reinsurance, and other obligations under the contracts on lives or risks resident or located in the foreign jurisdiction.

(5) Investments acquired under this section must be aggregated with investments of the same types made under [sections 1 through 36] and, in a similar manner, for purposes of determining compliance with the limitations, if any, contained in [sections 1 through 36]. Investments in obligations of foreign governments, their political subdivisions, and government-sponsored enterprises, except for those exempted under subsections (3) and (4), are subject to the limitations of [section 14].

HeinOnline -- 1999 vol. I 996 1999

Section 22. Derivative transactions. An insurer may, directly or indirectly through an investment subsidiary, engage in derivative transactions under this section under the following conditions:

(1) (a) An insurer may use derivative instruments under this section to engage in hedging transactions and certain income-generation transactions as provided in rules adopted by the commissioner.

(b) An insurer must be able to demonstrate to the commissioner the intended hedging characteristics and the ongoing effectiveness of the derivative transaction or combination of the transactions through cash flow testing or other appropriate analyses.

(2) An insurer may enter into hedging transactions under this section if, as a result of and after giving effect to the transaction:

(a) the aggregate statement value of options, caps, floors, and warrants not attached to another financial instrument purchased and used in hedging transactions does not exceed 5% of its admitted assets;

(b) the aggregate statement value of options, caps, and floors written in hedging transactions does not exceed 3% of its admitted assets; and

(c) the aggregate potential exposure of collars, swaps, forwards, and futures used in hedging transactions does not exceed 6.5% of its admitted assets.

(3) An insurer may enter into the following types of income-generation transactions only if, as a result of and after giving effect to the transactions, the aggregate statement value of the fixed-income assets that are subject to call or that generate the cash flows for payments under the caps or floors, plus the face value of fixed income securities underlying a derivative instrument subject to call, plus the amount of the purchase obligations under the put options does not exceed 10% of its admitted assets:

(a) sales of covered call options on noncallable, fixed-income securities, callable fixed-income securities if the option expires by its terms prior to the end of the noncallable period, or derivative instruments based on fixed-income securities;

(b) sales of covered call options on equity securities if the insurer holds in its portfolio or can immediately acquire, through the exercise of options, warrants, or conversion rights already owned, the equity securities subject to call during the complete term of the call option sold;

(c) sales of covered put options on investments that the insurer is permitted to acquire under [sections 1 through 36] if the insurer has placed in escrow or entered into a custodian agreement segregating cash or cash equivalents with a market value equal to the amount of its purchase obligations under the put option during the complete term of the put option sold; or

(d) sales of covered caps or floors if the insurer holds in its portfolio the investments generating the cash flow to make the required payments under the caps or floors during the complete term that the cap or floor is outstanding.

(4) An insurer shall include all counterparty exposure amounts in determining compliance with the limitations of [section 14].

(5) Pursuant to rules adopted under [section 11], the commissioner may approve additional transactions involving the use of derivative instruments in excess of the limits of subsection (2) or for other risk management purposes under

HeinOnline -- 1999 vol. I 997 1999

rules adopted by the commissioner, but replication transactions may not be permitted for other than risk management purposes.

Section 23. Policy loans. A life insurer may lend to a policyholder, on the security of the cash surrender value of the policyholder's policy, a sum not exceeding the legal reserve that the insurer is required to maintain on the policy.

Section 24. Additional investment authority. (1) Under this subsection (1), an insurer may acquire an investment or may engage in investment practices described in [section 20] solely for the purpose of acquiring investments that exceed the quantitative limitations of [sections 14 through 21]. However, an insurer may not acquire an investment or engage in investment practices described in [section 20] under this subsection (1) if, as a result of and after giving effect to the transaction:

(a) the aggregate amount of investments then held by an insurer under this subsection (1) would exceed 3% of its admitted assets; or

(b) the aggregate amount of investments as to a limitation in [sections 14 through 21] then held by the insurer under this subsection (1) would exceed 1% of its admitted assets.

(2) (a) In addition to the authority provided under subsection (1), an insurer may acquire under this subsection (2) an investment of any kind or engage in investment practices described in [section 20] that are not specifically prohibited by [sections 1 through 36] without regard to the categories, conditions, standards, or other limitations of [sections 14 through 21] if, as a result of and after giving effect to the transaction, the aggregate amount of investments then held under this subsection (2) would not exceed the lesser of:

(i) 10% of its admitted assets; or

(ii) 75% of its capital and surplus.

(b) However, an insurer may not acquire any investment or engage in any investment practice under this subsection (2) if, as a result of and after giving effect to the transaction, the aggregate amount of all investments in any one person then held by the insurer under this subsection (2) would exceed 3% of its admitted assets.

(3) In addition to the investments acquired under subsections (1) and (2), an insurer may acquire under this subsection (3) an investment of any kind or engage in investment practices described in [section 20] that are not specifically prohihited by [sections 1 through 36] without regard to any limitations of [section 14 through 21] if:

(a) the commissioner grants prior approval;

(b) the insurer demonstrates that its investments are being made in a prudent manner and that the additional amounts will be invested in a prudent manner; and

(c) as a result of and after giving effect to the transaction, the aggregate amount of investments then held by the insurer under this subsection (3) does not exceed the greater of:

(i) 25% of its capital and surplus; or

(ii) 100% of capital and surplus less 10% of its admitted assets.

HeinOnline -- 1999 vol. I 998 1999

(4) An investment prohibited under [section 5] that is not permitted under [section 22] or additional derivative instruments acquired under [section 22] may not be acquired under this section.

Section 25. Applicability. Subject to the provisions of [section 1(2)], [sections 26 through 36] apply to the investments and investment practices of property and casualty, financial guaranty, mortgage guaranty, surety, marine, and title insurers.

Section 26. General five percent diversification — medium-grade and lower-grade investments — Canadian investments. (1) (a) Except as otherwise specified in [sections 1 through 36], an insurer may not acquire, directly or indirectly through an investment subsidiary, an investment under [sections 1 through 36] if, as a result of and after giving effect to the investment, the insurer would hold more than 5% of its admitted assets in investments of all kinds issued, assumed, accepted, insured, or guaranteed by a single person.

(b) The 5% limitation in subsection (1)(a) does not apply to the aggregate amounts insured by a single financial guaranty insurer with the highest generic rating issued by a nationally recoguized statistical rating organization.

(c) Asset-backed securities are not subject to the limitations of subsection (1)(a). However, an insurer may not acquire an asset-hacked security if, as a result of and after giving effect to tbe investment, the aggregate amount of asset-backed securities that are secured by or evidencing an interest in a single asset or single pool of assets beld hy a trust or other business entity and that are tben held by tbe insurer would exceed 5% of its admitted assets.

(2) (a) An insurer may not acquire, directly or indirectly through an investment subsidiary, an investment under [section 27, 30, or 33] or counterparty exposure under [section 34(4)] if, as a result of and after giving effect to the investment:

(i) the aggregate amount of all medium-grade and lower-grade investments then held by the insurer would exceed 20% of its admitted assets;

(ii) tbe aggregate amount of lower-grade investments then beld by tbe insurer would exceed 10% of its admitted assets;

(iii) the aggregate amount of investments rated 5 or 6 hy the SVO tben held by the insurer would exceed 5% of its admitted assets;

(iv) tbe aggregato amount of investments rated 6 by tbe SVO tben held by the insurer would exceed 1% of its admitted assets; or

(v) the aggregate amount of medium-grade and lower-grade investments tben held by the insurer that receive as cash income less than the equivalent yield for treasury issues with a comparative average life would exceed 1% of its admitted assets.

(b) An insurer may not acquire, directly or indirectly through an investment subsidiary, an investment under [section 27, 30, or 33] or counterparty exposure under [section 34(4)] if, as a result of and after giving effect to the investment:

(i) tbe aggregate amount of medium-grade and lower-grade investments issued, assumed, accepted, insured, or guaranteed by any one person or, as to asset-backed securities secured by or evidencing an intorest in a single asset or pool of assets, then held by the insurer would exceed 1% of its admitted assets; or

HeinOnline -- 1999 vol. I 999 1999

(ii) the aggregate amount of lower-grade investments issued, assumed, accepted, insured, or guaranteed by any one person or, as to asset-backed securities secured by or evidencing an interest in a single asset or pool of assets, then held by the insurer would exceed 0.5% of its admitted assets.

(c) If an insurer attains or exceeds the limit of any one rating category referred to in this subsection (2), the insurer is not precluded from acquiring investments in other rating categories subject to the specific and multicategory limits applicable to those investments.

(3) (a) An insurer may not acquire, directly or indirectly through an investment subsidiary, any Canadian investments authorized by [sections 1 through 36] if as a result of and after giving effect to the investment, the aggregate amount of the investments then held by the insurer would exceed 40% of its admitted assets or if the aggregate amount of Canadian investments not acquired under [section 27(1)(b)] then held by the insurer would exceed 25% of its admitted assets.

(b) However, as to an insurer that is authorized to do business in Canada or that has outstanding insurance, annuity, or reinsurance contracts on lives or risks resident or located in Canada and denominated in Canadian currency, the limitations of subsection (3)(a) must be increased by the greater of:

(i) the amount the insurer is required by Canadian law to invest in Canada or to be denominated in Canadian currency; or

(ii) 125% of the amount of its reserves and other obligations under contracts on risks resident or located in Canada.

Section 27. Rated credit instruments. (1) Subject to the limitations of subsection (2), an insurer may acquire rated credit instruments in accordance with the following:

(a) Subject to the limitations of [section 26(2)], but not to the limitations of [section 26(1)], an insurer may acquire rated credit instruments issued, assumed, insured, or guaranteed by:

(i) the United States; or

(ii) a government-sponsored enterprise of the United States, if the instruments of the government-sponsored enterprise are assumed, guaranteed, or insured by the United States or are otherwise backed or supported by the full faith and credit of the United States.

(b) (i) Subject to the limitations of [section 26(2)], but not to the limitations of [section 26(1)], an insurer may acquire rated credit instruments issued, assumed, insured, or guaranteed by:

(A) Canada; or

(B) a government-sponsored enterprise of Canada, if the instruments of the government-sponsored enterprise are assumed, guaranteed, or insured by Canada or are otherwise backed or supported by the full faith and credit of Canada.

(ii) However, an insurer may not acquire an instrument under this subsection (1)(b) if, as a result of and after giving effect to the investment, the aggregate amount of investments then held by the insurer under this subsection (1)(b) would exceed 40% of its admitted assets.

HeinOnline -- 1999 vol. I 1000 1999

(c) (i) Subject to the limitations of [section 26(2)], hut not to the limitations of [section 26(1)], an insurer may acquire rated credit instruments, excluding asset-backed securities:

(A) issued by a government money market mutual fund, a class one money market mutual fund, or a class one bond mutual fund;

(B) issued, assumed, insured, or guaranteed by a government-sponsored enterprise of the United States other than those eligible under subsection (1)(a);

(C) issued, assumed, insured, or guaranteed by a state if the instruments are goneral obligations of the state; or

(D) issued hy a multilateral development bank.

(ii) However, an insurer may not acquire an instrument of any one fund, any one enterprise or entity, or any one state under this subsection (1)(c) if, as a result of and after giving effect to the investment, the aggregate amount of investments then held in any one fund, enterprise, entity, or state under this subsection (1)(c) would exceed 10% of its admitted assets.

(d) Subject to the limitations of [section 26], an insurer may acquire preferred stocks that are not foreign investments and that meet the requirements of rated credit instruments if, as a result of and after giving effect to the investment:

(i) the aggregate amount of preferred stocks then held by the insurer under this subsection (1)(d) does not exceed 20% of its admitted assets; and

(ii) the aggregate amount of preferred stocks then held by the insurer under this subsection (1)(d) that are not sinking fund stocks or rated P-1 or P-2 by the SVO does not exceed 10% of its admitted assets.

(e) Subject to the limitations of [section 26], in addition to those investments eligible under subsections (1)(a) tbrough (1)(d), an insurer may acquire rated credit instruments that are not foreign investments.

(2) An insurer may not acquire special rated credit instruments under this section if, as a result of and after giving effect to the investment, the aggregate amount of special rated credit instruments then held by tbe insurer would exceed 5% of its admitted assets.

Seetion 28. Insurer investment pools. (1) An insurer may acquire investments in investment pools that:

(a) invest only in:

(i) obligations that are rated 1 or 2 by the SVO or have an equivalent of an SVO 1 or 2 rating by a nationally recognized statistical rating organization recognized by the SVO or, in the absence of a 1 or 2 rating or equivalent rating, the issuer has outstanding obligations with an SVO 1 or 2 or equivalent rating and have:

(A) a remaining maturity of 397 days or less or a put option that entitles the holder to receive the principal amount of the obligation that may be exercised tbrough maturity at specified intervals not exceeding 397 days; or

(B) a remaining maturity of 3 years or less and a floating interest rate that resets no less frequently than quarterly on the basis of a current short-term index (federal funds, prime rate, treasury bills, London interbank offered rate, or commercial paper) and is subject to no maximum limit if the obligations do not have an interest rate that varies inversely to market interest rate changos;

HeinOnline -- 1999 vol. I 1001 1999

(ii) government money market mutual funds or class one money market mutual funds; or

(iii) securities lending, repurchase, and reverse repurchase transactions that meet all the requirements of [section 32], except the quantitative limitations of [section 32(1)(d)]; or

(b) invest only in investments that an insurer may acquire under [sections 1 through 36] if the insurer's proportionate interest in the amount invested in these investments does not exceed the applicable limits of [sections 1 through 36].

(2) For an investment in an investment pool to be qualified under [sections 1 through 36], the investment pool may not:

(a) acquire securities issued, assumed, insured, or guaranteed by the insurer or an affiliate of the insurer;

(b) borrow or incur any indebtedness for borrowed money, except for securities lending and reverse repurchase transactions that meet the requirements of [section 32], except the quantitative limitations of [section 32(1)(d)]; or

(c) permit the aggregate value of securities then loaned or sold to, purchased from, or invested in any one business entity under this section to exceed 10% of the total assets of the investment pool.

(3) The limitations of [section 26(1)] do not apply to an insurer's investment in an investment pool. However, an insurer may not acquire an investment in an investment pool under this section if, as a result of and after giving effect to the investment, the aggregate amount of investments then held by the insurer under this section:

(a) in any one investment pool would exceed 10% of its admitted assets;

(b) in all investment pools investing in investments permitted under subsection (1)(b) would exceed 25% of its admitted assets; or

(c) in all investment pools would exceed 40% of its admitted assets.

(4) For an investment in an investment pool to be qualified under [sections 1 through 36], the managar of the investment pool:

(a) must be organized under the laws of the United States or a state and must be designated as the pool manager in a pooling agreement;

(b) must be:

(i) the insurer, an affiliated insurer, a business entity affiliated with the insurer, a qualified bank, or a business entity registered under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1, et seq.), as amended;

(ii) in the case of a reciprocal insurer or interinsurance exchange, its attorney-in-fact; or

(iii) in the case of a United States branch of an alien insurer, its United States manager or affiliates or subsidiaries of its United States manager;

(c) shall compile and maintain detailed accounting records setting forth:

(i) the cash receipts and disbursements reflecting each participant's proportionate investment in the investment pool;

HeinOnline -- 1999 vol. I 1002 1999

(ii) a complete description of all underlying assets of the investment pool, including amount, interest rate, maturity date, if any, and other appropriate designations; and

(iii) other records that, on a daily basis, allow third parties to verify each participant's investment in the investment pool; and

(d) shall maintain the assets of the investment pool in one or more accounts, in the name of or on behalf of the investment pool, under a custody agreement with a qualified bank. The custody agreement must:

(i) state and recognize the claims and rights of each participant;

(ii) acknowledge that the underlying assets of the investment pool are held solely for the benefit of each participant in proportion to the aggregate amount of its investments in the investment pool; and

(iii) contain an agreement that the underlying assets of the investment pool may not be commingled with the general assets of the custodian qualified bank or any other person.

(5) The pooling agreement for each investment pool must be in writing and must provide that:

(a) an insurer and its affiliated insurers or, in the case of an investment pool investing solely in investments permitted under subsection (1)(a), the insurer and its subsidiaries or affiliates, any pension or profit-sharing plan of the insurer or its subsidiaries and affiliates, or in the case of a United States branch of an alien insurer, the affiliates or subsidiaries of its United States manager shall, at all times, hold 100% of the interests in the investment pool;

(b) the underlying assets of the investment pool may not be commingled with the general assets of the pool manager or any other person;

(c) in proportion to the aggregate amount of each pool participant's interest in the investment pool:

(i) each participant owns an undivided interest in the underlying assets of the investment pool; and

(ii) the underlying assets of the investment pool are held solely for the benefit of each participant;

(d) a participant or, in the event of the participant's insolvency, bankruptcy, or receivership, its trustee, receiver, or other successor in interest may withdraw all or any portion of its investment from the investment pool under the terms of the pooling agreement;

(e) withdrawals may be made on demand without penalty or other assessment on any business day, but settlement of funds must occur within a reasonable and customary period after withdrawal not to exceed 5 business days. Distributions under this subsection (5)(e) must be calculated in each case net of all then-applicable fees and expenses of the investment pool. The pooling agreement must provide that the pool manager shall distribute to a participant, at the discretion of the pool manager:

(i) in cash, the then fair market value of the participant's pro rata share of each underlying asset of the investment pool;

(ii) in kind, a pro rata share of each underlying asset; or

HeinOnline -- 1999 vol. I 1003 1999

(iii) in a combination of cash and in-kind distributions, a pro rata share in each underlying asset; and

(f) the pool manager shall make the records of the investment pool available for inspection by the commissioner.

Section 29. Equity interests. (1) Subject to the limitations of [section 26], an insurer may acquire equity interests in business entities organized under the laws of any domestic jurisdiction.

(2) An insurer may not acquire an investment under this section if, as a result of and after giving effect to the investment, the aggregate amount of investments then held by the insurer under this section would exceed the greater of 25% of its admitted assets or 100% of its surplus as regards policyholders.

(3) An insurer may not acquire under this section any investments that the insurer may acquire under [section 31].

(4) An insurer may not short sell equity investments unless the insurer covers the short sale by owning the equity investment or an unrestricted right to the equity instrument exercisable within 6 months of the short sale.

Section 30. Tangible personal property under lease. (1) (a) Subject to the limitations of [section 26], an insurer may acquire tangible personal property or equity interests in tangible personal property located or used wholly or in part within a domestic jurisdiction, either directly or indirectly through limited partnership interests and general partnership interests not otherwise prohibited by [section 4(4)], joint ventures, stock of an investment subsidiary, membership interests in a limited liability company, trust certificates, or other similar instruments.

(b) Investments acquired under subsection (1)(a) are eligible only if:

(i) the property is subject to a lease or other agreement with a person whose rated credit instruments in the amount of the purchase price of the personal property the insurer could then acquire under [section 27]; and

(ii) the lease or other agreement provides the insurer the right to receive rental, purchase, or other fixed payments for the use or purchase of the property and the aggregate value of the payments, together with the estimated residual value of the property at the end of its useful life and the estimated tax benefits to the insurer resulting from ownership of the property, are adequate to return the cost of the insurer's investment in the property, plus a return considered adequate by the insurer.

(2) The insurer shall compute the amount of each investment under this section on the basis of the out-of-pocket purchase price and applicable related expenses paid by the insurer for the investment, net of each borrowing made to finance the purchase price and expenses, to the extent the borrowing is without recourse to the insurer.

(3) An insurer may not acquire an investment under this section if, as a result of and after giving effect to the investment, the aggregate amount of all investments then held by the insurer under this section would exceed:

(a) 2% of its admitted assets; or

(b) 0.5% of its admitted assets as to any single item of tangible personal property.

HeinOnline -- 1999 vol. I 1004 1999

(4) For purposes of determining compliance with the limitations of [section 26], investments acquired by an insurer under this section must be aggregated with those acquired under [section 27] and each lessee of the property under a lease referred to in this section is considered the issuer of an obligation in the amount of the investment of the insurer in the property determined as provided in subsection (2).

(5) This section is not applicable to tangible personal property lease arrangements between an insurer and its subsidiaries and affiliates under a cost-sharing arrangement or agreement permitted under Title 33, chapter 2, part 11.

Section 31. Mortgage loans — income producing real estate — real estate for accommodation of business — quantitative limitations. (1) (a) Subject to the limitations of [section 26], an insurer may acquire obligations secured by mortgages on real estate situated within a domestic jurisdiction, either directly or indirectly through limited partnership interests and general partnership interests not otherwise prohibited by [section 4(4)], joint ventures, stock of an investment subsidiary, membership interests in a limited liability company, trust certificates, or other similar instruments. However, a mortgage loan that is secured by other than a first lien may not be acquired unless the insurer is the holder of the first lien. The obligations held by the insurer and any obligations with an equal lien priority may not, at the time of acquisition of the obligation, exceed:

(i) 90% of the fair market value of the real estate if the mortgage loan is secured by a purchase money mortgage or similar security received by the insurer upon disposition of the real estate;

(ii) 80% of the fair market value of the real estate if the mortgage loan requires immediate scheduled payment in periodic installments of principal and interest, has an amortization period of 30 years or less, and bas periodic payments made no less frequently than annually. Each periodic payment must he sufficient to ensure that at all times the outstanding principal halance of the mortgage loan is not greater than the outstanding principal balance that would be outstanding under a mortgage loan with the same original principal balance, with the same interest rate, and requiring equal payments of principal and interest with the same frequency over the same amortization period. Mortgage loans permitted under this subsection (1)(b) are permitted notwithstanding the fact that they provide for a payment of the principal balance prior to the end of the period of amortization of the loan. For residential mortgage loans, the 80% limitation may be increased to 97% if acceptable private mortgage insurance has been obtained.

(iii) 75% of the fair market value of the real estate for mortgage loans that do not meet the requirements of suhsections (1)(a)(i) or (1)(a)(ii).

(b) For purposes of subsection (1)(a), the amount of an ohligation required to be included in the calculation of the loan-to-value ratio may be reduced to the extent the obligation is insured by the federal housing administration, guaranteed by the administrator of veterans affairs, or insured or guaranteed by their successors.

(c) A mortgage loan that is held by an insurer under [section 3(6)] or acquired under this section and that is restructured in a manner that meets the requirements of a restructured mortgage loan in accordance with the NAIC

HeinOnline -- 1999 vol. I 1005 1999

Accounting Practices and Procedures Manual or a successor publication continues to qualify as a mortgage loan under [sections 1 through 36].

(d) Subject to the limitations of [section 26], credit lease transactions that do not qualify for investment under [section 27] and that have the following characteristics are exempt from the provisions of subsection (1)(a):

(i) the loan amortizes over the initial fixed lease term in at least an amount sufficient so that the loan balance at the end of the lease term does not exceed the original appraised value of the real estate;

(ii) the lease payments cover or exceed the total debt service over the life of the loan;

(iii) a tenant or its affiliated entity with rated credit instruments that have an SVO 1 or 2 designation or a comparable rating from a nationally recognized statistical rating organization recognized by the SVO has a full faith and credit obligation to make the lease payments;

(iv) the insurer holds or is the beneficial holder of a first lien mortgage on the real estate;

(v) the expenses of the real estate are passed through to the tenant, excluding exterior, structural, parking, and heating, ventilation, and air conditioning replacement expenses, unless annual escrow contributions, from cash flows derived from the lease payments, cover the expense shortfall; and

(vi) there is a perfected assignment of the rents due pursuant to the lease to or for the benefit of the insurer.

(2) (a) An insurer may acquire, manage, and dispose of real estate situated in a domestic jurisdiction, either directly or indirectly through limited partnership interests and general partnership interests not otherwise prohibited by [section 4(4)], joint ventures, stock of an investment subsidiary, membership interests in a limited liability company, trust certificates, or other similar instruments. The real estate must be income-producing or intended for improvement or development for investment purposes under an existing program, in which case the real estate must be considered to be income-producing.

(b) The real estate may be subject to mortgages, liens, or other encumbrances, the amount of which must, to the extent that the obligations secured by the mortgages, liens, or encumbrances are without recourse to the insurer, be deducted from the amount of the investment of the insurer in the real estate for purposes of determining compliance with subsections (4)(b) and (4)(c).

(3) (a) An insurer may acquire, manage, and dispose of real estate for the convenient accommodation of the insurer's or the insurer's affiliates' business operations, including home office, branch office, and field office operations.

(b) Real estate acquired under this subsection (3) may include excess space for rent to others if the excess space, valued at its fair market value, would otherwise be a permitted investment under subsection (2) and is so qualified by the insurer.

(c) The real estato acquired under this subsection (3) may he subject to one or more mortgages, liens, or other encumbrances, the amount of which must, to the extent that the obligations secured by the mortgages, liens, or encumbrances are without recourse to the insurer, be deducted from the amount of the

investment of the insurer in the real estate for purposes of determining compliance with subsection (4)(d).

(d) For purposes of this subsection (3), business operations may not include that portion of real estate used for the direct provision of health care services by an insurer whose insurance premiums and required statutory reserves for accident and health insurance constitute at least 95% of total premium considerations or total statutory required reserves, respectively. An insurer may acquire real estate used for these purposes under subsection (2).

(4) (a) An insurer may not acquire an investment under subsection (1) if, as a result of and after giving effect to the investment, the aggregate amount of all investments then held by the insurer under subsection (1) would exceed:

(i) 1% of its admitted assets in mortgage loans covering any one secured location;

(ii) 0.25% of its admitted assets in construction loans covering any one secured location; or

(iii) 1% of its admitted assets in construction loans in the aggregate.

(b) An insurer may not acquire an investment under subsection (2) if, as a result of and after giving effect to the investment and any outstanding guarantees made by the insurer in connection with the investment, the aggregate amount of investments then held by the insurer under subsection (2) plus the guarantees then outstanding would exceed:

(i) 1% of its admitted assets in any one parcel or group of contiguous parcels of real estate, except that this limitation does not apply to that portion of real estate used for the direct provision of health care services by an insurer whose insurance premiums and required statutory reserves for accident and health insurance constitute at least 95% of total premium considerations or total statutory required reserves, respectively, such as hospitals, medical clinics, medical professional buildings, or other health facilities used for the purpose of providing health services; or

(ii) the lesser of 10% of its admitted assets or 40% of its surplus as regards policyholders in the aggregate, except for an insurer whose insurance premiums and required statutory reserves for accident and health insurance constitute at least 95% of total premium considerations or total statutory required reserves, respectively. This limitation must be increased to 15% of its admitted assets in the aggregate.

(c) An insurer may not acquire an investment under subsection (1) or (2) if, as a result of and after giving effect to the investment and any outstanding guarantees it has made in connection with the investment, the aggregate amount of all investments then held by the insurer under subsection (1) or (2) plus the guarantees then outstanding would exceed 25% of its admitted assets.

(d) The limitations of [section 26] do not apply to an insurer's acquisition of real estate under subsection (3). An insurer may not acquire real estate under subsection (3) if, as a result of and after giving effect to the acquisition, the aggregate amount of all real estate then held by the insurer under subsection (3) would exceed 10% of its admitted assets. With the permission of the commissioner, additional amounts of real estate may be acquired under subsection (3).

HeinOnline -- 1999 vol. I 1007 1999

Section 32. Securities lending, repurchase, reverse repurchase, and dollar roll transactions. (1) An insurer may enter into securities lending, repurchase, reverse repurchase, and dollar roll transactions with business entities, subject to the following requirements:

(a) The insurer's board of directors shall adopt a written plan that is consistent with the requirements of the written plan provided for in [section 4(1)] that specifies guidelines and objectives to be followed, such as:

(i) a description of how cash received will be invested or used for general corporate purposes of the insurer;

(ii) operational procedures to manage interest rate risk, counterparty default risk, the conditions under which proceeds from reverse repurchase transactions may be used in the ordinary course of business, and the use of acceptable collateral in a manner that reflects the liquidity needs of the transaction; and

(iii) the extent to which the insurer may engage in these transactions.

(b) The insurer shall enter into a written agreement for all transactions authorized in this section other than dollar roll transactions. The written agreement must require that each transaction terminate no more than 1 year from its inception or upon the earlier demand of the insurer. The agreement must be with the business entity counterparty, but for securities lending transactions, the agreement may be with an agent acting on behalf of the insurer if the agent is a qualified business entity and if the agreement:

(i) requires the agent to enter into separate agreements with each counterparty that are consistent with the requirements of this section; and

(ii) prohibits securities lending transactions under the agreement with the agent or its affiliates.

(c) Cash received in a transaction under this section must be invested in accordance with [sections 1 through 36] and in a manner that recognizes the liquidity needs of the transaction or must be used hy the insurer for its general corporate purposes. For as long as the transaction remains outstanding, the insurer or its agent or custodian shall maintain, as to acceptable collateral received in a transactien under this section, either physically or through the book entry systems of the federal reserve, depository trust company, participants trust company, or other securities depositories approved by the commissioner:

(i) possession of the acceptable collateral;

(ii) a perfected security interest in the acceptable collateral; or

(iii) in the case of a jurisdiction outside of the United States, title to or rights of a secured creditor to the acceptable collateral.

(d) The limitations of [sections 26 and 33] do not apply to the business entity counterparty exposure created hy transactions under this section. For purposes of calculations made to determine compliance with this subsection (1), no effect will be given to the insurer's future obligation to resell securities, in the case of a repurchase transaction, or to repurchase securities, in the case of a reverse repurchase transaction. An insurer may not enter into a transaction under this section if, as a result of and after giving effect to the transaction:

(i) the aggregate amount of securities then loaned, sold to, or purchased from any one business entity counterparty under this section would exceed 5% of the insurer's admitted assets. In calculating the amount sold to or purchased from

HeinOnline -- 1999 vol. I 1008 1999

a business entity counterparty under repurchase or reverse repurchase transactions, effect may be given to netting provisions under a master written agreement.

(ii) the aggregate amount of all securities then loaned, sold to, or purchased from all business entities under this section would exceed 40% of its admitted assets. However, the limitation of this subsection (1)(d) does not apply to reverse repurchase transactions as long as the borrowing is used to meet operational liquidity requirements resulting from an officially declared catastrophe and is subject to a plan approved by the commissioner.

(e) In a securities lending transaction, the insurer shall receive acceptable collateral having a market value as of the transaction date at least equal to 102% of the market value of the securities loaned by the insurer in the transaction as of that date. If at any time the market value of the acceptable collateral is less than the market value of the loaned securities, the business entity counterparty must be obligated to deliver additional acceptable collateral, the market value of which, together with the market value of all acceptable collateral then held in connection with the transaction, equals at least 102% of the market value of the loaned securities.

(f) In a reverse repurchase transaction, other than a dollar roll transaction, the insurer shall receive acceptable collateral having a market value as of the transaction date at least equal to 95% of the market value of the securities transferred by the insurer in the transaction as of that date. If at any time the market value of the acceptable collateral is less than 95% of the market value of the securities transferred, the business entity counterparty is obligated to deliver additional acceptable collateral, the market value of which, together with the market value of all acceptable collateral then held in connection with the transaction, equals at least 95% of the market value of the transferred securities.

(g) In a dollar roll transaction, the insurer must receive cash in an amount at least equal to the market value of the securities transferred by the insurer in the transaction as of the transaction date.

(h) In a repurchase transaction, the insurer must receive as acceptable collateral transferred securities having a market value at least equal to 102% of the purchase price paid by the insurer for the securities. If at any time the market value of the acceptable collateral is less than 100% of the purchase price paid by the insurer, the business entity counterparty must be obligated to provide additional acceptable collateral, the market value of which, together with the market value of all acceptable collateral then held in connection with the transaction, equals at least 102% of the purchase price. Securities acquired by an insurer in a repurchase transaction may not be sold in a reverse repurchase transaction, loaned in a securities lending transaction, or otherwise pledged.

(2) To constitute acceptable collateral for the purposes of this section, a letter of credit must have an expiration date beyond the term of the subject transaction.

Seetion 33. Foreign investments and foreign curreney exposure. (1) Subject to the limitations of [section 26], an insurer may acquire foreign investments or engaga in investment practices with persons of or in foreign jurisdictions if the investments or investment practices are of substantially the same types as those that an insurer is permitted to acquire under [sections 1 through 36], other than of the type permitted under [section 28] and if as a result

HeinOnline -- 1999 vol. I 1009 1999

of and after giving effect to the investment the aggregate amount of foreign investments then held by the insurer under this subsection (1):

(a) does not exceed 20% of its admitted assets; and

(b) in a single foreign jurisdiction does not exceed 10% of its admitted assets as to a foreign jurisdiction that has a sovereign debt rating of SVO 1 or 5% of its admitted assets as to any other foreign jurisdiction.

(2) (a) Subject to the limitations of [section 26], an insurer may acquire investments or engage in investment practices denominated in foreign currencies, whether or not they are foreign investments acquired under subsection (1), or additional foreign currency exposure as a result of the termination or expiration of a hedging transaction with respect to investments denominated in a foreign currency if:

(i) the aggregate amount of investments then held by the insurer under this subsection (2) denominated in foreign currencies does not exceed 15% of its admitted assets; and

(ii) the aggregate amount of investments then held by the insurer under this subsection (2) denominated in the foreign currency of a single foreign jurisdiction does not exceed 10% of its admitted assets as to a foreign jurisdiction that has a sovereign debt rating of SVO 1 or 5% of its admitted assets as to any other foreign jurisdiction.

(b) However, an investment may not be considered denominated in a foreign currency if the acquiring insurer enters into one or more contracts in transactions permitted under [section 34] and the business entity counterparty agrees under the contract or contracts to exchange all payments made on the foreign currency denominated investment for United States currency at a rate that effectively insulates the investment cash flows against future changes in currency exchange rates during the period the contract or contracts are in effect.

(3) (a) Subject to [section 26] and subsection (3)(b) of this section and in addition to investments permitted under subsections (1) and (2), an insurer that is authorized to do business in a foreign jurisdiction and that has outstanding insurance, annuity, or reinsurance contracts on lives or risks resident or located in that foreign jurisdiction and denominated in foreign currency of that jurisdiction may acquire foreign investments respecting that foreign jurisdiction and may acquire investments denominated in the currency of that jurisdiction.

(b) However, investments made under this subsection (3) in obligations of foreign governments, their political subdivisions, and government-sponsored enterprises are not subject to the limitations of [section 26] if those investments carry an SVO rating of 1 or 2. The aggregate amount of investments acquired by the insurer under this subsection (3) may not exceed the greater of:

(i) the amount the insurer is required by law to invest in the foreign jurisdiction; or

(ii) 125% of the amount of its reserves, net of reinsurance, and other obligations under the contracts.

(4) (a) In addition to investments permitted under subsections (1) and (2) and except as provided in subsection (4)(b), an insurer that is not authorized to do business in a foreign jurisdiction and that has outstanding insurance, annuity, or reinsurance contracts on lives or risks resident or located in a foreign jurisdiction and denominated in foreign currency of that jurisdiction may acquire

HeinOnline -- 1999 vol. I 1010 1999

foreign investments respecting that foreign jurisdiction and may acquire investments denominated in the currency of that jurisdiction subject to the limitations set forth in [section 26].

(b) However, investments made under this subsection (4) in obligations of foreign governments, their political subdivisions, and government-sponsored enterprises are not subject to the limitations of [section 26] if those investments carry an SVO rating of 1 or 2. The aggregate amount of investments acquired by the insurer under this subsection (4) may not exceed 105% of the amount of its reserves, net of reinsurance, and other obligations under the contracts on risks resident or located in the foreign jurisdiction.

(5) Investments acquired under this section must be aggregated with investments of the same types made under [sections 1 through 36] and, in a similar manner, for purposes of determining compliance with the limitations, if any, contained in [sections 1 through 36]. Investments in obligations of foreign governments, their political subdivisions, and government-sponsored enterprises, except for those exempted under subsections (3) and (4), are subject to the limitations of [section 26].

Section 34. Derivative transactions. An insurer may, directly or indirectly through an investment subsidiary, engage in derivative transactions under this section under the following conditions:

(1) (a) An insurer may use derivative instruments under tbis section to engage in hedging transactions and certain income generation transactions as provided in rules adopted by the commissioner.

(b) An insurer must be able to demonstrate to the commissioner the intended hedging characteristics and the ongoing effectiveness of the derivative transaction or combination of transactions through cash flow testing or other appropriate analyses.

(2) An insurer may enter into hedging transactions under this section if, as a result of and after giving effect to the transaction:

(a) the aggregate statement value of options, caps, floors, and warrants not attached to another financial instrument purchased and used in hedging transactions does not exceed 5% of its admitted assets;

(b) the aggregate statement value of options, caps, and floors written in hedging transactions does not exceed 3% of its admitted assets; and

(c) the aggregate potential exposure of collars, swaps, forwards, and futures used in hedging transactions does not exceed 6.5% of its admitted assets.

(3) An insurer may enter into the following types of income-generation transactions only if, as a result of and after giving effect to the transactions, the aggregate statement value of the fixed-income assets that are subject to call, plus the face value of fixed-income securities underlying a derivative instrument subject to call, plus the amount of the purchase obligations under the put options does not exceed 10% of its admitted assets:

(a) sales of covered call options on noncallable, fixed-income securities, callable fixed-income securities if the option expires by its terms prior to the end of the noncallable period, or derivative instruments basod on fixed-income securities;

HeinOnline -- 1999 vol. I 1011 1999

(b) sales of covered call options on equity securities if the insurer holds in its portfolio or can immediately acquire, through the exercise of options, warrants, or conversion rights already owned, the equity securities subject to call during the complete term of the call option sold; or

(c) sales of covered put options on investments that the insurer is permitted to acquire under [sections 1 through 36] if the insurer has placed in escrow or entered into a custodian agreement segregating cash or cash equivalents with a market value equal to the amount of its purchase obligations under the put option during the complete term of the put option sold.

(4) An insurer shall include all counterparty exposure amounts in determining compliance with the limitations of [section 26].

(5) Pursuant to rules adopted under [section 11], the commissioner may approve additional transactions involving the use of derivative instruments in excess of the limits of subsection (2) or for other risk management purposes under rules adopted by the commissioner, but replication transactions may not be permitted for other than risk management purposes.

Section 35. Additional investment authority. (1) Under this section, an insurer may acquire investments, may engage in investment practices of any kind that are not specifically prohibited hy [sections 1 through 36], or may engage in investment practices without regard to any limitation in [sections 26 through 33]. However, an insurer may not acquire an investment or engage in an investment practice under this section if, as a result of and after giving effect to the transaction, the aggregate amount of the investments then held by the insurer under this section would exceed the greater of:

(a) its unrestricted surplus; or

(b) the lesser of:

(i) 10% of its admitted assets; or

(ii) 50% of its surplus as regards policyholders.

(2) An insurer may not acquire an investment or engage in an investment practice under subsection (1) if, as a result of and after giving effect to the transaction, the aggregate amount of all investments in any one person then held by the insurer under subsection (1) would exceed 5% of its admitted assets.

Section 36. Reserve requirements — authority of commissioner. (1) Subject to all other limitations and requirements of this title, a property and casualty, financial guaranty, mortgage guaranty, surety, marine, title, or accident and health insurer shall maintain an amount at least equal to 100% of adjusted loss reserves and loss adjustment expense reserves, 100% of adjusted unearned premium reserves, and 100% of statutorily required policy and contract reserves in:

(a) cash and cash equivalents;

(b) high-grade investments and medium-grade investments that qualify under [section 27 or 28];

(c) equity interests that qualify under [section 29] and that are traded on a qualified exchange;

(d) investments of the type set forth in [section 33] if the investments are rated in the highest generic rating category by a nationally recognized statistical

rating organization recognized by the SVO for rating foreign jurisdictions and if any foreign currency exposure is effectively hedged through the maturity date of the investments;

(e) qualifying investments of the type set forth in subsection (1)(b), (1)(c), or (1)(d) that are acquired under [section 35];

(f) interest and dividends receivable on qualifying investments of the type set forth in subsections (1)(a) through (1)(e); or

(g) reinsurance recoverable on paid losses.

(2) (a) For purposes of determining the amount of assets to be maintained under this subsection (2), the calculation of adjusted loss reserves and loss adjustment expense reserves, adjusted unearned premium reserves, and statutorily required policy and contract reserves must be based on the amounts reported as of the most recent annual or quarterly statement date.

(b) Adjusted loss reserves and loss adjustment expense reserves must he equal to the sum of the amounts derived from the following calculations:

(i) the result of each amount reported by the insurer as losses and loss adjustment expenses unpaid for each accident year for each individual line of business; multiplied hy

(ii) the discount factor that is applicable to the line of business and accident year published by the internal revenue service under Internal Revenue Code section 846 (26 U.S.C. 846), as amended, for tho calendar year that corresponds to the most recent annual statement of the insurer; minus

(iii) accrued retrospective premiums discounted by an average discount factor. The discount factor must be calculated by dividing the losses and loss adjustment expenses unpaid after discounting (the product of subsections (2)(b)(i) and (2)(b)(ii)) by loss and loss adjustment expense reserves before discounting subsection (2)(b)(i).

(c) For purposes of the calculations in subsections (2)(b)(i) through (2)(b)(iii), the losses and loss adjustment expenses unpaid must be determined net of anticipated salvage and subrogation and gross of any discount for the time value of money or tabular discount.

(d) Adjusted unearned premium reserves must be equal to the result of the following calculation:

(i) the amount reported by the insurer as unearned premium reserves; minus

(ii) the admitted asset amounts reported by the insurer as:

(A) premiums in and agents' balances in the course of collection, accident and health premiums due and unpaid, and uncollected premiums for accident and health premiums;

(B) premiums, agents' balances, and installments booked but deferred and not yet due; and

(C) bills receivable, taken for premium.

(3) A property and casualty, financial guaranty, mortgage guaranty, surety, marine, title, or accident and health insurer shall supplement its annual statement witb a reconciliation and summary of its assets and reserve requirements as required in (1). A reconciliation and summary showing that an

HeinOnline -- 1999 vol. I 1013 1999

insurer's assets as required in subsection (1) are greater than or equal to its undiscounted reserves referred to in subsection (1) must be sufficient to satisfy this requirement. Upon prior notification, the commissioner may require an insurer to submit a reconciliation and summary with any quarterly statement filed during the calendar year.

(4) If a property and casualty, financial guaranty, mortgage guaranty, surety, marine, title, or accident and health insurer's assets and reserves do not comply with subsection (1), the insurer shall notify the commissioner immediately of the amount by which the reserve requirements exceed the annual statement value of the qualifying assets, explain why the deficiency exists, and within 30 days of the date of the notice, propose a plan of action to remedy the deficiency.

(5) (a) If the commissioner determines that an insurer is not in compliance with subsection (1), the commissioner shall require the insurer to eliminate the condition causing the noncompliance within a specified time from the date the notice of the commissioner's requirement is mailed or delivered to the insurer.

(b) If an insurer fails to comply with the commissioner's requirement under subsection (5)(a), the insurer is considered to be in hazardous financial condition and the commissioner shall take one or more of the actions authorized by law with respect te insurers in hazardous financial condition.

Section 37. Section 33-2-202, MCA, is amended to read:

"33-2-202. Required deposit of assets. (1) An alien insurer may use Montana as a state of entry to transact insurance in the United States by making and maintaining in this state a deposit of assets in trust with a solvent bank or trust company approved by the commissioner.

(2) The deposit, together with other trust deposits of the insurer held in the United States for the same purpose, ~~shall~~ *must* be in amount not less than the deposits required of an alien insurer under 33-2-111(1) and ~~shall~~ *must* consist of cash ~~and/or~~ *and* securities of the same character and diversification as those eligible for the investment of the funds of domestic insurers under ~~part 8 of this chapter~~ *[sections 1 through 36]*.

(3) ~~Such a~~ *A* deposit *under this section* may he referred to as "trusteed assets"."

Section 38. Section 33-2-213, MCA, is amended to read:

"33-2-213. Withdrawal of assets. (1) ~~The~~ *A* trust agreement ~~shall~~ *under this part must* provide, in substance, that ~~no~~ withdrawals of trusteed assets ~~shall~~ *may not* be made by the insurer or permitted by the trustee without the written authorization or approval of the commissioner in advance ~~thereof~~ *of the withdrawal*, except as follows:

(a) any or all income, earnings, dividends, or interest accumulations of the trusteed assets may be paid over to the United States manager of the insurer upon request of the insurer or the manager;

(b) for substitution, coincidentally with ~~such~~ *a* withdrawal, of other securities or assets of value at least equal in amount to those being withdrawn if ~~such~~ *the* substituted securities or assets are ~~likewise such as are~~ eligible for investment of the funds of domestic insurers under ~~part 8 of this chapter~~ *[sections 1 through 36]*, if ~~such~~ *the* withdrawal is requested in writing by the insurer's United States manager pursuant to general or specific written authority previously given or

HeinOnline -- 1999 vol. I 1014 1999

delegated by the insurer's board of directors or other similar governing body and a copy of ~~such~~ *the* authority has been filed with the trustee;

(c) for the purpose of making deposits required by law in any state in which the insurer is or ~~thereafter~~ becomes an authorized insurer, for the protection of the insurer's policyholders or policyholders and creditors in such state or in the United States, if ~~such~~ *a* withdrawal does not reduce the insurer's deposit in this state to an amount less than the minimum deposit required under 33-2-111(1)(c)(i) and ~~(ii)~~*(1)(c)(ii)*. The trustee shall transfer any assets ~~so~~ withdrawn and in the amount ~~so~~ required to be deposited in the other state direct to the depositary required to receive ~~such~~ *the* deposit in ~~such~~ *the* other state, as certified in writing by the public official having supervision of insurance in the other state.

(d) for the purpose of transferring the trusteed assets to an official liquidator, conservator, or rehabilitator pursuant to the order of a court of competent jurisdiction.

(2) The commissioner shall ~~so~~ authorize or approve withdrawal of only ~~such~~ *the* assets ~~as~~ *that* are in excess of the amount of assets required to be ~~so~~ held in trust under 33-2-202 or as may otherwise be consistent with tbe provisions of this part.

(3) If at any time the insurer becomes insolvent or if its assets held in the United States are less in amount than as required under 33-2-111(1)(c), ~~upon determination thereof~~ the commissioner shall in writing order the trustee to suspend the right of the insurer or any other person to withdraw assets as authorized under ~~(a), (b), and (c) of subsection (1) above~~ *subsections (1)(a), (1)(b), and (1)(c)*, and the trustee shall comply with ~~such~~ *the* order and until the further order of the commissioner."

Section 39. Section 33-2-502, MCA, is amended to read:

"33-2-502. Assets expressly not allowed. In addition to assets impliedly excluded by the provisions of 33-2-501, the following expressly ~~shall~~ *may* not be allowed as assets in any determination of the financial condition of an insurer:

(1) goodwill, trade names, and other like intangible assets;

(2) advances to officers (other than policy loans), whether secured or not, and advances to employees, insurance producers, and other persons on personal security only;

(3) stock of ~~such~~ *the* insurer, owned by it, or any equity ~~therein~~ *in the stock* or loans secured ~~thereby~~ *by the stock* or any proportionate interest in ~~such~~ *the* stock acquired or held through the ownership by ~~such~~ *the* insurer of an interest in another firm, corporation, or business unit;

(4) furniture, fixtures (other than electronic data processing machines authorized under 33-2-501(11)), furnishings, safes, vehicles, libraries, stationery, literature, and supplies, except:

(a) in the case of title insurers, ~~such~~ materials and plants ~~as~~ *that* the insurer is expressly authorized to invest in under ~~33-2-851~~ *33-25-211*; and

(b) in the case of any insurer, ~~such~~ personal proporty ~~as~~ *that* the insurer is permitted to hold pursuant to ~~part 8 of this chapter~~ *[sections 1 through 36]* or ~~which~~ *that* is acquired through foreclosure of chattel mortgages acquired pursuant to ~~33-2-851~~ *[section 19 or 31]* or ~~which~~ *that* is reasonably necessary for

HeinOnline -- 1999 vol. I 1015 1999

the maintenance and operation of real estate lawfully acquired and held by the insurer other than real estate used by it for home office, branch office, and similar purposes;

(5) the amount, if any, by which the aggregate book value of investments as carried in the ledger assets of the insurer exceeds the aggregate value ~~thereof~~ *of the investments* as determined under this ~~code~~ *title*."

Section 40. Section 33-2-531, MCA, is amended to read:

"**33-2-531. Deposit of reserves — domestic life insurers.** (1) Domestic life insurers shall deposit and maintain on deposit, in securities and assets, with depositaries and subject to conditions as provided for in part 6 of this chapter, an amount not less than the reserves on its outstanding life insurance policies and annuity contracts, as valued under 33-2-521 through 33-2-526, minus policy loans.

(2) Annually on or before April 1, the insurer shall deposit any additional securities or assets required under subsection (1) and related to the increase of the reserves, minus policy loans, during the *preceding* calendar year ~~next preceding~~, as determined from the insurer's annual statement as at December 31 of the preceding year.

(3) A domestic stock life insurer may credit toward the deposit the amount of any other deposit of the insurer held under part 6 of this chapter for the protection of its policyholders or of its policyholders and creditors.

(4) Deposits of the reserves of a domestic life insurer under this section must consist of securities and assets acquired and valued in accordance with ~~parts~~ *part* 5 ~~and 8~~ of this chapter *and [sections 1 through 36]*.

(5) Real estate mortgage loans and chattel mortgage loans may be made a part of the deposit by filing a verified statement of the loans with the commissioner. The statement is subject to audit at all times by the commissioner. Nonnegotiable securities deposited with the commissioner must be accompanied by transfer powers in due form. If the insurer uses real estate acquired under ~~33-2-832~~ *[section 19]* as a deposit, then a deed of trust, mortgege, or other instrument sufficient to convey a security interest in the real estato, in a form acceptable to the commissioner, must be completed in due form and recorded prior to being deposited with the commissioner.

(6) If default occurs in the payment of interest or principal of any deposited security and the default continues for a period of 120 days, the commissioner may declare the security no longer eligible for depesit under this section."

Section 41. Section 33-2-534, MCA, is amended to read:

"**33-2-534. Valuation of property.** (1) Real property acquired pursuant to a mortgago loan or contract for sale ~~shall~~ *may* not be valued at an amount greater than the unpaid principal of the defaulted loan or contract at the date of ~~such~~ acquisition, together with any taxes and expenses paid or incurred in connection with ~~such~~ *the* acquisition, the cost of improvements ~~thereafter~~ made by the insurer *after acquisition*, and any amounts ~~thereafter~~ paid by the insurer *after acquisition* on assessments levied for improvements in connection with the property. After the initial valuation as set forth ~~herein~~ *in this section*, any land ~~shall~~ *must* be valued at its acquisition cost and any improvements ~~thereon shall~~ *on the land must* be valued at depreciated acquisition cost.

HeinOnline -- 1999 vol. I 1016 1999

(2) Other real property held hy an insurer ~~shall~~ *may* not be valued at an amount in excess of acquisition cost, if land, and depreciated acquisition cost, if an improvement to land.

(3) Personal property acquired pursuant to chattel mortgages ~~made in accordance with 33-2-831 shall~~ *may* not be valued at an amount greater than the unpaid balance of principal on the defaulted loan at the date of acquisition, together with taxes and expenses incurred in connection with ~~such~~ *the* acquisition, or tbe fair value of ~~such~~ *the* property, whichever amount is the lesser."

Section 42. Section 33-2-603, MCA, is amended to read:

"33-2-603. Securities eligible for deposit. (1) All ~~such~~ deposits required under 33-2-111 for authority to transact insurance in this state ~~shall~~ *must* consist of certificates of deposit or ~~any combination of~~ *the following* securities: ~~of the kinds described in the following sections of this code: 33-2-811(1), 33-2-812, and 33-2-813~~

(a) United States or Canadian government bonds, notes, warrants, or other evidences of indebtedness that are direct obligations of the United States or of Canada or for which the full faith and credit of the United States or of Canada is pledged for the payment of principal and interest;

(b) state, county, municipal, and school bonds or other evidences of indebtedness that are gencral obligations of or are secured by a pledge of specific revenue of a state or of a province of Canada or of any of the counties, incorporated cities or towns, school districts, or other taxing districts in a state or province; and

(c) revenue bonds, notes, or other evidences of indebtedness of any state or province, political subdivision of a state or province or agency or instrumentality of a state or province that are payable from revenue or earnings specifically pledged for the payment of the principal and interest on the obligations and for the payment of which a lawful sinking fund or reserve fund has been established and is being maintained.

(2) All other deposits of a domestic insurer held in this state pursuant to the laws of another state, province, or country ~~shall~~ *must* be comprised of assets of the kinds described in subsection (1) ~~above~~ and of ~~such~~ additional kind or kinds of securities required or permitted by the laws of ~~such~~ *the* state, province, or country except common stocks, mortgages of any kind, and real estate.

(3) Deposits of the reserves of a domestic life insurer ~~shall~~ *must* consist of securities and assets as provided under 33-2-531.

(4) Deposits of foreign insurers made in this state under the retaliatory law, 33-2-709, ~~shall~~ *must* consist of ~~such~~ assets ~~as~~ *that* are required by the commissioner pursuant to ~~such law~~ *33-2-709*."

Section 43. Section 33-2-1217, MCA, is amended to read:

"33-2-1217. Reduction of liability for reinsurance ceded by domestic insurer to assuming insurer — definition. A reduction from liability for the reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of 33-2-1216 must be allowed in an amount not exceeding the liabilities carried by the ceding insurer. The reduction must be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer:

HeinOnline -- 1999 vol. I 1017 1999

(1) under a reinsurance contract with the assuming insurer as security for the payment of obligations under the contract if the security is held in the United States subject to withdrawal solely by and under the exclusive control of the ceding insurer; or

(2) in the case of a trust, in a qualified United States financial institution. This security may be in the form of:

(a) cash;

(b) securities listed by the securities valuation office of the NAIC and qualifying as admitted assets;

(c) clean, irrevocable, unconditional letters of credit that are issued or confirmed by a qualified United States financial institution no later than December 31 of the year for which filing is being made and that are in the possession of the ceding company on or before the filing date of its annual statement. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance or confirmation must, notwithstanding the issuing or confirming institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification, or amendment, whichever occurs first.

(d) any other form of security acceptable to the commissioner.

(3) For the purposes of subsection (2)(c), a "qualified United States financial institution" means an institution that:

(a) is organized or, in the case of a United States office of a foreign banking organization, licensed under the laws of the United States or any of its states;

(b) is regulated, supervised, and examined by United States federal or state authorities with regulatory authority over banks and trust companies; and

(c) has been determined by either the commissioner or the securities valuation office of the national association of insurance commissioners to meet the standards of financial condition and standing that are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the commissioner.

(4) For the purposes of this part, except for subsection (2)(c), "qualified United States financial institution" means, with respect to institutions eligible to act as a fiduciary of a trust, an institution that:

(a) is organized or, in the case of a United States branch or agency office of a foreign banking corporation, licensed under the laws of the United States or any of its states and that has been granted authority to operate with fiduciary powers; and

(b) is regulated, supervised, and examined by federal or state authorities having regulatory authority over banks and trust companies.

(5) The commissioner may adopt rules implementing the provisions of 33-2-307, 33-2-708, and ~~33-2-806~~ *[sections 1 through 36]*."

Section 44. Section 33-3-432, MCA, is amended to read:

"33-3-432. Impairment of capital or assets. (1) If a stock insurer's capital, as represented by the aggregate par value of its outstanding capital stock, becomes impaired or the assets of a mutual insurer are less than its liabilities

HeinOnline -- 1999 vol. I 1018 1999

and the minimum amount of surplus required to be maintained by it under 33-3-204 for authority to transact the kinds of insurance being transacted, the commissioner shall at once determine the amount of deficiency and serve notice upon the insurer to make good the deficiency within 60 days after service of such notice.

(2) The deficiency may be made good in cash or in assets eligible under ~~chapter 2, part 8,~~ *[sections 1 through 36]* for the investment of the insurer's funds~~;~~ *as follows:*

(a) if a stock insurer, by reduction of the insurer's capital to an amount not below the minimum required for the kinds of insurance ~~thereafter~~ to be transacted; or

(b) if a mutual insurer, by amendment of its certificate of authority to cover only ~~such~~ *the* kind or kinds of insurance ~~thereafter~~ for which the insurer has sufficient surplus under this ~~code~~ *title*.

(3) If the deficiency is not made good and proof ~~thereof~~ *is* filed with the commissioner within ~~such~~ *the* 60-day period, the insurer ~~shall be deemed~~ *is* insolvent and the commissioner shall institute delinquency proceedings against it under chapter 2, part 13; except that if ~~such~~ *the* deficiency exists because of increased loss reserves required by the commissioner or because of disallowance by the commissioner of certain assets or reduction of the value at which carried in the insurer's accounts, the commissioner may, ~~in his discretion and~~ upon application and good cause shown, extend for not more than an additional 60 days the period within which ~~such~~ *the* deficiency may be ~~so~~ made good and ~~such~~ proof ~~thereof so~~ *of making good is* filed."

Section 45. Section 33-6-101, MCA, is amended to read:

"33-6-101. Scope of chapter — provisions applicable. (1) This chapter applies only to benevolent associations.

(2) ~~No~~ *The* provisions of this ~~code shall~~ *title do not* apply to any ~~such~~ *benevolent* association unless contained or referred to in this chapter.

(3) In addition to the provisions contained in this chapter, other chapters and provisions of this title shall apply to benevolent associations, to the extent applicable, as follows: parts 1, 2, 3, 4, 5, and 7 of chapter 1; 33-1-601 through 33-1-603; 33-2-101; 33-2-107; 33-2-112; 33-2-117 through 33-2-121; 33-2-501; 33-2-502; ~~33-2-804~~ *[section 5]*; chapter 2, part 13; 33-2-1207; 33-3-308; 33-3-401; 33-3-402; 33-3-436; chapter 15; chapter 18; 33-22-304; and 33-22-506."

Section 46. Section 33-20-603, MCA, is amended to read:

"33-20-603. Separate accounts for life insurance or annuities. (1) Subject to the provisions of subsection (2), a life insurer may establish one or more separate accounts and may allocate to those accounts the amounts necessary to provide for life insurance or annuities and benefits incidental to the life insurance or annuities, payable in fixed or variable amounts, or both. The amounts allocated to the accounts may include without limitation proceeds applied under optional modes of settlement or under dividend options.

(2) Separate accounts for life insurance or annuities established under the provisions of subsection (1) are subject to the following:

HeinOnline -- 1999 vol. I 1019 1999

(a) The income, gains, and losses, realized or unrealized, from assets allocated to a separate account must be credited to or charged against the account, without regard to other income, gains, or losses of the insurer.

(b) Except as provided for reserves for guaranteed benefits and funds in subsection (2)(c):

(i) amounts allocated to a separate account and accumulations on the separate account may be invested and reinvested in any class of investment authorized under ~~Title 33, chapter 2, part 8,~~ *[sections 1 through 36]* if limitations under ~~33-2-806~~ *[section 20 or 32]* on investments in stocks are not applicable;

(ii) the investments in the separate account or accounts may not be considered in applying the investment limitations otherwise applicable to the investments of the insurer.

(c) Except with the approval of the commissioner and under conditions relating to investments and other prescribed matters that recognize the guaranteed nature of the benefits provided, reserves for benefits guaranteed as to amount and duration and for funds guaranteed as to principal amount or stated rate of interest may not be maintained in a separate account.

(d) Unless otherwise approved by the commissioner, assets allocated to a separate account must be valued at their market value on the date of valuation or, if there is no readily available market, as provided under the terms of the contract or the rules or other written agreement applicable to that separate account; however, unless otherwise approved by the commissioner, the portion, if any, of the assets of that separate account equal to the insurer's reserve liability with regard to the guaranteed benefits and funds referred to in subsection (2)(c) must be valued in accordance with the laws and rules otherwise applicable to the insurer's assets.

(e) Amounts allocated to a separate account in the exercise of the power granted by this part must be owned by the insurer, and the insurer may not be or hold itself out to be a trustee with respect to those amounts. If and to the extent provided under applicable contracts, that portion of the assets of a separate account equal to the reserves and other contract liabilities with respect to the account are not chargeable with liabilities arising out of any other business the insurer may conduct.

(f) (i) A sale, exchange, or other transfer of assets may not be made by an insurer between any of its separate accounts or between any other investment account and one or more of its separate accounts unless:

(A) in case of a transfer into a separate account, the transfer is made solely to establish the account or to support the operation of the contracts with respect to the separate account to which the transfer is made; or

(B) the transfer, whether into or from a separate account, is made by a transfer of cash or by a transfer of securities having a readily determinable market value and the transfer of securities is approved by the commissioner.

(ii) The commissioner may approve other transfers among these accounts if, in the commissioner's opinion, transfers would not be inequitable.

(g) To the extent an insurer considers it necessary to comply with any applicable federal or state laws, the insurer, with respect to any separate account, including without limitation any separate account that is a management investment company or a unit investment trust account, may provide, for persons

HeinOnline -- 1999 vol. I 1020 1999

having an interest in the account, appropriate voting and other rights and special procedures for the conduct of the business of that account, including without limitation special rights and procedures relating to investment policy, investment advisory services, selection of independent public accountants, and selection of a committee, the members of which need not be otherwise affiliated with the insurer, to manage the business of that account."

Section 47. Section 33-25-211, MCA, is amended to read:

"**33-25-211. Guaranty fund — investments.** *(1)* A title insurer shall establish and maintain the guaranty fund required under 33-2-517 and may invest in necessary plant and equipment and in other investments as authorized under ~~33-2-851~~ *this section.*

(2) In addition to other investments eligible under this part, a title insurer may invest and have invested an amount not exceeding 50% of its paid-in capital stock in its title plant, in equipment, and with the commissioner's consent, in stock of abstract companies and of title insurance producers.

(3) Investments authorized by this section may not be credited against the insurer's required guaranty fund or unearned premium reserve provided for under 33-2-517.

(4) A title plant and equipment may not be allowed as an asset in any determination of the insurer's financial condition at a value greater than actual cost."

Section 48. Section 33-27-115, MCA, is amended to read:

"**33-27-115. Composition of independent liability fund.** The money, assets, and investments contributed to an independent liability fund must meet the criteria established for investments by an insurance company in ~~Title 33, chapter 2, part 8,~~ *[sections 1 through 36]* and must be valued as ~~such~~ *those* assets and investments would be valued."

Section 49. Section 33-31-215, MCA, is amended to read:

"**33-31-215. Investment regulations.** Except for a health maintenance organization operated as a plan by a health service corporation, a domestic health maintenance organization may invest its funds only as prescribed in ~~Title 33, chapter 2, part 8~~ *[sections 1 through 36].*"

Section 50. Repealer. Sections 33-2-801, 33-2-802, 33-2-803, 33-2-804, 33-2-805, 33-2-806, 33-2-811, 33-2-812, 33-2-813, 33-2-814, 33-2-815, 33-2-816, 33-2-817, 33-2-818, 33-2-819, 33-2-820, 33-2-821, 33-2-822, 33-2-823, 33-2-824, 33-2-825, 33-2-826, 33-2-827, 33-2-828, 33-2-829, 33-2-830, 33-2-831, 33-2-832, 33-2-833, 33-2-841, 33-2-842, 33-2-843, 33-2-851, and 33-2-852, MCA, are repealed.

Section 51. Codification instruction. [Sections 1 through 36] are intended to be codified as an integral part of Title 33, and the provisions of Title 33 apply to [sections 1 through 36].

Section 52. Effective date. [This act] is effective July 1, 1999.

Approved April 14, 1999

HeinOnline -- 1999 vol. I 1021 1999

CHAPTER NO. 305

[SB 153]

AN ACT GENERALLY REVISING THE PROVISIONS OF THE UNIFORM COMMERCIAL CODE GOVERNING SECURED TRANSACTIONS; REPLACING ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE WITH THE MOST RECENT VERSION OF ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE; AMENDING SECTIONS 2-6-109, 7-4-2631, 25-10-302, 30-1-105, 30-1-201, 30-1-206, 30-2-103, 30-2-210, 30-2-326, 30-2-502, 30-2-716, 30-2A-103, 30-2A-303, 30-2A-307, 30-2A-309, 30-4-208, 30-7-503, 30-8-113, 30-8-116, 30-8-120, 30-8-331, 30-8-332, 30-8-510, 40-5-242, 40-5-248, 69-8-503, 70-24-430, 71-3-125, 71-3-205, 71-3-206, 71-3-408, 71-3-704, 71-3-713, 71-3-808, AND 71-3-908, MCA; REPEALING SECTIONS 30-9-102, 30-9-103, 30-9-104, 30-9-105, 30-9-106, 30-9-107, 30-9-108, 30-9-109, 30-9-110, 30-9-112, 30-9-113, 30-9-114, 30-9-115, 30-9-116, 30-9-201, 30-9-202, 30-9-203, 30-9-204, 30-9-205, 30-9-206, 30-9-207, 30-9-208, 30-9-301, 30-9-302, 30-9-303, 30-9-304, 30-9-305, 30-9-306, 30-9-307, 30-9-308, 30-9-309, 30-9-310, 30-9-311, 30-9-312, 30-9-313, 30-9-314, 30-9-315, 30-9-316, 30-9-317, 30-9-318, 30-9-401, 30-9-402, 30-9-403, 30-9-404, 30-9-405, 30-9-406, 30-9-407, 30-9-409, 30-9-410, 30-9-411, 30-9-412, 30-9-421, 30-9-423, 30-9-431, 30-9-501, 30-9-502, 30-9-503, 30-9-504, 30-9-505, 30-9-506, 30-9-507, 30-9-508, AND 30-9-511, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions and index of definitions. (1) As used in [sections 1 through 125], the following definitions apply:

(a) "Accession" means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost.

(h) (i) "Account", except as used in "account for", means a right to payment of a monetary obligation, whether or not earned by performance:

(A) for property that has been or is to he sold, leased, licensed, assigned, or otherwise disposed of;

(B) for services rendered or to he rendered;

(C) for a policy of insurance issued or to be issued;

(D) for a secondary obligation incurred or to he incurred;

(E) for energy provided or to be provided;

(F) for the use or hire of a vessel under a charter or other contract;

(G) arising out of the use of a credit or charge card or information contained on or for use with the card; or

(H) as winnings in a lottery or other game of chance oporated or sponsored hy a state, governmental unit of a state, or person licensed or authorized to operate the game by a state or governmental unit of a state.

(ii) The term includes a health-care-insurance receivahle.

(iii) The term does not include:

(A) a right to payment evidenced hy chattel paper or an instrument;

(B) a commercial tort claim;

HeinOnline -- 1999 vol. I 1022 1999

(C) a deposit account;

(D) investment property;

(E) a letter-of-credit right; or

(F) a right to payment for money or funds advanced or sold, other than a right arising out of the use of a credit or charge card or information contained on or for use with the card.

(c) "Account debtor" means a person obligated on an account, chattel paper, or general intangible. The term does not include a person obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper.

(d) "Accounting", except as used in "accounting for", means a record:

(i) authenticated by a secured party;

(ii) indicating the aggregate unpaid secured obligations as of a date not more than 35 days earlier or 35 days later than the date of the record; and

(iii) identifying the components of the obligations in reasonable detail.

(e) "Agricultural lien" means an interest, other than a security interest, in farm products:

(i) that secures payment or performance of an obligation for:

(A) goods or services furnished in connection with a debtor's farming operation; or

(B) rent on real property leased by a debtor in connection with its farming operation;

(ii) that is created by statute in favor of a person that:

(A) in the ordinary course of its business furnished goeds or services to a debtor in connection with a debtor's farming operation; or

(B) leased real property to a debtor in connection with the debtor's farming operation; and

(iii) whose effectiveness does not depend on the person's possession of the personal property.

(f) "As-extracted collateral" means:

(i) oil, gas, or other minerals that are subject to a security interest that:

(A) is created by a debtor having an interest in the minerals before extraction; and

(B) attaches to the minerals as extracted; or

(ii) accounts arising out of the sale at the wellhead or minehead of oil, gas, or other minerals in which the debtor had an interest before extraction.

(g) "Authenticate" means to:

(i) sign; or

(ii) execute or adopt a symbol, or encrypt a record in whole or in part, with present intent to:

(A) identify the authenticating party; and

(B) adopt, accept, or establish the authenticity of a record or term.

HeinOnline -- 1999 vol. I 1023 1999

(h) "Bank" means an organization that is engaged in the business of banking. The term includes a savings bank, savings and loan association, credit union, and trust company.

(i) "Cash proceeds" means proceeds that are money, checks, deposit accounts, or the like.

(j) "Certificate of title" means a certificate of title with respect to which a statute provides for the security interest in question to he indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral.

(k) (i) "Chattel paper" means a record or records that evidence both a monetary obligation and a security interest in or a lease of specific goods or of specific goods and software used in the goods.

(ii) The term does not include a charter or other contract involving the use or hire of a vessel. If a transaction is evidenced both by a security agreement or lease and by an instrument or series of instruments, tbe group of records taken together constitutes chattel paper.

(l) "Collateral" means the property subject to a security interest or agricultural lien. Tlie term includes:

(i) proceeds to which a security interest attaches under [section 34];

(ii) accounts, chattel paper, payment intangibles, and promissory notes tliat have been sold; and

(iii) goods that are the subject of a consignment.

(m) "Commercial tort claim" means a claim arising in tort if:

(i) the claimant is an organization; or

(ii) the claimant is an individual and the claim:

(A) arose in tlie course of tlie claimant's business or profession; and

(B) does not include damages arising out of personal injury to or tlie death of an individual.

(n) "Commodity account" means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.

(o) "Commodity contract" means a commodity futures contract, an option on a coinmodity futures contract, a commodity option, or anotlier contract if the contract or option is:

(i) traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to federal commodities laws; or

(ii) traded on a foreign commodity board of trade, exchange, or market and is carried on the books of a commodity intermediary for a commodity customer.

(p) "Commodity customer" means a person for whicli a commodity intermediary carries a commodity contract on its books.

(q) "Commodity intermediary" means a person that:

(i) is registered as a futures commission merchant under federal commodities law; or

(ii) in the ordinary course of its business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to federal commodities law.

(r) "Communicate" means:

(i) to send a written or other tangible record;

(ii) to transmit a record by any means agreed upon by the persons sending and receiving the record; or

(iii) in the case of transmission of a record to or by a filing office, to transmit a record by any means prescribed by filing-office rule.

(s) "Consignee" means a merchant to which goods are delivered in a consignment.

(t) "Consignment" means a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and:

(i) the merchant:

(A) deals in goods of that kind under a name other than the name of the person making delivery;

(B) is not an auctioneer; and

(C) is not generally known by its creditors to be substantially engaged in selling the goods of others;

(ii) with respect to each delivery, the aggregate value of the goods is $1,000 or more at the time of delivery;

(iii) the goods are not consumer goods immediately before delivery; and

(iv) the transaction does not create a security interest that secures an obligation.

(u) "Consignor" means a person that delivers goods to a consignee in a consignment.

(v) "Consumer debtor" means a debtor in a consumer transaction.

(w) "Consumer goods" means goods that are used or bought for use primarily for personal, family, or household purposes.

(x) "Consumer-goods transaction" means a transaction to the extent that:

(i) an individual incurs an obligation primarily for personal, family, or household purposes; and

(ii) a security interest in consumer goods or in consumer goods and software that is used, licensed, or bought for use primarily for personal, family, or household purposes secures the obligation.

(y) "Consumer obligor" means an obligor who is an individual and who incurred the obligation as part of a transaction entered into primarily for personal, family, or household purposes.

(z) "Consumer transaction" means a transaction to the extent that:

(i) an individual incurs an obligation primarily for personal, family, or household purposes;

(ii) a security interest secures the obligation; and

HeinOnline -- 1999 vol. I 1025 1999

(iii) the collateral is held or acquired primarily for personal, family, or household purposes. The term includes a consumer-goods transaction.

(aa) "Continuation statement" means an amendment of a financing statement that:

(i) identifies, by its file number, the initial financing statement to which it relates; and

(ii) indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.

(bb) "Debtor" means:

(i) a person having a property interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor;

(ii) a seller of accounts, chattel paper, payment intangibles, or promissory notes; or

(iii) a consignee.

(cc) "Deposit account" means a demand, time, savings, passbook, or similar account maintained with a bank. The term does not include investment property or an account evidenced by an instrument.

(dd) "Document" means a document of title or a receipt of the type described in 30-7-201(2).

(ee) "Electronic chattel paper" means chattel paper evidenced by a record or records consisting of information stored in an electronic medium.

(ff) "Encumbrance" means a right, other than an ownership interest, in real property. The term includes a mortgage and other lien on real property.

(gg) "Equipment" means goods other than inventory, farm products, or consumer goods.

(hh) "Farm products" means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and that are:

(i) crops grown, growing, or to be grown, including:

(A) crops produced on trees, vines, and bushes; and

(B) aquatic goods produced in aquacultural operations;

(ii) livestock, born or unborn, including aquatic goods produced in aquacultural operations;

(iii) supplies used or produced in a farming operation; or

(iv) products of crops or livestock in their unmanufactured states.

(ii) "Farming operation" means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, or aquacultural operation.

(jj) "File number" means the number assigned to an initial financing statement pursuant to [section 89(1)].

(kk) "Filing office" means an office designated in [section 71] as the place to file a financing statement.

(ll) "Filing-office rule" means a rule adopted pursuant to [section 96].

HeinOnline -- 1999 vol. I 1026 1999

(mm) "Financing statement" means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.

(nn) "Fixture filing" means the filing of a financing statement covering goods that are or are to become fixtures and satisfying the requirements of [section 72(1) and (2)]. The term includes the filing of a financing statement covering goods of a transmitting utility that are or are to become fixtures.

(oo) "Fixtures" means goods that have become so related to particular real property that an interest in them arises under real property law.

(pp) "General intangible" means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes a payment intangible and software.

(qq) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(rr) (i) "Goods" means all things that are movable when a security interest attaches. The term includes:

(A) fixtures;

(B) standing timber that is to be cut and removed under a conveyance or contract for sale;

(C) the unborn young of animals;

(D) crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes; and

(E) manufactured homes.

(ii) The term also includes a computer program structurally integrated with goods, any informational content included in the program, and any supporting information provided in connection with a transaction relating to the program or informational content if:

(A) the program is associated with the goods in such a manner that it customarily is considered part of the goods; or

(B) by becoming the owner of the goods, a person would acquire a right to use the program in connection with the goods.

(iii) The term does not include a program integrated with goods that consist solely of the medium with which the program is integrated. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction.

(ss) "Governmental unit" means a subdivision, agency, department, county, parish, municipality, or other unit of the government of the United States, a state, or a foreign country. The term includes an organization with a separate corporate existence only if the organization is eligible to issue debt obligations on which interest is exempt from income taxation under the laws of the United States.

HeinOnline -- 1999 vol. I 1027 1999

(tt) "Health-care-insurance receivable" means an interest in or claim under a policy of insurance that is a right to payment of a monetary obligation for health care goods or services provided.

(uu) (i) "Instrument" means:

(A) a negotiable instrument; or

(B) any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in the ordinary course of business is transferred by delivery with any necessary indorsement or assignment.

(ii) The term does not include:

(A) investment property;

(B) a letter of credit; or

(C) a writing that evidences a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.

(vv) "Inventory" means goods, other than farm products, that:

(i) are leased by a person as lessor;

(ii) are held by a person for sale or lease or to be furnished under contracts of service;

(iii) are furnished by a person under a contract of service; or

(iv) consist of raw materials, work in process, or materials used or consumed in a business.

(ww) "Investment property" means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract, or commodity account.

(xx) "Jurisdiction of organization", with respect to a registered organization, means the jurisdiction under whose law the organization is organized.

(yy) (i) "Letter-of-credit right" means a right to payment and performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance.

(ii) The term does not include the right of a beneficiary to demand payment or performance under a letter of credit.

(zz) "Lien creditor" means:

(i) a creditor that has acquired a lien on the property involved by attachment, levy, or the like;

(ii) an assignee for benefit of creditors from the time of assignment;

(iii) a trustee in bankruptcy from the date of the filing of the petition; and

(iv) a receiver in equity from the time of appointment.

(aaa) "Manufactured home" means a structure, transportable in one or more sections, that in the traveling mode is 8 body feet or more in width or 40 body feet or more in length or that when erected on site is 320 or more square feet and that is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities and includes the plumbing, heating, air-conditioning, and electrical systems

HeinOnline -- 1999 vol. I 1028 1999

contained therein. The term includes any structure that meets all of the requirements of this subsection except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States secretary of housing and urban development and complies with the standards established under Title 42 of the United States Code.

(bbb) "Manufactured-home transaction" means a secured transaction:

(i) that creates a purchase-money security interest in a manufactured home, other than a manufactured home held as inventory; or

(ii) in which a manufactured home, other than a manufactured home held as inventory, is the primary collateral.

(ccc) "Mortgage" means a consensual interest in real property, including fixtures, that is created by a mortgage, trust deed, or similar transaction.

(ddd) "New debtor" means a person that becomes bound as debtor under [section 12(4)] by a security agreement previously entered into by another person.

(eee) (i) "New value" means:

(A) money;

(B) money's worth in property, services, or new credit; or

(C) release by a transferee of an interest in property previously transferred to the transferee.

(ii) The term does not include an obligation substituted for another obligation.

(fff) "Noncash proceeds" means proceeds other than cash proceeds.

(ggg) (i) "Obliger" means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral:

(A) owes payment or other performance of the obligation;

(B) has provided property other than the collateral to secure payment or other performance of the obligation; or

(C) is otherwise accountable in whole or in part for payment or other performance of the obligation.

(ii) The term does not include an issuer or a nominated person under a letter of credit.

(hhh) "Original debtor" means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under [section 12(4)].

(iii) "Payment intangible" means a general intangible under which the account debtor's principal obligation is a monetary obligation.

(jjj) "Person related to", with respect to an individual, means:

(i) the spouse of the individual;

(ii) a brother, brother-in-law, sister, or sister-in-law of the individual;

(iii) an ancestor or lineal descendant of the individual or the individual's spouse; and

HeinOnline -- 1999 vol. I 1029 1999

(iv) any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.

(kkk) "Person related to", with respect to an organization, means:

(i) a person directly or indirectly controlling, controlled by, or under common control with the organization;

(ii) an officer or director of, or a person performing similar functions with respect to, the organization;

(iii) an officer or director of, or a person performing similar functions with respect to, a person described in subsection (1)(kkk)(i);

(iv) the spouse of an individual described in subsection (1)(kkk)(i), (1)(kkk)(ii), or (1)(kkk)(iii); or

(v) an individual who is related by blood or marriage to an individual described in subsections (1)(kkk)(i), (1)(kkk)(ii), (1)(kkk)(iii), or (1)(kkk)(iv) and shares the same home with the individual.

(lll) "Proceeds" means the following property:

(i) whatever is acquired upen the sale, lease, license, exchange, or other disposition of collateral;

(ii) whatever is collected on, or distributed on account of, collateral;

(iii) rights arising out of collateral;

(iv) to the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to the collateral; and

(v) to the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects in, or damage to the collateral.

(mmm) "Promissory note" means an instrument that:

(i) evidences a promise to pay a monetary obligation;

(ii) does not evidence an order to pay; and

(iii) does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.

(nnn) "Proposal" means a record authenticated by a secured party and including the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to [sections 117, 118, and 119].

(ooo) "Public-finance transaction" means a secured transaction in connection with which:

(i) bonds, debentures, certificates of participation, or similar debt securities are issued;

(ii) all or a portion of the securities issued bave an initial stated maturity of at least 20 years; and

(iii) the debtor, the obliger, the secured party, the account debtor or other person obligated on collateral, the assignor or assignee of a secured obligation,

HeinOnline -- 1999 vol. I 1030 1999

or the assignor or assignee of a security interest is a state or a governmental unit of a state.

(ppp) "Pursuant to commitment", with respect to an advance made or other value given by a secured party, means pursuant to the secured party's obligation, whether or not a subsequent event of default or other event not within the secured party's control has relieved or may relieve the secured party from its obligation.

(qqq) "Record", except as used in "for record", "of record", "record or legal title", and "record owner", means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(rrr) "Registered organization" means an organization organized solely under the law of one state or the United States and as to which the state or the United States is required to maintain a public record showing the organization to have been organized.

(sss) "Secondary obligor" means an obligor to the extent that:

(i) the obligor's obligation is secondary; or

(ii) the obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor, or property of either.

(ttt) "Secured party" means:

(i) a person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;

(ii) a person that holds an agricultural lien;

(iii) a consignor;

(iv) a person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold;

(v) a trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest or agricultural lien is created or provided for; or

(vi) a person that holds a security interest arising under 30-2-401, 30-2-505, 30-2-711(3), 30-2A-508(5), 30-4-208, or [section 161].

(uuu) "Security agreement" means an agreement that creates or provides for a security interest.

(vvv) "Send", in connection with a record or notification, means to:

(i) depesit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances; or

(ii) cause the record or notification to be received within the time that it would have been received if properly sent under subsection (1)(vvv)(i).

(www) (i) "Software" means a computer program, any informational content included in the program, and any supporting information provided in connection with a transaction relating to the computer program or informational content.

(ii) The term does not include a computer program that is contained in goods unless the goods are a computer or computer peripheral.

HeinOnline -- 1999 vol. I 1031 1999

(xxx) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(yyy) "Supporting obligation" means a letter-of-credit right or secondary obligation that supports the payment or performance of an account, chattel paper, document, general intangible, instrument, or investment property.

(zzz) "Tangihle chattel paper" means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.

(aaaa) "Termination statement" means an amendment of a financing statement that:

(i) identifies, by its file number, the initial financing statement to which it relates; and

(ii) indicates either that it is a termination statement or tbat the identified financing statement is no longer effective.

(bbbb) "Transmitting utility" means a person primarily engaged in the business of:

(i) operating a railroad, subway, street railway, or trolley bus;

(ii) transmitting electric or electronic communications;

(iii) transmitting goods by pipeline or sewer; or

(iv) transmitting or producing and transmitting electricity, steam, gas, or water.

(2) The following definitions in other chapters apply to [sections 1 through 125]:

"Applicant" 30-5-122.

"Beneficiary" 30-5-122.

"Broker" 30-8-112.

"Certificated security" 30-8-112.

"Check" 30-3-104.

"Clearing corporation" 30-8-112.

"Contract for sale" 30-2-106.

"Customer" 30-4-104.

"Entitlement holder" 30-8-112.

"Financial asset" 30-8-112.

"Holder in due course" 30-3-302.

"Issuer" (with respect to a letter of credit or letter-of-credit right) 30-5-122.

"Issuer" (with respect to a security) 30-8-211.

"Lease" 30-2A-103.

"Lease agreement" 30-2A-103.

"Lease contract" 30-2A-103.

"Leasehold interest" 30-2A-103.

HeinOnline -- 1999 vol. I 1032 1999

"Lessee" 30-2A-103.

"Lessee in ordinary course of business" 30-2A-103.

"Lessor" 30-2A-103.

"Lessor's residual interest" 30-2A-103.

"Letter of credit" 30-5-122.

"Merchant" 30-2-104.

"Negotiable instrument" 30-3-104.

"Nominated person" 30-5-122.

"Note" 30-3-104.

"Proceeds of a letter of credit" 30-5-134.

"Prove" 30-3-102.

"Sale" 30-2-106.

"Securities account" 30-8-501.

"Securities intermediary" 30-8-112.

"Security" 30-8-112.

"Security certificate" 30-8-112.

"Security entitlement" 30-8-112.

"Uncertificated security" 30-8-112.

(3) Chapter 1 contains general definitions and principles of construction and interpretation applicable throughout [sections 1 through 125].

Section 2. Purchase-money security interest — application of payments — burden of establishing purchase-money security interest. (1) In this section:

(a) "purchase-money collateral" means goods or software that secures a purchase-money obligation incurred with respect to that collateral; and

(b) "purchase-money obligation" means an obligation of an obligor incurred as all or part of the price of the collateral or for value given to enable the debtor to acquire rights in or the use of the collateral if the value is in fact so used.

(2) A security interest in goods is a purchase-money security interest:

(a) to the extent that the goods are purchase-money collateral with respect to that security interest;

(b) if the security interest is in inventory that is or was purchase-money collateral, also to the extent that the security interest secures a purchase-money obligation incurred with respect to other inventory in which the secured party holds or held a purchase-money security interest; and

(c) also to the extent that the security interest secures a purchase-money obligation incurred with respect to software in which the secured party holds or held a purchase-money security interest.

(3) A security interest in software is a purchase-money security interest to the extent that the security interest also secures a purchase-money obligation

HeinOnline -- 1999 vol. I 1033 1999

incurred with respect to goods in which the secured party holds or held a purchase-money security interest if:

(a) the debtor acquired its interest in the software in an integrated transaction in which it acquired an interest in the goods; and

(b) the debtor acquired its interest in the software for the principal purpose of using the software in the goods.

(4) The security interest of a consignor in goods that are the subject of a consignment is a purchase-money security interest in inventory.

(5) In a transaction other than a consumer-goods transaction, if the extent to which a security interest is a purchase-money security interest depends on the application of a payment to a particular obligation, the payment must be applied:

(a) in accordance with any reasonable method of application to which the parties agree;

(b) in the absence of the parties' agreement to a reasonable method, in accordance with any intention of the obligor manifested at or before the time of payment; or

(c) in the absence of an agreement to a reasonable method and a timely manifestation of the obligor's intention, in the following order:

(i) to obligations that are not secured; and

(ii) if more than one obligation is secured, to obligations secured by purchase-money security interests in the order in which those obligations were incurred.

(6) In a transaction other than a consumer-goods transaction, a purchase-money security interest does not lose its status as such, even if:

(a) the purchase-money collateral also secures an obligation that is not a purchase-money obligation;

(b) collateral that is not purchase-money collateral also secures the purchase-money obligation; or

(c) the purchase-money obligation has been renewed, refinanced, consolidated, or restructured.

(7) In a transaction other than a consumer-goods transaction, a secured party claiming a purchase-money security interest has the burden of establishing the extent to which the security interest is a purchase-money security interest.

(8) The limitation of the rules in subsections (5), (6), and (7) to transactions other than consumer-goods transactions is intended to leave to the court the determination of the proper rules in consumer-goods transactions. The court may not infer from that limitation the nature of the proper rule in consumer-goods transactions and may continue to apply established approaches.

Section 3. Control of deposit account. (1) A secured party has control of a deposit account if:

(a) the secured party is the bank with which the deposit account is maintained;

(b) the debtor, secured party, and bank have agreed in an authenticated record that the bank will comply with instructions originated by the secured party

HeinOnline -- 1999 vol. I 1034 1999

directing disposition of the funds in the account without further consent by the debtor; or

(c) the secured party becomes the bank's customer with respect to the deposit account.

(2) A secured party that has satisfied the requirements of subsection (1) has control, even if the debtor retains the right to direct the disposition of funds from the deposit account.

Section 4. Control of electronic chattel paper. A secured party has control of electronic chattel paper if the record or records comprising the chattel paper are created, stored, and assigned in such a manner that:

(1) a single authoritative copy of the record or records exists that is unique, identifiable, and except as otherwise provided in subsections (4), (5), and (6), unalterable;

(2) the authoritative copy identifies the secured party as the assignee of the record or records;

(3) the authoritative copy is communicated to and maintained by the secured party or its designated custodian;

(4) copies or revisions that add or change an identified assignee of the authoritative copy can be made only with the consent of the secured party;

(5) each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) any revision of the authoritative copy is readily identifiable as an authorized or unauthorized revision.

Section 5. Control of investment property. (1) A person has control of a certificated security, or security entitlement as provided in 30-8-116.

(2) A secured party has control of a commodity contract if:

(a) the secured party is the commodity intermediary with which the commodity contract is carried; or

(b) the commodity customer, secured party, and commodity intermediary have agreed that the commodity intermediary will apply any value distributed on account of the commodity contract as directed by the secured party without further consent by the commodity customer.

(3) A secured party having control of all security entitlements or commodity contracts carried in a securities account or commodity account has control over the securities account or commodity account.

Section 6. Control of letter-of-credit right. A secured party has control of a letter-of-credit right to the extent of any right to payment or performance by the issuer of any nominated person if the issuer or nominated person has consented to an assignment of proceeds of the letter of credit under 30-5-134(3) or otherwise applicable law or practice.

Section 7. Sufficiency of description. (1) Except as otherwise provided in subsections (3), (4), and (5), a description of personal or real property is sufficient, whether or not it is specific, if it reasonably identifies what is described.

(2) Except as otherwise provided in subsection (4), a description of collateral reasonably identifies the collateral if it identifies the collateral by:

HeinOnline -- 1999 vol. I 1035 1999

(a) specific listing;

(b) category;

(c) except as otherwise provided in subsection (5), a type of collateral defined in chapters 1 through 9;

(d) quantity;

(e) computational or allocational formula or procedure; or

(f) except as otherwise provided in subsection (3), any other method, if the identity of the collateral is objectively determinable.

(3) A description of collateral as "all the debtor's assets" or "all the debtor's personal property" or using words of similar import does not reasonably identify the collateral.

(4) Except as otherwise provided in subsection (5), a description of a security entitlement, securities account, or commodity account is sufficient if it describes:

(a) the collateral by those terms or as investment property; or

(b) the underlying financial asset or commodity contract.

(5) A description only by type of collateral defined in chapters 1 through 9 is an insufficient description of:

(a) a commercial tort claim; or

(b) in a consumer transaction, consumer goods, a security entitlement, a securities account, or a commodity account.

Section 8. Scope. (1) Except as otherwise provided in subsections (3) and (4), [sections 1 through 125] apply to:

(a) any transaction, regardless of its form, that creates a security interest in personal property or fixtures by contract;

(b) an agricultural lien;

(c) a sale of an account, chattel paper, payment intangible, or promissory note;

(d) a consignment;

(e) a security interest arising under 30-2-401, 30-2-505, 30-2-711(3), or 30-2A-508(5), to the extent provided in [section 9]; and

(f) a security interest arising under 30-4-208 or [section 161].

(2) The application of [sections 1 through 125] to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which [sections 1 through 125] do not apply.

(3) [Sections 1 through 125] do not apply to the extent that:

(a) a statute, regulation, or treaty of the United States preempts [sections 1 through 125];

(b) another statute of this state expressly governs the creation, perfection, priority, or enforcement of a security interest created by this state or a governmental unit of this state;

(c) a statute of another state, a foreigu country, or a governmental unit of another state or a foreign country, other than a statute gonerally applicable to security interests, expressly governs creation, perfection, priority, or

HeinOnline -- 1999 vol. I 1036 1999

enforcement of a security interest created by the state, country, or governmental unit; or

(d) the rights of a transferee beneficiary or nominated person under a letter of credit are independent and superior under 30-5-134.

(4) [Sections 1 through 125] do not apply to:

(a) a landlord's lien, other than an agricultural lien;

(b) a lien, other than an agricultural lien, given by statute or other rule of law for services or materials, but [section 52] applies with respect to priority of the lien;

(c) an assignment of a claim for wages, salary, or other compensation of an employee;

(d) a sale of accounts, chattel paper, payment intangibles, or promissory notes as part of a sale of the business out of which they arose;

(e) an assignment of accounts, chattel paper, payment intangibles, or promissory notes that is for the purpose of collection only;

(f) an assignment of a right to payment under a contract to an assignee that is also obliged to perform under the contract;

(g) an assignment of a single account, payment intangible, or promissory note to an assignee in full or partial satisfaction of a preexisting indebtedness;

(h) a transfer of an interest in or an assignment of a claim under a policy of insurance, other than an assignment by or to a health care provider of a health-care-insurance receivable and any subsequent assignment of the right to payment, but [sections 34 and 41] apply with respect to proceeds and priorities in proceeds;

(i) an assignment of a right represented by a judgment, other than a judgment taken on a right to payment that was collateral;

(j) a right of recoupment or setoff, but:

(i) [section 59] applies with respect to the effectiveness of rights of recoupment or setoff against deposit accounts; and

(ii) [section 65] applies with respect to defenses or claims of an account debtor;

(k) the creation or transfer of an interest in or lien on real property, including a lease or rents thereunder, except to the extent that provision is made for:

(i) liens on real property in [sections 12 and 27];

(ii) fixtures in [section 53];

(iii) fixture filings in [sections 71, 72, 82, 86, and 89]; and

(iv) security agreements covering personal and real property in [section 101];

(l) an assignment of a claim arising in tort, other than a commercial tort claim, but [sections 34 and 41] apply with respect to proceeds and priorities in proceeds; or

(m) an assignment of a deposit account in a consumer transaction, except that [sections 34 and 41] apply with respect to proceeds and priorities in proceeds.

Section 9. Security interests arising under chapter 2 or 2A. A security interest arising under 30-2-401, 30-2-505, 30-2-711(3), or 30-2A-508(5) is subject

HeinOnline -- 1999 vol. I 1037 1999

to [sections 1 through 125]. However, until the debtor obtains possession of the goods:

(1) the security interest is enforceable, even if the requirements of [section 12(2)(c)] have not been met;

(2) filing is not required to perfect the security interest;

(3) the rights of the secured party on default by the debtor are governed by chapter 2 or 2A, as applicable; and

(4) the security interest has priority over a conflicting security interest created by the debtor.

Section 10. General effectiveness of security agreement. (1) Except as otherwise provided in chapters 1 through 9, a security agreement is effective according to its terms between the parties, against purchasers of the collateral, and against creditors.

(2) A transaction subject to [sections 1 through 125] is subject to any applicable rule of law that establishes a different rule for consumers, to Title 30, chapter 14, part 1, and to Title 31, chapter 1.

(3) In case of conflict between [sections 1 through 125] and a rule of law, statute, or regulation described in subsection (2), the rule of law, statute, or regulation controls. Failure to comply with a statute or regulation described in subsection (2) has only the effect that the statute or regulation specifies.

(4) [Sections 1 through 125] do not:

(a) validate any rate, charge, agreement, or practice that violates a rule of law, statute, or regulation described in subsection (2); or

(b) extend the application of the rule of law, statute, or regulation to a transaction not otherwise subject to it.

Section 11. Title to collateral immaterial. Except as otherwise provided with respect to consignments or sales of accounts, chattel paper, payment intangibles, or promissory notes, the provisions of [sections 1 through 125] with regard to rights, obligations, and remedies apply whether title to collateral is in the secured party or the debtor.

Section 12. Attachment and enforcement of security interest — proceeds — supporting obligations — formal requisites. (1) A security interest attaches to collateral when it becomes enforceable against the debtor with respect to the collateral, unless an agreement expressly postpones the time of attachment.

(2) Except as otherwise provided in subsections (3) through (9), a security interest is enforceable against the debtor and third parties with respect to the collateral only if:

(a) value has been given;

(b) the debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and

(c) one of the following conditions is met:

(i) the debtor has authenticated a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned;

HeinOnline -- 1999 vol. I 1038 1999

(ii) the collateral is not a certificated security and is in the possession of the secured party under [section 32] pursuant to the debtor's security agreement;

(iii) the collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under 30-8-331 pursuant to the debtor's security agreement; or

(iv) the collateral is a deposit account, electronic chattel paper, investment property, or a letter-of-credit right and the secured party has control under [section 3, 4, 5, or 6] pursuant to the dehtor's security agreement.

(3) Subsection (2) is subject to 30-4-208 on the security interest of a collecting bank, [section 161] on the security interest of a letter-of-credit issuer or nominated person, [section 9] on a security interest arising under chapter 2 or 2A, and [section 15] on security interests in investment property.

(4) A person becomes bound as debtor by a security agreement entered into by another person if, by operation of law other than [sections 1 through 125] or by contract:

(a) the security agreement becomes effective to create a security interest in the person's property; or

(b) the person becomes generally obligated for the obligations of the other person, including the obligation secured under the security agreement, and acquires or succeeds to all or substantially all of the assets of the other person.

(5) If a new debtor becomes bound as debtor by a security agreement entered into by another person:

(a) the agreement satisfies the requirements of subsection (2)(c) with respect to existing or after-acquired property of the new debtor to the extent the property is described in the agreement; and

(b) another agreement is not necessary to make a security interest in the property enforceable.

(6) The attachment of a security interest in collateral gives the secured party the rights to proceeds provided by [section 34] and is also attachment of a security interest in a supporting obligation for the collateral.

(7) The attachment of a security interest in a right to payment or performance secured by a security interest or other lien on personal or real property is also attachment of a security interest in the security interest, mortgage, or other lien.

(8) The attachment of a security interest in a securities account is also attachment of a security interest in the security entitlements carried in the securities account.

(9) The attachment of a security interest in a commodity account is also attachment of a security interest in the commodity contracts carried in the commodity account.

Section 13. After acquired property — future advances. (1) Except as otherwise provided in subsection (2), a security agreement may create or provide for a security interest in after-acquired collateral.

(2) A security interest does not attach under a term constituting an after-acquired property clause to:

HeinOnline -- 1999 vol. I 1039 1999

(a) consumer goods, other than an accession when given as additional security, unless the debtor acquires rights in them within 10 days after the secured party gives value; or

(b) a commercial tort claim.

(3) A security agreement may provide that collateral secures, or that accounts, chattel paper, payment intangibles, or promissory notes are sold in connection with, future advances or other value, whether or not the advances or value are given pursuant to commitment.

Section 14. Usc or disposition of collateral permissible. (1) A security interest is not invalid or fraudulent against creditors solely because:

(a) the dehtor has the right or ability to:

(i) use, commingle, or dispose of all or part of the collateral, including returned or repossessed goods;

(ii) collect, compromise, enforce, or otherwise deal with collateral;

(iii) accept the return of collateral or make repossessions; or

(iv) use, commingle, or dispose of proceeds; or

(b) the secured party fails to require the debtor to account for proceeds or replace collateral.

(2) This section does not relax the requirements of possession if attachment, perfection, or enforcement of a security interest depends upon possession of the collateral by the secured party.

Section 15. Security interest arising in purchase or delivery of financial asset. (1) A security interest in favor of a securities intermediary attaches to a person's security entitlement if:

(a) the person buys a financial asset through the securities intormediary in a transaction in which the person is obligated to pay the purchase price to the securities intermediary at the time of the purchase; and

(b) the securities intermediary credits the financial asset to the buyer's securities account before the buyer pays the securities intermediary.

(2) The security interest described in subsection (1) secures the person's obligation to pay for the financial asset.

(3) A security interest in favor of a person that delivers a certificated security or other financial asset represented by a writing attaches to the security or other financial asset if:

(a) the security or other financial asset is:

(i) in the ordinary course of business transferred by delivery with any necessary indorsement or assignment; and

(ii) delivered under an agreement between persons in the business of dealing with such securities or financial assets; and

(b) the agreement calls for delivery against payment.

(4) The security interest described in subsection (3) secures the obligation to make payment for the delivery.

HeinOnline -- 1999 vol. I 1040 1999

Section 16. Rights and duties of secured party having possession or control of collateral. (1) Except as otherwise provided in subsection (4), a secured party shall use reasonable care in the custody and preservation of collateral in the secured party's possession. In the case of chattel paper or an instrument, reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.

(2) Except as otherwise provided in subsection (4), if a secured party has possession of collateral:

(a) reasonable expenses, including the cost of insurance and payment of taxes or other charges, incurred in the custody, preservation, use, or operation of the collateral are chargeable to the debtor and are secured by the collateral;

(b) the risk of accidental loss or damage is on the debtor to the extent of a deficiency in any effective insurance coverage;

(c) the secured party shall keep the collateral identifiable, but fungible collateral may be commingled; and

(d) the secured party may use or operate the collateral:

(i) for the purpose of preserving the collateral or its value;

(ii) as permitted by an order of a court having competent jurisdiction; or

(iii) except in the case of consumer goods, in the manner and to the extent agreed by the debtor.

(3) Except as otherwise provided in subsection (4), a secured party having possession of collateral or control of collateral under [section 3, 4, 5, or 6]:

(a) may hold as additional security any proceeds, except money or funds, received from the collateral;

(b) shall apply money or funds received from the collateral to reduce the secured obligation, unless remitted to the debtor; and

(c) may create a security interest in the collateral.

(4) If the secured party is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor:

(a) subsection (1) does not apply unless the secured party is entitled by agreement:

(i) to charge back uncollected collateral; or

(ii) otherwise to full or limited recourse against the debtor or a secondary obligor based on the nonpayment or other default of an account debtor or other obligor on the collateral; and

(b) subsections (2) and (3) do not apply.

Section 17. Additional duties of secured party having control of collateral. (1) This section applies if:

(a) there is no outstanding secured obligation; and

(b) the secured party is not committed to make advances, incur obligations, or otherwise give value.

(2) Within 10 days after receiving an authenticated demand by the debtor:

HeinOnline -- 1999 vol. I 1041 1999

(a) a secured party having control of a deposit account under [section 3(1)(b)] shall send to the bank with which the deposit account is maintained an authenticated statement that releases the bank from any further obligation to comply with instructions originated hy the secured party;

(b) a secured party having control of a deposit account under [section 3(1)(c)] shall:

(i) pay the debtor the balance on deposit in the deposit account; or

(ii) transfer the balance on deposit into a deposit account in the debtor's name;

(c) a secured party, other than a buyer, having control of electronic chattel paper under [section 4] shall:

(i) communicate the authoritative copy of the electronic chattel paper to the dehtor or its designated custodian;

(ii) if the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic chattel paper is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated hy the dehtor; and

(iii) take appropriate action to enable the dehtor or its designated custodian to make copies of or revisions to the authoritative copy that add or change an identified assignee of the authoritative copy without the consent of the secured party;

(d) a secured party having control of investment property under 30-8-116(4)(b) or [section 5(2)] shall send to the securities intermediary or commodity intermediary with which the security entitlement or commodity contract is maintained an authenticated record that releases the securities intermediary or commodity intermediary from any further obligation to comply with entitlement orders or directions originated by the secured party; and

(e) a secured party having control of a letter-of-credit right under [section 6] shall send to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to the secured party an authenticated release from any further ohligation to pay or deliver proceeds of the letter of credit to the secured party.

Section 18. Dutics of secured party if account debtor has been notified of assignment. (1) Except as otherwise provided in subsection (3), this section applies if:

(a) there is no outstanding secured obligation; and

(b) the secured party is not committed to make advances, incur obligations, or otherwise give value.

(2) Within 10 days after receiving an authenticated demand by the debtor, a secured party shall send to an account debtor that has received notification of an assignment to the secured party as assignee under [section 67(1)] an authenticated record that releases the account debtor from any further obligation to the secured party.

(3) This section does not apply to an assignment constituting the sale of an account, chattel paper, or payment intangihle.

HeinOnline -- 1999 vol. I 1042 1999

Section 19. Request for accounting — request regarding list of collateral or statement of aecount. (1) In this section, the following definitions apply:

(a) "Request" means a record of a type described in subsection (1)(b), (1)(c), or (1)(d).

(b) "Request for an accounting" means a record authenticated by a debtor requesting that the recipient provide an accounting of the unpaid obligations secured by collateral and reasonably identifying the transaction or relationship that is the subject of the request.

(c) "Request regarding a list of collateral" means a record authenticated by a debtor requesting that the recipient approve or correct a list of what the debtor believes to be the collateral securing an obligation and reasonably identifying the transaction or relationship that is the subject of the request.

(d) "Request regarding a statement of account" means a record authenticated by a debtor requesting that the recipient approve or correct a statement indicating what the debtor believes to be the aggregate amount of unpaid obligations secured by collateral as of a specified date and reasonably identifying the transaction or relationship that is the suhject of the request.

(2) Subject to subsections (3), (4), (5), and (6), a secured party, other than a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor shall comply with a request within 14 days after receipt:

(a) in the case of a request for an accounting, by authenticating and sending to the debtor an accounting; and

(b) iu the case of a request regarding a list of collateral or a request regarding a statement of account, by authenticating and sending to the debtor an approval or correction.

(3) A secured party that claims a security interest in all of a particular type of collateral owned by the debtor may comply with a request regarding a list of collateral by sending to the debter an authenticated record including a statement to that effect within 14 days after receipt.

(4) A person that receives a request regarding a list of collateral, that claims no interest in tlie collateral when it receives the request, and that claimed an interest in tlie collateral at an earlier time shall comply with the request within 14 days after receipt by sending to the debter an authenticated record:

(a) disclaiming any interest in the collateral; and

(b) if known to tlie recipient, providing the name and mailing address of any assignee of or successor te the recipient's security interest in the collateral.

(5) A person that receives a request for an accounting or a request regarding a statement of account, that claims no interest in the obligations wlien it receives the request, and that claimed an interest in the obligations at an earlier time shall comply with the request within 14 days after receipt by sending to the debtor an authenticated record:

(a) disclaiming any interest in the obligations; and

(b) if known to the recipient, providing the name and mailing address of any assignee of or successor to the recipient's interest in the obligations.

HeinOnline -- 1999 vol. I 1043 1999

(6) A debtor is entitled without charge to one response to a request under this section during any 6-month period. The secured party may require payment of a charge not exceeding $25 for each additional response.

Section 20. Law governing perfection and priority of security interests. Except as otherwise provided in [sections 22 through 25], the following rules determine the law governing perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral:

(1) Except as otherwise provided in this section, while a debtor is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral.

(2) While collateral is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a possessory security interest in that collateral.

(3) Except as otherwise provided in subsection (4), while negotiable documents, goods, instruments, money, or tangible chattel paper is located in a jurisdiction, the local law of that jurisdiction governs:

(a) perfection of a security interest in the geods by filing a fixture filing;

(b) perfection of a security interest in timber to be cut; and

(c) the effect of perfection or nonperfection and the priority of a nonpossessory security interest in the collateral.

(4) The local law of the jurisdiction in which the wellhead or minehead is located governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in as-extracted collateral.

Section 21. Law governing perfection and priority of agricultural liens. While farm products are located in a jurisdiction, the local law of that jurisdiction geverns perfection, the effect of perfection or nonperfection, and the priority of an agricultural lien on the farm products.

Section 22. Law governing perfection and priority of security interests in goods covered by a certificate of title. (1) This section applies to geods covered by a certificate of title, even if there is no other relationship between the jurisdiction under whose certificate of title the goods are covered and the goods or the debtor.

(2) Goods become covered by a certificate of title when a valid application for the certificate of title and the applicable fee are delivered to the appropriate authority. Goods cease to be covered by a certificate of title at the earlier of the time the certificate of title ceases to be effective under the law of the issuing jurisdiction or the time tbe goods become covered subsequently by a certificate of title issued by another jurisdiction.

(3) The local law of tbe jurisdiction under whose certificate of title tbe goods are covered governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in goods covered by a certificate of title from the time the goods become covered by the certificate of title until the goods cease to be covered by tbe certificate of title.

Section 23. Law governing perfection and priority of security interests in deposlt accounts. (1) The local law of a bank's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a deposit account maintained with tbat bank.

HeinOnline -- 1999 vol. I 1044 1999

(2) The following rules determine a bank's jurisdiction for purposes of [sections 20 through 61]:

(a) If an agreement between the bank and the dehtor governing the deposit account expressly provides that a particular jurisdiction is the bank's jurisdiction for purposes of [sections 20 through 61], [sections 1 through 125], or chapters 1 through 9 of this title, that jurisdiction is the hank's jurisdiction.

(b) If subsection (2)(a) does not apply and an agreement between the bank and its customer governing the deposit account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the bank's jurisdiction.

(c) If subsection (2)(a) or (2)(b) does not apply and an agreement between the bank and its customer governing the deposit account expressly provides that the deposit account is maintained at an office in a particular jurisdiction, that jurisdiction is the bank's jurisdiction.

(d) If none of the preceding subsections apply, the bank's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the customer's account is located.

(e) If none of the preceding subsections apply, the bank's jurisdiction is the jurisdiction in which the chief executive office of the bank is located.

Section 24. Law governing perfection and priority of security interests in investment property. (1) Except as otherwise provided in subsection (3), the following rules apply:

(a) While a security certificate is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in the certificated security represented thereby.

(b) The local law of the issuer's jurisdiction as specified in 30-8-120(4) governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in an uncertificated security.

(c) The local law of the securities intermediary's jurisdiction as specified in 30-8-120(5) governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a security entitlement or securities account.

(d) The local law of the commodity intermediary's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a commodity contract or commodity account.

(2) The following rules determine a commodity intermediary's jurisdiction for purposes of [sections 20 through 61]:

(a) If an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that a particular jurisdiction is the commodity intermediary's jurisdiction for purposes of [sections 20 through 61], [sections 1 through 125], or chapters 1 through 9 of this title, that jurisdiction is the commodity intermediary's jurisdiction.

(b) If subsection (2)(a) does not apply and an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

HeinOnline -- 1999 vol. I 1045 1999

(c) If subsection (2)(a) or (2)(b) does not apply and an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that the commodity account is maintained at an office in a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

(d) If none of the preceding subsections applies, the commodity intermediary's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the commodity customer's account is located.

(e) If none of the preceding subsections applies, the commodity intermediary's jurisdiction is the jurisdiction in which the chief executive office of the commodity intermediary is located.

(3) The local law of the jurisdiction in which the debtor is located governs:

(a) perfection of a security interest in investment property by filing;

(b) automatic perfection of a security interest in investment property granted by a broker or securities intermediary; and

(c) automatic perfection of a security interest in a commodity contract or commodity account granted by a commodity intermediary.

Section 25. Law governing perfection and priority of security interests in letter-of-credit rights. (1) Subject to subsection (3), the local law of the issuer's jurisdiction or a nominated person's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a letter-of-credit right if the issuer's jurisdiction or nominated person's jurisdiction is a state.

(2) For purposes of [sections 20 through 61], an issuer's jurisdiction or nominated person's jurisdiction is the jurisdiction whose law governs the liability of the issuer or nominated person with respect to the letter-of-credit right as provided in 30-5-136.

(3) This section does not apply to a security interest that is perfected only under [section 27(4)].

Section 26. Location of debtor. (1) In this section, "place of business" means a place where a debtor conducts its affairs.

(2) Except as otherwise provided in this section, the following rules determine a debtor's location:

(a) A debtor who is an individual is located at the individual's residence.

(b) A debtor that is an organization and has only one place of business is located at its place of business.

(c) A debtor that is an organization and has more than one place of business is located at its chief executive office.

(3) (a) Subsection (2) applies only if a debtor's residence, place of business, or chief executive office, as applicable, is located in a jurisdiction whose law generally requires information concerning the existence of a nonpessessory security interest to be made generally available in a filing, recording, or registration system as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral. If subsection (2) does not apply, the debtor is located in the District of Columbia.

HeinOnline -- 1999 vol. I 1046 1999

(4) A person that ceases to exist, have a residence, or have a place of business continues to be located in the jurisdiction specified by subsections (2) and (3).

(5) A registered organization that is organized under the law of a state is located in that state.

(6) Except as otherwise provided in subsection (9), a registered organization that is organized under the law of the United States and a branch or agency of a bank that is a registered organization and is not organized under the law of the United States or a state are located:

(a) in the state that the law of the United States designates, if the law designates a state of location;

(h) in the state that the registered organization designates, if the law of the United States authorizes the registered organization to designate its state of location; or

(c) in tbe District of Columbia, if subsection (6)(a) or (6)(b) does not apply.

(7) A registered organization continues to be located in the jurisdiction specified by subsection (5) or (6) notwithstanding:

(a) the suspension, revocation, forfeiture, or lapse of the registered organization's status as such in its jurisdiction of organization; or

(b) the dissolution, winding up, or cancellation of the existence of the registered organization.

(8) The United States is located in the District of Columbia.

(9) A branch or agency of a bank that is not organized under the law of the United States or a state is located in the state in which the branch or agency is licensed, if all branches and agencies of the bank are licensed in only one state.

(10) A foreign air carrier under the Federal Aviation Act of 1958, as amended, is located at the designated office of the agent upon which service of process may be made on behalf of the carrier.

(11) This section applies only for purposes of [sections 20 through 61].

Section 27. Whcn security interest or agricultural lien is perfectcd — contiuuity of perfectiou. (1) Except as otherwise provided in [section 28] and this section, a security interest is perfected if it has attacbed and all of the applicable requirements for perfection in [sections 29 through 35] have been satisfied. A security interest is perfected when it attaches if the applicable requirements are satisfied before the security interest attaches.

(2) An agricultural lien is perfected if it has become effective and all of tbe applicable requirements for perfection in [section 29] have been satisfied. An agricultural lien is perfected when it becomes effective if the applicable requirements are satisfied before the agricultural lien hecomes effective.

(3) A security interest or agricultural lien is perfected continuously if it is originally perfected in one manner under [sections 1 through 125] and is later perfected in another manner under [sections 1 through 125], without an intermediate period when it was unperfected.

(4) Perfection of a security interest in collateral also perfects a security interest in a supporting obligation for the collateral.

HeinOnline -- 1999 vol. I 1047 1999

(5) Perfection of a security interest in a right to payment or performance also perfects a security interest in a security interest, mortgage, or other lien on personal or real property securing the right.

(6) Perfection of a security interest in a securities account also perfects a security interest in the security entitlements carried in the securities account.

(7) Perfection of a security interest in a commodity account also perfects a security interest in the commodity contracts carried in the commodity account.

Section 28. Security interest perfected on attachment. The following security interests are perfected when they attach:

(1) a purchase-money security interest in consumer goods, except as otherwise provided in [section 30(2)] with respect to consumer goods that are subject to a statute or treaty described in [section 30(1)];

(2) an assignment of accounts or payment intangibles that does not by itself or in conjunction with other assignments to the same assignee transfer a significant part of the assignor's outstanding accounts or payment intangibles;

(3) a sale of a payment intangible;

(4) a sale of a promissory note;

(5) a security interest created by the assignment of a health-care-insurance receivable to the provider of the health care goods or services;

(6) a security interest arising under 30-2-401, 30-2-505, 30-2-711(3), or 30-2A-508(5), until the debtor obtains possession of the collateral;

(7) a security interest of a collecting bank arising under 30-4-208;

(8) a security interest of an issuer or nominated person arising under [section 161];

(9) a security interest arising in the purchase or delivery of a financial asset under [section 15(3)];

(10) a security interest in investment property created by a broker or securities intermediary;

(11) a security interest in a commodity contract or a commodity account created by a commodity intermediary;

(12) an assignment for the benefit of all creditors of the transferor and subsequent transfers by the assignee thereunder; and

(13) a security interest created by an assignment of a beneficial interest in a decedent's estate.

Section 29. When filing required to perfect security interest or agricultural lien — security interests and agricultural liens to which filing provisions do not apply. (1) Except as otherwise provided in [section 31(2)] or subsection (2) of this section, a financing statement must be filed to perfect all security interests and agricultural liens.

(2) The filing of a financing statement is not necessary to perfect a security interest:

(a) that is perfected under [section 27(4), (5), (6), or (7)];

(b) that is perfected under [section 28] when it attaches;

(c) in property subject to a statute, regulation, or treaty described in [section 30(1)];

(d) in goods in possession of a bailee that is perfected under [section 31(4)(a) or (4)(b)];

(e) in certificated securities, documents, goods, or instruments that is perfected without filing or possession under [section 31(5), (6), or (7)];

(f) in collateral in the secured party's possession under [section 32];

(g) in a certificated security that is perfected by delivery of the security certificate to the secured party under [section 32];

(h) in a deposit account, electronic chattel paper, investment property, or letter-of-credit right that is perfected by control under [section 33];

(i) in proceeds which is perfected under [section 34]; or

(j) that is perfected under [section 35].

(3) If a secured party assigns a perfected security interest or agricultural lien, a filing under [sections 1 through 125] is not required to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

Section 30. Perfection of security interests in property subject to certain statutes, regulations and treaties. (1) Except as otherwise provided in subsection (4), the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to:

(a) a statute, regulation, or treaty of the United States whose requirements for a security interest's obtaining priority over the rights of a lien creditor with respect to the property preempt [section 29(1)];

(b) the certificate of ownership provisions of Title 23 or Title 61; or

(c) a certificate of title statute of another jurisdiction that provides for a security interest to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the property.

(2) Compliance with the requirements of a statute, regulation, or treaty described in subsection (1) for obtaining priority over the rights of a lien creditor is equivalent to the filing of a financing statement under [sections 1 through 125]. Except as otherwise provided in [sections 32 and 35(4) and (5)] and subsection (4) of this section for goods covered by a certificate of title, a security interest in property subject to a statute, regulation, or treaty described in subsection (1) may be perfected only by compliance with those requirements, and a security interest so perfected remains perfected notwithstanding a change in the use or transfer of possession of the collateral.

(3) Except as otherwise provided in [section 35(4) and (5)] and subsection (4) of this section, duration and renewal of perfection of a security interest perfected by compliance with the requirements prescribed by a statute, regulation, or treaty described in subsection (1) are governed by the statute, regulation, or treaty. In other respects the security interest is subject to [sections 1 through 125].

(4) During any period in which collateral is inventory held for sale or lease by a person or leased by that person as lessor and that person is in the business of

HeinOnline -- 1999 vol. I 1049 1999

selling or leasing goods of that kind, this section does not apply to a security interest in that collateral created hy that person as dehtor.

Section 31. Perfection of security interests in chattel paper, deposit accounts, documents, goods covered by documents, instruments, investment property, letter-of-credit rights, and money — perfection by permissive filing — temporary perfection without filing or transfer of possession. (1) A security interest in chattel paper, negotiable documents, instruments, or investment property may he perfected hy filing.

(2) Except as otherwise provided in [section 34(3) and (4)] for proceeds:

(a) a security interest in a deposit account may be perfected only hy control under [section 33];

(b) a security interest in a letter-of-credit right may be perfected only by control under [section 33], except as otherwise provided in [section 27(4)]; and

(c) a security interest in money may be perfected only by the secured party's taking possession under [section 32].

(3) While goods are in the pessession of a bailee that has issued a negotiahle document covering the goods:

(a) a security interest in the goods may he perfected hy perfecting a security interest in the document; and

(b) a security interest perfected in the document has priority over any security interest that hecomes perfected in the goods by another method during that time.

(4) While goods are in the possession of a bailee that has issued a nonnegotiahle document covering the goods, a security interest in the goods may be perfected by:

(a) issuance of a document in the name of the secured party;

(b) the bailee's receipt of notification of the secured party's interest; or

(c) filing as to the goods.

(5) A security interest in certificated securities, negotiable documents, or instruments is perfected without filing or the taking of pessession for a period of 20 days from the time it attaches to the extent that it arises for new value given under an authenticated security agreement.

(6) A perfected security interest in a negotiable document or goods in pessession of a hailee, other than one that has issued a negotiable document for the goods, remains perfected for 20 days without filing if the secured party makes available to the debtor the goods or documents representing the goods for the purpose of:

(a) ultimate sale or exchange; or

(b) loading, unloading, storing, shipping, transshipping, manufacturing, processing, or otherwise dealing with them in a manner preliminary to their sale or exchange.

(7) A perfected security interest in a certificated security or instrument remains perfected for 20 days without filing if the secured party delivers the security certificate or instrument to the debtor for the purpose of:

(a) ultimate sale or exchango; or

(b) presentation, collection, enforcement, renewal, or registration of transfer.

(8) After the 20-day period specified in subsection (5), (6), or (7) expires, perfection depends upon compliance with [sections 1 through 125].

Section 32. When possession by or delivery to secured party perfects security interest without filing. (1) Except as otherwise provided in subsection (2), a secured party may perfect a security interest in negotiable documents, goods, instruments, money, or tangible chattel paper by taking possession of the collateral. A secured party may perfect a security interest in certificated securities by taking delivery of the certificated securities under 30-8-331.

(2) Witb respect to goods covered by a certificate of title issued by this state, a secured party may perfect a security interest in the goods by taking possession of the goods only in the circumstances described in [section 35(4)].

(3) Witb respect to collateral other than certificated securities and goods covered by a document, a secured party takes possession of collateral in tbe possession of a person other than tbe debtor, the secured party, or a lessee of the collateral from the debtor in the ordinary course of the debtor's business when:

(a) the person in possession authenticates a record acknowledging tbat it holds possession of tbe collateral for the secured party's benefit; or

(b) the person takes possession of the collateral after having authenticated a record acknowledging that it will hold possession of collateral for the secured party's benefit.

(4) If perfection of a security interest depends upon possession of the collateral by a secured party, perfection occurs no earlier than the time the secured party takes possession and continues only while the secured party retains possession.

(5) A security interest in a certificated security in registered form is perfectod by delivery when delivery of the certificated security occurs under 30-8-331 and remains perfected by delivery until the debtor obtains possession of the security certificate.

(6) A person in possession of collateral is not required to acknowledgo that it holds possession for a secured party's benefit.

(7) If a person acknowledgos that it holds possession for the secured party's benefit:

(n) the acknowledgment is effective under 30-8-331(1) or subsection (3) of this section, even if tbe acknowledgment violates the rights of a debtor; and

(b) unless the person otherwise agrees or law other than [sections 1 through 125] otberwise provides, the person does not owe any duty to the secured party and is not required to confirm the acknowledgment to another person.

(8) A secured party having possession of collateral does not relinquisb possession by delivering the collateral to a person other than the debtor or a lessee of the collateral from tlie debtor in the ordinary course of the debtor's business if the person was instructed before the delivery or is instructed contemporaneously with the delivery:

(a) to hold possession of the collateral for the secured party's benefit; or

(b) to redeliver tbe collateral to the secured party.

HeinOnline -- 1999 vol. I 1051 1999

(9) A secured party does not relinquish possession even if a delivery under subsection (8) violates the rights of a debtor. A person to which collateral is delivered under subsection (8) does not owe any duty to the secured party and is not required to confirm the delivery to another person unless the person otherwise agrees or law other than [sections 1 through 125] otherwise provides.

Section 33. Perfection by control. (1) A security interest in investment property, a deposit account, a letter-of-credit right, or electronic chattel paper may be perfected by control of the collateral under [section 3, 4, 5, or 6].

(2) A security interest in a deposit account, electronic chattel paper, or a letter-of-credit right is perfected by control under [section 3, 4, or 6] when the secured party obtains control and remains perfected by control only while the secured party retains control.

(3) A security interest in investment property is perfected by control under [section 5] from the time the secured party obtains control and remains perfected by control until:

(a) tbe secured party does not have control; and

(b) one of the following occurs:

(i) if the collateral is a certificated security, the debtor has or acquires possession of the security certificate;

(ii) if the collateral is an uncertificated security, the issuer has registered or registers the debtor as the registered owner; or

(iii) if the collateral is a security entitlement, the dehtor is or becomes tbe entitlement holder.

Section 34. Secured party's rights on disposition of collateral and in proceeds. (1) Except as otherwise provided in 30-2-403(2) and [sections 1 through 125]:

(a) a security interest or agricultural lien continues in collateral notwithstanding sale, lease, license, exchange, or other disposition thereof unless the secured party authorized the disposition free of tbe security interest or agricultural lien; and

(b) a security interest attaches to any identifiable proceeds of collateral.

(2) Proceeds that are commingled with other property are identifiable proceeds:

(a) if the proceeds are geods, to the extent provided by [section 55]; and

(b) if the proceeds are not goods, to the extent tbat the secured party identifies tbe proceeds by a method of tracing, including application of equitable principles, tbat is permitted under law other than [sections 1 through 125] witb respect to commingled property of the type involved.

(3) A security interest in proceeds is a perfected security interest if the security interest in the original collateral was perfected.

(4) A perfected security interest in proceeds becomes unperfected on tbe 21st day after the security interest attacbes to the proceeds unless:

(a) the following conditions are satisfied:

(i) a filed financing statement covers the original collateral;

(ii) the proceeds are collateral in which a security interest may be perfected by filing in the office in which the financing statement has been filed; and

(iii) the proceeds are not acquired with cash proceeds;

(b) the proceeds are identifiable cash proceeds; or

(c) the security interest in the proceeds is perfected when the security interest attaches to the proceeds or within 20 days thereafter.

(5) If a filed financing statement covers the original collateral, a security interest in proceeds that remains perfected under subsection (4)(a) becomes unperfected at the later of:

(a) when the effectiveness of the filed financing statement lapses under [section 85] or is terminated under [section 83]; or

(b) the 21st day after the security interest attaches to the proceeds.

Section 35. Continued perfection of security interest following change in applicable law. (1) A security interest perfected pursuant to the law of the jurisdiction designated in [section 20(1) or 24(3)] remains perfected until the earliest of:

(a) the time perfection would have ceased under the law of that jurisdiction;

(b) the expiration of 4 months after a change of the debtor's location to another jurisdiction;

(c) the expiration of 1 year after a transfer of collateral to a person that thereby becomes a debtor and is located in another jurisdiction; or

(d) the expiration of 1 year after a new debtor located in another jurisdiction becomes bound under [section 12(4)].

(2) If a security interest described in subsection (1) becomes perfected under the law of the other jurisdiction before the earliest time or event described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earliest time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(3) A possessory security interest in collateral, other than goods covered by a certificate of title and as-extracted collateral consisting of goods, remains continuously perfected if:

(a) the collateral is located in one jurisdiction and subject to a security interest perfected under the law of that jurisdiction;

(b) thereafter the collateral is brought into another jurisdiction; and

(c) upon entry into the other jurisdiction, the security interest is perfected under the law of the other jurisdiction.

(4) Except as otherwise provided in subsection (5), a security interest in goods covered by a certificate of title that is perfected by any method under the law of another jurisdiction when the goods become covered by a certificate of title from this state remains perfected until the security interest would have become unperfected under the law of the other jurisdiction had the goods not become so covered.

(5) A security interest described in subsection (4) becomes unperfected as against a purchaser of the goods for value and is deemed never to have been

HeinOnline -- 1999 vol. I 1053 1999

perfected as against a purchaser of the goods for value if the applicable requirements for perfection under [section 30(2) or 32] are not satisfied before the earlier of:

(a) the time the security interest would have become unperfected under the law of the other jurisdiction had the goods not become covered by a certificate of title from this state; or

(b) the expiration of 4 months after the goods had become so covered.

(6) A security interest in a deposit account, letter-of-credit right, or investment property that is perfected under the law of the bank's jurisdiction, the issuer's jurisdiction, a nominated person's jurisdiction, the securities intermediary's jurisdiction, or the commodity intermediary's jurisdiction, as applicable, remains perfected until the earlier of:

(a) the time perfection would have ceased under the law of the first jurisdiction; or

(b) the expiration of 4 months after a change of the applicable jurisdiction.

(7) If a security interest described in subsection (6) becomes perfected under the law of the other jurisdiction before the earlier of the time or the end of the period described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier of that time or the end of that period, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

Section 36. Interests that take priority over or take free of unperfected security interest or agricultural lien. (1) An unperfected security interest or agricultural lien is subordinate to the rights of:

(a) a person entitled to priority under [section 41]; and

(b) a person that becomes a lien creditor before the earlier of the time the security interest or agricultural lien is perfected or a financing statement covering the collateral is filed.

(2) Except as otherwise provided in subsection (5), a buyer, other than a secured party, of chattel paper, documents, goods, instruments, or a security certificate takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(3) Except as otherwise provided in subsection (5), a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(4) A licensee of a general intangible or a buyer, other than a secured party, of accounts, general intangibles, or investment property other than a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

(5) Except as otherwise provided in [sections 39 and 40], if a person files a financing statement with respect to a purchase-money security interest before or within 20 days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor that arise between the time the security interest attaches and the time of filing.

HeinOnline -- 1999 vol. I 1054 1999

Section 37. No interest retained in right to payment that is sold — rights and title of seller of account or chattel paper with respect to creditors and purchasers. (1) A debtor that has sold an account, chattel paper, payment intangible, or promissory note does not retain a legal or equitable interest in the collateral sold.

(2) For purposes of determining the rights of creditors of, and purchasers for value of an account or chattel paper from, a debtor that has sold an account or chattel paper, while the buyer's security interest is unperfected, the debtor has rights and title to the account or chattel paper identical to those the debtor sold.

Section 38. Rights and title of consignee with respect to creditors and purchasers. (1) Except as otherwise provided in subsection (2), for purposes of determining the rights of creditors of, and purchasers for value of goods from, a consignee, while the goods are in the possession of the consignee, the consignee has rights and title to the goods identical to those the consignor had or had power to transfer.

(2) For purposes of determining the rights of a creditor of a consignee, law other than [sections 1 through 125] determines the rights and title of a consignee while goods are in the consignee's possession if, under [sections 20 through 61], a perfected security interest held by the consignor would have priority over the rights of the creditor.

Section 39. Buyer of goods. (1) Except as otherwise provided in subsection (5), a buyer in ordinary course of business, other than a person buying farm products from a person engaged in farming operations, takes free of a security interest created by the buyer's seller, even if the security interest is perfected and the buyer knows of its existence.

(2) Except as otherwise provided in subsection (5), a buyer of goods from a person who used or bought the goods for use primarily for personal, family, or household purposes takes free of a security interest, even if perfected, if the buyer buys:

(a) without knowledge of the security interest;

(b) for value;

(c) primarily for the buyer's personal, family, or household purposes; and

(d) before the filing of a financing statement covering the goods.

(3) To the extent that it affects the priority of a security interest over a buyer of goods under subsection (2), the period of effectiveness of a filing made in the jurisdiction in which the seller is located is governed by [section 35(1) and (2)].

(4) A buyer in ordinary course of business buying oil, gas, or other minerals at the wellhead or minehead or after extraction takes free of an interest arising out of an encumbrance.

(5) Subsections (1) and (2) do not affect a security interest in goods in the possession of the secured party under [section 32].

Section 40. Licensee of general intangible and lessee of goods in ordinary course of business. (1) In this section, "licensee in ordinary course of business" means a person that becomes a licensee of a general intangible in good faith, without knowledge that the license violates the rights of another person in the general intangible, and in the ordinary course from a person in the business of licensing general intangibles of that kind. A person becomes a licensee

HeinOnline -- 1999 vol. I 1055 1999

in ordinary course of business if the license to the person comports with the usual or customary practices in the kind of business in which the licensor is engaged or with the licensor's own usual or customary practices.

(2) A licensee of a general intangible in ordinary course of business takes its rights under the license free of a security interest in the general intangible created by the licensor, even if the security interest is perfected and the licensee knows of its existence.

(3) A lessee in ordinary course of business takes its leasehold interest free of a security interest in the goods created by the lessor, even if the security interest is perfected and the lessee knows of its existence.

Section 41. Priorities among conflicting security interests and agricultural liens in same collateral. (1) Except as otherwise provided in this section, priority among conflicting security interests and agricultural liens in the same collateral is determined according to the following rules:

(a) Conflicting perfected security interests and agricultural liens rank according to priority in time of filing or perfection. Priority dates from the earlier of the time a filing covering the collateral is first made or the security interest or agricultural lien is first perfected if there is no period thereafter when there is neither filing nor perfection.

(b) A perfected security interest or agricultural lien has priority over a conflicting unperfected security interest or agricultural lien.

(c) The first security interest or agricultural lien to attach or become effective has priority if conflicting security interests and agricultural liens are unperfected.

(2) For the purposes of subsection (1)(a):

(a) the time of filing or perfection as to a security interest in collateral is also the time of filing or perfection as to a security interest in proceeds; and

(b) the time of filing or perfection as to a security interest in collateral supported by a supporting obligation is also the time of filing or perfection as to a security interest in the supporting obligation.

(3) Except as otherwise provided in subsection (6), a security interest in collateral that qualifies for priority over a conflicting security interest under [section 46, 47, 48, 49, or 50] also has priority over a conflicting security interest in:

(a) any supporting obligation for the collateral; and

(b) proceeds of the collateral if:

(i) the security interest in proceeds is perfected;

(ii) the proceeds are:

(A) cash proceeds; or

(B) of the same type as the collateral; and

(iii) in the case of proceeds that are proceeds of proceeds, all intervening proceeds are cash proceeds, proceeds of the same type as the collateral, or an account relating to the collateral.

(4) Subject to subsection (5) and except as otherwise provided in subsection (6), if a security interest in chattel paper, deposit accounts, negotiable documents, instruments, investment property, or letter-of-credit rights is perfected by a

HeinOnline -- 1999 vol. I 1056 1999

method other than filing, conflicting perfected security interests in proceeds of the collateral rank according to priority in time of filing.

(5) Subsection (4) applies only if the proceeds of the collateral are not cash proceeds, chattel paper, negotiable documents, instruments, investment property, or letter-of-credit rights.

(6) Suhsections (1) through (5) are subject to:

(a) suhsection (7) and the other provisions of [sections 20 through 61];

(b) 30-4-208 with respect to a security interest of a collecting bank;

(c) [section 161] with respect to a security interest of an issuer or nominated person; and

(d) [section 9] with respect to a security interest arising under chapter 2 or 2A.

(7) A perfected agricultural lien on collateral has priority over a conflicting security interest in or agricultural lien on the same collateral if the statute creating the agricultural lien so provides.

Section 42. Future advances. (1) Except as otherwise provided in subsection (3), for purposes of determining the priority of a perfected security interest under [section 41(1)(a)], perfection of the security interest dates from the time an advance is made to the extent that the security interest secures an advance that:

(a) is made while the security interest is perfected only:

(i) under [section 28] when it attaches; or

(ii) temporarily under [section 31(5), (6), or (7)]; and

(b) is not made pursuant to a commitment entered into before or while the security interest is perfected by a method other than under [section 28 or 31(5), (6), or (7)].

(2) Except as otherwise provided in subsection (3), a security interest is subordinate to the rights of a person that becomes a lien creditor while the security interest is perfected only to the extent that it secures advances made more than 45 days after the person hecomes a lien creditor unless the advance is made:

(a) without knowledge of the lien; or

(b) pursuant to a commitment entered into without knowledge of the lien.

(3) Suhsections (1) and (2) do not apply to a security interest held by a secured party that is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor.

(4) Except as otherwise provided in subsection (5), a buyer of goods other than a buyer in ordinary course of business takes free of a security interest to the extent that it secures advances made after the earlier of:

(a) the time the secured party acquires knowledge of the huyer's purchase; or

(b) 45 days after the purchase.

(5) Subsection (4) does not apply if the advance is made pursuant to a commitment entered into without knowledge of the buyer's purchase and before the expiration of the 45-day period.

HeinOnline -- 1999 vol. I 1057 1999

(6) Except as otherwise provided in subsection (7), a lessee of goods, other than a lessee in ordinary course of business, takes the leasehold interest free of a security interest to the extent that it secures advances made after the earlier of:

(a) the time the secured party acquires knowledge of the lease; or

(b) 45 days after the lease contract becomes enforceable.

(7) Subsection (6) does not apply if the advance is made pursuant to a commitment entered into without knowledge of the lease and before the expiration of the 45-day period.

Section 43. Priority of purchase-money security interests. (1) Except as otherwise provided in subsection (7), a perfected purchase-money security interest in goods other than inventory or livestock has priority over a conflicting security interest in the same goods, and except as otherwise provided in [section 46], a perfected security interest in its identifiable proceeds also has priority, if the purchase-money security interest is perfected when the debtor receives possession of the collateral or within 20 days thereafter.

(2) Subject to subsection (3) and except as otherwise provided in subsection (7), a perfected purchase-money security interest in inventory has priority over a conflicting security interest in the same inventory, has priority over a conflicting security interest in chattel paper or an instrument constituting proceeds of the inventory and in proceeds of the chattel paper if so provided in [section 49], and except as otherwise provided in [section 46], also has priority in identifiable cash proceeds of the inventory to the extent tbe identifiable cash proceeds are received on or before the delivery of the inventory to a buyer, if:

(a) the purchase-money security interest is perfected when the debtor receives possession of the inventory;

(b) the purchase-money secured party sends an authenticated notification to the holder of the conflicting security interest;

(c) the holder of the conflicting security interest receives the notification within 5 years before the debtor receives possession of the inventory; and

(d) the notification states that the person sending the notification has or expects to acquire a purchase-money security interest in inventory of the debtor and describes the inventory.

(3) Subsections (2)(b) through (2)(d) apply only if the holder of the conflicting security interest had filed a financing statement covering the same types of inventory:

(a) if the purchase-money security interest is perfected by filing, before the date of the filing; or

(b) if the purchase-money security interest is temporarily perfected without filing or possession under [section 31(6)], before the beginning of the 20-day period thereunder.

(4) Subject to subsection (5) and except as otherwise provided in subsection (7), a perfected purchase-money security interest in livestock tbat are farm products has priority over a conflicting security interest in the same livestock, and except as otherwise provided in [section 46], a perfected security interest in their identifiable proceeds and identifiable products in tbeir unmanufactured states also has priority, if:

HeinOnline -- 1999 vol. I 1058 1999

(a) the purchase-money security interest is perfected when the debtor receives possession of the livestock;

(b) the purchase-money secured party sends an authenticated notification to the holder of the conflicting security interest;

(c) the holder of the conflicting security interest receives the notification within 6 months before the debtor receives possession of the livestock; and

(d) the notification states that the person sending the notification bas or expects to acquire a purchase-money security interest in livestock of the debtor and describes the livestock.

(5) Subsections (4)(b) through (4)(d) apply only if the holder of the conflicting security interest had filed a financing statement covering the same types of livestock:

(a) if the purchase-money security interest is perfected by filing, before the date of the filing; or

(b) if the purchase-money security interest is temporarily perfected without filing or possession under [section 31(6)], before the beginning of the 20-day period thereunder.

(6) Except as otherwise provided in subsection (7), a perfected purchase-money security interest in software has priority over a conflicting security interest in the same collateral, and except as otherwise provided in [section 46], a perfected security interest in its identifiable proceeds also has priority, to the extent that the purchase-money security interest in the goods in which the software was acquired for use has priority in the goods and proceeds of the goods under this section.

(7) If more than one security interest qualifies for priority in the same collateral under subsection (1), (2), (4), or (6):

(a) a security interest securing an obligation incurred as all or part of the price of the collateral has priority over a security interest securing an obligation incurred for value given to enable the debtor to acquire rights in or the use of collateral; and

(b) in all other cases, [section 41(1)] applies to the qualifying security interests.

Section 44. Priority of security interests in transferred collateral. (1) Except as otherwise provided in subsection (2), a security interest created by a debtor is subordinate to a security interest in the same collateral created by another person if:

(a) the debtor acquired the collateral subject to the security interest created by the other person;

(b) the security interest created by the other person was perfected when the debtor acquired the collateral; and

(c) there is no period thereafter when the security interest is unperfected.

(2) Subsection (1) subordinates a security interest only if the security interest:

(a) otherwise would have priority solely under [section 41(1) or 43]; or

(b) arose solely under 30-2-711(3) or 30-2A-508(5).

HeinOnline -- 1999 vol. I 1059 1999

Section 45. Priority of security interests created by new debtor. (1) Subject to subsection (2), a security interest created by a new debtor that is perfected by a filed financing statement that is effective solely under [section 78] in collateral in which a new debtor has or acquires rights is subordinate to a security interest in the same collateral that is perfected by another method.

(2) If more than one security interest in the same collateral is subordinate under subsection (1), the other provisions of [sections 20 through 61], as applicable, determine the priority among the subordinated security interests.

Section 46. Priority of security interests in deposit account. The following rules govern priority among conflicting security interests in the same deposit account:

(1) A security interest held by a secured party having control of the deposit account under [section 3] has priority over a conflicting security interest held by a secured party that does not have control.

(2) Except as otherwise provided in subsections (3) and (4), security interests perfected by control under [section 33] rank according to priority in time of obtaining control.

(3) Except as otherwise provided in subsection (4), a security interest held by the bank with which the deposit account is maintained has priority over a conflicting security interest held by another secured party.

(4) A security interest perfected by control under [section 3(1)(c)] has priority over a security interest held by the bank with which the deposit account is maintained.

Section 47. Priority of security interests in investment property. The following rules govern priority among conflicting security interests in the same investment property:

(1) A security interest held by a secured party having control of investment property under [section 5] has priority over a security interest of a secured party that does not have control of the investment property.

(2) Except as otherwise provided in subsections (3) and (4), conflicting security interests held by secured parties each of which has control under [section 5] rank according to priority in time of:

(a) if the collateral is a security, obtaining control;

(b) if the collateral is a security entitlement carried in a securities account and:

(i) if the secured party obtained control under 30-8-116(4)(a), the secured party's becoming the person for which the securities account is maintained;

(ii) if the secured party obtained control under 30-8-116(4)(b), the securities intermediary's agreement to comply with the secured party's entitlement orders with respect to security entitlements carried or to be carried in the securities account; or

(iii) if the secured party obtained control through another person under 30-8-116(4)(c), the time on which priority would be based under this subsection if the other person were the secured party; or

(c) if the collateral is a commodity contract carried with a commodity intermediary, the satisfaction of the requirement for control specified in [section

HeinOnline -- 1999 vol. I 1060 1999

5(2)(b)] with respect to commodity contracts carried or to be carried with the commodity intermediary.

(3) A security interest held by a securities intermediary in a security entitlement or a securities account maintained with the securities intermediary has priority over a conflicting security interest held by another secured party.

(4) A security interest held by a commodity intermediary in a commodity contract or a commodity account maintained with the commodity intermediary has priority over a conflicting security interest held by another secured party.

(5) A security interest in a certificated security in registered form that is perfected by taking delivery under [section 32(1)] and not by control under [section 33] has priority over a conflicting security interest perfected by a method other than control.

(6) Conflicting security interests granted by a broker, securities intermediary, or commodity intermediary that are perfected without control under [section 5] rank equally.

(7) In all other cases, priority among conflicting security interests in investment property is governed by [sections 41 and 42].

Section 48. Priority of security interests in letter-of-credit right. The following rules govern priority among conflicting security interests in the same letter-of-credit right:

(1) A security interest held by a secured party having control of the letter-of-credit right under [section 6] has priority to the extent of its control over a conflicting security interest held by a secured party that does not have control.

(2) Security interests perfected by control under [section 33] rank according to priority in time of obtaining control.

Scction 49. Purchase of chattel paper or instrument. (1) A purchaser of chattel paper has priority over a security interest in the chattel paper that is claimed merely as proceeds of inventory subject to a security interest if:

(a) in good faith and in the ordinary course of the purchaser's husiness, the purchaser gives new value and takes possession of the chattel paper or obtains control of the chattel paper under [section 4]; and

(b) the chattel paper does not indicate that it has been assigned to an identified assignee other than the purchaser.

(2) A purchaser of chattel paper has priority over a security interest in the chattel paper that is claimed other than merely as proceeds of inventory subject to a security interest if the purchaser gives new value and takes pessession of the cbattel paper or obtains control of the chattel paper under [section 4] in good faith, in the ordinary course of the purchaser's business, and without knowledge that the purchase violates the rights of the secured party.

(3) Except as otherwise provided in [section 46], a purchaser having priority in chattel paper under subsection (1) or (2) also has priority in proceeds of the cbattel paper to the extent that:

(a) [section 41] provides for priority in the proceeds; or

(b) the proceeds consist of the specific goods covered by the chattel paper or cash proceeds of the specific goods, even if the purchaser's security interest in the proceeds is unperfected.

HeinOnline -- 1999 vol. I 1061 1999

(4) Except as otherwise provided in [section 50(1)], a purchaser of an instrument has priority over a security interest in the instrument perfected by a method other than possession if the purchaser gives value and takes possession of the instrument in geod faith and without knowledge that the purchase violates the rights of the secured party.

(5) For purposes of subsections (1) and (2), the holder of a purchase-money security interest in inventory gives new value for chattel paper constituting proceeds of the inventory.

(6) For purposes of subsections (2) and (4), if chattel paper or an instrument indicates that it has been assigned to an identified secured party other than the purchaser, a purchaser of the chattel paper or instrument has knowledge that the purchase violates the rights of the secured party.

Section 50. Priority of rights of purehasers of instruments, documents, and securities under other chapters — priority of interests in financial assets and security entitlements under chapter 8. (1) [Sections 1 through 125] do not limit the rights of a holder in due course of a negotiable instrument, a holder to whom a negotiable document of title has been duly negotiated, or a protected purchaser of a security. These holders or purchasers take priority over an earlier security interest, even if perfected, to the extent provided in chapters 3, 7, and 8.

(2) [Sections 1 througb 125] do not limit the rights of or impose liability on a person to the extent that the person is protected against the assertion of an adverse claim under chapter 8.

(3) Filing under [sections 1 through 125] does not constitute notice of a claim or defense to the holders, purchasers, or persons mentioned in subsections (1) and (2).

Section 51. Transfer of money — transfer of funds from deposit account. (1) A transferee of money takes the money free of a security interest unless the transferee acts in collusion with the debtor in violating the rights of the secured party.

(2) A transferee of funds from a deposit account takes the funds free of a security interest in the deposit account unless the transferee acts in collusion with the debtor in violating the rights of the secured party.

Section 52. Priority of certain liens arising hy operation of law. (1) In this section, "possessory lien" means an interest, other than a security interest or an agricultural lien:

(a) that secures payment or performance of an obligation for services or materials furnished with respect to goods by a person in the ordinary course of the person's business;

(b) tbat is created by statute or rule of law in favor of the person; and

(c) whose effectiveness depends on the person's pessession of the goods.

(2) A possessory lien on goods has priority over a security interest in the goods unless the lien is created by a statute that expressly provides otherwise.

Section 53. Priority of security interests in fixtures and crops. (1) A security interest under [sections 1 through 125] may be created in goods that are fixtures or may continue in goods that become fixtures. A security interest does

HeinOnline -- 1999 vol. I 1062 1999

not exist under [sections 1 through 125] in ordinary building materials incorporated into an improvement on land.

(2) [Sections 1 through 125] do not prevent creation of an encumbrance upon fixtures under real property law.

(3) In cases not governed by subsections (4) through (8), a security interest in fixtures is subordinate to a conflicting interest of an encumbrancer or owner of the related real property that is not the debtor.

(4) Except as otherwise provided in subsection (8), a perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property and:

(a) the security interest is a purchase-money security interest;

(b) the interest of the encumbrancer or owner arises before the goods become fixtures; and

(c) the security interest is perfected by a fixture filing before the goods become fixtures or within 20 days thereafter.

(5) A perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if:

(a) the debtor has an interest of record in the real property or is in possession of the real property and the security interest:

(i) is perfected by a fixture filing before the interest of the encumbrancer or owner is of record; and

(ii) the security interest has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner;

(b) before the goods become fixtures, the security interest is perfected by any method permitted by [sections 1 through 125] and the fixtures are readily removable:

(i) factory or office machines;

(ii) equipment that is not primarily used or leased for use in the operation of the real property; or

(iii) replacements of domestic appliances that are consumer goods;

(c) the conflicting interest is a lien on the real property obtained by legal or equitable proceedings after the security interest was perfected by any method permitted by [sections 1 through 125]; or

(d) the security interest is:

(i) created in a manufactured home in a manufactured-home transaction; and

(ii) perfected pursuant to a statute described in [section 30(1)(b)].

(6) A security interest in fixtures, whether or not perfected, has priority over a conflicting interest of an encumbrancer or owner of the real property if:

(a) the encumbrancer or owner has, in an authenticated record, consentod to the security interest or disclaimed an interest in the goods as fixtures; or

(b) the debtor has a right to remove the goods as agalnst the encumbrancer or owner.

HeinOnline -- 1999 vol. I 1063 1999

(7) The priority of the security interest under subsection (6) continues for a reasonable time if the debtor's right to remove the goods as against the encumbrancer or owner terminates.

(8) A mortgage is a "construction mortgage" to the extent that it secures an obligation incurred for the construction of an improvement on land, including the acquisition cost of the land, if the recorded record so indicates. Except as otherwise provided in subsections (5) and (6), a security interest in fixtures is subordinate to a construction mortgage recorded before the goods become fixtures if the goods become fixtures before the completion of the construction. A mortgage has this priority to the same extent as a construction mortgage to the extent that it is given to refinance a construction mortgage.

(9) A perfected security interest in crops growing on real property has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property.

(10) Subsection (9) prevails over any inconsistent provisions of Title 71, chapter 3, parts 8 and 9.

Section 54. Accessions. (1) A security interest may be created in an accession and continues in collateral that becomes an accession.

(2) If a security interest is perfected when the collateral becomes an accession, the security interest remains perfected in the collateral.

(3) Except as otherwise provided in subsection (4), the other provisions of [sections 20 through 61] determine the priority of a security interest in an accession.

(4) A security interest in an accession is subordinate to a security interest in the whole that is perfected by compliance with the requirements of a certificate-of-title statute under [section 30(2)].

(5) After default, subject to [sections 98 through 125], a secured party may remove an accession from other goods if the security interest in the accession has priority over the claims of every person having an interest in the whole.

(6) A secured party that removes an accession from other goods under subsection (5) shall promptly reimburse any encumbrancer or owner of the whole or of the other goods, other than the debtor, for the cost of repair of any physical injury to the whole or the other goods. The secured party need not reimburse the encumbrancer or owner for any diminution in value of the whole or the other goods caused by the absence of the accession removed or by any necessity for replacing it. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse.

Section 55. Commingled goods. (1) In this section, "commingled goods" means goods that are physically united with other goods in such a manner that their identity is lost in a product or mass.

(2) A security interest does not exist in commingled goods as such. However, a security interest may attach to a product or mass that results when goods become commingled goods.

(3) If collateral becomes commingled goods, a security interest attaches to the product or mass.

HeinOnline -- 1999 vol. I 1064 1999

(4) If a security interest in collateral is perfected before the collateral becomes commingled goods, the security interest that attaches to the product or mass under subsection (3) is perfected.

(5) Except as otherwise provided in subsection (6), the other provisions of [sections 20 through 61], as applicable, determine the priority of a security interest that attaches to the product or mass under subsection (3).

(6) If more than one security interest attaches to the product or mass under subsection (3), the following rules determine priority:

(a) A security interest that is perfected under subsection (4) has priority over a security interest that is unperfected at the time the collateral becomes commingled goods.

(b) If more than one security interest is perfected under subsection (4), the security interests rank equally in propertion to value of the collateral at the time it became commingled goeds.

Section 56. Priority of security intercsts in goods covered by certificate of titie. If, while a security interest in goods is perfected by any method under the law of another jurisdiction, this state issues a certificate of title that does not show that the goods are subject to the security interest or contain a statement that they may be subject to security interests not shown on the certificate:

(1) a buyer of the goods, other than a person that is in the business of selling goods of that kind, takes free of the security interest if the buyer gives value and receives delivery of the goods after issuance of the certificate and without knowledge of the security interest; and

(2) the security interest is subordinate to a conflicting security interest in the goods that attaches, and is perfected under [section 30(2)], after issuance of the certificate and without the conflicting secured party's knowledge of the security interest.

Scction 57. Priority of security interest or agricuitural lien perfected by filed financing statement providing certain incorrect information. If a security interest or agricultural lien is perfected by a filed financing statement providing information described in [section 86(2)(e)] that is incorrect at the time the financing statement is filed:

(1) the security interest or agricultural lien is subordinate to a conflicting perfected security interest in the collateral to the extent that the holder of the conflicting security interest gives value in reasonable reliance upen the incorrect information; and

(2) a purchaser, other than a secured party, of the collateral takes free of the security interest or agricultural lien to the extent that, in reasonable reliance upon the incorrect information, the purchaser gives value and, in the case of chattel paper, documents, goods, instruments, or a security certificate, receives delivery of the collateral.

Section 58. Priority subject to subordination. [Sections 1 through 125] do not preclude subordination by agreement by a person entitled to priority.

Scction 59. Effectiveness of right of recoupment or setoff against deposit account. (1) Except as otherwise provided in subsection (3), a bank with

HeinOnline -- 1999 vol. I 1065 1999

which a deposit account is maintained may exercise against a secured party that holds a security interest in the deposit account any right of recoupment or setoff.

(2) Except as otherwise provided in subsection (3), the application of [sections 1 through 125] to a security interest in a deposit account does not affect a right of recoupment or setoff of the secured party as to a deposit account maintained with tho secured party.

(3) The exerciso by a bank of a setoff against a deposit account is ineffective against a secured party that holds a security interest in the deposit account that is perfected by control under [section 3(1)(c)] if the setoff is based on a claim against the debtor.

Section 60. Bank's rights and duties with respect to deposit account. Except as otherwise provided in [section 59(3)] and unless the bank otherwise agrees in an authenticated record, a bank's rights and duties with respect to a deposit account maintained with the bank are not terminated, suspended, or modified by:

(1) the creation, attschment, or perfection of a security interest in the deposit account;

(2) the bank's knowledge of the security interest; or

(3) the bank's receipt of instructions from the secured party.

Section 61. Bank's right to refuse to enter into or disclose existence of control agreement. [Sections 1 through 125] do not require a bank to enter into an agreement of the type described in [section 3(1)(b)], even if its customer so requests or directs. A bank that has entered into such an agreement is not requirod to confirm the existence of the agreement to another porson unless requested to do so by its customer.

Section 62. Alienability of debtor's rights. (1) Except as otherwise provided in [sections 67, 68, 69, and 70] and subsection (2) of this section, whether a debtor's rights in collateral may be voluntarily or involuntarily transferred is governed by applicable law other than [sections 1 through 125].

(2) An agreement between the debtor and secured party that prohibits a transfer of the debtor's rights in collateral or makes the transfer a default does not prevent the transfer from taking effect.

Section 63. Secured party not obligated on contract of debtor. The existence of a security interest, agricultural lien, or authority given to a debtor to dispose of or use collateral, without more, does not impose upon a secured party liability in contract or tort for the debtor's acts or omissions.

Section 64. Agreement not to assert defense against assignee. (1) In this section, "value" has the meaning provided in 30-3-303(1).

(2) Except as otherwise provided in this section, an agreement between an account debtor and an assignor not to assert against an assignee any claim or defense that the account debter may have against the assignor is enforceable by an assignee that takes an assignment:

(a) for value;

(b) in geod faith;

(c) without notice of a claim of a property or possessory right to the property assigned; and

HeinOnline -- 1999 vol. I 1066 1999

(d) without notice of a defense or claim in recoupment of the type that may be asserted against a person entitled to enforce a negotiable instrument under 30-3-305(1).

(3) Subsection (2) does not apply to defenses of a type that may be asserted against a holder in due course of a negotiable instrument under 30-3-305(2).

(4) In a consumer transaction, if a record evidences the account debtor's obligation, law other than [sections 1 through 125] requires that the record provide a statement to the effect that the rights of an assignee are subject to claims or defenses that the consumer debtor could assert against the original obligee, and the record does not provide such a statement:

(a) the record has the same effect as if the record provided such a statement; and

(b) the account debtor may assert against an assignee those claims and defenses that would have heen available if the record provided such a statement.

(5) This section is subject to law other than [sections 1 through 125] that establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(6) Except as otherwise provided in subsection (4), this section does not displace law other than [sections 1 through 125] that gives effect to an agreement by an account debtor not to assert a claim or defense against an assignee.

Section 65. Rights acquired by assignee — claim and defenses against assignee. (1) Unless an account debtor has made an enforceable agreement not to assert defenses or claims, and subject to subsections (2) through (5), the rights of an assignee are subject to:

(a) all terms of the agreement between the account debtor and assignor and any defense or claim in recoupment arising from the transaction that gave rise to the contract; and

(b) any other defense or claim of the account debtor against the assignor that accrues before the account debtor receives a notification of the assignment authenticated by the assignor or the assignee.

(2) Subject to subsection (3) and except as otherwise provided in subsection (4), the claim of an account debtor against an assignor may be asserted against an assignee under subsection (1) only to reduce the amount the account debtor owes.

(3) This section is subject to law other than [sections 1 through 125] that establishes a different rule for an account debtor who is an individual and who incurred the ohligation primarily for personal, family, or household purposes.

(4) In a consumer transaction, if a record evidences the account dehtor's obligation, law other than [sections 1 through 125] requires that the record provide a statement to the effect that the account debtor's recovery against an assignee with respect to claims and defenses against the assignor may not exceed amounts paid by the account dehtor under the record, and the record does not provide such a statement, the extent to which a claim of an account debtor against the assignor may he asserted against an assignee is determined as if the record provided such a statement.

(5) This section does not apply to an assignment of a health-care-insurance receivable.

HeinOnline -- 1999 vol. I 1067 1999

Section 66. Modification of assigned contract. (1) A modification of or substitution for an assigned contract is effective against an assignee if made in good faith. The assignee acquires corresponding rights under the modified or substituted contract. The assignment may provide that the modification or substitution is a breach of contract by the assignor. This subsection is subject to subsections (2) through (4).

(2) Subsection (1) applies to the extent that:

(a) the right to payment or a part thereof under an assigned contract has not been fully earned by performance; or

(b) the right to payment or a part thereof has been fully earned by performance and the account debtor has not received notification of the assignment under [section 67(1)].

(3) This section is subject to law other than [sections 1 through 125] that establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(4) This section does not apply to an assignment of a health-care-insurance receivable.

Section 67. Discharge of account debtor — notification of assignment — identification and proof of assignment — term prohibiting assignment ineffective. (1) Subject to subsections (2) through (8), an account debtor on an account, chattel paper, or payment intangible may discharge its obligation by paying the assignor until, but not after, the account debtor receives a notification, authenticated by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.

(2) Subject to subsection (7), notification is ineffective under subsection (1):

(a) if it does not reasonably identify the rights assigned;

(b) to the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than [sections 1 through 125]; or

(c) at the option of an account debtor, if the notification notifies the account debtor to make less than the full amount of any installment or other periodic payment to the assignee, even if:

(i) only a portion of the account, chattel paper, or general intangible has been assigned to that assignee;

(ii) a portion has been assigned to another assignee; or

(iii) the account debtor knows that the assignment to that assignee is limited.

(3) Subject to subsection (7), if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the assignee complies, the account debtor may discharge its obligation by paying the assignor, even if the account debtor has received a notification under subsection (1).

HeinOnline -- 1999 vol. I 1068 1999

(4) Except as otherwise provided in 30-2A-303, [section 68], and subsection (5) of this section, and subject to subsection (7) of this section, a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it:

(a) prohibits, restricts, or requires the consent of tbe account debtor or person obligated on the promissory note to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, an account, chattel paper, payment intangible, or promissory note; or

(b) provides that the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account, chattel paper, payment intangible, or promissory note.

(5) Subsection (4) does not apply to the sale of a payment intangible or promissory note.

(6) Subject to subsection (7), an account debtor may not waive or vary its option under subsection (2)(c).

(7) This section is subject to law other than [sections 1 through 125] that establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(8) This section does not apply to an assignment of a health-care-insurance receivable.

Section 68. Restrictions on creation or enforcement of security interest in leasehold interest or in lessor's residual interest. (1) Except as otherwise provided in subsection (2), a term in a lease agreement is ineffective to the extent that it:

(a) prohibits, restricts, or requires the consent of a party to the lease to the creation, attachment, perfection, or enforcement of a security interest in an interest of a party under the lease contract or in the lessor's residual interest in the goods; or

(b) provides that the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the lease.

(2) Except as otherwise provided in 30-2A-303(7), a term described in subsection (1)(b) is effective to the extent that there is:

(a) a transfer by the lessee of the lessee's right of possession or use of the goods in violation of the term; or

(b) a delegation of a material performance of either party to the lease contract in violation of the term.

(3) The creation, attachment, perfection, or enforcement of a security interest in the lessor's interest under the lease contract or the lessor's residual interest in the goods is not a transfer that materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on the lessee within 30-2A-303(4). This subsection does not apply to the extent that enforcement results in a delegation of a material performance of the lessor.

HeinOnline -- 1999 vol. I 1069 1999

Section 69. Restrictions on assignment of promissory notes, health-care-insurance receivables, and certain general intangibles ineffective. (1) Except as otherwise provided in subsection (2), a term in a promissory note or in an agreement between an account debtor and a debtor that relates to a health-care-insurance receivable or a general intangible, including a contract, permit, license, or franchise, and that prohibits, restricts, or requires the consent of the person obligated on the promissory note or the account debtor to, the assignment or transfer of, or the creation, attachment, or perfection of a security interest in, the promissory note, health-care-insurance receivable, or general intangible is ineffective to the extent that the term:

(a) would impair the creation, attachment, or perfection of a security interest; or

(b) provides that the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

(2) Subsection (1) applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note.

(3) A rule of law, including a provision in a statute or governmental rule or regulation, that prohibits, restricts, or requires the consent of a government, governmental body or official, person obligated on a promissory note, or account debtor to the assignment or transfer of or creation of a security interest in a promissory note, health-care-insurance receivable, or general intangible, including a contract, permit, license, or franchise between an account debtor and a debtor, is ineffective to the extent that the rule of law, statute, or regulation:

(a) would impair the creation, attachment, or perfection of a security interest; or

(b) provides that the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

(4) To the extent that a term in a promissory note or in an agreement between an account debtor and a debtor that relates to a health-care-insurance receivable or general intangible or a rule of law described in subsection (3) would be effective under law other than [sections 1 through 125] but is ineffective under subsection (1) or (3), the creation, attachment, or perfection of a security interest in the promissory note, health-care-insurance receivable, or general intangible:

(a) is not enforceable against the person obligated on the promissory note or the account debtor;

(b) does not impose a duty or obligation on the person obligated on the promissory note or the account debtor;

(c) does not require the person obligated on the promissory note or the account debtor to recognize the security interest, pay or render performance to the secured party, or accept payment or performance from the secured party;

(d) does not entitle the secured party to use or assign the debtor's rights under the promissory note, health-care-insurance receivable, or general intangible, including any related information or materials furnished to the debtor in the

HeinOnline -- 1999 vol. I 1070 1999

transaction giving rise to the promissory note, health-care-insurance receivable, or general intangible;

(e) does not entitle the secured party to use, assign, possess, or have access to any trade secrets or confidential information of the person obligated on the promissory note or the account debtor; and

(f) does not entitle the secured party to enforce the security interest in the promissory note, health-care-insurance receivable, or general intangible.

(5) This section prevails over any inconsistent provisions of other statutes or rules.

Section 70. Restrictions on assignment of letter-of-credit rights ineffective. (1) A term in a letter of credit or a rule of law, including a provision in a statute or governmental rule or regulation, custom, or practice applicable to the letter of credit that prohibits, restricts, or requires the consent of an applicant, issuer, or nominated person to a beneficiary's assignment of or creation of a security interest in a letter-of-credit right is ineffective to the extent that the term or rule of law, custom, or practice:

(a) would impair the creation, attachment, or perfection of a security interest in the letter-of-credit right; or

(b) provides that the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the letter-of-credit right.

(2) To the extent that a term in a letter of credit is ineffective under subsection (1) but would be effective under law other than [sections 1 through 125] or a custom or practice applicable to the letter of credit, to the transfer of a right to draw or otherwise demand performance under the letter of credit, or to the assignment of a right to proceeds of the letter of credit, the creation, attachment, or perfection of a security interest in the letter-of-credit right:

(a) is not enforceable against the applicant, issuer, nominated person, or transferee beneficiary;

(b) imposes no duties or obligations on the applicant, issuer, nominated person, or transferee beneficiary; and

(c) does not require the applicant, issuer, nominated person, or transferee beneficiary to recognize the security interest, pay or render performance to the secured party, or accept payment or other performance from the secured party.

Section 71. Filing office. (1) Except as otherwise provided in subsection (2), if the local law of this state governs perfection of a security interest or agricultural lien, the office in which to file a financing statement to perfect the security interest or agricultural lien is:

(a) the office designated for the filing or recording of a mortgage on the real property if:

(i) the collateral is as-extracted collateral or timber to be cut; or

(ii) the financing statement is filed as a fixture filing and the collateral is goods that are or are to become fixtures; or

(b) the office of secretary of state in all other cases, including if the collateral is goods that are or are to become fixtures and the financing statement is not filed as a fixture filing.

HeinOnline -- 1999 vol. I 1071 1999

(2) The office in which to file a financing statement to perfect a security interest in collateral, including fixtures, of a transmitting utility is the office of secretary of state. The financing statement also constitutes a fixture filing as to the collateral indicated in the financing statement that is or is to become fixtures.

Section 72. Contents of financing statement — mortgage as financing statement — time of filing financing statement. (1) Subject to subsection (2), a financing statement is sufficient only if it:

(a) provides the name of the debtor;

(b) provides the name of the secured party or a representative of the secured party; and

(c) indicates the collateral covered by the financing statement.

(2) Except as otherwise provided in [section 71(2)], to be sufficient, a financing statement that covers as-extracted collateral or timber to be cut or that is filed as a fixture filing and covers goods that are or are to become fixtures must comply with the requirements of subsection (1) and also:

(a) indicate that it covers this type of collateral;

(b) indicate that it is to be filed for record in the real property records;

(c) provide a description of the real property to which the collateral is related sufficient to give constructive notice of the mortgage under the law of this state if the description were contained in a record of the mortgage of the real property; and

(d) if the debtor does not have an interest of record in the real property, provide the name of a record owner.

(3) A record of mortgage is effective, from the date of recording, as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut only if:

(a) the record indicates the goods or accounts that it covers;

(b) the goods are or are to become fixtures related to the real property described in the record or the collateral is related to the real property described in the record and is as-extracted collateral or timber to be cut;

(c) the record complies with the requirements for a financing statement in this section other than an indication that it is to be filed in the real property records; and

(d) the record is recorded.

(4) A financing statement may be filed before a security agreement is made or a security interest otherwise attaches.

Section 73. Name of debtor and secured party. (1) A financing statement sufficiently provides the name of the debtor:

(a) if the debtor is a registered organization, only if the financing statement provides the name of the debtor indicated on the public record of the debtor's jurisdiction of organization that shows the debtor to have been organized;

(b) if the debtor is a decedent's estate, only if the financing statement provides the name of the decedent and indicates that the debtor is an estate;

HeinOnline -- 1999 vol. I 1072 1999

(c) if the debtor is a trust or a trustee acting with respect to property held in trust, only if the financing statement:

(i) provides the name, if any, specified for the trust in its organic documents or, if no name is specified, provides the name of the settlor and additional information sufficient to distinguish the debtor from other trusts having one or more of the same settlors; and

(ii) indicates, in the debtor's name or otherwise, that the debtor is a trust or is a trustee acting with respect to property held in trust; and

(d) in other cases:

(i) if the debtor has a name, only if it provides the individual or organizational name of the debtor; and

(ii) if the debtor does not have a name, only if it provides the names of the partners, members, associates, or other persons comprising the debtor.

(2) A financing statement that provides the name of the debtor in accordance with subsection (1) is not rendered ineffective by the absence of:

(a) a trade name or other name of the debtor; or

(b) unless required under subsection (1)(d)(ii), names of partners, members, associates, or other persons comprising the debtor.

(3) A financing statement that provides only the debtor's trade name does not sufficiently provide the name of the debtor.

(4) Failure to indicate the representative capacity of a secured party or representative of a secured party does not affect the sufficiency of a financing statement.

(5) A financing statement may provide the name of more than one debtor and the name of more than one secured party.

Section 74. Indication of collateral. A financing statement sufficiently indicates the collateral that it covers if the financing statement provides:

(1) a description of the collateral pursuant to [section 7]; or

(2) an indication that the financing statement covers all assets or all personal property.

Section 75. Filing and compliance with other statutes and treaties for consignments, leases, bailments, and other transactions. (1) A consignor, lessor, or bailor of goods or a buyer of a payment intangible or promissory note may file a financing statement or may comply with a statute or treaty described in [section 30(1)], using the terms "consignor", "consignee", "lessor", "lessee", "bailor", "bailee", "owner", "registered owner", "buyer", "seller", or words of similar import, instead of the terms "secured party" and "debtor."

(2) [Sections 71 through 97] apply to the filing of a financing statement under subsection (1) and, as appropriate, to compliance that is equivalent to filing a financing statement under [section 30(2)], but the filing or compliance is not of itself a factor in determining whether the collateral secures an obligation. If it is determined for another reason that the collateral secures an obligation, a security interest held by the consignor, lessor, bailor, owner, or buyer that attaches to the collateral is perfected by the filing or compliance.

HeinOnline -- 1999 vol. I 1073 1999

Section 76. Effect of errors or omissions. (1) A financing statement substantially complying with the requirements of [sections 71 through 97] is effective, even if it includes minor errors or omissions, unless the errors or omissions make the financing statement seriously misleading.

(2) Except as otherwise provided in subsection (3), a financing statement that fails sufficiently to provide the name of the debtor in accordance with [section 73(1)] is seriously misleading.

(3) If a search of the records of the filing office under the debtor's correct name, using the filing office's standard search logic, if any, would disclose a financing statement that fails sufficiently to provide the name of the debtor in accordance with [section 73(1)], the name provided does not make the financing statement seriously misleading.

(4) For purposes of [section 78(2)], the "debtor's correct name" in subsection (3) means the correct name of the new debtor.

Section 77. Effect of certain events on effectiveness of financing statement. (1) A filed financing statement remains effective with respect to collateral that is sold, exchanged, leased, licensed, or otherwise disposed of and in which a security interest or agricultural lien continues, even if the secured party knows of or consents to the disposition.

(2) Except as otherwise provided in [section 78] and subsection (3) of this section, a financing statement is not rendered ineffective if, after the financing statement is filed, the information provided in the financing statement becomes seriously misleading under the standard set forth in [section 76].

(3) If a debtor so changes its name that a filed financing statement becomes seriously misleading under the standard set forth in [section 76]:

(a) the financing statement is effective to perfect a security interest in collateral acquired by the debtor before or within 4 months after the change; and

(b) the financing statement is not effective to perfect a security interest in collateral acquired by the debtor more than 4 months after the change, unless an amendment to the financing statement that renders the financing statement not seriously misleading is filed within 4 months after the change.

Section 78. Effectiveness of financing statement if new debtor becomes bound by security agreement. (1) Except as otherwise provided in this section, a filed financing statement naming an original debtor is effective to perfect a security interest in collateral in which a new debtor has or acquires rights to the extent that the financing statement would have been effective had the original debtor acquired rights in the collateral.

(2) If the difference between the name of the original debtor and that of the new debtor causes a filed financing statement that is effective under subsection (1) to be seriously misleading under the standard set forth in [section 76]:

(a) the financing statement is effective to perfect a security interest in collateral acquired by the new debtor before and within 4 months after the new debtor becomes bound under [section 12(4)]; and

(b) the financing statement is not effective to perfect a security interest in collateral acquired by the new debtor more than 4 months after the new debtor becomes bound under [section 12(4)] unless an initial financing statement providing the name of the new debtor is filed before the expiration of that time.

HeinOnline -- 1999 vol. I 1074 1999

(3) This section does not apply to collateral as to which a filed financing statement remains effective against the new debtor under [section 77(1)].

Section 79. Persons entitled to file record. (1) A person may file an initial financing statement, an amendment that adds collateral covered by a financing statement, or an amendment that adds a dehtor to a financing statement only if:

(a) the debtor authorizes the filing in an authenticated record; or

(h) the person holds an agricultural lien that has become effective at the time of filing and the financing statement covers only collateral in which the person holds an agricultural lien.

(2) By authenticating a security agreement, a debtor authorizes the filing of an initial financing statement and an amendment covering:

(a) the collateral described in the security agreement; aud

(b) property that becomes collateral under [section 34(1)(b)], whether or not the security agreement expressly covers proceeds.

(3) A person may file an amendment other than an amendment that adds collateral covered by a financing statement or an amendment that adds a debtor to a financing statement only if:

(a) the secured party of record authorizes the filing; or

(b) the amendment is a termination statement for a financing statement as to which the secured party of record has failed to file or send a termination statement as required by [section 83(1) or (3)], the debtor authorizes the filing, and the termination statement indicates that the debtor authorized it to be filed.

(4) If there is more than one secured party of record for a financing statement, each secured party of record may authorize the filing of an amendment under subsection (3).

Section 80. Effectiveness of filed record. (1) A filed record is effective only to the extent that it was filed by a person that may file it under [section 79].

(2) A record authorized by one secured party of record does not affect the financing statement with respect to another secured party of record.

(3) A continuation statement that is not filed within the 6-month period prescribed by [section 85(4)] is ineffective.

Section 81. Secured party of record. (1) A secured party of record with respect to a financing statement is a person whose name is provided as the name of the secured party or a representative of the secured party in an initial financing statement that has been filed. If an initial financing statement is filed under [section 84(1)], the assignee named in the initial financing statement is the secured party of record with respect to the financing statement.

(2) If an amendment of a financing statement that provides the name of a person as a secured party or a representative of a secured party is filed, the person named in the amendment is a secured party of record. If an amendment is filed under [section 84(2)], the assignee named in the amendment is a secured party of record.

(3) A person remalns a secured party of record until the filing of an amendment of the financing statement tbat deletes the person.

HeinOnline -- 1999 vol. I 1075 1999

Section 82. Amendment of financing statement. (1) Subject to [section 79], a person may add or delete collateral covered by, continue or terminate the effectiveness of, or subject to subsection (5), otherwise amend the information provided in, a financing statement by filing an amendment that:

(a) identifies, by its file numher, the debtor, the creditor, and the initial financing statement to which the amendment relates; and

(b) if the amendment relates to an initial financing statement filed or recorded in a filing office described in [section 71(1)(b)], provides the date that the initial financing statement was filed or recorded and the information specified in [section 72(2)].

(2) Except as otherwise provided in [section 85], the filing of an amendment does not extend the period of effectiveness of the financing statement.

(3) A financing statement that is amended by an amendment that adds collateral is effective as to tbe added collateral only from the date of the filing of the amendment.

(4) A financing statement that is amended by an amendment that adds a debtor is effective as to the added debtor only from the date of the filing of the amendment.

(5) An amendment is ineffective to the extent it:

(a) purports to delete all debtors and fails to provide the name of a debtor to be covered by the financing statement; or

(b) purports to delete all secured parties of record and fails to provide the name of a new secured party of record.

Section 83. Termination statement. (1) A secured party shall cause the secured party of record for a financlng statement to file a termination statement for the financing statement if the financing statement covers consumer goods and:

(a) there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value; or

(b) the debtor did not authorize the filing of tbe initial financing statement.

(2) To comply with subsection (1), a secured party shall cause the secured party of record to file the termination statement:

(a) within 1 month after there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value; or

(b) if earlier, within 20 days after the secured party receives an authenticated demand from a debtor.

(3) In cases not governed by subsection (1), within 20 days after a secured party receives an authenticated demand from a debtor, the secured party shall cause the secured party of record for a financing statement to send to the debtor a termination statement for the financing statement or file the termination statement in the filing office if:

(a) except in the case of a financing statement covering accounts or chattel paper that has been sold or goods that are the subject of a consignment, there is

HeinOnline -- 1999 vol. I 1076 1999

no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value;

(b) the financing statement covers accounts or chattel paper that has been sold but as to which the account debtor or other person obligated has discharged its obligation;

(c) the financing statement covers goods that were the subject of a consignment to the debtor but are not in the debtor's possession; or

(d) the debtor did not authorize the filing of the initial financing statement.

(4) Except as otherwise provided in [section 80], upon the filing of a termination statement with the filing office, the financing statement to which the termination statement relates ceases to be effective.

Section 84. Assignment powers of secured party of record. (1) Except as otherwise provided in subsection (3), an initial financing statement may reflect an assignment of all of the secured party's power to authorize an amendment to the financing statement by providing the name and mailing address of the assignee as the name and address of the secured party.

(2) Except as otherwise provided in subsection (3), a secured party of record may assign of record all or part of its power to authorize an amendment to a financing statement by filing in the filing office an amendment of the financing statement that:

(a) identifies, by its file number, the initial financing statement to which it relates;

(b) provides the name of the assignor; and

(c) provides the name and mailing address of the assignee.

(3) An assignment of record of a security interest in a fixture covered by a real property mortgage that is effective as a fixture filing under [section 72(3)] may be made only by an assignment of record of the mortgage in the manner provided by law of this state other than chapters 1 through 9.

Section 85. Duration and effectiveness of financing statement — effect of lapsed financing statement. (1) Except as otherwise provided in subsections (2), (5), (6), and (7), a filed financing statement is effective for a period of 5 years after the date of filing.

(2) Except as otherwise provided in subsections (5), (6), and (7), an initial financing statement filed in connection with a public-finance transaction or manufactured-home transaction is effective for a period of 30 years after the date of filing if it indicates that it is filed in connection with a public-finance transaction or manufactured-home transaction.

(3) The effectiveness of a filed financing statement lapses on the expiration of the period of its effectiveness unless before the lapse a continuation statement is filed pursuant to subsection (4). Upon lapse, a financing statement ceases to be effective and any security interest or agricultural lien that was perfected by the financing statement becomes unperfected, unless the security interest is perfected without filing. If the security interest or agricultural lien becomes unperfected upon lapse, it is deemed never to have been perfected as against a purchaser of the collateral for value.

HeinOnline -- 1999 vol. I 1077 1999

(4) A continuation statement may be filed only within 6 months before the expiration of the 5-year period specified in subsection (1) or the 30-year period specified in subsection (2), whichever is applicable.

(5) Except as otherwise provided in [section 80], upon timely filing of a continuation statement, the effectiveness of the initial financing statement continues for a period of 5 years commencing on the day on which the financing statement would have become ineffective in the absence of the filing. Upon the expiration of the 5-year period, the financing statement lapses in the same manner as provided in subsection (3), unless, before the lapse, another continuation statement is filed pursuant to subsection (4). Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the initial financing statement.

(6) If a debtor is a transmitting utility and a filed financing statement so indicates, the financing statement is effective until a termination statement is filed.

(7) A record of mortgage that is effective as a fixture filing under [section 72(3)] remains effective as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real property.

Section 86. What constitutes filing — effectiveness of filing. (1) Except as otherwise provided in subsection (2), communication of a record to a filing office and tender of the filing fee or acceptance of the record by the filing office constitutes filing.

(2) Filing does not occur with respect to a record that a filing office refuses to accept because:

(a) the record is not communicated by a method or medium of communication authorized by the filing office;

(b) an amount equal to or greater than the applicable filing fee is not tendered;

(c) the filing office is unable to index the record because:

(i) in the case of an initial financing statement, the record does not provide a name for the debtor;

(ii) in the case of an amendment or correction statement, the record:

(A) does not identify the initial financing statement as required by [section 82 or 88], as applicable; or

(B) identifies an initial financing statement whose effectiveness has lapsed under [section 85];

(iii) in the case of an initial financing statement that provides the name of a debtor identified as an individual or an amendment that provides a name of a debtor identified as an individual that was not previously provided in the financing statement to which the record relates, the record does not identify the debtor's last name; or

(iv) in the case of a record filed or recorded in the filing office described in [section 71(1)(a)], the record does not provide a sufficient description of the real property to which it relates;

(d) in the case of an initial financing statement or an amendment that adds a secured party of record, the record does not provide a name and mailing address for the secured party of record;

HeinOnline -- 1999 vol. I 1078 1999

(e) in the case of an initial financing statement or an amendment that provides a name of a debtor that was not previously provided in the financing statement to which the amendment relates, the record does not:

(i) provide a mailing address for the debtor;

(ii) indicate whether the debtor is an individual or an organization; or

(iii) if the financing statement indicates that the debtor is an organization, provide:

(A) a type of organization for the debtor;

(B) a jurisdiction of organization for the debtor; or

(C) an organizational identification number for the debtor or indicate that the debtor bas none;

(f) in the case of an assignment reflected in an initial financing statement under [section 84(1)] or an amendment filed under [section 84(2)], the record does not provide a name and mailing address for the assignee; or

(g) in the case of a continuation statement, the record is not filed within the 6-month period prescribed by [section 85(4)].

(3) For purposes of subsection (2):

(a) a record does not provide information if the filing office is unable to read or decipher the information; and

(b) a record that dees not indicate that it is an amendment or identify an initial financing statement to which it relates, as required by [section 82, 84, or 88], is an initial financing statement.

(4) A record that is communicated to the filing office with tender of the filing fee, but that the filing office refuses to accept for a reason other than one set forth in subsection (2), is effective as a filed record except as against a purchaser of the collateral that gives value in reasonahle reliance upon the absence of the record from the files.

Section 87. Effect of indexing errors. The failure of the filing office to index a record correctly does not affect the effectiveness of the filed record.

Section 88. Claim concerning inaccurate or wrongfully filed record. (1) A person may file in the filing office a correction statement with respect to a record indexed there under the person's name if the person believes that the record is inaccurate or was wrongfully filed.

(2) A correction statement must:

(a) identify the record to which it relates by:

(i) the file number assigned to the initial financing statement to which the record relates; and

(ii) if the correction statement relates to a record filed in a filing office described in [section 71(1)(a)], the date that the initial financing statement was filed or recorded and the information specified in [section 72(2)];

(b) indicate that it is a correction statement; and

(c) provide the basis for the person's belief that the record is inaccurate and indicato the manner in which the person beheves the record should be amended

HeinOnline -- 1999 vol. I 1079 1999

to cure any inaccuracy or provide the basis for the person's belief that the record was wrongfully filed.

(3) The filing of a correction statement does not affect the effectiveness of an initial financing statement or other filed record.

Section 89. Numbering, maintaining, and indexing records — communicating information provided in records. (1) For each record filed in a filing office, the filing office shall:

(a) assign a unique number to the filed record;

(b) create a record that bears the number assigned to the filed record and the date and time of filing;

(c) maintain the filed record for public inspection; and

(d) index the filed record in accordance with subsections (3), (4), and (5).

(2) A file number assigned after January 1, 2002, must include a digit that:

(a) is mathematically derived from or related to the other digits of the file number; and

(b) enables the filing office to detect whether a number communicated as the file number includes a single-digit or transpositional error.

(3) Except as otherwise provided in subsections (4) and (5), the filing office shall:

(a) index an initial financing statement according to the name of the debtor and shall index all filed records relating to the initial financing statement in a manner that associates with one another an initial financing statement and all filed records relating to the initial financing statement; and

(b) index a record that provides a name of a debtor that was not previously provided in the financing statement to which the record relates also according to the name that was not previously provided.

(4) If a financing statement is filed as a fixture filing or covers as-extracted collateral or timber to he cut, it must be filed for record and the filing office shall index it:

(a) under the names of the debtor and of each owner of record shown on the financing statement as if they were the mortgagors under a mortgage of the real property described; and

(b) to the extent that the law of this state provides for indexing of mortgages under the name of the mortgagee, under the name of the secured party as if the secured party were the mortgagee thereunder, or if indexing is by description, as if the financing statement were a mortgage of the real property described.

(5) If a financing statement is filed as a fixture filing or covers as-extracted collateral or timber to be cut, the filing office shall index an assignment filed under [section 84(1)] or an amendment filed under [section 84(2)]:

(a) under the name of the assignor as grantor; and

(b) to the extent that the law of this state provides for indexing the assignment of a mortgage under the name of the assignee, under the name of the assignee.

(6) The filing office shall maintain a capability:

(a) to retrieve a record by the name of the debtor and:

HeinOnline -- 1999 vol. I 1080 1999

(i) if the filing office is described in [section 71(1)(a)], by the file number assigned to the initial financing statement to which the record relates and the date and time that the record was filed; or

(ii) if the filing office is described in [section 71(1)(b)], hy the file number assigned to tbe initial financing statement to which the record relates; and

(b) to associate and retrieve with one another an initial financing statement and each filed record relating to the initial fmancmg statement.

(7) The filing office may not remove a debtor's name from the index until 1 year after the effectiveness of a financing statoment naming the debtor lapses under [section 85] with respect to all secured parties of record.

(8) The filing office shall perform the acts required by subsections (1) through (5) at the time and in the manner prescribed by filing-office rule, but not later than 2 business days after tbe filing office receives the record in question.

(9) Subsections (2) and (8) do not apply to a filing office described in [section 71(1)(a)].

Section 90. Acceptance and refusal to reeord. (1) A filing office shall refuse to accept a record for filing for a reason set forth in [sections 72 and 86(2)] and may refuse to accept a record for filing only for a rcason set forth in [sections 72 and 86(2)].

(2) If a filing office refuses to accept a record for filing, it shall communicate to the person tbat presented the record tlie fact of and reason for tbe refusal and the date and time the record would have been filed had the filing office accepted it. The communication must be made at the time and in the manner prescribed by filing-office rule but in no event more than 2 business days after the filing office receives the record.

(3) A filed fmancing statement complying with [section 72(1) and (2)] is effective, even if the filing office is required to refuse to accept it for filing under subsection (1). However, [section 57] applies to a filed financing statement providing information described in [section 86(2)(e)] that is incorrect at the time the financing statement is filed.

(4) If a record communicated to a filing office provides information that relates to more than one debtor, [sections 71 througb 97] apply as to each debtor separately.

Section 91. Uniform form of written financing statement and amendment. (1) A filing office that accepts written records may not refuse to accept a written initial financing statement in the model form adopted by the secretary of state except for a reason set forth in [sections 72 and 86(2)].

(2) A filing office that accepts written records may not refuse to accept a written record in tbe model form adopted by tbe secretary of state except for a reason set forth in [sections 72 and 86(2)].

Section 92. Maintenance and destruction of records. (1) Subject to tbe requirements of Title 2, chapter 6, part 2, the filing office shall maintain a record of the information provided in a filed financing statement for at least 1 year after the effectiveness of the filed financing statement has lapsed under [section 85] with respect to all secured parties of record. The record must be retrievable by using the name of the debtor and:

HeinOnline -- 1999 vol. I 1081 1999

(a) if the record was filed or recorded in the filing office described in [section 71(1)(a)], by using the file number assigned to the initial financing statement to which the record relates and the date and time that the record was filed or recorded; or

(h) if the record was filed or recorded in the filing office described in [section 71(1)(b)], by using the date and time file number assigned to the initial financing statement to which the record relates.

(2) Except to the extent tbat a statute governing disposition of public records provides otherwise, the filing office may immediately destroy any written record evidencing a financing statement. However, if the filing office destroys a written record, it shall maintain another record of the financing statement that complies with subsection (1).

Section 93. Information from filing office — sale or license of records. (1) If a person that fiies a written record requests an acknowledgment of the filing, the filing office shall send to the porson an image of the record showing the number assigned to the record pursuant to [section 89(1)(a)] and the date and time of the filing of the record. However, if the person furnishes a copy of the record to the filing office, the filing office may instead:

(a) note upon the copy the number assigned to the record pursuant to [section 89(1)(a)] and the date and time of the filing of the record; and

(b) send the copy to the person.

(2) If a person files a record other than a written record, the filing office shall communicate to the person an acknowledgment that provides:

(a) the information in the record;

(b) the number assigned to the record pursuant to [section 89(1)(a)]; and

(c) tbe date and time of the filing of the record.

(3) The filing office shall communicate or otherwise make available in a record the following information to any porson that requests it:

(a) whether there is on file on a date and time spocified by the filing office, but not a date earlier than 3 business days before the filing office receives the request, any financing statement that:

(i) designates a particuiar debtor;

(ii) has not lapsed under [section 85] with respoct to all secured parties of record; and

(iii) if the request so states, has lapsed under [section 85] and a record of which is maintained by the filing office under [section 92(1)];

(b) the date and time of filing of each financing statement; and

(c) the information provided in each financing statement.

(4) In complying with its duty under subsection (3), the filing office may communicate information in any medium. However, if requested, the filing office shall communicate information by issuing a record that can be admitted into evidence in the courts of this state without extrinsic evidence of its authenticity.

(5) The filing office shali perform the acts required by subsections (1) through (4) at the time and in tbe manner prescribed by filing-office rule, but not later than 2 business days after the filing office receives the request.

HeinOnline -- 1999 vol. I 1082 1999

(6) At least weekly, the filing office shall offer to sell or license to the public on a nonexclusive basis, in bulk, copies of all records filed in it under [sections 71 through 97], in a reasonable form or medium from time to time available to the filing office.

Section 94. Delay by filing office. Delay by the filing office beyond a time limit prescribed in [sections 71 through 97] is excused if:

(1) the delay is caused by interruption of communication or computer facilities, war, emergency conditions, failure of equipment, or other circumstances beyond the control of the filing office; and

(2) the filing office exercises reasonable diligence under the circumstances.

Section 95. Fees. (1) Except as otherwise provided in subsection (5), the fee for filing and indexing a record under [sections 71 through 97], other than an initial financing statement of the kind described in [section 72(3)], must be commensurate with costs and must be established by rule.

(2) Except as otherwise provided in subsection (5), the fee for filing and indexing an initial financing statement of the kind described in [section 72(3)] must be commensurate with costs and must be established by rule.

(3) The number of names required to be indexed does not affect the amount of the fees in subsections (1) and (2).

(4) The fee for responding to a request for information from the filing office, including for communicating whether there is on file any financing statement naming a particular debtor, must be commensurate with costs and must be established by rule.

(5) This section does not require a fee with respect to a record of mortgage that is effective as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut under [section 72(3)]. However, the recording and satisfaction fees that otherwise would be applicable to the record of mortgage apply.

Section 96. Filing-office rules. (1) The secretary of state shall adopt and publish rules to carry out the provisions of [sections 1 through 125]. The filing-office rules must be:

(a) consistent with [sections 1 through 125]; and

(b) adopted and published in accordance with Title 2, chapter 4.

(2) To keep the filing-office rules and practices of the filing office in harmony with the rules and practices of filing offices in other jurisdictions that enact substantially [sections 71 through 97] and to keep the technology used by the filing office compatible with the technology used by filing offices in other jurisdictions that enact substantially [sections 71 through 97], the secretary of state, so far as is consistent with the purposes, policies, and provisions of [sections 1 through 125], in adopting, amending, and repealing filing-office rules shall:

(a) consult with filing offices in other jurisdictions that enact substantially [sections 71 through 97];

(b) consult the most recent version of the model rules promulgated by the international association of corporate administrators or any successor organization; and

HeinOnline -- 1999 vol. I 1083 1999

(c) take into consideration the rules and practices of and the technology used by filing offices in other jurisdictions that enact suhstantially [sections 71 through 97].

Section 97. Duty to report. The secretary of state shall report to each session of the legislature on the operation of the filing office. The report must contain a statement of the extent to which:

(1) the filing-office rules are not in harmony with the rules of filing offices in other jurisdictions that enact substantially [sections 71 through 97] and the reasons for these variations; and

(2) the filing-office rules are not in harmony with the most recent version of the model rules promulgated by the intornational association of corporate administrators or any successor organization and the reasons for these variations.

Section 98. Rights after default — judicial cnforcement — consignor or buyer of accounts, chattel paper, payment intangibles, or promissory notes. (1) After default, a secured party has the rights provided in [sections 98 through 125] and, except as otherwise provided in [section 99], those provided by agreement of the parties. A secured party:

(a) may reduce a claim to judgment, foreclose, or otherwise enforce the claim, security interest, or agricultural lien by any availahle judicial procedure; and

(b) if the collateral is documents, may proceed either as to the documents or as to the goods they cover.

(2) A secured party in possession of collateral or control of collateral under [section 3, 4, 5, or 6] has the rights and duties provided in [section 16].

(3) The rights under subsections (1) and (2) are cumulative and may be exercised simultaneously.

(4) Except as otherwise provided in [section 102] and subsection (7) of this section, after default, a debtor and an obligor have the rights provided in [sections 98 through 125] and by agreement of the parties.

(5) If a secured party has reduced its claim to judgment, the lien of any levy that may be made upon the collateral by virtue of an execution based upon the judgment relates back to the earliest of:

(a) the date of perfection of the security interest or agricultural lien in the collateral;

(b) the date of filing a financing statement covering the collateral; or

(c) any date specified in a statute under which the agricultural lien was created.

(6) A sale pursuant to an execution is a foreclosure of the security interest or agricultural lien by judicial procedure within the meaning of this section. A secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of [sections 1 through 125].

(7) Except as otherwise provided in [section 104(3)], [sections 98 through 125] impose no duties upon a secured party that is a consignor or is a buyer of accounts, chattel paper, payment intangibles, or promissory notes.

HeinOnline -- 1999 vol. I 1084 1999

Section 99. Waiver and variance of rights and duties. Except as provided in [section 121], to the extent that they give rights to a debtor or obligor and impose duties on a secured party, the debtor or obligor may not waive or vary the rules stated in the following listed sections:

(1) [section 16(2)(d)(iii)], which deals with use and operation of the collateral by the secured party;

(2) [section 19], which deals with requests for an accounting and requests concerning a list of collateral and statement of account;

(3) [section 104(3)], which deals with collection and enforcement of collateral;

(4) [sections 105(1) and 112(3)] to the extent that they deal with application or payment of noncash proceeds of collection, enforcement, or disposition;

(5) [sections 105(1) and 112(4)] to the extent that they require accounting for or payment of surplus proceeds of collateral;

(6) [section 106] to the extent that it imposes upon a secured party that takes possession of collateral without judicial process the duty to do so without breach of the peace;

(7) [sections 107(2), 108, 110, and 111], which deal with disposition of collateral;

(8) [section 112(6)], which deals with calculation of a deficiency or surplus when a disposition is made to the secured party, a person related to the secured party, or a secondary obligor;

(9) [section 113], which deals with explanation of the calculation of a surplus or deficiency;

(10) [section 117, 118, and 119], which deal with acceptance of collateral in satisfaction of obligation;

(11) [section 120], which deals with redemption of collateral;

(12) [section 121], which deals with permissible waivers; and

(13) [sections 122 and 123], which deal with the secured party's liability for failure to comply with [sections 1 through 125].

Section 100. Agreement on standards concerning rights and duties. (1) The parties may determine by agreement the standards measuring the fulfillment of the rights of a debtor or obligor and the duties of a secured party if the standards are not manifestly unreasonable.

(2) Subsection (1) does not apply to the duty under [section 106] to refrain from breaching the peace.

Section 101. Procedure if security agreement covers real property or fixtures. (1) If a security agreement covers both personal and real property, a secured party may proceed:

(a) under [sections 98 through 125] as to the personal property without prejudicing any rights and remedies with respect to the real property; or

(b) as to both the personal property and the real property in accordance with the rights and remedies with respect to the real property, in which case the other provisions of [sections 98 through 125] do not apply.

HeinOnline -- 1999 vol. I 1085 1999

(2) Subject to suhsection (3), if a security agreement covers goods that are or become fixtures, a secured party may proceed:

(a) under [sections 98 through 125]; or

(b) in accerdance with the rights and remedies with respect to real property, in which case the other provisions of [sections 98 through 125] do not apply.

(3) Subject to the other provisions of [sections 98 through 125], if a secured party holding a security interest in fixtures has priority over all owners and encumbrancers of the real property, the secured party, on default, may remove the collateral from the real property.

(4) A secured party that removes collateral shall promptly reimburse any encumbrancer or owner of the real property, other than the dehtor, for the cost of repair of any physical injury caused by the removal. The secured party need not reimburse the encumbrancer or owner for any diminution in value of the real property caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse.

Section 102. Unknown debtor or secondary obligor. A secured party does not owe a duty based on its status as securod party:

(1) to a person that is a dehtor or obligor, unless the secured party knows:

(a) that the person is a debtor or obligor;

(b) the identity of the person; and

(c) how to communicate with the person; or

(2) to a secured party or lienholder that has filed a financing statement against the person unless the secured party knows:

(a) that a person is a debtor; and

(b) the identity of the person.

Section 103. Time of default for agricultural lien. For purposes of [sections 98 through 125], a default occurs in connection with an agricultural lien at the time the secured party becomes entitled to enforce the lien in accordance with the statute under which it was created.

Section 104. Coliection and enforcement by seeured party. (1) If so agreed, and in any event on default, a secured party:

(a) may notify an account debtor or other person obligated on collateral to make payment or otherwise render performance to or for the henefit of the secured party;

(b) may take any proceeds to which the secured party is entitled under [section 34];

(c) may enforce the obligations of an account debtor or other person ohligated on collateral and exercise the rights and remedies of the debtor with respect to the obligation of the account debtor or other person obligated on collateral to make payment or otherwise render performance to the debtor and with respect to any property that secures the obligations of the account debtor or other person obligated on the collateral;

HeinOnline -- 1999 vol. I 1086 1999

(d) if it bolds a security interest in a depesit account perfected by control under [section 3(1)(a)], may apply the balance of the deposit account to the obligation secured by the deposit account; and

(e) if it holds a security interest in a deposit account perfected by control under [section 3(1)(b) or (1)(c)], may instruct the bank to pay the balance of the deposit account to or for tbe benefit of the secured party.

(2) If necessary to enable a secured party to exercise under subsection (1)(c) the right of a debtor to enforce nonjudicially any mortgage, tbe secured party may record in the office in which the mortgage is recorded:

(a) a copy of the security agreement tbat creates or provides for a security interest in the obligation secured by the mortgage; and

(b) tbe secured party's sworu affidavit in recordable form stating tbat:

(i) a default has occurred; and

(ii) the secured party is entitled to enforce the mortgage nonjudicially.

(3) A secured party shall proceed in a commercially reasonable manner if the secured party:

(a) undertakes to collect from or enforce an obligation of an account debtor or other person obligated on collateral; and

(b) is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor or a secondary obligor.

(4) A secured party may deduct from the collections made pursuant to subsection (3) reasonable expenses of collection and enforcement, including reasonable attorneys fees and legal expenses incurred by the secured party.

(5) This section does not determine whether an account debtor, bank, or other person obligated on collateral owes a duty to a secured party.

Scction 105. Application of proceeds of collection or enforcement — liability for deficiency and right to surplus. (1) If a security interest or agricultural lien secures payment or performance of an obligation, the following rules apply:

(a) A secured party shall apply or pay over for application the cash proceeds of collection or enforcement under this section in the following order to:

(i) the reasonable expenses of collection and enforcement and, to the extent provided for by agreement and not prohibited by law, reasonable attorneys fees and legal expenses incurred by the secured party;

(ii) the satisfaction of obligations secured by the security interest or agricultural lien under which the collection or enforcement is made; and

(iii) tbe satisfaction of obligations secured by any subordinate security interest in or other lien on the collateral subject to the security interest or agricultural lien under which the collection or enforcement is made if tbe secured party receives an authenticated demand for proceeds before distribution of the proceeds is completed.

(b) If requested by a secured party, a holder of a subordinate security interest or other lien sball furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder complies, the secured party need not comply with tbe holder's demand under subsection (1)(a)(iii).

HeinOnline -- 1999 vol. I 1087 1999

(c) A secured party need not apply or pay over for application the noncash proceeds of collection and enforcement under this section unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(d) A secured party shall account to and pay a debtor for any surplus, and the obligor is liable for any deficiency.

(2) If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes, the debtor is not entitled to any surplus and the obligor is not liable for any deficiency.

Section 106. Secured party's right to take possession after default. (1) After default, a secured party:

(a) may take possession of the collateral; and

(b) without removal, may render equipment unusable and dispose of collateral on a debtor's premises under [section 107].

(2) A secured party may proceed under subsection (1):

(a) pursuant to judicial process; or

(b) without judicial process, if it proceeds without breach of the peace.

(3) If so agreed, and in any event after default, a secured party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party that is reasonably convenient to both parties.

Section 107. Disposition of collateral after default. (1) After default, a secured party may sell, lease, license, or otherwise dispose of any or all of the collateral in its present condition or following any commercially reasonable preparation or processing.

(2) Every aspect of a disposition of collateral, including the method, manner, time, place, and other terms, must be commercially reasonable. If commercially reasonable, a secured party may dispose of collateral by public or private proceedings, by one or more contracts, as a unit or in parcels, and at any time and place and on any terms.

(3) A secured party may purchase collateral:

(a) at a public disposition; or

(b) at a private disposition only if the collateral is of a kind that is customarily sold on a recognized market or the subject of widely distributed standard price quotations.

(4) A contract for sale, lease, license, or other disposition includes the warranties relating to title, possession, quiet enjoyment, and the like that by operation of law accompany a voluntary disposition of property of the kind subject to the contract.

(5) A secured party may disclaim or modify warranties under subsection (4):

(a) in a manner that would be effective to disclaim or modify the warranties in a voluntary disposition of property of the kind subject to the contract of disposition; or

HeinOnline -- 1999 vol. I 1088 1999

(b) by communicating to the purchaser a record evidencing the contract for disposition and including an express disclaimer or modification of the warranties.

(6) A record is sufficient to disclaim warranties under subsection (5) if it indicates "There is no warranty relating to title, possession, quiet enjoyment, or the like in this disposition" or uses words of similar import.

Section 108. Notification before disposition of collateral. (1) In this section, "notification date" means the earlier of the date on which:

(a) a secured party sends to the debtor and any secondary obligor an authenticated notification of disposition; or

(b) the debtor and any secondary obligor waive the right to notification.

(2) Except as otherwise provided in subsection (4), a secured party that disposes of collateral under [section 107] shall send to the persons specified in subsection (3) a reasonable authenticated notification of disposition.

(3) To comply with subsection (2), the secured party shall send an authenticated notification of disposition to:

(a) the debtor;

(b) any secondary obligor; and

(c) if the collateral is other than consumer goods:

(i) any other person from which the secured party has received, before the notification date, an authenticated notification of a claim of an interest in the collateral;

(ii) any other secured party that, 10 days before the notification date, held a security interest in or agricultural lien on the collateral perfected by the filing of a financing statement that:

(A) identified the collateral;

(B) was indexed under the debtor's name as of that date; and

(C) was filed in the office in which to file a financing statement against the debtor covering the collateral as of that date; and

(iii) any other secured party that, 10 days before the notification date, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in [section 30(1)].

(4) Subsection (2) does not apply if the collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market.

(5) A secured party complies with the requirement for notification prescribed in subsection (3)(c)(ii) if:

(a) not later than 20 days or earlier than 30 days before the notification date, the secured party requests, in a commercially reasonable manner, information concerning financing statements indexed under the debtor's name in the office indicated in subsection (3)(c)(ii); and

(b) before the notification date, the secured party:

(i) did not receive a response to the request for information; or

(ii) received a response to the request for information and sent an authenticated notification of disposition to each secured party named in that response and whose financing statement covered the collateral.

Section 109. Timeliness of notification before disposition of collateral. (1) Except as otherwise provided in subsection (2), whether a notification is sent within a reasonable time is a question of fact.

(2) In a transaction other than a consumer transaction, a notification of disposition sent after default and 10 days or more before the earliest time of disposition set forth in the notification is sent within a reasonable time before the disposition.

Section 110. Contents and form of notification before disposition of collateral — general. (1) Except in a consumer-goods transaction, the following rules apply:

(a) The contents of a notification of disposition are sufficient if the notification:

(i) describes the debtor and the secured party;

(ii) describes the collateral that is the subject of the intended disposition;

(iii) states the method of intended disposition;

(iv) states that the debtor is entitled to an accounting of the unpaid indebtedness and states the charge, if any, for an accounting; and

(v) states the time and place of a public sale or the time after which any other disposition is to be made.

(b) Whether the contents of a notification that lacks any of the information set forth in subsection (1) are nevertheless sufficient is a question of fact.

(c) The contents of a notification providing substantially the information specified in subsection (1) are sufficient, even if the notification includes:

(i) information not specified by that subsection; or

(ii) minor errors that are not seriously misleading.

(d) A particular phrasing of the notification is not required.

(2) The following form of notification and the form appearing in [section 111(3)], when completed, each provides sufficient information:

NOTIFICATION OF DISPOSITION OF COLLATERAL

To:	[Name of debtor, obligor, or other person to which the notification is sent]
From:	[Name, address, and telephone number of secured party]
Name of Debtor(s):	[Include only if debtor(s) are not an addressee]

[For a public disposition:]

We will sell [or lease or license, as applicable] the [describe collateral] [to the highest qualified bidder] in public as follows:

Day and Date: _____

Time: _____

Place: _____

[For a private disposition:]

We will sell [or lease or license, as applicable] the [describe collateral] privately sometime after [day and date].

You are entitled to an accounting of the unpaid indebtedness secured by the property that we intend to sell [or lease or license, *as applicable*] [for a charge of $____]. You may request an accounting by calling us at [telephone number]

[End of Form]

Section 111. Contents and form of notification before disposition of collateral — consumer-goods transaction. In a consumer-goods transaction, the following rules apply:

(1) A notification of disposition must provide the following information:

(a) the information specified in [section 110(1)(a)];

(b) a description of any liability for a deficiency of the person to which the notification is sent;

(c) a telephone number from which the amount that must be paid to the secured party to redeem the collateral under [section 120] is available; and

(d) a telephone number or mailing address from which additional information concerning the dispesition and the obligation secured is available.

(2) A particular phrasing of the notification is not required.

(3) The following form of notification, when completed, provides sufficient information:

[Name and address of secured party]

[Date]

NOTICE OF OUR PLAN TO SELL PROPERTY

[Name and address of any obligor who is also a debtor]

Subject: [Identification of Transaction]

We have your [describe collateral], because you broke promises in our agreement.

[*For a public disposition:*]

We will sell [describe collateral] at public sale. A sale could include a lease or license. The sale will be held as follows:

Date: _____

Time: _____

Place: _____

You may attend the sale and bring bidders if you want.

HeinOnline -- 1999 vol. I 1091 1999

[For a private disposition:]

We will sell [describe collateral] at private sale sometime after [date]. A sale could include a lease or license.

The money that we get from the sale (after paying our costs) will reduce the amount you owe. If we get less money than you owe, you [will or will not, as applicable] still owe us the difference. If we get more money than you owe, you will get the extra money, unless we must pay it to someone else.

You can get the property back at any time before we sell it by paying us the full amount you owe (not just the past due payments), including our expenses. To learn the exact amount you must pay, call us at [telephone number].

If you want us to explain to you in writing how we have figured the amount that you owe us, you may call us at [telephone number] or write us at [secured party's address] and request a written explanation. [We will charge you $____ for the explanation if we sent you another written explanation of the amount you owe us within the last six months.]

If you need more information about the sale call us at [telephone number] or write us at [secured party's address].

We are sending this notice to the following other people who have an interest in [describe collateral] or who owe money under your agreement:

[Names of all other debtors and obligors, if any]

[End of Form]

(4) A notification in the form of subsection (3) is sufficient, even if additional information appears at the end of the form.

(5) A notification in the form of subsection (3) is sufficient, even if it includes errors in information not required by subsection (1), unless the error is misleading with respect to rights arising under [sections 1 through 125].

(6) If a notification under this section is not in the form of subsection (3), law other than [sections 1 through 125] determines the effect of including information not required by subsection (1).

Section 112. Application of proceeds of disposition — liability for deficiency and right to surplus. (1) A secured party shall apply or pay over for application the cash proceeds of disposition in the following order to:

(a) the reasonable expenses of retaking, holding, preparing for disposition, processing, and disposing, and to the extent provided for by agreement and not prohibited by law, reasonable attorneys fees and legal expenses incurred by the secured party;

(b) the satisfaction of obligations secured by the security interest or agricultural lien under which the disposition is made;

(c) the satisfaction of obligations secured by any subordinate security interest in or other lien on the collateral if:

(i) the secured party receives from the holder of the subordinate security interest an authenticated demand for proceeds before distribution of the proceeds is completed; and

(ii) if a consignor has an interest in the collateral, the subordinate security interest or lien is senior to the interest of the consignor; and

HeinOnline -- 1999 vol. I 1092 1999

(d) a secured party that is a consignor of the collateral if the secured party receives from the consignor an authenticated demand for proceeds before distribution of the proceeds is completed.

(2) If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder does so, the secured party need not comply with the holder's demand under subsection (1)(c).

(3) A secured party need not apply or pay over for application noncash proceeds of disposition under this section unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(4) If the security interest under which a disposition is made secures payment or performance of an obligation, after making the payments and applications required by subsection (1) and permitted by subsection (3):

(a) unless subsection (1)(d) requires the secured party to apply or pay over cash proceeds to a consignor, the secured party shall account to and pay a debtor for any surplus; and

(b) the obligor is liable for any deficiency.

(5) If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes:

(a) the debtor is not entitled to any surplus; and

(b) the obligor is not liable for any deficiency.

(6) The surplus or deficiency following a disposition is calculated based on the amount of proceeds that would have been realized in a disposition complying with the requirements of [sections 98 through 125] to a transferee other than the secured party, a person related to the secured party, or a secondary obligor if:

(a) the transferee in the disposition is the secured party, a person related to the secured party, or a secondary obligor; and

(b) the amount of proceeds of the disposition is significantly below the range of proceeds that a complying disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor would have brought.

(7) A secured party that receives cash proceeds of a disposition in good faith and without knowledge that the receipt violates the rights of the holder of a security interest or other lien that is not subordinate to the security interest or agricultural lien under which the disposition is made:

(a) takes the cash proceeds free of the security interest or other lien;

(b) is not obligated to apply the proceeds of the disposition to the satisfaction of obligations secured by the security interest or other lien; and

(c) is not obligated to account to or pay the holder of the security interest or other lien for any surplus.

Section 113. Explanation of calculation of surplus or deficiency. (1) In this section, the following definitions apply:

(a) "Explanation" means a writing that:

(i) states the amount of the surplus or deficiency;

HeinOnline -- 1999 vol. I 1093 1999

(ii) provides an explanation in accordance with subsection (3) of how the secured party calculated the surplus or deficiency;

(iii) states, if applicable, that future debits, credits, charges, including additional credit service charges or interest rebates, and expenses may affect the amount of the surplus or deficiency; and

(iv) provides a telephone number or mailing address from which additional information concerning the transaction is available.

(b) "Request" means a record:

(i) authenticated by a debtor or consumer obliger;

(ii) requesting that the recipient provide an explanation; and

(iii) sent after dispesition of the collateral under [section 107].

(2) In a consumer-goods transaction in which the debtor is entitled to a surplus or a consumer obligor is liable for a deficiency under [section 112], the secured party shall:

(a) send an explanation to the debtor or consumer obligor, as applicable, after the disposition and:

(i) before or when the secured party accounts to the debtor and pays any surplus or first makes written demand on the consumer obligor after the disposition for payment of the deficiency; and

(ii) within 14 days after receipt of a request; or

(b) in the case of a consumer obligor who is liable for a deficiency, within 14 days after receipt of a request, send to the consumer obliger a record waiving the secured party's right to a deficiency.

(3) To comply with subsection (1)(a)(ii), a writing must provide the following information in the following order:

(a) the aggregate amount of obligations secured by the security interest under which the disposition was made, and if the amount reflects a rebate of unearned interest or credit service charge, an indication of that fact, calculated as of a specified date:

(i) if the secured party takes or receives possession of the collateral after default, not more tban 35 days before the secured party takes or receives possession; or

(ii) if the secured party takes or receives pessession of the collateral before default or does not take possession of the collateral, not more than 35 days before the disposition;

(b) the amount of proceeds of the disposition;

(c) the aggregate amount of the obligations after deducting the amount of proceeds;

(d) the amount, in the aggregate or by type, and types of expenses, including expenses of retaking, holding, preparing for disposition, processing, and dispesing of the collateral, and attorneys fees secured by the collateral tbat are known to the secured party and relate te the current disposition;

HeinOnline -- 1999 vol. I 1094 1999

(e) the amount, in the aggregate or by type, and types of credits, including rebates of interest or credit service charges, to which the obligor is known to be entitled and that are not reflected in the amount in subsection (3)(a); and

(f) the amount of the surplus or deficiency.

(4) A particular phrasing of the explanation is not required. An explanation complying substantially with the requirements of subsection (1)(a) is sufficient, even if it includes minor errors that are not seriously misleading.

(5) A debtor or consumer obligor is entitled without charge to one response to a request under this section during any 6-month period in which the secured party did not send to the debtor or consumer obligor an explanation pursuant to subsection (2)(a). The secured party may require payment of a charge not exceeding $25 for each additional response.

Section 114. Rights of transferee of collateral. (1) A secured party's disposition of collateral after default:

(a) transfers to a transferee for value all of the debtor's rights in the collateral;

(b) discharges the security interest under which the disposition is made; and

(c) discharges any subordinate security interest or other lien.

(2) A transferee that acts in good faith takes free of the rights and interests described in subsection (1), even if the secured party fails to comply with the requirements of [sections 1 through 125] or any judicial proceedings.

(3) If a transferee does not take free of the rights and interests described in subsection (1), the transferee takes the collateral subject to:

(a) the debtor's rights in the collateral;

(b) the security interest or agricultural lien under which the disposition is made; and

(c) any security interest or other lien.

Section 115. Rights and duties of certain secondary obligors. (1) A secondary obligor acquires the rights and becomes obligated to perform the duties of the secured party after the secondary obligor:

(a) receives an assignment of a secured obligation from the secured party;

(b) receives a transfer of collateral from the secured party and agrees to accept the rights and assume the duties of the secured party; or

(c) is subrogated to the rights of a secured party with respect to collateral.

(2) An assignment, transfer, or subrogation described in subsection (1):

(a) is not a disposition of collateral under [section 107]; and

(b) relieves the secured party of further duties under [sections 1 through 125].

Section 116. Transfer of record or legal title. (1) In this section, "transfer statement" means a record authenticated by a secured party stating:

(a) that the debtor has defaulted in connection with an obligation secured by specified collateral;

(b) that the secured party has exercised its postdefault remedies with respect to the collateral;

(c) that, by reason of the exercise, a transferee has acquired the rights of the debtor in the collateral; and

(d) the name and mailing address of the secured party, debtor, and transferee.

(2) A transfer statement entitles the transferee to the transfer of record of all rights of the debtor in the collateral specified in the statement in any official filing, recording, registration, or certificate of title system covering the collateral. If a transfer statement is presented with the applicable fee and request form to the official or office responsible for maintaining the system, the official or office shall:

(a) accept the transfer statement;

(b) promptly amend its records to reflect the transfer; and

(c) if applicable, issue a new appropriate certificate of title in the name of transferee.

(3) A transfer of the record or legal title to collateral to a secured party under subsection (2) or otherwise is not of itself a disposition of collateral under [sections 1 through 125] and does not of itself relieve the secured party of its duties under [sections 1 through 125].

Section 117. Acceptance of collateral in full or partial satisfaction — compulsory disposition of collateral. (1) Except as otherwise provided in subsection (7), a secured party may accept collateral in full or partial satisfaction of the obligation it secures only if:

(a) the debtor consents to the acceptance under subsection (3);

(b) the secured party does not receive, within the time set forth in subsection (4), a notification of objection to the proposal authenticated by:

(i) a person to which the secured party was required to send a proposal under [section 118]; or

(ii) any other person, other than the debtor, holding an interest in the collateral subordinate to the security interest that is the subject of the proposal;

(c) if the collateral is consumer goods, the collateral is not in the possession of the debtor when the debtor consents to the acceptance; and

(d) subsection (5) does not require the secured party to dispose of the collateral.

(2) A purported or apparent acceptance of collateral under this section is ineffective unless:

(a) the secured party consents to the acceptance in an authenticated record or sends a proposal to the debtor; and

(b) the conditions of subsection (1) are met.

(3) For purposes of this section:

(a) a debtor consents to an acceptance of collateral in partial satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record authenticated after default; and

(b) a debtor consents to an acceptance of collateral in full satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record authenticated after default or the secured party:

HeinOnline -- 1999 vol. I 1096 1999

(i) sends to the debtor after default a proposal that is unconditional or subject only to a condition that collateral not in the possession of the secured party be preserved or maintained;

(ii) in the proposal, proposes to accept collateral in full satisfaction of the obligation it secures; and

(iii) does not receive a notification of objection authenticated by the debtor within 20 days after the proposal is sent.

(4) To be effective under subsection (1)(b), a notification of objection must be received by the secured party:

(a) in the case of a person to which the proposal was sent pursuant to [section 118], within 20 days after notification was sent to that person; and

(b) in other cases:

(i) within 20 days after the last notification was sent pursuant to [section 118]; or

(ii) if a notification was not sent, before the debtor consents to the acceptance under subsection (3).

(5) A secured party that has taken possession of collateral shall dispose of the collateral pursuant to [section 107] within the time specified in subsection (6) if:

(a) 60% of the cash price has been paid in the case of a purchase-money security interest in consumer goods; or

(b) 60% of the principal amount of the obligation secured has been paid in the case of a nonpurchase-money security interest in consumer goods.

(6) To comply with subsection (5), the secured party shall dispose of the collateral:

(a) within 90 days after taking possession; or

(b) within any longer period to which the debtor and all secondary obligors have agreed by authenticating a record including a statement to that effect after default.

(7) In a consumer transaction, a secured party may not accept collateral in partial satisfaction of the obligation it secures.

Section 118. Notification of proposal to accept collateral. (1) A secured party that desires to accept collateral in full or partial satisfaction of the obligation it secures shall send its proposal to:

(a) any person from which the secured party has received, before the debtor consented to the acceptance, an authenticated notification of a claim of an interest in the collateral;

(b) any other secured party or lienholder that, 10 days before the debtor consented to the acceptance, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:

(i) identified the collateral;

(ii) was indexed under the debtor's name as of that date; and

(iii) was filed in the office or offices in which to file a financing statement against the debtor covering the collateral as of that date; and

(c) any other secured party that, 10 days before the debtor consented to the acceptance, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in [section 30(1)].

(2) A secured party that desires to accept collateral in partial satisfaction of the obligation it secures shall send its proposal to any secondary obligor in addition to the porsons described in subsection (1).

Section 119. Effect of acceptance of collateral. (1) A secured party's acceptance of collateral in full or partial satisfaction of the obligation it secures:

(a) discbarges the obligation to the extent consented to by the debtor;

(b) transfers to the secured party all of a debtor's rights in the collateral;

(c) dischargos the security interest or agricultural lien that is the subject of the debtor's consent and any subordinate security interest or other lien; and

(d) terminates any other subordinate interest.

(2) A subordinate interest is discharged or terminatod under subsection (1) whether or not the secured party is required to send or does send its proposal to the holder of the interest. However, any person to which the secured party was required to send, but did not send, its proposal has the remedy provided by [section 122(2)].

Section 120. Right to redeem collateral. (1) A dehtor, any secondary obligor, or any other secured party or lienholder may redeem collateral.

(2) To redeem collateral, a person shall tender:

(a) fulfillment of all obligations secured by the collateral; and

(b) the reasonable expenses and attorneys fees described in [section 112(1)(a)].

(3) A redemption may occur at any time before a secured party:

(a) has collected collateral under [section 104];

(b) has disposed of collateral or entered into a contract for its disposition under [section 107]; or

(c) has accepted collateral in full or partial satisfaction of the obligation it secures under [section 119].

Section 121. Waiver. (1) A debtor or secondary obligor may waive the rigbt to notification of disposition of collateral under [section 108] only by authenticating an agreement to tliat effect entered into and authenticated after default.

(2) A debtor may waive the right to require disposition of collateral under [section 117(5)] only by an agreement to that effect entered into and authenticated after default.

(3) Except in a consumer-goods transaction, a debtor or secondary obligor may waive the right to redeem collateral under [section 120] only by an agreement to that effect after default.

Section 122. Remedies for secured party's failure to comply with chapter. (1) If it is established that a secured party is not proceeding in accordance with [sections 1 through 125], a court may order or restrain collection, enforcement, or disposition of collateral on appropriate terms and conditions.

HeinOnline -- 1999 vol. I 1098 1999

(2) Subject to subsections (3), (4), and (6), a secured party is liable for damages in the amount of any loss caused by a failure to comply with [sections 1 through 125]. Loss caused by a failure to comply with a request under [section 19] may include loss resulting from the debtor's inability to obtain, or increased costs of, alternative financing.

(3) Except as otherwise provided in [section 125]:

(a) a person that, at the time of the failure, was a debtor, was an obligor, or held a security interest in or other lien on the collateral may recover damages under subsection (2) for its loss; and

(b) if the collateral is consumer goods, a person that was a debtor or a secondary obligor at the time a secured party failed to comply with [sections 98 through 125] may recover for that failure in any event an amount not less than the credit service charge plus 10% of the principal amount of the obligation or the time-price differential plus 10% of the cash price.

(4) A debtor whose deficiency is eliminated under [section 123] may recover damages for the loss of any surplus. However, a debtor or secondary obligor whose deficiency is eliminated or reduced under [section 123] may not otherwise recover under subsection (2) of this section for noncompliance with the provisions of [sections 98 through 125] relating to collection, enforcement, disposition, or acceptance.

(5) In addition to any damages recoverable under subsection (2), the debtor, consumer obligor, or person named as a debtor in a filed record, as applicable, may recover $500 in each case from:

(a) a secured party that fails to comply with [section 17];

(b) a secured party that fails to comply with [section 18];

(c) a porson that files a record that the person is not entitled to file under [section 79(1)];

(d) a secured party that fails to cause the secured party of record to file or send a termination statement as required by [section 83(1) or (3)];

(e) a secured party that fails to comply with [section 113(2)(a)] and whose failure is part of a pattern, or consistent with a practice, of noncompliance; or

(f) a secured party that fails to comply with [section 113(2)(b)].

(6) A debtor or consumer obligor may recover damages under subsection (2) and, in addition, $500 in each case from a porson that, without reasonable cause, fails to comply with a request under [section 19]. A recipient of a request under [section 19] that never claimed an interest in the collateral or obligations that are the subject of a request under that section has a reasonable excuse for failure to comply with the request within the meaning of this subsection.

(7) If a secured party fails to comply with a request regarding a list of collateral or a statement of account under [section 19], the secured party may claim a security interest only as shown in the statement included in the request as against a person that is reasonably misled by the failure.

Section 123. Action in which deficiency or surplus is in issue. (1) In an action arising from a transaction, other than a consumer transaction, in which the amount of a deficiency or surplus is in issue, the following rules apply:

HeinOnline -- 1999 vol. I 1099 1999

(a) A secured party need not prove compliance with the provisions of [sections 98 through 125] relating to collection, enforcement, disposition, or acceptance unless the debtor or a secondary obligor places the secured party's compliance in issue.

(b) If the secured party's compliance is placed in issue, the secured party has the burden of establishing that the collection, enforcement, disposition, or acceptance was conducted in accordance with [sections 98 through 125].

(c) Except as otherwise provided in [section 125], if a secured party fails to prove that the colleetion, enforcement, disposition, or acceptance was conducted in accordance with the provisions of [sections 98 through 125] relating to collection, enforcement, disposition, or acceptance, the liability of a debtor or a secondary obligor for a deficiency is limited to an amount by which the sum of the secured obligation, expenses, and attorneys fees exceeds the greater of:

(i) the proceeds of the collection, enforcement, disposition, or acceptance; or

(ii) the amount of proceeds that would have been realized had the noncomplying secured party proceeded in accordance with the provisions of [sections 98 through 125] relating to collection, enforcement, disposition, or acceptance.

(d) For purposes of subsection (1)(e)(ii), the amount of proceeds that would have been realized is equal to the sum of the secured obligation, expenses, and attorneys fees unless the secured party proves that the amount is less than that sum.

(e) If a deficiency or surplus is calculated under [section 112(6)], the debtor or obligor has the burden of establishing that the amount of proceeds of the disposition is significantly below the range of prices that a complying disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor would have brought.

(2) The limitation of the rules in subsection (1) to transactions other than consumer transactions is intended to leave to the court the determination of the proper rules in consumer transactions. The court may not infer from that limitation the nature of the proper rule in consumer transactions and may continue to apply established approaches.

Section 124. Determination of whether conduct was commercially reasonable. (1) The fact that a greater amount could have been obtained by a collection, enforcement, disposition, or acceptance at a different time or in a different method from that selected by the secured party is not of itself sufficient to preclude the secured party from establishing that the collection, enforcement, disposition, or acceptance was made in a commercially reasonable manner.

(2) A disposition of collateral is made in a commercially reasonable manner if the disposition is made:

(a) in the usual manner on any recognized market;

(b) at the price current in any recognized market at the time of the disposition; or

(c) otherwise in conformity with reasonable commercial practices among dealers in the type of property that was the subject of the disposition.

(3) A collection, enforcement, disposition, or acceptance is commercially reasonable if it has been approved:

(a) in a judicial proceeding;

(b) by a bona fide creditors' committee;

(c) by a representative of creditors; or

(d) by an assignee for the benefit of creditors.

(4) Approval under subsection (3) need not be obtained, and lack of approval does not mean that the collection, enforcement, disposition, or acceptance is not commercially reasonable.

Section 125. Nonliability and limitation on liability of seeured party — liability of secondary obligor. (1) Unless a secured party knows that a person is a debtor or obligor, knows the identity of the person, and knows how to communicate with the person:

(a) the secured party is not liable to the person, or to a secured party or lienholder that has filed a financing statement against the person, for failure to comply with [sections 1 through 125]; and

(b) the secured party's failure to comply with [sections 1 through 125] does not affect the liability of the person for a deficiency.

(2) A secured party is not liable because of its status as a secured party:

(a) to a person that is a debtor or obligor, unless the secured party knows:

(i) that the person is a debtor or obligor;

(ii) the identity of the person; and

(iii) how to communicate with the person; or

(b) to a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:

(i) that the person is a debtor; and

(ii) the identity of the person.

(3) A secured party is not liable to any person, and a person's liability for a deficiency is not affected, because of any act or omission arising out of the secured party's reasonable belief that a transaction is not a consumer-goods transaction or a consumer transaction or that goods are not consumer goods if the secured party's belief is based on its reasonable reliance on:

(a) a debtor's representation concerning the purpose for which collateral was to be used, acquired, or held; or

(b) an obligor's representation concerning the purpose for which a secured obligation was incurred.

(4) A secured party is not liable to any person under [section 122(3)(b)] for its failure to comply with [section 113].

(5) A secured party is not liable under [section 122(3)(b)] more than once with respect to any one secured obligation.

Section 126. Section 2-6-109, MCA, is amended to read:

"2-6-109. Prohibition on distribution or sale of mailing lists — exceptions — penalty. (1) Except as provided in subsections (3) through (8), in order to protect the privacy of those who deal with state and local government:

HeinOnline -- 1999 vol. I 1101 1999

(a) an agency may not distribute or sell for use as a mailing list any list of persons without first securing the permission of those on the list; and

(b) a list of persons prepared by the agency may not be used as a mailing list except by the agency or another agency without first securing the permission of those on the list.

(2) As used in this section, "agency" means any board, bureau, commission, department, division, authority, or officer of the state or a local government.

(3) ~~Except as provided in 30-9-403, this~~ *This* section does not prevent an individual from compiling a mailing list by examination of original documents or applications that are otherwise open to public inspection.

(4) This section does not apply to the lists of registered electors and the new voter lists provided for in 13-2-115 and 13-38-103, to lists of the names of employees governed by Title 39, chapter 31, or to lists of persons holding driver's licenses provided for under 61-5-126.

(5) This section does not prevent an agency from providing a list to persons providing prelicensing or continuing educational courses subject to state law or subject to Title 33, chapter 17.

(6) This section does not apply to the right of access either by Montana law enforcement agencies or, by purchase or otherwise, of public records dealing with motor vehicle registration.

(7) This section does not apply to a corporate information list developed by the secretary of state containing the name, address, registered agent, officers, and directors of business, nonprofit, religious, professional, and close corporations authorized to do business in this state.

(8) This section does not apply to the use by the public employees' retirement board of a mailing list of board-administered retirement system participants to send materials on behalf of a retiree organization formed for board-administered retirement system participants and with tax-exempt status under section 501(c)(4) of the Internal Revenue Code, as amended, for a fee determined by rules of the board, provided that the mailing list is not released to the organization.

(9) A person violating the provisions of subsection (1)(b) is guilty of a misdemeanor."

Section 127. Section 7-4-2631, MCA, is amended to read:

"7-4-2631. Fees of county clerk. (1) Except as provided in 7-4-2632, the county clerks ~~must~~ *shall* charge, for the use of their respective counties:

(a) for recording and indexing each certificate of location of a quartz or placer mining claim or millsite claim, including a certificate that the instrument has been recorded with seal affixed, $6;

(b) for recording and indexing each affidavit of annual labor on a mining claim, including certificate that the instrument has been recorded with seal affixed:

(i) for the first mining claim in the affidavit, $3; and

(ii) for each additional mining claim included in it, 50 cents;

(c) for filing and indexing each writ of attachment, execution, certificate of sale, lien, or other instrument required by law to be filed and indexed, $5;

HeinOnline -- 1999 vol. I 1102 1999

(d) for filing of subdivision and townsite plats, $5 plus:

(i) for each lot up to and including 100, 50 cents;

(ii) for each additional lot in excess of 100, 25 cents;

(e) for filing certificates of surveys and amendments thereto, $5 plus 50 cents per tract or lot;

(f) for a copy of a record or paper:

(i) for the first page of any document, 50 cents, and 25 cents for each subsequent page; and

(ii) for each certification with seal affixed, $2;

(g) for searching an index record of files of the office for each year when required in abstracting or otherwise, 50 cents;

(h) for administering an oath with certificate and seal, no charge;

(i) for taking and certifying an acknowledgment, with seal affixed, for signature to it, no charge;

(j) for filing, indexing, or other services provided for by ~~30-9-401 through 30-9-407~~ *[sections 71 through 97]*, the fees prescribed under those sections;

(k) for recording each stock subscription and contract, stock certificate, and articles of incorporation for water users' associations, $3;

(l) for filing a copy of notarial commission and issuing a certificate of official character of such notary public, $2;

(m) for each certified copy of a birth certificate, $5, and for each certified copy of a death certificate, $3;

(n) for filing, recording, or indexing any other instrument not expressly provided for in this section or 7-4-2632, the same fee provided in this section or 7-4-2632 for a similar service.

(2) State agencies submitting documents to be put of record shall pay the fees provided for in this section. If a state agency or political subdivision has requested an account with the county clerk, any applicable fees must be paid on a periodic basis."

Section 128. Section 25-10-302, MCA, is amended to read:

"25-10-302. Inclusion of attorney's fees in bill of costs. The ~~attorney's~~ *attorney* fees mentioned in ~~30-9-511~~ *25-10-303, [section 104]*, 71-1-233, *and* 71-3-124~~, and 25-10-303~~ need not be included in the cost bill if they are made a part of the judgment."

Section 129. Section 30-1-105, MCA, is amended to read:

"30-1-105. Territorial application of ~~the~~ code — parties' power to choose applicable law. (1) Except as provided in this section, when a transaction bears a reasonable relation to this state and also to another state or nation, the parties may agree that the law either of this state or of the other state or nation ~~shall govern~~ *governs* their rights and duties. Failing agreement, this code applies to transactions bearing an appropriate relation to this state.

(2) ~~Where~~ *When* one of the following provisions of this code specifies the applicable law, that provision governs and a contrary agreement is effective only

HeinOnline -- 1999 vol. I 1103 1999

to the extent permitted by the law (including the conflict of laws rules) so specified:

Rights of creditors against sold goods. 30-2-402.

Applicability of the Chapter on Leases. 30-2A-105 and 30-2A-106.

Applicability of the Chapter on Bank Deposits and Collections. 30-4-102.

Governing law in the Chapter on Funds Transfers. 30-4A-507.

Letters of Credit. 30-5-136.

Applicability of the Chapter on Investment Securities. 30-8-120.

~~Perfection provisions of the Chapter on Secured Transactions. 30-9-103.~~

Law governing perfection, the effect of perfection or nonperfection, and the priority of security interest. [sections 20 through 26]."

Section 130. Section 30-1-201, MCA, is amended to read:

"**30-1-201. General definitions.** Subject to additional definitions contained in the subsequent chapters of this code ~~which~~ *that* are applicable to specific chapters or parts thereof, and unless the context otherwise requires, in this code:

(1) "Action" in the sense of a judicial proceeding includes recoupment, counterclaim, setoff, suit in equity, and any other proceedings in which rights are determined.

(2) "Aggrieved party" means a party entitled to resort to a remedy.

(3) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances, including course of dealing or usage of trade or course of performance as provided in this code (30-1-205 and 30-2-208). Whether an agreement has legal consequences is determined by the provisions of this code, if applicable; otherwise by the law of contracts (30-1-103).

(4) "Bank" means any person engaged in the business of banking.

(5) "Bearer" means the person in possession of an instrument, document of title, or certificated security payable to bearer or endorsed in blank.

(6) "Bill of lading" means a document evidencing the receipt of goods for shipment issued by a person engaged in the business of transporting or forwarding goods, and includes an airbill. "Airbill" means a document serving for air transportation as a bill of lading does for marine or rail transportation, and includes an air consignment note or air waybill.

(7) "Branch" includes a separately incorporated foreign branch of a bank.

(8) "Burden of establishing" a fact means the burden of persuading the triers of fact that the existence of the fact is more probable than its nonexistence.

(9) "Buyer in ordinary course of business" means a person ~~who~~ *that buys goods*, in good faith, ~~and~~ without knowledge that the sale ~~to him is in violation of~~ *violates* the ~~ownership~~ rights ~~or security interest~~ of ~~a third party~~ *another person* in the goods, ~~buys~~ *and* in *the* ordinary course from a person, *other than a pawnbroker*, in the business of selling goods of that kind~~, but does not include a pawnbroker. All persons who sell minerals or the like (including oil and gas) at wellhead or minehead shall be considered to be persons~~ *A person buys goods in the ordinary course if the sale to the person comports with the usual or customary*

practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices. A person that sells oil, gas, or other mineral at the wellhead or minehead is a person in the business of selling goods of that kind. ~~"Buying"~~ *A buyer in ordinary course of business* may ~~be~~ *buy* for cash, ~~or~~ by exchange of other property, or on secured or unsecured credit and ~~includes receiving~~ *may acquire* goods or documents of title under a preexisting contract for sale ~~but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt~~. *Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under chapter 2 may be a buyer in ordinary course of business. A person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt is not a buyer in ordinary course of business.*

(10) "Conspicuous": A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. A printed heading in capitals (as: Non-Negetiable Bill of Lading) is conspicuous. Language in the body of a form is "conspicuous" if it is in larger or other contrasting type or color. But in a telegram any stated term is "conspicuous". Whether a term or clause is "conspicuous" or not is for decision by the court.

(11) "Contract" means the total legal obligation which results from the parties' agreement as affected by this code and any other applicable rules of law.

(12) "Creditor" includes a general creditor, a secured creditor, a lien creditor and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity and an executor or administrator of an insolvent debtor's or assignor's estate.

(13) "Defendant" includes a person in the position of defendant in a cross-action or counterclaim.

(14) "Delivery" with respect to instruments, documents of title, chattel paper, or certificated securities means voluntary transfer of possession.

(15) "Document of title" includes bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers. To be a document of title a document must purport to be issued by or addressed to a bailee and purport to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass.

(16) "Fault" means wrongful act, omission or breach.

(17) "Fungible" with respect to goods or securities means goods or securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit. Goods which are not fungible shall be deemed fungible for the purposes of this code to the extent that under a particular agreement or document unlike units are treated as equivalents.

(18) "Genuine" means free of forgery or counterfeiting.

(19) "Good faith" means honesty in fact in the conduct or transaction concerned.

(20) "Holder", with respect to a:

HeinOnline -- 1999 vol. I 1105 1999

(a) negotiable instrument, means the porson in possession if the instrument is payahle to bearer or to the person in possession;

(h) certified security, means the person in possession is the registered owner, the security has been indorsed to the person in pessession by the registered owner, or the security is in bearer form; or

(c) document of title, means the person in pessession if the goods are deliverable to bearer or to the order of the person in possession.

(21) To "honor" is to pay or to accept and pay, or where a credit so engagos to purchase or discount a draft complying with the terms of the credit.

(22) "Insolvency proceedings" includes any assignment for the benefit of creditors or other proceedings intended to liquidate or reliabilitate the estate of the person involved.

(23) A person is "insolvent" who eitlier has ceased to pay his dehts in tlie ordinary course of business or cannot pay his debts as tliey become due or is insolvent within the meaning of tlie federal bankruptcy law.

(24) "Money" means a medium of exchange authorized or adopted by a domestic or foreign government or intergovernmental organization.

(25) A person lias "notice" of a fact when:

(a) lie lias actual knowledge of it; or

(b) he has received a notice or notification of it; or

(c) from all tlie facts and circumstances known to him at the time in question lie has reason to know that it exists. A person "knows" or lias "knowledge" of a fact when he lias actual knowledge of it. "Discover" or "learn" or a word or phrase of similar import refers to knowledge ratlier than to reason to know. The time and circumstances under wliich a notice or notification may cease to be effective are not determined by this code.

(26) A person "notifies" or "gives" a notice or notification to another by taking such steps as may be reasonably required to inform tlie other in ordinary course whether or not such other actually comes to know of it. A person "receives" a notice or notification wlien:

(a) it comes to his attention; or

(b) it is duly delivered at the place of business tlirougli which tlie contract was made or at any other place lield out by him as tlie place for receipt of such communications.

(27) Notice, knowledge or a notice or notification received by an organization is effective for a particular transaction from tlie time when it is brought to tlie attention of tlie individual conducting that transaction, and in any event from the time when it would have been brought to his attontion if the organization had exercised due diligance. An organization exercises due diligence if it maintains reasonable routines for communicating significant information to tlie person conducting the transaction and there is reasonable compliance with tlie routines. Due diligence does not require an individual acting for the organization to communicate information unless such communication is part of his regular duties or unless he has reason to know of the transaction and that the transaction would be materially affected by tlie information.

HeinOnline -- 1999 vol. I 1106 1999

(28) "Organization" includes a corporation, government or governmental subdivision or agoncy, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(29) "Party" as distinct from "third party" means a person who has engaged in a transaction or made an agreement within this code.

(30) "Person" includes an individual or an organization.

(31) "Presumption" or "presumed" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would suppert a finding of its nonexistence.

(32) "Purchase" includes taking by sale, discount, negotiation, mortgage, pledge, lien, *security interest,* issue or reissue, gift or any other voluntary transaction creating an interest in property.

(33) "Purchaser" means a person who takes by purchase.

(34) "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

(35) "Representative" includes an agent, an officer of a corporation or association, and a trustee, executor or administrator of an estate, or any other person empewered to act for another.

(36) "Rights" includes remedies.

(37) ~~(a)~~ "Security interest" means an interest in personal property or fixtures that secures payment or performance of an obligation. ~~The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (30-2-401) is limited in effect to a reservation of a "security interest".~~ The term also includes any interest of a *consignor and a* buyer of accounts, ~~or~~ chattel paper, *a payment intangible, or a promissory note in a transaction* that is subject to chapter 9. The special property interest of a buyer of goods on identification of those goods to a contract for sale under 30-2-401 is not a "security interest", but a buyer may also acquire a "security interest" by complying with chapter 9. ~~Unless a consignment is intended as security, reservation of title thereunder is not a "security interest", but a consignment in any event is subject to the provisions on consignment sales (30-2-326). Whether a transaction creates a lease or security interest is determined by the facts of each case; however, a transaction creates a security interest if the consideration the lessee is to pay the lessor for the right to possession and use of the goods is an obligation for the term of the lease not subject to termination by the lessee and:~~

~~(i) the original term of the lease is equal to or greater than the remaining economic life of the goods;~~

~~(ii) the lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;~~

~~(iii) the lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement; or~~

~~(iv) the lessee has an option to become the owner of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement.~~ *Except as otherwise provided in 30-2-505, the right of a seller or lessor of goods under chapter 2 or 2A to retain or acquire possession of the*

goods in not a "security interest", but a seller or lessor may also acquire a "security interest" by complying with chapter 9. The retcntion or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (30-2-401) is limited in effect to a reservation of a "security interest".

~~(b) A transaction does not create a security interest merely because it provides that:~~

~~(i) the present value of the consideration the lessee is obligated to pay the lessor for the right to possession and use of the goods is substantially equal to or is greater than the fair market value of the goods at the time the lease is entered into;~~

~~(ii) the lessee assumes risk of loss of the goods or agrees to pay taxes, insurance, filing, recording, or registration fees or service or maintenance costs with respect to the goods;~~

~~(iii) the lessee has an option to renew the lease or to become the owner of the goods;~~

~~(iv) the lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market value for the use of the goods for the term of the renewal at the time the option is to be performed; or~~

~~(v) the lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.~~

~~(c) For purposes of this subsection (37):~~

~~(i) additional consideration is not nominal if:~~

~~(A) when the option to renew the lease is granted to the lessee, the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed; or~~

~~(B) when the option to become the owner of the goods is granted to the lessee, the price is stated to be the fair market value of the goods determined at the time the option is to be performed;~~

~~(ii) additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised;~~

~~(iii) "reasonably predictable" and "remaining economic life of the goods" are to be determined with reference to the facts and circumstances at the time the transaction is entered into; and~~

~~(iv) "present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate is not manifestly unreasonable at the time the transaction is entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.~~

(38) "Send" in connection with any writing or notice means to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed, and in the case of an instrument to an address specified thereon or otherwise agreed, or if

there be none to any address reasonable under the circumstances. The receipt of any writing or notice within the time at which it would have arrived if properly sent has the effect of a proper sending.

(39) "Signed" includes any symbol executed or adopted by a party with present intention to authenticate a writing.

(40) "Surety" includes guarantor.

(41) "Telegram" includes a message transmitted by radio, teletype, cable, any mechanical method of transmission, or the like.

(42) "Term" means that portion of an agreement which relates to a particular matter.

(43) "Unauthorized" signature means one made without actual, implied, or apparent authority and includes a forgery.

(44) "Value". Except as otherwise provided with respect to negotiable instruments and bank collections (30-3-303, 30-4-208, and 30-4-209), a person gives "value" for rights if he acquires them:

(a) in return for a binding commitment to extend credit or for the extension of immediately available credit whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection; or

(b) as security for or in total or partial satisfaction of a preexisting claim; or

(c) by accepting delivery pursuant to a preexisting contract for purchase; or

(d) generally, in return for any consideration sufficient to support a simple contract.

(45) "Warehouse receipt" means a receipt issued by a person engaged in the business of storing goods for hire.

(46) "Written" or "writing" includes printing, typewriting, or any other intentional reduction to tangible form."

Section 131. Section 30-1-206, MCA, is amended to read:

"30-1-206. Statute of frauds for kinds of personal property not otherwise covered. (1) Except in the cases described in subsection (2) a contract for the sale of personal property is not enforceable by way of action or defense beyond $5,000 in amount or value of remedy unless there is some writing which indicates that a contract for sale has been made between the parties at a defined or stated price, reasonably identifies the subject matter, and is signed by the party against whom enforcement is sought or by the party's authorized agent.

(2) Subsection (1) of this section does not apply to contracts for the sale of goods (30-2-201) nor of securities (30-8-123) nor to security agreements ~~(30-9-203)~~ *[section 12]*."

Section 132. Section 30-2-103, MCA, is amended to read:

"30-2-103. Definitions and index of definitions. (1) In this chapter, unless the context otherwise requires, the following definitions apply:

(a) "Buyer" means a person who buys or contracts to buy goods.

(b) "Good faith", in the case of a merchant, means honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.

(c) "Receipt" of goods means taking physical possession of them.

HeinOnline -- 1999 vol. I 1109 1999

(d) "Seller" means a person who sells or contracts to sell goods.

(2) Other defmitions applying to this chapter or to specified parts thereof and the sections in which they appear are:

"Acceptance". 30-2-606.

"Banker's credit". 30-2-325.

"Between merchants". 30-2-104.

"Cancellation". 30-2-106(4).

"Commercial unit". 30-2-105.

"Confirmed credit". 30-2-325.

"Conforming to contract". 30-2-106.

"Contract for sale". 30-2-106.

"Cover". 30-2-712.

"Entrusting". 30-2-403.

"Financing agency". 30-2-104.

"Future goods". 30-2-105.

"Goods". 30-2-105.

"Identification". 30-2-501.

"Installment contract". 30-2-612.

"Letter of credit". 30-2-325.

"Lot". 30-2-105.

"Merchant". 30-2-104.

"Overseas". 30-2-323.

"Person in position of seller". 30-2-707.

"Present sale". 30-2-106.

"Sale". 30-2-106.

"Sale on approval". 30-2-326.

"Sale or return". 30-2-326.

"Termination". 30-2-106.

(3) The following definitions in other chaptors apply to this chapter:

"Check". 30-3-104.

"Consignee". 30-7-102.

"Consignor". 30-7-102.

"Consumer goods". ~~30-9-109~~ *[section 1]*.

"Dishonor". 30-3-512.

"Draft". 30-3-104.

(4) In addition, chaptor 1 contains goneral definitions and principles of construction and interpretation applicable throughout this chapter."

Section 133. Section 30-2-210, MCA, is amended to read:

"30-2-210. Delegation of performance — assignment of rights. (1) A party may perform ~~his~~ *the party's* duty through a delegate unless otherwise agreed or unless the other party has a substantial interest in having ~~his~~ *the party's* original promisor perform or control the acts required by the contract. No delegation of performance relieves the party delegating of any duty to perform or any liability for breach.

(2) Unless otherwise agreed all rights of either seller or buyer can he assigned except ~~where~~ *when* the assignment would materially change the duty of the other party, or increase materially the burden or risk imposed on ~~him~~ *the other party* by ~~his~~ *the* contract, or impair materially ~~his~~ *the other party's* chance of obtaining return performance. A right to damages for breach of the whole contract or a right arising out of the assignor's due performance of ~~his~~ *the assignor's* entire obligation can be assigned despite agreement otherwise.

(3) The creation, attachment, perfection, or enforcement of a security interest in the seller's interest under a contract is not a transfer that materially changes the duty of or increases materially the burden or risk imposed on thc buyer or impairs materially the buycr's chance of obtaining return performance within the purview of subsection (2) unless, and then only to the extent that, enforcement actually results in a delegation of material performance of the seller. Even in that event, the creation, attachment, perfection, and enforcement of the security interest remain effective, but:

(a) the seller is liable to the buyer for damages caused by the dclegation to the extent that the damages could not reasonably be prevented by the buyer; and

(b) a court having jurisdiction may grant other appropriate relief, including cancellation of the contract for sale or an injunction against enforcement of the security interest or consummation of the enforcement.

~~(3)~~*(4)* Unless the circumstances indicate the contrary a prohibition of assignment of "the contract" is to be construed as barring only the delegation to the assignee of the assignor's performance.

~~(4)~~*(5)* An assignment of "the contract" or of "all my rights under the contract" or an assignment in similar general terms is an assignment of rights and unless the language or the circumstances (as in an assignment for security) indicate the contrary, it is a delegation of performance of the duties of the assignor and its acceptance by the assignee constitutes a promise by ~~him~~ *the assignee* to perform those duties. This promise is enforceable by either the assignor or the other party to the original contract.

~~(5)~~*(6)* The other party may treat any assignment ~~which~~ *that* delegates performance as creating reasonable grounds for insecurity and may without prejudice to ~~his~~ *the other party's* rights against the assignor demand assurances from the assignee (30-2-609)."

Section 134. Section 30-2-326, MCA, is amended to read:

"30-2-326. Sale on approval and sale or return — ~~consignment sales and~~ rights of creditors. (1) Unless otherwise agreed, if delivered goods may be returned by the buyer even though they conform to the contract, the transaction is:

(a) a "sale on approval" if the goods are delivered primarily for use; and

HeinOnline -- 1999 vol. I 1111 1999

(h) a "sale or return" if the goods are delivered primarily for resale.

(2) ~~Except as provided in subsection (3), goods~~ *Goods* held on approval are not subject to the claims of the buyer's creditors until acceptance; goods held on sale or return are subject to such claims while in the buyer's possession.

~~(3) Where goods are delivered to a person for sale and such person maintains a place of business at which he deals in goods of the kind involved, under a name other than the name of the person making delivery, then with respect to claims of creditors of the person conducting the business the goods are deemed to be on sale or return. The provisions of this subsection are applicable even though an agreement purports to reserve title to the person making delivery until payment or resale or uses such words as "on consignment" or "on memorandum". However, this subsection is not applicable if the person making delivery:~~

~~(a) complies with an applicable law providing for a consignor's interest or the like to be evidenced by a sign; or~~

~~(b) establishes that the person conducting the business is generally known by his creditors to be substantially engaged in selling the goods of others; or~~

~~(c) complies with the filing provisions of the Chapter on Secured Transactions (Chapter 9).~~

~~(4)~~*(3)* Any "or return" term of a contract for sale is to he treated as a separate contract for sale within the statute of frauds section of this chapter (30-2-201) and as contradicting the sale aspect of the contract within the provisions of this chapter on parol or extrinsic evidence (30-2-202)."

Section 135. Section 30-2-502, MCA, is amended to read:

"30-2-502. Buyer's right to goods on seller's insolvency. (1) Subject to ~~subsection~~ *subsections* (2) *and (3)* and even though the goods have not been shipped a buyer who has paid a part or all of the price of goods in which ~~he~~ *the buyer* has a special property under the provisions of the immediately preceding section may on making and keeping good a tender of any unpaid portion of their price recover them from the seller if:

(a) in the case of goods bought for personal, family, or household purposes, the seller repudiates or fails to deliver as required by the contract; or

(b) in other cases, the seller becomes insolvent within 10 days after receipt of the first installment on their price.

(2) The buyer's right to recover the goods under subsection (1)(a) vests upon acquisition of a special property, even if the seller had not then repudiated or failed to deliver.

~~(2)~~*(3)* If the identification creating ~~his~~ *the buyer's* special property has been made by the buyer, ~~he~~ *the buyer* acquires the right to recover the goods only if they conform to the contract for sale."

Section 136. Section 30-2-716, MCA, is amended to read:

"30-2-716. Buyer's right to specific performance or recovery of goods. (1) Specific performance may be decreed where the goods are unique or in other proper circumstances.

(2) The decree for specific performance may include such terms and conditions as to payment of the price, damages, or other relief as the court may deem just.

HeinOnline -- 1999 vol. I 1112 1999

(3) The buyer has a right to maintain an action for the recovery of goods identified to the contract if after reasonable effort ~~he~~ *the buyer* is unable to effect cover for such goods or the circumstances reasonably indicate that such effort will be unavailing or if the goods bave been shipped under reservation and satisfaction of the security interest in tbem has been made or tendered. *In the case of goods bought for personal, family, or household purposes, the buyer's right to maintain an action for recovery of the goods vests upon acquisition of a special property, even if the seller had not then repudiated or failed to deliver."*

Section 137. Section 30-2A-103, MCA, is amended to read:

"30-2A-103. Definitions and index of definitions. (1) In this chapter, unless the context otberwise requires, the following definitions apply:

(a) "Buyer in ordinary course of business" means a person, who in good faith and without knowledge that the sale to ~~him~~ *the buyer* is in violation of tlie ownership rights or security interest or leasebold interest of a third party in the goods, buys in ordinary course from a person in the business of selling goods of that kind, but the term does not include a pawnbroker. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a preexisting contract for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(b) "Cancellation" occurs when either party puts an end to the lease contract for default by the other party.

(c) "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of lease and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article, as a machine; a set of articles, as a suite of furniture or a line of machinery; a quantity, as a gross or carload; or any other unit treated in use or in the relevant market as a single whole.

(d) "Conforming" goods or performance under a lease contract means goods or performance that is in accordance with the obligations under the lease contract.

(e) "Consumer lease" means a lease that a lessor regularly engagod in the business of leasing or selling makes to a lessee who is an individual and who takes under the lease primarily for a personal, family, or household purpose if the total payments to be made under the lease contract, excluding payments for options to renew or buy, do not exceed $25,000.

(f) "Fault" means wrongful act, omission, breach, or default.

(g) "Finance lease" means a lease with respect to which:

(i) the lessor does not select, manufacture, or supply the goods;

(ii) tbe lessor acquires the goods or the right to possession and use of the goods in connection with the lease; and

(iii) one of the following occurs:

(A) the lessee receives a copy of the contract by which the lessor acquired the goods or the right to possession and use of the goods before signing tbe lease contract;

HeinOnline -- 1999 vol. I 1113 1999

(B) the lessee's approval of the contract by which the lessor acquired the goods or the right to possession and use of the goods is a condition to effectiveness of the lease contract;

(C) the lessee, before signing the lease contract, receives an accurate and complete statement designating the promises and warranties, and any disclaimers of warranties, limitations or modifications of remedies, or liquidated damagos, including those of a third party, such as the manufacturer of the goods, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; or

(D) if the lease is not a consumer lease, the lessor, hefore the lessee signs the lease contract, informs the lessee in writing:

(I) of the identity of the person supplying the goods to the lessor, unless the lessee has selected that person and directed the lessor to acquire the goods or the right to possession and use of the goeds from that person;

(II) that the lessee is entitled under this chapter to the promises and warranties, including those of any third party, provided to the lessor by the person supplying the goods in connection with or as part of the contract by which the lessor acquired the goods or the right to possession and use of the goods; and

(III) that the lessee may communicate with the person supplying the goods to the lessor and receive an accurate and complete statement of those promises and warranties, including any disclaimers and limitations of them or of remedies.

(h) "Goods" means all things that are movahle at the time of identification to the lease contract, or are fixtures (30-2A-309), but the term does not include money, documents, instruments, accounts, chattol paper, goneral intangibles, or minerals or the like, including oil and gas, before extraction. The term also includes the unborn young of animals.

(i) "Installment lease contract" means a lease contract that authorizes or requires the delivery of goods in separate lots to be separately accepted, even though the lease contract contains a clause "each delivery is a separate lease" or its equivalent.

(j) "Lease" means a transfer of the right to possession and use of goods for a term in return for consideration, hut a sale, including a sale on approval or a sale or return, or retention or creation of a security interest is not a lease. Unless the context clearly indicates otherwise, the term includes a sublease.

(k) "Lease agreement" means the bargain, with respect to the lease, of the lessor and the lessee in fact as found in their languago or hy implication from other circumstances, including course of dealing or usago of trade or course of performance as provided in this chapter. Unless the context clearly indicates otherwise, the term includes a sublease agreement.

(l) "Lease contract" means the total legal obligation that results from the lease agreement as affected by this chapter and any other applicable rules of law. Unless the context clearly indicates otherwise, the term includes a suhlease contract.

(m) "Leasehold interest" means the interest of the lessor or the lessee under a lease contract.

HeinOnline -- 1999 vol. I 1114 1999

(n) "Lessee" means a person who acquires the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessee.

(o) "Lessee in ordinary course of business" means a person, who in good faith and without knowledge that the lease to him is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods, leases in ordinary course from a person in the business of selling or leasing goods of that kind, but the term does not include a pawnbroker. "Leasing" may be for cash or by exchange of other property or on secured or unsecured credit and includes receiving goods or documents of title under a preexisting lease contract but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(p) "Lessor" means a person who transfers the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessor.

(q) "Lessor's residual interest" means the lessor's interest in the goods after expiration, termination, or cancellation of the lease contract.

(r) "Lien" means a charge against or interest in goods to secure payment of a debt or performance of an obligation, but the term does not include a security interest.

(s) "Lot" means a parcel or a single article that is the subject matter of a separate lease or delivery, whether or not it is sufficient to perform the lease contract.

(t) "Merchant lessee" means a lessee that is a merchant with respect to goods of the kind subject to the lease.

(u) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate was not manifestly unreasonable at the time the transaction was entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

(v) "Purchase" includes taking by sale, lease, mortgage, security interest, pledge, gift, or any other voluntary transaction creating an interest in goods.

(w) "Sublease" means a lease of goods the right to possession and use of which was acquired by the lessor as a lessee under an existing lease.

(x) "Supplier" means a person from whom a lessor buys or leases goods to be leased under a finance lease.

(y) "Supply contract" means a contract under which a lessor buys or leases goods to be leased.

(z) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the lease contract otherwise than for default.

(2) Other definitions applying to this chapter and the sections in which they appear are:

(a) "Accessions". 30-2A-310(1).

(b) "Construction mortgage". 30-2A-309(1)(d).

HeinOnline -- 1999 vol. I 1115 1999

(c) "Encumbrance". 30-2A-309(1)(e).

(d) "Fixtures". 30-2A-309(1)(a).

(e) "Fixture filing". 30-2A-309(1)(b).

(f) "Purchase money lease". 30-2A-309(1)(c).

(3) The following definitions in other chapters apply to this chapter:

(a) "Account". ~~30-9-106~~ *[section 1(1)(b)]*.

(h) "Between merchants". 30-2-104(3).

(c) "Buyer". 30-2-103(1)(a).

(d) "Chattel paper". ~~30-9-105(1)(b)~~ *[section 1(1)(k)]*.

(e) "Consumer goods". ~~30-9-109(1)~~ *[section 1(1)(w)]*.

(f) "Document". ~~30-9-105(1)(f)~~ *[section 1(1)(dd)]*.

(g) "Entrusting". 30-2-403(3).

(h) "General ~~intangibles~~ *intangible*". ~~30-9-106~~ *[section 1(1)(pp)]*.

(i) "Good faith". 30-2-103(1)(b).

(j) "Instrument". ~~30-9-105(1)(i)~~ *[section 1(1)(uu)]*.

(k) "Merchant". 30-2-104(1).

(l) "Mortgage". ~~30-9-105(1)(j)~~ *[section 1(1)(ccc)]*.

(m) "Pursuant to commitment". 30-9-105(1)(k).

(n) "Receipt". 30-2-103(1)(c).

(o) "Sale". 30-2-106(1).

(p) "Sale on approval". 30-2-326.

(q) "Sale or return". 30-2-326.

(r) "Seller". 30-2-103(1)(d).

(4) In addition, Title 30, chapter 1, contains general definitions and principles of construction and interpretation applicable throughout this chapter."

Section 138. Section 30-2A-303, MCA, is amended to read:

"30-2A-303. Alienability of party's interest under lease contract or of lessor's residual interest in goods — delegation of performance — transfer of rights. (1) As used in this section, "creation of a security interest" includes the sale of a lease contract that is subject to Title 30, chapter 9, secured transactions, by reason of ~~30-9-102(1)(b)~~ *[section 8(1)(c)]*.

(2) Except as provided in ~~subsections~~ *[section 68] and subsection* (3) ~~and (4)~~ *of this section*, a provision in a lease agreement that prohibits the voluntary or involuntary transfer, including a transfer by sale, sublease, creation or enforcement of a security interest, or attachment, levy, or other judicial process, of an interest of a party under the lease contract or of the lessor's residual interest in the goods or that makes such a transfer an event of default gives rise to the rights and remedies provided in subsection ~~(5)~~ *(4)*, but a transfer that is prohibited or is an event of default under the lease agreement is otherwise effective.

HeinOnline -- 1999 vol. I 1116 1999

~~(3) (a) A provision in a lease agreement that prohibits the creation or enforcement of a security interest in an interest of a party under the lease contract or in the lessor's residual interest in the goods or that makes such a transfer an event of default is not enforceable unless, and then only to the extent that, there is an actual transfer by the lessee of the lessee's right of possession or use of the goods in violation of the provision or an actual delegation of a material performance of either party to the lease contract in violation of the provision.~~

~~(b) Neither the granting nor the enforcement of a security interest in the lessor's interest under the lease contract or the lessor's residual interest in the goods is a transfer that materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on the lessee within the purview of subsection (5) unless, and then only to the extent that, there is an actual delegation of a material performance of the lessor.~~

~~(4)~~*(3)* A provision in a lease agreement that prohibits a transfer of a right to damages for default with respect to the whole lease contract or of a right to payment arising out of the transferor's due performance of the transferor's entire obligation or that makes such a transfer an event of default is not enforceable, and such a transfer is not a transfer that materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on the other party to the lease contract within the purview of subsection ~~(5)~~ *(4)*.

~~(5)~~*(4)* Subject to ~~subsections (3) and (4)~~ *[section 68] and subsection (3) of this section*:

(a) if a transfer is made ~~which~~ *that* is made an event of default under a lease agreement, the party to the lease contract not making the transfer, unless that party waives the default or otherwise agrees, has the rights and remedies described in 30-2A-501;

(b) if subsection ~~(5)(a)~~ *(4)(a)* is not applicable and if a transfer is made that is prohibited under a lease agreement or that materially impairs the prospect of obtaining return performance by, materially changes the duty of, or materially increases the burden or risk imposed on the other party to the lease contract, unless the party not making the transfer agrees at any time to the transfer in the lease contract or otherwise, then, except as limited by contract:

(i) the transferor is liable to the party not making the transfer for damages caused by the transfer to the extent that the damages could not reasonably be prevented by the party not making the transfer; and

(ii) a court having jurisdiction may grant other appropriate relief, including cancellation of the lease contract or an injunction against the transfer.

~~(6)~~*(5)* A transfer of "the lease" or of "all my rights under the lease" or a transfer in similar general terms is a transfer of rights, and unless the language or the circumstances, as in a transfer for security, indicate the contrary, the transfer is a delegation of duties by the transferor to the transferee. Acceptance by the transferee constitutes a promise by the transferee to perform those duties. The promise is enforceable by either the transferor or the other party to the lease contract.

HeinOnline -- 1999 vol. I 1117 1999

~~(7)~~*(6)* Unless otherwise agreed hy the lessor and the lessee, a delegation of performance does not relieve the transferor as against the other party of any duty to perform or of any liability for default.

~~(8)~~*(7)* In a consumer lease, to prohibit the transfer of an interest of a party under the lease contract or to make a transfer an event of default, the language must be specific, by a writing, and conspicuous."

Section 139. Section 30-2A-307, MCA, is amended to read:

"30-2A-307. Priority of liens arising by attachment or levy on, security interests in, and otber claims to goods. (1) Except as otherwise provided in 30-2A-306, a creditor of a lessee takes subject to the lease contract.

(2) Except as otherwise provided in 30-2A-306, 30-2A-308, and ~~subsections~~ *subsection* (3) ~~and (4)~~ of this section, a creditor of a lessor takes subject to the lease contract unless~~:~~

~~(a)~~ tbe creditor holds a lien tbat attached to the goods before the lease contract became enforceable~~;~~

~~(b) the creditor holds a security interest in the goods and the lessee did not give value and receive delivery of the goods without knowledge of the security interest; or~~

~~(c) the creditor holds a security interest in the goods that was perfected (30-9-303) before the lease contract became enforceable.~~

~~(3) A lessee in the ordinary course of business takes the leasehold interest free of a security interest in the goods created by the lessor even though the security interest is perfected (30-9-303) and the lessee knows of its existence.~~

~~(4) A lessee other than a lessee in the ordinary course of business takes the leasehold interest free of a security interest to the extent that it secures future advances made after the secured party acquires knowledge of the lease or more than 45 days after the lease contract becomes enforceable, whichever occurs first, unless the future advances are made pursuant to a commitment entered into without knowledge of the lease and before the expiration of the 45-day period~~.

(3) Except as otherwise provided in [sections 36, 40, and 42], a lessee takes a leasehold interest subject to a security interest held by a creditor of the lessor."

Section 140. Section 30-2A-309, MCA, is amended to read:

"30-2A-309. Lessor's and lessee's rights when goods become fixtures. (1) In this section:

(a) goods are "fixtures" when they become so related to particular real estato that an interest in them arises under real estate law;

(b) a "fixture filing" is the filing, in the office where a mortgago on the real estate would be filed or recorded, of a financing statement covering goods that are or are to become fixtures and conforming to the requirements of ~~30-9-402(5)~~ *[section 72(1) and (2)]*;

(c) a lease is a "purchase money lease" unless the lessee has possession or use of the goods or the right to possession or use of the goods before the lease agreement is enforceable;

HeinOnline -- 1999 vol. I 1118 1999

(d) a mortgage is a "construction mortgage" to the extent it secures an obligation incurred for the construction of an improvement on land, including the acquisition cost of the land, if the recorded writing so indicates; and

(e) "encumbrance" includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests.

(2) Under this chapter, a lease may be of goods that are fixtures or may continue in goods that become fixtures, but no lease exists under this chapter of ordinary building materials incorporated into an improvement on land.

(3) This chapter does not prevent creation of a lease of fixtures pursuant to real estate law.

(4) The perfected interest of a lessor of fixtures has priority over a conflicting interest of an encumbrancer or owner of the real estate if:

(a) the lease is a purchase money lease, the conflicting interest of the encumbrancer or owner arises before the goods become fixtures, the interest of the lessor is perfected by a fixture filing before the goods become fixtures or within 10 days thereafter, and the lessee has an interest of record in the real estate or is in possession of the real estate; or

(h) the interest of the lessor is perfected by a fixture filing before the interest of the encumbrancer or owner is of record, the lessor's interest has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner, and the lessee has an interest of record in the real estate or is in possession of the real estate.

(5) The interest of a lessor of fixtures, whether or not perfected, has priority over the conflicting interest of an encumbrancer or owner of the real estate if:

(a) the fixtures are readily removable factory or office machines, readily removable equipment that is not primarily used or leased for use in the operation of the real estate, or readily removable replacements of domestic appliances that are goods subject to a consumer lease, and before the goods become fixtures the lease contract is enforceable;

(b) the conflicting interest is a lien on the real estate obtained by legal or equitable proceedings after the lease contract is enforceable;

(c) the encumbrancer or owner has consented in writing to the lease or has disclaimed an interest in the goods as fixtures; or

(d) the lessee has a right to remove the goods as against the encumbrancer or owner. If the lessee's right to remove terminates, the priority of the interest of the lessor continues for a reasonable time.

(6) Notwithstanding the provisions of subsection (4)(a) but otherwise subject to the provisions of subsections (4) and (5), the interest of a lessor of fixtures, including the lessor's residual interest, is subordinate to the conflicting interest of an encumbrancer of the real estate under a construction mortgage recorded before the goods become fixtures if the goods become fixtures before the completion of the construction. To the extent given to refinance a construction mortgage, the conflicting interest of an encumbrancer of the real estate under a mortgage has this priority to the same extent as the encumbrancer of the real estate under the construction mortgago.

(7) In cases not within the provisions of subsections (1) through (6), priority between the interest of a lessor of fixtures, including the lessor's residual interest,

HeinOnline -- 1999 vol. I 1119 1999

and the conflicting interest of an encumbrancer or owner of the real estate who is not the lessee is determined by the priority rules governing conflicting interests in real estate.

(8) If the interest of a lessor of fixtures, including the lessor's residual interest, has priority over all conflicting interests of all owners and encumbrancers of the real estate, the lessor or the lessee may, on default, expiration, termination, or cancellation of the lease agreement but subject to the lease agreement and this chapter or if necessary to enforce other rights and remedies of the lessor or lessee under this chapter, remove the goods from the real estate, free and clear of all conflicting interests of all owners and encumbrancers of the real estate. However, the lessor or lessee shall reimburse any encumbrancer or owner of the real estate who is not the lessee and who has not otherwise agreed to the cost of repair of any physical injury, but not for any diminution in value of the real estate caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the party seeking removal gives adequate security for the performance of this obligation.

(9) Even though the lease agreement does not create a security interest, the interest of a lessor of fixtures, including the lessor's residual interest, is perfected by filing a financing statement as a fixture filing for leased goods that are or are to become fixtures in accordance with the relevant provisions of the chapter on secured transactions (Title 30, chapter 9)."

Section 141. Section 30-4-208, MCA, is amended to read:

"30-4-208. Security interest of collecting bank in items, accompanying documents, and proceeds. (1) A collecting bank has a security interest in an item and any accompanying documents or the proceeds of either:

(a) in case of an item deposited in an account, to the extent to which credit given for the item has been withdrawn or applied;

(b) in case of an item for which it has given credit available for withdrawal as of right, to the extent of the credit given, whether or not the credit is drawn upon or there is a right of charge-back; or

(c) if it makes an advance on or against the item.

(2) If credit given for several items received at one time or pursuant to a single agreement is withdrawn or applied in part, the security interest remains upon all the items, any accompanying documents, or the proceeds of either. For the purpose of this section, credits first given are first withdrawn.

(3) Receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying documents and proceeds. To the extent and so long as the bank does not receive final settlement for the item or give up possession of the item or accompanying documents for purposes other than collection, the security interest continues and is subject to the provisions of chapter 9 except that:

(a) no security agreement is necessary to make the security interest enforceable ~~(30-9-203)~~ *([section 12(2)(c)(i)])*; and

(b) no filing is required to perfect the security interest; and

HeinOnline -- 1999 vol. I 1120 1999

(c) the security interest has priority over conflicting perfected security interests in the item, accompanying documents or proceeds."

Section 142. Section 30-7-503, MCA, is amended to read:

"30-7-503. Document of title to goods defeated in certain cases. (1) A document of title confers no right in goods against a person who before issuance of the document had a legal interest or a perfected security interest in them and who neither:

(a) delivered or entrusted them or any document of title covering them to the bailor or ~~his~~ *the bailor's* nominee with actual or apparent authority to ship, store or sell or with power to obtain delivery under this chapter (30-7-403) or with power of disposition under this code (30-2-403 and ~~30-9-307~~ *[section 39]*) or other statute or rule of law; nor

(b) acquiesced in the procurement by the bailor or ~~his~~ *the bailor's* nominee of any document of title.

(2) Title to goods based upon an unaccepted delivery order is subject to the rights of anyone to whom a negotiable warehouse receipt or bill of lading covering the goods has been duly negotiated. Such a title may be defeated under the next section to the same extent as the rights of the issuer or a transferee from the issuer.

(3) Title to goods based upen a bill of lading issued to a freight forwarder is subject to the rights of anyone to whom a bill issued by the freight forwarder is duly negotiated; but delivery by the carrier in accordance with ~~Part~~ *part* 4 of this chapter pursuant to its own bill of lading discharges the carrier's obligation to deliver."

Section 143. Section 30-8-113, MCA, is amended to read:

"30-8-113. Rules for determining whether certain obligations and interests are securities or financial assets. (1) A share or similar equity interest issued by a corporation, business trust, joint stock company, or similar entity is a security.

(2) An "investment company security" is a security. "Investment company security" means a share or similar equity interest issued by an entity that is registered as an investment company under the federal investment company laws, an interest in a unit investment trust that is so registered, or a face-amount certificate issued by a face-amount certificate company that is so registered. Investment company security does not include an insurance policy or endowment policy or annuity contract issued by an insurance company.

(3) An interest in a partnership or limited liability company is not a security unless it is dealt in or traded on securities exchanges or in securities markets, its terms expressly provide that it is a security governed by this chapter, or it is an investment company security. However, an interest in a partnership or limited liability company is a financial asset if it is held in a securities account.

(4) A writing that is a security certificate is governed by this chapter and not by chapter 3, even though it also meets the requirements of that chapter. However, a negotiable instrument governed by chapter 3 is a financial asset if it is held in a securities account.

(5) An option or similar obligation issued by a clearing corporation to its participants is not a security, but is a financial asset.

HeinOnline -- 1999 vol. I 1121 1999

(6) A commodity contract, as defined in ~~30-9-115~~ *[section 1]*, is not a security or a financial asset."

Section 144. Section 30-8-116, MCA, is amended to read:

"30-8-116. Control. (1) A purchaser has "control" of a certificated security in bearer form if the certificated security is delivered to the purchaser.

(2) A purchaser has "control" of a certificated security in registered form if the certificated security is delivered to the purchaser and:

(a) the certificate is indorsed to the purchaser or in blank by an effective indorsement; or

(b) the certificate is registered in the name of the purchaser, upon original issue or registration of transfer by the issuer.

(3) A purchaser has "control" of an uncertificated security if:

(a) the uncertificated security is delivered to the purchaser; or

(b) the issuer has agreed that it will comply with instructions originated by the purchaser without further consent by the registered owner.

(4) A purchaser has "control" of a security entitlement if:

(a) the purchaser becomes the entitlement holder; ~~or~~

(b) the securities intermediary has agreed that it will comply with entitlement orders originated by the purchaser without further consent by the entitlement holder; *or*

(c) another person has control of the security entitlement on behalf of the purchaser or, having previously acquired control of the security entitlement, acknowledges that it has control on behalf of the purchaser.

(5) If an interest in a security entitlement is granted by the entitlement holder to the entitlement holder's own securities intermediary, the securities intermediary has control.

(6) A purchaser who has satisfied the requirements of subsection (3)~~(b)~~ or (4)~~(b)~~ has control even if the registered owner in the case of subsection (3)~~(b)~~ or the entitlement holder in the case of subsection (4)~~(b)~~ retains the right to make substitutions for the uncertificated security or security entitlement, to originate instructions or entitlement orders to the issuer or securities intermediary, or otherwise to deal with the uncertificated security or security entitlement.

(7) An issuer or a securities intermediary may not enter into an agreement of the kind described in subsection (3)(b) or (4)(b) without the consent of the registered owner or entitlement holder, but an issuer or a securities intermediary is not required to enter into such an agreement even though the registered owner or entitlement holder so directs. An issuer or securities intermediary that has entered into such an agreement is not required to confirm the existence of the agreement to another party unless requested to do so by the registered owner or entitlement holder."

Section 145. Section 30-8-120, MCA, is amended to read:

"30-8-120. Applicability — choice of law. (1) The local law of the issuer's jurisdiction, as specified in subsection (4), governs:

(a) the validity of a security;

HeinOnline -- 1999 vol. I 1122 1999

(b) the rights and duties of the issuer with respect to registration of transfer;

(c) the effectiveness of registration of transfer by the issuer;

(d) whether the issuer owes any duties to an adverse claimant to a security; and

(e) whether an adverse claim can be asserted against a person to whom transfer of a certificated or uncertificated security is registered or a person who obtains control of an uncertificated security.

(2) The local law of the securities intermediary's jurisdiction, as specified in subsection (5), governs:

(a) acquisition of a security entitlement from the securities intermediary;

(b) the rights and duties of the securities intormediary and entitlement holder arising out of a security entitlement;

(c) whether the securities intermediary owes any duties to an adverse claimant to a security entitlement; and

(d) whether an adverse claim can be asserted against a person who acquires a security entitlement from the securities intermediary or a person who purchases a security entitlement or interest therein from an entitlement holder.

(3) The local law of the jurisdiction in which a security certificate is located at tbe time of delivery governs whether an adverse claim can be asserted against a person to whom the security certificate is delivered.

(4) "Issuer's jurisdiction" means the jurisdiction under which the issuer of the security is organized or, if permitted by the law of that jurisdiction, the law of another jurisdiction specified by the issuer. An issuer organized under the law of this state may specify the law of another jurisdiction as the law governing tbe matters specified in subsections (1)(b) through (1)(e).

(5) The following rules determine a "securities intermediary's jurisdiction" for purposes of this section:

(a) If an agreement between the securities intermediary and its entitlement holder ~~specifies that it is governed by the law of a particular jurisdiction~~ *governing the securities account expressly provides that a particular jurisdiction is the security intermediary's jurisdiction for the purposes of this part, this chapter, or chapters 1 through 9 of this title,* that jurisdiction is the securities intermediary's jurisdiction.

(b) If subsection (5)(a) does not apply and an agreement between the securities intermediary and its entitlement holder expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

~~(b)~~*(c)* If *neither subsection (5)(a) nor (5)(b) applies and* an agreement between the securities intermediary and its entitlement holder ~~does not specify the governing law as provided in subsection (5)(a), but~~ *governing the securities account* expressly ~~specifies~~ *provides* that the securities account is maintained at an office in a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

~~(c)~~*(d)* If ~~an agreement between the securities intermediary and its entitlement holder does not specify a jurisdiction as provided in~~ subsection (5)(a), ~~or~~ (5)(b), *or (5)(c) does not apply,* the securities intermediary's jurisdiction is the

jurisdiction in which ~~is located~~ the office identified in an account statement as the office serving the entitlement holder's account *is located*.

~~(d)~~*(e)* If ~~an agreement between the securities intermediary and its entitlement holder does not specify a jurisdiction as provided in~~ subsection (5)(a), ~~or~~ (5)(b), ~~and an account statement does not identify an office serving the entitlement holder's account as provided in subsection~~ (5)(c), *or (5)(d) does not apply* the securities intermediary's jurisdiction is the jurisdiction in which ~~is located~~ the chief executive office of the securities intermediary *is located*.

(6) A securities intermediary's jurisdiction is not determined by the physical location of certificates representing financial assets, or by the jurisdiction in which is organized the issuer of the financial asset with respect to which an entitlement holder has a security entitlement, or by the location of facilities for data processing or other recordkeeping concerning the account."

Section 146. Section 30-8-331, MCA, is amended to read:

"30-8-331. Delivery. (1) Delivery of a certificated security to a purchaser occurs when:

(a) the purchaser acquires possession of the security certificate;

(b) another person, other than a securities intermediary, either acquires possession of the security certificate on behalf of the purchaser or, having previously acquired possession of the certificate, acknowledges that it holds for the purchaser; or

(c) a securities intermediary acting on behalf of the purchaser acquires possession of the security certificate, only if the certificate is in registered form and ~~has been~~ *is:*

(i) registered in the name of the purchaser;

(ii) payable to the order of the purchaser; or

(iii) specially indorsed to the purchaser by an effective indorsement *and has not been indorsed to the securities intermediary or in blank.*

(2) Delivery of an uncertificated security to a purchaser occurs when:

(a) the issuer registers the purchaser as the registered owner, upon original issue or registration of transfer; or

(b) another person, other than a securities intermediary, either becomes the registered owner of the uncertificated security on behalf of the purchaser or, having previously become the registered owner, acknowledges that it holds for the purchaser."

Section 147. Section 30-8-332, MCA, is amended to read:

"30-8-332. Rights of purchaser. (1) Except as otherwise provided in subsections (2) and (3), ~~upon delivery~~ *a purchaser* of a certificated or uncertificated security ~~to a purchaser, the purchaser~~ acquires all rights in the security that the transferor had or had power to transfer.

(2) A purchaser of a limited interest acquires rights only to the extent of the interest purchased.

(3) A purchaser of a certificated security who as a previous holder had notice of an adverse claim does not improve its position by taking from a protected purchaser."

HeinOnline -- 1999 vol. I 1124 1999

Section 148. Section 30-8-510, MCA, is amended to read:

"30-8-510. Rights of purchaser of security entitlement from entitlement holder. (1) ~~An~~ *In an action not covered by the priority rules in chapter 9 or the rules stated in subsection (3), an* action based on an adverse claim to a financial asset or security entitlement, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against a person who purchases a security entitlement, or an interest therein, from an entitlement holder if the purchaser gives value, does not have notice of the adverse claim, and obtains control.

(2) If an adverse claim could not have been asserted against an entitlement holder under 30-8-502, the adverse claim cannot be asserted against a person who purchases a security entitlement, or an interest therein, from the entitlement holder.

(3) In a case not covered by the priority rules in chapter 9, a purchaser for value of a security entitlement, or an interest therein, who obtains control has priority over a purchaser of a security entitlement, or an interest therein, who does not obtain control. ~~Purchasers~~ *Except as otherwise provided in subsection (4), purchasers* who have control rank ~~equally, except that a~~ *according to the priority in time of:*

(a) the purchaser's becoming the person for whom the securities account, in which the security entitlement is carried, is maintained if the purchaser obtained control under 30-8-116(4)(a);

(b) the securities intermediary's agreement to comply with the purchaser's entitlement orders with respect to security entitlements carried or to be carried in the securities account in which the security entitlement is carried if the purchaser obtained control under 30-8-116(4)(b); or

(c) if the purchaser obtained control through another person under 30-8-116(4)(c), the time on which priority would be based under this subsection (3) if the other person were the secured party.

(4) A securities intermediary as purchaser has priority over a conflicting purchaser who has control unless otherwise agreed by the securities intermediary."

Section 149. Section 40-5-242, MCA, is amended to read:

"40-5-242. Notice of support lien — civil liability upon failure to honor support lien or to comply with warrant for distraint. (1) The department may, at any time after asserting a support lien, serve a notice of the lien on any person, firm, corporation, association, or political subdivision or department of the state in possession of any real or personal property that is due, owing, or belonging to an obligor. For this purpose, porsonal property includes the obligor's share of a decedent's estate, workers' compensation benefits, and any proceeds or potential proceeds from suits at law. Except as provided in subsections (1)(a) and (1)(b), the department may not impose a lien under this section upon a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1, or upon the assets of a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1.

(a) The department may impose a lien under this section upon a self-sufficiency trust or upon the assets of a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1, if the department is required by federal

HeinOnline -- 1999 vol. I 1125 1999

law to recover or collect from the trust or its assets as a condition of receiving federal financial participation for the child support enforcement program or the FAIM financial assistance program.

(b) To the extent otherwise permitted by this section, the department is not precluded from asserting a claim or imposing a lien upon real or personal property prior to transfer of the property to the trust. If the department imposes a lien upon property prior to transfer to a self-sufficiency trust, any transfer of the property to the trust is subject to the lien.

(2) Except as provided in subsection (3), a person or entity is liable to the department in an amount equal to 100% of the value of a support lien or warrant for distraint or the value of real or personal property subject to a support lien or distrained by a warrant for distraint, whichever is less, together with costs, interest, and reasonable attorney fees, if the person or entity:

(a) pays over, releases, sells, transfers, or conveys real or personal property subject to a support lien, to or for the benefit of the obligor, after the person or entity receives actual notice of filing of the support lien; or

(b) fails or refuses to surrender upon demand property of an obligor when presented with a warrant for distraint by a sheriff or levying officer under the provisions of 40-5-247.

(3) A person or entity is not liable to the department under this section when:

(a) a written release or waiver of the support lien or warrant for distraint issued by the department has been delivered to the person or entity;

(b) a determination has been made in an adjudicative proceeding, either administrative or judicial, that a support lien does not exist or that the lien has been satisfied; or

(c) the property subject to a support lien has been transferred to, paid over to, or repossessed by a person or entity holding:

(i) a prior perfected lien;

(ii) a mortgege, the proceeds of which were used by the obliger to purchase real property; or

(iii) a perfected purchase money security interest, as ~~defined~~ *described* by ~~30-9-107~~ *[section 20]*."

Section 150. Section 40-5-248, MCA, is amended to read:

"40-5-248. Lien against real and personal property — effect of lien — interest — warrant for distraint. (1) There is a support lien on the real and personal property of an obligor:

(a) when the department bas entered a final decision in a contested case under this cbapter that finds the obligor owes a sum certain debt eitber to this department or to an obligee, or both; or

(b) upon registration under 40-5-271 of a support order that includes finding that the obligor owes a sum certain amount of delinquent support.

(2) A support lien is for the amount required to satisfy:

(a) the sum certain debt shown in a fmal decision in a contested case under this chapter or the sum certain support debt included in any support order registered under 40-5-271;

HeinOnline -- 1999 vol. I 1126 1999

(b) interest claimed under this section; and

(c) any fees that may be due under 40-5-210.

(3) A support lien has the priority of a secured creditor from the date the lien is perfected as provided by this section; however, the lien is subordinate to:

(a) any prior perfected lien or security interest;

(b) a mortgage, the proceeds of which are used by an obligor to purchase real property; or

(c) any perfected purchase money security interest, as ~~defined~~ *described* in ~~30-9-107~~ *[section 20]*.

(4) Support liens remain in effect until the delinquency upon which the lien is based is satisfied or until 2 years after the child to whom the support lien is related attains the age of majority, whichever occurs first.

(5) The lien applies to all real and personal property owned by the obligor if it can be located in the state. The lien applies to all real and personal property that the obligor can afterward acquire. Except as provided in subsections (5)(a) and (5)(b), the department may not impose a lien under this section upon a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1, or upon the assets of a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1.

(a) The department may impose a lien under this section upon a self-sufficiency trust or upon the assets of a self-sufficiency trust established pursuant to Title 53, chapter 18, part 1, if the department is required by federal law to recover or collect from the trust or its assets as a condition of receiving federal financial participation for the child support enforcement program or the FAIM financial assistance program.

(b) To the extent otherwise permitted by this section, the department is not precluded from asserting a claim or imposing a lien upon real or personal property prior to transfer of the property to the trust. If the department imposes a lien upon property prior to transfer to a self-sufficiency trust, any transfer of the property to the trust is subject to the lien.

(6) The department shall keep a record of support liens asserted under this section in the registry of support orders established by 40-5-271.

(7) A support lien is perfected:

(a) as to real property, upon filing a notice of support lien with the clerk of the district court in the county or counties in which the real property is or may be located at the time of filing or at any time in the future;

(b) as to motor vehicles or other items for which a certificate of ownership is issued by the department of justice, upon filing a notice of support lien with the department of justice in accordance with the provisions of Titles 23 and 61;

(c) as to all other personal property, upon filing a notice of support lien in the place required to perfect a security interest under ~~30-9-401~~ *[section 20]*. The county clerk and recorder or the secretary of state, as appropriate, shall cause the notice of support lien to be marked, held, and indexed as if the notice of support lien were a financing statement within the meaning of the Uniform Commercial Code.

HeinOnline -- 1999 vol. I 1127 1999

(8) A buyer, in the ordinary course of business, who buys an obligor's personal property for value and who buys in good faith and without knowledge of the support lien takes the property free of the support lien.

(9) (a) The department may charge interest on the support lien at the rate of 1% per month.

(b) Interest accrues at the close of the business day on the last day of each month and is calculated by multiplying the unpaid balance of the lien, including prior accrued interest existing at the end of the day, by the applicable rate of interest.

(c) A provision of this section may not be construed to require the department to maintain interest balance due accounts. The department may waive interest if waiver would facilitate the collection of the debt.

(d) Interest under this subsection (9) is in addition to and not in substitution for any other interest accrued or accruing under any other provision of law.

(10) (a) Upon receiving payment in full of the amount of the lien plus interest and fees, if any, the department shall take all necessary steps to release the support lien.

(b) Upon receiving partial payment of the support lien or if the department determines that a release or partial release of the lien will facilitate the collection of support arrearages, the department may release or partially release the support lien. The department may release the support lien if it determines that the lien is unenforceable.

(11) A support lien under this section is in addition to any other lien created by law.

(12) A support lien under this section may not be discharged in bankruptcy.

(13) Support liens provided for by this section may be enforced or collected through the warrant for distraint provided for by 40-5-247."

Section 151. Section 69-8-503, MCA, is amended to read:

"69-8-503. Transition costs financing. (1) A utility may, after July 1, 1997, apply to the commission for a determination that certain transition costs may be recovered through the issuance of transition bonds. If transition bonds are issued, cost savings associated with and resulting from the bonds must benefit customers. After the issuance of a financing order, the utility retains sole discretion regarding whether to sell, assign, or otherwise transfer or pledge transition property or to cause the transition bonds to be issued, including the right to defer or postpone the sale, assignment, transfer, pledge, or issuance. If transition bonds are not issued within 4 years of the issuance of the financing order, the financing order must terminate. The utility may apply for an extension or renewal of a financing order.

(2) (a) The commission may issue financing orders in accordance with this section to facilitate the recovery, reimbursement, financing, or refinancing of transition costs and the acquisition of transition property. A financing order may be adopted only upon the application of a utility and may only become effective in accordance with its terms after the utility files with the commission the utility's written consent to all terms and conditions of the financing order. A financing order may specify how amounts collected from a customer are allocated between fixed transition amounts and other charges.

HeinOnline -- 1999 vol. I 1128 1999

(b) A financing order must include, without limitation, a procedure for the expeditious approval by the commission of periodic adjustments to nonbypassable rates and charges associated with fixed transition amounts included in the order to ensure recovery of all transition costs and the costs of capital associated with the proposed recovery, reimbursement, financing, or refinancing of transition costs and the acquisition of transition property including the costs of issuing, servicing, and retiring the transition bonds contemplated by the financing order. The order must set forth the term over which the transition bonds are to be paid, but those terms may not exceed 20 years. These adjustments may not impose fixed transition amounts upon customer classes that were not subject to the fixed transition amounts in the pertinent financing order.

(3) (a) Notwithstanding any other provision of law, and except as otherwise provided in this section with respect to transition property that has been made the basis for the issuance of transition bonds and upon the issuance of transition bonds, the financing orders and the fixed transition amounts must be irrevocable.

(b) If transition bonds have been issued, the commission may not by rescinding, altering, or amending the financing order or otherwise:

(i) revalue or revise for ratemaking purposes the transition costs or the costs of recovering, reimbursing, financing, or refinancing the transition costs and acquiring transition property;

(ii) determine that the fixed transition amounts or rates are unjust or unreasonable; or

(iii) in any way reduce or impair the value of transition property either directly or indirectly by taking fixed transition amounts into account when setting other rates for the utility.

(c) The total amount of the transition property may not be subject to reduction, impairment, postponement, or termination.

(d) Except as otherwise provided in this section, the state pledges and agrees with the assignees and pledgees of transition property and transition bondholders that the state may not limit or alter the fixed transition amounts, transition property, financing orders, or any right under the bonds until the bonds, together with the interest on the bonds, are fully met and discharged. The board, as agent for the state, is authorized to include this pledge and undertaking for the state in these bonds.

(e) Notwithstanding any other provision of this section, the commission shall approve those adjustments to the fixed transition amounts as may be necessary to ensure timely recovery of all transition costs that are the subject of the pertinent financing order and the costs of capital associated with the recovery, reimbursement, financing, or refinancing of transition costs and acquiring transition property including the costs of issuing, servicing, and retiring the transition bonds contemplated by the financing order. The adjustments may not impose fixed transition amounts upon customer classes that were not subject to the fixed transition amounts in the pertinent financing order.

(4) (a) Financing orders do not constitute a debt or liability of the state or of any political subdivision of the state if issued through the board and do not constitute a pledge of the full faith and credit of the state or any of the state's political subdivisions if issued through the board. The financing orders are

HeinOnline -- 1999 vol. I 1129 1999

payable solely from the funds provided under this section. The bonds and offering documents must contain on their face a statement to the following effect:

This bond may not constitute an indebtedness or a loan of credit of the state of Montana or any political subdivision of the state of Montana within any constitutional or statutory provision. Neither the full faith and credit nor the taxing power of the state of Montana is pledged to tbe payment of the principal or interest on this bond, and neither the state of Montana nor any political subdivision of the state of Montana is obligated, directly, indirectly, or contingently, to levy or to pledge any form of taxation or to make any appropriation for the payment of tbis bond. This bond is a limited obligation of the issuer, payable solely out of tlie transition property or the proceeds of tbat property specifically pledged for its payment and not otherwise.

(b) The issuance of bonds under this section may not directly, indirectly, or contingently obligate the state or any political subdivision of the state to levy or to pledge any form of taxation or to make any appropriation for bond payment.

(5) The commission shall establisb procedures for the expeditious processing of applications for financing orders, including the approval or disapproval of applications within 120 days after a utility submits a complete application. The commission sball provide in any financing order for a procedure for tlie expeditious approval by the commission of periodic adjustments to tlie fixed transition amounts that are the subject of the pertinent financing order pursuant to subsection (2). Tlie commission sball determine on each anniversary of the issuance of the financing order and at additional intervals as may be provided for in the financing order whether the adjustments are required and shall provide for the adjustments, if required, to be approved within 60 days of each anniversary of the issuance of the financing order or of each additional interval provided for in the financing order.

(6) Fixed transition amounts become transition property when and to the extent that a financing order authorizing the fixed transition amounts has become effective in accordance with subsection (2), and tbe transition property must thereafter continuously exist as property for all purposes with all of the rights and privileges of this chapter for the period and to the extent provided in the financing order or until tbe transition bonds are paid in full including all principal, interest, premium, costs, and arrearages on the transition bonds.

(7) Transition bonds may be issued upon commission approval in the pertinent financing order. Transition bonds must specify tbat they do not provide recourse to the credit or any assets of the utility, other than the transition property as specified in tbe pertinent financing order.

(8) (a) A utility may sell, assign, or transfer all or pertions of the utility's interest in transition property to an assignee. A utility or an assignee may further sell, assign, or transfer the utility's interest in tbat transition property to one or more assignees in connection witb the issuance of transition bonds to the extent approved in the pertinent financing order.

(b) A utility or an assignee may pledge transition property as collateral for transition bonds to the extent approved in the pertinent financing order and may provide for a security interest in tbe transition property as provided in this section.

(c) Transition property may be sold, assigned, or transferred for the benefit of:

HeinOnline -- 1999 vol. I 1130 1999

(i) transition bondholders in connection with the exercise of remedies upon a default; or

(ii) any person acquiring the transition property after a sale, assignment, or transfer pursuant to this section.

(9) (a) To the extent that any interest in transition property is sold, assigned, transferred, or pledged as collateral, the commission shall authorize the utility to contract with any assignee so that the utility will, subject to the utility's rights under subsection (18):

(i) continue to operate the utility's system and to provide service to the utility's customers;

(ii) collect amounts in respect of the fixed transition amounts for the benefit and account of the assignee; and

(iii) account for and remit these amounts to or for the account of the assignee.

(b) Contracting with the assignee in accordance with the commission's authorization may not impair or negate the characterization of the sale, assignment, transfer, or pledge as a true sale, an absolute assignment or transfer, or a grant of a security interest, as applicable.

(10) Notwithstanding any other provision of law, any provision under this section or under a financing order requiring that the commission take or refrain from taking action with respect to the subject matter of a financing order binds the commission and any successor commission or agency exercising functions similar to the commission, and the commission or any successor commission or agency may not rescind, alter, or amend that requirement in a financing order.

(11) A pledge or any other security interest in transition property is valid, is enforceable against the pledger and third parties, including judgment lien creditors, subject only te the rigbts of any third parties holding security interests in the transition property perfected in the manner described in this section, and attaches only when all of the following have taken place:

(a) the commission has issued the financing order authorizing the fixed transition amounts included in the transition property;

(b) value has been given by the pledgees of the transition property; and

(c) the pledgor has signed a security agreement or other financing-related agreement covering the transition property.

(12) (a) A valid and enforceable security interest in transition property is perfected only when it has attached and when a financing statement has been filed with the secretary of state in accordance with procedures that the secretary of state may establish. The financing statement must name the pledger of the transition property as debtor and identify the transition property.

(b) Any description of the transition property is sufficient if the description refers to the financing order creating the transition property.

(c) The commission may require other filings with respect to the security interest in accordance with procedures tbe commission may establish, except that tbese filings may not affect the perfection of the security interest.

(13) A perfected security interest in transition property is a continuously perfected security interest in all revenue and proceeds arising with respect to the transition property, whether or not the revenue or proceeds have accrued.

HeinOnline -- 1999 vol. I 1131 1999

Conflicting security interests must rank according to priority in time of perfection. Transition property constitutes property for all purposes, including for contracts securing transition bonds, whether or not the revenue and proceeds arising with respect to the transition property have accrued.

(14) (a) Suhject to the terms of the security agreement covering the transition property and the rights of any third parties holding security interests in the transition property perfected in the manner described in this section, the validity and relative priority of a security interest created under this section is not defeated or adversely affected by:

(i) the commingling of revenue arising with respect to the transition property with other funds of the utility that is the pledgor or transferor of the transition property; or

(ii) any security interest of any third party in a deposit account of that utility perfected under Title 30, chapter 9, part 3, into which the revenue is deposited.

(b) Subject to the terms of the security agreement, upon compliance with the requirements of this section, a pledgee of the transition property has a perfected security interest in all cash and deposit accounts of the utility in which revenue arising with respect to the transition property has been commingled with other funds, but the perfected security interest must be limited to an amount no greater than the amount of the revenue with respect to the transition property received by the utility within 12 months before any default under the security agreement or the institution of insolvency proceedings by or against the utility, less payments from the revenue to the pledgees during that 12-month period.

(15) (a) If a default occurs under the security agreement covering the transition property, a pledgee of the transition property, subject to the terms of the security agreement, has all rights and remedies of a secured party upon default under ~~Title 30, chapter 9, part 5~~ *[sections 98 through 125]*, and is entitled to foreclose or otherwise enforce the pledgee's security interest in the transition property, subject to the rights of any third parties holding prior security interests in the transition property perfected in the manner provided in this section.

(b) The commission may require in the financing order creating the transition property that in the event of default by the utility in payment of revenue arising with respect to the transition property, the commission and any successor to the commission, upen the application by a pledgee or assignee of the transition property and without limiting any other remedies available to the pledgees or transferees by reason of the default shall order the sequestration and payment to the pledgee or assignee of the proceeds of the transition property. An order must remain in full force and effect notwithstanding any bankruptcy, reorganization, or other insolvency proceedings with respect to the public utility or a debtor, pledgor, or transferor of the transition property.

(c) Any sum in excess of amounts necessary to pay principal, premium, if any, interest, costs, and arrearages on the transition bonds and other costs arising under the security agreement must be remitted to the debtor or to the pledgor as provided in the security agreement.

(16) (a) A transfer of transition property by a utility to an assignee or by the assignee to another assignee that the parties have in the governing documentation expressly stated to be a sale or other absolute transfer in a transaction approved or authorized in a financing order must be treated as an absolute transfer of all of the transferors right, title, and interest, as in a true

HeinOnline -- 1999 vol. I 1132 1999

sale, and not as a pledge or other financing of the transition property, other than for federal and state income and franchise tax purposes.

(b) Granting to transition bondholders a preferred right to revenue of the utility or the provision by the utility or an assignee of other credit enhancement with respect to transition bonds may not impair or negate the characterization of any transfer as a true sale, other than for federal and state income and franchise tax purposes.

(c) Notwithstanding the provisions of this subsection (16), for state tax purposes, a transfer must be treated as a pledge or other financing unless the governing documentation of transfer specifically states that the transfer is intended to be treated otherwise. The characterization of the transfer as a true sale or other absolute transfer in the governing documentation of a transfer is not intended to prejudice the characterization of the transfer as a pledge or other financing for federal tax purposes.

(17) A sale, assignment, or other transfer of transition property may only be considered perfected as against any third person, including any judicial lien creditor, when both of the following have taken place:

(a) the financing order authorizing the fixed transition amounts included in the transition property has become effective in accordance with subsection (2); and

(b) an assignment of the transition property, in writing, has been executed and delivered to the transferee.

(18) (a) As between bona fide assignees of the same right for value without notice, the assignee first filing a financing statement with the secretary of state in accordance with procedures that the secretary of state may establish has priority. The financing statement must name the assignor of the transition property as debtor and must identify the transition property. Any description of the transition property is sufficient if the description refers to the financing order creating the transition property. The commission may require the assignor or the assignee to make other filings with respect to the transfer in accordance with procedures that the commission may establish, but these filings may not affect the perfection of the transfer.

(b) Any successor to the utility, whether pursuant to any bankruptcy, reorganization, or other insolvency proceeding or pursuant to any merger, sale, or transfer, by operation of law or otherwise, shall perform and satisfy all obligations of the utility pursuant to this section in the same manner and to the same extent as the utility, including but not limited to collecting and paying to the assignee or pledgee, as the case may be, revenue arising with respect to the transition property sold, assigned, transferred, or pledged to secure transition bonds.

(19) Transition property or any right, title, or interest of a utility, assignee, or pledgee described in the definition of transition property, whether before or after the issuance of a financing order, does not constitute an account or general intangibles ~~under 30-9-106~~ *as those terms are defined in [section 1].* Any right, title, or interest pertaining to a financing order, including the interest pertaining to a financing order, along with the associated transition property and any revenue, collections, claims, payments, money, or proceeds of or arising from fixed transition amounts pursuant to the financing order, may not be considered

HeinOnline -- 1999 vol. I 1133 1999

proceeds of any right, title, or interest other than in the order and the transition property arising from the order.

(20) The lien under this section is enforceable against the pledgor and all third parties, including judicial lien creditors, subject only to the rights of any third parties holding security interests in the transition property previously perfected in the manner described in this section if value has been given by the purchasers of transition bonds. A perfected lien in transition property is a continuously perfected security interest in all revenue and proceeds arising with respect to the associated transition property, whether or not revenue has been accrued. Transition property constitutes property for the purposes of contracts securing transition bonds, whether or not the related revenue has accrued. The lien created under this section is perfected and ranks before any lien, including any judicial lien, that subsequently attaches to the transition property, to the fixed transition costs, and to the financing order and any rights created by the order or any proceeds of the order. The relative priority of a lien created under this section is not defeated or adversely affected by changes to the financing order or to the fixed transition amounts payable by any customer.

(21) The commission shall establish and maintain a separate system of records to reflect the date and time of receipt of all filings made under this section and may provide that transfers of transition property to an assignee be filed in accordance with the same system.

(22) Any sale, assignment, or other transfer of transition property or any pledge of transition property is exempt from any state or local sales, income, transfers, gains, receipts, or similar taxes.

(23) The transition bonds issued under this chapter are exempt from the provisions of Title 30, chapter 10, but copies of all prospectus and disclosure documents must be deposited for public inspection with the state securities commissioner.

(24) The granting, perfection, and priority of security interests with respect to transition property and the proceeds thereof are governed by this section rather than by Title 30, chapter 9.

(25) Upon the payment in full of transition bond principal and interest, the utility shall discontinue charging and collecting the competitive transition charge associated with that portion of the utility's approved transition costs.

(26) The commission may, by order or rule and subject to terms and conditions that it may prescribe, exempt any security or class of securities for which an application is required under this title or any public utility or class of public utility from the provisions of this title if it finds that the application of this title to the security, class of security, public utility, or class of public utility is not required by the public interest."

Section 152. Section 70-24-430, MCA, is amended to read:

"70-24-430. Disposition of personal property abandoned by tenant after termination. (1) If a tenancy terminates in any manner except by court order and the landlord reasonably believes that the tenant has abandoned all personal property that the tenant has left on the premises and a period of time of at least 5 days has elapsed since the occurrence of events upon which the landlord formed that belief, the landlord may remove the property from the premises.

HeinOnline -- 1999 vol. I 1134 1999

(2) The landlord shall inventory and store all goods, chattels, and personal property of the tenant in a place of safekeeping and shall exercise reasonable care for the property. The landlord may chargo a reasonable storago and labor chargo if the property is stored by the landlord, plus the cost of removal of the property to the place of storage. The landlord may store the property in a commercial storage company, in which case tbe storage cost includes tbe actual storage chargo plus the cost of removal of the property to the place of storage.

(3) After complying with subsections (1) and (2), the landlord shall:

(a) make a reasonable attempt to notify the tenant in writing that the property must be removed from the place of safekeeping;

(b) notify tbe local law enforcement office of the property held by the landlord;

(c) make a reasonable effort to determine if the property is secured or otherwise encumbered; and

(d) send a notice by certified mail to the last-known address of the tenant, stating that at a specified time, not less than 15 days after mailing the notice, the property will be disposed of if not removed.

(4) The landlord may dispose of the property after complying with subsection (3) by:

(a) selling all or part of the property at a public or private sale; or

(b) destroying or otherwise disposing of all or part of the property if the landlord reasonably believes that the value of the property is so low that the cost of storage or sale exceeds the reasonable value of the property.

(5) If the tenant, upon receipt of the notice provided in subsection (3), responds in writing to the landlord on or before the day specified in the notice that the tenant intends to remove the property and does not do so within 7 days after delivery of the tenant's response, tbe tenant's property is conclusively presumed to be abandoned. If the tenant removes the property, the landlord is entitled to storage costs for the period that the property remains in safekeeping, plus the cost of removal of the property to the place of storago. Reasonable storage costs are allowed a landlord who stores the property, and actual storage costs are allowed a landlord who stores the property in a commercial storage company. A landlord is entitled to payment of the storage costs allowed under this subsection before the tenant may remove the property.

(6) The landlord is not responsible for any loss to the tenant resulting from storage unless the loss is caused by the landlord's purposeful or negligent act. On the event of purposeful violation, the landlord is liable for actual damages.

(7) A public or private sale authorized by this section must be conducted under the provisions of ~~30-9-504(3)~~ *[section 98]* or the sheriff's sale provisions of Title 25, chapter 13, part 7.

(8) The landlord may deduct from the proceeds of the sale the reasonable costs of notice, storage, labor, and sale and any delinquent rent or damages owing on the premises and shall remit to the tenant the remaining proceeds, if any, together with an itemized accounting. If the tenant cannot after due diligence be found, the remaining proceeds must be deposited with the county treasurer of the county in which the sale occurred and, if not claimed within 3 years, must revert to the general fund of the county available for general purposes."

HeinOnline -- 1999 vol. I 1135 1999

Section 153. Section 71-3-125, MCA, is amended to read:

"71-3-125. Filing of agricultural lien statements. (1) Unless a statement of an agricultural lien has been filed in the office of the secretary of state as provided in this chapter, a buyer who, in ordinary course of business as defined in 30-1-201(9), buys a farm product takes it free of any lien created by this chapter even though the lien is otberwise perfected.

(2) A statement of an agricultural lien is sufficient if it:

(a) gives the names and addresses of the debtor and lienor;

(b) describes the type of lien and its statutory authority;

(c) describes the collateral;

(d) contains the notation by the secretary of state of the date of filing and filing number;

(e) is signed by the lienor;

(f) describes the service or product furnished. If the collateral is farm products, the statement must state the county in whicb tbe farm products are located, designated by type of farm product.

(g) states the price or wage agreed upon or, if the price or wage was not agreed upon, the reasonable value of the service or product furnished;

(h) states the amount remaining unpaid;

(i) states the terms and period of employment if it is a farm laborer's lien filed pursuant to part 4 of this chapter;

(j) describes the land upon which seed or grain was or will be sown, planted, or used if it is a lien for seed or grain filed pursuant te part 7 of this chapter;

(k) describes the land upon which the grain or crops were grown and the place the grain or crops are presently stored if it is a thresher's lien filed pursuant to part 8 of this chapter;

(l) describes the land upon which the service was performed if it is a lien for spraying or dusting filed pursuant to part 9 of this chapter; and

(m) states the starting date of insurance coverage if it is a lien filed pursuant to part 7 of this chapter.

(3) The agricultural lien statement must be in the form prescribed by tbe secretary of state.

(4) The secretary of state shall:

(a) record the agricultural lien statement on the centralized computer system as set forth in ~~30-9-403~~ *[section 72]*; and

(b) establish fees for such recordings as set forth in ~~30-9-403~~ *[section 95]*.

(5) For the purposes of this section, an agricultural lien means a lien under part 4, 7, 8, or 9 of this chapter.

(6) A statement of an agricultural lien or continuation statement that has been filed at the office of the county clerk and recorder lapses on Marcb 31, 1990, unless prior to that date there is filed in the office of the secretary of state a certified copy of the statement and all related documents on file with the county clerk and recorder."

HeinOnline -- 1999 vol. I 1136 1999

Section 154. Section 71-3-205, MCA, is amended to read:

"71-3-205. Duties of filing officer. (1) If a notice of federal lien, a refiling of a notice of federal lien, or a notice of revocation of any certificate described in subsection (2) is presented to the filing officer and:

(a) ~~he~~ *the filing officer* is the secretary of state, ~~he shall cause~~ the notice ~~to~~ *must* be marked, held, and indexed in accordance with the provisions of ~~30-9-403(4)~~ *[section 89]* as if the notice were a financing statement within the meaning of the Uniform Commercial Code; or

(b) ~~he~~ *the filing officer* is any other officer described in 71-3-204, ~~he~~ *the filing officer* shall endorse ~~thereon his~~ *on the document the filing officer's* identification and the date and time of receipt and ~~forthwith~~ file it alphabetically or enter it in an alphabetical index showing the name and address of the person named in the notice, the date and time of receipt, the title and address of the official or entity certifying the lien, and the total amount appearing on the notice of lien.

(2) If a certificate of release, nonattachment, discharge, or subordination of any lien is presented to the secretary of state for filing, ~~he~~ *the secretary of state* shall:

(a) cause a certificate of release or nonattachment to be marked, held, and indexed as if the certificate were a termination statement within the meaning of the Uniform Commercial Code, except that the notice of lien to which the certificate relates ~~shall~~ *may* not be removed from the files; and

(b) cause a certificate of discharge or subordination to be held, marked, and indexed as if the certificate were a release of collateral within the meaning of the Uniform Commercial Code.

(3) If a refiled notice of federal lien referred to in subsection (1) or any of the certificates or notices referred to in subsection (2) is presented for filing with any other filing officer specified in 71-3-204, ~~he~~ *the filing officer* shall permanently attach the refiled notice or the certificate to the original notice of lien and shall enter the refiled notice or the certificate, with the date of filing, in any alphabetical lien index on the line where the original notice of lien is entered.

(4) Upon request of any person, the filing officer shall issue ~~his~~ *a* certificate showing whether there is on file, on the date and hour stated ~~therein~~ *in the certificate*, any notice of lien or certificate or notice affecting the lien, filed on or after July 1, 1967, naming a particular person, and if a notice or certificate is on file, giving the date and hour of filing of each notice or certificate."

Section 155. Section 71-3-206, MCA, is amended to read:

"71-3-206. Fees. (1) The fee for filing and indexing each notice of lien or certificate or notice affecting the tax lien must be established ~~and deposited~~ in accordance with the provisions of ~~30-9-403~~ *[section 89]*.

(2) The officer shall bill the district directors of internal revenue or other appropriate federal officials on a monthly basis for fees for documents filed by them."

Section 156. Section 71-3-408, MCA, is amended to read:

"71-3-408. Acknowledgment of satisfaction of lien — penalty. (1) Whenever the indebtedness ~~which~~ *that* is a lien upon any of ~~such~~ *the* crops *subject to this part* is paid and satisfied, it is the duty of the lienor to acknowledge satisfaction ~~thereof~~ *of the lien* and to discharge the lien of record. If any lienor

HeinOnline -- 1999 vol. I 1137 1999

fails to acknowledge satisfaction and discharge ~~said~~ *the* lien within 30 days after heing requested to do so hy a person having a property interest in ~~such~~ *the* crops, ~~he~~ *the lienor* is liable to any person injured ~~thereby~~ *by the failure* in the amount of ~~such~~ *the* injury and costs of action.

(2) A termination statement as described in ~~30-9-404~~ *[section 83]* must be filed with the secretary of stato with the same obligations and penalties described in subsection (1)."

Section 157. Section 71-3-704, MCA, is amended to read:

"71-3-704. Acknowledgment of satisfaction of lien — penalty. (1) Whenever the indebtedness ~~which~~ *that* is a lien upon ~~such~~ grain or other crops is paid and satisfied, it is the duty of the lienor to acknowledge satisfaction ~~thereof~~ *of the lien* and to discharge the lien of record. If any lienor fails to acknowledge satisfaction and discbarge of ~~said~~ *the* lien ~~as aforesaid~~ within 30 days after being requested to do so by a person having a property interest in ~~such~~ *the* grain or other crops, ~~he~~ *the lienor* is liable to any person injured ~~thereby~~ *by the failure* in the amount of ~~such~~ *the* injury and the costs of the action.

(2) A termination statement as described in ~~30-9-404~~ *[section 83]* must be filed with the secretary of stato with the same obligations and penalties described in subsection (1)."

Seetion 158. Section 71-3-713, MCA, is amended to read:

"71-3-713. Aeknowledgment of satisfaetion of lien — penalty. (1) Whenever the indebtedness~~, which~~ *that* is a lien upon ~~such~~ grain or other crops~~,~~ is paid or satisfied on or before November 1 of the current year, it is the duty of the lienor to acknowledge satisfaction ~~thereof~~ *of the lien* within 20 days after receiving payment and to discharge the lien of record. If any lienor fails to acknowledge satisfaction and discharga of ~~said~~ *the* lien ~~as aforesaid~~, ~~he~~ *the lienor* is liable to any person injured ~~thereby~~ *by the failure* in the amount of ~~such~~ *the* injury and tbe costs of action. If any hail lien is not satisfied on or before March 1 of the next succeeding year after the insurance was carried on the crop, the ~~same shall be deemed~~ *lien is considered* satisfied and released of record.

(2) A termination statement as described in ~~30-9-404~~ *[section 83]* must be filed with the secretary of state with the same obligations and penalties described in subsection (1)."

Section 159. Section 71-3-808, MCA, is amended to reac:

"71-3-808. Aeknowledgment of satisfaction of lien — penalty. (1) Whenever the indebtedness ~~which~~ *that* is a lien upon any ~~such~~ grain or other crops is paid and satisfied, it is the duty of the lienor to acknowledge satisfaction ~~thereof~~ *of the lien* and to discharge the lien of record~~, and if any~~ *If a* lienor fails to acknowledge satisfaction and discharge ~~said~~ *the* lien ~~as aforesaid~~ within 30 days after being requested to do so by a person having a property interest in ~~such~~ *the* grain or other crops, ~~he~~ *the lienor* is liable to any person injured ~~thereby~~ *by the failure* in the amount of ~~such~~ *the* injury and the costs of action.

(2) A termination statement as described in ~~30-9-404~~ *[section 83]* must he filed with the secretary of state with the same obligations and penalties described in subsection (1)."

Section 160. Section 71-3-908, MCA, is amended to read:

HeinOnline -- 1999 vol. I 1138 1999

"71-3-908. Acknowledgment of satisfaction and discharge of lien — penalty. (1) Whenever the indebtedness ~~which~~ *that* is a lien upon any grain or crops is paid and satisfied, it is the duty of the lienor to acknowledge satisfaction ~~thereof~~ *of the lien* and to discharge the lien of record. If any lienor fails to acknowledge satisfaction and discharge ~~said~~ *the* lien within 30 days after being requested to do so by a person having a property interest in ~~such~~ *the* grain or crops, ~~he~~ *the lienor* is liable to any person injured ~~thereby~~ *by the failure* in the amount of ~~such~~ *the* injury and the costs of action.

(2) A termination statement as described in ~~30-9-404~~ *[section 83]* must be filed with the secretary of state with the same obligations and penalties described in subsection (1)."

Section 161. Security interest of issuer or nominated person. (1) An issuer or nominated person has a security interest in a document presented under a letter of credit and any identifiable proceeds of the collateral to the extent that the issuer or nominated person honors or gives value for the presentation.

(2) Subject to subsection (2)(c), as long as and to the extent that an issuer or nominated person has not been reimbursed or has not otherwise recovered the value given with respect to a security interest in a document under subsection (1), the security interest continues and is subject to chapter 9, but:

(a) a security agreement is not necessary to make the security interest enforceable under [section 12(2)(c)];

(b) if the document is presented in a medium other than a written or other tangible medium, the security interest is perfected; and

(c) if the document is presented in a written or other tangible medium and is not a certificated security, chattel paper, a document of title, an instrument, or a letter of credit, so long as the debtor does not have possession of the document, the security interest is perfected and has priority over a conflicting security interest in the document.

Section 162. Security interest perfected before effective date. (1) If a security interest is enforceable and has priority over the rights of a lien creditor immediately before [this act] takes effect and the applicable requirements for enforceability and perfection under [this act] are satisfied without further action when [this act] takes effect, the security interest is a perfected security interest under [this act].

(2) Except as otherwise provided in [section 166], if a security interest is a perfected security interest under [former chapter 9] immediately before [this act] takes effect but the applicable requirements for enforceability or perfection under [this act] are not satisfied when [this act] takes effect, the security interest:

(a) is a perfected security interest for 1 year after [this act] takes effect;

(b) remains enforceable thereafter only if the security interest becomes enforceable under [section 12] before the year expires; and

(c) remains perfected thereafter only if the applicable requirements for perfection under [this act] are satisfied before the year expires.

Section 163. Security interest unperfected before effective date. A security interest that is enforceable immediately before [this act] takes effect but that is subordinate to the rights of a person that becomes a lien creditor at that time:

HeinOnline -- 1999 vol. I 1139 1999

(1) remains an enforceable security interest for 1 year after [this act] takes effect;

(2) remains enforceable thereafter if the security interest becomes enforceable under [section 12] when [this act] takes effect or within 1 year thereafter; and

(3) becomes perfected:

(a) without further action, when [this act] takes effect if the applicable requirements for perfection under [this act] are satisfied before or at that time; or

(b) when the applicable requirements for perfection are satisfied if the requirements are satisfied after that time.

Section 164. Effectiveness of action taken before effective date of act. (1) If action other than the filing of a financing statement is taken before [this act] takes effect and the action would have resulted in priority of a security interest over the rights of a lien creditor had the security interest become enforceable before [this act] takes effect, the action is sufficient to perfect a security interest that attaches under [this act] within 1 year after [this act] takes effect. An attached security interest becomes unperfected 1 year after [this act] takes effect unless the security interest becomes a perfected security interest under [this act] before the expiration of that period.

(2) The filing of a financing statement before [this act] takes effect is sufficient to perfect a security interest that attaches after [this act] takes effect to the extent the filing would satisfy the applicable requirements for perfection under [this act].

(3) [This act] does not render ineffective an effective financing statement that is filed before [this act] takes effect in accordance with the law of the jurisdiction governing perfection as provided in [former 30-9-103]. However, except as otherwise provided in subsection (4):

(a) the financing statement ceases to be effective at the earlier of:

(i) the time the financing statement would have ceased to be effective under the law of the jurisdiction in which it is filed; or

(ii) 5 years after [this act] takes effect; and

(b) a continuation statement filed after [this act] takes effect does not continue the effectiveness of the financing statement.

(4) A continuation statement filed after [this act] takes effect and in accordance with the law of the jurisdiction governing perfection as provided in [sections 20 through 61] is effective to continue the effectiveness of a financing statement filed in that jurisdiction before [this act] takes effect.

(5) [This act] does not render ineffective an effective financing statement that was filed before [this act] takes effect and in the office specified in [former 30-9-401]. However, except as otherwise provided in subsection (6):

(a) the financing statement ceases to be effective at the earlier of:

(i) the time the financing statement would have ceased to be effective under [former chapter 9]; or

(ii) 5 years after [this act] takes effect; and

(b) a continuation statement filed after [this act] takes effect does not continue the effectiveness of the financing statement.

(6) A continuation statement filed after [this act] takes effect and in the office specified in [section 71] is effective to continue the effectiveness of a financing statement filed in that office before [this act] takes effect.

(7) A financing statement that includes a financing statement filed before [this act] takes effect and a continuation statement filed after [this act] takes effect is effective only to the extent that it satisfies the requirements of [sections 71 through 97] for an initial financing statement.

Section 165. When initial financing statement suffices as continuation statement. (1) The effectiveness of a financing statement filed before [this act] takes effect may be continued by filing in the office specified in [section 71] an initial financing statement complying with the requirements of subsection (2) if:

(a) the filing of a financing statement in that office is effective to perfect a security interest; and

(b) the preeffective-date financing statement was filed in an office in another state or another office in this state.

(2) To be effective for purposes of subsection (1), an initial financing statement must:

(a) satisfy the requirements of [sections 71 through 97] for an initial financing statement;

(b) identify the preeffective-date financing statement by indicating the office in which the financing statement was filed and providing the dates of filing and file numbers, if any, of the financing statement and of the most recent continuation statement filed with respect to the financing statement; and

(c) indicate that the preeffective-date financing statement remains effective.

Section 166. Persons entitled to file initial financing statement or continuation of statement. A person may file an initial financing statement or a continuation statement under [sections 164 through 169] if:

(1) the secured party of record authorizes the filing; and

(2) the filing is necessary under [sections 164 through 169]:

(a) to continue the effectiveness of a financing statement filed before [this act] takes effect; or

(b) to perfect or continue the perfection of a security interest.

Section 167. Priority. (1) [Former chapter 9] determines the priority of conflicting claims to collateral if the relative priorities of the parties were fixed before [this act] takes effect. In other cases, [this act] determines priority.

(2) For purposes of [section 41(1)], the priority of a security interest that becomes a perfected security interest under [section 165] dates from the time the applicable requirements for perfection are satisfied. This subsection does not apply to conflicting security interests each of which becomes a perfected security interest under [section 165].

Section 168. Repealer. Sections 30-9-102, 30-9-103, 30-9-104, 30-9-105, 30-9-106, 30-9-107, 30-9-108, 30-9-109, 30-9-110, 30-9-112, 30-9-113, 30-9-114,

HeinOnline -- 1999 vol. I 1141 1999

30-9-115, 30-9-116, 30-9-201, 30-9-202, 30-9-203, 30-9-204, 30-9-205, 30-9-206, 30-9-207, 30-9-208, 30-9-301, 30-9-302, 30-9-303, 30-9-304, 30-9-305, 30-9-306, 30-9-307, 30-9-308, 30-9-309, 30-9-310, 30-9-311, 30-9-312, 30-9-313, 30-9-314, 30-9-315, 30-9-316, 30-9-317, 30-9-318, 30-9-401, 30-9-402, 30-9-403, 30-9-404, 30-9-405, 30-9-406, 30-9-407, 30-9-409, 30-9-410, 30-9-411, 30-9-412, 30-9-421, 30-9-423, 30-9-431, 30-9-501, 30-9-502, 30-9-503, 30-9-504, 30-9-505, 30-9-506, 30-9-507, 30-9-508, and 30-9-511, MCA, are repealed.

Section 169. Savings provisions. (1) Except as otherwise provided in [sections 164 through 169], [this act] applies to a transaction or lien within its scope, even if the transaction or lien was entered into or created before [this act] takes effect.

(2) Except as otherwise provided in subsection (3) and [sections 164 through 169]:

(a) transactions and liens that were not governed by [former chapter 9] were validly entered into or created before [this act] takes effect and would be subject to [this act] if they had been entered into or created after [this act] takes effect, and the rights, duties, and interests flowing from those transactions and liens remain valid after [this act] takes effect; and

(b) the transactions and liens may he terminated, completed, consummated, or enforced as required or permitted by [this act] or by the law that otherwise would apply if [this act] did not take effect.

(3) [This act] does not affect an action, case, or proceeding commenced before [this act] takes effect.

Section 170. Codification instruction. (1) [Sections 1 through 125] are intended to be codified as an integral part of Title 30, chapter 9, and the provisions of Title 30, chapter 9, apply to [sections 1 through 125].

(2) [Section 161] is intended to be codified as an integral part of Title 30, chapter 5, part 1, and the provisions of Title 30, chapter 5, part 1, apply to [section 161].

Section 171. Effective date. [This act] is effective July 1, 2001.

Approved April 14, 1999

CHAPTER NO. 306

[SB 330]

AN ACT PROHIBITING THE DEPARTMENT OF TRANSPORTATION AND THE TRANSPORTATION COMMISSION FROM ENTERING INTO CONTRACTS FOR HIGHWAY OR CONSTRUCTION PROJECTS WITH BIDDERS WHOSE OPERATIONS ARE NOT HEADQUARTERED IN THE UNITED STATES UNLESS A RECIPROCITY AGREEMENT IS IN PLACE; PROVIDING A CONTINGENT VOIDNESS PROVISION IF FEDERAL FUNDS ARE AT RISK; AMENDING SECTIONS 18-1-102 AND 60-2-112, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 18-1-102, MCA, is amended to read:

HeinOnline -- 1999 vol. I 1142 1999

"18-1-102. State contracts to lowest bidder — *reciprocity.* (1) (a) ~~In~~ *Except as provided in subsection (1)(b), in* order to provide for an orderly administration of the business of the state of Montana in awarding public contracts for the purchase of goods and for construction, repair, and public works of all kinds, a public agency shall award:

(i) a public contract for construction, repair, or public works to the lowest responsible bidder without regard to residency. However, a resident bidder must be allowed a preference on a contract against the bid of any nonresident bidder from any state or country that enforces a preference for resident bidders. The preference given to resident bidders of this state must be equal to the preference given in the other state or country.

(ii) a public contract for the purchase of goods, if the goods are comparable in quality and performance, to the lowest responsible resident bidder whose:

(A) bid is not more than 3% higher than that of the lowest responsible nonresident bidder;

(B) offered goods are Montana-made and whose bid is not more than 5% higher than that of the lowest responsible nonresident bidder; or

(C) offered goods are Montana-made and whose bid is not more than 3% higher than that of the lowest responsible resident bidder whose offered goods are not Montana-made.

(b) The transportation commission or the department of transportation may not enter into a contract for [a federal-aid highway project,] a state-funded highway project[,] or a construction project with a bidder whose operations are not headquartered in the United States unless:

(i) the foreign country in which the bidder is headquartered affords companies based in the United States open, fair, and nondiscriminatory access to bidding on highway projects and construction projects located in the foreign country; and

(ii) the department of transportation has entered into a reciprocity agreement with the foreign country that addresses:

(A) the equal and fair treatment of bids originating in the United States and in the foreign country;

(B) specific ownership requirements and tax policies in the United States and in the foreign country that may result in the unequal treatment of all bids received, regardless of their origin;

(C) the means by which contractors from both the United States and the foreign country are notified of highway projects and construction projects available for bid; and

(D) any other differences in public policy or procedure that may result in the unequal treatment of bids originating in the United States or in the foreign country for projects located in either the United States or the foreign country.

~~(b)~~*(c)* (i) If both subsections (1)(a)(ii)(B) and (1)(a)(ii)(C) are applicable to bids for a contract, the contract must be awarded to the resident bidder whose offered goods are Montana-made if the bid is:

(A) not more than 3% higher than that of a resident bidder whose offered goods are not Montana-made; and

(B) not more than 5% higher than that of the nonresident bidder.

HeinOnline -- 1999 vol. I 1143 1999

(ii) However, ~~no~~ *a* combination of preferences under this subsection *(1)(c)* may *not* exceed 5%.

(2) The preferences in this section apply:

(a) whether the law requires advertisement for bids or does not require advertisement for bids; and

(b) to contracts involving funds obtained from the federal government unless expressly prohibited by the laws of the United States or regulations adopted pursuant ~~thereto~~ *to federal laws*."

Section 2. Section 60-2-112, MCA, is amended to read:

"**60-2-112. Competitive bidding — *reciprocity*.** (1) Except as provided in subsections (2) through ~~(4)~~ *(5)*, when the estimated cost of any work exceeds $50,000, the commission shall let the contract by competitive bidding to the lowest responsible and responsive bidder. Award must be made upon the notice and terms that the commission prescribes by its rules. However, except when prohibited by federal law, the commission shall make awards and contracts in accordance with 18-1-102 and 18-1-112.

(2) The commission may let a contract by means other than competitive bidding if it determines that special circumstances so require. The commission shall specify the special circumstances in writing.

(3) The commission may enter into contracts with units of local government for the construction of projects without competitive bidding if it finds that the work can be accomplished at lower total costs, including total costs of labor, materials, supplies, equipment usage, engineering, supervision, clerical and accounting services, administrative costs, and reasonable estimates of other costs attributable to the project.

(4) The commission may delegate to the department the authority to enter, without competitive bidding, agreed-upon price contracts for projects costing $50,000 or less.

(5) The commission or the department may not enter into a contract for [a federal-aid highway project,] a state-funded highway project[,] or a construction project with a bidder whose operations are not headquartered in the United States unless:

(a) the foreign country in which the bidder is headquartered affords companies based in the United States open, fair, and nondiscriminatory access to bidding on highway projects and construction projects located in the foreign country; and

(b) the department has entered into a reciprocity agreement with the foreign country that addresses:

(i) the equal and fair treatment of bids originating in the United States and in the foreign country;

(ii) specific ownership requirements and tax policies in the United States and in the foreign country that may result in the unequal treatment of all bids received, regardless of their origin;

(iii) the means by which contractors from both the United States and the foreign country are notified of highway projects and construction projects available for bid; and

HeinOnline -- 1999 vol. I 1144 1999

(iv) any other differences in public policy or procedure that may result in the unequal treatment of bids originating in the United States or in the foreign country for projects located in either the United States or the foreign country.

(6) For the purposes of subsection (5) "construction" has the same meaning as is provided in 18-2-101."

Section 3. Contingent voidness. (1) If the federal government notifies the state in writing that the enforcement of [this act] places at risk this state's eligibility to receive federal funds for highway projects, then the bracketed language in [this act] is void pursuant to subsection (2).

(2) The bracketed language in [this act] is void on the date that the director of the department of transportation certifies to the governor in writing that the director has received written notice of the federal government's intention to terminate allocation of highway funds to Montana because of the enforcement of [this act].

Section 4. Effective date. [This act] is effective on passage and approval.

Approved April 14, 1999

CHAPTER NO. 307

[HB 412]

AN ACT REQUIRING STATE LANDHOLDING AND LANDMANAGING AGENCIES TO IDENTIFY ALL GEOGRAPHIC FEATURES AND PLACES UNDER THEIR JURISDICTION USING THE WORD "SQUAW"; REQUIRING THE AGENCIES TO REMOVE THE WORD "SQUAW" FROM ANY MAPS, SIGNS, OR MARKERS WHENEVER AGENCIES UPDATE MAPS OR REPLACE SIGNS AND MARKERS BECAUSE OF WEAR OR VANDALISM; AND PROVIDING FOR APPOINTMENT OF AN ADVISORY GROUP TO DEVELOP REPLACEMENT NAMES AND NOTIFY APPROPRIATE AGENCIES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Naming of sites and geographic features — replacement of word "squaw" — advisory group. (1) The coordinator of Indian affairs shall appoint an advisory group that will serve on a volunteer basis to consult with local agencies, organizations, and individuals in developing names to replace present site or geographic names that contain the word "squaw".

(2) Each agency of state government that owns or manages public land in the state shall identify any features or places under its jurisdiction that contain the word "squaw" and inform the advisory group of the agency's identification of features or places containing that word. The agency shall ensure that whenever the agency updates a map or replaces a sign, interpretive marker, or any other marker because of wear or vandalism, the word "squaw" is removed and replaced with the name chosen by the advisory group.

(3) The advisory group shall:

(a) notify the U.S. forest service, the Montana departments of commerce and natural resources and conservation, and any other entity that compiles information for and develops maps for the state or for public use of the name

HeinOnline -- 1999 vol. I 1145 1999

change so that it may be reflected on subsequent editions of any maps or informational literature produced by those entities; and

(b) place a formal request with the United States board on geographic names to render a decision on the proposed name change so that the new name will be reflected on all United States board on geographic names maps.

Section 2. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

Section 3. Codifieation instruction. [Section 1] is intended to be codified as an integral part of Title 2, chapter 15, part 1, and the provisions of Title 2, chapter 15, part 1, apply to [section 1].

Approved April 15, 1999

CHAPTER NO. 308

[SB 31]

AN ACT REVISING THE SCHEDULE OF BASE AID PAYMENTS TO SCHOOL DISTRICTS TO COMPLETE THE DISTRIBUTION IN FULL PRIOR TO THE END OF THE SCHOOL FISCAL YEAR; AMENDING SECTION 20-9-344, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-344, MCA, is amended to read:

"20-9-344. Duties of board of public education for distribution of BASE aid. (1) The board of public education shall administer and distribute the BASE aid and state advances for county equalization in the manner and with the powers and duties provided by law. To this end, the board of public education shall:

(a) adopt policies for regulating the distribution of BASE aid and state advances for county equalization in accordance with the provisions of law;

(b) have the power to require reports from the county superintendents, budget boards, county treasurers, and trustees as it considers necessary; and

(c) order the superintendent of public instruction to distribute the BASE aid on the basis of each district's annual entitlement to the aid as established by the superintendent of public instruction. In ordering the distribution of BASE aid, the board of public education may not increase or decrease the BASE aid distribution to any district on account of any difference that may occur during the school fiscal year between budgeted and actual receipts from any other source of school revenue.

(2) The board of public education may order the superintendent of public instruction to withhold distribution of BASE aid from a district when the district fails to:

(a) submit reports or budgets as required by law or rules adopted by the board of public education; or

(b) maintain accredited status.

(3) Prior to any proposed order by the board of public education to withhold distribution of BASE aid or county equalization money, the district is entitled to a contested case hearing before the board of public education, as provided under the Montana Administrative Procedure Act.

(4) If a district or county receives more BASE aid than it is entitled to, the county treasurer shall return the overpayment to the state upon the request of the superintendent of public instruction in the manner prescribed by the superintendent of public instruction.

(5) Except as provided in 20-9-347(3), the BASE aid payment must be distributed according to the following schedule:

(a) from August to October of the school fiscal year, 10% of the direct state aid to each district;

(b) from December to April of the school fiscal year, 10% of the direct state aid to each district;

(c) in November of the school fiscal year, one-half of the guaranteed tax base aid payment to each district or county that has submitted a final budget to the superintendent of public instruction in accordance with the provisions of 20-9-134;

(d) in May of the school fiscal year, the remainder of the guaranteed tax base aid payment to each district or county; and

(e) in June of the school fiscal year, ~~one-half of~~ the remaining payment to each district of direct state aid ~~and on the following July 15, the remaining payment to each district of direct state aid for the school fiscal year ending on the preceding June 30~~.

(6) The distribution provided for in subsection (5) must occur by the last working day of each month."

Section 2. Effeetive date. [This act] is effective July 1, 1999.

Section 3. Applicability. [This act] applies to school fiscal years beginning after June 30, 1999.

Approved April 15, 1999

CHAPTER NO. 309

[SB 94]

AN ACT GENERALLY REVISING THE LAWS GOVERNING THE LICENSING OF NONCOMMERCIAL AND COMMERCIAL DRIVERS; AUTHORIZING THE ISSUANCE OF A MEDICAL ASSESSMENT AND REHABILITATION DRIVING PERMIT; DEFINING "DRIVER REHABILITATION SPECIALIST"; CLARIFYING RESIDENCY REQUIREMENTS FOR LICENSURE AND EXTENDING FROM 90 DAYS TO 120 DAYS THE NONCOMMERCIAL RESIDENCE REQUIREMENT; MAKING INELIGIBLE FOR LICENSURE A PERSON WHO LACKS CERTAIN FUNCTIONAL ABILITIES; REQUIRING A DRIVER'S LICENSE APPLICANT TO DISCLOSE ANY PHYSICAL OR MENTAL CONDITION THAT MAY IMPAIR THE APPLICANT'S DRIVING ABILITIES; REQUIRING DISCLOSURE OF ANY ADAPTIVE EQUIPMENT OR OPERATIONAL

HeinOnline -- 1999 vol. I 1147 1999

RESTRICTIONS THAT ASSIST AN APPLICANT IN SAFELY OPERATING A MOTOR VEHICLE; DEFINING "JURISDICTION"; REQUIRING AN APPLICANT SURRENDERING A VALID LICENSE FROM ANOTHER JURISDICTION OR RENEWING A MONTANA DRIVER'S LICENSE TO SUBMIT TO KNOWLEDGE AND SKILLS TESTS IN CERTAIN SITUATIONS; ALLOWING A PERSON TO RETAIN A LICENSE FROM ANOTHER JURISDICTION FOR IDENTIFICATION PURPOSES; REQUIRING DRIVER'S LICENSES TO CONTAIN A PERSON'S FULL LEGAL NAME; CLARIFYING LAWS GOVERNING LICENSE RENEWAL BY MAIL; REQUIRING THE DEPARTMENT TO ADOPT RULES GOVERNING ISSUANCE OF COMMERCIAL DRIVER'S LICENSES, DRIVER'S LICENSE EXAMINATIONS AND REEXAMINATIONS, THE STANDARDS CONCERNING A DRIVER'S FUNCTIONAL ABILITIES AND SKILLS, VISUAL ACUITY REQUIREMENTS, AND OTHER LICENSING RESTRICTIONS; ALLOWING A PEACE OFFICER TO SEIZE A SUSPENDED LICENSE DURING AN INVESTIGATIVE STOP OR ARREST; REQUIRING A PERSON TO SUBMIT PROOF OF COMPLIANCE WITH 61-6-301 IN CERTAIN INSTANCES; CLARIFYING WHEN A PERSON IS CONSIDERED TO HAVE COMMITTED A SECOND, THIRD, OR SUBSEQUENT OFFENSE OF DRIVING WITH AN ALCOHOL CONCENTRATION OF 0.10 OR MORE; DEFINING "MOVING VIOLATION" FOR PURPOSES OF HABITUAL TRAFFIC OFFENDER PROVISIONS; ALLOWING THE DEPARTMENT OF JUSTICE TO USE CERTIFIED REPRODUCTIONS OF DRIVING RECORDS CONTAINED IN COMPUTER STORAGE DEVICES; AMENDING SECTIONS 61-5-102, 61-5-103, 61-5-105, 61-5-106, 61-5-107, 61-5-108, 61-5-110, 61-5-111, 61-5-112, 61-5-113, 61-5-125, 61-5-207, 61-5-208, 61-6-112, 61-6-122, 61-6-123, 61-6-125, 61-11-203, AND 61-11-204, MCA; REPEALING SECTION 61-6-141, MCA; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. (1) For the purposes of [section 2], "driver rehabilitation specialist" means a person who:

(a) possesses current certification from the association of driver educators for the disabled as a driver rehabilitation specialist; or

(b) (i) provides comprehensive services in the clinical evaluation of the abilities of a person with a disability to safely operate a motor vehicle, utilizing, among other things, wheelchair and seating assessment, vehicle modification prescription, and driver education;

(ii) (A) possesses a bachelor's degree in rehabilitation, education, or health and safety; in physical, occupational, or recreational therapy; or in a related profession; or

(B) has an equivalent of 8 years of experience in driver rehabilitation and education; and

(iii) has at least 1 year of experience in the area of driver evaluation and training for individuals with disabilities.

(2) For the purposes of this chapter, "jurisdiction" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico or a province or territory of Canada.

HeinOnline -- 1999 vol. I 1148 1999

Section 2. Medical assessment and rehabilitation driving permit. (1) Upon the written request of a licensed physician on a form prescribed by the department, the department may authorize a driver rehabilitation specialist to issue a temporary medical assessment and rehabilitation driving permit to a person who is not licensed to drive or whose license has expired under the provisions of this chapter for the purpose of driver assessment, rehabilitation, and training.

(2) The temporary permit may he issued only to a person who is 16 years of age or older.

(3) The permit is valid for up to 6 weeks, beginning with the date of the first evaluation of the permitholder by the driver rehabilitation specialist. The driver rehabilitation specialist shall sign and date the permit at the time of the first evaluation.

(4) The permit is valid only when the permitholder is operating a motor vehicle under the immediate supervision of the driver rehabilitation specialist during the permitholder's participation in an actual in-vehicle evaluation process.

(5) The department may extend the duration of a medical assessment and rehabilitation permit for an additional 6-week period if the driver rehabilitation specialist or the licensed physician certifies that the permitholder needs additional time to complete the driver assessment, rehabilitation, and training process.

Section 3. Section 61-5-102, MCA, is amended to read:

"61-5-102. Drivers to be licensed. (1) ~~No person, except those expressly exempted under 61-5-104, shall~~ *Except as provided in 61-5-104, a person may not* drive ~~any~~ *a* motor vehicle upon a highway in this state unless ~~such~~ *the* person has a valid Montana driver's license. ~~No person shall~~ *A person may not* receive a Montana driver's license ~~unless and~~ until ~~he~~ *the person* surrenders to the department all valid driver's licenses ~~in his possession~~ issued ~~to him~~ by any other jurisdiction. ~~All surrendered licenses shall be returned by the department to the issuing department together with information that the licensee is now licensed in this state. No person shall be permitted to~~ *A person may not* have *in the person's possession or under the person's control* more than one valid *Montana* driver's license at any time.

(2) (a) A license is not valid for the operation of a motorcycle or quadricycle unless the holder of the license has completed the requirements of 61-5-110 and the license has been clearly marked with the words "motorcycle endorsement". A motorcycle endorsement is required for the operation of a quadricycle.

(b) A license is not valid for the operation of a commercial vehicle unless the holder of the license has completed the requirements of 61-5-110 and the license has been clearly marked with the words "commercial driver's license".

~~(2)~~*(3)* ~~Whenever~~ *When* a city or town requires a licensed driver to obtain a local driving license or permit, ~~such~~ a license or permit ~~shall~~ *may* not be issued unless the applicant presents a state driver's license valid under the provisions of this chapter.

~~(3)~~*(4)* A person operating a bicycle defined in 61-1-123(2) ~~shall have in his~~ *must have in the person's* possession at all times when operating tbe bicycle a valid Montana driver's license."

HeinOnline -- 1999 vol. I 1149 1999

Section 4. Section 61-5-103, MCA, is amended to read:

"61-5-103. Residency requirement. (1) ~~Any~~ *A* person who has resided in Montana for more than ~~90~~ *120 consecutive* days is considered to be a resident for the purpose of being licensed to operate a motor vehicle and must ~~thereafter~~ be licensed under the laws of Montana before operating a motor vehicle.

(2) A person who operates a commercial motor vehicle in Montana is considered to be a resident of Montana for the purpose of being licensed to operate a commercial motor vehicle if ~~he~~ *the person* has resided in Montana for more than 30 *consecutive* days and must ~~thereafter~~ be licensed under the laws of Montana before operating any commercial motor vehicle."

Section 5. Section 61-5-105, MCA, is amended to read:

"61-5-105. Who may not be licensed. The department may not issue a license under this chapter to a person:

(1) who is under 16 years of age unless:

(a) the person is at least 15 years of age and has passed a driver's education course approved by the department and the superintendent of puhlic instruction; or

(b) the person is at least 13 years of age and, because of individual hardship, to be determined by the department, needs a restricted license;

(2) whose license or driving privilege is currently suspended or revoked in this or any state;

(3) who is addicted to the use of alcohol or narcotic drugs;

(4) who has previously been adjudged to be afflicted with or suffering from any mental disability or disease and who, at the time of application, has not been restored to competency by the methods provided by law;

(5) who is required by this chapter to take an examination;

(6) who has not deposited proof of financial responsibility when required under the provisions of chapter 6 of this title; ~~or~~

(7) who has any condition characterized by lapse of consciousness or control, either temporary or prolonged, that is or may become chronic. However, the department may in its discretion issue a license to an otherwise qualified person suffering from a condition if the afflicted person's attending physician attests in writing that the person's condition has stabilized and would not be likely to interfere with that person's ability to operate a motor vehicle safely and, if a commercial driver's license is involved, the person is physically qualified to operate a commercial motor vehicle under applicable state or federal regulations; *or*

(8) who lacks the functional ability, due to a physical or mental disability or limitation, to safely operate a motor vehicle on the highway."

Section 6. Section 61-5-106, MCA, is amended to read:

"61-5-106. Instruction permits — traffic education learner licenses and permits — temporary licenses. (1) The department may issue an instruction permit to a person satisfying the age requirements specified in 61-5-105(1) after the applicant has successfully passed the knowledge test and the vision examination as provided in 61-5-110. An instruction permit entitles

HeinOnline -- 1999 vol. I 1150 1999

the permittee, while in immediate possession of the permit and accompanied by a licensed driver seated beside the permittee, to drive a motor vehicle upon the public highways for a period of 6 months from the date the fees required in 61-5-111 are paid.

(2) The department may issue a traffic education learner license to any person who is at least 14 1/2 years of age and who has successfully completed or is successfully participating in a traffic education course approved by the department and the superintendent of public instruction. A traffic education learner license entitles the licensee to operate a motor vehicle only when accompanied by an approved instructor or licensed parent or guardian and may be restricted to specific times or areas.

(3) (a) An instructor of a traffic education program approved by the department and by the superintendent of public instruction may issue a traffic education permit that is effective for a school year or more restricted period to an applicant who is enrolled in a traffic education program approved by the department and who meets the age requirements specified in 20-7-503.

(b) When in immediate possession of the traffic education permit, the permittee may operate on a designated highway or within a desiguated area:

(i) a motor vehicle when an approved instructor is seated beside the permittee; or

(ii) a motorcycle or quadricycle when under the immediate and proximate supervision of an approved instructor.

(4) The department may in its discretion issue a temporary driver's permit to an applicant for a driver's license permitting the applicant to operate a motor vehicle while the department is completing its investigation and determination of all facts relative to the applicant's right to receive a driver's license. The temporary driver's permit must be in the permittee's immediate possession while operating a motor vehicle, and it is invalid when the applicant's license has been issued or for good cause has been refused.

(5) The department may in its discretion issue a temporary commercial driver's license to an applicant permitting the applicant to operate a commercial motor vehicle while the department is completing its investigation and determination of all facts relative to the applicant's right to receive a commercial driver's license. The temporary license must be in the applicant's immediate possession while operating a commercial motor vehicle and is invalid when the applicant's license has been issued or for good cause has been refused.

(6) The department may in its discretion issue a temporary medical assessment and rehabilitation driving permit as provided in [section 2]."

Section 7. Section 61-5-107, MCA, is amended to read:

"**61-5-107. (Bracketed language terminates on occurrence of contingeney or July 1, 1999) Application for license, instruction permit, or motorcycle endorsement.** (1) Each application for an instruction permit, driver's license, or motorcycle endorsement must be made upon a form furnished by the department. ~~A motorcycle endorsement is required for the operation of a quadricycle.~~ Each application must be accompanied by the proper fee, and payment of the fee entitles the applicant to not more than three attempts to pass the examination within a period of 6 months from the date of application. A votor registration form for mail registration as prescribed by the secretary of state must

HeinOnline -- 1999 vol. I 1151 1999

be attached to each driver's license application. If the applicant wishes to register to vote, the department shall accept the registration and forward the form to the election administrator.

(2) Each application must ~~state~~ *include* the full *legal* name, date of hirth, sex, residence address of the applicant[, and if the application is for a commercial ~~vehicle operator's~~ *driver's* license, social security number], must ~~briefly describe~~ *include a brief description of* the applicant, and must ~~state whether~~ *include a statement that allows the department to determine if*:

(a) the applicant has previously been licensed as a driver or commercial vehicle operator, and, if so, when and by what state or country;

(b) any commercial ~~operator~~ *driver's* license has ever been suspended or revoked; ~~or~~

(c) an application has ever been ~~refused~~ *denied*, and, if so, the date of and reason for suspension, revocation, or ~~refusal~~ *denial;*

(d) the applicant has a physical or mental disability, limitation, or condition that impairs or may impair the applicant's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway; and

(e) the applicant relies upon, or intends to rely upon, any adaptive equipment or operational restrictions to attain the ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway, including the nature of the equipment or restrictions.

[(3) The department shall keep the applicant's social security number from this source confidential, except that the number may be used for purposes of subtitle VI of Title 49 of the U.S.C. or as otherwise permitted by state law administered by the department and may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.]

(4) When application is received from an applicant previously licensed by another jurisdiction, the department shall request a copy of the applicant's driving record from the previous licensing jurisdiction. The driving record may be transmitted manually or by electronic medium. When received, the driving records become a part of the driver's record in this state with the same force and effect as though entered on the driver's record in this state in the original instance. (Bracketed language terminates on occurrence of contingency or July 1, 1999—sec. 104, Ch. 552, L. 1997.)"

Section 8. Section 61-5-108, MCA, is amended to read:

"61-5-108. Application of minors — imputed liability. (1) The application of ~~any~~ *a* person *who is* under ~~the age of~~ 18 years *of age* for an instruction permit, ~~or~~ driver's license, *or medical assessment and rehabilitation driving permit* ~~shall~~ *must* be signed and verified before a person authorized to administer oaths or an employee of the department by a parent of the applicant or, if none is available, by some other responsible adult who is willing to assume the obligation imposed under this chapter upon a person signing the application of a minor.

(2) Any negligence or willful misconduct of a minor *who is* under ~~the age of~~ 18 years *of age* when driving a motor vehicle upon a highway ~~shall~~ *must* be imputed to a person who has signed the application of the minor for ~~a~~ *an instruction* permit, ~~or~~ *driver's* license, ~~which person shall be~~ *or medical and*

rehabilitation driving permit. The person who signs the application is jointly and severally liable with the minor for any damages caused by the negligence or willful misconduct unless a motor vehicle liability policy, as provided for in chapter 6 of this title, covering the minor is in effect, in which case there is no imputed liability as described in this section."

Section 9. Section 61-5-110, MCA, is amended to read:

"61-5-110. (Temporary) Examination of applicants — cooperative driver testing programs. (1) The department shall examine each applicant for a driver's license or motorcycle endorsement, except as otherwise provided in this section. The examination must include a test of the applicant's eyesight, a knowledge test examining the applicant's ability to read and understand highway signs and the applicant's knowledge of the traffic laws of this state, and, except as provided in 61-5-118, a road test or a skills test demonstrating the applicant's ability to exercise ordinary and reasonable control in the *safe* operation of a motor vehicle, quadricycle, or motorcycle. ~~The examination for the commercial driver's license may include additional items. The knowledge test and the road test or the skills test must be waived for an applicant who works in a farm-related service industry and who otherwise meets the requirements for a seasonal commercial driver's license as set forth in this title and rules adopted by the department.~~ The knowledge test or road test, or both, may be waived by the department upon certification of the applicant's successful completion of the test by a certified cooperative driver testing program, as provided in subsection (2).

(2) The department is authorized to certify as a cooperative driver testing program any state-approved high school traffic education course offered by or in cooperation with a school district that employs an approved instructor who has current endorsement from the superintendent of public instruction as a teacher of traffic education and who agrees to:

(a) administer standardized knowledge and road tests required by the department to students participating in the district's high school traffic education courses~~;~~;

(b) certify the test results to the department; and

(c) comply with regulations of the department and the superintendent of public instruction.

(3) *(a)* Except as otherwise provided by law, a resident who has a valid driver's license issued by another ~~state~~ *jurisdiction* may surrender that license for a Montana license of the same class, type, and endorsement upon payment of the required fees~~,~~ *and* successful completion of a vision examination~~, and, if requested by the examiner, completion of either the knowledge test or road test, or both~~. In addition, a resident surrendering a commercial driver's license issued by another ~~state~~ *jurisdiction* shall successfully complete any examination required by federal regulations before being issued a commercial driver's license by the department.

(b) The department may require an applicant who surrenders a valid driver's license issued by another jurisdiction to submit to a knowledge and skills test if:

(i) the applicant has a physical or mental disability, limitation, or condition that impairs, or may impair, the applicant's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway; and

HeinOnline -- 1999 vol. I 1153 1999

(ii) the surrendered license does not include readily discernible adaptive equipment or operational restrictions appropriate to the applicant's functional abilities; or

(iii) the applicant wants to remove or modify a restriction imposed on the surrendered license.

(c) When a license from another jurisdiction is surrendered, the department shall notify the issuing agency from the other jurisdiction that the applicant has surrendered the license. If the applicant wants to retain the license from another jurisdiction for identification or other nondriving purposes, the department shall place a distinctive mark on the license, indicating that the license may be used for nondriving purposes only, and return the marked license to the applicant. (Terminates September 30, 1999—sec. 12, Ch. 53, L. 1995.)

61-5-110. (Effective October 1, 1999) Examination of applicants — cooperative driver testing programs. (1) The department shall examine each applicant for a driver's license or motorcycle endorsement, except as otherwise provided in tbis section. The examination must include a test of the applicant's eyesight, a knowledge test examining the applicant's ability to read and understand highway signs and the applicant's knowledge of the traffic laws of this state, and a road test or a skills test demonstrating the applicant's ability to exercise ordinary and reasonahle control in the *safe* operation of a motor vebicle, quadricycle, or motorcycle. ~~The examination for the commercial driver's license may include additional items. The knowledge test and the road test or the skills test must be waived for an applicant who works in a farm-related service industry and who otherwise meets the requirements for a seasonal commercial driver's license as set forth in this title and rules adopted by the department.~~ The knowledge test or road test, or both, may be waived by the department upon certification of tbe applicant's successful completion of the test by a certified cooperative driver testing program, as provided in subsection (2).

(2) The department is authorized to certify as a cooperative driver testing program any state-approved high school traffic education course offered hy or in cooperation with a school district that employs an approved instructor who has current endorsement from the superintendent of puhlic instruction as a teacher of traffic education and who agrees to:

(a) administer standardized knowledge and road tests required hy the department to students participating in the district's high school traffic education courses~~;~~;

(b) certify the test results to the department; and

(c) comply with regulations of the department and the superintendent of public instruction.

(3) *(a)* Except as otherwise provided by law, a resident who has a valid driver's license issued by another ~~state~~ *jurisdiction* may surrender that license for a Montana license of the same class, type, and endorsement upon payment of the required fees~~;~~ *and* successful completion of a vision examination~~, and, if requested by the examiner, completion of either the knowledge test or road test, or both~~. In addition, a resident surrendering a commercial driver's license issued by another ~~state~~ *jurisdiction* shall successfully complete any examination required by federal regulations before being issued a commercial driver's license by the department.

HeinOnline -- 1999 vol. I 1154 1999

(b) The department may require an applicant who surrenders a valid driver's license issued by another jurisdiction to submit to a knowledge and skills test if:

(i) the applicant has a physical or mental disability, limitation, or condition that impairs, or may impair, the applicant's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway; and

(ii) the surrendered liccnse does not include readily discernible adaptive equipment or operational restrictions appropriate to the applicant's functional abilities; or

(iii) the applicant wants to remove or modify a restriction imposed on the surrendered license.

(c) When a license from another jurisdiction is surrendered, the department shall notify the issuing agency from the other jurisdiction that the applicant has surrendered the license. If the applicant wants to retain the license from another jurisdiction for identification or other nondriving purposes, the department shall place a distinctive mark on the license, indicating that the license may be used for nondriving purposes only, and return the marked license to the applicant."

Section 10. Section 61-5-111, MCA, is amended to read:

"61-5-111. ~~Renewals~~ *Contents of a driver's license, renewal, renewal by mail, license* expirations, *grace period,* and fees for licenses, permits, and endorsements — notice of expiration. (1) The department may appoint county treasurers and other qualified officers to act as its agents for the sale of driver's licenses receipts and shall make necessary rules governing sales. In areas in which the department provides driver licensing services 3 days or more a week, the department is responsible for sale of receipts and may, in its discretion, appoint an agent to sell receipts.

(2) The department, upon receipt of payment of the fees specified in this section, shall issue a driver's license to each qualifying applicant. The license must contain a full-face photograph of the licensee in the size and form prescribed by the department; a distinguishing number issued to the licensee; the full *legal* name, date of birth, Montana mailing address, and a brief description of the licensee; and either the licensee's *customary* signature or a digital reproduction of the licensee's *customary* signature. A license is not valid until it is signed hy the licensee.

~~(2) (a)~~*(3) (a)* When a person applies for renewal of a driver's license, the department shall test the applicant's eyesight. ~~and, in the department's discretion, may have~~ *The department may also require* the applicant ~~complete a road test demonstrating the applicant's ability to operate and to exercise ordinary and reasonable care in the operation of a motor vehicle~~ *to submit to a knowledge and skills test if:*

(i) the renewal applicant has a physical or mental disability, limitation, or condition that impairs, or may impair, the applicant's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway; and

(ii) the expired or expiring license does not include adaptive equipment or operational restrictions appropriatc to the applicant's functional abilities; or

(iii) the applicant wants to remove or modify the restrictions stated on the expired or expiring license.

HeinOnline -- 1999 vol. I 1155 1999

(b) In the case of a commercial driver's license, the department may also require that the applicant successfully complete a written examination as required by federal regulations.

(c) A person is considered to have applied for renewal of a Montana driver's license if the application is made within 6 months before or 3 months after the expiration of the person's license. *Except as provided in subsection (3)(d), a person seeking to renew a driver's license shall appear in person at a Montana driver's examination station.*

(d) (i) A person may renew a driver's license by mail if the person certifies that the person is temporarily out of state and will not be returning to the state prior to the expiration of the license.

(ii) An applicant who renews a driver's license by mail shall submit to the department an approved vision examination and a medical evaluation from a licensed physician in addition to the fees required for renewal.

(iii) If the department does not have a digitized photograph or signature record of the renewal applicant from the expiring license, then the department may require the renewal applicant to submit a personal photograph and signature that meets the requirements prescribed by the department.

(iv) The term of a license renewed by mail is 4 years, and a person may not renew by mail for consecutive license terms.

~~(d)~~*(e)* The department shall mail a driver's license renewal notice no earlier than 60 days and no later than 30 days prior to the expiration date of a commercial driver's license if the licensee has previously submitted a written request for the notice, either at the time of initial application or of renewal of the license.

~~(3) (a)~~*(4) (a)* Except as provided in subsections ~~(3)(b)~~ *(4)(b)* and ~~(3)(c)~~ *(4)(c)*, a license expires on the anniversary of the licensee's birthday 8 years or less after the date of issue or on the licensee's 75th birthday, whichever occurs first. Tho department may adopt rules to stagger the implementation of the conversion to an 8-year license cycle over a 4-year period.

(b) A license issued to a person who is 75 years of age or older expires on the anniversary of the licensee's birthday 4 years or less after the date of issue.

(c) A license issued to a person who is under 21 years of age expires on the licensee's 21st birthday.

~~(4)~~*(5)* Whenever the department issues an original license to a person under the age of 18 years, the license must be designated and clearly marked as a "provisional license". Any license designated and marked as provisional may be suspended by the department for a period of not more than 12 months when its records disclose that the licensee, subsequent to the issuance of the license, has been guilty of careless or negligent driving.

~~(5) It is unlawful for any person to have in the person's possession or under the person's control more than one valid Montana driver's license at any one time. A license is not valid for the operation of a motorcycle or quadricycle unless the holder of the license has completed the requirements of 61-5-110 and the license has been clearly marked with the words "motorcycle endorsement". A license is not valid for the operation of a commercial vehicle unless the holder of the license has completed the requirements of 61-5-110 and the license has been clearly marked with the words "commercial driver's license".~~

(6) Fees for driver's licenses are:

HeinOnline -- 1999 vol. I 1156 1999

(a) driver's license, except a commercial driver's license — $4 ~~per~~ *a* year or fraction of a year;

(b) motorcycle endorsement — 50 cents ~~per~~ *a* year or fraction of a year;

(c) commercial driver's license:

(i) interstate — $5 ~~per~~ *a* year or fraction of a year;

(ii) intrastate — $3.50 ~~per~~ *a* year or fraction of a year.

~~(7) The holder of a valid chauffeur's license may convert or renew the chauffeur's license to a commercial driver's license by paying the appropriate fee and complying with the requirements established by the department.~~

(7) Upon receipt of notice from another jurisdiction that a person licensed under this chapter has surrendered a Montana driver's license to that jurisdiction, the department shall change the license status on the person's official driver record to "inactive". If the person returns to Montana prior to the expiration of the previously surrendered license, the department may reactivate the license for the remainder of the license term."

Section 11. Section 61-5-112, MCA, is amended to read:

"61-5-112. ~~Classification of~~ *Types and classes of* commercial driver's ~~license~~ *licenses — classification — rulemaking.* The department ~~upon issuing a commercial driver's license shall indicate on the license the class of license issued and shall appropriately examine each applicant according to the class applied for and may impose rules for classification, examination, and use~~ *shall adopt rules* that it considers necessary for the safety and welfare of the traveling public *governing the classification of commercial driver's licenses and related endorsements and the examination of commercial driver's license applicants and renewal applicants. The rules must:*

(1) subject to the exceptions provided in this section, comport with the requirements of 49 CFR, part 383, and the medical qualifications of 49 CFR, part 391;

(2) allow for the issuance of a type 2 (intrastate only) commercial driver's license in accordance with medical qualification and visual acuity standards prescribed by the department;

(3) allow for the issuance of a type 2 commercial driver's license to a person who is 18 years of age or older or an operationally restricted type 2 commercial driver's license to a person who is 16 years of age or older;

(4) allow for issuance of a seasonal commercial driver's license based on standards established by the department for the waiver of the knowledge and skills test for a qualified person employed in farm-related service industries who has a good driving record and sufficient prior driving experience;

(5) prescribe the operational and seasonal restrictions for a seasonal commercial driver's license; and

(6) prescribe the requirements for the medical statement that must be submitted in order for a person to be qualified for a type 2 commercial driver's license."

Section 12. Section 61-5-113, MCA, is amended to read:

"61-5-113. Restricted licenses. (1) ~~The department upon issuing a driver's license shall have authority whenever good cause appears to impose restrictions suitable to the licensee's driving ability with respect to the type of or special mechanical control devices required on a motor vehicle which the licensee may operate or such other restrictions applicable to the licensee as the~~

~~department may determine to be appropriate to assure the safe operation of a motor vehicle by the licensee~~ *If, upon an applicant's completion of the vision, knowledge, and skills tests required under 61-5-110, 61-5-111, and 61-5-207, the department determines that an applicant's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway depends on the use of adaptive equipment or operational restrictions, then the department shall include the appropriate restrictions on a license issued to the applicant. Once imposed, the restrictions may not be removed unless the department determines that the adaptive equipment or operational restrictions are no longer essential to the licensee's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway.*

(2) The department may either issue a special restricted license or may ~~set forth such~~ *include the* restrictions ~~upon~~ *on* the usual license form.

(3) The department may upon receiving satisfactory evidence of ~~any~~ *a* violation of the restrictions of ~~such~~ *a* license or endorsement suspend or revoke the ~~same but the~~ *license. The* licensee ~~shall be~~ *is* entitled to a hearing as upon suspension or revocation under this chapter.

(4) It is a misdemeanor for ~~any~~ *a* person to operate a motor vehicle in ~~any~~ *a* manner in violation of the restrictions imposed in a restricted license ~~issued to him~~."

Section 13. Section 61-5-125, MCA, is amended to read:

"61-5-125. Authority of department — *rulemaking authority.* *(1)* The department shall administer and enforce the provisions of this chapter ~~and may adopt rules to implement this chapter~~.

(2) The department shall adopt rules setting standards to govern driver's license examinations and reexaminations. The rules:

(a) must specifically address the functional abilities and skills required for a person to exercise ordinary and reasonable control in the safe operation of a motor vehicle on a highway;

(b) must include minimum uncorrected or corrected visual acuity requirements for both unrestricted and restricted licensure and may include minimum field of vision and depth perception requirements and hearing requirements for unrestricted and restricted licensure;

(c) may direct the design of one or more types of skills tests to assess an applicant's or licensee's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway. A skills test may consist of:

(i) a comprehensive assessment of a person's functional abilities by means of an actual demonstration of the applicant's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle; or

(ii) a more limited assessment of a person's functional abilities, conducted at the discretion of the department, as related to a specific physical or mental condition or conditions or a request for reexamination;

(d) must include operational restrictions based upon the visual acuity of an applicant or licensee;

(e) may take into consideration any nationally recognized standards or recommended practices for assessment of a person's ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway;

HeinOnline -- 1999 vol. I 1158 1999

(f) must include appropriate licensing criteria relating to the use of adaptive equipment or operational limits that can be readily discerned by law enforcement or a licensing agency in another jurisdiction;

(g) may be derived from medical guidelines and information compiled by driver licensing medical advisory or review boards from other jurisdictions, as well as information received from advocacy groups for persons with disabilities and senior citizens; and

(h) except as provided in 61-5-105, may not use a person's age or physical or mental disability, limitation, or condition as a justification for denial of a license.

(3) The department may adopt additional rules governing:

(a) acceptable methods of proof of identification that must be supplied by a person upon application for or renewal of a driver's license;

(b) issuance of a hardship license to an underage applicant;

(c) the cancellation of a driver's license upon receipt of an insufficient funds check in payment of license fees;

(d) circumstances under which the department may issue a probationary license to a person whose license has been suspended or revoked or a person whose license is subject to a discretionary suspension or revocation;

(e) restrictions to be imposed upon a probationary license;

(f) renewal of a driver's license by a person in the military assigned to active duty who had a valid Montana driver's license at the time of entering active duty; and

(g) issuance of a duplicate driver's license."

Section 14. Section 61-5-207, MCA, is amended to read:

"61-5-207. Reexamination or ~~investigation~~ *medical evaluation* — when required. ~~The~~ *(1) If the* department~~, having good cause to believe that a licensed driver is incompetent or otherwise not qualified to be licensed, may, based on information received, investigate the licensee's record, physical or mental condition, or need for a license or,~~ *receives reliable evidence that a licensed driver lacks the ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway, the department may,* upon written notice of at least 5 days to the licensee, require the licensee to ~~submit to an examination~~ *obtain a medical evaluation from a licensed physician or submit to one or more tests customarily conducted by the department for licensure under 61-5-110.*

(2) Upon *the review of a medical evaluation,* the conclusion of ~~the investigation or examination~~ *testing, or both,* the department ~~shall take action as may be appropriate considering the facts reported or discovered and may suspend or revoke the driver's license of the person or permit the person to retain the license or may issue a license subject to restrictions as permitted under 61-5-113~~ *may:*

(a) impose restrictions on the license, as provided in 61-5-113, that are appropriate to the licensee's acknowledged or demonstrated functional abilities;

(b) suspend the license indefinitely based upon a licensee's inability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on the highway; or

(c) take no action modifying the license or placing restrictions on the licensee.

HeinOnline -- 1999 vol. I 1159 1999

(3) The age of a licensee, by itself, does not constitute evidence of a condition requiring a reexamination or a medical evaluation by a licensed physician.

(4) A suspension under this section continues in effect until evidence satisfactory to the department establishes that the licensee has regained the ability to exercise ordinary and reasonable control in the safe operation of a motor vehicle on a highway.

(5) Refusal or neglect of the licensee to *obtain a medical evaluation from a licensed physician or* submit to ~~the investigation or examination~~ *testing as required by the department* is grounds for susp ~~or revocation~~ of the person's license."

Section 15. Section 61-5-208, MCA, is amended to read:

"61-5-208. Period of suspension or revocation. (1) The department may not suspend or revoke a driver's license or privilege to drive a motor vehicle on the public highways for a period of more than 1 year, except as otherwise permitted by law.

(2) *(a)* A person whose license or privilege to drive a motor vehicle on the puhlic highways has been suspended or revoked may not have the license, endorsement, or privilege renewed or restored unless the revocation was for a cause ~~which~~ *that* has been removed. After the expiration of the period of the revocation or suspension, the person may make application for a new license or endorsement as provided hy law, but the department may not issue a new license or endorsement ~~unless and~~ until it is satisfied, after investigetion of the driving ability of the person and upon a showing by its records or other sufficient evidence, that the person is eligible to be licensed to drive in Montana.

(b) When ~~any~~ *a* person is convicted or forfeits bail or collateral not vacated for the offense of operating or being in actual physical control of a motor vehicle while under the influence of alcohol or any drug or a combination of alcohol or drugs or for the offense of operation of a motor vehicle by a person with alcohol concentration of 0.10 or more, the department shall, upon receiving a report of conviction or forfeiture of bail or collateral not vacated, suspend the driver's license or driving privilege of the person for a period of 6 months. Upon receiving a report of a conviction or forfeiture of bail or collateral for a second, third, or subsequent offense within 5 years of the first offense, the department shall revoke the license or driving privilege of the person for a period of 1 year, except that if the 1-year period passes and the person bas not completed an alcohol information course, treatment, or both, as ordered by the sentencing court, the license revocation remains in effect until the course, treatment, or both are completed.

(c) For the purposes of subsection (2)(b), a person is considered to have committed a second, third, or subsequent offense if fewer than 5 years have passed between the date of an offense that resulted in a prior conviction and the date of the offense that resulted in the most recent conviction.

(3) (a) If a person pays the reinstatement fee required in 61-2-107 and provides the department proof of compliance with any ignition interlock restriction imposed under 61-8-442, the department shall stay the license suspension or revocation of a person who has been convicted of a violation of 61-8-401 or 61-8-406 and return the person's driver's license. The stay must remain in effect until the period of suspension or revocation has expired and any required alcohol information course, treatment, or both, have been completed.

HeinOnline -- 1999 vol. I 1160 1999

(b) If the department receives notice from a court, peace officer, or ignition interlock vendor that the person has violated the ignition interlock restriction by, including but not limited to, operating a motor vehicle not equipped with the device, tampering with the device, or removing the device before the period of restriction has expired, the department shall lift the stay and reinstate the license suspension or revocation for the remainder of the time period. The department may not issue a probationary driver's license to a person whose license suspension or revocation has been reinstated due to violation of an ignition interlock restriction.

(4) The period for all revocations made mandatory by 61-5-205 is 1 year except as provided in subsection (2).

(5) The period of revocation for any person convicted of any offense which makes mandatory the revocation of the driver's license commences from date of conviction or forfeiture of bail.

(6) If a person is convicted of a violation of 61-8-401 or 61-8-406 while operating a commercial motor vehicle, the department shall suspend the person's driver's license as provided in 61-8-811 and subsection (2) of this section."

Section 16. Section 61-6-112, MCA, is amended to read:

"61-6-112. Surrender of license. ~~Any~~ *A* person whose license ~~shall have~~ *has* been suspended ~~as herein provided~~, ~~or~~ whose policy of insurance or bond, when required under tbis part, ~~shall have~~ *has* been canceled or terminated, or who ~~shall neglect~~ *neglects* to furnish otber proof upon request of the department shall immediately return ~~his~~ *the person's* license to the department. If ~~any person shall fail~~ *a licensee fails* to return to the department tbe license as ~~provided herein, the department shall forthwith direct any~~ *required by this section, then a* peace officer ~~or highway patrol officer to secure possession thereof~~ *may seize the license during an investigative stop or arrest* and ~~to~~ return the ~~same~~ *license* to the department."

Section 17. Section 61-6-122, MCA, is amended to read:

"61-6-122. Suspension for nonpayment of judgments — exceptions. (1) The department, upen the receipt of a certified copy of a judgment, shall ~~forthwith~~ suspend the license and any nonresident's operating privilege of any person against wbom ~~such~~ *a* judgment was rendered, except as ~~hereinafter otherwise~~ provided in this section and in 61-6-125.

(2) If the judgment creditor consents in writing, in ~~such~~ *a* form ~~as~~ *that* tbe department ~~may prescribe~~ *prescribes*, that the judgment debtor be allowed *a* license or *a* nonresident's operating privilege, ~~the same may be allowed by~~ the department *may*, in its discretion, *allow the debtor a license or nonresident's operating privilege* ~~for 6 months~~ from the date of ~~such~~ consent. ~~and thereafter~~ *The debtor's license or nonresident's operating privilege continues* until ~~such~~ *the judgment creditor's* consent is revoked in writing notwithstanding default in the payment of ~~such~~ *the* judgment, or of any installments ~~thereof~~ prescribed in 61-6-125, provided the judgment debtor furnishes proof of ~~financial responsibility~~ *compliance with 61-6-301*."

Section 18. Section 61-6-123, MCA, is amended to read:

"61-6-123. Suspensiou to eontinue until judgments paid and proof given — maximum period of suspension. ~~Such~~ *A* license ~~and~~ *or* nonresident's operating privilega ~~shall remain so~~ *remains* suspended and ~~shall~~ *may* not be renewed, nor ~~shall any such~~ *may a* license be ~~thereafter~~ issued in the name of

~~such person~~ *a judgement debtor*, including ~~any such person~~ *a judgment debtor* not previously licensed, ~~unless and~~ until ~~every such~~ *each* judgment is stayed, satisfied in full, or *satisfied* to the extent ~~hereinafter~~ provided *in this part*, and until the person gives proof of ~~financial responsibility~~ *compliance with 61-6-301* subject to the exemptions ~~stated~~ *provided* in 61-6-122 and 61-6-125 or 6 years have passed from date judgment was first entered as provided in 25-9-301 and the person has complied with 61-6-301 and 61-6-302."

Section 19. Section 61-6-125, MCA, is amended to read:

"61-6-125. Installment payment of judgments — default. (1) A judgment debtor upon due notice to the judgment creditor may apply to the court in which ~~such~~ *the* judgment was rendered for the privilege of paying ~~such~~ *the* judgment in installments. ~~and the~~ *The* court, in its discretion and without prejudice to any other legal remedies ~~which~~ *that* the judgment creditor may have, may ~~so~~ order *payment in installments* and fix the amounts and times of ~~payment of the installments~~ *the payments*.

(2) The department ~~shall~~ *may* not suspend a license or a nonresident's operating privilege and shall restore any license or nonresident's operating privilege suspended following nonpayment of a judgment, when the judgment debtor gives proof of ~~financial responsibility~~ *compliance with 61-6-301* and obtains ~~such~~ an order permitting the payment of ~~such~~ *the* judgment in installments, and while the payment of any ~~said~~ installment is not in default.

(3) ~~In the event~~ *If* the judgment debtor fails to pay any installment as specified by ~~such~~ *a court* order, then ~~upon notice of such default~~, the department shall, *upon notice of the default,* ~~forthwith~~ suspend the license or nonresident's operating privilege of the judgment debtor until ~~such~~ *the* judgment is satisfied, as provided in this part."

Section 20. Section 61-11-203, MCA, is amended to read:

"61-11-203. Definitions. As used in this part, the following definitions apply:

(1) "Conviction" means a finding of guilt by duly constituted judicial authority, a plea of guilty, or a forfeiture of bail, bond, or other security deposited to secure appearance by a person charged with having committed any offense relating to the use or operation of a motor vehicle which is prohibited by law, ordinance, or administrative order.

(2) "Habitual traffic offender" means any person who within a 3-year period accumulates 30 or more conviction points according to the schedule specified in this subsection:

(a) deliberate homicide resulting from the operation of a motor vehicle, 15 points;

(b) mitigated deliberate homicide, negligent homicide resulting from operation of a motor vehicle, or negligent vehicular assault, 12 points;

(c) any offense punishable as a felony under the motor vehicle laws of Montana or any felony in the commission of which a motor vehicle is used, 12 points;

(d) driving while under the influence of intoxicating liquor or narcotics or drugs of any kind or operation of a motor vehicle by a person with alcohol concentration of 0.10 or more, 10 points;

HeinOnline -- 1999 vol. I 1162 1999

(e) operating a motor vehicle while the license to do so has been suspended or revoked, 6 points;

(f) failure of the driver of a motor vehicle involved in an accident resulting in death or injury to any person to stop at the scene of the accident and give the required information and assistance, as defined in 61-7-105, 8 points;

(g) willful failure of the driver involved in an accident resulting in property damage of $250 to stop at the scene of the accident and give the required information or failure to otherwise report an accident in violation of the law, 4 points;

(h) reckless driving, 5 points;

(i) illegal drag racing or engaging in a speed contest in violation of the law, 5 points;

(j) any of the mandatory motor vehicle liability protection offenses under 61-6-301 and 61-6-302, 5 points;

(k) operating a motor vehicle without a license to do so, 2 points (this subsection (k) does not apply to operating a motor vehicle within a period of 180 days from the date the license expired);

(l) speeding, 3 points;

(m) all other moving violations, 2 points.

(3) There may not he multiple application of cumulative points when two or more charges are filed involving a single occurrence. If there are two or more convictions involving a single occurrence, only the number of points for the specific conviction carrying the highest points is chargeable against that defendant.

(4) "License" means any type of license or permit to operate a motor vehicle.

(5) "Moving violation" means a violation of a traffic regulation of this state or another jurisdiction by a person while operating a motor vehicle or in actual physical control of a motor vehicle upon a highway, as the term is defined in 61-1-201.

(6) A traffic regulation includes any provision governing motor vehicle operation, equipment, safety, size, weight, and load restrictions or driver licensing. A traffic regulation does not include provisions governing vehicle registration or local parking."

Section 21. Section 61-11-204, MCA, is amended to read:

"61-11-204. Department's duties. (1) If the records maintained by the department show that a person's driving record brings the person within the definition of a habitual traffic offender, the department shall:

(a) declare the person a habitual traffic offender;

(b) revoke the person's driver's license or driving privileges as provided in 61-11-211; and

(c) notify the person in writing of the declaration and revocation.

(2) The notice must be sent by first-class mail to the most current address on record with the department. The notice must include a certified ~~copy~~ *reproduction* of the person's driving record ~~and copies of all relevant abstracts of convictions and bond forfeitures~~ *as contained in the computer storage device used*

by the department for recordkeeping. The notice must inform the person of the right under 61-11-210 to appeal the declaration and revocation. Service of the notice is complete upon mailing."

Section 22. Repealer. Section 61-6-141, MCA, is repealed.

Section 23. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 61, chapter 5, and the provisions of Title 61, chapter 5, apply to [sections 1 and 2].

Section 24. Effective dates. (1) [Sections 11 and 13] are effective on passage and approval.

(2) [Sections 1 through 10, 12, and 14 through 22] are effective October 1, 1999.

Section 25. Applicability. [This act] applies to license applications, renewals, and reexaminations submitted after September 30, 1999.

Approved April 15, 1999

CHAPTER NO. 310

[SB 134]

AN ACT REVISING THE LAWS RELATING TO SCHOOL TRUSTEES; CLARIFYING THE APPLICATION OF INDIVIDUAL LIABILITY FOR SCHOOL TRUSTEES FOR LOSS OF MONEY; AMENDING SECTION 20-3-332, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-3-332, MCA, is amended to read:

"20-3-332. Personal immunity and liability of trustees. (1) When acting in their official capacity at a regular or special meeting of the board or a committee ~~thereof~~ *of the board*, the trustees of each district are individually immune from exemplary and punitive damages.

(2) The trustees of each district ~~shall be~~ *are* responsible for the proper administration and ~~utilization~~ *use* of all ~~moneys~~ *money* of the district in accordance with the provisions of law and this title. Failure or refusal to do so ~~shall constitute~~ *constitutes* grounds for removal from office. ~~These trustees consenting to illegal use of the moneys shall be jointly and individually liable to the district for any losses the district has realized. The county attorney shall prosecute any proceeding arising pursuant to this section, or a party seeking such action may retain private counsel. The party commencing the action shall be liable for the costs if the action fails.~~ *The liability of trustees for violations of this section must be determined in accordance with the provisions of 2-9-305.*"

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 15, 1999

HeinOnline -- 1999 vol. I 1164 1999

CHAPTER NO. 311

[SB 258]

AN ACT REVISING THE LAWS RELATED TO VICTIMS OF PARTNER AND FAMILY MEMBER ASSAULT, VICTIMS OF SEXUAL ASSAULT, AND VICTIMS OF STALKING; CLARIFYING TEMPORARY ORDER OF PROTECTION LAWS RELATING TO CONTINUANCES; ELIMINATING THE TERMINATION DATE ON CIVIL FILING FEES ON DIVORCE AND SEPARATION FILINGS THAT FUND THE PARTNER AND FAMILY MEMBER ASSAULT INTERVENTION AND TREATMENT FUND ACCOUNT; AMENDING SECTIONS 40-15-202 AND 40-15-301, MCA; REPEALING SECTION 14, CHAPTER 484, LAWS OF 1997; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-15-202, MCA, is amended to read:

"40-15-202. Order of protection — hearing — evidence. (1) A hearing must be conducted within 20 days from the date *that* the court issues a temporary order of protection. *The hearing date may be continued at the request of either party for good cause or by the court. If the hearing date is continued, the temporary order of protection must remain in effect until the court conducts a hearing.* At the hearing, the court shall determine whether good cause exists for the temporary order of protection to be continued, amended, or made permanent.

(2) The respondent may request an emergency hearing before the end of the 20-day period by filing an affidavit that demonstrates that the respondent has an urgent need for the emergency hearing. An emergency hearing must be set within 3 working days of the filing of the affidavit.

(3) The order of protection may not be made mutually effective by the court. The respondent may obtain an order of protection from the petitioner only by filing an application for an order of protection and following the procedure described in this chapter.

(4) (a) Except as provided in subsection (4)(b), evidence concerning a victim's sexual conduct is not admissible in a hearing under this section.

(b) Evidence of a victim's past sexual conduct with the offender or evidence of specific instances of the victim's sexual activity to show the origin of semen, pregnancy, or disease may he admitted in a hearing under this section only if that sexual conduct is at issue in the hearing.

(5) If a respondent proposes to offer evidence subject to subsection (4)(b), the trial judge shall order a separate hearing to determine whether the proposed evidence is admissible under subsection (4)(b)."

Section 2. Section 40-15-301, MCA, is amended to read:

"40-15-301. Jurisdiction and venue. (1) District courts, justices' courts, municipal courts, and city courts have concurrent jurisdiction to hear and issue orders under 40-15-201.

(2) When a ~~divorce~~ *dissolution of marriage* or ~~custody~~ *parenting* action involving the parties is pending in district court, a person may file a petition for an order of protection in a justice's, municipal, or city court only if the district court judge assigned to that case is unavailable or if the petitioner, to escape

HeinOnline -- 1999 vol. II 1165 1999

further abuse, left the county where the abuse occurred. The petitioner shall provide a copy of relevant district court documents to the justice's, municipal, or city court, along with the petition. The justice of the peace, municipal court judge, or city court judge shall immediately certify the pleadings to the original district court after signing an order of protection under this subsection. *The district court shall conduct the hearing unless both parties and both courts agree that the hearing may be conducted in the court of limited jurisdiction.* If the district court is unable to conduct a hearing within 20 days of receipt of the certified pleadings, it ~~may~~ *shall* conduct a hearing within 45 days of the receipt *of the pleadings, unless the hearing is continued at the request of either party for good cause or by the court. If the hearing is continued, the order of protection must remain in effect until the court conducts the hearing.*

(3) If one of the parties to an order of protection files for dissolution of marriage or files a parenting action after the order of protection is filed but before the hearing is conducted, the hearing must be conducted in the court in which the order of protection was filed. Either party may appeal or remove the matter to the district court prior to or after the hearing. If the district court is unable to conduct a hearing within 20 days of receipt of the certified pleadings, the district court shall conduct a hearing within 45 days of receipt of the pleadings. The hearing may be continued at the request of either party for good cause or by the court. If the hearing is continued, the order of protection must remain in effect until the court conducts the hearing.

~~(3)~~*(4)* An action brought under this chapter may be filed in the county where the petitioner currently or temporarily resides, the county where the respondent resides, or the county where the abuse occurred. There is no minimum length of residency required to file a petition under this chapter.

~~(4)~~*(5)* The right to petition for relief may not be denied because the petitioner has vacated the residence or household to avoid abuse.

~~(5)~~*(6)* An order of protection issued under this section is effective throughout the state. Courts and law enforcement officials shall give full faith and credit to all orders of protection issued within the state.

~~(6)~~*(7)* A certified copy of an order of protection from another state, along with proof of service, may be filed in a Montana court with jurisdiction over orders of protection in the county where the petitioner resides. If properly filed in Montana, an order of protection issued in another state must be enforced in the same manner as an order of protection issued in Montana."

Section 3. Repealer. Section 14, Chapter 484, Laws of 1997 is repealed.

Section 4. Effective date. [This act] is effective on passage and approval.

Approved April 15, 1999

CHAPTER NO. 312

[SB 349]

AN ACT ESTABLISHING AN AFFORDABLE HOUSING LOAN FUND ADMINISTERED BY THE MONTANA BOARD OF HOUSING; PROVIDING RULEMAKING AUTHORITY AND DIRECTION TO THE BOARD; AND PROVIDING AN EFFECTIVE DATE.

HeinOnline -- 1999 vol. II 1166 1999

Be it enacted by the Legislature of the State of Montana:

Section 1. Legislative declaration. (1) The legislature finds that current economic conditions, federal housing policies, and declining resources at the federal, state, and local levels adversely affect the ability of low-income and moderate-income persons to obtain safe, decent, and affordable housing.

(2) The legislature further finds that the state will lose substantial sums allocated to it by the federal government for affordable housing for low-income and moderate-income households unless matching funds are provided.

(3) The legislature declares that it is in the public interest to establish a continuously renewable financial resource known as an affordable housing revolving loan fund to assist low- and moderate-income citizens in meeting their basic housing needs.

Section 2. Definitions. (1) As used in [sections 1 through 6], the following definitions apply:

(1) "Board" means the board of housing created in 2-15-1814.

(2) "Housing development" means the same as in 90-6-103.

(3) "Loan account" means the affordable housing revolving loan account created in [section 3].

(4) "Low-income" means households whose incomes do not exceed 80% of the median income in the area, as determined by the United States department of housing and urban development, with adjustments for smaller or larger families.

(5) "Moderate-income" means households whose incomes are between 81% and 95% of the median income for the area, as determined by the United States department of housing and urban development, with adjustments for smaller and larger families.

Section 3. Revolving loan aceount — administration. (1) There is an affordable housing revolving loan account in the state special revenue fund in the state treasury. The money in the loan account is allocated to the board for the purpose of providing loans to eligible applicants.

(2) Funds deposited in the loan account must be used for the program authorized in [section 4] and may not be used to pay the expenses of any other program or service administered by the board.

(3) The board may determine the rate of interest to be charged for any loan made under the provisions of [sections 1 through 6].

(4) The board may accept contributions, gifts, and grants for deposit into the loan account. The money must be used in accordance with the provisions of [section 4].

(5) The costs incurred by the board in administering the loan fund must be paid from the loan account.

(6) Interest and principal on loans from the fund must be repaid to the loan fund.

(7) Interest income generated by investment of the principal of the loan fund is retained in the loan fund account.

HeinOnline -- 1999 vol. II 1167 1999

Section 4. Housing loan program — loan capital restricted to interest on principal — eligible applicants. (1) The money in the loan fund must be used to provide financial assistance in the form of direct loans by the board to eligible applicants.

(2) After the initial principal is loaned to eligible applicants, the amount of loans made in a fiscal year is contingent on the repayment of loan principal and on the amount of interest income generated by the principal of the loan fund.

(3) Money from the loan fund must be used to provide:

(a) matching funds for public or private money available from other sources for the development of low-income and moderate-income housing;

(b) bridge financing necessary to make a low-income housing development or a moderate-income housing development financially feasible;

(c) acquisition of existing housing for the purpose of preservation of or conversion to low-income or moderate-income housing; or

(d) preconstruction technical assistance to eligible recipients in rural areas and small cities and towns.

(4) (a) Technical assistance under subsection (3)(d) may include but is not limited to:

(i) financial planning and packaging for housing developments and projects;

(ii) project design, architectural planning, and siting;

(iii) compliance with planning and permitting requirements; or

(iv) maximizing local government contributions to project development in the form of land donations, infrastructure improvements, zoning variances, or creative local planning.

(b) The board may contract with a nonprofit organization to provide this technical assistance.

(5) Money from the loan fund may not be used to replace existing or available sources of funding for eligible activities.

(6) Organizations eligible for loans from the loan fund are local governments, tribal governments, local housing authorities, nonprofit community- or neighborhood-based organizations, regional or statewide nonprofit housing assistance organizations, or for-profit housing developers.

Section 5. Coordination with other programs. The board shall ensure that all housing assistance activities supported through the loan program are coordinated with other housing assistance programs administered by the board, the federal government, state agencies, tribal governments, local public housing authorities, and local governments.

Section 6. Administrative rules. The board shall adopt rules to implement [sections 1 through 6]. The rules must address:

(1) the development of eligibility criteria for applicants;

(2) the development of an application process for requesting financial assistance;

(3) the establishment of a procedure for disbursing financial assistance;

HeinOnline -- 1999 vol. II 1168 1999

(4) the establishment of the terms and conditions of a loan, including the method and schedule of repayment and the applicable rate of interest;

(5) the development of a process for awarding technical assistance contracts; and

(6) other matters necessary for the administration of [sections 1 through 6].

Section 7. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

Section 8. Codification instruction. [Sections 1 through 6] are intended to be codified as an integral part of Title 90, chapter 6, part 1, and the provisions of Title 90, chapter 6, part 1, apply to [sections 1 through 6].

Section 9. Effective date. [This act] is effective July 1, 1999.

Approved April 15, 1999

CHAPTER NO. 313

[SB 367]

AN ACT REVISING AND CLARIFYING THE LAW GOVERNING NEW MOTOR VEHICLE DEALERS, MANUFACTURERS, DISTRIBUTORS, AND CERTAIN OTHER PARTIES; AMENDING SECTIONS 61-4-201, 61-4-204, AND 61-4-208, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-4-201, MCA, is amended to read:

"61-4-201. Definitions. As used in this part, the following definitions apply:

(1) "Community" means the relevant market area of a franchise. For the purposes of this part, the relevant market area of a franchise is the county or counties in which the franchisee is located.

(2) "Distributor" or "wholesaler" means a person who sells or distributes new motor vehicles to new motor vehicle dealers in this state or who maintains distributor representatives in this state.

(3) "Distributor branch" means a branch office maintained or availed of by a distributor or wholesaler for the sale of new motor vehicles to new motor vehicle dealers in this state for directing or supervising its representatives in this state.

(4) "Factory branch" means a branch office maintained or availed of by a manufacturer for the sale of new motor vehicles to distributors or for the sale of new motor vehicles to new motor vehicle dealers in this state or for directing or supervising its representatives in this state.

(5) "Franchise" means a contract between or among two or more persons when all of the following conditions are included:

(a) a commercial relationship of definite duration or continuing indefinite duration is involved;

(b) the franchisee is granted the right to:

HeinOnline -- 1999 vol. II 1169 1999

(i) offer, sell, and service in this state new motor vehicles manufactured or distributed by the franchisor; *or*

(ii) service motor vehicles pursuant to the terms of a franchise and a manufacturer's warranty;

(c) the franchisee, as ~~a~~ *an independent and* separate business, constitutes a component of *the* franchisor's distribution system; and

(d) the operation of the franchisee's business is substantially reliant on the franchisor for the continued supply of new motor vehicles, parts, and accessories.

(6) "Franchisee" means a person who receives new motor vehicles from the franchisor under a franchise and who offers, sells, and services ~~such~~ *the* new motor vehicles to and for the general public.

(7) "Franchisor" means a person who manufactures, imports, or distributes new motor vehicles and who may enter into a franchise.

(8) "Importer" means a person who transports or arranges for the transportation of a foreign manufactured new motor vehicle into the United States for sale in this state.

(9) "Manufacturer" means a person who manufactures or assembles new motor vehicles or who manufactures or installs on previously assembled truck chassis special bodies or equipment that, when installed, forms an integral part of the new motor vehicle and that constitutes a major manufacturing alteration, but does not include a person who installs a camper on a pickup truck.

(10) "New motor vehicle" means a motor vehicle that has not been the subject of a retail sale regardless of the mileage of the vehicle.

(11) "New motor vehicle dealer" means a person who buys, sells, exchanges, or offers or attempts to negotiate a sale or exchange or any interest in or who is engaged in the business of selling new motor vehicles under a franchise with the manufacturer of the new motor vehicles or used motor vehicles taken in trade on new motor vehicles.

(12) (a) "Retail sale" means the sale of a new motor vehicle.

(b) "Retail sale" does not mean a sale:

(i) of a new motor vehicle to a purchaser who is acquiring the vehicle for the purposes of a resale; or

(ii) that is the result of a transfer between two licensed new motor vehicle dealers."

Section 2. Section 61-4-204, MCA, is amended to read:

"61-4-204. Filing agreement — produet liability. (1) A franchisee ~~must~~ *shall*, at the time ~~he applies~~ *of application* for a new motor vehicle dealer license under the provisions of 61-4-101, file with the department a certified copy of ~~his~~ *the* written agreement with a manufacturer and a certificate of appointment as dealer or distributor. The certificate of appointment must be signed by an authorized agent of the manufacturer of domestic vehicles whenever there is a direct manufacturer dealer agreement or by an authorized agent of the distributor whenever the manufacturer is wholesaling through an appointed distributorship. The certificate must be signed by an authorized agent of the importer of ~~foreign-made~~ *foreign-made* vehicles whenever there is a direct importer-dealer agreement or by an authorized agent of the distributor whenever

HeinOnline -- 1999 vol. II 1170 1999

there is an indirect distributor-dealer agreement. The distributor's certificate of appointment must be signed by an authorized agent of the manufacturer of domestically manufactured vehicles or by an authorized agent of the manufacturer or importer of ~~foreign-made~~ *foreign-made* vehicles.

(2) A franchisee need not file a written agreement or certificate of appointment if the manufacturer on direct dealerships or distributor on indirect dealerships or importer on direct dealerships uses the identical basic agreement for all its franchised dealers or distributors in this state and certifies in the certificate of appointment that the blanket agreement is on file and the written agreement with the particular dealer or distributor, respectively, is identical with the filed blanket agreement and that ~~he~~ *the franchisee* has filed with the department one ~~such~~ agreement together with a list of franchised dealers or distributors.

(3) A manufacturer, distributor, or importer shall notify the department within 30 days of any revision of or addition to the basic agreement on file or of any franchise supplement to the agreement. Annual renewal of a certificate filed as provided in this section is not required.

(4) A manufacturer ~~must~~ *shall* file with the department a copy of the delivery and preparation obligations required to be performed by a dealer prior to the delivery of a new motor vehicle to a buyer. These delivery and preparation obligations constitute the dealer's only responsibility for product liability as between the dealer and the manufacturer. Any mechanical, body, or parts defects arising from an express or implied warranty of the manufacturer constitute the manufacturer's product or warranty liability only~~; provided, however, that~~. *However,* this section ~~shall~~ *may* not affect the obligations of new motor vehicle dealers to perform ~~such~~ warranty repair and maintenance ~~as~~ *that* may be required by law or contract. Except as regards household appliances, including but not limited to ranges, refrigerators, and water heaters, in a recreational vehicle, as defined in 61-1-132, and except as regards a truck rated at more than 10,000 pounds gross vehicle weight, the manufacturer ~~must~~ *shall* compensate an authorized dealer for labor, parts, and other expenses incurred by a dealer who performs work to rectify the manufacturer's product or warranty defect or for delivery and preparation obligations at the same rate and time the dealer charges to its retail customers for nonwarranty work of a like kind, based upon a published, nationally recognized, retail flat rate labor time guide manual if the dealer uses the manual as the basis for computing charges for both warranty and retail work.

(5) (a) All claims made by the dealer pursuant to this section for compensation for delivery, preparation, warranty, and recall service, including labor, parts, and other expenses, must be paid by the manufacturer within 30 days of receipt of the claim from the dealer, except that a manufacturer of a motor home, as defined in 61-1-130, shall pay any claim within 60 days of receipt from the dealer.

(b) If a claim is disapproved, the dealer must be notified in writing of the grounds for disapproval. A claim that has not been disapproved in writing within 30 days of having been received must be considered approved, and payment is due to the claimant immediately. However, the manufacturer retains the right to audit a claim for a period of 12 months following the payment of the claim.

(c) A claim that has been approved and paid may not be charged back to the dealer unless the manufacturer proves that:

HeinOnline -- 1999 vol. II 1171 1999

(i) the claim was false or fraudulent;

(ii) the repairs were not properly made; or

(iii) the repairs were not necessary to correct the defective condition.

(d) A manufacturer may not deny a claim or reduce the amount to be reimbursed to the dealer if the dealer has provided reasonably sufficient documentation demonstrating that the dealer performed the services in compliance with the written policies and procedures of the manufacturer.

(e) A franchisor may reasonably and periodically audit a motor vehicle dealer to determine the validity of paid claims or chargebacks for customer or dealer incentives. An audit of incentive payments may apply only to the 18-month period immediately preceding the date on which the dealer was notified of an impending audit.

~~(5)~~*(6)* The dealer ~~must~~ *shall* furnish the purchaser of a new vehicle with a signed copy of the manufacturer's delivery and preparation requirements indicating that each of those requirements has been performed."

Section 3. Section 61-4-208, MCA, is amended to read:

"61-4-208. Prohibited acts. (1) A manufacturer of new motor vehicles, *a* factory branch, *a* distributor, *a* distributor branch, *an* importer, *a* field representative, *an* officer, *an* agent, or any representative of the persons or entities listed may not:

(a) coerce, attempt to coerce, or require a new motor vehicle dealer to:

(i) accept delivery of a new motor vehicle, a part, or an accessory for a new motor vehicle or any other commodity that has not been ordered by the dealer;

(ii) participate in or contribute to any local, regional, or national advertising fund or to participate in or to contribute to contests, giveaways, or other sales devices;

(iii) change location of the dealership or to make substantial alterations to the use or number of franchises or the dealership premises or facilities when to do so would be unreasonable, or without written assurance of a sufficient supply of new motor vehicles that would justify an expansion;

(iv) either establish or maintain exclusive facilities, personnel, or display space or to abandon an existing franchise relationship with another manufacturer that was established before April 8, 1997, when those requirements are not justified by reasonable business considerations;

(v) refrain from participation in the management of, investment in, or acquisition of any other line of new motor vehicle or related products if the new motor vehicle dealer maintains a reasonable line of credit for each make or line of new motor vehicles and remains in compliance with any reasonable capital standards and facility requirements of the manufacturer; or

(vi) enter into an agreement with a manufacturer, factory branch, distributor, distributor branch, or representative of the listed persons or entities or do any other act unfair to the dealer by:

(A) threatening to cancel or not renew a franchise existing between the manufacturer, factory branch, distributor, distributor branch, or representative of the listed persons or entities and the dealer; or

HeinOnline -- 1999 vol. II 1172 1999

(B) threatening to withhold, delay, or disrupt the receipt of new motor vehicles or any motor vehicle parts or supplies ordered by the dealer from the manufacturer, factory branch, distributor, distributor branch, importer, or representative or agent of the listed entities;

(b) delay, refuse, or fail to deliver new vehicles in a reasonable time in a reasonable quantity relative to the new vehicle dealer's facilities and sales potential after accepting an order from a new vehicle dealer if the new vehicles are publicly advertised as being available for immediate delivery; or

(c) impose unreasonable restrictions on the assertion of legal or equitable rights on the new motor vehicle dealer or franchise regarding transfer; sale; right to renew; termination; discipline; noncompetition covenants; site control, whether by sublease, collateral pledge of lease, or otherwise; or compliance with subjective standards.

(2) There is no violation of subsection (1)(a)(iii) or (1)(b) if a failure on the part of the manufacturer, factory branch, distributor, or distributor branch is beyond the control of the listed persons or entities.

(3) (a) Except as provided in subsection (3)(b) or (3)(c), a manufacturer of new motor vehicles, a factory branch, a distributor, a distributor branch, an importer, a field representative, an officer, an agent, or any representative of any of these persons or entities may not own or operate, directly or indirectly, a motor vehicle dealership in Montana that is for sale or has been for sale under a franchise agreement with a new motor vehicle dealer in Montana.

(b) If there is no independent person available to own and operate a motor vehicle dealership in a manner that is consistent with the public interest, a manufacturer of new motor vehicles, a factory branch, a distributor, a distributor branch, an importer, a field representative, an officer, an agent, or any representative of any of these persons or entities may own and operate a motor vehicle dealership for a temporary period, not to exceed 1 year, during the transition from one owner of the dealership to another. Approval of the sale may not be unreasonably withheld by the manufacturer.

(c) A manufacturer of new motor vehicles, a factory branch, a distributor, a distributor branch, an importer, a field representative, an officer, an agent, or any representative of any of these persons or entities may own an interest in a motor vehicle dealership but may not operate the dealership unless a manufacturer of new motor vehicles, a factory branch, a distributor, a distributor branch, an importer, a field representative, an officer, an agent, or any representative of any of these persons or entities has a bona fide business relationship with an independent person who is not a franchisor or a franchisor's agent or affiliate, who has made an investment that is subject to loss in the dealership, and who reasonably expects to acquire full ownership of the dealership on reasonable terms and conditions."

Section 4. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 5. Effective date. [This act] is effective on passage and approval.

Approved April 15, 1999

HeinOnline -- 1999 vol. II 1173 1999

CHAPTER NO. 314

[SB 14]

AN ACT AUTHORIZING THE DEPARTMENT OF REVENUE TO CONTRACT WITH THE U.S. DEPARTMENT OF THE INTERIOR OR ANOTHER FEDERAL AGENCY TO PERFORM FEDERAL ROYALTY AUDITS AND RELATED FUNCTIONS UNDER THE FEDERAL OIL AND GAS ROYALTY SIMPLIFICATION AND FAIRNESS ACT OF 1996; AND AMENDING SECTION 15-1-201, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-1-201, MCA, is amended to read:

"15-1-201. Administration of revenue laws. (1) (a) The department has general supervision over the administration of the assessment and tax laws of the state, except Title 15, chapters 70 and 71, and over any officers of municipal corporations having any duties to perform under the laws of this state relating to taxation to the end that all assessments of property are made relatively just and equal, at true value, and in substantial compliance with law. The department may make rules to supervise the administration of all revenue laws of the state and assist in their enforcement.

(b) The department may contract with the U.S. department of the interior or any other federal agency to perform federal royalty audits, collection services, and any other delegable functions related to mining operations on federal lands within the state pursuant to the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996.

~~(b)~~*(c)* The department shall adopt rules specifying which types of property within the several classes are considered comparable property as defined in 15-1-101.

~~(c)~~*(d)* The department shall also adopt rules for determining the value-weighted mean sales assessment ratio for all commercial and industrial real property and improvements.

(2) The department shall confer with, advise, and direct officers of municipal corporations concerning their duties, with respect to taxation, under the laws of the state.

(3) The department shall collect annually from the proper officers of the municipal corporations information, in a form prescribed by the department, about the assessment of property, collection of taxes, receipts from licenses and other sources, expenditure of public funds for all purposes, and other information as may be necessary and helpful in the work of the department. It is the duty of all public officers to fill out properly and return promptly to the department all forms and to aid the department in its work. The department shall examine the records of all municipal corporations for purposes considered necessary or helpful."

Section 2. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

Approved April 16, 1999

HeinOnline -- 1999 vol. II 1174 1999

CHAPTER NO. 315

[SB 22]

AN ACT INCLUDING PROBATION AND PAROLE OFFICERS, CORRECTIONS OFFICERS, AND COMMERCIAL VEHICLE INSPECTORS AS OFFICERS FOR WHOM THE BOARD OF CRIME CONTROL MAY ESTABLISH MINIMUM QUALIFYING STANDARDS FOR EMPLOYMENT; INCLUDING PROBATION AND PAROLE OFFICERS, CORRECTIONS OFFICERS, AND COMMERCIAL VEHICLE INSPECTORS AS OFFICERS FOR WHOM THE BOARD MAY REVOKE OR SUSPEND CERTIFICATION; AUTHORIZING THE BOARD TO ESTABLISH MINIMUM STANDARDS FOR TRAINING CORRECTIONS OFFICERS AND COMMERCIAL VEHICLE INSPECTORS; REQUIRING THAT ALL PROBATION AND PAROLE OFFICERS, CORRECTIONS OFFICERS, AND COMMERCIAL VEHICLE INSPECTORS HIRED AFTER SEPTEMBER 30, 1999, ATTEND AN APPROPRIATE BASIC COURSE; ALLOWING APPOINTING AUTHORITIES TO TERMINATE PROBATION AND PAROLE OFFICERS, CORRECTIONS OFFICERS, OR COMMERCIAL VEHICLE INSPECTORS FOR FAILURE TO SATISFACTORILY COMPLETE THE APPROPRIATE BASIC COURSE; DEFINING "CORRECTIONS OFFICER" AND "COMMERCIAL VEHICLE INSPECTOR"; AND AMENDING SECTIONS 44-4-301 AND 44-4-302, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 44-4-301, MCA, is amended to read:

"44-4-301. Functions. (1) As designated by the governor as the state planning agency under the Omnibus Crime Control and Safe Streets Act of 1968, as amended, the board of crime control shall perform the functions assigned to it under that act. The board shall also provide to criminal justice agencies technical assistance and supportive services that are approved by the board or assigned by the governor or legislature.

(2) The board may:

(a) establish minimum qualifying standards for employment of peace officers, as defined in 7-32-303, detention officers, detention center administrators, ~~and~~ public safety communications officers, *probation and parole officers, corrections officers, and commercial vehicle inspectors*; and

(b) develop procedures for revoking or suspending the certification of peace officers, as defined in 7-32-303, detention officers, detention center administrators, ~~and~~ public safety communications officers, *probation and parole officers, corrections officers, and commercial vehicle inspectors.*

(3) The board may require basic training for officers, establish minimum standards for equipment and procedures and for advanced inservice training for officers, establish minimum standards for the certification of public safety communications officers, establish minimum standards for the certification of motor carrier services division officers appointed under 61-12-201, and establish minimum standards for law enforcement and detention officer training schools administered by the state or any of its political subdivisions or agencies, to ensure the public health, welfare, and safety.

(4) The board may waive the minimum qualification standard provided in subsection (2) for good cause shown.

HeinOnline -- 1999 vol. II 1175 1999

(5) The board shall establish minimum standards for training of probation and parole officers, pursuant to 46-23-1003.

(6) The board shall establish minimum standards for training corrections officers and commercial vehicle inspectors.

(7) It is the duty of the appointing authority to cause each probation and parole officer, corrections officer, and commercial vehicle inspector appointed under its authority whose term of employment commenced after September 30, 1999, to attend and successfully complete within 6 months of employment, an appropriate basic course certified by the board. The appointing authority may terminate a probation and parole officer's, corrections officer's, or commercial vehicle inspector's employment for failure to:

(a) meet the minimum standards established by the board; or

(b) satisfactorily complete the appropriate basic course."

Section 2. Section 44-4-302, MCA, is amended to read:

"44-4-302. Definitions. As used in 44-4-301 and this section, the following definitions apply:

(1) "Commercial vehicle inspector" means a person authorized by the department of justice to conduct a motor carrier safety inspection pursuant to 44-1-1005.

(2) "Corrections officer" means a person who has full-time or part-time authority and responsibility for maintaining custody of inmates and who performs tasks related to the operation of a prison or juvenile correctional facility.

~~(1)~~*(3)* "Detention center" means a facility established and maintained by an appropriate entity for the purpose of confining arrested persons or persons sentenced to a detention center.

~~(2)~~*(4)* "Detention center administrator" means the sheriff, chief of police, administrator, superintendent, director, or other individual serving as the chief executive officer of a detention center or temporary detention center.

~~(3)~~*(5)* "Detention officer" means a person or a peace officer who has full-time or part-time authority and responsibility for maintaining custody of inmates and who performs tasks related to the operation of a detention center or temporary detention center.

~~(4)~~*(6)* "Public safety communications officer" means a person who receives requests for emergency services, as defined in 10-4-101, dispatches the appropriate emergency service units, and is certified under 7-31-203.

~~(5)~~*(7)* "Temporary detention center" means a facility for the temporary detention of an arrested person for up to 72 hours, excluding holidays, Saturdays, and Sundays. The period of time *that* a person is held in temporary detention may not exceed 96 hours."

Approved April 16, 1999

HeinOnline -- 1999 vol. II 1176 1999

CHAPTER NO. 316

[SB 132]

AN ACT REMOVING MOST INSURANCE FEES AND INSURANCE LICENSE FEES AND REPLACING THEM WITH A FLAT FEE FOR INSURERS APPLYING FOR OR RENEWING A CERTIFICATE OF AUTHORITY; ESTABLISHING CONTINUING EDUCATION COURSE REVIEW AND LATE RENEWAL FEES IN STATUTE RATHER THAN BY RULE WITHOUT INCREASING THE FEES; AMENDING SECTIONS 33-2-117, 33-2-126, 33-2-701, 33-2-708, 33-3-202, 33-3-203, 33-4-505, 33-17-211, 33-17-212, 33-17-214, 33-17-216, 33-17-221, 33-17-231, 33-17-301, 33-17-505, 33-17-1204, AND 33-17-1205, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-2-117, MCA, is amended to read:

"33-2-117. ~~Continuance~~ *Renewal*, expiration, reinstatement, and amendment of certificate of authority. (1) ~~Certificates~~ *A certificate* of authority issued or renewed under this code must continue in force as long as the insurer is entitled ~~thereto~~ under this code and until suspended, ~~or~~ revoked, or otherwise terminated. A certificate is subject to ~~continuance~~ *renewal* by the insurer each year by payment on or prior to March 1 of the ~~continuation~~ fee provided *for* in 33-2-708.

(2) If not continued by the insurer, the certificate of authority expires at midnight on May 31 following failure of the insurer to continue it in force. The commissioner shall promptly notify the insurer of its failure to pay the ~~continuation~~ fee that can result in the expiration of its certificate of authority.

(3) The commissioner may reinstate a certificate of authority that the insurer has inadvertently permitted to expire after the insurer cures any failures resulting in expiration and upon payment of ~~the~~ *a* fee *of $100* for reinstatement in addition to the ~~current continuation fee, as~~ *fee* provided *for* in 33-2-708. Otherwise, the insurer may be granted another certificate of authority only after filing an application and meeting all other requirements for an original certificate of authority in this state.

(4) The commissioner may amend a certificate of authority at any time to accord with changes in the insurer's charter of insuring powers."

Section 2. Section 33-2-126, MCA, is amended to read:

"33-2-126. Admission as domestic insurer — conversion to foreign insurer. (1) An insurer organized under the laws of any other state and admitted to do business in this state for the purposes of writing insurance may become a domestic insurer by complying with all of the laws relative to the organization and licensing of a domestic insurer of the same type, *and* designating its principal place of business in this state~~, and paying the filing fees specified in 33-2-708~~. An insurer complying with this subsection is entitled to a certificate of redomestication and a certificate of authority to transact business in this state, is subject to the authority and jurisdiction of this state, and has the same rights and obligations as other domestic insurers.

(2) A domestic insurer may, upon approval of the commissioner, transfer its domicile to any other state in which it is admitted to transact insurance. If the insurer is otherwise qualified, the commissioner shall approve a proposed

HeinOnline -- 1999 vol. II 1177 1999

transfer unless ~~he~~ *the commissioner* determines a transfer is not in the interest of the policyholders of this state. Upon a transfer, the insurer ceases to he a domestic insurer."

Section 3. Section 33-2-701, MCA, is amended to read:

"33-2-701. Annual statement — revocation or fine for failure to file — penalty for perjury. (1) Each authorized insurer shall annually on or before March 1 file with the commissioner a full and true statement of its financial condition, transactions, and affairs as of the preceding Decemher 31. The statement niust be in the general form and context as is required or not disapproved by the commissioner, as is in current use for similar reports to states in general with respect to the type of insurer and kinds of insurance to he reported upon, and as supplemented for additional information required by the commissioner. The statement must be completed in accordance with the annual statement instructions and the accounting practices and procedures manual of the national association of insurance commissioners. The statement must be accompanied by an actuarial opinion attesting to the adequacy of the insurer's reserves. The statement must be verified by the oath of the insurer's president or ~~vice-president~~ *vice president* and secretary or, if a reciprocal insurer, by the oath of the attorney-in-fact or its like officers if a corporation. Tbe commissioner may waive the verification under oath.

(2) (a) Each domestic insurer shall file electronic diskette versions of its annual and quarterly financial statements with the national association of insurance commissioners. The filing date for submission of the annual statement diskette is March 1. The filing dates for the quarterly statement diskettes are as follows:

(i) the first calendar quarter filing is due May 15;

(ii) the second calendar quarter filing is due August 15; and

(iii) the third calendar quarter filing is due November 15.

(b) The commissioner may exempt insurers that operate only in Montana from these filing requirements.

(3) The statement of an alien insurer must relate only to its transactions and affairs in the United States unless the commissioner requires otherwise. If the commissioner requires a statement as to an alien insurer's affairs throughout the world, the insurer shall file the statement with the commissioner as soon as reasonably possible. The statement must be verified by the insurer's United States manager or otber authorized officer.

(4) Tbe commissioner may refuse to accept the fee for ~~continuance~~ *renewal* of the insurer's certificate of authority, as provided in 33-2-117, or may suspend or revoke the certificate of authority of any insurer failing to file its annual statement when due or within an extension of time that the commissioner may grant.

(5) Any director, officer, ~~or~~ insurance producer, or employee of any company who suhscribes to, makes, or concurs in making or publishing any annual statement or any other statement required by law knowing that the statement contains any material statement ~~which~~ *that* is false shall be punished by a fine of not more than $1,000.

~~(6) At time of filing, the insurer shall pay to the commissioner the fee for filing its statement as prescribed in 33-2-708.~~

HeinOnline -- 1999 vol. II 1178 1999

~~(7)~~*(6)* The commissioner may impose a fine not to exceed $100 a day for each day after March 1 that an insurer fails to file the annual statement referred to in subsection (1). The fine may not exceed a maximum of $1,000."

Section 4. Section 33-2-708, MCA, is amended to read:

"33-2-708. Fees and licenses. (1) *(a)* Except as provided in 33-17-212(2), the commissioner shall collect *a fee of $1,900 from each insurer applying for or annually renewing a certificate of authority to conduct the business of insurance in Montana.* ~~and the persons served shall pay to the commissioner the following fees:~~

~~(a) certificates of authority:~~

~~(i) for filing applications for original certificates of authority, articles of incorporation, except original articles of incorporation of domestic insurers as provided in subsection (1)(b), and other charter documents, bylaws, financial statement, examination report, power of attorney to the commissioner, and all other documents and filings required in connection with the application and for issuance of an original certificate of authority, if issued:~~

~~(A) domestic insurers ..... $600.00~~

~~(B) foreign insurers ..... 600.00~~

~~(ii) annual continuation of certificate of authority ..... 600.00~~

~~(iii) reinstatement of certificate of authority ..... 25.00~~

~~(iv) amendment of certificate of authority ..... 50.00~~

~~(b) articles of incorporation:~~

~~(i) filing original articles of incorporation of a domestic insurer, exclusive of fees required to be paid by the corporation to the secretary of state ..... 20.00~~

~~(ii) filing amendment of articles of incorporation, domestic and foreign insurers, exclusive of fees required to be paid to the secretary of state by a domestic corporation ..... 25.00~~

~~(c) filing bylaws or amendment to bylaws when required ..... 10.00~~

~~(d) filing annual statement of insurer, other than as part of application for original certificate of authority ..... 25.00~~

~~(e) insurance producer's license:~~

~~(i) application for original license, including issuance of license, if issued ..... 10.00~~

~~(ii) appointment of insurance producer, each insurer, electronically filed ..... 10.00~~

~~(iii) appointment of insurance producer, each insurer, nonelectronically filed15.00~~

~~(iv) temporary license ..... 10.00~~

~~(v) amendment of license, excluding additions to license, or reissuance of master license ..... 15.00~~

~~(vi) termination of insurance producer, each insurer, electronically filed ..... 10.00~~

~~(vii) termination of insurance producer, each insurer, nonelectronically filed ..... 15.00~~

~~(f)~~*(b) The commissioner shall collect certain additional fees as follows:*

(i) nonresident insurance producer's license:

~~(i)~~*(A)* application for original license, including issuance of license, if issued 100.00

~~(ii) appointment of insurance producer, each insurer, electronically filed ..... 15.00~~

~~(iii) appointment of insurance producer, each insurer, nonelectronically filed ..... 15.00~~

~~(iv)~~*(B)* annual renewal of license 10.00

~~(v) amendment of license, excluding additions to license, or reissuance of master license ..... 15.00~~

~~(vi) termination of insurance producer, each insurer, electronically filed ..... 10.00~~

~~(vii) termination of insurance producer, each insurer, nonelectronically filed ..... 15.00~~

~~(g) examination, if administered by the commissioner, for license as insurance producer, each examination ..... 15.00~~

~~(h)~~*(ii)* surplus lines insurance producer license:

~~(i)~~*(A)* application for original license and for issuance of license, if issued 50.00

~~(ii)~~*(B)* annual renewal of license 50.00

~~(i) adjuster's license:~~

~~(i) application for original license and for issuance of license, if issued ..... 15.00~~

~~(ii) annual renewal of license ..... 15.00~~

~~(j) insurance vending machine license, each machine, each year ..... 10.00~~

~~(k) motor club representative's license:~~

~~(i) application for original license and issuance of license, if issued ..... 15.00~~

~~(ii) annual renewal of license ..... 15.00~~

~~(l) commissioner's certificate under seal, except when on certificates of authority or licenses ..... 10.00~~

~~(m)~~*(iii) 50 cents for each page for* copies of documents on file in the commissioner's office.~~, per page ..... .50~~

~~(n) policy forms:~~

~~(i) filing each policy form ..... 25.00~~

~~(ii) filing each application, certificate, enrollment form, rider, endorsement, amendment, insert page, schedule of rates, and clarification of risks ..... 10.00~~

~~(iii) maximum charge if policy and all forms submitted at one time or re-submitted for approval within 180 days, provided that all additional forms relate to the same policy..... 100.00~~

(2) *(a)* The commissioner shall ~~establish by rule fees commensurate with costs for filing documents and conducting the course reviews required by 33-17-1204 and 33-17-1205~~ *charge a fee of $75 for each course or program submitted for review as required by 33-17-1204 and 33-17-1205, but may not charge more than $1,500 to a sponsoring organization submitting courses or programs for review in any biennium.*

(b) Insurers and associations composed of members of the insurance industry are exempt from the charge in subsection (2)(a).

~~(3) The commissioner shall establish by rule an annual accreditation fee to be paid by each domestic and foreign insurer when it submits a fee for annual continuation of its certificate of authority.~~

~~(4) (a) Except as provided in subsection (4)(b), the~~

(3) The commissioner shall promptly deposit with the state treasurer to the credit of the general fund all fines and penalties~~,~~ *and* those amounts received pursuant to 33-2-311, 33-2-705, and 33-2-706~~, and any fees and examination and miscellaneous charges that are~~ *All other fees* collected by the commissioner pursuant to Title 33 and the rules adopted under Title 33~~, except that all fees for filing documents and conducting the course reviews required by 33-17-1204 and 33-17-1205~~ must be deposited in the state special revenue fund ~~pursuant to 33-17-1207~~ *to the credit of the state auditor's office.*

~~(b) The accreditation fee required by subsection (3) and the annual renewal of license fee established in subsection (1)(f)(iv) must be turned over promptly to the state treasurer who shall deposit the money in the state special revenue fund to the credit of the commissioner's office. The accreditation fee funds must be used only to pay the expenses of the commissioner's office in discharging the administrative and regulatory duties that are required to meet the minimum financial regulatory standards established by the national association of insurance commissioners, subject to the applicable laws relating to the appropriation of state funds and to the deposit and expenditure of money. The commissioner is responsible for the proper expenditure of the accreditation money and the renewal fee.~~

~~(5)~~ *(4)* All fees are considered fully earned when received. In the event of overpayment, only those amounts in excess of $10 will be refunded."

Section 5. Section 33-3-202, MCA, is amended to read:

"33-3-202. Articles of incorporation — filing and approval. (1) The incorporators of a proposed domestic insurer shall deliver the quadruplicate originals of the articles of incorporation to the commissioner ~~together with the filing fees therefor specified in 33-2-708~~. The commissioner shall examine the proposed articles of incorporation. If the commissioner finds that the articles comply with this chapter and are not in conflict with the constitution and laws of the United States or of this state, ~~he~~ *the commissioner* shall ~~endorse his approval upon~~ *approve in writing* each set of the articles, except that if the commissioner finds that the proposed insurer would not be eligible for a certificate of authority under 33-2-112, ~~he~~ *the commissioner* shall refuse to approve the articles of incorporation and shall return them to the proposed

HeinOnline -- 1999 vol. II 1181 1999

incorporators together with a written statement of the reasons for ~~such~~ refusal. ~~If approved by him, the~~ *The* commissioner shall ~~then~~ forward the *approved* articles of incorporation~~, with his approval endorsed thereon,~~ to the incorporators. The incorporators shall ~~forthwith~~ *subsequently* file one set of the articles of incorporation with the secretary of state, one set with the commissioner, bearing the certification of the secretary of state, and one set with the county clerk of the county ~~wherein is to be located~~ *in which* the corporation's principal place of business *will be located*~~;~~, and the remaining set of articles ~~shall~~ *must* be made a part of the corporation's record.

(2) If the commissioner finds that the proposed articles of incorporation do not comply with law, ~~he~~ *the commissioner* shall refuse to approve the ~~same~~ *proposed articles of incorporation* and shall return all sets of the proposed articles of incorporation to the proposed incorporators together with a written statement of the reasons for ~~his~~ *the* refusal to approve.

(3) The corporation shall ~~have legal existence as such~~ *enter into legal existence* upon the issuance of the certificate of incorporation by the secretary of state and the completion of the filings referred to in subsection (1) ~~above~~, but ~~it shall~~ *the corporation may* not transact business as an insurer until it has qualified for and received from the commissioner a certificate of authority as provided in this code.

(4) A copy of the certificate of incorporation, ~~duly~~ certified by the secretary of state, ~~shall be~~ *is* admissible in all the courts of this state as prima facie evidence of ~~due~~ incorporation."

Section 6. Section 33-3-203, MCA, is amended to read:

"33-3-203. Amendment of articles of incorporation — grounds for disapproval. (1) A domestic stock insurer may amend its articles of incorporation for any lawful purpose by written authorization of the holders of a majority of the voting power of its outstanding capital stock or by affirmative vote of ~~such~~ a majority voting at a lawful meeting of stockholders of which the notice given to stockholders included ~~due~~ notice of the proposal to amend.

(2) A domestic mutual insurer ~~heretofore or hereafter formed~~ may amend its articles of incorporation for any lawful purpose by affirmative vote of a majority of those of its members present or represented by proxy at a lawful meeting of its members of which the notice given members included ~~due~~ notice of the proposal to amend.

(3) Upon adoption of ~~such~~ an amendment the insurer shall make in quadruplicate under its corporate seal a certificate (sometimes referred to as "articles of amendment") setting forth ~~such~~ *the* amendment and the date and manner of the *amendment's* adoption ~~thereof, which~~. *The* certificate ~~shall~~ *must* be executed by the insurer's president or ~~vice president~~ *vice president* and secretary or assistant secretary and acknowledged by them before an officer authorized by law to take acknowledgments of deeds. The insurer shall deliver to the commissioner the quadruplicate originals of the certificate~~, together with the filing fee specified therefor in 33-2-708~~. If ~~he~~ *the commissioner* finds that the certificate and amendments comply with law, the commissioner shall ~~endorse his approval upon~~ *approve in writing* each of the quadruplicate originals and return them to the insurer. The insurer shall ~~forthwith~~ *subsequently* file one set of ~~such~~ endorsed articles of amendment with the secretary of state, one set with the commissioner, bearing the certification of the secretary of state, *and* one set with

HeinOnline -- 1999 vol. II 1182 1999

the county clerk of the county in which ~~is located~~ the insurer's principal place of business *will be located*~~,~~ and *shall* retain the remaining set in the corporate records. The amendment ~~shall be~~ *is* effective when ~~such~~ *the* filings have been completed.

(4) If the commissioner finds that the proposed amendment or certificate does not comply with the law, ~~he shall~~ *the commissioner may* not approve the ~~same~~ *amendment or certificate* and shall return the quadruplicate certificate of amendment to the insurer together with ~~his~~ *a* written statement of reasons for nonapproval. The filing fee ~~shall not be~~ *is not* returnable.

(5) If an amendment of articles of incorporation would reduce the authorized capital stock of a stock insurer below the amount ~~thereof~~ then outstanding, the commissioner ~~shall~~ *may* not approve the amendment if ~~he~~ *the commissioner* has reason to believe that the interests of policyholders or creditors of the insurer would be materially prejudiced by ~~such~~ *the* reduction. If ~~any such~~ *a* reduction of capital stock is effectuated, the insurer may require return of the original certificates of stock held by each stockholder for exchange for new certificates for ~~such~~ *the* number of shares as ~~such~~ *the* stockholder is then entitled in the proportion that the reduced capital bears to the amount of capital stock outstanding as of immediately prior to the effective date of ~~such~~ *the* reduction."

Section 7. Section 33-4-505, MCA, is amended to read:

"33-4-505. Certificate of authority required — issuance — continuation — fee. (1) A farm mutual insurer may not insure any risk in this state unless it then holds a subsisting certificate of authority issued to it by the commissioner.

(2) Upon application, ~~therefor~~ the commissioner shall issue ~~such~~ a certificate of authority to every insurer qualified ~~therefor~~ under this chapter.

(3) Every ~~such~~ certificate of authority continues in force as long as the farm mutual insurer is entitled ~~thereto~~ under this chapter and until suspended, revoked, or otherwise terminated; subject, however, to continuance of the certificate by the farm mutual insurer each year by payment before May 15 of the continuation fee of $10 if a county mutual insurer or $25 if a state mutual insurer, to be deposited by the commissioner with the state treasurer to the credit of the state general fund.

(4) If the farm mutual insurer does not continue its certificate of authority in accordance with subsection (3), its certificate of authority expires at midnigbt on May 31 next following its failure to continue it in force. The commissioner shall promptly notify a farm mutual insurer that has not continued its certificate of authority of tbe impending expiration of its certificate of authority.

(5) A certificate of authority is subject to suspension or revocation by the commissioner for violation of or noncompliance with any provision of this chapter or referred to ~~herein~~ *in this chapter*.

(6) The commissioner may ~~in his discretion~~ reinstate a certificate of authority that a farm mutual insurer has inadvertently permitted to expire, after the farm mutual insurer has fully cured all failures that resulted in the expiration and upon payment by the farm mutual insurer of ~~the fee for reinstatement as provided in 33-2-708 in addition to~~ the current continuation fee as provided in subsection (3). If a certificate is not reinstated, the commissioner may grant a farm mutual insurer another certificate of authority only after the farm mutual insurer files

HeinOnline -- 1999 vol. II 1183 1999

an application for a certificate of authority and meets all other requirements for an original certificate of authority in this state.

(7) The commissioner may amend a certificate of authority at any time to accord with changes in the farm mutual insurer's charter of insuring powers."

Section 8. Section 33-17-211, MCA, is amended to read:

"33-17-211. General qualifications — application for license. (1) An individual applying for a license shall apply on a form specified by the commissioner and declare under penalty of refusal, suspension, or revocation of the license that statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. Before approving the application, the commissioner shall verify that the individual:

(a) is 18 years of age or older;

(b) has not committed an act that is a ground for refusal, suspension, or revocation as set forth in 33-17-1001;

(c) has paid the license fees stated in 33-2-708;

(d) has successfully passed the examinations for each kind of insurance for which the individual has applied within 12 months of application;

(e) is a resident of this state or of another state that grants similar privileges to residents of this state. Licenses issued based upon Montana state residency terminate if the licensee relocates to another state;

(f) is competent, trustworthy, and of good reputation;

(g) has experience or training or otherwise is qualified in the kind or kinds of insurance for which the applicant applies to be licensed and is reasonably familiar with the provisions of this code which govern the applicant's operations as an insurance producer; and

(h) if applying for a license as to life or disability insurance:

(i) is not a funeral director, undertaker, or mortician operating in this or any other state;

(ii) is not an officer, employee, or representative of a funeral director, undertaker, or mortician operating in this or any other state; or

(iii) does not hold an interest in or benefit from a business of a funeral director, undertaker, or mortician operating in this or any other state.

(2) A person acting as an insurance producer shall obtain a license. A person shall apply for a license on a form specified by the commissioner. Before approving the application, the commissioner shall verify that:

(a) the person meets the requirements listed in subsection (1);

(b) the person has paid the licensing fees stated in 33-2-708 for each individual licensed in conjunction with the person's license. A licensed person shall promptly notify the commissioner of each change relating to an individual listed in the license.

(c) the person has designated a licensed officer responsible for compliance by the person with the insurance laws and rules of this state;

HeinOnline -- 1999 vol. II 1184 1999

(d) each member and employee of a partnership and each officer, director, stockholder, or employee of a corporation who is acting as an insurance producer in this state has obtained a license;

(e) (i) if the person is a partnership or corporation, the transaction of insurance business is within the purposes stated in the partnership agreement or the articles of incorporation; and

(ii) if the person is a corporation, the secretary of state has issued a certificate of existence or authorization under 35-1-1312 or filed articles of incorporation under 35-1-220.

(3) The commissioner may license as a resident insurance producer an association of licensed Montana insurance producers, whether or not incorporated, formed and existing substantially for purposes other than insurance. The license must be used solely for the purpose of enabling the association to place, as a resident insurance producer, insurance of the properties, interests, and risks of the state of Montana and of other public agencies, bodies, and institutions and to receive the customary commission for the placement. The president and secretary of the association shall apply for the license in the name of the association, and the commissioner shall issue the license to the association in its name alone. The fee for the license is the same as that required by 33-2-708*(1)(a)* ~~for the license of an insurance producer~~. The commissioner may, after a hearing with notice to the association, revoke the license if the commissioner finds that continuation of the license is not in the public interest or that a ground listed in 33-17-1001 exists.

(4) An insurance producer using an assumed business name shall register the name with the commissioner before using it."

Section 9. Section 33-17-212, MCA, is amended to read:

"33-17-212. Examination required — exceptions — fees. (1) Except as provided in subsection ~~(7)~~*(6)*, an individual applying for a license ~~shall~~ *is required to* pass a written examination. The examination must test the knowledge of the individual concerning each kind of insurance listed in subsection ~~(6)~~*(5)* for which application is made, the duties and responsibilities of an insurance producer, and the insurance laws and rules of this state. The examination must be developed and conducted under rules adopted by the commissioner.

(2) The commissioner may conduct the examination or make arrangements, including contracting with an outside testing service, for administering the examination ~~and collecting the fees required by 33-2-708~~. The commissioner may arrange for the testing service to recover the cost of the examination from the applicant.

~~(3) Each individual applying for an examination shall remit the fees required by 33-2-708.~~

~~(4)~~*(3)* An individual who fails to appear for the examination as scheduled or fails to pass the examination may reapply for an examination and shall remit all ~~required fees and~~ forms before being rescheduled for another examination.

~~(5)~~*(4)* If the applicant is a partnership or corporation, each individual who is to be named in the license as having authority to act for the applicant in its insurance transactions under the license shall take the examination.

HeinOnline -- 1999 vol. II 1185 1999

~~(6)~~*(5)* Examination of an applicant for a license must cover all of the kinds of insurance for which the applicant has applied to be licensed, as constituted by any one or more of the following classifications:

(a) life insurance;

(b) disability insurance;

(c) property insurance. For the purposes of this provision, property insurance includes marine insurance.

(d) casualty insurance;

(e) surety insurance;

(f) credit life and disability insurance;

(g) title insurance.

~~(7)~~*(6)* This section does not apply to and an examination is not required of:

(a) an individual lawfully licensed as an insurance producer as to the kind or kinds of insurance to be transacted as of or immediately prior to January 1, 1961, and who continues to be licensed;

(b) an applicant for a license covering the same kind or kinds of insurance as to which the applicant was licensed in this state, other than under a temporary license, within the 12 months immediately preceding the date of application unless the commissioner has suspended, revoked, or refused to continue the previous license, except that this subsection ~~(7)(b)~~*(6)(b)* does not apply to a title insurance producer, as defined in 33-25-105;

(c) an applicant for a license as a nonresident insurance producer;

(d) an applicant for a license to sell all-risk federal crop insurance if the applicant provides certification from an appropriate governmental agency to the commissioner that the applicant is qualified to sell the insurance;

(e) transportation ticket agents of common carriers applying for a license to solicit and sell only:

(i) accident insurance ticket policies; or

(ii) insurance of personal effects while being carried as baggage on a common carrier, as incidental to their duties as transportation ticket agents;

(f) an association applying for a license under 33-17-211;

(g) a mechanical breakdown insurance producer;

(h) a service contract insurance producer; or

(i) an individual who, within 60 days of cancellation of a license issued by the state of the individual's residence, files with the commissioner a current letter of clearance certifying that the individual has passed an examination and held an insurance license in good standing in the individual's state of licensure, except that the individual shall take an examination pertaining to this state's law and each kind of insurance for which the individual has applied for a license and that is not covered under the license held in the other state."

Section 10. Section 33-17-214, MCA, is amended to read:

HeinOnline -- 1999 vol. II 1186 1999

"33-17-214. Issuance of license — contents — lapse of license — change of address. (1) The commissioner shall promptly issue a license to a person pursuant to 33-17-211 and 33-17-212.

(2) The license must state the name and address of the licensee, personal identification number, date of issuance, general conditions relative to expiration or termination, kind of insurance covered, and ~~such~~ other information as the commissioner considers necessary.

(3) The license of a partnership, corporation, or association must also state the name of each individual authorized to exercise the license powers.

(4) Each license remains in effect, unless suspended or revoked~~, as long as the fees required by 33-2-708 are paid~~.

~~(5) An individual who allows his license to lapse may, within 12 months from the due date of the unpaid annual fee, apply for the same license without having to pass a written examination if he pays a penalty in the amount of two the unpaid annual fee.~~

~~(6)~~*(5)* A person shall inform the commissioner in writing of a change of address within 30 days of the change."

Section 11. Section 33-17-216, MCA, is amended to read:

"33-17-216. Temporary insurance producer license ~~fee~~. (1) The commissioner may issue a temporary license to or with respect to an individual qualified for the temporary license only as to age, residence, and trustworthiness and without requiring the individual to take an examination, in the following cases:

(a) to the surviving spouse or next of kin or to the administrator or executor, or the employee of the administrator or executor, of a licensed insurance producer upon the insurance producer's death;

(b) to the spouse, next of kin, employee, or legal guardian of a licensed insurance producer disabled by injury or physical or mental illness;

(c) to an employee of a partnership, or officer or employee of a corporation, licensed as an insurance producer, upon the death or disability of an individual designated in the license to exercise the powers of an insurance producer;

(d) to the designee of a licensed insurance producer entering upon active service in the armed forces of the United States of America;

(e) in any other circumstance in which the commissioner finds that the public interest will best be served by issuing ~~such~~ a *temporary* license.

(2) The temporary license must be issued upon application filed with the commissioner in the form and containing the information as the commissioner may reasonably require ~~and upon payment of the applicable fee as provided in 33-2-708~~.

(3) The temporary license must be for a period of not over 90 days, subject to extension ~~by the commissioner in his~~ *at the commissioner's* discretion for an additional period of not more than 90 days, except that a temporary license issued pursuant to subsection (1)(a) may be continued ~~without payment of an additional fee~~ until the executor or administrator disposes of the insurance business, but not to exceed a period of 15 months. A temporary license issued to the next of kin

HeinOnline -- 1999 vol. II 1187 1999

under subsection (1)(a) may not be extended for an additional term after the appointment and qualification of the administrator or executor.

~~(4) The fee paid for the temporary license may be applied upon the fee required for a permanent license issued to the licensee upon or prior to expiration of the temporary license and covering the same kinds of insurance.~~"

Section 12. Section 33-17-221, MCA, is amended to read:

"**33-17-221. Licensing insurance vending machines.** (1) A licensed resident insurance producer may solicit applications for and issue policies of personal travel accident insurance by means of mechanical vending machines supervised hy ~~him~~ *the insurance producer* and placed at airports, railroad stations, bus stations, and similar places where transportation tickets are sold and of convenience to the traveling public, if the commissioner finds that:

(a) the policy to be sold provides reasonable coverage and benefits, is reasonably suited for sale and issuance through a mechanical vending machine, and use of a mechanical vending machine to sell or issue a policy in a particular proposed location would be of material convenience to the public;

(b) the type of mechanical vending machine proposed to be used is reasonably suitable and practical for the purpose;

(c) reasonable means are provided for informing the prospective purchaser of any policy of the coverage and restrictions of the policy; and

(d) reasonable means are provided for refund to the applicant or prospective applicant of money inserted in a defective mechanical vending machine and for which no insurance or a less amount than that paid for is actually received.

(2) ~~As to each mechanical vending machine to be used to sell or issue a policy, the~~ *The* commissioner shall issue to the insurance producer a special mechanical vending machine license *for each mechanical vending machine to be used to sell or issue a policy*. The license must specify the name and address of the insurer and insurance producer, the name of the policy to be sold or issued through the mechanical vending machine, the serial number of the mechanical vending machine, and the place where the machine will operate. The license is subject to annual continuation, expiration, suspension, or revocation coincidentally with that of the insurance producer. The commissioner shall also revoke the license of a mechanical vending machine if ~~he~~ *the commissioner* finds that the conditions upon which the machine was licensed, as referred to in subsection (1), no longer exist. ~~The license fee is as provided in 33-2-708 for each license year or part of the year for each respective mechanical vending machine.~~ Proof of the existence of a subsisting license must he displayed on or about each mechanical vending machine in use in the manner that the commissioner may reasonably require."

Section 13. Section 33-17-231, MCA, is amended to read:

"**33-17-231. Appointment of insurance producers — continuation and termination.** (1) Each insurer appointing an insurance producer in this state shall file with the commissioner the appointment, specifying the kinds of insurance to be transacted by the insurance producer for the insurer~~, and pay the fee as stated in 33-2-708~~. The appointment may be electronically filed pursuant to rules adopted by the commissioner.

(2) Each appointment remains in effect until the insurance producer's license is revoked or otherwise terminated unless written notice of earlier termination of the appointment is filed with the commissioner by the insurer or

HeinOnline -- 1999 vol. II 1188 1999

the insurance producer. The written notice may be electronically filed pursuant to rules adopted by the commissioner. Termination of the insurer's authority in Montana also terminates the appointment.

(3) Subject to the insurance producer's contract rights, an insurer may terminate an insurance producer's appointment at any time. The insurer shall promptly give written notice of the termination to the commissioner and to the insurance producer. The commissioner may require reasonable proof that the insurer has given notice to the insurance producer.

(4) As part of the notice of termination given the commissioner, the insurer shall file with the commissioner a statement of the facts relative to the termination and the cause of termination. Any information or statement contained in the notice of termination is not admissible as evidence in any action or proceeding against the insurer or any representative of the insurer by or on behalf of any person affected by the termination."

Section 14. Section 33-17-301, MCA, is amended to read:

"33-17-301. Adjuster license — qualifications — catastrophe adjustments — public adjuster. (1) A person may not act as or ~~hold the person out~~ *purport* to be an adjuster in this state unless licensed as an adjuster under this chapter. A person shall apply for an adjuster license to the commissioner according to forms that the commissioner prescribes and furnishes. The commissioner shall issue the adjuster license to individuals qualified to be licensed as an adjuster ~~upon payment of the license fee provided in 33-2-708~~.

(2) To be licensed as an adjuster, the applicant:

(a) must be an individual 18 years of age or more;

(b) must be a resident of Montana or resident of another state that will permit residents of Montana regularly to act as adjusters in the other state;

(c) must be a full-time salaried employee of a licensed adjuster or a graduate of a recognized law school or have had experience or special education or training as to the handling of loss claims under insurance contracts of sufficient duration and extent reasonably to make the applicant competent to fulfill the responsibilities of an adjuster;

(d) must be trustworthy and of good character and reputation; and

(e) must have and shall maintain in this state an office accessible to the public and shall keep in the office for not less than 5 years the usual and customary records pertaining to transactions under the license. This provision does not prohibit maintenance of the office in the home of the licensee.

(3) A partnership or corporation, whether or not organized under the laws of this state, may be licensed as an adjuster if each individual who is to exercise the adjuster license powers is separately licensed or is named in the partnership or corporation adjuster license and is qualified for an individual adjuster license. ~~An additional full license fee must be paid for each individual in excess of one named in the partnership or corporation adjuster license to exercise its powers.~~

(4) An adjuster license or qualifications are not required for an adjuster who is sent into this state by and on behalf of an insurer or adjusting partnership or corporation for the purpose of investigating or making adjustments of a particular loss under an insurance policy or for the adjustment of a series of losses resulting from a catastrophe common to all losses.

HeinOnline -- 1999 vol. II 1189 1999

(5) An adjuster license continues in force until expired, suspended, revoked, or terminated. The license is subject to ~~annual payment to the commissioner of the renewal fee required by 33-2-708, accompanied by a written request for renewal~~ *renewal upon written request to the commissioner.*

(6) The commissioner may adopt rules providing for the examination, licensure, bonding, and regulation of public adjusters."

Section 15. Section 33-17-505, MCA, is amended to read:

"33-17-505. Qualification ~~—fee~~ *examination.* ~~(1)~~ In order to determine the competency of an applicant for a consultant license, the commissioner shall require the applicant to pass an examination.

~~(2) The fee for taking the consultant license examination is $50. The commissioner shall deposit all fees collected in the general fund. The fee for taking a second or subsequent examination may be no more than the cost of administering the examination, not to exceed $50.~~"

Section 16. Section 33-17-1204, MCA, is amended to read:

"33-17-1204. Review and approval of continuing education courses by commissioner — advisory council. (1) The commissioner shall, after review by and at the recommendations of the advisory council established under subsection (2), approve only those continuing education courses, lectures, seminars, and instructional programs that the commissioner determines would improve the product knowledge, management, ethics, or marketing capability of the licensee. Course content, instructors, material, instructional format, and the sponsoring organization must be approved and periodically reviewed by the commissioner. The ~~filing~~ fee ~~and process~~ for approval of a course, lecture, seminar, or instructional program ~~must be determined by the commissioner by rule~~ *is listed in 33-2-708(2).* The commissioner shall also determine the number of credit hours to be awarded for completion of an approved continuing education activity.

(2) The commissioner shall appoint an advisory council, pursuant to 2-15-122, consisting of one representative of the independent insurance agents of Montana, one representative of the Montana association of life underwriters, one representative of the professional insurance agents of Montana, two public members who are not directly employed by the insurance industry, one insurance producer or consultant not affiliated with any of the three listed organizations, and a nonvoting presiding officer from the department who will be appointed by the commissioner as a representative of the department. The members of the council shall serve a term of 2 years, except that the initial term of the representative from each organization is 3 years. The commissioner shall consult with the council in formulating rules and standards for the approval of continuing education activities and prior to approving specific education activities. The provisions of 2-15-122(9) and (10) do not apply to this council.

(3) In conducting periodic review of course content, instructors, material, instructional format, or a sponsoring organization, the commissioner may exercise any investigative power of the commissioner provided for in 33-1-311 or 33-1-315.

(4) If after review or investigation the commissioner determines an approved continuing education activity is not being operated in compliance with the standards established under this section, the commissioner may revoke approval,

HeinOnline -- 1999 vol. II 1190 1999

place the activity under probationary approval, or issue a cease and desist order under 33-1-318."

Section 17. Section 33-17-1205, MCA, is amended to read:

"33-17-1205. Complianee — failure to comply. (1) Each person subject to the requirements of 33-17-1203 shall file annually on a form supplied by the commissioner written certification as to the approved courses, lectures, seminars, and instructional programs successfully completed by that person during the preceding calendar year. ~~The form must be accompanied with a filing fee established by the commissioner.~~

(2) The commissioner may suspend the license of any person failing to comply with subsection (1) who has not been granted an extension under 33-17-1203 and may impose a late renewal fee ~~in the amount of twice the annual filing fee~~ *of $20, which is the same amount previously determined by an administrative rule in effect on November 3, 1998.* The suspension must remain in effect until the time that the person demonstrates to the satisfaction of the commissioner that the person has complied with all the provisions of this part. If the license of an insurance producer or consultant is suspended by reason of this section for a period exceeding 12 months, the license must be terminated upon notice to the insurance producer or consultant.

(3) Each person providing approved courses, lectures, seminars, and instructional programs, including insurance company education programs, shall file annually with the commissioner an alphabetical list of the names and addresses of all persons who have successfully completed an approved continuing education activity during the preceding calendar year.

(4) The commissioner may, following the process provided for in 33-1-314, withdraw approval of all courses, lectures, seminars, and instructional programs of any person that fails to comply with subsection (3). The commissioner may, after having conducted a hearing pursuant to 33-1-701, impose a fine upon a person that has failed to comply with subsection (3). The fine may not exceed tbe penalty permitted by 33-1-317."

Section 18. Effective date. [This act] is effective January 1, 2000, with the application and renewal fee in 33-2-708 being due March 1, 2000, for tax year 1999.

Approved April 16, 1999

CHAPTER NO. 317

[SB 154]

AN ACT ELIMINATING THE RESTRICTION THAT THE LONG SEMITRAILER CARGO UNIT OF A ROCKY MOUNTAIN DOUBLE VEHICLE COMBINATION MAY NOT EXCEED 48 FEET IN LENGTH; ESTABLISHING A $125 ANNUAL FEE FOR A NONDIVISIBLE LOAD PERMIT; DEFINING "NONDIVISIBLE LOAD"; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-10-124, MCA, is amended to read:

HeinOnline -- 1999 vol. II 1191 1999

"61-10-124. Special permits — fees. (1) Except as provided in subsections (2)(b), (2)(d), and (4), in addition to the regular registration and gross vehicle weight fees, a fee of $10 for each trip permit and a fee of $75 for each term permit issued for size in excess of that specified in 61-10-101 through 61-10-104 must be paid for all movements under special permits on the public highways under the jurisdiction of the department of transportation.

(2) (a) Except as provided in subsections (2)(b), (2)(d), *(2)(f),* (4), and (5), term or blanket permits may not be issued for an overwidth vehicle, combination of vehicles, load, or other thing in excess of 15 feet; an overlength vehicle, combination of vehicles, load, object, or other thing in excess of 95 feet; or an overheight vehicle, combination of vehicles, load, or other thing in excess of 14 feet or of a limit determined by the department. A vehicle, combination of vehicles, load, or other thing in excess of these dimensions is limited to trip permits. A Rocky Mountain double may not exceed 81 feet in combined trailer length~~, and the long semitrailer cargo unit of the combination may not exceed 48 feet in length~~. A Rocky Mountain double is not subject to a combination length limit. Special permits for vehicle combinations of more than two trailers or more than two units designed for or used to carry a load are not permitted except as provided in subsections (4) and (5). Special permits for vehicle combinations may specify and special permits under subsections (4) and (5) must specify highway routing and otherwise limit or prescribe conditions of operation of the vehicle or combination, including but not limited to required equipment, speed, stability, operational procedures, and insurance.

(b) A term permit may be issued to a dealer in implements of husbandry and self-propelled machinery for an overwidth or overlength vehicle referred to in subsection (2)(a). The fee for this permit is $75. This permit expires on December 31 of each year, with no grace period.

(c) With payment of the appropriate gross weight fees required by 61-10-201 and with payment of the fee prescribed in subsection (1), allowable gross weight of a five-axle combination logging vehicle is 80,000 pounds.

(d) A term permit may be issued for any combination of vehicles that exceeds 95 feet in length but does not exceed 100 feet in combination length, except a truck-trailer-trailer or a truck tractor-semitrailer-trailer-trailer combination, for travel only on highways that are part of the federal-aid interstate system, as defined in 60-1-103, or on other highways within a 2-mile radius of an interchange on the interstate system in order to obtain necessary services or to load or unload at a terminal. When a terminal is beyond a 2-mile radius, the department may authorize travel between the terminal and the interchange. The fee for this permit is $125.

(e) A term permit may be issued for a truck tractor-semitrailer combination when the semitrailer exceeds 53 feet in length but does not exceed 57 feet in length.

(f) (i) An annual permit may be issued for nondivisible loads up to 120 feet in length. The fee for this permit is $125.

(ii) Portions of a nondivisible load hauled on a public road off of the interstate highway may be detached and reloaded on the same hauling unit if the separate pieces are necessary to the operation of the machine or equipment that is being hauled and if the arrangement does not exceed limits for which a permit may be issued.

HeinOnline -- 1999 vol. II 1192 1999

(iii) An applicant for a nondivisible load permit for use as provided in subsection (6)(b) is responsible for providing information regarding the number of work hours required to dismantle the load.

(iv) For use as provided in subsection (6)(b) and for the purposes of this section, emergency response vehicles and casks designed and used for the transport of spent nuclear materials are considered nondivisible loads.

(3) Except as provided in subsection (2)(b), a permit may not be issued for a period of time greater than the period for which the GVW license is valid as provided in this title, including grace periods allowed by this title. Owners of vehicles licensed in other jurisdictions may, at the discretion of the department of transportation, purchase permits to expire with their registration. A license required by the state governs the issuance of a special permit.

(4) The department may issue special permits to the operating company for a truck-trailer-trailer or truck tractor-semitrailer-trailer-trailer combination of vehicles under the following conditions:

(a) the combination may be operated only on highways that are part of the federal-aid interstate system, as defined in 60-1-103, and within a 2-mile radius of an interchange on the interstate system on other highways only in order to obtain necessary services or to load or unload at a terminal. When a terminal is beyond a 2-mile radius, the department may authorize travel between the terminal and the interchange.

(b) a combination of vehicles powered by a cab-over (tilt cab) type truck-tractor or a truck may not exceed overall length of 105 feet, inclusive of front and rear bumpers and overhang;

(c) a combination of vehicles powered by a conventional truck-tractor may not exceed overall length of 110 feet, inclusive of front and rear bumpers and overhang;

(d) an individual cargo unit of the combination may not exceed 28 1/2 feet in length and 102 inches in width;

(e) gross weight fees under 61-10-203 must be paid on the truck or truck tractor for the declared registered gross weight of the special vehicle combination, but not to exceed the formula in 61-10-107;

(f) the combination must have a special overlength permit issued at a fee of $200 for a term permit or $20 for each trip permit;

(g) travel of the combination may be restricted to specific routes, hours of operation, specific days, or seasonal periods; and

(h) the department may enforce any other restrictions determined by the department to be necessary. The permit is not transferable, and the fee for the permit is $200.

(5) The department of transpertation may issue special permits under subsection (4) for vehicle combinations that consist of a truck-trailer-trailer if:

(a) the vehicle combination's overall length, inclusive of front and rear bumpers, is not more than 95 feet; and

(b) the person, firm, or corporation applying for the permit:

(i) restricts truck-trailer-trailer operations authorized by the permit to the hauling of talc ore, chlorite, dolomite, limestone, and custom combine equipment;

HeinOnline -- 1999 vol. II 1193 1999

(ii) operated the truck-trailer-trailer combination before July 1, 1987;

(iii) restricts the truck-trailer-trailer operations authorized by the permit to the specified routes that those vehicles used before July 1, 1987; and

(iv) provides the department of transportation with an affidavit confirming the routes used before July 1, 1987, for truck-trailer-trailer operations.

(6) For the purposes of this section, a "nondivisible load" is:

(a) on public roads off of interstate highways, a load that cannot be readily or reasonably dismantled and that is reduced to a minimum practical size and weight;

(b) on interstate highways, a load or vehicle exceeding applicable length or weight limits that, if separated into smaller loads or vehicles, would:

(i) compromise the intended use of the vehicle;

(ii) destroy the value of the load or vehicle; or

(iii) require more than 8 work hours to dismantle using appropriate equipment."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 16, 1999

CHAPTER NO. 318

[SB 221]

AN ACT CLARIFYING THE SHOWING NECESSARY FOR THE DISCOVERY OF CONSTITUTIONALLY PROTECTED MATERIAL; AMENDING SECTION 46-4-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, in State v. Nelson, 283 Mont. 231, 941 P.2d 441, 54 St. Rep. 576 (1997), the Montana Supreme Court held that discovery of constitutionally protected material, such as medical records, requires a showing of a compelling state interest.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-4-301, MCA, is amended to read:

"46-4-301. Issuance of subpoena. *(1)* Whenever a prosecutor has a duty to investigate alleged unlawful activity, any justice of the supreme court or district court judge of this state may cause subpoenas to be issued commanding the persons to whom they are directed to appear before the prosecutor and give testimony and produce books, records, papers, documents, and other objects as may be necessary and proper to the investigation.

(2) Except as provided in subsection (3), ~~A~~ *a* subpoena may be issued only when it appears upon the affidavit of the prosecutor that the administration of justice requires it to be issued.

(3) In the case of constitutionally protected material, such as but not limited to medical records or information, a subpoena may be issued only when it appears upon the affidavit of the prosecutor that a compelling state interest requires it to be issued. In order to establish a compelling state interest for the issuance of such

a subpoena, the prosecutor shall state facts and circumstances sufficient to support probable cause to believe that:

(a) an offense has been committed; and

(b) the information relative to the commission of that offense is in the possession of the person or institution to whom the subpoena is directed."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 16, 1999

CHAPTER NO. 319

[SB 225]

AN ACT EXPANDING THE AUTHORITY OF A BOARD OF COUNTY COMMISSIONERS TO INCLUDE ROAD CONSTRUCTION IN ROAD IMPROVEMENT DISTRICTS; CLARIFYING THE TYPE OF ROAD THAT CAN BE INCLUDED IN A ROAD IMPROVEMENT DISTRICT; AND AMENDING SECTION 7-14-2901, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-14-2901, MCA, is amended to read:

"7-14-2901. Road improvement district — purpose — benefited property defined. (1) The board of county commissioners may establish road improvement districts in those areas of the county that are not within the limits of an incorporated city or town.

(2) The purpose of a road improvement district is to allow a public entity to assess owners of parcels of land directly benefited by a proposed public road or a public road within the county that is not a county road or a highway to provide for the ~~road's~~ *construction,* reconstruction, upgrade, repair, or maintenance *of the proposed public road or a public road that does not meet the standards of 7-14-2111 or 7-14-2112.* ~~The county surveyor must determine that it would be physically impractical to improve the road to standard county road specifications.~~

(3) For the purposes of tbis part, "benefited property" means land within the district that receives a direct benefit from the road for which the road improvement district was created. A parcel of land is not henefited property if the parcel is within the district solely because the road passes over the property to provide access to benefited property. A parcel of land within the district used solely for agricultural purposes is not considered benefited property."

Approved April 16, 1999

CHAPTER NO. 320

[SB 226]

AN ACT CLARIFYING THAT A BOARD OF COUNTY COMMISSIONERS MAY LEVY TAXES FOR THE ESTABLISHMENT AND MAINTENANCE OF COUNTY ROADS AND BRIDGES WITHIN THE COUNTY; CLARIFYING THAT A BOARD OF COUNTY COMMISSIONERS MAY LEVY TAXES FOR ROAD AND BRIDGE ESTABLISHMENT AND MAINTENANCE IN

HeinOnline -- 1999 vol. II 1195 1999

ADJACENT COUNTIES IF A ROAD OR BRIDGE PROJECT IS SHARED AMONG COUNTIES; AND AMENDING SECTION 7-14-2101, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-14-2101, MCA, is amended to read:

"7-14-2101. General powers of county relating to roads and bridges — *definitions*. (1) The board of county commissioners, under ~~such~~ *the* limitations and restrictions ~~as~~ *that* are prescribed by law, may:

(a) (i) lay out, maintain, control, and manage county roads and bridges within the county;

(ii) levy taxes ~~therefor~~ *for the laying out, maintenance, control, and management of the county roads and bridges within the county* as provided by law;

(b) (i) in the exercise of sound discretion, jointly with other counties, lay out, maintain, control, manage, and improve county roads and bridges in adjacent counties, wholly or in ~~such~~ part as ~~may be~~ agreed upon between the boards of the counties concerned;

(ii) levy taxes ~~therefor~~ *for the laying out, maintenance, control, management, and improvement of county roads and bridges shared jointly with other counties, as agreed upon between the boards of the counties concerned and* as provided by law;

(c) (i) enter into agreements for adjusted annual contributions over not more than 6 years toward the cost of joint highway or bridge construction projects entered into in cooperation with other counties, the state, or the United States;

(ii) place ~~such~~ a *joint* project in the budget and levy taxes ~~therefor~~ *for the joint project* as provided by law.

(2) (a) Unless the context requires otherwise, ~~county road~~ *the term "county road"* means any public highway opened, established, constructed, maintained, abandoned, or discontinued by a county in accordance with this chapter.

(b) Unless the context requires otherwise, ~~bridge~~ *the term "bridge"* includes rights-of-way or other interest in land, abutments, superstructures, piers, and approaches except dirt fills."

Approved April 16, 1999

CHAPTER NO. 321

[SB 380]

AN ACT REVISING THE INCOME TAX CHECKOFF SYSTEM BY REDUCING FROM $20,000 TO $10,000 THE THRESHOLD AMOUNT THAT TRIGGERS TERMINATION OF CERTAIN TAX CHECKOFFS; AMENDING SECTION 12, CHAPTER 581, LAWS OF 1993, AND SECTION 1, CHAPTER 12, LAWS OF 1995; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 12, Chapter 581, Laws of 1993, is amended to read:

HeinOnline -- 1999 vol. II 1196 1999

"**Section 12. Contingent termination.** A voluntary income tax checkoff created in 15-30-150, 15-30-152, or 15-30-155 terminates on January 1 of the first tax year following the 2 immediately preceding tax years in which the voluntary checkoff raises less than ~~$20,000~~ *$10,000* in each of those 2 tax years."

Section 2. Section 1, Chapter 12, Laws of 1995, is amended to read:

"**Section 1.** Section 12, Chapter 581, Laws of 1993, is amended to read:

"Section 12. **Contingent termination.** A voluntary income tax checkoff created in 15-30-150~~, 15-30-152,~~ or 15-30-155 terminates on January 1 of the first tax year following the 2 immediately preceding tax years in which the voluntary checkoff raises less than ~~$20,000~~ *$10,000* in each of those 2 tax years."

Section 3. Effective date. [This act] is effective on passage and approval.

Section 4. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to voluntary income tax checkoff programs to which the contingent termination in section 1, Chapter 12, Laws of 1995, applied and that were in effect prior to January 1, 1999.

Approved April 16, 1999

CHAPTER NO. 322

[SB 384]

AN ACT REVISING STATUTES RELATED TO ROADSIDE MENAGERIES AND ZOOS; CREATING WILD ANIMAL MENAGERIES AND PROVIDING FOR TERMS OF OPERATION OF WILD ANIMAL MENAGERIES, INCLUDING THE KEEPING OF BEARS AND LARGE CATS; CLARIFYING PERMIT APPLICATION REQUIREMENTS; PROVIDING THAT ROADSIDE AND WILD ANIMAL MENAGERIES AND ZOOS MAY OBTAIN CAPTIVE-BRED WILD ANIMALS FROM A LICENSED ZOO, ROADSIDE OR WILD ANIMAL MENAGERIE, GAME FARM, FUR FARM, GAME BIRD FARM, OR ANIMAL REHABILITATION CENTER; REVISING DEFINITIONS; AMENDING SECTIONS 87-4-406, 87-4-801, 87-4-802, 87-4-803, 87-4-804, AND 87-4-806, MCA; AND REPEALING SECTION 87-4-805, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-4-406, MCA, is amended to read:

"**87-4-406. Definitions.** As used in this part, the following definitions apply:

(1) "Cloven-hoofed ungulate" means an animal of the order Artiodactyla, except a member of the families suidae, camelidae, or hippopotamidae. The term does not include domestic pigs, domestic cows, domestic yaks, domestic sheep, domestic goats that are not naturally occurring in the wild in their country of origin, or bison.

(2) "Department" means the department of fish, wildlife, and parks.

(3) "Facilities" means perimeter fences and other enclosures that provide for the confinement, handling, and quarantine of game farm animals.

(4) "Game animals" means game animals as defined in 87-2-101 that are not the lawful property of any private person.

HeinOnline -- 1999 vol. II 1197 1999

(5) "Game farm" means the enclosed land area upon which game farm animals may be kept for purposes of obtaining, rearing in captivity, keeping, or selling game farm animals or parts of game farm animals, as authorized under this part.

(6) "Game farm animal" means a privately owned caribou, ~~black bear, mountain lion,~~ white-tailed deer, mule deer, elk, moose, antelope, mountain sheep, or mountain goat indigenous to the state of Montana, a privately owned reindeer, or any other cloven-hoofed ungulate as classified by the department.

(7) "Person" means an individual, firm, corporation, association, or partnership."

Section 2. Section 87-4-801, MCA, is amended to read:

"87-4-801. Definitions. As used in this part unless the context requires otherwise, the following definitions apply:

(1) "Roadside menagerie ~~or zoo~~" means any place where one or more wild animals, including birds, reptiles, and the like, are kept in captivity for the evident purpose of exhibition or attracting trade, *on or off the facility premises.* It does not include the exhibition of any animal by an educational institution or ~~in a zoological garden chartered as a nonprofit corporation by the state and does not include animals exhibited~~ by ~~any~~ *a* traveling theatrical exhibition or circus *based outside of Montana.*

(2) "Wild animal" means an animal *that is* wild by nature as distinguished from the common domestic animals, whether the animal was bred or reared in captivity, and includes birds and reptiles.

(3) "Wild animal menagerie" means any place where one or more bears or large cats, including cougars, lions, tigers, jaguars, leopards, pumas, cheetahs, ocelots, and hybrids of those large cats are kept in captivity for use other than public exhibition.

(4) "Zoo" means any zoological garden chartered as a nonprofit corporation by the state or any facility participating in the American zoo and aquarium association accreditation program for the purpose of exhibiting wild animals for public viewing."

Section 3. Section 87-4-802, MCA, is amended to read:

"87-4-802. Department regulations. The department shall adopt and enforce reasonable regulations for the housing, care, treatment, feeding, and sanitation of animals kept in roadside menageries, *wild animal menageries, and zoos;* ~~and~~ for the protection of the public from injury by ~~such~~ *those* animals*; and for the licensing of roadside menageries, wild animal menageries, and zoos."*

Section 4. Section 87-4-803, MCA, is amended to read:

"87-4-803. Permits. (1) The department ~~shall~~ *may* grant permits for roadside menageries, *wild animal menageries,* ~~or~~ *and* zoos. It is unlawful for any person to operate a roadside menagerie *or wild animal menagerie* without a permit. Application for a permit ~~shall~~ *must* be made to the director on a form prescribed by ~~him~~ *the director.* The annual permit fee for five or less animals ~~shall be~~ *is* $10. The annual permit fee for more than five animals ~~shall be~~ *is* $25. Permits ~~shall~~ expire on December 31 but may be renewed upon payment of the annual fee *and submission of a renewal application.* This section ~~shall~~ *does* not apply to the United States, the state of Montana, or any county or city. ~~Any~~ *A*

HeinOnline -- 1999 vol. II 1198 1999

person who ~~shall subscribe~~ *subscribes* to any false statement in application for a permit ~~shall be~~ *is* guilty of a misdemeanor *and may be denied a permit.*

(2) *(a) A permit application for a roadside menagerie must include:*

(i) the applicant's name and address;

(ii) the exact location of the facility;

(iii) a list of species and the number of animals to be held in the facility;

(iv) the type of facility contemplated, including cage specifications;

(v) a copy of all required federal permits for exhibition of wild animals; and

(vi) a copy of a liability insurance policy to cover bodily injury or property damage.

(b) A permit application for a wild animal menagerie must include:

(i) the applicant's name and address;

(ii) the exact location of the facility, together with the nature of the applicant's title to the land, whether in fee, under lease, by contract for deed, or otherwise;

(iii) a list of species and the number of animals to be held in the facility;

(iv) the type of facility contemplated, including cage specifications; and

(v) information demonstrating that the applicant is responsible.

(c) A permit application for a zoo must include:

(i) the applicant's name and address;

(ii) the exact location of the facility;

(iii) a copy of the nonprofit corporation documents approved by the secretary of state's office;

(iv) a copy of the required federal permits for exhibition of wild animals; and

(v) if applicable, a copy of the American zoo and aquarium association accreditation program specific to the facility.

(3) Renewal applications for roadside menageries and wild animal menageries must include an accounting of all wild animals on the facility.

(4) ~~No~~ *A* permit ~~shall~~ *may not* be granted by the department until it has satisfactorily verified that the provisions for housing and caring for ~~such~~ *the* animals and for protecting the public are proper and adequate and in accordance with the standards established by the department.

~~(3)~~ *(5)* A permit is not transferable to another person ~~unless the roadside menagerie or zoo to which it pertains is also transferred to the same person. The director's approval must be obtained prior to such permit transfer and prior to a transfer of any wild animals held under the permit~~."

Section 5. Section 87-4-804, MCA, is amended to read:

"87-4-804. Permit to obtain wild animals. (1) It is unlawful to obtain wild animals for a *roadside menagerie, wild animal* menagerie, or zoo by capture from the wild or by purchase except *as authorized by the department* in accordance with the terms of a permit.

HeinOnline -- 1999 vol. II 1199 1999

(2) Application for ~~such~~ *a capture* permit ~~shall~~ *may be made only by a zoo and must* be made to the director on a form prescribed by ~~him~~ *the director*. After investigation by the department, the director may issue ~~such~~ *a capture* permit without charge if ~~he~~ *the director* finds:

(a) that all provisions of this part and of the department regulations are complied with by the applicant; and

(b) that the number and species of wildlife desired is not excessive under the circumstances.

~~(2)~~*(3)* If wild animals are to be obtained by capture *for use in zoos*, the permit ~~shall~~ *must* designate the number and the means of capture, but ownership of the wild animals captured shall remain in the state of Montana.

(4) ~~Nongame animals may be bought, sold, or transferred under such regulations as the department may prescribe.~~ *Roadside menageries, wild animal menageries, and zoos may obtain captive-bred wild animals from a licensed zoo, menagerie, game farm, fur farm, game bird farm, or animal rehabilitation center.*"

Section 6. Section 87-4-806, MCA, is amended to read:

"**87-4-806. Inspection, permit revocation, and redemption of wildlife.** All roadside menageries, *wild animal menageries,* ~~or~~ *and* zoos and all equipment used in connection ~~therewith shall~~ *with any roadside menagerie, wild animal menagerie, or zoo must* be open to inspection at all reasonable hours. If upon inspection it is found that the *roadside menagerie, wild animal* menagerie, or zoo is not being operated in accordance with this part or with the department regulations, the director shall revoke the permit without right of renewal and shall redeem possession of all wildlife obtained by capture or unlawful propagation."

Section 7. Restrictions on menagerie and zoo permits. (1) Wild animals may be bought, sold, or transferred under regulations that the department prescribes.

(2) The number of wild animals in a wild animal menagerie may not exceed 10.

Section 8. Repealer. Section 87-4-805, MCA, is repealed.

Section 9. Codification instruction. [Section 7] is intended to be codified as an integral part of Title 87, chapter 4, part 8, and the provisions of Title 87, chapter 4, part 8, apply to [section 7].

Approved April 16, 1999

CHAPTER NO. 323

[SB 409]

AN ACT AUTHORIZING NET METERING FOR CERTAIN ENERGY SYSTEMS; AMENDING SECTION 69-8-103, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY PROVISION.

Be it enacted by the Legislature of the State of Montana:

HeinOnline -- 1999 vol. II 1200 1999

Section 1. Legislative findings. The legislature finds that it is in the public interest to promote net metering because it:

(1) encourages private investment in renewable energy resources;

(2) stimulates Montana's economic growth; and

(3) enhances the continued diversification of the energy resources used in Montana.

Section 2. Section 69-8-103, MCA, is amended to read:

"69-8-103. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Aggregator" or "market aggregator" means an entity, licensed by the commission, that aggregates retail customers, ~~and~~ purchases electric energy, and takes title to electric energy as an intermediary for sale to retail customers.

(2) "Assignee" means any entity, including a corporation, partnership, board, trust, or financing vehicle, to which a utility assigns, sells, or transfers, other than as security, all or a portion of the utility's interest in or right to transition property. The term also includes an entity, corporation, public authority, partnership, trust, or financing vehicle to which an assignee assigns, sells, or transfers, other than as security, the assignee's interest in or right to transition property.

(3) "Board" means the board of investments created by 2-15-1808.

(4) "Broker" or "marketer" means an entity, licensed hy the commission, that acts as an agent or intermediary in the sale and purchase of electric energy but that does not take title to electric energy.

(5) "Cooperative utility" means:

(a) a utility qualifying as an electric cooperative pursuant to Title 35, chapter 18; or

(b) an existing municipal electric utility as of May 2, 1997.

(6) "Customer" or "consumer" means a retail electric customer or consumer. The university of Montana, pursuant to 20-25-201(1), and Montana state university, pursuant to 20-25-201(2), are each considered a single retail electric customer or consumer with a single individual load.

(7) "Customer-generator" means a user of a net metering system.

~~(7)~~(8) "Distribution facilities" means those facilities by and through which electricity is received from a transmission services provider and distributed to the customer and that are controlled or operated by a distribution services provider.

~~(8)~~(9) "Distribution services provider" means a person controlling or operating distribution facilities for distribution of electricity to the public.

~~(9)~~(10) "Electricity supplier" means any person, including aggregators, market aggregators, brokers, and marketers, offering to sell electricity to retail customers in the state of Montana.

~~(10)~~(11) "Financing order" means an order of the commission adopted in accordance with 69-8-503 that authorizes the imposition and collection of fixed transition amounts and the issuance of transition bonds.

HeinOnline -- 1999 vol. II 1201 1999

~~(11)~~*(12)* (a) "Fixed transition amounts" means those nonbypassable rates or charges, including but not limited to:

(i) distribution;

(ii) connection;

(iii) disconnection; and

(iv) termination rates and charges that are authorized by the commission in a financing order to permit recovery of transition costs and the costs of recovering, reimbursing, financing, or refinancing the transition costs and *of* acquiring transition property through a plan approved by the commission in the financing order, including the costs of issuing, servicing, and retiring transition bonds.

(b) If requested by the utility in tbe utility's application for a financing order, fixed transition amounts must include nonbypassable rates or charges to recover federal and state taxes in which the transition cost recovery period is modified by the transactions approved in tbe financing order.

~~(12)~~*(13)* "Functionally separate" means a utility's separation of the utility's electricity supply, transmission, distribution, and unregulated retail energy services assets and operations.

~~(13)~~*(14)* "Local governing body" means a local board of trustees of a rural electric cooperative.

~~(14)~~*(15)* "Low-income customer" means those energy consumer households and families with incomes at or below industry-recognized levels that qualify those consumers for low-income energy-related assistance.

(16) "Net metering" means measuring the difference between the electricity distributed to and the electricity generated by a customer-generator that is fed back to the distribution system during the applicable billing period.

(17) "Net metering system" means a facility for the production of electric energy that:

(a) uses as its fuel solar, wind, or hydropower;

(b) has a generating capacity of not more than 50 kilowatts;

(c) is located on the customer-generator's premises;

(d) operates in parallel with the distribution services provider's distribution facilities; and

(e) is intended primarily to offset part or all of the customer-generator's requirements for electricity.

~~(15)~~*(18)* "Nonbypassable rates or charges" means rates or charges *that are* approved by the commission *and* imposed on a customer to pay the customer's share of transition costs or universal system benefits ~~program~~ *programs* costs even if the customer has physically bypassed either tbe utility's transmission or distribution facilities.

~~(15)~~*(19)* "Pilot program" means a program using a representative sample of residential and small commercial customers to assist in developing and offering customer choice of ~~electric~~ *electricity* supply for all residential and commercial customers.

HeinOnline -- 1999 vol. II 1202 1999

~~(17)~~*(20)* "Public utility" means any electric utility regulated by the commission pursuant to Title 69, chapter 3, on May 2, 1997, including the public utility's successors or assignees.

~~(18)~~*(21)* "Transition bondholder" means a holder of transition bonds, including trustees, collateral agents, and other entities acting for the benefit of that holder.

~~(19)~~*(22)* "Transition bonds" means any bond, debenture, note, interim certificate, collateral, trust certificate, or other evidence of indebtedness or ownership issued by the board or other transition bonds issuer that is secured by or payable from fixed transition amounts or transition property. Proceeds from transition bonds must be used to recover, reimburse, finance, or refinance transition costs and to acquire transition property.

~~(20)~~*(23)* "Transition charge" means a nonbypassable rate or charge to be imposed on a customer to pay the customer's share of transition costs.

~~(21)~~*(24)* "Transition cost recovery period" means the period beginning on July 1, 1998, and ending when a utility customer does not have any liability for payment of transition costs.

~~(22)~~*(25)* "Transition costs" means:

(a) a public utility's net verifiable generation-related and electricity supply costs, including costs of capital, that become unrecoverable as a result of the implementation of this chapter or of federal law requiring retail open access or customer choice;

(b) those costs that include but are not limited to:

(i) regulatory assets and deferred charges that exist because of current regulatory practices and can he accounted for up to the effective date of the commission's final order regarding a puhlic utility's transition plan and conservation investments made prior to universal system henefits cbarge implementation;

(ii) nonutility and utility power purchase contracts, including qualifying facility contracts;

(iii) existing generation investments and supply commitments or other obligations incurred hefore May 2, 1997, and costs arising from these investments and commitments;

(iv) the costs associated with renegotiation or buyout of the existing nonutility and utility power purchase contracts, including qualifying facilities and all costs, expenses, and reasonable fees related to issuing transition bonds; and

(v) the costs of refinancing and retiring of debt or equity capital of the public utility and associated federal and state tax liabilities or other utility costs for which the use of transition bonds would benefit customers.

~~(23)~~*(26)* "Transition period" means the period beginning on July 1, 1998, and ending on July 1, 2002, unless otherwise extended pursuant to this chapter, during which utilities may phase in customer choice of electricity supplier.

~~(24)~~*(27)* "Transition property" means the property right created by a financing order, including without limitation the right, title, and interest of a utility, assignee, or other issuer of transition bonds to all revenue, collections, claims, payments, money, or proceeds of or arising from or constituting fixed transition

HeinOnline -- 1999 vol. II 1203 1999

amounts that are the subject of a financing order, including those nonbypassable rates and other charges and fixed transition amounts that are authorized by the commission in the financing order to recover transition costs and the costs of recovering, reimbursing, financing, or refinancing the transition costs and acquiring transition property, including the costs of issuing, servicing, and retiring transition bonds. Any right that a utility has in the transition property before the utility's sale or transfer or any other right created under this section or created in the financing order and assignable under this chapter or assignable pursuant to a financing order is only a contract right.

~~(25)~~*(28)* "Transmission facilities" means those facilities that are used to provide transmission services as determined by the federal energy regulatory commission and the commission.

~~(25)~~*(29)* "Transmission services provider" means a person controlling or operating transmission facilities.

~~(27)~~*(30)* "Universal system benefits charge" means a nonbypassable rate or charge to be imposed on a customer to pay the customer's share of universal system benefits ~~program~~ *programs* costs.

~~(28)~~*(31)* "Universal system benefits programs" means public purpose programs for:

(a) cost-effective local energy conservation;

(b) low-income customer weatherization;

(c) renewable resource projects and applications, including those that capture unique social and energy system benefits or *that* provide transmission and distribution system benefits;

(d) research and development programs related to energy conservation and renewables;

(e) market transformation designed to encourage competitive markets for public purpose programs; and

(f) low-income energy assistance.

~~(29)~~*(32)* "Utility" means any public utility or cooperative utility."

Seetion 3. Distribution serviees provider net metering requirements. A distribution services provider shall:

(1) allow net metering systems to be interconnected using a standard kilowatt-hour meter capable of registering the flow of electricity in two directions, unless the commission determines, after appropriate notice and opportunity for comment:

(a) that the use of additional metering equipment to monitor the flow of electricity in each direction is necessary and appropriate for the interconnection of net metering systems, after taking into account the benefits and costs of purchasing and installing additional metering equipment; and

(b) how the costs of net metering are to be allocated between the customer-generator and the distribution services provider; and

(2) charge the customer-generator a minimum monthly fee that is the same as other customers of the electric utility in the same rate class. The commission shall determine, after appropriate notice and opportunity for comment if:

HeinOnline -- 1999 vol. II 1204 1999

(a) the distribution services provider will incur direct costs associated with interconnecting or administering net metering systems that exceed any offsetting henefits associated with these net metering systems; and

(b) public policy is best served by imposing these costs on the customer-generator, rather than allocating theso costs among the distribution services provider's entire customer base.

Section 4. Net energy measurement calculation. Consistent with the other provisions of [sections 1 and 3 through 5], the net energy measurement must be calculated in the following manner:

(1) The distribution services provider shall measure the net electricity produced or consumed during the billing period, in accordance with normal metering practices.

(2) If the electricity supplied by the electricity supplier exceeds the electricity generated hy the customer-generator and fed back to the electricity supplier during the billing period, the customer-generator must be billed for the net electricity supplied by the electricity supplier, in accordance with normal metering practices.

(3) If electricity generated by the customer-generator exceeds the electricity supplied by the electricity supplier, the customer-generator must be:

(a) billed for the appropriate customer charges for tbat billing period, in accordance with [section 3]; and

(b) credited for the excess kilowatt hours generated during the billing period, with this kilowatt-hour credit appearing on the bill for the following billing period.

(4) At the beginning of each calendar year, any remaining unused kilowatt-hour credit accumulated during the previous year must he granted to the electricity supplier, without any compensation to the customer-generator.

Section 5. Net metering system — reliability and safety. (1) A net metering system used by a customer-generator must include, at the customer-generator's own expense, all equipment necessary to meet applicable safety, power quality, and interconnection requirements established by the national electrical code, national electrical safety code, institute of electrical and electronic engineers, and underwriters laboratories.

(2) The commission, after appropriate notice and opportunity for comment, may adopt by rule additional safety, power quality, and interconnection requirements for customer-generators that the commission or the local governing body determines are necessary to protect public safety and net metering system reliability.

Section 6. Applicability. [Sections 1 through 5] do not apply to corporations organized under Title 35, chapter 18.

Section 7. Codification instruction. [Sections 1 and 3 through 5] are intended to be codified as an integral part of Title 69, chapter 8, and the provisions of Title 69, chapter 8, apply to [sections 1 and 3 through 5].

Scction 8. Effectivc date. [This act] is effective July 1, 1999.

Approved April 16, 1999

HeinOnline -- 1999 vol. II 1205 1999

CHAPTER NO. 324

[SB 446]

AN ACT CHANGING THE PROVISIONS RELATING TO RESTAURANT BEER AND WINE LICENSES; REDUCING THE PERCENTAGE OF REVENUE THAT MUST BE DERIVED FROM FOOD SALES TO 65 PERCENT FROM 75 PERCENT; INCREASING THE NUMBER OF LICENSES AVAILABLE IN THE SMALLEST QUOTA AREA; AUTHORIZING A ONE-TIME QUOTA ADJUSTMENT; GIVING A PREFERENCE TO UNSUCCESSFUL LOTTERY APPLICANTS; ESTABLISHING THAT THE APPLICATION FEE FOR A LICENSE IS 20 PERCENT OF THE INITIAL LICENSE FEE; REQUIRING THE DEPARTMENT TO PAY INTEREST ON AN APPLICATION FEE IF A LICENSE IS NOT GRANTED OR REJECTED WITHIN 4 MONTHS OF APPLICATION FOR A LICENSE; AMENDING SECTIONS 16-4-111 AND 16-4-420, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Seetion 1. Section 16-4-111, MCA, is amended to read:

"16-4-111. Catering endorsement for beer and wine licensees. (1) (a) A person who is engaged primarily in the business of providing meals with table service and who is licensed to sell beer at retail or beer and wine at retail for on-premises consumption may, upon the approval of the liquor division, be granted a catering endorsement to the license to allow the catering and sale of beer or beer and wine to persons attending a special event upon premises not otherwise licensed for the sale of beer or beer and wine for on-premises consumption. The beer or wine must be consumed on the premises where the event is held.

(b) A person who is licensed pursuant to 16-4-420 to sell beer at retail or beer and wine at retail for on-premises consumption may, upon the approval of the liquor division, be granted a catering endorsement to the license to allow the catering and sale of beer and wine to persons attending a special event upon premises not otherwise licensed for the sale of beer or beer and wine, along with food equal in cost to ~~75%~~ *65%* of the total gross revenue from the catering contract, for on-premises consumption. The beer or wine must he consumed on the premises where the event is held.

(2) A written application for a catering endorsement and an annual fee of $200 must be submitted to the department for its approval.

(3) A licensee who holds a catering endorsement may not cater an event in which the licensee is the sponsor. The catered event must be within 100 miles of the licensee's regular place of business.

(4) The licensee shall notify the local law enforcement agency that has jurisdiction over the premises that the catered event is to be held. A fee of $35 must accompany the notice.

(5) The sale of beer or beer and wine pursuant to a catering endorsement is subject to the provisions of 16-6-103.

(6) The sale of heer or beer and wine pursuant to a catering endorsement is subject to the provisions of 16-3-306, unless entities named in 16-3-306 give their

HeinOnline -- 1999 vol. II 1206 1999

written approval for the on-premises sale of beer or beer and wine on premises where the event is to be held.

(7) A catering endorsement issued for the purpose of selling and serving beer or beer and wine at a special event conducted on the premises of a county fairground or public sports arena authorizes the licensee to sell and serve beer or beer and wine in the grandstand and bleacher area of the premises, as well as from a booth, stand, or other fixed place on the premises."

Section 2. Section 16-4-420, MCA, is amended to read:

"16-4-420. Restaurant beer and wine license. (1) The department shall issue a restaurant beer and wine license to an applicant whenever the department determines that the applicant, in addition to satisfying the requirements of this section, meets the following qualifications and conditions:

(a) in the case of an individual applicant:

(i) the applicant's past record and present status as a purveyor of alcoholic beverages and as a business person and citizen demonstrate that the applicant is likely to operate the establishment in compliance with all applicable laws of the state and local governments; and

(ii) the applicant is not under 19 years of age;

(b) in the case of a corporate applicant:

(i) in the case of a corporation listed on a national stock exchange, the corporate officers and the board of directors ~~must~~ *shall* meet the requirements of subsection (1)(a);

(ii) in the case of a corporation not listed on a national stock exchange, each owner of 10% or more of the outstanding stock ~~must~~ *shall* meet the requirements for an individual listed in subsection (1)(a); and

(iii) the corporation is authorized to do business in Montana;

(c) in the case of any other business entity, including but not limited to partnerships, including limited liability partnerships, limited partnerships, and limited liability companies, but not including any form of a trust:

(i) if the applicant consists of more than one individual, all individuals ~~must~~ *shall* meet the requirements of subsection (1)(a); and

(ii) if the applicant consists of more than one corporation, all corporations listed on a national stock exchange ~~must~~ *shall* meet the requirements of subsection (1)(b)(i) and corporations not listed on a national stock exchange ~~must~~ *shall* meet the requirements of subsection (1)(b)(ii);

(d) the applicant operates a restaurant at the location where the restaurant beer and wine license will be used or satisfies the department:

(i) that the applicant intends to open a restaurant that will meet the requirements of subsection (6) and intends to operate the restaurant so that at least ~~75%~~ *65%* of the restaurant's gross income during its first year of operation is expected to be the result of the sale of food;

(ii) that the restaurant beer and wine license will be used in conjunction with that restaurant, that the restaurant will serve beer and wine only to a patron who orders food, and that beer and wine purchases will be stated on the food bill; and

HeinOnline -- 1999 vol. II 1207 1999

(iii) that the restaurant will serve beer and wine from a service bar, as service bar is defined by the department by rule;

(e) the applicant understands and acknowledges in writing on the application that this license prohibits the applicant from heing licensed to conduct any gaming or gambling activity or operate any gambling machines and that if any gaming or gambling activity or machine exists at the location where the restaurant beer and wine license will be used, the activity must be discontinued or the machines must be removed before the restaurant beer and wine license takes effect; and

(f) the applicant states the planned seating capacity of the restaurant, if it is to be built, or the current seating capacity if the restaurant is operating.

(2) *(a)* A restaurant that has an existing retail license for the sale of beer, wine, or any other alcoholic beverage may not be considered for a restaurant beer and wine license at the same location.

(b) A restaurant that sells its existing retail license may not apply for a license under this section for a period of 1 year from the date that license is transferred to a new purchaser.

(3) (a) A completed application for a license under this section and the appropriate application fee, as provided in subsection (11), must be submitted to the department. The department sball request that the department of justice make an investigation of all the items relating to the application as described in subsections (3)(a)(i) through (3)(a)(iv). Based on the results of the investigation or in exercising its sound discretion, the department shall determine whether:

(i) the applicant is qualified to receive a license;

(ii) the applicant's premises are suitable for the carrying on of the business;

(iii) the requirements of this code and the rules promulgated by the department are met and complied with; and

(iv) the seating capacity as stated on the application is correct.

(b) The department may retain 20% of the application fee collected under subsection (11) to defray the costs of the department and department of justice associated with investigating and processing applications.

(4) An application for a beer and wine license submitted under this section is subject to the provisions of 16-4-203, 16-4-207, and 16-4-405.

(5) If a premises proposed for licensing under tbis section is a new or remodeled structure, then the department may issue a conditional license prior to completion of the premises based on reasonable evidence, including a statement from the applicant's architect or contractor confirming that the seating capacity stated on the application is correct, that the premises will be suitable for the carrying on of business as a bona fide restaurant, as defined in subsection (6).

(6) For purposes of this section, "restaurant" means a public eating place where individually priced meals are prepared and served for on-premises consumption. At least ~~75%~~ *65%* of the restaurant's annual gross income from the operation must be from the sale of food and not from the sale of alcoholic beverages. Each year after a license is issued, the applicant shall file with the department a statement, in a form approved by the department, attesting that at least ~~75%~~ *65%* of the gross income of the restaurant during the prior year

HeinOnline -- 1999 vol. II 1208 1999

resulted from the sale of food. The restaurant must have a dining room, a kitchen, and the number and kinds of employees necessary for the preparation, cooking, and serving of meals in order to satisfy the department that the space is intended for use as a full-service restaurant. A full-service restaurant is a restaurant that provides an evening dinner ~~menu~~ *meal*.

(7) (a) (i) Subject to the conditions of subsection (7)(a)(ii), a restaurant beer and wine license may be transferred, upon approval by the department, from the original applicant to a new owner of the restaurant if there is no change of location, and the original owner may transfer location after the license is issued by the department to a new location, upon approval by the department.

(ii) A new owner may not transfer the license to a new location for a period of 1 year following the transfer of the license to the new owner.

(b) A license issued under this section may be jointly owned, and the license may pass to the surviving joint tenant upon the death of the other tenant. However, the license may not be transferred to any other person or entity by operation of the laws of inheritance or succession or any other laws allowing the transfer of property upon the death of the owner in this state or in another state.

(c) An estate may, upon the sale of a restaurant that is property of the estate and with the approval of the department, transfer a restaurant beer and wine license to a new owner.

(8) (a) The department shall issue a restaurant beer and wine license to a qualified applicant:

(i) for a restaurant located in a quota area with a population of 20,000 persons or fewer, as the quota area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in that quota area is equal to or less than ~~60%~~ *80%* of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105;

(ii) for a restaurant located in a quota area with a population of 20,001 to 60,000 persons, as the quota area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in that quota area is equal to or less than 50% of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105;

(iii) for a restaurant located in a quota area with a population of 60,001 persons or more, as the quota area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in that quota area is equal to or less than 40% of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105; and

(iv) for a restaurant located in a quota area that is also a resort community, as the resort community is designated by the department of commerce under 7-6-1501(5), if the number of restaurant beer and wine licenses issued in the quota area that is also a resort community is equal to or less than 100% of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105.

(b) In determining the number of restaurant beer and wine licenses that may be issued under this subsection (8) based on the percentage amounts described in subsections (8)(a)(i) through (8)(a)(iii), the department shall round to the nearer whole number.

HeinOnline -- 1999 vol. II 1209 1999

(c) If the department has issued the number of restaurant beer and wine licenses authorized for a quota area under subsections (8)(a)(i) through (8)(a)(iii), there must be a one-time adjustment of one additional license for that quota area.

~~(c)~~*(d)* If there are more applicants than licenses available in a quota area, then the license must be awarded by lottery as provided in subsection (9).

(9) (a) When a restaurant beer and wine license becomes available by the initial issuance of licenses under this section or as the result of an increase in the population in the quota area, the nonrenewal of *a* restaurant beer and wine license, or the lapse or revocation of ~~the~~ *a* license by the department, then the department shall advertise the availability of the license in the quota area for which it is available. If there are more applicants than number of licenses available, the license must be awarded to an applicant by a lottery.

(b) Any applicant who operates a restaurant that meets the qualifications of subsection (6) for at least 12 months prior to the filing of an application must be given a preference, *and any unsuccessful lottery applicants from previous selections must also be given a preference. An applicant with both preferences must be awarded a license before any applicant with only one preference.*

(c) The department shall numerically rank all applicants in the lottery. Only the successful applicants will be required to suhmit a completed application and ~~the~~*a one-time* required fee. An applicant's ranking may not be sold or transferred to another person or entity. The preference and an applicant's ranking apply only to the intended license advertised by the department or to the number of licenses determined under suhsection (8) when there are more applicants than licenses available. The applicant's qualifications for any other restaurant beer and wine license awarded by lottery must be determined at the time of the lottery.

(10) Under a restaurant beer and wine license, beer and wine may not be sold for off-premises consumption.

(11) An application for a restaurant beer and wine license must be accompanied by a fee *equal to 20% of the initial licensing fee. If the department does not make a decision either granting or denying the license within 4 months of receipt of a complete application, the department shall pay interest on the application fee at the rate set in 16-1-409(4) until a license is issued or the application is denied. Interest may not accrue during any period that the processing of an application is delayed by reason of a protest filed pursuant to 16-4-203 or 16-4-207. If the department denies issuing a license to an applicant, the application fee, plus any interest, less a $100 processing fee, must be refunded to the applicant. Upon the issuance of a license, the licensee shall pay the balance of the initial licensing fee. The amount of the initial licensing fee is determined* according to the following schedule:

(a) $5,000 for restaurants with a stated seating capacity of 60 persons or less;

(b) $10,000 for restaurants with a stated seating capacity of 61 to 100 persons; or

(c) $20,000 for restaurants with a stated seating capacity of 101 persons or more.

(12) The annual fee for a restaurant beer and wine license is $400.

(13) If a restaurant *licensed under this part* increases the stated seating capacity of the licensed restaurant or if the department determines that ~~an applicant~~ *a licensee* has increased the stated seating capacity of the licensed

HeinOnline -- 1999 vol. II 1210 1999

restaurant, then the ~~applicant~~ *licensee* shall pay to the department the difference between the ~~application fee~~ *fees* paid at the time of filing the original application *and issuance of a license* and the applicable ~~application fee~~ *fees* for the additional seating.

(14) The number of beer and wine licenses issued to restaurants with a stated seating capacity of 101 persons or more may not exceed 25% of the total licenses issued.

(15) Possession of a restaurant beer and wine license is not a qualification for licensure of any gaming or gambling activity. A gaming or gambling activity may not occur on the premises of a restaurant with a restaurant beer and wine license."

Section 3. Effective date. [This act] is effective upon passage and approval.

Section 4. Applicability. [This act] applies only to new applications received after [the effective date of this act].

Approved April 16, 1999

CHAPTER NO. 325

[SB 453]

AN ACT CLARIFYING THE REQUIREMENTS FOR ISSUANCE OF RESORT RETAIL ALL-BEVERAGES LICENSES; LIMITING GAMBLING MACHINE PERMITS IN RESORT AREAS; AMENDING SECTION 16-4-202, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-4-202, MCA, is amended to read:

"16-4-202. Resort retail all-beverages licenses. (1) It is the intent and purpose of this section to encourage the growth of quality recreational resort facilities in undeveloped areas of the state and to provide for the orderly growth of existing recreational sites by the establishment of resort areas within which retail all-beverages licenses may be issued by the department under the terms of this section. In addition to the licenses set forth in this code, the department may issue *one* resort retail all-beverages ~~licenses~~ *license for the first 100 accommodation units and an additional license for each additional 50 accommodation units* in a resort area. *Regardless of how many resort area all-beverages licenses are issued, no more than 20 gambling machine permits may be issued for the resort area.*

(2) (a) For the purposes of this section, "resort area" means a recreational facility meeting the qualifications determined by the department and as otherwise provided in this section.

(b) The term does not include any land or improvements that lie wholly within the boundaries of ~~an incorporated city or town~~ *a quota area as described in 16-4-201(1).*

(3) The department shall determine that the area for which licenses are to be issued is a resort area pursuant to rules.

HeinOnline -- 1999 vol. II 1211 1999

(4) (a) In addition to the other requirements of this code, a resort area, for the purposes of qualification for the issuance of a resort retail all-heverages license, must:

(i) have a current actual valuation of resort or recreational facilities, including land and improvements, of not less than $500,000, at least half of which valuation must be for a structure or structures within the resort area;

(ii) be under the sole ownership or control of one person or entity at the time of the filing of the resort area plat referred to in subsection (5); ~~and~~

(iii) contain a minimum of 50 acres of land;

(iv) contain a minimum of 100 overnight guest accommodation units, each unit capable of being separately locked by the occupants and containing sleeping, bath, and toilet facilities; and

(v) provide on the grounds of the resort the recreational facilities that warrant the resort designation being granted.

(h) For the purposes of this section, "control" means land or improvements that are owned or that are held under contract, lease, option, or permit.

(5) The resort area must be determined by the resort area developer or landowner by a plat setting forth the resort area boundaries and designating the ownership of the lands within the resort area. The plat must be verified by the resort area developer or landowner and must be filed with the department prior to the filing of any applications for resort retail all-beverages licenses within the resort area. The plat must show the location and general design of the buildings and other improvements existing or to be built in the resort area. A master plan for the development of the resort area may be filed by the resort area developer in satisfaction of this section.

(6) Within 7 days after the plat is filed, the department shall schedule a public hearing to be held in the proposed area to determine whether the facility proposed by the resort area developer or landowner is a resort area. At least 30 days prior to the date of the hearing, the department shall publish notice of the hearing in a newspaper published in the county or counties in which the resort area is located, once a week for 4 consecutive weeks. The notice must include a description of the proposed resort area. Each resort area developer or landowner shall, at the time of filing an application, pay to the department an amount sufficient to cover the costs of publication.

(7) Any person may present, in person or in writing, a statement to the department at the hearing in opposition to or support of the plat.

(8) Within 30 days after the hearing, the department shall accept or reject the plat. If the plat is rejected, the department shall state its reasons and set forth the conditions, if any, under which the plat will be accepted. The decision of the department may be reviewed pursuant to the review procedure set forth in 16-4-406.

(9) Once filed with the department, the boundaries of a resort area may not be changed without:

(a) a hearing, noticed and conducted in the same manner as provided in subsections (6) and (7); and

(b) the prior approval of the department, determined according to public convenience and necessity.

HeinOnline -- 1999 vol. II 1212 1999

(10) (a) When the department has accepted a plat and a given resort area has been determined, applications may be filed with the department for the issuance of resort retail all-beverages licenses within the resort area.

(b) Each applicant shall submit plans showing the location, appearance, and floor plan of the premises for which application for a resort retail all-beverages license is made.

(c) If an applicant otherwise qualifies for a resort retail all-beverages license but the premises to be licensed are still in construction or are otherwise incomplete at the time that application is made, the department shall issue a letter stating that the license will be issued at the time that the qualifications for a licensed premises have been met. The letter must set forth specific time limitations and requirements that the department may establish.

(11) In addition to the restrictions on sale or transfer of a license as provided in 16-4-204 and 16-4-404, a resort retail all-beverages license may not be sold or transferred for operation at a location outside of the boundaries of the resort area.

(12) A resort retail all-beverages license is {not} subject to the quota limitations set forth in 16-4-201, and if the requirements of this section have been met, a resort retail all-beverages license must be issued by the department on the basis that the department has determined that the license is justified by public convenience and necessity, in accordance with the procedure required in 16-4-207."

Section 2. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to new resort determination applications received on or after January 1, 1999.

Approved April 16, 1999

CHAPTER NO. 326

[SB 481]

AN ACT DEFINING THE TERM "JUVENILE HOME ARREST OFFICER"; PROVIDING THAT A JUVENILE HOME ARREST OFFICER MAY TAKE A YOUTH INTO CUSTODY UPON VIOLATION OF A PLACEMENT UNDER THE HOME ARREST PROGRAM; PROVIDING FOR A PROBABLE CAUSE HEARING; AMENDING SECTIONS 41-5-103, 41-5-321, AND 41-5-332, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-5-103, MCA, is amended to read:

"41-5-103. Definitions. As used in the Montana Youth Court Act, unless the context requires otherwise, the following definitions apply:

(1) "Adult" means an individual who is 18 years of age or older.

(2) "Agency" means any entity of state or local government authorized by law to be responsible for the care or rehabilitation of youth.

(3) "Assessment officer" means a person who is authorized by the court to provide initial intake and evaluation for a youth who appears to be in need of intervention or an alleged delinquent youth.

HeinOnline -- 1999 vol. II 1213 1999

(4) "Commit" means to transfer to legal custody.

(5) "Correctional facility" means a public or private residential facility used for the placement of delinquent youth or individuals convicted of criminal offenses.

(6) "Court", when used without further qualification, means the youth court of the district court.

(7) "Custodian" means a person, other than a parent or guardian, to whom legal custody of the youth has been given but does not include a person who has only physical custody.

(8) "Delinquent youth" means a youth who is adjudicated under formal proceedings under the Montana Youth Court Act as a youth:

(a) who has committed an offense that, if committed by an adult, would constitute a criminal offense; or

(b) who has been placed on probation as a delinquent youth or a youth in need of intervention and who has violated any condition of probation.

(9) "Department" means the department of corrections provided for in 2-15-2301.

(10) "Detention" means the holding or temporary placement of a youth in the youth's home under home arrest or in a facility other than the youth's own home for:

(a) the purpose of ensuring the continued custody of the youth at any time after the youth is taken into custody and before final disposition of the youth's case; or

(b) contempt of court or violation of a valid court order.

(11) "Detention facility" means a physically restricting facility designed to prevent a youth from departing at will. The term includes a youth detention facility, short-term detention center, and regional detention facility.

(12) "Family" means the parents, guardians, legal custodians, and siblings or other youth with whom a youth ordinarily lives.

(13) "Final disposition" means the implementation of a court order for the disposition or placement of a youth as provided in 41-5-1422, 41-5-1503, 41-5-1504, 41-5-1512, 41-5-1513, and 41-5-1522 through 41-5-1525.

(14) "Foster home" means a private residence licensed by the department of public health and human services for placement of a youth.

(15) "Guardian" means an adult:

(a) who is responsible for a youth and has the reciprocal rights, duties, and responsibilities with the youth; and

(b) whose status is created and defined by law.

(16) "Habitual truancy" means recorded absences of 10 days or more of unexcused absences in a semester or absences without prior written approval of a parent or a guardian.

(17) "Holdover" means a room, office, building, or other place approved by the board of crime control for the temporary detention and supervision of youth in a physically unrestricting setting for a period not to exceed 24 hours while the

HeinOnline -- 1999 vol. II 1214 1999

youth is awaiting a probable cause hearing, release, or transfer to an appropriate detention or shelter care facility. The term does not include a jail.

(18) "Jail" means a facility used for the confinement of adults accused or convicted of criminal offenses. The term includes a lockup or other facility used primarily for the temporary confinement of adults after arrest but does not include a collocated juvenile detention facility that complies with 28 CFR, part 31.

(19) "Judge", when used without further qualification, means the judge of the youth court.

(20) "Juvenile home arrest officer" means a court-appointed officer administering or supervising juveniles in a program for home arrest, as provided for in Title 46, chapter 18, part 10.

~~(20)~~*(21)* (a) "Legal custody" means the legal status created by order of a court of competent jurisdiction that gives a person the right and duty to:

(i) have physical custody of the youth;

(ii) determine with whom the youth shall live and for what period;

(iii) protect, train, and discipline the youth; and

(iv) provide the youth with food, shelter, education, and ordinary medical care.

(b) An individual granted legal custody of a youth shall personally exercise the individual's rights and duties as guardian unless otherwise authorized by the court entering the order.

~~(21)~~*(22)* "Necessary parties" includes the youth and the youth's parents, guardian, custodian, or spouse.

~~(22)~~*(23)* "Parent" means the natural or adoptive parent but does not include a person whose parental rights have been judicially terminated, nor does it include the putative father of an illegitimate youth unless the putative father's paternity is established by an adjudication or by other clear and convincing proof.

~~(23)~~*(24)* "Probable cause hearing" means the hearing provided for in 41-5-332.

~~(24)~~*(25)* "Regional detention facility" means a youth detention facility established and maintained by two or more counties, as authorized in 41-5-1804.

~~(25)~~*(26)* "Restitution" means payments in cash to the victim or with services to the victim or the general community when these payments are made pursuant to a consent adjustment, consent decree, or other youth court order.

~~(23)~~*(27)* "Running away from home" means that a youth has been reported to have run away from home without the consent of a parent or guardian or a custodian having legal custody of the youth.

~~(27)~~*(28)* "Secure detention facility" means a public or private facility that:

(a) is used for the temporary placement of youth or individuals accused or convicted of criminal offenses or as a sanction for contempt of court, violation of a parole agreement, or violation of a valid court order; and

(b) is designed to physically restrict the movements and activities of youth or other individuals held in lawful custody of the facility.

HeinOnline -- 1999 vol. II 1215 1999

~~(28)~~*(29)* "Serious juvenile offender" means a youth who has committed an offense that would be considered a felony offense if committed by an adult and that is an offense against a person, an offense against property, or an offense involving dangerous drugs.

~~(29)~~*(30)* "Shelter care" means the temporary substitute care of youth in physically unrestricting facilities.

~~(30)~~*(31)* "Shelter care facility" means a facility used for the shelter care of youth. The term is limited to the facilities enumerated in 41-5-344.

~~(31)~~*(32)* "Short-term detention center" means a detention facility licensed by the department for the temporary placement or care of youth, for a period not to exceed 10 days excluding weekends and legal holidays, pending a probable cause hearing, release, or transfer of the youth to an appropriate detention facility, youth assessment center, or shelter care facility.

~~(32)~~*(33)* "State youth correctional facility" means a residential facility used for the placement and rehabilitation of delinquent youth, such as the Pine Hills youth correctional facility in Miles City.

~~(33)~~*(34)* "Substitute care" means full-time care of youth in a residential setting for the purpose of providing food, shelter, security and safety, guidance, direction, and, if necessary, treatment to youth who are removed from or are without the care and supervision of their parents or guardians.

~~(34)~~*(35)* "Victim" means:

(a) a person who suffers property, physical, or emotional injury as a result of an offense committed by a youth that would be a felony offense if committed by an adult;

(b) an adult relative of the victim, as defined in subsection ~~(34)(a)~~ *(35)(a)*, if the victim is a minor; and

(c) an adult relative of a homicide victim.

~~(35)~~*(36)* "Youth" means an individual who is less than 18 years of age without regard to sex or emancipation.

~~(36)~~*(37)* "Youth assessment" means a multidisciplinary assessment of a youth as provided in 41-5-1201.

~~(37)~~*(38)* "Youth assessment center" means a staff-secured location that is licensed by the department of public health and human services to hold a youth for up to 10 days for the purpose of providing an immediate and comprehensive community-based youth assessment to assist the youth and the youth's family in addressing the youth's behavior.

~~(38)~~*(39)* "Youth care facility" has the meaning provided in 41-3-1102.

~~(39)~~*(40)* "Youth court" means the court established pursuant to this chapter to hear all proceedings in which a youth is alleged to be a delinquent youth, a youth in need of intervention, or a youth in need of care and includes the youth court judge, probation officers, and assessment officers.

~~(40)~~*(41)* "Youth detention facility" means a secure detention facility licensed by the department for the temporary substitute care of youth that:

(a) is operated, administered, and staffed separately and independently of a jail; and

(b) is used exclusively for the lawful detention of alleged or adjudicated delinquent youth or as a sanction for contempt of court, violation of a parole agreement, or violation of a valid court order.

~~(41)~~*(42)* "Youth in need of care" has the meaning provided for in 41-3-102.

~~(42)~~*(43)* "Youth in need of intervention" means a youth who is adjudicated as a youth and who commits an offense prohibited by law that if committed by an adult would not constitute a criminal offense, including but not limited to a youth who:

(a) violates any Montana municipal or state law regarding alcoholic beverages;

(b) continues to exhibit behavior, including running away from home or habitual truancy, beyond the control of the youth's parents, foster parents, physical custodian, or guardian despite the attempt of the youth's parents, foster parents, physical custodian, or guardian to exert all reasonable efforts to mediate, resolve, or control the youth's behavior; or

(c) has committed any of the acts of a delinquent youth but whom the youth court, in its discretion, chooses to regard as a youth in need of intervention."

Section 2. Section 41-5-321, MCA, is amended to read:

"41-5-321. Taking into custody. (1) A youth may be taken into custody under the following circumstances:

(a) by a law enforcement officer pursuant to a lawful order or process of any court;

(b) by a law enforcement officer pursuant to a lawful arrest for violation of the law;

(c) by a law enforcement officer, agent of the department, county attorney, or a person or physician treating a youth when there is reason to believe the youth is a youth in need of care and that the residence of the youth or the custody by the person legally responsible for the youth presents an imminent danger to the life or health of the youth;

(d) by a juvenile home arrest officer or an officer listed in subsections (1)(a) through (1)(c) if a youth placed under a home arrest program has violated a condition of the placement and the home arrest officer or law enforcement officer has direct knowledge of the violation or a juvenile probation officer has provided the juvenile home arrest officer notice of a violation.

(2) The taking of a youth into custody is not an arrest except for the purpose of determining the validity of the taking under the constitution of Montana or the United States."

Section 3. Section 41-5-332, MCA, is amended to read:

"41-5-332. Custody — hearing for probable cause. (1) When a youth is taken into custody for questioning, a hearing to determine whether there is probable cause to believe the youth is a delinquent youth or a youth in need of intervention must be held within 24 hours, excluding weekends and legal holidays. A hearing is not required if the youth is released prior to the time of the required hearing.

HeinOnline -- 1999 vol. II 1217 1999

(2) When a youth is taken into custody for a violation of placement under a home arrest program, a hearing to determine whether a violation occurred must be held within 24 hours, excluding weekends and holidays.

~~(2)~~*(3)* The probable cause hearing required under subsection (1) may be held by the youth court, a justice of the peace, a municipal or city judge, or a magistrate having jurisdiction in the case as provided in 41-5-203. If the probable cause hearing is held by a justice of the peace, a municipal or city judge, or a magistrate, a record of the hearing must be made by a court reporter or by a tape recording of the hearing.

~~(3)~~*(4)* A probable cause hearing may be conducted by telephone if other means of conducting the hearing are impractical. All written orders and findings of the court in a hearing conducted by telephone must bear the name of the judge or magistrate presiding in the case and the hour and date the order or findings were issued."

Section 4. Effective date. [This act] is effective July 1, 1999.

Approved April 16, 1999

CHAPTER NO. 327

[SB 522]

AN ACT ALLOWING MARRIED TAXPAYERS TO FILE SEPARATE MONTANA INCOME TAX RETURNS TO DEFER FROM MONTANA ADJUSTED GROSS INCOME RATABLY FOR 4 TAX YEARS THE CONVERSION AMOUNT FROM A TRADITIONAL IRA TO A ROTH IRA; AMENDING SECTION 15-30-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-111, MCA, is amended to read:

"15-30-111. Adjusted gross income. (1) Adjusted gross income is the taxpayer's federal income tax adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954, 26 U.S.C. 62, as that section may be labeled or amended, and in addition includes the following:

(a) (i) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision of another state, except to the extent that the interest is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(h)(5) of the Internal Revenue Code of 1986, 26 U.S.C. 852(b)(5), as that section may be amended or renumbered, that are attributable to the interest referred to in subsection (1)(a)(i);

(b) refunds received of federal income tax, to the extent that the deduction of the tax resulted in a reduction of Montana income tax liability;

(c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue Code of 1954 that has been reduced by any federal taxes paid by the subchapter S. corporation on the income;

(d) depreciation or amortization taken on a title plant as defined in 33-25-105(15); and

HeinOnline -- 1999 vol. II 1218 1999

(e) the recovery during the tax year of an amount deducted in any prior tax year to the extent that the amount recovered reduced the taxpayer's Montana income tax in the year deducted.

(2) Notwithstanding the provisions of the federal Internal Revenue Code of 1954, as labeled or amended, adjusted gross income does not include the following, which are exempt from taxation under this chapter:

(a) (i) all interest income from obligations of the United States government, the state of Montana, a county, municipality, or district, or other political subdivision of the state and any other interest income that is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code of 1986, 26 U.S.C. 852(b)(5), as that section may be amended or renumbered, that are attributable to the interest referred to in subsection (2)(a)(i);

(b) interest income earned by a taxpayer who is 65 years of age or older in a tax year up to and including $800 for a taxpayer filing a separate return and $1,600 for each joint return;

(c) (i) except as provided in subsection (2)(c)(ii), the first $3,600 of all pension and annuity income received as defined in 15-30-101;

(ii) for pension and annuity income described under subsection (2)(c)(i), as follows:

(A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total amount of the exclusion provided in subsection (2)(c)(i) by $2 for every $1 of federal adjusted gross income in excess of $30,000 as shown on the taxpayer's return;

(B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in subsection (2)(c)(i) must be reduced by $2 for every $1 of federal adjusted gross income in excess of $30,000 as shown on their joint return;

(d) all Montana income tax refunds or tax refund credits;

(e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

(f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by section 3401 of the Internal Revenue Code of 1954, 26 U.S.C. 3402(k) or 3401, as amended and applicable on January 1, 1983, received by persons for services rendered by them to patrons of premises licensed to provide food, beverage, or lodging;

(g) all benefits received under the workers' compensation laws;

(h) all health insurance premiums paid by an employer for an employee if attributed as income to the employee under federal law;

(i) all money received because of a settlement agreement or judgment in a lawsuit brought against a manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange";

(j) principal and income in a medical care savings account established in accordance with 15-61-201 or withdrawn from an account for eligible medical

HeinOnline -- 1999 vol. II 1219 1999

expenses, as defined in 15-61-102, of the taxpayer or a dependent of the taxpayer or for the long-term care of the taxpayer or a dependent of the taxpayer;

(k) principal and income in a first-time home buyer savings account established in accordance with 15-63-201 or withdrawn from an account for eligible costs, as provided in 15-63-202(7), for the first-time purchase of a single-family residence;

(l) money, not exceeding $3,000 for each taxpayer, contributed to a family education savings program account established in accordance with 15-62-201;

(m) principal withdrawn from an account for qualified higher education expenses, as defined in 15-62-103, for a designated beneficiary of the taxpayer;

(n) the recovery during the tax year of any amount deducted in any prior tax year to the extent that the recovered amount did not reduce the taxpayer's Montana income tax in the year deducted; and

(o) income of a dependent child that is included in the taxpayer's federal adjusted gross income pursuant to the Internal Revenue Code. The child is required to file a Montana personal income tax return if the child and taxpayer meet the filing requirements in 15-30-142.

(3) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l) shall include in the shareholder's adjusted gross income the earnings and profits of the DISC in the same manner as provided by section 995 of the Internal Revenue Code, 26 U.S.C. 995, for all periods for which the DISC election is effective.

(4) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's business deductions by an amount for wages and salaries for which a federal tax credit was elected under sections 38 and 51(a) of the Internal Revenue Code of 1954, as those sections may be labeled or amended, is allowed to deduct the amount of the wages and salaries paid regardless of the credit taken. The deduction must be made in the year that the wages and salaries were used to compute the credit. In the case of a partnership or small business corporation, the deduction must be made to determine the amount of income or loss of the partnership or small business corporation.

(5) Married taxpayers filing a joint federal return who are required to include part of their social security benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement benefits when they file separate Montana income tax returns. The federal base must be split equally on the Montana return.

(6) A taxpayer receiving retirement disability benefits who has not attained age 65 by the end of the tax year and who has retired as permanently and totally disabled may exclude from adjusted gross income up to $100 a week received as wages or payments in lieu of wages for a period during which the employee is absent from work due to the disability. If the adjusted gross income before this exclusion and before application of the two-earner married couple deduction exceeds $15,000, the excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the limitation for income exceeding $15,000 is determined with respect to the spouses on their combined adjusted gross income. For the purpose of this

HeinOnline -- 1999 vol. II 1220 1999

subsection, "permanently and totally disabled" means unable to engage in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting or expected to last at least 12 months.

(7) Married taxpayers who file a joint federal return and who make an election on the federal return to defer income ratably for 4 tax years because of a conversion from an IRA other than a Roth IRA to a Roth IRA, pursuant to section 408A(d)(3) of the Internal Revenue Code, 26 U.S.C. 408A(d)(3), may file separate Montana income tax returns to defer the full taxable conversion amount from Montana adjusted gross income for the same time period. The deferred amount must be attributed to the taxpayer making the conversion. (Subsection (2)(f) terminates on occurrence of contingency—sec. 3, Ch. 634, L. 1983.)"

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1997.

Approved April 14, 1999

CHAPTER NO. 328

[HB 4]

AN ACT APPROPRIATING MONEY THAT WOULD USUALLY BE APPROPRIATED BY BUDGET AMENDMENT TO VARIOUS STATE AGENCIES FOR THE FISCAL YEAR ENDING JUNE 30, 1999; PROVIDING THAT CERTAIN APPROPRIATIONS CONTINUE INTO STATE AND FEDERAL FISCAL YEAR 2000; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Time limits. The appropriations contained in [section 3] are intended to provide necessary expenditures for the years for which the appropriations are made. The unspent balance of an appropriation reverts to the fund from which it is appropriated upon conclusion of the final fiscal year for which its expenditures are authorized by [sections 1 through 3].

Seetion 2. Totals not appropriations. The totals shown in [section 3] are for informational purposes only and are not appropriations.

Section 3. Appropriations. The following money is appropriated, subject to the terms and conditions of [sections 1 through 3]:

Agency and Program	FY	Amount	Fund
Department of Labor and Industry			
Unemployment Insurance Division			
UI Reed Act	1999	$ 38,500	Federal Funds
UI Integrity	1999	55,903	Federal Funds
UI YR2000 SBR	1999	2,319,334	Federal Funds

HeinOnline -- 1999 vol. II 1221 1999

All remaining fiscal year 1998 federal budget amendment authority for Y2K Compliance-UID and Y2K Compliance-DOR Transfer is authorized to continue into fiscal year 2000.

All remaining fiscal year 1999 federal budget amendment authority for the UI Integrity, the UI YR2000 SBR, the Y2K Indep Verification/Valid, and the UI SBR funding is authorized to continue into fiscal year 2000.

Job Service Division

Job Training-Grants	1999	2,035,218	Federal Funds
Job Training-Administration	1999	742,842	Federal Funds
R&A NAICS FY99	1999	37,603	Federal Funds
R&A NAICS	1999	40,000	Federal Funds
ETA One Stop LMI	1999	49,974	Federal Funds

All remaining fiscal year 1999 federal budget amendment authority for R&A NAICS, EDWAA Buttrey Training Grant-Administration, and EDWAA Buttrey Training Grants is authorized to continue into federal fiscal year 2000.

Legal/Centralized Division

All remaining fiscal year 1998 federal budget amendment authority for Y2K Compliance-Legal/CSD is authorized to continue into federal fiscal year 2000.

Montana Community Services

MCS Cross Streams	1999	10,000	Federal Funds
AmeriCorps Promise Fellows	1999	85,000	Federal Funds

All remaining fiscal year 1999 federal budget amendment authority for AmeriCorps Promise Fellows and OCS Montana America Reads is authorized to continue into fiscal year 2000.

Employment Relations Division

ERD Safety	1999	77,000	Federal Funds

All remaining fiscal year 1999 federal budget amendment authority for ERD Safety is authorized to continue into fiscal year 2000.

Department of Military Affairs

Disaster and Emergency Services

CERCLA99	1999	5,335	Federal Funds
SARA Title III	1999	35,700	Federal Funds
USDOT/HMEP	1999	58,847	Federal Funds

All remaining fiscal year 1999 federal budget amendment authority for DRCG-SF Project Impact, CERCLA99, SARA Title III, and USDOT/HMEP is authorized to continue into fiscal year 2000.

HeinOnline -- 1999 vol. II 1222 1999

Military Capital Construction

All remaining fiscal year 1999 federal budget amendment authority for FY99 Construction is authorized to continue into federal fiscal year 2000.

Army National Guard

Additional 100% Federal	1999	109,336	Federal Funds
Environmental	1999	60,000	Federal Funds

All remaining fiscal year 1999 federal budget amendment authority for Environmental is authorized to continue into fiscal year 2000.

Air National Guard

Air Program	1999	116,143	Federal Funds

All remaining fiscal year 1999 federal budget amendment authority for Air Program is authorized to continue into fiscal year 2000.

Department of Public Health and Human Services

Health Policy and Services

Birth Defect Surveillance	1999	90,000	Federal Funds

All remaining fiscal year 1999 federal budget amendment authority for Birth Defect Surveillance and Mortal/Morbid Review is authorized to continue into fiscal year 2000.

Addictive and Mental Disorders

All remaining fiscal year 1998 federal budget amendment authority for CSAP Youth Prevention and the CSAT grant is authorized to continue into federal fiscal year 2000.

Senior and Long-Term Care

Lien and Estate-Waiver	1999	162,883	Federal Funds
Lien and Estate-Nurse Home	1999	162,883	Federal Funds

Judiciary

Supreme Court Operations

All remaining fiscal year 1999 federal budget amendment authority for the Court-Appointed Special Advocate is authorized to continue into fiscal year 2000.

Department of Justice—Crime Control Division

Justice System Support Services

98 Criminal History Records Improvement	1999	370,890	Federal Funds
98 Crime Victims BFS Federal	1999	72,000	Federal funds

HeinOnline -- 1999 vol. II 1223 1999

All remaining fiscal year 1999 federal budget amendment authority for the 98 Criminal History Records Improvement, the National Sex Offender Registry, and the State Identification System Improvement is authorized to continue into fiscal year 2000.

All remaining fiscal year 1999 federal budget amendment authority for 98 Victims Assistance-Administration, 98 Victims Assistance Pass Thru, 98 Crime Victims BFS Federal, Juvenile Accountability Administration, Juvenile Accountability Pass Thru, 98 Juvenile Action Pass Thru, and LLEBG Training is authorized to continue into federal fiscal year 2000.

Department of Justice

Motor Vehicle Division

All remaining fiscal year 1999 federal budget amendment authority for Accident Report is authorized to continue into fiscal year 2000.

Department of Environmental Quality

Central Management Division

EPA-99PD-Program 10	1999	85,550	Federal Funds

Planning Prevention and Assistance Division

GPS/GIS	1999	10,000	Federal Funds
EPA/Wetlands-99	1999	321,397	Federal Funds
DOE/SEP-99	1999	50,000	Federal Funds
EPA-99PPG	1999	401,496	Federal Funds
EPA/SmBusConf/99-00	1999	80,000	Federal Funds
EPA/CWAP-NPS/99	1999	1,093,643	Federal Funds

All remaining fiscal year 1999 federal budget amendment authority for EPA/Wetlands-99, EPA/SmBusConf/99-00, EPA/CWAP-NPS/99, and EPA/Greenhouse Climate Change is authorized to continue into fiscal year 2000.

Enforcement Division

EPA-99PPG	1999	9,040	Federal Funds

Permitting/Compliance Division

FY97 PPG Pegasus	1999	193,658	Federal Funds
EPA-99PPG	1999	247,134	Federal Funds
Zortman/Landusky Set	1999	1,050,000	State Special
Zortman/Landusky Bond	1999	1,500,000	State special
Additional Bond/Pegasus	1999	1,140,000	State Special

HeinOnline -- 1999 vol. II 1224 1999

Department of Natural Resources and Conservation

Water Resources Division

Ecosystem and Watershed Management	1999	20,000	Federal Funds
Missouri River Study-BOR	1999	52,000	Federal Funds

All remaining fiscal year 1998 federal budget amendment authority for the Milk River Basin BOR, Ecosystem and Watershed Management, Bighole-Jeff BOR Grant, EPA Upper Clark Fork, and FMAP-FEMA FFY98 is authorized to continue into fiscal year 2000.

All remaining fiscal year 1998 and fiscal year 1999 federal budget amendment authority for Missouri River Study BOR is authorized to continue into federal fiscal year 2000.

All remaining fiscal year 1999 federal budget amendment authority for Ecosystem and Watershed Management and FMAP-FEMA is authorized to continue into fiscal year 2000.

Conservation and Resource Development Division

NRCS FY99/00	1999	15,000	Federal Funds

All remaining fiscal year 1999 federal budget amendment authority for NRCS FY99/00 is authorized to continue into fiscal year 2000.

Department of Fish, Wildlife, and Parks

Fisheries Division

Federal Wallop-Breaux	1999	306,000	Federal Funds
Habitat Restoration Coordination	1999	20,000	Federal Funds

Parks Division

Federal Trails Act	1999	912,213	Federal Funds

Department of Transportation

Construction Division

Highway Construction Federal	1999	22,500,000	Federal Funds

Transpertation Planning Division

Stars-State	1999	222,452	State Special
Stars-Federal	1999	889,809	Federal Funds

All remaining state and federal fiscal year 1999 authority for Stars-State and Stars-Federal is authorized to continue into fiscal year 2000.

HeinOnline -- 1999 vol. II 1225 1999

State Library Commission			
NRIS Program			
Natural Resource Conservation	1999	11,500	Federal Funds
Department of Livestock			
Animal Health Division			
Bison Capture Facility	1999	225,000	Federal Funds
Department of Administration			
Information Services Division			
PDCR/Administration-Federal	1999	600,000	Federal Funds

The remaining fiscal year 1999 federal budget amendment authority for PDCR/Administration-Federal is authorized to continue into federal fiscal year 2000.

Department of Commerce			
Economic Development Division			
CDBG Economic Development-Federal	1999	750,000	Federal Funds
Montana Arts Council			
Promotion of the Arts			
NEA/Arts Education	1999	14,100	Federal Funds
NEA/BSG	1999	43,845	Federal Funds
NEA/Locals Grant	1999	95,489	Federal Funds
BSG/Prior Year	1999	124,970	Federal Funds

Section 4. Effective date. [This act] is effective on passage and approval.

Approved April 19, 1999

CHAPTER NO. 329

[HB 9]

AN ACT ESTABLISHING PRIORITIES FOR CULTURAL AND AESTHETIC PROJECT GRANT AWARDS; APPROPRIATING GENERAL FUND AND OTHER MONEY FOR CULTURAL AND AESTHETIC GRANTS; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Appropriation of cultural and aesthetic grant funds — priority of disbursement. (1) The Montana arts council shall award grants for projects authorized by and limited to the amounts appropriated by [section 2]

HeinOnline -- 1999 vol. II 1226 1999

and tbis section. Money must be disbursed in priority order, first to projects covered under subsection (3) and second to the projects listed in [section 2].

(2) The Montana arts council sball dishurse money to projects authorized by [section 2] through grant contracts between the Montana arts council and the grant recipient. The award contract must bind the parties to conditions, if any, listed with the appropriation in [section 2].

(3) There is appropriated from tbe cultural and aesthetic projects account to the Montana historical society $15,000 for tbe biennium ending July 1, 2001, for care and conservation of capitol complex artwork. This appropriation is recommended to be repeated for one additional biennium and also to be reviewed in fiscal year 2001 to determine if it should continue in the 2003 biennium and future bienniums.

Seetion 2. Appropriation of general fund and cultural and aesthetic grant funds. (1) There is appropriated $300,000 in general fund money in fiscal year 2000 and $300,000 in general fund money in fiscal year 2001 to the Montana arts council for the projects approved in this section. The general fund appropriation is a continuing appropriation for the biennium.

(2) The following projects are approved and amounts appropriated to the Montana arts council for the biennium ending June 30, 2001, from the cultural and aesthetic projects account first and the general fund last:

(a) Category 1 - Special Projects $4,500 or Less:

Grantee	Amount
Bonnie Cypher - Lewis & Clark Educational Trunk	$1,100
Montana Preservation Alliance - Technical Assistance Team	5,000
Museums Association of Montana - Envisioning the Future	4,000
Montana Agricultural Center & Museum -Homestead Village Business Development	4,400
Butte Symphony Orchestra - Celebrating Heritage	3,300
Yellowstone Ballet Company - French Romantic Ballet in Rural MT	5,000
Montana Watercolor Society - "MONAQUA"	3,000
International Choral Festival, Inc. - Foreign Choir Outreach & Performance	4,000
Blackfeet Tribe - Information Signage Project	5,000
Anaconda-Deer Lodge County Historical Society - CD Recorder for Oral Histories	1,200
Council for the Arts, Inc., Lincoln - Standing Ovation Series X & XI	3,000
Charlo School District 7J - True Art	2,000
Heron Players - Special Project	3,000
Libby Fine Arts Council - Veterans Memorial Gym Renovation	1,200
Institute for African-American Folk Culture -Support	4,000

Contingency: Funding contingent on the Montana arts council's approval of applicant's budget and production planning.

HeinOnline -- 1999 vol. II 1227 1999

(b) Category 2 - Special Projects:

Montana Committee for the Humanities -Speakers' Bureau 2000-2001	$32,000
Rattlesnake Productions, Inc. - Butte, America: From Their Labors	16,000
Montana State Historical Records Advisory Board - Local Records Project	24,000
Montana Repertory Theater - Regional Arts Education Initiative	32,000
Hockaday Museum of Art - School Tour & Arts Outreach	20,000
Missoula Children's Theater, Inc. - Rural MT Tour	32,000
Montana Performing Arts Consortium - Four-Part Special Project	24,000
Glacier Orchestra & Chorale - Making Music in Northwestern MT	16,000
Western Heritage Center - Many Voices, Many Visions	12,000
Miles Community College - Speakers' Bureau Expansion	5,000
Whitefish Theater Company - Performing Arts for Children	15,000
Paris Gibson Square Museum of Art - Permanent Collection Galleries	21,000
Montana Historic Quilt Project - Border to Border Exhibits	5,000
Helena Symphony Society - Cascade Quartet Residency	10,200
Yellowstone County Museum Foundation - The Stories Project	13,400
Wakina Sky Learning Circle - Sharing the Native American Spirit in Arts	4,000
MT Indian Art & Culture Assn. - Service & Staff Expansion	12,000
Gallatin County Historical Society - Historic Signs Project	14,200
Missoula Symphony Association - Rural Outreach & Youth Mentoring	9,400
Very Special Arts Montana - Model Arts Programs for People with Disabilities	7,100
Meadowlark Fund - Meadowlark Fund Partnership	20,000
Montana State University-Billings - Managing the Past at MSU	6,000
Museum of Fine Arts, University of Montana -Cataloging Works on Paper	12,000
MT Alliance for Arts Education - Making a Positive Impact	8,000
Broadwater Prod/Grandstreet Theater -Scholarships for Needy Students	5,000
Bitterroot RC & D Area, Inc. - Asian Community Cultural Project	4,000
Bertha Kassing - Montana Baseball	4,000
Spring Meadow Resources, Inc. - Virtual Art Center	9,000

(c) Category 3 - Operational Support:

Writer's Voice of Billings YMCA - Expanding the Literary Frontier	$22,000
Custer County Art Center - Avenues to Ed -Through the Arts	17,300

Vigilante Players, Inc. - Tour Support	20,000
Carbon County Historical Society - Peaks to Plains	16,000
Helena Presents, Inc. - Support	32,000
Montana Arts - Support	22,000
Montana Art Gallery Directors Assn. -Exhibition Fee Support	24,400
Shakespeare in tbe Parks - Support	21,000
Montana Transport Company - Support	12,000
Yellowstone Art Museum - Preserving & Sharing Montana's Cultural Heritage	28,000
Great Falls Symphony Assoc., Inc. - Support for Outreach	12,000
Butte Center for the Performing Arts - Mother Lode Theater	16,000
Archie Bray Foundation - 50 Years of Montana's Archie Bray	17,300
Alberta Bair Theater - Support	10,000
Garden City Ballet of Montana - Support	4,000
Billings Symphony Society - Support for Education & Outreach	16,000
Young Audiences of Western Montana -Artist/Staff Travel	10,000
Montana Dance Arts Assn. - Support	5,000
Holter Museum of Art - Support	16,000
Montana Association of Symphony Orchestras -Support	12,000
Montana Ballet Company - Competitive Salaries for Staff	8,000
Artist Group - Kaleidoscope Arts Productions	6,300
Bozeman Symphony Society - Musicians' Fee Support	8,000
Helena Art Center - Support	6,300
Montana Chorale - Outreach Support	6,000
Little Red School House, Inc. - School House in the Year 2000	6,000
Montanans for Quality Television - New Crystal Program Expansion	3,000
(d) Category 4 - Capital Expenditures:	
Art Museum of Missoula - Contemporary Indian Art Collection Expansion	$11,000
Cascade County Historical Society - High Plains Heritage Museum & Archives	24,000
Fort Peck Fine Arts Council - Theater Restoration/Reroof	15,000
Billings Preservation Society, Inc. - Moss Mansion Carriage House	24,000
Contingency: Funding is contingent on the provision of a 20% match by the city of Billings in either cash or in-kind contributions.	
C.M. Russell Museum - Facility Expansion	28,000
Emerson, Inc. - Theater Seats	16,000
Arlee Historical Society, Inc. - Finish Interior and Handicap Ramp	3,000

Hamilton Players, Inc. - Playhouse Renovation & Expansion	12,000
Performing Arts Advisory Board: WMC-UM -Support	7,000

Seetion 3. Reversion of granted money. On July 1, 2001, the unencumbered balance of the 2001 biennium grants revert to the cultural and aesthetic project account provided for in 15-35-108 and the unencumbered balance of the general fund reverts to the general fund.

Section 4. Reduction of grants. Except as provided in [section 1(3)], if money in the cultural and aesthetic project account is insufficient to fund projects at the appropriation levels contained in [section 2], reductions to all projects will be made on a pro-rata basis.

Scction 5. Effective date. [This act] is effective July 1, 1999.

Approved April 19, 1999

CHAPTER NO. 330

[HB 32]

AN ACT GENERALLY REVISING THE LAWS GOVERNING THE BOARD OF INVESTMENTS; CLARIFYING THE NUMBER OF POSITIONS FOR WHICH THE BOARD MAY ESTABLISH SALARIES; CLARIFYING THAT PERSONS IN THOSE POSITIONS SERVE AT THE PLEASURE OF THE BOARD; ELIMINATING AUTHORITY TO REPAIR PROPERTY OWNED BY THE BOARD; AMENDING SECTIONS 2-15-1808 AND 17-6-201, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-1808, MCA, is amended to read:

"2-15-1808. Board of investments — allocation — composition — quasi-judicial. (1) There is a board of investments within the department of commerce.

(2) Except as otherwise provided in this subsection, the board is allocated to the department for administrative purposes as prescribed in 2-15-121. The board may employ ~~an~~ *a chief* investment officer~~, an assistant investment officer,~~ and an executive director who have general responsibility for selection and management of the board's staff and for direct investment and economic development activities. ~~The investment officer, assistant investment officer, and executive director serve at the pleasure of the board.~~ The board shall prescribe the duties and annual salaries of the *chief* investment officer, ~~assistant investment officer,~~ executive director, and ~~three~~ *six* professional staff positions. *The chief investment officer, executive director, and six professional staff serve at the pleasure of the board.*

(3) The board is composed of nine members appointed by the governor as prescribed in 2-15-124. The members are:

(a) one member from the public employees' retirement board, provided for in 2-15-1009, and one member from the teachers' retirement board provided for in 2-15-1010. If either member ceases to be a member of the retirement board, the position of tbat member on the board of investments is vacant, and the governor shall fill the vacancy in accordance with 2-15-124.

HeinOnline -- 1999 vol. II 1230 1999

(b) seven members who will provide a balance of professional expertise and public interest and accountability, ~~and~~ who are informed and experienced in the subject of investments, and who are representative of:

(i) the financial community;

(ii) small business;

(iii) agriculture; and

(iv) labor.

(4) The board is designated as a quasi-judicial board for the purposes of 2-15-124."

Section 2. Section 17-6-201, MCA, is amended to read:

"17-6-201. (Temporary) Unified investment program — general provisions. (1) The unified investment program directed by Article VIII, section 13, of the Montana constitution to he provided for public funds must be administered by the board of investments in accordance with the prudent expert principle, which requires an investment manager to:

(a) discharge the duties with the care, skill, prudence, and diligence, under the circumstances then prevailing, that a prudent person acting in a like capacity witb the same resources and familiar with like matters exercises in the conduct of an enterprise of a like character with like aims;

(b) diversify the holdings of each fund within the unified investment program to minimize the risk of loss and to maximize the rate of return unless, under the circumstances, it is clearly prudent not to do so; and

(c) discharge the duties solely in the interest of and for the benefit of the funds forming the unified investment program.

(2) (a) Retirement funds may be invested in common stocks of any corporation, except that an investment may not be made at any time that would cause tbe book value of the investments in a retirement fund to exceed 50% of the book value of the fund or that would cause the stock of one corporation to exceed 2% of the book value of tbe retirement fund.

(b) Other public funds may not be invested in private corporate capital stock. "Private corporate capital stock" means only the common stock of a corporation.

(3) (a) This section does not prevent investment in any business activity in Montana, including activities that continue existing jobs or create new jobs in Montana.

(b) The board is urged under the prudent expert principle to invest up to 3% of retirement funds in venture capital companies. Whenever possible, preference should be given to investments in those venture capital companies that demonstrate an interest in making investments in Montana.

(c) In discharging its duties, the board shall consider the preservation of purchasing power of capital during periods of high monetary inflation.

(d) The board may not make a direct loan to an individual borrower. The purchase of a loan or a portion of a loan originated by a financial institution is not considered a direct loan.

(4) The board has the primary authority to invest state funds. Another agency may not invest state funds unless otherwise provided by law. The hoard shall direct the investment of state funds in accordance with the laws and

HeinOnline -- 1999 vol. II 1231 1999

constitution of this state. The board has the power to veto investments made under its general supervision.

(5) The board shall:

(a) assist agencies with public money to determine if, when, and how much surplus cash is available for investment;

(b) determine the amount of surplus treasury cash to be invested;

(c) determine the type of investment to be made;

(d) prepare the claim to pay for the investment; and

(e) keep an account of the total of each investment fund and of all the investments belonging to the fund and a record of the participation of each treasury fund account in each investment fund.

(6) The board may:

(a) execute deeds of conveyance transferring real property obtained through investments. Prior to the transfer of real property directly purchased and held as an investment, the board shall obtain an appraisal by a qualified appraiser.

(b) direct the withdrawal of funds deposited by or for the state treasurer pursuant to 17-6-101 and 17-6-105;

(c) direct the sale of securities in the program at their full and true value when found necessary to raise money for payments due from the treasury funds for which the securities have been purchased;

~~(d) expend funds needed to cover costs of necessary repairs to property owned by the board as an investment. Repairs that cost in excess of $2,500 must be bid, and the bid must be awarded in compliance with existing state law and regulations. Emergency repairs may be made by the board without bid if approved by the state architect.~~

(7) The cost of administering and accounting for each investment fund must be deducted from the income from each fund.

(8) At the beginning of each fiscal year, the board shall, from the appropriate fund, reimburse the department of commerce for the costs of administering programs established under Title 90, chapter 3, that are not covered hy payback funds available from the account established in 90-3-305.

17-6-201. (Effective July 1, 1999) Unified investment program — general provisions. (1) The unified investment program directed by Article VIII, section 13, of the Montana constitution to be provided for public funds must be administered by the board of investments in accordance with the prudent expert principle, which requires an investment manager to:

(a) discharge the duties with the care, skill, prudence, and diligence, under the circumstances then prevailing, that a prudent person acting in a like capacity with the same resources and familiar with like matters exercises in the conduct of an enterprise of a like character with like aims;

(b) diversify the holdings of each fund within the unified investment program to minimize the risk of loss and to maximize the rate of return unless, under the circumstances, it is clearly prudent not to do so; and

(c) discharge the duties solely in the interest of and for the benefit of the funds forming the unified investment program.

HeinOnline -- 1999 vol. II 1232 1999

(2) (a) Retirement funds may be invested in common stocks of any corporation, except that an investment may not be made at any time that would cause the book value of the investments in a retirement fund to exceed 50% of the book value of the fund or that would cause the stock of one corporation to exceed 2% of the book value of the retirement fund.

(b) Other public funds may not be invested in private corporate capital stock. "Private corporate capital stock" means only the common stock of a corporation.

(3) (a) This section does not prevent investment in any business activity in Montana, including activities that continue existing jobs or create new jobs in Montana.

(b) The board is urged under the prudent expert principle to invest up to 3% of retirement funds in venture capital companies. Whenever possible, preference should be given to investments in those venture capital companies that demonstrate an interest in making investments in Montana.

(c) In discharging its duties, the board shall consider the preservation of purchasing power of capital during periods of high monetary inflation.

(d) The board may not make a direct loan to an individual borrower. The purchase of a loan or a portion of a loan originated by a financial institution is not considered a direct loan.

(4) The board has the primary authority to invest state funds. Another agency may not invest state funds unless otherwise provided by law. The board shall direct the investment of state funds in accordance with the laws and constitution of this state. The board has the power to veto investments made under its general supervision.

(5) The board shall:

(a) assist agencies with public money to determine if, when, and how much surplus cash is available for investment;

(b) determine the amount of surplus treasury cash to be invested;

(c) determine the type of investment to be made;

(d) prepare the claim to pay for the investment; and

(e) keep an account of the total of each investment fund and of all the investments belonging to the fund and a record of the participation of each treasury fund account in each investment fund.

(6) The board may:

(a) execute deeds of conveyance transferring real property obtained through investments. Prior to the transfer of real property directly purchased and held as an investment, the board shall obtain an appraisal by a qualified appraiser.

(b) direct the withdrawal of funds deposited by or for the state treasurer pursuant to 17-6-101 and 17-6-105;

(c) direct the sale of securities in the program at their full and true value when found necessary to raise money for payments due from the treasury funds for which the securities have been purchased;

~~(d) expend funds needed to cover costs of necessary repairs to property owned by the board as an investment. Repairs that cost in excess of $2,500 must be bid, and the bid must be awarded in compliance with existing state law and~~

~~regulations. Emergency repairs may be made by the board without bid if approved by the state architect.~~

(7) The cost of administering and accounting for each investment fund must be deducted from the income from each fund."

Section 3. Effective date. [This act] is effective July 1, 1999.

Approved April 19, 1999

CHAPTER NO. 331

[HB 47]

AN ACT CREATING A STATUTE OF LIMITATIONS FOR ACTIONS BROUGHT BY THE STATE AUDITOR FOR VIOLATIONS OF THE STATE INSURANCE CODE; AND AMENDING SECTION 33-1-701, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-1-701, MCA, is amended to read:

"33-1-701. Hearings — discretion — written demand — *limitations on actions.* (1) The commissioner may hold hearings for any purpose within the scope of this code ~~deemed by him to be~~ *considered* necessary.

(2) The commissioner shall hold a hearing if required by any provision or upon written demand ~~therefor~~ by a person aggrieved by any act, threatened act, or failure ~~of the commissioner~~ to act or by any report, rule, or order ~~of~~ *by* the commissioner, other than an order for ~~the~~ holding ~~of~~ a hearing, ~~or~~ an order on *a* hearing, or *an order* pursuant ~~thereto~~ *to a hearing.* ~~Any such~~ *The person's* demand ~~shall~~ *must* specify the grounds ~~to be~~ relied upon as a basis for the relief ~~to be demanded~~ *sought* at the hearing, and unless postponed by mutual consent, ~~such~~ *the* hearing ~~shall~~ *must* be held within 30 days after receipt by the commissioner of *the* demand ~~therefor~~ *for a hearing.*

(3) If within ~~such~~ *the* 30-day period the commissioner does not either grant the hearing or issue ~~his~~ *an* order refusing *to set* the hearing ~~as to such previous report, rule, or order as to which such person so claims to be aggrieved~~, then the hearing ~~shall thereby~~ *must* be ~~deemed~~ *considered* to have been refused.

(4) Unless otherwise provided by law, the department shall commence an action for a violation of the insurance code within 2 years of the date of the violation or within 2 years after the department discovers the violation or through the use of reasonable diligence should have discovered the violation, whichever occurs last. Regardless of when the department discovers a violation or should have discovered a violation through the use of reasonable diligence, an action may not be commenced by the department unless it is brought within 5 years of the date of the violation."

Approved April 19, 1999

HeinOnline -- 1999 vol. II 1234 1999

CHAPTER NO. 332

[HB 64]

AN ACT REQUIRING AGENCY PROGRAM BUDGETS TO CONTAIN A PRIORITIZED PLAN TO REDUCE BASE BUDGETS BY 15 PERCENT; AND AMENDING SECTION 17-7-111, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-7-111, MCA, is amended to read:

"17-7-111. Preparation of state budget — agency program budgets — form distribution and contents. (1) (a) To prepare a state budget, the executive branch, the legislature, and the citizens of the state need information that is consistent and accurate. Necessary information includes detailed disbursements by fund type for each agency and program for the appropriate time period, recommendations for creating a balanced budget, and recommended disbursements and estimated receipts by fund type and fund category.

(b) Subject to the requirements of this chapter, the budget director and the legislative fiscal analyst shall by agreement:

(i) establisb necessary standards, formats, and other matters necessary to share information between the agencies and to ensure that information is consistent and accurate for the preparation of the state's budget; and

(ii) provide for the collection and provision of budgetary and financial information that is in addition to or different from the information otherwise required to be provided pursuant to this section.

(2) In the preparation of a state budget, the budget director shall, not later than the date specified in 17-7-112(1), distribute to all agencies the proper forms and instructions necessary for the preparation of budget estimates by the budget director. These forms must be prescribed by the budget director to procure the information required by subsection (3). Tbe forms must be submitted to the budget director by the date provided in 17-7-112(2) or the agency's budget is subject to preparation based upon estimates as provided in 17-7-112(5). The budget director may refuse to accept forms that do not comply with the provisions of this section or tbe instructions given for completing the forms.

(3) The agency budget request must set forth a balanced financial plan for the agency completing the forms for each fiscal year of the ensuing biennium. The plan must consist of:

(a) a consolidated agency budget summary of funds subject to appropriation for the current base budget expenditures, including statutory appropriations, and for each present law adjustment and new proposal request setting forth tlie aggregate figures of the full-time equivalent personnel positions (FTE) and the budget, showing a balance between tbe total proposed disbursements and the total anticipated receipts, together with the other means of financing tbe budget for each fiscal year of the ensuing biennium, contrasted witb the corresponding figures for the last completed fiscal year and the fiscal year in progress;

(b) a schedule of the actual and projected receipts, disbursements, and solvency of each accounting entity within each fund for the current biennium and estimated for tbe subsequent biennium;

HeinOnline -- 1999 vol. II 1235 1999

(c) a statement of the agency mission and a statement of goals and objectives for each program of the agency. The goals and objectives must include, in a concise form, sufficient specific information and quantifiable information to enable the legislature to formulate an appropriations policy regarding the agency and its programs and to allow a determination, at some future date, on whether the agency has succeeded in attaining its goals and objectives.

(d) actual FTE and disbursements for the completed fiscal year of the current biennium, estimated FTE and disbursements for the current fiscal year, and the agency's request for the ensuing biennium, by program;

(e) actual disbursements for the completed fiscal year of the current biennium, estimated disbursements for the current fiscal year, and the agency's recommendations for the ensuing biennium, by disbursement category;

(f) a reference, for each program included in the agency budget request, identifying whether the program may be operated at the discretion of the agency or whether the agency is required by federal or state law to operate, administer, or manage the program; ~~and~~

(g) for only agencies with more than 20 FTE, a plan to reduce the proposed budget to 85% of the current base budget. The plan must include:

(i) a prioritized list of services that would be eliminated or reduced;

(ii) for each service included in the prioritized list, the savings that would result from the elimination or reduction; and

(iii) the consequences or impacts of the proposed elimination or reduction of each service.

~~(g)~~*(h)* other information the budget director feels is necessary for the preparation of a budget.

(4) The budget director shall prepare and submit to the legislative fiscal analyst in accordance with 17-7-112:

(a) detailed recommendations for the state long-range building program. Each recommendation must be presented by institution, agency, or branch, by funding source, with a description of each proposed project.

(b) the proposed pay plan schedule for all executive branch employees at the program level by fund, with the specific cost and funding recommendations for each agency. Submission of a pay plan schedule under this subsection is not an unfair labor practice under 39-31-401.

(c) agency proposals for the use of cultural and aesthetic project grants under Title 22, chapter 2, part 3, the renewable resource grant and loan program under Title 85, chapter 1, part 6, the reclamation and development grants program under Title 90, chapter 2, part 11, and the treasure state endowment program under Title 90, chapter 6, part 7.

(5) The board of regents shall submit, with its budget request for each university unit in accordance with 17-7-112, a report on the university system bonded indebtedness and related finances as provided in this subsection (5). The report must include the following information for each year of the biennium, contrasted with the same information for the last completed fiscal year and the fiscal year in progress:

HeinOnline -- 1999 vol. II 1236 1999

(a) a schedule of estimated total bonded indebtedness for each university unit by bond indenture;

(b) a schedule of estimated revenue, expenditures, and fund balances by fiscal year for each outstanding bond indenture, clearly delineating the accounts relating to each indenture and the minimum legal funding requirements for each bond indenture; and

(c) a schedule showing the total funds available from each bond indenture and its associated accounts, with a list of commitments and planned expenditures from such accounts, itemized by revenue source and project for each year of the current and ensuing bienniums.

(6) The budget director may not obtain copies of individual income tax records protected under 15-30-303. The department of revenue shall make individual income tax data available by removing names, addresses, occupations, social security numbers, and taxpayer identification numbers. The department of revenue may not alter the data in any other way. The data is subject to the same restrictions on disclosure as are individual income tax returns."

Approved April 19, 1999

CHAPTER NO. 333

[HB 107]

AN ACT REVISING THE LIBRARY MILL LEVY ELECTION LAW; PROVIDING THAT THE BALLOT MUST SPECIFY THE AMOUNT OF TIME DURING WHICH THE LEVY IS TO BE IN EFFECT; CLARIFYING THE PURPOSES FOR WHICH BONDS MAY BE ISSUED FOR A LIBRARY; AND AMENDING SECTION 22-1-304, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 22-1-304, MCA, is amended to read:

"22-1-304. Tax levy — special library fund — bonds. (1) The governing body of ~~any~~ *a* city or county ~~which~~ *that* has established a public library may levy in the same manner and at the same time as other taxes are levied a special tax in the amount necessary to maintain adequate public library service~~,~~. *The special tax levy that may be levied by the governing body of a county may* not ~~to~~ exceed 5 mills on the dollar~~, upon~~ *on* all property in ~~such~~ *the* county ~~which may be levied by the governing body of such county and~~. *The special tax that may be levied by the governing body of a city may* not ~~to~~ exceed 7 mills on the dollar ~~upon~~ *on* all property in ~~such~~ *the* city ~~which may be levied by the governing body of such city~~.

(2) (a) The governing body of ~~any~~ *a* city or county may by resolution submit the question of exceeding the maximum tax levy provided in subsection (1) to a vote of the qualified electors ~~thereof~~ at the next general election *or at a special election as provided for in Title 13*. ~~Such~~ *The* resolution must be adopted at least 75 days prior to the ~~general~~ election at which the question will be voted on.

(b) Upon petition being filed with the governing body and signed by not less than 5% of the resident taxpayers of any city or county requesting an election for the purpose of exceeding the maximum mill levy, the governing body shall submit to a vote of the qualified electors ~~thereof~~ at the next general election *or at a special election as provided for in Title 13* the question of exceeding the maximum mill

HeinOnline -- 1999 vol. II 1237 1999

levy. ~~Such~~ *The* petition must be delivered to the governing body at least 90 days prior to the ~~general~~ election at which the question will be voted on.

(c) The question ~~shall~~ *must* be submitted by ballots upon which the words "FOR exceeding the ... mill maximum levy and authorizing an additional ... mill(s) for the library" and "AGAINST exceeding the ... mill maximum library levy" ~~shall~~ *must* appear, with a square before each proposition and a direction to insert an "X" mark in the square before one or the other of the propositions.

(d) *The ballots must also specify the amount of time during which the proposed increase exceeding the maximum mill levy is to be in effect.*

(e) The votes cast for the adoption or rejection of the question must he canvassed, and:

(i) if a majority of the voters voting on the question vote to exceed the maximum mill levy, the governing body shall levy the additional tax for the ~~year in which the vote was taken~~ *time specified on the ballot*; or

(ii) if a majority of tbe voters voting on the question vote to not exceed the maximum mill levy, the maximum mill levy may not be exceeded.

(3) The municipal tax authorized in this section is in addition to all other taxes authorized by law and is not within the all-purpose mill levy established by 7-6-4451 through 7-6-4453.

(4) The proceeds of ~~such~~ *the* tax ~~shall~~ *must* constitute a separate fund called the public library fund and ~~shall~~ *may* not be used for any purpose except those of the public library.

(5) ~~No money shall~~ *Money may not* be paid out of the public lihrary fund hy the treasurer of the city or county except by order or warrant of the board of library trustees.

(6) Bonds may be issued by the governing body in the manner prescribed by law for the ~~erection and equipment of public library buildings and the purchase of land therefor~~ *following purposes:*

(a) building, altering, repairing, furnishing, or equipping a public library or purchasing land for the library;

(b) buying a bookmobile or bookmobiles; and

(c) funding a judgment against the library."

Approved April 19, 1999

CHAPTER NO. 334

[HB 111]

AN ACT ESTABLISHING STANDARDS FOR THE COLLECTION, USE, AND DISCLOSURE OF GENETIC INFORMATION IN ISSUING INSURANCE; PROHIBITING INSURERS FROM REQUIRING GENETIC TESTING EXCEPT AS OTHERWISE REQUIRED BY LAW; PROHIBITING DISCRIMINATION ON THE BASIS OF GENETIC TRAITS BY INSURERS, HEALTH SERVICE CORPORATIONS, HEALTH MAINTENANCE ORGANIZATIONS, FRATERNAL BENEFIT SOCIETIES, AND OTHER ISSUERS OF INDIVIDUAL OR GROUP POLICIES OR CERTIFICATES OF

HeinOnline -- 1999 vol. II 1238 1999

INSURANCE; PROHIBITING THE SOLICITATION OF GENETIC INFORMATION FOR NONTHERAPEUTIC PURPOSES; AND AMENDING SECTIONS 2-18-812 AND 33-31-111, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-18-812, MCA, is amended to read:

"2-18-812. Alternatives to conventional insurance for providing state employee group benefits authorized — requirements. The department may establish alternatives to conventional insurance for providing state employee group benefits. The requirements for providing alternatives to conventional insurance are as follows:

(1) The department shall maintain state employee group benefit plans on an actuarially sound basis.

(2) The department shall maintain reserves sufficient to liquidate the unrevealed claims liability and other liabilities of state employee group benefit plans.

(3) The department shall deposit all reserve funds and premiums paid to a state employee group benefit plan, and the deposits must be expended for claims under the plan.

(4) The department shall deposit income earned from the investment of a state employee group benefit plan's reserve fund into the account established under subsection (3) in order to offset the costs of administering the plan. Expenditures for actual and necessary expenses required for the efficient administration of the plan must be made from temporary appropriations, as described in 17-7-501(1) or (2), made for that purpose.

(5) The department shall, prior to implementation of any alternative to conventional insurance, present to the advisory council the evidence upon which the department has concluded that the alternative method will be more efficient, less costly, or otherwise superior to contracting for conventional insurance.

(6) ~~The~~ *Except as otherwise provided in [sections 3 through 6], the* provisions of Title 33 do not apply to the department when exercising the powers and duties provided for in this section."

Section 2. Section 33-31-111, MCA, is amended to read:

"33-31-111. Statutory construction and relationship to other laws. (1) Except as otherwise provided in this chapter, the insurance or health service corporation laws do not apply to ~~any~~ *a* health maintenance organization authorized to transact business under this chapter. This provision does not apply to an insurer or health service corporation licensed and regulated pursuant to the insurance or health service corporation laws of this state except with respect to its health maintenance organization activities authorized and regulated pursuant to this chapter.

(2) Solicitation of enrollees by a health maintenance organization granted a certificate of authority or its representatives is not a violation of any law relating to solicitation or advertising by health professionals.

(3) A health maintenance organization authorized under this chapter is not practicing medicine and is exempt from Title 37, chapter 3, relating to the practice of medicine.

HeinOnline -- 1999 vol. II 1239 1999

(4) This chapter does not exempt a health maintenance organization from the applicable certificate of need requirements under Title 50, chapter 5, parts 1 and 3.

(5) This section does not exempt a health maintenance organization from the prohibition of pecuniary interest under 33-3-308 or the material transaction disclosure requirements under 33-3-701 through 33-3-704. A health maintenance organization must be considered an insurer for the purposes of 33-3-308 and 33-3-701 through 33-3-704.

(6) This section does not exempt a health maintenance organization from:

(a) prohibitions against interference with certain communications as provided under chapter 1, part 8;

(h) the provisions of Title 33, chapter 22, part 19;

(c) the requirements of 33-22-134 and 33-22-135; ~~or~~

(d) network adequacy and quality assurance requirements provided under chapter 36*; or*

(e) the requirements of [sections 3 through 6].

(7) Sections 33-22-141, 33-22-142, 33-22-246, 33-22-247, 33-22-514, 33-22-523, 33-22-524, and 33-22-526 apply to health maintenance organizations."

Section 3. Definitions. Unless the context indicates otherwise, the following definitions apply to [sections 3 through 6]:

(1) "Genetic information" means, unless otherwise provided by Public Law 104-191, information derived from genetic testing or medical evaluation to determine the presence or absence of variations or mutations, including carrier status, in an individual's genetic material or genes that are scientifically or medically believed to cause a disease, disorder, or syndrome or are associated with a statistically increased risk of developing a disease, disorder, or syndrome that is asymptomatic at the time of testing.

(2) "Genetic testing" or "genetic test" means a test used to diagnose a presymptomatic genetic factor, including analysis of human deoxyrihonucleic acid or ribonucleic acid, chromosomes, proteins, or metabolites. The term does not include a routine physical examination or a chemical, blood, or urine analysis, unless conducted or analyzed purposefully or knowingly to obtain genetic information, or a family history.

(3) "Genetic trait" means any medically or scientifically identified genetic factor, known or presumed to be present in the individual or a hiological relative but not presently associated with any manifestations of the disorder in the individual, that could cause a disorder or be statistically associated with an increased risk of development of a disorder.

(4) "Group policy" includes:

(a) the group insurance program authorized by Title 2, chapter 18, part 7;

(b) the state employee group insurance program required by Title 2, chapter 18, part 8; and

(c) a self-funded multiple employer welfare arrangement that is not regulated pursuant to the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1001, et seq.

Section 4. Requirement for genetic testing — limitations. (1) An insurer, health service corporation, health maintenance organization, fraternal benefit society, or other issuer of an individual or group policy or certificate of insurance may not require an individual to obtain a genetic test unless the test is otherwise required by law for reasons including but not limited to the following:

(a) to establish parentage;

(b) to determine the presence of metabolic disorders in a newborn by testing conducted pursuant to newborn screening and protocols;

(c) in connection with a criminal investigation or prosecution; or

(d) for remains identification.

(2) This section does not apply to transactions of life, disability income, or long-term care insurance.

Section 5. Discrimination on basis of genetic traits prohibited. (1) Unless otherwise required by law, an insurer, health service corporation, health maintenance organization, fraternal benefit society, or other issuer of an individual or group policy or certificate of insurance may not, on the basis of a person's genetic traits:

(a) fail or refuse to accept an application for a policy or certificate of insurance;

(b) fail or refuse to issue a policy or certificate of insurance to an applicant;

(c) cancel a policy or certificate of insurance;

(d) refuse to renew a policy or certificate of insurance;

(e) charge a higher rate or premium for a policy or certificate of insurance; or

(f) offer or provide different terms, conditions, or benefits or place a limitation on coverage under a policy or certificate of insurance.

(2) An insurer, health service corporation, health maintenance organization, fraternal benefit society, or other issuer of an individual or group policy or certificate of insurance may not underwrite or condition coverage on the basis of:

(a) a requirement or agreement that the individual undergo genetic testing; or

(b) genetic information about a member of the individual's family.

(3) Discrimination may not be made in the fees or commissions of agents or brokers for writing or renewing an individual or group policy of insurance on the basis of an individual's genetic traits.

(4) This section does not apply to transactions of life, disability income, or long-term care insurance.

(5) This section does not prohibit an insurer, health service corporation, health maintenance organization, fraternal benefit society, or other issuer of an

HeinOnline -- 1999 vol. II 1241 1999

individual or group policy or certificate of insurance from discriminating as otherwise allowed hy law on the basis of other factors unrelated to genetic traits.

Section 6. Seeking genetic information for nontherapeutic purposes prohibited. (1) An insurer, health service corporation, bealth maintenance organization, fraternal benefit society, or other issuer of an individual or group policy or certificate of insurance may not seek genetic information about an individual for a purpose that is:

(a) unrelated to assessing or managing the individual's current health;

(b) inappropriate in an asymptomatic individual; or

(c) unrelated to research in which a subject is not personally identifiable.

(2) This section does not apply to transactions of life, disability income, or long-term care insurance.

Section 7. Codification instruction. [Sections 3 through 6] are intended to be codified as an integral part of Title 33, chapter 18, and the provisions of Title 33, chapter 18, apply to [sections 3 through 6].

Section 8. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 9. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 19, 1999

CHAPTER NO. 335

[HB 126]

AN ACT PROVIDING FOR THE USE OF AUTOMATED EXTERNAL DEFIBRILLATORS (AEDS) BY PUBLIC AND PRIVATE ENTITIES; PROVIDING THAT USE OF AN AED IS NOT PROHIBITED AND A LICENSE IS NOT REQUIRED BY STATUTES PROHIBITING THE PRACTICE OF MEDICINE WITHOUT A LICENSE; REQUIRING THE PREPARATION OF AN AED PROGRAM PLAN; REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO ADOPT RULES; PROVIDING FOR ENFORCEMENT BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES; PROVIDING IMMUNITY FOR INDIVIDUALS AND ENTITIES PARTICIPATING IN AN AED PROGRAM; EXEMPTING CERTAIN USES OF AEDS; AMENDING SECTION 37-3-103, MCA; AND PROVIDING EFFECTIVE DATES.

WHEREAS, the Montana Legislature finds that each year more than 250,000 Americans die from out-of-hospital, sudden cardiac arrest; and

WHEREAS, the American Heart Association estimates that more tban 20,000 deatbs could be prevented each year if early defibrillation were more widely available; and

WHEREAS, while many communities have invested in 9-1-1 emergency notification systems and emergency medical services systems that include well-trained emergency personnel, in other communities there are insufficient numbers of strategically placed defibrillators and persons properly trained to operate them.

THEREFORE, the Legislature finds that in order to improve the access of Montana's citizens to early defibrillation, the Legislature should authorize and regulate the establishment of early defibrillation programs by many different public and private entities in careful coordination with emergency medical services systems.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-3-103, MCA, is amended to read:

"37-3-103. Exemptions from licensing requirements. (1) This chapter does not prohibit or require a license with respect to any of the following acts:

(a) the gratuitous rendering of services in cases of emergency or catastrophe;

(b) the rendering of services in this state by a physician lawfully practicing medicine in another state or territory. However, if the physician does not limit the services to an occasional case or if ~~he~~ *the physician* has any established or regularly used hospital connections in this state or maintains or is provided with, for ~~his~~ *the physician's* regular use, an office or other place for rendering the services, ~~he~~ *the physician* must possess a license to practice medicine in this state.

(c) the practice of dentistry under the conditions and limitations defined by the laws of this state;

(d) the practice of podiatry under the conditions and limitations defined by the laws of this state;

(e) the practice of optometry under the conditions and limitations defined by the laws of this state;

(f) the practice of osteopathy under the conditions and limitations defined in chapter 5 of this title for those doctors of osteopathy who do not receive a physician's certificate under this chapter;

(g) the practice of chiropractic under the conditions and limitations defined by the laws of this state;

(h) the practice of Christian Science, with or without compensation, and ritual circumcisions by rabbis;

(i) the performance by commissioned medical officers of the armed forces of the United States, of the United States public health service, or of the United States department of veterans affairs of their lawful duties in this state as officers;

(j) the rendering of nursing services by registered or other nurses in the lawful discharge of their duties as nurses or of midwife services by registered nurse-midwives under the supervision of a licensed physician;

(k) the rendering of services by interns or resident physicians in a hospital or clinic in which they are training, subject to the conditions and limitations of this chapter. The board may require a resident physician to be licensed if ~~he~~ *the physician* otherwise engages in the practice of medicine in the state of Montana.

HeinOnline -- 1999 vol. II 1243 1999

(l) the rendering of services by a physical therapist, technician, or other paramedical specialist under the appropriate amount and type of supervision of a person licensed under the laws of this state to practice medicine, but this exemption does not extend the scope of a paramedical specialist;

(m) the rendering of services by a physician assistant-certified in accordance with Title 37, chapter 20;

(n) the practice by persons licensed under the laws of this state to practice a limited field of the healing arts, and not specifically designated, under the conditions and limitations defined by law;

(o) the execution of a death sentence pursuant to 46-19-103; ~~and~~

(p) the practice of direct-entry midwifery. For the purpose of this section, the practice of direct-entry midwifery means the advising, attending, or assisting of a woman during pregnancy, labor, natural childbirth, or the postpartum period. Except as authorized in 37-27-302, a direct-entry midwife may not dispense or administer a prescription drug, as those terms are defined in 37-7-101.

(q) the use of an automated external defibrillator pursuant to [sections 2 through 7].

(2) Licensees referred to in subsection (1) ~~of this section~~ who are licensed to practice a limited field of healing arts shall confine themselves to the field for which they are licensed or registered and to the scope of their respective licenses and, with the exception of those licensees who hold a medical degree, may not use the title "M.D." or any word or abbreviation to indicate or to induce others to believe that they are engaged in the diagnosis or treatment of persons afflicted with disease, injury, or defect of body or mind except to the extent and under the conditions expressly provided by the law under which they are licensed."

Section 2. Definitions. As used in [sections 2 through 7], unless the context indicates otherwise, the following definitions apply:

(1) "Automated external defibrillator" or "AED" means a medical device that:

(a) has received approval for marketing from the U.S. food and drug administration;

(b) is capable of recognizing the presence or absence of ventricular fibrillation or rapid ventricular tachycardia and of determining, without intervention by an operator, whether defibrillation should be performed;

(c) upon determining that defibrillation should be performed, automatically charges and indicates that it is ready to deliver an electrical impulse to an individual's heart; and

(d) may be used by an operator of the device to deliver an electrical impulse to an individual's heart.

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

(3) "Emergency medical service" means an emergency medical service as defined by 50-6-302.

(4) "Entity" means a public agency, department, office, board, or commission or other governmental organization or a private corporation, partnership, group, or business or other private organization.

HeinOnline -- 1999 vol. II 1244 1999

(5) "Physician" means an individual licensed to practice medicine pursuant to Title 37, chapter 3, part 3.

(6) "Public safety answering point" means a communications facility operated on a 24-hour basis that first receives 9-1-1 calls from persons in a 9-1-1 service area and that may, as appropriate, directly dispatch public or private safety services or transfer or relay 9-1-1 calls to appropriate public safety agencies.

Section 3. AED program — requirements for AED use. In order for an entity to use or allow the use of an automated external defibrillator, the entity shall:

(1) establish a program for the use of an AED that includes a written plan that complies with [sections 2 through 7] and rules adopted by the department pursuant to [section 4]. The plan must specify:

(a) where the AED will be placed;

(b) the individuals who are authorized to operate the AED;

(c) how AED use will be coordinated with an emergency medical service providing services in the area where the AED is located;

(d) the medical supervision that will be provided;

(e) the maintenance that will be performed on the AED;

(f) records that will be kept by the program;

(g) reports that will be made of AED use;

(h) the name, location, and telephone number of a physician, or other individual designated by the physician, designated to provide medical supervision of the AED program; and

(i) other matters as specified by the department;

(2) adhere to the written plan required by subsection (1);

(3) ensure that before using the AED, an individual authorized to operate the AED receives appropriate training approved by the department in cardiopulmonary resuscitation and the proper use of an AED;

(4) maintain, test, and operate the AED according to the manufacturer's guidelines and maintain written records of all maintenance and testing performed on the AED;

(5) ensure that the physician or other individual designated by the physician to supervise the AED program supervises the AED program to ensure compliance with the written plan, [sections 2 through 7], and rules adopted by the department pursuant to [section 4] and reviews each case in which the AED is used;

(6) each time an AED is used for an individual in cardiac arrest, require that an emergency medical service is summoned to provide assistance as soon as possible and that the AED use is reported to the supervising physician or the person designated by the physician and to the department as required by the written plan;

(7) before allowing any use of an AED, provide the following to all licensed emergency medical services and any public safety answering point or emergency dispatch center providing services to the area where the AED is located:

HeinOnline -- 1999 vol. II 1245 1999

(a) a copy of the plan prepared pursuant to this section; and

(b) written notice, in a format prescribed hy department rules, stating:

(i) that an AED program is established by the entity;

(ii) where the AED is located; and

(iii) how the use of the AED is to be coordinated with the local emergency medical service system; and

(8) comply with [sections 2 through 7] and rules adopted by the department pursuant to [section 4].

Section 4. Rulemaking. (1) The department shall adopt rules specifying the following:

(a) the contents of the written notice required by [section 3(7)];

(b) reporting requirements for each use of an AED;

(c) the contents of a plan prepared in accordance with [section 3] and requirements applicable to the subject matter of the plan;

(d) training requirements in cardiopulmonary resuscitation and AED use for any individual authorized by an AED program plan to use an AED;

(e) requirements for medical supervision of an AED program;

(f) minimum requirements for a medical protocol for use of an AED;

(g) performance requirements for an AED in order for tbe AED to be used in an AED program; and

(h) a list of the AED training programs approved by tbe department.

(2) The department may not adopt rules for any purpose other tban those in subsection (1).

Section 5. Enforcement — cessation order — hearing — injunction. (1) If the department receives information that an AED is being used in violation of [sections 2 through 7] or a rule adopted hy the department pursuant to [section 4], it may send a written order to the entity responsihle for use of the AED, as specified in the plan prepared pursuant to [section 3], ordering the entity to cease the violation immediately. The order is effective upon receipt hy tbe entity, and the entity shall comply with tbe terms of the order. If the department receives information that tbe violation has been corrected, the department may rescind its order by sending a notice to that effect to the entity. The rescission is effective upon its receipt by the entity.

(2) The entity may request a hearing to contest an order issued by the department pursuant to suhsection (1) by submitting a written request to the department within 30 days after receipt of the order. A request for a hearing does not stay the enforceability of the department's order. The hearing must be held within 30 days after the department receives the request, unless the hearings officer sets a later date for good cause. The hearing must he held pursuant to the contested case provisions of the Montana Administrative Procedure Act.

(3) Either the county attorney for tlie county in which the violation occurred or the department may bring an action in the district court of the county where the violation occurred or in the district court for Lewis and Clark County to enforce the department's order or to directly enjoin a violation of [sections 2 through 7] or a rule adopted pursuant to [section 4].

HeinOnline -- 1999 vol. II 1246 1999

Section 6. Liability limitations. (1) An individual who provides emergency care or treatment hy using an AED in compliance with [sections 2 through 7] and rules adopted by the department pursuant to [section 4] and an individual providing cardiopulmonary resuscitation to an individual upon whom an AED is or may be used are immune from civil liability for a personal injury tbat results from that care or treatment or from civil liability as a result of any act or failure to act in providing or arranging further medical treatment for the individual upon whom the AED was used unless the individual using the AED or the person providing cardiopulmonary resuscitation, as applicable, acts with gross negligence or with willful or with wanton disregard for the care of the person upon whom the AED is or may be used.

(2) The following individuals or entities are immune from civil liability for any personal injury that results from an act or omission that does not amount to willful or wanton misconduct or gross negligence if applicable provisions of [sections 2 through 7] and rules adopted by the department pursuant to [section 4] have been met by the individual or entity:

(a) the physician supervising the AED program or the person designated hy a physician to supervise the program, either of whom are designated in the plan prepared pursuant to [section 3];

(b) the entity responsible for the AED program, as designated in the plan prepared pursuant to [section 3];

(c) an individual providing training to others on the use of an AED.

Section 7. Exemptions. [Sections 2 through 7] do not apply to the use of an AED by:

(1) a patient or the patient's caretaker if use of the AED is ordered by a physician; or

(2) a licensed health care professional, including an emergency medical technician, whose scope of practice includes the use of an AED.

Section 8. Two-thirds vote required. Because [section 6] limits governmental liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage.

Section 9. Effective dates. (1) [Section 4 and this section] are effective on passage and approval.

(2) [Sections 1 through 3 and 5 through 8] are effective July 1, 1999.

Approved April 19, 1999

CHAPTER NO. 336

[HB 153]

AN ACT REVISING THE LAWS GOVERNING FUNERAL SERVICES; DEFINING "ARRANGEMENTS", "AT-NEED ARRANGEMENTS", "BRANCH ESTABLISHMENT", "INTERN", AND "PRENEED ARRANGEMENTS"; MODIFYING THE DEFINITION OF "AUTHORIZING AGENT", "EMBALMING", AND "MORTUARY"; REQUIRING THE RECORDING OF THE SALE OF BURIAL PLOTS WITH THE COUNTY

HeinOnline -- 1999 vol. II 1247 1999

CLERK AND RECORDER; ESTABLISHING FUNERAL PLAN TRUSTS; AMENDING SECTIONS 37-19-101 AND 37-19-824, MCA; AND REPEALING SECTIONS 37-19-826, 72-37-101, 72-37-102, 72-37-103, AND 72-37-104, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-19-101, MCA, is amended to read:

"37-19-101. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Arrangements" includes:

(a) planning the details of funeral service, including time of service, type of service, and, if requested, acquiring the services of clergy;

(b) obtaining the necessary information for filing death certificates and obtaining burial-transit permits;

(c) comparing or discussing prices, including merchandise prices and financial arrangements; and

(d) providing for onsite direction and coordination of participants and onsite direction, coordination, and facilitation at funeral, graveside, or memorial services or rites.

(2) "At-need" arrangements means arrangements made by an authorized person on behalf of a deceased.

~~(1)~~*(3)* "Authorizing agent" means a person legally entitled to order the ~~cremation~~ *final disposition, including burial, cremation, entombment, donation to medical science, or other means,* of human remains. An authorizing agent is, in order of preference:

(a) a spouse;

(b) a majority of adult children;

(c) a parent;

(d) a close relative of the deceased; or

(e) in the absence of a person or persons listed in subsections (1)(a) through (1)(d), a personal representative, a public administrator, the deceased through a preneed authorization, or others as designated by board rule.

~~(2)~~*(4)* "Board" means the board of funeral service provided for in 2-15-1853.

(5) "Branch establishment" means a separate facility that may or may not have a suitable visitation room or preparation room and that is owned by, a subsidiary of, or otherwise financially connected to or controlled by a licensed mortuary.

~~(3)~~*(6)* "Cemetery" means any land or structure in this state dedicated to and used or intended to be used for interment of cremated remains or human remains. It may be any one or a combination of a burial park for earth interments, a mausoleum for crypt or niche interments, or a columbarium.

~~(4)~~*(7)* "Cemetery company" means an individual, partnership, corporation, or association that:

(a) owns or controls cemetery lands or property and conducts the business of a cemetery; or

HeinOnline -- 1999 vol. II 1248 1999

(b) applies to the board to own or control cemetery lands or property and conduct the business of a cemetery.

~~(5)~~*(8)* "Closed container" means a container in which cremated remains can be placed and enclosed in a manner that prevents leakage or spillage of cremated remains or entrance of foreign material.

~~(6)~~*(9)* "Columharium" means a room or space in a building or structure used or intended to be used for the interment of cremated remains.

~~(7)~~*(10)* "Cremated remains" means all human remains recovered after the completion of the cremation, including pulverization that leaves only bone fragments reduced to unidentifiable dimensions.

~~(8)~~*(11)* "Cremation" means the technical process, using heat, that reduces human remains to hone fragments. The reduction takes place through heat and evaporation.

~~(9)~~*(12)* "Cremation chamber" means the enclosed space within which the cremation process takes place. Cremation chambers of crematoriums licensed by this chapter must be used exclusively for tbe cremation of human remains.

~~(10)~~*(13)* "Cremation container" means the container in which the human remains are placed in the cremation chamber for a cremation. A cremation container must meet substantially all of the following standards:

(a) be composed of readily combustihle materials suitable for cremation;

(b) be able to be closed in order to provide a complete covering for the human remains;

(c) be resistant to leakage and spillage;

(d) be rigid enough for handling with ease; and

(e) be able to provide protection for the health, safety, and integrity of crematory personnel.

~~(11)~~*(14)* "Crematory" means the building or portion of a building that houses the cremation chamber and the holding facility.

~~(12)~~*(15)* "Crematory operator" means tlie person in charge of the licensed crematory facility.

~~(12)~~*(16)* "Crematory technician" means an employee of a crematory facility who is trained to perform cremations and is licensed by the board.

~~(14)~~*(17)* "Crypt" means a chamber of sufficient size to inter the remains of a deceased person.

~~(15)~~*(18)* "Department" means the department of commerce provided for in Title 2, cbapter 15, part 18.

~~(15)~~*(19)* "Embalming" means: ~~the preservation and disinfection of the dead human body by application of chemicals, externally, internally, or both.~~

(a) obtaining burial or removal permits or assuming other duties incidental to the practice of embalming;

(b) disinfecting and preserving or attempting to preserve dead human bodies in their entirety or in parts by the use of chemical substances, fluids, or gasses ordinarily intended for that use by introducing the chemical substances, fluids,

HeinOnline -- 1999 vol. II 1249 1999

or gasses into the body by vascular or hypodermic injection or by direct introduction into the organs or cavities; and

(c) restorative art.

~~(17)~~*(20)* "Funeral directing" includes:

(a) supervising funerals~~, including~~:

(b) the making of preneed or at-need contractual arrangements for funerals;

~~(b)~~*(c)* preparing dead bodies for burial, other than by embalming;

~~(c)~~*(d)* maintaining a mortuary for the preparation, disposition, or care of dead human bodies; and

~~(d)~~*(e)* representing to the public that one is a funeral director.

~~(18)~~*(21)* "Holding facility" means an area within or adjacent to the crematory facility designated for the retention of human remains prior to cremation that must:

(a) comply with any applicable public health law;

(b) preserve the dignity of the human remains;

(c) recognize the health, safety, and integrity of the crematory operator and crematory personnel; and

(d) be secure from access by anyone other than authorized personnel.

~~(19)~~*(22)* "Human remains" means the body of a deceased person or part of a body or limb that has been removed from a living person, including the body, part of a body, or limb in any stage of decomposition.

~~(20)~~*(23)* "Interment" means any lawful disposition of cremated remains or human remains.

(24) (a) "Intern" means a person who has met the educational and testing requirements for a license to practice mortuary science in Montana, has been licensed by the board as an intern and is engaged in the practice of mortuary science under the supervision of a licensed mortician.

(b) For the purposes of this subsection (24), "supervision" means the extent of oversight that a mortician believes an intern requires based upon the training, experience, judgment, and professional development of the intern.

~~(21)~~*(25)* "Lot" or "grave space" means a space in a cemetery used or intended to be used for interment.

~~(20)~~*(26)* "Mausoleum" means a community-type room or space in a building or structure used or intended to be used for the interment of human remains in crypts or niches.

~~(20)~~*(27)* "Mortician" means a person licensed under this chapter to practice mortuary science.

~~(24)~~*(28) (a)* "Mortuary" means a place of business ~~used for the care and preparation for burial or transportation of dead human bodies or a place where a person represents that the person is engaged in the profession of mortuary science or funeral directing~~ *licensed by the board, located in a building or portion of a building having a specific street address or location, containing but not limited to a suitable room for viewing or visitation and a preparation room, and devoted exclusively to activities that are related to the preparation and*

arrangements for funerals, transportation, burial, or other disposition of dead human bodies.

(b) The term includes conducting activities from the place of business referred to in subsection (28)(a) that are incidental, convenient, or related to the preparation of funeral or memorial services or rites or the transportation, burial, cremation, or other disposition of dead human bodies in any area where those activities may be conducted.

~~(25)~~*(29)* "Mortuary science" means the profession or practice of funeral directing and embalming.

~~(26)~~*(30)* "Niche" means a space in a columbarium or mausoleum used or intended to be used for the interment of the cremated remains or human remains of one or more deceased persons.

~~(27)~~*(31)* "Perpetual care and maintenance" means continual and proper maintenance of cemetery buildings, grounds, and lots or grave spaces.

(32) "Preneed arrangements" means arrangements made with a licensed funeral director or licensed mortician by a person on the person's own behalf or by an authorized individual on the person's behalf prior to the death of the person.

~~(28)~~*(33)* "Temporary container" means a receptacle for cremated remains that is usually made of cardboard, plastic film, or similar material designed to hold the cremated remains until an urn or other permanent container is acquired.

~~(26)~~*(34)* "Urn" means a receptacle designed to permanently encase the cremated remains."

Section 2. Section 37-19-824, MCA, is amended to read:

"37-19-824. Conveyance. (1) An instrument of conveyance ~~or deed~~ for a lot, grave space, mausoleum, crypt, niche, or burial right or part of a lot or grave space must be issued to the purchaser upon complete payment of the purchase price.

(2) Only a cemetery company or its agents may sell or convey the items listed in subsection (1). However, an owner may sell the item if the owner has first offered in writing to sell it to the cemetery company at the purchase price then being charged by the cemetery company for a similar item and the cemetery company has not accepted the offer within 30 days of the offer.

(3) *(a)* The secretary or other responsible person of a cemetery company shall file and record in the cemetery company's books all instruments of conveyance ~~and deeds~~.

(b) An instrument of conveyance must be recorded by the cemetery company in the office of the county clerk and recorder and returned to the purchaser.

(4) An instrument of conveyance ~~or deed~~ must be signed on behalf of a cemetery company by the person having proper authority to sign the instrument of conveyance ~~or deed~~."

Section 3. Contract for prearranged funeral plan or related services — trust requirement — interest — exception. (1) Prearranged funeral or related services may be presented, negotiated, and sold to the public only by a licensed funeral director or licensed mortician.

(2) Except as provided in subsection (4), all money paid pursuant to a contract for a prearranged funeral or related services must be held in trust for

HeinOnline -- 1999 vol. II 1251 1999

the purposes for which it was furnished until the obligations of a funeral director, embalmer, cemetery firm, or mausoleum-columbarium corporation have been fulfilled according to the terms of the contract or, by mutual consent of the parties, until the money is refunded to the proper party.

(3) Any interest accrued by money in a trust must be held in the trust and is subject to the terms of the trust agreement.

(4) Money paid for the purchase of a lot, grave space, mausoleum, crypt, niche, or burial right or part of a lot or grave space is not subject to the trust requirements of this section if title passes to the purchaser at the time that the payment is made.

Section 4. Trust fund — deposit of money. (1) (a) A party that provides services pursuant to a contract for a prearranged funeral or related services and that receives money under the contract shall deposit the money within 3 business days of receipt in a banking institution or invest the money in the stock of a savings or building and loan association or in the shares of a credit union.

(b) The banking institution, savings or building and loan association, or credit union must have its principal place of business in this state and must be organized under the laws of this state or of the United States.

(c) Deposits or investments made as provided in this section must be insured by an instrumentality of the federal government.

(2) Deposits or investments made pursuant to this section constitute a trust fund for the benefit of the person contracting for the prearranged funeral or related services. The money must be placed in a separate account in the name of the depositor as trustee for the person contracting for the prearranged funeral or related services.

Section 5. Report of entity holding deposited money. A banking institution, savings or building and loan association, or credit union shall report to the department prior to February 1 of each year all amounts that it has received and held in trust accounts created as provided in [section 4]. The report must contain the name and address of each trustee and trust beneficiary and must contain the amount of principal in each account and the amount of interest or dividends paid on each account.

Section 6. Repealer. Sections 37-19-826, 72-37-101, 72-37-102, 72-37-103, and 72-37-104, MCA, are repealed.

Section 7. Codification instruction. [Sections 3 through 5] are intended to be codified as an integral part of Title 37, chapter 19, part 8, and the provisions of Title 37, chapter 19, part 8, apply to [sections 3 through 5].

Approved April 19, 1999

CHAPTER NO. 337

[HB 192]

AN ACT PROVIDING THAT CITIES AND TOWNS MAY CONTRACT WITH A POLICE OFFICER TO BE REIMBURSED FOR THE COST OF AN APPOINTED POLICE OFFICER'S TRAINING IF THE OFFICER LEAVES EMPLOYMENT BEFORE FULFILLING A MINIMUM SERVICE

HeinOnline -- 1999 vol. II 1252 1999

REQUIREMENT; AND PROVIDING FOR REASONABLE ATTORNEY FEES AND COSTS TO THE PREVAILING PARTY IN AN ACTION TO ENFORCE ANY PROVISION OF THE CONTRACT.

Be it enacted by the Legislature of the State of Montana:

Section 1. Reimbursement of training expenses if minimum service not fulfilled. (1) At the time that a police officer accepts an appointment by a city or town as provided for in 7-32-4107, the city or town may require the officer to enter into a contract for reimbursement subject to the provisions of this section.

(2) The contract may require that the appointing authority be reimbursed for the cost of the officer's basic course training required under 7-32-303(5) if the officer leaves employment as a police officer for the appointing authority before completing at least 36 months of service.

(3) (a) The reimbursement due may be equivalent to the total cost of the officer's training prorated over a 36-month period and reduced proportional to the number of months of completed service.

(b) For the purposes of this section, "total cost" means the cost of the officer's basic course training, salary, mileage, and expenses paid to the officer while the officer is in training.

(4) The contract may require that the officer pay the reimbursement unless the officer's next employer agrees to pay the debt. The reimbursement must be paid according to a payment schedule contained in the contract with the city or town that paid for the officer's training, but must be fully paid within 18 months of the officer's termination of employment unless otherwise agreed to in the contract by the city or town.

(5) The 36-month minimum service requirement begins on the first day of employment.

(6) As used in this section, "leaves employment" means a voluntary resignation.

(7) In an action brought to enforce any provision of a contract entered into under this section, the court may award reasonable attorney fees and costs to the prevailing party.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 7, chapter 32, and the provisions of Title 7, chapter 32, apply to [section 1].

Approved April 19, 1999

CHAPTER NO. 338

[HB 339]

AN ACT PROVIDING FOR AN INTERIM STUDY OF THE NECESSITY OF REDISTRICTING THE STATE'S JUDICIAL DISTRICTS; PROVIDING FOR THE PREPARATION OF PROPOSED REDISTRICTING LEGISLATION IF THE STUDY COMMITTEE DETERMINES THAT REDISTRICTING IS NECESSARY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

HeinOnline -- 1999 vol. II 1253 1999

Section 1. Study of neccssity of redistrieting state judicial districts. (1) The legislative council is requested to designate an appropriate legislative interim committee to study the issue of whether the state's judicial districts should he redistricted. The committee shall report the results of its study to the 57th regular session of the legislature. If the committee determines that redistricting is necessary hased on the factors listed in subsection (2), the committee shall prepare for introduction in the 57th regular session of the legislature legislation redistricting the state's judicial districts.

(2) Factors to be considered by the committee shall include hut not be limited to:

(a) the population of the districts as determined by the latest estimates prepared and issued by the United States bureau of the census and made available to the census and economic information center of the Montana department of commerce;

(b) each district's case load;

(c) the relative proportions of civil, criminal, juvenile, and family law cases in each district's case load;

(d) the extent to which special masters, alternative dispute resolution techniques, and other measures have been used in the districts;

(e) the distances between county seats in existing districts and any districts that may be proposed by the committee;

(f) the impact on counties of any changes proposed in the districts; and

(g) other factors that the committee determines to be significant to the determination of whether the state's judicial districts should be redistricted.

(3) For the purposes of this study, suhcommittees of the committee must include, to the extent allowed by law, judges, county commissioners, and other affected parties.

(4) The legislative council may accept gifts, grants, donations, and other funding to assist in this study.

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 19, 1999

CHAPTER NO. 339

[HB 625]

AN ACT PROVIDING FOR FAMILY IMPACT NOTES FOR CERTAIN BILLS INTRODUCED IN THE LEGISLATURE AND FOR CERTAIN PROPOSED ADMINISTRATIVE RULES; AMENDING SECTION 2-4-405, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Family impact note for bill. The presiding officer of the house in which a hill is introduced that may have a significant impact on families may, at the time of introduction of the bill, request a family impact note. A note may

also be requested, as the joint rules of the senate and the house of representatives allow, by:

(1) a committee considering the bill;

(2) a majority of the members of the house in which the bill is to be considered, at the time of second reading; or

(3) the sponsor, through the presiding officer.

Section 2. Preparation of family impact note. The executive branch agency designated by the presiding officer is responsible for the preparation of the family impact note and shall provide the note to the presiding officer within 6 days of the request for the note. The agency may ask the presiding officer to allow additional time to complete a note.

Section 3. Submission of family impact note — sponsor's note — distribution to legislators. (1) A completed family impact note must be submitted by the executive branch agency designated by the presiding officer to the presiding officer. Upon receipt of the completed note, the presiding officer shall notify the sponsor of the bill for which the note was prepared that the note has been completed and is available for review. Within 24 hours following notification, the sponsor shall:

(a) notify the presiding officer that the sponsor concurs with the completed note;

(b) request additional time, not to exceed 24 hours, to consult with the executive branch agency on the note; or

(c) elect to prepare a sponsor's note, as provided in subsection (4).

(2) (a) If the sponsor concurs with the completed note prepared by the executive branch agency or elects to prepare a sponsor's note, the presiding officer shall refer the completed note prepared by the executive branch agency to the committee considering the bill. If the bill is printed, the note must be reproduced and placed on the members' desks.

(b) If the sponsor requests additional time to consult with the executive branch agency, the presiding officer shall notify the sponsor and the executive branch agency of the time, not to extend beyond the time limitation specified in subsection (1)(b), by which:

(i) the executive branch agency shall submit a revised completed note to the presiding officer;

(ii) the sponsor shall notify the presiding officer that the sponsor concurs with the original completed note; or

(iii) the sponsor shall elect to prepare a sponsor's note as provided in subsection (4).

(3) At the time specified as provided in subsection (2)(b), the presiding officer shall refer the original or, if revised, the revised note to the committee considering the bill. If the bill is printed, the note must be reproduced and placed on the members' desks.

(4) (a) A sponsor who elects to prepare a sponsor's note shall prepare the note as provided in [section 4] and return the completed note to the presiding officer within 4 days of the election to prepare a sponsor's note.

HeinOnline -- 1999 vol. II 1255 1999

(b) The presiding officer may grant additional time to the sponsor to prepare the sponsor's note.

(c) Upon receipt of the completed sponsor's note, the presiding officer shall refer it to the committee hearing the bill. If the bill is printed, the note must be identified as a sponsor's note, reproduced, and placed on the members' desks.

Section 4. Contents of family impact note. A family impact note must, if possible, include:

(1) any services that the bill would provide to families;

(2) any deleterious effects that the bill might have on families;

(3) an estimate of the number or percentage of families that would be affected by the bill;

(4) an estimate of the short-term and long-term costs or costs savings that the bill would have for the average family;

(5) ways in which the bill might strengthen the stability of the family;

(6) any effect the bill might have on the rights of parents, the rights of children, and their rights in relation to each other and to state and local government;

(7) whether the bill would help the family perform its functions;

(8) whether the bill substitutes state or local government activity for an activity traditionally engaged in by the family; and

(9) whether the bill sends a message to parents, children, or both regarding personal responsibility and the norms of society.

Section 5. Background information on family impact note to legislators on request. The executive branch agency designated by the presiding officer to prepare the family impact note shall make available on request to any member of the legislature all background information used in developing the note.

Section 6. Section 2-4-405, MCA, is amended to read:

"2-4-405. Economic impact statement—*family impact note.* (1) Upon written request of the *appropriate* administrative ~~code~~ *rule review* committee based upon the affirmative request of ~~at least five~~ *a majority of the* members of the committee at an open meeting, an agency shall prepare a statement of the economic impact of the adoption, amendment, or repeal of a rule as proposed. *The agency shall also prepare a family impact note upon receipt by the agency or the appropriate administrative rule review committee of a written request for a family impact note made by at least 15 legislators. If the request is received by the appropriate administrative rule review committee, the committee shall give the agency a copy of the request, and if the request is received by the agency, the agency shall give the appropriate administrative rule review committee a copy of the request. A family impact note must contain the material required by [section 4] if appropriate data is available.* As an alternative, the *appropriate* administrative ~~code~~ *rule review* committee may, by contract, prepare ~~such an~~ *the* estimate *or the family impact note*. Except to the extent that the request expressly waives any one or more of the following, ~~the~~ *a* requested *economic impact* statement must include and the statement prepared by the committee may include:

HeinOnline -- 1999 vol. II 1256 1999

(a) a description of the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule;

(b) a description of the probable economic impact of the proposed rule upon affected classes of persons and quantifying, to the extent practicable, that impact;

(c) the probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state ~~revenues~~ *revenue*;

(d) an analysis comparing the costs and benefits of the proposed rule to the costs and benefits of inaction;

(e) an analysis that determines whether there are less costly or less intrusive methods for achieving the purpose of the proposed rule;

(f) an analysis of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule;

(g) a determination as to whether the proposed rule represents an efficient allocation of public and private resources; and

(h) a quantification or description of the data upon which subsections (1)(a) through (1)(g) are based and an explanation of how the data was gathered.

(2) A request to an agency for a *family impact note or economic impact* statement or a decision to contract for the preparation of a *note or* statement must be made by the committee prior to the final agency action on the rule. The *note or* statement must be filed with the *appropriate* administrative ~~code~~ *rule review* committee within 3 months of the committee's request or decision. The committee may withdraw its request or decision for ~~an economic impact~~ *note or* statement at any time.

(3) Upon receipt of an *economic* impact statement, the committee shall determine the sufficiency of the statement. If the committee determines that the statement is insufficient, the committee may return it to the agency or other person who prepared the statement and request that corrections or amendments be made. If the committee determines that the statement is sufficient, a notice indicating where a copy of the statement may be obtained must be filed with the secretary of state for publication in the register by the agency preparing the statement or by the committee, if the statement is prepared under contract by the committee, and must be mailed to persons who have registered advance notice of the agency's rulemaking proceedings.

(4) This section does not apply to rulemaking pursuant to 2-4-303.

(5) The final adoption, amendment, or repeal of a rule is not subject to challenge in any court as a result of the inaccuracy or inadequacy of a *family impact note or economic impact* statement required under this section.

(6) An environmental impact statement prepared pursuant to 75-1-201 that includes an analysis of the factors listed in this section satisfies the provisions of this section."

Section 7. Effective date. [This act] is effective on passage and approval.

Section 8. Termination. [This act] terminates October 1, 2003.

Approved April 19, 1999

HeinOnline -- 1999 vol. II 1257 1999

CHAPTER NO. 340

[HB 630]

AN ACT GENERALLY REVISING STATUTES RELATING TO GASOLINE AND SPECIAL FUEL TAXES TO CLARIFY LANGUAGE; INCREASING THE PENALTY FROM $25 TO $100 FOR FAILURE TO FILE A STATEMENT RELATING TO INTERSTATE SHIPMENT OF GASOLINE; PROVIDING A PRESUMPTION FOR MILES PER GALLON USED IN DETERMINING CERTAIN PUBLIC ROAD USE FOR FUEL TAX PURPOSES; INCREASING THE TIME FOR APPLYING FOR CERTAIN TAX REFUNDS; AND AMENDING SECTIONS 15-70-123, 15-70-209, 15-70-210, 15-70-221, 15-70-224, 15-70-225, 15-70-343, 15-70-356, 15-70-363, AND 15-70-364, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-70-123, MCA, is amended to read:

"15-70-123. Report by unlicensed petroleum dealer — definition — penalty. (1) The department of transportation may require a petroleum dealer who is not licensed by the department under Title 15, chapter 70 ~~or 71~~, to file, within 30 days of the end of a quarter, on a form prescribed by the department a report of the amount of fuel received and sold during the quarter. The report must also contain other information as required by the department.

(2) As used in this section, "petroleum dealer" means a dealer who:

(a) is directly or indirectly engaged in delivering, *transporting,* or distributing gasoline, aviation gasoline, special fuel, liquefied petroleum gas (LPG), or compressed natural gas (CNG) ~~to a consumer~~ in this state; or

(b) offers or advertises to sell, refine, manufacture, or store gasoline, aviation gasoline, special fuel, liquefied petroleum gas (LPG), or compressed natural gas (CNG) in this state.

(3) A petroleum dealer who fails to file the report required by subsection (1) shall be fined $50 for the first offense, $75 for the second offense, and $100 for the third and each subsequent offense."

Section 2. Section 15-70-209, MCA, is amended to read:

"15-70-209. Information reports — confidentiality. (1) A person receiving gasoline, including ~~every~~ *each* exporter, importer, common carrier, private carrier, and contract carrier of property who hauls, receives, transports, or ships gasoline from any other state or foreign country into this state or from this state to any other state or foreign country or from any refinery or pipeline terminal in this state to another point within this state, shall submit to the department of transportation, upon its request and within the time specified, a statement showing the number of gallons of gasoline contained in each shipment in interstate commerce and the movement of the products from any refinery or pipeline terminal located within this state to another point within this state during the preceding calendar month, the names and addresses of the consignor and the consignee, and the date of delivery to the consignee.

(2) A person, except a licensed distributor or exporter, who refuses or fails to file a statement as required in this section is subject to a penalty of ~~$25~~ *$100* for each failure or refusal. If a person establishes to the satisfaction of the department that the failure to file a statement as prescribed by the department was due to reasonable cause, the department shall waive the penalty.

HeinOnline -- 1999 vol. II 1258 1999

(3) The department or a deputy, assistant, agent, clerk, or other employee of the department may not publish or otherwise disseminate information contained in a statement required under this section in a form that allows identification of a distributor or a purchaser of gasoline. ~~Nothing in this~~ *This* section may *not* be construed to prohibit:

(a) the delivery to a person or the person's authorized representative of a certified copy of any report filed under subsection (1);

(b) the inspection by the attorney general or other legal representative of the state of the report or statement of a person if a person or distributor brings an action to set aside or review the tax based on the report or statement or if an action or proceeding has been instituted in accordance with the provisions of Title 15 against that person or distributor;

(c) the publication of statistics classified to prevent the identification of particular reports or statements and the items in the reports or statements;

(d) the inspection by the commissioner of internal revenue of the United States or the proper officer of any state imposing a tax on motor fuels or the authorized representative of either officer of the report or statement of any person or the furnishing to the officer or authorized representative of an abstract of the report or statement, but permission may be granted or information may be furnished to the officer or a representative of the officer only if the statutes of the United States or the other state grant substantially similar privileges to the proper officer of this state charged with the administration of this chapter or in compliance with 15-70-121 and 15-70-122; or

(e) the compliance of the department with any order of a court of competent jurisdiction."

Section 3. Section 15-70-210, MCA, is amended to read:

"15-70-210. Tax penalty for delinquency. (1) Any license tax not paid within the time provided ~~shall be~~ *in 15-70-205 is* delinquent, and a penalty of 10% ~~shall~~ *must* be added to the tax and the tax ~~shall bear~~ *bears* interest at the rate of 1% ~~per~~ *a* month from the date of delinquency until paid. Upon a showing of good cause by the distributor, the department of transportation may waive *any* penalty.

(2) If any distributor or other person subject to the payment of ~~such~~ *the* license tax ~~shall~~ willfully ~~fail, neglect, or refuse~~ *fails, neglects, or refuses* to make any statement required by this part or ~~shall~~ willfully ~~fail~~ *fails* to make payment of ~~such~~ *the* license tax within the time provided, the department ~~shall be authorized to~~ *may* revoke any license issued under this part.

(3) ~~In addition, the~~ *The* department shall ~~inform itself regarding the matters required to be in such~~ *set forth the information that it requires in the* statement and determine the amount of the license tax due ~~the state~~ from ~~such~~ *the* distributor and shall add ~~thereto~~ a penalty of $25 or 10% ~~thereof~~ *of the amount due*, whichever is greater, together with interest at the rate of 1% ~~per~~ *a* month from the date ~~such~~ *that the* statements should have been made and ~~said~~ *the* license tax *should have been* paid.

(4) The ~~state treasurer~~ *department* shall proceed to collect ~~such~~ *the* license tax, with penalties and interest. ~~Upon~~ *At* the request of the ~~state treasurer~~ *department*, the attorney general shall commence and prosecute to final

HeinOnline -- 1999 vol. II 1259 1999

determination in any court of competent jurisdiction an action to collect ~~such~~ *the* license tax."

Section 4. Section 15-70-221, MCA, is amended to read:

"15-70-221. (Temporary) Refund or credit authorized. (1) A person who purchases and uses any gasoline on which the Montana gasoline license tax has been paid for denaturing alcohol to be used in gasohol, for operating ~~or propelling~~ stationary gasoline engines ~~or tractors~~ used off the public highways and streets, or for any commercial use other than ~~propelling~~ *operating* vehicles upon any of the public highways or streets of this state is allowed a refund of the amount of tax paid directly or indirectly on the gasoline. The refund may not exceed the tax paid or to be paid to the state. Except as provided in subsection (5) or (6), a refund is not allowed for the tax per gallon upon aviation fuel allocated to the department of transportation by 67-1-301.

(2) A distributor who pays the gasoline license tax to this state erroneously is allowed a credit or refund of the amount of tax paid.

(3) (a) A distributor is entitled to a credit for the tax paid to the department on those sales of gasoline with a tax liability of $200 or greater for which the distributor has not received consideration from or on behalf of the purchaser and for which the distributor has not forgiven any liability. The distributor may not have declared the accounts of the purchaser worthless more than once during a 3-year period, and the distributor must have claimed those accounts as bad debts for federal *or state* income tax purposes.

(b) If a credit has been granted under this subsection (3), any amount collected on the accounts that were declared worthless must be reported to the department and the tax due must be prorated on the collected amount and must be paid to the department.

(c) The department may require a distributor to submit periodic reports listing accounts that are delinquent for 90 days or more.

(4) A person who purchases and exports for sale, use, or consumption outside Montana gasoline on which the Montana gasoline tax has been paid is entitled to a credit or refund of the amount of tax paid unless the person is not licensed and is not paying the tax to the state the fuel is destined for. The credit or refund ~~will~~ *must* be made upon completion of the information reports required under 15-70-209 and presentation to the department of proof of delivery outside Montana as it may by rule require.

(5) A scheduled passenger air carrier certified under 14 CFR, part 121 or 135, may claim a refund of 2 cents on each gallon of aviation fuel purchased by the carrier on which the Montana gasoline license tax has been paid.

(6) A Montana refinery or distributor who sells JP-4 or JP-8 jet fuel to the federal defense fuel supply center is entitled to a credit or refund of 2 cents a gallon for each gallon that is sold to the supply center and on which the gasoline license tax has been paid. (Terminates on occurrence of contingency—sec. 17, Ch. 642, L. 1993.)

15-70-221. (Effective on occurrence of contingency) Refund or credit authorized. (1) A person who purchases and uses any gasoline on which the Montana gasoline license tax has been paid for denaturing alcohol to be used in gasohol, for operating ~~or propelling~~ stationary gasoline engines ~~or tractors~~ used off the public highways and streets, or for any commercial use other than

HeinOnline -- 1999 vol. II 1260 1999

~~propelling~~ *operating* vehicles upon any of the public highways or streets of this state is allowed a refund of the amount of tax paid directly or indirectly on the gasoline. The refund may not exceed the tax paid or to be paid to the state. Except as provided in subsection (5) or (6), a refund is not allowed for the tax per gallon upon aviation fuel allocated to the department of transportation by 67-1-301.

(2) A distributor who pays the gasoline license tax to this state erroneously is allowed a credit or refund of the amount of tax so paid.

(3) (a) A distributor is entitled to a credit for the tax paid to the department on those sales of gasoline with a tax liability of $200 or greater for which the distributor has not received consideration from or on behalf of the purchaser and for which the distributor has not forgiven any liability. The distributor may not have declared the accounts of the purchaser worthless more than once during a 3-year period, and the distributor must have claimed those accounts as bad debts for federal *or state* income tax purposes.

(b) If a credit has been granted under this subsection (3), any amount collected on the accounts that were declared worthless must be reported to the department and the tax due must be prorated on the collected amount and must be paid to the department.

(c) The department may require a distributor to submit periodic reports listing accounts that are delinquent for 90 days or more.

(4) A person who purchases and exports for sale, use, or consumption outside Montana gasoline on which the Montana gasoline tax has been paid is entitled to a credit or refund of the amount of tax paid unless the person is not licensed and is not paying the tax to the state the fuel is destined for. The credit or refund ~~will~~ *must* be made upon completion of the information reports required under 15-70-209 and presentation to the department of proof of delivery outside Montana as it may by rule require.

(5) A scheduled passenger air carrier certified under 14 CFR, part 121 or 135, may claim a refund of 1 cent on each gallon of aviation fuel purchased by the carrier on which the Montana gasoline license tax has been paid.

(6) A Montana refinery or distributor who sells JP-4 or JP-8 jet fuel to the federal defense fuel supply center is entitled to a credit or refund of 1 cent a gallon for each gallon that is sold to the supply center and on which the gasoline license tax has been paid."

Section 5. Section 15-70-224, MCA, is amended to read:

"15-70-224. Determination of highway use. Highway use for each vehicle is determined by dividing the average miles per gallon rate into the number of miles traveled on public roads. *When records are not available, an average of 4 miles per gallon or other methods that have been found acceptable may be used by the department to determine fuel use."*

Section 6. Section 15-70-225, MCA, is amended to read:

"15-70-225. Application for refund or credit — filing — correction by department. (1) The application for refund is a signed statement, on a form furnished by the department of transportation. Except for a claim for a credit of taxes paid on unpaid accounts, the form must be accompanied by the original bulk delivery invoice or invoices issued to the claimant at the time of each purchase and delivery, showing the total amount of gasoline purchased or aviation fuel purchased by a certified scheduled passenger air carrier, the total

HeinOnline -- 1999 vol. II 1261 1999

amount of gasoline or aviation fuel on which a refund is claimed, and the amount of the tax claimed for refund.

(2) A claim for a credit for taxes paid on accounts for which the distributor did not receive compensation must be accompanied by documents or copies of documents showing that the accounts were worthless and claimed as bad debts on the distributor's federal income tax return. Any further information pertaining to a claim must be furnished as required by the department.

(3) A bulk delivery invoice issued by a dealer for a sale that does not qualify as a bulk delivery under 15-70-201 is not valid for refund purposes.

(4) All applications for refunds must be filed with the department within ~~14~~ *36* months after the date on which the gasoline or aviation fuel was purchased as shown by invoices or after the date on which the tax was erroneously paid. A distributor may file a claim for refund of taxes erroneously paid or for a credit for taxes paid by the distributor on unpaid accounts within 3 years after the date of payment.

(5) If the department finds that the statement contains errors that are not fraudulently inserted, it may correct the statement and approve it as corrected or the department may require the claimant to file an amended statement."

Section 7. Section 15-70-343, MCA, is amended to read:

"15-70-343. Special fuel license tax — rate. (1) Each distributor shall pay to the department of transportation a license tax for the privilege of engaging in and carrying on business in this state. The license tax is in the amount imposed under 15-70-321 for each gallon of special fuel that is distributed by the distributor within the state and upon which the special fuel license tax has not been paid by any other distributor.

(2) Special fuel may not be included in the measure of the distributor's license tax if it is:

(a) dyed *by injector* at a refinery or terminal for off-highway use; or

(b) sold for export, unless the distributor is not licensed and is not paying the tax to the state where the fuel is destined."

Section 8. Section 15-70-356, MCA, is amended to read:

"15-70-356. Refund or credit authorized. (1) A person who purchases and uses any special fuel on which the Montana special fuel license tax has been paid for operating stationary special fuel engines~~, tractors~~ used off the public highways and streets~~,~~ or for any commercial use other than operating vehicles upon any of the public highways or streets of this state is allowed a refund of the amount of tax paid directly or indirectly on the special fuel ~~so~~ used. The refund may not exceed the tax paid or to be paid to the state.

(2) (a) The United States government, the state of Montana, any other state, or any county, incorporated city, town, or school district of this state is entitled to a refund of the taxes paid on special fuel regardless of the use of the special fuel.

(b) (i) A nonpublic school may use dyed special fuel in buses that are owned by the nonpublic school if the buses are used for the transportation of pupils solely for nonsectarian school-related purposes.

(ii) For the purposes of this subsection (2)(b), nonpublic schools are those schools that have been accredited pursuant to 20-7-102.

HeinOnline -- 1999 vol. II 1262 1999

(3) A distributor who pays the special fuel license tax to this state erroneously is allowed a credit or refund of the amount of tax paid.

(4) (a) A distributor is entitled to a credit for the tax paid to the department on those sales of special fuel with a tax liability of $200 or greater for which the distributor has not received consideration from or on behalf of the purchaser and for which the distributor has not forgiven any liability. The distributor shall have declared the accounts of the purchaser worthless not more than once during a 3-year period and claimed those accounts as bad debts for federal *or state* income tax purposes.

(b) If a credit has been granted under subsection (4)(a), any amount collected on the accounts declared worthless must be reported to the department and the tax due must be prorated on the collected amount and must be paid to the department.

(c) The department may require a distributor to submit periodic reports listing accounts that are delinquent for 90 days or more.

(5) A person who purchases and exports for sale, use, or consumption outside Montana any special fuel on which the Montana special fuel tax has been paid is entitled to a credit or refund of the amount of tax paid unless the person is not licensed and is not paying the tax to the state where fuel is destined. Upon completion of the reports required under 15-70-351, the department shall authorize the credit or refund."

Section 9. Section 15-70-363, MCA, is amended to read:

"15-70-363. Determination of highway use. Highway use for each vehicle is determined by dividing the rate of the average miles per gallon into the number of miles traveled on public roads. *When records are not available, an average of 4 miles per gallon or other methods that have been found acceptable may be used by the department to determine fuel use.*"

Scetion 10. Section 15-70-364, MCA, is amended to read:

"15-70-364. Application for refund or credit — filing — correction by department. (1) The application for a refund must be a signed statement on a form furnished by the department. Except for a claim for a credit for taxes paid on unpaid accounts or taxes paid by the United States government, the state of Montana, any other state, or any county, incorporated city, town, or school district of this state, the form must be accompanied by the original bulk delivery invoice or invoices issued to the claimant at the time of each purchase and delivery and must show the total amount of special fuel purchased, the total amount of special fuel on which a refund is claimed, and the amount of the tax claimed for refund. A claim for a credit for taxes paid on accounts for which the distributor did not receive compensation must be accompanied by documents or copies of documents showing that the accounts were worthless and claimed as bad debts on the distributor's federal income tax return. Any further information pertaining to a claim must be furnished as required by the department.

(2) A bulk delivery invoice issued by a dealer for a sale that does not qualify as a bulk delivery, as defined in 15-70-301, is not valid for refund purposes.

(3) All applications for refunds must be filed with the department within ~~14~~ *36* months after the date on which the special fuel was purchased as shown by invoices or after the date on which the tax was erroneously paid. A distributor

HeinOnline -- 1999 vol. II 1263 1999

may file a claim for refund of taxes erroneously paid or for a credit for taxes paid by the distributor on unpaid accounts within 3 years after the date of payment.

(4) If the department finds that the statement contains errors that are not fraudulently inserted, it may correct the statement and approve it as corrected or the department may require the claimant to file an amended statement."

Approved April 19, 1999

CHAPTER NO. 341

[HB 676]

AN ACT RELATING TO NONASSUMED COUNTIES' SHARES OF PUBLIC ASSISTANCE EXPENDITURES; REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO PAY SALARIES AND TRAVEL EXPENSES OF CERTAIN COUNTY PUBLIC ASSISTANCE PERSONNEL; REQUIRING COUNTIES TO REIMBURSE THE DEPARTMENT FOR CERTAIN ADMINISTRATIVE COSTS OF PUBLIC ASSISTANCE AND OTHER COSTS; REVISING THE LAW GOVERNING THE DEPARTMENT'S MAINTENANCE OF EFFORT REQUIREMENT TO REQUIRE THE DEPARTMENT TO MAINTAIN A SPECIFIED LEVEL OF ASSISTANCE; REQUIRING THE COUNTIES TO REIMBURSE THE DEPARTMENT FOR A PORTION OF TEMPORARY ASSISTANCE FOR NEEDY FAMILIES GRANTS TO INDIVIDUALS; AMENDING SECTIONS 53-2-304, 53-4-211, AND 53-4-246, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-2-304, MCA, is amended to read:

"53-2-304. Staff personnel of connty department. (1) Each county board shall select and appoint from a list of qualified persons furnished by the department ~~of public health and human services~~ staff personnel that are necessary. The staff personnel in each county must consist of at least one qualified staff worker or investigator and clerks and stenographers that may be necessary. If conditions warrant, the county board, with the approval of the department ~~of public health and human services~~, may appoint some fully qualified person listed by the department as supervisor of its staff personnel. The staff personnel of each county department are directly responsible to the county board, but the department of public health and human services may supervise the county employees in respect to the efficient and proper performance of their duties. The county board of public welfare may not dismiss any member of the staff personnel without the approval of the department ~~of public health and human services~~. The department may request the county board to dismiss any member of the staff personnel for inefficiency, incompetence, or similar cause. The final authority for dismissal is the county board. In counties where the department has assumed the administration of welfare duties, the final authority for dismissal is the director of the department.

(2) ~~Public assistance staff personnel attached to the county board must be paid from state public assistance funds both their salaries and their travel expenses as provided for in 2-18-501 through 2-18-503 when away from the county seat in the performance of their duties, but the county board of public~~

~~welfare shall reimburse the department of public health and human services from county poor funds the full amount of the salaries and travel expenses not reimbursed to the department by the federal government and the full amount of the department's administrative costs that are allocated by the department to the county for the administration of county welfare programs and not reimbursed to the department by the federal government. Under circumstances prescribed by the department of public health and human services, the reimbursement by the county board of public welfare may be less than the county share as prescribed in this subsection. All other administrative costs of the county department must be paid from county poor funds.~~ *The department shall pay from state public assistance funds the salaries of public assistance staff personnel attached to a county board. The department shall also pay the travel expenses of those personnel, as provided in 2-18-501 through 2-18-503, when those personnel are away from the county seat in the performance of their duties. However, the county board shall reimburse the department from county poor funds for those salaries, travel expenses, and indireet costs and for the department's administrative costs allocated by the department to the county for the administration of county welfare programs, as follows:*

(a) The county board shall reimburse the department 50% of all salaries, travel expenses, and allocated direct and indirect administrative costs attributable to cash assistance and emergency assistanee programs created pursuant to Title 53, chapter 4. However, a county is not required to reimburse the department more for the salaries, travel expenses, indirect costs, and allocated administrative costs for 1 state fiscal year than the dollar amount that the county paid as its share of cash assistance and emergency assistance programs in 1996.

(b) The county board shall reimburse the department the full amount of salaries, travel expenses, and allocated direct and indirect administrative costs attributable to any public assistanee program other than the cash assistance and emergency assistance programs created pursuant to Title 53, chapter 4, not reimbursed to the department by the federal government.

(3) All administrative costs of the county department of public welfare other than the costs described in subsections (2)(a) and (2)(b) must be paid from county poor funds.

~~(3)~~*(4)* On or before the 20th day of the month following the month for which the payments to the public assistance staff personnel of the county were made, the department ~~of public health and human services~~ shall present to the county department of public welfare a claim for the required reimbursements. The county board shall make reimbursements within 20 days after the presentation of the claim, and the department of public health and human services shall credit all reimbursements to its account for administrative costs.

~~(4)~~*(5)* If a county has transferred its public assistance and protective services responsibilities to the state under part 8 of this chapter, the department shall select, appoint, and supervise all necessary public assistance and protective services personnel, including if necessary a supervisor of staff personnel. All personnel are directly responsible to the department."

Section 2. Section 53-4-211, MCA, is amended to read:

"53-4-211. Administration of programs funded under temporary assistance for needy families block grant. (1) The department is authorized and is charged with the general administration and supervision of programs

HeinOnline -- 1999 vol. II 1265 1999

funded under the temporary assistance for needy families block grant under the powers, duties, and functions as prescribed in chapter 2 of this title.

(2) The state of Montana shall maintain a fiscal effort equivalent to at least ~~80%~~ 77% of ~~the federally calculated~~ *its historic state expenditures, as defined in 42 U.S.C. 609(a)(7)(B)(iii), governing* maintenance of effort necessary to draw down the temporary assistance to needy families block grant."

Section 3. Section 53-4-246, MCA, is amended to read:

"53-4-246. (Temporary) County share of participation. Each county where the recipient of FAIM financial assistance resides shall reimburse the department in the amount equal to the percentage of the approved temporary assistance for needy families grants, exclusive of the federal share. However, a county may not be required to pay more than the amount appropriated to the department by the legislature for the state maintenance of effort for the temporary assistance for needy families block grant. (Terminates June 30, 1999—sec. 53, Ch. 486, L. 1997.)

53-4-246. ~~(Effective July 1, 1999)~~ County share of participation. ~~Each county where the recipient of FAIM financial assistance~~ *Except for recipients who are enrolled members of an Indian tribe, for each recipient of cash assistance in the FAIM project, the county where the recipient* resides shall reimburse the department ~~in the amount equal to the percentage~~ *22.5% of the nonfederal share* of the approved temporary assistance for needy families ~~grants not paid with federal temporary assistance for needy families funds~~ *grant for the recipient. However, a county is not required to reimburse the department more for temporary assistance for needy families grants for 1 state fiscal year than the dollar amount that the county paid as its share of cash assistance and emergency assistance programs in 1996. For purposes of determining the nonfederal share, the federal share is considered to be equal to the federal medical assistance percentage paid to the states for medicaid benefits under Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq."*

Section 4. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

Section 5. Effective date. [This act] is effective July 1, 1999.

Section 6. Termination date. [This act] terminates June 30, 2001.

Approved April 19, 1999

CHAPTER NO. 342

[SB 27]

AN ACT ESTABLISHING THE MONTANA TELEMARKETING REGISTRATION AND FRAUD PREVENTION ACT; REQUIRING TELEMARKETERS TO REGISTER WITH THE STATE, POST A BOND, AND PROVIDE CERTAIN INFORMATION TO CONSUMERS; ESTABLISHING A TELEMARKETING FRAUD CONSUMER AWARENESS PROGRAM; PROVIDING CIVIL AND CRIMINAL PENALTIES FOR TELEMARKETING FRAUD; INCREASING THE CIVIL FINES FOR UNLAWFUL, UNFAIR, OR

HeinOnline -- 1999 vol. II 1266 1999

DECEPTIVE ACTS OR PRACTICES; AMENDING SECTION 30-14-142, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 14] may be cited as the "Montana Telemarketing Registration and Fraud Prevention Act".

Section 2. Purpose — scope — rulemaking. (1) The purposes of [sections 1 through 14] are to require telemarketers to register in this state, to establish standards of conduct for telemarketers, and to provide penalties for violations of [sections 1 through 14].

(2) [Sections 1 through 14] do not apply to any claim brought by a person under Title 30, chapter 14, part 5, and the provisions of Title 30, chapter 14, part 5, do not apply to any claim brought by a person pursuant to the provisions of [sections 1 through 14].

(3) The department shall adopt rules to implement the provisions of [sections 1 through 14]. The rules must include but are not limited to rules:

(a) establishing forms and procedures for registration, registration renewal, and bonding of sellers or telemarketers;

(b) for administering a telemarketing fraud consumer awareness program; and

(c) ensuring that proper procedures are in place for maintaining civil and criminal actions for violations of [sections 1 through 14].

Section 3. Definitions. As used in [sections 1 through 14], the following definitions apply:

(1) "Consumer" means a person who is or may be required to pay for goods or services offered by a seller or telemarketer through telemarketing.

(2) "Department" means the department of commerce created in 2-15-1801.

(3) "Goods or services" means any real property, any tangible or intangible personal property, or services of any kind provided or offered to a person.

(4) "Material aspect" means any factor likely to affect a person's choice of or conduct regarding goods or services. The term includes currency values and comparative expressions of value, including but not limited to percentages or multiples.

(5) "Person" means a natural person, corporation, trust, partnership, incorporated or unincorporated association, or other legal entity.

(6) "Prize" means anything offered, purportedly offered, given, or purportedly given to a person by chance.

(7) "Prize promotion" means a sweepstakes or other game of chance or an oral or written representation, express or implied, that a person has won, has been selected to receive, or is eligible to receive a prize or purported prize.

(8) "Seller" means a person who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the consumer in exchange for consideration.

(9) "Solicitation" means a written or oral notification or advertisement that:

HeinOnline -- 1999 vol. II 1267 1999

(a) is transmitted by or on behalf of a seller or telemarketer by any printed, audio, video, cinematic, telephonic, or electronic means to a consumer; and

(b) in the case of a notification or advertisement other than by telephone, either of the following conditions is met:

(i) the notification or advertisement is followed by a telephone call from a seller or telemarketer; or

(ii) the notification or advertisement induces a response by telephone and, through that response, a seller or telemarketer attempts to make a sale of goods or services.

(10) "Supervised financial organization" means any bank, trust company, savings and loan association, mutual savings bank, credit union, industrial loan company, consumer finance lender, commercial finance lender, or insurer, provided that the organization is subject to supervision by an agency of this or any other state of the United States or an agency, bureau, or department of government of the United States.

(11) "Telemarketer" means a person, located within or outside of this state, who in connection with telemarketing initiates or receives telepbone calls to or from a consumer in this state. The term includes a seller directly engaged in telemarketing on the seller's own behalf or a person engaged in telemarketing at the direction of a seller.

(12) "Telemarketing" means a plan, program, or campaign that is conducted by telephone to induce the purchase of goods or services and that involves more than one telephone call to a consumer.

Section 4. Registration of sellers or telemarketers. (1) (a) Unless exempt under [section 5], a person may not act as a seller or telemarketer without first having registered with the department.

(b) The initial application for registration must be approved by the department prior to a seller or telemarketer offering or offering for sale consumer goods or services through any medium.

(c) A registered seller or telemarketer shall submit an application for renewal of registration annually to the department.

(d) The application for a certificate of registration or renewal must include but is not limited to the following information:

(i) the true name, current address, telephone number, and location of tbe seller or telemarketer, including each name under which the seller or telemarketer intends to engage in telemarketing;

(ii) each occupation or business that the seller's or telemarketer's principal owner has engaged in for the 2 years immediately preceding the date of tbe application;

(iii) whether any principal or manager has been convicted or pleaded guilty to or is being prosecuted by indictment for racketeering, violations of state or federal securities laws, or a theft offense;

(iv) whether there has been entered against any principal or manager an injunction, a temporary restraining order, or a final judgment in any civil or administrative action involving fraud, theft, racketeering, embezzlement, fraudulent conversion, misappropriation of property, or violation of any federal

HeinOnline -- 1999 vol. II 1268 1999

or state consumer protection law. The information must include any pending litigation against the applicant.

(v) whether the seller, at any time during the previous 7 years, has filed for bankruptcy, been adjudged bankrupt, or been reorganized because of insolvency;

(vi) the true name, current home address, date of birth, social security number, and all other names of the following:

(A) each telemarketer or other person to be employed by the seller;

(B) each person participating in or responsible for the management of the seller's business; and

(C) each person, office manager, or supervisor principally responsible for the management of the seller's business;

(vii) the name, address, and account number of every institution where banking or any other monetary transactions are conducted by the seller; and

(viii) a copy of all scripts, outlines, or presentation material that the seller will require a telemarketer to use when soliciting, as well as all sales information to be provided by the seller to a purchaser in connection with any solicitation.

(2) (a) The application for registration or renewal must be accompanied by a surety bond in the amount of $50,000. The bond must provide for indemnification to the state of Montana for any person suffering a loss as the result of violation of [sections 1 through 14].

(b) The surety may for any cause cancel the bond upon giving a 60-day written notice by certified mail to the applicant and to the department. Unless the bond is replaced by that of another surety before the expiration of the 60-day notice of cancellation, the registration of the seller or telemarketer must be treated as lapsed.

(c) The surety bond must remain in effect for 1 year from the period the telemarketing business ceases to operate in this state.

(d) (i) Any business required under [sections 1 through 14] to file a bond with a registration application may file, in lieu of the bond, a certificate of deposit, cash, or a government bond in the amount of $50,000.

(ii) The department shall hold the cash, certificate of deposit, or government bond for 1 year from the period the telemarketing business ceases to operate in this state or registration lapses in order to pay claims made against the telemarketing business for its activities during its period of operation in this state.

(iii) For the purposes of this section, "government bond" means any United States bond, treasury note, or other public debt obligation of the United States that is unconditionally guaranteed as to both interest and principal by the United States.

(e) The registration of a telemarketing business must be treated as lapsed if at any time the amount of the bond, cash, certificate of deposit, or government bond falls below the amount required by this section.

(f) The aggregate liability of the surety company to the state of Montana for all persons injured by a seller's or telemarketer's violations may not exceed the amount of the bond.

HeinOnline -- 1999 vol. II 1269 1999

(3) The following constitute a violation of [sections 1 through 14]:

(a) failure to register, maintain, or renew a registration if required;

(b) failure to meet the surety bond requirement if required to provide a bond;

(c) including any false or misleading information on a registration application; and

(d) misrepresenting that a seller or telemarketer is registered.

(4) A violation of subsection (3) of this section also constitutes a violation of 30-14-103 and is subject to the penalty provisions of [section 14] and the Montana Unfair Trade Practices and Consumer Protection Act of 1973.

Section 5. Exemptions from registration and bonding. The registration and bonding requirements of [section 4] do not apply to:

(1) any securities, commodities, or investment brokers, dealers, or investment advisers or any associates of securities, commodities, or investment brokers, dealers, or investment advisers who are subject to licensure or registration by the securities and exchange commission, the national association of securities dealers, or another self-regulatory organization, as defined by 15 U.S.C. 78(c), or by an agency of this state or any other state and who are soliciting within the scope of their license or registration;

(2) a person engaged in solicitation for a religious, charitable, political, educational, or other noncommercial purpose or a person soliciting for a domestic or foreign nonprofit corporation that is registered with the Montana secretary of state;

(3) a business-to-business sale;

(4) a person that solicits sales by periodically publishing and delivering a catalog of the person's merchandise to prospective purchasers, if the catalog:

(a) contains a written description or illustration of each item offered for sale;

(b) includes the business or home address of the person soliciting the sale;

(c) includes at least 20 pages of written material and illustrations;

(d) is distributed in more than one state; and

(e) has a circulation by mailing of not less than 150,000;

(5) a person who solicits contracts for maintenance or repair of goods previously purchased from that person or from the person on whose behalf the solicitation is made;

(6) a person soliciting a transaction regulated by the commodity futures trading commission if the person is registered or temporarily licensed with the commodity futures trading commission under the Commodity Exchange Act, Title 7, chapter 1, of the United States Code, and the person's registration or license is not expired, suspended, or revoked;

(7) a supervised financial organization or parent, subsidiary, or affiliate of a supervised financial organization;

(8) an insurer authorized to transact insurance under Title 33, chapter 2, part 1, a person licensed as an insurance producer under Title 33, chapter 17, part 2, or staff members, licensed or unlicensed, of the producer;

HeinOnline -- 1999 vol. II 1270 1999

(9) a person soliciting the sale of services provided by a satellite or cable television system or a radio or television station authorized by the federal government or this state to provide services in this state;

(10) a telephone company or its subsidiary or agent or other business regulated by the Montana public service commission, the federal communications commission, a rural telephone cooperative er its subsidiary or agent, or a federally licensed cellular telephone or radio telecommunication service provider;

(11) a person soliciting business from consumers that have an existing business relationship with or bave previously purcbased from the business enterprise for which the person is soliciting;

(12) a person operating a retail business establishment under the same name as that used in the solicitation and:

(a) the products or services are displayed and offered for sale at the business establishment; and

(b) a majority of the person's business involves the consumer obtaining the products or services at the business establishment;

(13) a person soliciting for the sale of a magazine or newspaper of general circulation;

(14) an issuer or a subsidiary of an issuer that is authorized to offer securities for sale in this state;

(15) a book, video, record, or multimedia club, contractual plan, or arrangement:

(a) under which the seller provides the consumer with a form that the consumer may use to instruct the seller not to ship the offered merchandise;

(b) that is regulated by the federal trade commission regulation, 16 CFR 425, concerning the use of negative option plans by sellers in commerce; or

(c) that provides for the sale of books, videos, records, multimedia products, or other goods that are not covered by subsection (15)(a) or (15)(b), including continuity plans, subscription arrangements, standing order arrangements, single sales, supplements, or series arrangements under which the seller periodically ships merchandise to a consumer who has consented in advance to receive the merchandise on a periodic basis;

(16) a real estate salesperson or broker licensed by this state;

(17) a person tbat has provided telemarketing sales services under the same name and derives 50% of gross telemarketing sales revenue from contracts with persons exempted under this section from registration requirements;

(18) a person soliciting the sale of food or food products if the solicitation is not intended to and does not result in a sale in excess of $100 to a single address.

Section 6. Telemarketing fraud consumer awareness program. The department shall establish and administer a telemarketing fraud consumer awareness program. The program must be funded as provided in [section 7(2)].

Section 7. Authority of department, attorney general, and county attorney. (1) The department, the attorney general, and a county attorney have the same authority in enforcing and carrying out the provisions of [sections 1 through 14] as they have under Title 30, chapter 14, part 1.

HeinOnline -- 1999 vol. II 1271 1999

(2) All civil fines, costs, and fees received or recovered by the department pursuant to this section must be deposited into the state special revenue account to the credit of the department and must be used to defray the expenses of the department in discharging its administrative and regulatory powers and duties in relation to this section and to fund the telemarketing fraud consumer awareness program estahlished in [section 5]. Any excess civil fines, costs, or fees must be deposited in the general fund.

(3) All civil fines, costs, and fees received or recovered by the attorney general pursuant to this section must be deposited into the state special revenue account to the credit of the attorney general and must be used to defray the expenses of the office of the attorney general in discharging its duties in relation to this section and to establish a telemarketing fraud consumer awareness program similar to the program authorized in [section 5]. Any excess civil fines, costs, or fees must be deposited in the general fund.

(4) All civil fines, costs, and fees received or recovered by a county attorney must be paid to the general fund of the county where the action was commenced.

Section 8. Recordkeeping requirements. (1) (a) A telemarketer shall keep records subject to this section for a period of 24 months from the date the record is produced.

(b) The records that must be kept for the 24-month period include:

(i) all substantially different advertising, brochures, telemarketing scripts, and promotional materials;

(ii) the name and last-known address of each prize recipient and the prize awarded;

(iii) the name and last-known address of each consumer, the goods or services purchased, the date the goods or services were shipped or provided, the amount of goods or services provided, and the amount paid by the consumer for the goods or services;

(iv) the name, any fictitious name used, the last-known home address and telephone number, and the job title for all current and former employees directly involved in telephone sales; however, if the seller or telemarketer permits fictitious names to be used by employees, each fictitious name must be traceable to only one specific employee; and

(v) all written authorizations required to be provided or received under [sections 1 through 14].

(2) In the event of any dissolution or termination of a telemarketer's business, the principal of that telemarketer shall maintain all records as required under this section. In the event of any sale, assignment, or other change in ownership of the seller's business, the successor shall maintain all records required under this section.

Section 9. Acts and practices not governed by [sections 1 through 14]. The following acts and practices are not subject to the provisions of [sections 1 through 14]:

(1) telephone calls in which the sale of goods or services is not completed and payment or authorization of payment is not required until after a face-to-face sales presentation by the seller or telemarketer; and

(2) telephone calls initiated by a consumer that are not the result of any solicitation by a seller or telemarketer.

Section 10. Disclosure and contract requirements. (1) When contacting a consumer, a seller or telemarketer shall promptly disclose in a clear and conspicuous manner the following:

(a) the identity of the seller or telemarketer;

(b) that the purpose of the call is to sell goods or services;

(c) the nature of the goods or services; and

(d) that a purchase or payment is not necessary to be able to win a prize or participate in a prize promotion.

(2) Prior to requesting any payment from the consumer a seller or telemarketer shall disclose in a clear and conspicuous manner the following information:

(a) the total cost of the goods or services;

(b) all material restrictions, limitations, and conditions pertaining to the purchase of the goods or services;

(c) in any prize promotion:

(i) the odds of being able to receive the prize or, if the odds are not calculable in advance, the factors used in calculating the odds; and

(ii) the "no-purchase no-payment" method of participating in the prize promotion with either instructions on how to participate or an address or a local or toll-free telephone number that consumers may write or call for information on how to participate.

(3) A seller or telemarketer may not misrepresent, directly or by implication, any of the following information:

(a) any material aspect of performance, effectiveness, nature, or basic characteristics of goods or services;

(b) any material aspect of the nature or terms of the seller's or telemarketer's refund, cancellation, exchange, or repurchase policies; or

(c) any material aspect of a prize promotion, including but not limited to the nature or value of the prize or that a purchase or payment is required to win a prize or to participate in a prize promotion.

(4) (a) Except as provided in subsection (6), in addition to any other right to revoke an offer, in the case of a sale made by telephone, the buyer may cancel the sale at any time prior to signing an agreement or offer to purchase the goods or services.

(b) Cancellation occurs:

(i) when written notice of cancellation is given to the seller or telemarketer; or

(ii) when written notice of cancellation, properly addressed and with postage prepaid, is deposited in the mail.

(c) A notice of cancellation does not have to be in the form prescribed by the seller or telemarketer if it indicates the intention of the buyer to cancel the sale of goods or services.

HeinOnline -- 1999 vol. II 1273 1999

(d) In the case of goods, a telemarketing sale may not be canceled if the goods cannot be returned to the seller or telemarketer in substantially the same condition as when received by the buyer.

(5) (a) Except as provided in subsection (6), a telemarketing sale may not be considered final until the purchaser receives the notice required by subsection (5)(b).

(b) A seller or telemarketer shall furnish the purchaser, in the same language as that principally used in the sales presentation, a written notice, in not less than 10-point boldface type, containing a statement in substantially the following form:

"You, the purchaser, may cancel this transaction without any penalty or obligation at any time prior to midnight of the third business day after receipt of this notice. If you cancel, any payments made by you under the sale will be returned within 10 business days of the day your written notice of cancellation is received by the seller and any security interest connected to this transaction will be canceled.

If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this sales contract; or you may, if you wish, comply with the seller's instructions regarding returning the goods at the seller's expense and risk.

If you do make the goods available to the seller and the seller does not pick up the goods within 20 days of the date of your notice of cancellation or if the seller does not agree to assume the expense and risk of the return of the goods to the seller, you may retain or dispose of the goods without any further obligation. If you fail to make the goods available to the seller or if you agree to return the goods to the seller and fail to return the goods, then you remain liable for the performance of all your obligations under the sales contract.

To cancel this transaction, mail, deliver, or telegram a written notice of cancellation to (name of seller) at the following address (address of the seller)."

(c) In addition to the notice required in subsection (5)(b), the seller or telemarketer shall furnish the purchaser with:

(i) the seller's or telemarketer's name and the name of the person to whom a notice of cancellation is to be given if different from the seller's or telemarketer's name;

(ii) the legal name of the company for whom the seller or telemarketer is soliciting;

(iii) the seller's or telemarketer's street address and telephone number; and

(iv) the date and a description of the telephone solicitation.

(6) A sale is not subject to the requirements of subsections (4) and (5) if the seller or telemarketer, at a minimum, has a policy of:

(a) accepting returns or canceling services in connection with the return of unused and undamaged goods or canceled services for a period of not less than 7 days after the date of delivery to the consumer and providing a cash refund for a cash purchase or issuing a credit for a credit purchase applied to the account that was debited;

HeinOnline -- 1999 vol. II 1274 1999

(b) disclosing the seller's or telemarketer's refund and return policy to the consumer by telephone or in written material included with advertising or promotional material or with the delivery of the goods or services; and

(c) restoring payments or issuing credits pursuant to subsection (6)(a) within 30 days after the date on which the seller or telemarketer receives the returned goods or notice of cancellation of services. A seller or telemarketer who discloses in writing that a sale is subject to "satisfaction guaranteed", "free inspection", "a no-risk guarantee", or similar words or phrases must be considered to have met the review and return for refund policy requirements of this subsection.

(7) It is an unfair and deceptive act or practice to fail to comply with or to misrepresent the requirements of this section.

(8) In addition to subsection (7), it is a violation of [sections 1 through 14] for any seller or telemarketer to engage in any other unfair or deceptive conduct that would create a likelihood of confusion or misunderstanding to any reasonable consumer.

(9) Failure to comply with the provisions of this section is a violation of 30-14-103 and is subject to the penalty provisions of [section 14] and the Montana Unfair Trade Practices and Consumer Protection Act of 1973.

Section 11. Prohibited acts and practices. (1) It is a violation of [sections 1 through 14] for a seller or telemarketer, purposely or knowingly, to engage in the following conduct:

(a) advertise or represent that registration as a seller or telemarketer equals an endorsement or approval by the state or any political subdivision of the state;

(b) assist, support, or provide substantial assistance to any telemarketer when the seller knew or should have known that the telemarketer was engaged in any act or practice violating [section 8] or this section;

(c) request a fee in advance to remove derogatory information from or improve a person's credit history or credit record;

(d) request or receive payment in advance from a person to recover or otherwise aid in the return of money or any other item lost by the person in a prior telemarketing transaction; however, this subsection does not apply to services rendered to a person by a licensed attorney;

(e) obtain or submit for payment a check, draft, or other form of negotiable paper drawn on a person's checking, savings, bond, or other account without the person's express written authorization; or

(f) procure the services of any professional delivery, courier, or other pickup service to obtain immediate receipt or possession of a person's payment unless the goods are delivered with the opportunity to inspect them before any payment is collected.

(2) Failure to comply with the provisions of subsection (1) constitutes a violation of 30-14-103 and is subject to the penalty provisions of [section 14] and the Montana Unfair Trade Practices and Consumer Protection Act of 1973.

Section 12. Abusive acts and practices. (1) It is an abusive telemarketing act or practice and a violation of [sections 1 through 14] for any seller or telemarketer to engage in the following conduct:

(a) use threatening, intimidating, or profane or obscene language;

HeinOnline -- 1999 vol. II 1275 1999

(h) engage any person repeatedly or continuously with behavior a reasonable person would consider annoying, abusive, or harassing;

(c) initiate a telemarketing call to a person who has stated previously, in compliance with 16 CFR 310 and 47 CFR 64.1200, that the person does not wish to receive solicitation calls from that seller or telemarketer;

(d) engage in telemarketing to a person's residence at any time other than between 8 a.m. and 9 p.m. local time at the called person's location; or

(e) engage in any other conduct that would he considered abusive to any reasonable consumer.

(2) The department or the attorney general may seek injunctive or declaratory relief or any other remedy provided in Title 30, chapter 14, part 1, for any violations of this section.

Section 13. Civil remedies — venue — burden of proof. (1) The sale of any goods or services by an unregistered seller or telemarketer that is required to register is void. A person obtaining a judgment for damages, attorney fees, or costs against a seller or telemarketer pursuant to this section has the right to be reimbursed for those damages, attorney fees, or costs from any bond or security posted by the seller or telemarketer pursuant to the provisions of [section 4].

(2) A person that suffers a loss or harm as a result of an unfair and deceptive act or practice or a prohibited act or practice is entitled to recover actual damages or $500, whichever is greater, attorney fees, court costs, and any other remedies provided by law.

(3) In addition to the remedies provided in subsection (2), a person that suffers harm as a result of an abusive act or practice is entitled to receive injunctive or declaratory relief.

(4) (a) The department, the attorney general, or a county attorney, on behalf of state residents who have suffered a loss or harm as a result of a violation of [sections 1 through 14], may seek any remedy provided by Title 30, chapter 14, part 1.

(b) The proper place for trial for an action based on a claim of a violation of [sections 1 through 14] is the district court of Lewis and Clark County or the county in which the alleged violation occurred.

(5) In a civil proceeding alleging a violation of [sections 1 through 14], the burden of proving an exemption under [section 5] or an exception to a definition contained in [section 3] is on the person claiming the exemption or exception.

Section 14. Penalties — misdemeanor and felony violations — burden of proof. (1) (a) A person who fails to follow the requirements of [sections 4, 8, 10, 11, or 12] commits the offense of failure to comply with the requirements of [sections 1 through 14]. Except as otherwise provided in [section 11], this offense is specifically intended to be an absolute liability offense as provided for in 45-2-104.

(b) A person convicted of the offense of failure to comply with the requirements of [sections 1 through 14] shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(c) Upon a second or subsequent conviction for the offense of failure to comply with the requirements of [sections 1 through 14], a person shall be fined not to

HeinOnline -- 1999 vol. II 1276 1999

exceed $50,000 or be imprisoned in the state prison for a term not to exceed 5 years, or both.

(2) (a) A person commits the offense of telemarketing fraud when the person knowingly violates [sections 1 through 14] with the purpose of depriving an owner of property.

(b) A person convicted of the offense of telemarketing fraud in which the value of the property does not exceed $500 shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(c) A person convicted of the offense of telemarketing fraud in which the value of the property exceeds $500 or the person has engaged in telemarketing fraud as part of a common scheme shall be fined not to exceed $50,000 or he imprisoned in the state prison for a term not to exceed 10 years, or both.

(3) In any criminal proceeding alleging a violation of [sections 1 through 14], the burden of producing evidence to support a defense based on an exemption under [section 5] or an exception from a definition in [section 3] is on the person claiming the exemption or exception.

Section 15. Section 30-14-142, MCA, is amended to read:

"30-14-142. Penalties. (1) A person who violates the terms of an injunction or temporary restraining order issued under 30-14-111 shall forfeit and pay to the state a civil ~~penalty~~ *fine* of not more than $10,000 ~~per~~ *for each* violation. For the purposes of this section, the district court issuing an injunction or temporary restraining order retains jurisdiction and the cause ~~shall~~ *must* be continued, and in ~~such~~ *those* cases the department acting in the name of the state may petition for recovery of civil penalties.

(2) In an action brought under 30-14-111, if the court finds that a person is willfully using or has willfully used a method, act, or practice declared unlawful by 30-14-103, the department, upon petition to the court, may recover on behalf of the state a civil ~~penalty~~ *fine* of not more than ~~$500 per~~ *$1,000 for each* violation.

(3) A person who engages in a fraudulent course of conduct declared unlawful by 30-14-103 shall upon conviction be fined not more than ~~$2,000~~ *$5,000*, imprisoned for not more than 1 year, or both, in the discretion of the court. Nothing in this subsection limits any other provision of this part.

(4) For purposes of this section, a willful violation occurs when the party committing the violation knew or should have known that ~~his~~ *the* conduct was a violation of 30-14-103."

Section 16. Codification instruction. [Sections 1 through 14] are intended to be codified as an integral part of Title 30, chapter 14, and the provisions of Title 30, chapter 14, apply to [sections 1 through 14].

Section 17. Effective dates. (1) [Sections 2(3) and 16 and this section] are effective on passage and approval.

(2) [Sections 1, 2(1) and (2), and 3 through 15] are effective October 1, 1999.

Approved April 19, 1999

HeinOnline -- 1999 vol. II 1277 1999

CHAPTER NO. 343

[SB 69]

AN ACT GENERALLY REVISING LAWS RELATED TO PUBLIC ELEMENTARY AND SECONDARY SCHOOLS; REVISING THE DEFINITIONS RELATED TO SCHOOLS; CHANGING VARIOUS ANNUAL REPORTING DATE REQUIREMENTS FROM SEPTEMBER 1 TO THE SECOND MONDAY IN SEPTEMBER; REVISING THE REPORTING TIME REQUIREMENTS OF A DISTRICT SUPERINTENDENT OR COUNTY HIGH SCHOOL PRINCIPAL REGARDING PUPIL ATTENDANCE, ABSENCE, AND ENROLLMENT; AUTHORIZING TRUSTEES TO DEPOSIT PROCEEDS FROM INSURANCE SETTLEMENTS ON REAL OR PERSONAL PROPERTY INSURED BY THE DISTRICT INTO AN APPROPRIATE FUND; CLARIFYING THAT THE COUNTY OF RESIDENCY PAY COSTS OF TUITION AND TRANSPORTATION FOR A CHILD WITH DISABILITIES PLACED BY A STATE AGENCY IN AN OUT-OF-COUNTY SCHOOL; CLARIFYING CALCULATION OF AVERAGE NUMBER BELONGING PROVISIONS; ELIMINATING THE REQUIREMENT THAT TRUSTEES ESTABLISH OR CREDIT THE BUILDING FUND WHEN A DISTRICT RECEIVES AN INSURANCE SETTLEMENT FOR DESTROYED PROPERTY INSURED BY THE DISTRICT; UPDATING REFERENCES REGARDING SCHOOL TRANSPORTATION GROUPS; CLARIFYING INFORMATION THAT TRUSTEES MAY INCLUDE IN A TRANSPORTATION FUND BUDGET AS A CONTINGENCY AMOUNT; AUTHORIZING STATE REIMBURSEMENT FOR TRANSPORTATION BUDGET AMENDMENTS; ELIMINATING THE REFERENCE TO 6-YEAR HIGH SCHOOL FROM THE DEFINITION OF SCHOOL; AMENDING SECTIONS 20-3-106, 20-3-209, 20-4-402, 20-6-501, 20-6-608, 20-7-420, 20-9-134, 20-9-166, 20-9-307, 20-9-311, 20-9-313, 20-9-508, 20-10-111, 20-10-143, AND 20-10-145, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-3-106, MCA, is amended to read:

"20-3-106. Supervision of schools — powers and duties. The superintendent of public instruction has the general supervision of the public schools and districts of the state and shall perform the following duties or acts in implementing and enforcing the provisions of this title:

(1) resolve any controversy resulting from the proration of costs by a joint board of trustees under the provisions of 20-3-362;

(2) issue, renew, or deny teacher certification and emergency authorizations of employment;

(3) negotiate reciprocal tuition agreements with other states in accordance with the provisions of 20-5-314;

(4) approve or disapprove the opening or reopening of a school in accordance with the provisions of 20-6-502, 20-6-503, 20-6-504, or 20-6-505;

(5) approve or disapprove school isolation within the limitations prescribed by 20-9-302;

HeinOnline -- 1999 vol. II 1278 1999

(6) generally supervise the school budgeting procedures prescribed by law in accordance with the provisions of 20-9-102 and prescrihe the school budget format in accordance with the provisions of 20-9-103 and 20-9-506;

(7) establish a system of communication for calculating joint district revenue in accordance with the provisions of 20-9-151;

(8) approve or disapprove the adoption of a district's budget amendment resolution under the conditions prescribed in 20-9-163 and adopt rules for an application for additional direct state aid for a budget amendment in accordance with the approval and disbursement provisions of 20-9-166;

(9) generally supervise the school financial administration provisions as prescribed by 20-9-201(2);

(10) prescribe and furnish the annual report forms to enable the districts to report to the county superintendent in accordance with the provisions of 20-9-213~~(5)~~*(6)* and the annual report forms to enable the county superintendents to report to the superintendent of public instruction in accordance with the provisions of 20-3-209;

(11) approve, disapprove, or adjust an increase of the average number belonging (ANB) in accordance with the provisions of 20-9-313 and 20-9-314;

(12) distribute BASE aid and special education allowable cost payments in support of the BASE funding program in accordance with the provisions of 20-9-331, 20-9-333, 20-9-342, 20-9-346, 20-9-347, and 20-9-366 through 20-9-369;

(13) provide for the uniform and equal provision of transportation by performing the duties prescribed by the provisions of 20-10-112;

(14) request, accept, deposit, and expend federal money in accordance with the provisions of 20-9-603;

(15) authorize the use of federal money for the support of an interlocal cooperative agreement in accordance with the provisions of 20-9-703 and 20-9-704;

(16) prescribe the form and contents of and approve or disapprove interstate contracts in accordance with the provisions of 20-9-705;

(17) approve or disapprove the conduct of school on a Saturday in accordance with the provisions of 20-1-303;

(18) recommend standards of accreditation for all schools to the board of public education and evaluate compliance with the standards and recommend accreditation status of every school to the board of public education in accordance with the provisions of 20-7-101 and 20-7-102;

(19) collect and maintain a file of curriculum guides and assist schools with instructional programs in accordance with the provisions of 20-7-113 and 20-7-114;

(20) establish and maintain a library of visual, aural, and other educational media in accordance with the provisions of 20-7-201;

(21) license textbook dealers and initiate prosecution of textbook dealers violating the law in accordance with the provisions of the textbooks part of this title;

HeinOnline -- 1999 vol. II 1279 1999

(22) as the governing agent and executive officer of the state of Montana for K-12 vocational education, adopt the policies prescribed by and in accordance with the provisions of 20-7-301;

(23) supervise and coordinate the conduct of special education in the state in accordance with the provisions of 20-7-403;

(24) administer the traffic education program in accordance with the provisions of 20-7-502;

(25) administer the school food services program in accordance with the provisions of 20-10-201 through 20-10-203;

(26) review school building plans and specifications in accordance with the provisions of 20-6-622;

(27) prescribe the method of identification and signals to be used by school safety patrols in accordance with the provisions of 20-1-408;

(28) provide schools with information and technical assistance for compliance with the student assessment rules provided for in 20-2-121 and collect and summarize the results of the student assessment for the board of public education and the legislature;

(29) upon request and in compliance with confidentiality requirements of state and federal law, disclose to interested parties all school district student assessment data for ~~any~~ *a* test required by the board of public education;

(30) administer the distribution of guaranteed tax base aid in accordance with 20-9-366 through 20-9-369; and

(31) perform any other duty prescribed from time to time hy this title, any other act of the legislature, or the policies of the board of public education."

Seetion 2. Section 20-3-209, MCA, is amended to read:

"20-3-209. Annual report. The county superintendent of each county shall submit an annual report to the superintendent of public instruction not later than ~~September 1~~ *the second Monday in September*. The report must be completed on the forms supplied by the superintendent of public instruction and must include:

(1) the final budget information for each district of the county, as prescribed by 20-9-134(1);

(2) the financial activities of each district of the county for the immediately preceding school fiscal year as provided by the trustees' annual report to the county superintendent under the provisions of 20-9-213~~(5)~~*(6)*; *and*

~~(3) the pupil information for each district provided the county superintendent under the provisions of 20-4-402(7); and~~

~~(4)~~*(3)* any other information that may be requested by the superintendent of public instruction that is within the superintendent's authority prescribed by this title."

Seetion 3. Section 20-4-402, MCA, is amended to read:

"20-4-402. Duties of distriet superintendent or county high school prineipal. The district superintendent or county high school principal is the executive officer of the trustees and, subject to the direction and control of the trustees, ~~he~~ *the executive officer* shall:

HeinOnline -- 1999 vol. II 1280 1999

(1) have general supervision of all schools of the district and the personnel employed by the district;

(2) implement and administer the policies of the trustees of the district;

(3) develop and recommend courses of instruction to the trustees for their consideration and approval in accordance with the provisions of 20-7-111;

(4) select all textbooks and submit the selections to the trustees for tbeir approval in accordance witb the provisions of 20-7-602;

(5) select all reference and library books and submit the selections to the trustees for their approval in accordance with provisions of 20-7-204;

(6) have general supervision of all pupils of the district, enforce the compulsory attendance provisions of this title, and have the authority to suspend for good cause ~~any~~ *a* pupil of the district;

(7) report the ~~cumulative~~ pupil attendance ~~and pupil~~, absence, *and enrollment* of the district and ~~any~~ other pupil information required by the report form prescribed hy the superintendent of public instruction to the county superintendent, or county superintendents when reporting for a joint district~~, within 10 days after the conclusion of each school semester~~; and

(8) perform ~~any~~ other duties in connection with the district as the trustees may prescribe."

Section 4. Section 20-6-501, MCA, is amended to read:

"20-6-501. Definition of various schools. As used in this title, unless the context clearly indicates otherwise, the term "school" means an institution for the teaching of children that is established and maintained under the laws of the state of Montana at puhlic expense. The trustees of ~~any~~ *a* district shall designate tbe grade assignments for the schools of the district, but for the purposes of this title eacb school is known as:

(1) an elementary school when it comprises the work of any combination of kindergarten, other preschool programs, or the first eight grades or their equivalents. A middle school is a school comprising the work of grades 4 through 8 or any combination of grades 4 through 8 that has heen accredited as a middle school under the provisions of 20-7-102. When an accredited junior high school ~~or an accredited 6-year high school~~ is operated by the district, grades 7 and 8 or their equivalents may not be considered as elementary grades.

(2) a high school when it comprises the work of one or more grades of schoolwork or their equivalents intermediate between the elementary schools and the institutions of higher education of the state of Montana. Types of high schools are designated as follows:

(a) a junior bigh scbool is a school comprising the work of grades 7 through 9 or their equivalents that has been accredited as a junior high school under the provisions of 20-7-102;

(b) a senior high school is a school that comprises the work of grades 10 through 12 or their equivalents and that is operated in conjunction with a junior high school;

~~(c) a 6-year high school is a school comprising the work of grades 7 through 12 or their equivalents that has been accredited as a 6-year high school under the provisions of 20-7-102;~~

HeinOnline -- 1999 vol. II 1281 1999

~~(d)~~*(c)* a 4-year high school is a school comprising the work of grades 9 through 12 or their equivalents."

Section 5. Section 20-6-608, MCA, is amended to read:

"20-6-608. Authority and duty of trustees to insure district property. *(1)* The trustees of ~~any~~ *a* district shall insure ~~any or~~ all real and personal property of the district. The trustees shall include the cost of insurance in the general fund budget of the district.

(2) Proceeds received from an insurance settlement on real or personal property insured by the district may, at the discretion of the trustees, be deposited in a fund considered appropriate by the trustees."

Section 6. Section 20-7-420, MCA, is amended to read:

"20-7-420. Residency requirements — financial responsibility for special education. (1) In accordance with the provisions of 1-1-215, a child's district of residence for special education purposes is the residence of the child's parents or of the child's guardian if the parents are deceased, unless otherwise determined by the court. This applies to a child living at home, in an institution, or under foster care. If the parent has left the state, the parent's last-known district of residence is the child's district of residence.

(2) The county of residence is financially responsible for tuition and transportation as established under 20-5-323 *and 20-5-324* for a child with disabilities, as defined in 20-7-401, ~~including a child~~ who *attends school outside the district and county of residence because the student* has been placed by a state agency in a foster care or group home licensed by the state. The county of residence is not financially responsible for tuition and transportation for a child who is placed by a state agency in an out-of-state public school or an out-of-state private residential facility.

(3) If an eligible child, as defined in 20-7-436, is receiving inpatient treatment in an in-state residential treatment facility or children's psychiatric hospital, as defined in 20-7-436, and the educational services are provided by a public school district under the provisions of 20-7-411 or 20-7-435, the superintendent of public instruction shall reimburse the district providing the services for the negotiated amount, as established pursuant to 20-7-435(5), that represents the district's costs of providing education and related services. Payments must be made from funds appropriated for this purpose. If the negotiated amount exceeds the daily membership rate under 20-7-435(3) and any per-ANB amount of direct state aid, the superintendent of public instruction shall pay the remaining balance from available funds. However, the amount spent from available funds for this purpose may not exceed $500,000 during ~~any~~ *a* biennium.

(4) A state agency that makes a placement of a child with disabilities is responsible for the financial costs of room and board and the treatment of the child. The state agency that makes an out-of-state placement of a child with disabilities is responsible for the education fees required to provide a free appropriate public education that complies with the requirements of Title 20, chapter 7, part 4."

Section 7. Section 20-9-134, MCA, is amended to read:

"20-9-134. Completion, filing, and delivery of final budgets. After the final budget of the elementary, high school, or community college district has

HeinOnline -- 1999 vol. II 1282 1999

been adopted by the trustees, the county superintendent shall complete all the remaining portions of the budget forms and shall:

(1) send the final budget information to the superintendent of public instruction, on the forms provided by the superintendent, on or before ~~September 1~~ *the second Monday in September*; and

(2) in the case of the community college districts, send the final budget information to the board of regents, on the forms provided by the community college coordinator, on or before September 1."

Section 8. Section 20-9-166, MCA, is amended to read:

"20-9-166. State financial aid for budget amendments. Whenever a final budget amendment has been adopted for the general fund ~~or the transportation fund~~ to finance the cost of an amendment resulting from increased enrollment, the trustees may apply to the superintendent of public instruction for an increased payment from the state for direct state aid ~~or for state transportation reimbursement, or both~~. *Whenever a final budget amendment has been adopted for the transportation fund, the trustees may apply to the superintendent of public instruction for an increased payment for state transportation reimbursement.* The superintendent of public instruction shall adopt rules for the application. The superintendent of public instruction shall approve or disapprove each application for increased state aid made in accordance with 20-9-314 and this section. When the superintendent of public instruction approves an application, the superintendent of public instruction shall determine the additional amount of *direct* state aid ~~from the state~~ or the state transportation reimbursement that will be made available to the applicant district because of the increase in enrollment *or additional pupil transportation obligations*. The superintendent of public instruction shall notify the applicant district of the superintendent's approval or disapproval and, in the event of approval, the amount of additional state aid that will be made available for the general fund or the transportation fund. The superintendent of public instruction sball disburse the state aid to the eligible district at the time the next regular state aid payment is made."

Section 9. Section 20-9-307, MCA, is amended to read:

"20-9-307. BASE funding program — district general fund budget — funding sources. (1) A basic system of free quality public elementary schools and high schools must be established and maintained throughout the state of Montana to provide equality of educational opportunity to all school-age children.

(2) The state shall in an equitable manner fund and distribute to the school districts the state's share of the cost of the basic school system through BASE aid to support the BASE funding program in the manner established in this title.

(3) The budgetary vehicle for achieving the financing system established in subsection (2) is the general fund budget of the school district. The purpose of the district general fund budget is to finance those instructional, administrative, facility maintenance, and other operational costs of a district not financed by other funds established for special purposes in this title.

(4) The BASE funding program for the districts in the state is financed by a combination of the following sources:

(a) county equalization money, as provided in 20-9-331 and 20-9-333;

HeinOnline -- 1999 vol. II 1283 1999

(b) state equalization aid, as provided in 20-9-343, including guaranteed tax base aid for eligible districts as provided in 20-9-366 through 20-9-369;

(c) appropriations for special education;

(d) a district levy, as provided in ~~20-9-302~~ *20-9-303*, for support of a school not approved as an isolated school under the provisions of ~~that section~~ *20-9-302*; and

(e) district levies or other revenue, as provided by 20-9-308 and 20-9-353."

Section 10. Section 20-9-311, MCA, is amended to read:

"20-9-311. Calculation of average number belonging (ANB). (1) Average number belonging (ANB) must he computed as follows:

(a) compute an average enrollment hy adding a count of regularly enrolled full-time pupils who were enrolled as of the first Monday in Octoher of the prior school fiscal year to a count of regularly enrolled pupils on February 1 of the prior school fiscal year, or the ~~nearest~~ *next* school day if those dates do not fall on a school day, and divide the sum by two; and

(b) multiply the average enrollment calculated in suhsection (1)(a) by the sum of the pupil-instruction and the approved pupil-instruction-related days for the current school fiscal year and divide hy 180.

(2) For the purpose of calculating ANB under subsection (1), up to 7 approved pupil-instruction-related days may be included in the calculation.

(3) When a school district has approval to operate less than 180 school days under 20-9-806, the total ANB must he calculated in accordance with the provisions of 20-9-805.

(4) Enrollment for a part of a morning session or a part of an afternoon session by a pupil must he counted as enrollment for one-half day.

(5) In calculating the ANB for pupils enrolled in a program established under 20-7-117(1), enrollment at a regular session of the program for at least 2 hours of either a morning or an afternoon session must he counted as one-half pupil for ANB purposes. The ANB for a kindergarten student may not exceed one-half for each kindergarten pupil.

(6) When a pupil has been absent, with or without excuse, for more tban 10 consecutive school days, the pupil may not be included in the enrollment count used in the calculation of the ANB unless the pupil resumes attendance prior to the day of the enrollment count.

(7) The enrollment of prekindergarten pupils, as provided in 20-7-117, inay not he included in the ANB calculations.

(8) The average numher belonging of the regularly enrolled, full-time pupils for the puhlic schools of a district must be based on the aggregate of all the regularly enrolled, full-time pupils attending the schools of the district, except that when:

(a) (i) a school of the district is located more than 20 miles beyond the incorporated limits of a city or town located in the district and at least 20 miles from any other school of the district, the number of regularly enrolled, full-time pupils of the school must be calculated separately for ANB purposes and the district must receive a hasic entitlement for the school calculated separately from the other schools of the district;

HeinOnline -- 1999 vol. II 1284 1999

(ii) a school of the district is located more than 20 miles from any other school of the district and incorporated territory is not involved in the district, the number of regularly enrolled, full-time pupils of the school must be calculated separately for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the other schools of the district;

(iii) the superintendent of public instruction approves an application not to aggregate when conditions exist affecting transportation, such as poor roads, mountains, rivers, or other obstacles to travel, or when any other condition exists that would result in an unusual hardship to the pupils of the school if they were transported to another school, the number of regularly enrolled, full-time pupils of the school must be calculated separately for ANB purposes and the district must receive a basic entitlement for the school calculated separately from the other schools of the district; or

(iv) two or more elementary districts consolidate or annex under the provisions of 20-6-203, 20-6-205, or 20-6-208; two or more high school districts consolidate or annex under the provisions of 20-6-315 or 20-6-317; or two or more K-12 districts consolidate or annex under Title 20, chapter 6, part 4, the ANB and the basic entitlements of the component districts must be calculated separately for a period of 3 years following the consolidation or annexation;

(b) a junior high school has heen approved and accredited as a junior high school, all of the regularly enrolled, full-time pupils of the junior high school must be considered as high school district pupils for ANB purposes;

(c) a middle school has been approved and accredited, all pupils below the 7th grade must he considered elementary school pupils for ANB purposes and the 7th and 8th grade pupils must be considered high school pupils for ANB purposes; or

(d) a school has not been accredited by the board of public education, the regularly enrolled, full-time pupils attending the nonaccredited school are not eligible for average number belonging calculation purposes, nor will an average number belonging for the nonaccredited school be used in determining the BASE funding program for the district.

~~(9) When 11th or 12th grade students are regularly enrolled on a part-time basis, high schools may calculate the ANB to include an "equivalent ANB" for those students. The method for calculating an equivalent ANB must be determined in a manner prescribed by the superintendent of public instruction.~~

~~(10) For average daily attendance reporting purposes, districts~~

(9) The district shall provide the superintendent of public instruction with ~~annual~~ *semiannual* reports of school attendance, *absence, and enrollment* for regularly enrolled students ~~and special education students~~, using a format determined by the superintendent."

Seetion 11. Section 20-9-313, MCA, is amended to read:

"20-9-313. Circumstanees under whieh regular average number belonging may be inereased. The average number belonging of a school, calculated in accordance with the ANB formula prescribed in 20-9-311, may be increased when:

(1) the opening of a new elementary school or the reopening of an elementary school has been approved in accordance with 20-6-502. The average number

HeinOnline -- 1999 vol. II 1285 1999

belonging for the school must be established by the county superintendent and approved, disapproved, or adjusted by the superintendent of public instruction.

(2) the opening or reopening of a high school or a branch of the county high school has been approved in accordance with 20-6-503, 20-6-504, or 20-6-505. The average number belonging for the high school must be established by the county superintendent's estimate, after an investigation of the probable number of pupils that will attend the high school.

(3) a district anticipates an increase in the average number belonging due to the closing of ~~any~~ *a* private or public school in the district or a neighboring district. The estimated increase in average number belonging must be established by the trustees and the county superintendent and approved, disapproved, or adjusted by the superintendent of public instruction no later than the fourth Monday in June.

(4) a district anticipates an unusual enrollment increase in the ensuing school fiscal year. The increase in average number belonging must be based on estimates of increased enrollment approved by the superintendent of puhlic instruction and must be computed in the manner prescribed by 20-9-314.

(5) for the initial year of operation of a program established under 20-7-117(1), the ANB to be used for budget purposes is tbe same as one-half the number of 5-year-old children residing in the district as of September 10 of the preceding school year, either as shown on tbe official school census or as determined by some other procedure approved by the superintendent of puhlic instruction; or

(6) a high school district provides early graduation for ~~any~~ *a* student who completes graduation requirements in less than eight semesters or the equivalent amount of secondary school enrollment ~~or when a high school district provides early graduation for a class of students who have completed the requirements for graduation after 175 pupil instruction days in the 12th grade~~. The increase must be established by the trustees as though the student had attended to the end of the school fiscal year and must be approved, disapproved, or adjusted by the superintendent of public instruction."

Section 12. Section 20-9-508, MCA, is amended to read:

"20-9-508. Building fund. (1) The trustees of ~~any~~ *a* district shall establish or credit the building fund whenever the district:

(a) issues and sells bonds under the school district bonding provisions of this title for purposes other than refunding bonds of the district;

(b) receives federal money for the express purpose of building, enlarging, or remodeling a school building or other building of the district;

(c) sells property of the district in accordance with the law authorizing the sale;

~~(d) receives money as an insurance settlement for the destruction of any property or portion of property insured by the district;~~

~~(e)~~*(d)* earns interest from the investment of building fund money under the provisions of 20-9-213(4), except that interest earned from the investment of bond money under the provisions of 20-9-435 must be credited to a fund in accordance with that section; or

HeinOnline -- 1999 vol. II 1286 1999

~~(f)~~*(e)* receives any other money, including payments made by a developer under the provisions of 20-9-615, for the express purpose of building, enlarging, or remodeling a school building or other building of the district.

(2) The financial administration of the building fund must be in accordance with the financial administration provisions of this title for a nonbudgeted fund and must provide for a separate accounting of the money realized by each bond issue or by each construction project financed by a federal grant of money. Any other money deposited to the credit of this fund must be expended for building, enlargement, remodeling, or repairing of buildings of the district at the discretion of the trustees.

(3) Money credited to the building fund under the provisions of subsection (1)(a) must be expended for the express purpose or purposes authorized by the bond proposition approved at the election authorizing the issuance of the honds. Any money realized by tbe sale of bonds and remaining to tbe credit of tbe building fund after the full accomplishment of the purpose for which the bonds were sold must be transferred to the debt service fund to be used for tlie redemption of the bonds.

(4) Money credited to the building fund under the provisions of subsection (1)(b) must be expended for the express purpose or purposes authorized by the federal government in granting the money."

Section 13. Section 20-10-111, MCA, is amended to read:

"20-10-111. Duties of board of public education. (1) The board of public education, with the advice of the Montana department of justice and the superintendent of public instruction, shall adopt and enforce policies, not inconsistent with the motor vehicle laws, to provide uniform standards and regulations for the desigu, construction, and operation of school buses in tbe state of Montana. ~~Such~~ *The* policies ~~shall~~ *must*:

(a) prescribe minimum standards for the design and construction of school buses not inconsistent with:

(i) minimum standards adopted by the national ~~commission on safety education~~ *conference on school transportation*; or

(ii) minimum standards adopted by the national highway ~~safety bureau~~ *traffic safety administration*;

(b) prescribe standards and specifications for the lighting equipment and special warning devices to be carried by school buses in conformity with:

(i) current specifications approved by the society of automobile engineers;

(ii) motor vehicle laws; and

(iii) the requirement tbat all school buses have an alternately flashing prewarning lighting system of four amber signal lamps to be used while preparing to stop and an alternately flashing warning lighting system of four red signal lamps to be used while stopped in accordance with 61-9-402;

(c) establish ~~any~~ other driver qualifications considered necessary in addition to the qualifications required in 20-10-103;

(d) prescribe criteria for tbe establishment of transportation service areas for school bus purposes hy the county transportation committee ~~which~~ *that* shall

HeinOnline -- 1999 vol. II 1287 1999

allow for the establishment of ~~such~~ *service* areas without regard to the district boundary lines within the county;

(e) prescribe ~~any~~ other criteria for the determination of the residence of a pupil that may be ~~deemed~~ *considered* necessary in addition to the criteria established in 20-10-105;

(f) prescribe ~~any~~ other policies for the operation of school buses ~~which~~ *that* are not inconsistent with:

(i) motor vehicle laws;

(ii) minimum standards adopted for school bus operation by the national ~~commission on safety education~~ *conference on school transportation*;

(iii) highway safety standards; and

(iv) the transportation provisions of this title;

(g) prescribe standards for the measurement of the child seating capacity of school buses, to be known as the rated capacity.

(2) The board of public education shall prescribe ~~any~~ other policy necessary for the proper administration and operation of individual transportation programs that are not inconsistent with the transportation provisions of this title."

Section 14. Section 20-10-143, MCA, is amended to read:

"20-10-143. Budgeting for transportation and transmittal of transportation contracts. (1) The trustees of a district furnishing transportation to pupils who are residents of the district shall provide a transportation fund budget that is adequate to finance the district's transportation contractual obligations and any other transportation expenditures necessary for the conduct of its transportation program. The transportation fund budget must include:

(a) an adequate amount to finance the maintenance and operation of school buses owned and operated by the district;

(b) the annual contracted amount for the maintenance and operation of school buses by a private party;

(c) the annual contracted amount for individual transportation, including any increased amount because of isolation, which may not exceed the schedule amounts prescribed in 20-10-142;

(d) any amount necessary for the purchase, rental, or insurance of school buses; and

(e) any other amount necessary to finance the administration, operation, or maintenance of the transportation program of the district, as determined by the trustees.

(2) The trustees may include a contingency amount in the transportation fund budget for the purpose of enabling the district to fulfill an obligation to provide transportation in accordance with this title for:

(a) pupils not residing in the district at the time of the adoption of the final budget and who subsequently became residents of the district during the school fiscal year; ~~or~~

HeinOnline -- 1999 vol. II 1288 1999

(b) pupils who have become eligible transportees since the adoption of the final budget because their legal residence has been changed; *or*

(c) other unforeseen increases in bus route mileage or obligations for payment of additional contracts for individual transportation for an eligible transportee for which state and county reimbursement is authorized under 20-10-141 and 20-10-142. The budgeted contingency amount may not exceed 10% of the transportation schedule amount as calculated under the provisions of 20-10-141 and 20-10-142 for all transportation services authorized by the schedules and provided by the district unless 10% of the transportation schedule amount is less than $100, in which case $100 is the maximum limitation for the budgeted contingency amount.

(3) A budget amendment to the transportation fund budget may be adopted subject to the provisions of 20-9-161 through 20-9-166.

(4) The ~~transportation fund budgeted expenditures appropriated by the~~ trustees ~~must be reported~~ *shall report the transportation fund budget* on the regular budget form prescribed by the superintendent of public instruction in accordance with 20-9-103, and the adoption of the transportation fund budget must be completed in accordance with the school budgeting laws. When the adopted final budget is sent to the county superintendent, the trustees shall also send copies of all completed transportation contracts for school bus transportation ~~and individual transportation~~ to the county superintendent. The contracts must substantiate all contracted *school bus* transportation services incorporated in the final budget~~, and after the county superintendent has utilized the contracts for that purpose but before the second Monday of August, the county superintendent shall send all transportation contracts received to the superintendent of public instruction~~."

Section 15. Section 20-10-145, MCA, is amended to read:

"20-10-145. State transportation reimbursement. (1) A district providing school bus transportation or individual transportation in accordance with this title, board of public education transportation policy, and superintendent of public instruction transportation rules must receive a state reimbursement of its transportation expenditures under the transportation reimbursement rate provisions of 20-10-141 and 20-10-142. The state transportation reimbursement is one-half of the reimbursement amounts established in 20-10-141 and 20-10-142 or one-half of the district's transportation fund budget, whichever is smaller, and must be computed on the basis of the number of days the transportation services were actually rendered, not to exceed 180 pupil-instruction days. In determining the amount of the state transportation reimbursement, an amount claimed by a district may not be considered for reimbursement unless the amount has been paid in the regular manner provided for the payment of other financial obligations of the district.

(2) Requests for the state transportation reimbursement must be made by each district semiannually during the school fiscal year on the claim forms and procedure promulgated by the superintendent of public instruction. The claims for state transportation reimbursements must be routed by the district to the county superintendent, who after reviewing the claims shall send them to the superintendent of public instruction. The superintendent of public instruction shall establish the validity and accuracy of the claims for the state transportation reimbursements by determining compliance with this title, board of public education transportation policy, and the transportation rules of the

HeinOnline -- 1999 vol. II 1289 1999

superintendent of public instruction. After making any necessary adjustments to the claims, the superintendent of public instruction shall order a disbursement from the state money appropriated by the legislature of the state of Montana for the state transportation reimbursement. The payment of all the district's claims within one county must be made to the county treasurer of the county, and the county superintendent shall apportion the payment in accordance with the apportionment order supplied by the superintendent of public instruction.

(3) After adopting a budget amendment for the transportation fund in accordance with 20-9-161 through 20-9-166, the district shall send to the superintendent of public instruction a copy of each new or amended individual transportation contract and each new or amended bus route form to which the budget amendment applies. State reimbursement for the additional obligations must be paid as provided in subsection (1)."

Section 16. Effective date — applicability. [This act] is effective July 1, 1999, and applies to school budgets for school fiscal years heginning on or after July 1, 1999.

Approved April 19, 1999

CHAPTER NO. 344

[SB 137]

AN ACT AMENDING STATUTES NECESSARY TO IMPLEMENT ISSUANCE OF THE NATIONAL GUARD VETERANS' OR LEGION OF VALOR MEMBERS' LICENSE PLATES; AMENDING SECTIONS 61-3-332, 61-3-407, AND 61-3-446, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-3-332, MCA, is amended to read:

"**61-3-332. Number plates.** (1) A motor vehicle that is driven upon the streets or highways of Montana must display both front and rear number plates, bearing the distinctive number assigned to the vehicle. The number plates are in 10 series: one series for owners of motorcars, one for owners of motor vehicles of the motorcycle or quadricycle type, one for trailers, one for trucks, one for dealers in vehicles of the motorcycle or quadricycle type that bear the distinctive letters "MCD" or the letters "MC" and the word "DEALER", one for franchised dealers in new motorcars (including trucks and trailers) or new and used motorcars (including trucks and trailers) that bear the distinctive letter "D" or the word "DEALER", one for dealers in used motorcars only (including used trucks and trailers) that bear the distinctive letters "UD" or the letter "U" and the word "DEALER", one for dealers in trailers and/or semitrailers (new or used) that bear the distinctive letters "DTR" or the letters "TR" and the word "DEALER", one for dealers in recreational vehicles that bear the distinctive letters "RV" or the letter "R" and the word "DEALER", and one for special license plates. All markings for the various kinds of dealers' plates must be placed on the number plates assigned to the dealer, in the position that the department designates.

(2) All number plates for motor vehicles must be issued for a minimum period of 4 years, bear a distinctive marking, and be furnished by the state. In years when number plates are not issued, the department shall provide nonremovable

HeinOnline -- 1999 vol. II 1290 1999

stickers bearing appropriate registration numbers that must be affixed to the license plates in use.

(3) Subject to tbe provisions of this section, the department shall create a new design for number plates as provided in this section.

(4) In the case of motorcars and trucks, plates must be of metal 6 inches wide and 12 inches in length. The outline of the state of Montana must be used as a distinctive border on the license plates, and tbe word "Montana" and the year must be placed across tbe plates. Registration plates must be treated with a reflectorized background material according to specifications prescribed by tbe department.

(5) The distinctive registration numbers must begin with a number one or with a letter-number combination, such as "A 1" or "AA 1", or any other similar combination of letters and numbers. The distinctive registration number or letter-number combination assigned to the vehicle must appear on the plate preceded by tbe number of the county and appearing in horizontal order on tbe same borizontal baseline. The county number must be separated from the distinctive registration number by a separation mark unless a letter-number combination is used. The dimensions of the numerals and letters must be determined by the department, and all county and registration numbers must be of equal height.

(6) For the use of tax-exempt motor vehicles, in addition to the markings provided in this section, number plates must bear tbe following distinctive markings:

(a) For vehicles owned by tbe state, the department may designate the prefix number for the various state departments. All numbered plates issued to state departments must bear tbe words "State Owned", and a year number may not be indicated on the plates because these numbered plates are of a permanent nature and will be replaced by the department only when the physical condition of numbered plates requires it.

(b) For vehicles that are owned by the counties, municipalities, and special districts, as defined in 18-8-202, organized under the laws of Montana and not operating for profit, and that are used and operated by officials and employees in the line of duty and for vehicles on loan from the United States government or the state of Montana to, or owned by, the civil air patrol and used and operated by officials and employees in tbe line of duty, there must be placed on the number plates assigned, in a position that the department may designate, the letter "X" or the word "EXEMPT". Distinctive registration numbers for plates assigned to motor vehicles of each of the counties in the state and those of the municipalities and special districts that obtain plates within each county must begin with number one and be numbered consecutively. Because these number plates are of a permanent nature, they are subject to replacement by tbe department only when the physical condition of the number plates requires it and a year number may not be displayed on the number plates.

(7) On all number plates assigned to motor vehicles of the truck and trailer type, otber than tax-exempt trucks and tax-exempt trailers, there must appear the letter "T" or the word "TRUCK" on plates assigned to trucks and tbe letters "TR" or the word "TRAILER" on plates assigned to trailers and housetrailers. The letters "MC" or the word "CYCLE" must appear on plates assigned to vehicles of the motorcycle or quadricycle type.

HeinOnline -- 1999 vol. II 1291 1999

(8) Number plates issued to a passenger car, truck, trailer, or vehicle of the motorcycle or quadricycle type may be transferred only to a replacement passenger car, truck, trailer, or motorcycle- or quadricycle-type vehicle. A registration or license fee may not be assessed upon a transfer of a number plate under 61-3-317 and 61-3-335.

(9) For the purpose of this chapter, the several counties of the state are assigned numbers as follows: Silver Bow, 1; Cascade, 2; Yellowstone, 3; Missoula, 4; Lewis and Clark, 5; Gallatin, 6; Flathead, 7; Fergus, 8; Powder River, 9; Carbon, 10; Phillips, 11; Hill, 12; Ravalli, 13; Custer, 14; Lake, 15; Dawson, 16; Roosevelt, 17; Beaverhead, 18; Chouteau, 19; Valley, 20; Toole, 21; Big Horn, 22; Musselshell, 23; Blaine, 24; Madison, 25; Pondera, 26; Richland, 27; Powell, 28; Rosebud, 29; Deer Lodge, 30; Teton, 31; Stillwater, 32; Treasure, 33; Sheridan, 34; Sanders, 35; Judith Basin, 36; Daniels, 37; Glacier, 38; Fallon, 39; Sweet Grass, 40; McCone, 41; Carter, 42; Broadwater, 43; Wheatland, 44; Prairie, 45; Granite, 46; Meagher, 47; Liberty, 48; Park, 49; Garfield, 50; Jefferson, 51; Wibaux, 52; Golden Valley, 53; Mineral, 54; Petroleum, 55; Lincoln, 56. Any new counties must be assigned numbers by tbe department as they may be formed, beginning with the number 57.

(10) Each type of special license plate approved by the legislature, except collegiate license plates authorized in 61-3-463, must be a separate series of plates, numbered as provided in subsection (5), except that the county number must be replaced by a nonremovable design or decal designating the group or organization to which the applicant belongs. Unless otherwise specifically stated in this section, the special plates are subject to the same rules and laws as govern the issuance of regular license plates, must be placed or mounted on a vehicle owned by the person who is eligible to receive them, and must be removed upon sale or other disposition of the vehicle. The special license plates must be issued to national guard members, former prisoners of war, persons with disabilities, reservists, disabled veterans, survivors of the Pearl Harbor attack, veterans of the armed services, *national guard veterans, legion of valor members,* or veterans of the armed services who were awarded the purple heart medal, who comply with the following provisions:

(a) *(i)* An active member of the Montana national guard may be issued special license plates with a design or decal displaying the letters "NG". The adjutant general shall issue to each active member of the Montana national guard a certificate authorizing the department to issue national guard plates, numbered in sets of two with a different number on each set, and the member shall surrender the plates to the department upon becoming ineligible to use them.

(ii) The department may issue national guard veteran plates, bearing a design or decal displaying the Montana national guard insignia and the words "National Guard veteran" and numbered in sets of two with a different number on each set, to an applicant who presents to the department a copy of certification of national guard retirement cligibility issued by the appropriate authorities for the applicant or the applicant's deceased spouse and who pays, in addition to all taxes and fees required by parts 3 and 5 of this chapter, a national guard veteran license plate fee of $10. The additional fee must be distributed in accordance with the provisions of subsection (10)(f)(iii) and (10)(f)(iv).

(b) An active member of the reserve armed forces of the United States of America who is a resident of this state may be issued special license plates with a design or decal displaying the following: United States army reserve, AR

HeinOnline -- 1999 vol. II 1292 1999

(symbol); United States naval reserve, NR (anchor); United States air force reserve, AFR (symbol); and United States marine corps reserve, MCR (globe and anchor). The commanding officer of each armed forces reserve unit shall issue to each eligihle member of the reserve unit a certificate authorizing the issuance of special license plates, numbered in sets of two with a different numher on each set. The member shall surrender the plates to the department upon becoming ineligible to use them.

(c) (i) A resident of Montana who is a veteran of the armed forces of the United States and who is 100% disabled because of an injury that bas heen determined by the department of veterans affairs to be service-connected may, upon presentation to the department of proof of the 100% disability, be issued:

(A) a special license plate under this section with a design or decal displaying the letters "DV"; or

(B) one set of any other military-related plates that the disabled veteran is eligible to receive under this section.

(ii) The fee for original or renewal registration by a 100% disabled veteran for a passenger vehicle or a truck with a GVW-rated capacity of 1 ton or less is $5 and is in lieu of all other fees and taxes for that vehicle under this chapter.

(iii) Special license plates issued to a disabled veteran are not transferable to another person.

(iv) A disabled veteran is not entitled to a special disabled veteran's license plate for more than one vehicle.

(v) A vehicle lawfully displaying a disabled veteran's plate and that is conveying a 100% disabled veteran is entitled to the parking privileges allowed a person with a disability's vehicle under this title.

(d) A Montana resident who is a veteran of the armed forces of the United States and was captured and held prisoner by a military force of a foreign nation, documented by the veteran's service record, may upon application and presentation of proof be issued special license plates, numbered in sets of two with a different numher on each set, with a design or decal displaying the words "ex-prisoner of war" or an abbreviation that the department considers appropriate.

(e) Except as provided in subsection (10)(c), upon payment of all taxes and fees required by parts 3 and 5 of this chapter and upon furnishing proof satisfactory to the department that the applicant meets the requirements of this subsection (10)(e), the department shall issue to a Montana resident who is a veteran of the armed services of the United States special license plates, numbered in sets of two with a different number on each set, designed to indicate that the applicant is a survivor of the Pearl Harbor attack if the applicant was a member of the United States armed forces on December 7, 1941, was on station on December 7, 1941, during the hours of 7:55 a.m. to 9:45 a.m. (Hawaii time) at Pearl Harbor, the island of Oahu, or offshore at a distance of not more than 3 miles, and received an honorable discharge from the United States armed forces. If special license plates issued under this subsection are lost, stolen, or mutilated, the recipient of the plates is entitled to replacement plates upon request and without charge.

(f) A motor vehicle owner and resident of this state who is a veteran or the surviving spouse of a veteran of the armed services of the United States may be

HeinOnline -- 1999 vol. II 1293 1999

issued license plates inscribed as provided in subsection (10)(f)(i) if the veteran was separated from the armed services under other than dishonorable circumstances or was awarded the purple heart medal:

(i) Upon submission of a department of defense form 214(DD-214) or its successor or documents showing an other-than-dishonorable discharge or a reenlistment, proper identification, and other relevant documents to show an applicant's qualification under this subsection, there must be issued to the applicant, in lieu of the regular license plates prescribed by law, special license plates numbered in sets of two with a different number on each set. The plates must display:

(A) the word "VETERAN" and a symbol signifying the United States army, United States navy, United States air force, United States marine corps, or United States coast guard, according to the record of service verified in the application; or

(B) a symbol representing the purple heart medal.

(ii) Plates must be furnished by the department to the county treasurer, who shall issue them to a qualified veteran or to the veteran's surviving spouse. The plates must be placed or mounted on the vehicle owned by the veteran or the veteran's surviving spouse designated in the application and must be removed upon sale or other disposition of the vehicle.

(iii) Except as provided in subsection (10)(c), a veteran or surviving spouse who receives special license plates under this subsection (10)(f) is liable for payment of all taxes and fees required under parts 3 and 4 of this chapter and a special veteran's or purple heart medal license plate fee of $10. Upon an original application for a license under this subsection (10)(f), the county treasurer shall:

(A) deposit $3 of the special fee in the county general fund;

(B) remit $1 for deposit in the state general fund; and

(C) deposit the remainder of the special fee in the state special revenue account established in 10-2-603 for administration, construction, operation, and maintenance of the state veterans' cemeteries.

(iv) Upon subsequent annual renewal of registration, the county treasurer shall deposit all of the special fee as provided in subsection (10)(f)(iii)(C).

(g) A Montana resident who is eligible to receive a special parking permit under 49-4-301 may, upon written application on a form prescribed by the department, be issued a special license plate with a desigu or decal bearing a representation of a wheelchair as the symbol of a person with a disability.

(h) The department may issue legion of valor license plates, bearing a design or decal depicting the recognized legion of valor medallion and numbered in sets of two with a different number on eaeh set, to an applieant who presents to the department proper documentation of receipt of a legion of valor award by appropriate authorities to the applicant or the applicant's deceased spouse and who pays all taxes and fees required by parts 3 and 5 of this chapter.

(11) The provisions of this section do not apply to a motor vehicle, trailer, or semitrailer that is registered as part of a fleet, as defined in 61-3-712, and that is subject to the provisions of 61-3-711 through 61-3-733."

Section 2. Section 61-3-407, MCA, is amended to read:

HeinOnline -- 1999 vol. II 1294 1999

"61-3-407. Personalized veterans', *national guard veterans', or legion of valor members'* licensc plates. (1) Subject to the provisions of 61-3-405 and 61-3-406, an application for veterans', *national guard veterans', or legion of valor members'* license plates under ~~61-3-332(10)(f)~~ *61-3-332(10)(a)(ii), (10)(f), or (10)(h)* may be combined with an application for personalized plates.

(2) An application for personalized veterans', *national guard veterans', or legion of valor members'* license plates must be made on a form supplied by the department."

Section 3. Section 61-3-446, MCA, is amended to read:

"61-3-446. Retentlon of special lieense plates. If during a registration year the holder of special license plates issued under 61-3-332(10)~~(b) through (10)(g)~~ disposes of the vehicle to which the plates are affixed, the holder shall retain the plates and may affix them to another vehicle."

Scction 4. Effective date — applieability. [This act] is effective January 1, 2000, and applies to registrations of motor vehicles occurring after December 31, 1999.

Approved April 19, 1999

CHAPTER NO. 345

[SB 183]

AN ACT REVISING LAWS REGARDING AGRICULTURAL SEED; CLARIFYING LABELING REQUIREMENTS AND PACKAGING PROHIBITIONS; CLARIFYING AND REVISING DEFINITIONS; REVISING CERTAIN SEED DEALER LICENSING REQUIREMENTS AND FEES; ESTABLISHING REPORTING REQUIREMENTS AND AN ASSESSMENT ON SEED DEALERS LOCATED OUTSIDE MONTANA BASED ON GROSS ANNUAL SALES IN MONTANA; AMENDING SECTIONS 80-5-105, 80-5-110, 80-5-120, 80-5-121, 80-5-202, 80-5-206, 80-5-207, 80-5-208, 80-5-301, AND 80-5-305, MCA; REPEALING SECTIONS 80-5-102, 80-5-104, 80-5-107, 80-5-112, 80-5-113, AND 80-5-205, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-5-105, MCA, is amended to read:

"80-5-105. Prohibitions. *(1)* A person~~, firm, corporation, partnership, or association~~ may not sell or transport for use in planting in this state any seed that:

~~(1)~~*(a)* contains prohibited noxious weed seeds;

~~(2)~~*(b)* contains restricted ~~noxious~~ weed seeds in excess of ~~either:~~

~~(a)~~ the maximum numbers per pound allowed under rules adopted by the department; ~~or~~

~~(b) the maximum numbers per pound as follows:~~

HeinOnline -- 1999 vol. II 1295 1999

~~Common name Species Number of seeds per pound~~

~~dyers woad (Isatis tinctoria) 0~~

~~spotted knapweed (Centaurea maculosa) 0~~

~~wild oats (Avena fatua) 45~~

~~(per pound of grass seed)~~

~~0~~

~~(per pound of cereal seed)~~

~~(3)~~*(c)* contains in excess of 2% or more of weed seed;

~~(4)~~*(d)* is offered or exposed for sale more than 12 calendar months from the last day of the month in which the germination test was completed. This 12-month limitation does not apply when seed is packaged in hermetically sealed containers within 12 months after harvest. The container must he conspicuously labeled in not less than 8-point type to indicate that:

~~(a)~~*(i)* the container is hermetically sealed;

~~(b)~~*(ii)* the seed has been preconditioned as to moisture content; *and*

~~(c)~~*(iii)* the germination test is valid for a period not to exceed 18 months from the date of the germination test for seeds offered for sale on a wholesale basis and for a period not to exceed 36 months for seeds offered for sale at retail~~;~~.

~~(d) the germination of vegetable seed at the time of packaging was equal to or above standards prescribed in the Federal Seed Act, 7 U.S.C. 1551 through 1610, amended October 15, 1967, with subsequent revisions;~~

~~(3)~~*(e)* is labeled, advertised, or otherwise represented as being certified seed of any class ~~thereof~~ unless:

~~(a)~~*(i)* it has been determined by a seed certifying agency that ~~such~~ *the* seed conforms to standards of purity and identity as to kind, species (and subspecies, if appropriate), or variety; and

~~(b)~~*(ii)* the seed bears an official label issued for ~~such~~ *that* seed by a seed certifying agency certifying that the seed is of a specified class and a specified kind, species (and subspecies, if appropriate), or variety;

~~(6)~~*(f)* ~~is labeled with a variety name for which a U.S. certificate of plant variety protection has been issued or applied for under the provisions of the Plant Variety Protection Act (7 U.S.C. 2321, et. seq.) without the authority of the owner of the variety or~~ *is a variety for which a United States certificate of plant variety protection has been issued or applied for under the provisions of the Plant Variety Protection Act, 7 U.S.C. 2321, et seq., without the authority of the owner of the variety or* is labeled with a variety name but not certified by an official seed certifying agency when it is a variety for which the certificate or application for "protection" specifies sale only as a class of certified seed, provided that seed from a certified lot may be labeled as to variety name when used in a mixture ~~by or with approval of the owner of the variety;~~

(g) is not labeled in accordance with the provisions of this chapter and appurtenant rules or that has false or misleading labeling;

(h) has been falsely or misleadingly advertised.

(2) It is unlawful for a person within this state to:

(a) detach, alter, deface, or destroy any label provided for in this chapter or by rules promulgated pursuant to this chapter or to alter or substitute seed in a manner that may defeat the purposes of this chapter;

(b) disseminate any false or misleading advertisement concerning seed subject to the provisions of this chapter in any manner or by any means;

(c) hinder or obstruct, in any way, any authorized person in the performance of duties authorized under this chapter;

(d) fail or refuse to obtain a license when required pursuant to 80-5-202;

(e) fail to comply with a stop sale order or to move or otherwise handle or dispose of any lot of seed held under a stop sale order except with permission of the department and for the purpose specified in the stop sale order;

(f) fail to comply with any provisions of parts 1 and 2 of this chapter, including rules promulgated under those parts;

(g) use the word "trace" as a substitute for any required statement; or

(h) use the word "type" in any labeling in connection with the name of any agricultural seed variety."

Section 2. Section 80-5-110, MCA, is amended to read:

"80-5-110. Laboratory testing of samples — fees. Any citizen of this state may request the seed laboratory to examine, analyze, and test samples of seed upon payment of the fee and compliance with rules governing the submission of seed samples for ~~such~~ *that* service. Samples of seed analyzed and tested ~~shall~~ *must* be charged for at rates established by rule of the department as recommended by the agricultural experiment station. All fees collected by the seed laboratory ~~shall~~ *must* be used to defray the expenses incurred by the laboratory under ~~80-5-102 through 80-5-105 and 80-5-107 through 80-5-113~~ *this chapter*."

Section 3. Section 80-5-120, MCA, is amended to read:

"80-5-120. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) *"Advertisement" means a representation, other than a representation on the label, that is disseminated by any means and that relates to seed governed by the provisions of this chapter.*

(2) "Agricultural seeds" means the seeds of grass, forage, cereal, fiber crops, and any other kinds of seeds commonly recognized within this state as agricultural seeds. The term includes lawn seeds and mixtures of seeds.

~~(2)~~*(3)* "Approximate percentago" and "approximate number" mean the percentago or number with the variations above and below that value as allowed according to the tolerance limits defined in the rules for seed testing adopted hy the association of official seed analysts.

~~(3) "Bin-run seed sales" means seed sales from one farmer to another farmer with seeds sold "as is", without guaranty or analysis.~~

(4) *"Bulk" means not packaged in separate units.*

HeinOnline -- 1999 vol. II 1297 1999

(5) "Certifying agency" means:

(a) an agency authorized under the laws of a state, territory, or possession of the United States to officially certify seed and ~~which~~ *that* has standards and procedures to ~~assure~~ *ensure* the genetic purity and identity of the seed certified; or

(b) an agency of a foreign country determined by the department to adhere to procedures and standards for seed certification that are comparable to those adhered to generally by the seed certifying agencies described in subsection ~~(4)(a)~~ *(5)(a)*.

(6) "Conditioning" means drying, cleaning, scarifying, and other operations that could change the purity or germination of a seed and require the seed lot to be retested to determine labeling.

~~(5)~~*(7)* "Controlling the pollination" means to use a method of hybridization that will produce pure seed ~~which~~ *that* is at least 75% hybrid seed. ~~Hybrid designations must be treated as variety names.~~

(8) "Dormant" means viable seeds, excluding hard seeds, that fail to germinate when provided the specified germination conditions for the seed in question.

~~(6)~~*(9)* "Flower seeds" means seeds of herbaceous plants grown for their blooms, ornamental foliage, or other ornamental parts and that are commonly known and sold under the name of flower seeds in this state.

(10) "Genuine grower declaration" means a statement signed by the grower that indicates, for each lot of seed, the lot number, kind, variety, origin, weight, year of production, date, and destination of shipment.

(11) "Germination" means the emergence and development from the seed embryo as evidence of vitality when the seeds are subjected to the proper moisture and temperature conditions with proper aeration for the customary length of time for each specific kind of seed, as specified in the rules for seed testing adopted by the association of official seed analysts.

(12) "Hard seeds" means seeds that remain hard at the end of the prescribed test period because they have not absorbed water because of an impermeable seed coat.

~~(7)~~*(13)* "Hybrid", as the term applies to varieties of seed, means the first generation seed of a cross produced by controlling the pollination and by combining:

(a) two or more inbred lines;

(b) one inbred or a single cross with an open pollinated variety; or

(c) two or more selected clones, seed lines, varieties, or species *except open-pollinated varieties of corn (Zea mays). The second generation of subsequent generations from those crosses may not be regarded as hybrids. Hybrid designations must be treated as variety names.*

~~(8)~~*(14)* "Indigenous seeds" means the seeds of those plants that are naturally adapted to an area where the intended use is for revegetation of disturbed sites. These plants include grasses, forbs, shrubs, and legumes.

(15) "Inert matter" means all matter that is not seed, including broken seeds, sterile florets, chaff, fungus bodies, and stones as determined by methods defined by the association of official seed analysts.

HeinOnline -- 1999 vol. II 1298 1999

(16) "Kind" means one or more related species or subspecies that are known singly or collectively by one common name, such as corn, oats, alfalfa, and timothy.

~~(9)~~*(17)* "Labeling" means ~~to affix, before offering the seed for sale, on the exterior of the container in a conspicuous place a label written or printed in the English language that has not been altered, giving the information required under this chapter~~ *a tag or other device, attached to or written, stamped, or printed on a container or accompanying a lot of bulk seeds, that purports to set forth the information required on the seed label under [section 11] and that may include any other information relating to the labeled seed.*

(18) "Lot" means a definite quantity of seed identified by a lot number or other mark, every portion of which is uniform within recognized tolerances for the factors that appear in the labeling.

(19) "Mixture" means seed consisting of more than one kind, each in excess of 5% by weight of the whole.

~~(10)~~*(20)* "Montana certified seed grower" means a member of an authorized Montana seed certifying agency who has consented to produce seed under the rules for certified classes of seed, with respect to the maintenance of genetic purity and variety identity, set forth by the establishing agency.

~~(11) "Name of the state in which the seed was grown" means any of the several states of the United States or a foreign country.~~

~~(12)~~*(21)* "Other crop seeds" means any agricultural, vegetable, or flower seeds other than the *kind or variety of* seed or the mixture of seeds ~~under consideration~~ *included as pure seed.*

~~(13) "Percentage of germination" means the percentage of seeds that show normal sprouts as evidence of vitality when the seeds are subjected to the proper moisture and temperature conditions with proper aeration for the customary length of time for each specific kind of seed, as specified in the rules for seed testing adopted by the association of official seed analysts.~~

~~(14) "Percentage viability" means the percentage of live seed capable of producing a normal seedling under optimum growing conditions, after all forms of dormancy have been overcome, if present.~~

~~(15)~~*(22)* "Person" means ~~any~~ *an* individual, firm, partnership, corporation, or association.

~~(10)~~*(23)* "Prohibited noxious weed seeds" means the seeds of ~~perennial plants that not only reproduce by seed but also may spread by underground roots, stems, and other reproductive parts and that, when well established, are highly destructive and difficult to control in this state by ordinary good cultural practice. Prohibited noxious weed seeds include the seeds of:~~

~~(a) leafy spurge (Euphorbia esula);~~

~~(b) Russian knapweed (Centaurea repens); and~~

~~(c) plants that are designated by rule of the department as prohibited noxious weeds~~ *plant species designated as noxious weeds under 7-22-2101(7)(a)(i).*

~~(17)~~*(24)* "Protected variety" means a variety for which a certificate has been issued by the United States plant variety protection office or for which an application for protection has been filed granting the owner or ~~his~~ *the owner's* authorized agent exclusive rights in the sale and distribution of the variety.

HeinOnline -- 1999 vol. II 1299 1999

(25) "Pure live seed" means the product of the percentage of germination plus hard seed or dormant seed multiplied by the percentage of pure seed, divided by 100, with the result expressed as a whole number.

(26) "Pure seed" means seed exclusive of inert matter and all other seeds not of the seed being considered, as determined by methods defined by the association of official seed analysts.

~~(18)~~*(27)* "Restricted ~~noxious~~ weed seeds" means the seeds ~~and bulbets~~ of any plant *that may adversely affect agriculture or the environment and that are* designated as restricted weed seeds under rules adopted by the department. ~~The term includes the seeds of:~~

~~(a) spotted knapweed (Centaurea maculosa); and~~

~~(b) dyers woad (Isatis tinctoria).~~

~~(18)~~*(28)* "Screening" means chaff, sterile florets, immature seed, weed seed, inert matter, and any other materials removed from seed by any kind of cleaning or conditioning.

~~(20)~~*(29)* "Seed conditioning plant" means ~~any~~ *a* place of business, *whether a permanent or portable facility,* that ~~repackages,~~ conditions~~, blends, treats, or otherwise manipulates agricultural~~ seeds.

~~(21)~~*(30)* "Seed dealer" means ~~any~~ *a* person who ~~offers for sale,~~ sells~~, or barters agricultural~~ seeds.

~~(22)~~*(31)* "Seed labeler" means ~~any~~ *a* person affixing labels to ~~agricultural~~ seeds, with ~~his~~ *that person's* name, ~~and~~ address, *and other information* ~~listed~~ as required in ~~80-5-102~~ *[section 11]*~~, when such seed is distributed in Montana~~.

~~(22)~~*(32)* "Sell" means to offer for sale, expose for sale, have in possession for sale, exchange, barter, or trade. The term includes furnishing agricultural seed to growers for the production of a crop on contract.

(33) "Stop sale" means an administrative order provided by law that restrains the sale, use, disposition, and movement of a definite amount of seed.

(34) "Treated" means that seed has received an application of a substance or has been subjected to a process for which a claim is made.

(35) "Type" means a group of varieties so nearly similar that the individual varieties cannot be clearly differentiated except under special conditions.

(36) "Variety" means a subdivision of a kind that is:

(a) distinct, in the sense that the variety can be differentiated by one or more identifiable morphological, physiological, or other characteristics from all other varieties known publicly;

(b) uniform, in the sense that the variations in essential and distinctive characteristics are describable; and

(c) stable, in the sense that the variety will remain unchanged in its essential and distinctive characteristics and its uniformity when reproduced or reconstituted as required by the different categories of varieties.

~~(24)~~*(37)* "Vegetable seeds" means seeds of those crops that are or may be grown in gardens or on truck farms and are or may be sold generally under the name of vegetable seeds *or herbs.*

HeinOnline -- 1999 vol. II 1300 1999

(38) "Viable" means that seeds are capable of producing a normal seedling under optimum growing conditions after all forms of dormancy have been overcome, if present.

~~(25)~~*(39)* "Weed seeds" means the seeds ~~or bulbets~~ of all plants generally recognized as weeds within this state and includes noxious weed seeds."

Section 4. Section 80-5-121, MCA, is amended to read:

"80-5-121. Inspection. ~~To enforce~~ *Consistent with the responsibilities of* this chapter, *authorized representatives of* the department, *upon presentation of department-issued credentials,* may enter, at reasonable times *or under emergency conditions*, any public or private premises, including any vehicle of transport~~, and upon entry to the premises, the~~. *The* department may *inspect or investigate,* obtain samples, examine seeds and labels, inspect equipment, and review *and copy* records relating to distribution of seed *or licensing requirements* in Montana. ~~The department may take any sample of seeds as may be required; however, the department shall pay, upon~~ *Upon* request, *the department shall pay* the ~~firm~~ current market value for each *seed* sample."

Section 5. Section 80-5-202, MCA, is amended to read:

"80-5-202. Licensing — application — fee. (1) All ~~seed conditioning plants~~ *facilities located in the state that condition agricultural seed* shall obtain a license from the department for each ~~plant before doing business in this state; however~~ *facility. However*, a seed grower, when conditioning *only* seed from ~~his~~ *that grower's* own production, is not required to be licensed under this part.

(2) Each *seed* conditioning plant must post in a conspicuous location in the facility:

(a) its fees for conditioning services; and

(b) the license ~~designation~~ for the facility.

(3) ~~All seed labelers and growers who label or affix written claims to their seed~~ *A person whose name and address appear on the label of agricultural seed sold in Montana, as required by [section 11],* shall obtain a *seed labeler's* license from the department before doing business in Montana. The following persons, however, are excluded from the licensing requirements under this subsection:

(a) a Montana certified seed grower when labeling certified seed from ~~his~~ *that grower's* own production; ~~and~~

(b) any person who updates germination test data by affixing to the package of seed a supplemental label bearing new germination data, the lot number, and ~~his~~ *the person's* name and address*; or*

(c) a Montana grower who labels seed only of that labeler's own production with a gross annual sales value of $5,000 or less.

(4) A person ~~may not sell or distribute~~ *who sells agricultural* seed in Montana ~~without obtaining~~ *shall obtain* a seed dealer's license from the department for each place where seed is located *or sold*, except for:

(a) a person who ~~distributes~~ *sells* seed only in sealed packages of 10 pounds or less ~~that are properly labeled~~;

(b) ~~a Montana certified seed grower when selling certified seed from his own production~~ *a person who sells seed that has a gross sales value of $1,000 or less a year*; ~~and~~

HeinOnline -- 1999 vol. II 1301 1999

(c) ~~a grain producer when making bin-run seed sales~~ *a person who sells seed only to a Montana-licensed seed dealer, labeler, or conditioner; or*

(d) a Montana grower selling only seed of that grower's own production with a gross annual sales value of $5,000 or less.

(5) *(a)* ~~Each person selling seed from a location other than the licensed place must be listed on the application for license.~~

~~(6) The department shall set by rule the period for which a license is issued under this section.~~

~~(7) The department may establish by rule minimum standards for equipment and handling procedures for facilities to be licensed.~~

~~(8)~~ Each *type of* license *for an in-state person* ~~shall cost no more than~~ *costs* $50 a year. ~~The fee must include the cost of application for a license and must be nonrefundable. The department may by rule establish license fees which bear a reasonable relationship to the cost of administering this part.~~

(b) The license fee for an out-of-state person selling seed in Montana is $100 a year.

(c) The license fee for an out-of-state person who labels seed that is being sold in Montana is $50 a year.

(d) The license fee for a person who sells only lawn and turf grass seed is $50 a year.

(e) The license fee for a Montana grower who sells or labels only seed of that grower's own production is $50 a year.

~~(9)~~*(6)* An application for a license under this section must he made in a manner and on forms provided by the department. The application must contain among other things:

(a) the location of each seed conditioning plant if the application is for a seed conditioning plant license;

(b) a sample label if the application is for a seed labeler license; and

(c) a list of persons selling seed if ~~the application is for a seed dealer's license~~ *required by department rule.*

~~(10)~~*(7)* Seed dealers shall provide with all shipments of *agricultural* seed a bill of lading or other evidence of delivery that includes:

(a) the names of:

(i) the ~~seller~~ *seed dealer*;

(ii) the shipper, if other than the ~~seller~~ *seed dealer*;

(iii) the buyer; and

(iv) the receiver, if other than the buyer; and

(b) the destination where the seed will be first unloaded."

Section 6. Section 80-5-206, MCA, is amended to read:

"80-5-206. Rules — promulgated by department. *(1)* The department is authorized to promulgate necessary rules as authorized by ~~this part~~ *parts 1 and 2 of this chapter*. All rules are to be promulgated in accordance with procedures as set forth in the Montana Administrative Procedure Act.

(2) Rules may address but are not limited to the following subjects:

HeinOnline -- 1999 vol. II 1302 1999

(a) designation of kinds of seed as agricultural, vegetable, flower, or indigenous;

(b) designation of kinds of seed that must be labeled as to variety name;

(c) designation of kinds and varieties of flower seeds that may be labeled according to type and performance characteristics;

(d) standards for determining and stating pure live seed, germination, or viability;

(e) plants to be designated as weeds, restricted weeds, and prohibited weeds and standards for allowing weeds and restricted weeds in seeds;

(f) procedures for implementing the administrative provisions of 80-5-207;

(g) procedures for implementing and administering civil penalties, including establishing a penalty matrix that schedules the types of penalties, the amounts for initial and subsequent offenses, and any other matters necessary for the administration of civil penalties under 80-5-207;

(h) procedures for submitting applications for licensing and establishing the period for which licenses are issued under 80-5-202;

(i) minimum standards for equipment and handling procedures for facilities that require licensing, including sellers and distributors of agricultural seed, seed labelers, and conditioning plants;

(j) standards that restrict or exempt from restriction the holding and movement of screenings, when in the public interest;

(k) recordkeeping requirements for persons who handle agricultural, vegetable, flower, or indigenous seeds, including file samples of seed for each lot handled for a period of time up to 2 years.

(3) The department may promulgate rules related to the operation of the state seed laboratory. The rules may include but are not limited to procedures for submitting seed samples and rates charged for seed analysis."

Section 7. Section 80-5-207, MCA, is amended to read:

"80-5-207. ~~Violation~~ *Administration — stop sale order — violation* — cancellation of license — enforcement ~~proceedings~~. (1) *The department shall administer and enforce the provisions of parts 1 and 2 of this chapter and the rules promulgated under those parts.*

(2) The department may issue and enforce a written or printed stop sale order to the owner or custodian of any lot of seed that the department finds to be in violation of this chapter. The order shall prohibit further sale or movement of the seed until the department has evidence that this chapter has been complied with. Upon proper correction by reconditioning, labeling, or otherwise and when in the judgment of the department the requirements of this chapter have been met, the stop sale order must be lifted and the seed may be sold. If a violation cannot be corrected after adequate opportunity has been provided, the department may order the destruction of any lot of seed remaining in violation. An order for the destruction of a lot of seed is subject to the contested case provisions of Title 2, chapter 4, part 6.

(3) Distribution of seeds that are not legally labeled or failure to comply with this chapter or rules issued under its authority constitutes sufficient grounds for the department to cancel or deny a license to a licensee, provided that the licensee

HeinOnline -- 1999 vol. II 1303 1999

is given a reasonable opportunity to correct inadvertent and nonrecurring deficiencies.

~~(2)~~*(4)* A person who violates or aids in the violation of any provision of this chapter or rules adopted under this chapter is subject to one or both of the following penalties:

(a) an administrative civil penalty of not more than $1,000 for each offense. Assessment of a penalty under this subsection *(4)*(a) may be made in conjunction with any other warning, order, or administrative action by the department under the authority of this part.

(b) a misdemeanor punishable by a fine of not less than $100 or more than $300 *plus costs of prosecution* for the first violation and not less than $500 or more than $1,000 *plus costs of prosecution* for each subsequent violation.

~~(3)~~*(5)* The department shall establish by rule a penalty matrix that schedules the types of penalties, the amounts for initial and subsequent offenses, and any other matters necessary for the administration of civil penalties under subsection ~~(2)(a)~~ *(4)(a)*. The issuance of a civil penalty is subject to the contested case procedures of Title 2, chapter 4, part 6.

~~(4)~~*(6)* Nothing in this part may be construed as requiring the department or its representatives to report violations of ~~this part~~ *parts 1 and 2 of this chapter* when it believes that the public interest will be best served by a suitable notice of warning.

~~(5)~~*(7)* It is the duty of each county attorney to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay.

~~(6)~~*(8)* The department is authorized to apply for and the court to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of ~~this part~~ *parts 1 and 2 of this chapter* or any rule promulgated under ~~this part~~ *parts 1 and 2 of this chapter* notwithstanding the existence of other remedies at law. An injunction is issued without bond.

~~(7)~~*(9)* Any person adversely affected by an act, order, or ruling made pursuant to the provisions of ~~this part~~ *parts 1 and 2 of this chapter* may within 30 days bring action in the district court of the county or any county where the alleged violation occurred for trial of the issues bearing upon the act."

Section 8. Section 80-5-208, MCA, is amended to read:

"80-5-208. Deposit of funds — seed account. (1) There is an account in the state special revenue fund to be known as the seed account. All inspection, license, *assessment, filing,* and penalty fee revenue collected under this chapter must be deposited in the seed account. *Funds received from any source, such as gifts, grants, cost-share funds, and other funds designated for purposes consistent with this chapter, may also be deposited in the seed account.*

(2) Money received as revenue under this chapter not immediately required for the purposes of this chapter must be invested under the provisions of the unified investment program established in Title 17, chapter 6, part 2. All interest earned on the seed account must be deposited in the seed account."

Section 9. Section 80-5-301, MCA, is amended to read:

"80-5-301. Application of sections. A person, firm, association, or corporation ~~which~~ *that* issues, uses, or circulates any certificate, advertisement, tag,

HeinOnline -- 1999 vol. II 1304 1999

seal, poster, letterhead, marking, circular, or written or printed representation or description pertaining to seeds or plant parts intended for propagation or sale or sold or offered for sale in which the words "Montana state certified", "state certified", "Montana certified", *or "one year off certified"* or similar words or phrases are used or employed is subject to 80-5-301 through 80-5-305."

Section 10. Section 80-5-305, MCA, is amended to read:

"80-5-305. Unlawful use of certification — penalty. A person, firm, association, or corporation may not issue, make, use, or circulate any document purporting to be or represented as a seed or plant part certification certificate, represent seeds or plant parts as certified, or use the ~~terms~~ *term* "Montana state certified", "state certified", "Montana certified", *or "one year off certified"* or similar words or phrases, without the authority and approval of the university. A person, firm, association, or corporation who violates 80-5-301 through 80-5-305 is guilty of a misdemeanor and shall be fined not less than $100 or more than $500 for each offense."

Section 11. Label requirements for agricultural, vegetable, flower, and indigenous seeds. (1) Each container of agricultural, vegetable, flower, and indigenous seeds sold in this state for sowing purposes must bear a conspicuous, unaltered label or tag, plainly written or printed in English. Bulk sales must be accompanied by the required label information, which must be given to the seed purchaser. The following information, which may not be modified or denied in the labeling or on another label attached to the container, must be included on a label:

(a) name and address of the seed labeler;

(b) lot number identification;

(c) germination rate and date of germination test or a notation of the year for which the seed was packaged for sale;

(d) state or country of origin; and

(e) seed kind or variety. The department shall establish rules specifying the kinds of seed for which variety must be stated and the kinds of seeds for which the variety may be stated and when the words "variety not stated" may be used. Kinds of seeds not listed by department rule may be stated as kind only or as kind and variety.

(2) In addition to the required label information listed in subsection (1), the department shall establish by rule additional label requirements for agricultural seed, including grass, lawn, and turf seed, and for vegetable, flower, and indigenous seeds. The additional label requirements may include:

(a) percentage of kind or variety of each seed component present in a container;

(b) percentage of weed seed present, both restricted and common weed seed;

(c) amount of inert material present;

(d) warnings for treated seed; and

(e) requirements for coated seed, inoculated seed, seed that is below standard, seed sold in bulk, hybrid seed, seed mixtures, and seed in containers, mats, tapes, and other planting devices.

HeinOnline -- 1999 vol. II 1305 1999

Section 12. Cooperation and agreements. The department may cooperate with and enter into agreements with other governmental agencies, universities, and private entities to carry out the provisions of this chapter.

Section 13. Assessment on sales into Montana — reporting — rulemaking. (1) Seed labelers located outside Montana who sell agricultural seed in Montana shall report those sales and pay a fee of 15 cents per $100 in gross annual sales of agricultural seed.

(2) The department shall by rule establish:

(a) reporting requirements, including persons who shall report, the form of reports, and the scope of information to be reported;

(b) the due date applicable to reports; and

(c) penalty provisions applicable to reports that are not received by the due date, not to exceed $10 or 10% of the assessment due, whichever is greater.

(3) Failure to submit the report as required or to pay the assessment in full constitutes a violation subject to the penalty provisions of this chapter.

Section 14. Exemptions. (1) The labeling requirements in [section 11] and the prohibitions in 80-5-105 do not apply to:

(a) seed or grain that is not intended for sowing purposes;

(b) seed in storage in or being transported or consigned to a cleaning or processing establishment for cleaning or processing if:

(i) the invoice or labeling accompanying that seed bears the statement "seeds for processing"; and

(ii) any labeling or representation made with respect to the uncleaned or unprocessed seed is subject to this chapter; and

(c) a carrier in respect to seed transported or delivered for transportation in the ordinary course of its business as a carrier, as long as the carrier is not engaged in producing, processing, or marketing seed that is subject to the provisions of this chapter.

(2) A person is not subject to the penalties in 80-5-207 for selling or offering for sale seeds subject to the provisions of this chapter that were incorrectly labeled or represented as to kind, species and subspecies (if appropriate), variety, type, origin, elevation, or year of collection (if required) when the seed cannot be identified by examination, unless the person has failed to obtain an invoice, genuine grower declaration, or other labeling information and has failed to take reasonable precautions to ensure the identity of the seeds. A genuine grower declaration of variety is considered an affirmation that the grower holds records of proof regarding parent seed, such as invoices and labels.

Section 15. Arbitration study. During the 1999-2000 interim, the department of agriculture shall conduct a study of the concept of arbitration as it applies to the seed industry. With input from the industry, the department shall investigate the feasibility of a department-sponsored arbitration program to assist in settling damage claims between seed buyers and seed sellers and report to the legislature regarding the results of the study. If an arbitration program is determined to be feasible, the department shall make recommendations to the 57th legislature regarding any legislation necessary to implement the arbitration concept. The study report and legislative recommendations, if any, must be presented to the legislature by September 1, 2000.

HeinOnline -- 1999 vol. II 1306 1999

Section 16. Repealer. Sections 80-5-102, 80-5-104, 80-5-107, 80-5-112, 80-5-113, and 80-5-205, MCA, are repealed.

Section 17. Codification instruction. [Sections 11 through 14] are intended to be codified as an integral part of Title 80, chapter 5, part 1, and the provisions of Title 80, chapter 5, part 1, apply to [sections 11 through 14].

Section 18. Effective date. [This act] is effective July 1, 1999.

Approved April 19, 1999

CHAPTER NO. 346

[SB 190]

AN ACT CLARIFYING THAT A DEFENDANT IS NOT LIMITED TO A SINGLE JURY TRIAL IN MISDEMEANOR CASES FILED IN A JUSTICE'S OR CITY COURT; AMENDING SECTIONS 46-7-102, 46-17-201, AND 46-17-311, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, in Woirhaye v. Montana Fourth Judicial District Court, 1998 MT 320, ___Mont.___, ___P.2d___ (1998), the Montana Supreme Court found that Chapter 129, Laws of 1997, impinges upon rights to a jury trial guaranteed by Article II, section 26, of the Montana Constitution.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-7-102, MCA, is amended to read:

"46-7-102. Duty of court. (1) The judge shall inform the defendant:

(a) of the charge or charges against the defendant;

(b) of the defendant's right to counsel;

(c) of the defendant's right to have counsel assigned by a court of record in accordance with the provisions of 46-8-101;

(d) of the general circumstances under which the defendant may ohtain pretrial release;

(e) of the defendant's right to refuse to make a statement and the fact that any statement made by the defendant may be offered in evidence at the defendant's trial; *and*

(f) of the defendant's right to a judicial determination of whether prohable cause exists if the charge is made by a complaint alleging the commission of a felony~~; and~~

~~(g) if the charge is a misdemeanor filed in justice's or city court, of the defendant's right to elect one jury trial, either in justice's or city court or on appeal to the district court, as provided in 46-17-201~~.

(2) The judge shall admit the defendant to bail as provided by law."

Section 2. Section 46-17-201, MCA, is amended to read:

"46-17-201. Juries in misdemeanor cases. (1) ~~Subject to subsection (3), the~~ *The* parties in a misdemeanor case are entitled to a jury of six qualified persons but may agree to a number less than six at any time before the verdict.

(2) Upon consent of the parties, a trial by jury may be waived.

~~(3) A defendant in a misdemeanor case filed in justice's or city court is limited to one jury trial, either in justice's or city court or on appeal to the district court. The defendant shall either elect a jury trial in justice's or city court or reserve jury trial for the district court in the event of conviction and subsequent appeal to the district court. The defendant's election or reservation must be noted by the court on the face of the charging document.~~"

Section 3. Section 46-17-311, MCA, is amended to read:

"**46-17-311. Appeal from justices', municipal, and city courts.** (1) Except as provided in subsection (4) and except for cases in which legal issues are preserved for appeal pursuant to 46-12-204, all cases on appeal from a justice's or city court must be tried anew in the district court and may be tried before a jury of six selected in the same manner as for other criminal cases ~~if the defendant has not previously exercised the right of jury trial in a justice's or city court, as provided in 46-17-201. If the defendant received a jury trial in justice's or city court, the case must be tried anew in the district court without a jury.~~ An appeal from a municipal court to the district court is governed hy 3-6-110.

(2) The defendant may appeal to the district court by filing written notice of intention to appeal within 10 days after a judgment is rendered following trial. In the case of an appeal by the prosecution, the notice must be filed within 10 days of the date that the order complained of is given. The prosecution may appeal only in the cases provided for in 46-20-103.

(3) Within 30 days of filing the notice of appeal, the court shall transfer the entire record of the court of limited jurisdiction to the district court.

(4) A defendant may appeal a justice's court or city court revocation of a suspended sentence to the district court. The district court judge shall determine whether the suspended sentence will be revoked. A jury trial is not available in a sentence revocation procedure."

Section 4. Effective date. [This act] is effective on passage and approval.

Approved April 19, 1999

CHAPTER NO. 347

[SB 216]

AN ACT RATIFYING A RESERVED WATER RIGHTS COMPACT BETWEEN THE UNITED STATES FISH AND WILDLIFE SERVICE AND THE STATE OF MONTANA FOR FEDERALLY RESERVED WATERS ASSOCIATED WITH THE RED ROCK LAKES NATIONAL WILDLIFE REFUGE AND WILDERNESS AREA.

Be it enacted by the Legislature of the State of Montana:

Section 1. United States Fish and Wildlife Service, Red Rock Lakes-Montana compact ratified. The compact entered into hy the State of Montana and the United States Fish and Wildlife Service and filed with the secretary of state of the State of Montana under the provisions of 85-2-702 on [date of filing] is ratified. The compact is as follows:

WATER RIGHTS COMPACT

STATE OF MONTANA

UNITED STATES OF AMERICA, FISH AND WILDLIFE SERVICE

This Compact is entered into by the State of Montana and the United States of America to settle for all time any and all claims existing on the effective date of the Compact to water for Red Rock Lakes National Wildlife Refuge and Wilderness Area ("Refuge") administered by the U.S. Fish and Wildlife Service (FWS) within the State of Montana.

RECITALS

WHEREAS, the State of Montana, in 1979, pursuant to Title 85, Chapter 2 of the Montana Code Annotated, commenced a general adjudication of the rights to the use of water within the State of Montana including all federal reserved and appropriative water rights;

WHEREAS, 85-2-703, MCA, provides that the state may negotiate compacts concerning the equitable division and apportionment of water between the state and its people and the federal government with claims to non-Indian reserved water rights within the State of Montana;

WHEREAS, the United States wishes to quantify and have decreed the amount of water necessary to fulfill the purposes of Red Rock Lakes National Wildlife Refuge and Wilderness Area, in the State of Montana;

WHEREAS, the United States, in quantifying its water rights recognizes the need to accommodate the interests of the State and its citizens by providing for the development and use of water in the vicinity of the Fish and Wildlife Service Refuges to tbe extent that it is possible to do so without materially affecting the rights and interests of the United States;

WHEREAS, the United States Attorney General, or a duly designated official of the United States Department of Justice, has authority to execute this Compact on behalf of the United States pursuant to the authority to settle litigation contained in 28 U.S.C. §§ 516-17 (1968);

WHEREAS, the Secretary of the Interior, or a duly designated official of the United States Department of tbe Interior, has authority to execute this Compact on hehalf of the United States Department of Interior pursuant to 43 U.S.C. § 1457 (1986, Supp. 1992);

NOW THEREFORE, the State of Montana and the United States agree as follows:

ARTICLE I - DEFINITIONS

For purposes of this Compact only, the following definitions shall apply:

1. "Abstract" means the copy of tbe document entitled "Abstract of U.S. Fish and Wildlife Service Water Rights" referenced in this Compact as Appendix 1.

2. "Consumptive" when referring to a water right recognized under state law means a use of water which removes water from the source of supply such that the quality or quantity is reduced or the timing of return delayed, making it unusable or unavailable for use by others, and includes evaporative loss from impoundments or natural lakes.

3. "Department" means the Montana Department of Natural Resources and Conservation or its successor.

4. "Developed spring" means any diversion from a spring for beneficial use under state law and does not require augmentation of flow.

HeinOnline -- 1999 vol. II 1309 1999

5. "Effective date of this Compact" means the date of the ratification of the Compact by the Montana legislature, written approval by the United States Department of the Interior, or written approval by the United States Department of Justice, whichever is latest.

6. "Groundwater" means water that is heneath the ground surface.

7. "Minimum flow" means the flow of water in a stream measured in cuhic feet per second at the point designated in Article II of the Compact, at or below which the United States has the right to seek curtailment of junior water rights upstream from the Refuge.

8. "Natural flow" means the water that the parties agree shall remain in the stream in satisfaction of the United States' water right for the purposes of the federal reservation.

9. "Non-consumptive" see "consumptive"

10. "Parties" means the State of Montana and the United States.

11. "Person" means an individual, association, partnership, corporation, state agency, political subdivision, or any other entity, but does not include the United States.

12. "Recognized under state law" when referring to a water right or use means a water right or use protected by state law, but does not include state recognition of a federal or tribal reserved water right arising under federal law.

13. "Red Rock Lakes National Wildlife Refuge" means those lands located in Montana that were withdrawn and reserved by Executive Orders No. 7023 of April 22, 1935, and 7172 of September 4, 1935, and all lands acquired by the United States Fish and Wildlife Service within the boundaries established by Executive Orders 7023 and 7172.

14. "Red Rock Lakes Wilderness Area" means those lands within Red Rock Lakes National Wildlife Refuge designated as wilderness by Public Law 94-557 of October 19, 1976, 16 USC 1132.

15. "Refuge" means both the Red Rock Lakes National Wildlife Refuge and the Red Rock Lakes Wilderness Area.

16. "State" means the State of Montana and all officers, agents, departments, and political subdivisions thereof. Unless otherwise indicated, for purposes of notification or consent, "state" means the Director of the Montana Department of Natural Resources and Conservation or his or her designee.

17. "United States" means the federal gevernment and all officers, agencies, departments and political subdivisions thereof. Unless otherwise indicated, for purposes of notification or consent other than service in litigation, "United States" means tlie Secretary of the Department of the Interior, or his or her designees.

ARTICLE II - WATER RIGHT

The parties agree that the following water rights are in settlement of all of the United States' water rights for the Refuge, including federal reserved and state-based water rights acquired with the purchase of land. The parties to this agreement recognize that the water rights described in this Compact are junior to any tribal water rights with a priority date before the effective date of the Compact, including aboriginal rights, if any, in the basins affected. All water rights described in this Article are subject to Article IV.A. of this Compact.

A. **Quantification:** The United States shall have the right to water from the following sources where they occur on the Refuge:

1. **Consumptive Use:**

Red Rock Lakes National Wildlife Refuge — Consumptive Use

	Legal Description of impoundment or POD				Elev. of Dam	Surface Acres	Acre-Feet Capacity	Future Acre-Feet	Natural or Manmade	Canal	Diversion Rate	Source of Diverted Water
	Qtr	Sec.	Twnshp	Range							CFS	
McDonald Pond	NW	6	14 S	1 E	**6629.63**	**13**	**44**		NWS	Mallard	10	Culver Springs
Widgeon Pond	NW	6	14 S	1 E	**6636.3**	**88**	**585**		NWS	Hacket Cr	20	Culver Springs
Culver Pond	NW	8	14 S	1 E	**6651.7**	**27**	**110**		NWS			Culver Springs
East Pintail Ditch Pnd	N	1	14 S	1 W		3	3		M	Mallard	10	Elk Creek
Pintail Ditch Pond	SW	34	13 S	1 W		21	24		M	Mallard	10	Elk Creek
Swan Lake[1]	N	9	14 S	1 W		649	1168		N			Elk Creek
Buck Pond[3]	NE	4	14 S	1 W		11	16		N	Mallard	10	Groundwater
East Swan lake[1]	SW	3	14 S	1 W		65	78		N			Groundwater
Sora Pond[2]	E	33	13 S	1 W		1	2		N			Groundwater
Antelope Pond	N	4	14 S	1 W		10	12		N			Groundwater
Campground Spring	SWSWSE	21	14 S	1 W			8		M		10 gpm	Groundwater
Shambow Pond[4]	S	20	14 S	1 W		7	26		N			Groundwater
Rail Pond[2]	NW	3	14 S	1 W		6	9		N	Mallard	10	Groundwater
Irrigation	SWSW	30	14 S	1 W				3000	M		25	Odell Creek
Sparrow Slough Dam[1]	N	13	14 S	2 W	**6627**	**63**	**190**		M			Odell Creek
Sparrow Slough Pond[1]	SW	13	14 S	2 W	**6629.3**	**21**	**34**		NWS	ditch	17.5	Odell Creek
Upper Red Rock Lake	W	8	14 S	1 W		**3467**			N			Red Rock Creek

HeinOnline -- 1999 vol. II 1311 1999

Lower Red Rock Lake	NE	6	14 S	2 W	6607.5	5492	89582		NWS			Red Rock Creek
Tuck Slough South	SW	7	14 S	1 E		29	63		M	Harlequin	30	Red Rock Creek
Tuck Slough North	N	7	14 S	1 E		103	2003		M	Harlequin	30	Red Rock Creek
Shoveler Pond[2]	W	7	14 S	1 E		6	9		N	Harlequin	30	Red Rock Creek
Refuge HQ domestic	SESENW	23	14 S	2 W			8	8	M			Groundwater
Irr. of Rofuge HQ	NESW	23	14 S	2 W					M	ditch	0.5	Shambow Creek
Irr. of Bunkhse grnds	E2W2E2	23	14 S	2 W					M	ditch	1	Shambow Creek

Bold letters denote data taken from the dam safety reports, all other data is derived from topographic maps and Refuge staff estimates.

POD = Point of Diversion

N = Natural lake

NWS = Natural lake with manmade structure

M = Manmade lake

[1] = Estimated average depth 2 feet

[2] = Estimated average depth 2.5 feet

[3] = Estimated average depth 3 feet

[4] = Estimated average depth 6 feet

HeinOnline -- 1999 vol. II 1312 1999

2. **Natural Flow**: The United States has a water right to the natural flow in all the tributaries entering the Refuge above the most downstream point on the Refuge at the point the tributary enters the Refuge in the amount of the natural flow remaining after satisfaction of the following water rights:

a. all rights recognized under state law upstream from the Refuge with a priority date prior to tbe effective date of this Compact; and

b. any rights exempt from the basin closure set forth in Article III.A. of this Compact.

3. **Minimum Flow**: Subject to the provisions of Article III.C.1., the United States has a water right for minimum flows on Red Rock, Tom and Odell Creeks as follows:

a. Red Rock Creek: 15 cfs, measured at NE SE NW Sec. 17, T14S, R1E;

b. Tom Creek: 1.4 cfs, measured at tbe county road in SW NE NE Sec. 25, T14S, R1W;

c. Odell Creek: 11 cfs, measured at the county road in SW SW SE Sec. 24, T14S, R2W.

4. **Lake Level**: The United States has the right to maintain the natural lake level of Lower Red Rocks Lake at an elevation of 6607.5 feet. The United States may store additional water only to the extent consistent with the Memorandum of Understanding of February 4, 1987, between the United States and the Water Users Irrigation Company (Lima Reservoir) and East Bench Irrigation District.

5. **Emergency Fire Suppression**: The use of water for emergency fire suppression benefits the public, and is necessary for the purposes of the Refuge. The United States may, as part of its water right, divert water for fire suppression at the Refuge as needed and without a definition of the specific elements of a recordable water rigbt. Use of water for fire suppression shall not be considered an exercise of the United States' water rights for consumptive use or a violation of its water rights for natural or minimum flow.

B. **Relative Priority**:

1. **Priority Date**:

a. Consumptive Use and Natural Flow: Subject to the subordination provisions of Article II.B.2.a., the United States has a priority date of April 22, 1935, for the water rights for consumptive use and natural flow described in Article II.A.1. and 2. of this Compact.

b. Minimum Flow: Subject to the provisions of Article III.C.1. setting forth the means to satisfy the minimum flow rights for the Refuge and the subordination provisions of Article II.B.2.b., the United States has a priority date of October 30, 1888, for the 15 cfs minimum flow on Red Rock Creek; June 15, 1894, for the 1.4 cfs minimum flow on Tom Creek; and June 28, 1889, for the 11 cfs minimum flow on Odell Creek.

2. **Subordination**:

a. Consumptive Use Natural Flow and Lake Levels: The water rights for consumptive use set forth in Article II.A.1. and natural flow set forth in Article II.A.2. and lake levels set forth in Article II.A.4. are subordinate to the following rights upstream from the most downstream point on the Refuge:

HeinOnline -- 1999 vol. II 1313 1999

(1) any right recognized under state law with a priority date before the effective date of this Compact; and

(2) any right exempt from the basin closure set forth in Article III.A. of this Compact.

b. Minimum Flow: The water rights for minimum flows on Red Rock, Tom and Odell Creeks set forth in Article II.A.3. of this Compact are subordinate to the following rights upstream from the Refuge:

(1) any right for the purpose of domestic use;

(2) any right for the purpose of instream stockwatering; and

(3) any change in use of a water right for the purpose of instream stockwatering to off-stream stockwatering that does not result in an increase in the historic consumptive use of water.

C. **Period of Use:**

1. **Natural Flow/Consumptive Use:** The period of use of the United States' water rights for natural flow and consumptive use set forth in Article II.A.1. and 2. shall be from January 1 through December 31 of each year.

2. **Minimum Flow:** The period of use of the United States' water rights for minimum flows set forth in Article II.A.3. shall be from April 1 through November 30 of each year.

D. **Points and Means of Diversion/Location of Natural and Minimum Flow Rights:**

1. **Consumptive Use:** See Table at Article II.A.1.

2. **Natural Flow:** The United States' water rights for natural flow apply to the portion of the streams specified in this Compact that flow over or form the boundary of land administered by the Fish and Wildlife Service.

3. **Minimum Flow:** The United States' water rights for minimum flow are measured at the points set forth in Article II.A.3.

E. **Purposes:** The United States' rights to water may be used for the following purposes:

1. **Consumptive Use:** The United States' water rights for consumptive use shall be used for the purposes of the Refuge including wildlife habitat maintenance and enhancement. Subject to the limitations set forth in Article III.E., the United States may change the use of water identified for consumptive use in Article II.A.1.

2. **Natural and Minimum Flows:** The United States' water rights to natural and minimum flows shall be used on the Refuge for wildlife habitat maintenance and enhancement. The United States' water rights to natural flow set forth in Article II.A.2. and to minimum flows set forth in Article II.A.3. shall be used only for the purpose of instream flow and shall not be changed or diverted for any other use, except for fire suppression as set forth in Article II.A.5.

ARTICLE III - IMPLEMENTATION

A. **Basin Closure:**

1. In the drainage basins upstream of the most downstream point on the Refuge, the Department shall not process or grant an application for a permit to

HeinOnline -- 1999 vol. II 1314 1999

appropriate or to reserve water for consumptive use after the effective date of this Compact, provided that, the following appropriations are exempt from this closure:

a. certificates of water right for appropriation of groundwater by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less that does not exceed a total appropriation of 10 acre-feet per year;

b. permits for appropriation of groundwater by means of a well or developed spring with an appropriation of greater than 35 gallons per minute or a total appropriation in excess of 10 acre-feet per year, if the Department determines by a preponderance of the evidence based on information provided by the applicant or information from any other source available to tbe Department tbat the groundwater is not hydrologically connected to surface water upstream from or on the Refuge;

c. permits or changes in water right for appropriation of groundwater for irrigation purposes when the number of acres to be irrigated from groundwater under the permit or change in water right will be accompanied by a corresponding decrease in the number of acres irrigated from surface water sources upstream from the Refuge;

d. permits for stock watering ponds with a maximum capacity of the impoundment or pit of less than 15 acre-feet and an appropriation of less than 30 acre-feet per year from a source other than a perennial flowing stream;

e. permits for domestic use;

f. permits for nonconsumptive use; and

g. temporary emergency appropriations.

2. If a temporary or permanent basin closure is enacted under state law for a drainage basin or subbasin for whicb future consumptive water use is limited under this Compact, the most restrictive measures applicable to consumptive use of surface or groundwater sball control.

3. Within 180 days following the effective date of this Compact, the Department shall mail notice of the basin closure to every person or public agency of record with a claim of water right or permit in the portion of the drainage basins subject to closure.

B. **Lake Levels**: The United States agrees to continue efforts to coordinate lake water level management with Water Users Irrigation Company (Lima Reservoir) and East Bench Irrigation District or their successors in interest. It is not intended that this Compact affect in any way the Memorandum of Understanding between the United States and the Irrigation Company and Irrigation District listed above, or tbe ability of the parties to modify that agreement.

C. **Enforeement of Water Right**:

1. **Minimum flow**:

a. Minimum flow rights set forth in Article II.A.3. may be satisfied through cooperative agreements entered into by the FWS and any person holding a water right with a point of diversion on Red Rock, Tom or Odell Creeks or their tributaries upstream of the Refuge. The FWS may, on agreement with the parties to a cooperative agreement, modify an existing agreement. The FWS may enter into additional cooperative agreements after the effective date of the Compact.

HeinOnline -- 1999 vol. II 1315 1999

Modification of a cooperative agreement or entry into a new cooperative agreement shall not he considered a modification of the Compact. As between the FWS and signatories to cooperative agreements, the FWS will use its hest efforts to seek satisfaction of the minimum flow rights pursuant to the cooperative agreements prior to resorting to remedies set forth in Article III.C.2.

b. Prior to seeking satisfaction of the minimum flow, the FWS shall cease its own diversions, if any, from:

(1) Red Rock Creek and its tributaries upstream from the point of measurement when measured flow is approximately 25 cfs;

(2) Odell Creek and its tributaries upstream from the point of measurement when measured flow is approximately 20 cfs; and

(3) Tom Creek and its tributaries upstream from the point of measurement when measured flow is approximately 5 cfs.

c. On acquisition by or transfer to the FWS of any water right subject to a cooperative agreement, the FWS will continue to exercise the water right in a manner that satisfies the minimum flow at least to the degree set forth in the cooperative agreement, and the provisions of Article III.C.1.b. requiring curtailment of FWS diversions shall apply.

d. In the absence of a cooperative agreement, the FWS may seek curtailment of a water use to satisfy the minimum flow by resort to a court of competent jurisdiction pursuant to Article III.C.2. In any proceeding before a court of competent jurisdiction, the FWS will not seek curtailment of any water right which, based on the experience and observation of the FWS, does not cause a measured or cumulative reduction in flow of Red Rock, Tom, or Odell Creeks at the point of measurement set forth in Article II.A.3., and will limit the period for which curtailment is sought to that necessary to maintain the minimum flow.

2. The United States, the State, or a holder of a water right recognized under state law, may petition a state or federal court of competent jurisdiction for relief when a controversy arises between the United States' reserved water rights described hy this Compact, and a holder of a water right recognized under state law. Resolution of the controversy shall be governed by the terms of this Compact where applicable or, to the extent not applicable, by appropriate state or federal law.

3. The United States agrees that a water commissioner appointed by a state or federal court of competent jurisdiction, or other official authorized by future changes in law, may enter the Refuge for the purpose of data collection, including the collection of information necessary for water distribution on or off the Refuge, and to inspect structures for the diversion and measurement of water described in this Compact for consumptive use and for the measurement of natural and minimum flow. The terms of entry shall be as specified in an order of a state or federal court of competent jurisdiction.

4. The Department may enter the Refuge, at a reasonable hour of the day, for the purposes of data collection on water diversion and stream flow or inspection of devices maintained by the United States pursuant to this Compact. The Department shall notify the United States by certified mail or in person, at least 24 hours prior to entry.

5. The United States may request an investigation by the Department of a diversion located upstream of the portion of a stream for which a water right is

HeinOnline -- 1999 vol. II 1316 1999

described in this Compact. The Department may investigate. If an investigation occurs, the United States may accompany the Department.

6. The United States shall maintain structures, including wellhead equipment and casing, for the diversion and measurement of water authorized for consumptive use by this Compact. The United States shall maintain the devices it considers necessary for enforcement of its reserved water right for natural and minimum flow described in this Compact.

7. A person who violates or refuses or neglects to comply with the provisions of this Compact or an order of the Department pursuant to this Compact is subject to the penalties provided by state law.

D. **Use of Water Right**: The rights of the United States described in this agreement are federal water rights. Non-use of all or a part of the federal water rights described in this Compact shall not constitute abandonment or forfeiture of those rights. The federal water rights described in this Compact need not be applied to a use deemed beneficial under state law, but shall be restricted to uses necessary to fulfill the purposes of the Refuge.

E. **Change in Use:**

1. **Natural and Minimum Flow**: Water rights specified in this Compact for natural and minimum flow shall not be subject to change to any other use, provided that: the emergency use of water for fire suppression as provided for in Article II.A.5. shall not be considered a change or alteration in use, or violation of a water right for natural or minimum flow.

2. **Consumptive Uses:**

a. The United States may make a change in the use of its consumptive use water rights, provided that:

(1) the action shall be in fulfillment of the purposes of the Refuge described in Article II.E. rather than with reference to a beneficial use as defined by state law;

(2) the total use shall not exceed the amount described in this Compact; and

(3) the action shall not adversely affect a water right that is recognized under state law.

b. With the exception of the purpose for which the water right is used, the United States, in making the change, shall comply with the provisions of Title 85, Chapter 2, Montana Code Annotated, applicable to change in appropriative right at the time of the change. The United States may appeal any decision by the Department to a state or federal court of competent jurisdiction.

ARTICLE IV - GENERAL PROVISIONS

A. **No Effect on Tribal Rights or Other Federal Reserved Water Rights:**

1. The relationship between the water rights of the United States described herein and any rights to water of an Indian Tribe, or of any federally derived water right of an individual, or of the United States on behalf of such tribe or individual shall be determined by the rule of priority. The parties to this agreement recognize that the water rights described in this Compact are junior to any tribal water rights with a priority date before the effective date of the Compact, including aboriginal rights, if any, in the basins affected.

HeinOnline -- 1999 vol. II 1317 1999

2. Nothing in this Compact may be construed or interpreted in any manner to establish the nature, extent or manner of administration of the rights to water of any other federal agency or federal lands in Montana other than those of the Fish and Wildlife Service at the Refuge.

3. Nothing in this Compact may be construed or interpreted in any manner to establish the nature, extent or manner of administration of the rights to water of any Indian Tribes and tribal memhers.

4. Nothing in this Compact is otherwise intended to conflict with or abrogate a right or claim of any Indian Tribe regarding houndaries or property interests.

B. **State Water Rights**: Nothing in this Compact limits the exclusive authority of the State, including the authority of a water commissioner authorized by state law, to administer all current and future water rights recognized under state law within and upstream of the Refuge, provided that in administration of those water rights in which the United States has an interest, such authority is limited to that not in conflict with federal law.

C. **Abstract**: Concurrent with this Compact, the parties have prepared an Abstract, a copy of which is referenced as Appendix 1, which is a specific listing of all of the United States' water rights for the Refuge, that are described in this Compact and quantified in accordance with this Compact. The parties prepared the Abstract to comply with the requirements for a final decree as set forth in 85-2-234, MCA, and in an effort to assist the state courts in the process of entering decrees accurately and comprehensively reflecting the rights described in this Compact. The rights specified in the Abstract are subject to the terms of this Compact. In the event of a discrepancy between a right listed in the Abstract and that same right as quantified in accordance with Articles II and III of this Compact, the parties intend that the quantification in accordance with Articles II and III of this Compact shall gevern and shall be reflected in a final decree.

D. **General Disclaimers**: Nothing in this Compact may be construed or interpreted:

1. as a precedent for the litigation of reserved water rights or the interpretation or administration of future compacts between the United States and the State; or of tbe United States and any other state;

2. except as agreed to in cooperative agreements authorized by Article III.C.1. of this Compact, as a waiver by the United States on behalf of the FWS of its right under state law to raise objections in state court to individual water rights claimed pursuant to the state Water Use Act, Title 85, of the Montana Code Annotated, in the basins affected by this Compact; or any right to raise objections in an appropriate forum to individual water rights subject to a provisional permit under the state Water Use Act, Title 85, of the Montana Code Annotated, in the basins affected by this Compact;

3. as a waiver by the United States of its right to seek relief from a conflicting water use not entitled to protection under the terms of this Conipact;

4. to establish a precedent for other agreements between the State and the United States or an Indian tribe;

5. to determine the relative rights, *inter sese*, of persons using water under the authority of state law or to limit the rights of the parties or a person to litigate an issue not resolved by this Compact;

HeinOnline -- 1999 vol. II 1318 1999

6. to create or deny substantive rights througb headings or captions used in this Compact;

7. to expand or restrict any waiver of sovereign immunity existing pursuant to federal law as of the effective date of this Compact;

8. to affect the right of the State to seek fees or reimbursement for costs or the right of the United States to contest the imposition of such fees or costs, pursuant to a ruling by a state or federal court of competent jurisdiction or Act of Congress;

9. to affect in any manner the entitlement to or quantification of other federal water rights;

10. to be binding on the United States with regard to the water rights of the United States for any area other than the Refuge;

11. to affect the water rights of any other federal agency that is not a successor in interest to the water rights subject to this Compact;

12. to prevent the United States from constructing or modifying an outlet to an impoundment at the Refuge in compliance with all applicable laws;

13. to prevent the United States from seeking a permit to appropriate water under state law from a source not closed to new permits by this Compact or any other law.

E. **Reservation of Rights:** The parties expressly reserve all rights not granted, described or relinquished in this Compact.

F. **Severahility**: The provisions of this Compact are not severable.

G. **Multiple Originals**: This Compact is executed in quintuplicate. Each of the five (5) Compacts bearing original signatures sball be deemed an original.

H. **Notice**: Unless otherwise specifically provided for in this Compact, service of notice required hereunder, except service in litigation, shall be:

1. **State**: Upon the Director of the Department and such other officials as he or she may designate in writing.

2. **United States**: Upon the Secretary of the Interior and such other officials as he or she may designate in writing.

ARTICLE V - FINALITY OF COMPACT

A. **Binding Effect**:

1. The effective date of this Compact is the date of the ratification of this Compact by the Montana legislature, written approval by the United States Department of the Interior, or written approval by the United States Department of Justice, whichever occurs later. Once effective, all of the provisions of this Compact shall be binding on the parties.

2. Following the effective date, this Compact shall not be modified without the consent of both parties. Either party may seek enforcement of this Compact in a court of competent jurisdiction. Any attempt unilaterally to modify this Compact by either party shall render this Compact voidable at the election of the other party.

3. On approval of this Compact by a state or federal court of competent jurisdiction and entry of a decree by such court confirming tbe rights described

HeinOnline -- 1999 vol. II 1319 1999

herein, this Compact and such rights are binding on all persons bound by the final order of the court.

4. If an objection to this Compact is sustained pursuant to 85-2-702(3), MCA, this Compact shall be voidable by action of and without prejudice to either party.

B. **Disposition of Actions**: Subject to the following stipulations and within one hundred eighty (180) days of the effective date of this Compact, the parties shall submit this Compact to an appropriate state court or courts having jurisdiction over this matter in an action commenced pursuant to 43 U.S.C. 666, for approval in accordance with state law and for the incorporation of the water rights described in this Compact into a decree or decrees entered therein. The parties understand and agree that the submission of this Compact to a state court or courts, as provided for in this Compact, is solely to comply with the provisions of 85-2-702(3), MCA, and does not expand the jurisdiction of the state court or expand in any manner the waiver of sovereign immunity of the United States in the McCarran Amendment, 43 U.S.C. 666, or other provision of federal law.

1. **Dismissal of Filed Ciaims**: At the time the stato courts approve the water rights described in this Compact and enter a decree or decrees confirming the rights described herein, such courts sball dismiss, with prejudice, all of the water right claims specified in Appendix 2 to this Compact. If this Compact is not approved or a water right described herein is not confirmed, the specified claims shall not be dismissed.

2. **Federal Court**: This Compact may be filed as a consent decree in federal court only if it is finally determined in a judgment binding on the State of Montana that the state courts lack jurisdiction over some or all of the water rights described in this Compact. Within one year of such judgment the United States agrees to commence such additional proceedings in the federal district court for the District of Montana as may be necessary to judicially confirm the water rights described herein.

3. **Continuation of Negotiations**: The parties were unable to finalize agreement on quantification of the water rights for: the National Bison Range; Bowdoin National Wildlife Refuge; and Charles M. Russell and UL Bend National Wildlife Refuges and UL Bend Wilderness Area, prior to tbe effective date of this Compact. The parties agree to continue to pursue, in good faith, quantification of water rights for these areas. In the event the parties are unable to agree on quantification, the United States retains its right to have the quantity of any reserved water rights for these areas adjudicated in a state or federal court of competent jurisdiction.

C. **Settlement of Claims**: The parties intend that the water rights described in this Compact are in full and final settlement of the water right claims for the Refuge land described in this Compact and administered by tbe Fish and Wildlife Service in Montana on the effective date of this Compact. On the effective date of this Compact, the United States hereby and in full settlement of any and all claims to water filed by the United States or which could have been filed by the United States for Red Rock Lakes National Wildlife Refuge and Wilderness Area, relinquishes forever all said claims to water within the State of Montana for Red Rock Lakes National Wildlife Refuge and Wilderness Area. The state agrees to recognize the water rights described and quantified herein, and shall, except as expressly provided for herein, treat them in the same manner as a water right recognized by the state.

HeinOnline -- 1999 vol. II 1320 1999

D. The parties agree to defend the provisions and purposes of this Compact from all challenges and attacks.

IN WITNESS WHEREOF the representatives of the State of Montana and the United States have signed this Compact on the _____ day of _____, 19__.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 85, chapter 20, and the provisions of Title 85, chapter 20, apply to [section 1].

Approved April 19, 1999

CHAPTER NO. 348

[SB 219]

AN ACT DEFINING "SEVERE MENTAL ILLNESS"; PROVIDING PARITY OF INSURANCE COVERAGE FOR SEVERE MENTAL ILLNESS; AMENDING SECTIONS 33-22-701, 33-22-702, 33-22-704, AND 33-31-111, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Coverage for severe mental illness — definition. (1) A policy or certificate of health insurance or disability insurance that is delivered, issued for delivery, renewed, extended, or modified in this state must provide a level of benefits for the necessary care and treatment of severe mental illness, as defined in subsection (6), that is no less favorable than that level provided for other physical illness generally. Benefits for treatment of severe mental illness may be subject to managed care provisions contained in the policy or certificate.

(2) Benefits provided pursuant to subsection (1) include but are not limited to:

(a) inpatient hospital services;

(b) outpatient services;

(c) rehabilitative services;

(d) medication;

(e) services rendered by a licensed physician, licensed advanced practice registered nurse with a specialty in mental health, licensed social worker, licensed psychologist, or licensed professional counselor when those services are part of a treatment plan recommended and authorized by a licensed physician; and

(f) services rendered hy a licensed advanced practico registered nurse with prescriptive authority and specializing in mental health.

(3) Benefits provided pursuant to tlris section must be included when determining maximum lifetime benefits, copayments, and deductibles.

(4) (a) This section applies to healtb service benefits provided hy:

(i) individual and group health and disability insurance;

(ii) individual and group hospital or medical expense insurance;

(iii) medical subscriber contracts;

(iv) membership contracts of a health service corporation; and

(v) health maintenance organizations.

(b) This section does not apply to the following coverages:

(i) blanket;

(ii) short-term travel;

(iii) accident only;

(iv) limited or specific disease;

(v) Title XVIII of the Social Security Act (medicare); or

(vi) any other similar coverage under state or federal government plans.

(5) This section does not limit benefits for an illness or condition that does not constitute a severe mental illness, as defined in subsection (6), but that does constitute a mental illness, as defined in 33-22-702.

(6) As used in this section, "severe mental illness" means the following disorders as defined by the American psychiatric association:

(a) schizophrenia;

(b) schizoaffective disorder;

(c) bipolar disorder;

(d) major depression;

(e) panic disorder;

(f) obsessive-compulsive disorder; and

(g) autism.

Section 2. Section 33-22-701, MCA, is amended to read:

"33-22-701. Scope of part — purpose — *exception.* ~~The~~ *Except as provided in [section 1], the* provisions of this part apply to all group policies of accident and health insurance and group subscriber contracts for the care and treatment of mental illness, alcoholism, and drug addiction offered to Montana residents by insurers, health service corporations, and all employees' health and welfare funds that provide accident and health insurance benefits to residents of this state. It is the purpose of this part to preserve the rights of the consumer to have ~~such~~ *this* coverage according to ~~his~~ *the consumer's* medical and economic needs."

Section 3. Section 33-22-702, MCA, is amended to read:

"33-22-702. Definitions. For purposes of this part, the following definitions apply:

(1) "Chemical dependency treatment center" means a treatment facility that:

(a) provides a program for the treatment of alcoholism or drug addiction pursuant to a written treatment plan approved and monitored by a physician or chemical dependency counselor certified by the state; and

(b) is licensed or approved as a treatment center by the department of public health and human services under 53-24-208.

HeinOnline -- 1999 vol. II 1322 1999

(2) "Inpatient benefits" are as set forth in 33-22-705.

(3) "Mental health treatment center" means a treatment facility organized to provide care and treatment for mental illness through multiple modalities or techniques pursuant to a written treatment plan approved and monitored by an interdisciplinary team, including a licensed physician, psychiatric social worker, and psychologist, and a treatment facility that is:

(a) licensed as a mental health treatment center by the state;

(b) funded or eligible for funding under federal or state law; or

(c) affiliated with a hospital under a contractual agreement with an established system for patient referral.

(4) (a) "Mental illness" means a clinically significant behavioral or psychological syndrome or pattern that occurs in a person and that is associated with:

(i) present distress or a painful symptom;

(ii) a disability or impairment in one or more areas of functioning; or

(iii) a significantly increased risk of suffering death, pain, disability, or an important loss of freedom.

(b) Mental illness must be considered as a manifestation of a behavioral, psychological, or biological dysfunction in a person.

(c) Mental illness does not include:

(i) a developmental disorder;

(ii) a speech disorder;

(iii) a psychoactive suhstance use disorder;

(iv) an eating disorder, except for bulimia and anorexia nervosa; ~~or~~

(v) an impulse control disorder, except for intermittent explosive disorder and trichotillomania*; or*

(vi) a severe mental illness as provided in [section 1].

(5) "Outpatient benefits" are as set forth in 33-22-705."

Section 4. Section 33-22-704, MCA, is amended to read:

"33-22-704. Applicability. ~~This~~ *Except as provided in [section 1], this* part applies to policies, contracts, or any employees' health and welfare fund that provides accident and health insurance benefits, established, delivered, issued for delivery, or renewed after September 30, 1987, but does not apply to blanket, short-term travel, accident-only, limited or specified disease, individual conversion policies or contracts, or to policies or contracts designed for issuance to persons eligible for coverage under Title XVIII of the Social Security Act, known as medicare, or any other similar coverage under state or federal governmental plans."

Section 5. Section 33-31-111, MCA, is amended to read:

"33-31-111. Statutory construction and relationship to other laws. (1) Except as otherwise provided in this chapter, the insurance or health service corporation laws do not apply to any health maintenance organization authorized to transact business under this chapter. This provision does not apply to an

HeinOnline -- 1999 vol. II 1323 1999

insurer or health service corporation licensed and regulated pursuant to the insurance or health service corporation laws of this state except with respect to its health maintenance organization activities authorized and regulated pursuant to this chapter.

(2) Solicitation of enrollees by a health maintenance organization granted a certificate of authority or its representatives is not a violation of any law relating to solicitation or advertising by health professionals.

(3) A health maintenance organization authorized under this chapter is not practicing medicine and is exempt from Title 37, chapter 3, relating to the practice of medicine.

(4) This chapter does not exempt a health maintenance organization from the applicable certificate of need requirements under Title 50, chapter 5, parts 1 and 3.

(5) This section does not exempt a health maintenance organization from the prohibition of pecuniary interest under 33-3-308 or the material transaction disclosure requirements under 33-3-701 through 33-3-704. A health maintenance organization must be considered an insurer for the purposes of 33-3-308 and 33-3-701 through 33-3-704.

(6) This section does not exempt a health maintenance organization from:

(a) prohibitions against interference with certain communications as provided under chapter 1, part 8;

(b) the provisions of Title 33, chapter 22, part 19;

(c) the requirements of 33-22-134 and 33-22-135; or

(d) network adequacy and quality assurance requirements provided under chapter 36.

(7) Sections 33-22-141, 33-22-142, 33-22-246, 33-22-247, 33-22-514, 33-22-523, 33-22-524, ~~and~~ 33-22-526, *and [section 1]* apply to health maintenance organizations."

Section 6. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 33, chapter 22, part 7, and the provisions of Title 33, chapter 22, part 7, apply to [section 1].

Section 7. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 8. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 9. Effective date. [This act] is effective January 1, 2000, for all policies or certificates issued or renewed on or after that date.

Approved April 19, 1999

HeinOnline -- 1999 vol. II 1324 1999

CHAPTER NO. 349

[SB 232]

AN ACT CLARIFYING THE TYPES OF ACTS OR PROCEEDINGS THAT ARE NOT PROHIBITED BY THE ONE-ACTION LIMITATION IN FORECLOSURE SUITS; AND AMENDING SECTION 71-1-222, MCA.

Be it enacted by the Legislature of the State of Montana:

Seetion 1. Section 71-1-222, MCA, is amended to read:

"71-1-222. Proceedings in foreclosure suits. (1) There is only one action for the recovery of debt or the enforcement of any right secured by a mortgage upon real estate, and that action must be in accordance with the provisions of this part. In the action, the court may, by its judgment, direct:

(a) a sale of the encumbered property ~~(~~or as much of the property as may be necessary~~)~~;

(b) the application of the proceeds of the sale, including the payment of property taxes due at tbe time of foreclosure; and

(c) the payment of the costs of the court, the expenses of the sale, and the amount due the plaintiff.

(2) If it appears from the sheriff's return that the proceeds are insufficient and a balance still remains due, judgment can then be docketed for the balance against the defendant or defendants personally liable for the debt, and it becomes a lien upon the real estate of the judgment debtor, as in other cases on which execution may be issued.

(3) A person holding a conveyance from or under the mortgagor of the property mortgaged or having a lien on the property, which conveyance or lien does not appear of record in the proper office at the time of the commencement of the action, does not ~~need~~ *have* to be made a party to the action. The judgment and the proceedings are as conclusive against the party holding the unrecorded conveyance or lien as if the holding party had been made a party to the action.

(4) The one-action limitation in this section does not prohibit an act or proceeding:

(a) to appoint a receiver for or obtain possession of real or personal property collateral for the debt or other obligation;

(b) to enforce a security interest in or the assignment of any rents, issues, profits, or other income of any real or personal property;

(c) to enforce a mortgage or other lien on real or personal property collateral located outside this state that is security for the same debt or other right secured by real property in this state;

(d) to secure a judgment outside this state on a debt or other right secured by real property in this state and by real or personal property collateral located outside this state;

(e) for the exercise of a power of sale conferred pursuant to the provisions of 71-1-223 or a foreclosure by advertisement and sale pursuant to Title 71, chapter 1, part 3;

(f) for the exercise of a right or remedy under the Montana Uniform Commercial Code, except securing a judgment on a secured debt, including a deficiency judgment on a secured debt, in a court in Montana;

HeinOnline -- 1999 vol. II 1325 1999

(g) for the exercise of a right or remedy under the uniform commercial code of another state;

(h) for claim and delivery of personal property pursuant to the provisions of Title 27, chapter 17;

(i) for the exercise of a right to set off a deposit or share account, to enforce a pledge in a deposit or share account pursuant to a written agreement or pledge, or to enforce a financial institution's statutory lien;

(j) to draw under a letter of credit;

(k) for the recovery of damages arising from the eommission of a tort or the recovery of any declaratory or equitable relief;

(l) to collect a debt or enforce a right or obligation secured by a junior mortgage or other junior lien on real property if the property has been sold to satisfy, in whole or in part, a debt or other right or obligation secured by a senior mortgage or other senior lien on the property;

(m) concerning a mortgage securing a debt or right guaranteed, to enforce an agreement with a surety or guarantor of the debt or right secured by a mortgage on real estate, if the surety or guaranty obligation is not secured by the same mortgage;

(n) relating to a proceeding in bankruptcy, including filing a proof of claim, to seek relief from an automatic stay and any other action to determine the amount or validity of a debt or right or obligation secured by a mortgage;

(o) for filing a claim or to enforce a claim disallowed pursuant to the Montana Uniform Probate Code;

(p) that does not include collection of the debt or realization of the collateral securing the debt or other obligation;

(q) that is exemptcd from the provisions of this section by law;

(r) to recover costs of suit, costs and expenses of sale, attorney fees, and other incidental relief in connection with any act or proceeding authorized in this subsection (4); or

(s) for recovery of a debt or for enforcement of a right secured by a mortgage when the mortgage security in this state has become valueless through no fault of the mortgagee."

Approved April 19, 1999

CHAPTER NO. 350

[SB 236]

AN ACT GENERALLY REVISING THE OFFENSE OF CRIMINAL SYNDICALISM; RENAMING THE OFFENSE AS CRIMINAL INCITEMENT; REDEFINING ELEMENTS OF THE OFFENSE TO BE CONSISTENT WITH CONSTITUTIONAL MANDATES; ELIMINATING CONSTITUTIONALLY PROTECTED ACTIVITIES FROM INCLUSION IN THE OFFENSE; AMENDING SECTION 45-8-105, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

HeinOnline -- 1999 vol. II 1326 1999

Section 1. Section 45-8-105, MCA, is amended to read:

"45-8-105. Criminal ~~syndicalism~~ *incitement*. ~~(1) "Criminal syndicalism" means the advocacy of crime, malicious damage or injury to property, violence, or other unlawful methods of terrorism as a means of accomplishing industrial or political ends.~~ *(1) "Criminal incitement" means the advocacy of crime, malicious damage or injury to property, or violence.*

(2) A person commits the offense of criminal ~~syndicalism~~ *incitement* if ~~he~~ *the person* purposely or knowingly:

~~(a) orally or by means of writing, advocates or promotes the doctrine of criminal syndicalism;~~

~~(b) organizes or becomes a member of any assembly, group, or organization which he knows is advocating or promoting the doctrine of criminal syndicalism; or~~

~~(c) for or on behalf of another whose purpose is to advocate or promote the doctrine of criminal syndicalism, distributes, sells, publishes, or publicly displays any writing advocating or advertising such doctrine~~ *advocates the commission of a criminal offense and the advocacy is:*

(a) directed to inciting or producing that imminent unlawful, criminal action; and

(b) likely to incite or produce that unlawful, criminal action.

(3) For purposes of this section, "imminent" means immediate in time, impending, or on the verge of happening.

~~(3)~~*(4)* A person convicted of the offense of criminal ~~syndicalism~~ *incitement* shall be imprisoned in the state prison for a term not to exceed 10 years.

~~(4) Whoever, being the owner or in possession or control of any premises, knowingly permits any assemblage of persons to use such premises for the purpose of advocating or promoting the doctrine of criminal syndicalism shall be fined not to exceed $500 or imprisoned in the county jail for a term not to exceed 6 months, or both.~~"

Section 2. Effeetive date. [This act] is effective on passage and approval.

Section 3. Applicability. [This act] applies to offenses committed on or after [the effective date of this act].

Approved April 19, 1999

CHAPTER NO. 351

[SB 269]

AN ACT REVISING AND CLARIFYING THE LAWS RELATING TO THE FINANCE OF COUNTY WATER AND SEWER DISTRICTS; AUTHORIZING THE LEVYING OF SPECIAL ASSESSMENTS TO PAY COSTS OF IMPROVEMENTS; AMENDING SECTIONS 7-13-2221 AND 7-13-2301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-13-2221, MCA, is amended to read:

HeinOnline -- 1999 vol. II 1327 1999

"7-13-2221. Powers related to district finances. Any district incorporated as provided in this part ~~shall have power to~~ *may*:

(1) accept funds and property or other assistance, financial or otherwise, from federal, state, and other public or private sources for the purposes of aiding the construction or maintenance of water or sewer development projects;

(2) cooperate and contract with the state or federal government or any department or agency ~~thereof~~ *of the state or federal government* in furnishing assurances for and meeting local cooperation requirements of any project involving control, conservation, and use of water;

(3) borrow money and incur indebtedness and issue bonds or otber evidence of ~~such~~ indebtedness~~; also~~ *and* refund or retire any indebtedness or lien that may exist against the district or property ~~thereof~~ *of the district*;

(4) cause taxes to be levied in tbe manner provided for in ~~this part and~~ part 23 *and this part* for the purpose ef paying any obligation of the district and to accomplish the purposes of ~~this part and~~ part 23 *and this part* in the manner provided in ~~this part and~~ part 23 *and this part*;

(5) levy special assessments against property located in the district and benefited by any of its improvements, as provided in [sections 2 through 11], and pledge the collections of the special assessments in whole or in part, with any other revenue of the district, to the payment of bonds issued pursuant to part 23; and

(6) enter into covenants and agreements as to the establishment and maintenance of reasonable rates and charges for the use of its systems or improvements or any part of the systems or improvements as required, in the judgment of the board of directors, for the favorable sale of bonds issued pursuant to part 23, including, without limitation, a covenant to establish and maintain rates and charges sufficient, with the collection of any special assessments, to pay debt service and operating, maintenance, and replacement costs of the system or improvement and to fund necessary reserves or a covenant to establish and maintain rates and charges sufficient, with the collection of any special assessments, to pay operating and maintenance costs of the system or improvement, fund neccssary reserves for the system or improvement, and pay debt service on bonds and to provide additional funds necessary for the purposes of the system or improvement or to provide assurance to the holders of bonds as to the sufficiency of the revenue."

Section 2. Levy of spccial assessments. (1) In lieu of imposing rates and charges to pay the capital costs of any improvement provided for in this part, a district may levy special assessments to defray the costs against property within the district and benefited by the improvement. The costs of the improvement may include the costs of issuance of any bonds issued to finance the improvement and any reserve securing payment of the bonds.

(2) The board of directors shall by resolution levy and assess upon all property in the district benefited by the improvement, by using for a basis for the assessment the method or methods provided for in 7-12-2151.

(3) The resolution must contain a description of each lot or parcel of land, with the name of the owner if known, and the amount of each assessment and the day when tbe assessment becomes delinquent.

(4) The resolution, signed hy the presiding officer ef the board of directors, must be kept on file in the office of the secretary.

HeinOnline -- 1999 vol. II 1328 1999

Seetion 3. Notice of resolution for levy of assessment hearing. (1) A notice, signed by the secretary and stating that the resolution levying a special assessment to defray the cost of making the improvements is on file in the office of the secretary and is subject to inspection, must be:

(a) published as provided in 7-1-2121;

(b) mailed to the owner of each lot, tract, or parcel of land to be assessed (the lands must be identified and the mailing address determined from the last-completed assessment roll for state, county, and school district taxes); and

(c) mailed to any other persons known to the secretary to have an ownership interest in the property.

(2) The notice must state the time and place in which objections to the final adoption of the resolution will be heard by the board of directors. The time for the hearing may not be less than 5 days after the second publication or less than 10 days after the mailing of the notice.

Seetion 4. Hearing on assessment — who eonsidered owner — suffieient protest to bar proceedings. (1) At the time fixed, the board of directors shall meet and hear all objections and for that purpose may adjourn from day to day.

(2) The board of directors may by resolution modify the assessment in whole or in part. A copy of the resolution, certified by the secretary, must he delivered to the county clerk and recorder of the county in which the lot, tract, or parcel is located within 2 days after passage of the resolution and not later than the July 15 preceding the county's next fiscal year.

(3) At any time within 30 days after the date of the first publication of the notice of proposed assessments, any owner of property to be assessed for the costs of making the improvements may make written protest against the levy of assessments. The protest must be in writing, identify the property in the district owned by the protestor, and be signed by all owners of the property. The protest must be delivered to the secretary of the district not later than 5 p.m. of the last day of the 30-day period provided for in this subsection. The secretary shall endorse the date and hour of receipt on the protest.

(4) If the board of directors finds that a protest with respect to the method or methods of assessment described in the resolution of intention is made by the owners of property in the district to be assessed for more than 50% of the cost of improvements, the board of directors may not use the method or methods of assessment described in the resolution of intention.

Section 5. Collection of assessments by eounty treasurer — delinquencies. (1) When any resolution of assessment has been certified by the secretary and the county clerk and recorder, it is the duty of the county treasurer in the county in which the lot, tract, or parcel is located, in accordance with the provisions of this title, to collect the assessment in the same manner and at the same time as taxes for general and municipal purposes are collected.

(2) When the payment of an installment of a special assessment becomes delinquent, all payments of subsequent installments of the special assessment may, at the option of the board of directors and upon adoption of the appropriate resolutions, become delinquent. Upon delinquency in one or all installments, the whole property must be sold the same as other property is sold for taxes. The enforcement of the lien of any installment of a special assessment by any method

HeinOnline -- 1999 vol. II 1329 1999

authorized by law does not prevent the enforcement of the lien of any subsequent installment when it becomes delinquent.

Section 6. Payment of asscssment under protest — action to recover. (1) When any special assessment levied and assessed under any of the provisions of this part is considered unlawful by the party whose property is assessed, the person may pay the assessment or any part of the assessment considered unlawful under protest to the county treasurer.

(2) After the payment, the party or the party's legal representative may bring an action in any court of competent jurisdiction against the officer to whom the assessment was paid or against the district on whose behalf the assessment was collected to recover the assessment or any portion of the assessment paid under protest. Any action instituted to recover the assessment paid under protest must be commenced within 60 days after the date of payment.

(3) The assessment paid under protest must be held by the county treasurer until the determination of any action brought for the recovery of the assessment.

Section 7. Procedure to correct assessment and to relevy. (1) Whenever, by reason of any alleged nonconformity to law or by reason of any omission or irregularity, any special assessment is either invalid or its validity is questioned, the board of directors may make all necessary orders and may take all necessary steps to correct, reassess, and relevy the assessment, including the ordering of the improvement, with the same force and effect as if made at the time provided by the law or resolution relating to the assessment. The board may reassess and relevy the assessment or tax with the same force and effect as an original levy.

(2) Any special assessment, upon reassessment or relevy, must, so far as practicable, be levied and collected the same as it would have been if the first levy had been enforced. Any provision of any law specifying a time when or order in which acts must be done in a proceeding that may result in a special assessment is subject to the qualifications of this part.

(3) Whenever any assessment is made and any property is assessed too little or too much, the assessment may be corrected and reassessed for the additional amount that is proper or the assessment may be reduced, even to the extent of refunding the assessment collected.

Section 8. Certain errors not to invalidate asscssments or liens. (1) When, under any of the provisions of this part, special assessments are assessed against any lot or parcel of land as the property of a particular person, a misnomer of the owner or supposed owner or other mistake relating to the ownership of the land may not affect the assessment or render it void or voidable.

(2) Any mistake in the description of property or the name of the owner may not vitiate any liens created by this part unless it is impossible to identify the property from tbe description.

Scction 9. Term of payment of assessments. (1) The payment of the assessment to defray the cost of constructing any improvement may be spread over a term not to exceed 40 years.

(2) The assessments are payable in equal semiannual installments of principal, with interest on the unpaid installments, or, if the board of directors prescribes in the resolution levying the assessments, in equal semiannual installments of principal and interest, each in the amount required to pay the

HeinOnline -- 1999 vol. II 1330 1999

principal over the term of payment, with interest at the rate then borne by the assessment.

(3) Any assessment that is not delinquent may be prepaid, in whole but not in part, at any time after the assessment is levied, by the payment of the assessment, with interest accrued and to accrue on the assessment through the next date on which an installment of tbe assessment is otherwise payable.

Seetion 10. Interest rate on unpaid assessments. The installments of assessments remaining unpaid bear simple interest at an annual rate equal to:

(1) the sum of:

(a) the average interest rate payable on the outstanding bonds issued to finance the improvement in respect of which the special assessments are levied; plus

(b) additional interest at a rate to be determined by the board of directors, not exceeding 2% a year; or

(2) if bonds are not issued to finance the improvements, at an interest rate to be determined by the board of directors, but not to exceed 10% a year.

Section 11. Assessments and certain othcr chargcs as liens. Any special assessment made and levied to defray the cost and expenses of any improvement, together with any amounts imposed for delinquency and for cost of collection, constitutes a lien upon and against the property upon which the assessment is made and levied from and after the date of the passage of tbe resolution levying the assessment. This lien can be extinguished only by payment of the assessment, with all penalties, costs, and interest.

Section 12. Section 7-13-2301, MCA, is amended to read:

"7-13-2301. Estahlishment of charges for services — payment of charges. (1) The board of directors shall fix all water and sewer rates and shall, through the general manager, collect the sewer charges and the charges for the sale and distrihution of water to all users.

(2) The board, in furnishing water, sewer service, other services, and facilities, shall review, at least once every 2 years, and from time to time fix the rate, fee, toll, rent, or other charge for the services, facilities, and benefits directly afforded by the facilities, taking into account services provided and direct benefits received, that will be sufficient in eacb year to provide income and revenue adequate, *with the collections of any special assessments levied pursuant to [sections 2 through 11] and appropriated,* for:

(a) the payment of the reasonable expense of operation and maintenance of the facilities;

(b) administration of tbe district;

(c) the payment of principal and interest on any bonded or other indebtedness of the district; and

(d) the establishment or maintenance of any required reserves, including reserves needed for expenditures for depreciation and replacement of facilities, as may be determined necessary from time to time by the board or as covenanted in the ordinance or resolution authorizing the outstanding bonds of the district.

(3) A person or entity may not use any facility without paying tbe rate established for the facility. In the event of nonpayment, the board may order the

HeinOnline -- 1999 vol. II 1331 1999

discontinuance of water or sewer service, or both, to the property and may require that all delinquent charges, interest, penalties, and deposits be paid before restoration of the service.

(4) (a) If the board has ordered discontinuance of service as provided in subsection (3) and the person or entity who received the service has not made full payment of all delinquent charges, interest, penalties, and deposits, then a district may elect to have its delinquent charges for water or sewer services collected as a tax against the property by following the procedures of tbis subsection (4). If a charge for services is due and payable in a fiscal year and is not paid by the end of the fiscal year, the general manager shall, by July 15 of the succeeding fiscal year, give notice to the owners of the property to which the service was provided. The notice must be in writing and:

(i) must specify the charges owed, including any interest and penalty;

(ii) must specify that the amount due must be paid by August 15 or it will be levied as a tax against the property;

(iii) must state that the district may institute suit in any court of competent jurisdiction to recover the amount due; and

(iv) may be served on the owner personally or by letter addressed to the post-office address of the owner as recorded in the county assessor's office.

(b) On September 1 of each year, the general manager shall certify and file with the county assessor a list of all property, including legal descriptions, on which arrearages remain unpaid. The list must include the amount of each arrearage, including interest and penalty. The county assessor shall assess the amount owed as a tax against each lot or parcel with an arrearage. If the property on which arrearages remain unpaid contains a mobile home, the amount owed must be assessed as a tax against the owner of the mobile home. If the mobile home for which arrearages remain unpaid is no longer on the property, the amount owed must be assessed as a tax against the property.

(5) In addition to collecting delinquent charges in the same manner as a tax, a district may bring suit in any court of competent jurisdiction to collect amounts due as a debt owed to the district.

(6) Notwithstanding any other section of part 22 or this part or any limitation imposed in part 22 or this part, when the board has applied for and received from the federal government any money for the construction, operation, and maintenance of facilities, the board may adopt a system of charges and rates to require that each recipient of facility services pays its proportionate share of the costs of operation, maintenance, and replacement and may require industrial users of facilities to pay the portion of the cost of construction of the facilities that is allocable te the treatment of that industrial user's wastes."

Section 13. Codification instruction. [Sections 2 through 11] are intended to be codified as an integral part of Title 7, chapter 13, part 22, and the provisions of Title 7, chapter 13, part 22, apply to [sections 2 through 11].

Section 14. Effective date. [This act] is effective on passage and approval.

Approved April 19, 1999

HeinOnline -- 1999 vol. II 1332 1999

CHAPTER NO. 352

[SB 292]

AN ACT CLARIFYING THE APPLICABILITY OF CERTAIN CAMPAIGN LAWS DECLARED TO BE INVALID; ELIMINATING RESTRICTIONS ON SEEKING VOTES ON ELECTION DAY; ELIMINATING WILLFUL OR NEGLIGENT MISREPRESENTATION OF A CANDIDATE'S VOTING RECORD AS A CRIME; AMENDING SECTION 13-37-131, MCA; AND REPEALING SECTION 13-35-233, MCA.

WHEREAS, in National Right to Life Political Action Committee v. Argenbright, Cause No. CV 96-85-H-CCL, U.S. District Court, Helena Division (1997), section 13-35-233, MCA, prohibiting solicitation of votes on election day, was declared unconstitutional; and

WHEREAS, in Parisot v. Argenbright, Cause No. CDV-96-1555, First Judicial District, Lewis and Clark County (1997), the negligence standard for publishing false statements about a candidate's voting record was declared invalid.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-37-131, MCA, is amended to read:

"13-37-131. Misrepresentation of voting record — political civil libel. (1) It is unlawful for a person to ~~willfully or negligently make or publish a false statement about~~ *misrepresent* a candidate's public voting record *or any other matter that is relevant to the issues of the campaign with knowledge that the assertion is false or with a reckless disregard of whether or not the assertion is false* ~~or to make or publish a false statement that reflects unfavorably upon a candidate's character or morality~~.

(2) It is unlawful for a person to ~~willfully or negligently provide false information to a candidate concerning another candidate's public voting record when the person knows or should know that the information will be made public during the course of a campaign~~ *misrepresent to a candidate another candidate's public voting record or any other matter that is relevant to the issues of the campaign with knowledge that the assertion is false or with a reckless disregard of whether or not the assertion is false.*

(3) For the purposes of this section, the public voting record of a candidate who was previously a member of the legislature includes a vote of that candidate recorded in committee minutes or in journals of the senate or the house of representatives. Failure of a person to verify a public voting record is evidence of the person's ~~willful or negligent conduct~~ *reckless disregard* if the statement made by the person or the information provided to the candidate is false.

(4) A person violating subsection (1) or (2) is liable in a civil action brought by the commissioner or county attorney pursuant to 13-37-124 for an amount up to $1,000. An action pursuant to this section is subject to the provisions of 13-37-129 and 13-37-130."

Section 2. Repealer. Section 13-35-233, MCA, is repealed.

Approved April 19, 1999

HeinOnline -- 1999 vol. II 1333 1999

CHAPTER NO. 353

[SB 294]

AN ACT AUTHORIZING A COUNTY TO RETAIN THE PROPERTY WITHIN A NEWLY INCORPORATED CITY OR TOWN AS A PART OF THE TAX BASE OF THE COUNTY FOR PURPOSES OF LEVYING TAXES AGAINST THE PROPERTY FOR THE MAINTENANCE OF PROPERTY WITHIN THE CITY OR TOWN UNTIL THE CITY OR TOWN IMPOSES AND COLLECTS A SIMILAR LEVY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Tax base — maintenance agreements. When a city or town is incorporated, a county may retain the property within the city or town as a part of the tax base of the county for purposes of levying taxes against the property for the maintenance of property within the city or town until the city or town imposes and collects a levy for maintenance of the property for which the county mill levy is imposed. The city or town and the county may enter into an agreement for maintenance of property pending an election on a city or town levy.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 7, chapter 2, part 41, and the provisions of Title 7, chapter 2, part 41, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Section 4. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to a city or town established on or after July 1, 1998.

Approved April 19, 1999

CHAPTER NO. 354

[SB 326]

AN ACT PROVIDING THAT, WITH CERTAIN EXCEPTIONS, IT IS A CRIMINAL OFFENSE TO INTERCEPT A COMMUNICATION OVER ANY TYPE OF TELEPHONE, INCLUDING BUT NOT LIMITED TO A CORDED, UNCORDED, CELLULAR, OR SATELLITE PHONE; DEFINING "TELEPHONE" FOR PURPOSES OF THE CRIMINAL CODE; PROVIDING THAT IT IS A CRIME TO PUBLISH CERTAIN INFORMATION BY COMPUTER TO AID IN THE AVOIDANCE OF PAYMENT OF A FEE FOR TELECOMMUNICATIONS SERVICES; AND AMENDING SECTIONS 45-2-101, 45-6-307, AND 45-8-213, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-2-101, MCA, is amended to read:

"45-2-101. General definitions. Unless otherwise specified in the statute, all words will be taken in the objective standard rather than in the subjective, and unless a different meaning plainly is required, the following definitions apply in this title:

(1) "Acts" has its usual and ordinary meaning and includes any bodily movement, any form of communication, and when relevant, a failure or omission to take action.

(2) "Administrative proceeding" means any proceeding the outcome of which is required to be based on a record or documentation prescribed by law or in which a law or a regulation is particularized in its application to an individual.

(3) "Another" means a person or persons, as defined in this code, other than the offender.

(4) "Benefit" means gain or advantage or anything regarded by the beneficiary as gain or advantage, including benefit to any other person or entity in whose welfare the beneficiary is interested. Benefit does not include an advantage promised generally to a group or class of voters as a consequence of public measures that a candidate engages to support or oppose.

(5) "Bodily injury" means physical pain, illness, or any impairment of physical condition and includes mental illness or impairment.

(6) "Cohabit" means to live together under the representation of being married.

(7) "Common scheme" means a series of acts or omissions motivated by a purpose to accomplish a single criminal objective or by a common purpose or plan that results in the repeated commission of the same offense or that affects the same person or the same persons or the property of the same person or persons.

(8) "Computer" means an electronic device that performs logical, arithmetic, and memory functions by the manipulation of electronic or magnetic impulses and includes all input, output, processing, storage, software, or communication facilities that are connected or related to that device in a system or network.

(9) "Computer network" means the interconnection of communication systems between computers or computers and remote terminals.

(10) "Computer program" means an instruction or statement or a series of instructions or statements, in a form acceptable to a computer, that in actual or modified form permits the functioning of a computer or computer system and causes it to perform specified functions.

(11) "Computer services" include but are not limited to computer time, data processing, and storage functions.

(12) "Computer software" means a set of computer programs, procedures, and associated documentation concerned with the operation of a computer system.

(13) "Computer system" means a set of related, connected, or unconnected devices, computer software, or other related computer equipment.

(14) "Conduct" means an act or series of acts and the accompanying mental state.

(15) "Conviction" means a judgment of conviction or sentence entered upon a plea of guilty or upon a verdict or finding of guilty of an offense rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury.

HeinOnline -- 1999 vol. II 1335 1999

(16) "Correctional institution" means the state prison, county or city jail, or other institution for the incarceration or custody of persons under sentence for offenses or awaiting trial or sentence for offenses.

(17) "Deception" means knowingly to:

(a) create or confirm in another an impression that is false and that the offender does not believe to be true;

(b) fail to correct a false impression that the offender previously has created or confirmed;

(c) prevent another from acquiring information pertinent to the disposition of the property involved;

(d) sell or otherwise transfer or encumber property without disclosing a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether the impediment is or is not of value or is or is not a matter of official record; or

(e) promise performance that the offender does not intend to perform or knows will not be performed. Failure to perform, standing alone, is not evidence that the offender did not intend to perform.

(18) "Defamatory matter" means anything that exposes a person or a group, class, or association to hatred, contempt, ridicule, degradation, or disgrace in society or to injury to the person's or its business or occupation.

(19) "Deprive" means:

(a) to withhold property of another:

(i) permanently;

(ii) for such a period as to appropriate a portion of its value; or

(iii) with the purpose to restore it only upon payment of reward or other compensation; or

(b) to dispose of the property of another and use or deal with the property so as to make it unlikely that the owner will recover it.

(20) "Deviate sexual relations" means sexual contact or sexual intercourse between two persons of the same sex or any form of sexual intercourse with an animal.

(21) "Document" means, with respect to offenses involving the medicaid program, any application, claim, form, report, record, writing, or correspondence, whether in written, electronic, magnetic, microfilm, or other form.

(22) "Felony" means an offense in which the sentence imposed upon conviction is death or imprisonment in the state prison for any term exceeding 1 year.

(23) "Forcible felony" means any felony that involves the use or threat of physical force or violence against any individual.

(24) A "frisk" is a search by an external patting of a person's clothing.

(25) "Government" includes any branch, subdivision, or agency of the government of the state or any locality within it.

HeinOnline -- 1999 vol. II 1336 1999

(26) "Harm" means loss, disadvantage, or injury or anything so regarded by the person affected, including loss, disadvantage, or injury to any person or entity in whose welfare the affected person is interested.

(27) A "house of prostitution" means any place where prostitution or promotion of prostitution is regularly carried on by one or more persons under the control, management, or supervision of another.

(28) "Human heing" means a person who has heen horn and is alive.

(29) An "illegal article" is an article or thing that is prohibited by statute, rule, or order from being in the possession of a person subject to official detention.

(30) "Inmate" means a person who engages in prostitution in or through the agency of a house of prostitution.

(31) "Intoxicating substance" means any controlled substance, as defined in Title 50, chapter 32, and any alcoholic heverage, including hut not limited to any beverage containing 1/2 of 1% or more of alcohol hy volume. Intoxicating substance does not include dealcoholized wine or any beverage or liquid produced by the process by which heer, ale, port, or wine is produced if it contains less than 1/2 of 1% of alcohol by volume.

(32) An "involuntary act" means any act that is:

(a) a reflex or convulsion;

(b) a hodily movement during unconsciousness or sleep;

(c) conduct during hypnosis or resulting from hypnotic suggestion; or

(d) a hodily movement that otherwise is not a product of the effort or determination of the actor, either conscious or habitual.

(33) "Juror" means any person who is a member of any jury, including a grand jury, impaneled by any court in this state in any action or proceeding or by any officer authorized by law to impanel a jury in any action or proceeding. The term "juror" also includes a person who has been drawn or summoned to attend as a prospective juror.

(34) "Knowingly"—a person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when the person is aware of the person's own conduct or that the circumstance exists. A person acts knowingly with respect to the result of conduct described by a statute defining an offense when the person is aware that it is highly prohable that the result will be caused by the person's conduct. When knowledge of the existence of a particular fact is an element of an offense, knowledge is estahlished if a person is aware of a high probahility of its existence. Equivalent terms, such as "knowing" or "with knowledge", have the same meaning.

(35) "Medicaid" means the Montana medical assistance program provided for in Title 53, chapter 6.

(36) "Medicaid agency" has the meaning in 53-6-155.

(37) "Medicaid benefit" means the provision of anything of pecuniary value to or on behalf of a recipient under the medicaid program.

(38) (a) "Medicaid claim" means a communication, whether in oral, written, electronic, magnetic, or other form:

HeinOnline -- 1999 vol. II 1337 1999

(i) that is used to claim specific services or items as payable or reimbursable under the medicaid program; or

(ii) that states income, expense, or other information that is or may be used to determine entitlement to or tbe rate of payment under the medicaid program.

(b) The term includes any related documents submitted as a part of or in support of the claim.

(39) "Mentally defective" means that a person suffers from a mental disease or defect that renders the person incapable of appreciating the nature of the person's own conduct.

(40) "Mentally incapacitated" means that a person is rendered temporarily incapable of appreciating or controlling the person's own conduct as a result of the influence of an intoxicating substance.

(41) "Misdemeanor" means an offense for which the sentence imposed upon conviction is imprisonment in the county jail for any term or a fine, or both, or for which the sentence imposed is imprisonment in the state prison for any term of 1 year or less.

(42) "Negligently"—a person acts negligently with respect to a result or to a circumstance described hy a statute defining an offense when the person consciously disregards a risk that the result will occur or that the circumstance exists or when the person disregards a risk of which the person should be aware that the result will occur or that the circumstance exists. The risk must be of a nature and degree that to disregard it involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation. "Gross deviation" means a deviation that is considerahly greater than lack of ordinary care. Relevant terms, such as "negligent" and "with negligence", have the same meaning.

(43) "Obtain" means:

(a) in relation to property, to hring about a transfer of interest or possession, whether to the offender or to another; and

(b) in relation to labor or services, to secure the performance of the labor or service.

(44) "Obtains or exerts control" includes hut is not limited to the taking, the carrying away, or the sale, conveyance, or transfer of title to, interest in, or possession of property.

(45) "Occupied structure" means any building, vehicle, or other place suitahle for human occupancy or night lodging of persons or for carrying on business, whether or not a person is actually present. Each unit of a building consisting of two or more units separately secured or occupied is a separate occupied structure.

(46) "Offender" means a person who has been or is liahle to be arrested, charged, convicted, or punished for a public offense.

(47) "Offense" means a crime for which a sentence of death or of imprisonment or a fine is authorized. Offenses are classified as felonies or misdemeanors.

(48) "Official detention" means imprisonment resulting from a conviction for an offense, confinement for an offense, confinement of a person charged with an offense, detention hy a peace officer pursuant to arrest, detention for extradition

HeinOnline -- 1999 vol. II 1338 1999

or deportation, or any lawful detention for the purpose of the protection of the welfare of the person detained or for the protection of society. Official detention does not include supervision of probation or parole, constraint incidental to release on bail, or an unlawful arrest unless the person arrested employed physical force, a threat of physical force, or a weapon to escape.

(49) "Official proceeding" means a proceeding heard or that may be heard before any legislative, judicial, administrative, or other governmental agency or official authorized to take evidence under oath, including any referee, hearing examiner, commissioner, notary, or other person taking testimony or deposition in connection with the proceeding.

(50) "Other state" means any state or territory of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(51) "Owner" means a person other than the offender who has possession of or any other interest in the property involved, even though the interest or possession is unlawful, and without whose consent the offender has no authority to exert control over the property.

(52) "Party official" means a person who holds an elective or appointive post in a political party in the United States by virtue of which the person directs or conducts or participates in directing or conducting party affairs at any level of responsibility.

(53) "Peace officer" means any person who by virtue of the person's office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses while acting within the scope of the person's authority.

(54) "Pecuniary benefit" is benefit in the form of money, property, commercial interests, or anything else the primary significance of which is economic gain.

(55) "Person" includes an individual, business association, partnership, corporation, government, or other legal entity and an individual acting or purporting to act for or on behalf of any government or subdivision of government.

(56) "Physically helpless" means that a person is unconscious or is otherwise physically unable to communicate unwillingness to act.

(57) "Possession" is the knowing control of anything for a sufficient time to be able to terminate control.

(58) "Premises" includes any type of structure or building and any real property.

(59) "Property" means any tangible or intangible thing of value. Property includes but is not limited to:

(a) real estate;

(b) money;

(c) commercial instruments;

(d) admission or transportation tickets;

(e) written instruments that represent or embody rights concerning anything of value, including labor or services, or that are otherwise of value to the owner;

HeinOnline -- 1999 vol. II 1339 1999

(f) things growing on, affixed to, or found on land and things that are part of or affixed to any building;

(g) electricity, gas, and water;

(h) birds, animals, and fish that ordinarily are kept in a state of confinement;

(i) food and drink, samples, cultures, microorganisms, specimens, records, recordings, documents, blueprints, drawings, maps, and whole or partial copies, descriptions, photographs, prototypes, or models thereof;

(j) any other articles, materials, devices, substances, and any whole or partial copies, descriptions, photographs, prototypes, or models thereof that constitute, represent, evidence, reflect, or record secret scientific, technical, merchandising, production, or management information or a secret designed process, procedure, formula, invention, or improvement; and

(k) electronic impulses, electronically processed or produced data or information, commercial instruments, computer software or computer programs, in either machine-or human-readable form, computer services, any other tangible or intangible item of value relating to a computer, computer system, or computer network, and any copies thereof.

(60) "Property of another" means real or personal property in which a person other than the offender has an interest that the offender has no authority to defeat or impair, even though the offender may have an interest in the property.

(61) "Public place" means any place to which the public or any substantial group has access.

(62) "Public servant" means any officer or employee of government, including but not limited to legislators, judges, and firefighters, and any person participating as a juror, advisor, consultant, administrator, executor, guardian, or court-appointed fiduciary. The term does not include witnesses. The term "public servant" includes one who has been elected or designated to become a public servant.

(63) "Purposely"—a person acts purposely with respect to a result or to conduct described by a statute defining an offense if it is the person's conscious object to engage in that conduct or to cause that result. When a particular purpose is an element of an offense, the element is established although the purpose is conditional, unless the condition negatives the harm or evil sought to be prevented by the law defining the offense. Equivalent terms, such as "purpose" and "with the purpose", have the same meaning.

(64) (a) "Serious bodily injury" means bodily injury that:

(i) creates a substantial risk of death;

(ii) causes serious permanent disfigurement or protracted loss or impairment of the function or process of any bodily member or organ; or

(iii) at the time of injury, can reasonably be expected to result in serious permanent disfigurement or protracted loss or impairment of the function or process of any bodily member or organ.

(b) The term includes serious mental illness or impairment.

(65) "Sexual contact" means any touching of the sexual or other intimate parts of the person of another for the purpose of arousing or gratifying the sexual desire of either party.

HeinOnline -- 1999 vol. II 1340 1999

(66) "Sexual intercourse" means penetration of the vulva, anus, or mouth of one person hy the penis of another person, penetration of the vulva or anus of one person by any body member of another person, or penetration of the vulva or anus of one person by any foreign instrument or object manipulated by another person for the purpose of arousing or gratifying the sexual desire of either party. Any penetration, however slight, is sufficient.

(67) "Solicit" or "solicitation" means to command, authorize, urge, incite, request, or advise another to commit an offense.

(68) "State" or "this state" means the state of Montana, all the land and water in respect to which the state of Montana has either exclusive or concurrent jurisdiction, and the air space above the land and water.

(69) "Statute" means any act of the legislature of this state.

(70) "Stolen property" means property over which control has been obtained by theft.

(71) A "stop" is the temporary detention of a person that results when a peace officer orders the person to remain in the peace officer's presence.

(72) "Tamper" means to interfere with something improperly, meddle with it, make unwarranted alterations in its existing condition, or deposit refuse upon it.

(73) "Telephone" means any type of telephone, including but not limited to a corded, uncorded, cellular, or sateltite telephone.

~~(73)~~*(74)* "Threat" means a menace, however communicated, to:

(a) inflict physical harm on the person threatened or any other person or on property;

(b) subject any person to physical confinement or restraint;

(c) commit any criminal offense;

(d) accuse any person of a criminal offense;

(e) expose any person to hatred, contempt, or ridicule;

(f) harm the credit or business repute of any person;

(g) reveal any information sought to he concealed hy the person threatened;

(h) take action as an official against anyone or anything, withhold official action, or cause the action or withholding;

(i) bring about or continue a strike, boycott, or other similar collective action if the person making the threat demands or receives property that is not for the benefit of groups that the person purports to represent; or

(j) testify or provide information or withhold testimony or information with respect to another's legal claim or defense.

~~(74)~~*(75)* (a) "Value" means the market value of the property at the time and place of the crime or, if the market value cannot be satisfactorily ascertained, the cost of the replacement of the property within a reasonable time after the crime. If the offender appropriates a portion of the value of the property, the value must be determined as follows:

(i) The value of an instrument constituting an evidence of deht, such as a check, draft, or promissory note, is considered the amount due or collectible. The

HeinOnline -- 1999 vol. II 1341 1999

figure is ordinarily the face amount of the indebtedness less any portion of the indebtedness that has been satisfied.

(ii) The value of any other instrument that creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation is considered the amount of economic loss that the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

(iii) The value of electronic impulses, electronically produced data or information, computer software or programs, or any other tangible or intangible item relating to a computer, computer system, or computer network is considered to be the amount of economic loss that the owner of the item might reasonably suffer by virtue of the loss of the item. The determination of the amount of economic loss includes but is not limited to consideration of the value of the owner's right to exclusive use or disposition of the item.

(b) When it cannot be determined if the value of the property is more or less than $500 by the standards set forth in subsection ~~(74)(a)~~ *(75)(a)*, its value is considered to be an amount less than $500.

(c) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property.

~~(75)~~*(76)* "Vehicle" means any device for transportation by land, water, or air or by mobile equipment, with provision for transport of an operator.

~~(76)~~*(77)* "Weapon" means any instrument, article, or substance that, regardless of its primary function, is readily capable of being used to produce death or serious bodily injury.

~~(77)~~*(78)* "Witness" means a person whose testimony is desired in any official proceeding, in any investigation by a grand jury, or in a criminal action, prosecution, or proceeding."

Section 2. Section 45-6-307, MCA, is amended to read:

"45-6-307. Aiding the avoidance of telecommunications charges. (1) A person commits the offense of aiding the avoidance of telecommunications charges when ~~he~~ *the person*:

(a) publishes the number or code of an existing, canceled, revoked, expired, or nonexistent telephone credit card or the numbering or coding ~~which~~ *that* is employed in the issuance of credit cards with the purpose that it will be used to avoid the payment of lawful telecommunications charges;

(b) publishes, advertises, sells, gives, or otherwise transfers to another plans or instructions for the making or assembling of any apparatus, instrument, equipment, or device described in 45-6-306(4) with the purpose that ~~such~~ *it* will be used or with the knowledge or reason to believe that ~~such~~ *it* will be used to avoid the payment of lawful telecommunications charges; or

(c) manufactures, assembles, possesses, sells, gives, or otherwise transfers any apparatus, instrument, equipment, or device described in 45-6-306(4) with the purpose that it will be used to avoid the payment of lawful telecommunications charges.

(2) A person convicted of the offense of aiding the avoidance of telecommunications charges shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

HeinOnline -- 1999 vol. II 1342 1999

(3) For the purposes of this section, the term "publish" means to communicate information to any one or more persons, either orally; in person; by *computer,* telephone, radio, or television; or in a writing of any kind, including but not limited to a letter, memorandum, circular, handbill, newspaper or magazine article, or book."

Section 3. Section 45-8-213, MCA, is amended to read:

"45-8-213. Privacy in communications. (1) Except as provided in 69-6-104, a person commits the offense of violating privacy in communications if ~~he~~ *the person* knowingly or purposely:

(a) with the purpose to terrify, intimidate, threaten, harass, annoy, or offend, communicates with ~~any~~ *a* person by telephone and uses ~~any~~ obscene, lewd, or profane language, suggests ~~any~~ *a* lewd or lascivious act, or threatens to inflict injury or physical harm to the person or property of ~~any~~ *the* person. ~~(the~~ *The* use of obscene, lewd, or profane language or the making of a threat or lewd or lascivious suggestions is prima facie evidence of an intent to terrify, intimidate, threaten, harass, annoy, or offend~~)~~;

(b) uses a telephone to attempt to extort money or any other thing of value from ~~any~~ *a* person or to disturb by repeated telephone calls the peace, quiet, or right of privacy of ~~any~~ *a* person at the place where the telephone call or calls are received;

(c) records or causes to he recorded ~~any~~ *a* conversation by use of a hidden electronic or mechanical device ~~which~~ *that* reproduces a human conversation without the knowledge of all parties to the conversation. ~~Subsection (c)~~ *This subsection (1)(c)* does not apply to ~~duly~~ elected or appointed public officials or employees when the transcription or recording is done in the performance of official duty, to persons speaking at public meetings, or to persons given warning of the *transcription or* recording.

(d) by means of any machine, instrument, or contrivance or in any other manner:

(i) reads or attempts to read ~~any~~ *a* message or learn the contents ~~thereof~~ *of a message* while it is heing sent over a telegraph line;

(ii) learns or attempts to learn the contents of ~~any~~ *a* message while it is in a telegraph office or is being received ~~thereat~~ *at* or sent ~~therefrom~~ *from a telegraph office*; or

(iii) uses, attempts to use, or communicates to others any information ~~so~~ obtained *as provided in this subsection (1)(d)*;

(e) discloses the contents of a telegraphic message or any part ~~thereof~~ *of a telegraphic message* addressed to another person without the permission of ~~such~~ *the* person, unless directed to do so by the lawful order of a court; or

(f) opens or reads or causes to he read any sealed letter not addressed to ~~himself~~ *the person opening the letter* without being authorized to do so by either the writer of the letter or the person to whom it is addressed or, without the like authority, publishes any of the contents of the letter knowing the ~~same~~ *letter* to have been unlawfully opened.

(2) Except as provided in 69-6-104, a person commits the offense of violating privacy in communications if the person purposely intercepts a telephonic voice or data communication. This subsection (2) does not apply to elected or appointed

public officials or employees when the interception is done in the performance of official duty or to persons given warning of the interception.

~~(2)~~*(3)* (a) A person convicted of the offense of violating privacy in communications shall be fined not to exceed $500 or imprisoned in the county jail for a term not to exceed 6 months, or both.

(b) On a second conviction of subsection (1)(a) or (1)(b), a person shall be imprisoned in the county jail for a term not to exceed 1 year or be fined an amount not to exceed $1,000, or both.

(c) On a third or subsequent conviction of subsection (1)(a) or (1)(b), a person shall be imprisoned in the state prison for a term not to exceed 5 years or be fined an amount not to exceed $10,000, or both."

Approved April 19, 1999

CHAPTER NO. 355

[SB 423]

AN ACT MODIFYING PROCEDURES FOR CONDUCTING A HEARING ON ANNEXATION IN CONJUNCTION WITH A HEARING ON ZONING; AND AMENDING SECTION 76-2-303, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-2-303, MCA, is amended to read:

"76-2-303. Procedure to administer certain annexations and zoning laws — hearing and notice. (1) The city or town council or other legislative body of a municipality shall provide for the manner in which regulations and restrictions and the boundaries of districts are determined, established, ~~and~~ enforced, and ~~from time to time amended, supplemented, or~~ changed, *subject to the requirements of subsection (2).*

(2) ~~However, a~~ *A* regulation, restriction, or boundary may not become effective until after a public hearing in relation to the regulation, restriction, or boundary at which parties in interest and citizens have an opportunity to be heard has been held. At least 15 days' notice of the time and place of the hearing must be published in an official paper or a paper of general circulation in the municipality.

(3) *(a)* For municipal annexations, a municipality may conduct a hearing on the annexation in conjunction with a hearing on the zoning of the proposed annexation, provided that the ~~municipality continues on~~ *proposed municipal zoning regulations for* the annexed property*:*

(i) authorize ~~a~~ land ~~use~~ *uses* comparable to the land ~~use~~ *uses* authorized by county zoning*;*

(ii) authorize land uses that are consistent with land uses approved by the board of county commissioners or the board of adjustment pursuant to part 1 or 2 of this chapter; or

(iii) are consistent with zoning requirements recommended in the master plan adopted pursuant to chapter 1 of this title for the annexed property.

HeinOnline -- 1999 vol. II 1344 1999

(b) A joint hearing authorized under this subsection fulfills a municipality's obligation regarding zoning notice and public hearing for a proposed annexation."

Approved April 19, 1999

CHAPTER NO. 356

[SB 470]

AN ACT REMOVING THE LIMITATION ON THE AMOUNT OF MONEY THAT MAY BE DEPOSITED IN THE ENDOWMENT FOR CHILDREN; AND AMENDING SECTION 41-3-705, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-3-705, MCA, is amended to read:

"41-3-705. Endowment for children. (1) There is within the nonexpendable trust fund type an endowment for children. The endowment is not subject to appropriation. The purpose of the endowment is to provide a permanent source of funding to support the programs and services referred to in 41-3-701.

(2) The endowment may receive funds from:

(a) appropriations;

(b) gifts, grants, and donations, from public or private sources; and

(c) other money credited or transferred to the endowment from any other fund or source.

(3) The state treasurer must receive and shall deposit money in the endowment. The board of investments shall invest the money in the endowment. ~~When the endowment reaches $5 million, further deposits may not be made to the endowment.~~ Only the interest generated by the endowment is available for expenditure by the board."

Approved April 19, 1999

CHAPTER NO. 357

[SB 476]

AN ACT REVISING THE LAWS RELATING TO CONSTRUCTION LIENS; REVISING THE FORM FOR GIVING NOTICE OF THE RIGHT TO CLAIM A CONSTRUCTION LIEN; PROVIDING THAT THE COUNTY CLERK AND RECORDER MAY ALLOW THE LIEN AND A NOTICE OF THE RIGHT TO CLAIM A LIEN TO BE FILED ELECTRONICALLY; AND AMENDING SECTIONS 71-3-531, 71-3-532, AND 71-3-535, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 71-3-531, MCA, is amended to read:

"71-3-531. Notice of right to claim lien required — exceptions. (1) The following are not required to give notice of a right to claim a lien as required by this section:

HeinOnline -- 1999 vol. II 1345 1999

(a) a person who furnishes services or materials directly to the owner at ~~his~~ *the owner's* request;

(b) a wage earner or laborer who performs personal labor services for a person furnishing any service or material pursuant to a real estate improvement contract;

(c) a person who furnishes services or materials pursuant to a real estate improvement contract that relates to a dwelling for five or more families; and

(d) a person who furnishes services or materials pursuant to a real estate improvement contract that relates to an improvement that is partly or wholly commercial in character.

(2) A person who may claim a construction lien pursuant to this part shall give notice of ~~his~~ *the* right to claim a lien to the contracting owner in order to claim a lien.

(3) Except as provided in subsection (4), this notice ~~must~~ *may not* be given ~~no~~ later than 20 days after the date on which the services or materials are first furnished to the contracting owner. If notice is not given within this period, a lien is enforceable only for the services or materials furnished witbin the 20-day period before the date on which notice is given.

(4) When payment for services or materials furnished pursuant to a real estate improvement contract, excluding a contract on an owner-occupied residence, is made by or on behalf of the contracting party from funds provided by a regulated lender and secured by an interest, lien, mortgage, or encumbrance for the purpose of paying the particular real estate improvement being liened, the notice required by this section ~~must~~ *may not* be given ~~no~~ later than 45 days after the date on which the services or materials are first furnished to the contracting owner. If notice is not given within this period, a lien is enforceable only for the services or materials furnished within the 45-day period before the date on which notice is given.

(5) The notice of the right to claim a lien must be sent to the contracting owner by certified mail or delivered personally to ~~him~~ *the owner*. Notice by certified mail is effective on the date *on which* the notice is mailed. If the notice is delivered, written acknowledgement of receipt must be obtained from the owner. A person may not claim a construction lien unless ~~he~~ *the person* has complied with this subsection.

(6) (a) A person who may claim a lien shall also file witli the clerk and recorder of the county in which the improved real estate is located a copy of the notice of the right to claim a lien, in the form required by 71-3-532. Tbis copy ~~must~~ *may not* be filed ~~no~~ later than 5 business days after the date on which the notice of the right to claim a lien is given to the contracting owner.

(b) The county clerk and recorder may allow the notice of the right to claim a lien to be electronically filed.

~~(b)~~*(c)* The notice filed with the clerk and recorder for the purpose of public notice is effective for 1 year from the date of filmg. The notice lapses upon the expiration of the 1-year period unless the person who may claim a lien files with the clerk and recorder a 1-year continuation of the notice prior to the date on which the notice lapses. The clerk and recorder may remove the notice from the public record when it lapses.

~~(c)~~*(d)* The continuation statement must include:

(i) the clerk and recorder's file number of the notice;

(ii) the date on which the notice originally was filed; and

(iii) the name of the person to whom the original notice was given.

~~(d)~~*(e)* If a notice of a right to claim a lien is required under this section, a person may not claim a construction lien pursuant to this part unless there is an unexpired notice of right to claim a construction lien or an unexpired continuation notice filed with the clerk and recorder at the time ~~he~~ *that the person* files ~~his~~ *the* lien.

(7) At the request of any subcontractor or material supplier who may claim a lien through ~~him~~ *a person providing services or materials to a contracting owner*, ~~a~~ *the* person shall furnish to the requestor within 5 business days:

(a) a description sufficient to identify the real estate being improved; and

(b) the name and address of the contracting owner."

Section 2. Section 71-3-532, MCA, is amended to read:

"71-3-532. Content of notice of right to claim lien. (1) The notice of the right to claim a lien must be in writing and state that it is a notice of a right to claim a lien against real estate for services or materials furnished in connection with improvement of the real estate.

(2) The notice must contain a description sufficient to identify the real estate against which the lien may be claimed.

(3) The notice must contain the following information ~~and be in substantially the following form~~:

(a) date of mailing;

(b) owner's name;

(c) owner's address;

(d) name of person filing notice;

(e) address of person filing notice;

(f) a description sufficient to identify the property that is being improved; and

(g) the following notice:

NOTICE OF THE RIGHT TO CLAIM A LIEN

WARNING: READ THIS NOTICE. PROTECT YOURSELF FROM PAYING ANY CONTRACTOR OR SUPPLIER TWICE FOR THE SAME SERVICE.

~~To: ..... Date of mailing: .....~~

~~(Owner)~~

~~.....~~

~~(Owner's address)~~

~~This is to inform you that ..... has begun to provide ..... (description of services or materials) ordered by ..... for improvements to property you own. The property is located at .....~~

~~A lien may be claimed for all services and materials furnished to you if this notice is given to you within 20 days after the date on which the services or materials described are first furnished to you. If the notice is not given within that time, a lien is enforceable for only the services or materials furnished within~~

HeinOnline -- 1999 vol. II 1347 1999

~~the 20-day period before the date on which the notice is given. However, if a regulated lender has provided the funds for the services or materials described in this notice, the notice may be given 45 days after the date the services or materials are first furnished to you. If the notice is not given within that time, a lien is enforceable for only the services or materials furnished within the 45-day period before the date the notice is given.~~

~~Even if you or your mortgage lender have made full payment to the contractor who ordered these services or materials, your property may still be subject to a lien unless the subcontractor or material supplier providing this notice is paid.~~ *This is to inform you that ..... has begun to provide ..... (description of services or materials) ordered by ..... for improvements to property you own. The property is located at ..... . If ..... is not paid, a lien may be filed against the property.* THIS IS NOT A LIEN. It is a notice sent to you for your protection in compliance with the construction lien laws of the state of Montana.

~~This notice has been sent to you by:~~

~~NAME:.....~~ ~~IF YOU HAVE ANY QUESTIONS~~

~~ADDRESS:.....~~ ~~ABOUT THIS NOTICE, PLEASE~~

~~TELEPHONE:.....~~ ~~CALL US~~

~~IMPORTANT INFORMATION ON REVERSE SIDE~~

~~IMPORTANT INFORMATION FOR YOUR PROTECTION~~

This notice has been sent to you by:

NAME: .....

ADDRESS: .....

TELEPHONE: .....

Under Montana's laws, those who work on your property or provide materials and are not paid have a right to enforce their claim for payment against your property. This claim is known as a construction lien.

If your contractor fails to pay subcontractors or material suppliers or neglects to make other legally required payments, the people who are owed money may look to your property for payment, even if you have paid your contractor in full.

The law states that all people hired by a contractor to provide you with services or materials are required to give you a notice of the right to claim a lien to let you know what they have provided.

WAYS TO PROTECT YOURSELF ARE:

— RECOGNIZE that this notice of delivery of services or materials may result in a lien against your property unless all those supplying a notice of the right to lien have been paid.

— LEARN more ahout the construction lien laws and the meaning of this notice by contacting an attorney or the firm sending this notice.

— WHEN PAYING your contractor for services or materials, you may make checks payable jointly to the contractor and the firm furnishing services or materials for which you have received a notice of the right to claim a lien.

HeinOnline -- 1999 vol. II 1348 1999

— OBTAIN EVIDENCE that all firms from whom you have received a notice of the right to claim a lien have been paid or have waived the right to claim a lien against your property.

— CONSULT an attorney, a professional escrow company, or your mortgage lender."

Section 3. Section 71-3-535, MCA, is amended to read:

"71-3-535. Attachment of lien — filing. (1) A person's lien does not attach and may not be enforced unless, after entering into the contract under which the lien arises, ~~he~~ *the person* has filed a lien not later than 90 days after:

(a) ~~his~~ *the person's* final furnishing of services or materials; or

(b) the owner files a notice of completion pursuant to 71-3-533.

(2) (a) The lien must be filed with the county clerk and recorder of the county in which the improved real estate is located, *and the county clerk and recorder may allow the lien to be filed electronically.*

(b) The person claiming the lien ~~must~~ *shall* certify to the county clerk and recorder that a copy of the lien has been served on the owner of record as provided in 71-3-534(2).

(3) The lien statement must contain:

(a) the name and address of the person claiming the lien;

(b) a description of the real property against which the lien is claimed sufficient to identify it;

(c) the name of the contracting owner;

(d) the name and address of the party with whom the person claiming the lien contracted to furnish services or materials;

(e) a description of the services or materials provided;

(f) the amount unpaid for services or materials or, if no amount is fixed by the contract, a good faith estimate of the amount unpaid, designated as an estimate;

(g) (i) the date on which the services or materials were first furnished; and

(ii) the date on which the services or materials were last furnished; and

(h) a declaration that a notice of a right to claim a lien was given to the contracting owner or an explanation of why ~~such~~ *the* notice was not required.

(4) A lien notice that is filed pursuant to this section before the person claiming the lien has substantially furnished services or materials pursuant to a real estate improvement contract is not effective to create a construction lien unless the lien claimant is prevented from fulfilling ~~his~~ *the lien claimant's* obligation because of the fault of another person.

(5) Except as provided in subsection (6), a lien attaches at the commencement of work as defined in 71-3-522.

(6) A lien attaches when it is filed if it is for the preparation of plans, surveys, or architectural or engineering plans or drawings for any change in the physical condition of land or structures that are not used incident to producing a change in the physical condition of the real estate."

Approved April 19, 1999

HeinOnline -- 1999 vol. II 1349 1999

CHAPTER NO. 358

[HB 59]

AN ACT AUTHORIZING PLEA AGREEMENTS SUBJECTING OFFENDERS TO THE SEXUAL AND VIOLENT OFFENDER REGISTRATION LAWS; REQUIRING THE DEPARTMENT OF CORRECTIONS TO APPLY LEVEL DESIGNATIONS TO OFFENDERS SUBJECT TO REGISTRATION REQUIREMENTS IF LEVELS WERE NOT DESIGNATED AT SENTENCING; AND AMENDING SECTION 46-23-509, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Plea agreement agreeing to compliance with this part. A defendant convicted of an offense that would otherwise not be subject to registration under this part may agree to comply with the registration requirements of this part as part of a plea agreement, and a court accepting the plea agreement may order the defendant to comply with this part.

Section 2. Section 46-23-509, MCA, is amended to read:

"46-23-509. Sexual offender evaluations and designations — rule-making authority. (1) The department shall adopt rules for the qualification of sexual offender evaluators who conduct sexual offender and sexually violent predator evaluations and for determinations by sexual offender evaluators of the risk of a repeat offense and the threat *that* an offender poses to the public safety.

(2) Prior to sentencing of a person convicted of a sexual offense, the department or a sexual offender evaluator shall provide the court with a sexual offender evaluation report recommending one of the following levels of designation for the offender:

(a) level 1, the risk of a repeat sexual offense is low;

(b) level 2, the risk of a repeat sexual offense is moderate;

(c) level 3, the risk of a repeat sexual offense is high, there is a threat to public safety, and the *sexual offender* evaluator believes that the offender is a sexually violent predator.

(3) Upon sentencing the offender, the court shall:

(a) review the sexual offender evaluation report, any statement by a victim, and any statement by the offender;

(b) designate the offender as level 1, 2, or 3; and

(c) designate a level 3 offender as a sexually violent predator.

(4) An offender designated as a level 2 or level 3 offender may petition the sentencing court to change the offender's designation if the offender has enrolled in and successfully completed the treatment phase of either the prison's sexual offender program or of an equivalent program approved by the department. After considering the petition, the court may change the offender's risk level designation if the court finds by clear and convincing evidence that the offender's risk of committing a repeat sexual offense has changed since the time sentence was imposed. The court shall impose one of the three risk levels specified in this section.

(5) If, at the time of sentencing, the sentencing judge did not apply a level designation to a sexual offender who is required to register under this part, the

HeinOnline -- 1999 vol. II 1350 1999

department shall designate the offender as level 1, 2, or 3 when the offender is released from confinement."

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 46, chapter 23, part 5, and the provisions of Title 46, chapter 23, part 5, apply to [section 1].

Approved April 20, 1999

CHAPTER NO. 359

[HB 71]

AN ACT AUTHORIZING A SCHOOL DISTRICT WHOSE CURRENT YEAR GENERAL FUND BUDGET EXCEEDS THE ENSUING YEAR'S MAXIMUM GENERAL FUND BUDGET AMOUNT TO ADOPT A GENERAL FUND BUDGET FOR THE ENSUING YEAR UP TO THE ENSUING YEAR'S MAXIMUM GENERAL FUND AMOUNT OR UP TO 94 PERCENT OF THE CURRENT YEAR'S GENERAL FUND BUDGET, WHICHEVER IS GREATER; ALLOWING ADOPTION OF A GENERAL FUND BUDGET THAT EXCEEDS THE MAXIMUM GENERAL FUND BUDGET FOR A MAXIMUM OF 5 CONSECUTIVE YEARS; PROVIDING AN EXCEPTION REQUIRING A SCHOOL DISTRICT WHOSE BUDGET EXCEEDS THE MAXIMUM GENERAL FUND BUDGET BECAUSE THE AVERAGE NUMBER BELONGING DECLINES 30 PERCENT OR MORE TO REDUCE ITS GENERAL FUND BUDGET PROPORTIONATELY OVER 5 CONSECUTIVE YEARS; ELIMINATING THE PROVISION FOR TRUSTEES TO ADOPT A BUDGET BASED ON THE PREVIOUS YEAR'S GENERAL FUND BUDGET PER-ANB; PROVIDING THAT A VOTE IS REQUIRED FOR ANY INCREASE IN LOCAL PROPERTY TAXES; AMENDING SECTIONS 20-9-308 AND 20-9-353, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-308, MCA, is amended to read:

"20-9-308. BASE budgets and maximum general fund budgets. (1) The trustees of a district shall adopt a general fund budget that:

~~(a) except as provided in subsection (2),~~ is at least equal to the BASE budget established for the district~~; or~~ *and,*

~~(b)~~ except as provided in ~~section 3, Chapter 38, Special Laws of November 1993, and~~ subsection ~~(4)~~ *(3)* of this section, does not exceed the maximum general fund budget established for the district.

~~(2) (a) If the BASE budget for a district for the school fiscal year is greater than the general fund budget of the district for the prior school fiscal year, the trustees of the district:~~

~~(i) shall increase the general fund budget by at least:~~

~~(A) 25% of the range between the district general fund budget for the school fiscal year ending June 30, 1994, and the BASE budget for the district for the school fiscal year beginning July 1, 1994;~~

HeinOnline -- 1999 vol. II 1351 1999

~~(B) 33.3% of the range between the district general fund budget for the school fiscal year ending June 30, 1995, and the BASE budget for the district for the school fiscal year beginning July 1, 1995;~~

~~(C) 50% of the range between the district general fund budget for the school fiscal year ending June 30, 1996, and the BASE budget for the district for the school fiscal year beginning July 1, 1996; or~~

~~(D) the remainder of the range between the district general fund budget for the school fiscal year ending June 30, 1997, and the BASE budget for the district for the school fiscal year beginning July 1, 1997;~~

~~(ii) may increase the general fund budget beyond the amount in subsection (2)(a)(i) but not by more than 4% of the previous year's general fund budget or by more than 4% of the previous year's general fund per-ANB multiplied by the current year's ANB for budgeting purposes pursuant to subsection (2)(b).~~

~~(b) The trustees shall submit a proposition on any amount exceeding the limitations in subsection (2)(a)(i) to the electors of the district, as provided in 20-9-353.~~

~~(3) (a)~~*(2) (a)* Whenever the trustees of a district adopt a general fund budget that exceeds the BASE budget for the district but does not exceed the maximum general fund budget for the district, the trustees shall submit a proposition to the electors of the district, as provided in 20-9-353~~, for any budget amount that exceeds the previous year's general fund budget amount or the previous year's general fund budget per-ANB multiplied by the current year's ANB for budgeting purposes~~.

(b) A general fund budget adopted under this subsection ~~(3)~~ *(2)* may not exceed the greater of:

(i) 104% of the previous year's general fund budget ~~as adjusted by the provisions of section 3, Chapter 38, Special Laws of November 1993~~; or

(ii) 104% of the previous year's general fund budget per-ANB multiplied by the current year's ANB for budgeting purposes ~~as adjusted by the provisions of section 3, Chapter 38, Special Laws of November 1993~~.

~~(4) (a) If the maximum general fund budget for a district for an ensuing school fiscal year is less than the general fund budget for the district for the current school fiscal year, as adjusted by the provisions of section 3, Chapter 38, Special Laws of November 1993, the trustees of the district may not adopt a general fund budget for the ensuing school fiscal year that is greater than the district's general fund budget for the current school fiscal year.~~

(3) (a) (i) Except as provided in subsections (3)(a)(ii) and (3)(a)(iii), the trustees of a district whose current year general fund budget exceeds the ensuing year's maximum budget amount may adopt a general fund budget for the ensuing year up to the ensuing year's maximum general fund budget amount or up to 94% of the current year's general fund budget, whichever is greater. A school district may adopt a budget under the criteria of this subsection (3) for a maximum of 5 consecutive years.

(ii) The trustees of a district whose general fund budget was above the maximum general fund budget established by Chapter 30, Special Laws of November 1993, may continue to adopt a general fund budget in each ensuing school fiscal year that exceeds the district's maximum general fund budget but does not exceed the district's general fund budget for the current school fiscal year.

HeinOnline -- 1999 vol. II 1352 1999

(iii) A school district whose current budget exceeds the ensuing year's maximum budget and whose current year ANB exceeds the ensuing year's ANB by 30% or more shall reduce its adopted budget by:

(A) in the first year, 20% of the range between the district's adopted general fund budget for the current fiscal year and the maximum general fund for the ensuing school fiscal year;

(B) in the second year, 25% of the range between the district's adopted general fund budget for the current school fiscal year and the maximum general fund budget for the ensuing school fiscal year;

(C) in the third year, 33.3% of the range between the district's adopted general fund budget for the current fiscal year and the maximum general fund budget for the ensuing school fiscal year;

(D) in the fourth year, 50% of the range between the district's adopted general fund budget for the current fiscal year and the maximum general fund budget for the ensuing school fiscal year; and

(E) in the fifth year, the remainder of the range between the district's adopted general fund budget for the current fiscal year and the maximum general fund budget for the ensuing school fiscal year.

(b) ~~Except for the school fiscal year beginning July 1, 1994, the~~ *The* trustees of the district shall submit a proposition to raise any general fund budget amount that is in excess of the maximum general fund budget for the district to the electors who are qualified under 20-20-301 to vote on the proposition, as provided in 20-9-353.

~~(5)~~*(4)* ~~Whenever the trustees of a district adopt a general fund budget that does not exceed the BASE budget for the district, the trustees shall finance this amount with~~ *The BASE budget for the district must be financed by* the following sources of revenue:

(a) state equalization aid, as provided in 20-9-343, including any guaranteed tax base aid for which the district may be eligible, as provided in 20-9-366 through 20-9-369;

(b) county equalization aid, as provided in 20-9-331 and 20-9-333;

(c) a district levy for support of a school not approved as an isolated school under the provisions of 20-9-302;

(d) payments in support of special education programs under the provisions of 20-9-321;

(e) nonlevy revenue, as provided in 20-9-141; and

(f) a BASE budget levy on the taxable value of all property within the district.

~~(6)~~*(5)* The over-BASE budget amount of a district must be financed by a levy on the taxable value of all property within the district or other revenue available to the district, as provided in 20-9-141."

Section 2. Section 20-9-353, MCA, is amended to read:

"20-9-353. Additional financing for general fund — election for authorization to impose. (1) The trustees of a district may propose to adopt:

~~(a) a budget amount up to the BASE budget amount for the district general fund that is within the limitations and required budget increases provided in 20-9-308(2);~~

~~(b)~~*(a)* an over-BASE budget amount for the district general fund that does not exceed the maximum general fund budget for the district or other limitations, as provided in ~~20-9-308(3)~~ *20-9-308(2)*; or

~~(c)~~*(b)* a general fund budget amount in excess of the maximum general fund budget amount for the district, as provided in ~~20-9-308(4)~~ *20-9-308(3)(a)(ii)*.

(2) *When the trustees of the district propose to adopt an over-BASE budget under subsection (1)(a), any increase in local property taxes authorized by 20-9-308(5) must be submitted to a vote of the qualified electors of the district. The trustees are not required to submit to the qualified electors any increase in state funding of the basic or per-ANB entitlements approved by the legislature.* When the trustees of a district determine that a voted amount of financing is required for the general fund budget, the trustees shall submit the proposition to finance the ~~additional~~ *voted* amount ~~of general fund financing~~ to the electors who are qualified under 20-20-301 to vote upon the proposition. The special election must be called and conducted in the manner prescribed by this title for school elections. The ballot for the election must state the amount of ~~money to be financed, the approximate number of mills required to raise all or a portion of the money, and the purpose for which the money will be expended~~ *the estimated increase in local property taxes and the estimated impact on the over-BASE mills needed to fund the general fund budget*. The ballot must be in the following format:

PROPOSITION

The district levied (state the total amount of local property taxes levied in support of the district's prior year's over-BASE general fund budget) dollars and (state the total number of mills levied in support of the district's prior year's over-BASE general fund budget) mills to support the previous year's over-BASE general fund budget. If this proposition is approved, the local property taxes to support the district's proposed over-BASE general fund budget will increase by (state the additional local property taxes) dollars. The mills will (increase or decrease as applicable) by (insert the number of mills) mills.

Shall the district be authorized to ~~expend the sum of (state the additional amount to be expended), and being approximately (give number) mills, for the purpose of (insert the purpose for which the additional financing is made)~~ *increase the local property taxes by (insert the amount), which will (increase or decrease as applicable) the local mills by (insert the number of mills) mills*?

☐ FOR ~~budget authority and any~~ *the additional* levy.

☐ AGAINST ~~budget authority and any~~ *the additional* levy.

(3) When the trustees of a district propose to adopt a general fund budget amount in excess of the maximum general fund budget under subsection (1)(b), the trustees shall submit the proposition to finance the additional amount of general fund budget authority to the electors who are qualified under 20-20-301 to vote upon the proposition. The special election must be called and conducted in the manner prescribed by this title for school elections. The ballot for the election must state the amount of the budget to be financed, the approximate number of mills required to fund all or a portion of the budget amount, and the purpose for which the money will be expended. The ballot must be in the following format:

PROPOSITION

Shall the district be authorized to expend the sum of (state the additional amount to be expended) and being approximately (give number) mills for the purpose of (insert the purpose for which the additional financing is made)?

HeinOnline -- 1999 vol. II 1354 1999

[ ] *FOR budget authority and any levy.*

[ ] *AGAINST budget authority and levy.*

~~(3)~~*(4)* If the election on any additional financing *or budget authority* for the general fund is approved by a majority vote of the electers voting at the election, the proposition carries and the trustees may use any portion or all of the authorized amount in adopting the final general fund budget. The trustees shall certify any additional levy amount authorized by the special election on the budget form that is submitted to the county superintendent, and the county commissioners shall levy the authorized number of mills on the taxable value of all taxable property within the district, as prescribed in 20-9-141~~, to raise the amount of the additional levy~~.

~~(4)~~*(5)* Authorization to levy an additional tax to support a budget amount adopted as allowed by ~~20-9-308(4)~~ *20-9-308(3)(a)(ii)* is effective for only 1 school fiscal year.

~~(5)~~*(6)* All levies adopted under this section must be authorized by a special election conducted before August 1 of the school fiscal year for which it is effective.

~~(6)~~*(7)* If the trustees of a district are required to submit a proposition to finance an ~~increased amount up to the BASE budget amount, as provided in 20-9-308(2)(b), an increased~~ over-BASE budget amount~~, as provided in 20-9-308(3)(a),~~ or an amount in excess of the maximum general fund budget amount for the district as allowed by ~~20-9-308(4)~~ *20-9-308(3)(a)(ii)* to the electors of the district, the trustees shall comply with the provisions of subsections (2) through ~~(4)~~ *(6) of this section.*"

Section 3. Effective date — applicability. [This act] is effective July 1, 1999, and applies to school budgets for the school fiscal years beginning on or after July 1, 2000.

Approved April 20, 1999

CHAPTER NO. 360

[HB 72]

AN ACT PROVIDING A GUARANTEED ANNUAL BENEFIT ADJUSTMENT FOR CERTAIN BENEFIT RECIPIENTS IN THE TEACHERS' RETIREMENT SYSTEM; INCREASING EMPLOYEE CONTRIBUTION RATES; PROVIDING A STATE CONTRIBUTION; PROVIDING FOR A MINIMUM MONTHLY BENEFIT ALLOWANCE; ELIMINATING CURRENT POSTRETIREMENT ADJUSTMENT PROVISIONS; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTIONS 17-7-502 AND 19-20-602, MCA; REPEALING SECTIONS 19-20-711, 19-20-712, 19-20-713, AND 19-20-714, MCA; AND PROVIDING AN EFFECTIVE DATE AND A CONTINGENT TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Seetion 1. Guaranteed annual benefit adjustment — rulemaking. (1) On January 1 of each year, the retirement allowance payable to each recipient who is eligible under subsection (2) must be increased by 1.5%.

HeinOnline -- 1999 vol. II 1355 1999

(2) A benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if the retiree's most recent retirement effective date is at least 36 months prior to January 1 of the year in which the adjustment is to be made.

(3) The board shall adopt rules to administer the provisions of this section.

Section 2. State contributions — termination. The state shall contribute monthly from the general fund to the pension trust fund a sum equal to 0.11% of the compensation of members participating in the system on or after July 1, 1999. The contributions are statutorily appropriated, as provided in 17-7-502, to the pension trust fund. The state contribution provided for in this section terminates when the amortization period for the system's unfunded liability is 10 years or less according to the system's latest actuarial valuation. The board shall certify amounts due under this section on a monthly basis. The state treasurer shall transfer the certified amounts to the pension trust fund within 1 week.

Section 3. Section 17-7-502, MCA, is amended to read:

"17-7-502. (Temporary) Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 3-5-901; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706; 15-30-195; 15-31-702; 15-36-324; 15-36-325; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-406; 16-1-411; 16-11-308; 17-3-106; 17-3-212; 17-3-222; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-6-709; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; *[section 2]*; 20-8-107; 20-8-111; 20-26-1503; 22-3-1004; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 39-71-907; 39-71-2321; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 53-6-703; 53-24-206; 67-3-205; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-1-131; 80-2-103; 80-2-222; 80-4-416; 81-5-111; 82-11-161; 85-20-402; 87-1-513; 90-3-301; 90-4-215; 90-6-331; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient

HeinOnline -- 1999 vol. II 1356 1999

eligible for supplemental benefit; pursuant to sec. 7(2), Ch. 29, L. 1995, the inclusion of 15-30-195 terminates July 1, 2001; pursuant to sec. 5, Ch. 461, L. 1997, the inclusion of 77-1-131 terminates October 1, 2003; and pursuant to secs. 13, 16(1), Ch. 549, L. 1997, the inclusion of 90-3-301 terminates July 1, 1999.)

17-7-502. (Effective July 1, 2008) Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 3-5-901; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-23-706; 15-30-195; 15-31-702; 15-36-324; 15-36-325; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; [16-1-406;] 16-1-411; 16-11-308; 17-3-106; 17-3-212; 17-3-222; 17-5-404; 17-5-804; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-6-709; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-205; 19-19-305; 19-19-506; *[section 2];* 20-8-107; 20-9-361; 20-26-1503; 22-3-1004; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 32-1-537; 37-43-204; 37-51-501; 39-71-503; 39-71-907; 39-71-2321; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 50-5-232; 50-40-206; 53-6-150; 53-6-703; 53-24-206; 60-2-220; 67-3-205; 75-1-1101; 75-5-1108; 75-6-214; 75-5-1108; 75-6-214; 75-11-313; 77-1-505; 80-2-103; 80-2-222; 80-4-416; 81-5-111; 82-11-136; 82-11-161; 85-1-220; 85-20-402; 87-1-513; 90-4-215; 90-6-331; 90-7-220; 90-7-221; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant to sec. 68(2), Ch. 422, L. 1997, this version becomes effective July 1, 2008.)"

Section 4. Section 19-20-602, MCA, is amended to read:

"19-20-602. Annuity savings fund — member's contribution. *(1)* The annuity savings fund is a fund in which the contributions for the members to provide for their retirement allowance or benefits must be accumulated in individual accounts for each member. The normal contribution of each member is ~~7.044%~~ *7.15%* of the member's earned compensation.

(2) Contributions to and payments from the annuity savings fund must be made in the following manner:

HeinOnline -- 1999 vol. II 1357 1999

~~(1) (a)~~*(a) (i)* Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Code of 1954, as amended and applicable on July 1, 1985, shall pick up and pay the contributions that would be payable by the member under this section for service rendered after June 30, 1985.

~~(b)~~*(ii)* The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system. These contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

~~(c)~~*(iii)* The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's earned compensation as defined in 19-20-101.

(iv) The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the retirement board.

~~(d)~~*(b)* The deductions must be made notwithstanding that the minimum compensation provided by law for a member may be reduced by the deductions. Each member is considered to consent to the deductions prescribed by this section, and payment of salary or compensation less the deductions is a complete discharge of all claims for the services rendered by the member during the period covered by the payment, except as to the benefits provided by the retirement system.

~~(2)~~*(3)* In addition to the normal contributions and subject to the approval of the retirement board, a member may redeposit in the annuity savings fund, by a single payment or by an increased rate of contribution, an amount equal to accumulated contributions that the member has previously withdrawn, plus interest in the amount the contributions would have earned had the contributions not been withdrawn.

~~(3)~~*(4)* The accumulated contributions of a member withdrawn by the member or paid to the member's estate or to the member's designated beneficiary in event of the member's death must be paid from the annuity savings fund. Upon the retirement of a member, the member's accumulated contributions must be transferred from the annuity savings fund to the pension accumulation fund."

Section 5. Minimum monthly benefit allowance. (1) A retired member of the retirement system who on July 1, 1999, is receiving a service or disability retirement allowance that is less than $500 is eligible to receive a minimum monthly benefit allowance of $500 if the member at the time of retirement had 25 years or more of creditable service.

(2) A beneficiary or beneficiaries of a deceased retired member who on July 1, 1999, are receiving an optional service, disability, or survivorship allowance that when added together are less than $500 are eligible to receive a proportional share of a minimum monthly benefit allowance of $500 if the retired member at the time of retirement had 25 years or more of creditable service.

(3) If on July 1, 1999, multiple beneficiaries are receiving benefits under a retired member's account, the minimum monthly benefit must be divided in the same proportion as was the initial service, disability, or survivorship allowance.

HeinOnline -- 1999 vol. II 1358 1999

Section 6. Repealer. Sections 19-20-711, 19-20-712, 19-20-713, and 19-20-714, MCA, are repealed.

Section 7. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 19, chapter 20, part 7, and the provisions of Title 19, chapter 20, part 7, apply to [section 1].

(2) [Sections 2 and 5] are intended to be codified as an integral part of Title 19, chapter 20, part 6, and the provisions of Title 19, chapter 20, part 6, apply to [sections 2 and 5].

Section 8. Nonseverability. It is the intent of the legislature that each part of [this act] is essentially dependent upon every other part, and if one part is held unconstitutional or invalid, all other parts are invalid.

Section 9. Effective date. [This act] is effective July 1, 1999.

Section 10. Contingent termination. [Sections 2 and 3] terminate when the amortization period for the system's unfunded liability is 10 years or less according to the system's latest actuarial valuation. The teachers' retirement board shall notify the governor and the code commissioner on occurrence of this contingency.

Approved April 20, 1999

CHAPTER NO. 361

[HB 98]

AN ACT CLARIFYING WHEN A LICENSE TO PERFORM PLUMBING WORK IS REQUIRED; AND AMENDING SECTIONS 37-69-102 AND 37-69-301, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-69-102, MCA, is amended to read:

"37-69-102. ~~Exceptions~~ *Permanent and temporary exceptions.* (1) Licensure is not required in the following instances of plumbing installation:

(a) ~~where~~ *when* an owner of a single-family residence used exclusively for ~~his~~ *the owner's* personal use ~~makes the installation himself for~~ *installs* all sanitary plumbing and potable water supply piping or ~~where~~ *when* a mobile home dealer *or a manufactured housing dealer* ~~makes such installation~~ *connects a mobile home or a manufactured house* to existing *sanitary and potable water supply* facilities as part of delivering and setting up a mobile home for a purchaser;

(b) in any mine, mill, smelter, refinery, or railroad;

(c) in a farm or ranch not connected to public water supply and sewage disposal systems~~;~~. *For the purposes of this subsection (1)(c), a "farm or ranch" means the same as in 39-3-402.*

(d) in cities, towns, water districts, and water user associations extending, *repairing, or replacing* their own water and sewer mains;

(e) installation of water conditioner services in private dwellings;

(f) minor work by employees or agents of an appliance dealer incidental to the installation of an appliance purchased from the dealer; ~~and~~

(g) installation of a water meter by a qualified person appointed by the administrative authority of the water system; *and*

HeinOnline -- 1999 vol. II 1359 1999

(h) in the case of a private water supply, installation of the pump, waterline, or pressure tank, regardless of whether the pump, waterline, or pressure tank is located inside or outside the structure being served.

(2) This chapter ~~shall~~ *may* not be construed to apply to or to affect plumbing installations in any mines, mills, smelters, refineries, public utilities, railroads, or plumbing installations on farms or ranches not connected to public water supply or sewage disposal systems.

(3) If a licensed person is not available, the council or commission of a county, city, or town or the board of directors or managers of a water or sewer district or water utility may, by ordinance, rule, or resolution, authorize an unlicensed person to perform plumbing work on a temporary basis if:

(a) the council, commission, or board of directors has provided reasonable notice by certified letter to the board; and

(b) the board has approved the temporary authorization or has failed to respond to the certified letter required under subsection (3)(a) within 30 days of the letter's postmark.

(4) The council, commission, board of directors, or board shall withdraw the temporary authorization provided for in subsection (3) when a licensed person is reasonably available."

Section 2. Section 37-69-301, MCA, is amended to read:

"37-69-301. License required ~~—temporary exception by municipal resolution when licensed plumber not available.~~ ~~Any~~ *Except as provided in 37-69-102, a* person ~~working at the field of plumbing~~*working at the field of plumbing* in ~~any incorporated city, town, or in any other area served by a public water supply or a public sewer system in~~ this state, either as a master plumber or as a journeyman plumber, ~~or who while working at the field of plumbing shall connect plumbing to or disconnect plumbing from a public water supply or public sewer system~~ shall first ~~secure a state~~ *obtain a* license as ~~hereinafter~~ provided *in Title 37, chapter 69, part 3.* ~~The council or commission of any city or town or board of directors or managers of a water or sewer district or water utility, in cases where a duly licensed person or persons are not reasonably available, may by ordinance, rule, or resolution duly adopted and upon reasonable notice by certified letter to the board of plumbers and upon their approval, or after 30 days from the date of the postmark of the certified letter if the board fails to respond to the certified letter, authorize the practice in the field of plumbing by a person or persons who have not obtained the state licenses as hereinafter provided until such time as a duly licensed person or persons are reasonably available or until the board of plumbers withdraws its authorization.~~"

Approved April 20, 1999

CHAPTER NO. 362

[HB 130]

AN ACT EXTENDING THE TERMINATION DATE FOR THE WASTE PESTICIDE AND PESTICIDE CONTAINER COLLECTION, DISPOSAL, AND RECYCLING PROGRAM; ELIMINATING THE VOLUNTARY WASTE PESTICIDE REPORTING SYSTEM; PROVIDING FOR EXPENDITURE OF REVENUE IN THE PROGRAM ACCOUNT; AMENDING SECTION 14,

HeinOnline -- 1999 vol. II 1360 1999

CHAPTER 465, LAWS OF 1993; REPEALING SECTIONS 80-8-111 AND 80-8-112, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 14, Chapter 465, Laws of 1993, is amended to read:

"**Section 14. Termination.** [Sections 1(2)(r) and (2)(s), ~~2, 3,~~ 5(5), 6(2), 7(4), 8(7), and 9(3)(a)(ii), (3)(b)(ii), and (3)(d)] terminate ~~June 30, 1999~~ *December 31, 2003.*"

Section 2. Repealer. Sections 80-8-111 and 80-8-112, MCA, are repealed.

Section 3. Effective dates. (1) [Section 1] and this section are effective on passage and approval.

(2) [Section 2] is effective when the department of agriculture certifies that funds in the account in 80-8-112 are completely expended.

Approved April 20, 1999

CHAPTER NO. 363

[HB 150]

AN ACT REQUIRING A FOREIGN CORPORATION OR A FOREIGN LIMITED LIABILITY COMPANY CONTRACTING WITH THE STATE, AN AGENCY OF THE STATE, OR A POLITICAL SUBDIVISION OF THE STATE TO APPLY FOR AND RECEIVE A CERTIFICATE OF AUTHORITY TO TRANSACT BUSINESS BEFORE ENTERING INTO THE CONTRACT; REQUIRING THE SECRETARY OF STATE TO PROVIDE NOTICE TO CONTRACTING PARTIES OF THE REQUIREMENT; ALLOWING 30 DAYS TO BRING VOIDABLE CONTRACTS INTO COMPLIANCE; AMENDING SECTIONS 35-1-1026, 35-1-1027, 35-8-1001, AND 35-8-1002, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 35-1-1026, MCA, is amended to read:

"**35-1-1026. Authority to transact business required.** (1) A foreign corporation may not transact business in this state until it obtains a certificate of authority from the secretary of state.

(2) The following activities, among others, do not constitute transacting business within the meaning of subsection (1):

(a) maintaining, defending, or settling any preceeding;

(b) holding meetings of the board of directors or shareholders or carrying on other activities concerning internal corporate affairs;

(c) maintaining bank accounts;

(d) maintaining offices or agencies for the transfer, exchange, and registration of the corporation's own securities or maintaining trustees or depesitaries with respect to those securities;

(e) selling through independent contractors;

HeinOnline -- 1999 vol. II 1361 1999

(f) soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;

(g) creating or acquiring indebtedness, mortgages, and security interests in real or personal property;

(h) securing or collecting debts or enforcing mortgages and security interests in property securing the debts;

(i) owning real or personal property that is acquired incident to activities described in subsection (2)(h) if the property is disposed of within 5 years after the date of acquisition does not produce income, or is not used in the performance of a corporate function;

(j) conducting an isolated transaction that is completed within 30 days and that is not a transaction in the course of repeated transactions of a similar nature; or

(k) transacting business in interstate commerce.

(3) The list of activities in subsection (2) is not exhaustive.

(4) Except as provided in subsection (2), a foreign corporation is transacting business within the meaning of subsection (1) if it enters into a contract, including a contract entered into pursuant to Title 18, with the state of Montana, an agency of the state, or a political subdivision of the state and must apply for and receive a certificate of authority to transact business before entering into the contract. The secretary of state shall provide written notice to the contracting parties regarding the requirement that a foreign corporation obtain a certificate of authority. The foreign corporation must be allowed 30 days from the date of the notice to obtain the certificate of authority, and an existing contract may not be voided prior to the expiration of the 30 days. This subsection does not apply to goods or services prepared out of state for delivery or use in this state."

Section 2. Section 35-1-1027, MCA, is amended to read:

"**35-1-1027. Consequences of transacting business without authority.** (1) A foreign corporation transacting business in this state without a certificate of authority may not maintain a proceeding in any court in this state until it obtains a certificate of authority.

(2) The successor to a foreign corporation that transacted business in this state without a certificate of authority and the assignee of a cause of action arising out of that business may not maintain a proceeding based on that cause of action in any court in this state until the foreign corporation or its successor obtains a certificate of authority.

(3) A court may stay a proceeding commenced by a foreign corporation or its successor or assignee until it determines whether the foreign corporation or its successor or assignee requires a certificate of authority. If it determines that a certificate is required, the court may further stay the proceeding until the foreign corporation or its successor obtains the certificate.

(4) A foreign corporation is liable for a civil penalty of $5 for each day but not to exceed a total of $1,000 for each year that it transacts business in this state without a certificate of authority. The attorney general may collect all penalties due under this subsection.

(5) Notwithstanding the provisions of subsections (1) and (2), the failure of a foreign corporation to obtain a certificate of authority does not impair the

HeinOnline -- 1999 vol. II 1362 1999

validity of its corporate acts or prevent it from defending any proceeding in this state.

(6) A contract between the state of Montana, an agency of the state, or a political subdivision of the state and a foreign corporation that has failed to obtain a certificate of authority, as required under 35-1-1026, is voidable by the state, the contracting state agency, or the contracting political subdivision."

Section 3. Section 35-8-1001, MCA, is amended to read:

"35-8-1001. Authority to transact business required. (1) A foreign limited liability company may not transact business in this state until it obtains a certificate of authority from the secretary of state.

(2) The following activities, among others, do not constitute transacting business within the meaning of subsection (1):

(a) maintaining, defending, or settling any proceeding;

(b) holding meetings of the members or managers or carrying on other activities concerning internal affairs of the limited liability company;

(c) maintaining bank accounts;

(d) maintaining offices or agencies for the transfer, exchange, and registration of the limited liability company's own securities or maintaining trustees or depositaries with respect to those securities;

(e) selling through independent contractors;

(f) soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;

(g) creating or acquiring indebtedness, mortgages, and security interests in real or personal property;

(h) securing or collecting debts or enforcing mortgages and security interests in property securing the debts;

(i) owning real or personal property that is acquired incident to activities described in subsection (2)(h) if the property is disposed of within 5 years after the date of acquisition, does not produce income, or is not used in the performance of a function of the limited liability company;

(j) conducting an isolated transaction that is completed within 30 days and that is not a transaction in the course of repeated transactions of a similar nature; or

(k) transacting business in interstate commerce.

(3) The list of activities in subsection (2) is not exhaustive.

(4) Except as provided in subsection (2), a foreign limited liability company is transacting business within the meaning of subsection (1) if it enters into a contract, including a contract entered into pursuant to Title 18, with the state of Montana, an agency of the state, or a political subdivision of the state and must apply for and receive a certificate of authority to transact business before entering into the contract. The secretary of state shall provide written notice to the contracting parties regarding the requirement that a foreign corporation obtain a certificate of authority. The foreign corporation must be allowed 30 days from the date of the notice to obtain the certificate of authority, and an existing contract may not

HeinOnline -- 1999 vol. II 1363 1999

be voided prior to the expiration of the 30 days. This subsection does not apply to goods or services prepared out of state for delivery or use in this state."

Section 4. Section 35-8-1002, MCA, is amended to read:

"35-8-1002. Consequences of transacting business without authority. (1) A foreign limited liability company transacting business in this state without a certificate of authority may not maintain a proceeding in any court in this state until it obtains a certificate of authority.

(2) The successor to a foreign limited liability company that transacted business in this state without a certificate of authority and the assignee of a cause of action arising out of that business may not maintain a proceeding based on that cause of action in any court in this state until the foreign limited liability company or its successor obtains a certificate of authority.

(3) A court may stay a proceeding commenced by a foreign limited liability company or its successor or assignee until it determines whether the foreign corporation or its successor or assignee requires a certificate of authority. If it determines that a certificate is required, the court may further stay the proceeding until the foreign limited liability company or its successor obtains the certificate.

(4) A foreign limited liability company is liable for a civil penalty of $5 for each day, but not to exceed a total of $1,000 for each year, that it transacts business in this state without a certificate of authority. The attorney general may collect all penalties due under this subsection and deposit them to the general fund.

(5) Notwithstanding the provisions of subsections (1) and (2) *and except as provided in subsection (6)*, the failure of a foreign limited liability company to obtain a certificate of authority does not impair the validity of its acts or prevent it from defending any proceeding in this state.

(6) A contract between the state of Montana, an agency of the state, or a political subdivision of the state and a foreign limited liability company that has failed to obtain a certificate of authority, as required under 35-8-1001, is voidable by the state, the contracting state agency, or the contracting political subdivision."

Section 5. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 6. Effective date. [This act] is effective on passage and approval.

Section 7. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to contracts entered into on or subsequent to January 1, 1999.

Approved April 20, 1999

CHAPTER NO. 364

[HB 155]

AN ACT PROHIBITING THE CANCELLATION OR NONRENEWAL OF PROPERTY AND CASUALTY INSURANCE ON THE BASIS OF A SINGLE LOSS UNLESS THE INSURER HAS PREVIOUSLY DISCLOSED THIS

CRITERION TO THE INSURED; AMENDING SECTION 33-15-1105, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-15-1105, MCA, is amended to read:

"33-15-1105. Nonrenewal — reuewal premium. (1) (a) An insured has a right to reasonable notice of nonrenewal. Unless otherwise provided by statute or unless a longer term is provided in the policy, at least 30 days prior to the expiration date provided in the policy, an insurer who does not intend to renew a policy beyond the agreed expiration date shall mail or deliver to the insured a notice of such intention. The insurer shall also mail or deliver a copy to the insured's insurance producer.

(b) Notification or nonrenewal to the insured's insurance producer via electronic transfer of data or by electronic data retrieval device meets the requirement of a mailed or delivered copy.

(2) An insurer shall give notice of premium due not more than 60 days or less than 10 days before the due date of a renewal premium. Tbe notice must clearly state the effect of nonpayment of the premium on or before the due date.

(3) Subsections (1) and (2) do not apply if:

(a) the insured has obtained insurance elsewhere, has accepted replacement coverage, or has requested or agreed to nonrenewal; or

(b) the policy is expressly designated as nonrenewable.

(4) An insurer may not refuse to renew a property and casualty insurance policy on the basis of a single loss occurring during the policy period unless the insurer has previously disclosed in writing to the insured, at the time that the insured applied for the insurance or prior to the insured's renewal, that a single loss is among the insurer's criteria for nonrenewal."

Section 2. Applicability. [This act] applies to new or renewed property and casualty insurance policies in effect on or after January 1, 2000.

Approved April 20, 1999

CHAPTER NO. 365

[HB 188]

AN ACT PROVIDING FOR THE USE OF ELECTRONIC RECORDS AND ELECTRONIC SIGNATURES IN TRANSACTIONS WITH STATE AGENCIES AND LOCAL GOVERNMENT UNITS; PROVIDING FOR LEGAL RECOGNITION OF ELECTRONIC RECORDS, ELECTRONIC SIGNATURES, AND ELECTRONIC CONTRACTS IN STATE AGENCY PROCEEDINGS; PROVIDING EXCEPTIONS; PROHIBITING A PERSON FROM ACTING AS A CERTIFICATION AUTHORITY OR REPOSITORY OF CERTAIN ELECTRONIC DATA WITHOUT REGISTERING WITH THE SECRETARY OF STATE; REQUIRING CERTAIN STATE AGENCIES AND THE SECRETARY OF STATE TO ADOPT RULES; PROVIDING FOR MANAGEMENT OF ELECTRONIC RECORDS; PROVIDING A PENALTY; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

HeinOnline -- 1999 vol. II 1365 1999

Section 1. Short title. [Sections 1 through 11] may be cited as the "Montana Electronic Transactions Witb State Agencies and Local Government Units Act".

Section 2. Legislative intent. It is the intent of the legislature that [sections 1 through 11]:

(1) facilitate economic development and efficient delivery of government services;

(2) encourage electronic filing of documents with state agencies and local government units;

(3) facilitate and promote electronic commerce by eliminating uncertainties over what constitutes verified electronic records and electronic signatures in transactions with state agencies and local government units;

(4) promote tbe development of the legal and business infrastructure necessary to implement electronic commerce carried on witb state agencies and local government units; and

(5) promote public confidence in the reliability and integrity of electronic records and electronic signatures sent or received by state agencies and local government units.

Section 3. Definitions. As used in [sections 1 through 11], unless the context indicates otberwise, the following definitions apply:

(1) "Certificate" means an electronic record that:

(a) identifies tbe certification authority issuing it;

(b) identifies its subscriber;

(c) contains a public key that corresponds to a private key under the control of the subscriber;

(d) specifies its operational period; and

(e) is digitally signed by the certification autbority issuing it.

(2) "Certification authority" means a person who authorizes and causes the issuance of a certificate.

(3) "Cryptosystem" means a system that transforms or encrypts information for the purpose of secrecy or authenticity. The term includes a computer-based security procedure capable of generating and using a key pair.

(4) "Digital signature" means a type of electronic signature that encrypts a record by using a cryptosystem in a manner that a person who has the unencrypted record, the encrypted record, and the signer's key can accurately determine:

(a) whether tbe encryption of the record to an electronic record was created using the private key that corresponds to the signer's public key; and

(b) whether the record has been altered since tbe record was encrypted into an electronic record.

(5) "Electronic" includes electrical, digital, magnetic, optical, electromagnetic, or any other form of technology that entails capabilities similar to these technologies.

HeinOnline -- 1999 vol. II 1366 1999

(6) "Electronic record" means a record that is created or stored electronically and that is retrievable in perceivable form.

(7) "Electronic signature" means an electronic signal attached to or logically associated with an electronic record and that is:

(a) unique to the person using it;

(b) capable of verification;

(c) under the sole control of the person using it; and

(d) linked to the electronic record in such a way that if the electronic record is changed, the signature is invalidated.

(8) "Key" means a password or table used to decipher encrypted electronic data.

(9) "Key pair" means a private key and its corresponding public key in a cryptosystem, as part of which tbe public key verifies the signature made by the private key.

(10) "Local government unit" means a city, county, town, unincorporated municipality or village, or a special taxing district and any commission, board, bureau, or other office of any of them.

(11) "Party" means a person who is a party to a transaction with a state agency or local government unit.

(12) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited partnership, limited liability company, association, joint venture, state agency, local government unit, government of another state or of the United States, or political subdivision of this or another state or any other legal or commercial entity.

(13) "Private key" is a key of a key pair used to create a digital signature.

(14) "Public key" is the key of a key pair used to verify a digital signature.

(15) "Qualified security procedure" means a security procedure capable of producing reliable evidence that an electronic record or electronic signature has not been altered.

(16) "Record" includes any paper, correspondence, form, book, photograph, microfilm, map, drawing, or other document, including a copy of any of them, that has been made or received by a state agency or local government unit in connection with the transaction of the official business of that entity and all other documents required hy law to be filed with or kept by that agency.

(17) "Repository" means a person that maintains a registry of certification authorities.

(18) "Rule of law" means a statute, regulation, ordinance, common-law rule, court decision, ordinance, rule, or other law enacted, established, or adopted by a state agency, court, or pelitical subdivision of this state.

(19) "Secure electronic record" is an electronic record that is transmitted using a qualified security procedure.

(20) "Secure electronic signature" is a digital signature that is transmitted using a qualified security procedure.

HeinOnline -- 1999 vol. II 1367 1999

(21) "Security procedure" is a methodology or procedure used for the purpose of:

(a) verifying that an electronic record is that of a specific person; and

(h) detecting an error or alteration in the communication, content, or storage of an electronic record since a specific point in time.

(22) "State agency" means a department, board, commission, authority, or other governmental entity of the executive branch of state government, including the Montana university system.

(23) "Subscriber" means a person holding a private key that corresponds to a public key listed or identified in a certificate and who is the person to whom digitally signed records verified by reference to the certificate are to be attributed.

(24) "Trustworthy manner" means electronic records and electronic signatures transmitted by a qualified security procedure.

(25) "Verify a digital signature" means to use the public key listed in a valid certificate, by means of a security procedure, to evaluate a digitally signed electronic record so that the evaluation concludes that:

(a) the digital signature was created using the private key corresponding to the public key listed in the certificate; and

(b) the electronic record has not been altered since its digital signature was created.

Section 4. Construction — exeeptions. (1) [Sections 1 through 11], as applied to transactions with state agencies or local government units, may not be construed to:

(a) require a party to accept an electronic record, an electronic signature, or an electronic contract or to respond to or act upon an electronic record, an electronic signature, or an electronic contract unless the parties have freely and voluntarily agreed to the use of an electronic record, electronic signature, or electronic contract prior to electronic transmission; or

(b) preclude the recipient of an electronic record, an electronic signature, or an electronic contract from establishing the conditions under which the recipient will accept the electronic record, electronic signature, or electronic contract.

(2) [Sections 1 through 11] do not apply:

(a) when application of [sections 1 through 11] is clearly inconsistent with the manifest intent of another rule of law. However, a requirement of a rule of law that information must be "in writing", "written", "printed", "signed", or by any other word or phrase specifies written communication for a certain purpose is not by itself sufficient te prohibit the use of an electronic record or electronic signature, as applicable, for that purpose.

(b) to any rule of law governing the creation or execution of a will, trust, living will, or health care power of attorney;

(c) to any record that serves as a unique and transferable physical token of rights and obligations, including negotiable instruments and other instruments of title in which possession of the instrument is considered to confer title.

Section 5. State agency or local government unit aceeptance and use of electronic records and electronic signatures — rulemaking required. (1) [Sections 1 through 11] strongly encourage but do not require a state agoncy or local government unit to use or permit the use of an electronic

HeinOnline -- 1999 vol. II 1368 1999

signature or to send or receive electronic records. A state agency or local government unit may determine if, and the extent to which, it will send and receive electronic records to and from other persons and the extent to which it will create, use, and rely upen electronic records.

(2) Unless otherwise agreed to hetween a state agoncy or local government unit acting as the sender or receiver of an electronic record and another person who is the sender or receiver of the same electronic record, an electronic record is sent when it enters an information processing system outside the control of the sender or a person that sent the electronic record on behalf of the sender.

(3) Unless otherwise agreed to between a state agoncy or local government unit acting as the sender or receiver of an electronic record and another person acting as the sender or receiver of the same electronic record, an electronic record is received when the electronic record enters an information processing system from which the recipient is able to retrieve electronic records in a form capable of being processed by that system, if the recipient uses or has designated that system for the purpose of receiving the electronic record. An electronic record is effective when received even if no individual is aware of its receipt.

(4) A state agency sending or receiving electronic records shall adopt rules specifying:

(a) the manner and format in which an electronic record must be created, sent, received, and stored;

(b) whether an electronic record must be signed, the type of electronic signature required, the manner and format in which a signature must be affixed to the electronic record, and the identity of, or criteria that must be met by, a third person used by the person filing the document to facilitate the process;

(c) appropriate control methods used to ensure adequate integrity, security, and confidentiality of the electronic records and te ensure that the creation, transmission, and use of the electronic record may be audited; and

(d) other matters applicable to nonelectronic records that in the state agency's judgment should also be made applicable to electronic records.

Scction 6. Legal recognition for certain electronic records and electronic signatures in administrative proceedings. (1) This section applies only to contested case proceedings held pursuant to the Montana Administrative Procedure Act or a similar procedure held before a state agency in wliich rights are determined or duties are enforced on a case-by-case basis.

(2) If a rule of law requires a record to be written or in writing or provides for certain consequences if the record is not written or in writing, an electronic record satisfies that rule of law.

(3) If a rule of law requires a signature or provides for certain consequences if a record is not signed, an electronic signature satisfies that rule of law.

(4) If all parties to a transaction agree to the use of an electronic record or electronic signature, the electronic record or electronic signature nuay not be denied legal effect, validity, or enforceability solely on the grounds that it is electronic or on the grounds that it is not original.

(5) The trier of fact shall weigh the reliahility of information in the form of an electronic record or electronic signature. In assessing tlie reliability of an

HeinOnline -- 1999 vol. II 1369 1999

electronic record or electronic signature when its authenticity is in issue, the trier of fact may consider:

(a) the manner in which it was generated, stored, or communicated;

(b) the reliability of the manner in which its integrity was maintained;

(c) the manner in which its originator was identified or the electronic record was signed; and

(d) any other relevant information or circumstances.

Section 7. Legal recognition for secured electronic records and secured electronic signatures in administrative proceedings. (1) This section applies only to contested case proceedings held pursuant to the Montana Administrative Procedure Act or a similar procedure held before a state agency in which rights are determined or duties are enforced on a case-by-case basis.

(2) If, through a qualified security procedure, it can be verified that an electronic record or electronic signature has not been altered since a specified point in time, the electronic record or electronic signature must be considered to be a secure electronic record or secure electronic signature from the specified point in time to the time of verification, if the relying party establishes that the qualified security procedure was:

(a) reasonable under the circumstances;

(b) applied by the relying party in a trustworthy manner; and

(c) reasonably in good faith relied upon by the relying party.

(3) In an administrative proceeding involving a secure electronic record, it must be rebuttably presumed that the electronic record bas not been altered since the specific point in time to which the secure status relates.

(4) In an administrative proceeding involving a secure electronic signature, it must be rebuttably presumed that the secure electronic signature is the signature of the person to whom it correlates.

(5) The effect of the presumptions provided in this section is to place on the party challenging the integrity of a secure electronic record or challenging the genuineness of a secure electronic signature both the burden of going forward with evidence to rebut the presumption and the burden of persuading the trier of fact that the nonexistence of the presumed fact is more probable than its existence.

Section 8. Lcgal recognition for electronic contracts in administrative proeeedings. (1) This section applies only to contested case proceedings held pursuant to the Montana Administrative Procedure Act or a similar procedure held before a state agency in which rights are determined or duties are enforced on a case-by-case basis.

(2) An electronic contract valid under the Uniform Commercial Code is valid under [sections 1 through 11].

(3) In an administrative proceeding involving a contract signed by a secure electronic signature, it must be rebuttahly presumed that the electronic contract has not been altered since the specific point in time to which the secure status relates.

HeinOnline -- 1999 vol. II 1370 1999

(4) The effect of presumptions provided in this section is to place on the party challenging the integrity of a secure electronic contract both the burden of going forward with evidence to rebut the presumption and the burden of persuading the trier of fact that the nonexistence of the presumed fact is more probable than its existence.

(5) In administrative proceedings involving a contract signed by an electronic signature, the trier of fact shall weigh the reliability of information. In assessing the reliability of a contract when its authenticity is in issue, the trier of fact may consider:

(a) the manner in which it was generated, stored, or communicated;

(b) the reliability of the manner in which its integrity was maintained;

(c) the manner in which its originator was identified or the electronic contract was signed; and

(d) any other relevant information or circumstances.

Section 9. Secretary of state to register certification authorities and repositories — penalty. (1) A person may not act as a certification authority or repository without registering with the secretary of state as provided in this section.

(2) A person who acts as a certification authority or repository without being registered with the secretary of state as required by this section and rules adopted pursuant to this section is guilty of a misdemeanor and shall be punished as provided by law.

(3) A certification authority registered with the secretary of state pursuant to this section shall comply with all applicable requirements of Title 35.

(4) In addition to a filing fee that may be required by Title 35, the secretary of state shall charge and collect from each certification authority a license fee of $300 annually.

Section 10. Secretary of state to adopt rules for registration of certification authorities and repositories. (1) The secretary of state shall adopt rules concerning the registration of certification authorities and repositories.

(2) In adopting rules authorized by this section, the secretary of state shall provide maximum flexibility to the development of digital signature technology and the business models necessary to support it. The rules must maximize opportunities for uniformity with the rules or laws of other jurisdictions.

Section 11. Electronic records management. Electronic records must be preserved, protected, transferred, and disposed of in accordance with Title 2, chapter 6, part 2.

Section 12. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before July 1, 1999.

Section 13. Effective dates. (1) [Sections 10 and 12 and this section] are effective on passage and approval.

(2) [Sections 1 through 9 and 11] are effective July 1, 1999.

Approved April 20, 1999

HeinOnline -- 1999 vol. II 1371 1999

CHAPTER NO. 366

[HB 215]

AN ACT PROHIBITING THE USE OF ELECTRONIC MOTION-TRACKING DEVICES WHILE HUNTING.

Be it enacted by the Legislature of the State of Montana:

Section 1. Restriction on use of electronic motion-tracking device while hunting. It is unlawful for a person, while hunting, to possess any electronic motion-tracking device or mechanism, as defined by commission rule, that is designed to track the motion of a game animal and relay information on the animal's movement to the hunter. A radio-tracking collar attached to a dog that is used by a hunter engaged in lawful hunting activities is not considered a motion-tracking device or mechanism for purposes of this section.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 87, chapter 3, part 1, and the provisions of Title 87, chapter 3, part 1, apply to [section 1].

Approved April 20, 1999

CHAPTER NO. 367

[HB 301]

AN ACT ALLOWING SCHOOL DISTRICTS AND SPECIAL EDUCATION COOPERATIVES TO HIRE UNLICENSED SPEECH-LANGUAGE PATHOLOGISTS UNDER CERTAIN CONDITIONS; LIMITING THE LENGTH OF TIME AN UNLICENSED SPEECH-LANGUAGE PATHOLOGIST MAY BE EMPLOYED; AMENDING SECTIONS 37-15-103, 37-15-301, AND 37-15-313, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-15-103, MCA, is amended to read:

"**37-15-103. Exemptions.** (1) Nothing in this chapter prevents a person licensed in this state under any other law from engaging in the profession or business for which ~~he~~ *the person* is licensed.

(2) *(a)* Nothing in this chapter restricts or prevents activities of a speech-language pathology or audiology nature or the use of the official title of the position for which they were employed on the part of a speech-language pathologist or audiologist employed by federal agencies.

(b) Nothing in this chapter restricts an elementary or high school district or a special education cooperative organized under the provisions of Title 20 from hiring on an annual basis a person to provide to students speech-language pathology-related services who does not meet the licensing requirements of this chapter if the elementary or high school district or the special education cooperative has:

(i) made an ongoing, good faith effort to recruit and hire appropriately and adequately trained personnel to provide services to students with disabilities and

has not received an application that resulted in the offer and acceptance of employment from any licensed person in the course of attempting to fill a position requiring a licensed person;

(ii) hired the most qualified unlicensed applicant, who must have completed at least a 4-year program in speech-language pathology or communication disorders and who can show written proof of ongoing enrollment in a program of study that would meet the licensing requirements of this chapter within 3 years of the date of hire; and

(iii) contracted with a licensed person to provide the person hired consultation and training in the subjects and in the manner that the licensed person considers necessary or appropriate for not less than 20 hours within the first 6 months of the unlicensed person's period of service.

(c) For the purposes of subsection (2)(b), an ongoing, good faith effort to recruit and hire appropriately and adequately trained personnel is presumed to be met if the school district or special education cooperative has advertised its vacant position in a newspaper of general circulation in the county in which the district or cooperative is located at least once each week for 3 consecutive weeks and has also advertised the vacancy during that same period with the state job service, the Montana university system placement service, the American speech-language-hearing association employment placement service, and the Montana speech-language-hearing association employment placement service. (d) A school district or special education cooperative hiring an unlicensed person under subsection (2)(b) shall readvertise the vacancy upon the completion of each school fiscal year and may continue to employ the unlicensed person only upon compliance with the requirements of subsection (2) each year. The maximum length of time that an unlicensed individual may be employed in the state under subsection (2)(b) is 3 years from the date of initial hire.

(3) Those persons performing activities described in subsection (2) ~~of this section~~ who are not licensed under this chapter must do so solely within the confines of or under the jurisdiction of the organization in which they are employed and may not offer speech-language pathology or audiology services to the public for compensation over and above the salary *that* they receive for performance of their official duties with organizations by which they are employed. However, without obtaining a license under this chapter, these persons may consult or disseminate their research findings and scientific information to other accredited academic institutions or governmental agencies. They also may offer lectures to the public for a fee without being licensed under this chapter.

(4) Nothing in this chapter restricts activities and services of a student in speech-language pathology or audiology from pursuing a course of study in speech-language pathology or audiology at an accredited or approved college or university or an approved clinical training facility. However, these activities and services must constitute a part of ~~his~~ *the student's* supervised course of study, and a fee may not accrue directly or indirectly to the student. These persons must be designated by the title "speech-language pathology (or audiology) intern", "speech-language pathology (or audiology) trainee", or a title clearly indicating the training status appropriate to ~~his~~ *the person's* level of training.

(5) Nothing in this chapter restricts a person from another state from offering speech-language pathology or audiology services in this state if these services are performed for no more than 5 days in any calendar year and if the

HeinOnline -- 1999 vol. II 1373 1999

services are performed in cooperation with a speech-language pathologist or audiologist licensed under this chapter. However, hy securing a temperary license from the board subject to limitations ~~as~~ *that* the board may impose, a person not a resident of this state who is not licensed under this chapter but who is licensed under the law of another state that has established licensure requirements at least equivalent to those established by this chapter or who is the holder of the ASHA certificate of clinical competency in speech-language pathology or audiology or its equivalent may offer speech-language pathology or audiology services in this state for no more than 30 days in any calendar year if the services are performed in cooperation with a speech-language pathologist or audiologist licensed under this chapter.

(6) Nothing in this chapter restricts any person holding a class A certificate issued by the conference of executives of American schools of the deaf from performing the functions for which ~~he~~ *the person's* qualifies.

(7) Nothing in this chapter restricts any person who holds a certificate of registration in this state as a hearing aid dealer from performing those functions for which ~~he~~ *the person's* qualifies and that are described in Title 37, chapter 16.

(8) Nothing in this chapter exempts an audiologist who sells, dispenses, or fits hearing aids from the licensing requirements or other provisions of Title 37, chapter 16."

Section 2. Section 37-15-301, MCA, is amended to read:

"37-15-301. License required. (1) A license ~~shall~~ *must* be issued to qualified persons either in speech-language pathology or audiology. A person may be licensed in both areas if ~~he~~ *the person* meets the respective qualifications, and in ~~such~~ *these* instances, the license fee ~~shall~~ *must* be as though for one license.

(2) ~~No~~ *Except as provided in 37-15-103, a* person may *not* practice or ~~represent himself as~~ *purport to be* a speech-language pathologist or audiologist in this state unless ~~he~~ *the person* is licensed in accordance with the provisions of this chapter."

Section 3. Section 37-15-313, MCA, is amended to read:

"37-15-313. Registration of aides — *unlicensed persons in schools.* *(1)* Each licensed speech-language pathologist and audiologist shall annually, on or before October 31, register with ~~a~~ *the* board on forms provided by the board all speech-language pathology aides and audiology aides working directly under the supervision of the licensee.

(2) The superintendent of an elementary or high school district or the chief administrative officer of a special education cooperative organized under Title 20 shall register with the board on forms provided by the board all unlicensed persons working as speech-language pathologists."

Section 4. Effective date. [This act] is effective on passage and approval.

Section 5. Termination. [This act] terminates June 30, 2003.

Section 6. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to January 1, 1998.

Approved April 20, 1999

HeinOnline -- 1999 vol. II 1374 1999

CHAPTER NO. 368

[HB 304]

AN ACT CLARIFYING THE BIDDING REQUIREMENTS FOR PROFESSIONAL SERVICES RENDERED TO A SCHOOL DISTRICT; AMENDING SECTION 20-9-204, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-204, MCA, is amended to read:

"20-9-204. Conflicts of interests, letting contracts, and calling for bids. (1) It is unlawful for a trustee to:

(a) have any pecuniary interest, either directly or indirectly, in any contract made by the trustee while acting in that official capacity or by the board of trustees of which the trustee is a member; or

(b) be employed in any capacity by the trustee's own school district.

(2) For the purposes of subsection (1):

(a) "pecuniary interest" does not include holding an interest of 10% or less in a corporation;

(b) "contract" does not include:

(i) merchandise sold to the highest bidder at public auctions;

(ii) investments or deposits in financial institutions that are in the business of loaning or receiving money when the investments or deposits are made on a rotating or ratable basis among financial institutions in the community or when there is only one financial institution in the community; or

(iii) contracts for professional services, other than salaried services, or for maintenance or repair services or supplies when the services or supplies are not reasonably available from other sources if the interest of any board member and a determination of the lack of availability are entered in the minutes of the board meeting at which the contract is considered.

(3) Except for district needs that must be met due to an unforeseen emergency as defined in 20-3-322(5), whenever the estimated cost of any building, furnishing, repairing, or other work for the benefit of the district or purchasing of supplies for the district exceeds the sum of $15,000, the work done or the purchase made must be by contract. Each contract must be let to the lowest responsible bidder after advertisement for bids. The advertisement must be published in the newspaper that will give notice to the largest number of people of the district as determined by the trustees. The advertisement must be made once each week for 2 consecutive weeks, and the second publication must be made not less than 5 days or more than 12 days before consideration of bids. A contract not let pursuant to this section is void. *The bidding requirements of this subsection do not apply to:*

(a) a registered professional engineer, surveyor, real estate appraiser, or registered architect;

(b) a physician, dentist, pharmacist, or other medical, dental, or health care provider;

HeinOnline -- 1999 vol. II 1375 1999

(c) an attorney;

(d) a consulting actuary;

(e) a private investigator licensed by any jurisdiction;

(f) a claims adjuster; or

(g) an accountant licensed under Title 37, chapter 50.

(4) Whenever hidding is required, the trustees shall award the contract to the lowest responsible bidder, except that the trustees may reject any bids.

(5) Nothing in this section requires the board of trustees to let a contract for any routine and regularly performed maintenance or repair project or service tbat can be accomplished by district staff whose regular employment with the school district is related to the routine performance of maintenance for the district."

Section 2. Effective date — applicability. [This act] is effective on passage and approval and applies to contracts bid on or after [the effective date of this act].

Approved April 20, 1999

CHAPTER NO. 369

[HB 379]

AN ACT REQUIRING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO IMPLEMENT DEPARTMENT PROGRAMS IN A MANNER THAT ASSISTS IN THE MAINTENANCE OR RECOVERY OF SENSITIVE OR RARE SPECIES; REQUIRING THAT THE DEPARTMENT ENSURE THAT THE STATE'S INTEREST IN BALANCING SPECIES RECOVERY WITH ECONOMIC AND SOCIAL IMPACTS WHEN ENTERING INTO ANY FEDERAL COOPERATIVE AGREEMENT OR WHEN COMMENTING ON FEDERAL RECOVERY PLANS IS FULLY PROTECTED; AMENDING SECTION 87-1-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-1-201, MCA, is amended to read:

"87-1-201. (Temporary) Powers and duties. (1) The department shall supervise all the wildlife, fish, game, game and nongame birds, waterfowl, and the game and fur-bearing animals of the state and may implement voluntary programs that encourage hunting access on private lands and that promote harmonious relations between landowners and the hunting public. It possesses all powers necessary to fulfill the duties prescribed by law and to bring actions in the proper courts of this state for the enforcement of the fish and game laws and the rules adopted by the department.

(2) The department shall enforce all the laws of the state respecting the protection, preservation, and propagation of fish, game, fur-bearing animals, and game and nongame birds within the state.

(3) The department has the exclusive pewer to spend for the protection, preservation, and propagation of fish, game, fur-bearing animals, and game and

HeinOnline -- 1999 vol. II 1376 1999

nongame birds all state funds collected or acquired for that purpose, whether arising from state appropriation, licenses, fines, gifts, or otherwise. Money collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, from fines or damages collected for violations of the fish and game laws, or from appropriations or received by the department from any other sources ~~are~~ *is* appropriated to and under control of the department.

(4) The department may discharge any appeintee or employee of the department for cause at any time.

(5) The department may dispese of all property owned by the state used for the protection, preservation, and propagation of fish, game, fur-bearing animals, and game and nongame birds that is of no further value or use to the state and shall turn over the proceeds from the sale to the state treasurer to be credited to the fish and game account in the state special revenue fund.

(6) The department may not issue permits te carry firearms within this state to anyone except regularly appointed officers or wardens.

(7) The department is authorized to make, promulgate, and enforce reasonable rules and regulations not inconsistent with the provisions of chapter 2 that in its judgment will accomplish the purpose of chapter 2.

(8) The department is authorized to promulgate rules relative to tagging, possession, or transportation of bear within or ~~without~~ *outside of* the state.

(9) (a) The department shall implement programs that:

(i) manage wildlife, fish, game, and nongame animals in a manner that prevents the need for listing under 87-5-107 or under the federal Endangered Species Act, 16 U.S.C. 1531, et seq.; and

(ii) manage listed species, sensitive species, or a species that is a potential candidate for listing under 87-5-107 or under the federal Endangered Species Act, 16 U.S.C. 1531, et seq., in a manner that assists in the maintenance or recovery of those species.

(b) In maintaining or recovering a listed speeies, a sensitive species, or a species that is a potential candidate for listing, the department shall seek, to the fullest extent possible, to balance maintenance or recovery of those species with the social and economic impacts of species maintenance or recovery.

(c) This subsection (9) docs not affect the ownership or possession, as authorized under law, of a privately held listed species, a sensitive species, or a species that is a potential candidate for listing. (Terminates October 1, 2001—sec. 18, Ch. 459, L. 1995.)

87-1-201. (Effective October 1, 2001) Powers and duties. (1) The department shall supervise all the wildlife, fish, game, game and nongame birds, waterfowl, and the game and fur-bearing animals of the state. It possesses all powers necessary to fulfill the duties prescribed by law and to bring actions in the proper courts of this state for the enforcement of the fish and game laws and the rules adopted by the department.

(2) ~~It~~ *The department* shall enforce all the laws of the state respecting the protection, preservation, and propagation of fish, game, fur-bearing animals, and game and nongame birds within the state.

(3) ~~It shall have~~ *The department has* the exclusive power to spend for the protection, preservation, and propagation of fish, game, fur-bearing animals, and

HeinOnline -- 1999 vol. II 1377 1999

game and nongame birds all state funds collected or acquired for that purpose, whether arising from state appropriation, licenses, fines, gifts, or otherwise. Money collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, from fines or damages collected for violations of the fish and game laws, or from appropriations or received by the department from any other sources ~~are~~ *is* appropriated to and under control of the department.

(4) ~~It~~ *The department* may discharge any appointee or employee of the department for cause at any time.

(5) ~~It~~ *The department* may dispose of all property owned by the state used for the protection, preservation, and propagation of fish, game, fur-bearing animals, and game and nongame birds ~~which~~ *that* is of no further value or use to the state and shall turn over the proceeds from the sale to the state treasurer to be credited to the fish and game account in the state special revenue fund.

(6) ~~It~~ *The department* may not issue permits to carry firearms within this state to anyone except regularly appointed officers or wardens.

(7) The department is ~~hereby~~ authorized to make, promulgate, and enforce ~~such~~ reasonable rules and regulations not inconsistent with the provisions of chapter 2 ~~as~~ *that* in its judgment will accomplish the purpose of chapter 2.

(8) The department is authorized to promulgate rules relative to tagging, possession, or transportation of bear within or ~~without~~ *outside of* the state.

(9) (a) The department shall implement programs that:

(i) manage wildlife, fish, game, and nongame animals in a manner that prevents the need for listing under 87-5-107 or under the federal Endangered Species Act, 16 U.S.C. 1531, et seq.; and

(ii) manage listed species, sensitive species, or a species that is a potential candidate for listing under 87-5-107 or under the federal Endangered Species Act, 16 U.S.C. 1531, et seq., in a manner that assists in the maintenance or recovery of those species.

(b) In maintaining or recovering a listed species, a sensitive species, or a species that is a potential candidate for listing, the department shall seek, to the fullest extent possible, to balance maintenance or recovery of those species with the social and economic impacts of species maintenance or recovery.

(c) this subsection (9) does not affect the ownership or possession, as authorized under law, of a privately held listed species, a sensitive species, or a species that is a potential candidate for listing."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 20, 1999

CHAPTER NO. 370

[HB 396]

AN ACT REGULATING OPERATORS OF AMUSEMENT RIDES; DESCRIBING THE RESPONSIBILITIES OF PASSENGERS AND OPERATORS OF AMUSEMENT RIDES; AND PROVIDING FOR INJURY REPORTS BY PASSENGERS.

HeinOnline -- 1999 vol. II 1378 1999

Be it enacted by the Legislature of the State of Montana:

Section 1. Purpose. The legislature finds that:

(1) amusement rides are used by a large number of Montana's citizens and attract a large number of nonresidents, significantly contributing to Montana's tourism industry and tax base;

(2) the safety of the public using amusement rides is an important matter of public policy;

(3) there are inherent risks associated with the machinery, equipment, or animals that are impracticable or impossible for an amusement ride owner or operator to eliminate with all reasonable safety precautions;

(4) an informed patron is in the best position to avoid risks inherent to amusement rides; and

(5) the safety of amusement rides will be greatly improved at minimal cost if riders are subject to minimum safety standards for their own protection and the protection of others.

Section 2. Definitions. As used in [sections 1 through 5], the following definitions apply:

(1) "Amusement ride" or "ride" means a movable, portable, or nonpermanent structure that features or employs a mechanical, aquatic, or other device or attraction that carries passengers over a fixed or restricted route or that operates in a fixed or restricted area, primarily for the passengers' amusement. This definition applies to amusement rides that are set up and operate in any location in Montana for not more than 30 days.

(2) "Operator" means a person, business, or other entity that owns, leases, manages, or operates amusement rides.

(3) "Passenger" means a person:

(a) waiting in the immediate vicinity of an amusement ride to board the ride;

(b) entering or boarding an amusement ride;

(c) using an amusement ride;

(d) getting off or exiting from an amusement ride; or

(e) leaving the immediate vicinity of an amusement ride after getting off or exiting the ride.

Section 3. Operator's responsibilities. An operator shall:

(1) exercise reasonable care in constructing, erecting, maintaining, operating, and supervising amusement rides to ensure the safety of passengers;

(2) ensure that there is an adequately staffed first-aid station and a location for reporting injuries and accidents. For the purposes of this section, one adequately staffed first-aid station and a single location for reporting injuries and accidents on a site where multiple operators are grouped in a fair or carnival formation are sufficient.

(3) ensure that when supervising or operating a ride, the operator or an employee of the operator is not under the influence of alcohol or drugs; and

(4) post in a conspicuous place on the amusement ride grounds an easily readable sign that lists the passenger and operator responsibilities and

HeinOnline -- 1999 vol. II 1379 1999

prohibitions contained in [section 4] and this section, as well as additional language or another sign near the entrance to each ride that includes:

(a) operational instructions, if any;

(b) safety guidelines for the ride, if any;

(c) restrictions on the use of the amusement ride, if any;

(d) behavior or activities that are prohibited, if any; and

(e) the following statement: "State law requires riders and passengers to obey all warnings and directions for this ride and behave in a manner that will not cause or contribute to injury to themselves or others. Riders must report injuries before leaving the premises".

Section 4. Passenger responsibilities and prohibitions. (1) A passenger may not:

(a) enter or exit an amusement ride except at a time and place, if any, designated by an operator or employee and in the manner and under the supervision of an operator or employee;

(b) throw or drop an object from or in the direction of an amusement ride;

(c) fail or refuse to comply with the instructions of an operator or employee operating or supervising an amusement ride;

(d) act in a manner that could interfere with the safe operation of an amusement ride or with the safety of a passenger;

(e) disable or attempt to disable any safety or restraining device;

(f) alter or enhance the designed speed, course, or direction of an amusement ride;

(g) operate or attempt to operate amusement ride controls designed to be operated only by the operator or employee operating the ride; or

(h) use an amusement ride when under the influence of alcohol or drugs to the point that the ability of the passenger to safely use the ride is diminished. An operator or employee may prohibit a person from using or continuing a ride if the operator or employee reasonably believes that the person is under the influence of alcohol or drugs to the point that the person's ability to safely use or continue the ride is diminished.

(2) A passenger shall follow warnings and other information posted by or orally given to the passenger by an operator or employee.

Section 5. Injury reports. (1) (a) A passenger who is injured on or by an amusement ride is encouraged to report the injury to the operator before leaving the amusement ride premises. The passenger shall if possible, not later than 6 months after the injury, report the injury to the operator or to the owner of the premises where the amusement ride was located at the time of the injury. The report must include:

(i) the passenger's name, address, and telephone number;

(ii) a brief description of the injury and how it occurred, including the date, approximate time, location, and amusement ride upon which the injury occurred; and

HeinOnline -- 1999 vol. II 1380 1999

(iii) the names, addresses, and telephone numbers of known witnesses to the injury.

(b) The operator shall provide to the person who was injured and who has filed an injury report:

(i) the individual oporator's name, current address, and telephone number;

(ii) a brief description of the ride, the maintenance schedule for the ride, and the manufacturer of the ride; and

(iii) the names, current addresses, and telephone numbers of all known witnesses to the injury.

(2) The report must be kept by the operator for at least 3 years after its receipt and must be made available for inspection by the injured passenger or the passenger's agent during business hours.

Section 6. Codification instruction. [Sections 1 through 5] are intended to be codified as an integral part of Title 27, and the provisions of Title 27 apply to [sections 1 through 5].

Approved April 20, 1999

CHAPTER NO. 371

[HB 399]

AN ACT PROHIBITING THE PRACTICE OF TELEMEDICINE WITHOUT A TELEMEDICINE CERTIFICATE ISSUED BY THE BOARD OF MEDICAL EXAMINERS; PROVIDING LEGISLATIVE FINDINGS; PROVIDING A DEFINITION AND EXCEPTIONS; PROVIDING QUALIFICATIONS FOR A TELEMEDICINE CERTIFICATE; SPECIFYING POWERS AND DUTIES OF THE BOARD; PROVIDING FOR DISCIPLINARY ACTION BY THE BOARD; ESTABLISHING JURISDICTION FOR THE MEDICAL LEGAL PANEL AND THE COURTS; AMENDING SECTION 37-3-301, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Legislative findings. The Montana legislature previously found, in 37-3-101, that the practice of medicine in Montana is a privilege, not a natural right, and that the regulation of the practice of medicine is necessary to ensure the health, happiness, safety, and welfare of the people of Montana. The legislature now finds that because of technological advances and changing patterns of medical practice, medicine is increasingly being practiced by electronic means across state lines. Altbougb access to tecbnological advances is in the public interest, the legislature also finds that regulation of the practice of medicine across state lines is necessary to protect the public against the unprofessional, improper, unauthorized, and unqualified practice of medicine. Accordingly, the legislature finds that physicians outside the boundaries of Montana who enter tbe state by electronic or other technological means to practice medicine for compensation on patients inside Montana are seeking the benefit and protection of the laws of Montana and are subject to the licensure and regulatory requirements provided in [sections 1 through 9].

Section 2. Definition — scope of practice allowed by telemedicine certificate. (1) As used in [sections 1 tbrough 9] and 37-3-301, "telemedicine"

means the practice of medicine, as defined in 37-3-102, by a physician located outside the state who performs an evaluative or therapeutic act relating to the treatment or correction of a patient's physical or mental condition, ailment, disease, injury, or infirmity and who transmits that evaluative or therapeutic act into Montana through any means, method, device, or instrumentality under the following conditions:

(a) The information or opinion is provided for compensation or with the expectation of compensation.

(b) The physician does not limit the physician's services to an occasional case.

(c) The physician has an established or regularly used connection with the state, including but not limited to:

(i) an office or another place for the reception of a transmission from the physician;

(ii) a contractual relationship with a person or entity in Montana related to the physician's practice of medicine; or

(iii) privileges in a Montana hospital or another Montana health care facility, as defined in 50-5-101.

(2) As used in [sections 1 through 9] and 37-3-301, telemedicine does not mean:

(a) an act or practice that is exempt from licensure under 37-3-103;

(b) an informal consultation, made without compensation or expectation of compensation, between an out-of-state physician and a physician or other health care provider located in Montana;

(c) the transfer of patient records, independent of any other medical service and without compensation;

(d) communication about a Montana patient with the patient's physician or other health care provider who practices in Montana, in lieu of direct communication with the Montana patient or the patient's legal representative;

(e) diagnosis of a medical condition by a physician located outside the state, based upon an x-ray, cardiogram, pap smear, or other specimen sent for evaluation to the physician outside the state by a health care provider in Montana; or

(f) a communication from a physician located outside Montana to a patient in Montana in collaboration with a physician or other health care provider licensed to practice medicine in Montana.

Section 3. Practice of telemedicine prohibited without certificate — scope of practice limitations — violations and penalty. (1) A physician may not practice telemedicine in this state without a telemedicine certificate issued pursuant to [sections 1 through 9] and 37-3-301.

(2) A telemedicine certificate authorizes an out-of-state physician to practice telemedicine only with respect to the specialty in which the physician is board-certified or meets the current requirements to take the examination to become board-certified and on which the physician bases the physician's application for a telemedicine certificate pursuant to [section 5(2)].

HeinOnline -- 1999 vol. II 1382 1999

(3) A telemedicine certificate authorizes an out-of-state physician to practice only telemedicine. A telemedicine certificate does not authorize the physician to engage in the practice of medicine while physically present within the state.

(4) A physician who practices telemedicine in this state without a telemedicine certificate issued pursuant to [sections 1 through 9] and 37-3-301, in violation of the terms or conditions of that certificate, in violation of the scope of practice allowed by the certificato, or without a physician's certificato of licensure issued pursuant to 37-3-301(2)(a), is guilty of a misdemeanor and on conviction shall be sentenced as provided in 37-3-325.

Section 4. Application for telemedicine certificate. (1) A person desiring a telemedicine certificate shall apply to the department and verify the application by oath, in a form prescribed by the hoard.

(2) The application must be accompanied by:

(a) a certificate fee prescribed hy board rule; and

(h) documents required by the board that establish that the applicant possesses the qualifications prescribed by [sections 1 through 9] and the rules of the board. The hurden of proof is on the applicant, but the department may make an independent investigation to detormine whether the applicant possesses the requisite qualifications.

(3) The application must include a clear statement that the applicant consents to the jurisdiction of the state as specified in [section 9].

(4) The applicant shall provide to the board authorizations necessary for the release of records and other information required by the board.

Section 5. Qualifications for telemedicine certificate — basis for denial. The board may not grant a telemedicine certificate to a physician unless the physician has established under oath that the physician:

(1) has a full, active, unrestricted certificate to practice medicine in another state or territory of the United States or the District of Columbia;

(2) is board-certified or meets the current requirements to take the examination to become board-certified in a medical specialty pursuant to the standards of, and approved by, the American board of medical spocialties or the American osteopathic association bureau of osteopathic specialists;

(3) has no history of disciplinary action or limitation of any kind impesed by a state or federal agency in a jurisdiction where the physician is or has ever been licensed to practice medicine;

(4) is not the subject of a pending investigation by a state medical board or another state or federal agency;

(5) has no history of conviction of a crime related to the physician's practice of medicine;

(6) has submitted proof of current malpractice or professional negligence insurance coverage in the amount to be set by the rules of the board;

(7) has not paid, or had paid on the physician's behalf, on more than three claims of professional malpractice or negligence within the 5 years preceding the physician's application for a telemedicine certificate;

HeinOnline -- 1999 vol. II 1383 1999

(8) has identified an agent for service of process in Montana who is registered with the secretary of state and the board and who may be a physician certified to practice medicine in this state;

(9) has paid an application fee in an amount set by the rules of the hoard; and

(10) has submitted as a part of the application form a sworn statement attesting that the physician has read, understands, and agrees to abide by Title 37, chapters 1 and 3, and the administrative rules governing the practice of medicine in Montana.

Section 6. Certifieate renewal — fee. (1) A physician certified to practice telemedicine shall renew the telemedicine certificate every 2 years.

(2) The physician shall complete and return an application for renewal provided by the board by a date established by hoard rule.

(3) The physician shall pay an application renewal fee in an amount established by board rule.

Section 7. Reasons for denial of certificate — alternative route to licensed practice. (1) The board may deny an application for a telemedicine certificate if the applicant:

(a) fails to demonstrate that the applicant possesses the qualifications for a certificate required by [sections 1 through 9] and the rules of the board;

(b) fails to pay a required fee;

(c) does not possess the qualifications or character required by this chapter; or

(d) has committed unprofessional conduct.

(2) A physician who does not meet the qualifications for a telemedicine certificate provided in [section 5] may apply for a physician's license in order to practice medicine in Montana.

Section 8. Discipline of physician with telemedicine certificate. A physician granted a telemedicine certificate may be subject to investigation and discipline on the grounds that the physician has:

(1) committed unprofessional conduct, as described in 37-1-316 or in a board rule; or

(2) failed to:

(a) maintain the qualifications provided in [section 5] or in a hoard rule;

(b) maintain complete, legible patient records in written or readily retrievable electronic form;

(c) make complete, legible patient records available to the board during an investigation or disciplinary proceeding concerning the physician's practice of telemedicine; or

(d) appear and testify at a deposition within the state in the course of an investigation or disciplinary proceeding conducted under Montana law that concerns the physician's practice of telemedicine.

Section 9. Consent to jurisdiction. A physician granted a telemedicine certificate shall, pursuant to [section 4], consent to the jurisdiction of:

HeinOnline -- 1999 vol. II 1384 1999

(1) the courts of Montana for the purpose of civil actions, including but not limited to tort, contract, and equitable actions, related to the physician's practice of telemedicine;

(2) the courts of Montana for the purpose of criminal actions related to the physician's practice of telemedicine;

(3) the board for the purposes of licensing and disciplinary action by the board; and

(4) the Montana medical legal panel for matters within the panel's jurisdiction, as provided in Title 27, chapter 6.

Section 10. Section 37-3-301, MCA, is amended to read:

"37-3-301. License required — kinds of certificates. (1) Before being issued a license, an applicant may not engage in the practice of medicine in this state.

(2) The department may issue ~~three~~ *four* forms of certificates of licensure under the board's seal: the physician's certificate, the restricted certificate, ~~and~~ the temporary certificate, *and the telemedicine certificate issued in accordance with [sections 1 through 9]*. The physician's certificate and the restricted certificate must be signed by the president, but the temporary certificate may be signed by any board member. The board shall decide which certificate to issue. These certificates must be designated as:

(a) physician's certificate, which is subject to renewable registration in accordance with department rules;

(b) restricted certificate; ~~and~~

(c) temporary certificate, which is subject to specifications and limitations imposed by the board; *and*

(d) telemedicine certificate."

Section 11. Codification instruction. [Sections 1 through 9] are intended to be codified as an integral part of Title 37, chapter 3, part 3, and the provisions of Title 37, chapter 3, part 3, apply to [sections 1 through 9].

Section 12. Effective dates. (1) Except as provided in subsection (2), [this act] is effective October 1, 2000.

(2) [Sections 1 through 9] are effective on passage and approval for the purpose of proposing rules that will be adopted on or after October 1, 2000, and are effective for all other purposes on October 1, 2000.

Approved April 20, 1999

CHAPTER NO. 372

[HB 404]

AN ACT INCREASING THE LEGISLATIVE MEMBERSHIP OF THE TRANSITION ADVISORY COMMITTEE ON ELECTRIC UTILITY INDUSTRY RESTRUCTURING; APPROPRIATING FUNDS FOR THE ACTIVITIES OF THE TRANSITION ADVISORY COMMITTEE ON ELECTRIC UTILITY INDUSTRY RESTRUCTURING; AMENDING SECTION 45, CHAPTER 505, LAWS OF 1997; AND PROVIDING EFFECTIVE DATES.

HeinOnline -- 1999 vol. II 1385 1999

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-8-501, MCA, is amended to read:

"69-8-501. Transition advisory committee. (1) A transition advisory committee on electric utility industry restructuring is created. The transition advisory committee is composed of ~~eight~~ *twelve* voting members who are appointed as follows:

(a) The speaker of the house shall appoint ~~four~~ *six* members from the house of representatives, not more than ~~two~~ *three* of whom may be from one political party.

(b) The president of the senate shall appoint ~~four~~ *six* members from the senate, not more than ~~two~~ *three* of whom may be from one political party.

(2) The following entities shall appoint nonvoting advisory representatives to the transition advisory committee:

(a) The director of the department of environmental quality shall appoint one department representative.

(b) The legislative consumer committee shall appoint one representative.

(c) One representative of the cooperative utility industry is appointed as designated by the Montana electrical cooperative association.

(d) The public utilities in the state of Montana shall appoint one member.

(e) The commission shall appoint one memher.

(f) The governor shall appoint the following nonvoting committee members:

(i) one representative from the industrial community with an interest in the restructuring of the electric utility industry;

(ii) one representative from the nonindustrial retail electric consumer sector;

(iii) one representative from organized lahor;

(iv) one representative from the community comprising environmental and conservation interests;

(v) one representative from a low-income program provider;

(vi) one representative of Montana's Indian tribes; and

(vii) one representative of the electric power market industry.

(3) In case of a vacancy, a replacement must be selected in the manner of the original appointment.

(4) Legislative members are entitled to salary and expenses as provided in 5-2-302.

(5) The public service commission, legislative services division, and appropriate state agencies shall provide staff assistance as requested by the committee.

(6) Transition advisory committee members must he appointed within 60 days of May 2, 1997, to an initial term expiring on December 31, 1999. Subsequent terms must be for up to 2 years expiring on January 1 of odd-numbered years.

(7) The voting members shall select a transition advisory committee presiding officer.

HeinOnline -- 1999 vol. II 1386 1999

(8) The transition advisory committee on electric utility industry restructuring must dissolve on the earlier of either the date that full transition to retail competition is completed or December 31, 2004.

(9) The transition advisory committee shall provide an annual report on the status of electric utility restructuring on or before November 1 to the governor, the speaker of the house, the president of the senate, and the commission and shall provide quarterly interim summary reports to the members of the legislature through January 1, 1999.

(10) The transition advisory committee shall meet at least quarterly or as often as is necessary to conduct its business.

(11) The transition advisory committee shall analyze and report on the transition to effective competition in the competitive electricity supply market. The annual report made in the year 2000 must evaluate specifically the pilot programs for customers with loads under 1,000 kilowatts and must include legislative recommendations, if it appears appropriate, about the best means to further encourage the development of customer choice and meaningful market access for the benefit of smaller customers. The annual report for the year 2000 must also address the need, if any, for additional consumer protection including protection from abusive or anticompetitive practices.

(12) The criteria that the transition advisory committee must use to evaluate effective competition in the electricity supply market include but are not limited to the following:

(a) the level of demand for power supply choice and the availability of market prices for smaller customers;

(b) the existence of sufficient markets and bargaining power to the benefit of smaller customers and the best means to encourage and support the development of sufficient markets;

(c) the level of interest among electricity suppliers and the opportunity for electricity suppliers to serve smaller customers; and

(d) the existence of the requisite technical and administrative support that enables smaller customers to have choice of electricity supply.

(13) The transition advisory committee shall recommend legislation if necessary to promote electric utility restructuring and retail choice of electricity suppliers.

(14) The transition advisory committee shall make recommendations to the governor, regarding the implementation of statewide universal system benefits and universal energy assistance funds, in time to allow for those funds to be created on or before January 1, 1999. This may include recommendations regarding the assignment of an existing government agency or private, nonprofit entity as the fund administrator and administration guidelines for the funds, including the means by which funds may be made available for use.

(15) The transition advisory committee shall monitor and evaluate the universal system benefits programs and comparable levels of funding for the region and make recommendations to the 58th legislature to adjust the funding level provided for in 69-8-402 to coincide with the related activities of the region at that time.

HeinOnline -- 1999 vol. II 1387 1999

(16) On or before July 1, 2002, the transition advisory committee, in coordination with the commission, shall conduct a reevaluation of the ongoing need for universal system benefits programs and annual funding requirements and shall make recommendations to the 58th legislature regarding the future need for those programs. The determination must focus specifically on the existence of markets to provide for any or all of the universal system benefits programs or whether other means for funding those programs have developed. These recommendations may also address how future reevaluations will be provided for, if necessary.

(17) On or before November 1, 2001, the transition advisory committee shall collect information to determine whether Montana utilities or their affiliates have an opportunity to sell electricity to customers outside of the state of Montana comparable to the oppertunity provided pursuant to this chapter to utilities or their affiliates located outside the state of Montana. That information must be included in the repert to the 58th legislature.

(18) On or before November 1, 1998, the transition advisory committee shall make recommendations to the governor and the legislature regarding the provision of low-income energy assistance programs in Montana by all energy providers."

Section 2. Transition advisory committee on electric utility industry restructuring appropriation. (1) The legislative services division may accept gifts, grants, or other donations for the purpose of offsetting the costs of conducting the activities of the transition advisory committee under 69-8-501.

(2) A gift, grant, or other donation made by a public utility, as defined in 69-8-103(17), is a cost that is nonrecoverable from ratepayers and must be borne 100% by the shareholders of the company making the gift, grant, or donation.

(3) The legislative services division is appropriated up to $100,000 of any gifts, grants, or other donations received under this section, and the appropriation is a biennial appropriation.

(4) If the amount of gifts, grants, or donations exceeds the amount appropriated under subsection (3), the excess must be refunded to the donors in the ratio of their respective gift, grant, or donation to the total gifts, grants, and donations received.

(5) If the amount of the gifts, grants, and donations expended for conducting the activities of the transition advisory committee under 69-8-501 is less than the amount received as gifts, grants, and donations, the excess must be carried forward and is reappropriated for use of the transition advisory committee in the succeeding biennium.

Section 3. Section 45, Chapter 505, Laws of 1997, is amended to read:

"**Section 45. Appropriation.** (1) The legislative services division may accept gifts, grants, or other donations for the purpose of offsetting the costs of conducting the activities of the transition advisory committee under [section 29] or the study required in [section 30].

(2) A gift, grant, or other donation made by a public utility, as defined in 69-3-101(1)(a), (1)(c), or (1)(d), is a cost that is nonrecoverable from ratepayers and must be borne 100% hy the shareholders of the company making the gift, grant, or donation.

HeinOnline -- 1999 vol. II 1388 1999

(3) The legislative services division is appropriated up to $200,000 of any gifts, grants, or other donations received under this section, and the appropriation is a biennial appropriation.

(4) If the amount of gifts, grants, or donations exceeds the amount appropriated under subsection (3), the excess must be refunded to the donors in the ratio of their respective gift, grant, or donation to the total gifts, grants, and donations received.

(5) If the amount of the gifts, grants, and donations expended for conducting the activities of the transition advisory committee under [section 29] or the study required in [section 30] is less than the amount received as gifts, grants, or donations, the excess must be ~~refunded to the donors in the ratio of their respective gift, grant, or donation to the total gifts, grants, and donations received~~ *carried forward and is reappropriated for use of the transition advisory committee in the succeeding biennium.*"

Section 4. Effective dates. (1) [Section 1 and this section] are effective on passage and approval.

(2) [Sections 2 and 3] are effective July 1, 1999.

Approved April 20, 1999

CHAPTER NO. 373

[HB 435]

AN ACT REVISING THE POWERS OF THE FISH, WILDLIFE, AND PARKS COMMISSION TO ALLOW THE COMMISSION TO ADOPT RULES REGARDING THE ESTABLISHMENT OF SPECIAL LICENSES OR PERMITS, SEASONS, CONDITIONS, PROGRAMS, OR OTHER PROVISIONS THAT THE COMMISSION CONSIDERS APPROPRIATE TO PROMOTE OR ENHANCE HUNTING BY PERSONS WITH DISABILITIES; AMENDING SECTION 87-1-301, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-1-301, MCA, is amended to read:

"**87-1-301. Powers of commission.** (1) The commission ~~shall~~:

(a) *shall* set the policies for the protection, preservation, and propagation of the wildlife, fish, game, furhearers, waterfowl, nongame species, and endangered species of the state and for the fulfillment of all other responsibilities of the department as provided by law;

(h) *shall* establish tbe hunting, fishing, and trapping rules of the department;

(c) *shall* establish the rules of the department governing tbe use of lands owned or controlled by the department and waters under the jurisdiction of the department;

(d) *must* bave the power within the department to establish wildlife refuges and bird and game preserves;

(e) *shall* approve all acquisitions or transfers by the department of interests in land or water;

HeinOnline -- 1999 vol. II 1389 1999

(f) *shall* review and approve the budget of the department prior to its transmittal to the budget office; and

(g) *shall* review and approve construction projects whose estimated cost is more than $1,000 but less than $5,000.

(2) The commission may adopt rules regarding the use and type of archery equipment that may be employed for hunting and fishing purposes, taking into account applicable standards as technical innovations in archery equipment change.

(3) The commission may adopt rules regarding the establishment of special licenses or permits, seasons, conditions, programs, or other provisions that the commission considers appropriate to promote or enhance hunting by Montana's youth *and persons with disabilities.*

(4) (a) The commission may adopt rules regarding nonresident big game combination licenses to:

(i) separate deer licenses from nonresident elk combination licenses;

(ii) set the fees for the separated deer combination licenses and the elk combination licenses without the deer tag;

(iii) condition the use of the deer licenses; and

(iv) limit the number of licenses sold.

(b) The commission may exercise the rulemaking authority in subsection (4)(a) when it is necessary and appropriate to regulate the harvest by nonresident big game combination license holders for the biologically sound management of big game populations of deer and elk and to control the impacts of those deer and elk populations on uses of private property. (Subsection (4) terminates October 1, 2001—sec. 6, Ch. 355, L. 1997.)"

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 20, 1999

CHAPTER NO. 374

[HB 502]

AN ACT CLARIFYING THE CONTENT OF ARGUMENTS PREPARED ON BALLOT MEASURES FOR INCLUSION IN THE VOTER INFORMATION PAMPHLET; REVISING THE APPOINTMENT OF COMMITTEES PREPARING ARGUMENTS; AND AMENDING SECTIONS 13-27-402, 13-27-406, AND 13-27-407, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-27-402, MCA, is amended to read:

"13-27-402. Committees to prepare arguments for and against ballot issues. (1) The arguments advocating approval or rejection of the ballot issue and rebuttal arguments must be submitted to the secretary of state by committees appointed as provided in this section.

(2) ~~The committees~~ *The committee advocating approval of a legislative act referred to the people either by the legislature or by referendum petition or*

advocating approval of a constitutional amendment referred by the legislature must be composed of:

(a) one senator ~~known to favor the measure~~ *known to favor the referred measure*, appointed by the president of the senate;

(b) one representative ~~known to favor the measure~~ *known to favor the referred measure*, appointed by the speaker of the bouse of representatives; and

(c) one individual who need not be a member of the legislature, appointed by the first two members ~~from:~~

~~(i) the committee advocating approval of an act referred to the people or of a constitutional amendment proposed by the legislature; or~~

~~(ii) the committee advocating approval of an act referred to the people by referendum petition.~~

(3) (a) The committee advocating rejection of an act referred to the people or of a constitutional amendment proposed by the legislature must be composed of:

(i) one senator appointed by the president of the senate;

(ii) one representative appointed hy the speaker of the house of representatives; and

(iii) one individual who need not be a member of the legislature, appointed hy the first two members.

(b) Whenever possible, the members must be known to have opposed the issue.

(4) The following must be three-member committees and must be appointed by the person submitting the petition to the secretary of state under the provisions of 13-27-202:

(a) the committee advocatmg approval of a ballot issue proposed by any type of initiative petition; and

(b) the committee advocating rejection of any ~~ballot issue that is a~~ legislative act referred to the people by referendum petition.

(5) A committee advocating rejection of a ballot issue proposed by any type of initiative petition must be composed of five members. The governor, attorney general, president of the senate, and speaker of the house of representatives shall each appoint one member, and the fifth member must be appointed by the first four members. ~~All~~ *If possible,* members must be known to favor rejection of the issue.

(6) A person may not be required to serve on any committee under this section, and *except for legislative appointments made by the president of the senate or by the speaker of the house of representatives,* the person making an appointment must have written acceptance of appointment from the appointee. If an appointment is not made by the required time, the committee members that have been appointed may fill the vacancy by unanimous written consent up until the deadline for filing the arguments."

Section 2. Section 13-27-406, MCA, is amended to read:

"13-27-406. Limitation on length of argument — time of filing. An argument advocating approval or rejection of a hallot issue is limited to a single *side of a single* 7 1/2-inch by 10-inch page and must be filed, in a black-and-white,

HeinOnline -- 1999 vol. II 1391 1999

camera-ready format, with the secretary of state no later than 105 days before the election at which the issue will be voted on by the people. *The argument must consist solely of written material prepared by the committee and may not consist of pictures, clippings, or other material. The written material must be prepared in the font and type style required by the secretary of state. With the goal of achieving readability and uniformity, the secretary of state shall prescribe a commonly used font and type style.* A majority of the committee responsible for preparation shall approve and sign each argnment filed. Separate signed letters of approval of an argument may be filed with the secretary of state by members of a committee if necessary to meet the filing deadline."

Section 3. Section 13-27-407, MCA, is amended to read:

"13-27-407. Rebuttal arguments. The secretary of state shall provide copies of the arguments advocating approval or rejection of a ballot issue to the members of the adversary committee no later than 1 day following the filing of both the approval and rejection arguments for the issue. The committees may prepare rebuttal arguments no longer than one-half the size of the arguments under 13-27-406 that must he filed, in ~~in~~ a black-and-white, camera-ready format, with the secretary of state no later than 10 days after the deadline for filing the original arguments. *The argument must consist solely of written material prepared by the committee and may not consist of pictures, clippings, or other material. The written material must be prepared in the font and type style required by the secretary of state. With the goal of achieving readability and uniformity, the secretary of state shall prescribe a commonly used font and type style.* Discussion in the rebuttal argument must be confined to the subject matter raised in the argument being rebutted. The rebuttal argument must be approved and signed by a majority of the committee responsible for its preparation. Separate signed letters of approval may be submitted in the same manner as for the original arguments."

Approved April 20, 1999

CHAPTER NO. 375

[HB 580]

AN ACT PROVIDING THAT COMPLAINTS OF UNPROFESSIONAL CONDUCT BY LICENSED OR CERTIFIED HEALTH CARE OR REHABILITATIVE SERVICES PROVIDERS FROM PERSONS DETAINED IN COUNTY DETENTION CENTERS OR INCARCERATED UNDER LEGAL CUSTODY OF THE DEPARTMENT OF CORRECTIONS MUST BE SUBMITTED TO A REVIEW TEAM ADMINISTERED BY THE DEPARTMENT OF COMMERCE PRIOR TO BEING FILED WITH A LICENSING BOARD; AMENDING SECTION 37-1-308, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Seetion 1. Section 37-1-308, MCA, is amended to read:

"37-1-308. Unprofessional conduct — complaint — investigation — immunity — ~~exception~~ *exceptions*. (1) Except as provided in subsection (3), a person, government, or private entity may submit a written complaint to the

HeinOnline -- 1999 vol. II 1392 1999

department charging a licensee or license applicant with a violation of this part and specifying the grounds for the complaint.

(2) If the department receives a written complaint or otherwise obtains information that a licensee or license applicant may have committed a violation of this part, the department may, with the concurrence of a member of the screening panel established in 37-1-307, investigate to determine whether there is reasonable cause to believe that the licensee or license applicant has committed the violation. A person or private entity, but not a government entity, filing a complaint under this section in good faith is immune from suit in a civil action related to the filing or contents of the complaint.

~~(3) A person may not file a complaint under subsection (1) against a licensed or certified provider of health care or rehabilitative services for services that were provided to the person while incarcerated under the legal custody of the department of corrections. If the department of corrections has reason to believe that there has been a violation of this part arising out of health care or rehabilitative services provided to a person incarcerated under the legal custody of the department of corrections, the department of corrections shall report the possible violation to the department for appropriate action under subsection (2).~~

(3) A person under legal custody of a county detention center or incarcerated under legal custody of the department of corrections may not file a complaint under subsection (1) against a licensed or certified provider of health care or rehabilitative services for services that were provided to the person while detained or confined in a county detention center or incarcerated under legal custody of the department of corrections unless the complaint is first reviewed by a correctional health care review team provided for in [section 2]."

Section 2. Correctional health care review team. (1) There is a correctional health care review team process in the department. The purpose of a review team is to review complaints filed by an inmate against a licensed or certified provider of health care or rehabilitative services for services that were provided to the person while the person was detained or confined in a county detention center or incarcerated under legal custody of the department of corrections. The inmate may file a complaint directly with the correctional health care review team for review or, if a board receives a complaint that has not been reviewed, the board shall forward the complaint to the review team. If the review team has reason to believe that there has been a violation of this part arising out of health care or rehabilitative services provided to a person detained or confined in a county detention center, the review team shall report the possible violation to the department for appropriate action under 37-1-308.

(2) Each health care licensing board shall solicit and submit to the department a list of licensed or certified health care or rehabilitative service professionals who have correctional health care experience and who are interested in participating on a team. A current board member may not participate on a review team. The department shall solicit from the administrators of the county detention centers and from the department of corrections names of licensed or certified health care or rehabilitative service providers who have correctional health care or rehabilitative services experience and are interested in participating on a review team. Each member of a review team must have at least 2 years of experience in providing health care or rehabilitative services in a correctional facility or program.

HeinOnline -- 1999 vol. II 1393 1999

(3) Each correctional health care review team is composed of three members who shall represent healtb care and rehabilitative service providers who have provided health care or rehabilitative services to incarcerated persons. Two members of the review team must he providers of the same discipline and scope of practice as the provider against whom a complaint was filed and the third member may be a provider of any other health care or rehabilitative services discipline. The members must be willing to serve without compensation. If available, a correctional health care professional employed by the department of corrections and appointed by the director of the department of corrections may participate on the review team, except when the provider against whom the complaint was filed was employed by the department of corrections.

(4) The members of a review team are appointed by the department from the listing of health care and rehabilitative service providers with correctional experience who have been submitted by each respective board, a county detention center administrator, or the department of corrections as provided in subsection (2). A review team shall meet at least twice a year. Any travel, lodging, meal, or miscellaneous costs incurred by a review team may be recovered through a memorandum of understanding with the agencies who provide medical services to inmates or may be assessed to the licensing or certifying boards of health care and rehabilitative service providers.

(5) The review team shall review each complaint with regard to the health care or rehabilitative services provider's scope of practice. A decision on whether or not to forward the complaint must be made by the majority of the review team. The review team shall submit a written response regarding the decision to the inmate, the county detention center administrator or the department of corrections, and the health care or rehabilitative services provider. If the decision is to not forward the complaint for action under 37-1-308, a record of the complaint may not be forwarded to any licensing or certifying board, but must be retained by the department.

Section 3. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 37, chapter 1, part 3, and the provisions of Title 37, chapter 1, part 3, apply to [section 2].

Section 4. Effective date. [This act] is effective July 1, 1999.

Approved April 20, 1999

CHAPTER NO. 376

[HB 644]

AN ACT CREATING THE GOVERNOR'S LOCAL COAL IMPACT REVIEW COUNCIL; DESCRIBING THE COMPOSITION, PURPOSE, AND AUTHORITY OF THE COUNCIL; APPROPRIATING FUNDS FOR THE EXPENSES OF THE COUNCIL; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

WHEREAS, coal development and its effects are important to Montana's society and economy; and

WHEREAS, the traditions of Montana public policy development are citizen-inclusive; and

HeinOnline -- 1999 vol. II 1394 1999

WHEREAS, public policy exists in an ever more dynamic and complex world; and

WHEREAS, Montana's state government has heen dealing with local coal development impact mitigation for nearly 25 years; and

WHEREAS, time and the evolution of reality demand that existing public policies be clearly and openly reexamined for appropriateness and efficiency.

Be it enacted by the Legislature of the State of Montana:

Section 1. Governor's local coal impact review council — purpose — report — authority to accept donations. (1) There is a governor's local coal impact review council. The council is attached to the department of commerce for administrative purposes only.

(2) The purpose of the council is to review and report on Montana's existing public policy regarding the impacts resulting from coal development and to develop findings, conclusions, and recommendations as to what the policies should be, both now and into the 21st century. The council shall, on or before December 1, 2000, prepare and deliver the report to the governor and, as provided in 5-11-210, to the 57th legislature.

(3) The council is composed of 10 members, each of whom must be appointed hy the governor before July 15, 1999, as follows:

(a) one member from the coal board, established in 2-15-1821;

(b) two members, each of whom must be a county commissioner from a county within or containing a coal impact area;

(c) two members, each of whom must be either a mayor or city council or commission member from an incorporated city or town within a coal impact area;

(d) two members, each of whom must be a representative of the coal industry;

(e) one member who must be a state senator and one member who must be a state representative, each of whom must be from a coal impact area; and

(f) one member of the general public.

(4) For the purposes of this section, a coal impact area means the areas generally described in 90-6-207 affected by coal development.

(5) At its first meeting, the council shall elect from among its members a presiding officer and any other officers it considers to he necessary.

(6) Each member is appointed for a term of 2 years and serves at the pleasure of the governor.

(7) (a) Each memher of the council except for the legislators appointed under subsection (3)(e), must be compensated as provided in 2-15-122(5).

(b) The legislative members of the council appointed under subsection (3)(e) must be compensated as provided in 5-2-302.

(8) On behalf of the council, the department of commerce may accept gifts, grants, or donations to cover the costs of the council's activities. The department shall account separately for any gifts, grants, or donations received on the council's behalf.

Section 2. Appropriation. (1) There is appropriated to the department of commerce for the activities of the governor's local coal impact review council

HeinOnline -- 1999 vol. II 1395 1999

$10,000 from the portion of coal severance tax collections allocated for local impacts under 15-35-108(3).

(2) On behalf of the council, the department of commerce is appropriated and may expend up to $20,000 of funds received as gifts, grants, or donations, as authorized in [section 1(8)] for the activities of the council.

(3) The appropriations in this section are biennial.

Section 3. Effective date. (1) Except as provided in subsection (2), [this act] is effective July 1, 1999.

(2) The governor may solicit applications from persons wishing to serve on the governor's local coal impact review council at any time following passage and approval of [this act].

Section 4. Termination. [This act] terminates June 30, 2001.

Approved April 20, 1999

CHAPTER NO. 377

[SB 117]

AN ACT REVISING CERTAIN LAWS WITHIN THE WORKERS' COMPENSATION ACT THAT ARE ADMINISTERED BY THE DEPARTMENT OF LABOR AND INDUSTRY; PROVIDING A CHANGE IN THE WORKERS' COMPENSATION REGULATORY ASSESSMENT; PROVIDING THE DEPARTMENT OF LABOR AND INDUSTRY WITH RULEMAKING AUTHORITY FOR DATA COLLECTION FOR THE WORKERS' COMPENSATION DATABASE SYSTEM; PROVIDING FOR ELECTRONIC SUBMITTAL OF REPORTS BY INSURERS; ESTABLISHING THE UNINSURED EMPLOYERS' FUND AS A STATE SPECIAL REVENUE ACCOUNT; ESTABLISHING THAT A PURPOSE OF THE UNINSURED EMPLOYERS' FUND IS PAYMENT OF ADMINISTRATIVE EXPENSES; PROVIDING FOR CONFIDENTIALITY OF UNINSURED EMPLOYERS' FUND RECORDS IN THE WORKERS' COMPENSATION ACT; CLARIFYING THE QUALIFICATIONS FOR AN EXAMINATION PANEL MEMBER; PROVIDING FOR PAYMENT OF BENEFITS IN A DISPUTED CLAIM PRIOR TO MEDIATION; SPECIFYING TERMINATION OF BENEFITS AFTER MEDIATION; AUTHORIZING REIMBURSEMENT FOR BENEFITS PAID AFTER A HEARING BEFORE THE WORKERS' COMPENSATION COURT; INCREASING THE AMOUNT PAYABLE FOR BURIAL EXPENSES FROM $1,400 TO $4,000; AUTHORIZING THE CERTIFICATION OF A DISABILITY ON THE DATE THE APPLICATION IS APPROVED; CHANGING THE PERIOD USED FOR ASSESSMENTS FOR THE INDUSTRIAL ACCIDENT REHABILITATION ACCOUNT FROM FISCAL YEAR TO CALENDAR YEAR; AUTHORIZING THE DETERMINATION OF ADVISABILITY OF CONTINUED EMPLOYMENT FOR OCCUPATIONAL DISEASE CLAIMANTS BY PERSONS OTHER THAN THE MEDICAL PANEL; REQUIRING THAT THE COSTS OF EXAMINATIONS AND REPORTS BE BORNE BY THE REQUESTING PARTY; PROVIDING THAT AN INSURER MAY REDUCE OR SUSPEND COMPENSATION FOR A CLAIMANT ENGAGING IN AN UNSANITARY OR INJURIOUS PRACTICE THAT IMPERILS RECOVERY AND REQUIRING MEDIATION OF DISPUTES

HeinOnline -- 1999 vol. II 1396 1999

WHEN BENEFITS ARE TERMINATED DUE TO UNSANITARY OR INJURIOUS PRACTICES; ELIMINATING REDUNDANT LANGUAGE BY COMBINING STATUTES RELATING TO THE CREATION AND ADMINISTRATION OF THE UNINSURED EMPLOYERS' FUND; REQUIRING THAT PLAN NO. 2 INSURERS AND PLAN NO. 3, THE STATE FUND, IDENTIFY THE COSTS OF THE REGULATORY ASSESSMENT THAT IS COLLECTED FROM INSURERS AS A POLICYHOLDER SURCHARGE BASED ON PREMIUM; AMENDING THE SUBSEQUENT INJURY FUND ASSESSMENT TO PROVIDE THE STATE FUND WITH THE ABILITY TO IDENTIFY THE COST OF THE ASSESSMENT AS A POLICYHOLDER SURCHARGE BASED ON PREMIUM; AMENDING SECTIONS 39-9-401, 39-71-123, 39-71-201, 39-71-225, 39-71-432, 39-71-501, 39-71-503, 39-71-510, 39-71-517, 39-71-519, 39-71-605, 39-71-610, 39-71-725, 39-71-905, 39-71-915, 39-71-1004, 39-72-405, 39-72-608, AND 39-72-714, MCA; REPEALING SECTION 39-71-502, MCA; AND PROVIDING EFFECTIVE DATES, A RETROACTIVE APPLICABILITY DATE, AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-9-401, MCA, is amended to read:

"**39-9-401. Violation — infraction — penalty — disposition.** (1) It is a violation of this chapter and an infraction for any construction contractor to:

(a) perform work as a construction contractor without being registered as required by this chapter;

(b) perform work as a construction contractor when the construction contractor's registration is suspended; or

(c) transfer a valid registration to an unregistered construction contractor or allow an unregistered construction contractor to work under a registration issued to another construction contractor.

(2) (a) A determination by the department of a violation of this section subjects tbe person who commits the violation to a penalty of up to $500, as determined by the department. A person who has been determined to have violated this section may request that a hearing be held in accordance with the Montana Administrative Procedure Act. The hearing may be held by telephone or video conference. An appeal of the hearing decision must be made in the same manner as prescribed in 39-51-2403 and 39-51-2404.

(b) A penalty under this section does not apply to a violation that is determined to be an inadvertent error.

(c) A penalty collected under this section must be deposited in the uninsured employers' fund established in ~~39-71-502~~ *39-71-503*."

Section 2. Section 39-71-123, MCA, is amended to read:

"**39-71-123. Wages defined.** (1) "Wages" means all remuneration paid for services performed by an employee for an employer, or income provided for in subsection (1)(d). Wages include the cash value of all remuneration paid in any medium other than cash. The term includes but is not limited to:

(a) commissions, bonuses, and remuneration at the regular hourly rate for overtime work, holidays, vacations, and sickness periods;

HeinOnline -- 1999 vol. II 1397 1999

(b) backpay or any similar pay made for or in regards to previous service by the employee for the employer, other than retirement or pension benefits from a qualified plan;

(c) tips or other gratuities received hy the employee, to the extent that tips or gratuities are documented hy the employee to the employer for tax purposes;

(d) income or payment in the form of a draw, wage, net profit, or substitute for money received or taken hy a sole proprietor or partner, regardless of whether the sole proprietor or partner has performed work or provided services for that remuneration;

(e) hoard, lodging, rent, or housing if it constitutes a part of the employee's remuneration and is based on its actual value; and

(f) payments made to an employee on any basis other than time worked, including but not limited to piecework, an incentive plan, or profit-sharing arrangement.

(2) The term "wages" does not include any of the following:

(a) employee expense reimbursements or allowances for meals, lodging, travel, subsistence, and other expenses, as set forth in department rules;

(b) the amount of the payment made by the employer for employees, if the payment was made for:

(i) retirement or pension pursuant to a qualified plan as defined under the provisions of the Internal Revenue Code;

(ii) sickness or accident disability under a workers' compensation policy;

(iii) medical or hospitalization expenses in connection with sickness or accident disability, including health insurance for the employee or tbe employee's immediate family; or

(iv) death, including life insurance for the employee or the employee's immediate family;

(c) vacation or sick leave benefits accrued hut not paid; or

(d) special rewards for individual invention or discovery.

(3) (a) Except as provided in subsection (3)(h), for compensation benefit purposes, the average actual earnings for the four pay periods immediately preceding the injury are the employee's wages, except that if the term of employment for the same employer is less than four pay periods, the employee's wages are the hourly rate times the number of hours in a week for which the employee was hired to work.

(h) For good cause shown, if the use of the last four pay periods does not accurately reflect the claimant's employment history with the employer, the wage may he calculated by dividing the total earnings for an additional period of time, not to exceed 1 year prior to the date of injury, hy the number of weeks in that period, including periods of idleness or seasonal fluctuations.

(4) (a) For the purpose of calculating compensation benefits for an employee working concurrent employments, the average actual wages must be calculated as provided in subsection (3). As used in this subsection, "concurrent employment" means employment in which the employee was actually employed at the time of the injury and would have continued to he employed without a break in the term of employment if not for the injury.

HeinOnline -- 1999 vol. II 1398 1999

(b) The compensation benefits for a covered volunteer must be based on the average actual wages in the volunteer's regular employment, except self-employment as a sole proprietor or partner who elected not to be covered, from which the volunteer is disabled by the injury incurred.

(c) The compensation benefits for an employee working at two or more concurrent remunerated employments must be based on the aggregate of average actual wages of all employments, except ~~self-employment as a sole proprietor or partner~~ *for the wages earned by individuals while engaged in the employments outlined in 39-71-401(3)(a)* who elected not to be covered, from which the employee is disabled by the injury incurred."

Section 3. Section 39-71-201, MCA, is amended to read:

"**39-71-201. (Temporary) Administration fund.** (1) A workers' compensation administration fund is established out of which all costs of administering the Workers' Compensation and Occupational Disease Acts and the statutory occupational safety acts the department ~~must administer~~ *is required to administer*, with the exception of the subsequent injury fund, as provided for in 39-71-907, and the uninsured employers' fund, are to be paid upon lawful appropriation. The department shall collect and deposit in the state treasury to the credit of the workers' compensation administrative fund:

(a) all fees and penalties provided in 39-71-205, 39-71-223, 39-71-304, 39-71-307, 39-71-308, 39-71-315, 39-71-316, 39-71-401(6), 39-71-2204, 39-71-2205, and 39-71-2337; and

(b) all fees paid by an assessment on each plan No. 1 employer, plan No. 2 insurer, and plan No. 3, the state fund. The assessments must be levied against the preceding calendar year's gross annual payroll of the plan No. 1 employers and the gross annual direct premiums collected in Montana on the policies of the plan No. 2 insurers, insuring employers covered under the chapter, during the preceding calendar year. However, an assessment of the plan No. 1 employer or plan No. 2 insurer may not be less than $500. If at any time during the fiscal year a plan No. 1 employer is granted permission to self-insure or a plan No. 2 insurer is authorized to insure employers under this chapter, that plan No. 1 employer or plan No. 2 insurer is subject to assessment. The assessments must be sufficient to fund the ~~direct costs identified to the three plans and an equitable portion of the indirect costs based on the ratio of the preceding fiscal year's indirect costs distributed to the plans, using proper accounting and cost allocation procedures. Plan No. 3 must be assessed an amount sufficient to fund the direct costs and an equitable portion of the indirect costs of regulating plan No. 3~~ *costs of the department's administration of the Workers' Compensation and Occupational Disease Acts and the statutory occupational safety acts administered by the department. The assessment must be equitably apportioned between the three plans using proper accounting and cost allocation procedures.* Other sources of revenue, including unexpended funds from the preceding fiscal year, must be used to reduce the costs before levying the assessments.

(2) The administration fund must be debited with expenses incurred by the department in the general administration of the provisions of this chapter, including the salaries of its members, officers, and employees and the travel expenses of the members, officers, and employees, as provided for in 2-18-501 through 2-18-503, as amended, incurred while on the business of the department either within or without the state.

HeinOnline -- 1999 vol. II 1399 1999

(3) Disbursements from the administration money must be made after being approved by the department upon a claim. (Terminates June 30, 1999—sec. 8, Ch. 385, L. 1997.)

39-71-201. (Effective July 1, 1999) Administration fund. (1) A workers' compensation administration fund is established out of which all costs of administering the Workers' Compensation and Occupational Disease Acts and the statutory occupational safety acts the department must administer, with the exception of the subsequent injury fund, as provided for in 39-71-907, and the uninsured employers' fund, are to be paid upon lawful appropriation. The department shall collect and deposit in the state treasury to the credit of the workers' compensation administrative fund:

(a) all fees and penalties provided in 39-71-205, 39-71-223, 39-71-304, 39-71-307, 39-71-308, 39-71-315, 39-71-316, 39-71-401(6), 39-71-2204, 39-71-2205, and 39-71-2337; and

(b) all fees paid by an assessment on each plan No. 1 employer, plan No. 2 insurer, and plan No. 3, the state fund. The assessments must be 2.6% of the following benefits paid during the preceding calendar year for injuries covered by the Workers' Compensation Act and the Occupational Disease Act without regard to the application of any deductible whether the employer or the insurer pays the losses:

(i) total compensation benefits paid; and

(ii) except for medical benefits in excess of $200,000 per occurrence that are exempt from assessment, total medical benefits paid for medical treatment rendered to an injured worker, including hospital treatment and prescription drugs.

(2) Each plan No. 1 employer, plan No. 2 insurer subject to the provisions of this section, and plan No. 3, the state fund, shall file annually on March 31 in the form and containing the information required by the department a report of paid losses pursuant to subsection (1)(b).

(3) An assessment of the plan No. 1 employer or plan No. 2 insurer may not be less than $500. If at any time during the fiscal year a plan No. 1 employer is granted permission to self-insure or a plan No. 2 insurer is authorized to insure employers under this chapter, that plan No. 1 employer or plan No. 2 insurer is subject to an initial assessment equal to the minimum assessment against plan No. 1 employers and plan No. 2 insurers.

(4) Payment of the assessment required by this section must be submitted by the employer under plan No. 1, plan No. 2, or plan No. 3 in:

(a) one installment made on or before July 1; or

(b) two equal installments made on or before July 1 and December 31 of each year. If an employer or insurer fails to pay the assessment required under this section, the department may impose a fine of $100 plus interest on the delinquent amount at the annual interest rate of 12%.

(5) The administration fund must be debited with expenses incurred by the department in the general administration of the provisions of this chapter, including the salaries of its members, officers, and employees and the travel expenses of the members, officers, and employees, as provided for in 2-18-501 through 2-18-503, as amended, incurred while on the business of the department either within or without the state.

HeinOnline -- 1999 vol. II 1400 1999

(6) Disbursements from the administration money must be made after being approved by the department upon claim for disbursement."

Section 4. Section 39-71-201, MCA, is amended to read:

"39-71-201. (Temporary) Administration fund. (1) A workers' compensation administration fund is established out of which all costs of administering the Workers' Compensation and Occupational Disease Acts and the statutory occupational safety acts the department must administer, with the exception of the subsequent injury fund, as provided for in 39-71-907, and the uninsured employers' fund, are to be paid upon lawful appropriation. The department shall collect and deposit in the state treasury to the credit of the workers' compensation administrative fund:

(a) all fees and penalties provided in 39-71-205, 39-71-223, 39-71-304, 39-71-307, 39-71-308, 39-71-315, 39-71-316, 39-71-401(6), 39-71-2204, 39-71-2205, and 39-71-2337; and

(b) all fees paid by an assessment on each plan No. 1 employer, plan No. 2 insurer, and plan No. 3, the state fund. The assessments must be levied against the preceding calendar year's gross annual payroll of the plan No. 1 employers and the gross annual direct premiums collected in Montana on the policies of the plan No. 2 insurers, insuring employers covered under the chapter, during the preceding calendar year. However, an assessment of the plan No. 1 employer or plan No. 2 insurer may not be less than $500. If at any time during the fiscal year a plan No. 1 employer is granted permission to self-insure or a plan No. 2 insurer is authorized to insure employers under this chapter, that plan No. 1 employer or plan No. 2 insurer is subject to assessment. The assessments must be sufficient to fund the direct costs identified to the three plans and an equitable portion of the indirect costs based on the ratio of the preceding fiscal year's indirect costs distributed to the plans, using proper accounting and cost allocation procedures. Plan No. 3 must be assessed an amount sufficient to fund the direct costs and an equitable portion of the indirect costs of regulating plan No. 3. Other sources of revenue, including unexpended funds from the preceding fiscal year, must be used to reduce the costs before levying the assessments.

(2) The administration fund must he debited with expenses incurred by the department in the general administration of the provisions of this chapter, including the salaries of its members, officers, and employees and the travel expenses of the members, officers, and employees, as provided for in 2-18-501 through 2-18-503, as amended, incurred while on the business of the department either within or without the state.

(3) Disbursements from the administration money must be made after being approved by the department upon a claim. (Terminates June 30, 1999—sec. 8, Ch. 385, L. 1997.)

39-71-201. (Effective July 1, 1999) Administration fund. (1) A workers' compensation administration fund is established out of which all costs of administering the Workers' Compensation and Occupational Disease Acts and the statutory occupational safety acts the department ~~must administer~~ *is required to administer*, with the exception of the subsequent injury fund, as provided for in 39-71-907, and the uninsured employers' fund, are to be paid upon lawful appropriation. The department shall collect and deposit in the state treasury to the credit of the workers' compensation administrative fund:

HeinOnline -- 1999 vol. II 1401 1999

(a) all fees and penalties provided in 39-71-205, 39-71-223, 39-71-304, 39-71-307, 39-71-308, 39-71-315, 39-71-316, 39-71-401(6), 39-71-2204, 39-71-2205, and 39-71-2337; and

(b) all fees paid by an assessment on each plan No. 1 employer, plan No. 2 insurer, and plan No. 3, the state fund. The assessments must be ~~2.6%~~ *3%* of the following benefits paid during tbe preceding calendar year for injuries covered by the Workers' Compensation Act and the Occupational Disease Act without regard to the application of any deductible whether the employer or the insurer pays the losses:

(i) total compensation benefits paid; and

(ii) except for medical benefits in excess of $200,000 per occurrence that are exempt from assessment, total medical benefits paid for medical treatment rendered to an injured worker, including hospital treatment and prescription drugs.

(2) Each plan No. 1 employer, plan No. 2 insurer subject to the provisions of tbis section, and plan No. 3, the state fund, shall file annually on March ~~31~~ *1* in the form and containing the information required by the department a report of paid losses pursuant to subsection (1)(b).

(3) An assessment of the plan No. 1 employer or plan No. 2 insurer may not be less than $500. If at any time during the fiscal year a plan No. 1 employer is granted permission to self-insure or a plan No. 2 insurer is authorized to insure employers under this chapter, that plan No. 1 employer or plan No. 2 insurer is subject to an initial assessment equal to the minimum assessment against plan No. 1 employers and plan No. 2 insurers.

(4) Payment of the assessment required by this section must be submitted hy the employer *or insurer* under plan No. 1, plan No. 2, or plan No. 3 in:

(a) one installment made on or before July 1; or

(b) two equal installments made on or before July 1 and December 31 of each year. If an employer or insurer fails to pay the assessment required under this section, the department may impose a fine of $100 plus interest on tbe delinquent amount at the annual interest rate of 12%.

(5) (a) Beginning July 1, 2000, each plan No. 2 insurer providing workers' compensation insurance and plan No. 3, the state fund, shall collect from the insurer's policyholders an amount equal to the insurer's assessment through a surcharge based on premium. When collected, assessments may not constitute an element of loss for the purpose of establishing rates for workers' compensation insurance but, for the purpose of collection, must be treated as separate costs imposed upon insured employers.

(b) The total of this assessment must be stated as a separate cost on an insured employer's policy or on a separate document submitted to the insured employer and must be identified as "workers' compensation regulatory assessment surcharge". Each assessment surcharge must be shown as a percentage of the total workers' compensation policyholder premium.

(c) The portion of the plan No. 2 assessment identified as a premium surcharge for an individual plan No. 2 insured employer must be calculated as a percentage to be applied to premium. The percentage applied must be determined by the amount of the plan No. 2 assessment, as determined in subsection (1)(b), divided

by the total net premium as calculated under 33-2-705 paid by all plan No. 2 insured employers during the preceding calendar year.

(d) The portion of the plan No. 3 assessment identified as a premium surcharge for an individual plan No. 3 insured employer must be calculated as a percentage to be applied to premium. The percentage applied must be determined by the amount of the plan No. 3 assessment, as determined in subsection (1)(b), divided by the total net premium as calculated under 33-2-705 paid by all plan No. 3 insured employers during the preceding fiscal year.

(e) On or before March 31, 2000, and each March 31 thereafter, the department, in consultation with the advisory organization designated pursuant to 33-16-1023, shall notify plan No. 2 insurers and plan No. 3, the state fund, of the insurer assessment identified as the premium surcharge percentage to be effective for policies written or renewed annually on and after July 1 of that year.

(f) The assessment provided for in subsection (1)(b), which will be identified as a premium surcharge, must be collected at the same time and in the same manner that the premium for the coverage is collected. This premium surcharge must be excluded from the definition of premiums for all purposes, including computation of insurance producers' commissions or premium taxes, except that an insurer may cancel a workers' compensation policy for nonpayment of the premium surcharge. Cancellation must be in accordance with the procedures applicable to the nonpayment of premium.

~~(5)~~*(6)* The administration fund must be debited with expenses incurred by the department in the general administration of the provisions of this chapter, including the salaries of its members, officers, and employees and the travel expenses of the members, officers, and employees, as provided for in 2-18-501 through 2-18-503, as amended, incurred while on the business of the department either within or without the state.

~~(6)~~*(7)* Disbursements from the administration money must be made after being approved by the department upon claim for disbursement."

Section 5. Section 39-71-225, MCA, is amended to read:

"39-71-225. Workers' compensation database system. (1) The department shall develop a workers' compensation database system to generate management information about Montana's workers' compensation system. The database system must be used to collect and compile information from insurers, employers, medical providers, claimants, adjusters, rehabilitation providers, and the legal profession.

(2) Data collected must be used to provide:

(a) management information to the legislative and executive branches for the purpose of making policy and management decisions, including but not limited to:

(i) performance information to enable the state to enact remedial efforts to ensure quality, control abuse, and enhance cost control;

(ii) information on medical, indemnity, and rehabilitation costs, utilization, and trends;

(iii) information on litigation and attorney involvement for the purpose of identifying trends, problem areas, and the costs of legal involvement;

HeinOnline -- 1999 vol. II 1403 1999

(b) current and prior claim information to any insurer that is at risk on a claim, or that is alleged to be at risk in any administrative or judicial proceeding, to determine claims liability or for fraud investigation. The department may release information only upon written request by the insurer and may disclose only the claimant's name, claimant's identification number, prior claim number, date of injury, body part involved, and name and address of the insurer and claim adjuster on each claim filed. Information obtained by an insurer pursuant to this section must remain confidential and may not be disclosed to a third party except to the extent necessary for determining claim liability or for fraud investigation; and

(c) current and prior claim information to law enforcement agencies for purposes of fraud investigation or prosecution.

(3) The department is authorized to collect from insurers, employers, medical providers, the legal profession, and others the information necessary to generate the workers' compensation database system.

(4) The workers' compensation database system must be designed in accordance with the following principles:

(a) avoidance of duplication and inconsistency;

(b) reasonable availability of data elements;

(c) value of information collected to be commensurate with the cost of retrieving the collected information;

(d) uniformity to permit efficiency of collection and to allow interstate comparisons;

(e) a workable mechanism to ensure the accuracy of the data collected and to protect the confidentiality of collected data;

(f) reasonable availability of the data at a fair cost to the user;

(g) a broad application to plan No. 1, plan No. 2, and plan No. 3 insurers;

(h) compatibility with electronic data reporting;

(i) reporting procedures that can be handled through private data collection systems that adhere to the provisions of subsections (4)(a) through (4)(h);

(j) implementation of reporting requirements that allow reasonable lead time for compliance.

(5) The department shall publish an annual report on the information compiled.

(6) Users of information obtained from the workers' compensation database under this section are liable for damages arising from misuse or unlawful dissemination of database information.

(7) Beginning July 1, 2000, an insurer or a third-party administrator who submitted 50 or more "first reports of injury" to the department in the preceding calendar year shall electronically submit the reports and any other reports related to the reported claims in a nationally recognized format specified by department rule.

(8) The department may adopt rules to implement this section."

Section 6. Section 39-71-432, MCA, is amended to read:

"**39-71-432. Definitions.** As used in 39-71-433, the following definitions apply:

(1) "Business entity" means a business enterprise owned by a single person, corporation, organization, business trust, trust, partnership, limited liability company, limited liability partnership, joint venture, association, or other business entity.

(2) "Group" means two or more business entities that join together~~, with the approval of the department,~~ to purchase individual workers' compensation insurance policies covering each business entity that is part of a group."

Section 7. Section 39-71-501, MCA, is amended to read:

"**39-71-501. Definition of uninsured employer.** For the purposes of 39-71-501 ~~through~~, *39-71-503 through* 39-71-511, and 39-71-515 through 39-71-520, "uninsured employer" means an employer who has not properly complied with the provisions of 39-71-401."

Section 8. Section 39-71-503, MCA, is amended to read:

"**39-71-503. ~~Administration~~ *Uninsured employers' fund — purpose and administration* of fund — appropriation.** (1) ~~The department shall administer the fund and shall pay from it all expenses of administering the fund, all loss adjustment expenses for claims of injured employees of uninsured employers, and all proper benefits to injured employees of underinsured and uninsured employers~~ *There is created an uninsured employers' fund in the state special revenue account to pay:*

(a) to an injured employee of an uninsured employer the same benefits the employee would have received if the employer had been properly enrolled under compensation plan No. 1, 2, or 3, except as provided in subsection (3);

(b) the costs of investigating and prosecuting workers' compensation fraud under 2-15-2015; and

(c) the expenses incurred by the department in administering the uninsured employers' fund.

(2) The department may refer to the workers' compensation fraud office, established in 2-15-2015, cases involving:

(a) false or fraudulent claims for benefits; and

(b) criminal violations of 45-7-501.

~~(2)~~*(3)* Surpluses and reserves may not be kept for the fund. The department shall make payments that it considers appropriate as funds become available from time to time. The payment of weekly disability benefits takes precedence over the payment of medical benefits. Lump-sum payments of future projected benefits, including impairment awards, may not be made from the fund. The board of investments shall invest the money of the fund, and the investment income must be deposited in the fund.

~~(3)~~*(4)* The amounts necessary for the payment of benefits from this fund are statutorily appropriated, as provided in 17-7-502, from this fund."

Section 9. Section 39-71-510, MCA, is amended to read:

"**39-71-510. Limitation on benefit entitlement under fund.** Notwithstanding the provisions of 39-71-407~~, 39-71-502,~~ and 39-71-503, injured

employees or an employee's beneficiaries who pursue a claim for benefits from the uninsured employers' fund are not granted an entitlement by this state for full workers' compensation benefits from the fund. Benefits from the fund must be paid in accordance with the sums in the fund. If the department determines at any time that the sums in the fund are not adequate to fully pay all claims, the department may make appropriate proportionate reductions in benefits to all claimants. The reductions do not entitle claimants to retroactive reimbursements in the future."

Section 10. Section 39-71-517, MCA, is amended to read:

"39-71-517. Requirement to serve papers. In pursuing remedies under 39-71-501 ~~through~~, *39-71-503 through* 39-71-511, and 39-71-515 through 39-71-520, an injured employee or the employee's beneficiaries shall serve all pleadings and all other litigation papers on the department and the uninsured employer, regardless of whether the department or the uninsured employer is a party to the particular action to which the papers relate."

Section 11. Section 39-71-519, MCA, is amended to read:

"39-71-519. Settlement. The department, the uninsured employer, the injured employee or the employee's beneficiaries, a third party who shares liability as defined in 39-71-412, or a fellow employee who shares liability as defined in 39-71-413 may enter into a settlement agreement to finally settle the rights and liabilities under 39-71-501 ~~through~~, *39-71-503 through* 39-71-511, and 39-71-515 through 39-71-520 of any or all of the parties. The settlement is subject to department approval in accordance with 39-71-741."

Section 12. Section 39-71-605, MCA, is amended to read:

"39-71-605. Examination of employee by physician — effect of refusal to submit to examination — report and testimony of physician — cost. (1) (a) Whenever in case of injury the right to compensation under this chapter would exist in favor of any employee, the employee shall, upon the written request of the insurer, submit from time to time to examination by a physician, psychologist, or panel that must be provided and paid for by the insurer and shall likewise submit to examination from time to time by any physician, psychologist, or panel selected by the department or as ordered by the workers' compensation judge.

(b) The request or order for an examination must fix a time and place for the examination, with regard for the employee's convenience, physical condition, and ability to attend at the time and place that is as close to the employee's residence as is practical. An examination that is conducted by a physician, psychologist, or panel licensed in another state is not precluded under this section. The employee is entitled to have a physician present at any examination. If the employee, after written request, fails or refuses to submit to the examination or in any way obstructs the examination, the employee's right to compensation must be suspended and is subject to the provisions of 39-71-607. Any physician, psychologist, or panel employed by the insurer or the department who makes or is present at any examination may be required to testify as to the results of the examination.

(2) In the event of a dispute concerning the physical condition of a claimant or the cause or causes of the injury or disability, if any, the department or the workers' compensation judge, at the request of the claimant or insurer, as the case may be, shall require the claimant to submit to an examination as it considers

HeinOnline -- 1999 vol. II 1406 1999

desirable by a physician, psychologist, or panel within the state or elsewhere that has had adequate and substantial experience in the particular field of medicine concerned with the matters presented by the dispute. The physician, psychologist, or panel making the examination shall file a written report of findings with the claimant and insurer for their use in the determination of the controversy involved. The requesting party shall pay the physician, psychologist, or panel for the examination.

(3) As used in this section, a panel includes a *practitioner having substantial experience in the field of medicine concerned with the matters presented by the dispute and whose licensure would qualify the practitioner to act as a* treating physician, as defined in 39-71-116, and may include a psychologist.

(4) A claimant is required, upon a written request of an insurer, to submit to a functional capacities evaluation conducted by a licensed physical therapist.

(5) This section does not apply to impairment evaluations provided for in 39-71-711."

Section 13. Section 39-71-610, MCA, is amended to read:

"**39-71-610. Termination of benefits by insurer — department order to pay disputed benefits prior to hearing *or mediation* — limitation on order — right of reimbursement.** If an insurer terminates biweekly compensation benefits and the termination of compensation benefits is disputed by the claimant, the department may, upon written request, order an insurer to pay additional biweekly compensation benefits prior to a hearing *or mediation*, but in no event may the biweekly compensation benefits be ordered to be paid under this section for a period exceeding 49 days or for any period subsequent to the date of ~~a~~ *the* hearing *or mediation*. If after a hearing *before the workers' compensation court* it is held that the insurer was not liable for the compensation payments ordered by the department, the insurer has the right to be reimbursed for ~~such~~ *the* payments by the claimant."

Section 14. Section 39-71-725, MCA, is amended to read:

"**39-71-725. Payment of burial expense.** There ~~shall~~ *must* be paid, in case of the death of an employee~~, which~~ *whose* death is the result of an accidental injury arising out of the employment and happening in the course of the employment, the reasonable burial expenses of the employee, not exceeding ~~$1,400, and such~~ *$4,000. The* payment is not a part of the compensation ~~which~~ *that* might be paid but is a benefit in addition to and separate ~~and apart~~ from compensation."

Section 15. Section 39-71-905, MCA, is amended to read:

"**39-71-905. Certification as person with a disability.** A person who wishes to be certified as a person with a disability for purposes of this part shall apply to the department on forms furnished by the department. The department shall conduct an investigation and shall issue a certificate to a person who, in the department's discretion, meets the requirements for certification. A person shall apply for certification before employment or within 60 days after the person becomes employed or reemployed and before an injury occurs that is covered by this part. The certification is effective on the date of employment or reemployment. *Certification is effective on the date the application is approved for a person who applies for certification more than 60 days after employment or reemployment, but before an injury occurs.* ~~Failure to apply before employment~~

HeinOnline -- 1999 vol. II 1407 1999

~~or within 60 days after employment or reemployment precludes the employer from the protection and benefits of this part.~~"

Section 16. Section 39-71-915, MCA, is amended to read:

"39-71-915. Assessment of insurers — definition. (1) As used in this section, "paid losses" means the following benefits paid during the preceding calendar year for injuries covered by the Montana Workers' Compensation Act without regard to the application of any deductible regardless of whether the employer or the insurer pays the losses:

(a) total compensation benefits paid; and

(b) except for medical benefits in excess of $200,000 per occurrence that are exempt from assessment, total medical benefits paid for medical treatment rendered to an injured worker, including hospital treatment and prescription drugs.

(2) The fund must be maintained by assessing each plan No. 1 employer, each plan No. 2 ~~insured employer~~ *insurer*, and plan No. 3, the state fund. The assessment amount is the total amount of paid losses reimbursed from the fund in the preceding calendar year and the expenses of administration less other income. The total assessment amount collected must be allocated among plan No. 1 employers, plan No. 2 ~~insured employers~~ *insurers*, and plan No. 3, the state fund, based on paid losses for the calendar year preceding the year in which the assessment is collected. The board of investments shall invest the money of the fund, and the investment income must be deposited in the fund.

(3) On or before March 31 each year, the department shall notify each plan No. 1 employer, plan No. 2 insurer, and plan No. 3, the state fund, of the amount to be assessed against the employer, *plan No. 2 insurer,* or the state fund for that calendar year. On or before March 31 each year, the department, in consultation with the advisory organization designated under 33-16-1023, shall notify plan No. 2 insurers *and plan No. 3* of the premium surcharge rate to be effective for policies written or renewed on and after ~~January 1~~ *July 1* in that ~~calendar~~ year.

(4) The portion of the plan No. 1 assessment assessed against an individual plan No. 1 employer is a proportionate amount of total plan No. 1 paid losses during the preceding calendar year that is equal to the percentage that the total paid losses of the individual plan No. 1 employer bore to the total paid losses of all plan No. 1 employers during the preceding calendar year.

(5) The portion of the plan No. 2 assessment subject to premium surcharge for an individual plan No. 2 insured employer is a proportionate amount of total plan No. 2 paid losses during the preceding calendar year that is equal to the percentage that the total paid losses of the individual plan No. 2 insured employer bore to the total paid losses of all plan No. 2 insurers during the preceding calendar year.

(6) The portion of the state fund assessment subject to premium surcharge for a state fund insured employer is a proportionate amount of total state fund paid losses during the preceding calendar year that is equal to the percentage that the total paid losses of the individual state fund insured employer bore to the total paid losses of state fund insured employers during the preceding calendar year.

~~(6)~~*(7)* Payment of assessments due must be made to the department semiannually on June 30 and December 31 of the year following the calendar year on which the assessment is based.

HeinOnline -- 1999 vol. II 1408 1999

~~(7)~~*(8)* Each plan No. 2 insurer providing workers' compensation insurance *and plan No. 3, the state fund,* ~~may~~ *shall* collect from ~~each of~~ its policyholders ~~an amount equal to the insured employer's fund~~ *the* assessment ~~through a surcharge based on premium~~ *in subsection (2).* When collected, assessments may not constitute an element of loss for the purpose of establishing rates for workers' compensation insurance but, for the purpose of collection, must be treated as separate costs imposed upon insured employers. The total of this assessment must be stated as a separate cost on an insured employer's policy or on a separate document submitted by the insured employer and must be identified as "workers' compensation ~~policyholder~~ *subsequent injury fund* surcharge". Each assessment must be shown as a percentage of the total workers' compensation policyholder premium. ~~The~~ *This* premium surcharge must be collected at the same time and in the same manner that the premium for the coverage is collected. The premium surcharge must be excluded from tbe definition of premiums for all purposes, including computation of insurance producers' commissions or premium taxes, except that an insurer may cancel a workers' compensation policy for nonpayment of the premium surcharge. Cancellation must be in accordance with the procedures applicable to the nonpayment of premium.

~~(8)~~*(9)* All assessments paid to the department must be deposited in the fund."

Section 17. Section 39-71-1004, MCA, is amended to read:

"39-71-1004. Industrial aecident rehabilitation aecount. (1) The payments provided in 39-71-1003 must be made from the industrial accident rehabilitation account in the state special revenue fund. Payments to the account must be made each year upon an assessment by the department as follows:

(a) by each employer operating under the provisions of plan No. 1 of the Workers' Compensation Act, an amount to be assessed by the department, not exceeding 1% of the compensation paid to the employer's injured employees in Montana for the preceding ~~fiscal~~ *calendar* year;

(b) by each insurer insuring employers under the provisions of plan No. 2 of the Workers' Compensation Act, an amount to be assessed by the department, not exceeding 1% of the compensation paid to injured employees of its insured in Montana during the preceding ~~fiscal~~ *calendar* year;

(c) by the state fund, an amount to be assessed by the department, not exceeding 1% of the compensation paid by the state fund to injured employees in Montana during the preceding ~~fiscal~~ *calendar* year.

(2) Separate accounts of the amounts that were collected and disbursements tbat were made from the industrial accident rehabilitation account in the state special revenue fund must be kept for each of the plans. If in any fiscal year the amount that was collected from the employers under any plan exceeds the amount of payments for employees of the employers under the plan, the assessment against the employers under the plan for the following year must be reduced.

(3) The payments provided for in this section must be made to the department, which shall credit the sums paid to the industrial accident rehabilitation account in the custody of the state treasurer. Disbursements from the account must be made after approval by the department.

(4) The funds allocated or contributed as provided in this section may not be used for payment of administrative expenses of the department.

HeinOnline -- 1999 vol. II 1409 1999

(5) The methods and processes used to disburse rehabilitation expense payments to eligible disabled workers are procedural and do not affect the substantive rights of those disabled workers."

Section 18. Section 39-72-405, MCA, is amended to read:

"**39-72-405. General limitations on payment of compensation.** ~~(1) Compensation may not be paid when the last day of the injurious exposure of the employee to the hazard of the occupational disease has occurred prior to July 1, 1959.~~

~~(2)~~ When an employee ~~in employment on or after January 1, 1959, because the employee~~ has an occupational disease incurred in and caused by the employment that is not yet disabling~~,~~ *and* is discharged or transferred from the employment in which the employee is engaged or when the employee ceases employment and it is ~~in fact~~ *medically*~~, as determined by the medical panel,~~ inadvisable for the employee on account of a nondisabling occupational disease to continue in employment and the employee suffers wage loss by reason of the discharge, transfer, or cessation, compensation may be paid, not exceeding $10,000, by an agreement between tbe insurer and the claimant. If the parties fail to reach an agreement, the mediation procedures in Title 39, chapter 71, part 24, must be followed."

Section 19. Section 39-72-608, MCA, is amended to read:

"**39-72-608. Payment of medical examination, report, and autopsy expenses.** The expense of the first medical examination and report as provided in 39-72-602 must be borne by the insurer. The expense of a reexamination and panel report must be borne by the dissatisfied party requesting the reexamination. The expense of the periodic medical examinations and reports, as provided in 39-72-607, must be borne by the party requesting the periodic medical examination. The expense of the autopsy, as provided for in 39-72-606, must be borne by the party requesting the autopsy. ~~When the occupational disease causes death, the~~ *The* expense of any examinations and reports, as provided in 39-72-605, must be borne by the party requesting the examination."

Section 20. Section 39-72-714, MCA, is amended to read:

"**39-72-714. Reduction or suspension of compensation for unsanitary or injurious practices or refusal to submit to medical or surgical treatment.** The ~~department~~ *insurer* may reduce or suspend the compensation of ~~an employee~~ *a claimant* who persists in unsanitary or injurious practices tending to imperil or retard ~~his~~ recovery or who refuses to submit to ~~such~~ medical or surgical treatment as is reasonably essential to promote ~~his~~ *the claimant's* recovery. *If a dispute arises between a claimant and an insurer regarding the reduction or suspension of compensation, the mediation procedures provided in Title 39, chapter 71, part 24, must be followed.*"

Section 21. Confidentiality of records — exception for nse by public employees. Information obtained from any individual under this part is confidential and may not be disclosed, sold, or opened to public inspection except to department employees when necessary to allow them to perform their public duties under Title 39, chapters 71 and 72, or to provide relevant and necessary information to other public entities or pursuant to a subpoena issued upon a showing of compelling state interest.

Section 22. Repealer. Section 39-71-502, MCA, is repealed.

HeinOnline -- 1999 vol. II 1410 1999

Section 23. Codification instruction. [Section 21] is intended to be codified as an integral part of Title 39, chapter 71, part 5, and the provisions of Title 39, chapter 71, part 5, apply to [section 21].

Section 24. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from that invalid applications.

Section 25. Effective dates. (1) [Sections 2, 3, 23, 24, 26, and 27 and this section] are effective on passage and approval.

(2) [Sections 1, 4 through 15, and 17 through 22] are effective July 1, 1999.

(3) [Section 16] is effective July 1, 2000.

Section 26. Retroactive applicability. [Section 3] applies retroactively, within the meaning of 1-2-109, to occurrences after June 30, 1991.

Section 27. Termination. [Section 3] terminates June 30, 1999.

Approved April 20, 1999

CHAPTER NO. 378

[SB 126]

AN ACT ESTABLISHING REQUIREMENTS FOR THE DISPOSAL OF SEPTAGE AND REQUIRING LICENSURE OF THOSE ENGAGED IN THAT BUSINESS; PROVIDING THE DEPARTMENT OF ENVIRONMENTAL QUALITY WITH RULEMAKING AUTHORITY; ESTABLISHING A LICENSE AND LICENSE RENEWAL FEE; PROVIDING FOR INJUNCTIVE RELIEF; PROVIDING THE DEPARTMENT WITH THE AUTHORITY TO REVOKE OR DENY A LICENSE; PROVIDING THE DEPARTMENT WITH ADMINISTRATIVE ENFORCEMENT AUTHORITY; AUTHORIZING CRIMINAL FINES AND CIVIL PENALTIES; CREATING A SEPTAGE SPECIAL REVENUE ACCOUNT; TRANSFERRING CERTAIN FUNDS; REPEALING SECTIONS 37-41-101, 37-41-103, 37-41-104, 37-41-105, 37-41-201, 37-41-202, 37-41-205, 37-41-211, AND 37-41-212, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. As used in [sections 1 through 10], the following definitions apply:

(1) "Board" means the board of environmental review provided for in 2-15-3502.

(2) "Department" means the department of environmental quality provided for in 2-15-3501.

(3) "Disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or placing of septage into or onto the land or water.

(4) "Domestic sewage" means waste and wastewater from humans or household operations that are discharged to or otherwise enter a treatment works.

(5) "Industrial wastewater" means wastewater generated in a commercial or industrial process.

HeinOnline -- 1999 vol. II 1411 1999

(6) "Person" means an individual, firm, partnership, association, corporation, city, town, local government entity, or other government or private entity, whether organized for profit or not.

(7) (a) "Septago" means liquid or solid material removed from a septic tank, cesspool, portable toilet, or similar treatment works that receives only domestic sewago.

(h) Septage does not include material removed from a septic tank, cesspool, or similar treatment works that receives industrial wastewater and does not include grease removed from a grease trap at a restaurant.

(8) "Treatment works" means a puhlicly owned or privately owned device or system used to treat, including to recycle and to reclaim, either domestic sewago or a combination of domestic sewage and industrial waste of a liquid nature.

Section 2. Department rulemaking authority. Except as provided in subsection (4), the department shall adopt rules governing the licensure of a porson engaged in the business of cleaning cesspools, septic tanks, and privies or disposing of septage. The rules must provide:

(1) procedures for issuance, denial, renewal, and revocation of licenses;

(2) requirements that provide for the sanitary disposal of septage, including:

(a) application of septage to agricultural land, forest land, and reclamation sites;

(b) standards governing rates of application pursuant to subsection (2)(a);

(c) land application standards and restrictions, including:

(i) pathogen restrictions and treatment requirements;

(ii) vector attraction reduction requirements;

(iii) frequency of monitoring; and

(iv) recordkeepimg requirements; and

(3) surface disposal standards, including:

(a) the vector attraction reduction requirements for septago placed on an active sewage sludge unit;

(b) the frequency of monitoring required when septage is placed on an active sewage sludge unit;

(c) the recordkeeping required when septage is placed on a surface disposal site; and

(d) requirements for tbe disposal of waste from:

(i) cesspools, septic tanks, portable toilets, and other similar treatment works that receive industrial wastewater or grease removed from grease traps; and

(ii) grease traps.

(4) The department may not adopt rules pertaining to the business operations of persons engaged in the business of cleaning cesspools, septic tanks, and privies or disposing of septage, including the fees charged for cleaning or leasing portable toilets.

Section 3. License rcquired — exception. (1) Except as provided in subsection (2), a person may not engaga in the business of cleaning cesspools, septic tanks, or privies or dispose of septage unless licensed by the department.

HeinOnline -- 1999 vol. II 1412 1999

(2) An owner or lessee of property from which septage is removed may dispose of that septage on that person's property if:

(a) the person pumps the septage with the person's equipment or retains a person licensed pursuant to the provisions of subsection (1) to pump the septage; and

(b) the disposal does not violate disposal restrictions or rules adopted pursuant to [section 2] or create a nuisance or public health hazard.

Section 4. Application for license. An application for a license must be made to the department on forms provided by the department. The application must contain:

(1) the full name and business address of the applicant;

(2) a list of the counties in which business is to be conducted and a list of disposal sites that the applicant intends to use during the permit year;

(3) for each disposal site listed pursuant to subsection (2), a certification by a local health officer or the local health officer's designated representative in the county in which the disposal site is located that the site meets all applicable state and local requirements;

(4) written permission to use each proposed disposal site signed by the owner, manager, or other person authorized to give permission to use the disposal site; and

(5) any additional information required by rule.

Section 5. License term, renewal, and fees. (1) A license expires on December 31 of each calendar year. A license is renewable in accordance with procedures established in rules adopted pursuant to [section 2] and upon receipt of the application provided for in subsection (2) of this section. A license is not transferable. If a person ceases to do business, the license terminates and the license must be returned to the department.

(2) An application for renewal of a license must be made on a form provided by the department. The application must contain:

(a) the full name and address of the licensee;

(b) a list of counties in which business is to be conducted during the renewal term;

(c) a list of disposal sites that the licensee intends to use during the renewal term;

(d) for each disposal site listed pursuant to subsection (2)(c) but not previously listed by the licensee for the year immediately preceding the renewal year:

(i) a certification by the local health officer or the local health officer's representative in the county in which the disposal site is located that the site meets all applicable state and local requirements; and

(ii) written permission to use the site signed by the owner, manager, or other person authorized to give permission to use the site; and

(e) any additional information required by the department by rule.

(3) The fee for a license, including renewal of a license, is $125, payable to the department at the time of application for the license or renewal. A federal agency, city, town, county, or other political subdivision is not required to pay the license fee. A city, town, county, or other political subdivision, including a

HeinOnline -- 1999 vol. II 1413 1999

federal agency if allowed by federal law, shall comply with all other requirements of [sections 1 through 10]. The department shall annually return 40% of the fees to the county where the fees were collected. The state portion of the fee must be deposited in the account provided for in [section 10]. The county portion of the fee must be used to defer the cost of the county to enforce [sections 1 through 10].

(4) In addition to the license fee required under subsection (3), the department shall collect a late fee from any person that has failed to submit a license fee between January 31 and April 1 of a renewal year and that operates a business governed by [sections 1 through 10] in the renewal year. The late fee is $125 and must be deposited in the account provided for in [section 10]. The late fee is the exclusive remedy for the late payment of a renewal fee.

Section 6. Injunction. (1) The department may sue to enjoin the operation or maintenance of a septago collection or disposal operation until compliance with [sections 1 through 10], the rules of the department, or an order issued pursuant to [sections 1 through 10] has been demonstrated.

(2) Upon request of the department, the attorney general or the county attorney of the county in which a septage collection or disposal operation is located may petition the district court to enjoin further operation or maintenance of the septage collection or disposal operation.

Section 7. Department revocation or denial of license. The department may deny or revoke a license after giving the applicant written notice and an opportunity for a hearing before the board. The decision to deny or revoke a license may be made only after a finding that a business or disposal site cannot be operated or is not being operated in compliance with [sections 1 through 10] or a rule or order issued pursuant to [sections 1 through 10]. The hearing held before the board on a denial or revocation must be held pursuant to the provisions of the Montana Administrative Procedure Act.

Section 8. Administrative enforcement. (1) If the department believes that a violation of [sections 1 through 10], a rule adopted under [sections 1 through 10], or an order issued under [sections 1 through 10] has occurred, it may serve written notice of the violation, by certified mail, on the alleged violator or the violator's agent. The notice must specify the provision of [sections 1 through 10], the rule, or the condition of approval alleged to have been violated and the facts alleged to constitute a violation. The notice must include an order to take necessary corrective action within a reasonable period of time. The time period must be stated in the order. Service is complete on the date of mailing.

(2) If the alleged violator does not request a hearing before the board within 30 days of the date of service, the order is final. Failure to comply with a final order may subject the violator to an action commenced pursuant to [section 7].

(3) If the alleged violator requests a hearing before the board within 30 days of the date of service, the board shall schedule a hearing. After the hearing is held, the board may:

(a) affirm or modify the department's order issued under subsection (1) if the board finds that a violation has occurred; or

(b) rescind the department's order if the board finds that a violation has not occurred.

(4) An order issued by the department or the board may set a date by which the violation must cease and set a time limit for the violator to correct the violation.

(5) An action initiated by the department under this section may include an administrative penalty not to exceed $500 for each day of violation. Administrative penalties collected under this section must be deposited in the account provided for in [section 10].

(6) The contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply to a hearing under this section.

Section 9. Penalties and fines. (1) A person that disposes of septage in violation of [section 3] or of the standards adopted pursuant to [section 2] is guilty of a misdemeanor and upon conviction shall he fined an amount not to exceed $500.

(2) A person that violates [sections 1 through 10] or a rule or order adopted pursuant to [sections 1 through 10] is subject to a civil penalty of not more than $500. Each day that violation of [sections 1 through 10], a rule of the department, or an order issued pursuant to [sections 1 through 10] occurs constitutes a separate violation. The department or the county attorney of the county in which the violation occurred may file an action to collect the penalty.

(3) Penalties collected by the department under this section must be deposited in the account provided for in [section 10]. Fines and penalties collected by a county must be deposited in the general fund of the county.

Section 10. Special revenue account. There is an account in the state special revenue fund. Money in the account must be used to fund administration and enforcement of [sections 1 through 9] and this section.

Section 11. Transfer of funds. Money in the account established in 37-41-205 on December 31, 1999, must be transferred to the account established in [section 10].

Section 12. Repealer. Sections 37-41-101, 37-41-103, 37-41-104, 37-41-105, 37-41-201, 37-41-202, 37-41-205, 37-41-211, and 37-41-212, MCA, are repealed.

Section 13. Codification instruction. [Sections 1 through 10] are intended to be codified as an integral part of Title 75, chapter 10, and the provisions of Title 75, chapter 10, apply to [sections 1 through 10].

Section 14. Effective dates. (1) [Sections 1, 2, 4, 5, 7, 10, 11, and 13 and this section] are effective on passage and approval.

(2) [Sections 3, 6, 8, 9, and 12] are effective January 1, 2000.

Approved April 20, 1999

CHAPTER NO. 379

[SB 151]

AN ACT CLARIFYING THAT THE RETIREMENT LEVY FOR A COMMUNITY COLLEGE DISTRICT MAY BE IMPOSED ONLY ON PROPERTY WITHIN THE COMMUNITY COLLEGE DISTRICT; AMENDING

HeinOnline -- 1999 vol. II 1415 1999

SECTION 20-9-501, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-501, MCA, is amended to read:

"20-9-501. Retirement fund. (1) The trustees of a district employing personnel who are members of the teachers' retirement system or the public employees' retirement system or who are covered by unemployment insurance or who are covered by any federal social security system requiring employer contributions shall establish a retirement fund for the purposes of budgeting and paying the employer's contributions to the systems. The district's contribution for each employee who is a member of the teachers' retirement system must be calculated in accordance with Title 19, chapter 20, part 6. The district's contribution for each employee who is a member of the public employees' retirement system must be calculated in accordance with 19-3-316. The district's contributions for each employee covered by any federal social security system must be paid in accordance with federal law and regulation. The district's contribution for each employee who is covered by unemployment insurance must be paid in accordance with Title 39, chapter 51, part 11.

(2) The trustees of a district required to make a contribution to a system referred to in subsection (1) shall include in the retirement fund of the final budget the estimated amount of the employer's contribution. After the final retirement fund budget has been adopted, the trustees shall pay the employer contributions to the systems in accordance with the financial administration provisions of this title.

(3) When the final retirement fund budget has been adopted, the county superintendent shall establish the levy requirement by:

(a) determining the sum of the money available to reduce the retirement fund levy requirement by adding:

(i) any anticipated money that may be realized in the retirement fund during the ensuing school fiscal year, including anticipated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-504, 61-3-521, 61-3-527, 61-3-529, 61-3-537, and 67-3-204;

(ii) oil and natural gas production taxes;

(iii) anticipated local government severance tax payments for calendar year 1995 production as provided in 15-36-325;

(iv) coal gross proceeds taxes under 15-23-703;

(v) any fund balance available for reappropriation as determined by subtracting the amount of the end-of-the-year fund balance earmarked as the retirement fund operating reserve for the ensuing school fiscal year by the trustees from the end-of-the-year fund balance in the retirement fund. The retirement fund operating reserve may not he more than 35% of the final retirement fund budget for the ensuing school fiscal year and must be used for the purpose of paying retirement fund warrants issued by the district under the final retirement fund budget.

(vi) any other revenue anticipated that may be realized in the retirement fund during the ensuing school fiscal year, excluding any guaranteed tax base aid.

HeinOnline -- 1999 vol. II 1416 1999

(b) notwithstanding tbe provisions of subsection (8), subtracting tbe money available for reduction of the levy requirement, as determined in subsection (3)(a), from the budgeted amount for expenditures in the final retirement fund budget.

(4) The county superintendent shall:

(a) tetal the net retirement fund levy requirements separately for all elementary school districts, all high school districts, and all community college districts of the county, including any prorated joint district or special education cooperative agreement levy requirements; and

(b) report each levy requirement to the county commissioners on the fourth Monday of August as the respective county levy requirements for elementary district, high school district, and community college district retirement funds.

(5) The county commissioners shall fix and set the county levy *or district levy* in accordance witb 20-9-142.

(6) The net retirement fund levy requirement for a joint elementary district or a joint bigh school district must be prorated to each county in which a part of the district is located in the same proportion as the district ANB of the joint district is distributed by pupil residence in each county. The county superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county as provided in 20-9-151.

(7) The net retirement fund levy requirement for districts that are members of special education cooperative agreements must be prorated to each county in whicb the district is located in the same proportion as the special education cooperative budget is prorated to the member school districts. The county superintendents of the counties affected shall jointly determino the net retirement fund levy requirement for each county in the same manner as provided in 20-9-151, and tbe county commissioners shall fix and levy the net retirement fund levy for each county in the same manner as provided in 20-9-152.

(8) The county superintendent shall calculate the number of mills to be levied on the taxable property in the county to finance the retirement fund net levy requirement by dividing the amount determined in subsection (4)(a) by the sum of:

(a) the amount of guaranteed tax base aid that the county will receive for each mill levied, as certified by the superintendent of public instruction; and

(b) the taxable valuation of the district divided by 1,000.

(9) The levy for a community college district may be applied only to property within the district."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 20, 1999

CHAPTER NO. 380

[SB 178]

AN ACT IMPLEMENTING A MORATORIUM ON THE HARVEST OR REMOVAL OF WILD MEDICINAL PLANTS FROM STATE LANDS; ESTABLISHING A TASK FORCE ON WILD MEDICINAL PLANTS TO

HeinOnline -- 1999 vol. II 1417 1999

ACQUIRE THE NECESSARY TECHNICAL INFORMATION TO DETERMINE SUSTAINABLE COLLECTING OF WILD MEDICINAL PLANTS ON STATE LANDS AND TO RECOMMEND LEGISLATION IF APPROPRIATE; REQUIRING THE GOVERNOR TO NOTIFY FEDERAL AGENCIES AND TRIBAL GOVERNMENTS REGARDING THE MORATORIUM AND ALLOWING THE GOVERNOR, WHEN APPROPRIATE, TO ENTER INTO A MEMORANDUM OF UNDERSTANDING WITH A FEDERAL AGENCY OR TRIBAL GOVERNMENT TO HELP ENSURE THE SUSTAINABILITY OF WILD MEDICINAL PLANTS THROUGHOUT MONTANA; PROVIDING DEFINITIONS AND A PENALTY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Statement of policy. (1) It is the intent of the legislature to regulate the taking of wild medicinal plants from stato lands in order to protect and preserve the natural ecosystem integrity of state lands in perpetuity and safeguard the state's commercial interest in a potentially sustainable enterprise.

(2) In this connection, the legislature recognizes and declares that:

(a) school trust lands are held in trust for the support of education and for the attainment of other worthy objects helpful to the well-being of the people of the state;

(b) it is the duty of the board of land commissioners to administer this trust so as to secure the largest measure of legitimate and reasonable advantage to the state;

(c) the conservation and preservation of native wild medicinal plants on school trust lands and all lands owned and administered by the state for the enjoyment and inspiration of future generations is an object worthy of legislative action helpful to the well-being of tbe people of the state;

(d) the unregulated commercial harvest of wild medicinal plants from state lands creates a threat to the sustainability of wild medicinal plant species, increases the possibility of erosion, weed encroachment, and other adverse environmental effects, and deprives tlie school trust of potential income;

(e) the preservation of wild medicinal plants on state trust land has sufficient value to present and future education to meet the state's obligation for the disposition and utilization of trust lands as specified in the Enabling Act; and

(f) a moratorium on the harvest of wild medicinal plants on state lands provides the time to acquire necessary technical information to recommend policy and benefits all Montanans by raising public awareness of wild medicinal plants and their importance and value, by ensuring the viability of wild medicinal plant populations on state lands, and by preventing erosion and enhancing conservation efforts.

Section 2. Definitions. As used in [sections 1 through 5], the following definitions apply:

(1) "State lands" has the same meaning as provided in 77-1-101.

(2) "Wild medicinal plant" means an indigenous plant species as it occurs in the wild, with documented or potential risk of unsustainable commercial collecting, including:

HeinOnline -- 1999 vol. II 1418 1999

(a) bitterroot (Lewisia rediviva);

(b) echinacea (Echinacea angustifolia);

(c) lady's slipper (all species of Cypripedium);

(d) lomatium (Lomatium dissectum);

(e) osha (all species of Ligusticum);

(f) sundew (all species of Drosera); and

(g) trillium or Beth root (Trillium ovatum).

Section 3. Moratorium on harvest of wild medicinal plants on state lands — penalty. (1) For a period of 3 years after [the effective date of this act], the collection, disturbance, alteration, or removal of wild medicinal plants from state lands for human consumption is prohibited. The harvesting or other taking of wild medicinal plants or plant specimens from state lands is not a recreational use for which a general or special recreational use license may be issued. The harvesting or other taking of wild medicinal plants or plant specimens from state lands for purposes of scientific study by an accredited representative of an accredited school, college, university, or other institution of higher learning or of any government agency is not prohibited under the moratorium. The incidental disturbance of medicinal plants by a state land lessee who is lawfully exercising rights granted under the lease is not considered to be a violation of the moratorium.

(2) A violation of the moratorium imposed in this section is considered an illegal removal of a valuable resource from state lands. A person convicted of violating the moratorium is subject to a civil penalty of up to $1,000 for each day of violation.

Section 4. Task force on wild medicinal plants — report to governor and legislature. (1) The governor shall appoint a task force on wild medicinal plants. The task force may consist of members of the public and government agencies who are interested in wild medicinal plants. Membership on the task force is voluntary, and members shall serve without compensation. Membership may include but is not limited to:

(a) the director of the department of natural resources and conservation or a representative of the director;

(b) the director of the department of agriculture or a representative of the director;

(c) a person or persons with knowledge of the scientific aspects of indigenous medicinal plants, including biology, plant physiology, pharmacology, and plant preservation and sustainability;

(d) a person or persons with knowledge of the cultural, historical, and spiritual aspects of wild medicinal plants;

(e) a representative or representatives of Montana tribal governments;

(f) a representative of the medicinal plant production industry; and

(g) a representative of the Montana university system.

(2) The task force shall remain in effect for the duration of the moratorium period established in [section 3].

HeinOnline -- 1999 vol. II 1419 1999

(3) The task force shall meet as often as necessary during the moratorium established in [section 3] to study and compile the necessary technical information on wild medicinal plants on state lands. The study must include but is not limited to:

(a) a baseline report that addresses the range, taxonomy, and viability of indigenous wild medicinal plants on state lands, which may include a status report and a research report on demographic field research results;

(b) the effects of improper harvesting on wild medicinal plants and possible harvesting techniques that will ensure the future viability of indigenous wild medicinal plants on state lands;

(c) the potential for replacing noxious weeds on state lands with sustainable populations of propagated wild medicinal plants;

(d) symbiotic relationships between wild medicinal plants and other plant and animal species that are critical to the survival of wild medicinal plants;

(e) educational efforts designed to inform state trust land lessees and the public regarding the proper identification of indigenous wild medicinal plants and the maintenance of sustainable populations of those plants; and

(f) potential income that might be available to the school trust from future sustainable agricultural practices that enhance the propor cultivation, harvest, and marketing of wild medicinal plants on state lands.

(4) The task force shall report to the gevernor annually and to the legislature at each regular legislative session regarding the progress on and results of the technical studies and policy recommendations regarding wild medicinal plants and may make recommendations for legislation regarding management of wild medicinal plants on state lands.

Section 5. Notice to land management agencies and tribal governments — memorandum of understanding. (1) The governor shall notify all federal government agencies that manage public land in Montana and the tribal governments of the various tribes in Montana of the moratorium imposed on state lands in [section 3] and encourage those federal and tribal entities to consider imposing a similar moratorium on federal and tribal lands, emphasizing the seriousness of illegal harvesting, appropriate educational efforts, and Montana's commitment to ensuring the long-term sustainability of wild medicinal plant populations in Montana.

(2) Recognizing that the state's natural heritage provides the basis for Montana's economic strength and quality of life and that sustaining the diversity and condition of the state's natural ecosystems is a prerequisite for maintaining the state's prosperity and in order to develop a coordinated statewide strategy to help ensure the protection of wild medicinal plants throughout Montana, the governor, when appropriate, shall seek to enter into memoranda of understanding with the federal agencies and tribal governments. Through a memorandum of understanding, the parties shall agree to work with the task force on wild medicinal plants to ensure the protection of wild medicinal plants through improved coordination, exchange of information, conflict resolution, and collaboration. Issues addressed in a memorandum of understanding may include:

(a) biodiversity-related policies and regnlations;

(b) land managoment practices, land use planning, and land and reserve acquisition and exchange;

HeinOnline -- 1999 vol. II 1420 1999

(c) private landowner assistance;

(d) educational outreach and public relations; and

(e) wild medicinal plant monitoring, inventory, assessment, restoration, and research and technology development.

Section 6. Effective date. [This act] is effective on passage and approval.

Section 7. Termination. [This act] terminates 3 years after [the effective date of this act].

Approved April 20, 1999

CHAPTER NO. 381

[SB 215]

AN ACT INCREASING THE NEGLIGENT HOMICIDE INCARCERATION PENALTY; AND AMENDING SECTION 45-5-104, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-5-104, MCA, is amended to read:

"45-5-104. Negligent homicide. (1) A person commits the offense of negligent homicide if ~~he~~ *the person* negligently causes the death of another human being.

(2) Negligent homicide is not an included offense of deliberate homicide as defined in 45-5-102(1)(b).

(3) A person convicted of negligent homicide shall be imprisoned in the state prison for any term not to exceed ~~10~~ *20* years or be fined an amount not to exceed $50,000, or both."

Approved April 20, 1999

CHAPTER NO. 382

[SB 241]

AN ACT REVISING THE LAWS GOVERNING LICENSES FOR DISABLED HUNTERS; ALLOWING A PERSON WHO HAS PURCHASED CERTAIN LICENSES FOR A LICENSE YEAR AND WHO IS SUBSEQUENTLY CERTIFIED AS DISABLED TO BE ELIGIBLE FOR A REFUND OR REISSUANCE OF THE LICENSES AT THE STATUTORY RATE; REQUIRING THAT A DESIGNATED COMPANION ASSIST A BLIND HUNTER IN HUNTING AND FIELD DRESSING GAME; PROVIDING DEFINITIONS; GRANTING RULEMAKING AUTHORITY FOR ESTABLISHMENT OF REVIEW BOARDS TO RESOLVE DISPUTES; AND AMENDING SECTION 87-2-803, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-2-803, MCA, is amended to read:

"87-2-803. Persons with disabilities — *definitions.* (1) Persons with disabilities are entitled to fish and to hunt game birds with only a conservation license if they are residents of Montana not residing in an institution and are

HeinOnline -- 1999 vol. II 1421 1999

certified as disabled as prescribed by departmental rule. *A person who has purchased a conservation license and a resident fishing license or game bird license for a particular license year and who is subsequently certified as disabled is entitled to a refund for the fishing license or game bird license previously purchased for that license year.*

(2) A resident of Montana who is certified as disabled by the department and who is not residing in an institution may purchase regular resident deer and elk licenses at one-half the fee paid by a resident who is 15 years of age or older and who is under 62 years of age. *A person who has purchased a conservation license and a resident deer license or resident elk license for a particular license year and who is subsequently certified as disabled is entitled to a refund for the deer license or elk license previously purchased and reissuance of the license for that license year at the rate established in this subsection.*

(3) A resident or nonresident person with a disability who is certified as disabled by the department and who is not residing in an institution may carry a permit on a form prescribed by the department. A person with a disability who is issued a permit under this subsection is entitled to have the department stamp the permit with "Permission to Hunt From a Vehicle" if the person ~~establishes to the satisfaction of the department~~ *establishes to the satisfaction of the department* that the person ~~is nonambulatory and has a permanent physical disability or that the person's mobility is~~ *has* substantially impaired *mobility. The department shall adopt rules to establish a voluntary board or boards of review to resolve any disputes over whether a person meets the criteria established in this subsection. Each board must have at least one Montana-licensed physician as a member.*

(4) A person with a disability carrying a permit as required in subsection (3), upon which is stamped "Permission to Hunt From a Vebicle", may hunt by shooting a firearm from the shoulder, berm, or barrow pit right-of-way of a public highway, as defined in 61-1-202, except a state or federal highway, or may hunt by shooting a firearm from within a self-propelled or drawn vehicle that is parked on a shoulder, berm, or barrow pit right-of-way in a manner that will not impede traffic or endanger motorists or that is parked in an area, not a public highway, where hunting is permitted. This subsection does not allow a person with a disability to shoot across the roadway of any public highway or to hunt on private property without permission of the landowner. A person with a disability who hunts as authorized in this subsection must have a companion to assist in immediately dressing any killed game animal. The companion may also assist the ~~hunter~~ *person* with a disability by hunting a game animal that has been wounded by the ~~hunter~~ *person* with a disability when the ~~hunter~~ *person* with a disability is unable to pursue and kill the wounded game animal. Any vehicle from which a person with a disability is hunting must be conspicuously marked with an orange-colored international symbol of persons with disabilities on the front, rear, and each side of the vehicle.

(5) *(a)* A resident of Montana who is certified by the department as ~~suffering from~~ *experiencing* blindness, as defined in 53-7-301, may be issued a lifetime fishing license for the blind upon payment of a one-time fee of $10. The license is valid for the lifetime of the blind individual and allows the licensee to fish as authorized by department rule. An applicant for a license under this subsection need not obtain a wildlife conservation license as a prerequisite to licensure.

HeinOnline -- 1999 vol. II 1422 1999

(b) A person who is certified by the department as experiencing blindness, as defined in 53-7-301, may be issued regular resident deer and elk licenses in the manner provided in subsection (2), and must be accompanied by a companion, as provided in subsection (4).

(6) The department shall adopt rules to establish the qualifications that a person must meet to be a companion and may adopt rules to establish when a companion can be a designated shooter for a disabled person.

(7) As used in this section:

(a) "Disabled person" or "person with disabilities" means a person experiencing a condition medically determined to be permanent and substantial and resulting in significant impairment of the person's functional ability.

(b) "Permanently physically handicapped person" means a disabled person as defined in subsection (7)(a) except for a person with a disability that is due to mental retardation or mental illness.

(c) "Substantially impaired mobility" means, with respect to a disabled person, that the person is nonambulatory or virtually unable to move on foot. The board or boards of review established pursuant to subsection (3) shall resolve any disputes regarding whether a person meets the criteria for having substantially impaired mobility."

Approved April 20, 1999

CHAPTER NO. 383

[SB 293]

AN ACT PROHIBITING FALCONERS FROM USING CERTAIN LISTED SPECIES FOR THE SPORT OF FALCONRY; AMENDING SECTION 87-5-205, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Seetion 1. Section 87-5-205, MCA, is amended to read:

"87-5-205. Restrictions on species allowed for falconry. (1) ~~The peregrine falcon (Falco peregrinus), bald eagle (Haliaeetus leucocephalus), and osprey (Pandion haliaetus)~~ *Bald eagles, any raptors listed pursuant to 50 CFR, part 17, and any species that has been listed pursuant to 87-5-107* may not be captured in tbis state for the sport of falconry.

(2) Species of raptors ~~which~~ *that* are native to North America may he brought into Montana for the purpose of falconry unless that action is specifically prohibited by this part, the laws of other states, or the rules of the federal government. Those raptors may be possessed, subject to this part. A porson bringing a raptor into this state must be able to show proof of the area of origin."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 20, 1999

HeinOnline -- 1999 vol. II 1423 1999

CHAPTER NO. 384

[SB 331]

AN ACT GENERALLY REVISING THE LAW RELATING TO THE FRANCHISING, SALE, AND WARRANTY OF PERSONAL WATERCRAFT, SNOWMOBILES, AND OFF-HIGHWAY VEHICLES; AND AMENDING SECTIONS 23-2-619, 23-2-818, 61-4-201, 61-4-202, 61-4-204, 61-4-205, 61-4-222, AND 61-4-402, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Personal watercraft dealers — additional registration requirements. Unless the dealer is licensed under the provisions of 61-4-101, in addition to the requirements of 23-2-513, to qualify as a dealer, the applicant, when registering or renewing a registration, shall:

(1) complete an application:

(a) stating the name under which the business is to be conducted and the location of the premises (street address, city, county, and state) where records are kept, sales are made, and stock is displayed;

(b) stating the name, address, date of birth, and social security number of all owners or persons having an interest in the business, provided that in the case of a corporation, the names and addresses of the president and secretary are sufficient;

(c) identifying other dealerships owned by the applicant, identifying all persons in Montana or in another state having an interest in another dealership owned by the applicant, and disclosing whether the applicant or any other person with interest in a dealership owned by the applicant has been convicted of a felony; and

(d) stating the name and make of all personal watercraft handled and the name and address of the manufacturer, importer, or distributor with whom the applicant has a written franchise or sales agreement;

(2) provide an affidavit certifying that the applicant has acquired and shall maintain liability insurance for any personal watercraft offered for demonstration or loan to a customer;

(3) execute a certificate to the effect that the applicant has a permanent building for the display and sale of personal watercraft at the location of the premises where sales are conducted;

(4) execute a certificate to the effect that the applicant has a bona fide service department for the repair, service, and maintenance of personal watercraft; and

(5) execute a certificate to the effect that the applicant is a bona fide dealer in personal watercraft and that the dealer is recognized by a manufacturer, importer, or distributor as a dealer in personal watercraft.

Section 2. Section 23-2-619, MCA, is amended to read:

"23-2-619. Dealer registration certificate — use of fees. (1) *(a)* ~~A~~ *Unless the dealer is licensed under the provisions of 61-4-101, a* dealer registration certificate must be issued in accordance with 23-2-601 through 23-2-644.

(b) To qualify as a dealer the applicant, when registering or renewing a registration, shall:

(i) complete an application:

(A) stating the name under which the business is to be conducted and the location of the premises (street address, city, county, and state) where records are kept, sales are made, and stock is displayed;

(B) stating the name, address, date of birth, and social security number of all owners or persons having an interest in the business, provided that in the case of a corporation, the names and addresses of the president and secretary are sufficient;

(C) identifying other dealerships owned by the applicant, identifying all persons in Montana or in another state having an interest in another dealership owned by the applicant, and disclosing whether the applicant or any other person with interest in a dealership owned by the applicant has been convicted of a felony; and

(D) stating the name and make of all snowmobiles handled and the name and address of the manufacturer, importer, or distributor with whom the applicant has a written franchise or sales agreement;

(ii) provide an affidavit certifying that the applicant has acquired and shall maintain liability insurance for any snowmobile offered for demonstration or loan to a customer;

(iii) execute a certificate to the effect that the applicant has a permanent building for the display and sale of snowmobiles at the location of the premises where sales are conducted;

(iv) execute a certificate to the effect that the applicant has a bona fide service department for the repair, service, and maintenance of snowmobiles; and

(v) execute a certificate to the effect that the applicant is a bona fide dealer in snowmobiles and that the dealer is recognized by a manufacturer, importer, or distributor as a dealer in snowmobiles.

(2) The dealer application must be accompanied by an application fee of $5 and a registration fee of $5. Upon receipt of the dealer application and payment of fees, the dealer ~~shall~~ *must* be issued two dealer snowmobile identification cards that must be carried by the dealer or the dealer's customer when demonstrating the dealer's snowmobiles.

(3) *(a)* A *dealer shall file a* bond ~~is not required of the dealer~~ *in the amount of $5,000.*

(b) The bond must be conditioned that the applicant shall conduct business in accordance with the requirements of the law. The bond must run to the state of Montana, must be approved by the department and filed in its office, and must be renewed annually.

(c) A person who suffers loss or damage because of the unlawful conduct of a dealer registered under this section shall obtain a judgment from a court of competent jurisdiction prior to collecting on the bond. Before payment on the bond is required, the judgment must determine a specific loss or damage amount and conclude that the dealer's unlawful operation caused the loss or damage.

(4) The dealer shall have a principal place of business where the dealer ~~shall maintain~~ *maintains* all business records and ~~display and sell~~ *where the dealer displays and sells* merchandise.

HeinOnline -- 1999 vol. II 1425 1999

(5) An applicant for renewal of a snowmobile dealer registration shall certify that the applicant has sold five or more snowmobiles during the preceding year or pay an additional $50 renewal registration fee or provide a copy of a written new snowmobile franchise or sales agreement that the applicant has with a manufacturer, importer, or distributor.

(6) Additional dealer snowmobile identification cards as required by need justified to the department of justice may be purchased by the dealer for a fee of $2.

(7) Dealer registration certificates and identification cards expire on June 30 following the date of issuance.

(8) (a) The dealer application fees and all interest accruing from use of this money must be deposited in the state special revenue fund to the credit of the department, with one-half designated for use in enforcing the purposes of 23-2-601 through 23-2-644 and one-half designated for use in the development, maintenance, and operation of snowmobile facilities.

(b) All money collected from dealer registration and renewal registration fees must be deposited in the general fund."

Section 3. Section 23-2-818, MCA, is amended to read:

"23-2-818. Dealer registration certificate — use of fees. (1) *(a)* Unless the dealer is licensed under the provisions of 61-4-101, a dealer may not sell off-highway vehicles unless ~~he~~ *the dealer* has first obtained a dealer registration certificate from the department of justice under the provisions of this section.

(b) To qualify as a dealer the applicant, when registering or renewing a registration, shall:

(i) complete an application:

(A) stating the name under which the business is to be conducted and the location of the premises (street address, city, county, and state) where records are kept, sales are made, and stock is displayed;

(B) stating the name, address, date of birth, and social security number of all owners or persons having an interest in the business, provided that in the case of a corporation, the names and addresses of the president and secretary are sufficient;

(C) identifying other dealerships owned by the applicant, identifying all persons in Montana or in another state having an interest in another dealership owned by the applicant, and disclosing whether the applicant or any other person with interest in a dealership owned by the applicant has been convicted of a felony; and

(D) stating the name and make of all off-highway vehicles handled and the name and address of the manufacturer, importer, or distributor with whom the applicant has a written franchise or sales agreement;

(ii) provide an affidavit certifying that the applicant has acquired and shall maintain liability insurance for any off-highway vehicle offered for demonstration or loan to a customer;

(iii) execute a certificate to the effect that the applicant has a permanent building for the display and sale of off-highway vehicles at the location of the premises where sales are conducted;

HeinOnline -- 1999 vol. II 1426 1999

(iv) execute a certificate to the effect that the applicant has a bona fide service department for the repair, service, and maintenance of off-highway vehicles; and

(v) execute a certificate to the effect that the applicant is a bona fide dealer in off-highway vehicles and that the dealer is recognized by a manufacturer, importer, or distributor as a dealer in off-highway vehicles.

(2) The dealer application for registration or renewal of registration must be accompanied by an application or renewal fee of $5 and a registration fee of $5. To qualify for the fees in this subsection, the applicant for renewal shall certify that ~~he~~ *the applicant* has sold three or more off-highway vehicles during the preceding year. Upon receipt of the dealer application or renewal and payment of fees, the dealer must be issued two dealer off-highway identification cards to be carried by the dealer or the dealer's customer when demonstrating the dealer's off-highway vehicles. Additional dealer off-highway vehicle identification cards may be purchased by the dealer from the department of justice for a fee of $2 each.

(3) *(a)* ~~No~~ *A* ~~bond is required of the dealer~~ *dealer shall file a bond in the amount of $5,000.*

(b) The bond must be conditioned that the applicant shall conduct business in accordance with the requirements of the law. The bond must run to the state of Montana, must be approved by the department and filed in its office, and must be renewed annually.

(c) A person who suffers loss or damage because of the unlawful conduct of a dealer registered under this section shall obtain a judgment from a court of competent jurisdiction prior to collecting on the bond. Before payment on the bond is required, the judgment must determine a specific loss or damage amount and conclude that the dealer's unlawful operation caused the loss or damage.

(4) The dealer shall have a principal place of business where ~~he~~ *the dealer* maintains all ~~his~~ business records and where ~~he~~ *the dealer* displays and sells merchandise.

(5) An applicant for renewal of an off-highway vehicle dealer registration who does not qualify under subsection (2) shall:

(a) pay an additional $50 renewal registration fee; and

(b) provide a copy of a new off-highway vehicle franchise or sales agreement that ~~he~~ *the applicant* has with a manufacturer, importer, or distributor.

(6) Dealer registration certificates and identification cards expire on December 31 following the date of issuance.

(7) (a) The dealer application fees and all interest accruing from use of this money must be deposited in the general fund to be used by the department of justice for the administration of this part.

(b) All dealer registration fees and renewal fees collected must be deposited in the account provided in 23-2-804(3). This money and the interest earned on it must be used for off-highway vehicle safety and education programs."

Section 4. Section 61-4-201, MCA, is amended to read:

"61-4-201. Definitions. As used in this part, the following definitions apply *unless the context clearly indicates otherwise*:

HeinOnline -- 1999 vol. II 1427 1999

(1) "Community" means the relevant market area of a franchise. For the purposes of this part, the relevant market area of a franchise is the county or counties in which the franchisee is located.

(2) "Distributor" or "wholesaler" means a person who sells or distributes new motor vehicles to new motor vehicle dealers in this state or who maintains distributor representatives in this state.

(3) "Distributor branch" means a branch office maintained or availed of by a distributor or wholesaler for the sale of new motor vehicles to new motor vehicle dealers in this state for directing or supervising its representatives in this state.

(4) "Factory branch" means a branch office maintained or availed of by a manufacturer for the sale of new motor vehicles to distributors or for the sale of new motor vehicles to new motor vehicle dealers in this state or for directing or supervising its representatives in this state.

(5) "Franchise" means a contract between or among two or more persons when all of the following conditions are included:

(a) a commercial relationship of definite duration or continuing indefinite duration is involved;

(b) the franchisee is granted the right to offer, sell, and service in this state new motor vehicles manufactured or distributed by the franchisor;

(c) the franchisee, as a separate business, constitutes a component of franchisor's distribution system; and

(d) the operation of the franchisee's business is substantially reliant on the franchisor for the continued supply of new motor vehicles, parts, and accessories.

(6) "Franchisee" means a person who receives new motor vehicles from the franchisor under a franchise and who offers, sells, and services ~~such~~ *the* new motor vehicles to and for the general public.

(7) "Franchisor" means a person who manufactures, imports, or distributes new motor vehicles and who may enter into a franchise.

(8) "Importer" means a person who transports or arranges for the transportation of a foreign manufactured new motor vehicle into the United States for sale in this state.

(9) "Manufacturer" means a person who manufactures or assembles new motor vehicles or who manufactures or installs on previously assembled truck chassis special bodies or equipment that, when installed, forms an integral part of the new motor vehicle and that constitutes a major manufacturing alteration, but does not include a person who installs a camper on a pickup truck.

(10) "Motor vehicle" includes a personal watercraft as defined in 23-2-502, a snowmobile as defined in 23-2-601, and an off-highway vehicle as defined in 23-2-801.

~~(10)~~*(11)* "New motor vehicle" means a motor vehicle that has not been the subject of a retail sale regardless of the mileage of the vehicle.

~~(11)~~*(12)* "New motor vehicle dealer" means a person who buys, sells, exchanges, or offers or attempts to negotiate a sale or exchange or any interest in or who is engaged in the business of selling new motor vehicles under a franchise with the manufacturer of the new motor vehicles or used motor vehicles taken in trade on new motor vehicles.

HeinOnline -- 1999 vol. II 1428 1999

~~(12)~~*(13)* (a) "Retail sale" means the sale of a new motor vehicle.

(b) "Retail sale" does not mean a sale:

(i) of a new motor vehicle to a purchaser who is acquiring the vehicle for the purposes of a resale; or

(ii) that is the result of a transfer between two licensed new motor vehicle dealers."

Section 5. Section 61-4-202, MCA, is amended to read:

"61-4-202. License requirements — *fee exemption.* (1) ~~No~~ *A* new motor vehicle dealer, manufacturer, distributor, factory branch, ~~or~~ distributor branch, *importer, or franchiser* may *not* engage in business in Montana except in accordance with the requirements of this part. The provisions of this part do not apply to a public officer engaged in the discharge of ~~his~~ official duties or to a trustee, receiver, or other officer acting under the jurisdiction of a court~~;~~, to financial institutions disposing of repossessed vehicles~~;~~, or to a person disposing of ~~his~~ *a* personal vehicle. The provisions of this part regulating and licensing new motor vehicle dealers, manufacturers, distributors, factory branches, distributor branches, *importers,* and franchisors apply only to those new motor vehicle dealers, manufacturers, distributors, factory branches, distributor branches, *importers,* and franchisors of motor vehicles as defined by this part.

(2) *(a)* A manufacturer, distributor, factory branch, distributor branch, importer, or franchisor transacting business within Montana by offering, selling, trading, consigning, or otherwise transferring a new motor vehicle to a new motor vehicle dealer must be licensed by the state of Montana. The department shall issue licenses to qualified applicants upon receipt of a license fee in the amount of $15 accompanied by the information required in this section.

(b) A manufacturer, distributor, factory branch, distributor branch, importer, or franchisor of a personal watercraft as defined in 23-2-502, a snowmobile as defined in 23-2-601, or an off-highway vehicle as defined in 23-2-801 is not required to pay the $15 fee required in subsection (2)(a).

(3) The following information, if applicable, ~~shall~~ *must* be submitted by an applicant upon forms supplied by the department:

(a) the name and address of the applicant;

(b) the make and model of each new motor vehicle to be franchised;

(c) the name and address of each of the applicant's franchisees within the state; and

(d) the name and address of each factory branch, distributor branch, agent, or representative within the state.

(4) *(a)* ~~The~~ *Except as provided in subsection (4)(b), a* license may be renewed each year if the applicant is in compliance with the provisions of this part, remits a renewal fee in the amount of $15, and notifies the department of any changes in the information previously supplied.

(b) A manufacturer, distributor, factory branch, distributor branch, importer, or franchisor of a personal watercraft as defined in 23-2-502, a snowmobile as defined in 23-2-601, or an off-highway vehicle as defined in 23-2-801 is not required to pay the $15 fee required in subsection (4)(a) but is required to annually apply to renew its license on a form provided by the department.

HeinOnline -- 1999 vol. II 1429 1999

(5) *(a)* ~~No~~ *A* new motor vehicle may *not* be sold in this state unless either the manufacturer on direct dealership of domestic vehicles, the importer of foreign manufactured vehicles on direct dealership, or the distributor on indirect dealerships of either domestic or foreign vehicles is licensed as provided in this part.

(b) Notwithstanding any other licensing provision contained in Montana law, every new motor vehicle dealer ~~must~~ *shall* obtain a license under part 1 of this chapter.

(c) The obtaining of a license under this part or Title 61, chapter 4, part 1 conclusively establishes that a new motor vehicle dealer, manufacturer, distributor, or importer is subject to the laws of this state regnlating new motor vehicle dealers, manufacturers, importers, and distributors.

(d) The provisions of subsection (5)(b) do not apply to dealers of personal watercraft, snowmobiles, or off-highway vehicles licensed under the provisions of Title 23."

Section 6. Section 61-4-204, MCA, is amended to read:

"61-4-204. Filing agreement — product liability. (1) A franchisee ~~must~~ *shall*, at the time ~~he~~ *the franchisee* applies for a new motor vehicle dealer license under the provisions of *Title 23 or* 61-4-101, file with the department a certified copy of ~~his~~ *the franchisee's* written agreement with a manufacturer and a certificate of appointment as dealer or distributor. The certificate of appointment must be signed by an authorized agent of the manufacturer of domestic vehicles whenever there is a direct manufacturer dealer agreement or by an authorized agent of the distributor whenever the manufacturer is wholesaling through an appointed distributorship. The certificate must be signed by an authorized agent of the importer of foreign made vehicles whenever there is a direct importer-dealer agreement or by an authorized agent of the distributor whenever there is an indirect distributor-dealer agreement. The distributor's certificate of appointment must be signed by an authorized agent of the manufacturer of domestically manufactured vehicles or by an authorized agent of the manufacturer or importer of foreign made vehicles.

(2) A franchisee need not file a written agreement or certificate of appointment if the manufacturer on direct dealerships or distributor on indirect dealerships or importer on direct dealerships uses the identical basic agreement for all its franchised dealers or distributors in this state and certifies in the certificate of appointment that the blanket agreement is on file and the written agreement with the particular dealer or distributor, respectively, is identical with the filed blanket agreement and that ~~he~~ *the franchisee* has filed with the department one ~~such~~ agreement together with a list of franchised dealers or distributors.

(3) A manufacturer, distributor, or importer shall notify the department within 30 days of any revision of or addition to the basic agreement on file or of any franchise supplement to the agreement. Annual renewal of a certificate filed as provided in this section is not required.

(4) A manufacturer ~~must~~ *shall* file with the department a copy of the delivery and preparation obligations required to be performed by a dealer prior to the delivery of a new motor vehicle to a buyer. These delivery and preparation obligations constitute the dealer's only responsibility for product liability as between the dealer and the manufacturer. Any mechanical, body, or parts defects

HeinOnline -- 1999 vol. II 1430 1999

arising from an express or implied warranty of the manufacturer constitute the manufacturer's product or warranty liability only; provided, however, that this section ~~shall~~ *may* not affect the obligations of new motor vehicle dealers to perform ~~such~~ warranty repair and maintenance as may be required by law or contract. Except ~~as regards~~ *with regard to* household appliances, including but not limited to ranges, refrigerators, and water heaters, in a recreational vehicle, as defined in 61-1-132, and except ~~as regards~~ *with regard to* a truck rated at more than 10,000 pounds gross vehicle weight, the manufacturer ~~must~~ *shall* compensate an authorized dealer for labor, parts, and other expenses incurred by a dealer who performs work to rectify the manufacturer's product or warranty defect or for delivery and preparation obligations at the same rate and time the dealer charges to its retail customers for nonwarranty work of a like kind, based upon a published, nationally recognized, retail flat rate labor time guide manual if the dealer uses the manual as the basis for computing charges for both warranty and retail work.

(5) The dealer ~~must~~ *shall* furnish the purchaser of a new vehicle with a signed copy of the manufacturer's delivery and preparation requirements indicating that each of those requirements has been performed."

Seetion 7. Section 61-4-205, MCA, is amended to read:

"61-4-205. Limitations on eancellation and termination. (1) Notwithstanding the terms, provisions, or conditions of any agreement or franchise, a franchisor may not cancel, terminate, or refuse to continue a franchise unless the franchisor has cause for termination or noncontinuance.

(2) A franchisor may not enter into a franchise for the purpose of establishing an additional new motor vehicle dealership in any community in which the same line-make is then represented unless there is geod cause for an additional new motor vehicle dealership under a franchise and ~~that~~ it is in the public interest.

(3) If a franchisor seeks to terminate or not continue a franchise or seeks to enter into a franchise establishing an additional new motor vehicle dealership of the same line-make, the franchisor shall, not less than 60 days prior to the intended action, and the franchisee may, at any time, file a notice with the department of intention to terminate or not continue the franchise or to enter into a franchise for additional representation of the same line-make. A notice of intention to terminate or not continue a franchise is not required from a franchisor until the conclusion of any review proceeding of that intention offered to the franchisee under the franchise. This section does not apply to an intended termination or noncontinuance of a franchise that the franchisee elects voluntarily, pursuant to a plan established by a franchisor, to submit to binding arbitration.

(4) Upon receiving a notice of intention under the provisions of subsection (3), the department shall, within 5 days of receipt of a notice of intention, send by certified mail, with return receipt requested, a copy of the notice to the franchisor and to the franchisee whose franchise the franchisor seeks to establish, terminate, or not continue. If the notice states an intent to estahlish an additional new motor vehicle dealership, a copy of the notice must be sent within 5 days of receipt to all franchisees in the community who are then engaged in the business of offering to sell or selling the same line-make. Copies of notices must be addressed to the principal place of business of each recipient and to the statutory agent of each corporate recipient. The department may also give a copy of the

HeinOnline -- 1999 vol. II 1431 1999

franchisor's notice to any other parties whom the department may consider interested persons.

(5) In instances where the change in ownership has the effect of the sale of the franchise, the franchisor may not without good cause withhold its consent to the sale. Good cause relates only to the transferee's financial and managerial capabilities or to the inability of the transferee to comply with a state or federal law relating to new motor vehicle dealerships. The burden of establishing good cause is upon the franchisor.

(6) Notwithstanding the terms, provisions, or conditions of an agreement or franchise, in the event of the sale or transfer of ownership of the franchisee's dealership by sale or transfer of the business or by stock transfer to the dealer's or wholesaler's spouse, son, or daughter, the franchisor shall give effect to the sale or transfer of ownership in the franchise unless the transfer of the franchisee's new motor vehicle dealer's or wholesaler's license is denied or the new owner is unable to obtain a license under the laws of this state.

(7) If a franchisor enters into or attempts to enter into a franchise, whether upon termination or refusal to continue another franchise or upon the establishment of an additional new motor vehicle dealership in a community where the same line-make is then represented, without first complying with the provisions of this part, a license under *Title 23 or* 61-4-101 through 61-4-105 may not be issued to that franchisee or proposed franchisee to engage in the business of selling new motor vehicles manufactured or distributed by that franchisor."

Section 8. Section 61-4-222, MCA, is amended to read:

"61-4-222. Fees. *(1)* Upon making the application required under 61-4-221, the manufacturer shall pay to the department a fee of $250, which entitles the manufacturer to one set of number plates, and an additional fee of $20 for each additional set of number plates. The manufacturer may receive one set of number plates for each manufacturer's representative.

(2) The fees provided for in subsection (1) do not apply to the manufacturer of a personal watercraft as defined in 23-2-502, a snowmobile as defined in 23-2-601, or an off-highway vehicle as defined in 23-2-801."

Section 9. Section 61-4-402, MCA, is amended to read:

"61-4-402. Definitions. (1) "Finance company" or "finance agency" ~~shall mean any~~ *means a* person, firm, association, corporation, or other organization engaged in the business of buying, selling, assigning, dealing, financing, or acquiring conditional contracts of sale or engaged in the business of purchasing or acquiring promissory notes or any other form or evidences of indebtedness of sale, either secured by vendor's lien, conditional bill of sale, chattel mortgage, or leases arising out of the sale of motor vehicles in this state.

(2) The term "manufacturer" ~~shall mean any~~ *means a* person, firm, corporation, partnership, or association engaged either directly or indirectly in the manufacture or wholesale distribution of motor vehicles.

(3) The term "motor vehicle", as used in this part, includes a personal watercraft as defined in 23-2-502, a snowmobile as defined in 23-2-601, and an off-highway vehicle as defined in 23-2-801.

~~(3)~~*(4)* The terms "sell", "sold", "buy", and "purchase", as used in this part, include exchange, barter, gift, and offer or contract to sell or buy.

HeinOnline -- 1999 vol. II 1432 1999

~~(4)~~*(5)* The term "wholesale distributor" ~~shall mean any~~ *means a* person, firm, association, corporation, or other organization engaged directly or indirectly in the sale or distribution of motor vehicles to agents or to dealers."

Section 10. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 23, chapter 2, part 5, and the provisions of Title 23, chapter 2, part 5, apply to [section 1].

Approved April 20, 1999

CHAPTER NO. 385

[SB 477]

AN ACT PROVIDING IMMUNITY FOR EMPLOYERS FOR INJURIES OR DAMAGES SUSTAINED BY EMPLOYEES IN RIDESHARING ARRANGEMENTS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Ridesharing — limits on employer liability. (1) Except as provided in subsection (2), an employer is not liable for injuries or damages sustained by operators, passengers, or other persons:

(a) that result from operation of a motor vehicle that is being used in a voluntary ridesharing arrangement between a place of residence and a place of employment or near those places; or

(b) because the employer provides information to, provides incentives to, or otherwise encourages employees to participate in voluntary ridesharing arrangements.

(2) This section does not apply to:

(a) motor vehicles owned, leased, or otherwise provided by an employer;

(b) an employer that reimhurses an employee for mileage or travel expenses, other than parking, for participation in a ridesharing arrangement;

(c) an employer that makes employee participation in ridesharing programs a requirement of employment;

(d) acts by an employee within the scope of employment; or

(e) voluntary ridesharing arrangements subsidized by an employer.

(3) For purposes of this section:

(a) "employment" commences when an employee arrives at the employer's place of employment to report for work and terminates when the employee leaves the employer's place of employment; and

(b) "within the scope of employment" means activity when the employee is engaged in the performance of duties assigned or directed by the employer or is acting in the furtherance of the business of the employer.

Section 2. Two-thirds vote required. Because [section 1] limits governmental liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage.

Approved April 20, 1999

HeinOnline -- 1999 vol. II 1433 1999

CHAPTER NO. 386

[SB 505]

AN ACT ESTABLISHING THE CIVIL LEGAL ASSISTANCE FOR INDIGENT VICTIMS OF DOMESTIC VIOLENCE ACCOUNT; PROVIDING THAT THE MONTANA SUPREME COURT ADMINISTRATOR SHALL ESTABLISH PROCEDURES FOR DISTRIBUTION AND ACCOUNTABILITY OF THE MONEY IN THE ACCOUNT; INCREASING CERTAIN DISTRICT COURT FEES TO FUND THE ACCOUNT; AMENDING SECTION 25-1-201, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Seetion 1. Section 25-1-201, MCA, is amended to read:

"25-1-201. (Temporary) Fees of clerk of district court. (1) The clerk of the district court shall collect the following fees:

(a) at the commencement of each action or proceeding, except a petition for dissolution of marriage, from the plaintiff or petitioner, ~~$80~~ *$90*; for filing a complaint in intervention, from the intervenor, $80; for filing a petition for dissolution of marriage, ~~a fee of $150~~ *$160*; for filing a petition for legal separation, a fee of $150; and for filing a petition for a contested amendment of a final parenting plan, a fee of $120;

(h) from each defendant or respondent, on appearance, $60;

(c) on the entry of judgment, from the prevailing party, $45;

(d) for preparing copies of papers on file in the clerk's office, 50 cents a page for the first five pages of each file, for each request, and 25 cents for each additional page;

(e) for each certificate, with seal, $2;

(f) for oath and jurat, with seal, $1;

(g) for search of court records, 50 cents for each year searched, not to exceed a total of $25;

(h) for filing and docketing a transcript of judgment or transcript of the docket from all other courts, the fee for entry of judgment provided for in subsection (1)(c);

(i) for issuing an execution or order of sale on a foreclosure of a lien, $5;

(j) for transmission of records or files or transfer of a case to another court, $5;

(k) for filing and entering papers received by transfer from other courts, $10;

(l) for issuing a marriage license, $30;

(m) on the filing of an application for informal, formal, or supervised probate or for the appointment of a personal representative or the filing of a petition for the appointment of a guardian or conservator, from the applicant or petitioner, $70, which includes the fee for filing a will for probate;

(n) on the filing of the items required in 72-4-303 by a domiciliary foreign personal representative of the estate of a nonresident decedent, $55;

(o) for filing a declaration of marriage without solemnization, $30;

HeinOnline -- 1999 vol. II 1434 1999

(p) for filing a motion for substitution of a judge, $100;

(q) for filing a petition for adoption, $75.

(2) Except as provided in subsections (3) through ~~(10)~~ *(11)*, 32% of all fees collected by the clerk of the district court must be deposited in and credited to the district court fund. If no district court fund exists, that portion of the fees must be deposited in the general fund for district court operations. The remaining portion of the fees must be remitted to the state general fund.

(3) In the case of a fee collected for issuing a marriage license or filing a declaration of marriage without solemnization, $23.60 must be deposited in and credited to the state general fund and $6.40 must be deposited in and credited to the county general fund.

(4) *(a)* Of the fee for filing a petition for dissolution of marriage ~~or legal separation~~, $75 must be deposited in the state general fund, $5 must be deposited in the children's trust fund account established ~~by~~ *in* 41-3-702, *$9 must be deposited in the civil legal assistance for indigent victims of domestic violence account established in [section 2]*, $30 must be deposited in the partner and family member assault intervention and treatment fund established ~~by~~ *in* 40-15-110, and ~~$20~~ *$21* must be deposited in and credited to the district court fund. If no district court fund exists, the ~~$20~~ *$21* must be deposited in the general fund for district court operations.

(b) Of the fee for filing a petition for legal separation, $75 must be deposited in the state general fund, $5 must be deposited in the children's trust fund account established in 41-3-702, $30 must be deposited in the partner and family member assault intervention and treatment fund established in 40-15-110, and $20 must be deposited in and credited to the district court fund. If no district court fund exists, the $20 must be deposited in the general fund for district court operations.

(5) (a) Before the percentages contained in subsection (2) are applied and the fees deposited in the district court fund or the county general fund or remitted to the state, the clerk of the district court shall deduct from the following fees the amounts indicated:

(i) at the commencement of each action or proceeding and for filing a complaint in intervention as provided in subsection (1)(a), $35;

(ii) from each defendant or respondent, on appearance, as provided in subsection (1)(b), $25;

(iii) on the entry of judgment as provided in subsection (1)(c), $15; and

(iv) from the applicant or petitioner, on the filing of an application for probate or for the appointment of a personal representative or on the filing of a petition for appointment of a guardian or conservator, as provided in subsection (1)(m), $15.

(b) The clerk of the district court shall deposit the money deducted in subsection (5)(a) in the county general fund for district court operations unless the county has a district court fund. If the county has a district court fund, the money must be deposited in that fund.

(6) The fee for filing a motion for substitution of a judge as provided in subsection (1)(p) must be remitted to the state general fund.

HeinOnline -- 1999 vol. II 1435 1999

(7) Fees collected under subsections (1)(d) through (1)(i) must be deposited in the district court fund. If no district court fund exists, fees must be deposited in the general fund for district court operations.

(8) The clerk of the district court shall remit to the credit of the state general fund $20 of each fee collected under the provisions of subsections (1)(a) through (1)(c), (1)(m), and (1)(n) to fund a portion of judicial salaries.

(9) The fee for filing a petition for a contested amendment of a parenting plan must be remitted by the clerk of the district court to the credit of the district court to defray the costs of the court-sanctioned educational program concerning the effects of dissolution of marriage on children, as required in 40-4-226, and to defray the expense of education when ordered for the investigation and preparation of a report concerning parenting arrangements, as provided in 40-4-215(2)(a).

(10) The clerk of district court shall remit to the credit of the special revenue account established in 42-2-105 $70 of the filing fee required in subsection (1)(q), and $5 of the filing fee must be deposited in the district court fund. If no district court fund exists, fees must be deposited in the general fund for district court operations.

(11) Of the fee for filing an action or proceeding, except a petition for dissolution of marriage, $9 must be deposited in the civil legal assistance for indigent victims of domesti[illegible]olence account established in [section 2] and $1 must be deposited in and credited to the district court fund for mitigation of administrative costs incurred by the court in the collection of the fee. If a district court fund does not exist, the $1 must be deposited in the county general fund for district court operations. (Terminates June 30, 1999—sec. 14, Ch. 484, L. 1997.)

25-1-201. (Effective July 1, 1999) Fees of clerk of district court. (1) The clerk of the district court shall collect the following fees:

(a) at the commencement of each action or proceeding, except a petition for dissolution of marriage, from the plaintiff or petitioner, ~~$80~~ *$90*; for filing a complaint in intervention, from the intervenor, $80; for filing a petition for dissolution of marriage, ~~a fee of $120~~ *$130*; for filing a petition for legal separation, a fee of $120; and for filing a petition for a contested amendment of a final parenting plan, a fee of $120;

(b) from each defendant or respondent, on appearance, $60;

(c) on the entry of judgment, from the prevailing party, $45;

(d) for preparing copies of papers on file in the clerk's office, 50 cents a page for the first five pages of each file, for each request, and 25 cents for each additional page;

(e) for each certificate, with seal, $2;

(f) for oath and jurat, with seal, $1;

(g) for search of court records, 50 cents for each year searched, not to exceed a total of $25;

(h) for filing and docketing a transcript of judgment or transcript of the docket from all other courts, the fee for entry of judgment provided for in subsection (1)(c);

(i) for issuing an execution or order of sale on a foreclosure of a lien, $5;

(j) for transmission of records or files or transfer of a case to another court, $5;

(k) for filing and entering papers received by transfer from other courts, $10;

(l) for issuing a marriage license, $30;

(m) on the filing of an application for informal, formal, or supervised probate or for the appointment of a personal representative or the filing of a petition for the appointment of a guardian or conservator, from the applicant or petitioner, $70, which includes the fee for filing a will for probate;

(n) on the filing of the items required in 72-4-303 by a domiciliary foreign personal representative of the estate of a nonresident decedent, $55;

(o) for filing a declaration of marriage without solemnization, $30;

(p) for filing a motion for substitution of a judge, $100;

(q) for filing a petition for adoption, $75.

(2) Except as provided in subsections (3) through ~~(10)~~ *(11)*, 32% of all fees collected by the clerk of the district court must be deposited in and credited to the district court fund. If no district court fund exists, that portion of the fees must be deposited in the general fund for district court operations. The remaining portion of the fees must be remitted to the state general fund.

(3) In the case of a fee collected for issuing a marriage license or filing a declaration of marriage without solemnization, $23.60 must be deposited in and credited to the state general fund and $6.40 must be deposited in and credited to the county general fund.

(4) *(a)* Of the fee for filing a petition for dissolution of marriage ~~or legal separation~~, $75 must be deposited in the state general fund, $5 must be deposited in the children's trust fund account established ~~by~~ *in* 41-3-702, *$9 must be deposited in the civil legal assistance for indigent victims of domestic violence account established in [section 2]*, and ~~$20~~ *$21* must be deposited in and credited to the district court fund. If no district court fund exists, the ~~$20~~ *$21* must be deposited in the general fund for district court operations.

(b) Of the fee for filing a petition for legal separation, $75 must be deposited in the state general fund, $5 must be deposited in the children's trust fund account established by 41-3-702, and $20 must be deposited in and credited to the district court fund. If no district court fund exists, the $20 must be deposited in the general fund for district court operations.

(5) (a) Before the percentages contained in subsection (2) are applied and the fees deposited in the district court fund or the county general fund or remitted to the state, the clerk of the district court shall deduct from the following fees the amounts indicated:

(i) at the commencement of each action or proceeding and for filing a complaint in intervention as provided in subsection (1)(a), $35;

(ii) from each defendant or respondent, on appearance, as provided in subsection (1)(b), $25;

(iii) on the entry of judgment as provided in subsection (1)(c), $15; and

(iv) from the applicant or petitioner, on the filing of an application for probate or for the appointment of a personal representative or on the filing of a petition

HeinOnline -- 1999 vol. II 1437 1999

for appointment of a guardian or conservator, as provided in subsection (1)(m), $15.

(b) The clerk of the district court shall deposit the money deducted in subsection (5)(a) in the county general fund for district court operations unless the county has a district court fund. If the county has a district court fund, the money must be deposited in that fund.

(6) The fee for filing a motion for substitution of a judge as provided in subsection (1)(p) must be remitted to the state general fund.

(7) Fees collected under subsections (1)(d) through (1)(i) must be deposited in the district court fund. If no district court fund exists, fees must be deposited in the general fund for district court operations.

(8) The clerk of the district court shall remit to the credit of the state general fund $20 of each fee collected under the provisions of subsections (1)(a) through (1)(c), (1)(m), and (1)(n) to fund a portion of judicial salaries.

(9) The fee for filing a petition for a contested amendment of a parenting plan must be remitted by the clerk of the district court to the credit of the district court to defray the costs of the court-sanctioned educational program concerning the effects of dissolution of marriage on children, as required in 40-4-226, and to defray the expense of education when ordered for the investigation and preparation of a report concerning parenting arrangements, as provided in 40-4-215(2)(a).

(10) The clerk of district court shall remit to the credit of the special revenue account established in 42-2-105 $70 of the filing fee required in subsection (1)(q), and $5 of the filing fee must be deposited in the district court fund. If no district court fund exists, fees must be deposited in the general fund for district court operations.

(11) Of the fee for filing an action or proceeding, except a petition for dissolution of marriage, $9 must be deposited in the civil legal assistance for indigent victims of domestic violence account established in [section 2] and $1 must be deposited in and credited to the district court fund for mitigation of administrative costs incurred by the court in the collection of the fee. If a district court fund does not exist, the $1 must be deposited in the county general fund for district court operations."

Section 2. Civil legal assistance for indigent victims of domestic violence account. (1) There is a civil legal assistance for indigent victims of domestic violence account in the state special revenue fund. There must be paid into this account the filing fees paid under 25-1-201(4)(a) and (11). The money in the account must be used solely for the purpose of providing legal representation for indigent victims in civil matters in domestic violence cases and for alternative dispute resolution initiatives in family law cases. Money in the account may not be used for class action lawsuits.

(2) The supreme court administrator shall establish procedures for the distribution and accountability of money in the account. The supreme court administrator may designate nonprofit organizations that ordinarily render or finance legal services to indigent persons in civil matters in domestic violence cases to receive or administer the distribution of the funds.

Section 3. Effective date. [This act] is effective July 1, 1999.

HeinOnline -- 1999 vol. II 1438 1999

Section 4. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 3, chapter 2, part 7, and the provisions of Title 3, chapter 2, part 7, apply to [section 2].

Approved April 20, 1999

CHAPTER NO. 387

[HB 53]

AN ACT SPECIFYING THAT A CORONER OR DEPUTY CORONER SHALL PRONOUNCE THE DEATH OF A DEFENDANT AT AN EXECUTION; CLARIFYING THE NUMBER OF WITNESSES AT AN EXECUTION; REQUIRING THAT ALL WITNESSES BE SUBJECT TO THE APPROVAL OF THE DEPARTMENT OF CORRECTIONS; AND AMENDING SECTION 46-19-103, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-19-103, MCA, is amended to read:

"46-19-103. Execution of death sentence. (1) In pronouncing the sentence of death, the court shall set the date of execution, which may not be less than 30 days or more than 60 days from the date the sentence is pronounced. If execution has been stayed by any court and the date set for execution has passed prior to dissolution of the stay, the court in which the defendant was previously sentenced shall, upon dissolution of the stay, set a new date of execution for not less than 20 or more than 90 days from the day the date is set. The defendant is entitled to be present in court on the day the new date of execution is set.

(2) Pending execution of a sentence of death, the sheriff may deliver the defendant to a state prison for confinement, and the state shall bear the costs of imprisoning the defendant from the date of delivery.

(3) The punishment of death must be inflicted by administration of a continuous, intravenous injection of a lethal quantity of an ultra-fast-acting barbiturate in combination with a chemical paralytic agent until a ~~licensed physician~~ *coroner or deputy coroner* pronounces that the defendant is dead ~~according to accepted standards of medical practice~~.

(4) When an execution date is set, a death warrant signed by the judge and attested by the clerk of court under the seal of the court must, within 5 days, be prepared. The warrant and a certified copy of the judgment must be delivered to the director of the department of corrections. The warrant must be directed to the director and recite the conviction, judgment, appointed date of execution, and duration of the warrant.

(5) The warden of the Montana state prison shall provide a suitable and efficient room or place in which executions will be carried out, enclosed from public view, within the walls of the state prison, and shall provide all implements necessary to the execution. The warden shall, subject to subsection (6), select the person to perform the execution, and the warden or the warden's designee shall supervise the execution. The identity of the executioner must remain anonymous. Facts pertaining to the selection and training of the executioner must remain confidential.

HeinOnline -- 1999 vol. II 1439 1999

(6) *(a)* An execution must he performed by a person selected by the warden and trained to administer a lethal injection. The person administering the injection need not be a physician, registered nurse, or licensed practical nurse licensed or registered under the laws of this or any other state.

(b) The warden shall allow the execution to be observed by *no more than* 12 witnesses~~, 3 of whom may be designated by the person to be executed~~, *excluding department of corrections staff necessary to carry out the execution. The witnesses must, to the extent possible, include three persons from the news media, three persons designated by the family of the victim of the crime, three persons designated by the person to be executed, and three persons chosen by the department of corrections.*

(c) A proposed witness is subject to rejection by the department of corrections if thc department has reason to believe that the witness:

(i) poses a risk to the safety or security of department of corrections personnel, the other witnesses, or other persons; or

(ii) is likely to disrupt proceedings due to the witness's emotional or mental state.

(7) Within 20 days after the execution, the warden shall return the death warrant to the clerk of the court from which it was issued, noting on the warrant the time it was executed.

(8) The rejection of a witness under subsection (6)(c) is not grounds for stay of the execution."

Approved April 21, 1999

CHAPTER NO. 388

[HB 54]

AN ACT CREATING THE CRIMINAL OFFENSE OF ASSAULT WITH A BODILY FLUID; PROVIDING PENALTIES FOR THE OFFENSE; AND DEFINING "BODILY FLUID".

Be it enacted by the Legislature of the State of Montana:

Section 1. Assault with bodily fluid. (1) A person commits the offense of assault with a bodily fluid if the person purposely or knowingly causes one of the person's bodily fluids to make physical contact with a law enforcement officer or staff person of a correctional or detention facility:

(a) during or after an arrest for a criminal offense;

(b) while the person is incarcerated in or being transported to or from a state prison or a county, city, or regional jail or detention facility; or

(c) if the person is a minor, while the youth is detained in or being transported to or from a county, city, or regional jail or detention facility or a youth detention facility, secure detention facility, regional detention facility, short-term detention center, state youth correctional facility, or shelter care facility.

(2) A person convicted of the offense of assault with a bodily fluid shall be fined an amount not to exceed $1,000 or incarcerated in a county jail or a state prison for a term not to exceed 1 year, or hoth.

HeinOnline -- 1999 vol. II 1440 1999

(3) The youth court has jurisdiction of any violation of this section by a minor, unless the charge is filed in district court, in which case the district court has jurisdiction.

(4) As used in this section, "bodily fluid" means any bodily secretion, including but not limited to feces, urine, blood, and saliva.

Approved April 21, 1999

CHAPTER NO. 389

[HB 69]

AN ACT GENERALLY REVISING THE LAWS GOVERNING STATUTORY APPROPRIATIONS AND DEDICATED REVENUE; AMENDING SECTIONS 3-7-204, 3-7-222, 3-7-302, 10-3-203, 10-4-301, 10-4-311, 15-30-195, 15-35-108, 16-1-404, 16-11-308, 17-3-212, 17-7-502, 18-2-407, 20-26-1501, 20-26-1502, 20-26-1503, 39-71-502, 39-71-503, 39-71-901, 39-71-907, 39-71-2321, 44-12-206, 61-10-148, 77-1-131, 80-2-103, 85-2-123, 85-2-213, 85-2-225, 85-2-232, 85-20-402, 87-1-601, 90-4-103, 90-4-106, 90-4-109, 90-4-215, 90-6-304, AND 90-6-331, MCA; REPEALING SECTION 85-2-241, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-7-204, MCA, is amended to read:

"3-7-204. Supervision and administration by supreme court. (1) The Montana supreme court sball supervise the activities of the water judges, water masters, and associated personnel in implementing this chapter and Title 85, chapter 2, part 2.

(2) The supreme court shall pay the expenses of the water judges and the salaries and expenses of the water judges' staffs and the salaries and expenses of the water masters and the water masters' staffs, from ~~the water right adjudication account established by 85-2-241~~ *appropriations made for that purpose*. "Salaries and expenses" as used in this section include but are not limited to the salaries and expenses of personnel, the cost of office equipment and office space, and ~~such~~ other necessary expenses ~~as~~ *that* may be incurred in the administration of this chapter and Title 85, chapter 2, part 2."

Section 2. Section 3-7-222, MCA, is amended to read:

"3-7-222. Salary — office space. (1) The chief water judge is entitled to receive tbe same salary and expense allowance as provided for district judges in 3-5-211.

(2) The office of the chief water judge ~~shall~~ *must* be at the location that the chief justice of the Montana supreme court shall designate. The Montana supreme court shall provide in its budget for the salary, expenses, and office and staff requirements of the chief water judge, which money may be appropriated by the legislature from the ~~water right adjudication account~~ *general fund*."

Section 3. Section 3-7-302, MCA, is amended to read:

"3-7-302. Salary, expenses, and retirement of water masters. (1) The water judges shall set a uniform salary for water masters. Water masters ~~shall~~ *must* receive expenses as provided in 2-18-501 through 2-18-503.

HeinOnline -- 1999 vol. II 1441 1999

(2) A water master shall participate in the Montana Public Employees' Retirement System established in Title 19, chapter 3.

~~(3) The salary and expenses of a water master shall be paid from the water right adjudication account established in 85-2-241.~~"

Section 4. Section 10-3-203, MCA, is amended to read:

"10-3-203. Acceptance of services, gifts, grants, and loans. (1) Whenever the federal government or any agency or officer ~~thereof~~ *of the federal government* ~~or any person, firm, or corporation shall offer~~ *offers* to the state, or through the state to any political subdivision ~~thereof~~ *of the state*, services, equipment, supplies, materials, or funds by way of gift, grant, or loan for purposes of emergency or disaster services, the state, acting through the governor, or the political subdivision, acting through its executive officer or governing body, may accept the offer. ~~and upon~~ *Upon* the acceptance, the governor of the state or *the* executive officer or governing body of the political subdivision may authorize any officer of the state or of the political subdivision~~, as the case may be,~~ to receive the services, equipment, supplies, materials, or funds on behalf of the state or ~~such~~ political subdivision and subject to the terms of the offer and the rules, if any, of the agency making the offer.

(2) The funds, items, and services set forth in subsection (1) are statutorily appropriated, as provided in 17-7-502, to the governor for the purposes set forth in subsection (1)."

Section 5. Section 10-4-301, MCA, is amended to read:

"10-4-301. Establishment of emergency telecommunications accounts. (1) There are established in the state special revenue fund in the state treasury:

(a) an account for all fees collected for basic 9-1-1 services pursuant to 10-4-201(1)(a); and

(b) an account for all fees collected for enhanced 9-1-1 services pursuant to 10-4-201(1)(b).

(2) All money received by the department of revenue pursuant to 10-4-201 must be paid to the state treasurer for deposit in the appropriate account. An amount equal to ~~7.48%~~ *3.74%* of the money received pursuant to 10-4-201 must be deposited in the state general fund.

(3) After payment of refunds pursuant to 10-4-205, the balance of the respective accounts must be used for the purposes described in part 1 of this chapter.

(4) The distribution of funds in the 9-1-1 emergency telecommunications accounts described in subsection (1), as required by 10-4-302 and 10-4-311, is statutorily appropriated, as provided in 17-7-502, to the department ~~of administration~~.

(5) Expenditures for actual and necessary expenses required for the efficient administration of the plan must be made from appropriations made for that purpose."

Section 6. Section 10-4-311, MCA, is amended to read:

HeinOnline -- 1999 vol. II 1442 1999

"10-4-311. Distribution of enhanced 9-1-1 account by department. (1) The department shall make quarterly distributions of the entire enhanced 9-1-1 account ~~as follows:~~

~~(a) administrative costs incurred during the preceding calendar quarter by the department of revenue in carrying out this chapter. The amount paid may not exceed 0.5% of the account on the date of distribution or actual expenses incurred, whichever is less.~~

~~(b) administrative costs incurred during the preceding calendar quarter by the department in carrying out its duties under this chapter. The department's annual recovery of costs may not exceed 3.5% of the amount deposited in the account during the fiscal year or actual expenses incurred, whichever is less.~~

~~(c)~~ *for* costs incurred during the preceding calendar quarter by each provider of telephone service in the state for:

~~(i)~~*(a)* collection of the fee imposed by 10-4-201(1)(b); and

~~(ii)~~*(b)* modification of central office switching and trunking equipment necessary to provide service for an enhanced 9-1-1 system only.

(2) Payments under subsection (1)~~(c)~~ may be made only after application by the provider to the department for costs described in subsection (1)~~(c)~~. The department shall review all applications relevant to subsection (1)~~(c)~~ for appropriateness of costs claimed by the provider. If the provider contests the review, payment may not be made until the amount owed the provider is made certain.

(3) After all amounts under subsections (1) and (2) have been paid:

(a) for each fiscal year through the fiscal year ending June 30, 2007:

(i) 84% of the balance of the account must be allocated to cities and counties on a per capita basis. However, each county must be allocated a minimum of 1% of the balance of the counties' share of the account.

(ii) the remaining 16% of the balance of the account must be distributed evenly to the counties with 1% or less than 1% of the total population of the state; and

(b) for fiscal years beginning after June 30, 2007, 100% of the balance of the account must be allocated to cities and counties on a per capita basis. However, each county must be allocated a minimum of 1% of the balance of the counties' share of the account.

(4) An enhanced 9-1-1 jurisdiction whose enhanced 9-1-1 service area includes more than one city or county is eligible to receive operating funds from the allocation for each city or county involved. The department shall distribute to the accounting entity designated by an enhanced 9-1-1 jurisdiction with an approved final plan for enhanced 9-1-1 service the proportional amount for each city or county served by the enhanced 9-1-1 jurisdiction. The department shall, upon request, provide a report indicating the proportional share derived from the individual city's or county's allocation with each distribution to a 9-1-1 jurisdiction.

(5) If the department determines that an enhanced 9-1-1 jurisdiction is not adhering to an approved plan for enhanced 9-1-1 service or is not using funds in the manner prescribed in 10-4-312, the department may, after giving notice to the jurisdiction and providing an opportunity for a representative of the

HeinOnline -- 1999 vol. II 1443 1999

jurisdiction to comment on the department's determination, suspend payment from the enhanced 9-1-1 account to the 9-1-1 jurisdiction. The jurisdiction is not eligible to receive funds from the enhanced 9-1-1 account until the department determines that the jurisdiction is complying with the approved plan for enhanced 9-1-1 and fund usage limitations."

Section 7. Section 15-30-195, MCA, is amended to read:

"15-30-195. (Temporary) Excess tax refund agreement (EXTRA) — process — requirements — limitations. (1) This section may be referred to as the "Excess Tax Refund Agreement" or "EXTRA".

(2) On or before October 15, 1995, the department of administration shall determine and certify to the governor the combined total of the unreserved ending fund balances in the general fund, described in 17-2-102(1)(a)(i), and the school equalization aid account, described in 20-9-343, for the fiscal year ending June 30, 1995.

(3) If the amount of the unreserved ending fund balances described in subsection (2) exceeds $24.4 million, the amount in excess of $24.4 million, subject to the limitation provided in subsection (9), is the amount available for refund under this section.

(4) The amount determined under subsection (3) to be available for refund must be refunded on a pro rata basis to each taxpayer who filed a state income tax return, pursuant to 15-30-103, for tax year 1994.

(5) For the purposes of this section:

(a) the term "taxpayer" does not include a fiduciary or a beneficiary of an estate or trust who was required to file an income tax return pursuant to 15-30-135 unless a 1994 return was filed on behalf of a decedent;

(b) a return filed using the filing status married filing jointly is considered to have been filed by a single taxpayer; and

(c) the 1994 tax year is the 12-month period beginning January 1, 1994, and ending December 31, 1994, except that for fiscal year taxpayers, the 1994 tax year is a 12-month period ending between January 1, 1994, and December 31, 1994.

(6) (a) The pro rata distribution of the amount available for refund must be calculated by the department by dividing the amount available for refund described in subsection (3) by the total individual income tax liability as determined by the department from all 1994 tax year returns that were filed by October 15, 1995.

(b) The percentage determined in subsection (6)(a), adjusted to take into account the limitations contained in subsection (8), must be used as the adjusted percentage multiplier described in subsection (6)(c) to determine the amount of each taxpayer's refund. The department may not alter or change the adjusted percentage multiplier.

(c) The department shall calculate the amount of each taxpayer's refund by multiplying the amount of tax shown on the taxpayer's return on line 40 of the 1994 Montana Individual Income Tax Return, Form 2, or line 27 of the 1994 Montana Individual Income Tax Return, Short Form 2S, depending on the form used by the taxpayer for tax year 1994, by the adjusted percentage multiplier determined in subsection (6)(b).

HeinOnline -- 1999 vol. II 1444 1999

(7) (a) The department shall calculate the amount of each taxpayer's refund based on the taxpayer's 1994 tax year return on file with the department by October 15, 1995. A taxpayer filing a delinquent return for the 1994 tax year after October 15, 1995, is not eligible for a refund under this section.

(b) (i) If a taxpayer files an amended return or if the department reviews a taxpayer's return and recalculates the tax due to the state, the department shall recalculate the refund due to the taxpayer under this section.

(ii) If the department's recalculation determines that the taxpayer has an increased tax liability for tax year 1994 and should receive an additional refund under this section as a result of increased 1994 liability, the department shall credit the additional amount of refund under this section to the amount of additional tax due from the taxpayer.

(iii) If the amount of the recalculated refund due to the taxpayer exceeds the amount of additional tax due from the taxpayer, the department shall pay the excess amount to the taxpayer, hut only if the amount of the refund exceeds $10.

(iv) If, as the result of the taxpayer filing an amended return or of a review by the department, a taxpayer's original 1994 tax liability is decreased, any overpayment of the refund calculated by the department based on the original tax liahility must be credited against any refund due to the taxpayer.

(8) A refund paid to a taxpayer pursuant to this section may not exceed $1,000. The department may not issue a refund under this section if the amount of the refund is $10 or less.

(9) Refunds may not be made under this section if the total amount available for refund as determined in subsection (3) is less than $10 million.

(10) Beginning in November 1995, the department shall calculate and issue refunds due to taxpayers under this section.

(11) (a) Notwithstanding the provisions of 15-1-211, any objection concerning the determination of the amount of refund or any other issue relating to the refunds provided in this section must be raised by the taxpayer with the department no later than 30 days after the refund is mailed to the taxpayer.

(b) A district court has no jurisdiction to entertain or consider any issue relating to the determination or payment of a refund made under this section unless the issue was first presented to the department and the taxpayer exhausted all administrative remedies.

~~(12) The amount determined to be available for refund as provided in subsection (3), limited as provided in subsection (9), for the Excess Tax Refund Agreement and such additional funds required to do any subsequently required acts necessary as a result of the approval of this section, including the filing of amended returns or audit adjusted returns, is statutorily appropriated, as provided in 17-7-502, from the general fund to the department of revenue.~~ (Terminates July 1, 2001—sec. 7, Ch. 29, L. 1995.)"

Section 8. Section 15-35-108, MCA, is amended to read:

"15-35-108. Disposal of severance taxes. Severance taxes collected under this chapter must, in accordance with the provisions of 15-1-501, be allocated as follows:

(1) Fifty percent of total coal severance tax collections is allocated to the trust fund created by Article IX, section 5, of the Montana constitution. The trust fund

HeinOnline -- 1999 vol. II 1445 1999

money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) Twelve percent of coal severance tax collections is allocated to the long-range building program account established in 17-7-205.

(3) The amount of 8.36% must be credited to an account in the state special revenue fund to he allocated by the legislature for local impacts, county land planning, provision of basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking, conservation districts, and the Montana Growth Through Agriculture Act. Expenditures of the allocation may be made only from this account. Money may not be transferred from this account to another account other than the general fund. Any unreserved fund balance at the end of each fiscal year must be deposited in the general fund.

(4) The amount of 1.27% must be allocated to a nonexpendable trust fund for the purpose of parks acquisition or management. Income from this trust fund must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(5) The amount of 0.95% must be allocated to the debt service fund type to the credit of the renewable resource loan debt service fund.

(6) Beginning July 1, 1997, and ending June 30, 1999, the amount of 0.87% must be allocated to an account in the state special revenue fund for the purpose of protection of works of art in the state capitol and for other cultural and aesthetic projects. Beginning July 1, 1999, the amount of 0.63% must be allocated to a trust fund for the purpose of protection of works of art in the capitol and for other cultural and aesthetic projects. Income from this trust fund must be appropriated for protection of works of art in the state capitol and for other cultural and aesthetic projects.

~~(7) Beginning July 1, 1997, and ending June 30, 2007, the amount of 1.3% must be allocated to the long-range building program fund in the debt service fund type to fund the bonds issued for the purchase of the Virginia City and Nevada City property.~~

~~(8)~~*(7)* All other revenue from severance taxes collected under the provisions of this chapter must be credited to the general fund of the state."

Section 9. Section 16-1-404, MCA, is amended to read:

"16-1-404. License tax on liquor — amount — distribution of proceeds. (1) The department shall collect at the time of sale and delivery of any liquor under any provisions of the laws of the state of Montana a license tax of:

(a) 10% of the retail selling price on all liquor sold and delivered in the state by a company that manufactured, distilled, rectified, bottled, or processed and that sold more than 200,000 proof gallons of liquor nationwide in the calendar year preceding imposition of the tax pursuant to this section;

(b) 8.6% of the retail selling price on all liquor sold and delivered in the state by a company that manufactured, distilled, rectified, bottled, or processed and that sold not more than 200,000 proof gallons of liquor nationwide in the calendar year preceding imposition of the tax pursuant to this section.

(2) The license tax must be charged and collected on all liquor brought into the state and taxed by the department. The retail selling price must be computed

HeinOnline -- 1999 vol. II 1446 1999

by adding to the cost of the liquor tbe state markup as designated by the department. The license tax must be figured in the same manner as the state excise tax and is in addition to the state excise tax. The department shall retain in a separate account the amount of tbe license tax received. The ~~revenue is statutorily appropriated, as provided in 17-7-502, to the~~ department ~~and must~~, in accordance with the provisions of 15-1-501, ~~be disbursed~~ *shall allocate the revenue* as follows:

(a) Thirty percent is allocated to the counties according to the amount of liquor purchased in each county to be distributed to tbe incorporated cities and towns, as provided in subsection ~~(3)~~ *(4)*.

(b) Four and one-half percent is allocated to the counties according to the amount of liquor purchased in each county, and this money may be used for county purposes.

(c) Sixty-five and one-balf percent must be deposited in the state special revenue fund to the credit of tbe department of public health and human services for the treatment, rehabilitation, and prevention of alcoholism.

(3)(a) In the case of purchases of liquor by a retail liquor licensee for use in the licensee's business, the department shall make regulations necessary to apportion that proportion of license tax so generated to the county wbere the licensed establishment is located, for use as provided in 16-1-405.

(b) The department shall pay quarterly to each county treasurer the proportion of the license tax due each county, in accordance with the provisions of 15-1-501, to be allocated to the incorporated cities and towns of the county. *The payments to counties under this section are statutorily appropriated, as provided in 17-7-502.*

~~(3)~~*(4)* The license tax proceeds allocated to tbe county under subsection (2) for use by cities and towns must be distributed by the county treasurer to the incorporated cities and towns within 30 days of receipt from the department. The distrihution of funds to the cities and towns must be based on the proportion that the gross sale of liquor in each city or town is to the gross sale of liquor in all of the cities and towns of the county.

~~(4)~~*(5)* The license tax proceeds that are allocated to the department of public bealth and human services for the treatment, rehabilitation, and prevention of alcoholism must be credited quarterly to the department of public health and human services. Tbe legislature may appropriate a portion of the license tax proceeds to support alcohol programs. The remainder must be distributed as provided in 53-24-206."

Section 10. Section 16-11-308, MCA, is amended to read:

"16-11-308. Tobacco education fee. (1) Failure to obtain a license, as required by 16-11-303, or to post signs, as provided in 16-11-304, is punishable by a civil penalty of $100. The department may collect the penalty in the manner provided for tbe collection of other debts.

(2) A person wbo violates 16-11-305(1) or 16-11-307 at any one location within a 3-year period shall be punished as follows:

(a) A first through third offense is punishable by a verhal notification of violation.

(b) A fourth offense is punishable by a written notice of violation to be sent by the department of public health and human services to the owner of the establishment.

(c) A fifth offense is punishable by assessment against the owner of the establishment of a tobacco education fee of $500. The employee or other person who sold the tobacco product, the establishment manager, and the establishment owner, if the owner is a sole proprietor or partner, shall read and view the tebacco education material.

(d) A sixth offense is punishable by suspension of the licenses required by 16-11-120 and 16-11-303 for 3 months.

(e) A seventh and subsequent offense is punishable by suspension of the licenses required by 16-11-120 and 16-11-303 for 1 year.

(3) After 2 years from the first violation, if a person has not received notice of any further violations, a second violation is considered a first violation for the purposes of subsection (2).

(4) A license may not be reissued after suspension under subsection (2)(d) or (2)(e) unless tobacco education fees are paid in full.

(5) Tobacco education fees must be assessed and collected by the department of public health and buman services. Notice of an assessment pursuant to subsection (2) and this subsection must be made by the department of public health and human services within 30 days of the alleged violation by certified letter addressed to the establishment owner or manager. The notice of assessment against the owner of the establishment must provide an opportunity for a hearing. The hearing may be conducted using electronic equipment and must comply with the provisions of the Montana Administrative Procedure Act. Within 30 days from the date on which the notice of assessment was mailed, the owner or manager shall notify the department of public health and human services that the owner or manager objects to the assessment and request a hearing pursuant to this subsection.

(6) In addition to the penalty provided for in subsection (2), a first and subsequent violation of 16-11-305(1) or 16-11-307 is punishable by an assessment of a tobacco education fee of $25 against the employee who sold the tobacco product if the employee is not the owner of the establishment. The tobacco education fee must be assessed and collected by the department of public health and human services. Within 30 days of the alleged violation, notice of assessment pursuant to this subsection must be made by the department of public health and human services by certified letter addressed to the employee. The notice of assessment must provide an opportunity for a bearing. The hearing may he conducted using electronic equipment and must comply with the provisions of the Montana Administrative Procedure Act. Within 30 days from the date on wbich tbe notice of assessment was mailed, the employee shall notify the department of public health and human services that the employee objects to the assessment and requests a hearing pursuant to this subsection.

(7) The tobacco education material referred to in this section must be provided by tbe department of public health and human services in the form of written and video self-teaching materials. The education materials may be used only for tbe purposes provided in this section. Upon completion of the self-teaching materials, the establishment owner or manager sball execute a written statement on a form provided by the department of public health and

HeinOnline -- 1999 vol. II 1448 1999

human services verifying that the employee, owner, or manager, as appropriate, has read and viewed the self-teaching material and shall return the statement and the self-teaching video to the department of public health and human services.

(8) Upon the sixth and subsequent violation of this section, the department of public health and human services shall notify the department of revenue in writing to initiate suspension of the licenses required by 16-11-120 and 16-11-303 and shall notify the licensee in writing of the alleged violation and of the referral of the licensee's record of violations to the department of revenue for suspension of the licenses pursuant to 16-11-144 and this section. The department of revenue shall review the record of violations and may initiate license suspension proceedings in accordance with 16-11-144. If, upon a review of the record of violations, the department of revenue declines to initiate suspension proceedings, the violation may not be charged against the licensee for the purposes of this section.

(9) Fees assessed pursuant to this section must be deposited ~~in an account~~ in the state ~~special revenue~~ *general* fund. ~~One-half of the money in the account is statutorily appropriated, as provided in 17-7-502, to the department of public health and human services to defray the costs of the tobacco education program. One-half of the money in the account is statutorily appropriated, as provided in 17-7-502, to the department of revenue to defray the department's costs of implementing its duties pursuant to 16-11-144 and this section.~~"

Section 11. Section 17-3-212, MCA, is amended to read:

"**17-3-212. Apportionment of forest reserve funds among counties.** *(1)* The forest reserve funds and earned interest are statutorily appropriated, as provided in 17-7-502, *from the federal special revenue fund* to the state auditor~~,~~. ~~who~~ *The state auditor* shall apportion ~~said~~ *all* forest reserve funds and earned interest for allocation ~~between the several counties as follows: all funds received from each forest reserve shall be apportioned between~~ *among* the counties in which ~~such~~ *the* forest reserve is situated in proportion to the acreage of ~~such~~ *the* forest reserve in each county~~, and~~.

(2) ~~the~~ *The* state treasurer shall pay the ~~several~~ *apportioned* amounts ~~so apportioned~~ plus interest ~~thereon~~, as provided in 17-3-211, to the respective counties."

Section 12. Section 17-7-502, MCA, is amended to read:

"**17-7-502. (Temporary) Statutory appropriations — definition — requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 3-5-901; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301;

HeinOnline -- 1999 vol. II 1449 1999

15-1-111; 15-23-706; ~~15-30-195;~~ 15-31-702; 15-36-324; ~~15-36-325;~~ *15-36-325;*15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-406; 16-1-411; ~~16-11-308;~~ 17-3-106; 17-3-212; 17-3-222; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-6-709; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 20-8-107; ~~20-8-111;~~ 20-26-1503; 22-3-1004; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; ~~23-7-301;~~ ~~23-7-402;~~ *23-7-301; 23-7-402;* 37-43-204; 37-51-501; 39-71-503; ~~39-71-907;~~ ~~39-71-2321;~~ 42-2-105; 44-12-206; 44-13-102; 50-4-623; 53-6-703; 53-24-206; 67-3-205; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; ~~77-1-131;~~ *77-1-505;* ~~80-2-103;~~ 80-2-222; 80-4-416; 81-5-111; 82-11-161; ~~85-20-402;~~ 87-1-513; ~~90-3-301;~~ ~~90-4-215;~~ ~~90-6-331;~~ and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; pursuant to sec. 7(2), Ch. 29, L. 1995, the inclusion of 15-30-195 terminates July 1, 2001; pursuant to sec. 5, Ch. 461, L. 1997, the inclusion of 77-1-131 terminates October 1, 2003; and pursuant to secs. 13, 16(1), Ch. 549, L. 1997, the inclusion of 90-3-301 terminates July 1, 1999.)

17-7-502. (Effective July 1, 2008) Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 3-5-901; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-23-706; ~~15-30-195;~~ 15-31-702; 15-36-324; ~~15-36-325;~~ *15-36-325;* 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; [16-1-406;] 16-1-411; ~~16-11-308;~~ 17-3-106; 17-3-212; 17-3-222; 17-5-404; 17-5-804; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-6-709; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-205; 19-19-305; 19-19-506; 20-8-107; 20-9-361; 20-26-1503; 22-3-1004; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; ~~23-7-301;~~ ~~23-7-402;~~ *23-7-301; 23-7-402;* 32-1-537; 37-43-204; 37-51-501; 39-71-503; ~~39-71-907;~~ ~~39-71-2321;~~ 42-2-105; 44-12-206; 44-13-102; 50-4-623; 50-5-232; 50-40-206; 53-6-150; 53-6-703; 53-24-206; 60-2-220; 67-3-205; 75-1-1101; 75-5-1108; 75-6-214; 75-5-1108; 75-6-214; 75-11-313; 77-1-505; ~~80-2-103;~~ 80-2-222; 80-4-416; 81-5-111; 82-11-136; 82-11-161; 85-1-220; ~~85-20-402;~~ 87-1-513; ~~90-4-215;~~ ~~90-6-331;~~ 90-7-220; 90-7-221; and 90-9-306.

HeinOnline -- 1999 vol. II 1450 1999

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant to sec. 68(2), Ch. 422, L. 1997, this version becomes effective July 1, 2008.)"

Section 13. Section 18-2-407, MCA, is amended to read:

"**18-2-407. Forfeiture for failure to pay standard prevailing wage.** (1) Any contractor, subcontractor, or employer who pays workers or employees at less than the standard prevailing wage as established under the public works contract shall forfeit to the department a penalty at a rate of up to 20% of the delinquent wages plus fringe benefits, attorney fees, audit fees, and court costs. Money collected by the department under this section must be deposited in the ~~employment security account, as provided in 39-51-409, and must be used for enforcement~~ *general fund*. A contractor, subcontractor, or employer shall also forfeit to the employee the amount of wages owed plus $25 a day for each day that the employee was underpaid.

(2) Whenever it appears to the contracting agency or to the Montana commissioner of labor and industry that there is insufficient money due to the contractor or the employer under the terms of the contract to cover penalties, the Montana commissioner of labor and industry may, within 90 days after the filing of notice of completion of the project and its acceptance by the contracting agency, maintain an action in district court to recover all penalties and forfeitures due. This part does not prevent the individual worker who has been underpaid or the commissioner of labor and industry on behalf of all the underpaid workers from maintaining an action for recovery of the wages due under the contract as provided in Title 39, chapter 3, part 2, except that appeal of the ~~hearing~~ *hearings* officer's decision is made directly to district court rather than to the board of personnel appeals."

Section 14. Section 20-26-1501, MCA, is amended to read:

"**20-26-1501. Rural physician incentive ~~trust fund~~ *state special revenue account*.** There is a rural physician incentive ~~expendable trust fund~~ *state special revenue account* in the state treasury. Money is payable into the ~~fund~~ *account* as provided in 20-26-1502. Income and earnings on the ~~fund~~ *account* must be redeposited in the ~~fund~~ *account*. The ~~fund~~ *account* must be administered by the board of regents ~~of higher education~~ as provided in this part."

Section 15. Section 20-26-1502, MCA, is amended to read:

"**20-26-1502. Fee assessments — deposits.** The board of regents ~~of higher education~~ may assess a fee to students preparing to be physicians in the fields of medicine or osteopathic medicine who are supported by the state pursuant to an interstate compact for a professional education program in those fields, as those fields are defined by the compact. The fee may not exceed an amount equal to 8% of the annual individual medicine support fee paid by the state pursuant to 20-25-804. The fee must be assessed by the board of regents and deposited in the

HeinOnline -- 1999 vol. II 1451 1999

rural physician incentive ~~trust fund~~ *state special revenue account* established in 20-26-1501."

Section 16. Section 20-26-1503, MCA, is amended to read:

"20-26-1503. Use of rural physician incentive ~~trust fund~~ *state special revenue account.* (1) The rural physician incentive ~~trust fund~~ *state special revenue account* is statutorily appropriated, as provided in 17-7-502, to the board of regents ~~of higher education~~ to be used to pay:

(a) the educational debts of rural physicians who practice in medically underserved areas of the state that demonstrate a need for assistance in physician recruitment; and

(b) the expenses of administering the rural physician incentive program. The expenses of administering the program may not exceed 10% of the annual fees assessed pursuant to 20-26-1502.

(2) The board of regents shall establish procedures for determining the areas of the state that qualify for assistance in physician recruitment. An eligible area must demonstrate that a physician shortage exists or that the area has been unsuccessful in recruiting physicians by other mechanisms.

(3) A physician from an area determined to be eligible under subsection (2) may apply to the board of regents for payment of an educational debt directly related to a professional school, as provided in subsection (4). Physicians who have paid the fee authorized in 20-26-1502 must be given a preference over other applicants. To receive the educational debt payments, the physician shall sign an annual contract with the board of regents. The contract must provide that the physician is liable for the payments if the physician ceases to practice in the eligible area during the contract period.

(4) The maximum amount of educational debt payment that a rural physician may receive is $45,000 over a 5-year period or a proportionally reduced amount for a shorter period.

(5) The amount contractually committed in a year may not exceed the annual amount deposited in the rural physician incentive ~~trust fund~~ *state special revenue account.*"

Section 17. Section 39-71-502, MCA, is amended to read:

"39-71-502. Creation and purpose of uninsured employers' fund. (1) There is created an uninsured employers' fund *in the state special revenue fund type.* The purpose of the fund is to pay:

(a) to an injured employee of an uninsured employer the same benefits the employee would have received if the employer had been properly enrolled under compensation plan No. 1, 2, or 3, except as provided in 39-71-503(2); and

(b) the costs of investigating and prosecuting workers' compensation fraud under 2-15-2015.

(2) The department may refer to the workers' compensation fraud office established in 2-15-2015 cases involving:

(a) false or fraudulent claims for benefits; or

(b) criminal violations of 45-7-501."

Section 18. Section 39-71-503, MCA, is amended to read:

HeinOnline -- 1999 vol. II 1452 1999

"39-71-503. Administration of fund — appropriation. (1) The department shall administer the *uninsured employers'* fund and shall pay from it all expenses of administering the fund, all loss adjustment expenses for claims of injured employees of uninsured employers, and all proper benefits to injured employees of underinsured and uninsured employers.

(2) Surpluses and reserves may not be kept for the fund. The department shall make payments that it considers appropriate as funds become available from time to time. The payment of weekly disability benefits takes precedence over the payment of medical benefits. Lump-sum payments of future projected benefits, including impairment awards, may not be made from the fund. The board of investments shall invest the money of the fund, and the investment income must be deposited in the fund.

(3) The amounts necessary for the payment of benefits from this fund are statutorily appropriated, as provided in 17-7-502, from this fund."

Section 19. Section 39-71-901, MCA, is amended to read:

"39-71-901. Definitions. As used in this part, the following definitions apply:

(1) "Certificate" means documentation issued by the department to an individual who is a person with a disability.

(2) "Fund" means the subsequent injury fund *in the proprietary fund category.*

(3) "Person with a disability" means a person who has a medically certifiable permanent impairment that is a substantial obstacle to obtaining employment or to obtaining reemployment if the employee should become unemployed, considering such factors as the person's age, education, training, experience, and employment rejection."

Section 20. Section 39-71-907, MCA, is amended to read:

"39-71-907. Certified person with a disability to be compensated for injury as provided by chapter — insurer liability for compensation limited —~~appropriation.~~ ~~(1)~~ A person certified as having a physical or mental disability that constitutes or results in a substantial impediment to employment who receives an injury, as defined in 39-71-119, that results in death or disability must be paid compensation in the manner and to the extent provided in this chapter or, in case of death resulting from the injury, the compensation must be paid to the person's beneficiaries or dependents. The liability of the insurer for payment of medical and burial benefits as provided in this chapter is limited to those benefits arising from services rendered during the period of 104 weeks after the date of injury. The liability of the insurer for payment of benefits as provided in this chapter is limited to 104 weeks of compensation benefits actually paid. Thereafter, all compensation and the cost of all medical care and burial are the liability of the fund.

~~(2) The amounts necessary for the payment of benefits from this fund are statutorily appropriated, as provided in 17-7-502, from this fund.~~"

Section 21. Section 39-71-2321, MCA, is amended to read:

"39-71-2321. What to be deposited in state fund. (1) All premiums, penalties, recoveries by subrogation, interest earned upon money belonging to the state fund, ~~and~~ securities acquired by or through use of money, taxes collected

HeinOnline -- 1999 vol. II 1453 1999

under 39-71-2503 and 39-71-2505, and the interest and penalties on the taxes in accordance with 15-1-501 must be deposited in the state fund. They must be separated into two accounts based upon whether they relate to claims for injuries resulting from accidents that occurred before July 1, 1990, or claims for injuries resulting from accidents that occur on or after that date.

(2) All funds deposited in the state fund ~~are statutorily appropriated as provided in 17-7-502~~ *may be spent as provided in 17-8-101(2)(b).*"

Section 22. Section 44-12-206, MCA, is amended to read:

"**44-12-206. Disposition of proceeds of sale.** (1) Whenever property is seized, forfeited, and sold under the provisions of this chapter, the net proceeds of the sale must be distributed as follows:

(a) to the holders of security interests who have presented proper proof of their claims, if any, up to the amount of their interests in the property;

(b) the remainder, if any, to the county treasurer of the county in which the property was seized, who shall establish and maintain a drug forfeiture account and deposit the remainder into the account, except as provided in subsections (1)(c) through (1)(e);

(c) if the property was seized within the corporate limits of a city or town by a law enforcement agency of that city or town, the remainder, if any, to the city or town treasurer, who shall establish and maintain a drug forfeiture account and deposit the remainder into the account, except as provided in subsections (1)(d) and (1)(e);

(d) if the property was seized by an employee of the state, the remainder, if any, ~~to the account established~~ *is allocated as provided* in subsection (3), except as provided in subsection (1)(e); and

(e) if the property was seized as a result of the efforts of more than one law enforcement agency, the remainder, if any, to the accounts required by this subsection (1), pro rata in the proportions represented by the agencies' expenses of investigation, as determined by the attorney general.

(2) All proceeds from any source that are deposited into a county, city, or town drug forfeiture account must in each fiscal year be appropriated to and remain available until expended by the confiscating agency for drug laws enforcement and education concerning drugs.

(3) *(a)* ~~Net~~ *Each year, the first $125,000 of net* proceeds received by the state under subsections (1)(d) and (1)(e) must be deposited in an account in the state special revenue fund to the credit of the department of justice. The department may expend the money in the account only for purposes of enforcement of drug laws. An amount up to $125,000 each year is statutorily appropriated, as provided in 17-7-502, to the attorney general for enforcement of drug laws. Any expenditure in excess of $125,000 each fiscal year requires approval through budget amendment, as provided in Title 17, chapter 7, part 4.

(b) Each year, net proceeds in excess of $125,000 that are received by the state under subsections (1)(d) and (1)(e) must be deposited equally between the state special revenue account and the general fund."

Section 23. Section 61-10-148, MCA, is amended to read:

"**61-10-148. Disposition of fines and forfeited bonds.** (1) Except as provided in 61-12-701 and subsection (2) of this section, one-half of all the money

collected as fines and forfeited bonds for violations of Title 61, chapter 10, must be remitted monthly by the county treasurer to the state treasurer for deposit in the ~~highway nonrestricted account in the state special revenue~~ *state general* fund. The remaining half, less the deductions required by law, must be deposited in the county road fund. This subsection does not apply to fines and forfeited bonds paid to justices' courts.

(2) If the apprehension or arrest was for a violation of Title 61, chapter 10, and if the offense occurred on a road or highway not included under the provisions of 60-2-128 and 60-2-203, all money collected as fines and forfeited bonds must be distributed to the county treasurer for deposit in the county road fund."

Section 24. Section 77-1-131, MCA, is amended to read:

"**77-1-131. (Temporary) State lands historic right-of-way account — ~~statutory appropriation~~.** There is a state lands historic right-of-way account in the state special revenue fund. The application fee collected by the department pursuant to 77-1-130(1)(a) must be deposited in the account. Money in the account ~~is statutorily appropriated to the department, as provided in 17-7-502,~~ *must be used* for the expenses of the department in administering 77-1-130. Money in the account on the termination date of the account must be deposited in the general fund. (Terminates October 1, 2003—sec. 5, Ch. 461, L. 1997.)"

Section 25. Section 80-2-103, MCA, is amended to read:

"**80-2-103. Administration of trust assets.** Funds and the proceeds of the trust assets ~~which~~ *that* are not authorized to be administered by the secretary of agriculture under 80-2-102 must be received by the department and paid by it to the state treasurer for deposit in the expendable trust fund ~~and are statutorily appropriated, as provided in 17-7-502~~, to be used for expenditure or obligation by the department for the purposes of 80-2-102 or for the rural rehabilitation purposes permissible under the charter of the now dissolved Montana rural rehabilitation corporation as may be agreed upon between the department and the secretary of agriculture, subject to Public Law 499. ~~Expenditures for actual and necessary expenses required for the efficient administration of this part must be made from temporary appropriations, as described in 17-7-501(1) or (2), made for that purpose.~~"

Section 26. Section 85-2-123, MCA, is amended to read:

"**85-2-123. Deposit of fees and penalties.** Except as provided in 85-2-124 ~~and 85-2-241~~, all fees and penalties collected under this chapter ~~shall~~ *must* be deposited in the water right appropriation account established in 85-2-318. Except for fines collected by a district court under 85-2-122, all penalties or fines imposed by any court other than a justice's court for a violation of this chapter ~~shall~~ *must* be deposited in the general fund of the county where the court presides and ~~shall~~ *must* be disposed of in the same manner as any other penalty or fine."

Section 27. Section 85-2-213, MCA, is amended to read:

"**85-2-213. Notice of order ~~—additional filing period~~.** ~~(1)~~ To ~~assure~~ *ensure* that all persons who may claim an existing water right are notified of the requirement to file a claim of that right, the Montana supreme court shall give notice of the order as follows:

~~(a)~~*(1)* It shall cause the order, printed in not less than 10-point type, to be placed in a prominent and conspicuous place in all daily newspapers of the state and in at least one newspaper published in each county of the state within 30

HeinOnline -- 1999 vol. II 1455 1999

days after the Montana supreme court order as provided in 85-2-212 ~~and in April of 1980, 1981, 1982, and 1983~~.

~~(b)~~*(2)* It shall cause the order, in writing, to be placed in a prominent and conspicuous location in each county courthouse in the state within 30 days after the Montana supreme court order as provided in 85-2-212.

~~(c) It shall provide a sufficient number of copies of the order to the county treasurers before October 15, 1979, 1980, 1981, and 1982, and the county treasurers shall enclose a copy of the order with each statement of property taxes mailed in 1979, 1980, 1981, and 1982. In the implementation of this subsection, the department shall provide reimbursement to each county treasurer for the reasonable additional costs incurred by the treasurer arising from the inclusion of the order required by this section. The department shall be reimbursed for such costs from the water right adjudication account created by 85-2-241.~~

~~(d)~~*(3)* It shall provide copies of the order, in writing, to the press services with offices located in Helena within 30 days after the Montana supreme court order as provided in 85-2-212~~, and in April of 1980, 1981, 1982, and 1983~~.

~~(e)~~*(4)* It shall, under authority granted to the states by 43 U.S.C. 666, provide for service of the petition and order upon the United States attorney general or ~~his~~ *the attorney general's* designated representative.

~~(f)~~*(5)* It may also in its discretion give notice of the order in any other manner that will carry out the purposes of this section.

~~(g)~~*(6)* It may also in its discretion order that the department or the water judge assist the Montana supreme court in ~~the~~ carrying out ~~of~~ this section.

~~(2) (a) To ensure that all persons who failed to file a claim of existing right under 85-2-221(1) are provided notice of the opportunity to file a claim on or before July 1, 1996, as provided in 85-2-221(3), the department shall provide notice as follows:~~

~~(i) It shall, in October 1993, April and October 1994, April and October 1995, and April 1996, cause a notice of the right to file a claim in accordance with 85-2-221(3) to be published in all daily newspapers in the state and in at least one newspaper in each county in the state.~~

~~(ii) It shall, in October 1993, April and October 1994, April and October 1995, and April 1996, provide copies of the notice, in writing, to the press services with offices located in Helena.~~

~~(iii) It shall, by October 1993, provide copies of the notice to the United States attorney general and to all Indian tribes in Montana.~~

~~(iv) It shall cause copies of the notice to be posted in a conspicuous location in each county courthouse and department field office in the state and to be maintained in that location through July 1, 1996.~~

~~(v) It may also, in its discretion, provide notice in any other manner that will effectuate the purposes of 85-2-221(3).~~

~~(b) The water court shall include notice of 85-2-221(3) in all notices, decrees, or orders issued pursuant to 85-2-231 or 85-2-232 after July 1, 1993, until July 1, 1996.~~

~~(3) Notice given in accordance with subsection (2) must at a minimum indicate that any claim of existing right not filed with the department before April~~

~~30, 1982, may be filed by physically filing it with the department on or before July 1, 1996, or sending it by United States mail, postmarked on or before July 1, 1996. Additionally, the notice must indicate that under 85-2-226, a failure to file or mail the claim results in the forfeiture for all time of any existing rights to the use of water that are not claimed in accordance with the provisions of 85-2-221.~~"

Section 28. Section 85-2-225, MCA, is amended to read:

"**85-2-225. Filing fee -- processing fee for remitted claims.** (1) Each claim filed under 85-2-221 or 85-2-222 must be accompanied by a filing fee in the amount of $40, subject to the following exceptions:

(a) the total filing fees for all claims filed by one person in any one water court division may not exceed $480; and

(b) ~~no~~ *a* filing fee is *not* required accompanying a claim of an existing right that is included in a decree of a court in the state of Montana and that is accompanied by a copy of that decree or pertinent portion ~~thereof~~ *of the decree*.

(2) A claim that is exempt from the filing requirements of 85-2-221(1) but that is voluntarily filed must be accompanied by a filing fee in the amount of $40. Exempt claims for a single development with several uses if filed simultaneously may be accompanied by a filing fee in the amount of $40.

(3) (a) Except as provided in subsection (3)(c), in addition to the filing fee set forth in subsection (1), each statement of claim filed under 85-2-221(3) must be accompanied by a processing fee in the amount of $150, which must be deposited in the ~~water rights adjudication account for the examination of late claims by the department and for the publication of notices by the department as required under 85-2-213(2)~~ *general fund*.

(b) The water judge shall assess against the late claimant all reasonable administrative costs and expenses that may be incurred by the court due to the filing of the late claim and the consideration of the objection, which assessment must be deposited in the ~~water rights adjudication account~~ *general fund*.

~~(c) For a statement of claim that was filed after April 30, 1982, but prior to July 1, 1993, or for a statement of claim filed by a state agency, the processing fee provided for in subsection (3)(a) must be paid on or before a date to be established by the department by rule, but no later than July 1, 1999.~~"

Section 29. Section 85-2-232, MCA, is amended to read:

"**85-2-232. Availability of temporary preliminary or preliminary decree.** (1) (a) The water judge shall send to the department a copy of a temporary preliminary decree or preliminary decree issued for a basin.

(b) The water judge shall serve by mail a notice of availability of the temporary preliminary decree or preliminary decree to each person who has filed a claim of existing right within the decreed basin or to that person's successor as documented in the department's records.

(c) The water judge shall also serve by mail a notice of availability of the temporary preliminary decree or preliminary decree te the purchaser under contract for deed, as defined in 70-20-115, of property in connection with which a claim of existing right has been filed within the decreed basin.

(d) In the Powder River basin, the water judge shall serve by mail a notice of availability of the temporary preliminary decree or preliminary decree to each

HeinOnline -- 1999 vol. II 1457 1999

person or to that person's successor as documented in the department's records, who has filed a declaration of an existing right.

(e) The water judge shall enclose with a notice required under subsections (1)(b) through (1)(d) an abstract of the disposition of the claimed or declared existing right of a person identified in this section or that person's successor as documented in the department's records.

(f) The notice of availability required under this section must also be served upon:

(i) those issued or having applied for and not having been denied a permit to beneficially use water within the decreed basin pursuant to Title 85, chapter 2, part 3;

(ii) those granted a reservation within the decreed basin pursuant to 85-2-316; or

(iii) other interested persons who request service of the notice from the water judge.

(2) The clerk or person designated by the water judge to mail the notice shall make a general certificate of mailing certifying that a copy of the notice has been placed in the United States mail, postage prepaid, addressed to each party required to be served notice of the temporary preliminary decree or preliminary decree. The certificate is conclusive evidence of legal notice of entry of decree.

(3) Notice of the availability of a preliminary decree must also be published at least once each week for 3 consecutive weeks in at least three newspapers of general circulation that cover the water division or divisions in which the decreed basin is located. This notice must be provided before the final decree for the basin is issued.

(4) A person may obtain a copy of the temporary preliminary decree or preliminary decree upon payment of a fee of $20 or the cost of printing, whichever is greater, to the water judge. *The fee must be deposited in the state general fund.*"

Section 30. Section 85-20-402, MCA, is amended to read:

"**85-20-402.** ~~**Statutory appropriation of**~~ ***Accounting for*** **federal funds.** (1) There must be created those accounts that are necessary within the federal special revenue fund established under 17-2-102 for the purposes of this part.

(2) Federal funds deposited in the accounts and interest and earnings on the accounts ~~are statutorily appropriated, as provided in 17-7-502, and~~ must be used for the following purposes or to reimburse the state for expenditures incurred for the following purposes:

(a) establishment, administration, and enforcement of the Yellowstone controlled ground water area;

(b) inventory, sampling, reporting, and database management;

(c) provision for administrative costs and the cost of any study or any other necessary activity by the technical oversight committee; and

(d) any other necessary activity pursuant to this part."

Section 31. Section 87-1-601, MCA, is amended to read:

HeinOnline -- 1999 vol. II 1458 1999

"**87-1-601. Use of fish and game money.** (1) (a) Except as provided in subsection (7), all money collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, from damages collected for violations of the fish and game laws of this state, *or* from appropriations~~,~~ or received by the department from any other state source must be turned over to the state treasurer and placed in the state special revenue fund to the credit of the department.

(b) Any money received from federal sources must be deposited in the federal special revenue fund to the credit of the department.

(c) All interest earned on money from the following sources must be placed in the state special revenue fund to the credit of the department:

(i) the general license account;

(ii) the license drawing account;

(iii) accounts established to administer the provisions of 87-1-246, 87-1-258, 87-1-605, 87-2-412, 87-2-722, and 87-2-724; and

(iv) money received from the sale of any other hunting and fishing license.

(2) The money described in subsection (1) must be exclusively set apart and made available for the payment of all salaries, per diem, fees, expenses, and expenditures authorized to be made by the department under the terms of this title. The money described in subsection (1) must be spent for those purposes by the department, subject to appropriation by the legislature.

(3) Any reference to the fish and game fund in this code means fish and game money in the state special revenue fund and the federal special revenue fund.

(4) Except as provided in subsections (7) and (8), all money collected or received from fines and forfeited bonds, except money collected or received by a justice's court, that relates to violations of state fish and game laws under Title 87 must be deposited by the state treasurer and credited to the department in a state special revenue fund account for this purpose. Out of any fine imposed by a court for the violation of the fish and game laws, the costs of prosecution must be paid to the county where the trial was held in any case in which the fine is not imposed in addition to the costs of prosecution.

(5) Money received by the department from the sale of surplus real property; from exploration or development of oil, gas, or mineral deposits from lands acquired by the department except royalties or other compensation based on production; and from leases of interests in department real property not contemplated at the time of acquisition must be deposited in an account within the nonexpendable trust fund of the state treasury. The interest derived from the fund, but not the principal, may be used only for the purpose of operation, development, and maintenance of real property of the department~~,~~ and only upon appropriation by the legislature. If the use of money as set forth in this section would result in violation of applicable federal laws or state statutes specifically naming the department or money received by the department, then the use of this money must be limited in the manner, method, and amount to those uses that do not result in a violation.

(6) Money received from the collection of license drawing applications is not subject to the deposit requirements of 17-6-105. The department shall deposit license drawing application money within a reasonable time after receipt.

HeinOnline -- 1999 vol. II 1459 1999

(7) Money collected or received from fines or forfeited bonds for the violation of 77-1-801, 77-1-806, or rules adopted under 77-1-804 must be deposited ~~as follows:~~

~~(a) 50% in an account for use by the department for the enforcement of 77-1-801, 77-1-806, and rules adopted under 77-1-804; and~~

~~(b) 50% in the state lands recreational use account established by 77-1-808 for use by the department of natural resources and conservation in the management of state lands~~ *in the state general fund.*

(8) ~~After July 1, 1995, the~~ *The* state treasurer shall deposit in the state general fund one-half of the money received from the fines pursuant to 87-1-102."

Section 32. Section 90-4-103, MCA, is amended to read:

"90-4-103. Alternative energy and energy conservation research development and demonstration ~~account established~~ *program* — allocation of funds. (1) There is ~~within the state special revenue fund~~ an alternative energy and energy conservation research development and demonstration ~~account~~ *program*. Money ~~is paid into this account~~ from repayments of grants and loans previously awarded ~~from this account~~ *must be deposited in the general fund*. The state treasurer shall draw warrants payable from ~~this account~~ *appropriations provided for the program* upon order of the department.

(2) Each fiscal year the department shall allocate the funds appropriated ~~from~~ *for* the alternative energy and energy conservation research development and demonstration ~~account~~ *program* for the following:

(a) grants under 90-4-104 and 90-4-106;

(b) loans under 90-4-104 and 90-4-106;

(c) grants to state gevernmental units under 90-4-109;

(d) program administration; and

(e) matching federal energy programs and petroleum violation escrow account money if consistent with the purposes of this chapter.

(3) To ~~assure~~ *ensure* that the program offers the greatest possible benefits during the fiscal year, the department may reallocate funds among the categeries specified in this section based on the availability of funds or the applications it receives and the department's evaluation of the relative merits of each project."

Section 33. Section 90-4-106, MCA, is amended to read:

"90-4-106. Criteria for grant or loan awards. The department may award grants or loans to applicants under 90-4-105 in accordance with the following criteria:

(1) A grant may cover a period exceeding 1 year, provided that all funds for the grant must be encumbered or accrued from the program appropriation for the year the grant is authorized.

(2) The department may give preference to projects ~~which~~ *that* are also supported by funding from the federal gevernment or other persons, provided the projects are consistent with the other objectives of the departnient. The purpose of this preference is to use the alternative energy and energy conservation research development and demonstration ~~account~~ *appropriations*

for matching ~~moneys~~ *funds* in order to support more substantial research or commercialization.

(3) The department may give preference to research centers unattached to existing educational institutions where several investigators can share supporting services. However, this ~~shall~~ *may* not be interpreted to prohibit the department from awarding grants or loans to existing educational institutions.

(4) The department may give preference to research centers ~~which~~ *that* make information available to individuals, small businesses, and small communities seeking the use of renewable energy sources and energy conservation in their homes, plants, places of business, and small communities.

(5) All information resulting from such research ~~shall~~ *must* be made available to the public.

(6) The department may expend or commit available alternative energy and energy conservation research development and demonstration funds. The department may commit funds for demonstration purposes only when in its judgment ~~such~~ *the* expenditures or commitments have good potential for producing savings of nonrenewable energy sources. The department may not commit funds for demonstration purposes when any of the following conditions are present:

(a) previous commitments of a similar nature were not productive;

(b) a similar demonstration has been conducted within close geographic proximity of the geographic location of the proposed demonstration project, other than a project proposed for funding under 90-4-109;

(c) the proposed demonstration project would not further the purpose of this part."

Section 34. Section 90-4-109, MCA, is amended to read:

"90-4-109. State governmental unit grants. (1) (a) The department may award grants from the alternative energy and energy conservation research development and demonstration ~~account~~ *appropriations* to state governmental units. These grants must be used to further the purposes of this part by providing money for state governmental units for energy conservation measures.

(b) State governmental units ~~must~~ *shall* apply to the department for grants.

(c) The department shall prescribe the form for applications and develop criteria for awarding grants under this section, including provisions requiring matching funds or repayment of grant funds to the ~~alternative energy and energy conservation research development and demonstration account~~ *general fund*.

(d) Each agency awarded a grant shall either repay the grant or reduce its budgot commensurate with the documented energy savings resulting from the grant.

(2) All grants awarded under this section must be administered by the department of administration according to Title 18, chapter 2."

Section 35. Section 90-4-215, MCA, is amended to read:

"90-4-215. Account established — use. (1) There is created an energy conservation and energy assistance account within the federal special revenue fund established in 17-2-102.

HeinOnline -- 1999 vol. II 1461 1999

(2) The amounts deposited in the account and interest and earnings on the account ~~are statutorily appropriated, as provided in 17-7-502, to~~ *may be used by* the department of public health and human services to fund its low income energy assistance and home weatherization programs created in 90-4-201. However, the department may use the principal of the account only if the federal grants for either of those programs ~~is~~ *are* reduced below the federal fiscal year 1987 level. The department may not use the principal to increase expenditures to either program above the level of the federal grant for that program for federal fiscal year 1987."

Section 36. Section 90-6-304, MCA, is amended to read:

"90-6-304. Accounts established. (1) There is within the state agency fund type a hard-rock mining impact account. Money is payable into this account from payments made by a mining developer in compliance with the written guarantee from the developer to meet the increased costs of public services and facilities as specified in the impact plan provided for in 90-6-307. The state treasurer shall draw warrants from this account upon order of the board.

(2) There is within the state special revenue fund a hard-rock mining impact trust account. Within this trust account, there is established a reserve account not to exceed $100,000.

(a) Money within the hard-rock mining impact trust account may be used:

(i) for the administrative and operating expenses of the board, as provided by 90-6-303(4);

(ii) to establish and maintain the reserve account; and

(iii) for distribution to the counties of origin, as provided by 90-6-331~~(1)~~ and this section.

(b) Money within the hard-rock mining impact trust reserve account may be used for the administrative and operating expenses of the board if:

(i) the revenue provided under 15-37-117(1)(b) is less than the amount appropriated for the administrative and operating expenses of the board; or

(ii) the use of the reserve account revenue is necessary to allow the board to meet its quasi-judicial responsibilities under 90-6-307, 90-6-311, or 90-6-403(3).

(3) Money is payable into the hard-rock mining impact trust account under the provisions of 15-37-117. After first deducting the administrative and operating expenses of the board, as provided in 90-6-303, and then establishing and maintaining the reserve account in the amount of $100,000, as provided in subsection (2) of this section, the remaining money must be segregated within the account by county of origin. The state treasurer shall draw warrants from this account upon order of the board."

Section 37. Section 90-6-331, MCA, is amended to read:

"90-6-331. Fund transfer. ~~(1) On July 1, 1990, and prior~~ *Prior* to each October 1 ~~thereafter~~, all money segregated by county in the hard-rock mining impact trust account following allocation to the hard-rock mining impact trust reserve account established in 90-6-304(2) as of September 1 immediately preceding must be transferred to the county for which the funds have been held in deposit. The funds ~~so~~ transferred must be deposited in the county hard-rock mine trust reserve account established in 7-6-2225.

HeinOnline -- 1999 vol. II 1462 1999

~~(2) The transfer of funds required by this section is a statutory appropriation pursuant to 17-7-502.~~"

Section 38. Repealer. Section 85-2-241, MCA, is repealed.

Section 39. Effective date. [This act] is effective July 1, 1999.

Approved April 21, 1999

CHAPTER NO. 390

[HB 81]

AN ACT PROVIDING THAT A YOUTH TRANSFERRED FROM THE YOUTH COURT TO THE DISTRICT COURT AND FOUND GUILTY OF CERTAIN OFFENSES MAY BE COMMITTED FOR LONGER THAN 5 YEARS TO THE DEPARTMENT OF CORRECTIONS FOR INCARCERATION IN AN APPROPRIATE CORRECTIONAL FACILITY; AND AMENDING SECTION 46-18-201, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-18-201, MCA, is amended to read:

"**46-18-201. Sentences that may be imposed.** (1) Whenever a person has been found guilty of an offense upon a verdict or a plea of guilty, the court may:

(a) defer imposition of sentence, except as provided in 61-8-734 for sentences for driving under the influence of alcohol or drugs or as provided in 61-6-304, for a period, except as otherwise provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Reasonable restrictions or conditions may include:

(i) jail base release;

(ii) jail time not exceeding 180 days;

(iii) conditions for probation;

(iv) payment of the costs of confinement;

(v) payment of a fine as provided in 46-18-231;

(vi) payment of costs as provided in 46-18-232 and 46-18-233;

(vii) payment of costs of court-appointed counsel as provided in 46-8-113;

(viii) with the approval of the facility or program, an order that the offender be placed in a community corrections facility or program as provided in 53-30-321;

(ix) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, an order that the offender be placed in a prerelease center or prerelease program for a period not to exceed 1 year;

(x) community service;

(xi) home arrest as provided in Title 46, chapter 18, part 10;

(xii) any other reasonable conditions considered necessary for rehabilitation or for the protection of society;

HeinOnline -- 1999 vol. II 1463 1999

(xiii) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116; or

(xiv) any combination of the restrictions or conditions in subsections (1)(a)(i) through (1)(a)(xiii).

(b) suspend execution of sentence for a period up to the maximum sentence allowed or for a period of 6 months, whichever is greater, for each particular offense. The sentencing judge may impose on the defendant any reasonable restrictions or conditions during the period of suspended sentence. Reasonable restrictions or conditions may include any of those listed in subsection (1)(a).

(c) impose a fine as provided by law for the offense;

(d) require payment of costs as provided in 46-18-232 or payment of costs of court-appointed counsel as provided in 46-8-113;

(e) impose a county jail or state prison sentence, as provided in Title 45, for the offense or commit the defendant to the department of corrections for a period not to exceed, *except for a youth transferred to district court under and found guilty of an offense enumerated in 41-5-206(1),* 5 years for placement in an appropriate correctional facility or program;

(f) with the approval of the facility or program, order the offender to be placed in a community corrections facility or program as provided in 53-30-321;

(g) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, order the offender to be placed in a prerelease center or prerelease program for a period not to exceed 1 year; or

(h) impose any combination of subsections (1)(b) through (1)(g).

(2) In addition to any penalties imposed pursuant to subsection (1), if the court finds that the victim of the offense has sustained a pecuniary loss, the court shall require payment of full restitution to the victim as provided in 46-18-241 through 46-18-249.

(3) If a financial obligation is imposed as a condition under subsection (1)(a), sentence may be deferred for a period not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony, regardless of whether any other conditions are imposed.

(4) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, the court shall consider any elapsed time and either expressly allow part or all of it as a credit against the sentence or reject all or part as a credit. The court shall state its reasons in the order. Credit, however, must be allowed for jail or home arrest time already served.

(5) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended: 45-5-103, 45-5-202(3) relating to aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).

(6) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102 may not be deferred or suspended.

(7) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of a defendant who has been convicted of a felony

HeinOnline -- 1999 vol. II 1464 1999

on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(8) If the victim was less than 16 years old, the imposition or execution of the first 30 days of a sentence of imprisonment imposed under 45-5-503, 45-5-504, 45-5-505, or 45-5-507 may not he deferred or suspended. Section 46-18-222 does not apply to the first 30 days of the imprisonment.

(9) In imposing a sentence on a defendant convicted of a sexual or violent offense as defined in 46-23-502, the court may not waive the registration requirement provided in Title 46, chapter 23, part 5.

(10) A person convicted of a sexual offense, as defined in 46-23-502, and sentenced to imprisonment in the state prison shall enroll in and complete the educational phase of the prison's sexual offender program. If the person is subject to the provisions of 45-5-512, the person shall also, as provided in 45-5-512, undergo medically safe medroxyprogesterone acetate treatment or its chemical equivalent or other medically safe drug treatment that reduces sexual fantasies, sex drive, or both, paid for by and for a period of time determined by the department of corrections. The period may not exceed the period of state supervision of the person.

(11) In sentencing a nonviolent felony offender, the court shall first consider alternatives to imprisonment of the offender in the state prison, including placement of the offender in a community corrections facility or program or a prerelease center or prerelease program. In considering alternatives to imprisonment, the court shall examine the sentencing criteria contained in 46-18-225. If the court subsequently sentences the offender to a state prison, the court shall state the reasons why it did not select an alternative to imprisonment, based on the criteria contained in 46-18-225.

(12) If a felony sentence includes prohation, the department of corrections shall supervise the defendant unless the court specifies otherwise.

(13) Except as provided in 46-18-222, a provision of this section that conflicts with 46-18-219 does not apply to a person sentenced under 46-18-219."

Seetion 2. Coordination instruction. If House Bill No. 115 and [this act] are hoth passed and approved, then [this act] is void.

Approved April 21, 1999

CHAPTER NO. 391

[HB 116]

AN ACT REVISING THE PENALTIES FOR FOURTH OFFENSE DUI AND DRIVING WITH EXCESSIVE ALCOHOL CONCENTRATION; ALLOWING AN OFFENDER TO SERVE INITIAL IMPRISONMENT IN A STATE-APPROVED PUBLIC OR PRIVATE TREATMENT FACILITY THAT PROVIDES APPROPRIATE CHEMICAL DEPENDENCY TREATMENT; PROVIDING THAT ONLY THE FIRST 6 MONTHS OF MANDATORY IMPRISONMENT ON A FOURTH OFFENSE DUI MAY NOT BE SUSPENDED; AND AMENDING SECTION 61-8-731, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-8-731, MCA, is amended to read:

HeinOnline -- 1999 vol. II 1465 1999

"61-8-731. Driving under influence of alcohol or drugs — driving with excessive alcohol concentration — penalty for fourth or subsequent offense. (1) On the fourth or subsequent conviction under 61-8-714 or 61-8-722 for a violation of 61-8-401 or 61-8-406, the person is guilty of a felony and shall be punished by:

(a) imprisonment for a term of not less than 6 months or more than 13 months, *for which* the imposition or execution of ~~which~~ *the first 6 months* may not be suspended, and during which the person is not eligible for parole;

(b) probation for a term of not less than 1 year or more than 4 years; and

(c) a fine of not less than $1,000 or more than $10,000.

(2) The court shall, subject to sentencing restrictions:

(a) specify one of the following facilities as the initial place in which the term of imprisonment must be served:

(i) a state prison;

(ii) a regional correctional facility;

(iii) a county jail;

(iv) a boot camp, provided the prior approval of the department of corrections has heen obtained; or

(v) a prerelease center *or, upon acceptance by the facility, a state-approved public or private treatment facility that provides the appropriate level of chemical dependency treatment*, provided the prior approval of the department of corrections has been obtained; or

(b) sentence the person to the department of corrections for placement in an appropriate correctional institution or program; and

(c) order a person who is financially able to pay the costs of imprisonment ~~and~~, probation, *and chemical dependency treatment* under this section and of the information course and treatment under 61-8-732.

(3) The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of probation. Reasonable restrictions or conditions may include:

(a) payment of a fine as provided in 46-18-231;

(b) payment of costs as provided in 46-18-232 and 46-18-233;

(c) payment of costs of court-appointed counsel as provided in 46-8-113;

(d) community service;

(e) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of society;

(f) treatment in a state-approved public or private treatment facility; or

(g) any combination of the restrictions or conditions listed in subsections (3)(a) through (3)(f).

(4) (a) Following initial placement of a defendant in a boot camp ~~or a~~, prerelease center, *or treatment facility* under subsection (2)(a), the department of corrections may, at its discretion, place the offender in another facility or program.

(b) The department of corrections may order all or any portion of the term of probation to be served under intensive supervision. The provisions of Title 46, chapter 23, part 10, relating to probation, apply to the probation.

(5) If a violation of the restrictions or conditions of the probation is established, the court may continue the period of probation or may require the defendant to serve the remainder of the probation sentence in one of the facilities set forth in subsection (2)(a) or (2)(b). The court may credit the remainder of the probation or the time to be served in a facility set forth in subsection (2)(a) or (2)(b) with all or part of the time already served on probation."

Approved April 21, 1999

CHAPTER NO. 392

[HB 135]

AN ACT PROVIDING AN APPROPRIATION FOR PAY INCREASES FOR CERTAIN DEPARTMENT OF JUSTICE PROTECTIVE SERVICE PROFESSIONALS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Department of Justice is the state's principal law enforcement agency and provides essential services for the safety of the public, including but not limited to highway safety; and

WHEREAS, it is in the best interest of the citizens of Montana to have the ability to travel safely on the streets and highways of Montana; and

WHEREAS, financial loss to the citizens of the State of Montana associated with motor vehicle crashes amounted to $509 million in 1997; and

WHEREAS, providing public safety on Montana streets and highways is a primary responsibility of the State Highway Patrol; and

WHEREAS, the 55th Legislature, recognizing the unique nature of law enforcement services and the importance of retaining qualified law enforcement personnel, directed the Department of Administration, through Senate Bill No. 269, to study a pay schedule for protective service professionals, develop draft legislation, and report on the results of that study; and

WHEREAS, the Department of Administration report recommends that protective service professionals have an alternative classification and pay plan that recognizes the unique needs of law enforcement work, broadens current pay ranges, and retains pay equity, comparable worth, and legislative control over total funding; and

WHEREAS, an independent salary study shows highway patrol officer compensation to be 85% to 90% of the compensation paid to other Montana law enforcement agencies and as much as $6,300 less for an entry-level officer than for similar positions in contiguous states; and

WHEREAS, the Highway Patrol continues to experience the loss of career officers to other law enforcement agencies and careers because of higher levels of pay; and

WHEREAS, entry level highway patrol officers are currently not eligible for a programmed, experience-based, salary increase prior to 5 years of service; and

HeinOnline -- 1999 vol. II 1467 1999

WHEREAS, the Highway Patrol must be able to compete with other law enforcement agency pay structures to attract and retain qualified and competent officers to maintain critical public traffic safety services.

Be it enacted by the Legislature of the State of Montana:

Section 1. Appropriation for pay increases — conditions — definition. (1) For the biennium ending June 30, 2001, there is appropriated to the department of justice a total of $1,980,307, as follows:

	FY 2000	FY 2001
General fund	$ 70,180	$ 93,573
State special revenue	751,852	944,850
Federal special revenue	51,366	68,486

(2) The amounts appropriated under subsection (1) must be used to provide pay increases for all department of justice protective service professionals in addition to any other pay plan increases and in accordance with the provisions of 2-18-303(7) and (8).

(3) To the extent funding is available:

(a) effective the first full pay period in October 1999, each protective service professional must receive a pay increase equal to an increase of one pay grade; and

(b) beginning the first full pay period in October 1999, each highway patrol officer, as defined in 61-1-305, in an entry-level position must receive periodic incremental increases extending over no more than 5 years sufficient to increase the officer's pay to an amount equal to the pay grade of a senior highway patrol officer.

(4) For the purposes of this section, "protective service professional" means a "highway patrol officer", as that term is defined in 61-1-305, an "agent", as that term is defined in 44-2-111, or a person authorized by the department of justice to conduct a motor carrier safety inspection pursuant to 44-1-1005, except that protective service professional does not include personnel in appointed exempt positions provided for under 2-18-104.

Section 2. Coordination instruction. If House Bill No. 13 and [this act] are both passed and approved and if House Bill No. 13 authorizes the department of administration to develop and implement a demonstration project for an alternative classification and pay plan encompassing department of justice protective service professionals, then [section 1 of this act] must read as follows:

" Section 1. Appropriation for pay increases — conditions — definition. (1) For the biennium ending June 30, 2001, there is appropriated to the department of justice a total of $1,980,307, as follows:

	FY 2000	FY 2001
General fund	$ 70,180	$ 93,573
State special revenue	751,852	944,850
Federal special revenue	51,366	68,486

(2) The amounts appropriated under subsection (1) must be in addition to any other pay plan increases and must be used to fund a department of administration alternative classification and pay plan demonstration project encompassing department of justice protective service professionals.

(3) For the purposes of this section, "protective service professional" means a "highway patrol officer", as that term is defined in 61-1-305, an "agent", as that term is defined in 44-2-111, or a person authorized by the department of justice to conduct a motor carrier safety inspection pursuant to 44-1-1005, except that protective service professional does not include personnel in appointed exempt positions provided for under 2-18-104."

Section 3. Effective date. [This act] is effective July 1, 1999.

Approved April 21, 1999

CHAPTER NO. 393

[HB 204]

AN ACT AUTHORIZING CERTAIN COURT FINANCIAL ACCOUNTS TO BE KEPT IN INTEREST-BEARING ACCOUNTS IN FINANCIAL INSTITUTIONS, WITH THE INTEREST TO BE USED TO HELP DEFRAY THE COURT'S ADMINISTRATION COSTS; INCREASING THE ALLOWABLE NUMBER OF JUSTICES OF THE PEACE; INCREASING THE DOLLAR AMOUNT JURISDICTION OF JUSTICES' COURTS TO $7,000; PROVIDING THAT IF A REQUIRED UNDERTAKING IS NOT FILED WITHIN 10 DAYS AFTER A NOTICE OF APPEAL IS FILED, THE COURT FROM WHICH THE APPEAL WAS TAKEN SHALL DISMISS THE NOTICE OF APPEAL; REVISING CRIMINAL JURISDICTION OF JUSTICES' COURTS; AND AMENDING SECTIONS 3-10-101, 3-10-301, AND 3-10-303, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Court financial accounts. Except for accounts kept in the state treasury or a county treasury, each financial account kept by a court may be kept in an interest-bearing account in a financial institution. The interest earned on the interest-bearing account must be used to help defray the administrative costs of the court.

Section 2. Dismissal for failure to timely file required undertaking. If an undertaking required by this part is not filed within 10 days after the filing of a notice of appeal, the court from which the appeal was taken shall dismiss the notice of appeal.

Section 3. Section 3-10-101, MCA, is amended to read:

"3-10-101. Number and location of justices' courts — authorization to combine with city court. (1) There must be at least one justice's court in each county of the state, which must be located at the county seat. *The board of county commissioners shall designate the number of justices in each justice's court.*

(2) The board of county commissioners of each county of the state ~~shall have authority to constitute~~ *may establish*:

(a) ~~as it considers necessary,~~ one additional justice's court ~~which may be~~ located anywhere in the county; and

(b) one additional justice's court located in each city having a population of over 5,000, as provided in subsection (3).

(3) A city having a population of over 5,000 may, by resolution, request the board of county commissioners to constitute a justice's court in the city. A justice's court ~~shall~~ *must* be established in the city if the board of county commissioners approves the request by resolution.

(4) A justice of the peace of a court ~~constituted~~ *established* pursuant to subsection (3) may act as the city judge upon passage of a city ordinance authorizing ~~such~~ *the* action and upon approval of the ordinance by resolution of the board of county commissioners. If ~~such an~~ *the* ordinance and ~~such a~~ resolution are passed, the city and the county shall enter into an agreement for proportionate payment of the justice's salary, as established under 3-10-207 and 3-11-202, and for proportionate reimbursement for the use of facilities."

Section 4. Section 3-10-301, MCA, is amended to read:

"3-10-301. Civil jurisdiction. (1) Except as provided in 3-11-103 and in subsection (2) of this section, the justices' courts have jurisdiction:

(a) in actions arising on contract for the recovery of money only if the sum claimed does not exceed ~~$5,000~~ *$7,000*, exclusive of court costs;

(b) in actions for damages not exceeding ~~$5,000~~ *$7,000*, exclusive of court costs, for taking, detaining, or injuring personal property or for injury to real property when no issue is raised by the verified answer of the defendant involving the title to or possession of the real property;

(c) in actions for damages not exceeding ~~$5,000~~ *$7,000*, exclusive of court costs, for injury to the person, except that, in actions for false imprisonment, libel, slander, criminal conversation, seduction, malicious prosecution, determination of paternity, and abduction, the justice of the peace does not have jurisdiction;

(d) in actions to recover the possession of personal property if the value of the property does not exceed ~~$5,000~~ *$7,000*;

(e) in actions for a fine, penalty, or forfeiture not exceeding ~~$5,000~~ *$7,000*, imposed by a statute or an ordinance of an incorporated city or town when no issue is raised by the answer involving the legality of any tax, impost, assessment, toll, or municipal fine;

(f) in actions upon bonds or undertakings conditioned for the payment of money when the sum claimed does not exceed ~~$5,000~~ *$7,000*, though the penalty may exceed that sum;

(g) to take and enter judgment for the recovery of money on the confession of a defendant when the amount confessed does not exceed ~~$5,000~~ *$7,000*, exclusive of court costs;

(h) to issue temporary restraining orders, as provided in 40-4-121, and orders of protection, as provided in Title 40, chapter 15.

(2) Justices' courts do not bave jurisdiction in civil actions that might result in a judgment against the state for the payment of money."

Section 5. Section 3-10-303, MCA, is amended to read:

HeinOnline -- 1999 vol. II 1470 1999

"**3-10-303. Criminal jurisdiction.** *(1)* The justices' courts have jurisdiction of public offenses committed within the respective counties in which the courts are established as follows:

~~(1)~~*(a) except as provided in subsection (2),* jurisdiction of all misdemeanors punishable by a fine not exceeding $500 or imprisonment not exceeding 6 months, or both;

~~(2)~~*(b)* jurisdiction of all misdemeanor violations of fish and game statutes punishable by a fine of not more than $1,000 or imprisonment for not more than 6 months, or both;

~~(3)~~*(c)* concurrent jurisdiction with district courts of all misdemeanors punishable by a fine exceeding $500 or imprisonment exceeding 6 months, or both;

~~(4)~~*(d)* concurrent jurisdiction with district courts of all misdemeanor violations of fish and game statutes punishable by a fine exceeding $1,000 or imprisonment exceeding 6 months, or both;

~~(5)~~*(e)* jurisdiction to act as examining and committing courts and for that purpose to conduct preliminary hearings;

~~(6)~~*(f)* jurisdiction of all violations of Title 61, chapter 10; and

~~(7)~~*(g)* all misdemeanor violations of Title 81, chapter 8, part 2.

(2) In any county that has established a drug court, the district court, with the consent of all judges of the courts of limited jurisdiction in the county, has concurrent jurisdiction of all misdemeanors punishable by a fine not exceeding $500 or imprisonment not exceeding 6 months, or both."

Section 6. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 3, chapter 1, part 1, and the provisions of Title 3, chapter 1, part 1, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 25, chapter 33, part 2, and the provisions of Title 25 apply to [section 2].

Approved April 21, 1999

CHAPTER NO. 394

[HB 207]

AN ACT PROVIDING THAT THE DISTRICT COURT REIMBURSEMENT PROGRAM PAY FOR CERTAIN EXPENSES INCURRED IN STATE DISTRICT COURT FOR PROCEEDINGS INVOLVING ABUSED AND NEGLECTED CHILDREN; ELIMINATING THE CONTINGENCY FOR PAYMENT OF YOUTH COURT FOSTER CARE PLACEMENTS BY THE DEPARTMENT OF CORRECTIONS IF THERE WAS AN EXCESS BALANCE IN THE DISTRICT COURT REIMBURSEMENT FUND; STATUTORILY APPROPRIATING THE EXPENSE PAYMENTS AND DISTRICT COURT GRANTS; AMENDING SECTIONS 3-5-604 AND 3-5-901, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-5-604, MCA, is amended to read:

HeinOnline -- 1999 vol. II 1471 1999

"3-5-604. Transcript of proceedings. (1) Each reporter ~~must~~ *shall* furnish, upon request, with all reasonable diligence, to a party or ~~his~~ *a party's* attorney in a case in which ~~he~~ *the reporter* has attended the trial or hearing a transcript from ~~his~~ stenographic notes of the testimony and proceedings of the trial or hearing or a part ~~thereof,~~ *of a trial or hearing* upon payment by the person requiring the ~~same~~ *transcript* of $2 ~~per~~ *a* page for the original transcript, 50 cents ~~per~~ *a* page for the first copy, *and* 25 cents ~~per~~ *a* page for each additional copy.

(2) If the county attorney, attorney general, or judge requires a transcript in a criminal case, the reporter is entitled to ~~his~~ *the reporter's* fees ~~therefor~~ *for the transcript*, hut ~~he must~~ *the reporter shall* furnish it. Upon furnishing it, ~~he shall~~ *the reporter must* receive a certificate for the sum to which ~~he~~ *the reporter* is entitled. The reporter shall submit the certificate to the supreme court administrator who, in accordance with 3-5-902, is responsible for the prompt payment of all or a portion of the amount due the reporter. If the state, in accordance with 3-5-902, pays none or only a portion of the amount due, the county shall pay the balance upon receipt of a statement from the reporter.

(3) If the judge requires a copy in a civil case to assist ~~him~~ in rendering a decision, the reporter ~~must~~ *shall* furnish the ~~same~~ *copy* without charge ~~therefor~~. In civil cases, all transcripts required by the court ~~shall~~ *must* be furnished, and only the reporter's actual costs of preparation may be paid by the county.

(4) If it appears to the judge that a defendant in a criminal case *or a parent or guardian in a proceeding brought pursuant to Title 41, chapter 3, part 4 or 6,* is unable to pay for a transcript, it ~~shall~~ *must* be furnished to ~~him~~ *the party* and paid for by the state in the manner provided in subsection (2) to the extent funds are available. The county shall pay the remainder as required in 3-5-901."

Section 2. Section 3-5-901, MCA, is amended to read:

"3-5-901. State assumption of certain district court expenses — designation as district court ~~criminal~~ reimbursement program. (1) To the extent that revenue is available under 61-3-509, the state shall fund:

(a) the following district court expenses in criminal cases only:

(i) salaries of court reporters;

(ii) fees for transcripts of proceedings;

(iii) witness fees and necessary expenses;

(iv) juror fees;

(v) expenses for indigent defense; and

(vi) expenses for psychiatric examinations;

(b) the district court expenses, as listed in subsection (1)(a), in all postconviction proceedings held pursuant to Title 46, chapter 21, and in all habeas corpus proceedings held pursuant to Title 46, chapter 22, and appeals from those proceedings; ~~and~~

(c) the following expenses incurred by the state in federal habeas corpus cases that challenge the validity of a conviction or of a sentence:

(i) transcript fees;

(ii) witness fees; and

(iii) expenses for psychiatric examinations; *and*

HeinOnline -- 1999 vol. II 1472 1999

(d) the following expenses incurred by the state in a proceeding held pursuant to Title 41, chapter 3, part 4 or 6, that seeks temporary investigative authority of a youth, temporary legal custody of a youth, or termination of the parent-child legal relationship and permanent custody:

(i) transcript fees;

(ii) witness fees;

(iii) expenses for medical and psychological evaluation of a youth or the youth's parent, guardian, or other person having physical or legal custody of the youth except for expenses for services that a person is eligible to receive under a public program that provides medical or psychological evaluation;

(iv) expenses associated with appointment of a guardian ad litem or child advocate for the youth;

(v) expenses for appointed counsel for the youth;

(vi) expenses for appointed counsel for the parent, guardian, or other person having physical or legal custody of the youth; and

(vii) expenses associated with court-ordered alternative dispute resolution.

(2) If revenue received under 61-3-509 exceeds the amount appropriated by the legislature to fund the expenses of the appellate defender program, the excess amount is statutorily appropriated, as provided in 17-7-502, to the supreme court to fund the expenses described in subsections (1)(a) through ~~(1)(e)~~ *(1)(d), the district court grant program as described in subsection (4)(a),* and the costs of administering this section.

(3) All revenue disbursed under this section must be deposited in and credited to the district court fund. If a district court fund does not exist, the revenue must be deposited in the county general fund for district court operations.

~~(3)~~*(4)* If money appropriated for the expenses listed in subsection (1):

(a) exceeds the amount necessary to fully fund those expenses, ~~up to $500,000 of the excess amount must be used for youth court and probation foster care placements if the department of corrections certifies to the supreme court that appropriations for youth court and probation foster care placements will be inadequate to fund those costs and~~ *the* remaining excess amounts must be used for district court grants as provided in 7-6-2352; or

(b) is insufficient to fully fund those expenses, the county is responsible for payment of the balance."

Section 3. Effective date. [This act] is effective July 1, 1999.

Approved April 21, 1999

CHAPTER NO. 395

[HB 209]

AN ACT SPECIFICALLY PROVIDING FOR A PLEA OF NOLO CONTENDERE IN A CRIMINAL PROSECUTION; AND AMENDING SECTIONS 41-3-609, 45-2-101, 45-5-222, 45-5-621, 45-8-212, 46-1-202, 46-12-201, 46-12-204, 46-12-210, 46-12-211, 46-12-212, 46-13-108, 46-13-109,

HeinOnline -- 1999 vol. II 1473 1999

46-14-311, 46-16-103, 46-16-105, 46-17-203, 46-18-104, 46-18-201, 46-18-204, 46-18-231, 46-24-203, 53-30-303, 61-11-203, AND 87-1-112, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-3-609, MCA, is amended to read:

"41-3-609. Criteria for termination. (1) The court may order a termination of the parent-child legal relationship upon a finding that any of the following circumstances exist:

(a) the parents have relinquished the child pursuant to 42-2-402 and 42-2-412;

(b) the child has been abandoned by the parents as set forth in 41-3-102;

(c) the identity of the parent is unknown and has been unknown for a period of 90 days and reasonable efforts to identify and locate the parent have failed;

(d) the parent is convicted of a felony in which sexual intercourse occurred or is a minor adjudicated a delinquent youth because of an act that, if committed by an adult, would be a felony in which sexual intercourse occurred and, as a result of the sexual intercourse, the child is born; or

(e) the child is an adjudicated youth in need of care and both of the following exist:

(i) an appropriate treatment plan that has been approved by the court has not been complied with by the parents or has not been successful; and

(ii) the conduct or condition of the parents rendering them unfit is unlikely to change within a reasonable time; or

(f) the parent has substantially failed to successfully complete or meet the goals of a treatment plan approved by the court and the child has been in an out-of-home placement for a cumulative total period of 1 year or longer.

(2) In determining whether the conduct or condition of the parents is unlikely to change within a reasonable time, the court shall enter a finding that continuation of the parent-child legal relationship will likely result in continued abuse or neglect or that the conduct or the condition of the parents renders the parents unfit, unable, or unwilling to give the child adequate parental care. In making the determinations, the court shall consider but is not limited to the following:

(a) emotional illness, mental illness, or mental deficiency of the parent of a duration or nature as to render the parent unlikely to care for the ongoing physical, mental, and emotional needs of the child within a reasonable time;

(b) a history of violent behavior by the parent;

(c) a single incident of life-threatening or gravely disabling injury to or disfigurement of a child caused by the parent;

(d) excessive use of intoxicating liquor or of a narcotic or dangerous drug that affects the parent's ability to care and provide for the child;

(e) present judicially ordered long-term confinement of the parent;

(f) the injury or death of a child because of proven abuse or neglect; and

(g) any reasonable efforts by protective service agencies that have been unable to rehabilitate the parent.

HeinOnline -- 1999 vol. II 1474 1999

(3) In considering any of the factors in subsection (2) in terminating the parent-child relationship, the court shall give primary consideration to the physical, mental, and emotional conditions and needs of the child. The court shall review and, if necessary, order an evaluation of the child's or the parent's physical, mental, and emotional conditions.

(4) A treatment plan is not required under this part upon a finding by the court following hearing if:

(a) two medical doctors or clinical psychologists submit testimony that the parent cannot assume the role of parent;

(b) the parent is incarcerated for more than 1 year and a treatment plan is not practical considering the incarceration; or

(c) the death or serious bodily injury, as defined in 45-2-101~~(64)~~, of a child caused by abuse or neglect by the parent has occurred."

Section 2. Section 45-2-101, MCA, is amended to read:

"45-2-101. General definitions. Unless otherwise specified in the statute, all words will be taken in the objective standard rather than in the subjective, and unless a different meaning plainly is required, the following definitions apply in this title:

(1) "Acts" has its usual and ordinary meaning and includes any bodily movement, any form of communication, and when relevant, a failure or omission to take action.

(2) "Administrative proceeding" means any proceeding the outcome of which is required to be based on a record or documentation prescribed by law or in which a law or a regulation is particularized in its application to an individual.

(3) "Another" means a person or persons, as defined in this code, other than the offender.

(4) "Benefit" means gain or advantage or anything regarded by the beneficiary as gain or advantage, including benefit to any other person or entity in whose welfare the beneficiary is interested. Benefit does not include an advantage promised generally to a group or class of voters as a consequence of public measures that a candidate engages to support or oppose.

(5) "Bodily injury" means physical pain, illness, or any impairment of physical condition and includes mental illness or impairment.

(6) "Cohabit" means to live together under the representation of being married.

(7) "Common scheme" means a series of acts or omissions motivated by a purpose to accomplish a single criminal objective or by a common purpose or plan that results in the repeated commission of the same offense or that affects the same person or the same persons or the property of the same person or persons.

(8) "Computer" means an electronic device that performs logical, arithmetic, and memory functions by the manipulation of electronic or magnetic impulses and includes all input, output, processing, storage, software, or communication facilities that are connected or related to that device in a system or network.

(9) "Computer network" means the interconnection of communication systems between computers or computers and remote terminals.

HeinOnline -- 1999 vol. II 1475 1999

(10) "Computer program" means an instruction or statement or a series of instructions or statements, in a form acceptable to a computer, tbat in actual or modified form permits tbe functioning of a computer or computer system and causes it to perform specified functions.

(11) "Computer services" include but are not limited to computer time, data processing, and storage functions.

(12) "Computer software" means a set of computer programs, procedures, and associated documentation concerned with the operation of a computer system.

(13) "Computer system" means a set of related, connected, or unconnected devices, computer software, or other related computer equipment.

(14) "Conduct" means an act or series of acts and the accompanying mental state.

(15) "Conviction" means a judgment of conviction or sentence entered upon a plea of guilty *or nolo contendere* or upon a verdict or finding of guilty of an offense rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury.

(16) "Correctional institution" means the state prison, county or city jail, or other institution for the incarceration or custody of persons under sentence for offenses or awaiting trial or sentence for offenses.

(17) "Deception" means knowingly to:

(a) create or confirm in another an impression that is false and that the offender does not believe to be true;

(b) fail to correct a false impression that the offender previously has creatod or confirmed;

(c) prevent another from acquiring information pertinent to the disposition of the property involved;

(d) sell or otherwise transfer or encumber property without disclosing a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether the impediment is or is not of value or is or is not a matter of official record; or

(e) promise performance that the offender does not intend to perform or knows will not be performed. Failure to perform, standing alone, is not evidence that the offender did not intend to perform.

(18) "Defamatory matter" means anything that exposes a person or a group, class, or association to hatred, contempt, ridicule, degradation, or disgrace in society or to injury to the person's or its business or occupation.

(19) "Deprive" means:

(a) to withhold property of another:

(i) permanently;

(ii) for such a period as to appropriate a portion of its value; or

(iii) with the purpose to restore it only upon payment of reward or other compensation; or

HeinOnline -- 1999 vol. II 1476 1999

(b) to dispose of the property of another and use or deal with the property so as to make it unlikely that the owner will recover it.

(20) "Deviate sexual relations" means sexual contact or sexual intercourse between two persons of the samo sex or any form of sexual intercourse with an animal.

(21) "Document" means, with respect to offenses involving the medicaid program, any application, claim, form, report, record, writing, or correspondence, whether in written, electronic, magnetic, microfilm, or other form.

(22) "Felony" means an offense in which the sentence imposed upon conviction is death or imprisonment in the state prison for any term exceeding 1 year.

(23) "Forcible felony" means any felony that involves the use or threat of physical force or violence against any individual.

(24) A "frisk" is a search by an external patting of a person's clothing.

(25) "Government" includes any branch, subdivision, or agency of the government of the state or any locality witbin it.

(26) "Harm" means loss, disadvantago, or injury or anything so regarded by the person affected, including loss, disadvantage, or injury to any person or entity in whose welfare tbe affected person is interested.

(27) A "house of prostitution" means any place where prostitution or promotion of prostitution is regularly carried on by one or more persons under the control, management, or supervision of another.

(28) "Human being" means a person who has been born and is alive.

(29) An "illegal article" is an article or thing that is prohibited by statute, rule, or order from being in the possession of a person subject to official detention.

(30) "Inmate" means a person who engages in prostitution in or through the agency of a house of prostitution.

(31) "Intoxicating substance" means any controlled substance, as defined in Title 50, chapter 32, and any alcoholic beverage, including but not limited to any beverage containing 1/2 of 1% or more of alcohol by volume. Intoxicating substance does not include dealcoholized wine or any beverage or liquid produced by the process by which beer, ale, port, or wine is produced if it contains less than 1/2 of 1% of alcohol by volume.

(32) An "involuntary act" means any act that is:

(a) a reflex or convulsion;

(b) a bodily movement during unconsciousness or sleep;

(c) conduct during hypnosis or resulting from hypnotic suggestion; or

(d) a bodily movement that otherwise is not a product of the effort or determination of the actor, either conscious or habitual.

(33) "Juror" means any person who is a member of any jury, including a grand jury, impaneled by any court in this state in any action or proceeding or by any officer authorized by law to impanel a jury in any action or proceeding. The term "juror" also includes a person who has been drawn or summoned to attend as a prospective juror.

HeinOnline -- 1999 vol. II 1477 1999

(34) "Knowingly"—a person acts knowingly with respect to conduct or to a circumstance described hy a statute defining an offense when the person is aware of the person's own conduct or that the circumstance exists. A person acts knowingly with respect to the result of conduct described by a statute defining an offense when the person is aware that it is highly prohable that the result will be caused by the person's conduct. When knowledge of the existence of a particular fact is an element of an offense, knowledge is established if a person is aware of a high probability of its existence. Equivalent terms, such as "knowing" or "with knowledge", have the same meaning.

(35) "Medicaid" means the Montana medical assistance program provided for in Title 53, chapter 6.

(36) "Medicaid agency" has the meaning in 53-6-155.

(37) "Medicaid benefit" means the provision of anything of pecuniary value to or on behalf of a recipient under the medicaid program.

(38) (a) "Medicaid claim" ıneans a communication, whether in oral, written, electronic, magnetic, or other form:

(i) that is used to claim specific services or items as payable or reimbursahle under the medicaid program; or

(ii) that states income, expense, or other information that is or may be used to determine entitlement to or the rate of payment under the medicaid program.

(b) The term includes any related documents submitted as a part of or in support of the claim.

(39) "Mentally defective" means that a person suffers from a mental disease or defect that renders the person incapable of appreciating the nature of the person's own conduct.

(40) "Mentally incapacitated" means that a person is rendered temporarily incapable of appreciating or controlling the person's own conduct as a result of the influence of an intoxicating substance.

(41) "Misdemeanor" means an offense for which the sentence imposed upon conviction is imprisonment in the county jail for any term or a fine, or both, or for which the sentence imposed is imprisonment in the state prison for any term of 1 year or less.

(42) "Negligently"—a person acts negligently with respect to a result or to a circumstance described by a statute defining an offense when the person consciously disregards a risk that the result will occur or that the circumstance exists or when the person disregards a risk of which the person should be aware that the result will occur or that the circumstance exists. The risk must be of a nature and degree that to disregard it involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation. "Gross deviation" means a deviation that is considerably greater than lack of ordinary care. Relevant terms, such as "negligent" and "with negligence", have the same meaning.

(43) "Nolo contendere" means a plea in which the defendant does not contest the charge or charges against the defendant and neither admits nor denies the charge or charges.

~~(43)~~*(44)* "Obtain" means:

(a) in relation to property, to bring about a transfer of interest or possession, whether to the offender or to another; and

(b) in relation to labor or services, to secure the performance of the labor or service.

~~(44)~~*(45)* "Obtains or exerts control" includes but is not limited to the taking, the carrying away, or the sale, conveyance, or transfer of title to, interest in, or possession of property.

~~(45)~~*(46)* "Occupied structure" means any building, vehicle, or other place suitable for human occupancy or night lodging of persons or for carrying on business, whether or not a person is actually present. Each unit of a building consisting of two or more units separately secured or occupied is a separate occupied structure.

~~(45)~~*(47)* "Offender" means a person who has been or is liable to be arrested, charged, convicted, or punished for a public offense.

~~(47)~~*(48)* "Offense" means a crime for which a sentence of death or of imprisonment or a fine is authorized. Offenses are classified as felonies or misdemeanors.

~~(48)~~*(49)* "Official detention" means imprisonment resulting from a conviction for an offense, confinement for an offense, confinement of a person charged with an offense, detention by a peace officer pursuant to arrest, detention for extradition or deportation, or any lawful detention for the purpose of the protection of the welfare of the person detained or for the protection of society. Official detention does not include supervision of probation or parole, constraint incidental to release on bail, or an unlawful arrest unless the person arrested employed physical force, a threat of physical force, or a weapon to escape.

~~(49)~~*(50)* "Official proceeding" means a proceeding heard or that may be heard before any legislative, judicial, administrative, or other governmental agency or official authorized to take evidence under oath, including any referee, hearing examiner, commissioner, notary, or other person taking testimony or deposition in connection with the proceeding.

~~(50)~~*(51)* "Other state" means any state or territory of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

~~(51)~~*(52)* "Owner" means a person other than the offender who bas possession of or any other interest in the property involved, even though the interest or possession is unlawful, and without whose consent the offender has no authority to exert control over the property.

~~(52)~~*(53)* "Party official" means a person who holds an elective or appointive post in a political party in the United States by virtue of which the person directs or conducts or participates in directing or conducting party affairs at any level of responsibility.

~~(52)~~*(54)* "Peace officer" means any person who by virtue of the person's office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses while acting within the scope of the person's authority.

~~(54)~~*(55)* "Pecuniary benefit" is benefit in the form of money, property, commercial interests, or anything else the primary significance of which is economic gain.

HeinOnline -- 1999 vol. II 1479 1999

~~(55)~~*(56)* "Person" includes an individual, business association, partnership, corporation, government, or other legal entity and an individual acting or purporting to act for or on behalf of any government or subdivision of government.

~~(55)~~*(57)* "Physically helpless" means that a person is unconscious or is otherwise physically unable to communicate unwillingness to act.

~~(57)~~*(58)* "Possession" is the knowing control of anything for a sufficient time to be able to terminate control.

~~(58)~~*(59)* "Premises" includes any type of structure or building and any real property.

~~(58)~~*(60)* "Property" means any tangible or intangible thing of value. Property includes hut is not limited to:

(a) real estate;

(b) money;

(c) commercial instruments;

(d) admission or transportation tickets;

(e) written instruments that represent or embody rights concerning anything of value, including labor or services, or that are otherwise of value to the owner;

(f) things growing on, affixed to, or found on land and things that are part of or affixed to any building;

(g) electricity, gas, and water;

(h) birds, animals, and fish that ordinarily are kept in a state of confinement;

(i) food and drink, samples, cultures, microorganisms, specimens, records, recordings, documents, blueprints, drawings, maps, and whole or partial copies, descriptions, photographs, prototypes, or models thereof;

(j) any other articles, materials, devices, substances, and any whole or partial copies, descriptions, photographs, prototypes, or models tbereof that constitute, represent, evidence, reflect, or record secret scientific, technical, merchandising, production, or management information or a secret designed process, procedure, formula, invention, or improvement; and

(k) electronic impulses, electronically processed or produced data or information, commercial instruments, computer software or computer programs, in either machine-or human-readable form, computer services, any other tangible or intangible item of value relating to a computer, computer system, or computer network, and any copies thereof.

~~(60)~~*(61)* "Property of another" means real or personal property in which a person other than the offender has an interest that the offender has no authority to defeat or impair, even though the offender may have an interest in the property.

~~(61)~~*(62)* "Public place" means any place to whicli the public or any substantial group has access.

~~(60)~~*(63)* "Public servant" means any officer or employee of government, including but not limited to legislators, judges, and firefighters, and any person participating as a juror, advisor, consultant, administrator, executor, guardian,

or court-appointed fiduciary. The term does not include witnesses. The term "public servant" includes one who has been elected or designated to become a public servant.

~~(63)~~*(64)* "Purposely"—a person acts purposely with respect to a result or to conduct described by a statuto defining an offense if it is the person's conscious object to engage in that conduct or to cause that result. When a particular purpese is an element of an offense, the element is established although the purpose is conditional, unless the condition negatives the barm or evil sought to be prevented hy the law defiming the offense. Equivalent terms, such as "purpose" and "with the purpose", have the same meaning.

~~(64)~~*(65)* (a) "Serious bodily injury" means bodily injury that:

(i) creates a substantial risk of death;

(ii) causes serious permanent disfigurement or protracted loss or impairment of the function or process of any bodily member or organ; or

(iii) at the time of injury, can reasonably be expected to result in serious permanent disfigurement or protracted loss or impairment of the function or process of any bodily member or organ.

(b) The term includes serious mental illness or impairment.

~~(65)~~*(66)* "Sexual contact" means any touching of the sexual or other intimate parts of the person of another for the purpose of arousing or gratifying the sexual desire of either party.

~~(65)~~*(67)* "Sexual intercourse" means penetration of the vulva, anus, or mouth of one person by the penis of another person, penetration of the vulva or anus of one person by any body member of another person, or penetration of the vulva or anus of one person by any foreign instrument or object manipulated by another person for the purpose of arousing or gratifying the sexual desire of either party. Any penetration, however slight, is sufficient.

~~(67)~~*(68)* "Solicit" or "solicitation" means to command, authorize, urge, incite, request, or advise another to commit an offense.

~~(65)~~*(69)* "State" or "this state" means the state of Montana, all the land and water in respect to which the state of Montana has either exclusive or concurrent jurisdiction, and the air space above the land and wator.

~~(69)~~*(70)* "Statute" means any act of the legislature of this stato.

~~(70)~~*(71)* "Stolen property" means property over which control has been obtained by theft.

~~(71)~~*(72)* A "step" is the temperary detention of a person that results when a peace officer orders the person to remain in the peace officer's presence.

~~(70)~~*(73)* "Tamper" means to interfere with something improperly, meddle with it, make unwarranted alterations in its existing condition, or depesit refuse upon it.

~~(70)~~*(74)* "Threat" means a menace, however communicated, to:

(a) inflict physical harm on the person threatened or any other person or on property;

(h) subject any person to physical confinement or restraint;

(c) commit any criminal offense;

(d) accuse any person of a criminal offense;

(e) expose any person to hatred, contempt, or ridicule;

(f) harm the credit or husiness repute of any person;

(g) reveal any information sought to be concealed by the person threatened;

(h) take action as an official against anyone or anything, withhold official action, or cause the action or withholding;

(i) bring about or continue a strike, boycott, or other similar collective action if the person making the threat demands or receives property that is not for the benefit of groups that the person purports to represent; or

(j) testify or provide information or withhold testimony or information with respect to another's legal claim or defense.

~~(74)~~*(75)* (a) "Value" means the market value of the property at the time and place of the crime or, if the market value cannot be satisfactorily ascertained, the cost of the replacement of the property within a reasonable time after the crime. If the offender appropriates a portion of the value of the property, the value must be determined as follows:

(i) The value of an instrument constituting an evidence of debt, such as a check, draft, or promissory note, is considered the amount due or collectible. The figure is ordinarily the face amount of the indebtedness less any portion of the indebtedness that has been satisfied.

(ii) The value of any other instrument that creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation is considered the amount of economic loss that the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

(iii) The value of electronic impulses, electronically produced data or information, computer software or programs, or any other tangible or intangible item relating to a computer, computer system, or computer network is considered to be the amount of economic loss that the owner of the item might reasonably suffer by virtue of the loss of the item. The determination of the amount of economic loss includes but is not limited to consideration of the value of the owner's right to exclusive use or disposition of the item.

(b) When it cannot be determined if the value of the property is more or less than $500 by the standards set forth in subsection ~~(74)(a)~~ *(75)(a)*, its value is considered to be an amount less than $500.

(c) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property.

~~(75)~~*(76)* "Vehicle" means any device for transportation by land, water, or air or by mobile equipment, with provision for transport of an operator.

~~(75)~~*(77)* "Weapon" means any instrument, article, or substance that, regardless of its primary function, is readily capable of being used to produce death or serious bodily injury.

~~(77)~~*(78)* "Witness" means a person whose testimony is desired in any official proceeding, in any investigation by a grand jury, or in a criminal action, prosecution, or proceeding."

HeinOnline -- 1999 vol. II 1482 1999

Section 3. Section 45-5-222, MCA, is amended to read:

"45-5-222. Sentence enhancement — offenses committed because of victim's race, creed, religion, color, national origin, or involvement in civil rights or human rights activities. (1) A person who has *pleaded guilty or nolo contendere to or who has* been found guilty of any offense, except malicious intimidation or harassment, that was committed because of the victim's race, creed, religion, color, national origin, or involvement in civil rights or human rights activities or that involved damage, destruction, or attempted destruction of a building regularly used for religious worship, in addition to the punishment provided for commission of the offense, may be sentenced to a term of imprisonment of not less than 2 years or more than 10 years, except as provided in 46-18-222.

(2) An additional sentence prescribed by subsection (1) shall run consecutively to the sentence, except as provided in 46-18-222."

Section 4. Section 45-5-621, MCA, is amended to read:

"45-5-621. Nonsupport. (1) A person commits the offense of nonsupport if the person fails to provide support that the person can provide and that the person knows the person is legally obliged to provide to a spouse, child, or other dependent.

(2) (a) A person commits the offense of aggravated nonsupport if *the person has*:

(i) ~~the offender has~~ left the state without making reasonable provisions for the support of a spouse, child, or other dependent; or

(ii) ~~the offender has~~ been previously convicted of the offense of nonsupport.

(b) For purposes of this section, "conviction" means a conviction, as defined in 45-2-101, in this state, conviction for a violation of a statute similar to this section in another state, or a forfeiture of bail or collateral deposited to secure ~~the defendant's~~ *a person's* appearance in court in this state or another state, which forfeiture has not been vacated.

(3) If a defense to the charge of nonsupport is inability to pay, the person's inability must be the result of circumstances over which the person had no control. In determining ability to pay, after an allowance for the person's minimal subsistence needs, the support of a spouse, child, or other dependent has priority over any other obligations of the person.

(4) When a person is ordered to pay support by a court or administrative agency with jurisdiction to enter the order, the support order is prima facie evidence of the person's legal obligation to provide support.

(5) Payment records maintained by the court or administrative agency that issued the support order are prima facie evidence of the amount of support paid and the arrearages that have accrued.

(6) It is not a defense to a charge of nonsupport that any other person, organization, or agency furnishes necessary food, clothing, shelter, medical attention, or other essential needs for the support of the spouse, child, or other dependent.

(7) (a) Except as provided in subsection (7)(b) or (7)(c), a person convicted of nonsupport shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

HeinOnline -- 1999 vol. II 1483 1999

(b) A person convicted of nonsupport who has failed to provide support under a court or administrative order for 6 months or more or who has failed to provide support in a cumulative amount equal to or in excess of 6 months' support shall be fined not to exceed $5,000 or be imprisoned in the state prison for a term not to exceed 2 years, or both.

(c) A person convicted of aggravated nonsupport shall be fined not to exceed $50,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both.

(8) Before trial with the consent of the defendant, on entry of a plea of guilty *or nolo contendere*, or after conviction, instead of the penalty provided in subsection (7) or in addition to that penalty, the defendant may post a bond, undertaking, or other security. This security must be for a period of 2 years or, in the case of aggravated nonsupport, for a period of 10 years. The court shall fix the sum of the security in an amount sufficient to ensure payment of support by the defendant. After the security is posted, the court shall release the defendant on the condition that the defendant comply with any order for support. If there is no order for support, the court shall order the defendant to pay support to the spouse, child, or other dependent in an amount that is consistent with the defendant's ability to pay and, if applicable, the child support guidelines adopted under 40-5-209.

(9) The bond, undertaking, or other security posted pursuant to subsection (8) ~~must be~~ *is* forfeited if the defendant fails to pay support as ordered, and the court may proceed to try the defendant upon the original charge of nonsupport, sentence the defendant under the original plea or conviction, or enforce a suspended sentence.

(10) As part of any prosecution under this section, the court shall also order the ~~defendant~~ *offender* to make restitution to the spouse, the child's caretaker, or any other dependent or to the person or agency that provided support to the spouse, child, or other dependent. The amount of restitution is the sum of the arrearages payable under a support order or, if there is no support order, an amount determined reasonable by the court. The terms for payment of restitution must be determined by the court.

(11) The court may order, in its discretion, any fine levied or any bond forfeited upon a charge of nonsupport paid to or for the benefit of any person that the ~~defendant~~ *offender* has failed to support. A bond, undertaking, or other security forfeited under subsection (9) must be paid to the person or agency entitled to receive support from the ~~defendant~~ *offender*.

(12) When ~~any~~ *a* payment of public assistance money has been made for the benefit of a child by the department of public health and human services under the provisions of Title 53, a representative of the department may sign a criminal complaint against the person obligated by law to support the child who received the public assistance.

(13) The court may order that a term of imprisonment imposed under this section be served in another facility made available by the county and approved by the sentencing court. The ~~defendant~~ *offender*, if financially able, shall bear the expense of the imprisonment. The court may impose restrictions on the ~~defendant's~~ *offender's* ability to leave the premises of the facility and require that the defendant follow the rules of that facility. The facility may be a community-based prerelease center as provided for in 53-1-203. The prerelease

HeinOnline -- 1999 vol. II 1484 1999

center may accept or reject ~~a defendant~~ *an offender* referred by the sentencing court."

Section 5. Section 45-8-212, MCA, is amended to read:

"**45-8-212. Criminal defamation.** (1) Defamatory matter is anything that exposes a person or a group, class, or association to hatred, contempt, ridicule, degradation, or disgrace in society or injury to the person's or its business or occupation.

(2) Whoever, with knowledge of its defamatory character, orally, in writing, or by any other means communicates any defamatory matter to a third person without the consent of the person defamed commits the offense of criminal defamation and may be sentenced to imprisonment for not more than 6 months in the county jail or a fine of not more than $500, or both.

(3) Violation of subsection (2) is justified if:

(a) the defamatory matter is true;

(b) the communication is absolutely privileged;

(c) the communication consists of fair comment made in good faith with respect to persons participating in matters of public concern;

(d) the communication consists of a fair and true report or a fair summary of any judicial, legislative, or other public or official proceedings; or

(e) the communication is between persons each having an interest or duty with respect to the subject matter of the communication and is made with the purpose to further the interest or duty.

(4) A person may not be convicted on the basis of an oral communication of defamatory matter except upon the testimony of at least two other persons that they heard and understood the oral statement as defamatory or upon a plea of guilty *or nolo contendere*."

Section 6. Section 46-1-202, MCA, is amended to read:

"**46-1-202. Definitions.** As used in this title, unless the context requires otherwise, the following definitions apply:

(1) "Arraignment" means the formal act of calling the defendant into open court to enter a plea answering a charge.

(2) "Arrest" means taking a person into custody in the manner authorized by law.

(3) "Arrest warrant" means a written order from a court directed to a peace officer or to some other person specifically named commanding that officer or person to arrest another. The term includes the original warrant of arrest and a copy certified by the issuing court.

(4) "Bail" means the security given for the primary purpose of ensuring the presence of the defendant in a pending criminal proceeding.

(5) "Charge" means a written statement that accuses a person of the commission of an offense, that is presented to a court, and that is contained in a complaint, information, or indictment.

(6) "Conviction" means a judgment or sentence entered upon a guilty *or nolo contendere* plea or upon a verdict or finding of guilty rendered by a legally

HeinOnline -- 1999 vol. II 1485 1999

constituted jury or by a court of competent jurisdiction authorized to try the case without a jury.

(7) "Court" means a place where justice is judicially administered and includes the judge of the court.

(8) "Included offense" means an offense that:

(a) is established by proof of the same or less than all the facts required to establish the commission of the offense charged;

(b) consists of an attempt to commit the offense charged or to commit an offense otherwise included in the offense charged; or

(c) differs from the offense charged only in the respect that a less serious injury or risk to the same person, property, or public interest or a lesser kind of culpability suffices to establish its commission.

(9) "Judge" means a person who is vested by law with the power to perform judicial functions.

(10) "Judgment" means an adjudication by a court that the defendant is guilty or not guilty, and if the adjudication is that the defendant is guilty, it includes the sentence pronounced by the court.

(11) "Make available for examination and reproduction" means to make material and information that is subject to disclosure available upon request at a designated place during specified reasonable times and to provide suitable facilities or arrangements for reproducing it. The term does not mean that the disclosing party is required to make copies at its expense, to deliver the materials or information to the otber party, or to supply the facilities or materials required to carry out tests on disclosed items. The parties may by mutual consent make other or additional arrangements.

(12) "New trial" means a reexamination of the issue in the same court before another jury after a verdict or finding has been rendered.

(13) "Notice to appear" means a written direction that is issued by a peace officer and that requests a person to appear before a court at a stated time and place to answer a charge for the alleged commission of an offense.

(14) "Offense" means a violation of any penal statute of this state or any ordinance of its political subdivisions.

(15) "Parole" means the release to the community of a prisoner by a decision of the board of pardons and parole prior to the expiration of the prisoner's term subject to conditions imposed by the board of pardons and parole and the supervision of tbe department of corrections.

(16) "Peace officer" means any person who by virtue of the person's office or public employment is vested by law with a duty to maintain public order and make arrests for offenses while acting within the scope of the person's authority.

(17) "Persistent felony offender" means an offender who has previously been convicted of a felony and who is presently being sentenced for a second felony committed on a different occasion than the first. An offender is considered to bave been previously convicted of a felony if:

(a) the previous felony conviction was for an offense committed in this state or any other jurisdiction for which a sentence of imprisonment in excess of 1 year could have been imposed;

(b) less than 5 years have elapsed between the commission of the present offense and either:

(i) the previous felony conviction; or

(ii) the offender's release on parole or otherwise from prison or other commitment imposed as a result of a previous felony conviction; and

(c) the offender has not been pardoned on the ground of innocence and the conviction has not been set aside at the postconviction hearing.

(18) "Place of trial" means the geographical location and political subdivision in which the court that will hear the cause is situated.

(19) "Preliminary examination" means a hearing before a judge for the purpose of determining if there is probable cause to believe a felony has been committed by the defendant.

(20) "Probation" means release by the court without imprisonment of a defendant found guilty of a crime. The release is subject to the supervision of the department of corrections upon direction of the court.

(21) "Prosecutor" means an elected or appointed attorney who is vested by law with the power to initiate and carry out criminal proceedings on behalf of the state or a political subdivision.

(22) "Same transaction" means conduct consisting of a series of acts or omissions that are motivated by:

(a) a purpose to accomplish a criminal objective and that are necessary or incidental to the accomplishment of that objective; or

(b) a common purpose or plan that results in the repeated commission of the same offense or effect upon the same person or the property of the same person.

(23) "Search warrant" means an order that is:

(a) in writing;

(b) in the name of the state;

(c) signed by a judge;

(d) a particular description of the place, object, or person to be searched and the evidence, contraband, or person to be seized; and

(e) directed to a peace officer and commands the peace officer to search for evidence, contraband, or persons.

(24) "Sentence" means the judicial disposition of a criminal proceeding upon a plea *of guilty or nolo contendere*~~, verdict,~~ or *upon a verdict or* finding of gnilty.

(25) "Statement" means:

(a) a writing sigued or otherwise adopted or approved by a person;

(b) a video or audio recording of a person's communications or a transcript of the communications; and

(c) a writing containing a summary of a person's oral communications or admissions.

(26) "Summons" means a written order issued by the court that commands a person to appear before a court at a stated time and place to answer a charge for the offense set forth in the order.

HeinOnline -- 1999 vol. II 1487 1999

(27) "Superseded notes" means handwritten notes, including field notes, that have heen suhstantially incorporated into a statement. The notes may not be considered a statement and are not subject to disclosure except as provided in 46-15-324.

(28) "Temporary road block" means any structure, device, or means used by a peace officer for the purpose of controlling all traffic through a point on the highway where all vehicles may be slowed or stopped.

(29) "Witness" means a person whose testimony is desired in a proceeding or investigation by a grand jury or in a criminal action, prosecution, or proceeding.

(30) "Work product" means legal research, records, correspondence, reports, and memoranda, both written and oral, to the extent that they contain the opinions, theories, and conclusions of the prosecutor, defense counsel, or their staff or investigators."

Section 7. Section 46-12-201, MCA, is amended to read:

"46-12-201. Manner of conducting arraignment — use of two-way electronic audio-video communication — exception. (1) Arraignment must bo conducted in open court and must consist of reading the charge to the defendant or stating to the defendant the substance of the charge and calling on tbe defendant to plead to the charge. Tho defendant must he given a copy of the charging document before heing called upon to plead. For purposes of this chapter, an arraignment that is conducted by the use of two-way electronic audio-video communication, allowing all of the participants to be ohserved and heard in the courtroom by all present, is considered to be an arraignment in open court.

(2) The court shall inquire of the defendant or the defendant's counsel the defendant's true name, and if tbe defendant's true name is given as any other than that used in the charge, the court shall order the defendant's name to be substituted for the name under which tbe defendant is charged.

(3) The court shall determine whether the defendant is under any disability that would prevent the court, in its discretion, from proceeding with the arraignment. The arraignment may be continued until the court determines the defendant is able to proceed.

(4) Whenever the law requires that a defendant in a misdemeanor or felony case be taken before a court for an arraignment, this requirement may, in the discretion of the court, be satisfied either by the defendant's physical appearance before the court or by two-way electronic audio-video communication. The audio-video communication must operate so that tho defendant and the judge can see each other simultaneously and converse with each other, so that the defendant and ~~his~~ *the defendant's* counsel, if any, can communicate privately, and so that the defendant and ~~his~~ *the defendant's* counsel are both physically present in the same place during tbe two-way electronic audio-video communication. The defendant may waive the requirement that ~~his~~ *the defendant's* counsel be in the defendant's physical presence during the two-way electronic audio-video communication.

(5) A judge may order a defendant's physical appearance in court for arraignment. In a felony case, a judge may not accept a plea of gnilty *or nolo contendere* from a defendant *who is* not pbysically present in the courtroom."

HeinOnline -- 1999 vol. II 1488 1999

Section 8. Section 46-12-204, MCA, is amended to read:

"46-12-204. Plea alternatives. (1) A defendant may plead guilty, ~~or~~ not guilty, *or, with the consent of the court and the prosecutor, nolo contendere.* If a defendant refuses to plead or if a defendant corporation fails to appear, the court shall enter a plea of not guilty.

(2) The court may not accept a plea of guilty *or nolo contendere* without first determining that the plea is voluntary and not the result of force or threats or of promises apart from the plea agreement. The court shall also inquire as to whether the defendant's willingness to plead guilty *or nolo contendere* results from prior discussions between the prosecutor and the defendant or the defendant's attorney.

(3) With the approval of the court and the consent of the prosecutor, a defendant may enter a plea of guilty *or nolo contendere*, reserving the right, on appeal from the judgment, to review the adverse determination of any specified pretrial motion. If the defendant prevails on appeal, the defendant must he allowed to withdraw the plea.

(4) The court may not accept a plea of nolo contendere in a case involving a sexual offense, as defined in 46-23-502."

Section 9. Section 46-12-210, MCA, is amended to read:

"46-12-210. Advice to defendant. (1) Before accepting a plea of guilty *or nolo contendere*, the court shall determine that the defendant understands the following:

(a) (i) the nature of the charge for which the plea is offered;

(ii) the mandatory minimum penalty provided hy law, if any;

(iii) the maximum penalty provided by law, including the effect of any penalty enhancement provision or special parole restriction; and

(iv) when applicable, the requirement that the court may also order the defendant to make restitution of the costs and assessments provided by law;

(b) if the defendant is not represented by an attorney, the fact that the defendant has the right to be represented by an attorney at every stage of the proceeding and that, if necessary, one will be appointed to represent the defendant;

(c) that the defendant has the right:

(i) to plead not guilty or to persist in that plea if it has already been made;

(ii) to be tried by a jury and at the trial has the right to the assistance of counsel;

(iii) to confront and cross-examine witnesses against the defendant; and

(iv) not to be compelled to reveal personally incriminating information;

(d) that if the defendant pleads guilty *or nolo contendere* in fulfillment of a plea agreement, the court is not required to accept the terms of the agreement and that the defendant may not be entitled to withdraw the plea if the agreement is not accepted pursuant to 46-12-211;

(e) that if the defendant's plea of guilty *or nolo contendere* is accepted by the courts, there will not be a further trial of any kind, so that by pleading guilty *or nolo contendere* the defendant waives the right to a trial; and

HeinOnline -- 1999 vol. II 1489 1999

(f) that if the defendant is not a United States citizen, a guilty *or nolo contendere* plea might result in deportation from or exclusion from admission to the United States or denial of naturalization under federal law.

(2) The requirements of subsection (1) may be accomplished by the defendant filing a written acknowledgment of the information contained in subsection (1)."

Section 10. Section 46-12-211, MCA, is amended to read:

"46-12-211. Plea agreement procedure — use of two-way electronic audio-video communication. (1) The prosecutor and the attorney for the defendant, or the defendant when acting pro se, may engage in discussions with a view toward reaching an agreement that, upon the entering of a plea of guilty *or nolo contendere* to a charged offense or to a lesser or related offense, the prosecutor will do any of the following:

(a) move for dismissal of other charges;

(b) agree that a specific sentence is the appropriate disposition of the case; or

(c) make a recommendation, or agree not to oppose the defendant's request, for a particular sentence, with the understanding that the recommendation or request may not be binding upon the court.

(2) Subject to the provisions of subsection (5), if a plea agreement has been reached by the parties, the court shall, on the record, require a disclosure of the agreement in open court or, on a showing of good cause in camera, at the time that the plea is offered. If the agreement is of the type specified in subsection (1)(a) or (1)(b), the court may accept or reject the agreement or may defer its decision as to the acceptance or rejection until there has been an opportunity to consider the presentence report. If the agreement is of the type specified in subsection (1)(c), the court shall advise the defendant that, if the court does not accept the recommendation or request, the defendant nevertheless has no right to withdraw the plea.

(3) If the court accepts a plea agreement, the court shall inform the defendant that it will embody in the judgment and sentence the disposition provided for in the plea agreement.

(4) If the court rejects a plea agreement of the type specified in subsection (1)(a) or (1)(b), the court shall, on the record, inform the parties of this fact and advise the defendant that the court is not bound by the plea agreement, afford the defendant an opportunity to withdraw the plea, and advise the defendant that if the defendant persists in the guilty *or nolo contendere* plea, the disposition of the case may be less favorable to the defendant than that contemplated by the plea agreement.

(5) For purposes of this section, in cases in which the defendant is charged with a misdemeanor offense, a disclosure of the agreement through the use of two-way electronic audio-video communication, allowing all of the participants to be observed and heard in the courtroom by all present, is considered to be a disclosure in open court. Audio-video communication may be used if neither party objects and the court agrees to its use. The audio-video communication must operate as provided in 46-12-201."

Section 11. Section 46-12-212, MCA, is amended to read:

HeinOnline -- 1999 vol. II 1490 1999

"**46-12-212. Determining accuracy of plea.** (1) The court may not accept a guilty plea without determining that there is a factual basis for the plea in charges of felonies or misdemeanors resulting in incarceration.

(2) A defendant who is unwilling to admit to any element of the offense that would provide a factual basis for a plea of guilty may, with the consent of the court, enter a plea of guilty *or may, with the consent of the court and the prosecutor, enter a plea of nolo contendere* to the offense if the defendant considers the plea to be in the defendant's best interest ~~and if a factual basis exists for the plea~~ *and the court determines that there is a factual basis for the plea.*"

Section 12. Section 46-13-108, MCA, is amended to read:

"**46-13-108. Notice by prosecutor seeking persistent felony offender status.** (1) Except for good cause shown, if the prosecution seeks treatment of the accused as a persistent felony offender, notice of that fact must be given at or before the omnibus hearing pursuant to 46-13-110.

(2) The notice must specify the alleged prior convictions and may not be made known to the jury before the verdict is returned except as allowed by the Montana Rules of Evidence.

(3) If the defendant objects to the allegations contained in the notice, the judge shall conduct a hearing to determine if the allegations in the notice are true.

(4) The hearing must be held before the judge alone. If the judge finds any allegations of the prior convictions are true, the accused must be sentenced as provided by law.

(5) The notice must be filed and sealed until the time of trial or until a plea of guilty *or nolo contendere* is given by the defendant."

Section 13. Section 46-13-109, MCA, is amended to read:

"**46-13-109. Notice by prosecutor of other crimes, wrongs, or acts.** (1) Except for good cause shown, if the prosecutor intends to use evidence of other crimes, wrongs, or acts pursuant to Rule 404(b), Montana Rules of Evidence, notice must be given at or before the omnibus hearing held pursuant to 46-13-110.

(2) The notice must specify the other crimes, wrongs, or acts and must include a statement as to the purpose for which the evidence is to be offered.

(3) The notice must he filed and sealed until the time of trial or until a plea of guilty *or nolo contendere* is entered by the defendant."

Section 14. Section 46-14-311, MCA, is amended to read:

"**46-14-311. Consideration of mental disease or defect in sentencing.** Whenever a defendant is convicted on a verdict *of guilty* or a plea of guilty *or nolo contendere* and claims that at the time of the commission of the offense of which convicted the defendant was suffering from a mental disease or defect that rendered the defendant unahle to appreciate the criminality of the defendant's behavior or to conform the defendant's behavior to the requirements of law, the sentencing court shall consider any relevant evidence presented at the trial and shall require additional evidence as it considers necessary for the determination of the issue, including examination of the defendant and a report of the examination as provided in 46-14-202 and 46-14-206."

Seetion 15. Section 46-16-103, MCA, is amended to read:

HeinOnline -- 1999 vol. II 1491 1999

"**46-16-103. Who decides questions of law and fact.** (1) All prosecutions deciding issues of fact must be tried hy the court and jury, except on a plea of guilty *or nolo contendere.*

(2) Questions of law must be decided by the court and questions of fact by the jury, except that on a trial for criminal defamation, the jury shall determine both questions of law and of fact. Questions of law and fact must be decided by the court when a trial by jury is waived under 46-16-110(3)."

Section 16. Section 46-16-105, MCA, is amended to read:

"**46-16-105. Plea of guilty — use of two-way electronic audio-video communication.** (1) Before or during trial, a plea of guilty *or nolo contendere* may be accepted when:

(a) subject to the provisions of subsection (3), the defendant enters a plea of guilty *or nolo contendere* in open court; and

(b) the court has informed the defendant of the consequences of the plea and of the maximum penalty provided by law that may be imposed upon acceptance of the plea.

(2) At any time before or after judgment, the court may, for good cause sbown, permit the plea of guilty *or nolo contendere* to be withdrawn and a plea of not guilty substituted.

(3) For purposes of this section, in cases in which tbe defendant is charged with a misdemeanor offense, an entry of a plea of guilty *or nolo contendere* through the use of two-way electronic audio-video communication, allowing all of the participants to be observed and heard in the courtroom by all present, is considered to be an entry of a plea of guilty *or nolo contendere* in open court. Audio-video communication may be used if neither party objects and the court agrees to its use. The audio-video communication must operate as provided in 46-12-201."

Section 17. Section 46-17-203, MCA, is amended to read:

"**46-17-203. Plea of guilty — use of two-way electronic audio-video communication.** (1) Before or during trial, a plea of guilty *or nolo contendere* may be accepted when:

(a) subject to the provisions of suhsection (3), the defendant enters a plea of guilty *or nolo contendere* in open court; and

(b) the court has informed the defendant of the consequences of the plea and of the maximum penalty provided by law that may be imposed upon acceptance of the plea.

(2) A plea of guilty *or nolo contendere* in a justice's court, city court, or otber court of limited jurisdiction waives the right of trial de novo in district court. A defendant must be informed of the waiver before the plea is accepted, and tbe justice or judge shall question the defendant to ensure that the plea and waiver are entered voluntarily.

(3) For purposes of this section, in cases in which the defendant is charged with a misdemeanor offense, an entry of a plea of guilty *or nolo contendere* through the use of two-way electronic audio-video communication, allowing all of the participants to be observed and heard in the courtroom by all present, is considered to be an entry of a plea of guilty *or nolo contendere* in open court. Audio-video communication may be used if neither party objects and the court

HeinOnline -- 1999 vol. II 1492 1999

agrees to its use. The audio-video communication must operate as provided in 46-12-201."

Section 18. Section 46-18-104, MCA, is amended to read:

"46-18-104. Definitions. As used in 46-18-101, 46-18-104, 46-18-105, 46-18-201, and 46-18-225, unless the context requires otherwise, the following definitions apply:

(1) "Community corrections" or "community corrections facility or program" means a community corrections facility or program as defined in 53-30-303.

(2) "Crime of violence" means:

(a) a crime in which an offender uses or possesses and threatens to use a deadly weapon during the commission or attempted commission of a crime;

(b) a crime in which the offender causes a serious hodily injury or death to a person other than ~~himself~~ *the offender*; or

(c) any sexual offense in which tlie offender causes bodily injury to the victim or uses threat, intimidation, or force against the victim.

(3) "Nonviolent felony offender" means a person who bas entered a plea of guilty *or nolo contendere* to a felony offense other than a crime of violence or who has been convicted of a felony offense other than a crime of violence."

Section 19. Section 46-18-201, MCA, is amended to read:

"46-18-201. Sentences that may be imposed. (1) Whenever a person has been found guilty of an offense upon a verdict *of guilty* or a plea of guilty *or nolo contendere*, the court may:

(a) defer imposition of sentence, except as provided in 61-8-734 for sentences for driving under the influence of alcohol or drugs or as provided in 61-6-304, for a period, except as otherwise provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Reasonable restrictions or conditions may include:

(i) jail base release;

(ii) jail time not exceeding 180 days;

(iii) conditions for probation;

(iv) payment of the costs of confinement;

(v) payment of a fine as provided in 46-18-231;

(vi) payment of costs as provided in 46-18-232 and 46-18-233;

(vii) payment of costs of court-appointed counsel as provided in 46-8-113;

(viii) with the approval of the facility or program, an order that the offender be placed in a community corrections facility or program as provided in 53-30-321;

(ix) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, an order that the offender be placed in a prerelease center or prerelease program for a period not to exceed 1 year;

HeinOnline -- 1999 vol. II 1493 1999

(x) community service;

(xi) home arrest as provided in Title 46, chapter 18, part 10;

(xii) any other reasonable conditions considered necessary for rehabilitation or for the protection of society;

(xiii) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116; or

(xiv) any combination of the restrictions or conditions in subsections (1)(a)(i) through (1)(a)(xiii).

(b) suspend execution of sentence for a period up to the maximum sentence allowed or for a period of 6 months, whichever is greater, for each particular offense. The sentencing judge may impose on the defendant any reasonable restrictions or conditions during the period of suspended sentence. Reasonable restrictions or conditions may include any of those listed in subsection (1)(a).

(c) impose a fine as provided by law for the offense;

(d) require payment of costs as provided in 46-18-232 or payment of costs of court-appointed counsel as provided in 46-8-113;

(e) impose a county jail or state prison sentence, as provided in Title 45, for the offense or commit the defendant to the department of corrections for a period not to exceed 5 years for placement in an appropriate correctional facility or program;

(f) with the approval of the facility or program, order the offender to be placed in a community corrections facility or program as provided in 53-30-321;

(g) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, order the offender to be placed in a prerelease center or prerelease program for a period not to exceed 1 year; or

(h) impose any combination of subsections (1)(b) through (1)(g).

(2) In addition to any penalties imposed pursuant to subsection (1), if the court finds that the victim of the offense has sustained a pecuniary loss, the court shall require payment of full restitution to the victim as provided in 46-18-241 through 46-18-249.

(3) If a financial obligation is imposed as a condition under subsection (1)(a), sentence may be deferred for a period not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony, regardless of whether any other conditions are imposed.

(4) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, the court shall consider any elapsed time and either expressly allow part or all of it as a credit against the sentence or reject all or part as a credit. The court shall state its reasons in the order. Credit, however, must be allowed for jail or home arrest time already served.

(5) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended: 45-5-103, 45-5-202(3) relating to aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).

HeinOnline -- 1999 vol. II 1494 1999

(6) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102 may not be deferred or suspended.

(7) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in tbe case of a defendant who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(8) If the victim was less than 16 years old, the imposition or execution of the first 30 days of a sentence of imprisonment imposed under 45-5-503, 45-5-504, 45-5-505, or 45-5-507 may not be deferred or suspended. Section 46-18-222 does not apply to tbe first 30 days of the imprisonment.

(9) In imposing a sentence on a defendant convicted of a sexual or violent offense as defined in 46-23-502, tbe court may not waive the registration requirement provided in Title 46, chapter 23, part 5.

(10) A person convicted of a sexual offense, as defined in 46-23-502, and sentenced to imprisonment in the state prison shall enroll in and complete the educational phase of the prison's sexual offender program. If the person is subject to the provisions of 45-5-512, tbe person shall also, as provided in 45-5-512, undergo medically safe medroxyprogesterone acetate treatment or its chemical equivalent or other medically safe drug treatment that reduces sexual fantasies, sex drive, or both, paid for by and for a period of time determined by the department of corrections. The period may not exceed the period of state supervision of the person.

(11) In sentencing a nonviolent felony offender, the court shall first consider alternatives to imprisonment of the offender in the state prison, including placement of the offender in a community corrections facility or program or a prerelease center or prerelease program. In considering alternatives to imprisonment, the court shall examine the sentencing criteria contained in 46-18-225. If the court subsequently sentences the offender to a state prison, the court shall state the reasons why it did not select an alternative to imprisonment, based on the criteria contained in 46-18-225.

(12) If a felony sentence includes probation, the department of corrections shall supervise the defendant unless the court specifies otherwise.

(13) Except as provided in 46-18-222, a provision of tbis section that conflicts with 46-18-219 does not apply to a person sentenced under 46-18-219."

Section 20. Section 46-18-204, MCA, is amended to read:

"**46-18-204. Dismissal after deferred imposition.** Whenever the court has deferred the imposition of sentence and after termination of tlie time period during which imposition of sentence has heen deferred, upon motion of the court, the defendant, or the defendant's attorney, the court may allow the defendant to withdraw ~~his~~ *a* plea of guilty *or nolo contendere* or may strike the verdict of guilty from the record and order tbat the cbarge or charges against ~~him~~ *the defendant* be dismissed. A copy of the order of dismissal must he sent to the prosecutor and the department of justice, accompanied by a form prepared by the department of justice and containing identifying information about tbe defendant. After the charge is dismissed, all records and data relating to the charge are confidential criminal justice information, as defined in 44-5-103, and public access to the information may only be obtained by district court order upon geod cause shown."

HeinOnline -- 1999 vol. II 1495 1999

Section 21. Section 46-18-231, MCA, is amended to read:

"46-18-231. Fines in felony and misdemeanor cases. (1) Whenever, upon a verdict *of guilty* or a plea of guilty *or nolo contendere*, a person has been found guilty of an offense for which a felony penalty of imprisonment could be imposed, the court may impose a fine, only in accordance with subsection (3), and in lieu of or in addition to a sentence of imprisonment. For those crimes for which penalties are provided in 45-5-103, 45-5-202(3), 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), 45-9-103(2), and 45-9-109, a fine may be imposed in accordance with subsection (3) in addition to a sentence of imprisonment.

(2) Whenever, upon a verdict *of guilty* or *a* plea of guilty *or nolo contendere*, a person has been found guilty of an offense for which a misdemeanor penalty of a fine could be imposed, the court may impose a fine only in accordance with subsection (3).

(3) The court may not sentence a defendant to pay a fine unless the defendant is or will be able to pay the fine. In determining the amount and method of payment, the court shall take into account the nature of the crime committed, tbe financial resources of the defendant, and the nature of the burden that payment of the fine will impose.

(4) Any fine levied under this section in a felony case shall be in an amount fixed by the court not to exceed $50,000."

Section 22. Section 46-24-203, MCA, is amended to read:

"46-24-203. Prompt notification to victims and witnesscs of certain offenses. (1) A person described in subsection (2) who provides the appropriate official with a current address and telephone number must receive prompt advance notification, if possible, of proceedings relating to the person's case, including:

(a) the arrest of an accused;

(b) the release of tbe accused pending judicial proceedings;

(c) the crime with which the accused has been charged, including an explanation of the elements of the offense when necessary to an understanding of the nature of the crime;

(d) proceedings in the prosecution of the accused, including entry of a plea of guilty *or nolo contendere* and the setting of a trial date;

(e) if the accused is convicted or pleads guilty *or nolo contendere*, the function of a presentence report; the name, office address, and telepbone number of the person preparing the report; and the convicted person's right of access to the report, as well as the victim's right under 46-18-115 to present a statement in writing or orally at the sentencing proceeding and the convicted person's right to be present at the sentencing proceeding and to have access to the victim's statement;

(f) the date, time, and place of any sentencing hearing, the sentence imposed, and the term of imprisonment, if imposed; and

(g) the right under 46-24-212 of a victim of a felony offense to receive information from the department of corrections concerning the convicted person's incarceration.

HeinOnline -- 1999 vol. II 1496 1999

(2) A person entitled to notification under subsection (1) must be a victim or witness of a felony offense or a misdemeanor offense involving actual, threatened, or potential bodily injury to the victim, a relative of ~~such~~ a victim or witness who is a minor, or a relative of a homicide victim."

Section 23. Section 53-30-303, MCA, is amended to read:

"53-30-303. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Community corrections board" means a community corrections board as provided in 53-30-312.

(2) "Community corrections facility or program" means a community-based or community-oriented facility or program, other than a jail, that:

(a) is established by a local or tribal government and operated by a unit of local government, a tribal government, or a nongovernmental agency; and

(h) provides programs and services to aid offenders in:

(i) obtaining and holding regular employment;

(ii) enrolling in and maintaining academic courses;

(iii) participating in vocational training programs;

(iv) utilizing the resources of the community to meet their personal and family needs;

(v) obtaining the benefits of specialized treatment services that exist within the community; and

(vi) paying restitution or performing community restitution to crime victims.

(3) "Department" means the department of corrections created in 2-15-2301.

(4) "Nongovernmental agency" means a person, private, nonprofit agency, corporation, association, labor organization, or other nongovernmental entity.

(5) "Offender" means a person who bas entered a plea of guilty *or nolo contendere* or has been convicted of a criminal offense.

(6) "Tribal government" means a federally recognized Indian tribe within the state of Montana.

(7) "Unit of local government" means a county, city, town, or city-county consolidated government."

Section 24. Section 61-11-203, MCA, is amended to read:

"61-11-203. Definitions. As used in this part, the following definitions apply:

(1) "Conviction" means a finding of guilt by duly constituted judicial authority, a plea of guilty *or nolo contendere*, or a forfeiture of bail, bond, or other security deposited to secure appearance by a person chargod with having committed any offense relating to the use or operation of a motor vehicle ~~which~~ *that* is prohibited by law, ordinance, or administrative order.

(2) "Habitual traffic offender" means any person who within a 3-year period accumulates 30 or more conviction points according to the schedule specified in this subsection:

HeinOnline -- 1999 vol. II 1497 1999

(a) deliberate homicide resulting from the operation of a motor vehicle, 15 points;

(b) mitigated deliberate homicide, negligent homicide resulting from operation of a motor vehicle, or negligent vehicular assault, 12 points;

(c) any offense punishable as a felony under the motor vehicle laws of Montana or any felony in the commission of which a motor vehicle is used, 12 points;

(d) driving while under the influence of intoxicating liquor or narcotics or drugs of any kind or operation of a motor vehicle hy a person with alcohol concentration of 0.10 or more, 10 points;

(e) operating a motor vehicle while the license to do so has been suspended or revoked, 6 points;

(f) failure of the driver of a motor vehicle involved in an accident resulting in death or injury to any person to stop at the scene of the accident and give the required information and assistance, as defined in 61-7-105, 8 points;

(g) willful failure of the driver involved in an accident resulting in property damage of $250 to stop at the scene of the accident and give the required information or failure to otherwise report an accident in violation of the law, 4 points;

(h) reckless driving, 5 points;

(i) illegal drag racing or engaging in a speed contest in violation of the law, 5 points;

(j) any of the mandatory motor vehicle liability protection offenses under 61-6-301 and 61-6-302, 5 points;

(k) operating a motor vehicle without a license to do so, 2 points (this subsection (k) does not apply to operating a motor vehicle within a period of 180 days from the date the license expired);

(l) speeding, 3 points;

(m) all other moving violations, 2 points.

(3) There may not be multiple application of cumulative points when two or more charges are filed involving a single occurrence. If there are two or more convictions involving a single occurrence, only the number of points for the specific conviction carrying the highest points is chargeable against that defendant.

(4) "License" means any type of license or permit to operate a motor vehicle."

Section 25. Section 87-1-112, MCA, is amended to read:

"87-1-112. **Finding required.** Before restitution may be ordered pursuant to 87-1-111, the finder of fact at trial or the court upon entry of a guilty *or nolo contendere* plea ~~must~~ *shall* find that ~~such~~ *the* illegal killing or possession was done knowingly or purposely as defined in 45-2-101. This finding is not required for state reimbursement under 87-1-111 when bond or bail is forfeited."

Approved April 21, 1999

HeinOnline -- 1999 vol. II 1498 1999

CHAPTER NO. 396

[HB 232]

AN ACT GENERALLY REVISING LAWS RELATED TO COMMERCIAL FEEDS; CREATING AND REVISING APPLICABLE DEFINITIONS; CLARIFYING THE DEPARTMENT OF AGRICULTURE'S RULEMAKING AUTHORITY; MAKING PUBLICATION OF THE DEPARTMENT'S REPORT ON COMMERCIAL FEED DISCRETIONARY RATHER THAN MANDATORY; REVISING LICENSING PROCEDURES AND LABELING REQUIREMENTS; REVISING THE CRITERIA FOR DETERMINING WHAT CONSTITUTES ADULTERATED FEED; CLARIFYING PROHIBITIONS AND REVISING PENALTIES; PROVIDING FOR DEPOSIT AND EXPENDITURE OF ADMINISTRATIVE PENALTY FEES; REVISING ENFORCEMENT PROCEDURES; CLARIFYING PROVISIONS REGARDING CONFIDENTIALITY OF INFORMATION; AMENDING SECTIONS 80-9-101, 80-9-103, 80-9-105, 80-9-201, 80-9-202, 80-9-204, 80-9-205, 80-9-206, 80-9-207, 80-9-301, 80-9-302, 80-9-303, AND 80-9-304, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-9-101, MCA, is amended to read:

"80-9-101. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) *"AOAC international" means the association of official analytical chemists.*

(2) "Brand name" means any word, name, symbol, or device or any combination of them identifying the commercial feed of a distributor or registrant and distinguishing it from that of others.

~~(2)~~*(3)* "Commercial feed" means all materials ~~except the mixed or unmixed whole seeds or physically altered mixed or unmixed entire seeds of cereal grains with or without molasses added, when not adulterated within the meaning of subsections (1) through (5) of 80-9-204, which~~ *or combinations of materials that* are distributed *or intended for distribution* for use as feed or for mixing in feed, *unless the materials are specifically exempted by law. Unmixed whole seeds and physically altered entire unmixed seeds, when those seeds are not chemically changed or adulterated within the meaning of 80-9-204, are exempt.* ~~However, the~~ *The* department may by rule exempt from this definition or from specific provisions of this chapter commodities such as hay, straw, stover, silage, cobs, husks, hulls, and individual chemical compounds or substances when those commodities, compounds, or substances are not intermixed ~~or mixed~~ with other materials and are not adulterated within the meaning ~~of subsections (1) through (5)~~ of 80-9-204.

(4) "Contract feeder" means a person who, as an independent contractor, feeds commercial feed to animals pursuant to a contract whereby the commercial feed is supplied, furnished, or otherwise provided to that person and whereby that person's remuneration is determined completely or in part by feed consumption, mortality, profits, or amount or quality of product.

~~(3)~~*(5)* "~~Custom mixed~~ *Customer formula* feed" means commercial feed ~~which~~ *that* consists of a mixture of ~~either~~ commercial feeds or feed ingredients ~~or both~~

HeinOnline -- 1999 vol. II 1499 1999

~~of them~~, each batch of which is manufactured according to ~~specifications mutually agreed to by the purchaser and the manufacturer~~ *specific instructions of the final purchaser.* ~~A copy of the specifications or a list of the ingredients, but not necessarily the percentage of each ingredient, shall be on file at the manufacturing facility.~~

~~(4)~~*(6)* "Distribute" means to offer for sale, sell, exchange, or barter commercial feed *or to supply, furnish, or otherwise provide commercial feed to a contract feeder.*

~~(5)~~*(7)* "Distributor" means a person who distributes.

~~(6)~~*(8)* "Drug" means any article intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in animals other than ~~man~~ *humans* and articles other than feed intended to affect the structure or function of the animal body.

~~(7)~~*(9)* "Feed ingredient" means each of the constituent materials making up a commercial feed.

~~(8)~~*(10)* "Label" means a display of written, printed, or graphic matter upon or affixed to the container in which a commercial feed is distributed or on the invoice or delivery slip with which a commercial feed is distributed.

~~(9)~~*(11)* "Labeling" means all labels and other written, printed, or graphic matter upon a commercial feed, any of its containers, its wrapper, or accompanying the commercial feed.

~~(10)~~*(12)* "Manufacture" means to grind, mix, blend, or further process a commercial feed.

~~(11)~~*(13)* "Mineral feed" means a commercial feed intended to supply primarily mineral elements or inorganic nutrients.

~~(12)~~*(14)* "Official sample" means a sample of feed taken by the department in accordance with the provisions of ~~subsections (3), (5), or (6) of~~ 80-9-301.

~~(12)~~*(15)* "Percent" or "percentage" means percentage by weights.

~~(14)~~*(16)* "Person" means an individual, partnership, corporation, or association.

~~(15)~~*(17)* "Pet" means any domesticated animal normally maintained in or near the household of its owner.

~~(15)~~*(18)* "Pet food" means any commercial feed prepared and distributed for consumption by pets.

~~(17)~~*(19)* "Product name" means the name of the commercial feed which identifies it as to kind, class, or specific use.

(20) "Quantity statement" means the net weight or mass; net volume, either liquid or dry; or count.

~~(18)~~*(21)* "Specialty pet" means any domesticated animal pet normally maintained in a cage or tank, including hut not limited to gerbils, hamsters, canaries, psittacine birds, mynahs, finches, tropical fish, goldfish, snakes, and turtles.

~~(10)~~*(22)* "Specialty pet food" means any commercial feed prepared and distributed for consumption by specialty pets.

~~(20)~~*(23)* "Ton" means a net weight of 2,000 pounds avoirdupois."

HeinOnline -- 1999 vol. II 1500 1999

Section 2. Section 80-9-103, MCA, is amended to read:

"80-9-103. Rules — adoption by department. (1) The department may adopt ~~those~~ rules for commercial feeds and pet foods ~~which~~ *that* are specifically authorized in this chapter and ~~those~~ other reasonable rules necessary for the efficient enforcement of this chapter, *including rules related to:*

(a) the specific content of label directions and precautions for safe and effective use of commercial and customer formula feeds;

(b) definitions of feed ingredients and poisonous or deleterious substances;

(c) good manufacturing practices for commercial feeds containing medications or drugs;

(d) standards for viable weed seeds;

(e) format and content of annual statements of tonnage and distribution records required by 80-9-206(2);

(f) standards for establishing deficiency of a commercial feed based on laboratory testing;

(g) standards for establishing that a commercial feed is in violation because of a deficiency in any feed ingredient;

(h) procedures for the issuance and release of embargo orders and condemnation pursuant to 80-9-302; and

(i) procedures for implementing and administering the civil penalties under 80-9-303.

(2) Unless it determines that they are inconsistent with this chapter or are not appropriate to conditions ~~which~~ *that* exist in this state, the department, in the interest of uniformity, shall adopt:

(a) the official definitions of feed ingredients and official feed terms adopted by the association of American feed control officials and published in the official publication of that organization; and

(b) any rules adopted under the Federal Food, Drug, and Cosmetic Act as long as the department has the authority under this chapter to adopt that rule.

~~(2)~~*(3)* In adopting rules the department ~~will~~ *shall* follow procedures prescribed in the Montana Administrative Procedure Act."

Section 3. Section 80-9-105, MCA, is amended to read:

"80-9-105. Publications. The department ~~shall~~ *may* publish ~~at least annually~~, in a form it considers proper, information concerning the sale of commercial feed, data on production and use, and the results of analysis of official samples of commercial feeds sold within the state as compared with the analysis guaranteed in the registration and on the label. The information concerning production and use of commercial feed ~~shall~~ *may* not disclose the operations of any person."

Section 4. Section 80-9-201, MCA, is amended to read:

"80-9-201. ~~Permits~~ *Licenses* and registration. (1) *Except as provided in subsection (4)(b), a license is required of a person:*

(a) ~~No person may manufacture for distribution or distribute a commercial feed in this state unless he has obtained a permit by filing with the department,~~

~~on forms provided by the department, his name, place of business, and location of manufacturing facility, distribution point, or point of invoicing. All new applicants or those failing to renew a permit by January 1 of each year shall pay a nonrefundable fee of $25 per calendar year for each facility, distribution point, or point of invoicing. A permit will remain in force until the end of the calendar year for which it is issued or until canceled by the permit holder or canceled for cause by the department. No refund may be made at the time of cancellation. No transfer of permits will be made. A distributor who distributes only pet foods or specialty pet foods is exempt from this provision~~ *who manufactures commercial feed in this state;*

(b) who distributes commercial feed in or into this state; or

(c) whose name appears on the label of a commercial feed as guarantor.

~~(b) Feed permit renewals received by the department prior to January 1 of each year must be accompanied by a nonrefundable renewal fee of $25 for each permit.~~

(2) (a) *A separate license is required for each facility that manufactures commercial feed within this state or for each facility that distributes commercial feed in or into this state. A facility that manufactures, distributes, or is a guarantor for commercial feed need be licensed only once annually pursuant to this section.*

(b) (i) All new applicants shall pay a nonrefundable fee of $75 per calendar year for a license for each facility, distribution point, or point of invoicing.

(ii) License renewals received by the department prior to January 1 of each year must be accompanied by a nonrefundable renewal fee of $50 for each license.

(3) Applicants for licensure shall file with the department information on forms provided by the department, including the following:

(a) the applicant's name and place of business;

(b) the mailing address and physical location of the facility to be licensed; and

(c) an indication of whether the facility to be licensed manufactures feed, distributes feed, or both.

(4) (a) A license granted under this section remains in force until the end of the calendar year for which it is issued or until canceled by the licensee or by the department for cause. The department may collect a $25 late penalty fee for a license renewal application received after January 1 of any year. A license is nontransferable and license fees are nonrefundable.

(b) A license is not required for a distributor who distributes only pet food or specialty pet food.

(5) A person who manufactures for distribution or who distributes commercial feed in this state shall, upon written request by the department, submit the following information regarding products distributed in this state:

(a) a list of feed products;

(b) all labeling, promotional material, and claims for any feed product;

(c) analytical methods for ingredients claimed or listed on a label, if the methods are not available from AOAC international; and

(d) replicated data performed by a reputable investigator whose work is recognized as acceptable by the department, verifying any claims for effectiveness of a feed product.

HeinOnline -- 1999 vol. II 1502 1999

(6) (a) ~~No~~ *A* person may *not manufacture for distribution or* distribute in this state a ~~commercial feed, except a custom-mixed feed, which~~ *pet food or specialty pet food that* has not been registered under this section by the manufacturer. The application for registration must be accompanied by a nonrefundable fee ~~of $6.50 for each product other than a pet food or specialty pet food and a nonrefundable fee~~ of $25 for each pet food or specialty pet food.

(b) The registration of ~~commercial feeds~~ *pet food* and specialty pet food is for a period of 1 year commencing ~~October~~ *January* 1 and ending ~~September 30~~ *December 31* of each year.

~~(3)~~*(7)* An applicant for registration *of a pet food or specialty pet food* shall file with the department the following information:

(a) ~~his~~ *the applicant's* name and address; *and*

(b) a complete ~~copy of the label or label facsimile that will appear on the product;~~ *standard list of all products being registered*

~~(c) when requested by the department, promotional material and claims made about the product; and~~

~~(d) any other necessary information requested by the department.~~

~~(4)~~*(8)* The department may refuse registration of ~~any commercial feed~~ *a pet food or specialty pet food* not in compliance with this chapter and may cancel any registration subsequently found not to be in compliance with this chapter. ~~No~~ *A* registration may *not* be refused or canceled unless the registrant has been given an opportunity to be heard before the department and to amend ~~his~~ *the* application in order to comply with this chapter."

Section 5. Section 80-9-202, MCA, is amended to read:

"80-9-202. Labeling. (1) A commercial feed, except a ~~custom-mixed~~ *customer formula* feed, ~~shall~~ *must* be accompanied by a label containing:

(a) the ~~net weight~~ *quantity statement*;

(b) the product name and any brand name under which the commercial feed is distributed;

(c) the guaranteed analysis stated in terms the department by rule determines are required to advise the user of the composition of the feed or to support claims made in the labeling. The substances or elements guaranteed must be determinable by laboratory methods such as the methods puhlished by ~~the association of official analytical chemists~~ *AOAC international.*

(d) the common or usual name of each ingredient used in the manufacture of the commercial feed. The department by rule may permit the use of a collective term for a group of ingredients which perform a similar function or it may exempt commercial feeds or any group of them from this requirement of an ingredient statement if it finds that the statement is not required in the interest of consumers.

(e) the name and principal mailing address of the manufacturer or the person responsible for distributing the commercial feed;

(f) adequate directions for use for all commercial feeds containing drugs. The department may by rule require directions for the use of other commercial feeds when necessary for their safe and effective use.

(g) precautionary statements which the department by rule determines are necessary for safe and effective use of the commercial feed.

HeinOnline -- 1999 vol. II 1503 1999

(2) A ~~custom-mixed~~ *customer formula* feed ~~shall~~ *must* be accompanied by a label, invoice, delivery slip, or other shipping document containing:

(a) the name and address of the manufacturer;

(b) the name and address of the purchaser;

(c) tbe date of delivery;

(d) the specific agreed to composition of the feed or a list of the ingredients, but not necessarily the percentage of each ingredient;

(e) adequate directions for use for all ~~custom-mixed~~ *customer formula* feed containing drugs. The department may by rule require directions for the use of other ~~custom-mixed~~ *customer formula* feeds when necessary for their safe and effective use.

(f) precautionary statements which the department by rule determines are necessary for safe and effective use of the ~~custom-mixed~~ feeds.~~;~~

(g) in cases when a drug-containing product is used in a customer formula feed:

(i) the purpose of the drug in the form of a claim statement; and

(ii) the established name of each active drug ingredient and the level of each drug used in the final mixture, expressed in accordance with the association of American feed control officials model feed regulations, as published in that organization's official publication and adopted by department rule."

Section 6. Section 80-9-204, MCA, is amended to read:

"80-9-204. Adulterated feed. A commercial feed is adulterated if:

(1) it contains any poisonous or deleterious substance ~~which~~ *that* may render it injurious to health. However, if the substance is not an added substance, the commercial feed ~~shall~~ *may* not be considered adulterated under this subsection if the quantity of the substance in the commercial feed does not ordinarily render it injurious to health.

(2) it contains any added poisonous, deleterious, or nonnutritive substance ~~which~~ *that* is unsafe within the meaning of section 406 of the Federal Food, Drug, and Cosmetic Act, ~~(~~other than one ~~which~~ *that* is a pesticide chemical in or on a raw agricultural commodity or a food additive~~)~~;

(3) it is or it contains any food additive ~~which~~ *that* is unsafe within the meaning of section 409 of the Federal Food, Drug, and Cosmetic Act;

(4) it is a raw agricultural commodity and it contains a pesticide chemical ~~which~~ *that* is unsafe within tbe meaning of section 408(a) of the Federal Food, Drug, and Cosmetic Act. However, ~~where~~ *when* a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or a tolerance prescribed under section 408 of the Federal Food, Drug, and Cosmetic Act and that agricultural commodity has been processed by canning, cooking, freezing, dehydrating, or milling, the residue of the pesticide chemical remaining in or on tbe processed feed ~~shall~~ *may* not be ~~deemed~~ *considered* unsafe if ~~such~~ *the* residue in or on the raw agricultural commodity has heen removed to the extent possible in good manufacturing practice and the concentration of the residue in the processed feed is not greater than the tolerance prescribed for the raw agricultural commodity, unless the feeding of the processed feed is likely to result in the pesticide residue in the edible product of the

HeinOnline -- 1999 vol. II 1504 1999

animal, which is unsafe within the meaning of section 408(a) of the Federal Food, Drug, and Cosmetic Act;

(5) it is or contains any color additive ~~which~~ *that* is unsafe within the meaning of section ~~706~~ *721* of the Federal Food, Drug, and Cosmetic Act;

(6) *it is or contains any new animal drug that is unsafe within the meaning of section 512 of the Federal Food, Drug, and Cosmetic Act;*

(7) it consists in whole or in part of any filthy, putrid, or decomposed substance or if it is otherwise unfit for feed;

(8) it has been prepared, packed, or held under unsanitary conditions whereby it may have become contaminated with filth or rendered injurious to health;

(9) it is in whole or in part the product of a diseased animal or of an animal that has died otherwise than by slaughter and that is unsafe within the meaning of section 402(a)(1) or (a)(2) of the Federal Food, Drug, and Cosmetic Act;

(10) its container is composed in whole or in part of any poisonous or deleterious substance that may render the contents injurious to health;

(11) it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with the regulation or exemption in effect pursuant to section 409 of the Federal Food, Drug, and Cosmetic Act;

(12) any valuable constituents have been in whole or in part omitted or abstracted ~~therefrom~~ *from the commercial feed* or any less valuable substance substituted ~~therefor~~ *for the valuable constituent*;

~~(7)~~*(13)* its composition or quality falls below or differs from ~~that stated on its label~~ *the composition or quality that is purported or represented to possess by its labeling*;

~~(8)~~*(14)* it contains a drug and the methods used in or the facilities or controls used for its manufacture, processing, or packaging do not conform to current good manufacturing practice rules adopted by the department to assure that the drug meets the requirement of this chapter as to safety and has the identity and strength and meets the quality and purity characteristics ~~which~~ *that* it is represented to possess. In formulating these rules, the department shall adopt the current good manufacturing practice regulations for medicated feed premixes and for medicated feeds established under the Federal Food, Drug, and Cosmetic Act unless it determines that they are not appropriate to the conditions ~~which~~ *that* exist in this state~~.~~.

~~(9)~~*(15)* it contains viable weed seeds in amounts exceeding the limits ~~which the department~~ established by *department* rule."

Section 7. Section 80-9-205, MCA, is amended to read:

"80-9-205. Prohibitions. ~~No~~ *Subject to the penalty provisions in 80-9-303, a* person may *not*:

(1) manufacture or distribute any commercial feed that is adulterated or misbranded;

(2) adulterate or misbrand a commercial feed;

(3) distribute agricultural commodities such as whole seed, hay, straw, stover, silage, cobs, husks, and hulls ~~which~~ *that* are adulterated within the meaning of subsections (1) through ~~(5)~~ *(11)* of 80-9-204;

HeinOnline -- 1999 vol. II 1505 1999

(4) remove or dispose of a commercial feed in violation of an order under 80-9-302;

(5) fail to register or obtain a ~~permit~~ *license* in accordance with 80-9-201;

(6) violate 80-9-304;

(7) fail to pay inspection fees and file reports as required by 80-9-206;

(8) fail to submit a complete copy of labeling or a list of feed labels as required in 80-9-201;

(9) submit false information on an application for licensure or registration;

(10) knowingly use commercial feed or other feeds that are adulterated to feed animals that are intended for human consumption or to produce commodities for human consumption; or

(11) fail to comply with a lawfully issued order."

Section 8. Section 80-9-206, MCA, is amended to read:

"**80-9-206. Inspection fees — filing of annual statement.** (1) An inspection fee must be paid on all commercial feeds, including ~~custom mix~~ *customer formula* feeds, except pet foods and specialty pet foods, distributed in this state as follows:

~~(a) The inspection fee must be set by rule on a cents-per-ton basis, except that the first 10 tons are exempt. The department may adjust the fee by rule to adequately fund the administration of this chapter. Adjustments may be made only after holding a public hearing on the proposed changes as required in 80-9-103 and must remain within the limits of 5 cents to 25 cents per ton. The effective date of any rule adjusting fees is January 1 of the calendar year following the issuance of the rule. All permit holders are to be notified immediately of any changes in fees.~~

~~(b)~~*(a)* The feed manufacturer has primary responsibility for paying inspection fees. However, the distributor is responsible for inspection fees if the manufacturer has not paid them.

~~(c)~~*(b) The inspection fee is 18 cents a ton.* Inspection fees must be paid on each commercial feed, including ~~custom mix~~ *customer formula* feeds and feed ingredients that are defined as commercial feeds even though they are used in the manufacture of other commercial feeds. However, premixes prepared and used within a feed plant ~~are exempt but not premixes~~ or ~~ingredients~~ transferred from one plant to another ~~even~~ within the same organization *are exempt.*

~~(d)~~*(c)* A person producing a commercial feed with a feed mixing plant at a feed lot or a poultry, swine, or dairy operation may not be required to pay inspection fees on the commercial feeds produced and used in ~~his~~ *the* feeding operation at the site, but ~~he~~ is responsible for any unpaid inspection fees on commercial feed purchased by ~~him~~ *that person* and on any commercial feed ~~he~~ *that person* produces and distributes other than in ~~his~~ *that person's* feeding operations at the site.

(2) Each person who holds a ~~permit~~ *license* as required in 80-9-201(1) shall:

(a) file, not later than January 31 of each year, an annual statement setting forth the number of tons of commercial feeds distributed in this state during the preceding calendar year (January 1 through December 31) and upon filing the statement shall pay the inspection fee ~~at the rate stated in subsection (1)~~. Inspection fees that have not been remitted to the department on or before

HeinOnline -- 1999 vol. II 1506 1999

January 31 have a penalty fee of 10% ~~with~~ *or* a minimum of $10, *whichever is more,* added to the amount due. The assessment of this penalty fee does not prevent the department from taking other action as provided in this chapter.

(b) keep those records that are necessary or are required hy the department to indicate accurately the tonnage of commercial feed distributed in this state. The department may examine the records to verify statements of tonnage.

(c) make accurate and prompt reports as required. Failure to do so is sufficient cause for the department to cancel or refuse to reissue a ~~permit~~ *license.*"

Section 9. Section 80-9-207, MCA, is amended to read:

"**80-9-207. Deposit of fees.** (1) All fees collected for ~~permits~~ *licenses,* registration, and inspection ~~shall~~ *must* be deposited in the state treasury to the credit of the state special revenue fund for the purpose of administering this chapter, including the cost of equipment and facilities and the cost of inspecting, analyzing, and examining commercial feeds manufactured or distributed in this state and the cost of developing better analytical methods and means of evaluating the value or the potential toxic qualities of a feed.

(2) The department may direct the board of investments to invest funds from the state special revenue fund pursuant to the provisions of the unified investment program for state funds. The income from ~~such~~ *those* investments ~~shall~~ *must* he credited to the proper department account in the state special revenue fund.

(3) The account in subsection (1) may rceive funds from any source, including but not limited to gifts, grants, cost-share funds, or other funds designated for purposes consistent with this chapter.

(4) Any administrative civil penalties collected under 80-9-303 must be deposited in the Montana state university-Bozeman agricultural experiment station research account and may be used only for feed and animal nutrition research and education."

Section 10. Section 80-9-301, MCA, is amended to read:

"**80-9-301. Enforcement — inspection — notice — sampling and analysis.** (1) To enforce this chapter, the department upon presenting appropriate credentials ~~and a written notice to the owner, operator, or agent in charge~~ may enter, ~~during normal business hours~~ *at reasonable times or under emergency conditions,* any factory, warehouse, or establisbment within the state in which commercial feeds are manufactured, processed, packed, *distributed,* or held or enter any vehicle being used to transport or hold commercial feeds. The department may inspect at reasonable times and within reasonable limits and in reasonable manner any factory, warehouse, estahlishment, or vehicle and all pertinent equipment, finished and unfinished materials, containers, and labeling found in them. The inspection may include the verification of only those records and production and control procedures necessary to determine compliance with the good manufacturing practice rules adopted under ~~80-9-204(8)~~ *80-9-204(14).*

(2) ~~A separate notice shall be given for each inspection, but a notice is not required for each entry made during the period covered by the inspection.~~ Each inspection ~~shall~~ *must* be commenced and completed with reasonable promptness. Upon completion of the inspection, the person in charge of the facility or vehicle ~~shall~~ *must* be ~~so~~ notified *of the completion.*

HeinOnline -- 1999 vol. II 1507 1999

(3) If the officer or employee making the inspection of a factory, warehouse, or other establishment has obtained a sample in the course of the inspection, upon completion of the inspection and prior to leaving the premises, ~~he~~ *the officer or employee* shall give the owner, operator, or agent in charge a receipt describing the sample obtained.

~~(4) If the owner of a factory, warehouse, or establishment described in subsection (1) or his agent refuses to allow an inspection, the department may obtain from the district court a warrant directing the owner or his agent to allow inspection of the premises described in the warrant.~~

~~(5)~~*(4)* To enforce this chapter the department may enter upon any public or private premises, including any vehicle of transport, during regular business hours to obtain samples and examine records relating to distribution of commercial feeds.

~~(6)~~*(5)* Sampling and analysis ~~shall~~ *must* be conducted in accordance with methods published by ~~the association of official analytical chemists~~ *AOAC international* or with other generally recognized methods.

~~(7)~~*(6)* The results of all analyses of official samples ~~shall~~ *must* be forwarded by the department to the person named on the label and to the purchaser. When the inspection and analysis of an official sample indicates a commercial feed has been adulterated or misbranded, the department shall upon request within 30 days following receipt of the analysis furnish the registrant a portion of the *official* sample.

~~(6)~~*(7)* The department, in determining for administrative purposes whether a commercial feed is deficient in any component, ~~shall~~ *must* be guided by the official sample as defined in ~~80-9-101(12)~~ *80-9-101(14)* and obtained and analyzed as provided for in subsections (3)~~,~~ *through* (5)~~, and (6)~~ of this section.

~~(9)~~*(8)* All ~~chemical~~ *official* analyses ~~shall~~ *must* be performed cooperatively by the department and the agricultural experiment station at Montana state university-Bozeman. *However, the department may arrange with other laboratories for specific analyses conducted as part of an official analysis.*"

Section 11. Section 80-9-302, MCA, is amended to read:

"**80-9-302. Enforcement — embargo order — condemnation.** (1) When the department has reasonable cause to believe any lot of commercial feed *or other feed* is in violation of this chapter or a rule adopted by the department, it may issue and enforce a written or printed embargo order requiring the person holding the commercial feed not to dispose of it in any manner until written permission is given by the department or the court. The department shall release the feed when this chapter and the rules of the department have been complied with. If compliance is not obtained within 30 days, the department may begin or, upon the request of the registrant, *manufacturer, distributor,* or the person holding the commercial feed, shall begin proceedings for condemnation.

(2) Commercial feed not in compliance with this chapter or the rules of the department may be seized on complaint of the department to a district court in the area in which the commercial feed is located. If the court finds the commercial feed in violation of this chapter and orders its condemnation, it ~~shall~~ *must* be disposed of in any manner consistent with the quality of the commercial feed and state law. The disposition of the commercial feed may not be ordered by the court without first giving the owner or person from whom the feed was seized an opportunity to apply to the court for release of the commercial feed or for

HeinOnline -- 1999 vol. II 1508 1999

permission to process or relabel the commercial feed to bring it into compliance with this chapter."

Section 12. Section 80-9-303, MCA, is amended to read:

"80-9-303. Violation — penalty — injunction — appeal. (1) A person who ~~violates~~ *is convicted of violating* this chapter *or rules adopted under this chapter* or who obstructs, prevents, or attempts to obstruct or prevent the department in the performance of its duty under this chapter is ~~guilty of~~ *subject to one or both of the following penalties:*

(a) a misdemeanor and sball be fined not less than $100 or more than $300 for the first violation and not less than $500 or more tban $1,000 for a subsequent violation;

(b) an administrative eivil penalty of not more than $1,000 for each offense. Assessment of a penalty under this subsection (1)(b) may be made in conjunction with any other warning, order, or administrative action by the department, under the authority of this part.

(2) *The department may by rule establish a penalty matrix that schedules the types of penalties, the amounts for initial and subsequent offenses, and any other matters necessary for the administration of civil penalties under subsection (1)(b). In developing rules for determining appropriate civil penalties, the department shall consider the significance or gravity of a violation, the degree of care exercised by the offender, and the adverse impact or potential adverse impact or effects on animals or humans. Violations that are determined to be nonsignificant but that are repeated within a 2-year period may also subject a person to a civil penalty. The issuance of a civil penalty is subject to the contested case procedures of Title 2, chapter 4, part 6.*

(3) Nothing in this chapter requires the department to prosecute, begin seizure proceedings, *issue civil penalties,* or issue an embargo order as a result of minor violations or when it believes the public interest will best be served by suitable notice of warning in writing.

~~(3)~~*(4)* A county attorney to whom a violation is reported shall prosecute in a court of competent jurisdiction without delay. Before the department reports a violation for prosecution, an opportunity ~~shall~~ *must* be given tbe ~~distributor~~ *person* to present ~~his~~ *the person's* view to the department.

~~(4)~~*(5)* The department may, *in the district court of the first judicial district,* apply for and the court may grant a temporary or permanent injunction restraining any person from violating this chapter or any rule adopted under this chapter notwithstanding the existence of other remedies at law. The injunction ~~shall~~ *must* be issued without bond.

~~(5)~~*(6)* Any person adversely affected by an act, order, or ruling made pursuant to the provisions of this chapter may within 30 days seek judicial review in the district court ~~where the person resides or has his place of business~~ *of the first judicial district.*"

Section 13. Section 80-9-304, MCA, is amended to read:

"80-9-304. Disclosure of information prohibited. *(1)* A person who uses to ~~his~~ *that person's* own advantago or reveals to persons other than officers of the department or to the courts when relevant in a judicial proceeding any information acquired under this chapter concerning any method, records, formulations, or processes which as a trade secret is entitled to protection is guilty of a

HeinOnline -- 1999 vol. II 1509 1999

misdemeanor and shall he fined not more than $300 or imprisoned for not more than 1 year, or both.

(2) ~~However, the~~ *The* department may exchange information of a regulatory nature with the proper officials of the United States government or of other states who are similarly prohibited by law from revealing that information. *The department may not release information obtained from officials of the United States government or of other states when those officials have determined and advised the department in writing that, based on the statutes governing those officials, the information is confidential."*

Section 14. Applicability. Because 80-9-201(6)(b) changes the period of registration of a pet food or specialty pet food from October 1 through September 30 to January 1 through December 31 of each year, it is intended that registrations issued after October 1, 1998, be valid through December 31, 1999, in order to coordinate registration issuance with the new period of registration.

Approved April 21, 1999

CHAPTER NO. 397

[HB 255]

AN ACT INCREASING TO $1,000 THE AMOUNT REQUIRED TO BE INVOLVED IN VARIOUS CRIMES BEFORE PENALTIES FOR THOSE CRIMES ARE ENHANCED; INCREASING TO $1,000 THE POSSIBLE FINE FOR THOSE CRIMES WHEN THE AMOUNT INVOLVED IN THOSE CRIMES IS LESS THAN $1,000; AND AMENDING SECTIONS 27-1-718, 45-2-101, 45-6-101, 45-6-103, 45-6-301, 45-6-309, 45-6-311, 45-6-312, 45-6-313, 45-6-316, 45-6-317, 45-6-325, AND 45-7-210, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 27-1-718, MCA, is amended to read:

"27-1-718. Civil penalty for shoplifting. (1) An adult or emancipated minor who takes possession of any goods, wares, or merchandise displayed or offered for sale by any store or other mercantile establishment without the consent of the owner or seller and with the intention of converting the goods to the taker's own use without having paid the purchase price of the goods is liable to the owner or seller for a penalty, whether or not the goods have been returned undamaged, in the amount of the greater of $100 or the retail value of the goods, not to exceed ~~$500~~ *$1,000*. This amount is in addition to actual damagos.

(2) When an unemancipated minor takes possession of any goods, wares, or merchandise displayed or offered for sale by any store or other mercantile establishment without the consent of the owner or seller and with the intention of converting the goods to the minor's own use without having paid the purchase price of the goods, the minor's parent or legal guardian having custody of tbe minor is liable to the owner or seller for a penalty, whether or not the goods have been returned undamagod, equal to the greater of $100 or the retail value of the goods, not to exceed ~~$500~~ *$1,000*. For the purposes of this subsection (2), liability may not be imposed upon any governmental or private agency that has been assigned responsibility for the minor child pursuant to court order or action of the department of corrections or the department of public health and human services.

HeinOnline -- 1999 vol. II 1510 1999

(3) Judgments and claims arising under this section may be assigned.

(4) A conviction for violation of 45-6-301 is not a condition precedent to maintenance of a civil action under this section.

(5) For purposes of this section, the term "emancipated minor" means a person under 18 years of age who is self-supporting from personal earnings or is married. A person who received more tban 25% of the cost of support from any person other than an agency of the government may not be considered an emancipated minor."

Section 2. Section 45-2-101, MCA, is amended to read:

"45-2-101. General definitions. Unless otherwise specified in the statute, all words will be taken in the objective standard rather than in the subjective, and unless a different meaning plainly is required, the following definitions apply in this title:

(1) "Acts" has its usual and ordinary meaning and includes any bodily movement, any form of communication, and when relevant, a failure or omission to take action.

(2) "Administrative proceeding" means ~~any~~ *a* proceeding the outcome of which is required to be based on a record or documentation prescribed by law or in which a law or a regulation is particularized in its application to an individual.

(3) "Another" means a person or persons, as defined in this code, other tban tbe offender.

(4) "Benefit" means gain or advantage or anything regarded by the beneficiary as gain or advantage, including benefit to ~~any~~ *a* otber person or entity in whose welfare the beneficiary is interested. Benefit does not include an advantage promised generally to a group or class of voters as a consequence of public measures that a candidate engages to support or oppose.

(5) "Bodily injury" means physical pain, illness, or ~~any~~ *an* impairment of pbysical condition and includes mental illness or impairment.

(6) "Cohabit" means to live togother under the representation of being married.

(7) "Common scheme" means a series of acts or omissions motivated by a purpose to accomplish a single criminal objective or by a cominon purpose or plan tbat results in the repeated commission of the same offense or tbat affects the same person or tbe same persons or the property of the same person or persons.

(8) "Computer" means an electronic device that performs logical, arithmetic, and memory functions by the manipulation of electronic or magnetic impulses and includes all input, output, processing, storago, software, or cominunication facilities that are connected or related to tbat device in a system or network.

(9) "Computer network" means the interconnection of communication systems between coinputers or computers and remote terminals.

(10) "Computer program" means an instruction or statement or a series of instructions or statements, in a form acceptable to a computer, tbat in actual or modified form permits the functioning of a computer or computer system and causes it to perform specified functions.

(11) "Computer services" include but are not limited to computer time, data processing, and storage functions.

HeinOnline -- 1999 vol. II 1511 1999

(12) "Computer software" means a set of computer programs, procedures, and associated documentation concerned with the operation of a computer system.

(13) "Computer system" means a set of related, connected, or unconnected devices, computer software, or other related computer equipment.

(14) "Conduct" means an act or series of acts and the accompanying mental state.

(15) "Conviction" means a judgment of conviction or sentence entered upon a plea of guilty or upon a verdict or finding of guilty of an offense rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury.

(16) "Correctional institution" means the state prison, county or city jail, or other institution for the incarceration or custody of persons under sentence for offenses or awaiting trial or sentence for offenses.

(17) "Deception" means knowingly to:

(a) create or confirm in another an impression that is false and that the offender does not believe to be true;

(b) fail to correct a false impression that the offender previously has created or confirmed;

(c) prevent another from acquiring information pertinent to the disposition of the property involved;

(d) sell or otherwise transfer or encumber property without disclosing a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether the impediment is or is not of value or is or is not a matter of official record; or

(e) promise performance that the offender does not intend to perform or knows will not be performed. Failure to perform, standing alone, is not evidence that the offender did not intend to perform.

(18) "Defamatory matter" means anything that exposes a person or a group, class, or association to hatred, contempt, ridicule, degradation, or disgrace in society or to injury to the person's or its business or occupation.

(19) "Deprive" means:

(a) to withhold property of another:

(i) permanently;

(ii) for such a period as to appropriate a portion of its value; or

(iii) with the purpose to restore it only upon payment of reward or other compensation; or

(b) to dispose of the property of another and use or deal with the property so as to make it unlikely that the owner will recover it.

(20) "Deviate sexual relations" means sexual contact or sexual intercourse between two persons of the same sex or any form of sexual intercourse with an animal.

(21) "Document" means, with respect to offenses involving the medicaid program, any application, claim, form, report, record, writing, or correspondence, whether in written, electronic, magnetic, microfilm, or other form.

HeinOnline -- 1999 vol. II 1512 1999

(22) "Felony" means an offense in which the sentence imposed upon conviction is death or imprisonment in the state prison for ~~any~~ *a* term exceeding 1 year.

(23) "Forcible felony" means ~~any~~ *a* felony that involves the use or threat of physical force or violence against any individual.

(24) A "frisk" is a search by an external patting of a person's clothing.

(25) "Government" includes ~~any~~ *a* branch, subdivision, or agency of the government of the state or ~~any~~ *a* locality within it.

(26) "Harm" means loss, disadvantage, or injury or anything so regarded by the person affected, including loss, disadvantage, or injury to ~~any~~ *a* person or entity in whose welfare the affected person is interested.

(27) A "house of prostitution" means ~~any~~ *a* place where prostitution or promotion of prostitution is regularly carried on by one or more persons under the control, management, or supervision of another.

(28) "Human being" means a person who has been born and is alive.

(29) An "illegal article" is an article or thing that is prohibited by statute, rule, or order from being in the possession of a person subject to official detention.

(30) "Inmate" means a person who engages in prostitution in or through the agency of a house of prostitution.

(31) "Intoxicating substance" means ~~any~~ *a* controlled substance, as defined in Title 50, chapter 32, and ~~any~~ *an* alcoholic beverage, including but not limited to ~~any~~ *a* beverage containing 1/2 of 1% or more of alcohol by volume. Intoxicating substance does not include dealcoholized wine or ~~any~~ *a* beverage or liquid produced by the process by which beer, ale, port, or wine is produced if it contains less than 1/2 of 1% of alcohol by volume.

(32) An "involuntary act" means ~~any~~ *an* act that is:

(a) a reflex or convulsion;

(b) a bodily movement during unconsciousness or sleep;

(c) conduct during hypnosis or resulting from hypnotic suggestion; or

(d) a bodily movement that otherwise is not a product of the effort or determination of the actor, either conscious or habitual.

(33) "Juror" means ~~any~~ *a* person who is a member of ~~any~~ *a* jury, including a grand jury, impaneled by ~~any~~ *a* court in this state in ~~any~~ *an* action or proceeding or by ~~any~~ *an* officer authorized by law to impanel a jury in ~~any~~ *an* action or proceeding. The term "juror" also includes a person who has been drawn or summoned to attend as a prospective juror.

(34) "Knowingly"—a person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when the person is aware of the person's own conduct or that the circumstance exists. A person acts knowingly with respect to the result of conduct described by a statute defining an offense when the person is aware that it is highly probable that the result will be caused by the person's conduct. When knowledge of the existence of a particular fact is an element of an offense, knowledge is established if a person is aware of a high probability of its existence. Equivalent terms, such as "knowing" or "with knowledge", have the same meaning.

(35) "Medicaid" means the Montana medical assistance program provided for in Title 53, chapter 6.

HeinOnline -- 1999 vol. II 1513 1999

(36) "Medicaid agency" has the meaning in 53-6-155.

(37) "Medicaid benefit" means the provision of anything of pecuniary value to or on behalf of a recipient under the medicaid program.

(38) (a) "Medicaid claim" means a communication, whether in oral, written, electronic, magnetic, or other form:

(i) that is used to claim specific services or items as payable or reimbursable under the medicaid program; or

(ii) that states income, expense, or other information that is or may be used to determine entitlement to or the rate of payment under the medicaid program.

(b) The term includes ~~any~~ related documents submitted as a part of or in support of the claim.

(39) "Mentally defective" means that a person suffers from a mental disease or defect that renders the person incapable of appreciating the nature of the person's own conduct.

(40) "Mentally incapacitated" means that a person is rendered temporarily incapable of appreciating or controlling the person's own conduct as a result of the influence of an intoxicating substance.

(41) "Misdemeanor" means an offense for which the sentence imposed upon conviction is imprisonment in the county jail for ~~any~~ *a* term or a fine, or both, or for which the sentence imposed is imprisonment in the state prison for ~~any~~ *a* term of 1 year or less.

(42) "Negligently"—a person acts negligently with respect to a result or to a circumstance described by a statute defining an offense when the person consciously disregards a risk that the result will occur or that the circumstance exists or when the person disregards a risk of which the person should be aware that the result will occur or that the circumstance exists. The risk must be of a nature and degree that to disregard it involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation. "Gross deviation" means a deviation that is considerably greater than lack of ordinary care. Relevant terms, such as "negligent" and "with negligence", have the same meaning.

(43) "Obtain" means:

(a) in relation to property, to bring about a transfer of interest or possession, whether to the offender or to another; and

(b) in relation to labor or services, to secure the performance of the labor or service.

(44) "Obtains or exerts control" includes but is not limited to the taking, the carrying away, or the sale, conveyance, or transfer of title to, interest in, or possession of property.

(45) "Occupied structure" means any building, vehicle, or other place suitable for human occupancy or night lodging of persons or for carrying on business, whether or not a person is actually present. Each unit of a building consisting of two or more units separately secured or occupied is a separate occupied structure.

(46) "Offender" means a person who has been or is liable to be arrested, charged, convicted, or punished for a public offense.

(47) "Offense" means a crime for which a sentence of death or of imprisonment or a fine is authorized. Offenses are classified as felonies or misdemeanors.

HeinOnline -- 1999 vol. II 1514 1999

(48) "Official detention" means imprisonment resulting from a conviction for an offense, confinement for an offense, confinement of a person charged with an offense, detention by a peace officer pursuant to arrest, detention for extradition or deportation, or ~~any~~ lawful detention for the purpose of the protection of the welfare of the person detained or for the protection of society. Official detention does not include supervision of probation or parole, constraint incidental to release on bail, or an unlawful arrest unless the person arrested employed physical force, a threat of physical force, or a weapon to escape.

(49) "Official proceeding" means a proceeding heard or that may be heard before ~~any~~ *a* legislative, *a* judicial, *an* administrative, or ~~other~~ *another* governmental agency or official authorized to take evidence under oath, including any referee, hearing examiner, commissioner, notary, or other person taking testimony or deposition in connection with the proceeding.

(50) "Other state" means ~~any~~ *a* state or territory of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(51) "Owner" means a person other than the offender who has possession of or ~~any~~ other interest in the property involved, even though the interest or possession is unlawful, and without whose consent the offender has no authority to exert control over the property.

(52) "Party official" means a person who holds an elective or appointive post in a political party in the United States by virtue of which the person directs or conducts or participates in directing or conducting party affairs at any level of responsibility.

(53) "Peace officer" means ~~any~~ *a* person who by virtue of the person's office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses while acting within the scope of the person's authority.

(54) "Pecuniary benefit" is benefit in the form of money, property, commercial interests, or anything else the primary significance of which is economic gain.

(55) "Person" includes an individual, business association, partnership, corporation, government, or other legal entity and an individual acting or purporting to act for or on behalf of ~~any~~ *a* government or subdivision of government.

(56) "Physically helpless" means that a person is unconscious or is otherwise physically unable to communicate unwillingness to act.

(57) "Possession" is the knowing control of anything for a sufficient time to be able to terminate control.

(58) "Premises" includes any type of structure or building and ~~any~~ real property.

(59) "Property" means ~~any~~ *a* tangible or intangible thing of value. Property includes but is not limited to:

(a) real estate;

(b) money;

(c) commercial instruments;

(d) admission or transportation tickets;

(e) written instruments that represent or embody rights concerning anything of value, including labor or services, or that are otherwise of value to the owner;

HeinOnline -- 1999 vol. II 1515 1999

(f) things growing on, affixed to, or found on land and things that are part of or affixed to ~~any~~ *a* building;

(g) electricity, gas, and water;

(h) birds, animals, and fish that ordinarily are kept in a state of confinement;

(i) food and drink, samples, cultures, microorganisms, specimens, records, recordings, documents, blueprints, drawings, maps, and whole or partial copies, descriptions, photographs, prototypes, or models thereof;

(j) ~~any~~ other articles, materials, devices, substances, and ~~any~~ whole or partial copies, descriptions, photographs, prototypes, or models thereof that constitute, represent, evidence, reflect, or record secret scientific, technical, merchandising, production, or management information or a secret designed process, procedure, formula, invention, or improvement; and

(k) electronic impulses, electronically processed or produced data or information, commercial instruments, computer software or computer programs, in either machine- or human-readable form, computer services, any other tangible or intangible item of value relating to a computer, computer system, or computer network, and ~~any~~ copies thereof.

(60) "Property of another" means real or personal property in which a person other than the offender has an interest that the offender has no authority to defeat or impair, even though the offender may have an interest in the property.

(61) "Public place" means ~~any~~ *a* place to which the public or ~~any~~ *a* substantial group has access.

(62) "Public servant" means ~~any~~ *an* officer or employee of government, including but not limited to legislators, judges, and firefighters, and ~~any~~ *a* person participating as a juror, advisor, consultant, administrator, executor, guardian, or court-appointed fiduciary. The term does not include witnesses. The term "public servant" includes one who has been elected or designated to become a public servant.

(63) "Purposely"—a person acts purposely with respect to a result or to conduct described by a statute defining an offense if it is the person's conscious object to engage in that conduct or to cause that result. When a particular purpose is an element of an offense, the element is established although the purpose is conditional, unless the condition negatives the harm or evil sought to be prevented by the law defining the offense. Equivalent terms, such as "purpose" and "with the purpose", have the same meaning.

(64) (a) "Serious bodily injury" means bodily injury that:

(i) creates a substantial risk of death;

(ii) causes serious permanent disfigurement or protracted loss or impairment of the function or process of ~~any~~ *a* bodily member or organ; or

(iii) at the time of injury, can reasonably be expected to result in serious permanent disfigurement or protracted loss or impairment of the function or process of ~~any~~ *a* bodily member or organ.

(b) The term includes serious mental illness or impairment.

(65) "Sexual contact" means ~~any~~ touching of the sexual or other intimate parts of the person of another for the purpose of arousing or gratifying the sexual desire of either party.

HeinOnline -- 1999 vol. II 1516 1999

(66) "Sexual intercourse" means penetration of the vulva, anus, or mouth of one person hy the penis of another person, penetration of the vulva or anus of one person hy ~~any~~ *a* hody member of another person, or penetration of the vulva or anus of one person by ~~any~~ *a* foreign instrument or object manipulated by another person for the purpose of arousing or gratifying the sexual desire of either party. Any penetration, however slight, is sufficient.

(67) "Solicit" or "solicitation" means to command, authorize, urge, incite, request, or advise another te commit an offense.

(68) "State" or "this state" means the state of Montana, all the land and water in respect to which the state of Montana has either exclusive or concurrent jurisdiction, and the air space above the land and water.

(69) "Statute" means ~~any~~ *an* act of the legislature of this state.

(70) "Stolen property" means property over which control has been obtained by theft.

(71) A "stop" is the temporary detention of a person that results when a peace officer orders the person to remain in the peace officer's presence.

(72) "Tamper" means to interfere with something improperly, meddle with it, make unwarranted alterations in its existing condition, or deposit refuse upon it.

(73) "Threat" means a menace, however communicated, to:

(a) inflict physical harm on the person threatened or any other person or on property;

(b) subject any person to physical confinement or restraint;

(c) commit ~~any~~ *a* criminal offense;

(d) accuse ~~any~~ *a* person of a criminal offense;

(e) expose ~~any~~ *a* person to hatred, contempt, or ridicule;

(f) harm the credit or business repute of ~~any~~ *a* person;

(g) reveal ~~any~~ information sought to be concealed by the person threatened;

(h) take action as an official against anyone or anything, withhold official action, or cause the action or withholding;

(i) bring about or continue a strike, boycott, or other similar collective action if the person making the threat demands or receives property that is not for the benefit of groups that the person purports to represent; or

(j) testify or provide information or withhold testimony or information with respect to another's legal claim or defense.

(74) (a) "Value" means the market value of the property at the time and place of the crime or, if the market value cannot be satisfactorily ascertained, the cost of the replacement of the property within a reasonable time after the crime. If the offender appropriates a portion of the value of the property, the value must be determined as follows:

(i) The value of an instrument constituting an evidence of debt, such as a check, draft, or promissory note, is considered the amount due or collectible. The figure is ordinarily the face amount of the indebtedness less any portion of the indebtedness that has been satisfied.

HeinOnline -- 1999 vol. II 1517 1999

(ii) The value of any other instrument that creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation is considered the amount of economic loss that the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

(iii) The value of electronic impulses, electronically produced data or information, computer software or programs, or any other tangible or intangible item relating to a computer, computer system, or computer network is considered to be the amount of economic loss that the owner of the item might reasonably suffer by virtue of the loss of the item. The determination of the amount of economic loss includes but is not limited to consideration of the value of the owner's right to exclusive use or disposition of the item.

(b) When it cannot be determined if the value of the property is more or less than ~~$500~~ *$1,000* by the standards set forth in subsection (74)(a), its value is considered to be an amount less than ~~$500~~ *$1,000*.

(c) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property.

(75) "Vehicle" means ~~any~~ *a* device for transportation by land, water, or air or by mobile equipment, with provision for transport of an operator.

(76) "Weapon" means ~~any~~ *an* instrument, article, or substance that, regardless of its primary function, is readily capable of being used to produce death or serious bodily injury.

(77) "Witness" means a person whose testimony is desired in ~~any~~ *an* official proceeding, in any investigation by a grand jury, or in a criminal action, prosecution, or proceeding."

Section 3. Section 45-6-101, MCA, is amended to read:

"45-6-101. Criminal mischief. (1) A person commits the offense of criminal mischief if the person knowingly or purposely:

(a) injures, damages, or destroys any property of another or public property without consent;

(b) without consent tampers with property of another or public property so as to endanger or interfere with persons or property or its use;

(c) damages or destroys property with the purpose to defraud an insurer; or

(d) fails to close a gate previously unopened ~~which~~ *that* the person has opened, leading in or out of any enclosed premises. This does not apply to gates located in cities or towns.

(2) A person convicted of criminal mischief must be ordered to make restitution in an amount and manner to be set by the court. The court shall determine the manner and amount of restitution after full consideration of the convicted person's ability to pay the restitution. Upon good cause shown by the convicted person, the court may modify any previous order specifying the amount and manner of restitution. Full payment of the amount of restitution ordered must be made prior to the release of state jurisdiction over the person convicted.

(3) A person convicted of the offense of criminal mischief shall be fined not to exceed ~~$500~~ *$1,000* or be imprisoned in the county jail for any term not to exceed 6 months, or both. If the offender commits the offense of criminal mischief and causes pecuniary loss in excess of ~~$500~~ *$1,000*, injures or kills a commonly

HeinOnline -- 1999 vol. II 1518 1999

domesticated hoofed animal, or causes a substantial interruption or impairment of public communication, transportation, supply of water, gas, or power, or other public services, the offender shall be fined an amount not to exceed $50,000 or be imprisoned in the state prison for ~~any~~ *a* term not to exceed 10 years, or both.

(4) Amounts involved in criminal mischiefs committed pursuant to a common scheme or the same transaction, whether against the public or the same person or several persons, may be aggregated in determining pecuniary loss."

Section 4. Section 45-6-103, MCA, is amended to read:

"45-6-103. Arson. (1) A person commits the offense of arson when, by means of fire or explosives, the person knowingly or purposely:

(a) damages or destroys a structure, vehicle, personal property (other than a vehicle) that exceeds ~~$500~~ *$1,000* in value, crop, pasture, forest, or other real property that is property of another without consent;

(b) damages or destroys a structure, vehicle, crop, pasture, forest, or other property that the person owns or has a possessory interest in, with the purpose of obtaining a pecuniary or other gain through fraud or deception; or

(c) places another person in danger of death or bodily injury, including a firefighter responding to or at the scene of a fire or explosion.

(2) A person convicted of the offense of arson shall be imprisoned in the state prison for a term not to exceed 20 years or be fined an amount not to exceed $50,000, or both."

Section 5. Section 45-6-301, MCA, is amended to read:

"45-6-301. Theft. (1) A person commits the offense of theft when the person purposely or knowingly obtains or exerts unauthorized control over property of the owner and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or

(c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment probably will deprive the owner of the property.

(2) A person commits the offense of theft when the person purposely or knowingly obtains by threat or deception control over property of the owner and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or

(c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment probably will deprive the owner of the property.

(3) A person commits the offense of theft when the person purposely or knowingly obtains control over stolen property knowing the property to have been stolen by another and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or

(c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment probably will deprive the owner of the property.

HeinOnline -- 1999 vol. II 1519 1999

(4) A person commits the offense of theft when the person purposely or knowingly obtains or exerts unauthorized control over any part of any public assistance provided under Title 52 or 53 by a state or county agency, regardless of the original source of assistance, by means of:

(a) a knowingly false statement, representation, or impersonation; or

(b) a fraudulent scheme or device.

(5) A person commits the offense of theft when the person purposely or knowingly obtains or exerts or helps another obtain or exert unauthorized control over any part of any benefits provided under Title 39, chapter 71 or 72, by means of:

(a) a knowingly false statement, representation, or impersonation; or

(b) deception or other fraudulent action.

(6) A person commits the offense of theft when the person purposely or knowingly commits insurance fraud as provided in 33-1-1202.

(7) (a) A person convicted of the offense of theft of property not exceeding ~~$500~~ *$1,000* in value shall be fined not to exceed ~~$500~~ *$1,000* or be imprisoned in the county jail for any term not to exceed 6 months, or both. A person convicted of a second offense shall be fined ~~$500~~ *$1,000* or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of a third or subsequent offense shall be fined $1,000 and be imprisoned in the county jail for a term of not less than 30 days or more than 6 months.

(b) A person convicted of the offense of theft of property exceeding ~~$500~~ *$1,000* in value or theft of any commonly domesticated hoofed animal shall be fined not to exceed $50,000 or be imprisoned in the state prison for any term not to exceed 10 years, or both.

(8) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property."

Section 6. Section 45-6-309, MCA, is amended to read:

"45-6-309. Failure to return rented or leased personal property. (1) A person commits the offense of failure to return rented or leased personal property if, without notice to and permission of the lessor, the person purposely and knowingly fails to return the property within 48 hours after the time provided for return in the rental agreement, provided that clear written notice, in bold print, of the date and time when return of the property is required and of the penalty prescribed in this section is stated in the rental or lease agreement.

(2) Presentation to the lessor by the lessee of identification that is false for the purpose of obtaining a rental or lease agreement constitutes prima facie evidence of commission of the offense.

(3) After the rental or lease period specified in the rental or lease agreement has expired, failure to return rented or leased personal property within 72 hours of written demand by the lessor, sent by certified mail to the renter or lessee at the address given at the time of entering the rental or lease agreement, constitutes prima facie evidence of commission of the offense.

(4) (a) A person convicted of failure to return rented or leased personal property not exceeding ~~$500~~ *$1,000* in value shall be fined not to exceed ~~$500~~

HeinOnline -- 1999 vol. II 1520 1999

$1,000 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(b) A person convicted of failure to return rented or leased personal property exceeding ~~$500~~ *$1,000* in value shall be imprisoned in the state prison for a term not to exceed 10 years."

Section 7. Section 45-6-311, MCA, is amended to read:

"45-6-311. Unlawful use of a computer. (1) A person commits the offense of unlawful use of a computer if the person knowingly or purposely:

(a) obtains the use of any computer, comnputer system, or computer network without consent of the owner;

(b) alters or destroys or causes another to alter or destroy a computer program or computer software without consent of the owner; or

(c) obtains the use of or alters or destroys a computer, comnputer system, computer network, or any part thereof as part of a deception for the purpose of obtaining money, property, or computer services from the owner of the computor, computer system, computer network, or part thereof or from any other person.

(2) A person convicted of the offense of unlawful use of a computer involving property not exceeding ~~$500~~ *$1,000* in value shall be fined not to exceed ~~$500~~ *$1,000* or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of the offense of unlawful use of a computer involving property exceeding ~~$500~~ *$1,000* in value shall be fined not more than 2 1/2 times the value of the property used, altered, destroyed, or obtained or be imprisoned in the state prison for a term not to exceed 10 years, or both."

Section 8. Section 45-6-312, MCA, is amended to read:

"45-6-312. Unauthorized acquisition or transfer of food stamps. (1) A person commits the offense of unauthorized acquisition or transfer of food stamps if the person knowingly:

(a) acquires, purchases, pessesses, or uses any food stamp or coupen that the person is not entitled to; or

(b) transfers, sells, trades, gives, or otherwise dispeses of any foed stamp or coupon to another person not entitled te receive or use it.

(2) A person convicted of an offense under this section shall be fined not more than ~~$500~~ *$1,000* or be imprisoned in the county jail for not more than 6 months, or both. A person convicted of an offense under this section, which offense is part of a common scheme or in which the value of the food stamps exceeds ~~$500~~ *$1,000*, shall be fined not more than $50,000 or be imprisoned in the state prison for not more than 10 years, or both.

(3) As used in this section, "food stamp or coupen" means any stamp, coupon, or type of certification provided for the purchase of eligible food pursuant to the Food Stamp Act of 1977, 7 U.S.C. 2011 through 2029, or any similar public assistance program."

Section 9. Section 45-6-313, MCA, is amended to read:

"45-6-313. Medicaid fraud. (1) A person commits the offense of medicaid fraud when:

(a) the person obtains a medicaid payment or benefit for the person or another person by purposely or knowingly:

HeinOnline -- 1999 vol. II 1521 1999

(i) making, submitting, or authorizing the making or submitting of a false or misleading medicaid claim, statement, representation, application, or document to a medicaid agency for a service or item when the person knows or has reason to know that tbe person is not entitled under applicable statutes, regulations, rules, or policies to medicaid payment or benefits for the service or item or for the amount of payment requested or claimed; or

(ii) making, submitting, or authorizing the making or submitting of a medicaid claim, statement, representation, application, or document under tbe medicaid program for a service or item when the person knows or bas reason to know that the person is not entitled under applicable statutes, regulations, rules, or policies to medicaid payment or benefit for the service or item or for the amount of payment requested or claimed;

(b) the person purposely or knowingly:

(i) solicits, accepts, offers, or provides any remuneration, including but not limited to a kickback, bribe, or rebate, other than an amount legally payable under the medical assistance program, for furnishing services or items for which payment may be made under the medicaid program or in return for purchasing, leasing, ordering, arranging for, or recommending the purcbasing, leasing, or ordering of any services or items from a provider for which payment may be made under the medicaid program; or

(ii) makes, offers, or accepts a remuneration, a rebate of a fee, or a charge for referring a recipient to another provider for the furnishing of services or items for which payment may be made under the medicaid program; or

(c) the person, with respect to a managed care contract, healtb maintenance organization contract, or similar contract or subcontract under the medicaid program, purposely or knowingly fails or refuses to provide covered medically necessary services to eligihle recipients as required by the contract.

(2) Any conduct or activity that does not violate or that is protected under the provisions of, or federal regulations adopted under, 42 U.S.C. 1395nn or 42 U.S.C. 1320a-7b(b), as may be amended, is not considered an offense under subsection (1)(b), and the conduct or activity must be accorded the same protections allowed under federal laws and regulations.

(3) In a prosecution for a violation of this section, it is a defense if the person acted in reliance upon the written authorization or advice of the department.

(4) (a) A person convicted of the offense of medicaid fraud involving payments, benefits, or claims not exceeding ~~$500~~ *$1,000* in value shall be fined an amount not to exceed ~~$500~~ *$1,000* or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of a second offense shall be fined ~~$500~~ *$1,000* and be imprisoned in the county jail for a term not less than 10 days or more than 6 months. A person convicted of a third or subsequent offense shall he fined $1,000 and be imprisoned in tbe county jail for a term not less than 30 days or more than 1 year.

(h) A person convicted of the offense of medicaid fraud involving payments, benefits, or claims exceeding ~~$500~~ *$1,000* in value shall be fined an amount not to exceed the greater of $50,000 or 10 times the value of the payments obtained or be imprisoned in the state prison for a term not to exceed 10 years, or both.

(c) For purposes of imposing sentence for a conviction under subsection (1)(b), the value of payments or benefits involved is the greater of the value of

HeinOnline -- 1999 vol. II 1522 1999

medicaid payments or benefits received as a result of the illegal conduct or activity or the value of the remuneration, rebate, or charge involved.

(d) Amounts involved in medicaid fraud committed pursuant to a common scheme or the same transaction may he aggregated in determining the value involved.

(e) A person convicted of the offense of medicaid fraud must be suspended from participation in the medicaid program:

(i) for any period of time not less than 1 year for a first offense, or the person may be permanently terminated from participation in the medical assistance program;

(ii) for any period of time not less than 3 years for a second offense, or the person may be permanently terminated from participation in the medical assistance program; or

(iii) permanently for a third offense.

(5) In addition to any other penalty provided by law, a person convicted of medicaid fraud is not entitled to hill or collect from the recipient, the medicaid program, or any other third-party payor for the services or items involved and shall repay to the medicaid program any payments or henefits ohtained by any person for the services or items involved.

(6) The establishment of the criminal offenses specified in this section does not preclude the application of any other provision of law."

Section 10. Section 45-6-316, MCA, is amended to read:

"45-6-316. Issuing a bad check. (1) A person commits the offense of issuing a bad check when the person issues or delivers a check or other order upon a real or fictitious depository for the payment of money knowing that it will not be paid by the depository.

(2) If the offender has an account with the depository, failure to make good the check or other order within 5 days after written notice of nonpayment has been received by the issuer is prima facie evidence that the offender knew that it would not be paid hy the depository.

(3) A person convicted of issuing a bad check shall be fined not to exceed ~~$500~~ *$1,000* or be imprisoned in the county jail for any term not to exceed 6 months, or both. If the offender has engaged in issuing bad checks that are part of a common scheme or if the value of any property, labor, or services obtained or attempted to be obtained exceeds ~~$500~~ *$1,000*, the offender shall be fined not to exceed $50,000 or be imprisoned in the state prison for any term not to exceed 10 years, or both."

Section 11. Section 45-6-317, MCA, is amended to read:

"45-6-317. Deccptive practices. (1) A person commits the offense of deceptive practices when the person purposely or knowingly:

(a) causes another, by deception or threat, to execute a document disposing of property or a document by which a pecuniary obligation is incurred;

(h) makes or directs another to make a false or deceptive statement addressed to the public or any person for the purpose of promoting or procuring the sale of property or services;

(c) makes or directs another to make a false or deceptive statement to any person respecting the financial condition of the person making or directing

HeinOnline -- 1999 vol. II 1523 1999

another to make the statement for the purpose of procuring a loan or credit or accepts a false or deceptive statement from any person who is attempting to procure a loan or credit regarding that person's financial condition; or

(d) obtains or attempts te obtain property, labor, or services by any of the following means:

(i) using a credit card ~~which~~ *that* was issued to another without the other's consent;

(ii) using a credit card that has been revoked or canceled;

(iii) using a credit card that bas been falsely made, counterfeited, or altered in any material respect;

(iv) using the pretended number or description of a fictitious credit card;

(v) using a credit card that has expired when the credit card clearly indicates the expiration date.

(2) A person convicted of the offense of deceptive practices shall be fined not to exceed ~~$500~~ *$1,000* or imprisoned in the county jail for a term not to exceed 6 months, or both. If the deceptive practices are part of a common scheme or the value of any property, labor, or services obtained or attempted to be obtained exceeds ~~$500~~ *$1,000*, the offender shall be fined not to exceed $50,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both."

Seetion 12. Section 45-6-325, MCA, is amended to read:

"45-6-325. Forgery. (1) A person commits the offense of forgery when with purpose to defraud the person knowingly:

(a) without authority makes or alters ~~any~~ *a* document or other object apparently capable of being used to defraud another in a manner that it purports to have been made by another or at another time or with different provisions or of different composition;

(b) issues or delivers the document or other object knowing it te have been thus made or altered;

(c) pessesses with the purpose of issuing or delivering any such document or other object knowing it to have been thus made or altered; or

(d) pessesses with knowledge of its character any plate, die, or other device, apparatus, equipment, or article spocifically designed for use in counterfeiting or otherwise forging written instruments.

(2) A purpose to defraud means the purpose of causing another to assume, create, transfer, alter, or terminate any right, obligation, or power with reference to any person or property.

(3) A document or other object capable of being used to defraud another includes but is not limited to one by which any right, obligation, or power with reference to any person or property may be created, transferred, altered, or terminated.

(4) A person convicted of the offense of forgery shall be fined not to exceed ~~$500~~ *$1,C00* or be imprisoned in the county jail for any term not to exceed 6 months, or both. If the forgery is part of a common scheme or if the value of the property, labor, or services obtained or attempted to be obtained exceeds ~~$500~~ *$1,000*, the offender shall be fined not to exceed $50,000 or be imprisoned in the state prison for any term not to exceed 20 years, or both."

HeinOnline -- 1999 vol. II 1524 1999

Section 13. Section 45-7-210, MCA, is amended to read:

"45-7-210. False claims to public agencies. (1) A person commits an offense under this section if the person purposely and knowingly presents for allowance or for payment any false or fraudulent claim, bill, account, voucher, or writing to any public agency, public servant, or contractor authorized to allow or pay claims presented to public agencies if genuine.

(2) (a) Except as provided in subsection (2)(b), a person convicted of an offense under this section shall be fined not to exceed ~~$500~~ *$1,000* or imprisoned in the county jail for a term not to exceed 6 months, or both.

(b) If false or fraudulent claims are submitted purposely and knowingly as part of a common scheme or if the value of the claim or the aggregate value of all claims exceeds ~~$500~~ *$1,000*, a person convicted of an offense under this section shall be fined not to exceed $10,000 or imprisoned in the state prison for a term not to exceed 10 years, or both."

Approved April 21, 1999

CHAPTER NO. 398

[HB 257]

AN ACT IMPOSING AN ADDITIONAL SURCHARGE UPON CRIMINAL CONVICTIONS TO FINANCE LOCAL VICTIM AND WITNESS ADVOCATE PROGRAMS; PROVIDING THAT A PORTION OF THE SURCHARGE MUST BE RETAINED BY THE ASSESSING COURT FOR ADMINISTRATIVE EXPENSES; AMENDING SECTIONS 46-18-236 AND 46-18-251, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-18-236, MCA, is amended to read:

"46-18-236. Imposition of charge upon conviction or forfeiture — administration. (1) Except as provided in subsection (2), there must he imposed by all courts of original jurisdiction on a defendant upon ~~his~~ conviction for any conduct made criminal by state statute or upon forfeiture of bond or bail a charge that is in addition to other taxable court costs, fees, or fines, as follows:

(a) $15 for each misdemeanor charge; ~~and~~

(b) the greater of $20 or 10% of the fine levied for each felony charge*; and*

(c) an additional $10 for each misdemeanor and felony charge under Title 45, 61-8-401, or 61-8-406.

(2) If a convicting court determines under 46-18-231 and 46-18-232 that the defendant is not able to pay the fine and costs or that ~~he~~ *the defendant* is unable to pay within a reasonable time, the court ~~must~~ *shall* waive payment of the charge imposed by this section.

(3) The ~~charge~~ *charges* imposed by this section ~~is~~ *are* not ~~a fine~~ *fines* and must be imposed in addition to any fine and may not be used in determining the jurisdiction of any court.

(4) When the payment of a fine is to be made in installments over a period of time, the ~~charge~~ *charges* imposed by this section must be collected from the first

HeinOnline -- 1999 vol. II 1525 1999

payment made and each subsequent payment as necessary if the first payment is not sufficient to cover the ~~charge~~ *charges*.

(5) The charges collected under subsection (1), except those collected by a justice's court, must be deposited with the appropriate local government finance officer or treasurer. If a city municipal court or city or town court is the court of original jurisdiction, the charges collected under subsection (1) must be deposited with the city or town finance officer or treasurer. If a district court is the court of original jurisdiction, the charges collected under subsection (1) must be deposited with the county finance officer or treasurer. If the court of original jurisdiction is a court within a consolidated city-county government within the meaning of Title 7, chapter 3, the chargos collected under subsection (1) must be deposited with the finance officer or treasurer of the consolidated government.

(6) (a) A city or town finance officer or treasurer may retain the charges collected under ~~subsection~~ *subsections* (1)*(a) and (1)(b)* by a city municipal court or a city or town court and may use that money for the payment of salaries of the city or town attorney and ~~his~~ deputies.

(b) Each county finance officer or treasurer may retain the charges collected under ~~subsection~~ *subsections* (1)*(a) and (1)(b)* by district courts for crimes committed or alleged to have been committed within that county. The county finance officer or treasurer shall use the money for the payment of salaries of its deputy county attorneys and for the payment of other salaries in the office of the county attorney, and any funds not needed for ~~such~~ *those* salaries may be used for the payment of any other county salaries.

(7) (a) Except as provided in subsection (7)(b), each county, city, or town finance officer or treasurer may retain the charges collected under subsection (1)(c) for payment of the expenses of a victim and witness advocate program that provides the services specified in Title 40, chapter 15, and Title 46, chapter 24, and that is operated or used by the county, city, or town.

(b) The appropriate county, city, or town finance officer or treasurer shall deposit $1 of each $10 charge collected under subsection (1)(c) in the collecting court's fund for mitigation of administrative costs incurred by the court in the collection of the charge. The funds deposited under this subsection (7)(b) are not subject to allocation under 46-18-251.

(c) If the county, city, or town does not operate or use a victim and witness advocate program, all charges collected under subsection (1)(c) must be paid to the crime victims compensation and assistance account established in 53-9-109, except as provided in subsection (7)(b)."

Section 2. Section 46-18-251, MCA, is amended to read:

"**46-18-251. Allocation of fines, costs, restitution, and other charges.** (1) ~~If~~ *Except as provided in 46-18-236(7)(b), if* an offender is subjected to any combination of fines, costs, restitution, charges, or other payments arising out of the same criminal proceeding, money collected from the offender must be allocated as provided in this section.

(2) Except as otherwise provided in *46-18-236(7)(b) and* this section, if a defendant is subject to payment of restitution and any combination of fines, costs, charges under the provisions of 46-18-236, or other payments, 50% of all money collected from the defendant must be applied to payment of restitution and the balance must be applied to other payments in the following order:

(a) payment of charges imposed pursuant to 46-18-236;

HeinOnline -- 1999 vol. II 1526 1999

(b) payment of supervisory fees imposed pursuant to 46-23-1031;

(c) payment of costs imposed pursuant to 46-18-232 or 46-18-233;

(d) payment of fines imposed pursuant to 46-18-231 or 46-18-233; and

(e) any other payments ordered by the court.

(3) The money applied under subsection (2) to the payment of restitution must be paid in the following order:

(a) to the victim until the victim's unreimhursed pecuniary loss is satisfied;

(b) to the crime victims compensation and assistance account provided for in 53-9-109 until the account is fully reimbursed for compensation to the victim;

(c) to any other government agency that has compensated the victim for the victim's pecuniary loss;

(d) to any insurance company that has compensated the victim for the victim's pecuniary loss.

(4) If any fines, costs, charges, or other payments remain unpaid after all of the restitution has been paid, any additional money collected must be applied to payment of those fmes, costs, charges, or other payments. If any restitution remains unpaid after all of the fines, costs, charges, or other payments have been paid, any additional money collected must be applied toward payment of the restitution."

Section 3. Effective date. [This act] is effective July 1, 1999.

Approved April 21, 1999

CHAPTER NO. 399

[HB 282]

AN ACT REALLOCATING TAX RATES AND REVENUE COLLECTED FROM EMPLOYERS TO FUND THE EMPLOYMENT SECURITY ACCOUNT AND TO MAINTAIN LOCAL DELIVERY OF EMPLOYMENT SERVICES; INCREASING THE TAX RATE ON TAXABLE WAGES FOR EXPERIENCE-RATED EMPLOYERS FROM 0.1 PERCENT TO 0.13 PERCENT; CHANGING THE ROUNDING CALCULATION OF THE TAX RATE FOR AN EMPLOYER WHO HAS FAILED TO FILE PAYROLL REPORTS FROM THE NEAREST ONE-TENTH OF 1 PERCENT TO THE NEAREST ONE-HUNDREDTH OF 1 PERCENT; DECREASING THE UNEMPLOYMENT INSURANCE TAX RATE ON TAXABLE WAGES FOR EXPERIENCE-RATED EMPLOYERS BY 0.03 PERCENT; AMENDING SECTIONS 39-51-404, 39-51-409, 39-51-1213, AND 39-51-1218, MCA; AND PROVIDING A DELAYED APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-51-404, MCA, is amended to read:

"39-51-404. Administrative expenses. (1) Money credited to the account of this state in the unemployment trust fund by the secretary of the treasury of the United States pursuant to sections 903 and 904 of the Social Security Act (42 U.S.C. 1103 and 1104), as amended, may be requisitioned and used for the payment of expenses incurred for the administration of this chapter pursuant to

HeinOnline -- 1999 vol. II 1527 1999

a specific appropriation by the legislature if the expenses are incurred and the money is requisitioned after the enactment of an appropriation law that:

(a) specifies the purposes for which the money is appropriated and the amounts appropriated;

(b) limits the period within which the money may be expended to a period ending not more than 2 years after the date of the enactment of the appropriation law; and

(c) limits the amount that may be used during any 12-month period beginning on July 1 and ending on the next June 30 to an amount not exceeding the amount by which the aggregate of the amounts credited to the account of this state pursuant to sections 903 and 904 of the Social Security Act (42 U.S.C. 1103 and 1104), as amended, during the same 12-month period and the 34 preceding 12-month periods exceeds the aggregate of the amounts used pursuant to this section and charged against the amounts credited to the account of this state during any of the 35 12-month periods.

(2) For the purposes of this section, amounts used during any 12-month period must be charged against equivalent amounts that were first credited and that are not already charged, except that an amount used for administration during any 12-month period may not be charged against any amount credited during a 12-month period earlier than the 34th preceding period. Money requisitioned for the payment of expenses of administration pursuant to this section must be deposited in the unemployment insurance administration account but, until expended, must remain a part of the unemployment insurance fund.

(3) The department shall maintain a separate record of the deposit, obligation, expenditure, and return of funds deposited. If any money deposited is for any reason not to be expended for the purpose for which it was appropriated or if it remains unexpended at the end of the period specified by the law appropriating the money, it must be withdrawn and returned to the secretary of the treasury of the United States for credit to this state's account in the unemployment trnst fund.

(4) An assessment equal to ~~0.1%~~ *0.13%* of all taxable wages provided for in 39-51-1108 and 0.05% of total wages paid by employers not covered by an experience rating must be levied against and paid by all employers. All assessments and investment income must be depesited in the employment security account provided for in 39-51-409."

Section 2. Section 39-51-409, MCA, is amended to read:

"39-51-409. Employment security account. (1) There is an account created in the state special revenue fund called the employment security account.

(2) The department may transfer funds from the account to the unemployment insurance fund account provided for in 39-51-402 upon receiving approval from the budget director that the transfer will not decrease the money in the account below the level appropriated by the legislature to provide employment ~~office~~ *services* programs.

(3) The department may transfer appropriation authority in ~~the~~ employment ~~office program~~ *services programs* between the federal special revenue and the state special revenue fund types."

Section 3. Section 39-51-1213, MCA, is amended to read:

HeinOnline -- 1999 vol. II 1528 1999

"39-51-1213. Classification of employers for experience rating purposes. (1) The department shall for each calendar year classify employers in accordance with their actual experience in the payment of contrihutions and with respect to benefits charged against their accounts, with contribution rates reflecting benefit experience. Each employer's rate for a calendar year must be determined on the basis of the employer's record as of October 1 of the preceding calendar year.

(2) In making the classification, each eligible and deficit employer's contribution rate is determined in the manner set forth below:

(a) Each employer is given an "experience factor", which is contributions paid since October 1, 1981, minus benefits charged on each employer's account since Octoher 1, 1981, divided by the employer's average annual taxable payroll rounded to the next lower dollar amount for the 3 fiscal years immediately preceding the computation date. The computation of the "experience factor" must be to six decimal places.

(b) Schedules must be prepared listing all eligible and deficit employers in inverse numerical order of their experience factors. There must be listed on the schedules for each employer in addition to the experience factor:

(i) the amount of the employer's taxable payroll for the fiscal year ending on the computation date; and

(ii) the cumulative tetal consisting of the sum of the employer's taxable payroll for the fiscal year ending on the computation date and the corresponding taxable payrolls for all other employers preceding that employer on the schedules.

(3) The cumulative taxable payroll amounts listed on the schedules provided for in 39-51-1218 must be segregatod into groups that will yield approximately the average tax rate according to the tax schedule assigned for that particular taxable year. Each group must be identified by the rate class numher listed in the table that represente the percentage limits of each group. Each employer on the schedules is assigned that contribution rate opposite that employer's rate class for the tax schedule in effect for the taxahle year.

(4) (a) If the grouping of rate classes requires the inclusion of exactly one-half of an employer's taxable payroll, the employer is assigned the lower of the two rates designated for the two classes in which the halves of that employer's taxahle payroll are required.

(b) If the group of rate classes requires the inclusion of a portion other than exactly one-half of an employer's taxahle payroll, the employer is assigned the rate designated for the class in which the greater part of that employer's taxable payroll is required.

(c) If one or more employers on the schedules have experience factors identical to that of the last employer included in a particular rato class, all such employers are included in and assigned the contribution rate specified for the class, notwithstanding the provisions of 39-51-1214.

(5) If the taxahle payroll amount, the experience facter, or both of any eligible or deficit employer listed on the schedules is changed, the employer is placed in that position on the schedules that the employer would have occupied had that employer's taxahle payroll amount or experience factor as changed been used in determining that employer's pesition in the first instance. However, the change does not affect the position or rate classification of any other employer listed on the schedules and does not affect the rate determination for previous years.

HeinOnline -- 1999 vol. II 1529 1999

(6) An employer who has not filed all required payroll reports or paid all taxes, penalties, and interest due by the cutoff date must be assigned a contribution rate in effect for the taxable year for the employer's classification as an eligible, deficit, or new employer, plus an additional assessment of 50% of the employer's assigned contribution rate, rounded to the nearest ~~1/10~~ *1/100* of 1%."

Section 4. Section 39-51-1218, MCA, is amended to read:

"39-51-1218. Rate schedules.

~~SCHEDULES OF CONTRIBUTION RATES—Part I~~

	~~Sched. I~~	~~Sched. II~~	~~Sched. III~~	~~Sched. IV~~
~~Minimum Ratio of Fund to Total Wages~~	~~(.0260)~~	~~(.0245)~~	~~(.0225)~~	~~(.0200)~~
~~Average Tax Rate~~	~~1.4~~	~~1.6~~	~~1.8~~	~~2.0~~
~~Rate Class~~	~~Contribution Rates For Eligible Employers~~			
~~1~~	~~0.0%~~	~~0.1%~~	~~0.3%~~	~~0.5%~~
~~2~~	~~0.1~~	~~0.3~~	~~0.5~~	~~0.7~~
~~3~~	~~0.3~~	~~0.5~~	~~0.7~~	~~0.9~~
~~4~~	~~0.5~~	~~0.7~~	~~0.9~~	~~1.1~~
~~5~~	~~0.7~~	~~0.9~~	~~1.1~~	~~1.3~~
~~6~~	~~0.9~~	~~1.1~~	~~1.3~~	~~1.5~~
~~7~~	~~1.1~~	~~1.3~~	~~1.5~~	~~1.7~~
~~8~~	~~1.3~~	~~1.5~~	~~1.7~~	~~1.9~~
~~9~~	~~1.5~~	~~1.7~~	~~1.9~~	~~2.1~~
~~10~~	~~1.7~~	~~1.9~~	~~2.1~~	~~2.3~~
~~Rate Class~~	~~Contribution Rates For Deficit Employers~~			
~~1~~	~~3.2%~~	~~3.4%~~	~~3.6%~~	~~3.8%~~
~~2~~	~~3.4~~	~~3.6~~	~~3.8~~	~~4.0~~
~~3~~	~~3.6~~	~~3.8~~	~~4.0~~	~~4.2~~
~~2~~	~~3.4~~	~~3.6~~	~~3.8~~	~~4.0~~
~~5~~	~~4.0~~	~~4.2~~	~~4.4~~	~~4.6~~
~~6~~	~~4.2~~	~~4.4~~	~~4.6~~	~~4.8~~
~~7~~	~~4.4~~	~~4.6~~	~~4.8~~	~~5.0~~
~~8~~	~~4.6~~	~~4.8~~	~~5.0~~	~~5.2~~
~~8~~	~~4.6~~	~~4.8~~	~~5.0~~	~~5.2~~
~~10~~	~~6.4~~	~~6.4~~	~~6.4~~	~~6.4~~

~~SCHEDULES OF CONTRIBUTION RATES—Part II~~

~~Sched. V~~	~~Sched. VI~~	~~Sched. VII~~	~~Sched. VIII~~	~~Sched. IX~~	~~Sched. X~~
~~(.0170)~~	~~(.0135)~~	~~(.0095)~~	~~(.0075)~~	~~(.0050)~~	~~(.....)~~
~~2.2~~	~~2.4~~	~~2.6~~	~~2.8~~	~~3.0~~	~~3.2~~

HeinOnline -- 1999 vol. II 1530 1999

~~Contribution Rates For Eligible Employers~~

~~0.7%~~	~~0.9%~~	~~1.1%~~	~~1.3%~~	~~1.5%~~	~~1.7%~~
~~0.9~~	~~1.1~~	~~1.3~~	~~1.5~~	~~1.7~~	~~1.9~~
~~1.1~~	~~1.3~~	~~1.5~~	~~1.7~~	~~1.9~~	~~2.1~~
~~1.3~~	~~1.5~~	~~1.7~~	~~1.9~~	~~2.1~~	~~2.3~~
~~1.5~~	~~1.7~~	~~1.9~~	~~2.1~~	~~2.3~~	~~2.5~~
~~1.7~~	~~1.9~~	~~2.1~~	~~2.3~~	~~2.5~~	~~2.7~~
~~1.9~~	~~2.1~~	~~2.3~~	~~2.5~~	~~2.7~~	~~2.9~~
~~2.1~~	~~2.3~~	~~2.5~~	~~2.7~~	~~2.9~~	~~3.1~~
~~2.3~~	~~2.5~~	~~2.7~~	~~2.9~~	~~3.1~~	~~3.3~~
~~2.5~~	~~2.7~~	~~2.9~~	~~3.1~~	~~3.3~~	~~3.5~~

~~Contribution Rates For Deficit Employers~~

~~4.0%~~	~~4.2%~~	~~4.4%~~	~~4.6%~~	~~4.8%~~	~~5.0%~~
~~4.2~~	~~4.4~~	~~4.6~~	~~4.8~~	~~5.0~~	~~5.2~~
~~4.4~~	~~4.6~~	~~4.8~~	~~5.0~~	~~5.2~~	~~5.4~~
~~4.6~~	~~4.8~~	~~5.0~~	~~5.2~~	~~5.4~~	~~5.6~~
~~4.8~~	~~5.0~~	~~5.2~~	~~5.4~~	~~5.6~~	~~5.8~~
~~5.0~~	~~5.2~~	~~5.4~~	~~5.6~~	~~5.8~~	~~6.0~~
~~5.2~~	~~5.4~~	~~5.6~~	~~5.8~~	~~6.0~~	~~6.2~~
~~5.4~~	~~5.6~~	~~5.8~~	~~6.0~~	~~6.2~~	~~6.4~~
~~5.6~~	~~5.8~~	~~6.0~~	~~6.2~~	~~6.4~~	~~6.4~~
~~6.4~~	~~6.4~~	~~6.4~~	~~6.4~~	~~6.4~~	~~6.4~~

SCHEDULES OF CONTRIBUTION RATES - Part 1

	Sched. I	*Sched.* II	*Sched.* III	*Sched.* IV
Minimum Ratio of Fund to Total Wages	*(.0260)*	*(.0245)*	*(.0225)*	*(.0200)*
Average Tax Rate	*1.37*	*1.57*	*1.77*	*1.97*
Rate Class	*Contribution Ratcs for Eligiblc Employers*			
1	*0.00%*	*0.07%*	*0.27%*	*0.47%*
2	*0.07*	*0.27*	*0.47*	*0.67*
3	*0.27*	*0.47*	*0.67*	*0.87*
4	*0.47*	*0.67*	*0.87*	*1.07*
5	*0.67*	*0.87*	*1.07*	*1.27*
6	*0.87*	*1.07*	*1.27*	*1.47*
7	*1.07*	*1.27*	*1.47*	*1.67*
8	*1.27*	*1.47*	*1.67*	*1.87*
9	*1.47*	*1.67*	*1.87*	*2.07*
10	*1.67*	*1.87*	*2.07*	*2.27*

HeinOnline -- 1999 vol. II 1531 1999

Rate Class	*Contribution Rates for Deficit Employers*			
1	*3.17%*	*3.37%*	*3.57%*	*3.77%*
2	*3.37*	*3.57*	*3.77*	*3.97*
3	*3.57*	*3.77*	*3.97*	*4.17*
4	*3.77*	*3.97*	*4.17*	*4.37*
5	*3.97*	*4.17*	*4.37*	*4.57*
6	*4.17*	*4.37*	*4.57*	*4.77*
7	*4.37*	*4.57*	*4.77*	*4.97*
8	*4.57*	*4.77*	*4.97*	*5.17*
9	*4.77*	*4.97*	*5.17*	*5.37*
10	*6.37*	*6.37*	*6.37*	*6.37*

SCHEDULES OF CONTRIBUTION RATES - Part II

Sched. V	*Sched. VI*	*Sched. VII*	*Sched. VIII*	*Sched. IX*	*Sched. X*
(.0170)	*(.0135)*	*(.0095)*	*(.0075)*	*(.0050)*	*(....)*
2.17	*2.37*	*2.57*	*2.77*	*2.97*	*3.17*
		Contribution Rates for Eligible Employers			
0.67%	*0.87%*	*1.07%*	*1.27%*	*1.47%*	*1.67%*
0.87	*1.07*	*1.27*	*1.47*	*1.67*	*1.87*
1.07	*1.27*	*1.47*	*1.67*	*1.87*	*2.07*
1.27	*1.47*	*1.67*	*1.87*	*2.07*	*2.27*
1.47	*1.67*	*1.87*	*2.07*	*2.27*	*2.47*
1.67	*1.87*	*2.07*	*2.27*	*2.47*	*2.67*
1.87	*2.07*	*2.27*	*2.47*	*2.67*	*2.87*
2.07	*2.27*	*2.47*	*2.67*	*2.87*	*3.07*
2.27	*2.47*	*2.67*	*2.87*	*3.07*	*3.27*
2.47	*2.67*	*2.87*	*3.07*	*3.27*	*3.47*
		Contribution Rates for Deficit Employers			
3.97%	*4.17%*	*4.37%*	*4.57%*	*4.77%*	*4.97%*
4.17	*4.37*	*4.57*	*4.77*	*4.97*	*5.17*
4.37	*4.57*	*4.77*	*4.97*	*5.17*	*5.37*
4.57	*4.77*	*4.97*	*5.17*	*5.37*	*5.57*
4.77	*4.97*	*5.17*	*5.37*	*5.57*	*5.77*
4.97	*5.17*	*5.37*	*5.57*	*5.77*	*5.97*
5.17	*5.37*	*5.57*	*5.77*	*5.97*	*6.17*
5.37	*5.57*	*5.77*	*5.97*	*6.17*	*6.37*
5.57	*5.77*	*5.97*	*6.17*	*6.37*	*6.37*
6.37	*6.37*	*6.37*	*6.37*	*6.37*	*6.37"*

Section 5. Applicability. [This act] applies to taxable wages paid on or after January 1, 2000.

Approved April 21, 1999

HeinOnline -- 1999 vol. II 1532 1999

CHAPTER NO. 400

[HB 395]

AN ACT REVISING ELIGIBILITY FOR UNEMPLOYMENT INSURANCE BENEFITS FOR PART-TIME WORKERS; AMENDING SECTIONS 39-51-2101 AND 39-51-2202, MCA; AND PROVIDING AN EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-51-2101, MCA, is amended to read:

"39-51-2101. Total unemployment — when. An individual ~~shall be deemed~~ *is considered to be* totally unemployed in any week during which the individual ~~performed no~~*:*

(1) performed no work *in employment* and earned no wages *for employment;* or

(2) ~~a week of~~ *performed* less than full-time work *in employment* with wages *for employment* of less than two times the individual's weekly benefit amount."

Section 2. Section 39-51-2202, MCA, is amended to read:

"39-51-2202. Partial payment of benefits. Partial payment for a week of unemployment, as used in this section, ~~shall be~~ *is* the claimant's weekly benefit amount less 50% of wages *for employment* earned in excess of one-fourth of ~~his~~ *the claimant's* weekly benefit amount. ~~Such~~ *The* wages *for employment* and the one-fourth weekly benefit amount, if not a multiple of $1, ~~shall~~ *must* be rounded to the nearest lower full dollar amount."

Section 3. Effective date — applicability. [This act] is effective July 1, 1999, and applies to claims for benefits first filed on or after July 1, 1999.

Section 4. Termination. [This act] terminates July 1, 2001.

Approved April 21, 1999

CHAPTER NO. 401

[HB 444]

AN ACT REVISING CERTAIN PROVISIONS OF THE GRASS CONSERVATION ACT; CREATING THE MONTANA GRASS CONSERVATION COMMISSION; PRESCRIBING THE MEMBERSHIP AND DUTIES OF THE COMMISSION; TRANSFERRING PRIMARY ADMINISTRATION OF THE GRASS CONSERVATION ACT FROM THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO THE MONTANA GRASS CONSERVATION COMMISSION; REVISING DEFINITIONS; REVISING THE ADMINISTRATIVE FEE FOR IMPLEMENTING THE GRASS CONSERVATION ACT FROM 15 CENTS PER ANIMAL UNIT TO 10 CENTS PER ANIMAL UNIT MONTH OF PREFERENCE; ELIMINATING THE 40-YEAR LIMIT ON THE TERM OF INCORPORATION OF A STATE GRAZING DISTRICT; REQUIRING UPDATE AND REVIEW OF THE BYLAWS OF INCORPORATED STATE DISTRICTS; ALLOWING CERTAIN MEMBERS OF A DISTRICT THAT IS BEING LIQUIDATED TO MEET THE HIGHEST BID ON DISTRICT ASSETS;

HeinOnline -- 1999 vol. II 1533 1999

REVISING DISTRICT VOTING PROCEDURES; REVISING PROCEDURES FOR AND INCREASING THE FEE ASSOCIATED WITH TRESPASSING LIVESTOCK; AMENDING SECTIONS 76-16-103, 76-16-106, 76-16-107, 76-16-108, 76-16-109, 76-16-111, 76-16-201, 76-16-202, 76-16-203, 76-16-204, 76-16-206, 76-16-207, 76-16-208, 76-16-209, 76-16-210, 76-16-211, 76-16-212, 76-16-302, 76-16-303, 76-16-304, 76-16-307, 76-16-308, 76-16-311, 76-16-315, 76-16-316, 76-16-319, 76-16-323, 76-16-325, 76-16-403, 76-16-406, 76-16-413, AND 76-16-414, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-16-103, MCA, is amended to read:

"76-16-103. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Animal unit" means one cow, one horse, or five sheep, 6 months ~~old or over~~ *of age or older.*

(2) *"Animal unit month" or "AUM" means one cow/calf pair, one horse, or five sheep, grazed individually for 1 month, or an equivalency as determined by a local grazing district.*

(3) "Assessment" means a special levy imposed on permittee memhers hy the state district to raise funds for specific purposes as provided in 76-16-323(1). The term does not include fees.

~~(3)~~*(4)* "Commensurate property" means land that is privately owned or controlled and that is not range.

(5) "Commission" means the Montana grass conservation commission provided for in [section 33].

~~(4)~~*(6)* "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

~~(5)~~*(7)* "Dependent commensurate property" is commensurate property that:

(a) requires the use of range in connection with it to maintain its proper use;

(b) produces or whose owner furnishes as part of the owner's past customary practice the proper feed necessary to maintain livestock during the time other than the established grazing period on the range; and

(c) has been used in connection with the range for a period of any 3 years or for any 2 consecutive years in the 5-year period immediately preceding June 28, 1934, or in the case of districts organized after March 15, 1945, for a 5-year period immediately preceding the date of organization of the districts.

~~(6)~~*(8)* "Grazing preference" is a right to obtain a grazing permit from a state district, *expressed in animal unit months. Grazing preferences, expressed in AUMs, must be the basis for determining a member's proportionate interest in grazing district assets.*

~~(7)~~*(9)* "Permits" are evidence of grazing privileges granted by state districts.

~~(8)~~*(10)* "Person" means a natural person or persons, unincorporated associations, partnerships, corporations, and governmental departments or agencies.

~~(9)~~*(11)* "Range" is the land within a grazing district upon which grazing permits are granted to maintain livestock through the established grazing period.

HeinOnline -- 1999 vol. II 1534 1999

(12) "Secretary" means the secretary of the Montana grass conservation commission.

~~(10)~~*(13)* "State district" means a nonprofit cooperative organization incorporated under this chapter and its board of directors. The term includes all lands owned or controlled by the state district or its members."

Section 2. Section 76-16-106, MCA, is amended to read:

"76-16-106. ~~Department~~ *Commission* fees. (1) The ~~department~~ *commission* may impose fees against the ~~several~~ state grazing districts of the state in an amount not in excess of ~~15~~ *10* cents per animal unit *month of preference,* based upon the number of animal ~~units~~ *unit months* per year for which the district grants permits, to defray expenses incurred by the ~~department~~ *commission* in carrying out its powers and duties under this chapter.

(2) These fees ~~shall~~ *must* be held in the state special revenue fund to be expended by order and direction of the ~~department~~ *commission* for the *operation and* administration of the ~~department's functions~~ *commission* under this chapter.

(3) If a state district fails or refuses to pay the fee on or before October 1 of each year and after the district is provided with a full report from the department of all money collected and expended by it for its fiscal year ~~next~~ preceding that date, the ~~department~~ *commission* may compel and levy collection and payment by writ of mandate or other appropriate remedy against the state district."

Section 3. Section 76-16-107, MCA, is amended to read:

"76-16-107. Range for wild game animals. In each state district a sufficient carrying capacity of range ~~shall~~ *must* be reserved for the maintenance of a reasonable number of wild game animals to use the range in common with livestock grazing in the district. The ~~department~~ *commission* may act in an advisory capacity to the department of fish, wildlife, and parks in the protection of wildlife within the boundaries of all state districts. ~~The department shall encourage the transfer of beaver from streams where they are doing damage to other streams where they are needed.~~"

Section 4. Section 76-16-108, MCA, is amended to read:

"76-16-108. Nature of rights. (1) Preferences or rights under this chapter through the creation of the district or the issuance of permits ~~or preferences~~ *based on AUMs of preference* are statutory and do not create any vested right, title, interest, or estate in or to the lands owned or controlled by the district ~~excepting~~ *except* as ~~herein~~ provided *in this chapter.*

(2) ~~Any~~ *A* person who chooses to become a member of ~~any~~ *a* state district is bound by all the provisions of this chapter and is limited to the statutory remedies ~~therein~~ contained *in this chapter,* and ~~no~~ *a* court ~~shall have~~ *has no* jurisdiction to consider any right claimed under this chapter ~~excepting only~~ *except* by judicial review from the final decision of the commission as ~~herein~~ provided *in this chapter.*"

Section 5. Section 76-16-109, MCA, is amended to read:

"76-16-109. Appeal procedure. (1) Notice of a decision of a state district must be given in writing by the secretary of the state district to the interested parties or their attorneys by certified mail at the address as shown on the records of the district.

HeinOnline -- 1999 vol. II 1535 1999

(2) A person affected by the decision of a state district may appeal to the ~~department~~ *commission*, and the ~~department~~ *commission* shall hear and decide all those appeals. An appeal from the decision of the district to the ~~department~~ *commission* may be taken by filing written notice of the appeal with the ~~department~~ *commission*, by filing a copy of the notice of appeal with the secretary of the district, and by serving a copy of the notice of appeal by certified mail upon any interested parties who have appeared or upon their attorneys within 60 days after receiving written notice of the decision of the district. The appellant shall also file with the ~~department~~ *commission* proof by affidavit of the filing and service of the notice of appeal. The appeal to the ~~department~~ *commission* must be taken and review of the appeal must be upon the record of any hearing conducted and considered by the state district. However, the ~~department~~ *commission* may, at its discretion and for good cause shown, permit additional testimony to be suhmitted."

Section 6. Section 76-16-111, MCA, is amended to read:

"76-16-111. What constitutes receipt of notice. In all cases where notices are given permittees under this chapter by registered or certified mail and addressed to the post-office address of the permittee as shown by the records of the state district, the notices ~~shall~~ *must* be considered received by the permittee when deposited in the United States post office by the district or by the ~~department~~ *commission*."

Sectiou 7. Section 76-16-201, MCA, is amended to read:

"76-16-201. Procedure to incorporate state district. (1) If three or more persons who own or control commensurate property and are livestock operators within the area proposed to be created into a state district decide to incorporate a state district, they shall submit a statement in writing to the ~~department~~ *commission* together with a plat showing the proposed boundaries of the area.

(2) The statement shall set forth the name of the proposed state district, the county or counties in which the proposed state district is located, and the names and addresses of all operators of land and livestock units within the area. The ~~department~~ *commission* may require any additional information it considers necessary.

(3) On receipt of the statement and plat and any additional information, the ~~department~~ *commission* shall fix a time and place of a hearing for approval within the district or county, which may not be less than 30 days or more than 60 days after receipt of the statement."

Section 8. Section 76-16-202, MCA, is amended to read:

"76-16-202. Notice and hearing on question of incorporation. (1) The persons deciding to incorporate the state grazing district shall cause notice of the hearing to be given by publishing a notice prescribed by the ~~department~~ *commission* once a week for 2 consecutive weeks, the first publication to be at least 30 days prior to the date of hearing, in a newspaper of general circulation in the area.

(2) The ~~department~~ *commission* shall hear evidence offered in support of or in opposition to tbe creation of the state district and shall make a full inquiry into the advisability of its creation."

Section 9. Section 76-16-203, MCA, is amended to read:

HeinOnline -- 1999 vol. II 1536 1999

"**76-16-203. Certificate of approval.** If the creation of the state district appears feasible, beneficial, and desirable to those who own or control more than 50% of the lands to be included in the district, the ~~department~~ *commission* may issue a certificate of approval."

Section 10. Section 76-16-204, MCA, is amended to read:

"**76-16-204. Articles of incorporation.** (1) Upon the issuance of the certificate of approval, three or more persons who own or control commensurate property and are livestock operators within or near the proposed state district may prepare articles of incorporation and file them in the office of the secretary of state without payment of fees.

(2) The articles ~~shall~~ *must* be accompanied by the certificate of approval and signed, sealed, and acknowledged. The articles, as prescribed by the ~~department~~ *commission*, shall substantially state the following:

(a) the name of the state district, the last four words of which ~~shall~~ *must* be "cooperative state grazing district";

(b) the county or counties in which the state district is located and the place where the principal office and business of the state district will be conducted;

(c) the membership fee for each member of the state district, which may not be more than $5;

~~(d) the term for which the state district is incorporated, which may not exceed 40 years;~~

~~(e)~~*(d)* the names and residences of the persons who subscribe, together with a statement that each owns or controls commensurate property and is a livestock operator within the proposed state district;

~~(f)~~*(e)* the pewers of the state district, which may not be inconsistent with this chapter;

~~(g)~~*(f)* the officers of the state district, their principal duties, and the principal duties of the board of directors;

~~(h)~~*(g)* the purpose for which the state district is incorporated."

Section 11. Section 76-16-206, MCA, is amended to read:

"**76-16-206. Amending articles of incorporation.** (1) A state district may amend its articles of incorporation by a two-thirds vote of all members present at any regular or special meeting of its members and the approval of the ~~department~~ *commission*. The only notice of the meeting ~~which~~ *that* is necessary is the notice of meetings of members as required by the bylaws of the district. The amended articles of incorporation and bylaws ~~shall~~ *must* be submitted to the ~~department~~ *commission* for approval. Upon approval, the ~~department~~ *commission* shall issue a certificate of approval. The amended articles of incorporation ~~shall~~ *must* be filed by the secretary of state without charge, but may not be filed unless accompanied by the certificate of approval. If the articles of incorporation are amended, the amendment ~~shall~~ *must* be filed with the county clerk or clerks.

(2) Upon the filing of the amended articles with the secretary of state and the proper county clerk or clerks, the district possesses the same powers and ~~shall be~~ *is* subject to the same obligations as if incorporated under this chapter."

Section 12. Section 76-16-207, MCA, is amended to read:

HeinOnline -- 1999 vol. II 1537 1999

"76-16-207. Filing of map or plat of district. A state district shall, upon completion of its organization, file with the *commission and the* county clerk and recorder of each county in which its lands lie a map or plat of the external boundaries of the state district *showing the allocation of individual allotments, members running in common allotments, allotment names, and references to lands used as base properties,* ~~and~~ *along with* a copy of its articles of incorporation. If the boundaries of a state district are changed and the changes are approved by the ~~department~~ *commission* after a hearing, the state district shall file with the county clerk or clerks *and with the commission* a *revised* map or plat indicating the changed boundaries."

Section 13. Section 76-16-208, MCA, is amended to read:

"76-16-208. Adoption of bylaws *and periodic review — annual report.* *(1)* A state district incorporated under this chapter shall within 60 days after its incorporation adopt bylaws approved by the ~~department~~ *commission.* The bylaws may be amended or revised with the approval of the ~~department~~ *commission. Each incorporated district shall review and update its bylaws to ensure compliance with this chapter and the general laws of this state. The first review and update must be completed no later than January 1, 2001. Subsequent review and update must be completed at reasonable intervals, not to exceed 5 years.*

(2) Each state district incorporated under this chapter shall report annually to the commission any changes to the allocation of grazing preferences, redefinitions of grazing allotment boundaries, or dispositions of base properties within the district. The annual reports must include an updated plat depicting current allocation of preferences, grazing allotment boundaries, and a list of all members running in common allotments where more than one member may have grazing preferences."

Section 14. Section 76-16-209, MCA, is amended to read:

"76-16-209. Alteration of district. (1) A state district may change the boundaries of the district, merge with another state district organized under this chapter, or subdivide.

(2) A merger may not be made unless consented to by a majority of the members of each merging state district and approved by the ~~department~~ *commission* after a hearing.

(3) A subdivision may not be made unless consented to by a majority of the members in the affected area and approved by the ~~department~~ *commission* after a hearing."

Section 15. Section 76-16-210, MCA, is amended to read:

"76-16-210. Request for dissolution of district. A state district, with the written consent of three-fourths of its permittee members, may at any time request the ~~department~~ *commission* to dissolve the state district *subject to the preferences of this chapter. The commission shall establish procedures for the dissolution of any state district."*

Section 16. Section 76-16-211, MCA, is amended to read:

"76-16-211. Dissolution of district. (1) If a state district ceases to function *in accordance with its bylaws and this chapter* and it appears to the ~~department~~ *commission* that the reinstatement and future operation of the district is no longer feasible, beneficial, and desirable to ~~those who own or control more than 50% of the lands included in~~ *the majority of members of* the district, the

~~department~~ *commission*, after a hearing and upon 30 days' notice in writing, published for 2 consecutive weeks in a newspaper of general circulation in or nearest to the district, may dissolve the district.

(2) A notice of the dissolution must be filed by the ~~department~~ *commission* with the secretary of state and the clerk and recorder of the county or counties in which the district is located."

Section 17. Section 76-16-212, MCA, is amended to read:

"76-16-212. Distribution of district assets. (1) When a hearing on the request for dissolution has been held before the ~~department~~ *commission* and the board's consent has been given, the directors shall distribute the assets of the state district, either in items of property or in cash or in both. Distribution ~~shall~~ *must* first be made with the approval of the ~~department~~ *commission* to creditors up to the amount of their claims. Distribution ~~shall~~ *must* then be made with the approval of the ~~department~~ *commission* to permittee members upon the basis of their proportionate interest in the assets.

(2) If assets must be liquidated, the directors shall offer them for sale at public auction *or through another competitive bidding procedure* after publication of a notice of the sale once a week for 2 successive weeks in a newspaper of general circulation within the state district. *District members holding grazing preference directly proportional to and associated with the assets being liquidated must be offered an opportunity to meet the highest bid submitted through the bidding process.*"

Section 18. Section 76-16-302, MCA, is amended to read:

"76-16-302. Membership in district. (1) Membership in the district is limited to persons engaged in the livestock business who own or lease forage-producing lands within or near the district, except that the agent of a person entitled to membership in the district may become a member in place of ~~his~~ *the agent's* principal.

(2) If an agent becomes a member, ~~his~~ *the agent's* qualifications for membership and ~~his~~ *the agent's* obligations to and the privileges in the district ~~shall~~ *must* be measured by those ~~his~~ *that the agent's* principal would have had if ~~he~~ *the principal* had elected to become a member. An agent and ~~his~~ *the agent's* principal may not both be members of the district unless the agent has individual qualifications for membership ~~which~~ *that* are separable from and independent of those of ~~his~~ *the* principal.

(3) ~~All members who possessed preferential grazing permits~~ *Livestock producers owning or controlling base property within the designated boundaries of the district and who held preference* during the preceding grazing season or ~~who possess such a permit~~ at the time of voting ~~shall~~ *must* be designated as permittee members."

Section 19. Section 76-16-303, MCA, is amended to read:

"76-16-303. Voting rights. ~~Permittee~~ *Only permittee* members ~~only~~ *in good standing as set forth in the district bylaws* are entitled to vote on all issues submitted to a vote of the members. *Individuals or livestock producers who operate on temporary permits may not vote.* A permittee member has only one vote. Voting by proxy may not be permitted *unless clearly outlined procedures for proxy voting are incorporated into the district bylaws.*"

Section 20. Section 76-16-304, MCA, is amended to read:

HeinOnline -- 1999 vol. II 1539 1999

"76-16-304. Effect of transfer of land. When a member disposes of a part of the lands or leases owned by ~~him~~ *that member* so that another person becomes the owner of the lands or leases and acquires the right to membership, then the rights and interest involved ~~shall~~ *must* be determined by the directors of the state district with the approval of the ~~department~~ *commission*."

Section 21. Section 76-16-307, MCA, is amended to read:

"76-16-307. ~~Requirement to lease available~~ *Leasing of* state lands. State land ~~situated~~ that is *situated* within the boundaries of a grazing district created under this chapter ~~and that is not otherwise disposed of by the department must be leased by the grazing district at a reasonable rental when offered for lease to the officers of the grazing district by the department. However, the officers of the grazing district may appear or submit evidence in writing before the department and show reason and cause for a change in the rental. If there is cause, the department may reappraise the land in question~~ *may be leased by one or more members of a grazing district if the lease is in accordance with existing laws and regulations of the department. The board of directors of a cooperative state district may assist members of a grazing district in acquiring and administering a state grazing lease.* The ~~department~~ *commission* shall require that all state districts comply with this section."

Section 22. Section 76-16-308, MCA, is amended to read:

"76-16-308. Regulation of stock grazing in district. A state district may:

(1) specify the breed, quality, and number of male breeding animals ~~which~~ *that* each member must furnish when stock is grazing in common in the state district;

(2) regulate the driving of stock over, across, into, or through the range and collect fees ~~therefor;~~

~~(3) impose sanitary provisions, regulations, and practices~~ *for driving stock*."

Section 23. Section 76-16-311, MCA, is amended to read:

"76-16-311. Control of trespassing livestock. (1) The stato district or its duly authorized agent controlling the land upon which ~~such~~ wrongful entry is made by trespassing livestock may take *the livestock* into its possession ~~such livestock~~ and shall reasonably care for ~~same~~ *the livestock* while in its possession and may retain possession of ~~said~~ *the* livesteck and have a lien and claim ~~thereon~~ *on the livestock* as security for payment of ~~such~~ damages and reasonable charges for the care of ~~said~~ livestock while in its possession.

(2) The state district taking ~~up such~~ *possession of trespassing* livestock shall, within 72 hours after taking possession ~~thereof~~, notify ~~said~~ *the* owner, owners, or person in charge ~~thereof~~ *of the livestock* by a notice in writing describing ~~said~~ *the* livesteck by number of animals and brands ~~thereon~~ *on the livestock*, if any, the amount of damages claimed to date, and the charge per animal unit per day for caring for and feeding the ~~same~~ *livestock* thereafter~~, such charges~~. *Charges may* not ~~to~~ exceed ~~50 cents~~ *$2* per animal unit per day~~, and describing by general description~~. *The notice must generally describe* the location ~~of the premises upon which said~~ *where the* livestock is held and ~~requiring such~~ *require the* owner or owners, within 10 days after receiving ~~said~~ *the* notice, to take ~~said~~ *the* livestock away after making full payment of all damages and costs ~~of said livestock~~.

HeinOnline -- 1999 vol. II 1540 1999

(3) In case the parties do not agree as to the amount of damages, the state district taking ~~up such~~ *possession of the* livestock may at the expense of the owner retain a sufficient ~~amount~~ *number* of ~~such~~ livestock to cover the amount of damages claimed by the state district. However, the owner may, upon furnishing a ~~good and~~ sufficient bond, conditioned for the payment to the state district of all sums, including costs that may be recovered by ~~said~~ *the* state district in a civil action to foreclose its lien, bave returned to ~~him~~ *the owner* all livestock held ~~as aforesaid, and said~~. *The* state district ~~shall be~~ *is* liable to ~~such~~ *the* owner for any loss or injury to ~~said~~ *the* livestock accruing through the stato district's lack of reasonable care.

(4) If the state district taking ~~up~~ *possession of the* livestock ~~shall fail~~ *fails* to recover in a civil action a sum equal to tbat offered to the state district by the owner of the livestock, the ~~former~~ *state district* shall bear the expense of keeping and feeding ~~same~~ *the livestock* wbile in its possession. ~~Such notice~~ *Notice* may be given by personal service on tlie ~~said~~ owner, owners, or person in charge ~~thereof, by leaving said notice at his usual place of residence with some member of his family over the age of 14 years, or~~ *of the livestock* by sending ~~said~~ notice by prepaid registered or certified mail, addressed to ~~his~~ *that person's* last known place of residence. ~~Said service~~ *Service* by registered or certified mail ~~shall be deemed~~ *is considered* complete upon the deposit of ~~said~~ *the* notice in the post office."

Section 24. Section 76-16-315, MCA, is amended to read:

"76-16-315. Procedure upon inability to locate person responsible for trespassing livestock. ~~The~~ *If a* state district ~~taking up such~~ *takes possession of* livestock ~~(if,~~ after due diligence to discover the owner or possessor of ~~such~~ *the* livestock~~, such~~ *and the* owner or possessor cannot be found or the ownership of ~~such~~ *the* livestock discovered~~)~~ or ~~the~~ *if a* party ~~taking up such~~ *takes possession of* livestock ~~(if said~~ *and the* owner or claimant ~~shall refuse~~ *refuses* to pay the amount of damages or charges or *to* furnish bonds ~~therefor~~, as ~~herein~~ provided~~)~~ *in 76-16-311, the state district or person* sball, within 10 days from tlie time tliat ~~said~~ *the* livestock was taken ~~up~~ *into possession*, deliver to tlie sheriff ~~or a constable~~ of tlie county in which the livestock was taken ~~up~~ *into possession or to the nearest state livestock inspector* a statement containing the information required to be given in the notice~~, hereinbefore~~ set out~~, and~~ in *76-16-311* ~~addition thereto, he shall mail, by prepaid registered or certified mail, a copy of said statement addressed to the nearest state livestock inspector~~."

Section 25. Section 76-16-316, MCA, is amended to read:

"76-16-316. Sale of trespassing livestock. (1) Upon receipt of the statement referred to in 76-16-315, the sheriff ~~or constable~~ shall proceed to advertise and sell at public auction the livestock ~~so~~ taken up.

(2) ~~Such~~ *The* livestock ~~shall~~ *must* be sold on 5 days' notice posted at the courthouse of each county in which any portion of tbe district lies and ~~posted~~ in ~~three public places~~ *a newspaper of general circulation* in ~~such~~ *the* county~~, one of which shall be within the district~~. ~~Such~~ *The* sheriff may require from the state district a ~~good and~~ sufficient bond, conditioned*:*

(a) that the state district has used reasonable diligence to discover the owner of ~~such~~ *the* stock and to notify ~~him~~ *the owner* in the premises*;*

(b) ~~and~~ that all requirements of law on tbe part of tbe state district to be performed in the premises bave been performed*;* and

(c) ~~indemnifying~~ *that* the sheriff *is indemnified* against all liability for the sale of ~~said~~ *the* livestock except as to ~~his~~ *the sheriff's* own failure to perform the things required ~~of him~~ by law."

Section 26. Section 76-16-319, MCA, is amended to read:

"76-16-319. No liability for official acts. An officer, the ~~department~~ *commission*, an employee of an officer or the ~~department~~ *commission*, or an employee of any county or of any state district is not liable for any act performed in good faith in discharging official duties under this chapter. All acts are presumed to have been in good faith and in conformity with this chapter."

Section 27. Section 76-16-323, MCA, is amended to read:

"76-16-323. District finances. A state district may:

(1) fix and determine the amount of grazing fees to be imposed on members or nonmembers for the purpose of paying leases and operating expenses and fix and determine the amount of assessments to be made on members on ~~an animal unit~~ *a grazing preference* basis for the purpose of acquiring lands by purchase or for the purpose of constructing improvements in the state district;

(2) set up and maintain a reasonable reserve fund;

(3) borrow money and if necessary mortgage the physical assets of a state district to provide for operation and development, provided that at least 80% of the permittee members of the state district consent in writing to the borrowing and the borrowing has been approved by the ~~department~~ *commission*. This subsection does not confer power upon a state district to mortgage the property of the individual members of the district."

Section 28. Section 76-16-325, MCA, is amended to read:

"76-16-325. Compliance with ~~department~~ *commission* orders required. (1) If a state district or the directors of a state district fail to comply with an order of the ~~department~~ *commission*, the ~~department~~ *commission* may order a hearing on the order within the district or county and cite the directors of the district to appear before the ~~department~~ *commission*.

(2) If upon the hearing it appears that the directors refuse to perform the duties of their office as provided in this part and as set forth in the articles of incorporation and the bylaws of the association or refuse to comply with a lawful order of the ~~department~~ *commission*, the directors may be summarily removed from office by the ~~department~~ *commission*, and the district shall elect new officers. During the period until the election, the ~~department~~ *commission* may operate and manage the affairs of the state district.

(3) The expense of operating and managing the affairs of a noncomplying state district must be paid by the noncomplying state district before it may be reinstated."

Section 29. Section 76-16-403, MCA, is amended to read:

"76-16-403. Procedure if reduction in grazing privileges necessary. *(1)* If ~~reductions~~ *a reduction* in grazing privileges ~~become~~ *becomes* necessary, operators with temporary permits will be reduced ~~first~~ on a proportionate basis *prior to any reduction to any holder of grazing preference.* ~~When the extent of reduction of privileges exceeds that of temporary permits, then the rights of operators with both dependent commensurate property and commensurate property shall be reduced together on a proportionate basis.~~

HeinOnline -- 1999 vol. II 1542 1999

(2) Reductions of grazing preference for individual members that result from actions beyond the control of the state district or the board of directors of a cooperative state district or as a result of actions or of the failure to take appropriate actions by the holder of the preference in question, do not require a general reduction in grazing preference and the state district may not be compelled to require proportionate reductions in grazing preference by the membership of the state district."

Section 30. Section 76-16-406, MCA, is amended to read:

"76-16-406. Transfer of preferences. (1) Upon application by a permittee, the state district with the approval of the ~~department~~ *commission* may allow a preference based on ownership or control of dependent commensurate or commensurate property to he transferred to other property of sufficient commensurability~~; however~~. *However,* in any transfer of preference from dependent commensurate or commensurate property controlled but not owned by the applicant, the applicant must bave had control and use of the dependent commensurate or commensurate property and the preference appurtenant ~~thereto~~ *to the property* for 5 consecutive years and must have established and maintained the livestock operation upon which the dependency was established by use or priority immediately prior to the application for transfer.

(2) In addition, the transfer may not interfere with tbe stability of livestock operations or with proper range management and may not affect adversely the establisbed local economy. A transfer may not be allowed without the written consent of the owner or owners of the dependent commensurate or commensurate property from which the transfer is to be made and the owner or owners of any encumbrances on the property. A transfer is not effective until approved by the ~~department~~ *commission.*

(3) All expenses involved under tbe application ~~shall~~ *must* be borne by the applicant."

Seetion 31. Section 76-16-413, MCA, is amended to read:

"76-16-413. Effect of revocation. (1) When a preference is revoked, it is detached from the dependent commensurate or commensurate property to which it was formerly appurtenant and it immediately shifts to tbe state district. *A revocation includes all rights, privileges, and authorities associated with a preference.*

(2) The state district may tben allocate it to either dependent commensurate or commensurate property in the manner provided by its bylaws."

Section 32. Section 76-16-414, MCA, is amended to read:

"76-16-414. Equaiization of district assets. (1) Whenever a state district ~~shall possess~~ *possesses* reserves, the values of which are greater than its liabilities, and the state district ~~shall determine~~ *determines* that a part of ~~such~~ *the* reserves is in excess of its reasonable needs to operate the district, ~~such~~ *the* state district may refund to the permittee members their proportionate share of ~~such~~ *the* reserves as determined at the last annual accounting.

(2) Whenever a state district ~~shall possess~~ *possesses* reserves and pbysical assets, the values of which are greater than its liabilities, and a permittee member ~~shall lose his~~ *loses a* grazing preference *or any portion of a grazing preference,* ~~he shall be~~ *the permittee member is* entitled to receive ~~his~~ *a* proportionate share of the value of ~~such~~ *the* excess from the state district, as determined by tbe annual

HeinOnline -- 1999 vol. II 1543 1999

accounting of the state district. *Valuation must be as prescribed by the bylaws of the state district.* The state district may set off the amount of any claim it may have against ~~such~~ *a* former member.

(3) Whenever a new member ~~shall receive~~ *receives* a grazing preference, ~~he~~ *the new member* shall, as a condition of receiving ~~such~~ *the* preference, pay to the state district the value of the equitable interest in the physical assets and reserve fund ~~which~~ *that* accrues to ~~him~~ *the new member* by virtue of ~~such~~ membership. ~~Such~~ *The* value ~~shall~~ *must* be determined at the time of receiving ~~such~~ *a* preference, *as prescribed by the bylaws of the state district,* and upon the basis of the determination of value of ~~such~~ physical assets and reserves made at the last annual accounting."

Section 33. Creation of Montana grass conservation commission — membership — meetings — compensation. (1) There is a Montana grass conservation commission. The commission must be composed of five members appointed by the governor to serve staggered 3-year terms. Beginning on January 1, 2000, one member shall serve a 1-year term and two members shall serve 2-year terms, with assignment of terms based on a random drawing.

(2) (a) The governor, after giving full consideration to representation by both large and small operators, shall appoint:

(i) two members who are either officers of or who serve on the board of directors of a state grazing district;

(ii) two members who hold active preference rights within a state grazing district; and

(iii) one member of the public who possesses a general understanding of the livestock industry and the proper use of rangelands within state grazing districts for the purpose of livestock production.

(b) Ex officio members may be appointed by the commission as needed.

(3) Members may not be appointed for more than three consecutive terms. The commission shall annually elect from among its members a presiding officer and a vice presiding officer. The presiding officer shall preside over all meetings of the commission, except that the vice presiding officer shall assume the duties of the presiding officer in the absence of the presiding officer.

(4) The commission shall meet annually at the main offices of the department in Helena. The commission may hold other meetings at times and places as necessary upon the call of the presiding officer or upon the request of a majority of commission members, and upon at least 14 days' written notice to the commission members of the time and place of the meeting. A majority of commission members constitutes a quorum for the transaction of business. The commission shall keep accurate records of all business that is considered, and the presiding officer shall sign all orders, minutes, and other documents of the commission.

(5) Commission members may receive no compensation for their services, but members are entitled to compensation for actual expenses incurred in carrying out their duties, including travel and per diem.

(6) The commission is allocated to the department for administrative purposes only as provided in 2-15-121. The commission shall, if it determines that personnel services are required, hire its own personnel, and 2-15-122(2)(d)

HeinOnline -- 1999 vol. II 1544 1999

does not apply. The secretary must be employed at the discretion of the commission.

Section 34. Powers of commission. The commission has all the powers enumerated in this chapter and any other powers necessary or incidental to carrying out the full purpose and intent of this chapter, including but not limited to:

(1) conducting hearings on issues brought before the commission and conducting investigations into matters affecting the commission or the operation of state grazing districts, including appeals of decisions made by the board of directors of an individual state grazing district or other actions taken in accordance with this chapter;

(2) administratively promoting and fostering an atmosphere of cooperation and mutual trust between the federal bureau of land management, the United States forest service, the department, and cooperative state grazing districts and upholding the terms and conditions of any memorandum of understanding between those entities with regard to provisions noted in the Federal Land Policy and Management Act, the Public Rangelands Improvement Act, the Taylor Grazing Act, and this chapter; and

(3) prescribing methodologies to be used for the reallocation of grazing preference within cooperative state grazing districts that, for whatever reason, no longer have access to historical preference records.

Section 35. Codification instruction. [Sections 33 and 34] are intended to be codified as an integral part of Title 76, chapter 16, and the provisions of Title 76, chapter 16, apply to [sections 33 and 34].

Section 36. Effective date. [This act] is effective on July 1, 1999.

Approved April 21, 1999

CHAPTER NO. 402

[HB 461]

AN ACT ALLOWING STATE PLUMBING BOARD AND STATE ELECTRICAL BOARD COMPLIANCE OFFICERS TO ISSUE CITATIONS TO AND COLLECT FINES FROM PERSONS WHO FAIL TO DISPLAY A PLUMBER'S LICENSE OR AN ELECTRICIAN'S LICENSE AT A JOB SITE; ESTABLISHING CIVIL FINES FOR VIOLATIONS; AMENDING SECTIONS 37-1-317, 37-68-301, 37-68-313, 37-68-315, 37-69-301, 37-69-308, AND 37-69-319, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-1-317, MCA, is amended to read:

"37-1-317. Practice without license — investigation of complaint — injunction — penalties. (1) The department shall investigate complaints concerning practice by an unlicensed person of a profession or occupation for which a license is required by this title.

(2) The department may issue a citation and collect a fine, as provided in [sections 8 and 9], to a person at a job site who is performing plumbing or electrical work and who fails to display a license or proof of licensure at the request of an

employee of the department who bears responsibility for compliance with licensure requirements.

~~(2)~~*(3)* A board may file an action to enjoin a person from practicing, without a license, a profession or occupation for which a license is required by this title."

Section 2. Section 37-68-301, MCA, is amended to read:

"37-68-301. License required to engage in electrical work. (1) A person may not engage in or work at the business, trade, or calling of electrical contractor, residential electrician, journeyman electrician, or master electrician in this state until the person has received from the department a license or permit to work as an electrical contractor, residential electrician, journeyman electrician, or master electrician.

(2) A person who has received a license from the department under the provisions of this chapter shall carry the license, or proof of licensure, at all times while working at a job site and performing work that requires a license. Acceptable proof of licensure must be determined by the board and made known to each licensee by the department when a license is issued.

~~(2)~~*(3)* A private or public employment agency or labor union, or an employee thereof, who refers persons for employment by others may not refer a person for employment by others to perform the work of an electrical contractor, residential electrician, journeyman electrician, or master electrician in this state unless the person bas received from the department a license or permit to work as an electrical contractor, residential electrician, journeyman electrician, or master electrician."

Section 3. Section 37-68-313, MCA, is amended to read:

"37-68-313. Reasonable fees — deposit of ~~money~~ *fees and fines* collected. *(1)* All fees established by the board under this chapter must be reasonably related to the respective program costs. ~~Money~~ *Fees* collected by the department under this chapter ~~shall~~ *must* be deposited in the state special revenue fund for the use of the board.

(2) Fines collected under this chapter must be deposited in the state general fund."

Seetion 4. Section 37-68-315, MCA, is amended to read:

"37-68-315. Proof of license. *(1)* An employee of a private or public employment agency or labor union, a building code compliance inspector, an employee of the department, a person who is professionally responsible for a job site, or an electrician licensed under Title 37, chapter 68, has the right to ask a person working at a job site doing work that requires an electrician's license to provide proof of licensure. If the person performing the work is unable to furnish proof of licensure, the requesting person may report that fact to the board or the department.

(2) An employee of the department may issue a citation and collect a fine, as provided in [section 9], to a person at a job site where the perso ı is performing electrical work if the person fails to display an electrician's license or proof of licensure at the request of the department inspector."

Section 5. Section 37-69-301, MCA, is amended to read:

"37-69-301. License required — temporary exception by municipal resolution when licensed plumber not available. ~~Any~~ *(1) A* person working

HeinOnline -- 1999 vol. II 1546 1999

at the field of plumbing in any incorporated city, town, or in any other area served by a public water supply or a public sewer system in this state, either as a master plumber or as a journeyman plumber, or who while working at the field of plumbing ~~shall connect~~ *connects* plumbing to or ~~disconnect~~ *disconnects* plumbing from a public water supply or public sewer system shall first secure a state license ~~as hereinafter provided~~.

(2) A person who receives a license under the provisions of this chapter shall carry the license, or proof of licensure, at all times while working on a job site and performing work that requires a license. Acceptable proof of licensure must be determined by the board and made known by the department to each licensee when a license is issued.

(3) The council or commission of any city or town or board of directors or managers of a water or sewer district or water utility, in cases ~~where~~ *in which* a ~~duly~~ licensed person or persons are not reasonably available, may by ordinance, rule, or resolution ~~duly adopted~~ and upon reasonable notice by certified letter to the board of plumbers and upon ~~their~~ *its* approval, or after 30 days from the date of the postmark of the certified letter if the board fails to respond to the certified letter, authorize the practice in the field of plumbing by a person or persons who have not obtained the state licenses ~~as hereinafter provided~~ until ~~such time as a duly~~ *a* licensed person ~~or persons are~~ *is* reasonably available or until the board of plumbers withdraws its authorization."

Section 6. Section 37-69-308, MCA, is amended to read:

"37-69-308. Deposit of fees *and fines*. *(1)* Money paid for license fees under this chapter ~~shall~~ *must* be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

(2) Fines collected under this chapter must be deposited in the state general fund."

Section 7. Section 37-69-319, MCA, is amended to read:

"37-69-319. Proof of license — *citation and fine*. *(1)* An employee of a private or public employment agency or labor union, a building code compliance inspector, an employee of the department, a person who is professionally responsible for a job site, or a plumber licensed under Title 37, chapter 69, has the right to ask a person working at a job site doing work that requires a plumber's license to provide proof of licensure. If the person performing the work is unable to furnish proof of licensure, the requesting person may report that fact to the board or the department.

(2) An employee of the department may issue a citation and collect a fine, as provided in [section 8], to a person at a job site where the person is performing plumbing work if the person fails to display a plumber's license or proof of licensure at the request of the department inspector."

Section 8. Citation and fine for failure to display license. (1) A citation for failure to display a plumber's license or proof of licensure issued by an employee of the department of commerce must include:

(a) the time and date on which the citation is issued;

(b) the name, address, mailing address, and signature of the person to whom the citation is issued;

(c) reference to the statutory authority to issue the citation;

HeinOnline -- 1999 vol. II 1547 1999

(d) the name, title, affiliation, and signature of the person issuing the citation;

(e) information explaining the procedure for the person to follow in order to pay the fine or to demonstrate proof of licensure; and

(f) the amount of the applicable fine.

(2) The applicable civil fines for failing to display a license or proof of licensure are as follows:

(a) $100 for the first offense;

(b) $250 for the second offense; and

(c) $500 for the third and any subsequent offense.

(3) Each day of violation constitutes a separate offense. The person issuing the citation is responsible for determining, by means of an up-to-date list or through telephone or other communication with the board office, whether the citation being issued is for a first, second, or subsequent offense.

(4) The person who issues the citation is authorized to collect the fine, but the person who is issued a citation may pay the fine to the board within 5 business days of the date of issuance. The board may, upon finding that the person has demonstrated acceptable proof of licensure, waive or refund the fine.

(5) A person who refuses to sign and accept a citation commits a misdemeanor, punishable in the same manner as provided in 37-1-318.

Section 9. Citation and fine for failure to display license. (1) A citation for failure to display an electrician's license or proof of licensure issued by an employee of the department must include:

(a) the time and date on which the citation is issued;

(b) the name, address, mailing address, and signature of the person to whom the citation is issued;

(c) reference to the statutory authority to issue the citation;

(d) the name, title, affiliation, and signature of the person issuing the citation;

(e) information explaining the procedure for the person to follow in order to pay the fine or to demonstrate proof of licensure; and

(f) the amount of the applicable fine.

(2) The applicable civil fines for failing to display a license or proof of licensure are as follows:

(a) $100 for the first offense;

(b) $250 for the second offense; and

(c) $500 for the third and any subsequent offense.

(3) Each day of violation constitutes a separate offense. The person issuing the citation is responsible for determining, by means of an up-to-date list or through telephone or other communication with the board office, whether the citation being issued is for a first, second, or subsequent offense.

(4) The person who issues the citation is authorized to collect the fine, but the person who is issued a citation may pay the fine to the appropriate authority identified on the citation within 5 business days of the date of issuance. The board

HeinOnline -- 1999 vol. II 1548 1999

may, upon finding that the person has demonstrated acceptable proof of licensure, waive or refund the fine.

(5) A person who refuses to sign and accept a citation commits a misdemeanor, punishable in the same manner as provided in 37-1-318.

Section 10. Codification instruction. (1) [Section 8] is intended to be codified as an integral part of Title 37, chapter 69, part 3, and the provisions of Title 37, chapter 69, part 3, apply to [section 8].

(2) [Section 9] is intended to be codified as an integral part of Title 37, chapter 68, part 3, and the provisions of Title 37, chapter 68, part 3, apply to [section 9].

Section 11. Effective date. [This act] is effective July 1, 1999.

Approved April 21, 1999

CHAPTER NO. 403

[HB 504]

AN ACT PROVIDING THAT THE SMALL EMPLOYER HEALTH CARE INSURANCE AVAILABILITY ACT DOES NOT APPLY TO AN INDIVIDUAL HEALTH BENEFIT PLAN IF THE EMPLOYEE OR DEPENDENT ELIGIBLE FOR COVERAGE UNDER THAT PLAN IS REIMBURSED BY THE SMALL EMPLOYER FOR ANY PART OF THE PLAN PREMIUMS UNLESS THE EMPLOYER HAS HAD IN PLACE AN EMPLOYER-SPONSORED GROUP HEALTH BENEFIT PLAN IN THE 12 MONTHS PRECEDING THE REIMBURSEMENT; AND AMENDING SECTION 33-22-1804, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-22-1804, MCA, is amended to read:

"33-22-1804. Applicability and scope. (1) This part applies to a health benefit plan marketed through a small employer that provides coverage to the employees of a small employer in this state if any of the following conditions are met:

(a) a portion of the premium or benefits is paid by or on behalf of the small employer;

(b) an eligible employee or dependent is reimbursed, whether through wage adjustments or otherwise, by or on behalf of the small employer for any portion of the premium;

(c) the health benefit plan is treated by the employer or any of the eligible employees or dependents as part of a plan or program for the purposes of section 106, 125, or 162 of the Internal Revenue Code, except a plan or program that is funded entirely by contributions from the employees; or

(d) all of the premium is paid by the employee who obtains coverage through the employer's group health benefit plan.

(2) This part does not apply to an individual health benefit plan for which the entire premium is paid by an employee through payroll deduction or other means.

(3) ~~This~~ *Unless prohibited by a written opinion from a federal agency, by final regulations implementing Public Law 104-191, or by a ruling by a court of*

competent jurisdiction, this part ~~applies~~ *does not apply* to an individual health benefit plan if the eligible employee or dependent is directly or indirectly reimbursed, whether through wage adjustments or otherwise, hy or on behalf of the small employer for any portion of the premium. *However, this part does apply to an individual health benefit plan if the employer making the direct or indirect reimbursement for any portion of the premium has had in place an employer-sponsored group health benefit plan in the 12 months preceding the reimbursement.*"

Seetion 2. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun hefore [the effective date of this act].

Approved April 21, 1999

CHAPTER NO. 404

[HB 526]

AN ACT CREATING A MONTANA DEFERRED DEPOSIT LOAN ACT TO BE ADMINISTERED BY THE DEPARTMENT OF COMMERCE; PROVIDING FOR LICENSURE, LICENSE AND EXAMINATION FEES, DISCLOSURE REQUIREMENTS, COMPLAINT PROCEDURES, CONTRACT PROVISIONS, RULEMAKING AUTHORITY, CIVIL REMEDIES, AND CRIMINAL PENALTIES; AND AMENDING SECTION 32-5-103, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 15] may he cited as the "Montana Deferred Deposit Loan Act".

Section 2. Purpose — rules. (1) The purpose of [sections 1 through 15] is to protect consumers who enter into short-term, high-rate loans with lenders from abuses that occur in the credit marketplace when the lenders are unregulated.

(2) The department may adopt rules to implement the provisions of [sections 1 through 15]. The rules may include hut are not limited te rules establishing forms and procedures for licensing, rules pertaining to acceptable practices at a business location, rules establishing disclosure requirements, and rules estahlishing complaint and hearing procedures.

Section 3. Definitions. For the purposes of [sections 1 through 15], the following definitions apply:

(1) "Check" means a negetiable instrument, as defined in 30-3-104, that is drawn on a hank and is payable on demand at the maturity of a deferred deposit loan.

(2) "Consumer" means a natural person who, singly or jointly with another natural person, enters into a deferred deposit loan.

(3) "Deferred deposit lender" or "licensee" means a person engaged in the business of making deferred deposit loans.

(4) "Deferred deposit loan" means an arrangement, including all representations made by the deferred deposit lender whether express or implied, in which:

HeinOnline -- 1999 vol. II 1550 1999

(a) a person accepts a check dated on the date the check is written and agrees to hold the check for a period of days prior to deposit or presentment; or

(h) a person accepts a check dated suhsequent to the date on which the check is written and agrees to hold the check for deposit or presentment until the date written on the check.

(5) "Department" means the department of commerce.

(6) "Person" means a natural person, sole proprietorship, firm, partnership, corporation, or other entity.

Section 4. Scope. (1) [Sections 1 through 15] apply to deferred deposit lenders and to persons who facilitate, enable, or act as a conduit for persons making deferred deposit loans.

(2) [Sections 1 through 15] do not apply to:

(a) hanks, savings and loan associations, credit unions, or other state or federally regulated financial institutions; or

(b) retail sellers who cash checks incidental to or independent of a sale and who do not charge more than $2 per check for the service.

Section 5. License — business locations —rules. (1) A person may not engage in or offer to engage in the business of making deferred deposit loans unless licensed by the department.

(2) An applicant for a license to engage in the business of making deferred deposit loans shall pay to the department a license application fee of $375.

(3) The department may not issue or renew a license unless findinga are made that:

(a) the financial responsibility, experience, character, and general fitness of the applicant warrant the belief that the husiness will be operated lawfully and fairly and within the provisions of [sections 1 through 15];

(b) the applicant has unencumbered assets of at least $25,000 for each location;

(c) the applicant has provided a sworn statement that the applicant will not in the future, directly or indirectly, use a criminal process to collect the payment of deferred deposit loans or any civil process to collect the payment of deferred deposit loans not generally available to creditors to collect on loans in default; and

(d) other information that the department considers necessary has been provided.

(4) A license may not be issued for longer than 1 year, and a renewal of a license may not be provided if the licensee has violated a provision of [sections 1 through 15].

(5) Each licensee shall post a bond in the amount of $10,000 for each location. The bond must continue in effect for 2 years after the licensee ceases operation in the state. The bond must be available to pay damages and penalties to consumers harmed by any violation of [sections 1 through 15].

(6) More than one place of business may not be maintained under the same license, but the department may issue more than one license to the same licensee

HeinOnline -- 1999 vol. II 1551 1999

upon compliance with the provisions of this section governing issuance of a single license.

Section 6. Annual examinations — fee. (1) The department shall conduct annually an examination of each licensee's deferred deposit lending operation to ensure that the licensee is in compliance with the provisions of [sections 1 through 15].

(2) A licensee shall pay the department a fee in the amount of $300 a day for each examiner required to conduct an annual examination.

(3) A licensee shall make available to a department examiner the information required under [section 9] or as required by rule.

(4) Completion of an annual examination must, in the absence of the department's finding just cause to revoke or suspend a license, constitute grounds for license renewal.

Section 7. License revocation. (1) If the department finds, after due notice and hearing or opportunity for hearing, as provided in the Montana Administrative Procedure Act, that a licensee or an officer, agent, employee, or representative of the licensee has violated any of the provisions of [sections 1 through 15], has failed to comply with the rules, regulations, instructions, or orders promulgated by the department, has failed or refused to make required reports to the department, or has furnished false information to the department, the department may issue an order revoking or suspending the right of the licensee, directly or through an officer, agent, employee, or representative, to do business in this state as a licensee.

(2) A revocation, suspension, or surrender of a license does not relieve the licensee from civil or criminal liability for acts committed prior to the revocation, suspension, or surrender of the license.

Section 8. Complaint procedure. The department shall maintain a list of licensees that is available to interested persons and to the general public. The department shall also establish by rule a procedure under which an aggrieved consumer or any member of the public may file a complaint against a licensee or an unlicensed person who violates any provision of [sections 1 through 15]. The department may hold hearings upon the request of a party to the complaint, make findings of fact or conclusions of law, issue cease and desist orders, refer the matter to the appropriate law enforcement agency for prosecution for a violation of [sections 1 through 15], seek injunctive or other relief in district court, or suspend or revoke a license granted under [sections 1 through 15].

Section 9. Information and annual reports. (1) Each licensee shall keep and use books, accounts, and records that will enable the department to determine if the licensee is complying with the provisions of [sections 1 through 15] and maintain any other records required by the department. The department is authorized to examine the records at any reasonable time. The records must be kept for 4 years following the last entry on a loan and must be kept according to generally accepted accounting procedures that include an examiner being able to review the recordkeeping and reconcile each consumer loan with documentation maintained in the consumer's loan file records.

(2) Each licensee shall file, on forms prescribed by the department, an annual report with the department on or before March 31 for the 12-month period in the

HeinOnline -- 1999 vol. II 1552 1999

preceding year ending as of December 31. The report must disclose in detail and under appropriate headings:

(a) the resources, assets, and liabilities of the licensee at the beginning and the end of the period;

(b) the income, expense, gain, loss, and balance sheets;

(c) the total number of deferred deposit loans made in the year ending as of December 31 of the previous year;

(d) the total number of deferred deposit loans outstanding as of December 31 of the previous year;

(e) the minimum and maximum amount of checks for which deposits were deferred in the year ending as of December 31 of the previous year;

(f) the total number and dollar amount of returned checks, the total number and dollar amount of checks recovered, and the total number and dollar amount of checks charged off during the year ending as of December 31 of the previous year; and

(g) verification that the licensee has not used a criminal process or caused a criminal process to be used in the collection of any deferred deposit loans or used any civil process to collect the payment of deferred deposit loans not generally available to creditors to collect on loans in default during the year ending as of December 31 of the previous year.

(3) A report must be verified by the oath or affirmation of the owner, manager, or president of the deferred deposit lender.

(4) (a) If a licensee conducts another business or is affiliated with other licensees under [sections 1 through 15] or if any other situation exists under which allocations of expense are necessary, the licensee shall make the allocation according to appropriate and reasonable accounting principles as approved by the department.

(b) Information about any other business conducted on the same premises where deferred deposit loans are made must be provided as required by the department.

(5) Each licensee shall file a copy of the disclosure documents described in [section 11] with the department prior to the date of commencement of business at each location, at the time any changes are made to the documents, and annually upon renewal of the license. These documents must be available to interested parties and to the general public through the department.

Section 10. Loan requirements. (1) Each deferred deposit loan may not have a term that exceeds 31 days.

(2) The amount of the deferred deposit loan, exclusive of the fee allowed in [section 12(2)], may not exceed $300.

(3) The minimum amount of a deferred deposit loan is $50.

(4) The check written by the consumer in a deferred deposit loan must be made payable to the licensee.

(5) The licensee shall provide the consumer, or each consumer if there is more than one, with a copy of the loan documents described in [section 11] upon consummation of the loan.

HeinOnline -- 1999 vol. II 1553 1999

(6) The holder or assignee of any check written by a consumer in connection with a deferred deposit loan takes the instrument subject to all claims and defenses of the consumer.

Section 11. Required disclosures. (1) Before entering into a deferred deposit loan, the licensee shall deliver to the consumer a pamphlet prepared by or at the direction of the department that:

(a) explains, in simple language, all of the consumer's rights and responsibilities in a deferred deposit loan transaction;

(b) includes a telephone number to the department's office that handles concerns or complaints by consumers; and

(c) informs consumers that the department's office can provide information about whether a lender is licensed and other legally available information.

(2) Licensees shall provide consumers with a written agreement on a form specified or approved by the department that can be kept by the consumer, which must include the following information:

(a) the name, address, and phone number of the licensee making the deferred deposit loan and the initials or other written means of identifying the individual employee who signs the agreement on behalf of the licensee;

(b) an itemization of the fees and interest charges to be paid by the consumer;

(c) a clear description of the consumer's payment obligations under the loan; and

(d) in a manner that is more conspicuous than the other information provided in the loan document and that is in at least 14-point bold typeface, a statement that "you cannot be prosecuted in criminal court for collection of this loan". The statement must be located immediately preceding the signature of the consumer.

Section 12. Permitted fees. (1) A licensee may not charge or receive, directly or indirectly, any interest, fees, or charges except those specifically authorized by this section.

(2) A licensee may not charge a fee for each deferred deposit loan entered into with a consumer that exceeds 25% of the face amount of the check against which the delayed deposit loan is advanced.

(3) If there are insufficient funds to pay a check on the date of presentment, a licensee may charge a fee, not to exceed $15. Only one fee may be collected pursuant to this subsection with respect to a particular check even if it has been redeposited and returned more than once. A fee charged pursuant to this subsection is a licensee's exclusive charge for late payment.

(4) If the loan agreement in [section 11] requires, reasonable attorney fees and court costs may be awarded to the party in whose favor a final judgment is rendered in any action on a deferred deposit loan entered into pursuant to [sections 1 through 15].

Section 13. Prohibited acts. A licensee making deferred deposit loans may not commit, or have committed on behalf of the licensee, any of the following prohibited acts:

(1) engaging in the business of deferred deposit lending unless the department has first issued a valid license;

HeinOnline -- 1999 vol. II 1554 1999

(2) threatening to use or using a criminal process in this or any other state to collect on the loan made to a consumer in this state or any civil process to collect the payment of deferred deposit loans not generally available to creditors to collect on loans in default;

(3) altering the date or any other information on a check received from a consumer;

(4) using any device or agreement that would have the effect of charging or collecting more fees, charges, or interest than those allowed by [sections 1 through 15], including but not limited to entering into a different type of transaction or renewing or rolling over a loan with the consumer;

(5) engaging in unfair, deceptive, or fraudulent practices in the making or collection of a deferred deposit loan;

(6) entering into a deferred deposit loan with a consumer that is unconscionable. In determining whether a deferred deposit loan transaction is unconscionable, consideration must be given to, but is not limited to, whether the amount of the loan exceeds 25% of the consumer's monthly net income.

(7) charging to cash a check representing the proceeds of the deferred deposit loan;

(8) using or attempting to use the check provided by the consumer in a deferred deposit loan as security for purposes of any state or federal law;

(9) accepting payment of the deferred deposit loan through the proceeds of another deferred deposit loan provided by the same licensee or any affiliate;

(10) making a deferred deposit loan that, when combined with another outstanding deferred deposit loan owed to the licensee, exclusive of the fee allowed in [section 12(2)], exceeds a total of $300 when combining the face amount of the checks written in connection with each loan. Regardless of the total of the loans, a licensee may not make a loan to a consumer who has two or more deferred deposit loans outstanding with the licensee.

(11) renewing, repaying, refinancing, or consolidating a deferred deposit loan with the proceeds of another deferred deposit loan made to the same consumer. However, a licensee may without charge extend the term of the loan beyond the due date.

(12) accepting any collateral for a deferred deposit loan;

(13) charging any interest, fees, or charges other than those specifically authorized by [sections 1 through 15], including but not limited to charges for insurance.

(14) threatening to take any action against a consumer that is prohibited by [sections 1 through 15] or making any misleading or deceptive statements regarding the deferred deposit loan;

(15) making a misrepresentation of a material fact by an applicant in obtaining or attempting to obtain a license;

(16) including any of the following provisions in the loan agreement required by [section 11]:

(a) a hold harmless clause;

(b) a confession of judgment clause;

HeinOnline -- 1999 vol. II 1555 1999

(c) a waiver of the right to a jury trial, if applicable, in any action brought by or against a consumer;

(d) a mandatory arbitration clause;

(e) any assignment of or order for payment of wages or other compensation for services;

(f) a provision in which the consumer agrees not to assert any claim or defense arising out of the contract; or

(g) a waiver of any provision of [sections 1 through 15].

Section 14. Civil remedies. (1) The remedies provided in this section are cumulative and apply to licensees and unlicensed persons to whom [sections 1 through 15] apply.

(2) Any violation of [sections 1 through 15] constitutes an unfair or deceptive trade practice.

(3) Any person found to have violated [sections 1 through 15] is liable to the consumer for actual and consequential damages, plus statutory damages of $1,000 for each violation, plus costs and attorney fees.

(4) A consumer may sue for injunctive and other appropriate equitable relief to stop a person from violating any provisions of [sections 1 through 15].

(5) The consumer may bring a class action suit to enforce [sections 1 through 15].

(6) The remedies provided in this section are not intended to be the exclusive remedies available to a consumer for a violation of [sections 1 through 15].

Section 15. Criminal penalties. Any person, including a member, officer, or director of a deferred deposit lender who knowingly violates [sections 1 through 15] is guilty of a misdemeanor and, on conviction, is subject to a fine not exceeding $1,000 or imprisonment not exceeding 6 months, or both.

Section 16. Section 32-5-103, MCA, is amended to read:

"32-5-103. Engaging in business of making consumer loans restricted. (1) Except as provided in subsection (5), a person may not engage in the business of making consumer loans or advances of money on credit in any amount and contract for, charge, or receive directly or indirectly on or in connection with any loan or advance any charges, whether for interest, compensation, consideration, or expense, except as provided in and authorized by this chapter. ~~A person engaged in business as a licensed pawnbroker may not become a licensee under this chapter.~~ The provisions of this chapter do not apply to any exempted person.

(2) A licensee may sell its business and assets to a bank, building and loan association, savings and loan association, trust company, credit union, credit association, development credit corporation, or bank holding company organized pursuant to state or federal statutory authority and subject to supervision, control, or regulation by an agency of the state of Montana or an agency of the federal government. All contracts for loans and all other contracts entered into by the licensee pursuant to the provisions of this chapter that are sold and transferred to an acquiring organization continue to be governed by the provisions of this chapter.

HeinOnline -- 1999 vol. II 1556 1999

(3) The provisions of subsection (1) apply to any person who seeks to evade its applications by any device, subterfuge, or pretense.

(4) Any act by a licensee in the making of a contract or in the collection of a loan made under the contract that violates the provisions of this chapter is void. The licensee has no right to collect, receive, or retain any principal, interest, or charges.

(5) A consumer loan licensee or a person who seeks a regulated lender exemption under 31-1-112 as a consumer loan licensee shall fully comply with this chapter. A regulated lender as defined in 31-1-111, other than a consumer loan licensee, or a lender who complies with the provisions of Title 31, chapter 1, part 1, is not required to comply with this chapter. *A deferred deposit lender, as defined in [section 3], who complies with the provisions of [sections 1 through 15] is not required to comply with this chapter."*

Section 17. Codification instruction. [Sections 1 through 15] are intended to be codified as an integral part of Title 31, chapter 1, and the provisions of Title 31, chapter 1, apply to [sections 1 through 15].

Section 18. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 2, 1999

CHAPTER NO. 405

[HB 578]

AN ACT REVISING PUBLIC RECORD LAWS RELATED TO PUBLIC ACCESS TO NONPRINT RECORDS; AND AMENDING SECTION 2-6-110, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-6-110, MCA, is amended to read:

"2-6-110. Electronic information *and nonprint records* — public acccss — fees. (1) *(a)* Except as provided by law, each person is entitled to a copy of information compiled, created, or otherwise in the custody of public agencies that is in electronic format *or other nonprint media, including but not limited to videotapes, photographs, microfilm, film, or computer disk*, subject to the same restrictions applicable to the information in printed form. All restrictions relating to confidentiality, privacy, business secrets, and copyright are applicable to the electronic *or nonprint* information.

(b) The provisions of subsection (1)(a) do not apply to collections of the Montana historical society established pursuant to 22-3-101.

(2) Except as provided by law and subject to subsection (3), an agency may charge a fee, not to exceed:

(a) the agency's actual cost of purchasing the electronic media used for transferring data, if the person requesting the information does not provide the media;

(b) expenses incurred by the agency as a result of mainframe processing charges;

HeinOnline -- 1999 vol. II 1557 1999

~~(c) expenses incurred by the agency for providing online computer access to the person requesting access;~~

(c) expenses incurred by the agency for providing online computer access to the person requesting access;

~~(d)~~*(d)* other out-of-pocket expenses directly associated with the request for information; and

~~(e)~~*(e)* the hourly rate for the current fiscal year for a state employee classified as grade 10, market salary, under 2-18-312 for each hour, or fraction of an hour, after one-half hour of copying service has heen provided.

(3) (a) In addition to the allowable fees in subsection (2), the department of revenue may charge an additional fee as reimhursement for the cost of developing and maintaining the property valuation and assessment system database from which the information is requested. The fee must be charged to persons, federal agencies, state agencies, and other entities requesting the database or any part of the database from any department property valuation and assessment system. The fee may not be charged to the governor's office of budget and program planning, the state tax appeal board, or any legislative agency or committee.

(b) The department of revenue may not charge a fee for information provided from any department property valuation and assessment system database to a local taxing jurisdiction for use in taxation and other governmental functions or to an individual taxpayer concerning the taxpayer's property.

(c) All fees received by tbe department of revenue under subsection (2) and tbis subsection (3) must be deposited in a state special revenue fund as provided in 15-1-521.

(4) For tbe purposes of this section, the term "agency" has the meaning provided in 2-3-102 but includes legislative, judicial, and state military agencies.

(5) *An agency may not charge more than the amount provided under subsection (2) for providing a copy of an existing nonprint record.*

(6) An agency shall ensure that a copy of information provided to a requestor is of a quality that reflects the condition of the original if requested by the requestor.

(7) This section does not authorize the release of electronic security codes giving access to private information."

Approved April 21, 1999

CHAPTER NO. 406

[SB 36]

AN ACT PROVIDING LIMITS ON LIABILITY FOR MEDICAL PRACTITIONERS AND DENTAL HYGIENISTS WHO PROVIDE CARE OR ASSISTANCE FOR CHARITABLE PURPOSES; AMENDING SECTION 27-1-736, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 27-1-736, MCA, is amended to read:

"27-1-736. Limits on liability of ~~dentist~~ *medical practitioner or dental hygienist* who provides services without compensation. *(1)* A ~~dentist, dental surgeon, or oral surgeon~~ *medical practitioner, as defined in 37-2-101, or a dental hygienist* licensed under Title 37, chapter 4, who~~, for charitable purposes, provides care or assistance~~ *renders, at any site, any health care within the scope of the provider's license, voluntarily and* without compensation~~, except for reimbursement for supplies~~, *to a patient of a clinic or to a patient referred by a clinic* is not liable *to a person* for civil damages ~~for acts or omissions other than damages occasioned by~~ *resulting from the rendering of the care, unless the damages were the result of* gross negligence or ~~by~~ willful or wanton acts or omissions by the ~~dentist, dental surgeon, or oral surgeon~~ *medical practitioner or dental hygienist. Each patient must be given notice that under state law the medical practitioner or dental hygienist cannot be held legally liable for ordinary negligence if the medical practitioner or dental hygienist does not have malpractice insurance.*

(2) For purposes of this section:

(a) "clinic" means a place for the provision of health care to patients that is organized for the delivery of health care without compensation or that is operated as a health center under 42 U.S.C. 254b;

(b) "health care" has the meaning provided in 50-16-504;

(c) "without compensation" means that the medical practitioner or dental hygienist voluntarily rendered health care without receiving any reimbursement or compensation, except for reimbursement for supplies.

(3) Subsection (1) applies only to a medical practitioner or dental hygienist who:

(a) does not have malpractice insurance coverage because the medical practitioner or dental hygienist is retired or is otherwise not engaged in active practice; or

(b) has malpractice insurance coverage that has a rider or exclusion that excludes coverage for services provided under this section."

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Applicability. [This act] applies to services rendered on or after [the effective date of this act].

Approved April 21, 1999

CHAPTER NO. 407

[SB 68]

AN ACT REVISING CERTAIN STATUTES RELATING TO THE STATE COMPENSATION INSURANCE FUND; PROVIDING AN EXEMPTION FROM THE MONTANA PROCUREMENT ACT FOR INSURANCE-RELATED SERVICES; CLARIFYING CURRENT LAW RELATING TO PAYMENT OF DIVIDENDS BY THE STATE COMPENSATION INSURANCE FUND; REQUIRING USE OF NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS' RISK-BASED CAPITAL REQUIREMENTS IN SETTING RATES; ELIMINATING AN ADDITIONAL PRICING LEVEL WITH A

HeinOnline -- 1999 vol. II 1559 1999

HIGHER RATE FOR EMPLOYERS WHO DO NOT SATISFACTORILY IMPLEMENT SAFETY PROGRAMS; ELIMINATING THE STATE FUND'S AUTHORITY TO ASSESS AN ADDITIONAL 20 PERCENT SURCHARGE ON PREMIUMS PAYABLE TO THE STATE FUND BY HIGH-LOSS EMPLOYERS; AMENDING SECTIONS 18-4-132, 39-71-2315, 39-71-2323, 39-71-2330, AND 39-71-2341, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 18-4-132, MCA, is amended to read:

"18-4-132. Application. (1) This chapter applies to expenditure of public funds irrespective of their source, including federal assistance money, by this state acting through a governmental body, as defined in 18-4-123, under any contract. This chapter does not apply to either grants or contracts between the state and its political subdivisions or other governments, except as provided in part 4. This chapter also applies to the disposal of state supplies. This chapter or rules adopted pursuant to this chapter do not prevent any governmental body or political subdivision from complying with the terms and conditions of any grant, gift, bequest, or cooperative agreement.

(2) This chapter does not apply to construction contracts.

(3) This chapter does not apply to expenditures of or the authorized sale or disposal of equipment purchased with money raised by student activity fees designated for use by the student associations of the university system.

(4) This chapter does not apply to contracts entered into by the Montana state lottery that bave an aggregate value of less than $250,000.

(5) This chapter does not apply to contracts entered into by the state compensation insurance fund to procure insurance-related services.

~~(5)~~*(6)* This chapter does not apply to employment of:

(a) a registered professional engineer, surveyor, real estate appraiser, or registered architect;

(b) a physician, dentist, pharmacist, or other medical, dental, or health care provider;

(c) an expert witness hired for use in litigation, a hearings officer hired in rulemaking and contested case proceedings under the Montana Administrative Procedure Act, or an attorney as specified by executive order of the governor;

(d) consulting actuaries;

(e) a private consultant employed by the student associations of the university system with money raised from student activity fees designated for use by those student associations;

(f) a private consultant employed by the Montana stato lottery;

(g) a private investigator licensed by any jurisdiction; or

(h) a claims adjuster."

Section 2. Section 39-71-2315, MCA, is amended to read:

"39-71-2315. Management of state fund — powers and duties of the hoard — business plan required. (1) The managoment and control of the state fund is vested solely in the board.

HeinOnline -- 1999 vol. II 1560 1999

(2) The board is vested with full power, authority, and jurisdiction over the state fund. The board may perform all acts necessary or convenient in the exercise of any power, authority, or jurisdiction over the state fund, either in the administration of the state fund or in connection with the insurance business to be carried on under the provisions of this part, as fully and completely as the governing body of a private mutual insurance carrier, in order to fulfill the objectives and intent of this part. Bonds may not be issued by the board, the state fund, or the executive director.

(3) The board shall adopt a business plan no later than June 30 for the next fiscal year. At a minimum, the plan must include:

(a) specific goals for the fiscal year for financial performance. The standard for measurement of financial performances must include an evaluation of premium to surplus.

(b) specific goals for the fiscal year for operating performance. Goals must include but not be limited to specific performance standards for staff in the area of senior management, underwriting, and claims administration. Goals must, in goneral, maximize efficiency, economy, and equity as allowed by law.

(4) The business plan must be available upon request to the general public for a fee not to exceed the actual cost of publication. However, performance goals relating to a specific employment position are confidential and not available to the public.

(5) No sooner than July 1 or later than October 31, the board shall convene a public meeting to review the performance of the state fund, using the business plan for comparison of all the established goals and targots. The board shall publish, by November 30 of each year, a report of the state fund's actual performance as compared to the business plan.

(6) The state fund board of directors shall establish in-house guidelines for procurement of insurance-related services and shall include guidelines for the solicitation of submissions of information regarding insurance-related services from more than one vendor. The board may include guidelines for the circumstances when business necessity or expedience may preclude the solicitation of submissions from more than one vendor. The board may also include in the guidelines the exemptions to the procurement process in 18-4-132."

Section 3. Section 39-71-2323, MCA, is amended to read:

"**39-71-2323. Surplus in state fund — payment of dividends.** Subject to the provisions of 39-71-2316, if at the end of any fiscal year there exists in the state fund account created by 39-71-2321 for claims for injuries resulting from accidents that occur on or after July 1, 1990, an excess of assets over liabilities, including necessary reserves and ~~a reasonable~~ *an appropriate* surplus *as determined by the board in accordance with 39-71-2330*, and if the excess may be refunded safely, then the ~~state fund~~ *board, after consultation with the independent actuary engaged pursuant to 39-71-2330,* may declare a dividend. The rules of the state fund must prescribe the manner of payment to those employers who have paid premiums into the state fund in excess of liabilities ~~chargeable to them in the fund for that year. In determining the amount or proportion of the balance to which the employer is entitled as dividends, the state fund shall give consideration to the prior paid premiums and accident experience of each individual employer during the dividend year~~."

Section 4. Section 39-71-2330, MCA, is amended to read:

HeinOnline -- 1999 vol. II 1561 1999

"39-71-2330. Rate setting — *surplus.* *(1)* The board has the authority to establish the rates to be charged by the state fund for insurance. The board shall engage the services of an independent actuary who is a member in good standing with the American academy of actuaries to develop and recommend actuarially sound rates. Rates must be set at amounts sufficient, when invested, to carry the estimated cost of all claims to maturity, to meet the reasonable expenses of conducting the business of the state fund, and to amass and maintain~~, by July 1, 2003, a surplus of 25% of the annual premium~~ *an excess of surplus over the amount produced by the national association of insurance commissioners' risk-based capital requirements for a casualty insurer.*

(2) Because surplus is desirable in the insurance business, the board shall annually determine the level of surplus that must be maintained by the state fund pursuant to this section, but shall maintain a minimum surplus of 25% of annual earned premium. The state fund shall use the amount of the surplus above the risk-based capital requirements to secure the state fund against various risks inherent in or affecting the business of insurance and not accounted for or only partially measured by the risk-based capital requirements."

Section 5. Section 39-71-2341, MCA, is amended to read:

"39-71-2341. Variable pricing — ~~higher premium by state fund for noncompliance with safety program —~~ expenditure accounting. (1) The state fund shall:

~~(a)~~ implement variable pricing levels within individual rate classifications to reward an employer with a good safety record and penalize an employer with a poor safety record. The timeliness of an employer's payroll reporting and premium payments and other relevant factors may be considered in the placement of an employer within the variable pricing levels.

~~(b) provide an additional pricing level with a higher rate within the classification for those employers who do not satisfactorily implement a safety program subsequent to the provision of or attempt to provide onsite safety consultation services.~~

~~(2) The state fund may assess a surcharge of an additional 20% on premiums payable to the state fund by high-loss employers. The criteria for identifying high-loss employers must be established by the state fund board of directors by rule.~~

~~(3)~~*(2)* The state fund shall separately account for money expended under 2-15-1708, 33-15-318, Title 39, chapter 71, part 15, 39-71-2311, and this section."

Section 6. Effective dates. (1) [Sections 1 and 2 and this section] are effective on passage and approval.

(2) [Sections 3 through 5] are effective July 1, 1999.

Approved April 21, 1999

CHAPTER NO. 408

[SB 79]

AN ACT IMPOSING A 6-MILL LEVY FOR SUPPORT OF THE UNIVERSITY SYSTEM; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND A TERMINATION DATE.

HeinOnline -- 1999 vol. II 1562 1999

Be it enacted by the Legislature of the State of Montana:

Section 1. Tax levy for university system. There is levied upon the taxable value of all real estate and personal property subject to taxation in the state of Montana 6 mills or so much of 6 mills as is necessary to raise the amount appropriated by the legislature from the state special revenue fund for the support, maintenance, and improvement of the Montana university system, as provided in referendum measure No. 113, passed by a vote of the people at the general election held November 3, 1998. The funds raised from the levy must be deposited in the state special revenue fund.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 15, chapter 10, part 1, and the provisions of Title 15, chapter 10, part 1, apply to [section 1].

Section 3. Coordination instruction. If [this act] is passed and approved, then Senate Bill No. 56 is void.

Section 4. Effective date. [This act] is effective on passage and approval.

Section 5. Retroactive applicability. [Section 1] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

Section 6. Termination. [Section 1] terminates January 1, 2009.

Approved April 21, 1999

CHAPTER NO. 409

[SB 113]

AN ACT GENERALLY REVISING THE LAWS GOVERNING THE LICENSING OF DEALERS AND WHOLESALERS OF MOTOR VEHICLES, RECREATIONAL VEHICLES, MOTORCYCLES, QUADRICYCLES, TRAILERS, AND SPECIAL MOBILE EQUIPMENT BY THE DEPARTMENT OF JUSTICE; DEFINING THE TERMS "NEW MOTOR VEHICLE", "ESTABLISHED PLACE OF BUSINESS", AND "RETAIL SALE"; AUTHORIZING COMPLIANCE SPECIALISTS DESIGNATED BY THE DEPARTMENT AND TRAINED AS PEACE OFFICERS TO ISSUE CITATIONS FOR VIOLATIONS OF DEALER LAWS AND CERTAIN VEHICLE TITLE AND REGISTRATION LAWS; REQUIRING DEALERS TO DISPLAY ON A SALES LOT NEW OR USED MOTOR VEHICLES BEARING EITHER A MONRONEY LABEL OR BUYER'S GUIDE LABEL AS APPROPRIATE; REQUIRING DEALERS TO INSTALL AND MAINTAIN LISTED TELEPHONE SERVICE AND TO POST WRITTEN NOTICE OF REGULAR AND CUSTOMARY BUSINESS HOURS AT THE DEALER'S ESTABLISHED PLACE OF BUSINESS; REQUIRING DEALERS AND WHOLESALERS TO MAINTAIN GARAGE KEEPERS LIABILITY INSURANCE; CLARIFYING THE DUTY OF AN APPLICANT FOR A DEALER'S LICENSE TO DISCLOSE FELONY OFFENSES FOR WHICH A DETERMINATION OF GUILT WAS MADE AND TO SUMMARIZE CONDUCT GIVING RISE TO THE CHARGE; REQUIRING DEALER'S LICENSE OR WHOLESALER'S LICENSE APPLICANTS TO PROVIDE CERTAIN INFORMATION ABOUT GARAGE KEEPERS LIABILITY COVERAGE OBTAINED BY THE APPLICANT; CONDITIONING USED MOTOR VEHICLE DEALER LICENSE RENEWAL ON A MINIMUM OF 12 RETAIL

HeinOnline -- 1999 vol. II 1563 1999

SALES OF USED MOTOR VEHICLES IN A PRIOR LICENSE TERM; RETAINING SEPARATE LICENSE RENEWAL REQUIREMENTS FOR A USED MOTOR VEHICLE DEALER WHO IS ALSO A QUALIFIED TOW TRUCK OPERATOR OR A LICENSED MOTOR VEHICLE WRECKING FACILITY; DENYING LICENSE RENEWAL TO USED MOTOR VEHICLE DEALERS WHO FAIL TO MEET MINIMUM RETAIL SALES REQUIREMENTS IN THE PRECEDING LICENSE YEAR AND WITHHOLDING DEALER LICENSE ELIGIBILITY FROM THOSE DEALERS FOR THE SUCCEEDING 12-MONTH PERIOD; EXEMPTING USED MOTOR VEHICLE DEALERS LICENSED BY THE DEPARTMENT OF JUSTICE ON OR BEFORE DECEMBER 31, 1999, FROM THE MINIMUM RETAIL SALES REQUIREMENTS FOR LICENSE RENEWAL; CONDITIONING WHOLESALER'S LICENSE RENEWAL ON A MINIMUM OF 12 SALES OF VEHICLES OF THE TYPE AUTHORIZED UNDER THE LICENSE TO A LICENSED DEALER, AUTO AUCTION, OR ANOTHER WHOLESALER IN THE PRECEDING LICENSE YEAR; DENYING LICENSE RENEWAL TO WHOLESALERS WHO FAIL TO MEET MINIMUM SALES REQUIREMENTS IN THE PRECEDING LICENSE YEAR AND WITHHOLDING WHOLESALER LICENSE ELIGIBILITY FROM THOSE WHOLESALERS FOR THE SUCCEEDING 12-MONTH PERIOD; CLARIFYING THE DEFINITION OF DEALER TO INCLUDE THE BUSINESS OF ACCEPTING VEHICLES ON CONSIGNMENT AND OTHERWISE BUYING, SELLING, EXCHANGING, OR ACTING AS A BROKER OF VEHICLES NOT TITLED AND REGISTERED IN THE DEALER'S NAME; EXTENDING ABATEMENT OF VEHICLE TAXES ON PROPERLY REPORTED DEALER INVENTORY TO TRANSFERS TO OR FROM OTHER MONTANA-LICENSED DEALERS, WHOLESALERS, OR AUTO AUCTIONS PRIOR TO RETAIL SALE; REDUCING CERTAIN DEALER LICENSE FEES; CODIFYING THE CURRENT FEE CHARGED FOR DEMONSTRATOR PLATES; AMENDING SECTIONS 20-7-514, 61-1-132, 61-1-314, 61-3-101, 61-3-103, 61-3-206, 61-3-301, 61-3-432, 61-3-501, 61-3-502, 61-3-508, 61-3-602, 61-4-101, 61-4-102, 61-4-104, 61-4-105, 61-4-107, 61-4-108, 61-4-120, 61-4-205, AND 61-10-214, MCA; REPEALING SECTION 61-4-103, MCA; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Established place of business. (1) "Estahlished place of business" means the geographic location upon which a permanent building is located that is actually occupied either continuously or at regular periods by a dealer. A building is actually occupied by a dealer if the dealer's books and records are kept in the huilding, and except for approved off-premises sales, the dealer's business is transacted within the building.

(2) A dealer's established place of husiness may also include the geographic location of one or more physical lots upon which vehicles are displayed for sale, as long as the requirements of 61-4-101(4)(d) regulating the distanco hetween display lots and the recordkeeping building are met.

(3) The geographic location of the permanent building actually occupied hy the dealer or the geographic location of the physical lots upon which vehicles are displayed for sale may be identified by street address, legal description, or other reasonably identifiahle description, as prescrihed hy the department.

Section 2. New motor vchiclc. "New motor vehicle" means a motor vehicle, regardless of the mileage of the vehicle, the legel or equitable title to

HeinOnline -- 1999 vol. II 1564 1999

which has never been transferred by a manufacturer, distributor, or dealer to another person as the result of a retail sale.

Section 3. Retail sale. (1) "Retail sale" means the sale of a new motor vehicle or used motor vehicle, a recreational vehicle, a trailer, a motorcycle, a quadricycle, or special mobile equipment by a dealer to a person for purposes other than resale.

(2) For purposes of chapter 4, part 1, of this title, "retail sale" does not mean a sale that is the result of a transfer between a dealer, wholesaler, or auto auction and another dealer, wholesaler, or auto auction.

Section 4. Compliance specialists as peace officers. (1) The department may designate and train civilian employees as compliance specialists within the motor vehicle division. Each compliance specialist is a peace officer whose jurisdiction is limited to enforcement of violations of Title 61, chapter 3, parts 1, 2, 3, 4, and 6 and chapter 4.

(2) As a peace officer, a trained compliance specialist may:

(a) issue citations and make arrests;

(b) issue summonses;

(c) accept bail;

(d) serve warrants of arrest;

(e) make reasonable inspections of a dealer's established place of business and vehicle inventory; and

(f) require production of documents relating to the sale, purchase, exchange, or consignment of any vehicle currently or previously in a dealer's inventory or displayed for sale by the dealer or relating to any obligation imposed on a dealer under this title.

(3) For purposes of this section, the term "dealer" includes a dealer of any vehicle type, a wholesaler, or an auto auction, subject to licensure by the department under this chapter.

Section 5. Dealer requirements and restrictions. (1) A dealer may not offer for sale, trade, or consignment any vehicle type not authorized by the license issued to the dealer by the department or use a dealer or demonstrator plate on a vehicle of a type for which the dealer is not licensed.

(2) A dealer may not exhibit at the dealer's established place of business or any approved off-premises sale location, a vehicle for sale, trade, or consignment unless the Monroney label required for new motor vehicles pursuant to 15 U.S.C. 1232 or the buyer's guido label required for used motor vehicles pursuant to 16 CFR, part 455, is affixed to the side window of the vehicle or is conspicuously displayed within the vehicle in a fashion that is readily readable by a customer.

(3) A dealer may not sell vehicles from a geographic location other than that of the dealer's established place of business as listed on the dealer's license unless the dealer notifies the department 10 days in advance, on a form prescribed by the department, of the opening date and location of an off-premises sale. Except for recreational vehicle dealers, an off-premises sale must be conducted within the city limits of the city of the dealer's licensed location or upon an adjacent off-premises site that is approved by the department and that is within the county of the dealer's licensed location. The sale may not exceed 10 consecutive business

HeinOnline -- 1999 vol. II 1565 1999

days, and a licensed dealer may not conduct more than 10 off-premises sales during any 1 calendar year.

(4) If more than one dealer displays vehicles and maintains an established place of business at the same geographic location, each dealer shall ensure that all vehicle records, office facilities, and inventory, if applicable, are physically segregated from those of the other dealer and clearly identified and attributed to the appropriate dealer.

(5) A dealer shall install and maintain telephone service at the dealer's established place of business. The telephone service must be listed in the directory assistance that applies to the area in which the business is located.

(6) A dealer shall conspicuously post at the dealer's established place of business written notice indicating the regular and customary office hours maintained by the dealer.

(7) (a) It is the responsibility of the dealer to ensure that a lapse in required garage keepers legal liability insurance does not occur as a result of cancellation or termination of a previously certified policy.

(b) This subsection (7) does not relieve a dealer of the mandatory vehicle liability insurance obligation imposed under chapter 6 of this title.

(8) A dealer shall display at the dealer's established place of business at least one sign stating the name of the business and indicating that vehicles are offered for sale, trade, or consignment. The letters of the sign must be at least 6 inches in height and clearly visible and readable to the major avenue of traffic at a minimum distance of 150 feet.

Section 6. License renewal — fee — dealer license suspension. (1) On or before December 31 of each year, a dealer shall apply to the department for renewal of the dealer's license for an additional 1 year period.

(2) (a) To qualify for renewal, a dealer shall submit a completed application, in a form prescribed by the department, updating prior submitted information concerning owner identity, other ownership interest, felony conduct, garage keeper liability insurance, and surety bond filings, as originally required under 61-4-101, and providing any other relevant information requested by the department.

(b) The department may also require a renewal applicant to submit one or more current photographs of the dealer's established place of business or the signage for the business.

(c) If a dealer seeks to change the geographic location of the dealer's established place of business, the dealer shall also provide information concerning local land use planning, zoning, and business permitting compliance, if applicable, and a diagram or plat for the proposed location, consistent with the requirements of 61-4-101.

(3) Except as provided in subsection (4)(c), a license renewal application must be accompanied by a $5 application fee and one or more of the following license fees, depending on the type of license renewal being sought:

(a) $25 for a new motor vehicle, used motor vehicle, new recreational vehicle, or used recreational vehicle dealer's license; and

(b) $25 for a motorcycle or trailer dealer's license.

HeinOnline -- 1999 vol. II 1566 1999

(4) (a) Except as provided in subsections (4)(b) and (4)(c), a used motor vehicle dealer seeking license renewal shall also certify, under penalty of law, to the retail sale of 12 or more used motor vehicles during the expiring license term. A used motor vehicle dealer licensed for less than a full calendar year in the expiring license term shall certify, under penalty of law, to the retail sale of an average of at least one used motor vehicle a calendar month or portion of a calendar month, for which the expiring license was in effect.

(b) The minimum retail sales requirements of this subsection do not apply to a dealer seeking to renew a used motor vehicle dealer's licenso and either a new motor vehicle dealer license or a new recreational vehicle dealer license.

(c) (i) To qualify for renewal, a used motor vehicle dealer who is also a qualified tow truck operator, as defined in 61-8-903, shall certify, under penalty of law, to the retail sale of five or more used motor vehicles during the expiring license term or pay a fee of $25 in addition to the application and license fee required in subsection (3).

(ii) A renewal applicant licensed as a motor vehicle wrecking facility under Title 75, chapter 10, part 5, is exempt from the minimum retail sales requirements of subsection (4)(a), as well as the additional renewal or the lower minimum sales requirements of this subsection.

(iii) If a used motor vehicle dealer also qualified as a tow truck operator loses the status of a qualified tow truck operator under 61-8-903, the dealer's license may be retained for the remainder of the license term, but after the current term, the dealer is subject to the retail sales requirements of subsection (4)(a).

(iv) If a used motor vehicle dealer also licensed as a motor vehicle wrecking facility ceases to do business as a wrecking facility and surrenders the wrecking facility license to the department of environmental quality, the dealer license may be retained for the remainder of the licens · term, but after the current term, the dealer is subject to the retail sales requirements of subsection (4)(a).

(d) A dealer who fails to meet the retail sales requirements for license renewal under subsection (4)(a) is not eligible for license renewal and may not submit an application for another used motor vehicle dealer's license or a wholesaler's license for a period of 12 months from the expiration of the dealer's most recent license term.

(5) A dealer whose completed renewal application is received by the department on or before December 31 of the expiring license term may, if necessary, continue dealership operations and display or use dealer or demonstrator plates under the expired license through February 15 of the following year.

Section 7. Wholesaler's license. (1) (a) The department is authorized to issue a wholesaler's license to any person that it determines is qualified to hold a license under the provisions of this section.

(b) A wholesaler is authorized to sell used motor vehicles, used recreational vebicles, trailers, motorcycles, quadricycles, or special mobile equipment. However, a wholesaler may sell a vehicle only to a dealer, an auto auction, or another wholesaler. Retail sale of vehicles by a wholesaler is not allowed.

(c) A wholesaler's license issued by the department has a term of 1 calendar year, commencing on or after January 1 in the year of issue and expiring on December 31 of the same year.

HeinOnline -- 1999 vol. II 1567 1999

(d) The department shall design and issue wholesaler demonstrator plates, of a similar sequence to demonstrator plates issued to dealers but that conspicuously display the term "wholesaler" or the abbreviation "W".

(2) To qualify for a wholesaler's license, an applicant shall submit a completed application, in a form prescribed by the department, that provides the following:

(a) the name under which the applicant intends to conduct business and the name, address, date of birth, and social security number of any person who possesses or will possess an ownership interest in the business for which the license is sought. If the applicant is a corporation, the personal information required in this subsection (2)(a) must be provided for each corporate officer and the person designated by the corporation to manage or oversee the dealership;

(b) for each person subject to the provisions of subsection (2)(a) whether the person has:

(i) an ownership interest in a vehicle dealership or wholesaler business in Montana or another jurisdiction and if so, the name and address of each dealership or wholesaler; and

(ii) been found guilty of, or pleaded guilty to, a felony in this or any other jurisdiction, and if so, provide a summary of the conduct giving rise to the felony charge, including the dates of the conduct and any judicial proceeding pertaining to the conduct, and the name and address of any court in which the matter was heard;

(c) the name, address, and telephone number of the insurance carrier from whom the applicant has acquired garage keepers liability insurance and the name, address, and telephone number of the local insurance agent for the carrier and the applicant's policy number. The insurance must cover any vehicle bearing a wholesaler demonstrator plate that is offered for demonstration or loan to, or otherwise operated by, a customer in the regular course of the applicant's business;

(d) the street address of the permanent nonresidential building or office where business records will be kept and available for inspection by the department; and

(e) a bond of $25,000 filed with the department on behalf of the applicant. The bond must be conditioned that the applicant shall conduct business in accordance with the requirements of the law. The bond must be approved by the department and subject to annual renewal.

(3) The application fee for a wholesaler's license is $5, and the license fee is $25. Both fees must accompany an original or renewal wholesaler's license application.

(4) Wholesalers may not be issued or use dealer plates, as provided in 61-4-102. However, a wholesaler may be issued and is authorized to display and use a wholesaler demonstrator plate on any type of vehicle that a wholesaler is authorized to sell. The fee for a wholesaler demonstrator plate is $3. To the extent not inconsistent with this section, use of wholesaler demonstrator plates is otherwise governed by [section 23].

(5) (a) A wholesaler license must be renewed annually, and application for renewal must be filed on or before December 31 of the expiring license term.

HeinOnline -- 1999 vol. II 1568 1999

(b) To qualify for renewal of a wholesaler's license, a wholesaler must submit a completed application, in a form prescribed by the department, updating prior submitted information, as originally supplied under subsection (2).

(c) Additionally, the wholesaler shall certify, under penalty of law, that 12 or more vehicles of the type authorized under the license were sold by the wholesaler to a dealer, auto auction, or another wholesaler during the expiring license term. A wholesaler who was licensed for less than a full calendar year in the expiring term shall certify, under penalty of law, to the sale of an average of at least one vehicle a calendar month, or portion of a calendar month, during which the expiring license was in effect.

(d) A wholesaler who fails to meet the sales requirements for license renewal under this section is not eligible for license renewal and may not submit an application for another wholesaler's license or a used motor vehicle dealer's license for a period of 12 months from the expiration of the wholesaler's most recent license term.

(6) A wholesaler whose completed renewal application has been received by the department on or before December 31 of the expiring license term may, if necessary, operate the business and display wholesaler demonstrator plates under the expired license through February 15 of the following year.

Section 8. Claims against dealer, wholesaler, or auto auction bonds. (1) A person who suffers loss or damage due to the unlawful conduct of a dealer, wholesaler, or auto auction licensed under this title shall obtain a judgment from a court of competent jurisdiction prior to collecting on the bond of the dealer, wholesaler, or auto auction. The judgment must set out a specific loss or damage amount and establish that the licensee's unlawful conduct caused the loss or damage, before payment on the bond is required.

(2) If claim is made on a bond by two or more persons who have obtained a judgment against a dealer, wholesaler, or auto auction based on the unlawful conduct of the dealer, wholesaler, or auto auction and the judgments in the aggregate exceed the amount of the bond, the proceeds of the bond must be divided between or among the claimants on a pro rata basis.

Section 9. Section 20-7-514, MCA, is amended to read:

"20-7-514. Motorcycle registration fee — exemptions. (1) A motorcycle safety training fee of $5 must be assessed on each motorcycle required by 61-3-301 to be registered for licensing.

(2) The county treasurer shall collect the fee and remit the fee to the state treasurer for deposit in the state traffic education account, as provided in 20-7-504.

(3) Exempt from payment of the fee specified in subsection (1) are vehicles:

(a) leased or owned by the state or a county or municipality;

(b) used for transportation by a nonresident or migratory worker temporarily employed in agricultural work in this state; or

(c) displaying dealer or wholesaler plates, as provided in ~~61-4-103~~ *61-4-102 and [section 7]*, while owned by a dealer or wholesaler."

Section 10. Section 61-1-132, MCA, is amended to read:

HeinOnline -- 1999 vol. II 1569 1999

"61-1-132. Recreational vehicle. The term "recreational vehicle" as used in ~~61-4-101 through 61-4-105~~ *chapter 4, part 1, of this title* and 61-10-141 includes travel trailers as defined in 61-1-131, motor homes as defined in 61-1-130, and other self-propelled vehicles originally designed or permanently altered to provide temporary facilities for recreational, travel, or camping use."

Section 11. Section 61-1-314, MCA, is amended to read:

"61-1-314. Dealer. (1) "Dealer" means:

(a) a person, firm, association, or corporation that, for commission or profit, engages in whole or in part in the business of buying, selling, exchanging, *accepting on consignment,* or acting as a broker of ~~either~~ new *motor vehicles* or used motor vehicles~~, or both, and that qualifies for issuance of a dealer's license under 61-4-101 through 61-4-105~~ *for which a certificate of ownership has not been issued and that are not registered in the name of the person, firm, association, or corporation and for whom a dealer license is required under chapter 4 of this title*;

(b) an owner of real property who allows more than three new or used motor vehicles not titled in the property owner's or the seller's name to be offered for sale on the property during 1 calendar year unless the property is leased to a motor vehicle dealer licensed under 61-4-101 and the vehicles offered for sale are bona fide units of the licensed dealer's inventory; or

(c) an owner of a motor vehicle that is offered for sale and is displayed on real property in which the motor vehicle owner does not have a legal interest, and the primary purpose for displaying the motor vehicle on the real property is to effect the sale of the motor vehicle.

(2) The term "dealer" does not include the following:

(a) receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under a judgment or order of any court of competent jurisdiction;

(b) employees of the persons included in subsection (2)(a) when engaged in the specific performance of their duties as employees;

(c) public officers while performing or in the operation of their duties;

(d) a motor vehicle owner who obtains the written consent of the real property owner, lessee, or agent of the owner or lessee on whose property the motor vehicle is displayed and who posts the written consent or a copy of the written consent in the front or rear window of the motor vehicle; or

(e) a person who attempts to effect a sale of the person's motor vehicle by displaying the motor vehicle on a public street or public area that abuts real property in which the person has a legal interest."

Section 12. Section 61-3-101, MCA, is amended to read:

"61-3-101. Duties of department — records. (1) The department shall keep a record as specified in this section of all motor vehicles, trailers, and semitrailers of every kind, of certificates of registration and ownership of those vehicles, and of all manufacturers and dealers in motor vehicles.

(2) The record must show the ~~following~~:

(a) name of *the* owner, *the* residence address by street or rural route, town, and county, and *the* mailing address if different than *the* residence address;

HeinOnline -- 1999 vol. II 1570 1999

(b) name and address of conditional sales vendor, mortgagee, or other lienholder and *the* amount due under contract or lien;

(c) manufacturer of *the* vehicle;

(d) manufacturer's designation of style of *the* vehicle;

(e) identifying number;

(f) year of manufacture;

(g) character of motive power and *the* shipping weight of *the* vehicle as shown by the manufacturer;

(h) ~~the~~ distinctive license number assigned to the vehicle, if any;

(i) if a truck or trailer, the number of tons' capacity or GVW if imprinted on manufacturer's identification plate;

(j) except as provided in 61-3-103, the name and complete address of any holder of a perfected security interest in the vehicle; and

(k) other information that may from time to time be found desirable.

(3) The department shall file applications for registration received by it from county treasurers and register the vehicles and the vehicle owners as follows:

(a) under the distinctive license number assigned to the vehicle by the county treasurer;

(b) alphabetically under the name of the owner;

(c) numerically under make and identifying number of the vehicle; and

(d) *under* another index of registration as the department considers expedient.

(4) The department shall determine the amount of motor vehicle taxes and fees to be collected at the time of registration for each light vehicle subject to tax under 61-3-503 and for each bus, truck having a manufacturer's rated capacity of more than 1 ton, and truck tractor subject to a fee in lieu of tax under 61-3-528 and 61-3-529. The county treasurer shall collect the taxes and fees on each motor vehicle at the time of its registration.

(5) Vehicle registration records and indexes and driver's license records and indexes may be maintained by electronic recording and storage media.

(6) In the case of dealers, the records must show the information contained in the application for a dealer's, *wholesaler's, or auto auction* license as required by ~~61-4-101 through 61-4-105~~ *chapter 4, parts 1 and 2 of this title*, as well as the distinctive license number assigned to the dealer.

(7) In order to prevent an accumulation of unneeded records and files, regardless of any other statutory requirements, the department may destroy all records and files that relate to vehicles that have not been registered within the preceding 4 years and that do not have an active lien.

(8) All records must he open to inspection during reasonahle business hours, and the department shall furnish any information from the records upon payment by the applicant of the cost of the information requested. Prior to providing the information, the department may require the applicant to provide identification. However, the department may, by rule, reasonably restrict

HeinOnline -- 1999 vol. II 1571 1999

disclosure of information on an owner or the owner's vehicle if the owner has requested in writing that the department not disclose the information."

Section 13. Section 61-3-103, MCA, is amended to read:

"61-3-103. (Temporary) Filing of security interests — perfection — rights — procedure — fees. (1) Except as provided in 61-3-109, the department may not file any voluntary security interest or lien unless it is accompanied by or specified in the application for a certificate of ownership of the vehicle encumbered. If the approved notice form is transmitted to the department, the security agreement or other lien instrument that creates the security interest must be retained by the secured party. A copy of the security agreement is sufficient as a lien notice if it contains the name and address of the debtor and the secured party, the complete vehicle description, and the amount of the lien and is signed by the debtor. The department shall file voluntary security interests and liens by entering the name and address of the secured party upon the face of the certificate of ownership. Involuntary liens must be filed against the record of the vehicle encumbered. The department shall mail a statement certifying to the filing of a security interest or lien to the secured party. The department shall mail the certificate of ownership to the owner at the address given on the certificate; however, if the transfer of ownership and filing of the security interest are paid for by a creditor or secured party, the department shall return the certificate of ownership to the county treasurer in the county in which the vehicle is to be registered. The owner of a motor vehicle is the person entitled to operate and possess the motor vehicle.

(2) A security interest in a motor vehicle held as inventory by a dealer licensed under ~~the provisions of 61-4-101~~ *chapter 4 of this title* must be perfected in accordance with Title 30, chapter 9.

(3) Whenever a security interest or lien is filed against a motor vehicle that is subject to two security interests previously perfected under this section, the department shall endorse on the face of the certificate of ownership, "NOTICE. This motor vehicle is subject to additional security interests on file with the Department of Justice." Other information regarding the additional security interests need not be endorsed on the certificate.

(4) Satisfactions or statements of release filed with the department under this chapter must be retained by it for a period of 8 years after receipt, after which they may be destroyed.

(5) Except as provided in 61-3-109 and subsection (6) of this section, a voluntary security interest or lien is perfected on the date that the lien notice and the certificate of ownership or manufacturer's statement of origin are delivered to the county treasurer. On that date, the county treasurer shall issue to the secured party a receipt evidencing the perfection. Perfection under this section constitutes constructive notice to subsequent purchasers or encumbrancers, from the date of delivery of the lien notice to the county treasurer, of the existence of the security interest.

(6) Except as provided in 61-3-109, voluntary security interests or lien filings that do not require transfer of ownership are perfected on the date that the lien notice and the certificate of ownership or manufacturer's statement of origin are received by the department. On that date, the department shall issue to the secured party a receipt evidencing the perfection. Perfection under this subsection constitutes constructive notice to subsequent purchasers or

HeinOnline -- 1999 vol. II 1572 1999

encumbrancers, from the date that the lien notice is delivered to the department, of the existence of the security interest.

(7) Upon default under a chattel mortgage or conditional sales contract covering a motor vehicle, the mortgagee or vendor has the same remedies as in the case of other personal property. In case of attachment of motor vehicles, all the provisions of 27-18-413, 27-18-414, and 27-18-804 are applicable except that deposits must be made with the department.

(8) A conditional sales vendor or chattel mortgagee or assignee who fails to file a satisfaction of a chattel mortgage, assignment, or conditional sales contract within 15 days after receiving final payment is required to pay the department the sum of $1 for each day that the person fails to file the satisfaction.

(9) Upon receipt of notice of any involuntary liens or attachments against the record of any motor vehicle registered in this state, the department shall within 24 hours mail to the owner, conditional sale vendor, mortgagees, or assignees of the owner, conditional sale vendor, or mortgagees a notice showing the name and address of the lien claimant, the amount of the lien, the date of execution of the lien, and, in the case of attachment, the full title of the court and the action and the names of the attorneys for the plaintiff and attaching creditor.

(10) It is not necessary to refile with the department any instruments on file in the offices of the county clerk and recorders at the time that this law takes effect.

(11) A fee of $4 must be paid to the department to file any security interest or other lien against a motor vehicle. The $4 fee includes the cost of filing a satisfaction or release of the security interest and also the cost of entering the satisfaction or release on the records of the department and of deleting the endorsement of the security interest from the face of the certificate of ownership. A fee of $4 must be paid to the department for issuing a certified copy of a certificate of ownership subject to a security interest or other lien on file in the office of the department or for filing an assignment of any security interest or other lien on file with the department. All fees provided for in this section must be paid to the county treasurer for deposit in the state general fund in accordance with 15-1-504. (Terminates June 30, 2000—sec. 4, Ch. 90, L. 1997.)

61-3-103. (Effective July 1, 2000) Filing of security interests, perfection, rights, procedure, fees. (1) The department may not file any voluntary security interest or lien unless it is accompanied by or specified in the application for a certificate of ownership of the vehicle encumbered. If the approved notice form is transmitted to the department, the security agreement or other lien instrument that creates the security interest must be retained by the secured party. A copy of the security agreement is sufficient as a lien notice if it contains the name and address of the debtor and the secured party, the complete vehicle description, amount of lien, and is signed by the debtor. The department shall file voluntary security interests and liens by entering the name and address of the secured party upon the face of the certificate of ownership. Involuntary liens must be filed against the record of the vehicle encumbered. The department shall mail a statement certifying to the filing of a security interest or lien to the secured party. The department shall mail the certificate of ownership to the owner at the address given on the certificate; however, if the transfer of ownership and filing of the security interest are paid for by a creditor or secured party, the department shall return the certificate of ownership to the

HeinOnline -- 1999 vol. II 1573 1999

county treasurer where the vehicle is to be registered. The owner of a motor vehicle is the person entitled to operate and possess the motor vehicle.

(2) A security interest in a motor vehicle held as inventory by a dealer licensed under ~~the provisions of 61-4-101~~ *chapter 4 of this title*, must be perfected in accordance with Title 30, chapter 9.

(3) Whenever a security interest or lien is filed against a motor vehicle that is subject to two security interests previously perfected under this section, the department shall endorse on the face of the certificate of ownership, "NOTICE. This motor vehicle is subject to additional security interests on file with the Department of Justice." ~~No other~~ *Other* information regarding ~~such~~ *the* additional security interests need *not* be endorsed on the certificate.

(4) Satisfactions or statements of release filed with the department under this chapter must be retained by it for a period of 8 years after receipt, after which they may be destroyed.

(5) Except as provided in subsection (6), a voluntary security interest or lien is perfected on the date the lien notice and the certificate of ownership or manufacturer's statement of origin are delivered to the county treasurer. On that date, the county treasurer shall issue to the secured party a receipt evidencing the perfection. Perfection under this section constitutes constructive notice to subsequent purchasers or encumbrancers, from the date of delivery of the lien notice to the county treasurer, of the existence of the security interest.

(6) Voluntary security interests or lien filings that do not require transfer of ownership are perfected on the date the lien notice and the certificate of ownership or manufacturer's statement of origin are received by the department. On that date, the department shall issue to the secured party a receipt evidencing the perfection. Perfection under this subsection constitutes constructive notice to subsequent purchasers or encumbrancers, from the date the lien notice is delivered to the department, of the existence of the security interest.

(7) Upon default under a chattel mortgage or conditional sales contract covering a motor vehicle, the mortgagae or vendor has the same remedies as in the case of other personal property. In case of attachment of motor vehicles all the provisions of 27-18-413, 27-18-414, and 27-18-804 are applicable except that deposits must be made with the department.

(8) A conditional sales vendor or chattel mortgagee or assignee who fails to file a satisfaction of a chattel mortgage, assignment, or conditional sales contract within 15 days after receiving final payment is required to pay the department the sum of $1 for each day that the person fails to file such satisfaction.

(9) Upon receipt of notice of any involuntary liens or attachments against the record of any motor vehicle registered in this state, the department shall within 24 hours mail to the owner, conditional sale vendor, mortgagees, or assignees of any ~~thereof~~ *owner, conditional sale under, or mortgagees* a notice showing the name and address of the lien claimant, amount of the lien, date of execution of lien, and in the case of attachment the full title of the court and the action and the name of the attorneys for the plaintiff and attaching creditor.

(10) It is not necessary to refile with the department any instruments on file in the offices of the county clerk and recorders at the time this law takes effect.

(11) A fee of $4 must be paid to the department to file any security interest or other lien against a motor vehicle. The $4 fee ~~shall~~ *must* include and cover the

HeinOnline -- 1999 vol. II 1574 1999

cost of filing a satisfaction or release of the security interest and also the cost of entering ~~such~~ *the* satisfaction or release on the records of the department and deleting the endorsement of the security interest from the face of the certificate of ownership. A fee of $4 must be paid to the department for issuing a certified copy of a certificate of ownership subject to a security interest or other lien on file in the office of the department or for filing an assignment of any security interest or other lien on file with the department. All fees provided for in this section must be paid to the county treasurer for deposit in the state general fund in accordance with 15-1-504."

Section 14. Section 61-3-206, MCA, is amended to read:

"61-3-206. Odometer disclosure requirements on transfer of vehicle — dealer to preserve record. (1) Except as provided in subsection (3), before executing any transfer of ownership document relating to a motor vehicle, each seller of a motor vehicle shall record on the certificate of ownership the odometer reading at the time of transfer or, if the certificate of ownership does not provide for the recording of the odometer reading, furnish to the purchaser a written statement that is signed by the seller, who shall also print ~~his~~ *the seller's* name on the written statement, and that contains the following information:

(a) the odometer reading at the time of transfer;

(b) the date of transfer;

(c) the seller's name and current address;

(d) the purchaser's name and current address;

(e) the vehicle year, make, model, body style, and identification number;

(f) one of the following statements or certification:

(i) a certification by the seller that, to tbe best of ~~his~~ *the seller's* knowledge, the odometer reading reflects the actual miles or kilometers the vehicle has been driven;

(ii) if the seller knows that the odometer reading reflects the amount of mileage in excess of tbe designed mechanical odometer limit of 99,999 miles or kilometers, ~~he~~ *the seller* shall include a statement to that effect; or

(iii) if the seller knows that the odometer reading differs from the number of miles or kilometers the vehicle has actually traveled and that the difference is greater than that caused by odometer calibration error, ~~he~~ *the seller* shall include a statement that the odometer reading is not the actual mileage and should not be relied upon.

(2) The purchaser shall acknowledge receipt of the disclosure statement by signing it and printing ~~his~~ *the purchaser's* name on the disclosure statement.

(3) The seller of the following types of motor vehicles need not disclose the odometer reading of the vehicle as required in subsection (1):

(a) a motor vehicle that is 10 years old or older;

(b) a vebicle that is not self-propelled;

(c) a new motor vehicle transferred between dealers or wholesalers prior to its first retail sale, unless ~~such~~ *the* vehicle has been used as a demonstrator;

(d) a vehicle having a gross weight rating of more than 16,000 pounds; or

HeinOnline -- 1999 vol. II 1575 1999

(e) a vehicle sold directly hy the manufacturer to an agency of the United States.

(4) A dealer or wholesaler licensed under ~~61-4-101~~ *chapter 4 of this title* shall create a record of the information required in subsection (1) and shall maintain and preserve that record for at least 5 years after the date of sale of the motor vehicle to which the information pertains."

Seetion 15. Section 61-3-301, MCA, is amended to read:

"61-3-301. Registration — license plate required — display. (1) Except as otherwise provided in this chapter, ~~no~~ *a* person may *not* operate a motor vehicle upon the puhlic highways of Montana unless the vehicle is properly registered and has the proper number plates conspicuously displayed, one on the front and one on the rear of the vehicle, each securely fastened to prevent it from swinging and unobstructed from plain view, except that ~~trailers, semitrailers, quadricycles, motorcycles, and~~ vehicles authorized ~~in 61-4-102(6)~~ to display demonstrator plates *under [section 7 or 23]* may have ~~but~~ *only* one number plate conspicueusly displayed on the rear. ~~No~~ *A* person may *not* display on a vehicle at the same time a numher assigned to it under any motor vehicle law except as provided in this chapter. A junk vehicle, as defined in Title 75, chapter 10, part 5, being driven or towed to an auto wrecking graveyard for disposal is exempt from the provisions of this section.

(2) ~~No~~ *A* person may *not* purchase or display on a vehicle a license plate bearing the numher assigned to any county as provided in 61-3-332 other than the county of ~~his~~ *the person's* permanent residence at the time of application for registration. However, the owner of any motor vehicle requiring a license plate on any motor vehicle used in the public transportation of persons or property may make application for the license in any county through which the motor vehicle passes in its regularly scbeduled route, and the license plate issued bearing the numher assigued to that county may be displayed on the motor vehicle in any other county of the stato.

(3) It is unlawful to use license plates issued to one vehicle on any other vehicle, trailer, or semitrailer unless legally transferred as provided by statute, or to repaint old license plates to resemble current license plates.

(4) This section does not apply to a vehicle exempt from taxation under 15-6-215 or subject to taxation under 61-3-520.

(5) Any person violating these provisions is guilty of a misdemeanor and subject to the penalty prescribed in 61-3-601."

Section 16. Section 61-3-432, MCA, is amended to read:

"61-3-432. Exemptions of vehicles not capable of operation on highways. Track-type tractors, other track mounted machinery and equipment, road rollers, and other similar equipment and machinery which cannot be self-propelled or towed upon the highways of this state and which must he transported by some type of hauling unit, are not subject to this chapter, ~~61-4-101 through 61-4-106~~ *chapter 4, part 1,* chapter 6, ~~part 2 of~~ chapter 10, *part 2,* or ~~part 4 of~~ chapter 12, *part 4.*"

Section 17. Section 61-3-501, MCA, is amended to read:

"61-3-501. When vehicle taxes and fees are due. (1) Motor vehicle taxes, fees in lieu of tax, new car taxes, and fees must be paid on the date of registration or reregistration of the vehicle.

HeinOnline -- 1999 vol. II 1576 1999

(2) *(a)* If the anniversary date for reregistration of a vehicle passes while the vehicle is owned and held for sale by a licensed new or used car dealer, motor vehicle taxes or fees in lieu of tax abate on the vehicle properly reported with the county treasurer until the vehicle is ~~sold~~ *the subject of a retail sale.* After the sale, the purchaser shall pay the pro rata halance of the taxes or fees in lieu of tax due and owing on tbe vehicle.

(b) For the purposes of this subsection "retail sale" does not include a transfer between any of the following:

(i) a licensed new motor vehicle or used motor vehicle dealer;

(ii) another licensed new motor vehicle or used motor vehicle dealer;

(iii) a licensed wholesaler; or

(iv) a licensed auto auction.

(3) In the event that a vehicle's registration period is changed under 61-3-315, all taxes or fees in lieu of tax and other fees due must be prorated and paid from the last day of the old period until the first day of tbe new period in which tbe vehicle is registered. The taxes or fees in lieu of tax and other fees must be paid from the first day of tbe new period for a minimum period of 1 year. When the change is to a later registration period, taxes and fees must be prorated and paid based on the same tax year as the original registration period. Tbereafter, during tbe appropriate anniversary registration period, each vebicle must again be registered or reregistered and all taxes and fees must be paid for a 12-month period."

Seetion 18. Section 61-3-502, MCA, is amended to read:

"61-3-502. Sales tax on new motor vehicles — exemptions. (1) In consideration of tbe right to use the highways of the state, there is imposed a tax upon all sales of new motor vehicles, excluding trailers, semitrailers, and housetrailers, for which a license is sought and an original application for title is made. The tax must be paid by the purchaser when tbe purchaser applies for an original Montana license through tbe county treasurer. For purposes of this section, "new motor vehicle" means a new motor vehicle for which original registration is sought or a motor vebicle previously furnished without charge by a dealer to a school district for use in a state-approved traffic education program, whether or not ~~titled~~ *the certificate of ownership is held* by the dealer or tbe school district, and for which original registration is sought.

(2) Except as providod in subsections (4) and (5), the sales tax is:

(a) 1 1/2% of the f.o.b. factory list price or f.o.b. port-of-entry list price, during the first quarter of the year or for a registration period other than a calendar year or calendar quarter;

(b) 1 1/8% of the list price during the second quarter of tlie year;

(c) 3/4 of 1% during tlie third quarter of tlie year;

(d) 3/8 of 1% during the fourth quarter of the year.

(3) If tlie manufacturer or imperter fails to furnish the f.o.b. factory list price or f.o.b. pert-of-entry list price, the department may use published price lists.

(4) Tlie new car sales tax on vehicles subject to the provisions of 61-3-313 through 61-3-316 is 1 1/2% of tlie f.o.b. factory list price or f.o.b. port-of-entry list price regardless of the month in which the new vehicle is purcbased.

HeinOnline -- 1999 vol. II 1577 1999

(5) The sales tax on new motor vehicles registered as part of a fleet under 61-3-318 is 3/4 of 1% of the f.o.b. factory list price or f.o.b. port-of-entry list price.

(6) The proceeds from this tax must be remitted to the state treasurer every 30 days. The state treasurer sball deposit $1 of the tax on each new motor vehicle in a special revenue account to be used by the department of commerce in carrying out its duties under Title 61, chapter 4, part 5, with the balance of the proceeds to be credited to the highway nonrestricted account of the state special revenue fund. The county treasurer shall retain 5% of the taxes collected to pay for tbe cost of administration.

(7) The new vehicle is not subject to any other assessment, fee in lieu of tax, or tax during the calendar year in which the original application for title is made.

(8) A new motor vehicle may not be registered or licensed unless the application for registration is accompanied by a statement of origin that is furnished by the dealer selling the vehicle and that shows that the vehicle has not previously been registered or owned, except as otherwise provided in this section, by any person, firm, corporation, or association other tban a new motor vehicle dealer holding a franchise or distribution agreement from a new car manufacturer, distributor, or importer.

(9) (a) Motor vehicles operating exclusively for transportation of persons for hire within the limits of incorporated cities or towns and within 15 miles from the limits are exempt from the provisions of subsection (1).

(b) Motor vehicles brought or driven into Montana by nonresident, migratory, bona fide agricultural workers who are temporarily employed in agricultural work in this state, when those motor vehicles are used exclusively for transportation of agricultural workers, are also exempt from the provisions of subsection (1).

(c) Vehicles lawfully displaying a licensed dealer's plate as provided in ~~61-4-103~~ *61-4-102* are exempt from the provisions of subsection (1):

(i) when moving to or from a dealer's place of business when unloaded or loaded with dealer's property only; and

(ii) in the case of vehicles having a gross loaded weight of less than 24,000 pounds, while being demonstrated in the course of the dealer's business.

(d) Motor vehicles owned or controlled by a special district, as defined in 18-8-202, are exempt from subsection (1).

(e) A vehicle registered under 61-3-456 is exempt from the provisions of subsection (1)."

Seetion 19. Section 61-3-508, MCA, is amended to read:

"61-3-508. Junk vehicle disposal fee. A special junk vehicle disposal fee ~~shall~~ *must* be assessed on each new application for a motor vehicle title and on each transfer of a motor vehicle title in the amount of $1.50 on passenger cars and trucks under 8,001 pounds GVW. An additional special junk vehicle disposal fee ~~shall~~ *must* be assessed in the amount of 50 cents on each passenger car and truck under 8,001 pounds GVW registered for licensing. The fees ~~shall~~ *must* be collected by the county treasurer. However, the following are exempt from payment of the fees:

(1) vehicles leased or owned by the state or by a county or municipality;

HeinOnline -- 1999 vol. II 1578 1999

(2) vehicles used for transportation by nonresident, migratory workers temporarily employed in agricultural work in this state;

(3) vehicles displaying dealer's or wholesaler's ~~license~~ plates~~, as provided in 61-4-103,~~ while owned by a dealer or wholesaler; and

(4) housetrailers or equipment ~~which~~ *that* is not self-propelled or ~~which~~ *that* requires towing upon a highway of this state."

Section 20. Section 61-3-602, MCA, is amended to read:

"**61-3-602. Enforcement.** It is mandatory upon all police and peace officers of the state, of the counties of the state, and of towns, cities, and villages to carry out the provisions of this chapter and ~~61-4-101 through 61-4-105~~ *chapter 4, part 1*."

Section 21. Section 61-4-101, MCA, is amended to read:

"**61-4-101. ~~Application for dealer's~~ *Dealer's* license ~~or wholesaler's license~~ — *types of licenses and terms — plates — bonds — zoning.*** ~~(1) (a) A verified application for licensure as a dealer or wholesaler must be filed, by mail or otherwise, in the office of the department by each person, firm, corporation, or association that, for commission or profit, engages in:~~

~~(i) the business of buying, selling, exchanging, taking for consignment, or acting as a broker of new motor vehicles, recreational vehicles, used motor vehicles, trailers (except trailers having an unloaded weight of less than 500 pounds), semitrailers, mobile homes, or special mobile equipment as defined in 61-1-104; or~~

~~(ii) business as a wholesaler as defined in 61-1-310.~~

~~(b) A licensed real estate broker or agent lawfully buying, selling, exchanging, taking for consignment, or acting as a broker of mobile homes is exempt from licensure under this section.~~

~~(c) The sale of more than three motor vehicles or the offering for sale of more than three motor vehicles, if the motor vehicles are not titled in the seller's name, in any calendar year is prima facie evidence that a person is engaged in the business of dealing motor vehicles. Licensed wholesalers do not have the privilege of the use of dealer license plates as provided in subsection (2)(b) but are authorized to display and use demonstrator plates under the provisions of 61-4-102(2)(a)(ii).~~

~~(d) Each license application and all of the information contained in it must be verified by the department or an authorized representative of the department on a form to be furnished by the department for that purpose and must contain the information required. Each application must be accompanied by the license fee specified in 61-4-102. A dealer's or wholesaler's license must be renewed and paid for annually, and an application for relicensure must be filed not later than January 1 of each year. If an application for renewal of a license has been received by the department before the expiration of the license, the licensee may operate the business and display dealer or demonstrator plates under the expired license between January 1 and February 15 following expiration.~~

~~(2) To qualify for licensure and the issuance and use of "D", "UD", "RV", "DTR", or "MCD" plates as provided in this subsection, the applicant shall furnish the following information and qualify under the following provisions:~~

~~(a) To qualify as a new motor vehicle dealer and for the use of "D" plates, the applicant shall:~~

~~(i) state the name under which the business is to be conducted and the location of the premises (street address, city, county, and state) where records are kept, sales are made, and stock of motor vehicles is displayed;~~

~~(ii) state the name, address, date of birth, and social security number of all owners or persons having an interest in the business, provided that in the case of a corporation, the names and addresses of the president and secretary are sufficient;~~

~~(iii) identify other dealerships owned by the applicant, identify all persons in Montana or in another state having an interest in another dealership owned by the applicant, and disclose whether the applicant or other person with interest in a dealership owned by the applicant has been convicted of a felony;~~

~~(iv) certify that the applicant has acquired and shall maintain motor vehicle liability insurance, pursuant to 61-6-301, for any vehicle offered for demonstration or loan to a customer;~~

~~(v) state the name and make of all motor vehicles handled and the name and address of the manufacturer, importer, or distributor with whom the applicant has a written new motor vehicle franchise or sales agreement;~~

~~(vi) execute a certificate to the effect that the applicant has a permanent building for the display and sale of new motor vehicles at the location of the premises where sales are conducted;~~

~~(vii) execute a certificate to the effect that the applicant has a bona fide service department for the repair, service, and maintenance of motor vehicles; and~~

~~(viii) execute a certificate to the effect that the applicant is a bona fide dealer in new motor vehicles and that the dealer is recognized by a manufacturer, importer, or distributor as a dealer in new motor vehicles.~~

~~(b) To qualify as a used motor vehicle dealer and for the use of "UD" plates; as a recreational vehicle dealer and for the use of "RV" plates; as a trailer, semitrailer, or special mobile equipment dealer and for the use of "DTR" plates; as a motorcycle or quadricycle dealer and for the use of "MCD" plates; or as a wholesaler and for the use of demonstrator plates, the applicant shall, in addition to the matters set forth in subsections (2)(a)(i) through (2)(a)(iv), provide:~~

~~(i) a statement that the:~~

~~(A) applicant has an established place of business consisting of one or more lots located within 200 feet of each other upon which motor vehicles may be displayed and a permanent nonresidential building on or within 1,000 feet of the lot or lots where records are kept and sales are made; or~~

~~(B) wholesaler applicant has an established place of business that includes a permanent nonresidential building or office where records are kept in order that those records may be inspected;~~

~~(ii) a certificate to the effect that the applicant is a bona fide dealer or wholesaler in used motor vehicles, recreational vehicles, trailers, semitrailers, special mobile equipment, motorcycles, or quadricycles. An applicant for a recreational vehicle dealer license shall also indicate on the same certificate that~~

~~the person is recognized by a manufacturer, importer, or distributor as a dealer in recreational vehicles.~~

~~(c) If two or more vehicle dealers or wholesaler businesses share a location, all records, office facilities, and inventory, if applicable, must be physically segregated and clearly identified. Each applicant's established place of business may display a sign that indicates the firm name and that vehicles are offered for sale. The letters of the sign must be clearly visible and readable to the major avenue of traffic at a minimum distance of 150 feet.~~

~~(d) To qualify for a used motor vehicle dealer's or wholesaler's license, a person shall submit an annual application for that license and comply with the provisions of 61-4-102(5) in addition to fulfilling the requirements of subsection (2)(b).~~

~~(e) The provisions of subsection (2)(d) do not apply to an applicant who is licensed as a motor vehicle wrecking facility under the provisions of Title 75, chapter 10, part 5.~~

(1) Except as provided in [section 7], a person may not engage in the business of buying, selling, exchanging, accepting on consignment, or acting as a broker of a new motor vehicle or used motor vehicle, a new or used recreational vehicle, trailer, motorcycle, quadricycle, or special mobile equipment for which a certificate of ownership has not been issued and that are not registered in the person's name, unless the person is the holder of a dealer's license issued by the department under this part.

(2) (a) The department is authorized to issue a dealer's license for one or more specified vehicle types to any person that it determines is qualified to hold a license under the provisions of this section. A dealer's license may be issued for, and restricted to, one or more of the following vehicle types:

(i) new motor vehicle;

(ii) used motor vehicle;

(iii) new recreational vehicle;

(iv) used recreational vehicle;

(v) trailer of any size, or special mobile equipment; or

(vi) motorcycle or quadricycle.

(b) For each type of dealer license authorized, the department shall design and issue dealer and demonstrator plates as provided in 61-4-102 and [section 23].

(c) With the exception of a licensed new motor vehicle dealer, a dealer licensed for a particular type of vehicle may sell, trade, or accept upon consignment only vehicles of the type for which the license is authorized, unless the dealer's license specifically refers to more than one vehicle type, such as a motorcycle or quadricycle license. A new motor vehicle dealer is authorized to sell, trade, or accept upon consignment new motor vehicles or used motor vehicles.

(d) Regardless of vehicle type, a dealer's license issued by the department has a term of 1 calendar year, commencing on or after January 1 in the year of issue and expiring on December 31 of the same year.

(3) (a) An applicant for a dealer's license shall submit a written application for a dealer's license to the department, specifying the type or types of dealer's license sought. The application must be signed by the applicant and contain a

HeinOnline -- 1999 vol. II 1581 1999

verification by the applicant, under penalty of law, that the information contained in the application is true and correct. Any information provided in the license application process is subject to independent verification by the department or a duly authorized representative of the department.

(b) After examining a license application and conducting investigation necessary to verify the information contained in the application and if the department is satisfied that the applicant qualifies for the issuance of a license under the provisions of this chapter, the department may issue the license. The department may refuse, after examination and investigation, to issue a license to an applicant who is not qualified for licensure or whose prior financial or other activities or criminal record, as determined by the department:

(i) pose a threat to the effective regulation of dealers, wholesalers, or auto auctions;

(ii) pose a threat to the public interest of the state; or

(iii) create a danger of illegal or deceptive practices being used in the conduct of the proposed dealership, wholesaler, or auto auction.

(4) To be qualified for licensure as a dealer, an applicant shall provide to the department the following:

(a) the name under which the applicant intends to conduct business and the name, address, date of birth, and social security number of any person who possesses or will possess an ownership interest in the business for which the license is sought. If the applicant is a corporation, the personal information required in this subsection (4)(a) must be provided for each corporate officer and the person designated by the corporation to manage or oversee the dealership;

(b) for each person subject to the provisions of subsection (4)(a), whether the person has:

(i) an ownership interest in a vehicle dealership or a wholesaler business in Montana or another jurisdiction and if so, the name and address of each dealership or wholesaler; and

(ii) been found guilty of, or pleaded guilty to, a felony in this or any other jurisdiction and if so, provide a summary of the conduct resulting in the felony charge, including the dates of the conduct and any court proceedings pertaining to the conduct and the name and address of any court in which the matter was heard;

(c) the name, address, and telephone number of the insurance carrier from whom the applicant has acquired garage keepers liability insurance and the name, address, and telephone number of the local insurance agent for the carrier and the applicant's policy number. The insurance must cover any vehicle bearing dealer or demonstrator license plates that is offered for demonstration or loan to, or otherwise operated by, a customer in the regular course of the applicant's business;

(d) the geographic location of the physical lot or lots upon which vehicles will be displayed for sale and a permanent nonresidential building will be maintained to store the actual physical or electronic records resulting from the purchase, sale, trade, or consignment of vehicles for which licensure is sought. An applicant may use more than one location to display vehicles for sale, provided the maximum distance between each display lot does not exceed 200 feet, and the distance between

HeinOnline -- 1999 vol. II 1582 1999

a display lot and the building in which vehicle sales records are stored does not exceed 1,000 feet;

(e) for each geographic location specified in the application, evidence of the applicant's compliance with applicable local land use planning, zoning, and business permitting requirements, if any. Evidence of compliance may be documented by means of a written verification of compliance signed by the authorized representative of the local land use planning or zoning board or the local business permitting agency;

(f) a diagram or plat showing the geographic location, lot dimensions, and building and sign placement for the applicant's proposed established place of business, along with two or more photographs of the geographic location, building premises, and sign, as prescribed by the department;

(g) a certification by the applicant that the applicant is a bona fide dealer in new motor vehicles, used motor vehicles, used recreational vehicles, trailers, motorcycles, quadricycles, or special mobile equipment;

(h) if the applicant is seeking a new motor vehicle dealer license:

(i) the name and address of the manufacturer, importer, or distributor with whom the applicant has a written new motor vehicle franchise or sales agreement and the name and make of all motor vehicles to be handled by the applicant;

(ii) the geographic location or locations, specified in writing, upon which the applicant will provide and maintain a permanent building to display and sell new motor vehicles and offer and maintain a bona fide service department for the repair, service, and maintenance of the motor vehicles; and

(iii) otherwise meet the requirements of part 2 of this chapter; and

(iv) if the applicant is applying for a new recreational vehicle dealer's license, certification that the person is recognized by a manufacturer, importer, or distributor as a dealer in new recreational vehicles.

(5) If an applicant for a new motor vehicle or used motor vehicle, new or used recreational vehicle, or trailer dealer's license wants to maintain more than one established place of business, the applicant shall file a separate license application for each proposed established place of business and otherwise qualify for licensure at each place separately.

(6) Each application under this section must be accompanied by an application fee of $5 and one or more of the following license fees based on the type of dealer's license being sought:

(a) $25 for a new motor vehicle dealer's license;

(b) $25 for a used motor vehicle dealer's license;

(c) $25 for a new or used recreational vehicle dealer's license; or

(d) $25 for a motorcycle or trailer dealer's license.

~~(3) (a)~~*(7)* The applicant for a dealer's ~~or wholesaler's~~ license shall also file with the application a bond of $25,000 for a license as a new motor vehicle dealer, a used motor vehicle dealer, a *new or used* recreational vehicle dealer, *or* a trailer dealer~~, or a wholesaler~~. ~~However, applicants for a license as a trailer dealer or a trailer wholesaler shall file the $25,000 surety bond only if special mobile equipment, commercial trailers and semitrailers exceeding 6,000 pounds maximum gross loaded weight, mobile homes, or house trailers are sold. All other~~

~~trailer dealer,~~ *Applicants for a* motorcycle ~~dealer, or wholesaler~~ *dealer's* license ~~applicants~~ shall file a bond in the sum of $10,000. All bonds must be conditioned that the applicant shall conduct the business in accordance with the requirements of the law. The bond may extend to any other type of dealer license issued to the applicant at the same ~~place of business~~ *geographic location*, provided that all types of licenses are indicated on the face of the bond. All bonds must ~~run to the state of Montana, must~~ be approved hy the department, must be filed in its office, and must be renewed annually.

~~(b) A person who suffers loss or damage due to the unlawful conduct of a dealer or wholesaler licensed under this section shall obtain a judgment from a court of competent jurisdiction prior to collecting on the bond. The judgment must determine a specific loss or damage amount and conclude that the licensee's unlawful operation caused the loss or damage before payment on the bond is required.~~"

Section 22. Section 61-4-102, MCA, is amended to read:

"61-4-102. ~~Fees — restrictions on licensees~~ *Dealer's license numbers — assignment, numbering, and limitation of dealer plates — restriction of use — fees.* (1) *Upon the licensing of a dealer, the department shall assign to the dealer a distinctive serial license number as a dealer and furnish the dealer with one or more sets of numbered dealer plates in accordance with the provisions of this section.*

(2) (a) Dealer plates designed by the department must be similar to the numbered plates furnished to owners of motor vehicles under 61-3-332, but they must bear:

(i) the license number assigned to the dealer;

(ii) an abbreviation for the vehicle type of the dealer license issued, as follows:

(A) the letter "D" for a new motor vehicle dealer;

(B) the letters "UD" for a used motor vehicle dealer; or

(C) the letters "RV" for a new or used recreational vehicle dealer; and

(iii) the actual number of sets of dealer plates issued to the dealer.

(b) Dealer plates may not be issued to a motorcycle or trailer dealer or a wholesaler.

(3) Dealer plates must contain the prefix of the county in which the dealer's established place of business is located, followed by the dealer license type abbreviation, the dealer license number, and the number of sets of dealer plates issued to that dealer. For example, new motor vehicle dealer number 4 in Lewis and Clark County would be numbered 5D-4, and if the dealer were issued three sets of dealer plates, they would be numbered consecutively as follows, 5D-4-1, 5D-4-2, and 5D-4-3.

(4) (a) ~~Upon making such application, the applicant shall pay to the department, in~~ *In* addition to the fees required ~~of dealers and wholesalers~~ under the provisions of ~~subsection (2)~~ *61-4-101 and [section 6]*, ~~a fee of $5. Upon receipt of the application, fee, and bond, as provided above, the department shall examine the application, and may, prior to issuing a license, make individual investigation of the truth of the statements contained in the application. If the department is satisfied that the applicant qualifies for the issuance of a license under the provisions of this chapter, the department may issue the license. The department~~

HeinOnline -- 1999 vol. II 1584 1999

~~may refuse, after investigation, to issue a license to an applicant as allowed by law.~~

~~(2) Registration or license fees shall be paid upon registration or reregistration of dealers in motor vehicles, recreational vehicles, or trailers as follows:~~

~~(a) (i) all dealers in motor vehicles and recreational vehicles, a~~ *an applicant for a dealer license shall pay an annual* fee of $25, ~~which shall entitle such dealer to one set of number plates, and $25 additional fee~~ for each ~~additional~~ set of ~~number~~ *numbered dealer* plates *requested and issued.*~~, subject to the following limitations on the number of additional sets allowed a dealer:~~

(b) The number of dealer plates that may be issued to a dealer must be determined as follows:

(i) a dealer is entitled to one set of dealer plates upon the issuance of an original license or a renewed license;

(ii) an applicant qualified for a license renewal is entitled to additional sets of numbered plates based on the following formula:

(A) 5% of the first 100 vehicle sales for the previous year; plus

(B) 3% of the next 100 vehicle sales for the previous year; plus

(C) 2% of vehicle sales in excess of 200 for the previous year; and

(iii) a dealer is entitled to additional sets of dealer plates during a license term as the dealer's sales incrementally meet or exceed the requirements of the formula established in subsection (4)(b)(ii). However, the aggregate number of sets of dealer plates issued to a dealer under this subsection (4)(b)(iii) may not exceed the combined number allowed under subsections (4)(b)(i) and (4)(b)(ii).

~~(D) any additional sets upon a showing of good cause by the applicant dealer to the department.~~

~~(ii) in addition to the dealer plates allowed under subsection (2)(a)(i), a dealer who has purchased one or more sets of dealer plates or a licensed wholesaler is entitled to purchase demonstrator plates at a cost determined by the department to offset the cost of production. Demonstrator plates must be used in lieu of a dealer plate but only as set forth in subsection (6) and must be distinguished from dealer plates in a manner determined by the department. Wholesaler demonstrator plates must be distinguished from dealer demonstrator plates in a manner determined by the department.~~

~~(b) dealers in motorcycles, quadricycles, and trailers, including housetrailers, $45; and~~

~~(c) wholesalers in used motor vehicles, recreational vehicles, trailers (including semitrailers and special mobile equipment), and motorcycles (including quadricycles), $30.~~

~~(3) If a dealer or wholesaler is originally registered 6 months after the time of registration as set by law, the registration or license fee for the remainder of the year is one-half of the regular fee above given.~~

~~(4) A dealer or wholesaler in motor vehicles, recreational vehicles, or trailers who maintains more than one place of business or who maintains a branch establishment or establishments shall register and pay a registration or license fee for each place of business or establishment. A dealer may sell vehicles only~~

~~from his licensed place of business unless the dealer notifies the department 10 days in advance, on a form prescribed by the department, of the opening date and location of an off-premises sale. Except for recreational vehicle dealers, an off-premises sale must be conducted within the city limits of the city of the dealer's licensed location or upon an adjacent off-premises site that is approved by the department and that is within the county of the dealer's licensed location. The sale may not exceed 10 consecutive business days, and a licensed dealer may not conduct more than 10 off-premises sales during any 1 calendar year.~~

~~(5) A new applicant for a used motor vehicle dealer or wholesaler license shall pay $300 to the department in addition to any other sums required by this section or other provisions of the law. An applicant for a renewal of a used motor vehicle dealer or wholesaler license shall certify under oath that he has sold more than five used motor vehicles during the preceding calendar year or pay an additional $300 before he may be licensed.~~

~~(6) Demonstrator plates provided for in subsection (2)(a)(ii) may be used only as follows:~~

~~(a) New and used motor vehicle or recreational vehicle demonstrator plates may be used:~~

~~(i) to demonstrate, for no more than 72 hours, an authorized vehicle held for sale, when operated by an individual holding a valid operator's license;~~

~~(ii) on authorized vehicles owned by the firm when operated by an officer or bona fide full-time employee of the dealer or wholesaler and used to transport the dealer's or wholesaler's own tools, parts, and equipment;~~

~~(iii) on authorized vehicles being tested for repair;~~

~~(iv) on authorized vehicles being moved to or from a dealer's place of business for sale;~~

~~(v) on authorized vehicles being moved to or from service and repair facilities before sale;~~

~~(vi) on authorized vehicles being moved to or from exhibitions within the state, provided any such exhibition does not exceed a period of 20 days.~~

~~(b) Mobile home and trailer dealer demonstrator plates may be used:~~

~~(i) on units hauled to or from the place of business of the manufacturer and the place of business of the dealer or to and from places of business of the dealer;~~

~~(ii) on mobile homes hauled to a customer's location for setup after sale;~~

~~(iii) on travel trailers held for sale to demonstrate the towing capability of the vehicle provided that a dated demonstration permit, valid for not more than 72 hours, is carried with the vehicle at all times;~~

~~(iv) on any motor vehicle owned by the dealer that is used only to move vehicles legally bearing mobile home and travel trailer dealer license plates of the dealer owning any such motor vehicle;~~

~~(v) on vehicles being moved to or from vehicle exhibitions within the state, provided any such exhibition does not exceed a period of 20 days.~~

(5) (a) A dealer is authorized to use and display dealer plates on a motor vehicle held for bona fide sale by the dealer and that is operated by or under the control of the dealer, the dealer's spouse, officers, or employees.

(b) For purposes of this subsection:

(i) the term "officers" includes only the persons listed on the manufacturer's franchise agreement or the importer's distribution agreement and the term "employees" means persons upon whom the dealer has paid social security taxes as a full-time employee; and

(ii) the display of a Monroney label or a buyer's guide label, as required by [section 5(2)], on a vehicle bearing dealer plates is prima facie evidence that the vehicle is offered for bona fide sale by the dealer.

(6) Dealer plates may not be used or displayed on vehicles used for hire, lease, or rental.

(7) (a) A dealer is accountable for each set of numbered dealer plates issued and shall file a quarterly report with the department certifying the disposition of each set of dealer plates assigned to the dealer and specifying the name, address, and occupation of the person primarily using each set of plates.

(b) A dealer who fails to submit an accountability report within 30 days of the end of the calendar quarter may be subject to the imposition of a civil penalty under 61-4-105.

(8) All numbered dealer plates expire on December 31 of the year of issue and are subject to renewal in accordance with the provisions of [section 6] and this section."

Section 23. Assignment of demonstrator plates. (1) A dealer or wholesaler may purchase demonstrator plates at a fee of $3 a plate. Demonstrator plates must be issued for each vehicle type for which a dealer license is required under 61-4-102. Demonstrator plates must be designed by the department in a manner that distinguishes demonstrator plates from dealer plates.

(2) (a) New and used motor vehicle or recreational vehicle demonstrator plates may be used:

(i) to demonstrate, for not more than 72 hours, a vehicle held for sale, when operated by an individual holding a valid operator's license;

(ii) on vehicles owned by the dealership when operated by an officer or bona fide full-time employee of the dealer or wholesaler and used to transport the dealer's or wholesaler's own tools, parts, and equipment;

(iii) on vehicles being tested for repair;

(iv) on vehicles being moved to or from a dealer's place of business for sale;

(v) on vehicles being moved to or from service and repair facilities before sale; and

(vi) on vehicles being moved to or from exhibitions within the state, provided the exhibition does not exceed a period of 20 days.

(b) Mobile home and trailer demonstrator plates may be used:

(i) on units being hauled to or from the place of business of the manufacturer and the place of business of the dealer or to and from places of business of the dealer;

(ii) on mobile homes being hauled to a customer's location for setup after sale;

HeinOnline -- 1999 vol. II 1587 1999

(iii) on travel trailers held for sale to demonstrate the towing capability of the vehicle, provided that a dated demonstration permit, valid for not more than 72 hours, is carried with the vehicle at all times;

(iv) on any motor vehicle owned by the dealer that is used only to move vehicles legally bearing mobile home and travel trailer dealer license plates of the dealer owning tbe motor vehicle; and

(v) on units being moved to or from exhibitions within the state, provided the exhibition does not exceed a period of 20 days.

(c) A vehicle being operated in accordance with this subsection (2) need only display one demonstrator plate conspicuously on the rear of the vehicle.

Section 24. Section 61-4-104, MCA, is amended to read:

"61-4-104. Record of purchase or sale. A dealer or wholesaler licensed under 61-4-101 shall keep a book or record of the purcbases, sales or exchanges, or receipts for the purpose of sale of used vehicles and a description of the vehicles, together with the name and address of the seller, of the purchaser, and of the alleged owner or other person from whom each vehicle was purchased or received or to whom it was sold or delivered, as the case may be. The description in the case of motor vehicles must also include the vehicle identification number and engine number, if any, and must include a statement that a number has been obliterated, defaced, or changed if that bas occurred. In the case of a trailer, semitrailer, or special mobile equipment, the record must include the manufacturer's number and other numbers or identification marks that appear on the trailer, semitrailer, or special mobile equipment. The dealer or wholesaler must also have a duly assigned certificate of ownership from the owner of tbe motor vehicle to the dealer or wholesaler from the time the motor vehicle is delivered to the dealer or wholesaler until it bas been disposed of by the dealer or wholesaler. It is a violation of this part for a dealer or wholesaler to fail to take assignment of all certificates of ownership or manufacturer's certificates of origin for vehicles acquired by the licensee or to fail to assign tbe certificate of ownership or manufacturer's certificate of origin for vehicles sold. All records required to be kept in accordance with this section, in addition to the required retention of odometer disclosure information under 61-3-206(4), must be physically located and maintained witbin the building referred to in 61-4-101~~(2)(b)(i)~~. An authorized representative of the department, upon presentation of the representative's credentials, may inspect and bave access to and copy any records required under this chapter."

Section 25. Section 61-4-105, MCA, is amended to read:

"61-4-105. Criminal penalty — civil penalty imposed by agency. (1) Any person violating tbe provisions of *61-3-501*, 61-4-101 ~~through~~, *61-4-102*, 61-4-104, ~~or~~ 61-4-120, *or [sections 5 through 8]* is guilty of a misdemeanor and subject to a fine of not less than $250 and not more than $500. For the purposes of this section, every sale of a moter vehicle in violation of the provisions of *61-3-501*, 61-4-101 ~~through~~, *61-4-102*, 61-4-104, ~~or~~ 61-4-120, *or [sections 5 through 8]* is a separate offense.

(2) In addition to all other penalties created by this part, the department is authorized to take appropriate enforcement action on its own initiative. Any person violating the provisions of *61-3-501*, 61-4-101 ~~through~~, *61-4-102*, 61-4-104, ~~or~~ 61-4-120, *or [sections 5 through 8]* may be subject to administrative action, in accordance with the contested case procedures of Title 2, chapter 4, as follows:

HeinOnline -- 1999 vol. II 1588 1999

(a) a civil penalty not to exceed $200 for each violation;

(b) suspension of the motor vehicle dealer, wholesaler, or auto auction license not to exceed 5 working days;

(c) revocation or denial of the motor vehicle dealer, wholesaler, or auto auction license; or

(d) any combination of subsections (2)(a) through (2)(c)."

Section 26. Section 61-4-107, MCA, is amended to read:

"61-4-107. Cease and desist order. *(1)* When the department has reasonable cause to believe, from information furnished to it or from an investigation made by it, that a person is engaged in any business regulated by this part without being licensed as required, it shall immediately issue and serve upon the person, by certified mail, a cease and desist order requiring ~~him~~ *the person* to cease and desist from further engaging in that business. If the person fails to comply with the order, the department shall file an action in the district court of Lewis and Clark County to restrain and enjoin the person from engaging in the business. The court shall proceed in the action as in other actions for injunctions.

(2) The sale of more than three motor vehicles or the offering for sale of more than three motor vehicles, if the certificates of ownership are not held in the offeror's name, in any calendar year is prima facie evidence that the offeror is engaged in the business of dealing motor vehicles and must be licensed under this chapter.

(3) When the department has reasonable cause to believe, from an investigation made by it or information furnished to it by a law enforcement officer, that a dealer or wholesaler has been improperly licensed, has used a dealer's license in a manner other than as authorized in this title, has provided a material misstatement of fact in an application for a license, is not qualified as a dealer or wholesaler under the requirements of this title, or has engaged in criminal conduct that renders the dealer or wholesaler unfit for licensure, the department may revoke the dealer's or wholesaler's license."

Section 27. Section 61-4-108, MCA, is amended to read:

"61-4-108. Exemptions. (1) This part does not require licensure of, or restrict or prohibit a financial institution, as defined in 32-6-103:

(a) in the selling of collateral repossessed on default of a loan made by the financial institution;

(b) in the conduct of a motor vehicle sales promotion in affiliation with one or more licensed dealers; or

(c) in the conduct of a motor vehicle sales promotion in affiliation with a person regularly engaged in a bona fide vehicle rental business if the purpose of the sale is to dispose of used motor vehicles used in the rental business.

(2) This part does not require licensure of an auctioneer whose business consists primarily of the sale of personal property other than motor vehicles.

(3) This part does not require licensure of a licensed real estate broker or agent lawfully buying, selling, exchanging, taking on consignment, or acting as a broker of mobile homes."

Section 28. Section 61-4-120, MCA, is amended to read:

HeinOnline -- 1999 vol. II 1589 1999

"61-4-120. Application for auto auction license — general regulations. (1) A person, firm, association, or corporation that takes possession of a motor vehicle owned by another person through consignment, bailment, or any other arrangement for the purpose of selling the motor vehicle to the highest bidder when all buyers are licensed motor vehicle dealers, wholesalers, or wrecking facilities shall file by mail or otherwise in the office of the department a verified application for licensure as an auto auction. The application must be made in the following manner:

(a) Each application and all of the information contained in it must be verified by the department or an authorized representative of the department on a form to be furnished by the department for that purpose. The application must provide the following information:

(i) the name in which the business is to be conducted and the location of premises, including street address, city, county, and state, where records are kept, sales are made, and motor vehicle stock is displayed as an established place of business that displays a sign indicating the firm name and that vehicles are offered for sale. The letters on the sign must be clearly visible and readable to the major avenue of traffic at a minimum distance of 150 feet.

(ii) the name and address of all owners or persons having an interest in the business. In the case of a corporation, the names and addresses of the president and secretary are sufficient.

(iii) a statement that the applicant is authorized to auction used motor vehicles, recreational vehicles, trailers, semitrailers, special mobile equipment, motorcycles, and quadricycles under one license. A licensed auto auction may not auction a new motor vehicle except when authorized by a new motor vehicle manufacturer, importer, distributor, or representative ~~thereof~~, for the purpose of conducting a closed-factory fleet sale to dispose of new motor vehicles by the franchisor (manufacturer, distributor, or importer) to franchisee purchasers when the purchasers are licensed new motor vehicle dealers purchasing new motor vehicle line-makes authorized by their respective franchise, sales, or distributor agreements. An auto auction licensed under the provisions of this section shall notify and update the department with current fleet sale agreements between the auto auction and franchisor. An auto auction may not conduct a factory fleet sale unless authorized or appointed by a franchisor licensed under part 2 of this chapter.

(b) Each application must be accompanied by a bond of $25,000 and must be conditioned that the applicant shall conduct business in accordance with the requirements of the law. All bonds must run to the state of Montana, must be approved by the department and filed in its office, and must he renewed annually. ~~A person who suffers loss or damage due to the unlawful conduct of an auto auction licensed under this section may proceed in the same manner as provided for licensed dealers and wholesalers in 61-4-101(3)(b).~~

(2) An auto auction's license must be renewed and paid for annually to the department, and an application for relicensure must be filed by January 1 of each year. The fee required for each first-time applicant is $500 and for subsequent renewal applications is $100 each year. Upon receipt of a properly completed application, fee, and bond, the department sball issue the auto auction license and assign an auto auction license number for each applicant in a manner determined by the department. Auto auctions dealing in motor vehicles may sell only to licensed dealers and wholesalers.

HeinOnline -- 1999 vol. II 1590 1999

(3) Auto auctions that are licensed under this section and that hold a current license number may issue temporary permits, which may be displayed and used by a buyer to operate an unregistered vehicle purchased from the auto auction. The temporary permit is valid for a period of 72 hours from the time of purchase and may be used only for the purpose of driving or transporting a vehicle from the auction premises to the purchaser's established place of business or point of destination. Temporary permits must be on a form prescribed hy the department and must contain the name, address, and license number of the purchaser, date of sale, name, address, license number, and authorized signature of the auto auction, and a description of the vehicle, including its serial number. The department shall collect a fee of $10 from the auto auction for each temporary permit, and the auto auction may charge a vehicle purchaser no more tban $10 for the issuance of each permit to offset the cost of the permit. It is unlawful for the auto auction to issue more than one temporary permit per vehicle sale.

(4) A licensed auto auction may apply for and may be authorized by the department to purchase and use license plates of a type and amount approved by the department, upon payment of a fee to the department to offset the cost of production. Licensed auto auctions may use the license plates to transport inventory vehicles from a point of storage or a point of delivery in this state to the auto auction's place of business, for road testing authorized vehicles, or for moving vehicles for purposes of repairing, painting, upholstering, polishing, and related activities. One license plate is required to be conspicuously displayed on tbe rear of the vehicle. Auto auctions may appoint designated persons, partnerships, corporations, service stations, or repair garages to use the license plate only when conducting work for the auto auction involving repairing, painting, upholstering, polishing, or performing similar types of work upon a vehicle. Upon application for an auto auction license, the applicant, if requesting the license plates, shall submit a sworn affidavit on a form prescribed by the department, listing each authorized person designated by the auction to use the license plates. The auto auction is responsible for reporting any changes to the affidavit within 72 hours after the amendment has occurred. An auto auction licensed under the provisions of this section is liable for the proper use of the license plates, which may not be used for private purposes. The department may revoke an auto auction's 72-hour temporary permit and license plate privileges if an auction issues, authorizes the use of, or uses a temporary permit or the license plate in violation of the provisions of this section.

(5) (a) Each auto auction shall keep a book or record, in a form and manner subject to approval by the department, of the purchases, sales, or exchanges or the receipts for the purpose of sale of any motor vehicle, a properly completed copy of a temporary permit issued to a vehicle purchaser, the date of title transfer, and a description of the motor vehicle, together witb the name and address of the seller, the purchaser, and the alleged owner or otber person from whom tlie motor vebicle was purchased or received or to whom it was sold or delivered. The description in the case of a motor vehicle must include:

(i) the vehicle identification number and engine number, if any; and

(ii) a statement that a number has been obliterated, defaced, or changed, if it has.

(b) An auto auction licensed under this section shall validate the sale of a motor vehicle through its auction by stamping its name and license number upon the certificate of ownership at a location on the front or back of the certificate,

HeinOnline -- 1999 vol. II 1591 1999

at the margin in the assignment section as executed between the transferor and transferee. An auto auction's stamp must be legible and may not interfere with the information recorded on the certificate between the transferor and transferee. If the certificate of ownership lacks adequate space for the auto auction to place its stamp, the auction may provide the transferee a copy of the auction invoice bearing the:

(i) name and license number of the auction, along with an indication of the vehicle year, make, model, and identification number;

(ii) name, address, and signature of the transferor;

(iii) name, license number, and signature of the transferee; and

(iv) date the vehicle was sold through the auction.

(c) The invoice must be attached to the certificate of ownership and must be presented to the department with any application for title.

(d) An auto auction shall retain, for 5 years, odometer disclosure information, including the name of the owner on the date the auto auction took possession of the motor vehicle, the name of the buyer, the vehicle identification number, and the odometer reading on the date the auto auction took possession of the motor vehicle. The odometer information may be retained in any way that is systematically retrievable and is not required to be maintained on any special disclosure form. The information may be part of the auction receipt or invoice or be maintained as a portion of a computer database or manual file. An auto auction that executes a transfer of ownership as an agent on behalf of a seller or buyer is liable for providing an odometer disclosure statement for the seller or an odometer disclosure acknowledgment for the buyer under the provisions of 61-3-206."

Section 29. Section 61-4-205, MCA, is amended to read:

"61-4-205. Limitations on cancellation and termination. (1) Notwitbstanding the terms, provisions, or conditions of any agreement or franchise, a franchisor may not cancel, terminate, or refuse to continue a franchise unless the franchisor has cause for termination or noncontinuance.

(2) A franchisor may not enter into a franchise for the purpose of establishing an additional new motor vehicle dealership in any community in which the same line-make is then represented unless there is good cause for an additional new motor vehicle dealership under a franchise and tbat it is in the public interest.

(3) If a franchisor seeks to terminate or not continue a franchise or seeks to enter into a franchise establishing an additional new motor vehicle dealership of the same line-make, the franchisor shall, not less than 60 days prior to the intended action, and the franchisee may, at any time, file a notice with the department of intention to terminate or not continue the franchise or to enter into a franchise for additional representation of the same line-make. A notice of intention to terminate or not continue a franchise is not required from a franchisor until the conclusion of any review proceeding of that intention offered to the franchisee under the franchise. This section does not apply to an intended termination or noncontinuance of a franchise that the franchisee elects voluntarily, pursuant to a plan established hy a franchisor, to submit to binding arbitration.

(4) Upon receiving a notice of intention under the provisions of subsection (3), the department shall, within 5 days of receipt of a notice of intention, send

HeinOnline -- 1999 vol. II 1592 1999

by certified mail, with return receipt requested, a copy of the notice to the franchisor and to the franchisee whose franchise the franchisor seeks to establish, terminate, or not continue. If the notice states an intent to establish an additional new motor vehicle dealership, a copy of the notice must be sent within 5 days of receipt to all franchisees in the community who are then engaged in the business of offering to sell or selling the same line-make. Copies of notices must be addressed to the principal place of business of each recipient and to the statutory agent of each corporate recipient. The department may also give a copy of the franchisor's notice to any other parties whom the department may consider interested persons.

(5) In instances where the change in ownership has the effect of the sale of the franchise, the franchisor may not without good cause withhold its consent to the sale. Good cause relates only to the transferee's financial and managorial capabilities or to the inability of the transferee to comply with a state or federal law relating to new motor vehicle dealerships. The burden of establishing good cause is upon the franchisor.

(6) Notwithstanding the terms, provisions, or conditions of an agreement or franchise, in the event of the sale or transfer of ownership of the franchisee's dealership by sale or transfer of the business or by stock transfer to the dealer's or wholesaler's spouse, son, or daughter, the franchisor shall give effect to the sale or transfer of ownership in the franchise unless the transfer of the franchisee's new motor vehicle dealer's or wholesaler's license is denied or the new owner is unable to obtain a license under the laws of this state.

(7) If a franchisor enters into or attempts to enter into a franchise, whether upon termination or refusal to continue another franchise or upon the establishment of an additional new motor vehicle dealership in a community where the same line-make is then represented, without first complying with the provisions of this part, a license under 61-4-101 ~~through 61-4-105~~ may not be issued to that franchisee or proposed franchisee to engage in the business of selling new motor vehicles manufactured or distributed by that franchisor."

Section 30. Section 61-10-214, MCA, is amended to read:

"61-10-214. Exemptions. (1) Motor vehicles operating exclusively for transportation of persons for hire within the limits of incorporated cities or towns and within 15 miles from the limits are exempt from this part.

(2) Motor vehicles brought or driven into Montana by a nonresident, migratory, bona fide agricultural worker temporarily employed in agricultural work in this state when those motor vehicles are used exclusively for transportation of agricultural workers are exempt from this part.

(3) Vehicles lawfully displaying a ~~licensed~~ dealer's or wholesaler's plate as provided in ~~61-4-103~~ *61-4-102 and [section 7]* are exempt from this part for a period not to exceed 7 days when moving to or from a dealer's or wholesaler's place of business when unloaded or loaded with dealer's or wholesaler's property only or while being demonstrated in the course of the dealer's or wholesaler's business. Vehicles being demonstrated may not be leased, rented, or operated for compensation by the licensed dealer or wholesaler.

(4) Vehicles exempt from property tax under 15-6-201(1)(a), (1)(c) through (1)(e), (1)(g), (1)(o), (1)(q), and (1)(v) are exempt from this part. The department of transportation may require documentation of tax-exempt status from the department of revenue before granting this exemption."

HeinOnline -- 1999 vol. II 1593 1999

Section 31. Repealer. Section 61-4-103, MCA, is repealed.

Section 32. Codification instruction. (1) [Sections 1 through 3] are intended to be codified as an integral part of Title 61, chapter 1, and the provisions of Title 61, chapter 1, apply to [sections 1 through 3].

(2) [Sections 4 through 8 and section 23] are intended to be codified as an integral part of Title 61, chapter 4, part 1, and the provisions of Title 61, chapter 4, part 1, apply to [sections 4 through 8 and section 23].

Section 33. Effective dates. (1) [Sections 4, 32, and 34 and this section] are effective on passage and approval.

(2) [Sections 1 through 3 and 5 through 31] are effective October 1, 1999.

Section 34. Applicability. (1) Except as provided in subsection (2), [sections 1 through 3 and 5 through 30] apply to license terms beginning after December 31, 1999.

(2) [Sections 6(4)(a) and (4)(d)] do not apply to used motor vehicle dealers licensed by the department of justice on or before December 31, 1999.

Approved April 21, 1999

CHAPTER NO. 410

[SB 169]

AN ACT REVISING THE LAWS GOVERNING SMALL BUSINESS INVESTMENT COMPANIES TO ENSURE THEIR COMPLIANCE WITH FEDERAL LAW AND REGULATIONS; AUTHORIZING ADDITIONAL MONTANA SMALL BUSINESS INVESTMENT CAPITAL COMPANIES; AMENDING SECTIONS 32-1-422, 90-8-104, 90-8-106, 90-8-201, 90-8-202, 90-8-203, 90-8-301, 90-8-302, 90-8-303, 90-8-304, 90-8-305, 90-8-311, 90-8-312, 90-8-313, AND 90-8-321, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-1-422, MCA, is amended to read:

"32-1-422. Restriction on investment in corporate stock — rulemaking authority. (1) Except as provided in subsections (2) and (3), a commercial or savings bank may not purchase or invest its capital or surplus or money of its depositors, or any part of either, in the capital stock of any corporation unless the purchase or acquisition of capital stock is necessary to prevent loss to the bank on a debt previously contracted in good faith. Any capital stock so purchased or acquired must be sold by the bank within 6 months after purchase or acquisition if it can be sold for the amount of the claim of the bank against it. All capital stock purchased or acquired must be sold for the best price obtainable by the bank within 1 year after purchase or acquisition, or if the stock is unmarketable, it must be charged off as an investment loss, which is equivalent to the stock's sale. A person or corporation violating any provision of this section shall forfeit to the state twice the nominal amount of the stock.

(2) A bank may acquire and hold for its own account:

(a) up to 20% of its capital and surplus in the capital stock of a bank service corporation organized solely for the purpose of providing services to banks;

HeinOnline -- 1999 vol. II 1594 1999

(h) shares of stock of a federal reserve bank, without limitation of amount; and

(c) shares of stock in a Montana capital company or ~~the~~ *a* Montana small business investment capital company within limits prescribed by the Montana Capital Company Act.

(3) A bank may invest any amount up to the limit established by the department of its unimpaired capital and surplus in shares of stock of:

(a) the federal national mortgage association;

(b) the federal home loan mortgage corporation;

(c) the federal agricultural mortgage corporation; and

(d) other corporations created pursuant to acts of congress to meet the agricultural, housing, health, transit, educational, environmental, or similar needs of the nation when the department determines that the investment is in the public interest.

(4) The department shall adopt rules to implement this section."

Section 2. Section 90-8-104, MCA, is amended to read:

"90-8-104. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Capital base" means equity capital raised by a certified Montana capital company or by a certified Montana small business investment capital company for which tax credits were claimed under this chapter.

(2) "Certified Montana capital company" or "certified Montana small business investment capital company" means:

(a) a development credit corporation created pursuant to Title 32, chapter 4; or

(b) a profit or nonprofit entity organized and existing under the laws of Montana, created for the purpose of making venture or risk capital available for qualified investments and tbat has heen certified by the department.

(3) "Department" means the department of commerce.

(4) "Montana business" means a business which is located or principally based within Montana.

(5) "Qualified investment" means an investment that does not violate any of the provisions of this chapter, does not displace other sources of equity or debt financing that are available to the project unless the department determines that the investment furthers the purposes of this chapter, and is:

(a) a debt or equity financing of a Montana business that meets both of the following criteria:

(i) the business is engaged in one or more of the following activities:

(A) manufacturing;

(B) agricultural, fishery, or forestry production and processing;

(C) mineral production and processing, except for conventional oil and gas exploration;

HeinOnline -- 1999 vol. II 1595 1999

(D) recognized nonfossil forms of energy generation or the manufacture of low emission wood or biomass combustion devices as defined in 15-32-102;

(E) transportation;

(F) research and development of products or processes associated with any of the activities enumerated in (A) through (E) above;

(G) wholesale or retail distribution activities for which products produced in Montana comprise 50% or more of the gross sales receipts;

(H) any activity conducted in the state for which 50% or more of the gross receipts are derived from the sale of products or services outside Montana; and

(I) tourism; and

(ii) the business is a small business as defined in rules adopted by the department *and is a small business pursuant to the regulations promulgated by the United States small business administration at 13 CFR 121, et seq.*;

(b) a debt or equity financing of a business outside Montana if ~~such~~ *the* investment is likely te produce a qualified investment in Montana, as long as ~~such~~ *the* investment does not exceed 25% of the capital base of the capital company; or

(c) a debt or equity financing of an acquisition of a non-Montana business that will be relocated in Montana.

(6) "Qualified Montana capital company" means a certified Montana capital company that has been designated a qualified capital company under the provisions of 90-8-202 so that investors in the company may receive the tax credits authorized in 90-8-202.

(7) "Qualified Montana small business investment capital company" means a certified Montana small business investment capital company that has been designated a qualified small business investment capital company under the provisions of 90-8-202 so that investors in the company may receive the tax credits authorized in 90-8-202."

Section 3. Section 90-8-106, MCA, is amended to read:

"90-8-106. Fees. The department may charge fees commensurate with costs for the administration of this chapter. Fees for the administration of this chapter must be assessed to each qualified Montana capital company *that is not a small business investment company that is licensed and regulated by the United States small business administration,* in a ratio proportionate to the tax credits allocated to the capital company divided by the total tax credits allocated to all qualified Montana capital companies."

Section 4. Section 90-8-201, MCA, is amended to read:

"90-8-201. (Temporary) Certification of Montana capital companies ~~—certification of a Montana small business investment capital company~~ *and small business investment capital companies.* (1) The department shall certify ~~one~~ Montana small business investment capital ~~company~~ *companies*, and from time to time the department shall certify Montana capital companies. A company seeking to be certified as a Montana capital company or as ~~the~~ *a* Montana small business investment capital company shall make written application to the department on forms provided by the department. The application must contain the information required by 90-8-204

HeinOnline -- 1999 vol. II 1596 1999

and other information that the department requires. ~~The application and certificate must specify the level of capitalization that the company expects to qualify for the tax credits provided for in 90-8-202.~~

(2) The application must show that the applicant's purpose is to increase the general economic welfare of the state of Montana by:

(a) making investment capital available to businesses in Montana; and

(b) allowing for investment of up to 25% of its capital base in businesses outside Montana if there is a substantial likelihood that ~~such~~ *the* investment will produce a qualified investment in Montana.

(3) Certifiable applicants include but are not limited to local and community development corporations, small business administration ~~503 corporations~~ *certified development companies*, and small business investment companies.

(4) Certification is a prerequisite to and must be completed before seeking designation as a qualified capital company or as ~~the~~ *a* qualified Montana small business investment capital company.

(5) To be eligible for certification under this section as ~~the~~ *a* Montana small business investment capital company, the applicant shall commit to:

(a) ~~utilize the tax credits to~~ accumulate private capital with the intention of being ~~designated~~ *licensed as* a small business investment corporation by the United States small business administration as provided in Title III of the Small Business Investment Act of 1958, as amended, and as implemented under 13 CFR 107;

(b) target its investments as a small business investment capital company toward commercialization projects emerging from centers of excellence and entrepreneurship, federal laboratories, the federal small business innovative research program, the federal cooperative research and development agreement program, Montana university system research and development, the Montana board of science and technology development (second stage), small business incubators, community development block grant programs, and projects emerging from economic development programs of Montana certified communities with the objective of providing significant investment opportunities in an area where economic development capital is limited;

(c) consider investment opportunities originating in any Montana county; and

(d) adopt investment guidelines that ensure that not less than 10% of its available capital is invested in counties with populations of 20,000 or less.

90-8-201. (Effective July 1, 1999) Certification of Montana capital companies ~~—certification of Montana small business investment capital company~~ *and small business investment capital companies.* (1) The department shall certify ~~one~~ Montana small business investment capital ~~company~~*companies*, and from time to time, the department shall certify Montana capital companies. A company seeking to be certified as a Montana capital company or as ~~the~~ *a* Montana small business investment capital company shall make written application to the department on forms provided by the department. The application must contain the information required by 90-8-204 and other information that the department requires. ~~The application and certificate must specify the level of capitalization that the company expects to qualify for the tax credits provided for in 90-8-202.~~

HeinOnline -- 1999 vol. II 1597 1999

(2) The application must show that the applicant's purpose is to increase the general economic welfare of the state of Montana by:

(a) making investment capital available to businesses in Montana; and

(b) allowing for investment of up to 25% of its capital base in businesses outside Montana if there is a substantial likelihood that the investment will produce a qualified investment in Montana.

(3) Certifiable applicants include but are not limited to local and community development corporations, small business administration ~~503 corporations~~ *certified development companies*, and small business investment companies.

(4) Certification is a prerequisite to and must be completed before seeking designation as a qualified capital company or as ~~the~~ *a* qualified Montana small business investment capital company.

(5) To be eligible for certification under this section as ~~the~~ *a* Montana small business investment capital company, the applicant shall commit to:

(a) ~~using the tax credits to accumulate~~ *accumulating* private capital with the intention of being ~~designated~~ *licensed as* a small business investment corporation by the United States small business administration as provided in Title III of the Small Business Investment Act of 1958, as amended, and as implemented under 13 CFR 107;

(b) targeting its investments as a small business investment capital company toward commercialization projects emerging from centers of excellence and entrepreneurship, federal laboratories, the federal small business innovative research program, the federal cooperative research and development agreement program, Montana university system research and development, small business incubators, community development block grant programs, and projects emerging from economic development programs of Montana certified communities, with the objective of providing significant investment opportunities in an area where economic development capital is limited;

(c) considering investment opportunities originating in any Montana county; and

(d) adopting investment guidelines that ensure that not less than 10% of its available capital is invested in counties with populations of 20,000 or less."

Section 5. Section 90-8-202, MCA, is amended to read:

"90-8-202. Designation of qualified Montana capital companies — designation of qualified Montana small business investment capital company — tax credit. (1) The department shall designate as:

(a) qualified Montana capital companies those certified companies that have been privately capitalized at a minimum level of $200,000; or

(b) ~~the~~ *a* qualified Montana small business investment capital company ~~the~~ *a* certified Montana small business investment capital company once it has been privately capitalized at a minimum level of $500,000.

(2) A certified company seeking designation as a qualified Montana capital company or as ~~the~~ *a* qualified Montana small business investment capital company ~~must~~ *shall* make written application to the department on forms provided by the department. The application must contain the information required by 90-8-204 and other information that the department requires.

HeinOnline -- 1999 vol. II 1598 1999

(3) (a) The total amount of tax credits authorized for a single qualified capital company or ~~the~~ *a* qualified Montana small business investment capital company may not exceed $1,500,000, except that ~~the~~ *a* qualified Montana small business investment capital company must receive all remaining tax credits under this section available as of January 1, 1991. In the event the capitalization of a qualified capital company is later increased, the company may apply for authorization of additional tax credits within the foregoing limitation.

(b) The total credits authorized for all companies may not exceed a total of $1 million prior to June 30, 1985. The total credits authorized for all companies between July 1, 1985, and June 30, 1987, may not exceed $1 million plus any portion of the $1 million available for authorization before June 30, 1985, that is allocated to qualified companies. The total credits authorized for all companies between July 1, 1987, and June 30, 1989, may not exceed $3 million plus any portion of the credits available for authorization before June 30, 1987, that is allocated to qualified companies. The total credits authorized for all companies between July 1, 1989, and June 30, 1991, may not exceed $3 million plus any portion of the credits available for authorization before June 30, 1989, that is allocated to qualified companies.

(4) (a) Before January 1, 1991, credits must be allocated to qualified companies in the order that completed applications for designation as qualified capital companies are received by the department, and the department shall certify to each company its appropriate allocation.

(b) All tax credits allowed under subsection (3) that are not allocated as of January 1, 1991, must be allocated to ~~the~~ *a* qualified Montana small business investment capital company, and the department shall certify the allocation to the company.

(c) If the legislature provides additional tax credits under this chapter after June 30, 1991, or if tax credits become available by reversion to the department by a capital company or by ~~the~~ *a* qualified Montana small business investment capital company, those additional or reverted tax credits must be allocated by the department to qualified capital companies or to ~~the~~ *a* qualified Montana small business investment capital company in accordance with this chapter and the rules of the department.

(5) Investors in a qualified Montana capital company or in ~~the~~ *a* qualified Montana small business investment capital company are entitled to the tax credits provided for in subsection (6). Funds invested in a certified company prior to designation as a qualified Montana capital company or as ~~the~~ *a* qualified Montana small business investment capital company may, at the discretion of the investor, be placed in an escrow account in a Montana financial institution pending designation of the company as a qualified Montana capital company or as ~~the~~ *a* qualified Montana small business investment capital company.

(6) Subject to the provisions of subsections (3) and (9), an individual, small business corporation, partnership, trust, decedent's estate, or corporate taxpayer that makes a capital investment in a qualified Montana capital company or ~~the~~ *a* qualified Montana small business investment capital company is entitled to a tax credit equal to 50% of the investment, up to a maximum credit for investments in all qualified Montana capital companies of $150,000 per taxpayer, except that, as applied to ~~the~~ *a* qualified small business investment capital company, the maximum tax credit is $250,000 per taxpayer and the tax credit limitation relating to a capital investment in ~~the~~ *a* qualified Montana small business

HeinOnline -- 1999 vol. II 1599 1999

investment capital company must he in addition to any other tax credit limitation in this section. The credit may be taken against the tax liability imposed on the investor pursuant to Title 15, chapter 30, 31, or 35. The credit for investments by a small business corporation defined in 15-31-201 or a partnership may be claimed by the small business corporation sbareholders or the partners.

(7) The tax credit allowed under subsection (6) is to he credited against the taxpayer's income tax liability or coal severance tax liability for the taxable year in which the investment in a qualified Montana capital company or ~~the~~ *a* qualified Montana small business investment capital company is made. If the amount of the tax credit exceeds tbe taxpayer's tax liability for the taxable year, the amount of the credit which exceeds the tax liability may be carried back or carried forward in the following manner:

(a) If the sum of the amount of credit for the current taxable year plus the amount of credit, if any, carried forward from a previous taxable year exceeds the taxpayer's tax liability for the current taxable year, the excess must be carried back as a credit to the 3 preceding taxable years and, if the full credit remains unused, carried forward as a credit to the 15 succeeding taxable years.

(b) The amount of unused credit must be used to offset the entire tax liability of each of the 18 taxable years, beginning with the earliest and commencing to the next succeeding year until the credit is exhausted.

(8) The tax credit provided for in this section is available only to those taxpayers who invest in a qualified Montana capital company within 4 years of July 1, 1987, or in ~~the~~ *a* qualified Montana small business investment capital company within 4 years of July 1, 1991.

(9) (a) An individual, small business corporation, partnership, or corporate taxpayer wbo obtains the tax credit allowed under subsection (6) may not obtain credits in excess of the limits contained in subsection (6) by making investments as more than one entity.

(b) A partner or shareholder in a small business corporation may not obtain more than $150,000, or not more than $250,000 in the case of ~~the~~ *a* qualified Montana small business investment capital company, in credits as an individual and as the partnership or small business corporation. A corporate taxpayer that obtains the maximum credits allowed under this subsection (9)(b) may not obtain additional credits through investments by wholly owned subsidiaries or affiliates. An individual, small business corporation, partnership, or corporate taxpayer who obtains the tax credit allowed under subsection (6) may not claim deduction under tbe provisions of Title 15, chapter 30 or 31, for donation of stock in ~~the~~ *a* qualified Montana small business investment capital company."

Seetion 6. Section 90-8-203, MCA, is amended to read:

"90-8-203. No recapture — unqualified investments — penalty. (1)*(a)* If the amount invested by a taxpayer in a qualified Montana capital company or in ~~the~~ *a* qualified Montana small business investment capital company is not used by the company for qualified investments as provided in 90-8-301, the taxpayer is not subject to a recapture provision for any tax credit claimed by ~~him~~ *the taxpayer* but the company, *except as provided in subsection (1)(b),* is subject to the penalty provided for in 90-8-301(4).

(b) The collection of a penalty under 90-8-301(4) from a small business investment company whose securities are guaranteed by the United States small

business administration must be deferred until all accounts due under the terms of the guarantee of the securities are paid in full.

(2) If a capital company does not invest its capital hase in accordance with 90-8-301 and has paid or otherwise distributed funds to an investor or subsequent holder of the investment, the department of revenue may recover from the person receiving the distrihuted funds a penalty in an amount not to exceed the lesser of:

(a) the amount of the tax credit received by the original ~~investor~~ *investors*; or

(b) tbe amount of funds paid or otherwise distributed to the investor or the subsequent holder of the investment *other than the United States small business administration or its designee.* Dividends or distributions made in accordance with applicahle law may not he included in the amount specified in this subsection *(2)*(b) unless the capital company has not invested its capital base in accordance with 90-8-301."

Section 7. Section 90-8-204, MCA, is amended to read:

"90-8-204. Application requirements. A company applying to become either a certified or qualified Montana capital company or ~~the~~ *a* certified or qualified Montana small husiness investment capital company shall include in its application evidence that it has disclosed or will disclose to all investors the following:

(1) the condition that a tax credit is not available for investment in a company until the company has been designated a qualified Montana capital company or ~~the~~ *a* qualified Montana small business investment capital company and the investor has received a certificate approving the credit from the department;

(2) the condition that a tax credit will not he made available until a qualified capital company raises at least $200,000 in capital and has been designated a qualified capital company or ~~the~~ *a* qualified Montana small business investment capital company raises at least $500,000 in capital before July 1, 1995, and has heen designated ~~the~~ *a* qualified Montana small business investment capital company and the limits on tax credits that may be authorized; and

(3) the fact that the state of Montana is not liable for damages in accordance with 90-8-205."

Section 8. Section 90-8-301, MCA, is amended to read:

"90-8-301. Qualified investments — penalty — extension permissible. (1) A qualified Montana capital company receiving investments for which a taxpayer has applied and received a tax credit must use its capital base to make qualified investments according to the following schedule:

(a) at least 30% of its capital base raised through investments for which tax credits were taken within 3 years of the date on which the certified company was designated as a qualified capital company by the department and, in the case of capital raised by a qualified Montana capital company under an amended application for additional tax credits filed after its initial designation as a qualified Montana capital company, at least 30% of its capital base raised through investments for which tax credits were taken within 3 years of the date on which the department approves the amended application;

HeinOnline -- 1999 vol. II 1601 1999

(b) at least 50% of its capital base raised through investments for which tax credits were taken within 4 years of the date on which the certified company was designated as a qualified capital company by the department and, in the case of capital raised by a qualified Montana capital company under an amended application for additional tax credits filed after its initial designation as a qualified Montana capital company, at least 50% of its capital base raised through investments for which tax credits were taken within 4 years of the date on which the department approves the amended application; and

(c) at least 70% of its capital base raised through investments for which tax credits were taken within 5 years of the date on which the certified company was designated as a qualified capital company by the department and, in the case of capital raised by a qualified Montana capital company under an amended application for additional tax credits filed after its initial designation as a qualified Montana capital company, at least 70% of its capital base raised through investments for which tax credits were taken within 5 years of the date on which the department approves the amended application.

(2) ~~The~~ *A* qualified Montana small business investment capital company receiving investments for which a taxpayer has applied and received a tax credit must use its capital base to make qualified investments according to the following schedule:

(a) of its capital base raised through investments for which tax credits were taken:

(i) 30% within 3 years of the date on which the certified company was designated as ~~the~~ *a* qualified Montana small business investment capital company by the department or within 3 years of its designation as a small business investment corporation by the small business administration, whichever is later;

(ii) 50% within 4 years of the date on which the certified company was designated as ~~the~~ *a* qualified Montana small business investment capital company by the department or within 4 years after its designation as a small business investment corporation by the small business administration, whichever is later; and

(iii) 70% within 5 years of the date on which the certified company was designated as ~~the~~ *a* qualified Montana small business investment capital company by the department or within 5 years after its designation as a small business investment corporation by the small business administration, whichever is later; or

(b) of its capital base, in the case of capital raised through a loan from the small business administration pursuant to 13 CFR 107, as provided under this chapter except as provided in subsection (2)(a).

(3) Following each annual examination, the department shall notify the department of revenue of any companies that are not in compliance with this section.

(4) *(a)* A *Except as provided in subsection (4)(b), a* qualified Montana capital company that fails to make qualified investments pursuant to subsection (1) or ~~the~~ *a* qualified Montana small business investment capital company that fails to make qualified investments pursuant to subsection (2) shall pay to the department of revenue a penalty equal to all of the tax credits allowed to the

investors investing in that company during that time period, with interest at 1% a month from the date the tax credits were certified as allocated to ~~the~~ *a* qualified Montana capital company or to ~~the~~ *a* qualified Montana small business investment capital company. The department of revenue may abate the penalty if ~~the~~ *a* capital company or ~~the~~ *a* Montana small business investment capital company establishes reasonable cause for the failure to make qualified investments pursuant to subsection (1) or (2) and if the failure was not due to neglect on the part of the company.

(b) A company that has been licensed as a small business investment company whose securities are guaranteed by the United States small business administration pursuant to Title III of the Small Business Investment Act of 1958 may not be required to pay the penalty until all amounts due under the terms of the guarantee of the securities are paid in full.

(5) The department of revenue may grant an extension of time in which to make qualified investments pursuant to subsection (1) or (2) upon application by a capital company or ~~the~~ *a* Montana small business investment capital company showing reasonable cause for an extension.

(6) The department of revenue shall deposit any amount received under this section to the credit of the state general fund.

(7) A capital company may invest tax credit funds in an existing profitable business only if a substantial portion of the investment is to be used for expansion of the business. The department may limit the amount of the investment to be counted toward the investment percentage criteria set forth in this section to the amount to be used for the expansion of the business."

Section 9. Section 90-8-302, MCA, is amended to read:

"90-8-302. Restriction on investment. In addition to the requirements of 90-8-301, no more than 50% of the equity raised by a Montana capital company or by ~~the~~ *a* Montana small business investment capital company *subject to any lower percentage prescribed by the regulations promulgated by the United States small business administration that govern small business investment companies* may be invested in any one business, and no more than 25% of the total funds raised for which tax credits were claimed pursuant to the investment credit provisions of this chapter may be invested in any one business."

Section 10. Section 90-8-303, MCA, is amended to read:

"90-8-303. Conflict of interest. (1) A capital company may not invest in any business venture in which the combined ownership of the business venture for all investors in the capital company exceeds 49% at the time of the investment decision.

(2) A member of the investment committee of a Montana capital company or of ~~the~~ *a* Montana small business investment capital company who has an interest in a venture that comes before the committee for a vote shall disclose the interest and abstain from voting on investment in the venture.

(3) Notwithstanding subsections (1) and (2), a company that has been licensed as a small business investment company pursuant to Title III of the Small Business Investment Act of 1958 may not make an investment that is prohibited by that act or subsequent regulations."

Section 11. Section 90-8-304, MCA, is amended to read:

HeinOnline -- 1999 vol. II 1603 1999

"**90-8-304. Application of securities law.** In lieu of registration under Title 30, chapter 10, a certified Montana capital company or ~~the~~ *a* certified Montana small business investment capital company may file all disclosure documents, along with a consent to service of process, with the state securities commissioner. The commissioner may not charge a fee for the filing."

Section 12. Section 90-8-305, MCA, is amended to read:

"**90-8-305. Sale of debentures.** (1) A qualified Montana capital company or ~~the~~ *a* qualified Montana small business investment capital company is authorized to issue and sell debentures to the permanent coal tax trust fund.

(2) Proceeds received by a qualified Montana capital company or by ~~the~~ *a* qualified Montana small business investment capital company from the sale of debentures authorized in subsection (1) must be invested in accordance with the provisions of 90-8-301, except that the time periods for making qualified investments must be calculated from the date the company sells the debentures to the permanent coal tax trust fund."

Section 13. Section 90-8-311, MCA, is amended to read:

"**90-8-311. Legislative review and oversight.** The department shall report on an annual basis to the revenue oversight committee of the legislature concerning Montana capital companies and ~~the~~ Montana small business investment capital ~~company~~ *companies*."

Section 14. Section 90-8-312, MCA, is amended to read:

"**90-8-312. Investment reporting and recordkeeping.** (1) Each qualified Montana capital company and each qualified Montana small business investment capital company shall report to the department on a quarterly basis:

(a) the name of each investor in the qualified Montana capital company or in the qualified Montana small business investment capital company who has applied for a tax credit;

(b) the amount of each investor's investment;

(c) the amount of the tax credit allowed to the investor and the date on which the investment was made; and

(d) any other information determined by the department.

(2) The department shall provide the information contained in subsection (1) to the department of revenue on a quarterly basis.

(3) The department shall provide each investor in a qualified Montana capital company and each investor in ~~the~~ *a* qualified Montana small business investment capital company with a certificate authorizing the tax credit, and the certificate must be submitted with each tax return requesting a credit under 90-8-202.

(4) Each qualified Montana capital company and ~~the~~ *each* qualified Montana small business investment capital company shall report to the department on a quarterly basis all qualified investments that the company has made. The department shall share the information with the department of revenue, in order that the provisions of 90-8-301 may be complied with.

(5) Each qualified Montana capital company shall report to the department all proposed investments to be made from its capital base. The capital company may not make the proposed investment unless the department determines,

HeinOnline -- 1999 vol. II 1604 1999

within 10 days of submission of a report satisfactory to the department, that the proposed investment is qualified under this chapter."

Section 15. Section 90-8-313, MCA, is amended to read:

"**90-8-313. Examination.** (1) At least once a year the department shall examine the books and affairs of each Montana capital company and of ~~the~~ *each* qualified Montana small business investment capital company. The examination must address the methods of operation and conduct of the business of the Montana capital company or of the Montana small business investment capital company to determine if the company is abiding by the purposes of this chapter and that the funds received by the company have been invested within the time limits required for a qualified Montana capital company or for ~~the~~ *a* qualified Montana small business investment capital company in 90-8-301.

(2) The department may examine under oath any of the officers, directors, agents, employees, or investors of a Montana capital company regarding the affairs and business of the company. The department may issue subpoenas and administer oaths. Refusal to obey such a subpoena may at once be reported to the district court of the district in which the company is located, and the court shall enforce obedience to the subpoena in the manner provided by law.

(3) The cost of the annual review must he paid by each Montana capital company or by ~~the~~ *each* Montana small business investment capital company in accordance with reasonable fees assessed by the department."

Section 16. Section 90-8-321, MCA, is amended to read:

"**90-8-321. Decertification.** (1) *(a)* If the examination conducted pursuant to 90-8-313 discloses that a Montana capital company or ~~the~~ *a* Montana small business investment capital company is not in compliance with the provisions of this chapter, the department may exercise any of the powers with regard to banks granted in Title 32, chapter 1, part 5, and may seize the assets of the company and liquidate it. In the event of liquidation of the assets, any penalty imposed pursuant to 90-8-301 must be included in the claims to be paid.

(b) If a company has any fixed or contingent obligations to the United States small business administration or its designee:

(i) the department may not exercise the powers granted in Title 32, chapter 1, part 5, without the prior written consent of the United States small business administration; and

(ii) the proceeds from any liquidation, including the collection of any unfunded commitments, must be applied first toward the payment of all sums that may be due the United States small business administration as holder or guarantor of any security issued by the company.

(2) If in the discretion of the department the action allowed under subsection (1) is not required to protect the company's investors, the department may place the company on notice that it will lose its certification as a Montana capital company or as ~~the~~ *a* Montana small business investment capital company within a specified period of time if the company does not come into compliance with the provisions of this chapter. The department shall automatically decertify a Montana capital company or ~~the~~ *a* Montana small business investment capital company that is assessed a penalty under 90-8-301(4).

(3) As long as the department acts in good faith, the department and its employees and agents may not be held civilly or criminally liable or liable upon

HeinOnline -- 1999 vol. II 1605 1999

their official bonds for action taken under this section or for any failure to act under it.

(4) A Montana capital company or ~~the~~ *a* Montana small business investment capital company may apply to the department for decertification.

(5) The department has the power to decertify any capital company not in compliance with this chapter.

(6) The department shall decertify a capital company once tbe capital company has met the investment schedule outlined in 90-8-301 and over 70% of the capital base of the capital company has been invested in qualified investments and after at least 5 years have elapsed since the date the capital company was qualified."

Section 17. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings tbat were begun before [the effective date of this act].

Section 18. Effective date. [This act] is effective on passage and approval.

Section 19. Applicability. [This act] applies to any capital company or small business investment capital company operating prior to or on or organized after [the effective date of this act].

Approved April 21, 1999

CHAPTER NO. 411

[SB 233]

AN ACT PROVIDING A DISCRETIONARY LONGEVITY SALARY ADJUSTMENT FOR COUNTY ATTORNEYS; AMENDING SECTIONS 7-4-2503 AND 46-18-236, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-4-2503, MCA, is amended to read:

"7-4-2503. Salary scbedule for ccrtain county officers. (1) (a) The salary paid to the county treasurer, county clerk and recorder, clerk of the district court, county assessor, county superintendent of schools, county sberiff, county surveyor in counties where county surveyors receive salaries as provided in 7-4-2812, and county auditor in all counties where the office is autborized must be established by the county governing body at no less tban 80% of the annual base salary of:

(i) $25,000 for counties of the first through fifth class added to the population increment of $10 for each 100 persons or major fraction of 100 persons included in the county's population as determined by the 1990 federal decennial census; or

(ii) $18,000 for counties of the sixtb and seventh class added to the population increment of $10 ~~per~~ *for each* 100 persons or major fraction of 100 persons in the county's population as determined by the 1990 federal decennial census.

(b) The annual base established by the county governing hody in subsection (1) must be uniform for all county officers referred to in subsection (1).

HeinOnline -- 1999 vol. II 1606 1999

(2) (a) An elected county superintendent of schools must receive, in addition to the salary based upon subsection (1), the sum of $400 ~~per~~ *a* year, except that an elected county superintendent of schools who holds a master of arts degree or a master's degree in education, with an endorsement in school administration, from a unit of the Montana university system or an equivalent institution may, at the discretion of the county commissioners, receive, in addition to the salary based upon subsection (1), up to $2,000 ~~per~~ *a* year.

(b) The county sheriff must receive, in addition to the salary based upon subsection (1), the sum of $2,000 ~~per~~ *a* year.

(c) The county sheriff must receive a longevity payment amounting to 1% of the base salary set forth in subsection (1) for each year of service with the sheriff's department, but years of service during any year in which the salary was set at the level of the salary of the prior fiscal year may not be included in any calculation of longevity increases. The additional salary amount provided for in this subsection may not be included in the base salary for purposes of computing the compensation for undersheriffs and deputy sheriffs as provided in 7-4-2508.

(3) (a) In each county with a population in excess of 30,000, the county attorney must be a full-time official under 7-4-2704, and the *base* salary is $50,000 ~~per~~ *a* year. In counties with a population less than 30,000, the county attorney who is a part-time official for a county of the first, second, or third class is entitled to receive an annual *base* salary equal to 60% of the annual salary of a full-time county attorney. A county attorney who is a part-time official for a county of the fourth, fifth, sixth, or seventh class is entitled to receive an annual *base* salary equal to 50% of the annual *base* salary of a full-time county attorney.

(b) In those counties where the office of the county attorney has been established as a full-time position pursuant to 7-4-2706, the *base* salary of the county attorney is the same as ~~that~~ *the base salary* established for full-time county attorneys in subsection (3)(a).

(c) On August 1 of each year, each county attorney is entitled to an increase in salary calculated by adding to the annual salary a percentage of up to 100% of the previous calendar year's consumer price index for all urban consumers, U.S. department of labor, bureau of labor statistics, or other index that the bureau of business and economic research of the university of Montana-Missoula may in the future recognize as the successor to that index. However, the county commissioners may, for all or the remainder of each fiscal year, in conjunction with setting salaries for other officers as provided in 7-4-2504(1), set the salary at the prior fiscal year level if that level is lower than the level required by this subsection (3)(c). The cost-of-living increment for each fiscal year must be added to all cost-of-living increments granted for previous years unless salaries were set for the fiscal year at the level of salaries received in the prior fiscal year. Unless restored pursuant to 7-4-2504(2), a cost-of-living increment that would have been received for the fiscal year, computed on the prior fiscal year, may not be added to previous increments.

(d) (i) After completing 4 years of service as deputy county attorney, each deputy county attorney is entitled to an increase in salary of $1,000 on the anniversary date of employment ~~as deputy county attorney~~ *as a deputy county attorney*. After completing 5 years of service as deputy county attorney, each deputy county attorney is entitled to an additional increase in salary of $1,500 on the anniversary date of employment. After completing 6 years of service as deputy county attorney and for each year of service thereafter up to completion

HeinOnline -- 1999 vol. II 1607 1999

of the 11th year of service, each deputy county attorney is entitled to an additional annual increase in salary of $500.

(ii) A county with a full-time county attorney may pay its full-time county attorney the same longevity increase that is provided for under subsection (3)(d)(i) for deputy county attorneys.

~~(ii)~~*(iii)* ~~The years of service as a deputy county attorney accumulated prior to July 1, 1985, must be included in the calculation of the longevity increase, but, unless~~ *Unless* longevity increases are restored pursuant to 7-4-2504(2), the years of service during a year in which the salary was set at the level of the salary of the prior fiscal year may not he included in a calculation of longevity increases.

(4) The latest federal decennial census statistics are the basis for computation of population increments under this section. During the intervening 9 years, the computation of population increments applicable on July 1 of each year is based on the most current calendar year's estimates of counties' populations compiled by the federal-state cooperative program for estimates of the university of Montana-Missoula bureau of business and economic research and the U.S. bureau of the census or other estimate that the bureau of business and economic research may certify."

Section 2. Section 46-18-236, MCA, is amended to read:

"46-18-236. Imposition of charge upon conviction or forfeiture — administration. (1) Except as provided in subsection (2), there must be imposed by all courts of original jurisdiction on a ~~defendant~~ *person* upon ~~his~~ conviction for any conduct made criminal by state statute or upon forfeiture of bond or bail a charge that is in addition to other taxable court costs, fees, or fines, as follows:

(a) $15 for each misdemeanor charge; and

(b) the greater of $20 or 10% of the fine levied for each felony charge.

(2) If a convicting court determines under 46-18-231 and 46-18-232 that the ~~defendant~~ *person* is not able to pay the fine and costs or that ~~he~~ *the person* is unable to pay within a reasonable time, the court ~~must~~ *shall* waive payment of the charge imposed by this section.

(3) The charge imposed by this section is not a fine and must be imposed in addition to any fine and may not be used in determining the jurisdiction of any court.

(4) When the payment of a fine is to be made in installments over a period of time, the charge imposed by this section must be collected from the first payment made and each subsequent payment as necessary if the first payment is not sufficient to cover the charge.

(5) The charges collected under subsection (1), except those collected by a justice's court, must be deposited with the appropriate local government finance officer or treasurer. If a city municipal court or city or town court is the court of original jurisdiction, the charges collected under subsection (1) must be deposited with the city or town finance officer or treasurer. If a district court is the court of original jurisdiction, the charges collected under subsection (1) must be deposited with the county finance officer or treasurer. If the court of original jurisdiction is a court within a consolidated city-county government within the meaning of Title 7, chapter 3, the charges collected under subsection (1) must be deposited with the finance officer or treasurer of the consolidated government.

HeinOnline -- 1999 vol. II 1608 1999

(6) (a) A city or town finance officer or treasurer may retain the charges collected under subsection (1) by a city municipal court or a city or town court and may use that money for the payment of salaries of the city or town attorney and ~~his deputies~~ *deputy city or town attorneys*.

(b) Each county finance officer or treasurer may retain the charges collected under subsection (1) by district courts for crimes committed or alleged to have been committed within that county. The county finance officer or treasurer shall use the money for the payment of salaries of its *county attorney and* deputy county attorneys and for the payment of other salaries in the office of the county attorney, and any funds not needed for ~~such~~ *those* salaries may be used for the payment of any other county salaries."

Section 3. Effective date. [This act] is effective July 1, 1999.

Section 4. Termination. [This act] terminates July 1, 2001.

Approved April 21, 1999

CHAPTER NO. 412

[SB 359]

AN ACT REQUIRING THE CREATION OF A RESERVE FUND FOR PAYMENT OF CERTAIN CLAIMS BY MANUFACTURERS OF TOBACCO PRODUCTS WHO HAVE NOT PREVIOUSLY SETTLED WITH THE STATE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Findings and purpose. (1) Cigarette smoking presents serious public health concerns to the State and to the citizens of the State. The Surgeon General has determined that smoking causes ... ng cancer, heart disease and other serious diseases, and that there are hundreds of thousands of tobacco-related deaths in the United States each year. These diseases most often do not appear until many years after the person in question begins smoking.

(2) Cigarette smoking also presents serious financial concerns for the Stato. Under certain health-care programs, the State may have a legal obligation to provide medical assistance to eligible persons for health conditions associated with cigarette smoking, and those persons may have a legal entitlement to receive such medical assistance.

(3) Under these programs, the State pays millions of dollars each year to provide medical assistance for these persons for health conditions associated with cigarette smoking.

(4) It is the policy of the State that financial burdens imposed on the Stato by cigarette smoking be borne by tobacco product manufacturers rather than by the State to the extent that such manufacturers either determine to enter into a settlement with the State or are found culpable by the courts.

(5) On November 23, 1998, leading United States tobacco product manufacturers entered into a settlement agreement, entitled the "Master Settlement Agreement," with the State. The Master Settlement Agreement obligates these manufacturers, in return for a release of past, present and certain future claims against them as described therein, to pay substantial sums to the Stato (tied in part to their volume of sales); to fund a national foundation devoted

HeinOnline -- 1999 vol. II 1609 1999

to the interests of public health; and to make substantial changes in their advertising and marketing practices and corporate culture, with the intention of reducing underage smoking.

(6) It would be contrary to the policy of the State if tobacco product manufacturers who determine not to enter into such a settlement could use a resulting cost advantage to derive large, short-term profits in the years before liability may arise without ensuring that the State will have an eventual source of recovery from them if they are proven to have acted culpably. It is thus in the interest of the State to require that such manufacturers establish a reserve fund to guarantee a source of compensation and to prevent such manufacturers from deriving large, short-term profits and then becoming judgment-proof before liability may arise.

Section 2. Definitions. (1) "Adjusted for inflation" means increased in accordance with the formula for inflation adjustment set forth in Exhibit C to the Master Settlement Agreement.

(2) "Affiliate" means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. Solely for purposes of this definition, the terms "owns," "is owned" and "ownership" mean ownership of an equity interest, or the equivalent thereof, of ten percent or more, and the term "person" means an individual, partnership, committee, association, corporation or any other organization or group of persons.

(3) "Allocable share" means Allocable Share as that term is defined in the Master Settlement Agreement.

(4) "Cigarette" means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains (a) any roll of tobacco wrapped in paper or in any substance not containing tobacco; or (b) tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or (c) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in clause (a) of this definition. The term "cigarette" includes "roll-your-own" (i.e., any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes). For purposes of this definition of "cigarette," 0.09 ounces of "roll-your-own" tobacco shall constitute one individual "cigarette."

(5) "Master Settlement Agreement" means the settlement agreement (and related documents) entered into on November 23, 1998 by the State and leading United States tobacco product manufacturers.

(6) "Qualified escrow fund" means an escrow arrangement with a federally or State chartered financial institution having no affiliation with any tobacco product manufacturer and having assets of at least $1,000,000,000 where such arrangement requires that such financial institution hold the escrowed funds' principal for the benefit of releasing parties and prohibits the tobacco product manufacturer placing the funds into escrow from using, accessing or directing the use of the funds' principal except as consistent with [section 3(2)] of this Act.

HeinOnline -- 1999 vol. II 1610 1999

(7) "Released claims" means Released Claims as that term is defined in the Master Settlement Agreement.

(8) "Releasing parties" means Releasing Parties as that term is defined in the Master Settlement Agreement.

(9) "Tobacco Product Manufacturer" means an entity that after the date of enactment of this Act directly (and not exclusively through any affiliate):

(a) manufactures cigarettes anywhere that such manufacturer intends to he sold in the United States, including cigarettes intended to be sold in the United States through an importer (except where such importer is an original participating manufacturer (as that term is defined in the Master Settlement Agreement) that will be responsible for the payments under the Master Settlement Agreement with respect to such cigarettes as a result of the provisions of subsections II(mm) of the Master Settlement Agreement and that pays the taxes specified in suhsection II(z) of the Master Settlement Agreement, and provided that the manufacturer of such cigarettes does not market or advertise such cigarettes in the United States);

(b) is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States; or

(c) becomes a successor of an entity described in paragraph (a) or (b).

The term "Tobacco Product Manufacturer" shall not include an affiliate of a tobacco product manufacturer unless such affiliate itself falls within any of paragraphs (a) - (c) above.

(10) "Units sold" means the number of individual cigarettes sold in the State by the applicable tobacco product manufacturer (whether directly or through a distributor, retailer or similar intermediary or intermediaries) during the year in question, as measured by excise taxes collected by the State on packs (or "roll-your-own" tobacco containers) bearing the excise tax stamp of the State. The department of revenue sball promulgate such regulations as are necessary to ascertain the amount of State excise tax paid on the cigarettes of such tobacco product manufacturer for each year.

Section 3. Requirements. Any tobacco product manufacturer selling cigarettes to consumers within the State (whether directly or through a distributor, retailer or similar intermediary or intermediaries) after the date of enactment of this Act shall do one of the following:

(1) become a participating manufacturer (as that term is defined in section II(jj) of the Master Settlement Agreement) and generally perform its financial obligations under the Master Settlement Agreement; or

(2) (a) place into a qualified escrow fund by April 15 of the year following the year in question the following amounts (as such amounts are adjusted for inflation) —

1999: $.0094241 per unit sold after the date of enactment of this Act;

2000: $.0104712 per unit sold;

for each of 2001 and 2002: $.0136125 per unit sold;

for each of 2003 through 2006: $.0167539 per unit sold;

for each of 2007 and each year thereafter: $.0188482 per unit sold.

HeinOnline -- 1999 vol. II 1611 1999

(b) A tobacco product manufacturer that places funds into escrow pursuant to paragraph (a) shall receive the interest or other appreciation on such funds as earned. Such funds themselves shall be released from escrow only under the following circumstances-

(i) to pay a judgment or settlement on any released claim brought against such tobacco product manufacturer by the State or any releasing party located or residing in the State. Funds shall be released from escrow under this subparagraph (A) in the order in which they were placed into escrow and (B) only to the extent and at the time necessary to make payments required under such judgment or settlement;

(ii) to the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow in a particular year was greater than the State's allocable share of the total payments that such manufacturer would have been required to make in that year under the Master Settlement Agreement (as determined pursuant to section IX(i)(2) of the Master Settlement Agreement, and before any of the adjustments or offsets described in section IX(i)(3) of that Agreement other than the Inflation Adjustment) had it been a participating manufacturer, the excess shall be released from escrow and revert back to such tobacco product manufacturer; or

(iii) to the extent not released from escrow under subparagraphs (i) or (ii), funds shall be released from escrow and revert back to such tobacco product manufacturer twenty-five years after the date on which they were placed into escrow.

(c) Each tobacco product manufacturer that elects to place funds into escrow pursuant to this subsection shall annually certify to the Attorney General that it is in compliance with this subsection. The Attorney General may bring a civil action on behalf of the State against any tobacco product manufacturer that fails to place into escrow the funds required under this section. Any tobacco product manufacturer that fails in any year to place into escrow the funds required under this section shall-

(i) be required within 15 days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a violation of this subsection, may impose a civil ponalty to be paid to the general fund of the state in an amount not to exceed 5 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 100 percent of the original amount improperly withheld from escrow;

(ii) in the case of a knowing violation, be required within 15 days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a knowing violation of this subsection, may impose a civil penalty to be paid to the general fund of the state in an amount not to exceed 15 percent of the amount improporly withheld from escrow por day of the violation and in a total amount not to exceed 300 percent of the original amount improperly withheld from escrow; and

(iii) in the case of a second knowing violation, be prohibited from selling cigarettes to consumers within the State (whether directly or through a distributor, retailer or similar intermediary) for a period not to exceed 2 years.

Each failure to make an annual deposit required under this section shall constitute a separate violation.

HeinOnline -- 1999 vol. II 1612 1999

Section 4. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 16.

Section 5. Effective date. [This act] is effective on passage and approval.

Approved April 21, 1999

CHAPTER NO. 413

[SB 463]

AN ACT PROVIDING THAT THE STATE'S LIABILITY FOR INTEREST AND ATTORNEY FEES IN A JUDGMENT ON A CONTRACT, PROVIDED FOR IN CHAPTER 508, LAWS OF 1997, IS RETROACTIVE TO AND APPLIES TO CONTRACTS IN EFFECT ON MAY 1, 1997, THE DATE ON WHICH CHAPTER 508 TOOK EFFECT; AMENDING SECTION 18-1-404, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 18-1-404, MCA, is amended to read:

"18-1-404. Liability of state — costs. (1) (a) The stato of Montana is liable in respect to any contract entered into in the same manner and to the same extent as a private individual under like circumstances, except the state of Montana is not liable for punitive damages.

(b) The state of Montana is liable for interest from the date on which the payment on the contract became due. *This liability is retroactive, within the meaning of 1-2-109, and applies to any contract in effect or an action pending on a contract on or after May 1, 1997.* For purposes of this section, the interest rate is 10% simple interest each year, whether due before or after a judgment. If the contract does not specify when interest is payable before a judgment, interest must be paid at the time provided in 17-8-242(2).

(2) Costs may be allowed as provided in 25-10-711. In all other cases, costs must be allowed in all courts to the successful claimant to the same extent as if the state of Montana were a private litigant. The costs must include attorney fees. *The liability for attorney fees is retroactive, within the meaning of 1-2-109, and applies to any contract in effect or an action pending on a contract on or after May 1, 1997.*

(3) This section does not apply to a contract governed by Title 19."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 21, 1999

CHAPTER NO. 414

[SB 486]

AN ACT REVISING THE LAWS RELATING TO PARENTING MATTERS BETWEEN NATURAL PARENTS AND THIRD PARTIES; AUTHORIZING COURTS TO MAKE A DETERMINATION THAT A PARENTAL INTEREST OR VISITATION RIGHT MAY BE AWARDED TO A THIRD PARTY WHEN

HeinOnline -- 1999 vol. II 1613 1999

THE PARENT'S CONDUCT IS CONTRARY TO A CHILD-PARENT RELATIONSHIP AND THE DETERMINATION SERVES THE BEST INTERESTS OF THE CHILD; AND AMENDING SECTIONS 40-4-211 AND 40-4-221, MCA.

WHEREAS, it is undisputed that parents have a fundamental right to autonomy in child-rearing decisions; and

WHEREAS, the United States Supreme Court has long recognized a constitutionally protected interest of parents to raise their children without state interference; and

WHEREAS, the liberty interest guaranteed by the 14th amendment to the United States Constitution includes freedom to engage in any of the common occupations of life, to acquire useful knowledge, to marry, to establish a home, and to bring up children; and

WHEREAS, the freedom of personal choice in matters of family life is a fundamental liberty interest protected by the 14th amendment to the United States Constitution; and

WHEREAS, the integrity of the family unit has found protection in the due process clause of the 14th amendment, the equal protection clause of the 14th amendment, and the 9th amendment; and

WHEREAS, the Montana Supreme Court has recognized the constitutionally protected rights of natural parents to parent their children; and

WHEREAS, the Montana Legislature recognizes that the careful protection of parental rights is not merely a matter of legislative grace but is constitutionally required; and

WHEREAS, the Montana Constitution recognizes the constitutional rights of children; and

WHEREAS, Article II, section 15, of the Montana Constitution provides that the rights of persons under 18 years of age shall include but not be limited to all the fundamental rights of Article II, unless specifically precluded by law which enhances the protection of the persons; and

WHEREAS, these fundamental rights include but are not limited to freedom; pursuing life's basic necessities, enjoying and defending life and liberty, and seeking safety, health, and happiness in lawful ways and the rights of individual dignity and privacy; and

WHEREAS, the Legislature finds that there are times when the rights of parents must be balanced against the rights of children; and

WHEREAS, the Legislature further finds that the courts need direction and authority to consider the best interests of children in parenting and visitation matters; and

WHEREAS, the Legislature finds it is appropriate to establish standards and direction for resolving these issues.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-4-211, MCA, is amended to read:

"40-4-211. Jurisdiction — commencement of parenting proceedings. (1) A court of this state competent to decide parenting matters has jurisdiction to make a parenting determination by initial or amended decree if:

HeinOnline -- 1999 vol. II 1614 1999

(a) this state:

(i) is the home state of the child at the time of commencement of the proceedings; or

(ii) had been the child's home state within 6 months before commencement of the proceedings and the child is absent from this state because of the child's removal or retention by any person and a parent or person acting as parent continues to live in this state; or

(b) it is in the best interest of the child that a court of this state assume jurisdiction because:

(i) the child and the parents or the child and at least one contestant have a significant connection with this state; and

(ii) there is available in this state substantial evidence concerning the child's present or future care, protection, training, and personal relationships; or

(c) the child is physically present in this state and:

(i) has been abandoned; or

(ii) it is necessary in an emergency to protect the child because the child has been subjected to or threatened with mistreatment or abuse or is neglected or dependent; or

(d) (i) no other state has jurisdiction under prerequisites substantially in accordance with subsection (1)(a), (1)(b), or (1)(c) or another state has declined to exercise jurisdiction on the ground that this state is the more appropriate forum to determine parenting of the child; and

(ii) it is in the child's best interest that the court assume jurisdiction.

(2) Except under subsections (1)(c) and (1)(d), physical presence in this state of the child or of the child and one of the contestants is not alone sufficient to confer jurisdiction on a court of this state to make a parenting determination.

(3) Physical presence of the child, while desirable, is not a prerequisite for jurisdiction te determine parenting of the child.

(4) A parenting plan proceeding is commenced in the district court:

(a) by a parent, by filing a petition:

(i) for dissolution or legal separation; or

(ii) for parenting in the county in which the child is permanently resident or found; or

(b) by a person other than a parent *if the person has established a child-parent relationship with the child*, by filing a petition for parenting in the county in which the child ~~is permanently resident~~ *resides* or *is* found~~, but only if the child is not physically residing with one of the child's parents~~.

(5) Notice of a parenting proceeding must be given to the child's parent, guardian, caretaker, those persons with whom the child is physically residing, and all other contestants, who may appear, be heard, and file a responsive pleading. The court, upon a showing of good cause, may permit intervention of other interested parties.

(6) For purposes of subsection (4)(b), "child-parent relationship" means a relationship that exists or did exist, in whole or in part, preceding the filing of an action under this section, in which a person provides or provided for the physical

HeinOnline -- 1999 vol. II 1615 1999

needs of a child by supplying food, shelter, and clothing and provides or provided the child with necessary care, education, and discipline and which relationship continues or existed on a day-to-day basis through interaction, companionship, interplay, and mutuality that fulfill the child's psychological needs for a parent as well as the child's physical needs."

Section 2. Section 40-4-221, MCA, is amended to read:

"**40-4-221. Determination of child's care upon dcath of parent.** (1) Upon the death of a parent, one or more parties named in subsection (2) may request a parenting plan hearing. The surviving parent must be a party in any proceeding brought under this section.

(2) Upon the death of a parent, any of the following parties may request a parenting plan hearing:

(a) the natural parent;

(b) the surviving spouse of tbe deceased parent;

(c) a porson nominated by the will of the deceased parent;

(d) any person nominated by the child if the child is at least 12 years old;

(e) any other person if that person has actual physical control over the child;

(f) a person who has established with the child a child-parent relationship, as defined in 40-4-211(6);

~~(f)~~*(g)* any other party whom, upon showing of good cause, the court permits to intervene as an interested party.

(3) The hearing and determination of a parenting plan is governed by this part."

Section 3. Rights of parents and children — policy — findings. (1) It is the policy of the state of Montana:

(a) to recognize the constitutionally protected rights of parents and the integrity of the family unit;

(b) to recognize a child's constitutionally protected rights, including all fundamental rights unless those rights are specifically precluded hy laws that enhance their protection; and

(c) to ensure that the best interests of the child are met in parenting proceedings.

(2) The legislature finds:

(a) that while it is in the best interests of a child to maintain a relationship with a natural parent, a natural parent's inchoate interest in the child requires constitutional protection only when the parent has demonstrated a timely commitment to the responsibilities of parenthood; and

(b) that a parent's constitutionally protected interest in the parental control of a child should yield to the best interests of the child when the parent's conduct is contrary to the child-parent relationship.

Section 4. Parenting and visitation matters between natural parent and third party. (1) In cases when a nonparent seeks a parental interest in a child under 40-4-211 or visitation with a child, the provisions of this chapter apply unless a separate action is pending under Title 41, chapter 3.

HeinOnline -- 1999 vol. II 1616 1999

(2) A court may award a parental interest to a person other than a natural parent when it is shown by clear and convincing evidence that:

(a) tbe natural parent has engaged in conduct that is contrary to the child-parent relationship; and

(b) the nonparent has established with the child a child-parent relationship, as defined in 40-4-211, and it is in the best interests of the child to continue that relationsbip.

(3) For purposes of an award of visitation rights under tbis section, a court may order visitation based on the best interests of the child.

(4) For purposes of this section, voluntarily permitting a child to remain continuously in the care of otbers for a significant poriod of time so that the others stand in loco parentis to the cluld is conduct that is contrary to the parent-child relationship.

(5) It is not necessary for the court to find a natural parent unfit before awarding a parental interest to a third party under this section.

Section 5. Codification instruction. [Sections 3 and 4] are intended to be codified as an integral part of Title 40, chapter 4, part 2, and the provisions of Title 40, chapter 4, part 2, apply to [sections 3 and 4].

Approved April 21, 1999

CHAPTER NO. 415

[SB 504]

AN ACT AUTHORIZING THE DEPARTMENT OF TRANSPORTATION TO APPROVE REVISED URBAN BOUNDARIES FOR A CONSOLIDATED CITY-COUNTY GOVERNMENT FOR THE PURPOSE OF ALLOCATION OF GASOLINE AND VEHICLE FUEL TAX REVENUE; AMENDING SECTION 15-70-101, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, gasoline and fuel tax revenue is allocated among cities, towns, and counties pursuant to 15-70-101, MCA, based on a formula that distingnishes between rural and urban areas; and

WHEREAS, tbe boundaries between urban and rural areas change over time; and

WHEREAS, the boundary between tbe urban area and the rural area for a consolidated city-county government should be revisod to reflect changes in settlement patterns over time.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-70-101, MCA, is amended to read:

"15-70-101. Disposition of funds. (1) All taxes collected under this chapter must, in accordance with the provisions of 15-1-501, be placed in a highway revenue account in the state special revenue fund to the credit of the departinent of transportation. Those funds allocated to cities, towns, counties, and consolidated city-county gevernmenta in this section must, in accordance with the provisions of 15-1-501, be paid by the departinent of transportation from the state special revenue fund to the cities, towns, counties, and consolidated city-county governments.

(2) The amount of $16,766,000 of the taxes collected under this chapter is statutorily appropriated, as provided in 17-7-502, to the department of transportation and must be allocated each fiscal year on a monthly basis to the counties, incorporated cities and towns, and consolidated city-county governments in Montana for construction, reconstruction, maintenance, and repair of rural roads and city or town streets and alleys, as provided in subsections (2)(a) through (2)(c):

(a) The amount of $54,000 must be designated for the purposes and functions of the Montana local technical assistance transportation program in Bozeman.

(b) The amount of $6,323,000 must be divided among the various counties in the following manner:

(i) 40% in the ratio that the rural road mileage in each county, exclusive of the national highway system and the primary system, bears to the total rural road mileage in the state, exclusive of the national highway system and the primary system;

(ii) 40% in the ratio that the rural population in each county outside incorporated cities and towns bears to the total rural population in the state outside incorporated cities and towns;

(iii) 20% in the ratio that the land area of each county bears to the total land area of the state.

(c) The amount of $10,389,000 must be divided among the incorporated cities and towns in the following manner:

(i) 50% of the sum in the ratio that the population within the corporate limits of the city or town bears to the total population within corporate limits of all the cities and towns in Montana;

(ii) 50% in the ratio that the city or town street and alley mileage, exclusive of the national highway system and the primary system, within corporate limits bears to the total street and alley mileage, exclusive of the national highway system and primary system, within the corporate limits of all cities and towns in Montana.

(3) (a) For the purpose of allocating the funds in subsections (2)(b) and (2)(c) to a consolidated city-county government, each entity must be considered to have separate city and county boundaries. The city limit boundaries are the last official city limit boundaries for the former city *unless revised boundaries based on the location of the urban area have been approved by the department of transportation* and must be used to determine city and county populations and road mileages in the following manner:

(i) Percentage factors must be calculated to determine separate populations for the city and rural county by using the last official deconnial federal census population figures that recognized an incorporated city and the rural county. The factors must he based on the ratio of the city to the rural county population, considering the total population in the county minus the population of any other incorporated city or town in the county.

(ii) The city and county populations must be calculated by multiplying the total county population, as determined by the latest official decennial census or the latest interim year population estimates from the Montana department of commerce as supplied by the United States hureau of the census, minus the

HeinOnline -- 1999 vol. II 1618 1999

population of any other incorporated city or town in that county, by the factors established in subsection (3)(a)(i).

(b) The amount allocated by this method for the city and the county must be combined, and single monthly payments must be made to the consolidated city-county government.

(4) All funds allocated by this section to counties, cities, towns, and consolidated city-county governments must be used for the construction, reconstruction, maintenance, and repair of rural roads or city or town streets and alleys or for the share that the city, town, county, or consolidated city-county government might otherwise expend for proportionate matching of federal funds allocated for the construction of roads or streets that are part of the primary or secondary highway system or urban extensions to those systems. The governing body of a town or third-class city, as defined in 7-1-4111, may each year expend no more than 25% of the funds allocated to that town or third-class city for the purchase of capital equipment and supplies to be used for the maintenance and repair of town or third-class city streets and alleys.

(5) All funds allocated by this section to counties, cities, towns, and consolidated city-county governments must be disbursed to the lowest responsible bidder according to applicable bidding procedures followed in all cases in which the contract for construction, reconstruction, maintenance, or repair is in excess of $4,000.

(6) For the purposes of this section in which distribution of funds is made on a basis related to population, the population must be determined annually for counties and biennially for cities according to the latest official decennial census or the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(7) For the purposes of this section in which determination of mileage is necessary for distribution of funds, it is the responsibility of the cities, towns, counties, and consolidated city-county governments to furnish to the department of transportation a yearly certified statement indicating the total mileage within their respective areas applicable to this chapter. All mileage submitted is subject to review and approval by the department of transportation.

(8) Except by a town or third-class city as provided in subsection (4), the funds authorized by this section may not be used for the purchase of capital equipment.

(9) Funds authorized by this section must be used for construction and maintenance programs."

Section 2. Effective date. [This act] is effective July 1, 1999.

Approved April 21, 1999

CHAPTER NO. 416

[SB 82]

AN ACT GENERALLY REVISING STATUTES RELATING TO THE PUBLIC'S RIGHT TO EXAMINE DOCUMENTS AND OBSERVE THE DELIBERATIONS OF GOVERNMENT; CLARIFYING THE PROCEDURE FOR OPENING COMPETITIVE SEALED PROPOSALS; AMENDING

HeinOnline -- 1999 vol. II 1619 1999

SECTIONS 5-3-106, 18-4-304, 23-5-115, 23-5-116, 30-10-107, 33-1-409, 33-2-1116, 33-2-1701, 33-16-205, 33-20-1310, 44-4-203, 44-5-301, 50-15-121, 50-15-122, 61-3-101, 61-11-105, AND 81-23-302, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5-3-106, MCA, is amended to read:

"5-3-106. Procedure for polling legislators. ~~(1)~~ Within 5 days after receiving a request, the secretary of state sball send to all legislators by certified mail a ballot ~~which~~ *that* contains:

~~(a)~~*(1)* the names of the legislators making the request;

~~(b)~~*(2)* the reasons for calling the special session;

~~(c)~~*(3)* the purposes of tbe special session;

~~(d)~~*(4)* the requested conveming date and time of the special session;

~~(e)~~*(5)* the date by which legislators ~~must~~ *shall* return the ballot, which may not be more than 30 days after the date of the mailing of the ballots; and

~~(f)~~*(6)* a stamped return envelope.

~~(2) The secretary of state shall keep the ballots secret until all legislators have voted or until the day after the date set for return of the ballots, whichever occurs first.~~"

Section 2. Section 18-4-304, MCA, is amended to read:

"18-4-304. Competitive sealed proposals. (1) The department may procure supplies and services through competitive sealed proposals.

(2) Proposals must be solicited through a request for proposals.

(3) Adequate public notice of the request for proposals must be given in the same manner as provided in 18-4-303(2).

~~(4) Proposals must be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation. A register of proposals must be prepared in accordance with rules adopted by the department and must be open for public inspection after contract award. After the contract is executed, proposal documents may be inspected by the public, subject to the limitations of the Uniform Trade Secrets Act, Title 30, chapter 14, part 4.~~

(4) After the proposals have been opened at the time and place designated in the request for proposals, proposal documents may be inspected by the public, subject to the limitations of:

(a) the Uniform Trade Secrets Act, Title 30, chapter 14, part 4;

(b) matters involving individual safety as determined by the department;

(c) information requested by the department to establish vendor responsibility unless prior written consent has been given by the vendor, pursuant to 18-4-308; and

(d) other constitutional protections.

(5) The request for proposals must state the evaluation factors and their relative importance. The award must be made to the responsible and responsive offeror whose proposal best meets tbe evaluation criteria. Other factors or criteria

HeinOnline -- 1999 vol. II 1620 1999

may not be used in the evaluation. The contract file must demonstrate the basis on which the award is made.

(6) The department may discuss a proposal with an offeror for the purpose of clarification or revision of the proposal. ~~In conducting discussions, there may not be disclosure of any information derived from proposals submitted by competing offerors.~~"

Section 3. Section 23-5-115, MCA, is amended to read:

"**23-5-115. Powers and duties of department — licensing.** (1) The department shall administer the provisions of parts 1 through 8 of this chapter.

(2) The department shall adopt rules to administer and implement parts 1 through 8 of this chapter.

(3) The department shall provide licensing procedures, prescribe necessary application forms, and grant or deny license applications.

(4) The department shall prescribe recordkeeping requirements for licensees, provide a procedure for inspection of records, provide a method for collection of taxes, and establish penalties for the delinquent reporting and payment of required taxes.

(5) The department may suspend, revoke, deny, or place a condition on a license issued under parts 1 through 8 of this chapter.

(6) The department may not make public or otherwise disclose *confidential criminal justice* information ~~obtained in the application or tax reporting processes, except for general statistical reporting or studies or as provided in 23-5-116~~, *as defined in 44-5-103, information obtained in the tax reporting processes, personal information protected by an individual privacy interest, or trade secrets, as defined in 30-14-402, specifically identified and for which there are reasonable grounds of privilege asserted by the party claiming the privilege.*

(7) The department shall assess, collect, and disburse any fees, taxes, or charges authorized under parts 1 through 8 of this chapter."

Section 4. Section 23-5-116, MCA, is amended to read:

"**23-5-116. Disclosure of information.** (1) The department shall, upon request, disclose ~~the following~~ information ~~from a license or permit application:~~

~~(a) the applicant's name;~~

~~(b) the address of the business where the activity under the license or permit is to be conducted;~~

~~(c) the name of each person who has an ownership interest in the business; and~~

~~(d) the types of permits requested by the applicant.~~

~~(2) The department shall, upon request, disclose:~~

~~(a) public criminal justice information, as defined in 44-5-103, as required by 44-5-301;~~

~~(b) all records and other information, except confidential criminal justice information, as defined in 44-5-103, that relates to:~~

~~(i) a sanction imposed under 23-5-136, for a violation of this chapter or a department rule; or~~

~~(ii) any other civil or administrative sanction or penalty imposed under a provision of this chapter or a department rule for a violation of this chapter or a department rule~~ *concerning a current or former gambling license applicant or gambling licensee, or any other person engaged in gambling or a gambling activity governed by parts 1 through 8 of this chapter, except:*

(a) confidential criminal justice information, as defined in 44-5-103;

(b) personal information protected by an individual privacy interest;

(c) trade secrets, as defined in 30-14-402, specifically identified and for which there are reasonable grounds of privilege asserted by the party claiming the privilege; and

(d) information obtained in the tax reporting processes.

~~(3)~~*(2)* ~~In addition to the information enumerated in subsections (1) and (2)~~ *Notwithstanding the limitations set forth in subsection (1),* the department may disclose any ~~other relevant~~ information obtained in the application or tax reporting process or as a result of other department operations to:

(a) a federal, state, city, county, or tribal criminal justice agency;

(b) the department of revenue and the federal internal revenue service; and

(c) a gambling regulatory agency of another state, a local government unit of another state, a tribal government, or a foreign nation, provided that the disclosure of the information complies with the law of that jurisdiction and that the receiving entity has been approved for receipt by the Montana attorney general."

Section 5. Section 30-10-107, MCA, is amended to read:

"30-10-107. Administration. (1) The administration of the provisions of parts 1 through 3 of this chapter must be under the general supervision and control of the state auditor, the ex officio securities commissioner. The commissioner may, from time to time, make, amend, and rescind rules and forms as necessary to carry out the provisions of parts 1 through 3 of this chapter. A rule or form may not be adopted unless the commissioner finds that the action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes of the policy and provisions of parts 1 through 3 of this chapter. In prescribing rules and forms, the commissioner may cooperate with the securities administrators of the other states and the securities and exchange commission with a view to effectuating the policy of parts 1 through 3 of this chapter to achieve maximum uniformity in the form and content of registration statements, applications, and reports ~~wherever~~ *whenever* practicable.

(2) It is unlawful for the commissioner or any of the commissioner's officers or employees to use for personal benefit any information filed with or obtained by the commissioner and not made public. The provisions of parts 1 through 3 of this chapter do not authorize the commissioner or any of the commissioner's officers or employees to disclose any information or the fact that ~~any~~ *an* investigation is being made, except among themselves or when necessary or appropriate in a proceeding or investigation under parts 1 through 3 of this chapter.

(3) The provisions of parts 1 through 3 of this chapter imposing liability do not apply to ~~any~~ *an* act done or omitted in good faith in conformity with ~~any~~ *a*

rule, form, or order of the commissioner, notwithstanding that the rule or form may later be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

(4) Every hearing in an administrative proceeding must be public ~~unless the commissioner grants a request joined in by all the respondents that the hearing be conducted privately~~.

(5) A document is filed when it is received by the commissioner. The commissioner shall keep a register of all applications for registration and registration statements that are or have ever been effective under parts 1 through 3 of this chapter and all denial, suspension, or revocation orders that have ever been entered under parts 1 through 3 of this chapter. The register must be open for public inspection. The information contained in or filed with any registration statement, application, or report may be made available to the public under rules the commissioner prescribes.

(6) Upon request and at a reasonable charge, the commissioner shall furnish to any person photostatic or other copies, certified if requested, of any entry in the register or any document that is a matter of public record. In ~~any~~ *a* proceeding or prosecution under parts 1 through 3 of this chapter, ~~any~~ *a* certified copy is prima facie evidence of the contents of the entry or document certified.

(7) To serve the purposes of 30-10-102, the commissioner may cooperate with the securities and exchange commission, the commodity futures trading commission, the securities investor protection corporation, any national securities exchange~~,~~ or national securities association registered under the Securities Exchange Act of 1934, any national or international organization of securities officials or agencies, and any governmental agency, corporation, or body.

(8) Except as specifically provided in this title, an order or notice may be given to a person by personal delivery or by mail addressed to that person at the person's ~~last-recorded~~ *last-recorded* principal place of business on file at the commissioner's office. An order or notice that is mailed is considered to have been given at the time it is mailed."

Section 6. Section 33-1-409, MCA, is amended to read:

"33-1-409. Examination reports — hearings — confidentiality — publication. (1) All examination reports must be composed only of facts appearing upon the books, records, or other documents of the company, its agents, or other persons examined or as ascertained from the testimony of its officers or agents or other persons examined concerning its affairs. The report must contain the conclusions and recommendations that the examiners find reasonably warranted from the facts.

(2) No later than 60 days following completion of the examination, the examiner in charge shall file with the department a verified written report of examination under oath. Upon receipt of the verified report, the department shall transmit the report to the company examined, together with a notice that gives the company examined a reasonable opportunity, but not more than 30 days, to make a written submission or rebuttal with respect to any matters contained in the examination report.

(3) Within 30 days of the end of the period allowed for the receipt of written submissions or rebuttals, the commissioner shall fully consider and review the

HeinOnline -- 1999 vol. II 1623 1999

report, together with any written submissions or rehuttals and any relevant portions of the examiner's workpapers and enter an order:

(a) adopting the examination report as filed or with modification or corrections. If the examination report reveals that the company is operating in violation of any law, regulation, or prior order of the commissioner, the commissioner may order the company to take any action the commissioner considers necessary and appropriate to cure the violation.

(b) rejecting tbe examination report with directions to the examiners to reopen the examination for purposes of obtaining additional data, documentation, information, or testimony and of refiling pursuant to subsection (2); or

(c) calling for an investigatory hearing with no less than 20 days' notice to the company for purposes of obtaining additional data, documentation, information, and testimony.

(4) (a) All orders entered pursuant to subsection (3)(a) must be accompanied by findings and conclusions resulting from tbe commissioner's consideration and review of tbe examination report, relevant examiner workpapers, and any written submissions or rebuttals. An order must be considered a final administrative decision and may be appealed pursuant to Title 33, chapter 1, part 7, and must be served upon the company by certified mail, together with a copy of the adopted examination report. Within 30 days of the issuance of the adopted report, the company shall file affidavits executed by each of its directors stating under oath that they have received a copy of the adopted report and related orders.

(b) (i) A hearing conducted under subsection (3)(c) by the commissioner or an authorized representative must be conducted as a nonadversarial, confidential, investigatory proceeding as necessary for the resolution of any inconsistencies, discrepancies, or disputed issues apparent upon the face of the filed examination report or raised by or as a result of the commissioner's review of relevant workpapers or by the written submission or rebuttal of the company. Within 20 days of the conclusion of the hearing, tbe commissioner shall enter an order pursuant to subsection (3)(a).

(ii) The commissioner may not appoint an examiner as an authorized representative to conduct the hearing. The hearing must proceed expeditiously with discovery by the company limited to the examiner's workpapers that tend to substantiate any assertions set forth in any written submission or rebuttal. The commissioner or the commissioner's representative may issue subpoenas for the attendance of ~~any~~ witnesses or the production of ~~any~~ documents considered relevant to the investigation, whether under the control of tbe department, the company, or other persons. The documents produced must be included in the record, and testimony taken by the commissioner or the commissioner's representative must be under oath and preserved for the record. This section does not require tbe department to disclose any information or records tbat would indicate or show the existence or content of ~~any~~ *an* investigation or activity of a criminal justice agency.

(iii) The hearing must proceed with tbe commissioner or tbe commissioner's representative pesing questions to tbe persons subpoenaed. The company and the department may present testimony relevant to the investigation. Cross-examination ~~must~~ *may* be conducted only by the commissioner or the commissioner's representative. The company and the department must be

HeinOnline -- 1999 vol. II 1624 1999

permitted to make closing statements and may be represented by counsel of their choice.

(5) (a) Upon the adoption of the examination report under subsection (3)(a), the commissioner shall continue to hold the content of the examination report as private and confidential information for a period of 30 days, except to the extent provided in subsection (2). After 30 days, the commissioner ~~may~~ *shall* open the report for public inspection as long as a court of competent jurisdiction bas not stayed its publication.

(b) This title does not prevent and may not be construed as prohibiting tbe commissioner from disclosing the content of an examination report or preliminary examination report, the results of an examination, or any matter relating to a report or results to the insuranco department of this state or of any other state or country, to law enforcement officials of tbis stato or of any other state, or te an agency of the federal government at any time as long as the agency or office receiving the report or matters relating to the report agrees in writing to hold it ~~confidential and~~ in a manner consistent with this part.

(c) If the commissioner determines that regulatory action is appropriate as a result of ~~any~~ *an* examination, the commissioner may initiate any proceedings or actions as provided by law.

(6) All working papers, ~~recorded information, documents, and copies produced by,~~ *confidential criminal justice information, as defined in 44-5-103, personal information protected by an individual privacy interest, and trade secrets, as defined in 30-14-402, specifically identified and for which there are reasonable grounds of privilege asserted by the party claiming the privilege* obtained by~~,~~ or disclosed to tbe commissioner or any other person in tbe course of an examination made under this part must be given confidential treatment, are not subject to subpoena, and may not be made public by tbe commissioner or any other person, except to tbe extent provided in subsection (5). Access may also be granted to tbe NAIC. The persons given access *to confidential criminal justice information, trade secrets, and personal information* shall agree in writing, prior to receiving the information, to treat the information in the ~~confidential~~ manner required by this section unless the prior written consent of the company to which it pertains has been obtained."

Section 7. Section 33-2-1116, MCA, is amended to read:

"**33-2-1116. Confidentiality of information.** All ~~information, documents, and copies thereof~~ *confidential criminal justice information, as defined in 44-5-103, personal information protected by an individual privacy interest, and trade secrets, as defined in 30-14-402, specifically identified and for which there are reasonable grounds of privilege asserted by the party claiming the privilege* obtained by or disclosed to the commissioner or any otber person in the course of an examination or investigation made pursuant te 33-2-1115 and all information reported pursuant to 33-2-1111 and 33-2-1112 *containing confidential criminal justice information, trade secrets, or personal information* ~~shall~~ *must* be given confidential treatment, ~~and shall~~ *may* not be subject to subpoena, and ~~shall~~ *may* not be made public by the commissioner or any other person, except to insurance departments of other states, without the prior written consent of the insurer to whicb it pertains unless tbe commissioner, after giving the insurer and its affiliates who would be affected ~~thereby~~ notice and opportunity to be heard, determines that the interests of policyholders, shareholders, or the public will be served by tbe publication ~~thereof~~ *of thc trade*

HeinOnline -- 1999 vol. II 1625 1999

secrets or personal information, in which event ~~he~~ *the commissioner* may puhlish all or any part ~~thereof~~ *of the trade secrets or personal information* in ~~such~~ *a* manner ~~as he may deem~~ *that the commissioner considers* appropriate."

Section 8. Section 33-2-1701, MCA, is amended to read:

"33-2-1701. Liccnsure of reinsurance intermediaries. (1) A person, firm, association, or corporation may not act as a reinsurance intermediary-hroker in this state if the reinsurance intermediary-broker maintains an office directly, as a member or employee of a firm or association, or as an officer, director, or employee of a corporation:

(a) in this state, unless the reinsurance intermediary-broker is a licensed producer in this state; or

(h) in another state, unless the reinsurance intermediary-hroker is a licensed producer in this state or another state that has a law suhstantially similar to this law or unless the reinsurance intermediary-broker is licensed in this state as a nonresident reinsurance intermediary.

(2) A person, firm, association, or corporation may not act as a reinsurance intermediary-manager:

(a) for a reinsurer domiciled in this state, unless the reinsurance intermediary-manager is a licensed producer in this state;

(b) in this state, if the reinsurance intermediary-manager maintains an office either directly or as a member or employee of a firm or association or as an officer, director, or employee of a corporation in this state, unless the reinsurance intermediary-manager is a licensed producer in this state; or

(c) in another state for a nondomestic insurer, unless the reinsurance intermediary-manager is a licensed producer in this state or another state that has a law substantially similar to this law or unless the person is licensed in this state as a nonresident insurance intermediary.

(3) Subject to subsection (2), the commissioner may require a reinsurance intermediary-manager to:

(a) file a bond in an amount from an insurer acceptable to the commissioner for the protection of the reinsurer; and

(b) maintain a policy on errors and omissions in an amount acceptable to the commissioner.

(4) (a) The commissioner may issue a reinsurance intermediary license to any person, firm, association, or corporation that has complied with the requirements of this part. A license issued to a firm or association authorizes all the members of the firm or association and any designated employees to act as reinsurance intermediaries under the license. All authorized persons must be named in the application and in any supplements to the application. A license issued to a corporation must authorize all of the officers and any designated employees and directors to act as reinsurance intermediaries on behalf of the corporation. All autborized persons must be named in the application and in any supplements to the application.

(b) If the applicant for a reinsurance intermediary license is a nonresident, the applicant, as a condition precedent to receiving or holding a license, shall designate the commissioner as the agent for service of process in the manner provided for by this title for designation of service of process upon unauthorized

HeinOnline -- 1999 vol. II 1626 1999

insurers. The applicant shall also furnish the commissioner with the name and address of a resident of this state upon whom notices or orders of the commissioner or process affecting the nonresident reinsurance intermediary may be served. The licensee shall promptly notify the commissioner in writing of each change in its designated agent for service of process, and the change may not become effective until acknowledged by the commissioner.

(5) (a) The commissioner may refuse to issue a reinsurance intermediary license if, in the commissioner's judgment:

(i) the applicant, a person named on the application, or a member, principal, officer, or director of the applicant is not trustworthy;

(ii) a controlling person of the applicant is not trustwortby to act as a reinsurance intermediary; or

(iii) any of the persons listed in subsection (5)(a)(i) or (5)(a)(ii) has given cause for revocation or suspension of the license or has failed to comply with any prerequisite for the issuance of the license.

(b) Upon written request, the commissioner shall furnish a summary of the basis for refusal to issue a license. ~~The document is privileged and is not subject to public disclosure under Title 2, chapter 6, part 1.~~

(6) Licensed attorneys of this state, when acting in their professional capacity, are exempt from this section."

Seetion 9. Section 33-16-205, MCA, is amended to read:

"33-16-205. Noncompliance of rates — notice. If, after examination of an insurer, rating organization, advisory organization, or group, association, or other organization of insurers ~~which~~ *that* engages in joint underwriting or joint reinsurance or upon the basis of other information or upon sufficient complaint as provided in 33-16-204, the commissioner has good cause to believe that ~~such~~ *the* insurer, organization, group, or association or any rate, rating plan, or rating system made or used by ~~any such~~ *the* insurer or rating organization does not comply with the requirements and standards of this chapter applicable to it, ~~he~~ *the commissioner* shall, unless ~~he~~ *the commissioner* has good cause to believe ~~such~~ *that the* noncompliance is willful, give notice, in writing, to ~~such~~ *the* insurer, organization, group, or association stating ~~therein~~ in what manner and to what extent ~~such~~ *the* noncompliance is allegod to exist and specifying ~~therein~~ a reasonable time, not less than 10 days ~~thereafter~~ *aftcr receipt*, in which ~~such~~ *the* noncompliance may be corrected. ~~Notices under this section shall be confidential as between the commissioner and the parties unless a hearing is held under 33-16-206.~~"

Section 10. Section 33-20-1310, MCA, is amended te read:

"33-20-1310. Examination of business and practices of lieensee or applicant — maintenance of bnsincss records. (1) The commissioner may examine the business and practices of any licensee or applicant for a license when the commissioner determines an examination to be necessary. The commissioner may order a licensee or applicant to produce any records, books, files, or other information reasonably necessary to ascertain whether the licensee or applicant is acting or bas acted in violation of the law or contrary to the interests of the public. The licensee or applicant shall pay the expenses incurred in conducting ~~any~~ *an* examination.

HeinOnline -- 1999 vol. II 1627 1999

(2) A viatical settlement provider shall maintain records of all transactions of viatical settlement contracts of the viatical settlement provider and shall make the records available to the commissioner for inspection during reasonable business hours. The records must be maintained for a period of not less than 5 years from the date of their creation.

(3) The commissioner may at any time require a licensee to fully disclose the identity of all stockholders, partners, officers, and employees.

(4) The names of and individual identification data for all policyholders and certificate holders who have entered viatical settlement contracts with viatical settlement providers are confidential and may not he disclosed except ~~as considered necessary by the commissioner in administration of this part~~ *in cases in which the commissioner determines that the merits of public disclosure exceed the demands of individual privacy.*"

Section 11. Section 44-4-203, MCA, is amended to read:

"**44-4-203. Registration records.** (1) The registration records of each vehicle ~~so~~ registered ~~shall~~ *must* he maintained by the department of justice.

(2) The contents of ~~such~~ confidential registration records may be disclosed only at the discretion of the attorney general *when there is a legitimate law enforcement purpose for disclosure.*"

Section 12. Section 44-5-301, MCA, is amended to read:

"**44-5-301. Dissemination of public criminal justice information.** (1) There are no restrictions on the dissemination of public criminal justice information ~~except. for the following:~~

~~(a) Whenever a record or index is compiled by name or universal identifier from a manual or automated system, only information about convictions, deferred prosecutions, or deferred sentences is available to the public.~~

~~(b) Whenever the conviction record reflects only misdemeanors or deferred prosecutions and whenever there are no convictions except for traffic, regulatory, or fish and game offenses for a period of 5 years from the date of the last conviction, no record or index may be disseminated pursuant to subsection (1)(a). However, the original documents are available to the public from the originating criminal justice agency.~~

(2) All public criminal justice information is available from *the department or* the agency that is the source of the original documents and that is authorized to maintain the documents according to applicable law. These documents ~~shall~~ *must* be open, subject to the restrictions in this section, during the normal business hours of the agency. A reasonable charge may he made hy a criminal justice agency for providing a copy of public criminal justice information."

Section 13. Section 50-15-121, MCA, is amended to read:

"**50-15-121. Copies from system of vital statistics.** (1) Except as provided in subsections ~~(4),~~ (6)~~,~~ and (7), the department and county clerk and recorders shall, upon receipt of an application, issue a certified copy or copies of a vital record or a part of a vital record to the registrant, the registrant's spouse, children, parents, or guardian, or an authorized representative. Other individuals may obtain certified copies when the individual demonstrates that the record is needed for the determination or protection of the individual's personal or property rights. The department shall adopt rules to further define those who may obtain copies of vital records filed under this chapter.

HeinOnline -- 1999 vol. II 1628 1999

(2) All applications, forms, and procedures used in the issuance of certified copies of vital records in the state must be uniform and prepared or approved by the department. All certified copies must contain security features that deter the document from being altered, counterfeited, duplicated, or simulated without ready detection that there have been these changes to the document.

(3) Each copy issued must show the date of filing. Copies issued from amended records must be marked and must show the effective date of the amendment. Copies issued from delayed records must be marked, must include the date of filing, and must contain a statement of the evidence used to establish the delayed certificate. A copy issued of a certificate of foreign birth must indicate the fact of foreign birth and the date of birth (if known), must show the actual place of birth, and must state that the certificate is not proof of United States citizenship for the adoptive child.

(4) A certified copy or other copy of a death certificate ~~containing information or data that would identify any person or institution named in a certificate or report and the cause of death information may not be issued, except as follows:~~

~~(a) upon specific request of the spouse, children, parents, or other next of kin of the decedent or their respective authorized representatives, as specified by department rule;~~

~~(b) when a documented need for the cause of death to establish a legal right or claim has been demonstrated, as specified by department rule;~~

~~(c) when the request for the copy is made by or on behalf of a person or entity that provides monetary benefits to the decedent's survivors or beneficiaries, as may be specified by department rule;~~

~~(d) upon specific request by federal, state, or local agencies for research or administrative purposes and when approved for release by the department;~~

~~(e) when needed for research activities and approved for release by the department; or~~

~~(f) upon receipt by the department of an order directed to the department from a court of competent jurisdiction ordering the release~~ *must be issued upon request of any person.*

(5) A certified copy of a vital record or any part of a vital record, issued in accordance with subsections (1) through (3), must be considered for all purposes the same as the original. The admissibility of a certificate or vital record filed more than 1 year after the event or after a corrective record is filed, of a vital record that has been amended, or of a certificate of foreign birth must be determined by the judicial or administrative body or official before whom the certificate is offered as evidence.

(6) This section may not be construed to permit disclosure of confidential information contained in a birth certificate for medical or health use or of information for statistical purposes only contained in a certificate of marriage or report of dissolution of marriage unless disclosure is specifically authorized by law for statistical or research purposes or unless ordered by a court.

(7) (a) When the department receives information that a certificate may have been registered through fraud or misrepresentation, it shall withhold issuance of the certificate or any copy of that certificate pending issuance of an order after an administrative contested case hearing before the department to determine whether fraud or misrepresentation has occurred.

HeinOnline -- 1999 vol. II 1629 1999

(b) The hearing provided for in subsection (7)(a) must be conducted pursuant to the Montana Administrative Procedure Act. In the proceeding, the department shall notify the registrant or the registrant's authorized representative and provide the registrant or the representative the opportunity to be heard.

(c) If, upon conclusion of the hearing, fraud or misrepresentation is not found, the department may issue the certificate or copies of the certificate in question.

(d) If, upon conclusion of the hearing, fraud or misrepresentation is found, the department may not register the certificate unless ordered to do so by a court.

(e) An affected person may appeal the department's decision to the district court as provided in Title 2, chapter 4, part 7.

(8) A person may not prepare or issue any certificate that purports to be an original or certified copy, except as authorized in this chapter or rules adopted to implement this chapter.

(9) The department may, by rule, prescribe details for the hearing and appellate procedures contained in this section."

Section 14. Section 50-15-122, MCA, is amended to read:

"50-15-122. Disclosure of information from vital records or vital reports — rules. (1) It is the policy of the state to protect the integrity of vital records and vital reports, to ensure their proper use, and to ensure the efficient and proper administration of the system of vital statistics. In furtherance of the policy, it is unlawful for any person to permit inspection of or to disclose information contained in vital records or in vital reports or to copy or issue a copy of all or a part of a record or report unless authorized by this chapter, by administrative rule, or by order of a court of competent jurisdiction. Rules adopted under this chapter must provide for adequate standards of security and confidentiality of vital records.

(2) The execution of a research agreement that protects the confidentiality of the information provided to a researcher in response to a written request is required for disclosure of information that may identify a person or institution named in ~~any~~ *a* vital record or report. This agreement must be made in compliance with this chapter or rules adopted to implement this chapter. Each agreement must prohibit the release by the researcher of any information that might identify a person or institution, other than releases that may be provided for in the agreement.

(3) This section does not prohibit the release of information or data that does not identify a person or institution named in a vital record or report.

(4) A challenge to a decision of a custodian of vital records to refuse disclosing information from records, as prescribed by this section and rules issued to implement this section, must be made before the department in the case of a county clerk and recorder and to a district court in the case of the department. A challenge before the department must be in the form of a contested case pursuant to the Montana Administrative Procedure Act. An appeal of the department's decision to district court must be made by filing an original action pursuant to the Montana Rules of Civil Procedure.

(5) Immediately upon the filing of a record with the department, the fact that a birth or death has occurred or a record of marriage or dissolution of marriage may be released to the public without restriction. Notwithstanding the restric-

HeinOnline -- 1999 vol. II 1630 1999

tions provided in 50-15-121, complete birth ~~or death~~ records may be released to the public 30 years after the date of birth ~~or death~~. The department shall adopt rules that provide for the continued safekeeping of the records.

(6) The department may provide the national center for health statistics or a successor agency with copies of records, reports, or data from the system of vital statistics that are required for national statistics. The department shall enter into an agreement with the center, indicating the scope of disclosure of information, as required by this chapter or rules implementing this chapter, concerning the use of records, reports, or data for statistical or research purposes. The agreement must set forth the financial support to be provided by the center for the collection, processing, and transmission of the records, reports, or data. Upon written request of the center, the department may approve, by amendment to the agreement, additional statistical or research uses of the records, reports, or data supplied under the agreement.

(7) Federal, state, and local governmental agencies may, subject to this chapter and rules implementing this chapter, upon request, be furnished copies of records or data from the system of vital statistics if the copies or data is used solely in the conduct of the agency's official duties. The department shall, upon request by a licensed adoption agency, provide a birth certificate and related records for purposes of adoption, termination of parental rights, custody actions, paternity actions, child support actions, social security eligibility determinations, or Indian tribal enrollment determinations.

(8) Subject to this chapter and rules implementing this chapter, the department may, by agreement, transmit copies of records and other reports required to be compiled by this chapter to offices of vital statistics outside this state when the records or reports concern residents of those jurisdictions or persons born in those jurisdictions. The agreement must specify the statistical and administrative purposes for which the records may be used, and the agreement must provide instructions concerning proper retention, confidentiality requirements, and disposition of the copies. Copies received by the department from offices of vital statistics in other states must be handled as provided for in this subsection."

Section 15. Section 61-3-101, MCA, is amended to read:

"61-3-101. Duties of department — records. (1) The department shall keep a record, as specified in this section, of all motor vehicles, trailers, and semitrailers of every kind, of certificates of registration and ownership of those vehicles, and of all manufacturers and dealers in motor vehicles.

(2) The record must show the following:

(a) *the* name of *the* owner, *the* residence address by street or rural route, town, and county, and *the* mailing address if different ~~than~~ *from the* residence address;

(b) *the* name and address of *the* conditional sales vendor, mortgagee, or other lienholder and *the* amount due under contract or lien;

(c) *the* manufacturer of *the* vehicle;

(d) *the* manufacturer's designation of *the* style of *the* vehicle;

(e) *the* identifying number;

(f) *the* year of manufacture;

(g) *the* character of *the* motive power and *the* shipping weight of *the* vehicle as shown by the manufacturer;

HeinOnline -- 1999 vol. II 1631 1999

(h) the distinctive license number assigned to the vehicle, if any;

(i) if a truck or trailer, the number of tons' capacity or GVW if imprinted on *the* manufacturer's identification plate;

(j) except as provided in 61-3-103, the name and complete address of any holder of a perfected security interest in the vehicle; and

(k) other information that may from time to time be found desirable.

(3) The department shall file applications for registration received by it from county treasurers and register the vehicles and the vehicle owners as follows:

(a) under the distinctive license number assigned to the vehicle by tbe county treasurer;

(b) alphabetically under the name of the owner;

(c) numerically under make and identifying number of tbe vehicle; and

(d) another index of registration as the department considers expedient.

(4) The department sball determine tbe amount of motor vehicle taxes and fees to be collected at the time of registration for each light vehicle subject to tax under 61-3-503 and for eacb bus, truck having a manufacturer's rated capacity of more than 1 ton, and truck tractor subject to a fee in lieu of tax under 61-3-528 and 61-3-529. The county treasurer shall collect tbe taxes and fees on each motor vehicle at the time of its registration.

(5) Vehicle registration records and indexes and driver's license records and indexes may be maintained by electronic recording and storage media.

(6) In tbe case of dealers, the records must show the information contained in the application for a dealer's license as required by 61-4-101 through 61-4-105, as well as the distinctive license number assigned to the dealer.

(7) In order to prevent an accumulation of unneeded records and files, regardless of any otber statutory requirements, the department may destroy all records and files tbat relate to vehicles tbat bave not been registered within the preceding 4 years and tbat do not have an active lien.

(8) All records must be open to inspection during reasonable business hours, and the department shall furnish any information from tbe records upon payment by the applicant of tbe cost of the information requested. Prior to providing the information, the department may require the applicant to provide identification. However, the department may, by rule, reasonably restrict disclosure of information on an owner ~~or the owner's vehicle~~ if the owner has requested in writing that the department not disclose the information *or if the demands of individual privacy clearly exceed the merits of public disclosure.*"

Section 16. Section 61-11-105, MCA, is amended to read:

"61-11-105. Release of information — fees. (1) Except as provided in subsection (2), the department shall, upon request ~~and with the licensee's approval~~, furnish a person the individual Montana driving record of a licensee, showing the following:

~~(a) licensee identification data, which may not include the individual's residence address, or information provided through means of an electronic tracking device;~~

~~(b)~~*(a)* driver's license status and expiration date;

~~(c)~~*(b)* convictions of the licensee; and

~~(d)~~*(c)* traffic accidents in which the licensee was involved.

(2) Unless the merits of public disclosure exceed the demands of individual privacy, a driving record of a licensee released under subsection (1) may not disclose an individual's address, social security number, photograph, medical or disability information, or information provided through means of a tracking device.

~~(2)~~*(3)* Information relating to a traffic accident that did not involve a conviction, as defined in 61-11-203, may not be released by the department unless the release is requested or approved by a party involved in the accident or is required by court order or a duly executed subpoena. ~~The department shall, upon request, furnish a criminal justice agency or any person or firm having a legitimate purpose as determined by the department with the individual Montana driving record of a licensee showing the items listed in subsections (1)(a) through (1)(d).~~

~~(3)~~*(4)* A fee of $4 must be paid for each individual Montana driving record requested. A fee of $10 must be paid if a certified Montana record, as provided in 61-11-102(6), is requested. All driving records must be provided without charge to any criminal justice agency, as defined in 44-5-103, or other state or federal agency."

Section 17. Section 81-23-302, MCA, is amended to read:

"81-23-302. Establishment of minimum prices. (1) The board shall fix minimum producer prices for class I, class II, and class III milk by adopting rules in a manner prescribed by the Montana Administrative Procedure Act.

(2) The board shall establish prices by means of flexible formulas that must be devised so that they bring about automatic changes in all minimum prices that are justified on the basis of changes in production, supply, processing, distribution, and retailing costs.

(3) The board shall consider the balance between production and consumption of milk, the costs of production and distribution, and prices in adjacent and neighboring areas and states so that minimum prices that are fair and equitable to producers and consumers may result.

(4) The board shall, when publishing notice of proposed rulemaking under authority of this section, set forth the specific factors that must he taken into consideration in establishing the formulas and, in particular, in determining costs of production and of the actual dollars and cents costs of production that preliminary studies and investigations of auditors or accountants in its employment indicate will or should be shown at the hearing so that all interested parties will have opportunity to be heard and to question or rebut the considerations as a matter of record.

(5) Specific factors may include but are not limited to the following items:

(a) current and prospective supplies of milk in relation to current and prospective demands for milk for all purposes;

(b) the cost factors in producing milk, which must include among other things the prices paid by farmers generally, as used in parity calculations of the United States department of agriculture, prices paid by farmers for dairy feed in particular, and farm wage rates in this state;

HeinOnline -- 1999 vol. II 1633 1999

(c) the alternative opportunities, both farm and nonfarm, open to milk producers, which must include among other things *the* prices received by farmers for all products other than milk, *the* prices received by farmers for beef cattle, and the percentage of unemployment in the state and nation as determined by appropriate state and federal agencies;

(d) the prices of butter, nonfat dry milk, and cheese;

(e) the need, if any, for freight or transportation charges to be deducted by distributors from producer prices for bulk milk.

(6) If the board at any time proposes to base all or part of an official order establishing or revising milk pricing formulas upon facts within its own knowledge, as distinguished from evidence that may be presented to it by the consuming public or the milk industry, the board shall, when publishing notice of proposed rulemaking under authority of this section, notify the consuming public and the milk industry of the specific facts within its own knowledge that it will consider, so that all interested parties will have opportunity to be heard and to question or rebut the facts as a matter of record.

(7) The board, after consideration of the evidence produced, shall make written findings and conclusions and shall fix by official rule the formula under which minimum producer prices for milk in classes I, II, and III must be computed.

(8) This section may not be construed as requiring the board to promulgate a specific number of formulas, but it must he construed liberally so that the board may adopt a reasonable method of expression to accomplish the objective set forth in subsection (7).

(9) Each rule establishing or revising milk pricing formulas must classify milk by forms, classes, grades, or uses as the hoard considers advisable and must specify the minimum prices for the forms, classes, grades, and uses.

(10) Distributors who have processing facilities in this state shall, whenever possible, purchase milk from Montana producers for the processing of products to be sold in this state, provided that milk is available from Montana producers at the price set by the board.

(11) The board shall adopt rules after notice and hearing in the manner prescribed by the Montana Administrative Procedure Act to regulate transportation rates that distributors, contract haulers, and others charge producers for interplant transportation of milk. An allowance for transportation of milk between plants may not be permitted unless it is found by the board to be necessary to permit the movement of milk in the public interest. The board may promulgate rules regarding the requirement for first call on Montana milk supplies, as provided in subsection (10). Rules must be coordinated with those adopted pursuant to fair trade practices under 81-23-303.

(12) All milk purchased by a distributor must be purchased on a uniform basis. The basis to be used must be established by the board after the producers and the distributors have been consulted.

(13) The board may amend an official rule in the same manner provided in this section for the original establishment of milk pricing formulas. The board may in its discretion, when it determines that the need exists, give notice of and hold statewide public hearings affecting establishment or revision of milk pricing formulas.

HeinOnline -- 1999 vol. II 1634 1999

(14) Upon petition of a distributor or a majority of a distributor's producers, the board shall hold a hearing to receive and consider evidence regarding the advisability and need for a base or quota plan as a method of payment by that distributor of producer prices. If the board finds that the evidence presented at the hearing warrants the establishment of a base or quota plan, the board shall proceed by official order to establish the base or quota plan.

(15) (a) Upon petition by 10% or 20 of the licensed producers in Montana, whichever is less, or upon petition by a licensed producer-distributor or distributor, the board shall hold a hearing to receive and consider evidence regarding the advisability and need for a statewide pooling arrangement as a method of payment of producer prices, provided that at the hearing, the board shall, among other things, specifically receive and consider evidence concerning production and marketing practices that have historically prevailed statewide. If the board finds that the evidence presented at the hearing warrants the establishment of a statewide pooling arrangement, the board shall proceed by official order to establish the arrangement. An official order is not effective until it is approved in a referendum conducted by the board by mail ~~and by secret ballot~~ among affected producers, producer-distributors, and distributors. ~~The board shall keep confidential the vote of each producer, producer-distributor, and distributor voting in the referendum.~~ The official order must be approved by a majority of the producers, producer-distributors, and distributors voting, representing more than 50% of the milk produced in Montana that is to be included in the proposed pool, based on each producer's average monthly production for the 12 months immediately preceding the referendum. If the board finds it necessary, the board may conduct more than one referendum on any order.

(b) The order of the board establishing the statewide pooling arrangement may include other provisions that the board considers necessary for the proper and efficient operation of the pool. These provisions may include but are not limited to:

(i) a statewide base or quota plan contemplated in subsection (14);

(ii) the establishment of a pool settlement fund to be administered by the department for the purpose of receiving payments from pool distributors or making payments to them as necessary in order to operate and administer the statewide pool; and

(iii) the establishment of a pool expense fund for the purpose of offsetting the costs to the department of administering the pool, funded by a special levy assessed against each pool producer.

(c) During the initial startup of a statewide pool, the department may draw from existing cash reserves to fund a pool settlement fund and a pool expense fund, but withdrawals from the cash reserve must be reimbursed.

(d) An order of the board establishing a statewide pooling arrangement that has been approved in a referendum may be rescinded in the same manner as provided for approval of the order under subsection (15)(a). The order may be amended without a referendum if, prior to amending the order, the board gives written notice of its intended action and holds a public hearing as required under the Montana Administrative Procedure Act.

(16) The requirements of this section concerning notices of hearings for the establishment of milk pricing formulas apply to any hearings regarding base or

HeinOnline -- 1999 vol. II 1635 1999

quota plans or statewide pooling arrangements or abandonment of base or quota plans or statewide pooling arrangements.

(17) Rules adopted pursuant to this section must be enforced and audited for compliance by the department."

Approved April 22, 1999

CHAPTER NO. 417

[SB 89]

AN ACT REQUIRING THE DEPARTMENT OF COMMERCE TO DESIGN AND THE DEPARTMENT OF TRANSPORTATION TO ERECT SIGNS IDENTIFYING VISITOR INFORMATION CENTERS.

WHEREAS, the 1989 Legislature passed House Bill No. 550, requiring the Department of Commerce and other agencies to study the feasibility of constructing and oporating visitor information centers to benefit the traveling public and enhance tourism; and

WHEREAS, the Department of Commerce reported the results of the study to the 1991 Legislature, recommending the establishment of seven visitor information centers located near entrances to the state; and

WHEREAS, the report stated that visitor information centers had the potential to enhance the quality of visitors' experiences while in Montana, increase word-of-mouth promotion about Montana destinations, improve visitors' images and perceptions of Montana as a vacation destination, increase visitors' length of stay and expenditures in Montana, and increase the likelihood of return visits to Montana; and

WHEREAS, visitor information centers were constructed near the communities of Culbertson, Shelby, Dillon, Wibaux, Hardin, St. Regis, and West Yellowstone; and

WHEREAS, the visitor information centers are community-hased, with the Department of Commerce providing partial funding for maintenance and staffing; and

WHEREAS, signs along the highway notifying the traveling public of the presence of visitor information centers are inadequate and many tourists are missing the opportunity to learn of eacli area's services and unique historic and recreational opportunities.

Be it enacted by the Legislature of the State of Montana:

Section 1. Visitor information centers — signs. (1) Subject to the provisions of federal law, the department of commerce shall design and the department of transportation shall erect signs identifying the Montana visitor information centers established and maintained by the department of commerce and in existence on October 1, 1999.

(2) (a) Each visitor information center must have two signs identifying it to the traveling public.

(b) The first sign must be erected at the nearest practical location to the border of the state along tlie highway leading to the visitor information center and must indicate the number of miles to the visitor information center.

HeinOnline -- 1999 vol. II 1636 1999

(c) The second sign must be erected along the highway at the exit leading to the visitor information center or at the nearest practical location to the visitor information center where the sign may be easily seen and read by the traveling public. This sign must contain directions te the center and the information that is provided at the center.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 60, chapter 2, part 2, and the provisions of Title 60, chapter 2, part 2, apply to [section 1].

Approved April 22, 1999

CHAPTER NO. 418

[HB 6]

AN ACT APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR GRANTS UNDER THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM; PRIORITIZING GRANTS AND AMOUNTS; ESTABLISHING CONDITIONS FOR GRANTS; PROVIDING FOR CONTINGENT APPROPRIATIONS; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Appropriations from renewable resource grant and loan state special revenue account. (1) There is appropriated to the department of natural resources and conservation up to $125,000 to be used for emergency projects and $100,000 to be used for private grants from the money available in the renewable resource account administered by the department.

(2) There is appropriated to the department of natural resources and conservation $2 million that is availahle in the renewable resource grant and loan state special revenue account for grants to political subdivisions and local government entities during the 2001 biennium. The funds appropriated in this section must be awarded by the department to the named entities for the described purposes and in the described grant amounts set out in subsection (3), suhject to the conditions set forth in [sections 1 through 4] and the contingencies described in the renewahle resource grant and loan program January 1999 report to the 56th legislature. The legislature, pursuant to 85-1-605, approves the grants listed in subsection (3), with grants to be made in the order indicated in the prioritized list of projects and activities. Funds must be awarded up to the amounts approved in this section in order of priority until availahle funds are expended. Funds not accepted or used hy higher-ranked projects must he provided for projects further down the priority list that would not otherwise receive funding. It is the intent of the legislature that each grant project listed after the Rae Water and Sewer District project in subsection (3) may not receive grant funds until sufficient funds are available for that purpose. Any projects that are funded by the reclamation and development grants programs may not be funded under [sections 1 through 4].

HeinOnline -- 1999 vol. II 1637 1999

(3) The following are the prioritized grant projects:

RENEWABLE RESOURCE GRANT AND LOAN PROGRAM	Recommended Funding
Applicant/Project Grant Amount	
Glasgow Irrigation District	$100,000
(St. Mary Siphon Repair)	
Malta Irrigation District	100,000
(Repair and Modification of Dodson Diversion Dam)	
Cascade County Conservation District*	77,000
(Muddy Creek Restoration and Water Quality Improvements)	
Madison County*	100,000
(Harrison Wastewater System Improvements)	
Glasgow Irrigation District	56,000
(Phase 1 - Vandalia Diversion Dam Rehabilitation)	
Petroleum County Conservation District*	50,150
(Musselshell River Assessment and Monitoring Plan)	
Mt. Department of Natural Resources and Conservation*	75,000
(Deadman's Basin Water Quality Improvement)	
Tin Cup County Water and Sewer District	25,000
(Tin Cup Lake Dam Restoration Project)	
Fort Shaw Irrigation District*	50,000
(Water Quality and Quantity Improvement)	
Sheridan County Conservation District*	99,700
(Sheridan County Ground Water Management Program)	
Cut Bank, City of	100,000
(Water System Improvements)	
Buffalo Rapids Project*	91,622
(Improving Pump Discharge Line Efficiency)	
Mt. Department of Natural Resources and Conservation	100,000
(Seepage Monitoring Program)	
Sanders County*	100,000
(Floodplain Delineation of the Clark Fork River)	
Missoula Sewer System, City of	100,000
(East Reserve Street Phases II & III)	
Glen Lake Irrigation District	100,000
(Costich Dam Improvements Project)	

Denton, Town of	100,000
(Wastewater Treatment Project)	
Bitterroot Irrigation District*	99,650
(Water Conservation and Improvement)	
Frenchtown Irrigation District*	32,900
(Irrigation System Water Use and Water Quality Improvements)	
Boulder, Town of	100,000
(Water Systems Improvement)	
Daly Ditches Irrigation District*	100,000
(Repuhlican Canal Diversion Dam Replacement)	
West Crane Sprinkler Irrigation Project	100,000
(West Crane Irrigation Project)	
Hebgen Basin/West Yellowstone Refuse District	99,425
(Composting Facility for Municipal Solid Waste)	
Teton County Conservation District*	100,000
(Irrigation Methods and Pesticide Transport to Ground Water)	
Glasgew, City of	100,000
(Combined Sewer Separation Project)	
Columbia Falls, City of	100,000
(Sewer Treatment Plant Upgrade)	
Sweetgrass Community County Water/Sewer District Wastewater	100,000
(Treatment Facility Rehabilitation/Upgrade)	
Sheridan, Town of*	30,000
(Water Supply Improvements)	
Corvallis County Sewer District	100,000
(Upgrade and Expansion of Wastewater Treatment Facility)	
Geraldine, Town of	50,000
(Wastewater Improvements)	
Roosevelt County Conservation District	82,109
(Fort Peck Assiniboine and Sioux Rural Water Supply Project)	
Brockton, Town of	100,000
(Water and Wastewater Systems Improvements)	
Neihart, Town of	76,770
(Water Distribution Improvements)	
Lewis and Clark County Water Quality Protection District Helena*	100,000
(Area Ground Water Quality Monitoring Network)	

HeinOnline -- 1999 vol. II 1639 1999

Eureka, Town of	100,000
(Wastewater Collection, Treatment, and Disposal Improvements)	
Ekalaka, Town of	100,000
(Ekalaka Water Source Improvement)	
Garfield County Conservation District	100,000
(Rehabilitation of Irrigation Diversion Dam and Outlet Works)	
Drummond, Town of	100,000
(Sanitary Sewer Rehabilitation Project)	
Lake County Conservation District*	100,000
(Forestry Implementation Project)	
Rae Water and Sewer District	100,000
(Wastewater Treatment System Improvements)	
Canyon Creek Irrigation District	100,000
(Canyon Lake and Wyant Lake Restoration Project)	
Chinook Division Irrigation Association*	100,000
(Rehabilitation and Betterment of Water Conveyance Systems)	
Big Timber, City of	100,000
(Lagoon Reconstruction and Lining)	
LaCasa Grande Estates Water and Sewer District	100,000
(New Water Supply System)	
Missoula, City of*	74,000
(Rattlesnake Creek Flood Plain Restoration and Control)	
Eureka, Town of	25,000
(Water System Facility Plan)	
Havre, City of	20,000
(Source-Water Delineation for Havre and Seeley Lake)	
Troy, City of	23,646
(Water System Master Plan)	

(4) For grant projects for which the department of natural resources and conservation also has recommended a loan, the authorization for the loan is contained in House Bill No. 8.

(5) The funding provided to the projects approved in this section and identified with an asterisk (*) following the applicant's name is eligible for and may be designated for use as a nonfederal match for the federal funding acquired for the nonpoint source pollution control program administered by the department of environmental quality.

(6) To the entities listed in this section, this appropriation constitutes a valid obligation of these funds for purposes of encumbering the funds within the 2001 biennium pursuant to 17-7-302.

Section 2. Conditions of grants. Disbursement of funds under [sections 1 through 4] for grants is subject to the following conditions that must be met by project sponsors:

(1) approval of a scope of work and budget for the project by the department of natural resources and conservation. Changes in the project scope of work or budget that reduce the public or natural resource benefits as presented in department reperts and applicant testimony to the 56th legislature will result in the proportional reduction in grant amount.

(2) documented commitment of other funds required for project completion;

(3) satisfactory completion of conditions described in the recommendation section of the project narrative in the renewable resource grant and loan program project recommendations and biennium report submitted to the 56th legislature for the 2001 biennium or, in the case of emergency applications, conditions specified at the time of written notification of approved grant authority;

(4) execution of a grant agreement with the department; and

(5) accomplishment of other specific requirements considered necessary by the department to accomplish the purpose of the grant as evidenced from the application to the department or from the proposal to the legislature.

Seetion 3. Conditions for grants. Notwithstanding the conditions described in [section 2], grant funds are disbursed in the order of priority listed in [section 1] as resource indemnity trust account interest income revenue is received. A project approved by [section 1] is not entitled to receive grant funds that are not collected and allocated to the renewable resource grant and loan program state special revenue account.

Section 4. Appropriations established. (1) For any entity of state government that receives a grant under [sections 1 through 3], an appropriation is established for the amount of the grant listed in [section 1(3)]. Grants to state entities from prior biennia are reauthorized for completion of contract work.

(2) Any funds in excess of the amount appropriated for grants under [sections 1 through 3] are available for appropriation for authorized purposes from the renewable resource grant and loan state special revenue account.

Section 5. Contingent appropriations. If [LC 327] is passed and approved and it includes a provision allocating $2 million a year to be deposited into the renewable resource grant and loan program state special revenue account created by 85-1-604, for the purpose of making grants, then [section 1(2) of this act] must provide:

"(2) There is appropriated to the department of natural resources and conservation $4 million that is available in the renewable resource grant and loan state special revenue account for grants to political subdivisions and local government entities during the 2001 biennium. The department shall allocate $400,000 of these funds for planning grants to be awarded over the course of the biennium and $100,000 to the Flathead Lake biological station for water quality monitoring. The remaining funds appropriated in this section must be awarded by the department to the named entities for the described purposes and in the described grant amounts set out in subsection (3), subject to the grant and loan program January 1999 report to the 56th legislature. The legislature, pursuant to 85-1-605, approves the grants listed in subsection (3), with grants to be made in the order indicated in the prioritized list of projects and activities. Funds must be awarded up to the amounts approved in this section in order of priority until

HeinOnline -- 1999 vol. II 1641 1999

available funds are expended. Funds not accepted or used by higher-ranked projects must be provided for projects further down the priority list that would not otherwise receive funding. It is the intent of the legislature that each grant project listed after the Rae Water and Sewer District project in subsection (3) may not receive grant funds until sufficient funds are available for that purpose. Any projects that are funded by the reclamation and development grants programs may not be funded under [sections 1 through 4]."

Section 6. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 7. Effective dates. (1) [Sections 2 through 6 and this section] are effective on passage and approval.

(2) [Section 1] is effective July 1, 1999.

Approved April 23, 1999

CHAPTER NO. 419

[HB 7]

AN ACT APPROPRIATING MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FOR GRANTS FOR DESIGNATED PROJECTS UNDER THE RECLAMATION AND DEVELOPMENT GRANTS PROGRAM; PRIORITIZING GRANTS AND AMOUNTS; ESTABLISHING CONDITIONS FOR GRANTS; AMENDING SECTION 2, CHAPTER 552, LAWS OF 1991, SECTION 2, CHAPTER 454, LAWS OF 1995, AND SECTION 2, CHAPTER 108, LAWS OF 1997; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Appropriations for reclamation and development grants. (1) The amount of $3,233,197 is appropriated to the department of natural resources and conservation from the reclamation and development grants special revenue account from funds allocated for appropriation from the interest income of the resource indemnity trust fund set forth in Title 15, chapter 38.

(2) The funds appropriated in this section must be awarded by the department to the entities listed in [section 2] for the prescribed purposes and in the prescribed grant amounts, subject to the conditions provided in [sections 2 through 4].

Section 2. Approved grant projects. (1) The legislature approves the grants listed in subsection (2), to be made in the order of priority as indicated within the following list of projects and activities. If the conditions in [sections 3 and 4] are met, funds must be awarded up to the amounts approved in this section in order of priority until available funds are expended. Funds not accepted by grantees or funds not used by higher-ranked projects and activities must be provided for projects and activities lower on the priority list that would otherwise not receive funding. Descriptions of the various projects and activities and specific conditions established for each project and activity are contained within the department of natural resources and conservation's reclamation and development grants program report to the 56th legislature for the 2001 biennium.

(2) The following are the grants program prioritized projects and activities:

Applicant/Project	Grant Amount
MONTANA BOARD OF OIL AND GAS CONSERVATION*	
1999 "A" Orphaned Well Plug and Abandonment and Site Restoration	$300,000
MONTANA BOARD OF OIL AND GAS CONSERVATION*	
1999 "B" Orphaned Well Plug and Abandonment and Site Restoration	300,000
ENVIRONMENTAL QUALITY, DEPARTMENT OF*	
Toston Smelter Reclamation Project	300,000
ENVIRONMENTAL QUALITY, DEPARTMENT OF*	
Frohner Mine Reclamation Project	300,000
ENVIRONMENTAL QUALITY, DEPARTMENT OF*	
Great Republic Smelter Reclamation Project	300,000
PARK CONSERVATION DISTRICT*	
Upper Yellowstone River Cumulative Effects Investigation	299,940
TOOLE COUNTY*	
Toole County Plugging and Abandonment, Aid to Independent Small Oil Operators	300,000
BUTTE-SILVER BOW LOCAL GOVERNMENT	
Upper Clark Fork Basin: Superfund Technical Assistance	95,236
FERGUS COUNTY CONSERVATION DISTRICT*	
Central Montana Artesian Basin Ground Water Project	150,000
TOOLE COUNTY	
North Toole County Reclamation Project	150,000
BUTTE-SILVER BOW LOCAL GOVERNMENT	
Mining City Mineyard Preservation and Enhancement	297,104
TOWNSEND, CITY OF	
East Pacific Mine Reclamation	202,500
MONTANA TECH OF THE UNIVERSITY OF MONTANA	
Champion International Gravel Pit Reclamation Project	57,494
LEWISTOWN, CITY OF	
Source Location of Hazardous Organic Contaminants Spring Creek Drainage	50,000
GLASGOW IRRIGATION DISTRICT	
St. Mary Diversion Repairs	110,818
MONTANA BOARD OF OIL AND GAS CONSERVATION	
Oil Well Abandonment	20,105

HeinOnline -- 1999 vol. II 1643 1999

The board of oil and gas conservation is authorized to expend remaining funds from grants to the board in this subsection (2) and remaining funds from grants previously awarded to the board to pay for the proper plugging of additional abandoned oil and gas wells. In determining which wells to plug, abandoned wells that represent the greatest threat to the environment and public health and safety should be given priority over all others.

(3) To the entities listed in this section, this appropriation constitutes a valid obligation of these funds for purposes of encumbering the funds within the 2001 biennium pursuant to 17-7-302.

(4) The funding provided to the grant projects in this section and identified by an asterisk (*) following the applicant's name is eligible for and may be designated for use as a nonfederal match for the federal funding acquired for the nonpoint source pollution control program administered by the department of environmental quality.

Section 3. Coordination of fund sources for grants programs projects. A sponsor of a grants program project who has applied for a grant for that project under both the reclamation and development grants program and the renewable resource grant and loan program may not receive duplicate funding.

Section 4. Condition of grants. Disbursement of grant funds under [sections 1 through 8] is subject to the following conditions that must be met by the project sponsor:

(1) A scope of work and budget for the project must be approved by the department of natural resources and conservation. Reduction in a scopo of work or budget may not affect priority activities or improvements.

(2) Other funds required for project completion must have been committed, and the commitment must be documented.

(3) The project sponsor shall show satisfactory completion of conditions described in the recommendation section of the project narrative of the reclamation and development grants program report to the legislature or the 2001 biennium.

(4) An agreement between the department and the project sponsor must be executed in a timely manner, taking into consideration any changed conditions or circumstances that govern the administration and disbursement of funds.

(5) Any other specific requirements considered necessary by the department must be met to accomplish the purpose of the grant as evidenced from the application to the department or as defined by the legislature.

Section 5. Other appropriations. There is appropriated to any entity of state government that receives a grant under [sections 1 through 8] the amount of the grant upon award of the grant by the department of natural resources and conservation. Grants to state entities from a prior biennium are reauthorized for completion of contract work.

Section 6. Section 2, Chapter 552, Laws of 1991, is amended to read:

The appropriations for reclamation and development grants in section 2, Chaptor 552, Laws of 1991, at page 1801 of the 1991 Montana Session Laws, are amended to read:

HeinOnline -- 1999 vol. II 1644 1999

"CHINOOK IRRIGATION DISTRICT

Milk River Water Supply Project, Rehabilitation and Betterment Element ~~300,000~~ *189,182*"

Section 7. Section 2, Chapter 454, Laws of 1995, is amended to read:

The appropriations for reclamation and development grants in section 2, Chapter 454, Laws of 1995, at page 2157 of the 1995 Montana Session Laws, are amended to read:

"STATE LANDS, DEPARTMENT OF*

Oil Well Abandonment ~~183,260~~ *163,155*"

Section 8. Section 2, Chapter 108, Laws of 1997, is amended to read:

The appropriations for reclamation and development grants in section 2, Chapter 108, Laws of 1997, at page 559 of the 1997 Montana Session Laws, are amended to read:

"ENVIRONMENTAL QUALITY - ABANDONED, DEPARTMENT OF

Nancy Lee Mine Complex Reclamation ~~286,914~~ *84,640*"

Section 9. Reversion of funds. All funds appropriated from the reclamation and development grants special revenue account under [sections 1 through 8] that are unspent and unencumbered on June 30, 2001, revert to that account.

Section 10. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 11. Effective date. [This act] is effective July 1, 1999.

Approved April 23, 1999

CHAPTER NO. 420

[HB 58]

AN ACT MODIFYING THE ELIGIBILITY REQUIREMENTS FOR REIMBURSEMENT FROM THE PETROLEUM TANK RELEASE CLEANUP FUND; AMENDING SECTIONS 75-11-302 AND 75-11-308, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-11-302, MCA, is amended to read:

"75-11-302. Definitions. Except as provided in subsections (2), (15), and (25), the following definitions apply to this part:

(1) "Accidental release" means a sudden or nonsudden release, neither expected nor intended by the tank owner or operator, of petroleum or petroleum products from a storage tank that results in a need for corrective action or compensation for third-party bodily injury or property damage.

HeinOnline -- 1999 vol. II 1645 1999

(2) "Aviation gasoline" means aviation gasoline as defined in 15-70-201. For the purposes of this chapter, aviation gasoline does not include JP-4 jet fuel sold to a federal defense fuel supply center.

(3) "Board" means the petroleum tank release compensation board established in 2-15-2108.

(4) "Bodily injury" means physical injury, sickness, or disease sustained by an individual, including death that results from the physical injury, sickness, or disease at any time.

(5) "Claim" means a written request prepared and submitted by an owner or operator or an agent of the owner or operator for reimbursement of expenses caused by an accidental release from a petroleum storage tank.

(6) "Corrective action" means investigation, monitoring, cleanup, restoration, abatement, removal, and other actions necessary to respond to a release.

(7) "Department" means the department of environmental quality provided for in 2-15-3501.

(8) "Distributor" means a person who is licensed to sell gasoline, as provided in 15-70-202, and who:

(a) in the state of Montana, engages in the business of producing, refining, manufacturing, or compounding gasoline, aviation gasoline, special fuel, or heating oil for sale, use, or distribution;

(b) imports gasoline, aviation gasoline, special fuel, or heating oil for sale, use, or distribution in this state;

(c) engages in wholesale distribution of gasoline, aviation gasoline, special fuel, or heating oil in this state;

(d) is an exporter;

(e) is a dealer licensed as of January 1, 1969, except a dealer at an established airport; or

(f) either blends gasoline with alcohol or blends heating oil with waste oil.

(9) "Double-walled tank system" means a petroleum storage tank and associated product piping that is designed and constructed with rigid inner and outer walls separated by an interstitial space and that is capable of being monitored for leakage. The design and construction of these tank systems must meet standards of the department and the department of justice fire prevention and investigation bureau. The material used in construction must be compatible with the liquid te be stored in the system, and the system must be designed to prevent the release of any stored liquid.

(10) "Eligible costs" means expenses reimbursable under 75-11-307.

(11) "Export" means to transport out of the state of Montana, by means other than in the fuel supply tank of a motor vehicle, gasoline, aviation gasoline, special fuel, or heating oil received from a refinery or pipeline terminal within the state of Montana.

(12) "Exporter" means a person who transports, by means other than in the fuel supply tank of a motor vehicle, gasoline, aviation gasoline, special fuel, or heating oil received from a refinery or pipeline terminal within the state of

HeinOnline -- 1999 vol. II 1646 1999

Montana to a destination outside the state of Montana for sale, use, or consumption beyond the boundaries of the state of Montana.

(13) "Fee" means the petroleum storage tank cleanup fee provided for in 75-11-314.

(14) "Fund" means the petroleum tank release cleanup fund established in 75-11-313.

(15) "Gasoline" means gasoline as defined in 15-70-201. For the purposes of this chapter, gasoline does not include JP-4 jet fuel sold to a federal defense fuel supply center.

(16) "Heating oil" means petroleum that is No. 1, No. 2, No. 4-light, No. 4-heavy, No. 5-light, No. 5-heavy, and No. 6 technical grades of fuel oil; other residual fuel oils, including navy special fuel oil and bunker C; and other fuels when used as substitutes for one of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.

(17) "Import" means to receive into a person's possession or custody first after its arrival and coming to rest at a destination within the state any gasoline, aviation gasoline, special fuel, or heating oil shipped or transported into this state from a point of origin outside this state, other than in the fuel supply tank of a motor vehicle.

(18) "Operator" means a person in control of or having responsibility for the daily operation of a petroleum storage tank.

(19) (a) "Owner" means:

(i) a person ~~who~~ *that* holds title to, controls, or possesses an interest in a petroleum storage tank; *or*

(ii) a person that owns the property on which a petroleum storage tank from which a release occurred was located.

(b) The term does not include a person ~~who~~ *that* holds an interest in a tank solely for financial security, unless through foreclosure or other related actions the holder of a security interest has taken possession of the tank.

(20) "Person" means an individual, firm, trust, estate, partnership, company, association, joint-stock company, syndicate, consortium, commercial entity, corporation, or agency of state or local government.

(21) "Petroleum" or "petroleum products" means crude oil or any fraction of crude oil that is liquid at standard conditions of temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute) or motor fuel blend, such as gasohol, and that is not augmented or compounded by more than a de minimis amount of another substance.

(22) "Petroleum storage tank" means a tank that contains or contained petroleum or petroleum products and that is:

(a) an underground storage tank as defined in 75-11-503;

(b) a storage tank that is situated in an underground area, such as a basement, cellar, mine, drift, shaft, or tunnel;

(c) an aboveground storage tank with a capacity less than 30,000 gallons; or

HeinOnline -- 1999 vol. II 1647 1999

(d) aboveground or underground pipes associated with tanks under subsections (22)(b) and (22)(c), except that pipelines regulated under the following laws are excluded:

(i) the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. 1671, et seq.);

(ii) the Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. 2001, et seq.); and

(iii) state law comparable to the provisions of law referred to in subsections (22)(d)(i) and (22)(d)(ii), if the facility is intrastate.

(23) "Property damage" means:

(a) physical injury to tangible property, including loss of use of that property caused by the injury; or

(b) loss of use of tangible property that is not physically injured.

(24) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing of petroleum or petroleum products from a petroleum storage tank into ground water, surface water, surface soils, or subsurface soils.

(25) "Special fuel" means those combustible liquids commonly referred to as diesel fuel or another volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test, except liquid petroleum gas. For the purposes of this chapter, special fuel does not include diesel fuel sold to a railroad or a federal defense fuel supply center."

Section 2. Section 75-11-308, MCA, is amended to read:

"75-11-308. Eligibility. (1) An owner or operator is eligible for reimbursement for the applicable percentage as provided in 75-11-307(4)(a) and (4)(b) of eligible costs caused by a release from a petroleum storage tank only if:

(a) the release was discovered on or after April 13, 1989;

(b) the department is notified of the release in the manner and within the time provided by law or rule;

(c) the department has been notified of the existence of the tank in the manner required by department rule or has waived the requirement for notification;

(d) the release was an accidental release; ~~and~~

(e) with the exception of the release, the operation and management of the tank complied with applicable state and federal laws and rules *that the board determines pertain to prevention and mitigation of petroleum releases* when the release ~~occurred~~ *was discovered* and remained in compliance following ~~detection~~ *discovery* of the release; *and*

(f) the owner or operator undertakes corrective action to respond to the release and the corrective action is undertaken, in accordance with a corrective action plan approved by the department, from the time of discovery until the release is resolved.

(2) An owner or operator is not eligible for reimbursement from the petroleum tank release cleanup fund for expenses caused by releases from the following petroleum storage tanks:

(a) a tank located at a refinery or a terminal of a refiner;

HeinOnline -- 1999 vol. II 1648 1999

(b) a tank located at an oil and gas production facility;

(c) a tank that is or was previously under the ownership or control of a railroad, *except for a tank that was operated by a lessee of a railroad in the course of nonrailroad operations*;

(d) a tank belonging to the federal government;

(e) a tank owned or operated by a person who has heen convicted of a substantial violation of state or federal law or rule that relates to tlie installation, operation, or management of petroleum storage tanks; or

(f) a mobile storage tank used to transport petroleum or petroleum products from one location to another."

Section 3. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun hefore [the effective date of this act].

Section 4. Effective date. [This act] is effective on passage and approval.

Section 5. Applieability. [Section 2] applies to claims for reimbursement initially filed with the petroleum tank release compensation board on or after [the effective date of this act].

Approved April ?3, 1999

CHAPTER NO. 421

[HB 74]

AN ACT GENERALLY REVISING THE LAWS RELATING TO THE WASTEWATER TREATMENT AND SAFE DRINKING WATER TREATMENT REVOLVING FUNDS; AUTHORIZING THE CREATION OF STATE DEBT; AMENDING SECTIONS 75-5-1106, 75-5-1113, 75-5-1121, 75-6-211, 75-6-224, 75-6-225, MCA, AND SECTION 16, CHAPTER 553, LAWS OF 1995; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-5-1106, MCA, is amended to read:

"75-5-1106. Revolving fund. (1) There is established in tbe state treasury a separate account designated as the water pollution control state revolving fund. There are established in the revolving fund as subaccounts a federal allocation account, a state allocation account, an administration account, an investment income account, and a debt service account.

(2) There must be credited to:

(a) the federal allocation account, all amounts received by the state from the following sources:

(i) funds provided pursuant to the federal act as capitalization grants for a state revolving fund to assist construction of projects;

(ii) grants or transfers of grants received under subchapter II of the federal act for projects; and

(iii) money transferred to the fund from the drinking water state revolving fund pursuant to 75-6-211;

(b) the state allocation account;

(i) the net proceeds of bonds of the state issued pursuant to 75-5-1121, *less any proceeds deposited to the administration account as provided in subsection (2)(c)(ii);* and

(ii) other money appropriated by the legislature;

(c) the administration account;

~~(i)~~, *an amount not to exceed* 4% of the capitalization grant award or the maximum amount allowed by the federal act for payment of administrative costs *and that may include a combination of:*

(i) federal funds; and

(ii) the proceeds of bonds of the state issued pursuant to 75-5-1121 as the department determines necessary and as required by the federal act for state matching funds to assist in administering the program;

(d) the investment account, all money received from investment of amounts in those accounts in the revolving fund designated by the board of examiners in the resolution or trust indenture authorizing the issuance of bonds; and

(e) the debt service account, the interest portion of loan repayments.

(3) Each loan made as authorized by 75-5-1113 must be funded and disbursed from the federal allocation account or the state allocation account, or both, by the department and the department of natural resources and conservation as recommended by the department. All amounts received in payment of principal or interest on a loan must be credited to the revolving fund. If bonds have been issued pursuant to 75-5-1121 and are outstanding, the interest payments must be transferred to the debt service account securing the bonds. Money in the debt service account that is not required for debt service may be transferred to other accounts within the revolving fund as provided in the resolution or trust indenture authorizing the bonds. *The department may transfer payments and prepayments of the principal of loans deposited in the state allocation account to the state allocation account of the state's drinking water revolving fund program.*

(4) The department of natural resources and conservation may establish additional accounts and subaccounts within the revolving fund as it considers necessary to account for the program money and to ensure compliance with the federal act and this part.

(5) As allowed under the federal Safe Drinking Water Act, 42 U.S.C. 300f, et seq., ~~and with the governor's permission, an amount equivalent to up to 33% of each year's drinking water state revolving fund federal capitalization grant may be transferred from the federal allocation account, established under subsection (2)(a), to the drinking water state revolving fund federal allocation account established in 75-6-211~~ *the governor may reserve or transfer from the water pollution control state revolving fund program capitalization grant to the state's drinking water revolving fund program an amount up to 33% of the state's drinking water revolving fund program capitalization grant.*"

Section 2. Section 75-5-1113, MCA, is amended to read:

HeinOnline -- 1999 vol. II 1650 1999

"**75-5-1113. Conditions on loans.** (1) Upon approval of a project by the department, the department of natural resources and conservation may lend amounts on deposit in the revolving fund to a municipality or private person to pay part or all of the cost of a project or to buy or refinance an outstanding obligation of a municipality that was issued to finance a project. The loan is subject to the municipality or private person complying with the following conditions:

(a) meeting requirements of financial capability set by the department of natural resources and conservation to ensure sufficient revenue to operate and maintain the project for its useful life and to repay the loan, including the establishment and maintenance by the municipality of a reserve or revolving fund to secure the payment of principal of and interest on the loan to the extent permitted by the applicable law governing the municipality's obligation;

(b) agreeing to operate and maintain the project properly over its structural and material design life, which may not be less than the term of the loan;

(c) agreeing to maintain proper financial records in accordance with generally accepted accounting standards and agreeing that all records are subject to audit;

(d) meeting the requirements listed in the federal act for projects constructed with funds directly made available by federal capitalization grants;

(e) providing legal assurance that all necessary property titles, easements, and rights-of-way have been obtained to construct, operate, and maintain the project;

(f) submitting an engineering report evaluating the proposed project, including information demonstrating its cost-effectiveness and environmental information necessary for the department and the department of natural resources and conservation to fulfill their responsibilities under the Montana Environmental Policy Act and rules adopted to implement that act;

(g) complying with plan and specification requirements and other requirements established by the department; and

(b) providing for proper construction inspection and project management.

(2) Each loan, unless prepaid, is payable subject to the limitations of the federal act, with interest paid in annual or more frequent installments, the first of which must be received not more than 1 year after the completion date of the project and the last of which must be received not more than 20 years after the completion date.

(3) Subject to the limitations of the federal act, the interest rate on a loan must ensure that the interest payments on the loan and on other outstanding loans will be sufficient, if paid timely and in full, with other available funds in the revolving fund, including investment income, to enable the state to pay the principal of and interest on the bonds issued pursuant to 75-5-1121.

(a) The interest rate must be determined as of the date the loan is authorized by the department of natural resources and conservation.

(b) The rate may include any additional rate that the department of natural resources and conservation considers reasonable or necessary to provide a reserve for the repayment of the ~~loan~~ *loans*. The additional rate may be fixed or variable or may be calculated according to a formula, and it may differ from the rate

HeinOnline -- 1999 vol. II 1651 1999

established for any other loan. *Once the reserve has been established at a level considered by the department to be reasonable and prudent for the loans outstanding, the department may use excess reserve payments to make grants to aid in the feasibility of projects.*

(4) Each loan must be evidenced by a bond, note, or other evidence of indebtedness of the municipality or private person, in a form prescribed or approved by the department of natural resources and conservation, except that the bond, note, or other evidence must include provisions required by the federal act and must be consistent with the provisions of this part. The bond, note, or other evidence is not required to he identical for all loans. The department of natural resources and conservation may require that loans te private persons be further secured by a mortgage and other security interests in tbe project that is being financed or other forms of additional security as considered necessary, including personal guarantees and letters of credit.

(5) As a condition to making a loan, the department of natural resources and conservation, with the concurrence of the department, may impose a reasonable administrative fee that may be paid from the proceeds of the loan or other available funds of the municipality or private person. Administrative fees may be deposited:

(a) in a special administrative costs account that the department of natural resources and conservation may create for that purpose outside the revolving fund provided for in 75-5-1106; or

(b) in the admimstration account. Money deposited in the admimstration account established in 75-5-1106 must be used for the payment of administrative costs of the program. Money deposited in the special administration costs account must be used for the payment of administrative costs of the program unless not required for that purpose, in which case the money may be transferred to other funds and accounts in the program."

Section 3. Section 75-5-1121, MCA, is amended to read:

"75-5-1121. Authorization of bonds — ~~appropriation~~ *allocation* of proeeeds. (1) Upon request of the department of natural resources and conservation and upon certification by the department that the state has entered into a capitalization grant agreement or otber agreement with the United States government pursuant to 75-6-204 and that federal capitalization grants have been made to the state for the program, the board of examiners is authorized to issue and sell bonds of the state as authorized by the legislature to provide money for the program. The bonds are general obligations on which the full faith, credit, and taxing powers of the state are pledged for payment of the principal and interest. The bonds must be issued as provided by Title 17, chapter 5, part 8.

(2) The proceeds of the bonds, other than any premium and accrued interest received or amounts to be used to pay interest on the bonds or the costs of issuing the bonds, are ~~appropriated~~ *allocated* to the state allocation account *or the administration account* of the revolving fund, *as provided in 75-5-1106*. Any premium and accrued interest and bond proceeds to be used to pay interest must be deposited in the debt service account. Proceeds of bonds to be used te pay the costs of issuing the bonds must be deposited in a cost of issuanco account established outside of the revolving fund by the board of examiners in the resolution or trust indenture authorizing the issuance of the bonds. For purposes of ~~sections~~ 17-5-803 and 17-5-804, the state allocation account and the cost of

HeinOnline -- 1999 vol. II 1652 1999

issuance account constitute a capital projects account. The proceeds must be available to the department and the department of natural resources and conservation and may be used for the purposes authorized in this part without further budgetary authorization.

(3) In the resolution authorizing the sale and issuance of the bonds, the board of examiners, upon the request of the department of natural resources and conservation, may create separate accounts or subaccounts to provide for the payment security of the bonds and may pledge the interest component of the loan repayments credited to the revolving fund and the revolving fund as security for the bonds.

(4) The board of examiners may allow bonds issued under this section to be secured by a trust indenture between the board of examiners and a trustee. The trustee may be a trust company or bank having the powers of a trustee inside or outside the state.

(a) If the board of examiners elects to issue bonds pursuant to a trust indenture, the trustee may, as determined by the board of examiners, hold one or more of the funds and accounts created pursuant to this chapter.

(b) In addition to provisions that the board of examiners determines to be necessary and appropriate to secure the bonds, provide for the rights of the bondholders, and ensure compliance with all applicable law, the trust indenture must contain provisions that:

(i) govern the custody, safeguarding, and disbursement of all money held by the trustee under the trust indenture; and

(ii) permit representatives of the state treasurer, department, or department of natural resources and conservation, upon reasonable notice and at reasonable times, to inspect the trustee's books and records concerning the trust indenture.

(c) A trust indenture or an executed counterpart of a trust indenture developed pursuant to this chapter must be filed with the secretary of state."

Section 4. Section 16, Chapter 553, Laws of 1995, is amended to read:

"**Section 16. Creation of debt.** The legislature, through enactment of this section, authorizes the creation of state debt in an amount not to exceed ~~$10~~ *$20* million and authorizes the issuance and sale of general obligation bonds in this amount for the purpose of providing the state's share of the drinking water program."

Section 5. Section 75-6-211, MCA, is amended to read:

"**75-6-211. Revolving fund.** (1) There is established in the state treasury a separate account designated as the drinking water state revolving fund. The corpus of the fund must be available in perpetuity for providing assistance under this part. There are established within the revolving fund a federal allocation account, a state allocation account, an administration account, an investment income account, *and* a debt service account~~, and a~~. *A* nonproject account *for the program is established in the state treasury as a separate account that is outside the revolving fund.*

(2) There must be credited to:

(a) the federal allocation account:

HeinOnline -- 1999 vol. II 1653 1999

(i) all amounts received by the state pursuant to the federal act as capitalization grants for a state revolving fund to provide loans or other assistance, as authorized under this part, to community water systems and nonprofit noncommunity water systems; and

(ii) all amounts transferred to the fund from the water pollution control state revolving fund under 75-5-1106;

(b) the state allocation account:

(i) the net proceeds of bonds of the state issued pursuant to 75-6-225, *less any proceeds deposited to the administration account as provided in subsection (2)(c)(ii)*;

(ii) money appropriated hy the legislature; and

(iii) other available qualifying funds;

(c) the administration account, *an amount not to exceed* 4% of the federal capitalization grant award or the maximum amount allowed by the federal act for payment of administrative costs *and that may include a combination of:*

(i) federal funds; and

(ii) the proceeds of bonds of the state issued pursuant to 75-6-225 as the department determines necessary and as required by the federal act for state matching funds to assist in administering the program;

(d) the investment account, all money received from investment of amounts in those accounts in the revolving fund designated by the board of examiners in the resolution or trust indenture authorizing the issuance of bonds;

(e) the debt service account, the interest portion of loan repayments; and

(f) the nonproject account for department programs authorized under section 300j-12(g)(2) of the federal act (42 U.S.C. 300j-12(g)(2)), up to 10% of the capitalization grant and the state's match as described in 75-6-204.

(3) Each loan made under this part must be funded and disbursed from the federal allocation account or the state allocation account, or both, by the department of natural resources and conservation as recommended by the department. All amounts received in payment of principal or interest on a loan must be credited to the revolving fund. If bonds have been issued pursuant to 75-6-225 and are outstanding, the interest payments must be transferred to the debt service account securing the bonds. Money in the debt service account that is not required for debt service may be transferred to other accounts within the revolving fund as provided in the resolution or trust indenture authorizing the bonds. *The department may transfer payments and prepayments of the principal of loans deposited in the state allocation account to the state allocation account of the state's water pollution control revolving fund program.*

(4) The department of natural resources and conservation may establish additional accounts and subaccounts within the revolving fund that it considers necessary to account for the program money and to ensure compliance with the federal act and this part.

(5) As allowed under the federal act ~~and with the governor's permission, the department may transfer up to 33% of each year's federal capitalization grant from the federal allocation account, established under subsection (2)(a), to the water pollution control state revolving fund federal allocation account~~

~~established in 75-5-1106.~~, *the governor may reserve or transfer to the state's water pollution control revolving fund up to 33% of the state's drinking water revolving fund program capitalization grant.* The transfer of funds must be included in the intended use plan in 75-6-231."

Section 6. Section 75-6-224, MCA, is amended to read:

"75-6-224. Loan conditions. (1) Upon approval of an application by the department, the department of natural resources and conservation may lend amounts on deposit in the revolving fund to a public water system to pay part or all of the cost of a project. The loan is subject to the applicant complying with the following conditions:

(a) meeting requirements of financial capability set by the department of natural resources and conservation to ensure sufficient revenue to operate and maintain the project for its useful life and to repay the loan, including the establishment of a dedicated source of revenue and the establishment and maintenance by the applicant of a reserve or revolving fund to secure the payment of principal of and interest on the loan to the extent permitted by the applicable law governing the public water system or the applicant's financial authority;

(b) in the case of a system owned by a private person, in addition to establishing a dedicated source of revenue, which may include the pledge of accounts receivable, providing, as required by the department of natural resources and conservation, credit enhancements, a pledge of collateral, or other types of security, such as a corporate or personal guarantee;

(c) agreeing to operate and maintain the project properly over its structural and material design life, which may not be less than the term of the loan;

(d) agreeing to maintain proper financial records in accordance with generally accepted accounting standards and agreeing that all records are subject to audit;

(e) meeting the requirements listed in the federal act for projects constructed with funds directly made available by federal capitalization grants;

(f) providing legal assurance that all necessary property titles, easements, and rights-of-way have been obtained to construct, operate, and maintain the project;

(g) submitting an engineering report evaluating the proposed project, including information demonstrating its cost-effectiveness and environmental information necessary for the department and the department of natural resources and conservation to fulfill their responsibilities under the Montana Environmental Policy Act and rules adopted to implement that act;

(h) complying with plan, specification, and other requirements for public water systems established by the department;

(i) providing for proper construction inspection and project management; and

(j) meeting requirements of financial, managerial, and technical capability to maintain compliance with the federal act.

(2) Each loan, unless prepaid, is payable subject to the limitations of the federal act, with interest paid in annual or more frequent installments, the first of which must be received not more than 1 year after the completion date of the project and the last of which must be received not more than 20 years after the

HeinOnline -- 1999 vol. II 1655 1999

completion date. If the applicant is a disadvantaged community that has qualified and applied for a loan subsidy, the department may determine that the last installment must be received not more than 30 years after the completion date, provided that the period of the loan does not exceed the expected design life of the project.

(3) (a) Subject to the limitations of the federal act, the interest rate on a loan must ensure that the interest payments on the loan and on other outstanding loans will be sufficient, if timely paid in full, with other available funds in the revolving fund, including investment income, to enable the state to pay the principal of and interest on the bonds issued pursuant to 75-6-225.

(b) The interest rate may include any additional rate that the department of natural resources and conservation considers reasonable or necessary to provide a reserve for the repayment of the ~~loan~~ *loans*. The additional rate may he fixed or variable, may be calculated according to a formula, and may differ from the rate established for any otber ~~loans.~~ *loan. Oncc the reserve has been established at a level considered by the department to be reasonable and prudent for the amount of the loans outstanding, the department may use excess reserve payments to make grants to aid in the feasibility of projects.*

(4) Each loan must be evidenced by a bond, note, or other evidence of indebtedness of the borrower, in a form prescribed or approved by the department of natural resources and conservation, except that the bond, note, or other evidence must include provisions required by the federal act and must be consistent with the provisions of this part. The bond, note, or other evidence is not required to be identical for all loans.

(5) As a condition to making a loan, the department of natural resources and conservation, with the concurrence of the department, may impose a reasonable administrative fee that may be paid from the proceeds of the loan or other available funds of the municipality or private person. Administrative fees may be deposited:

(a) in a special administrative costs account that the department of natural resources and conservation may create for that purpose outside the revolving fund provided for in 75-6-211; or

(b) in the administrative account provided for in 75-6-211. In determining into which account the administrative fees are deposited, the department shall take into consideration the needs and requirements of the programs. Money deposited in tbe special administrative costs account or the administration account must be used for the payment of administrative costs of the program."

Section 7. Section 75-6-225, MCA, is amended to read:

"75-6-225. Authorization of honds — ~~appropriation~~ *allocation* of proceeds. (1) The board of examiners is authorized, upon request of the department of natural resources and conservation, to issue and sell bonds of the state as authorized by the legislature to provide money for the program. The bonds are general obligations on which the full faith, credit, and taxing powers of the state are pledged for payment of the principal and interest. The bonds must be issued as provided by Title 17, chapter 5, part 8.

(2) The proceeds of the bonds, otber than any premium and accrued interest received, the amounts to be used to pay interest on the bonds, or the costs of issuing the bonds, are ~~appropriated~~ *allocated* to the state allocation account *or*

HeinOnline -- 1999 vol. II 1656 1999

the administration account of the revolving fund, *as provided in 75-6-211*. Any premium and accrued interest and bond proceeds to be used to pay interest must be deposited in the debt service account of the revolving fund. Proceeds of bonds to be used to pay the costs of issuing the bonds must he deposited in a cost of issuance account established outside of the revolving fund by the board of examiners in the resolution or trust indenture authorizing the issuance of the bonds. For purposes of 17-5-803 and 17-5-804, the state allocation account and the cost of issuance account constitute a capital projects account. The proceeds must be available to the department and the department of natural resources and conservation and may be used for the purposes authorized in this part without further budgetary authorization.

(3) In the resolution authorizing the sale and issuance of the bonds, the board of examiners, upon the request of the department of natural resources and conservation, may create separate accounts or subaccounts to provide for the payment security of the bonds and may pledge the revolving fund and the interest component of the loan repayments credited to the revolving fund as security for the bonds.

(4) (a) The board of examiners may allow bonds issued under this section to be secured by a trust indenture between the board of examiners and a trustee. The trustee may be a trust company or bank having the power of a trustee inside or outside the state.

(b) If the board of examiners elects to issue bonds pursuant to a trust indenture, tbe trustee may, as determined by the board of examiners, hold one or more of the funds and accounts created pursuant to this chapter.

(c) In addition to provisions that the board of examiners determines to be necessary and appropriate to secure the bonds, to provide for the rights of the bondholders, and to ensure compliance with all applicable law, the trust indenture must contain provisions that:

(i) govern the custody, safeguarding, and disbursement of all money held by the trustee under the trust indenture; and

(ii) permit representatives of the state treasurer, department, or department of natural resources and conservation, upon reasonable notice and at reasonable times, to inspect the trustee's books and records concerning the trust indenture.

(d) A trust indenture or an executed counterpart of a trust indenture developed pursuant to this chapter must be filed with the secretary of state."

Section 8. Codification instruction. [Section 4] is intended te be codified as an integral part of Title 75, chaptor 6, part 2, and the provisions of Title 75, chapter 6, part 2, apply to [section 4].

Section 9. Two-thirds vote required. Because [section 4] authorizes the creation of state debt, Article VIII, section 8, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage.

Section 10. Effectivc date. [Tbis act] is effective on passage and approval.

Scction 11. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to all existing loans on [the effective date of this act].

Approved April 23, 1999

HeinOnline -- 1999 vol. II 1657 1999

CHAPTER NO. 422

[HB 95]

AN ACT GENERALLY REVISING THE MONTANA WATER USE LAWS; CLARIFYING PROCEDURES FOR CORRECT AND COMPLETE PERMIT APPLICATIONS; CLARIFYING WHAT CONSTITUTES A VALID OBJECTION; CHANGING PROCEDURAL ASPECTS OF CERTAIN HEARINGS AND MAILINGS; ALTERING PROCEDURES FOR REQUESTING AN EXTENSION TO COMPLETE THE REQUIREMENTS FOR A WATER RIGHT PERMIT; AMENDING SECTIONS 85-2-302, 85-2-308, 85-2-309, 85-2-310, AND 85-2-312, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-2-302, MCA, is amended to read:

"85-2-302. Application for permit. Except as otherwise provided in ~~(1) through (3) of~~ 85-2-306*(1) through (3)*, a person may not appropriate water or commence construction of diversion, impoundment, withdrawal, or *related* distribution works ~~therefor~~ except by applying for and receiving a permit from the department. The application ~~shall~~ *must* be made on a form prescribed by the department. The department shall make the forms available through its offices and the offices of the county clerk and recorders. The applicant shall submit a correct and complete application. ~~The department shall return a defective application for correction or completion, together with the reasons for returning it. An application does not lose priority of filing because of defects if the application is corrected, completed, and refiled with the department within 30 days after its return to the applicant or within a further time as the department may allow. If an application is not corrected and completed within 30 days or within a further time as the department allows, up to 3 months, the priority date of the application shall be the date of refiling the application with the corrections with the department. An application not corrected within 3 months shall be terminated.~~ *The department shall notify the applicant of any defects in an application. An application does not lose priority of filing because of defects if the application is corrected or completed within 30 days of the date of notification of the defects or within a further time as the department may allow, but not to exceed 90 days from the date of notification. If an application is made correct and complete after the mandated time period, but within 90 days of the date of notification of the defects, the priority date of the application is the date the application is made correct and complete. An application not corrected or completed within 90 days from the date of notification of the defects is terminated.*"

Section 2. Section 85-2-308, MCA, is amended to read:

"85-2-308. Objections. (1) (a) An objection to an application for a permit must be filed by the date specified by the department under 85-2-307(2).

(b) The objection to an application for a permit must state the name and address of the objector and facts ~~tending to show~~ *indicating* that one or more of the criteria in 85-2-311 are not met.

(2) For an application for a change in appropriation rights, the objection must state the name and address of the objector and facts ~~tending to show~~ *indicating* that one or more of the criteria in 85-2-402 are not met.

HeinOnline -- 1999 vol. II 1658 1999

(3) A person has standing to file an objection under this section if the property, water rights, or interests of the objector would be adversely affected by the proposed appropriation.

(4) For an application for a reservation of water, the objection must state the name and address of the objector and facts ~~tending to sho w~~ *indicating* that one or more of the criteria in 85-2-316 are not met.

(5) An objector to an application under this chapter shall ~~timely~~ file a correct and complete objection on a form prescribed by the department *within the time period stated on the public notice associated with the application. The department shall notify the objector of any defects in an objection. An objection not corrected or completed within 15 days from the date of notification of the defects is terminated.*

(6) An objection is valid if the objector has standing pursuant to subsection (3), has filed a correct and complete objection within the prescribed time period, and has stated the applicable information required under subsection (1), (2), or (4)."

Section 3. Section 85-2-309, MCA, is amended to read:

"**85-2-309. Hearings on objections — jurisdiction.** (1) If the department determines that an objection to an application for a permit or change approval under 85-2-402 states a valid objection, it shall hold a ~~public~~ *contested case* hearing, *pursuant to Title 2, chapter 4, part 6,* on the objection within 60 days from the date set by the department for the filing of objections, after serving notice of the hearing by ~~certified~~ *first-class* mail upon the applicant and the objector, unless the department certifies an issue to the district court for determination by a water judge under subsection (2). The department may consolidate hearings if more than one objection is filed to an application. The department shall file in its records proof of the service by affidavit of the department.

(2) (a) At any time prior to commencement or before the conclusion of a hearing as provided in subsection (1), the department may in its discretion certify to the district court all factual and legal issues involving the adjudication or determination of the water rights at issue in the hearing, including but not limited to issues of abandonment, quantification, or relative priority dates. Certified controversies must be given priority hy a water judge over all other adjudication matters.

(b) If the department fails to certify an issue as provided in this section after a timely request hy a party to the hearing, the department shall include its denial to certify as part of the record of the hearing.

(c) Upon determination of the issues certified to it by the department, the court shall remand the matter to the department for further processing of the application under this chapter.

(3) Subsection (2) does not apply in the case of a matter considered at a hearing under this section pursuant to 85-2-316 or 85-2-322."

Section 4. Section 85-2-310, MCA, is amended to read:

"**85-2-310. Action on application.** (1) The department shall grant, deny, or condition an application for a permit in whole or in part within 120 days after the last date of publication of the notice of application if no objections have been received and within 180 days if a hearing is held or objections have been received.

HeinOnline -- 1999 vol. II 1659 1999

However, in either case the time may be extended upon agreement of the applicant, or, in those cases where an environmental impact statement must be prepared or in other extraordinary cases, not more than 60 days upon order of the department. If the department orders the time extended, it shall serve a notice of the extension and the reasons ~~therefor~~ *for the extension* by ~~certified~~ *first-class* mail upon the applicant and each person who has filed an objection as provided by 85-2-308.

(2) However, an application may not be approved in a modified form or upon terms, conditions, or limitations specified by the department or denied, unless the applicant is first granted an opportunity to be heard. If no objection is filed against the application but the department is of the opinion that the application should be approved in a modified form or upon terms, conditions, or limitations specified by it or that the application should be denied, the department shall prepare a statement of its opinion and ~~the~~ *its* reasons ~~therefor~~ *for the opinion*. The department shall serve a statement of its opinion by ~~certified~~ *first-class* mail upon the applicant, ~~together~~ with a notice that the applicant may obtain a hearing by filing a request ~~therefor~~ within 30 days after the notice is mailed. The notice ~~shall~~ *must* further state that the application will be modified in a specified manner or denied, unless a hearing is requested.

(3) The department may cease action upon an application for a permit and return it to the applicant when it finds that the application is not in good faith or does not show a bona fide intent to appropriate water for a beneficial use. An application returned for ~~any~~ *either* of these reasons ~~shall~~ *must* be accompanied by a statement of the reasons for which it was returned, and there ~~shall be no~~ *is not a* right to a priority date based upon the filing of the application. Returning an application pursuant to this subsection ~~shall be deemed~~ *is* a final decision of the department.

(4) For all applications filed after July 1, 1973, the department shall find that an application is not in good faith or does not show a bona fide intent to appropriate water for a beneficial use if:

(a) an application is not corrected and completed as required by 85-2-302;

(b) the appropriate filing fee is not paid;

(c) the application does not document:

(i) a beneficial use of water;

(ii) the proposed place of use of all water applied for;

(iii) for an appropriation of 4,000 acre-feet a year or more and 5.5 cubic feet ~~per~~ *a* second or more, a detailed project plan describing when and how much water will be put to a beneficial use. The project plan must include a reasonable time line for the completion of the project and the actual application of the water to a beneficial use.

(iv) for appropriations not covered in subsection (4)(c)(iii), a general project plan stating when and how much water will be put to a beneficial use; and

(v) if the water applied for is to be appropriated above that which will be used solely by the applicant or if it will be marketed by the applicant to other users, information detailing:

(A) each person who will use the water and the amount of water each person will use;

(B) the proposed place of use of all water by each person;

HeinOnline -- 1999 vol. II 1660 1999

(C) the nature of the relationship between the applicant and each person using the water; and

(D) each firm contractual agreement for the specified amount of water for each person using the water; or

(d) the appropriate environmental impact statement fee, if any, is not paid as required by 85-2-124."

Section 5. Section 85-2-312, MCA, is amended to read:

"85-2-312. Terms of permit. (1) The department may issue a permit for less than the amount of water requested, but ~~in no case~~ may ~~it~~ *not* issue a permit for more water than is requested or than can be beneficially used without waste for the purpose stated in the application. The department may require modification of plans and specifications for the appropriation or related diversion or construction. The department may issue a permit subject to terms, conditions, restrictions, and limitations it considers necessary to satisfy the criteria listed in 85-2-311, and it may issue temporary or seasonal permits. A permit ~~shall~~ *must* be issued subject to existing rights and any final determination of those rights made under this chapter.

(2) The department shall specify in the permit or in any authorized extension of time provided in subsection (3), the time limits for commencement of the appropriation works, completion of construction, and actual application of the water to the proposed beneficial use. In fixing those time limits, the department shall consider the cost and magnitude of the project, the engineering and physical features to be encountered, and, on projects designed for gradual development and gradually increased use of water, the time reasonably necessary for that gradual development and increased use. The department shall issue the permit or authorized extension of time subject to the terms, conditions, restrictions, and limitations it considers necessary to ensure that the work on the appropriation is commenced, conducted, and completed and that the water is actually applied in a timely manner to the beneficial use specified in the permit.

(3) The department shall by rule or by condition to a permit establish a process allowing for the extension of the time limits specified in the permit for commencement of the appropriation works, completion of construction, and actual application of water to the proposed beneficial use. ~~The department may not accept a request for extension of time that is filed less than 30 days prior to the time limit specified in the permit.~~ If a permit is not completed within the time limit specified or within an extension of that time limit, the permit is void upon lapse of the time limit.

(4) The original of the permit ~~shall~~ *must* be sent to the permittee, and a copy ~~shall~~ *must* be kept in the office of the department in Helena."

Section 6. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 7. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

Section 8. Effective date. [This act] is effective on passage and approval.

Approved April 23, 1999

HeinOnline -- 1999 vol. II 1661 1999

CHAPTER NO. 423

[HB 99]

AN ACT CHANGING THE FINAL DATE THAT NOTICE MUST BE GIVEN BY THE CITY TREASURER OR TOWN CLERK TO PROPERTY OWNERS FOR DELINQUENT SEWER CHARGES FROM JULY 15 TO JULY 7; ALLOWING A CITY TREASURER OR TOWN CLERK TO FILE A DELINQUENT SEWER SERVICE ASSESSMENT LIST WITH THE DEPARTMENT OF REVENUE AT THE TIME THAT THE ANNUAL TAX LEVY IS CERTIFIED TO THE COUNTY CLERK; AND AMENDING SECTION 7-13-4309, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-13-4309, MCA, is amended to read:

"7-13-4309. Procedure to collect sewer charges. (1) ~~The sewer~~ *Sewer* charges must be collected by the treasurer.

(2) On or before July ~~15~~ 7 of each year, notice must be given by the city treasurer or town clerk to the owners of all lots or parcels of real estate to which sewer service has heen furnished prior to July 1 by the city or town. The notice must specify the assessment owing and in arrears at the time of giving notice. The notice must be in writing and must state the amount of arrearage, including any penalty and interest assessed pursuant to the provisions of the city or town ordinance, and that unless the amount is paid ~~by August 15~~ *within 30 days of the notice*, the amount will be levied as a tax against the lot or parcel of real estate to which sewer service was furnished and for which payment is delinquent. The notice must also state that the city or town may by suit collect past-due assessments, interest, and penalties, as a debt owing the city or town, in any court of competent jurisdiction, including city court. The notice may be delivered to the owner personally or by letter addressed to the owner at the post-office address of the owner as shown in property tax records maintained by the department of revenue.

(3) (a) Except as provided in subsection (3)(b), ~~on September 1~~ *at the time that the annual tax levy is certified to the county clerk*, the city treasurer or town clerk shall certify and file with the department of revenue a list of all lots or parcels of real estate, giving the legal description of the lot or parcel, to the owners of which notices of arrearage in payments were given and which arrearage remains unpaid and stating the amount of the arrearage, including any penalty and interest. The department of revenue shall insert the amount as a tax against the lot or parcel of real estate.

(b) In cities where the council has provided by ordinance for the collection of taxes, the city treasurer shall collect the delinquent amount, including penalty and interest, as a tax against the lot or parcel of real estate to which sewer service was furnished and payment for which is delinquent.

(4) A city or town may, in addition to pursuing the collection of assessments in the same manner as a tax, bring suit in any court of competent jurisdiction, including city court, to collect the amount due and owing, including penalties and interest, as a debt owing the city or town."

Approved April 22, 1999

HeinOnline -- 1999 vol. II 1662 1999

CHAPTER NO. 424

[HB 109]

AN ACT AUTHORIZING THE DEPARTMENT OF JUSTICE TO OPERATE AND MAINTAIN AN AUTOMATED ACCOUNTING AND REPORTING SYSTEM FOR VIDEO GAMBLING MACHINES; ELIMINATING THE REQUIREMENT THAT MACHINE SPECIFICATIONS BE SUBSTANTIALLY THE SAME AS THE SPECIFICATIONS REQUIRED ON SEPTEMBER 30, 1989; ASSIGNING RESPONSIBILITY FOR PAYMENT OF MACHINE TAXES TO THE OWNER OF THE MACHINE; AUTHORIZING STATE PARTICIPATION IN LOANS TO MACHINE OWNERS TO COVER COSTS OF CONVERTING MACHINES TO THE AUTOMATED SYSTEM; PROVIDING A MACHINE CONVERSION COST TAX CREDIT TO MACHINE OWNERS WHO CONVERT MACHINES TO THE AUTOMATED SYSTEM; PLEDGING AN AMOUNT OF THE STATE'S SHARE OF MACHINE TAX REVENUE TO GUARANTEE LOANS MADE TO MACHINE OWNERS WHO CONVERT MACHINES TO THE AUTOMATED SYSTEM; AMENDING SECTIONS 23-5-116, 23-5-602, 23-5-610, AND 23-5-621, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Automated accounting and reporting system. (1) For the purposes of performing its duties under this chapter, minimizing regulatory costs, simplifying the reporting of video gambling machine revenue data, preserving the integrity of video gambling machines within its jurisdiction, lessening administrative and recordkeeping burdens for licensed machine owners and licensed operators and the department, and enhancing the management tools available to the industry and the state, the department may operate and maintain, subject to the restrictions contained in subsections (3) and (4), an automated accounting and reporting system for video gambling machines.

(2) Except as provided in subsection (4), connection of video gambling machines to the department's automated accounting and reporting system is voluntary for licensed machine owners and licensed operators who hold a valid current license on December 31, 2000.

(3) (a) The department shall issue a request for proposals for the automated accounting and reporting system on or before September 1, 1999. The department may not sign a final contract for the purpose of acquiring an automated system unless it has obtained written confirmation from licensed machine owners who volunteer to participate in the automated system and whose commitment to participate covers 70% of the total number of video gambling machines that are capable of being connected to the automated system.

(b) The 70% calculation must be based on video gambling machines that had permits on July 15, 1999, and on an analysis by the department of the feasibility of upgrading specific video gambling machine models based on the age of the video gambling machines, technologies employed, numbers of video gambling machines in a model series, and existence or nonexistence of a licensed manufacturer to support upgraded conversions.

(c) A request for proposals for the system must require that the proposal:

(i) provide that communication protocols between connected video gambling machines and the central system and between connected video gambling

HeinOnline -- 1999 vol. II 1663 1999

machines and on-premises site controllers do not favor any one central system vendor or component manufacturer; and

(ii) provide for computer backup and contingency planning to ensure that there will he no video gambling machine operation interruptions because of central system failures.

(4) After December 31, 2000:

(a) a permit may not be issued for a video gambling machine manufactured after December 31, 2000, that is not manufactured in a manner specifically designed to allow the video gambling machine to be connected to the department's automated accounting and reporting system;

(b) if a permitholder voluntarily connects one or more video gambling machines at a premises to the department's automated accounting and reporting system, all connected video gambling machines on the premises, including video gambling machines replacing connected video gambling machines, must remain connected to the automated system as long as video gambling machines are operated on the premises; and

(c) if there is a change in the majority ownership interests of a licensed gambling business, all video gambling machines located on the premises must he connected to the department's automated accounting and reporting system within 5 years after the date on which the majority ownership change is approved by the department, unless there are five or fewer video gambling machines on the premises and:

(i) they are owned by the licensed operator; or

(ii) the premises are located in a city, town, or county with a population of 3,000 or less, according to the last official decennial census.

Section 2. Loans to video gambling machine owners. (1) A licensed machine owner of a video gambling machine who incurs actual hardware or software costs for conversion of a video gamhling machine to make it compatible with the automatic accounting and reporting system authorized by [section 1] is eligible for loan assistance pursuant to Title 17, chapter 6, part 3, to cover the actual costs of conversion for each video gambling machine if the owner:

(a) is eligible for a tax credit under 23-5-610; and

(b) meets all other eligibility criteria required by the lending institution.

(2) The total amount of loans participated in by the state under this section may not exceed $3.6 million.

Section 3. Section 23-5-116, MCA, is amended to read:

"23-5-116. Disclosure of information. (1) The department shall, upon request, disclose the followmg information from a license or permit application:

(a) the applicant's name;

(b) the address of the business where the activity under the license or permit is to be conducted;

(c) the name of each person who has an ownership interest in the business; and

(d) the types of permits requested by the applicant.

(2) The department shall, upon request, disclose:

HeinOnline -- 1999 vol. II 1664 1999

(a) public criminal justice information, as defined in 44-5-103, as required by 44-5-301;

(b) all records and other information, except confidential criminal justice information, as defined in 44-5-103, that relates to:

(i) a sanction imposed under 23-5-136, for a violation of this chapter or a department rule; or

(ii) any other civil or administrative sanction or penalty imposed under a provision of this chapter or a department rule for a violation of this chapter or a department rule.

(3) In addition to the information enumerated in subsections (1) and (2), the department may disclose any other relevant information obtained in the application or tax reporting process or as a result of other department operations to:

(a) a federal, state, city, county, or tribal criminal justice agency;

(b) the department of revenue and the federal internal revenue service; and

(c) a gambling regulatory agency of another state, a local government unit of another state, a tribal government, or a foreign nation, provided that the disclosure of the information complies with the law of that jurisdiction and that the receiving entity has been approved for receipt by the Montana attorney general.

(4) In the event of a tax delinquency or at the request of a video gambling machine permitholder, the department shall inform the permitholder of the status of a licensed machine owner's tax payments for a video gambling machine located at the permitholder's place of business."

Section 4. Section 23-5-602, MCA, is amended to read:

"**23-5-602. Definitions.** As used in this part, the following definitions apply:

(1) "Associated equipment" means all proprietary devices, machines, or parts used in the manufacture or maintenance of a video gambling machine, including but not limited to integrated circuit chips, printed wired assembly, printed wired boards, printing mechanisms, video display monitors, metering devices, and cabinetry.

(2) "Bingo machine" means an electronic video gambling machine that, upon insertion of cash, is available to play bingo as defined by rules of the department. The machine ~~utilizes~~ *uses* a video display and microprocessors in which, by the skill of the player, by chance, or *by* both, the player may receive free games or credits that may be redeemed for cash. The term does not include a slot machine or a machine that directly dispenses coins, cash, tokens, or anything else of value.

(3) "Draw poker machine" means an electronic video gambling machine that, upon insertion of cash, is available to play or simulate the play of the game of draw poker as defined by rules of the department. The machine ~~utilizes~~ *uses* a video display and microprocessors in which, by the skill of the player, by chance, or *by* both, the player may receive free games or credits that may be redeemed for cash. The term does not include a slot machine or a machine that directly dispenses coins, cash, tokens, or anything else of value.

(4) "Gross income" means money put into a video gambling machine minus credits paid out in cash.

HeinOnline -- 1999 vol. II 1665 1999

(5) "Keno machine" means an electronic video gambling machine that, upon insertion of cash, is available to play keno as defined by rules of the department. The machine ~~utilizes~~ *uses* a video display and microprocessors in which, by the skill of the player, by chance, or *by* both, the player may receive free games or credits that may be redeemed for cash. The term does not include a slot machine or a machine that directly dispenses coins, cash, tokens, or anything else of value.

(6) "Licensed machine owner" means a licensed operator or route operator who owns a video gambling machine for which a permit has been issued by the department.

(7) "Permitholder" means a licensed operator on whose premises is located one or more video gambling machines for which a permit has been issued by the department."

Section 5. Section 23-5-610, MCA, is amended to read:

"23-5-610. Video gambling machine gross income tax — records — distribution — quarterly statement and payment. (1) A licensed ~~operator issued a permit under this part~~ *machine owner* shall pay to the department a video gambling machine tax of 15% of the gross income from each video gambling machine ~~licensed~~ *issued a permit* under this part. A licensed ~~operator~~ *machine owner* may deduct from the gross income amounts equal to amounts stolen from machines if the amounts stolen are not repaid by insurance or under a court order, if a law enforcement agency investigated the theft, and if the theft is the result of either unauthorized entry and physical removal of the money from the machines or of machine tampering and the amounts stolen are documented.

(2) (a) A licensed machine owner is entitled to a tax credit for each video gambling machine for which a permit has been issued under this part if:

(i) the permit was active for the video gambling machine on December 31, 2000;

(ii) the department determines that the video gambling machine is incapable, in the form in which it was approved by the department, of communicating with the automated accounting and reporting system authorized by [section 1]; and

(iii) the licensed machine owner participates in the automated accounting and reporting system and incurs actual hardware or software costs prior to December 31, 2003, for conversion of the video gambling machine to make it compatible with the automated system.

(b) The amount of the tax credit allowed under subsection (2)(a) is $250 for each video gambling machine or the actual hardware and software cost necessary for conversion of the video gambling machine to the automated accounting and reporting system, whichever is less.

(3) If a tax credit is claimed under subsection (2)(a), the credit is deducted from the tax due for the quarter or quarters that begin after the video gambling machine for which the tax credit is claimed is connected to the automated accounting and reporting system authorized by [section 1].

~~(2)~~*(4)* A licensed ~~operator issued a permit under this part~~ *machine owner* shall keep a record of the gross income from each *video gambling* machine *issued a permit under this part* in the form the department requires. The records must at all times during the business hours of the licensee be subject to inspection by the department.

HeinOnline -- 1999 vol. II 1666 1999

~~(3)~~*(5) (a)* ~~A~~ *For each video gambling machine issued a permit under this part but not connected to the department's automated accounting and reporting system, a* licensed ~~operator issued a permit under this part~~ *machine owner* shall, within 15 days after the end of each quarter *and in the manner prescribed by the department*, complete and deliver to the department a statement showing the total gross income ~~from each video gambling machine licensed to the operator~~, together with the total amount due the state as video gamhling machine gross income tax for the preceding quarter. Tlie statement must contain other relevant information that the department requires.

(b) For each video gambling machine issued a permit under this part that is connected to the department's automated accounting and reporting system, the department shall, within 5 working days after the end of each quarter, complete and deliver to the licensed machine owner (with a copy sent to the licensed operator, if different from the licensed machine owner, on whose premises the machine is placed) a statement showing the total gross income from the video gambling machine, together with the total amount due the state as video gambling machine gross income tax for the preceding quarter. The licensed machine owner shall remit the total amount due the state under this subsection within 25 days after the end of each quarter.

~~(4)~~*(6)* (a) ~~The~~ *Except as provided in subsection (7), the* department shall, in accordance with the provisions of 15-1-501, forward one-third of the tax collected under subsection ~~(3)~~ *(5)* to the general fund.

~~(b) The department shall, in accordance with the provisions of 15-1-501, forward the remaining two-thirds of the tax collected under subsection (3)~~

(b) The department shall, in accordance with the provisions of 15-1-501, forward the remaining two-thirds of the tax collected under subsection (5) to the treasurer of the county or the clerk, finance officer, or treasurer of the city or town in which the licensed machine is located, for deposit to the county or municipal treasury. Counties are not entitled to proceeds from taxes on income from video gambling machines located in incorporated cities and towns. The two-thirds local government portion of tax collected under subsection ~~(3)~~ *(5)* is statutorily appropriated, *as provided in 17-7-502,* to the department ~~as provided in 17-7-502~~ for deposit to the county or municipal treasury.

(7) Receipts from the state's share of taxes collected under this section are pledged and dedicated to guarantee repayment of loans participated in under [section 2] in an amount sufficient to meet the prepayment obligation for the fiscal year during which the loans are made. The amount of taxes pledged by this subsection is the dollar amount of loan participation under [section 2] and must be allocated to a separate account in the short-term investment pool. The board of investments is not entitled to use the proceeds from taxes collected under this section to repay a loan made under [section 2] unless the board certifies that all other commercially available means of collection on the loan have been exhausted."

Section 6. Section 23-5-610, MCA, is amended to read:

"23-5-610. Video gambling machine gross income tax — records — distribution — quarterly statement and payment. (1) A licensed ~~operator issued a permit under this part~~ *machine owner* shall pay to the department a video gambling machine tax of 15% of the gross income from each video gambling machine ~~licensed~~ *issued a permit* under this part. A licensed ~~operator~~ *machine*

HeinOnline -- 1999 vol. II 1667 1999

owner may deduct from the gross income amounts equal to amounts stolen from machines if the amounts stolen are not repaid by insurance or under a court order, if a law enforcement agency investigated the theft, and if the theft is the result of either unauthorized entry and physical removal of the money from the machines or of machine tampering and the amounts stolen are documented.

(2) (a) A licensed machine owner is entitled to a tax credit for each video gambling machine for which a permit has been issued under this part if:

(i) the permit was active for the video gambling machine on December 31, 2000;

(ii) the department determines that the video gambling machine is incapable, in the form in which it was approved by the department, of communicating with the automated accounting and reporting system authorized by [section 1]; and

(iii) the licensed machine owner participates in the automated accounting and reporting system and incurs actual hardware or software costs prior to December 31, 2003, for conversion of the video gambling machine to make it compatible with the automated system.

(b) The amount of the tax credit allowed under subsection (2)(a) is $250 for each video gambling machine or the actual hardware and software cost necessary for conversion of the video gambling machine to the automated accounting and reporting system, whichever is less.

(3) If a tax credit is claimed under subsection (2)(a), the credit is deducted from the tax due for the quarter or quarters that begin after the video gambling machine for which the tax credit is claimed is connected to the automated accounting and reporting system authorized by [section 1].

~~(2)~~*(4)* A licensed ~~operator issued a permit under this part~~ *machine owner* shall keep a record of the gross income from each *video gambling* machine *issued a permit under this part* in the form the department requires. The records must at all times during the business hours of the licensee be subject to inspection by the department.

~~(3)~~*(5) (a)* ~~A~~ *For each video gambling machine issued a permit under this part but not connected to the department's automated accounting and reporting system, a* licensed ~~operator issued a permit under this part~~ *machine owner* shall, within 15 days after the end of each quarter *and in the manner prescribed by the department*, complete and deliver to the department a statement showing the total gross income ~~from each video gambling machine licensed to the operator~~, together with the total amount due the state as video gambling machine gross income tax for the preceding quarter. The statement must contain other relevant information that the department requires.

(b) For each video gambling machine issued a permit under this part that is connected to the department's automated accounting and reporting system, the department shall, within 5 working days after the end of each quarter, complete and deliver to the licensed machine owner (with a copy sent to the licensed operator, if different from the licensed machine owner, on whose premises the machine is placed) a statement showing the total gross income from the video gambling machine, together with the total amount due the state as video gambling machine gross income tax for the preceding quarter. The licensed machine owner shall remit the total amount due the state under this subsection within 25 days after the end of each quarter.

HeinOnline -- 1999 vol. II 1668 1999

~~(4)~~*(6)* (a) The department shall, in accordance with the provisions of 15-1-501, forward one-third of the tax collected under subsection ~~(3)~~ *(5)* to the general fund.

~~(b) The department shall, in accordance with the provisions of 15-1-501, forward the remaining two-thirds of the tax collected under subsection (3)~~

(b) The department shall, in accordance with the provisions of 15-1-501, forward the remaining two-thirds of the tax collected under subsection (5) to the treasurer of the county or the clerk, finance officer, or treasurer of the city or town in which the licensed machine is located, for deposit to the county or municipal treasury. Counties are not entitled to proceeds from taxes on income from video gambling machines located in incorporated cities and towns. The two-thirds local government portion of tax collected under subsection ~~(3)~~ *(5)* is statutorily appropriated, *as provided in 17-7-502,* to the department ~~as provided in 17-7-502~~ for deposit to the county or municipal treasury."

Section 7. Section 23-5-621, MCA, is amended to read:

"**23-5-621. ~~Video gambling machine specifications -- rules~~ *Rules.*** *(1)* The department shall adopt rules ~~describing~~ *that:*

(a) implement [section 1];

(b) describe the video gambling machines authorized by this part and ~~stating~~ *state* the specifications for video gambling machines authorized by this part~~;. The specifications in the rules must substantially follow the specifications contained in 23-5-606 and 23-5-609 as those sections read on September 30, 1989. The department shall adopt rules allowing~~

(c) allow video gambling machines to be imported into this state and used for the purposes of trade shows, exhibitions, and similar activities;

(d) allow each video gambling machine connected to the department's automated accounting and reporting system to offer any combination of approved poker, keno, and bingo games within the same video gambling machine cabinet;

(e) allow, on an individual license basis, licensed machine owners and operators of machines connected to the department's automated accounting and reporting system to:

(i) electronically acquire and use for an individual licensed premise the information and data collected by the department for business management, accounting, and payroll purposes; however, the rules must specify that the data made available as a result of the department's automated accounting and reporting system may not be used by licensees for player tracking purposes; and

(ii) acquire and use, at the expense of a licensee, a department-approved site controller;

(f) provide that, for video gambling machines connected to the department's automated accounting and reporting system, machine paper audit and accounting rolls need not be retained for more than 4 consecutive quarters; and

(g) minimize, whenever possible, the recordkeeping and retention requirements for video gambling machines that are connected to the department's automated accounting and reporting system.

(2) The department's rules for an automated accounting and reporting system must, at a minimum:

HeinOnline -- 1999 vol. II 1669 1999

(a) provide for confidentiality of information received through the automated accounting and reporting system within the limits prescribed by 23-5-115(6) and 23-5-116;

(b) prescribe specifications for maintaining the security and integrity of the automated accounting and reporting system;

(c) limit and prescribe the circumstances for electronic issuance of video gambling machine permits and electronic transfer of funds for payment of taxes, fees, or penalties to the department based on the requirement that electronic permitting and transfer of funds may be done only when the department has a request in writing from the owner of the electronic funds transfer account; and

(d) limit and prescribe the circumstances under which machines may be disabled for malfunctions or violations detected by use of the automated accounting and reporting system or for other violations of this chapter. Under no circumstances may machines connected to the automated system be disabled for violations except upon clear and convincing evidence supporting a determination made after notice and an opportunity for hearing and with the right of judicial review under the Montana Administrative Procedure Act."

Section 8. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 23, chapter 5, part 6, and the provisions of Title 23, chapter 5, apply to [sections 1 and 2].

Section 9. Effective dates. (1) [Sections 1, 2, 7, 8, and 10 and this section] are effective on passage and approval.

(2) [Sections 3 through 5] are effective July 1, 1999.

(3) [Section 6] is effective January 1, 2006.

Section 10. Termination. [Sections 2 and 5] terminate December 31, 2005.

Approved April 22, 1999

CHAPTER NO. 425

[HB 113]

AN ACT PROVIDING THE DEPARTMENT OF ENVIRONMENTAL QUALITY WITH CORRECTIVE ACTION ORDER AUTHORITY UNDER THE MONTANA HAZARDOUS WASTE ACT.

Be it enacted by the Legislature of the State of Montana:

Section 1. Corrective action orders — judicial action. Whenever, on the basis of any information, the department determines and verifies that there is or has been a release of hazardous waste or constituents into the environment from any facility that treats, stores, or disposes of hazardous waste, whether or not the facility is authorized to operate under 75-10-406, the department may:

(1) commence a civil action for appropriate relief, including injunctive relief, in the district court in the district in which the facility is located; or

(2) issue an order requiring corrective action or any other response measure that the department considers necessary to protect human health or the environment. An order may include a suspension or revocation of authorization to operate under 75-10-406. An order must state with reasonable specificity the

HeinOnline -- 1999 vol. II 1670 1999

nature of the required corrective action or other response measure and must specify a time for compliance.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 75, chapter 10, part 4, and the provisions of Title 75, chapter 10, part 4, apply to [section 1].

Approved April 23, 1999

CHAPTER NO. 426

[HB 128]

AN ACT GENERALLY REVISING THE TAXATION OF TELECOMMUNICATIONS SERVICES PROVIDERS; IMPOSING A 3.75 PERCENT STATEWIDE RETAIL TELECOMMUNICATIONS EXCISE TAX TO REPLACE REVENUE LOST FROM MOVING TELECOMMUNICATIONS SERVICES PROVIDERS' PROPERTY FROM CLASS NINE TO A NEW PROPERTY TAX CLASS THIRTEEN AND FROM THE REPEAL OF THE TELEPHONE COMPANY LICENSE TAX; REQUIRING THAT RURAL TELEPHONE COOPERATIVES AND RURAL ELECTRIC COOPERATIVES OFFERING SERVICE IN AN AREA SERVED BY AN INCUMBENT LOCAL EXCHANGE PROVIDER COLLECT THE RETAIL TELECOMMUNICATIONS EXCISE TAX FROM CUSTOMERS IN THE INCUMBENT LOCAL EXCHANGE AREA; PROVIDING FOR THE DISTRIBUTION OF TAX REVENUE; PROVIDING THAT A PERCENTAGE OF THE RETAIL TELECOMMUNICATIONS EXCISE TAX BE USED TO REPLACE PROPERTY TAX REVENUE LOST FROM REDUCING THE TAX RATE ON TELECOMMUNICATIONS SERVICES PROVIDERS' PROPERTY FROM 12 PERCENT TO 6 PERCENT; TAXING TELECOMMUNICATIONS PROPERTY AT 6 PERCENT OF ITS MARKET VALUE; MOVING CLASS SEVEN TELECOMMUNICATIONS PROPERTY TO CLASS FIVE; CREATING A SEPARATE CLASS OF PROPERTY FOR CENTRALLY ASSESSED TELECOMMUNICATIONS PROPERTY; REVISING THE DEBT LIMITS OF TAXING JURISDICTIONS; AMENDING SECTIONS 7-1-2111, 7-7-107, 7-7-2101, 7-7-2203, 7-7-4201, 7-7-4202, 7-14-2524, 7-14-2525, 7-16-2327, 7-16-4104, 15-1-501, 15-6-135, 15-6-137, 15-6-141, 17-7-502, 20-9-406, 35-18-503, AND 69-3-861, MCA; REPEALING SECTIONS 15-53-101, 15-53-102, 15-53-103, 15-53-104, 15-53-105, 15-53-106, 15-53-111, 15-53-112, 15-53-113, 15-53-114, 15-53-115, AND 69-3-860, MCA; AND PROVIDING EFFECTIVE DATES AND AN APPLICARILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 19] may be cited as the "Retail Telecommunications Excise Tax Act".

Section 2. Legislative findings and declaration of purpose. (1) The legislature finds that one measure of the state's economic competitiveness is the presence of an efficient and affordable telecommunications infrastructure using the latest technological advancements.

(2) The legislature further finds that the telecommunications industry is undergoing a dramatic change tbat is altering the identity of its participants, the

HeinOnline -- 1999 vol. II 1671 1999

nature of services that the industry provides, and the methods used to deliver those services.

(3) The legislature further finds that the existing method of property taxation of the telecommunications industry results in competitive inequities that hinder the investment in the state's telecommunications infrastructure.

(4) The legislature further finds that the evolving nature of the telecommunications industry necessitates changes to the existing system of property taxation that include reducing the tax rate applied to telecommunications property and imposing a replacement tax in order to:

(a) avoid placing telecommunications services providers at a competitive advantage or disadvantage;

(b) provide purchasers of telecommunications services with greater choices and lower retail prices; and

(c) preserve the revenue base of the existing property tax system for taxing jurisdictions in the state.

(5) The legislature further finds that a reduction in property tax rates applied to telecommunications services providers should be replaced with an excise tax on the purchasers of telecommunications services.

(6) The legislature further finds that taxes imposed on the telecommunications industry are in reality hidden taxes that are passed on to telecommunications customers in the form of higher prices and that such a policy is contrary to the principles of open government and a fully informed citizenry on the tax policies of the state.

(7) The legislature therefore declares that there is a compelling public need to modify the existing system of property taxation of telecommunications services providers and to impose a retail telecommunications excise tax measured by the price of retail telecommunications on the purchaser to ensure competitive neutrality and constancy of revenue to taxing jurisdictions in the state of Montana.

(8) The legislature further declares that to avoid additional competitive advantages or disadvantages, the telephone company license tax must be eliminated.

Section 3. Definitions. As used in [sections 1 through 19], unless the context requires otherwise, the following definitions apply:

(1) "Customer" or "purchaser" means a person who acquires for consideration retail telecommunications services for use or consumption and not for resale.

(2) "Retail telecommunications" means the two-way transmission of voice, imago, data, or other information over wire, cable, fiber optics, microwave, radio, satellite, or similar facilities that originates or terminates in this state and is billed to a customer with a Montana service address. The term includes hut is not limited to local exchange, long-distance, two-way paging, wireless telephony, and related services.

(3) (a) "Sales price" means the consideration paid for the distribution, supply, furnishing, sale, transmission, or delivery of retail telecommunications services to the end-user customer.

HeinOnline -- 1999 vol. II 1672 1999

(b) Sales price does not include:

(i) an amount added to the customer's bill because of a charge made pursuant to the tax imposed by [sections 1 through 19];

(ii) charges added to a customer's bill under 10-4-201, 53-19-311, 69-3-844, and 69-3-860;

(iii) federal excise taxes or other federally imposed charges or fees;

(iv) a charge for a dishonored check;

(v) a finance or credit charge, penalty or charge for delayed payment, or discount for prompt payment;

(vi) a charge for reconnection of service or for replacement of service or relocation of facilities;

(vii) the repair, inspection, or servicing of equipment located on customer premises;

(viii) bad debt;

(ix) a charge added by a hotel, motel, or similar facility for telecommunications services used in placing calls for guests;

(x) charges paid by inserting coins in coin-operated telecommunications devices; and

(xi) charges for telecommunications services that have heen prepaid by a prepaid calling card that enables the origination of calls by using an access number or authorization code.

(4) "Service address" means:

(a) the location from where the retail tolecommunications services originated or where the retail telecommunications services are received; or

(b) where there is not a defined location, the location in Montana where the statement of charges for retail telecommunications services is mailed.

(5) "Telecommunications services provider" means a person providing retail telecommunications services.

Section 4. Imposition of retail telecommunications excise tax — rate. An excise tax of 3.75% is imposed on the sales price of retail telecommunications services. The tax is imposed on the purchaser and must be collected by the telecommunications services provider.

Section 5. Separate statement of tax — no advertising to absorb or refund tax. (1) The excise tax imposed by [sections 1 through 19] must be separately stated on the end-user custemer's bill or statement.

(2) A telecommunications services provider may not advertise, hold out, or state to the public or to any customer that the tax imposed by [sections 1 through 19] will be absorbed or refunded.

Section 6. Multistate exemption. A customer, upon proof that the customer has paid a tax in another state on the consumption or use of retail telecommunications services, is allowed a credit against the tax imposed by [sections 1 through 19] if the tax has been paid to another state.

Section 7. Application for permission to report on accrual basis. (1) A telecommunications services provider may apply to the department for

HeinOnline -- 1999 vol. II 1673 1999

permission to report and pay the retail telecommunications excise tax on an accrual basis.

(2) The application must be made on a form, prescribed by the department, that contains information that the department may reasonably require.

(3) A telecommunications services provider may not report or pay the retail telecommunications excise tax on an accrual basis unless the telecommunications services provider has received written permission from the department.

Section 8. Rural telephone cooperatives and rural electric cooperatives — subject to excise tax. (1) Rural telephone cooperatives or rural electric cooperatives providing retail telecommunications services in an area served by an incumbent local exchange carrier, as defined in 69-3-803, that is not a cooperative shall collect the retail telecommunications excise tax imposed by [sections 1 through 19] from customers in the incumbent local exchange carrier's service area.

(2) An incumbent local exchange carrier that is not a cooperative providing retail telecommunications services in an area served by a rural telephone cooperative is not required to collect the retail telecommunications excise tax imposed by [sections 1 through 19] from customers in the rural telephone cooperative service area.

Section 9. Return required of telecommunications services providers. (1) A return, on a form approved by the department, and payment of the tax for the preceding calendar quarter must be filed with the department on or before 60 days after the end of each calendar quarter in which the tax imposed by [sections 1 through 19] is payable. Each telecommunications services provider engaged in providing retail telecommunications services in this state that is subject to tax under [sections 1 through 19] shall file a return.

(2) Each telecommunications services provider liable to collect the tax under [sections 1 through 19] shall keep a record, on a form approved by the department, of all revenue received from providing retail telecommunications services for each quarter.

(3) The department may grant a reasonable extension of time for filing the return upon good cause shown.

Section 10. Credit for taxes paid on worthless account — taxes paid if account collected. (1) The retail telecommunications excise taxes paid on an accrual basis by a telecommunications services provider filing a return under [section 9] on sales found to be worthless and actually deducted by the person as bad debt for federal income tax purposes may be credited on a subsequent payment of the tax.

(2) If the accounts are subsequently collected, the retail telecommunications excise tax must be paid on the amount collected.

Section 11. Deficiency assessment — review — interest — penalty. (1) If the department determines that the amount of tax due is greater than the amount reported, it shall mail to the taxpayer a notice, pursuant to 15-1-211, of the additional tax proposed to be assessed. The taxpayer may seek a review of the determination pursuant to 15-1-211.

(2) (a) Interest on any deficiency must bear interest until paid at a rate of 1% a month or fraction of a month, computed from the original due date of the return.

HeinOnline -- 1999 vol. II 1674 1999

(b) If payment is not made within 60 days, the tax is delinquent and a penalty of 10% must be added to the amount of the deficiency.

Section 12. Credit for overpayment — interest on overpayment. (1) If the department determines that the amount of tax, penalty, or interest due for any year is less than the amount paid, the amount of overpayment must be credited against any tax, penalty, or interest then due from the taxpayer, with the balance being refunded to the taxpayer or its successor through reorganization, merger, consolidation, or its shareholders upon dissolution.

(2) Except as provided in subsection (3), interest must be allowed on overpayments at the same rate as is charged on deficiency assessments under [section 11] due from the date of the return or from the date of overpayment, whichever date is later, to the date on which the department approves crediting or refunding the payment.

(3) (a) Interest may not accrue during any period of processing a claim for a refund delayed more than 30 days by reason of failure of the taxpayer to provide information requested by the department for the purposes of verifying the amount of the overpayment.

(b) Interest is not allowed:

(i) if the overpayment is credited or refunded within 6 months from the date on which the return is due or from the date on which the return is filed, whichever date is later; or

(ii) if the amount of interest is less than $1.

Section 13. Penalty and interest for delinquency — waiver. (1) Taxes due under [sections 1 through 19] become delinquent if not paid within 60 days after the end of each calendar quarter. The department shall add to the amount of all delinquent retail telecommunications excise taxes a penalty of 10% of the excise tax due plus interest at the rate of 1% a month or fraction of a month, computed from the date on which the tax becomes delinquent to the date of payment.

(2) The 10% penalty may be waived by the department if reasonable cause for the failure to file the return, as required by [section 9], or to pay the tax due is provided to the department.

Section 14. Estimation of tax upon failure to file return — notice. (1) If a telecommunications services provider fails, neglects, or refuses to file the return required by [section 9] within the time required or fails to pay the tax required by [sections 1 through 19] within the period provided for in [section 9], the department shall estimate the amount of revenue of the telecommunications services provider subject to tax under [sections 1 through 19] during the preceding quarter.

(2) The department shall compute the amount of excise tax due from the telecommunications services provider and mail to the telecommunications services provider a letter and tax assessment statement setting forth the amount of delinquent excise tax, penalty, and interest due. The letter must advise that if payment is not made, a warrant for distraint may be filed.

Section 15. Warrant for distraint. If all or part of the tax imposed by [sections 1 through 19] is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The resulting lien has

HeinOnline -- 1999 vol. II 1675 1999

precedence over any claim, lien, or demand filed after the department files the warrant for distraint.

Section 16. Statute of limitations. (1) Except as otherwise provided in this section, a deficiency may not be assessed or collected with respect to the year for which a return is filed unless a notice of additional tax proposed to be assessed is mailed within 5 years from the date on which the return was filed. For the purposes of this section, a return filed before the last day prescribed for filing is considered filed on the last day. If the taxpayer, before the expiration of the period prescribed for the assessment of tbe tax, consents in writing to an assessment after that time, the tax may be assessed at any time prior to the expiration of the period agreed upon.

(2) A refund or credit may not be allowed or paid with respect to the year for which a return is filed after 5 years from the last day prescribed for filing the return or after 1 year from the date of tbe overpayment, whichever period expires later, unless before the expiration of the period, the taxpayer files a claim for refund or the department has determined the existence of the overpayment and has approved the refund or credit of the overpayment. If the taxpayer has agreed in writing under the provisions of subsection (1) to extend the time within which the department may propose an additional assessment, the period within which a claim for refund or credit may be filed or a refund or credit allowed if a claim is not filed is automatically extended.

(3) If a return is required to be filed and the taxpayer fails to file the return, the tax may be assessed or an action to collect the tax may be brought at any time. If the return is required and the taxpayer files a fraudulent return, the 5-year period provided for in subsection (1) does not begin until discovery of the fraud by the department.

Section 17. Administration — rules. The department shall:

(1) administer and enforce the provisions of [sections 1 through 19];

(2) cause to be prepared and distributed forms and information that may be necessary to administer the provisions of [sections 1 through 19]; and

(3) adopt rules that may be necessary or appropriate to administer and enforce the provisions of [sections 1 through 19].

Section 18. Distribution of retail telecommunications excise tax revenue. Retail telecommunications excise tax revenue collected by the department must be distributed as follows:

(1) 75% of the amount collected must be deposited in the account established in [section 19]; and

(2) the remaining 25% of the amount collected must be deposited in the state general fund.

Section 19. Retail telecommunications excise tax — account. (1) There is within the state special revenue fund an account for the receipts of retail telecommunications excise tax revenue.

(2) There must be retained in the account the amounts necessary under [sections 1 through 19] to repay overpayments, pay any erroneous receipts illegally assessed or collected or that are excessive in amount, and pay any other refunds otherwise required.

HeinOnline -- 1999 vol. II 1676 1999

Section 20. Distribution of property tax replacement revenue —statutory appropriation. (1) Tax revenue deposited in the account established in [section 19] must be distributed as provided in this section.

(2) On or before January 1, 2000, the department shall determine a reimbursement ratio associated with reducing the tax rate on the property of telecommunications companies taxed under 15-6-141, as that section read on December 31, 1998, and provide that information to each county treasurer. The reimbursement ratio must be determined for each taxing jurisdiction that levied mills on the taxable value of the property of telecommunications companies as that property was taxed under 15-6-141 in tax year 1998.

(3) The reimbursement ratio for each taxing jurisdiction to be used as the basis for the reimbursement amount is calculated using the formula RR = (((TV1 x ML1) + (TV2 x ML2) + (TV3 x ML3))/3)/(ST1 + ST2 + ST3)/3, where:

(a) RR is the reimbursement ratio;

(b) TV1 is the tax year 1996 taxable value of telecommunications property in the taxing jurisdiction, and ML1 is the tax year 1996 mill levy in the taxing jurisdiction applied to telecommunications property;

(c) TV2 is the tax year 1997 taxable value of telecommunications property in the taxing jurisdiction, and ML2 is the tax year 1997 mill levy in the taxing jurisdiction applied to telecommunications property;

(d) TV3 is the tax year 1998 taxable value of telecommunications property in the taxing jurisdiction, and ML3 is the tax year 1998 mill levy in the taxing jurisdiction applied to the telecommunications property;

(e) ST1 is the sum of (TV1 x ML1) for all taxing jurisdictions in the state for tax year 1996;

(f) ST2 is the sum of (TV2 x ML2) for all taxing jurisdictions in the state for tax year 1997;

(g) ST3 is the sum of (TV3 x ML3) for all taxing jurisdictions in the state for tax year 1998.

(4) For each calendar quarter, the department shall determine the amount of tax, late payment interest, and penalty collected under [sections 1 through 19]. Within 90 days after the close of the calendar quarter, the department shall remit to each county treasurer the reimbursement amount calculated in this subsection (4). The reimbursement amount for each taxing jurisdiction in the state is the product of multiplying the reimbursement ratio determined for the taxing jurisdiction in subsection (3) by the amount available in the account established in [section 19] for redistribution for the calendar quarter.

(5) Upon receipt of the reimbursement from the department, the county treasurer shall distribute the reimbursement as calculated by the department to each taxing jurisdiction.

(6) For the purposes of this section, "taxing jurisdiction" means a jurisdiction levying mills against telecommunications property described in 15-6-141, as that section read on December 31, 1998, and includes but is not limited to a county, city, school district, tax increment financing district, special district, or miscellaneous taxing district and the state of Montana.

(7) Each local government taxing jurisdiction receiving reimbursements shall consider the amount of reimbursement that will be received and lower the mill

HeinOnline -- 1999 vol. II 1677 1999

levy otherwise necessary to fund the budget by the amount that would otherwise have to be raised by the mill levy.

(8) A local government taxing jurisdiction that ceases to exist after [the effective date of this section] will no longer be considered for revenue loss or reimbursement purposes. A local government taxing jurisdiction that is created after January 1, 2000, will not he considered for revenue loss or reimbursement purposes. If a local government taxing jurisdiction that existed prior to January 2000 is split between two or more taxing jurisdictions or is annexed to or is consolidated with another taxing jurisdiction, the department shall determine how much of the revenue loss and reimbursement is attributed to the new jurisdictions.

(9) The amounts necessary for the administration of this section are statutorily appropriated, as provided in 17-7-502, from the account established in [section 19] to reimburse eligible taxing jurisdictions for the reduction in the tax rate on telecommunications property classified under 15-6-141 prior to [the effective date of this section].

Section 21. Section 7-1-2111, MCA, is amended to read:

"7-1-2111. Classification of counties. (1) For the purpose of regulating the compensation and salaries of all county officers, not otherwise provided for, and for fixing the penalties of officers' bonds, the counties of this state must be classified according to the taxable valuation of the property in the counties upon which the tax levy is made, except for vehicles subject to taxation under 61-3-504, as follows:

(a) first class—all counties having a taxable valuation of $50 million or more;

(b) second class—all counties having a taxable valuation of $30 million or more and less than $50 million;

(c) third class—all counties having a taxable valuation of $20 million or more and less than $30 million;

(d) fourth class—all counties having a taxable valuation of $15 million or more and less tban $20 million;

(e) fifth class—all counties having a taxable valuation of $10 million or more and less than $15 million;

(f) sixth class—all counties having a taxable valuation of $5 million or more and less than $10 million;

(g) seventh class—all counties having a taxable valuation of less than $5 million.

(2) As used in this section, "taxable valuation" means the taxable value of taxable property in the county as of the time of determination plus:

(a) that portion of the taxable value of the county on December 31, 1981, attributable to automobiles and trucks having a rated capacity of three-quarters of a ton or less;

(b) that portion of the taxable value of the county on December 31, 1989, attributable to automobiles and trucks having a manufacturer's rated capacity of more than three-quarters of a ton but less than or equal to 1 ton;

(c) that portion of the taxable value of the county on December 31, 1997, attributable to buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors;

(d) that portion of the taxable value of the county on December 31, 1997, attributable to trailers, pole trailers, and semitrailers with a declared weight of less than 26,000 pounds;

(e) the value provided by the department of revenue under 15-36-324(13); ~~and~~

(f) 50% of the taxable value of the county on December 31, 1999, attributable to telecommunications property under 15-6-141; and

~~(f)~~*(g)* 6% of the taxable value of the county on January 1 of each tax year."

Section 22. Section 7-7-107, MCA, is amended to read:

"7-7-107. Limitation on amount of bonds for city-county consolidated units. (1) Except as provided in 7-7-108, ~~no~~ *a* city-county consolidated local government may *not* issue bonds for any purpose ~~which~~ *that*, witb all outstanding indebtedness, ~~may exceed~~ *exceed* 39% of the taxable value of the property ~~therein~~ *in the local government* subject to taxation, as ascertained by the last assessment for state and county taxes, *plus an additional 50% of the taxable value of telecommunications property under 15-6-141 within the local government for tax year 1999, multiplied by 39%.*

(2) The issuing of bonds for the purpose of funding or refunding outstanding warrants or bonds is not the incurring of a new or additional indebtedness but is merely the changing of the evidence of outstanding indebtedness."

Section 23. Section 7-7-2101, MCA, is amended to read:

"7-7-2101. Limitatiou on amount of county indebtedness. (1) A county may not become indebted in any manner or for any purpose in an amount, including existing indebtedness, in the aggregate exceeding 23% of the total of the taxable value of the property in the county subject to taxation~~,~~ plus:

(a) the value provided by the department of revenue in 15-36-324(13), as ascertained by the last assessment for state and county taxes previous to the incurring of the indebtedness~~, plus,~~;

(b) ~~for indebtedness to be incurred during fiscal year 1997, an additional 11% of the taxable value of class eight property within the county for tax year 1995, for indebtedness to be incurred during fiscal year 1998, an additional 22% of the taxable value of class eight property within the county for tax year 1995, and~~ for indebtedness to be incurred during fiscal years 1999 through 2008, an additional 33% of the taxable value of class eight property within the county for tax year 1995, ~~in each case of class eight property,~~ multiplied hy 23%*; and*

(c) an additional 50% of the taxable value of telecommunications property under 15-6-141 within the county for tax year 1999, multiplied by 23%.

(2) A county may not incur indebtedness or liability for any single purpose to an amount exceeding $500,000 without the approval of a majority of the electors of the county voting at an election to be provided by law, except as provided in 7-7-2402, 7-21-3413, and 7-21-3414.

(3) This section does not apply to the acquisition of conservation easements as set forth in Title 76, chapter 6."

HeinOnline -- 1999 vol. II 1679 1999

Section 24. Section 7-7-2203, MCA, is amended to read:

"7-7-2203. Limitation on amount of bonded indebtedness. (1) Except as provided in subsections (2) ~~through (4)~~ *and (3)*, a county may not issue general obligation bonds for any purpose that, with all outstanding bonds and warrants except emergency bonds, will exceed 11.25% of the total of the taxable value of the property in the county~~,~~ plus:

(a) the value provided by the department of revenue under 15-36-324(13), to be ascertained by the last assessment for state and county taxes prior to the proposed issuance of bonds~~, plus~~;

(b) ~~for general obligation bonds to be issued during fiscal year 1997, an additional 11% of the taxable value of class eight property within the county for tax year 1995, for general obligation bonds to be issued during fiscal year 1998, an additional 22% of the taxable value of class eight property within the county for tax year 1995, and~~ for general obligation bonds to be issued during fiscal years 1999 through 2008, an additional 33% of the taxable value of class eight property within the county for tax year 1995, ~~in each case of class eight property,~~ multiplied by 11.25%*; and*

(c) an additional 50% of the taxable value of telecommunications property under 15-6-141 within the county for tax year 1999, multiplied by 11.25%.

~~(2) In addition to the bonds allowed by subsection (1), a county may issue bonds that, with all outstanding bonds and warrants, will not exceed 27.75% of the total of the taxable value of the property in the county subject to taxation, plus the value provided by the department of revenue under 15-36-324(13), when necessary to do so, to be ascertained by the last assessment for state and county taxes, plus, for bonds to be issued during fiscal year 1997, an additional 11% of the taxable value of class eight property within the county for tax year 1995, and for bonds to be issued during fiscal year 1998, an additional 22% of the taxable value of class eight property within the county for tax year 1995.~~

~~(3)~~*(2)* In addition to the bonds allowed by ~~subsections~~ *subsection* (1) ~~and (2)~~, a county may issue bonds for the construction or improvement of a ~~jail~~ *detention center* that will not exceed 12.5% of the taxable value of the property in the county subject to taxation, plus the adjustments permitted by ~~7-7-2101~~ *subsection (1)*.

~~(4)~~*(3)* The limitation in subsection (1) does not apply to refunding bonds issued for the purpose of paying or retiring county bonds lawfully issued prior to January 1, 1932, or to bonds issued for the repayment of tax protests lost by the county."

Section 25. Section 7-7-4201, MCA, is amended to read:

"7-7-4201. Limitation on amount of bonded indebtedness. (1) Except as otherwise provided, a city or town may not issue bonds or incur other indebtedness for any purpose in an amount that with all outstanding and unpaid indebtedness will exceed 28% of the taxable value of the property in the city or town subject to taxation, to be ascertained by the last assessment for state and county taxes, plus~~,~~:

(a) ~~for bonds to be issued or other indebtedness to be incurred during fiscal year 1997, an additional 11% of the taxable value of class eight property within the city or town for tax year 1995, for bonds to be issued or other indebtedness to be incurred during fiscal year 1998, an additional 22% of the taxable value of class eight property within the city or town for tax year 1995, and~~ for bonds to

HeinOnline -- 1999 vol. II 1680 1999

be issued or other indebtedness to be incurred during fiscal years 1999 through 2008, an additional 33% of the taxable value of class eight property within the city or town for tax year 1995, ~~in each case of class eight property,~~ multiplied by 28%; *and*

(b) an additional 50% of the taxable value of telecommunications property under 15-6-141 within the city or town for tax year 1999, multiplied by 28%.

(2) The issuing of bonds for the purpose of funding or refunding outstanding warrants or bonds is not the incurring of a new or additional indebtedness but is merely the changing of the evidence of outstanding indebtedness.

(3) The limitation in subsection (1) does not apply to bonds issued for the repayment of tax protests lost by the city or town."

Section 26. Section 7-7-4202, MCA, is amended to read:

"7-7-4202. Special provisions relating to water and sewer systems. (1) Notwithstanding the provisions of 7-7-4201, for the purpose of constructing a sewer system, procuring a water supply, or constructing or acquiring a water system for a city or town that owns and controls the water supply and water system and devotes the revenue from the water supply and water system to the payment of the debt, a city or town may incur an additional indebtedness by borrowing money or issuing bonds.

(2) The additional total indebtedness that may be incurred by borrowing money or issuing bonds for the construction of a sewer system, for the procurement of a water supply, or for both of the purposes, including all indebtedness that is contracted and that is unpaid or outstanding, may not in the aggregate exceed 55% ~~over and above~~ *of* the ~~28%,~~ *debt limitation* referred to in 7-7-4201, of the taxable value of the property in the city or town subject to taxation, to be ascertained by the last assessment for state and county taxes, plus~~,~~:

(a) ~~for indebtedness to be incurred during fiscal year 1997, an additional 11% of the taxable value of class eight property within the city or town for tax year 1995, for indebtedness to be incurred during fiscal year 1998, an additional 22% of the taxable value of class eight property within the city or town for tax year 1995, and~~ for indebtedness to be incurred during fiscal years 1999 through 2008, an additional 33% of the taxable value of class eight property within the city or town for tax year 1995, ~~in each case of class eight property,~~ multiplied by 55%; *and*

(b) an additional 50% of the taxable value of telecommunications property under 15-6-141 within the city or town for tax year 1999, multiplied by 55%."

Section 27. Section 7-14-2524, MCA, is amended to read:

"7-14-2524. Limitation on amount of bonds issued — excess void. (1) Except as otherwise provided in 7-7-2203, 7-7-2204, and this section, a county may not issue bonds that, with all outstanding bonds and warrants except emergency bonds, will exceed 11.25% of the total of the taxable value of the property in the county, plus:

(a) the value provided by the department of revenue under 15-36-324(13). The taxable property and the amount of taxes levied on new production, production from horizontally completed wells, and incremental production must be ascertained by the last assessment for state and county taxes prior to the issuance of the bonds.

HeinOnline -- 1999 vol. II 1681 1999

(b) an additional 50% of the taxable value of telecommunications property under 15-6-141 within the county for tax year 1999, multiplied by 11.25%.

(2) A county may issue bonds that, with all outstanding bonds and warrants, will exceed 11.25% but will not exceed 22.5% of the total of the taxable value of the property~~,~~ *plus an additional 50% of the taxable value of telecommunications property under 15-6-141 within the county for tax year 1999, multiplied by the amount that exceeds 11.25% but does not exceed 22.5%,* plus the value provided by the department of revenue under 15-36-324(13) when necessary for the purpose of replacing, rebuilding, or repairing county buildings, bridges, or highways that have been destroyed or damaged by an act of God or by a disaster, catastrophe, or accident.

(3) The value of the bonds issued and all other outstanding indebtedness of the county may not exceed 22.5% of the total of the taxable value of the property within the county, ~~plus the value provided by the department of revenue under 15-36-324(13), as ascertained by the last preceding general assessment~~ *as adjusted in this section.*"

Section 28. Section 7-14-2525, MCA, is amended to read:

"**7-14-2525. Refunding agreements and refunding bonds authorized.** (1) Whenever the total indebtedness of a county exceeds 22.5% of the total of the taxable value of the property in the county, ~~plus the value provided by the department of revenue under 15-36-324(13)~~ *as adjusted in 7-14-2524*, and the board determines that the county is unable to pay the indebtedness in full, the board may:

(a) negotiate with the bondholders for an agreement under which the bondholders agree to accept less than the full amount of the bonds and the accrued unpaid interest in satisfaction of the honds;

(b) enter into the agreement;

(c) issue refunding bonds for the amount agreed upon.

(2) These bonds may be issued in more than one series, and each series may be either amortization or serial bonds.

(3) The plan agreed upon between the board and the bondholders must be embodied in full in the resolution providing for the issuance of the bonds."

Section 29. Section 7-16-2327, MCA, is amended to read:

"**7-16-2327. Indebtedness for park purposes.** (1) Subject to the provisions of subsection (2), a county park board, in addition to powers and duties now given under law, may contract an indebtedness in behalf of a county, upon the credit of the county, in order to carry out its powers and duties.

(2) (a) The total amount of indebtedness authorized to be contracted in any form, including the then-existing indebtedness, may not at any time exceed 13% of the total of the taxable value of the taxable property in the county~~,~~ plus:

(i) the value provided by the department of revenue under 15-36-324(13)~~,~~ ~~ascertained by the last assessment for state and county taxes previous to the incurring of the indebtedness~~*; and*

(ii) an additional 50% of the taxable value of telecommunications property under 15-6-141 within the city or town for tax year 1999, multiplied by 13%.

HeinOnline -- 1999 vol. II 1682 1999

(b) Money may not be borrowed on bonds issued for the purchase of lands and improving the land for any purpose until the proposition has been submitted to the vote of those qualified under the provisions of the state constitution to vote at the election in the affected county and a majority vote is cast in favor of the bonds."

Section 30. Section 7-16-4104, MCA, is amended to read:

"7-16-4104. Authorization for municipal indebtedncss for various cultural, social, and recreational purposes. (1) A city or town council or commission may contract an indebtedness on hehalf of the city or town, upon the credit of the city or town, by borrowing money or issuing bonds:

(a) for the purpose of purchasing and improving lands for public parks and grounds;

(b) for procuring by purchase, construction, or otherwise swimming pool facilities, athletic fields, skating rinks, playgrounds, museums, a golf course, a site and building for a civic center, a youth center, or *any* combination of these facilities; and

(c) for furnishing, equipping, repairing, or rehabilitating a swimming pool facility, athletic field, skating rink, playground, museum, golf course, civic center, or youth center.

(2) The total amount of indebtedness authorized to be contracted in any form, including the then-existing indehtedness, may not at any time exceed 16.5% of the taxable value of the taxable property of the city or town, as ascertained by the last assessment for state and county taxes previous to the incurring of the indebtedness, *plus an additional 50% of the taxable value of telecommunications property under 15-6-141 within the city or town for tax year 1999, multiplied by 16.5%.* Money may not be borrowed for any purpose on bonds issued for the purchase of lands and improving the land until the proposition has been submitted to the vote of the qualified electors of the city or town and a majority vote is cast in favor of the proposition."

Section 31. Section 15-1-501, MCA, is amended to read:

"15-1-501. Disposition of money from certain designated lieense and other taxes. (1) The state treasurer shall deposit to the credit of the state general fund in accordance with the provisions of subsection (3) all money received from the collection of:

(a) income taxes, interest, and penalties collected under chapter 30;

(b) except as provided in 15-31-702, all taxes, interest, and penalties collected under chapter 31;

(c) oil and natural gas production taxes allocated under 15-36-324(8)(a) and (10)(a);

(d) electrical energy producer's license taxes under chapter 51;

(e) ~~telephone company license taxes under chapter 53~~ *an amount equal to 25% of the retail telecommunications excise tax collected under [sections 1 through 19]*;

(f) liquor license taxes under Title 16;

(g) fees from driver's licenses, motorcycle endorsements, and duplicate driver's licenses as provided in 61-5-121;

HeinOnline -- 1999 vol. II 1683 1999

(h) inheritance and estate taxes under Title 72, chapter 16; and

(i) fees based on the value of currency on deposit and tangihle personal property held for safekeeping by a foreign capital depository as provided in 15-31-803.

(2) The department of revenue shall also deposit to the credit of the state general fund all money received from the collection of license taxes and fees and all net revenue and receipts from all other sources under the operation of the Montana Alcoholic Beverage Code.

(3) Notwithstanding any other provision of law, the distribution of tax revenue must be made according to the provisions of the law governing allocation of the tax that were in effect for the period in which the tax revenue was recorded for accounting purposes. Tax revenue must be recorded as prescribed by tbe department of administration, pursuant to 17-1-102(2) and (4), in accordance with generally accepted accounting principles.

(4) All refunds of taxes must be attributed to the funds in which the taxes are currently being recorded. All refunds of interest and penalties must be attributed to the funds in which the interest and penalties are currently being recorded."

Scction 32. Section 15-6-135, MCA, is amended to read:

"15-6-135. Class five property — dcscription — taxable percentage. (1) Class five property includes:

(a) all property used and owned by cooperative rural electrical and cooperative rural telephone associations organized under the laws of Montana, except property owned by cooperative organizations described in 15-6-137(1)~~(b)~~*(a)*;

(b) air and water pollution control equipment as defined in this section;

(c) new industrial property as defined in this section;

(d) any personal or real property used primarily in the production of gasohol during construction and for the first 3 years of its operation;

(e) all land and improvements and all personal property owned by a research and development firm, provided that the property is actively devoted to research and development;

(f) machinery and equipment used in electrolytic reduction facilities;

(g) all property used and owned by persons, firms, corporations, or other organizations that are engaged in the business of furnishing telecommunications services exclusively to rural areas or to rural areas and cities and towns of 1,200 permanent residents or less.

(2) (a) "Air and water pollution control equipment" means that portion of identifiable property, facilities, machinery, devices, or equipment designed, constructed, under construction, or operated for removing, disposing, abating, treating, eliminating, destroying, neutralizing, stabilizing, rendering inert, storing, or preventing the creation of air or water pollutants that, except for the use of the item, would be released to the environment. Reduction in pollutants obtained through operational techniques without specific facilities, machinery, devices, or equipment is not eligible for certification under this section.

HeinOnline -- 1999 vol. II 1684 1999

(b) Requests for certification must be made on forms available from the department of revenue. Certification may not he granted unless the applicant is in substantial compliance with all applicahle rules, laws, orders, or permit conditions. Certification remains in effect only as long as substantial compliance continues.

(c) The department of environmental quality shall promulgate rules specifying procedures, including timeframes for certification application, and definitions necessary to identify air and water pollution control equipment for certification and compliance. The department of revenue shall promulgate rules pertaining to the valuation of qualifying air and water pollution control equipment. The department of environmental quality shall identify and track compliance in the use of certified air and water pollution control equipment and report continuous acts or patterns of noncompliance at a facility to the department of revenue. Casual or isolated incidents of noncompliance at a facility do not affect certification.

(d) A person may appeal the certification, classification, and valuation of the property to the state tax appeal board. Appeals on the property certification must name the department of environmental quality as the respondent, and appeals on the classification or valuation of the equipment must name the department of revenue as the respondent.

(3) (a) "New industrial property" means any new industrial plant, including land, buildings, machinery, and fixtures, used hy new industries during the first 3 years of their operation. The property may not have been assessed within the state of Montana prior to July 1, 1961.

(b) New industrial property does not include:

(i) property used by retail or wholesale merchants, commercial services of any type, agriculture, trades, or professions unless the business or profession meets the requirements of subsection (4)(b)(v);

(ii) a plant that will create adverse impact on existing state, county, or municipal services; or

(iii) property used or employed in an industrial plant that has been in operation in this state for 3 years or longer.

(4) (a) "New industry" means any person, corporation, firm, partnership, association, or other group that establishes a new plant in Montana for the operation of a new industrial endeavor, as distinguished from a mere expansion, reorganization, or merger of an existing industry.

(b) New industry includes only those industries that:

(i) manufacture, mill, mine, produce, process, or fabricate materials;

(ii) do similar work, employing capital and lahor, in which materials unserviceable in their natural state are extracted, processed, or made fit for use or are substantially altered or treated so as to create commercial products or materials;

(iii) engage in the mechanical or chemical transformation of materials or substances into new products in the manner defined as manufacturing in the 1987 Standard Industrial Classification Manual prepared by the United States office of management and budget;

HeinOnline -- 1999 vol. II 1685 1999

(iv) engage in the transportation, warehousing, or distribution of commercial products or materials if 50% or more of an industry's gross sales or receipts are earned from outside the state; or

(v) earn 50% or more of their annual gross income from out-of-state sales.

(5) Class five property is taxed at 3% of its market value."

Section 33. Section 15-6-137, MCA, is amended to read:

"15-6-137. Class seven property — description — taxable percentage. (1) Class seven property includes:

(a) ~~all property used and owned by persons, firms, corporations, or other organizations that are engaged in the business of furnishing telephone communications exclusively to rural areas or to rural areas and cities and towns of 800 persons or less;~~

~~(b)~~ all property owned by cooperative rural electrical ~~and cooperative rural telephone~~ associations that serve less than 95% of the electricity consumers ~~or telephone users~~ within the incorporated limits of a city or town, except rural electric cooperative properties described in 15-6-141(1)(a);

~~(c)~~*(b)* electric transformers and meters; electric light and power substation machinery; natural gas measuring and regulating station equipment, meters, and compressor station machinery owned by noncentrally assessed public utilities; and tools used in the repair and maintenance of this property.

(2) ~~To qualify for this classification, the average circuit miles for each station on the telephone communication system described in subsection (1)(b) must be more than 1 mile.~~

~~(3)~~ Class seven property is taxed at 8% of its market value."

Section 34. Section 15-6-141, MCA, is amended to read:

"15-6-141. Class nine property — description — taxable percentage. (1) Class nine property includes:

(a) centrally assessed electric power companies' allocations, including, if congress passes legislation that allows the state to tax property owned by an agency created by congress to transmit or distribute electrical energy, allocations of properties constructed, owned, or operated by a public agency created by the congress to transmit or distribute electric energy produced at privately owned generating facilities, not including rural electric cooperatives. However, rural electric cooperatives' property used for the sole purpose of serving customers representing less than 95% of the electric consumers located within the incorporated limits of a city or town of more than 3,500 persons in which a centrally assessed electric power company also owns property is included. For purposes of this subsection (1)(a), "property used for tbe sole purpose" does not include a beadquarters, office, shop, or other similar facility.

(b) allocations for centrally assessed natural gas companies having a major distribution system in this state; and

(c) centrally assessed companies' allocations except:

(i) electric power and natural gas companies' property;

(ii) property owned by cooperative rural electric and cooperative rural telephone associations and classified in class five;

HeinOnline -- 1999 vol. II 1686 1999

(iii) property owned by organizations providing telephone communications to rural areas and classified in class ~~seven~~ *five*;

(iv) railroad transportation property included in class twelve; ~~and~~

(v) airline transportation property included in class twelve*; and*

(vi) telecommunications property included in class thirteen.

(2) Class nine property is taxed at 12% of market value."

Section 35. Class thirteen property — description — taxable percentage. (1) Class thirteen property includes allocations of centrally assessed telecommunications services companies.

(2) Class thirteen property does not include:

(a) property owned by cooperative rural telephone associations and classified in class five; or

(b) property owned by organizations providing telecommunications services and classified in class five.

(3) Class thirteen property is taxed at 6% of its market value.

Section 36. Section 17-7-502, MCA, is amended to read:

"17-7-502. (Temporary) Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 3-5-901; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; *[section 20];* 15-23-706; 15-30-195; 15-31-702; 15-36-324; 15-36-325; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-406; 16-1-411; 16-11-308; 17-3-106; 17-3-212; 17-3-222; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-6-709; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 20-8-107; 20-8-111; 20-26-1503; 22-3-1004; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 39-71-907; 39-71-2321; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 53-6-703; 53-24-206; 67-3-205; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-1-131; 80-2-103; 80-2-222; 80-4-416; 81-5-111; 82-11-161; 85-20-402; 87-1-513; 90-3-301; 90-4-215; 90-6-331; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to

HeinOnline -- 1999 vol. II 1687 1999

pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; pursuant to sec. 7(2), Ch. 29, L. 1995, the inclusion of 15-30-195 terminates July 1, 2001; pursuant to sec. 5, Ch. 461, L. 1997, the inclusion of 77-1-131 terminates October 1, 2003; and pursuant to secs. 13, 16(1), Ch. 549, L. 1997, the inclusion of 90-3-301 terminates July 1, 1999.)

17-7-502. (Effective July 1, 2008) Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 3-5-901; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; *[section 20];* 15-23-706; 15-30-195; 15-31-702; 15-36-324; 15-36-325; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; [16-1-406;] 16-1-411; 16-11-308; 17-3-106; 17-3-212; 17-3-222; 17-5-404; 17-5-804; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-6-709; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-205; 19-19-305; 19-19-506; 20-8-107; 20-9-361; 20-26-1503; 22-3-1004; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 32-1-537; 37-43-204; 37-51-501; 39-71-503; 39-71-907; 39-71-2321; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 50-5-232; 50-40-206; 53-6-150; 53-6-703; 53-24-206; 60-2-220; 67-3-205; 75-1-1101; 75-5-1108; 75-6-214; 75-5-1108; 75-6-214; 75-11-313; 77-1-505; 80-2-103; 80-2-222; 80-4-416; 81-5-111; 82-11-136; 82-11-161; 85-1-220; 85-20-402; 87-1-513; 90-4-215; 90-6-331; 90-7-220; 90-7-221; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant to sec. 68(2), Ch. 422, L. 1997, this version becomes effective July 1, 2008.)"

Section 37. Section 20-9-406, MCA, is amended to read:

"20-9-406. Limitations on amount of bond issue. (1) (a) Except as provided in subsection ~~(1)(c)~~ *(1)(d)*, the maximum amount for which an elementary district or a high school district may become indebted by the issuance of bonds, including all indebtedness represented by outstanding bonds of previous issues and registered warrants, is 45% of the taxable value of the

HeinOnline -- 1999 vol. II 1688 1999

property subject to taxation, to be ascertained by the last-completed assessment for state, county, and school taxes previous to the incurring of the indebtedness, plus:

(i) ~~for bonds to be issued during fiscal year 1997, an additional 11% of the taxable value of class eight property within the district for tax year 1995, for bonds to be issued during fiscal year 1998, an additional 22% of the taxable value of class eight property within the district for tax year 1995, and~~ for bonds to be issued during fiscal years 1999 through 2008, an additional 33% of the taxable value of class eight property within the district for tax year 1995, ~~in each case of class eight property,~~ multiplied hy 45%*; and*

(ii) an additional 50% of the taxable value of telecommunications property under 15-6-141 within the district for tax year 1999, multiplied by 45%.

(b) Except as provided in subsection ~~(1)(c)~~ *(1)(d)*, the maximum amount for which a K-12 school district, as formed pursuant to 20-6-701, may become indebted by the issuance of bonds, including all indebtedness represented by outstanding bonds of previous issues and registered warrants, is up to 90% of the taxable value of the property subject to taxation, to be ascertained by the last-completed assessment for state, county, and school taxes previous to the incurring of the indebtedness, plus:

(i) ~~for bonds to be issued during fiscal year 1997, an additional 11% of the taxable value of class eight property within the district for tax year 1995, for bonds to be issued during fiscal year 1998, an additional 22% of the taxable value of class eight property within the district for tax year 1995, and~~ for bonds to be issued during fiscal years 1999 through 2008, an additional 33% of the taxable value of class eight property within the district for tax year 1995, ~~in each case of class eight property,~~ multiplied by 90%*; and*

(ii) an additional 50% of the taxable value of telecommunications property under 15-6-141 within the district for tax year 1999, multiplied by 90%.

(c) The total indebtedness of the high school district with an attached elementary district must be limited to the sum of 45% of the taxable value of the property for elementary school program purposes and 45% of the taxable value of the property for high school program purposes, adjusted as provided in this section.

~~(c)~~*(d)* (i) The maximum amount for which an elementary district or a high school district with a district mill value per elementary ANB or per high school ANB that is less than the corresponding statewide mill value per elementary ANB or per high school ANB may become indebted by the issuance of bonds, including all indebtedness represented by outstanding bonds of previous issues and registered warrants, is 45% of the corresponding statewide mill value per ANB times 1,000 times the ANB of the district. For a K-12 district, the maximum amount for which the district may become indebted is 45% of the sum of the statewide mill value per elementary ANB times 1,000 times the elementary ANB of the district and the statewide mill value per high school ANB times 1,000 times the high school ANB of the district.

(ii) If mutually agreed upen by the affected districts, for the purpose of calculating its maximum bonded indebtedness under this subsection ~~(1)(c)~~ *(1)(d)*, a district may include the ANB of the district plus tbe number of students residing within the district for which the district or county pays tuition for attendance at a school in an adjacent district. The receiving district may not use out-of-district

HeinOnline -- 1999 vol. II 1689 1999

ANB for the purpose of calculating its maximum indebtedness if the out-of-district ANB has been included in the ANB of the sending district pursuant to the mutual agreement.

(2) The maximum amounts determined in subsection (1), however, may not pertain to indebtedness imposed by special improvement district obligations or assessments against the school district or to bonds issued for the repayment of tax protests lost by the district. All bonds issued in excess of the amount are void, except as provided in this section.

(3) When the total indebtedness of a school district has reached the limitations prescribed in this section, the school district may pay all reasonable and necessary expenses of the school district on a cash basis in accordance with the financial administration provisions of this chapter.

(4) Whenever bonds are issued for the purpose of refunding bonds, any money to the credit of the debt service fund for the payment of the bonds to be refunded is applied toward the payment of the bonds and the refunding bond issue is decreased accordingly."

Section 38. Section 35-18-503, MCA, is amended to read:

"35-18-503. Exemption from taxes. Cooperatives and foreign corporations transacting business in this state pursuant to the provisions of this chapter, except as provided in 10-4-201 *and [section 8]*, are exempt from all excise and income taxes."

Section 39. Section 69-3-861, MCA, is amended to read:

"69-3-861. Interim universal access program — account. An interim universal access account is established in the state special revenue fund in the state treasury. All money received by the department of revenue pursuant to ~~69-3-860~~ *the surcharge that was in effect during the fiscal year ending June 30, 1999,* must be paid to the state treasurer for deposit in the account. After payment of refunds, the balance of the account must be used for the purposes described in 69-3-859."

Section 40. Repealer. Sections 15-53-101, 15-53-102, 15-53-103, 15-53-104, 15-53-105, 15-53-106, 15-53-111, 15-53-112, 15-53-113, 15-53-114, 15-53-115, and 69-3-860, MCA, are repealed.

Section 41. Codification instruction. (1) [Sections 1 through 19] are intended to be codified as an integral part of Title 15, and the provisions of Title 15 apply to [sections 1 through 19].

(2) [Section 20] is intended to be codified as an integral part of Title 15, chapter 1, part 1, and the provisions of Title 15, chapter 1, part 1, apply to [section 20].

(3) [Section 35] is intended to be codified as an integral part of Title 15, chapter 6, and the provisions of Title 15, chapter 6, apply to [section 35].

Section 42. Effective dates. (1) Except as provided in subsections (2) and (3), [this act] is effective January 1, 2000.

(2) [Section 4] is effective on the occurrence of the contingency provided for in [section 44(1)].

(3) For the purposes of promulgating administrative rules under [section 17], [section 17] and this section are effective on passage and approval.

HeinOnline -- 1999 vol. II 1690 1999

Seetion 43. Applicability. [This act] applies to tax years beginning after December 31, 1999.

Section 44. Contingent voidness. (1) If Constitutional Initiative No. 75, enacting Article VIII, section 17, of the Montana constitution, is declared invalid, then [section 4] is effective on January 1 of the year following the date of the determination of invalidity.

(2) If House Bill No. 191 is submitted to and not approved by the electorate at the tax election to be held in 1999, then [this act] is void.

Approved April 23, 1999

CHAPTER NO. 427

[HB 132]

AN ACT SIMPLIFYING THE DETERMINATION OF PENALTY AND INTEREST APPLIED TO TAXES, FEES, AND OTHER ASSESSMENTS COLLECTED BY THE DEPARTMENT OF REVENUE UNDER TITLES 15 AND 16; PROVIDING UNIFORM PROVISIONS FOR ASSESSING PENALTIES FOR LATE FILED TAX RETURNS, REPORTS, OR STATEMENTS; PROVIDING UNIFORM PROVISIONS FOR ASSESSING PENALTY AND INTEREST FOR DELINQUENT TAXES AND FEES; PROVIDING EXCEPTIONS; REVISING THE WAIVER OF PENALTY PROVISIONS; REVISING THE PENALTY PROVISIONS FOR DELINQUENT PROPERTY TAXES; AMENDING SECTIONS 15-1-206, 15-8-309, 15-24-904, 15-24-1207, 15-30-142, 15-30-209, 15-30-241, 15-30-321, 15-30-323, 15-31-510, 15-31-543, 15-31-545, 15-35-105, 15-35-112, 15-35-113, 15-36-311, 15-36-313, 15-36-314, 15-36-315, 15-36-325, 15-37-105, 15-37-108, 15-37-109, 15-37-114, 15-37-115, 15-37-205, 15-37-210, 15-37-211, 15-38-107, 15-50-309, 15-51-103, 15-51-109, 15-51-110, 15-51-111, 15-53-105, 15-53-106, 15-53-111, 15-59-106, 15-59-112, 15-59-113, 15-60-204, 15-60-208, 15-65-115, 15-65-116, 16-1-403, 16-1-409, 16-1-411, 16-11-143, 16-11-203, 39-51-1301, 75-2-220, 75-5-516, AND 87-2-903, MCA; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Uniform penalty and interest assessments for violation of tax provisions — applicability — exceptions. (1) (a) A person who fails to file a required tax return or other report with the department by the due date, including any extension of time, of the return or report must be assessed a late filing penalty of $50 or the amount of tbe tax due, whichever is less.

(b) A person who purposely fails to file a required return, statement, or other report must be assessed an additional late filing penalty of $200 or the amount of the tax due, whichever is less.

(c) A person who fails to pay a tax when due must be assessed a late payment penalty of 1.5% a month or fraction of a month on tbe unpaid tax. The penalty may not exceed 18% of the tax due.

(d) A person who purposely fails to pay a tax when due must be assessed an additional penalty equal to 25% of the tax due or $200, whichever is less, plus interest as provided in subsection (2).

HeinOnline -- 1999 vol. II 1691 1999

(2) Interest on taxes not paid when due must be assessed at the rate of 12% a year, accrued at 1% a month or fraction of a month, on the unpaid tax. Interest on delinquent taxes and on deficiency assessments is computed from the original due date of the return until the tax is paid.

(3) (a) Except as provided in subsection (3)(b), this section applies to taxes, fees, and other assessments imposed under Titles 15 and 16.

(b) This section does not apply to:

(i) property taxes;

(ii) gasoline and vehicle fuel taxes collected by the department of transportation pursuant to Title 15, chapter 70; or

(iii) to taxes, fees, and other assessments subject to other penalty or interest charges as provided by law.

Section 2. Rulemaking authority. The department shall adopt rules that are necessary to implement and administer [section 1].

Section 3. Section 15-1-206, MCA, is amended to read:

"15-1-206. Waiver ~~and abatement~~ of penalties — interest. (1) The department may, in its discretion, waive, *for reasonable cause,* ~~the assessment of~~ *any* penalty *assessed by the department* ~~for the late filing of any tax statement or return required to be filed with the department when the filing is done within 5 days of the date specified for filing the return or statement and for the late payment of any tax collected by the department when the payment is made within 5 days of the date specified for payment of the tax.~~

(2) Whenever the department waives ~~or abates~~ a penalty provided for in this title, it also may, in its discretion, waive ~~or abate~~ interest not to exceed $100 due upon the tax.

(3) Whenever the department is notified of a change in federal taxable income as the result of a federal adjustment or upon filing an amended federal return, as provided for in 15-30-304, the department shall ~~abate~~ *waive* the interest on the additional tax liability from the date the department is notified until the department sends the statement of increased tax liability to the taxpayer."

Section 4. Section 15-8-309, MCA, is amended to read:

"15-8-309. Violation and penalty. ~~(1)~~ ~~Every~~ *A* person who ~~refuses to furnish~~ *fails for any reason to file or return* the statement ~~hereinbefore~~ required *by 15-8-301 must be assessed a $25 penalty. The department shall deposit the penalty to the credit of the state general fund* ~~or to make and subscribe such affidavit respecting his name and place of residence or to appear and testify when requested so to do by the department, as above provided, for each and every refusal and as often as the same is repeated forfeits to the people of the state the sum of $100 to be recovered by action brought in the name of the state in any city or justice's court.~~

~~(2) All moneys recovered under the provisions of this section, except moneys paid to a justice's court, must be paid into the treasury of the county in which the property is located.~~"

Section 5. Section 15-24-904, MCA, is amended to read:

"15-24-904. Penalty for violation of law. If any person, ~~persons,~~ company, or corporation who is the owner or is in charge of any livestock within

HeinOnline -- 1999 vol. II 1692 1999

this state fails to make the statement or statements as provided in 15-24-903, the department ~~may~~ *shall*, after 10 days' notice to the person who failed to file the report, ~~increase the assessment by 10% as a penalty~~ *assess the penalty provided in 15-8-309.*"

Section 6. Section 15-24-1207, MCA, is amended to read:

"**15-24-1207. Reporting requirements — *penalty* — rules.** (1) Each private person who is a possessor or a beneficial user of tax-exempt property for industrial, trade, or other business purposes subject to tax pursuant to 15-24-1203 shall, on or before March 1 each year, file with the department ~~of revenue~~ a statement of the possession or other beneficial use of tax-exempt property in the preceding calendar year and the value of the property. The statement must be in the form prescribed by the department and must be verified by the possessor or beneficial user or, in the case of an association or corporation, by an officer of the association or corporation. The statement must include:

(a) the name and address of the person, association, or corporation;

(b) the location of the tax-exempt property; and

(c) the market value in dollars and cents of the tax-exempt property.

(2) *A person who fails to file the statement required by subsection (1) must be assessed the penalty provided in 15-8-309.*

(3) The department may adopt any reasonable rules necessary to insure that the possessor or other beneficial user of tax-exempt property complies with the provisions of this part."

Section 7. Section 15-30-142, MCA, is amended to read:

"**15-30-142. Returns and payment of tax — penalty and interest — refunds — credits.** (1) Each single individual and each married individual not filing a joint return with a spouse and having a gross income for the tax year of more than $1,500, as adjusted under the provisions of subsection (7), and married individuals not filing separate returns and having a combined gross income for the tax year of more than $3,000, as adjusted under the provisions of subsection (7), are liable for a return to be filed on forms and according to rules that the department may prescribe. The gross income amounts referred to in the preceding sentence must he increased by $800, as adjusted under the provisions of 15-30-112(6), for each additional personal exemption allowance that the taxpayer is entitled to claim for the taxpayer and the taxpayer's spouse under 15-30-112(3) and (4). A nonresident shall file a return if the taxpayer's gross income for the tax year derived from sources within Montana exceeds the amount of the personal exemption that the taxpayer is entitled to claim for the taxpayer and the taxpayer's spouse under the provisions of 15-30-112(2) through (4).

(2) In accordance with instructions set forth by the department, each taxpayer who is married and living with husband or wife and is required to file a return may, at the taxpayer's option, file a joint return with husband or wife even though one of the spouses has neither gross income nor deductions. If a joint return is made, the tax must be computed on the aggregate taxable income and the liability with respect to the tax is joint and several. If a joint return has been filed for a tax year, the spouses may not file separate returns after the time for filing the return of either has expired unless the department consents.

HeinOnline -- 1999 vol. II 1693 1999

(3) If a taxpayer is unable to make the taxpayer's own return, the return must be made by an authorized agent or hy a guardian or other person charged with the care of the person or property of the taxpayer.

(4) All taxpayers, including but not limited to those subject to the provisions of 15-30-202 and 15-30-241, shall compute the amount of income tax payable and shall, at the time of filing the return required by this chapter, pay to the department any balance of income tax remaining unpaid after crediting the amount withheld, as provided by 15-30-202, and any payment made by reason of an estimated tax return provided for in 15-30-241. However, the tax computed must be greater by $1 than the amount withheld and paid by estimated return as provided in this chapter. If the amount of tax withheld and the payment of estimated tax exceed by more than $1 tbe amount of income tax as computed, the taxpayer is entitled to a refund of the excess.

(5) As soon as practicable after the return is filed, the department shall examine and verify the tax.

(6) If the amount of tax as verified is greater than the amount paid, the excess must be paid by the taxpayer to the department within 60 days after notice of the amount of the tax as computed, with interest added ~~at the rate of 9% a year or fraction of a year on the additional tax~~ *as provided in [section 1].* In that case, there may not be a penalty because of the understatement if the deficiency is paid within 60 days after the first notice of the amount is mailed to the taxpayer.

(7) By November 1 of each year, the department shall multiply the minimum amount of gross income necessitating the filing of a return by the inflation factor for the tax year. These adjusted amounts are effective for that tax year, and persons who have gross incomes less than these adjusted amounts are not required to file a return.

(8) Individual income tax forms distributed by the department for each tax year must contain instructions and tables based on the adjusted base year structure for that tax year."

Section 8. Section 15-30-209, MCA, is amended to read:

"15-30-209. Violations by employer — penalties, interest, and remedies. (1) The first time in any consecutive 3-year period that an employer files a report or remits a tax after the due date, the department shall issue a warning notice explaining to the employer that the employer failed to file a report on the due date as required by law and, if applicable, tbat the employer failed to remit the tax on the due date as required by law and the department shall notify the employer of the consequences of any further subsequent late reporting or late remittance.

(2) ~~(a)~~ A late report penalty may not be assessed *under [section 1]* if an employer files the late report prior to the issuance of a notice of delinquent report.

~~(b) If the report is not received prior to the issuance of a notice of delinquent report, a $50 penalty must be assessed at the same time the notice is issued.~~

~~(3) (a) Taxes unpaid on the date on which they are due and payable are subject to a penalty of 2% per month, or any portion of a month, on the late-paid tax with a maximum penalty of 24%.~~

~~(b)~~*(3)* A late payment penalty may be ~~suspended~~ *waived pursuant to 15-1-206* if an acceptable payment agreement is made between the department and the employer. An employer's failure to meet the terms of the payment agreement

HeinOnline -- 1999 vol. II 1694 1999

voids the ~~suspension~~ *waiver* and the penalty must be recomputed from the due date on the unpaid tax.

~~(4) An employer must be assessed interest at the rate of 18% a year, computed at 1 1/2% a month or fraction of a month, on any remaining unpaid tax required to be paid.~~

~~(5)~~*(4)* (a) A subpoena penalty of $50 must be assessed whenever, as the result of a refusal of an employer to furnish wage information or pay taxes on time, the department issues a subpoena pursuant to 15-1-302, to obtain wage information or make a summary or jeopardy assessment pursuant to 15-1-703.

(b) If an employer fails to honor the subpoena provided in subsection ~~(5)(a)~~ *(4)(a)*, an additional $100 penalty must be added to the liability.

~~(6)~~*(5)* In addition to any other penalty provided by law, the failure of an employer to furnish a wage and tax statement as required hy 15-30-207(1) subjects the employer to a penalty of $5 for each failure with a minimum of $50.

~~(7)~~*(6)* Penalties may be waived by the department upon a sbowing of good cause by the employer. The penalty may be collected in the same manner as are other tax debts including a tax lien.

~~(8)~~*(7)* If any tax imposed by this chapter or any portion of the tax is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The priority date of the tax lien created by filing the warrant for distraint is the date the tax was due as indicated on the warrant for distraint.

~~(9)~~*(8)* The tax lien provided for in subsection ~~(8)~~ *(7)* is not valid against any third party owning an interest in the real or personal property whose interest is recorded prior to the filing of the warrant for distraint if the third party receives from the most recent grantor of the interest an affidavit stating that all taxes, assessments, penalties, and interest due from the grantor have been paid.

~~(10)~~*(9)* A grantor who signs and delivers to the third party an affidavit as provided in subsection ~~(9)~~ *(8)* is subject to the penalties imposed by 15-30-321~~(3)~~*(1)* if any part of the affidavit is untrue. ~~Notwithstanding the provisions of 15-30-321(3), the~~ *The* department may bring an action as provided in ~~that subsection~~ *15-30-321(1)* in the name of the state to recover the civil penalty and any delinquent taxes.

~~(11)~~*(10)* All of the remedies available to the state for the administration, enforcement, and collection of income taxes are available and apply to the tax required to be deducted and withheld under the provisions of 15-30-201 through 15-30-208 unless otherwise specifically addressed in this part."

Section 9. Section 15-30-241, MCA, is amended to read:

"15-30-241. Estimated tax — payment — exceptions — ~~penalty~~ *interest*. (1) (a) Each individual subject to tax under this chapter, except farmers or ranchers as defined in subsection (6), shall pay for the tax year, through employer withholding, as provided in 15-30-202, through payment of estimated tax in four installments, as provided in subsection (2) of this section, or through a combination of employer withholding and estimated tax payments, at least:

(i) 90% of the tax for the current tax year, less tax credits and withholding allowed the taxpayer; or

HeinOnline -- 1999 vol. II 1695 1999

(ii) an amount equal to 100% of the individual's tax liability for the preceding tax year, if the preceding tax year was a period of 12 months and if the individual filed a return for the tax year.

(b) Payment of estimated taxes under this section is not required if:

(i) the combined tax liability of employer withholding and estimated tax for the current year is less than $500 after reductions for credits and withholding;

(ii) the individual did not have any tax liability for the preceding tax year, which was a tax year of 12 months, and if the individual was a citizen or resident of the United States throughout that tax year;

(iii) the underpayment was caused by reason of casualty, disaster, or other unusual circumstances that the department determines to constitute good cause; or

(iv) the individual retired in the tax year after having attained the age of 62 or if the individual became disabled in the tax year. In addition, payment of estimated taxes under this section is not required in the tax year following the tax year in which the individual retired or became disabled.

(2) Estimated taxes must be paid in four installments according to one of the following schedules:

(a) For each taxpayer whose tax year begins on January 1, estimated tax payments are due on the following dates:

Installment	Date
First	April 15
Second	June 15
Third	September 15
Fourth	January 15 of the following tax year

(b) For each taxpayer whose tax year begins on a date other than January 1, estimated tax payments are due on the following dates:

Installment	Date
First	15th day of the 4th month following the beginning of the tax year
Second	15th day of the 6th month following the beginning of the tax year
Third	15th day of the 9th month following the beginning of the tax year
Fourth	15th day of the month following the close of the tax year

(3) (a) Except as provided in subsection (4), each installment must be 25% of the required annual payment determined pursuant to subsection (1). If the taxpayer's tax situation changes, each succeeding installment must be proportionally changed so that the balance of the required annual payment is paid in equal installments over the remaining period of time.

(b) If the taxpayer's tax situation changes after the date for the first installment or any subsequent installment, as specified in subsection (2)(a) or (2)(b), so that the taxpayer is required to pay estimated taxes, the taxpayer shall

HeinOnline -- 1999 vol. II 1696 1999

pay 25% for each succeeding installment except for the first one in which a payment is required. For estimated taxes required to be paid beginning with the second installment provided for in subsection (2)(a) or (2)(b), the taxpayer shall pay 50% for that installment and 25% for the third and fourth installments, respectively. For estimated taxes required to be paid beginning with the third installment provided for in subsection (2)(a) or (2)(b), the taxpayer shall pay 75% for that installment and 25% for the fourth installment.

(4) (a) If for any required installment the taxpayer determines that the installment payment is less than the amount determined under subsection (3)(a), the lower amount may be paid as an annualized income installment.

(b) For any required installment, the annualized income installment is the applicable percentage described in subsection (4)(c) applied to the tax computed on the basis of annualized taxable income in the tax year for the months ending before the due date for the installment less the total amount of any prior required installments for the tax year.

(c) For the purposes of this subsection (4), the applicable percentage is determined according to the following schedule:

Required Installment	Applicable Percentage
First	22.5%
Second	45%
Third	67.5%
Fourth	90%

(d) A reduction in a required installment resulting from the application of an annualized income installment must be recaptured by increasing the amount of the next required installment, determined under subsection (3)(a), by the amount of the reduction. Any subsequent installment must be increased hy the amount of the reduction until the amount has been recaptured.

(5) (a) If an estimated tax, an employer withholding tax, or a combination of estimated tax and employer withholding tax is underpaid, there must be added to the amount due under this chapter ~~a penalty~~ *interest* equal to ~~10%~~ *12%* a year on the amount of the underpayment. The ~~penalty~~ *interest* is computed on the amount of the underpayment, as determined in subsection (5)(b), for the period from the time the payment was due to the date payment was made or to the 15th day of the 4th month of the year following the tax year in which the payment was to be made, whichever is earlier.

(b) For the purpose of determining the ~~penalty~~ *amount of interest due* in subsection (5)(a), the amount of the underpayment is the required installment amount less the installment amount paid, if any, on or before the due dato for the installment.

(c) For the purpose of determining the ~~penalty~~ *amount of interest due* in subsection (5)(a), an estimated payment must he credited against unpaid required installments in the order in which those installments are required to be paid.

(d) For each married taxpayer filing separately on the same form, the ~~penalty~~ *interest* provided for in subsection (5)(a) must be computed on the combined tax liability after reductions for credits and withholding, as shown on the taxpayer's return.

HeinOnline -- 1999 vol. II 1697 1999

(e) ~~A penalty~~ *Interest* may not be ~~imposed~~ *charged* with respect to any underpayment of the fourth installment of estimated taxes if:

(i) the taxpayer pays in full the amount computed on the return as payable; and

(ii) the taxpayer files a return on or before the last day of the month following the close of the tax year referred to in subsection (2)(a) or (2)(b).

(6) For the purposes of this section, "farmer or rancher" means a taxpayer who derives at least 66 2/3% of the taxpayer's gross income, as defined in 15-30-101(7), from farming or ranching operations, or both.

(7) The department shall promulgate rules governing reasonable extensions of time for paying the estimated tax. An extension may not be for more than 6 months."

Section 10. Section 15-30-321, MCA, is amended to read:

"15-30-321. Penalties for violation of chapter. ~~(1) If any person, without purposely or knowingly violating any requirement imposed by this chapter, fails to file a return of income on or before its due date (determined with regard to an extension of time granted for filing the return), there shall be imposed a penalty of 5% of any balance of tax unpaid with respect to such return as of its due date, but in no event shall the penalty for failure to file a return by its due date be less than $5. The department may abate the penalty if the taxpayer establishes that the failure to file on time was due to reasonable cause and was not due to neglect on his part. If any person, without purposely or knowingly violating any requirement imposed by this chapter, fails to pay any tax on or before its due date (determined with regard to an extension of time granted for filing the return), there shall be added to the tax a penalty of 10% of said tax, but not less than $5, and interest shall accrue on the tax at the rate of 9% per annum for the entire period it remains unpaid. The department may abate the penalty if the taxpayer establishes that the failure to pay on time was due to reasonable cause and was not due to neglect on his part.~~

~~(2) If any person fails, purposely or knowingly violating any requirement imposed by this chapter, to make a return of income or to pay a tax if one is due at the time required by or under the provisions of this chapter, there shall be added to the tax an additional amount equal to 25% thereof, but such additional amount shall in no case be less than $25, and interest at 1% for each month or fraction of a month during which the tax remains unpaid.~~

~~(3)~~*(1)* Any individual, corporation, or partnership or any officer or employee of any corporation or member or employee of any partnership who~~, with intent to evade any tax or any requirement of this chapter or any lawful requirement of the department thereunder, purposely or knowingly, fails to pay the tax or to make, render, or sign any return or to supply any information within the time required by or under the provisions of this chapter or who, with like intent,~~ purposely ~~or knowingly makes,~~ *fails to file a return or files,* renders, or signs ~~any~~ *a* false or fraudulent return or statement or supplies ~~any~~ false or fraudulent information ~~shall be~~ *is* liable to a penalty of not ~~more~~ *less* than $1,000 *and not more than $5,000*, to be recovered ~~by the attorney general~~ in the name of the state by action in ~~any~~ *a* court of competent jurisdiction~~,~~.

(2) An individual, corporation, or partnership or an officer or employee of a corporation or member or employer of a partnership who, with intent to evade any

tax or requirement of this chapter or any lawful requirement of the department under this chapter, purposely fails to pay the tax or to file or sign any return or to supply information within the time required by this chapter or who with an intent to evade, purposely files or signs a false or fraudulent return or statement or supplies false or fraudulent information ~~and shall also be~~ *is* guilty of a misdemeanor and ~~shall~~ upon conviction *must* be fined not ~~to exceed~~ *more than* $1,000 or he imprisoned *for* not ~~to exceed~~ *more than* 1 year, or both, at the discretion of the court.

~~(4)~~*(3)* With respect to the imposition of a civil penalty, evidence produced hy the department to the effect that a tax has not been paid, that a return has not been filed, or that information has not been supplied as required under the provisions of this chapter is prima facie evidence tbat the tax bas not been paid, the return has not been filed, or the information has not been supplied."

Section 11. Section 15-30-323, MCA, is amended to read:

"15-30-323. Penalty *and interest* for deficiency. (1) If the payment required by 15-30-142(6) is not made within 60 days or if the understatement is due to negligence on the part of the taxpayer but without fraud, ~~there shall~~ *the penalty imposed in [section 1(1)(c)] must* be added to the amount of the deficiency ~~5% thereof; provided, however, that no deficiency penalty shall be less than $2~~. Interest ~~will~~ *on the additional assessment must* be computed ~~at the rate of 9% per annum or fraction thereof on the additional assessment~~ *as provided in [section 1]*. Except as otherwise ~~expressly~~ provided in this subsection, the interest ~~shall~~ in all cases *must* be computed from the date the return and tax were originally due as distinguished from the due date as it may have been extended to the date of payment.

(2) If the time for filing a return is extended, the taxpayer shall pay in addition interest ~~thereon at the rate of 9% per annum~~ *on the tax due as provided in [section 1]* from the time when the return was originally required to be filed to the time of payment."

Section 12. Section 15-31-510, MCA, is amended to read:

"15-31-510. Estimated payments — ~~interest penalty~~ — tax returns — ~~penalty~~ — interest. (1) For corporations failing to make estimated payments according to the schedule provided in 15-31-502(2), there is ~~assessed a 20%~~ *charged interest in the amount of 12%* a year ~~underpayment interest penalty~~ calculated as follows:

(a) The amount of underpayment is the amount of the required installment set forth in 15-31-502 that exceeds the amount, if any, of the installment paid on or before tbe last date prescribed for payment.

(b) Notwithstanding the provisions of subsection (1)(a), ~~the~~ interest ~~penalty~~ with respect to an underpayment of any installment may not be ~~imposed~~ *charged* if the total amount of all payments of estimated tax made on or before tlie last date prescribed for the payment of the installment equals or exceeds the amount tbat would have been required to be paid on or before that date if the estimated tax were an amount equal to 80% of the tax for the taxable year, computed by placing on an annualized basis the taxable income:

(i) for the first 3 months of the taxable year in the case of the installment required to be paid in the 4th month;

HeinOnline -- 1999 vol. II 1699 1999

(ii) for the first 3 months or for the first 5 months of the taxable year in the case of the installment required to be paid in the 6th month;

(iii) for the first 6 months or for the first 8 months of the taxable year in the case of the installment required to be paid in the 9th month; and

(iv) for the first 9 months or for the first 11 months of the taxable year in the case of the installment required to be paid in the 12th month of the taxable year.

(c) For purposes of subsection (1)(b), the taxable income must be placed on an annualized basis by:

(i) multiplying by 12 the taxable income referred to in subsection (1)(b); and

(ii) dividing the resulting amount by the numher of months in the taxable year (3, 5, 6, 8, 9, or 11, as the case may be) referred to in subsection (1)(b).

(d) Notwitbstanding tbe provisions of subsections (1)(a) through (1)(c), ~~the~~ interest ~~penalty~~ with respect to an underpayment of any installment may not be ~~imposed~~ *charged* if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of the installment equals or exceeds 80% of the amount determined under subsection (1)(e).

(e) To determine the amount for any installment:

(i) take the taxable income for all months during the taxable year preceding the filing month;

(ii) divide tbe amount by the base period percentage for all months during the taxable year preceding the filing month;

(iii) determine the tax on the amount calculated under subsection (1)(e)(ii); and

(iv) multiply the tax computed under subsection (1)(e)(iii) hy the base period percentage for the filing month and all months during the taxable year preceding the filing month.

(f) For purposes of this subsection (1):

(i) the base period percentage for any period of months is the average percentage that the taxable income for tlie corresponding months in each of the 3 preceding taxable years bears to the taxable income of the 3 preceding years;

(ii) the term "filing month" means the month in which the installment is required to be paid;

(iii) this suhsection (1) applies only if the base period percentage for any 6 consecutive months of the taxable year equals or exceeds 70%; and

(iv) the department ~~of revenue~~ may hy rule provide for the determination of the base period percentage in the case of reorganizations, new corporations, and other similar circumstances.

(2) ~~If~~ *Except as provided in subsection (1), if* any tax due under this chapter is not paid when due as provided in 15-31-545, by reason of extension or otberwise, interest is added to the tax due ~~at the rate of 12% a year from the due date until paid~~ *as provided in [section 1]*."

Section 13. Section 15-31-543, MCA, is amended to read:

"15-31-543. Penalties. (1) If ~~any~~ *a* corporation ~~shall refuse or neglect~~ *fails* to ~~make~~ *file* a return at the time ~~hereinbefore~~ specified in ~~each year~~ *15-31-502* or

HeinOnline -- 1999 vol. II 1700 1999

~~shall render~~ *files* a false or fraudulent return, ~~such~~ *the* corporation ~~shall be~~ *is* liable to a penalty of not ~~exceeding~~ *more than* $5,000 *to be recovered by an action in a court of competent jurisdiction.*

(2) A corporation that purposely fails to file a return at the time specified in 15-31-502 or that purposely files a false or fraudulent return ~~and~~ may be adjudged by a court of competent jurisdiction to forfeit the right to continue to engage in business in the state as ~~such~~ *a* corporation until the license fee, together with all penalties and costs, ~~shall be~~ *is* paid~~,~~. ~~which~~ *The* forfeiture may be enforced ~~by the attorney general~~ by proper proceedings in court.

~~(2)~~*(3)* ~~Every~~ *Each* officer or employee of any corporation or other person who, without fraudulent intent, ~~shall fail to make, render,~~ *fails to file,* sign, or verify any return or to supply any information within the time required by ~~or under~~ the provisions of this chapter ~~shall be~~ *is* liable ~~to a~~ *for the* penalty ~~of not more than $100 to be~~ imposed *by [section 1]*~~,~~. ~~assessed, and collected by the~~ *The* department ~~of revenue~~ *shall assess and collect any penalty* in the same manner as is provided in this chapter with regard to delinquent taxes."

Section 14. Section 15-31-545, MCA, is amended to read:

"15-31-545. ~~Graduated delinquent~~ *Delinquent* penalty for corporate taxpayers. If the tax for any corporation is not paid on or before the due date of the return, as provided in 15-31-111(2), or if the tax is not paid on or before the due date of the return, as provided in 15-31-111(3), there is assessed a penalty ~~of 1% of the tax due, increasing by 1% for each 30-day period that the tax or any fraction of the tax remains unpaid, up to a maximum penalty of 25% of the tax due. This penalty must be assessed unless it is shown that the failure was due to a reasonable cause and was not due to neglect~~ *as provided in [section 1(1)(c)].*"

Section 15. Section 15-35-105, MCA, is amended to read:

"15-35-105. Penalty *and interest* for delinquent tax — *waiver.* *(1)* The department shall add to the amount of all delinquent severance taxes ~~a~~ penalty ~~of 10% of the delinquent amount plus interest at the rate of 1% per month or fraction thereof computed on the total amount of severance tax and penalty. Interest shall be computed from the date the severance tax was due to the date of payment~~ *and interest as provided in [section 1].*

(2) The department shall mail to tbe person required to file a quarterly report and pay any severance tax, a letter setting forth the amount of tax, penalty, and interest due~~,~~. ~~and the~~ *The* letter ~~shall further~~ *must* contain a statement that if payment is not made, a warrant for distraint may be filed.

(3) ~~The penalty amount~~ *A penalty* may be waived by the department ~~if reasonable cause for the failure or neglect to file the quarterly statement is provided to the department~~ *pursuant to 15-1-206.*"

Section 16. Section 15-35-112, MCA, is amended to read:

"15-35-112. Deficiency asscssment — review — interest. (1) When the department ~~of revenue~~ determines that the amount of tax due is greater than the amount disclosed by a return, it shall mail to the taxpayer a notice, pursuant to 15-1-211, of the additional tax proposed to be assessed. The taxpayer may seek review of the determination pursuant to 15-1-211.

(2) Interest on any deficiency assessment ~~shall~~ *must* bear interest ~~until paid at the rate of 1% a month or fraction thereof, computed from the original due date of the return~~ *as provided in [section 1].*"

HeinOnline -- 1999 vol. II 1701 1999

Section 17. Section 15-35-113, MCA, is amended to read:

"15-35-113. Credit for overpayment — interest on overpayment. (1) If the department ~~of revenue~~ determines that the amount of tax, penalty, or interest due for any year is less than the amount paid, the amount of the overpayment ~~shall~~ *must* be credited against any tax, penalty, or interest then due from the taxpayer and the balance refunded to the taxpayer or its successor through reorganization, merger, or consolidation or to its shareholders upon dissolution.

(2) Except as provided in subsection (3), interest ~~shall~~ *must* be allowed on overpayments at the same rate as is charged on ~~deficiency assessments~~ *unpaid taxes* provided in ~~15-35-112~~ *[section 1]* due from the due date of the return or from the date of overpayment, ~~(~~whichever ~~date~~ is later~~)~~, to the date the department approves refunding or crediting of the overpayment.

(3) (a) Interest ~~shall~~ *may* not accrue during any period *in which* the processing of a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department for the purpose of verifying the amount of the overpayment.

(b) ~~No interest shall be~~ *Interest is not* allowed:

(i) if the overpayment is refunded within 6 months from the date the return is due or from the date the return is filed, whichever is later; or

(ii) if the amount of interest is less than $1.

(c) A payment not made incident to a bona fide and orderly discharge of an actual tax liability or one reasonably assumed to be imposed by this law ~~shall~~ *may* not be considered an overpayment with respect to which interest is allowable."

Section 18. Section 15-36-311, MCA, is amended to read:

"15-36-311. Quarterly payment of tax — statement — failure to pay penalty. (1) The oil and natural gas production tax must be paid in quarterly installments for the quarterly periods ending, respectively, March 31, June 30, September 30, and December 31 of each year, and the amount of the tax for each quarterly period must be paid to the department within 60 days after the end of each quarterly period.

(2) The operator shall complete on forms prescribed by the department a statement showing the total number of barrels of merchantable or marketable oil or cubic feet of natural gas produced and sold by the person in the state during each month of the quarter and during the whole quarter, the average value of the production sold during each month, and the total value of the production sold for the whole quarter, together with the total amount due as taxes for the quarter. The statement must be filed within the time provided in subsection (1). The statement must be accompanied by the tax due. The statement must be signed by the individual or the president, vice president, treasurer, assistant treasurer, or authorized agent of the association, corporation, joint-stock company, or syndicate making the statement. A person engaged in carrying on business at more than one place in this state or owning, leasing, controlling, or operating more than one oil or gas well in this state may include all operations in one statement.

(3) If the tax is not paid on or before the due date, there must be assessed ~~a~~ penalty ~~of 10% of the amount of the tax not paid. If the tax is not paid when due, interest also must be added at the rate of 1% a month or fraction of a month,~~

~~computed on the total amount of the tax from the due date until paid~~ *and interest as provided in [section 1].* The department may waive ~~the 10%~~ *any* penalty ~~if reasonable cause for the failure to pay is provided to the department~~ *pursuant to 15-1-206.*"

Section 19. Section 15-36-313, MCA, is amended to read:

"**15-36-313. Procedure to compute tax in absence of statement — estimation of tax — failure to file penalty and interest.** (1) If the operator fails to file any statement required by 15-36-311 within the time required, the department shall, immediately after the time has expired, ascertain the number of barrels of oil or cubic feet of gas produced and sold by the person in this state during the quarter and during each month of the quarter. The department also shall determine the average value of the barrels of oil produced and sold during each month or the average value of cubic feet of ges produced and sold during each month and fix the amount of the taxes due from the person for the quarter.

(2) The department shall impose ~~a~~ penalty ~~of 10% of the tax due plus interest at the rate of 1% a month or fraction of a month, computed on the total amount of the tax. Interest must be computed from the date on which the oil and natural gas production taxes were due to the date of payment~~ *and interest as provided in [section 1].* The department shall mail to the taxpayer a notice, pursuant to 15-1-211, of the tax, penalty, and interest proposed to be assessed. The taxpayer may seek review of the determination pursuant to 15-1-211. The notice must contain a statement that if payment is not made, a warrant for distraint may be filed. The department may waive ~~the 10%~~ *any* penalty ~~if reasonable cause for the failure to file the statement required by 15-36-311 is provided to the department~~ *pursuant to 15-1-206.*"

Section 20. Section 15-36-314, MCA, is amended to read:

"**15-36-314. Deficiency assessment — local government severance tax deficiency assessment — review —*penalty and* interest.** (1) When the department determines that the amount of the tax due, including the amount due for the local government severance tax, is greater than the amount disclosed by a return, it sball mail to the taxpayer a notice, pursuant to 15-1-211, of the additional tax proposed to be assessed. The notice must contain a statement that if payment is not made, a warrant for distraint may be filed. The taxpayer may seek review of the determination pursuant to 15-1-211.

(2) (a) The department shall collect deficiency assessments of the local government severance tax in the same manner as it collects oil and natural gas production tax deficiency assessments.

(b) Any local gevernment severance taxes tbat are collected on oil and natural gas production occurring after December 31, 1988, and before January 1, 1995, must be treated as current revenue for the purposes of distribution and must be distributed pursuant to 15-36-324(8)(a).

(3) ~~A~~ *Penalty and interest must be added to a* deficiency assessment ~~must bear interest until paid at the rate of 1% a month or fraction of a month, computed from the original due date of the return~~ *as provided in [section 1].*"

Scction 21. Section 15-36-315, MCA, is amended to read:

"**15-36-315. Credit or refund for overpayment — refund from county — interest on overpayment.** (1) If the department determines that the amount of tax, penalty, or interest due for any taxable period is less than the amount paid,

HeinOnline -- 1999 vol. II 1703 1999

the amount of the overpayment must be credited against any tax, penalty, or interest then due from the taxpayer and tbe balance refunded to the taxpayer or its successor through reorganization, merger, or consolidation or to its shareholders upon dissolution.

(2) (a) The amount of an overpayment credited against any tax, ponalty, or interest due for any tax period or any refund or portion of a refund, which has not been distributed pursuant to 15-36-324, must be withheld from the current distribution made pursuant to 15-36-324.

(b) If the amount of the refund reduces the amount of tax previously distributed pursuant to 15-36-324 and if the current distribution, if any, is insufficient to offset the refund, then the department shall demand the amount of the refund from the county to which the tax was originally distributed. The county treasurer shall remit the amount demanded within 30 days of the receipt of notice from the department.

(3) A refund that is paid by the department for an overpayment of the local government severance tax for oil or natural gas production occurring after December 31, 1988, and before January 1, 1995, must be treated as issued for the current distribution period for distribution purposes, and the refund must be apportioned in the same manner as taxes are distributed pursuant to 15-36-324(8)(a).

(4) Except as provided in subsection (5), interest must be allowed on overpayments at the same rate as is charged on ~~deficiency assessments~~ *unpaid taxes* provided in ~~15-36-314~~ *[section 1]* beginning from the due date of tho return or from the date of overpayment, whichever date is later, to the date on which the department approves refunding or crediting of the overpayment.

(5) (a) Interest may not accrue during any period in which tbe processing of a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department for the purpose of verifying the amount of the overpayment.

(b) Interest is not allowed:

(i) if the overpayment is refunded within 6 months from the date on which the return is due or from the date on which the return is filed, whichever is later; or

(ii) if the amount of interest is less than $1."

Section 22. Section 15-36-325, MCA, is amended to read:

"15-36-325. Local government severance tax payments for calendar year 1995 produetion — distribution of payments — not subjeet to I-105 limitations. (1) The local government severance tax imposed under 15-36-101, as that section read before January 1, 1996, for calendar year 1995 production is due as follows:

(a) for oil and natural gas production occurring in the second calendar quarter of 1995, the tax is due May 31, 1997;

(b) for oil and natural gas production occurring in the third calendar quarter of 1995, the tax is due May 31, 1998; and

(c) for oil and natural gas production occurring in the fourth calendar quarter of 1995, the tax is due May 31, 1999.

HeinOnline -- 1999 vol. II 1704 1999

(2) (a) If the taxpayer pays the entire local government severance tax liability for calendar year 1995 on or before June 30, 1996, the taxpayer must receive a 6% reduction in the total local government severance tax liability.

(b) Any payment of local government severance taxes for calendar year 1995 made on or before June 30, 1997, does not accrue interest. Any payment of local government severance taxes for calendar year 1995 made after June 30, 1997, must accrue interest at the rate of 1% a month or fraction of a month from July 1, 1997, to the date of payment. Any payment for the third quarter of 1995 received after May 31, 1998, and any payment for the fourth quarter of 1995 received after May 31, 1999, is subject to ~~the~~ *a* late payment penalty ~~provisions in 15-36-311~~ *of 10% of the amount of the tax not paid. The department may waive the penalty pursuant to 15-1-206. The penalty and interest provisions of [section 1] do not apply to this subsection (2)(b).*

(c) In the case of the dissolution of the operater or a chango in the operator of any lease or unit, any unpaid local government severance tax for calendar year 1995 becomes due on the date of dissolution or on the date of the chango in operator. The operator is subject to the provisions of subsection (2)(a) regarding the 6% tax liability reduction or the provisions of subsection (2)(h) regarding interest and penalties.

(3) The department shall determine the amount of tax collected under subsections (1) and (2) from within each taxing unit.

(4) For purposes of the distribution of local government severance taxes collected under this section, the department shall use the unit value of oil and gas for each taxing unit as determined in 15-36-323.

(5) The local government severance tax must be deposited in the state special revenue fund in the state treasury and transferred to the county for distribution as provided in subsection (6).

(6) For the purpose of the distribution of the local government severance tax for calendar year 1995 production, the department shall adjust the unit value determined under this section according to tbe ratio that the local government severance taxes collected during the quarters for which the distribution occurs plus penalties and interest on delinquent local government severance taxes bears to the total liability for local government severance taxes for the quarters for which the distribution occurs. The taxes must be calculated and distributed as follows:

(a) By July 31 of each of the years 1997, 1998, and 1999, the department shall calculate and distribute to each eligible county the amount of local government severance tax for calendar year 1995 production, determined by multiplying the unit value, as adjusted in this subsection (6), by the units of production on which the local government severance tax was owed during calendar year 1995 production.

(b) Any amount by which the total tax liahility exceeds or is less than the total distributions determined in subsection (6)(a) must be calculated and distributed in tlie following manner:

(i) The excess amount or shortago must be divided by the total distribution determined for that period to obtain an excess or shortago percentago.

HeinOnline -- 1999 vol. II 1705 1999

(ii) The excess percentage must be multiplied by the distribution to each taxing unit, and this amount must be added to the distrihution to each respective taxing unit.

(iii) The shortage percentage must be multiplied by the distribution to each taxing unit, and this amount must be subtracted from the distribution to each respective taxing unit.

(7) (a) The county treasurer shall distribute the money received under subsection (6) between the county and school taxing units. The distribution between county and school taxing units is the ratio of the number of mills levied for fiscal year 1990 against 1988 production in each taxing unit for the county and schools, including the county equalization levies that were in effect under 20-9-331 and 20-9-333 as those sections read on July 1, 1989, and the university 6-mill levy imposed under 20-25-423, except that a distribution may not be made to a municipal taxing unit or the state equalization aid levy imposed under 20-9-360. Distribution of money for the county equalization levies and the university levy must be remitted to the state by the county treasurer. The amounts distributed under subsections (7)(b) and (7)(c) are for the exclusive use of county and school taxing units.

(b) The county treasurer shall deposit the money from subsection (7)(a) allocated to county levies to the oil and natural gas accelerated tax fund.

(c) The trustees of a school district may allocate any payment received under subsection (7)(a) to any budget fund of the district or to the miscellaneous programs fund established in 20-9-507. The trustees shall direct the county treasurer to deposit the local government severance tax payments under this section to the funds of the district in accordance with the allocations determined by the trustees.

(8) Local government severance tax payments to a county pursuant to this section are not subject to the limitations of Title 15, chapter 10, part 4. Payments of local government severance tax pursuant to this section may not he used for county classification purposes under 7-1-2111 and may not be considered in the determination of bonding limits under 7-7-2101, 7-7-2203, 7-14-2524, and 7-16-2327.

(9) The distribution to taxing units under this section is statutorily appropriated as provided in 17-7-502."

Section 23. Section 15-37-105, MCA, is amended to read:

"15-37-105. Computation and payment of tax. (1) The tax due under this part is computed according to 15-37-103 and is due and payahle on or before March 31 of each year for the products produced in the preceding calendar year. The tax due under this part becomes delinquent as of midnight on March 31 of the year immediately following the production year. If good cause is shown, the department may grant a reasonable extension of time for payment of the tax. During the period of any extension granted, the tax due bears interest ~~at a rate of 1% a month or any part thereof~~ *as provided in [section 1].*

(2) If any person has sold or otherwise disposed of any of the mine's products at a price suhstantially below the true market price of the product at the time and place of sale or disposal, then the department shall compute the gross value of the portion of the mine's product sold or disposed of suhstantially below the market price. The gross value ~~shall~~ *must* be based upon the quotations of the

price of the mine's product in New York City at the time the portion of the product was sold or otherwise disposed of as evidenced by some established authority or market report, such as the Engineering and Mining Journal of New York, or some other standard publication, giving the market reports for the year covered by the statement. If there is no quotation covering any particular product, then the department shall fix the value of the gross product or portion of the gross product that was sold or otherwise disposed of at a price substantially below the true market price at the time and place of sale or disposal in a manner as may seem to be equitable."

Section 24. Section 15-37-108, MCA, is amended to read:

"15-37-108. Delinquent taxes — penalty *and interest*. All license taxes assessed under the provisions of this part ~~shall~~ become delinquent if not paid on or before midnight of March 31 of the year immediately following the production year. The department shall add to the amount of delinquent metalliferous mines tax ~~a~~ penalty ~~of 10%. The whole amount of license tax, together with penalty, shall bear interest at the rate of 1% per month or fraction thereof. Interest shall be computed from the date the tax becomes delinquent until it is paid~~ *and interest as provided in [section 1].* The department may waive ~~the 10%~~ *a late payment* penalty ~~if it determines that a reasonable cause exists for failure to pay the tax on or before March 31 of the year immediately following the production year~~ *as provided in 15-1-206.*"

Section 25. Section 15-37-109, MCA, is amended te read:

"15-37-109. False or erroneous statements — investigation *penalty and interest*. (1) ~~Should the director of~~ *When* the department ~~of revenue have reason to believe~~ *determines* that any statement and return is false or erroneous ~~in any particular~~, ~~he~~ *it* may require ~~the~~ *a* person or~~, if made by a corporation, association, or company,~~ the officers ~~thereof and~~ *or* the employees of ~~any such~~ *the* person, ~~corporation, association, or company~~ to ~~appear before the director of revenue or his agent and~~ testify concerning the ~~same~~ *statement and return* and ~~any statement contained therein and~~ may examine all books, records, papers, and documents of ~~such~~ *the* person, pertaining to ~~such~~ *the* business, upon giving 5 days' written notice to ~~such~~ *the* ~~persons~~ *person* or officers or employees ~~thereof~~ having custody of ~~such~~ *the* books, records, papers, and documents. ~~Any~~ *A* person ~~failing, refusing, or neglecting~~ *who fails* to ~~so~~ appear or ~~refusing~~ *who refuses* to be sworn, ~~or~~ to testify, or ~~refusing~~ to answer any material question propounded by the ~~director or any of his employees~~ *department* or ~~refusing~~ *who refuses* to permit the ~~director or his employees~~ *department* to examine ~~such~~ *the* books, records, papers, or documents ~~or any thereof~~ pertaining to ~~such~~ *the* business ~~shall be deemed~~ *is considered* guilty of a misdemeanor and upon conviction ~~thereof~~ shall be punished by a fine of not more than $1,000 or by imprisonment in the county jail for ~~a term~~ not ~~exceeding~~ *more than* 6 months or by both ~~such~~ fine and imprisonment. If the ~~director~~ *department*, after hearing ~~such~~ *the* evidence and after ~~such~~ *the* examination of the books, papers, documents, and records of ~~such~~ *the* person, ~~shall find and determine~~ *finds* that ~~such~~ *the* statement and return are erroneous or false in any material matter, the ~~director~~ *department* shall ~~change and~~ correct the ~~same so as~~ *return* to show the true gross value of product and shall reassess the amount of the license tax due from ~~such~~ *the* person and may add ~~thereto~~ *to the tax* a penalty of not ~~exceeding~~ *more than* 50% and shall ~~thereupon~~ immediately mail to ~~such~~ *the* person a written notice of the corrections ~~and changes~~ made ~~in such~~ *to the* statement and return and the amount of the license tax and penalty due and payable.

HeinOnline -- 1999 vol. II 1707 1999

(2) The department shall collect ~~such~~ *the* license tax with penalty added, and if the ~~same~~ *tax* has become delinquent, it shall also collect interest ~~thereon from the date of delinquency until paid, at the rate of 1% per month or fraction thereof~~ *as provided in [section 1]*. In order to verify ~~such~~ *the* statement and return, the department may require any person engaged in the business of smelting, milling, reduction, or treatment ~~in any manner~~ of ores extracted or produced from any mine or mining property in the state ~~of Montana~~ to appear before the ~~director of revenue~~ *department* and testify concerning the gross mineral content of any ~~such~~ ore or at the request of ~~said director~~ *the department* to furnish sworn statements showing the gross yield of ~~such~~ *the* ores, mineral products, or deposits in constituents of commercial value~~, that is to say,~~ *including* the number of ounces of gold or silver, pounds of copper, lead, or zinc, or other commercially valuable constituents of ~~said~~ *the* ores or mineral products or deposits, measured by standard units of measurement, during the period covered by ~~such~~ *the* statement, without any deductions ~~whatsoever~~ for smelting, milling, reduction, or treatment of ~~such~~ *the* ores or mineral product.

(3) The books, records, papers, and documents of ~~such~~ *the* person engaged in the business of smelting, milling, reduction, or treatment in any manner of ores extracted or produced by any mine or mining property in the state ~~shall~~ *must* be open to inspection and examination by the ~~director of revenue or his employees~~ *department* at any time or place that the ~~director~~ *department* may designate.

(4) If ~~any~~ *a* person required by this part to ~~make or~~ file ~~any statement~~ *a return* or to verify, under oath, any statement ~~shall make~~ *on the return makes* ~~such~~ *a false* statement ~~false~~ in any material respect or ~~shall verify~~ *verifies*, under oath, any *false* statement ~~false in any respect~~ or ~~shall fail, neglect, or refuse~~ *fails* to file any statement required by ~~said~~ *the* department or ~~shall refuse~~ *refuses* to appear before the ~~director of revenue~~ *department* to testify concerning the gross mineral content of any ~~such~~ ore or ~~shall refuse~~ *refuses* to allow the ~~director or his employees~~ *department* at any time or place to inspect or examine the books, records, papers, and documents of ~~such~~ *the* person engaged in the business of smelting, milling, reduction, or treatment ~~in any manner~~ of ores extracted or produced by any mine or mining property in the state, ~~of Montana shall be deemed~~ *the person is considered* guilty of a misdemeanor and shall be punished by a fine of not ~~exceeding~~ *more than* $1,000 or by imprisonment in the county jail for not ~~exceeding~~ *more than* 6 months or by both ~~such~~ *a* fine and imprisonment."

Section 26. Section 15-37-114, MCA, is amended to read:

"15-37-114. Deficiency assessment — review — interest. (1) When the department ~~of revenue~~ determines that the amount of tax due is greater than the amount disclosed by a return, it shall mail to the taxpayer a notice, pursuant to 15-1-211, of the additional tax proposed to be assessed. The taxpayer may seek review of the determination pursuant to 15-1-211.

(2) Interest on any deficiency assessment ~~shall~~ *must* bear interest ~~until paid at the rate of 1% a month or fraction thereof, computed from the original due date of the return~~ *as provided in [section 1]*."

Section 27. Section 15-37-115, MCA, is amended to read:

"15-37-115. Credit for overpayment — interest on overpayment. (1) If the department ~~of revenue~~ determines that the amount of tax, penalty, or interest due for any year is less than the amount paid, the amount of the

overpayment ~~shall~~ *must* be credited against any tax, penalty, or interest then due from the taxpayer and the balance refunded to the taxpayer or its successor through reorganization, merger, or consolidation or to its shareholders upon dissolution.

(2) Except as provided in subsection (3), interest ~~shall~~ *must* be allowed on overpayments at the same rate as is charged on ~~deficiency assessments~~ *the amount of unpaid tax as* provided in ~~15-37-114~~ *[section 1]* due from the due date of the return or from the date of overpayment, ~~(~~whichever ~~date~~ is later~~)~~, to the date the department approves refunding or crediting of the overpayment.

(3) (a) Interest ~~shall~~ *may* not accrue during any period *in which* the processing of a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department for the purpose of verifying the amount of the overpayment.

(b) ~~No interest shall be~~ *Interest is not* allowed:

(i) if the overpayment is refunded within 6 months from the date the return is due or from the date the return is filed, whichever is later; or

(ii) if the amount of interest is less than $1.

(c) A payment not made incident to a bona fide and orderly discharge of an actual tax liability or one reasonably assumed to be imposed by this ~~law shall~~ *chapter is* not ~~be~~ considered an overpayment with respect to which interest is allowable."

Section 28. Section 15-37-205, MCA, is amended to read:

"15-37-205. Procedure on failure to file statement. (1) If ~~any~~ *a* person ~~shall fail, neglect, or refuse~~ *fails* to file any statement required by 15-37-204 within the time required or ~~shall fail~~ *fails* to pay the tax required by this part on or before the date ~~such~~ *the* payment is due, the department ~~of revenue~~ shall immediately after ~~such~~ *the* time has expired proceed to ~~inform itself as best it may regarding~~ *determine* the amount produced by ~~such~~ *the* person within this state during ~~such~~ *the* quarter and during each month ~~thereof~~ *of the quarter* and shall determine and fix the amount of the license taxes due to the state from ~~such~~ *the* person for ~~such~~ *the* quarter.

(2) The department shall add to the amount of all delinquent micaceous mineral mines license taxes ~~a~~ penalty ~~of 10% of the amount of such license taxes plus interest at the rate of 1% per month or fraction thereof computed on the total amount of license taxes and penalty. Interest shall be computed from the date the license taxes were due to the date of payment~~ *and interest as provided in [section 1].* The ~~10%~~ *department may waive a* penalty ~~may be waived by the department if reasonable cause for the failure and neglect to file the statement required by 15-37-204 is provided~~ *pursuant to 15-1-206.*"

Section 29. Section 15-37-210, MCA, is amended to read:

"15-37-210. Deficiency assessment — review — interest. (1) When the department ~~of revenue~~ determines that the amount of tax due is greater than the amount disclosed by a return, it shall mail to the taxpayer a notice, pursuant to 15-1-211, of the additional tax proposed to be assessed. The taxpayer may seek review of the determination pursuant to 15-1-211.

HeinOnline -- 1999 vol. II 1709 1999

(2) Interest on any deficiency assessment ~~shall~~ *must* bear interest ~~until paid at the rate of 1% a month or fraction thereof, computed from the original due date of the return~~ *as provided in [section 1].*"

Section 30. Section 15-37-211, MCA, is amended to read:

"**15-37-211. Credit for overpayment — interest on overpayment.** (1) If the department ~~of revenue~~ determines that the amount of tax, penalty, or interest due for any year is less than the amount paid, the amount of the overpayment ~~shall~~ *must* be credited against any tax, penalty, or interest ~~then~~ due from the taxpayer and the balance refunded to the taxpayer or its successor through reorganization, merger, or consolidation or to its shareholders upon dissolution.

(2) Except as provided in subsection (3), interest ~~shall~~ *must* be allowed on overpayments at the same rate as ~~is charged on deficiency assessments~~ provided in ~~15-37-210~~ *[section 1]* due from the due date of the return or from the date of overpayment, ~~(~~whichever ~~date~~ is later~~)~~, to the date the department approves refunding or crediting of the overpayment.

(3) (a) Interest ~~shall~~ *may* not accrue during any period *in which* the processing of a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department for the purpose of verifying the amount of the overpayment.

(b) ~~No interest shall be~~ *Interest is not* allowed:

(i) if the overpayment is refunded within 6 months from the date the return is due or from the date the return is filed, whichever is later; or

(ii) if the amount of interest is less than $1.

(c) A payment not made incident to a bona fide and orderly discharge of an actual tax liability or one reasonably assumed to be imposed by this law ~~shall~~ *is* not ~~be~~ considered an overpayment with respect to which interest is allowable."

Section 31. Section 15-38-107, MCA, is amended to read:

"**15-38-107. Proeedure in case of failure to file statement.** (1) If any person fails~~, refuses, or neglects~~ to make and file a statement ~~and return it~~ within the time prescribed, the department shall immediately after ~~such~~ *the* time has expired determine~~, as nearly as may be possible from any returns or reports filed with the state or from any other information which the department may be able to obtain,~~ the gross yield of the mineral of ~~such~~ *the* person from ~~such~~ *the* business during the calendar year immediately preceding the year in which the statement is to be filed and shall fix the amount of the tax due to the state from ~~such~~ *the* person for ~~such~~ *the* calendar year and shall add to the amount of ~~such~~ *the* tax ~~a~~ penalty ~~of $25 or 10%, whichever is greater~~ *and interest as provided in [section 1].*

(2) If ~~any~~ *a* person fails~~, refuses, or neglects~~ to pay the tax when due, the department shall immediately determine~~, as nearly as may be possible from any information which the department may be able to obtain,~~ the total gross value of product of the person from the business during the year for which the tax is due and shall fix the amount of tax due to the state and shall add to the amount ~~a~~ penalty ~~of 10% plus interest at the rate of 1% a month or fraction thereof computed on the total amount of tax and penalty. Interest shall be computed from the date the tax was due to the date of payment~~ *and interest as provided in [section 1].*

HeinOnline -- 1999 vol. II 1710 1999

(3) The department shall mail to the person failing to file an annual statement or pay any tax a letter setting forth the amount of tax, penalty, and interest due. The letter ~~shall~~ *must* advise that if payment is not received, a warrant for distraint may be filed.

(4) Penalties *imposed by [section 1]* may be waived by the department ~~if reasonable cause for the failure and neglect to file the statement required by 15-38-105 or the failure to pay the tax required by 15-38-106 is provided to the department~~ *pursuant to 15-1-206*."

Section 32. Section 15-50-309, MCA, is amended to read:

"15-50-309. Penalty and interest for delinquency — waiver. (1) License taxes due under this chapter become delinquent if not paid within 30 days after payment to the contractor. The department shall add to the amount of all delinquent license taxes a penalty ~~of 10% of the amount of license taxes plus interest at the rate of 1% per month or fraction of a month, computed on the total amount of license taxes. Interest is computed from the date the license taxes were due to the date of payment~~ *and interest as provided in [section 1].*

(2) ~~The 10% penalty~~ *Penalties imposed by [section 1]* may he waived by the department ~~if reasonable cause for the failure or neglect to file the statement required by 15-50-206 or pay the tax due is provided to the department~~ *pursuant to 15-1-206*."

Section 33. Section 15-51-103, MCA, is amended to read:

"15-51-103. Disposition of revenue — *penalty and* interest on delinquency. The department ~~of revenue~~ shall, in accordance with the provisions of 15-1-501, promptly remit the collected taxes to the state treasurer. Taxes not paid on the due date are delinquent, and a penalty ~~of 10% plus interest at the rate of 1% per month or fraction of a month computed on the total of tax and penalty must be charged~~ *and interest must be added to the delinquent taxes as provided in [section 1].*"

Section 34. Section 15-51-109, MCA, is amended to read:

"15-51-109. Deficiency assessment — review — interest. (1) When the department ~~of revenue~~ determines that the amount of tax due is greater than the amount disclosed by a return, it shall mail to the taxpayer a notice, pursuant to 15-1-211, of the additional tax proposed to be assessed. The taxpayer may seek review of the determination pursuant to 15-1-211.

(2) Interest on any deficiency assessment ~~shall bear interest until paid at the rate of 1% a month or fraction thereof, computed from the original due date of the return~~ *must be computed as provided in [section 1].*"

Section 35. Section 15-51-110, MCA, is amended to read:

"15-51-110. Credit for overpayment — interest on overpayment. (1) If the department ~~of revenue~~ determines that the amount of tax, penalty, or interest due for any year is less than the amount paid, the amount of the overpayment ~~shall~~ *must* be credited against any tax, penalty, or interest then due from the taxpayer and the balance refunded to the taxpayer or its successor through reorganization, merger, or consolidation or to its shareholders upon dissolution.

(2) Except as provided in subsection (3), interest ~~shall~~ *must* he allowed on overpayments at the same rate as ~~is charged on deficiency assessments~~ provided

HeinOnline -- 1999 vol. II 1711 1999

in ~~15-51-109~~ *[section 1]* due from the due date of the return or from the date of overpayment, ~~(~~whichever ~~date~~ is later~~)~~, to the date the department approves refunding or crediting of the overpayment.

(3) (a) Interest ~~shall~~ *may* not accrue during any period *in which* the processing of a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested hy the department for the purpose of verifying the amount of the overpayment.

(b) ~~No interest shall be~~ *Interest is not* allowed:

(i) if the overpayment is refunded within 6 months from the date the return is due or from the date the return is filed, whichever is later; or

(ii) if the amount of interest is less than $1.

(c) A payment not made incident to a bona fide and orderly discharge of an actual tax liability or one reasonably assumed to be imposed by this ~~law shall~~ *chapter may* not be considered an overpayment with respect to which interest is allowable."

Section 36. Section 15-51-111, MCA, is amended to read:

"15-51-111. Procedure to compute tax in absence of statement — *waiver of penalty.* *(1)* If any person fails~~, neglects, or refuses~~ to file any statement required by 15-51-101 within the time ~~therein~~ required, the department ~~of revenue~~ shall, after ~~such~~ *the* time has expired, ~~proceed to inform itself as best it may regarding~~ *determine* the number of KWH produced by ~~such~~ *the* person in this state during ~~such~~ *the* quarter and compute the amount of taxes due to the state from ~~such~~ *the* person for ~~such~~ *the* quarter and add ~~the~~ penalty and interest as required by ~~15-51-103~~ *[section 1]*. The department shall mail to the person required to file a quarterly report and pay ~~such~~ *the* tax a letter setting forth the amount of tax, penalty, and interest due, and the letter must ~~further~~ contain a statement that if payment is not made, a warrant for distraint may be filed.

(2) ~~The 10%~~ *A* penalty *imposed by [section 1]* may be waived by the department ~~if reasonable cause for failure and neglect to file the statement required by 15-51-101 is provided to the department~~ *pursuant to 15-1-206*."

Section 37. Section 15-53-105, MCA, is amended to read:

"15-53-105. Deficiency assessment — review — interest — penalty. (1) If the department ~~of revenue~~ determines that the amount of tax due is greater than the amount reported, it shall mail to the taxpayer a notice, pursuant to 15-1-211, of the additional tax proposed to he assessed. The taxpayer may seek review of the determination pursuant to 15-1-211.

(2) (a) Interest ~~on any~~ *must be added to the* deficiency assessment ~~bears interest until paid, at the rate of 1% a month or fraction of a month, computed from the original due date of the return~~ *as provided in [section 1].*

(b) If payment is not made within ~~10~~ *30* days, the tax is delinquent and a penalty ~~of 10%~~ must be added to the amount of the deficiency *as provided in [section 1].*"

Section 38. Section 15-53-106, MCA, is amended to read:

"15-53-106. Credit for overpayment — interest on overpayment. (1) If the department ~~of revenue~~ determines that the amount of tax, penalty, or

HeinOnline -- 1999 vol. II 1712 1999

interest due for any year is less than the amount paid, the amount of the overpayment ~~shall~~ *must* be credited against any tax, penalty, or interest then due from the taxpayer and the balance refunded to the taxpayer or its successor through reorganization, merger, or consolidation or to its shareholders upon dissolution.

(2) Except as provided in subsection (3), interest ~~shall~~ *must* be allowed on overpayments at the same rate as is charged on ~~deficiency assessments~~ *unpaid taxes* provided in ~~15-53-105~~ *[section 1]* due from the due date of the return or from the date of overpayment, ~~(~~whichever ~~date~~ is later~~)~~, to the date the department approves refunding or crediting of the overpayment.

(3) (a) Interest ~~shall~~ *may* not accrue during any period *in which* the processing of a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department for the purpose of verifying the amount of the overpayment.

(b) ~~No interest shall be~~ *Interest is not* allowed:

(i) if the overpayment is refunded within 6 months from the date the return is due or from the date the return is filed, whichever is later; or

(ii) if the amount of interest is less than $1.

(c) A payment not made incident to a bona fide and orderly discharge of an actual tax liability or one reasonably assumed to be imposed by this law ~~shall~~ *may* not be considered an overpayment with respect to which interest is allowable."

Section 39. Section 15-53-111, MCA, is amended to read:

"15-53-111. Penalty and interest for delinquency — waiver. (1) License taxes due under this chapter become delinquent if not paid within 60 days after the end of each calendar quarter. The department ~~of revenue~~ shall add to the amount of all delinquent telephone company license taxes ~~a~~ penalty ~~of 10% of the amount of license taxes plus interest at the rate of 1% per month or fraction of a month, computed on the total amount of license taxes. Interest is computed from the date the license taxes were due to the date of payment~~ *and interest as provided in [section 1].*

(2) ~~The 10%~~ *A* penalty *imposed by [section 1]* may be waived by the department ~~if reasonable cause for the failure or neglect to file the statement required by 15-53-102 or pay the tax due is provided to the department~~ *pursuant to 15-1-206.*"

Section 40. Section 15-59-106, MCA, is amended to read:

"15-59-106. Procedure to estimate tax on failure to file statement — penalty *and interest*. (1) If ~~any such~~ *a* person ~~shall fail, neglect, or refuse~~ *fails* to file any statement required by 15-59-105 within the time required or ~~shall fail~~ *fails* to pay the tax required by this part on or before the date ~~such~~ *the* payment is due, the department ~~of revenue~~ shall, immediately after ~~such~~ *the* time has expired, ~~proceed to inform itself as best it may regarding~~ *determine* the amounts of the respective articles or products enumerated in 15-59-101(2) and 15-59-102 manufactured or produced by ~~such~~ *the* person within this state or imported by ~~such~~ *the* person into the state during ~~such~~ *the* quarter and during each month ~~thereof~~ *of the quarter* and shall determine and fix the amount of the license taxes due to the state from ~~such~~ *the* person for ~~such~~ *the* quarter.

HeinOnline -- 1999 vol. II 1713 1999

(2) The department shall add to the amount of ~~all such~~ delinquent license taxes a penalty ~~of 10% of the amount of such license taxes plus interest at the rate of 1% a month or fraction thereof computed on the total amount of license taxes and penalty. Interest shall be computed from the date the license taxes were due to the date of payment~~ *and interest as provided in [section 1].*

(3) The department shall mail to the person required to file a quarterly statement and pay any license tax a letter setting forth the amount of license tax, penalty, and interest due, and the letter ~~shall further~~ *must* contain a statement that if payment is not made, a warrant for distraint may be filed.

(4) ~~The 10%~~ *A* penalty *imposed by [section 1]* may be waived by the department ~~if reasonable cause for the failure and neglect to file the statement required by 15-59-105 is provided to the department~~ *pursuant to 15-1-206.*"

Section 41. Section 15-59-112, MCA, is amended to read:

"15-59-112. Deficiency assessment — review — interest. (1) When the department ~~of revenue~~ determines that the amount of tax due is greater than the amount disclosed by a return, it shall mail to the taxpayer a notice, as provided in 15-1-211, of the additional tax proposed to he assessed. The taxpayer may seek review of the determination pursuant to 15-1-211.

(2) Interest ~~on any~~ *must be added to the* deficiency assessment ~~shall bear interest until paid at the rate of 1% a month or fraction thereof, computed from the original due date of the return~~ *as provided in [section 1].*"

Section 42. Section 15-59-113, MCA, is amended to read:

"15-59-113. Credit for overpayment — interest on overpayment. (1) If the department ~~of revenue~~ determines that the amount of tax, penalty, or interest due for any year is less than the amount paid, the amount of the overpayment ~~shall~~ *must* be credited against any tax, penalty, or interest then due from the taxpayer and the balance refunded to the taxpayer or its successor through reorganization, merger, or consolidation or to its shareholders upon dissolution.

(2) Except as provided in subsection (3), interest ~~shall be~~ *is* allowed on overpayments at the same rate as is charged on ~~deficiency assessments~~ *unpaid taxes as* provided in ~~15-59-112~~ *[section 1]* due from the due date of the return or from the date of overpayment, ~~(~~whichever ~~date~~ is later~~)~~, to the date the department approves refunding or crediting of the overpayment.

(3) (a) Interest ~~shall~~ *may* not accrue during any period *in which* the processing of a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department for the purpose of verifying the amount of the overpayment.

(b) ~~No interest shall be~~ *Interest is not* allowed:

(i) if the overpayment is refunded within 6 months from the date the return is due or from the date the return is filed, whichever is later; or

(ii) if the amount of interest is less than $1.

(c) A payment not made incident to a bona fide and orderly discharge of an actual tax liability or one reasonably assumed to he imposed by this law ~~shall~~ *may* not be considered an overpayment with respect to which interest is allowable."

Section 43. Section 15-60-204, MCA, is amended to read:

HeinOnline -- 1999 vol. II 1714 1999

"15-60-204. (Temporary) Penalty and interest for delinquent fees — waiver. ~~(1)~~ If the fee for any facility is not paid on or before the due date of the report as provided in 15-60-201(1), ~~a~~ penalty ~~of 10% of the amount of the fee due~~ *and interest as provided in [section 1]* must be ~~assessed unless it is shown that the failure was due to reasonable cause and not neglect~~ *added to the fee.*

~~(2) If any fee due under 15-60-102 is not paid when due, interest is added to the tax due at the rate of 12% a year from the due date until paid.~~ (Void on occurrence of contingency—sec. 18, Ch. 746, L. 1991—see chapter compiler's comment.)"

Section 44. Section 15-60-208, MCA, is amended to read:

"15-60-208. (Temporary) Credit for overpayment — interest on overpayment. (1) If the department determines that the amount of fees, penalty, or interest due for any year is less than the amount paid, the amount of the overpayment must be credited against any fees, penalty, or interest then due from the facility and the balance must be refunded to the facility or its successor through reorganization, merger, or consolidation or to its shareholders upon dissolution.

(2) Except as provided in ~~subsections (2)(a) and (2)(b)~~ *subsection (3)*, interest is allowed on overpayments at the same rate as is charged on ~~delinquent fees~~ *unpaid taxes as provided in [section 1]* due from the due date of the report or from the date of overpayment, whichever date is later, to the date the department approves refunding or crediting of the overpayment. Interest does not accrue during any period during which the processing of a claim for refund is delayed more than 30 days by reason of failure of the facility to furnish information requested by the department for the purpose of verifying the amount of the overpayment.

(3) ~~No interest~~ *Interest* is *not* allowed:

(a) if the overpayment is refunded within 6 months from the date the report is due or from the date the return is filed, whichever is later; or

(b) if the amount of interest is less than $1.

~~(3)~~*(4)* A payment not made incident to a discharge of actual utilization fee liability or a payment reasonably assumed to be imposed by this chapter is not considered an overpayment with respect to which interest is allowable. (Void on occurrence of contingency—sec. 18, Ch. 746, L. 1991—see chapter compiler's comment.)"

Section 45. Section 15-65-115, MCA, is amended to read:

"15-65-115. Failure to pay or file — penalty — review — interest. (1) An owner or operator of a facility who fails to file the report as required by 15-65-112 must be assessed a penalty ~~of 10% of the tax that should have been collected during the calendar quarter~~ *as provided in [section 1].* ~~Upon a showing of good cause, the~~ *The* department ~~of revenue~~ may waive ~~the~~ *any* penalty *as provided in 15-1-206.*

(2) An owner or operator of a facility who fails to make payment or fails to report and make payment as required by 15-65-112 must be assessed ~~a~~ penalty ~~of 10% of the amount that was not paid. Upon a showing of good cause, the~~ *and interest as provided in [section 1]. The* department may waive ~~the~~ *any* penalty *pursuant to 15-1-206.*

HeinOnline -- 1999 vol. II 1715 1999

(3) (a) If an owner or operator of a facility fails to file the report required by 15-65-112 or if the department ~~of revenue~~ determines that the report understates the amount of tax due, the department may determine the amount of the tax due and assess that amount against the owner or oporator. The provisions of 15-1-211 apply to any assessment by the department ~~of revenue~~. The taxpayer may seek review of the assessment pursuant to 15-1-211.

(b) When a deficiency is determined and the tax hecomes final, the department shall mail a notice and demand for payment to the owner or oporator. The tax is due and payable at the expiration of ~~10~~ *30* days after the notice and demand were mailed. Interest on any deficiency assessment ~~bears interest until paid, at the rate of 1% a month or fraction of a month, computed from the original due date of the return~~ *must be computed as provided in [section 1].*

~~(4) The amount required to be paid under 15-65-112 accrues interest at the rate of 1% a month or part thereof from delinquency until paid.~~"

Section 46. Section 15-65-116, MCA, is amended to read:

"15-65-116. Credit for overpayment — interest on overpayment. (1) If the department ~~of revenue~~ determines that the amount of tax, penalty, or interest paid for any year is more than the amount due, the amount of the overpayment must be credited against any tax, penalty, or interest then due from the taxpayer and the balance refunded to the taxpayer, to the taxpayer's successor through reorganization, merger, or consolidation, or to the taxpayer's shareholders upon dissolution.

(2) Except as provided in subsection (3), interest is allowed on overpayments at the same rate as is charged on ~~deficiency assessments~~ *unpaid taxes as provided in [section 1]* from the due date of the return or from the date of overpayment, whichever is later, to the date the department approves refunding or crediting of the overpayment.

(3) (a) Interest does not accrne during any period in which the processing of a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department for the purpose of verifying the amount of the overpayment.

(b) Interest is not allowed:

(i) if the overpayment is refunded within 6 months from the date the return is due or from the date the return is filed, whichever is later; or

(ii) if the amount of interest is less tban $1.

(c) Only a payment made incident to a bona fide and orderly discharge of actual tax liability or one reasonahly assumod to he imposed by this chapter is considered an overpayment with respect to which interest is allowable."

Section 47. Section 16-1-403, MCA, is amended to read:

"16-1-403. Exeise tax accounting methods — report forms —*penalty and interest.* (1) ~~The method provided in 16-1-402 shall be presumed to determine fairly and correctly the liquor purchased outside this state and sold for consumption within this state.~~ Any carrier aggrieved hy tlie application of the method *provided in 16-1-402* may petition the department for use of ~~some other~~ *an alternate* method. ~~Thereupon, if~~ *If* tbe department finds tliat the application of the method will be unjust to the carrier, it may allow the use of the methed petitioned for by the carrier or may use ~~such other~~ *another* method ~~as~~

HeinOnline -- 1999 vol. II 1716 1999

~~will~~ *that* fairly ~~reflect~~ *reflects* the liquor purchased outside this state and served for consumption within this state.

(2) *(a)* The department shall prescribe report forms ~~which~~ *that* ~~shall~~ *must* be used by the carriers in reporting their sales and computing their liability for excise taxes and markup. Report forms ~~shall~~ *must* be filed and payment of excise taxes and state markup ~~shall~~ *must* be made on a quarterly basis. The filing of report forms and payment of excise taxes and state markup ~~shall~~ *must* be made not later than the last day of the month immediately following the close of each quarterly period.

(b) A person who fails to file a required report form or to pay the excise taxes or state markup due under this part is subject to the penalty and interest provisions of [section 1]."

Section 48. Section 16-1-409, MCA, is amended to read:

"16-1-409. Failure to make beer tax returns — penalties *and interest*. (1) If a brewer or wholesaler subject to the payment of the tax provided for in 16-1-406 fails~~, neglects, or refuses~~ to make any return required by this code or fails to make payment of the tax within the time provided in this part, the department shall, after the time has expired, determine and fix the amount of tax due the state from the delinquent brewer or wholesaler.

~~(2) The department shall add to the amount of tax due a penalty of:~~

~~(a) 5% for the first failure;~~

~~(b) 10% for the second failure;~~

~~(c) 15% for the third failure; and~~

~~(d) 25% for the fourth and each subsequent failure.~~

~~(3) The penalty provided for in subsection (2) is in addition to the 5% penalty provided for nonpayment of the tax within the time provided.~~

~~(4) The tax and penalties bear interest at the rate of 1% per month from the date returns should have been made and the tax paid.~~

~~(5)~~*(2)* The department shall then proceed to collect the tax with penalties and interest. Upon request of the department, ~~it is the duty of~~ the attorney general ~~to commence and~~ *shall* prosecute in any court of competent jurisdiction an action to collect the tax.

~~(6)~~*(3)* If all or part of the tax imposed upon a brewer or wholesaler hy this part is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7. The resulting lien has precedence over any other claim, lien, or demand filed or recorded after the warrant is issued.

~~(7)~~*(4)* An action may not be maintained to enjoin the collection of tbe tax or any part of the tax.

~~(6)~~*(5)* Any tax owed by a brewer or wholesaler under this code not paid within the time provided is delinquent, and ~~a~~ penalty ~~of 5% must be added to the tax. The tax and penalty bear interest at the rate of 1% per month from the date of delinquency until paid~~ *and interest must be added to the delinquent tax as provided in [section 1].*

(6) A hrewer or wholesaler who fails, neglects, or refuses to make the return to the department provided for in 16-3-211 or 16-3-231 or refuses to allow the

HeinOnline -- 1999 vol. II 1717 1999

examination as provided for in 16-3-211 or 16-3-231 or fails to make an accurate return according to the manner prescribed is guilty of a misdemeanor and upon conviction shall be fined in an amount not exceeding $1,000."

Section 49. Section 16-1-411, MCA, is amended to read:

"16-1-411. Tax on wine and hard cider—*penalty and interest.* (1) (a) A tax of 27 cents per liter is imposed on table wine, except hard cider, imported by a table wine distributor or the department.

(b) A tax of 3.7 cents per liter is imposed on hard cider imported by a table wine distributor or the department.

(2) The tax imposed in subsection (1) must be paid by the table wine distributor by the 15th day of the month following sale of the table wine or hard cider from the table wine distributor's warehouse. Failure to file a tax return or failure to pay the tax required by this section subjects the table wine distributor to the penalties and interest provided for in ~~16-1-409~~ *[section 1].*

(3) The tax paid by a table wine distributor in accordance with subsection (2) must, in accordance with the provisions of 15-1-501, be distributed as follows:

(a) 59% to the stato general fund;

(b) 31% to the state special revenue fund to the credit of the department of public health and human services for the treatment, rehabilitation, and prevention of alcoholism;

(c) 5% is statutorily appropriated, as provided in 17-7-502, to the department for allocation to the counties, based on population, for the purpose established in 16-1-404; and

(d) 5% is statutorily appropriated, as provided in 17-7-502, to the department for allocation to the cities and towns, based on population, for the purpose established in 16-1-405.

(4) The tax computed and paid in accordance with this section is the only tax imposed by the state or any of its subdivisions, including cities and towns.

(5) For purposes of this section, the following definitions apply:

(a) "Based on population" means:

(i) for counties, the direct proportion that the population of each county hears to the total population of all counties as shown in the latest official federal census as adjusted by the most recent population estimates published by the U.S. bureau of the census as provided in 16-1-406; and

(ii) for cities, the distribution described in 16-1-406; and

(b) "Table wine" has the meaning assigned in 16-1-106, but does not include hard cider."

Section 50. Section 16-11-143, MCA, is amended to read:

"16-11-143. Penalty *and interest* for unpaid cigarette tax. (1) If a person fails or refuses to pay the tax required hy this part when due, the department shall proceed to determine the tax due from the information that the department can obtain and shall assess the tax plus ~~a~~ ponalty ~~that is the greater of 5% of the tax or $50 against the person and notify the person of the amount~~ *and interest as provided in [section 1].*

HeinOnline -- 1999 vol. II 1718 1999

(2) In the case of any violation of this chapter, the department may sue, in the district where the department maintains its principal office, for the amount of the unpaid tax, penalty, and costs, including reasonable expense of the department in effecting collection of the unpaid tax and penalty. When the court finds that the failure to pay the tax has been willful, the court shall, in addition, assess damages in trehle the amount of the tax found to he due."

Section 51. Section 16-11-203, MCA, is amended to read:

"16-11-203. Wholesaler to precollect tax — *penalty and interest.* The tax imposed must be precollected and paid by the wholesaler to the department prior to the sale of tobacco products. *A wholesaler who fails to report or pay the tax required by this part must be assessed penalty and interest as provided in [section 1].*"

Seetion 52. Section 39-51-1301, MCA, is amended to read:

"39-51-1301. Penalty and interest on past-due reports and taxes. (1) Failure to file reports and payments in a timely manner, as required under 39-51-603, 39-51-1103, and 39-51-1125, may suhject an employer to penalty and interest, as provided by ~~15-30-209~~ *[section 1].*

(2) There is an account in the federal special revenue fund. Penalties and interest collected for unemployment insurance obligations are distributed as provided in 15-30-250 and must be deposited in that account. Money deposited in that account and appropriated to the department or transferred by the department to its delegate, pursuant to 39-51-301(5), may only be used by the department or its delegate to administer this chapter, including the detection and collection of unpaid taxes and overpayments of benefits to tbe extent that federal grant revenue is less than amounts appropriated for this purpose. Money in the account not appropriated for these purposes must he transferred by the department to the unemployment insurance trust fund at the end of each fiscal year.

(3) All money accruing to the unemployment insurance trust fund from interest and penalties collected on past-due unemployment insurance taxes must he used solely for the payment of unemployment insurance henefits and may not be used for any other purpose."

Seetion 53. Section 75-2-220, MCA, is amended to read:

"75-2-220. Fces — special assessmcnts — late payment assessments. (1) Concurrent with the submittal of a permit application required under this chapter and annually for the duration of the permit, the applicant shall submit to the department a fee sufficient to cover the reasonable costs, direct and indirect, of developing and administering the permitting requirements in this chapter, including:

(a) reviewing and acting upon the application;

(b) implementing and enforcing the terms and conditions of the permit. This amount does not include any court costs or otber costs associated with an enforcement action. If the permit is not issued, the department shall return this portion of the fee to the applicant.

(c) emissions and ambient monitoring;

(d) preparing generally applicable regulations or guidance;

(e) modeling, analysis, and demonstrations;

HeinOnline -- 1999 vol. II 1719 1999

(f) preparing inventories and tracking emissions;

(g) providing support to sources under the small business stationary source tecbnical and environmental compliance assistance program; and

(h) all other costs required to be recovered pursuant to Subchapter V of the federal Clean Air Act, 42 U.S.C. 7661, et seq.

(2) In recovering the costs described in subsection (1), the department may assess an application fee based on estimated actual emissions or an annual fee based on actual emissions of air pollutants regulated under this chapter, including but not limited to volatile organic compounds, each air pollutant regulated under section 7411 or 7412 of the federal Clean Air Act, 42 U.S.C. 7401, et seq., and each air pollutant subject to a national primary ambient air quality standard.

(3) The board shall by rule provide for the annual adjustment of all fees assessed for operating permit applications under 75-2-217 and 75-2-218 to account for changes to the consumer price index, as required by Subchapter V of the federal Clean Air Act.

(4) In addition to the fee required under subsection (1), the board may order the assessment of additional fees required to fund specific activities of the department tbat are directed at a particular geographic area if the legislature authorizes the activities and appropriates funds for the activities, including emissions or ambient monitoring, modeling analysis or demonstrations, or emissions inventories or tracking. Additional assessments may be levied only on tbose sources that are within or are believed by the department to be impacting the geographic area. Before the board may require the fees, it shall first determine, after opportunity for hearing, that the activities to be funded are necessary for the administration or implementation of this chapter, tbat the amount of the requested fees is appropriate, that the assessments apportion the required funding in an equitable manner, and that the department has obtained the necessary appropriation. The contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply te a hearing before the board under this subsection.

(5) (a) If the applicant or permitholder fails to pay in a timely manner a fee required under subsection (1), in addition to the fee, the department may:

(i) impose a penalty not to exceed 50% of the fee, plus interest on the required fee computed ~~at the rate contained~~ *as provided* in ~~15-31-510~~ *[section 1]*; or

(ii) revoke the permit consistent with those procedures established under this chapter for permit revocation.

(b) Within 1 year of revocation, the department may reissue the revoked permit after the applicant or permitholder has paid all outstanding fees required under subsections (1) and (4), including all penalties and interest provided for under this subsection (5). In reissuing the revoked permit, the department may modify the terms and conditions of the permit as necessary to account for changes in air quality occurring since revocation.

(c) The board shall by rule provide for the implementation of this suhsection (5), including critoria for impesition of the sanctions described in this subsection (5).

HeinOnline -- 1999 vol. II 1720 1999

(6) The board may by rule allow the reduction of a fee required under this section for an operating permit or permit renewal to account for the financial resources of a category of small business stationary sources.

(7) As a condition of the continuing validity of a permit issued hy the department under this chapter prior to Octoher 1, 1993, the board may hy rule require the permitholder to pay the fees under subsections (1) and (4).

(8) For an existing source of air pollutants tbat is subject to Subchapter V of the federal Clean Air Act and that is not required to hold an air quality permit from the department as of October 1, 1993, tbe board may, as a condition of continued operation, require by rule that the owner or operator of the source pay the fees under subsections (1) and (4).

(9) (a) The department shall give written notice of the fee to he assessed and the basis for the department's fee assessment under this section to the owner or operator of the air pollutant source. The owner or operator may appeal the department's fee assessment to the board within 20 days after receipt of the written notice.

(b) An appeal must be based upon the allegation that the fee assessment is erroneous or excessive. An appeal may not be based on tbe amount of the fee contained in the schedule adopted by the board.

(c) If any part of the fee assessment is not appealed, it must be paid to the department upen receipt of the notice required in suhsection (9)(a).

(d) The contested case provisions of the Montana Administrative Procedure Act, Title 2, cbapter 4, part 6, apply to a hearing before the board under this subsection (9).

(10) The department may not charge more tban one fee annually to a source of air pollutants for the costs identified in subsection (1)."

Section 54. Section 75-5-516, MCA, is amended to read:

"75-5-516. Fees authorized for recovery — proccss — rulemaking. (1) The board shall by rule prescribe fees to be assessed by the department that are sufficient to cover the board's and department's documented costs, both direct and indirect, of:

(a) reviewing and acting upon an application for a permit, permit modification, permit renewal, certificate, license, or other authorization required by rule under 75-5-201 or 75-5-401;

(b) reviewing and acting upon a petition for a degradation allowance under 75-5-303;

(c) reviewing and acting upon an application for a permit, certificate, license, or otber authorization for which an exclusion is provided by rule from the permitting requirements established under 75-5-401;

(d) enforcing the terms and conditions of a permit or authorization identified in subsections (1)(a) through (1)(c). If the permit or authorization is not issued, the department shall return this portion of any application fee to the applicant.

(e) conducting compliance inspections and monitoring effluent and ambient water quality; and

(f) preparing water quality rules or guidance documents.

HeinOnline -- 1999 vol. II 1721 1999

(2) The rules promulgated by tbe board under this section must include:

(a) a fee on all applications for permits or authorizations, as identified in subsections (1)(a) through (1)(c), that recovers to the extent permitted by this subsection (2) the department's cost of reviewing and acting upon the applications. This fee may not be more than $5,000 per discharge point for an application addressed under subsection (1), except that an application with multiple discharge points may be assessed a lower fee for tbose points according to board rule.

(b) an annual fee to be assessed according to the volume and concentration of waste discharged into state waters. The annual fee may not be more than $3,000 per million gallons discharged per day on an annual average for any activity under permit or authorization, as described in subsection (1), except that:

(i) a permit or authorization with multiple discharge points may be assessed a lower fee for tbose points according to board rule; and

(ii) a facility that consistently discharges effluent at less than or equal to one-half of its effluent limitations and that is in compliance with other permit requirements, using the previous calendar year's discharge data, is entitled to a 25% reduction in its annual permit fee. Proportionate reductions of up to 25% of the permit fee may be given to facilities that consistently discharge effluent at levels between 50% and 100% of tbeir effluent limitations. However, a new permittee is not eligible for a fee reduction in its first year of operation, and a permittee with a violation of any effluent limit during the previous calendar year is not eligihle for a fee reduction for the following year.

(3) To the extent permitted under subsection (2)(b), the annual fee must be sufficient to pay the department's estimated cost of conducting all tasks described under subsection (1) after subtracting:

(a) the fees collected under subsection (2)(a);

(b) state general fund appropriations for functions administered under this chapter; and

(c) federal grants for functions administered under this cbapter.

(4) For purposes of subsection (3), the department's estimated cost of conducting the tasks described under subsection (1) is the amount authorized by the legislature for the department's water quality discharge permit programs.

(5) If the applicant or bolder fails to pay a fee assessed under this section or rules adopted under this section within 90 days after the date established by rule for fee payment, the department may:

(a) impose an additional assessment consisting of not more than 20% of the fee plus interest on the required fee computed ~~at the rate established under 15-31-510~~ *as provided in [section 1]*; or

(b) suspend the permit or exclusion. The department may lift the suspension at any time up to 1 year after the suspension occurs if the holder has paid all outstanding fees, including all penalties, assessments, and interest imposed under subsection (5)(a).

(6) Fees collected pursuant to this section must be deposited in an account in the special revenue fund type pursuant to 75-5-517.

HeinOnline -- 1999 vol. II 1722 1999

(7) The department shall give written notice to each person assessed a fee under this section of the amount of fee that is assessed and the basis for the department's calculation of the fee. This notice must be issued at least 30 days prior to the due date for payment of the assessment.

(8) A holder of or an applicant for a permit, certificate, or license may appeal the department's fee assessment to the board within 20 days after receiving written notice of the department's fee determination under subsection (7). The appeal to the board must include a written statement detailing the reasons that the permitholder or applicant considers the department's fee assessment to be erroneous or excessive.

(9) If part of the department's fee assessment is not in dispute in an appeal filed under subsection (8), the undisputed portion of the fee must be paid to the department upon written request of the department.

(10) The contested case provisions of the Montana Administrative Procedure Act, provided for in Title 2, chapter 4, part 6, apply to a hearing before the board under this section.

(11) A municipality may raise rates to cover costs associated with the fees prescribed in this section for a public sewer system without the hearing required in 69-7-111."

Section 55. Section 87-2-903, MCA, is amended to read:

"87-2-903. Compensation, fees, and duties of agents — penalty for late submission of license money. (1) License agents, except salaried employees of the department, must receive for all services rendered a commission of 50 cents for each transaction.

(2) Each license agent shall submit to the department the money received from the sale of licenses, less the appropriate commission.

(3) Each license agent shall submit to the department copies of each license sold.

(4) The department may charge license agents appointed after March 1, 1998, an electronic license system installation fee not to exceed actual costs.

(5) The department may designate classes of license agents and may establish a deadline for submission of license money by each class of agent. Each license agent shall keep the license account open at all reasonable hours to inspection by the department, the director, the wardens, or the legislative auditor.

(6) For purposes of this section, the term "transaction" includes the sale of any license, permit, or certificate prescribed by the department.

(7) If a license agent fails to submit to the department all money received from the declared sale of licenses, less the appropriate fee, by the deadline established by the department, an interest charge equal to the rate charged ~~on late corporation license tax payments~~ under ~~15-31-510~~ *[section 1]* must be assessed. Acceptance of late payments with interest does not preclude the department from summarily revoking the appointment of a license agent under 87-2-904.

(8) The department may adopt rules necessary to implement this section."

HeinOnline -- 1999 vol. II 1723 1999

Section 56. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 15, chapter 1, part 2, and the provisions of Title 15, chapter 1, part 2, apply to [sections 1 and 2].

Section 57. Effective dates — applicability. (1) Except as provided in subsection (2), [this act] is effective January 1, 2000, and applies to all tax periods beginning after December 31, 1999.

(2) For the purposes of promulgating administrative rules, [section 2 and this section] are effective July 1, 1999.

Approved April 22, 1999

CHAPTER NO. 428

[HB 180]

AN ACT ALLOWING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES OR A GUARDIAN AD LITEM TO PETITION FOR APPOINTMENT OF A GUARDIAN FOR A CHILD FOUND TO BE A YOUTH IN NEED OF CARE EITHER AS PART OR NOT AS PART OF A TERMINATION OF PARENTAL RIGHTS; PROVIDING FOR REVOCATION OF GUARDIANSHIPS; CLARIFYING THE AUTHORITY OF THE DEPARTMENT TO PROVIDE FINANCIAL SUBSIDIES FOR GUARDIANSHIPS MEETING DEPARTMENT CRITERIA; AND AMENDING SECTIONS 41-3-401, 41-3-406, 41-3-412, 41-3-607, AND 41-3-1103, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-3-401, MCA, is amended to read:

"41-3-401. Abuse and neglect petitions. (1) The county attorney, attorney general, or an attorney hired by the county is responsible for filing all petitions alleging abuse or neglect. The county attorney, the attorney general, or an attorney hired by the department with the written consent of the county attorney or the attorney general may require all state, county, and municipal agencies, including law enforcement agencies, to conduct the investigations and furnish reports that may be necessary.

(2) Upon receipt of a petition, except a petition for temporary investigative authority, the court shall set a date for an adjudicatory hearing on the petition. The petitions must be given preference by the court in setting hearing dates.

(3) A petition alleging abuse or neglect is a civil action brought in the name of the state of Montana. The Montana Rules of Civil Procedure apply except as modified in this part. Proceedings under a petition are not a bar to criminal prosecution.

(4) The parents or parent, guardian, or other person or agency having legal custody of the youth named in the petition, if residing in the state, must be served personally with a copy of the petition and summons at least 5 working days before the date set for hearing. If the person or agency cannot be served personally, the person or agency may be served by publication in the manner provided by the Montana Rules of Civil Procedure for other types of proceedings.

(5) If personal service cannot be made upon the parents or parent, guardian, or other person or agency having legal custody, the court shall appoint an

HeinOnline -- 1999 vol. II 1724 1999

attorney to represent the unavailahle party when in the opinion of the court the interests of justice require.

(6) If a parent of the child is a minor, notice must be given to the minor parent's parents or guardian, and if there is no guardian the court shall appoint one.

(7) Any person interested in any cause under this chapter has the right to appear.

(8) Except when the proceeding is instituted or commenced at the request of the department of puhlic health and human services, a citation must be issued and served upon a representative of the department hefore the court hearing.

(9) The petition must:

(a) state the nature of the alleged abuse or neglect;

(b) state the full name, age, and address of the youth and the name and address of the youth's parents or guardian or person having legal custody of the youth;

(c) state the names, addresses, and relationship to the youth of all persons who are necessary parties to the action.

(10) The petition may ask for the following relief:

(a) temporary investigative authority and protective services, as provided in 41-3-402;

(b) temporary legal custody, as provided in 41-3-406;

(c) *appointment of a guardian pursuant to [section 4];*

(d) termination of the parent-child legal relationship and *either:*

(i) permanent legal custody with the right to consent to adoption, as provided in 41-3-607; *or*

(ii) appointment of a guardian; or

~~(d)~~*(e)* any combination of the provisions of subsections (10)(a) through ~~(10)(c)~~ *(10)(d)* or any other relief tbat may be required for tbe best interests of the child.

(11) The potition may be modified for different relief at any time within the discretion of the court.

(12) The court may at any tiine on its own motion or the motion of any party appoint counsel for any indigent party."

Section 2. Section 41-3-406, MCA, is amended to read:

"41-3-406. Dispositional hearing — temporary lcgal eustody. (1) If a youth is found to be a youth in need of care under 41-3-404, the court inay enter its judgment, making any of the following dispositions to protect the welfare of the youth:

(a) permit the youth to remain with the youth's parent or guardian, subject to those conditions and limitations the court may prescribe;

(b) grant an order of limited emancipation to a youth who is 16 years of age or older as provided in 41-3-408;

(c) transfer temporary legal custody to any of the following:

HeinOnline -- 1999 vol. II 1725 1999

(i) the department;

(ii) a licensed child-placing agency that is willing and able to assume responsibility for the education, care, and maintenance of the youth and that is licensed or otherwise authorized by law to receive and provide care of the youth; or

(iii) a relative or other individual who is recommended by the department or a licensed child-placing agency designated by the court, and is found by the court to be qualified to receive and care for the youth;

(d) order ~~any~~ *a* party to the action to do what is necessary to give effect to the final disposition, including undertaking medical and psychological evaluations, treatment, and counseling that does not require an expenditure of money by the department unless the department is notified and a court hearing is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all family, insurance, and other resources have been examined.

(e) order further care and treatment as the court considers in the best interests of the child that does not require an expenditure of money by the department unless the department is notified and a court hearing is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all family, insurance, and other resources have been examined pursuant to 41-3-411.

(2) To grant temporary legal custody, the court shall make a finding that:

(a) returning the child to the child's parent or guardian would create a substantial risk of harm to the child or detriment to the child's physical or emotional well-being; and

(b) reasonable services have been provided to the parent or guardian to prevent the removal of the child from the home.

(3) In making a finding regarding the risk of harm to the child or regarding detriment to the child, failure of the child's parent or guardian to participate in, to comply with, in whole or in part, or to meet the goals of a court-ordered treatment plan constitutes prima facie evidence that return of the child to the parent or guardian would be detrimental to the child's physical or emotional well-being.

(4) An order for temporary legal custody may be in effect for no longer than 6 months. Before the expiration of the order for temporary legal custody the county attorney, the attorney general, or an attorney hired by the county shall petition for one of the following:

(a) an extension of temporary legal custody upon a showing that additional time is necessary for the parent or guardian to successfully complete a treatment plan;

(b) termination of the parent-child legal relationship and *either:*

(i) permanent legal custody with the right of adoption*; or*

(ii) appointment of a guardian pursuant to 41-3-607; ~~or~~

(c) appointment of a guardian pursuant to [section 4]; or

~~(c)~~*(d)* dismissal.

(5) The court may continue an order for temporary legal custody pending a hearing on a petition provided for in subsection (4).

(6) If an extension of temporary legal custody is granted to the department, the court shall state the reasons why the child was not returned home and the conditions upon which the child may be returned home.

(7) If the time limitations of this section are not met, the court shall review the reasons for the failure and order an appropriate remedy that considers the best interests of the child."

Section 3. Section 41-3-412, MCA, is amended to read:

"41-3-412. Permanency plan hearing. (1) A permanency plan hearing must be held by the court no later than 12 months after the initial order is issued unless the proceeding has been dismissed, the child was not removed from the home, or the child has been returned to the child's parent or guardian. The permanency plan hearing may be combined with a hearing that is required in other sections of this part if held within the time limits of that section. If a permanency plan hearing is combined with another hearing, the requirements of the court related to the disposition of the other hearing must be met in addition to the requirements of this section.

(2) At least 3 days prior to the permanency plan hearing, the department and the guardian ad litem shall each submit a report regarding the child to the court for review. The report must contain the:

(a) efforts and progress demonstrated by the child's parent or guardian to complete a treatment plan;

(b) extent to which the parent or guardian cooperated and used the services provided;

(c) status of the child, including the child's mental, physical, and emotional health; and

(d) plan for permanency for the child.

(3) At least 3 days prior to the permanency plan hearing, an attorney or advocate for a parent or guardian may submit an informational report to the court for review.

(4) If the court finds that the permanency plan is in the best interests of the child, the court shall~~:~~

~~(a)~~*(a)* order the department to take whatever steps are necessary to effectuate the terms of the plan and shall order the county attorney, the attorney general, or an attorney hired by the county to *file any necessary* petition *with* the court within 30 days after the present hearing ~~for one of the following:~~

~~(i) termination of parental rights;~~

~~(ii) temporary legal custody, not to exceed 6 months; or~~

~~(iii) dismissal; and~~

~~(b) in its discretion, enter any other order that it determines to be in the best interests of the child that does not require an expenditure of money by the department unless the department is notified and a court hearing is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all family, insurance, and other resources have been examined~~*; and*

HeinOnline -- 1999 vol. II 1727 1999

(b) in its discretion, enter any other order that it determines to be in the best interests of the child that does not require an expenditure of money by the department unless the department is notified and a court hearing is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all family, insurance, and other resources have been examined.

(5) If the permanency plan hearing results in ~~an order for a 6-month extension of temporary legal custody, upon the expiration of the temporary legal custody order and the filing of a petition by the department and if the court finds~~ *a finding* that reunification of the child with the child's parent or guardian is not in the best interests of the child, ~~the court shall order~~ *a subsequent petition may only be for*:

(a) termination of parental rights if the applicable requirements to terminate parental rights have been met; ~~or~~

(b) appointment of a guardian pursuant to [section 4]; or

~~(b)~~*(c)* long-term custody of a child if the evidence demonstrates by a preponderance of the evidence that:

(i) the child bas been adjudicated a youth in need of care;

(ii) the department has made reasonable efforts to reunite the parent and child, further efforts by the department would likely be unproductive, and reunification of the child with the parent or guardian would be contrary to the best interests of the child;

(iii) the child has reached 12 years of age;

(iv) termination of parental rights to the child is not in the child's best interests; and

(v) the child has been in a placement in which the foster parent has committed to the long-term care and to a relationship with the child and it is in the best interests of the child to remain in tbat placement.

(6) The court may terminate long-term custody upon petition of the birth parents, those to whom legal custody has been transferred, or the department if the court finds that the circumstances of the child or family have substantially changed and the best interests of the child are no longer being served."

Section 4. Abuse and neglect proccedings — appointment of guardian — financial subsidics. (1) The court may, upon the petition of the department or guardian ad litem, enter an order appointing a guardian for a child who has been placed in the temporary or permanent custody of the department pursuant to 41-3-406, 41-3-412, or 41-3-607. The guardianship may he subsidized by the department under subsection (8) if the guardianship meets the department's criteria, or the guardianship may be nonsubsidized.

(2) The court may appoint a guardian for a child pursuant to this section if the following facts are found by the court:

(a) the department has given its written consent to the appointment of the guardian, whether the guardianship is to be subsidized or not;

(b) if the guardianship is to be subsidized, the department has given its written consent after the department has considered initiating or continuing financial subsidies pursuant to subsection (8);

(c) the child has been adjudicated a youth in need of care;

HeinOnline -- 1999 vol. II 1728 1999

(d) the department has made reasonable efforts to reunite the parent and child, further efforts to reunite the parent and child by the department would likely be unproductive, and reunification of the parent and child would be contrary to the best interests of the child;

(e) the child is at least 12 years old or the child is in a group of siblings, at least one of whom is at least 12 years old, and the guardianship is in the best interests of the siblings;

(f) the child has lived with the potential guardian in a family setting and the potential guardian is committed to providing a long-term relationship with the child;

(g) it is in the best interests of the child to remain or be placed with the potential guardian;

(h) either termination of parental rights to the child is not in the child's best interests or parental rights to the child have been terminated, but adoption is not in the child's best interests; and

(i) if the child concerning whom the petition for guardianship has been filed is an Indian child, as defined in the Indian Child Welfare Act, 25 U.S.C. 1901, et seq., the child's tribe has received notification from the state of the initiation of the proceedings.

(3) The entry of a decree of guardianship pursuant to this section terminates the custody of the department and the involvement of the department with the child and the child's parents except a provision of a financial subsidy, if any, pursuant to subsection (8).

(4) A guardian appointed under this section may exercise the powers and has the duties provided in 72-5-231.

(5) The court may revoke a guardianship ordered pursuant to this section if the court finds, after hearing on a petition for removal of the child's guardian, that continuation of the guardianship is not in the best interests of the child. Notice of hearing on the petition must be provided by the moving party to the child's lawful guardian, the department, any court appointed guardian ad litem, the child's parent if the rights of the parent have not been terminated, and other persons directly interested in the welfare of the child.

(6) A guardian may petition the court for permission to resign the guardianship. A petition may include a request for appointment of a successor guardian.

(7) After notice and hearing on a petition for removal or permission to resign, the court may appoint a successor guardian or may terminate the guardianship and restore temporary legal custody to the department pursuant to 41-3-406.

(8) The department may provide a financial subsidy to a guardian appointed pursuant to this section if the guardianship meets the department's criteria and if the department determines that a subsidy is in the best interests of the child. The amount of the subsidy must he determined by the department.

(9) This section does not apply to guardians appointed pursuant to Title 72, chapter 5.

Section 5. Section 41-3-607, MCA, is amended to read:

HeinOnline -- 1999 vol. II 1729 1999

"41-3-607. Petition for termination — separate hearing — right to counsel — ~~no~~ *no* jury trial. (1) The termination of a parent-child legal relationship may be considered only after the filing of a petition pursuant to 41-3-401 alleging the factual grounds for termination pursuant to 41-3-609. If termination of a parent-child legal relationship is ordered, the court may:

(a) transfer permanent legal custody of the child, with the right to consent to the child's adoption, to:

~~(a)~~*(i)* the department;

~~(b)~~*(ii)* a licensed child-placing agency; or

~~(c)~~*(iii)* another individual who has been approved by the department and has received consent for the transfer of custody from the department or agency that has custody of the child; *or*

(b) transfer permanent legal custody of the child to the department with the right to petition for appointment of a guardian pursuant to [section 4].

(2) After a petition for termination of a parent-child relationship is filed, parents must be advised of the right to counsel, and counsel must be appointed in accordance with 41-3-401.

(3) A guardian ad litem must be appointed to represent the child's best interests in any hearing determining the involuntary termination of the parent-child legal relationship. The guardian ad litem shall continue to represent the child until the child is returned home or placed in an appropriate permanent placement. If a respondent parent is a minor, a guardian ad litem must be appointed to serve the minor parent in addition to any counsel requested by the parent.

(4) There is no right to a jury trial at proceedings held to consider the termination of a parent-child legal relationship."

Section 6. Section 41-3-1103, MCA, is amended to read:

"41-3-1103. Powers and duties of department. (1) The department shall:

(a) administer all state and federal funds allocated to the department for youth foster homes, youth group homes, child-care agencies, and youth assessment centers for youth in need of care, as defined in 41-3-102;

(b) exercise licensing authority over all youth foster homes, youth group homes, child-care agencies, and youth assessment centers;

(c) collect and disseminate information relating to youth in need of care;

(d) provide for training of program personnel delivering services;

(e) in cooperation with youth care facility providers, develop and implement standards for youth care facilities;

(f) maintain adequate data on placements it funds in order to keep the legislature properly informed of the following:

(i) the number of youth in need of care in out-of-home care facilities;

(ii) the cost per facility for services rendered;

(iii) the type and level of care of services provided by each facility;

(iv) a profile of out-of-home care placements by level of care; and

HeinOnline -- 1999 vol. II 1730 1999

(v) a profile of puhlic institutional placements; and

(g) administer all funds allocated to the department for residential alcohol and drug abuse treatment for indigent youths in need of care, indigent youths in need of intervention, and indigent delinquent youths who require treatment.

(2) The department may:

(a) enter into contracts with nonprofit corporations or associations or private organizations to provide substitute care for youth in need of care in youth care facilities;

(b) accept gifts, grants, and donations of money and property from public and private sources to initiate and maintain community-based services to youth;

(c) adopt rules to carry out the administration and purposes of this part.

(3) The department shall pay for room, board, clothing, personal needs, transportation, and treatment in youth foster care homes and youth group homes for youths committed to the department who need to be placed in the facilities. Payments for the clothing of a child placed in a youth foster home must be provided to the extent the child needs a basic wardrobe or has a special clothing need. Payments under this subsection may not exceed appropriations for the purposes of this subsection.

(4) The department may provide a subsidy for a guardianship of a child who is in the department's legal custody if the guardianship has been approved by the department pursuant to [section 4] and in accordance with eligibility criteria established by department rule."

Section 7. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

Section 8. Codification instruction. [Section 4] is intended to be codified as an integral part of Title 41, chapter 3, part 4, and the provisions of Title 41, chapter 3, part 4, apply to [section 4].

Approved April 22, 1999

CHAPTER NO. 429

[HB 186]

AN ACT ALLOWING A PAY-ON-DEATH BENEFICIARY TO BE DESIGNATED AND A SERVICE FEE TO BE DEDUCTED FOR A MEDICAL CARE SAVINGS ACCOUNT AND A FIRST-TIME HOME BUYER SAVINGS ACCOUNT; CLARIFYING RESPONSIBILITY OF A FINANCIAL INSTITUTION ACTING AS AN ACCOUNT ADMINISTRATOR OF MEDICAL CARE SAVINGS ACCOUNTS; AND AMENDING SECTIONS 15-61-202, 15-61-204, 15-63-202, AND 15-63-204, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-61-202, MCA, is amended to read:

"15-61-202. Tax exemption — conditions. (1) Except as provided in this section, the amount of principal provided for in subsection (2) contributed annually by an employee or account holder to an account and all interest or other

HeinOnline -- 1999 vol. II 1731 1999

income on that principal may be excluded from the adjusted gross income of the employee or account holder and are exempt from taxation, in accordance with 15-30-111(2)(j), as long as the principal and interest or other income is contained within the account or withdrawn only for payment of eligible medical expenses or for the long-term care of the employee or account holder or a dependent of the employee or account holder. Any part of the principal or income, or both, withdrawn from an account may not be excluded under subsection (2) and this subsection if the amount is withdrawn from the account and used for a purpose other than an eligible medical expense or the long-term care of the employee or account holder or a dependent of the employee or account holder.

(2) An employee or account holder may exclude as an annual contribution in 1 year ~~no~~ *not* more than $3,000. There is no limitation on the amount of funds and interest or other income on those funds that may be retained tax-free within an account.

(3) A deduction pursuant to 15-30-121 is not allowed to an employee or account holder for an amount contributed to an account. An employee or account holder may not deduct pursuant to 15-30-121 or exclude pursuant to 15-30-111 an amount representing a loss in the value of an investment contained in an account.

(4) An employee or account holder may in 1 year deposit into an account more than the amount excluded pursuant to subsection (2) if the exemption claimed by the employee or account holder in the year does not exceed $3,000. An employee or account holder who deposits more than $3,000 into an account in a year may exclude from the employee's or account holder's adjusted gross income in accordance with 15-30-111(2)(j) in a subsequent year any part of $3,000 per year not previously excluded.

(5) The transfer of money in an account owned by one employee or account holder to the account of another employee or account holder within the immediate family of the first employee or account holder does not subject either employee or account holder to tax liability under this section. Amounts contained within the account of the receiving employee or account holder are subject to the requirements and limitations provided in this section.

(6) The employee or account holder who establishes the account is the owner of the account. An employee or account holder may withdraw money in an account and deposit the money in another account with a different or with the same account administrator without incurring tax liability.

(7) The amount of a disbursement of any assets of a medical care savings account pursuant to a filing for protection under the United States Bankruptcy Code, 11 U.S.C. 101 through 1330, by an employee or account holder does not subject the employee or account holder to tax liability.

(8) Within 30 days of being furnished proof of the death of the employee or account holder, the account administrator shall distribute the principal and accumulated interest or other income in the account to the estate of the employee or account holder *or to a designated pay-on-death beneficiary as provided in 72-6-223*."

Section 2. Section 15-61-204, MCA, is amended to read:

"15-61-204. Administration of account. (1) *(a)* An account administrator shall administer the medical care savings account from which the payment of

claims is made and, *except as provided in subsection (1)(b),* has a fiduciary duty to the person for whose benefit the account is administered.

(b) Except for reporting and remitting of penalties to the department of revenue, a financial institution shall administer a medical savings account as a regular deposit. ~~A~~ *or share account and has the same rights and duties pertaining to the account as pertain to a regular deposit or share account. notwithstanding any other provision of this chapter, a* financial institution is not responsible for *determining whether a medical expense is eligible or nonreimbursable or for* the use or application of funds *if the account holder attests that withdrawals are for eligible and nonreimbursable medical expenses.*

(2) Not more than 30 days after an account administrator begins to administer an account, the account administrator shall notify in writing each employee and account holder on whose behalf the account administrator administers an account of the date of the last business day of the account administrator's business year.

(3) An account administrator may use funds held in a medical care savings account only for the purpose of paying the eligible medical expenses of the employee or account holder or the employee's or account holder's dependents, purchasing long-term care insurance or a long-term care annuity for the long-term care of the employee or account holder or a dependent of the employee or account holder, or paying the expenses of administering the account. Funds held in a medical care savings account may not be used to pay medical expenses or for a long-term care insurance policy or annuity of the employee or account holder or a dependent of the employee or account holder that is otherwise reimbursable, including medical expenses payable pursuant to an automobile insurance policy, workers' compensation insurance policy or self-insured plan, or another health coverage policy, certificate, or contract.

(4) The employee or account holder may submit documentation of eligible medical expenses paid by the employee or account holder or a dependent of the employee or account holder in the tax year to the account administrator, and the account administrator shall reimburse the employee or account holder from the employee's or account holder's account for eligible medical expenses. The burden of proving that a withdrawal from a medical savings account was made for an eligible medical expense is upon the account holder and not upon the account administrator or the employer of the account holder.

(5) The employee or account holder may submit documentation of the purchase of long-term care insurance or a long-term care annuity for the employee or account holder or a dependent of the employee or account holder to the account administrator, and the account administrator shall reimburse the employee or account holder from the employee's or account holder's account for payments made for the purchase of the insurance or annuity. The account administrator may also provide for a system of automatic withdrawals from the account for the payment of long-term care insurance premiums or an annuity.

(6) If an employer makes contributions to a medical care savings account on a periodic installment basis, the employer may advance to an employee, interest free, an amount necessary to cover medical expenses incurred that exceeds the amount in the employee's medical care savings account at the time that the expense is incurred if the employee agrees to repay the advance from future installments or when the employee ceases employment with the employer.

HeinOnline -- 1999 vol. II 1733 1999

(7) In the case of an account administrator who is also the account holder or an employee:

(a) notice hy the account administrator to the account holder pursuant to subsection (2) is not required;

(b) the account administrator may not use funds held in an account to pay expenses of administering tlie account, *except that a service fee may be deducted from the account by a financial institution or other holder of the account*;

(c) documentation of eligihle medical expenses must be maintained hut is not required to be submitted to the account administrator;

(d) contributions to a medical savings account must be established in a separate account and he segregated from other funds;

(e) the account holder is suhject to the same yearend reporting requirements as all other account administrators; and

(f) the account holder is required to forward the 10% penalty on funds withdrawn for noneligible medical expenses to the state."

Section 3. Section 15-63-202, MCA, is amended to read:

"15-63-202. Tax exemption — conditions. (1) Except as provided in this section, the amount of principal provided for in subsection (2) contributed annually hy an account holder to an account and all interest or other income on the principal may be excluded from the adjusted gross income of the account holder and is exempt from taxation, in accordance with 15-30-111(2)(k), as long as the principal and interest or other income is contained within the account or withdrawn only for eligihle costs for the purchase of a single-family residence hy a first-time home buyer. Any part of the principal or income, or both, withdrawn from an account may not be excluded under subsection (2) and this subsection if the amount is withdrawn from the account and used for a purpose other than for eligihle costs for the purchase of a single-family residence.

(2) (a) An account holder who files singly, head of household, or married filing separately may exclude as an annual contrihution in 1 year up to $3,000.

(b) An account holder who files jointly may exclude as annual contribution in 1 year up to $6,000.

(c) There is no limitation on the amount of principal and interest or other income on the principal that may be retained tax-free within an account.

(d) An account holder may not contribute to the first-time home huyer savings account for a period exceeding 10 years.

(3) An account holder may not deduct pursuant to 15-30-121 or exclude pursuant to 15-30-111 an amount representing a loss in the value of an investment contained in an account.

(4) Each year, an account holder may deposit into an account more than the amount excluded pursuant to subsection (2) if the exemption claimed hy the account holder in the year does not exceed the amount specified in subsection (2)(a) or (2)(b). An account holder who deposits more than the amount specified in subsection (2)(a) or (2)(b) into an account in a year may exclude from the account holder's adjusted gross income, in accordance with 15-30-111(2)(k), in a subsequent year any part of the amount specified in subsection (2)(a) or (2)(b) per year not previously excluded.

HeinOnline -- 1999 vol. II 1734 1999

(5) The transfer of money by a person other than the account holder to the account of an account holder does not subject the account holder to tax liability under this section. Amounts contained within the account of the receiving account holder are subject to the requirements and limitations provided in this section. The person other than the account holder who transfers money to the account is not entitled to the tax exemption under this section.

(6) The account holder who establishes the account, individually or jointly, is the owner of the account. An account holder may withdraw money in an account and deposit the money in another account with a different account administrator or with the same account administrator without incurring tax liability.

(7) The account holder shall use the money in the account for the eligible costs related to the purchase of a single-family residence within 10 years following the year in which the account was established. Any principal and income in the account not expended on eligible costs at the time of purchase of a single-family residence or any principal or income remaining in the account on December 31 of the last year of the 10-year period must be taxed as ordinary income.

(8) Tho amount of a disbursement of any assets of a first-time home buyer savings account pursuant to a filing for protection under the United States Bankruptcy Code, 11 U.S.C. 101 through 1330, by an account holder does not subject the account holder to tax liability.

(9) Within 30 days of being furnished proof of the death of the account holder, the account administrator shall distribute the principal and accumulated interest or other income in the account to the estate of the account holder *or to a designated pay-on-death beneficiary as provided in 72-6-223.*"

Section 4. Section 15-63-204, MCA, is amended to read:

"**15-63-204. Administration of account.** (1) An account administrator shall administer the first-time home buyer savings account from which the payment of eligible costs for the purchase of a single-family residence is made and has a fiduciary duty to the person for whose benefit the account is administered. Except for reporting and remitting of penalties to the department, a financial institution shall administer a first-time home buyer's savings account as a regular deposit. A financial institution is not responsible for the use or applications of funds.

(2) Within 30 days after an account administrator begins to administer an account, the account administrator shall notify in writing each account holder on whose behalf the account administrator administers an account of the date of the last business day of the account administrator's business year.

(3) An account administrator may use funds held in a first-time home buyer savings account only for the purpose of paying the eligible costs of the account holder or paying the expenses of administering the account.

(4) The account holder may submit documentation of eligible costs paid by the account holder in the tax year to the account administrator, and the account administrator shall reimburse the account holder from the account holder's account for eligible costs for the first-time purchase of a single-family residence. The burden of proving that a withdrawal from a first-time home buyer's savings account was made for eligible costs is upon the account holder and not upon the account administrator.

HeinOnline -- 1999 vol. II 1735 1999

(5) In the case of an account administrator who is also the account holder:

(a) notice by the account administrator to the account holder pursuant to subsection (2) is not required;

(b) the account administrator may not use funds held in an account to pay expenses of administering the account, *except that a service fee may be deducted from the account by a financial institution or other holder of the account*;

(c) documentation of the segregation of funds in separate accounts and documentation of eligible costs for the purchase of a single-family residence must be maintained but is not required to be submitted to the account administrator;

(d) the account administrator shall file reports as reasonably required by the department; and

(e) the account holder is required to forward the 10% penalty on funds withdrawn for other than eligible costs to the department."

Approved April 22, 1999

CHAPTER NO. 430

[HB 187]

AN ACT REQUIRING THE DEPARTMENT OF TRANSPORTATION, A LOCAL AUTHORITY, A UTILITY COMPANY, OR A PRIVATE CONTRACTOR TO POST WORK ZONE AND CONSTRUCTION ZONE SPEED LIMIT SIGNS IF THOSE ENTITIES DETERMINE THAT SPECIAL SPEED LIMITS ARE WARRANTED; REQUIRING REMOVAL OR COVERING OF SIGNS WHEN NO WORK IS IN PROGRESS AND NO HAZARD EXISTS; AND AMENDING SECTION 61-8-314, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-8-314, MCA, is amended to read:

"61-8-314. Traffic violations in construction zone and work zone — definitions. (1) As used in this section, the following definitions apply:

(a) "Construction zone" means an area on a public highway or on the adjacent rigbt-of-way where construction, repair, maintenance, or survey work is being performed by the department of transportation, a local authority, a utility company, or a private contractor under contract with the department of transportation or a local authority. A construction zone may include a work zone.

(b) "Public highway" has the same meaning as in 60-1-103.

(c) "Work zone" means the area where the construction, repair, maintenance, or survey work is actually taking place. *The boundaries of the work zone must be clearly identified by the posting of signs.*

(2) A person may not operate a motor vehicle in a construction zone or in a work zone on a public highway in violation of any of the provisions of part 3 of this chapter.

(3) The speed limit in a construction zone or in a work zone must be set by the department of transportation or the local authority based on traffic conditions or the condition of the construction, repair, maintenance, or survey project.

HeinOnline -- 1999 vol. II 1736 1999

(4) (a) ~~The~~ *If the* department of transportation, the local authority, the utility company, or the private contractor ~~shall~~ *determines, based on traffic conditions or the condition of the construction, repair, maintenance, or survey project, that special speed limits in work zones or construction zones are warranted, then the department, the local authority, the utility company, or the private contractor shall* post signs that:

(i) conform to the department of transportation's manual on uniform traffic control devices; ~~and that~~

(ii) indicate the boundaries of the construction zone and the work zone; and

(iii) display the speed limit in effect within both zones.

(b) The department of transportation, the local authority, the utility company, or the private contractor sball clearly indicate at the boundary of a construction zone that a person who violates any of the provisions of part 3 of this chapter in the work zone is subject to the fine provided in subsection (5)(a).

(c) The boundaries of the work zone may not exceed 500 feet in advance of and beyond the actual construction activity.

(d) The department of transportation, the local authority, the utility company, or the private contractor shall remove or cover the signs when no work is in progress and no hazard exists.

(5) (a) A person convicted of a traffic violation in a work zone is guilty of a misdemeanor. Upen arrest and conviction, the person shall be punished by a fine of not less tban double the penalty provided for the violation in part 7 of this chapter.

(b) A person convicted of a traffic violation in a construction zone is guilty of a misdemeanor. Upon arrest and conviction, the person is subject to the penalty provided for the violation in part 7 of this chapter."

Approved April 22, 1999

CHAPTER NO. 431

[HB 189]

AN ACT GENERALLY REVISING THE LAWS RELATING TO STATE-OWNED OR LEASED MOTOR VEHICLES; CLARIFYING STATE IDENTIFICATION REQUIREMENTS; CLARIFYING DEPARTMENT OF TRANSPORTATION RESPONSIBILITIES; CLARIFYING RESPONSIBILITIES OF OTHER STATE AGENCIES; AMENDING SECTIONS 2-17-402, 2-17-411, 2-17-421, 2-17-422, AND 2-17-423, MCA; AND REPEALING SECTIONS 2-17-413 AND 2-17-431, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-17-402, MCA, is amended to read:

"2-17-402. Seal on motor vehicles. A moter vehicle owned by the state must have a seal, ~~8 inches in diameter~~ *logo, or other form of state ownership identification* placed upon the vehicle ~~in accordance with the rules adopted by the department of transportation~~."

Section 2. Section 2-17-411, MCA is amended to read:

HeinOnline -- 1999 vol. II 1737 1999

"2-17-411. ~~Helena-based motor~~ *Motor* pool — department of transportation — exceptions. ~~(1) The department of transportation is the custodian of all motor vehicles operated out of the Helena area used primarily to carry passengers or having a cargo rating of three-quarters of a ton or less and which do not carry specialized equipment that would render them unfit for interagency use, owned or leased by the state or its agencies~~ *(1) The department of transportation's motor pool is responsible for the acquisition, operation, maintenance, repair, and administration of all motor vehicles in the custody of the motor pool.*

(2) This part does not apply to a motor vehicle used in the service of the governor, the attorney general, or the highway patrol."

Section 3. Section 2-17-421, MCA, is amended to read:

"2-17-421. Use — state business only — exception — compensation for driving personal vehicle — penalty for private use. (1) A state officer or *state* employee may not use a state-owned or leased motor vehicle for ~~his own~~ personal and private use, nor may ~~he~~ *a state officer or state employee* be compensated for driving ~~his own~~ *a personal* motor vehicle unless that motor vehicle is used on state business.

(2) ~~The department of transportation may require that a~~ *A* decal *must* be affixed to the ~~instrument panel~~ *windshield* of each state-owned vehicle with the following information contained on the decal:

"Any officer or employee of the state government who uses or authorizes the use of any state-owned motor-propelled vehicle, or of any motor-propelled vehicle leased by the state government, for other than official purposes may be removed from office by the head of the department or establishment concerned."

(3) The private use of state-owned or leased motor vehicles for emergency travel-related purposes or exceptional circumstances by *state* employees in a travel status may be approved by the head of the department or agency concerned.

(4) The head of the department or agency concerned may terminate the employment of any *state* employee using state-owned or leased vehicles for personal or private use."

Section 4. Section 2-17-422, MCA, is amended to read:

"2-17-422. Operating history. ~~All~~ *Each state agency shall maintain* motor vehicle operating history records for motor vehicles under control of the ~~department of transportation must be entered in the department of transportation~~ *agency*. These records must show the purchase price of the vehicle and the items of expense incurred in the operation of the vehicle, including the expenses of gas, oil, repairs, labor, storage, and service. A complete summary of the operating cost and history record of all state-owned or leased vehicles and trucks must be prepared for each fiscal year."

Section 5. Section 2-17-423, MCA, is amended to read:

"2-17-423. ~~Use rules~~ *Rules*. (1) The department of transportation may adopt and enforce reasonable rules governing the ~~use~~ *maintenance* and operation of motor vehicles under control of the department.

(2) The department shall establish reasonable rules governing:

~~(a) employee responsibility for misuse and negligent damage of state-owned or leased vehicles;~~

~~(b) determination of when the use of privately owned vehicles on state business may be justified as in the best interest of the state~~ *(a) the manner and procedure by which motor pool vehicles may be rented or leased to state officials, state agencies, or state employees*;

~~(c)~~*(b)* procedures for determining when a ~~state~~ *motor pool* vehicle is not available for use*; and*

(c) rental charges for a motor pool vehicle that may include reimbursement of actual costs for administration, maintenance, service, operation, storage, replacement, and disposal costs.

(3) The department shall adopt and formulate travel rules providing:

(a) for *scheduling of motor pool vehicles and* filing an application for travel showing ~~necessity for trips, points to be visited, approximate~~ *destination and date and* time of departure ~~and return~~ *and*;

(b) for filing a report upon completion of the trip, showing ~~actual points reached,~~ mileage traveled~~,~~ and ~~car cost record data~~ *date and time of return*~~; and~~

~~(c) for recording in the car operating history record book all items of expense incurred in the purchase of gas, oil, repairs, labor, storage, or service.~~"

Section 6. Repealer. Sections 2-17-413 and 2-17-431, MCA, are repealed.

Approved April 22, 1999

CHAPTER NO. 432

[HB 203]

AN ACT REVISING CERTAIN CRIMINAL LAW PROVISIONS RELATING TO ASSAULT AND THE CRIMINAL DISTRIBUTION OF DANGEROUS DRUGS; CREATING THE OFFENSE OF ASSAULT ON A MINOR; RENAMING "FELONY ASSAULT" TO "ASSAULT WITH A WEAPON" AND INCREASING THE PENALTY FOR THE OFFENSE; AND AMENDING SECTIONS 40-15-102, 41-5-206, 45-5-102, 45-5-201, 45-5-202, 45-5-206, 45-5-627, 45-8-405, 45-9-101, 45-9-103, 45-9-109, 45-9-112, 45-9-113, 46-18-201, 46-18-219, 46-18-231, 46-23-502, AND 50-32-405, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-15-102, MCA, is amended to read:

"40-15-102. Eligibility for order of protection. (1) A person may file a petition for an order of protection if:

(a) the petitioner is in reasonable apprehension of bodily injury by the petitioner's partner or family member as defined in 45-5-206; or

(b) the petitioner is a victim of one of the following offenses committed by a partner or family member:

(i) assault as defined in 45-5-201;

(ii) aggravated assault as defined in 45-5-202;

(iii) intimidation as defined in 45-5-203;

(iv) partner or family member assault as defined in 45-5-206;

HeinOnline -- 1999 vol. II 1739 1999

(v) criminal endangerment as defined in 45-5-207;

(vi) negligent endangerment as defined in 45-5-208;

(vii) assault on a minor as defined in [section 5];

(viii) assault with a weapon as defined in [section 7];

~~(vii)~~*(ix)* unlawful restraint as defined in 45-5-301;

~~(viii)~~*(x)* kidnapping as defined in 45-5-302;

~~(ix)~~*(xi)* aggravated kidnapping as defined in 45-5-303; or

~~(x)~~*(xii)* arson as defined in 45-6-103.

(2) A victim of stalking as defined in 45-5-220, incest as defined in 45-5-507, sexual assault as defined in 45-5-502, or sexual intercourse without consent as defined in 45-5-503 is eligible for an order of protection against the offender regardless of the petitioner's relationship to the offender.

(3) A parent, guardian ad litem, or other representative of the petitioner may file a petition for an order of protection on behalf of a minor petitioner against the petitioner's abuser. At its discretion, a court may appoint a guardian ad litem for a minor petitioner.

(4) A guardian must be appointed for a minor respondent when required by Rule 17(c), Montana Rules of Civil Procedure, or by 25-31-602. An order of protection is effective against a respondent regardless of the respondent's age.

(5) A petitioner is eligible for an order of protection whether or not:

(a) the petitioner reports the abuse to law enforcement;

(b) charges are filed; or

(c) the petitioner participates in a criminal prosecution.

(6) If a petitioner is otherwise entitled to an order of protection, the length of time between the abusive incident and the petitioner's application for an order of protection is irrelevant."

Section 2. Section 41-5-206, MCA, is amended to read:

"41-5-206. Filing in district court prior to formal proceedings in youth court. (1) The county attorney may, in the county attorney's discretion, file with the district court a motion for leave to file an information in the district court if:

(a) the youth charged was 12 years of age or older at the time of the conduct alleged to be unlawful and the unlawful act would if it had been committed by an adult constitute:

(i) sexual intercourse without consent as defined in 45-5-503;

(ii) deliberate homicide as defined in 45-5-102;

(iii) mitigated deliberate homicide as defined in 45-5-103; or

(iv) the attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for either deliberate or mitigated deliberate homicide; or

(b) the youth charged was 16 years of age or older at the time of the conduct alleged to be unlawful and the unlawful act is one or more of the following:

(i) negligent homicide as defined in 45-5-104;

(ii) arson as defined in 45-6-103;

(iii) aggravated ~~or felony~~ assault as defined in 45-5-202;

(iv) assault with a weapon as defined in [section 7];

~~(iv)~~*(v)* robbery as defined in 45-5-401;

~~(v)~~*(vi)* burglary or aggravated burglary as defined in 45-6-204;

~~(vi)~~*(vii)* aggravated kidnapping as defined in 45-5-303;

~~(vii)~~*(viii)* possession of explosives as defined in 45-8-335;

~~(viii)~~*(ix)* criminal ~~sale~~ *distribution* of dangerous druge as defined in 45-9-101;

~~(ix)~~*(x)* criminal production or manufacture of dangerous drugs as defined in 45-9-110;

~~(x)~~*(xi)* attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for any of tbe acts enumerated in subsections (1)(b)(i) through (1)(b)(x);

~~(xi)~~*(xii)* use of threat to coerce criminal street gang membership or use of violence to coerce criminal street gang membership, as defined in 45-8-403.

(2) The county attorney shall file with the district court a petition for leave to file an information in district court if the youth was 17 years of age at the time the youth committed an offense listed under subsection (1).

(3) The district court shall grant leave to file the information if tbe court finds that there is probable cause to believe that tbe youth has committed the alleged offense and that, considering the seriousness of the offense and in the interests of community protection, the case should be filed in the district court.

(4) The filing of an information in district court terminates the jurisdiction of the youth court over the youth with respect to the acts alleged in tbe information. A youth may not be prosecuted in the district court for a criminal offense originally subject to tbe jurisdiction of tbe youth court unless the case bas been filed in the district court as provided in this section. A case may be transferred to district court after prosecution as provided in 41-5-208 or 41-5-1605.

(5) An offense not enumerated in subsection (1) that arises during the commission of a crime enumerated in subsection (1) may be:

(a) tried in youth court;

(b) transferred to district court with an offense enumerated in subsection (1) upon motion of the county attorney and order of tbe district court judge.

(6) If a youth is found guilty in district court of any of tbe offenses enumerated in subsection (1) and is sentenced to the state prison, the commitment must be to the department of corrections. The department shall confine the youth in wbatever institution that it considers proper, including a state youth correctional facility under the procedures of 52-5-111. However, a youth under 16 years of age may not be confined in a state prison facility. During the period of confinement, school-aged youth with disabilities must he provided an education consistent witli the requirements of the federal Individuals ~~with~~ *With* Disabilities Education Act, 20 U.S.C. 1400, et seq.

(7) A youth whose case is filed in the district court may not be detained or otherwise placed in a jail or other adult detention facility hefore final disposition of the youth's case unless:

HeinOnline -- 1999 vol. II 1741 1999

(a) alternative facilities do not provide adequate security: and

(b) the youth is kept in an area that provides physical separation as well as sight and sound separation from adults accused or convicted of criminal offenses."

Section 3. Section 45-5-102, MCA, is amended to read:

"45-5-102. Deliberate homicide. (1) A person commits the offense of deliberate homicide if:

(a) the person purposely or knowingly causes the death of another human being; or

(b) the person attempts to commit, commits, or is legally accountable for the attempt or commission of robbery, sexual intercourse without consent, arson, burglary, kidnapping, aggravated kidnapping, felonious escape, ~~felony assault~~ *assault with a weapon*, aggravated assault, or any other forcible felony and in the course of the forcible felony or flight thereafter, the person or any person legally accountable for the crime causes the death of another human being.

(2) A person convicted of the offense of deliberate homicide shall be punished by death as provided in 46-18-301 through 46-18-310, by life imprisonment, or by imprisonment in the state prison for a term of not less than 10 years or more than 100 years, except as provided in 46-18-219 and 46-18-222."

Section 4. Section 45-5-201, MCA, is amended to read:

"45-5-201. Assault. (1) A person commits the offense of assault if ~~he~~ *the person*:

(a) purposely or knowingly causes bodily injury to another;

(b) negligently causes bodily injury to another with a weapon;

(c) purposely or knowingly makes physical contact of an insulting or provoking nature with any individual; or

(d) purposely or knowingly causes reasonable apprehension of bodily injury in another.

(2) ~~Except as provided in subsection (3), a~~ *A* person convicted of assault shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

~~(3) If the victim is less than 14 years old and the offender is 18 or more years old, the offender, upon conviction under subsection (1)(a), shall be fined not to exceed $50,000 or be imprisoned in the state prison for a term not to exceed 5 years, or both.~~"

Section 5. Assault on minor. (1) A person commits the offense of assault on a minor if the person commits an offense under 45-5-201, and at the time of the offense, the victim is under 14 years of age and the offender is 18 years of age or older.

(2) A person convicted of assault on a minor shall be imprisoned in a state prison for a term not to exceed 5 years or be fined not more than $50,000, or both.

Section 6. Section 45-5-202, MCA, is amended to read:

"45-5-202. Aggravated assault ~~—felony assault~~. (1) A person commits the offense of aggravated assault if the person purposely or knowingly causes serious bodily injury to another.

HeinOnline -- 1999 vol. II 1742 1999

~~(2) A person commits the offense of felony assault if the person purposely or knowingly causes:~~

~~(a) bodily injury to another with a weapon; or~~

~~(b) reasonable apprehension of serious bodily injury in another by use of a weapon.~~

~~(3)~~(2) ~~(a)~~ A person convicted of aggravated assault shall be imprisoned in the state prison for a term of not less than 2 years or more than 20 years and may be fined not more than $50,000, except as provided in 46-18-219 and 46-18-222. ~~Subject to the provisions of subsection (3)(b), a person convicted of felony assault shall be imprisoned in the state prison for a term not to exceed 10 years or be fined not more than $50,000, or both.~~

~~(b) In addition to any sentence imposed under subsection (3)(a), if the person convicted of felony assault is a partner or family member of the victim, as defined in 45-5-206, the person is required to pay for and complete a counseling assessment as required in 45-5-206(4).~~"

Section 7. Assault with weapon. (1) A person commits the offense of assault with a weapon if the person purposely or knowingly causes:

(a) bodily injury to another with a weapon; or

(b) reasonable apprehension of serious bodily injury in another hy use of a weapon or what reasonably appears to be a weapon.

(2) (a) Subject to the provisions of subsection (2)(b), a person convicted of assault with a weapon shall be imprisoned in the state prison for a term not to exceed 20 years or be fined not more than $50,000, or both.

(b) In addition to any sentence imposed under subsection (2)(a), if the person convicted of assault with a weapon is a partner or family member of the victim, as defined in 45-5-206, the person is required to pay for and complete a counseling assessment as required in 45-5-206(4).

Section 8. Section 45-5-206, MCA, is amended to read:

"45-5-206. Partner or family memher assault — penalty. (1) A person commits the offense of partner or family member assault if the person:

(a) purposely or knowingly causes bodily injury to a partner or family member;

(b) negligently causes bodily injury to a partner or family member with a weapon; or

(c) purposely or knowingly causes reasonable apprehension of hodily injury in a partner or family member.

(2) For the purposes of Title 40, chapter 15, 46-6-311, and this section, the following definitions apply:

(a) "Family member" means mothers, fathers, children, hrothers, sisters, and other past or present family members of a household. These relationships include relationships created by adoption and remarriage, including stepchildren, stepparents, in-laws, and adoptive children and parents. These relationships continue regardless of the ages of the parties and whether the parties reside in the same household.

HeinOnline -- 1999 vol. II 1743 1999

(b) "Partners" means spouses, former spouses, persons who have a child in common, and persons who have heen or are currently in a dating or ongoing intimate relationship with a person of the opposite sex.

(3) (a) An offender convicted of partner or family member assault shall he fined an amount not less than $100 or more than $1,000 and he imprisoned in the county jail for a term not to exceed 1 year or not less than 24 hours for a first offense. An offender convicted of a second offense under this section shall he fined not less than $300 or more than $1,000 and he imprisoned in the county jail not less than 72 hours or more than 1 year. Upon a first or second conviction, the offender may be ordered into misdemeanor probation as provided in 46-23-1005. On a third or subsequent conviction for partner or family memher assault, the offender shall he fined not less than $500 and not more than $50,000 and he imprisoned for a term not less than 30 days and not more than 5 years. If the term of imprisonment does not exceed 1 year, the person shall be imprisoned in the county jail. If the term of imprisonment exceeds 1 year, the person shall be imprisoned in the state prison.

(b) (i) For the purpose of determining the number of convictions under this section, a conviction means a conviction, as defined in 45-2-101, in this state, conviction for a violation of a similar statuto in another state, or a forfeiture of bail or collateral deposited to secure the defendant's appearance in court in this stato or in another state for a violation of a similar statute, which forfeiture has not been vacated. A prior conviction for domestic ahuse under this section is a prior conviction for purposes of subsection (3)(a).

(ii) A conviction for ~~felony~~ assault *with a weapon* under ~~45-5-202~~ *[section 7]*, if the offender was a partner or family member of the victim, constitutes a conviction for the purpose of calculating prior convictions under this section.

(4) (a) An offender convicted of partner or family member assault is required to pay for and complete a counseling assessment with a focus on violence, dangerousness, and chemical dependency. The offender shall follow through on all recommendations made by the counseling provider. The counseling provider must be approved by the court. The counseling must include a counseling assessment and a minimum of 25 hours of counseling in addition to the assessment. The assessment and the counseling must be:

(i) with a porson licensed under Title 37, chaptor 17, 22, or 23;

(ii) with a professional person as defined in 53-21-102; or

(iii) in a specialized domestic violence intervention program.

(b) The counseling provided in subsection (4)(a) must be directed to the violent conduct of the offender. Other issues indicated by the assessment may be addressed in additional counseling beyond the minimum 25 hours. Subsection (4)(a) does not prohibit the placement of the offender in other appropriate treatment if the court determines that there is no availahle treatment program directed to the violent conduct of the offender.

(5) In addition to any sentence imposed under subsections (3) and (4), after determining the financial resources and future ability of the offender to pay restitution as provided for in 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable actual medical, housing, wage loss, and counseling costs.

HeinOnline -- 1999 vol. II 1744 1999

(6) In addition to the requirements of subsection (5), if financially able, the offender must be ordered to pay for the costs of the offender's probation, if probation is ordered by the court.

(7) The court may prohibit an offender convicted under this section from possession or use of the firearm used in the assault. The court may enforce 45-8-323 if a firearm was used in the assault.

(8) At the time of sentencing, the court shall provide an offender a written copy of the offender's sentence."

Section 9. Section 45-5-627, MCA, is amended to read:

"45-5-627. Ritual abuse of minor — exceptions — peualty. (1) A person commits the offense of ritual abuse of a minor if the person purposely or knowingly and as part of any ceremony, rite, or ritual or of any training or practice for any ceremony, rite, or ritual:

(a) has sexual intercourse without consent with a person less than 16 years of age; commits assault, aggravated assault, *assault on a minor,* or ~~felony~~ assault *with a weapon* against a victim less than 16 years of age; or kills a person less than 16 years of age;

(b) actually or by simulation tortures, mutilates, or sacrifices an animal or person in the presence of the minor;

(c) dissects, mutilates, or incinerates a human corpse or remains in the presence of the minor;

(d) forces upon the minor or upon another person in the presence of a minor the ingestion or the external bodily application of human or animal urine, feces, flesh, blood, bone, or bodily secretions or drugs or chemical compounds;

(e) places a living minor or another living person in the presence of a minor in a coffin or upon grave that is empty or that contains a human corpse or remains; or

(f) threatens the minor or, in the presence of the minor, threatens any person or animal with death or serious bodily harm and the minor reasonably believes that the threat will or may be carried out.

(2) This section does not apply to activities, practices, and procedures otherwise allowed by law.

(3) Except as provided in 46-18-219, a person convicted of ritual abuse of a minor shall:

(a) for the first offense, be imprisoned in the state prison for a term of not less than 2 years or more than 20 years and may be fined not more than $50,000, or both; and

(b) for a second or subsequent offense, be imprisoned in the state prison for any term of not less than 2 years or more than 40 years and may be fined not more than $50,000, or both.

(4) In addition to any sentence imposed under subsection (3), after determining pursuant to 46-18-242 the financial resources and future ability of the offender to pay restitution, the court shall require the offender, if able, to pay the victim's reasonable costs of counseling that result from the offense. The amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244."

HeinOnline -- 1999 vol. II 1745 1999

Section 10. Section 45-8-405, MCA, is amended to read:

"45-8-405. Pattern of criminal street gang activity. (1) For purposes of this part, "pattern of criminal street gang activity" means the commission, solicitation, conspiracy, attempt; adjudication as a delinquent youth for the commission, attempt, or solicitation; or conviction of two or more of the offenses listed in subsection (2) within a 3-year period, and that the offenses were committed on separate occasions.

(2) The offenses tbat form a pattern of criminal street gang activity include:

(a) deliberate homicide, as defined in 45-5-102;

(b) ~~felony~~ assault *with a weapon*, as defined in ~~45-5-202~~ *[section 7]*;

(c) intimidation, as defined in 45-5-203;

(d) kidnapping, as defined in 45-5-302;

(e) aggravated kidnapping, as defined in 45-5-303;

(f) rohbery, as defined in 45-5-401;

(g) sexual intercourse without consent, as defined in 45-5-503;

(h) aggravated promotion of prostitution, as defined in 45-5-603;

(i) criminal mischief, as defined in 45-6-101;

(j) arson, as defined in 45-6-103;

(k) burglary, as defined in 45-6-204;

(l) theft, as defined in 45-6-301;

(m) forgery, as defined in 45-6-325;

(n) tampering with witnesses and informants, as defined in 45-7-206;

(o) bringing armed men into the state, as defined in 45-8-106;

(p) unlawful possession of a firearm by a convicted person, as defined in 45-8-313;

(q) carrying a concealed weapon, as defined in 45-8-316;

(r) possession of a deadly weapon by a prisoner, as defined in 45-8-318;

(s) possession of a destructive device, as defined in 45-8-334;

(t) possession of explosives, as defined in 45-8-335;

(u) possession of a sawed-off firearm, as defined in 45-8-340;

(v) the sale, possession for sale, transportation, manufacture, offer for sale, offer to manufacture, or other offense involving a dangerous drug as prohibited by Title 45, chapter 9;

(w) use of threat to coerce criminal street gang membership or use of violence to coerce criminal street gang membership provided in 45-8-403."

Section 11. Section 45-9-101, MCA, is amended to read:

"45-9-101. Criminal ~~sale~~ *distribution* of dangerous drugs. (1) A person commits the offense of criminal ~~sale~~ *distribution* of dangerous drugs if the person sells, barters, exchanges, gives away, or offers to sell, barter, exchange, or give away any dangerous drug, as defined in 50-32-101.

HeinOnline -- 1999 vol. II 1746 1999

(2) A person convicted of criminal ~~sale~~ *distribution* of a narcotic drug, as defined in 50-32-101(18)(d), or an opiate, as defined in 50-32-101(19), shall be imprisoned in the state prison for a term of not less than 2 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222.

(3) A person convicted of criminal ~~sale~~ *distribution* of a dangerous drug included in Schedule I or Schedule II pursuant to 50-32-222 or 50-32-224, except marijuana or tetrahydrocannabinol, who has a prior conviction for criminal ~~sale~~ *distribution* of such a drug shall be imprisoned in the state prison for a term of not less than 10 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222. Upon a third or subsequent conviction for criminal ~~sale~~ *distribution* of such a drug, the person shall be imprisoned in the state prison for a term of not less than 20 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222.

(4) A person convicted of criminal ~~sale~~ *distribution* of dangerous drugs not otherwise provided for in subsection (2), (3), or (5) shall be imprisoned in the state prison for a term of not less than 1 year or more than life or be fined an amount of not more than $50,000, or both.

(5) A person who was an adult at the time of ~~sale~~ *distribution* and who is convicted of criminal ~~sale~~ *distribution* of dangerous drugs to a minor shall be sentenced as follows:

(a) If convicted pursuant to subsection (2), the person shall be imprisoned in the state prison for not less than 4 years or more than life and may he fined not more than $50,000, except as provided in 46-18-222.

(b) If convicted of the ~~sale~~ *distribution* of a dangerous drug included in Schedule I or Schedule II pursuant to 50-32-222 or 50-32-224 and if previously convicted of such a ~~sale~~ *distribution*, the person shall be imprisoned in the state prison for not less than 20 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222.

(c) If convicted of the ~~sale~~ *distribution* of a dangerous drug included in Schedule I or Schedule II pursuant to 50-32-222 or 50-32-224 and if previously convicted of two or more such ~~sales~~ *distributions*, the person shall be imprisoned in the state prison for not less than 40 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222.

(d) If convicted pursuant to subsection (4), the person shall be imprisoned in the state prison for not less than 2 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222.

(6) Practitioners and agents under their supervision acting in the course of a professional practice, as defined by 50-32-101, are exempt from this section."

Section 12. Section 45-9-103, MCA, is amended to read:

"45-9-103. Criminal possession with intent to ~~sell~~ *distribute*. (1) A person commits the offense of criminal possession with intent to ~~sell~~ *distribute* if ~~he~~ *the person* possesses with intent to ~~sell~~ *distribute* any dangerous drug as defined in 50-32-101.

(2) A person convicted of criminal possession of an opiate, as defined in 50-32-101(19), with intent to ~~sell~~ *distribute* shall be imprisoned in the state prison for a term of not less than 2 years or more than 20 years and may be fined not more than $50,000, except as provided in 46-18-222.

HeinOnline -- 1999 vol. II 1747 1999

(3) A person convicted of criminal possession with intent to ~~sell~~ *distribute* not otherwise provided for in subsection (2) shall be imprisoned in the state prison for a term of not more than 20 years or be fined an amount not to exceed $50,000, or both.

(4) Practitioners and agents under their supervision acting in the course of a professional practice as defined by 50-32-101 are exempt from this section."

Section 13. Section 45-9-109, MCA, is amended to read:

"45-9-109. Criminal ~~sale~~ *distribution* of dangerous drugs on or near school property — penalty — affirmative defense. (1) A person commits the offense of criminal ~~sale~~ *distribution* of dangerous drugs on or near school property if ~~he~~ *the person* violates 45-9-101 in, on, or within 1,000 feet of the real property comprising a public or private elementary or secondary school.

(2) Except as provided in 46-18-222, a person convicted of criminal ~~sale~~ *distribution* of dangerous drugs on or near school property:

(a) shall be imprisoned in the state prison for a term of not less than 3 years or more than life; and

(b) may be fined an amount of not more than $50,000.

(3) It is not a defense to prosecution under subsection (1) that the person did not know the distance involved.

(4) It is an affirmative defense to prosecution for a violation of this section that:

(a) the prohibited conduct took place entirely within a private residence; and

(b) no person 17 years of age or younger was present in the private residence at any time during the commission of the offense."

Section 14. Section 45-9-112, MCA, is amended to read:

"45-9-112. Criminal ~~sale~~ *distribution* of imitation dangerous drug — penalty. (1) A person commits the offense of criminal ~~sale~~ *distribution* of an imitation dangerous drug if ~~he~~ *the person* knowingly or purposely sells, barters, exchanges, gives away, or offers to sell, barter, exchange, or give away any imitation dangerous drug.

(2) A person convicted of criminal ~~sale~~ *distribution* of an imitation dangerous drug to a person 18 years of age or older shall be imprisoned in the state prison for a term of not more than 5 years and may be fined not more than $50,000.

(3) A person convicted of criminal ~~sale~~ *distribution* of an imitation dangerous drug to a person under the age of 18 shall be imprisoned in the state prison for a term of not more than 10 years and may be fined not more than $50,000."

Section 15. Section 45-9-113, MCA, is amended to read:

"45-9-113. Criminal possession of imitation dangerous drug with *the* purpose to ~~sell~~ *distribute* — penalty. (1) A person commits the offense of criminal possession of an imitation dangerous drug with *the* purpose to ~~sell~~ *distribute* if ~~he~~ *the person* possesses with *the* purpose to ~~sell~~ *distribute* any imitation dangerous drug.

(2) A person convicted of criminal possession of an imitation dangerous drug with *the* purpose to ~~sell~~ *distribute* shall be imprisoned in the state prison for a term of not more than 5 years and may be fined not more than $50,000.

HeinOnline -- 1999 vol. II 1748 1999

(3) A person under 18 years of age convicted of a first violation under this section ~~shall be~~ *is* presumed to he entitled to a deferred imposition of sentence."

Seetion 16. Section 46-18-201, MCA, is amended to read:

"46-18-201. Sentences that may be imposed. (1) Whenever a person has been found guilty of an offense upon a verdict or a plea of guilty, the court may:

(a) defer imposition of sentence, except as provided in 61-8-734 for sentences for driving under the influence of alcohol or drugs or as provided in 61-6-304, for a period, except as otherwise provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of tho deferred imposition. Reasonable restrictions or conditions may include:

(i) jail base release;

(ii) jail time not exceeding 180 days;

(iii) conditions for probation;

(iv) payment of the costs of confinement;

(v) payment of a fine as provided in 46-18-231;

(vi) payment of costs as provided in 46-18-232 and 46-18-233;

(vii) payment of costs of court-appointed counsel as provided in 46-8-113;

(viii) with the approval of the facility or program, an order that the offender be placed in a community corrections facility or program as provided in 53-30-321;

(ix) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, an order that the offender be placed in a prerelease center or prerelease program for a period not to exceed 1 year;

(x) community service;

(xi) home arrest as provided in Title 46, chapter 18, part 10;

(xii) any other reasonable conditions considered necessary for rebabilitation or for the protection of society;

(xiii) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116; or

(xiv) any combination of the restrictions or conditions in subsections (1)(a)(i) through (1)(a)(xiii).

(b) suspend execution of sentence for a period up to the maximum sentence allowed or for a period of 6 months, whichever is greater, for each particular offense. The sentencing judge may impose on the defendant any reasonable restrictions or conditions during the period of suspended sentence. Reasonable restrictions or conditions may include any of those listed in subsection (1)(a).

(c) impose a fine as provided by law for tbe offense;

(d) require payment of costs as provided in 46-18-232 or payment of costs of court-appointed counsel as provided in 46-8-113;

HeinOnline -- 1999 vol. II 1749 1999

(e) impose a county jail or state prison sentence, as provided in Title 45, for the offense or commit the defendant to the department of corrections for a period not to exceed 5 years for placement in an appropriate correctional facility or program;

(f) with the approval of the facility or program, order the offender to be placed in a community corrections facility or program as provided in 53-30-321;

(g) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, order the offender to be placed in a prerelease center or prerelease program for a period not to exceed 1 year; or

(h) impose any combination of subsections (1)(b) through (1)(g).

(2) In addition to any penalties imposed pursuant to subsection (1), if the court finds that the victim of the offense has sustained a pecuniary loss, the court shall require payment of full restitution to the victim as provided in 46-18-241 through 46-18-249.

(3) If a financial obligation is imposed as a condition under subsection (1)(a), sentence may be deferred for a period not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony, regardless of whether any other conditions are imposed.

(4) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, the court shall consider any elapsed time and either expressly allow part or all of it as a credit against the sentence or reject all or part as a credit. The court shall state its reasons in the order. Credit, however, must be allowed for jail or home arrest time already served.

(5) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended: 45-5-103, 45-5-202~~(3) relating to aggravated assault~~, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).

(6) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102 may not be deferred or suspended.

(7) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of a defendant who has heen convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of tbe sentence was suspended.

(8) If the victim was less than 16 years old, the imposition or execution of the first 30 days of a sentence of imprisonment imposed under 45-5-503, 45-5-504, 45-5-505, or 45-5-507 may not be deferred or suspended. Section 46-18-222 does not apply to the first 30 days of the imprisonment.

(9) In imposing a sentence on a defendant convicted of a sexual or violent offense as defined in 46-23-502, the court may not waive the registration requirement provided in Title 46, chapter 23, part 5.

(10) A person convicted of a sexual offense, as defined in 46-23-502, and sentenced to imprisonment in the state prison shall enroll in and complete the educational phase of the prison's sexual offender program. If the person is subject to the provisions of 45-5-512, the person shall also, as provided in 45-5-512, undergo medically safe medroxyprogesterone acetate treatment or its chemical

HeinOnline -- 1999 vol. II 1750 1999

equivalent or other medically safe drug treatment that reduces sexual fantasies, sex drive, or both, paid for by and for a period of time determined hy the department of corrections. The period may not exceed the period of state supervision of the person.

(11) In sentencing a nonviolent felony offender, the court shall first consider alternatives to imprisonment of the offender in the state prison, including placement of the offender in a community corrections facility or program or a prerelease center or prerelease program. In considering alternatives to imprisonment, the court shall examine the sentencing criteria contained in 46-18-225. If the court subsequently sentences the offender to a state prison, the court shall state the reasons why it did not select an alternative to imprisonment, based on the criteria contained in 46-18-225.

(12) If a felony sentence includes probation, the department of corrections shall supervise the defendant unless the court specifies otherwise.

(13) Except as provided in 46-18-222, a provision of this section that conflicts with 46-18-219 does not apply to a person sentenced under 46-18-219."

Section 17. Section 46-18-219, MCA, is amended to read:

"46-18-219. Life sentence without possibility of release. (1) (a) Except as provided in subsection (3), if a person convicted of one of the following offenses was previously convicted of one of the following offenses or of an offense under the laws of another state or of the United States that, if committed in this state, would be one of the following offenses, the person must be sentenced to life in prison, unless the death penalty is applicable and imposed:

(i) 45-5-102, deliberate homicide;

(ii) 45-5-303, aggravated kidnapping;

(iii) 45-5-503, sexual intercourse without consent;

(iv) 45-5-625, sexual abuse of children; or

(v) 45-5-627, except subsection (1)(b), ritual abuse of a minor.

(b) Except as provided in subsection (3), if a person convicted of one of the following offenses was previously convicted of two of the following offenses, two of any combination of the offenses listed in subsection (1)(a) or the following offenses, or two of any offenses under the laws of another state or of the United States that, if committed in this state, would be one of the offenses listed in subsection (1)(a) or this subsection, the person must be sentenced to life in prison, unless the death penalty is applicable and imposed:

(i) 45-5-103, mitigated deliberate homicide;

(ii) 45-5-202~~(1)~~, aggravated assault;

(iii) 45-5-302, kidnapping;

(iv) 45-5-401, robbery.

(2) Except as provided in 46-23-210 and subsection (3) of this section, a person sentenced under subsection (1):

(a) shall serve the entire sentence;

(b) shall serve the sentence in prison;

(c) may not for any reason, except medical reasons, be transferred for any length of time to another type of institution, facility, or program;

HeinOnline -- 1999 vol. II 1751 1999

(d) may not be paroled; and

(e) may not be given time off for good behavior or otherwise be given an early release for any reason.

(3) If the person was previously sentenced for either of two or three offenses listed in subsection (1), as applicable, pursuant to any of the exceptions listed in 46-18-222, then the provisions of subsections (1) and (2) of this section do not apply to the person's present sentence.

(4) (a) For purposes of this section, "prison" means a secure detention facility in which inmates are locked up 24 hours a day and that is operated by this state, another state, the federal government, or a private contractor.

(b) Prison does not include a work release center, prerelease center, boot camp, or any other type of facility that does not provide secure detention."

Section 18. Section 46-18-231, MCA, is amended to read:

"46-18-231. Fines in felony and misdemeanor cases. (1) Whenever, upon a verdict or a plea of guilty, a person has been found guilty of an offense for which a felony penalty of imprisonment could be imposed, the court may impose a fine, only in accordance with subsection (3), and in lieu of or in addition to a sentence of imprisonment. For those crimes for which penalties are provided in 45-5-103, 45-5-202~~(3)~~, *[section 7]*, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), 45-9-103(2), and 45-9-109, a fine may be imposed in accordance with subsection (3) in addition to a sentence of imprisonment.

(2) Whenever, upon a verdict or plea of guilty, a person has been found guilty of an offense for which a misdemeanor penalty of a fine could be imposed, the court may impose a fine only in accordance with subsection (3).

(3) The court may not sentence a defendant to pay a fine unless the defendant is or will be able to pay the fine. In determining the amount and method of payment, the court shall take into account the nature of the crime committed, the financial resources of the defendant, and the nature of the burden that payment of the fine will impose.

(4) Any fine levied under this section in a felony case shall be in an amount fixed by the court not to exceed $50,000."

Section 19. Section 46-23-502, MCA, is amended to read:

"46-23-502. Definitions. As used in 46-18-255 and this part, the following definitions apply:

(1) "Department" means the department of corrections provided for in 2-15-2301.

(2) "Mental abnormality" means a congenital or acquired condition that affects the mental, emotional, or volitional capacity of a person in a manner that predisposes the person to the commission of one or more sexual offenses to a degree that makes the person a menace to the health and safety of other persons.

(3) "Personality disorder" means a personality disorder as defined in the fourth edition of the Diagnostic and Statistical Manual of Mental Disorders adopted hy the American psychiatric association.

(4) "Predatory sexual offense" means a sexual offense committed against a stranger or against a person with whom a relationship has been established or furthered for the primary purpose of victimization.

HeinOnline -- 1999 vol. II 1752 1999

(5) "Sexual offender evaluator" means a person qualified under rules established by the department to conduct sexual offender and sexually violent predator evaluations.

(6) "Sexual offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-502(3), 45-5-503, 45-5-504(2)(c), 45-5-507 (unless the act occurred between two consenting persons 16 years of age or older), or 45-5-625; or

(b) any violation of a law of another state or the federal government reasonably equivalent to a violation listed in subsection (6)(a).

(7) "Sexual or violent offender" means a person who has been convicted of a sexual or violent offense.

(8) "Sexually violent predator" means a person who has been convicted of a sexual offense and who suffers from a mental abnormality or a personality disorder that makes the person likely to engage in predatory sexual offenses.

(9) "Violent offense" means:

(a) any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-102, 45-5-103, 45-5-202, 45-5-206 (third or subsequent offense), *[section 5], [section 7],* 45-5-301 (when the victim is less than 18 years of age and the offender is not a parent of the victim), 45-5-302, 45-5-303, 45-5-401, 45-5-603(1)(b), or 45-6-103; or

(b) any violation of a law of another state or the federal government reasonably equivalent to a violation listed in subsection (9)(a)."

Section 20. Section 50-32-405, MCA, is amended to read:

"50-32-405. Violation — penalties. (1) A person commits the offense of failure to report ~~sale or transfer~~ *distribution* of a precursor to a controlled substance if ~~he~~ *the person* purposely or knowingly fails to report the sale, transfer, or other furnishing of a substance regulated by 50-32-401.

(2) A person convicted of failing to report the ~~sale or transfer~~ *distribution* of a precursor to a controlled substance shall be fined not more than $10,000 or *be* imprisoned in the state prison for not more than 10 years, or both."

Section 21. Codification instruction. [Sections 5 and 7] are intended to be codified as an integral part of Title 45, chapter 5, part 2, and the provisions of Title 45, chapter 5, part 2, apply to [sections 5 and 7].

Approved April 23, 1999

CHAPTER NO. 433

[HB 221]

AN ACT CLARIFYING RESPONSIBILITY FOR WEED CONTROL ALONG A STATE OR COUNTY HIGHWAY OR ROAD BY PROVIDING THAT A LANDOWNER WHO OWNS PROPERTY BORDERING A STATE OR COUNTY HIGHWAY OR ROAD AND DOES NOT WISH TO ENTER A VOLUNTARY AGREEMENT FOR WEED CONTROL, BUT WHO OBJECTS TO WEED CONTROL MEASURES, IS RESPONSIBLE FOR ALTERNATIVE WEED CONTROL ON THAT PROPERTY; PROVIDING PENALTIES FOR A LANDOWNER WHO OBJECTS TO WEED DISTRICT CONTROL MEASURES

HeinOnline -- 1999 vol. II 1753 1999

BUT DOES NOT PROVIDE ALTERNATIVE WEED CONTROL; REQUIRING THE DISTRICT WEED BOARD TO PROVIDE WEED CONTROL IF THE LANDOWNER DOES NOT PROVIDE ALTERNATIVE WEED CONTROL WITHIN 30 DAYS AFTER NOTIFICATION; AMENDING SECTION 7-22-2153, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-22-2153, MCA, is amended to read:

"7-22-2153. Voluntary agreements for control of noxious weeds along roads — *liability of landowner who objects to weed district control measures — penalties.* (1) Any person may voluntarily seek to enter into an agreement for the management of noxious weeds along a state or county highway or road bordering or running through ~~his~~ *the person's* land. The supervisor may draft ~~such an~~ *a voluntary* agreement upon the request of and in cooperation with the person~~; however,~~. *Howevcr,* the agreement must, in the board's judgment, provide for effective weed management. The weed management agreement must be signed by the person and, upon approval of the board, hy the ~~chairman~~ *presiding officer.* An agreement involving a state highway right-of-way must also be signed by a representative of the department of transportation.

(2) The agreement must contain a statement disclaiming any liability of the board and, if applicable, the department of transportation for any injuries or losses suffered by the person in managing noxious weeds on the state or county highway rigbt-of-way. The signed agreement transfers responsibility for managing noxious weeds on the specified section of right-of-way from the board to the person signing the agreement. If the board later finds that the person has failed to adhere to the agreement, the board shall issue an order informing the person tbat the agreement will be void and that responsibility for the management of noxious weeds on the right-of-way will revert to the board unless the person complies witb the provisions of the agreement within a specified time period.

(3) (a) If a person objects to weed control measures bordering a state or county highway right-of-way and does not enter a voluntary agreement pursuant to subsections (1) and (2) and if the board finds that the person has failed to provide alternative weed control, the board shall issue an order informing the person that the management of noxious weeds on the right-of-way will be undertaken by the board unless the person provides alternative weed control within 30 days.

(b) A person who does not provide alternative weed control within the time specified in subsection (3)(a) is guilty of a misdemeanor and, upon conviction, shall be sentenced pursuant to 46-18-212 and assessed the costs of weed control provided by the board. A second or subsequent conviction is punishable by a fine of not less than $500 or more than $2,000, plus the costs of weed control provided by the board."

Section 2. Effective dates. (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Section 1(3)(b)] is effective October 1, 1999.

Approved April 22, 1999

HeinOnline -- 1999 vol. II 1754 1999

CHAPTER NO. 434

[HB 266]

AN ACT REVISING INSURANCE COVERAGE FOR PHENYLKETONURIA TO INCLUDE ALL INBORN ERRORS OF METABOLISM; DEFINING "MEDICAL FOODS"; REQUIRING COVERAGE FOR MEDICAL FOODS, MEDICAL SUPPLIES, PRESCRIPTION DRUGS, AND CERTAIN CORRECTIVE LENSES; REQUIRING THAT MANDATORY COVERAGE FOR INBORN ERRORS OF METABOLISM APPLY TO COVERAGE BY HEALTH MAINTENANCE ORGANIZATIONS, COVERAGE OF STATE AND LOCAL GOVERNMENT EMPLOYEES, AND TO COVERAGE OFFERED BY MULTIPLE EMPLOYER WELFARE ARRANGEMENTS; AMENDING SECTIONS 2-18-704, 33-22-131, 33-31-102, 33-31-111, AND 33-35-306, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-18-704, MCA, is amended to read:

"2-18-704. Mandatory provisions. (1) An insurance contract or plan issued under this part must contain provisions that permit:

(a) the member of a group who retires from active service under the appropriate retirement provisions provided by law to remain a member of the group until the member becomes eligible for medicare under the federal Health Insurance for the Aged Act, 42 U.S.C. 1395, as amended, unless the member is a participant in another group plan with substantially the same or greater benefits at an equivalent cost or unless the member is employed and, by virtue of that employment, is eligible to participate in another group plan with substantially the same or greater benefits at an equivalent cost;

(b) the surviving spouse of a member to remain a member of the group as long as the spouse is eligible for retirement benefits accrued by the deceased member as provided by law unless the spouse is eligible for medicare under the federal Health Insurance for the Aged Act or unless the spouse has or is eligible for equivalent insurance coverage as provided in subsection (1)(a);

(c) the surviving children of a member to remain members of the group as long as they are eligible for retirement benefits accrued by the deceased member as provided by law unless they have equivalent coverage as provided in subsection (1)(a) or are eligible for insurance coverage by virtue of the employment of a surviving parent or legal guardian.

(2) An insurance contract or plan issued under this part must contain the provisions of subsection (1) for remaining a member of the group and also must permit:

(a) the spouse of a retired member the same rights as a surviving spouse under subsection (1)(b);

(b) the spouse of a retiring member to convert a group policy as provided in 33-22-508; and

(c) continued membership in the group by anyone eligible under the provisions of this section, notwithstanding the person's eligibility for medicare under the federal Health Insurance for the Aged Act.

HeinOnline -- 1999 vol. II 1755 1999

(3) (a) A state insurance contract or plan must contain provisions that permit a legislator to remain a member of the state's group plan until the legislator becomes eligible for medicare under the federal Health Insurance for the Aged Act, 42 U.S.C. 1395, as amended, if the legislator:

(i) terminates service in the legislature and is a vested member of a state retirement system provided by law; and

(ii) notifies the department of administration in writing within 90 days of the end of the legislator's legislative term.

(b) A former legislator may not remain a member of the group plan under the provisions of subsection (3)(a) if the person:

(i) is a member of a plan with substantially the same or greater benefits at an equivalent cost; or

(ii) is employed and, by virtue of that employment, is eligible to participate in another group plan with substantially the same or greater benefits at an equivalent cost.

(c) A legislator who remains a member of the group under the provisions of subsection (3)(a) and subsequently terminates membership may not rejoin the group unless the person again serves as a legislator.

(4) (a) A state insurance contract or plan must contain provisions that permit continued membership in the state's group plan by a member of the judges' retirement system who leaves judicial office hut continues to be an inactive vested member of the judges' retirement system as provided by 19-5-301. The judge sball notify the department of administration in writing within 90 days of the end of the judge's judicial service of tbe judge's choice to continue membership in the group plan.

(b) A former judge may not remain a member of the group plan under the provisions of this subsection (4) if the person:

(i) is a member of a plan with substantially the same or greater benefits at an equivalent cost;

(ii) is employed and, by virtue of that employment, is eligible to participate in another group plan with substantially the same or greater benefits at an equivalent cost; or

(iii) becomes eligible for medicare under the federal Health Insurance for the Aged Act, 42 U.S.C. 1395, as amended.

(c) A judge who remains a member of the group under the provisions of this subsection (4) and subsequently terminates membership may not rejoin the group plan unless the person again serves in a position covered by the state's group plan.

(5) A person electing to remain a member of the group under subsection (1), (2), (3), or (4) shall pay the full premium for coverage and for that of the person's covered dependents.

(6) An insurance contract or plan issued under this part that provides for the dispensing of prescription drugs by an out-of-state mail service pharmacy, as defined in 37-7-702:

(a) must permit any member of a group to obtain prescription drugs from a pharmacy located in Montana that is willing to match the price charged to the

HeinOnline -- 1999 vol. II 1756 1999

group or plan and to meet all terms and conditions, including the same professional requirements that are met by the mail service pharmacy for a drug, without financial penalty to the member; and

(b) may only be with an out-of-state mail service pharmacy that is registered with the board under Title 37, chapter 7, part 7, and that is registered in this state as a foreign corporation.

(7) An insurance contract or plan issued under this part must include coverage for treatment of inborn errors of metabolism, as provided for in 33-22-131."

Section 2. Section 33-22-131, MCA, is amended to read:

"33-22-131. Coverage for ~~phenylketonuria~~ treatment *of inborn errors of metabolism.* (1) Each group or individual medical expense disability policy, certificate of insurance, and membership contract that is delivered, issued for delivery, renewed, extended, or modified in this state must provide coverage for the treatment of ~~phenylketonuria~~ *inborn errors of metabolism that involve amino acid, carbohydrate, and fat metabolism and for which medically standard methods of diagnosis, treatment, and monitoring exist.*

(2) Coverage must include expenses of diagnosing, monitoring, and controlling the disorders by nutritional and medical assessment, including but not limited to clinical services, biochemical analysis, medical supplies, prescription drugs, corrective lenses for conditions related to the inborn error of metabolism, nutritional management, and medical foods used in treatment to compensate for the metabolic abnormality and to maintain adequate nutritional status.

~~(2)~~*(3)* For purposes of this section~~,~~*:*

(a) "medical foods" means nutritional substances in any form that are:

(i) formulated to be consumed or administered enterally under supervision of a physician;

(ii) specifically processed or formulated to be distinct in one or more nutrients present in natural food;

(iii) intended for the medical and nutritional management of patients with limited capacity to metabolize ordinary foodstuffs or certain nutrients contained in ordinary foodstuffs or who have other specific nutrient requirements as established by medical evaluation; and

(iv) essential to optimize growth, health, and metabolic homeostasis;

(b) "treatment" means licensed professional medical services under the supervision of a physician ~~and a dietary formula product to achieve and maintain normalized blood levels of phenylalanine and adequate nutritional status~~.

~~(3)~~*(4)* These services are subject to the terms of the applicable group or individual disability policy, certificate, or membership contract that establishes durational limits, dollar limits, deductibles, and copayment provisions as long as the terms are not less favorable than for physical illness generally.

~~(4)~~*(5)* This section does not apply to disability income, hospital indemnity, medicare supplement, accident-only, vision, dental, or specified disease policies."

Section 3. Section 33-31-102, MCA, is amended to read:

HeinOnline -- 1999 vol. II 1757 1999

"**33-31-102. Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Affiliation period" means a period that, under the terms of the health insurance coverage offered hy a health maintenance organization, must expire before the health insurance coverage becomes effective.

(2) "Basic health care services" means:

(a) consultative, diagnostic, therapeutic, and referral services by a provider;

(b) inpatient hospital and provider care;

(c) outpatient medical services;

(d) medical treatment and referral services;

(e) accident and sickness services by a provider to each newborn infant of an enrollee pursuant to 33-31-301(3)(e);

(f) care and treatment of mental illness, alcoholism, and drug addiction;

(g) diagnostic laboratory and diagnostic and tberapeutic radiologic services;

(h) preventive health services, including:

(i) immunizations;

(ii) well-child care from birth;

(iii) periodic health evaluations for adults;

(iv) voluntary family planning services;

(v) infertility services; and

(vi) children's eye and ear examinations conducted to determine the need for vision and hearing correction;

(i) minimum mammography examination, as defined in 33-22-132; and

(j) treatment *and medical foods* for ~~phenylketonuria~~ *inborn errors of metabolism.* ~~"Treatment" means licensed professional medical services under the supervision of a physician and a dietary formula product to achieve and maintain normalized blood levels of phenylalanine and adequate nutritional status~~ *"Medical foods" and "treatment" have the meanings provided for in 33-22-131.*

(3) "Commissioner" means the commissioner of insurance of the state of Montana.

(4) "Enrollee" means a person:

(a) who enrolls in or contracts with a health maintenance organization;

(b) on whose behalf a contract is made with a health maintenance organization to receive health care services; or

(c) on whose behalf the health maintenance organization contracts to receive health care services.

(5) "Evidence of coverage" means a certificate, agreement, policy, or contract issued to an enrollee setting forth the coverage to which the enrollee is entitled.

(6) "Health care services" means:

(a) the services included in furnishing medical or dental care to a person;

(b) the services included in hospitalizing a person;

HeinOnline -- 1999 vol. II 1758 1999

(c) the services incident to furnishing medical or dental care or hospitalization; or

(d) the services included in furnishing to a person other services for the purpose of preventing, alleviating, curing, or healing illness, injury, or physical disability.

(7) "Health care services agreement" means an agreement for health care services between a health maintenance organization and an enrollee.

(8) "Health maintenance organization" means a person who provides or arranges for basic health care services to enrollees on a prepaid basis, either directly through provider employees or through contractual or other arrangements with a provider or a group of providers. This subsection does not limit methods of provider payments made by health maintenance organizations.

(9) "Insurance producer" means an individual, partnership, or corporation appointed or authorized by a health maintenance organization to solicit applications for health care services agreements on its behalf.

(10) "Person" means:

(a) an individual;

(b) a group of individuals;

(c) an insurer, as defined in 33-1-201;

(d) a health service corporation, as defined in 33-30-101;

(e) a corporation, partnership, facility, association, or trust; or

(f) an institution of a gevernmental unit of any state licensed by that state to provide health care, including but not limited to a physician, hospital, hospital-related facility, or long-term care facility.

(11) "Plan" means a health maintenance organization operated by an insurer or health service corporation as an integral part of the corporation and not as a subsidiary.

(12) "Point-of-service option" means a delivery system that permits an enrollee of a health maintenance organization to receive health care services from a provider who is, under the terms of the enrollee's contract for health care services with the health maintenance organization, not on the provider panel of the health maintenance organization.

(13) "Provider" means a physician, hospital, hospital-related facility, long-term care facility, dentist, osteopath, chiropractor, optometrist, podiatrist, psychologist, licensed social worker, registered pharmacist, or advanced practice registered nurse, as specifically listed in 37-8-202, who treats any illness or injury within the scope and limitations of the provider's practice or any other person who is licensed or otherwise authorized in this state to furnish health care services.

(14) "Provider panel" means those providers with whom a health maintenance organization contracts to provide health care services to the health maintenance organization's enrollees.

(15) "Purchaser" means the individual, employer, or other entity, but not the individual certificate holder in the case of group insurance, that enters into a health care services agreement.

HeinOnline -- 1999 vol. II 1759 1999

(16) "Uncovered expenditures" mean the costs of health care services that are covered by a health maintenance organization and for which an enrollee is liable if the health maintenance organization becomes insolvent."

Section 4. Section 33-31-111, MCA, is amended to read:

"**33-31-111. Statutory construction and relationship to other laws.** (1) Except as otherwise provided in this chapter, the insurance or health service corporation laws do not apply to any health maintenance organization authorized to transact business under this chapter. This provision does not apply to an insurer or health service corporation licensed and regulated pursuant to the insurance or health service corporation laws of this state except with respect to its health maintenance organization activities authorized and regulated pursuant to this chapter.

(2) Solicitation of enrollees hy a health maintenance organization granted a certificate of authority or its representatives is not a violation of any law relating to solicitation or advertising hy health professionals.

(3) A health maintenance organization authorized under this chapter is not practicing medicine and is exempt from Title 37, chapter 3, relating to the practice of medicine.

(4) This chapter does not exempt a health maintenance organization from the applicable certificate of need requirements under Title 50, chapter 5, parts 1 and 3.

(5) This section does not exempt a health maintenance organization from the prohibition of pecuniary interest under 33-3-308 or the material transaction disclosure requirements under 33-3-701 through 33-3-704. A health maintenance organization must he considered an insurer for the purposes of 33-3-308 and 33-3-701 through 33-3-704.

(6) This section does not exempt a health maintenance organization from:

(a) prohibitions against interference with certain communications as provided under chapter 1, part 8;

(b) the provisions of Title 33, chapter 22, part 19;

(c) the requirements of 33-22-134 and 33-22-135; or

(d) network adequacy and quality assurance requirements provided under chapter 36.

(7) Sections *33-22-131,* 33-22-141, 33-22-142, 33-22-246, 33-22-247, 33-22-514, 33-22-523, 33-22-524, and 33-22-526 apply to health maintenance organizations."

Section 5. Section 33-35-306, MCA, is amended to read:

"**33-35-306. Application of insurance code to arrangements.** (1) In addition to this chapter, self-funded multiple employer welfare arrangements are subject to the following provisions of Title 33:

(a) Title 33, chapter 1, part 4, hut the examination of a self-funded multiple employer welfare arrangement is limited to those matters to which the arrangement is suhject to regulation under this chapter;

(b) Title 33, chapter 1, part 7;

(c) 33-3-308;

(d) Title 33, chapter 18, except 33-18-242;

(e) *33-22-131*, 33-22-134, and 33-22-135; and

(f) 33-22-525 and 33-22-526.

(2) Except as provided in this chapter, other provisions of Title 33 do not apply to a self-funded multiple employer welfare arrangement that has been issued a certificate of authority that has not been revoked."

Section 6. Effective date — applicability. [This act] is effective January 1, 2000, and applies to all policies, contracts, plans, or certificates issued or renewed on or after that date.

Approved April 22, 1999

CHAPTER NO. 435

[HB 275]

AN ACT ESTABLISHING STATEWIDE AND COMMUNITY LONG-TERM PLANNING FOR THE AGING POPULATION; REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO REPORT BIENNIALLY, WITH ANNUAL UPDATES, ON STATEWIDE AND COMMUNITY ISSUES ON AGING; INCLUDING STAKEHOLDER IDENTIFICATION IN QUALIFICATIONS FOR AREA AGENCIES ON AGING; PROVIDING TECHNICAL ASSISTANCE TO AREA AGENCIES ON AGING AND COMMUNITIES FOR LONG-TERM PLANNING; AND AMENDING SECTIONS 52-3-101, 52-3-103, 52-3-503, AND 52-3-504, MCA; AND PROVIDING A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 52-3-101, MCA, is amended to read:

"52-3-101. Functions of department of public health and human services. The department of public health and human services shall:

(1) consult with and advise organized efforts by communities, organizations, associations, and groups that are working toward any forms of assistance to problems of aging;

(2) study and identify problems of aging;

(3) review existing programs for the aging and make recommendations to the governor and the legislature for improvements in the programs;

(4) encourage the sponsorship of community projects ~~which~~ *that* will seek to make optimum use of the time and talents of retired persons;

(5) coordinate, through area ~~councils~~ *agencies* on aging *and county councils*, the delivery of community-based care, including but not limited to home health care, homemaker services, foster home care, nutrition, transportation, winterization, information and referral, and recreation;

(6) (a) produce a biennial report, with annual updates, on statewide and community issues related to aging. The report must be provided to the legislature or an appropriate interim committee and the governor and must include but is not limited to:

(i) identifying key stakeholders in state and community planning for aging, such as senior citizens and those who will become senior citizens in the next decade, local government officials, members of the business community, schools, service providers, and state agencies;

(ii) reporting current demographics and projected demographics for Montana's aging population;

(iii) presenting the implications of the aging population for local and state services and budgets and state law and policies; and

(iv) providing a statewide overview of the 4-year plans of area agencies on aging to identify issues, needs, and resources.

(b) The report provided for in subsection (6)(a) must be posted in an appropriate electronic forum and format for access by the public."

Section 2. Section 52-3-103, MCA, is amended to read:

"52-3-103. Designation of area agencies. (1) The department of public health and human services may designate as an area agency in a geographical area an entity that demonstrates its ability to:

(a) develop and administer an area plan for a comprehensive and coordinated system of services; ~~and~~

(b) serve as the advocate and focal point for older persons in the planning and service area*; and*

(c) identify the stakeholders in the planning and service areas and to involve them in long-term identification of needs and goals.

(2) An entity may be but is not limited to:

(a) an established office on aging that operates within the geographical area;

(b) an office or agency of a unit of general purpose local government, except a county welfare office or department;

(c) any combination of offices or units of general purpose local governments; or

(d) any other public or private, nonprofit agency, except a regional or local agency of the state."

Section 3. Section 52-3-503, MCA, is amended to read:

"52-3-503. Purpose and policy. (1) The legislature finds that older Montanans constitute a valuable resource of this state and that their competence, experience, and wisdom must be used more effectively for the benefit of all Montanans.

(2) The legislature further finds that a complete range of services is not available in all areas of the state and that many Montanans lack access to the services that are available.

(3) The legislature declares that it is the policy of this state, subject to available funding, to provide a wide range of coordinated services to enable older Montanans to maintain an independent lifestyle, avoid unnecessary institutional care, and live in dignity.

(4) It is the intent of the legislature that available federal, state, regional, and local resources be used to strengthen the economic, social, and general well-being of older Montanans and that the state:

HeinOnline -- 1999 vol. II 1762 1999

(a) develop appropriate programs for older Montanans;

(b) coordinate and integrate all levels of service, with emphasis on the whole person; and

(c) promote alternative forms of service that will create options for older Montanans.

(5) It is the intent of the legislature that the state and its communities plan for the future by organizing more local involvement within communities and their surrounding rural areas. Communities need to identify all of the stakeholders that are integral to the success of meeting the challenges facing a society with an aging population. The state shall gather and coordinate the information received by the community planning efforts and bring that information forward to allow coordinated services that provide the options that Montanans need."

Section 4. Section 52-3-504, MCA, is amended to read:

"52-3-504. Services to be provided. Subject to available funding, the department, in conjunction with other state, local, and private agencies and organizations, shall identify and may provide ~~for older Montanans~~, in addition to existing services *for older Montanans*:

(1) a directory of available services;

(2) transportation that provides access to services;

(3) housing, nutrition, education, homemaker, escort, respite, hospice, and other programs that facilitate self-care;

(4) physical and mental health care, including inpatient and outpatient services, screening, appliances and supplies, and home health care;

(5) placement in adult day care, foster care, personal care, supervisory care, and nursing homes;

(6) protective advocacy and legal programs;

(7) job training, job development, and income maintenance;

(8) adult education; ~~and~~

(9) training and research in aging*; and*

(10) technical assistance to communities through the area agencies on aging to identify stakeholders to conduct long-term planning and identification of needs."

Section 5. Termination. [This act] terminates June 30, 2001.

Approved April 22, 1999

CHAPTER NO. 436

[HB 405]

AN ACT CHANGING THE LINEAL YARDS REQUIREMENT FOR GOLF COURSES TO BE TAXED AT ONE-HALF THE RATE OF OTHER CLASS FOUR PROPERTY; AMENDING SECTION 15-6-134, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

HeinOnline -- 1999 vol. II 1763 1999

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-6-134, MCA, is amended to read:

"15-6-134. Class four property — description — taxable percentage. (1) Class four property includes:

(a) all land, except that specifically included in another class;

(b) all improvements, including trailers, manufactured homes, or mobile homes used as a residence, except those specifically included in another class;

(c) the first $100,000 or less of the market value of any improvement on real property, including trailers, manufactured homes, or mobile homes, and appurtenant land not exceeding 5 acres owned or under contract for deed and actually occupied for at least 7 months a year as the primary residential dwelling of any person whose total income from all sources, including net business income and otherwise tax-exempt income of all types but not including social security income paid directly to a nursing home, is not more than $15,000 for a single person or $20,000 for a married couple or a head of household, as adjusted according to subsection (2)(b)(ii). For the purposes of this subsection (1)(c), net business income is gross income less ordinary operating expenses but before deducting depreciation or depletion allowance, or both.

(d) all golf courses, including land and improvements actually and necessarily used for that purpose, that consist of at least nine holes and not less than ~~3,000~~ *700* lineal yards; and

(e) all improvements on land that is eligible for valuation, assessment, and taxation as agricultural land under 15-7-202, including 1 acre of real property beneath improvements on land described in 15-6-133(1)(c). The 1 acre must be valued at market value.

(2) Class four property is taxed as follows:

(a) (i) Except as provided in 15-24-1402 or 15-24-1501 and subsection (2)(a)(ii) of this section, property described in subsections (1)(a), (1)(b), and (1)(e) of this section is taxed at 3.86% of its market value.

(ii) The taxable percentage rate in subsection (2)(a)(i) must be adjusted downward by subtracting 0.022 percentage points each year until the tax rate is equal to or less than 2.78%.

(b) (i) Property qualifying under the property tax assistance program in subsection (1)(c) is taxed at the rate provided in subsection (2)(a)(ii) of its market value multiplied by a percentage figure based on income and determined from the following table:

Income Single Person	Income Married Couple Head of Household	Percentage Multiplier
$0 - $ 6,000	$0 - $ 8,000	20%
6,001 - 9,200	8,001 - 14,000	50%
9,201 - 15,000	14,001 - 20,000	70%

HeinOnline -- 1999 vol. II 1764 1999

(ii) The income levels contained in the table in subsection (2)(h)(i) must be adjusted for inflation annually by the department ~~of revenue~~. The adjustment to the income levels is determined by:

(A) multiplying the appropriate dollar amount from the table in subsection (2)(b)(i) by the ratio of tbe PCE for the second quarter of the year prior to the year of application to tbe PCE for the second quarter of 1995; and

(B) rounding the product thus obtained to the nearest whole dollar amount.

(iii) "PCE" means the implicit price deflator for personal consumption expenditures as puhlished quarterly in the Survey of Current Business hy tbe bureau of economic analysis of the U.S. department of commerce.

(c) Property described in subsection (1)(d) is taxed at one-half the taxable percentage rate established in subsection (2)(a)(i).

(3) Within the meaning of comparable property, as defined in 15-1-101, property assessed as commercial property is comparable only to other property assessed as commercial property and property assessed as other than commercial property is comparable only to other property assessed as other than commercial property."

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 1998.

Approved April 22, 1999

CHAPTER NO. 437

[HB 486]

AN ACT DEFINING "INSTITUTIONAL CONTROL"; CLARIFYING THE DEFINITION OF "ORPHAN SHARE"; REQUIRING THAT THE DEPARTMENT OF ENVIRONMENTAL QUALITY GIVE DUE CONSIDERATION TO INSTITUTIONAL CONTROLS IN SELECTING REMEDIAL ACTIONS; ESTABLISHING AN INSTITUTIONAL CONTROL PROCESS; PROPORTIONATELY REDUCING THE ORPHAN SHARE IF A POTENTIALLY RESPONSIBLE PERSON RECOVERS REMEDIAL ACTION COSTS FROM A FINANCIALLY RESPONSIBLE PARTY; AMENDING SECTIONS 75-10-701, 75-10-715, AND 75-10-721, MCA; REPEALING SECTION 27, CHAPTER 584, LAWS OF 1995; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-10-701, MCA, is amended to read:

"75-10-701. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Department" means the department of environmental quality provided for in 2-15-3501.

(2) "Director" means the director of the department.

(3) "Environment" means any surface water, ground water, drinking water supply, land surface or subsurface strata, or ambient air within the state of Montana or under the jurisdiction of the state of Montana.

(4) (a) "Facility" means:

(i) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft; or

(ii) any site or area where a hazardous or deleterious substance has been deposited, stored, disposed of, placed, or otherwise come to be located.

(b) The term does not include any consumer product in consumer use.

(5) "Fiduciary" means a trustee, executor, administrator, personal representative, custodian, conservator, guardian, or receiver acting or holding property for the exclusive benefit of another person. The term does not include:

(a) a person who has previously owned or operated the property in a nonfiduciary capacity; or

(b) a person acting as fiduciary with respect to a trust or other fiduciary estate that has no objectively reasonable or substantial purpose apart from avoidance of or limitation of liability under this part. For the purposes of 75-10-715(9), the term does not include the state, a state agency, or a political subdivision of the state acting as trustee of natural resources within the state of Montana.

(6) "Foreclosure" means acquisition of title to property through foreclosure, purchase at foreclosure sale, assignment or acquisition of title in lieu of foreclosure, repossession in the case of a lease financing transaction, or acquisition of a right to title or other agreement in full or partial settlement of a loan obligation.

(7) "Fund" means the environmental quality protection fund established in 75-10-704.

(8) "Hazardous or deleterious substance" means a substance that because of its quantity, concentration, or physical, chemical, or infectious characteristics may pose an imminent and substantial threat to public health, safety, or welfare or the environment and is:

(a) a substance that is defined as a hazardous substance by section 101(14) of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9601(14), as amended;

(b) a substance identified by the administrator of the United States environmental protection agency as a hazardous substance pursuant to section 102 of CERCLA, 42 U.S.C. 9602, as amended;

(c) a substance that is defined as a hazardous waste pursuant to section 1004(5) of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6903(5), as amended, including a substance listed or identified in 40 CFR 261; or

(d) any petroleum product.

(9) "Household" means single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, day-use recreational areas, or similar structures or areas.

HeinOnline -- 1999 vol. II 1766 1999

(10) "Household refuse" means garbage, trash, and sanitary wastes in septic tanks that are derived from a household.

(11) "Institutional control" means a restriction on the use of real property that mitigates the risk posed to public health, safety, and welfare and the environment. Institutional controls include but are not limited to:

(a) deed restrictions;

(b) easements;

(c) reservations;

(d) convenants, either restrictive or affirmative; and

(e) other mechanisms or physical restrictions for controlling present and future land use, including controlled ground water areas, that are placed upon real property to mitigate the risk to public health, safety, and welfare and the environment.

~~(11)~~*(12)* "Natural resources" means land, fish, wildlife, biota, air, surface water, ground water, drinking water supplies, and any other resources within the state of Montana owned, managed, held in trust, or otherwise controlled by or appertaining to the state of Montana or a political subdivision of the state.

~~(12)~~*(13)* "Orphan share" means the percentage share of remedial action costs for a facility that is attributable, under the procedures in 75-10-742 through 75-10-752, to identified but bankrupt or defunct persons who are not ~~affiliated with~~ *an affiliate of* any viable person, *unless affiliated by stock ownership.*

~~(13)~~*(14)* "Orphan share fund" means the fund for the orphan share account established in 75-10-743.

~~(14)~~*(15)* (a) "Owns or operates" means owning, leasing, operating, managing activities at, or exercising control over the operation of a facility.

(b) The term does not include holding the indicia of ownership of a facility primarily to protect a security interest in the facility or other location unless the holder has participated in the management of the facility. The term does not apply to the state or a local gevernment tbat acquired ownership or control through bankruptcy, tax delinquency, abandonment, lien foreclosure, or other circumstances in which the government acquires title by virtue of its function as sovereign, unless the state or local government bas caused or contributed to the release or threatened release of a hazardous or deleterious substance from the facility. The term also does not include the owner or operator of the Milltown dam licensed under part 1 of the Federal Power Act (FERC license No. 2543-004) if a hazardous or deleterious substance has been released into the environment upstream of the dam and has subsequently come to be located in the reservoir created by the dam, unless the owner or operator is a person who would otherwise be liable for a release or tbreatened release under 75-10-715(1).

~~(15)~~*(16)* "Person" means an individual, trust, firm, joint-stock company, joint venture, consortium, commercial entity, partnership, association, corporation, commission, state or state agency, political subdivision of the state, interstate body, or the federal government, including a federal agency.

~~(15)~~*(17)* "Petroleum product" includes gasoline, crude oil (except for crude oil at production facilities subject to regulation under Title 82), fuel oil, diesel oil or fuel, lubricating oil, oil sludge or refuse, and any otber petroleum-related product or waste or fraction of tbe product or waste that is liquid at standard conditions

HeinOnline -- 1999 vol. II 1767 1999

of temperature and pressure (60 degrees F and 14.7 pounds per square inch absolute).

~~(17)~~*(18)* "Reasonably anticipated future uses" means likely future land or resource uses that take into consideration:

(a) local land and resource use regulations, ordinances, restrictions, or covenants;

(b) historical and anticipated uses of tbe facility;

(c) patterns of development in the immediate area; and

(d) relevant indications of anticipated land use from the owner of the facility and local planning officials.

~~(18)~~*(19)* "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of a bazardous or deleterious suhstance directly into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any hazardous or deleterious substance), but excludes releases confined to the indoor workplace environment, the use of pesticides as defined in 80-8-102(30) when they are applied in accordance with approved federal and state labels, and the use of commercial fertilizers, as defined in 80-10-101(2), when applied as part of accepted agricultural practice.

~~(19)~~*(20)* "Remedial action" includes all notification, investigation, administration, monitoring, cleanup, restoration, mitigation, abatement, removal, replacement, acquisition, enforcement, legal action, health studies, feasibility studies, and other actions necessary or appropriate to respond to a release or threatened release.

~~(20)~~*(21)* "Remedial action contract" means a written contract or agreement entered into by a remedial action contractor with the state, or with a potentially liable person acting pursuant to an order or request issued by the department, the United States, or any federal agency, to provide a remedial action with respect to a release or threatened release of a hazardous or deleterious substance.

~~(21)~~*(22)* "Remedial action contractor" means:

(a) any person who enters into and is carrying out a remedial action contract; or

(h) any person who is retained or hired by a person described in subsection ~~(21)(a)~~ *(22)(a)* to provide services relating to a remedial action.

~~(22)~~*(23)* "Remedial action costs" means reasonable costs that are attributable to or associated with a remedial action at a facility, including but not limited to the costs of administration, investigation, legal or enforcement activities, contracts, feasihility studies, or health studies."

Seetion 2. Section 75-10-715, MCA, is amended to read:

"75-10-715. Liability — reimbursement and penalties — proceedings — defenses and exclusions. (1) Except as provided in 75-10-742 through 75-10-752, notwithstanding any other provision of law, and subject only to the defenses set forth in subsection (5) and the exclusions set forth in subsection (7), the following persons are jointly and severally liable for a release or threatened release of a hazardous or deleterious suhstance from a facility:

HeinOnline -- 1999 vol. II 1768 1999

(a) a person who owns or operates a facility where a hazardous or deleterious substance was dispesed of;

(b) a person who at the time of disposal of a hazardous or deleterious substance owned or operated a facility where the hazardous or deleterious substance was disposed of;

(c) a person who generated, possessed, or was otherwise responsible for a hazardous or deleterious substance and who, hy contract, agreement, or otherwise, arranged for disposal or treatment of the substance or arranged with a transporter for transport of the substance for disposal or treatment; and

(d) a porson who accepts or has accepted a hazardous or deleterious substance for transport to a disposal or treatment facility.

(2) A porson identified in subsection (1) is liable for the following costs:

(a) all remedial action costs incurred by the state; and

(b) damages for injury to, destruction of, or loss of natural resources caused by the release or threatened release, including the reasonable technical and legal costs of assessing and enforcing a claim for the injury, destruction, or loss resulting from the release, unless the impaired natural resources were specifically identified as an irreversible and irretrievable commitment of natural resources in an approved final state or federal environmental impact statement or other comparable approved final environmental analysis for a project or facility that was the subject of a gevernmental permit or license and the project or facility was being operated within the terms of its permit or license.

(3) If the porson liable under subsection (1) fails, without sufficient cause, to comply with a department order issued pursuant to 75-10-711(4) or to properly provide remedial action upen notification by the department pursuant to 75-10-711(3), the person may be liable for penalties in an amount not to exceed two times the amount of any costs incurred by the state pursuant to this section.

(4) Tbe department may initiate civil proceedings in district court to recover remedial action costs, natural resource damages, or penalties under subsections (1), (2), and (3). Proceedings to recover costs and penalties must be cenducted in accordance with 75-10-722. Venue for any action to recover costs, damages, or ponalties lies in the county where the release occurred or where the person liable under subsection (1) resides or has its principal place of business or in the district court of the first judicial district.

(5) A porson has a defense and is not liable under subsections (1), (2), and (3) if the person can establish by a prependerance of the evidence that:

(a) the department failed to follow the notice provisions of 75-10-711 when required;

(b) the release did not emanate from any vessel, vehicle, or facility to which the porson contributed any hazardous or deleterious substance or over which the porson had any ownership, authority, or control and was not caused by any action or omission of the porson;

(c) the release or threatened release occurred solely as a result of:

(i) an act or omission of a third party other than either an employee or agent of the porson; or

HeinOnline -- 1999 vol. II 1769 1999

(ii) an act or omission of a third party other than one whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly, with the person, if the person establishes by a preponderance of the evidence that the person:

(A) exercised due care with respect to the hazardous or deleterious substance concerned, taking into consideration the characteristics of the hazardous or deleterious substance in light of all relevant facts and circumstances; and

(B) took precautions against foreseeable acts or omissions of a third party and the consequences that could foreseeably result from those acts or omissions;

(d) the release or threat of release occurred solely as the result of an act of God or an act of war;

(e) the release or threatened release was from a facility for which a permit had been issued by the department, the hazardous or deleterious substance was specifically identified in the permit, and the release was within the limits allowed in the permit;

(f) in the case of assessment of penalties under subsection (3), factors beyond the control of the person prevented the person from taking timely remedial action; or

(g) the person transported only household refuse, unless that person knew or reasonably should have known that the hazardous or deleterious substance was present in the refuse.

(6) (a) For the purpose of subsection (5)(c)(ii), the term "contractual relationship" includes but is not limited to land contracts, deeds, or other instruments transferring title or possession, unless the real property on which the facility is located was acquired by the person after the disposal or placement of the hazardous or deleterious substance on, in, or at the facility and one or more of the following circumstances is also established by the person by a preponderance of the evidence:

(i) At the time the person acquired the facility, the person did not know and had no reason to know that a hazardous or deleterious substance that is the subject of the release or threatened release was disposed of on, in, or at the facility.

(ii) The person is a governmental entity that acquired the facility by escheat, lien foreclosure, or through any other involuntary transfer or acquisition or through the exercise of eminent domain authority by purchase or condemnation.

(iii) The person acquired the facility by inheritance or bequest.

(b) In addition to establishing one or more of the circumstances in subsection (6)(a)(i) through (6)(a)(iii), the person shall establish that the person has satisfied the requirements of subsection (5)(c)(i) or (5)(c)(ii).

(c) To establish that the person had no reason to know, as provided in subsection (6)(a)(i), the person must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability. For purposes of assessing this inquiry, the following must be taken into account:

(i) any specialized knowledge or experience on the part of the person;

(ii) the relationship of the purchase price to the value of the property if uncontaminated;

(iii) commonly known or reasonably ascertainable information about the property;

(iv) the obviousness of the presence or the likely presence of contamination on the property; and

(v) the ability to detect the contamination by appropriate inspection.

(d) (i) Subsections (5)(b) and (5)(c) or this subsection (6) may not diminish the liability of a previous owner or operator of the facility who would otherwise be liable under this part.

(ii) Notwithstanding this subsection (6), if the previous owner or operator obtained actual knowledge of the release or threatened release of a hazardous or deleterious substance at the facility when the person owned the real property and then subsequently transferred ownersbip of the property to another person without disclosing the knowledge, the previous owner is liable under subsections (1), (2), and (3) and a defense under subsection (5)(b) or (5)(c) is not available to that person.

(e) Subsection (6) does not affect the liability under this part of a person who, by any act or omission, caused or contributed to the release or threatened release of a hazardous or deleterious substance that is the subject of the action relating to the facility.

(7) A person has an exclusion and is not liable under this section if:

(a) the person generated or disposed of only household refuse, unless the person knew or reasonably should have known that the hazardous or deleterious substance was present in the refuse;

(b) the person owns or operates real property where hazardous or deleterious substances have come to be located solely as a result of subsurface migration in an aquifer from a source or sources outside the person's property, provided that the following conditions are met:

(i) the owner or operator did not cause, contribute to, or exacerbate the release or threatened release of any hazardous or deleterious substances through any act or omission. The failure to take affirmative steps to mitigate or address contamination that has migrated from a source outside the owner's or operator's property does not, in the absence of exceptional circumstances, constitute an omission by the owner or operator.

(ii) the person who caused, contributed to, or exacerbated the release or threatened release of any hazardous or deleterious substance is not and was not an agent or employee of the owner or operator and is not or was not in a direct or indirect contractual relationship with the owner or operator, unless the department provides a written determination tbat an existing or proposed contractual relationship is an insufficient basis to establish liability under this section;

(iii) there is no other basis of liability under subsection (1) for the owner or operator for the release or threatened release of a hazardous or deleterious substance; and

(iv) the owner or operator cooperates with the department and all persons conducting department-approved remedial actions on the property, including

HeinOnline -- 1999 vol. II 1771 1999

granting access and complying with and implementing all required institutional controls;

(c) the person owns or occupies real property of 20 acres or less for residential purposes, provided that the following conditions are met:

(i) the person did not cause, contribute to, or exacerbate the release or threatened release of any hazardous or deleterious substance through any act or omission;

(ii) the person uses or allows the use of the real property for residential purposes. This exclusion does not apply to any person who acquires or develops real property for commercial use or any use other than residential use.

(iii) at the time the person purchased or occupied the real property, there were no visible indications of contamination on the surface of the real property;

(iv) the person cooperates with the department and all persons conducting department-approved remedial actions on the property, including granting access and complying with and implementing all required institutional controls; and

(v) there is no other basis of liability under subsection (1) for the owner or occupier for the release or threatened release of a hazardous or deleterious substance.

(8) A person is liable under this section if the department provides substantial credible evidence that the person fails to satisfy any element of each exclusion in subsections (7)(a) through (7)(c).

(9) The liability of a fiduciary under the provisions of this part for a release or a threatened release of a hazardous or deleterious substance from a facility held in a fiduciary capacity may not exceed the assets held in the fiduciary capacity that are available to indemnify the fiduciary unless the fiduciary is liable under this part independent of the person's ownership or actions taken in a fiduciary capacity.

(10) A person who holds indicia of ownership in a facility primarily to protect a security interest is not liable under subsections (1)(a) and (1)(b) for having participated in the management of a facility within the meaning of ~~75-10-701(14)(b)~~ *75-10-701(15)(b)* because of any one or any combination of the following:

(a) holding an interest in real or personal property when the interest is being held as security for payment or performance of an obligation, including but not limited to a mortgage, deed of trust, lien, security interest, assignment, pledge, or other right or encumbrance against real or personal property that is furnished by the owner to ensure repayment of a financial obligation;

(b) requiring or conducting financial or environmental assessments of a facility or a portion of a facility, making financing conditional upon environmental compliance, or providing environmental information or reports;

(c) monitoring the operations conducted at a facility or providing access to a facility to the department or its agents or to remedial action contractors;

(d) having the mere capacity or unexercised right to influence a facility's management of hazardous or deleterious substances;

HeinOnline -- 1999 vol. II 1772 1999

(e) giving advice, information, guidance, or direction concerning the administrative and financial aspects, as opposed to day-to-day operational aspects, of a borrower's operations;

(f) providing general information concerning federal, state, or local laws governing the transportation, storage, treatment, and disposal of hazardous or deleterious substances and concerning tbe hiring of remedial action contractors;

(g) engaging in financial workouts, restructuring, or refinancing of a borrower's obligations;

(h) collecting rent, maintaining utility services, securing a facility from unauthorized entry, or undertaking other activities to protect or preserve the value of the security interest in a facility;

(i) extending or denying credit to a person owning or in lawful possession of a facility;

(j) in an emergoncy, requiring or undertaking activities to prevent exposure of persons to hazardous or deleterious substances or to contain a release;

(k) requiring or conducting remedial action in response to a release or threatened release if prior notice is given to the department and the department approves of the remedial action; or

(l) taking title to a facility by foreclosure, provided that the bolder of indicia of ownership, from the time the holder acquires title, undertakes to sell, re-lease property held pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), or otherwise divest itself of the property in a reasonably expeditious manner, using whatever commercially reasonable means are relevant or appropriate with respect to the facility and taking all facts and circumstances into consideration and provided that the holder does not:

(i) outbid or refuse a hid for fair consideration for the property or outbid or refuse a bid tbat would effectively compensate the holder for the amount secured by the facility;

(ii) worsen the contamination at the facility;

(iii) incur liability under subsection (1)(c) or (1)(d) by arranging for disposal of or transporting hazardous or deleterious substances; or

(iv) engage in conduct described in subsection (11).

(11) The protection from liability provided in subsections (9) and (10) is not available to a fiduciary or to a person holding indicia of ownership primarily to protect a security interest if the fiduciary or person through affirmative conduct:

(a) causes or contributes to a release of hazardous or deleterious substances from the facility;

(b) allows others to cause or contribute to a release of hazardous or deleterious substances; or

(c) in the case of a person holding indicia of ownership primarily te protect a security interest, actually participates in the management of a facility by:

(i) exercising decisionmaking control over environmental compliance; or

(ii) exercising control at a level comparable to that of a manager of tbe enterprise with responsibility for day-to-day decisionmaking either with respect

HeinOnline -- 1999 vol. II 1773 1999

to environmental compliance or substantially all of the operational, as opposed to financial or administrative, aspects of the facility."

Section 3. Section 75-10-721, MCA, is amended to read:

"75-10-721. Degree of cleanup required — permit exemption — financial assurance. (1) A remedial action performed under this part or a voluntary cleanup under 75-10-730 through 75-10-738 must attain a degree of cleanup of the hazardous or deleterious substance and control of a threatened release or further release of that substance that assures protection of public health, safety, and welfare and of the environment.

(2) In approving or carrying out remedial actions performed under this part, the department:

(a) except as provided in subsection (4), shall require cleanup consistent with applicable state or federal environmental requirements, criteria, or limitations;

(b) may consider substantive state or federal environmental requirements, criteria, or limitations that are relevant to the site conditions; and

(c) shall select remedial actions, considering present and reasonably anticipated future uses, *giving due consideration to institutional controls,* that:

(i) demonstrate acceptable mitigation of exposure to risks to the public health, safety, and welfare and the environment;

(ii) are effective and reliable in the short term and the long term;

(iii) are technically practicable and implementable;

(iv) use treatment technologies or resource recovery technologies if practicable, giving due consideration to ~~institutional and~~ engineering controls; and

(v) are cost-effective.

(3) In selecting remedial actions, the department shall consider the acceptability of the actions to the affected community, as indicated by community members and the local government.

(4) The department may select a remedial action that does not meet an applicable state environmental requirement, criteria, or limitation under any one of the following circumstances:

(a) The remedial action is an interim measure and will become part of a total remedial action that will attain the applicable requirement, criteria, or limitation.

(b) Compliance with the applicable requirement, criteria, or limitation will result in greater risk to human health and the environment than other remedial action alternatives.

(c) Compliance with the applicable requirement, criteria, or limitation is technically impracticable from an engineering perspective.

(d) The remedial action will attain a standard of performance that is equivalent to that required under the otherwise applicable requirement, criteria, or limitation through use of another method or approach.

(e) Compliance with the requirement would not be cost-effective.

(5) For purposes of this section, cost-effectiveness must be determined through an analysis of incremental costs and incremental risk reduction and

HeinOnline -- 1999 vol. II 1774 1999

other benefits of alternatives considered, taking into account the total anticipated short-term and long-term costs of remedial action alternatives considered, including the total anticipated cost of operation and maintenance activities.

(6) The department may exempt any portion of a remedial action that is conducted entirely on site from a state or local permit that would, in the absence of the remedial action, be required if the remedial action is carried out in accordance with the standards established under this section and this part.

(7) The department may require financial assurance from a liable person in an amount that the department determines will ensure the long-term operation and maintenance of the remedial action site. The liable person shall provide the financial assurance by any one method or combination of methods satisfactory to the department, including but not limited to insurance, guarantee, performance or other surety bond, letter of credit, qualification as a self-insurer, or other demonstration of financial capability."

Section 4. Institutional controls. (1) An owner of real property may, with department approval, restrict the use of the owner's real property to mitigate the risk posed to the public health, safety, and welfare and the environment by imposing on the real property, without conveying the property or creating a dominant and servient estate, an appropriate institutional control.

(2) An institutional control restricting present and future real property rights is placed on a property by filing a written instrument evidencing the restrictions to be placed on the use of the property with the county clerk in the county in which the property is located.

(3) An institutional control that restricts real property runs with the land and is binding on all successors in interest to real property until the institutional control is removed.

(4) An institutional control must be removed if there is not an unacceptable risk posed to public health, safety, and welfare and the environment. An owner may request department approval to remove all or a portion of the institutional controls from the real property. The department shall review the request and provide the owner with its decision to approve or deny the request within 120 days from the department's receipt of the request. If the department denies the request, it shall provide the owner with a written explanation of the denial. A department decision to deny the request may be appealed to the board of environmental review and conducted as a contested case proceeding pursuant to Title 2, chapter 4.

(5) If the department or the board approves an owner's request to remove all or a portion of the institutional controls, the owner shall file the approval with the county clerk in the county in which the real property is located.

Section 5. Remedial action costs. (1) If a potentially liable person or assignee recovers remedial action costs at a particular site from a financially responsible party, reimbursement from the orphan share is proportionally reduced by the amount of remedial action costs recovered, less any litigation expenses, including attorney fees and costs.

(2) The department may, in defending the orphan share, initiate a court action against a potentially liable party, an affiliate, or another financially responsible party to recover the orphan's share.

Section 6. Repealer. Section 27, Chapter 584, Laws of 1995, is repealed.

HeinOnline -- 1999 vol. II 1775 1999

Section 7. Codification instruction. [Sections 4 and 5] are intended to be codified as an integral part of Title 75, chapter 10, part 7, and the provisions of Title 75, chapter 10, part 7, apply to [sections 4 and 5].

Section 8. Effective date. [This act] is effective on passage and approval.

Approved April 23, 1999

CHAPTER NO. 438

[HB 513]

AN ACT PROVIDING THAT AGRICULTURAL PROPERTY THAT IS USED TO PRODUCE UNRELATED BUSINESS TAXABLE INCOME DOES NOT QUALIFY AS PROPERTY USED PURELY FOR PUBLIC CHARITABLE PURPOSES OF QUALIFYING FOR A PROPERTY TAX EXEMPTION; REVISING THE DEFINITION OF "INSTITUTIONS OF PURELY PUBLIC CHARITY"; AMENDING SECTION 15-6-201, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-6-201, MCA, is amended to read:

"15-6-201. Exempt categories. (1) The following categories of property are exempt from taxation:

(a) except as provided in 15-24-1203, the property of:

(i) the United States, except:

(A) if congress passes legislation that allows the state to tax property owned by the federal government or an agency created by congress; or

(B) as provided in 15-24-1103;

(ii) the state, counties, cities, towns, and school districts;

(iii) irrigation districts organized under the laws of Montana and not operating for profit;

(iv) municipal corporations;

(v) public libraries; and

(vi) rural fire districts and other entities providing fire protection under Title 7, chapter 33;

(b) buildings, with land that they occupy and furnishings in the buildings, that are owned by a church and used for actual religious worship or for residences of the clergy, together with adjacent land reasonably necessary for convenient use of the buildings;

(c) property used exclusively for agricultural and horticultural societies, for educational purposes, and for nonprofit health care facilities, as defined in 50-5-101, licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3. A health care facility that is not licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3, is not exempt.

(d) property that is:

HeinOnline -- 1999 vol. II 1776 1999

(i) owned and held by an association or corporation organized under Title 35, chapter 2, 3, 20, or 21;

(ii) devoted exclusively to use in connection with a cemetery or cemeteries for which a permanent care and improvement fund has been established as provided for in Title 35, chapter 20, part 3; and

(iii) not maintained and operated for private or corporate profit;

(e) *subject to subsection (2),* property that is owned or property that is leased from a federal, state, or local governmental entity by institutions of purely public charity if the property is directly used for purely public charitable purposes;

(f) evidence of debt secured by mortgages of record upon real or personal property in the state of Montana;

(g) public museums, art galleries, zoos, and observatories that are not used or held for private or corporate profit;

(h) all household goods and furniture, including but not limited to clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by the owner for personal and domestic purposes or for furnishing or equipping the family residence;

(i) truck canopy covers or toppers and campers;

(j) a bicycle, as defined in 61-1-123, used by the owner for personal transportation purposes;

(k) motor homes;

(l) all watercraft;

(m) motor vehicles, land, fixtures, buildings, and improvements owned by a cooperative association or nonprofit corporation organized to furnish potable water to its members or customers for uses other than the irrigation of agricultural land;

(n) the right of entry that is a property right reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise, or succession to enter land with a surface title that is held by another to explore, prospect, or dig for oil, gas, coal, or minerals;

(o) (i) property that is owned and used by a corporation or association organized and operated exclusively for the care of persons with developmental disabilities, persons with mental illness, or persons with physical or mental impairments that constitute or result in substantial impediments to employment and that is not operated for gain or profit; and

(ii) property that is owned and used by an organization owning and operating facilities that are for the care of the retired, aged, or chronically ill and that are not operated for gain or profit;

(p) all farm buildings with a market value of less than $500 and all agricultural implements and machinery with a market value of less than $100;

(q) property owned by a nonprofit corporation that is organized to provide facilities primarily for training and practice for or competition in international sperts and athletic events and that is not held or used for private or corporate gain or profit. For purposes of this subsection (1)(q), "nonprofit corporation" means an organization that is exempt from taxation under section 501(c) of the

HeinOnline -- 1999 vol. II 1777 1999

Internal Revenue Code and incorporated and admitted under the Montana Nonprofit Corporation Act.

(r) the first $15,000 or less of market value of tools owned hy the taxpayer that are customarily hand-held and that are used to:

(i) construct, repair, and maintain improvements to real property; or

(ii) repair and maintain machinery, equipment, appliances, or other personal property;

(s) harness, saddlery, and other tack equipment;

(t) a title plant owned hy a title insurer or a title insurance producer, as those terms are defined in 33-25-105;

(u) timber as defined in 15-44-102;

(v) all trailers as defined in 61-1-111, semitrailers as defined in 61-1-112, pole trailers as defined in 61-1-114, and travel trailers as defined in 61-1-131;

(w) all vehicles registered under 61-3-456;

(x) (i) buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors, including buses, trucks, and truck tractors apportioned under Title 61, chapter 3, part 7; and

(ii) personal property that is attached to a bus, truck, or truck tractor that is exempt under subsection (1)(x)(i); and

(y) motorcycles and quadricycles.

(2) (a) For the purposes of subsection (1)(e),:

(i) the term "institutions of purely public charity" includes any organization that meets the following requirements:

~~(i)~~*(A)* The organization *offers its charitable goods or services to persons without regard to race, religion, creed, or gender and* qualifies as a tax-exempt organization under the provisions of section 501(c)(3), Internal Revenue Code, as amended.

~~(ii)~~*(B)* The organization accomplishes its activities through absolute gratuity or grants. However, the organization may solicit or raise funds by the sale of merchandise, memberships, or tickets to public performances or entertainment or by other similar types of fundraising activities.

(ii) agricultural property owned by a purely public charity is not exempt if the agricultural property is used by the charity to produce unrelated business taxable income as that term is defined in section 512 of the Internal Revenue Code, 26 U.S.C. 512. A public charity claiming an exemption for agricultural property shall file annually with the department a copy of its federal tax return reporting any unrelated business taxable income received by the charity during the tax year, together with a statement indicating whether the exempt property was used to generate any unrelated business taxable income.

(b) For the purposes of subsection (1)(g), the term "public museums, art galleries, zoos, and observatories" means governmental entities or nonprofit organizations whose principal purpose is to hold property for public display or for use as a museum, art gallery, zoo, or observatory. The exempt property includes all real and personal property reasonably necessary for use in connection with the public display or observatory use. Unless the property is leased for a

HeinOnline -- 1999 vol. II 1778 1999

profit to a governmental entity or nonprofit organization by an individual or for-profit organization, real and personal property owned by other persons is exempt if it is:

(i) actually used by the governmental entity or nonprofit organization as a part of its public display;

(ii) held for future display; or

(iii) used to house or store a public display.

(3) The following portions of the appraised value of a capital investment in a recognized nonfossil form of energy generation or low emission wood or biomass combustion devices, as defined in 15-32-102, are exempt from taxation for a period of 10 years following installation of the property:

(a) $20,000 in the case of a single-family residential dwelling;

(b) $100,000 in the case of a multifamily residential dwelling or a nonresidential structure."

Section 2. Applicability. [This act] applies to tax periods beginning after December 31, 1999.

Approved April 23, 1999

CHAPTER NO. 439

[HB 532]

AN ACT REQUIRING GOVERNMENT ENTITIES TO DECIDE WITHIN 10 DAYS AFTER A REQUEST FOR FINAL ACCEPTANCE BY THE CONSTRUCTION CONTRACTOR WHETHER OR NOT TO FINALLY ACCEPT THE CONSTRUCTION OF A BUILDING AND TO MAKE FINAL PAYMENT OF THE PRICE OF CONSTRUCTION CONTRACTS WITHIN 30 DAYS OF FINAL ACCEPTANCE OF THE CONSTRUCTION OF THE BUILDING; REQUIRING PAYMENT OF INTEREST; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Time of final acceptance and final payment on construction contracts — interest. (1) A government entity that enters into a contract for the construction of a building shall, unless otherwise provided by law or the contract and within 10 days after a request by the construction contractor for final acceptance, decide whether or not to make final acceptance. Within 30 days after final acceptance by the government entity, the government entity shall make the final payment of the contract price specified in the contract to the other party to the contract.

(2) Except as provided by law or the contract, a government entity that fails to complete the payment of the contract price at the time required by subsection (1) shall pay to the other party to the contract interest at the rate specified in 18-1-404. Collection of interest pursuant to this section does not preclude any other legal remedy.

(3) The following definitions apply to this section:

(a) "Building" has the meaning provided in 18-2-101.

HeinOnline -- 1999 vol. II 1779 1999

(b) "Construction" has the meaning provided in 18-2-101.

(c) "Final acceptance" means the government entity's acceptance of the construction of a building by the contractor upon certification hy the architect, project engineer, or other representative of the government entity of final completion of the building.

(d) "Final completion" means that tbe building has been completed in accordance with the terms and conditions of the contract documents.

(e) "Government entity" means a department, agency, commission, board, authority, institution, or office of the state, including tbe board of regents and the Montana university system, a municipality, county, consolidated municipal-county government, school district, or other special district.

Section 2. Contract let by commission — time for final payment of contract price — interest. Tbe commission shall comply with the 30-day time period for payment of contracts as provided in [section 1] for all contracts let by the commission in accordance with this part.

Seetion 3. Codification instruction. (1) [Section 1] is intended to be codified as an integral part of Title 18, chapter 2, part 3, and the provisions of Title 18, chapter 2, part 3, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 60, chapter 2, part 1, and the provisions of Title 60, chapter 2, part 1, apply to [section 2].

Section 4. Applicability. [This act] applies to contracts entered into after October 1, 1999.

Approved April 22, 1999

CHAPTER NO. 440

[HB 560]

AN ACT GENERALLY REVISING COUNTY ROAD LAWS; CLARIFYING THE DUTIES OF A BOARD OF COUNTY COMMISSIONERS REGARDING COUNTY ROADS; ESTABLISHING THE CONDITIONS UNDER WHICH A ROAD MAY BE DESIGNATED AS A COUNTY ROAD; ALLOWING A BOARD OF COUNTY COMMISSIONERS TO TEMPORARILY CLOSE A ROAD UNDER ITS JURISDICTION; ALLOWING A BOARD OF COUNTY COMMISSIONERS TO MAINTAIN A ROAD TO THE DEGREE THAT IT DETERMINES IS APPROPRIATE; REQUIRING THAT PUBLIC NOTICE BE GIVEN AND A PUBLIC HEARING BE HELD BEFORE A ROAD MAY BE ABANDONED BY THE STATE; AND AMENDING SECTIONS 7-14-2101, 7-14-2103, 7-14-2127, 60-1-201, AND 60-2-107, MCA.

WHEREAS, it has become necessary to clarify the duties of hoards of county commissioners regarding roads under their jurisdiction; and

WHEREAS, it is appropriate to specify how the maintenance and oversight of certain roads may he transferred to a county in a manner that protects private property rigbts and allows the public to participate in the process; and

WHEREAS, clarifying in statute the definition of a county road and the rights and responsibilities of a board of county commissioners will prevent county road-related disputes from entering the court system.

HeinOnline -- 1999 vol. II 1780 1999

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-14-2101, MCA, is amended to read:

"7-14-2101. General powers of county relating to roads and bridges. (1) The board of county commissioners, under ~~such~~ *the* limitations and restrictions ~~as~~ *that* are prescribed by law, may:

(a) (i) lay out, maintain, control, and manage county roads and bridges within the county;

(ii) levy taxes ~~therefor~~ *for county roads and bridges* as provided by law;

(b) (i) in the exercise of sound discretion, jointly with other counties, lay out, maintain, control, manage, and improve county roads and bridges in adjacent counties, wholly or in ~~such~~ part as may be agreed upon between the boards of the counties concerned;

(ii) levy taxes ~~therefor~~ *for the laying out, maintenance, control, management, and improvement of county roads and bridges* as provided hy law;

(c) (i) enter into agreements for adjusted annual contributions over not more than 6 years toward the cost of joint highway or bridge construction projects entered into in cooperation with other counties, the state, or the United States;

(ii) place ~~such~~ a *joint* project in the budget and levy taxes ~~therefor~~ *for a joint project* as provided by law.

(2) (a) Unless the context requires otherwise, *for the purposes of this chapter,* county road means: ~~any public highway opened, established, constructed, maintained, abandoned, or discontinued by a county in accordance with this chapter~~

(i) a road that is petitioned by freeholders, approved by resolution, and opened by a board of county commissioners in accordance with this title;

(ii) a road that is dedicated for public use in the county and approved by resolution by a board of county commissioners; or

(iii) a road that has been acquired by eminent domain and accepted by resolution as a county road by a board of county commissioncrs.

(b) Following a public hearing, a board of county commissioners may accept by resolution a road that has not previously been considered a county road but that has been laid out, constructed, and maintained with state department of transportation or county funds.

(c) A survey is not required of an existing county road that is accepted by resolution by a board of county commissioners.

(d) A road that is abandoned by the state may be designated as a county road upon the acceptance and approval by resolution of a board of county commissioners.

~~(b)~~*(e)* Unless the context requires otherwise, bridge includes rights-of-way or other interest in land, abutments, superstructures, piers, and approaches except dirt fills."

Section 2. Section 7-14-2103, MCA, is amended to read:

"7-14-2103. Duties of county commissioners eoncerning eounty roads. (1) ~~Each~~ *A* board of county commissioners has general supervision over the county roads within the county.

(2) ~~Each~~ *A* board may survey, view, lay out, record, open, work, and maintain county roads that are ~~petitioned for by freeholders~~ *established in accordance with this chapter*. Guideposts must be erected.

(3) ~~Each~~ *A* board may discontinue or abandon county roads when freeholders properly petition for discontinuance or abandonment.

(4) A board of county commissioners may determine the level and scope of maintenance on a county road under its jurisdiction, and a local entity or the state may not withhold funds based on the board's maintenance determinations."

Section 3. Section 7-14-2127, MCA, is amended to read:

"**7-14-2127. Temporary limitation or prohibition of traffic.** ~~Each~~ *(1)* A board of county commissioners may in its discretion limit or forbid, temporarily, any traffic or class of traffic on the county roads or any part ~~thereof~~ *of a county road* when it is necessary in order to preserve or repair ~~such~~ *the* roads.

(2) A board of county commissioners may temporarily close a county road or bridge or any part of a county road for maintenance or repair if the board determines that the road or bridge is unsafe. This temporary closure is not considered abandonment. The board of county commissioners shall erect signs indicating that the road is closed."

Section 4. Section 60-1-201, MCA, is amended to read:

"**60-1-201. Classification — highways and roads.** (1) Public highways of this state are classified as follows:

(a) federal-aid highways;

(b) state highways;

(c) county roads;

(d) city streets.

(2) All highways ~~which~~ *that* are not designated, selected, or established by the commission or constructed or maintained by the department ~~are~~ *may be designated as* county roads or city streets *upon the acceptance of the county or city*.

(3) County roads are those opened, established, constructed, maintained, changed, abandoned, or discontinued by a county in accordance with Title 7, chapter 14.

(4) City streets are those public highways under the jurisdiction of municipal officials."

Section 5. Section 60-2-107, MCA, is amended to read:

"**60-2-107. Abandonment of highways — exchange of roadways — *public notice required.*** (1) The commission may abandon highways on the federal-aid systems and state highways.

(2) Before abandoning or discontinuing maintenance on a highway, the commission shall hold a public hearing in the county or counties affected by the abandonment. The commission may elect to offer to transfer the liability for and the maintenance of a highway to another agency or agencies that may in turn elect to take responsibility for the highway. The commission shall notify the board of county commissioners in writing of its intent to abandon a highway and hold a

HeinOnline -- 1999 vol. II 1782 1999

public hearing. The commission shall publish for 3 consecutive weeks in local newspapers within the county the notice of abandonment and public hearing.

~~(2)~~*(3)* The commission may enter into an agreement with a unit of local government, on mutually beneficial terms, to exchange property interests or responsibilities, including maintenance, on any portion of a federal-aid or state highway and on any portion of a county road or city street."

Approved April 23, 1999

CHAPTER NO. 441

[HB 584]

AN ACT AUTHORIZING SURPLUS STATE PROPERTY TO BE DONATED TO SCHOOL DISTRICTS FOR CLASSROOM USE PURSUANT TO PROCEDURES IMPLEMENTED BY THE OFFICE OF PUBLIC INSTRUCTION TO ENSURE ADEQUATE NOTICE OF THE AVAILABILITY OF STATE SURPLUS PROPERTY AND EQUAL ACCESS AND FAIR DISTRIBUTION OF THE PROPERTY TO SCHOOL DISTRICTS; AMENDING SECTIONS 2-17-202, 18-4-226, AND 18-6-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-17-202, MCA, is amended to read:

"2-17-202. Inventory — property to be charged to receiving agency. (1) Each person in charge of any state property ~~must~~ *shall*, upon request of the department of administration, furnish a sworn statement of all personal property in ~~his~~ *the person's* possession or under ~~his~~ *the person's* charge belonging to the state, together with an estimate of its value. ~~He~~ *The person* ~~must~~ *shall* furnish any other information in connection ~~therewith as~~ *with the statement that* the department requires.

(2) Each state department, office, board, commission, and institution must be charged with all items of personal property and all other personal property placed at the disposal of ~~any such~~ *the* state department, office, board, commission, ~~and~~ *or* institution ~~after June 30, 1923,~~ and ~~shall~~ *must* be credited with all worn out, used, lost, injured, or destroyed property from time to time~~,~~ as ~~may be~~ reported to the department of administration. ~~and shall be held~~ *The entity is* responsible for all items of personal property not accounted for. *Property may be accounted for as provided in 18-6-101.*"

Section 2. Section 18-4-226, MCA, is amended to read:

"18-4-226. Surplus supply — rules. (1) As used in this section, the following definitions apply:

(a) "Supplies" means supplies owned by the state.

(b) "Surplus supplies" means any supplies having a remaining useful life but that are no longer required by the ~~using~~ agency in possession of them. This includes obsolete supplies, scrap materials, and supplies that have completed their useful life cycle.

(2) The department shall adopt rules governing:

(a) the management of supplies during their entire life cycle;

HeinOnline -- 1999 vol. II 1783 1999

(h) the sale, lease, or disposal of surplus supplies hy puhlic auction, competitive sealed bidding, *donation to a school district as provided in 18-6-101,* or other appropriate method designated by rule;

(c) transfer of surplus supplies.

(3) ~~No~~ *An* employee of the owning or disposing agency directly involved with the dispesal may *not* purchase supplies sold by ~~his~~ *the employee's* agency.

(4) Proceeds from the sale, lease, or disposal of surplus supplies must he allocated as provided by 18-6-101, less a reasonable handling fee."

Section 3. Section 18-6-101, MCA, is amended to read:

"18-6-101. Power to sell state property — proceeds credited to general fund. (1) The department has exclusive power, subject to the approval of the governor, to sell or otherwise dispose of or to authorize the sale or other disposition of all materials and supplies, service equipment, or other personal property of ~~every~~ *any* kind owned by the state but not needed or used by any state institution or by any department of state government. *Upon request, the department shall authorize a state department or entity to donate property to a school district for classroom use pursuant to procedures implemented by the office of public instruction to ensure adequate notice of the availability of surplus state property and equal access and fair distribution of the property to school districts.*

(2) Unless otherwise provided by law, the department sball credit the general fund with all money received.

(3) Whenever the personal property was accounted for in an enterprise or internal service fund or designated subfund account, the proceeds of the sale ~~shall~~ *must* be credited to the appropriate enterprise or internal service fund or designated subfund account."

Section 4. Effective date. [This act] is effective on passago and approval.

Approved April 23, 1999

CHAPTER NO. 442

[HB 592]

AN ACT IMPLEMENTING HOUSE JOINT RESOLUTION NO. 10 TO REVISE THE PROCESSES FOR RESOLVING EMPLOYMENT-RELATED DISPUTES; ELIMINATING THE APPELLATE ROLE OF THE BOARD OF PERSONNEL APPEALS IN REVIEWING WAGE CLAIM DISPUTES; PROVIDING FOR THE APPEAL OF DEPARTMENT HEARINGS EXAMINERS' DECISIONS IN WAGE CLAIMS CASES TO THE DISTRICT COURT; ESTABLISHING A TIMEFRAME FOR RECOVERY OF IMPROPERLY PAID WAGES; TRANSFERRING FROM THE DEPARTMENT OF LABOR AND INDUSTRY TO THE WORKERS' COMPENSATION COURT EXCLUSIVE JURISDICTION OVER COMPENSATION AND BENEFIT ISSUES ARISING UNDER THE OCCUPATIONAL DISEASE ACT, THE WORKERS' COMPENSATION ACT, AND THE APPLICATION OF INDEPENDENT CONTRACTOR STATUS; AUTHORIZING THE WORKERS' COMPENSATION COURT TO COLLECT A PENALTY FOR WORKERS' COMPENSATION BENEFIT THEFT; REQUIRING THAT CASES INVOLVING WAGE AND HOUR, THE UNINSURED EMPLOYER FUND,

HeinOnline -- 1999 vol. II 1784 1999

AND INDEPENDENT CONTRACTOR ISSUES INCLUDE MEDIATION PRIOR TO CONTESTED CASE PROCEEDINGS; PROVIDING A COLLATERAL ESTOPPEL PROVISION TO PROHIBIT DECISIONS PERTAINING TO UNEMPLOYMENT INSURANCE BENEFITS FROM BEING USED IN RELATED DISPUTES; AMENDING SECTIONS 15-30-248, 39-3-201, 39-3-207, 39-3-212, 39-3-216, 39-9-401, 39-51-310, 39-51-1109, 39-71-304, 39-71-315, 39-71-316, 39-71-317, 39-71-401, 39-71-415, 39-71-601, 39-71-610, 39-71-613, 39-71-704, 39-71-1032, 39-72-403, 39-72-601, 39-72-602, 39-72-607, AND 39-72-608, MCA; REPEALING SECTIONS 39-3-217, 39-72-609, 39-72-610, 39-72-611, 39-72-612, AND 39-72-613, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

WHEREAS, Montana's current employment statutes constitute a complex and often confusing body of law requiring specialized skills and knowledge to interpret; and

WHEREAS, most employers in the private sector employ 10 or fewer employees and function without the assistance of personnel officers or in-house legel staff; and

WHEREAS, employment-related disputes are currently heard in many different forums, including the Board of Personnel Appeals for wage and hour issues, the Board of Labor Appeals for unemployment insurance issues, the Workers' Compensation Court for workers' compensation issues, the Commission for Human Rights for discrimination issues, and District Courts for the resolution of wrongful discharge conflicts; and

WHEREAS, the 1997 Legislature enacted House Joint Resolution No. 10, which directed the Department of Labor and Industry to convene a group of interested parties to explore, investigate, and report to the 1999 Legislature optional approaches to an integrated dispute resolution process for employment-related issues; and

WHEREAS, members of the Legislature and interest groups, including employers and employees from the private and public sectors, formed the House Joint Resolution No. 10 work group, which convened in September 1997 to begin studying the issues related to the employment dispute resolution process; and

WHEREAS, after approximately 10 meetings during the 1997 interim, the work group issued its report in November 1998, recommending that legislation be prepared for consideration by the 1999 Legislature to revise the dispute resolution process for employment-related issues.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-248, MCA, is amended to read:

"15-30-248. Determination of employer status. A final determination by either the department of labor and industry or the ~~board of labor appeals~~ *workers' compensation court* that an employer-employee relationship existed between the taxpayer and certain individuals subjecting the taxpayer to the requirements of chapter 30, part 2, ~~which may be subject to judicial review, as provided in 39-51-2404, at the discretion of the taxpayer,~~ is not subject to any further administrative or judicial challenge in any proceeding before or with the department of revenue concerning a determination of the proper amount of state income tax withholding and old fund liability tax to be paid. *A final decision of the workers' compensation court may be appealed as provided in 39-71-2904.*"

HeinOnline -- 1999 vol. II 1785 1999

Section 2. Section 39-3-201, MCA, is amended to read:

"39-3-201. Definitions. The following are the definitions used for the purpose of this part:

~~(1) "Board" means the board of personnel appeals provided for in 2-15-1705.~~

~~(2)~~*(1)* "Commissioner of labor" refers to the director, commissioner, or chief of the department of labor and industry, as the department is defined by law, or any person or persons designated by the director, commissioner, or chief for the purpose of this part.

~~(3)~~*(2)* "Department" means the department of labor and industry as provided for in 2-15-1701.

~~(4)~~*(3)* "Employ" means to permit or suffer to work.

~~(5)~~*(4)* "Employee" includes any person who works for another for hire.

~~(6)~~*(5)* "Employer" includes any individual, partnership, association, corporation, business trust, legal representative, or organized group of persons acting directly or indirectly in the interest of an employer in relation to an employee but does not include the United States.

~~(7)~~*(6)* (a) "Wages" includes any money due an employee from the employer or employers, whether to be paid by the hour, day, week, semimonthly, monthly, or yearly, and includes bonus, piecework, and all tips and gratuities that are covered by section 3402(k) and service charges that are covered by section 3401 of the Internal Revenue Code of 1954, as amended and applicable on January 1, 1983, received by employees for services rendered by them to patrons of premises or businesses licensed to provide food, beverage, or lodging.

(b) For the purposes of this subsection ~~(7)~~ *(6)*, "service charge" means an arbitrary fixed charge added to the customer's bill by an employer in lieu of a tip. It is collected by the employer and must be distributed directly to the nonmanagement employee preparing or serving the food or beverage or to any other employee involved in related services, pursuant to a tip pool agreement."

Section 3. Section 39-3-207, MCA, is amended to read:

"39-3-207. Period within which employee may recover *wages and* penalties. ~~Any~~ *(1) An* employee may recover all ~~such~~ *wages and* penalties ~~as are~~ provided for the violation of 39-3-206 ~~which have accrued to him at any time within 18 months succeeding such default or delay in the payment of such wages~~ *by filing a complaint within 180 days of default or delay in the payment of wages.*

(2) Except as provided in subsection (3), an employee may recover wages and penalties for a period of 2 years prior to the date on which the claim is filed if the employee is still employed by the employer or for a period of 2 years prior to the date of the employee's last date of employment.

(3) If an employer has engaged in repeated violations, an employee may recover wages and penalties for a period of 3 years from the date on which a claim is filed if the employee is still employed by the employer or for a period of 3 years prior to the date of the employee's last date of employment."

Section 4. Section 39-3-212, MCA, is amended to read:

"39-3-212. Court enforcement of administrative decision. (1) A department default order~~,~~ *or* a decision of the hearings officer, ~~if the decision is not appealed to the board, or a decision of the board,~~ if judicial review is not

sought, may be enforced by application by the commissioner to a district court for an order or judgment enforcing tbe decision. The commissioner shall apply to the district court where the employer has its principal place of business or in the first judicial district of the state. A proceeding under this section is not a review of the validity of the administrative decision.

(2) If judicial review is sought, the district court may issue an order or a judgment enforcing the decision of the ~~board~~ *department or the hearings officer* in a wage claim proceeding. In a case involving failure to pay tbe standard prevailing rate of wages provided for in Title 18, chapter 2, part 4, the district court may issue an order or a judgment enforcing the decision of the hearings officer."

Section 5. Section 39-3-216, MCA, is amended to read:

"39-3-216. ~~Hearing~~ *Mediation — hearing.* (1) If the department determines that a wage claim is valid and tbe employer does not appeal the determination, the department may enter a default order against the employer for the amount of wages due and for any penalty assessed pursuant to 39-3-206. The department may enforce the default order pursuant to 39-3-212.

(2) If a party disputes the determination of the department prior to a contested case, the department shall conduct mediation of the dispute in accordance with guidelines to be established by department rule.

~~(2)~~*(3)* When the department determines tbat a wage claim is valid, the department shall mail tbe determination to the parties at the last-known address of each party. If a party appeals the department's determination within 15 days after the determination is mailed by the department, a hearing must be conducted according to contested case procedures under Title 2, cbapter 4, part 6, except that service need not be made as prescribed for civil actions in the district court and the hearings officer is not bound by statutory or common-law rules of evidence. The hearing may be conducted by telepbone or by videoconference. The department shall by rule provide relief for a person who does not receive the determination by mail.

~~(3)~~*(4)* The decision of tbe hearings officer is final unless ~~further review is initiated pursuant to 39-3-217 within 15 days after the decision is mailed to each party's last-known address. The period may be extended by the board for good cause~~ *an aggrieved party requests a rehearing or initiates judicial review, pursuant to Title 2, chapter 4, part 7, by filing a petition in district court within 30 days of the date of mailing of the hearings officer's decision.*"

Section 6. Section 39-9-401, MCA, is amended to read:

"39-9-401. Violation — infraction — penalty — disposition. (1) It is a violation of this chapter and an infraction for any construction contractor to:

(a) perform work as a construction contractor without being registered as required by this chapter;

(b) perform work as a construction contractor when the construction contractor's registration is suspended; or

(c) transfer a valid registration to an unregistered construction contractor or allow an unregistered construction contractor to work under a registration issued to another construction contractor.

HeinOnline -- 1999 vol. II 1787 1999

(2) (a) A determination by the department of a violation of this section subjects the person who commits the violation to a penalty of up to $500, as determined by the department. A person who has been determined to have violated this section may request that a hearing be held in accordance with the Montana Administrative Procedure Act. The hearing may be held by telephone or video conference. An appeal of the hearing decision must be made in the same manner as prescribed in 39-51-2403 ~~and 39-51-2404~~.

(b) A penalty under this section does not apply to a violation that is determined to be an inadvertent error.

(c) A penalty collected under this section must be deposited in the uninsured employers' fund established in 39-71-502."

Section 7. Collateral estoppel. A finding of fact or law, judgment, conclusion, or final order made with respect to a determination made under this chapter may not be conclusive or binding or used as evidence in any separate or subsequent action or proceeding in another forum except for proceedings under this chapter, regardless of whether the prior action was between the same or related parties or involved the same facts.

Section 8. Section 39-51-310, MCA, is amended to read:

"39-51-310. Function of board. The board shall act in a quasi-judicial capacity for the hearing of disputes concerning the administration of Montana's unemployment insurance laws ~~and disputes arising under Title 39, chapter 71, not~~ concerning benefits~~, regarding whether an individual is an employee or an independent contractor as defined in that chapter~~."

Section 9. Section 39-51-1109, MCA, is amended to read:

"39-51-1109. Tax appeals — procedure. (1) A decision, determination, or redetermination of the department involving an employer-employee relationship or the charging of benefit payments to employers is final unless an interested party entitled to notification submits a written appeal of the decision, determination, or redetermination. The appeal must be made in the same manner as provided in ~~39-51-2402 for the appeal of a decision relating to a claim for unemployment insurance benefits. Statutory rules of evidence and civil procedure do not apply to a hearing on the appeal. A hearing may be conducted by telephone or by videoconference. The decision of the appeals referee and any subsequent appeal must be made in the same manner as prescribed in 39-51-2403 through 39-51-2410~~ *39-71-415*.

(2) A decision, determination, or redetermination involving contribution liability, contribution rate, application for refund, subject wages, or other tax-related issues must be issued by the department of revenue as provided in Title 15, chapter 1, part 2, and 15-30-257, if applicable. The decision is final unless an interested party entitled to notification follows the uniform tax review procedures as prescribed in 15-1-211 and 15-30-257, if applicable."

Section 10. Section 39-71-304, MCA, is amended to read:

"39-71-304. Books, records, and payrolls to be open to inspection — penalty for refusal — subpoenas. (1) The books, records, and payrolls of an employer pertinent to the administration of this chapter must always be open to inspection by the department or any ~~duly~~ authorized employee ~~thereof~~ *of the department* for the purpose of ascertaining the correctness of the payroll, the number of workers employed, and ~~such~~ other information ~~as~~ *that* may be

necessary for the department and its management under this chapter. Refusal on the part of an employer to submit the books, records, and payrolls for ~~such~~ inspection ~~shall~~ *will* subject the offending employer to a penalty not exceeding $500 for each offense, to be collected through a ~~civil~~ *workers' compensation court* action in the name of the state and paid into the state treasury.

(2) In addition to the remedy provided in subsection (1), the department may issue subpoenas and compel testimony for the production of evidence, including books, records, papers, documents, and other objects as may be necessary and proper in regard to any investigation or proceeding under this chapter. In the case of disobedience of a subpoena issued and served or the refusal of a witness to testify as to any matter for which the witness may be interrogated in a proceeding before the department, the department may apply to ~~a district~~ *the workers' compensation* court for an order to compel compliance with the subpoena or testimony. Disobedience of the court's order constitutes contempt of court."

Section 11. Section 39-71-315, MCA, is amended to read:

"39-71-315. Prohibited actions — penalty. (1) The following actions by a medical provider constitute violations and are subject to the penalty in subsection (2):

(a) failing to document, under oath, the provision of the services or treatment for which compensation is claimed under chapter 72 or this chapter; or

(b) referring a worker for treatment or diagnosis of an injury or illness that is compensable under chapter 72 or this chapter to a facility owned wholly or in part by the provider, unless the provider informs the worker of the ownership interest and provides the name and address of alternate facilities, if any exist.

(2) A person who violates this section may be assessed a penalty of not less than $200 or more than $500 for each offense. The department shall assess and collect the penalty. *Penalties collected pursuant to this section must be paid into the state general fund. The workers' compensation court has jurisdiction over actions brought to collect the penalty and over disputes concerning the penalty assessment. Disputes brought pursuant to this section are not subject to mediation.*

(3) Subsection (1)(b) does not apply to medical services provided te an injured worker by a treating physician with an ownership interest in a managed care organization that has been certified by the department."

Section 12. Section 39-71-316, MCA, is amended to read:

"39-71-316. Filing true claim — obtaining benefits through deception or other fraudulent means. (1) A person filing a claim under ~~this chapter or~~ chapter 72 *or this chapter* ~~of this title~~, by signing the claim, affirms the information filed is true and correct to the best of that person's knowledge.

(2) (a) A person who obtains or assists in obtaining benefits to which the person is not entitled or who obtains or assists another person in obtaining benefits to which tbe other person is not entitled under ~~this chapter or~~ chapter 72 *or this chapter* ~~of this title~~ is guilty of theft and may be prosecuted under 45-6-301. A county attorney or the attorney general may initiate criminal proceedings against the person. This subsection includes but is not limited to a person who is receiving temporary total disability benefits, permanent total

HeinOnline -- 1999 vol. II 1789 1999

disability benefits, or rehabilitation benefits while working without the knowledge and concurrence of the insurer.

(b) As used in subsection (2)(a), "person" includes but is not limited to an employee, employer, insurer, or medical service provider.

(3) (a) The department may require a person convicted of theft under 45-6-301(5) to pay to the department an amount equal to 10 times the amount paid by an insurer on the false claim, provided that the amount does not exceed $50,000. If upon demand of the department the person refuses to pay the fine, the department may ~~institute suit~~ *petition the workers' compensation court* to collect the money owed.

(b) The department shall:

(i) use the money collected pursuant to subsection (3)(a) to administer and enforce the provisions of this section; and

(ii) forward any surplus money to the department of justice. The forwarded money must be used exclusively for the staffing and operation of the workers' compensation fraud investigation and prosecution office established in 2-15-2015.

(c) This section does not limit an insurer's civil remedies to collect for money paid to a person convicted under 45-6-301(5).

(4) A person licensed under the provisions of Title 37 is subject to suspension, revocation, or denial of a license if the person knowingly claims or assists in the claiming of benefits in violation of the provisions of chapter 72 or this chapter."

Section 13. Section 39-71-317, MCA, is amended to read:

"39-71-317. Employer not to terminate worker for filing claim — preference — jurisdiction over dispute. (1) An employer may not use as grounds for terminating a worker the filing of a claim under ~~this chapter or~~ chapter 72 ~~of this title~~ *or this chapter. The district court has exclusive jurisdiction over disputes concerning the grounds for termination under this section.*

(2) When an injured worker is capable of returning to work within 2 years from the date of injury and has received a medical release to return to work, the worker must be given a preference over other applicants for a comparable position that becomes vacant if the position is consistent with the worker's physical condition and vocational abilities.

(3) This preference applies only to employment with the employer for whom the employee was working at the time the injury occurred.

(4) The ~~department and~~ workers' compensation court ~~do not have~~ *has exclusive* jurisdiction to administer or resolve a dispute *concerning the reemployment preference* under this section. ~~Exclusive jurisdiction is with the district court~~ *A dispute concerning the reemployment preference is not subject to mediation or a contested case hearing.*"

Section 14. Section 39-71-401, MCA, is amended to read:

"39-71-401. Employments covered and employments exempted. (1) Except as provided in subsection (2), the Workers' Compensation Act applies to all employers, as defined in 39-71-117, and to all employees, as defined in 39-71-118. An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound

HeinOnline -- 1999 vol. II 1790 1999

hy the provisions of compensation plan No. 1, 2, or 3. Each employee whose employer is bound by the Workers' Compensation Act is subject to and bound by the compensation plan tbat has been elected by the employer.

(2) Unless the employer elects coverage for these employments under this chapter and an insurer allows an election, the Workers' Compensation Act does not apply to any of the following employments:

(a) household and domestic employment;

(b) casual employment as defined in 39-71-116;

(c) employment of a dependent member of an employer's family for whom an exemption may be claimed by the employer under the federal Internal Revenue Code;

(d) employment of sole proprietors, working members of a partnership, working members of a limited liability partnership, or working members of a member-managed limited liability company, except as provided in subsection (3);

(e) employment of a broker or salesperson performing under a license issued by the board of realty regulation;

(f) employment as a direct seller as defined by 26 U.S.C. 3508;

(g) employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States;

(h) employment of a person performing services in return for aid or sustenance only, except employment of a volunteer under 67-2-105;

(i) employment with a railroad engaged in interstate commerce, except that railroad construction work is included in and subject to the provisions of this chapter;

(j) employment as an official, including a timer, referee, or judge, at a school amateur athletic event, unless the person is otherwise employed by a school district;

(k) employment of a person performing services as a newspaper carrier or freelance correspondent if the person performing the services or a parent or guardian of the person performing the services in the case of a minor has acknowledged in writing that the person performing the services and the services are not covered. As used in this subsection, "freelance correspondent" is a person who submits articles or photographs for publication and is paid by the article or by the photograph. As used in this subsection, "newspaper carrier":

(i) is a person who provides a newspaper with the service of delivering newspapers singly or in bundles; but

(ii) does not include an employee of the paper who, incidentally to the employee's main duties, carries or delivers papers.

(l) cosmetologist's services and barber's services as defined in 39-51-204(1)(e);

(m) a person who is employed by an enrolled tribal member or an association, business, corporation, or other entity that is at least 51% owned by an enrolled tribal member or members, whose business is conducted solely within the exterior boundaries of an Indian reservation;

HeinOnline -- 1999 vol. II 1791 1999

(n) employment of a jockey who is performing under a license issued by the board of horseracing from the time that the jockey reports to the scale room prior to a race through the time that the jockey is weighed out after a race if the jockey has acknowledged in writing, as a condition of licensing by the board of horseracing, that the jockey is not covered under the Workers' Compensation Act while performing services as a jockey;

(o) employment of an employer's spouse for whom an exemption based on marital status may be claimed by the employer under 26 U.S.C. 7703;

(p) a person who performs services as a petroleum land professional. As used in this subsection, a "petroleum land professional" is a person who:

(i) is engaged primarily in negotiating for the acquisition or divestiture of mineral rights or in negotiating a business agreement for the exploration or development of minerals;

(ii) is paid for services that are directly related to the completion of a contracted specific task rather than on an hourly waga basis; and

(iii) performs all services as an independent contractor pursuant to a written contract.

(q) an officer of a quasi-public or a private corporation or manager of a manager-managed limited liability company who qualifies under one or more of the following provisions:

(i) the officer or manager is not engaged in the ordinary duties of a worker for the corporation or the limited liability company and does not receive any pay from the corporation or the limited liability company for performance of the duties;

(ii) the officer or manager is engaged primarily in household employment for the corporation or the limited liability company;

(iii) the officer or manager either:

(A) owns 20% or more of the number of shares of stock in the corporation or owns 20% or more of the limited liability company; or

(B) owns less than 20% of the number of shares of stock in the corporation or limited liability company if the officer's or manager's shares when aggregated with the shares owned by a person or persons listed in subsection (2)(q)(iv) total 20% or more of the number of shares in the corporation or limited liability company; or

(iv) the officer or manager is the spouse, child, adopted child, stepchild, mother, father, son-in-law, daughter-in-law, nephew, niece, brother, or sister of a corporate officer who meets the requirements of subsection (2)(q)(iii)(A) or (2)(q)(iii)(B).

(r) a person who is an officer or a manager of a ditch company as defined in 27-1-731;

(s) service performed by an ordained, commissioned, or licensed minister of a church in the exercise of the church's ministry or by a member of a religious order in the exercise of duties required hy the order.

(3) (a) A sole proprietor, a working member of a partnership, a working member of a limited liability partnership, or a working member of a member-managed limited liability company who represents to the public that the

person is an independent contractor shall elect to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3 but may apply to the department for an exemption from the Workers' Compensation Act.

(b) The application must be made in accordance with the rules adopted hy the department. There is a $25 fee for the initial application. Any subsequent application renewal must be accompanied by a $25 application fee. The application fee must be deposited in the administration fund established in 39-71-201 to offset the costs of administering the program.

(c) When an application ic approved by tlie department, it is conclusive as to the status of an independent contractor and precludes tbe applicant from obtaining benefits under this chapter.

(d) The exemption, if approved, remains in effect for 3 years following the date of the department's approval. To maintain tbe independent contractor status, an independent contractor sball every 3 years submit a renewal application. A renewal application must be submitted for all independent contractor exemptions approved on or after July 1, 1995. The renewal application and tbe $25 renewal application fee must be received by the department at least 30 days before tlie anniversary date of tbe previously approved exemption.

(e) A person who makes a false statoment or misrepresentation concerning tliat person's status as an exempt independent contractor is subject to a civil penalty of $1,000. The department may impose tlie penalty for each false statement or misrepresentation. Tlie penalty must be paid to the uninsured employers' fund. The lien provisions of 39-71-506 apply to the penalty imposed by this section.

(f) If the department denies the application for exemption, tlie applicant may, *after mediation pursuant to department rules,* contest the denial by petitioning ~~for review of the decision by an appeals referee in the manner provided for in 39-51-1109~~ *the workers' compensation court.* ~~An applicant dissatisfied with the decision of the appeals referee may appeal the decision in accordance with the procedure established in 39-51-2403 and 39-51-2404.~~

(4) (a) A corporation or a manager-managed limited liability company shall provide coverage for its employees under tlie provisions of compensation plan No. 1, 2, or 3. A quasi-public corporation, a private corporation, or a manager-managed limited liahility company may elect coverage for its corporato officers or managers, who are otberwise exempt under subsection (2), by giving a written notice in the following manner:

(i) if the employer has elected to be bound by the provisions of compensation plan No. 1, by delivering the notice to the board of directors of the corporation or to the management organization of the manager-managed limited liability company; or

(ii) if tlie employer has elected to be bound by tlie provisions of compensation plan No. 2 or 3, by delivering tlie notice to the board of directors of the corporation or to tlie management organization of the manager-managed limited liability company and to the insurer.

(b) If the employer changes plans or insurers, the employer's previous election is not effective and the employer shall again serve notice to its insurer and to its board of directors or the management organization of tlie manager-managed limited liability company if tlie employer elects to be bound.

HeinOnline -- 1999 vol. II 1793 1999

(5) The appointment or election of an employee as an officer of a corporation, a partner in a partnership, a partner in a limited liability partnership, or a member in or a manager of a limited liability company for the purpose of exempting the employee from coverage under this chapter does not entitle the officer, partner, member, or manager to exemption from coverage.

(6) Each employer shall post a sign in the workplace at the locations where notices to employees are normally posted, informing employees about the employer's current provision of workers' compensation insurance. A workplace is any location where an employee performs any work-related act in the course of employment, regardless of whether the location is temporary or permanent, and includes the place of business or property of a third person while the employer has access to or control over the place of business or property for the purpose of carrying on the employer's usual trade, business, or occupation. The sign must be provided by the department, distributed through insurers or directly by the department, and posted by employers in accordance with rules adopted by the department. An employer who purposely or knowingly fails to post a sign as provided in this subsection is subject to a $50 fine for each citation."

Section 15. Section 39-71-415, MCA, is amended to read:

"39-71-415. Procedure for resolving disputes regarding independent contractor status. (1) If an individual, employer, or insurer has a dispute as to whether an individual is an independent contractor or an employee as defined in this chapter, any party may, *after mediation pursuant to department rules,* petition ~~a department of labor and industry appeals referee for resolution of the dispute in accordance with 39-51-1109 and may appeal from a decision of the appeals referee in the same manner as prescribed in 39-51-2403 and 39-51-2404~~ *the workers' compensation court for resolution of the dispute.*

(2) If a claimant and insurer have a dispute over benefits and the dispute involves an issue of whether the claimant is an independent contractor or employee as defined in this chapter, *and after mediating pursuant to department rule,* either party may petition the workers' compensation judge for resolution of the dispute in accordance with 39-71-2905.

(3) Notwithstanding the provisions of subsection (1), an individual may apply to the department for an exemption from the Workers' Compensation Act in accordance with 39-71-401."

Section 16. Section 39-71-601, MCA, is amended to read:

"39-71-601. Statute of limitation on presentment of claim — waiver. (1) In case of personal injury or death, all claims must be forever barred unless signed by the claimant or the claimant's representative and presented in writing to the employer, the insurer, or the department, as the case may be, within 12 months from the date of the happening of the accident, either by the claimant or someone legally authorized to act on the claimant's behalf.

(2) The ~~department~~ *insurer* may waive the time requirement up to an additional 24 months upon a reasonable showing by the claimant of:

(a) lack of knowledge of disability;

(b) latent injury; or

(c) equitable estoppel.

HeinOnline -- 1999 vol. II 1794 1999

(3) Any dispute regarding the statute of limitations for filing time is considered a dispute that, after mediation pursuant to department rules, is subject to jurisdiction of the workers' compensation court."

Section 17. Section 39-71-610, MCA, is amended to read:

"39-71-610. Termination of benefits by insurer — department order to pay disputed benefits prior to hearing *or mediation* — limitation on order — right of reimbursement. If an insurer terminates biweekly compensation benefits and the termination of compensation benefits is disputed by the claimant, the department may, upon written request, order an insurer to pay additional biweekly compensation benefits prior to a hearing *before the workers' compensation court or prior to mediation*, but in no event may the biweekly compensation benefits be ordered to be paid under this section for a period exceeding 49 days or for any period subsequent to the date of ~~a~~ *the* hearing *or mediation. A party may appeal this order to the workers' compensation court.* If after a hearing *before the workers' compensation court* it is held that the insurer was not liable for the compensation payments ordered by the department, the insurer has the right to be reimbursed for ~~such~~ *the* payments by the claimant."

Section 18. Section 39-71-613, MCA, is amended to read:

"39-71-613. Regulation of attorney fees — forfeiture of fee for noncompliance — return of fee when claimant received benefits through fraud or deception. (1) When an attorney represents or acts on behalf of a claimant or any other party on any workers' compensation claim, the attorney shall submit to the department a contract of employment, on a form provided by the department, stating specifically the terms of the fee arrangement between the attorney and the claimant.

(2) The department may regulate the amount of the attorney fees in any workers' compensation case. In regulating the amount of the ~~fee~~ *fees*, the department shall consider:

(a) the benefits the claimant gained due to the efforts of the attorney;

(b) the time the attorney was required to spend on the case;

(c) the complexity of the case; and

(d) any other relevant matter the department may consider appropriate.

(3) An attorney who violates a provision of this section, a rule adopted under this section, or an order fixing attorney fees under this section forfeits the right to any ~~fee~~ *fees* that the attorney collected or was entitled to collect.

(4) If, after an attorney receives attorney fees and costs assessed against an insurer, tbe claimant is convicted of having obtained benefits through fraud or deception, the attorney fees and costs for obtaining the benefits must be returned to the insurer by the attorney.

(5) A dispute concerning the forfeiture or return of attorney fees is considered a dispute for which the workers' compensation court has original jurisdiction and is not subject to mediation or a contested case hearing."

Section 19. Section 39-71-704, MCA, is amended to read:

"39-71-704. Payment of medical, hospital, and related services — fee schedules and hospital rates — fee limitation. (1) In addition to the compensation provided under this chapter and as an additional benefit separate

HeinOnline -- 1999 vol. II 1795 1999

and apart from compensation benefits actually provided, the following must be furnished:

(a) After the happening of a compensable injury and subject to other provisions of this chapter, the insurer shall furnish reasonable primary medical services for conditions resulting from the injury for those periods as the nature of the injury or the process of recovery requires.

(b) The insurer shall furnish secondary medical services only upon a clear demonstration of cost-effectiveness of the services in returning the injured worker to actual employment.

(c) The insurer shall replace or repair prescription eyeglasses, prescription contact lenses, prescription hearing aids, and dentures that are damaged or lost as a result of an injury, as defined in 39-71-119, arising out of and in the course of employment.

(d) The insurer shall reimburse a worker for reasonable travel expenses incurred in travel to a medical provider for treatment of an injury only if the travel is incurred at the request of the insurer. Reimbursement must be at the rates allowed for reimbursement of travel by state employees.

(e) Except for the repair or replacement of a prostbesis furnished as a result of an industrial injury, the benefits provided for in this section terminate when they are not used for a period of 60 consecutive months.

(f) Notwithstanding subsection (1)(a), the insurer may not be required to furnish, after the worker has achieved medical stability, palliative or maintenance care except:

(i) when provided to a worker who has been determined to be permanently totally disabled and for whom it is medically necessary to monitor administration of prescription medication to maintain the worker in a medically stationary condition; ~~or~~

(ii) when necessary to monitor the status of a prosthetic device~~.~~*; or*

~~(g)~~*(iii)* ~~If~~ *when* the worker's treating physician believes that ~~palliative or maintenance~~ *the* care that would otherwise not be compensable under subsection (1)(f) is appropriate to enable the worker to continue current employment or that there is a clear probability of returning the worker to employment~~, the treating physician shall first request approval from the insurer for the treatment. If approval is not granted, the treating physician may request approval from the department for the treatment. The department shall appoint a panel of physicians, including at least one treating physician from the area of specialty in which the injured worker is being treated, pursuant to rules that the department may adopt, to review the proposed treatment and determine its appropriateness~~. *A dispute regarding the compensability of palliative or maintenance care is considered a dispute over which, after mediation pursuant to department rule, the workers' compensation court has jurisdiction.*

~~(h)~~*(g)* Notwithstanding any other provisions of this chapter, the department, by rule and upon the advice of the professional licensing boards of practitioners affected by the rule, may exclude from compensability any medical treatment that the department finds to be unscientific, unproved, outmoded, or experimental.

(2) The department shall annually establish a schedule of fees for medical services not provided at a hospital that are necessary for the treatment of injured

HeinOnline -- 1999 vol. II 1796 1999

workers. Charges submitted by providers must be the usual and customary charges for nonworkers' compensation patients. The department may require insurers to submit information to be used in establishing the schedule.

(3) (a) The department shall establish rates for hospital services necessary for the treatment of injured workers.

(b) Except as provided in subsection (3)(g), ~~for the fiscal year beginning July 1, 1997,~~ rates for services provided at a hospital must be the greater of:

(i) 69% of the hospital's January 1, 1997, usual and customary charges; or

(ii) the discount factor established by the department that was in effect on June 30, 1997, for the hospital. The discount factor for a hospital formed by the merger of two or more existing hospitals is computed by using the weighted average of the discount factors in effect at the time of the merger.

(c) Except as provided in subsection (3)(g), beginning July 1, 1998, the department shall adjust hospital discount factors so that the rate of payment does not exceed the annual percentage increase in the state's average weekly wage, as defined in 39-71-116.

(d) The department may establish a fee schedule for hospital outpatient services rendered on or after July 1, 1998. The fee schedule must, in the aggregate, provide for fees that are equal to the statewide average discount factors paid to hospitals to provide the same or equivalent procedure to workers' compensation hospital outpatients.

(e) The discount factors established by the department pursuant to this subsection (3) may not be less than medicaid reimbursement rates.

(f) For services available in Montana, insurers are not required to pay facilities located outside Montana rates that are greater than those allowed for services delivered in Montana.

(g) For a hospital licensed as a medical assistance facility pursuant to Title 50, chapter 5, the rate for services is the hospital's usual and customary charge. Fees paid to a hospital licensed as a medical assistance facility are not subject to the limitation provided in subsection (4).

(4) The percentage increase in medical costs payable under this chapter may not exceed the annual percentage increase in the state's average weekly wage, as defined in 39-71-116.

(5) Payment pursuant to reimbursement agreements between managed care organizations or preferred provider organizations and insurers is not bound by the provisions of this section.

(6) Disputes between an insurer and a medical service provider regarding the amount of a fee for medical services must be resolved by a hearing before the department upon written application of a party to the dispute.

(7) (a) After the initial visit, the worker is responsible for 20%, but not to exceed $10, of the cost of each subsequent visit to a medical service provider for treatment relating to a compensable injury or occupational disease, unless the visit is to a medical service provider in a managed care organization as requested by the insurer or is a visit to a preferred provider as requested by the insurer.

HeinOnline -- 1999 vol. II 1797 1999

(b) After the initial visit, the worker is responsible for $25 of the cost of each subsequent visit to a hospital emergency department for treatment relating to a compensable injury or occupational disease.

(c) "Visit", as used in subsections (7)(a) and (7)(b), means each time that the worker obtains services relating to a compensable injury or occupational disease from:

(i) a treating physician;

(ii) a physical therapist;

(iii) a psychologist; or

(iv) hospital outpatient services available in a nonhospital setting.

(d) A worker is not responsible for the cost of a subsequent visit pursuant to subsection (7)(a) if the visit is an examination requested by an insurer pursuant to 39-71-605."

Section 20. Section 39-71-1032, MCA, is amended to read:

"39-71-1032. Termination of benefits for noncooperation with rehabilitation provider — ~~department hearing and~~ appeal. (1) If an insurer believes that a worker is refusing unreasonably to cooperate with the rehabilitation provider, the insurer, with 14 days' written notice to the worker and the department, may terminate any benefits, except medical benefits and the impairment award, that the worker is receiving until the worker cooperates.

(2) ~~The worker may contest the insurer's termination of benefits by filing a written exception to the department within 20 working days after the date of the 14-day notice. The worker or insurer may request a hearing before the department. The department shall hold a hearing within 30 days of receipt of the request. The department shall issue an order within 15 days of the hearing~~ *If the worker disputes the termination of benefits, the worker may, after mediation pursuant to department rule, petition the workers' compensation court for resolution of the dispute.*

~~(3) If the worker prevails at a hearing before the department, it may award attorney fees and costs to the worker under 39-71-612.~~

~~(4) Within 30 days after the department mails its order to the party's last known address, a party may appeal to the workers' compensation court.~~"

Section 21. Section 39-72-403, MCA, is amended to read:

"39-72-403. Time when claims must be presented. (1) When a claimant seeks benefits under this chapter, the claimant's claims for benefits must be presented in writing to the employer, the employer's insurer, or the department within 1 year from the date the claimant knew or should have known that the claimant's condition resulted from an occupational disease. When a beneficiary seeks benefits under this chapter, claims for death benefits must be presented in writing to the employer, the employer's insurer, or the department within 1 year from the date the beneficiaries knew or should have known that the decedent's death was related to an occupational disease.

(2) The ~~department~~ *insurer* may, upon a reasonable showing by the claimant or a decedent's beneficiaries that the claimant or the beneficiaries could not have known that the claimant's condition or the employee's death was related to an occupational disease, waive the claim time requirement up to an additional 2 years.

HeinOnline -- 1999 vol. II 1798 1999

(3) Any dispute regarding a claim filing time is considered a dispute that, after mediation pursuant to department rule, is subject to jurisdiction of the workers' compensation court."

Section 22. Section 39-72-601, MCA, is amended to read:

"39-72-601. Medical ~~panel~~ *evaluators.* (1) The department shall develop a list of physicians to serve ~~on the~~ *as* occupational disease medical ~~panel~~ *evaluators*. The list may include physicians nominated by the board of medical examiners. ~~A physician on the panel~~ *An evaluator* must be certified by the physician's specialty board or be eligible for certification in the specialty area appropriate to the claimant's condition in relation to this chapter.

(2) The department shall select ~~a panel physician~~ *an evaluator* to examine a claimant, as required. ~~The department shall appoint, as required, a physician as the presiding officer.~~"

Section 23. Section 39-72-602, MCA, is amended to read:

"39-72-602. Insurer may accept liability — procedure for medical examination when insurer has not accepted liability. (1) An insurer may accept liability for a claim under this chapter based on information submitted to it by a claimant.

(2) In order to determine the compensability of claims under this chapter when an insurer has not accepted liability, the following procedure must he followed:

(a) The department shall direct the claimant to ~~a member of the medical panel~~ *an evaluator on the list of physicians* for an examination. The ~~panel member~~ *evaluator* shall conduct an examination to determine whether the claimant is totally disabled and is suffering from an occupational disease. *In the case of a fatality, the evaluator shall examine the records to determine if the death was caused by an occupational disease.* The ~~panel member~~ *evaluator* shall submit a report of the ~~member's~~ findings to the department.

(b) ~~Either the claimant or the insurer may, within 20 days after the receipt of the report by the first panel member, request that the claimant be examined by a second panel member. If a second examination is requested, the department shall direct the claimant to a second panel member who shall conduct an examination to determine whether the claimant is totally disabled and is suffering from an occupational disease. The panel member shall submit a report of the member's findings to the department. The medical panel member may, in order to reach a conclusion, consult with the claimant's attending physician. The reports from the two examining physicians must be sent by the department to the presiding officer of the panel. The presiding officer shall issue a report concerning the claimant's physical condition and whether the claimant is suffering from an occupational disease~~ *Within 7 working days of receipt, the department shall mail the report of the evaluator's findings to the insurer and claimant.*

(c) ~~(i) If a second examination is not requested, the department shall issue its order determining whether the claimant is entitled to occupational disease benefits based on the report of the first examining physician.~~

~~(ii) If a second examination is requested, the department shall issue its order based on the report of the presiding officer. If the panel presiding officer has examined the claimant, the department shall appoint another presiding officer~~ *Upon receipt of the report, if a dispute exists over initial compensability of an*

occupational disease, it is considered a dispute that, after mediation pursuant to department rule, is subject to the jurisdiction of the workers' compensation court."

Section 24. Section 39-72-607, MCA, is amended to read:

"**39-72-607. Periodic medical examinations.** (1) Upon the request of the department or the insurer, each employee entitled to compensation shall submit to a medical examination from time to time by a physician designated by the department who is ~~a member of the appropriate medical panel~~ *an evaluator on the department's list of physicians*. The examination ~~shall~~ *must* be at a place reasonably convenient for the employee.

(2) The order directing the examination ~~shall~~ *must* fix a time and place having regard to the convenience of the employee, ~~his~~ *the employee's* physical condition, and ~~his~~ *the employee's* ability to attend. The employee and any other party in interest may have a physician present at the examination if the physician is provided and paid for by the employee or other party.

(3) If the employee refuses to submit to the examination or obstructs the examination, ~~his~~ *the employee's* right to compensation is suspended until the examination has been made, and ~~no~~ compensation is *not* payable during or for the period of suspension.

(4) A physician who makes or is present at the examination may be required to testify as to the result ~~thereof~~ *of the examination*."

Section 25. Section 39-72-608, MCA, is amended to read:

"**39-72-608. Payment of medical examination, report, and autopsy expenses.** The expense of the ~~first~~ medical examination and report, as provided in 39-72-602, must be ~~borne~~ *paid* by the insurer. ~~The expense of a reexamination and panel report must be borne by the dissatisfied party requesting the reexamination.~~ The expense of the periodic medical examinations and reports, as provided in 39-72-607, must be ~~borne~~ *paid* by the party requesting the periodic medical examination. The expense of the autopsy, as provided for in 39-72-606, must be ~~borne~~ *paid* by the party requesting the autopsy. When the occupational disease causes death, the expense of any examinations and reports, as provided in 39-72-605, must be ~~borne~~ *paid* by the party requesting the examination."

Section 26. Repealer. Sections 39-3-217, 39-72-609, 39-72-610, 39-72-611, 39-72-612, and 39-72-613, MCA, are repealed.

Section 27. Codification instruction. [Section 7] is intended to be codified as an integral part of Title 39, chapter 51, part 1, and the provisions of Title 39, chapter 51, part 1, apply to [section 7].

Section 28. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 29. Effective date. [This act] is effective on passage and approval.

Section 30. Applicability. [Sections 3 and 5] apply to claims accruing on or after [the effective date of this act].

Section 31. Retroactive applicability. (1) [Sections 14 through 20] apply retroactively, within the meaning of 1-2-109, to claims for injuries occurring before [the effective date of this act] unless a party elects, after notification by the department of labor and industry, to remain in the contested case process.

HeinOnline -- 1999 vol. II 1800 1999

(2) [Sections 21 through 25] apply retroactively, within the meaning of 1-2-109, to occupational diseases occurring hefore [the effective date of this act] unless a party elects, after notification by the department of labor and industry, to remain in the contested case process.

Approved April 23, 1999

CHAPTER NO. 443

[HB 621]

AN ACT APPROPRIATING FUNDS TO THE DEPARTMENT OF COMMERCE FOR GRANTS TO LOCAL GOVERNMENTS SUBMITTING PROPOSALS TO LOCATE THE VENTURE STAR PROJECT IN MONTANA; PROVIDING CONDITIONS FOR THE RECEIPT AND USE OF GRANT FUNDS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enactcd by the Legislature of the State of Montana:

Section 1. Appropriation — conditions. (1) There is appropriated to the department of commerce $300,000 from the research and commercialization state special revenue account created in House Bill No. 260. Except as provided in subsection (6), the funds must be used as a grant to a local government submitting a nationally competitive proposal to locate the venture star project in Montana.

(2) The department shall develop procedures for accepting grant proposals and awarding grants. A grant may not be made unless the local government submitting the proposal provides an equal amount of matching funds.

(3) The expenditure of grant funds may be made only for costs incurred after comments have been received and clarified after an evaluation of preliminary proposals by the primary contractor for the venture star project. Following review and consideration by the primary contractor of all proposals for siting the venture star project, only a local government that is identified by tbe primary contractor to be a viable candidate among other competing states for locating the project in Montana may receive and expend the granted funds.

(4) Grant funds that are not spont pursuant to subsection (3) or that are unspent on June 30, 2001, must be deposited in the goneral fund.

(5) Except as provided in subsection (6), for tbe purposes of tbis section, it is tbe intent of the legislature that the appropriated funds be used to assist a local government in Montana in competing with venture star proposals submitted by other states, but not with proposals submitted by or for other sites in Montana.

(6) If, after the review and consideration under subsection (3), the primary contractor deterinines that more than one proposal or site in Montana is competitive among all other states' proposals for the venture star site, the department of commerce shall grant funds to each of those compotitive sites.

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 22, 1999

HeinOnline -- 1999 vol. II 1801 1999

CHAPTER NO. 444

[HB 638]

AN ACT PROVIDING A TAX CREDIT FOR QUALIFIED RESEARCH EXPENSES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Credit for research expenses and research payments. (1) (a) There is a credit against taxes otherwise due under this chapter for increases in qualified research expense and basic research payments for research conducted in Montana. Except as provided in this section, the credit must be determined in accordance with section 41 of the Internal Revenue Code, 26 U.S.C. 41, as that section read on July 1, 1996, or as subsequently amended.

(b) For purposes of the credit, the:

(i) applicable percentage specified in 26 U.S.C. 41(a) is 5%;

(ii) election of the alternative incremental credit allowed under 26 U.S.C. 41(c)(4) does not apply;

(iii) special rules in 26 U.S.C. 41(g) do not apply; and

(iv) the termination date provided for in 26 U.S.C. 41(h) does not apply.

(2) The credit allowed under this section for a tax year may not exceed the tax liability under chapter 30 or 31. A credit may not be refunded if a taxpayer has tax liability less than the amount of the credit.

(3) The credit allowed under this section may be used as a carryback against taxes imposed under chapter 30 or 31 for the 2 preceding tax years and may be used as a carryforward against taxes imposed by chapter 30 or 31 for the 15 succeeding tax years. The entire amount of the credit not used in the year earned must be carried first to the earliest tax year in which the credit may be applied and then to each succeeding tax year.

(4) A taxpayer may not claim a current year credit under this section after December 31, 2010. However, any unused credit may be carried back or forward as provided in subsection (3).

(5) A corporation, an individual, a small business corporation, a partnership, a limited liability partnership, or a limited liability company qualifies for the credit under this section. If the credit is claimed by a small business corporation, a partnership, a limited liability partnership, or a limited liability company, the credit must be attributed to the individual shareholders, partners, members, or managers in the same proportion used to report income or loss for state tax purposes. The allocations in 26 U.S.C. 41(f) do not apply to this section.

(6) For purposes of calculating the credit, the following definitions apply:

(a) "Gross receipts" means:

(i) for a corporation that has income from business activity that is taxable only within the state, all gross sales less returns of the corporation for the tax year; and

(ii) for a corporation that has income from business activity that is taxable both within and outside of the state, only the gross sales less returns of the corporation apportioned to Montana for the tax year.

(b) "Qualified research" has the meaning provided in 26 U.S.C. 41(d), but is limited to research conducted in Montana.

(c) "Qualified research expenses" has the meaning provided in 26 U.S.C. 41(b), but includes only the sum of amounts paid or incurred by the taxpayer for research conducted in Montana.

(d) "Supplies" has the meaning provided in 26 U.S.C. 42(b)(2)(C), but includes only those supplies used in the conduct of qualified research in Montana.

(e) "Wages" has the meaning provided in 39-51-201 and includes only those wages paid or incurred for an employee for qualified services performed by the employee in Montana. For a self-employed individual and an owner-employee, the term includes the income, as defined in 26 U.S.C. 401(c)(2), of the employee.

(7) The department shall adopt rules, prepare forms, maintain records, and perform other duties necessary to implement this section. In adopting rules to implement this section, the department shall conform the rules to regulations prescribed by the secretary of the treasury under 26 U.S.C. 41 except to the extent that the regulations need to be modified to conform to this section.

Section 2. Qualified research tax credit. There is a credit against taxes otherwise due under this chapter allowable for qualified research. The credit must be computed and administered as provided in [section 1].

Section 3. Codifieation instruetion. (1) [Section 1] is intended to be codified as an integral part of Title 15, chapter 31, part 1, and the provisions of Title 15, chapter 31, part 1, apply to [section 1].

(2) [Section 2] is intended to be codified as an integral part of Title 15, chapter 30, part 1, and the provisions of Title 15, chapter 30, part 1, apply to [section 2].

Seetion 4. Effective date. [This act] is effective on passage and approval.

Seetion 5. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

Approved April 22, 1999

CHAPTER NO. 445

[HB 652]

AN ACT REVISING THE DEFINITION OF "INCOME" AS IT RELATES TO THE RESIDENTIAL PROPERTY TAX CREDIT FOR THE ELDERLY; EXCLUDING THE TAXPAYER'S BASIS IN THE DETERMINATION OF INCOME; AMENDING SECTION 15-30-171, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-171, MCA, is amended to read:

HeinOnline -- 1999 vol. II 1803 1999

"15-30-171. Residential property tax credit for elderly — definitions. As used in 15-30-171 through 15-30-179, the following definitions apply:

(1) "Claim period" means the tax year for individuals required to file Montana individual income tax returns and the calendar year for individuals not required to file returns.

(2) "Claimant" means a person who is eligible to file a claim under 15-30-172.

(3) "Department" means the department of revenue.

(4) "Gross household income" means all income received by all individuals of a household while they are members of the household.

(5) "Gross rent" means the total rent in cash or its equivalent actually paid during the claim period by the renter or lessee for the right of occupancy of the homestead pursuant to an arm's-length transaction with the landlord.

(6) "Homestead" means:

(a) a single-family dwelling or unit of a multiple-unit dwelling that is subject to property taxes in Montana and as much of the surrounding land, but not in excess of 1 acre, as is reasonably necessary for its use as a dwelling; or

(b) a single-family dwelling or unit of a multiple-unit dwelling that is rented from a county or municipal housing authority as provided in Title 7, chapter 15.

(7) "Household" means an association of persons who live in the same dwelling, sharing its furnishings, facilities, accommodations, and expenses. The term does not include bona fide lessees, tenants, or roomers and boarders on contract.

(8) "Household income" means the amount obtained by subtracting $6,300 from gross household income.

(9) *(a)* "Income" means, *except as provided in subsection (9)(b),* federal adjusted gross income, without regard to loss, as that quantity is defined in the Internal Revenue Code of the United States, plus all nontaxable income, including but not limited to:

~~(a)~~*(i)* the ~~gross~~ amount of any pension or annuity, including Railroad Retirement Act benefits and veterans' disability benefits;

~~(b)~~*(ii)* the amount of capital gains excluded from adjusted gross income;

~~(c)~~*(iii)* alimony;

~~(d)~~*(iv)* support money;

~~(e)~~*(v)* nontaxable strike benefits;

~~(f)~~*(vi)* cash public assistance and relief;

~~(g)~~*(vii)* ~~payments and~~ interest on federal, state, county, and municipal bonds; and

~~(h)~~*(viii)* all payments received under federal social security except social security income paid directly to a nursing home.

(b) For the purposes of this subsection (9), income is reduced by the taxpayer's basis.

HeinOnline -- 1999 vol. II 1804 1999

(10) "Property tax billed" means taxes levied against the homestead, including special assessments and fees but excluding penalties or interest during the claim period.

(11) "Rent-equivalent tax paid" means 15% of tbe gross rent."

Section 2. Coordination instruction. If Senate Bill No. 424 is passed and approved and if it amends section 15-30-171, then the section of Senate Bill No. 424 amending section 15-30-171 is void.

Section 3. Effective date. [This act] is effective on passage and approval.

Section 4. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

Approved April 22, 1999

CHAPTER NO. 446

[HB 656]

AN ACT GENERALLY REVISING THE TAX DEED PROCESS BY PROVIDING A FORM TO RECORD OR FILE CANCELLATIONS OF TAX SALES CERTIFICATES; PROVIDING A FORM FOR A CERTIFICATE OF REDEMPTION; REQUIRING THAT THE CANCELLATION OF A TAX SALE CERTIFICATE AND A CERTIFICATE OF REDEMPTION BE FILED OR RECORDED WITH THE COUNTY CLERK AND RECORDER; PROHIBITING THE IMPOSITION OF A CHARGE FOR FILINGS OR RECORDINGS RELATED TO THE TAX DEED PROCESS; AMENDING SECTIONS 15-18-113 AND 15-18-212, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-18-113, MCA, is amended to read:

"15-18-113. Treasurer to record redemptions. *(1)* Upon payment of all delinquent taxes, including penalties, interest, and costs, by the person to whom taxes were assessed or ~~his~~ *the person's* agent to the county treasurer and refunded to the person listed as purchaser as provided in 15-17-212(1)(e), 15-17-213, or 15-17-214 or distributed as provided in 15-18-114, the word "redeemed", the date, and the name of the redemptioner must be marked by the county treasurer on the tax sale certificate or in the record required in 15-17-214. *Upon redemption the county treasurer shall execute a certificate of redemption to be filed or recorded with the county clerk and recorder.*

(2) The form of the certificate of redemption may be made as follows:

CERTIFICATE OF REDEMPTION

I, ..., the treasurer of ..... County, certify the following:

1. For tax years ..... (years) the taxes were delinquent on the following real property: ..... (description of the property).

2. The tax lien on the property was sold on.....(date of the tax sale). Tax Sale Certificate No. ..... or Tax Lien Assignment No. ..... (if applicable).

3. The tax lien was redeemed on ..... (date of redemption) by the payment of:

Taxes .....

Penalty .....

Interest .....

Cost .....

Total .....

Receipt Number .....

4. The redemption was made by ..... (name of redemptioner).

Date:.....

.....

Signature"

Section 2. Section 15-18-212, MCA, is amended to read:

"15-18-212. Notice — proof of notice — penalty for failure to notify. (1) Not more than 60 days prior to and not more than 60 days following the expiration of the redemption period provided in 15-18-111, a notice must be given as follows:

(a) for each property for which there has been issued to the county a tax sale certificate or for which the county is otherwise listed as the purchaser or assignee, the county clerk shall notify all persons considered interested parties in the property and the current occupant of the property, if any, that a tax deed may be issued to the county unless the property tax lien is redeemed prior to the expiration date of the redemption period; or

(b) for each property for which there has been issued a tax sale certificate to a purchaser other than the county or for which an assignment has been made, the purchaser or assignee, as appropriate, shall notify all persons considered interested parties in the property, if any, that a tax deed will be issued to the purchaser or assignee unless the property tax lien is redeemed prior to the expiration date of the redemption period.

(2) (a) Except as provided in subsection (2)(b), if the county is the purchaser, an assignment has not been made, and the board of county commissioners has not directed the county treasurer to issue a tax deed during the period described in subsection (1) but the board of county commissioners at a time subsequent to the period described in subsection (1) does direct the county treasurer to issue a tax deed, the county clerk shall provide notification to all interested parties and the current occupant, if any, in the manner provided in subsection (1)(a). The notification required under this subsection must be made not less than 60 days or more than 120 days prior to the date on which the county treasurer will issue the tax deed.

(b) If the county commissioners direct the county treasurer to issue a tax deed within 6 months after giving the notice required by subsection (1)(a), additional notice need not be given.

(3) (a) If a purchaser other than the county or an assignee fails or neglects to give notice as required by subsection (1)(b) and the failure or neglect is evidenced by failure of the purchaser or assignee to file proof of notice with the county clerk as required in subsection (7), the county treasurer shall notify the purchaser or assignee of the obligation to give notice under subsection (1)(b). The

HeinOnline -- 1999 vol. II 1806 1999

notice of obligation may be sent by certified mail, return receipt requested, to the purchaser or assignee at the address contained on the tax sale certificate provided for in 15-17-212 or on the assignment form provided for in 15-17-323.

(b) If within 120 days after the county treasurer mails the notice of obligation the purchaser or assignee fails to give notice as required by subsection (1)(b), as evidenced by failure to file proof of notice with the county clerk as required in subsection (7), the county treasurer shall cancel the property tax lien evidenced by the tax sale certificate or the assignment. *Upon cancellation of the property tax lien, the county treasurer shall file or record with the county clerk and recorder a notice of cancellation on a form provided for in [section 3].*

(4) The notice required under subsections (1) and (2) must be made by certified mail, return receipt requested, to each interested party and the current occupant, if any, of the property. The address to which the notice must be sent is, for each interested party, the address disclosed by the records in the office of the county clerk and, for the occupant, the street address or other known address of the subject property.

(5) In all cases in which the address of an interested party is not known, the person required to give notice shall, within the period described in subsection (1) or not less than 60 days or more than 120 days prior to the date upon which the county treasurer will otherwise issue a tax deed, whichever is appropriate, commence publishing once a week for 2 successive weeks, in the official newspaper of the county or another newspaper as the hoard of county commissioners may by resolution designate, a notice containing the information contained in subsection (6), plus:

(a) the name of the interested party for whom the address is unknown;

(b) a statement that the address of the interested party is unknown;

(c) a statement that the published notice meets the legal requirements for notice of a pending tax deed issuance; and

(d) a statement that the interested party's rights in the property may be in jeopardy.

(6) The notices required by subsections (1), (2), and (5) must contain the following:

(a) a statement that a property tax lien exists on the property as a result of a property tax delinquency;

(b) a description of the property on which the taxes are or were delinquent, which must be the same as the description of the property on the tax sale certificate or in the record described in 15-17-214(2)(b);

(c) the date that the property taxes became delinquent;

(d) the date that the property tax lien attached as the result of a tax sale;

(e) the amount of taxes due, including penalties, interest, and costs, as of the date of the notice of pending tax deed issuance, which amount must include a separate listing of the delinquent taxes, penalties, interest, and costs that must be paid for the property tax lien to be liquidated;

(f) the name and address of the purchaser;

(g) the name of the assignee if an assignment was made as provided in 15-17-323;

(h) the date that the redemption period expires or expired;

(i) a statement that if all taxes, penalties, interest, and costs are not paid to the county treasurer on or prior to the date on which the redemption period expires or on or prior to the date on which the county treasurer will otherwise issue a tax deed that a tax deed may be issued to the purchaser on the day following the date on which the redemption period expires or on the date on which the county treasurer will otherwise issue a tax deed; and

(j) the business address and telephone number of the county treasurer who is responsible for issuing the tax deed.

(7) Proof of notice in whatever manner given must he filed with the county clerk. If the purchaser or assignee is other than the county, the proof of notice must be filed with the county clerk within 30 days of the mailing or publishing of the notice. If the purchaser or assignee is the county, the proof of notice must be filed before the issuance of the tax deed under this chapter. Once filed, the proof of notice is prima facie evidence of the sufficiency of the notice.

(8) A county or any officer of a county may not be held liable for any error of notification."

Section 3. Form of cancellation. The notice of cancellation required hy 15-18-212 of a tax lien as evidenced by a tax sale certificate or assignment may be made as follows:

I, ..., the treasurer of ..... County, certify that ..... (name of the purchaser or the purchaser's agent or assignee) of ..... (address), purchased a tax lien ..... (tax sale certificate no. or tax lien assignment no.) on property owned by ..... (name of owner of record). See legal description attached as exhibit "A", Tax Receipt No. ..... on ..... (date).

I further certify that pursuant to 15-18-212(3)(a), notice was given to ..... (name of purchaser or the purchaser's agent or assignee) that the tax lien will be canceled if the purchaser does not comply with provisions of 15-18-212 within 120 days from ..... (date of mailing of certified letter).

I further certify that the treasurer of ..... County has no record of notice by the owner of the tax lien in accordance with 15-18-212(7).

Therefore, noncompliance by the assignee has caused the tax lien to be canceled this ..... (date).

.....

Name of County Treasurer

Section 4. Charge not allowed for filings or recordings made by county treasurer. The county clerk and recorder may not impose a charge for tax lien assignments, tax sale certificates, certificates of redemption, or any other form that the county treasurer is required to file or record with the county clerk and recorder.

Section 5. Codification instruction. [Sections 3 and 4] are intended to be codified as an integral part of Title 15, chapter 18, and the provisions of Title 15, chapter 18, apply to [sections 3 and 4].

Section 6. Effective date — applicability. [This act] is effective on passage and approval and applies to filings, recordings, or redemptions occurring after [the effective date of this act].

Approved April 22, 1999

HeinOnline -- 1999 vol. II 1808 1999

CHAPTER NO. 447

[HB 657]

AN ACT REVISING THE TAXATION OF ESTATE OR TRUST INCOME BASED ON THE TAXABLE DISTRIBUTION OF THE ESTATE OR TRUST; AMENDING SECTION 15-30-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-111, MCA, is amended to read:

"15-30-111. Adjusted gross income. (1) Adjusted gross income is the taxpayer's federal income tax adjusted gross income as defined in section 62 of the Internal Revenue Code of 1954, 26 U.S.C. 62, as that section may be labeled or amended, and in addition includes the following:

(a) (i) interest received on obligations of another state or territory or county, municipality, district, or other political subdivision of another state, except to the extent that the interest is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code of 1986, 26 U.S.C. 852(b)(5), as that section may be amended or renumbered, that are attributable to the interest referred to in subsection (1)(a)(i);

(b) refunds received of federal income tax, to the extent that the deduction of the tax resulted in a reduction of Montana income tax liability;

(c) that portion of a shareholder's income under subchapter S. of Chapter 1 of the Internal Revenue Code of 1954 that has been reduced by any federal taxes paid by the subchapter S. corporation on the income;

(d) depreciation or amortization taken on a title plant as defined in 33-25-105(15); ~~and~~

(e) the recovery during the tax year of an amount deducted in any prior tax year to the extent that the amount recovered reduced the taxpayer's Montana income tax in the year deducted; *and*

(f) if the state taxable distribution of an estate or trust is greater than the federal taxable distribution of the same estate or trust, the difference between the state taxable distribution and the federal taxable distribution of the same estate or trust for the same tax period.

(2) Notwithstanding the provisions of the federal Internal Revenue Code of 1954, as labeled or amended, adjusted gross income does not include the following, which are exempt from taxation under this chapter:

(a) (i) all interest income from obligations of the United States government, the state of Montana, a county, municipality, or district, or other political subdivision of the state and any other interest income that is exempt from taxation by Montana under federal law;

(ii) exempt-interest dividends as defined in section 852(b)(5) of the Internal Revenue Code of 1986, 26 U.S.C. 852(b)(5), as that section may be amended or renumbered, that are attributable to the interest referred to in subsection (2)(a)(i);

HeinOnline -- 1999 vol. II 1809 1999

(b) interest income earned by a taxpayer who is 65 years of age or older in a tax year up to and including $800 for a taxpayer filing a separate return and $1,600 for each joint return;

(c) (i) except as provided in subsection (2)(c)(ii), the first $3,600 of all pension and annuity income received as defined in 15-30-101;

(ii) for pension and annuity income described under subsection (2)(c)(i), as follows:

(A) each taxpayer filing singly, head of household, or married filing separately shall reduce the total amount of the exclusion provided in subsection (2)(c)(i) by $2 for every $1 of federal adjusted gross income in excess of $30,000 as shown on the taxpayer's return;

(B) in the case of married taxpayers filing jointly, if both taxpayers are receiving pension or annuity income or if only one taxpayer is receiving pension or annuity income, the exclusion claimed as provided in subsection (2)(c)(i) must be reduced by $2 for every $1 of federal adjusted gross income in excess of $30,000 as shown on their joint return;

(d) all Montana income tax refunds or tax refund credits;

(e) gain required to be recognized by a liquidating corporation under 15-31-113(1)(a)(ii);

(f) all tips or gratuities that are covered by section 3402(k) or service charges that are covered by section 3401 of the Internal Revenue Code of 1954, 26 U.S.C. 3402(k) or 3401, as amended and applicable on January 1, 1983, received by persons for services rendered by them to patrons of premises licensed to provide food, beverage, or lodging;

(g) all benefits received under the workers' compensation laws;

(h) all health insurance premiums paid by an employer for an employee if attributed as income to the employee under federal law;

(i) all money received because of a settlement agreement or judgment in a lawsuit brought against a manufacturer or distributor of "agent orange" for damages resulting from exposure to "agent orange";

(j) principal and income in a medical care savings account established in accordance with 15-61-201 or withdrawn from an account for eligible medical expenses, as defined in 15-61-102, of the taxpayer or a dependent of the taxpayer or for the long-term care of the taxpayer or a dependent of the taxpayer;

(k) principal and income in a first-time home buyer savings account established in accordance with 15-63-201 or withdrawn from an account for eligible costs, as provided in 15-63-202(7), for the first-time purchase of a single-family residence;

(l) money, not exceeding $3,000 for each taxpayer, contributed to a family education savings program account established in accordance with 15-62-201;

(m) principal withdrawn from an account for qualified higher education expenses, as defined in 15-62-103, for a designated beneficiary of the taxpayer;

(n) the recovery during the tax year of any amount deducted in any prior tax year to the extent that the recovered amount did not reduce the taxpayer's Montana income tax in the year deducted; ~~and~~

HeinOnline -- 1999 vol. II 1810 1999

(o) *if the federal taxable distribution of an estate or trust is greater than the state taxable distribution of the same estate or trust, the difference between the federal taxable distribution and the state taxable distribution of the same estate or trust for the same tax period; and*

(p) income of a dependent child that is included in the taxpayer's federal adjusted gross income pursuant to the Internal Revenue Code. The child is required to file a Montana personal income tax return if the child and taxpayer meet the filing requirements in 15-30-142.

(3) A shareholder of a DISC that is exempt from the corporation license tax under 15-31-102(1)(l) shall include in the shareholder's adjusted gross income the earnings and profits of the DISC in the same manner as provided by section 995 of the Internal Revenue Code, 26 U.S.C. 995, for all periods for which the DISC election is effective.

(4) A taxpayer who, in determining federal adjusted gross income, has reduced the taxpayer's business deductions by an amount for wages and salaries for which a federal tax credit was elected under sections 38 and 51(a) of the Internal Revenue Code of 1954, as those sections may be labeled or amended, is allowed to deduct the amount of the wages and salaries paid regardless of the credit taken. The deduction must be made in the year that the wages and salaries were used to compute the credit. In the case of a partnership or small business corporation, the deduction must be made to determine the amount of income or loss of the partnership or small business corporation.

(5) Married taxpayers filing a joint federal return who are required to include part of their social security benefits or part of their tier 1 railroad retirement benefits in federal adjusted gross income may split the federal base used in calculation of federal taxable social security benefits or federal taxable tier 1 railroad retirement benefits when they file separate Montana income tax returns. The federal base must be split equally on the Montana return.

(6) A taxpayer receiving retirement disability benefits who has not attained age 65 by the end of the tax year and who has retired as permanently and totally disabled may exclude from adjusted gross income up to $100 a week received as wages or payments in lieu of wages for a period during which the employee is absent from work due to the disability. If the adjusted gross income before this exclusion and before application of the two-earner married couple deduction exceeds $15,000, the excess reduces the exclusion by an equal amount. This limitation affects the amount of exclusion, but not the taxpayer's eligibility for the exclusion. If eligible, married individuals shall apply the exclusion separately, but the limitation for income exceeding $15,000 is determined with respect to the spouses on their combined adjusted gross income. For the purpose of this subsection, "permanently and totally disabled" means unable to engage in any substantial gainful activity by reason of any medically determined physical or mental impairment lasting or expected to last at least 12 months. (Subsection (2)(f) terminates on occurrence of contingency—sec. 3, Ch. 634, L. 1983.)"

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

Approved April 22, 1999

HeinOnline -- 1999 vol. II 1811 1999

CHAPTER NO. 448

[HB 659]

AN ACT ELIMINATING THE NEED TO PROCESS A NEW TAX BILL OR TO ISSUE A REFUND AS THE RESULT OF A REVISED PROPERTY TAX ASSESSMENT WHEN THE ADDITIONAL TAX OR REFUND IS $5 OR LESS; AMENDING SECTIONS 15-1-402, 15-16-101, 15-16-102, AND 15-16-605, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, AN APPLICABILITY DATE, AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-1-402, MCA, is amended to read:

"15-1-402. Payment of taxes under protest. (1) The person upon whom a property tax or fee is being imposed under this title may, before the property tax or fee becomes delinquent, pay under written protest that portion of the property tax or fee protested. The protested payment must:

(a) be made to the officer designated and authorized to collect it;

(b) specify the grounds of protest; and

(c) not exceed the difference between the payment for the immediately preceding tax year and the amount owing in the tax year protested unless a different amount results from the specified grounds of protest, which may include but are not limited to changes in assessment due to reappraisal under 15-7-111.

(2) A person appealing a property tax or fee pursuant to chapter 2 or 15 shall pay the tax or fee under protest when due in order to receive a refund. If the tax or fee is not paid under protest when due, the appeal may continue but a tax or fee may not be refunded as a result of the appeal.

(3) If a protested property tax or fee is payable in installments, a subsequent installment portion considered unlawful by the state tax appeal board need not be paid and an action or suit need not be commenced to recover the subsequent installment. The determination of the action or suit commenced to recover the first installment portion paid under protest determines the right of the party paying the subsequent installment to have it or any part of it refunded te the party or the right of the taxing authority to collect a subsequent installment not paid by the taxpayer plus interest from the date the subsequent installment was due.

(4) All property taxes and fees paid under protest to a county or municipality must be deposited by the treasurer of the county or municipality to the credit of a special fund to be designated as a protest fund and must be retained in the protest fund until the final determination of any action or suit to recover the taxes and fees unless they are released at the request of the county, municipality, or other local taxing jurisdiction pursuant to subsection (5). This section does not prohibit the investment of the money of this fund in the state unified investment program or in any manner provided in Title 7, chapter 6. The provision creating the special protest fund does not apply to any payments made under protest directly to the state.

(5) The governing board of a taxing jurisdiction affected by the payment of taxes under protest in the second and subsequent years that a tax protest remains unresolved may demand that the treasurer of the county or municipality pay the requesting taxing jurisdiction all or a portion of the protest payments to which

HeinOnline -- 1999 vol. II 1812 1999

it is entitled, except the amount paid by the taxpayer in the first year of the protest. The decision in a previous year of a taxing jurisdiction to leave protested taxes in the protest fund does not preclude it from demanding in a subsequent year any or all of the payments to which it is entitled, except the first-year protest amount.

(6) (a) If action before the county tax appeal board, state tax appeal hoard, or district court is not commenced within the time specified or if the action is commenced and finally determined in favor of the department of revenue, county, municipality, or treasurer of the county or the municipality, the amount of the protested portions of the property tax or fee must be taken from tbe protest fund and deposited to the credit of the fund or funds to which the property tax belongs, less a pro rata deduction for the costs of administration of the protest fund and related expenses charged the local government units.

(b) If the action is finally determined adversely to the department of revenue, a county, a municipality, or the treasurer of a county or a municipality, then the treasurer shall, upon receiving a certified copy of the final judgment in the action from the state tax appeal board or from the district or supreme court, as appropriate, if the final action of the state tax appeal board is appealed in the time prescribed, refund to the person in whose favor the judgment is rendered the amount of the protested portions of the property tax or fee deposited in the protest fund, and not released pursuant to subsection (5), as the person holding the judgment is entitled to recover, together with interest from the date of payment under protest, at the greater of:

(i) the rate of interest generated from the pooled investment fund provided for in 17-6-203 for the applicahle period; or

(ii) 6% a year.

(c) If the amount retained in the protest fund is insufficient to pay all sums due the taxpayer, the treasurer shall apply the available amount first to tax repayment, then interest owed, and lastly to costs.

(d) If the protest action is decided adversely to a taxing jurisdiction and the amount retained in the protest fund is insufficient to refund the tax payments and costs to which the taxpayer is entitled and for which local governnient units are responsible, the treasurer shall bill and the taxing jurisdiction shall refund to the treasurer that portion of the taxpayer refund, including tax payments and costs, for which the taxing jurisdiction is proratahly responsible.

(e) In satisfying the requirements of suhsection (6)(d), the taxing jurisdiction is allowed not more than 1 year from the beginning of the fiscal year following a final resolution of the protest. The taxpayer is entitled to interest on the unpaid balance at the greater of the rates referred to in subsections (6)(b)(i) and (6)(b)(ii) from the date of payment under protest until the date of final resolution of the protest and at the combined rate of the federal reserve discount rate quoted from the federal reserve bank in New York, New York, on the date of final resolution, plus four percentage points, from the date of final resolution of the protest until refund is made.

(7) A taxing jurisdiction may satisfy the requirements of this section by use of funds from one or more of the following sources:

(a) imposition of a property tax to be collected by a special tax protest refund levy;

HeinOnline -- 1999 vol. II 1813 1999

(b) the general fund, except that amount generated by the all-purpose mill levy, or any other funds legally available to the governing body; and

(c) proceeds from the sale of bonds issued by a county, city, or school district for the purpose of deriving revenue for the repayment of tax protests lost by the taxing jurisdiction. The governing body of a county, city, or school district is authorized to issue the bonds pursuant to procedures established by law. The bonds may be issued without being submitted to an election. Property taxes may be levied to amortize the bonds.

(8) If the department revises an assessment that results in a refund of taxes of $5 or less, a refund is not owed."

Section 2. Section 15-16-101, MCA, is amended to read:

"15-16-101. Treasurer to publish notiee — manner of publication. (1) Within 10 days after the receipt of the property tax record, the county treasurer shall publish a notice specifying:

(a) that one-half of all taxes levied and assessed will be due and payable before 5 p.m. on the next November 30 or within 30 days after the notice is postmarked and that unless paid prior to that time the amount then due will be delinquent and will draw interest at the rate of 5/6 of 1% per month from the time of delinquency until paid and 2% will be added to the delinquent taxes as a penalty;

(b) that one-half of all taxes levied and assessed will be due and payable on or before 5 p.m. on the next May 31 and that unless paid prior to tbat time the taxes will be delinquent and will draw interest at the rate of 5/6 of 1% per month from the time of delinquency until paid and 2% will be added to the delinquent taxes as a penalty; and

(c) the time and place at which payment of taxes may be made.

(2) The county treasurer shall send to the last-known address of each taxpayer a written notice, postage prepaid, showing the amount of taxes and assessments due for the current year and the amount due and delinquent for other years. The written notice must include:

(a) the taxable value of the property;

(b) the total mill levy applied to that taxable value;

(c) the value of each mill in that county;

(d) itemized city services and special improvement district assessments collected by the county;

(e) the number of the school district in which the property is located; and

(f) the amount of the total tax due that is levied as city tax, county tax, state tax, school district tax, and other tax.

(3) The municipality shall, upon request of the county treasurer, provide the information to be included under subsection (2)(d) ready for mailing.

(4) The notice in every case must be published once a week for 2 weeks in a weekly or daily newspaper published in the county, if there is one, or if there is not, then by posting it in three public places. Failure to publish or post notices does not relieve the taxpayer from any tax liability. Any failure to give notice of tbe tax due for the current year or of delinquent tax will not affect the legality of the tax.

HeinOnline -- 1999 vol. II 1814 1999

(5) If the department revises an assessment that results in an additional tax of $5 or less, an additional tax is not owed and a new tax bill does not need to be prepared."

Section 3. Section 15-16-102, MCA, is amended to read:

"15-16-102. Time for payment — penalty for delinquency. Unless suspended or canceled under the provisions of Title 15, chapter 24, part 17, all taxes levied and assessed in the state of Montana, except assessments made for special improvements in cities and towns payable under 15-16-103, are payable as follows:

(1) One-half of the taxes are payable on or before 5 p.m. on November 30 of each year or within 30 days after the tax notice is postmarked, whichever is later, and one-half are payable on or before 5 p.m. on May 31 of each year.

(2) Unless one-half of the taxes are paid on or before 5 p.m. on November 30 of each year or within 30 days after the tax notice is postmarked, whichever is later, the amount payable is delinquent and draws interest at the rate of 5/6 of 1% a month from and after the delinquency until paid and 2% must be added to the delinquent taxes as a penalty.

(3) All taxes due and not paid on or before 5 p.m. on May 31 of each year are delinquent and draw interest at the rate of 5/6 of 1% a month from and after the delinquency until paid, and 2% must be added to the delinquent taxes as a penalty.

(4) If the date on which taxes are due falls on a holiday or Saturday, taxes may be paid without penalty or interest on or before 5 p.m. of the next business day in accordance with 1-1-307.

(5) A taxpayer may pay current year taxes without paying delinquent taxes. The county treasurer shall accept a partial payment equal to the delinquent taxes, including penalty and interest, for one or more full taxable years, provided that taxes for both halves of the current tax year have been paid. Payment of taxes for delinquent taxes must be applied to the taxes that have been delinquent the longest. The payment of taxes for the current tax year is not a redemption of the property tax lien for any delinquent tax year.

(6) The penalty and interest on delinquent assessment payments for specific parcels of land may be waived by resolution of the city council. A copy of the resolution must be certified to the county treasurer.

(7) If the department revises an assessment that results in an additional tax of $5 or less, an additional tax is not owed and a new tax bill does not need to be prepared."

Section 4. Section 15-16-605, MCA, is amended to read:

"15-16-605. Payment of refunds — *exception*. (1) In the order to refund a tax, penalty, interest, or cost under 15-16-603, the board of county commissioners shall determine the method of payment. The board may refund the amount due the taxpayer in installments over a period not to exceed 10 years. If the refund is made in installments, the taxpayer is entitled to interest on the unpaid balance at the interest rate received on public money invested by the county as provided in Title 7, chapter 6, part 2; Title 7, chapter 6, part 27; or 17-6-204.

(2) ~~A~~ *Except as provided in subsection (3), a* refund of a tax, penalty, interest, or cost under 15-16-603 must be paid by the county treasurer out of the general fund of the county. The county treasurer shall transfer money from other funds

HeinOnline -- 1999 vol. II 1815 1999

of the county and of the state, school district, or other taxing jurisdictions that are proratably responsible for the refunds as may be necessary to reimburse the county general fund for the refund.

(3) If the board of county commissioners revises an assessment of property taxes that would result in a refund of $5 or less, then a refund is not owed to the taxpayer."

Section 5. Effective date — applicability — retroactive applicability. [This act] is effective on passage and approval and applies to changes or corrections in revised property tax assessments occurring after [the effective date of this act] and applies retroactively, within the meaning of 1-2-109, to changes or corrections that have been made prior to [the effective date of this act] but for which a new tax hill or refund has not yet heen issued.

Approved April 22, 1999

CHAPTER NO. 449

[SB 10]

AN ACT REVISING THE LAWS RELATING TO THE MOVEMENT OF SLOW-MOVING VEHICLES; REQUIRING A SLOW-MOVING VEHICLE TRAVELING ON AN INTERSTATE OR A FOUR-LANE HIGHWAY TO TRAVEL IN THE RIGHT LANE AS FAR TO THE RIGHT AS POSSIBLE; REQUIRING A FARM VEHICLE THAT EXCEEDS 16 1/2 FEET IN WIDTH AND THAT IS TRAVELING ON AN INTERSTATE OR A FOUR-LANE HIGHWAY TO BE FOLLOWED BY A FLAG VEHICLE ESCORT; AND AMENDING SECTIONS 61-9-415 AND 61-10-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-9-415, MCA, is amended to read:

"61-9-415. Slow-moving vehicles. (1) It is unlawful for a person to oporate on a state highway, a farm, rural, or county road, or a city street of this state a slow-moving vehicle or equipment, an animal-drawn vehicle, or any other machinery, including all road construction or maintenance machinery, except when engaged in actual construction or maintenance work either guarded by a flag person or clearly visible warning signs, that normally travels or is normally used at a speed of less than 25 miles an hour, unless there is displayed on the rear of the vehicle an emblem as provided in subsection (2) ~~of this section~~. The requirement of the emblem is in addition to any lighting devices required by law.

(2) The emblem required by subsection (1) must be of substantial construction, and must be a based-down equilateral triangle of fluorescent yellow-orange film or equivalent quality paint with a base of 14 inches and a height of 12 inches. The triangle must be hordered with reflective red strips having a minimum width of 1 3/4 inches, with the vertices of the overall triangle truncated so that the remaining height is a minimum of 14 inches. The emblem must be mounted on the rear of the vehicle near the horizontal geometric center of the vehicle at a height of 3 to 5 feet above the roadway, and must be maintained in a clean, reflective condition.

(3) In addition to the requirements in subsection (2), on a highway that has only two lanes for traffic moving in opposite directions, when an overtaking vehicle heing operated in conformity with 61-8-303 does not have a clear lane for

HeinOnline -- 1999 vol. II 1816 1999

passing as required by 61-8-325, the driver of a slower-moving, overtaken vehicle shall, at the first opportunity and when a safe turnout exists, move the overtaken vehicle off the main-traveled portion of the highway until the overtaking vehicle is safely clear of the overtaken vehicle.

(4) On an interstate highway or on any other four-lane highway, a slow-moving vehicle, subject to the requirements of this section, must be driven in the right lane as far to the right as possible, including the shoulder of the highway."

Section 2. Section 61-10-102, MCA, is amended to read:

"**61-10-102. Width.** (1) Except as provided in subsection (2), a vehicle, including a bus, unloaded or with load, may not have a total outside width in excess of 102 inches. This width for buses is allowed only on paved highways 20 feet or more in width.

(2) (a) Subsection (1) does not apply to an implement of husbandry or a vehicle used for hauling hay, *that is* moved or propelled upon the highway during daylight hours for a distance of not more than 100 miles if the movement is incidental to the farming operations of the owner of the implement of husbandry or the vehicle used for hauling hay. If the implement or vehicle is more than ~~12 feet 6 inches~~ *12 1/2 feet* wide, it must be preceded by flag vehicle escorts to warn other highway users. This restriction does not apply to dual-wheel tractors under 15 feet overall width that are used in farming operations or to movement on a county road within 100 miles of the farming operation of the owner of an implement of husbandry or a vehicle used for hauling hay. Lights ~~which~~ *that* meet the requirements of 61-9-219(4) must be displayed on the rear of the implement of husbandry or vehicle used for hauling hay. However, if the highway passes through a hazardous area, the implements or vehicles must be preceded and followed by flag vehicle escorts unless the movement of the implements or vehicles is restricted to a county road within 100 miles of the farming operation of the owner.

(b) An implement of husbandry or a vehicle used for hauling hay that exceeds 16 1/2 feet in width and that is traveling on an interstate or a four-lane highway must be followed by a flag vehicle escort.

~~(b)~~*(c)* A commercial vehicle that is hauling hay but does not qualify under subsection (2)(a) may be granted a permit subject to the provisions of 61-10-121 through 61-10-127 and the following requirements:

(i) travel during daylight hours only for an oversize shipment of large round bales of hay, whether the vehicle is loaded or with an empty hay rack, up to 144 inches; when empty, a square red or orange flag measuring 12 inches on each side must be attached to each corner of the hay rack; and

(ii) travel day or night for any other shipment of baled hay, whether the vehicle is loaded or with an empty hay rack, up to 114 inches.

~~(c)~~*(d)* Subsection (1) does not apply to a commercial hay grinder moved or propelled upon the highway during daylight hours for a distance of not more than 100 miles if the movement is incidental to operations of the commercial hay grinder. A commercial bay grinder exceeding 102 inches in width must have a permit issued under 61-10-124. If the commercial hay grinder is more than ~~12 feet 6 inches~~ *12 1/2 feet* wide, it must be preceded by flag vehicle escorts to warn other highway users. Lights that meet the requirements of 61-9-219(4) must be displayed on the rear of the commercial hay grinder. Movement of a commercial hay grinder that does not exceed 138 inches in width may occur on any day of the

HeinOnline -- 1999 vol. II 1817 1999

week, including holidays, and is restricted to movement during daylight hours. Movement of a commercial hay grinder may not exceed the posted speed limit, including the speed limit on an interstate highway.

(3) A safety device that the department determines hy rule adopted pursuant to 61-9-504 to he necessary for safe and efficient operation of motor vehicles is not included in the calculation of width provided in subsection (1).

(4) For the purposes of this section, "county road" has the same meaning as the term is defined in 60-1-103."

Approved April 22, 1999

CHAPTER NO. 450

[SB 20]

AN ACT DEFINING "INITIAL APPEARANCE"; CLARIFYING WHEN A PRISONER SHALL MAKE AN INITIAL APPEARANCE BEFORE THE BOARD OF PARDONS AND PAROLE; AUTHORIZING THE BOARD TO ADOPT RULES FOR VIDEO HEARINGS, PROGRESS REVIEWS, REVOCATION PROCEEDINGS, AND CLEMENCY PROCEEDINGS; PROVIDING FOR INTERACTIVE VIDEOCONFERENCING PAROLE AND REVOCATION HEARINGS AND ADMINISTRATIVE REVIEWS BY TELEPHONE; CLARIFYING THE LAWS RELATING TO PUBLIC ACCESS TO BOARD RECORDS; AMENDING SECTIONS 46-23-103, 46-23-202, AND 46-23-218, MCA; REPEALING SECTION 46-23-108, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-23-103, MCA, is amended to read:

"46-23-103. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of pardons and parole provided for in 2-15-2302.

(2) "Department" means the department of corrections provided for in 2-15-2301.

(3) "Executive clemency" refers to the powers of the governor as provided hy section 12 of Article VI of the constitution of Montana.

(4) "Initial appearance" means the prisoner's first appearance before the board during the prisoner's current term of incarceration.

~~(4)~~*(5)* "Parole" means the release to the community of a prisoner by the decision of the board prior to the expiration of the prisoner's term, subject to conditions imposed by the board and subject to supervision of the department ~~of corrections~~."

Section 2. Section 46-23-202, MCA, is amended to read:

"46-23-202. Investigation of prisoner by board. (1) Within the 2 months prior to a prisoner's official parole eligibility date~~,~~ *or as soon thereafter as possible, the prisoner shall make an initial appearance before the board.* ~~the~~ *The* board shall consider all pertinent information regarding the prisoner, including:

(a) the circumstances of the offense;

(b) the prisoner's previous social history and criminal record;

(c) the prisoner's conduct, employment, and attitude in prison; and

(d) the reports of any physical and mental examinations that have heen made.

(2) Before ordering the parole of ~~any~~ *a* prisoner, the board shall:

(a) conduct a hearing and interview the prisoner. At the time of the hearing, the board ~~shall~~ *must* receive relevant statements from interested persons and any person may be represented by counsel, provided that the board has the power to regulate procedures at all hearings.

(b) permit a victim to present a statement concerning the effects of the crime on the victim, the circumstances surrounding the crime, the manner in which the crime was perpetrated, and the victim's opinion regarding whether the prisoner should be paroled. In the board's discretion, the victim's statement may be kept confidential. The board shall consider the victim's statement, along with the information provided under subsection (1), in determining whether to grant parole."

Section 3. Section 46-23-218, MCA, is amended to read:

"**46-23-218. Authority of board to adopt rules.** The board may adopt any ~~other~~ rules *that* it considers proper or necessary with respect to the eligibility of prisoners for parole, the conduct of parole hearings, *video hearings, progress reviews, the conduct of revocation proceedings, clemency proceedings,* and conditions to be imposed upon parolees."

Seetion 4. Parole and revocation hearings and administrative reviews — telephone — videoconference. The board may, in its discretion, hold any parole hearing or revocation hearing via interactive videoconference and may hold an administrative review via telephone conference.

Section 5. Records — disseminatlon. (1) The department and the board shall keep a record of the board's acts and decisions. Citizens may inspect and make copies of the public records of the board, as provided in 2-6-102 and this section.

(2) Records and materials that are constitutionally protected from disclosure are not subject to disclosure under the provisions of subsection (1). Information that is constitutionally protected from disclosure is information in which there is an individual privacy or safety interest that clearly exceeds the merits of public disclosure.

(3) Upon a request to inspect or copy records of the board's acts and decisions, the board or a board staff member shall review the file requested and determine whether any document in the file is subject to a personal privacy or safety interest that clearly exceeds the merits of public disclosure.

(4) The board may assert the privacy or safety interest and may withhold a document if the board determines that the demand for individual privacy clearly exceeds the merits of public disclosure or if the document's contents would compromise the safety, order, or security of a facility or the safety of facility personnel, a member of the public, or an inmate of the facility if disclosed.

(5) The board may not withhold from public scrutiny under subsections (2) through (4) any more information than is required to protect an individual privacy interest or a safety interest.

(6) The board may charge a reasonable fee for copying and inspecting records.

HeinOnline -- 1999 vol. II 1819 1999

(7) The board may limit the time and place that the records may be inspected or copied.

Section 6. Repealer. Section 46-23-108, MCA, is repealed.

Section 7. Codification instruction. [Sections 4 and 5] are intended to be codified as an integral part of Title 46, chapter 23, and the provisions of Title 46, chapter 23, apply to [sections 4 and 5].

Section 8. Effective date. [This act] is effective on passage and approval.

Approved April 22, 1999

CHAPTER NO. 451

[SB 46]

AN ACT GENERALLY REVISING AND CLARIFYING THE SETTLEMENT AUTHORITY AND PROCEDURE OF STATE AGENCIES; PROVIDING FOR THE RECORDING AND USE OF SETTLEMENT PROCEEDS; CLARIFYING THAT A SETTLEMENT BY THE DEPARTMENT OF REVENUE MAY NOT BIND A FUTURE LEGISLATURE; AMENDING SECTIONS 2-4-603, 15-1-211, AND 18-1-413, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-4-603, MCA, is amended to read:

"2-4-603. Informal disposition and hearings — waiver of administrative proceedings — *recording and use of settlement proceeds.* (1) Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default. *Unless otherwise provided by law, if a stipulation, agreed settlement, consent order, or default results in a settlement involving an agency or the state, the settlement proceeds, including cash or other assets, whether received by the state or a third party, must be recorded in the account or fund in which the penalty, fine, or other payment would be recorded if the contested case had proceeded to final decision. If there is no account or fund designated for recording of a fine, penalty, or payment in the type of action, then the settlement must be recorded in the general fund. The provisions of this section do not apply to the portions of a settlement negotiated on behalf of or paid to a party other than the state.*

(2) Except as otherwise provided, parties to a contested case may jointly waive in writing a formal proceeding under this part. The parties may then utilize informal proceedings under 2-4-604. Parties to contested case proceedings held under Title 37 or under any other provision relating to licensure to pursue a profession or occupation may not waive formal proceedings.

(3) If a contested case does not involve a disputed issue of material fact, parties may jointly stipulate in writing to waive contested case proceedings and may directly petition the district court for judicial review pursuant to 2-4-702. The petition ~~shall~~ *must* contain an agreed statement of facts and a statement of the legal issues or contentions of the parties upon which the court, together with the additions it may consider necessary to fully present the issues, may make its decision."

Section 2. Section 15-1-211, MCA, is amended to read:

"15-1-211. Uniform tax review proccdure — notiee — appeal. (1) The department of revenue shall provide a uniform tax review procedure for all taxpayers, except as provided in subsection (1)(a).

(a) The tax review procedure described in this section applies to all taxes administered by the department and to all issues arising from the administration of taxes, except inheritance taxes, estate taxes, property taxes, and the issue of whether an employer-employee relationship existed between the taxpayer and individuals subjecting the taxpayer to the requirements of chapter 30, part 2, or whether tbe employment relationship was that of an independent contractor. The procedure applies to any revised assessment of centrally assessed property taxed pursuant to cbapter 23.

(b) The term "taxpayers", as used in this section, includes all persons determined by the department to have a potential tax liability.

(2) (a) If the department determines that a request for a refund should be denied in whole or part, it shall notify the taxpayer of the determination. If the department determines that a person has failed to pay a sufficient tax, interest, or penalty, it sball provide the taxpayer with notice. The notice stops the running of any applicable statute of limitations regarding the assessment of the tax.

(b) A notice under this section must clearly state:

(i) the reasons for the department's determination that a refund is not due or that tax plus interest and penalty, if any, are due;

(ii) tbe taxpayer's right to a review by the department, the taxpayer's rigbt to appeal after a final department decision, and the taxpayer's right to a review of determinations by the department of labor and industry and board of labor appeals of whetber an employer-employee relationship existed between the taxpayer and certain individuals or whether the employment relationship was that of an independent contractor;

(iii) *that* failure to notify the department within 30 days will result in a forfeiture of the taxpayer's right to contest the department's determination under this section or to file an appeal with the state tax appeal board;

(iv) that the taxpayer has 30 days to either notify the department in writing that tbe taxpayer does not agree with an assessment or pay the amount assessed;

(v) tbat a warrant for distraint placing a lien on the taxpayer's property may be issued unless the taxpayer notifies the department that the taxpayer disagrees witb an assessment or pays within 30 days; and

(vi) that tbe notice stops the running of the statute of limitations regarding the assessment of tbe tax.

(3) (a) A taxpayer shall notify the department, in writing, tbat the taxpayer objects to the determination witbin 30 days from the date that the notice is mailed. The notification by the taxpayer is not required to specify the reasons for the disagreement or be in any particular form unless the taxpayer is objecting to a determination that an employer-employee relationship existed between tbe taxpayer and individuals, subjecting the taxpayer to the requirements of chapter 30, part 2. If the taxpayer does not notify the department within 30 days:

(i) an assessment becomes final and the assessed tax, plus any interest and penalty, must be paid;

HeinOnline -- 1999 vol. II 1821 1999

(ii) the taxpayer waives any further right to review under this section or to appeal to the state tax appeal board; and

(iii) a warrant for distraint may be issued without further opportunity to be heard on the assessment.

(b) (i) A taxpayer who notifies the department pursuant to subsection (3)(a) that the taxpayer disagrees with a tax assessment shall present the objections, the reasons for the objections, and any other information to the administrator of the division that administers the tax or to the administrator's designee within 60 days after the notice referred to in subsection (3)(a) is mailed. The reasons for objections may be provided in writing, by telephone, or, if requested by the taxpayer, at an informal conference. An informal conference is not subject to the Montana Administrative Procedure Act.

(ii) An objection received by the department pursuant to subsection (3)(a) stating that the taxpayer disagrees with the department's determination that an employer-employee relationship existed between the taxpayer and certain individuals, subjecting the taxpayer to the requirements of chapter 30, part 2, must be referred to the department of labor and industry for appeal procedures pursuant to 39-51-2402 and 39-51-2410.

(c) Within 60 days after the taxpayer has presented the taxpayer's objections, as provided in subsection (3)(b), the administrator or a designee shall issue a written decision addressing the taxpayer's objections and describing the reasons for the determination. The administrator's decision must also clearly set forth the taxpayer's review rights. The administrator's decision must be provided to the taxpayer and the director of revenue.

(4) (a) A taxpayer shall notify the department in writing that the taxpayer objects to the administrator's decision within 30 days from the date that the decision is mailed, or the taxpayer may appeal to the state tax appeal board as provided in subsection (6). If an objection is not made within 30 days, the administrator's decision and any assessment become final. By failing to object, the taxpayer waives any further right to review or appeal and a warrant for distraint may be issued without further opportunity to be heard on the assessment.

(b) Except as provided in subsection (6), a taxpayer who objects to the administrator's decision pursuant to subsection (4)(a) shall present the taxpayer's objections, the reasons for the objections, and any other information to the director of revenue or the director's designee within 60 days after the notice referred to in subsection (4)(a) is mailed. The director or the designee may consider written information, hold a telephone conference, or conduct an informal conference, none of which are subject to the Montana Administrative Procedure Act.

(c) Within 60 days after the taxpayer has presented the objections, the director or the designee shall issue a written decision addressing the objections and describing the reasons for the decision. The director's *or the designee's* decision is the final decision and assessment of the department.

(5) The taxpayer shall pay the assessment within 30 days after being mailed a copy of the final decision and assessment unless an appeal is filed with the state tax appeal board. If an appeal with the board is filed within 30 days after the final decision is mailed, payment is not due until final resolution by the board or, if

HeinOnline -- 1999 vol. II 1822 1999

further appeals are filed, by the appropriate court. However, any interest required by law must continue to accrue.

(6) (a) A taxpayer who validly objects to the administrator's decision may elect to file an appeal with the state tax appeal board. The appeal must be filed within 30 days after mailing an objection to the administrator's decision. If an appeal is filed, the administrator's decision is the final decision of the department.

(b) If the director notifies the board within 30 days after an appeal is filed that the director has not had an opportunity to review the administrator's decision and the director believes that a review may be helpful in resolving the controversy, the board shall stay the appeal for a time that the board considers reasonable, not to exceed 90 days except by the mutual consent of both parties. The taxpayer shall provide the taxpayer's objections and reasons for the objections to the director so that the director or the director's designee may review the controversy and issue a decision within tbe period of the stay granted by the board. If the taxpayer is dissatisfied with the director's *or the designee's* decision, the stay must be lifted and the appeal resumed.

(7) The time limits in this section must be applied and interpreted as provided in Rule 6 of the Montana Rules of Civil Procedure, including additional time for mailing. Any time limit may be extended by mutual consent of the department and the taxpayer. The department shall consent to all reasonable requests for extension of deadlines.

(8) (a) *(i)* The director of revenue or the director's designee is authorized to enter into an agreement with any taxpayer relating to the taxpayer's liability with respect to a tax administered by the department for any taxable period.

(ii) The director or the director's designee has no authority to bind a future legislature through the terms of an agreement.

(b) ~~An~~ *Subject to subsection (8)(a)(ii), an* agreement under the provisions of subsection (8)(a)*(i)* is final and conclusive, and, except upon a showing of fraud, malfeasance, or misrepresentation of a material fact:

(i) the agreement may not be reopened as to matters agreed upon or be modified by any officer, employee, or agent of this state; and

(ii) in any suit, action, or proceeding under the agreement or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance with the agreement, the agreement may not be annulled, modified, set aside, or disregarded."

Section 3. Section 18-1-413, MCA, is amended to read:

"18-1-413. Litigation — compromise. The attorney general ~~shall have~~ *has* full charge of ~~such~~ litigation *under this part* on behalf of the state of Montana. ~~He~~ *The attorney general* is authorized to arbitrate, compromise, or settle any claim cognizable under this part after the institution of any suit ~~thereon~~ *under this part*, with the approval of the court in which ~~said~~ *the* suit is pending. *The provisions of 2-4-603(1) apply to any arbitration, compromise, or settlement made pursuant to this section."*

Section 4. Effective date. [This act] is effective on passage and approval.

Section 5. Applicability. [This act] applies to any arbitration, compromise, or settlement of actions entered into on or after [the effective date of this act].

Approved April 22, 1999

HeinOnline -- 1999 vol. II 1823 1999

CHAPTER NO. 452

[SB 167]

AN ACT EXEMPTING FROM TAXATION QUALIFYING LOW-INCOME RENTAL HOUSING PROPERTY; ESTABLISHING CRITERIA FOR QUALIFICATION, INCLUDING THE REQUIREMENT THAT THE BOARD OF HOUSING MUST HAVE ALLOCATED LOW-INCOME HOUSING TAX CREDITS TO THE OWNER UNDER FEDERAL LAW; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Exemption for rental housing providing affordable housing to lower-income tenants. (1) That portion of residential rental property that is dedicated to providing affordable housing for lower-income persons is exempt from property taxation in any year that:

(a) the property is owned and operated by an entity, including but not limited to a limited partnership, limited liability corporation, or limited liability partnership in which a general partner is a nonprofit corporation exempt from taxation under section 26 U.S.C. 501(c)(3), as amended, and incorporated and admitted under the Montana Nonprofit Corporation Act as provided in Title 35, chapter 2, or is a housing authority created under 7-15-4402 and the nonprofit general partner actively participates in accordance with the definition found in 26 U.S.C. 469(i). Section 26 U.S.C. 469(i) is applicable without reference to section 26 U.S.C. 469(i)(6).

(b) the board of housing, established in 2-15-1814, has allocated low-income housing tax credits to the owner, under 26 U.S.C. 42, which requires that:

(i) at least 20% of the residential units in the property are rent-restricted, as defined in 26 U.S.C. 42, and rented to tenants whose household incomes do not exceed 50% of the median family income, adjusted for family size, for the county in which the property is located; or

(ii) at least 40% of the residential units in the property are rent-restricted, as defined in 26 U.S.C. 42, and rented to persons whose household incomes do not exceed 60% of the median income, adjusted for family size, for the county in which the property is located;

(c) a deed restriction or other legally binding instrument restricts the property's usage and provides that the units designated for use by lower-income households must be made available to or occupied by lower-income households for the period required to qualify for low-income housing tax credits at rents that do not exceed those prescribed by the terms of the deed restriction or other legally binding instruments;

(d) the property meets a public purpose in providing housing to an underserved population and provides a minimum of 50% of the units in the property to tenants at 50% of the median family income for the area, with rents restricted to a maximum of 30% of 50% of median family income, as calculated under 26 U.S.C. 42; and

(e) the owner's partnership or operating agreement or accompanying document provides that at the end of the compliance period, as that term is defined in 26 U.S.C. 42, the ownership of the property may be transferred to the

HeinOnline -- 1999 vol. II 1824 1999

nonprofit corporation or housing authority general partner as provided for in 26 U.S.C. 42(i)(7).

(2) Prior to the allocation of low-income housing tax credits to the owner, as provided in subsection (1)(b), the unit of local government where the proposed project is to be located shall give due notice, as defined in 76-15-103, and hold a public hearing to solicit comment on whether the proposed qualifying low-income rental housing property meets a community housing need. A record of the public hearing must be forwarded to the board of housing for consideration in granting the allocation of tax credits.

(3) For purposes of this section the following definitions apply:

(a) "Median family income" means the household income, adjusted for family size, determined annually by the United States department of housing and urban development, or its successor agency, to be the median family income for persons residing within each county of the state.

(b) A residential unit is "rent-restricted" if it satisfies the criteria of 26 U.S.C. 42(g)(2).

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 15, chapter 6, part 2, and the provisions of Title 15, chapter 6, part 2, apply to [section 1].

Section 3. Applicability. [This act] applies to tax years beginning after December 31, 1998.

Section 4. Effeetive date. [This act] is effective on passage and approval.

Approved April 22, 1999

CHAPTER NO. 453

[SB 170]

AN ACT REVISING THE CRITERIA AND PRIORITIES FOR AWARDING FUNDING; AMENDING SECTION 90-6-710, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-6-710, MCA, is amended to read:

"90-6-710. Priorities for projects — procedure — rulemaking. (1) The department of commerce must receive proposals for projects from local governments as defined in 90-6-701(3)(b). The department shall work with a local government in preparing cost estimates for a project. In reviewing project proposals, the department may consult with other state agencies with expertise portinent to the proposal. The department shall prepare and submit a list ~~containing the~~ *containing the* recommended projects and the recommended form *and amount* of financial assistance for each project to the governor, prioritized pursuant to subsection (2). ~~The governor shall review the projects recommended by the department and shall submit a list of recommended projects and the recommended financial assistance to the legislature.~~ *The governor shall review the projects recommended by the department and shall submit a list of recommended projects and the recommended financial assistance to the legislature.*

HeinOnline -- 1999 vol. II 1825 1999

(2) In preparing recommendations under subsection (1), preference must be given to *infrastructure* projects based on the following order of priority:

(a) projects that solve urgent and serious public health or safety problems; *or*

~~(b) projects~~ that enable local governments to meet state or federal health or safety standards;

(b) projects that reflect greater need for financial assistance than other projects;

(c) projects that incorporate appropriate, cost-effective technical design and that provide thorough, long-term solutions to community public facility needs;

(d) projects that ~~result in a benefit to the public commensurate with the amount of financial assistance. However, the benefit to the public may not be measured by population alone.~~ *reflect substantial past efforts to ensure sound, effective, long-term planning and management of public facilities and that attempt to resolve the infrastructure problem with local resources;*

(e) ~~projects that reflect greater need for financial assistance than other projects;~~

~~(f)~~ projects that enable local governments to obtain funds from sources other than the funds provided under this part;

~~(g)~~*(f)* projects that provide long-term, full-time job opportunities for Montanans;,

~~(h) projects~~ that provide public facilities necessary for the expansion of a business that has a high potential for financial success;, *or*

~~(i) projects~~ that maintain the tax base or that ~~do not discourage~~ *encourage* expansion of the tax base; and

~~(j)~~*(g)* projects that are high local priorities and have strong community support.

(3) After the review required by subsection (1), the projects must be approved by the legislature.

(4) The department shall adopt rules necessary to implement the treasure state endowment program."

Section 2. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 3. Effective date. [This act] is effective July 1, 1999.

Section 4. Applicability. [This act] applies to projects funded with interest earnings from the treasure state endowment fund earned after June 30, 2001.

Approved April 22, 1999

HeinOnline -- 1999 vol. II 1826 1999

CHAPTER NO. 454

[SB 273]

AN ACT CREATING THE 22ND JUDICIAL DISTRICT; PROVIDING FOR AN ADDITIONAL DISTRICT COURT JUDGE FOR THE 11TH JUDICIAL DISTRICT AND THE 20TH JUDICIAL DISTRICT; AMENDING SECTIONS 3-5-101 AND 3-5-102, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-5-101, MCA, is amended to read:

"**3-5-101. Judicial districts defined.** In this state, there are ~~21~~ *22* judicial districts, distrihuted as follows:

(1) 1st district: Lewis and Clark and Broadwater Counties;

(2) 2nd district: Silver Bow County;

(3) 3rd district: Deer Lodge, Granite, and Powell Counties;

(4) 4th district: Missoula and Mineral Counties;

(5) 5th district: Beaverhead, Jefferson, and Madison Counties;

(6) 6th district: Park and Sweet Grass Counties;

(7) 7th district: Dawson, McCone, Richland, Prairie, and Wibaux Counties;

(8) 8th district: Cascade County;

(9) 9th district: Teton, Pondera, Toole, and Glacier Counties;

(10) 10th district: Fergus, Judith Basin, and Petroleum Counties;

(11) 11th district: Flathead County;

(12) 12th district: Liberty, Hill, and Chouteau Counties;

(13) 13th district: Yellowstone~~, Stillwater, Carbon, and Big Horn Counties~~ *County*;

(14) 14th district: Meagher, Wheatland, Golden Valley, and Musselshell Counties;

(15) 15th district: Roosevelt, Daniels, and Sheridan Counties;

(16) 16th district: Custer, Carter, Fallon, Powder River, Garfield, Treasure, and Rosebud Counties;

(17) 17th district: Phillips, Blaine, and Valley Counties;

(18) 18th district: Gallatin County;

(19) 19th district: Lincoln County;

(20) 20th district: Lake and Sanders Counties;

(21) 21st district: Ravalli County*;*

(22) 22nd district: Stillwater, Carbon, and Big Horn Counties."

Section 2. Section 3-5-102, MCA, is amended to read:

"**3-5-102. Number of judges.** In each judicial district, there must be the following number of judges of the district court:

HeinOnline -- 1999 vol. II 1827 1999

(1) in the 2nd, 7th, ~~11th,~~ 16th, ~~and~~ 18th, *and 20th* districts, two judges each;

(2) in the 1st, ~~and~~ 8th, *and 11th* districts, three judges each;

(3) in the 4th district, four judges;

(4) in the 13th district, five judges;

(5) in all other districts, one judge each."

Section 3. Effective date. [This act] is effective July 1, 1999.

Seetion 4. Transition — applicability. (1) The additional judge for the 11th judicial district and the judge for the new 22nd judicial district must be appointed pursuant to the provisions of Title 3, chapter 1, part 10, to take office in January 2000. There must be an election for the offices at the general election to be held in November 2000 for 6-year terms to begin in January 2001.

(2) The additional judge for the 20th judicial district must be elected at tbe general election to be held in November 2000 and shall take office in January 2001.

Approved April 22, 1999

CHAPTER NO. 455

[SB 251]

AN ACT CLARIFYING A COURT'S AUTHORITY TO REQUIRE AN ASSESSMENT OF CHEMICAL DEPENDENCY PRIOR TO SENTENCING A PERSON FOR DRIVING UNDER THE INFLUENCE OR WITH AN ILLEGAL BLOOD ALCOHOL CONTENT; CLARIFYING THAT AN ASSESSMENT OF CHEMICAL DEPENDENCY IS SEPARATE FROM CHEMICAL DEPENDENCY EDUCATION OR TREATMENT; PROVIDING FOR CONSISTENCY OF TERMS USED TO DESCRIBE ASSESSMENT, EDUCATION, AND TREATMENT PROGRAMS; ALLOWING NONMANDATORY PORTIONS OF SENTENCES TO BE SUSPENDED PENDING COURT-ORDERED CHEMICAL DEPENDENCY ASSESSMENT, EDUCATION, OR TREATMENT; AND AMENDING SECTIONS 61-5-208, 61-8-410, 61-8-714, 61-8-731, 61-8-732, AND 61-11-101, MCA.

Be it enacted by the Legislature of the State of Montana:

Seetion 1. Section 61-5-208, MCA, is amended to read:

"61-5-208. Period of suspeusion or revocation. (1) The department may not suspend or revoke a driver's license or privilege to drive a motor vehicle on the public highways for a poriod of more than 1 year, except as otherwise permitted by law.

(2) A person whose license or privilege to drive a motor vehicle on the public highways bas been suspended or revoked may not have the license, endorsement, or privilege renewed or restored unless the revocation was for a cause ~~which~~ *that* has been removed. After the expiration of the period of the revocation or suspension, the person may ~~make application~~ *apply* for a new license or endorsement as provided by law, but the department may not issue a new license or endorsement unless ~~and until~~ it is satisfied, after investigation of the driving ability of the person and upon a showing by its records or other sufficient evidence, that the porson is eligible to be licensed to drive in Montana. ~~When any~~

HeinOnline -- 1999 vol. II 1828 1999

If a person is convicted or forfeits bail or collateral not vacated for the offense of operating or being in actual physical control of a motor vehicle while under the influence of alcohol or any drug or a combination of alcohol or drugs or for the offense of operation of a motor vehicle by a person with alcohol concentration of 0.10 or more, the department shall, upon receiving a report of conviction or forfeiture of bail or collateral not vacated, suspend the driver's license or driving privilege of the person for a period of 6 months. Upon receiving a report of a conviction or forfeiture of bail or collateral for a second, third, or subsequent offense within 5 years of the first offense, the department shall revoke the license or driving privilege of the person for a period of 1 year, except that if the 1-year period passes and the person has not completed ~~an alcohol information~~ *a chemical dependency education* course, treatment, or both, as ordered by the sentencing court, the license revocation remains in effect until the course, treatment, or both, are completed.

(3) (a) If a person pays the reinstatement fee required in 61-2-107 and provides the department proof of compliance with ~~any~~ *an* ignition interlock restriction imposed under 61-8-442, the department shall stay the license suspension or revocation of a person who has been convicted of a violation of 61-8-401 or 61-8-406 and return the person's driver's license. The stay must remain in effect until the period of suspension or revocation has expired and any required ~~alcohol information~~ *chemical dependency education* course, treatment, or both, have been completed.

(b) If the department receives notice from a court, peace officer, or ignition interlock vendor that the person has violated the ignition interlock restriction by, including but not limited to, operating a motor vehicle not equipped with the device, tampering with the device, or removing the device before the period of restriction has expired, the department shall lift the stay and reinstate the license suspension or revocation for the remainder of the time period. The department may not issue a probationary driver's license to a person whose license suspension or revocation has been reinstated ~~due to~~ *because of* violation of an ignition interlock restriction.

(4) The period for all revocations made mandatory by 61-5-205 is 1 year except as provided in subsection (2).

(5) The period of revocation for ~~any~~ *a* person convicted of any offense ~~which~~ *that* makes mandatory the revocation of the driver's license commences from *the* date of conviction or forfeiture of bail.

(6) If a person is convicted of a violation of 61-8-401 or 61-8-406 while operating a commercial motor vehicle, the department shall suspend the person's driver's license as provided in 61-8-811 and subsection (2) of this section."

Section 2. Section 61-8-410, MCA, is amended to read:

"61-8-410. Operation of vehicle by person under twenty-one with alcohol concentration of 0.02 or more. (1) It is unlawful for a person under the age of 21 who has an alcohol concentration of 0.02 or more to drive or be in actual physical control of a vehicle upon ways of this state open to the public. Absolute liability, as provided for in 45-2-104, is imposed for a violation of this section.

(2) Upon a first conviction under this section, a person shall be punished by a fine of not less than $100 or more than $500.

HeinOnline -- 1999 vol. II 1829 1999

(3) Upon a second conviction under this section, a person shall be punished by a fine of not less than $200 or more than $500 and, if the person is 18 years of age or older, by incarceration for not more than 10 days.

(4) Upon a third or subsequent conviction under this section, a person shall be punished by a fine of not less than $300 or more than $500 and, if the person is 18 years of age or older, by incarceration for not less than 24 consecutive hours or more than 60 days.

(5) In addition to the punishment provided in this section, regardless of disposition:

(a) the person shall comply with the ~~alcohol information~~ *chemical dependency education* course and ~~alcohol and drug~~ *chemical dependency* treatment provisions in ~~61-8-714~~ *61-8-732 as ordered by the court*; and

(b) the department shall suspend the person's driver's license for 90 days upon the first conviction, 6 months upon the second conviction, and 1 year upon the third or suhsequent conviction. A restricted or probationary driver's license may not be issued during the suspension period until the person has paid a license reinstatement fee in accordance with 61-2-107 and, if the person was under the age of 18 at the time of the offense, has completed at least 30 days of the suspension period.

(6) A conviction under this section may not be counted as a prior conviction under 61-8-401 or 61-8-406."

Section 3. Section 61-8-714, MCA, is amended to read:

"61-8-714. Penalty for driving under influence of alcohol or drugs — first through third offense. (1) A person convicted of a violation of 61-8-401 shall be punished by imprisonment for not less than 24 consecutive hours or more than ~~60 days~~ *6 months* and shall be punished by a fine of not less than $100 or more than $500. The initial 24 hours of the imprisonment term must be served in the county jail and may not be served under home arrest. The *mandatory* imprisonment sentence may not be suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the defendant's physical or mental well-being. *Except for the initial 24 hours of the imprisonment term, the imprisonment sentence may be suspended for a period of up to 6 months pending successful completion of court-ordered chemical dependency assessment, education, or treatment by the defendant.*

(2) On a second conviction, the person shall be punished by a fine of not less than $300 or more than $500 and by imprisonment for not less than 7 days or more than 6 months. At least 48 hours of the imprisonment term must be served consecutively in the county jail and may not be served under home arrest. Three days of the imprisonment sentence may not be suspended unless the judge finds that the imposition of the imprisonment sentence will pose a risk to the defendant's physical or mental well-being. *Except for the initial 3 days of the imprisonment term, the imprisonment sentence may be suspended for a period of up to 6 months pending successful completion of a chemical dependency treatment program by the defendant.*

(3) On the third conviction, the person shall be punished by imprisonment for a term of not less than 30 days or more than 1 year and by a fine of not less than $500 or more than $1,000. At least 48 hours of the imprisonment term must be served consecutively in the county jail and may not be served under home

HeinOnline -- 1999 vol. II 1830 1999

arrest. The imposition or execution of the first 10 days of the imprisonment sentence may not be suspended. *The remainder of the imprisonment sentence may be suspended for a period of up to 1 year pending successful completion of a chemical dependency treatment program by the defendant.*"

Section 4. Section 61-8-731, MCA, is amended to read:

"**61-8-731. Driving under influence of alcohol or drugs — driving with excessive alcohol concentration — penalty for fourth or subsequent offense.** (1) On the fourth or subsequent conviction under 61-8-714 or 61-8-722 for a violation of 61-8-401 or 61-8-406, the person is guilty of a felony and shall be punished by:

(a) imprisonment for a term of not less than 6 months or more than 13 months, the imposition or execution of which may not be suspended, and during which the person is not eligible for parole;

(b) probation for a term of not less than 1 year or more than 4 years; and

(c) a fine of not less than $1,000 or more than $10,000.

(2) The court shall, subject to sentencing restrictions:

(a) specify one of the following facilities as the initial place in which the term of imprisonment must be served:

(i) a state prison;

(ii) a regional correctional facility;

(iii) a county jail;

(iv) a boot camp, provided the prior approval of the department of corrections has been obtained; or

(v) a prerelease center, provided the prior approval of the department of corrections has been obtained; or

(b) sentence the person to the department of corrections for placement in an appropriate correctional institution or program; and

(c) order a person who is financially able to pay the costs of imprisonment and probation under this section ~~and of the information course and treatment under 61-8-732~~.

(3) The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of probation. Reasonable restrictions or conditions may include:

(a) payment of a fine as provided in 46-18-231;

(b) payment of costs as provided in 46-18-232 and 46-18-233;

(c) payment of costs of court-appointed counsel as provided in 46-8-113;

(d) community service;

(e) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the protection of society;

(f) treatment in a state-approved public or private treatment facility; or

(g) any combination of the restrictions or conditions listed in subsections (3)(a) through (3)(f).

HeinOnline -- 1999 vol. II 1831 1999

(4) (a) Following initial placement of a defendant in a boot camp or a prerelease center under subsection (2)(a), the department of corrections may, at its discretion, place the offender in another facility or program.

(b) The department of corrections may order all or any portion of the term of probation to be served under intensive supervision. The provisions of Title 46, chapter 23, part 10, relating to probation, apply to the probation.

(5) If a violation of the restrictions or conditions of the probation is established, the court may continue the period of probation or may require the defendant to serve the remainder of the probation sentence in one of the facilities set forth in subsection (2)(a) or (2)(b). The court may credit the remainder of the probation or the time to be served in a facility set forth in subsection (2)(a) or (2)(b) with all or part of the time already served on probation."

Section 5. Section 61-8-732, MCA, is amended to read:

"**61-8-732. Driving under influence of alcohol or drugs — driving with excessive alcohol concentration — ~~alcohol information course~~ *assessment, education, and treatment* required.** (1) ~~(a) In addition to the punishments provided in~~ *In addition to the punishments provided in* 61-8-714, 61-8-722, and 61-8-731, regardless of disposition, a defendant convicted of a violation of 61-8-401 or 61-8-406 shall complete:

(a) ~~an alcohol information course at an alcohol treatment~~ *a chemical dependency assessment* ~~program approved by the department of public health and human services, which may include alcohol or drug treatment, or both.~~;

(b) a chemical dependency education course; and

(c) on a second or subsequent conviction for a violation of 61-8-401 or 61-8-406 or as required by subsection (8) of this section, chemical dependency treatment.

(2) The sentencing judge may, in the judge's discretion, require the defendant to complete the chemical dependency assessment prior to sentencing the defendant. If the assessment is not ordered or completed before sentencing, the judge shall order the chemical dependency assessment as part of the sentence.

(3) The chemical dependency assessment and the chemical dependency education course must be completed at a treatment program approved by the department of public health and human services and must be conducted by a certified chemical dependency counselor. The defendant may attend a treatment program of the defendant's choice as long as the treatment services are provided by a certified chemical dependency counselor. The defendant shall pay the cost of the assessment, the education course, and chemical dependency treatment.

(4) The assessment must describe the defendant's level of addiction, if any, and contain a recommendation as to education, treatment, or both. A defendant who disagrees with the initial assessment may, at the defendant's cost, obtain a second assessment provided by a certified chemical dependency counselor or a program approved by the department of public health and human services.

~~(b) As long as the alcohol information course is approved as provided in this section and the treatment is provided by a certified chemical dependency counselor, the defendant may attend the information course and treatment program of the defendant's choice.~~

(5) The treatment provided to the defendant at a treatment program must be at a level appropriate to the defendant's alcohol or drug problem, or both, as

HeinOnline -- 1999 vol. II 1832 1999

determined by a certified chemical dependency counselor pursuant to diagnosis and patient placement rules adopted by the department of public health and human services. Upon determination, the court shall order the defendant's appropriate level of treatment. If more than one counselor makes a determination as provided in this subsection, the court shall order an appropriate level of treatment based upon the determination of one of the counselors.

~~(c)~~*(6)* Each counselor providing education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant has been enrolled in ~~an alcohol information~~ *a chemical dependency education* course or treatment program. If the defendant fails to attend the ~~information~~ *education* course or treatment program, the counselor shall notify the court of the failure.

~~(d)~~*(7)* A court or counselor may not require attendance at a self-help program other than at an "open meeting", as that term is defined by the self-help program. A defendant may voluntarily participate in self-help programs.

~~(2)~~*(8)* ~~Alcohol or drug treatment, or both, must be ordered for a first time offender convicted of a violation of 61-8-401 or 61-8-406 upon~~ *Chemical dependency treatment must be ordered for a first-time offender convicted of a violation of 61-8-401 or 61-8-406 upon* a finding of chemical dependency made by a certified chemical dependency counselor pursuant to diagnosis and patient placement rules adopted by the department of public health and human services.

~~(3) (a) On conviction of a second or subsequent offense under 61-8-714 or 61-8-722 for a violation of 61-8-401 or 61-8-406, in addition to the punishment provided in 61-8-714 or 61-8-722, regardless of disposition, the defendant shall complete an alcohol information course at an alcohol treatment program approved by the department of public health and human services, which must include alcohol or drug treatment, or both.~~

~~(b) (i)~~*(9) (a)* On a second or subsequent conviction, the treatment program provided for in subsection ~~(1)~~ *(5)* must be followed by monthly monitoring for a period of at least 1 year from the date of admission to the program.

~~(ii)~~*(b)* If a defendant fails to comply with the monitoring program imposed under subsection ~~(3)(b)(i)~~ *(9)(a)*, the court shall revoke the susponded sentence, *if any,* impose any remaining portion of the suspended sentence, and may include additional monthly monitoring for up to an additional 6 months."

Section 6. Section 61-11-101, MCA, is amended to read:

"61-11-101. Report of convictions and suspension or revocation of driver's licenses — surrender of licenses. (1) ~~Whenever any~~ *If a* person is convicted of ~~any~~ *an* offense for which chapter 5 makes mandatory the suspension or revocation of the driver's license of the person by the department, the court in which the conviction ~~is had~~ *occurs* shall require the surrender to it of all driver's licenses then held by the *convicted* porson ~~convicted~~. The court shall, within 5 days, forward the license *and a record of the conviction* to the department ~~and at the same time forward a record of the conviction to the department, providing that if~~. *If* the person does not possess a driver's license, the court shall indicate that fact in its report to the department.

(2) ~~Every~~ *A* court having jurisdiction over offenses committed under ~~any act~~ *a statute* of this state or *a* municipal ordinance regulating the oporation of motor vebicles on higbways shall for··ard~~, within 5 days,~~ *a record of the conviction or*

forfeiture to the department ~~a record of the~~ *within 5 days after a* conviction or *a* forfeiture of bail~~,~~ *that is* not vacated, ~~of any person in the court for a violation of any motor vehicle laws, other than regulations governing~~ *exeept for a conviction or a forfeiture of bail for a* standing or parking *statute or ordinance*, and may recommend the suspension of the driver's license of the *convicted* person ~~convicted~~. The court may also recommend tbat the department issue a restricted probationary license on the condition that the individual comply with the requirement that the person attend and complete ~~an alcohol information~~ *a chemical dependency education* course, *treatment, or both,* as ~~provided in~~ *ordered by the court under* 61-8-732. The department shall issue a restricted probationary license unless the person is not entitled to a Montana driver's license. Upon issuance of a probationary license, the licensee is subject to the restrictions ~~set forth~~ and may not operate a vehicle in violation of ~~those~~ *the* restrictions.

(3) ~~Any~~ *A* court or other agency of this state~~,~~ or *of* a subdivision of the state~~,~~ that has jurisdiction to take any action suspending, revoking, or otherwise limiting a license to drive shall report ~~the~~ *an* action and the adjudication upon which it is based to the department within 5 days on forms furnished by the department."

Approved April 22, 1999

CHAPTER NO. 456

[SB 342]

AN ACT CREATING THE MONTANA AGRICULTURAL HERITAGE PROGRAM; CREATING A 12-MEMBER MONTANA AGRICULTURAL HERITAGE COMMISSION; AUTHORIZING THE STATE AND APPROVED NONPROFIT ORGANIZATIONS TO ACQUIRE AND HOLD AGRICULTURAL EASEMENTS; PROVIDING AGRICULTURAL EASEMENT ACQUISITION CRITERIA; REQUIRING NINE MEMBERS OF THE COMMISSION TO APPROVE AGRICULTURAL EASEMENT ACQUISITIONS; PROVIDING FOR PERPETUAL AND RENEWABLE TERM AGRICULTURAL EASEMENTS AND AGRICULTURAL EASEMENT ENFORCEMENT; PROVIDING THAT STATE FUNDS MAY BE USED TO PURCHASE, MONITOR, AND ENFORCE AGRICULTURAL EASEMENT AGREEMENTS; PROVIDING FOR DONATIONS, GIFTS, AND OTHER FUNDS; CREATING AN ACCOUNT IN THE STATE SPECIAL REVENUE FUND; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

WHEREAS, Montana has a rich heritage of family-based agricultural enterprises that foster and promote economic and cultural values, open space, diversity of wild species, and important natural and aesthetic qualities; and

WHEREAS, a diverse group of Montanans concerned about threats to the viability of the state's family-based agricultural heritage and the natural and public values sustained by that heritage convened a policy dialogue that established a set of core values and a series of principles to expand tbe available alternatives to preserve Montana's agricultural land and heritage; and

WHEREAS, the Legislature seeks to create a program that protects the values and principles recognized by Montanans concerned about the future viability of the state's family-based agricultural tradition and the values contained within

HeinOnline -- 1999 vol. II 1834 1999

that tradition to secure the long-term conservation and productive use of the agricultural lands in this state for future generations.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 3 and 5 through 12] may be cited as the "Montana Agricultural Heritage Act".

Section 2. Definitions. As used in [sections 1 through 3 and 5 through 12], the following definitions apply:

(1) "Agricultural easement" means a conservation easement, as defined in 76-6-104, that is created to satisfy the core values established in [section 5].

(2) "Commission" means the Montana agricultural heritage commission.

(3) "Department" means the department of agriculture provided for in 2-15-3001.

(4) "Native wild species" means the diversity of native wild plant and animal species and the ecological and management processes that sustain them.

(5) "Qualified easement holder" means a private, nonprofit organization, land trust, or state agency.

Section 3. Montana agricultural heritage commission — membership — administration. (1) There is a Montana agricultural heritage commission. The commission consists of 12 members. Ten members must be appointed by the gevernor, one member must be appointed by the president of the senate, and one member must be appointed by the speaker of the house.

(2) Of the members appointed by the governor:

(a) two members shall operate family farms or ranches in the state and must be active in regional or local agricultural organizations;

(b) one member shall own and manage land taxed as forest land and must be active in and represent a state or local forestry organization or husiness;

(c) one member must be active in and represent a statewide real estate or building industry organization that has been in operation for at least 10 years;

(d) two members shall represent regional or statewide conservation organizations that have been in operation for at least 10 years;

(e) one member shall represent a regional or statewide land trust that has been in operation for at least 5 years;

(f) one member must be a county commissioner or a member of a conservation district board of supervisors;

(g) one member must be active in and represent a statewide agricultural organization that has been in existence for at least 10 years; and

(h) one member must be active in and represent a statewide travel or tourism industry organization.

(3) Except for the initial appointments, members appointed by the governor shall serve 3-year terms. Members appointed by the legislature shall serve 2-year terms. A presiding officer must be elected from among members of the commission at an annual election. The presiding officer may be reelected. If a vacancy occurs, the appointing authority shall make an appointment for the unexpired portion of the term.

HeinOnline -- 1999 vol. II 1835 1999

(4) The commission is allocated to the department for administrative purposes only, pursuant to 2-15-121.

Section 4. Montana agricultural heritage commission — initial appointments. The initial appointments to the commission must be for the following terms:

(1) the two members operating family farms or ranches, 4 years;

(2) the member owning and managing forest land, 4 years;

(3) the member representing a statewide real estate or building industry organization, 3 years;

(4) the two members representing a regional or statewide conservation organization, 4 years;

(5) the member representing a regional or statewide land trust, 4 years;

(6) the member who is a county commissioner or a conservation district supervisor, 4 years;

(7) the member representing a statewide agricultural organization, 4 years;

(8) the member representing a statewide travel or tourism organization, 3 years; and

(9) the members appointed by the legislature, 2 years.

Section 5. Purpose — core values. (1) The commission shall approve the acquisition of an agricultural easement, from willing sellers and donors, for the objective of conserving rural landscapes while providing for the continued working of family farms, ranches, and forest lands and maintenance of natural and public values.

(2) The type of activities that are permitted or prohibited by any given acquired agricultural easement must be determined on a case-by-case basis and must be consistent with the following core values:

(a) conservation of family farms, ranches, and forest lands;

(b) conservation of rural landscapes; and

(c) conservation of native wild species and their habitat.

Section 6. Executive director — administration — powers — decisions. (1) The executive director must be hired by a joint, mutual decision of the presiding officer of the commission and the director of the department. The department shall provide additional staff as necessary.

(2) The commission may expend funds to acquire agricultural easements under [sections 1 through 3 and 5 through 12], without the approval of the state land board, on behalf of the state.

(3) An affirmative vote of at least nine members is required for approval of an agricultural easement acquisition. However, if three members vote against an acquisition, the acquisition may not be approved.

(4) For each agricultural easement acquisition approved, the commission shall use the acquisition criteria provided in [section 7].

(5) The terms of an agricultural easement acquired under this section must be designed to conserve the core values set forth in [section 5] and must specify the manner in which the agricultural easement will conserve the values.

HeinOnline -- 1999 vol. II 1836 1999

Section 7. Criteria for agricultural easement — rulemaking. (1) The commission shall adopt rules that establish the criteria and policies for acquiring agricultural easements. With respect to each proposed acquisition, the criteria and policies adopted by the commission must consider:

(a) important natural or public values, found within family farms, ranches, and forest lands;

(b) the threat of conversion of the property from traditional agricultural use;

(c) cooperation and support among neighboring property owners and protection of individual property rights;

(d) positive impacts on long-term agricultural productivity and perpetuation both within and beyond the boundaries of the proposed agricultural easement;

(e) landscape and watershed integrity to conserve water quality and natural resources;

(f) habitats for native wild species, including habitats for important, rare, or sensitive species;

(g) potential social and economic impacts to affected local governments and the state;

(h) regional balance of approved agricultural easements;

(i) potential for leveraging state funds allocated to the program with additional public or private funds;

(j) whether the landowner is a resident of the state, as defined in 87-2-102;

(k) provisions for compensating landowners who agree to allow public access on the agricultural easement. The agreement to allow public access may not be a requirement for any proposed agricultural easement acquisition and may not result in a higher funding priority for any agricultural easement acquisition.

(2) In order to receive commission approval, a proposal is not required to meet all of the criteria set forth in this section.

(3) The commission shall adopt rules that it considers necessary to implement [sections 1 through 3 and 5 through 12].

Section 8. Agricultural easement acquisition procedure — enforcement. (1) Any interested landowner may seek to establish an agricultural easement under the provisions of [sections 1 through 3 and 5 through 12].

(2) Before an agricultural easement acquisition proposal may be considered for approval by the commission, an interested landowner shall file an application with the commission. The application must include:

(a) the name of the title holder of the land;

(b) a description of the land proposed for the agricultural easement acquisition;

(c) the name of the qualified easement holder;

(d) the total amount of compensation requested for the proposed agricultural easement;

(e) the source and nature of nonstate funds, if applicable, including donations, grants, or gifts to be used for the agricultural easement acquisition;

HeinOnline -- 1999 vol. II 1837 1999

(f) a description of how the proposed agricultural easement meets the core values identified in [section 5];

(g) a description of which criteria specified in [section 7] the proposed agricultural easement addresses; and

(h) other noncriteria information that the commission determines is necessary to adequately process the request.

(3) In addition to filing the application, an interested landowner and the qualified easement holder shall also submit to the commission:

(a) the proposed easement document created pursuant to Title 76, chapter 6; and

(b) if the qualified easement holder is a private, nonprofit organization:

(i) notification that the state holds the second position on the easement agreement; and

(ii) a statement outlining the specific duties of the qualified easement holder to the state.

(4) For purposes of this section, holding the second position on an agricultural easement authorizes the state to enforce the agricultural easement provisions if the qualified easement holder fails to do so.

Section 9. Program fund uses — state funds. State funds allocated to this program may be used for:

(1) the purchase of agricultural easements by a qualified easement holder;

(2) the payment of agricultural easement transaction costs;

(3) the monitoring and enforcement costs borne by the qualified easement holder;

(4) contributions to secure additional nonstate funding, donations, grants, or gifts for agricultural easement acquisition; and

(5) any program administration costs borne by the state.

Section 10. Landowner considerations. The following considerations may be negotiated with landowners in return for establishing agricultural easements:

(1) lump-sum or annual cash payments;

(2) perpetual or renewable term agricultural easements, as provided in 76-6-202;

(3) provisions for long-term contract security; and

(4) retention of limited residential development rights by the perpetual or renewable term agricultural easement seller. The nature and extent of the retained limited residential development rights must be consistent with the specific conditions of the agricultural easement agreement and with the core values specified in [section 5].

Section 11. Donations — specifying locations. (1) The commission may accept donations, grants, gifts, or other private or public funds for the purpose of agricultural easement acquisition, pursuant to [section 9], and for other purposes determined necessary.

HeinOnline -- 1999 vol. II 1838 1999

(2) An organization or individual offering a donation, grant, gift, or other source of financial support to the Montana agricultural heritage program may specify a geographic area for the use of the donation.

Section 12. Account — Montana agricultural heritage program. (1) There is an account within the state special revenue fund.

(2) Money deposited in the account must be used for:

(a) the purchase of agricultural easements by a qualified easement holder;

(b) payment of easement transaction costs;

(c) easement monitoring and enforcement costs borne by the qualified easement holder; and

(d) administrative costs borne by the commission.

Section 13. Codification instruction. [Sections 1 through 3 and 5 through 12] are intended to be codified as an integral part of Title 2, chapter 15, part 33, and the provisions of Title 2, chapter 15, part 33, apply to [sections 1 through 3 and 5 through 12].

Section 14. Effective date. [This act] is effective July 1, 1999.

Section 15. Termination. [This act] terminates July 1, 2003.

Approved April 22, 1999

CHAPTER NO. 457

[SB 345]

AN ACT PROVIDING FOR THE CONTINUATION OF A MINE OR ANY AMENDED PERMIT FOR THAT MINE THAT IS NECESSARY FOR THE CONTINUED OPERATION OF THAT MINE; AMENDING SECTION 82-4-390, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-4-390, MCA, is amended to read:

"82-4-390. Cyanide heap and vat leach open-pit gold and silver mining prohibited. (1) Open-pit mining for gold or silver using heap leaching or vat leaching with cyanide ore-processing reagents is prohibited *except as described in subsection (2).*

(2) A mine described in this section operating on November 3, 1998, may continue operating under its existing operating permit~~, but the permit may not be amended to allow its operations to be expanded~~ *or any amended permit that is necessary for the continued operation of the mine.*"

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 23, 1999

CHAPTER NO. 458

[SB 353]

AN ACT ESTABLISHING LIMITS ON SANCTIONS FOR THE FAIM PROJECT; PROVIDING FOR A STUDY OF THE EFFECT OF THE FAIM SANCTION POLICIES ON MONTANA'S LOW-INCOME FAMILIES; AMENDING SECTION 53-4-717, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-4-717, MCA, is amended to read:

"53-4-717. Sanctions. If an individual receiving FAIM financial assistance under the FAIM project is required to participate in the employment and training program as a condition of the individual's family investment agreement and fails without good cause to participate, the individual must be sanctioned in accordance with rules established by the department. *Except as required by federal law, a sanction may not include any restriction or termination of food stamps or medicaid coverage, and child care benefits may only be continued for employment-related activities required by the family investment agreement that the FAIM participant has signed that are to be performed during the sanction period. The department may establish rules to ensure that individuals who participate in good faith are sanctioned properly and avail themselves of additional case management services to ensure compliance with the family investment agreement."*

Section 2. Sanctions policy — study. (1) The department shall conduct and, when appropriate, incorporate into the FAIM project evaluation a study to investigate the impact of its sanctions policy on families participating in the FAIM project. The study must include but not be limited to:

(a) information on the rate of successful appeals of sanctions imposed on individuals;

(b) what circumstances led to any improper sanctioning;

(c) what services or assistance could have prevented the improper sanctioning of the individual; and

(d) what services or assistance could be provided to individuals to lower the sanction rate in the FAIM project.

(2) The study must also include model policies outlining progressive disciplinary practices used in the private sector and the applicability of those practices to the FAIM program.

(3) The study must be conducted as part of the department's current efforts to evaluate the FAIM project.

(4) The department shall report the progress of the study to the 57th legislature.

Section 3. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 53, chapter 4, part 7, and the provisions of Title 53, chapter 4, part 7, apply to [section 2].

Section 4. Effective date. [This act] is effective July 1, 1999.

Approved April 23, 1999

HeinOnline -- 1999 vol. II 1840 1999

CHAPTER NO. 459

[SB 388]

AN ACT ADDING NATUROPATHIC PHYSICIANS TO THE HEALTH CARE PROVIDERS FOR WHICH FREEDOM OF CHOICE IN SELECTION MUST BE PROVIDED UNDER DISABILITY INSURANCE POLICIES OR CERTIFICATES; REQUIRING HEALTH SERVICES CORPORATIONS TO COVER SERVICES PROVIDED BY A NATUROPATHIC PHYSICIAN; AMENDING SECTION 33-22-111, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-22-111, MCA, is amended to read:

"33-22-111. Policies *and certificates* to provide for freedom of choice of practitioners — professional practice not enlarged. (1) All policies *or certificates* of disability insurance, including individual, group, and blanket policies *or certificates*, must provide that the insured has full freedom of choice in the selection of any licensed physician, physician assistant-certified, dentist, osteopath, chiropractor, optometrist, podiatrist, psychologist, licensed social worker, licensed professional counselor, acupuncturist, *naturopathic physician,* or nurse specialist as specifically listed in 37-8-202 for treatment of any illness or injury within the scope and limitations of the person's practice. Whenever the policies *or certificates* insure against the expense of drugs, the insured has full freedom of choice in the selection of any licensed and registered pharmacist.

(2) This section may not be construed as enlarging the scope and limitations of practice of any of the licensed professions enumerated in subsection (1). This section may not be construed as amending, altering, or repealing any statutes relating to the licensing or use of hospitals."

Section 2. Coverage required for services provided by naturopathic physicians. A health service corporation shall provide, in group and individual insurance contracts or certificates, coverage for health services provided by a naturopathic physician licensed pursuant to Title 37, chapter 26, if the health care services that naturopathic physicians are licensed to perform are covered by the contract or certificate.

Section 3. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 33, chapter 30, part 10, and the provisions of Title 33, chapter 30, part 10, apply to [section 2].

Section 4. Effective date. [This act] is effective January 1, 2000.

Approved April 23, 1999

CHAPTER NO. 460

[SB 393]

AN ACT DESIGNATING THE BOARD OF REGENTS AS THE ELIGIBLE AGENCY FOR ADMINISTERING THE CARL D. PERKINS ACT VOCATIONAL EDUCATION PROGRAMS IN MONTANA; REQUIRING THE SUPERINTENDENT OF PUBLIC INSTRUCTION AND THE

HeinOnline -- 1999 vol. II 1841 1999

COMMISSIONER OF HIGHER EDUCATION TO WORK COOPERATIVELY ON THE VOCATIONAL AND TECHNICAL EDUCATION STATE PLAN; REQUIRING THE BOARD OF REGENTS TO MEET WITH INTERESTED PERSONS AND ENTITIES REGARDING THE IMPLEMENTATION AND EVALUATION OF THE STATE PLAN; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Legislative intent. (1) It is the intent of the legislature that the administration of the programs authorized by the Carl D. Perkins Vocational and Applied Technology Education Act provide a seamless system of services to those people seeking to improve their vocational and technical skills.

(2) It is the intent of the legislature that the superintendent of public instruction and the commissioner work cooperatively in providing that system of vocational and technical services at both the secondary and postsecondary levels.

(3) It is the intent of the legislature that the development of the state plan for vocational and technical education be a cooperative effort of the superintendent of public instruction and the commissioner in consultation with teachers, students, and institutions or agencies that provide the services and activities.

Section 2. Eligible agency for federal vocational education requirements. (1) The board of regents is the eligible agency for purposes of the 1984 federal Carl D. Perkins Vocational and Applied Technology Education Act, as amended, which requires a state participating in programs under that act to designate a state board as the eligible agency responsible for administration or supervision of those programs.

(2) The board of regents shall contract with the superintendent of public instruction for the administration and supervision of K-12 vocational education programs, services, and activities allowed by the 1984 federal Carl D. Perkins Vocational and Applied Technology Education Act, as amended, and in concert with the state plan for vocational and technical education required by the act. The board of regents may contract with other agencies for the administration and supervision of postsecondary vocational education programs, services, and activities that receive funding allowed by the 1984 federal Carl D. Perkins Vocational and Applied Technology Education Act, as amended.

Section 3. Development of state plan — meetings — report. (1) The superintendent of public instruction and the commissioner shall each appoint two people to serve on a committee to develop the 5-year state plan for vocational and technical education as required by 20 U.S.C. 2323. The four appointed members shall select a fifth member who must represent a community-based organization that provides vocational and technical education services.

(2) At least four times a year, the board of regents shall meet with the superintendent of public instruction, teachers, students, labor organizations, businesses, and institutions or agencies involved in vocational and technical education to:

(a) discuss the implementation of the state plan;

(b) evaluate the state plan;

HeinOnline -- 1999 vol. II 1842 1999

(c) identify any issues or concerns with the administration of the Carl D. Perkins Vocational and Applied Technology Education Act in Montana;

(d) identify the needs of vocational-technical students and programs in Montana and determine the best way to meet those needs; and

(e) if necessary, make changes in the administration and operation of the Carl D. Perkins Vocational and Applied Technology Education Act in Montana.

(3) The board of regents shall report the results of the meetings required in subsection (2) to the 57th legislature in accordance with the provisions of 5-11-210.

Section 4. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 20, chapter 7, part 3, and the provisions of Title 20, chapter 7, part 3, apply to [sections 1 through 3].

Section 5. Effective date. [This act] is effective July 1, 1999.

Section 6. Termination. [This act] terminates June 30, 2001.

Approved April 23, 1999

CHAPTER NO. 461

[SB 401]

AN ACT REVISING THE DEFINITION OF "AGRICULTURAL USE" FOR GASOLINE AND SPECIAL FUEL TAX REFUND PURPOSES; ALLOWING A PERSON WHO EARNS INCOME WHILE ENGAGING IN THE BUSINESS OF FARMING OR RANCHING TO RECEIVE GASOLINE AND SPECIAL FUEL TAX REFUNDS ACCORDING TO THE RATIO OF THE PERSON'S GROSS EARNED FARM INCOME TO TOTAL GROSS EARNED INCOME; ALLOWING THE DEPARTMENT OF TRANSPORTATION TO VERIFY THAT A PERSON QUALIFIES AS AN AGRICULTURAL USER OF GASOLINE AND SPECIAL FUEL; AMENDING SECTIONS 15-30-303, 15-70-201, 15-70-223, 15-70-301, AND 15-70-362, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-303, MCA, is amended to read:

"15-30-303. Confidentiality of tax records. (1) Except as provided in subsections (7) and (8) or in accordance with a proper judicial order or as otherwise provided by law, it is unlawful to divulge or make known in any manner:

(a) the amount of income or any particulars set forth or disclosed in any individual report or individual return required under this chapter or any other information secured in the administration of this chapter; or

(b) any federal return or federal return information disclosed on any return or report required by rule of the department or under this chapter.

(2) (a) The officers charged with the custody of the reports and returns may not be required to produce them or evidence of anything contained in them in an action or proceeding in a court, except in an action or proceeding:

HeinOnline -- 1999 vol. II 1843 1999

(i) to which the department is a party under the provisions of this chapter or any other taxing act; or

(ii) on behalf of a party to any action or proceedings under the provisions of this chapter or other taxes when the reports or facts shown by the reports are directly involved in the action or proceedings.

(b) The court may require the production of and may admit in evidence only as much of the reports or of the facts shown by the reports as are pertinent to the action or proceedings.

(3) This section does not prohibit:

(a) the delivery to a taxpayer or the taxpayer's authorized representative of a certified copy of any return or report filed in connection with the taxpayer's tax;

(b) the publication of statistics classified to prevent the identification of particular reports or returns and the items of particular reports or returns; or

(c) the inspection by the attorney general or other legal representative of the state of the report or return of any taxpayer who brings an action to set aside or review the tax based on the report or return or against whom an action or proceeding has been instituted in accordance with the provisions of 15-30-311.

(4) Reports and returns must he preserved for at least 3 years and may be preserved until the department orders them to be destroyed.

(5) Any offense against subsections (1) through (4) is punishable by a fine not exceeding $1,000 or by imprisonment in the county jail for a term not exceeding 1 year, or both. If the offender is an officer or employee of the state, the offender must be dismissed from office and may not hold any public office in this state for a period of 1 year after dismissal.

(6) This section may not be construed to prohibit the department from providing taxpayer return information and information from employers' payroll withholding reports to:

(a) the department of labor and industry to be used for the purpose of investigation and prevention of noncompliance, tax evasion, fraud, and abuse under the unemployment insurance laws; or

(h) the state fund to be used for the purpose of investigation and prevention of noncompliance, fraud, and abuse under the workers' componsation program.

(7) The department may permit the commissioner of internal revenue of the United States or the proper officer of any state imposing a tax upon the incomes of individuals or the authorized representative of either officer to inspect the return of income of any individual or may furnish to the officer or an authorized representative an abstract of the return of income of any individual or supply the officer with information concerning an item of income contained in a return or disclosed by the report of an investigation of the income or return of income of an individual, but the permission may be granted or information furnished only if the statutes of the United States or of the other state grant substantially similar privileges to the proper officer of this state charged with the administration of this chapter.

(8) The department shall furnish:

(a) to the department of justice all information necessary to identify those persons qualifying for the additional exemption for blindness pursuant to 15-30-112(4), for the purpose of enabling the department of justice to administer the provisions of 61-5-105;

(b) to the department of public health and human services information acquired under 15-30-301, pertaining to an applicant for public assistance, reasonably necessary for the prevention and detection of public assistance fraud and abuse, provided notice to the applicant has been given;

(c) to the department of labor and industry for the purpose of prevention and detection of fraud and abuse in and eligibility for benefits under the unemployment compensation and workers' compensation programs information on whether a taxpayer who is the subject of an ongoing investigation by the department of labor and industry is an employee, an independent contractor, or self-employed;

(d) to the department of fish, wildlife, and parks specific information that is available from income tax returns and required under 87-2-102 to establish the residency requirements of an applicant for hunting and fishing licenses;

(e) to the board of regents information required under 20-26-1111;

(f) to the legislative fiscal analyst and the office of budget and program planning individual income tax information as provided in 5-12-303. The information provided to the office of budget and program planning must be the same as the information provided to the legislative fiscal analyst.

(g) to the department of transpertation ~~the ratio of gross~~ farm income *information* ~~to total gross income~~ based on the most recent income tax return filed by an applicant applying for a refund under 15-70-223 *or 15-70-362*, provided that notice to the applicant has been given as provided in 15-70-223 *and 15-70-362*. The information obtained by the department of transportation is subject to the same restrictions on disclosure as are individual income tax returns."

Section 2. Section 15-70-201, MCA, is amended to read:

"15-70-201. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Agricultural use" means use of gasoline by a person ~~whose major endeavor and primary source of earned income is from~~ *who earns income while engaging in* the business of farming or ranching *and who files farm income reports for tax purposes as required by the United States internal revenue service.*

(2) "Aviation dealer" means a person in this state engaged in the business of selling aviation fuel, either from a wholesale or retail outlet, on which the license tax has been paid to a licensed distributor as provided in this section.

(3) "Aviation fuel" means gasoline or any other liquid fuel by whatever name the liquid fuel may be known or sold, compounded for use in and sold for use in aircraft, including but not limited to any and all gasoline or liquid fuel meeting or exceeding the minimum specifications prescribed by the United States for use by its military forces in aircraft.

(4) "Bulk delivery" means placing gasoline in storage or containers. The term does not mean gasoline delivered into the supply tank of a motor vehicle.

HeinOnline -- 1999 vol. II 1845 1999

(5) (a) Gasoline refined, produced, manufactured, or compounded in this state and placed in tanks, gasoline transferred from a refinery or pipeline terminal in this state and placed in tanks, or gasoline imported into this state and placed in storage at refineries or pipeline terminals is considered to be "distributed", for the purpose of this part, at the time the gasoline is withdrawn from the tanks, refinery, or terminal storage for sale or use in this state or for the transportation to destinations in this state other than by pipeline to another refinery or pipeline terminal in this state. When withdrawn from the tanks, refinery, or terminal, the gasoline may be distributed only by a person who is the holder of a valid distributor's license.

(b) Gasoline imported into this state, other than that gasoline placed in storage at refineries or pipeline terminals, is considered to be "distributed" after it has arrived in and is brought to rest in this state.

(6) "Distributor" means:

(a) a person who engages in the business in this state of producing, refining, manufacturing, or compounding gasoline for sale, use, or distribution;

(b) a person who imports gasoline for sale, use, or distribution;

(c) a person who engages in the wholesale distribution of gasoline in this state and chooses to become licensed to assume the Montana state gasoline tax liability;

(d) an exporter as defined in subsection (8);

(e) a dealer licensed as of January 1, 1969, except a dealer at an established airport; or

(f) a person in Montana who blends alcohol with gasoline.

(7) "Export" means to transport out of Montana, by any means other than in the fuel supply tank of a motor vehicle, gasoline received from a refinery or pipeline terminal within Montana.

(8) "Exporter" means any person who transports, other than in the fuel supply tank of a motor vehicle, gasoline received from a refinery or pipeline terminal in Montana to a destination outside Montana for sale, use, or consumption beyond the boundaries of this state.

(9) (a) "Gasoline" includes:

(i) all products commonly or commercially known or sold as gasolines, including casinghead gasoline, natural gasoline, aviation fuel, and all flammable liquids composed of a mixture of selected hydrocarbons expressly manufactured and blended for the purpose of effectively and efficiently operating internal combustion engines; and

(ii) any other type of additive when the additive is mixed or blended into gasoline, regardless of the additive's classifications or uses.

(b) Gasoline does not include special fuels as defined in 15-70-301.

(10) "Import" means to receive into a person's possession or custody first after its arrival and coming to rest at destination within the state of gasoline shipped or transported into this state from a point of origin outside of this state other than in the fuel supply tank of a motor vehicle.

(11) "Importer" means a person who transports or arranges for the transportation of gasoline into Montana for sale, use, or distribution in this state.

HeinOnline -- 1999 vol. II 1846 1999

(12) "Improperly imported fuel" means aviation or gasoline fuel as defined in subsections (3) and (9) that:

(a) is consigned to a Montana destination and imported into the state without the distributor first having obtained a Montana gasoline distributor license as required in 15-70-202; or

(b) is delivered, possessed, sold, or transferred in the state in any manner not authorized under Title 15, chapter 70.

(13) "Motor vehicle" means all vehicles operated or propelled upon the public highways or streets of this state in whole or in part by the combustion of gasoline.

(14) "Person" means any person, firm, association, joint-stock company, syndicate, or corporation.

(15) "Use" means the operation of motor vehicles upon the public roads or highways of the state or of any political subdivision of the state."

Section 3. Section 15-70-223, MCA, is amended to read:

"15-70-223. Estimate allowed for agricultural use — seller's signed statement acceptable on keylock or cardtrol purchases. (1) An applicant whose use qualifies as agricultural use may apply for a refund ~~of 60%~~ of the applicable tax on the gallons of gasoline as indicated by bulk delivery invoices or by evidence of keylock or cardtrol purchases as an estimate of off-roadway use. To ensure that the applicant's use qualifies as agricultural use, the department of transportation may request from the department of revenue information on the ratio of the applicant's gross *earned* farm income to total gross *earned* income, *excluding unearned income,* provided that the department of transportation gives notice to the applicant.

(2) For purposes of application for a refund under subsection (1), the department shall accept, as evidence of keylock or cardtrol purchases, a statement of the sale of gasoline with applicable tax that identifies the purchaser and that is signed by a licensed distributor or a person licensed under 15-70-203 from whom the gasoline was purchased.

(3) An applicant may apply for a refund of the applicable tax on gallons of gasoline as evidenced by bulk delivery invoices or by evidence of keylock or cardtrol purchases according to the applicant's ratio of gross earned farm income to total gross earned income, excluding unearned income, as follows:

(a) if the ratio is 50% or more, the applicant may apply for a refund of 60% of the gasoline tax;

(b) if the ratio is between 40% and 49%, the applicant may apply for a refund of 50% of the gasoline tax;

(c) if the ratio is between 30% and 39%, the applicant may apply for a refund of 40% of the gasoline tax;

(d) if the ratio is less than 30%, the applicant is not eligible for a refund of the gasoline tax under this section.

(4) If the applicant's ratio in any of the 3 previous years on record is higher than the present year, the highest ratio must be used to calculate the eligible refund.

~~(3)~~*(5)* If any invoice or evidence is either lost or destroyed, the purchaser may support ~~his~~ *the purchaser's* claim for refund by submitting an affidavit relating

the circumstances of ~~such~~ *the* loss or destruction and by producing ~~such~~ other evidence ~~as~~ *that* may be required by the department of transportation.

~~(4)~~*(6)* An applicant whose use does not qualify as agricultural use may not estimate and ~~must~~ *shall* maintain records as required by 15-70-222."

Section 4. Section 15-70-301, MCA, is amended to read:

"15-70-301. Definitions. As used in this part, the following definitions apply:

(1) "Agricultural use" means use of special fuel by a person ~~whose major endeavor is~~ *who earns income while engaging in* the business of farming or ranching ~~and whose primary source of earned income is from the business of farming or ranching~~ *and who files farm income reports for tax purposes as required by the United States internal revenue service.*

(2) "Bond" means:

(a) a bond executed by a special fuel user as principal with a corporate surety qualified under the laws of Montana, payable to the state of Montana, and conditioned upon faithful performance of all requirements of this part, including the payment of all taxes, penalties, and other obligations of the special fuel user arising out of this part; or

(b) a deposit with the department by the special fuel user, under terms and conditions that the department may prescribe, of certificates of deposit or irrevocable letters of credit issued by a bank and insured by the federal deposit insurance corporation.

(3) "Bulk delivery" means placing special fuel not intended for resale in storage or containers. The term does not mean special fuel delivered into the supply tank of a motor vehicle.

(4) "Cardtrol" or "keylock" means a unique device intended to allow access to a special fuel dealer's unattended pump or dispensing unit for the purpose of delivery of special fuel to an authorized user of the unique device.

(5) "Department" means the department of transportation.

(6) (a) "Distributed" means, at the time that special fuel is withdrawn, the withdrawal from a storage tank, a refinery, or a terminal storage in this state for sale or use in this state or for the transportation other than by pipeline to another refinery in this state or a pipeline terminal in this state of the following:

(i) special fuel refined, produced, manufactured, or compounded in this state and placed in storage tanks in this state;

(ii) special fuel transferred from a refinery or pipeline terminal in this state and placed in tanks at the refinery or terminal; or

(iii) special fuel imported into this state and placed in storage at a refinery or pipeline terminal.

(b) When withdrawn from the storage tanks, refinery, or terminal, the special fuel may be distributed only by a person who is the holder of a valid distributor's license.

(c) Special fuel imported into this state, other than that special fuel placed in storage at a refinery or pipeline terminal, is considered to be distributed after it has arrived in and is brought to rest in this state.

HeinOnline -- 1999 vol. II 1848 1999

(7) "Distributor" means:

(a) a person who engages in the business in this state of producing, refining, manufacturing, or compounding special fuel for sale, use, or distribution;

(b) an importer who imports special fuel for sale, use, or distribution;

(c) a person who engages in the wholesale distribution of special fuel in this state and chooses to become licensed to assume the Montana state special fuel tax liability; and

(d) an exporter.

(8) "Export" means to transport out of Montana, by any means other than in the fuel supply tank of a motor vehicle, special fuel received from a refinery or pipeline terminal within Montana.

(9) "Exporter" means a person who transports, other than in the fuel supply tank of a motor vehicle, special fuel received from a refinery or pipeline terminal in Montana to a destination outside Montana for sale, use, or consumption outside Montana.

(10) "Import" means to first receive special fuel into possession or custody after its arrival and coming to rest at a destination within the state or to first receive any special fuel shipped or transported into this state from a point of origin outside this state other than in the fuel supply tank of a motor vehicle.

(11) "Importer" means a person who transports or arranges for the transportation of special fuel into Montana for sale, use, or distribution.

(12) "Improperly imported fuel" means special fuel as defined in subsection (16) that is:

(a) consigned to a Montana destination and imported into the state without the distributor first having obtained a Montana special fuel distributor license as required in 15-70-341; or

(b) delivered, possessed, sold, or transferred in the state in any manner not authorized under Title 15, chapter 70.

(13) "Motor vehicle" means all vehicles that are operated upon the public highways or streets of this state and that are operated in whole or in part by the combustion of special fuel.

(14) "Person" includes any porson, firm, association, joint-stock company, syndicate, partnership, or corporation. Whenever the term is used in any clause prescribing and imposing a fine or imprisonment, or both, as applied to a firm, association, syndicate, or partnership, it includes the partners or members and, as applied to joint-stock companies and corporations, the officers.

(15) "Public roads and highways of this state" means all streets, roads, highways, and related structures:

(a) built and maintained with appropriated funds of the United States, the state of Montana, or any political subdivision of the state;

(b) dedicated to public use;

(c) acquired by eminent domain; or

(d) acquired by adverse use by the public, jurisdiction having been assumed by the state or any political subdivision of the state.

HeinOnline -- 1999 vol. II 1849 1999

(16) "Special fuel" means those combustible gases and liquids commonly referred to as diesel fuel or any other volatile liquid of less than 46 degrees A.P.I. (American petroleum institute) gravity test, except liquid petroleum gas, when actually sold for use in motor vehicles operating upon the public roads and highways within the state of Montana. The term special fuel includes all other types of additives when the additive is mixed or blended into special fuel, regardless of the additive's classifications or uses.

(17) "Special fuel dealer" means:

(a) a person in the business of handling special fuel who delivers any part of the fuel into the fuel supply tank or tanks of a motor vehicle not then owned or controlled by the person;

(b) a person who sells special fuel at a location unattended by the dealer through an unattended pump by use of a cardtrol, keylock, or similar device; or

(c) a person who provides a facility, with or without attended services, from which more than one special fuel user obtains special fuel for use in the fuel supply tank of a motor vehicle not then controlled by the dealer.

(18) "Special fuel user" means a person other than the U.S. government, a state, or a county, incorporated city or town, or school district of this state who consumes in this state special fuel for the operation of motor vehicles owned or controlled by the person upon the highways of this state.

(19) "Use", when the term relates to a special fuel user, means the consumption by a special fuel user of special fuels in the operation of a motor vehicle on the highways of this state."

Section 5. Section 15-70-362, MCA, is amended to read:

"15-70-362. Estimate allowed for agricultural use — seller's signed statement acceptable on keylock or cardtrol purchases. (1) An applicant whose use qualifies as agricultural use may apply for a refund ~~of 60%~~ of the applicable tax on the gallons of special fuel as indicated by bulk delivery invoices or by evidence of keylock or cardtrol purchases as an estimate of off-roadway use.

(2) An applicant may apply for a refund of the applicable tax on gallons of special fuel as evidenced by bulk delivery invoices or by evidence of keylock or cardtrol purchases according to the applicant's ratio of gross earned farm income to total gross earned income, excluding unearned income, as follows:

(a) if the ratio is 50% or more, the applicant may apply for a refund of 60% of the special fuel tax;

(b) if the ratio is between 40% and 49%, the applicant may apply for a refund of 50% of the special fuel tax;

(c) if the ratio is between 30% and 39%, the applicant may apply for a refund of 40% of the special fuel tax;

(d) if the ratio is less than 30%, the applicant is not eligible for a refund of the special fuel tax under this section.

(3) If the applicant's ratio in any of the 3 previous years on record is higher than the present year, the highest ratio must be used to calculate the eligible refund.

~~(2)~~*(4)* If any invoice or evidence is either lost or destroyed, the purchaser may support the purchaser's claim for refund by submitting an affidavit relating the

circumstances of the loss or destruction and by producing other evidence ~~as~~ *that* may be required by the department of transportation.

~~(3)~~*(5)* An applicant whose use does not qualify as agricultural use may not estimate and shall maintain records as required by 15-70-361."

Section 6. Effective date. [This act] is effective July 1, 1999.

Section 7. Termination. [This act] terminates June 30, 2001.

Approved April 23, 1999

CHAPTER NO. 462

[SB 411]

AN ACT REQUIRING THE BOARD OF LAND COMMISSIONERS TO PROVIDE ANNUAL REPORTS REGARDING THE AVERAGE RETURN OF REVENUE ON ASSET VALUE TO TRUST BENEFICIARIES OF FORESTED LANDS; DESCRIBING THE METHOD FOR CALCULATING AVERAGE RETURN AND ASSET VALUE; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Forest land report to trust beneficiaries — contents. The board shall annually prepare and provide to each beneficiary of a trust a separate financial report on the forested lands classified by 77-1-401 as Class 2 lands that are held in trust for the beneficiary. The report must include for each beneficiary:

(1) the total acreage of forested land held in trust;

(2) a summary of the asset value of the forested tracts held in trust;

(3) a calculation of the average return of revenue on asset value for the forested tracts held in trust; and

(4) a listing by each department land office of the total acreage of forested land administered for the trust beneficiary and a calculation of the average return of revenue on asset value for lands designated to the trust beneficiary.

Section 2. Asset value and average return of revenue methods described. (1) The board shall use the department of revenue forest productivity valuation procedures provided in Title 15, chapter 44, part 1, to calculate the asset value of forested tracts held in trust for each beneficiary.

(2) The board shall calculate the average return of revenue on lands held in trust for each beneficiary by utilizing a 10-year rolling average. The board shall include as revenue all proceeds derived from or attributable to forested tracts held in trust for each beneficiary, and the board shall include any change in value or unrealized gain resulting from the appreciation in the value of the land, using the formula in 15-44-103. All revenue derived from the forested tracts designated to each beneficiary must be:

(a) totaled for the 10-year period including and prior to the date of the report described in [section 1];

(b) adjusted to reflect current year dollars;

(c) divided by ten to create a 10-year rolling average;

HeinOnline -- 1999 vol. II 1851 1999

(d) expressed as a percentage of the asset value for each trust beneficiary; and

(e) expressed as a percentage of the asset value collectively for all trust beneficiaries.

Section 3. Annual report provided. The annual financial report to each trust beneficiary must be provided to each beneficiary at the end of each fiscal year beginning with the fiscal year ending June 30, 2000.

Section 4. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 77, chapter 1, part 2, and the provisions of Title 77, chapter 1, part 2, apply to [sections 1 through 3].

Section 5. Effective date. [This act] is effective July 1, 1999.

Approved April 22, 1999

CHAPTER NO. 463

[SB 434]

AN ACT REDUCING THE MEMBER CONTRIBUTION FOR THE POLICE RETIREMENT STATEWIDE PLAN; PROVIDING FOR AN ELECTION ON GUARANTEED ANNUAL BENEFIT ADJUSTMENTS; AMENDING SECTION 19-9-710, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-9-710, MCA, is amended to read:

"19-9-710. Member's contribution. (1) Except as provided in subsection (2), the regular contribution as a percentage of compensation of each active member first employed by an employer as a police officer:

(a) on or before June 30, 1975, is ~~7.8%~~ *5.8%*;

(b) after June 30, 1975, is ~~9%~~ *7%*;

(c) after June 30, 1979, but before July 1, 1997, is ~~10.5%~~ *8.5%*; and

(d) on and after July 1, 1997, is ~~11%~~ *9%*.

(2) A member covered under 19-9-1009 *or [section 2]* shall pay a contribution rate equal to ~~11%~~ *9%* of compensation received ~~on and after July 1, 1997~~.

(3) Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Code of 1954, as amended and applicable on July 1, 1985, shall pick up and pay the contributions that would be payable by the member under subsections (1) and (2) for service rendered after June 30, 1985.

(4) The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system. These contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(5) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's wages as defined in 19-1-102 and in the member's

HeinOnline -- 1999 vol. II 1852 1999

compensation as defined in 19-9-104. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the board."

Section 2. Election — guaranteed annual benefit adjustment. (1) Subject to subsection (2), on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by 1.5%.

(2) (a) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less than a 1.5% annualized increase, then the recipient's benefit must be adjusted by an amount that will provide a total annualized increase of 1.5% in the benefit paid since the preceding January.

(b) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the increases amount to more than a 1.5% annualized increase, then the benefit increase provided under this section must be 0%.

(3) A benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if:

(a) the benefit's commencement date is at least 36 months prior to January 1 of the year in which the adjustment is to be made; and

(b) the member either:

(i) first became an active member on or after July 1, 1997; or

(ii) filed a voluntary, irrevocable election to be covered under this section. The election:

(A) must be filed with the board prior to December 1, 1999; and

(B) requires an active member to pay an increased or revised contribution rate from January 1, 2000, forward.

(4) The board shall adopt rules to administer the provisions of this section.

(5) The decision of a member who elected to participate under 19-9-1009 remains valid. The decision of a member who elected not to participate under 19-9-1009 may be reversed under this section.

Section 3. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 19, chapter 9, part 10, and the provisions of Title 19, chapter 9, part 10, apply to [section 2].

Section 4. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before January 1, 2000.

Section 5. Effective dates. (1) Except as provided in subsection (2), [this act] is effective January 1, 2000.

(2) [Section 2(3)(b)(ii)(A) and (4)] are effective on passage and approval.

Approved April 22, 1999

HeinOnline -- 1999 vol. II 1853 1999

CHAPTER NO. 464

[SB 502]

AN ACT GENERALLY REVISING LAWS RELATING TO HARD-ROCK MINING IMPACTS; PROVIDING THAT A PAYMENT GUARANTEE FOR A FACILITY IMPACT BOND MUST BE MADE THROUGH A THIRD-PARTY FINANCIAL INSTITUTION; CLARIFYING THE MINIMUM ALLOCATION OF TAXABLE VALUATION OF GROSS PROCEEDS TO UNITS OF LOCAL GOVERNMENT; REVISING THE ALLOCATION OF THE METAL MINES LICENSE TAX; REVISING THE TIME AND MINIMUM DISTRIBUTION OF REVENUE TO TRUST ACCOUNTS; AMENDING SECTIONS 15-37-117, 90-6-302, 90-6-310, 90-6-331, AND 90-6-404, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-37-117, MCA, is amended to read:

"15-37-117. Disposition of metalliferous mines license taxes. (1) Metalliferous mines license taxes collected under the provisions of this part must, in accordance with the provisions of 15-1-501, be allocated as follows:

(a) to the credit of the general fund of the state, 58% of total collections each year;

(b) to the state special revenue fund to the credit of a hard-rock mining impact trust account, ~~1.5%~~ *2.5%* of total collections each year;

(c) to the orphan share state special revenue account established in 75-10-743, 8.5% of total collections each year;

(d) to the ground water assessment account established in 85-2-905, 2.2% of total collections each year;

(e) to the reclamation and development grants program state special revenue account, 4.8% of total collections each year; and

(f) *on or before June 1,* to the county or counties identified as experiencing fiscal and economic impacts, resulting in increased employment or local government costs, under an impact plan for a large-scale mineral development prepared and approved pursuant to 90-6-307, in direct proportion to the fiscal and economic impacts determined in the plan, or, if an impact plan has not been prepared, to the county in which the mine is located, ~~25%~~ *24%* of total collections each year, to be allocated by the county commissioners as follows:

(i) not less than ~~40%~~ *37.5%* to the county hard-rock mine trust reserve account established in 7-6-2225; and

(ii) all money not allocated to the account pursuant to subsection (1)(f)(i) to be further allocated as follows:

(A) 33 1/3% is allocated to the county for planning or economic development activities;

(B) 33 1/3% is allocated to the elementary school districts within the county that have been affected by the development or operation of the metal mine; and

(C) 33 1/3% is allocated to the high school districts within the county that have been affected by the development or operation of the metal mine.

HeinOnline -- 1999 vol. II 1854 1999

(2) When an impact plan for a large-scale mineral development approved pursuant to 90-6-307 identifies a jurisdictional revenue disparity, the county shall distribute the proceeds allocated under suhsection (1)(f) in a manner similar to that provided for property tax sharing under Title 90, chapter 6, part 4.

(3) The department shall return to the county in which metals are produced the tax collections allocated under subsection (1)(f). The allocation to the county described by subsection (1)(f) is a statutory appropriation pursuant to 17-7-502."

Section 2. Section 90-6-302, MCA, is amended to read:

"90-6-302. Definitions. In this part, the following definitions apply:

(1) "Board" means the hard-rock mining impact hoard estahlished in 2-15-1822.

(2) "Bonds" include bonds, notes, warrants, debentures, certificates of indebtedness, temporary bonds, temporary notes, interim receipts, interim certificates, and all instruments or obligations evidencing or representing indebtedness or evidencing or representing the borrowing of money or evidencing or representing a charge, lien, or encumbrance on specific revenues, special assessments, income, or property of a political subdivision, including all instruments or obligetions payable from a special fund.

(3) "Facility" means a facility tbat is owned, operated, or maintained by a local government unit and that, under the impact plan submitted under the provisions of 90-6-307, can be expected to have increased capital and operating costs as a result of tlie large-scale mineral development.

(4) "Large-scale mineral development" means the construction or operation of a hard-rock mine and the associated milling facility for which a permit is applied for under 82-4-335 ~~on or after May 18, 1981~~, and for which the average number of persons on the payroll of the mineral developer and of contractors at the mineral development exceeds or is projected to exceed 75 for any consecutive 6-month period. A mining operation that would qualify as a large-scale mineral development under this subsection is not a large-scale mineral development if the mine owner and operator are small miners as defined in 82-4-303.

(5) "Local government unit" means a county, city, town, school district, or any of the following independent special districts:

(a) rural fire district;

(b) public hospital district;

(c) refuse disposal district;

(d) county water and sewer district;

(e) county water district;

(f) county sewer district; or

(g) park district.

(6) (a) "Property tax prepayment" means a potentially reimbursable impact payment made by the developer of a large-scale mineral development to the impact fund of an affected unit of local government pursuant to an approved impact plan to be expended for the purpose or purposes identified in the plan.

(b) The term does not mean a payment or prepayment of property taxes for general distribution among funds or accounts."

Section 3. Section 90-6-310, MCA, is amended to read:

"90-6-310. Local government facility impact bonds. (1) When the need for the construction, renovation, improvement, or acquisition of local government facilities as a result of the large-scale mineral development is determined under 90-6-307, the owners of a large-scale mineral development may enter into a written agreement with the local government unit having the burden for the increased capital and operating costs expected to be incurred by the facilities. The local government unit may execute a written agreement with the owner of a large-scale mineral development for the issuance of any special industrial local government facility impact bonds provided for in this section.

(2) The agreement with the owners of a large-scale mineral development ~~shall~~ *must* provide for a payment guarantee *through a third-party financial institution*, in addition to the taxes imposed by the local government unit on property owners generally, of the principal and interest on the bonds provided for in this section. Payment will then be made by an annual special tax levy on the property of the large-scale mineral development sufficient to retire the principal and interest on these special impact bonds. The bonds ~~shall~~ *may* not be an obligation of the local government unit, but ~~shall~~ *must* be special obligations limited to the revenue derived from the special tax levy. A local government unit shall establish a levy and, to the extent bonds are issued as provided in this section, shall pledge the special fund and all ~~revenues~~ *revenue* of the special tax levy to the repayment of the bonds.

(3) The debt limits set forth in 7-7-2203, 7-7-4201, and 20-9-406 do not apply to bonds issued in accordance with this section. The interest on ~~such~~ *the* bonds ~~shall~~ *is* not ~~be~~ subject to state taxes.

(4) The impact bonds ~~shall~~ *must* be authorized by the governing body of the local government unit by a resolution that states:

(a) the facility for which the bonds are issued;

(b) the amount of the bonds;

(c) the rate of interest the bonds bear;

(d) the date of the bonds and the maturity date or dates of the bonds;

(e) the dates interest is payable on the bonds;

(f) the redemption options, if any, with respect to the bonds; and

(g) the manner of execution of the bonds.

(5) The impact bonds ~~shall~~ *must* be:

(a) in registered form as to principal and interest;

(b) payable in installments and at times not exceeding 30 years from their date of issuance; and

(c) payable at a place or places and be evidenced in a manner the governing body determines is in the best interest of the local government unit.

(6) Any impact bonds issued under the authority of this section may be sold at public or private sale in a manner, at a time or times, and at a price above or below par as may be determined by the governing body of the local government unit. All expenses, premiums, and commissions that the local government unit considers necessary or advantageous in connection with the authorization, sale,

HeinOnline -- 1999 vol. II 1856 1999

and issuance of the bonds may be paid by the governing body of the local government unit from the proceeds of the sale of the bonds.

(7) If more than one local government unit adopts a resolution to issue impact bonds, the local government units may enter into an interlocal agreement under 7-11-101 through 7-11-105, 7-11-107, and 7-11-108, providing for the issue of impact bonds of the local government units te be combined in a single offering, if the governing body of each local government unit authorizing the bonds determines that the pooling of bonds:

(a) is in the best interest of the local government units;

(b) will facilitate the sale of the bonds under more advantageous terms;

(c) will lower the interest rates; or

(d) will lower the cost of issuance.

(8) In addition to the specific requirements of 7-11-105, the interlocal agreement ~~shall~~ *must* provide:

(a) that the bond titles ~~shall~~ *must* denote that impact bonds of different local government units have heen pooled and ~~shall~~ *must* refer to each local government unit executing the interlocal agreement;

(b) for a single debt service fund, to be held by a qualified trust company, to which each local government unit shall pledge and pay the annual special tax levies levied against the largo-scale mineral development; and

(c) that the bonds are payable solely from and against the debt service funds under the interlocal agreement."

Section 4. Section 90-6-331, MCA, is amended to read:

"90-6-331. Fund transfer. (1) ~~On July 1, 1990, and prior~~ *Prior* to each October ~~1 thereafter~~ *31*, all money segregated by county in the hard-rock mining impact trust account following allocation to the hard-rock mining impact trust reserve account established in 90-6-304(2) as of September ~~1~~ *30* immediately preceding must be transferred to the county for which the funds have heen held in deposit. The funds ~~so~~ transferred must be deposited in the county hard-rock mine trust reserve account estahlished in 7-6-2225.

(2) The transfer of funds required by this section is a statutory appropriation pursuant to 17-7-502."

Section 5. Section 90-6-404, MCA, is amended to read:

"90-6-404. Allocation of taxable valuation for local taxation purposes. When property of a large-scale mineral development is subject to the provisions of 90-6-403, the increase in taxable valuation must be allocated by the department of revenue as follows:

(1) ~~If the board determines that the~~ *The* local government unit in which the ore body or the mineral deposit heing mined is located ~~is not affected by the development and if this determination is shown on the impact plan,~~ *must be allocated* 20% of the total increase in taxable valuation of the gross proceeds ~~must be allocated to that local government unit. This provision is intended to establish a minimum allocation for the units and does not prohibit proof by a unit that actual direct impacts would exceed 20% of the total impacts of the development.~~

HeinOnline -- 1999 vol. II 1857 1999

(2) The remaining increase in taxable valuation of the mineral development must be allocated between affected counties and affected municipalities according to the following formula based on the place of residence of mineral development employees:

(a) A portion, not to exceed 20%, to affected municipalities, based on that percentage of the total number of mineral development employees that reside within municipal boundaries. The taxable valuation allocated to affected municipalities must be distributed to each municipality according to its percentage of the total number of mineral development employees who reside within municipal boundaries. That portion of the taxable valuation distributed to a municipality pursuant to this section is subject to the same county mill levy as other taxable properties located in the municipality.

(b) The remaining portion of the taxable valuation must be distributed to each affected county according to its percentage of the total number of mineral development employees that reside within the county.

(3) The increase in taxable valuation equal to that subject to subsection (2) must be distributed pro rata among each affected high school district according to the percentage of the total number of mineral development high school students that reside within each district.

(4) The increase in taxable valuation equal to that subject to subsection (2) must be distributed pro rata among each affected elementary school district according to the percentage of the total number of mineral development elementary school students that reside within each district.

(5) The distribution formula specified in subsections (2) through (4) may be modified by an impact plan approved as provided in 90-6-307 or amended as provided in 90-6-311, if the modification is needed in order to ensure a reasonable correspondence between the occurrence of increased costs resulting from the mineral development and the allocation of taxable valuation resulting from the mineral development."

Section 6. Effective date. [This act] is effective on passage and approval.

Approved April 22, 1999

CHAPTER NO. 465

[SB 533]

AN ACT MAKING IT UNLAWFUL TO IMPORT INTO THIS STATE FOR SALE OR DISTRIBUTION CIGARETTES OR TOBACCO PRODUCTS MANUFACTURED FOR USE OUTSIDE THE UNITED STATES; MAKING IT UNLAWFUL TO AFFIX A TAX INSIGNIA ON CIGARETTES OR TO SELL OR ATTEMPT TO SELL CIGARETTES OR TOBACCO PRODUCTS MANUFACTURED FOR USE OUTSIDE THE UNITED STATES OR LABELED CONTRARY TO FEDERAL LAW; AND PROVIDING A PENALTY.

Be it enacted by the Legislature of the State of Montana:

Section 1. Cigarette and tobacco product labels — federal requirements — penalty. (1) A person may not knowingly import into this state for sale or other distribution any package of cigarettes or tobacco product that violates any federal:

HeinOnline -- 1999 vol. II 1858 1999

(a) tax, trademark, or copyright law; or

(b) requirement for the placement of labels, warnings, or other information, including health hazards, that must be on the container or individual package.

(2) A person may not sell or offer to sell a package of cigarettes or tobacco product or affix the tax insignia on a package of cigarettes, as provided in 16-11-113, knowing that:

(a) the package is marked as manufactured for use outside of the United States;

(b) any label or language has been altered from the manufacturer's original packaging and labeling to conceal the fact that the package was manufactured for use outside of the United States; or

(c) a stamp, label, or decal was affixed to conceal the fact that the package was manufactured for use outside of the United States.

(3) A package of cigarettes or tobacco product found in this state that is marked for use outside of the United States is contraband and may be seized without a warrant by the department, any agent of the department, or any peace officer. Any cigarettes or tobacco products seized as contraband must be destroyed by the department.

(4) (a) The department may proceed against a person who violates this section through a civil action under the civil enforcement provisions of Title 16, chapter 10, part 4.

(b) A violation of this section is criminally punishable by a fine in an amount not to exceed $10,000.

(5) For the purposes of this section, the term "cigarette" has the meaning defined in 16-11-102 and "tobacco product" has the meaning defined in 16-11-201.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 16, chapter 10, and the provisions of Title 16, chapter 10, apply to [section 1].

Approved April 22, 1999

CHAPTER NO. 466

[SB 472]

AN ACT REVISING CRIMINAL CODE PROVISIONS RELATING TO MACHINE GUNS AND SILENCERS; AMENDING SECTIONS 45-8-301, 45-8-302, 45-8-305, 45-8-307, AND 45-8-337, MCA; AND REPEALING SECTIONS 45-8-306, 45-8-308, AND 45-8-309, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-8-301, MCA, is amended to read:

"45-8-301. Uniformity of interpretation. Sections 45-8-302 through ~~45-8-309 shall~~ *45-8-305 and 45-8-307 must* be ~~so~~ interpreted and construed ~~as~~ to effectuate their general purpose to make uniform the law of those states ~~which~~ *that* enact them."

Section 2. Section 45-8-302, MCA, is amended to read:

"45-8-302. Definitions. In 45-8-303 through ~~45-8-309~~ *45-8-305 and 45-8-307*, the following definitions apply:

(1) "Crime of violence" means any of the following crimes or an attempt to commit any of the ~~same~~ *crimes*: any forcible felony, robbery, burglary, and criminal trespass.

(2) "Machine gun" means a ~~weapon of any description by whatever name known, loaded or unloaded, from which more than six shots or bullets may be rapidly, automatically, or semiautomatically discharged from a magazine by a single function of the firing device~~ *firearm designed to discharge more than one shot by a single function of the trigger*.

(3) "Person" includes a firm, partnership, association, or corporation."

Section 3. Section 45-8-305, MCA, is amended to read:

"45-8-305. Presumption of offensive or aggressive purpose. Possession or use of a machine gun ~~shall~~ *must* be presumed to be for *an* offensive or aggressive purpose~~:~~

~~(1) when the machine gun is on premises not owned or rented for bona fide permanent residence or business occupancy by the person in whose possession the machine gun may be found;~~

~~(2)~~ when the machine gun is in the possession of or used by a person who has been convicted of a crime of violence in any court of record, state or federal, in the United States of America or its territories or insular possessions~~;~~

~~(3) when the machine gun is of the kind described in 45-8-309 and has not been registered as required in that section; or~~

~~(4) when empty or loaded pistol shells of 30 (.30 in. or 7.63 mm.) or larger caliber which have been or are susceptible of being used in the machine gun are found in the immediate vicinity thereof.~~"

Section 4. Section 45-8-307, MCA, is amended to read:

"45-8-307. Exceptions. ~~Nothing contained in~~ *Sections* 45-8-301 through ~~45-8-309 shall~~ *45-8-305 and this section do not* prohibit or interfere with:

(1) the manufacture of machine guns for and sale of machine guns to the military forces or the peace officers of the United States or of any political subdivision ~~thereof~~ *of the United States* or ~~the~~ transportation required for that purpose;

(2) the possession of a machine gun for *a* scientific purpose or the possession of a machine gun not usable as a weapon and possessed as a curiosity, ornament, or keepsake;

(3) the possession of a machine gun ~~other than one adapted to use pistol cartridges of 30 (.30 in. or 7.63 mm.) or larger caliber~~ for a purpose manifestly not aggressive or offensive."

Section 5. Section 45-8-337, MCA, is amended to read:

"45-8-337. Possession prima facie evidence of unlawful purpose. Possession of a silencer *that is not registered under federal law* or of a bomb or similar device charged or filled with one or more explosives is prima facie evidence of a purpose to use the same to commit an offense."

HeinOnline -- 1999 vol. II 1860 1999

Seetion 6. Repealer. Sections 45-8-306, 45-8-308, and 45-8-309, MCA, are repealed.

Approved April 22, 1999

CHAPTER NO. 467

[HB 348]

AN ACT CHANGING ONE OF THE MONTHS IN WHICH SCHOOL TRUSTEES MUST HOLD A MEETING FROM JULY TO AUGUST; AMENDING SECTION 20-3-322, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-3-322, MCA, is amended to read:

"20-3-322. Meetings and quorum. (1) The trustees of a district shall hold at least the following number of regular meetings:

(a) an organization meeting, as prescribed by 20-3-321;

(b) a final hudget meeting, as prescrihed by 20-9-131; and

(c) in first-class elementary districts, not less than one regular meeting each month; or

(d) in any other district, regular meetings during the months of April, ~~July~~ *August*, October, and January.

(2) The trustees of the district shall adopt a pelicy setting the day and time for the minimum number of regular school meetings prescribed in suhsection (1)(c) or (1)(d) and, in addition, any other regular meeting days the trustoes wish to establish. Except for an unforeseen emergency, meetings must be conductod in school huildings or in a puhlicly owned building located within the district.

(3) Special meetings of the trustees may be called hy the presiding officer or any two members of the trustees hy giving each member a 48-hour writton notice of the meeting, except that the 48-hour notice is waived in an unforeseen emergency.

(4) Business may not he transacted by the trustees of a district unless it is transacted at a regular meeting or a properly called special meeting. A quorum for any meeting is a majority of the trustees' memhership. All trustee meetings must he public meetings, as prescrihed by 2-3-201, except that the trustees may recess to an executive session under the provisions of 2-3-203.

(5) For the purposes of suhsection (3), "unforeseen emergency" means a storm, fire, explosion, community disaster, insurrection, act of God, or other unforeseen destruction or impairment of school district property that affects the health and safety of the trustees, students, or district employees or the educational functions of the district."

Section 2. Effective date. [This act] is effective on passaga and approval.

Approved April 27, 1999

HeinOnline -- 1999 vol. II 1861 1999

CHAPTER NO. 468

[HB 430]

AN ACT CLARIFYING THAT A WORKER MAY CHOOSE AN INITIAL TREATING PHYSICIAN EVEN IF A PREFERRED PROVIDER ORGANIZATION IS IN PLACE; PROVIDING FOR WRITTEN NOTICE TO THE INJURED WORKER AFTER THE DATE OF INJURY; AND AMENDING SECTIONS 39-71-1101 AND 39-71-1102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-1101, MCA, is amended to read:

"39-71-1101. Choice of physician by worker — change of physician — receipt of care from managed care organization. (1) Subject to subsection (3), a worker may choose the initial treating physician within the state of Montana.

(2) Authorization by the insurer is required to change treating physicians. If authorization is not granted, the insurer shall direct the worker to a managed care organization, if any, or to a medical service provider who qualifies as a treating physician, who shall then serve as the worker's treating physician.

(3) A medical service provider who otherwise qualifies as a treating physician but who is not a member of a managed care organization may not provide treatment unless authorized by the insurer, if:

(a) the injury results in a total loss of wages for any duration;

(b) the injury will result in permanent impairment;

(c) the injury results in the need for a referral to another medical provider for specialized evaluation or treatment; or

(d) specialized diagnostic tests, including but not limited to magnetic resonance imaging, computerized axial tomography, or electromyography, are required.

(4) ~~A~~ *After the date that a* worker whose injury is subject to the provisions of subsection (3) ~~shall~~ *receives individual written notice of a referral to a managed care organization, the worker must*, unless otherwise authorized by the insurer, receive medical services from the managed care organization designated by the insurer, in accordance with 39-71-1104. The designated treating physician in the managed care organization then becomes the worker's treating physician. The insurer is not liable for medical services obtained otherwise, except that a worker may receive immediate emergency medical treatment for a compensable injury from a medical service provider who is not a member of a managed care organization.

(5) Posting of managed care requirements in the workplace on bulletin boards, in personnel policies, in company manuals, or by other general or broadcast means does not constitute individual written notice. To constitute individual written notice under this section, information regarding referral to a managed care organization must be provided to the worker in written form by mail or in person after the date that the injury meets the provisions of subsection (3). The notice must advise the worker of the worker's right to choose the initial treating physician under subsection (1).

HeinOnline -- 1999 vol. II 1862 1999

(6) Any postings or other information regarding referral to a managed care organization on bulletin boards, in personnel policies, in company manuals, or by other general or broadcast means and any individual notice of referral to a managed care organization, whether before or after the occurrence of an injury, must include in prominent type advice of the worker's right to choose the initial treating physician pursuant to subsection (1)."

Section 2. Section 39-71-1102, MCA, is amended to read:

"**39-71-1102. Preferred provider organizations — establishment — limitations.** *(1)* In order to promote cost containment of medical care provided for in 39-71-704, development of preferred provider organizations by insurers is encouraged. Insurers may establish arrangements with suppliers of soft and durable medical goods and medical providers in addition to or in conjunction with managed care organizations. Workers' compensation insurers may contract with other entities to use the other entities' preferred provider organizations. After the date that ~~a~~ *an injured* worker is given *an individual* written notice by the insurer of a preferred provider, the insurer is not liable for charges from nonpreferred providers. This section does not prohibit the worker from choosing the initial treating physician under 39-71-1101(1).

(2) Posting of preferred provider requirements in the workplace on bulletin boards, in personnel policies, in company manuals, or by other general or broadcast means does not constitute individual written notice. To constitute individual written notice under this section, information regarding referral to preferred providers must be provided to the worker in written form by mail or in person after the date of injury. The notice must advise the worker of the worker's right to choose the initial treating physician under 39-71-1101(1).

(3) Any postings or other information regarding referral to preferred providers on bulletin boards, in personnel policies, in company manuals, or by other general or broadcast means and any individual notice of referral to preferred providers, whether before or after the occurrence of an injury, must include in prominent type advice of the worker's right to choose the initial treating physician pursuant to subsection 39-71-1101(1)."

Approved April 26, 1999

CHAPTER NO. 469

[HB 482]

AN ACT EXEMPTING JUVENILE DETENTION OFFICERS WHO ARE EMPLOYED IN A JUVENILE DETENTION CENTER FROM BASIC DETENTION OFFICER TRAINING OVER THE NEXT 2 YEARS UNDER CERTAIN CONDITIONS; DEFINING "JUVENILE DETENTION CENTER" AND "JUVENILE DETENTION OFFICER"; AMENDING SECTION 44-4-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Temporary exemption for juvenile detention officers. (1) A juvenile detention officer employed by a juvenile detention center is exempt from the requirements for certification and basic detention officer training provided for in 44-4-301 on the following conditions:

HeinOnline -- 1999 vol. II 1863 1999

(a) The juvenile detention officer shall satisfactorily complete the training provided for in this section.

(b) The juvenile detention center that employs the juvenile detention officer shall develop and conduct a training program based on training approved by a nationally recognized professional association for juvenile detention officers. The training program must include goals, objectives, a curriculum outline, and a budget. If more than one juvenile detention center chooses to develop and conduct a training program, those centers shall work cooperatively to develop one curriculum for the purposes of this section.

(c) The jurisdiction that administers and operates the juvenile detention center shall assume the responsibility and cost for administering a training program for the juvenile detention officers employed in a juvenile detention facility and any associated liability related to the training.

(d) The juvenile detention center shall submit quarterly reports on the progress of the development and implementation of a training program provided for in subsection (1)(b) to the board of crime control, peace officer standards and training council, youth justice council, and Montana law enforcement academy.

(e) The juvenile detention center shall present a final report to the board of crime control, peace officer standards and training council, youth justice council, and Montana law enforcement academy by October 1, 2000, that includes the goals, objectives, curriculum, and budget and any findings, recommendations, and suggested legislation.

(f) The jurisdiction that operates and administers a juvenile detention center shall agree to allow the board of crime control, peace officer standards and training council, and youth justice council to contract, at the expense of the board of crime control, for an evaluation of the curriculum and training program by an outside party who has both adult and juvenile detention experience and to cooperate with the evaluation process.

(2) The board of crime control, peace officers standards and training council, and youth justice council shall present a report of its findings, recommendations, and suggested legislation regarding training for juvenile detention officers who are employed in juvenile detention centers to the 57th legislature.

(3) A county that complies with this section is eligible for reimbursement through the state grants for youth detention services provided for in Title 41, chapter 5, part 19, to the same extent that training received pursuant to 44-4-301 is reimbursable.

Section 2. Section 44-4-302, MCA, is amended to read:

"44-4-302. Definitions. As used in 44-4-301 and this section, the following definitions apply:

(1) "Detention center" means a facility established and maintained by an appropriate entity for the purpose of confining arrested persons or persons sentenced to a detention center.

(2) "Detention center administrator" means the sheriff, chief of police, administrator, superintendent, director, or other individual serving as the chief executive officer of a detention center or temporary detention center.

(3) "Detention officer" means a person or a peace officer who has full-time or part-time authority and responsibility for maintaining custody of inmates and

HeinOnline -- 1999 vol. II 1864 1999

who performs tasks related to the operation of a detention center or temporary detention center.

(4) "Juvenile detention center" means a detention facility as defined in 41-5-103.

(5) "Juvenile detention officer" means a person who has full-time or part-time authority and responsibility for maintaining custody of juveniles under the jurisdiction of the youth court and who performs tasks related to the operation of a juvenile detention center.

~~(4)~~*(6)* "Puhlic safety communications officer" means a person who receives requests for emergency services, as defined in 10-4-101, dispatches the appropriate emergency service units, and is certified under 7-31-203.

~~(5)~~*(7)* "Temporary detention center" means a facility for the temporary detention of an arrested person for up to 72 hours, excluding holidays, Saturdays, and Sundays. The period of time a person is held in temporary detention may not exceed 96 hours."

Seetion 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 44, chapter 4, part 3, and the provisions of Title 44, chapter 4, part 3, apply to [section 1].

Section 4. Effective date. [This act] is effective on passage and approval.

Section 5. Termination. [This act] terminates June 30, 2001.

Approved April 26, 1999

CHAPTER NO. 470

[SB 490]

AN ACT REQUIRING PROMPT PAYMENT FOR CONSTRUCTION CONTRACTORS AND SUBCONTRACTORS; PROVIDING FOR THE PAYMENT OF INTEREST FOR DELAYED PAYMENTS; ALLOWING COSTS AND ATTORNEY FEES IN CIVIL ACTIONS TO ENFORCE PAYMENT; ALLOWING OTHER REMEDIES; PROVIDING EXCEPTIONS; SUPERCEDING THE UNFUNDED MANDATE LAW; AMENDING SECTION 18-2-101, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Payment of contractors and subcontractors. Notwithstanding any other provision of this title, payment of a construction contractor or subcontractor, as those terms are defined in [section 3], for services performed by a construction contractor or subcontractor is governed by the provisions of [sections 3 through 9].

Section 2. Section 18-2-101, MCA, is amended to read:

"18-2-101. Definitions of building, costs, and construction. In part 1 of this chapter, with the exception of 18-2-104, 18-2-107, *[section 1],* 18-2-113, 18-2-114, and 18-2-122:

(1) "building" includes a building, facility, or structure:

(a) constructed or purchased wholly or in part with state money;

HeinOnline -- 1999 vol. II 1865 1999

(b) at a state institution;

(c) owned or to be owned by a state agency, including the department of transportation;

(d) constructed for the use or benefit of the state with federal or private money as provided in 18-2-102(2)(d);

(2) "building" does not include a building, facility, or structure:

(a) owned or to be owned by a county, city, town, school district, or special improvement district;

(b) used as a component part of an environmental remediation or abandoned mine land reclamation project, a highway, or a water conservation project, unless the building will require a continuing state general fund financial obligation after the environmental remediation or abandoned mine land reclamation project is completed;

(c) leased or to be leased by a state agency;

(3) "construction" includes the construction, alteration, repair, maintenance, and remodeling of a building and the equipping and furnishing of a building during construction, alteration, repair, maintenance, and remodeling;

(4) "costs" means those expenses defined in 17-5-401 and 17-5-801."

Section 3. Definitions. As used in [sections 3 through 9], unless the context requires otherwise, the following terms apply:

(1) "Construction contract" means a written agreement between an owner and a contractor for the contractor to construct or improve or to provide construction management for the construction or improvement of an improvement to real property.

(2) "Contractor" means a person who has signed a construction contract with an owner.

(3) "Government entity" means a city, town, county, consolidated municipal-county government, school district, or other special district.

(4) "Improve" means to build, alter, demolish, repair, construct, expand, cover, excavate, grade, fill, clear, plant, landscape, or furnish material or labor, or both for an improvement.

(5) "Improvement" means all or a part of a residential or commercial building, structure, area of real property, quantity of earth or fill material, tree or shrubbery, driveway, roadway, or parking area.

(6) "Owner" means a governmental entity or private entity that has a legal interest in the real property improved or to be improved by the performance of the construction contract.

(7) "Owner's representative" means an architect, engineer, or other person who represents the owner and is designated in the contract as the person representing the owner for the purposes of the administration or oversight of the performance of the construction contract.

(8) "Receipt" or "receive" means actual receipt.

(9) "Subcontract" means a contract between a contractor and a subcontractor or between a subcontractor and another subcontractor, the purpose of which is the performance of all or a part of the construction contract.

HeinOnline -- 1999 vol. II 1866 1999

(10) "Subcontractor" means a person who has contracted with a contractor or anotber subcontractor for the purposes of performance of all or a part of a subcontract.

Section 4. Performance entitles contractor or subeontractor to payment. (1) Performance by a contractor of a construction contract in accordance with the provisions of the contract entitles a contractor to payment from the owner.

(2) Performance by a subcontractor of a subcontract entitles the subcontractor to payment from the contractor.

Section 5. Payment to contractor and subcontractor. (1) If a contractor performs a construction contract according to the terms of the contract and requests, either directly to the owner or to owner's representative, payment for performance of the contract, the owner shall pay the contractor, within 30 days after receipt by the owner or the owner's representative of the request for payment, for work performed or materials provided in accordance with the contract.

(2) Within 3 working days after a contractor receives a periodic or final payment from an owner or a state agency, the contractor shall pay the subcontractor, if any, the full amount due the subcontractor in accordance with the subcontract for work performed or materials provided in accordance with that subcontract.

(3) Within 3 working days after a subcontractor receives a periodic or final payment from a contractor, the subcontractor shall pay another subcontractor, if any, the full amount due the subcontractor under the subcontract for work performed or materials provided in accordance with that subcontract.

Section 6. Obligations upon delay of payment. (1) If a periodic or final payment that is required by a construction contract to be paid by an owner to a contractor is delayed by more than 30 days from the date the payment is required by the contract to be made, the owner shall pay to the contractor interest, beginning on the day following the date when the payment is due, at the rate of 1 1/2% a month or a pro rata fraction of that amount on the unpaid balance. If the contractor receives interest from the owner for a delayed payment by the owner, the contractor shall ensure that any interest accrued on a delayed payment is distributed by the contractor to subcontractors on a pro rata basis.

(2) If a periodic or final payment required by a subcontract to be paid by a contractor to a subcontractor is delayed for more than 30 days plus 3 working days from the date the payment is required by the subcontract to be made, the contractor shall pay to the subcontractor interest beginning on the day following the date when the payment is due, at the rate of 1 1/2% a month or a pro rata fraction of that amount on the unpaid balance. If a subcontractor receives interest from the contractor for a delayed payment by the contractor, the subcontractor shall ensure that any interest accrued on the delayed payment is distributed by the subcontractor to other subcontractors, if any, on a pro rata basis. (3) Interest is not required to be paid pursuant to this section unless the owner, contractor, or subcontractor, as appropriate, has been notified of the requirements of this section at the time the request for payment is made. Acceptance of progress payments or final payment releases any claim for interest on the payment.

HeinOnline -- 1999 vol. II 1867 1999

Section 7. Prevailing party entitled to costs and attorney fees. In a civil action on a contract to enforce an obligation imposed by [sections 3 through 9], the prevailing party is entitled to reasonable attorney fees and costs, both for trial and appeal. If the parties to a construction contract or subcontract use arbitration, the arbitrator may award fees and costs as the arbitrator may determine.

Section 8. Remedies not exclusive. The remedies provided by [sections 3 through 9] are not exclusive of any other remedy provided by law or contract.

Section 9. Exeeption for eertain residcntial dwellings. The provisions of [sections 3 through 9] do not apply to improvements to real property intended for residential purposes that consist of four or fewer residential units.

Section 10. Unfundcd mandate law superceded. The provisions of [this act] expressly supercede and modify the requirements of 1-2-112 through 1-2-116.

Section 11. Codifieation instruetions. (1) [Section 1] is intended to be codified as an integral part of Title 7, chapter 1, and the provisions of Title 7, cbapter 1, apply to [section 1].

(2) [Section 1] is intended to be codified as an integral part of Title 18, chapter 2, and the provisions of Title 18, chapter 2, apply to [section 1].

(3) [Sections 3 through 9] are intended to be codified as an integral part of Title 28, chapter 2, and the provisions of Title 28, cbapter 2, apply to [sections 3 through 9].

Seetion 11. Applieability. [This act] applies to contracts agreed to on or after July 1, 1999.

Approved April 26, 1999

CHAPTER NO. 471

[HB 79]

AN ACT RELATING TO THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; ESTABLISHING A DEFINED CONTRIBUTION PLAN WITHIN THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM AND SPECIFYING THE PLAN'S PROVISION OF RIGHTS, BENEFITS, AND FEATURES; TRANSFERRING ADMINISTRATION OF THE STATE DEFERRED COMPENSATION PROGRAM TO THE PUBLIC EMPLOYEES' RETIREMENT BOARD; ELIMINATING CERTAIN INVESTMENT RESTRICTIONS IN THE UNIFIED INVESTMENT PROGRAM; PROVIDING FOR THE POWERS AND DUTIES OF THE PUBLIC EMPLOYEES' RETIREMENT BOARD IN IMPLEMENTING AND ADMINISTERING THE NEW PLAN; ALLOWING CURRENT AND NEW SYSTEM MEMBERS TO CHOOSE WHETHER TO JOIN THE NEW DEFINED CONTRIBUTION PLAN OR STAY IN THE DEFINED BENEFIT PLAN; SPECIFYING PLAN CHOICE, MEMBERSHIP, AND VESTING CRITERIA; ALLOWING RETIREMENT SYSTEM MEMBERS EMPLOYED BY THE UNIVERSITY SYSTEM TO CHOOSE THE OPTIONAL RETIREMENT PLAN; PROVIDING FOR ACTUARIAL FUNDING OF DEFINED BENEFIT PLAN UNFUNDED LIABILITIES AND PLAN CHOICE COSTS; ESTABLISHING CRITERIA FOR

HeinOnline -- 1999 vol. II 1868 1999

THE INVESTMENT ALTERNATIVES THAT MAY BE OFFERED IN THE NEW PLAN; SPECIFYING THE PAYOUT AND BENEFIT OPTIONS AVAILABLE WITHIN THE DEFINED CONTRIBUTION PLAN; PROVIDING FOR DEATH BENEFITS IN THE NEW PLAN; REQUIRING AND SPECIFYING THE COMPONENTS OF MEMBER EDUCATIONAL PROGRAMS; ESTABLISHING AN IMPLEMENTATION SCHEDULE; PROVIDING FOR AN IMPLEMENTATION TEAM, ADVISORY COUNCIL, AND OVERSIGHT COMMITTEE; PROVIDING FOR PAYMENT OF CERTAIN LOCAL GOVERNMENT ADMINISTRATIVE EXPENSES; REQUIRING THAT THE PUBLIC EMPLOYEES' RETIREMENT BOARD FILE FOR AN INTERNAL REVENUE SERVICE DETERMINATION; EXPANDING CERTAIN RETIREMENT BENEFITS TO COVER LEGISLATORS TERMINATED FROM SERVICE BECAUSE OF TERM LIMITS; AUTHORIZING A LONG-TERM LOAN FROM THE DEPARTMENT OF ADMINISTRATION TO THE PUBLIC EMPLOYEES' RETIREMENT BOARD TO PAY FOR DEFINED CONTRIBUTION PLAN STARTUP COSTS; AMENDING SECTIONS 2-15-1009, 2-18-704, 17-6-201, 19-2-302, 19-2-303, 19-2-401, 19-2-403, 19-2-405, 19-2-406, 19-2-407, 19-2-408, 19-2-409, 19-2-501, 19-2-503, 19-2-504, 19-2-505, 19-2-603, 19-2-706, 19-2-902, 19-2-906, 19-2-907, 19-2-908, 19-2-909, 19-2-1001, 19-2-1002, 19-2-1003, 19-2-1005, 19-2-1006, 19-2-1007, 19-3-103, 19-3-108, 19-3-201, 19-3-203, 19-3-315, 19-3-316, 19-3-401, 19-21-102, 19-21-201, 19-21-202, 19-21-203, 19-50-101, 19-50-102, 19-50-201, 19-50-202, AND 19-50-203, MCA; REPEALING SECTION 19-50-206, MCA; AND PROVIDING EFFECTIVE DATES, AN APPLICABILITY PROVISION, AND TERMINATION DATES.

WHEREAS, House Bill No. 90 of the 55th Legislature required the Committee on Public Employee Retirement Systems (CPERS) to design a new or modified public employees' retirement plan containing certain specified features; and

WHEREAS, House Bill No. 90 required that the new or modified plan increase portability of member contributions, increase flexibility to allow members to choose among investment options, and retain a plan component that offers a specified benefit in retirement; and

WHEREAS, House Bill No. 90 required that the CPERS establish an implementation schedule for tbe new or modified plan, provide for an educational program, and present any implementing legislation; and

WHEREAS, the CPERS contracted with a benefits consulting firm and conducted a thorough and broad-based study during the 1997-98 interim to determine the design of the new or modified retirement plan; and

WHEREAS, the study involved numerous focus groups from across Montana, including members of retirement systems, employers, plan administrators, and public officials; and

WHEREAS, tbe CPERS commissioned and considered reports and analyses by the contracted consulting firm; and

WHEREAS, the CPERS bas concluded the study required by House Bill No. 90 and recommends that the current public employees' retirement system (PERS) consist of two retirement plans, tbe current defined retirement benefit plan and a new defined contrihution retirement plan; and

WHEREAS, current and new members of the PERS may choose between either the defined benefit plan or the defined contribution plan.

HeinOnline -- 1999 vol. II 1869 1999

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-1009, MCA, is amended to read:

"2-15-1009. Public employees' retirement board — terms — allocation. (1) There is a public employees' retirement board.

(2) The board consists of ~~six~~ *seven* members appointed by the governor. The members are:

(a) three public employees who are active members of a public retirement system (not more than one of these members may be an employee of the same department *and at least one of these members must, no later than July 1, 2003, be a member of the defined contribution plan created pursuant to [sections 42 through 63]*);

(b) one retired public employee who is an inactive member of the public employees' retirement system; ~~and~~

(c) two members at large*; and*

(d) one member who has experience in investment management, counseling, or financial planning or who has other similar experience.

(3) The term of office for each member is 5 years.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121. The board shall hire necessary employees as provided in 19-2-404.

(5) Members of the board must be compensated and receive travel expenses as provided for in 2-15-124."

Section 2. Section 2-18-704, MCA, is amended to read:

"2-18-704. Mandatory provisions. (1) An insurance contract or plan issued under this part must contain provisions that permit:

(a) the member of a group who retires from active service under the appropriate retirement provisions *of a defined benefit plan* provided by law *or, in the case of the defined contribution plan provided in [sections 42 through 63], a member with at least 5 years of service and who is at least age 50 while in covered employment* to remain a member of the group until the member becomes eligible for medicare under the federal Health Insurance for the Aged Act, 42 U.S.C. 1395, as amended, unless the member is a participant in another group plan with substantially the same or greater benefits at an equivalent cost or unless the member is employed and, by virtue of that employment, is eligible to participate in another group plan with substantially the same or greater benefits at an equivalent cost;

(b) the surviving spouse of a member to remain a member of the group as long as the spouse is eligible for retirement benefits accrued by the deceased member as provided by law unless the spouse is eligible for medicare under the federal Health Insurance for the Aged Act or unless the spouse has or is eligible for equivalent insurance coverage as provided in subsection (1)(a);

(c) the surviving children of a member to remain members of the group as long as they are eligible for retirement benefits accrued by the deceased member as provided by law unless they have equivalent coverage as provided in subsection (1)(a) or are eligible for insurance coverage by virtue of the employment of a surviving parent or legal guardian.

HeinOnline -- 1999 vol. II 1870 1999

(2) An insurance contract or plan issued under this part must contain the provisions of subsection (1) for remaining a member of the group and also must permit:

(a) the spouse of a retired member the same rights as a surviving spouse under subsection (1)(b);

(b) the spouse of a retiring member to convert a group policy as provided in 33-22-508; and

(c) continued membership in the group by anyone eligible under the provisions of this section, notwithstanding the person's eligibility for medicare under the federal Health Insurance for the Aged Act.

(3) (a) A state insurance contract or plan must contain provisions that permit a legislator to remain a member of the state's group plan until the legislator becomes eligible for medicare under the federal Health Insurance for the Aged Act, 42 U.S.C. 1395, as amended, if the legislator:

(i) terminates service in the legislature and is a vested member of a state retirement system provided by law; and

(ii) notifies the department of administration in writing within 90 days of the end of the legislator's legislative term.

(b) A former legislator may not remain a member of the group plan under the provisions of subsection (3)(a) if the person:

(i) is a member of a plan with substantially the same or greater benefits at an equivalent cost; or

(ii) is employed and, by virtue of that employment, is eligible to participate in another group plan with substantially the same or greater benefits at an equivalent cost.

(c) A legislator who remains a member of the group under the provisions of subsection (3)(a) and subsequently terminates membership may not rejoin the group *plan* unless the person again serves as a legislator.

(4) (a) A state insurance contract or plan must contain provisions that permit continued membership in the state's group plan by a member of the judges' retirement system who leaves judicial office but continues to be an inactive vested member of the judges' retirement system as provided by 19-5-301. The judge shall notify the department of administration in writing within 90 days of the end of the judge's judicial service of the judge's choice to continue membership in the group plan.

(b) A former judge may not remain a member of the group plan under the provisions of this subsection (4) if the person:

(i) is a member of a plan with substantially the same or greater benefits at an equivalent cost;

(ii) is employed and, by virtue of that employment, is eligible to participate in another group plan with substantially the same or greater benefits at an equivalent cost; or

(iii) becomes eligible for medicare under the federal Health Insurance for the Aged Act, 42 U.S.C. 1395, as amended.

HeinOnline -- 1999 vol. II 1871 1999

(c) A judge who remains a member of the group under the provisions of this subsection (4) and subsequently terminates membership may not rejoin the group plan unless the person again serves in a position covered by the state's group plan.

(5) A person electing to remain a member of the group under subsection (1), (2), (3), or (4) shall pay the full premium for coverage and for that of the person's covered dependents.

(6) An insurance contract or plan issued under this part that provides for the dispensing of prescription drugs by an out-of-state mail service pharmacy, as defined in 37-7-702:

(a) must permit any member of a group to obtain prescription drugs from a pharmacy located in Montana that is willing to match the price charged to the group or plan and to meet all terms and conditions, including the same professional requirements that are met by the mail service pharmacy for a drug, without financial penalty to the member; and

(b) may only be with an out-of-state mail service pharmacy that is registered with the board under Title 37, chapter 7, part 7, and that is registered in this state as a foreign corporation."

Section 3. Section 17-6-201, MCA, is amended to read:

"17-6-201. (Temporary) Unified investment program — general provisions. (1) The unified investment program directed by Article VIII, section 13, of the Montana constitution to be provided for public funds must be administered by the board of investments in accordance with the prudent expert principle, which requires an investment manager to:

(a) discharge the duties with the care, skill, prudence, and diligence, under the circumstances then prevailing, that a prudent person acting in a like capacity with the same resources and familiar with like matters exercises in the conduct of an enterprise of a like character with like aims;

(b) diversify the holdings of each fund within the unified investment program to minimize the risk of loss and to maximize the rate of return unless, under the circumstances, it is clearly prudent not to do so; and

(c) discharge the duties solely in the interest of and for the benefit of the funds forming the unified investment program.

(2) (a) Retirement funds may be invested in common stocks of any corporation~~, except that an investment may not be made at any time that would cause the book value of the investments in a retirement fund to exceed 50% of the book value of the fund or that would cause the stock of one corporation to exceed 2% of the book value of the retirement fund~~.

(b) Other public funds may not be invested in private corporate capital stock. "Private corporate capital stock" means only the common stock of a corporation.

(3) (a) This section does not prevent investment in any business activity in Montana, including activities that continue existing jobs or create new jobs in Montana.

(b) The board is urged under the prudent expert principle to invest up to 3% of retirement funds in venture capital companies. Whenever possible, preference should be given to investments in those venture capital companies that demonstrate an interest in making investments in Montana.

HeinOnline -- 1999 vol. II 1872 1999

(c) In discharging its duties, the board shall consider the preservation of purchasing power of capital during periods of high monetary inflation.

(d) The board may not make a direct loan to an individual borrower. The purchase of a loan or a portion of a loan originated by a financial institution is not considered a direct loan.

(4) The board has the primary authority to invest state funds. Another agency may not invest state funds unless otherwise provided by law. The board shall direct the investment of state funds in accordance with the laws and constitution of this state. The board has the power to veto investments made under its general supervision.

(5) The board shall:

(a) assist agencies with public money to determine if, when, and how much surplus cash is available for investment;

(b) determine the amount of surplus treasury cash to be invested;

(c) determine the type of investment to be made;

(d) prepare the claim to pay for the investment; and

(e) keep an account of the total of each investment fund and of all the investments belonging to the fund and a record of the participation of each treasury fund account in each investment fund.

(6) The board may:

(a) execute deeds of conveyance transferring real property obtained through investments. Prior to the transfer of real property directly purchased and held as an investment, the board shall obtain an appraisal by a qualified appraiser.

(b) direct the withdrawal of funds deposited by or for the state treasurer pursuant to 17-6-101 and 17-6-105;

(c) direct the sale of securities in the program at their full and true value when found necessary to raise money for payments due from the treasury funds for which the securities have been purchased;

(d) expend funds needed to cover costs of necessary repairs to property owned by the board as an investment. Repairs that cost in excess of $2,500 must be bid, and the bid must be awarded in compliance with existing state law and regulations. Emergency repairs may be made by the board without bid if approved by the state architect.

(7) The cost of administering and accounting for each investment fund must be deducted from the income from each fund.

(8) At the beginning of each fiscal year, the board shall, from the appropriate fund, reimburse the department of commerce for the costs of administering programs established under Title 90, chapter 3, that are not covered by payback funds available from the account established in 90-3-305.

17-6-201. (Effective July 1, 1999) Unified investment program — general provisions. (1) The unified investment program directed by Article VIII, section 13, of the Montana constitution to be provided for public funds must be administered by the board of investments in accordance with the prudent expert principle, which requires an investment manager to:

(a) discharge the duties with the care, skill, prudence, and diligence, under the circumstances then prevailing, that a prudent person acting in a like capacity

HeinOnline -- 1999 vol. II 1873 1999

with the same resources and familiar with like matters exercises in the conduct of an enterprise of a like character with like aims;

(h) diversify the holdings of each fund within the unified investment program to minimize the risk of loss and to maximize the rate of return unless, under the circumstances, it is clearly prudent not to do so; and

(c) discharge the duties solely in the interest of and for the benefit of the funds forming the unified investment program.

(2) (a) Retirement funds may be invested in common stocks of any corporation~~, except that an investment may not be made at any time that would cause the book value of the investments in a retirement fund to exceed 50% of the book value of the fund or that would cause the stock of one corporation to exceed 2% of the book value of the retirement fund~~.

(b) Other puhlic funds may not be invested in private corporate capital stock. "Private corporate capital stock" means only the common stock of a corporation.

(3) (a) This section does not prevent investment in any business activity in Montana, including activities that continue existing jobs or create new jobs in Montana.

(b) The board is urged under the prudent expert principle to invest up to 3% of retirement funds in venture capital companies. Whenever possible, preference should be given to investments in those venture capital companies that demonstrate an interest in making investments in Montana.

(c) In discharging its duties, the board shall consider the preservation of purchasing power of capital during periods of high monetary inflation.

(d) The board may not make a direct loan to an individual borrower. The purchase of a loan or a portion of a loan originated by a financial institution is not considered a direct loan.

(4) The board has the primary authority to invest state funds. Another agency may not invest state funds unless otherwise provided by law. The board shall direct the investment of state funds in accordance with the laws and constitution of this state. The board has the power to veto investments made under its general supervision.

(5) The board shall:

(a) assist agencies with public money to determine if, when, and how much surplus cash is available for investment;

(b) determine the amount of surplus treasury cash to be invested;

(c) determine the type of investment to be made;

(d) prepare the claim to pay for the investment; and

(e) keep an account of the total of each investment fund and of all the investments belonging to the fund and a record of the participation of each treasury fund account in each investment fund.

(6) The board may:

(a) execute deeds of conveyance transferring real property obtained through investments. Prior to the transfer of real property directly purchased and held as an investment, the board shall obtain an appraisal by a qualified appraiser.

HeinOnline -- 1999 vol. II 1874 1999

(h) direct the withdrawal of funds deposited by or for the state treasurer pursuant to 17-6-101 and 17-6-105;

(c) direct the sale of securities in the program at their full and true value when found necessary to raise money for payments due from the treasury funds for which the securities have been purchased;

(d) expend funds needed to cover costs of necessary repairs to property owned by the board as an investment. Repairs that cost in excess of $2,500 must be hid, and the bid must be awarded in compliance with existing state law and regulations. Emergency repairs may be made by the board without bid if approved by the state architect.

(7) The cost of administering and accounting for each investment fund must be deducted from the income from each fund."

Section 4. Section 19-2-302, MCA, is amended to read:

"19-2-302. Applicability. ~~This~~ *Except as otherwise provided in this title, this* chapter applies to the provisions and administration of the retirement systems *and plans within the systems* under chapters 3, 5 through 9, and 13 of this title."

Section 5. Section 19-2-303, MCA, is amended to read:

"19-2-303. Definitions. Unless the context requires otherwise, for each of the retirement systems subject to this chapter, the following definitions apply:

(1) "Account balance" means all contributions, income, and other assets in a retirement account that have, pursuant to [section 52], vested to a member of the defined contribution plan.

~~(1)~~*(2)* "Accumulated contributions" means the sum of all the regular and any additional contributions made by a member in a ~~system~~ *defined benefit plan*, together with the regular interest on the contributions.

~~(2)~~*(3)* "Active member" means a member who is a paid employee of an employer, is making the required contributions, and is properly reported to the division for the most current reporting period.

~~(3)~~*(4)* "Actuarial cost" means the amount determined by the hoard in a uniform and nondiscriminatory manner to represent the present value of the benefits to be derived from the additional service to be credited based on the most recent actuarial valuation for the system and the age, years until retirement, and current salary of the member.

~~(4)~~*(5)* "Actuarial equivalent" means a benefit of equal value when computed upon tbe basis of tbe 1971 Group Annuity Mortality Table, with ages set back 4 years and an interest rate of 8% compounded annually.

~~(5)~~*(6)* "Actuarial liabilities" means the excess of the present value of all benefits payable under a *defined benefit* retirement ~~system~~ *plan* over the present value of future normal costs in that retirement ~~system~~ *plan*.

~~(6)~~*(7)* "Actuary" means the actuary retained by the hoard in accordance with 19-2-405.

~~(7)~~*(8)* "Additional contributions" means contributions made hy a memher *of a defined benefit plan* to purchase various types of optional service credit as allowed by the applicable retirement ~~system~~ *plan*.

HeinOnline -- 1999 vol. II 1875 1999

~~(8)~~*(9)* "Annuity" means:

(a) in the case of a defined benefit plan, equal and fixed payments for life that are the actuarial equivalent of a lump-sum payment under a retirement ~~system~~ *plan* and as such are not benefits paid by a retirement ~~system~~ *plan* and are not subject to periodic or one-time increases; *or*

(b) in the case of the defined contribution plan, a payment of a fixed sum of money at regular intervals.

~~(9)~~*(10)* "Benefit" means:

(a) the service or disability retirement or survivorship benefit payment provided by a *defined benefit* retirement ~~system~~ *plan; or*

(b) a payment or distribution under the defined contribution retirement plan for the exclusive benefit of a plan member or the member's beneficiary or an annuity purchased under [section 57].

~~(10)~~*(11)* "Board" means the public employees' retirement board provided for in 2-15-1009.

~~(11)~~*(12)* "Contingent annuitant" means a person designated to receive a continuing monthly benefit after the death of a retired member.

(13) "Covered employment" means employment in a covered position.

(14) "Covered position" means a position in which the employee must be a member of the retirement system except as otherwise provided by law.

~~(12)~~*(15)* "Credited service" or "service credit" means the periods of time for which the required contributions have been made to a retirement ~~system~~ *plan* and that are used to calculate service or disability retirement or survivorship benefits under a *defined benefit* retirement ~~system~~ *plan.*

(16) "Defined benefit retirement plan" or "defined benefit plan" means a plan within the retirement systems provided for pursuant to 19-2-302 that is not the defined contribution retirement plan.

(17) "Defined contribution retirement plan" or "defined contribution plan" means the plan within the public employees' retirement system established in 19-3-103 that is provided for in [sections 42 through 63] and that is not a defined benefit plan.

~~(13)~~*(18)* "Department" means the department of administration.

~~(14)~~*(19)* "Designated beneficiary" means the person designated by a member or payment recipient to receive any survivorship benefits ~~or~~, lump-sum payments, *or benefit from a retirement account* upon the death of the member or payment recipient, including annuities derived from the benefits or payments.

~~(13)~~*(20)* "Disability" means a total inability of the member to perform the member's duties by reason of physical or mental incapacity. The disability must be incurred while the member is an active member and must be one of permanent duration or of extended and uncertain duration, as determined by the board on the basis of competent medical opinion.

~~(13)~~*(21)* "Division" means the public employees' retirement division of the department ~~of administration~~.

~~(17)~~*(22)* "Employee" means a person who is employed by an employer in any capacity and whose salary is paid by the employer.

HeinOnline -- 1999 vol. II 1876 1999

~~(18)~~*(23)* "Employer" means a governmental entity participating in a retirement system enumerated in 19-2-302 on behalf of its eligible employees.

~~(19)~~*(24)* "Essential elements of the position" means fundamental job duties. An element may be considered essential because of but not limited to the following factors:

(a) the position exists to perform the element;

(b) there are a limited number of employees to perform the element; or

(c) the element is highly specialized.

~~(20)~~*(25)* "Fiscal year" means any year commencing with July 1 and ending the following June 30.

~~(21)~~*(26)* "Inactive member" means a member who is not an active or retired member.

~~(22)~~*(27)* "Member" means ~~any~~ *either:*

(a) a person with accumulated contributions and service credited with a *defined benefit* retirement ~~system~~ *plan* or receiving a retirement benefit on account of the person's previous service credited in a retirement system*; or*

(b) a person with a retirement account in the defined contribution plan.

~~(23)~~*(28)* "Membership service" or "years of service" means the periods of service that are used to determine eligibility for retirement or other benefits.

~~(24)~~*(29)* "Normal cost" or "future normal cost" means an amount calculated under an actuarial cost method required to fund accruing benefits for members of a *defined benefit* retirement ~~system~~ *plan* during any year in the future. Normal cost does not include any portion of the supplemental costs of a retirement ~~system~~ *plan.*

~~(23)~~*(30)* "Pension" means benefit payments for life derived from contributions to a ~~system~~ *retirement plan* made from state- or employer-controlled funds.

~~(20)~~*(31)* "Pension trust fund" means a fund established to hold the contributions, income, and assets of a retirement system *or plan* in public trust.

~~(27)~~*(32) "Plan choice rate" means the amount of the employer contribution as a percentage of payroll covered by the defined contribution plan members that is allocated to the public employees' retirement system's defined benefit plan pursuant to [section 53] and that is adjusted by the board pursuant to [section 54] to actuarially fund the unfunded liabilities and the normal cost rate changes in a defined benefit plan resulting from member selection of the defined contribution plan.*

(33) "Regular contributions" means contributions required from members under a retirement ~~system~~ *plan.*

~~(20)~~*(34)* "Regular interest" means interest at the rate set from time to time by the board.

~~(20)~~*(35)* "Retirement" or "retired" means the status of a member who has terminated from service and has received and accepted a retirement benefit from a retirement ~~system~~ *plan.*

(36) "Retirement account" means an individual account within the defined contribution retirement plan for the deposit of employer and employee

HeinOnline -- 1999 vol. II 1877 1999

contributions and other assets for the exclusive benefit of a member of the defined contribution plan or the member's beneficiary.

~~(30)~~*(37)* "Retirement benefit" means:

(a) in the case of a defined benefit plan, the periodic benefit payable as a result of service, early, or disability retirement under *a defined benefit plan of* a retirement system. ~~An~~ *With respect to a defined benefit plan, the term does not mean an* annuity ~~is not a retirement benefit~~.

(b) in the case of the defined contribution plan, a benefit as defined in subsection (10)(b).

~~(31)~~*(38)* "Retirement system" or "system" means one of the public employee retirement systems enumerated in 19-2-302.

~~(32)~~*(39)* "Service" means employment of an employee in a position covered by a retirement system.

~~(33)~~*(40)* "Statutory beneficiary" means the surviving spouse or dependent child or children of a member of the highway patrol officers', municipal police officers', or firefighters' unified retirement system who are statutorily designated to receive benefits upon the death of the member.

~~(34)~~*(41)* "Supplemental cost" means an element of the total actuarial cost of a *defined benefit* retirement ~~system~~ *plan* arising from benefits payable for service performed prior to the inception of the retirement ~~system~~ *plan* or prior to the date of contribution rate increases, changes in actuarial assumptions, actuarial losses, or failure to fund or otherwise recognize normal cost accruals or interest on supplemental costs. These costs are included in the unfunded actuarial liabilities of the retirement ~~system~~ *plan*.

~~(30)~~*(42)* "Survivorship benefit" means payments for life to the statutory or designated beneficiary of a deceased member who died while in service under a *defined benefit* retirement ~~system~~ *plan*.

~~(36)~~*(43)* "Termination of employment" or "termination of service" means that the member has severed the employment relationship with the employer and has been paid all compensation due upon termination of employment, including but not limited to payment of accrued annual leave credits, as provided in 2-18-617, and payment of accrued sick leave credits, as provided in 2-18-618. For purposes of this subsection, compensation as a result of legal action, court order, appeal, or settlement to which the board was not party is not a payment due upon termination.

~~(37)~~*(44)* "Unfunded actuarial liabilities" or "unfunded liabilities" means the excess of a *defined benefit* retirement ~~system's~~ *plan's* actuarial liabilities at any given point in time over the value of its cash and investments on that same date.

~~(33)~~*(45)* "Vested member" or "vested" means:

(a) with respect to a defined benefit plan, a member or the status of a member who has attained the minimum membership service requirements to be eligible for retirement benefits under ~~a~~ *the* retirement ~~system~~ *plan; or*.

(b) with respect to the defined contribution plan, a member or the status of a member who, pursuant to [section 52], is entitled to employer contributions and income on those contributions in the member's retirement account.

HeinOnline -- 1999 vol. II 1878 1999

~~(39)~~*(46)* "Written application" means a written instrument duly executed and filed with the board and containing all information required by the board, including ~~such~~ proofs of age ~~as~~ *that* the board considers necessary."

Section 6. Section 19-2-401, MCA, is amended to read:

"19-2-401. Location of board — jurisdiction and venue for judicial review — quorum — officers and employees. (1) The board shall maintain its office in the city of Helena. Jurisdiction and venue for judicial review of final administrative decisions of the board are in the first judicial district, Lewis and Clark County, unless otherwise stipulated by the parties.

(2) A quorum of the board is ~~three~~ *four* members.

(3) The board shall elect one of its members presiding officer. The board may appoint a committee of one or more of its members to perform routine acts, such as retirement of members and fixing of retirement benefits, approval of death claims, and correction of records necessary in the administration of the systems in accordance with the provisions of chapters 3, 5 through 9, ~~12,~~ 13, and ~~15~~ *17* of this title and in accordance with the rules of the board. The attorney general is the legal counsel for the board."

Section 7. Section 19-2-403, MCA, is amended to read:

"19-2-403. Powers and duties of board. (1) The board shall administer the provisions of the chapters enumerated in 19-2-302.

(2) The board may establish rules that it considers proper for the administration and operation of the retirement systems and enforcement of the chapters under which each retirement system is established.

(3) The board shall establish uniform rules that are necessary to determine service credit for fractional years of service.

(4) The board shall determine who are employees within the meaning of each retirement system. The board is the sole authority for determining the conditions under which persons may become members of and receive benefits under the retirement systems.

(5) The board shall determine and may modify retirement benefits under the retirement systems.

(6) In matters of board discretion under the systems, the board shall treat all persons in similar circumstances in a uniform and nondiscriminatory manner.

(7) The board shall maintain records and accounts it determines necessary for the administration of the retirement systems.

(8) Upon the basis of the findings of the actuary pursuant to 19-2-405, the board shall adopt actuarial tables and rates of regular interest it determines appropriate for the administration of the retirement systems.

(9) The board shall review the sufficiency of benefits paid by the retirement system *or plan* and recommend to the legislature those changes in benefits *in a defined benefit plan or in contributions under the defined contribution plan* that may be necessary for ~~retired~~ members and their beneficiaries to maintain a stable standard of living.

(10) The board may implement third-party mailings under the provisions of 2-6-109. If third-party mailings are implemented, the board shall adopt rules governing means of implementation, including the specification of eligible third

HeinOnline -- 1999 vol. II 1879 1999

parties, appropriate materials, and applicable fees and procedures. Fees generated by third-party mailings must be deposited in an account in the state special revenue fund and must be appropriated to the board for the benefit of participants of retirement systems *or plans* administered by the board.

(11) The board shall perform other duties and may exercise the powers concerning the defined contribution plan for plan members as provided in [sections 42 through 63]."

Section 8. Section 19-2-405, MCA, is amended to read:

"**19-2-405. Employment of actuary — biennial investigation and valuation.** (1) The board shall retain a competent actuary who is an enrolled member of the American academy of actuaries and who is familiar with public systems of pensions. The actuary is the technical advisor of the board on matters regarding the operation of the retirement systems.

(2) The board shall require the actuary to make a biennial actuarial investigation into the suitability of the actuarial tables used by the retirement systems and an actuarial valuation of the assets and liabilities of ~~the~~ *each defined benefit plan that is a part of the* retirement systems.

(3) The normal cost contribution rate, which is funded by required employee contributions and a portion of the required employer contributions to ~~the~~ *each defined benefit* retirement ~~system~~ *plan*, must be calculated as ~~that~~ *the* level percentage of members' salaries that will actuarially fund benefits payable under a retirement ~~system~~ *plan* as those benefits accrue in the future.

(4) *(a)* The unfunded liability contribution rate, which is entirely funded by a portion of the required employer contributions to the retirement ~~system~~ *plan*, must be calculated as ~~that~~ *the* level percentage of *current and future defined benefit plan* members' salaries that will amortize the unfunded actuarial liabilities of the retirement ~~system~~ *plan* over a reasonable period of time, not to exceed 30 years, as determined by the board.

(b) In determining the amortization period under subsection (4)(a) for the public employees' retirement system's defined benefit plan, the actuary shall take into account the plan choice rate contributions to be made to the defined benefit plan pursuant to [section 53] and 19-21-203(5)(b).

(5) The board shall require the actuary to conduct a periodic actuarial investigation into the actuarial experience of the retirement systems *and plans*.

(6) The board may require the actuary to conduct any valuation necessary to administer the retirement systems and the plans subject to this chapter."

Section 9. Section 19-2-406, MCA, is amended to read:

"**19-2-406. Determination of disability by board — compliance with federal law — conversion to service retirement benefit — rules.** (1) The board shall determine whether a member has become disabled. In the discharge of its duty regarding determinations, the board, any member of the board, or any authorized representative of the board may order medical examinations, conduct hearings, administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records considered necessary as evidence in connection with a claim for disability retirement.

HeinOnline -- 1999 vol. II 1880 1999

(2) The board shall adopt rules requiring employers to identify and explain the essential elements of a member's position, any accommodations that were or can be made in compliance with the Americans With Disabilities Act of 1990 (42 U.S.C. 12101, et seq.), and the effectiveness of the accommodations.

(3) The board shall retain medical personnel to advise it in assessing the nature and extent of disabling conditions while reviewing claims for disability retirement.

(4) The disability retirement benefit paid to a member must be converted to a service retirement benefit, without recalculation of the monthly benefit amount, when the member has attained the minimum age required for normal service retirement. The board shall notify the member in writing as to the change in status.

(5) This section does not apply to members of the defined contribution plan."

Section 10. Section 19-2-407, MCA, is amended to read:

"**19-2-407. Report by division to governor.** As soon as practical after the close of each fiscal year, the division shall file with the governor a report of its work for that fiscal year. The report must include a statement as to the accumulated cash and securities in the pension trust funds as certified by the state treasurer and the board of investments. The report must ~~also~~ include the most recent unpublished report of the actuary of the actuarial valuation of the assets and liabilities of each system *or plan. The report must also provide information concerning the defined contribution plan, including a description of the plan, the number of members in the plan, plan contribution rates, the total amount of money invested by members, investment performance, administrative costs and fees, determinations on the plan choice rate made pursuant to [section 54], and other information required under applicable governmental accounting standards and as determined by the board.*"

Section 11. Section 19-2-408, MCA, is amended to read:

"**19-2-408. Administrative expenses.** (1) The legislature finds that proper administration of the pension trust funds benefits both employers and members and continues to benefit members after retirement.

(2) *(a)* The administrative expenses of the retirement systems administered by the board must be paid from the investment earnings on the pension trust fund of the public employees' retirement ~~system~~ *system's defined benefit plan,* except as *otherwise* provided in ~~subsection (3)~~ *this section.* ~~Before the fiscal yearend closing, the~~ *The* board shall compute the administrative expenses attributable to each retirement system *or plan* administered by the board ~~for the immediately preceding fiscal year~~ and transfer that amount from each retirement system's *or plan's* pension trust fund to the pension trust fund of the public employees' retirement ~~system.~~ *system's defined benefit plan in a manner that ensures that the public employees' retirement system's defined benefit plan trust fund is fully compensated for expenditures made on behalf of other systems or plans so that there is no actuarial impact on the fund.*

(b) The total administrative expenses of the board, including the administration of the volunteer firefighters' pension plan, may not exceed 1.5% of the total *defined benefit plan* retirement benefits paid.

(3) For purposes of calculating the percentage specified in subsection (2)(b), administrative expenses do not include:

HeinOnline -- 1999 vol. II 1881 1999

(a) expenditures to purchase intangible assets for plan administration;

(b) expenses of the defined contribution plan; or

(c) expenditures of funds allocated under [section 41(1)(b) or (1)(c)] to the education fund established in [section 41(1)(a)].

~~(3)~~*(4)* On January 1 of each year, each employer under the public employees' retirement system shall contribute on behalf of each member then in its service a membership fee of $1 in addition to other required contributions. The fees must be used for the purpose of defraying the administrative expense of chapters ~~2,~~ 3, 5 through 9, and 13 and this chapter.

~~(4)~~*(5)* The board may assess and the division may collect a fee from the department of fish, wildlife, and parks for the purpose of defraying the expenses of administering chapter 8 of this title.

(6) The administrative expenses of the defined contribution plan must be paid, as provided in [section 46], from assets of the defined contribution plan."

Section 12. Section 19-2-409, MCA, is amended to read:

"19-2-409. ~~Systems~~ *Plans* to be funded on actuarially sound basis — definition. As required by Article VIII, section 15, of the Montana constitution, each system must be funded on an actuarially sound basis. For purposes of this section, "actuarially sound basis" means that contributions to each ~~system~~ *retirement plan* must be sufficient to pay the full actuarial cost of the ~~system~~ *plan*. ~~The~~ *For a defined benefit plan, the* full actuarial cost includes both the normal cost of providing benefits as they accrue in the future and the cost of amortizing unfunded liabilities over a scheduled period of no more than 30 years. *For the defined contribution plan, the full actuarial cost is the contribution defined by law that is payable to an account on behalf of the member."*

Section 13. Section 19-2-501, MCA, is amended to read:

"19-2-501. Pension trust funds established. A pension trust fund is established and maintained for each retirement *plan within a* system subject to this chapter as enumerated in 19-2-302."

Section 14. Section 19-2-503, MCA, is amended to read:

"19-2-503. Management of pension trust funds. The pension trust funds must be managed as follows:

(1) The board is the trustee of all money collected for the retirement systems and has exclusive control of the administration of the pension trust funds except as otherwise provided by law.

(2) The department shall deposit in the state treasury all amounts received by it as provided in this chapter.

(3) ~~The~~ *Except as provided in [sections 42 through 63], the* state treasurer is custodian of the pension trust funds, subject to the exclusive control of the board for administration and the board of investments for the investment of the funds."

Section 15. Section 19-2-504, MCA, is amended to read:

"19-2-504. Investment of pension trust funds. (1) ~~The~~ *Except as provided in [sections 42 through 63], the* pension trust funds of the retirement systems must be invested by the state board of investments as part of the unified investment program described in Title 17, chapter 6, part 2.

HeinOnline -- 1999 vol. II 1882 1999

(2) All income earned on any assets constituting a part of the pension trust funds must be paid into tbe appropriate pension trust funds as received.

(3) The pension trust funds may be commingled for investment purposes, but separate accounts must be maintained for each system."

Section 16. Section 19-2-505, MCA, is amended to read:

"19-2-505. Restrictions on use of funds. (1) Except as provided in this section, a member or an employee of *the board,* tbe department, or the board of investments may not:

(a) have any interest, direct or indirect, in the making of any investment or in the gains or profits accruing from the pension trust funds;

(b) directly or indirectly, for the member or employee or as an agent or partner of others, borrow from the pension trust funds or deposits;

(c) in any manner use the pension trust funds except to make current and necessary payments that are authorized by the division; or

(d) become an endorser or surety as to or in any manner an obligor for investments for the pension trust funds.

(2) The assets of the retirement systems, *including the assets of retirement accounts,* may not be used for or diverted to any purpose other than for the exclusive benefit of the members and their beneficiaries and for paying the reasonable administrative expenses of tbe retirement systems administered by the board.

(3) This section does not prevent the administration of an investment alternative within the defined contribution plan to the same extent that all other investment alternatives within the defined eontribution plan are managed."

Section 17. Section 19-2-603, MCA, is amended to read:

"19-2-603. Reinstatement after withdrawal of contributions. (1) Except as otherwise provided in *[sections 42 through 63] and* this section, ~~any~~ *a* person who again becomes a member *of a defined benefit plan* subsequent to the refund of the person's accumulated contributions after a termination of previous membership is considered a new member without credit for any previous membership service. The person may reinstate that membership service by redepositing the sum of the accumulated contributions that were refunded to tbe person at the last termination of the person's membership plus the interest that would have been credited to the person's accumulated contributions bad the refund not taken place. If tbe person makes this redeposit, the service credits previously canceled must be reinstated.

(2) Regardless of whether this redeposit is made, tbe documents held by tbe retirement system as executed by the member prior to termination of membership must be held by the system for the same purposes as prior to termination, and beneficiaries nominated in tbe documents continue unchanged until cbanged as provided in this section."

Section 18. Section 19-2-902, MCA, is amended to read:

"19-2-902. Frequeney of benefit payments. A retirement benefit or survivorship benefit granted under a retirement system subject to this chapter, *other than a benefit under the defined eontribution plan,* must be payable in monthly installments, except tbat the board may elect to convert payments of at

HeinOnline -- 1999 vol. II 1883 1999

least $20 ~~per~~ *a* year to a single sum of actuarial equivalent value. A smaller pro rata amount may be paid for part of a month when the retirement benefit ends before the last day of the month."

Section 19. Section 19-2-906, MCA, is amended to read:

"19-2-906. Limitations on disability or survivorship benefits. If the board determines that ~~a member's~~ *the* disability or death *of a member of a defined benefit plan* is proximately caused hy the gross negligence, willful misconduct, or violation of the law by the member, the board may revoke, suspend, or refuse to grant benefits except an annuity that is the actuarial equivalent of the memher's accumulated contributions with regular interest to the day the benefit commences."

Section 20. Section 19-2-907, MCA, is amended to read:

"19-2-907. Alternate payees — family law orders — *rulemaking*. (1) A participant in a retirement system may have the participant's rights modified or recognized by a family law order.

(2) For purposes of this section:

(a) "family law order" means a judgment, decree, or order of a court of competent jurisdiction under Title 40 concerning child support, parental support, spousal maintenance, or marital property rights that includes a transfer of all or a portion of a participant's payment rights in a retirement system to an alternate payee in compliance with this section; and

(b) "participant" means a member or an actual or potential beneficiary, survivor, or contingent annuitant of a retirement system designated pursuant to Title 19, chapter 3, 5, 6, 7, 8, 9, 13, or 17.

(3) A family law order must identify an alternate payee by full name, current address, and social security number. An alternate payee's rights and interests granted in compliance with this section are not subject to assignment, execution, garnishment, attachment, or other process. An alternate payee's rights or interests may be modified only by a family law order amending the family law order that established the right or interest.

(4) A family law order may not require:

(a) a type or form of benefit, option, or payment not available to the affected participant under the appropriate retirement system *or plan*; or

(b) an amount or duration of payment greater than that available to a participant under the appropriate retirement system.

(5) ~~A~~ *In a defined benefit plan, a* family law order may only provide for payment to an alternate payee as follows:

(a) Service retirement benefit payments or withdrawals of member contributions may he apportioned by directing payment of a percentage of the amount payable or payment of a fixed amount of no more than the amount payable to the participant.

(b) The maximum amount of disability or survivorship henefits that may be apportioned to alternate payees is the monthly benefit amount that would have been payable on the date of termination of service if the member had retired without disability or death. Conversion of a disability retirement to a service retirement pursuant to 19-2-406(4), 19-3-1015(2), 19-6-612(2), or 19-8-712(2)

HeinOnline -- 1999 vol. II 1884 1999

does not increase the maximum monthly amount that may be apportioned to an alternate payee.

(c) Retirement benefit adjustments for which a participant is eligible after retirement may be apportioned only if existing benefit payments are apportioned. The adjustments must be apportioned in the same ratio as existing benefit payments.

(d) Payments must be limited to the life of the appropriate participant. The duration of payments to an alternate payee may be further limited only to a specified maximum time, the life of the alternate payee, or the life of a specified participant. Payments to an alternate payee may be limited to a specific amount ~~per~~ *each* month if the number of payments is specified. The alternate payee's rights and interests survive the alternate payee's death and may be transferred by inheritance.

(e) The participant may be required to choose a specified form of benefit payment or designate a beneficiary or contingent annuitant if the retirement system *or plan* allows for that option.

(6) The board may assess a participant or an alternate payee for all costs of reviewing and administering a family law order, including reasonable attorney fees. The board may adopt rules to implement this section.

(7) Each family law order establishing a final obligation concerning payments by the retirement system must contain a statement that the order is subject to review and approval by the board.

(8) The board shall adopt rules to provide for the application of a family law order within the defined contribution plan."

Section 21. Section 19-2-908, MCA, is amended to read:

"**19-2-908. Time of commencement of benefit — *rulemaking*.** (1) (a) The board shall grant a benefit to any member, or the member's statutory or designated beneficiary, who has fulfilled all eligibility requirements, terminated covered service, and filed the appropriate written application.

(b) A member may apply for retirement benefits before terminating covered service, but commencement of the benefits must be as provided in this section.

(2) (a) Except as provided in subsection (2)(b), the service retirement benefit may commence on the first day of the month following the eligible member's last day of membership service or, if requested by the inactive member in writing, on the first day of a later month following receipt of the written application.

(b) If an elected official's term of office expires before the 15th day of the month, the official may elect that service retirement benefits *from a defined benefit plan* commence on the first day of the month following the official's last full month in office. An official electing this option may not earn membership service, service credit, or compensation for purposes of calculating final average salary under the retirement system in the partial month ending the official's term, and compensation earned in that partial month is not subject to employer or employee contributions.

(3) The disability retirement benefit payable to a member must commence on the day following the member's termination from service.

(4) Monthly survivorship benefits *from a defined benefit plan* must commence on the day following the death of the member.

HeinOnline -- 1999 vol. II 1885 1999

(5) Estimated and finalized benefit payments must be issued as provided in rules adopted by the board.

(6) With respect to the defined contribution plan, the board shall adopt rules regarding the commencement of benefits that are consistent with applicable provisions of the Internal Revenue Code and its implementing regulations."

Section 22. Section 19-2-909, MCA, is amended to read:

"19-2-909. Execution or withholding for support obligation — *rulemaking.* (1) Benefits in the retirement systems *or plans* provided for in chapters 3, 5 through 9, 13, and 17 are subject to execution and income withholding for the payment of a participant's support obligation.

(2) For purposes of this section, *the following definitions apply*:

(a) "Execution" means a warrant for distraint issued or a writ of execution obtained by the department of public health and human services when providing support enforcement services under Title IV-D of the Social Security Act.

(b) "Income withholding" means an income-withholding order issued under the provisions of Title 40, chapter 5, part 3 or 4, or an income-withholding order issued in another state as provided in 40-5-157.

(c) "Participant" means a member or an actual or potential beneficiary, survivor, or contingent annuitant of a retirement system *or plan* designated pursuant to Title 19, chapter 3, 5, 6, 7, 8, 9, 13, or 17.

(d) "Support obligation" has the meaning provided in 40-5-403 for a support order.

(3) The execution or income-withholding order may not require:

(a) a type or form of benefit, option, or payment not available to the affected participant under the appropriate retirement system *or plan*; or

(b) an amount or duration of payment greater than that available to a participant under the appropriate retirement system *or plan*.

(4) ~~The~~ *An* execution or income-withholding order *applied to a defined benefit retirement plan* may ~~only~~ provide for payment *only* as follows:

(a) Service retirement benefit payments or withdrawals of member contributions may be apportioned by directing payment of a percentage of the amount payable or payment of a fixed amount of no more than the amount payable to the participant.

(b) The maximum amount of disability or survivorship benefits that may be apportioned and paid under this section is the monthly benefit amount that would have been payable on the date of termination of service if the member had retired without disability or death.

(c) Retirement benefit adjustments for which a participant is eligible after retirement may be apportioned only if existing benefit payments are apportioned. The adjustments must be apportioned in the same ratio as existing benefit payments.

(d) Payments must be limited to the life of the appropriate participant. The duration of payments under this section may be further limited only to a specified maximum time or the life of a specified participant. Payments may also be limited to a specific amount ~~per~~ *each* month if the number of payments is specified.

HeinOnline -- 1999 vol. II 1886 1999

(5) The board shall adopt rules to provide for the application of an execution or income-withholding order within the defined contribution plan."

Section 23. Section 19-2-1001, MCA, is amended to read:

"19-2-1001. Maximum benefit *and contribution* limitation. A monthly benefit paid under *a defined benefit plan of* the retirement systems *and the annual additions to a retirement account within the defined contribution plan* may not exceed the annual limits on benefits *and contributions* as specified in section 415 of the Internal Revenue Code of 1986 and adjusted annually by the commissioner of internal revenue."

Section 24. Section 19-2-1002, MCA, is amended to read:

"19-2-1002. Vesting of retirement benefits upon termination of ~~system~~ *plan*. Upon termination of a retirement ~~system~~ *plan*, termination of employment of a substantial number of members that would constitute a partial termination of the retirement ~~system~~ *plan*, or complete discontinuance of contributions to that retirement ~~system~~ *plan*, the retirement benefit accrued to each member directly affected by the occurrence becomes fully vested and nonforfeitable to the extent funded."

Section 25. Section 19-2-1003, MCA, is amended to read:

"19-2-1003. Transfer of dormant, nonvested member-accumulated contributions. The board may, in its discretion, transfer the accumulated contributions of a nonvested member *of a defined benefit plan* to the pension trust fund of the ~~system~~ *plan* in which the member is participating if the member has not participated in the plan as an employee for a period of 10 years. Rights of the member may not be jeopardized by the transfer, and the accumulated contributions must be transferred to the member's name upon subsequent return to service or subsequent application for refund."

Section 26. Section 19-2-1005, MCA, is amended to read:

"19-2-1005. Compensation limit. A retirement ~~system~~ *plan* subject to this chapter may not take into account compensation of a member in excess of the amount permitted in Internal Revenue Code section 401(a)(17)."

Section 27. Section 19-2-1006, MCA, is amended to read:

"19-2-1006. Use of forfeitures. A retirement ~~system~~ *plan* subject to this chapter may not apply forfeitures of benefits to increase the benefits of any member in a manner not permitted in Internal Revenue Code section 401(a)(8)."

Section 28. Section 19-2-1007, MCA, is amended to read:

"19-2-1007. Required distributions. The benefits payable by the retirement ~~systems~~ *plans* subject to this chapter are subject to the requirements of section 401(a)(9) of the Internal Revenue Code as follows:

(1) Benefits must begin by April 1 of the calendar year following the plan year in which the member reaches 70 1/2 years of age or retires, whichever is later.

(2) The member's entire interest in ~~the~~ *a* retirement ~~system~~ *plan* must be distributed over the life of the member or the lives of the member and a designated beneficiary~~,~~ *or* over a period not extending beyond the life expectancy of the member or the life expectancy of the member and *a* designated beneficiary.

HeinOnline -- 1999 vol. II 1887 1999

(3) When a member dies after distribution of benefits has begun, the remaining portion of the member's interest must be distributed at least as rapidly as under the method of distribution prior to the member's death.

(4) When a member dies before distribution of benefits has begun, the entire interest of the member must he distributed within 5 years of the member's death. The 5-year payment rule does not apply to any portion of the member's interest that is payable to a designated beneficiary over the life or life expectancy of the beneficiary and that begins within 1 year after the date of the member's death. The 5-year payment rule does not apply to any portion of the member's interest that is payable to a surviving spouse, *that is* payable over tbe life or life expectancy of the spouse, and that begins no later than the date the member would have reached 70 1/2 years of age.

(5) The benefits payable must meet the minimum distribution incidental benefit requirements of section 401(a)(9)(G) of the Internal Revenue Code."

Section 29. Section 19-3-103, MCA, is amended to read:

"19-3-103. Retirement system created — *system to consist of two plans.* *(1)* A *defined benefit* retirement ~~system~~ *plan* is created and established to become effective July 1, 1945~~, and to be known as the public employees' retirement system~~.

(2) A defined contribution plan is established as provided in [sections 42 through 63].

(3) The *public employees' retirement* system *consists of the defined benefit plan and the defined contribution plan. Each plan within the system* is governed by the *applicable* provisions of chapter 2 and this chapter."

Section 30. Section 19-3-108, MCA, is amended to read:

"19-3-108. Definitions. Unless the context requires otherwise, as used in this chapter, the following definitions apply:

(1) "Compensation" means remuneration paid out of funds controlled by an employer. Compensation does not include the payments or contributions made in lieu of wages for an individual subject to 19-3-403(4)(a).

(2) "Contracting employer" means any political suhdivision or governmental entity that has contracted to come into tbe system under this chapter.

(3) *"Defined benefit plan" means the plan within the public employees' retirement system established in 19-3-103 that is not the defined contribution plan.*

(4) "Employer" means the state of Montana, its university system or any of the colleges, schools, components, or units of the university system for the purposes of this chapter, or any contracting employer.

~~(4)~~*(5)* "Employer contributions" means payments to ~~the~~ *a* pension trust fund pursuant to 19-3-316 from appropriations of the state of Montana and from contracting employers.

~~(5)~~*(6)* "Final average salary", except as provided in 19-3-520, means a member's highest average monthly compensation during any 36 consecutive months of membership service. Lump-sum payments for severance pay, sick leave, and annual leave paid to the member upon termination of employment may be used in the calculation of a retirement benefit only to the extent that they are used to replace, on a month-for-month basis, tbe regular compensation for a

HeinOnline -- 1999 vol. II 1888 1999

month or months included in the calculation of the final average salary. A lump-sum payment may not be added to a single month's compensation.

(7) "System" or "retirement system" means the public employees' retirement system established in 19-3-103."

Section 31. Section 19-3-201, MCA, is amended to read:

"19-3-201. Contracts with political subdivisions. (1) Any municipal corporation, county, or public agency in the state may become a contracting employer and make all or specified groups of its employees members of the retirement system by a contract entered into between the board and the legislative body of the contracting employer. The contract may include any provisions that are consistent with chapter 2 and this chapter and necessary in the administration of the retirement system as it affects the contracting employer and its employees.

(2) The approval of the contract is subject to the following provisions, in addition to the other provisions of this chapter:

(a) The legislative body of the contracting employer shall adopt a resolution giving notice of intention to approve the contract and containing a summary of the major provisions of the retirement system. The contract may not be approved unless the employees proposed to be included in the retirement system adopt the proposal by a majority affirmative vote in a secret ballot. The ballot at the election must include the summary of the retirement system as set forth in the resolution. The election must be conducted as prescribed by the legislative body of the contracting employer. Approval of the contract must be hy ordinance adopted hy the affirmative vote of two-thirds of the members of the legislative body, not less than 20 days after the adoption of the resolution or by an ordinance adopted by a majority vote of the electorate of the contracting employer voting on the contract.

(b) The contract must specify that all employees of the contracting employer or groups of employees as agreed to between the board and the contracting employer ~~must~~ *shall* become members. The groups of employees to be included must be by departments, duties, or otber similar classifications and not hy individual employees. The board may disapprove any classification into groups if, in its opinion, the classification affects adversely the interest of the retirement system. Membership in the retirement system is compulsory for all employees included under the contract and who are hired after the effective date of the contract. *An employee's membership in either the defined benefit plan or the defined contribution plan is determined on an individual basis as provided in this chapter.*

(c) The contract may be amended in the manner prescribed in this section for the original approval of contracts. Groups of excluded employees may be suhsequently included by amendment.

(3) The termination of the contract is subject to the following provisions, in addition to the other provisions of this chapter:

(a) The legislative body of a contracting employer shall adopt a resolution giving notice to its employees that it intends to terminate retirement *system* coverage.

HeinOnline -- 1999 vol. II 1889 1999

(b) All employees covered under the retirement system ~~shall~~ *must* receive notice of the termination resolution and be permitted to vote for or against the resolution by secret ballot.

(c) If a majority of covered employees votes for termination, the legislative body, not less than 20 days after the approval of the resolution by the employees, may adopt by a ~~2/3~~ *two-thirds* majority a resolution terminating coverage under the system effective the last day of that month and forward the resolution and a certified copy of the election results to the board.

(d) Upon receipt of the termination resolution, the board may request an actuarial valuation of the liabilities of the terminating agency to the retirement system, and the board may withhold approval of the termination of contract until satisfactory arrangements are made to provide funding for any excess accrued liabilities not previously funded by the terminating agency."

Section 32. Section 19-3-203, MCA, is amended to read:

"19-3-203. Conversion of local or state retirement plan. (1) If the legislative body of any city, county, or public agency having an existing retirement, pension, or annuity fund or system, referred to as the local system, desires to make the members of the local system members of the public employees' retirement system, it may enter into a contract for that purpose with the board in the manner provided in 19-3-201. However, the employees voting, as provided in 19-3-201(2)(a), ~~shall~~ *must* be limited to active members of the local system, and approval ~~shall require~~ *requires* an affirmative vote of two-thirds of the employees.

(2) ~~All~~ *Subject to the applicable provisions of this chapter,* active members of the local system shall become members of *either the defined benefit plan or the defined contribution plan of* the retirement system and ~~shall~~ *are* no longer ~~be~~ members of the local system. The pensions being paid to pensioners or annuitants of the local system on the effective date of the contract must be continued and paid at their existing rates by the public employees' retirement system. The liability for the pensions must be computed by the actuary and charged to the contracting employer. All cash and securities held by the local system must be transferred to the retirement system as of the effective date of the contract and credited to the employer. The value of the securities must be determined by the board.

(3) The trustees or other administrative head of the local system as of the effective date of the contract shall certify the proportion, if any, of the funds of the system that represents the accumulated contributions of the active members and the relative shares of the members as of that date. The shares must be charged to the employer and credited as accumulated contributions of the members in the public employees' retirement system and administered as if the contributions had been made during membership in the retirement system. Any excess of employer credits over charges under this section must be offset, with regular interest, against future required employer contributions. Any excess of employer charges over credits under this section must be payable by the contracting employer, with regular interest, on a monthly basis as specified in the contract."

Section 33. Section 19-3-315, MCA, is amended to read:

"19-3-315. Member's contribution to be deducted. (1) ~~On and after July 1, 1997, the regular contribution of each member is 6.8% of the member's~~

~~compensation.~~ Each member's contribution ~~increases to~~ *is* 6.9% ~~beginning July 1, 1999~~ *of the member's compensation.*

(2) Payment of salaries or wages less the contribution is full and complete discharge and acquittance of all claims and demands for the service rendered by members during the period covered by the payment, except their claims to the benefits to which they may be entitled under the provisions of this chapter.

(3) Each employer, pursuant to section 414(h)(2) of the federal Internal Revenue Code of 1954, as amended and applicable on July 1, 1985, shall pick up and pay the contributions that would be payable by the member under subsection (1) for service rendered after June 30, 1985.

(4) *(a)* The member's contributions picked up by the employer must be designated for all purposes of the retirement system as the member's contributions, except for the determination of a tax upon a distribution from the retirement system. ~~These~~

(b) In the case of a member of the defined benefit plan, these contributions must become part of the member's accumulated contributions but must be accounted for separately from those previously accumulated.

(c) In the case of a member of the defined contribution plan, these contributions must be allocated as provided in [section 53].

(5) The member's contributions picked up by the employer must be payable from the same source as is used to pay compensation to the member and must be included in the member's wages, as defined in 19-1-102, and compensation. The employer shall deduct from the member's compensation an amount equal to the amount of the member's contributions picked up by the employer and remit the total of the contributions to the board."

Section 34. Section 19-3-316, MCA, is amended to read:

"19-3-316. Employer contribution rates. (1) Each employer shall contribute to ~~the cost of benefits under~~ the system. Except as provided in subsection (2), the amount of the employer contribution as a percentage of the employer's covered payroll is ~~6.8% beginning July 1, 1997, and increases to~~ 6.9% ~~beginning July 1, 1999~~. *Of employer contributions made under this subsection for both defined benefit plan and defined contribution plan members, a portion must be allocated for educational programs as provided in [section 41]. Employer contributions for members under the defined contribution plan must be allocated as provided in [section 53].*

(2) Local government and school district employer contributions must be the total employer contribution rate provided in subsection (1) minus the state contribution rate applied to their monthly covered payrolls under 19-3-319. The payment is statutorily appropriated as provided in 17-7-502."

Section 35. Section 19-3-401, MCA, is amended to read:

"19-3-401. Membership — inactive vested members — inactive nonvested members. (1) Except as otherwise provided in this chapter, all employees shall become members *of the defined benefit plan* on the first day of service. Each employer shall file with the board information affecting their employees' status as members ~~of the retirement system~~ as the board may require. *An employee may become a member of the defined contribution plan only as provided in [sections 42 through 63].*

HeinOnline -- 1999 vol. II 1891 1999

(2) A member *of the defined benefit plan* with at least 5 years of membership service who terminates service and does not take a refund of the member's accumulated contributions is an inactive vested member and retains the right to purchase service and to receive a service retirement benefit subject to the provisions of this chapter.

(3) A member *of the defined benefit plan* with less than 5 years of membership service who terminates service and leaves the member's accumulated contributions in the pension trust fund is an inactive nonvested member and is not eligible for any benefits from the retirement ~~system~~ *plan*. An inactive nonvested member is eligible only for a refund of the member's accumulated contributions.

(4) Every employee who reenters service shall become a member *of either the defined benefit plan or the defined contribution plan subject to the provisions of this chapter* unless the employee has had an original election of exemption from membership and the employee's service was not interrupted by a break of more than 1 month. A seasonal employee who has had an original election of exemption from membership is not subject to the requirement regarding the break in service while continuing in the employee's original employment and employed on a seasonal basis, but upon termination of employment to accept new employment or absence of more than 1 month in returning to original employment in any ensuing season, the seasonal employee shall become a member of the retirement system upon reentry.

(5) Time during which an employee of a school district is absent from service during official vacation is counted as service in determining eligibility for membership under this chapter."

Section 36. Section 19-21-102, MCA, is amended to read:

"**19-21-102. ~~Definition of teachers' retirement system~~ *Definitions*.** ~~In this chapter, "teachers"~~ *Unless the context requires otherwise, as used in this chapter, the following definitions apply:*

(1) "Program" means the optional retirement program established pursuant to this chapter.

(2) "Public employees' retirement system" means the retirement system established in 19-3-103.

(3) "Teachers' retirement system" *or "system"* means the teachers' retirement system provided for in Title 19, chapter 20."

Section 37. Section 19-21-201, MCA, is amended to read:

"**19-21-201. Participation in program.** (1) Except as provided in subsection (2), academic and professional administrative personnel with individual contracts under the authority of the board of regents are eligible for and may elect to participate in the ~~optional retirement~~ program instead of the teachers' retirement system. This election must be exercised:

(a) before January 1, 1988, for an eligible person hired before July 1, 1987;

(b) within 90 days after entry into service or before January 1, 1988, whichever is later, for a person hired in an eligible position on or after July 1, 1987; and

(c) within 30 days after receiving written notice of eligibility or before January 1, 1988, whichever is later, for an employee who becomes eligible to

HeinOnline -- 1999 vol. II 1892 1999

participate in the ~~optional retirement~~ program by reason of appointment, promotion, transfer, or reclassification to an eligible position.

(2) (a) An eligible person hired on or after July 1, 1993, shall become a member of the ~~optional retirement plan~~ *program* unless the person is, on the date hired, an active, inactive, or retired member of a public retirement system created in Title 19, chapter 3 or 20.

(b) A *An eligible* person hired who is a member of a public retirement system created in Title 19, chapter 3 or 20, shall elect to:

(i) remain with the retirement system of which the person is a member on the date hired; or

(ii) become a member of the ~~optional retirement plan~~ *program*.

(c) A person eligible to make an election under this subsection (2) shall exercise the election within 30 days of being hired.

(d) A person is ineligible to make an election under subsection (1) or (2) if the person previously elected to remain in the teachers' retirement system pursuant to subsection (1) or to remain in the public employees' retirement system pursuant to this subsection (2).

(3) The election must be exercised by filing a written ~~notice~~ *irrevocable election* with the teachers' retirement system and the disbursing officer of the employer. The election is effective as of the date the notice is filed or January 1, 1988, whichever is later.

(4) If an eligible officer or staff member fails to exercise the election, as provided by this section, that person ~~must~~ *shall* remain or become a member of the teachers' retirement system.

(5) An election under this section is not effective unless the notice filed with the disbursing officer of the employer is accompanied by an appropriate application, if one is required, for the issuance of a contract or contracts under the program.

(6) Subject to and as provided in [section 48], a university system employee in a position covered under the public employees' retirement system may elect to participate in the program."

Section 38. Section 19-21-202, MCA, is amended to read:

"19-21-202. Effect on rights under teachers' retirement system. (1) An election under 19-21-201*(1) through (3) and (5)* to participate in the ~~optional retirement~~ program is a waiver of all rights and benefits under the teachers' retirement system except as provided in this section.

(2) A member of the teachers' retirement system who elects to participate in the ~~optional retirement~~ program is considered, for the purpose of determining eligibility for rights and benefits under that system, to he no longer employed in a capacity that allows active membership in that system as of the effective date of the election. Thereafter, the member is considered an inactive member of the ~~retirement~~ system if qualified under 19-20-303, with the rights and privileges provided under 19-20-603(1). A member who elects to participate in the ~~optional retirement~~ program who does not qualify as an inactive member under 19-20-303 is considered a terminated member of the ~~retirement~~ system under 19-20-304(4).

HeinOnline -- 1999 vol. II 1893 1999

(3) A person who elects te participate in the ~~optional retirement~~ program is ineligible to be an active member of the teachers' retirement system while continuously employed in a position eligible to participate in the ~~optional retirement~~ program."

Section 39. Section 19-21-203, MCA, is amended to read:

"19-21-203. Contributions — *supplemental and plan choice rate contributions.* (1) Each ~~optional retirement~~ program participant shall contribute an amount equal to the member's contribution required under 19-20-602. The board of regents shall contribute an amount that, when added to the participant's contribution, is equal to 12% of the participant's earned compensation.

(2) (a) ~~On or after July 1, 1997, the~~ *The* board of regents may:

(i) reduce the participant's contribution rate established in subsection (1) to an amount not less than 6% of the participant's earned compensation; and

(ii) increase the employer's contribution rate to an amount not greater than 6% of the participant's earned compensation.

(b) The sum of the participant's and employer's contributions made under subsection (2)(a) must remain at 12% of the participant's earned compensation.

(3) The board of regents shall determine whether the participant's contribution is to be made by salary reduction under section 403(b) of the Internal Revenue Code of 1954 or by employer ~~pick-up~~ *pickup* under section 414(h)(2) of that code.

(4) The disbursing officer of the employer or other official designated by the board of regents shall pay both the participant's contribution and the appropriate portion of the *board of* regents' contribution to the designated company or companies for the benefit of the participant.

(5) *(a)* The board of regents shall make the supplemental contributions to the teachers' retirement system, as provided in 19-20-621, to discharge the obligation incurred by the Montana university system for the past service liability incurred by active, inactive, and retired members of the teachers' retirement system.

(b) For employees electing to become program members pursuant to [section 48], the board of regents shall, in addition to other contributions required under this section, contribute to the public employees' retirement system the plan choice rate provided in [section 53(2)(b)] and adjusted pursuant to [section 54]."

Section 40. Nonapplication of part to defined contribution plan. Except as otherwise provided in [sections 42 through 63], none of the provisions of this part apply under the defined contribution plan.

Section 41. Education fund established — allocation of employer contributions — educational program requirements. (1) (a) The board shall establish an education fund and provide for educational programs for system members in a manner consistent with the provisions of this section.

(b) For the initial transfer educational program established for system members, 0.1% of covered payroll from the employer contributions made pursuant to 19-3-316 must be allocated to the education fund established in subsection (1)(a).

HeinOnline -- 1999 vol. II 1894 1999

(c) For the ongoing educational and communication programs established pursuant to this section, from the employer contributions made pursuant to 19-3-316, 0.04% of covered payroll must be allocated to the education fund established in subsection (1)(a). The board shall from time to time review the sufficiency of this amount and recommend to the legislature the adjustments that it considers appropriate.

(2) (a) The educational programs must provide system members with impartial and balanced information about plan choices. The programs must involve multimedia formats. Plan comparisons must, to the greatest extent possible, be based upon real rates of return on investments available in each retirement plan.

(b) If an educational program is conducted by a contractor, the board shall monitor the performance of the contract to ensure that the program is conducted in accordance with the contract, applicable law, and the rules of the board. A contractor hired to provide educational services pursuant to this section may not be the same entity contracted to provide other services for the defined contribution plan or the optional retirement program.

(3) The board shall provide for an initial and an ongoing transfer educational program to provide system members with information necessary to make informed plan choice decisions. The transfer educational program must include but is not limited to information on:

(a) the amount of money available to a member to transfer to the defined contribution plan;

(b) the features of and differences between the defined benefit plan and the defined contribution plan, both generally and specifically, as those differences may affect the member;

(c) the expected benefit available if the member were to retire under each of the retirement plans, based on appropriate alternative sets of assumptions;

(d) the aggregate rate of return from investments in the defined contribution plan and the period of time over which the aggregate rate of return must be achieved to equal or exceed the expected monthly benefit payable to the member under the defined benefit plan;

(e) the historical rates of return for the investment alternatives available in the defined contribution plan;

(f) the benefits and historical rates of return on investments available in deferred compensation plans or a plan under section 403(b) of the Internal Revenue Code for which the employee may be eligible;

(g) the plan choices available to employees of the university system pursuant to [section 48] and the comparative benefits of each available plan; and

(h) payout options available in each of the retirement plans.

(4) An ongoing educational and communication program must provide members of either plan with information necessary to make informed decisions about choices within their plan of membership and in preparation for retirement. The program must include but not be limited to information concerning:

(a) rights and conditions of membership;

(b) benefit features within the plan, options, and the effects of certain decisions;

(c) coordination of contributions and benefits with a deferred compensation plan under section 457 of the Internal Revenue Code or a plan under section 403(b) of the Internal Revenue Code;

(d) significant plan changes;

(e) contribution rates and plan funding status; and

(f) planning for retirement.

(5) The board shall also establish a communication program to provide plan information to participating employers and the employer's personnel and payroll officers and to explain their respective responsibilities in conjunction with the retirement plans.

(6) This section does not prohibit a plan vendor or vendors from providing system members with information necessary to make informed decisions about the defined contribution plan or the optional retirement program and investment alternatives within the defined contribution plan or the optional retirement program.

Section 42. Definitions. Unless the context requires otherwise, as used in [sections 42 through 63], the following definitions apply:

(1) "Member" means an employee with a retirement account in the defined contribution plan.

(2) "Optional retirement program" means the retirement plan established by the board of regents under chapter 21 of this title.

(3) "Plan" or "defined contribution plan" means the defined contribution retirement plan.

Section 43. Defined contribution plan established — assets to be held in trust — contracted services. (1) The board shall establish within the public employees' retirement system a defined contribution plan in accordance with the provisions of [sections 42 through 63]. The plan must be established as a pension plan for the exclusive benefit of members and their beneficiaries and as a "qualified plan" pursuant to section 401(a) of the Internal Revenue Code and its implementing regulations. Retirement accounts must be established for each member of the defined contribution plan. Assets of the plan must be held in trust. The plan is established in addition to any retirement, pension, deferred compensation, or other benefit plan administered by the state or a political subdivision.

(2) The board shall contract for plan administration and use a competitive bidding process when contracting for consulting, educational, investment, recordkeeping, or other services for the plan.

(3) The board shall contract for a qualified consultant to assist in preparation of the request for bid or request for proposal for plan services.

Section 44. Legislative intent. It is the intent of the legislature that, in implementing and administering the defined contribution plan:

(1) changes to current administrative processes and the impact of those changes on employers be minimized to the extent possible;

HeinOnline -- 1999 vol. II 1896 1999

(2) the administrative structure for the plan be configured in an economical and efficient manner;

(3) administration and services for the plan be contracted out to the extent possible, but that the board provide for the diligent oversight of the contracts;

(4) reasonable participant services be provided for and that fees be commensurate with the services;

(5) lines of communication and responsibilities be clearly established so that employers or their personnel and payroll officers do not advise members about plan choices or investment alternatives; and

(6) employers be encouraged to provide paid time for employees to attend educational programs sponsored by the board pursuant to [section 41].

Section 45. Board powers and duties — rulemaking. (1) The board has the powers and shall perform the duties regarding the defined contribution plan as provided in 19-2-403, as applicable. The board may also exercise the powers and shall perform the duties provided in this chapter.

(2) The board shall, in accordance with the Montana Administrative Procedure Act, adopt rules necessary for the implementation of [sections 42 through 63] and other applicable sections in chapters 2 and 3 of this title, including rules concerning the following:

(a) matters necessary for the treatment of the plan as a qualified plan under applicable sections of the Internal Revenue Code;

(b) the treatment of dormant or inactive accounts;

(c) the security and privacy of information maintained by the board concerning a member's investments, as required by applicable law;

(d) minimum asset, re. rve, insurance, or other security requirements intended to ensure the solvency of a contractor used by the board for investment services; and

(e) the commencement of benefits in the plan pursuant to [sections 42 through 63] and as provided in 19-2-908.

Section 46. Administrative expenses and fees. (1) The board may establish a fund within the defined contribution plan for paying the plan's administrative expenses.

(2) The board may:

(a) assess fees to pay the reasonable administrative costs of the plan; and

(b) negotiate with a vendor or vendors for vendor reimbursement of board administrative expenses for the plan.

(3) All fees assessed must be fully disclosed to plan members and treated as public information.

(4) Costs for the board to provide for contract oversight are included as part of the administrative expenses of the plan.

Section 47. Plan membership — written election required — failure to elect — effect of election. (1) Except as otherwise provided in [sections 42 through 63]:

HeinOnline -- 1999 vol. II 1897 1999

(a) (i) a member who is an active memher of the defined benefit plan on the date that the defined contrihution plan becomes effective may, within 12 montbs after that date, elect to transfer to and become a member of the plan;

(ii) a member who was an inactive member of the defined benefit plan on the date that tbe defined contribution plan becomes effective and who is rehired into covered employment after the plan effective date may, within 12 months after the member's rehire date, elect to transfer te and become a member of the plan;

(b) a member who is initially hired into covered employment on or after the date that the defined contribution plan becomes effective may, within 12 months of the member's hire date, elect to become a member of the plan.

(2) (a) Elections made pursuant to this section must be made on a form prescribed by the board.

(b) A member failing to make an election prescribed by this section remains a memher of the defined benefit plan.

(c) An election under this section, including the default election pursuant to subsection (2)(b), is a one-time irrevocable election. Subject to [section 49], this subsection (2)(c) does not prohibit a new election after an employee has terminated membership in either plan and returned to covered employment.

(3) A member in either the defined benefit plan or the defined contribution plan who becomes inactive after an election under this section and who returns to active membership remains in the plan previously elected.

(4) A system member may not simultaneously be a member of the defined benefit plan and the defined contribution plan and must be a member of either the defined benefit plan or the defined contribution plan. A period of service may not be credited in more than one retirement plan within the system.

(5) The provisions of [sections 42 through 63] do not prohibit the board from adopting rules te allow an employee to elect the defined contrihution plan on the first day of covered employment.

(6) A member of the defined benefit plan who is subject to a family law order pursuant to 19-2-907 or an execution or income-withholding order pursuant to 19-2-909 may not transfer to the defined contribution plan unless the order is modified to apply under the defined contribution plan or, for university employees making an election pursuant to [section 48], the optional retirement program.

Seetion 48. Plan choices for memhers employed by university system — amount available to transfer — effect on rights. (1) If an employee of the university system, as defined in 5-20-201, is eligible to make an election under [sections 42 through 63] to transfer to the defined contribution plan, the employee may, instead of electing the plan, make a one-time irrevocable election on a form prescribed by the board to transfer membership to the university system's optional retirement program provided for under chapter 21 of this title.

(2) For an employee electing to transfer to the optional retirement program, the board shall transfer to the optional retirement program the amount that the employee would have been able to transfer to the defined contribution plan under [section 50].

HeinOnline -- 1999 vol. II 1898 1999

(3) An election to become a member of the optional retirement program pursuant to this section is a waiver of all rights and benefits under the public employees' retirement system.

Section 49. Reinstatement of plan membership — purchase of prior service in defined benefit plan. (1) (a) An employee who terminated membership in the defined benefit plan, the defined contribution plan, or the optional retirement program after making an election pursuant to [section 47] or [section 48] and who returns to covered employment after a break in service of less than 24 consecutive months shall become a member of the plan that the member last selected and is not eligible for a new plan choice election.

(b) Except as provided in subsection (2), an employee who terminated membership in either the defined benefit plan, the defined contribution plan, or the optional retirement program after making an election pursuant to [section 47] or [section 48] and who returns to covered employment after a break in service of 24 consecutive months or more is eligible to make a plan choice election as if the employee were initially hired as provided for in [section 47(1)(b)].

(2) (a) An employee who returns to covered employment after terminating plan membership in the defined contribution plan or the optional retirement program shall return to the plan previously selected if the employee has accessed money derived from the employee's former retirement account by:

(i) receiving a lump-sum distribution of the member's former retirement account, unless the distribution was forced pursuant to [section 59(1)(b)];

(ii) receiving a lump-sum distribution from an account outside the defined contribution plan that has at any time received a transfer of funds from the member's former retirement account or any account to which the member has transferred funds from a former retirement account; or

(iii) receiving a regular benefit, payment, or distribution from an account outside the defined contribution plan in which there is money from the member's former retirement account.

(b) For the purposes of this subsection (2), "retirement account" also includes an employee's account under the optional retirement program.

(3) (a) An employee who returns to covered employment after terminating membership in the defined benefit plan, who is eligible to make a plan choice, and who elects to join the defined benefit plan may reinstate prior membership service as provided in 19-2-603.

(b) An employee who returns to covered employment after terminating membership in the defined contribution plan or the optional retirement program, who is eligible to make a plan choice, and who elects to join the defined benefit plan may purchase prior membership service by paying to the board the full actuarial cost of the service as of the latest actuarial valuation of the defined benefit plan. The employee may not purchase membership service under this section in excess of the employee's length of service as a member of the defined contribution plan or the optional retirement program.

Section 50. Amount available to transfer. (1) (a) For an employee who was a system member on the day before the effective date of the defined contribution plan and who elects to transfer to the plan, the board shall transfer from the defined benefit plan to the member's retirement account the employee's contributions and the percentage of the employer's contributions specified in

HeinOnline -- 1999 vol. II 1899 1999

subsection (1)(b), plus 8% compounded annual interest on the total of the employee and employer contributions.

(b) Based on the contribution amount historically available to pay unfunded liabilities in the defined benefit plan and the transferring member's years of service, the porcentage of the employer contributions that may be transferred are as follows:

Years of service	Percentage of employer contributions available to transfer
Less than 5 years	65.53%
5 to 9 years	58.59%
10 to 14 years	55.26%
15 to 19 years	55.42%
20 or more years	57.53%

(2) For an employee hired on or after the effective date of the defined contribution plan who elects to become a member of the plan, the board shall transfer from the defined benefit plan to the member's retirement account an amount equal to the amount that would have been credited to the member's account pursuant to [section 53] had the employee become a plan member on the employee's hire date, plus interest credited at the actuarially assumed rate of return on the defined benefit plan assets as of the plan's latest actuarial valuation.

Section 51. Transfers or rollovers into plan — membership credit for purposes of vesting. (1) Except as provided in subsection (2), the board shall accept the transfer or rollover of assets from another qualified plan to the member's retirement account. If a member is transferring assets from another plan provided for in this title, the member must, for the purposes of becoming vested pursuant to [section 52], receive credit for the employee's prior membership service under that plan.

(2) (a) After-tax money may not be transferred or rolled over to a retirement account unless the money was contributed to the system's defined benefit plan on an after-tax basis.

(b) To the extont that the transfer or rollover is disallowed under the Internal Revenue Code provisions in effect as of the calendar year immediately preceding the date of the transfer or rollover, a member may not transfer or rollover to a retirement account contributions made under sections 403(b) and 457 of the Internal Revenue Code.

Section 52. Vesting — mandatory termination of membership — forfeitures. (1) A member is fully vested with the member's contributions and the income on those contributions from the date that the employee becomes a member of the plan, but is not considered a vested member, as defined in 19-2-303, unless the member meets the criteria under subsection (2).

(2) A member is not vested with the employer's contributions and the income on those contributions and does not attain the status of a vested member until the member has a total of 5 years of membership service under the system.

(3) A member who terminates covered employment before becoming a vested member shall terminate plan membership by removing from the plan the

HeinOnline -- 1999 vol. II 1900 1999

member's entire account balance as provided in [section 56]. The employer contributions and income on the employer's contributions in the member's retirement account are forfeited and must be allocated as provided in [section 53].

Section 53. Allocation of contributions and forfeitures. (1) Each plan member's retirement account must be credited with the employee contributions made under 19-3-315.

(2) Subject to adjustment by the board as provided in [section 54], beginning on the plan's effective date, of the employer contributions under 19-3-316:

(a) 4.49% of compensation must be allocated to the member's retirement account; and

(b) 2.37% of compensation must be allocated to the defined benefit plan as the plan choice rate.

(3) Forfeitures of employer contributions and investment income on the employer contributions may not be used to increase a member's retirement account. The board shall allocate the forfeitures under [section 52] to meet the employer contributions obligation provided under subsection (2)(a) of this section in lieu of direct contributions by the employer and shall increase the contribution amount under subsection (2)(b) of this section by the amount of the forfeitures used in lieu of the employer contributions.

Section 54. Determination and adjustment of plan choice rate and contribution allocations — rulemaking. (1) The board shall provide for the periodic review of the sufficiency of the plan choice rate and shall adjust the allocation of contributions under [section 53] as specified in this section. The board shall provide that the data necessary te comply with this section is collected and maintained for all system members.

(2) The plan choice rate set in [section 53(2)(b)] must be adjusted as provided in this section, taking into account:

(a) as determined under subsection (3), the change in the normal cost contribution rate in the defined benefit plan that is the result of member selection of the defined contribution plan;

(b) as determined under subsection (4), the anticipated reduction in defined contribution plan costs because of forfeitures; and

(c) as determined under subsection (5), the sufficiency of the plan choice rate to actuarially fund the defined contribution plan's share of the defined benefit plan's unfunded liabilities.

(3) The change in the normal cost contribution rate must be an amount equal to the difference between the normal cost contribution rate in the defined benefit plan that would have resulted if all system members remained in the defined benefit plan and the normal cost contribution rate in the defined benefit plan for the actual members of the defined benefit plan, multiplied by the covered payroll of members in the defined benefit plan, divided by the covered payroll of members in the defined contribution plan. The measurements under this subsection must be based on the defined benefit plan in effect on the effective date of the defined contribution plan until the board determines that the defined benefit plan has been amended in a manner that significantly affects plan choices available to system members. After a board determination that the defined benefit plan has been significantly changed, the measurements in this subsection with respect to

HeinOnline -- 1999 vol. II 1901 1999

members entering the system after the significant change must be made on the basis of the defined benefit plan, as amended.

(4) The anticipated reduction in defined contribution plan costs as a result of forfeitures under [section 52] must be determined as the amount of forfeitures expected during the next biennium based on actual forfeitures in the preceding biennium, adjusted by taking into account the gains or losses during the preceding biennium resulting from forfeitures of greater or lesser amounts than expected, divided by twice the covered payroll of members of the defined contribution plan.

(5) The sufficiency of the plan choice rate to actuarially fund the appropriate share of the defined benefit plan's unfunded liabilities must be determined as follows:

(a) The board shall determine the number of years required to actuarially fund the defined benefit plan's unfunded liabilities as of the June 30, 1998, actuarial valuation, which must be the initial schedule for the defined contribution plan to actuarially fund the plan's share of the unfunded liabilities. The board shall reduce the schedule by 1 year each biennium.

(b) During each subsequent actuarial valuation of the defined benefit plan conducted pursuant to 19-2-405, the board shall determine whether the plan choice rate minus the sum of the amounts provided in subsections (2)(a) and (2)(b) of this section is sufficient to pay the unfunded liability obligations within the schedule determined under subsection (5)(a) of this section. If the amount is insufficient to fund the liability over a period of 10 years longer than the scheduled period or is more than sufficient to fund the liability over a period of 10 years earlier than the scheduled period, the board shall determine to the nearest 0.1% the amount of the increase or decrease in the plan choice rate that is required to actuarially fund the liabilities according to the established schedule.

(6) If the board determines that the plan choice rate should be increased or decreased, the plan choice rate under [section 53(2)(b)] must be increased or decreased accordingly. If the plan choice rate is increased, the allocation of employer contributions to member accounts under [section 53(2)(a)] must be decreased by that amount. If the plan choice rate is decreased, the allocation of employer contributions to member accounts under [section 53(2)(b)] must be increased by that amount.

(7) By November 1 of the year of a determination pursuant to this section that the allocation of employer contributions under [section 53(2)] must be changed, the board shall notify system members, participating employers, employee and employer organizations, the governor, and the legislature of its determination and of the changes required.

(8) Effective January 1 of the year after the regular legislative session that immediately follows a determination under this section, the plan choice rate and the allocation of contributions under [section 53(2)] must be adjusted according to the board's determination.

Section 55. Investment alternatives — notice of changes — default fund. (1) The board shall contract with a vendor or vendors to provide for at least eight investment alternatives within the defined contribution plan. In providing for the plan's investment alternatives, only a vendor or vendors offering suitable and well-managed investments, licensed to conduct business in Montana, and regulated by the United States securities and exchange commission may be used.

HeinOnline -- 1999 vol. II 1902 1999

(2) The investment alternatives must include at least three that offer plan members the following:

(a) the ability to materially affect the potential return on amounts in the member's retirement account and the degree of risk to which those amounts are subject;

(b) a range of investment alternatives that:

(i) provides sound and diversified funds;

(ii) offers, under each alternative, a materially different risk and return characteristic than found in the other alternatives;

(iii) allows the member or beneficiary to choose among them to achieve a portfolio with an aggregate risk and return characteristic to achieve a point within the risk and return range normally appropriate for the member or beneficiary based on age, income, and individual retirement goals; and

(iv) tends to minimize through diversification the overall risk of large losses.

(3) Subject to a competitive bidding process, the investment alternatives may include the investment alternatives offered to members of the state deferred compensation plan pursuant to chapter 50 of this title.

(4) The board shall from time to time review the suitability and management of investment alternatives and may change the alternatives to be offered. The board shall notify affected members of potential changes before any changes become effective.

(5) Assets within each member's retirement account must be invested as directed by the member.

(6) The board shall provide for a balanced fund to be established as a default investment fund. In the case of a member failing to direct how the member's retirement account is to be invested, the member's entire account balance must be invested in the default fund.

(7) This section does not prohibit the board from contracting with the board of investments established in 2-15-1808 to provide one or more investment alternatives within the plan.

Section 56. Payout of account balances when terminating plan membership. Any time after termination of covered employment, a member or the member's beneficiary may terminate plan membership by making a written application to the board and removing the member's account balance from the plan through any combination of the following payout options, each of which is subject to applicable regulations of the internal revenue service:

(1) a direct rollover to an eligible retirement plan or to an individual retirement account or annuity pursuant to section 401(a)(31) of the Internal Revenue Code;

(2) a regular rollover to an eligible retirement plan pursuant to section 402(c) of the Internal Revenue Code; or

(3) a lump-sum distribution of the member's account balance.

Section 57. Distribution options for plan members — rulemaking — minimum distribution requirements — restrictions. (1) Subject to [sections 52 and 59], a member may, after termination of covered employment,

HeinOnline -- 1999 vol. II 1903 1999

leave the member's account balance in the plan, and the member is eligible for a distribution as provided in this section.

(2) After termination of covered employment, upon written application to the board, a member may, if provided for by the board, select a distribution option offered pursuant to a contract negotiated by tbe board with a plan vendor or vendors.

(3) A memher who is less than 70 1/2 years of age who returns to covered employment may not continue to receive a distrihution under this section while actively employed in a covered position.

(4) The board shall adopt rules to administer this section and to provide that distributions comply with the minimum distribution requirements established in the Internal Revenue Code and applicable under 19-2-1007.

Section 58. Death henefits. A plan member's beneficiary must be determined as provided in chapter 2, part 8, of this title. Upon written application filed with the board after the death of a plan member, the member's beneficiary is entitled to the memher's account balance and all rights established in and subject to [sections 42 through 63].

Section 59. Minimum account balance required for membcrship after termination — adjustment by rule. (1) (a) If a member's account balance is less than $5,000 at the time that the member terminates covered employment, the member shall terminate plan membership by removing the member's account balance from the plan in a manner provided pursuant to [section 56].

(b) If the member fails to remove the member's account balance, the board may close the account hy paying to the member a lump-sum distribution of the memher's entire account balance.

(2) The board may by rule adjust the minimum account balance provided in this section as necessary to maintain reasonable administrative costs and to account for inflation.

Section 60. Implementation schedule — plan effective date. (1) In exercising its authority pursuant to [sections 42 through 63] to implement the defined contrihution plan, the board shall:

(a) by September 1, 1999, retain a qualified consultant to assist the board in developing appropriate requests for proposals for contracted services;

(b) by January 1, 2000, issue a request for proposal for all required contracted services;

(c) by August 1, 2000, award the contracts for all required contracted services; and

(d) by September 1, 2000, begin the development and modification of data systems and reporting processes required to administer the plan.

(2) The defined contribution plan must become operational by no later than July 1, 2002.

Section 61. Implementation tcam — state agency assistance. The board shall create an implementation team to assist in establishing the defined contribution plan. Upon request of the board, other state agencies may provide technical and professional assistance to support the implementation of the plan.

HeinOnline -- 1999 vol. II 1904 1999

The board may also request the assistance of other contracting employers and may provide compensation for personal services and other costs incurred by an agency or contracting employer to suppert the board pursuant to this section.

Section 62. Creation of employee investment advisory council. The board shall, by August 1, 1999, appeint an employee investment advisory council. The advisory council shall meet at least quarterly to:

(1) advise the board concerning the establishment and operation of tbe defined contribution plan, including the selection of the initial investment alternatives to be provided pursuant to [section 55];

(2) advise the board about negetiating, contracting, or modifying services for the state deferred compensation plan provided for in chapter 50; and

(3) review existing deferred compensation plans and to advise the board on the administration of the program.

Section 63. Legisiative oversight committee — reports and recommendations by hoard — study of health care costs and disability provisions. (1) The legislative council shall provide for an appropriate interim legislative committee to oversee the implementation of the defined contribution plan established pursuant to [sections 42 through 63] and to act as a steering committee on matters of pelicy.

(2) The board shall consult with and provide regular progress reports to the committee and shall make recommendations regarding the design and implementation of the defined contribution plan.

(3) The committee shall also examine:

(a) options for addressing the cost of postretirement health insurance and other medical care for public retirees; and

(b) options for providing disability benefits for public retirees.

Seetion 64. Board to seek commissioner's ruling or opinion. The public employees' retirement board shall, as soon as possible, request in writing a ruling or opimon from the commissioner of the internal revenue service as to whether the defined contribution retirement plan established pursuant to [this act] constitutes a "qualified plan" pursuant to section 401(a) of the Internal Revenue Code.

Section 65. Rulemaking — implementation — certification that plan is effective. (1) The public employees' retirement board may adopt rules necessary to implement the provisions of [sections 42 through 63].

(2) The board shall certify to the gevernor and the secretary of state the date on which the defmed contribution retirement plan established pursuant to [sections 42 through 63] is ready to become operational and shall provide a copy of the certification to the code commissioner.

(3) Rights under [sections 42 through 63] do not vest until the defined contribution retirement plan becomes operational and is certified as provided in this section.

Section 66. Payment of local government administration expenses. To the extent that a local government unit is required to incur administrative expenses to start the defined contribution retirement plan that exceed the amount provided in 1-2-112(4)(a), the expenses must be paid by the public

HeinOnline -- 1999 vol. II 1905 1999

employees' retirement board as defined contribution plan administrative expenses.

Section 67. Section 19-50-101, MCA, is amended to read:

"19-50-101. Definitions. For the purposes of this chapter, unless a different meaning is plainly implied by the context, the following definitions apply:

(1) "Administrator" *or "board"* means the ~~department of administration created by 2-15-1001~~ *public employees' retirement board created in 2-15-1009* or an appropriate officer of a political subdivision.

~~(2) "Advisory council" means the state employee group benefits advisory council provided for in 2-15-1016.~~

~~(3)~~*(2)* "Deferred compensation" means that income which an employee may legally defer in a deferred compensation plan established under this chapter pursuant to the rulings of the internal revenue service and which, while invested, is exempt from state and federal income tax on the employee's contribution and on the interest, dividends, and capital gains until ultimately distributed to the employee.

~~(4) "Department" means the department of administration created by 2-15-1001.~~

~~(5)~~*(3)* "Eligible deferred compensation plan" means a plan meeting the requirements of section 457 of the Internal Revenue Code.

~~(6)~~*(4)* "Employee" means any person, including independent contractors and elected officials, receiving compensation from the state or a political subdivision for performing services.

~~(7)~~*(5)* "Fund" means the state deferred compensation investment account.

~~(6)~~*(6)* "Participant" means an employee enrolled in the plan.

~~(9)~~*(7)* "Political subdivision" means any city, town, county, or other political subdivision of the state of Montana."

Section 68. Section 19-50-102, MCA, is amended to read:

"19-50-102. Deferred compensation programs permitted — rules. (1) The state or a political subdivision may establish deferred compensation plans that are eligible under section 457 of the Internal Revenue Code of 1954 (26 U.S.C. 457), as amended or superseded, and in compliance with regulations of the U.S. department of the treasury. Eligible deferred compensation plans for employees may be established in addition to any retirement, pension, or other benefit plan administered by the state or a political subdivision.

(2) An employee may enter into a written agreement with the state or a political subdivision to defer a part of the employee's compensation to one or more of the investment options provided in subsection (4) for the purpose of investment as provided by this chapter. The total amount deferred may not exceed the employee's annual salary and may not exceed the amounts permitted under applicable sections of the Internal Revenue Code.

(3) Compensation deferred pursuant to this chapter is included as compensation for the purpose of computing retirement or pension benefits.

HeinOnline -- 1999 vol. II 1906 1999

(4) The ~~department~~ *board* or an appropriate officer of a political subdivision shall from time to time select the type of investment options and the financial institutions or entities in which state or political suhdivision employee deferred compensation plan funds may be invested. The ~~department~~ *board* or an appropriate officer of a political subdivision shall notify affected plan members of potential changes in investment options and financial institutions before the changes are made. The investment options and entities may include:

(a) a state deferred compensation investment fund established pursuant to Title 17 for the purpose of administering a state-invested deferred compensation plan. All contributions made by participants in the state deferred compensation investment fund and all interest or increase in the fund must be credited to the fund. These state-invested funds may be commingled with other state investment funds, but separate accounting must be maintained. The assets of the fund must be maintained for the benefit of participants and may not be diverted except for paying the reasonable expenses for administering the state deferred compensation investment fund.

(b) savings accounts in federally insured financial institutions;

(c) life insurance contracts and fixed annuity and variable annuity contracts from companies that are licensed to do business in the state and subject to regulation by the insurance commissioner;

(d) investment funds managed pursuant to investment services contracts maintained by the ~~department~~ *board* or an appropriate officer of a political subdivision with investment managers registered with the United States securities and exchange commission;

(e) mutual funds provided through contracts maintained by the ~~department~~ *board* or an appropriate officer of a political subdivision with mutual fund companies regulated hy the United States securities and exchange commission; or

(f) a combination of the items in subsections (4)(a) through (4)(e).

(5) The deferred compensation plan funds invested pursuant to this section and the income from those funds must be held in a trust, custodial account, or insurance contract for the exclusive benefit of participants and their beneficiaries.

(6) The administrator niay allocate any necessary costs against the assets and interest earnings accumulated in funds, accounts, or contracts established under this chapter.

(7) The ~~department~~ *board* or appropriate officer of a political subdivision shall promulgate rules not inconsistent with this chapter for the proper administration of deferred compensation plans established under this chapter."

Section 69. Section 19-50-201, MCA, is amended to read:

"19-50-201. ~~Department~~ *Board* authorized to make contracts with political subdivisions. (1) Effective July 1, 1983, a political subdivision may become a contracting employer and niake all or specified groups of its employees eligible to participate in the state-administered deferred compensation program by a contract entered into and between the ~~department~~ *board* and the legislative body of the political subdivision. The contract may include any provisions that are consistent with this chapter and necessary for the administration of the deferred compensation program.

HeinOnline -- 1999 vol. II 1907 1999

(2) The approval and termination of the contract shall be subject to the following provisions:

(a) The legislative body of the political subdivision shall adopt a resolution to enter into a contract with tbe ~~department~~ *board* authorizing its employees to participate in the state-administered deferred compensation program. The resolution must contain a summary of the major provisions of the state-administered deferred compensation program.

(b) The contract must specify that the political subdivision agrees that the ~~department~~ *board* is the administrator of the deferred compensation program and agrees to the rules and conditions established by the ~~department~~ *board* for the proper administration of the plan.

(c) The contract may be revoked or amended in the manner prescribed in the original approval of contracts."

Section 70. Section 19-50-202, MCA, is amended to read:

"19-50-202. Administration of program. The deferred compensation program shall be administered hy the ~~department~~ *board* or the appropriate officer designated by a political subdivision. Payroll deductions shall be made, in each instance, by the appropriate payroll officer. The administrator shall protect the interests of program participants and safeguard the assets of the deferred compensation plan and sball contract with private corporations, institutions, or individuals for administrative and marketing services. The administrator may solicit bids for options under 19-50-102. All contracts witb marketing representatives must provide that all options in 19-50-102 he presented in an unbiased manner and in a manner so as to conform to applicahle rules promulgated by tbe administrator, he reported on a periodic basis to all employees participatmg in eligible deferred compensation plans, and not be the suhject of unreasonable solicitation of employees to participate in the program. All costs or fees in relation to the marketing of options provided under 19-50-102 shall he paid by the underwritmg companies selected by the administrator or hy the interest earnings accruing to the assets of the state deferred compensation investment fund."

Section 71. Section 19-50-203, MCA, is amended to read:

"19-50-203. Payments authorized. Notwithstanding any other provision of law to the contrary, tbe ~~department~~ *board* or a pelitical subdivision is hereby authorized to make payments to eligihle deferred compensation plans designated by this chapter. Such payments shall not he construed to be a prohibited use of the general assets of the state or a political subdivision."

Section 72. Section 19-2-706, MCA, is amended to read:

"19-2-706. Additional service for member invoiuntarily terminated from membership service. (1) An employee of the state or university system is entitled to the involuntary termination provision provided in subsection (3) if:

(a) the employee is a member of the public employees', game wardens' and peace officers', sheriffs', or higbway patrol officers' retirement system;

(b) the employee's active service is involuntarily terminated because of elimination of the employee's position as a result of privatization, reorganization of an agency, closure of or a reduction in force at an agency, or other actions by the legislature *or, in the case of a legislator, because of term limits terminating*

HeinOnline -- 1999 vol. II 1908 1999

the service of the legislator in either one of the houses of the legislature ~~on or after July 1, 1997, but before July 1, 1999~~;

(c) the employee is eligible for a normal service retirement or early retirement under the applicable provisions of the retirement system to which the member belongs; and

(d) the employee waives termination benefits for which the employee would otherwise be eligible under the State Employee Protection Act.

(2) The cost of each year of service purchased under this section is the total actuarial cost of purchasing the service based on the most recent actuarial valuation of the retirement system.

(3) The employer of an eligible member under subsection (1) shall pay a portion of the total cost of purchasing up to 3 years of additional service that the member was qualified to purchase under 19-3-513, 19-6-804, 19-7-804, or 19-8-904. The employer-paid portion applied toward the service purchase must be calculated using the formula A x B x C when:

(a) A is equal to a maximum of 3 additional years of service that the member is eligible to purchase;

(b) B is equal to the sum of the employer and employee contribution rates in the member's retirement system; and

(c) C is equal to the member's gross compensation paid during the immediate preceding 12 months of membership service. The employer may not be charged more tban the total actuarial cost of the service purchased by the terminated employee.

(4) The member shall pay the difference, if any, between the full actuarial cost of the service to be purchased and the amount contributed by the employer under subsection (3). A member is entitled to a refund for that pertion of previously purchased additional service that would otherwise cause the member to be unqualified to receive all or part of the additional service provided in this section. A member may elect to purchase less than the full amount of service for which the member is eligible under this section, but the election may not reduce the amount of the employer's contribution as calculated under subsection (3).

(5) The board may allow an employer to pay the contributions required under subsection (3) in installments for up to 10 years and may charge interest at a rato set by the board pursuant to 19-2-403.

(6) A member who has received additional service under this section and who returns to employment for the same jurisdiction for 600 or more hours in a calendar year forfeits the additional service. The employer's contribution to purchase that member's additional service, minus any retirement benefits already paid, must be refunded to the employer. As used in this subsection, the same jurisdiction means all agencies of the state, including the university system."

Section 73. Repealer. Section 19-50-206, MCA, is repealed.

Section 74. Loans — repayment. To pay the startup costs of the defined contribution retirement plan, the public employees' retirement board is authorized to take a long-term loan from the department of administration, which shall provide for the loan from tbe investment fund type establisbed under

HeinOnline -- 1999 vol. II 1909 1999

the provisions of House Bill No. 645. The loan must be repaid with interest under terms and conditions determined by the department.

Section 75. Codification instruction. (1) [Section 40] is intended to be codified as an integral part of Title 19, chapter 2, parts 7 and 11; and Title 19, chapter 3, parts 5, 9 through 12, and 15, and the provisions of Title 19, chapter 2, parts 7 and 11; and Title 19, chapter 3, parts 5, 9 through 12, and 15, apply to [section 40].

(2) [Section 41] is intended to be codified as an integral part of Title 19, chapter 3, part 1, and the provisions of Title 19, chapter 3, part 1, apply to [section 41].

(3) [Sections 42 through 63] are intended to be codified as an integral part of Title19, chapter 3, and the provisions of Title 19, chapter 3, apply to [sections 42 through 63].

Section 76. Coordination instruction. (1) If __ Bill No. __ [LC0567] is passed and approved and if it provides for the continuation of the committee on public employee retirement systems provided for in Title 5, chapter 21, then the phrase "legislative council shall provide for an appropriate interim legislative committee" as it appears in [section 63] of [this act] is replaced with the phrase "committee on public employee retirement systems provided for in Title 5, chapter 21".

(2) If House Bill No. 645 is not passed and approved, then [section 74] of [this act] must read:

"NEW SECTION. **Section 74. Loan from board of investments.** To pay the startup costs of the defined contribution retirement plan, the public employees' retirement board may receive a loan from the intercap revolving loan program adopted pursuant to 17-5-1605."

Section 77. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the immediate effective date provided under [section 79(2)]].

Section 78. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 79. Effective dates. (1) Except as provided in subsections (2) through (4), [this act] is effective October 1, 1999.

(2) [Sections 3, 11, 20 through 22, 43(2) and (3), 44, 45, 55(1) through (3) and (7), 60, 61, 64, 65, 72, 75 through 78, 80, and 81 and this section] are effective on passage and approval.

(3) [Sections 34, 41(1)(a), (1)(b), and (2) through (6), 46, 62, 63, and 66 through 71, 73, and 74] are effective July 1, 1999.

(4) [Sections 2, 4 through 10, 12 through 19, 23 through 40, 41(1)(c), 43(1), 47 through 54, 55(4) through (6), and 56 through 59] are effective contingent upon certification, as provided in [section 65], that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier.

Section 80. Contract of employment — applicability. Contract rights of employment are not applicable with regard to the right to elect either the

HeinOnline -- 1999 vol. II 1910 1999

defined contribution plan or the optional retirement program until the plan choice period begins. Contract rights of employment are not applicable with regard to rights in tbe defined contribution plan or the optional retirement program until the defined contribution plan or the optional retirement program is elected.

Seetion 81. Termination. (1) [Sections 41(1)(b), 61, and 63] terminate July 1, 2001.

(2) [Section 60] terminates July 1, 2002.

Approved April 27, 1999

CHAPTER NO. 472

[HB 100]

AN ACT GENERALLY REVISING LAWS ADMINISTERED BY THE STATE AUDITOR; GENERALLY REVISING STATE SECURITY LAWS; GENERALLY REVISING STATE INSURANCE LAWS; DEFINING "INVOLUNTARY UNEMPLOYMENT INSURANCE"; DEFINING "GAP INSURANCE" AND "GAP AMOUNT"; DEFINING "SERVICE CONTRACT INSURANCE"; DEFINING "MECHANICAL BREAKDOWN INSURANCE"; DEFINING "PREPAID LEGAL PLAN"; PROVIDING FOR EXCLUSIONS FROM THE DEFINITION OF "PREPAID LEGAL PLAN"; AMENDING SECTIONS 27-1-306, 30-10-103, 30-10-104, 30-10-105, 30-10-107, 30-10-115, 30-10-201, 30-10-210, 31-1-233, 33-1-311, 33-1-411, 33-2-109, 33-2-502, 33-2-521, 33-2-701, 33-2-806, 33-3-202, 33-3-307, 33-4-101, 33-4-203, 33-4-311, 33-4-313, 33-5-402, 33-10-102, 33-15-336, 33-15-1107, 33-16-102, 33-16-104, 33-16-1021, 33-16-1022, 33-16-1026, 33-17-212, 33-17-236, 33-17-505, 33-17-507, 33-17-1203, 33-18-301, 33-18-1006, 33-20-121, 33-20-1201, 33-22-101, 33-22-111, 33-22-140, 33-22-307, 33-22-514, 33-22-523, 33-22-524, 33-22-1803, 33-22-1809, 33-22-1811, 33-22-1813, 33-22-1815, 33-22-1816, 33-23-212, 33-30-107, 33-30-201, 33-31-111, 33-31-202, 33-31-211, 33-31-216, 33-31-301, 33-31-401, 39-8-207, AND 61-12-303, MCA; REPEALING SECTIONS 33-2-1311, 33-7-526, 33-22-801, 33-22-802, 33-22-803, 33-22-804, 33-22-805, 33-22-806, 33-22-811, 33-22-812, 33-22-813, 33-22-814, 33-22-815, AND 33-22-816, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 27-1-306, MCA, is amended to read:

"27-1-306. When replacement value to be allowed. The measure of damages in a case in which the cost of repairing a motor vehicle exceeds its value is tbe actual replacement value of the motor vehicle rather than its "book" value unless, after the damages arise, the parties agree to use the "book" value. "Book" value must be determined by referring to ~~the used car guides listed in 61-3-503(1)(c)~~ *the most recent volume of the Mountain States Edition of the National Automobile Dealers Association (N.A.D.A.) Official Used Car Guide, the National Edition of the N.A.D.A. Appraisal Guides Official Older Used Car Guide, or another nationally published used vehicle or appraisal guide approved by the department of revenue.* Actual replacement value is the actual cash value of the motor vehicle immediately prior to the damage. "Book" value may be used to assist in determining the actual replacement value of the motor vehicle."

HeinOnline -- 1999 vol. II 1911 1999

Section 2. Section 30-10-103, MCA, is amended to read:

"30-10-103. Definitions. When used in parts 1 through 3 of this chapter, unless the context requires otherwise, the following definitions apply:

(1) (a) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for the person's own account.

(b) The term does not include:

(i) a salesperson, issuer, bank, savings institution, trust company, or insurance company; or

(ii) a person who does not have a place of business in this state if the person effects transactions in this state exclusively with or through the issuers of the securities involved in the transactions, other broker-dealers, or banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustee.

(2) "Commissioner" means the securities commissioner of this state.

(3) (a) "Commodity" means:

(i) any agricultural, grain, or livestock product or byproduct;

(ii) any metal or mineral, including a precious metal, or any gem or gem stone, whether characterized as precious, semiprecious, or otherwise;

(iii) any fuel, whether liquid, gaseous, or otherwise;

(iv) foreign currency; and

(v) all other goods, articles, products, or items of any kind.

(b) Commodity does not include:

(i) a numismatic coin with a fair market value at least 15% higher than the value of the metal it contains;

(ii) real property or any timber, agricultural, or livestock product grown or raised on real property and offered and sold by the owner or lessee of the real property; or

(iii) any work of art offered or sold by an art dealer at public auction or offered or sold through a private sale by the owner.

(4) "Commodity Exchange Act" means the federal statute of that name.

(5) "Commodity futures trading commission" means the independent regulatory agency established by congress to administer the Commodity Exchange Act.

(6) (a) "Commodity investment contract" means any account, agreement, or contract for the purchase or sale, primarily for speculation or investment purposes and not for use or consumption by the offeree or purchaser, of one or more commodities, whether for immediate or subsequent delivery or whether delivery is intended by the parties and whether characterized as a cash contract, deferred shipment or deferred delivery contract, forward contract, futures contract, installment or margin contract, leverage contract, or otherwise. Any commodity investment contract offered or sold, in the absenco of evidence to the

HeinOnline -- 1999 vol. II 1912 1999

contrary, is presumed to be offered or sold for speculation or investment purposes.

(h) A commodity investment contract does not include a contract or agreement that requires, and under which the purchaser receives, within 28 calendar days after the payment in good funds of any portion of the purchase price, physical delivery of the total amount of each commodity to he purchased under the contract or agreement. The purchaser is not considered to have received physical delivery of the total amount of each commodity to be purchased under the contract or agreement when the commodity or commodities are held as collateral for a loan or are subject to a lien of any person when the loan or lien arises in connection with the purchase of each commodity or commodities.

(7) (a) "Commodity option" means any account, agreement, or contract giving a party to the account, agreement, or contract the right hut not the obligation to purchase or sell one or more commodities or one or more commodity contracts, whether characterized as an option, privilege, indemnity, hid, offer, put, call, advance guaranty, decline guaranty, or otherwise.

(b) The term does not include an option traded on a national securities exchange registered with the U.S. securities and exchange commission.

(8) *(a)* "Federal covered adviser" means a porson who ~~is:~~ *is*

~~(a)~~ registered under section 203 of the Investment Advisers Act of 1940~~;~~ ~~or~~.

(b) ~~excluded from the definition of "investment adviser" under section 202(a)(11) of the Investment Advisers Act of 1940~~ *The term does not include a person who would be exempt from the definition of investment adviser pursuant to subsection (11)(c)(i), (11)(c)(ii), (11)(c)(iii), (11)(c)(iv), (11)(c)(v), (11)(c)(vi), (11)(c)(vii), or (11)(c)(ix).*

(9) "Federal covered security" means a security that is a covered security under section 18(b) of the Securities Act of 1933 or rules promulgated hy the commissioner.

(10) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends.

(11) (a) "Investment adviser" means a person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities.

(b) The term includes a financial planner or other person who:

(i) as an integral component of other financially related services, provides the investment advisory services described in subsection (11)(a) to others for compensation, as part of a business; or

(ii) represents to any person that the financial planner or other person provides the investment advisory services described in subsection (11)(a) to others for compensation.

(c) Investment adviser does not include:

(i) an investment adviser representative;

(ii) a bank, savings institution, trust company, or insurance company;

HeinOnline -- 1999 vol. II 1913 1999

(iii) a lawyer or accountant whose performance of these services is solely incidental to the practice of the person's profession or who does not accept or receive, directly or indirectly, any commission, payment, referral, or other remuneration as a result of the purchase or sale of securities by a client, does not recommend the purchase or sale of specific securities, and does not have custody of client funds or securities for investment purposes;

(iv) a registered broker-dealer whose performance of services described in subsection (11)(a) is solely incidental to the conduct of business and for which the broker-dealer does not receive special compensation;

(v) a publisher of any newspaper, news column, newsletter, news magazine, or business or financial publication or service, whether communicated in hard copy form or by electronic means or otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation of each client;

(vi) a person whose advice, analyses, or reports relate only to securities exempted by 30-10-104(1);

(vii) an engineer or teacher whose performance of the services described in subsection (11)(a) is solely incidental to the practice of the person's profession;

(viii) a federal covered adviser; or

(ix) other persons not within the intent of this subsection (11) as the commissioner may by rule or order designate.

(12) (a) "Investment adviser representative" means:

(i) any partner of, officer of, director of, or a person occupying a similar status or performing similar functions, or other individual, except clerical or ministerial personnel, employed by or associated with an investment adviser who:

~~(i)~~*(A)* makes any recommendation or otherwise renders advice regarding securities to clients;

~~(ii)~~*(B)* manages accounts or portfolios of clients;

~~(iii)~~*(C)* solicits, offers, or negetiatos for the sale or sells investment advisory services; or

~~(iv)~~*(D)* supervises employees who perform any of the foregoing~~.~~*; and*

(ii) with respect to a federal covered adviser, any person who is an investment adviser representative with a place of business in this state as those terms are defined by the securities and exchange commission under the Investment Advisers Act of 1940.

(b) ~~Investment adviser representative~~ *The term* does not include a salesperson registered pursuant to 30-10-201(1) whose performance of the services described in subsection (12)(a) is solely incidental to the conduct of business as a salesperson and for which the salesperson does not receive special compensation other than fees relating to the solicitation or offering of investment advisory services of a registered investment adviser *or of a federal covered adviser who has made a notice filing under parts 1 through 3 of this chapter.*

(13) "Issuer" means any person who issues or proposes to issue any security, except that with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors, or persons performing similar functions, or of the fixed, restricted management, or unit type,

HeinOnline -- 1999 vol. II 1914 1999

the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued.

(14) "Nonissuer" means not directly or indirectly for the henefit of the issuer.

(15) "Offer" or "offer to sell" includes each attempt or offer to dispose of or solicitation of an offer to huy a security or interest in a security for value.

(16) "Person", for the purpose of parts 1 through 3 of this chapter, means an individual, a corporation, a partnership, an association, a joint-stock company, a trust in which the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government.

(17) "Precious metal" means the following, in coin, bullion, or other form:

(a) silver;

(b) gold;

(c) platinum;

(d) palladium;

(e) copper; and

(f) other items as the commissioner may by rule or order specify.

(18) "Registered hroker-dealer" means a broker-dealer registered pursuant to 30-10-201.

(19) "Sale" or "sell" includes each contract of sale of, contract to sell, or disposition of a security or interest in a security for value.

(20) "Salesperson" means an individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect sales of securities. A partner, officer, or director of a broker-dealer or issuer is a salesperson only if the person otherwise comes within this definition. Salesperson does not include an individual who represents:

(a) an issuer in:

(i) effecting a transaction in a security exempted by 30-10-104(1), (2), (3), (8), (9), (10), or (11);

(ii) effecting transactions exempted by 30-10-105, except when registration as a salesperson, pursuant to 30-10-201, is required hy 30-10-105 or by any rule proinulgated under 30-10-105;

(iii) effecting transactions in a federal covered security described in section 18(b)(4)(D) of the Securities Act of 1933 for a qualified purchaser as defined in section 18(b)(3) of the Securities Act of 1933; or

(iv) effecting transactions with existing employees, partners, or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state; or

(b) a hroker-dealer in effecting in this state solely those transactions described in section 15(h)(2) of the Securities Exchange Act of 1934.

(21) "Securities Act of 1933", "Securities Exchange Act of 1934", "Public Utility Holding Company Act of 1935", "Investment Advisors Act of 1940", and "Investment Company Act of 1940" mean the federal statutes of those names.

HeinOnline -- 1999 vol. II 1915 1999

(22) (a) "Security" means any note; stock; treasury stock; bond; commodity investment contract; commodity option; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable sbares; investment contract; voting-trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under a title or lease; or, in general, any interest or instrument commonly known as a security, any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities, including any interest in a security or based on the value of a security, or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the foregoing.

(b) Security does not include an insurance or endowment policy or annuity contract under which an insurance company promises to pay a fixed sum of money either in a lump sum or periodically for life or some other specified period.

(23) "State" means any state, territery, or possession of the United States, as well as the District of Columbia and Puerto Rico.

(24) "Transact", "transact business", or "transaction" includes the meanings of the terms "sale", "sell", and "offer"."

Section 3. Section 30-10-104, MCA, is amended to read:

"**30-10-104. Exempt securities.** Sections 30-10-202 through 30-10-207 *and 30-10-211* do not apply to any of the following securities:

(1) any security, including a revenue obligation, issued or guaranteed by the United States, any state, any political subdivision of a state, or any agency or corporate or other instrumentality of one or more of the foregoing; provided, however, 30-10-202 through 30-10-207 *and 30-10-211* apply to a security issued by any of the foregeing that is payable solely from payments to be received in respect of property or money used under a lease, sale, or loan arrangement by or for a nongevernmental industrial or commercial enterprise, unless the enterprise or any security of which it is the issuer is within any of the exemptions enumerated in subsections (2) through (15) of this section;

(2) any security issued or guaranteed by Canada, a Canadian province, a political subdivision of a province, or an agency or corporate or other instrumentality of one or more of the foregoing or any other foreign government with which the United States currently maintains diplomatic relations if the security is recognized as a valid obligation by the issuer or guarantor;

(3) any security issued by and representing an interest in or a debt of or guaranteed by a bank organized under the laws of the United States or a bank, savings institution, or trust company organized and supervised under the laws of any state;

(4) any security issued by and representing an interest in, or a debt of, or guaranteed by a federal savings and loan association or a building and loan or similar association organized under the laws of any state and authorized to do business in this state;

(5) any security issued or guaranteed by a federal credit union or a credit union, industrial loan association, or similar association organized and supervised under the laws of this state;

HeinOnline -- 1999 vol. II 1916 1999

(6) any security issued or guaranteed by a railroad, other common carrier, public utility, or holding company ~~which~~ *that* is:

(a) subject to the jurisdiction of the interstate commerce commission;

(b) a registered holding company under the Public Utility Holding Company Act of 1935 or a subsidiary of a registered holding company within the meaning of that act;

(c) regulated in respect of its rates and charges by a governmental authority of the United States or any state or municipality; or

(d) regulated in respect to the issuance or guarantee of the security by a governmental authority of the United States, any state, Canada, or any Canadian province; also equipment trust certificates in respect to equipment conditionally sold or leased to a railroad or public utility if other securities issued by the railroad or public utility would be exempt under this subsection;

(7) any security that meets all of the following conditions:

(a) if the issuer is not organized under the laws of the United States or a state, it has appointed ~~a duly~~ *an* authorized agent in the United States for service of process and has set forth the name and address of the agent in its prospectus;

(b) a class of the issuer's securities is required to be and is registered under section 12 of the Securities Exchange Act of 1934 and has been registered for the 3 years immediately preceding the offering date;

(c) the issuer or a significant subsidiary has not had a material default during the last 7 years, or during the issuer's existence if that period is less than 7 years, in the payment of:

(i) principal, interest, dividend, or sinking fund installment on preferred stock or indebtedness for borrowed money; or

(ii) rentals under leases with terms of 3 years or more;

(d) the issuer has had consolidated net income, before extraordinary items and the cumulative effect of accounting changes, of at least $1 million in 4 of its last 5 fiscal years, including its last fiscal year; and if the offering is of interest-bearing securities, has had for its last fiscal year such net income, but before deduction for income taxes and depreciation, of at least 1 1/2 times the issuer's annual interest expense, giving effect to the proposed offering and the intended use of the proceeds. "Last fiscal year", as used in this subsection (7)(d), means the most recent year for which audited financial statements are available, provided that the statements cover a fiscal period ended not more than 15 months from the commencement of the offering.

(e) if the offering is of stock or shares, other than preferred stock or shares, the securities have voting rights and rights including the right to have at least as many votes per share and the right to vote on at least as many general corporate decisions as each of the issuer's outstanding classes of stock or shares, except as otherwise required by law;

(f) if the offering is of stock or shares, other than preferred stock or shares, the securities are owned beneficially or of record on any dato within 6 months prior to the commencement of the offering by at least 1,200 persons and on that date there are at least 750,000 of the shares outstanding with an aggregate market value, based on the average bid price for that day, of at least $3,750,000. In connection with the determination of the number of persons who are beneficial

HeinOnline -- 1999 vol. II 1917 1999

owners of the stock or shares of an issuer, the issuer or broker-dealer may rely in good faith for the purposes of this section upon written information furnished by the record owners.

(8) any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purposes if the issuer pays a fee of $50 and files with the commissioner 20 days prior to the offering a written notice specifying the terms of the offer and the commissioner does not disallow the exemption in writing within the 20-day period;

(9) any commercial paper that arises out of a current transaction or the proceeds of which have been or are to be used for the current transaction and that evidences an obligation to pay cash within 9 months of the date of issuance, exclusive of days of grace, or any renewal of the paper ~~which~~ *that* is likewise limited or any guarantee of the paper or of any renewal, when the commercial paper is sold to banks or insurance companies;

(10) any investment contract issued in connection with an employee's stock purchase, savings, pension, profit-sharing, or similar benefit plan;

(11) any security for which the commissioner determines by order that an exemption would better serve the purposes of 30-10-102 than would registration. The fee for this exemption must be as prescribed in 30-10-209(4).

(12) any security listed or approved for listing upon notice of issuance on the New York stock exchango, the American stock exchange, the Pacific stock exchange, the Midwest stock exchange, the Chicago board of options exchange, the Philadelphia stock exchange, the Boston stock exchange, or any other stock exchange registered witb the federal securities and exchange commission and approved by the commissioner; any other security of the same issuer that is of senior or substantially equal rank; any security called for by subscription rights or warrants so listed or approved; or any warrant or right to purchase or subscribe to any of the foregoing. The commissioner may by rule or order limit, restrict, or otherwise condition the terms under which any security may be exempt under this subsection.

(13) any national market system security listed or approved for listing upon notice of issuance on the national association of securities dealers automated quotation system or any other national quotation system approved by the commissioner; any other security of the same issuer that is of senior or substantially equal rank; any security called for by subscription rights or warrants so listed or approved; or any warrant or right to purchase or subscribe to any of the securities listed in this subsection. The commissioner may by rule or order limit, restrict, or otherwise condition the terms under which any security may be exempt under this subsection.

(14) any security issued by and representing an interest in, or a debt of, or any security guaranteed by any insurer organized and authorized to transact business under the laws of any state;

(15) any security for which an offer or sale is not directed to or received by a person in this state, and the issuer does not maintain a place of business in the state."

Section 4. Section 30-10-105, MCA, is amended to read:

HeinOnline -- 1999 vol. II 1918 1999

"30-10-105. Exempt transactions — rulemaking. Except as expressly provided in this section, 30-10-201 through 30-10-207 *and 30-10-211* do not apply to the following transactions:

(1) a nonissuer isolated transaction, whether effected through a broker-dealer or not. A transaction is presumed to be isolated if it is one of not more than three transactions during the prior 12-month period.

(2) (a) a nonissuer distribution of an outstanding security by a broker-dealer registered pursuant to 30-10-201 if:

(i) quotations for the securities to be offered or sold (or the securities issuable upon exercise of any warrant or right to purchase or subscribe to the securities) are reported by the automated quotations system operated by the national association of securities dealers, inc., ~~(NASDAQ)~~ or by any otber quotation system approved by the commissioner by rule; or

(ii) the security has a fixed maturity or a fixed interest or dividend provision and tbere has been no default during the current fiscal year or within the 3 preceding fiscal years or if tbe issuer and any predecessors have been in existence for less than 3 years and there has been no default in the payment of principal, interest, or dividends on the security.

(b) The commissioner ınay by order deny or revoke the exemption specified in subsection (2)(a) with respect to a specific security. Upon tbe entry of an order, the commissioner shall promptly notify all registered broker-dealers that it bas been entered and give the reasons for the order and shall notify them that within 15 days of the receipt of a written request, the matter will be set for hearing. If a hearing is not requested and is not ordered by the commissioner, the order remains in effect until it is ınodified or vacated by the cominissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination. An order under this subsection may not operate retroactively. A person may not be considered to have violated parts 1 through 3 of this chapter by reason of any offer or sale effected after the entry of an order under this subsection if tbe person sustains the burden of proof that the person did not know and in the exercise of reasonable care could not have known of the order.

(3) a nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy, hut the commissioner ınay require that tbe customer acknowledge upon a specified form that the sale was unsolicited and tbat a signed copy of eacb form be preserved by the broker-dealer for a specified period;

(4) a transaction between the issuer or other person on whose behalf the offering is made and an underwriter or between underwriters;

(5) a transaction by an executor, adıninistrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator in tbe perforınance of official duties;

(6) a transaction executed by a bona fide pledgee without any purpose of evading parts 1 tbrough 3 of this chapter;

(7) an offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Coınpany Act of 1940, pension or profit-sharing trust, or other financial institution or

HeinOnline -- 1999 vol. II 1919 1999

institutional huyer or to a broker-dealer, whether the purchaser is acting for itself or in a fiduciary capacity;

(8) (a) a transaction pursuant to an offer made in this state directed by the offeror to not more than 10 persons (other than those designated in subsection (7)) during any period of 12 consecutive months, if:

(i) the seller reasonably believes that all the buyers are purchasing for investment; and

(ii) a commission or other remuneration is not paid or given directly or indirectly for soliciting a prospective buyer; provided, bowever, tbat a commission may be paid to a registered broker-dealer if the securities involved are registered with the United States securities and exchange commission under the federal Securities Act of 1933, as amended;

(b) any transaction pursuant to an offer made in this state directed by the offeror to not more than 25 persons, other than those designated in subsection (7), during any period of 12 consecutive months if:

(i) the seller reasonably believes that all the buyers are purchasing for investment;

(ii) a commission or other remuneration is not paid or given directly or indirectly for soliciting ~~any~~ *a* prospective buyer; provided, however, that a commission may be paid to a registered broker-dealer if the securities involved are registered with the United States securities and exchange commission under the federal Securities Act of 1933, as amended; and

(iii) the offeror applies for and obtains the written approval of the commissioner prior to making any offers in this state and pays a filing fee that must accompany the application for approval. The commissioner may deny an application.

(c) For tbe purpose of the exemptions provided for in this subsection (8), an offer to sell is made in this state, whether or not the offeror or any of the offerees is then present in this stato, if the offer either originates from this state or is directed by the offeror to this state and received at the place to which it is directed (or at any post office in this state in the case of a mailed offer).

(9) an offer or sale of a preorganization certificate or subscription if:

(a) a commission or other remuneration is not paid or given directly or indirectly for soliciting a prospective subscriber;

(b) the number of subscribers does not exceed 25; and

(c) a payment is not made by a subscriber;

(10) a transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more tban 90 days of their issuance, if:

(a) a commission or other remuneration (other than a standhy commission) is not paid or given directly or indirectly for soliciting any security holder in this state; or

(b) the issuer first files a notice specifying the terms of the offer and the commissioner does not by order disallow either subsection (10)(a) or the notice specifying the terms of the offer;

HeinOnline -- 1999 vol. II 1920 1999

(11) an offer, but not a sale, of a security for which registration statements have been filed under both parts 1 through 3 of this chapter and the Securities Act of 1933 if a stop, refusal, denial, suspension, or revocation order is not in effect and a public proceeding or examination looking toward an order is not pending under either law;

(12) an offer, but not a sale, of a security for which a registration statement has been filed under parts 1 through 3 of this chapter and the commissioner does not disallow the offer in writing within 10 days of the filing;

(13) the issuance of a ~~stock~~ *security* dividend, whether the corporation distributing the dividend is the issuer of the ~~stock~~ *security* or not, if nothing of value is given by ~~stockholders~~ *security holders* for the distribution other than the surrender of a right to a cash dividend when the ~~stockholder~~ *security holder* can elect to take a dividend in cash or ~~stock~~ *in securities*;

(14) a transaction incident to a right of conversion, ~~or~~ a statutory or judicially approved reclassification, *or a* recapitalization, reorganization, quasi-reorganization, stock split, reverse stock split, merger, consolidation, or sale of assets;

(15) a transaction in compliance with rules that the commissioner may adopt to serve the purposes of 30-10-102. The commissioner may require that 30-10-201 through 30-10-207 *and 30-10-211* apply to any ~~or all~~ transactional exemptions adopted by rule.

(16) a transaction in the securities of a certified Montana capital company or a certified Montana small business investment capital company, as defined in 90-8-104, ~~provided that~~ *if* the company first files all disclosure documents, along with a consent to service of process, with the commissioner. The commissioner may not charge a fee for the filing.

(17) the sale of a commodity investment contract traded on a commodities exchange recognized by the commissioner at the time of sale;

(18) a transaction within the exclusive jurisdiction of the commodity futures trading commission as granted under the Commodity Exchange Act;

(19) a transaction that:

(a) involves the purchase of one or more precious metals;

(b) requires, and under which the purchaser receives within 7 calendar days after payment in good funds of any portion of the purchase price, physical delivery of the quantity of the precious metals purchased. For the purposes of this subsection, physical delivery is considered to have occurred if, within the 7-day period, the quantity of precious metals, whether in specifically segregated or fungible bulk, purchased by the payment is delivered into the possession of a depository, other than the seller, that:

(i) (A) is a financial institution, meaning a bank, savings institution, or trust company organized under or supervised pursuant to the laws of the United States or of this state;

(B) is a depository the warehouse receipts of which are recognized for delivery purposes for any commodity on a contract market designated by the commodity futures trading commission; or

(C) is a storage facility licensed by the United States or any agency of the United States; and

HeinOnline -- 1999 vol. II 1921 1999

(ii) issues, and the purchaser receives, a certificate, document of title, confirmation, or other instrument evidencing that the quantity of precious metals has been delivered to the depository and is being and will continue to be held on the purchaser's behalf, free and clear of all liens and encumbrances other than:

(A) liens of the purchaser;

(B) tax liens;

(C) liens agreed to by the purchaser; or

(D) liens of the depository for fees and expenses that previously have been disclosed to the purchaser.

(c) requires the quantity of precious metals purchased and delivered into the possession of a depository, as provided in subsection (19)(b), to be physically located within Montana at all times after the 7-day delivery period provided in subsection (19)(b), and the precious metals are in fact physically located within Montana at all times after that delivery period;

(20) a transaction involving a commodity investment contract solely between persons engaged in producing, processing, using commercially, or handling as merchants each commodity subject to the contract or any byproduct of the commodity;

(21) an offer or sale of a security to an employee of the issuer, pursuant to an employee stock ownership plan qualified under section 401 of the Internal Revenue Code; or

(22) (a) an offer or sale of securities by a cooperative association organized under the provisions of Title 35, chapter 15, or under the laws of another state that are substantially the same as the provisions of Title 35, chapter 15, if the offer and sale are only to members of the cooperative association or the purchase of the securities is necessary or incidental to establishing membership in the cooperative association;

(b) a cooperative organized under the laws of another state may not take advantage of the exemption created by this subsection (22) unless, not less than 10 days before the issuance or delivery of the securities, the cooperative has furnished the commissioner with a general written description of the transaction and any other information the commissioner may require by rule or otherwise. The commissioner shall promulgate rules establishing a list of states whose laws are considered substantially the same as Title 35, chapter 15, for the purposes of this subsection (22)."

Section 5. Section 30-10-107, MCA, is amended to read:

"30-10-107. Administration. (1) The administration of the provisions of parts 1 through 3 of this chapter must be under the general supervision and control of the state auditor, the ex officio securities commissioner. The commissioner may, from time to time, make, amend, and rescind rules and forms as necessary to carry out the provisions of parts 1 through 3 of this chapter. A rule or form may not be adopted unless the commissioner finds that the action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes of the policy and provisions of parts 1 through 3 of this chapter. In prescribing rules and forms, the commissioner may cooperate with the securities administrators of the other states and the securities and exchange commission with a view to effectuating the policy of parts 1 through 3

HeinOnline -- 1999 vol. II 1922 1999

of this chapter to achieve maximum uniformity in the form and content of registration statements, applications, and reports ~~wherever~~ *whenever* practicable.

(2) It is unlawful for the commissioner or any of the commissioner's officers or employees to use for personal benefit any information filed with or obtained by the commissioner and not made public. The provisions of parts 1 through 3 of this chapter do not authorize the commissioner or any of the commissioner's officers or employees to disclose any information or the fact that any investigation is being made, except among themselves or when necessary or appropriate in a proceeding or investigation under parts 1 through 3 of this chapter.

(3) The provisions of parts 1 through 3 of this chapter imposing liability do not apply to any act done or omitted in good faith in conformity with any rule, form, or order of the commissioner, notwithstanding that the rule or form may later be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

(4) Every hearing in an administrative proceeding must be public unless the commissioner grants a request joined in by all the respondents that the hearing be conducted privately.

(5) A document is filed when it is received by the commissioner. The commissioner shall keep a register of all applications for registration and registration statements that are or have ever been effective under parts 1 through 3 of this chapter and all denial, suspension, or revocation orders that have ever been entered under parts 1 through 3 of this chapter. The register must be open for public inspection. The information contained in or filed with any registration statement, application, or report may be made available to the public under rules the commissioner prescribes.

(6) Upon request and at a reasonable charge, the commissioner shall furnish to any person photostatic or other copies, certified if requested, of any entry in the register or any document that is a matter of public record. In any proceeding or prosecution under parts 1 through 3 of this chapter, any certified copy is prima facie evidence of the contents of the entry or document certified.

(7) To serve the purposes of 30-10-102, the commissioner may cooperate with the securities and exchange commission, the commodity futures trading commission, the securities investor protection corporation, *the securities registration depository,* any national securities exchange, or national securities association registered under the Securities Exchange Act of 1934, any national or international organization of securities officials or agencies, and any governmental agency, corporation, or body.

(8) Except as specifically provided in this title, an order or notice may be given to a person by personal delivery or by mail addressed to that person at the person's last recorded principal place of business on file at the commissioner's office. An order or notice that is mailed is considered to have been given at the time it is mailed."

Section 6. Section 30-10-115, MCA, is amended to read:

"30-10-115. Deposits to ~~the~~ general fund. (1) All fees~~, examination charges,~~ and miscellaneous charges received by the commissioner pursuant to parts 1 through 3 of this chapter, except for portfolio registration fees described in 30-10-209(1)(d), must be deposited in the general fund.

HeinOnline -- 1999 vol. II 1923 1999

(2) All portfolio registration fees collected under 30-10-209(1)(d) *and examination costs collected under 30-10-210* must be deposited in the state special revenue account to the credit of the state auditor's office. The funds allocated by this section to the state special revenue account may only be used to defray the expenses of the state auditor's office in discharging its administrative and regulatory powers and duties in relation to portfolio registration *and examinations*. Any excess fees must be deposited in the general fund."

Section 7. Section 30-10-201, MCA, is amended to read:

"30-10-201. Registration and notice filing requirements of broker-dealers, salespersons, investment advisers, and investment adviser representatives. (1) It is unlawful for a person to transact business in this state as a broker-dealer or salesperson, except as provided in 30-10-105, unless the person is registered under parts 1 through 3 of this chapter.

(2) It is unlawful for a broker-dealer or issuer to employ a salesperson to represent the broker-dealer or issuer in this state, except in transactions exempt under 30-10-105, unless the salesperson is registered under parts 1 through 3 of this chapter.

(3) It is unlawful for ~~any~~ *a* person to transact business in this state as an investment adviser or as an investment adviser representative unless:

(a) the porson is registered under parts 1 through 3 of this chapter;

(b) the person does not have a place of business in the state and the person's only clients in this state are:

(i) investment companies, as defined in the Investment Company Act of 1940, or insurance companies;

(ii) other investment advisers;

(iii) federal covered advisers;

(iv) broker-dealers;

(v) banks;

(vi) trust companies;

(vii) savings and loan associations;

(viii) employee benefit plans with assets of not less than $1 million;

(ix) governmental agencies or instrumentalities, whether acting for themselves or as trustees with investment control; or

(x) other institutional investors as designated by rule or order of the commissioner; or

(c) the person does not have a place of business in this state and during the preceding 12-month period, the person has not had more than five clients who are residents of this state, other than those clients specified in subsection (3)(b).

(4) Except for federal covered advisers whose only clients are clients listed in subsection (3)(b) *or who meet the requirements of subsection (3)(c)*, it is unlawful for a federal covered adviser to conduct advisory business in this state unless the federal covered adviser complies with the provisions of subsection (6)(b).

(5) (a) It is unlawful for a person required to be registered as an investment adviser under Title 30, chapter 10, parts 1 through 3, to employ an investment

HeinOnline -- 1999 vol. II 1924 1999

adviser representative unless the investment adviser representative is registered or exempt from registration under Title 30, chapter 10, parts 1 through 3.

(b) It is unlawful for a federal covered adviser to employ, supervise, or associate with an investment adviser representative who maintains a place of business in this state unless the investment adviser representative is registered or exempt from registration under Title 30, chapter 10, parts 1 through 3.

(6) (a) A broker-dealer or a salesperson, acting as an agent for an issuer or as an agent for a broker-dealer in the offer or sale of securities for an issuer, or an investment adviser or investment adviser representative may apply for registration by filing an application in the form that the commissioner prescribes and payment of the fee prescribed in 30-10-209.

(b) Except for a federal covered adviser whose only clients are those listed in subsection (3)(b) or *who meet the requirements of subsection* (3)(c), a federal covered adviser shall, prior to acting as a federal covered adviser in this state, ~~pay~~ *submit a notice filing to the commissioner consisting of* the fee prescribed in 30-10-209 and ~~shall file with the commissioner~~ copies of any documents filed with the securities and exchange commission that the commissioner requires by rule or order. *A notice filing is effective upon its receipt by the commissioner.*

(7) The application must contain whatever information the commissioner requires. A registration application of a broker-dealer, salesperson, investment adviser, or investment adviser representative may not be withdrawn before the commissioner approves or denies the registration, without the express written consent of the commissioner.

(8) When the registration requirements are met, the commissioner shall make the registration effective. An effective registration of a broker-dealer, salesperson, investment adviser, or investment adviser representative may not be withdrawn or terminated without the express written consent of the commissioner.

(9) Registration of a broker-dealer, salesperson, investment adviser, or investment adviser representative *or a notice filing by a federal covered adviser*:

(a) is effective until December 31 following the registration *or notice filing* or any other time as the commissioner may by rule adopt; and

(b) may be renewed pursuant to subsection (11).

(10) (a) The registration of a salesperson is not effective during any period when the salesperson is not associated with an issuer or a registered broker-dealer specified in the application. When a salesperson begins or terminates a connection with an issuer or registered broker-dealer, the salesperson and the issuer or broker-dealer shall promptly notify the commissioner.

(b) The registration of an investment adviser representative is not effective during any period when the person is not associated with *either* an investment adviser registered under this act *or a federal covered adviser with an effective notice filing* ~~and~~ *who is* specified in the application. When an investment adviser representative begins or terminates a connection with an investment adviser, the investment adviser shall promptly notify the commissioner. When an investment adviser representative begins or terminates a connection with a federal covered adviser, the investment adviser representative shall promptly notify the commissioner.

HeinOnline -- 1999 vol. II 1925 1999

(11) Registration of a broker-dealer, salesperson, investment adviser, or investment adviser representative or notice filing for a federal covered adviser may be renewed by filing, prior to the expiration of the registration or notice filing, an application containing information as the commissioner may require to indicate any material change in the information contained in the original application or any renewal application for registration or notice filing, and payment of the fee prescribed by 30-10-209. A broker-dealer who is not a member of ~~NASD~~ *the national association of securities dealers*, inc., is required to file a financial statement of the broker-dealer within 90 days of the end of the broker-dealer's fiscal year, except as provided in section 15 of the Securities Exchange Act of 1934. A registered broker-dealer or investment adviser may file an application for registration of a successor, to become effective upon approval of the commissioner.

(12) (a) Except as provided in section 15 of the Securities Exchange Act of 1934 in the case of a broker-dealer and section 222 of the Investment Advisers Act of 1940 in the case of an investment adviser, every registered broker-dealer and investment adviser shall make and keep accounts and other records, except with respect to securities exempt under 30-10-104(1), as may be prescribed by the commissioner by rule or order. All required records of an investment adviser must be preserved for the period the commissioner prescribes by rule or order. All the records of a registered broker-dealer or investment adviser are subject at any time or from time to time to reasonable periodic, special, or other examinations, within or outside this state, by representatives of the commissioner, as the commissioner considers necessary or appropriate in the public interest or for the protection of investors.

(b) The commissioner may require investment advisers who are registered or required to be registered to furnish or disseminate certain information as necessary or appropriate in the public interest or for the protection of investors and advisory clients.

(c) If information contained in any document filed with the commissioner is, or becomes, inaccurate or incomplete in any material respect, the registrant or federal covered adviser ~~must~~ *shall* promptly file a correcting amendment.

(13) The commissioner may by order deny, suspend, or revoke registration of any broker-dealer, salesperson, investment adviser, or investment adviser representative if the commissioner finds that the order is in the public interest and that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, director, person occupying a similar status or performing similar functions, or person directly or indirectly controlling the broker-dealer or investment adviser:

(a) has filed an application for registration under this section that, as of its effective date or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement that was, in ~~the~~ light of the circumstances under which it was made, false or misleading with respect to any material fact;

(b) has willfully violated or willfully failed to comply with any provision of parts 1 through 3 of this chapter or a predecessor law or any rule or order under parts 1 through 3 of this chapter or a predecessor law;

(c) has been convicted of any misdemeanor involving a security or any aspect of the securities business or any felony;

(d) is permanently or temporarily enjoined hy any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;

(e) is the subject of an order of tbe commissioner denying, suspending, or revoking registration as a broker-dealer, salesperson, investment adviser, or investment adviser representative;

(f) is the subject of an adjudication or determination, within the past 5 years, by a securities or commodities agency or administrator of another state or a court of competent jurisdiction, that the person has violated the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisors Act of 1940, the Investment Company Act of 1940, or the Commodity Exchange Act or the securities or commodities law of any other state;

(g) bas engaged in dishonest or unethical practices in the securities business;

(h) is insolvent, either in the sense that the person's liabilities exceed the person's assets or in the sense that the person cannot meet obligations as they mature, but the commissioner may not enter an order against a broker-dealer or investment adviser under this subsection (13) without a finding of insolvency as to the broker-dealer or investment adviser;

(i) has not complied with a condition imposed by the commissioner under this section or is not qualified on the basis of such factors as training, experience, or knowledge of the securities business;

(j) has failed to pay the proper filing fee, but the commissioner may enter only a denial order under this subsection (13), and the commissioner shall vacate any order when the deficiency has been corrected; or

(k) has failed to reasonably supervise the person's salespersons or employees or investment adviser representatives or employees to ~~assure~~ *ensure* their compliance with this act.

(14) The commissioner may not institute a suspension or revocation proceeding on the basis of a fact or transaction known to the commissioner when registration became effective unless the proceeding is instituted within 30 days after the date on which tbe registration became effective.

(15) The commissioner may by order summarily postpone or suspend registration pending final determination of any proceeding under this section.

(16) Upon the entry of the order under subsection (13), the commissioner shall promptly notify the applicant or registrant, as well as the employer or prospective employer if tbe applicant or registrant is a salesperson or investment adviser representative, that it bas been entered and of the reasons for the order and that if requested by the applicant or registrant within 15 days after tbe receipt of the commissioner's notification, the matter will be promptly set for hearing. If a hearing is not requested within 15 days and none is ordered hy the commissioner, the order will remain in effect until it is modified or vacated by tbe commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing, may modify or vacate the order or extend it until final determination.

(17) If tbe commissioner finds that ~~any~~ *a* registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, salesperson, investment adviser, or investment adviser representative or is subject to an adjudication of mental incompetence or to the

HeinOnline -- 1999 vol. II 1927 1999

control of a committee, conservator, or guardian or cannot he located after reasonable search, tbe commissioner may by order cancel the registration or application.

(18) The commissioner may, after suspending or revoking registration of any broker-dealer, salesperson, investment adviser, or investment adviser representative, iinpose a fine not to exceed $5,000 upon the broker-dealer, salesperson, investment adviser, or investment adviser representative. The fine is in addition to all other penalties imposed by the laws of this state and must be collected by the commissioner in the name of the state of Montana and deposited in the general fund. Imposition of any fine under tbis subsection is an order from which an appeal may be taken pursuant to 30-10-308. If any broker-dealer, salesperson, investment adviser, or investment adviser representative fails to pay a fine referred to in this subsection, tbe amount of the fine is a lien upon all of the assets and property of the broker-dealer, salesperson, investment adviser, or investment adviser representative in this state and may be recovered by suit by tbe commissioner and deposited in the general fund. Failure of a broker-dealer, salesperson, investment adviser, or investment adviser representative to pay a fine also constitutes a forfeiture of the right to do business in this state under parts 1 through 3 of this chapter.

(19) A sole proprietor registered as a broker-dealer or investment adviser who does not employ other salespersons or investment adviser representatives, otber than the sole proprietor, is not required to register as both a broker-dealer and a salesperson or as an investment adviser and an investment adviser representative if the sole proprietor meets the examination requirements establisbed by the commissioner by rule.

(20) A person who is subject to the provisions of this section and who bas passed the general securities principal's examination is not required to also pass the uniform investment adviser law examination. The commissioner shall by rule provide for a form that a person who passes the general securities principal's examination shall file with the commissioner as a verification of having passed the examination unless the commissioner can verify electronically that the person has passed the exam."

Section 8. Section 30-10-210, MCA, is amended to read:

"30-10-210. Examination costs. (1) An issuer, broker-dealer, or investment adviser who is examined in connection with a registration under parts 1 tbrough 3 of tbis chapter shall reimburse the commissioner or any of ~~his duly~~ *the commissioner's* autborized agents, officers, or employees for actual travel expenses, a reasonable living expense allowance, and a per diem as compensation of examiners, ~~as~~ *which are* necessarily incurred on account of the examination, upon presentation of a detailed account of ~~such~~ *the* cbarges and expenses by the commissioner or pursuant to ~~his~~ *the commissioner's* written authorization; however, ~~no~~ reimbursement of expenses may *not* be required for routine examinations performed in connection with an application for registration. ~~No~~ *A* person may *not* pay and ~~no~~ *an* examiner may *not* accept additional emolument on account of ~~such~~ an examination.

(2) The commissioner shall ~~pay to the state treasurer to the credit of the general fund all moneys received hereunder~~ *deposit examination costs collected under this section in the special revenue account provided for in 30-10-115.* The commissioner may give written authorization for payment of the examination

HeinOnline -- 1999 vol. II 1928 1999

costs referred to in subsection (1) by the person examined directly to the examiner.

(3) If an issuer, broker-dealer, or investment adviser fails to pay the charges and expenses referred to ~~above~~ *in subsection (1),* the ~~same shall~~ *charges and expenses must* be paid out of the funds of the commissioner in the same manner as other disbursements of ~~such~~ *those* funds. The amount ~~so~~ paid is a first lien upon all of the assets and property in this stato of the issuer, broker-dealer, or investment adviser and may be recovered by suit by the attorney general on behalf of the state of Montana and restored to the appropriate fund. Failure of the issuer, broker-dealer, or investment adviser to pay the charges and expenses also works a forfeiture of ~~his or its~~ *the* right to do business in this state under parts 1 through 3 of this chapter."

Seetion 9. Section 31-1-233, MCA, is amended to read:

"31-1-233. Insuranee. (1) The amount, if any, included for insurance that may be purchased by the holder of the contract may not exceed the applicable premiums chargeable in accordance with the rates filed with the insurance department of this state ~~where~~ *when* the rates are required by law to be approved by the insurance department.

(2) All insurance purchased by the holder of the contract must he written by an insurance company authorized to do business in this state ~~and must be countersigned by a duly licensed resident insurance producer authorized to engage in the insurance business in this state~~.

(3) A buyer may be required to provide insurance on the goods at ~~his~~ *the buyer's* own cost for the protection of the seller or holder as well as the buyer, but the insurance is limited to insurance against suhstantial risk of loss, damage, or destruction of the goods.

(4) Any other insurance may be included in a retail installment transaction at the buyer's expenue only if contracted for voluntarily by the buyer.

(5) If insurance for which an identified charge is made insures the life, safety, or health of the buyer or ~~his~~ *the buyer's* interest in ~~the~~ goods and is purchased by the holder, the holder shall within 30 days after the execution of the retail installment contract send or cause to be sent to the buyer a pelicy or policies or certificate or certificates of insurance, written by an insurance company authorized to do business in this state, clearly setting forth:

(a) the amount of the premium;

(b) the kind or kinds of insurance;

(c) the coveragos; and

(d) if a policy, all the terms, exceptions, limitations, restrictions, and conditions of the contract or contracts of insurance or, if a certificate, a summary of the terms, exceptions, limitations, restrictions, and conditions.

(6) The ~~seller~~ *holder* may not decline existing insurance written by an insurance company authorized to do business in this state, and the buyer has the privilege of purchasing insurance from an insurance producer or broker of ~~his~~ *thc buyer's* own selection and of selecting ~~his~~ *the buyer's* insurance company~~, provided that~~ *if*:

(a) the insurance company is acceptable to the holder, which acceptance may not he unreasonably or arbitrarily withheld; and

HeinOnline -- 1999 vol. II 1929 1999

(h) the inclusion of the cost of the insurance premium in the retail installment contract when the buyer selects ~~his~~ *the buyer's* insurance producer, broker, or company is optional with the ~~seller~~ *holder*.

(7) If any insurance is canceled or the premium adjusted, any refund of the insurance premium received by the holder must be credited to the final maturing installment of the contract except to the extent applied toward payment for a similar insurance protecting tbe interests of the buyer and the holder or either of them."

Section 10. Section 33-1-311, MCA, is amended to read:

"33-1-311. General powers and duties. (1) The commissioner shall enforce the applicable provisions of the laws of this state and shall execute the duties imposed on the commissioner by the laws of this state.

(2) The commissioner has the powers and authority expressly conferred upon the commissioner by or reasonably implied from the provisions of the laws of this state.

(3) Tbe commissioner shall administer the department to ensure that the interests of insurance consumers are protected.

(4) The commissioner may conduct examinations and investigations of insurance matters, in addition to examinations and investigations expressly authorized, as the commissioner considers proper, to determine whether any person has violated any provision of the laws of this state or to secure information useful in the lawful administration of any provision. The cost of additional examinations and investigations must be borne by the state.

(5) The commissioner shall maintain as confidential any information or document received from:

(a) the national association of insurance commissioners; or

(b) an insurance department from another state that treats the same information or document as confidential. The commissioner may provide information or documents, including information or documents that are confidential, to the national association of insurance commissioners, a state or federal law enforcement agency, or an insurance department in another state, if the recipient agrees to maintain the confidentiality of the information or documents.

~~(5)~~*(6)* The department is a criminal justice agency as defined in 44-5-103."

Section 11. Section 33-1-411, MCA, is amended to read:

"33-1-411. Destruction of records — hindrance of examination — penalty. ~~Any~~ *A* director, officer, agent, or employee of ~~any~~ *a* company who for the purpose of hindering any examination conducted pursuant to this part destroys any books, records, or documents required to be kept by law shall be punished by a fine ~~of not more than $1,000~~ *as provided in 33-1-317*. After notice and hearing in accordance with Title 33, chapter 1, part 7, the commissioner may revoke the certificate of authority of ~~such~~ *the* company."

Section 12. Section 33-2-109, MCA, is amended to read:

"33-2-109. Capital or surplus funds required. (1) To qualify for authority to transact any one kind of insurance, as defined in 33-1-205 through 33-1-212, or combinations of kinds of insurance as shown below, an insurer shall

HeinOnline -- 1999 vol. II 1930 1999

possess and ~~thereafter~~ maintain unimpaired paid-in capital stock, ~~(~~if a stock insurer~~)~~, or surplus, ~~(~~if a mutual or foreign reciprocal insurer~~)~~, in *an* amount not less than ~~as~~ *is* applicable under the ~~schedule~~ *schedules* below~~,~~ and shall possess when first ~~so~~ authorized ~~such~~ *to transact insurance any* additional funds as surplus as required under 33-2-110:

(a)

Kind or kinds of insurance	Minimum capital or surplus required
Life	$200,000
Disability	200,000
Life and disability	300,000
Credit life and disability	50,000
Property	400,000
Marine	400,000
Casualty	
All lines, except workers' compensation	400,000
All lines, including workers' compensation	600,000
Surety	500,000
Title	200,000
Multiple lines, ~~(~~two or more~~:~~ *of* property, marine, casualty, or surety~~)~~	800,000

(b) For insurers licensed on or after October 1, 1999:

Kind or kinds of insurance	*Minimum capital or surplus required*
Life	*$ 600,000*
Disability	*500,000*
Life and disability	*750,000*
Credit life and disability	*150,000*
Property	*500,000*
Marine	*500,000*
Casualty	
All lines, except workers' compensation	*500,000*
All lines, including workers' compensation	*750,000*
Surety	*500,000*
Title	*500,000*
Multiple lines, two or more of property, marine, casualty, or surety	*1,000,000*

(2) ~~As to surplus required~~ *Surplus requirements* for qualification to transact one or more kinds of insurance ~~and thereafter to be maintained,~~ *for* domestic mutual insurers ~~shall be~~ *are* governed by *Title 33,* chapter 3, and *surplus*

HeinOnline -- 1999 vol. II 1931 1999

requirements for domestic reciprocal insurers ~~shall be~~ *are* governed by *Title 33,* chapter 5.

(3) Capital and surplus requirements ~~shall~~ *must* be based upon all the kinds of insurance actually transacted or to be transacted by the insurer in any ~~and all~~ areas in which it operates, whether or not only a portion of ~~such~~ *the* kinds are to be transacted in this state.

(4) A life insurer may also grant annuities without additional capital or additional surplus.

(5) For a credit life and disability insurer that is not a resident domestic insurer as defined in 33-1-201 and 33-1-202, the capital or surplus required by this section is an amount equal to four times the minimum capital or surplus required for credit life and disability pursuant to subsection (1)."

Section 13. Section 33-2-502, MCA, is amended to read:

"33-2-502. Assets expressly not allowed. In addition to assets impliedly excluded by the provisions of 33-2-501, the following expressly ~~shall~~ *may* not be allowed as assets in any determination of the financial condition of an insurer:

(1) goodwill, trade names, and other like intangible assets;

(2) advances to officers, ~~(~~other than policy loans~~)~~, whether secured or not, and advances to employees, insurance producers, and other persons on personal security only;

(3) stock ~~of such~~ *issued and owned by the* insurer, ~~owned by it, or~~ any equity ~~therein~~ *in the stock issued by the insurer,* ~~or~~ loans secured ~~thereby~~ *by stock issued by the insurer,* or any proportionate interest in ~~such~~ *the* stock acquired or held through the ownership by ~~such~~ *the* insurer of an interest in another firm, corporation, or business unit;

(4) furniture, fixtures, ~~(~~other than electronic data processing machines authorized under 33-2-501(11)~~)~~, furnishings, safes, vehicles, libraries, stationery, literature, and supplies, except:

(a) in the case of title insurers, ~~such~~ materials and plants ~~as~~ *that* the insurer is expressly authorized to invest in under 33-2-851; and

(b) in the case of any insurer, ~~such~~ personal property ~~as~~ *that* the insurer is permitted to hold pursuant to part 8 of this chapter, ~~or which~~ *that* is acquired through foreclosure of chattel mortgages acquired pursuant to 33-2-831, or ~~which~~ *that* is reasonably necessary for the maintenance and operation of real estate lawfully acquired and held by the insurer other than real estate used by it for home office, branch office, and similar purposes;

(5) the amount, if any, by which the aggregate book value of investments as carried in the ledger assets of the insurer exceeds the aggregate value ~~thereof~~ *of the investments* as determined under this ~~code~~ *title; and*

(6) prepaid expenses."

Section 14. Section 33-2-521, MCA, is amended to read:

"33-2-521. Standard valuation of reserve liabilities law — life insurance. (1) The commissioner shall annually value or cause to be valued the reserve liabilities (reserves) for all outstanding life insurance policies and annuity and pure endowment contracts of every life insurer doing business in this state and may certify the amount of any reserves, specifying the mortality table or

HeinOnline -- 1999 vol. II 1932 1999

tables, rate or rates of interest, and methods (net level premium method or other) used in the calculation of reserves. In calculating the reserves, the commissioner may use group methods and approximate averages for fractions of a year or otherwise.

(2) In lieu of the valuation of the reserves required in this section of any foreign or alien insurer, the commissioner may accept any valuation made or caused to be made by the insurance supervisory official of any state or other jurisdiction when the valuation complies with the minimum standard provided in this section and if the official of the other state or jurisdiction accepts as sufficient and valid for all legal purposes the certificate of valuation of the commissioner when the certificate states the valuation to have been made in a specified manner according to which the aggregate reserves would be at least as large as if they had been computed in the manner prescribed by the law of that state or jurisdiction.

(3) Any insurer that has adopted any standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard provided in this section may, with the approval of the commissioner, adopt any lower standard of valuation but not lower than the minimum in this section. For the purposes of this section, the holding of additional reserves previously determined by a qualified actuary to be necessary to render the opinion required in subsection (4) may not be considered to be the adoption of a higher standard of valuation.

(4) (a) Each life insurer doing business in this state shall annually submit the opinion of a qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the commissioner by rule are computed appropriately, are based on assumptions that satisfy contractual provisions, are consistent with prior reported amounts, and comply with applicable laws of this state. The commissioner by rule shall define the specifics of this opinion and add any other items considered necessary to its scope.

(b) Each life insurer, except as exempted by or pursuant to regulation, shall also annually include in the opinion required by subsection (4)(a) an opinion of the same qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the commissioner by rule, when considered in light of the assets held by the insurer with respect to the reserves and related actuarial items, including but not limited to the investment earnings on the assets and the considerations anticipated to be received and retained under the policies and contracts, make adequate provision for the insurer's obligations under the policies and contracts, including but not limited to the benefits under and expenses associated with the policies and contracts.

(c) The commissioner may provide by rule for a transition period for establishing any higher reserves that the qualified actuary may consider necessary in order to render the opinion required by this subsection (4).

(d) Each opinion required by this subsection (4) must be governed by the following provisions:

(i) A memorandum, in form and substance acceptable to the commissioner as specified by rule, must be prepared to support each actuarial opinion.

(ii) If the insurer fails to provide a supporting memorandum at the request of the commissioner within a period specified by rule or if the commissioner

HeinOnline -- 1999 vol. II 1933 1999

determines that the supporting memorandum provided by the insurer fails to meet tbe standards prescribed by the rules or is otherwise unacceptable to the commissioner, the commissioner may engage a qualified actuary at the expense of the insurer to review the opinion and the basis for the opinion and to prepare any supporting memorandum as is required by the commissioner.

(iii) The opinion must be submitted with the annual statement reflecting the valuation of the reserve liabilities for each year ending on or after December 31, 1996.

(iv) The opinion must apply to all business in force, including individual and group health insurance plans, in form and substance acceptable to the commissioner as specified by rule.

(v) The opinion must be based on standards adopted from time to time by the actuarial standards board and on additional standards as the commissioner may prescribe by rule.

(vi) In the case of an opinion required to be submitted by a foreign or alien insurer, the commissioner may accept the opinion filed by that insurer with the insurance supervisory official of another state if the commissioner determines that the opinion reasonably meets the requirements applicable to a company domiciled in this state.

(vii) Except in cases of fraud or willful misconduct, the qualified actuary is not liable for damages to any person, other than the insurer and the commissioner, for any act, error, omission, decision, or conduct with respect to the actuary's opinion.

(viii) Disciplinary action by the commissioner against the insurer or the qualified actuary must be defined in rules by the commissioner.

(ix) Any memorandum in support of the opinion and any other material provided by the insurer to the commissioner in connection with those items must be kept confidential by the commissioner, may not be made public, and is *not* subject to subpoena, other than for the purpose of defending an action seeking damagas from any person by reason of any action required by this subsection (4) or by rules promulgated under this subsection (4). However, the memorandum or other material may otherwise be released by the commissioner:

(A) with the written consent of the insurer; or

(B) to the American academy of actuaries upon request stating that the memorandum or other material is required for the purpose of professional disciplinary proceedinga and setting forth procedures satisfactory to the commissioner for preserving the confidentiality of the memorandum or other material. Once any portion of the confidential memorandum is cited by the insurer in its marketing, is cited before any governmental agoncy other than a state insurance department, or is released by the insurer to the news media, all portions of the confidential memorandum are no longer confidential.

(5) For purposes of this section, "qualified actuary" means a member in good standing of the American academy of actuaries who meets the requirements set forth in the academy's rules."

Seetion 15. Section 33-2-701, MCA, is amended to read:

"33-2-701. Annual statement — revoeation or fine for faiiure to file — penalty for perjury. (1) Each authorized insurer shall annually on or before

HeinOnline -- 1999 vol. II 1934 1999

March 1 file with the commissioner a full and true statement of its financial condition, transactions, and affairs as of the preceding December 31. The statement must be in the general form and context as is required or not disapproved by the commissioner, as is in current use for similar reports to states in general with respect to the type of insurer and kinds of insurance to be reported upon, and as supplemented for additional information required by the commissioner. The statement must be completed in accordance with the annual statement instructions and the accounting practices and procedures manual of the national association of insurance commissioners. The statement must be accompanied by an actuarial opinion attesting to the adequacy of the insurer's reserves. The statement must be verified by the oath of the insurer's president or ~~vice president~~ *vice president* and secretary or, if a reciprocal insurer, by the oath of the attorney-in-fact or its like officers if a corporation. The commissioner may waive the verification under oath.

(2) (a) Each domestic insurer shall file electronic ~~diskette~~ versions of its annual and quarterly financial statements with the national association of insurance commissioners. The ~~filing~~ date for submission of the annual statement ~~diskette~~ *electronic filing* is March 1. The ~~filing dates~~ *dates* for the *submission of the* quarterly statement ~~diskettes~~ *electronic filings* are as follows:

(i) the first ~~calendar~~ quarter filing is due May 15;

(ii) the second ~~calendar~~ quarter filing is due August 15; and

(iii) the third ~~calendar~~ quarter filing is due November 15.

(b) The commissioner may exempt insurers that operate only in Montana from these filing requirements.

(3) The statement of an alien insurer must relate only to its transactions and affairs in the United States unless the commissioner requires otherwise. If the commissioner requires a statement as to an alien insurer's affairs throughout the world, the insurer shall file the statement with the commissioner as soon as reasonably possible. The statement must be verified by the insurer's United States manager or other authorized officer.

(4) The commissioner may refuse to accept the fee for continuance of the insurer's certificate of authority, as provided in 33-2-117, or may suspend or revoke the certificate of authority of any insurer failing to file its annual statement when due or within an extension of time that the commissioner may grant.

(5) ~~Any~~ *A* director, officer or insurance producer, or employee of ~~any~~ *a* company who subscribes to, makes, or concurs in making or publishing ~~any~~ *an* annual statement or any other statement required by law knowing that the statement contains any material statement ~~which~~ *that* is false shall be punished by a fine of not more than $1,000.

(6) At *the* time of filing, the insurer shall pay to the commissioner the fee for filing its statement as prescribed in 33-2-708.

(7) The commissioner may impose a fine not to exceed $100 a day for each day after March 1 that an insurer fails to file the annual statement referred to in subsection (1). The fine may not exceed a maximum of $1,000."

Section 16. Section 33-2-806, MCA, is amended to read:

HeinOnline -- 1999 vol. II 1935 1999

"33-2-806. Diversification of investments. An insurer shall invest in or hold as admitted assets categories of investments only within applicable limits as follows:

(1) An insurer may not, except with the consent of the commissioner, have at any one time any combination of investments in or loans upon the security of the obligations, property, or securities of any one person or insurer aggregating an amount exceeding 5% of the insurer's assets. This restriction does not apply as to general obligations of the United States ~~of America~~ or of any state or include policy loans made under 33-2-825.

(2) An insurer may not invest in or hold at any one timo more than 10% of the outstanding voting stock of any corporation, except with the consent of the commissioner. This provision does not apply as to stock of a wholly owned subsidiary of the insurer or to controlling stock of an insurer acquired under 33-2-821.

~~(3) An insurer, other than title insurer, shall invest and maintain invested funds not less in amount than the minimum paid-in capital stock required under this code of a domestic stock insurer transacting like kinds of insurance, only in cash and the securities provided for in 33-2-811(1), 33-2-812, and 33-2-830.~~

~~(4)~~*(3)* A life insurer shall also invest and keep invested its funds in an amount not less than the reserves under its life insurance policies and annuity contracts, other than variable annuities, in force in cash, in securities, in both cash and securities, or in investments provided for in 33-2-531.

~~(5)~~*(4)* Except with the commissioner's consent, an insurer may not have invested at any one time more than 20% of its assets in the class of securities described in 33-2-818, exclusive of obligations of public utilities.

~~(5)~~*(5)* Except with the commissioner's consent, an insurer may not invest and have invested at any one time in aggregate amount more than 15% of its assets in all stocks provided for in 33-2-820 and 33-2-821. Determination of the amount that an insurer has invested in common stocks for the purposes of this provision must be based on the cost of the stocks to the insurer. This provision does not apply to stock of a controlled or subsidiary insurance corporation or other corporations provided for in 33-2-821 and 33-2-822.

~~(7)~~*(6)* Except with the commissioner's consent, an insurer may not have invested at any one time more than 5% of its assets in securities allowed in 33-2-824. Money market funds, as defined by the commissioner by rule, are exempt from the 5% limitation of this subsection.

~~(8)~~*(7)* Except with the commissioner's consent, an insurer may not have invested at any one time more than 10% of its assets in the class of securities described in 33-2-814, 33-2-819, and 33-2-823.

~~(9)~~*(8)* Limits of investments in real estate must be as provided in 33-2-832. Other specific limits apply as stated in the sections dealing with other respective kinds of investments."

Section 17. Section 33-3-202, MCA, is amended to read:

"33-3-202. Articles of incorporation — filing and approval. (1) The incorporators of a proposed domestic insurer shall deliver the ~~quadruplicate~~ *triplicate* originals of the articles of incorporation to the commissioner, together with the filing fees ~~therefor~~ specified in 33-2-708. The commissioner shall examine the proposed articles of incorporation. If the commissioner finds that

HeinOnline -- 1999 vol. II 1936 1999

the articles comply with this chapter and are not in conflict with the constitution and laws of the United States or of this state, ~~he~~ *the commissioner* shall ~~endorse his~~ *place an endorsement of* approval upon each set of the articles~~, except that~~. *However,* if the commissioner finds that tbe proposed insurer would not be eligible for a certificate of authority under 33-2-112, ~~he~~ *the commissioner* shall refuse to approve the articles of incorporation and shall return them to the proposed incorporators, together with a written statement of the reasons for ~~such~~ *the* refusal. If approved ~~by him~~, the commissioner shall then forward the *endorsed* articles of incorporation~~, with his approval endorsed thereon,~~ to the incorporators. The incorporators shall ~~forthwith~~ file one set of the articles of incorporation with the secretary of state~~,~~ *and* one set *certified by the secretary of state* with the commissioner~~, bearing the certification of the secretary of state, and one set with the county clerk of the county wherein is to be located the corporation's principal place of business; and the~~. *The* remaining set of articles ~~shall~~ *must* be made a part of the corporation's record.

(2) If the commissioner finds that the proposed articles of incorporation do not comply with law, ~~he~~ *the commissioner* shall refuse to approve the ~~same~~ *articles* and shall return all sets of the proposed articles of incorporation to the proposed incorporators, together with a written statement of the reasons for ~~his~~ *the* refusal ~~to approve~~.

(3) The corporation ~~shall have~~ *has* legal existence as ~~such~~ *a corporation* upon the issuance of the certificate of incorporation by the secretary of state and ~~the~~ completion of the ~~filings~~ *filing with the commissioner* ~~referred to~~ *required* in subsection (1) ~~above~~, but ~~it shall~~ *the corporation may* not transact business as an insurer until it has qualified for and received from the commissioner a certificate of authority as provided in this ~~code~~ *title*.

(4) A copy of the certificate of incorporation, ~~duly~~ certified by the secretary of state, ~~shall be~~ *is* admissible in all the courts of this state as prima facie evidence of ~~due~~ *proper* incorporation."

Section 18. Section 33-3-307, MCA, is amended to read:

"33-3-307. ~~Bond~~ *Bonding* of officers *and employees.* (1) ~~The president, secretary, and treasurer~~ *When acting in a fiduciary capacity, officers and employees* of each mutual insurer or stock insurer shall ~~each file with the commissioner and~~ maintain ~~in force so long as that individual is an officer~~ a fidelity bond ~~in an amount set by the commissioner by rule and~~ issued by an authorized corporate surety in favor of the insurer. The commissioner shall consider the insurer's exposure, total assets, and total income in determining the bond amount. In lieu of individual bonds, officers *and employees* may be covered under a blanket bond for the same respective amounts. The *insurer shall file the* blanket bond ~~must be filed~~ with the commissioner.

(2) The *insurer shall pay the* premium for the bond ~~must be payable by the insurer~~.

(3) A bond is not subject to cancellation except upon written notice to both the insurer and the commissioner, delivered not less than 30 days in advance of the effective date of the cancellation.

~~(4) The insurer shall provide for the bonding by authorized corporate surety of all other officers in any way responsible for the handling of the funds of the insurer.~~

HeinOnline -- 1999 vol. II 1937 1999

~~(5)~~*(4)* This section may not be considered to limit the amount of bonded protection that the insurer may carry as to any officer *or employee*.

(5) The commissioner may adopt rules to determine the bond amount for officers and employees who are subject to the provisions of this section."

Section 19. Section 33-4-101, MCA, is amended to read:

"**33-4-101. Scope of chapter — provisions applicable.** (1) The chapter applies to:

(a) all domestic mutual hail, fire, and other casualty insurers of farm property and stock and rural buildings formed and immediately prior to January 1, 1961, lawfully transacting insurance under sections 40-1501 through 40-1517 of the Revised Codes of Montana, 1947;

(b) all domestic mutual rural insurers formed and immediately prior to January 1, 1961, lawfully transacting insurance under sections 40-1601 through 40-1625 of the Revised Codes of Montana, 1947;

(c) all insurers formed under this chapter.

(2) The insurance laws of this state do not apply to or govern, either directly or indirectly, domestic farm mutual insurers except as ~~contained or referred to~~ *provided* in this chapter.

(3) The following chapters and sections of this title apply to farm mutual insurers to the extent applicable and not inconsistent with the express provisions of this chapter and the reasonable implications of the express provisions *of this chapter*: chapter 1, parts 1 through 4, ~~and~~ 7, *12, and 13*; 33-2-112; 33-2-501; 33-2-502; 33-2-532 through 33-2-535; 33-2-708; ~~chapter 2, parts 13 and 16;~~ 33-2-1212; *chapter 2, parts 13 and 16;* 33-3-218; 33-3-308; 33-3-309; 33-3-401; 33-3-402; 33-3-431; 33-3-436; and chapter 18."

Section 20. Section 33-4-203, MCA, is amended to read:

"**33-4-203. Approval of articles — commencement of corporate existence.** (1) If the commissioner finds the proposed articles of incorporation to be in accordance with the provisions of this chapter and not in conflict with the constitution and laws of the United States ~~of America~~ or of this state, the commissioner shall make a certificate of the facts.

(2) If the commissioner considers the name of the proposed corporation to be so similar to one already appropriated hy another company or corporation as to be likely to mislead the public, the commissioner shall reject the name applied for and shall notify the incorporators of the rejection.

(3) When the proposed articles of incorporation have been approved by the commissioner, the commissioner shall endorse the approval upon each set of the articles and forward ~~four~~ *three* sets of articles to the incorporators. The incorporators shall file, *with the required filing fee,* one of the sets of articles with the secretary of state~~,~~ *and* one set *certified by the secretary of state* with the commissioner ~~bearing the certification of the secretary of state, and one set with the county clerk of the county in which the principal place of business of the corporation is located and shall pay to the secretary of state and the county clerk the customary filing fees~~. The remaining set of articles must be made a part of the corporation's records.

(4) The corporation has legal existence upon the approval of the articles by the commissioner and completion of the filings ~~referred to~~ *required* in subsection

HeinOnline -- 1999 vol. II 1938 1999

(3), but it may not transact business as an insurer until it has ~~fulfilled the requirements for and has~~ obtained a certificate of authority as provided in 33-4-505."

Section 21. Section 33-4-311, MCA, is amended to read:

"**33-4-311. ~~Bonds~~ *Bonding* of officers, *managers, and employees.*** *(1)* ~~The treasurer and secretary of an insurer~~ *When acting in a fiduciary capacity, officers, managers, and employees* shall each give bonds to the insurer for the faitbful performance of their duties~~, in such amount as is designated by the board of directors~~. ~~Any such~~ *The* bond ~~shall~~ *must* be ~~one~~ issued by an authorized corporate surety.

(2) The commissioner may adopt rules to determine the amount of the bonds required under this section."

Section 22. Section 33-4-313, MCA, is amended to read:

"**33-4-313. Annual statement.** The president and secretary of each insurer, on or before March 1 each year, shall prepare, affirm under oath, ~~affix the corporate seal to,~~ and file with the commissioner, on forms prescribed and furnished by the commissioner, an annual statement for the preceding calendar year showing the condition of the insurer as of December 31 of the preceding year and exhibiting the following facts:

(1) tbe names of the president and secretary;

(2) the date of the annual meeting;

(3) the amount of insurance in force;

(4) tbe number of members;

(5) the number of assessments made during the year;

(6) the amount paid in losses during tbe year;

~~(7) the amount of the losses claimed and not paid, with the reason for nonpayment;~~

~~(8)~~*(7)* the number of members withdrawn, suspended, and expelled during the year;

~~(9)~~*(8)* the number of new members admitted during the year;

~~(10)~~*(9)* the expenses during the year;

~~(11)~~*(10)* the amount of money on hand;

~~(12)~~*(11)* the amount and character of the insurer's assets;

~~(13)~~*(12)* the amount of the insurer's liabilities, including any reserves required to be established under this chapter; and

~~(14)~~*(13)* other information concerning the insurer's affairs that the commissioner may reasonably require."

Section 23. Section 33-5-402, MCA, is amended to read:

"**33-5-402. Contributions to insurer.** The attorney or other parties may advance to a domestic reciprocal insurer upon reasonable terms funds that it may require from time to time in its operations. Sums advanced may not be treated as a liability of tlie insurer. Except upon liquidation of the insurer, during any calendar year, tbe total of withdrawals and repayments of the advanced sums

HeinOnline -- 1999 vol. II 1939 1999

may not exceed the lesser of the ~~insured's~~ *insurer's* realized earned surplus or 10% of the sums advanced as of the previous Decemher 31. A withdrawal or repayment may not be made without the advance approval of the commissioner. This section does not apply to bank loans or to loans for which security is given."

Section 24. Section 33-10-102, MCA, is amended to read:

"33-10-102. Definitions. As used in this part, the following definitions apply:

(1) "Association" means the Montana insurance guaranty association created under 33-10-103.

(2) (a) "Covered claim" means an unpaid claim, including one for unearned premiums, ~~which~~ *that* arises out of and is within the coverage and not in excess of tbe applicable limits of an insurance policy to which this part applies issued hy an insurer, if ~~such~~ *the* insurer becomes an insolvent insurer after July 1, 1971, and:

(i) the claimant or insured is a resident of this state at the time of the insured event; or

(ii) the property from which the claim arises is permanently located in this state.

(b) ~~"Covered claim" shall~~ *Covered claim does* not include any amount: ~~due a reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries or otherwise.~~

(i) awarded as punitive or exemplary damages;

(ii) sought as a return of premium under a retrospective rating plan; or

(iii) due a reinsurer, insurer, insurance pool, or underwriting association as subrogation recoveries, reinsurance recoveries, contribution, or indemnification. If insolvent, a reinsurer, insurer, insurance pool, or underwriting association may not assert a claim in any amount against an insured except to the extent that the claim exceeds the policy limits of the insured's policy.

(3) "Insolvent insurer" means an insurer:

(a) authorized to transact insurance in this state either at the time the policy was issued or when the insured event occurred; and

(b) determined to be insolvent by a court of competent jurisdiction.

(4) "Member insurer" means ~~any~~ *a* person who:

(a) writes any kind of insurance to which this part applies under 33-10-101(3), including the exchange of reciprocal or interinsurance contracts; and

(b) is licensed to transact insurance in this state.

(5) *(a)* "Net direct written premiums" means direct gross premiums written in this state on insurance policies to which this part applies, less return premiums ~~thereon~~ *on the policies* and dividends paid or credited to policyholders ~~on such direct business~~ *of policies to which this part applies.*

(b) ~~"Net~~ *Net* direct written ~~premiums"~~ *premiums* does not include premiums on contracts between insurers or reinsurers.

HeinOnline -- 1999 vol. II 1940 1999

(6) "Person" means any individual, corporation, partnership, association, or voluntary organization."

Section 25. Section 33-15-336, MCA, is amended to read:

"33-15-336. Applicability. (1) Other statutes of this state setting simplification standards for language or format do not apply to property and casualty policies.

(2) Sections 33-15-333 through 33-15-340 do not apply to policies in manuscript form or to the following kinds of insurance:

(a) ocean marine;

(b) surety and financial institution bonds;

(c) reinsurance; ~~or~~

(d) commercial aviation~~;~~ *or*

(e) large commercial risks whose aggregate annual premiums for insurance on all risks totals at least $100,000.

(3) A non-English policy is considered in compliance with 33-15-337 if it was translated from an English policy that complies with 33-15-337."

Section 26. Section 33-15-1107, MCA, is amended to read:

"33-15-1107. Information about grounds for nonrenewal. (1) ~~If an insured questions the facts upon which an insurer's decision to cancel or not renew is based, the insurer shall mail or deliver such information to the insured within 15 working days of receiving a written request from the insured.~~ *If the insurer or insurance producer receives a written request from an insured within 60 business days from the date on which the insurer mailed a notice of cancellation or nonrenewal to the insured, the insurer or insurance producer shall, within 21 days of receiving the insured's written request, furnish the insured the information that the insurer or insurance producer used to make its decision.* A notice is not effective unless it contains adequate information about the insured's right to make the request.

(2) This section does not apply if the ground for cancellation or nonrenewal is nonpayment of the premium and the *reason is stated in the* notice ~~so states~~."

Section 27. Section 33-16-102, MCA, is amended to read:

"33-16-102. Definitions. In this chapter, the following definitions apply:

(1) "Advisory organization" means ~~every~~ *each* person, other than an admitted insurer, whether located within or outside this state, who prepares policy forms or makes underwriting rules incident to hut not including the making of rates, rating plans, or rating systems or ~~which~~ *who* collects and furnishes to admitted insurers or rating organizations loss or expense statistics or other statistical information and data and acts in an advisory, as distinguished from a ratemaking, capacity. ~~No duly authorized~~ *A licensed* attorney ~~at law~~, acting in the usual course of ~~his~~ *the* profession, ~~shall~~ *may not* be ~~deemed to be~~ *considered* an advisory organization.

(2) "Dividend" means:

(a) a noncontractual and nonrecoverable payment or credit declared by an insurer's board of directors and paid out or credited out of earned surplus to policyholders, members, or subscribers; or

HeinOnline -- 1999 vol. II 1941 1999

(b) in the absence of earned surplus, a noncontractual and nonrecoverable payment or credit declared by an insurer's board of directors and paid to policyholders, members, or subscribers with the written permission of the commissioner. The commissioner may grant permission only if the payment of the dividend or credit will not reduce the insurer's capital below an amount three times the minimum capital required under 33-2-109.

~~(2)~~*(3)* "Member" means an insurer who participates in or is entitled to participate in the management of a rating, advisory, or other organization.

~~(3)~~*(4)* "Rating organization" means ~~every~~ *each* person, other than an admitted insurer, whether located within or outside this state, ~~who has as his~~ *with the* object or purpose ~~the~~ *of* making ~~of~~ rates, rating plans, or rating systems. Two or more admitted insurers ~~which~~ *who* act in concert for the purpose of making rates, rating plans, or rating systems and ~~which~~ *who* do not operate within the specific authorizations contained in 33-16-105, 33-16-302, 33-16-304, 33-16-305, and 33-16-307 ~~shall~~ *must* be ~~deemed to be~~ *considered* a rating organization. ~~No~~ *A* single insurer ~~shall~~ *may not* be ~~deemed to be~~ *considered* a rating organization.

~~(4)~~*(5)* "Subscriber" means an insurer ~~which~~ *who* is furnished at its request with rates and rating manuals hy a rating organization of which ~~it~~ *the insurer* is not a member or with advisory services by an advisory organization of which it is not a member.

~~(5)~~*(6)* "Willful" or "willfully", in relation to an act or omission ~~which~~ *that* constitutes a violation of this chapter, means with actual knowledge or belief that ~~such~~ *the* act or omission constitutes ~~such~~ *a* violation and with specific intent to commit ~~such~~ *the* violation."

Section 28. Section 33-16-104, MCA, is amended to read:

"33-16-104. Payment of dividends, savings, or unabsorbed premium deposits not prohibited or regulated — plan for payment not rating system. Nothing in this chapter ~~shall~~ *may* be construed to prohibit or regulate the payment of dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers. A plan for the payment of dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers ~~shall~~ *may* not be ~~deemed~~ *considered* a rating plan or system. *A plan for the payment of dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers does not relieve the insurer from complying with any requirements of this chapter regarding rating plans or systems."*

Section 29. Section 33-16-1021, MCA, is amended to read:

"33-16-1021. Ratemaking standards — review by commissioner. (1) Rates may not be excessive, inadequate, or unfairly discriminatory.

(2) Rates in a competitive market are not excessive. Rates in a noncompetitive market are excessive if they are likely to produce a long-run profit that is unreasonably high in relation to services rendered.

(3) A rate may not he determined to be inadequate unless:

(a) it is clearly insufficient to sustain projected losses and expenses; ~~and~~

HeinOnline -- 1999 vol. II 1942 1999

(b) the rate is unreasonably low and the use of the rate by the insurer has bad or, if continued, will tend to create a monopoly in the market; or

(c) funds equal to the full, ultimate cost of anticipated losses and loss adjustment expenses are not produced when prospective loss costs are applied to anticipated payrolls.

(4) Unfair discrimination exists if, after allowing for practical limitations, price differentials fail to reflect equitably the differences in expected losses and expenses. A rate is not unfairly discriminatory because different premiums result for policyholders with different loss exposures or expense levels.

(5) In determining whether rates comply with standards under subsection (1), consideration must be given to:

(a) past and prospective loss experience within and outside Montana, in accordance with accepted actuarial principles;

(b) catastrophe hazards and contingencies;

(c) past and prospective expenses within and outside Montana;

(d) loadings for leveling premium rates over time for dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers;

(e) a reasonable margin for underwriting profit; and

(f) all other relevant factors within and outside Montana.

(6) The systems of expense provisions included in the rates for use by an insurer or group of insurers may differ from those of any other insurer or group of insurers to reflect the requirements of the operating methods of the insurer or group *of* insurers.

(7) The rate may contain provisions of contingencies and an allowance permitting a reasonable profit. In determining the reasonableness of a profit, consideration must be given to all investment income attributable to premiums and the reserves associated witb those premiums.

(8) The commissioner may investigate and determine whether rates in Montana are excessive, inadequate, or unfairly discriminatory. In any investigation and determination, the commissioner shall also consider the factors specified in 33-16-1020."

Section 30. Section 33-16-1022, MCA, is amended to read:

"33-16-1022. Dividends — ~~no~~ regulation or prohibition. (1) An advisory organization may not adopt a rule that would regulate or probibit the payment of dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or suhscribers.

(2) A plan for tbe payment of dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers is not a rating plan or system. *A plan for the payment of dividends, savings, or unabsorbed premium deposits does not relieve an insurer from complying with any requirement of this chapter regarding rating plans or systems.*

(3) It is an unfair trade practice under 33-18-1003 to make the payment of a dividend or any portion of it conditioned upon renewal of the policy or contract."

Section 31. Section 33-17-212, MCA, is amended to read:

HeinOnline -- 1999 vol. II 1943 1999

"33-17-212. Examination required — exceptions — fees. (1) Except as provided in subsection (7), an individual applying for a license shall pass a written examination. The examination must test the knowledge of the individual concerning each kind of insurance listed in subsection (6) for which application is made, the duties and responsibilities of an insurance producer, and the insurance laws and rules of this state. The examination must be developed and conducted under rules adopted by the commissioner.

(2) The commissioner may conduct the examination or make arrangements, including contracting with an outside testing service, for administering the examination and collecting the fees required by 33-2-708. The commissioner may arrange for the testing service to recover the cost of the examination from the applicant.

(3) Each individual applying for an examination shall remit the fees required by 33-2-708.

(4) An individual who fails to appear for the examination as scheduled or fails to pass the examination may reapply for an examination and shall remit all required fees and forms before being rescheduled for another examination.

(5) ~~If the applicant is a~~ *If the applicant is a* partnership or corporation~~, each individual who is to be named in the license as having authority to act for the applicant in its insurance transactions under the license shall take the examination.~~, *each individual who is to be named in the license as having authority to act for the applicant in its insurance transactions under the license shall meet the qualifications as provided in this section.*

(6) Examination of an applicant for a license must cover all of the kinds of insurance for which the applicant has applied to be licensed, as constituted by any one or more of the following classifications:

(a) life insurance;

(b) disability insurance;

(c) property insurance. For the purposes of this provision, property insurance includes marine insurance.

(d) casualty insurance;

(e) surety insurance;

(f) credit life and disability insurance;

(g) title insurance.

(7) This section does not apply to and an examination is not required of:

(a) an individual lawfully licensed as an insurance producer as to the kind or kinds of insurance to be transacted as of or immediately prior to January 1, 1961, and who continues to be licensed;

(b) an applicant for a license covering the same kind or kinds of insurance as to which the applicant was licensed in this state, other than under a temporary license, within the 12 months immediately preceding the date of application unless the commissioner has suspended, revoked, or refused to continue the previous license, except that this subsection (7)(b) does not apply to a title insurance producer, as defined in 33-25-105;

(c) an applicant for a license as a nonresident insurance producer;

HeinOnline -- 1999 vol. II 1944 1999

(d) an applicant for a license to sell all-risk federal crop insurance if the applicant provides certification from an appropriate governmental agency to the commissioner that the applicant is qualified to sell the insurance;

(e) transportation ticket agents of common carriers applying for a license to solicit and sell only:

(i) accident insurance ticket policies; or

(ii) insurance of personal effects while being carried as baggege on a common carrier, as incidental to their duties as transportation ticket agonts;

(f) an association applying for a license under 33-17-211;

(g) a mechanical breakdown insurance producer;

~~(h) a service contract insurance producer; or~~

(h) a prepaid legal plans producer;

(i) a gap insurance producer;

(j) involuntary unemployment insurance producer; or

~~(i)~~*(k)* an individual who, within 60 days of cancellation of a license issued by tbe state of the individual's residence, files with the commissioner a current letter of clearance certifying that the individual has passed an examination and held an insurance license in good standing in the individual's stato of licensure, except that the individual shall take an examination pertaining to this state's law and each kind of insurance for which the individual has applied for a license and that is not covered under the license held in the other state."

Seetion 32. Section 33-17-236, MCA, is amended to read:

"33-17-236. Appointments of insurance producers by insurers. (1) An insurance producer may not claim to be a representative of or an authorized or appointed insurance producer of or use anotber term implying a contractual relationsbip with a particular insurer ~~and may not accept applications for the insurer~~ unless the insurance producer ~~becomes~~ *is* an appointed insurance producer of that insurer pursuant to this section. ~~The following are the appointing insurer's requirements for making appointment of a licensed insurance producer.~~ *This does not prevent an insurance producer from obtaining and presenting a quotation from an insurer with whom the producer is not appointed. If the insurer consents, the insurer may bind coverage on a risk in accordance with 33-15-411 prior to the execution of an agency contract and policy issuance.*

~~(a)~~*(2)* The insurer sball, ~~no~~ *not* later tban 15 days from the date *on which* the agency contract is executed ~~or the first insurance application is submitted by~~ *with* a licensed insurance producer, ~~whichever is earlier,~~ file with the insurance department a written notice of appointment on a form prescribed hy the insurance department. The notice may be electronically filed pursuant to rules adopted by the commissioner.

~~(b) If there is no executed agency contract, the insurer shall mail to the licensed insurance producer, no later than 15 days from the date the first insurance application is submitted by him, a copy of the notice of appointment form filed with the insurance department. If the licensed insurance producer does not receive the acknowledgment of appointment from the insurer within 30 days from the date the first insurance application is submitted to the insurer, the~~

HeinOnline -- 1999 vol. II 1945 1999

~~insurance producer shall immediately discontinue acting as an insurance producer on behalf of that insurer until the acknowledgment is received or the agency contract is executed.~~

~~(2)~~*(3)* Upon receipt of the notice of appointment, the insurance department shall verify ~~within 5 working days~~ that the licensed insurance producer is eligible for appointment. If the licensed insurance producer is determined to be ineligible for appointment, the insurance department shall notify the insurer ~~within 5 days~~ of the determination.

~~(3)~~*(4)* An appointment is effective on the *earlier of the* date of the executed *agency* contract ~~and~~ *or the date on which the insurer files the notice of appointment with the insurance department, unless the appointment is disapproved by the insurance department. A disapproved appointment is void on the date the department provides notification to the insurer.*

(5) The appointment is perpetual until canceled by the insurer."

Section 33. Section 33-17-505, MCA, is amended to read:

"33-17-505. Qualification — fee. (1) In order to determine the competency of an applicant for a consultant license, the commissioner shall require the applicant to pass an examination.

(2) The commissioner may conduct the examination or make arrangements, including contracting with an outside testing service, for administering the examination and collecting the fees required by 33-17-503. The commissioner may arrange for the testing service to recover its cost of the examination from the applicant.

~~(2)~~*(3)* The fee for taking the consultant license examination is $50. The commissioner shall deposit all fees collected in the general fund. The fee for taking a second or subsequent examination may be no more than the cost of administering the examination, not to exceed $50."

Section 34. Section 33-17-507, MCA, is amended to read:

"33-17-507. Revocation. The commissioner may revoke or suspend a consultant license for a *specified* period ~~he determines if,~~ after *giving* notice and *conducting a* hearing. ~~as specified in this chapter, he~~ *To revoke or suspend a license, the commissioner shall* ~~determines~~ *determine* that the licensee:

(1) has violated any provision of or any obligation imposed by the insurance law or has violated any law in the course of ~~his dealings~~ *dealing* as an insurance consultant;

(2) has made a material misstatement in application for a consultant license;

(3) has been guilty of fraudulent or dishonest practices; or

(4) has demonstrated ~~his~~ incompetency or untrustworthiness to act as an insurance consultant."

Section 35. Section 33-17-1203, MCA, is amended to read:

"33-17-1203. Continuing edueation — basic requirements — exceptions. (1) Unless exempt under suhsection (4):

(a) a person licensed to act as an insurance producer for property, casualty, surety, or title insurance or as a consultant for general insurance shall, during

HeinOnline -- 1999 vol. II 1946 1999

each calendar year, complete at least 10 credit hours of approved continuing education;

(b) a person licensed to act as an insurance producer for life or disability insurance or as a consultant for life insurance shall, during each calendar year, complete at least 10 credit hours of approved continuing education;

(c) a person holding multiple licenses shall, during each calendar year, complete at least 15 credit hours of approved continuing education;

(d) a person licensed to act as an insurance producer only for credit life and disability insurance shall, during each calendar year, complete ~~5~~ *2 1/2* credit hours of approved continuing education in the areas of insurance law, ethics, or credit life and disability insurance;

(e) a person licensed as an insurance producer or consultant shall, during each biennium, complete at least 1 credit hour of approved continuing education on changes in Montana insurance statutes and administrative rules.

(2) If a person licensed as an insurance producer or consultant completes more credit hours of approved continuing education in a year than the minimum required in subsection (1), the excess credit hours may be carried forward and applied to the continuing education requirements of the next year.

(3) The commissioner may, for good cause, grant an extension of time, not to exceed 1 year, during which the requirements imposed by subsection (1) may be completed.

(4) The minimum continuing education requirements do not apply to:

(a) a person licensed to sell any kind of insurance for which an examination is not required under 33-17-212(7)(d) through ~~(7)(h)~~ *(7)(k)*;

(b) a person holding a temporary license issued under 33-17-216;

(c) a nonresident licensee who must meet continuing education requirements in the licensee's state of residence if that state grants substantially similar privileges to and has similar requirements for residents of this state;

(d) a newly licensed insurance producer or consultant during the calendar year in which the licensee first received a license;

(e) a person who only executes surety bail bonds; or

(f) an insurance producer or consultant otherwise exempted by the commissioner."

Section 36. Section 33-18-301, MCA, is amended to read:

"33-18-301. Prohibited relations with mortuaries. (1) A life insurer and its *board of directors*, officers, employees, or representatives may not own, manage, supervise, operate, or maintain any mortuary, funeral, or undertaking establishment in Montana.

(2) A life insurer may not contract or agree with any funeral director, mortuary, or undertaker that the funeral director, undertaker, or mortuary shall conduct the funeral or be named beneficiary of any person insured by the insurer. This subsection does not prohibit a life insurer from making insurance, designated as funeral insurance, available.

(3) A funeral insurance policy and any solicitation material for the policy must clearly indicate that:

HeinOnline -- 1999 vol. II 1947 1999

(a) the policy is a life insurance product;

(b) the applicant may designate the beneficiary~~, provided that~~ *if* there is an appropriate and insurable interest;

(c) the beneficiary may use the proceeds for any purpose; and

(d) any attempt hy the insurer or its representative to have the insured designate a specific beneficiary, including but not limited to a funeral director, mortuary, or undertaker, constitutes a violation of this section punishable as a misdemeanor pursuant to subsection (4).

(4) Each violation of this section constitutes a misdemeanor punishable by a fine of not more than $1,000 or by imprisonment for not more than 6 months, or both."

Section 37. Section 33-18-1006, MCA, is amended to read:

"33-18-1006. Desist orders for prohibited practices. Violations of 33-18-221 through ~~33-18-223~~ *33-18-224* are subject to cease and desist orders of the commissioner issued under 33-18-1004."

Section 38. Section 33-20-121, MCA, is amended to read:

"33-20-121. Prohibited provisions — limitations on liability. (1) A policy of life insurance may not be delivered or issued for delivery in this state if it contains a provision:

(a) for a period shorter than that provided by statute within which an action at law or in equity may be commenced on the policy; or

(b) that excludes or restricts liability for death caused in a certain specified manner or occurring while the insured has a specified status, except that a policy may contain provisions excluding or restricting coverage as specified in the policy in the event of death:

(i) as a result, directly or indirectly, of war, declared or undeclared, or of action by military forces or of an act or hazard of war or action or of service in the military, naval, or air forces or in civilian forces auxiliary to those military forces or from any cause while a member of military, naval, or air forces of a country at war, declared or undeclared, or of a country engaged in military action;

(ii) as a result of aviation, air travel, or flight;

(iii) as a result of a specified hazardous occupation or occupations;

(iv) while the insured is a resident outside the continental United States and Canada; or

(v) within 2 years from the date of issue of the policy as a result of suicide~~, while committed pursuant to 53-21-127~~. If a life insurance policy contains a dependent rider, the dependent coverage may be continued upon payment of the premium for the dependent rider.

(2) A policy tbat contains an exclusion or restriction pursuant to subsection (1) must also provide that in the event of death under the circumstances to which the exclusion or restriction is applicable, the insurer will pay an amount not less than a reserve determined according to the commissioner's reserve valuation method on the basis of the mortality table and interest rate specified in the policy for the calculation of nonforfeiture benefits ~~(~~or, if the policy does not provide for nonforfeiture benefits, computed according to a mortality table and interest rate

HeinOnline -- 1999 vol. II 1948 1999

determined by the insurer and specified in the policy~~)~~ or by any other method more favorable to the policyholder, with adjustment for indebtedness or dividend credit.

(3) This section does not apply to industrial life insurance, group life insurance, disability insurance, reinsurance, or annuities or to a provision in a life insurance policy relating to disability benefits or to additional benefits in the event of death by accident or accidental means.

(4) This section does not prohibit a provision that in the opinion of the commissioner is more favorable to the policyholder than a provision permitted by this section."

Section 39. Section 33-20-1201, MCA, is amended to read:

"33-20-1201. Provisions required in group contracts. ~~No~~ *A* policy of group life insurance ~~shall~~ *may not* be delivered in this state unless it contains in substance the provisions set forth in ~~33-20-1202 through 33-20-1211~~ *this part* or provisions ~~which~~ *that* in the opinion of the commissioner are more favorable to the persons insured or at least as favorable to the persons insured and more favorable to the policyholder~~; except~~, however~~, that~~:

(1) ~~sections~~ 33-20-1207 through 33-20-1211 ~~shall~~ *do* not apply to policies issued to a creditor to insure debtors of ~~such~~ *the* creditor;

(2) the standard provisions required for individual life insurance policies ~~shall~~ *do* not apply to group life insurance policies; and

(3) if the group life insurance policy is on a plan of insurance other than the term plan, it ~~shall~~ *must* contain a nonforfeiture provision or provisions ~~which~~ *that* in tbe opinion of the commissioner is or are equitable to the insured persons and to the policyholder, but nothing ~~herein shall~~ *in this subsection may* be construed to require that group life insurance policies contain the same nonforfeiture provisions as are required for individual life insurance policies."

Section 40. Section 33-22-101, MCA, is amended to read:

"33-22-101. Exceptions to scope. Parts 1 through 4 of this chapter, except 33-22-107, 33-22-110, 33-22-111, 33-22-114, 33-22-125, 33-22-130 through ~~33-22-132, 33-22-134,~~ 33-22-135, 33-22-141, 33-22-142, 33-22-243, and 33-22-304~~,~~ and part 19 of this chapter, do not apply to or affect:

(1) any policy of liability or workers' componsation insurance with or without supplementary expense coverage;

(2) any group or blanket policy;

(3) life insurance, endowment, or annuity contracts or supplemental contracts that contain only those provisions relating to disability insurance as:

(a) provide additional benefits in case of death or dismemberment or loss of sight by accident or accidental means; or

(b) operate to safeguard contracts against lapse or to give a special surrender value or special benefit or an annuity in the event that the insured or annuitant becomes totally and permanently disabled, as defined by the contract or supplemental contract;

(4) reinsurance."

Section 41. Section 33-22-111, MCA, is amended to read:

HeinOnline -- 1999 vol. II 1949 1999

"33-22-111. Policies to provide for freedom of choice of practitioners — professional practice not enlarged. (1) All policies of disability insurance, including individual, group, and blanket policies, must provide that the insured has full freedom of choice in the selection of any licensed physician, physician assistant-certified, dentist, osteopath, chiropractor, optometrist, podiatrist, psychologist, licensed social worker, licensed professional counselor, acupuncturist, or ~~nurse specialist~~ *advanced practice registered nurse* as specifically listed in 37-8-202 for treatment of any illness or injury within the scope and limitations of the person's practice. Whenever the policies insure against the expense of drugs, the insured has full freedom of choice in the selection of any licensed and registered pharmacist.

(2) This section may not be construed as enlarging the scope and limitations of practice of any of the licensed professions enumerated in subsection (1). This section may not be construed as amending, altering, or repealing any statutes relating to the licensing or use of hospitals."

Section 42. Section 33-22-140, MCA, is amended to read:

"33-22-140. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Beneficiary" has the meaning given the term by 29 U.S.C. 1002(33).

(2) "Church plan" has the meaning given the term by 29 U.S.C. 1002(33).

(3) "COBRA continuation provision" means:

(a) section 4980B of the Internal Revenue Code, 26 U.S.C. 4980B, other than subsection (f)(1) of that section as it relates to pediatric vaccines;

(b) Title I, subtitle B, part 6, excluding section 609, of the Employee Retirement Income Security Act of 1974, Public Law 93-406; or

(c) Title XXII of the Public Health Service Act, 42 U.S.C. 300dd, et seq.

(4) (a) "Creditable coverage" means coverage of the individual under any of the following:

(i) a group health plan;

(ii) health insurance coverage;

(iii) Title XVIII, part A or B, of the Social Security Act, 42 U.S.C. 1395c through 1395i-4 or 42 U.S.C. 1395j through 1395w-4;

(iv) Title XIX of the Social Security Act, 42 U.S.C. 1396a through 1396u, other than coverage consisting solely of a benefit under section 1928, 42 U.S.C. 1396s;

(v) Title 10, chapter 55, United States Code;

(vi) a medical care program of the Indian health service or of a tribal organization;

(vii) the Montana comprehensive health association provided for in 33-22-1503;

(viii) a health plan offered under Title 5, chapter 89, of the United States Code;

(ix) a public health plan;

(x) a health benefit plan under section 5(e) of the Peace Corps Act, 22 U.S.C. 2504(e).

HeinOnline -- 1999 vol. II 1950 1999

(b) Creditable coverage does not include coverage consisting solely of coverage of excepted benefits.

(5) "Elimination rider" means a provision attached to a policy that excludes coverage for a specific condition that would otherwise be covered under the policy.

(6) "Enrollment date" means, with respect to an individual covered under a group health plan or health insurance coverage, the date of enrollment of the individual in the plan or coverage or, if earlier, the first day of the waiting period for enrollment.

(7) "Excepted benefits" means:

(a) coverage only for accident, *or* disability income insurance, or both;

(b) coverage issued as a supplement to liability insurance;

(c) liability insurance, including general liability insurance and automobile liability insurance;

(d) workers' compensation or similar insurance;

(e) automobile medical payment insurance;

(f) credit-only insurance;

(g) coverage for onsite medical clinics;

(h) other similar insurance coverage under which benefits for medical care are secondary or incidental to other insurance benefits, as approved by the commissioner;

(i) if offered separately, any of the following:

(i) limited-scope dental or vision benefits;

(ii) benefits for long-term care, nursing home care, home health care, community-based care, or any combination of these types of care; or

(iii) other similar, limited benefits as approved by the commissioner;

(j) if offered as independent, noncoordinated benefits, any of the following:

(i) coverage only for a specified disease or illness; or

(ii) hospital indemnity or other fixed indemnity insurance;

(k) if offered as a separate insurance policy:

(i) medicare supplement coverage;

(ii) coverage supplemental to the coverage provided under Title 10, chapter 55, of the United States Code; and

(iii) similar supplemental coverage provided under a group health plan.

(8) "Federally defined eligible individual" means an individual:

(a) for whom, as of the date on which the individual seeks coverage in the group market or individual market or under an association portability plan, as defined in 33-22-1501, the aggregate of the periods of creditable coverage is 18 months or more;

(b) whose most recent prior creditable coverage was under a group health plan, governmental plan, church plan, or health insurance coverage offered in connection with any of those plans;

HeinOnline -- 1999 vol. II 1951 1999

(c) who is not eligible for coverage under:

(i) a group health plan;

(ii) Title XVIII, part A or B, of the Social Security Act, 42 U.S.C. 1395c through 1395i-4 or 42 U.S.C. 1395j through 1395w-4; or

(iii) a state plan under Title XIX of the Social Security Act, 42 U.S.C. 1396a through 1396u, or a successor program;

(d) who does not have other health insurance coverage;

(e) for whom the most recent coverage within the period of aggregate creditable coverage was not terminated for factors relating to nonpayment of premiums or fraud;

(f) who, if offered the option of continuation coverage under a COBRA continuation provision or under a similar state program, elected that coverage; and

(g) who has exhausted continuation coverage under the COBRA continuation provision or program described in subsection (8)(f) if the individual elected the continuation coverage described in subsection (8)(f).

(9) "Group health insurance coverage" means health insurance coverage offered in connection with a group health plan or health insurance coverage offered to an eligible group as described in 33-22-501.

(10) "Group health plan" means an employee welfare benefit plan, as defined in, 29 U.S.C. 1002(1), to the extent that the plan provides medical care and items and services paid for as medical care to employees or their dependents, directly or through insurance, reimbursement, or otherwise.

(11) "Health insurance coverage" means benefits consisting of medical care, including items and services paid for as medical care, that are provided directly, through insurance, reimbursement, or otherwise, under a policy, certificate, membership contract, or health care services agreement offered by a health insurance issuer.

(12) "Health insurance issuer" means an insurer, a health service corporation, or a health maintenance organization.

(13) "Individual health insurance coverage" means health insurance coverage offered to individuals in the individual market, but does not include short-term limited duration insurance.

(14) "Individual market" means the market for health insurance coverage offered to individuals other than in connection with a group health ~~plan~~ *insurance coverage*.

(15) "Large employer" means, in connection with a group health plan, with respect to a calendar year and a plan year, an employer who employed an average of at least 51 employees on business days during the preceding calendar year and who employs at least 2 employees on the first day of the plan year.

(16) "Large group market" means the health insurance market under which individuals obtain health insurance coverage directly or through any arrangement on behalf of themselves and their dependents through a group health plan *or group health insurance coverage issued to a large employer* ~~maintained by a large employer~~.

HeinOnline -- 1999 vol. II 1952 1999

(17) "Late enrollee" means an eligible employee or dependent, *other than a special enrollee under 33-22-523,* who requests enrollment in a group health plan following the initial enrollment period during which the individual was entitled to enroll under the terms of the group health plan if the initial enrollment period was a period of at least 30 days. However, an eligible employee or dependent is not considered a late enrollee if:

~~(a) the individual requests enrollment within 63 days after termination of the creditable coverage and:~~

~~(i) the individual was covered under creditable coverage at the time of the initial enrollment; or~~

~~(ii) the individual lost coverage under creditable coverage as a result of termination of employment or eligibility, reduction in the number of hours of employment, involuntary termination of the creditable coverage, the death of a spouse, divorce, or legal separation;~~

~~(b) the individual is employed by an employer that offers multiple health benefit plans and the individual elects a different plan during an open enrollment period; or~~

~~(c)~~ a court has ordered that coverage be provided for a spouse, minor, or dependent child under a covered employee's health benefit plan and a request for enrollment is made within 30 days after issuance of the court order.

(18) "Medical care" means:

(a) the diagnosis, cure, mitigation, treatment, or prevention of disease or amounts paid for the purpose of affecting any structure or function of the body;

(b) transportation primarily for and essential to medical care referred to in subsection (18)(a); or

(c) insurance covering medical care referred to in subsections (18)(a) and (18)(b).

(19) "Network plan" means health insurance coverage offered by a health insurance issuer under which the financing and delivery of medical care, including items and services paid for as medical care, are provided, in whole or in part, through a defined set of providers under contract with the issuer.

(20) "Plan sponsor" has the meaning provided under section 3(16)(B) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1002(16)(B).

(21) "Preexisting condition exclusion" means, with respect to coverage, a limitation or exclusion of benefits relating to a condition based on presence of a condition before the enrollment date coverage, whether or not any medical advice, diagnosis, care, or treatment was recommended or received before the enrollment date.

(22) "Small group market" means the health insurance market under which individuals obtain health insurance coverage directly or through an arrangement, on behalf of themselves and their dependents, through a group health plan *or group health insurance coverage maintained by a small employer as defined in 33-22-1803* ~~maintained by a small employer, as defined in 33-22-1803~~.

(23) "Waiting period" means, with respect to a group health plan and an individual who is a potential participant or beneficiary in the group health plan,

HeinOnline -- 1999 vol. II 1953 1999

the period that must pass with respect to the individual before the individual is eligible to be covered for benefits under the terms of the group health plan."

Section 43. Section 33-22-307, MCA, is amended to read:

"33-22-307. Continuity of coverage. (1) Subject to the requirements of 33-22-305 through 33-22-311 and on the date specified in the policy under which coverage otherwise terminates *because of the death of the named insured or for any other reason specified in 33-22-306,* as to covered family members, other than for nonpayment of premium, nonrenewal of the policy, or the expiration of the term for which the policy is issued, a covered person, ~~(~~other than one eligible for medicare or any other similar federal or state disability insurance program~~)~~, including the spouse and any covered dependent child of the last-named insured or the representative of ~~such~~ *the* child, has the right to continuation of coverage under provisions that, at the option of the carrier, are consistent with:

(a) the continuation of the policy, with the person exercising the right of continuation designated as the named insured;

(b) the issuance of a converted policy with the person exercising the conversion right designated as the named insured; or

(c) both *(1)*(a) and *(1)*(b).

(2) When continuation of coverage or conversion is made in the name of the spouse of the named insured, the coverage may, at the option of the spouse, include covered dependent children for whom the spouse has the responsibility for care and support."

Section 44. Section 33-22-514, MCA, is amended to read:

"33-22-514. Preexisting conditions relating to group market. (1) A group health plan or a health insurance issuer offering group health insurance coverage may not exclude coverage for a preexisting condition unless:

(a) medical advice, diagnosis, care, or treatment was recommended or received by the participant or beneficiary within the 6-month period ending on the enrollment date;

(b) exclusion of coverage extends for a period of not more than 12 months *or 18 months in the case of a late enrollee*; and

(c) the period of the preexisting condition exclusion is reduced by the aggregate of the periods of creditable coverage applicable to the participant or beneficiary as of the enrollment date.

(2) Genetic information may not be excluded as a preexisting condition in the absence of a diagnosis of the condition related to the genetic information.

(3) Pregnancy may not be excluded as a preexisting condition."

Section 45. Section 33-22-523, MCA, is amended to read:

"33-22-523. Special enrollment periods. (1) A group health plan and a health insurance issuer offering group health insurance coverage in connection with a group health plan shall permit an employee or a dependent of an employee who is eligible, but not enrolled, for coverage under the terms of the group health plan to enroll for coverage under the terms of the group health plan if:

HeinOnline -- 1999 vol. II 1954 1999

(a) the employee or dependent was covered under a group health plan or had health insurance coverage at the time that coverage was previously offered to the employee or dependent;

(b) the employee stated in writing at the time that coverage under a group health plan or health insurance coverage was the reason for declining enrollment, hut only if the plan sponsor or health insurance issuer required the statement at the time and provided the employee with notice of the requirement and the consequences of the requirement at the time;

(c) the employee's or dependent's coverage described in suhsection (1)(a) was:

(i) under a COBRA continuation provision and was exhausted; or

(ii) not under a COBRA continuation provision and was terminated as a result of loss of eligibility for the coverage or hecause employer contrihutions toward the coverage were terminated; and

(d) under the terms of the group health plan, the employee requests the enrollment not later than 30 days after the date of exhaustion of coverage described in subsection (1)(c)(i) or termination of coverage or employer contribution described in subsection (1)(c)(ii).

(2) (a) A group health plan ~~shall~~ *must* provide for a dependent special enrollment period described in suhsection (2)(h) during which a dependent may be enrolled under the group health plan as a dependent of the individual ~~and,~~ *if the person becomes a dependent of the individual through marriage, birth, adoption, or placement for adoption.* ~~in~~ *In* the case of the birth or adoption of a child, the spouse of the individual may he enrolled as a dependent of the individual if the spouse is otherwise eligihle for coverage.

(b) A dependent special enrollment period under this subsection (2) is a period of not less than 30 days that hegins on the later of:

(i) the date dependent coverage is made available; or

(ii) the date of the marriage, birth, ~~or~~ adoption, or placement for adoption.

(3) If an individual seeks to enroll a dependent during the first 30 days of the dependent special enrollment period, the coverage of the dependent hecomes effective:

(a) in the case of marriage, not later than the first day of the first month heginning after the date on which the completed request for enrollment is received;

(b) in the case of a dependent's birth, as of the date of birth; or

(c) in the case of a dependent's adoption or placement for adoption, the date of the adoption or placement for adoption."

Section 46. Section 33-22-524, MCA, is amended to read:

"33-22-524. Guaranteed renewability of coverage for employers in group market. (1) Except as provided in this section, if a health insurance issuer offers health insurance coverage in the small group market or large group market in connection with a group health plan, the health insurance issuer shall renew or continue the coverage in force at the option of the plan sponsor.

HeinOnline -- 1999 vol. II 1955 1999

(2) A health insurance issuer may nonrenew or discontinue health insurance coverage offered in connection with a group health plan in the small group market or large group market if:

(a) the plan sponsor has failed to pay premiums or contrihutions in accordance with the terms of the health insurance coverage or if the health insurance issuer has not received timely premium payments;

(h) the plan sponsor has performed an act or practice that constitutes fraud or has niade an intentional misrepresentation of material fact under the terms of the coverage;

(c) the plan sponsor has failed to comply with a material plan provision relating to employer contribution or group health plan participation rules ~~in the case of the small group market or pursuant to applicable state law in the case of the large group market~~;

(d) the health insurance issuer is ceasing to offer coverage in that group market in accordance with this section and applicahle state law;

(e) in the case of a health insurance issuer that offers health insurance coverage in the group market through a network plan, there is no longer any enrollee in connection with the group health plan who lives, resides, or works in the service area of the health insurance issuer and, in the case of the small group market, if the health insurance issuer would deny enrollment with respect to the plan under 33-22-1811(4)(a)(i); or

(f) in the case of health insurance coverage that is made available in the small group market or large group market only through one or more bona fide associations, the membership of an employer in the bona fide association ceases, but only if the coverage is terminated under this subsection (2)(f) uniformly without regard to any health status-related factor of a covered individual.

(3) A health insurance issuer may not discontinue offering a particular type of group health insurance coverage offered in the small group market or large group market unless in accordance with applicable state law and unless:

(a) the issuer provides notice to each plan sponsor, participant, and heneficiary provided coverage of this type in that group market of the discontinuation at least 90 days prior to the date of the discontinuation of the coverage;

(b) the issuer offers to each plan sponsor provided coverage of this type in the market the option to purchase any other health insurance coverage currently being offered hy the health insurance issuer to a group health plan in the market; and

(c) the health insurance issuer acts uniformly without regard to the claims experience of those sponsors or any health status-related factor of any participants or beneficiaries covered or new participants or heneficiaries who may become eligible for the coverage.

(4) (a) A health insurance issuer may not discontinue offering all health insurance coverage in the small group market, the large group market, or hoth the small group market and the large group market, unless in accordance with applicable state law and unless:

HeinOnline -- 1999 vol. II 1956 1999

(i) the issuer provides notice of discontinuation to the commissioner and to each plan sponsor, participant, and beneficiary covered at least 180 days prior to the date of the discontinuation of coverage; and

(ii) all health insurance issued or delivered for issuance in Montana in the group market or markets is discontinued and coverage under the health insurance coverage in the group market or markets is not renewed.

(b) In the case of a discontinuation under this section in a group market, the health insurance issuer may not provide for tbe issuance of any health insurance coverage in the group market for a period of 5 years beginning on the date of tbe discontinuation of tbe last health insurance coverage not renewed.

(5) A health insurance issuer may modify upon renewal health insurance coverage for a product offered to a group bealth plan in the large group market or in the small group market if, for coverage tbat is available in the small group market other than only through one or more bona fide associations, modification is consistent with applicable state law and effective on a uniform basis among group health plans with that product.

(6) In the case of healtb insurance coverage tbat is made available by a health insurance issuer in the small group market or large group market to employers only through one or more bona fide associations, references to "plan sponsor" under this section include those employers."

Section 47. Section 33-22-1803, MCA, is amended to read:

"33-22-1803. Definitions. As used in this part, the following definitions apply:

(1) "Actuarial certification" means a written statement by a member of the American academy of actuaries or other individual acceptable to the commissioner that a small employer carrier is in compliance with the provisions of 33-22-1809, based upon the person's examination, including a review of the appropriate records and of the actuarial assumptions and methods used by the small employer carrier in establishing premium rates for applicable health benefit plans.

(2) "Affiliate" or "affiliated" means any entity or person who directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with a specified entity or person.

(3) "Assessable carrier" means all carriers of disability insurance, including excess of loss and stop loss disability insurance.

(4) "Base premium rate" means, for each class of business as to a rating period, the lowest premium rate charged or that could have been charged under the rating system for that class of business by the small employer carrier to small employers with similar case characteristics for health benefit plans with the same or similar coverage.

(5) "Basic health benefit plan" means a health benefit plan, except a uniform health benefit plan, developed by a small employer carrier, that has a lower benefit value than the small employer carrier's standard benefit plan and that provides the benefits required by 33-22-1827.

(6) "Benefit value" means a numerical value based on the expected dollar value of benefits payable to an insured under a health benefit plan. The benefit value must be calculated by the small employer carrier using an actuarially based

HeinOnline -- 1999 vol. II 1957 1999

method and must take into account all health care expenses covered hy the health benefit plan and all cost-sharing features of the bealth benefit plan, including deductibles, coinsurance, copayments, and the insured individual's maximum out-of-pocket expenses. The benefit value must apply equally to indemnity-type health benefit plans and to managed care health benefit plans, including health maintenance organization-type plans.

(7) "Board" means the board of directors of the program established pursuant to 33-22-1818.

(8) "Bona fide association" means an association that:

(a) has been actively in existence for at least 5 years;

(b) was formed and has been maintained in good faith for purposes otber than obtaining insurance;

(c) does not condition membership in the association on a health status-related factor relating to an individual, including an employee of an employer or a dependent of an employee;

(d) makes health insurance coverage offered through the association availahle to a member regardless of a health status-related factor relating to the member or an individual eligible for coverage through a member; *and*

(e) does not make health insurance coverage offered through the association available other than in connection with a member of the association~~; and~~.

~~(f) meets any additional requirements required by law.~~

(9) "Carrier" means any person who provides a health benefit plan in this state subject to state insurance regulation. The term includes but is not limited to an insurance company, a fraternal benefit society, a health service corporation, and a health maintenance organization. For purposes of this part, companies that are affiliated companies or that are eligible to file a consolidated tax return must be treated as one carrier, except that the following may be considered as separate carriers:

(a) an insurance company or health service corporation that is an affiliate of a health maintenance organization located in this state;

(b) a health maintenance organization located in this state tbat is an affiliate of an insurance company or health service corporation; or

(c) a health maintenance organization tbat operates only one health maintenance organization in an establisbed geographic service area of this state.

(10) "Case characteristics" means demographic or other objective cbaracteristics of a small employer that are considered by the small employer carrier in the determination of premium rates for the small employer, provided that gender, claims experience, health status, and duration of coverage are not case characteristics for purposes of this part.

(11) "Class of business" means all or a separate grouping of small employers established pursuant to 33-22-1808.

(12) "Dependent" means:

(a) a spouse or an unmarried child under 19 years of age;

(b) an unmarried child, under 23 years of age, who is a full-time student and who is financially dependent on the insured;

HeinOnline -- 1999 vol. II 1958 1999

(c) a child of any age who is disabled and dependent upon the parent as provided in 33-22-506 and 33-30-1003; or

(d) any other individual defined as a dependent in the health benefit plan covering the employee.

(13) "Eligible employee" means an employee who works on a full-time basis with a normal workweek of 30 hours or more, except that at the sole discretion of the employer, the term may include an employee who works on a full-time basis with a normal workweek of between 20 and 40 bours as long as this eligibility criteria is applied uniformly among all of the employer's employees. The term includes a sole proprietor, a partner of a partnership, and an independent contractor if the sole proprietor, partner, or independent contractor is included as an employee under a health benefit plan of a small employer. *The term also includes those persons eligible for coverage under 2-18-704.* The term does not include an employee who works on a part-time, temporary, or substitute basis.

(14) "Established geographic service area" means a geographic area, as approved by the commissioner and based on the carrier's certificate of authority to transact insurance in this state, within which the carrier is authorized to provide coverage.

(15) "Health benefit plan" means any hospital or medical policy or certificate providing for physical and mental health care issued by an insurance company, a fraternal benefit society, or a health service corporation or issued under a health maintenance organization subscriber contract. Health benefit plan does not include coverage of excepted benefits if coverage is provided under a separate policy, certificate, or contract of insurance.

(16) "Index rate" means, for each class of business for a rating period for small employers with similar case characteristics, the average of the applicable base premium rate and the corresponding highest premium rate.

(17) "New business premium rate" means, for each class of business for a rating period, the lowest premium rate charged or offered or that could have been charged or offered by the small employer carrier to small employers with similar case characteristics for newly issued health benefit plans with the same or similar coverage.

(18) "Plan of operation" means the operation of the program established pursuant to 33-22-1818.

(19) "Premium" means all money paid by a small employer and eligible employees as a condition of receiving coverage from a small employer carrier, including any fees or other contributions associated with the health benefit plan.

(20) "Program" means the Montana small employer health reinsurance program created by 33-22-1818.

(21) "Rating period" means the calendar period for which premium rates established by a small employer carrier are assumed to be in effect.

(22) "Reinsuring carrier" means a small employer carrier participating in the reinsurance program pursuant to 33-22-1819.

(23) "Restricted network provision" means a provision of a health benefit plan that conditions the payment of benefits, in whole or in part, on the use of health care providers that have entered into a contractual arrangement with the

HeinOnline -- 1999 vol. II 1959 1999

carrier pursuant to Title 33, chapter 22, part 17, or Title 33, chapter 31, to provide health care services to covered individuals.

(24) "Small employer" means a person, firm, corporation, partnership, or bona fide association that is actively engaged in business and that, with respect to a calendar year and a plan year, employed at least 2 but not more than 50 eligible employees during the preceding calendar year and employed at least two employees on the first day of the plan year. In the case of an employer that was not in existence throughout the preceding calendar year, the determination of whether the employer is a small or large employer must be based on the average number of employees reasonably expected to be employed by the employer in the current calendar year. In determining the number of eligible employees, companies are considered one employer if they:

(a) are affiliated companies;

(b) are eligible to file a combined tax return for purposes of state taxation; or

(c) are members of a bona fide association.

(25) "Small employer carrier" means a carrier that offers health benefit plans that cover eligible employees of one or more small employers in this state.

(26) "Standard health benefit plan" means a health benefit plan that is developed by a small employer carrier and that contains the provisions required pursuant to 33-22-1828."

Section 48. Section 33-22-1809, MCA, is amended to read:

"33-22-1809. Restrictions relating to premium rates. (1) Premium rates for health benefit plans under this part are subject to the following provisions:

(a) The index rate for a rating period for any class of business may not exceed the index rate for any other class of business by more than 20%.

(b) For each class of business, the premium rates charged during a rating period to small employers with similar case characteristics for the same or similar coverage or the rates that could be charged to the employer under the rating system for that class of business may not vary from the index rate by more than 25% of the index rate.

(c) The percentage increase in the premium rate charged to a small employer for a new rating period may not exceed the sum of the following:

(i) the percentage change in the new business premium rate measured from the first day of the prior rating period to the first day of the new rating period; in the case of a health benefit plan into which the small employer carrier is no longer enrolling new small employers, the small employer carrier shall use the percentage change in the base premium rate, provided that the change does not exceed, on a percentage basis, the change in the new business premium rate for the most similar health benefit plan into which the small employer carrier is actively enrolling new small employers;

(ii) any adjustment, not to exceed 15% annually and adjusted pro rata for rating periods of less than 1 year, because of the claims experience, health status, or duration of coverage of the employees or dependents of the small employer, as determined from the small employer carrier's rate manual for the class of business; and

HeinOnline -- 1999 vol. II 1960 1999

(iii) any adjustment because of a change in coverage or a change in the case characteristics of the small employer, as determined from the small employer carrier's rate manual for the class of business.

(d) Adjustments in rates for claims experience, health status, and duration of coverage may not be charged to individual employees or dependents. Any adjustment must be applied uniformly to the rates charged for all employees and dependents of the small employer.

(e) If a small employer carrier uses industry as a case characteristic in establishing premium rates, the rate factor associated with any industry classification may not vary from the average of the rate factors associated with all industry classifications by more than 15% of that coverage.

~~(f) In the case of health benefit plans delivered or issued for delivery prior to January 1, 1994, a premium rate for a rating period may exceed the ranges set forth in subsections (1)(a) and (1)(b) until January 1, 1997. In that case, the percentage increase in the premium rate charged to a small employer for a new rating period may not exceed the sum of the following:~~

~~(i) the percentage change in the new business premium rate measured from the first day of the prior rating period to the first day of the new rating period; in the case of a health benefit plan into which the small employer carrier is no longer enrolling new small employers, the small employer carrier shall use the percentage change in the base premium rate, provided that the change does not exceed, on a percentage basis, the change in the new business premium rate for the most similar health benefit plan into which the small employer carrier is actively enrolling new small employers; and~~

~~(ii) any adjustment because of a change in coverage or a change in the case characteristics of the small employer, as determined from the small employer carrier's rate manual for the class of business.~~

~~(g)~~*(f)* A small employer carrier shall:

(i) apply rating factors, including case characteristics, consistently with respect to all small employers in a class of business. Rating factors must produce premiums for identical groups that differ only by the amounts attributable to plan design and that do not reflect differences because of the nature of the groups. Differences among base premium rates may not be based in any way on the actual or expected health status or claims experience of the small employer groups that choose or are expected to choose a particular health benefit plan.

(ii) treat all health benefit plans issued or renewed in the same calendar month as having the same rating period.

~~(h)~~*(g)* For the purposes of this subsection (1), a health benefit plan that includes a restricted network provision may not be considered similar coverage to a health benefit plan that does not include a restricted network provision.

(2) A small employer carrier may not transfer a small employer involuntarily into or out of a class of business. A small employer carrier may not offer to transfer a small employer into or out of a class of business unless the offer is made to transfer all small employers in the class of business without regard to case characteristics, claims experience, health status, or duration of coverage since the insurance was issued.

(3) The commissioner may suspend for a specified period the application of subsection (1)(a) for the premium rates applicable to one or more small employers

HeinOnline -- 1999 vol. II 1961 1999

included within a class of business of a small employer carrier for one or more rating periods upon a filing by the small employer carrier and a finding by the commissioner either that the suspension is reasonable in light of the financial condition of the small employer carrier or that the suspension would enhance the fairness and efficiency of the small employer health insurance market.

(4) In connection with the offering for sale of any health benefit plan to a small employer, a small employer carrier shall make a reasonable disclosure, as part of its solicitation and sales materials, of each of the following:

(a) the extent to which premium rates for a specified small employer are established or adjusted based upon the actual or expected variation in claims costs or upon the actual or expected variation in health status of the employees of small employers and the employees' dependents;

(b) the provisions of the health benefit plan concerning the small employer carrier's right to change premium rates and the factors, other than claims experience, that affect changes in premium rates;

(c) the provisions relating to renewability of policies and contracts; and

(d) the provisions relating to any preexisting condition.

(5) (a) Each small employer carrier shall maintain at its principal place of business a complete and detailed description of its rating practices and renewal underwriting practices, including information and documentation that demonstrate that its rating methods and practices are based upon commonly accepted actuarial assumptions and are in accordance with sound actuarial principles.

(b) Each small employer carrier shall file with the commissioner annually, on or before March 15, an actuarial certification certifying that the carrier is in compliance with this part and that the rating methods of the small employer carrier are actuarially sound. The actuarial certification must be in a form and manner and must contain information as specified by the commissioner. A copy of the actuarial certification must be retained by the small employer carrier at its principal place of business.

(c) ~~The filing required in subsection (5)(b) must contain the small employer carrier's benefit value.~~

~~(d)~~ A small employer carrier shall make the information and documentation described in subsection (5)(a) available to the commissioner upon request. Except in cases of violations of the provisions of this part and except as agreed to by the small employer carrier or as ordered by a court of competent jurisdiction, the information must be considered proprietary and trade secret information and is not subject to disclosure by the commissioner to persons outside of the department.

(6) The commissioner may not require prior approval of the rating methods used by small employer carriers or the premium rates of the health benefit plans offered to small employers."

Section 49. Section 33-22-1811, MCA, is amended to read:

"33-22-1811. Availability of coverage — required plans. (1) (a) As a condition of transacting business in this state with small employers, each small employer carrier must have approved for issuance to small employer groups at

least two health benefit plans. One plan must be a basic health benefit plan, and one plan must be a standard health benefit plan.

(b) (i) A small employer carrier shall issue ~~a basic health benefit plan or a standard health benefit plan~~ *all plans marketed under this part* to any eligible small employer that applies for ~~either~~ *a* plan and agrees to make the required premium payments and to satisfy the other reasonable provisions of the health benefit plan not inconsistent with this part. ~~If, pursuant to Public Law 104-191, an agency of the United States or a court does not prohibit a small employer carrier from doing so, a small employer carrier may offer and issue a group health benefit plan other than a basic or standard plan on an underwritten basis.~~

(ii) In the case of a small employer carrier that establishes more than one class of business pursuant to 33-22-1808, the small employer carrier shall maintain and offer to eligible small employers ~~at least one basic health benefit plan and at least one standard health benefit plan~~ *all plans marketed under this part* in each established class of business. A small employer carrier may apply reasonable criteria in determining whether to accept a small employer into a class of business, provided that:

(A) the criteria are not intended to discourage or prevent acceptance of small employers applying for a health benefit plan;

(B) the criteria are not related to the health status or claims experience of the small employers' employees;

(C) the criteria are applied consistently to all small employers that apply for coverage in that class of business; and

(D) the small employer carrier provides for the acceptance of all eligible small employers into one or more classes of business.

(iii) The provisions of subsection (1)(b)(ii) may not be applied to a class of business into which the small employer carrier is no longer enrolling new small businesses.

(c) A small employer carrier that elects not to comply with the requirements of subsections (1)(a) and (1)(b) may continue to provide coverage under health benefit plans previously issued to small employers in this state for a period of no more than 7 years from October 1, 1995, if the carrier:

(i) complies with all other applicable provisions of this part, except 33-22-1810, 33-22-1813, and subsections (2) through (4) of this section; ~~and~~

(ii) does not amend or alter the benefits and coverages of the previously issued health benefit plans unless required to do so by law or rule.~~;~~ *; and*

(iii) complies with all applicable provisions of Public Law 104-91.

(2) (a) A small employer carrier shall, pursuant to 33-1-501, file the basic health benefit plans and the standard health benefit plans to be used by the small employer carrier.

(h) The commissioner may at any time, after providing notice and an opportunity for a hearing to the small employer carrier, disapprove the continued use by a small employer carrier of a basic or standard health benefit plan on the grounds that the plan does not meet the requirements of this part.

(3) Health benefit plans covering small employers must comply with the following provisions:

HeinOnline -- 1999 vol. II 1963 1999

(a) A health benefit plan may not:

(i) because of a preexisting condition, deny, exclude, or limit benefits for a covered individual for losses incurred more than 12 months following the ~~effective date of the~~ individual's *enrollment date* ~~coverage~~. A health benefit plan may not define a preexisting condition exclusion more restrictively than 33-22-140.

(ii) use a preexisting condition exclusion more restrictive than exclusions allowed under 33-22-514.

(b) A health benefit plan must waive any time period applicable to a preexisting condition exclusion or limitation period with respect to particular services for the period of time that an individual was previously covered by creditable coverage that provided benefits with respect to those services if the creditable coverage was continuous to a date not more than 63 days prior to the submission of an application for new coverage. *A health benefit plan may determine waivers of time periods applicable to preexisting condition exclusions or limitations on the basis of prior coverage of benefits within each of several classes or categories as specified in regulations implementing Public Law 104-191, rather than as provided in this subsection (3)(b).* This subsection (3)(b) does not preclude application of any waiting period applicable to all new enrollees under the health benefit plan.

(c) A health benefit plan may exclude coverage for late enrollees for 18 months or for an 18-month preexisting condition exclusion, provided that if both a period of exclusion from coverage and a preexisting condition exclusion are applicable to a late enrollee, the combined period may not exceed 18 months from the date *on which* the individual enrolls for coverage under the health benefit plan.

(d) (i) Requirements used by a small employer carrier in determining whether to provide coverage to a small employer, including requirements for minimum participation of eligible employees and minimum employer contributions, must be applied uniformly among all small employers that have the same number of eligible employees and that apply for coverage or receive coverage from the small employer carrier.

(ii) A small employer carrier may vary the application of minimum participation requirements and minimum employer contribution requirements only by the size of the small employer group.

(e) (i) If a small employer carrier offers coverage to a small employer, the small employer carrier shall offer coverage to all of the eligible employees of a small employer and their dependents. A small employer carrier may not offer coverage only to certain individuals in a small employer group or only to part of the group, except in the case of late enrollees as provided in subsection (3)(c).

(ii) A small employer carrier may not modify a ~~basic or standard health benefit~~ plan *marketed under this part* with respect to a small employer or any eligible employee or dependent, through riders, endorsements, or otherwise, to restrict or exclude coverage for certain diseases or medical conditions otherwise covered by the health benefit plan.

(iii) A small employer carrier shall secure a waiver of coverage from each eligible employee who declines, at the sole discretion of the eligible employee, an offer of coverage under a health benefit plan provided by the small employer. The waiver must be signed by the eligible employee and must certify that the

HeinOnline -- 1999 vol. II 1964 1999

employee was informed of the availability of coverage under the health benefit plan and of the penalties for late enrollment. The waiver may not require the eligible employee to disclose the reasons for declining coverage.

(iv) A small employer carrier may not issue coverage to a small employer if the carrier or a producer for the carrier has evidence that the small employer induced or pressured an eligible employee to decline coverage due to the health status or risk characteristics of the eligible employee or of the dependents of the eligible employee.

(4) (a) A small employer carrier may not be required to offer coverage or accept applications pursuant to subsection (1) in the case of the following:

(i) to an employer whose employees do not work or reside within the small employer carrier's established geographic service area for a network plan, as defined in 33-22-140; or

(ii) within an area where the small employer carrier reasonably anticipates and demonstrates to the satisfaction of the commissioner that it will not have the capacity within its established geographic service area to deliver service adequately to the members of a group because of its obligations to existing group policyholders and enrollees. The small employer carrier may not deny coverage under this subsection unless the small employer carrier acts uniformly without regard to claims experience or health status-related factors of employers, employees, or dependents.

(b) A small employer carrier may not be required to provide coverage to small employers pursuant to subsection (1) for which the commissioner determines that the small employer carrier does not have the financial reserves necessary to underwrite additional coverage and that the small employer carrier has denied coverage of small employers uniformly throughout the state and without regard to the claims experience and health status-related factors of the applicant small employer groups. The small employer carrier exempted from providing coverage under this subsection may not offer coverage to small employer groups in this state for 180 days after the date on which coverage is denied or until the small employer carrier has demonstrated to the commissioner that the small employer carrier has sufficient financial reserves to underwrite additional coverage, whichever is later."

Section 50. Section 33-22-1813, MCA, is amended to read:

"**33-22-1813. Standards to ensure fair marketing.** (1) Each small employer carrier shall actively market health benefit plan coverage, including the basic and standard health benefit plans, to eligible small employers in the state. ~~If a small employer carrier denies coverage other than the basic or standard health benefit plans to a small employer on the basis of claims experience of the small employer or the health status or claims experience of its employees or dependents, the small employer carrier shall offer the small employer the opportunity to purchase a basic health benefit plan or a standard health benefit plan.~~

(2) (a) Except as provided in subsection (2)(b), a small employer carrier or producer may not directly or indirectly engage in the following activities:

(i) encouraging or directing small employers to refrain from filing an application for coverage with the small employer carrier because of the health

HeinOnline -- 1999 vol. II 1965 1999

status of the employer's employees or the claims experience, industry, occupation, or geographic location of the small employer;

(ii) encouraging or directing small employers to seek coverage from another carrier because of the health status of the employer's employees or the claims experience, industry, occupation, or geographic location of the small employer.

(b) The provisions of subsection (2)(a) do not apply with respect to information provided by a small employer carrier or producer to a small employer regarding the established geographic service area or a restricted network provision of a small employer carrier.

(3) (a) Except as provided in subsection (3)(b), a small employer carrier may not, directly or indirectly, enter into any contract, agreement, or arrangement with a producer that provides for or results in the compensation paid to a producer for the sale of a health benefit plan to be varied because of the health status of the employer's employees or the claims experience, industry, occupation, or geographic location of the small employer.

(b) Subsection (3)(a) does not apply with respect to a compensation arrangement that provides compensation to a producer on the basis of the percentage of a premium, provided that the percentage may not vary because of the health status of the employer's employees or the claims experience, industry, occupation, or geographic area of the small employer.

(4) A small employer carrier shall provide reasonable compensation, as provided under the plan of operation of the program, to a producer, if any, for the sale of a basic or standard health benefit plan.

(5) A small employer carrier may not terminate, fail to renew, or limit its contract or agreement of representation with a producer for any reason related to the health status of the employer's employees or the claims experience, industry, occupation, or geographic location of the small employers placed by the producer with the small employer carrier.

(6) A small employer carrier or producer may not induce or otherwise encourage a small employer to separate or otherwise exclude an employee from health coverage or benefits provided in connection with the employee's employment.

(7) Denial by a small employer carrier of ~~an application for coverage from~~ *health insurance coverage for* a small employer must be in writing and must state the reason or reasons for the denial.

(8) The commissioner may adopt rules setting forth additional standards to provide for the fair marketing and broad availability of health benefit plans to small employers in this state.

(9) (a) A violation of this section by a small employer carrier or a producer is an unfair trade practice under 33-18-102.

(b) If a small employer carrier enters into a contract, agreement, or other arrangement with an administrator who holds a certificate of registration pursuant to 33-17-603 to provide administrative, marketing, or other services related to the offering of health benefit plans to small employers in this state, the administrator is subject to this section as if the administrator were a small employer carrier."

Section 51. Section 33-22-1815, MCA, is amended to read:

HeinOnline -- 1999 vol. II 1966 1999

"33-22-1815. Qualifications for voluntary purchasing pool. A voluntary purchasing pool of disability insurance purchasers may be formed solely for the purpose of obtaining disability insurance upon compliance with the following provisions:

(1) It contains at least 1,000 eligible employees.

(2) It establishes requirements for membership. The voluntary purchasing pool shall accept for membership any small employers and may accept for membership any employers with more than ~~25~~ *50* eligible employees that otherwise meet the requirements for membership. However, the voluntary purchasing pool may not exclude any small employers that otherwise meet the requirements for membership on the basis of claim experience, occupation, or health status.

(3) It holds an open enrollment period at least once a year during which new members can join the voluntary purchasing pool.

(4) It offers coverage to eligible employees of member employers and to the employees' dependents. Coverage may not be limited to certain employees of member small employers except as provided in 33-22-1811(3)(c).

(5) It does not assume any risk or form self-insurance plans among its members.

(6) (a) It has the option of using the following types of rating arrangements with the disability insurance policies, certificates, or contracts:

(i) Disability insurance pelicies, certificates, or contracts offered through the voluntary purchasing pool that rate each member employer separately are subject to the provisions of this part.

(ii) Disability insurance policies, certificates, or contracts offered through the voluntary purchasing pool that rate the entire group as a whole must charge each insured person based on a community rate within the common group, adjusted for case characteristics as permitted by the laws governing group disability insurance.

(b) At its discretion, premiums may be paid to the disability insurance policies, certificates, or contracts by the voluntary purchasing pool, by member employers, or by eligible employees and their dependents.

(7) A person marketing disability insurance pelicies, certificates, or contracts for a voluntary purchasing pool must be licensed as an insurance producer."

Section 52. Section 33-22-1816, MCA, is amended to read:

"33-22-1816. Commissioner powers and duties — application for registration — reporting insolvency. (1) The commissioner shall develop forms for registration of an organization as a voluntary purchasing pool.

(2) An organization seeking to be registered as a voluntary purchasing pool shall make application to the commissioner. The commissioner shall register an organization as a voluntary purchasing pool upen proof of fulfillment of the qualifications provided in 33-22-1815.

(3) ~~On~~ *Except as providcd in subsection (5), on* March 1 of each year, the voluntary purchasing pool shall provide a report and financial statement for the previous calendar year to the commissioner in order that the commissioner may determine:

HeinOnline -- 1999 vol. II 1967 1999

(a) whether the operation of the voluntary purchasing pool is fiscally sound;

(b) whether the voluntary purchasing pool is hearing any risk; and

(c) the number of individuals covered.

(4) The annual report of the voluntary purchasing pool must disclose its total administrative cost.

(5) A voluntary purchasing pool may choose to operate on a fiscal year other than on the calendar year. A voluntary purchasing pool that establishes a fiscal year that is other than the calendar year shall provide the report required in subsection (3) to the commissioner within 60 days of the voluntary purchasing pool's fiscal yearend."

Section 53. Section 33-23-212, MCA, is amended to read:

"33-23-212. Notice required for cancellation — statement that insurer will specify reason upon request — exception — penalty. (1) Notwithstanding any other provision of this code, ~~no~~ *a* cancellation by an insurer of a motor vehicle liability insurance policy may *not* be effective prior to the mailing or delivery to the named insured, at the address shown in the policy, of a written notice of the cancellation stating the date on which, not less than 30 days after the date of such mailing or delivery, the cancellation becomes effective.

(2) ~~No~~ *A* notice of cancellation of a policy to which 33-23-211 applies may *not* be effective unless mailed or delivered by the insurer to the named insured at least 30 days prior to the effective date of cancellation; provided, however, that where cancellation is for nonpayment of premium, at least 10 days' notice of cancellation accompanied by the reason ~~therefor~~ must be given. Unless the reason accompanies or is included in the notice of cancellation, the notice of cancellation must state or be accompanied by a statement that upon written request of the named insured, mailed or delivered to the insurer not less than ~~15~~ *21* days prior to the effective date of cancellation, the insurer ~~will~~ *shall* specify the reason for ~~such~~ *the* cancellation.

(3) Subsection (2) does not apply to nonrenewal.

(4) Any insurer willfully violating any provisions of subsection (2) of this section is guilty of a misdemeanor and is punishable by a fine not exceeding $500 for each violation thereof."

Section 54. Section 33-30-107, MCA, is amended to read:

"33-30-107. Annual statement. (1) On or before March 1 of each year, each health service corporation shall file an annual statement for the preceding year on ~~form No. 13~~ *the* N.A.I.C. *health blank form* with the commissioner of insurance. This annual statement must be completed in accordance with the national association of insurance commissioners' annual statement instructions. *The statement must be accompanied by an actuarial opinion attesting to the insurer's reserves.*

(2) The health service corporation shall file a statement containing any other information concerning its financial affairs that may be reasonably requested by the commissioner.

(3) (a) Each health service corporation shall file electronic ~~diskette~~ versions of its annual and quarterly financial statements with the national association of insurance commissioners. The ~~filing~~ date for submission of the annual statement

HeinOnline -- 1999 vol. II 1968 1999

~~diskette~~ *electronic filing* is March 1. The ~~filing~~ dates for ~~the other three~~ *submission of the* quarterly ~~statements~~ *statement electronic filing* are as follows:

(i) the first quarter ~~statement~~ *filing* is due May 15;

(ii) the second quarter ~~statement~~ *filing* is due August 15; and

(iii) the third quarter ~~statement~~ *filing* is due November 15.

(b) The commissioner may exempt health service corporations operating only in Montana from these filing requirements.

(4) The commissioner may, after notice and hearing, suspend or revoke a health service corporation's license or impose a fine not to exceed $100 a day and not to exceed $1,000 upon a health service corporation that fails to file an annual statement as required by this part."

Section 55. Section 33-30-201, MCA, is amended to read:

"33-30-201. Reserves — requirements suspended. (1) The corporation shall maintain at all times unobligated funds adequate to:

(a) provide the hospital, medical-surgical, and other health services made available to its members and beneficiaries; and

(b) meet all costs and expenses.

(2) In addition, reserves of a health service corporation in cash, certificates of deposit, obligations issued or guaranteed by the government of the United States, or other assets approved by the commissioner ~~shall~~ *must* be maintained in an amount not less than:

(a) $500,000~~;~~ or, *if licensed under this chapter after October 1, 1999, $750,000; or*

(b) an amount equal to 1 month's average income from dues or fees paid to the corporation by its members or beneficiaries, based on an average of the preceding 12 months, whichever is less.

~~(3) If the reserves are not equal to the average in subsection (2)(b), they must have been increased during the preceding 12 months by an amount equal to 1% of the gross dues or fee income during that period.~~

~~(4)~~*(3)* The determination of minimum reserves is subject, as to amounts payable to participating providers of the health services, to any right of the corporation to prorate the amounts under the terms of its health service contracts with providers.

~~(5) The commissioner may decrease or suspend the requirements of this section if he finds that the action is in the best interest of the members of the corporation.~~

(4) The commissioner may decrease or suspend the requirements of this section if the commissioner finds that the action is in the best interest of the members of the corporation."

Section 56. Section 33-31-111, MCA, is amended to read:

"33-31-111. Statutory construction and relationship to other laws. (1) Except as otherwise provided in this chapter, the insurance or health service corporation laws do not apply to any health maintenance organization authorized to transact business under this chapter. This provision does not apply to an insurer or health service corporation licensed and regulated pursuant to the

HeinOnline -- 1999 vol. II 1969 1999

insurance or health service corporation laws of this state except with respect to its health maintenance organization activities authorized and regulated pursuant to this chapter.

(2) Solicitation of enrollees by a health maintenance organization granted a certificate of authority or its representatives is not a violation of any law relating to solicitation or advertising by health professionals.

(3) A health maintenance organization authorized under this chapter is not practicing medicine and is exempt from Title 37, chapter 3, relating to the practice of medicine.

(4) This chapter does not exempt a health maintenance organization from the applicable certificate of need requirements under Title 50, chapter 5, parts 1 and 3.

(5) This section does not exempt a health maintenance organization from the prohibition of pecuniary interest under 33-3-308 or the material transaction disclosure requirements under 33-3-701 through 33-3-704. A health maintenance organization must be considered an insurer for the purposes of 33-3-308 and 33-3-701 through 33-3-704.

(6) This section does not exempt a health maintenance organization from:

(a) prohibitions against interference with certain communications as provided under chapter 1, part 8;

(b) the provisions of Title 33, chapter 22, part 19;

(c) the requirements of 33-22-134 and 33-22-135; or

(d) network adequacy and quality assurance requirements provided under chapter 36.

(7) ~~Sections~~ *Chapter 1, parts 12 and 13, of this title, 33-3-431, 33-15-308,* 33-22-141, 33-22-142, 33-22-246, 33-22-247, 33-22-514, 33-22-523, 33-22-524, and 33-22-526 apply to health maintenance organizations."

Section 57. Section 33-31-202, MCA, is amended to read:

"33-31-202. Issuance of certificate of authority. (1) The commissioner shall issue or deny a certificate of authority to any person filing an application pursuant to 33-31-201 within 180 days after receipt of the application. The commissioner shall grant a certificate of authority upon payment of the application fee prescribed in 33-31-212 if the commissioner is satisfied that each of the following conditions is met:

(a) The persons responsible for the conduct of the applicant's affairs are competent and trustworthy.

(b) The health maintenance organization will effectively provide or arrange for the provision of basic health care services on a prepaid basis, through insurance or otherwise, except to the extent of reasonable requirements for copayments. This requirement does not apply to the health care services provided by a health maintenance organization to a person receiving medicaid services under the Montana medicaid program as established in Title 53, chapter 6.

(c) The health maintenance organization is financially responsible and can reasonably be expected to meet its obligations to enrollees and prospective enrollees. In making this determination, the commissioner may consider:

HeinOnline -- 1999 vol. II 1970 1999

(i) the financial soundness of the arrangements for health care services and the schedule of charges used in connection with the services;

(ii) the adequacy of working capital;

(iii) any agreement with an insurer, a health service corporation, a government, or any other organization for ensuring the payment of the cost of health care services or the provision for automatic applicability of an alternative coverage in the event of discontinuance of the health maintenance organization;

(iv) any agreement with providers for the provision of health care services;

(v) any deposit of cash or securities submitted in accordance with 33-31-216; and

(vi) any additional information that the commissioner may reasonably require.

(d) The enrollees must be afforded an opportunity to participate in matters of policy and operation pursuant to 33-31-222.

(e) Nothing in the proposed method of operation, as shown by the information submitted pursuant to 33-31-201 or by independent investigation, violates any provision of this chapter or rules adopted by the commissioner.

(2) The commissioner may deny a certificate of authority only if the requirements of 33-31-404 are complied with.

(3) The commissioner shall examine each health maintenance organization applying for an initial certificate of authority to do business in this state. In lieu of making an examination under this part of any health maintenance organization domiciled in another state, the commissioner may accept an examination report on the organization prepared by the insurance department of the organization's state of domicile."

Section 58. Section 33-31-211, MCA, is amended to read:

"33-31-211. Annual statements — revocation for failure to file — penalty for false swearing. (1) Unless it is operated by an insurer or a health service corporation as a plan, each authorized health maintenance organization shall annually on or before March 1 file with the commissioner a full and true statement of its financial condition, transactions, and affairs as of the preceding December 31. The statement must be in the general form and content required by the commissioner *and must be completed in accordance with the national association of insurance commissioners' annual statement instructions.* The statement must be verified by the oath of at least two principal officers of the health maintenance organization. The commissioner may waive any verification under oath. In addition, a health maintenance organization shall, unless it is operated by an insurer or a health service corporation as a plan, annually file on or before June 1 an audited financial statement. *A health maintenance organization's audited financial statement must comply with rules adopted by the commissioner concerning audited financial statements.*

(2) At the time of filing the annual statement required by March 1, the health maintenance organization shall pay the commissioner the fee for filing the statement as prescribed in 33-31-212. The commissioner may refuse to accept the fee for continuance of the insurer's certificate of authority, as provided in 33-31-212, may impose a penalty of $100, or may suspend or revoke the certificate of authority of a health maintenance organization that fails to file an annual

HeinOnline -- 1999 vol. II 1971 1999

statement when due. Each day that the insurer fails to file its annual statement constitutes a separate violation. The total penalty may not exceed $1,000.

(3) The commissioner may, after notice and hearing, impose a fine not to exceed $5,000 for each violation upon a director, officer, partner, member, insurance producer, or employee of a health maintenance organization who knowingly subscribes to or concurs in making or publishing an annual statement required by law that contains a material statement that is false.

(4) The commissioner may require reports considered reasonably necessary and appropriate to enable the commissioner to carry out the duties required of the commissioner under this chapter, including but not limited to a statement of operations, transactions, and affairs of a health maintenance organization operated by an insurer or a health service corporation as a plan."

Section 59. Section 33-31-216, MCA, is amended to read:

"33-31-216. Protection against insolvency. (1) Except as provided in subsections (4) through (7), each authorized health maintenance organization shall deposit with the commissioner cash, securities, or any combination of cash or securities acceptable to the commissioner in the amount set forth in this section.

(2) The amount of the deposit for a health maintenance organization during the first year of its operation is $200,000.

(3) At the beginning of each succeeding year, unless not applicable, the health maintenance organization shall deposit with the commissioner cash, securities, or any combination of cash or securities acceptable to the commissioner, in an amount equal to 4% of its estimated annual uncovered expenditures for that year.

(4) Unless not applicable, a health maintenance organization that is in operation on October 1, 1987, shall make a deposit equal to the greater of:

(a) 1% of the preceding 12 months' uncovered expenditures; or

(b) 4% of its estimated annual uncovered expenditures for each year.

(5) The commissioner may waive any of the deposit requirements set forth in subsections (1) through (4) whenever the commissioner is satisfied that:

(a) the health maintenance organization has sufficient net worth and an adequate history of generating net income to ensure its financial viability for the next year;

(b) the health maintenance organization's performance and obligations are guaranteed by an organization with sufficient net worth and an adequate history of generating net income; or

(c) the health maintenance organization's assets or its contracts with insurers, health service corporations, governments, or other organizations are reasonably sufficient to ~~assure~~ *ensure* the performance of its obligations.

(6) When a health maintenance organization achieves a net worth not including land, buildings, and equipment of at least $1 million or achieves a net worth including organization-related land, buildings, and equipment of at least $5 million, the annual deposit requirement under subsection (3) does not apply. The annual deposit requirement under subsection (3) does not apply to a health maintenance organization if the total amount of the accumulated deposit is greater than the capital requirement for the formation or admittance of a

HeinOnline -- 1999 vol. II 1972 1999

disability insurer in this state. If the health maintenance organization has a guaranteeing organization that has been in operation for at least 5 years and has a net worth not including land, buildinga, and equipment of at least $1 million or that has been in operation for at least 10 years and has a net worth including organization-related land, buildings, and equipment of at least $5 million, the annual deposit requirement under subsection (3) does not apply. If the guaranteeing organization is sponsoring more than one health maintenance organization, however, the net worth requirement is increased by a multiple equal to the number of those health maintenance organizations. This requirement to maintain a deposit in excess of the deposit required of a disability insurer does not apply during any time tbat the guaranteeing organization maintains for each health maintenance organization it sponsors a net worth at least equal to the capital and surplus requirements for a disability insurer.

(7) All income from deposits belongs to the depositing health maintenance organization and must be paid to it as it becomes available. A health maintenance organization that has made a securities deposit may withdraw the deposit or any part of it after making a substitute deposit of cash, securities, or any combination of cash or securities of equal amount and value. A health maintenance organization may not substitute securities without prior approval by the commissioner.

(8) In any year in which an annual deposit is not required of a health maintenance organization, at the health maintenance organization's request, the commissioner shall reduce the previously accumulated deposit by $100,000 for each $250,000 of net worth in excess of the amount tbat allows the healtb maintenance organization to be exempt from the annual deposit requirement. If the amount of net worth no longer supports a reduction of its required deposit, the health maintenance organization shall immediately redeposit $100,000 for each $250,000 of reduction in net worth. However, the health maintenance organization's total deposit may not be required to exceed the maximum required under this section.

(9) *(a)* ~~Unless~~ *Subject to subsection (9)(b) and unless* it is operated by an insurer or a health service corporation as a plan, each health maintenance organization must have a minimum capital of at least $200,000 in addition to any deposit requirements under this section. The capital account must be in excess of any accrued liabilities and be in the form of cash, securities, or any combination of cash or securities acceptable to the commissioner.

(b) A health maintenance organization licensed under this chapter after October 1, 1999, must have a minimum capital of at least $750,000. The amount required to be deposited with the commissioner under subsection (2) must be included in the calculation of the capital needed to meet the $750,000 minimum.

(10) Each health maintenance organization shall demonstrate that if it becomes insolvent:

(a) enrollees hospitalized on the date of insolvency will be covered until discharged; and

(b) enrollees will be entitled to similar alternate insurance coverage that does not contain any medical underwriting or preexisting limitation requirements."

Section 60. Section 33-31-301, MCA, is amended to read:

HeinOnline -- 1999 vol. II 1973 1999

"33-31-301. Evidence of coverage — schedule of charges for health care services. (1) Each enrollee residing in this state is entitled to an evidence of coverage. The health maintenance organization shall issue the evidence of coverage, except that if the enrollee obtains coverage through an insurance policy issued by an insurer or a contract issued by a health service corporation, whether by option or otherwise, the insurer or the health service corporation shall issue the evidence of coverage.

(2) A health maintenance organization may not issue or deliver an enrollment form, an evidence of coverage, or an amendment to an approved enrollment form or evidence of coverage to a person in this state before a copy of the enrollment form, the evidence of coverage, or the amendment to the approved enrollment form or evidence of coverage is filed with and approved by the commissioner.

(3) An evidence of coverage issued or delivered to a person resident in this state may not contain a provision or statement that is untrue, misleading, or deceptive as defined in 33-31-312(1). The evidence of coverage must contain:

(a) a clear and concise statement, if a contract, or a reasonably complete summary, if a certificate, of:

(i) the health care services and the insurance or other benefits, if any, to which the enrollee is entitled;

(ii) any limitations on the services, kinds of services, or benefits to be provided, including any deductible or copayment feature;

(iii) the location at which and the manner in which information is available as to how services may be obtained;

(iv) the total amount of payment for health care services and the indemnity or service benefits, if any, that the enrollee is obligeted to pay with respect to individual contracts; and

(v) a clear and understandable description of the health maintenance organization's method for resolving enrollee complaints;

(b) definitions of geographical service area, emergency care, urgent care, out-of-area services, dependent, and primary provider if these terms or terms of similar meaning are used in the evidence of coverage and have an effect on the benefits covered by the plan. The definition of geographical service area need not be stated in the text of the evidence of coverage if the definition is adequately described in an attachment that is given to each enrollee along with the evidence of coverage.

(c) clear disclosure of each provision that limits benefits or access to service in the exclusions, limitations, and exceptions sections of the evidence of coverage. The exclusions, limitations, and exceptions that must be disclosed include but are not limited to:

(i) emergency and urgent care;

(ii) restrictions on the selection of primary or referral providers;

(iii) restrictions on changing providers during the contract period;

(iv) out-of-pocket costs, including copayments and deductibles;

(v) charges for missed appointments or other administrative sanctions;

HeinOnline -- 1999 vol. II 1974 1999

(vi) restrictions on access to care if copayments or other charges are not paid; and

(vii) any restrictions on coverage for dependents who do not reside in the service area.

(d) clear disclosure of any benefits for bome health care, skilled nursing care, kidney disease treatment, diabetes, maternity benefits for dependent children, alcoholism and other drug abuse, and nervous and mental disorders;

(e) a provision requiring immediate accident and sickness coverage, from and after the moment of birth, to each newborn infant of an enrollee or the enrollee's dependents;

(f) a provision providing coverage as required in 33-22-133;

(g) a provision requiring medical treatment and referral services to appropriate ancillary services for mental illness and for the abuse of or addiction to alcohol or drugs in accordance with tbe limits and coverage provided in Title 33, chapter 22, part 7; however:

(i) after the primary care pbysician refers an enrollee for treatment of and appropriate ancillary services for mental illness, alcoholism, or drug addiction, the health maintenance organization may not limit the enrollee to a health maintenance organization provider for tbe treatment of and appropriate ancillary services for mental illness, alcoholism, or drug addiction;

(ii) if an enrollee chooses a provider otber tban the bealth maintenance organization provider for treatment and referral services, the enrollee's designated provider shall limit treatment and services to the scope of the referral in order to receive payment from the healtb maintenance organization;

(iii) the amount paid by tbe bealth maintenance organization to the enrollee's designated provider may not exceed the amount paid by the health maintenance organization to one of its providers for equivalent treatment or services;

(iv) the provisions of this subsection (3)(g) do not apply to services for mental illness provided under tbe Montana medicaid program as established in Title 53, cbapter 6;

(h) a provision as follows:

"Conformity With State Statutes: Any provision of this evidence of coverage tbat on its effective date is in conflict with tbe statutes of the state in wbich tbe insured resides on that date is amended to conform to tbe minimum requirements of those statutes."

(i) a provision that the health maintenance organization sball issue, witbout evidence of insurability, to the enrollee, dependents, or family members continuing coverage on the enrollee, dependents, or family members:

(i) if tbe evidence of coverage or any portion of it on an enrollee, dependents, or family members covered under the evidence of coverage ceases because of termination of employment or termination of membership in tbe class or classes eligible for coverage under tbe policy or because tbe employer discontinues the business or tbe coverage;

(ii) if the enrollee had been enrolled in the health maintenance organization for a period of 3 months preceding tbe termination of group coverage; and

HeinOnline -- 1999 vol. II 1975 1999

(iii) if the enrollee applied for continuing coverage within 31 days after the termination of group coverage. The conversion contract may not exclude, as a preexisting condition, any condition covered by the group contract from which the enrollee converts.

(j) a provision that clearly describes the amount of money an enrollee shall pay to the health maintenance organization to be covered for basic health care services.

(4) A health maintenance organization may amend an enrollment form or an evidence of coverage in a separate document if the separate document is filed with and approved by the commissioner and issued to the enrollee.

(5) (a) A health maintenance organization shall provide the same coverage for newborn infants, required by subsection (3)(e), as it provides for enrollees, except that for newborn infants, there may be no waiting or elimination periods. A health maintenance organization may not assess a deductible or reduce benefits applicable to the coverage for newborn infants unless the deductible or reduction in benefits is consistent with the deductible or reduction in benefits applicable to all covered persons.

(b) A health maintenance organization may not issue or amend an evidence of coverage in this state if it contains any disclaimer, waiver, or other limitation of coverage relative to the accident and sickness coverage or insurability of newborn infants of an enrollee or dependents from and after the moment of birth.

(c) If a health maintenance organization requires payment of a specific fee to provide coverage of a newborn infant beyond 31 days of the date of birth of the infant, the evidence of coverage may contain a provision that requires notification to the health maintenance organization, within 31 days after the date of birth, of the birth of an infant and payment of the required fee.

~~(6) A health maintenance organization may not use a schedule of charges for enrollee coverage for health care services or an amendment to a schedule of charges before it files a copy of the schedule of charges or the amendment to it with the commissioner. A health maintenance organization may evidence a subsequent amendment to a schedule of charges in a separate document issued to the enrollee. The charges in the schedule must be established in accordance with actuarial principles for various categories of enrollees, except that charges applicable to an enrollee may not be individually determined based on the status of the enrollee's health.~~

~~(7)~~*(6)* The commissioner shall, within 60 days, approve a form if the requirements of subsections (1) through (5) are met. A health maintenance organization may not issue a form before the commissioner approves the form. If the commissioner disapproves the filing, the commissioner shall notify the filer. In the notice, the commissioner shall specify the reasons for the disapproval. The commissioner shall grant a hearing within 30 days after receipt of a written request by the filer.

~~(8)~~*(7)* The commissioner may require a health maintenance organization to submit any relevant information considered necessary in determining whether to approve or disapprove a filing made pursuant to this section."

Section 61. Section 33-31-401, MCA, is amended to read:

"33-31-401. Examination. (1) The commissioner may examine the affairs of a health maintenance organization as often as is reasonably necessary to

HeinOnline -- 1999 vol. II 1976 1999

protect the interests of the people of this state. The commissioner shall make an examination at least once every 3 years. *The provisions of 33-1-408 and 33-1-409 apply to examinations under this section.*

(2) Each authorized health maintenance organization and provider shall submit its relevant books and records for the examinations and in every way facilitate the examinations. For the purpose of examination, the commissioner may administer oaths to and examine the officers and insurance producers of the health maintenance organization and the principals of the providers concerning their business.

(3) (a) Upon presentation of a detailed account of the charges and expenses of examinations by the commissioner, the health maintenance organization being examined shall pay to the examiner as necessarily incurred on account of the examination the actual travel expenses, a reasonable living-expense allowance, and a per diem, all at reasonable rates customary therefor and as established or adopted by the commissioner. The commissioner may present an account periodically during the course of the examination or at the termination of the examination as the commissioner considers proper. A person may not pay and an examiner may not accept any additional emolument on account of any examination.

(b) If a health maintenance organization fails to pay the charges and expenses as referred to in subsection (3)(a), the commissioner shall pay them out of the funds of the commissioner in the same manner as other disbursements of funds. The amount ~~so~~ paid ~~must be~~ *is* a lien upon all of the person's assets and property in this state and may be recovered by suit by the attorney general on behalf of the state ~~of Montana~~ and restored to the appropriate fund.

(4) In lieu of an examination, the commissioner may accept the report of an examination made by the commissioner of another state."

Section 62. Section 39-8-207, MCA, is amended to read:

"39-8-207. Requirements of licensee. (1) A professional employer organization or group shall, by written contract with the client, establish the responsibilities and duties of each party. The contract must disclose to the client:

(a) the services provided, the administrative fee, and the respective rights and obligations of the parties;

(b) a statement providing that the professional employer organization or group:

(i) reserves a right of direction and control over employees assigned to the client's location. The client may retain sufficient direction and control over employees necessary to conduct business and without which the client would be unable to conduct business, discharge fiduciary responsibilities, or comply with state licensing laws.

(ii) assumes responsibility for the payment of wages of employees, workers' compensation premiums, payroll-related taxes, and employee benefits from its own accounts without regard to payments by the client; and

(iii) retains authority to hire, terminate, discipline, and reassign employees. The client has the right to accept or cancel the assignment of an employee.

(c) a statement that, with respect to a worker supplied to a client by a professional employer organization or group, the client shares joint and several

HeinOnline -- 1999 vol. II 1977 1999

liability for any wages, workers' compensation premiums, and payroll-related taxes and for any benefits left unpaid by the professional employer organization or group and that, in the event that the licensee's license is suspended or revoked, this liability is retroactive to the client's entering into a contract with the licensee; and

(d) a statement that the client is responsible for compliance with the Montana Safety Culture Act, Title 39, chapter 71, part 15.

(2) The professional employer organization or group shall:

(a) give written notice of the general nature of the relationship between the professional employer organization or group and the client to each employee assigned to perform services at the client's place of work. The disclosure must provide that the professional employer organization:

(i) reserves a right of direction and control over employees assigned to the client's location. The client may retain sufficient direction and control over employees necessary to conduct business and without which the client would be unable to conduct business, discharge fiduciary responsibilities, or comply with state licensing laws.

(ii) retains authority to hire, terminate, discipline, and reassign employees. The client has the right to accept or cancel the assignment of an employee.

(b) submit to the department, within 90 days of the end of each calendar quarter, information certified by an independent certified public accountant demonstrating that all payroll-related taxes for the quarter have been paid. Upon a showing of reasonable cause, one 30-day extension may be granted for each quarter.

(c) maintain and make available for the department or its agent all records relating to the licensee's business conduct. Records must be maintained for 5 years after terminating an employee leasing arrangement or professional employer arrangement.

(d) notify the department in writing within 20 days of a change of business address or a change in partners, directors, officers, members, or controlling persons designated in the license;

(e) notify the department in writing within 20 days after a client either commences or terminates a professional employer arrangement or an employee leasing arrangement with that professional employer organization or group; and

(f) post the license issued in a conspicuous place in the principal place of business and display, in clear public view in each licensee's office, a notice stating that the professional employer organization or group is licensed and regulated by the department.

(3) When a professional employer organization or group uses a professional employer arrangement with the client, both the professional employer organization or group and the client are the immediate employers of the workers subject to the arrangement for the purposes of the workers' compensation laws of this state. When a professional employer organization or group uses an employee leasing arrangement with the client, the professional employer organization or group is the immediate employer of the workers subject to the arrangement for the purposes of the workers' compensation laws of this state.

(4) A professional employer organization or group shall:

HeinOnline -- 1999 vol. II 1978 1999

(a) pay wages and collect, report, and pay payroll-related taxes from its own accounts;

(b) pay unemployment taxes, pursuant to 39-51-1103, and provide, maintain, and secure all records and documents required of employers under the unemployment insurance laws of this state. For unemployment reporting purposes, each professional employer organization is the employing unit, as defined in 39-51-201, and shall keep separate records and submit quarterly wage lists for each of its clients.

(c) provide workers' compensation coverage for all employees and provide, maintain, and secure all records and documents required of employers under the workers' compensation laws of this state. A license may not be issued to a professional employer organization or group until the department receives proof of workers' compensation coverage for all employees assigned to any client location in this state.

(5) A professional employer organization or group is the employer for sponsoring and maintaining employee benefit and welfare plans. The plans, if limited to employees of the professional employer organization or group, are not multiple employer welfare arrangements.

(6) A professional employer organization or group shall disclose to the department, to each client, and to its employees information on any health or life fringe benefit program provided for its employees. The information must include:

(a) the type of benefits;

(b) the identity of each insurer providing each type of coverage;

(c) the amount of benefits for each type of coverage and to whom or on whose behalf the benefits will be paid;

(d) the policy limits on each insurance policy; and

(e) whether coverage is fully insured, partially insured, or fully self-funded.

(7) Disclosure required by this section may be made by any written means reasonably calculated to adequately inform the employees, including a summary plan description that meets the requirements of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001, et seq.), as amended.

(8) (a) Subject to any contrary provisions of the contract between the client and the professional employer organization or group, the professional employer arrangement that exists between the parties must be interpreted for purposes of insurance, bonding, and employer liability pursuant to subsection (8)(b).

(b) The professional employer organization or group:

(i) is entitled, along with the client, to the exclusivity of the remedy under both the workers' compensation and employers' liability provisions of a workers' compensation policy or plan of either party; and

(ii) is not liable for the acts, errors, or omissions of a client or of an employee acting under the direction and control of a client, subject to the provisions of this chapter. Subject to the provisions of this chapter, a client is not liable for the acts, errors, or omissions of a professional employer organization or group or of any employee of a professional employer organization or group acting under the direction and control of the professional employer organization or group.

HeinOnline -- 1999 vol. II 1979 1999

(9) A professional employer organization that applies for workers' compensation coverage shall also maintain and furnish to the insurer sufficient information to permit the calculation of an experience modification factor for each client employer, including but not limited to:

(a) the client employer's corporate or business name;

(b) the client employer's taxpayer or employer identification number;

(c) the client employer's risk identification number;

(d) a listing of all employees assigned to each client employer and the applicable classification code and payroll; and

(e) the client employer's first report of injury identifying the client employer and any other information necessary to permit the calculation of an experience modification factor for each client employer.

(10) An employee assigned to a client by a professional employer organization or group is considered the employee of the client for purposes of general liability insurance, motor vehicle insurance, fidelity bonds, surety bonds, and liquor liability insurance carried by the client. An employee assigned to a client by a professional employer organization or group is not an employee of the professional employer organization or group for purposes of general liability insurance, motor vehicle insurance, fidelity bonds, surety bonds, or liquor liability insurance carried by the professional employer organization or group unless the employee is included hy reference in an employment arrangement contract, insurance contract, or bond.

(11) The sale of professional employer services pursuant to this chapter does not constitute the sale of insurance under Title 33 unless the professional employer organization or group:

(a) undertakes to indemnify another or pay or provide a specified or determinable amount of benefit based on determinable contingencies unless done through a licensed insurer or an employee welfare benefit plan as defined in 29 U.S.C. 1002(1);

(b) solicits, negotiates, effects, procures, delivers, renews, continues, or binds an insurance pelicy unless done through a licensed insurance producer; or

(c) is *not* exempt under 33-17-103(4).

(12) A sole proprietor or a working memher of a partnership working under a professional employer arrangement may not receive unemployment insurance benefits unless tlie individual would otherwise be entitled to benefits if the professional employer arrangement did not exist.

(13) If the professional employer organization or group or the client comphes with tlie provisions of 39-71-401 with respect to a worker under the professional employer arrangement, the professional employer organization or group and the client, with respect to those workers, are not uninsured employers, as defined in 39-71-501, and are not subject to the provisions of 39-71-508 or 39-71-515."

Section 63. Section 61-12-303, MCA, is amended to read:

"61-12-303. Requirements for license. (1) The commissioner may not issue a license to a company until the company has filed ~~with him~~ the following:

(a) a formal application in ~~such~~ *the* form and detail ~~as~~ *that* the commissioner may require, executed under oath by its president or other principal officer;

HeinOnline -- 1999 vol. II 1980 1999

(b) a copy of the form of its contract;

(c) a certified copy of its charter or articles of incorporation and its bylaws, if any;

(d) a financial statement in ~~such~~ *the* form and detail ~~as~~ *that* the commissioner may require, executed on oath by its president or other principal officer;

(e) a certificate from the commissioner that it has complied with 61-12-304 in all cases ~~where~~ *in which* a deposit of cash or a bond is required by this part;

(f) *if the company is a corporation,* a certificate from the ~~corporation commissioner~~ *secretary* of ~~the~~ state ~~of Montana, in the event it be a corporation,~~ that ~~it~~ *the company* has complied with ~~the corporation laws of said state~~ *this state's corporate laws.*

(2) The commissioner may not issue a license to a company until the company has paid to the commissioner $100 as an annual license fee~~,~~ or the pro rata portion ~~thereof~~ *of the $100* necessary to be paid to the end of the current calendar year from the date of the application for the license.

(3) The commissioner may not issue a license to a company until the company has satisfied ~~him~~ by an examination and evidence *that* the commissioner may require~~, in his discretion,~~ that the company has complied with the laws of the state ~~of Montana~~, ~~and~~ that its management is trustworthy and competent, *and that the company is financially responsible.*"

Section 64. Service contract. (1) Service contract means a contract or agreement for a separately stated consideration for a specific duration to perform the repair, replacement, or maintenance of property or to indemnify for the repair, replacement, or maintenance of property if an operational or structural failure is due to a defect in materials or manufacturing or to normal wear and tear, with or without an additional provision for incidental payment or indemnity under limited circumstances, including but not limited to towing, rental, and emergency road service. A service contract may provide for the repair, replacement, or maintenance of property for damage resulting from power surges or accidental damage from handling.

(2) The marketing, sale, offering for sale, issuance, making, proposing to make, and administration of a service contract is exempt from the provisions of Title 33, except for:

(a) chapter 1, part 3;

(b) chapter 1, part 6, excluding 33-1-616;

(c) chapter 1, part 7; and

(d) chapter 18.

Section 65. Mechanical breakdown insurance. (1) Mechanical breakdown insurance means a policy, contract, or agreement issued by an authorized insurer that provides for the repair, replacement, or service for the operational or structural failure of the property because of a defect in materials or workmanship or because of normal wear and tear.

(2) The term does not include motor club services, as defined in 61-12-301, or vehicle casualty insurance, as defined in 33-1-206.

Section 66. Prepaid legal plan. (1) For the purposes of this section, prepaid legal plan means the assumption of a contractual obligation that is to be

HeinOnline -- 1999 vol. II 1981 1999

spread directly or indirectly among a group of persons to provide specified legal services or reimbursement for legal expenses in consideration of a specified payment for an interval of time, regardless of whether the payment is made by the beneficiary or by a third person on behalf of the beneficiary.

(2) A prepaid legal plan does not include the provision of or reimbursement for legal services that are incidental to other insurance coverage. The following are not prepaid legal plans:

(a) retainer contracts made with individual clients with fees based on estimates of the nature and amount of services that will be required;

(b) contracts made with a group of clients involved in the same or closely related legal matters;

(c) plans providing only a referral service or a discount card for legal services;

(d) legal services provided by unions or employee associations to members pertaining to employment or occupation; or

(e) legal services provided by an agency of state or federal government to employees.

Section 67. Involuntary unemployment insurance. Involuntary unemployment insurance means insurance providing the insured borrower with coverage for consumer credit replacement obligations for a period or periods during which the borrower is involuntarily unemployed. Involuntary unemployment insurance must at least provide benefits for the loss of employment income caused by individual or mass layoff, a general strike, termination by an employer, a dispute involving organized labor, and a lockout.

Section 68. Gap amount — gap insuranee. (1) As used in this section, gap amount means the difference between the amount owed by the lessee or borrower under the purchase or lease agreement in the event of total loss of the personal property prior to the expiration of the agreement by theft or physical damage and the actual cash value or portion received by the lessor or creditor from insurance proceeds or from any other person on account of the total loss or destruction of the personal property.

(2) Gap insurance means insurance covering the gap amount that is payable upon the total loss of personal property, which is the subject of a lease or a loan or another credit transaction, occasioned by the theft of or physical damage to the property.

Seetion 69. Repealer. Sections 33-2-1311, 33-7-526, 33-22-801, 33-22-802, 33-22-803, 33-22-804, 33-22-805, 33-22-806, 33-22-811, 33-22-812, 33-22-813, 33-22-814, 33-22-815, and 33-22-816, MCA, are repoaled.

Seetion 70. Codification instruction. [Sections 64 through 68] are intended to be codified as an integral part of Title 33, chapter 1, part 2, and the provisions of Title 33, chapter 1, part 2, apply to [sections 64 through 68].

Section 71. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 72. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

HeinOnline -- 1999 vol. II 1982 1999

Section 73. Effective datcs. (1) Except as provided in subsections (2) and (3), [tbis act] is effective October 1, 1999.

(2) [Sections 1 through 4, 31, 66, and 70 through 72 and this section] are effective on passage and approval.

(3) [Section 35] is effective January 1, 2000.

Approved April 27, 1999

CHAPTER NO. 473

[HB 245]

AN ACT IMPLEMENTING RECOMMENDATIONS OF THE AFFORDABLE HOUSING AND LAND USE INITIATIVE; ESTABLISHING A BUILDING CODES COUNCIL; ESTABLISHING A CONTINUING EDUCATION PROGRAM ADMINISTERED BY THE DEPARTMENT OF COMMERCE AND FUNDED BY A PORTION OF INSPECTION FEES; MANDATING THE CREATION OF A CENTRAL REGISTRY OF AUTHORITATIVE INTERPRETATIONS OF BUILDING CODES; PROVIDING FOR STATEWIDE APPROVAL OF MODEL PLANS AND A CHECKLIST FOR THE EXAMINATION OF SINGLE-FAMILY DWELLING CONSTRUCTION PLANS; AND AMENDING SECTIONS 50-60-103, 50-60-106, 50-60-201, AND 50-60-301, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Building codes council — purpose and strueture. (1) There is a building codes council for the purpose of assisting the department with the application, implementation, and interpretation of the state building code and building codes adopted by local governments. The council shall work cooperatively with the department and with representatives of the construction industry as well as members of the interested public to harmonize building codes and related rules with hoth the needs of the construction industry and the public interest in efficiency, cost-effectiveness, and safety.

(2) The council consists of 11 members appointed by the governor, unless otherwise specified, as follows:

(a) a practicing architect licensed in Montana;

(b) a practicing professional engineer licensed in Montana;

(c) a representative from the building contractor industry;

(d) a municipal building inspector;

(e) a representative of the manufactured housing industry;

(f) a member of the general public who does not hold public office and who does not represent the same industry or agency as another council member;

(g) the director of the department of health and human services or the director's designee;

(h) a licensed electrician selected by the board of electricians;

(i) a licensed plumber selected by the hoard of plumbers;

(j) the state fire marshal or the fire marshal's designee; and

HeinOnline -- 1999 vol. II 1983 1999

(k) a representative of the home building industry.

(3) The appointed council members serve at the pleasure of the governor for terms of 3 years.

(4) The council is allocated to the department for administrative purposes only as provided in 2-15-121.

(5) The council and its members are entitled to compensation as provided in 2-15-122.

Section 2. Continuing education — funding support from building fees — special account. (1) There is a building codes education program administered by the department for the purpose of providing continuing education in building code standards and other related topics to interested persons in the construction industry and in regulatory agencies of state and local government.

(2) The building codes education program must be funded entirely from building fee revenue collected by the department, and the department shall allocate 0.5% of the fees that the department collects pursuant to 50-60-104 to the state special revenue account established in subsection (3) to pay the costs of conducting courses and seminars at multiple locations in the state.

(3) There is an account in the state special revenue fund for the purpose of paying the costs of the building codes education program.

(4) The department may expend the funds referred to in subsection (2) to contract with the cooperative extension service, the extended studies programs, other appropriate units of the Montana university system, or private sector entities to develop and conduct the building codes education program.

Section 3. Building code interpretations — central registry. (1) The department shall, in cooperation with the Montana chapter of the international conference of building officials, develop a process and procedure for:

(a) achieving, to the greatest extent possible, knowledgo and acceptance of the department's interpretations by affected parties;

(b) publishing the department's interpretations of building code provisions in a manner that makes the interpretations easily accessihle to and obtainable by the public by paper copy and by electronic means; and

(c) maintaining in a central registry easily accessed records of the published interpretations provided for in subsection (1)(b).

(2) The department shall provide to the building codes council, established in [section 1], a comprehensive and up-to-date file of the department's interpretations of all building codes in use in Montana.

Section 4. Examination of single-family dwelling plans — statewide approval for model plans — fee adjustments — mandatory checklist. (1) The department shall accept for examination and approval or disapproval all model construction plans for single-family dwellings submitted to the department.

(2) Once a model construction plan has been approved, the department shall indicate in writing on the approved plan that the plan is acceptable on a statewide basis and that no further examination is warranted except with respoct to:

(a) zoning;

HeinOnline -- 1999 vol. II 1984 1999

(b) footings, foundations, and basements;

(c) curbs;

(d) gutters;

(e) landscaping;

(f) utility connections;

(g) street requirements;

(h) sidewalks; and

(i) other requirements specifically related to the exterior of the building.

(3) Local building departments shall reduce plan examination fees commensurate with the reduced time and effort expended resulting from the department's examination provided for in subsection (1).

(4) This section may not be construed to reduce the requirements for obtaining permits for onsite inspection of the residence under construction pursuant to 50-60-106.

(5) (a) The department shall devise a checklist for the examination of single-family dwelling construction plans by the department and by the building code enforcement officials of municipalities and counties.

(b) The checklist must be based upon the most recently adopted edition of the council of American building officials One and Two Family Dwelling Code, as amended.

(c) The checklist is subject to review and amendment by the building codes council provided for in [section 1].

(d) The checklist must be made available to building contractors at a price that is commensurate with reproduction costs, and a building contractor who uses the checklist and attaches it to the plans that the contractor submits to the department or a municipality or county for examination is entitled to receive the relevant building permit or notice of disapproval within 10 days of submission of the completed checklist.

Section 5. Section 50-60-103, MCA, is amended to read:

"**50-60-103. Administration by department.** The department shall administer parts 1 through 4 and for that purpose shall:

(1) issue orders necessary to effectuate the purposes of parts 1 through 4 and enforce the orders by all appropriate administrative and judicial proceedings;

(2) enter, inspect, and examine buildings or premises necessary for the proper performance of its duties under parts 1 through 4;

(3) study the operation of the state building code, local building regulations, and other laws related to the construction of buildings to ascertain their effects upon the cost of building construction and the effectiveness of their provisions for health and safety;

(4) recommend tests or require the testing and approval of materials, devices, and methods of construction to ascertain their acceptability under the requirements of the state building code and issue certification of ~~such~~ *the* acceptability;

HeinOnline -- 1999 vol. II 1985 1999

(5) appoint experts, consultants, and technical advisers for assistance and recommendations relative to the formulation and adoption of the state building code;

(6) advise, consult, and cooperate with other agencies of the state, local governments, industries, and interested persons or groups; *and*

(7) consult with the building codes council, established in [section 1], on all rules and interpretations of building code provisions and on the checklist for the examination of single-family dwelling construction plans provided for in [section 4]."

Section 6. Section 50-60-106, MCA, is amended to read:

"50-60-106. Powers and duties of municipalities. (1) The examination, approval, or disapproval of plans and specifications, the issuance and revocation of building permits, licenses, certificates, and similar documents, the inspection of buildings, and the administration and enforcement of building regulations within the municipal jurisdictional area are the responsibility of the municipalities of the state.

(2) Each municipality or county certified under 50-60-302 shall, within its jurisdictional area:

(a) examine, approve, or disapprove plans and specifications for the construction of any building, the construction of which is pursuant or purports to be pursuant to the applicable provisions of the state or municipal building code, and direct the inspection of the buildings during and in the course of construction;

(b) require that construction of buildings be in accordance with the applicable provisions of the state or municipal building code, subject to the powers of variance or modification granted to the department;

(c) make available to building contractors at a price that is commensurate with reproduction costs a checklist devised by the department pursuant to [section 4] for single-family dwellings and provide to contractors who attach a completed checklist to the plans submitted for examination the relevant building permit or notice of plan disapproval within 10 working days of the contractor's submission.

~~(c)~~*(d)* during and in the course of construction, order in writing the remedying of any condition found to exist in, on, or about any building that is being constructed in violation of the applicable state or municipal building code. Orders may be served upon the owner or ~~his~~ *the owner's* authorized agent personally or by sending by ~~registered or~~ certified mail a copy of the order to the owner or ~~his~~ *the owner's* authorized agent at the address set forth in the application for permission for the construction of the building. A local building department, by action of an authorized officer, may grant in writing ~~such~~ time as may be reasonably necessary for achieving compliance with the order. For the purposes of this subsection ~~(2)(c)~~ *(2)(d)*, the phrase "during and in the course of construction" refers to the construction of a building until all necessary building permits have been obtained and the municipality or county has issued formal written approvals or has issued a certificate of occupancy for the building.

~~(d)~~*(e)* issue certificates of occupancy as provided in 50-60-107;

~~(e)~~*(f)* issue permits, licenses, and other required documents in connection with the construction of a building;

HeinOnline -- 1999 vol. II 1986 1999

~~(f)~~*(g)* ensure that all construction-related fees or charges imposed and collected by the municipality or county are necessary, reasonable, and uniform and are:

(i) *except as provided in subsection (2)(g)(iii),* used only for building code enforcement, which consists of those necessary and reasonable costs directly and specifically identifiable for the enforcement of building codes, plus indirect costs charged on the same basis as other local government proprietary funds not paying administrative charges as direct charges. If indirect costs are waived for any local government proprietary fund, they must also be waived for the program established in this section. Indirect charges are limited to the charges that are allowed under federal cost accounting principles that are applicable to a local government.

(ii) reduced if the amount of the fees or charges accumulates above the amount needed to enforce building codes for 12 months. The excess must be placed in a reserve account and may only be used for building code enforcement. Collection and expenditure of fees and charges must be fully documented.

(iii) allocated and remitted to the department, in an amount not to exceed 0.5% of the building fees or charges collected, for the building codes edueation program established in [section 2].

(3) Each municipality or county certified under 50-60-302 may, within its jurisdictional area:

(a) make, amend, and repeal rules for the administration and enforcement of the provisions of this section and for the collection of fees and charges related to construction;

(b) prohibit the commencement of construction until a permit has been issued by the local building department after a showing of compliance with the requirements of the applicable provisions of the state or municipal building code; and

(c) enter into a private contract with the owner or builder of a building that is not or will not be within the jurisdiction of the municipality or county under which the municipality or county will provide reviews, inspections, orders, and certificates of occupancy for a fee and under conditions agreed upon by the parties. Municipal or county powers of enforcement may not be exercised."

Section 7. Section 50-60-201, MCA, is amended to read:

"**50-60-201. Purpose of state building code.** The state building code must be designed to effectuate the general purposes of parts 1 through 4 and the following specific objectives and standards to:

(1) provide reasonably uniform standards and requirements for construction and construction materials consistent with accepted standards of design, engineering, and fire prevention practices;

(2) permit to the fullest extent feasible the use of modern technical methods, devices, and improvements that tend to reduce the cost of construction consistent with reasonable requirements for the health and safety of the occupants or users of buildings and, consistent with the conservation of energy, by design requirements and criteria that will result in the efficient use of energy, whether used directly or in a refined form, in buildings;

HeinOnline -- 1999 vol. II 1987 1999

(3) eliminate restrictive, obsolete, conflicting, and unnecessary building regulations and requirements that tend to unnecessarily increase construction costs, unnecessarily prevent the use of proven new materials that have been found adequate through experience or testing, or provide unwarranted preferential treatment to types or classes of materials, products, or methods of construction;

(4) ensure that any newly constructed public buildings and certain altered public buildings are readily accessible to and usable by persons with disabilities, according to the principles applicable to accessibility to public buildings for persons with disabilities in the state building code;

(5) ensure statewide uniformity in the inspection and enforcement of exterior features of all newly constructed public buildings and certain altered public buildings, including building sites, for physical accessibility to people with disabilities;

(6) encourage efficiencies of design and insulation that enable buildings to be heated in the winter with the least possible quantities of energy and to be kept cool in the summer without air conditioning equipment or with the least possible use of the equipment;

(7) encourage efficiencies and criteria directed toward design of building envelopes with high thermal resistance and low air leakage and toward requiring practices in the design and selection of mechanical, electrical, and illumination systems that promote the efficient use of energy;

(8) provide, to the greatest extent possible, with the advice and consent of the building codes council and the Montana chapter of the international conference of building officials, a broadly uniform system of building code interpretations for the purposes of predictability, fairness, and efficiency."

Section 8. Section 50-60-301, MCA, is amended to read:

"50-60-301. Municipal and county building codes authorized — health care facility and public health center doors — ***fee adjustment for model plans.*** (1) The local legislative body of a municipality or county may adopt a building code by ordinance to apply to the municipal or county jurisdictional area.

(2) A municipal or county building code may include only codes adopted by the department.

(3) Any provision of a building code requiring the installation or maintenance of self-closing or automatic closing corridor doors to patient rooms does not apply to health care facilities, as defined in 50-5-101, or to a public health center, as defined in 7-34-2102.

(4) (a) When the same single-family dwelling plan is constructed at more than one site, the municipality or county shall, after the first examination of the plan, adjust the required plan fee to reflect only the cost of reviewing requirements pertaining to the review of:

(i) zoning;

(ii) footings, foundations, and basements;

(iii) curbs;

(iv) gutters;

HeinOnline -- 1999 vol. II 1988 1999

(v) landscaping;

(vi) utility connections;

(vii) street requirements;

(viii) sidewalks; and

(ix) other requirements related specifically to the exterior of the building.

(b) If a building contractor alters the single-family dwelling plan referred to in subsection (4)(a) in a fashion that substantially affects the building code requirements, the municipality or county may impose the full examination fee permitted under in 50-60-106."

Section 9. Codification instruction. [Sections 1 through 4] are intended to be codified as an integral part of Title 50, chapter 60, part 1, and the provisions of Title 50, chapter 60, part 1, apply to [sections 1 through 4].

Approved April 27, 1999

CHAPTER NO. 474

[HB 314]

AN ACT IMPLEMENTING A "GOOD NEIGHBOR POLICY" ON PUBLIC RECREATIONAL LANDS TO PROVIDE MINIMUM IMPACT ON ADJOINING PRIVATE PROPERTY; REQUIRING THAT MAINTENANCE IN STATE PARKS AND FISHING ACCESS SITES HAVE PRIORITY OVER ADDITIONAL DEVELOPMENT; REQUIRING LEGISLATIVE APPROVAL OF DEVELOPMENT PROJECTS; DEFINING "MAINTENANCE"; PROTECTING RIPARIAN VEGETATION BY DISCOURAGING MOTORIZED CAMPING WITHIN 25 FEET OF A RIVER OR STREAM IN STATE PARKS AND FISHING ACCESS SITES; AND DISALLOWING THE USE OF CERTAIN MOTORIZED OFF-HIGHWAY VEHICLES IN STATE PARKS AND FISHING ACCESS SITES.

WHEREAS, Montanans recognize that landowners have a responsibility to be good stewards of tbeir land; and

WHEREAS, the citizens of Montana, through their state government, own many acres of land throughout the state; and

WHEREAS, public lands should be used to set an example of good land stewardship; and

WHEREAS, the Legislature desires that managoment of state recreational lands should complement the rights of neighboring landowners to use and enjoy their private lands.

Be it enacted by the Legislature of the State of Montana:

Section 1. Good neighbor policy — public recreational lands. (1) The good neighbor policy of public land use, as applied to public recreational lands, seeks a goal of no impact upon adjoining private and public lands by preventing impact on those adjoining lands from noxious weeds, trespass, litter, noise and light pollution, streambank erosion, and loss of privacy.

(2) In order to implement the good neighbor policy expeditiously, the legislature finds it necessary to require the department of fish, wildlife, and parks

HeinOnline -- 1999 vol. II 1989 1999

to place maintenance as a priority over additional development at all state parks and fishing access sites.

(3) The restriction in subsection (2) does not apply to:

(a) development and improvement projects for which the legislature has appropriated funds prior to [the effective date of this act];

(b) activities directly related to the historic preservation, restoration, or protection of assets in state parks;

(c) at the discretion of the department of fish, wildlife, and parks, projects on the Missouri reach of the Missouri-Madison hydropower project or the Clark Fork basin hydropower project, undertaken pursuant to the federal energy regulatory commission's bydropower relicensing requirements and in conjunction with private entities, political subdivisions of the state of Montana, and federal agencies;

(d) at the discretion of the department of fish, wildlife, and parks, projects on Fort Peck reservoir undertaken in conjunction with tbe U.S. army corps of engineers; or

(e) partnership projects as designated within the park master plan.

(4) Any development in state parks and fishing access sites beyond those defined as maintenance in [section 2] must he approved by the legislature.

Section 2. Maintenance priority — maintenance defined. With regard to state parks and fishing access sites, implementation of tbe good neighbor policy requires that priority is to be given to maintenance of existing facilities, rather than to development or improvement. As used in [sections 1 and 2], "maintenance" means:

(1) placing, cleaning, and stocking of latrines;

(2) garbage and litter removal;

(3) fence installation and repair of existing fences;

(4) weed control;

(5) implementation of safety and health measures required by law to protect tbe public;

(6) upkeep of established trails, roads, parking areas, boat docks, and similar facilities existing in state parks and fishing access sites on [the effective date of this act];

(7) in-kind replacement of existing facilities, including electric lines or facilities, or replacement of tbose existing facilities with facilities tbat have less impact on the state park or fisbing access site;

(8) erosion control;

(9) streambank stabilization;

(10) erection of barriers necessary to preserve riparian vegetation and babitat;

(11) minimal signage necessary to inform users of appropriate state park or fishing access site use and applicable regulations and of historical, natural, cultural, geographical, and geological features in the area;

HeinOnline -- 1999 vol. II 1990 1999

(12) measures necessary to ensure compliance with the federal Americans With Disabilities Act of 1990, when applicable;

(13) planting of native trees, grasses, and shrubs for habitat stabilization and privacy shielding;

(14) installation of fire rings, picnic tables, and trash collection facilities; and

(15) other necessary activities and expenditures consistent with the good neighbor policy and the intent of [sections 1 through 3], including new trails, new boat ramps, and necessary new access roads into and within the state park or fishing access site.

Section 3. Proteetion of riparian vegetation — limit on motorized camping, operation of off-highway vehicles. In order to protect riparian vegetation, provide for stable streambanks, reduce erosion, and provide for nutrient barriers to protect the quality of rivers and streams:

(1) camping in a motor vehicle, as defined in 61-1-102, is discouraged within 25 feet of a river or stream in state parks and fishing access sites; and

(2) the off-road operation of an off-highway vehicle, as defined in 23-2-801, within state parks and fishing access sites is prohibited except for administrative purposes.

Section 4. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 23, chapter 1, part 1, and the provisions of Title 23, chapter 1, part 1, apply to [sections 1 through 3].

Approved April 27, 1999

CHAPTER NO. 475

[HB 389]

AN ACT APPROPRIATING MONEY TO THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS FOR GRANTS FOR THE ESTABLISHMENT AND IMPROVEMENT OF SHOOTING RANGES; ESTARLISHING SHOOTING RANGE DEVELOPMENT GRANTS AND CRITERIA FOR GRANTS; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Purpose. The purpose of [sections 1 through 4] is to create a continuing program and mechanism to provide funding, through the department, to private shooting clubs, private organizations, local governments, and school districts for the establishment and improvement of a system of sbooting ranges throughout Montana.

Section 2. Shooting range development grants. A private shooting club, private organization, unit of local government, or school district may seek a grant for a shooting range development project.

Section 3. Grant criteria. (1) An applicant for a grant pursuant to [section 2] shall provide matching funds in either cash or in-kind contributions. The match must represent $1 in value for each $1 of the grant. In-kind contributions include but are not limited to labor, materials, and real property. Existing assets and existing shooting range development may not apply to the match.

HeinOnline -- 1999 vol. II 1991 1999

(2) An applicant that is a private shooting club or a private organization must be a nonprofit corporation pursuant to Title 35, chapter 2, with an organizational structure, officers, directors, and a registered agent.

(3) A grant must be used for the purchase of real property, earthwork, fixed improvements to existing shooting ranges or ranges being established, or reasonable grant application expenses. A grant may not be used for any expendable supplies for a shooting range.

(4) To be eligible for grant assistance, a private sbooting club or a private organization:

(a) (i) shall accept in its membership any person who holds or is eligible to hold a Montana hunting license and who pays club or organization membership fees;

(ii) may not limit the number of members;

(iii) may charge a membership fee not greater than the per-member share of the club's or organization's reasonable cost of provision of services, including establishment, improvement, and maintenance of shooting facilities and other membership services; and

(iv) shall offer members occasional guest privileges at no cost to the member or invited guest and shall make a reasonable effort to hold a public sight-in day each September, when the general public may use the shooting range for a day-use fee or at no cost; or

(b) shall admit the general public for a reasonable day-use fee.

(5) A private shooting club, private organization, unit of local government, or school district that accepts a grant under [sections 1 through 4] shall provide the department with a future interest, providing that upon the discontinued use of its shooting range facility or its dissolution, the assets of the facility revert to the department. The department may hold the property indefinitely pending identification of a new entity to operate the facility. If a facility funded under [sections 1 through 4] is sold for a use other than a shooting range facility and the sale proceeds are not reinvested in another shooting range facility within 1 year of the sale, the entity that sells tbe facility sball reimburse the grant program for all funds received under [sections 1 through 4].

(6) To be eligible for grant assistance, the applicant sball allow safe shooting of hunting arms. Hunting arms include shotguns, archery equipment, black powder arms, rifles, and pistols.

(7) An entity receiving a grant shall allow use of tbe facility by hunter education classes for no fee.

(8) A unit of local gevernment or a school district shall compete on an equal basis witb other applicants and shall provide access to its facility for a reasonable fee to any person holding or eligible to hold a Montana hunting license.

Seetion 4. Program rules. (1) The department may not use more than 15% of the program funds for administration.

(2) The department shall develop a simple application procedure and accountability system.

HeinOnline -- 1999 vol. II 1992 1999

(3) The department shall make every effort to expend or obligate funds for shooting range improvement grants within the year for which they are appropriated.

(4) The department shall prioritize grant applications according to those that provide facilities for the greatest number of shooters, that accommodate the use of a combination of hunting arms, and that meet other criteria established by the department.

(5) The department may not grant more than 30% of the eligible funds for the establishment or improvement of any single facility in any year.

(6) The department shall promote the use of publicly owned land for shooting range facilities. The department may negotiate with federal, state, and local agencies to encourage land trades, shared or specific use designations, and other mechanisms to provide land for shooting range facilities.

Section 5. Appropriation. There is appropriated $60,000 for the biennium ending June 30, 2001, from the state special revenue fund of the department of fish, wildlife, and parks, for the purpose of making grants to qualified shooting range facilities under [sections 1 through 4]. This appropriation is in addition to the appropriation in House Bill No. 2 for the shooting range grant program.

Section 6. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 7. Codification instruction. [Sections 1 through 4] are intended to be codified as an integral part of Title 87, chapter 1, part 2, and the provisions of Title 87, chapter 1, part 2, apply to [sections 1 through 4].

Section 8. Effective date. [This act] is effective July 1, 1999.

Section 9. Termination. [This act] terminates July 1, 2004.

Approved April 27, 1999

CHAPTER NO. 476

[HB 459]

AN ACT PROVIDING THAT A RESIDENT OF ANOTHER STATE WHO HAS BEEN ISSUED A CONCEALED WEAPON PERMIT BY THAT STATE MAY CARRY A CONCEALED WEAPON IN THIS STATE; ELIMINATING THE AUTHORITY OF THE GOVERNOR TO NEGOTIATE CONCEALED WEAPON PERMIT RECIPROCITY AGREEMENTS; AND AMENDING SECTIONS 45-8-317 AND 45-8-329, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-8-317, MCA, is amended to read:

"45-8-317. Exceptions. (1) Section 45-8-316 does not apply to:

(a) any peace officer of the state of Montana *or of another state who has the power to make arrests*;

(b) any officer of the United States government authorized to carry a concealed weapon;

HeinOnline -- 1999 vol. II 1993 1999

(c) a person in actual service as a *member of the* national ~~guardsman~~ *guard*;

(d) a person summoned to the aid of any of the persons named in subsections (1)(a) through (1)(c);

(e) a civil officer or the officer's deputy engaged in the discharge of official business;

(f) a probation and parole officer authorized to carry a firearm under 46-23-1002;

(g) a person issued a permit under 45-8-321 *or a person with a permit recognized under 45-8-329*;

(h) an agent of tbe department of justice or a criminal investigator in a county attorney's office;

(i) a person who is outside the official boundaries of a city or town or the confines of a logging, lumbering, mining, or railroad camp or who is lawfully engaged in hunting, fishing, trapping, camping, hiking, backpacking, farming, ranching, or other outdoor activity in which weapons are often carried for recreation or protection; or

(j) the carrying of arms on one's own premises or at one's home or place of business.

(2) ~~Except with~~ *With* regard to a person issued a permit under 45-8-321, the provisions of 45-8-328 do not apply to this section."

Section 2. Section 45-8-329, MCA, is amended to read:

"45-8-329. Concealed weapon ~~permit reciprocity agreements~~ *permits from other states recognized* — advisory council. (1) ~~The governor may negotiate concealed weapon permit reciprocity agreements with other states that have concealed weapon permit laws similar to those of Montana.~~ *A concealed weapon permit from another state is valid in this state if:*

(a) the person issued the permit has the permit in the person's immediate possession;

(b) the person bearing the permit is also in possession of an official photo identification of the person, whether on the permit or on other identification; and

(c) the state that issued the permit requires a criminal records background check of permit applicants prior to issuance of a permit.

(2) The attorney general shall develop and maintain a list of states from which permits are recognized under this section for the use by law enforcement agencies in this state.

(3) A determination or declaration of a Montana government entity, official, or employee is not necessary to the existence and exercise of the privilege granted by this section.

~~(2)~~*(4)* Tbe gevernor shall establish a council, composed of interested persons, including law enforcement personnel and gun owners, to advise the governor on and pursue ~~reciprocity~~ *concealed weapon permit* issues ~~and agreements~~."

Approved April 27, 1999

HeinOnline -- 1999 vol. II 1994 1999

CHAPTER NO. 477

[HB 512]

AN ACT REVISING THE MANDATORY INSURANCE BENEFIT FOR CHEMICAL DEPENDENCY BY CHANGING THE INPATIENT, OUTPATIENT, AND LIFETIME BENEFITS; EXCLUDING MEDICAL DETOXIFICATION FROM THE BENEFITS; FURTHER DEFINING INPATIENT BENEFITS; AMENDING SECTIONS 33-22-703 AND 33-22-705, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-22-703, MCA, is amended to read:

"33-22-703. (Temporary) Coverage for mental illness, alcoholism, and drug addiction. (1) A group health plan or a health insurance issuer that provides group health insurance coverage shall provide for Montana residents covered by the plan at least the following level of benefits for the necessary care and treatment of mental illness, alcoholism, and drug addiction:

(a) under basic inpatient expense policies or contracts, inpatient hospital benefits *and outpatient benefits* consisting of durational limits, dollar limits, deductibles, and coinsurance factors that are not less favorable than for physical illness generally, except that:

(i) inpatient treatment for mental illness~~, alcoholism, and drug addiction~~ is subject to a maximum yearly benefit of 21 days;

(ii) inpatient treatment for mental illness may he traded on a 2-for-1 basis for a benefit for partial hospitalization through a program that complies with the standards for a partial hospitalization program that are published by the American association for partial hospitalization if the program is operated by a hospital; ~~and~~

(iii) inpatient *and outpatient* treatment for alcoholism and drug addiction, *excluding costs for medical detoxification,* is suhject to a maximum benefit of ~~$4,000 in any 24-month period and a maximum lifetime benefit of $8,000~~ *$6,000 for a 12-month period until a lifetime maximum inpatient benefit of $12,000 is met, after which the annual benefit may be reduced to $2,000; and*

(iv) costs for medical detoxification treatment must be paid the same as any other sickness or illness under the terms of the contract and are not subject to the annual and lifetime limits in subsection (1)(a)(iii);

(h) under major medical policies or contracts, inpatient benefits and outpatient benefits consisting of durational limits, dollar limits, deductihles, and coinsurance factors that are not less favorable than for physical illness generally, except that:

(i) inpatient treatment for mental illness~~, alcoholism, and drug addiction~~ is subject to a maximum yearly benefit of 21 days;

(ii) inpatient treatment for mental illness may he traded on a 2-for-1 basis for a benefit for partial hospitalization through a program that complies with the standards for a partial hospitalization program that are published by the American association for partial hospitalization if the program is operated by a hospital;

HeinOnline -- 1999 vol. II 1995 1999

(iii) inpatient *and outpatient* treatment for alcoholism and drug addiction, *excluding costs for medical detoxification,* may be subject to a maximum benefit of ~~$4,000 in any 24-month period and a maximum lifetime benefit of $8,000~~ *$6,000 for a 12-month period until a lifetime maximum inpatient benefit of $12,000 is met, after which the annual benefit may be reduced to $2,000;*

(iv) costs for medical detoxification treatment, which must be paid the same as any other illness under the terms of the contract and are not subject to the annual and lifetime benefits in subsection (1)(b)(iii) and;

~~(iv)~~*(v)* outpatient treatment for mental illness may be subject to a maximum yearly benefit of no less than $2,000, but this subsection (1)(b)~~(iv)~~*(v)* does not apply to benefits for services furnished before September 30, 2001, unless the group health plan or group health insurance coverage is exempt from the requirements of subsection (2) pursuant to subsection (3) or (4)~~; and~~

~~(v) outpatient treatment for alcoholism and drug addiction is subject to a maximum yearly benefit of $1,000~~.

(2) A group health plan or group health insurance coverage offered in connection with a group health plan may not impose an aggregate dollar limit on an annual or lifetime basis more restrictively for mental health benefits than for medical and surgical benefits covered by the plans. In the case of a plan that has different aggregate lifetime limits and different annual limits on various categories of medical and surgical benefits, the commissioner shall establish rules for determining a weighted average aggregate lifetime limit and weighted average annual limit to apply to mental health benefits. This subsection does not apply to benefits for services furnished on or after September 30, 2001.

(3) Subsection (2) does not apply to a group health plan or health insurance coverage offered in connection with a group health plan in the small group market.

(4) Subsection (2) does not apply to a group health plan or health insurance coverage offered in connection with a group health plan if the application of subsection (2) results in an increase in the cost under the group health plan or for coverage of at least 1%. This subsection applies separately to each benefit package option in the case of a group health plan that offers a participant or beneficiary two or more benefit package options under the group health plan. (Terminates September 30, 2001—sec. 54, Ch. 416, L. 1997.)

33-22-703. (Effective October 1, 2001) Coverage for mental illness, alcoholism, and drug addiction. A group health plan or a health insurance issuer that provides group health insurance coverage shall provide for Montana residents covered by the plan at least the following level of benefits for the necessary care and treatment of mental illness, alcoholism, and drug addiction:

(1) under basic inpatient expense policies or contracts, inpatient hospital benefits *and outpatient benefits* consisting of durational limits, dollar limits, deductibles, and coinsurance factors that are not less favorable than for physical illness generally, except that:

(a) inpatient treatment for mental illness~~, alcoholism, and drug addiction~~ is subject to a maximum yearly benefit of 21 days;

(b) inpatient treatment for mental illness may be traded on a 2-for-1 basis for a benefit for partial hospitalization through a program that complies with the standards for a partial hospitalization program that are published by the Ameri-

HeinOnline -- 1999 vol. II 1996 1999

can association for partial hospitalization if the program is operated by a hospital; ~~and~~

(c) inpatient *and outpatient* treatment for alcoholism and drug addiction, *excluding costs for medical detoxification,* is subject to a maximum benefit of ~~$4,000 in any 24-month period and a maximum lifetime benefit of $8,000~~ *$6,000 for a 12-month period until a lifetime maximum inpatient benefit of $12,000 is met, after which the annual benefit may be reduced to $2,000 and;*

(d) costs for medical detoxification treatment must be paid the same as any other illness under the terms of the contract and are not subject to the annual and lifetime limits in subsection (1)(c);

(2) under major medical policies or contracts, inpatient benefits and outpatient benefits consisting of durational limits, dollar limits, deductibles, and coinsurance factors that are not less favorable than for physical illness generally, except that:

(a) inpatient treatment for mental illness, alcoholism, and drug addiction is subject to a maximum yearly benefit of 21 days;

(b) inpatient treatment for mental illness may be traded on a 2-for-1 basis for a benefit for partial hospitalization through a program that complies with the standards for a partial hospitalization program that are published by the American association for partial hospitalization if the program is operated by a hospital;

(c) inpatient *and outpatient* treatment for alcoholism and drug addiction, *excluding costs for medical detoxification,* may be subject to a maximum benefit of ~~$4,000 in any 24-month period and a maximum lifetime benefit of $8,000~~ *$6,000 for a 12-month period until a lifetime maximum inpatient benefit of $12,000 is met, after which the annual benefit may be reduced to $2,000;*

(d) costs for medical detoxification treatment must be paid the same as any other illness under the terms of the contract and are not subject to the annual and lifetime benefits in subsection (2)(c) and;

~~(d)~~*(e)* outpatient treatment for mental illness may be subject to a maximum yearly benefit of no less than $2,000, but this subsection (2)~~(d)~~*(e)* does not apply to benefits for services furnished before September 30, 2001~~; and~~

~~(e) outpatient treatment for alcoholism and drug addiction is subject to a maximum yearly benefit of $1,000~~."

Section 2. Section 33-22-705, MCA, is amended to read:

"33-22-705. Inpatient and outpatient benefits. (1) "Inpatient benefits" are benefits payable for charges made by a hospital or freestanding inpatient facility for the necessary care and treatment of mental illness, alcoholism, or drug addiction furnished to a covered person while confined as an inpatient and, with respect to major medical policies or contracts, also includes those benefits payable for charges made by a physician for the necessary care and treatment of mental illness, alcoholism, or drug addiction furnished to a covered person while confined as an inpatient. Care and treatment of alcoholism or drug addiction in a freestanding inpatient facility must be in a chemical dependency treatment center that is approved by the department of public health and human services under 53-24-208. *Inpatient benefits include payment for medically monitored and medically managed intensive inpatient services and clinically managed high-intensity residential services.*

HeinOnline -- 1999 vol. II 1997 1999

(2) "Outpatient benefits" are benefits payable for:

(a) reasonable charges made by a hospital for the necessary care and treatment of mental illness, alcoholism, or drug addiction furnished to a covered person while not confined as an inpatient;

(b) reasonable charges for services rendered or prescribed by a physician for the necessary care and treatment for mental illness, alcoholism, or drug addiction furnisbed to a covered person while not confined as an inpatient;

(c) reasonable charges made by a mental health or chemical dependency treatment center for the necessary care and treatment of a covered person provided in the treatment center. The chemical dependency treatment center must be approved by the department of public health and buman services under 53-24-208.

(d) reasonable charges for services rendered by a licensed psychiatrist, psychologist, licensed professional counselor, licensed social worker, or chemical dependency counselor certified by the department of commerce under Title 37, chapter 35."

Section 3. Effective date — applicability. [This act] is effective January 1, 2000, and applies to all policies or certificates issued or renewed on or after that date.

Approved April 27, 1999

CHAPTER NO. 478

[HB 515]

AN ACT PROVIDING FOR AN INTERIM STUDY OF THE EFFECTS OF COMPETITION BY STATE POLITICAL SUBDIVISIONS WITH THE PRIVATE SECTOR; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Study of government competition with private sector. The legislative council shall designate an appropriate legislative interim committee to study the issue of government competition by political subdivisions of this state with the private sector. The study may include an examination of the impact on the private sector of the provision of goods, services, manufacturing, construction, and maintenance and repair by governmental entities in this state and an examination of the feasibility and desirability of privatizing the sale of goods, specific services, manufacturing, construction, and maintenance and repair activities conducted by political suhdivisions. The appropriate committee shall prepare for submission to the 57th legislature a report of its findings and any recommendations or proposed legislation.

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 27, 1999

HeinOnline -- 1999 vol. II 1998 1999

CHAPTER NO. 479

[HB 530]

AN ACT REVISING CERTAIN LAWS RELATING TO ABORTION TO REMOVE OR CLARIFY CERTAIN PROVISIONS DECLARED INVALID BY THE JUDICIARY; REMOVING RESTRICTIONS ON THE PLACE OF PERFORMING AN ABORTION AND ADVERTISING; REVISING THE DEFINITION OF "PARTIAL-BIRTH ABORTION"; AND AMENDING SECTIONS 50-20-102, 50-20-109, AND 50-20-401, MCA.

WHEREAS, in Intermountain Planned Parenthood v. State of Montana, No. BDV 97-477 (First Judicial District, 1998), the District Court found the definition of "partial-birth abortion" void for reasons of vagueness.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-20-102, MCA, is amended to read:

"50-20-102. Statement of purpose — *findings.* *(1)* The legislature reaffirms the tradition of the state of Montana to protect every human life, whether unborn or aged, healthy or sick. In keeping with this tradition and in the spirit of our constitution, we reaffirm tbe intent to extend the protection of the laws of Montana in favor of all human life. *It is the policy of the state to preserve and protect the lives of all human beings and to provide protection for the viable human life. The protection afforded to a person by Montana's constitutional right of privacy is not absolute, but may be infringed upon by a compelling state interest. The legislature finds that a compelling state interest exists in the protection of viable life.*

(2) The legislature finds, with respect to 50-20-401, that:

(a) the United States supreme court has determined that states have a legitimate interest in protecting both a woman's health and the potentiality of human life and that each interest grows and reaches a compelling point at various stages of a woman's approach to the full term of a pregnancy;

(b) the court has also determined that subsequent to viability, the state in promoting its interest in the potentiality of human life may, if it chooses, regulate and even proscribe abortion except when necessary, in appropriate medical judgment, for the preservation of the life or health of the woman;

(c) the holdings referred to in subsections (2)(a) and (2)(b) apply to unborn persons in order to extend to unborn persons the inalienable right to defend their lives and liberties;

(d) absent clear proof that an abortion is necessary to save the life of the woman, the abortion of a viable person is an infringement of that person's rights; and

(e) the state has a duty to protect innocent life and that duty has grown to a compelling point with respect to partial-birth abortion."

Section 2. Section 50-20-109, MCA, is amended to read:

"50-20-109. Control of practice of abortion. (1) Except as provided in 50-20-401, an abortion may not be performed within the state of Montana:

(a) except by a licensed physician;

~~(b) after the first 3 months of pregnancy, except in a hospital licensed by the department;~~

~~(c)~~*(b)* after viability of the fetus, ~~unless in appropriate medical judgment, the abortion is necessary to preserve the life or health of the mother~~ *except as provided in subsection (2).*

(2) An abortion under subsection ~~(1)(c)~~ *(1)(b)* may ~~only~~ be performed *only to preserve the life or health of the mother and only* if:

(a) the ~~foregoing~~ judgment of the physician who is to perform the abortion is first certified in writing by the physician, setting forth in detail the facts relied upon in making the judgment; and

(b) two other licensed physicians have first examined the patient and concurred in writing with the judgment. The certification and concurrence in this subsection (2)(h) are not required if a licensed physician certifies that the abortion is necessary to preserve the life of the mother.

(3) The timing and procedure used in performing an abortion under subsection ~~(1)(c)~~ *(1)(b)* must be such that the viability of the fetus is not intentionally or negligently endangered, as the term "negligently" is defined in 45-2-101. The fetus may be intentionally endangered or destroyed only if necessary to preserve the life or health of the mother.

~~(4) A physician, facility, or other person or agency may not engage in solicitation, advertising, or other form of communication that has the purpose of inviting, inducing, or attracting a person to come to the physician, facility, or other person or agency to have an abortion or to purchase abortifacients.~~

(4) For purposes of this section, "health" means the prevention of a risk of substantial and irreversible impairment of a major bodily function.

(5) The utilization plan of a physician assistant-certified may not provide for performing abortions.

(6) Violation of subsections (1) through (3) and (5) is a felony. ~~Violation of subsection (4) is a misdemeanor.~~"

Section 3. Section 50-20-401, MCA, is amended to read:

"50-20-401. Offense of partial-birth abortion — exception — definitions — penalties. (1) Except as provided in this section, a person commits an offense if the person purposely, knowingly, or negligently causes a partial-birth abortion.

(2) Subsection (1) does not apply to:

(a) a partial-birth abortion caused to save the life of a woman because the woman's life is endangered by a physical disorder, illness, or injury, including a life-endangering condition caused by or arising from the pregnancy itself, if no other medical procedure would save the life of the woman; or

(b) the woman upon whom a partial-birth abortion is performed.

(3) As used in this section, the following definitions apply:

(a) "Knowingly" has the meaning provided in 45-2-101.

(b) "Negligently" has the meaning provided in 45-2-101.

(c) *(i)* "Partial-birth abortion" means an abortion in which the person performing the abortion partially vaginally delivers a living human fetus before killing the fetus and completing the delivery.

HeinOnline -- 1999 vol. II 2000 1999

(ii) A procedure that constitutes a partial-birth abortion is one in which the following steps occur:

(A) the living fetus is removed intact from the uterus until only the head remains in the uterus;

(B) all or a part of the intracranial contents of the fetus are evacuated;

(C) the head of the fetus is compressed; and

(D) following fetal demise, the fetus is removed from the birth canal.

(d) "Purposely" has the meaning provided in 45-2-101.

(4) A person committing the offense provided for in subsection (1) is guilty of a felony and shall be punished by:

(a) a fine of not more than $50,000;

(b) imprisonment in a correctional facility for a term of not less than 5 years and not more than 10 years; or

(c) both fine and imprisonment as provided in subsections (4)(a) and (4)(b); and

(d) permanent revocation of the license of the physician performing the partial-birth abortion. The provisions of 37-1-203 and 37-1-205 do not apply to a physician whose license is revoked pursuant to this section."

Section 4. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 27, 1999

CHAPTER NO. 480

[HB 557]

AN ACT CLARIFYING THE DISCLOSURE OF HEALTH CARE INFORMATION RELATED TO A WORKERS' COMPENSATION CLAIM; AMENDING SECTION 50-16-527, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-16-527, MCA, is amended to read:

"50-16-527. Patient authorization — retention — effective period — exception. (1) A health care provider shall retain each authorization or revocation in conjunction with any health care information from which disclosures are made.

(2) Except for authorizations to provide information to third-party health care payors, an authorization may not permit the release of health care information relating to health care that the patient receives more than 6 months after the authorization was signed.

(3) ~~An authorization in effect on October 1, 1987, remains valid for 30 months after October 1, 1987, unless an earlier date is specified or it is revoked under~~

HeinOnline -- 1999 vol. II 2001 1999

~~50-16-528.~~ Health care information disclosed under ~~such~~ an authorization is otherwise subject to this part. An authorization ~~written after October 1, 1987,~~ becomes invalid after the expiration date contained in the authorization, which may not exceed 30 months. If the authorization does not contain an expiration date, it expires 6 months after it is signed.

(4) Notwithstanding subsections (2) and (3), a signed claim for workers' compensation or occupational disease benefits authorizes disclosure to the workers' compensation insurer, as defined in 39-71-116, by the health care provider. The disclosure authorized by this subsection ~~relates only to~~ *authorizes the physician or other health care provider to disclose or release only* information ~~concerning the~~ *relevant to the* claimant's condition. *Health care information relevant to the claimant's condition may include past history of the complaints of or the treatment of a condition that is similar to that presented in the claim, conditions for which benefits are subsequently claimed, other conditions related to the same body part, or conditions that may affect recovery. A release of information related to workers' compensation must be consistent with the provisions of this subsection.* ~~This authorization~~ *Authorization under this section* is effective only as long as the claimant is claiming benefits. *This subsection may not be construed to restrict the scope of discovery or disclosure of health care information as allowed under the rules of civil procedure, by the workers' compensation court, or as otherwise provided by law.*"

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 27, 1999

CHAPTER NO. 481

[HB 593]

AN ACT PROVIDING FOR CONFIDENTIALITY IN MEDIATION PROCEEDINGS; CREATING A MEDIATION PRIVILEGE FOR MEDIATORS AND PARTIES TO MEDIATION; AMENDING SECTIONS 40-4-303 AND 41-3-404, MCA; AND REPEALING SECTION 26-1-811, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Mediation — confidentiality — privilege — exceptions. (1) Mediation means a private, confidential, informal dispute resolution process in which an impartial and neutral third person, the mediator, assists disputing parties to resolve their differences. In the mediation process, decisionmaking authority remains with the parties and the mediator does not have authority to compel a resolution or to render a judgment on any issue. A mediator may encourage and assist the parties to reach their own mutually acceptable settlement by facilitating an exchange of information between the parties, helping to clarify issues and interests, ensuring that relevant information is brought forth, and assisting the parties to voluntarily resolve their dispute.

(2) Except upon written agreement of the parties and the mediator, mediation proceedings must be:

(a) confidential;

(b) held without a verbatim record; and

(c) held in private.

HeinOnline -- 1999 vol. II 2002 1999

(3) A mediator's files and records, with the exception of signed, written agreements, are closed to all persons unless the parties and the mediator mutually agree otherwise. Except as provided in subsection (5), all mediation-related communications, verbal or written, between the parties or from the parties to the mediator and any information and evidence presented to the mediator during the proceedings are confidential. The mediator's report, if any, and the information or recommendations contained in it, with the exception of a signed, written agreement, are not admissible as evidence in any action subsequently brought in any court of law or before any administrative agency and are not subject to discovery or suhpoena in any court or administrative proceeding unless all parties waive the rights to confidentiality and privilege.

(4) Except as provided in subsection (5), the parties to the mediation and a mediator are not subject to subpoena hy any court or administrative agency and may not be examined in any action as to any communication made during the course of the mediation proceeding without the consent of the parties to the mediation and the mediator.

(5) The confidentiality and privilege provisions of this section do not apply to information revealed in a mediation if disclosure is:

(a) required by any statute;

(b) agreed to by the parties and the mediator in writing, whether prior to, during, or subsequent to the mediation; or

(c) necessary to establish a claim or defense on behalf of the mediator in a controversy between a party to the mediation and the mediator.

(6) Nothing in this section prohihits a mediator from conveying information from one party to another during the mediation, unless a party objects to disclosure.

Section 2. Section 40-4-303, MCA, is amended to read:

"40-4-303. Proceedings — records — confidentiality. *Mediation proceedings under this part are subject to the confidentiality and privilege provisions of [section 1].* Mediation proceedings must be conducted in private *unless otherwise agreed to in writing by the parties and the mediator.* All records of a mediation proceeding are confidential and may not be used in evidence in an action enumerated in 40-4-301. ~~Matters subject to the mediation proceeding are confidential.~~ A mediator ~~or a party~~ *and the parties* to ~~the~~ *a* mediation ~~is not subject~~ *under this part are entitled* to ~~compelled disclosure of any part of the mediation proceeding~~ *the confidentiality and privilege provisions of [section 1].*"

Section 3. Section 41-3-404, MCA, is amended to read:

"41-3-404. Adjudicatory hearing — temporary disposition. (1) In the adjudicatory hearing on a petition under 41-3-401, the court shall determine by a preponderance of the evidence whether the youth is a youth in need of care and ascertain, as far as possible, the cause.

(2) The court shall hear evidence regarding the residence of the youth, the whereahouts of the parents, guardian, or nearest adult relative, and any other matters the court considers relevant in determining the status of the youth.

(3) In all civil and criminal proceedings relating to abuse or neglect, ~~none of~~ the privileges related to the examination or treatment of the child ~~and granted in Title 26, chapter 1, part 8~~ *do not apply*, except the attorney-client privilege

HeinOnline -- 1999 vol. II 2003 1999

granted by 26-1-803 and the ~~mediator~~ *mediation* privilege granted by ~~26-1-811, apply~~ *[section 1].*

(4) (a) If the court determines that the youth is not an abused or neglected child, the petition must be dismissed and any order made pursuant to 41-3-403 must be vacated.

(h) If the youth is adjudicated a youth in need of care, the court shall set a date for a dispositional hearing to be conducted within 30 days and order any necessary or required investigations. The court may issue a temporary dispositional order pending the dispositional hearing. The temporary dispositional order may provide for any of the forms of relief listed in 41-3-403(3)."

Section 4. Repealer. Section 26-1-811, MCA, is repealed.

Section 5. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 26, chapter 1, part 8, and the provisions of Title 26, chapter 1, part 8, apply to [section 1].

Approved April 27, 1999

CHAPTER NO. 482

[HB 607]

AN ACT REGULATING HEALTH CARRIERS AND MANAGED CARE ENTITIES; PROVIDING THAT HEALTH CARRIERS AND MANAGED CARE ENTITIES ARE RESPONSIBLE FOR HEALTH CARE TREATMENT DECISIONS; PROVIDING FOR INDEPENDENT REVIEW OF HEALTH CARE TREATMENT DECISIONS; PROHIBITING CERTAIN INDEMNIFICATION CLAUSES IN PROVIDER CONTRACTS; PROHIBITING EARLY TERMINATION OF PROVIDER CONTRACTS WITHOUT JUST CAUSE; AND PROVIDING APPLICABILITY PROVISIONS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. For the purposes of [sections 1 through 5], the following definitions apply:

(1) "Adverse determination" means a determination by a health carrier, a managed care entity, or an agent of a health carrier or managed care entity that the health care services furnished or proposed to be furnished to an enrollee are not appropriate and medically necessary.

(2) "Appropriate and medically necessary" means the standard for health care services as determined by health care providers in accordance with the prevailing practices and standards of the health care profession and community.

(3) "Department" means the department of public health and human services provided for in 2-15-2201.

(4) "Enrollee" has the meaning provided for a covered person as defined in 33-36-103.

(5) "Health benefit plan" has the meaning provided in 33-36-103.

(6) "Health care provider" has the meaning provided in 33-36-103.

HeinOnline -- 1999 vol. II 2004 1999

(7) "Health care treatment decision" means a determination made when medical services are actually provided by a health carrier or other managed care entity and that affects the quality of the diagnosis, care, or treatment provided to the insureds or enrollees of a health benefit plan. The term does not include a decision by a health carrier or managed care entity to deny payment or coverage for services based on the provisions of a policy, contract, certificate, or agreement.

(8) "Health carrier" has the meaning provided for in 33-36-103.

(9) (a) "Managed care entity" means a health carrier or any entity that delivers, administers, or assumes risk for health care services with systems or techniques to control or influence the quality, accessibility, utilization, or costs and prices of health care services to a defined enrollee population.

(b) The term does not include an employer purchasing coverage or acting on behalf of its employees or the employees of one or more subsidiaries or affiliated corporations of the employer.

(10) "Peer" means a health care provider actively practicing a health care profession in this state who has substantially the same education and training, who provides substantially the same range of health care services, and who has the same license or certification to practice as the health care provider whose practice, professional services, or activities on behalf of the enrollee are being considered, reviewed, evaluated, or judged.

Section 2. Independent review of adverse determinations. A health carrier or managed care entity or an agent of a health carrier or managed care entity, other than a health carrier or other managed care entity providing medicaid-funded services or any other publicly funded health care-related services authorized under Title 50, 52, or 53, shall:

(1) permit any party whose appeal of an adverse determination is denied by the health carrier, the managed care entity, or the agent of the health carrier or managed care entity to seek independent review of that determination by a poer or, if the health carrier or managed care entity does not maintain an appeals process, permit any party receiving an adverse determination to seek independent review of that determination;

(2) provide to the appropriate peer no later than the third business day after the date that the health carrier, the managed care entity, or the agent of the health carrier or managed care entity receives a request for review a copy of:

(a) any medical records of the enrollee that are relevant to the review. Confidential information in the custody of the health carrier, the managed care entity, or the agent of the health carrier or managed care entity may be provided to a peer.

(b) any documents used by the health carrier, the managed care entity, or the agent of the health carrier or managed care entity in making the determination to he reviewed by the peer;

(c) any documentation and written information submitted to the health carrier, the managed care entity, or the agent of the health carrier or managed care entity in support of the appeal; and

(d) a list of each health care provider who has provided care to the enrollee and who may have medical records relevant to the appeal;

(3) accept and comply with the findings made by a peer conducting the independent review concerning an adverse determination, a determination as to

HeinOnline -- 1999 vol. II 2005 1999

whether the services were appropriate and medically necessary, or a health care treatment decision; and

(4) pay for the reasonable costs of the independent review.

Seetion 3. Peer review. If independent review is requested pursuant to [section 2], the party seeking the review and the health carrier or managed care entity may agree on a peer to conduct the independent review. In the absence of an agreement, a peer must be selected in accordance with a process established by the department.

Section 4. Contract provisions — contract termination. (1) [Sections 1 through 5] do not create any liability on the part of an employer or an employer group purchasing organization that purchases coverage or assumes risks on behalf of its employees.

(2) A health carrier or other managed care entity may not enter into a contract with a health care provider that includes an indemnification or hold harmless clause for the acts or conduct of the health carrier or other managed care entity. Any indemnification or hold harmless clause in a contract entered into, amended, or renewed on or after [the effective date of this act] is void.

(3) A health care provider, a health carrier, or other managed care entity may not terminate a contract with a participating provider prior to the expiration of its term except for just cause. For purposes of this subsection, "just cause" means reasonable grounds for termination based on a failure to satisfactorily perform contract obligations or other legitimate business reason.

(4) The provisions of this section are not applicable to any contracts for health care services entered into by the state.

Section 5. Rulemaking authority. The department shall adopt rules to provide a process for selecting peers, ensuring the confidentiality of health care information, and implementing the provisions of [sections 1 through 5].

Seetion 6. Codification instruction. [Sections 1 through 5 and 8] are intended to be codified as an integral part of Title 33, and the provisions of Title 33 apply to [sections 1 through 5 and 8].

Section 7. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 8. Application to certain entities. (1) [This act] applies to contracts between a health carrier, managed care entity, or the health carrier's or managed care entity's agent and an insured or enrollee and contracts between a health carrier, managed care entity, or the health carrier's or managed care entity's agent and a health care provider entered into on or after October 1, 1999.

(2) [This act] does not apply to the Montana medicaid program, the children's health insurance program, or other state-funded health care-related programs. Unless specifically provided otherwise, [this act] does apply to a managed care entity that contracts with the state to provide these programs and that makes health care treatment decisions concerning the beneficiaries of the programs.

(3) [This act] does not apply to a health carrier, managed care entity, or preferred provider organization that provides services under Title 39, chapters 71 and 72.

Approved April 27, 1999

HeinOnline -- 1999 vol. II 2006 1999

CHAPTER NO. 483

[HB 614]

AN ACT PROVIDING LANDLORDS WITH A METHOD OF DISPOSING OF ABANDONED MOBILE HOMES AFTER GIVING NOTICE TO THE OWNER AND LIENHOLDER; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Disposition of abandoned mobile home occupying a mobile home park space. (1) If a tenancy terminates and the landlord reasonably believes that the tenant has abandoned a mobile home occupying a mobile home park space and a period of time of at least 5 days has elapsed since the occurrence of events upon which the landlord formed that belief, the landlord may remove the mobile home from the premises.

(2) If the landlord moves the mobile home from the premises, the landlord shall store the mobile home in a place of safekeeping and shall exercise reasonable care for the mobile home. The landlord may charge the mobile home owner a reasonable removal and storage charge.

(3) If the landlord stores the mobile home, the landlord shall:

(a) notify the local law enforcement office of the removal and storage;

(b) make a reasonable effort to determine if the mobile home is secured or otherwise encumbered; and

(c) send a notice by certified mail to the last-known address of the mobile home owner and to any person or entity found by the landlord to have an interest referred to in subsection (3)(b), stating that at a specified time, not less than 15 days after mailing the notice, the mobile home will be disposed of if the mobile home owner does not respond and remove the mobile home under subsection (4).

(4) If the mobile home owner, within 15 days after receipt of the notice provided for in subsection (3)(c), responds in writing to the landlord that the owner intends to remove the mobile home from storage and does not do so within 20 days after delivery of the owner's response, the mobile home is conclusively presumed to be abandoned. A landlord is entitled to payment of the removal and storage costs allowed under subsection (2) before the owner may remove the mobile home.

(5) The landlord may dispose of the mobile home after complying with subsection (3) by:

(a) selling the mobile home at a public or private sale; or

(b) destroying or otherwise disposing of the mobile home if the landlord reasonably believes that the value of the mobile home is so low that the cost of a sale would exceed the reasonable value of the mobile home. Disposal may include having the mobile home removed to an appropriate disposal site. If the county in which the mobile home is located has adopted a plan for abandoned and deserted mobile home removal, recycling, and disposal, the landlord may inform the county of the abandoned mobile home and the county may take possession of the mobile home and dispose of it as provided in the county plan.

(6) A public or private sale authorized by this section must be conducted under the provisions of 30-9-504(3) or the sheriff's sale provisions of Title 25, chapter 13, part 7.

HeinOnline -- 1999 vol. II 2007 1999

(7) The landlord may deduct from the proceeds of a sale the reasonable costs of removal, storage, notice, and sale and any delinquent rent or damages owing on the premises and shall remit to the mobile home owner the remaining proceeds, if any. If the owner cannot after due diligence be found, the remaining proceeds must be deposited in the general fund of the county in which the sale occurred and, if not claimed within 3 years, are forfeited to the county.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 70, chapter 24, part 4, and the provisions of Title 70, chapter 24, part 4, apply to [section 1].

Section 3. Coordination instruction. If Senate Bill No. 366 is not passed and approved, then the last sentence of [section 1(5)] of [this act] is void.

Section 4. Effective date. [This act] is effective July 1, 1999.

Approved April 27, 1999

CHAPTER NO. 484

[HB 616]

AN ACT PROVIDING FOR THE RECEIPT OF PUBLIC COMMENT BY ELECTRONIC MAIL; REQUIRING AGENCIES USING ELECTRONIC MAIL TO DISSEMINATE AN ELECTRONIC MAIL ADDRESS TO WHICH PUBLIC COMMENT MAY BE MADE; REQUIRING AGENCIES CREATING OR RECEIVING ELECTRONIC DOCUMENTS TO DISSEMINATE THEM ELECTRONICALLY IF REQUESTED; PROHIBITING AGENCIES FROM CHARGING A FEE FOR DISSEMINATION OF ELECTRONIC DOCUMENTS; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Agency using electronic mail to accept public comment eleetronically — dissemination of electronic mail address and documcnts requircd — prohibiting fees. (1) An agency that accepts public comment pursuant to a statute, administrative rule, or policy, including an agency adopting rules pursuant to the Montana Administrative Procedure Act or an agency to which 2-3-111 applies, sball, if the agency is capable of receiving electronic mail from the internet world wide web, provide for the receipt of public comment by the agency by use of that electronic mail system.

(2) As part of tbe agency action required by subsection (1), an agency shall disseminate by appropriate mediums its electronic mail address te which public comment may be made, including dissemination in:

(a) rulemaking notices published pursuant to the Montana Administrative Procedure Act;

(b) the telephone directory of state agencies published by tbe department of administration;

(c) any notice of agency existence, purpose, and operations published on the internet world wide weh, popularly known as a "website", used by the agency;

(d) the stato electronic bulletin board; or

(e) any combination of the methods of dissemination provided in subsections (2)(a) through (2)(d).

HeinOnline -- 1999 vol. II 2008 1999

(3) An agency that uses electronic mail and creates or receives electronic documents shall, at the request of another agency or person, disseminate the electronic documents to that agency or person hy electronic mail in place of surface mail. An agency may not charge a fee for providing documents by electronic mail in accordance with this subsection.

(4) As used in this section, "agency" means a department, division, bureau, office, board, commission, authority, or other agency of the executive branch of state government.

Section 2. Effective date. [This act] is effective July 1, 2000.

Approved April 27, 1999

CHAPTER NO. 485

[HB 620]

AN ACT CLARIFYING THE PUBLIC'S CONSTITUTIONAL RIGHT TO EXAMINE PUBLIC DOCUMENTS; CLARIFYING THAT THE RIGHT DOES NOT EXTEND TO INFORMATION IN WHICH THERE IS A PRIVACY INTEREST, INCLUDING LEGITIMATE TRADE SECRETS AND MATTERS RELATING TO INDIVIDUAL OR PUBLIC SAFETY; AND AMENDING SECTIONS 2-6-101, 2-6-102, AND 2-6-104, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-6-101, MCA, is amended to read:

"2-6-101. Definitions. (1) Writings are of two kinds:

(a) public; and

(b) private.

(2) Puhlic writings are:

(a) the written acts or records of the acts of the sovereign authority, of official bodies and tribunals, and of public officers, legislative, judicial, and executive, whether of this state, of the United States, of a sister state, or of a foreign country, *except records that are constitutionally protected from disclosure*;

(b) public records, kept in this state, of private writings, except as provided in 22-1-1103 and 22-3-807 *and except for records that are constitutionally protected from disclosure.*

(3) Public writings are divided into four classes:

(a) laws;

(b) judicial records;

(c) other official decuments;

(d) public records, kept in this state, of private writings.

(4) All other writings are private."

Section 2. Section 2-6-102, MCA, is amended to read:

"2-6-102. Citizens entitled to inspect and copy public writings. (1) Every citizen has a right to inspect and take a copy of any public writings of this state, except as provided in 22-1-1103, ~~or~~ 22-3-807, *or subsection (3) of this section* and as otherwise expressly provided by statute.

HeinOnline -- 1999 vol. II 2009 1999

(2) Every puhlic officer having the custody of a puhlic writing ~~which~~ *that* a citizen has a right to inspect is bound to give ~~him~~ *the citizen* on demand a certified copy of it, on payment of the legal fees ~~therefor~~ *for the copy*, and ~~such~~ *the* copy is admissihle as evidence in like cases and with like effect as the original writing.

(3) Records and materials that are constitutionally protected from disclosure are not subject to the provisions of this section. Information that is constitutionally protected from disclosure is information in which there is an individual privacy interest that clearly exceeds the merits of public disclosure, including legitimate trade secrets, as defined in 30-14-402, and matters related to individual or public safety.

(4) A public officer may withhold from public scrutiny information relating to individual privacy or individual or public safety or security of public facilities, including jails, correctional facilities, private correctional facilities, and prisons, if release of the information may jeopardize the safety of facility personnel, the public, or inmates of a facility. Security features that may be protected under this section include but are not limited to architectural floor plans, blueprints, designs, drawings, building materials, alarms system plans, surveillance techniques, and facility staffing plans, including staff numbers and locations. A public officer may not withhold from public scrutiny any more information than is required to protect an individual privacy interest or safety or security interest."

Section 3. Section 2-6-104, MCA, is amended to read:

"2-6-104. Records of officers open to public inspection. Except as provided in 27-18-111 and 42-6-101, the public records and other matters, *except records that are constitutionally protected from disclosure,* in the office of any officer are at all times during office hours open to the inspection of any person."

Section 4. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 27, 1999

CHAPTER NO. 486

[HB 641]

AN ACT CLARIFYING THE ENFORCEMENT OF LAWS AND RULES PERTAINING TO MEDICAL GAS PIPING; REQUIRING THE DEPARTMENT OF COMMERCE TO ADOPT CERTAIN PROVISIONS OF A NATIONAL FIRE PROTECTION ASSOCIATION CODE; MANDATING THAT STATE AND LOCAL COMPLIANCE OFFICERS REQUEST PROOF OF ENDORSEMENT FOR PERSONS PERFORMING MEDICAL GAS PIPING SYSTEM WORK AT A JOB SITE; AMENDING SECTION 50-60-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-60-203, MCA, is amended to read:

"50-60-203. Department to adopt state building code by rule. (1) (a) The department shall adopt rules relating to the construction of, the installation of equipment in, and standards for materials to be used in all

HeinOnline -- 1999 vol. II 2010 1999

of buildings, including provisions dealing with safety, accessibility to persons with disabilities, sanitation, and conservation of energy. The adoption, amendment, or repeal of a rule is of significant public interest for purposes of 2-3-103.

(b) Rules concerning the conservation of energy must conform to the policy established in 50-60-801 and to relevant policies developed under the provisions of Title 90, chapter 4, part 10.

(2) The department may adopt by reference nationally recognized building codes in whole or in part and may adopt rules more stringent than those contained in national codes.

(3) The rules, when adopted as provided in parts 1 through 4, constitute the "state building code" and are acceptable for the buildings to which they are applicable.

(4) The department shall adopt rules that permit the installation of below-grade liquefied petroleum gas-burning appliances.

(5) (a) The department shall, by rule, adopt by reference the most recently published edition of the national fire protection association's publication NFPA 99C for the installation of medical gas piping systems. The department may, by rule, issue plumbing permits for medical gas piping systems and require inspections of medical gas piping systems.

(b) A state or local government building code compliance officer shall, as part of any inspection, request proof of a medical gas piping installation endorsement from any person who is required to hold an endorsement or who, in the inspector's judgment, appears to be involved with onsite medical gas piping activity. The inspector shall report any instance of endorsement violation to the inspector's employing agency, and the employing agency shall report the violation to the board of plumbers."

Seetion 2. Proof of endorsement. (1) A state or local gevernment plumbing code compliance inspector shall, as part of any inspection, request proof of medical gas piping installation endorsement from any person who is required to hold an endorsement under 37-69-402 or who, in the inspector's judgment, appears to be involved with onsite medical gas piping activity. The inspecter shall report any instance of endorsement violation to the inspector's employing agency, and the employing agency shall report the violation to the board.

(2) An employee of a private or public emnployment agency or labor union, a person who is professionally responsible for a job site, or a person who holds a medical gas piping installation endorsement under Title 37, chapter 69, has the right to ask a person doing work on the job site that requires an endorsement to provide proof of endorsement. If the person performing the work is unable to furnish proof of endorsement, the requesting person may report that fact to the board or the department.

Section 3. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 37, chapter 69, part 4, and the provisions of Title 37, chapter 69, part 4, apply to [section 2].

Section 4. Effective date. [This act] is effective on passage and approval.

Approved April 27, 1999

HeinOnline -- 1999 vol. II 2011 1999

CHAPTER NO. 487

[HB 651]

AN ACT REVISING THE MONTANA DEDUCTION ALLOWED FOR A NET OPERATING LOSS FROM A TRADE OR BUSINESS TO INCORPORATE MONTANA ITEMS THAT CHANGE THE AMOUNT OF THE FEDERAL CALCULATION OF NET OPERATING LOSS; AMENDING SECTION 15-30-117, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-117, MCA, is amended to read:

"15-30-117. Net operating loss — computation. ~~(1)~~ A Montana net operating loss must be determined in accordance with section 172 of the Internal Revenue Code of ~~1954~~ *1986* (26 U.S.C. 172) or as that section may be labeled or amended ~~and in accordance with the following:~~

~~(a) The net operating loss deduction for Montana purposes is increased by the following:~~

~~(i) that portion of the federal income tax and motor vehicle tax allowed as a deduction under 15-30-121 or 15-30-131 that is attributable to income from a Montana trade or business; and~~

~~(ii) Montana wages and salaries allowed as a business deduction under 15-30-111(4).~~

~~(b) The net operating loss deduction for Montana purposes is decreased by the following:~~

~~(i) interest received on obligations of another state or territory or of a county, municipality, district, or political subdivision thereof allowed as nonbusiness income under 15-30-111(1)(a);~~

~~(ii) federal income tax refunds required to be reported under 15-30-111 and 15-30-131 as Montana business income;~~

~~(iii) state income tax; and~~

~~(iv) any other nonbusiness deductions allowed under 15-30-121 in excess of nonbusiness income.~~

~~(2) Notwithstanding the provisions of section 172 of the Internal Revenue Code of 1954 (26 U.S.C. 172) or as that section may be labeled or amended, a net operating loss does not include:~~

~~(a) income defined as exempt from state taxation under 15-30-111(2); or~~

~~(b) a zero bracket deduction provided for under section 63 of the Internal Revenue Code of 1954 (26 U.S.C. 63) or as that section may be labeled or amended~~ *except that the net operating loss determined under section 172(c) of the Internal Revenue Code (26 U.S.C. 172(c)) means taxable income, as defined in 15-30-101(18), computed with the modifications specified in section 172(d) of the Internal Revenue Code (26 U.S.C. 172(d)) as they relate to items provided for in this chapter.*"

Section 2. Coordination instruction. If House Bill No. 582 and [this act] are both passed and approved, then [this act] is void.

HeinOnline -- 1999 vol. II 2012 1999

Section 3. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 4. Effective date. [This act] is effective on passage and approval.

Section 5. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

Approved April 27, 1999

CHAPTER NO. 488

[HB 658]

AN ACT EXEMPTING FROM THE OIL PRODUCTION TAX THAT IS ATTRIBUTABLE TO COUNTY AND SCHOOL TAXING UNITS OIL PRODUCTION FROM A STRIPPER WELL THAT PRODUCES 3 BARRELS A DAY OR LESS IF THE AVERAGE PRICE OF A BARREL OF OIL DURING A CALENDAR QUARTER IS LESS THAN $30; PROVIDING A DEFINITION OF "STRIPPER WELL EXEMPTION"; AMENDING SECTIONS 15-36-303, 15-36-304, AND 15-36-324, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-36-303, MCA, is amended to read:

"15-36-303. Definitions. As used in this part, the following definitions apply:

(1) "Board" means the board of oil and gas conservation provided for in 2-15-3303.

(2) "Department" means *the* department of revenue provided for in 2-15-1301.

(3) "Enhanced recovery project" means the use of any process for the displacement of oil from the earth other than primary recovery and includes the use of an immiscible, miscible, chemical, thermal, or biological process.

(4) "Existing enhanced recovery project" means an enhanced recovery project that began development before January 1, 1994.

(5) "Expanded enhanced recovery project" or "expansion" means the addition of injection wells or production wells, the recompletion of existing wells as horizontally completed wells, the change of an injection pattern, or other operating changes to an existing enhanced recovery project that will result in the recovery of oil that would not otherwise be recovered. The project must be developed after December 31, 1993, and before January 1, 2002.

(6) "Gross taxable value", for the purpose of computing the oil and natural gas production tax, means the gross value of the product as determined in 15-36-305.

(7) "Horizontal drain hole" means that portion of a well bore with 70 degrees to 110 degrees deviation from the vertical and a horizontal projection within the common source of supply, as that term is defined by the board, that exceeds 100 feet.

HeinOnline -- 1999 vol. II 2013 1999

(8) "Horizontally completed well" means:

(a) a well with one or more horizontal drain holes; and

(b) any other well classified hy the board as a horizontally completed well.

(9) "Incremental production" means:

(a) the volume of oil produced by a new enhanced recovery project, by a well in primary recovery recompleted as a horizontally completed well, or by an expanded enbanced recovery project, which volume of production is in excess of the production decline rate established under the conditions existing before:

(i) the commencement of the recompletion of a well as a horizontally completed well;

(ii) expansion of the existing enhanced recovery project; or

(iii) commencing a new enhanced recovery project; or

(b) in the case of any project that had no taxable production prior to commencing the enhanced recovery project, all production of oil from the enhanced recovery project.

(10) "Natural gas" or "gas" means natural gas and other fluid hydrocarbons, other than oil, produced at the wellbead.

(11) "New enhanced recovery project" means an enbanced recovery project that began development after December 31, 1993, and before January 1, 2002.

(12) "Nonworking interest owner" means any interest owner who does not share in tbe exploration, development, and operation costs of the lease or unit, except for production taxes.

(13) "Oil" means crude petroleum or mineral oil and other hydrocarbons, regardless of gravity, that are produced at the wellhead in liquid form and that are not the result of condensation of gas after it leaves the wellhead.

(14) "Operator" or "producer" means a person who produces oil or natural gas within this state or wbo owns, controls, manages, leases, or operates within this state any well or wells from which any marketable oil or natural gas is extracted or produced.

(15) "Post-1985 well" means an oil or natural gas well drilled after June 30, 1985, other than horizontally completed or recompleted oil wells drilled after December 31, 1993, that produces oil or natural gas or a well that has not produced oil or natural gas during the 5 years immediately preceding tbe first month of qualifying as a post-1985 well.

(16) "Pre-1985 well" means an oil or natural gas well that was drilled before July 1, 1985.

(17) "Primary recovery" means the displacement of oil from the earth into the well bore by means of the natural pressure of the oil reservoir and includes artificial lift.

(18) "Production decline rate" means the projected rate of future oil production, extrapolated by a method approved hy the board, that must be determined for a project area prior to commencing a new or expanded enhanced recovery project or the recompletion of a well as a horizontally completed well. The approved production decline rate must be certified in writing to the department by the board. In that certification, the board shall identify the project

HeinOnline -- 1999 vol. II 2014 1999

area and shall specify the projected rate of future oil production by calendar year and by calendar quarter within each year. The certified rate of future oil production must be used to determine the volume of incremental production that qualifies for the tax rate imposed under 15-36-304(4)(d).

(19) "Qualifying production" means the first 24 months of production of oil or natural gas from any post-1985 well drilled after March 31, 1995, or from a well that has not produced oil or natural gas during the 5 years immediately preceding the first month of qualifying production. Qualifying production does not include oil production from a horizontally recompleted well.

(20) "Secondary recovery project" means an enhanced recovery project, other than a tertiary recovery project, that commenced or was expanded after December 31, 1993, and before January 1, 2002, and meets each of the following requirements:

(a) The project must be certified as a secondary recovery project to the department by the board. The certification may be extended only after notice and hearing in accordance with Title 2, chapter 4.

(b) The property to be affected by the project must be adequately delineated according to the specifications required by the board.

(c) The project must involve the application of secondary recovery methods that can reasonably be expected to result in an increase, determined by the board to be significant in light of all the facts and circumstances, in the amount of oil that may potentially be recovered. For purposes of this part, secondary recovery methods include but are not limited to:

(i) the injection of water into the producing formation for the purposes of maintaining pressure in that formation or for the purpose of increasing the flow of oil from the producing formation to a producing well bore; or

(ii) any other method approved by the board as a secondary recovery method.

(21) "Stripper exemption" means the first 3 barrels a day for petroleum and other mineral or crude oil produced by a stripper well if the average price per barrel of oil as reported in the Wall Street Journal for west Texas intermediate crude oil during a calendar quarter is less than $30 a barrel. If the price of oil is equal to or greater than $30 a barrel in a calendar quarter, there is no stripper exemption in that quarter. The average price per barrel is computed by dividing the sum of the daily price for west Texas intermediate crude oil as reported in the Wall Street Journal for the calendar quarter by the number of days on which the price was reported in the quarter.

(22) "Stripper natural gas" means the natural gas produced from any well that produces less than 60,000 cubic feet of natural gas a day during the calendar year immediately preceding the current year. Production must be determined by dividing the amount of production from a lease or unitized area for the year immediately preceding the current calendar year by the number of producing wells in the lease or unitized area and by dividing the resulting quotient by 365.

(23) "Stripper oil" means the oil produced from any well that produces less than 10 barrels a day for the calendar year immediately preceding the current year. Production must be determined by dividing the amount of production from a lease or unitized area for the year immediately preceding the current calendar year by the number of producing wells in the lease or unitized area and by dividing the resulting quotient by 365.

HeinOnline -- 1999 vol. II 2015 1999

(24) "Stripper well exemption" means petroleum and other mineral or crude oil produced by a stripper well that produces 3 barrels a day or less [when the average price per barrel of oil as reported in the Wall Street Journal for west Texas intermediate crude oil during a calendar quarter is less than $30 a barrel. If the price of oil is equal to or greater than $30 a barrel in a calendar quarter, there is no stripper well exemption in that quarter. However, the stripper exemption would apply subject to the conditions of subsection (21). The average price per barrel is computed by dividing the sum of the daily price for west Texas intermediate crude oil as reported in the Wall Street Journal for the calendar quarter by the number of days on which the price was reported in the quarter].

~~(24)~~*(25)* "Tertiary recovery project" means an enhanced recovery project, other than a secondary recovery project, using a tertiary recovery method that meets the following requirements:

(a) The project must be certified as a tertiary recovery project to the department by the board. The certification may be extended only after notice and hearing in accordance with Title 2, chapter 4.

(b) The property to be affected by the project must be adequately delineated in the certification according to the specifications required by the board.

(c) The project must involve the application of one or more tertiary recovery methods that can reasonably be expected to result in an increase, determined by the board to be significant in light of all the facts and circumstances, in the amount of crude oil that may potentially be recovered. For purposes of this part, tertiary recovery methods include but are not limited to:

(i) miscible fluid displacement;

(ii) steam drive injection;

(iii) micellar/emulsion flooding;

(iv) in situ combustion;

(v) polymer augmented water flooding;

(vi) cyclic steam injection;

(vii) alkaline or caustic flooding;

(viii) carbon dioxide water flooding;

(ix) immiscible carbon dioxide displacement; or

(x) any other method approved by the board as a tertiary recovery method.

~~(25)~~*(26)* "Well" or "wells" means a single well or a group of wells in one field or production unit and under the control of one operator or producer.

~~(25)~~*(27)* "Working interest owner" means the owner of an interest in an oil or natural gas well or wells who bears any portion of the exploration, development, and operating costs of the well or wells."

Section 2. Section 15-36-304, MCA, is amended to read:

"15-36-304. Production tax rates imposed on oil and natural gas. (1) The production of oil and natural gas is taxed as provided in this section. The tax is distributed as provided in 15-36-324.

HeinOnline -- 1999 vol. II 2016 1999

(2) Natural gas is taxed on the gross taxahle value of production based on tbe type of well and type of production according to the following schodule for working intorest and nonworking intorest owners:

	Working Intorest	Nonworking Intorest
(a) pre-1985 wells	18.55%	14.8%
(b) post-1985 wells		
(i) first 12 months of qualifying production	0.5%	14.8%
(ii) next 12 months of qualifying production	12.5%	14.3%
(iii) after 24 months	15.15%	14.8%
(c) stripper natural gas pre-1985 and pest-1985 wells	11%	14.8%

(3) The reduced tax ratos under subsections (2)(b)(i) and (2)(b)(ii) on production for the first 24 months of natural gas production from a post-1985 well begin following the last day of the calendar month immediatoly preceding the month in which natural gas is placed in a natural gas distribution system, provided that notification has been given to the department.

(4) Oil is taxed on tbe gross taxable value of production basod on tbe type of well and type of production according to the following scbedule for working interest and nonworking interest owners:

	Working Interest	Nonworking Interest
(a) primary recovery production		
(i) pre-1985 wells	13.9%	16.9%
(ii) post-1985 wells		
(A) first 12 months of qualifying production	0.5%	14.8%
(B) next 12 months of qualifying production	7.5%	14.8%
(C) after 24 months	12.5%	14.8%
(b) stripper oil production		
(i) pre-1985 wells	10.5%	16.9%
(ii) post-1985 wells	10.5%	14.8%
(iii) stripper exemption production		
(A) pre-1985 wells	5.5%	16.9%

HeinOnline -- 1999 vol. II 2017 1999

(B) post-1985 wells	5.5%	14.8%
(iv) stripper well exemption production	*0.5%*	*14.8%*
(c) horizontally completed well production		
(i) first 18 months of qualifying production	0.5%	5.5%
(ii) next 6 months of qualifying production	7.5%	12.5%
(iii) after 24 months	12.5%	12.5%
(d) incremental production		
(i) new or expanded secondary recovery production		
(A) pre-1985 wells	8.5%	16%
(B) post-1985 wells	8.5%	10.5%
(ii) new or expanded tertiary production		
(A) pre-1985 wells	5.8%	15%
(B) post-1985 wells	5.8%	9.5%
(e) horizontally recompleted well		
(i) first 18 months	5.5%	5.5%
(ii) after 18 months	12.5%	12.5%

(5) (a) The reduced tax rates under subsections (4)(a)(ii)(A) and (4)(a)(ii)(B) for the first 24 months of oil production from a post-1985 well begin following the last day of the calendar month immediately preceding the month in which oil is pumped or flows, provided that notification has been given to the department.

(b) (i) The reduced tax rates under subsections (4)(c)(i) and (4)(c)(ii) on oil production from a horizontally completed well for the first 24 months of production begin following the last day of the calendar month immediately preceding the month in which oil is pumped or flows, provided that the well has been certified as a horizontally completed well to the department hy the board.

(ii) The reduced tax rate under subsection (4)(e)(i) on oil production from a horizontally recompleted well for the first 18 months of production begins following the last day of the calendar month immediately preceding the month in which oil is pumped or flows, provided that the well has been certified as a horizontally recompleted well to the department by the board.

(c) Incremental production is taxed as provided in subsection (4)(d) if the average price per barrel of oil as reported in the Wall Street Journal for west Texas intermediate crude oil during a calendar quarter is less than $30 a barrel. If the price of oil is equal to or greater than $30 a barrel in a calendar quarter as determined in subsection (5)(d), then incremental production from pre-1985 wells and from post-1985 wells is taxed at the rate imposed on primary recovery

HeinOnline -- 1999 vol. II 2018 1999

production under subsections (4)(a)(i) and (4)(a)(ii)(C), respectively, for production occurring in that quarter.

(d) For the purposes of subsection (5)(c), the average price per barrel must be computed by dividing the sum of the daily price for west Texas intermediate crude oil as reported in the Wall Street Journal for the calendar quarter by the number of days on which the price was reported in the quarter.

(6) The tax rates imposed under subsections (2) and (4) on working interest owners and nonworking interest owners must be adjusted to include the privilege and license tax adopted by the board of oil and gas conservation pursuant to 82-11-131."

Section 3. Section 15-36-324, MCA, is amended to read:

"15-36-324. Distribution of taxes — rules. (1) For each calendar quarter, the department of revenue shall determine the amount of tax, late payment interest, and penalty collected under this part. For purposes of distribution of the taxes to county and school taxing units, the department shall determine the amount of oil and natural gas production taxes paid on production from pre-1985 wells, post-1985 wells, and horizontally completed wells located in the taxing unit.

(2) Except as provided in subsections (3) through (5), oil production taxes must be distributed as follows:

(a) The amount equal to 39.3% of the oil production taxes, including late payment interest and penalty, collected under this part must be distributed as provided in subsection (8).

(b) The remaining 60.7% of the oil production taxes, plus accumulated interest earned on the amount allocated under this subsection (2)(b), must be deposited in the state special revenue fund in the state treasury and transferred to the county and school taxing units for distribution as provided in subsection (11).

(3) (a) The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on production from post-1985 wells occurring during the first 12 months of production must be distributed as provided in subsection (9).

(b) (i) The amount equal to 10.25% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on production from post-1985 wells occurring during the next 12 months of production must be distributed as provided in subsection (9).

(ii) The remaining 89.75% of the oil production taxes, plus accumulated interest earned on the amount allocated under this subsection (3)(b), must be deposited in the state special revenue fund in the state treasury and transferred to the county and school taxing units for distribution as provided in subsection (11).

(4) (a) The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected under this part on production from horizontally completed wells occurring during the first 18 months of production must be distributed as provided in subsection (9).

(b) (i) The amount equal to 10.25% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on

HeinOnline -- 1999 vol. II 2019 1999

production from horizontally completed wells occurring during the next 6 months of production must be distributed as provided in subsection (9).

(ii) The remaining 89.75% of the oil production taxes, plus accumulated interest earned on the amount allocated under this subsection (4)(b), must be deposited in the state special revenue fund in the state treasury and transferred to the county and school taxing units for distribution as providod in subsection (11).

(c) The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected under this part on the incremental production from horizontally recompleted wells occurring during the first 18 months of production must be distrihuted as provided in subsection (8).

(5) (a) The amount equal to 13.8% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on stripper exemption production from pre-1985 wells and post-1985 wells must be distributed as provided in subsection (9).

(b) The remaining 86.2% of the oil production taxes, plus accumulated interest earned on the amount allocated under this subsection (5)(b), must be deposited in the state special revenue fund in the state treasury and transferred to the county and school taxing units for distribution as provided in subsection (11).

(c) The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on stripper well exemption production from pre-1985 wells and post-1985 wells must be distributed as provided in subsection (9).

(6) Except as provided in subsection (7), natural gas production taxes must be allocated as follows:

(a) The amount equal to 14% of the natural gas production taxes, including late payment interest and penalty, collected under this part must be distributed as provided in subsection (10).

(b) The remaining 86% of the natural gas production taxes, plus accumulated interest earned on the amount allocated under this subsection (6)(b), must be deposited in the state special revenue fund in the state treasury and transferred to tbe county and school taxing units for distribution as provided in subsection (11).

(7) (a) The amount equal to 100% of the natural gas production taxes, including late payment interest and penalty, collected from working interest owners under this part on production from post-1985 wells occurring during the first 12 months of production must be distributed as provided in subsection (9).

(b) (i) The amount equal to 6.25% of the natural gas production taxes, including late payment interest and penalty, collected from working interest owners on production from post-1985 wells occurring during the next 12 months of production must be distrihuted as provided in subsection (9).

(ii) The remaining 93.75% of the oil production taxes, plus accumulated interest earned on the amount allocated under this subsection (7)(b), must be depesited in the state special revenue fund in the state treasury and transferred to the county and school taxing units for distribution as provided in subsection (11).

HeinOnline -- 1999 vol. II 2020 1999

(8) The department shall, in accordance with the provisions of 15-1-501, distribute the state portion of oil production taxes specified in subsections (2)(a) and (4)(c), including late payment interest and penalty collected, as follows:

(a) 86.21% to the state general fund;

(b) 5.17% to the state special revenue fund for the purpose of paying expenses of the board as provided in 82-11-135; and

(c) 8.62% to be distributed as provided by 15-38-106(2).

(9) The department shall distribute the state portion of oil and natural gas production taxes specified in subsections (3)(a), (3)(b)(i), (4)(a), (4)(b)(i), (5)(a), *(5)(c),* (7)(a), and (7)(b)(i), including late payment interest and penalty collected, as follows:

(a) 37.5% to the state special revenue fund for the purpose of paying expenses of the board as provided in 82-11-135; and

(b) 62.5% to be distributed as provided by 15-38-106(2).

(10) The department shall, in accordance with the provisions of 15-1-501, distribute the state portion of natural gas production taxes specified in subsection (6)(a), including late payment interest and penalty collected, as follows:

(a) 76.8% to the state general fund;

(b) 8.7% to the state special revenue fund for the purpose of paying expenses of the board as provided in 82-11-135; and

(c) 14.5% to be distributed as provided by 15-38-106(2).

(11) (a) For the purpose of distribution of the oil and natural gas production taxes from pre-1985 wells, the department shall each calendar quarter adjust the unit value determined under 15-36-323 according to the ratio that the oil and natural gas production taxes from pre-1985 wells collected during the calendar quarter for which the distribution occurs plus penalties and interest on delinquent oil and natural gas production taxes from pre-1985 wells bears to the total liability for the oil and natural gas production taxes from pre-1985 wells for the quarter for which the distribution occurs. The amount of oil and natural gas production taxes distributions must be calculated and distributed as follows:

(i) By the dates referrod to in subsection (12), the department shall calculate and distribute to each eligible county the amount of oil and natural gas production taxes from pre-1985 wells for the quarter, determined by multiplying the unit value, as adjusted in this subsection (11)(a), by the units of production on which oil and natural gas production taxes from pre-1985 wells were owed for the calendar quarter for which the distribution occurs.

(ii) Any amount by which the total tax liability exceeds or is less than the total distributions determined in this subsection (11)(a) must be calculated and distributed in the following manner:

(A) The excess amount or shortage must be divided by the total distribution determined for that period to obtain an excess or shortage percentage.

(B) The excess percentage must be multiplied by the distribution to each taxing unit, and this amount must be added to the distribution to each respective taxing unit.

HeinOnline -- 1999 vol. II 2021 1999

(C) The shortage percentage must be multiplied by the distribution to each taxing unit, and this amount must be subtracted from the distribution to each respective taxing unit.

(b) Except as provided in subsection (11)(c), the county treasurer shall distribute the money received under subsection (12) from pre-1985 wells to the taxing units that levied mills in fiscal year 1990 against calendar year 1988 production in the same manner that all other property tax proceeds were distributed during fiscal year 1990 in the taxing unit, except that a distribution may not be made to a municipal taxing unit.

(c) The board of county commissioners of a county may direct the county treasurer to reallocate the distribution of oil and natural gas production tax money that would have gone to a taxing unit, as provided in subsection (11)(b), to another taxing unit or taxing units, other than an elementary school or high school, within the county under tbe following conditions:

(i) The county treasurer shall first allocate the oil and natural gas production taxes to the taxing units within the county in the same proportion that all other property tax proceeds were distributed in the county in fiscal year 1990.

(ii) If the allocation in subsection (11)(c)(i) exceeds the total budget for a taxing unit, the commissioners may direct the county treasurer to allocate the excess to any taxing unit within the county.

(d) The board of trustees of an elementary or high school district may reallocate the oil and natural gas production taxes distributed to the district by the county treasurer under the following conditions:

(i) The district shall first allocate the oil and natural gas production taxes to the budgeted funds of the district in the same proportion that all other property tax proceeds were distributed in the district in fiscal year 1990.

(ii) If the allocation under subsection (11)(d)(i) exceeds the total budget for a fund, the trustees may allocate the excess to any budgeted fund of the school district.

(e) For all production from post-1985 wells and horizontally drilled wells completed after Decemnber 31, 1993, the county treasurer shall distribute oil and natural gas production taxes received under subsections (2)(b), (3)(b)(ii), (4)(b)(ii), (5)(b), (6)(b), and (7)(b)(ii) between county and school taxing units in the relative proportions required hy the levies for state, county, and school district purposes in the same manner as property taxes were distributed in the preceding fiscal year.

(f) The allocation to the county in subsection (11)(e) must be distributed by the county treasurer in the relative proportions required by the levies for county taxing units and in the same manner as property taxes were distributed in the preceding fiscal year.

(g) The money distributed in subsection (11)(e) that is required for the county mill levies for school district retirement obligations and transportation schedules must be deposited to the funds established for these purposes.

(b) The oil and natural gas production taxes distributed under subsection (11)(b) that are required for the 6-mill university levy imposed under 20-25-423 and for the county equalization levies impesed under 20-9-331 and 20-9-333, as those sections read on July 1, 1989, must be remitted by the county treasurer to the state treasurer.

HeinOnline -- 1999 vol. II 2022 1999

(i) The oil and natural gas production taxes distributed under subsection (11)(e) that are required for the 6-mill university levy imposed under 20-25-423, for the county equalization levies imposed under 20-9-331 and 20-9-333, and for the state equalization aid levy imposed under 20-9-360 must be remitted by the county treasurer to the state treasurer.

(j) The amount of oil and natural gas production taxes remaining after the treasurer has remitted the amounts determined in subsections (11)(h) and (11)(i) is for the exclusive use and benefit of the county and school taxing units.

(12) The department shall remit the amounts to be distributed in subsection (11) to the county treasurer by the following dates:

(a) On or before August 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending March 31 of the current year.

(b) On or before Novemher 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending June 30 of the current year.

(c) On or before February 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending September 30 of the previous year.

(d) On or before May 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending December 31 of the previous calendar year.

(13) The department shall provide to each county by May 31 of each year the amount of gross taxable value represented by all types of production taxed under 15-36-304 for the previous calendar year multiplied by 60%. The resulting value must be treated as taxable value for county classification purposes and for county bonding purposes.

(14) (a) In the event that the board of oil and gas conservation revises the privilege and license tax pursuant to 82-11-131, tbe department shall, by rule, change the formula under this section for distribution of taxes collected under 15-36-304. The revised formula must provide for the distribution of taxes in an amount equal to the rate adopted by the board of oil and gas conservation for the expenses of the board.

(b) Before the department adopts a rule pursuant to subsection (14)(a), it shall present the proposed rule to the revenue oversight committee.

(15) The distribution to taxing units under this section is statutorily appropriated as provided in 17-7-502."

Section 4. Coordination instruction. If House Bill No. 661 is passed and approved, then the bracketed material in [this act] in the definition of "stripper well exemption" in 15-36-303(24) is void.

Section 5. Effective date — applicability. [This act] is effective on passage and approval and applies to oil produced and sold during the quarters beginning after June 30, 1999.

Approved April 27, 1999

HeinOnline -- 1999 vol. II 2023 1999

CHAPTER NO. 489

[HB 660]

AN ACT PROVIDING SEVERANCE BENEFITS TO EMPLOYEES OF THE MONTANA STATE HOSPITAL WHO ARE INVOLUNTARILY TERMINATED FROM EMPLOYMENT BECAUSE OF A REDUCTION IN FORCE; PROVIDING AN APPROPRIATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Severance benefits for certain state hospital employees. The department of public health and human services shall provide severance benefits to Montana state hospital employees who are involuntarily terminated due to a reduction in force during the biennium ending June 30, 2001. Pursuant to 2-18-622, the department shall enter into written agreements with collective bargaining units of affected employees to negotiate benefits.

Section 2. Appropriation. There is appropriated from the general fund $250,000 to the department of public health and human services for the biennium ending June 30, 2001, to be used for the purposes of [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 27, 1999

CHAPTER NO. 490

[HB 674]

AN ACT REVISING THE DISTRIBUTION OF LODGING FACILITY USE TAX REVENUE PAID BY STATE AGENCIES FOR IN-STATE LODGING; PROVIDING THAT THE LODGING FACILITY USE TAX ATTRIBUTABLE TO STATE AGENCIES BE RETURNED TO THE STATE AGENCY FUND FROM WHICH THE TAX WAS PAID; AMENDING SECTIONS 15-65-121 AND 15-65-131, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-65-121, MCA, is amended to read:

"15-65-121. (Temporary) Distribution of tax proceeds ~~—general fund loan authority~~. (1) The proceeds of the tax imposed by 15-65-111 must, in accordance with the provisions of 15-1-501, be deposited in an account in the state special revenue fund to the credit of the department ~~of revenue~~. The department may spend from that account in accordance with an expenditure appropriation by the legislature based on an estimate of the costs of collecting and disbursing the proceeds of the tax. Before allocating the balance of the tax proceeds in accordance with the provisions of 15-1-501 and as provided in subsections (1)(a) through (1)(e) of this section, the department shall determine the expenditures by state agencies for in-state lodging for each reporting period and deduct 4% of that amount from the tax proceeds received each reporting period. The amount deducted must be deposited in the ~~general fund~~ *fund or funds from which in-state lodging expenditures were paid by state agencies*. The amount of $400,000 each year must be deposited in the Montana heritage preservation

HeinOnline -- 1999 vol. II 2024 1999

and development account provided for in 22-3-1004. On July 1, 1997, the amount of $45,000 is transferred to the department of commerce for purposes of a grant to the Fort Peck interpretive center. The balance of the tax proceeds received each reporting period and not deducted pursuant to the expenditure appropriation or deposited in the *fund or funds from which in-state lodging expenditures were paid by state agencies or in the* Montana heritage preservation and development account ~~or the general fund~~ is statutorily appropriated, as provided in 17-7-502, and must be transferred to an account in the state special revenue fund to the credit of the department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials, to the Montana historical society, to the university system, and to the department of fish, wildlife, and parks, as follows:

(a) 1% to the Montana historical society to be used for the installation or maintenance of roadside historical signs and historic sites;

(b) 2.5% to the university system for the establishment and maintenance of a Montana travel research program;

(c) 6.5% to the department of fish, wildlife, and parks for the maintenance of facilities in state parks that have both resident and nonresident use;

(d) 67.5% to be used directly by the department of commerce; and

(e) (i) except as provided in subsection (1)(e)(ii), 22.5% to be distributed by the department to regional nonprofit tourism corporations in the ratio of the proceeds collected in each tourism region to the total proceeds collected statewide; and

(ii) if 22.5% of the proceeds collected annually within the limits of a city or consolidated city-county exceeds $35,000, 50% of the amount available for distribution to the regional nonprofit tourism corporation in the region where the city or consolidated city-county is located, to be distributed to the nonprofit convention and visitors bureau in that city or consolidated city-county.

(2) If a city or consolidated city-county qualifies under this section for funds but fails to either recognize a nonprofit convention and visitors bureau or submit and gain approval for an annual marketing plan as required in 15-65-122, then those funds must be allocated to the regional nonprofit tourism corporation in the region in which the city or consolidated city-county is located.

(3) If a regional nonprofit tourism corporation fails to submit and gain approval for an annual marketing plan as required in 15-65-122, then those funds otherwise allocated to the regional nonprofit tourism corporation may be used by the department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials. (Terminates July 1, 2001—sec. 23(3), Ch. 469, L. 1997.)

15-65-121. (Effective July 1, 2001) Distribution of tax proceeds — ~~general fund loan authority~~. (1) The proceeds of the tax imposed by 15-65-111 must, in accordance with the provisions of 15-1-501, be deposited in an account in the state special revenue fund to the credit of the department ~~of revenue~~. The department may spend from that account in accordance with an expenditure appropriation by the legislature based on an estimate of the costs of collecting and disbursing the proceeds of the tax. Before allocating the balance of the tax proceeds in accordance with the provisions of 15-1-501 and as provided in subsections (1)(a) through (1)(e) of this section, the department shall determine the expenditures by state agencies for in-state lodging for each reporting period

HeinOnline -- 1999 vol. II 2025 1999

and deduct 4% of that amount from the tax proceeds received each reporting period. The amount deducted must be deposited in the ~~general fund~~ *fund or funds from which in-state lodging expenditures were paid by state agencies.* The balance of the tax proceeds received each reporting period and not deducted pursuant to the expenditure appropriation or deposited in the ~~general~~ fund *or funds from which in-state lodging expenditures were paid by state agencies* is statutorily appropriated, as provided in 17-7-502, and must he transferred to an account in the state special revenue fund to the credit of the department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials, to the Montana historical society, to the university system, and to the department of fish, wildlife, and parks, as follows:

(a) 1% to the Montana historical society to be used for the installation or maintenance of roadside historical signs and historic sites;

(b) 2.5% to the university system for the establishment and maintenance of a Montana travel research program;

(c) 6.5% to the department of fish, wildlife, and parks for the maintenance of facilities in state parks that have both resident and nonresident use;

(d) 67.5% to be used directly by the department of commerce; and

(e) (i) except as provided in subsection (1)(e)(ii), 22.5% to be distributed by the department to regional nonprofit tourism corporations in the ratio of the proceeds collected in each tourism region to the total proceeds collected statewide; and

(ii) if 22.5% of the proceeds collected annually within the limits of a city or consolidated city-county exceeds $35,000, 50% of the amount available for distribution to the regional nonprofit tourism corporation in the region where the city or consolidated city-county is located, to be distributed to the nonprofit convention and visitors bureau in that city or consolidated city-county.

(2) If a city or consolidated city-county qualifies under this section for funds but fails to either recognize a nonprofit convention and visitors bureau or submit and gain approval for an annual marketing plan as required in 15-65-122, then those funds must be allocated to the regional nonprofit tourism corporation in the region in which the city or consolidated city-county is located.

(3) If a regional nonprofit tourism corporation fails to submit and gain approval for an annual marketing plan as required in 15-65-122, then those funds otherwise allocated to the regional nonprofit tourism corporation may he used by the department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials."

Section 2. Section 15-65-131, MCA, is amended to read:

"15-65-131. State agencies to account for in-state lodging expenditures. Each state agency shall account for in-state lodging expenditures in a manner that will enable the department ~~of revenue~~ to determine total expenditures for in-state lodging by state agencies in order to make an allocation of a portion of the tax proceeds imposed by 15-65-111 to the ~~general~~ *appropriate* fund *or funds* as provided in 15-65-121. *Unless prohibited under terms of original receipt of the funds used to pay the lodging facility use tax, each fund shall reimburse the state general fund for the deposit made pursuant to 15-65-121.*"

HeinOnline -- 1999 vol. II 2026 1999

Section 3. Effective date — applicability. [This act] is effective July 1, 1999, and applies to in-state lodging expenditures incurred by state agencies after June 30, 1999.

Approved April 27, 1999

CHAPTER NO. 491

[SB 33]

AN ACT GENERALLY REVISING LAWS GOVERNING PRISONS AND PRISONERS; CLARIFYING THAT A PRIVATE PRISON FACILITY LICENSED BY THE DEPARTMENT OF CORRECTIONS IS A STATE PRISON; CLARIFYING THE PROCEDURE FOR THE ISSUANCE OF A LICENSE TO A PRIVATE PRISON FACILITY; CLARIFYING THE DEFINITION OF "REGIONAL CORRECTIONAL FACILITY"; CLARIFYING THAT PRIVATELY OPERATED OR PRIVATELY OWNED AND OPERATED REGIONAL CORRECTIONAL FACILITIES ARE SUBJECT TO DEPARTMENT AUTHORIZATION AND LICENSURE; CLARIFYING THAT A PRIVATE PRISON MAY HOUSE ONLY INMATES CHARGED OR CONVICTED IN MONTANA; CLARIFYING THAT FOR PURPOSES OF DETERMINING AGGRAVATING CIRCUMSTANCES IN CRIMINAL CASES CERTAIN CRIMES COMMITTED IN FACILITIES OTHER THAN THE STATE PRISON IN DEER LODGE APPLY; AMENDING SECTIONS 1-1-207, 19-8-301, 45-8-318, 46-18-220, 46-18-303, 46-19-103, 46-23-201, 46-23-215, 46-23-217, 53-1-102, 53-1-103, 53-1-104, 53-1-108, 53-1-202, 53-30-101, 53-30-132, 53-30-151, 53-30-503, 53-30-504, 53-30-507, 53-30-602, 53-30-603, AND 87-2-802, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 1-1-207, MCA, is amended to read:

"1-1-207. Miscellaneous terms. ~~(1)~~ Unless the context requires otherwise, the following definitions apply in the Montana Code Annotated:

~~(a)~~*(1)* "Bribe" means anything of value or advantage, present or prospective, or any promise or undertaking to give anything of value or advantage, that is asked, given, or accepted with a corrupt intent to unlawfully influence the person to whom it is given in the person's action, vote, or opinion in any public or official capacity.

~~(b) "Montana state prison" means the Montana state prison as defined in 53-30-101(3)(b).~~

~~(c)~~*(2)* "Peace officer" has the meaning as defined in 46-1-202.

~~(d) "State prison" or "prison" means:~~

~~(i) the Montana state prison as described in 53-30-101(1);~~

~~(ii) the Montana women's prison as defined in 53-30-101(3)(c);~~

~~(iii) a Montana regional correctional facility;~~

~~(iv) a detention center in another jurisdiction detaining inmates from Montana pursuant to 53-30-106; or~~

~~(v) a combination of the facilities listed in this subsection (1)(d).~~

HeinOnline -- 1999 vol. II 2027 1999

~~(e)~~*(3)* "Vessel", when used in reference to shipping, includes ships of all kinds, steamboats and steamships, canal boats, and every structure adapted to be navigated from place to place.

~~(2) Subsections (1)(b) and (1)(d) do not authorize a court to sentence a person to a correctional facility listed in those subsections.~~"

Section 2. Section 19-8-301, MCA, is amended to read:

"19-8-301. Membership — inactive vested members — inactive nonvested members. (1) Except as provided in 19-8-302, the following state peace officers must be covered under the game wardens' and peace officers' retirement system and, beginning on the first day of employment, shall become and remain active members for as long as they are employed as peace officers:

(a) game wardens who are assigned to law enforcement in the department of fish, wildlife, and parks;

(b) motor carrier officers employed by the department of transportation;

(c) campus security officers employed by the university system;

(d) ~~the warden~~ *wardens* and deputy wardens ~~of the state prison system~~ *employed by the department of corrections*;

(e) corrections officers employed by the department of corrections;

(f) probation and parole officers employed by the department of corrections;

(g) stock inspectors and detectives employed hy the department of livestock;

(h) motor vehicle inspectors employed by the department of justice; and

(i) drill instructors employed by the department of corrections.

(2) A member with at least 5 years of membership service who terminates service and does not take a refund of the member's accumulated contributions is an inactive vested member and retains the right to purchase service and to receive a retirement benefit under the provisions of this chapter.

(3) A member with less than 5 years of membership service who terminates service and leaves the member's accumulated contributions in the pension trust fund is an inactive nonvested member and is not eligible for any benefits from the retirement system. An inactive nonvested member is eligible only for a refund of the member's accumulated contributions."

Section 3. Section 45-8-318, MCA, is amended to read:

"45-8-318. Possession of deadly weapon by prisoner or youth in facility. (1) A person commits the offense of possession of a deadly weapon by a prisoner if the person purposely or knowingly possesses or carries or has under the person's custody or control without lawful authority a dirk, dagger, pistol, revolver, slingshot, sword cane, billy, knuckles made of any metal or hard substance, knife, razor not including a safety razor, or other deadly weapon while the person is:

(a) a person committed to ~~the Montana~~ *a* state prison or incarcerated in a county jail, city jail, or regional jail and is:

(i) at ~~the~~ *a* state prison, a state prison farm or ranch, or jail;

(ii) being conveyed to or from a place listed in this subsection (1)(a); or

(iii) under the custody of prison or jail officials, officers, or employees; or

HeinOnline -- 1999 vol. II 2028 1999

(b) a person in a youth detention facility, secure detention facility, regional detention facility, short-term detention center, state youth correctional facility, or shelter care facility, as those terms are defined in 41-5-103, and is at the facility, being conveyed to or from the facility, or under the custody of the facility officials, officers, or employees.

(2) A person convicted of the offense of possession of a deadly weapon by a prisoner shall be punished by imprisonment in the state prison for a term not less than 5 years or more than 15 years, by a fine of not more than $50,000, or by both fine and imprisonment.

(3) The youth court has jurisdiction of any violation of subsection (1)(b) unless the charge is filed in district court, in which case the district court has jurisdiction."

Section 4. Section 46-18-220, MCA, is amended to read:

"46-18-220. Sentences for certain offenses committed in state prison — death penalty. A person serving a sentence of imprisonment in ~~the~~ *a* state prison convicted of the offense of attempted deliberate homicide, aggravated assault, or aggravated kidnapping committed while incarcerated at ~~the~~ *a* state prison shall be sentenced to death or life imprisonment as provided in 46-18-301 through 46-18-310."

Section 5. Section 46-18-303, MCA, is amended to read:

"46-18-303. Aggravating circumstances. Aggravating circumstances are any of the following:

(1) The offense was deliberate homicide and was committed by a person serving a sentence of imprisonment in ~~the~~ *a* state prison.

(2) The offense was deliberate homicide and was committed by a defendant who had been previously convicted of another deliberate homicide.

(3) The offense was deliberate homicide and was committed by means of torture.

(4) The offense was deliberate homicide and was committed by a person lying in wait or ambush.

(5) The offense was deliberate homicide and was committed as a part of a scheme or operation that, if completed, would result in the death of more than one person.

(6) The offense was deliberate homicide as defined in 45-5-102 (1)(a), and the victim was a peace officer killed while performing the officer's duty.

(7) The offense was aggravated kidnapping that resulted in the death of the victim or the death by direct action of the defendant of a person who rescued or attempted to rescue the victim.

(8) The offense was attempted deliberate homicide, aggravated assault, or aggravated kidnapping committed while incarcerated at ~~the~~ *a* state prison by a person who has been previously:

(a) convicted of the offense of deliberate homicide; or

(b) found to be a persistent felony offender pursuant to part 5 of this chapter and one of the convictions was for an offense against the person in violation of Title 45, chapter 5, for which the minimum prison term is not less than 2 years.

HeinOnline -- 1999 vol. II 2029 1999

(9) The offense was deliberate homicide and was committed by a person during the course of committing sexual assault, sexual intercourse without consent, deviate sexual conduct, or incest, and the victim was less than 18 years of age.

(10) The offense was sexual intercourse without consent and the defendant has a previous conviction of sexual intercourse without consent in this state or of an offense under the laws of another state or of the United States that if committed in this state would be the offense of sexual intercourse without consent and the defendant inflicted serious bodily injury upon a person in the course of committing each offense."

Section 6. Section 46-19-103, MCA, is amended to read:

"46-19-103. Execution of death sentence. (1) In pronouncing the sentence of death, the court shall set the date of execution, which may not be less than 30 days or more than 60 days from the date the sentence is pronounced. If execution has been stayed by any court and the date set for execution has passed prior to dissolution of the stay, the court in which the defendant was previously sentenced shall, upon dissolution of the stay, set a new date of execution for not less than 20 or more than 90 days from the day the date is set. The defendant is entitled to be present in court on the day the new date of execution is set.

(2) Pending execution of a sentence of death, the sheriff may deliver the defendant to ~~a~~ *the Montana* state prison *or the Montana women's prison* for confinement, and the state shall bear the costs of imprisoning the defendant from the date of delivery.

(3) The punishment of death must be inflicted by administration of a continuous, intravenous injection of a lethal quantity of an ultra-fast-acting barbiturate in combination with a chemical paralytic agent until a licensed physician pronounces that the defendant is dead according to accepted standards of medical practice.

(4) When an execution date is set, a death warrant signed by the judge and attested by the clerk of court under the seal of the court must, within 5 days, be prepared. The warrant and a certified copy of the judgment must be delivered to the director of the department of corrections. The warrant must be directed to the director and recite the conviction, judgment, appointed date of execution, and duration of the warrant.

(5) The warden of the Montana state prison shall provide a suitable and efficient room or place in which executions will be carried out, enclosed from public view, within the walls of the state prison, and shall provide all implements necessary to the execution. The warden shall, subject to subsection (6), select the person to perform the execution, and the warden or the warden's designee shall supervise the execution. The identity of the executioner must remain anonymous. Facts pertaining to the selection and training of the executioner must remain confidential.

(6) An execution must be performed by a person selected by the warden and trained to administer a lethal injection. The person administering the injection need not he a physician, registered nurse, or licensed practical nurse licensed or registered under the laws of this or any other state. The warden shall allow the execution to be observed by 12 witnesses, 3 of whom may be designated by the person to be executed.

HeinOnline -- 1999 vol. II 2030 1999

(7) Within 20 days after the execution, the warden shall return the death warrant to the clerk of the court from which it was issued, noting on the warrant the time it was executed."

Seetion 7. Section 46-23-201, MCA, is amended to read:

"46-23-201. Prisoners eligible for nonmedical parole. (1) Subject to the restrictions contained in subsections (2) through (4), the board may release on nonmedical parole by appropriate order any person confined in ~~the Montana~~ *a* state prison ~~or the women's prison~~, except persons under sentence of death and persons serving sentences imposed under 46-18-202(2) or 46-18-219, when in its opinion there is reasonable probability that the prisoner can be released without detriment to the prisoner or to the community.

(2) A prisoner serving a time sentence may not be paroled under this section until the prisoner has served at least one-fourth of the prisoner's full term.

(3) A prisoner serving a life sentence may not be paroled under this section until the prisoner has served 30 years.

(4) A parole may be ordered under this section only for the hest interests of society and not as an award of clemency or a reduction of sentence or pardon. A prisoner may be placed on parole only when the board helieves that the prisoner is ahle and willing to fulfill the obligations of a law-abiding citizen."

Scction 8. Section 46-23-215, MCA, is amended to read:

"46-23-215. Conditions of parole. (1) A prisoner while on parole remains in the legal custody of the ~~correctional facility from which the prisoner was released~~ *department* but is subject to the orders of the board.

(2) When an order for parole is issued, it must recite the conditions of parole. If restitution was imposed as part of the sentence under 46-18-201, the order of parole must contain a condition to pay restitution to the victim. An order for parole or any parole agreement signed by a prisoner ıay contain a clause waiving extradition.

(3) Whenever a prisoner in ~~the Montana~~ *a* state prison ~~or the Montana women's prison~~ has heen approved for parole on condition that the prisoner obtain employment or secure suitable living arrangements or on any other condition that is difficult to fulfill while incarcerated, the ~~warden~~ *department* may grant the prisoner a furlough, not to exceed 10 days, for purposes of fulfilling the condition. While on furlough, the prisoner remains in the legal custody of the ~~prison~~ *department* and is subject to all other conditions recited by the board."

Section 9. Section 46-23-217, MCA, is amended to read:

"46-23-217. Serviee of term for additional crime. A prisoner who commits a crime while imprisoned in ~~the~~ *a* state prison or while released on parole or under the supervised release program and who is convicted and sentenced for the crime shall serve the sentence consecutively with the remainder of the original sentence. However, the prisoner remains eligihle for parole consideration under 46-23-201 in regard to the original sentence. If paroled from the original sentence, the prisoner shall begin serving the subsequent sentence."

Section 10. Section 53-1-102, MCA, is amended to read:

"53-1-102. Removal of patients from statc custodial institutions or correctional facilities witbout permission a misdemeanor. (1) A person, other than a parent or one having legal custody of a patient or inmate, who permits or assists a resident patient or inmate of a state custodial institution or

HeinOnline -- 1999 vol. II 2031 1999

correctional facility to leave the institution or facility without permission from the properly authorized member of the staff or proper court order is guilty of a misdemeanor and upon conviction is punishable by imprisonment in a county jail not exceeding 6 months or by a fine not exceeding $500, or both.

(2) This section may not be construed to conflict with laws relative to inmates of a ~~Montana~~ *state* prison."

Section 11. Section 53-1-103, MCA, is amended to read:

"53-1-103. Distribution of alcoholic beverages or drugs to patients at state custodial institutions or correctional facilities a misdemeanor. (1) A person who knowingly sells or distributes or attempts to sell or distribute alcoholic beverages or drugs to the resident patients or inmates of a state custodial institution or correctional facility without permission of the medical staff is guilty of a misdemeanor and, upon conviction, is punishable by imprisonment in a county ~~jail~~ *detention facility* not exceeding 6 months or by a fine not exceeding $500, or both.

(2) This section may not be construed to conflict with laws relative to inmates of a ~~Montana~~ *state* prison."

Section 12. Section 53-1-104, MCA, is amended to read:

"53-1-104. Release of arsonist — notification of department of justice. (1) Each of the following institutions, correctional facilities, or other facilities having the charge or custody of a person convicted of arson or of a person acquitted of arson on the ground of mental disease or defect shall give written notification to the department of justice when the person is admitted or released by it:

(a) Montana state hospital;

(b) a ~~Montana~~ *state* prison;

(c) a Montana youth correctional facility; or

(d) a county or city detention facility.

(2) The notification must disclose:

(a) the name of the person;

(b) where the person is or will be located; and

(c) the type of fire the person was involved in."

Section 13. Section 53-1-108, MCA, is amended to read:

"53-1-108. Inmate financial disclosure and account monitoring. (1) Upon incarceration at ~~the Montana~~ *a* state prison ~~in Deer Lodge or the women's prison in Billings~~, an inmate shall:

(a) make full disclosure of all the inmate's accounts in financial institutions to the department of corrections in writing and under oath;

(b) sign a release authorizing any financial institution in which the inmate has an account of any kind to provide the department with copies of records of any transaction in the account during the inmate's term of incarceration in the prison or correctional system. Released copies of records are confidential criminal justice information as defined in 44-5-103.

(c) sign a release authorizing the department to monitor any inmate account in a financial institution.

HeinOnline -- 1999 vol. II 2032 1999

(2) Failure of an inmate to disclose information under subsection (1)(a) or sign a release under subsection (1)(b) or (1)(c) is an offense under 45-7-302."

Section 14. Section 53-1-202, MCA, is amended to read:

"53-1-202. (Temporary) Department of corrections. (1) Adult and youth correctional services are included in the department of corrections to carry out the purposes of the department.

(2) Adult corrections services consist of the following correctional facilities or programs ~~to incarcerate and rehabilitate felons pursuant to Title 46, chapter 18~~:

(a) the ~~Montana state prison~~ *prisons listed in 53-30-101*;

~~(b) the Montana women's prison; and~~

~~(c)~~*(b)* appropriate community-based programs for the placement, supervision, and rehabilitation of adult felons who meet the criteria developed by the department for placement:

(i) in prerelease centers;

(ii) under intensive supervision;

(iii) under parole or probation pursuant to Title 46, chapter 23, part 2; or

(iv) in other appropriate programs*; and*

(c) the boot camp authorized by 53-30-403.

(3) Youth correctional services consist of the following correctional facilities or programs to provide for custody, supervision, training, education, and rehabilitation of delinquent youth and youth in need of intervention pursuant to Title 52, chapter 5:

(a) Pine Hills youth correctional facility or other state youth correctional facility; and

(b) any other facility or program that provides custody and services for delinquent youth.

(4) A state institution or facility may not be moved, discontinued, or abandoned without the consent of the legislature.

53-1-202. (Effective on occurrence of contingency) Department of corrections. (1) Adult and youth correctional services are included in the department of corrections to carry out the purposes of the department.

(2) Adult corrections services consist of the following correctional facilities or programs ~~to incarcerate and rehabilitate felons pursuant to Title 46, chapter 18~~:

(a) the ~~Montana state prison~~ *prisons listed in 53-30-101*;

~~(b) the Montana women's prison;~~

~~(c)~~*(b)* appropriate community-based programs for the placement, supervision, and rehabilitation of adult felons who meet the critoria developed by the department for placement:

(i) in prerelease centers;

(ii) under intensive supervision;

(iii) under parole or probation pursuant to Title 46, chapter 23, part 2; or

(iv) in other appropriate programs;

(c) the boot camp authorized by 53-30-403; and

(d) the forensic unit at Warm Springs.

(3) Youth correctional services consist of the following correctional facilities or programs to provide for custody, supervision, training, education, and rehabilitation of delinquent youth and youth in need of intervention pursuant to Title 52, chapter 5:

(a) Pine Hills youth correctional facility or other state youth correctional facility; and

(b) any other facility or program that provides custody and services for delinquent youth.

(4) A state institution or correctional facility may not be moved, discontinued, or abandoned without the consent of the legislature."

Section 15. Section 53-30-101, MCA, is amended to read:

"53-30-101. Location and function of prisons — definitions. (1) The correctional facility at Deer Lodge is the Montana state prison and its primary function is to provide for the custody, treatment, training, and rehabilitation of adult male criminal offenders. ~~The custody, treatment, training, and rehabilitation of adult male offenders may also occur at a correctional facility in another jurisdiction pursuant to an agreement as provided in 53-30-106.~~

(2) The correctional facility located in Billings is the Montana women's prison, and its primary function is to provide for the custody, treatment, training, and rehabilitation of adult female criminal offenders.

(3) As used in this title, unless the context indicates otherwise, the following definitions apply:

(a) "Montana state prison" means the correctional facility located at Deer Lodge.

(b) "Montana women's prison" or "women's prison" means the correctional facility located at Billings.

~~(a)~~*(c)* "~~Montana~~ *State* prison" means:

(i) the Montana state prison;

(ii) the Montana women's prison;

(iii) *a state correctional facility portion of* a Montana regional correctional facility;

(iv) a detention center in another jurisdiction detaining inmates from Montana pursuant to 53-30-106; ~~or~~

(v) a private correctional facility licensed by the department of corrections or a private correctional facility portion of a Montana regional correctional facility licensed by the department of corrections; or

~~(v)~~*(vi)* a combination of the facilities listed in this subsection (3)~~(a)~~*(c)*.

~~(b) "Montana state prison" means:~~

~~(i) the correctional facility located at Deer Lodge;~~

~~(ii) a Montana regional correctional facility; or~~

~~(iii) a detention center in another jurisdiction detaining inmates from Montana pursuant to 53-30-106.~~

~~(e) "Montana women's prison" or "women's prison" means:~~

~~(i) the correctional facility located at Billings;~~

~~(ii) a Montana regional correctional facility; or~~

~~(iii) a detention center in another jurisdiction detaining inmates from Montana pursuant to 53-30-106.~~"

Section 16. Section 53-30-132, MCA, is amended to read:

"**53-30-132. Inmate participation and status in prison work programs — prison industries and vocational training program — wages and benefits.** (1) The department of corrections may:

(a) establish prison industries that will result in the production or manufacture of products and the rendering of services that may be needed by any department or agency of the state or any political subdivision of the state, by any agency of the federal government, by any other states or their political subdivisions, or by nonprofit organizations and that will assist in the rehabilitation of inmates in institutions;

(b) obtain federal certification of specific prison industries programs in order to gain access to interstate markets for prison industries products;

(c) contract with private industry for the sale of goods or components manufactured or produced in shops under its jurisdiction and for the employment of inmates in federally certified prison industries programs;

(d) print catalogs describing goods manufactured or produced by prison industries and distribute the catalogs;

(e) fix the sale price for goods produced or manufactured by prison industries. Prices may not exceed prices existing in the open market for goods of comparable quality.

(f) require a correctional facility to purchase needed goods from other correctional facilities;

(g) provide for the repair and maintenance of property and equipment of institutions by inmates;

(h) provide for the removal of graffiti from property and equipment of institutions and the removal of littor from the property of institutions, public roads, and public parks by inmates;

(i) provide for construction projects, up to the aggregate sum of $200,000 for each project, performed by inmates. The department of administration may:

(i) exempt projects authorized by this subsection from the provisions of Title 18, chapter 2, relating to construction, public bidding, bonding, or contracts; and

(ii) exempt inmates who provide labor for those projects from the labor and wage requirements of Title 18, chapter 2, part 4. Inmates providing labor for projects under this subsection must he paid a rate of pay as provided in subsection (5).

HeinOnline -- 1999 vol. II 2035 1999

(j) provide for the repair and maintenance by prison industries of furniture and equipment of any state agency;

(k) provide for the manufacture by prison industries of motor vehicle license plates and other related articles;

(l) sell manufactured or agricultural products and livestock on the open market;

(m) provide for the manufacture by prison industries of highway, road, and street marking signs for the use of the state or any of its political subdivisions, except when the manufacture of the signs is in violation of a collective bargaining contract;

(n) pay an inmate from receipts from the sale of products produced or manufactured or services rendered in a program in which the inmate is working;

(o) collect 15% of the net wages paid to an inmate employed in a federally certified prison industries program for deposit in the Montana crime victims compensation and assistance account established under 53-9-109; and

(p) collect from an inmate employed in a federally certified prison industries program charges for room and board consistent with charges established by the director for inmates assigned to prerelease centers.

(2) Except as provided in subsection (3), furniture made in the prison may be purchased by state agencies in accordance with the procurement provisions under Title 18, chapter 4. All other prison-made furniture may be sold only through licensed wholesale or retail furniture outlets or through export firms for sale to international markets.

(3) Any state institution, facility, or program operated by the department of corrections may purchase prison-made furniture without complying with the procurement provisions under Title 18, chapter 4.

(4) While engaged in on-the-job training and production, inmates not employed in a federally certified prison industries program may be paid a wage in accordance with subsection (5). Inmates employed in a federally certified prison industries program must be paid as provided in subsection (5).

(5) (a) Except as provided for in subsection (5)(b), payment for the performance of work may be based on the following criteria:

(i) knowledge and skill;

(ii) attitude toward authority;

(iii) physical effort;

(iv) responsibility for equipment and materials; and

(v) regard for safety of others.

(b) The maximum rate of pay must be determined by the appropriation established for the program, except that an inmate employed in a federally certified prison industries program must be paid at a rate not less than the rate paid for similar work in the locality where the inmate performs the work.

(6) Premiums for workers' compensation and occupational disease coverage for federally certified prison industries programs must be paid by the prison industries program or by the department of corrections. If the department of corrections pays the premium, reimbursement for premium payments for

HeinOnline -- 1999 vol. II 2036 1999

workers' compensation and occupational disease coverage must be made to the department of corrections by the private company contracting with the federally certified prison industries program for services and products.

(7) Inmates not working in a federally certified prison industries training program are not employees, either public or private, and employment rights accorded other classes of workers do not apply to the inmates. Inmates working in a federally certified prison industry program are entitled to coverage and benefits as provided in 39-71-744.

(8) Able-bodied persons committed to a ~~Montana~~ *state* prison as adult offenders must be required to perform work as provided for by the department of corrections, including the manufacture of products or the rendering of services. In order to ensure the public safety, the department may secure inmates performing work."

Section 17. Section 53-30-151, MCA, is amended to read:

"53-30-151. Prison maintenance by inmates. An inmate of a ~~Montana~~ *state* prison may be required to:

(1) keep the living quarters assigned to that inmate clean and orderly;

(2) perform general maintenance and repair work on prison grounds and facilities and assist in providing services essential to the administration of the prison, including but not limited to food and laundry services."

Section 18. Section 53-30-503, MCA, is amended to read:

"53-30-503. Definitions. As used in this part, the following definitions apply:

(1) "Corporation" means an entity organized and existing pursuant to Title 35, chapter 1 or 2, and approved or designated by a local governmental entity.

(2) "Department" means the department of corrections.

(3) "Interlocal cooperation commission" means a commission established in accordance with Title 7, chapter 11, part 2.

(4) "Local governmental entity" means:

(a) a local governmental unit;

(b) a multijurisdictional service district; or

(c) an interlocal cooperation commission.

(5) "Multijurisdictional service district" means a district established in accordance with Title 7, chapter 11, part 11.

(6) "Regional correctional facility" means a ~~correctional~~ facility~~, except the Montana state prison, the women's prison, or the Swan River boot camp,~~ *for the housing of persons charged with or convicted of a criminal offense that is a joint detention center and correctional facility and that is* designed, constructed, or operated under this part by a local governmental entity, a corporation, the department, or any combination of a local governmental entity, a corporation, and the department ~~for the housing of convicted felons~~."

Section 19. Section 53-30-504, MCA, is amended to read:

"53-30-504. Authority to enter into contracts — terms — financing. (1) The department may contract with one or more local governmental entities

or corporations for the housing of and provision of services to inmates sentenced to the department or the department's correctional institutions at a regional correctional facility designed, financed, constructed, or operated by a local governmental entity, a corporation, tbe department, or any combination of a local governmental entity, a corporation, and the department.

(2) The contract must be authorized and approved by the governor, the department, and the governing body of the local governmental entity or tbe corporation, whichever is party to the contract. The contract must set forth fully the purposes, powers, rights, and responsibilities of each party to the contract and address necessary and proper matters set forth in 7-11-105.

(3) A contract may include an agreement to jointly design, finance, construct, and operate a regional correctional facility.

(4) The department may not enter into a contract unless the department and the local governmental entity or corporation has the legal autbority and the ability to finance its share of the costs under the contract.

(5) A regional correctional facility may be constructed on real property that is owned by the state of Montana, a local governmental entity, or a corporation or that is jointly owned.

(6) The proceeds of long-range building program general obligation bonds authorized to be issued in accordance with Title 17, chapter 5, part 8, may be used, in whole or in part, to construct a regional correctional facility that may be owned and operated by a local governmental entity, whether or not the facility or any part of it is to be owned and operated by the state. If the proceeds of long-range building program general obligation bonds or other state revenue is to be used in wbole or in part to construct a regional correctional facility that is to be owned and operated by a local governmental entity, the department of administration is not required to procure the design, engineering, or construction services for the facility. The contract may provide tbat the local governmental entity shall procure the services, but must also provide that the department of administration must be involved in the development and approval of the plans and specifications for tbe facility prior to the time the facility is let to bid.

(7) The department shall use the proceeds of long-range building program bonds and other state revenue appropriated for regional correctional facilities to negotiate with local governmental entities, corporations, or private providers to obtain the greatest number of beds tbat is consistent witb program objectives for the least cost to the state.

(8) An individual, corporation, partnership, association, or other private organization or entity may not construct a regional correctional facility in this state, if privately operated or privately owned and operated, unless authorized by the department.

(9) An individual, corporation, partnership, association, or other private organization or entity may not operate a regional correctional facility in this state unless licensed by the department. A license is nontransferable.

~~(8)~~*(10) A regional correctional facility may house persons who are charged or convicted in this state, another state, or federal court in the detention center portion of a regional correctional facility.* A person *charged or* convicted in another state *or charged or convicted in federal court in another state* may not be confined in ~~the~~ *a* state *correctional facility* portion of a regional correctional facility in this

state unless the confinement is under and governed by Title 46, chapter 19, part 3 or 4, *and the department authorizes the placement of the person in the state correctional facility portion of the regional correctional facility.*"

Section 20. Section 53-30-507, MCA, is amended to read:

"**53-30-507. Rulemaking authority.** The department may adopt rules to implement this part, including rules for the determination of how sites are to be chosen for regional correctional facilities. The rules must provide that in selecting a site, the department shall consider the need for a regional correctional facility in the area, the ability and willingness of a local governmental entity or a corporation to enter into a long-term contract with the department, and the availability of rehabilitative services to inmates. The rules must require that a corporation respond to a request for proposals prepared by the department for a regional correctional facility before a contract may be entered with that corporation. *The department shall adopt rules that include the minimum applicable standards for the construction, operation, and physical condition of a state correctional facility portion of a regional correctional facility and for the security, safety, health, treatment, and discipline of persons confined in a state correctional facility portion of a regional correctional facility. The rules must require that a privately operated or privately owned and operated state correctional facility portion of a regional correctional facility conform to applicable American correctional association and national commission on correctional health care standards.*"

Section 21. Section 53-30-602, MCA, is amended to read:

"**53-30-602. Definitions.** As used in this part, the following definitions apply:

(1) "Department" means the department of corrections provided for in 2-15-2301.

(2) (a) "Private correctional facility" means a correctional facility that is either privately operated or privately owned and operated. ~~The term includes a regional correctional facility, as defined in 53-30-503, if privately operated or privately owned and operated.~~

(b) The term does not include a private detention center or a regional jail governed by Title 7, chapter 32, part 22."

Section 22. Section 53-30-603, MCA, is amended to read:

"**53-30-603. Private correctional facilities — confinable persons.** (1) An individual, corporation, partnership, association, or other private organization or entity may not construct ~~or operate~~ a private correctional facility *in this state* unless ~~licensed~~ *authorized* by the department. ~~A license is nontransferable.~~

(2) An individual, corporation, partnership, association, or other private organization or entity may not operate a private correctional facility in this state unless licensed by the department. A license is nontransferable.

~~(2)~~*(3)* A person *charged or* convicted in another state *or charged or convicted in federal court in another state* may not be confined in ~~the portion of~~ a private correctional facility in this state ~~that is used for the incarceration of convicted felons for a term of over 1 year unless the confinement is under and governed by Title 46, chapter 19, part 3 or 4.~~"

HeinOnline -- 1999 vol. II 2039 1999

Section 23. Section 87-2-802, MCA, is amended to read:

"87-2-802. Veterans in VA hospitals and residents of state institutions and long-term care facilities, nursing care facilities, personal care facilities, and community homes for persons with disabilities. (1) Any veteran who is a patient residing at a hospital operated by the department of veterans affairs, within or outside the state, and residents of all ~~correctional facilities and~~ institutions under the jurisdiction of ~~the department of corrections and~~ the department of public health and human services~~, except the Montana state prison at Deer Lodge or the Montana women's prison,~~ may fish without a license. The residents shall carry a permit on a form prescribed by the department and signed hy the superintendent of the institution in lieu of a license.

(2) Upon annual application by managers or directors of licensed long-term care facilities and personal care facilities as defined in 50-5-101, community homes for persons with developmental disabilities licensed under 53-20-305, and community homes for persons with severe disabilities licensed under 52-4-203, the department shall allow supervised residents to fish without the otherwise required license during any activities approved by the facilities and homes."

Section 24. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 25. Effective date. [This act] is effective on passage and approval.

Section 26. Retroactive applicability. The amendments te 53-30-603 apply retroactively, within the meaning of 1-2-109, to all occurrences on or after July 1, 1998.

Approved April 27, 1999

CHAPTER NO. 492

[SB 96]

AN ACT MODIFYING PROVISIONS GOVERNING PROTEST OF CHANGES TO MUNICIPAL ZONING REGULATIONS; AND AMENDING SECTION 76-2-305, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-2-305, MCA, is amended to read:

"76-2-305. Aiteration of zoning regulations — protest. (1) ~~Such regulations, restrictions, and boundaries~~ *A regulation, restriction, and boundary* may ~~from time to time~~ be amended, supplemented, changed, modified, or repealed. The provisions of 76-2-303 relative to public hearings and official notice ~~shall~~ apply equally to all changes or amendments.

(2) *An amendment may not become effective except upon a favorable vote of two-thirds of the present and voting members of the city or town council or legislative body of the municipality* ~~In case, however, of a~~ *if a* protest against ~~such~~ *a* change *pursuant to subsection (1) is* signed by the owners of ~~20%~~ *25%* or more *of* ~~either of:~~

(a) the area of the lots included in ~~such~~ *any* proposed change; ~~or~~ *or*

(b) ~~of~~ those *lots* ~~immediately adjacent in the rear thereof extending~~ 150 feet ~~therefrom~~ *from a lot included in a proposed change* ~~or of those adjacent on either side thereof within the same block or of those directly opposite thereof extending 150 feet from the street frontage of such opposite lots, such amendment shall not become effective except by the favorable vote of three-fourths of all the members of the city or town council or legislative body of such municipality~~."

Section 2. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Approved April 27, 1999

CHAPTER NO. 493

[SB 164]

AN ACT REVISING STATUTES RELATED TO NOXIOUS WEED MANAGEMENT AND PROVIDING ALTERNATIVE FUNDING SOURCES; TRANSFERRING $1,125,000 ANNUALLY FROM THE HIGHWAY NONRESTRICTED ACCOUNT TO NOXIOUS WEED MANAGEMENT PROGRAMS; DIRECTING THE PROCEEDS TO THE NOXIOUS WEED MANAGEMENT TRUST FUND; REVISING THE MEMBERSHIP OF THE NOXIOUS WEED MANAGEMENT ADVISORY COUNCIL TO INCLUDE COUNTY REPRESENTATIVES; INCREASING THE CAP FOR THE NOXIOUS WEED MANAGEMENT TRUST FROM $2.5 MILLION TO $10 MILLION; AMENDING SECTIONS 80-7-805, 80-7-810, 80-7-811, AND 80-7-814, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-7-805, MCA, is amended to read:

"80-7-805. Noxious weed management advisory council. (1) The director of the department shall appoint a noxious weed management advisory council to provide advice to the department concerning the administration of this part.

(2) If appointed, the council must be composed of ~~nine~~ *eleven* members, as follows:

(a) the director of the department of agriculture, who shall serve as ~~chairman~~ *presiding officer*;

(b) one member representing livestock production;

(c) one member representing agriculture crop production;

(d) one member from a ~~sportsman~~ *recreationist*/wildlife group;

(e) one member who is a herbicide dealer or applicator;

(f) one member from a consumer group;

(g) one member representing biological research and control interests;

(h) one member from the Montana weed control association; ~~and~~

HeinOnline -- 1999 vol. II 2041 1999

(i) *two members representing counties, one each from the western and eastern parts of the state, which may include a county commissioner, district weed board member, or weed district supervisor; and*

(j) one at-large member from the agricultural community."

Section 2. Section 80-7-810, MCA, is amended to read:

"80-7-810. Disposition of proceeds. *(1)* Three percent of the proceeds from the fee imposed in 61-3-510 may be retained by the county treasurer for costs of collection. The remainder must be deposited in the special revenue fund and must be expended as provided in 80-7-814. Twenty-five percent of the money deposited in the special revenue fund under this section must he used for research and development of *integrated and* nonchemical methods of weed management *and for education.*

(2) The amounts transferred in [section 5] must be deposited in the noxious weed management trust fund established in 80-7-811."

Section 3. Section 80-7-811, MCA, is amended to read:

"80-7-811. Noxious weed management trust fund. There is a noxious weed management trust fund of ~~$2.5~~ *$10* million. The department shall administer the trust fund in accordance with this part."

Section 4. Section 80-7-814, MCA, is amended to read:

"80-7-814. Administration and expenditure of funds. (1) *(a)* ~~Money~~ *Except as provided in subsection (1)(b), money* deposited in the noxious weed management trust fund may not be committed or expended until the principal reaches $2.5 million, except in case of a noxious weed emergency as provided in 80-7-815. Once this amount is accumulated, interest or revenue generated by the trust fund and by other funding measures provided by this part must be deposited in the special revenue fund and may he expended for noxious weed management projects in accordance with this section, as long as the principal of the trust fund remains at least $2.5 million.

(b) Money deposited as principal in the trust fund from [section 5] pursuant to 80-7-810(2) may not be expended until the principal of the trust fund reaches $10 million. However, interest or revenue generated by the trust fund must be deposited in the special revenue fund and may be expended for noxious weed management projects in accordance with this section.

(2) The department may expend funds under this section through grants or contracts to communities, weed control districts, or other entities it considers appropriate for noxious weed management projects. A project is eligible to receive funds only if the county in which the project occurs has funded its own weed management program with a levy in an amount not less than 1.6 mills or an equivalent amount from another source or by an amount of not less than $100,000 for first-class counties, as defined in 7-1-2111.

(3) The department may expend funds without the restrictions specified in subsection (2) for the following:

(a) employment of a new and innovative noxious weed management project or the development, implementation, or demonstration of any noxious weed management project that may be proposed, implemented, or established by local, state, or national organizations, whether public or private. The expenditures must be on a cost-share basis with the organizations.

HeinOnline -- 1999 vol. II 2042 1999

(b) cost-share noxious weed management programs with local weed control districts;

(c) special grants to local weed control districts to eradicate or contain significant noxious weeds newly introduced into the county. These grants may be issued without matching funds from the district.

(d) administrative expenses of the department for managing the noxious weed management program and other provisions of this part. The cost of administering the program may not exceed 12% of the total program expenses.

(e) administrative expenses incurred by the noxious weed management advisory council;

(f) a project recommended by the noxious weed management advisory council, if the department determines the project will significantly contribute to the management of noxious weeds within the state; and

(g) grants to the agricultural experiment station and the cooperative extension service for crop weed management research, evaluation, and education.

(4) The agricultural experiment station and cooperative extension service shall submit annual reports on current projects and future plans to the noxious weed management advisory council.

(5) In making expenditures under subsections (2) and (3), the department shall give preference to weed control districts and community groups.

(6) If the noxious weed management trust fund is terminated by law, the money in the fund must be divided between all counties according to rules adopted by the department for that purpose."

Section 5. Transfer of funds. There is transferred $1,125,000 annually from the highway nonrestricted account established in 15-70-125 to the noxious weed management trust fund, provided for in 80-7-810(2), for noxious weed management.

Section 6. Effective date. [This act] is effective July 1, 1999.

Section 7. Termination. [Section 5] terminates July 1, 2001.

Approved April 27, 1999

CHAPTER NO. 494

[SB 195]

AN ACT PROVIDING FOR QUALIFICATION OF CERTAIN ACTIVE MILITARY SERVICE IN THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; EXEMPTING MILITARY SERVICE PURCHASES FROM THE LIMIT ON ADDITIONAL SERVICE; AMENDING SECTIONS 19-3-503 AND 19-3-513, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-3-503, MCA, is amended to read:

"19-3-503. Election to qualify military service. (1) (a) Except as provided in subsection (2), a member with 10 years or more of service credits

may, at any time prior to retirement, make a written election with the board to purchase service credits for all or any portion of the member's active service in the armed forces of the United States, including the first special service force or the American merchant marine in oceangoing service during the period of armed conflict, December 7, 1941, te August 15, 1945, up to a maximum of 5 years, if the member is not otherwise eligible to receive service credit for this same service pursuant to 19-2-705 or is ineligible under subsection (2)(a).

(b) ~~To~~ *Except as provided in subsection (3), to* qualify this service, the member shall contribute to the pension trust fund the actuarial cost of the service credit based on the most recent actuarial valuation of the system.

(2) (a) If a member has retired from active duty in the armed forces of the United States, including the first special service force or the American merchant marine in oceangoing service during the period of armed conflict, December 7, 1941, to August 15, 1945, with a military service retirement benefit, the member may not qualify the member's military service under subsection (1) *or subsection (3).*

(b) However, a member who is serving or has served in the military reserves with the expectation of receiving a military service pension may qualify the member's active military service under subsection (1) if the member's active duty in the armed forces of the United States, including the first special service force or the American merchant marine in oceangoing service during the armed conflict, December 7, 1941, to August 15, 1945, is not more than 25% of the total sum of all years of military service, including reserve and active duty time.

(3) (a) A member may, prior to retirement, receive up to 4 years of creditable service for active service in the armed forces of the United States, which includes the army, navy, marine corps, air force, and coast guard, during the Korean conflict between June 1, 1950, and January 31, 1955, and the Vietnam conflict between December 22, 1961, and May 7, 1975, dates inclusive, if the member has at least 10 years of membership service in the retirement system and is not otherwise ineligible under subsection (2)(a).

(b) To qualify this service, a member shall:

(i) submit to the board a completed application form and proper certification of the member's military service; and

(ii) contribute to the pension trust fund the amount determined by the board to be due based on the member's compensation and regular contribution rate as of the member's 11th year and based on as many succeeding years as are required to qualify this service, with regular interest from the date on which the member becomes eligible for this benefit to the date on which the member makes the required contribution.

(c) Service qualified pursuant to this subsection (3) is in addition to the service that may be qualified under subsection (1), except that a member may not receive duplicate credit for the same years of military service."

Section 2. Section 19-3-513, MCA, is amended to read:

"19-3-513. Election to purchase additional service. (1) At any time before retirement, a person who has 5 years or more of membership service may make a written election with the board to purchase additional service credit for the purpose of calculating the member's retirement benefit. Except as provided in subsection (3), the member may purchase 1 year of additional service credit

HeinOnline -- 1999 vol. II 2044 1999

for each 5 years of membership service that the member has qualified under the retirement system, up to a maximum of 5 years of additional service.

(2) For each year of service credit purchased under this section, a member shall contribute to the pension trust fund the actuarial cost of the service credit based on the most recent actuarial valuation of the system. Contributions may be made in a lump-sum payment or by making additional contributions in installments as agreed upon by the member and the board.

(3) (a) Except as provided in subsection (3)(b), a member may elect to qualify a combined total of 5 years of service under ~~19-3-503,~~ 19-3-512~~,~~ or this section.

(b) A member who has purchased service under 19-3-503 or 19-3-512 on or before January 1, 1990, and who elects to purchase service under this section ~~shall~~ *must* receive credit for the full months of service purchased on or before January 1, 1990.

(4) Service purchased under this section is not membership service and may not be used to qualify a member for service retirement."

Section 3. Effective date. [This act] is effective July 1, 1999.

Section 4. Termination. [This act] terminates July 1, 2001.

Approved April 27, 1999

CHAPTER NO. 495

[SB 220]

AN ACT ALLOCATING A PORTION OF THE COAL SEVERANCE TAX TRUST FUND FOR THE TREASURE STATE ENDOWMENT REGIONAL WATER SYSTEM FUND; PROVIDING THAT THE EARNINGS ON THE FUND MUST BE USED FOR REGIONAL WATER SYSTEMS; AMENDING SECTION 17-5-703, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-5-703, MCA, is amended to read:

"17-5-703. Coal severance tax trust funds. (1) The trust established under Article IX, section 5, of the Montana constitution is composed of the following funds:

(a) a coal severance tax bond fund into which the constitutionally dedicated receipts from the coal severance tax must be deposited;

(b) a treasure state endowment fund;

(c) a treasure state endowment regional water system fund;

~~(c)~~*(d)* a coal severance tax permanent fund;

~~(d)~~*(e)* a coal severance tax income fund; and

~~(e)~~*(f)* a coal severance tax school bond contingency loan fund.

(2) (a) The state treasurer shall determine, on July 1 of each year, the amount necessary to meet all principal and interest payments on bonds payable from the

coal severance tax bond fund during the next 12 months and retain that amount in the coal severance tax bond fund.

(b) The amount in the coal severance tax bond fund in excess of the amount required in subsection (2)(a) must be transferred from that fund as provided in subsections (3) through (5).

(3) (a) On January 21, 1992, and continuing as long as any school district bonds secured by state loans under 20-9-466 are outstanding, the state treasurer shall from time to time and as provided in subsection (3)(b) transfer from the coal severance tax bond fund to the coal severance tax school bond contingency loan fund any amount in the coal severance tax bond fund in excess of tbe amount that is specified in subsection (2) to be retained in tbe fund.

(b) The state treasurer shall transfer the amount referred to in subsection (3)(a) until and unless tbe balance in the coal severance tax school bond contingency loan fund is equal to the amount due as principal of and interest on the school district bonds secured by state loans under 20-9-466 during the next following 12 montbs.

(4) (a) Beginning July 1, 1993, and ending June 30, 2013, the state treasurer shall quarterly transfer to the treasure state endowment fund 50% of the amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund and in excess of amounts that are transferred pursuant to subsection (3).

(b) Beginning July 1, 1999, and ending June 30, 2013, the state treasurer shall quarterly transfer to the treasure state endowment regional water system fund 25% of the amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund and in excess of amounts that are transferred pursuant to subsection (3).

~~(b)~~*(c)* The state treasurer shall monthly transfer from the treasure state endowment fund to the treasure state endowment special revenue account the amount of earnings required to meet the obligations of the state that are payable from the account in accordance with 90-6-710. Earnings not transferred to the treasure state endowment special revenue account must be retained in the treasure state endowment fund.

(d) The state treasurer shall monthly transfer from the treasure state endowment regional water system fund to the treasure state endowment regional water system special revenue account the amount of earnings required to meet the obligations of the state that are payable from the account for regional water systems authorized under [section 2]. Earnings not transferred to the treasure state endowment regional water system special revenue account must be retained in the treasure state endowment regional water system fund.

(5) Any amount in the coal severance tax bond fund in excess of the amount tbat is specified in subsection (2)(a) to be retained in the fund and that is not otherwise allocated under this section must be deposited in the coal severance tax permanent fund."

Section 2. Special revenue account — use. (1) The treasure state endowment regional water system special revenue account may be used to provide matching funds to plan and construct regional drinking water systems in Montana. Each state dollar must be matched equally by local funds. Federal and state grants may not be used as a local match.

HeinOnline -- 1999 vol. II 2046 1999

(2) The funds in the account are further restricted to be used to finance regional drinking water systems, such as projects in north central Montana, from the waters of the Tiber reservoir, that will provide water for domestic use, industrial use, and stockwater for communities and rural residences that lie south of the Canadian border, west of Havre, north of Dutton, and east of Cut Bank and in northeastern Montana, from the waters of the Missouri River, that will provide water for domestic use, industrial use, and stockwater for communities and rural residences that lie south of the Canadian border, west of the North Dakota border, north of the Missouri River, and east of range 39.

(3) The funds must be administered by the department of commerce for eligible projects.

Section 3. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 90, chapter 6, part 7, and the provisions of Title 90, chapter 6, part 7, apply to [section 2].

Section 4. Coordination instruction. If House Bill No. 260 is passed and approved, [section 4 of House Bill No. 260] is void and [section 1 of this act], amending 17-5-703, must read as follows:

"Section 1. Section 17-5-703, MCA, is amended to read:

"17-5-703. Coal severance tax trust funds. (1) The trust established under Article IX, section 5, of the Montana constitution is composed of the following funds:

(a) a coal severance tax bond fund into which the constitutionally dedicated receipts from the coal severance tax must be deposited;

(b) a treasure state endowment fund;

(c) a treasure state endowment regional water system fund;

~~(c)~~*(d)* a coal severance tax permanent fund;

~~(d)~~*(e)* a coal severance tax income fund; and

~~(e)~~*(f)* a coal severance tax school bond contingency loan fund.

(2) (a) The state treasurer shall determine, on July 1 of each year, the amount necessary to meet all principal and interest payments on bonds payable from the coal severance tax bond fund during the next 12 months and retain that amount in the coal severance tax bond fund.

(b) The amount in the coal severance tax bond fund in excess of the amount required in subsection (2)(a) must be transferred from that fund as provided in subsections (3) through (5).

(3) (a) On January 21, 1992, and continuing as long as any school district bonds secured by state loans under 20-9-466 are outstanding, the state treasurer shall from time to time and as provided in subsection (3)(b) transfer from the coal severance tax bond fund to the coal severance tax school bond contingency loan fund any amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund.

(b) The state treasurer shall transfer the amount referred to in subsection (3)(a) until and unless the balance in the coal severance tax school bond contingency loan fund is equal to the amount due as principal of and interest on the school district bonds secured by state loans under 20-9-466 during the next following 12 months.

HeinOnline -- 1999 vol. II 2047 1999

(4) (a) Beginning July 1, 1993, and ending June 30, 2013, the state treasurer shall quarterly transfer to the treasure state endowment fund ~~50%~~ *75%* of the amount in the coal severance tax hond fund in excess of the amount that is specified in subsection (2) to he retained in the fund and in excess of amounts that are transferred pursuant to subsection (3).

(b) Beginning July 1, 1999, and ending June 30, 2013, the state treasurer shall quarterly transfer to the treasure state endowment regional water system fund 25% of the amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund and in excess of amounts that are transferred pursuant to subsection (3).

~~(b)~~*(c)* The state treasurer shall monthly transfer from the treasure state endowment fund to the treasure state endowment special revenue account the amount of earnings required to meet the ohligations of the state that are payable from the account in accordance with 90-6-710. Earnings not transferred to the treasure state endowment special revenue account must be retained in the treasure state endowment fund.

(d) The state treasurer shall monthly transfer from the treasure state endowment regional water system fund to the treasure state endowment regional water system special revenue account the amount of earnings required to meet the obligations of the state that are payable from the account for regional water systems authorized under [section 2]. Earnings not transferred to the treasure state endowment regional water system special revenue account must be retained in the treasure state endowment regional water system fund.

(5) Any amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2)(a) to be retained in the fund and that is not otherwise allocated under this section must be deposited in the coal severance tax permanent fund.""

Section 5. Effective date. [This act] is effective July 1, 1999.

Section 6. Termination. [This act] terminates June 30, 2013.

Approved April 27, 1999

CHAPTER NO. 496

[SB 229]

AN ACT EXEMPTING CERTAIN SCHOOL DISTRICTS FROM NONCONSTRUCTION SERVICES JOB CLASSIFICATIONS; AMENDING SECTION 18-2-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 18-2-401, MCA, is amended to read:

"18-2-401. Definitions. Unless the context requires otherwise, in this part, the following defmitions apply:

(1) A "bona fide resident of Montana" is a person who, at the time of employment and immediately prior to the time of employment, has lived in this state in a manner and for a time that is sufficient to clearly justify the conclusion that tbe person's past habitation in this state has been coupled with an intention to make it the person's home. Sojourners or persons who come to Montana solely

HeinOnline -- 1999 vol. II 2048 1999

in pursuance of any contract or agreement to perform labor may not be considered to be bona fide residents of Montana within the meaning and for the purpose of this part.

(2) "Commissioner" means the commissioner of labor and industry provided for in 2-15-1701.

(3) (a) "Construction services" means work performed by an individual in construction, heavy construction, highway construction, and remodeling work.

(b) The term does not include:

(i) engineering, superintendence, management, office, or clerical work on a public works contract; or

(ii) consulting contracts, contracts with commercial suppliers for geods and supplies, or contracts with professionals licensed under state law.

(4) "Department" means the department of labor and industry provided for in 2-15-1701.

(5) "District" means a prevailing wage rate district established as provided in 18-2-411.

(6) "Heavy and highway construction wage rates" means wage rates, including fringe benefits for health and welfare and pension contributions, that meet the requirements of the Employee Retirement Income Security Act of 1974 and other bona fide programs approved by the United States department of labor and travel allowance that are determined and established statewide for heavy and highway construction projects, such as alteration or repair of roads, streets, highways, alleys, runways, trails, parking areas, or utility rights-of-way.

(7) "Nonconstruction services" means work performed by an individual, not including management, office, or clerical work, for:

(a) the maintenance of publicly owned buildings and facilities, including public highways, roads, streets, and alleys;

(b) custodial or security services for publicly owned buildings and facilities;

(c) grounds maintenance for publicly owned property;

(d) the operation of public drinking water supply, waste collection, and wasto disposal systems;

(e) law enforcement, including janitors and prison guards;

(f) fire protection;

(g) public or school transportation driving;

(h) nursing, nurse's aid services, and medical laboratory technician services;

(i) material and mail handling;

(j) food service and cooking;

(k) motor vehicle and construction equipment repair and servicing; and

(l) appliance and office machine repair and servicing.

(8) "Public works contract" means a contract for construction services ~~or nonconstruction services~~ let by the state, county, municipality, school district, or political subdivision *or for nonconstruction services let by the state, county, municipality, or political subdivision* in which the tetal cost of the contract is in

excess of $25,000. *The nonconstruction services classification does not apply to any school district that at any time prior to [the effective date of this act] contracted with a private contractor for the provision of nonconstruction services on behalf of the district.*

(9) (a) "Standard prevailing rate of wages" or "standard prevailing wage" means:

(i) the heavy and highway construction wage rates applicable to heavy and highway construction projects; or

(ii) those wages, other than heavy and highway construction wages, including fringe benefits for health and welfare and pension contrihutions, that meet the requirements of tbe Employee Retirement Security Act of 1974 and other bona fide programs approved by the United States department of labor and travel allowance tbat are paid in the district by other contractors for work of a similar character performed in that district by each craft, classification, or type of worker needed to complete a contract under this part. In each district, the standard prevailing rate of wages must be computed from a weigbted average wage rate based on all of the bours worked on work of a similar character performed in the district unless the survey of employers in the district does not generate sufficient data. If the survey produces insufficient data, the rate may be estahlished hy the use of other information or methods tbat the commissioner determines fairly establish the standard prevailing rate of wages. The commissioner sball establisb by rule the metbod or methods by which the standard prevailing rate of wages is determined. The rules must establish a process for determining if there is insufficient data generated hy a survey of employers in the district that requires the use of other methods of determining the standard prevailing rate of wages. The rules must identify tbe amount of data that constitutes insufficient data and require tbe commissioner of labor to use other methods of determining the standard prevailing rate of wages when insufficient data exists. The alternative methods of determining the prevailing rate of wages must provide for review and the incorporation of data from work of a similar character that is conducted as near as possible to the original district.

(b) When work of a similar character is not being performed in the district, tbe standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions, tbat meets the requirements of the Employee Retirement Security Act of 1974 and other bona fide programs approved by tbe United States department of labor and the rate of travel allowance must he those rates established by collective bargaining agreements in effect in the district for each craft, classification, or type of worker needed to complete the contract.

(10) "Work of a similar character" means work on private or commercial projects as well as work on public projects."

Section 2. Effeetive date — applicability. [This act] is effective on passage and approval and applies to school district contracts entered into on or after [tbe effective date of this act].

Approved April 27, 1999

HeinOnline -- 1999 vol. II 2050 1999

CHAPTER NO. 497

[SB 301]

AN ACT ELIMINATING THE STATUTORY APPROPRIATION OF INTEREST FROM THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM STATE SPECIAL REVENUE ACCOUNT TO MONTANA STATE UNIVERSITY-NORTHERN; ALLOWING MONTANA STATE UNIVERSITY-NORTHERN TO USE THE APPROPRIATION TO ESTABLISH A TRUST FUND PRIOR TO TERMINATION; AMENDING SECTIONS 15-38-202 AND 17-7-502, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-38-202, MCA, is amended to read:

"15-38-202. (Temporary) Investment of resource indemnity trust fund — expenditure — minimum balance. (1) All money paid into the resource indemnity trust fund, including money payable into the fund under the provisions of 15-36-324 and 15-37-117, must be invested at the discretion of the board of investments. Only the net earnings may be appropriated and expended until the fund reaches $100 million. Thereafter, all net earnings and all receipts may be appropriated by the legislature and expended, provided that the balance in the fund may never be less than $100 million.

(2) (a) At the beginning of each fiscal year, there is allocated from the interest income of the resource indemnity trust fund:

(i) $240,000, which is statutorily appropriated, as provided in 17-7-502, ~~from the renewable resource grant and loan program state special revenue account~~ *to be deposited into the renewable resource grant and loan program state special revenue account* to support the operations of the environmental science-water quality instructional programs at Montana state university-northern, to be used for support costs, for matching funds necessary to attract additional funds to further expand statewide impact, and for enhancement of the facilities related to the programs~~;~~. *Any amount of the appropriation in this subsection (2)(a)(i) that is not pledged to repay bonds issued prior to January 1, 1999, may be deposited in a nonexpendable trust account, the income from which may be used for the purposes provided in this subsection.*

(ii) $1 million to be deposited into the renewable resource grant and loan program state special revenue account, created by 85-1-604, for the purpose of making grants; and

(iii) $1.5 million to be deposited into the reclamation and development grants special revenue account, created by 90-2-1104, for the purpose of making grants.

(b) At the beginning of each biennium, there is allocated from the interest income of the resource indemnity trust fund:

(i) an amount not to exceed $175,000 to the environmental contingency account pursuant to the conditions of 75-1-1101;

(ii) an amount not to exceed $50,000 to the oil and gas production damage mitigation account pursuant to the conditions of 82-11-161; and

(iii) $500,000 to be deposited into the water storage state special revenue account created by 85-1-631.

(c) The remainder of the interest income is allocated as follows:

(i) Thirty-six percent of the interest income of the resource indemnity trust fund must be allocated to the renewable resource grant and loan program state special revenue account created by 85-1-604.

(ii) Eighteen percent of the interest income of the resource indemnity trust fund must be allocated to the hazardous waste/CERCLA special revenue account provided for in 75-10-621.

(iii) Forty percent of the interest income from the resource indemnity trust fund must be allocated to the reclamation and development grants account provided for in 90-2-1104.

(iv) Six percent of the interest income of the resource indemnity trust fund must be allocated to the environmental quality protection fund provided for in 75-10-704.

(3) Any formal budget document prepared by the legislature or the executive branch that proposes to appropriate funds other than as provided for by the allocations in subsection (2) must specify the amount of money from each allocation that is proposed to be diverted and the proposed use of the diverted funds. A formal budget document includes a printed and publicly distributed budget proposal or recommendation, an introduced bill, or a bill developed during the legislative appropriation process or otherwise during a legislative session.

15-38-202. (Effective July 1, 1999) Investment of resource indemnity trust fund — expenditure — minimum balance. (1) All money paid into the resource indemnity trust fund, including money payable into the fund under the provisions of 15-36-324 and 15-37-117, must be invested at the discretion of the board of investments. Only the net earnings may be appropriated and expended until the fund reaches $100 million. Thereafter, all net earnings and all receipts may be appropriated by the legislature and expended, provided that the balance in the fund may never be less than $100 million.

(2) (a) At the beginning of each fiscal year, there is allocated from the interest income of the resource indemnity trust fund:

(i) $240,000, which is statutorily appropriated, as provided in 17-7-502, ~~from the renewable resource grant and loan program state special revenue account~~ *to be deposited into the renewable resource grant and loan program state special revenue account* to support the operations of the environmental science-water quality instructional programs at Montana state university-northern, to be used for support costs, for matching funds necessary to attract additional funds to further expand statewide impact, and for enhancement of the facilities related to the programs~~;~~. *Any amount of the appropriation in this subsection (2)(a)(i) that is not pledged to repay bonds issued prior to January 1, 1999, may be deposited in a nonexpendable trust account, the income from which may be used for the purposes provided in this subsection.*

(ii) $1 million to be deposited into the renewable resource grant and loan program state special revenue account, created by 85-1-604, for the purpose of making grants; and

(iii) $1.5 million to be deposited into the reclamation and development grants special revenue account, created by 90-2-1104, for the purpose of making grants.

(b) At the beginning of each biennium, there is allocated from the interest income of the resource indemnity trust fund:

(i) an amount not to exceed $175,000 to the environmental contingency account pursuant to the conditions of 75-1-1101;

HeinOnline -- 1999 vol. II 2052 1999

(ii) an amount not to exceed $50,000 to the oil and gas production damage mitigation account pursuant to the conditions of 82-11-161; and

(iii) $500,000 to be deposited into the water storage state special revenue account created by 85-1-631.

(c) At the beginning of each fiscal year, there is allocated from the interest income of the resource indemnity trust fund up to $200,000 to be deposited in the orphan share account established in 75-10-743.

(d) The remainder of the interest income is allocated as follows:

(i) Thirty-six percent of the interest income of the resource indemnity trust fund must be allocated to the renewable resource grant and loan program state special revenue account created by 85-1-604.

(ii) Eighteen percent of the interest income of the resource indemnity trust fund must be allocated to the hazardous waste/CERCLA special revenue account provided for in 75-10-621.

(iii) Forty percent of the interest income from the resource indemnity trust fund must be allocated to the reclamation and development grants account provided for in 90-2-1104.

(iv) Six percent of the interest income of the resource indemnity trust fund must be allocated to the environmental quality protection fund provided for in 75-10-704.

(3) Any formal budget document prepared by the legislature or the executive branch that proposes to appropriate funds other than as provided for by the allocations in subsection (2) must specify the amount of money from each allocation that is proposed to be diverted and the proposed use of the diverted funds. A formal budget document includes a printed and publicly distributed budget proposal or recommendation, an introduced bill, or a bill developed during the legislative appropriation process or otherwise during a legislative session."

Section 2. Section 15-38-202, MCA, is amended to read:

"15-38-202. (Temporary) Investment of resource indemnity trust fund — expenditure — minimum balance. (1) All money paid into the resource indemnity trust fund, including money payable into the fund under the provisions of 15-36-324 and 15-37-117, must be invested at the discretion of the board of investments. Only the net earnings may be appropriated and expended until the fund reaches $100 million. Thereafter, all net earnings and all receipts may be appropriated by the legislature and expended, provided that the balance in the fund may never be less than $100 million.

(2) (a) At the beginning of each fiscal year, there is allocated from the interest income of the resource indemnity trust fund:

~~(i) $240,000, which is statutorily appropriated, as provided in 17-7-502, from the renewable resource grant and loan program state special revenue account to support the operations of the environmental science water quality instructional programs at Montana state university-northern, to be used for support costs, for matching funds necessary to attract additional funds to further expand statewide impact, and for enhancement of the facilities related to the programs;~~

~~(ii)~~*(i)* $1 million to be deposited into the renewable resource grant and loan program state special revenue account, created by 85-1-604, for the purpose of making grants; and

HeinOnline -- 1999 vol. II 2053 1999

~~(iii)~~*(ii)* $1.5 million to be deposited into the reclamation and development grants special revenue account, created by 90-2-1104, for the purpose of making grants.

(b) At the beginning of each biennium, there is allocated from the interest income of the resource indemnity trust fund:

(i) an amount not to exceed $175,000 to the environmental contingency account pursuant to the conditions of 75-1-1101;

(ii) an amount not to exceed $50,000 to the oil and gas production damage mitigation account pursuant to the conditions of 82-11-161; and

(iii) $500,000 to be deposited into the water storage state special revenue account created by 85-1-631.

(c) The remainder of the interest income is allocated as follows:

(i) Thirty-six percent of the interest income of the resource indemnity trust fund must be allocated to the renewable resource grant and loan program state special revenue account created by 85-1-604.

(ii) Eighteen percent of the interest income of the resource indemnity trust fund must be allocated to the hazardous waste/CERCLA special revenue account provided for in 75-10-621.

(iii) Forty percent of the interest income from the resource indemnity trust fund must be allocated to the reclamation and development grants account provided for in 90-2-1104.

(iv) Six percent of the interest income of the resource indemnity trust fund must be allocated to the environmental quality protection fund provided for in 75-10-704.

(3) Any formal budget document prepared by the legislature or the executive branch that proposes to appropriate funds other than as provided for by the allocations in subsection (2) must specify the amount of money from each allocation that is proposed to be diverted and the proposed use of the diverted funds. A formal budget document includes a printed and publicly distributed budget proposal or recommendation, an introduced bill, or a bill developed during the legislative appropriation process or otherwise during a legislative session.

15-38-202. (Effective July 1, 1999) Investment of resource indemnity trust fund — expenditure — minimum balance. (1) All money paid into the resource indemnity trust fund, including money payable into the fund under the provisions of 15-36-324 and 15-37-117, must be invested at the discretion of the board of investments. Only the net earnings may be appropriated and expended until the fund reaches $100 million. Thereafter, all net earnings and all receipts may be appropriated by the legislature and expended, provided that the balance in the fund may never be less than $100 million.

(2) (a) At the beginning of each fiscal year, there is allocated from the interest income of the resource indemnity trust fund:

~~(i) $240,000, which is statutorily appropriated, as provided in 17-7-502, from the renewable resource grant and loan program state special revenue account to support the operations of the environmental science water quality instructional programs at Montana state university-northern, to be used for support costs, for matching funds necessary to attract additional funds to further expand statewide impact, and for enhancement of the facilities related to the programs;~~

HeinOnline -- 1999 vol. II 2054 1999

~~(ii)~~*(i)* $1 million to be deposited into the renewable resource grant and loan program state special revenue account, created by 85-1-604, for the purpose of making grants; and

~~(iii)~~*(ii)* $1.5 million to be deposited into the reclamation and development grants special revenue account, created by 90-2-1104, for the purpose of making grants.

(b) At the beginning of each biennium, there is allocated from the interest income of the resource indemnity trust fund:

(i) an amount not to exceed $175,000 to the environmental contingency account pursuant to the conditions of 75-1-1101;

(ii) an amount not to exceed $50,000 to the oil and gas production damage mitigation account pursuant to the conditions of 82-11-161; and

(iii) $500,000 to be deposited into the water storage state special revenue account created by 85-1-631.

(c) At the beginning of each fiscal year, there is allocated from the interest income of the resource indemnity trust fund up to $200,000 to be deposited in the orphan share account established in 75-10-743.

(d) The remainder of the interest income is allocated as follows:

(i) Thirty-six porcent of the interest income of the resource indemnity trust fund must be allocated to the renewable resource grant and loan program state special revenue account created by 85-1-604.

(ii) Eighteen percent of the interest income of the resource indemnity trust fund must be allocated to the hazardous waste/CERCLA special revenue account provided for in 75-10-621.

(iii) Forty percent of the interest income from the resource indemnity trust fund must be allocated to the reclamation and development grants account provided for in 90-2-1104.

(iv) Six percent of the interest income of the resource indemnity trust fund must be allocated to the environmental quality protection fund provided for in 75-10-704.

(3) Any formal budget document prepared by the legislature or the executive branch that proposes to appropriate funds other than as provided for by the allocations in subsection (2) must specify the amount of money from each allocation that is proposed to be diverted and the proposed use of the diverted funds. A formal budget document includes a printed and publicly distributed budget proposal or recommendation, an introduced bill, or a bill developed during the legislative appropriation process or otherwise during a legislative session."

Section 3. Section 17-7-502, MCA, is amended to read:

"17-7-502. (Temporary) Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

HeinOnline -- 1999 vol. II 2055 1999

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 3-5-901; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706; 15-30-195; 15-31-702; 15-36-324; 15-36-325; 15-37-117; ~~15-38-202;~~ 15-65-121; 15-70-101; 16-1-404; 16-1-406; 16-1-411; 16-11-308; 17-3-106; 17-3-212; 17-3-222; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-6-709; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 20-8-107; 20-8-111; 20-26-1503; 22-3-1004; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 39-71-907; 39-71-2321; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 53-6-703; 53-24-206; 67-3-205; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-1-131; 80-2-103; 80-2-222; 80-4-416; 81-5-111; 82-11-161; 85-20-402; 87-1-513; 90-3-301; 90-4-215; 90-6-331; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; pursuant to sec. 7(2), Ch. 29, L. 1995, the inclusion of 15-30-195 torminates July 1, 2001; pursuant to sec. 5, Ch. 461, L. 1997, the inclusion of 77-1-131 terminates October 1, 2003; and pursuant to secs. 13, 16(1), Ch. 549, L. 1997, the inclusion of 90-3-301 terminates July 1, 1999.)

17-7-502. (Effective July 1, 2008) Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 3-5-901; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-23-706; 15-30-195; 15-31-702; 15-36-324; 15-36-325; 15-37-117; ~~15-38-202;~~ 15-65-121; 15-70-101; 16-1-404; [16-1-406;] 16-1-411; 16-11-308; 17-3-106; 17-3-212; 17-3-222; 17-5-404; 17-5-804; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-6-709; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-205; 19-19-305; 19-19-506; 20-8-107; 20-9-361; 20-26-1503; 22-3-1004; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 32-1-537; 37-43-204;

HeinOnline -- 1999 vol. II 2056 1999

37-51-501; 39-71-503; 39-71-907; 39-71-2321; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 50-5-232; 50-40-206; 53-6-150; 53-6-703; 53-24-206; 60-2-220; 67-3-205; 75-1-1101; 75-5-1108; 75-6-214; 75-5-1108; 75-6-214; 75-11-313; 77-1-505; 80-2-103; 80-2-222; 80-4-416; 81-5-111; 82-11-136; 82-11-161; 85-1-220; 85-20-402; 87-1-513; 90-4-215; 90-6-331; 90-7-220; 90-7-221; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant to sec. 68(2), Ch. 422, L. 1997, this version becomes effective July 1, 2008.)"

Section 4. Effective dates. (1) [Section 1 and this section] are effective July 1, 1999.

(2) [Sections 2 and 3] are effective July 1, 2014.

Section 5. Termination. [Section 1] terminates June 30, 2014.

Approved April 27, 1999

CHAPTER NO. 498

[SB 302]

AN ACT PROVIDING FOR THE ESTABLISHMENT OF REGIONAL WATER AND WASTEWATER AUTHORITIES; SETTING FORTH THE PURPOSE OF THE AUTHORITIES AS ENABLING PUBLIC AGENCIES TO JOIN TOGETHER TO SECURE AND PROVIDE WATER FOR RESALE AND OTHER PURPOSES OR TO JOIN TOGETHER FOR THE TRANSPORTATION AND TREATMENT OF WASTEWATER; PROVIDING DEFINITIONS; SETTING FORTH REQUIREMENTS FOR AGREEMENTS BETWEEN PUBLIC AGENCIES; PROHIBITING COMPETING SERVICES BY PUBLIC AGENCIES IN AN AGREEMENT; REQUIRING OUTSTANDING BOND INDEBTEDNESS TO BE RETIRED BEFORE A PUBLIC AGENCY MAY WITHDRAW FROM AN AGREEMENT; AUTHORIZING PUBLIC AGENCIES TO PROVIDE FUNDS, PERSONNEL, AND SERVICES TO REGIONAL WATER AUTHORITIES, REGIONAL WASTEWATER AUTHORITIES, AND REGIONAL WATER AND WASTEWATER AUTHORITIES; AUTHORIZING AGREEMENTS BETWEEN PUBLIC AGENCIES AND AUTHORITIES; ESTABLISHING AN AUTHORITY AS A PUBLIC BODY, CORPORATE AND POLITIC; ESTABLISHING REQUIREMENTS FOR THE GOVERNING BODY OF AN AUTHORITY; REQUIRING MEETINGS AND AN AUDIT OF AN AUTHORITY; ESTABLISHING POWERS OF AN AUTHORITY; AUTHORIZING THE SALE OF BONDS FOR CONSTRUCTING OR ACQUIRING WATER SUPPLY SYSTEMS OR FOR CONSTRUCTING OR ACQUIRING WASTEWATER TRANSPORTATION AND TREATMENT FACILITIES; AUTHORIZING ITEMS TO BE INCLUDED AS COSTS OF

HeinOnline -- 1999 vol. II 2057 1999

PROPERTIES; PROVIDING THAT THE BONDS MAY BE SECURED BY TRUST INDENTURE; REQUIRING THE ESTABLISHMENT OF A SINKING FUND; ESTABLISHING ENFORCEMENT PROVISIONS FOR BONDHOLDERS; ESTABLISHING A STATUTORY MORTGAGE LIEN IN FAVOR OF BONDHOLDERS; PROVIDING THE REQUIREMENT THAT THE AUTHORITY ESTABLISH APPROPRIATE RATES AND CHARGES FOR THE USE OF SERVICES RENDERED; PROVIDING FOR REFUNDING ISSUED BONDS; EXEMPTING BONDS AND BOND INTEREST FROM TAXATION; ESTABLISHING THAT BONDS ISSUED BY AUTHORITIES ARE LEGAL INVESTMENTS; PROVIDING THAT AUTHORITIES ARE ELIGIBLE FOR FINANCING UNDER STATE PROGRAMS; AMENDING SECTIONS 17-5-1604, 75-5-1102, 75-6-202, 85-1-605, AND 90-6-701, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 20] may be cited as the "Regional Water and Wastewater Authority Act".

Section 2. Purpose. (1) It is the purpose of [sections 1 through 20] to permit certain public agencies to make the most efficient use of their powers relating to public water supplies and the transportation and treatment of wastewater by enabling them to cooperate with other public agencies on a basis of mutual advantage and to provide services and facilities to participating public agencies. It is also the purpose of [sections 1 through 20] to provide for the establishment of a public body, corporate and politic, that is known as a regional water authority or, when appropriate, a regional wastewater authority or regional water and wastewater authority. The function of the regional water authority is to secure a source of water on a scale larger than is feasible for individual public agencies acting alone and to sell the water to public service districts, municipalities, publicly and privately owned water utilities, and others. The function of the regional wastewater authority is to enable public agencies to join together to provide the most economical method of transportation and treatment of wastewater and to provide the transportation and treatment services to public service districts, municipalities, publicly and privately owned wastewater utilities, and others. The function of the regional water and wastewater authority is to enable public agencies to join together to carry out the joint functions of both a regional water authority and a regional wastewater authority.

(2) In addition to the purposes for which it may have originally been created, any authority created pursuant to [sections 1 through 20] may enter into agreements with public agencies, privately owned utilities, and other authorities for the provision of related services, including but not limited to the following:

(a) administration;

(b) operation and maintenance; and

(c) billing and collection.

Section 3. Definitions. For the purposes of [sections 1 through 20], the following definitions apply:

(1) "Authority" means any regional water authority, regional wastewater authority, or regional water and wastewater authority organized pursuant to the provisions of [sections 1 through 20].

HeinOnline -- 1999 vol. II 2058 1999

(2) "Public agency" means any municipality, county, water and sewer district, or other political subdivision of this state.

Section 4. Joint exercise of powers by certain public agencies — agreements among agencies — filing of agreement — prohibition against competition — retirement of bonds. (1) Any powers, privileges, or authority of a public agency of this state relating to public water supplies or the transportation or treatment of wastewater may be exercised jointly with any other public agency of this state or with any agency of the United States to the extent that the laws of the United States permit. An agency of the state government when acting jointly with any public or private agency may exercise all of the powers, privileges, and authority conferred by [sections 1 through 20] upon a public agency.

(2) A public agency may enter into agreements with one or more other public agencies for the purpose of organizing an authority. Appropriate action by ordinance, resolution, or otherwise pursuant to law of the governing bodies of the participating public agencies is necessary before any agreement may take effect.

(3) An agreement must specify the following:

(a) its duration;

(b) the precise organization, composition, and nature of the authority created, together with the powers delegated to the authority;

(c) its purpose or purposes;

(d) the manner of financing for the authority and of establishing and maintaining a budget for the authority;

(e) the permissible methods for partial or complete termination of the agreement and for disposing of property upon partial or complete termination;

(f) the manner of acquiring, holding, and disposing of real and personal property of the autbority; and

(g) any other necessary and proper matters.

(4) An agreement may be amended to include additional public agencies by consent of two-thirds of the signatories to the agreement, if the terms of the agreement are not changed. Otherwise, a new agreement with the new public agency must be made. When only two public agencies form an authority, both parties shall consent to the amendment of the agreement to include additional public agencies.

(5) Prior to taking effect, an agreement made under [sections 1 through 20] must be filed with the clerk of the county commission of each county in which a member of the authority is located and the agreement then must also be filed with the secretary of state, accompanied by a certificate from the clerk of the county commission of the county or counties where filed, stating that the agreement has been filed in that county.

(6) A public agency that enters into an agreement made under [sections 1 through 20] may not offer or provide water or wastewater services in competition with another public agency entering into the agreement.

(7) A public agency that enters into an agreement made under [sections 1 through 20] may not withdraw from the agreement until the outstanding bonded

HeinOnline -- 1999 vol. II 2059 1999

indebtedness of the authority is retired or the bondholders are otherwise protected.

Section 5. Furnishing of funds, personnel, or services by certain public agencies — agreements for purchase, sale, distribution, transmission, transportation, and treatment of water or wastewater — terms and conditions. A public agency entering into an agreement pursuant to [sections 1 through 20] may appropriate funds and may sell, lease, give, or otherwise supply to the authority personnel or services for the operation of the authority as may be within its legal power to furnish. A public agency, whether or not a party to an agreement pursuant to [sections 1 through 20], and a publicly or privately owned water distribution company may enter into contracts with an authority, created pursuant to [sections 1 through 20], for the purchase of water from the authority or the sale of water to the authority, for the treatment of water by either party, and for the distribution or transmission of water by either party. The authority may enter into the contracts. A public agency, whether or not a party to an agreement pursuant to [sections 1 through 20], and a publicly or privately owned wastewater transportation or treatment system may enter into contracts with an authority, created pursuant to [sections 1 through 20], for the transportation and treatment of wastewater by either party. The authority may enter into the contracts, subject to the prior approval of the public service commission, if the privately owned wastewater transportation or treatment system is subject to the jurisdiction of the public service commission. However, if the public service commission has not acted on a proposed contract within 90 days of its filing, approval is considered to have been granted. A contract may include an agreement for the purchase of water not actually received or the treatment of wastewater not actually treated. A contract may not be for a period in excess of 40 years, but renewal options may be included in the contract. The obligations of a public agency under a contract must be payable solely from the revenue produced from the public agency's water or wastewater system, and the public service commission, in the case of a water system whose rates are subject to its jurisdiction, shall permit the water system to recover through its rates revenue sufficient to meet its obligations under the agreement.

Section 6. Declaration of authority organization — when public body, corporate and politic. Upon filing with the secretary of state, the secretary of state shall declare the authority organized and give it the corporate name of regional water authority number ...., regional wastewater authority number ...., or regional water and wastewater authority number ...., as appropriate. Upon assignment of the designation, the authority is a public body, corporate and politic.

Section 7. Governing body — appointments — terms of members — voting rights. (1) The governing body of the authority shall consist of not less than three persons selected by the participating public agencies. Each participating public agency shall appoint at least one member. Each member's full term may not be less than 1 year or more than 4 years, and initial terms must be staggered in accordance with procedures set forth in the agreement provided for in [section 4] and amendments to the agreement. In the case of an authority that is made up by the agreement of two public agencies, each public agency shall appoint two representatives to the governing body.

(2) The manner of selection of the governing body and terms of office must be set forth in the agreement provided for in [section 4] and amendments to the

HeinOnline -- 1999 vol. II 2060 1999

agreement. The governing body of the authority shall elect one of its members as president, one as treasurer, and one as secretary.

(3) Each member has one vote in any matter that comes before the authority for decision. However, the member agencies shall, in the original agreement establishing the authority, set forth any special weighing of votes based upon population served, volumes of water purchased, volumes of wastewater treated, numbers of customers, or some other criterion that the authority considers appropriate for maintaining fairness in the decisions and operations of the authority.

Section 8. Meetings of governing body — annual audit. The governing body of the authority shall meet as often as the needs of the authority require, but not less frequently than on a quarterly basis. The authority is subject to the provisions of Title 2, chapter 3, regarding open meeting laws and public participation. The governing body shall cause an annual audit of the financial records of the authority to be made. The cost of the audit must be paid by the authority. The authority is considered a local government entity for purposes of Title 2, chapter 7, part 5, and audits must comply with the provisions of that part.

Section 9. Powers of governing body. (1) For the purpose of providing a water supply, transportation facilities, or treatment system to the participating public agencies and others, the governing body of the authority has the powers, authorities, and privileges provided for in this section.

(2) The governing body may accept by gift or grant from any person, firm, corporation, trust, or foundation; from this state or any other state or any political subdivision or municipality of this or any other state; or from the United States any funds or property or any interest in funds or property for the uses and purposes of the authority. The governing body may hold title to the funds or property in trust or otherwise and may bind the authority to apply the funds or property according to the terms of the gift or grant.

(3) The governing body may sue and be sued.

(4) The governing body may enter into franchises, contracts, and agreements with this or any other state, the United States, any municipality, political subdivision, or authority of a political subdivision, or any of their agencies or instrumentalities; any Indian tribe; or any public or private person, partnership, association, or corporation of this state or of any other state or the United States. This state and any municipality, political subdivision, or authority of a political subdivision or any of their agoncies or instrumentalities and any public or private person, partnership, association, or corporation may enter into contracts and agreements with the authority for any term not exceeding 40 years for the planning, development, construction, acquisition, maintenance, or operation of a facility or for any service rendered to, for, or by the authority. However, the authority is subject to the same statutory requirements for competitive bidding and procurement contracts as would be applicable to any member public agency.

(5) The governing body may borrow money and evidence the borrowing by warrants, notes, or bonds provided for in [sections 1 through 20] and may refund the indebtedness by the issuance of refunding obligations.

(6) The governing body may acquire land and interests in land by gift, purchase, exchange, or eminent domain. The power of eminent domain may be exercised within or outside of the boundaries of the authority in accordance with the provisions of Title 70, chapter 30.

HeinOnline -- 1999 vol. II 2061 1999

(7) The governing body may acquire hy purchase or lease, construct, install, and operate reservoirs, pipelines, wells, check dams, pumping stations, water purification plants, and other facilities for the production, distrihution, and use of water and transportation facilities, pump stations, lift stations, treatment facilities, and other facilities necessary for the transportation and treatment of wastewater and may own and hold real and personal property that may be necessary to carry out the purposes of its organization.

(8) The governing body has the general management, control, and supervision of all the business, affairs, property, and facilities of the authority and of the construction, installation, operation, and maintenance of authority improvements. The governing body may establish regulations relating to authority improvements.

(9) The governing hody may hire and retain agents, employees, engineers, and attorneys and determine their compensation. The governing body shall select and appoint a general manager of the authority who shall serve at the pleasure of the governing body. The general manager must have training and experience in the supervision and administration of tbe system or systems operated by the authority and shall manage and control the system under the general supervision of the governing hody. All employees, servants, and agents of the authority must be under the immediate control and management of the general manager. The general manager shall perform all other duties that may he prescribed by the governing body and shall give the governing body a good and sufficient surety company hond in a sum to be set and approved hy the governing body, conditioned upon the satisfactory performance of the general manager's duties. The governing body may also require that any other employees be bonded in an amount that it shall determine. The cost of a bond must he paid out of the funds of the authority.

(10) The governing body may adopt and amend rules and regulations not in conflict with the constitution and laws of this state, necessary for carrying on the business, objects, and affairs of the governing hody and of the authority.

(11) The governing hody has and may exercise all rights and powers necessary or incidental to or implied from the specific powers granted in this section. Specific powers may not be considered as a limitation upon any power necessary or appropriate to carry out the purposes of [sections 1 through 20].

Section 10. Revenue bonds. For constructing or acquiring any water supply, wastewater transportation, or treatment system for the authorized purposes of the authority or as necessary or incidental to the authorized purpeses, for constructing improvements and extensions to improvements, and for reimbursing or paying the costs and expenses of creating the authority, the governing body of an authority may borrow money from time to time and in evidence of the borrowing issue revenue bonds of the authority. The revenue honds are a lien on the revenue produced from the operation of the authority's system, hut may not he general obligations of the public agencies participating in the agreement. All revenue bonds issued under [sections 1 through 20] must be signed by the president of the governing body of the authority and attested by the secretary of the governing hody of the authority. The honds must contain recitals stating the authority under which the bonds are issued, that they are to be paid by the authority from the net revenue derived from the operation of the authority's system and not from any other fund or source, and that the bonds are negotiahle and payahle solely from the revenue derived from the operation of the

HeinOnline -- 1999 vol. II 2062 1999

system under control of the authority. However, in the case of a regional water and wastewater authority, the statutory lien created hy this section is a lien only on the revenue of that service funded by the proceeds of the sale of the bonds, it being understood that the combined authority shall maintain separate books and records for its water and wastewater operations. The bonds may be issued in one or more series, may hear a date or dates, may mature at a time or times not exceeding 40 years from their respective dates, may bear interest at a rate not exceeding 2% above the interest rate on treasury notes, bills, or bonds of the same term as the term of the bond or bonds the week of closing on the bond or bonds as reported by the treasury of the United States, may be payable at the times, may be in the form, may carry registration privileges, may be executed in the manner, may be payable at a place or places, may be subject to terms of redemption with or without premium, may be declared or become due before the maturity date, may be authenticated in any manner and upon compliance with the conditions, and may contain terms and covenants that may be provided by resolution or resolutions of the governing body of the authority. Notwithstanding the form or tenor of the bonds, and in the absence of any express recital on the face of the bonds, that the bonds are nonnegotiable, all bonds must be, and must be treated as, negotiable instruments for all purposes. Bonds bearing the signatures of officers in office on the date of the signing of the bonds must be valid and binding for all purposes, notwithstanding that before the delivery of the bonds, any of the persons whose signatures appear on the bonds ceased to be officers. Notwithstanding the requirements or provisions of any other law, bonds may be negotiated or sold in the manner and at the time or times that are found by the governing body to be most advantageous, and all bonds may be sold at the price that the interest cost of the proceeds from the bonds does not exceed 3% above the interest rate on treasury notes, bills, or bonds of the same term as the term of the bond or honds the week of closing on the bond or bonds as reported by the treasury of the United States, based on the average maturity of the bonds and computed according to standard tables of bond values. Any resolution or resolutions providing for the issuance of the honds may contain covenants and restrictions upon the issuance of additional bonds that are considered necessary or advisable for the assurance of the payment of the bonds authorized hy the resolutions.

Seetion 11. Items ineluded in cost of properties. The cost of any water supply, wastewater transportation, or treatment system acquired or constructed under the provisions of [sections 1 through 20] must be considered to include the cost of the acquisition or construction of the supply or system and the cost of all property rights, easements, and franchises considered necessary or convenient for the supply or system and for the improvements and extensions to the supply or system. Costs also include interest on bonds prior to and during construction or acquisition and for 6 months after completion of construction or of acquisition of the improvements and extensions; engineering expenses; fiscal agent and legal expenses; expenses for estimates of cost and of revenue; expenses for plans, specifications, and surveys; other expenses necessary or incidental to determining the feasibility or practicability of the enterprise; administrative expense; and other expenses that may be necessary or incidental to the financing authorized in [sections 1 through 20], the construction or acquisition of the properties, the placing of the properties in operation, and the performance of the things required or permitted, in connection with any property.

Section 12. Trust indenture. In the discretion and at the option of the governing body of the authority, bonds may be secured by a trust indenture by

HeinOnline -- 1999 vol. II 2063 1999

and between the authority and a corporate trustee, which may be a trust company or bank tbat has the powers of a trust company within or outside of the state. However, a trust indenture may not convey, mortgage, or create a lien upon the water supply, wastewater transportation, or treatment system, any part of the system, or the authority or its member puhlic agencies. The resolution authorizing the bonds and fixing the details of the bonds may provide that the trust indenture may contain provisions for protecting and enforcing the rights and remedies of bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the authority and the members of its governing body and officers in relation to the construction or acquisition of the water supply, wastewater transportation, or treatment system and the improvement, extension, oporation, repair, maintenance, and insurance of tbe bonds and the custody, safeguarding, and application of all money. The resolution may also provide tbat all or any part of the construction work must be contracted for, constructed, and paid for under the supervision and approval of consulting engineers employed or designated by the governing body and satisfactory to the original bond purchasers, their successors, assignees, or nominees, who may be given tbe right to require that the security given by contractors and by any depository of the proceeds of bonds or revenue of the water supply, wastewater transportation, or treatment system or other money pertaining to the supply or system be satisfactory to tbe purchasers, their successors, assignees, or nominees. The indenture may set forth the rights and remedies of the bondholders and the trustee.

Section 13. Sinking fund for revenue bonds. At or before the time of the issuance of any bonds under [sections 1 through 20], the governing body of tbe authority shall by resolution or in the trust indenture provide for the creation of a sinking fund and for monthly payments into the sinking fund from the revenue of the water supply, wastewater transportation, or treatment system operated by the authority sums in excess of the cost of maintenance and operation of the properties that will be sufficient to pay the accruing interest and retire the bonds at or before the time that each will respectively become due and to establish and maintain reserves for the bonds. All sums tbat are or should be, in accordance with the provisions, paid into the sinking fund must be used solely for payment of interest and for tbe retirement of the bonds at or prior to maturity, as may be provided or required by the resolutions.

Section 14. Collection of revenue and enforeement of covenants — default — suit to eompel performance — appointment and powers of receiver. The governing body of an authority may insert enforceable provisions in a resolution authorizing the issuance of bonds relating to the collection, custody, and application of revenue of tbe authority from the operation of the water supply, wastewater transportation, or treatment system under its control and relating to the enforcement of the covenants and undertakings of the authority. If there is a default in the sinking fund provisions provided for in [section 13] or in the payment of the principal or interest on any of the bonds or if the authority or its governing body or any of its officers, agonts, or employees fail or refuse to comply with the provisions of [sections 1 tbrough 20] or default in any covenant or agreement made with respoct to tbe issuance of the bonds or offered as security for the bonds, then any holder or holders of the bonds and any trustee under the trust indenture, if there is one, has the right by suit, action, mandamus, or other proceeding instituted in the district court in any of the counties in which the authority oporates, or in any other court of competent jurisdiction, to enforce and compel performance of all duties required by [sections

HeinOnline -- 1999 vol. II 2064 1999

1 through 20] or undertaken by the authority in connection with the issuance of the bonds. Upon application hy any holder or holders of the bonds, or the trustee of the trust indenture, the court shall, upon proof of the defaults, appoint a receiver for the affairs of the authority and its property. The receiver shall directly, or through its agents and attorneys, enter and take possession of the affairs of the authority. The receiver may hold, use, operate, manage, and control the authority and, in the name of the authority, exercise all of the rights and powers of the authority as considered expedient. The receiver may collect and receive all revenue and apply the revenue in the manner that the court shall direct. Whenever the default causing the appointment of the receiver has been cleared and fully discharged and all other defaults have been cured, the court, after notice and hearing as it considers reasonable and proper, may direct the receiver to surrender possession of the affairs of the authority to its governing body. The receiver may not sell, assign, mortgage, or otherwise dispose of any assets of the authority except as provided in this section.

Section 15. Statutory mortgage lien. There is a statutory mortgage lien upon the water supply, wastewater transportation, or treatment system of the authority. The lien exists in favor of the holders of bonds authorized to he issued pursuant to [sections 1 through 20], and each holder and the system remain subject to the statutory mortgage lien until payment in full of all principal of and interest on the bonds.

Section 16. Rates and charges. The governing body shall by appropriate resolution make provisions for the payment of bonds issued pursuant to [sections 1 through 20] by taxing rates, fees, and charges, for the use of all services rendered by the authority. The rates, fees, and charges must be sufficient to pay the costs of operation, improvement, and maintenance of the authority's water supply or wastewater transportation or treatment system; provide an adequate depreciation fund; provide an adequate sinking fund to retire any bonds and pay interest on the bonds when due; and create reasonable reserves for the enumerated purposes. The rates, fees, or charges must be sufficient to allow for miscellaneous and emergency or unforeseen expenses. The resolution of the governing body authorizing the issuance of revenue bonds may include agreements, covenants, or restrictions considered necessary or advisable by the governing hody to effect the efficient oporation of the system, to safeguard the interests of the holders of the revenue bonds, and to secure the payment of the bonds and the interest on the bonds.

Section 17. Refunding revenue bonds. If the authority has issued bonds under the provisions of [sections 1 through 20], it may by resolution issue refunding bonds for the purpose of retiring or refinancing outstanding bonds, together with any unpaid interest on the bonds and any redemption premium. All of the provisions of [sections 1 through 20] relating to the issuance, security, and payment of bonds apply to the refunding bonds. However, the bonds are subject to the provisions of the proceedings that authorized the issuance of the bonds to be refunded.

Section 18. Exemption from taxation. Bonds issued pursuant to [sections 1 through 20] and the interest on the bonds, together with all proporties and facilities of the authority owned or used in connection with the water supply, wastewater transportation, or treatment system, and all the money, revenue, and other income of the authority derived from the water supply, wastewator transportation, or treatment system are exempt from all taxation by the state or

HeinOnline -- 1999 vol. II 2065 1999

any county, municipality, political subdivision, or agency of the state, county, or municipality.

Section 19. Bonds as legal investment. Bonds issued under the provisions of [sections 1 through 20] are legal investments for banks, building and loan associations, and insurance companies organized under the laws of this state.

Section 20. Liberal construction. The provisions of [sections 1 through 20] are necessary for the public health, safety, and welfare and must be liberally construed to effectuate the purposes of [sections 1 through 20].

Section 21. Section 17-5-1604, MCA, is amended to read:

"17-5-1604. Definitions. As used in this part, the following definitions apply:

(1) "Board" means the board of investments created in 2-15-1808.

(2) "Department" means the department of commerce created in 2-15-1801.

(3) "Eligible government unit" means:

(a) any municipal corporation or political subdivision of the state, including without limitation any city, town, county, school district, *authority as defined in [section 3],* or other special taxing district or assessment or service district authorized by law to borrow money; or

(b) the state, any board, agency, or department of the state, or the board of regents of the Montana university system when authorized by law to borrow money.

(4) "Reserve fund" means the municipal finance consolidation act reserve fund created in 17-5-1630."

Section 22. Section 75-5-1102, MCA, is amended to read:

"75-5-1102. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Administrative costs" means costs incurred by the department and the department of natural resources and conservation in the administration of the program, including but not limited to costs of servicing loans and issuing debt; program start-up costs; financial, management, and legal consulting fees; and reimbursement costs for support services from other state agencies.

(2) "Cost" means, with reference to a project, all capital costs incurred or to be incurred by a municipality or a private person, including but not limited to engineering, construction, financing, and other fees, interest during construction, and a reasonable allowance for contingencies to the extent permitted by the federal act and regulations promulgated thereunder.

(3) "Federal act" means the Federal Water Pollution Control Act, also known as the Clean Water Act, 33 U.S.C. 1251 through 1387, as amended.

(4) "Intended use plan" means the annual plan adopted by the department and submitted to the environmental protection agency that describes how the state intends to use the money in the revolving fund.

HeinOnline -- 1999 vol. II 2066 1999

(5) "Loan" means a loan of money from the revolving fund to a municipality or a private person.

(6) "Municipality" means any state agency, city, town, or other public body created pursuant to state law, *including an authority as defined in [section 3].*

(7) "Private person" means an individual, corporation, partnership, or other nongovernmental legal entity.

(8) "Program" means the water pollution control state revolving fund program established by this part.

(9) (a) "Project" means an activity that is eligible for financing by the program under the federal act, including treatment works, as defined under section 1292 of the federal act (33 U.S.C. 1292), and nonpoint source pollution control under section 1329 of the federal act (33 U.S.C. 1329), and for which a municipality or private person makes an application for a loan or other financial assistance.

(b) "Project" does not include a solid waste management system, as defined in 75-10-203, except for a project that is intended specifically for the closure or postclosure care of or ground water corrective action at a landfill that:

(i) was in operation on May 5, 1997, and that accepts an annual average of less than 20,000 tons of solid waste ~~per~~ *a* year; or

(ii) was closed prior to May 5, 1997.

(10) "Revolving fund" means the fund established by 75-5-1106."

Section 23. Section 75-6-202, MCA, is amended to read:

"75-6-202. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Administrative costs" means costs incurred by the department and the department of natural resources and conservation in the administration of the program, including but not limited to:

(a) costs of servicing loans and issuing debt;

(b) program startup costs;

(c) financial, management, and legal consulting fees; and

(d) reimbursement costs for support services from other state agencies.

(2) "Community water system" means a public water system that is owned by a private person or a municipality and that serves at least 15 service connections used by year-round residents of the area served by the system or regularly serves at least 25 year-round residents. The term does not include a public water system that is owned by the federal government.

(3) "Cost" means, with reference to a project, all capital costs incurred or to be incurred for a public water system, including but not limited to:

(a) engineering, financing, and other fees;

(b) interest during construction;

(c) construction; and

HeinOnline -- 1999 vol. II 2067 1999

(d) a reasonable allowance for contingencies to the extent permitted by the federal act and rules promulgated under the federal act.

(4) "Department" means the department of environmental quality provided for in 2-15-3501.

(5) "Disadvantaged community" means one in which the service area of a public water system meets the affordability criteria established by rule adopted pursuant to this part.

(6) "Federal act" means the federal Safe Drinking Water Act, 42 U.S.C. 300f, et seq., as that act read on May 5, 1997.

(7) "Indian tribe" means an Indian tribe that has a federally recognized governing body carrying out substantial governmental duties and powers over any area.

(8) "Intended use plan" means the annual plan adopted by the department and submitted to the environmental protection agency that describes how the state intends to use the money in the revolving fund.

(9) "Loan" means a loan of money from the revolving fund for project costs.

(10) "Municipality" means a state agency, city, town, or other public body, *including an authority as defined in [section 3]*, created pursuant to state law or an Indian tribe.

(11) "Noncommunity water system" means a public water system that is not a community water system.

(12) "Nonprofit noncommunity water system" means a noncommunity water system owned by an organization that is organized under Montana law and that qualifies as a tax-exempt organization under the provisions of section 501(c)(3) of the Internal Revenue Code.

(13) "Private person" means an individual, corporation, partnership, or other nongovernmental legal entity.

(14) "Program" means the drinking water state revolving fund program established by this part.

(15) "Project" means improvements or activities that are:

(a) to be undertaken for a public water system and that are of a type that will facilitate compliance with the national primary drinking water regulations applicable to the system; or

(b) to further the health protection objectives of the federal act.

(16) "Public water system" means a system for the provision to the public of water for human consumption, through pipes or other constructed conveyances, if that system has at least 15 service connections or regularly serves at least 25 individuals. The term includes any collection, treatment, storage, and distribution facilities under control of an operator of a system that are used primarily in connection with a system and any collection or pretreatment storage facilities not under control of an operator and that are used primarily in connection with a system.

(17) "Revolving fund" means the drinking water state revolving fund established by 75-6-211."

Section 24. Section 85-1-605, MCA, is amended to read:

"85-1-605. Grants, loans, and bonds for state, local, or tribal government assistance. (1) The department may recommend to the legislature that grants and loans be made from revenue deposited in the renewable resource grant and loan program state special revenue account, that loans be made from renewable resource bond proceeds deposited in the renewable resource loan proceeds account established in 85-1-617(5), and that coal severance tax bonds be authorized pursuant to Title 17, chapter 5, part 7, to provide financial assistance to a department, agency, board, commission, or other division of state government, to a city, county, or other political subdivision or local government body of the state, *including an authority as defined in [section 3]*, or to a tribal government. The legislature may approve by appropriation or other appropriate means those grants and loans that it finds consistent with the policies and purposes of the program.

(2) Nothing in this part creates or expands the state's or a local government's authority to incur debt, and the legislature may authorize loans only to state and local government entities otherwise structured to incur debt.

(3) Loans may not be authorized except to a state, local, or tribal government entity that agrees to secure the authorized loan with its bond.

(4) In addition to implementing those projects approved by the legislature, the department may request up to 10% of the grant funds available and up to $10 million for loans from the renewable resource grant and loan program state special revenue account and the renewable resource loan proceeds account in any biennium to be used for emergencies. These emergency grant projects or loan projects, or both, may not be made because of the gross negligence of the state, local, or tribal government applicant, must be approved by the department, and must be defined as those projects otherwise eligible for either grant funding or loan funding, or both, that, if delayed until legislative approval can be obtained, will cause substantial damages or legal liability to the project sponsor. In allocating the funds, the department shall inform the legislative finance committee of the legislature.

(5) The grants and loans provided for by this section may be made for projects that enhance renewable resources in the state through conservation, development, management, or preservation; for assessing feasibility or planning; for implementing renewable resource projects; and for similar purposes approved by the legislature.

(6) Grant and loan agreements with tribal governments in Montana entered into under this part must contain, in addition to other appropriate terms and conditions, the following conditions:

(a) a requirement that in the event a dispute or claim arises under the agreement, state law will govern as to the interpretation and performance of the agreement and that any judicial proceeding concerning the terms of the agreement will be brought in the district court of the first judicial district of the state of Montana;

(b) an express waiver of the tribal government's immunity from suit on any issue specifically arising from the transaction of a loan or grant; and

(c) an express waiver of any right to exhaust tribal remedies signed by the tribal government."

HeinOnline -- 1999 vol. II 2069 1999

Section 25. Section 90-6-701, MCA, is amended to read:

"90-6-701. Treasure state endowment program created — definitions. (1) (a) There is a treasure state endowment program that consists of:

(i) the treasure state endowment fund established in 17-5-703;

(ii) the infrastructure portion of the coal severance tax bond program provided for in 17-5-701(2).

(b) The treasure state endowment program may borrow from the board of investments to provide additional financial assistance for local government infrastructure projects under this part, provided that no part of the loan may be made from retirement funds.

(2) Interest from the treasure state endowment fund and from proceeds of the sale of bonds under 17-5-701(2) may be used to provide financial assistance for local government infrastructure projects under this part and to repay loans from the board of investments.

(3) As used in this part, the following definitions apply:

(a) "Infrastructure projects" means:

(i) drinking water systems;

(ii) wastewater treatment;

(iii) sanitary sewer or storm sewer systems;

(iv) solid waste disposal and separation systems, including site acquisition, preparation, or monitoring; or

(v) bridges.

(b) "Local government" means an incorporated city or town, a county, a consolidated local government, ~~or~~ a county or multicounty water, sewer, or solid waste district, *or an authority as defined in [section 3].*

(c) "Treasure state endowment fund" means the coal severance tax infrastructure endowment fund established in 17-5-703(1)(b).

(d) "Treasure state endowment program" means the local government infrastructure investment program established in subsection (1)."

Section 26. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 27. Effective date. [This act] is effective on passage and approval.

Approved April 27, 1999

CHAPTER NO. 499

[SB 381]

AN ACT GENERALLY REVISING HUNTER EDUCATION LAWS AND PENALTIES FOR HUNTING VIOLATIONS; ESTABLISHING MANDATORY SENTENCING GUIDELINES FOR REPEAT OFFENDERS OF HUNTING

HeinOnline -- 1999 vol. II 2070 1999

LAWS; PROVIDING PENALTIES FOR VIOLATORS OF FISH, WILDLIFE, AND PARKS COMMISSION OR DEPARTMENT ORDERS AND RULES; ALLOWING THE DEPARTMENT TO ESTABLISH AN ADULT HUNTER EDUCATION CLASS; ESTABLISHING A REMEDIAL HUNTER EDUCATION COURSE FOR HUNTING LAW VIOLATORS; AMENDING SECTIONS 27-1-721, 87-1-102, 87-1-114, 87-2-102, AND 87-2-105, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 27-1-721, MCA, is amended to read:

"27-1-721. Immunity of certain firearms *and hunter* safety *or hunter education* instructors. A person who is designated as a ~~firearms~~ *hunter* safety *instructor or hunter education* instructor by the department of fisb, wildlife, and parks under 87-2-105 or certified as an instructor by a national firearms association, who trains people in tbe lawful use of firearms, and who is not employed by a governmental entity is not liable for the conduct, acts, or omissions of a student handling firearms unless the instructor exhibits gross negligence giving rise to causation of the damages."

Section 2. Section 87-1-102, MCA, is amended to read:

"87-1-102. Penalties — *violation of state law.* (1) A person who purposely, knowingly, or negligently violates a provision of this title~~,~~ *or* any other state law pertaining to fish and game~~, or the orders or rules of the commission or department~~ is guilty of a misdemeanor, except if a felony is expressly provided by law, and shall be fined an amount not less than $50 or more than $1,000 or imprisoned in the county jail for not more than 6 months, or botb, unless a different punishment is expressly provided by law for the violation. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of that person's license and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period set by the court. If the court imposes forfeiture of the person's license and privilege to hunt, fish, or trap or to use state lands, the department shall notify the person of the loss of privileges as imposed by the court. The person shall surrender all licenses, as ordered by the court, to the department within 10 days.

(2) (a) A person convicted of unlawfully taking, killing, possessing, or transporting a bighorn sheep, moose, wild buffalo, caribou, mountain goat, black bear, or grizzly bear or any part of these animals shall be fined an amount not less than $500 or more than $2,000 or imprisoned in the county jail for not more than 6 months, or both. In addition, that person, upon conviction or forfeiture of bond or bail, shall forfeit any current hunting, fishing, recreational use, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 30 months from the date of conviction or forfeiture, unless the court imposes a longer forfeiture period. For each conviction or forfeiture, the department shall notify the person of tbe loss of privileges. The person shall surrender all huntir~, fishing, and trapping licenses to the department within 10 days.

(b) A person convicted of unlawfully taking, killing, possessing, or transporting a deer, antelope, elk, or mountain lion or any part of these animals shall be fined an amount not less than $300 or more than $1,000 or imprisoned in the county jail for not more than 6 months, or both. In addition, that person, upon conviction or forfeiture of bond or bail, sball forfeit any current hunting,

HeinOnline -- 1999 vol. II 2071 1999

fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 24 months from the date of conviction or forfeiture, unless the court imposes a longer forfeiture period. For each conviction or forfeiture, the department shall notify the person of the loss of privileges. The person shall surrender all hunting, fishing, and trapping licenses to the department within 10 days.

(c) A person convicted of unlawfully attempting to trap or hunt a game animal shall be fined an amount not less than $200 or more than $600 or imprisoned in the county jail for not more than 60 days, or both.

(d) A person convicted of purposely, knowingly, or negligently taking, killing, trapping, possessing, transporting, shipping, labeling, or packaging a fur-bearing animal or pelt of a fur-bearing animal in violation of any provision of this title shall be fined an amount not less than $100 or more than $1,000, imprisoned in the county jail for not more than 6 months, or both. In addition, that person, upon conviction or forfeiture of bond or bail, shall forfeit any current license and the privilege to hunt, fish, or trap in this state for 24 months from the date of conviction or forfeiture, unless the court imposes a longer forfeiture period, and any pelts possessed unlawfully must be confiscated. For each conviction or forfeiture, the department shall notify the person of the loss of privileges. The person shall surrender all hunting, fishing, and trapping licenses to the department within 10 days.

(e) A person convicted of hunting, fishing, or trapping while that person's license is forfeited or a privilege is denied shall be imprisoned in the county jail for not less than 5 days or more than 6 months. In addition, that person may be fined an amount not less than $500 or more than $2,000.

(3) A person convicted or who has forfeited bond or bail under this section and whose license privileges are forfeited may not purchase, acquire, obtain, possess, or apply for a hunting, fishing, or trapping license or permit during the period when license privileges have been forfeited. A person convicted of unlawfully purchasing, acquiring, obtaining, possessing, or applying for a hunting, fishing, or trapping license during the period when license privileges have been forfeited shall be fined an amount not less than $500 or more than $2,000, imprisoned in the county jail for not more than 60 days, or both.

(4) A person convicted or who has forfeited bond or bail under this section and who has been ordered to pay restitution under the provisions of 87-1-111 may not apply for any special license under Title 87, chapter 2, part 7, or enter any drawing for a special license or permit for a period of 5 years following the date of conviction or restoration of license privileges, whichever is later. If the violation involved the unlawful taking of a moose, a bighorn sheep, or a mountain goat, the person may not apply for a special license or enter a drawing for a special license or permit for the same species of game animal that was unlawfully taken for an additional period of 5 years following the ending date of the first 5-year period. A person convicted of unlawfully applying for any special license under Title 87, chapter 2, part 7, or unlawfully entering a drawing for a special license or permit shall be fined an amount not less than $500 or more than $2,000, imprisoned in the county jail for not more than 60 days, or both.

(5) (a) A person who is convicted of a second offense of any of the following offenses within 10 years of the first conviction or who is convicted of two or more of the following offenses at different times within a 10-year period is subject to the penalties provided in subsection (5)(b):

HeinOnline -- 1999 vol. II 2072 1999

(i) hunting during a closed season;

(ii) spotlighting;

(iii) hunting without a license;

(iv) unlawful taking of more than double the legal bag limit;

(v) unlawful possession of more than double the legal bag limit; and

(vi) waste of game by abandonment in the field.

(b) (i) A person who is convicted of the offenses in subsection (5)(a) in the time periods specified in subsection (5)(a) shall be fined an amount not less than $2,000 or more than $5,000 or be imprisoned in the county jail for not more than 1 year, or both. In addition, the person, upon conviction or forfeiture of bond or bail, shall forfeit all current hunting, fishing, and trapping licenses issued by this state and the privilege to hunt, fish, or trap in this state for 60 months from the date of conviction or forfeiture, unless the court imposes a longer forfeiture period.

(ii) The department shall notify the offender of the loss of privileges.

(iii) The offender shall surrender all hunting, fishing, and trapping licenses to the department within 10 days after having received notice from the department that privileges have been revoked.

(6) (a) A person who is convicted of a third offense of any of the following offenses within 10 years of the first conviction is subject to the penalties provided in subsection (6)(b):

(i) hunting during a closed season;

(ii) spotlighting;

(iii) hunting without a license; and

(iv) unlawful taking of more than double the legal bag limit.

(b) (i) A person convicted of the offenses in subsections (6)(a) in the time period specified in subsection (6)(a) shall be fined an amount not less than $5,000 or more than $10,000 or be imprisoned in the county jail for not more than 1 year, or both. In addition, the person, upon conviction or forfeiture of bond or bail, shall forfeit all current hunting, fishing, and trapping licenses issued by this state and the privilege to hunt, fish, or trap in this state for life.

(ii) The department shall notify the offender of the loss of privileges.

(iii) The offender shall surrender all hunting, fishing, and trapping licenses to the department within 10 days after having received notice from the department that privileges have been revoked.

(7) Subject to sentencing restrictions, the court shall order a person who is convicted pursuant to this section to pay the costs of imprisonment under this section.

(8) A mandatory forfeiture of privileges imposed pursuant to this section does not apply to juveniles. However, the court may, at its discretion, order forfeiture of a juvenile's license and privilege to hunt, fish, or trap upon conviction or forfeiture of bond or bail for a violation of this title.

HeinOnline -- 1999 vol. II 2073 1999

~~(5)~~*(9)* Notwithstanding the provision of subsection (1), the penalties provided by this section are in addition to any penalties provided in Title 37, chapter 47, and Title 87, chapter 4, part 2.

~~(6)~~*(10)* If an administrative authority suspends a license, permit, or privilege to obtain a license or permit issued under this title, the administrative authority or the department shall notify the person of the suspension and the person shall surrender the license or permit to the department within 10 days."

Section 3. Section 87-1-114, MCA, is amended to read:

"**87-1-114. Disposition of proceeds.** ~~All~~ *(1) Except as provided in subsection (2), all* money collected by a court pursuant to 87-1-111 through 87-1-113 must be remitted to the state treasurer for deposit in the state ~~general fund~~ *special revenue fund account to the credit of the department for hunter education purposes or for enforcement.*

(2) Money collected pursuant to subsection (1) in excess of $60,000 annually must be remitted to the state treasurer for deposit in the state general fund."

Section 4. Section 87-2-102, MCA, is amended to read:

"**87-2-102. Resident defined.** In determining a resident for the purpose of issuing resident fishing, hunting, and trapping licenses, the following provisions apply:

(1) A member of the regular armed forces of the United States, a member's dependent, as defined in 15-30-113, who resides in the member's Montana household, or a member of the armed forces of a foreign government attached to the regular armed forces of the United States is considered a resident for the purposes of this chapter if:

(a) the member was a resident of Montana under the provisions of subsection (4) at the time the member entered the armed forces and continues to meet residency criteria of subsections (4)(b) through (4)(e); or

(b) the member is currently stationed in and assigned to active duty in Montana, has resided in Montana for at least 30 days, and presents official assignment orders and proof of ~~competency~~ *completion of a hunter safety course approved by the department*, as provided in 87-2-105, or a certificate verifying the successful completion of a hunter safety course in any state or province. The 30-day residence requirement is waived in time of war. Reassignment to another state, United States territory, or country terminates Montana residency for purposes of this section, except that a reassigned member continues to qualify as a resident if the member's spouse and dependents continue to physically reside in Montana and the member continues to meet the residency criteria of subsections (4)(b) through (4)(e). The designation of Montana by a member of the regular armed forces as a "home of record" or "home of residence" in that member's armed forces records does not determine the member's residency for purposes of this section.

(2) A person who has physically resided in Montana as the person's principal or primary home or place of abode for 180 consecutive days and who meets the criteria of subsection (4) immediately before making application for any license is eligible to receive hunting, fishing, and trapping licenses. As used in this section, a vacant lot or a premises used solely for business purposes is not considered a principal or primary home or place of abode.

HeinOnline -- 1999 vol. II 2074 1999

(3) A person who obtains residency under subsection (2) may continue to be a resident for purposes of this section by physically residing in Montana as the person's principal or primary home or place of abode for not less than 120 days a year and by meeting the criteria of subsection (4) prior to making application for any resident hunting, fishing, or trapping license.

(4) In addition to the requirements of subsection (2) or (3), a person shall meet the following criteria to be considered a resident for purposes of this section:

(a) the person's principal or primary home or place of abode is in Montana;

(b) the person files Montana state income tax returns as a resident if required to file;

(c) the person licenses and titles in Montana as required hy law any vehicles that tbe person owns and operates in Montana;

(d) the person does not possess or apply for any resident hunting, fishing, or trapping licenses from another state or country or exercise resident hunting, fishing, or trapping privileges in another state or country; and

(e) if the person registers to vote, the person registers only in Montana.

(5) A student who is enrolled full-time in a post-secondary educational institution out of state and who would qualify for Montana resident tuition or who otherwise meets the residence requirements of subsection (2) or (3) is considered a resident for purposes of this section.

(6) An enrollee of a job corps camp located within the state of Montana is, after a period of 30 days within Montana, considered a resident for the purpose of making application for a fishing license as long as the person remains an enrollee in a Montana camp.

(7) A person who does not reside in Montana but who meets all of the following requirements is a resident for purposes of obtaining hunting and fishing licenses:

(a) The person's principal employment is within this state and the income from this employment is the principal source of the applicant's family income.

(b) The person is required to pay and has paid Montana income tax in a timely manner and proper amount.

(c) The person has been employed within this state on a full-tiine basis for at least 12 consecutive months immediately preceding each application.

(d) The person's state of residency has laws substantially similar to this subsection (7).

(8) An unmarried minor is considered a resident for the purposes of this section if the minor's parents, legal guardian, or parent with joint custody, sole custody, or visitation rights is a resident for purposes of this section. The minor is considered a resident for purposes of this section regardless of whether the minor resides primarily in the state or otherwise qualifies as a resident. The resident parent or guardian of the minor may be required to show proof of the parental, guardianship, or custodial relationship to the minor.

(9) A person is not considered a resident for the purposes of this section if the person:

HeinOnline -- 1999 vol. II 2075 1999

(a) claims residence in any other state or country for any purpose; or

(b) is an absentee property owner paying property tax on property in Montana.

(10) A license agent is not considered a representative of the state for tho purpose of determining a license applicant's residence status."

Section 5. Section 87-2-105, MCA, is amended to read:

"87-2-105. Safety instruction required. (1) A hunting license may not be issued to a resident person *who is* under ~~the age of~~ 18 years *of age* unless the person authorized to issue the license receives ~~proof of competency as provided by this section~~ *a certificate of completion from the Montana youth hunter safety and education course established in subsection (5).*

(2) A hunting license may not be issued to a nonresident person *who is* under ~~the age of~~ 18 years *of age* unless the person authorized to issue the license receives ~~proof of competency, as provided in this section~~ *a certificate of completion from the Montana youth hunter safety and education course established in subsection (5),* or a certificate vorifying that the nonresident has successfully completed a *hunter safety* course ~~in the safe handling of firearms~~ in any state or province.

(3) A hunting license may not be issued to a member of the regular armed forces of the United States or to a member of the armed forces of a foreign government attached to the armed forces of the United States who is assigned to active duty in Montana and who is otherwise considered a resident under 87-2-102(1) or to a member's dependents, as defined in 15-30-113, who reside in the member's Montana household, unless the person authorized to issue the license receives proof of ~~competency, as provided in this section~~ *completion of a hunter safety course approved by the department,* or a certificate verifying that the member or dependent has successfully completed a hunter safety course in any state or province.

(4) A bow and arrow license may not be issued to a resident or nonresident unless the person autborized to issue the license receives an archery license issued for a prior hunting season or receives proof of completion of a bowhunter education course from the national bowhunter education foundation. Neither the department nor the license agent is required to provide records of past archery license purchases. As part of the department's bow and arrow licensing procedures, tbe department shall notify the public regarding bowhunter education requirements.

(5) The department shall provide for a *youth hunter safety and education* course ~~of~~ *that includes* instruction in the safe handling of firearms and for that purpose may cooperate with any reputable organization having as one of its objectives the promotion of *hunter* safety ~~in the handling of firearms~~ *and education*. The department may desiguate as an instructor any person it finds to be competent to give instructions *to youth* in *hunter safety and education, including* the bandling of firearms. A person appointed shall give the course of instruction and shall issue a certificate of ~~competency in the safe handling of firearms~~ *completion from Montana's youth hunter safety and education course* to a person successfully completing the course.

(6) The department sball provide for a course of instruction from the national bowbunter education foundation and for that purpose may cooperate with any reputable organization having as one of its objectives the promotion of safety in

HeinOnline -- 1999 vol. II 2076 1999

the handling of bow hunting tackle. The department may designate as an instructor any person it finds to be competent to give the national bowhunter education foundation instruction. A person appointed shall give the course of instruction and shall issue a certificate of completion from the national bowhunter education foundation to any person successfully completing the course.

(7) The department may develop an adult hunter education course.

~~(7)~~*(8)* The department may adopt rules regarding how a person authorized to issue a license determines proof of ~~competency~~ *completion or achievement*."

Section 6. Remedial hunter education program. (1) The department shall develop a remedial hunter education program for hunting law violators.

(2) The program must he funded through money collected by a court pursuant to 87-1-111 through 87-1-113.

(3) The department shall determine the qualifications for instructors, hire the instructors, and pay the instructors at a rate determined by the department.

(4) A person who is sentenced by the court to complete a remedial hunter education course shall pay the costs directly attributable to the person's participation in the remedial hunter education program.

(5) The course instructor shall notify the sentencing court of the participant's attendance record and of the participant's success or failure in completing the program.

(6) A participant whose hunting, fishing, or trapping license has been revoked shall successfully complete the program before license privileges may be reinstated.

Section 7. Remedial hunter education program — sentencing. (1) The court may sentence a person who is convicted of a hunting violation that results in a mandatory forfeiture of hunting privileges or who is convicted of a hunting violation to complete a remedial hunter education course.

(2) A person who is sentenced by the court to complete a remedial hunter education course shall successfully complete the course before any license privileges may be restored.

(3) The department may not issue a hunting, fishing, or trapping license to a person who is convicted of a hunting violation that results in a mandatory forfeiture of hunting privileges until the person has successfully completed the remedial hunter education course.

(4) If the person who is sentenced by the court to complete the remedial hunter education course is not a resident of the state of Montana, the sentencing court shall require the person to complete a similar remedial hunter education course in the person's state of residence. If a similar course does not exist in the person's state of residence, the person shall complete Montana's course before any Montana hunting, fishing, or trapping license may be issued.

(5) This section does not allow the issuance of any licenses to a person whose hunting or fishing privileges have been revoked for life.

Section 8. Violation of orders or rules — penalties. (1) A person who purposely, knowingly, or negligently violates an order or rules of the commission or department is guilty of a misdemeanor and shall be fined an amount not less

HeinOnline -- 1999 vol. II 2077 1999

than $50 or more than $500. In addition, the person, upon conviction or forfeiture of bond or hail, may be subject to forfeiture of the person's license and privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period of time set by the court.

(2) If the court imposes forfeiture of the person's license and privilege to hunt, fish, trap, or use state lands, the department shall notify the person of the loss of privilege as imposed by the court.

(3) The person shall surrender all hunting, fishing, and trapping licenses to the department within 10 days after having received notice from the department that privileges have been revoked.

Section 9. Codification instruction. [Sections 6 through 8] are intended to be codified as an integral part of Title 87, chapter 1, part 1, and the provisions of Title 87, chapter 1, part 1, apply to [sections 6 through 8].

Section 10. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 11. Effective dates. Except as provided in subsection (2), [this act] is effective July 1, 1999.

(2) [Sections 5 and 7] are effective July 1, 2001.

Approved April 27, 1999

CHAPTER NO. 500

[SB 417]

AN ACT REQUIRING BOARDS OF COUNTY COMMISSIONERS TO BUDGET AND EXPEND FUNDS FOR INMATE MEDICAL COSTS OF INMATES IN COUNTY DETENTION FACILITIES; AND ALLOWING BOARDS OF COUNTY COMMISSIONERS TO LEVY UP TO 2 MILLS TO FUND THE MEDICAL COSTS.

Be it enacted by the Legislature of the State of Montana:

Section 1. County detention center inmate medieal costs. (1) The board of county commissioners shall budget and expend funds for inmate medical care, including but not limited to costs of providing direct medical care, medication, medical services, hospitalization, insurance premiums, self-insured coverage, or contracted services for expenses that must be borne by the county for inmates confined in a county detention center as provided for in 7-32-2222.

(2) If approved at a tax election by a majority of the qualified electors voting on the question, the board may levy up to 2 mills on the taxable value of all property within its jurisdiction for the purpose of subsection (1).

Scction 2. Codification instruetion. [Section 1] is intended to be codified as an integral part of Title 7, chapter 6, part 25, and the provisions of Title 7, chapter 6, part 25, apply to [section 1].

Approved April 27, 1999

HeinOnline -- 1999 vol. II 2078 1999

CHAPTER NO. 501

[SB 426]

AN ACT DISTRIBUTING APPROXIMATELY ONE-HALF OF THE FOREIGN CAPITAL DEPOSITORY ASSESSMENT PAYMENTS EQUALLY TO INDIVIDUAL INCOME TAXPAYERS FOR INCOME TAX RELIEF; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Seetion 1. Income tax relief — foreign capital depository assessment distribution. (1) The assessment payments made on June 15 of each year by foreign capital depositories pursuant to 15-31-803 must be redistributed to taxpayers as income tax relief as provided in this section.

(2) Each year, the department shall determine the June 15 collections under 15-31-803, including any late payments of assessments that should have been paid on any preceding June 15, together with penalty and interest on late payments. The amount of the collections divided by the number of individual state income taxpayers who filed income tax returns pursuant to 15-30-103 for the previous tax year equals the amount of income tax relief to which each taxpayer is entitled.

(3) The department shall include on each Montana state individual income tax form the amount of the income tax relief provided under this section. The form must provide that after the taxpayer's determination of taxes, the amount of the income tax relief is subtracted from the amount of taxes owed by the taxpayer. If the amount of taxes due is exceeded by the amount of income tax relief, the department shall pay the excess amount to the taxpayer, but only if the amount to be paid exceeds $10.

(4) (a) A return filed using the filing status married filing jointly is considered to have been filed by one taxpayer.

(b) A fiduciary or a beneficiary of an estate or trust who was required to file an income tax return pursuant to 15-30-135 is not considered a taxpayer unless a return was filed on behalf of the decedent the previous year.

Seetion 2. Codification instruction. [Section 1] is intended to he codified as an integral part of Title 15, chapter 30, and the provisions of Title 15, chapter 30, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Section 4. Applicability. [This act] applies to foreign capital depository assessment payments made after [the effective date of this act].

Approved April 27, 1999

CHAPTER NO. 502

[SB 458]

AN ACT REVISING THE RESTITUTION AND PENALTIES FOR ILLEGALLY KILLING OR POSSESSING GAME ANIMALS; AND AMENDING SECTIONS 87-1-102, 87-1-111, 87-1-112, 87-1-113, 87-1-114, 87-1-803, 87-1-804, AND 87-3-118, MCA.

HeinOnline -- 1999 vol. II 2079 1999

Be it enacted by the Legislature of the State of Montana:

Section 1. Restitution for illegal killing or possession of certain wildlife. In addition to other penalties provided by law, a person convicted or forfeiting bond or bail on a charge of the purposeful or knowing illegal killing, taking, or possession of a trophy animal listed in this section shall reimburse the state for each trophy animal according to the following schedule:

(1) bighorn sheep with at least one horn equal to or greater than three-fourth curl as defined by commission regulation, $30,000;

(2) elk with at least six points on one antler as defined by commission regulation, $8,000;

(3) moose having antlers with a total spread of at least 30 inches, as defined by commission regulation, or any mountain goat, $6,000;

(4) antlered deer with at least four points on one antler as defined by commission regulation, $8,000;

(5) antelope with at least one horn greater than 14 inches in length as defined by commission regulation, $2,000.

Section 2. Section 87-1-102, MCA, is amended to read:

"87-1-102. Penalties. (1) A person who purposely, knowingly, or negligently violates a provision of this title, any other state law pertaining to fish and game, or the orders or rules of the commission or department is guilty of a misdemeanor, except if a felony is expressly provided by law, and shall be fined an amount not less than $50 or more than $1,000 or imprisoned in the county ~~jail~~ *detention center* for not more than 6 months, or both, unless a different punishment is expressly provided by law for the violation. In addition, the person, upon conviction or forfeiture of bond or bail, may be subject to forfeiture of that person's license and the privilege to hunt, fish, or trap in this state or to use state lands, as defined in 77-1-101, for recreational purposes for a period set by the court. If the court imposes forfeiture of the person's license and privilego to hunt, fish, or trap or to use state lands, the department shall notify the person of the loss of privileges as impesed by the court. The person shall surrender all licenses, as ordered by the court, to the department within 10 days.

(2) (a) ~~A~~ *Except as provided in subsection (2)(f), a* person convicted of unlawfully taking, killing, possessing, or transporting a bighorn sheep, moose, wild buffalo, caribou, mountain goat, black bear, or grizzly bear or any part of these animals shall be fined an amount not less than $500 or more than $2,000 or imprisoned in the county ~~jail~~ *detention center* for not more than 6 months, or both. In addition, that person, upon conviction or forfeiture of bond or bail, shall forfeit any current hunting, fishing, recreational use, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for 30 months from the date of conviction or forfeiture, unless the court imposes a longer forfeiture period. For each conviction or forfeiture, the department shall notify the person of the loss of privileges. The person shall surrender all hunting, fishing, and trapping licenses to the department within 10 days.

(b) ~~A~~ *Except as provided in subsection (2)(f), a* person convicted of unlawfully taking, killing, possessing, or transporting a deer, antelope, elk, or mountain lion or any part of these animals shall be fined an amount not less than $300 or more than $1,000 or imprisoned in the county ~~jail~~ *detention center* for not more than 6 months, or both. In addition, that person, upon conviction or forfeiture of bond

HeinOnline -- 1999 vol. II 2080 1999

or hail, shall forfeit any current hunting, fishing, or trapping license issued hy this state and the privilege to hunt, fish, or trap in this state for 24 months from the date of conviction or forfeiture, unless the court imposes a longer forfeiture period. For each conviction or forfeiture, the department shall notify the person of the loss of privileges. The person shall surrender all hunting, fishing, and trapping licenses to the departinent within 10 days.

(c) A person convicted of unlawfully attempting to trap or hunt a game animal shall be fined an amount not less than $200 or more than $600 or imprisoned in the county ~~jail~~ *detention center* for not more than 60 days, or both.

(d) A person convicted of purposely, knowingly, or negligently taking, killing, trapping, possessing, transporting, shipping, labeling, or packaging a fur-hearing animal or pelt of a fur-bearing aniinal in violation of any provision of this title shall be fined an amount not less than $100 or more than $1,000, imprisoned in the county ~~jail~~ *detention ccnter* for not more than 6 months, or both. In addition, that person, upon conviction or forfeiture of bond or bail, shall forfeit any current license and the privilege to hunt, fish, or trap in this state for 24 months from the date of conviction or forfeiture, unless the court imposes a longer forfeiture period, and any pelts possessed unlawfully must be confiscated. For each conviction or forfeiture, the department shall notify the person of the loss of privileges. The person shall surrender all hunting, fishing, and trapping licenses to the department within 10 days.

(e) A person convicted of hunting, fishing, or trapping while that porson's license is forfeited or a privilege is denied shall be imprisoned in the county ~~jail~~ *detention center* for not less than 5 days or more than 6 months. In addition, that person inay be fined an amount not less than $500 or more than $2,000.

(f) A person convicted of purposely or knowingly taking, killing, possessing, or transporting a trophy animal as described in [section 1] or any part of those animals shall be fined an amount not less than $500 or more than $3,000 or imprisoned in the county detention center for not more than 6 months, or both. In addition, that person, upon conviction or forfeiture of bond or bail, shall forfeit any current hunting, fishing, recreational use, or trapping license issucd by this state and the privilege to hunt, fish, or trap in this state for 5 years from the date of conviction or forfeiture, unless the court imposes a longer forfeiture period. For each conviction or forfeiture, the department shall notify the person of the loss of privileges. The person shall surrender all hunting, fishing, and trapping licenses to the department within 10 days.

(3) If a person is convicted of illegally taking an animal described in 87-1-111 or [section 1] through the use of spotlights, nightscopes, or infrared scopes, the person is prohibited from fishing or hunting in thc state for an additional 5 years following the cnding date of the original prohibition period. In addition, the person, upon conviction or forfeiture of bond or bail, shall succcssfully complete, at the person's own expense, a department-sponsorcd hunter education course.

~~(3)~~*(4)* A person convicted or who has forfeited bond or bail under this section and whose license privileges are forfeited inay not purchase, acquire, obtain, possess, or apply for a hunting, fishing, or trapping license or permit during the period when license privileges have been forfeited. A person convicted of unlawfully purchasing, acquiring, obtaining, possessing, or applying for a hunting, fishing, or trapping license during the period when license privileges have been forfeited shall be fined an amount not less than $500 or more than $2,000, imprisoned in the county jail for not more than 60 days, or both.

HeinOnline -- 1999 vol. II 2081 1999

~~(4)~~*(5)* A person convicted or who has forfeited bond or hail under this section and who has been ordered to pay restitution under the provisions of 87-1-111 *or [section 1]* may not apply for any special license under Title 87, chapter 2, part 7, or enter any drawing for a special license or permit for a period of 5 years following the date of conviction or restoration of license privileges, whichever is later. If the violation involved the unlawful taking of a moose, a bighorn sheep, or a mountain goat, the person may not apply for a special license or enter a drawing for a special license or permit for the same species of game animal that was unlawfully taken for an additional period of 5 years following the ending date of the first 5-year period. A person convicted of unlawfully applying for any special license under Title 87, chapter 2, part 7, or unlawfully entering a drawing for a special license or permit shall be fined an amount not less than $500 or more than $2,000, imprisoned in the county ~~jail~~ *detention center* for not more than 60 days, or both.

~~(5)~~*(6)* Notwithstanding the provision of subsection (1), the penalties provided by this section are in addition to any penalties provided in Title 37, chapter 47, and Title 87, chapter 4, part 2.

~~(6)~~*(7)* If an administrative authority suspends a license, permit, or privilege to obtain a license or permit issued under this title, the administrative authority or the department shall notify the person of the suspension and the person shall surrender the license or permit to the department within 10 days.

(8) For the purposes of this section, the terms "knowingly", "negligently", and "purposely" have the same meaning as provided in 45-2-101."

Section 3. Section 87-1-111, MCA, is amended to read:

"**87-1-111. (Temporary) Restitution for illegal killing or possession of certain wildlife.** (1) ~~In~~ *Except as provided in [section 1] and in* addition to other penalties provided by law, a person convicted or forfeiting bond or bail upon a charge of the illegal taking, killing, or possession of a wild bird, mammal, or fish listed in this section shall reimburse the state for each bird, mammal, or fish according to the following schedule:

(a) bighorn sheep, grizzly bear, and endangered species, $2,000;

(b) elk, ~~mountain goat,~~ caribou, bald eagle, black bear, and moose, $1,000;

(c) mountain lion, lynx, wolverine, buffalo, golden eagle, osprey, falcon, antlered deer as defined by commission regulation, bull trout longer than 18 inches, and adult buck antelope as defined by commission regulation, $500;

(d) deer not included in subsection (1)(c), antelope not included in subsection (1)(c), fisher, raptor not included in subsection (1)(c), swan, bobcat, white sturgeon, river-dwelling grayling, and paddlefish, $300;

(e) fur-bearing animals, as defined in 87-2-101 and not listed in subsection (1)(c) or (1)(d), $100;

(f) game bird (except swan), $25;

(g) game fish, $10.

(2) When a court enters an order declaring bond or bail to be forfeited, the court may also order that some or all of the forfeited bond or bail be paid as restitution to the state according to the schedule in subsection (1). A hearing to determine the amount of restitution, as required under 46-9-512, is not required for an order of restitution under this section. (Terminates June 30, 2003—sec. 2, Ch. 196, L. 1993.)

HeinOnline -- 1999 vol. II 2082 1999

87-1-111. (Effective July 1, 2003) Restitution for illegal killing or possession of certain wildlife. (1) ~~In~~ *Except as provided in [section 1] and in* addition to other penalties provided by law, a person convicted or forfeiting bond or bail upon a charge of the illegal killing, taking, or possession of a wild bird, mammal, or fish listed in this section shall reimburse the state for each such bird, mammal, or fish according to the following schedule:

(a) bighorn sheep, grizzly bear, and endangered species, $2,000;

(b) elk, ~~mountain goat,~~ caribou, bald eagle, black bear, and moose, $1,000;

(c) mountain lion, lynx, wolverine, buffalo, gelden eagle, osprey, falcon, antlered deer as defined by commission regulation, bull trout longer than 18 inches, and adult buck antelope as defined by commission regulation, $500;

(d) deer not included in subsection (1)(c), antelope not included in subsection (1)(c), fisber, raptor not included in subsection (1)(c), swan, bobcat, river-dwelling grayling, and white sturgeon, $300;

(e) paddlefish and fur-bearing animals, as defined in 87-2-101 and not listed in subsection (1)(c) or (1)(d), $100;

(f) game bird (except swan), $25;

(g) game fish, $10.

(2) When a court enters an order declaring bond or bail to be forfeited, the court may also order that some or all of the forfeited bond or bail be paid as restitution to the state according to the schedule in subsection (1). A hearing to determine the amount of restitution, as required under 46-9-512, is not required for an order of restitution under this section."

Section 4. Section 87-1-112, MCA, is amended to read:

"87-1-112. Finding required. Before restitution may be ordered pursuant to 87-1-111 *or [section 1]*, the finder of fact at trial or the court upon entry of a guilty plea ~~must~~ *shall* find that ~~such~~ *the* illegal killing or possession was done knowingly or purposely as defined in 45-2-101. This finding is not required for state reimbursement under 87-1-111 when bond or bail is forfeited."

Section 5. Section 87-1-113, MCA, is amended to read:

"87-1-113. Payment — penalty for nonpayment. (1) In each case of conviction, the court before which the conviction is obtained shall order payment of the sum stated in 87-1-111 *or [section 1]*.

(2) Failure to make payment in the time and manner prescribed by the court constitutes civil contempt of court and is punishable as provided in Title 3, chapter 1, part 5."

Section 6. Section 87-1-114, MCA, is amended to read:

"87-1-114. Disposition of proceeds. All money collected by a court pursuant to 87-1-111 through 87-1-113 *and [section 1]* must be remitted to the state treasurer for deposit in the state general fund."

Section 7. Section 87-1-803, MCA, is amended to read:

"87-1-803. Reciprocal recognition of license suspensions — suspension of privileges for conviction in participating state. (1) When the department receives notice of the suspension of a person's hunting, trapping, or fishing privileges by a participating state, the department shall determine whether the violation leading to the suspension could have led to the forfeiture

HeinOnline -- 1999 vol. II 2083 1999

of privileges under Montana law. If the department determines that the person's privileges could have been forfeited, the department shall suspend the person's privileges to hunt, trap, or fish in Montana for the same period as imposed by the participating state or for the minimum period that would have been impesed under Montana law, whichever period is longer.

(2) When the department receives notice of a conviction of a Montana resident from the licensing authority of the issuing state, the department shall treat the conviction as if it had occurred in Montana and shall determine whether the conviction could have led to the forfeiture of the resident's hunting, trapping, or fishing privileges under Montana law. If the department determines that the resident's privileges could have been forfeited, the department shall suspend the resident's privileges to hunt, trap, or fish in Montana for the minimum period that would have been imposed under Montana law.

(3) Notice of the suspension must be sent to the person, who shall surrender any current Montana hunting, trapping, and fishing licenses to the department within 10 days.

(4) A person whose privileges have been suspended and who hunts, traps, or fishes in Montana, who applies for or purchases any licenses or permits to hunt, trap, or fish in Montana, or who refuses to surrender any current hunting, trapping, and fishing licenses as required, is guilty of a misdemeanor and is subject to the penalties prescribed in 87-1-102~~(3)~~*(4)*."

Seetion 8. Section 87-1-804, MCA, is amended to read:

"87-1-804. **Suspension of privileges for failure to comply with citation issued in partlcipating state.** (1) The department shall suspend the hunting, trapping, or fishing privileges of any resident of Montana upon notification from the licensing authority of an issuing state that the resident has failed to comply with the terms of a citation issued for a wildlife violation. The suspension remains in effect until the department receives satisfactory evidence of compliance from the issuing state.

(2) Notice of the suspension must be sent to the resident, who shall surrender all current Montana hunting, trapping, and fishing licenses to the department within 10 days.

(3) A person who hunts, traps, or fishes, who applies for or purchases licenses or permits, or who refuses to surrender any current hunting, trapping, or fishing license in violation of this section is guilty of a misdemeanor and is subject to the penalties prescribed in 87-1-102~~(3)~~*(4)*."

Section 9. Section 87-3-118, MCA, is amended to read:

"87-3-118. **Felony sale or possession of wildlife — penalty.** (1) A person commits the offense of sale of unlawfully taken wildlife if the person purposely or knowingly:

(a) sells, barters, purchases, or exchanges unlawfully taken wildlife for anything of value; or

(b) offers to sell, barter, purchase, or exchange unlawfully taken wildlife for anything of value.

(2) A person commits the offense of possession of unlawfully taken wildlife having a value of more than $1,000 if the person purposely or knowingly has actual or constructive possession of or transports or causes to be transperted

HeinOnline -- 1999 vol. II 2084 1999

unlawfully taken wildlife having a value of more than $1,000. The value of the unlawfully taken wildlife must be determined from the schedule of restitution values set out in 87-1-111 *and [section 1].*

(3) (a) A person commits the offense of unlawful sale or possession of wildlife if the person purposely or knowingly:

(i) sells, barters, purchases, or exchanges wildlife for anything of value;

(ii) attempts te sell, barter, purchase, or exchange wildlife for anything of value;

(iii) transports, causes to he transported, or is in the process of transporting out of state wildlife for purposes of sale, barter, purchase, or exchange for anything of value.

(b) For the purposes of this subsection (3), "wildlife" includes the edible meat, internal organs, tissue, fluids, or sex organs of wildlife having a value of more than $1,000 or edible meat of wildlife in excess of 150 pounds, except meat allowed to be sold under the provisions of 71-3-1505.

(c) For purposes of determining the total pounds of edible meat of wildlife, any nonwildlife meat or ingredients mixed with the meat of wildlife must be included in the total.

(4) For purposes of this section, the value of all wildlife actually or constructively possessed, transported, sold, bartered, bought, or exchanged for anything of value within a 45-day period must be added together to determine whether the value of the wildlife is greater than $1,000.

(5) A person who violates this section is guilty of a felony and upon conviction shall be fined not more than $50,000 or be imprisoned in the state prison for a term not to exceed 5 years, or both. In addition, a person convicted under this section or who pleads guilty to a violation of this section shall lose all hunting, fishing, and trapping permits and license privileges for a minimum of 3 years or up to a maximum of a lifetime revocation from the date of conviction."

Section 10. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 87, chapter 1, part 1, and the provisions of Title 87, chapter 1, part 1, apply to [section 1].

Approved April 27, 1999

CHAPTER NO. 503

[SB 462]

AN ACT GENERALLY AUTHORIZING ENVIRONMENTAL CONTROL EASEMENTS; ALLOWING THE ACQUISITION OF ENVIRONMENTAL CONTROL SITES; LIMITING THE CONVERSION OR DIVERSION OF ENVIRONMENTAL CONTROL SITES FROM THE PURPOSES SPECIFIED IN THE ENVIRONMENTAL CONTROL EASEMENT; RESTRICTING THE CONVEYANCE OR LEASE OF ENVIRONMENTAL CONTROL SITES; AUTHORIZING PUBLIC BODY POWERS IN CONNECTION WITH ENVIRONMENTAL CONTROL EASEMENTS; PROVIDING FOR THE CREATION AND APPROVAL OF ENVIRONMENTAL CONTROL EASEMENTS; SPECIFYING THE DURATION OF ENVIRONMENTAL

HeinOnline -- 1999 vol. II 2085 1999

CONTROL EASEMENTS; PROVIDING FOR PERMISSIBLE EASEMENTS; DESIGNATING GRANTEES OF ENVIRONMENTAL CONTROL EASEMENTS; PROVIDING FOR REPORTING REQUIREMENTS BY QUALIFIED PRIVATE ORGANIZATIONS; AUTHORIZING THE ASSIGNABILITY OF EASEMENTS; PROVIDING FOR COORDINATION WITH LOCAL PLANNING AUTHORITIES; REQUIRING THE RECORDING AND DESCRIPTION OF ENVIRONMENTAL CONTROL EASEMENTS; EXEMPTING CERTAIN INTEREST HELD BY A GRANTEE FROM PROPERTY TAXES; PROVIDING FOR EASEMENT ENFORCEMENT AND LIABILITY; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 20] may be cited as the "Environmental Control Easement Act".

Section 2. Findings and purpose. (1) The legislature finds tbat:

(a) numerous sites througbout the state contain or may contain hazardous wastes or substances that may threaten the public health, safety, or welfare or the environment if certain uses are permitted on these sites or if certain activities are not performed on these sites;

(b) at some sites, protection of the public health, safety, or welfare or the environment may be enhanced by the application and enforcement of certain restrictions on the future use of the site or requirements for performance of certain activities;

(c) the creation of an enforceable easement mechanism for imposing restrictions on the use of a site and requiring performance of operations and maintenance activities may help protect the public health, safety, and welfare and the environment by:

(i) preventing or minimizing the exposure of the public to hazardous wastes or substances;

(ii) preventing the disturbance of important features of remediation work and remedial technologies employed at the site;

(iii) ensuring that the presence of hazardous wastes or substances and the features of remediation work and remedial technologies are properly considered in the future use or development of a site; or

(iv) requiring the performance of certain activities or the prohibition or limitation of certain activities, with respect to the site; and

(d) the expenditure of public funds for the acquisition or designation of interests and rights in real property to protect the public health, safety, and welfare and the environment is in the public's interest.

(2) It is the purpose of [sections 1 through 20] to authorize and enable federal public entities, other public bodies, and certain qualifying private organizations to provide for:

(a) the monitoring and protection of environmental control sites to ensure tbat those sites are not used for purposes that may threaten the public health, safety, or welfare or the environment;

(b) a process of reviewing the need for specialized construction, development, use, and safety measures if the owner or user of an environmental control site

proposes a new use for which any contamination might present a risk to the public health, safety, or welfare or the environment; and

(c) a mechanism for prohibiting or limiting certain activities or requiring certain activities on an environmental control site to enhance protection of the public health, safety, or welfare or the environment.

Section 3. Definitions. As used in [sections 1 through 20], the following definitions apply:

(1) "Department" means the department of environmental quality provided for in 2-15-3501.

(2) "Environmental control easement" or "easement" means an easement created under [sections 1 through 20] that burdens an environmental control site, that runs with the land, and that is binding on the owner and subsequent owners, lessees, and other users of the land. The easement may require the relinquishment of some or all rights to use the land or its surface or subsurface or the water in, upon, or under the land to the extent provided in the instrument granting the easement.

(3) "Environmental control site" or "site" means any site, including the surface and subsurface of the land and the surface and subsurface resources in, upon, or under the land, including, without limitation, minerals and water that may contain hazardous wastes or substances or that may require remediation, reclamation, or restoration pursuant to federal, state, or local law or regulation.

(4) "Federal public entity" means the United States of America, the United States environmental protection agency, or any other federal government agency or authority and its successors or assigns.

(5) "Governmental order" means a consent decree, judgment, decision, order, agreement, or other requirement authorized or imposed by or under any federal or state law affecting an environmental control site.

(6) "Hazardous wastes or substances" means those hazardous or toxic substances, wastes, materials, pollutants, or contaminants that are subject to regulation by federal, state, or local environmental protection laws or that are defined pursuant to 75-10-403, 75-10-602, and 75-10-702.

(7) "Public body" means the state, counties, cities, towns, and other municipalities.

(8) "Qualified private organization" means a private organization:

(a) competent to own interests in real property;

(b) that qualifies and holds a general tax exemption under the federal Internal Revenue Code, 26 U.S.C. 501(c); and

(c) whose organizational purposes are designed to further the purposes of [sections 1 through 20].

Section 4. Acquisition of interests in environmental control sites. A public body may acquire by grant, title to, interests in, or rights in environmental control sites, including environmental control easements.

Section 5. Conversion or diversion of environmental control sites. An environmental control site in which an environmental control easement has been granted pursuant to [sections 1 through 20] may not be converted or diverted from purposes specified in the easement instrument or released from

HeinOnline -- 1999 vol. II 2087 1999

any restriction, limitation, or requirement specified in the easement instrument unless the conversion, diversion, or release is:

(1) protective of the public health, safety, and welfare and the environment as determined by the department or the U.S. environmental protection agency that initially approved the easement;

(2) permitted by the criteria for modification or termination imposed at the time of the creation of the easement; and

(3) approved in writing by the easement holder and any other person named in the easement instrument from whom approval is required.

Section 6. Conveyance or lease of environmental control sites. (1) A grantee of an environmental control easement acquired under [sections 1 through 20] may not convey or assign any of the easement rights that the grantee has acquired except to a federal public entity, a public body, or a qualified private organization authorized to hold environmental control easements under [section 11].

(2) A grantee of a conveyance pursuant to subsection (1) shall assume the responsibility for enforcing the environmental control easement as specified in the easement instrument and in [section 18].

Section 7. Public body powers. In connection with environmental control sites acquired or designated as environmental control easements for the purposes of [sections 1 through 20], a public body may provide, arrange, or contract for the monitoring of the environmental control sites as necessary to ensure that the environmental control sites are being used only for the purposes permitted by the terms of the environmental control easement and are not being used in a manner that is prohibited or restricted by the terms of the environmental control easement.

Section 8. Creation and approval of environmental control easements. (1) An environmental control easement may be created under [sections 1 through 20] only if the department or the United States environmental protection agency has approved the creation of an environmental control easement at an environmental control site to protect public health, safety, or welfare or the environment.

(2) An owner or an authorized representative of the owner of an environmental control site may apply for approval of a proposed environmental control easement to the department or the United States environmental protection agency.

(3) An owner or an authorized representative of the owner of an environmental control site that applies to the department for approval shall complete an environmental control easement application developed by the department.

(4) Upon receiving a completed application and following public notice, the department shall allow for a 30-day public comment poriod. Notice of the public comment period shall be published in a newspaper of general circulation in the area of the proposed environmental control easement.

(5) Following the 30-day public comment period, the department shall promptly review the application and either approve the application or provide the applicant with a written statement of the reasons for the department's disapproval.

HeinOnline -- 1999 vol. II 2088 1999

(6) If the application is disapproved for reasons that may be addressed by modification of the easement instrument or by changes to the proposed transaction, the applicant, in consultation with the department, may modify the proposed environmental control easement or the proposed transaction in a manner necessary to obtain department approval and resubmit the application for the department's approval.

(7) The department's approval must be evidenced by execution of the instrument creating the environmental control easement, the execution of a written statement evidencing the approval in recordable form, or any other method that reasonably substantiates the required approval.

Section 9. Duration of environmental control easements. An environmental control easement may be granted either in perpetuity or for a term of years. An environmental control easement may not be approved for a term of years unless it includes provisions that ensure that public health, safety, and welfare and the environment are protected beyond the expiration of the easement.

Section 10. Permissible easements. (1) An environmental control easement under [sections 1 through 20] may prohibit or limit the following activities or uses:

(a) constructing or placing of buildings, camping trailers, housetrailers, mobile homes, roads, or other structures on or above the ground;

(b) dumping or placing of soil, debris, or other wastes or substances as landfill or dumping or placing of trash, waste, or unsightly or offensive materials;

(c) removing or destroying trees, shrubs, or other vegetation or planting or allowing growth of specific types of vegetation, such as crops for human or animal consumption or undesirable vegetation;

(d) excavating, dredging, or removing gravel, soil, rock, or other materials or substances;

(e) using the surface of the land in a particular manner, such as for agricultural, residential, commercial, or industrial uses;

(f) subdividing the land, as described in 76-3-103, 76-3-104, and 76-3-202;

(g) disturbing soil caps, soil surfaces, berms, drainage structures, or other structures or other activities that may cause erosion or migration of hazardous wastes or substances at or from the environmental control site;

(h) drilling or using water wells for potable or nonpotable purpeses;

(i) other activities or uses detrimental te or interfering with the remediation or cleanup of the environmental control site or detrimental to the preservation of remedial structures, measures, or technologies employed at the environmental control site; and

(j) other activities or uses that may result in a risk or threat to the public health, safety, or welfare or the environment.

(2) An environmental control easement under [sections 1 through 20] may include or require the following:

(a) maintenance of environmental control site remedial structures or other remedial measures, such as soil surfaces, soil caps, berms, fences, or drainage improvements;

(b) rigbts in the holder of the easement or others for continuing access to the site as necessary to implement, operate, maintain, and monitor remedial work and technologies, including operation and maintenance, and to ensure implementation and enforcement of the requirements, restrictions, and limitations specified in the easement instrument;

(c) prompt notification to the holder of the easement or others of transfers of all or any portion of an environmental control site or interest in tbe site or of any proposed cbanges in land use at the site;

(d) compliance with all requirements of any applicable governmental order;

(e) arrangements for indemnification or for reimbursement of any costs and expenses of the easement holder or others or other methods of allocating costs and expenses for remedial actions, operations and maintenance, or other activities on the environmental control site or with respect to the site;

(f) other obligations that any federal public entity or other public body having jurisdiction over the property determines are necessary to implement, ensure noninterference with, or ensure the protection of remedial work performed under a governmental order; or

(g) other obligations tbat are necessary or advisable to reduce or eliminate risks or threats to the public health, safety, or welfare or the environment at environmental control sites.

Seetion 11. Environmental control easement conveyanees. (1) Tbe designated grantee of an environmental control easement granted under [sections 1 through 20] is one or more of tbe following entities:

(a) a federal public entity;

(b) the state of Montana, acting by and tbrough tbe department or any other state agency;

(c) any otber public body having jurisdiction over the environmental control site; or

(d) a qualified private organization.

(2) A grantee's acceptance of the easement interest and related obligations must be evidenced by the grantee's execution of tbe instrument creating the environmental control easement.

(3) Prior to or contemporaneously with the conveyance of an environmental control easement to a designated grantee, the environmental control site owner shall:

(a) obtain documents demonstrating tbat every person or entity holding an interest in the environmental control site or any part of the site, including without limitation each mortgagee, lienholder, lessee, and encumbrancer, irrevocably subordinates the entity's interest to the environmental control easement;

(b) record the documents required under subsection (3)(a) in tbe appropriate county; and

(c) submit those documents required under subsection (3)(a) to the designated grantee.

(4) An environmental control easement may not be separated from the land and survives foreclosure of a mortgage, lien, or other encumbrance, as well as tax sales and the issuance of a tax deed.

Seetion 12. Qualified private organizations. If the grantee or holder of an environmental control easement is a qualified private organization, then the organization has the following additional obligations:

(1) The organization shall provide to the state or federal agency that approved the environmental control easement pursuant to [section 8] an annual report on or before April 30 of each year providing a description of actions taken to monitor the environmental control site, the status of compliance with the environmental control easement, and any other information that the state or federal agency may require relating to compliance with the provisions of the environmental control easement.

(2) Within 15 days following the discovery of any material violation of the environmental control easement, the organization shall provide to the state or federal agency that approved the environmental control easement pursuant to [section 8] a written report setting forth the nature of the violation, the remedies that the grantee intends to undertake to correct the violation, and any other information that the state or federal agency may request.

(3) The organization shall notify, in writing, the state or federal agency that approved the environmental control easement pursuant to [section 8] of the organization's dissolution, the cessation of operations, or the occurrence of any other event that renders the organization incapahle of performing its obligations under tbe terms of the environmental control easement.

Section 13. Assignability of easements. For the purpose of [sections 1 through 20], an environmental control easement is assignable unless the instrument of conveyance or ownership expressly provides otherwise. An assignee must be qualified under the terms of [sections 1 through 20] to hold an environmental control easement. If an assignment is made in violation of the provisions of this section or in violation of the express terms of the instrument creating the easement, the assignment is void and the environmental control easement interests and obligations remain with the assignor.

Scction 14. Coordination with local planning authiority. (1) In order to minimize conflict with local comprehensive planning, the entity acquiring the environmental control easement shall provide a copy of the easement to the appropriate local planning authority for the county within which the land lies prior to or concurrently with recording.

(2) The requirement in subsection (1) to provide a copy of the environmental control easement to the local planning authority is only for the purposes of informing the authority of the easement.

(3) The failure to provide the environmental control easement to the local planning authority, as required in subsection (1), does not invalidate the easement.

Section 15. Recording and description of easement. (1) An environmental control easement must be recorded in the county where the property is located so as to effect the title in the manner of other conveyances of interest in the property and must describe the property subject to that easement

HeinOnline -- 1999 vol. II 2091 1999

by an adequate legal description or by reference to a recorded plat showing the property's boundaries.

(2) The county clerk and recorder shall, upen recording, place a copy of the environmental control easement in a separate file within the office of the county clerk and recorder and shall mail a copy of the easement to the department.

Section 16. Taxation of property subject to easemcnt. (1) The value of the interest held by a federal public entity, a public body, or a qualifying private organization is exempt from property taxation.

(2) Expiration of an environmental control easement granted for a term of years may not result in a reassessment of the land for property tax purposes if the easement is renewed and the grantmg instrument reflecting the renewed easement is executed and properly filed not later than 15 days after the date of expiration.

Section 17. Easements to run with iand. Notwithstanding 70-17-202 and 70-17-203(1) and (2), for the purposes of [sections 1 through 20], an environmental control easement runs with the land, whether or not this fact is stipulated in the instrument creating the easement, and the easeiment binds the owner of the land and all successors and assigns.

Section 18. Easement enforcement. (1) Environmental control easements may be enforced by injunction, specific performance, other proceedings in equity or at law, or any other ineans specified in the instrument creating the easement. In addition to any right specified in the easement instrument, representatives of the holder of the environmental control easement are entitled to enter the land in a reasonable manner and at reasonable times to ensure compliance with the terms and conditions of the easement and to impleinent, operate, maintain, and monitor all remedial work and technologies.

(2) An environmental control easement is not unenforceable because of a lack of privity of estate or contract or a lack of benefit to particular land, because the easement is not an appurtenant easement, or because the easement is an easement in gross.

(3) An environmental control easement is enforceable against the owner of the fee and any persons or entities holding or claiming an interest in the property regardless of whether the interest is equal to or less than the whole fee estate.

(4) A delay or failure to enforce in any specific instance any violation of an environmental control easeinent does not preclude or waive the right te enforce against that violation or any other breach.

(5) The easeinent holder may waive, in a writing executed by the easement holder, any single violation of the terms of the environmental control easement without waiving any other prior or subsequent violation whether of the same or different nature. The easement holder may remedy a violation without waiving the violation remedied and is entitled to recover from the environmental control site owner all costs, including but not limited te direct and indirect costs of remedying the violation and costs of any other remedies provided by law or in the easement instrument.

(6) A claim or cause of action arising out of or relating to a violation of a term or provision of an environmental control easeinent must be filed in a court of appropriate jurisdiction within 10 years from the date upen which the party alleging violation of the easement had actual knowledge of the violation.

HeinOnline -- 1999 vol. II 2092 1999

Section 19. Who may enforce easement. (1) The owner of any real property designated as a benefited property in the instrument creating the environmental control easement or the occupant of the benefited real property may maintain an action for enforcement of the easement.

(2) A public body or a qualified private organization holding an environmental control easement shall enforce the provisions of the easement.

(3) A person or entity specifically named as a beneficiary in the instrument creating the environmental control easement may enforce the provisions of the easement to the extent provided in the instrument.

Section 20. Liability. (1) The creation and approval of an environmental control easement do not waive or release any statutory liability or other obligation of a person for hazardous wastes or substances at an environmental control site. A federal public entity or public body may enforce any applicable law or obligation without regard to any allocation of liability in an easement instrument and without regard to exhaustion of remedies against any party to an easement instrument.

(2) An owner of a site to which the environmental control easement applies and any lessee or licensee of the land are liable for any violation of the provisions of the easement and are liable for abating the violation and for all damages, costs, and attorney fees arising from or attributable to the violation.

(3) Notwithstanding any other provision of law, the holder or other named beneficiary of an environmental control easement or other person enforcing the easement is not liable for hazardous wastes or substances at the environmental control site or for the release of a hazardous or deleterious substance from a facility at the site based upon its ownership of the easement or based upon its maintenance, monitoring, enforcement, or other actions with respect to the easement.

Section 21. Codification instruction. [Sections 1 through 20] are intended to be codified as an integral part of Title 76, and the provisions of Title 76 apply to [sections 1 through 20].

Section 22. Effective date. [This act] is effective July 1, 1999.

Approved April 27, 1999

CHAPTER NO. 504

[HB 92]

AN ACT APPROPRIATING MONEY FROM THE COAL SEVERANCE TAX PERMANENT FUND TO THE DEPARTMENT OF JUSTICE FOR TECHNICAL, LEGAL, AND ADMINISTRATIVE ACTIVITIES FOR THE STATE OF MONTANA NATURAL RESOURCE DAMAGE ASSESSMENT, LITIGATION, AND SETTLEMENT IMPLEMENTATION IN THE CLARK FORK RIVER BASIN; REQUIRING REPAYMENT OF THE EXPENDED AMOUNTS FROM ANY RECOVERY IN THE LITIGATION; CLARIFYING THAT RECOVERED FUNDS ARE NOT DEPOSITED IN THE HAZARDOUS WASTE/CERCLA SPECIAL REVENUE ACCOUNT OR THE ENVIRONMENTAL QUALITY PROTECTION FUND; AMENDING SECTIONS 5 AND 6, CHAPTER 154, LAWS OF 1997; REQUIRING A

HeinOnline -- 1999 vol. II 2093 1999

THREE-FOURTHS VOTE; AND PROVIDING EFFECTIVE DATES AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Natural resource damage program appropriation — rate of interest. (1) There is appropriated to the department of justice from the coal severance tax permanent fund a loan in the amount of $1,650,000 for the biennium ending June 30, 2001, for the purpose of conducting the natural resource damage assessment and litigation, implementing the settlement, and pursuing the state of Montana's remaining natural resource damage claims, and any appeals, against the atlantic richfield company through the natural resource damage litigation program. Any recovery in the litigation for assessment, litigation, and enforcement costs, up to the amount expended pursuant to this section, must be deposited in the coal severance tax permanent fund.

(2) The interest to be paid on the loan authorized under subsection (1) must be the highest rate allowable for interest recoverable under 42 U.S.C. 9607(a) based on rates specified for interest on investments of the hazardous substance superfund established under 26 U.S.C. 9507. The interest is payable as of the date of the transfer of the loan proceeds from the coal severance tax permanent fund.

Section 2. Section 5, Chapter 154, Laws of 1997, is amended to read:

"**Section 5. Fund balance transfer — reconciliation.** There is transferred from the social services block grant account $680,000 and from the public welfare account $1,820,000 to the state special revenue fund to the credit of the department of justice. The department of public health and human services may use any of its general fund appropriation to pay federal claims attributable to the funds transferred from these accounts that are related to activity prior to fiscal year 1996. *The balance of the transferred funds remaining in the state special revenue fund on June 30, 1999, must be transferred to the general fund.*"

Section 3. Section 6, Chapter 154, Laws of 1997, is amended to read:

"**Section 6. Use of recovered funds.** *(1)* Any funds recovered by the state on the natural resource damage claims against the atlantic richfield company and any interest that accumulates on the funds ~~after their receipt by the state~~ must be used, to the extent consistent with state and federal law, *for the following purposes:*

(a) to ~~recoup~~ *reimburse* the expenses of the natural resource damage assessment and the costs of litigating the state's claim; ~~and~~

(b) to restore, replace, rehabilitate, or acquire the equivalent of the damaged natural resources that are the subject of the litigation *and to reimburse the related administrative expenses; and*

(c) to perform remedial actions required by the terms of any settlement or judgment in the case.

(2) The provisions of 75-10-621 and 75-10-704 do not apply to funds recovered on the claims described in subsection (1)."

Section 4. Loan agreement. In order to make the loan authorized in [section 1], the board of investments shall enter into a contract with the department of justice pledging the amount recovered in the litigation to the

repayment of the loan to the full extent allowable under the law. The contract must provide that the loan repayment must be deposited in the coal severance tax permanent fund. To the extent possible, the board shall make the loan from the portion of the coal severance tax permanent fund invested in the short-term pool. The loan authorized in [section 1] may not be made until the contract required by this section has become effective.

Section 5. Three-fourths vote. Because [section 1] appropriates money from the coal severance tax permanent fund, Article IX, section 5, of the Montana constitution requires a vote of three-fourths of the members of each house of the legislature for passage.

Section 6. Effective dates. (1) [Sections 2 through 5 and 7 and this section] are effective on passage and approval.

(2) [Section 1] is effective July 1, 1999.

Section 7. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to all occurrences after July 1, 1997.

Approved April 28, 1999

CHAPTER NO. 505

[HB 115]

AN ACT INCREASING THE MAXIMUM COMMITMENT TO THE DEPARTMENT OF CORRECTIONS; REQUIRING THAT ALL BUT THE FIRST 5 YEARS OF A COMMITMENT TO THE DEPARTMENT BE SUSPENDED; ALLOWING THE COURT TO SENTENCE AN OFFENDER DIRECTLY TO THE BOOT CAMP INCARCERATION PROGRAM; ALLOWING A PROBATION AND PAROLE OFFICER TO PROVIDE ORAL AUTHORIZATION TO ANOTHER OFFICER WITH THE POWER TO ARREST A PROBATIONER OR A PAROLEE IF THE PROBATION AND PAROLE OFFICER DELIVERS A WRITTEN STATEMENT TO THE PLACE OF DETENTION WITHIN 12 HOURS OF THE ARREST; ALLOWING A PROBATION AND PAROLE OFFICER TO IMPOSE NO MORE THAN A 30-DAY SANCTION FOR DEFENDANTS WHO HAVE VIOLATED CONDITIONS OF PROBATION; PROVIDING FOR A PROBATION VIOLATOR PRISON DIVERSION PROGRAM; SPECIFYING THAT AN ONSITE HEARING IS NOT REQUIRED IF A DEFENDANT HAS BEEN CHARGED WITH A VIOLATION OF THE LAW; ESTARLISHING A $360 A YEAR MAXIMUM SUPERVISORY FEE PAYABLE BY A PROBATIONER OR PAROLEE; ALLOWING THE IMPOSITION OF A SUSPENDED SENTENCE UPON SUCCESSFUL COMPLETION OF THE BOOT CAMP INCARCERATION PROGRAM; CHANGING THE ELIGIBILITY REQUIREMENTS FOR PARTICIPATION IN THE BOOT CAMP INCARCERATION PROGRAM; AMENDING SECTIONS 46-18-201, 46-23-1011, 46-23-1012, 46-23-1023, 46-23-1024, 46-23-1031, 53-30-401, AND 53-30-403, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-18-201, MCA, is amended to read:

HeinOnline -- 1999 vol. II 2095 1999

"**46-18-201. Sentences that may be imposed.** (1) Whenever a person has heen found guilty of an offense upon a verdict or a plea of guilty, the court may:

(a) defer imposition of sentence, except as provided in 61-8-734 for sentences for driving under the influence of alcohol or drugs or as provided in 61-6-304, for a period, except as otherwise provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Reasonable restrictions or conditions may include:

(i) ~~jail~~ *detention center* hase release;

(ii) ~~jail time~~ *incarceration in a detention center* not exceeding 180 days;

(iii) conditions for probation;

(iv) payment of the costs of confinement;

(v) payment of a fine as provided in 46-18-231;

(vi) payment of costs as provided in 46-18-232 and 46-18-233;

(vii) payment of costs of court-appointed counsel as provided in 46-8-113;

(viii) with the approval of the facility or program, an order that the offender be placed in a community corrections facility or program as provided in 53-30-321;

(ix) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, an order that the offender be placed in a prerelease center or prerelease program for a period not to exceed 1 year;

(x) community service;

(xi) home arrest as provided in Title 46, chapter 18, part 10;

(xii) any other reasonable conditions considered necessary for rehabilitation or for the protection of society;

(xiii) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116; ~~or~~

(xiv) *with the approval of the department of corrections and with a signed statement from an offender that the offender's participation in the boot camp incarceration program is voluntary, an order that the offender complete the boot camp incarceration program established pursuant to 53-30-403; or*

(xv) any combination of the restrictions or conditions in subsections (1)(a)(i) through (1)(a)~~(xiii)~~*(xiv)*.

(b) suspend execution of sentence for a period up te the maximum sentonce allowed or for a period of 6 months, whichever is greater, for each particular offense. The sentencing judge may impose on the defendant any reasonable restrictions or conditions during the period of suspended sentence. Reasonable restrictions or conditions may include any of those listed in subsection (1)(a).

(c) inipose a fine as provided by law for the offense;

(d) require payment of costs as provided in 46-18-232 or payment of costs of court-appointed counsel as provided in 46-8-113;

HeinOnline -- 1999 vol. II 2096 1999

(e) impose a county ~~jail~~ *detention center* or state prison sentence, as provided in Title 45, for the offense; ~~or~~

(f) ~~commit the defendant~~ *commit:*

(i) an offender not referred to in subsection (1)(f)(ii) to the department of corrections ~~for a period not to exceed 5 years~~ for placement in an appropriate correctional facility or program; *however, all but the first 5 years of the commitment to the department of corrections must be suspended; or*

(ii) a youth transferred to district court under 41-5-206 and found guilty in the district court of an offense enumerated in 41-5-206 to the department of corrections for a period determined by the court for placement in an appropriate correctional facility or program;

~~(f)~~*(g)* with the approval of the facility or program, order the offender to be placed in a community corrections facility or program as provided in 53-30-321;

~~(g)~~*(h)* with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, order the offender to be placed in a prerelease center or prerelease program for a period not to exceed 1 year; or

~~(h)~~*(i)* impose any combination of subsections (1)(b) through ~~(1)(g)~~ *(1)(h)*.

(2) In addition to any penalties imposed pursuant to subsection (1), if the court finds that the victim of the offense has sustained a pecuniary loss, the court shall require payment of full restitution to the victim as provided in 46-18-241 through 46-18-249.

(3) If a financial obligation is imposed as a condition under subsection (1)(a), sentence may be deferred for a period not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony, regardless of whether any other conditions are imposed.

(4) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, the court shall consider any elapsed time and either expressly allow part or all of it as a credit against the sentence or reject all or part as a credit. The court shall state its reasons in the order. Credit, however, must be allowed for ~~jail~~ *time served in a detention center* or home arrest time already served.

(5) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended: 45-5-103, 45-5-202(3) relating to aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).

(6) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102 may not be deferred or suspended.

(7) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of a defendant who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(8) If the victim was less than 16 years old, the imposition or execution of the first 30 days of a sentence of imprisonment imposed under 45-5-503, 45-5-504, 45-5-505, or 45-5-507 may not be deferred or suspended. Section 46-18-222 does not apply to the first 30 days of the imprisonment.

HeinOnline -- 1999 vol. II 2097 1999

(9) In imposing a sentence on a defendant convicted of a sexual or violent offense as defined in 46-23-502, the court may not waive the registration requirement provided in Title 46, chapter 23, part 5.

(10) A person convicted of a sexual offense, as defined in 46-23-502, and sentenced to imprisonment in the state prison shall enroll in and complete the educational phase of the prison's sexual offender program. If the person is subject to the provisions of 45-5-512, the person shall also, as provided in 45-5-512, undergo medically safe medroxyprogesterone acetate treatment or its chemical equivalent or other medically safe drug treatment that reduces sexual fantasies, sex drive, or both, paid for by and for a period of time determined by the department of corrections. The period may not exceed the period of state supervision of the person.

(11) In sentencing a nonviolent felony offender, the court shall first consider alternatives to imprisonment of the offender in the state prison, including placement of the offender in a community corrections facility or program or a prerelease center or prerelease program. In considering alternatives to imprisonment, the court shall examine the sentencing criteria contained in 46-18-225. If the court subsequently sentences the offender to a state prison, the court shall state the reasons why it did not select an alternative to imprisonment, based on the criteria contained in 46-18-225.

(12) If a felony sentence includes probation, the department of corrections shall supervise the defendant unless the court specifies otherwise.

(13) Except as provided in 46-18-222, a provision of this section that conflicts with 46-18-219 does not apply to a person sentenced under 46-18-219."

Section 2. Section 46-23-1011, MCA, is amended to read:

"46-23-1011. Supervision on probation. (1) The department shall supervise persons during their probation period in accord with the conditions set by a court.

(2) A copy of the conditions of probation must he signed by the probationer and given to the probationer and the probationer's probation and parole officer, who shall report on the probationer's progress under rules of the court.

(3) The probation and parole officer shall regnlarly advise and consult with the probationer to encourage the probationer to improve the probationer's condition and conduct and shall inform the probationer of the restoration of rights on successful completion of the sentence.

(4) The probation and parole officer may recommend and a court may modify any condition of probation or suspension of sentence at any time. Notice must he given to the probation and parole officer before any condition is modified, and the officer must he given an opportunity to present the officer's ideas or recommendations on any modification. A copy of a modification of conditions must be delivered to the probation and parole officer and the probationer. Waiver or modification of restitution may be ordered only as provided under the provisions of 46-18-246.

(5) The probation and parole officer shall keep records as the department or the court may require.

(6) (a) Upon recommendation of the probation and parole officer, a court may conditionally discharge a probationer from supervision before expiration of the probationer's sentence if:

HeinOnline -- 1999 vol. II 2098 1999

(i) the court determines that a conditional discharge from supervision:

(A) is in the best interests of the probationer and society; and

(B) will not present unreasonable risk of danger to the victim of the offense; *and*

(ii) the offender has paid all restitution and court-ordered financial obligations in full.

(b) Subsection (6)(a) does not prohibit a court from revoking the order suspending execution or deferring imposition of sentence, as provided in 46-18-203, for a probationer who has been conditionally discharged from supervision.

(c) If the department certifies to tbe court that the workload of a district probation and parole office has exceeded the optimum workload for the district over the preceding 60 days, the court may not place an offender on probation under supervision by that district office unless it grants a conditional discharge to a probationer being supervised by tbat district office. The department may recommend probationers to the court for conditional discharge. The court may accept or reject the recommendations of the department. The department shall determine the optimum workload for each district probation and parole office."

Section 3. Section 46-23-1012, MCA, is amended to read:

"46-23-1012. Arrest when violations of probation alleged — *probation compliance plan — probation violator prison diversion program.* (1) At any time during probation or suspension of sentence, a court may issue a warrant for the arrest of the defendant for violation of any of the conditions of release or a notice to appear to answer to a charge of violation. ~~Such~~ *The* notice ~~shall~~ *must* be personally served upon the defendant. The warrant ~~shall~~ *must* authorize all officers named ~~therein~~ *in the warrant* to return ~~such~~ *the* defendant to the custody of the court or to any suitable detention facility designated by the court.

(2) Any probation and parole officer may arrest ~~such~~ *the* defendant without a warrant or may deputize any other officer with power of arrest to do so by giving *the officer oral authorization and within 12 hours delivering to the place of detention* ~~him~~ a written statement setting forth that the defendant has, in the judgment of ~~said~~ *the* probation and parole officer, violated the conditions of ~~his~~ *the defendant's* release. ~~Such~~ *A* written statement *or oral authorization* delivered with the defendant by the arresting officer to the official in charge of a county ~~jail~~ *detention center* or other place of detention ~~shall be~~ *is* sufficient warrant for the detention of the defendant *if the probation and parole officer delivers the written statement within 12 hours of the defendant's arrest.* The probation and parole officer, after making an arrest, shall present to the detaining authorities a similar statement of the circumstances of violation.

(3) Provisions regarding release on bail of ~~persons~~ *a person* charged with *a* crime ~~shall be~~ *are* applicable to the defendants arrested under these provisions.

(4) Any probation and parole officer may hold a defendant arrested under subsection (1) without bail for 72 hours. After the arrest of the defendant pursuant to this subsection, a hearings officer for the probation and parole bureau shall hold a hearing within 36 hours of the defendant's arrest. The hearings officer shall determine whether there is probable cause to believe that the defendant has violated a condition of probation and, if probable cause exists, notify the sentencing

HeinOnline -- 1999 vol. II 2099 1999

court and determine an appropriate plan to ensure the defendant's compliance with the conditions of probation. An appropriate plan may include:

(a) holding the defendant for a period of time up to 30 days, with credit for any time served from the time of the arrest to the time of the hearing to determine probable cause;

(b) a request to the court pursuant to 46-23-1011 to modify the defendant's terms or conditions of probation; or

(c) a notification to the court with jurisdiction over the defendant pursuant to 46-23-1013.

(5) The department shall adopt policies and procedures to implement a probation violator prison diversion program. If the department is able to sufficiently sanction a defendant with a term in a detention center as provided in subsection (4)(a) for a proven technical violation that could result in the revocation of a suspended or deferred sentence, the department may pay the expense of the detention center costs and pursue payment of costs by the defendant as provided in 7-32-2245. If the action plan developed for the defendant proceeds as provided in subsection (4)(b) or (4)(c), the expenses of the detention must be paid as provided in 7-32-2242."

Section 4. Program evaluation — report to legislature. The department shall develop evaluation measures to determine and shall report to the 57th and 58th legislatures whether the prohation violator prison diversion program:

(1) enhanced the department's ability to sanction probation violators and divert them from prison;

(2) demonstrated a decline in prison admissions for probation violators; and

(3) demonstrated policies and procedures of graduated sanctions that increased compliance with the conditions of prohation and decreased technical violations among probation violators for whom the detention center sanction was used.

Section 5. Section 46-23-1023, MCA, is amended to read:

"46-23-1023. Arrest of alleged parole violator. (1) At any time during release on parole or conditional release, the department may issue a warrant for the arrest of the ~~released prisoner~~ *parolee* for violation of any of the conditions of release or a notice to appear to answer to a charge of violation. The notice ~~shall~~ *must* be served personally upon the ~~prisoner~~ *parolee*. The warrant ~~shall~~ *must* authorize all officers named ~~therein~~ *in the warrant* to return the ~~prisoner~~ *parolee* to the actual custody of tbe penal institution from which ~~he~~ *the parolee* was released or to any other suitable detention facility designated by the department.

(2) Any probation and parole officer may arrest the ~~prisoner~~ *parolee* without a warrant or may deputize any other officer with power to arrest to do so by giving ~~him~~ *the officer oral authorization and within 12 hours delivering to the place of detention* a written statement setting forth that the ~~prisoner~~ *parolee* has, in the judgment of the probation and parole officer, violated the conditions of ~~his~~ *the parolee's* release. ~~The~~ *A* written statement *or oral authorization* delivered with the ~~prisoner~~ *parolee* by the arresting officer to the official in charge of the institution from which the ~~prisoner~~ *parolee* was releasod or other place of detention ~~shall be~~ *is* sufficient warrant for the detention of the parolee or conditional releasee *if the probation and parole officer delivers a written statement*

within 12 hours of the arrest. The probation and parole officer, after making an arrest, shall present to the detaining authorities a similar statement of the circumstances of violation.

(3) Pending *a* hearing, as provided in 46-23-1024 and 46-23-1025, upon any charge of violation the ~~prisoner~~ *parolee* may, if circumstances warrant, be incarcerated in the institution."

Section 6. Section 46-23-1024, MCA, is amended to read:

"46-23-1024. Initial hearing after arrest. (1) After the arrest of the ~~prisoner~~ *parolee*, a hearing must be held within a reasonable time, unless:

(a) the hearing is waived by the parolee~~,~~; *or*

(b) the parolee has been charged in any court with a violation of the law.

(2) The hearing is an onsite hearing and must be held to determine whether there is probable cause or reasonable grounds to believe that the arrested parolee has committed acts ~~which~~ *that* would constitute a violation of parole conditions. An independent officer, who need not be a judicial officer, ~~must~~ *shall* preside over the hearing. The hearing must be conducted at or reasonably near the place of the alleged parole violation or arrest and as promptly as convenient after arrest. The parolee must be given notice of the hearing and must be allowed to appear and speak in the parolee's own behalf and introduce relevant information to the hearings officer.

~~(2)~~*(3)* The hearings officer shall make a summary of what transpires at the hearing in terms of the responses and position of the parolee and the substance of the documents or evidence given in support of parole revocation. Based on the information given to the hearings officer, the hearings officer shall determine whether there is probable cause to hold the parolee for the final decision of the board of pardons and parole as provided in 46-23-1025."

Section 7. Section 46-23-1031, MCA, is amended to read:

"46-23-1031. Supervisory fees — account established. (1) (a) Except as provided in subsection (1)(b), a probationer or parolee shall pay a supervisory fee of *no less than* $120 a year *and no more than $360 a year*, prorated at *no less than* $10 a month for the number of months under supervision. The fee must be collected by the clerk of the district court with jurisdiction during the probationer's or parolee's period of supervision under this part.

(b) The court or the board may reduce or waive the fee or suspend the monthly payment of the fee if it determines that the payment would cause the probationer or parolee a significant financial hardship.

(2) (a) There is an account in the state special revenue fund for the fees collected under the provisions of this section.

(b) District court clerks shall deduct from the total fees collected pursuant to subsection (1) the administrative cost of collecting and accounting for the fees and shall deposit the remaining amount into the state special revenue account established in subsection (2)(a)."

Section 8. Section 53-30-401, MCA, is amended to read:

"53-30-401. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

HeinOnline -- 1999 vol. II 2101 1999

(1) "Department" means the department of corrections provided for in 2-15-2301.

(2) "Reduction of sentence" includes changing an incarceration sentence to a ~~grant of probation~~ *suspended sentence*."

Section 9. Section 53-30-403, MCA, is amended to read:

"53-30-403. Boot camp inearceration program — eligibility — rulemaking. (1) The department shall establish a boot camp incarceration program for offenders incarcerated in a correctional institution.

(2) In order to be eligible for participation in the boot camp incarceration program, an inmate must:

(a) be serving a sentence of at least 1 year in a Montana correctional institution for a felony offense other than a felony punishable by ~~life imprisonment or~~ death, *except as provided in 46-18-201(1)(a)(xiv)*;

(b) ~~be less than 35 years of age~~ *obtain the concurrenee of the sentencing court*; and

(c) pass a physical examination to ensure sufficient health for participation.

(3) The boot camp incarceration program must include:

(a) as a major component, a strong emphasis on work, physical activity, physical conditioning, and good health practices;

(b) a strong emphasis on intensive counseling and treatment programming designed to correct criminal and other maladaptive thought processes and behavior patterns and to instill self-discipline and self-motivation;

(c) a detailed, clearly written explanation of program goals, objectives, rules, and criteria that must be provided to, read by, and signed by all prospective enrollees; and

(d) a maximum enrollment period of 120 days.

(4) (a) Inmate participation in the boot camp incarceration program must be voluntary. The admission of an inmate to the program is discretionary with the department. Enrollment may be revoked only:

(i) at the participant's request; or

(ii) upon written departmental documentation of a participant's failure or refusal to comply with program requirements.

(b) A revocation of program enrollment is not subject to appeal. An inmate may not be admitted to the boot camp incarceration program more than twice.

(5) The department may adopt rules for the establishment and administration of the boot camp incarceration program."

Section 10. Codification instruction. [Section 4] is intended to he codified as an integral part of Title 46, chapter 23, part 10, and the provisions of Title 46, chapter 23, part 10, apply to [section 4].

Section 11. Coordination instruction. If House Bill No. 81 and [this act] are both passed and approved and if both contain amendments to 46-18-201(1)(e), then the amendments to 46-18-201(1)(e) contained in House Bill No. 81 are void.

Section 12. Effective date. [This act] is effective on passage and approval.

HeinOnline -- 1999 vol. II 2102 1999

Section 13. Applicability. (1) [Section 1] applies to all persons sentenced on or after [the effective date of this act].

(2) [Section 2] applies to all persons under probation or parole supervision on or after [the effective date of this act].

(3) [Sections 8 and 9] apply to all persons under the custody of the department of corrections on or after [the effective date of this act].

Approved April 28, 1999

CHAPTER NO. 506

[HB 158]

AN ACT AMENDING THE MONTANA UNDERGROUND STORAGE TANK INSTALLER LICENSING AND PERMITTING LAW TO INCLUDE TANK INSPECTORS AND AUTHORIZING LICENSURE OF TANK INSPECTORS; AMENDING THE MONTANA UNDERGROUND STORAGE TANK LAW TO REQUIRE UNDERGROUND STORAGE TANK INSPECTIONS; AUTHORIZING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO CLOSE CERTAIN UNDERGROUND STORAGE TANKS; CREATING A LIEN IN FAVOR OF THE STATE FOR COSTS INCURRED IN CLOSING A TANK; INCREASING THE FEE FOR CERTAIN UNDERGROUND STORAGE TANKS; AMENDING SECTIONS 75-11-201, 75-11-202, 75-11-203, 75-11-204, 75-11-211, 75-11-212, 75-11-218, 75-11-223, 75-11-504, 75-11-505, AND 75-11-512, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-11-201, MCA, is amended to read:

"75-11-201. Short title. This part may be cited as the "Montana Underground Storage Tank Installer *and Inspector* Licensing and Permitting Act"."

Section 2. Section 75-11-202, MCA, is amended to read:

"75-11-202. Findings and purpose. (1) Leaking underground storage tank systems have been identified as a significant source of underground contamination and as a potential hazard for fire and explosion. Government and industry studies show that a major cause of leaking underground storage tanks is improper installation or closure. Proper installation, ~~or~~ closure, *and inspection* ~~requires~~ *require* specialized knowledge, training, and experience.

(2) To protect the health of Montana citizens and the quality of state waters and other natural resources, it is the intent of the legislature to require permits for the installation or closure of underground storage tank systems; to limit the conduct of these activities to persons with demonstrated competence, training, and experience; and to ~~assess fees to support state and local administration of~~ *provide for* permitting, licensing, and inspection activities."

Section 3. Section 75-11-203, MCA, is amended to read:

"75-11-203. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of environmental review provided for in 2-15-3502.

(2) "Closure" or "to close" means the process of properly removing or filling in place an underground storage tank that is no longer in service.

(3) "Department" means the department of environmental quality provided for in 2-15-3501.

(4) "Inspection" means aetivities to inspect all or part of an underground storage tank system, including records relating to installation, operation, maintenance, and closure to determine compliance with applicable laws and rules relating to operation and maintenance.

(5) "Inspector" means an individual who performs inspections of underground storage tank systems.

~~(4)~~*(6)* (a) "Installation" or "to install" means the placement of an underground storage tank system, including excavation, tank placement, backfilling, and piping of underground portions of the underground storage tank system that store or convey regulated substances. Installation includes repair or modification of an underground storage tank system through such means as tank relining or the repair or replacement of valves, fillpipes, piping, vents, or in-tank liquid-level monitoring systems. Installation also means installation, repair, or modification of a leak detection device that is external to and not attached to the underground storage tank system and the installation, repair, or modification of a cathodic protection system.

(b) The terms do not include the process of conducting a precision (tightness) test to establish the integrity of the underground storage tank system.

~~(5)~~*(7)* "Installer" means an individual who installs or closes underground storage tank systems.

~~(5)~~*(8)* "License" means a license issued by the department under *75-11-204 or* 75-11-210 to conduct the *inspection,* installation, or closure of underground storage tank systems ~~and the installation of leak detection devices or cathodic protection systems~~.

(9) "Licensed inspector" means an individual who holds a valid underground storage tank system inspector license.

~~(7)~~*(10)* "Licensed installer" means an individual who holds a valid underground storage tank system installer license.

~~(8)~~*(11)* "Operator" means a person in control of or having responsibility for the operation, maintenance, or management of an underground sterage tank system.

~~(8)~~*(12)* "Owner" means a person who owns an underground storage tank system used for the storage, use, or dispensing of regulated substances.

~~(10)~~*(13)* "Person" means an individual, firm, trust, estate, partnership, company, association, corporation (whether organized for profit or not), city, town, local gevernmental entity, or any other governmental or private entity.

~~(11)~~*(14)* "Regulated substance" means a regulated substance as defined in 75-11-503.

~~(12)~~*(15)* "Underground storage tank" or "underground storage tank system" means an underground storage tank, as defined in 75-11-503, and, for purposes of this part, includes ~~a leak detection device that is external to and not attached~~

~~to~~ *ancillary equipment designed to prevent, detect, or contain a release from* an underground storage tank system."

Section 4. Section 75-11-204, MCA, is amended to read:

"75-11-204. Rulemaking authority. *(1)* The department may adopt rules governing the installation and closure of underground storage tank systems *and rules providing for the inspection of underground storage tank systems.* Rules may include but are not limited to the following:

~~(1)~~*(a)* the requirements for issuance, denial, renewal, modification, suspension, and revocation of permits for the installation and closure of underground storage tank systems;

~~(2)~~*(b)* the requirements for issuance, denial, renewal, modification, suspension, and revocation of licenses for underground storage tank system installers *and inspectors. The license for inspectors must be separate from the license for installers*~~;~~.

~~(3)~~*(c)* the requirements for examination and training of underground storage tank system installers *and inspectors*;

~~(4)~~*(d)* the requirements for qualifications of inspectors, use of inspectors, and methods for conducting an inspection. *The department shall adopt separate qualifications for installers and inspectors*~~;~~.

~~(5)~~*(e)* a schedule of fees for obtaining licenses and license renewals by underground storage tank system installers *and inspectors*;

~~(5)~~*(f)* a schedule of fees for the review of applications for underground storage tank system permits;

~~(7)~~*(g)* a schedule of fees for inspection of installations or closures; and

~~(3)~~*(h)* the mechanism for remittance of inspection or permitting fees to local governments.

(2) Licensed inspectors employed by a local government unit designated pursuant to 75-11-213 or 75-11-505 and associated rules are exempt from the licensing fees described in this section."

Section 5. Section 75-11-211, MCA, is amended to read:

"75-11-211. Denial, modification, suspension, or revocation of *installer or inspector* license — grounds. (1) The department may deny, modify, condition, suspend, or revoke a license if the installer *or inspector*:

(a) fails to achieve a passing grade on a written examination;

(b) fails to pay ~~a license fee~~ *the license fee imposed under this part*;

(c) commits fraud or deceit with respect to the license *or permit* application *or an inspection report submitted to the department*;

(d) has had *suspended or revoked:*

(i) a license issued under this part; or

(ii) a similar license ~~suspended or revoked~~ in another state or territory; or

(e) violates any state or federal law, rule, permit, or order relating to the installation or closure of an underground storage tank system.

HeinOnline -- 1999 vol. II 2105 1999

(2) If the department modifies, conditions, suspends, or revokes a license, it shall inform the applicant or license holder in writing of the reason for the action. The ~~installer~~ *applicant or license holder* may request a hearing before the board. If the board grants a hearing, the hearing must be held in accordance with the provisions of the Montana Administrative Procedure Act."

Section 6. Section 75-11-212, MCA, is amended to read:

"75-11-212. Permits — application procedure — issuance. (1) Before the installation or closure of an underground storage tank system, the owner or operator or the owner's or operator's designated licensed underground storage tank installer or remover shall file a permit application with the department on forms provided by the department. The time between the filing of a permit application with the department and the installation or closure may be provided by department rule. The department may provide by rule for emergency permits to apply to emergency conditions pertaining to the installation or closure of underground storage tanks.

(2) The permit application must, at a minimum, require the owner or operator to provide information concerning:

(a) the date of the underground storage tank system installation or closure;

(b) the location of the underground storage tank system installation or closure;

(c) the type of construction of the underground storage tank system;

(d) the contents of the underground storage tank system being closed or the anticipated contents of the tank being installed; and

(e) the name of the licensed installer who will be installing or closing the underground storage tank system or, if the owner or operator is not geing to have the underground storage tank system installed or closed by a licensed installer, the estimated date for inspection by the department.

(3) After receipt of a completed application that meets the requirements of this section and any rules adopted under 75-11-204~~(1)~~, the department shall issue the permit."

Section 7. Section 75-11-218, MCA, is amended to read:

"75-11-218. Administrative enforcement. (1) When the department believes that a person has violated this part, a rule adopted under this part, or a permit provision, it may serve written notice of the violation on the person or the person's agent. The notice must specify the alleged violation and the facts that constitute the alleged violation. The notice may include an order to provide information pertaining to the installation, ~~or~~ closure, *or inspection,* or an order to take necessary corrective action within a reasonable time as stated in the order. ~~The notice and order may be signed and served by a department inspector if it is personally given to the person or to the person's agent.~~ Every ~~other~~ notice and order must be signed by the director of the department or the director's deputy and must be served *personally or* by certified mail upon the person or the person's agent. The order becomes final unless, within 30 days after the notice is served, the person requests in writing a hearing before the board. On receipt of the request, the board shall schedule a hearing. Service by mail is complete on the date of mailing.

HeinOnline -- 1999 vol. II 2106 1999

(2) If, pursuant to a hearing held under suhsection (1), the board finds that a violation has occurred, it shall either affirm or modify the department's order. An order issued by the department or the board may prescribe the date by which the violation must cease and may prescribe time limits for particular action. If, after a hearing, the board finds that a violation has not occurred, it shall rescind the department's order.

(3) In addition to or instead of issuing an order pursuant to subsection (1), the department may either:

(a) require the alleged violator te appear before the board for a hearing at a time and place specified in the notice and answer the charges described in the notice of violation; or

(b) initiate action under 75-11-219, 75-11-223, or 75-11-224.

(4) This section does not prevent the board or department from attempting to obtain voluntary compliance through issuance of a warning, a conference, or any other appropriate administrative or judicial means."

Section 8. Section 75-11-223, MCA, is amended to read:

"75-11-223. Civil penalties. (1) Any person who violates any provision of this part, a rule adopted under this part, or an order of the department or the board is subject to a civil penalty not to exceed $10,000 per violation. If an installer *or an inspector* who is an employee is in violation, the employer of that installer *or that inspector* is the entity that is subject to the provisions of this section unless the violation is the result of a grossly negligent or willful act. Each day of violation of tbis part, a rule adopted under this part, or an order constitutes a separate violation.

(2) The department may institute and maintain in the name of the state any enforcement proceedings under this section. Upon request of the department, the attorney general or the county attorney of the county where the violation occurred shall petition the district court to impose, assess, and recover the civil penalty.

(3) Action under this section does not bar:

(a) enforcement of this part, rules adopted under this part, orders of the department or the board, or terms of a license or permit by injunction or other appropriate remedy; or

(b) action under 75-11-224."

Section 9. Lieensing of inspectors — interim licenscs — regular licenses. (1) The department shall grant an inspector license if the inspector demonstrates competency and experience in the inspection of underground storage tank systems, passes a written examination conducted by the department or by an agency or person authorized by the department to give the examination, and pays the license fee.

(2) The department or an agency or person authorized by the department to give the examination shall conduct written examinations for tbe purpose of qualifying individuals to receive an underground storage tank system inspector license. The department shall provide public notice of the date, time, and location of the examination.

HeinOnline -- 1999 vol. II 2107 1999

(3) An underground storage tank system inspector license is valid for a period not to exceed 3 years and is subject to periodic renewal as prescribed by department rule.

(4) As a condition of renewal, the department may require that an inspector demonstrate continuing competency in the regulatory requirements applicable to operation and maintenance of underground storage tank systems.

(5) An inspector need not be a Montana resident to qualify for a license.

Section 10. Section 75-11-504, MCA, is amended to read:

"75-11-504. Powers of department. (1) The department may:

(a) administer and enforce the provisions of this part, rules implementing this part, and orders and permits issued pursuant to this part;

(b) accept and administer grants from the federal government and from other sources, public and private; ~~and~~

(c) abate public nuisances that affect the public health and welfare or the environment and that arise from or in connection with the past or present handling or dispesal of any regulated substance*; and*

(d) enter property and permanently close an underground storage tank that:

(i) was in use after November 22, 1989;

(ii) was not permanently closed before December 23, 1998, in accordance with closure requirements established by this part; and

(iii) was neither:

(A) initially installed in accordance with design requirements established pursuant to this part; nor

(B) upgraded in accordance with rules adopted pursuant to this part.

(2) The department shall integrate all provisions of this part with other laws administered by the department to avoid unnecessary duplication."

Section 11. Lien. (1) The costs incurred by the department to close an underground storage tank pursuant to 75-11-504 or 75-11-512 constituto a lien in favor of the state upon all property and rights to the property that belong to the owner or operator.

(2) The lien imposed by this section arises at the time that notice incorporating a description of the property on which tbe underground storage tank was permanently closed and an identification of the amount of costs is filed with the clerk and recorder of the county in which tbe real property is located. A copy of the notice must be served by certified mail upon the property owner.

(3) The costs constituting the lien may be recovered in an action in the district court for the district in which the property is located. This section does not affect the right of the state to bring an action against a person to recover all costs for which that person is liable under this part or any other provision of state or federal law.

(4) The lien must continue until the liability for the costs incurred as a result of the permanent closure of the underground storage tank by the state is satisfied.

(5) Payment of any liens under this section must be depesited in the account from which the costs incurred by the state originated.

HeinOnline -- 1999 vol. II 2108 1999

Section 12. Inspections — permits. (1) The owner or operator of an underground storage tank must have the tank inspected for compliance with this part by January 1, 2002, and at least once every 3 years thereafter by an inspector who is licensed pursuant to Title 75, chapter 11, part 2, to perform underground storage tank inspections. The inspector may not be:

(a) the owner or operator of the tank;

(b) an employee of the owner or operator; or

(c) for the first inspection required by this subsection (1) after the installation or modification of the tank:

(i) the installer who installed or modified the tank;

(ii) an employee of the installer who installed or modified the tank;

(iii) an employee of the person whose empleyee installed or modified the tank; or

(iv) if the person that installed or modified the tank through an installer employee is a corporation or other artificial person, a person that owns or is owned by that artificial person.

(2) The department shall by rule provide requirements for the scope and timing of inspections.

(3) The inspector shall provide the owner or operator with an inspection report that meets the requirements of rules adopted by the department to ensure compliance with this part and rules adopted pursuant to this part.

(4) The owner or operator shall retain the original inspection report and mail a copy to the department.

(5) If the inspection report indicates violations, the owner or operator shall correct the violations and obtain a followup inspection. Followup inspection reports must be provided to the owuer or operator and to the department.

(6) A person may not place a regulated substance in an underground storage tank unless the owner or operator has been issued a valid permit from the department for the tank. Permits must be issued for a term of 3 years. The department may not issue or renew a permit unless the owner or operator has filed with the department an inspection report by a licensed inspector who certifies that the operation and maintenance of the tank was in compliance with this part and rules adopted pursuant to this part on the date of inspection.

Section 13. Section 75-11-505, MCA, is amended to read:

"75-11-505. Administrative rules. The department may adopt, amend, or repeal rules for the prevention and correction of leakage from underground storage tanks, including:

(1) reporting by owners and operators;

(2) financial responsibility;

(3) release detection, prevention, and corrective action;

(4) procedures and standards for the issuance and enforcement of permits authorizing the operation of underground storage tanks;

~~(4)~~*(5)* standards for design, construction, installation, and closure;

~~(5)~~*(6)* development of a schedule of *annual* fees, not to exceed ~~$50~~ *$70* for a tank over 1,100 gallons and not to exceed $20 for a tank 1,100 gallons or less, per tank, for tank ~~notification and permits~~ *registration* to defray state and local costs of implementing an underground storage tank program. *The department may prorate fees to cover periods not equal to 12 months in order to provide staggered scheduling of renewal dates*~~;~~.

~~(5)~~*(7)* a penalty schedule and a system for assessment of administrative penalties, notice, and appeals under 75-11-525; and

~~(7)~~*(8)* delegation of authority and funds to local agents for inspections and implementation. The delegation of authority to local agents must complement and may not duplicate existing authority for implementation of rules adopted by the department of justice that relate to underground storage tanks."

Section 14. Section 75-11-512, MCA, is amended to read:

"75-11-512. Administrative enforcement. (1) When the department believes that a violation of this part or a rule adopted under this part has occurred, it may serve written notice of the violation personally or by certified mail on the alleged violator or the violator's agent. The notice must specify the provision of this part or the rule alleged to be violated and the facts alleged to constitute a violation and may include an order to take necessary corrective action within a reasonable peried of time stated in the order. The order becomes final unless, within 30 days after the notice is served, the person named requests, in writing, a hearing before the board. On receipt of the request, the board shall schedule a hearing. Service by mail is complete on the date of mailing.

(2) If, after a hearing held under subsection (1), the board finds that a violation has occurred, it shall either affirm or modify the department's order. An order issued by the department or by the board may prescribe the date by which the violation must cease and may prescribe time limits for particular action. If, after hearing, the board finds that a violation has not occurred, it shall rescind the department's order.

(3) In addition to or instead of issuing an order pursuant to subsection (1), the department may:

(a) require the alleged violator to appear before the board or department, by subpoena or subpoena duces tecum, for a hearing at a time and place specified in the notice to answer the charges complained of or to provide information regarding the alleged violation or its actual or potential impact on the public health and welfare or the environment;

(b) initiate action under 75-11-513, 75-11-514, or 75-11-516; or

(c) assess administrative penalties and issue corrective action orders under 75-11-525.

(4) In the case of disobedience of any subpoena issued and served under this section or of the refusal of any witness to testify as to any material matter with regard to which the witness may be interrogated in a hearing or investigation before the board or the department, the board or department may apply to any district court in the state for an order to compel compliance with the subpoena or the giving of testimony. The court shall hear the matter as expeditiously as possible. If the disobedience or refusal is found to be unjustified, the court shall enter an order requiring compliance. Disobedience of the order is punishable by

HeinOnline -- 1999 vol. II 2110 1999

contempt of court in the same manner and by the same procedures as is provided for like conduct committed in the course of civil actions in district court.

(5) If a person fails to comply with an order issued pursuant to subsection (1) or (3) within the time allowed in the order, the department may enter the property on which the underground storage tank that is in violation is located and temporarily close the tank. If the department finds that permanent closure is necessary to prevent substantial environmental harm or because the owner or operator is unlikely to comply with the order, it may permanently close the tank.

~~(5)~~*(6)* This section does not prevent the board or department from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means."

Section 15. Codification instruction. (1) [Section 9] is intended to be codified as an integral part of Title 75, chapter 11, part 2, and the provisions of Title 75, chapter 11, part 2, apply to [section 9].

(2) [Sections 11 and 12] are intended to be codified as an integral part of Title 75, chapter 11, part 5, and the provisions of Title 75, chapter 11, part 5, apply to [sections 11 and 12].

Section 16. Effective dates. (1) [Sections 1 through 11 and 13 through 15 and this section] are effective on passage and approval.

(2) [Section 12] is effective January 1, 2000.

Approved April 28, 1999

CHAPTER NO. 507

[HB 183]

AN ACT GENERALLY REVISING THE OPENCUT MINING ACT AND THE METAL MINE RECLAMATION LAWS; TRANSFERRING THE REGULATION OF SOIL AND PEAT MINING TO THE OPENCUT MINING ACT; REGULATING PHOSPHATE MINING UNDER THE METAL MINE RECLAMATION LAWS; CLARIFYING DREDGE OPERATION EXEMPTIONS; LIMITING THE USE OF MERCURY AND ORE-PROCESSING REAGENTS AND SOLVENTS BY METAL MINERS; MODIFYING THE DEFINITION OF "PLACER DEPOSIT"; AUTHORIZING THE DEPARTMENT TO REQUIRE RECLAMATION OF CERTAIN METAL MINES AFTER 5 YEARS OF INACTIVITY; REQUIRING ISSUANCE OF SUMMONS AND SERVICE OF PROCESS WITHIN 60 DAYS AFTER FILING OF LEGAL ACTIONS SEEKING REVIEW OF CERTAIN DEPARTMENT DECISIONS; MODIFYING METAL MINE BONDING AND PUBLIC PARTICIPATION PROVISIONS AND OPENCUT MINE BONDING PROVISIONS; LIMITING THE PURPOSES OF THE OPENCUT MINE REGULATIONS; MODIFYING OPENCUT PERMITTING THRESHOLDS; REQUIRING A COMPLETE OPENCUT RECLAMATION PLAN AT THE TIME OF APPLICATION; INCREASING ANNUAL REPORTING REQUIREMENTS; AMENDING SECTIONS 82-4-303, 82-4-305, 82-4-310, 82-4-335, 82-4-338, 82-4-341, 82-4-349, 82-4-402, 82-4-403, 82-4-405, 82-4-422, 82-4-423, 82-4-427, 82-4-431, 82-4-432, 82-4-433, 82-4-434, AND 82-4-441, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES.

HeinOnline -- 1999 vol. II 2111 1999

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-4-303, MCA, is amended to read:

"82-4-303. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Ahandonment of surface or underground mining" may be presumed when it is shown that continued operation will not resume.

(2) "Amendment" means a change to an approved operating or reclamation plan. A major amendment is an amendment that may significantly affect the human environment. A minor amendment is an amendment that will not significantly affect the human environment.

(3) "Board" means the board of environmental review provided for in 2-15-3502.

(4) "Cyanide ore-processing reagent" means cyanide or a cyanide compound used as a reagent in leaching operations.

(5) "Department" means the department of environmental quality provided for in 2-15-3501.

(6) "Disturbed land" means the area of land or surface water that has been disturbed, beginning at the date of the issuance of the permit. The term includes the area from which the overburden, tailings, waste materials, or minerals have been removed and tailings ponds, waste dumps, roads, conveyor systems, leach dumps, and all similar excavations or coverings that result from the operation and that have not been previously reclaimed under the reclamation plan.

(7) "Exploration" means:

(a) all activities that are conducted on or beneath the surface of lands and that result in material disturbance of the surface for the purpose of determining the presence, location, extent, depth, grade, and economic viability of mineralization in those lands, if any, other than mining for production and economic exploitation; and

(b) all roads made for the purpose of facilitating exploration, except as noted in 82-4-310.

(8) "Mineral" means any ore, rock, or substance (other than oil, gas, bentonite, clay, coal, sand, gravel, ~~phosphate rock,~~ *peat, soil materials,* or uranium) that is taken from below the surface or from the surface of the earth for the purpose of milling, concentration, refinement, smelting, manufacturing, or other subsequent use or processing or for stockpiling for future use, refinement, or smelting.

(9) "Mining" commences when the operator first mines ores or minerals in commercial quantities for sale, beneficiation, refining, or other processing or disposition or first takes bulk samples for metallurgical testing in excess of aggregate of 10,000 short tons.

(10) "Ore processing" means milling, heap leaching, flotation, vat leaching, or other standard hard-rock mineral concentration processes.

(11) "Person" means any person, corporation, firm, association, partnership, or other legal entity engaged in exploration for or mining of minerals on or below the surface of the earth, reprocessing of tailings or waste materials, or operation of a hard-rock mill.

HeinOnline -- 1999 vol. II 2112 1999

(12) "Placer deposit" means:

(a) naturally occurring, scattered or unconsolidated valuable minerals in gravel, *glacial, eolian, colluvial,* or ~~alluvium~~ *alluvial deposits* lying abovo bedrock; *or*

(b) all forms of deposit except veins of quartz and other rock in place.

(13) "Placer or dredge mining" means the mining of minerals from a placer deposit by a person or persons.

(14) "Reclamation plan" means the oporator's written proposal, as required and approved by the department, for reclamation of tbe land that will be disturbed. The proposal must include, to tbe extent practical at the time of application for an operating permit:

(a) a statement of the proposed subsequent use of the land after reclamation;

(b) plans for surface gradient restoration to a surface suitable for the proposed subsequent use of the land after reclamation is completed and the proposed method of accomplishment;

(c) the manner and type of revegetation or other surface treatment of disturbed areas;

(d) procedures proposed to avoid foreseeable situations of public nuisance, endangerment of public safety, damage to human life or property, or unnecessary damage to flora and fauna in or adjacent to the area;

(e) the method of disposal of mining debris;

(f) the method of diverting surface waters around tbe disturbed areas when necessary to prevent pollution of tbose waters or unnecessary erosion;

(g) tbe method of reclamation of stream channels and stream banks to control erosion, siltation, and pollution;

(h) maps and other supporting documents that may be reasonably required by the department; and

(i) a time schedule for reclamation that meets the requirements of 82-4-336.

(15) (a) "Small minor" means a porson, firm, or corporation that engages in *mining activity that is not exempt from this part pursuant to 82-4-310, that engages in* the business of ~~mining or~~ reprocessing of tailings or waste materials, or, except as provided in 82-4-310, that knowingly allows other persons to engage in mining activities on land owned or controlled by the person, firm, or corporation; that does not hold an operating permit under 82-4-335 except for a permit issued under 82-4-335(2) or a permit that meets the criteria of suhsection (15)(c); and that conducts:

(i) an oporation tbat results in not more than 5 acres of the earth's surface being disturbed and unreclaimed; or

(ii) two operations that disturb and leave unreclaimed less than 5 acres ~~per~~ *for each* oporation if the respective mining properties are:

(A) the only operations engaged in by the person, firm, or corporation; and

(B) at least 1 mile apart at their closest point.

(b) For the purpose of this definition only, the department shall, in computing the area covered by the operation:

HeinOnline -- 1999 vol. II 2113 1999

(i) exclude access or haulage roads that are required by a local, state, or federal agency having jurisdiction over that road to be constructed to certain specifications if that public agency notifies the department in writing that it desires to have the road remain in use and will maintain it after mining ceases; and

(ii) exclude access roads for which the person, firm, or corporation submits a bond to the department in the amount of the estimated total cost of reclamation along with a description of the location of the road and the specifications to which it will be constructed.

(c) A small miner may hold an operating permit that allows disturbance of 100 acres or less. The permit may be amended to add new disturbance areas, but the total area permitted for disturbance may not exceed 100 acres at any time.

(16) "Soil materials" means earth material found in the upper soil layers that will support plant growth.

(17) (a) "Surface mining" means all or any part of the process involved in mining of minerals by removing the overburden and mining directly from the mineral deposits exposed, including but not limited to open-pit mining of minerals naturally exposed at the surface of the earth, mining by the auger method, and all similar methods by which earth or minerals exposed at the surface are removed in the course of mining.

(b) Surface mining does not include the extraction of oil, gas, bentonite, clay, coal, sand, gravel, ~~phosphate rock,~~ *peat, soil materials,* or uranium or excavation or grading conducted for onsite farming, onsite road construction, or other onsite building construction.

(18) "Underground mining" means all methods of mining other than surface mining.

(19) "Unit of surface-mined area" means that area of land and surface water included within an operating permit actually disturbed by surface mining during each 12-month period of time, beginning at the date of the issuance of the permit. The term includes the area from which overburden or minerals have been removed, the area covered by mining debris, and all additional areas used in surface mining or underground mining operations that by virtue of mining use are susceptible to erosion in excess of the surrounding undisturbed portions of land.

(20) "Vegetative cover" means the type of vegetation, grass, shrubs, trees, or any other form of natural cover considered suitable at time of reclamation."

Section 2. Section 82-4-305, MCA, is amended to read:

"82-4-305. Exemption — small miners — written agreement. (1) Except as provided in subsections (3) through ~~(9)~~ *(10)*, the provisions of this part do not apply to a small miner if the small miner annually agrees in writing:

(a) that the small miner will not pollute or contaminate any stream;

(b) that the small miner will provide protection for human and animal life through the installation of bulkheads installed over safety collars and the installation of doors on tunnel portals;

(c) that the small miner will provide a map locating the miner's mining operations. The map must be of a size and scale determined by the department.

HeinOnline -- 1999 vol. II 2114 1999

(d) if the small miner's operations are placer or dredge mining, that the small miner shall salvage and protect all soil materials for use in reclamation of that site and shall reclaim all land disturbed by the operations to comparable utility and stability as that of adjacent areas.

(2) For small-miner exemptions obtained after September 30, 1985, a small miner may not obtain or continue an exemption under subsection (1) unless the small miner annually certifies in writing:

(a) if the small miner is an individual, that:

(i) no business association or partnership of which the small miner is a member or partner has a small-miner exemption; and

(ii) no corporation of which the small miner is an officer, director, or owner of record of 25% or more of any class of voting stock has a small-miner exemption; or

(b) if the small miner is a partnership or business association, that:

(i) none of the associates or partners holds a small-miner exemption; and

(ii) none of the associates or partners is an officer, director, or owner of 25% or more of any class of voting stock of a corporation that has a small-miner exemption; or

(c) if the small miner is a corporation, that no officer, director, or owner of record of 25% or more of any class of voting stock of the corporation:

(i) holds a small-miner exemption;

(ii) is a member or partner in a business association or partnership that holds a small-miner exemption;

(iii) is an officer, director, or owner of record of 25% or more of any class of voting stock of another corporation that holds a small-miner exemption.

(3) A small miner whose operations are placer or dredge mining shall post a performance bond equal to the state's documented cost estimate of reclaiming the disturbed land, although the bond may not exceed $10,000 ~~per~~ *for each* operation. If the small miner has posted a bond for reclamation with another government agency, the small miner is exempt from the requirement of this subsection.

(4) If a small miner who conducts a placer or dredge mining operation fails to reclaim the operation, the small miner is liable to the department for all its reasonable costs of reclamation, including a reasonable charge for services performed by state personnel and for state materials and equipment used. If the small miner posts a surety bond, the surety is liable to the state to the extent of the bond amount and the small miner is liable for the remainder of the reasonable costs to the state of reclaiming the operation.

(5) If a small miner who conducts a placer or dredge mining operation fails to commence reclamation of the operation within 6 months after cessation of mining or within an extended period allowed by the department for good cause shown or if the small miner fails to diligently complete reclamation, the department shall notify the small miner by certified mail that it intends to reclaim the operation unless the small miner commences reclamation within 30 days and diligently completes the reclamation. The notice must be mailed to the address stated on the small miner exclusion statement or, if the small miner has notified

HeinOnline -- 1999 vol. II 2115 1999

the department of a different address by letter or in the annual certification form, to the most recent address given to the department. If the small miner fails to commence reclamation within 30 days or to diligently complete reclamation, the department may revoke the small miner exclusion statement, forfeit any bond that has been posted with the department, and enter and reclaim the operation. If the small miner has not posted a bond with the department or if the reasonable costs of reclamation exceed the amount of the bond, the department may also collect additional reclamation costs, as set forth in subsection (6), before or after it incurs those costs.

(6) To collect additional reclamation costs, the department shall notify the small miner by certified mail, at the address determined under subsection (5), of the additional reasonable reclamation costs and request payment within 30 days. If the small miner does not pay the additional reclamation costs within 30 days, the department may bring an action in district court for payment of the estimated future costs and, if the department has performed any reclamation, of its reasonable actual costs. The court shall order payment of costs that it determines to be reasonable and shall retain jurisdiction until reclamation of the operation is completed. Upon completion of reclamation, the court shall order payment of any additional costs that it considers reasonable or the refund of any portion of any payment for estimated costs that exceeds the actual reasonable costs incurred by the department.

(7) A small miner who intends to use a cyanide ore-processing reagent *or other metal leaching solvents or reagents* shall obtain an operating permit for that part of the small miner's operation in which the cyanide ore-processing reagent *or other metal leaching solvents or reagents* will be used or disposed of. The acreage disturbed by the *operation using* cyanide *ore-processing reagents or other metal leaching solvents or reagents* ~~ore-processing operation~~ and covered by the operating permit is excluded from the 5-acre limit specified in 82-4-303(15)(a)(i) and (15)(a)(ii).

(8) The exemption provided in this section does not apply to a person:

(a) whose failure to comply with the provisions of this part, the rules adopted under this part, or a permit or license issued under this part has resulted in the forfeiture of a bond, unless that person meets the conditions described under 82-4-360;

(b) who has not paid a penalty for which the department has obtained a judgment pursuant to 82-4-361;

(c) who has failed to post a reclamation bond required by this section, unless the department has certified that the area for which the bond should have been posted has been reclaimed by that person or reclaimed by the department and the person has reimbursed the department for the cost of the reclamation; or

(d) who has failed to comply with an abatement order issued pursuant to 82-4-362, unless the department has completed the abatement and the person has reimbursed the department for the cost of abatement.

(9) The exemption provided in this section does not apply to an area:

(a) under permit pursuant to 82-4-335;

(b) that has been permitted pursuant to 82-4-335 and reclaimed by the permittee, the department, or any other state or federal agency; or

HeinOnline -- 1999 vol. II 2116 1999

(c) that has been reclaimed by or has been subject to remediation of contamination or pollution by a public agency, under supervision of a public agency, or using public funds.

(10) A small miner may not use mercury except in a contained facility that prevents the escape of any mercury into the environment."

Section 3. Section 82-4-310, MCA, is amended to read:

"82-4-310. Exemption — scale and type of activity. (1) ~~This part does not apply to a person engaged in mining activities if that person~~ *A person is exempt from this part when the person is engaging in a mining activity that* does not:

(a) use motorized excavating equipment;

(b) use blasting agents;

(c) disturb more than 100 square feet or 50 cubic yards of material ~~per~~ *at any* site;

(d) leave unreclaimed sites that are less than 1 mile apart;

~~(e) use a suction dredge with an intake of more than 4 inches in diameter; or~~

~~(f) operate a suction dredge beyond the area of the stream bed that is naturally under water at the time of operation~~

(e) use mercury in any operations except in a contained facility that prevents the escape of any mercury into the environment; or

(f) use a cyanide ore-processing reagent or other metal leaching solvents or reagents in any operations.

(2) A person is exempt from this part when the person is engaging in a mining activity using a suction dredge if:

(a) the dredge in use has an intake of 4 inches in diameter or less;

(b) the person does not operate the dredge beyond the area of the streambed that is naturally under water at the time of operation; and

(c) the person has obtained for the activity:

(i) project approval pursuant to Title 75, chapter 7, part 1; and

(ii) a discharge permit issued pursuant to 75-5-402.

~~(2)~~*(3)* This part does not apply to a person who, on land owned or controlled by that person, allows other persons to engage in mining activities if those activities cumulatively meet the requirements of subsection (1)."

Section 4. Section 82-4-335, MCA, is amended to read:

"82-4-335. Operating permit — limitation — fees. (1) A person may not engage in mining, ore processing, or reprocessing of tailings or waste material, construct or operate a hard-rock mill, use cyanide ore-processing reagents *or other metal leaching solvents or reagents*, or disturb land in anticipation of those activities in the state without first obtaining an operating permit from the department. A separate operating permit is required for each complex.

(2) A small miner who intends to use a cyanide ore-processing reagent *or other metal leaching solvents or reagents* shall obtain an operating permit for that part of the small miner's operation where the cyanide ore-processing reagent *or other metal leaching solvents or reagents* will be used or disposed of.

HeinOnline -- 1999 vol. II 2117 1999

(3) Prior to receiving an operating permit from the department, a person shall pay the basic permit fee of $25. The department may require a person who is applying for a permit pursuant to subsection (1) to pay an additional fee not to exceed the actual amount of contractor and employee expenses beyond the normal operating expenses of the department whenever those expenses are reasonably necessary to provide for timely and adequate review of the application, including any environmental review conducted under Title 75, chapter 1, parts 1 and 2. The board may further define these expenses by rule. Whenever the department determines that an additional fee is necessary and the additional fee will exceed $5,000, the department shall notify the applicant that a fee must be paid and suhmit to the applicant an itemized estimate of the proposed expenses. The department shall provide the applicant an opportunity to review the department's estimated expenses. The applicant may indicate which proposed expenses the applicant considers duplicative or excessive, if any.

(4) The person shall submit an application on a form provided by the department, which must contain the following information and any other pertinent data required by rule:

(a) *the* name and address of the operator and, if a corporation or other husiness entity, the name and address of its officers, directors, owners of 10% or more of any class of voting stock, partners, and the like and its resident agent for service of process, if required by law;

(b) *the* minerals expected to be mined;

(c) a proposed reclamation plan;

(d) *the* expected starting date of operations;

(e) a map showing the specific area to be mined and the boundaries of the land that will be disturbed, *the* topographic detail, the location and names of all streams, roads, railroads, and utility lines on or immediately adjacent to the area, and the location of proposed access roads to be built;

(f) the names and addresses of the owners of record and any purchasers under contracts for deed of the surface of the land within the permit area and the owners of record and any purchasers under contracts for deed of all surface area within one-half mile of any part of the permit area, provided that the department is not required to verify this information;

(g) the names and addresses of the present owners of record and any purchasers under contracts for deed of all minerals in the land within the permit area, provided that the department is not required to verify this information;

(h) the source of the applicant's legal right to mine the mineral on the land affected hy the permit, provided that the department is not required to verify this information;

(i) *the* types of access roads to be built and manner of reclamation of road sites on abandonment;

(j) a plan ~~which~~ *that* will provide, within limits of normal operating procedures of the industry, for completion of the operation;

(k) ground water and surface water hydrologic data gathered from a sufficient number of sources and length of time to characterize the hydrologic regime;

(l) a plan detailing the design, operation, and monitoring of impounding structures, including but not limited to tailings impoundments and water reservoirs, sufficient to ensure that the structures are safe and stable;

(m) a plan identifying methods to be used to monitor for the accidental discharge of objectionable materials and remedial action plans to be used to control and mitigate discharges to surface or ground water; and

(n) an evaluation of the expected life of any tailings impoundment or waste area and the potential for expansion of the tailings impoundment or waste site.

(5) Except as provided in subsection (7), the permit provided for in subsection (1) for a large-scale mineral development as defined in 90-6-302 must be conditioned to provide that activities under the permit may not commence until the impact plan is approved under 90-6-307 and until the permittee has provided a written guarantee to the department and to the hard-rock mining impact board of compliance within the time schedule with the commitment made in the approved impact plan, as provided in 90-6-307. If the permittee does not comply with that commitment within the time scheduled, tbe department, upon receipt of written notice from the hard-rock mining impact board, shall suspeud the pormit until it receives written notice from the hard-rock mining impact board that the permittee is in compliance.

(6) When the department determines that a permittee has become or will become a large-scale mineral developer pursuant to 82-4-339 and 90-6-302 and provides notice as required under 82-4-339, within 6 months of receiving the notice, the permittee shall provide the department with proof that the permittee has obtained a waiver of the impact plan requirement from the hard-rock mining impact board or that the permittee has filed an impact plan with the hard-rock mining impact board and the appropriate county or counties. If the permittee does not file the required proof or if the hard-rock mining impact board certifies to the department that the permittee has failed to comply with the hard-rock mining impact review and implementation requirements in Title 90, chapter 6, parts 3 and 4, the department shall suspend the permit until the pormittee files the required proof or until tbe hard-rock mining impact board certifies that the permittee has complied with the hard-rock mining impact review and implementation requirements.

(7) Compliance with 90-6-307 is not required for exploration and bulk sampling for metallurgical testing when the aggregate samples are less than 10,000 tons.

(8) A person may not be issued an operating permit if:

(a) that person's failure to comply with the provisions of this part, the rules adopted under this part, or a permit or license issued under this part bas resulted in the forfeiture of a bond, unless that person meets the conditions described in 82-4-360;

(b) that person has not paid a penalty for which the department has obtained a judgment pursuant to 82-4-361;

(c) that person has failed to post a reclamation bond required by 82-4-305, unless the department has certified that the area for which the bond should bave been posted has been reclaimed by that person or reclaimed by the department and the person has reimbursed the department for the cost of the reclamation;

HeinOnline -- 1999 vol. II 2119 1999

(d) that person has failed to comply with an abatement order issued pursuant to 82-4-362, unless the department has completed the abatement and the person has reimbursed the department for the cost of abatement.

(9) A person may not be issued a permit under this part unless, at the time of submission of a bond, the person provides the current information required in subsection (4)(a) and:

(a) (i) certifies that the person is not currently in violation in this state of any law, rule, or regulation of this state or of the United States pertaining to air quality, water quality, or mined land reclamation; or

(ii) presents a certification by the administering agency that the violation is in the process of being corrected to the agency's satisfaction or is the subject of a bona fide administrative or judicial appeal; and

(b) if the person is a partnership, corporation, or other business association, provides the certification required by subsection (9)(a)(i) or (9)(a)(ii), as applicable, for any partners, officers, directors, owners of 10% or more of any class of voting stock, and business association members."

Section 5. Section 82-4-338, MCA, is amended to read:

"**82-4-338. Performance bond.** (1) The applicant shall file with the department a bond payable to the state of Montana with surety satisfactory to the department in the sum to be determined by the department of not less than $200 ~~or more than $2,500~~ for each acre or fraction of an acre of the disturbed ~~area~~ *land*, conditioned upon the faithful performance of the requirements of this part, the rules of the board, and the permit. In lieu of a bond, the applicant may file with the ~~board~~ *department* a cash deposit, an assignment of a certificate of deposit, or other surety acceptable to the department. ~~Regardless of the limits in this subsection, the~~ *The* bond may not be less than the estimated cost to the state to ensure compliance with this part, the rules, and the permit, *including the potential cost of department management, operation, and maintenance of the site upon temporary or permanent operator insolvency or abandonment, until full bond liquidation can be effected.* A public or governmental agency may not be required to post a bond under the provisions of this part. A blanket performance bond covering two or more operations may be accepted by the ~~board~~ *department*. A blanket bond must adequately secure the estimated total number of acres of disturbed land.

(2) The department shall ~~review~~ *conduct an overview of* the amount of each bond ~~at least every 5 years~~ *annually* and shall *conduct a comprehensive bond review at least every 5 years. The department may conduct additional comprehensive bond reviews if, after modification of the reclamation or operation plan, an annual overview, or an inspection of the permit area, the department determines that an increase of the bond level may be necessary. The department shall* consult with the licensee or permittee if the review indicates that the bond level should be adjusted. When determined by the department that the set bonding level of a permit or license does not represent the present costs of compliance with this part, the rules, and the permit, the department may modify the bonding requirements of that permit or license. The department shall make written findings, give the licensee or permittee a copy of the findings, and, for operating permits, publish notice of the findings in a newspaper of general circulation in the county in which the operation is located. The permittee or any person with an interest that may be adversely affected may obtain a contested

HeinOnline -- 1999 vol. II 2120 1999

case hearing under the provisions of the Montana Administrative Procedure Act on the adjusted bond level by filing with the department within 30 days of the notice a written request for hearing.

(3) A bond filed in accordance with the provisions of this part may not be released by the department until the provisions of this part, the rules adopted pursuant to this part, and the permit have been fulfilled.

(4) A bond filed for an operating permit obtained under 82-4-335 may not be released *or decreased* until the public has been provided an opportunity for a hearing *and a hearing has been held if requested. The department shall provide reasonable statewide and local notice of the opportunity for a hearing, including but not limited to publishing the notice in newspapers of general daily circulation.*

(5) All bonds required in accordance with the provisions of this section must be based upon reasonably foreseeable activities that the applicant may conduct in order to comply with conditions of an operating permit or license. Bonds may be required only for anticipated activities as described in subsection (1). Only those activities that themselves or in conjunction with other activities have a reasonable possibility of occurring may be bonded.

(6) At the applicant's discretion, bonding in addition to that required by this section may be posted. These unobligated bonds may, on the applicant's request, be applied to future bonds required by this section."

Section 6. Section 82-4-341, MCA, is amended to read:

"82-4-341. Compliance — reclamation by ~~board~~ *department*. (1) The department shall cause the permit area to be inspected at least annually to determine whether the permittee has complied with this part, the rules adopted under this part, or the permit.

(2) The permittee shall proceed with reclamation as scheduled in the approved reclamation plan *or as required pursuant to subsection (8)*. Following written notice by the department noting deficiencies, the permittee shall commence action within 30 days to rectify these deficiencies and shall diligently proceed until the deficiencies are corrected. Deficiencies that also violate other laws that require earlier rectification must be corrected in accordance with the applicable time provisions of those laws. The department may extend performance periods referred to in this section and in 82-4-336 for delays clearly beyond the permittee's control, but only when the permittee is, in the opinion of the department, making every reasonable effort to comply.

(3) Within 30 days after notification by the permittee and when, in the judgment of the department, reclamation of a unit of disturbed land area is properly completed, *the department shall provide the public notice and conduct any hearing requested pursuant to 82-4-338. As soon as practicable thereafter,* the permittee must be notified in writing and the bond on the area must be released or decreased proportionately to the acreage included within the bond coverage.

(4) The ~~board~~ *department* shall cause the bond to be forfeited if:

(a) reclamation of disturbed land is not pursued in accordance with the reclamation plan and the permittee has not commenced action to rectify deficiencies within 30 days after notification by the department;

(b) reclamation is not properly completed in conformance with the reclamation plan within 2 years after completion or abandonment of operation

on any fraction of the permit area or within a longer period that may have been authorized under this part; or

(c) after default hy the permittee, the surety either refuses or fails to perform the work to the satisfaction of the department within the time required.

(5) The department shall notify the permittee and the surety hy order. If the bond is not paid within 30 days after receipt of the notice, the attorney general, upon request of the department, shall bring an action on behalf of the state in district court.

(6) The department may, with the staff, equipment, and material under its control or by contract with others, take any necessary actions for required reclamation of the disturbed lands. Except in an environmental emergency, work provided for in this section must be let on the basis of competitive hidding. The department shall keep a record of all necessary expenses incurred in carrying out the work or activity authorized under this section, including a reasonable charge for the services performed by the state's personnel and the state's equipment and materials used. The surety is liable to the state to the extent of the bond. The permittee is liable for the remainder of the cost. Upon completion of the reclamation, the department shall return any amount not expended.

(7) In addition to the other liabilities imposed hy this part, failure to commence an action to remedy specific deficiencies in reclamation within 30 days after notification by the department or failure to satisfactorily complete reclamation work on any segment of the permit area within 2 years or within a longer period that the department may permit on the permittee's application or on the department's own motion, after completion or abandonment of operations on any segment of the permit area, constitutes sufficient grounds for cancellation of a permit or license and refusal to issue another permit or license to the applicant. A cancellation action may not be effected while an appeal is pending from any ruling requiring the cancellation of a permit or license.

(8) (a) If at the time of bond review pursuant to 82-4-338 no mineral extraction or ore processing has occurred on a mine permit area for the past 5 years, the department shall determine whether further suspension of the operation will create conditions that will cause violations of Title 75, chapter 2 or 5, or significantly impair reclamation of disturbed areas. If the department determines in writing that violations of Title 75, chapter 2 or 5, or significant impairment of reclamation will occur, the department shall notify the permittee that the permittee shall, within a reasonable time specified in the notice, abate the conditions or commence reclamation. The department may grant reasonable extensions of time for good cause shown. If the permittee does not abate the conditions or commence reclamation within the time specified in the notice and any extensions, the department shall order either that the condition be abated or that reclamation be commenced.

(b) The permittee may request a hearing on the order by submitting a written request for hearing within 30 days of receipt of the order. A request for hearing stays the order pending a final decision, unless the department determines in writing that the stay will create an imminent threat of significant environmental harm or will significantly impair reclamation."

Section 7. Section 82-4-349, MCA, is amended to read:

"82-4-349. Limitations of actions. Legal actions seeking review of a department decision granting or denying an exploration license or operating

permit issued under this part must be filed within 90 days after the decision is made. *Summons must be issued and process served on all defendants within 60 days after the action is filed.*"

Section 8. Section 82-4-402, MCA, is amended to read:

"**82-4-402. Policy.** It is the policy of this state to provide for the reclamation and conservation of land subjected to opencut ~~mineral~~ *materials* mining. Therefore, it is the purpose of this part to preserve natural resources, to aid in the protection of wildlife and aquatic resources, to safeguard and reclaim through effective means and methods all agricultural, recreational, home, and industrial sites subjected to or ~~which~~ *that* may be affected by opencut ~~mineral~~ *materials* mining to protect and perpetuate the taxable value of property *through reclamation*, to protect scenic, scientific, historic, or other unique areas, and to promote the health, safety, and general welfare of the people of this state."

Section 9. Section 82-4-403, MCA, is amended to read:

"**82-4-403. Definitions.** When used in this part, unless a different meaning clearly appears from the context, the following definitions apply:

(1) "Affected land" means the area of land and land covered by water that is disturbed by opencut mining operations, including the area from which overburden or ~~mineral~~ *material* is to be or has been removed and upon which the overburden is to be or has been deposited, roads constructed to gain access to the ~~mineral~~ *material*, areas of processing facilities on or contiguous to the opencut mine, treatment and sedimentation ponds, and ~~mineral~~ *material* stockpile areas on or contiguous to the opencut mine.

(2) "Board" means the board of environmental review provided for in 2-15-3502.

~~(3) "Contract" means a mined land reclamation contract prepared by the board to meet the requirements of this part.~~

~~(4)~~*(3)* "Department" means the department of environmental quality provided for in 2-15-3501.

~~(5)~~*(4)* "Final cut" means the last pit created in an opencut-mined area.

~~(6)~~*(5)* "Landowner" means the owner of land ~~directly affected by~~ *subjected to* an opencut-mining operation.

~~(7)~~*(6)* ~~"Minerals"~~ *"Materials"* means bentonite, clay, scoria, ~~phosphate rock~~ *peat*, sand, *soil materials,* or gravel.

~~(8)~~*(7)* "Opencut mining" means the mining of ~~minerals~~ *materials* by:

(a) removing the overburden lying upon natural deposits of ~~minerals~~ *materials* and mining directly from the exposed natural deposits; *or*

(b) mining directly from natural deposits of ~~minerals~~ *materials*~~; or~~

~~(c) removing overburden for the purpose of determining the location, quality, or quantity of any natural deposit of minerals~~.

~~(9)~~*(8)* "Operator" means a person engaged in or controlling an opencut-mining operation.

~~(10)~~*(9)* "Overburden" means all of the earth and other materials that lie above a natural deposit of ~~minerals~~ *materials*.

~~(11)~~*(10)* "Person" means:

HeinOnline -- 1999 vol. II 2123 1999

(a) a natural person;

(b) a firm, association, partnership, cooperative, or corporation;

(c) a department, agency, or instrumentality of the state or any governmental subdivision; or

(d) any other entity.

~~(12)~~*(11)* "Processing facilities" means all crushers, screens, and asphalt or concrete plants.

~~(13)~~*(12)* "Progress report" means a report ~~showing the land that the operator has affected by opencut mining during the year. The report must show the number of acres of affected land and all reclamation accomplished~~ *on a form provided by the department, with appropriate maps, that shows:*

(a) any change in ownership or control of the affected land and includes a landowner consent form if a change has occurred;

(b) any change in personnel who are in charge of the operation or responsible for reclamation;

(c) any change in any contractors or subcontractors who will be working at the site; and

(d) all land that has been affected by the operation.

~~(14) "Public notice" means notice given by publication in a newspaper in the general area where the affected land is located. The notice must be given once a week for 3 successive weeks.~~

~~(15)~~*(13)* "Reclamation" means the reconditioning of the area of land affected by opencut-mining operations to make the area suitable for productive use, including but not limited to forestry, agriculture, grazing, wildlife, recreation, or residential and industrial sites.

~~(15)~~*(14)* "Reclamation plan" means ~~the~~ *a plan that:*

(a) meets the requirements of 82-4-434; and

(b) contains a description of current land use, topographical data, water data, soils data, leased areas, and intended mine areas and an explanation of proposed reclamation of the land, including appropriate maps.

~~(17)~~*(15)* "Refuse" means all waste material directly connected with the opencut-mining operations.

~~(18)~~*(16)* ~~"Soils~~ *"Soil* materials" are those horizons that contain topsoil or other soils leached free of deleterious salts, that are capable of sustaining plant growth, and that are recognized as such by standard authorities.

~~(19)~~*(17)* "Spoil" means the overburden that is disturbed from its natural state in the process of opencut mining."

Section 10. Section 82-4-405, MCA, is amended to read:

"82-4-405. Inapplicability to ~~state and local~~ government. The provisions of this part relating to fees or bonds do not apply to the *federal government or its agencies, the* state of Montana, counties, cities, or towns."

Section 11. Section 82-4-422, MCA, is amended to read:

HeinOnline -- 1999 vol. II 2124 1999

"**82-4-422. Powers, duties, and functions.** (1) The department has the ~~foll~~*lowing* powers, duties, and functions to:

(a) ~~enter into contracts where~~ *issue permits when* it is found on the basis of the information set forth in the application and an evaluation of the operation by the department that the requirements of the part or rules will be observed and that the operation and the reclamation of the affected area can be carried out consistently with the purpose of the part;

(b) conduct hearings and, for the purposes of conducting ~~such~~ *those* hearings, administer oaths and affirmations, subpoena witnesses, compel attendance of witnesses, hear evidence, and require the productien of any books, papers, correspondence, memoranda, agreements, documents, or other records relevant or material to the inquiry;

(c) reclaim any affected land with respect to which a bond has been forfeited; and

(d) make investigations or inspections ~~which~~ *that* are considered necessary to ~~insure~~ *ensure* compliance with any provision of this part.

(2) Tbe board shall adopt rules:

(a) that pertain to opencut mining in order to accomplish the purposes of this part; and

(b) establishing uniform procedures for filin*g* of necessary records, for the issuance of ~~contracts~~ *permits*, and for any other matters of administration not specifically enumerated in this part."

Section 12. Section 82-4-423, MCA, is amended to read:

"**82-4-423. ~~Contracts~~ *Permits* for reclamation.** The department is ~~hereby~~ authorized to ~~enter into contracts with~~ *issue permits to* operators in the name of the state of Montana ~~which~~ *that* will provide for the reclamation of lands on which opencut mining of minerals has been or is to be conducted. The departnient is authorized to sue and be sued in the name of tlie state of Montana to enforce the provisions of any ~~contract~~ *permit*, and the department shall bring ~~such~~ *any* court actions and take ~~such~~ *any* other steps and actions as may be necessary to enforce the provisions of ~~such contracts~~ *a permit*."

Seetion 13. Section 82-4-427, MCA, is amended to read:

"**82-4-427. Hearing.** (1) A person who is aggrieved by a final decision of the department is entitled to a hearing *within 30 days of the department's decision.*

(2) The Montana Administrative Procedure Act governs hearings before the department and judicial review of *those* decisions ~~of the board under this part~~."

Section 14. Section 82-4-431, MCA, is amended to read:

"**82-4-431. ~~Contract~~ *Permit* for reclamation required.** (1) An operator may not conduct opencut-mining operations that ~~will~~ result in tlie removal of *a total of* 10,000 cubic yards or more of ~~product or~~ *materials and* overburden ~~or that will result in the disturbance of land that was previously reclaimed pursuant to this part~~ until the ~~operator has entered into a contract with the~~ department *has issued a permit to the operator* for the reclamation of the land affected. *A person may not, without a permit, remove materials from a site from which a total of 10,000 cubic yards or more of materials and overburden has been removed.* An operator conducting a number of operations, each of which results in the removal

HeinOnline -- 1999 vol. II 2125 1999

of less than 10,000 cubic yards of ~~product or~~ *materials and* overburden but ~~which~~ *that* result in the removal of 10,000 cubic yards or more of ~~product or~~ *materials and* overburden in the aggregate, is subject to the provisions of this part, except as provided in this section.

(2) ~~(a)~~ Except as provided in or conditioned under subsections ~~(2)(b)~~ *(3)* and ~~(2)(c)~~ *(4)*, an operator who holds a ~~contract~~ *permit* for reclamation may operate an opencut mine without first securing an additional ~~contract~~ *permit* or an amendment to the existing ~~contract~~ *permit* or bond if the mine meets the following criteria:

~~(i)~~*(a)* the total amount of ~~material~~ *materials* and overburden removed does not exceed ~~1,000~~ *2,500* cubic yards; and

~~(ii)~~*(b)* the operator notifies the department prior to beginning operations and, within 30 days of notifying the department, submits a completed site information form, salvages and stockpiles all root-bearing soil materials, regrades the affected area to 3:1 or flatter slope and blends the reclaimed area into the adjacent topography, and during the first appropriate growing season, replaces all topsoil and reseeds or revegetates as required by the department.

~~(b)~~*(3)* The department may refuse to *approve an application for issuance of a permit under subsection (1) or* allow the operator to operate an opencut mine under ~~subsection (2)(a)~~ *subsections (1) and (2)* if, at the time of notification hy the operator to the department, the operator has a pattern of violations or is in current violation of this part, ~~or~~ rules adopted under this part, or provisions of a ~~contract~~ *permit* for reclamation.

~~(c)~~*(4)* The department may require an additional bond as a condition for the operation of an opencut mine under subsection (2)~~(a)~~.

~~(3)~~*(5)* Opencut mines described in subsection (2) may not be placed:

(a) in flowing, ephemeral, or intermittent streams;

(b) in the bottom or head of a confined drainage;

(c) in an area where the operation will intercept ground water or intercept any slope that is naturally steeper than 3:1; or

(d) in any area where mining would be restricted by other laws.

~~(4)~~*(6)* Sand and gravel opencut mines must meet applicable local zoning regulations adopted under Title 76, chapter 2."

Section 15. Section 82-4-432, MCA, is amended to read:

"82-4-432. Application for ~~contract~~ *permit* — contents — issuance — amendment. (1) Applications for a ~~contract~~*permit* must be made upon a form furnished hy the department. The form must contain the following:

(a) the name of the operator and, if other than the owner of the land, the name and address of the owner;

(b) the type of operation to be conducted;

(c) the volume of earth to he removed, as accurately as the volume may then be estimated, and the volume ~~which~~ *that* has been previously removed, if any;

(d) the location of the operation by legal subdivision, section, township and range, and county;

(e) the date when the operation was or will be commenced; and

HeinOnline -- 1999 vol. II 2126 1999

(f) a statement that the applicant has the right and power by legal estate owned to mine by opencut mining the lands ~~so~~ described.

(2) The application must be accompanied by:

(a) a bond or security meeting the requirements as set out in this part;

(b) a fee of $50 *for an application to mine bentonite, clay, scoria, sand, or gravel*;

(c) a statement from the local governing body having jurisdiction over the area to be mined certifying that a proposed sand and gravel opencut mine and its operating and reclamation plans comply with applicable local zoning regulations adopted under Title 76, chapter 2; and

(d) the operator's plan of operation and ~~the method and manner of reclamation that will be used or followed~~ *a complete reclamation plan.*

(3) If, prior to applying for a ~~contract~~ *permit*, ~~the operator~~ *a person* notifies the department of the intention to submit ~~a plan~~ *an application* and requests the department to examine the area to be mined, the department shall cause the area to be examined and make recommendations to the ~~operator~~ *person* regarding reclamation. *The person may request a meeting with the department. The department shall hold a meeting if requested.*

(4) Upon receipt of ~~the~~ *a complete* application~~, bond or security, and fee due from the operator and upon agreement to the terms of the contract by the parties, the department may issue a contract to the applicant which entitles the applicant to continue in or engage in opencut mining on the land therein described~~ *containing all items listed in subsections (1) and (2), the department shall, within 30 days, notify the person if it has approved or denied the application. The department may for sufficient cause extend its period of review for an additional 30 days if it notifies the person of the extension prior to the end of the original 30-day period. Upon approval of the application, the department shall issue a permit to the operator that entitles the operator to continue or engage in opencut mining on the land described in the application.*

(5) An operator desiring to have a ~~contract~~ *permit* amended to cover additional contiguous or nearby land may file an amended application with the department. Upon receipt of the amended application and ~~such~~ *any* additional bond as may be required and upon agreement to the terms of the amendment by the parties, the department may issue an amendment to the original ~~contract~~ *permit* covering the additional land described in the amended application without the payment of any additional fee.

(6) An operator may withdraw any land covered by ~~contract~~ *a permit*, except affected land, by notifying the department ~~thereof~~ *of the withdrawal*, in which case the penalty of the bond or security filed by the operator pursuant to the provisions of this part ~~shall~~ *must* be reduced proportionately."

Section 16. Section 82-4-433, MCA, is amended to read:

"82-4-433. Bond. (1) A bond required to be filed ~~in~~ *under* this part by the operator ~~shall be in such~~ *must be in a* form ~~as~~ *that* the department prescribes, payable to the state of Montana and conditioned upon the operator's full compliance with all requirements of this part, ~~and all~~ *the* rules of the board, *and the permit*. The bond ~~shall~~ *must* be signed by the landowner or operator, as appropriate, as principal, and by a good and sufficient corporate surety licensed to do business in the state of Montana, as surety. The bond ~~shall~~ *must* be in an amount

HeinOnline -- 1999 vol. II 2127 1999

not to exceed the costs of restoration required by this part as determined by the department. The amount of the bond may not be less than $200 or more than $1,000 ~~per~~ *an* acre unless the department determines, in writing, that the cost of restoration of the land exceeds $1,000 ~~per~~ *an* acre. Upon ~~such a~~ *the cost* determination, the bond amount must be set by the department at the cost of restoring the land.

(2) In lieu of the bond, the operator may deposit with the ~~board~~ *department* cash, government securities, a letter of credit in a form acceptable to the department, or a bond with property sureties in an amount equal to that of the required bond on conditions as ~~above~~ prescribed *in this part*. In the discretion of the ~~board~~ *department*, surety bond requirements may be fulfilled by the operator's posting a bond with land and improvements and facilities ~~thereon~~ *located on the land* as security, in which event ~~no~~ *a* surety may *not* be required *but the department may require that the amount of the bond be adjusted to reimburse the department for foreclosure costs*. The penalty of the bond or amount of cash and securities ~~shall~~ *must* be increased or reduced from time to time as provided in this part. The bond or security remains in effect until the affected land has been reclaimed as provided under the ~~contract~~ *permit* and the reclamation has been approved and the bond or security has been released by the ~~board~~ *department*. The bond or security ~~shall~~ *may* cover only actual affected land and may be increased or reduced to cover only ~~such~~ *those* acreages as remain unreclaimed.

(3) If the license of a surety upon a bond filed with the department pursuant to this part is suspended or revoked, the operator, within 30 days after receiving notice ~~thereof~~ *of the suspension or revocation* from the ~~board~~ *department*, shall substitute for that surety a good and sufficient surety licensed to do business in the state. Upon failure of the operator to make substitution of surety, the ~~board~~ *department* may suspend the ~~contract~~ *permit* of the operator to conduct operations upon the land described in the ~~contract~~ *permit* until the substitution has been made.

(4) The department shall cause the reclamation of any affected land with respect to which a bond has been forfeited.

(5) Whenever an operator has completed all of the requirements under the provisions of this part as to any affected land, the operator shall notify the department ~~thereof~~ *of the completed requirements*. If the board releases the operator from further obligation regarding ~~such~~ *any* affected land, the penalty of the bond ~~shall~~ *must* be reduced proportionately."

Section 17. Section 82-4-434, MCA, is amended to read:

"82-4-434. Reclamation plan part of ~~contract~~ *permit* — requirements. The ~~contract~~ *reclamation plan* must meet the following requirements:

(1) ~~The operator shall submit a reclamation plan to the department before commencing any opencut mining and may not commence mining before the plan receives approval from the department. The operator may request and receive a meeting with the department prior to submission of the plan. If the department does not notify the operator that it has approved or disapproved a plan within 30 days after the department has received the plan, the department is considered to have approved the plan. The department, however, for sufficient cause, may extend its period of consideration for an additional 30 days if it notifies the~~

HeinOnline -- 1999 vol. II 2128 1999

~~operator prior to the end of the original 30-day period.~~ The department shall submit each reclamation plan or amendments to the reclamation plan to the landowner for recommendations and shall consider those recommendations in deciding whether to approve or disapprove any plan or amendments. The department may seek technical help from any state or federal agency. The ~~board~~ *department* shall submit the plan immediately to the ~~director of the university of Montana-Missoula-statewide archaeological survey~~ *state historic preservation office* for evaluation of possible archaeological or historical values in the area to be mined. The department may approve a reclamation plan only if the department has found that the plan provides for the best possible reclamation ~~procedures available~~ under the circumstances at the time, so that after mining operations are completed, the affected land will be reclaimed to a productive use. Once the reclamation plan is accepted in writing by the department, it must become a part of the ~~contract~~ *permit* but is subject to annual review and modification by the department.

(2) The department may not approve ~~any~~ *a* reclamation plan *or a plan of operations* unless the ~~plan provides~~ *plans provide*:

(a) that the land will be reclaimed for one or more specified uses, including but not limited to forest, pasture, orchard, cropland, residence, recreation, industry, and habitat for wildlife, including food, cover, or water, or other uses;

(b) that to the extent reasonable and practicable, the operator will establish vegetative cover commensurate with the proposed land use;

(c) whenever operations result in a need to prevent acid drainage or sedimentation on or in adjoining lands or streams, for the construction of earth dams or other reasonable devices to control water drainage, provided the formation of the impoundments or devices will not interfere with other landowners' rights or contribute to water pollution;

(d) that to accomplish practical utilization of soil materials, the material will be *salvaged and* utilized for placement on affected areas, if required by the reclamation plan after completion or termination of that particular phase of the mining operations, at a depth sufficient for plant growth on slopes of 3:1 or less~~;~~. *The depth of soil materials to be placed on the reclaimed area must be specified in the plan.*

(e) that grading will be commensurate with the topography sought and land use designated;

(f) that metal and other waste will be removed or buried;

(g) that all access, haul, and other support roads will be located, constructed, and maintained in such a manner as to control and minimize channeling and other erosion;

(h) that the operator will submit a progress report annually to the department;

(i) that all operations will be conducted to avoid range and forest fires and spontaneous combustion and that open burning of carbonaceous materials will be in accordance with suitable practices for fire prevention and control;

(j) that archaeological and historical values in areas to be mined will be given appropriate protection;

HeinOnline -- 1999 vol. II 2129 1999

(k) that except for ~~rock faces, bench faces, and excavations used for water impoundments~~ *those postmine land uses that do not require vegetation*, each surface area of the mined premises that will he disturbed will he revegetated when its use for extractive purposes is no longer required;

(l) that seeding and planting will be done in a manner to achieve a permanent ~~suitable~~ vegetative cover ~~for wildlife, livestock,~~ *that is suitable for the postmine land use* and ~~retardation of~~ *that retards* erosion and that all seed will be drilled unless otherwise provided in the plan;

(m) that reclamation will be as concurrent with mining operations as feasihle and will be completed within a specified length of time; ~~and~~

(n) that surface water and ground water will be given appropriate protection, consistent with state law, from deterioration of water quality and quantity that may arise as a result of the operation;

(o) that noise and visual impacts on residential areas will be minimized to the degree practicable through berms, vegetation screens, and reasonable limits on hours of operation; and

(p) that any additional procedures that are necessary, consistent with the purposes of this part, to prevent significant physical harm to the affected land or adjacent land, structures, improvements, or life forms will be implemented.

(3) If reclamation according to the plan has not been completed in the time specified, the department after 30 days' written notice shall order the operator to cease mining and, if the operator does not cease, ~~shall~~ *may issue an order to reclaim[, a notice of violation, or an order of abatement] or may* institute an action to enjoin further operation and may sue for damages for breach of ~~contract~~ *the conditions of the permit*, for payment of tbe performance bond, or for both.

(4) (a) At any time during the ~~period of reclamation~~ *term of the permit*, the operator may for good reason submit to tbe department a new reclamation plan or amendments to the existing plan, including extensions of time.

(b) The department may approve the proposed new reclamation plan or amendments to tbe existing plan if:

(i) tbe operator has in geod faith carried on reclamation according to the existing plan and the proposed new plan or amendments to the existing plan will result in reclamation as or more desirable than the reclamation proposed under the existing plan; or

(ii) it is higbly improbable reclamation will be successful unless the existing plan is replaced or amended.

(c) When accepted, the proposed new reclamation plan or the proposed amendments to the existing plan become a part of the ~~contract~~ *permit*.

(5) The operator shall provide a performance bond or an alternative acceptable to the department in an amount commensurate with the estimated cost of reclamation, but in no case may the bond be less than $200 ~~per~~ *an* acre. The estimated cost of reclamation must be set forth in the reclamation plan.

(6) The ~~contract~~ *permit*, reclamation plan, and amendments accepted by the department are a public record and are open to inspection.

HeinOnline -- 1999 vol. II 2130 1999

(7) The ~~contract~~ *permit* is effective when signed by the department and the operator and remains in force until terminated by mutual consent or by the department upon 6 months' notice."

Section 18. Section 82-4-441, MCA, is amended to read:

"**82-4-441. Penalty — enforcement.** (1) The department may assess against a person who violates any of the provisions of this part, rules adopted under this part, or provisions of a ~~contract for~~ reclamation *permit*:

(a) a civil penalty of not less than $100 or more than $1,000 for the violation; and

(b) an additional civil penalty of not less than $100 or more than $1,000 for each day during which a violation continues following the service of notice of the violation.

(2) The department shall take into account the following factors in determining whether to institute a civil penalty action and in determining the penalty amount:

(a) the nature, circumstances, extent, and gravity of the violation;

(b) the violator's prior history of violations;

(c) the economic benefit or savings, if any, to the violator resulting from the violator's action;

(d) the amounts voluntarily expended by the violator to address or mitigate the violation or impacts of the violation; and

(e) other matters that justice may require.

(3) The department sball notify the person or operator of the violation. The person or operator is entitled, by filing a written request within 20 days of receipt of the notice of violation, to a hearing on the issues of whether the alleged violation has occurred and whether tbe penalty proposed to be imposed is proper. The department shall issue a statement of proposed penalty no more than 10 days after notice of violation. After the hearing or after the time for requesting a hearing has expired, the department shall make findings of fact, issue a written decision as to the occurrence of the violation and the amount of penalty warranted, and order the payment of a penalty in that amount. The person or operator shall remit the amount of the penalty within 30 days of the order. If the person or operator wishes to obtain judicial review of the assessment, the person or operator shall submit with the penalty a statement that the penalty is being paid under protest and the department shall hold the payment in escrow until judicial review is complete. A person or operator who fails to request and submit testimony at the hearing provided for in this subsection or who fails to pay the assessed penalty under protest within 30 days of the order assessing the penalty forfeits the right to seek judicial review of the violation or penalty determinations. These penalties are recoverable in an action brought by the department in the district court of the first judicial district of this state, in and for the county of Lewis and Clark, or in the district court of tbe county in which the opencut mine is located.

(4) The department may bring an action to enjoin an operator or other person violating or threatening to violate this part, rules adopted pursuant to this part, or a ~~contract made~~ *permit* pursuant to this part in the district court of the first

HeinOnline -- 1999 vol. II 2131 1999

judicial district of this state, in and for the county of Lewis and Clark, or in the district court of the county in which the opencut mine is located."

Section 19. Coordination instruction. If Senate Bill No. 313 is passed and approved, and if Senate Bill No. 313 amends Title 82, chapter 4, part 4, then the bracketed language in [section 17 of this act] is void.

Section 20. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 21. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 22. Effective date. [This act] is effective on passage and approval.

Section 23. Applicability. (1) [Section 1(8)] and [section 9(6)] apply to operations conducted after July 31, 1999, except that the department of environmental quality may accept small miner exclusions and issue licenses and permits to implement these provisions at any time after [the effective date of this act]. [Section 1(8)] and [section 9(6)] apply to those operations upon filing of the exclusion or issuance of the license or permit.

(2) [Section 2(7)] applies to operations for which a valid small miner exclusion had not been filed before May 1, 1999.

(3) (a) For purposes of the amendment in [section 7] relating to the time for issuance of summons and service of process in legal actions challenging department decisions granting or denying an exploration license or operating permit issued under Title 82, chapter 4, part 3, the 60-day time limit specified in [section 7] applies to actions that are pending on [the effective date of this act] and the 60-day period must begin on [the effective date of this act].

(b) For purposes of the amendments in [sections 9, 11, 12, and 14 through 18] relating to changing opencut mining "contracts" to "permits", contracts issued before [the effective date of this act] are permits. The department of environmental quality shall issue permit documents to the contract holders within a reasonable time after [the effective date of this act].

Approved April 28, 1999

CHAPTER NO. 508

[HB 185]

AN ACT PROVIDING FOR A DETENTION CENTER INSPECTION PROGRAM; REQUIRING DETENTION CENTERS AND HOLDING FACILITIES TO COMPLY WITH THE PROGRAM; PROVIDING THE BOARD OF CRIME CONTROL ADMINISTRATIVE AND RULEMAKING AUTHORITY; PROVIDING FOR DELAYED ENFORCEMENT AUTHORITY; AMENDING SECTIONS 7-32-2222, 7-32-2241, 44-4-301, 44-4-302, 50-1-202, 50-1-203, AND 50-2-118, MCA; PROVIDING A CONTINGENT VOIDNESS PROVISION; AND PROVIDING EFFECTIVE DATES.

HeinOnline -- 1999 vol. II 2132 1999

Be it enacted by the Legislature of the State of Montana:

Section 1. Purpose. The purpose of [sections 1 through 4] is to provide the counties with guidance in order to operate detention centers and holding facilities that comply with minimum life, health, and safety standards and that uphold for inmates the constitutional rights that are guaranteed to all inmates. Operating at minimum standards is intended to reduce the counties' liability and safety concerns and therefore reduce insurance and indemnification costs. The intention of [sections 1 through 4] is to assist counties by providing guidance in policy and procedures and to encourage compliance with standards, not to be punitive in enforcement. Enforcement may include eventual closure of a detention center, but only after a county fails to make sufficient attempts at corrective action.

Section 2. Rulemaking authority. The board of crime control may adopt rules necessary to implement the provisions of [sections 1 through 4], including but not limited to rules on:

(1) detention center inspection regions;

(2) mandatory detention standards, including policies and procedures, for detention centers and holding facilities;

(3) detention center inspector training;

(4) the detention center and holding facility inspection process, including requiring inspection reports, corrective action plans, and followup inspections; and

(5) enforcement of mandatory detention center standards.

Section 3. Detention center inspection program — duties and responsibilities — inspector training. (1) There is a detention center inspection program.

(2) The duties and responsibilities of the board of crime control in the administration of the program include:

(a) adopting rules pursuant to [section 2];

(b) developing a curriculum to train persons to be qualified detention center inspectors;

(c) conducting the detention center and holding facility inspections, which may be contracted to a qualified entity;

(d) reviewing inspection reports from detention center and holding facility inspections;

(e) reviewing and approving action plans developed by a county to bring a detention center or a holding facility into compliance with adopted mandatory detention center standards; and

(f) enforcement as provided in [section 4].

(2) The board of crime control may accept grant funds to assist in the administration of the program.

(3) The board of crime control shall coordinate detention center and holding facility inspections with building, fire, safety, and public health inspections in order to reduce duplication and expense to local governments.

HeinOnline -- 1999 vol. II 2133 1999

Section 4. Enforcement. (1) The board of crime control is responsible for the enforcement of the mandatory detention center standards and any action plans necessary to bring detention centers and holding facilities into compliance.

(2) The board of crime control shall offer a county a reasonable opportunity to take remedial action and shall give a county sufficient time within an action plan to address deficiencies, especially in the event that capital costs are required.

(3) The board of crime control is authorized to take the necessary legal steps to enforce the standards, including pursuing closure of a county detention center or holding facility. The board of crime control shall pursue closure of a detention center or a bolding facility only after the county has failed to take remedial action.

Section 5. Section 7-32-2222, MCA, is amended to read:

"7-32-2222. Health and safety of ~~prisoners~~ *inmates.* (1) Each detention center ~~shall~~ *and holding facility shall* comply with state and local *building and* fire codes for correctional occupancy ~~and~~, with ~~sanitation,~~ safety *codes, with public health requirements including* ~~and~~ health codes, *and with the detention center inspection program as provided in [sections 1 through 4].*

(2) Designated exits must permit prompt evacuation of inmates and detention center staff in an emergency.

(3) When there is geod reason to believe that the inmates may be injured or endangered, the detention center administrator shall remove them to a safe and convenient place and confine tbem there as long as necessary to avoid the danger.

(4) (a) If in the opinion of the detention center administrator an inmate under the administrator's jurisdiction requires medication, medical services, or hospitalization, the expense must be borne by the arresting agency when the arresting agency is not the county in which the inmate is confined, except as provided in 7-32-2245 or subsection (4)(b) ~~of this section~~.

(b) If a city or town commits a person to the detention center *or holding facility* of the county in which the city or town is located for a reason other than detention pending trial for or detention for service of a sentence for violating an ordinance of that city or town, the expense must be paid by the county, except as provided in 7-32-2245. If the department of corrections is tbe arresting agency and the inmate is a probation violator, the expense must be paid by the county in which the district court that retains jurisdiction over the inmate is located, except as provided in 7-32-2245.

(c) The county attorney shall initiate proceedings to collect from the inmate any charges arising from the medical services or hospitalization for the inmate involved in accordance with 7-32-2245."

Section 6. Section 7-32-2241, MCA, is amended to read:

"7-32-2241. Definitions. As used in this part, the following definitions apply:

(1) "Detention center" means a facility established and maintained by an appropriate entity for the purpose of confining arrested persons or persons sentenced to the detention center.

(2) "Detention center administrator" means the sheriff, chief of police, administrator, superintendent, director, or other individual serving as the chief executive officer of a detention center *or holding facility.*

HeinOnline -- 1999 vol. II 2134 1999

(3) "Detention center staff" means custodial personnel whose duties include ongoing supervision of the inmates in a detention center *or holding facility.*

(4) "Holding facility" means a facility for the temporary detention of an arrested person for up to 72 hours, excluding holidays, Saturdays, and Sundays. The period of time a person is held in temporary detention may not exceed 96 hours.

~~(4)~~*(5)* "Inmate" means a person who is confined in a detention center *or holding facility.*

~~(5)~~*(6)* "Local government" means a city, town, county, or consolidated city-county government.

~~(5)~~*(7)* "Multijurisdictional detention center" means a detention center established and maintained by two or more local governments for the confinement of persons arrested or sentenced to confinement or a local government detention center contracting to confine persons arrested or sentenced in other local governments.

~~(7)~~*(8)* "Private detention center" means a detention center owned by private industry and leased to or operated under a contract with a local government."

Section 7. Section 44-4-301, MCA, is amended to read:

"44-4-301. Functions. (1) As designated by the governor as the state planning agency under the Omnibus Crime Control and Safe Streets Act of 1968, as amended, the board of crime control shall perform the functions assigned to it under that act. The board shall also provide to criminal justice agencies technical assistance and supportive services that are approved by the board or assigned by the governor or legislature.

(2) The board may:

(a) establish minimum qualifying standards for employment of peace officers, as defined in 7-32-303, detention officers, detention center administrators, and public safety communications officers; and

(h) develop procedures for revoking or suspending the certification of peace officers, as defined in 7-32-303, detention officers, detention center administrators, and public safety communications officers.

(3) The board may require basic training for officers, establish minimum standards for equipment and procedures and for advanced inservice training for officers, establish minimum standards for the certification of public safety communications officers, establish minimum standards for the certification of motor carrier services division officers appointed under 61-12-201, and establish minimum standards for law enforcement and detention officer training schools administered by the state or any of its political subdivisions or agencies, to ensure the public health, welfare, and safety.

(4) The board may waive the minimum qualification standard provided in subsection (2) for good cause shown.

(5) The board shall establish minimum standards for training of probation and parole officers, pursuant to 46-23-1003.

(6) The board shall administer a detention center inspection program as provided in [sections 1 through 4]."

Section 8. Section 44-4-302, MCA, is amended to read:

HeinOnline -- 1999 vol. II 2135 1999

"**44-4-302. Definitions.** As used in 44-4-301, *[sections 1 through 4]*, and this section, the following definitions apply:

(1) "Detention center" means a facility established and maintained by an appropriate entity for the purpose of confining arrested persons or persons sentenced to a detention center.

(2) "Detention center administrator" means the sheriff, chief of police, administrator, superintendent, director, or other individual serving as the chief executive officer of a detention center or ~~temporary detention center~~ *holding facility*.

(3) "Detention officer" means a person or a peace officer who has full-time or part-time authority and responsibility for maintaining custody of inmates and who performs tasks related to the operation of a detention center or ~~temporary detention center~~ *holding facility*.

(4) "Holding facility" means a facility for the temporary detention of an arrested person for up to 72 hours, excluding holidays, Saturdays, and Sundays. The period of time a person is held in temporary detention may not exceed 96 hours.

~~(4)~~*(5)* "Puhlic safety communications officer" means a person who receives requests for emergency services, as defined in 10-4-101, dispatches the appropriate emergency service units, and is certified under 7-31-203.

~~(5) "Temporary detention center" means a facility for the temporary detention of an arrested person for up to 72 hours, excluding holidays, Saturdays, and Sundays. The period of time a person is held in temporary detention may not exceed 96 hours.~~"

Section 9. Section 50-1-202, MCA, is amended to read:

"**50-1-202. General powers and duties.** The department shall:

(1) study conditions affecting the citizens of the state by making use of birth, death, and sickness records;

(2) make investigations, disseminate information, and make recommendations for control of diseases and improvement of public health to persons, groups, or the public;

(3) at the request of the governor, administer any federal health program for which responsibilities are delegated to states;

(4) inspect and work in conjunction with custodial institutions and Montana university system units periodically as necessary and at other times on request of the governor;

(5) after each inspection made under subsection (4), submit a written report on sanitary conditions to the governor and to the director of the department of corrections or the commissioner of higher education and include recommendations for improvement in conditions if necessary;

(6) advise state agoncies on location, drainage, water supply, disposal of excreta, heating, plumbing, sewer systems, and ventilation of public buildings;

(7) develop and administer activities for the protection and improvement of dental health and supervise dentists employed by the state, local boards of health, or schools;

HeinOnline -- 1999 vol. II 2136 1999

(8) develop, adopt, and administer rules setting standards for participation in and operation of programs to protect the health of mothers and children, which rules may include programs for nutrition, family planning services, improved pregnancy outcome, and those authorized by Title X of the federal Public Health Service Act and Title V of the federal Social Security Act;

(9) conduct health education programs;

(10) provide consultation to school and local community health nurses in the performance of their duties;

(11) consult with the superintendent of public instruction on health measures for schools;

(12) develop, adopt, and administer rules setting standards for a program to provide services to children with disabilities, including standards for:

(a) diagnosis;

(b) medical, surgical, and corrective treatment;

(c) aftercare and related services; and

(d) eligibility;

(13) provide consultation to local boards of health;

(14) bring actions in court for the enforcement of the health laws and defend actions brought against the board or department;

(15) accept and expend federal funds available for public health services;

(16) have the power to use personnel of local departments of health to assist in the administration of laws relating to public health;

(17) adopt rules imposing fees for the tests and services performed hy the department's laboratory. Fees should reflect the actual costs of the tests or services provided. The department may not establish fees exceeding the costs incurred in performing tests and services. All fees must be deposited in the state special revenue fund for the use of the department in performing tests and services.

(18) adopt and enforce rules regarding the definition of communicable diseases and the reporting and control of communicable diseases;

(19) adopt and enforce rules regarding the transportation of dead human bodies;

(20) adopt and enforce rules and standards concerning the issuance of licenses to laboratories that conduct analysis of public water supply systems; ~~and~~

(21) adopt and enforce minimum sanitation requirements for tattooing as provided in 50-2-116, including regulation of premises, equipment, and methods of operation, solely oriented to the protection of public health and the prevention of communicable disease*; and*

(22) adopt rules and minimum public health standards for detention centers and holding facilities as defined in 44-4-302."

Section 10. Section 50-1-203, MCA, is amended to read:

"**50-1-203. Public health inspections.** (1) The department may make public health inspections of schoolhouses, churches, theaters, ~~jails~~ *detention centers, holding facilities,* and other buildings or facilities where persons

HeinOnline -- 1999 vol. II 2137 1999

assemble. If public health deficiencies are found in the facility, the department may direct that conditions be corrected within a reasonable time.

(2) Either the department or a local board of health may bring an action, including an action for injunctive relief, to correct the public health deficiencies."

Section 11. Section 50-2-118, MCA, is amended to read:

"**50-2-118. Powers and duties of local health officers.** (1) Local health officers or their authorized representatives shall:

(a) make inspections for sanitary conditions;

(b) as directed by the local board, issue written orders for the destruction and removal of filth ~~which~~ *that* might cause disease;

(c) with written approval of the department, order buildings or facilities where people congregate closed during epidemics;

(d) on forms provided by the department, report communicable diseases to the department each week;

(e) before the first day of January, April, July, and October, give a report to the local board of sanitary conditions in the county, city, city-county, or district, together with a detailed account of ~~his~~ *the officer's* activities, on forms and containing information required by the department;

(f) before the 10th day after the report is given to the local board, send a copy of the report required by subsection (1)(e) ~~of this section~~ to the department;

(g) as prescribed by rules adopted by the department, establish and maintain quarantines;

(h) as prescribed by rules adopted by the department, supervise the disinfection of places at the expense of the local board when a period of quarantine ends;

(i) notify the department of ~~his~~ *the officer's* appointment and changes in membership of the local board;

(j) file a complaint with the appropriate court if this chapter or rules adopted by the local board or state department under this chapter are violated;

(k) validate state licenses issued by the department in accordance with chapters 50 through 53 of this title;

(l) perform annual public health inspections of the sanitary conditions of detention centers and holding facilities prescribed by the department by rule for the purpose of coordinating inspections by multiple government agencies for the detention center inspection program as provided in [sections 1 through 4].

(2) With approval of the department, local health officers may forbid persons to assemble in a place if the assembly endangers public health.

(3) A local health officer who is a physician may be placed in charge of a communicable disease hospital, but a local health officer who is a physician is not required to act as a physician to the indigent.

(4) A local health officer who is not a physician ~~shall~~ *may* not act as a physician to anyone."

HeinOnline -- 1999 vol. II 2138 1999

Seetion 12. Contingent voidness. [This act] is void if an appropriation of at least $200,000 is not included in House Bill No. 2 to cover the costs associated with [this act].

Section 13. Codification instruction. [Sections 1 through 4] are intended to be codified as an integral part of Title 44, chapter 4, and the provisions of Title 44, chapter 4, apply to [sections 1 through 4].

Section 14. Effective dates. (1) [Sections 1 through 3, 5 through 13, and this section] are effective on passage and approval.

(2) [Section 4] is effective October 1, 2003.

Approved April 28, 1999

CHAPTER NO. 509

[HB 551]

AN ACT PROVIDING FOR STATE FUNDING TO INDIAN TRIBES THAT IMPLEMENT A FAMILY ASSISTANCE PLAN UNDER THE PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT OF 1996; REQUIRING THE STATE TO PROVIDE LIMITED TECHNICAL ASSISTANCE TO AN INDIAN TRIBE; ALLOWING A COUNTY TO REDUCE ITS REIMBURSEMENT TO THE STATE WHEN A TRIBAL FAMILY ASSISTANCE PLAN IS IMPLEMENTED; REQUIRING THAT GENERAL FUND MONEY BE TRANSFERRED TO TRIBES STARTING FAMILY ASSISTANCE PLANS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Tribal family assistance plan. (1) As used in this section, "Indian tribe" means an Indian tribe that has a federally recognized governing body carrying out substantial governmental duties and powers over any area.

(2) The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, 42 U.S.C. 612, authorizes an Indian tribe or a combination of tribes to request federal approval to implement a tribal family assistance plan.

(3) If a Montana Indian tribe or a combination of tribes receives approval to implement a tribal family assistance plan and chooses to base their share of the federal temporary assistance for needy families block grant on the same federal fiscal year 1994 service population as they plan to serve under their tribal family assistance plan, the legislature sball continue to provide the Indian tribe or combination of tribes with a proportionate state sbare for cash benefits based on the maintenance of effort level established by the legislature for that biennium or the maintenance of effort level set in statute.

(4) The Indian tribe or combination of tribes retain eligibility to form a partnership with the department and share funding for approved special projects related to welfare reform.

(5) The department shall provide the Indian tribe or combination of tribes with a reasonable level of technical assistance in tbe form of eligibility and case management training, policy interpretation, and automated system hackground information. The technical assistance must he provided at no cost to the Indian tribe or combination of tribes for a period of 1 year after the inception of the tribal

HeinOnline -- 1999 vol. II 2139 1999

family assistance plan. After 1 year, the Indian tribe or combination of tribes may contract with the department for continued technical assistance.

(6) The tribe or combination of tribes may contract with the department for the provision of participant services or associated administrative functions that the tribe and the department find appropriate.

(7) The department shall transfer to each new tribal family assistance plan after [the effective date of this act] $100,000 of general fund money from existing general fund appropriation authority for each of the fiscal years of the succeeding biennium for the use of each tribe implementing a family assistance plan.

Section 2. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations.

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 53, chapter 4, part 2, and the provisions of Title 53, chapter 4, part 2, apply to [section 1].

Section 4. Effective date. [This act] is effective on passage and approval.

Approved April 28, 1999

CHAPTER NO. 510

[HB 586]

AN ACT AUTHORIZING CITIES OR TOWNS TO CREATE A PARK MAINTENANCE DISTRICT; AUTHORIZING COUNTIES TO ASSESS A FEE ON EACH HOUSEHOLD FOR OPERATION OF A PARK DISTRICT; AND AMENDING SECTIONS 7-16-2411, 7-16-2412, 7-16-2423, 7-16-2431, AND 7-16-2443, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-16-2411, MCA, is amended to read:

"7-16-2411. Creation of county park district. (1) Proceedings for the creation of a county park district may be initiated by:

(a) a petition signed by ~~not less than~~ 10% *or more* of the qualified electors of the proposed park district; or

(b) a resolution of intent adopted by the county governing body, calling for the creation of a county park district.

(2) The petition or resolution must contain:

(a) the boundaries of the proposed district;

(b) the proposed maximum property tax mill levy that could be levied on property owners within the district *or the proposed maximum fee on each household within the proposed district* for the operation of the district; and

(c) the proposed number of members of the county park district commission. The number of members must be an odd number and may not be less than three.

(3) When the territory to be included in the proposed district lies in more than one county, a petition must be presented to the governing body of each county in which the territory lies. Each petition must be signed by ~~not less than~~

10% *or more* of the qualified electors of the territory within the county proposed to be included in the district.

(4) Upon receipt of a petition for the creation of a county park district, the county clerk shall examine it and within 15 days either reject the petition if it is insufficient under the provisions of subsection (1), (2), or (3) or certify that the petition is sufficient and present it to the county governing body at its next meeting.

(5) The text of the petition or resolution must be published as provided in 7-1-2121 in each county in which the territory of the proposed district lies.

(6) At the hearing, the county governing body shall hear:

(a) testimony of all interested persons on whether a county park district should be created;

(b) testimony regarding the proposed boundary, *the* property tax mill levy *or proposed fee on each household within the proposed district*, and *the* number of members of the district commission; and

(c) any other matter relating to the proposed district.

(7) After the hearing, if the county governing body determines that the proposed park district should be created, it shall by resolution:

(a) set the boundaries of the proposed park district~~,~~;

(b) set the maximum mill levy *or fee on each household* for the proposed park district~~, and~~;

(c) set the number of members to be on the district commission~~. The~~; *and*

(d) ~~resolution must also~~ call for an election on the question of whether to create the county park district. The election must be held in conjunction with a regular or primary election, provided that at least 75 days have elapsed between the adoption of the resolution and the election."

Section 2. Section 7-16-2412, MCA, is amended to read:

"7-16-2412. Election on creation of district. (1) The election on the question of whether to create a county park district must be conducted as provided in Title 13.

(2) Only qualified electors residing within the proposed park district may vote on the question of whether to create the district.

(3) The question of creating a county park district shall be submitted to the electors in substantially *one of* the following ~~form~~ *forms*:

(a)

☐ FOR the creation of a county park district ~~which~~ *that* may levy not more than .... mills of property tax for the operation of the district.

☐ AGAINST the creation of a county park district.

(b)

☐ *FOR the creation of a county park district that may assess a fee on each household of .... dollars for the operation of the district.*

☐ *AGAINST the creation of a county park district.*"

HeinOnline -- 1999 vol. II 2141 1999

Section 3. Section 7-16-2423, MCA, is amended to read:

"7-16-2423. Powers of county park district commission. A county park district commission has all powers necessary for the betterment, operation, maintenance, and administration of park and recreation land within the territory of the district. In the exercise of this general grant of powers, the county park district commission may:

(1) employ or contract with administrative, professional, and other personnel necessary for the operation of the district;

(2) lease, purchase, or contract for the purchase of personal property, including property ~~which~~ *that* after purchase constitutes a fixture on real property;

(3) lease, purchase, or contract for the purchase of buildings and facilities on lands controlled by the district and equip, operate, and maintain ~~such~~ *the* buildings and facilities;

(4) adopt by resolution rules for the operation and administration of all parks and recreational facilities under its control;

(5) impose by resolution and collect charges for ~~such~~ *those* services and facilities provided by the district ~~as~~ *that* the commission considers necessary for the prudent operation of the district;

(6) establish a property tax mill levy for the operation of the district as provided in 7-16-2431;

(7) establish a fee on each household for the operation of the district as provided in 7-16-2431;

~~(7)~~*(8)* enter into agreements with any public or private entity or person for the operation of parks or recreational areas either by the district on behalf of the landowner or by another entity on behalf of the district;

~~(8)~~*(9)* with the concurrence of the county governing body or bodies, accept donations of land or recreational-type easements on land within the district for park or recreational purposes on behalf and in the name of the county or counties;

~~(9)~~*(10)* accept donations and devises of money or personal property."

Section 4. Section 7-16-2431, MCA, is amended to read:

"7-16-2431. District budget — property tax levy *or fee on household.* (1) The county park district commission shall annually prepare a budget for the ensuing fiscal year and present the budget to the governing body of each county with territory included in the district at the regular budget meetings as prescribed in Title 7, chapter 6, part 23, and certify the amount of money necessary for the operation of the district for the ensuing fiscal year.

(2) *(a)* The county governing body shall, annually at the time of levying county taxes, fix and levy a tax in mills on all taxable property within the district sufficient to raise the amount certified by the county park district commission. The tax levied may not in any year exceed the maximum amount approved by the electorate in 7-16-2411 or 7-16-2432.

(b) The county governing body shall annually assess a fee on each household that is sufficient to raise the amount certified by the county park district commission. The fee assessed may not exceed the maximum amount approved by the electorate. The fee must be assessed at the time of levying county taxes."

Section 5. Section 7-16-2443, MCA, is amended to read:

HeinOnline -- 1999 vol. II 2142 1999

"**7-16-2443. Effect of dissolution.** (1) If dissolution of a county park district is authorized hy a majority of the electorate of the district, the county governing body shall order the dissolution and file the order with the county clerk. The dissolution is effective upon the earlier of the following:

(a) 6 months after the date of filing of the order; or

(b) certification by the members of the county park commission that all debts and obligations of the district have been paid, discharged, or irrevocably settled.

(2) *(a)* If debts or obligations of the district remain unsatisfied after the dissolution of the district, the county governing body shall, for as long as necessary, levy a property tax *or a fee on each household*, in an amount not to exceed the voted maximum authorized by the district, on all taxable property that is in the territory formerly comprising the district, to be used to discharge the debts of the former district.

(b) If the electors of the district lowered the maximum amount to be levied for the operation of the district within 2 calendar years prior to the election authorizing the dissolution, the county governing body is authorized to levy a property tax not to exceed the maximum levy authorized prior to the reduction of the maximum levy for the discharge of the district's obligations *if the obligations are bonds.*

(3) Any assets of the district remaining after all debts and obligations have been discharged become the property of the county."

Section 6. Park maintenance districts. (1) A city or town may upon petition of 10% or more of the qualified electors of the proposed park maintenance district or upon a resolution of intent adopted by the governing body submit to the electors of the proposed district the creation of a park maintenance district.

(2) The district may be created for the purposes of, but not limited to, mowing, irrigation, turf repair and maintenance, recreation facility and equipment maintenance, tree trimming, tree replacement, tree removal, garbago removal, general cleaning, and leaf debris removal.

(3) The petition or the resolution of intent must state the maximum number of mills or the maximum fee that will be assessed for the district. The fee assessed or the tax levied may not exceed the maximum amount approved by the electorate.

(4) A park maintenance district authorized by this section must be formed and operated in the same manner as a special improvement district.

Section 7. Codification instruction. [Section 6] is intended to be codified as an integral part of Title 7, chapter 12, and the provisions of Title 7, chapter 12, apply to [section 6].

Approved April 28, 1999

CHAPTER NO. 511

[HB 596]

AN ACT INCORPORATING USE OF NEW TECHNOLOGY INTO THE RESEARCH AND INFORMATION RESPONSIBILITIES OF THE DEPARTMENT OF ENVIRONMENTAL QUALITY; REQUIRING THE DEPARTMENT TO MAKE AVAILABLE FOR ELECTRONIC ACCESS A

COMPILATION OF UPDATED WATER QUALITY INFORMATION; REQUIRING RULES RESTRICTING CHANGES TO DESIGN AND CONSTRUCTION CRITERIA FOR 36 MONTHS FOLLOWING DEPARTMENT APPROVAL OF CERTAIN WATER AND WASTE SYSTEMS OR FACILITIES; AMENDING SECTIONS 75-5-212 AND 75-6-103, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-5-212, MCA, is amended to read:

"75-5-212. Department research and information. *(1)* The department shall:

~~(1)~~*(a)* collect and furnish information relating to the prevention and control of water pollution;

~~(2)~~*(b)* conduct or encourage necessary research and demonstrations concerning water pollution;

(c) encourage and provide for the use of appropriate new methods, materials, and models in evaluation, design, and construction as they relate to water quality.

(2) (a) In the implementation of subsection (1)(a), the department shall, at intervals not to exceed 5 years, compile and when necessary, update department organizational information, statutes, rules, permitting information, standards, and bulletins related to water quality. The first compilation must be complete and made available in hard copy and for electronic access by January 31, 2000.

(b) The department may charge a reasonable fee for purchase of the hard-copy compilation, not to exceed the department's costs for copying, assembly, and distribution of the compilation."

Section 2. Section 75-6-103, MCA, is amended to read:

"75-6-103. Duties of board. (1) The board has general supervision over all state waters that are directly or indirectly being used by a person for a public water supply system or domestic purposes or as a source of ice.

(2) The board shall, subject to the provisions of 75-6-116, adopt rules and standards concerning:

(a) maximum contaminant levels for waters that are or will be used for a public water supply system;

(b) fees, as described in 75-6-108, for services rendered by the department;

(c) monitoring, recordkeeping, and reporting by persons who own or operate public water supply systems;

(d) requiring public notice to all users of a public water supply system when a person has been granted a variance or exemption or is in violation of this part or a rule or order issued pursuant to this part;

(e) the siting, construction, operation, and modification of a public water supply system or public sewage system;

(f) the review of financial viability of a propesed public water supply system or public sewage system, as necessary to ensure the capability of the system to meet the requirements of this part;

(g) the collection and analysis of samples of water used for drinking or domestic purposes;

HeinOnline -- 1999 vol. II 2144 1999

(h) the issuance of variances and exemptions as authorized by the federal Safe Drinking Water Act and this part;

(i) administrative enforcement procedures and administrative penalties authorized under this part;

(j) standards and requirements for the review and approval of programs that may be voluntarily submitted by suppliers of public water supply systems to prevent water supply contamination from a cross-connection, including provisions to exempt cross-connections from the standards and requirements if all connected systems are department-approved public water supply systems; and

(k) any other requirement necessary for the protection of public health as described in this part.

(3) Board rules must provide for the following:

(a) a water supply or water distribution facility reviewed and approved by the department is not subject to changes in department design and construction criteria for a period of 36 months after written approval of the facility is issued by the department;

(b) except for facilities subject to permit requirements under Title 75, chapter 5, part 4, a system of water supply, drainage, wastewater, or sewage reviewed and approved under this section is not subject to changes in department design or construction criteria for a period of 36 months after written approval is issued by the department;

(c) plans and specifications for a portion of a facility or system subject to a 36-month limit on criteria changes pursuant to subsections (3)(b) and (3)(c), but not constructed within the 36 month timeframe, must be resubmitted for department review and approval before construction of that portion of the facility;

(d) the provisions of this subsection (3) may not limit an applicant's ability to alter a proposed project that is otherwise in conformance with applicable laws, rules, standards, and criteria.

~~(3)~~*(4)* The board may issue orders necessary to fully implement the provisions of this part."

Section 3. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 4. Effective date. [This act] is effective July 1, 1999.

Approved April 28, 1999

CHAPTER NO. 512

[HB 670]

AN ACT ESTABLISHING A STATE-TRIBAL ECONOMIC DEVELOPMENT COMMISSION THAT IS ADMINISTRATIVELY ATTACHED TO THE GOVERNOR'S OFFICE; SPECIFYING THE PURPOSE AND DUTIES OF THE COMMISSION; ESTABLISHING SPECIAL REVENUE ACCOUNTS AND PROVIDING AN APPROPRIATION TO THE COMMISSION; MANDATING AN ASSESSMENT OF ECONOMIC CONDITIONS ON INDIAN

HeinOnline -- 1999 vol. II 2145 1999

RESERVATIONS IN THE STATE; ENABLING THE MICROBUSINESS LOAN PROGRAM TO SERVE A QUALIFIED ORGANIZATION OPERATING ON AT LEAST FOUR INDIAN RESERVATIONS; FURTHER CLARIFYING THE RESPONSIBILITIES OF THE COMMERCE DEPARTMENT AND THE STATE COORDINATOR OF INDIAN AFFAIRS TO ASSIST TRIBES IN ECONOMIC DEVELOPMENT; REQUIRING THE COORDINATOR OF INDIAN AFFAIRS TO REPORT IN DETAIL AT EVERY MEETING OF A CERTAIN LEGISLATIVE INTERIM COMMITTEE THE ACTIONS TAKEN BY THE COMMISSION TO CARRY OUT ITS DUTIES; AMENDING SECTIONS 2-15-217, 17-6-406, 17-6-407, 17-6-408, 90-1-105, 90-9-202, AND 90-11-102, MCA; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.

WHEREAS, Indians comprise approximately 7% of Montana's population, and tribal lands comprise about 9% of the total land area of the state; and

WHEREAS, the seven federally recognized tribes in Montana do not receive an equitable proportion of certain categories of federal funds disbursed to Montana; and

WHEREAS, state law requires the Department of Commerce to assist Indian communities and tribal governments in efforts to expand business activity and economic development on the seven Indian reservations in Montana; and

WHEREAS, the Governor and certain state agencies could, if provided with guidance and suitable resources from the Legislature, more actively seek federal assistance that would directly benefit tribal communities and the state; and

WHEREAS, the efforts expended by the Agricultural Development Council and other state boards and commissions intended to help boost the Montana economy will be enbanced by Indian representation; and

WHEREAS, certain Montana statutes and state programs, including loan programs, fail to include tribal entities and thereby fail to maximize the benefit of the existing network of tribal business information centers and other economic development opportunities in Indian communities across the state; and

WHEREAS, Indians who are citizens of Montana are both entitled to and deserving of a more vigorous effort on the part of the state, in cooperation with tribal governments, to foster economic development on the reservations in the state; and

WHEREAS, each of the tribal governments and their respective reservation communities will benefit from closer cooperation with new and existing boards, commissions, and agencies of the state, especially those most directly related to economic development.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 6] may be cited as the "Native American Economic Development Act of 1999".

Section 2. State-tribal economic development commission — composition — compensation for members. (1) There is a state-tribal economic development commission administratively attached to the office of the governor as prescribed in 2-15-121.

(2) The commission is composed of nine members, each appointed by the governor to 3-year staggered terms commencing on July 1 of each year of appointment, and must include:

(a) the state coordinator of Indian affairs;

(b) one member from the department of commerce;

(c) one member from each of the seven federally recognized tribes in Montana. If a tribal government nominates or otherwise recommends more than one person for membership on the commission, the governor shall select one individual from among those recommended persons.

(3) Each member may be reappointed for successive terms.

(4) The members of the commission shall elect a presiding officer from among the members.

(5) Six members of the commission constitute a quorum and the affirmative vote of the majority of the members present is sufficient for any action taken by the commission.

(6) Any vacancy on the commission must be filled in the same manner as the original appointment.

(7) Each member of the commission is entitled to reimbursement for expenses as provided in 2-18-501 through 2-18-503.

Section 3. Commission purposes — duties and responsibilities. (1) The general purposes of the commission include:

(a) assisting, promoting, encouraging, developing, and advancing economic prosperity and employment on Indian reservations in Montana by fostering the expansion of business, manufacturing, tourism, agriculture, and community development programs;

(b) cooperating and acting in conjunction with other organizations, public and private, to benefit tribal communities;

(c) recruiting business enterprises to locate on or invest in enterprises on the reservations; and

(d) identifying, obtaining, and coordinating federal, state, and private sector gifts, grants, loans, and donations to further economic development on the Indian reservations in Montana.

(2) The state-tribal economic development commission shall:

(a) determine, with assistance from the tribal business center coordinator and the federal grants coordinator in the office of the Indian affairs coordinator, the availability of federal, state, and private sector gifts, grants, loans, and donations to tribal governments, Indian business enterprises, and communities located on Indian reservations in Montana;

(b) apply for grants listed in the Catalog of Federal Domestic Assistance for which the commission is eligible and which would, if awarded, supply identifiable economic benefits to any or all of the Indian reservations in Montana;

(c) in cooperation with a tribal government, and when allowed by federal law and regulation, assist the tribe in applying for grants listed in the Catalog of Federal Domestic Assistance for which an appropriate tribal entity is eligible and

HeinOnline -- 1999 vol. II 2147 1999

which would, if awarded, supply identifiable economic benefits to any or all of the Indian reservations in Montana;

(d) evaluate the apportionment of current spending of federal funds by state agencies in areas including but not limited to economic development, housing, community infrastructure, business finance, tourism promotion, transportation, and agriculture;

(e) conduct or commission and oversee a comprehensive assessment of the economic development needs and priorities of each Indian reservation in the state;

(f) notify tribal governments, the governor, the Indian affairs coordinator, and the directors of the departments of commerce, agriculture, and transportation, of the availability of specific federal, state, or private sector funding programs or opportunities that would directly benefit Indian communities in Montana;

(g) assist tribal governments and other tribal entities that are eligible for federal assistance programs as provided in the most recent published edition in the Catalog of Federal Domestic Assistance in applying for funds that would contribute to the respective tribes' economic development;

(h) work cooperatively with tribal government officials, the state coordinator of Indian affairs, and other appropriate state officials to help foster state-tribal cooperative agreements pursuant to Title 18, chapter 11, part 1, that will:

(i) enhance economic development on the Indian reservations in Montana; and

(ii) help the department of commerce to fully implement and comply with the provisions of 90-1-105; and

(i) provide to the governor, the legislative council, the legislative auditor, and to each of the presiding officers of the tribal governments in Montana a biennial report that summarizes the activities of the commission.

Section 4. Comprehensive assessment on reservations. (1) The state-tribal economic development commission shall conduct an accurate, comprehensive, detailed, and objective assessment of economic conditions on each of the Indian reservations in the state. In addition to an initial assessment, the commission may also require periodic updates of the data and analysis contained in the assessment, mainly for the purpose of monitoring progress toward goals and objectives set forth by the commission.

(2) The commission, the coordinator of Indian affairs, or the governor may issue a request for proposals and, on the basis of a competitive bidding process, select a qualified researcher or research team from the private sector or a college or university to conduct the assessment and report findings and conclusions to the commission.

(3) If the commission has adequate financial resources, the commission may, at its discretion, conduct or commission subsequent follow-up studies or assessments to obtain updated information.

(4) An assessment of economic conditions on the Indian reservations in Montana must include the consideration of multiple dimensions of economic development, including reservation demographics, economic development strengths and weaknesses, salient factors relating to economic development,

HeinOnline -- 1999 vol. II 2148 1999

natural resources, conditions in the natural environment, human resources, financial resources, business assistance programs, job training programs, education curriculum, the availability of technical training and assistance, and relevant tribal, state, and federal policies.

Section 5. No waiver of tribal sovereignty. [Sections 3 and 4] do not constitute or imply any waiver of sovereignty on the part of any of the federally recognized tribes in Montana.

Section 6. Special revenue accounts. (1) There is an account in the state treasury for the receipt of state and private funds and an account in the state treasury for the receipt of federal funds for expenditure by the state-tribal economic development commission established in [section 2].

(2) Money in the accounts established in subsection (1) must be used to pay:

(a) the commission's administrative costs;

(b) the salary, benefits, and administrative expenses of the tribal business center coordinator and the federal grants coordinator; and

(c) the costs of conducting or commissioning and periodically updating or otherwise modifying a comprehensive assessment of economic development needs and priorities on each of the Indian reservations in the state.

(3) Money in the accounts that is not expended for the purposes identified in subsection (2) may be used for other purposes that the commission considers prudent or necessary.

(4) Interest and income earned on the money in the accounts must be deposited in the accounts for the commission's use.

(5) Money in the accounts that is not expended by June 30, 2001, must remain in the accounts for the commission's use.

Section 7. Appropriation. (1) There is transferred $200,000 from the general fund to the state special revenue account established in [section 6], which must be allocated to and expended by the commission, in appropriate amounts as determined by the commission to:

(a) fund a tribal business center coordinator position, a federal grants coordinator position, and related administrative support costs for both positions;

(b) conduct or commission, through a competitive bid process that results in a contract for services with a private sector or college or university research entity that is considered qualified by the commission, a comprehensive assessment of economic development needs and priorities as required in [section 4]; and

(c) pay the administrative costs and expenses of the commission.

(2) There is appropriated to the state-tribal economic development commission from the state special revenue account established in [section 6] $200,000 for the purpose of funding the commission's activities, including but not limited to those specified in subsection (1).

(3) Money received in federal programs or grants that is deposited in the federal special revenue account established in [section 7] is appropriated in an amount not to exceed $2 million to the state-tribal economic commission for purposes consistent with [this act].

(4) The appropriations in this section are biennial.

HeinOnline -- 1999 vol. II 2149 1999

Section 8. Section 2-15-217, MCA, is amended to read:

"2-15-217. Office of state coordinator of Indian affairs. (1) There is an office of state coordinator of Indian affairs. The office is allocated to the governor's office for administrative purposes only as prescribed in 2-15-121.

(2) The coordinator must be appointed by the governor from a list of five qualified Indian applicants agreed upon by the tribal councils of the respective Indian tribes of the state. The coordinator shall serve at the pleasure of the governor.

(3) Except as provided in subsection (4), the qualifications for applicants must include but are not limited to:

(a) a bachelor's degree in a relevant public policy field, as determined by the governor;

(b) not less than 3 years experience in a professional administrative capacity; and

(c) demonstrated skills in conducting policy research and obtaining grant funds from federal, state, or private sector sources.

(4) The governor may appoint an applicant agreed upon by the tribal councils as provided in subsection (2) whose skills and experience are commensurate with the qualifications set forth in subsection (3)."

Section 9. Section 17-6-406, MCA, is amended to read:

"17-6-406. Microbusiness finance program — powers and duties of department. There is a microbusiness finance program administered by the department. The department shall adopt rules to implement the provisions of this part, including but not limited to:

(1) establishing criteria and procedures for certifying microbusiness development corporations;

(2) establishing criteria and procedures to select from competing development loan applications and to award development loans to certified microbusiness development corporations;

(3) establishing criteria and procedures to be followed by certified microbusiness development corporations that administer revolving loan funds supported by the program;

(4) determining the amount and method of computation and payment of interest rates charged to recipients of development loans and specifying amortization schedules and other terms and conditions for development loans as may be necessary;

(5) establishing criteria for determining nonperformance and declaring default in the administration of development loans and requiring the refund of defaulted development loan funds to the microbusiness development loan account;

(6) establishing criteria for satisfactory performance in development loan administration to determine eligibility for renewal of development loans or for additional development loans;

(7) establishing guidelines for maximum and minimum interest rates that may be chargod by certified microbusiness development corporations on microbusiness loans; and

HeinOnline -- 1999 vol. II 2150 1999

(8) dividing the state into not more than 12 multicounty service regions within each of which not more than one microbusiness development corporation may be funded at any time. However, a corporation that is funded as a statewide microbusiness development corporation under 17-6-408 may offer specialized services to constituents within regions *or within an Indian reservation* having a funded regional microbusiness development corporation."

Section 10. Section 17-6-407, MCA, is amended to read:

"17-6-407. Microbusiness development loan account and finance program administrative account — criteria — limitations. (1) There is in the state special revenue fund a microbusiness development loan account into which the funds appropriated pursuant to section 11, Chapter 602, Laws of 1991, money appropriated pursuant to section 3, Chapter 413, Laws of 1995, and money received in repayment of the principal of development loans must be deposited. The department may make development loans from the account in amounts not to exceed $250,000 a loan to a certified microbusiness development corporation.

(2) There is in the state special revenue fund a microhusiness finance program administrative account into which all interest received on development loans, service charges or fees received from certified microbusiness development corporations, grants, donations, and private or public income must be deposited. Money in the administrative account may be transferred to the development loan account or be used to pay the costs of the program, including personnel, travel, equipment, supplies, consulting costs, and other operating expenses of the program.

(3) Subject to subsection (1), a certified microbusiness development corporation that receives a development loan may apply for an additional loan if tbe applicant meets the performance criteria established by the department.

(4) To establish the criteria for making development loans, the department shall consider:

(a) the plan for providing services to microbusinesses;

(b) the scope of services to bo provided by the certified microbusiness development corporation;

(c) geographic representation of all regions of the state, including ~~both~~ urban ~~and~~, rural, *and tribal* communities;

(d) tbe plan for providing service to minorities, women, and low-income persons;

(e) tbe ability of the corporation to provide business training and technical assistance to microbusiness clients;

(f) tbe ability of the corporation, with its plan, to:

(i) monitor and provide financial oversight of recipients of microbusiness loans;

(ii) administer a revolving loan fund; and

(iii) investigate and qualify financing proposals and to service credit accounts;

(g) sources and sufficiency of operating funds for the certified microbusiness development corporation; and

(h) the intent of the corporation, with its plan and written indications of local institutional support, to provide services to a designated multicounty region of the state.

HeinOnline -- 1999 vol. II 2151 1999

(5) Development loan funds may be used by a certified microbusiness development corporation to:

(a) satisfy matching fund requirements for other state, federal, or private funding only if funding is intended and used for the purpose of providing or enhancing the certified microbusiness development corporation's ability to provide and administer loans, technical assistance, or management training to microbusinesses;

(b) establish a revolving loan fund from which the certified microbusiness development corporation may make loans to qualified microbusinesses, provided that a single loan does not exceed $35,000 and the outstanding balance of all loans to a microbusiness or a project participated in by more than one microbusiness or to two or more microbusinesses in which any one person holds more than a 20% equity share does not exceed $35,000;

(c) establish a guarantee fund from which the certified microbusiness development corporation may guarantee loans made by financial institutions to qualified microbusinesses. However, a single guarantee may not exceed $35,000, and the aggregate of all guarantees to a microbusiness or a project participated in by more than one microbusiness or to two or more microbusinesses in which any one person holds more than a 20% equity share may not exceed $35,000.

(6) Development loan funds may not be:

(a) loaned for relending or investment in stocks, bonds, or other securities or for property not intended for use in production by the recipient of the loan; or

(b) used to:

(i) refinance a nonperforming loan held by a financial institution; or

(ii) pay the operating costs of a certified microbusiness development corporation. However, interest income earned from the proceeds of a development loan may be used to pay operating expenses.

(7) Certified microbusiness development corporations are required to contribute cash from other sources to leverage and secure development loans from the program. Contributions provided by the corporation must be on a ratio of at least $1 from other sources for each $6 from the program. These contributions may come from a public or private source other than the program and may be in the form of equity capital, loans, or grants.

(8) Development loans must be made pursuant to a development loan agreement and may be amortization or term loans, bear interest at less than the market rate, be renewable, be callable, and contain other terms and conditions considered appropriate by the department that are consistent with the purposes of and with rules promulgated to implement this part.

(9) (a) Unless subject to federal law or rule, each certified microbusiness development corporation that receives a development loan under this part shall pay the cost of an audit of its operations to be conducted at least once every 2 years. The department shall designate an auditor to conduct the audit.

(b) If an audit is performed under a requirement of federal law or rule, the department shall waive the audit required in subsection (9)(a) with respect to all issues addressed by the federal audit report. However, the department may require an audit of matters that are not, in the department's judgment, addressed by the federal report—for example, verification of compliance with requirements specific to the program, such as job-generation standards and reporting.

HeinOnline -- 1999 vol. II 2152 1999

(10) A certified microhusiness development corporation that is in default for nonperformance under rules estahlished by the department may be required to refund the outstanding halance of development loans awarded prior to the default declaration. A development loan is secured by a first lien on the receivables of the corporation receiving the loan."

Section 11. Section 17-6-408, MCA, is amended to read:

"17-6-408. Certification of microbusiness deveiopment corporations. The department may certify:

(1) a microhusiness development corporation when it determines that the corporation:

(a) has developed a viable plan for providing traininq, access to financing, and technical assistance for qualified microbusinesses;

(b) has broad-based community support in a designated inulticounty region of the state, as reflected, for example, by the memhership of its hoard of directors; and

(c) has an adequate source of operating capital; or

(2) a statewide microbusiness development corporation when the department determines that the corporation meets the conditions under subsections (1)(a) and (1)(c) and, in addition:

(a) has a vi .ble plan to provide specialized services to constituents throughout the state *or within at least four Indian reservations in Montana*; and

(b) does not preempt or duplicate efforts of microbusiness development corporations within local communities."

Section 12. Section 90-1-105, MCA, is amended to read:

"90-1-105. Functions of department of commerce — economic development. The department of commerce shall:

(1) provide coordinating services to aid state and local groups and Indian tribal governments in the promotion of new economic enterprises and conduct publicity and promotional activities in connection with new economic enterprises;

(2) collect and disseminate information regarding the advantages of developing agricultural, recreational, commercial, and industrial enterprises within this state;

(3) serve as tbe state's official liaison between persons interested in locating new economic enterprises in Montana and state and local groups and Indian tribal governments seeking new enterprises;

(4) aid communities and Indian tribal governments interested in obtaining new husiness or expanding existinq business;

(5) study and promote means of expanding markets for Montana products;

(6) encourage and coordinate public and private agencies or bodies in publicizing tbe facilities and attractions of the state;

(7) explore tbe use of cooperative agreements, as provided in Title 18, cbapter 11, part 1, for the promotion and enhancement of economic oppertunities on the state's Indian reservations; *and*

(8) assist the state-tribal economic development commission established in [section 2] in:

(a) identifying federal government and private sector funding sources for economic development on Indian reservations in Montana; and

(b) fostering and providing assistance to prepare, develop, and implement cooperative agreements, in accordance with Title 18, chapter 11, part 1, with each of the tribal governments in Montana."

Section 13. Section 90-9-202, MCA, is amended to read:

"90-9-202. Powers and duties of the council. The council shall:

(1) establish policies and priorities to enhance the future development of agriculture in Montana, *including the Indian reservations in the state*;

(2) make investments or loans in agricultural development projects that have a short- or long-term ability to stimulate agriculture development and diversification in *rural, urban, and tribal settings in* Montana, including but not limited to:

(a) seed capital loans for development and commercialization of new products and processes;

(b) agricultural business incubators;

(c) foreign and domestic market development activities;

(d) applied technological research; and

(e) agricultural technology assistance and transfer; and

(3) accept grants or receive devises of money or property for use in making the investments or loans authorized by this chapter."

Section 14. Section 90-11-102, MCA, is amended to read:

"90-11-102. Duties and assistance. (1) It ~~shall be~~ *is* the duty of the state coordinator of Indian affairs to carry out the legislative policy set forth in 90-11-101.

(2) ~~He shall acquaint himself~~ *The state coordinator shall:*

(a) become acquainted with the problems confronting the Indians of Montana~~, and he shall~~;

(b) advise the legislative and executive branches of the state of Montana of those problems; ~~and shall~~

(c) make recommendations for the alleviation ~~thereof.~~ *of those problems;* ~~He shall also~~

(d) serve the Montana delegation in the federal congress as an adviser and intermediary in the field of Indian affairs; ~~and shall~~

(e) act ~~as spokesman for~~ *on behalf of* representative Indian organizations and groups, public and private, whenever ~~his~~ *the state coordinator's* support is solicited *by tribal entities;*

(f) serve on the state-tribal economic development commission established in [section 2];

(g) report in detail at every meeting of the interim committee of the legislature having jurisdiction over the office of the coordinator those actions taken by the

HeinOnline -- 1999 vol. II 2154 1999

state-tribal economic development commission established by [section 2] to carry out its duties; and

(h) hire, with the concurrence of the other members of the state-tribal economic development commission, a tribal business center coordinator and a federal grants coordinator, and subsequently provide administrative support for both positions.

(3) All executive and legislative agencies of state government may within the area of their expertise and authority provide assistance to tribal councils or their official designees requesting ~~such~~ assistance on any matter relating to coal development on Indian reservation lands and may make an appropriate charge ~~therefor~~ *for that assistance.*"

Section 15. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 16. Codifieation instruction. [Sections 1 through 6] are intended to be codified as an integral part of Title 90, chapter 1, part 1, and the provisions of Title 90, chapter 1, part 1, apply to [sections 1 through 6].

Section 17. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

Section 18. Effective dates. (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Section 7] is effective July 1, 1999.

Section 19. Termination. [Tbis act] terminates June 30, 2001.

Approved April 28, 1999

CHAPTER NO. 513

[SB 166]

AN ACT REVISING COUNTY SHERIFF AND CITY POLICE RESPONSIBILITIES FOR HANDLING ABANDONED VEHICLES; PROVIDING FOR PAYMENT OF CERTAIN ABANDONED VEHICLE REMOVAL CHARGES FROM MOTOR VEHICLE DISPOSAL FEES, SUBJECT TO THE AVAILABILITY OF FUNDING; TRANSFERRING RESPONSIBILITY FOR DETERMINING VALUE OF A JUNK VEHICLE FROM THE STATE TO COUNTIES; AMENDING SECTIONS 61-12-401, 61-12-402, 61-12-403, 61-12-404, 75-10-503, AND 75-10-532, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-12-401, MCA, is amended to read:

"**61-12-401. Taking vehicle into custody.** (1) The following law enforcement agencies may take into custody any motor vehicle found abandoned for a period of 48 hours or more on ~~any~~ *a* public highway~~,~~ or for a period of 5 days or more on ~~any~~ *a* city street, public property, or private property:

(a) the Montana highway patrol if the vehicle is upon the right-of-way of any public highway other than a county road;

(h) the sheriff of the county if the vehicle is upon the right-of-way of any county road ~~within the county~~;

(c) the city police if the vehicle is upon a city street ~~within the city~~.

(2) The Montana highway patrol, sheriff of the county, or ~~the~~ city police may use ~~its or his~~ *their* porsonnel, equipment, and facilities for the removal and storage of the vehicle~~,~~ or may hire other porsonnel, equipment, and facilities for those purposes. *The sheriff of the county or the chief of police of the city in which the vehicle is being stored may request reimbursement of the hired removal charge from the motor vehicle recycling and disposal program of the department of environmental quality in an amount and manner established by rules adopted by the department of environmental quality for this purpose.*

(3) At the request of the owner or porson in lawful possession or control of the private property, the sheriff of the county in which the vehicle is located or the city police of the city in which the vehicle is located may remove and hold it in the manner and upon the conditions provided in subsections (1) and (2)."

Section 2. Section 61-12-402, MCA, is amended to read:

"61-12-402. Notice to owner. (1) Within 72 hours after a vehicle is removed and held by or at the direction of the Montana highway patrol, the highway patrol shall notify the sheriff of the county *or the chief of police of the city* in which the vehicle ~~was located at the time it was taken into custody of the place where the vehicle~~ is being ~~held~~ *stored of where and when the vehicle was taken into custody and of where the vehicle is being stored.* In addition, the Montana highway patrol shall furnish the sheriff *or the chief of police*:

(a) a complete description of the vehicle, including year, make, model, serial number, and license number if available;

(b) any costs incurred to that date in the removal, storage, and custody of the vehicle; and

(c) any available information concerning ~~its~~ *the vehicle's* ownership.

(2) The highway patrol shall notify the sheriff of the county or the chief of police of the city in which the vehicle was taken into custody of the location at which the vehicle is being stored if the vehicle was removed to a different county.

~~(2)~~*(3)* The sheriff or the city police *in the jurisdiction where the vehicle is being stored* shall make reasonable efforts to ascertain the name and address of the owner, lienholder, or person entitled to possession of the vehicle taken into custody under 61-12-401. If a name and address are ascertained, the sheriff or the city police shall notify the owner, lienholder, or porson of the location of the vehicle.

~~(3)~~*(4)* If the vehicle is registered in the office of the department, notice is considered to have been given when a certified letter addressed to the registered owner of the vehicle and lienholder, if any, at the latest address shown by the records in the office of the department, return receipt requested and postage prepaid, is mailed at least 30 days before the vehicle is sold.

~~(4)~~*(5)* If the identity of the last-registered owner cannot be determined, if the registration does not contain an address for the owner, or if it is impossible to determine with reasonable certainty the identity and addresses of all lienholders, notice by one publication in one newspaper of general circulation in the county where the motor vehicle ~~was abandoned~~ *is being stored* is sufficient to meet all

HeinOnline -- 1999 vol. II 2156 1999

requirements of notice pursuant to this part. The notice by publication may contain multiple listings of abandoned vehicles. The notice must be provided in the same manner as prescribed in 25-13-701(1)(b).

~~(5)~~*(6)* If the abandoned vehicle is in the possession of a motor vehicle wrecking facility licensed under 75-10-511, the wrecking facility may make the required search to ascertain the name and address of the owner, lienholder, or person entitled to possession of the vehicle and shall give the notices required in subsections ~~(2)~~ *(3)* through ~~(4)~~ *(5)*. The wrecking facility shall deliver to the sheriff or the city police a certificate describing the efforts made to ascertain the name and address of the owner, lienholder, or person entitled to possession of the vehicle and shall deliver to the sheriff or the city police proof of the notice given.

~~(5)~~*(7)* A vehicle found by law enforcement officials to be a junk vehicle, as defined by 75-10-501, and that has a value of $500 or less~~, as determined by the department,~~ may be directly submitted for disposal in accordance with the provisions of Title 75, chapter 10, part 5, upon a release given by the sheriff or the city police. *The county representative designated to implement the county motor vehicle recycling and disposal program pursuant to 75-10-521 for the county where the vehicle is being stored shall determine the value of the vehicle.* In the release, the sheriff or the city pelice shall include a description of the vehicle, including year, mako, model, serial number, and license number if available. A release provided by the sheriff or the city police under this section must be transmitted to the motor vehicle wrecking facility and must be considered by that facility to meet the requirements for records under 75-10-512 and 75-10-513. Vehicles described in this section may be submitted for dispesal without notice and without a required holding period."

Section 3. Section 61-12-403, MCA, is amended to read:

"61-12-403. Reclaiming vehicle. The owner, lienholder, or person entitled to possession of the vehicle may reclaim it at any time after it is taken into custody and before it is sold. ~~He~~ *The owner, lienholder, or person entitled to possession of the vehicle* shall present to the sheriff of the county or the city police of the city ~~in which~~ *where* the vehicle ~~was located at the time it was taken into custody~~ *is being stored* satisfactory proof of ownership or right to possession~~,~~ and *shall* pay the costs and expenses incurred in the removal, storage, and custody of the vehicle. ~~He shall~~ *The person reclaiming the vehicle may* not be required to pay storage charges for a period longer than 90 days."

Section 4. Section 61-12-404, MCA, is amended to read:

"61-12-404. Sale of vehicle if not reclaimed. (1) If a vehicle is not reclaimed, as provided in 61-12-403, within 30 days after notification by ~~registered or~~ certified mail or prescribed publication, the sheriff of the county or the city police of the city in which ~~it is located at the time it was taken into custody~~ *the vehicle is being stored* shall sell it at public auction in the manner provided in 25-13-701 through 25-13-709.

(2) After ~~any~~ *a* vehicle has been ~~so~~ sold *pursuant to subsection (1)*, the former owner or person entitled to possession has no further right, title, claim, or interest in or to the vehicle."

Section 5. Section 75-10-503, MCA, is amended to read:

"75-10-503. Adoption of rules. (1) The department shall adopt rules necessary for the administration of this part, except 75-10-520, including but not limited to rules pertaining to:

HeinOnline -- 1999 vol. II 2157 1999

(a) the establishment, control, operation, and licensing of motor vehicle wrecking facilities and graveyards;

(b) the control of junk vehicles in locations other than motor vehicle wrecking facilities and graveyards;

(c) the inspection and evaluation of premises and records subject to or required by this part;

(d) the development of budget and fiscal forms and procedures for counties;

(e) the review, approval, and control procedures for county motor vehicle graveyards developed under this part; and

(f) the shielding of a junk vehicle and motor vehicle wrecking facility and graveyard from public view. The department may not adopt a rule that requires any motor vehicle wrecking facility that existed prior to July 1, 1973, and *that* has been continuously used ~~thereafter~~ as a motor vehicle wrecking facility to construct a fence or ~~manmade~~ barrier that would be in excess of 12 feet in height.

(2) The department shall adopt rules authorizing the sale of junk vehicles by county motor vehicle graveyards to licensed motor vehicle wrecking facilities.

(3) The department shall adopt rules providing for the reimbursement of hired removal charges of certain abandoned vehicles in accordance with 61-12-401."

Section 6. Section 75-10-532, MCA, is amended to read:

"**75-10-532. Disposition of money collected.** All money received from the sale of the junk vehicles or from recycling of the material and all motor vehicle wrecking facility license fees and fees collected as motor vehicle disposal fees must be deposited with the state treasurer to be used for the control, collection, recycling, and disposal of junk vehicles and component parts *and, to the extent the legislature appropriates funds expressly and solely for this purpose, for the removal of abandoned vehicles.*"

Section 7. Effective date. [This act] is effective July 1, 1999.

Approved April 28, 1999

CHAPTER NO. 514

[SB 460]

AN ACT GENERALLY REVISING THE SCHOOL LAWS; ESTABLISHING THE FIRST TUESDAY AFTER THE FIRST MONDAY IN MAY AS THE REGULAR SCHOOL ELECTION AND TRUSTEE ELECTION DATE; LIMITING A SCHOOL DISTRICT TO ONE LEVY ELECTION IN A CALENDAR YEAR; ADJUSTING CERTAIN MEETING AND REPORTING DATES TO CONFORM WITH THE MAY ELECTION DATE; CLARIFYING TEACHER NOTICE AND HEARING TIME LIMIT PROVISIONS; REQUIRING A DISTRICT WHOSE BUDGET EXCEEDS THE MAXIMUM AND THAT LOSES ANB TO REDUCE ITS CURRENT GENERAL FUND BUDGET BY THE PERCENTAGE OF ANB DECREASE; AMENDING SECTIONS 13-1-104, 20-3-304, 20-3-305, 20-3-321, 20-4-207, 20-9-308, 20-9-353, 20-20-105, AND 20-20-401, MCA; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE.

HeinOnline -- 1999 vol. II 2158 1999

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-1-104, MCA, is amended to read:

"13-1-104. Times for holding general elections. (1) A general election ~~shall~~ *must* he held throughout the state in every even-numbered year on the first Tuesday after the first Monday of November to vote on hallot issues required by Article III, section 6, or Article XIV, section 8, of the Montana constitution to be submitted by the legislature to tbe electors at a general election, unless an earlier date is provided in a law authorizing a special election on an initiative or referendum pursuant to Article III, section 6, and to elect federal officers, state or multicounty district officers, memhers of the legislature, judges of the district court, and county officers when the terms of ~~such~~ *the* offices will expire before the next scheduled election for the offices or when one of the offices must he filled for an unexpired term as provided by law.

(2) A general election ~~shall~~ *must* be held throughout the state in every odd-numbered year on the first Tuesday after the first Monday in November to elect municipal officers, officers of political subdivisions wholly within one county and not required to hold annual elections, and any other officers specified by law for election in odd-numhered years when the term for the offices will expire before the next scheduled election for the offices or when one of the offices must he filled for an unexpired term as provided by law.

(3) The general election for any political subdivision, other than a municipality, required to hold elections annually shall he held on school election day, the first Tuesday ~~of April~~ *after the first Monday of May* of each year, and is subject to the election procedures provided for in 13-1-401.

(4) The general election for a municipality required to hold elections annually may be held either on school election day as provided in subsection (3) or on the first Tuesday after the first Monday in November, at the discretion of the governing body."

Section 2. Section 20-3-304, MCA, is amended to read:

"20-3-304. Annual election. In each district an election of trustees ~~shall~~ *must* be conducted annually on the regular school election day, tbe first Tuesday *after the first Monday* of ~~April~~ *May*. Election of trustees ~~shall~~ *must* comply with the election provisions of Title 13 and this title."

Section 3. Section 20-3-305, MCA, is amended to read:

"20-3-305. Candidate qualification and nomination. (1) Except as provided in 20-3-338, any person who is qualified to vote in a district under the provisions of 20-20-301 ~~shall be~~ *is* eligible for the office of trustee.

(2) Except as provided in 20-3-338, any five electors qualified under tbe provisions of 20-20-301 of any district, except a first-class elementary district, may nominate as many trustee candidates as there are trustee positions subject to election at the ensuing election. The name of each person nominated for candidacy ~~shall~~ *must* be submitted to the clerk of the district not less than 40 days before the regular school election day at which ~~he~~ *the person* is to be a candidate. If there are different terms to be filled, the term for which each candidate is nominated ~~shall~~ *must* also be indicated."

Section 4. Section 20-3-321, MCA, is amended to read:

HeinOnline -- 1999 vol. II 2159 1999

"**20-3-321. Organization and officers.** (1) The trustees of each district shall annually organize as a governing board of the district after the regular election day and after the issuance of the election certificates to the newly elected trustees, but not later than the third Saturday of ~~April~~ *May*. In order to organize, the trustees of the district ~~shall~~ *must* be given notice of the time and place where the organization meeting will be held, and at ~~such~~ *the* meeting they shall choose one of their number as the ~~chairman~~ *presiding officer*. In addition, except for the trustees of a high school district operating a county high school, the trustees shall employ and appoint a competent person, who is not a member of the trustees, as the clerk of the district. The trustees of a high school district operating a county high school shall appoint a secretary, who ~~shall~~ *must* be a member of the board.

(2) The ~~chairman~~ *presiding officer* of the trustees of any district shall serve until the next organization meeting and shall preside at all the meetings of the trustees in accordance with the customary rules of order. ~~He~~ *The presiding officer* shall perform the duties prescribed by this title and any other duties that normally pertain to ~~such~~ *a presiding* officer."

Section 5. Section 20-4-207, MCA, is amended to read:

"**20-4-207. Dismissal of teacher under contract.** (1) The trustees of any district may dismiss a teacher before the expiration of the teacher's employment contract for good cause.

(2) (a) The following persons may recommend the dismissal of a teacher for cause under subsection (1):

(i) a district superintendent;

(ii) in a district without a district superintendent, a principal; or

(iii) in a district without a district superintendent or a principal, the county superintendent or a trustee of the district.

(b) A person listed in subsection (2)(a) who recommends dismissal of a teacher shall give notice of the recommendation in writing to each trustee of the district and to the teacher.

(c) The notice must state *clearly and explicitly* the specific ~~instances of behavior or acts~~ *reason or reasons* that led to the recommendation for dismissal.

(3) (a) Whenever the trustees of any district receive a recommendation for dismissal, the trustees shall notify the teacher of the right to a hearing before the trustees either by certified letter or by personal notification for which a signed receipt must be returned. The teacher may in writing waive the right to a hearing. Unless the teacher waives the right to a hearing, the teacher and trustees shall agree on a hearing date not less than ~~5~~ *10* days or more than 20 days from the notice of intent to recommend dismissal.

(b) The trustees shall conduct a hearing on the recommendation and resolve at the conclusion of the hearing to dismiss the teacher or to reject the recommendation for dismissal.

(4) With the exception of a county superintendent, a person who recommends dismissal pursuant to subsection (2) may suspend the teacher from active performance of duty with pay pending the hearing date if the teacher's behavior or acts that led to the recommendation for dismissal are contrary to the welfare of the students or the effective operation of the school district.

HeinOnline -- 1999 vol. II 2160 1999

(5) Any teacher who has been dismissed may in writing within ~~10~~ *20* days appeal the dismissal under the guidelines set forth in 20-4-204. The teacher may appeal a decision to terminate an employment contract to the county superintendent if the teacher's employment is not covered by a collective bargaining agreement pursuant to Title 39, chapter 31. If the employment of the teacher is covered by a collective bargaining agreement, a teacher shall appeal a decision to terminate an employment contract to an arbitrator."

Section 6. Section 20-9-308, MCA, is amended te read:

"20-9-308. BASE budgets and maximum general fund budgets. (1) The trustees of a district shall adopt a general fund budget that~~:~~

~~(a) except as provided in subsection (2),~~ is at least equal to the BASE budget established for the district~~; or~~ *and,*

~~(b)~~ except as provided in ~~section 3, Chapter 38, Special Laws of November 1993, and~~ subsection ~~(4) of this section~~ *(3)*, does not exceed tbe maximum general fund budget established for the district.

~~(2) (a) If the BASE budget for a district for the school fiscal year is greater than the general fund budget of the district for the prior school fiscal year, the trustees of the district:~~

~~(i) shall increase the general fund budget by at least:~~

~~(A) 25% of the range between the district general fund budget for the school fiscal year ending June 30, 1994, and the BASE budget for the district for the school fiscal year beginning July 1, 1994;~~

~~(B) 33.3% of the range between the district general fund budget for the school fiscal year ending June 30, 1994, and the BASE budget for the district for the school fiscal year beginning July 1, 1995;~~

~~(C) 50% of the range between the district general fund budget for the school fiscal year ending June 30, 1994, and the BASE budget for the district for the school fiscal year beginning July 1, 1996; or~~

~~(D) the remainder of the range between the district general fund budget for the school fiscal year ending June 30, 1997, and the BASE budget for the district for the school fiscal year beginning July 1, 1997;~~

~~(ii) may increase the general fund budget beyond the amount in subsection (2)(a)(i) but not by more than 4% of the previous year's general fund budget or by more than 4% of the previous year's general fund per ANB multiplied by the current year's ANB for budgeting purposes pursuant to subsection (2)(b).~~

~~(b) The trustees shall submit a proposition on any amount exceeding the limitations in subsection (2)(a)(i) to the electors of the district, as provided in 20-9-353.~~

~~(3)~~*(2)* (a) Whenever the trustees of a district adopt a general fund budget that exceeds the BASE budget for the district but does not exceed the maximum general fund budget for the district, the trustees shall submit a proposition to the electors of the district, as provided in 20-9-353~~, for any budget amount that exceeds the previous year's general fund budget amount or the previous year's general fund budget per ANB multiplied by the current year's ANB for budgeting purposes~~.

HeinOnline -- 1999 vol. II 2161 1999

(b) A general fund budget adopted under this subsection ~~(3)~~ *(2)* may not exceed the greater of:

(i) 104% of the previous year's general fund budget ~~as adjusted by the provisions of section 3, Chapter 38, Special Laws of November 1993~~; or

(ii) 104% of the previous year's general fund budget per-ANB multiplied by the current year's ANB for budgeting purposes ~~as adjusted by the provisions of section 3, Chapter 38, Special Laws of November 1993~~.

~~(4)(a)~~*(3)* ~~If the maximum general fund budget for a district for an ensuing school fiscal year is less than the general fund budget for the district for the current school fiscal year, as adjusted by the provisions of section 3, Chapter 38, Special Laws of November 1993, the trustees of the district may not adopt a general fund budget for the ensuing school fiscal year that is greater than the district's general fund budget for the current school fiscal year~~ *The trustees may adopt a general fund budget greater than the maximum general fund budget only if the budget adopted for the previous year was greater than the district's maximum general fund budget for the previous year. However, the budget adopted for the current year may not exceed the lesser of:*

(a) the adopted budget for the previous year; or

(b) the district's current maximum general fund budget plus the over maximum general fund budget amount adopted for the previous year.

~~(b)~~*(c)* ~~Except for the school fiscal year beginning July 1, 1994, the~~ *The* trustees of the district shall submit a proposition to raise any general fund budget amount that is in excess of the maximum general fund budget for the district to the electors who are qualified under 20-20-301 to vote on the proposition, as provided in 20-9-353.

~~(5)~~*(4)* ~~Whenever the trustees of a district adopt a general fund budget that does not exceed the BASE budget for the district, the trustees shall finance this amount with~~ *The BASE budget for the district must be financed by* the following sources of revenue:

(a) state equalization aid as provided in 20-9-343, including any guaranteed tax base aid for which the district may be eligible, as provided in 20-9-366 through 20-9-369;

(b) county equalization aid, as provided in 20-9-331 and 20-9-333;

(c) a district levy for support of a school not approved as an isolated school under the provisions of 20-9-302;

(d) payments in support of special education programs under the provisions of 20-9-321;

(e) nonlevy revenue as provided in 20-9-141; and

(f) a BASE budget levy on the taxable value of all property within the district.

~~(6)~~*(5)* The over-BASE budget amount of a district must be financed by a levy on the taxable value of all property within the district or other revenue available to the district as provided in 20-9-141."

Section 7. Section 20-9-353, MCA, is amended to read:

"20-9-353. Additional financing for general fund — election for authorization to impose. (1) The trustees of a district may propose to adopt:

HeinOnline -- 1999 vol. II 2162 1999

~~(a) a budget amount up to the BASE budget amount for the district general fund that is within the limitations and required budget increases provided in 20-9-308(2);~~

~~(b)~~*(a)* an over-BASE budget amount for the district general fund that does not exceed the maximum general fund budget for the district or other limitations, as provided in 20-9-308~~(3)~~*(2)*; or

~~(c)~~*(b)* a general fund budget amount in excess of the maximum general fund budget amount for the district, as provided in 20-9-308~~(4)~~*(3)*.

(2) *When the trustees of the district propose to adopt an over-BASE budget under subsection (1)(a), any increase in the local property taxes authorized by 20-9-308(5) must be submitted to a vote of the qualified electors of the district. The trustees are not required to submit to the qualified electors any increase in state funding of the basic or per-ANB entitlements approved by the legislature.* When the trustees of a district determine that a voted amount of financing is required for the general fund budget, the trustees shall submit the proposition to finance the ~~additional~~ *voted* amount ~~of general fund financing~~ to the electors who are qualified under 20-20-301 to vote upon the proposition. The ~~special~~ election must be called and conducted in the manner prescribed by this title for school elections. The ballot for the election must state the amount of ~~money to be financed, the approximate number of mills required to raise all or a portion of the money, and the purpose for which the money will be expended~~ *estimated increase in local property taxes and the estimated impact on the over-BASE mills needed to fund the general fund budget.* The ballot must be in the following format:

PROPOSITION

The district levied (state the total amount of local property taxes levied in support of the district's prior year's over-BASE general fund budget) dollars and (state the total number of mills levied in support of the district's prior year's over-BASE general fund budget) mills to support the previous year's over-BASE general fund budget. If this proposition is approved, the local property taxes to support the district's proposed over-BASE general fund budget will increase by approximately (state the additional local property taxes) dollars. The mills will (increase or decrease as applicable) by approximately (insert the number of mills) mills.

Shall the district be authorized to ~~expend the sum of (state the additional amount to be expended), and being approximately (give number) mills, for the purpose of (insert the purpose for which the additional financing is made)~~ *increase the local property taxes by (insert the amount), which will (increase or decrease as applicable) the local mills by approximately (insert the number of mills) mills*?

☐ FOR ~~budget authority and any~~ *the additional* levy.

☐ AGAINST ~~budget authority and any~~ *the additional* levy.

(3) When the trustees of a district propose to adopt a general fund budget amount in excess of the maximum general fund budget amount under subsection (1)(b), the trustees shall submit the proposition to finance the additional amount of general fund budget authority to the electors who are qualified under 20-20-301 to vote upon the proposition. The election must be called and conducted in the manner prescribed by this title for school elections. The ballot for the election must state the amount of the budget to be financed, the approximate number of mills

HeinOnline -- 1999 vol. II 2163 1999

required to fund all or a portion of the budget amount, and the purpose for which the money will be expended. The ballot must be in the following format:

PROPOSITION

Shall the district be authorized to expend the sum of (state the additional amount to be expended) and being approximately (give number) mills for the purpose of (insert the purpose for which the additional financing is made)?

☐ *FOR budget authority and any levy.*

☐ *AGAINST budget authority and any levy.*

~~(3)~~*(4)* If the election on any additional ~~financing~~ *financing or budget authority* for the general fund is approved by a majority vote of the electors voting at the election, the proposition carries and the trustees may use any portion or all of the authorized amount in adopting the final general fund budget. The trustees shall certify any additional levy amount authorized by the ~~special~~ election on the budget form that is submitted to the county superintendent, and the county commissioners shall levy the authorized number of mills on the taxable value of all taxable property within the district, as prescribed in 20-9-141~~, to raise the amount of the additional levy~~.

~~(4)~~*(5)* Authorization to levy an additional tax to support a budget amount adopted as allowed by 20-9-308~~(4)~~*(3)* is effective for only 1 school fiscal year.

~~(5)~~*(6)* All levies adopted under this section must be authorized by ~~a special~~ *the* election conducted before August 1 of the school fiscal year for which it is effective.

~~(6)~~*(7)* If the trustees of a district are required to submit a proposition to finance an ~~increased amount up to the BASE budget amount, as provided in 20-9-308(2)(b), an increased~~ over-BASE budget amount, as provided in 20-9-308~~(3)(a)~~*(2)*, or an amount in excess of the maximum general fund budget amount for the district, as allowed by 20-9-308~~(4)~~*(3)*, to the electors of the district, the trustees shall comply with the provisions of subsections (2) through ~~(4)~~ *(6) of this section.*"

Section 8. Section 20-20-105, MCA, is amended to read:

"20-20-105. Regular school election day and special school elections — *limitation — exception.* *(1)* The first Tuesday *after the first Monday* of ~~April~~ *May* of each year ~~shall be~~ *is* the regular school election day. ~~Unless otherwise provided by law,~~ *Except as provided in subsection (3), a proposition requesting additional funding under 20-9-353 may be submitted to the electors only once each calendar year on the regular school election day.*

(2) Subject to the provisions of subsection (1), special school elections may be conducted at ~~such~~ times ~~as~~ determined by the trustees.

(3) In the event of an unforeseen emergency occurring on the date scheduled for the funding election pursuant to subsection (1), the district will be allowed to reschedule the election for a different day of the calendar year. As used in this section, "unforeseen emergency" has the meaning provided in 20-3-322(5)."

Section 9. Section 20-20-401, MCA, is amended to read:

"20-20-401. Trustees' election duties — ballot certification. (1) The trustees are the general supervisors of school elections unless the trustees

HeinOnline -- 1999 vol. II 2164 1999

request and the county election administrator agrees to conduct a school election under 20-20-417.

(2) Not less than ~~15~~ *25* days before an election, the clerk of the district shall prepare a certified list of the names of all candidates entitled to be on the ballot and the official wording for each ballot issue. The clerk shall arrange for printing the ballots. Ballots for absentee voting must be printed and available ~~at least 11 days before the election~~ *at least 20 days before the election*, except as provided in 20-9-426(2) for a bond election not held in conjunction with a school election. Names of candidates on school election ballots need not be rotated.

(3) Before the opening of the polls, the trustees shall cause each polling place to be supplied with the ballots and supplies necessary to conduct the election."

Section 10. Coordination instruction. (1) If House Bill No. 496 and [this act] are both passed and approved, then House Bill No. 496 is void.

(2) If House Bill No. 71, amending 20-9-308 and 20-9-353 and [this act] are passed and approved, 20-9-308 and 20-9-353 must read as follows:

"Section 6. Section 20-9-308, MCA, is amended to read:

"20-9-308. BASE budgets and maximum general fund budgets. (1) The trustees of a district shall adopt a general fund budget that:

~~(a) except as provided in subsection (2),~~ is at least equal to the BASE budget established for the district~~; or~~ *and,*

~~(b)~~ except as provided in ~~section 3, Chapter 38, Special Laws of November 1993, and~~ subsection ~~(4)~~ *(3)* of this section, does not exceed the maximum general fund budget established for the district.

~~(2) (a) If the BASE budget for a district for the school fiscal year is greater than the general fund budget of the district for the prior school fiscal year, the trustees of the district:~~

~~(i) shall increase the general fund budget by at least:~~

~~(A) 25% of the range between the district general fund budget for the school fiscal year ending June 30, 1994, and the BASE budget for the district for the school fiscal year beginning July 1, 1994;~~

~~(B) 33.3% of the range between the district general fund budget for the school fiscal year ending June 30, 1995, and the BASE budget for the district for the school fiscal year beginning July 1, 1995;~~

~~(C) 50% of the range between the district general fund budget for the school fiscal year ending June 30, 1996, and the BASE budget for the district for the school fiscal year beginning July 1, 1996; or~~

~~(D) the remainder of the range between the district general fund budget for the school fiscal year ending June 30, 1997, and the BASE budget for the district for the school fiscal year beginning July 1, 1997;~~

~~(ii) may increase the general fund budget beyond the amount in subsection (2)(a)(i) but not by more than 4% of the previous year's general fund budget or by more than 4% of the previous year's general fund per ANB multiplied by the current year's ANB for budgeting purposes pursuant to subsection (2)(b).~~

HeinOnline -- 1999 vol. II 2165 1999

~~(b) The trustees shall submit a proposition on any amount exceeding the limitations in subsection (2)(a)(i) to the electors of the district, as provided in 20-9-353.~~

~~(3) (a)~~ *(2) (a)* Whenever the trustees of a district adopt a general fund budget that exceeds the BASE budget for the district but does not exceed the maximum general fund budget for the district, the trustees shall submit a proposition to the electors of the district, as provided in 20-9-353~~, for any budget amount that exceeds the previous year's general fund budget amount or the previous year's general fund budget per-ANB multiplied by the current year's ANB for budgeting purposes~~.

(b) A general fund budget adopted under this subsection ~~(3)~~ *(2)* may not exceed the greater of:

(i) 104% of the previous year's general fund budget ~~as adjusted by the provisions of section 3, Chapter 38, Special Laws of November 1993~~; or

(ii) 104% of the previous year's general fund budget per-ANB multiplied by the current year's ANB for budgeting purposes ~~as adjusted by the provisions of section 3, Chapter 38, Special Laws of November 1993~~.

~~(4) (a) If the maximum general fund budget for a district for an ensuing school fiscal year is less than the general fund budget for the district for the current school fiscal year, as adjusted by the provisions of section 3, Chapter 38, Special Laws of November 1993, the trustees of the district may not adopt a general fund budget for the ensuing school fiscal year that is greater than the district's general fund budget for the current school fiscal year.~~

(3) (a) (i) Except as provided in subsections (3)(a)(ii), the trustees of a school district whose previous year's general fund budget exceeds the current year's maximum general fund budget amount may adopt a general fund budget up to the maximum general fund budget amount or up to 94% of the previous year's general fund budget, whichever is greater. A school district may adopt a budget under the criteria of this subsection (3)(a)(i) for a maximum of 5 consecutive years. A school district whose adopted general fund budget for the previous year exceeds the maximum general fund budget for the current year and whose ANB for the previous year exceeds the ANB for the current year by 30% or more shall reduce its adopted budget by:

(A) in the first year, 20% of the range between the district's adopted general fund budget for the previous school fiscal year and the maximum general fund budget for the current school fiscal year;

(B) in the second year, 25% of the range between the district's adopted general fund budget for the previous school fiscal year and the maximum general fund budget for the current school fiscal year;

(C) in the third year, 33.3% of the range between the district's adopted general fund budget for the previous school fiscal year and the maximum general fund budget for the current school fiscal year;

(D) in the fourth year, 50% of the range between the district's adopted general fund budget for the previous school fiscal year and the maximum general fund budget for the current school fiscal year; and

(E) in the fifth year, the remainder of the range between the district's adopted general fund budget for the previous school fiscal year and the maximum general fund budget for the current school fiscal year.

HeinOnline -- 1999 vol. II 2166 1999

(ii) The trustees of a district whose general fund budget was above the maximum general fund budget established by Chapter 38, Special Laws of November 1993, and whose general fund budget has continued to exceed the district's maximum general fund budget in each school fiscal year after school fiscal year 1993 may continue to adopt a general fund budget that exceeds the maximum general fund budget. However, the budget adopted for the current year may not exceed the lesser of:

(A) the adopted budget for the prcvious year; or

(B) the district's maximum general fund budget for the current year plus the over maximum budget amount adopted for the previous year.

(b) ~~Except for the school fiscal year beginning July 1, 1994, the~~ *The* trustees of the district shall submit a proposition to raise any general fund budget amount that is in excess of the maximum general fund budget for the district to the electors who are qualified under 20-20-301 to vote on the proposition, as provided in 20-9-353.

~~(5)~~*(4)* ~~Whenever the trustees of a district adopt a general fund budget that does not exceed the BASE budget for the district, the trustees shall finance this amount with~~ *The BASE budget for the district must be financed by* the following sources of revenue:

(a) state equalization aid as provided in 20-9-343, including any guaranteed tax base aid for which the district may be eligible, as provided in 20-9-366 through 20-9-369;

(b) county equalization aid, as provided in 20-9-331 and 20-9-333;

(c) a district levy for support of a school not approved as an isolated school under the provisions of 20-9-302;

(d) payments in support of special education programs under the provisions of 20-9-321;

(e) nonlevy revenue as provided in 20-9-141; and

(f) a BASE budget levy on the taxable value of all property within the district.

~~(6)~~*(5)* The over-BASE budget amount of a district must be financed by a levy on the taxable value of all property within the district or other revenue available to the district as provided in 20-9-141.""

"Section ~~9~~ 7. Section 20-9-353, MCA, is amended to read:

"20-9-353. Additional financing for general fund — election for authorization to impose. (1) The trustees of a district may propose to adopt:

~~(a) a budget amount up to the BASE budget amount for the district general fund that is within the limitations and required budget increases provided in 20-9-308(2);~~

~~(b)~~*(a)* an over-BASE budget amount for tbe district general fund that does not exceed the maximum general fund budget for the district or other limitations, as provided in ~~20-~~ ~~308(3)~~ *20-9-308(2)*; or

~~(c)~~*(b)* a general fund budget amount in excess of the maximum general fund budget amount for the district, as provided in ~~20-9-308(4)~~ *20-9-308(3)*.

(2) *When the trustees of thc district propose to adopt an over-BASE budget under subsection (1)(a), any increase in local property taxes authorized by*

HeinOnline -- 1999 vol. II 2167 1999

20-9-308(5) must be submitted to a vote of the qualified electors of the district. The trustees are not required to submit to the qualified electors any increase in state funding of the basic or per-ANB entitlements approved by the legislature. When the trustees of a district determine that a voted amount of financing is required for the general fund budget, the trustees shall submit the proposition to finance the ~~additional~~ *voted* amount ~~of general fund financing~~ to the electors who are qualified under 20-20-301 to vote upon the proposition. The ~~special~~ election must be called and conducted in the manner prescribed by this title for school elections. The ballot for the election must state the amount of ~~money to be financed, the approximate number of mills required to raise all or a portion of the money, and the purpose for which the money will be expended~~ *the estimated increase in local property taxes and the estimated impact on the over-BASE mills needed to fund the general fund budget.* The ballot must be in the following format:

PROPOSITION

The district levied (state the total amount of local property taxes levied in support of the district's prior year's over-BASE general fund budget) dollars and (state the total number of mills levied in support of the district's prior year's over-BASE general fund budget) mills to support the previous year's over-BASE general fund budget. If this proposition is approved, the local property taxes to support the district's proposed over-BASE general fund budget will increase by (state the additional local property taxes) dollars. The mills will (increase or decrease as applicable) by (insert the number of mills) mills.

Shall tbe district be authorized to ~~expend the sum of (state the additional amount to be expended), and being approximately (give number) mills, for the purpose of (insert the purpose for which the additional financing is made)~~ *increase the local property taxes by (insert the amount), which will (increase or decrease as applicable) the local mills by approximately (insert the number of mills) mills*?

☐ FOR ~~budget authority and any~~ *the additional* levy.

☐ AGAINST ~~budget authority and any~~ *the additional* levy.

(3) When the trustees of a district propose to adopt the general fund budget amount in excess of the maximum general fund budget under subsection (1)(b), the trustees shall submit the proposition to finance the additional amount of general fund budget authority to the electors who are qualified under 20-20-301 to vote upon the proposition. The election must be called and conducted in the manner prescribed by this title for school elections. The ballot for the election must state the amount of the budget to be financed, the approximate number of mills required to fund all or a portion of the budget amount, and the purpose for which the money will be expended. The ballot must be in the following format:

PROPOSITION

Shall the district be authorized to expend the sum of (state the additional amount to be expended) and being approximately (give number) mills for the purpose of (insert the purpose for which the additional financing is made)?

☐ *FOR budget authority and any levy.*

☐ *AGAINST budget authority and any levy.*

~~(3)~~*(4)* If the election on any additional financing *or budget authority* for the general fund is approved by a majority vote of the electors voting at tbe election, the proposition carries and the trustees may use any portion or all of the

authorized amount in adopting the final general fund budget. The trustees shall certify any additional levy amount authorized by the ~~special~~ election on the budget form that is submitted to the county superintendent, and the county commissioners shall levy the authorized number of mills on the taxable value of all taxable property within the district, as prescribed in 20-9-141~~, to raise the amount of the additional levy~~.

~~(4)~~*(5)* Authorization to levy an additional tax to support a budget amount adopted as allowed by ~~20-9-308(4)~~ *20-9-308(3)* is effective for only 1 school fiscal year.

~~(5)~~*(6)* All levies adopted under this section must be authorized by ~~a special~~ *the* election conducted before August 1 of the school fiscal year for which it is effective.

~~(5)~~*(7)* If the trustees of a district are required to submit a proposition to finance an ~~increased amount up to the BASE budget amount, as provided in 20-9-308(2)(b), an increased~~ over-BASE budget amount~~, as provided in 20-9-308(3)(a),~~ or an amount in excess of the maximum general fund budget amount for the district as allowed by ~~20-9-308(4)~~ *20-9-308(3)* to the electors of the district, the trustees shall comply with the provisions of subsections (2) through ~~(4)~~ *(6) of this section.*""

Section 11. Effective date — applicability. (1) Except as provided in subsection (2), [this act] is effective July 1, 1999, and applies to school fiscal years beginning on or after July 1, 2000.

(2) [Section 5 and this section] are effective on passage and approval.

Approved April 28, 1999

CHAPTER NO. 515

[HB 540]

AN ACT REVISING THE TAXATION OF CERTAIN VEHICLES; REPLACING THE CURRENT SYSTEM OF TAXATION OF AUTOMOBILES, VANS, SPORT UTILITY VEHICLES, AND LIGHT TRUCKS WITH A REGISTRATION FEE ON LIGHT VEHICLES; ALLOWING THE OWNER OF A LIGHT VEHICLE TO REGISTER THE VEHICLE FOR A 24-MONTH PERIOD; ALLOWING VEHICLES, INCLUDING MOTORCYCLES AND QUADRICYCLES, 11 YEARS OLD AND OLDER TO BE PERMANENTLY REGISTERED; REVISING THE FEE IN LIEU OF TAX ON MOTORCYCLES AND QUADRICYCLES; PROVIDING FOR DISTRIBUTION OF THE REGISTRATION FEE; REPEALING THE SALES TAX ON NEW MOTOR VEHICLES; ALLOWING A COUNTY TO IMPOSE A LOCAL OPTION FEE ON MOTOR VEHICLES WITH VOTER APPROVAL; PROVIDING THAT THE PROPOSED ACT BE SUBMITTED TO THE QUALIFIED ELECTORS OF MONTANA; AMENDING SECTIONS 7-1-2111, 15-6-201, 15-6-215, 15-8-202, 15-24-301, 15-24-302, 15-30-121, 15-50-207, 15-70-101, 15-70-125, 20-9-141, 20-9-331, 20-9-333, 20-9-360, 20-9-501, 20-10-144, 20-10-146, 27-1-306, 61-3-101, 61-3-301, 61-3-303, 61-3-314, 61-3-315, 61-3-316, 61-3-317, 61-3-332, 61-3-431, 61-3-456, 61-3-503, 61-3-506, 61-3-509, 61-3-520, 61-3-527, 61-3-537, 61-3-701, 61-3-707, 61-3-736, 61-3-737, 61-3-738, 61-4-112, AND 61-10-231, MCA; REPEALING SECTIONS 61-3-502, 61-3-504, AND 61-3-605, MCA; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE.

HeinOnline -- 1999 vol. II 2169 1999

Be it enacted by the Legislature of the State of Montana:

Section 1. Light vehicle registration fee — exemptions — 24-month registration. (1) Except as provided in subsection (2), there is a registration fee imposed on light vehicles. The registration fee is in addition to other annual registration fees.

(2) (a) Light vehicles that meet the description of property exempt from taxation under 15-6-201(1)(a), (1)(c) through (1)(e), (1)(g), (1)(m), (1)(o), (1)(q), or (1)(w), 15-6-203, or 15-6-215, except as provided in 61-3-520, are exempt from the fee imposed in subsection (1).

(b) A motor vehicle owned by a disabled veteran qualifying for special license plates under 61-3-332(10) or a motor vehicle registered under 61-3-456 is exempt from the fee imposed by this section.

(c) A dealer for light vehicles is not required to pay the registration fee for light vehicles that constitute inventory of the dealership and that are reported under 61-3-501.

(3) The owner of a motor vehicle subject to the provisions of 61-3-313 through 61-3-316 may register the light vehicle for a period not to exceed 24 months. The application for registration or reregistration must be accompanied hy the registration fee and all other fees required in this chapter for each 12-month period of the 24-month period. However, the registration fees required under 61-3-321 (1)(a) or (1)(b) paid at the time of registration or reregistration apply for the entire 24-month registration period.

Section 2. Schedule of fees for light vehicles — limitation on fee — payment of fee required for operation. (1) The following schedule, based on vehicle age, is used to determine the annual registration fee imposed by [section 1]:

Vehicle Age (in years)	Annual Fee
4 or less	$195
5-10	65
11 or more	6

(2) A light vehicle subject to the registration fee imposed by [section 1] may not be operated unless the fee has been paid and the vehicle is licensed. A lien for fees due on the vehicle occurs on the anniversary date of the registration and continues until the fees have been paid.

(3) For the purposes of this section, "vehicle age" means the age of the vehicle determined by subtracting the manufacturer's model year of the vehicle from the calendar year for which the registration fee is due.

Section 3. Permanent registration — transfer of vehiele ownership — rules. (1) (a) The owner of a light vehicle 11 years old or older subject to the registration fee, as provided in [section 2], may permanently register the vehicle upon payment of a $50 registration fee, the applicable registration and license fees under 61-3-321, and an amount equal to five times the applicahle fees imposed for each of the following:

(i) junk vehicle disposal fees under 61-3-508;

(ii) weed control fees under 61-3-510;

(iii) county motor vehicle computer fees under 61-3-511;

HeinOnline -- 1999 vol. II 2170 1999

(iv) the local option vehicle tax or flat fee on vehicles under 61-3-537;

(v) if applicable, license plate fees under 61-3-332 and renewal fees for personalized plates under 61-3-406;

(vi) if applicable, the amateur radio operator license plate fee under 61-3-422; and

(vii) if applicable, the annual scholarship donation fee under 61-3-465.

(b) A person who permanently registers a vehicle as provided in subsection (1)(a) shall pay an additional $2 fee at the time of registration for deposit in the state general fund. The department shall pay from the general fund an amount equal to the $2 fee collected under this subsection (1)(b) from each motor vehicle registration to the pension trust fund for payment of supplemental benefits provided for in 19-6-709.

(2) In addition to the fees described in subsection (1), an owner of a truck with a manufacturer's rated capacity of 1 ton or less that is permanently registered shall pay five times the applicable fees imposed under 61-10-201.

(3) The owner of a vehicle that is permanently registered under this section is not subject to additional fees under [section 2] or to other motor vehicle registration fees described in this section for as long as the owner owns the vehicle.

(4) The county treasurer shall:

(a) disburse the $50 registration fee collected under this section as provided in 61-3-509;

(b) once each month, remit to the state treasurer the amounts collected under this section for the purposes of 61-3-121(5), 61-3-508, 61-3-510, 61-3-511, and 61-10-201.

(5) (a) The permanent registration of a vehicle allowed by this section may not be transferred to a new owner. If the vehicle is transferred to a new owner, the department shall cancel the vehicle's permanent registration.

(b) Upon transfer of a vehicle registered under this section to a new owner, the new owner shall apply for a certificate of ownership under 61-3-201 and file an application for registration under 61-3-303.

Section 4. Section 7-1-2111, MCA, is amended to read:

"7-1-2111. Classification of counties. (1) For the purpose of regulating the compensation and salaries of all county officers, not otherwise provided for, and for fixing the penalties of officers' bonds, the counties of this state must be classified according to the taxable valuation of the property in the counties upon which the tax levy is made~~, except for vehicles subject to taxation under 61-3-504~~, as follows:

(a) first class—all counties having a taxable valuation of $50 million or more;

(b) second class—all counties having a taxable valuation of $30 million or more and less than $50 million;

(c) third class—all counties having a taxahle valuation of $20 million or more and less than $30 million;

(d) fourth class—all counties having a taxable valuation of $15 million or more and less than $20 million;

HeinOnline -- 1999 vol. II 2171 1999

(e) fifth class—all counties having a taxable valuation of $10 million or more and less than $15 million;

(f) sixth class—all counties having a taxable valuation of $5 million or more and less than $10 million;

(g) seventh class—all counties having a taxable valuation of less than $5 million.

(2) As used in this section, "taxable valuation" means the taxable value of taxable property in the county as of the time of determination plus:

(a) that portion of the taxable value of the county on December 31, 1981, attributable to automobiles and trucks having a rated capacity of three-quarters of a ton or less;

(b) that portion of the taxable value of the county on December 31, 1989, attributable to automobiles and trucks having a manufacturer's rated capacity of more than three-quarters of a ton but less than or equal to 1 ton;

(c) that portion of the taxable value of the county on December 31, 1997, attributable to buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors;

(d) that portion of the taxable value of the county on December 31, 1997, attributable to trailers, pole trailers, and semitrailers with a declared weight of less than 26,000 pounds;

(e) the value provided by the department of revenue under 15-36-324(13); and

(f) 6% of the taxable value of the county on January 1 of each tax year."

Section 5. Section 15-6-201, MCA, is amended to read:

"15-6-201. Exempt categories. (1) The following categories of property are exempt from taxation:

(a) except as provided in 15-24-1203, the property of:

(i) the United States, except:

(A) if congress passes legislation that allows the state to tax property owned by the federal government or an agency created by congress; or

(B) as provided in 15-24-1103;

(ii) the state, counties, cities, towns, and school districts;

(iii) irrigation districts organized under the laws of Montana and not operating for profit;

(iv) municipal corporations;

(v) public libraries; and

(vi) rural fire districts and other entities providing fire protection under Title 7, chapter 33;

(b) buildings, with land that they occupy and furnishings in the buildings, that are owned by a church and used for actual religious worship or for residences of the clergy, together with adjacent land reasonably necessary for convenient use of the buildings;

HeinOnline -- 1999 vol. II 2172 1999

(c) property used exclusively for agricultural and horticultural societies, for educational purposes, and for nonprofit health care facilities, as defined in 50-5-101, licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3. A health care facility that is not licensed by the department of public health and buman services and organized under Title 35, cbapter 2 or 3, is not exempt.

(d) property that is:

(i) owned and held by an association or corporation organized under Title 35, chapter 2, 3, 20, or 21;

(ii) devoted exclusively to use in connection with a cemetery or cemeteries for which a permanent care and improvement fund bas been established as provided for in Title 35, chapter 20, part 3; and

(iii) not maintained and operated for private or corporate profit;

(e) property that is owned or property that is leased from a federal, state, or local governmental entity by institutions of purely public charity if the property is directly used for purely public charitable purposes;

(f) evidence of debt secured by mortgagos of record upon real or personal property in the state of Montana;

(g) public museums, art galleries, zoos, and observatories that are not used or held for private or corporate profit;

(h) all household goods and furniture, including but not limited to clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by the owner for personal and domestic purposes or for furnishing or equipping the family residence;

(i) truck canopy covers or toppers and campers;

(j) a bicycle, as defined in 61-1-123, used by the owner for personal transportation purposes;

(k) motor homes;

(l) all watercraft;

(m) motor vehicles, land, fixtures, buildings, and improvements owned by a cooperative association or nonprofit corporation organized to furnish potable water to its members or customers for uses otber than the irrigation of agricultural land;

(n) the right of entry that is a property right reserved in land or received hy mesne conveyance (exclusive of leasehold interests), devise, or succession to enter land with a surface title that is held by another to explore, prospect, or dig for oil, gas, coal, or minerals;

(o) (i) property that is owned and used by a corporation or association organized and operated exclusively for the care of persons with developmental disabilities, persons with mental illness, or persons with physical or mental impairments that constitute or result in substantial impediments to employment and that is not operated for gain or profit; and

(ii) property tbat is owned and used by an organization owning and operating facilities that are for the care of the retired, agod, or chronically ill and that are not operated for gain or profit;

HeinOnline -- 1999 vol. II 2173 1999

(p) all farm buildings with a market value of less than $500 and all agricultural implements and machinery with a market value of less than $100;

(q) property owned by a nonprofit corporation that is organized to provide facilities primarily for training and practice for or competition in international sports and athletic events and that is not held or used for private or corporate gain or profit. For purposes of this subsection (1)(q), "nonprofit corporation" means an organization that is exempt from taxation under section 501(c) of the Internal Revenue Code and incorporated and admitted under the Montana Nonprofit Corporation Act.

(r) the first $15,000 or less of market value of tools owned by the taxpayer that are customarily hand-held and that are used to:

(i) construct, repair, and maintain improvements to real property; or

(ii) repair and maintain machinery, equipment, appliances, or other personal property;

(s) harness, saddlery, and other tack equipment;

(t) a title plant owned by a title insurer or a title insurance producer, as those terms are defined in 33-25-105;

(u) timber as defined in 15-44-102;

(v) all trailers as defined in 61-1-111, semitrailers as defined in 61-1-112, pole trailers as defined in 61-1-114, and travel trailers as defined in 61-1-131;

(w) all vehicles registered under 61-3-456;

(x) (i) buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors, including buses, trucks, and truck tractors apportioned under Title 61, chapter 3, part 7; and

(ii) personal property that is attached to a bus, truck, or truck tractor that is exempt under subsection (1)(x)(i); ~~and~~

(y) motorcycles and quadricycles*; and*

(z) light vehicles as defined in 61-1-139.

(2) (a) For the purposes of subsection (1)(e), the term "institutions of purely public charity" includes any organization that meets the following requirements:

(i) The organization qualifies as a tax-exempt organization under the provisions of section 501(c)(3), Internal Revenue Code, as amended.

(ii) The organization accomplishes its activities through absolute gratuity or grants. However, the organization may solicit or raise funds by tbe sale of merchandise, memberships, or tickets to public performances or entertainment or by other similar types of fundraising activities.

(b) For the purposes of subsection (1)(g), the term "public museums, art galleries, zoos, and observatories" means governmental entities or nonprofit organizations whose principal purpose is to hold property for public display or for use as a museum, art gallery, zoo, or observatory. The exempt property includes all real and personal property reasonably necessary for use in connection with the public display or observatory use. Unless the property is leased for a profit to a governmental entity or nonprofit organization by an individual or for-profit organization, real and personal property owned by other persons is exempt if it is:

HeinOnline -- 1999 vol. II 2174 1999

(i) actually used by the governmental entity or nonprofit organization as a part of its public display;

(ii) held for future display; or

(iii) used to house or store a public display.

(3) The following portions of the appraised value of a capital investment in a recognized nonfossil form of energy generation or low emission wood or biomass combustion devices, as defined in 15-32-102, are exempt from taxation for a period of 10 years following installation of the property:

(a) $20,000 in the case of a single-family residential dwelling;

(b) $100,000 in the case of a multifamily residential dwelling or a nonresidential structure."

Section 6. Section 15-6-215, MCA, is amended to read:

"15-6-215. Exemption for motion picture and television commercial property. Except as provided in 15-24-305 and 61-3-520, all property, including vehicles, brought into the state or otherwise used for the exclusive purpose of filming motion pictures or television commercials is exempt from property taxation *and registration fees under [sections 1 and 2]*, provided that the property does not remain in the state for a period in excess of 180 consecutive days in a calendar year."

Section 7. Section 15-8-202, MCA, is amended to read:

"15-8-202. Motor vehicle assessment by department of justice. (1) (a) *The department of justice shall determine the registration fee on light vehicles in accordance with [sections 1 through 3].*

(b) ~~The~~ *For the purposes of the local option vehicle tax under 61-3-537, the* department of justice shall assess all light vehicles, subject to 61-3-313 through 61-3-316 and 61-3-501, for taxation in accordance with 61-3-503.

~~(b)~~*(c)* The department of justice shall determine the fee in lieu of tax for all buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors in accordance with 61-3-528 and 61-3-529.

~~(c)~~*(d)* Taxes, *registration fees,* or fees in lieu of tax on motor vehicles under this subsection (1) must be assessed or imposed in each year on the persons who owned or claimed the motor vehicles or in whose possession or control the motor vehicle was on the anniversary registration date.

(2) A tax or fee in lieu of tax may not be assessed or imposed against motor vehicles subject to taxation or to a fee in lieu of tax that constitute inventory of motor vehicle dealers as of January 1. These vehicles and all other motor vehicles subject to taxation or a fee in lieu of tax that are brought into the state after January 1 as motor vehicle dealers' inventories must be assessed to their respective purchasers as of the dates the vehicles are registered by the purchasers.

(3) "Purchasers" includes dealers who apply for registration or reregistration of motor vehicles~~, except as otherwise provided by 61-3-502~~.

(4) Goods, wares, and merchandise of motor vehicle dealers, other than new motor vehicles and new mobile homes, must be assessed at market value as of January 1."

HeinOnline -- 1999 vol. II 2175 1999

Section 8. Section 15-24-301, MCA, is amended to read:

"15-24-301. Personal property brought into ~~the~~ state — assessment — exceptions — custom combine equipment. (1) Except as provided in subsections (2) through (5), property in the following cases is subject to taxation and assessment for all taxes levied that year in the county in which it is located:

(a) ~~any~~ personal property, ~~(~~including livestock~~)~~, brought~~, driven, or coming~~ into this state at any time during the year that is used in the state for hire, compensation, or profit;

(b) property whose owner or user is engaged in gainful occupation or business enterprise in the state; or

(c) property ~~which comes to rest and~~ *that* becomes a part of the general property of the state.

(2) The taxes on tbis property are levied in the same manner ~~and to the same extent~~, except as otherwise provided, as though the property had been in the county on the regular assessment date, provided that the property has not heen regularly assessed for the year in some other county of the state.

(3) ~~Nothing in this~~ *This* section ~~shall~~ *may not* be construed to levy a tax against a merchant or dealer within this state on goods, wares, or merchandise brought into the county to replenish the stock of the merchant or dealer.

(4) ~~Any~~ *A* ~~motor vehicle not subject to a fee in lieu of tax~~ *motor vehicle subject to the registration fee imposed by [sections 1 and 2] that is* brought~~, driven, or coming~~ into this state hy ~~any~~ *a* nonresident person temporarily employed in Montana and used exclusively for transportation of ~~such~~ *the* person is subject to ~~taxation and assessment for taxes~~ *registration fees* as follows:

(a) The motor vehicle ~~is taxed~~ *fee is imposed* by the county in which it is located.

(h) One-fourth of the annual ~~tax liability~~ *fee* of the motor vehicle must he paid for each quarter or portion of a quarter of the year that the motor vehicle is located in Montana.

(c) The quarterly ~~taxes~~ *fees* are due the first day of the quarter.

(5) Agricultural harvesting machinery classified under class eight, licensed in ~~other states~~ *another state*, and operated on the ~~lands~~ *land* of ~~persons~~ *a person* other than tlie owner of the machinery under ~~contracts~~ *a contract* for hire ~~shall be~~ *is* subject to a fee in lieu of ~~taxation~~ *tax* of $35 ~~per~~ *for each* machine for the calendar year in which the fee is collected. Tlie ~~machines~~ *machinery* ~~shall be~~ *is* subject to taxation under class eight only if ~~they are~~ *the machinery is* sold in Montana."

Section 9. Section 15-24-302, MCA, is amended to read:

"15-24-302. Collection procedure. All property mentioned in 15-24-301 is assessed at the same value as property of like kind and character, and the assessment, levy, and collection of the tax are governed by the provisions of 15-8-408, 15-16-115, 15-16-119, 15-16-404, 15-17-911, and 15-24-202, ~~as amended,~~ except:

(1) ~~taxation of~~ *the imposition of registration fees on* motor vehicles under 15-24-301(4) to the extent that subsection varies from the general provisions cited in this section; and

HeinOnline -- 1999 vol. II 2176 1999

(2) livestock taxation governed by 81-7-104 and Title 81, chapter 7, part 2."

Section 10. Section 15-30-121, MCA, is amended to read:

"15-30-121. Deductions allowed in computing net income. (1) In computing net income, there are allowed as deductions:

(a) the items referred to in sections 161, including the contributions referred to in 33-15-201(5)(b), and 211 of the Internal Revenue Code of 1954 (26 U.S.C. 161 and 211), or as sections 161 and 211 are labeled or amended, subject to the following exceptions, which are not deductible:

(i) items provided for in 15-30-123;

(ii) state income tax paid;

(iii) premium payments for medical care as provided in subsection (1)(g)(i);

(iv) long-term care insurance premium payments as provided in subsection (1)(g)(ii);

(b) federal income tax paid within the tax year;

(c) expenses of household and dependent care services as outlined in subsections (1)(c)(i) through (1)(c)(iii) and (2) and subject to the limitations and rules as set out in subsections (1)(c)(iv) through (1)(c)(vi), as follows:

(i) expenses for household and dependent care services necessary for gainful employment incurred for:

(A) a dependent under 15 years of ago for whom an exemption can be claimed;

(B) a dependent as allowable under 15-30-112(5), except that the limitations for age and gross income do not apply, who is unable to provide self-care because of physical or mental illness; and

(C) a spouse who is unable to provide self-care because of physical or mental illness;

(ii) employment-related expenses incurred for the following services, but only if the expenses are incurred to enable the taxpayer to be gainfully employed:

(A) household services that are attributable to the care of the qualifying individual; and

(B) care of an individual who qualifies under subsection (1)(c)(i);

(iii) expenses incurred in maintaining a household if over half of tbe cost of maintaining the household is furnished by an individual or, if the individual is married during the applicable period, is furnished by the individual and the individual's spouse;

(iv) the amounts deductible in subsections (1)(c)(i) through (1)(c)(iii), subject to the following limitations:

(A) a deduction is allowed under subsection (1)(c)(i) for employment-related expenses incurred during the year only to the extent that the expenses do not exceed $4,800;

(B) expenses for services in the household are deductible under subsection (1)(c)(i) for employment-related expenses only if they are incurred for services in the taxpayer's household, except that employment-related expenses incurred for services outside the taxpayer's household are deductible, but only if incurred for

HeinOnline -- 1999 vol. II 2177 1999

the care of a qualifying individual described in subsection (1)(c)(i)(A) and only to the extent that the expenses incurred during the year do not exceed:

(I) $2,400 in the case of one qualifying individual;

(II) $3,600 in the case of two qualifying individuals; and

(III) $4,800 in the case of three or more qualifying individuals;

(v) if the combined adjusted gross income of the taxpayers exceeds $18,000 for the tax year during which the expenses are incurred, the amount of the employment-related expenses incurred, to he reduced by one-half of the excess of the combined adjusted gross income over $18,000;

(vi) for purposes of this subsection (1)(c):

(A) married couples shall file a joint return or file separately on the same form;

(B) if the taxpayer is married during any period of the tax year, employment-related expenses incurred are deductible only if:

(I) both spouses are gainfully employed, in which case the expenses are deductible only to the extent that they are a direct result of the employment; or

(II) the spouse is a qualifying individual described in subsection (1)(c)(i)(C);

(C) an individual legally separated from the individual's spouse under a decree of divorce or of separate maintenance may not be considered as married;

(D) the deduction for employment-related expenses must be divided equally between the spouses when filing separately on the same form;

(E) payment made to a child of the taxpayer who is under 19 years of age at the close of the tax year and payments made to an individual with respect to whom a deduction is allowahle under 15-30-112(5) are not deductible as employment-related expenses;

(d) in the case of an individual, political contributions determined in accordance with the provisions of section 218(a) and (b) of the Internal Revenue Code (now repealed) that were in effect for the tax year ended December 31, 1978;

(e) that portion of expenses for organic fertilizer and inorganic fertilizer produced as a byproduct allowed as a deduction under 15-32-303 that was not otherwise deducted in computing taxable income;

(f) contributions to the child abuse and neglect prevention program provided for in 41-3-701, subject to tbe conditions set forth in 15-30-156;

(g) the entire amount of premium payments made by tlie taxpayer, except premiums deducted in determining Montana adjusted gross income, or for wliich a credit was claimed under 15-30-128, for:

(i) insurance for medical care, as defined in 26 U.S.C. 213(d), for coverage of tlie taxpayer, the taxpayer's dependents, and the parents and grandparents of the taxpayer; and

(ii) long-term care insurance policies or certificates that provide coverage primarily for any qualified long-term care services, as defined in 26 U.S.C. 7702B(c), for:

(A) tlie benefit of tlie taxpayer for tax years beginning after December 31, 1994; or

HeinOnline -- 1999 vol. II 2178 1999

(B) the benefit of the taxpayer, the taxpayer's dependents, and the parents and grandparents of the taxpayer for tax years beginning after December 31, 1996; ~~and~~

(h) contributions to the Montana drug abuse resistance education program provided for in 44-2-702, subject to the conditions set forth in 15-30-159; *and*

(i) light vehicle registration fees, as provided for in [sections 1 through 3], paid during the tax year.

(2) (a) Subject to the conditions of subsection (1)(c), a taxpayer who operates a family day-care home or a group day-care home, as these terms are defined in 52-2-703, and who cares for the taxpayer's own child and at least one unrelated child in the ordinary course of business may deduct employment-related expenses considered to have been paid for the care of the child.

(b) The amount of employment-related expenses considered to have been paid by the taxpayer is equal to the amount that the taxpayer charges for the care of a child of the same age for the same number of hours of care. The employment-related expenses apply regardless of whether any expenses actually have been paid. Employment-related expenses may not exceed the amounts specified in subsection (1)(c)(iv)(B).

(c) Only a day-care operator who is licensed and registered as required in 52-2-721 is allowed the deduction under this subsection (2). (Subsection (1)(h) terminates on occurrence of contingency—sec. 12, Ch. 808, L. 1991.)"

Section 11. Section 15-50-207, MCA, is amended to read:

"15-50-207. Credit against other taxes — credit for personal property taxes and certain fees. (1) The additional license fees withheld or otherwise paid as provided in this chapter may be used as a credit on the contractor's corporation license tax provided for in chapter 31 of this title or on the contractor's income tax provided for in chapter 30, depending upon the type of tax the contractor is required to pay under the laws of the state.

(2) Personal property taxes and the fee in lieu of tax on buses, trucks having a manufacturer's rated capacity of more than 1 ton, or truck tractors, as provided in 61-3-529, *and the registration fee on light vehicles, as provided in [sections 1 through 3],* paid in Montana on any personal property or vehicle of the contractor that is used in the business of the contractor and is located within this state may be credited against the license fees required under this chapter. However, in computing the tax credit allowed by this section against the contractor's corporation license tax or income tax, the tax credit against the license fees required under this chapter may not be considered as license fees paid for the purpose of the income tax or corporation license tax credit."

Section 12. Section 15-70-101, MCA, is amended to read:

"15-70-101. Disposition of funds. (1) All taxes collected under this chapter must, in accordance with the provisions of 15-1-501, be placed in a highway revenue account in the state special revenue fund to the credit of the department of transportation. *Beginning July 1, 2001, all interest and income earned on the account must be deposited to the credit of the account and any unexpended balance in the account must remain in the account.* Those funds allocated to cities, towns, counties, and consolidated city-county governments in this section must, in accordance with the provisions of 15-1-501, be paid by the

HeinOnline -- 1999 vol. II 2179 1999

department of transportation from the state special revenue fund to the cities, towns, counties, and consolidated city-county governments.

(2) The amount of $16,766,000 of the taxes collected under this chapter is statutorily appropriated, as provided in 17-7-502, to the department of transportation and must be allocated each fiscal year on a monthly basis to the counties, incorporated cities and towns, and consolidated city-county governments in Montana for construction, reconstruction, maintenance, and repair of rural roads and city or town streets and alleys, as provided in subsections (2)(a) through (2)(c):

(a) The amount of $54,000 must be designated for the purposes and functions of the Montana local technical assistance transportation program in Bozeman.

(b) The amount of $6,323,000 must be divided among the various counties in the following manner:

(i) 40% in the ratio that the rural road mileage in each county, exclusive of the national highway system and the primary system, bears to the total rural road mileage in the state, exclusive of the national highway system and the primary system;

(ii) 40% in the ratio that the rural population in each county outside incorporated cities and towns bears to the total rural population in the state outside incorporated cities and towns;

(iii) 20% in the ratio that the land area of each county bears to the total land area of the state.

(c) The amount of $10,389,000 must be divided among the incorporated cities and towns in the following manner:

(i) 50% of the sum in the ratio that the population within the corporate limits of the city or town bears to the total population within corporate limits of all the cities and towns in Montana;

(ii) 50% in the ratio that the city or town street and alley mileage, exclusive of the national highway system and the primary system, within corporate limits bears to the total street and alley mileage, exclusive of the national highway system and primary system, within the corporate limits of all cities and towns in Montana.

(3) (a) For the purpose of allocating the funds in subsections (2)(b) and (2)(c) to a consolidated city-county government, each entity must be considered to have separate city and county boundaries. The city limit boundaries are the last official city limit boundaries for the former city and must be used to determine city and county populations and road mileages in the following manner:

(i) Percentago factors must be calculated to determine separate populations for the city and rural county by using the last official decennial federal census population figures that recoguized an incorporated city and the rural county. The factors must he based on the ratio of the city to the rural county population, considering the total population in the county minus the population of any other incorporated city or town in the county.

(ii) The city and county populations must be calculated by multiplying the total county population, as determined by the latest official decennial census or the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census, minus the

HeinOnline -- 1999 vol. II 2180 1999

population of any other incorporated city or town in that county, by the factors established in subsection (3)(a)(i).

(b) The amount allocated by this method for the city and the county must be combined, and single monthly payments must be made to the consolidated city-county government.

(4) All funds allocated by this section to counties, cities, towns, and consolidated city-county governments must be used for the construction, reconstruction, maintenance, and repair of rural roads or city or town streets and alleys or for the share that the city, town, county, or consolidated city-county government might otherwise expend for proportionate matching of federal funds allocated for the construction of roads or streets that are part of the primary or secondary highway system or urban extensions to those systems. The governing body of a town or third-class city, as defined in 7-1-4111, may each year expend no more than 25% of the funds allocated to that town or third-class city for the purchase of capital equipment and supplies to be used for the maintenance and repair of town or third-class city streets and alleys.

(5) All funds allocated by this section to counties, cities, towns, and consolidated city-county governments must be disbursed to the lowest responsible bidder according to applicable bidding procedures followed in all cases in which the contract for construction, reconstruction, maintenance, or repair is in excess of $4,000.

(6) For the purposes of this section in which distribution of funds is made on a basis related to population, the population must be determined annually for counties and biennially for cities according to the latest official decennial census or the latest interim year population estimates from the Montana department of commerce as supplied by the United States bureau of the census.

(7) For the purposes of this section in which determination of mileage is necessary for distribution of funds, it is the responsibility of the cities, towns, counties, and consolidated city-county governments to furnish to the department of transportation a yearly certified statement indicating the total mileage within their respective areas applicable to this chapter. All mileage submitted is subject to review and approval by the department of transportation.

(8) Except by a town or third-class city as provided in subsection (4), the funds authorized by this section may not be used for the purchase of capital equipment.

(9) Funds authorized by this section must be used for construction and maintenance programs."

Section 13. Section 15-70-125, MCA, is amended to read:

"15-70-125. Highway nonrestricted account. There is a highway nonrestricted account in the state special revenue fund. All interest and penalties collected under this chapter, except those collected by a justice's court, must, in accordance with the provisions of 15-1-501, be placed in the highway nonrestricted account. *Beginning July 1, 2001, all interest and income earned on the account must be deposited to the credit of the account and any unexpended balance in the account must remain in the account."*

Section 14. Section 20-9-141, MCA, is amended to read:

"20-9-141. Computation of general fund net levy requirement by county superintendent. (1) The county superintendent shall compute the levy

requirement for each district's general fund on the basis of the following procedure:

(a) Determine the funding required for the district's final general fund budget less the sum of direct state aid and the special education allowable cost payment for the district by totaling:

(i) the district's nonisolated school BASE budget requirement to be met by a district levy as provided in 20-9-303; and

(ii) any general fund budget amount adopted by the trustees of the district under the provisions of 20-9-308 and 20-9-353, including any additional funding for a general fund budget that exceeds the maximum general fund budget.

(b) Determine the money available for the reduction of the property tax on the district for the general fund by totaling:

(i) the general fund balance reappropriated, as established under the provisions of 20-9-104;

(ii) amounts received in the last fiscal year for which revenue reporting was required for each of the following:

(A) tuition payments for out-of-district pupils under the provisions of 20-5-321 through 20-5-323, except the amount of tuition received for a pupil who is a child with disabilities in excess of the amount received for a pupil without disabilities, as calculated under 20-5-323(2);

(B) revenue from taxes and fees imposed under 23-2-517, 23-2-803, ~~61-3-504,~~ 61-3-521, 61-3-527, 61-3-529, 61-3-537, *[sections 1 through 3], [section 38],* and 67-3-204;

(C) oil and natural gas production taxes;

(D) interest earned by the investment of general fund cash in accordance with the provisions of 20-9-213(4);

(E) revenue from corporation license taxes collected from financial institutions under the provisions of 15-31-702; and

(F) any other revenue received during the school fiscal year that may be used to finance the general fund, excluding any guaranteed tax base aid; and

(iii) pursuant to subsection (4), anticipated revenue from coal gross proceeds under 15-23-703.

(c) Notwithstanding the provisions of subsection (2), subtract the money available to reduce the property tax required to finance the general fund that has been determined in subsection (1)(b) from any general fund budget amount adopted by the trustees of the district, up to the BASE budget amount, to determine the general fund BASE budget levy requiremont.

(d) Subtract any amount remaining after the determination in subsection (1)(c) from any additional funding requirement to he met by an over-BASE budget amount, a district levy as provided in 20-9-303, and any additional financing as provided in 20-9-353 to determine any additional general fund levy requirements.

(2) The county superintendent shall calculate the number of mills to be levied on the taxahle property in the district to finance the general fund levy requirement for any amount that does not exceed the BASE budget amount for

HeinOnline -- 1999 vol. II 2182 1999

the district by dividing the amount determined in subsection (1)(c) by the sum of:

(a) the amount of guaranteed tax base aid that the district will receive for each mill levied, as certified hy the superintendent of public instruction; and

(b) the taxahle valuation of the district divided by 1,000.

(3) The net general fund levy requirement determined in subsections (1)(c) and (1)(d) must be reported to the county commissioners on the fourth Monday of August by the county superintendent as the general fund net levy requirement for tbe district, and a levy must be set by the county commissioners in accordance with 20-9-142.

(4) For each school district, the department of revenue shall calculate and report to the county suporintendent the amount of revenue anticipated for the ensuing fiscal year from revenue from coal gross proceeds under 15-23-703."

Section 15. Section 20-9-331, MCA, is amended to read:

"20-9-331. Basic county tax for elementary equalization and other revenuc for county equalization of elementary BASE funding program. (1) The county commissioners of each county shall levy an annual basic county tax of 33 mills on the dollar of the taxable value of all taxable property within the county, except for property subject to a tax or fee under 23-2-517, 23-2-803, ~~61-3-504,~~ 61-3-521, 61-3-527, 61-3-529, 61-3-537, *[sections 1 through 3], [section 38],* and 67-3-204, for the purposes of elementary equalization and state BASE funding program support. The revenue collected from this levy must be apportioned to the support of tbe elementary BASE funding programs of the school districts in the county and to the state general fund in the following manner:

(a) In order to determine the amount of revonue raised by this levy that is retained by the county, the sum of the estimated revenue identified in subsection (2) must be subtracted from tlie total of the BASE funding programs of all elementary districts of the county.

(b) If tbe basic levy and other revenue prescribed by this section produce more revenue than is required to repay a state advance for county equalization, the county treasurer shall remit the surplus funds to the state treasurer for deposit to the state general fund immediately upon occurrence of a surplus balance and each subsequent month, with any final remittance due no later than June 20 of the fiscal year for which the levy has been set.

(2) The revenue realized from the county's portion of the levy prescribed by this section and tbe revenue from the following sources must he used for the equalization of the elementary BASE funding program of the county as prescribed in 20-9-335, and a separate accounting must be kept of the revenue hy the county treasurer in accordance with 20-9-212(1):

(a) the portion of the federal Taylor Grazing Act funds distributed to a county and designated for the elementary county equalization fund under the provisions of 17-3-222;

(b) the portion of the federal flood control act funds distributed to a county and designated for expenditure for the benefit of the county common schools under the provisions of 17-3-232;

HeinOnline -- 1999 vol. II 2183 1999

(c) all money paid into the county treasury as a result of fines for violations of law, except money paid to a justice's court, and the use of which is not otherwise specified by law;

(d) any money remaining at the end of the immediately preceding school fiscal year in the county treasurer's accounts for the various sources of revenue established or referred to in this section;

(e) any federal or state money distributed to the county as payment in lieu of property taxation, including federal forest reserve funds allocated under the provisions of 17-3-213;

(f) gross proceeds taxes from coal under 15-23-703;

(g) oil and natural gas production taxes;

(h) anticipated local government severance tax payments for calendar year 1995 production as provided in 15-36-325; and

(i) anticipated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, ~~61-3-504,~~ 61-3-521, ~~61-3-527,~~ 61-3-529, 61-3-537, *[section 38],* and 67-3-204."

Section 16. Section 20-9-333, MCA, is amended to read:

"20-9-333. Basic county tax for high school equalization and other revenue for county equalization of high school BASE funding program. (1) The county commissioners of each county shall levy an annual basic county tax of 22 mills on the dollar of the taxable value of all taxable property within the county, except for property subject to a tax or fee under 23-2-517, 23-2-803, ~~61-3-504,~~ 61-3-521, 61-3-527, 61-3-529, 61-3-537, *[sections 1 through 3], [section 38],* and 67-3-204, for the purposes of high school equalization and state BASE funding program support. The revenue collected from this levy must be apportioned to the support of the BASE funding programs of high school districts in the county and to the state general fund in the following manner:

(a) In order to determine the amount of revenue raised by this levy that is retained by the county, the sum of the estimated revenue identified in subsection (2) must be subtracted from the sum of the county's high school tuition obligation and the total of the BASE funding programs of all high school districts of the county.

(b) If the basic levy and other revenue prescribed by this section produce more revenue than is required to repay a state advance for county equalization, the county treasurer shall remit the surplus funds to the state treasurer for deposit to the state general fund immediately upon occurrence of a surplus balance and each subsequent month, with any final remittance due no later than June 20 of the fiscal year for which the levy has been set.

(2) The revenue realized from the county's portion of the levy prescribed in this section and the revenue from the following sources must be used for the equalization of the high school BASE funding program of the county as prescribed in 20-9-335, and a separate accounting must be kept of the revenue by the county treasurer in accordance with 20-9-212(1):

(a) any money remaining at the end of the immediately preceding school fiscal year in the county treasurer's accounts for the various sources of revenue established in this section;

(b) any federal or state money distributed to the county as payment in lieu of property taxation, including federal forest reserve funds allocated under the provisions of 17-3-213;

(c) gross proceeds taxes from coal under 15-23-703;

(d) oil and natural gas production taxes;

(e) anticipated local government severance tax payments for calendar year 1995 production as provided in 15-36-325; and

(f) anticipated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, ~~61-3-504,~~ 61-3-521, ~~61-3-527,~~ 61-3-529, 61-3-537, *[section 38],* and 67-3-204."

Section 17. Section 20-9-360, MCA, is amended to read:

"20-9-360. State equalization aid levy. There is a levy of 40 mills imposed by the county commissioners of each county on all taxable property within the state, except property for which a tax or fee is required under 23-2-517, 23-2-803, ~~61-3-504,~~ 61-3-521, 61-3-527, 61-3-529, 61-3-537, *[sections 1 through 3], [section 38],* and 67-3-204. Proceeds of the levy must be remitted to the state treasurer and must be deposited to the credit of the state general fund for state equalization aid to the public schools of Montana."

Section 18. Section 20-9-501, MCA, is amended to read:

"20-9-501. Retirement fund. (1) The trustees of a district employing personnel who are members of the teachers' retirement system or the public employees' retirement system or who are covered by unemployment insurance or who are covered by any federal social security system requiring employer contributions shall establish a retirement fund for the purposes of budgeting and paying the employer's contributions to the systems. The district's contribution for each employee who is a member of the teachers' retirement system must be calculated in accordance with Title 19, chapter 20, part 6. The district's contribution for each employee who is a member of the public employees' retirement system must be calculated in accordance with 19-3-316. The district's contributions for each employee covered by any federal social security system must be paid in accordance with federal law and regulation. The district's contribution for each employee who is covered by unemployment insurance must be paid in accordance with Title 39, chapter 51, part 11.

(2) The trustees of a district required to make a contribution to a system referred to in subsection (1) shall include in the retirement fund of the final budget the estimated amount of the employer's contribution. After the final retirement fund budget has been adopted, the trustees shall pay the employer contributions to the systems in accordance with the financial administration provisions of this title.

(3) When the final retirement fund budget has been adopted, the county superintendent shall establish the levy requirement by:

(a) determining the sum of the money available to reduce the retirement fund levy requirement by adding:

(i) any anticipated money that may be realized in the retirement fund during the ensuing school fiscal year, including anticipated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, ~~61-3-504,~~ 61-3-521, 61-3-527, 61-3-529, 61-3-537, *[sections 1 through 3], [section 38],* and 67-3-204;

HeinOnline -- 1999 vol. II 2185 1999

(ii) oil and natural gas production taxes;

(iii) anticipated local government severance tax payments for calendar year 1995 production as provided in 15-36-325;

(iv) coal gross proceeds taxes under 15-23-703;

(v) any fund balance available for reappropriation as determined by subtracting the amount of the end-of-the-year fund balance earmarked as the retirement fund operating reserve for the ensuing school fiscal year by the trustees from the end-of-the-year fund balance in the retirement fund. The retirement fund operating reserve may not be more than 35% of the final retirement fund budget for the ensuing school fiscal year and must be used for the purpose of paying retirement fund warrants issued by the district under the final retirement fund budget.

(vi) any other revenue anticipated that may be realized in the retirement fund during the ensuing school fiscal year, excluding any guaranteed tax base aid.

(b) notwithstanding the provisions of subsection (8), subtracting the money available for reduction of the levy requirement, as determined in subsection (3)(a), from the budgeted amount for expenditures in the final retirement fund budget.

(4) The county superintendent shall:

(a) total the net retirement fund levy requirements separately for all elementary school districts, all high school districts, and all community college districts of the county, including any prorated joint district or special education cooperative agreement levy requirements; and

(b) report each levy requirement to the county commissioners on the fourth Monday of August as the respective county levy requirements for elementary district, high school district, and community college district retirement funds.

(5) The county commissioners shall fix and set the county levy in accordance with 20-9-142.

(6) The net retirement fund levy requirement for a joint elementary district or a joint high school district must be prorated to each county in which a part of the district is located in the same proportion as the district ANB of the joint district is distributed by pupil residence in each county. The county superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county as provided in 20-9-151.

(7) The net retirement fund levy requirement for districts that are members of special education cooperative agreements must be prorated to each county in which the district is located in the same proportion as the special education cooperative budget is prorated to the member school districts. The county superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county in the same manner as provided in 20-9-151, and the county commissioners shall fix and levy the net retirement fund levy for each county in the same manner as provided in 20-9-152.

(8) The county superintendent shall calculate the number of mills to be levied on the taxable property in the county to finance the retirement fund net levy requirement by dividing the amount determined in subsection (4)(a) hy the sum of:

HeinOnline -- 1999 vol. II 2186 1999

(a) the amount of guaranteed tax hase aid that the county will receive for each mill levied, as certified hy the superintendent of puhlic instruction; and

(b) the taxable valuation of the district divided by 1,000."

Section 19. Section 20-10-144, MCA, is amended to read:

"20-10-144. Computation of revenue and net tax levy requirements for district transportation fund budget. Before the second Monday of August, the county superintendent shall compute the revenue availahle to finance the transportation fund budget of each district. The county superintendent shall compute the revenue for each district on the following basis:

(1) The "schedule ameunt" of the hudget expenditures that is derived from the rate schedules in 20-10-141 and 20-10-142 must be determined by adding the following amounts:

(a) the sum of the maximum reimhursable expenditures for all approved school bus routes maintained by the district (to determine the maximum reimhursable expenditure, multiply the applicable rate ~~per~~ *for each* bus mile hy the total number of miles to be traveled during the ensuing school fiscal year on each bus route approved by the county transportation committee and maintained by the district); plus

(b) the total of all individual transportation per diem reimbursement rates for the district as determined from the contracts submitted by the district multiplied by the number of pupil-instruction days scheduled for the ensuing school attendance year; plus

(c) any estimated costs for supervised home study or supervised correspondence study for the ensuing school fiscal year; plus

(d) the amount budgeted in the budget for the contingency amount permitted in 20-10-143, except if the amount exceeds 10% of the total of subsections (1)(a), (1)(b), and (1)(c) or $100, whichever is larger, the contingency amount on the budget must be reduced to the limitation amount and used in this determination of the scbedule amount; plus

(e) any estimated costs for transporting a child out of district when the child has mandatory approval to attend school in a district outside the district of residence.

(2) (a) The schedule ameunt determined in subsection (1) or the total transportation fund budget, whichever is smaller, is divided by 2 and is used to determine the available state and county revenue to be budgeted on the following basis:

(i) one-half is the budgeted state transportation reimbursement, except that the state transportation reimbursement for the transportatien of special education pupils under the provisions of 20-7-442 must be 50% of the schedule amount attributed to the transportation of special education pupils; and

(ii) one-half is the hudgeted county transportation fund reimbursement and must be financed in the manner provided in 20-10-146.

(b) When the district has a sufficient amount of fund balance for reappropriation and ether sources of district revenue, as determined in subsection (3), to reduce the total district obligation for financing to zero, any remaining amount of district revenue and fund balance reappropriated must be used to reduce the county financing obligation in subsection (2)(a)(ii) and, if the

HeinOnline -- 1999 vol. II 2187 1999

county financing obligations are reduced to zero, to reduce the state financial obligation in subsection (2)(a)(i).

(c) The county revenue requirement for a joint district, after the application of any district money under subsection (2)(b), must be prorated to each county incorporated by the joint district in the same proportion as the ANB of the joint district is distributed by pupil residence in each county.

(3) The total of the money available for the reduction of property tax on the district for the transportation fund must be determined by totaling:

(a) anticipated federal money received under the provisions of 20 U.S.C. 7701, et seq., or other anticipated federal money received in lieu of that federal act;

(b) anticipated payments from other districts for providing school bus transpertation services for the district;

(c) anticipated payments from a parent or guardian for providing school bus transportation services for a child;

(d) anticipated or reappropriated interest to be earned by the investment of transportation fund cash in accordance with the provisions of 20-9-213(4);

(e) anticipated or reappropriated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, ~~61-3-504,~~ 61-3-521, 61-3-527, 61-3-529, 61-3-537, *[sections 1 through 3], [section 38],* and 67-3-204;

(f) anticipated revenue from coal gross proceeds under 15-23-703;

(g) anticipated oil and natural gas production taxes;

(h) anticipated local government severance tax payments for calendar year 1995 production;

(i) anticipated transpertation payments for out-of-district pupils under the provisions of 20-5-320 through 20-5-324;

(j) any other revenue anticipated by the trustees to be earned during the ensuing school fiscal year that may be used to finance the transportation fund; and

(k) any fund balance available for reappropriation as determined by subtracting the amount of the end-of-the-year fund balance earmarked as the transpertation fund operating reserve for the ensuing school fiscal year by the trustees from the end-of-the-year fund balance in the transportation fund. The oporating reserve may not be more than 20% of the final transportation fund budget for the ensuing school fiscal year and is for the purpose of paying transportation fund warrants issued by the district under the final transportation fund budget.

(4) The district levy requirement for each district's transportation fund must be computed by:

(a) subtracting the schedule amount calculated in subsection (1) from the total preliminary transpertation budget amount; and

(b) subtracting the amount of money availahle to reduce the property tax on the district, as determined in subsection (3), from the amount determined in subsection (4)(a).

HeinOnline -- 1999 vol. II 2188 1999

(5) The transportation fund levy requirements determined in subsection (4) for each district must be reported to the county commissioners on the fourth Monday of August hy the county superintendent as the transportation fund levy requirements for the district, and the levy must be made by the county commissioners in accordance with 20-9-142."

Section 20. Section 20-10-146, MCA, is amended to read:

"20-10-146. County transportation reimbursement. (1) The apportionment of the county transportation reimbursement by the county superintendent for school bus transportation or individual transportation that is actually rendered by a district in accordance with this title, board of public education transportation policy, and the transportation rules of the superintendent of public instruction must be the same as the state transportation reimbursement payment, except that:

(a) if any cash was used to reduce the budgeted county transportation reimbursement under the provisions of 20-10-144(2)(b), the annual apportionment is limited to the budget amount;

(b) when the county transportation reimbursement for a school bus has been prorated between two or more counties because the school bus is conveying pupils of more than one district located in the counties, the apportionment of the county transportation reimbursement must be adjusted to pay the amount computed under the proration; and

(c) when county transportation reimbursement is required under the mandatory attendance agreement provisions of 20-5-321.

(2) The county transportation net levy requirement for the financing of the county transportation fund reimbursements to districts is computed by:

(a) totaling the net requirement for all districts of the county, including reimbursements to a special education cooperative or prorated reimbursements to joint districts or reimbursements under the mandatory attendance agreement provisions of 20-5-321;

(b) determining the sum of the money available to reduce the county transportation net levy requirement by adding:

(i) anticipated money that may be realized in the county transportation fund during the ensuing school fiscal year, including anticipated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, ~~61-3-504,~~ 61-3-521, 61-3-527, 61-3-529, 61-3-537, *[sections 1 through 3], [section 38],* and 67-3-204;

(ii) oil and natural gas production taxes;

(iii) anticipated local government severance tax payments for calendar year 1995 production;

(iv) coal gross proceeds taxes under 15-23-703;

(v) any fund balance available for reappropriation from the end-of-the-year fund balance in the county transportation fund;

(vi) federal forest reserve funds allocated under the provisions of 17-3-213; and

(vii) other revenue anticipated that may be realized in the county transportation fund during the ensuing school fiscal year; and

HeinOnline -- 1999 vol. II 2189 1999

(c) subtracting the money available, as determined in subsection (2)(b), to reduce the levy requirement from the county transportation net levy requirement.

(3) The net levy requirement determined in subsection (2)(c) must be reported to the county commissioners on the fourth Monday of August by the county superintendent, and a levy must be set by the county commissioners in accordance with 20-9-142.

(4) The county superintendent shall apportion the county transportation reimbursement from the proceeds of the county transportation fund. The county superintendent shall order the county treasurer to make the apportionments in accordance with 20-9-212(2) and after the receipt of the semiannual state transportation reimbursement payments."

Section 21. Section 27-1-306, MCA, is amended to read:

"27-1-306. When replacement value to be allowed. The measure of damages in a case in which the cost of repairing a motor vehicle exceeds its value is the actual replacement value of the motor vehicle rather than its "book" value unless, after the damages arise, the parties agree to use the "book" value. "Book" value must be determined by referring to the ~~used car~~ *national appraisal* guides ~~listed in 61-3-503(1)(c)~~ *referred to in 61-3-208*. Actual replacement value is the actual cash value of the motor vehicle immediately prior to the damage. "Book" value may be used to assist in determining the actual replacement value of the motor vehicle."

Section 22. Section 61-3-101, MCA, is amended to read:

"61-3-101. Duties of department — records. (1) The department shall keep a record as specified in this section of all motor vehicles, trailers, and semitrailers of every kind, of certificates of registration and ownership of those vehicles, and of all manufacturers and dealers in motor vehicles.

(2) The record must show the following:

(a) *the* name of *the* owner, *the* residence address by street or rural route, *the* town, and *the* county~~,~~ and *the* mailing address if different ~~than~~ *from the* residence address;

(b) *the* name and address of *the* conditional sales vendor, mortgagee, or other lienholder and *the* amount due under *the* contract or lien;

(c) *the* manufacturer of *the* vehicle;

(d) *the* manufacturer's designation of style of *the* vehicle;

(e) *the* identifying number;

(f) *the* year of manufacture;

(g) *the* character of motive power and shipping weight of *the* vehicle as shown by the manufacturer;

(h) the distinctive license number assigned to the vehicle, if any;

(i) if a truck or trailer, the number of ~~tons'~~ *tons* capacity or GVW if imprinted on *the* manufacturer's identification plate;

(j) except as provided in 61-3-103, the name and complete address of any holder of a perfected security interest in the vehicle; and

(k) other information that may from time to time be found desirable.

(3) The department shall file applications for registration received by it from county treasurers and register the vehicles and the vehicle owners as follows:

(a) under the distinctive license number assigned to the vehicle by the county treasurer;

(h) alphahetically under the name of the owner;

(c) numerically under make and identifying number of the vehicle; and

(d) another index of registration as the department considers expedient.

(4) The department shall determine the amount of ~~motor vehicle taxes and~~ fees, *including local option taxes or fees,* to be collected at the time of registration for each light vehicle subject to ~~tax~~ *a registration fee* under ~~61-3-503~~ *[sections 1 through 3]* and for each bus, truck having a manufacturer's rated capacity of more than 1 ton, and truck tractor subject to a fee in lieu of tax under 61-3-528 and 61-3-529. The county treasurer shall collect the ~~taxes and~~ *registration fee, other appropriate* fees, *and local option taxes or fees, if applicable,* on each motor vehicle at the time of its registration.

(5) Vehicle registration records and indexes and driver's license records and indexes may be maintained by electronic recording and storage media.

(6) In the case of dealers, the records must show the information contained in the application for a dealer's license, as required by 61-4-101 through 61-4-105, as well as the distinctive license number assigned to the dealer.

(7) In order to prevent an accumulation of unneeded records and files, regardless of any other statutory requirements, the department may destroy all records and files that relate to vehicles that have not been registered within the preceding 4 years and that do not have an active lien.

(8) All records must be open to inspection during reasonable business hours, and the department shall furnish any information from the records upon payment by the applicant of the cost of the information requested. Prior to providing the information, the department may require the applicant to provide identification. However, the department may, by rule, reasonably restrict disclosure of information on an owner or the owner's vehicle if the owner has requested in writing that the department not disclose the information."

Section 23. Section 61-3-301, MCA, is amended to read:

"61-3-301. Registration — license plate required — display. (1) Except as otherwise provided in this chapter, ~~no~~ *a* person may *not* operate a motor vehicle upon the public highways of Montana unless the vehicle is properly registered and has the proper number plates conspicuously displayed, one on the front and one on the rear of the vehicle, each securely fastened to prevent it from swinging and unobstructed from plain view, except that trailers, semitrailers, quadricycles, motorcycles, and vehicles authorized in 61-4-102(6) to display demonstrator plates may have but one number plate conspicuously displayed on the rear. ~~No~~ *A* person may *not* display on a vehicle at the same time a numher assigned to it under any motor vehicle law except as provided in this chapter. A junk vehicle, as defined in Title 75, chapter 10, part 5, being driven or towed to an auto wrecking graveyard for disposal is exempt from the provisions of this section.

(2) ~~No~~ *A* person may *not* purchase or display on a vehicle a license plate bearing the number assigned to any county, as provided in 61-3-332, other than

HeinOnline -- 1999 vol. II 2191 1999

the county of ~~his~~ *the person's* permanent residence at the time of application for registration. However, the owner of ~~any~~ *a* motor vehicle requiring a license plate on ~~any~~ *a* motor vehicle used in the puhlic transportation of persons or property may make application for the license in any county through which the motor vehicle passes in its regularly scheduled route, and the license plate issued hearing the number assigued to that county may be displayed on the motor vehicle in any other county of the state.

(3) It is unlawful to use license plates issued to one vehicle on any other vehicle, trailer, or semitrailer unless legally transferred as provided by statute~~,~~ or to repaint old license plates to resemble current license plates.

(4) This section does not apply to a vehicle exempt from taxation under 15-6-215 or subject to ~~taxation~~ *the registration fee or fee in lieu of tax* under 61-3-520.

(5) ~~Any~~ *A* person violating these provisions is guilty of a misdemeanor and subject to the penalty prescribed in 61-3-601."

Section 24. Section 61-3-303, MCA, is amended to read:

"61-3-303. Application for registration. (1) Each owner of a motor vehicle operated or driven upon the public highways of this state shall for each motor vehicle owned, except as otherwise provided in this section, file or cause to be filed in the office of the county treasurer *in the county* where the owner permanently resides at the time of making the application or, if the vehicle is owned by a corporation or used primarily for commercial purposes, in the taxing jurisdiction of the county where the vehicle is permanently assigned an application for registration or reregistration on a form prescribed by the department. The application must contain:

(a) the name and address of the owner, giving the county, school district, and town or city within whose corporate limits the motor vehicle is taxable, if taxable, or within whose corporate limits the owner's residence is located if the motor vehicle is not taxable;

(b) the name and address of the holder of any security interest in the motor vehicle;

(c) a description of the moter vehicle, including make, year model, engine or serial number, manufacturer's model or letter, gross weight, declared weight on all trucks for which the manufacturer's rated capacity is 1 ton or less, and type of body and, if a truck, the manufacturer's rated capacity;

(d) the declared weight on all trailers operating intrastate, except travel trailers or trailers and semitrailers registered as provided in 61-3-711 through 61-3-733; and

(e) other information that the department may require.

(2) A person who files an application for registration or reregistration of a motor vehicle, except of a mobile home or a manufactured home as those terms are defined in 15-1-101(1), shall upon the filing of the application pay to the county treasurer:

(a) the registration fee, as provided in 61-3-311 and 61-3-321 or 61-3-456; and

(b) except as provided in 61-3-456 or unless it has been previously paid~~:~~,

HeinOnline -- 1999 vol. II 2192 1999

~~(i)~~ the motor vehicle ~~taxes or~~ fees in lieu of tax ~~assessed~~ or *registration fees under [sections 1 through 3]* imposed against the vehicle for the current year of registration and the immediately previous year~~; or~~

~~(ii) the new motor vehicle sales tax against the vehicle for the current year of registration~~.

(3) The application may not be accepted by the county treasurer unless the payments required hy subsection (2) accompany the application. ~~The~~ *Except as provided in [sections 1 and 3], the* department may not assess or impose and the county treasurer may not collect taxes or fees for a period other than:

(a) the current year; and

(b) the immediately previous year if the vehicle was not registered or operated on tbe highways of the state, regardless of the period of time since the vehicle was previously registered or oporated.

(4) The department may make full and complete investigation of the ~~tax~~ status of the vehicle. An applicant for registration or reregistration shall submit proof from ~~the tax or other~~ appropriate records of the proper county at the request of the department."

Section 25. Section 61-3-314, MCA, is amended to read:

"61-3-314. Registration period. (1) ~~Notwithstanding any other provisions of this title regarding the registration of motor vehicles~~ *Except as provided in 61-3-315*, each vehicle subject to the provisions of 61-3-313 through 61-3-316 must be registered for a 12-month period based upon the date it is first registered in this state pursuant to 61-3-313 through 61-3-316.

(2) There are 12 registration periods, each of which commences on the first day of a calendar month. The periods are:

(a) January 1 through January 31	1st poriod
(b) February 1 through February 28/29	2nd period
(c) March 1 through March 31	3rd period
(d) April 1 through April 30	4tli period
(e) May 1 through May 31	5th period
(f) June 1 through June 30	6tli period
(g) July 1 through July 31	7th period
(h) August 1 through August 31	8th period
(i) September 1 through September 30	9th period
(j) October 1 through October 31	10th period
(k) November 1 through November 30	11th period
(l) December 1 through December 31	12th period"

Section 26. Section 61-3-315, MCA, is amended to read:

"61-3-315. Reregistration on anniversary date — department to make rules. *(1)* A vehicle that has ~~once~~ been registered for any of the periods desiguated in 61-3-314 must ~~thereafter~~ be reregistered for ~~a like~~ *the same* period on or before the anniversary date of the initial registration unless that period is changed as provided in ~~this section~~ *subsections (2) and (4)*. The anniversary date

HeinOnline -- 1999 vol. II 2193 1999

for reregistration is the last day of the month for the designated registration period.

(2) (a) The owner of a motor vehicle subject to the provisions of 61-3-313 through 61-3-316 and subject to the registration fee, as provided in [sections 1 and 2], may register the motor vehicle for a period not to exceed 24 months. The registration expires on the last day of the 24th month commencing from the date of the designated registration period under 61-3-314 for which the vehicle is registered.

(b) The owner of a motor vehicle 11 years old or older subject to the provisions of 61-3-313 through 61-3-316 and subject to the registration fee, as provided in [sections 1 and 2], may permanently register the motor vehicle as provided in [section 3]. The registration remains in effect until ownership of the vehicle is transferred to another person by the registered owner.

(3) The department shall adopt rules for the implementation and administration of 61-3-313 through 61-3-316 and for the identification of the registration on the vehicles.

(4) The department shall provide for simultaneous registration of multiple vehicles that have common ownership. The rules must provide for a change of the registration period to coincide with the date an owner desires to register ~~his~~ *the* vehicles."

Section 27. Section 61-3-316, MCA, is amended to read:

"61-3-316. New registrations under staggered registration. ~~Vehicles which are~~ *A vehicle that is* registered for the first time in this state ~~shall~~ *must* be assigned a registration period corresponding to when ~~they are~~ *the vehicle is* first registered in this state. ~~The~~ *Except as provided in 61-3-315, the* registration period for a vehicle ~~shall thereafter~~ *must* remain the same from year to year."

Section 28. Section 61-3-317, MCA, is amended to read:

"61-3-317. New registration required for transferred vehicle — grace period — penalty — display of proof of purchase. Except as otherwise provided ~~herein~~ *in this section*, the new owner of a transferred motor vehicle ~~shall have~~ *has* a grace period of 20 calendar days from the date of purchase to make application and pay the ~~taxes or~~ *registration* fees~~, or both, provided~~, *fees in lieu of tax and other fees required* by part 5 of this chapter, *and local option taxes, if applicable,* unless the ~~tax or fee~~ *fees and taxes* ~~has~~ *have* been paid for the year *or for the 24-month period as provided in 61-3-315*, as if the vehicle were being registered for the first time in that registration year. If the motor vehicle was not purchased from a ~~duly~~ licensed motor vehicle dealer as provided in this chapter, it is not a violation of this chapter or any other law for the purchaser to operate the vehicle upon the streets and highways of this state without a certificate of registration during the 20-day period, provided that at all times during that period, a vehicle purchase sticker in a form prescribed and furnished by the department, obtained from the county treasurer or a law enforcement officer as authorized by the department, reciting the date of purchase is clearly displayed in the rear window of the motor vehicle. Registration and license fees collected under 61-3-321 are not required to be paid when a license plate is transferred under ~~this section and~~ 61-3-335 *and this section*. Failure to make application within the time provided ~~herein~~ *in this section* subjects the purchaser to a penalty of $10. The penalty ~~shall~~ *must* be collected by the county treasurer

HeinOnline -- 1999 vol. II 2194 1999

at the time of registration and ~~shall be~~ *is* in addition to the fees otherwise provided by law."

Section 29. Section 61-3-332, MCA, is amended to read:

"61-3-332. Number plates. (1) A motor vehicle that is driven upon the streets or highways of Montana must display both front and rear number plates, bearing the distinctive number assigned to the vehicle. The number plates are in 10 series: one series for owners of motorcars, one for owners of motor vehicles of the motorcycle or quadricycle type, one for trailers, one for trucks, one for dealers in vehicles of the motorcycle or quadricycle type that ~~bear~~ *bears* the distinctive letters "MCD" or the letters "MC" and the word "DEALER", one for franchised dealers in new motorcars (including trucks and trailers) or new and used motorcars (including trucks and trailers) that ~~bear~~ *bears* the distinctive letter "D" or the word "DEALER", one for dealers in used motorcars only (including used trucks and trailers) that ~~bear~~ *bears* the distinctive letters "UD" or the letter "U" and the word "DEALER", one for dealers in trailers and/or semitrailers (new or used) that ~~bear~~ *bears* the distinctive letters "DTR" or the letters "TR" and the word "DEALER", one for dealers in recreational vehicles that ~~bear~~ *bears* the distinctive letters "RV" or the letter "R" and the word "DEALER", and one for special license plates. All markings for the various kinds of dealers' plates must be placed on the number plates assigned to the dealer, in the position that the department designates.

(2) *(a)* All number plates for motor vehicles must be issued for a minimum period of 4 years, bear a distinctive marking, and be furnished by the state. In years when number plates are not issued, the department shall provide nonremovable stickers bearing appropriate registration numbers that must be affixed to the license plates in use.

(b) For light vehicles that are permanently registered as provided in [section 3] or 61-3-527, the department shall provide distinctive nonremovable stickers indicating that the vehicle is permanently registered. The stickers must be affixed to the license plates in use.

(3) Subject to the provisions of this section, the department shall create a new design for number plates as provided in this section.

(4) In the case of motorcars and trucks, plates must be of metal 6 inches wide and 12 inches in length. The outline of the state of Montana must be used as a distinctive border on the license plates, and the word "Montana" and the year must be placed across the plates. Registration plates must be treated with a reflectorized background material according to specifications prescribed by the department.

(5) The distinctive registration numbers must begin with a number one or with a letter-number combination, such as "A 1" or "AA 1", or any other similar combination of letters and numbers. The distinctive registration number or letter-number combination assigned to the vehicle must appear on the plate preceded by the number of the county and appearing in horizontal order on the same horizontal baseline. The county number must be separated from the distinctive registration number by a separation mark unless a letter-number combination is used. The dimensions of the numerals and letters must be determined by the department, and all county and registration numbers must be of equal height.

HeinOnline -- 1999 vol. II 2195 1999

(6) For the use of ~~tax-exempt~~ *exempt* motor vehicles *and motor vehicles that are exempt from the registration fee as provided in [section 1(2)(a)]*, in addition to the markings provided in this section, number plates must bear the following distinctive markings:

(a) For vehicles owned by the state, the department may designate the prefix number for the various state departments. All numbered plates issued to state departments must bear the words "State Owned", and a year number may not be indicated on the plates because these numbered plates are of a permanent nature and will be replaced by the department only when the physical condition of numbered plates requires it.

(b) For vehicles that are owned by the counties, municipalities, and special districts, as defined in 18-8-202, organized under the laws of Montana and not operating for profit, and that are used and operated by officials and employees in the line of duty and for vehicles on loan from the United States government or the state of Montana to, or owned by, the civil air patrol and used and operated by officials and employees in the line of duty, there must be placed on the number plates assigned, in a position that the department may designate, the letter "X" or the word "EXEMPT". Distinctive registration numbers for plates assigned to motor vehicles of each of the counties in the state and those of the municipalities and special districts that obtain plates within each county must begin with number one and be numbered consecutively. Because these number plates are of a permanent nature, they are subject to replacement by the department only when the physical condition of the number plates requires it and a year number may not be displayed on the number plates.

(7) On all number plates assigned to motor vehicles of the truck and trailer type, other than tax-exempt trucks and tax-exempt trailers, there must appear the letter "T" or the word "TRUCK" on plates assigned to trucks and the letters "TR" or the word "TRAILER" on plates assigned to trailers and housetrailers. The letters "MC" or the word "CYCLE" must appear on plates assigned to vehicles of the motorcycle or quadricycle type.

(8) Number plates issued to a passenger car, truck, trailer, or vehicle of the motorcycle or quadricycle type may be transferred only to a replacement passenger car, truck, trailer, or motorcycle- or quadricycle-type vehicle. A registration or license fee may not be assessed upon a transfer of a number plate under 61-3-317 and 61-3-335.

(9) For the purpose of this chapter, the several counties of the state are assigned numbers as follows: Silver Bow, 1; Cascade, 2; Yellowstone, 3; Missoula, 4; Lewis and Clark, 5; Gallatin, 6; Flathead, 7; Fergus, 8; Powder River, 9; Carbon, 10; Phillips, 11; Hill, 12; Ravalli, 13; Custer, 14; Lake, 15; Dawson, 16; Roosevelt, 17; Beaverhead, 18; Chouteau, 19; Valley, 20; Toole, 21; Big Horn, 22; Musselshell, 23; Blaine, 24; Madison, 25; Pondera, 26; Richland, 27; Powell, 28; Rosebud, 29; Deer Lodge, 30; Teton, 31; Stillwater, 32; Treasure, 33; Sheridan, 34; Sanders, 35; Judith Basin, 36; Daniels, 37; Glacier, 38; Fallon, 39; Sweet Grass, 40; McCone, 41; Carter, 42; Broadwater, 43; Wheatland, 44; Prairie, 45; Granite, 46; Meagher, 47; Liberty, 48; Park, 49; Garfield, 50; Jefferson, 51; Wibaux, 52; Golden Valley, 53; Mineral, 54; Petroleum, 55; Lincoln, 56. Any new counties must be assigned numbers by the department as they may he formed, beginning with the number 57.

(10) Each type of special license plate approved by the legislature, except collegiate license plates authorized in 61-3-463, must be a separate series of

HeinOnline -- 1999 vol. II 2196 1999

plates, numbered as provided in subsection (5), except that the county number must be replaced by a nonremovable design or decal designating the group or organization to which the applicant belongs. Unless otherwise specifically stated in this section, the special plates are subject to the same rules and laws as govern the issuance of regular license plates, must be placed or mounted on a vehicle owned by the person who is eligible to receive them, and must be removed upon sale or other disposition of the vehicle. The special license plates must be issued to national guard members, former prisoners of war, persons with disabilities, reservists, disabled veterans, survivors of the Pearl Harbor attack, veterans of the armed services, or veterans of the armed services who were awarded the purple heart medal, who comply with the following provisions:

(a) An active member of the Montana national guard may be issued special license plates with a design or decal displaying the letters "NG". The adjutant general shall issue to each active member of the Montana national guard a certificate authorizing the department to issue national guard plates, numbered in sets of two with a different number on each set, and the member shall surrender the plates to the department upon becoming ineligible to use them.

(b) An active member of the reserve armed forces of the United States of America who is a resident of this state may be issued special license plates with a design or decal displaying the following: United States army reserve, AR (symbol); United States naval reserve, NR (anchor); United States air force reserve, AFR (symbol); and United States marine corps reserve, MCR (globe and anchor). The commanding officer of each armed forces reserve unit shall issue to each eligible member of the reserve unit a certificate authorizing the issuance of special license plates, numbered in sets of two with a different number on each set. The member shall surrender the plates to the department upon becoming ineligible to use them.

(c) (i) A resident of Montana who is a veteran of the armed forces of the United States and who is 100% disabled because of an injury that has been determined by the department of veterans affairs to be service-connected may, upon presentation to the department of proof of the 100% disability, be issued:

(A) a special license plate under this section with a design or decal displaying the letters "DV"; or

(B) one set of any other military-related plates that the disabled veteran is eligible to receive under this section.

(ii) The fee for original or renewal registration by a 100% disabled veteran for a passenger vehicle or a truck with a GVW-rated capacity of 1 ton or less is $5 and is in lieu of all other fees and taxes for that vehicle under this chapter.

(iii) Special license plates issued to a disabled veteran are not transferable to another person.

(iv) A disabled veteran is not entitled to a special disabled veteran's license plate for more than one vehicle.

(v) A vehicle lawfully displaying a disabled veteran's plate and that is conveying a 100% disabled veteran is entitled to the parking privileges allowed a person with a disability's vehicle under this title.

(d) A Montana resident who is a veteran of the armed forces of the United States and was captured and held prisoner by a military force of a foreign nation, documented by the veteran's service record, may upon application and

HeinOnline -- 1999 vol. II 2197 1999

presentation of proof be issued special license plates, numbered in sets of two with a different number on each set, with a design or decal displaying the words "ex-prisoner of war" or an abbreviation that the department considers appropriate.

(e) Except as provided in subsection (10)(c), upon payment of all taxes and fees required by parts 3 and 5 of this chapter and upon furnishing proof satisfactory to the department that the applicant meets the requirements of this subsection (10)(e), the department shall issue to a Montana resident who is a veteran of the armed services of the United States special license plates, numbered in sets of two with a different number on each set, designed to indicate that the applicant is a survivor of the Pearl Harbor attack if the applicant was a member of the United States armed forces on December 7, 1941, was on station on December 7, 1941, during the hours of 7:55 a.m. to 9:45 a.m. (Hawaii time) at Pearl Harbor, the island of Oahu, or *was* offshore at a distance of not more than 3 miles~~,~~ and received an honorable discharge from the United States armed forces. If special license plates issued under this subsection are lost, stolen, or mutilated, the recipient of the plates is entitled to replacement plates upon request and without charge.

(f) A motor vehicle owner and resident of this state who is a veteran or the surviving spouse of a veteran of the armed services of the United States may be issued license plates inscribed as provided in subsection (10)(f)(i) if the veteran was separated from the armed services under other than dishonorable circumstances or was awarded the purple heart medal:

(i) Upon submission of a department of defense form 214(DD-214) or its successor or documents showing an other-than-dishonorable discharge or a reenlistment, proper identification, and other relevant documents to show an applicant's qualification under this subsection, there must be issued to the applicant, in lieu of the regular license plates prescribed by law, special license plates numbered in sets of two with a different number on each set. The plates must display:

(A) the word "VETERAN" and a symbol signifying the United States army, United States navy, United States air force, United States marine corps, or United States coast guard, according to the record of service verified in the application; or

(B) a symbol representing the purple heart medal.

(ii) Plates must be furnished by the department to the county treasurer, who shall issue them to a qualified veteran or to the veteran's surviving spouse. The plates must be placed or mounted on the vehicle owned by the veteran or the veteran's surviving spouse designated in the application and must be removed upon sale or other disposition of the vehicle.

(iii) Except as provided in subsection (10)(c), a veteran or surviving spouse who receives special license plates under this subsection (10)(f) is liable for payment of all taxes and fees required under parts 3 and 4 of this chapter and a special veteran's or purple heart medal license plate fee of $10. Upon an original application for a license under this subsection (10)(f), the county treasurer shall:

(A) deposit $3 of the special fee in the county general fund;

(B) remit $1 for deposit in the state general fund; and

HeinOnline -- 1999 vol. II 2198 1999

(C) deposit the remainder of the special fee in the state special revenue account established in 10-2-603 for administration, construction, operation, and maintenance of the state veterans' cemeteries.

(iv) Upon subsequent annual renewal of registration, the county treasurer shall deposit all of the special fee as provided in subsection (10)(f)(iii)(C).

(g) A Montana resident who is eligible to receive a special parking permit under 49-4-301 may, upon written application on a form prescribed by the department, be issued a special license plate with a design or decal bearing a representation of a wheelchair as the symbol of a person with a disability.

(11) The provisions of this section do not apply to a motor vehicle, trailer, or semitrailer that is registered as part of a fleet, as defined in 61-3-712, and that is subject to the provisions of 61-3-711 through 61-3-733."

Section 30. Section 61-3-431, MCA, is amended to read:

"61-3-431. Special mobile equipment — exemption from registration and payment of fees and charges — identification plate — publicly owned special mobile equipment. (1) A person, firm, partnership, or corporation who owns, leases, or rents special mobile equipment as defined in 61-1-104 and occasionally moves that equipment on, over, or across the highways of the state is not subject to registration of that equipment or required to pay the fees and charges provided for in ~~61-3-502,~~ 61-4-301 through 61-4-308~~,~~ or part 2 of chapter 10. Prior to movement on the highways, however, each piece of equipment ~~shall~~ *must* display an equipment identification plate or a dealer's license plate attached to the equipment.

(2) Annual application for the identification plate ~~shall~~ *must* be made to the county treasurer before any piece of equipment is moved on the highways. Application ~~shall~~ *must* be made on a form furnished by the department of justice, together with the payment of a fee of $5. The equipment for which a special mobile equipment plate is sought is subject to the assessment of personal property taxes on the date application is made for the plate. The personal property taxes assessed against the special mobile equipment must be paid before the issuance of a special mobile equipment plate. The fees collected under this section belong to the county road fund.

(3) The identification plate expires on December 31 of each year. If the expired identification plate is displayed, an owner of special mobile equipment registered under the provisions of this section is entitled to operate the equipment between January 1 and February 15 following expiration without displaying the identification plate or receipt of the current year.

(4) Publicly owned special mobile equipment and implements of husbandry used exclusively by an owner in the conduct of ~~his own~~ *the owner's* farming operations are exempt from this section."

Section 31. Section 61-3-456, MCA, is amended to read:

"61-3-456. Registration of motor vehicle owned and operated by Montana resident on active military duty stationed outside Montana. (1) As an incentive for military service, an owner of a motor vehicle who is a Montana resident who entered active military duty from Montana and who is stationed outside Montana may file with the department an application for the registration of the motor vehicle. The application must be sworn to before an officer authorized to administer oaths. The application must state:

HeinOnline -- 1999 vol. II 2199 1999

(a) the name and address of the owner;

(b) the make, the gross weight, the year and number of tbe model, and the manufacturer's identification number and serial number of the motor vehicle; and

(c) that the vehicle is owned and operated by a Montana resident who meets tho qualifications of subsection (1) and is on active military duty and stationed outside Montana.

(2) Tho registration fee for a motor vehicle registered under subsection (1) is as provided in 61-3-311 and 61-3-321.

(3) A vehicle registered under this section is not subject to:

(a) the taxes described in 61-3-303(2)(b);

(b) assessment under 15-8-202 or 61-3-503, ~~or~~ the fee in lieu of tax under 61-3-529, *or the registration fee under [sections 1 through 3]*; or

(c) any of the fees provided in part 5 of this chapter."

Section 32. Section 61-3-503, MCA, is amended to read:

"61-3-503. Assessment. (1) Except as provided in 61-3-520 and subsection (4) of this section, the following apply to the taxation of motor vehicles:

(a) ~~Vehicles~~ *For the purposes of imposing the local option vehicle tax under 61-3-537, light vehicles* subject to the provisions of 61-3-313 through 61-3-316 must he assessed as of the first day of the registration period, using the depreciated value of the manufacturer's suggested retail price as determined in subsection (2).

(b) A lien for taxes and fees due on the vehicle occurs on the anniversary date of the registration and continues until the fees and taxes have been paid. If the depreciated value is less than $500, the department shall value the vehicle at $500.

(2) (a) Except as provided in subsections (2)(c) and (2)(d), the depreciatod value for the taxation of light vehicles is computed by inultiplying the manufacturer's suggested retail price by a percentage multiplier based on the type and age of the vehicle determined from the following table:

Age of Vehicle	Type of Vehicle			
(in years)	Automobile	Truck	Van	Sport Utility
-1	100%	100%	100%	100%
0	90	96	93	98
1	80	91	86	94
2	69	86	78	90
3	58	80	69	84
4	49	73	60	76
5	41	66	52	67
6	33	57	45	57

HeinOnline -- 1999 vol. II 2200 1999

7	26	49	38	48
8	21	43	32	39
9	17	37	27	33
10	14	31	22	29
11	12	26	18	25
12	10	22	15	22
13	09	18	13	21
14	09	15	11	19
15	09	13	09	17
16	09	12	09	15

(b) The age for the light vehicle is determined by subtracting the manufacturer's model year of the vehicle from the calendar year for which the tax is due.

(c) If the value of the vehicle determined under subsection (2)(a) is $500 or less, the value of the vehicle is $500 and the value must remain at that amount as long as the vehicle is registered.

(d) The depreciated value of a light vehicle that is 17 years old or older is computed by depreciating the value obtainod for the vehicle at 16 years old, as determined under subsection (2)(a), by 10% a year until a mimimum value of $500 is attained. The value must remain at that amount as long as the vehicle is registered.

(3) (a) For the purposes of this section, "manufacturer's suggested retail price" means the price suggested by the manufacturer for each given type, style, or model of light vehicle produced and first made available for retail sale by the manufacturer.

(b) The manufacturer's suggested retail price is based on standard equipment of a vehicle and does not contain price additions or deductions for optional accessories.

(c) When a manufacturer's suggested retail price is unavailable for a motor vehicle, the department shall determine an alternative valuation for the vehicle.

(4) The provisions of subsections (1) through (3) do not apply to buses, trucks having a manufacturer's rated capacity of more than 1 ton, truck tractors, motorcycles, motor homes, quadricycles, travel trailers, campers, mobile homes or manufactured homes as those terms are defined in 15-1-101(1)."

Section 33. Section 61-3-506, MCA, is amended to read:

"61-3-506. Rules. ~~(1) The department of transportation shall adopt rules for the payment of new car taxes under the provisions of 61-3-313 through 61-3-316, 61-3-501, and 61-3-520.~~

~~(2)~~ The department of justice may adopt rules:

~~(a)~~*(1)* for the assessment and collection of taxes and *registration* fees *under [sections 1 through 3], including the proration of fees under 61-3-520,* on light

vehicles, including ~~the proration of taxes under 61-3-520~~ *criteria for determining the vehicle's age*;

~~(b)~~*(2)* for the imposition and collection of fees in lieu of tax, including the proration of fees in lieu of tax under 61-3-520, on buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors, including criteria for determining the vehicle's age and manufacturer's rated capacity; and

~~(c)~~*(3)* ~~The department of justice may adopt rules~~ for the administration of fees for trailers, pole trailers, and semitrailers, including criteria for determining a trailer's age and weight."

Section 34. Section 61-3-509, MCA, is amended to read:

"61-3-509. Disposition of taxes *and fees*. *(1) All registration fees from vehicles for which an original application for title or the original Montana registration is sought must be remitted to the state treasurer every 30 days. The state treasurer shall credit the payments to the highway restricted state special revenue account.*

~~(1)~~*(2)* Except as provided in ~~subsection~~ *subsection* ~~(2)~~ *(3)*, the county treasurer shall, after deducting the district court fee, credit all taxes on motor vehicles ~~and~~, *registration* fees ~~in lieu of tax~~ on *light vehicles under [sections 1 through 3], and fees in lieu of tax on* motorcycles, quadricycles, motor homes, travel trailers, campers, trailers, pole trailers, semitrailers, buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors collected under ~~61-3-504,~~ 61-3-521, 61-3-527, 61-3-529, ~~and~~ *and* 61-3-537~~,~~ to a motor vehicle suspense fund. At some time between March 1 and March 10 of each year and every 60 days after that date, the county treasurer shall distribute the money in the motor vehicle suspense fund. *Except for registration fees collected under [sections 1 through 3], the county treasurer shall distribute money in the fund* in the relative proportions required by the levies for state, county, school district, and municipal purposes in the same manner as personal property taxes are distributed. *For money in the fund collected under [sections 1 through 3] and 61-3-527, the county treasurer shall disregard the statewide mills levied for county elementary and high school equalization under 20-9-331 and 20-9-333, the statewide mills levied for state equalization aid under 20-9-360, the statewide mills levied for the university system, and mills levied for state assumption of public assistance under 53-2-813 in determining distribution proportions of the money and may not distribute money from [sections 1 through 3] and 61-3-527 to the state for these levies. If the distribution of money collected under [sections 1 through 3] and 61-3-527 to a school district general fund results in a lower revenue than the district received in fiscal year 1999 and the district has, for each year after fiscal year 1999, received less revenue than fiscal year 1999, then the district general fund is entitled to state reimbursement for the amount of the difference between the fiscal year 1999 revenue under 61-3-504, as that section read on September 30, 1999, and the current year distributions of collections under [sections 1 through 3] and 61-3-527.*

~~(2)~~*(3)* The county treasurer shall deduct as a district court fee ~~7%~~ *10%* of the amount of the ~~2% tax~~ *registration fee* collected on light vehicles. The county treasurer shall credit the fee for district courts to a separate suspense account and shall forward the amount in the account to the state treasurer at the time that the county treasurer distributes money from the motor vehicle suspense fund. The state treasurer shall credit amounts received under this subsection to

the state special revenue fund to be used for purposes of state funding of district court expenses as provided in 3-5-901."

Section 35. Section 61-3-520, MCA, is amended to read:

"61-3-520. ~~Taxes and fees~~ *Fees* on vehicles used exclusively in filming motion pictures or television commercials. (1) A vehicle used exclusively in the filming of motion pictures or television commercials that has been in the state for a period exceeding 180 consecutive days in a calendar year is subject to ~~assessment~~ *a registration fee under [sections 1 and 2]* or a fee in lieu of tax as if the vehicle were not used exclusively for filming motion pictures or television commercials, but the ~~assessment~~ *registration fee* or fee in lieu of tax must be prorated as provided in subsection (2).

(2) *(a)* The ~~taxes assessed~~ *registration fees* or the fees in lieu of tax imposed under subsection (1) must be prorated by dividing the number of days in excess of 180 consecutive days in the calendar year by 365.

~~(3) (a) Taxes on a vehicle imposed pursuant to this section must be collected as provided in Title 15, chapter 16, part 1, for the collection of personal property taxes generally.~~

(b) Fees on a vehicle imposed pursuant to this section must be collected as provided in this chapter."

Section 36. Section 61-3-527, MCA, is amended to read:

"61-3-527. Fee in lieu of tax for motorcycles and quadricycles — schedule of fees — *permanent registration*. (1) (a) There is a fee in lieu of property tax imposed on motorcycles and quadricycles. The fee is in addition to annual registration fees.

(b) The fee imposed by subsection (1)(a) is not required to be paid by a dealer for motorcycles or quadricycles that constitute inventory of the dealership.

(2) The owner of a motorcycle or quadricycle shall pay a fee based on the age of the motorcycle or quadricycle and the size of the engine, as follows:

(a) The fee schedule for a motorcycle or quadricycle with an engine that measures from 1 cubic centimeter to 600 cubic centimeters is as follows:

(i) less than ~~2~~ *5* years old, $30;

(ii) ~~2 years old and less than 5 years old, $25;~~

~~(iii)~~ 5 years old and less than 11 years old, $15; and

~~(iv)~~*(iii)* 11 years old and older, ~~$10~~ *$6*.

(b) The fee schedule for a motorcycle or quadricycle with an engine that measures from 601 cubic centimeters to 1,000 cubic centimeters is as follows:

(i) less than ~~2~~ *5* years old, ~~$70~~ *$55*;

(ii) ~~2 years old and less than 5 years old, $55;~~

~~(iii)~~ 5 years old and less than 11 years old, ~~$40~~ *$20*; and

~~(iv)~~*(iii)* 11 years old and older, ~~$30~~ *$6*.

(c) The fee schedule for a motorcycle or quadricycle with an engine that measures 1,001 cubic centimeters and larger is as follows:

(i) less than ~~2~~ *5* years old, ~~$110~~ *$90*;

HeinOnline -- 1999 vol. II 2203 1999

(ii) ~~2 years old and less than 5 years old, $90;~~

~~(iii)~~ 5 years old and less than 11 years old, ~~$65~~ *$50*; and

~~(iv)~~*(iii)* 11 years old and older, ~~$40~~ *$6*.

(3) (a) Except as provided in subsection (3)(b), the age of a motorcycle or quadricycle is determined by subtracting the manufacturer's designated model year from the current calendar year.

(b) If the purchase year of a motorcycle or quadricycle precedes the designated model year of the motorcycle or quadricycle and the motorcycle or quadricycle is originally titled in Montana, then the purchase year is considered the model year for the purposes of calculating the fee in lieu of tax.

(4) (a) The owner of a motorcycle or quadricycle 11 years old or older subject to the fee in lieu of tax under this section may permanently register the motorcycle or quadricycle upon payment of a $30 fee in lieu of tax, the applicable registration and license fees under 61-3-321, and an amount equal to five times the applicable fees imposed for each of the following:

(i) the motorcycle safety training fee under 20-7-514;

(ii) weed control fees under 61-3-510;

(iii) county motor vehicle computer fees under 61-3-511; and

(iv) if applicable, renewal fees for personalized plates under 61-3-406.

(b) A person who permanently registers a motorcycle or quadricycle as provided in this subsection (4) shall pay an additional $2 fee at the time of registration for deposit in the state general fund. The department shall pay from the general fund an amount equal to the $2 fee collected under this subsection (4)(b) from each vehicle registration to the pension trust fund for payment of supplemental benefits provided for in 19-6-709."

Section 37. Section 61-3-537, MCA, is amended to read:

"61-3-537. (Temporary) Local option vehicle tax. (1) A county may impose a local vehicle tax *or a flat fee* on vehicles subject to ~~a tax~~ *the registration fee* under ~~61-3-504~~ *[sections 1 through 3] as provided in [section 38] or this section.*

(2) A county may impose a local option tax at a rate of up to 0.5% of the value determined under 61-3-503, in addition to the ~~tax~~ *registration fee* imposed under ~~61-3-504~~ *[sections 1 through 3].*

(3) A county that imposes a local option tax in addition to the registration fee imposed under [sections 1 through 3] shall collect the local option tax on a vehicle for which an original application for title or the original Montana registration is sought.

~~(2)~~*(4)* A local vehicle tax *or flat fee* is payable at the same time and in the same manner as the ~~tax~~ *registration fee* imposed under ~~61-3-504~~ *[sections 1 through 3]*. The first priority of the local vehicle tax *or flat fee* is for district court funding, and the tax *or flat fee* is distributed as follows:

(a) 50% to the county; and

(b) the remaining 50% to the county and the incorporated cities and towns within the county, apportioned on the basis of population. The distribution to a city or town is determined by multiplying the amount of money available by the ratio of the population of the city or town to the total county population. The

HeinOnline -- 1999 vol. II 2204 1999

distribution to the county is determined by multiplying the amount of money available by the ratio of the population of unincorporated areas within the county to the total county population.

(5) The proceeds of the tax collected under [section 3] must be remitted to the state treasurer every 30 days. The state treasurer shall credit the payments to the highway restricted state special revenue account.

~~(3)~~*(6)* The governing body of a county may impose, revise, or revoke a local vehicle tax by adopting a resolution before July 1, after conducting a public hearing on the proposed resolution. The resolution may provide for the distribution of the local vehicle tax. (Terminates June 30, 2005—sec. 2, 3, Ch. 217, L. 1995.)

61-3-537. (Effective July 1, 2005) Local option vehicle tax. (1) A county may impose a local vehicle tax *or a flat fee* on vehicles subject to ~~a tax~~ *the registration fee* under ~~61-3-504~~ *[sections 1 through 3] as provided in [section 38] or this section.*

(2) A county may impose a local option tax at a rate of up to 0.5% of the value determined under 61-3-503, in addition to the ~~tax~~ *registration fee* imposed under ~~61-3-504~~ *[sections 1 through 3].*

(3) A county that imposes a local option tax in addition to the registration fee imposed under [sections 1 through 3] shall collect the local option tax on a vehicle for which an original application for title or the original Montana registration is sought.

~~(2)~~*(4)* A local vehicle tax *or flat fee* is payable at the same time and in the same manner as the ~~tax~~ *registration fee* imposed under ~~61-3-504~~ *[sections 1 through 3]* and is distributed in the same manner, based on the registration address of the owner of the motor vehicle.

(5) The proceeds of the tax collected under [section 3] must be remitted to the state treasurer every 30 days. The state treasurer shall credit the payments to the highway restricted state special revenue account.

~~(3)~~*(6)* The governing body of a county may impose, revise, or revoke a local vehicle tax by adopting a resolution before July 1, after conducting a public hearing on the proposed resolution."

Section 38. Local option flat fee. (1) A flat fee for each vehicle may be imposed within a county by the board of county commissioners by adoption of a resolution and referral to the electorate. The imposition of the fee must be approved by the majority of the electorate voting in the election.

(2) The flat fee is distributed as provided in 61-3-537.

Section 39. Section 61-3-701, MCA, is amended to read:

"61-3-701. Foreign vehicles used in gainful occupation to be registered — reciprocity. (1) Before a foreign licensed motor vehicle may be operated on the highways of this state for hire, compensation, or profit or before the owner or user of the vehicle uses the vehicle if the owner or user is engaged in gainful occupation or business enterprise in the state, including highway work, the owner of the vehicle shall apply to a county treasurer for registration upon an application form furnished by the department. Upon satisfactory evidence of ownership submitted to the county treasurer and the payment of ~~motor vehicle taxes or~~ fees in lieu of taxes *or registration fees*, if appropriate, as required by

HeinOnline -- 1999 vol. II 2205 1999

15-8-201, 15-8-202, 15-24-301, ~~61-3-504,~~ 61-3-529, ~~or~~ 61-3-537, *or [sections 1 and 2],* the treasurer shall accept the application for registration and shall collect the regular license fee required for the vehicle.

(2) Upon payment of the fees or taxes, the treasurer shall issue to the applicant a copy of the certificate entitled "Owner's Certificate of Registration and Payment Receipt" and forward a duplicate copy of the certificate to the department. The treasurer shall at the same time issue to the applicant the proper license plates or other identification markers, which must at all times be displayed upon the vehicle when operated or driven upon roads and highways of this state during the effective period of the license.

(3) The registration receipt does not constitute evidence of ownership but must be used only for registration purposes. A Montana certificate of ownership may not be issued for this type of registration.

(4) This section is not applicable to a vehicle covered by a valid and existing reciprocal agreement or declaration entered into under the provisions of the laws of Montana."

Section 40. Section 61-3-707, MCA, is amended to read:

"61-3-707. Foreign vehicles used for transportation in connection with employment. (1) Before a motor vehicle ~~taxed~~ *assessed a fee* pursuant to 15-24-301(4) may be operated in Montana for a calendar quarter, the person responsible for payment of ~~taxes must~~ *fees shall* apply for and obtain a window decal.

(2) Decals must be color-coded to distinguish the four quarterly registration periods of the year.

(3) An applicant may purchase a decal for more than one registration quarter at a time by paying the appropriate amount.

(4) There is a $2 fee for each decal, and money collected from this fee ~~shall~~ *must* be deposited to the county general fund. The $2 fee is in addition to the ~~tax~~ *registration fee.*

(5) A current window decal must be displayed on the lower right-hand corner of the windshield."

Section 41. Section 61-3-736, MCA, is amended to read:

"61-3-736. Assessment of proportionally registered interstate motor vehicle fleets — payment of ~~tax or~~ fee in lieu of tax required for registration. (1) (a) ~~Except as provided in subsection (2), the~~ *The* department of transportation shall determine the fee for the purpose of imposing the fee in lieu of tax as provided in 61-3-528 and 61-3-529 *and the registration fee under [sections 1 and 2]* on *light vehicles,* buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors, in interstate motor vehicle fleets that are proportionally registered under the provisions of 61-3-711 through 61-3-733. The fee must be apportioned on the ratio of total miles traveled to in-state miles traveled as prescribed by 61-3-721. The fee in lieu of tax *or registration fee* on interstate motor vehicle fleets is imposed upon application for proportional registration and must be paid by the persons who own or claim the fleet or in whose possession or control the fleet is at the time of the application.

(b) With respect to an original application for a fleet that has a situs in Montana for the purpose of the fee in lieu of tax under this part or any other

HeinOnline -- 1999 vol. II 2206 1999

provision of the laws of Montana, the fee in lieu of tax *or registration fee* on fleet vehicles must be prorated according to the ratio that the remaining number of months in the year bears to the total number of months in the year.

~~(2) For the purpose of taxation, the department of transportation shall assess light vehicles, as defined in 61-1-139, that are part of an interstate motor vehicle fleet as follows:~~

~~(a) The value of each vehicle is determined in the same manner as provided in 61-3-503.~~

~~(b) The value determined under subsection (2)(a) multiplied by the percent of miles traveled in Montana, as prescribed by 61-3-721, is the market value.~~

~~(c) The sum of the market value of all vehicles subject to tax under this subsection (2) multiplied by 2% is the tax for the entire fleet.~~

~~(d) With respect to an original application for a fleet that has a situs in Montana for the purpose of taxation under this part or any other provision of the laws of Montana, the taxes on taxable vehicles are determined as provided in subsection (2)(b).~~

~~(c)~~*(c)* Vehicles taxed as part of a fleet under this subsection (2) are not subject to the local option tax *or flat fee* imposed under 61-3-537 *or [section 38].*

~~(3)~~*(2)* With respect to a renewal application for a fleet, ~~taxable vehicles are assessed and taxed for a full year and for all other vehicles~~ the fee in lieu of tax is imposed for a full year.

~~(4)~~*(3)* Vehicles contained in a fleet for which current ~~taxes or~~ fees~~, or both,~~ have been assessed and paid may not be assessed or charged fees under this section upon presentation to the department of proof of payment of ~~taxes,~~ fees~~, or both~~ for the current registration year. The payment of fleet vehicle ~~taxes,~~ fees in lieu of tax~~,~~ and license fees is a condition precedent to proportional registration or reregistration of an interstate motor vehicle fleet.

~~(5)~~*(4)* All ~~taxes and~~ fees collected on motor vehicle fleets under this chapter must be deposited and distributed as provided in 61-3-738."

Section 42. Section 61-3-737, MCA, is amended to read:

"61-3-737. Situs in state of proportionally registered fleets — collection of ~~taxes and~~ fees. (1) For the purposes of this part, any vehicle previously registered or that has had application for registration made under the provisions of 61-3-711 through 61-3-733 has a situs in Montana for the purposes of ~~taxation or~~ the fee in lieu of tax.

(2) The department of transportation shall collect the fleet vehicle ~~taxes, the~~ fees in lieu of tax~~,~~ and license fees prescribed in this part."

Section 43. Section 61-3-738, MCA, is amended to read:

"61-3-738. Deposit and distribution of ~~taxes and~~ fees on proportionally registered fleets. The ~~taxes,~~ fees in lieu of tax~~,~~ and license fees collected under this part must be deposited with the state treasurer for distribution to the general fund of each county on the following basis:

(1) for fleet vehicle ~~taxes and~~ fees in lieu of tax, according to the ratio of the taxable valuation of each county to the total state taxable valuation; and

HeinOnline -- 1999 vol. II 2207 1999

(2) for fleet vehicle license fees, according to the ratic of vehicle license fees, other than fees derived from interstate motor vehicle fleets, collected in each county to the sum of all fleet vehicle fees collected in all the counties."

Section 44. Section 61-4-112, MCA, is amended to read:

"61-4-112. New motor vehicles — transfers by dealers. (1) When a motor vehicle dealer transfers a new motor vehicle to a purchaser or other recipient, the dealer shall:

(a) issue and affix a permit as prescribed in 61-4-111(2)(a) for transfers of used motor vehicles and retain a copy of the permit;

(b) within 4 working days following the date of delivery of the new motor vehicle, forward to the county treasurer of the county where the purchaser or recipient resides:

(i) one copy of the permit issued under subsection (1)(a);

(ii) an application for certificate of title with a notice of security interest, if any, executed by the purchaser or recipient; and

(iii) a statement of origin ~~as prescribed in 61-3-502(8)~~ *that shows that the vehicle has not previously been registered or owned, exeept as otherwise provided in this section, by any person, firm, corporation, or association other than a new motor vehicle dealer holding a franchise or distribution agreement from a new car manufacturer, distributor, or importer.*

(2) Upon receipt from the county treasurer of the documents required under subsection (1), the department shall issue a certificate of ownership and certificate of registration, together with a statement of lien as provided in 61-3-202."

Section 45. Section 61-10-231, MCA, is amended to read:

"61-10-231. Enforcement. The highway patrol and any designated employee of the department of transportation shall enforce this part ~~and 61-3-502(1)~~, and those persons shall examine and inspect the motor vehicles operating upon the highways in this state and regulated by this part ~~and 61-3-502(1)~~ to ascertain whether or not those laws are being complied with."

Section 46. Repealer. Sections 61-3-502, 61-3-504, and 61-3-605, MCA, are repealed.

Section 47. Submission to electorate. The question of whether this act will become effective shall be submitted to the qualified electors of Montana at the general election to be held in November 2000 by printing on the ballot the full title of this act and the following:

☐ FOR reducing the taxation of light vehicles and eliminating the sales tax on new motor vehicles.

☐ AGAINST reducing the taxation of light vehicles and eliminating the sales tax on new motor vehicles.

Section 48. Codification instruction. [Sections 1, 2, 3, and 38] are intended to be codified as an integral part of Title 61, chapter 3, part 5, and the provisions of Title 61, chapter 3, part 5, apply to [sections 1, 2, 3, and 38].

HeinOnline -- 1999 vol. II 2208 1999

Section 49. Coordination instruction. If this act is approved by the electorate and Senate Bill No. 260 is passed and approved, then [section 3 of Senate Bill No. 260] terminates on January 1, 2002.

Section 50. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 51. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 52. Effective dates — applicability. (1) If approved by the electorate, this act is effective on approval by the electorate, except as provided in subsection (2), and applies to motor vehicle registration periods beginning after December 31, 2000.

(2) [Sections 12, 13, and 46] are effective January 1, 2001.

CHAPTER NO. 516

[SB 23]

AN ACT SUBMITTING TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE VIII, SECTION 13, OF THE MONTANA CONSTITUTION REGARDING INVESTMENT OF STATE COMPENSATION INSURANCE FUND ASSETS; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Article VIII, section 13, of The Constitution of the State of Montana is amended to read:

"Section 13. Investment of public funds and public retirement system *and state compensation insurance fund* assets. (1) The legislature shall provide for a unified investment program for public funds and public retirement system *and state compensation insurance fund* assets and provide rules therefor, including supervision of investment of surplus funds of all counties, cities, towns, and other local governmental entities. Each fund forming a part of the unified investment program shall be separately identified. Except as provided in ~~subsection~~ *subsections* (3) *and (4)*, no public funds shall be invested in private corporate capital stock. The investment program shall be audited at least annually and a report thereof submitted to the governor and legislature.

(2) The public school fund and the permanent funds of the Montana university system and all other state institutions of learning shall be safely and conservatively invested in:

(a) Public securities of the state, its subdivisions, local government units, and districts within the state, or

(b) Bonds of the United States or other securities fully guaranteed as to principal and interest by the United States, or

(c) Such other safe investments bearing a fixed rate of interest as may be provided by law.

HeinOnline -- 1999 vol. II 2209 1999

(3) Investment of public retirement system assets shall be managed in a fiduciary capacity in the same manner that a prudent expert acting in a fiduciary capacity and familiar with the circumstances would use in the conduct of an enterprise of a similar character with similar aims. Public retirement system assets may he invested in private corporate capital stock.

(4) Investment of state compensation insurance fund assets shall be managed in a fiduciary capacity in the same manner that a prudent expert acting in a fiduciary capacity and familiar with the circumstances would use in the conduct of a private insurance organization. State compensation insurance fund assets may be invested in private corporate capital stock. However, the stock investments shall not exceed 25 percent of the book value of the state compensation insurance fund's total invested assets."

Section 2. Effective date. If approved hy the electorate, the amendments in section 1 are effective January 1, 2001.

Section 3. Submission to electorate. This amendment shall he submitted to the qualified electors of Montana at the general election to be held in November 2000 by printing on the hallot the full title of this act and the following:

☐ FOR allowing a maximum of 25% of state compensation insurance fund assets to be invested in private corporate capital stock.

☐ AGAINST allowing a maximum of 25% of state compensation insurance fund assets to be invested in private corporate capital stock.

CHAPTER NO. 517

[HB 11]

AN ACT APPROPRIATING MONEY TO THE DEPARTMENT OF COMMERCE FOR FINANCIAL ASSISTANCE TO LOCAL GOVERNMENT INFRASTRUCTURE PROJECTS UNDER THE TREASURE STATE ENDOWMENT PROGRAM; AUTHORIZING GRANTS FROM THE TREASURE STATE ENDOWMENT SPECIAL REVENUE ACCOUNT; PLACING CONDITIONS UPON GRANTS; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Scction 1. Appropriations from treasure state endowment special revenue account. (1) There is appropriated to the department of commerce the interest earnings of the treasure state endowment special revenue account to finance grants authorized by this section.

(2) The funds appropriated in this section must he used by the department to make grants to the local government entities listed in subsection (3) for the described purposes and in amounts not to exceed the amounts set out in subsection (3). The appropriations are suhject to the conditions set forth in [sections 1 through 4] and described in the treasure state endowment program January 1999 report to the 56th legislature. The legislature, pursuant to 90-6-710, approves the grants listed in subsection (3), in the order indicated in the list of projects. The department shall award funds up to the amounts approved in this section based on the manner of dishursement set forth in [section 4] until

HeinOnline -- 1999 vol. II 2210 1999

available funds are expended. The department shall provide funds not accepted or used by local governments to other local governments whose projects have been authorized for grants as listed in subsection (3). When additional funds become available for the grants listed in subsection (3), they must he awarded to projects as set forth in [section 4]. It is the intent of the legislature that projects numbered 23 through 25 listed in subsection (3) may not receive grant funds until sufficient funds have been deposited in the treasure state endowment special revenue account and are available for that purpose.

(3) The following are the authorized projects for grants in the order of their priority:

	Applicant/Project	Matching Grant
1.	Harrison Water and Sewer District, Madison County (wastewater)	$500,000
2.	Arlee Water and Sewer District, Lake County (wastewater)	500,000
3.	Highwood Water and Sewer District, Chouteau County (water)	400,000
4.	City of Missoula (wastewater)	500,000
5.	City of Thompson Falls (water)	500,000
6.	Town of Philipsburg (water)	121,900
7.	Town of Ekalaka (wastewater)	87,200
8.	Rae Water and Sewer District, Gallatin County (wastewater)	485,850
9.	City of Big Timber (wastewater)	500,000
10.	City of Glasgow (wastewater, storm drainage)	500,000
11.	Corvallis Sewer District, Ravalli County (wastewater)	410,760
12.	Town of Boulder (water)	500,000
13.	Town of Denton (wastewater)	415,000
14.	City of Cut Bank (water)	500,000
15.	Richland County (bridge)	181,155
16.	Town of Geraldine (wastewater)	300,000
17.	Augusta Water and Sewer District, Lewis and Clark County (wastewater)	500,000
18.	City of Havre (water)	303,747
19.	Sweet Grass Water and Sewer District, Toole County (wastewater)	213,000
20.	Lewis and Clark County (bridge)	500,000
21.	Town of Drummond (wastewater)	292,850
22.	South Hills Water and Sewer District, Yellowstone County (water) 500,000	
23.	City of Helena (water)	500,000
24.	City of Red Lodge (wastewater)	500,000
25.	Town of Chester (water)	220,150

HeinOnline -- 1999 vol. II 2211 1999

(4) If sufficient funds are available, this section constitutes a valid obligation of funds to the entities listed in subsection (3) for purposes of encumhering the treasure state endowment special revenue account funds received during the 2001 biennium under 17-7-302. However, a local government's entitlement to receive funds is dependent on the local government's compliance with the conditions described in [section 4] and on the availability of funds.

(5) If funds deposited in the treasure state endowment special revenue account during the biennium ending June 30, 2001, are insufficient to fully fund the projects numbered 1 through 22 in subsection (3) that have satisfied the conditions described in [section 4], these projects will be fully funded from deposits in the treasure state endowment special revenue account made during the biennium ending June 30, 2003, before projects authorized by the 57th legislature in 2001 receive funding from the account.

Section 2. Appropriations from treasure state endowment speeial revenue account. (1) There is appropriated to the department of commerce the interest earnings of the treasure state endowment fund and the money allocated by House Bill No. 260 to be depesited in the treasure state endowment special revenue account te finance grants authorized by this section.

(2) The funds appropriated in this section must be used by the department to make grants to the local government entities listed in subsection (3) for the described purposes and in amounts not to exceed the amounts set out in subsection (3). The appropriations are subject to the conditions set forth in [sections 3 and 4] and this section and described in the treasure state endowment program January 1999 report to the 56th legislature. The legislature, pursuant to 90-6-710, approves the grants listed in subsection (3), in the order indicated in the list of projects. The department shall award funds up to the amounts approved in this section based on the manner of disbursement set forth in [section 4] until available funds are expended. The departinent shall provide funds not accepted or used by local governments to other local governments whose projects have been authorized for grants as listed in subsection (3). When additional funds become available for the grants listed in subsection (3), they must be awarded to projects as set forth in [section 4]. It is the intent of the legislature that projects numbered 29 through 32 listed in subsection (3) may not receive grant funds until sufficient funds have been deposited in the treasure state endowment special revenue account and are available for that purpose.

(3) The following are the authorized projects for grants in the order of their priority:

	Applicant/Project	Matching Grant
1.	Harrison Water and Sewer District, Madison County (wastewater)	$500,000
2.	Arlee Water and Sewer District, Lake County (wastewater)	500,000
3.	Highwood Water and Sewer District, Chouteau County (water)	400,000
4.	City of Missoula (wastewater)	500,000
5.	City of Thompson Falls (water)	500,000
6.	Town of Philipsburg (water)	121,900
7.	Town of Ekalaka (wastewater)	87,200
8.	Rae Water and Sewer District, Gallatin County (wastewater)	485,850

HeinOnline -- 1999 vol. II 2212 1999

9.	City of Big Timber (wastewater)	500,000
10.	City of Glasgow (wastewater, storm drainage)	500,000
11.	Corvallis Sewer District, Ravalli County (wastewater)	410,760
12.	Town of Boulder (water)	500,000
13.	Town of Denton (wastewater)	415,000
14.	City of Cut Bank (water)	500,000
15.	Richland County (bridge)	181,155
16.	Town of Geraldine (wastewater)	300,000
17.	Augusta Water and Sewer District, Lewis and Clark County (wastewater)	500,000
18.	City of Havre (water)	303,747
19.	Sweet Grass Water and Sewer District, Toole County (wastewater)	213,000
20.	Lewis and Clark County (bridge)	500,000
21.	Town of Drummond (wastewater)	292,850
22.	South Hills Water and Sewer District, Yellowstone County (water)	500,000
23.	City of Helena (water)	500,000
24.	City of Red Lodge (wastewater)	500,000
25.	Town of Chester (water)	220,150
26.	Willow Creek Sewer District, Gallatin County (wastewater)	500,000
27.	City of Columbia Falls (wastewater)	500,000
28.	Lacasa Grande Water and Sewer District, Lewis and Clark County (water)	500,000
29.	Elk Meadows Water and Sewer District, Missoula County (water)	210,000
30.	City of Harlem (water)	179,311
31.	Midvale Water and Sewer District, Lincoln County (water)	374,720
32.	City of Shelby (water)	400,000

(4) If sufficient funds are available, this section constitutes a valid obligation of funds to the entities listed in subsection (3) for purposes of encumbering the treasure state endowment special revenue account funds received during the 2001 biennium under 17-7-302. However, a local government's entitlement to receive funds is dependent on the local government's compliance with the conditions described in [section 4] and on the availability of funds.

(5) If funds depesited in the treasure state endowment special revenue account during the biennium ending June 30, 2001, are insufficient to fully fund the projects numbered 1 through 28 in subsection (3) that have satisfied the conditions described in [section 4], these projects will be fully funded from deposits in the treasure state endowment special revenue account made during the biennium ending June 30, 2003, before projects authorized by the 57th legislature in 2001 receive funding from the account.

HeinOnline -- 1999 vol. II 2213 1999

Section 3. Approval of grants — completion of appropriation. (1) The legislature, pursuant to 90-6-701, approves grants for the projects identified in [sections 1(3) and 2(3)].

(2) The approval of these grants completes an appropriation from the special revenue account provided for in 17-5-703(4)(b).

Section 4. Conditions and manner of disbursement of grant funds. (1) The disbursement of grant funds under [sections 1 through 4] for the grants specified in [sections 1(3) and 2(3)] is subject to the following conditions:

(a) The local government recipient must have a scope of work and budget for the project approved by the department of commerce that is consistent with the intent and circumstances under which the application was originally ranked by the department and approved by the legislature. The department may not approve amendments to the scope of work or budget affecting priority activities or improvements that would materially alter the intent and circumstances under which the application was originally ranked by the department and approved by the legislature.

(b) The local government recipient shall document that other matching funds required for completion of the project have been firmly committed before the disbursement of the funds appropriated in [section 1].

(c) The local government recipient shall have satisfactorily complied with any conditions described in the recommendation section of the project narrative in the treasure state endowment program project evaluations and recommendations report submitted to and approved by the 56th legislature and with conditions specified by the department in the notification of grant approval.

(d) The local government recipient shall have executed a grant agreement with the department.

(e) The local government recipient shall have satisfied other specific requirements considered necessary by the department to accomplish the purpose of the project as evidenced by the application to the department.

(2) The department shall disburse grant funds to projects approved in the order of priority listed in [section 1] and subject to the conditions in subsection (1), as treasure state endowment special revenue account interest income is received during the 2001 biennium.

(3) The department shall disburse grant funds as they become available each month in the order of priority, for projects that have met the conditions in subsection (1).

(4) A project approved in [section 1] may not receive grant funds until sufficient funds have been deposited in the treasure state endowment special revenue account and are available for that purpose.

(5) The department shall disburse grant funds on a reimbursement basis as grantees incur eligible project costs.

(6) In the event that construction bids received for a project are for an amount lower than the projected cost of the project, the department may, at its discretion, reduce the amount of funding to he provided in proportion to all other project funding sources. In the alternative, the department may authorize the construction of additional, directly related project components to enhance the overall project that are consistent with the intent and circumstances under which the

HeinOnline -- 1999 vol. II 2214 1999

application was originally ranked by the department and approved by the legislature, in amounts not to exceed the originally approved project budget.

Section 5. Contingent voidness. If House Bill No. 260 is enacted, [section 1] of [this act] is void and references to that section must be stricken. If House Bill No. 260 is not enacted or is invalidated by a final judicial decision, [section 2] of [this act] is void and references to that section must be stricken.

Section 6. Effective dates. (1) [Sections 3 through 5 and this section] are effective on passage and approval.

(2) Pursuant to [section 5], either [section 1 or 2] is effective July 1, 1999.

Approved April 29, 1999

CHAPTER NO. 518

[HB 14]

AN ACT AUTHORIZING THE CREATION OF STATE DEBT THROUGH THE ISSUANCE OF GENERAL OBLIGATION BONDS; APPROPRIATING THE PROCEEDS OF THE BONDS FOR CAPITAL PROJECTS FOR THE BIENNIUM ENDING JUNE 30, 2001; PROVIDING FOR MATTERS RELATING TO APPROPRIATIONS; AMENDING SECTION 17-7-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. For the purposes of [sections 1 through 8], unless otherwise stated, the following definitions apply:

(1) "Capital project" means the acquisition of land or improvements or the planning, capital construction, renovation, furnishing, or major repair projects authorized in [sections 1 through 8].

(2) "CPF" means the capital projects fund.

(3) "Other funding sources" means money other than CPF money, including special revenue fund money, that accrues to an agency under the provisions of the law.

Section 2. Appropriation of bond proceeds and other funds. (1) The following money is appropriated from the CPF and other funding sources to the department of administration for the capital projects described in this section, contingent upon the respective authorization of general obligation long-range building program bonds by the 56th legislature and the sale of the bonds by the board of examiners:

Agency/Project	CPF	Other Funding Sources
DEPARTMENT OF ADMINISTRATION		
Capitol Renovation	$3,898,750	$
DEPARTMENT OF CORRECTIONS		
Expand Women's Prison, MWP, Billings	$2,900,000	

HeinOnline -- 1999 vol. II 2215 1999

Complete Pine Hills Youth Correctional Facility, Miles City	2,225,000	
Security Improvements and Wallace Expansion, MSP, Deer Lodge	3,000,000	
DEPARTMENT OF LABOR AND INDUSTRY		
Havre Job Service Supplemental		210,000
DEPARTMENT OF MILITARY AFFAIRS		
Montana National Guard, Veterans' Affairs and Emergency Operations Center, Fort Harrison, Helena	3,500,000	
Construct New Armory, Kalispell	1,800,000	
Construct New Armory, Bozeman	2,200,000	
MONTANA UNIVERSITIES AND COLLEGES		
Renovate Renne Library, MSU-Bozeman	7,500,000	
Rural Technology Education Center, UM-Dillon	4,170,000	
Lab and Classroom Renovations, UM-All Campuses	2,000,000	

(2) (a) The 56th legislature authorizes four department of corrections' capital construction projects in the 2001 hiennium. Funding for the projects is contained in House Bill No. 5 and subsection (1) of this section. The total project cost and the authorized funding for each project are as follows:

(i) $9,375,000 for the women's prison expansion in Billings, funded hy $2,900,000 of general obligation bond proceeds authorized in subsection (1) and by $6,475,000 of federal funds appropriated in House Bill No. 5;

(ii) $2,225,000 for completing the Pine Hills youth correctional facility in Miles City, funded from general obligation bond proceeds authorized in subsection (1); and

(iii) $3,000,000 for security improvements and expanding tbe Wallace building at Montana state prison in Deer Lodge, funded from general obligation bond proceeds authorized in subsection (1).

~~(b) The 56th legislature notes that approximately $8,714,600 of federal department of justice funds are anticipated to become available for capital construction projects for the department of corrections in the 2001 biennium. It is the intent of the 56th legislature that the federal funds be used in lieu of general obligation bond authority to the maximum extent possible. It is further the intent of the 56th legislature that the priority for using these federal funds is:~~

~~(i) up to $6,475,000 for the women's prison expansion project, line-itemed in House Bill No. 5;~~

~~(ii) up to $5,500,000 for the construction of the reception unit at Montana state prison, line-itemed in House Bill No. 5;~~

~~(iii) up to $2,225,000 for the completion of the Pine Hills youth correctional facility in Miles City, line-itemed in subsection (1); and~~

~~(iv) up to $3,000,000 for the security improvements and Wallace expansion project at Montana state prison, line-itemed in subsection (1).~~

(3) It is the intent of the 56th legislature that the security improvements and the Wallace expansion project line-itemed in subsection (1) he used only for the following projects:

(a) a 12,000-square foot expansion of the Wallace building to include a new board of pardons and parole hearing room, a new command post, a consolidated record storage area, a consolidated training area, and office space; and

(b) remodeling the existing business building to provide a centralized area for investigation, business and information services units, and a new safe and secure armory.

(4) The 56th legislature authorizes the construction of the rural technology education center at western Montana college of the university of Montana at a total project cost of $4,520,000. House Bill No. 5 contains $350,000 in other revenue authority for this project, and subsection (1) of this section contains $4,170,000 in general obligation bond authority for this project. In the event that other additional funds become available for this project during its construction, the general obligation bond authority in subsection (1) of this section must be reduced by a like amount and other revenue authority is increased by a like amount in House Bill No. 5 for the same purpose.

(5) All proceeds derived from the sale of the national guard armories located in Bozeman and Whitefish must be used to pay the general obligation debt service on the bonds issued for construction of the new Bozeman and Kalispell armories. The proceeds of the sale must be deposited in the general fund for this purpose. In the event one or both of the facilities are sold prior to issuance of the bonds, then the board of examiners may determine to use all or a portion of the amount deposited in the general fund to reduce the amount of the bond issue required to finance the construction.

Section 3. Authorization of bonds. (1) The board of examiners is authorized to issue and sell general obligation long-range building program bonds in an amount not exceeding $33,403,750 for the capital projects described in [section 2] over and above the amount of general obligation long-range building program bonds outstanding on January 1, 1999, to be issued in accordance with the terms and in the manner required by Title 17, chapter 5, part 8. The authority granted to the board by this section is in addition to any other authorization to the board to issue and sell general obligation long-range building program bonds.

(2) It is the intent of the 56th legislature that debt service payments for the Havre job service office be paid with federal funds. If federal funds become unavailable, however, the department of labor and industry is directed to reduce operating or personal services costs in order to service the debt. The debt service payments for the job service office may not be paid with general fund money.

Section 4. Agreement with department of labor and industry. The board of examiners and the department of labor and industry may enter into an agreement for the expansion and renovation of the job service office, Havre, under which the department shall pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, an amount, as determined by the state

HeinOnline -- 1999 vol. II 2217 1999

treasurer, that is sufficient to pay the principal and interest due on the bonds and notes from which the appropriation was made and that is sufficient to accommodate and maintain reserves required under the bonds and notes. The agreement must further provide that income from the investment of bond proceeds, unused principal, and the reserves not required for construction and renovation costs may be credited against the department's payment obligation. The agreement must also allow for the accumulation of reserves during the first year that the bonds are outstanding. Payment by the department must be made from funds available therefor.

Section 5. Agreement with department of environmental quality. The department of environmental quality shall review capital projects authorized in [section 2] for potential inclusion in the state buildings energy conservation program. When review shows that a capital project will result in energy improvements, that capital project must be submitted to the energy conservation program for cofunding consideration. Cofunding provided under the energy conservation program guidelines must be used to offset or add to the authorized funding for the capital project, and the amount will be dependent on the annual utility savings resulting from the facility improvement. Agencies must be notified of potential cofunding after the review.

Section 6. Planning and design. The department of administration may proceed with the planning and design portions of capital projects before the receipt of other funding sources. The department may use interaccount loans in accordance with 17-2-107 to pay planning and design costs incurred before the receipt of other funding sources.

Section 7. Capital projects — contingent funds. If a capital project is financed in whole or in part with appropriations contingent upon the receipt of other funding sources, the department of administration may not let the projects for bid until the agency has submitted a financial plan for approval by the director of the department. A financial plan may not be approved by the director if:

(1) the level of funding provided under the financial plan deviates substantially from the funding level provided in [section 2] for that project; or

(2) the scope of the capital project is substantially altered or revised from the preliminary plans presented for that capital project in the 2000-2001 long-range building program presented to the 56th legislature.

Section 8. Legislative consent. The appropriations authorized in [section 2] constitute legislative consent for the capital projects contained in [section 2] within the meaning of 18-2-102.

~~**Section 9.** Section 17-7-211, MCA, is amended to read:~~

~~**"17-7-211. Expansion to be authorized — budget amendment.** (1) An existing capital project may not be expanded beyond the scope of the project approved by the legislature unless the expansion of the project is authorized by a long-range building program budget amendment approved by the budget director.~~

~~(2) A proposed long-range building program budget amendment must be submitted to the budget director through the architecture and engineering division of the department of administration. *Except as provided in (3), the* The budget director, through a long-range building program budget amendment, may authorize:~~

~~(a) the transfer of excess funds appropriated to a capital project within an agency to increase the appropriation of another capital project within that agency; or~~

~~(b) financing to expand a project with funds that were not available for consideration by the legislature.~~

~~*(3) Subsections (1) and (2) do not apply to capital construction projects authorized for the department of corrections in House Bill No. 5 and [section 2(1) of this act] by the 56th legislature. If the department of corrections receives or expects to receive federal department of justice funds that can be used for any department of corrections' project contained in [section 2(1)], the general obligation bond authority in [section 2(1)] for that project must be reduced by the amount of federal funds received or expected to be received and federal special revenue authority in House Bill No. 5 must be increased by a like amount and for the same purpose. In no case may general obligation bond authority increase for any department of corrections' project contained in [section 2(1)].*"~~

Section 10. Requirements for approval of state debt. Because [section 3] authorizes the creation of state debt, a vote of two-thirds of the members of each house of the legislature is required for enactment of [section 3]. If [section 3] is not approved by the required vote, [this act] is void.

Section 11. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 12. Effective date. [This act] is effective on passage and approval.

Section 13. Termination. [Section 9] terminates July 1, 2005.

Approved April 29, 1999

CHAPTER NO. 519

[HB 15]

AN ACT AUTHORIZING THE CREATION OF STATE DEBT THROUGH THE ISSUANCE OF GENERAL OBLIGATION BONDS; APPROPRIATING THE PROCEEDS OF THE BONDS FOR INFORMATION TECHNOLOGY PROJECTS FOR THE BIENNIUM ENDING JUNE 30, 2001; PROVIDING FOR DEBT SERVICE PAYMENTS FROM THE GENERAL FUND; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Definition. As used in [sections 1 through 5], "information technology project" means the planning, design, development, acquisition, installation, or integration of software and required hardware to provide for upgraded and integrated state management information systems.

Section 2. Appropriation of bond proceeds and approval of information technology project. Upon the sale of general obligation bonds by the board of examiners, the following bond proceeds are appropriated from the capital projects fund for the following projects:

HeinOnline -- 1999 vol. II 2219 1999

Agency/Project	Bond Proceeds
DEPARTMENT OF REVENUE	
Project META	$18,000,000
MONTANA UNIVERSITY SYSTEM	
Banner Project	800,000

Section 3. Authorization of bouds. (1) The board of examiners may issue and sell general obligation information technology bonds in an amount not exceeding $18,800,000 for the projects described in [section 2] over and above the amount of general obligation bonds outstanding on January 1, 1999. The bonds must be issued in accordance with Title 17, chapter 5, part 8. The bonds authorized by this section for the purchase of software, software licensing, and contract services must mature within 10 years from their date of issue. The bonds authorized hy this section for the purchase of equipment and operating software must mature no later than 4 years from their date of issue. The authority granted to the board by this section is in addition to any other authorization to the board to issue and sell general obligation bonds.

(2) It is the intent of the 56th legislature that the annual debt service payments of the bonds authorized in subsection (1) be paid from the general fund.

Section 4. Planning and design. The department of revenue and the Montana university system may proceed with the planning and design portions of the information technology project before the receipt of bond proceeds. The department of revenue and the Montana university system may use interaccount loans pursuant to 17-2-107 to pay planning and design costs incurred before receipt of the proceeds.

Section 5. Expenditures. (1) Except as provided in subsection (2), bond proceeds under [sections 1 through 4] may be used only for information technology project administration and implementation, including software and required hardware, software licensing, and contract services. The department of revenue and the Montana university system are prohibited from using any of the proceeds from the sale of bonds, authorized by [sections 1 through 5], for agency current level operating expenses.

(2) All of the bonds authorized and issued for the Montana university system under [sections 1 through 4] must be used to reduce student fees levied for information technology purposes.

Section 6. Two-thirds vote required. Because [section 3] authorizes the creation of state debt, Article VIII, section 8, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage.

Seetion 7. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 8. Effective date. [This act] is effective on passage and approval.

Approved April 30, 1999

HeinOnline -- 1999 vol. II 2220 1999

CHAPTER NO. 520

[HB 129]

AN ACT REVISING THE LAWS PERTAINING TO HIGHWAY HAZARDS, AUTHORIZED EMERGENCY VEHICLES, AND EMERGENCY SERVICE VEHICLES, INCLUDING COMMERCIAL TOW TRUCKS; PROVIDING LOCAL EMERGENCY RESPONSE AUTHORITIES WITH IMMUNITY; DEFINING THE TERM "INCIDENT COMMANDER"; PROVIDING CERTAIN PERSONS IMMUNITY FROM LIABILITIES ARISING FROM A MOTORIST VIOLATING PROVISIONS REGARDING SLOWING DOWN AT THE SCENE OF A HIGHWAY HAZARD; PROVIDING A PENALTY FOR VIOLATING HIGHWAY WARNING SIGNS POSTED AT A HAZARD ON THE HIGHWAY; AND AMENDING SECTIONS 10-3-111, 10-3-1203, 10-3-1216, 10-3-1217, 61-9-402, AND 61-9-416, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-3-111, MCA, is amended to read:

"10-3-111. Personnel immune from liability. (1) ~~Neither the~~ *The* state, ~~nor any~~ *a* political subdivision of the state ~~nor~~, *or* the agents or representatives of the state or ~~any~~ *a* political subdivision of the state are *not* liable for personal injury or property damage sustained by ~~any~~ *a* person appointed or acting as a volunteer civilian defense worker or member of ~~any~~ *an* agency engaged in civilian defense activity during an incident, disaster, or emergency. This section does not affect the right of ~~any~~ *a* person to receive benefits or compensation to which the person might otherwise be entitled under the workers' compensation law or ~~any~~ *a* pension law or ~~any~~ *an* act of congress.

(2) ~~Neither the~~ *The* state ~~nor any~~ *or a* political subdivision of the state ~~nor~~ *or*, except in cases of willful misconduct, gross negligence, or bad faith, the employees, agents, or representatives of the state or ~~any~~ *a* political subdivision of the state ~~nor any~~ *or a* volunteer or auxiliary civilian defense worker or member of ~~any~~ *an* agency engaged in civilian defense activity during an incident, disaster, or emergency ~~nor~~ *or* the owners of facilities used for civil defense shelters, pursuant to a fallout shelter license or privilege agreement and while complying with or reasonably attempting to comply with parts 1 through 4 *or 12* of this chapter or ~~any~~ *an* order or rule promulgated under the provisions of parts 1 through 4 *or 12* of this chapter or pursuant te ~~any~~ *an* ordinance relating to blackout or other precautionary measures enacted by ~~any~~ *a* political ~~subdivisions~~ *subdivision* of the state, are *not* liable for the death of or injury te persons or for damage to property as a result of any ~~such~~ activity *specified in this subsection.*"

Section 2. Section 10-3-1203, MCA, is amended to read:

"10-3-1203. Definitions. As used in this part, the following definitions apply:

(1) "Commission" means the state emergency response commission.

(2) "Division" means tbe division of disaster and emergency services in the department of military affairs.

(3) "Duration of respense" means a period of time beginning when ~~a~~ *an* emergency respender is requested by the appropriate authority to respond to an incident and ending when the responder is released from the incident by the incident commander and returned to the emergency responder's place of residence by the most direct route and includes the time required to replace and

HeinOnline -- 1999 vol. II 2221 1999

return all materials used for the incident to the same or similar condition and state of readiness as before the response.

(4) "Hazardous material" means a hazardous substance, a hazardous or deleterious substance as defined in 75-10-701, radioactive material, or a combination of a hazardous substance, a hazardous or deleterious substance, and radioactive material.

(5) "Hazardous material incident response team" means an organized group of trained response personnel, operating under an emergency response plan and appropriate standard operating procedures, that is expected to perform work to control an actual release or threatened release of hazardous material requiring close approach to the material, to respond to releases or threatened releases of hazardous material for the purpose of control or stabilization of the incident, and to provide technical assistance to local jurisdictions.

(6) (a) "Hazardous substance" means flammable solids, semisolids, liquids, or gases; poisons; explosives; corrosives; compressed gases; reactive or toxic chemicals; irritants; or biological agents.

(b) The term does not include radioactive material.

(7) "Incident" means an event involving the release or threat of release involving hazardous material that may cause injury to persons, the environment, or property.

(8) "Incident commander" means the person who is designated in the local emergency operations plan.

~~(8)~~*(9)* "Local emergency operations plan" means the local and interjurisdictional disaster and emergency plan developed pursuant to 10-3-401.

~~(9)~~*(10)* "Local emergency response authority" means the ~~person or persons~~ *agency* designated by the city, county, ~~or~~ *or* commission to be responsible for the management of an incident at the local level.

~~(10)~~*(11)* "Orphaned hazardous material" means hazardous material of which the owner cannot be identified.

~~(11)~~*(12)* "Plan" means the Montana incident management and hazardous material response support plan.

~~(10)~~*(13)* (a) "Radioactive material" means any material or combination of material that spontaneously emits ionizing radiation.

(b) The term does not include material in which the specific activity is not greater than 0.002 microcuries per gram of material unless the material is determined to be radioactive hy the U.S. environmental protection agency or the U.S. occupational safety and health administration.

~~(13)~~*(14)* "State hazardous material incident response team" means persons who are designated as state employees by the commission while they are engaged in activities as provided for in 10-3-1204 and may include members of the commission and local and state government responders.

~~(14)~~*(15)* "Threat of release" or "threatened release" means an indication of the possibility of the release of a hazardous material into the environment."

Section 3. Section 10-3-1216, MCA, is amended to read:

"10-3-1216. Cost recovery and civil remedies. (1) Cost recovery is the duty of the city or county having authority where an incident occurred.

HeinOnline -- 1999 vol. II 2222 1999

(2) The commission shall ensure the recovery of state expenditures according to the plan.

(3) A person responsible for an incident is liable for attorney fees and costs of the commission incurred in recovering costs associated with responding to an incident.

(4) The remedy for the recovery of emergency response costs identified in this part is in addition to any other remedy for recovery of the costs provided by applicable federal or state law.

(5) Any person who receives compensation for the emergency response costs pursuant to any other federal or state law is precluded from recovering compensation for those costs pursuant to this chapter.

(6) Except for the commission, ~~and~~ the state hazardous material incident response team, *and the local emergency response authority,* this part does not otherwise affect or modify in any way the obligations or liability of any person under any other provision of state or federal law, including common law, for damages, injury, or loss resulting from the release or threatened release of any hazardous material or for remedial action or the costs of remedial action for a release or threatened release.

(7) Any person who is not a liable party under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq., as amended, or the Comprehensive Environmental Cleanup and Responsibility Act, Title 75, chapter 10, part 7, and who renders assistance in response to an emergency situation associated with an incident may file a civil action against the responsible party for recoverable costs that have not heen reimbursed by the state.

(8) Recoveries by the state for reimbursed costs under this section must be deposited in the environmental contingency account to offset amounts paid as reimbursement.

(9) (a) In the event of orphaned hazardous material or the inability of the state to recover the full cost associated with an incident and the cost of collection described in this section, the state shall recover from the city or county having authority where the incident occurred an amount equal to 25% of the total cost identified pursuant to this part.

(b) When the hazardous material incident occurs in or involves multiple jurisdictions, the collectible amount must be equally divided among the jurisdictions."

Seetion 4. Section 10-3-1217, MCA, is amended to read:

"10-3-1217. Liability of persons and response team members rendering assistanee. The *state or a political subdivision of the state, the* commission, *the local emergency response authority,* and the state hazardous material incident response team *or, except for willful misconduct, gross negligence, or bad faith, an employee, representative, or agent of the state or a political subdivision of the state, the commission, the loeal emergency response authority, and the state hazardous material incident response team* ~~are~~ *is* not liable under this part for injuries, costs, damages, expenses, or other liabilities resulting from the release or threatened release *or remedial action resulting from the release or threatened release* of a hazardous material. The immunity includes but is not limited to indemnification, contribution, or third-party claims for wrongful death, personal injury, illness, loss or damages to property, or economic loss. A person becomes

HeinOnline -- 1999 vol. II 2223 1999

a member of the state hazardous material incident response team when the person is contacted, *dispatched, or requested* for response regardless of the person's location."

Section 5. Section 61-9-402, MCA, is amended to read:

"61-9-402. Audible and visual signals on police, ~~and~~ emergency vehicles, *and* ~~and~~ on-scene command vehicles — *immunity*. (1) A police vehicle must he equipped with a siren capable of giving an audible signal and may be equipped with alternately flashing or rotating red or hlue lights as specified in this section. The use of signal equipment as described in this section imposes upon the drivers of other vehicles the obligation to yield right-of-way or to stop and to proceed past the signal or light only with caution and at a speed that is no greater than is reasonable and proper under the conditions existing at the point of operation.

(2) An authorized emergency vehicle must be equipped:

(a) with a siren and an alternately flashing or rotating red light as specified in this section; and

(h) with signal lamps mounted as high and as widely spaced laterally as practicable that are capable of displaying to the front two alternately flashing red lights located at the same level and to the rear two alternately flashing red lights located at the same level. These lights must have sufficient intensity to be visihle at 500 feet in normal sunlight.

(3) A bus used for the transportation of school children must be equipped with signal lamps mounted as high and as widely spaced laterally as practicable, displaying to the front two red and two amber alternating flashing lights and to the rear two red and two amber altornating flashing lights. These lights must have sufficient intensity to be visible at 500 feet in normal sunlight. The warning lights must be as prescribed by the board of public education and approved hy the department.

(4) A police vehicle and an authorized emergency vehicle may, and an emergency service vehicle must, be equipped with alternately flashing or rotating amber lights as specified in this section.

(a) The use of signal equipment as described in this section imposes upon the drivers of otber vehicles the obligation to yield right-of-way or to stop and to proceed past the signal or light only with caution and at a speed that is no greater than is reasonable and proper under the conditions existing at the point of operation *subject to the provisions of 61-8-209 and 61-8-303.*

(b) An employee, agent, or representative of the state or a political subdivision of the state or of a fire department who is operating a police vehicle, an authorized emergency vehicle, or an emergency service vehicle and using signal equipment in rendering assistance at a highway crash scene or in response to any other hazard on the roadway that presents an immediate hazard or an emergency or life-threatening situation is not liable, except for willful misconduct, bad faith, or gross negligence, for injuries, costs, damages, expenses, or other liabilities resulting from a motorist operating a vehicle in violation of subsection (4)(a).

(5) Blue, red, and amber lights required in this section must be mounted as high as and as widely spaced laterally as practicable and capahle of displaying to the front two alternately flashing lights of the specified color located at the same level and to the rear two alternately flashing lights of the specified color located at the same level or one rotating light of the specified color, mounted as high as

HeinOnline -- 1999 vol. II 2224 1999

is practicable and visible from both the front and the rear. These lights must have sufficient intensity to be visible at 500 feet in normal sunlight. Except as provided in 61-9-204(6), only police vehicles as defined in 61-1-118 may display blue lights, lenses, or globes.

(6) A police car and authorized emergency vehicle may be equipped with a flashing signal lamp that is green in color, visible from 360 degrees, and attached to the exterior roof of the vehicle for purposes of designation as the on-scene command and control vehicle in an emergency or disaster. The green light must have sufficient intensity to be visible at 500 feet in normal sunlight. Only the on-scene command and control vehicle may display green lights, lenses, or globes.

(7) Only a police vehicle or an authorized emergency vehicle may be equipped with the means to flash or alternate its headlamps or its backup lights.

(8) A violation of 61-9-402(4)(a) is considered reckless endangerment of highway workers, as provided in 61-8-315, and is punishable as provided in 61-8-715(2)."

Section 6. Section 61-9-416, MCA, is amended to read:

"61-9-416. Commercial tow truck definition — requirements. (1) "Commercial tow truck" means a motor vehicle operating for compensation that is equipped with specialized equipment designed and intended for towing or the recovery of wrecked, disabled, or abandoned vehicles or other objects creating a hazard on the public roadways. A commercial tow truck must be equipped with:

(a) not less than two red flares, two red lanterns, or two warning lights or reflectors. The reflectors must be of a type approved by the department.

(b) at least two highway warning signs ~~of a uniform type, with dimensions of 3 x 3 feet, lettering 5 inches high, and reflectorized orange background and black border, as prescribed by the department. The signs must be designed to be visible both day and night. The warning signs must bear the words "wreck ahead", "tow truck ahead", or "wrecker ahead", as prescribed by the department~~ *as provided in [section 7].*

(c) a dry chemical fire extinguisher of at least 5 pound capacity or an equivalent alternative type of fire extinguisher, approved by the department;

(d) a lamp emitting a flashing red or amber light meeting the requirements of 61-9-402(5), or both a red and amber light, mounted on top of the cab of the tow truck or on the top of the crane or hoist if the light can be seen from the front of the tow truck. The light from the lamp must be visible for a distance of 1,000 feet under normal atmospheric conditions and must be mounted so that it can be securely fastened with the lens of the lamp facing the rear of the tow truck upon which it is mounted. When standing at the location from which the disabled vehicle is to be towed, the operator of the tow truck may unfasten the red light and place it in a position considered advisable to warn approaching drivers. When the disabled vehicle is ready for towing, the red light must be turned to the rear of the tow truck upon which it is mounted and securely locked in this position. Additional red or amber lights of an approved type may be displayed at either side or both sides of the tow truck during the period of preparation at the location from which the disabled vehicle is to be towed.

(e) one or more brooms, and the operator of the tow truck engaged to remove a disabled vehicle from the scene of an accident shall remove all glass and debris deposited upon the roadway by the disabled vehicle that is to be towed;

HeinOnline -- 1999 vol. II 2225 1999

(f) a shovel, and whenever practical, the tow truck operator engaged to remove a disabled vehicle shall spread dirt upon that portion of the roadway where oil or grease has been deposited by the disabled vehicle; and

(g) a portable electrical extension cord or other device for use in displaying stop, turn, and taillamps on the rear of the disabled vehicle. The length of the extension cord may not he less than the length of the combined vehicles. When a disabled vehicle is towed, the tow truck operator shall provide for the rear light that is capable of displaying a stop signal, turn signal, and taillamps by means of the extension cord or other device referred to in this subsection.

(2) The operator of a commercial tow truck used for the purpose of rendering assistance to other vehicles shall, when the rendering of assistance necessitates the obstruction of a portion of the roadway, place a highway warning sign as required in ~~subsection (1)(b):~~

~~(a) in an area in which the posted speed limit is 45 miles an hour or less, not less than 450 feet in advance of the disabled vehicle and an equal distance to the rear of the disabled vehicle; and~~

~~(b) in an area in which the posted speed limit is more than 45 miles an hour or no speed limit is posted, 600 feet in advance of the disabled vehicle, except on a divided highway where the disabled vehicle does not cause disruption of traffic traveling on the opposite side of the divided highway, and an equal distance to the rear of the disabled vehicle.~~

~~(3) A local government unit may adopt an ordinance exempting a commercial tow truck operator from the requirements of subsection (2) within the limits of an incorporated city or town.~~

~~(4) When a motor vehicle is disabled on the highway during the hours of darkness, the tow truck operator called to render assistance shall immediately upon arrival place warning signs upon the highway as prescribed in this section and shall also place not less than one red flare, red lantern, or warning light or reflector in close proximity to each warning sign.~~

~~(5)~~ *[section 7].*

(3) The owner or operator of a commercial tow truck who complies with the requirements of 61-8-906 and 61-8-907 and this section may stop or park the tow truck upon a highway for the purpose of rendering assistance to a disabled vehicle, notwithstanding other provisions of this code.

(4) A commercial tow truck company that is in compliance with [section 7] and that is operating an emergency service vehicle and using signal equipment in rendering assistance at a highway crash scene or in response to any other hazard on the roadway that presents an immediate hazard or an emergency or life-threatening situation is not liable, except for willful misconduct, bad faith, or gross negligence, for injuries, costs, damages, expenses, or other liabilities resulting from a motorist operating a vehicle in violation of 61-9-402(4)."

Section 7. Use of warning signs, flares, reflectors, lanterns, flag persons. (1) The operator of a commercial tow truck, in compliance with the requirements of 61-8-906 and 61-8-907, shall, when rendering assistance at a hazard on the highway that necessitates the obstruction of a portion or all of the roadway, place at least two warning signs as required in this section as soon as is practicable under the circumstances. Flag persons and cones may be used to augment the warning signs.

HeinOnline -- 1999 vol. II 2226 1999

(2) Highway warning signs must be of a uniform type, with dimensions of 3 x 3 feet, lettering 5 inches bigh, and reflectorized orange background and black border, as prescribed by the department. The signs must be designed to be visible both day and night. The warning signs must bear the words "hazard ahead", "lane closed ahead", "road closed ahead", "wreck ahead", "tow truck ahead", or "wrecker ahead", as prescribed by the department.

(3) The operator of a commercial tow truck used for the purpose of rendering assistance at a hazard on the highway that necessitates the obstruction of a portion of the roadway shall place a highway warning sign as required in subsection (2):

(a) in an area in which the posted speed limit is 45 miles an hour or less, not less than 600 feet in advance of the hazard and an equal distance to the rear of the hazard; and

(b) in an area in which the posted speed limit is more than 45 miles an hour or no speed limit is posted, 1,000 feet in advance of the hazard, except on a divided highway where the hazard does not cause disruption of traffic traveling on the opposite side of the divided highway, and an equal distance to the rear of the hazard.

(4) A local government unit may adopt an ordinance exempting an operator of a commercial tow truck from the requirements of subsection (2) within the limits of an incorporated city or town.

(5) When a hazard exists on the highway during the hours of darkness, the operator of a commercial tow truck called to render assistance shall place warning signs upon the highway as prescribed in this section and shall also place at least one red flare, red lantern, or warning light or reflector in close proximity to each warning sign.

(6) A violation of warning signs placed as provided in subsection (3) is considered reckless endangerment of highway workers, as provided in 61-8-315, and is punishable as provided in 61-8-715(2).

Section 8. Codification instruction. [Section 7] is intended to be codified as an integral part of Title 61, chapter 9, part 4, and the provisions of Title 61, chapter 9, part 4, apply to [section 7].

Approved April 30, 1999

CHAPTER NO. 521

[HB 302]

AN ACT REQUIRING ALL INTEREST EARNED ON DEVELOPMENT LOANS TO MICROBUSINESS DEVELOPMENT CORPORATIONS TO BE DEPOSITED INTO THE MICROBUSINESS FINANCE PROGRAM ADMINISTRATIVE ACCOUNT; ALLOWING A MICROBUSINESS DEVELOPMENT CORPORATION TO CHOOSE THE INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT FOR ITS ANNUAL AUDIT; CLARIFYING THAT THE DEPARTMENT OF COMMERCE HAS A FIRST LIEN ON ALL FUNDS AND RECEIVABLES OF A MICROBUSINESS DEVELOPMENT CORPORATION RECEIVING A DEVELOPMENT LOAN; AND AMENDING SECTION 17-6-407, MCA.

HeinOnline -- 1999 vol. II 2227 1999

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 17-6-407, MCA, is amended to read:

"17-6-407. Microbusiness development loan account and finance program administrative account — criteria — limitations. (1) There is in the state special revenue fund a microbusiness development loan account into which the funds appropriated pursuant to section 11, Chapter 602, Laws of 1991, money appropriated pursuant to section 3, Chapter 413, Laws of 1995, and money received in repayment of the principal of development loans must be deposited. The department may make development loans from the account ~~in amounts not to exceed $250,000 a loan~~ to a certified microbusiness development corporation.

(2) There is in the state special revenue fund a microbusiness finance program administrative account into which *must be deposited:*

(a) all interest received on development loans *received directly from microbusiness development corporations*~~,~~*;*

(b) service charges or fees received from certified microbusiness development corporations~~,~~*; and*

(c) grants, donations, and private or public income ~~must be deposited~~.

(3) Money in the administrative account may be transferred to the development loan account or be used to pay the costs of the program, including personnel, travel, equipment, supplies, consulting costs, and other operating expenses of the program.

~~(3)~~*(4)* Subject to subsection (1), a certified microbusiness development corporation that receives a development loan may apply for an additional loan if the applicant meets the performance criteria established by the department.

~~(4)~~*(5)* To establish the criteria for making development loans, the department shall consider:

(a) the plan for providing services to microbusinesses;

(b) the scope of services to be provided by the certified microbusiness development corporation;

(c) *the* geographic representation of all regions of the state, including both urban and rural communities;

(d) the plan for providing service to minorities, women, and low-income persons;

(e) the ability of the corporation to provide business training and technical assistance to microbusiness clients;

(f) the ability of the corporation, with its plan, to:

(i) monitor and provide financial oversight of recipients of microbusiness loans;

(ii) administer a revolving loan fund; and

(iii) investigate and qualify financing proposals and to service credit accounts;

(g) sources and sufficiency of operating funds for the certified microbusiness development corporation; and

HeinOnline -- 1999 vol. II 2228 1999

(h) the intent of the corporation, with its plan and written indications of local institutional support, to provide services to a designated multicounty region of the state.

~~(5)~~*(6)* Development loan funds may be used by a certified microbusiness development corporation to:

(a) satisfy matching fund requirements for other state, federal, or private funding only if funding is intended and used for the purpose of providing or enhancing the certified microbusiness development corporation's ability to provide and administer loans, technical assistance, or management training to microbusinesses;

(b) establish a revolving loan fund from which the certified microbusiness development corporation may make loans to qualified microbusinesses, provided that a single loan does not exceed $35,000 and the outstanding balance of all loans to a microbusiness or a project participated in by more than one microbusiness or to two or more microbusinesses in which any one person holds more than a 20% equity share does not exceed $35,000;

(c) establish a guarantee fund from which the certified microbusiness development corporation may guarantee loans made by financial institutions to qualified microbusinesses. However, a single guarantee may not exceed $35,000, and the aggregate of all guarantees to a microbusiness or a project participated in by more than one microbusiness or to two or more microbusinesses in which any one person holds more than a 20% equity share may not exceed $35,000.

~~(5)~~*(7)* Development loan funds may not be:

(a) loaned for relending or investment in stocks, bonds, or other securities or for property not intended for use in production by the recipient of the loan; or

(b) used to:

(i) refinance a nonperforming loan held by a financial institution; or

(ii) pay the operating costs of a certified microbusiness development corporation. However, interest income earned from the proceeds of a development loan may be used to pay operating expenses.

~~(7)~~*(8)* Certified microbusiness development corporations are required to contribute cash from other sources to leverage and secure development loans from the program. Contributions provided by the corporation must be on a ratio of at least $1 from other sources for each $6 from the program. These contributions may come from a public or private source other than the program and may be in the form of equity capital, loans, or grants.

~~(8)~~*(9)* Development loans must be made pursuant to a development loan agreement and may be amortization or term loans, bear interest at less than the market rate, be renewable, be callable, and contain other terms and conditions considered appropriate by the department that are consistent with the purposes of and with rules promulgated to implement this part.

~~(9)~~*(10)*~~(a) Unless subject to federal law or rule, each certified microbusiness development corporation that receives a development loan under this part shall pay the cost of an audit of its operations to be conducted at least once every 2 years. The department shall designate an auditor to conduct the audit.~~

~~(b) If an audit is performed under a requirement of federal law or rule, the department shall waive the audit required in subsection (9)(a) with respect to all~~

~~issues addressed by the federal audit report. However, the department may require an audit of matters that are not, in the department's judgment, addressed by the federal report -- for example, verification of compliance with requirements specific to the program, such as job generation standards and reporting.~~ *Each certified microbusiness development corporation that receives a development loan under this part shall provide the department with an annual audit from an independent certified public accountant. The audit must cover all of the microbusiness development corporation's activities and must include verification of compliance with requirements specific to the microbusiness program.*

~~(10)~~*(11)* A certified microbusiness development corporation that is in default for nonperformance under rules established by the department may be required to refund the outstanding balance of development loans awarded prior to the default declaration. A development loan is secured by a first lien on *all funds and all* ~~the~~ receivables ~~of~~ *administered under the authority of the microbusiness development act by* the corporation receiving the loan."

Approved April 29, 1999

CHAPTER NO. 522

[HB 341]

AN ACT PROHIBITING OIL OR GAS EXPLORATION AND DEVELOPMENT IN MAKOSHIKA STATE PARK FROM DISTURBING THE SURFACE OF THE STATE PARK; ALLOWING OIL AND GAS DEVELOPMENT IN CERTAIN INSTANCES; AMENDING SECTION 82-11-127, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-11-127, MCA, is amended to read:

"82-11-127. Prohibited activity — *Makoshika state park.* (1) ~~No~~ *A* person may *not*:

(a) cause pollution of any state waters or place or cause to be placed any liquid, gaseous, solid, or other substance in a location where the substance is likely to cause pollution of any state waters;

(b) violate any provision set forth in a permit or stipulation, including but not limited to limitations and conditions contained in it;

(c) violate an order issued pursuant to this chapter; or

(d) violate a provision of this chapter.

(2) ~~No~~ *A* person may *not* drill, construct, convert, or operate a class II injection well or drill an oil or gas well or stratigraphic test well or core hole as described under 82-11-134 without a valid permit or order from the board.

(3) Except as provided in subsection (5), on lands managed as Makoshika state park, pursuant to Title 23, chapter 1, and under the control of the department of fish, wildlife, and parks, by grant, acquisition, lease, easement, or other means, a person may not:

(a) drill, construct, convert, or operate an oil or gas well, stratigraphic test well, or core hole;

HeinOnline -- 1999 vol. II 2230 1999

(b) conduct vibroseis, drill a seismic shot hole, or set a surface charge;

(c) explore for oil or gas in a manner that damages the land surface; or

(d) construct or place any surface facility associated with oil or gas exploration or development.

(4) The prohibitions in subsection (3) do not preclude the development of oil or gas resources from beneath Makoshika state park through directional drilling or access from property outside the boundaries of the state park provided that the surface resources of the state park are not disturbed.

(5) The prohibitions listed in subsection (3) do not apply to oil or gas resources within Makoshika state park that are owned by a private person, nor do the prohibitions apply to school trust lands within the boundaries of the park. The state acknowledges the mineral rights of Dawson County and the state school trust and the private property rights of persons owning private mineral rights within Makoshika state park. The department of fish, wildlife, and parks is directed to conduct negotiations with the owners of mineral rights within Makoshika state park, with the purpose of acquiring those rights in the name of the state, and to report the results of the negotiations to the legislature no later than January 8, 2001."

Section 2. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 3. Effective date. [This act] is effective on passage and approval.

Approved April 29, 1999

CHAPTER NO. 523

[HB 374]

AN ACT REQUIRING THAT THE DISTRICT COURT HOLD A HEARING BEFORE MAKING ITS DECISION THAT A YOUTH SHOULD BE TRIED AS AN ADULT; ABOLISHING THE DEATH PENALTY FOR OFFENDERS LESS THAN 18 YEARS OF AGE AT THE TIME OF THE COMMISSION OF A CAPITAL OFFENSE; AND AMENDING SECTIONS 41-5-206, 41-5-1501, 45-5-102, AND 45-5-503, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-5-206, MCA, is amended to read:

"41-5-206. Filing in district court prior to formal proceedings in youth court. (1) The county attorney may, in the county attorney's discretion *and in accordance with the procedure provided in 46-11-201*, file with the district court a motion for leave to file an information in the district court if:

(a) the youth charged was 12 years of age or older at the time of the conduct alleged to be unlawful and the unlawful act would if it had been committed by an adult constitute:

(i) sexual intercourse without consent as defined in 45-5-503;

(ii) deliberate homicide as defined in 45-5-102;

HeinOnline -- 1999 vol. II 2231 1999

(iii) mitigated deliberate homicide as defined in 45-5-103; or

(iv) the attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for either deliberate or mitigated deliberate homicide; or

(b) the youth charged was 16 years of age or older at the time of the conduct alleged to be unlawful and the unlawful act is one or more of the following:

(i) negligent homicide as defined in 45-5-104;

(ii) arson as defined in 45-6-103;

(iii) aggravated or felony assault as defined in 45-5-202;

(iv) robbery as defined in 45-5-401;

(v) burglary or aggravated burglary as defined in 45-6-204;

(vi) aggravated kidnapping as defined in 45-5-303;

(vii) possession of explosives as defined in 45-8-335;

(viii) criminal sale of dangerous drugs as defined in 45-9-101;

(ix) criminal production or manufacture of dangerous drugs as defined in 45-9-110;

(x) attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for any of the acts enumerated in subsections (1)(b)(i) through ~~(1)(b)(x)~~ *(1)(b)(xi)*;

(xi) use of threat to coerce criminal street gang membership or use of violence to coerce criminal street gang membership, as defined in 45-8-403.

(2) The county attorney shall file with the district court a petition for leave to file an information in district court if the youth was 17 years of age at the time the youth committed an offense listed under subsection (1).

(3) The district court shall grant leave to file the information if ~~the court finds~~ *it appears from the affidavit or other evidence supplied by the county attorney* that there is probable cause to believe that the youth has committed the alleged offense. ~~and that, considering the seriousness of the offense and in the interests of community protection,~~ *Within 30 days after leave to file the information is granted, the district court shall conduct a hearing to determine whether the matter must be transferred back to the youth court, unless the hearing is waived by the youth or by the youth's counsel in writing or on the record. The hearing may be continued on request of either party for good cause. The district court may not transfer the case back to the youth court if the district court finds, by a preponderance of the evidence, that a youth court proceeding and disposition will not serve the interests of community protection and the best interests of the youth, and that, considering the seriousness of the offense,* the case should ~~be filed~~ *remain* in the district court.

(4) The filing of an information in district court terminates the jurisdiction of the youth court over the youth with respect to the acts alleged in the information. A youth may not he prosecuted in the district court for a criminal offense originally subject to the jurisdiction of the youth court unless the case has been filed in the district court as provided in this section. A case may be transferred to district court after prosecution as provided in 41-5-208 or 41-5-1605.

HeinOnline -- 1999 vol. II 2232 1999

(5) An offense not enumerated in subsection (1) that arises during the commission of a crime enumerated in subsection (1) may be:

(a) tried in youth court;

(b) transferred to district court with an offense enumerated in subsection (1) upon motion of the county attorney and order of the district court ~~judge~~. *The district court shall hold a hearing before deciding the motion.*

(6) If a youth is found guilty in district court of ~~any of the offenses~~ *an offense* enumerated in subsection (1) and is sentenced to the state prison, the commitment must be to the department of corrections. The department shall confine the youth in ~~whatever~~ *an* institution that it considers proper, including a state youth correctional facility under the procedures of 52-5-111. However, a youth under 16 years of age may not be confined in a state prison facility. During the period of confinement, school-aged youth with disabilities must be provided an education consistent with the requirements of the federal Individuals with Disabilities Education Act, 20 U.S.C. 1400, et seq.

(7) A youth whose case is filed in the district court may not be detained or otherwise placed in a jail or other adult detention facility before final disposition of the youth's case unless:

(a) alternative facilities do not provide adequate security; and

(b) the youth is kept in an area that provides physical separation as well as sight and sound separation from adults accused or convicted of criminal offenses."

Section 2. Section 41-5-1501, MCA, is amended to read:

"41-5-1501. Consent decree with petition. (1) (a) Subject to the provisions of subsection (2), after the filing of a petition under 41-5-1402 and before the entry of a judgment, the court may, on motion of counsel for the youth or on the court's own motion, suspend the proceedings and continue the youth under supervision under terms and conditions negotiated with probation services and agreed to by all necessary parties. The court's order continuing the ~~child~~ *youth* under supervision under this section is known as a "consent decree". Except as provided in subsection (1)(b), the procedures used and dispositions permitted under this section must conform to the procedures and dispositions specified in 41-5-1302 through 41-5-1304 relating to consent adjustments without petition and the responsibility of the youth's parents or guardians to pay a contribution for the costs of placement in substitute care.

(b) A youth may be placed in detention for up to 10 days on a space-available basis at the county's expense, which is not reimbursable under part 19 of this chapter.

(2) A consent decree under this section may not be used by the court unless the youth admits guilt for ~~any charges~~ *a charge* of an offense set forth in the petition and accepts responsibility for the youth's actions.

(3) If the youth or the youth's counsel objects to a consent decree, the court shall proceed to findings, adjudication, and disposition of the case.

(4) If, either prior to discharge by probation services or expiration of the consent decree, a new petition alleging that the youth is a delinquent youth or a youth in need of intervention is filed against the youth or if the youth fails to fulfill the expressed terms and conditions of the consent decree, the petition

HeinOnline -- 1999 vol. II 2233 1999

under which the youth was continued under supervision may be reinstated in the discretion of the county attorney in consultation with probation services. In the event of reinstatement, the proceeding on the petition must be continued to conclusion as if the consent decree had never been entered.

(5) A youth who is discharged by probation services or who completes a period under supervision without reinstatement of the original petition may not again be proceeded against in any court for the same offense alleged in the petition, and the original petition must be dismissed with prejudice. This subsection does not preclude a civil suit against the youth for damages arising from the youth's conduct.

(6) ~~In all cases in which~~ *If* the terms of the consent decree extend for a period in excess of 6 months, the probation officer shall at the end of each 6-month period submit a report that must be reviewed by the court.

~~(7) A consent decree with petition under this section may not be used to dispose of a youth's alleged second or subsequent offense if that offense would be a felony if committed by an adult or third or subsequent offense if that offense would be a misdemeanor if committed by an adult.~~

(7) A consent decree with petition under this section may not be used to dispose of a youth's alleged second or subsequent offense if that offense would be a felony if committed by an adult or third or subsequent offense if that offense would be a misdemeanor if committed by an adult."

Section 3. Section 45-5-102, MCA, is amended to read:

"**45-5-102. Deliberate homicide.** (1) A person commits the offense of deliberate homicide if:

(a) the person purposely or knowingly causes the death of another human being; or

(b) the person attempts to commit, commits, or is legally accountable for the attempt or commission of rohbery, sexual intercourse without consent, arson, burglary, kidnapping, aggravated kidnapping, felonious escape, felony assault, aggravated assault, or any other forcible felony and in the course of the forcible felony or flight thereafter, the person or any person legally accountable for the crime causes the death of another human being.

(2) A person convicted of the offense of deliberate homicide shall be punished by death as provided in 46-18-301 through 46-18-310, *unless the person is less than 18 years of age at the time of the commission of the offense*, by life imprisonment, or by imprisonment in the state prison for a term of not less than 10 years or more than 100 years, except as provided in 46-18-219 and 46-18-222."

Section 4. Section 45-5-503, MCA, is amended to read:

"**45-5-503. Sexual intercourse without consent.** (1) A person who knowingly has sexual intercourse without consent with another person commits the offense of sexual intercourse without consent. A person may not be convicted under this section based on tbe age of the person's spouse, as provided in 45-5-501(1)(b)(iii).

(2) A person convicted of sexual intercourse without consent shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 2 years or more than 100 years and may be fined not more than $50,000, except as provided in 46-18-219 and 46-18-222.

HeinOnline -- 1999 vol. II 2234 1999

(3) (a) If the victim is less than 16 years old and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual intercourse without consent, the offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and may be fined not more than $50,000, except as provided in 46-18-219 and 46-18-222.

(b) If two or more persons are convicted of sexual intercourse without consent with the same victim in an incident in which each offender was present at the location where another offender's offense occurred during a time period in which each offender could have reasonably known of the other's offense, each offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 5 years or more than 100 years and may be fined not more than $50,000, except as provided in 46-18-219 and 46-18-222.

(c) If the offender was previously convicted of an offense under this section or of an offense under the laws of another state or of the United States that if committed in this state would be an offense under this section and if the offender inflicted serious bodily injury upon a person in the course of committing each offense, the offender shall be:

(i) punished by death as provided in 46-18-301 through 46-18-310, *unless the offender is less than 18 years of age at the time of the commission of the offense*; or

(ii) punished as provided in 46-18-219.

(4) In addition to any sentence imposed under subsection (2) or (3), after determining the financial resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable medical and counseling costs that result from the offense. The amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244.

(5) As used in subsection (3), an act "in the course of committing sexual intercourse without consent" includes an attempt to commit the offense or flight after the attempt or commission."

Approved April 30, 1999

CHAPTER NO. 524

[HB 420]

AN ACT REVISING THE DEFINITION OF "RECEIPTS RECEIVED" TO INCLUDE TRANSPORTATION COSTS AS A DEDUCTION FOR THE PURPOSES OF DETERMINING THE GROSS PROCEEDS TAX OF METAL MINES AND THE METALLIFEROUS MINES LICENSE TAX; AMENDING SECTION 15-23-801, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-23-801, MCA, is amended to read:

"15-23-801. Definitions. As used in this part, the following definitions apply:

HeinOnline -- 1999 vol. II 2235 1999

(1) "Agreement not at arm's length" means an agreement between parties ~~where~~ *when* the sales price does not represent market value.

~~(2) "Department" means the department of revenue.~~

~~(3)~~*(2)* "Gross proceeds" or "gross metal yield" or "gross value of product" means the receipts realized from the extraction and sale of metals or concentrate containing metals.

~~(4)~~*(3)* "Merchantable value" means the receipts of all salable metals produced or extracted in a county over a 12-month period. If the extracted ores are milled, smelted, or reduced by the taxpayer, *then* the merchantable value in the county in which they are extracted is the receipts received for these metals after processing.

~~(5)~~*(4)* "Receipts received" means the monetary payment or refined metal received by the mining company from the metal trader, smelter, roaster, or refinery, determined by multiplying the quantity of metal received by the metal trader, smelter, roaster, or refinery by the quoted price for the metal and then subtracting *the following:*

(a) basic treatment and refinery charges~~,~~;

(b) costs of transporting the mineral product from the mine or mill to the smelter or other processor, including costs of demurrage, storage, interest, and other miscellaneous costs related to transporting the mineral product;

(c) quantity deductions~~,~~;

(d) price deductions~~,~~;

(e) interest~~,~~; and

(f) penalty metal, impurity, and moisture deductions as specified by contract between the mining company and the receiving metal trader, smelter, roaster, or refinery. ~~Deductions are not allowed, either directly or indirectly as an offset to payments, for the cost of transportation from the mine or mill to the smelter, roaster, or refinery. Demurrage, storage, interest, or any other miscellaneous costs related to transporting the mineral product are considered transportation and are not deductible.~~"

Section 2. Effective date — retroactive applicability. [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to metal mine production occurring after December 31, 1998.

Approved April 30, 1999

CHAPTER NO. 525

[HB 478]

AN ACT ALLOWING THE FISH, WILDLIFE, AND PARKS COMMISSION TO SET THE NUMBER OF NONRESIDENT UPLAND GAME BIRD LICENSES SOLD IF CERTAIN CONDITIONS ARE MET; PROVIDING THAT THE LICENSES MAY BE AWARDED THROUGH A DRAWING; ALLOWING THE COMMISSION TO DEVELOP RULES FOR GROUP LICENSE APPLICATIONS; INCREASING THE LICENSE FEE TO $110; AMENDING SECTION 87-2-402, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND A TERMINATION DATE.

HeinOnline -- 1999 vol. II 2236 1999

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-2-402, MCA, is amended to read:

"87-2-402. Class B-1—nonresident upland game bird license *authority to limit licenses.* *(1)* Except as otherwise provided in this chapter, a person who is not a resident, as defined in 87-2-102, hut who is 12 years of age or older, upon payment of a fee of ~~$55~~ *$110* may receive a Class B-1 license that entitles the holder to hunt upland game birds and possess the carcasses of upland game birds as authorized by department rules.

(2) (a) After providing public notice and holding a public hearing, the commission may set the number of Class B-1 nonresident upland game bird licenses to be sold in any license year and institute a drawing system to award the licenses, provided that the commission has analyzed the impacts on landowners, outfitters, bird populations, local communities, local economies, private property rights, and hunting access opportunities for resident and nonresident upland gamc bird hunters.

(b) If the commission establishes a limit on the number of Class B-1 nonresident upland game bird licenses to be sold as authorized in subsection (2)(a), the commission shall provide documentation of the analysis required in subsection (2)(a) and shall provide justification for its decision to establish a limit.

(c) The commission may not set aside any number of licenses issued under this section for the clients of licensed outfitters.

(3) If the commission establishes a limit on the number of licenses to be sold as authorized in subsection (2)(a), the department shall prepare a report for the 58th legislature that tracks upland game bird populations and numbers of nonresident licenses sold. The report must also include the results of the analysis required under subsection (2)(a).

(4) If the commission sets limits as authorizcd in subsection (2), the commission may develop and adopt rules that provide for a group of applicants to participate in the drawing system under one application. The rules must clarify that each member of a group that is successful in the drawing must still obtain thc license required by this section."

Section 2. Effective date. [This act] is effective March 1, 2000.

Section 3. Termination. [This act] terminates January 1, 2003.

Approved April 29, 1999

CHAPTER NO. 526

[HB 506]

AN ACT PROVIDING CONSUMERS CLEARER CHOICE IN AUTO GLASS INSTALLATION AND OTHER REPAIRS BY CLARIFYING WHAT INFORMATION AN INSURER MAY GIVE AN INSURED OR CLAIMANT; MAKING THE DIRECTING OF CONSUMERS BY INSURERS TO PARTICULAR AUTOMOBILE REPAIR BUSINESSES AN UNFAIR TRADE PRACTICE; PROHIBITING CERTAIN PERSONS FROM PROCESSING AUTO GLASS AND O'THER REPAIR CLAIMS; PROHIBITING DISCRIMINATION AGAINST INSURED CUSTOMERS FOR AUTOMOBILE GLASS REPLACEMENT SERVICES; PROVIDING FOR INJUNCTIONS

HeinOnline -- 1999 vol. II 2237 1999

AGAINST PROHIBITED PRACTICES; AND AMENDING SECTIONS 30-14-225, 33-18-221, 33-18-222, 33-18-223, 33-18-224, AND 33-18-1006, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 30-14-225, MCA, is amended to read:

"30-14-225. Prohibited practices — advertising allowed. (1) A person engaged in *automobile repair or* the sale, repair, or replacement of automobile glass may not:

(a) advertise, promise to provide, or offer any coupon, credit, or rebate to pay all or part of an insurance deductible under a casualty or property insurance policy; or

(b) pay a sum or incentive to an individual or entity for directing *automobile repair services or* glass replacement or repair or the purchase of a glass product.

(2) A person or association of persons engaged in *automobile repair services or* the sale, repair, or replacement of automobile glass may advertise services as to quality, service, and safety.

(3) A glass broker, as defined in 33-18-223, *or an automobile repair business* may not manage, handle, or arrange automohile glass replacement or glass repair work *or automobile repair services* for which the glass broker *or the automobile repair business* retains a percentage of the claim.

(4) Except as provided in 33-18-224, in a communication between an insurer and an insured regarding an insurance claim, the insurer may not:

(a) require, suggest, or encourage the use of the name of a particular automobile repair business or location; or

(b) mention or provide the name of a particular automobile repair business or location."

Section 2. Section 33-18-221, MCA, is amended to read:

"33-18-221. Designation of specific repair shops *and discrimination against insured customers* prohibited — lists allowed. (1) An insurance company, including its producers and adjusters, that issues or renews a policy of insurance in this state covering, in whole or part, a motor vehicle may not:

(a) require that a person insured under the policy use a particular company or location for providing automobile glass replacement, glass repair services, or glass products insured in whole or part by the policy; or

(h) engage in any act or practice of intimidation, coercion, or threat for or against an insured person to use a particular company or location to provide automobile glass replacement, glass repair services, or glass products insured in whole or in part under the terms of an insurance policy.

(2) (a) An insurance company may provide an insured with a list that includes the names of particular companies or locations providing automobile glass replacement, glass repair services, or glass products if some of the listed companies or locations are reasonably close and convenient to the insured. The insurance company may restrict the list to those companies or locations that meet reasonahle standards of quality, service, and safety.

(h) The insured may use a nonlisted company or location at the insured's sole discretion, and subject to the provisions of subsections (2)(c) and (3), the

HeinOnline -- 1999 vol. II 2238 1999

insurance company will fully and promptly pay for the cost of automobile glass replacement, glass repair services, or glass products provided, less any deductible under the terms of the policy.

(c) If the insured does not use a list as provided in subsection (2)(a), the insurer may require the insured to obtain not more than three competitive bids to establish the cost of automohile glass replacement, glass repair services, or glass products provided.

(3) This section does not require an insurer to pay more for automobile glass replacement, glass repair services, or glass products than the ~~lowest~~ prevailing market price as defined in 33-18-222.

(4) Notwithstanding the provisions of subsections (1) through (3), an insurance company may agree to pay the full cost of glass replacement or repair.

(5) It is unlawful for a company or location that provides automobile glass replacement services to charge or agree to charge an insured customer more than an uninsured customer for any automobile glass replacement service."

Section 3. Section 33-18-222, MCA, is amended to read:

"33-18-222. ~~Lowest prevailing~~ *Prevailing* market price. For purposes of 33-18-221, ~~and~~ 33-18-223, *and 33-18-224,* "~~lowest~~ prevailing market price" means the ~~lowest~~ *lowest competitive and generally accepted* market price in a local area. The ~~lowest~~ prevailing market price may not be less than cost as provided in 30-14-209."

Seetion 4. Section 33-18-223, MCA, is amended to read:

"33-18-223. Prohibited activities — glass broker defined. (1) It is unlawful for an insurance company, individually or with others, to directly or indirectly:

(a) establish an agreement with any person to act as a glass broker for the insurance company under which the glass broker sets a price that must be met by a glass repair shop as a condition for doing glass replacement or glass repair work for the insurance company;

(b) establish an agreement with a glass broker that requires a glass repair shop to bill through that glass broker as a condition of doing glass replacement or glass repair work; ~~or~~

(c) establish a price that must be met by a glass repair shop as a condition for doing glass replacement or glass repair work that is below the ~~lowest~~ prevailing market price as provided in 33-18-222;

(d) establish an agreement for the processing of claims or bills with a glass broker or with an entity that has a financial interest in an entity in this state that installs or provides glass for installation; or

(e) share information obtained through the processing of glass replacement or glass repair bills with an entity that is involved directly or indirectly in any aspect of the glass manufacturing, replacement, or repair business.

(2) As used in this section, "glass broker" means an automobile glass company that acts as a third-party agent for the insurer whenever the glass broker enters into agreements with other automobile glass dealers to perform glass replacement or glass repair work *or that installs or manufactures glass or provides glass for installation."*

HeinOnline -- 1999 vol. II 2239 1999

Section 5. Section 33-18-224, MCA, is amended to read:

"33-18-224. Designation of specific automobile ~~body~~ repair shops prohibited — *certain requirements* — *allowances*. (1) An insurance company, including its ~~producers~~ *employees* and adjusters, that issues or renews a policy of insurance in this state covering, in whole or in part, a motor vehicle may not:

(a) require ~~that~~ *or encourage* a person insured *or a claimant* under the policy *to* use a particular automobile repair business or location; ~~or~~

(b) engage in any act or practice that intimidates, coerces, or threatens an insured person *or a claimant* or provides an incentive or inducement for an insured person *or a claimant* to use a particular automobile repair business or location;

(c) except as provided in subsection (2):

(i) suggest the use of a particular automobile repair business or location;

(ii) mention or provide the name of a particular automobile repair business or location;

(iii) direct an insured or claimant to an automobile repair business or location or entity in Montana that engages in or has a financial interest in the processing of a claim or bill unless the business or location has been selected by the insured or claimant; or

(iv) share information obtained through the processing of an automobile repair bill with an entity that is involved directly or indirectly in any aspect of the automobile repair business.; or

(d) suggest or direct its appointed producers to suggest, mention, provide the name of, or encourage the use of a particular automobile repair business or location to an insured person or a claimant.

(2) (a) Subsections (1)(a), (1)(b), and (1)(c)(iii) apply to all insurance producers; and

(b) subsections (1)(c)(i) and (1)(c)(ii) apply only to insurance producers that:

(i) write automobile insurance for primarily one insurer; or

(ii) are contractually obligated to use one automobile insurer before using other insurers.

~~(2)~~*(3)* ~~For the purposes of this section, an incentive or inducement does not include~~ *An insurer may*:

(a) ~~providing~~ *provide* an insured person or a ~~customer~~ *claimant* with a list of all established automobile repair businesses or locations reasonably close to the insured person or ~~customer~~ *claimant* that offer a warranty for the automobile repair services provided by the businesses or locations; *or*

(b) ~~providing~~ *provide* an insured person or a ~~customer~~ *claimant* with a list of particular ~~body shops~~ *automobile repair businesses or locations that are reasonably close to the insured person or claimant* ~~meeting~~ *that meet* reasonable standards of quality, service, and safety ~~when the list is requested by the insured person or customer; or~~

~~(c) referring to a warranty issued by an automobile repair business or location~~.

HeinOnline -- 1999 vol. II 2240 1999

~~(3)~~*(4) If an insurer elects to provide an insured person or a claimant with the list described in subsection (3)(b), the insurer shall:*

(a) upon the request of any automobile repair business or location, make available the reasonable standards of quality, service, and safety that are to be met by automobile repair businesses or locations in order to be placed on the list. The standards may not exclude a business or location from being on the list solely on the basis of the size or location of the automobile repair business, the number of persons employed in the business, or pricing other than what is fair or reasonable in the market area of the automobile repair business or location.

(b) include on the list any automobile repair business or location that meets the standards and indicates in writing to the insurer that the business or location desires to be placed on the list.

(5) In the event of any dispute, the business or location may submit a complaint to the commissioner for a determination in accordance with the provisions of Title 33, chapter 1, part 7.

(6) In distributing the list provided for in subsection (3) to an insured or a claimant or in any discussion of the list with an insured or a claimant, an insurer may not express a preference or mention an advantage or inducement for the insured or the claimant to use a particular automobile repair facility or location on the list.

(7) The insured may use a business or location at the insured's *or claimant's* sole discretion~~, and the~~. *The* insurance company shall pay for the reasonable and necessary cost of the automobile ~~body~~ repair services for covered damages, less any deductible under the terms of the policy. This section does not require an insurer to pay more for automobile ~~body~~ repair services than the ~~lowest~~ prevailing market price, as defined in 33-18-222. *An insurer shall inform the insured person or claimant of the insured person's or claimant's rights under this subsection.*

~~(4)~~*(8)* If the insured person *or claimant* uses an automobile repair business or location not on a list provided under subsection ~~(2)(a) or (2)(b)~~ *(3)(a) or (3)(b)*, the insurance company may not be held liable for any repair work performed by the automobile repair business or location that the insured person chooses to use.

~~(5)~~*(9)* It is unlawful for an automobile repair business or location to charge or agree to charge an insured customer more than an uninsured customer for any automobile repair service.

~~(6)~~*(10)* An insurance company that contracts with an independent adjuster may not be held liable for the independent adjuster's failure to comply with the terms of this section *unless the independent adjuster is clearly acting at the direction of the insurance company.*

~~(7)~~*(11)* For purposes of this section, "automobile repair business or location" does not include a business or location that exclusively provides automobile glass replacement, glass repair services, or glass products."

Section 6. Section 33-18-1006, MCA, is amended to read:

"33-18-1006. Desist orders for prohibited practices — *court injunctions.* *(1)* Violations of 33-18-221 through ~~33-18-223~~ *33-18-224* are subject to cease and desist orders of the commissioner issued under 33-18-1004.

(2) The commissioner, the attorney general, or a county attorney of the county where a violation of 33-18-221 through 33-18-224 is alleged may bring an action

HeinOnline -- 1999 vol. II 2241 1999

to enjoin any further violation of 33-18-221 through 33-18-224 in the first judicial district or in the county where the violation is alleged to have occurred."

Seetion 7. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 30, 1999

CHAPTER NO. 527

[HB 528]

AN ACT IMPLEMENTING ARTICLE X, SECTION 1(2), OF THE MONTANA CONSTITUTION REGARDING THE STATE OF MONTANA'S RECOGNITION OF THE DISTINCT AND UNIQUE CULTURAL HERITAGE OF AMERICAN INDIANS AND THE STATE'S COMMITMENT TO ESTABLISH EDUCATIONAL GOALS THAT WILL PRESERVE THE CULTURAL INTEGRITY OF AMERICAN INDIANS; REPEALING SECTIONS 20-4-211, 20-4-212, 20-4-213, AND 20-4-214, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, as part of the state's educational guarantees, the people of Montana in 1972 included Article X, section 1(2), in the state constitution, recognizing the distinct and unique cultural heritage of American Indians and expressing the state's commitment to preserve that cultural integrity through education; and

WHEREAS, the Legislature recognizes that Article X, section 9(2), of the Montana Constitution provides the Board of Regents with full power, responsibility, and authority to supervise, coordinate, manage, and control the Montana University System; and

WHEREAS, the Legislature also recognizes that Article X, section 9(3), of the Montana Constitution provides the Board of Public Education with general supervision over the public scbool system and that Article X, section 8, of the Montana Constitution vests the supervision and control of the schools in each school district to the local board of trustees; and

WHEREAS, a 1995 study conducted by the Committee on Indian Affairs, pursuant to Senate Joint Resolution No. 11, revealed that despite the constitution's educational guarantees, many school districts and schools, including those adjacent to Montana's seven Indian reservations, had no policy or information in their school curricula recognizing the cultural heritage of American Indians and that the small number of Indian teachers and administrators in public schools resulted in Indian students with no role models and in a lack of cultural awareness and sensitivity among non-Indian students; and

WHEREAS, the Legislature recognizes that the history of Montana and the current problems of the state cannot be adequately understood and the problems cannot be addressed unless both Indians and non-Indians have an understanding of the history, culture, and contemporary contributions of Montana's Indian people.

HeinOnline -- 1999 vol. II 2242 1999

Be it enacted by the Legislature of the State of Montana:

Section 1. Recognition of American Indian cultural heritage — legislative intent. (1) It is the constitutionally declared policy of this state to recognize the distinct and unique cultural heritage of American Indians and to be committed in its educational goals to the preservation of their cultural heritage.

(2) It is the intent of the legislature that in accordance with Article X, section 1(2), of the Montana constitution:

(a) every Montanan, whether Indian or non-Indian, be encouraged to learn about the distinct and unique heritage of American Indians in a culturally responsive manner; and

(b) every educational agency and all educational personnel will work cooperatively with Montana tribes or those tribes that are in close proximity, when providing instruction or when implementing an educational goal or adopting a rule related to the education of each Montana citizen, to include information specific to the cultural heritage and contemporary contributions of American Indians, with particular emphasis on Montana Indian tribal groups and governments.

(3) It is also the intent of [sections 1 through 3], predicated on the belief that all school personnel should have an understanding and awareness of Indian tribes to help them relate effectively with Indian students and parents, that educational personnel provide means by which school personnel will gain an understanding of and appreciation for the American Indian people.

Section 2. American Indian studies — definitions. As used in [sections 1 through 3], the following definitions apply:

(1) "American Indian studies" means instruction pertaining to the history, traditions, customs, values, beliefs, ethics, and contemporary affairs of American Indians, particularly Indian tribal groups in Montana.

(2) "Instruction" means:

(a) a formal course of study or class, developed with the advice and assistance of Indian people, that is offered separately or that is integrated into existing accreditation standards by a unit of the university system or by an accredited tribal community college located in Montana, including a teacher education program within the university system or a tribal community college located in Montana, or by the board of trustees of a school district;

(b) inservice training developed by the superintendent of public instruction in cooperation with educators of Indian descent and made available to school districts;

(c) inservice training provided by a local board of trustees of a school district, which is developed and conducted in cooperation with tribal education departments, tribal community colleges, or other recognized Indian education resource specialists; or

(d) inservice training developed by professional education organizations or associations in cooperation with educators of Indian descent and made available to all certified and classified personnel.

Section 3. Qualification in Indian studies — trustees and noncertified personnel. (1) The board of trustees for an elementary or

HeinOnline -- 1999 vol. II 2243 1999

secondary public school district may require that all of its certified personnel satisfy the requirements for instruction in American Indian studies. Pursuant to Article X, section 8, of the Montana constitution, this requirement may he a local school district requirement with enforcement and administration solely the responsibility of the local hoard of trustees.

(2) Members of boards of trustees and all noncertified personnel in public school districts are encouraged to satisfy the requirements for instruction in American Indian studies.

Section 4. Repealer. Sections 20-4-211, 20-4-212, 20-4-213, and 20-4-214, MCA, are repealed.

Section 5. Notification to tribal governments, school districts, and university system. (1) The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

(2) The secretary of state shall send a copy of [this act] to the superintendent of public instruction for dissemination to every public school district in Montana.

(3) The secretary of state sball send a copy of [this act] to the commissioner of higher education for dissemination to every unit of the Montana university system.

Section 6. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 20, chapter 1, and the provisions of Title 20, chapter 1, apply to [sections 1 through 3].

Section 7. Effective date. [This act] is effective on passage and approval.

Approved April 29, 1999

CHAPTER NO. 528

[HB 536]

AN ACT ESTABLISHING A FIXED ANNUAL ASSESSMENT AMOUNT FOR THE MONTANA COMPREHENSIVE HEALTH ASSOCIATION; AUTHORIZING THE ASSOCIATION TO ABATE ASSESSMENTS; ALLOWING THE ASSOCIATION TO BORROW FROM THE BOARD OF INVESTMENTS; ALLOCATING FUNDS FROM TOBACCO SETTLEMENT PROCEEDS TO SUPPORT THE ASSOCIATION'S HEALTH INSURANCE PLANS; REQUIRING HEALTH MAINTENANCE ORGANIZATIONS TO BE MEMBERS OF THE ASSOCIATION; PROVIDING FOR A SEMIANNUAL REPORT TO THE LEGISLATIVE FINANCE COMMITTEE; AMENDING SECTIONS 33-22-1503, 33-22-1504, 33-22-1513, AND 33-22-1514, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Association autbority for borrowing. (1) If the amount of the annual assessment collected under 33-22-1513(5) and other available funds is insufficient to meet incurred or estimated claims expenses of the association plan and the association portability plan and the operating and administrative expenses of the association, the association may borrow from the board of investments for a period not to exceed 2 years any funds necessary for the continued operation of the association plan and the association portabiiity plar..

HeinOnline -- 1999 vol. II 2244 1999

The loaned funds may be used only to pay incurred or estimated claims expenses of the association plan and the association portability plan and the operating and administrative expenses of the association.

(2) Whenever the association accepts a loan from the board of investments pursuant to this section, it shall repay the loan and any interest required under the terms of the loan through assessments and premium income. In accordance with the constitutions of the United States and the state of Montana, the state pledges that it may not in any way impair the obligations of any loan agreement between the association and the board of investments by repealing the assessment imposed by 33-22-1513(5) or by reducing it below the amount necessary to make annual loan payments.

Section 2. Section 33-22-1503, MCA, is amended to read:

"33-22-1503. Comprehensive health association — mandatory membership. (1) There is established a nonprofit legal entity, to be known as the Montana comprehensive health association, with participating membership consisting of all insurers, insurance arrangements, societies, *health maintenance organizations,* and health service corporations licensed or authorized to do business in this state. The association is exempt from taxation under the laws of this state, and all property owned by the association is exempt from taxation.

(2) All participating members shall maintain their membership in the association as a condition for writing health care benefits policies or contracts in this state. The association shall submit its articles, bylaws, and operating rules to the commissioner for approval.

(3) The association may:

(a) exercise the powers granted to insurers under the laws of this state;

(b) sue or be sued;

(c) enter into contracts with insurers, administrators, similar associations in other states, or other persons for the performance of administrative functions;

(d) establish administrative and accounting procedures for the operation of the association;

(e) provide for the reinsuring of risks incurred as a result of issuing the coverages required by members of the association;

(f) provide for the administration by the association of policies that are reinsured pursuant to subsection (3)(e); and

(g) issue additional types of health insurance policies to provide optional coverage, including medicare supplemental health insurance."

Section 3. Section 33-22-1504, MCA, is amended to read:

"33-22-1504. Association board of directors — organization. (1) There is a board of directors of the association, consisting of eight individuals:

(a) one from each of the five participating members of the association with the highest annual premium volume of disability insurance contracts, *health maintenance organization health care services agreements,* or health service corporation contracts, derived from or on behalf of residents in the previous calendar year, as determined by the commissioner;

HeinOnline -- 1999 vol. II 2245 1999

(b) two members at large who must be participating members of the association, appointed by the commissioner; and

(c) a member at large, appointed by the commissioner to represent the public interest, who shall serve in an advisory capacity only.

(2) Each of the seven board members representing the association members is entitled to a weighted average vote, in person or by proxy, based on the association member's annual Montana premium volume. However, a board member may not have more than 50% of the vote.

(3) Members of the board may be reimbursed from the money of the association for expenses incurred by them because of their service as board members but may not otherwise be compensated by the association for their services. The costs of conducting the meetings of the association and its board of directors must be borne by participating members of the association in accordance with 33-22-1513."

Section 4. Section 33-22-1513, MCA, is amended to read:

"33-22-1513. Operation of association plan and association portability plans. (1) Upon acceptance by the lead carrier under 33-22-1516, an eligible person may enroll in the association plan by payment of the association plan premium to the lead carrier.

(2) Upon application by a federally defined eligible individual to the lead carrier for an association portability plan, the association may not:

(a) decline to offer an association portability plan; or

(b) impose a preexisting condition exclusion with respect to an individual's association portability plan coverage if application for association portability plan coverage is made within 63 days following termination of the applicant's most recent prior creditable coverage.

(3) Not less than 88% of the association plan premiums paid to the lead carrier may be used to pay claims and not more than 12% may be used for payment of the lead carrier's direct and indirect expenses as specified in 33-22-1514.

(4) Any income in excess of the costs incurred by the association in providing reinsurance or administrative services must be held at interest and used by the association to offset past and future losses due to claims expenses of the association plan and the association portability plan or be allocated to reduce association plan premiums.

(5) (a) Each participating member of the association shall share the losses due to claims expenses of the association plan and the association portability plan for plans issued or approved for issuance by the association and shall share in the operating and administrative expenses incurred or estimated to be incurred by the association incident to the conduct of its affairs *in the following manner:* ~~Claims expenses of the association plan and the association portability plan that exceed the premium payments allocated to the payment of benefits are the liability of the association members. Association members shall share in the claims expenses of the association plan and the association portability plan and operating and administrative expenses of the association in an amount equal to the ratio of the association member's total disability insurance premium received from or on behalf of Montana residents divided by the total disability insurance~~

HeinOnline -- 1999 vol. II 2246 1999

~~premium received by all association members from or on behalf of Montana residents as determined by the commissioner.~~

(i) Each participating member of the association must be assessed by the association on an annual basis an amount equal to 1% of the association member's total disability insurance premium received from or on behalf of Montana residents as determined by the commissioner. Assessments made under this subsection (5)(a) or funds from any other source must be allocated to the association plan and the association portability plan in proportion to the needs of the two plans. If the needs of the association plan and the association portability plan exceed the funds generated by the 1% assessment, the association is then authorized to spend any funds appropriated by the legislature for the support of the plans.

(ii) The association may abate, in whole or in part, the 1% assessment if the needs of the association plan and the association portability plan do not require the funds generated by the full 1% assessment. The commissioner shall approve any abatement of the 1% assessment.

(iii) Payment of an assessment is due within 30 days of receipt by a member of a written notice of the annual assessment. Failure by a contributing member to tender the association assessment within the 30-day period is grounds for termination of membership. A member terminated for failure to tender the association assessment is ineligible to write health care benefit policies or contracts in this state under 33-22-1503(2).

(iv) An associate member that ceases to do disability insurance business within the state remains liable for assessments through the calendar year in which the member ceased doing disability insurance business. The association may decline to levy an assessment against an association member if the assessment, as determined pursuant to this section, would not exceed $10.

(h) For purposes of this subsection (5), "total disability insurance premium" does not include premiums received from disability income insurance, credit disability insurance, disability waiver insurance, ~~or~~ life insurance, *[medicare risk or other similar medicare health maintenance organization payments, or medicaid health maintenance organization payments].*

(c) Any income in excess of the incurred or estimated claims expenses of the association plan and the association portability plan and the operating and administrative expenses of the association must be held at interest and used by the association to offset past and future losses due to claims expenses of the association plan and the association portability plan or be allocated to reduce association plan premiums.

(6) ~~The association shall make an annual determination of each association member's liability, if any, and may make an annual fiscal yearend assessment if necessary. Assessments related to the operation and expenses of the association plan must be determined and levied separately from assessments related to the operation and expenses of the association portability plan. The association may also, subject to the approval of the commissioner, provide for interim assessments against the association members as may be necessary to ensure the financial capability of the association in meeting the incurred or estimated claims expenses of the association plan and the association portability plan and operating and administrative expenses of the association until the association's next annual fiscal yearend assessment. Payment of an assessment is due within 30 days of~~

~~receipt by an association member of a written notice of a fiscal yearend or interim assessment. Failure by a contributing member to tender to the association the assessment within 30 days is grounds for termination of membership. An association member that ceases to do disability insurance business within the state remains liable for assessments through the calendar year during which disability insurance business ceased. The association may decline to levy an assessment against an association member if the assessment, as determined pursuant to this section, would not exceed $10.~~

~~(7) Any~~ *The proportion of the* annual ~~fiscal yearend or interim~~ assessment ~~relating~~ *allocated* to the operation and expenses of the association plan ~~levied against an association member~~ may be offset *by an association member*~~, in an amount equal to the assessment paid to the association,~~ against the premium tax payable by that association member pursuant to 33-2-705 for the year in which the annual ~~fiscal yearend or interim~~ assessment is levied. The insurance commissioner shall report to the office of budget and program planning, as a part of the information required by 17-7-111, the total amount of premium tax offset claimed by association members during the preceding biennium. ~~Assessments relating~~ *The proportion of the annual assessment allocated* to the operation and expenses of the association portability plan and levied against an association member may not be offset against the premium tax payable by that association member."

Section 5. Section 33-22-1514, MCA, is amended to read:

"33-22-1514. Administration of association plan — rules. (1) The association shall select one lead carrier to issue the association plan. The board of directors of the association shall prepare appropriate specifications and bid forms and may solicit bids from licensed administrators and the members of the association for the purpose of selecting the lead carrier. The selection of the lead carrier must be based upon criteria established by the board of directors.

(2) The lead carrier shall perform all administrative and claims payment functions required by this section upon the commissioner's approval of the policy forms and contracts submitted. The lead carrier shall provide these services for a period of at least 3 years, unless a request to terminate is approved by the association and the commissioner. The association and the commissioner shall approve or deny a request to terminate within 90 days of its receipt. A failure to make a final decision on a request to terminate within the specified period is considered an approval. The association shall invite submissions of policy forms from members of the association, including the lead carrier, 6 months prior to the expiration of each 3-year period. The association shall follow the procedure provided in subsection (1) in selecting a lead carrier for the subsequent 3-year period or, if a request to terminate is approved, on or before the end of the 3-year period.

(3) The lead carrier shall provide all eligible persons involved in the association plan an individual certificate setting forth a statement as to the insurance protection to which the person is entitled, the method and place of filing claims, and to whom benefits are payable. The certificate must indicate that coverage was obtained through the association.

(4) The lead carrier shall submit to the association, *the legislative finance committee,* and the commissioner on a semiannual basis a report of the operation of the association plan. The association must determine the specific information to be contained in the report prior to the effective date of the association plan.

HeinOnline -- 1999 vol. II 2248 1999

(5) The lead carrier shall pay all claims pursuant to this part and shall indicato that the claim was paid by the association plan. Each claim payment must include information specifying the procedure involved in the event a dispute over the amount of payment arises.

(6) The lead carrier must be reimbursed from the association plan premiums received for its direct and indirect expenses. Direct and indirect expenses include a prorated reimbursement for the pertion of the lead carrier's administrative, printing, claims admmistration, management, and building overhead expenses, which are assignable to the maintenance and administration of the association plan. The association must approve cost accounting methods to substantiate the lead carrier's cost reports consistent with generally accepted accounting principles. Direct and indirect expenses may not include costs directly related to the original submission of policy forms prior to selection as the lead carrier.

(7) The lead carrier is, when carrying out its duties under this part, an independent contractor for the association and is individually liable for its actions, subject to the laws of this state."

Section 6. Allocation of funds. There is allocated $2 million to the association for the biennium from any judgment, settlement, or fine that is received as a result of a criminal or civil claim against a tobacco company related to the production, marketing, or use of tobacco products. The association may use the funds only if the amount of the annual assessment collected by the association is insufficient to meet incurred or estimated claims expenses of the association plan and the association portability plan and the oporating and administrative expenses of the association.

Section 7. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 33, chapter 22, part 15, and the provisions of Title 33, chapter 22, part 15, apply to [section 1].

Section 8. Coordination instruction. If [section 4] of this hill passes, then [section 4] of House Bill No. 136, amending 33-22-1513, is void.

Section 9. Effective dates. (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Sections 2 and 3] and the bracketed language in [section 4(5)(b)] are effective January 1, 2000.

Approved April 30, 1999

CHAPTER NO. 529

[HB 647]

AN ACT CREATING THE BULL TROUT AND CUTTHROAT TROUT ENHANCEMENT PROGRAM; PROVIDING FOR THE ENHANCEMENT OF MONTANA BULL TROUT AND CUTTHROAT TROUT POPULATIONS THBOUGH VOLUNTARY ENHANCEMENT OF SPAWNING AREAS AND OTHER HABITATS FOR THE NATURAL REPRODUCTION OF BULL TROUT AND CUTTHROAT TROUT; DIRECTING THAT A PORTION OF FUNDING FROM VARIOUS SOURCES, INCLUDING FUNDS APPROPRIATED OR AVAILABLE TO THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS AND FROM THE INTEREST ON THE RESOURCE

HeinOnline -- 1999 vol. II 2249 1999

INDEMNITY TRUST FUND, BE USED TO FUND THE BULL TROUT AND CUTTHROAT TROUT ENHANCEMENT PROGRAM; DIRECTING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO ADMINISTER THE PROGRAM; APPROPRIATING FUNDS FOR THE ENHANCEMENT PROGRAM; REVISING THE MEMBERSHIP OF THE FUTURE FISHERIES REVIEW PANEL AND EXTENDING THE TERMINATION DATE OF THE FUTURE FISHERIES IMPROVEMENT PROGRAM; AMENDING SECTIONS 15-38-202 AND 87-1-273, MCA, AND SECTION 5, CHAPTER 463, LAWS OF 1995; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.

WHEREAS, the bull trout was federally listed as a threatened species under the Endangered Species Act of 1973 in May of 1998; and

WHEREAS, the cutthroat trout is listed as a species of special concern and is a candidate for listing under the Endangered Species Act; and

WHEREAS, the 56th Legislature recognizes the economic and social impacts that may accrue to businesses and individuals in western Montana as federal land-use restrictions to protect and recover the bull trout and cuttbroat trout are imposed; and

WHEREAS, significant funding opportunities exist to provide revenue to address land-use impacts to bull trout and cutthroat trout through cooperative efforts with landowners; and

WHEREAS, the 56th Legislature finds the mechanism provided in the future fisheries improvement program to be a highly successful method for on-the-land restoration of river and stream habitat referred to by the United States Secretary of the Interior, Bruce Babbitt, as "a model for other states".

Be it enacted by the Legislature of the State of Montana:

Section 1. Bull trout and cutthroat trout enhancement program. (1) In order to enbance bull trout and cutthroat trout populations through habitat restoration, reductions in species competition, and natural reproduction, the department shall, tbrough its future fisheries improvement program, restore habitats and spawning areas and reduce species competition in rivers, lakes, and streams for Montana's bull trout and cuttbroat trout.

(2) In order to implement this section, the department may expend revenue from the bull trout and cutthroat trout enhancement program for one additional full-time employee and one contractor to assist tbe review panel.

(3) Tbe department shall also work with the department of transportation to implement bull trout and cutthroat trout enhancement by providing annual updates to the state transportation improvement program regarding possible additions to projects that will benefit the enbancement effort. State transportation improvement plan funds expended for bull trout and cutthroat trout must be accounted for separately and reported annually.

Section 2. Funding of future fisberies improvement program's bull trout and cutthroat trout enhancement program. For the per.od inclusive of the fiscal biennium ending June 30, 2009, the following amounts must be expended to enhance bull trout and cutthroat trout populations, as directed by [section 1]:

(1) $750,000 redirected from the fiscal year 1999 ending fund balance of the general license account of the department of fish, wildlife, and parks;

(2) as determined by tbe transportation commission, the largest practicable portion of funding for the department of transportation's state transportation improvement program that may be used for bull trout and cutthroat trout enhancement purposes each of fiscal years 2000 and 2001.

Section 3. Section 15-38-202, MCA, is amended to read:

"15-38-202. (Temporary) Investment of resource indemnity trust fund — expenditure — minimum balance. (1) All money paid into the resource indemnity trust fund, including money payable into the fund under the provisions of 15-36-324 and 15-37-117, must be invested at the discretion of the board of investments. Only the net earnings may be appropriated and exponded until the fund reaches $100 million. Thereafter, all net earnings and all receipts may be appropriated by the legislature and expended, provided that the balance in the fund may never be less than $100 million.

(2) (a) At the beginning of each fiscal year, there is allocated from the interest income of the resource indemnity trust fund:

(i) $240,000, which is statutorily appropriated, as provided in 17-7-502, from the renewable resource grant and loan program state special revenue account to support the operations of the environmental science-water quality instructional programs at Montana state university-northern, to be used for support costs, for matching funds necessary to attract additional funds to further expand statewide impact, and for enhancement of the facilities related to the programs;

(ii) $1 million to be deposited into the renewable resource grant and loan program state special revenue account, created by 85-1-604, for tbe purpose of making grants; and

(iii) $1.5 million to be deposited into the reclamation and development grants special revenue account, created by 90-2-1104, for the purpose of making grants.

(b) At the beginning of each biennium, there is allocated from the interest income of the resource indemnity trust fund:

(i) an amount not to exceed $175,000 to the environmental contingency account pursuant to the conditions of 75-1-1101;

(ii) an amount not to exceed $50,000 to the oil and gas production damage mitigation account pursuant to the conditions of 82-11-161; and

(iii) $500,000 to be deposited into the water storage state special revenue account created by 85-1-631.

(c) The remainder of the interest income is allocated as follows:

(i) Thirty-six percent of the interest income of the resource indemnity trust fund must be allocated to the renewable resource grant and loan program state special revenue account created by 85-1-604.

(ii) Eighteen percent of the interest income of the resource indemnity trust fund must be allocated to the hazardous waste/CERCLA special revenue account provided for in 75-10-621.

(iii) Forty percent of the interest income from the resource indemnity trust fund must be allocated to the reclamation and development grants account provided for in 90-2-1104.

(iv) Six percent of the interest income of the resource indemnity trust fund must be allocated to the environmental quality protection fund provided for in 75-10-704.

HeinOnline -- 1999 vol. II 2251 1999

(3) Any formal budget document prepared by the legislature or the executive branch that proposes to appropriate funds other than as provided for by the allocations in subsoction (2) must specify the amount of money from each allocation that is proposed te be diverted and the proposed use of the diverted funds. A formal budget document includes a printed and publicly distributed budget proposal or recommendation, an introduced bill, or a hill developed during the legislative appropriation process or otherwise during a legislative session.

15-38-202. (Effective July 1, 1999) Investment of resource indemnity trust fund — expenditure — minimum balance. (1) All ıoney paid into the resource indemnity trust fund, including money payable into the fund under the provisions of 15-36-324 and 15-37-117, must be invested at the discretion of the board of investments. Only the net earnings may be appropriated and expended until the fund reaches $100 million. Thereafter, all net earnings and all receipts ıay be appropriated by the legislature and expended, provided that the balance in the fund ıay never he less than $100 million.

(2) (a) At the beginning of each fiscal year, there is allocated from the interest income of the resource indemnity trust fund:

(i) $240,000, which is statutorily appropriated, as provided in 17-7-502, from the renewable resource grant and loan program state special revenue account to support the operations of the environmental science-water quality instructional programs at Montana state university-northern, to be used for support costs, for matching funds necessary to attract additional funds to further expand statewide impact, and for enhancement of the facilities related to the programs;

(ii) $1 million to he deposited into the renewable resource grant and loan program state special revenue account, created by 85-1-604, for the purpose of making grants; ~~and~~

(iii) $1.5 million to he deposited into the reclamation and development grants special revenue account, created hy 90-2-1104, for the purpose of ınaking grants; *and*

(iv) $500,000 to the department of fish, wildlife, and parks for the purposes of [section 1]. The future fisheries review panel shall approve and fund qualified mineral reclamation projects before other types of qualified projects.

(b) At the beginning of each biennium, there is allocated from the interest income of the resource indemnity trust fund:

(i) an amount not to exceed $175,000 to the environmental contingency account pursuant to the conditions of 75-1-1101;

(ii) an amount not to exceed $50,000 to the oil and gas production damage mitigation account pursuant to the conditions of 82-11-161; and

(iii) $500,000 to be deposited into the water storage stato special revenue account created by 85-1-631.

(c) At the heginning of each fiscal year, there is allocatod from the interest income of the resource indemnity trust fund up to $200,000 to be deposited in the orphan share account estahlished in 75-10-743.

(d) The remainder of the interest incoıne is allocated as follows:

(i) Thirty-six percent of the intorest income of the resource indemnity trust fund must be allocated to the renewable resource grant and loan program state special revenue account created hy 85-1-604.

HeinOnline -- 1999 vol. II 2252 1999

(ii) Eighteen percent of the interest income of the resource indemnity trust fund must be allocated to the hazardous waste/CERCLA special revenue account provided for in 75-10-621.

(iii) Forty percent of the interest income from the resource indemnity trust fund must be allocated to the reclamation and development grants account provided for in 90-2-1104.

(iv) Six percent of the interest income of the resource indemnity trust fund must be allocated to the environmental quality protection fund provided for in 75-10-704.

(3) Any formal budget document prepared by the legislature or the executive branch that proposes to appropriate funds other tban as provided for by the allocations in subsection (2) must specify the amount of money from each allocation that is proposed to be diverted and the proposed use of the diverted funds. A formal budget document includes a printed and publicly distributed budget proposal or recommendation, an introduced bill, or a bill developed during the legislative appropriation process or otherwise during a legislative session."

Section 4. Section 87-1-273, MCA, is amended to read:

"87-1-273. **(Temporary) Future fisheries review panel — purpose — appointment and duties.** (1) Tbe governor or gevernor's designee shall call for nominees for, accept and review recommendations for, and~~, by August 1, 1995,~~ appoint a future fisheries review panel. The panel must consist of at least ~~10~~ *13* members, including but not limited to:

(a) one member wbo is a representative of conservation districts;

(b) one member with expertise in commercial agriculture ~~or silviculture~~;

(c) one member with expertise in irrigated agriculture;

(d) one member from the private sector who is a fisheries restoration professional;

(e) two members who are licensed Montana anglers;

(f) one member of the house of representatives, chosen by the speaker of the house;

(g) one member of the senate, chosen by the committee on committees;

(h) one member ~~who is a representative of the governor's office~~ *with expertise in silviculture*; ~~and~~

(i) one member who is a Montana high school student~~.~~*;*

(j) one member with expertise in mining reclamation techniques;

(k) one member with expertise in fisheries; and

(l) one ex officio member from the Montana department of transportation who has experience in highway impacts mitigation.

(2) A member appointed to the review panel shall serve a 2-year term and may be reappointed.

(3) The purpose of the review panel is to:

(a) review, at least every 6 months, proposed projects that have been submitted by public or private entities for funding;

HeinOnline -- 1999 vol. II 2253 1999

(b) determine what projects are eligible for inclusion in the future fisheries improvement program;

(c) approve or reject proposed projects; and

(d) forward a list of approved projects to the department.

(4) To be eligible for funding, a project must be generated at the local level and must be developed and presented to the review panel by the department, local landowners, conservation districts, or other interested citizens. Before consideration of any project that involves streambed or streambank restoration, a change in the use of water, or any other purpose that affects a particular property owner's interest in land or water, the review panel is required to find that the project is being proposed for funding with the voluntary approval of the participating property owner. (Terminates July 1, 2005—sec. 5, Ch. 463, L. 1995.)"

Section 5. Appropriation. There is appropriated $750,000 from the general license account to the department of fish, wildlife, and parks for the 2001 biennium for the purposes of [section 1]. Funds from the appropriation in this section that remain unexpended after the 2001 biennium may be expended during the 2003 biennium for the purposes of [section 1].

Section 6. Section 5, Chapter 463, Laws of 1995, is amended to read:

"**Section 5. Termination.** (1) [Sections 1 and 2] terminate July 1, ~~2005~~ *2009*.

(2) [Section 3] terminates July 1, 1997."

Section 7. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 87, chapter 1, part 2, and the provisions of Title 87, chapter 1, part 2, apply to [section 1].

Section 8. Effective dates. (1) Except as provided in subsection (2), [this act] is effective July 1, 1999.

(2) [Section 3] is effective July 1, 2001.

Section 9. Termination. [This act] terminates July 1, 2009.

Approved April 29, 1999

CHAPTER NO. 530

[HB 661]

AN ACT REVISING THE TAXATION OF OIL PRODUCTION PRODUCED FROM A STRIPPER WELL; REVISING THE DEFINITION OF "STRIPPER OIL"; REDUCING THE TAX RATE ON CERTAIN STRIPPER OIL PRODUCTION; CLARIFYING THE REQUIREMENTS FOR REPORTING OIL AND NATURAL GAS PRODUCTION FROM PRE-1985 WELLS AND POST-1985 WELLS; AMENDING SECTIONS 15-36-303, 15-36-304, 15-36-311, AND 15-36-324, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

HeinOnline -- 1999 vol. II 2254 1999

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-36-303, MCA, is amended to read:

"15-36-303. Definitions. As used in this part, the following definitions apply:

(1) "Board" means the board of oil and gas conservation provided for in 2-15-3303.

(2) "Department" means department of revenue provided for in 2-15-1301;

(3) "Enhanced recovery project" means the use of any process for the displacement of oil from the earth other tban primary recovery and includes the use of an immiscible, miscible, chemical, thermal, or biological process.

(4) "Existing enhanced recovery project" means an enhanced recovery project that began development before January 1, 1994.

(5) "Expanded enhanced recovery project" or "expansion" ıneans the addition of injection wells or production wells, the recompletion of existing wells as horizontally completed wells, the change of an injection pattern, or other operating changes to an existing enhanced recovery project that will result in the recovery of oil that would not otherwise be recovered. The project must be developed after December 31, 1993, and before January 1, 2002.

(6) "Gross taxable value", for the purpose of computing the oil and natural gas production tax, means the gross value of tbe product as determined in 15-36-305.

(7) "Horizontal drain hole" means that portion of a well bore with 70 degrees to 110 degrees deviation from the vertical and a horizontal projection within the common source of supply, as that terın is defined by the board, that exceeds 100 feet.

(8) "Horizontally completed well" means:

(a) a well with one or more horizontal drain holes; and

(b) any other well classified by the board as a horizontally completed well.

(9) "Incremental production" means:

(a) the volume of oil produced by a new enhanced recovery project, by a well in primary recovery recompleted as a horizontally completed well, or by an expanded enhanced recovery project, which volume of production is in excess of the production decline rate establisbed under the conditions existing before:

(i) the commencement of the recompletion of a well as a horizontally completed well;

(ii) expansion of the existing enhanced recovery project; or

(iii) commencing a new enhanced recovery project; or

(b) in the case of any project that had no taxable production prior to commencing the enhanced recovery project, all production of oil from the enhanced recovery project.

(10) "Natural gas" or "gas" means natural gas and other fluid hydrocarbons, other than oil, produced at the wellhead.

(11) "New enhanced recovery project" means an enhanced recovery project that began development after December 31, 1993, and before January 1, 2002.

HeinOnline -- 1999 vol. II 2255 1999

(12) "Nonworking interest owner" means any interest owner who does not share in the exploration, development, and operation costs of the lease or unit, except for production taxes.

(13) "Oil" means crude petroleum or mineral oil and other hydrocarbons, regardless of gravity, that are produced at the wellhead in liquid form and that are not the result of condensation of gas after it leaves the wellhead.

(14) "Operator" or "producer" means a person who produces oil or natural gas within this state or who owns, controls, manages, leases, or operates within this state any well or wells from which any marketable oil or natural gas is extracted or produced.

(15) "Post-1985 well" means an oil or natural gas well drilled after June 30, 1985, other than horizontally completed or recompleted oil wells drilled after December 31, 1993, that produces oil or natural gas or a well that has not produced oil or natural gas during the 5 years immediately preceding the first month of qualifying as a post-1985 well.

(16) "Pre-1985 well" means an oil or natural gas well that was drilled before July 1, 1985.

(17) "Primary recovery" means the displacement of oil from the earth into the well bore by means of the natural pressure of the oil reservoir and includes artificial lift.

(18) "Production decline rate" means the projected rate of future oil production, extrapolated by a method approved by the board, that must be determined for a project area prior to commencing a new or expanded enhanced recovery project or the recompletion of a well as a horizontally completed well. The approved production decline rate must be certified in writing to the department by the board. In that certification, the board shall identify the project area and shall specify the projected rate of future oil production by calendar year and by calendar quarter within each year. The certified rate of future oil production must be used to determine the volume of incremental production that qualifies for the tax rate imposed under 15-36-304(4)(d).

(19) "Qualifying production" means the first 24 months of production of oil or natural gas from any post-1985 well drilled after March 31, 1995, or from a well that has not produced oil or natural gas during the 5 years immediately preceding the first month of qualifying production. Qualifying production does not include oil production from a horizontally recompleted well.

(20) "Secondary recovery project" means an enhanced recovery project, other than a tertiary recovery project, that commenced or was expanded after December 31, 1993, and before January 1, 2002, and meets each of the following requirements:

(a) The project must be certified as a secondary recovery project to the department by the board. The certification may be extended only after notice and hearing in accordance with Title 2, chapter 4.

(b) The property to be affected by the project must be adequately delineated according to the specifications required by the board.

(c) The project must involve the application of secondary recovery methods that can reasonably be expected to result in an increase, determined by the board to be significant in light of all the facts and circumstances, in the amount of oil

HeinOnline -- 1999 vol. II 2256 1999

that may potentially be recovered. For purposes of this part, secondary recovery methods include but are not limited to:

(i) the injection of water into the producing formation for the purposes of maintaining pressure in that formation or for the purpose of increasing the flow of oil from the producing formation to a producing well bore; or

(ii) any other method approved by the board as a secondary recovery method.

~~(21) "Stripper exemption" means the first 3 barrels a day for petroleum and other mineral or crude oil produced by a stripper well if the average price per barrel of oil as reported in the Wall Street Journal for west Texas intermediate crude oil during a calendar quarter is less than $30 a barrel. If the price of oil is equal to or greater than $30 a barrel in a calendar quarter, there is no stripper exemption in that quarter. The average price per barrel is computed by dividing the sum of the daily price for west Texas intermediate crude oil as reported in the Wall Street Journal for the calendar quarter by the number of days on which the price was reported in the quarter.~~

~~(22)~~*(21)* "Stripper natural gas" means the natural gas produced from any well that produces less than 60,000 cubic feet of natural gas a day during the calendar year immediately preceding the current year. Production must be determined by dividing the amount of production from a lease or unitized area for the year immediately preceding the current calendar year by the number of producing wells in the lease or unitized area and by dividing the resulting quotient by 365.

~~(22)~~*(22)* "Stripper oil" means the oil produced from any well that produces less than ~~10~~ *15* barrels a day for the calendar year immediately preceding the current year *if the average price for a barrel of oil as reported in the Wall Street Journal for west Texas intermediate crude oil during a calendar quarter is less than $30 a barrel. If the price of oil is equal to or greater than $30 a barrel in a calendar quarter, there is no stripper tax rate[, including stripper well exemption tax rate,] in that quarter. The average price for a barrel is computed by dividing the sum of the daily price for west Texas intermediate crude oil as reported in the Wall Street Journal for the calendar quarter by the number of days on which the price was reported in the quarter.* Production must be determined by dividing the amount of production from a lease or unitized area for the year immediately preceding the current calendar year by the number of producing wells in the lease or unitized area and by dividing the resulting quotient by 365.

~~(24)~~*(23)* "Tertiary recovery project" means an enhanced recovery project, other than a secondary recovery project, using a tertiary recovery method that meets the following requirements:

(a) The project must be certified as a tertiary recovery project to the department by the board. The certification may be extended only after notice and hearing in accordance with Title 2, chapter 4.

(b) The property to be affected by the project must be adequately delineated in the certification according to the specifications required by the board.

(c) The project must involve the application of one or more tertiary recovery methods that can reasonably be expected to result in an increase, determined by the board to be significant in light of all the facts and circumstances, in the amount of crude oil that may potentially be recovered. For purposes of this part, tertiary recovery methods include but are not limited to:

(i) miscible fluid displacement;

HeinOnline -- 1999 vol. II 2257 1999

(ii) steam drive injection;

(iii) micellar/emulsion flooding;

(iv) in situ combustion;

(v) polymer augmented water flooding;

(vi) cyclic steam injection;

(vii) alkaline or caustic flooding;

(viii) carbon dioxide water flooding;

(ix) immiscible carbon dioxide displacement; or

(x) any other method approved by the board as a tertiary recovery method.

~~(25)~~*(24)* "Well" or "wells" means a single well or a group of wells in one field or production unit and under the control of one operator or producer.

~~(25)~~*(25)* "Working interest owner" means the owner of an interest in an oil or natural gas well or wells who bears any portion of the exploration, development, and operating costs of the well or wells."

Section 2. Section 15-36-304, MCA, is amended to read:

"15-36-304. Production tax rates imposed on oil and natural gas. (1) The production of oil and natural gas is taxed as provided in this section. The tax is distributed as provided in 15-36-324.

(2) Natural gas is taxed on the gross taxable value of production based on the type of well and type of production according to the following schedule for working interest and nonworking interest owners:

	Working Interest	Nonworking Interest
(a) pre-1985 wells	18.55%	14.8%
(b) post-1985 wells		
(i) first 12 months of qualifying production	0.5%	14.8%
(ii) next 12 months of qualifying production	12.5%	14.8%
(iii) after 24 months	15.15%	14.8%
(c) stripper natural gas pre-1985 and post-1985 wells	11%	14.8%

(3) The reduced tax rates under subsections (2)(b)(i) and (2)(b)(ii) on production for the first 24 months of natural gas production from a post-1985 well begin following the last day of the calendar month immediately preceding the month in which natural gas is placed in a natural gas distribution system, provided that notification has been given to the department.

(4) Oil is taxed on the gross taxable value of production based on the type of well and type of production according to the following schedule for working interest and nonworking interest owners:

HeinOnline -- 1999 vol. II 2258 1999

	Working Interest	Nonworking Interest
(a) primary recovery production		
(i) pre-1985 wells	13.9%	16.9%
(ii) post-1985 wells		
(A) first 12 months of qualifying production	0.5%	14.8%
(B) next 12 months of qualifying production	7.5%	14.8%
(C) after 24 months	12.5%	14.8%
(b) stripper oil production		
(i) first 1 through 10 barrels per day production	*5.5%*	*14.8%*
(ii) more than 10 barrels per day production	*9.0%*	*14.8%*
~~(i) pre-1985 wells~~	~~10.5%~~	~~16.9%~~
~~(ii) post-1985 wells~~	~~10.5%~~	~~14.8%~~
~~(iii) stripper exemption production~~		
~~(A) pre-1985 wells~~	~~5.5%~~	~~16.9%~~
~~(B) post-1985 wells~~	~~5.5%~~	~~14.8%~~
(c) horizontally completed well production		
(i) first 18 months of qualifying production	0.5%	5.5%
(ii) next 6 months of qualifying production	7.5%	12.5%
(iii) after 24 months	12.5%	12.5%
(d) incremental production		
(i) new or expanded secondary recovery production		
(A) pre-1985 wells	8.5%	16%
(B) post-1985 wells	8.5%	10.5%
(ii) new or expanded tertiary production		
(A) pre-1985 wells	5.8%	15%
(B) post-1985 wells	5.8%	9.5%

HeinOnline -- 1999 vol. II 2259 1999

(e) horizontally recompleted well		
(i) first 18 months	5.5%	5.5%
(ii) after 18 months	12.5%	12.5%

(5) (a) The reduced tax rates under subsections (4)(a)(ii)(A) and (4)(a)(ii)(B) for the first 24 months of oil production from a post-1985 well begin following the last day of the calendar month immediately preceding the month in which oil is pumped or flows, provided that notification has been given to the department.

(b) (i) The reduced tax rates under subsections (4)(c)(i) and (4)(c)(ii) on oil production from a horizontally completed well for the first 24 months of production begin following the last day of the calendar month immediately preceding the month in which oil is pumped or flows, provided that the well has been certified as a horizontally completed well to the department by the board.

(ii) The reduced tax rate under subsection (4)(e)(i) on oil production from a horizontally recompleted well for the first 18 months of production begins following the last day of the calendar month immediately preceding the month in which oil is pumped or flows, provided that the well has been certified as a horizontally recompleted well to the department by the board.

(c) Incremental production is taxed as provided in subsection (4)(d) if the average price ~~per~~ *for each* barrel of oil as reported in the Wall Street Journal for west Texas intermediate crude oil during a calendar quarter is less than $30 a barrel. If the price of oil is equal to or greater than $30 a barrel in a calendar quarter as determined in subsection (5)(d), then incremental production from pre-1985 wells and from post-1985 wells is taxed at the rate imposed on primary recovery production under subsections (4)(a)(i) and (4)(a)(ii)(C), respectively, for production occurring in that quarter.

(d) For the purposes of subsection (5)(c), the average price ~~per~~ *for each* barrel must be computed by dividing the sum of the daily price for west Texas intermediate crude oil as reperted in the Wall Street Journal for the calendar quarter by the number of days on which the price was reported in the quarter.

(6) The tax rates imposed under subsections (2) and (4) on working interest owners and nonworking interest owners must be adjusted to include the privilege and license tax adopted by the board of oil and gas conservation pursuant to 82-11-131."

Section 3. Section 15-36-311, MCA, is amended to read:

"15-36-311. Quarterly payment of tax — statement — failure to pay penalty. (1) The oil and natural gas production tax must be paid in quarterly installments for the quarterly periods ending, respectively, March 31, June 30, September 30, and December 31 of each year, and the amount of the tax for each quarterly period must be paid to the department within 60 days after the end of each quarterly period.

(2) The operator shall complete on forms prescribed by the department a statement showing the total number of barrels of merchantable or marketable oil or cubic feet of natural gas produced and sold *from pre-1985 wells and post-1985 wells* by the person in the state during each month of the quarter and during the whole quarter, the average value of the production sold during each month, and the total value of the production sold for the whole quarter, together with the total amount due as taxes for the quarter. The statement must be filed

HeinOnline -- 1999 vol. II 2260 1999

within the time provided in subsection (1). The statement must be accompanied by the tax due. The statement must be signed by the individual or the president, vice president, treasurer, assistant treasurer, or authorized agent of the association, corporation, joint-stock company, or syndicate making the statement. A person engaged in carrying on business at more than one place in this state or owning, leasing, controlling, or operating more than one oil or gas well in this state may include all operations in one statement.

(3) If the tax is not paid on or before the due date, there must be assessed a penalty of 10% of the amount of the tax not paid. If the tax is not paid when due, interest also must be added at the rate of 1% a month or fraction of a month, computed on the total amount of the tax from the due date until paid. The department may waive the 10% penalty if reasonable cause for the failure to pay is provided to the department."

Section 4. Section 15-36-324, MCA, is amended to read:

"15-36-324. Distribution of taxes — rules. (1) For each calendar quarter, the department of revenue shall determine the amount of tax, late payment interest, and penalty collected under this part. For purposes of distribution of the taxes to county and school taxing units, the department shall determine the amount of oil and natural gas production taxes paid on production from pre-1985 wells, post-1985 wells, and horizontally completed wells located in the taxing unit.

(2) Except as provided in subsections (3) through (5), oil production taxes must be distributed as follows:

(a) The amount equal to 39.3% of the oil production taxes, including late payment interest and penalty, collected under this part must be distributed as provided in subsection (8).

(b) The remaining 60.7% of the oil production taxes, plus accumulated interest earned on the amount allocated under this subsection (2)(b), must be deposited in the state special revenue fund in the state treasury and transferred to the county and school taxing units for distribution as provided in subsection (11).

(3) (a) The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on production from post-1985 wells occurring during the first 12 months of production must be distributed as provided in subsection (9).

(b) (i) The amount equal to 10.25% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on production from post-1985 wells occurring during the next 12 months of production must be distributed as provided in subsection (9).

(ii) The remaining 89.75% of the oil production taxes, plus accumulated interest earned on the amount allocated under this subsection (3)(b), must be deposited in the state special revenue fund in the state treasury and transferred to the county and school taxing units for distribution as provided in subsection (11).

(4) (a) The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected under this part on production from horizontally completed wells occurring during the first 18 months of production must be distributed as provided in subsection (9).

HeinOnline -- 1999 vol. II 2261 1999

(b) (i) The amount equal to 10.25% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on production from horizontally completed wells occurring during the next 6 months of production must he distributed as provided in subsection (9).

(ii) The remaining 89.75% of the oil production taxes, plus accumulated interest earned on the amount allocated under this subsection (4)(b), must be deposited in the state special revenue fund in the state treasury and transferred to the county and school taxing units for distribution as provided in subsection (11).

(c) The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected under this part on the incremental production from horizontally recompleted wells occurring during the first 18 months of production must be distributed as provided in subsection (8).

(5) (a) The amount equal to 13.8% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on *the first 10 barrels of* stripper ~~exemption~~ *oil* production from pre-1985 wells and post-1985 wells must be distributed as provided in subsection (9).

(b) The remaining 86.2% of the oil production taxes, plus accumulated interest earned on tbe amount allocated under this subsection (5)(b), must be deposited in the state special revenue fund in the state treasury and transferred to the county and school taxing units for distribution as provided in subsection (11).

(6) Except as provided in subsection (7), natural gas production taxes must be allocated as follows:

(a) The amount equal to 14% of the natural gas production taxes, including late payment interest and penalty, collected under this part must be distributed as provided in subsection (10).

(b) The remaining 86% of the natural gas production taxes, plus accumulated interest earned on the amount allocated under this subsection (6)(b), must be deposited in the state special revenue fund in the state treasury and transferred to the county and school taxing units for distribution as provided in subsection (11).

(7) (a) The amount equal to 100% of the natural gas production taxes, including late payment interest and penalty, collected from working interest owners under this part on production from post-1985 wells occurring during the first 12 months of production must be distrihuted as provided in subsection (9).

(b) (i) The amount equal to 6.25% of the natural gas production taxes, including late payment interest and penalty, collected from working interest owners on production from post-1985 wells occurring during the next 12 months of production must be distributed as provided in subsection (9).

(ii) The remaining 93.75% of the oil production taxes, plus accumulated interest earned on the amount allocated under this subsection (7)(b), must be deposited in the state special revenue fund in the state treasury and transferred to the county and school taxing units for distribution as provided in subsection (11).

(8) The department shall, in accordance with the provisions of 15-1-501, distribute the state portion of oil production taxes specified in subsections (2)(a) and (4)(c), including late payment interest and penalty collected, as follows:

HeinOnline -- 1999 vol. II 2262 1999

(a) 86.21% to the state general fund;

(h) 5.17% to the state special revenue fund for the purpose of paying expenses of the board as provided in 82-11-135; and

(c) 8.62% to be distributed as provided by 15-38-106(2).

(9) The department shall distribute the state portion of oil and natural gas production taxes specified in subsections (3)(a), (3)(b)(i), (4)(a), (4)(b)(i), (5)(a), (7)(a), and (7)(b)(i), including late payment interest and penalty collected, as follows:

(a) 37.5% to the state special revenue fund for the purpose of paying expenses of tbe board as provided in 82-11-135; and

(b) 62.5% to be distributed as provided by 15-38-106(2).

(10) The department sball, in accordance with the provisions of 15-1-501, distribute the state portion of natural gas production taxes specified in subsection (6)(a), including late payment interest and penalty collected, as follows:

(a) 76.8% to the state general fund;

(b) 8.7% to the state special revenue fund for the purpose of paying expenses of the board as provided in 82-11-135; and

(c) 14.5% to be distributed as provided by 15-38-106(2).

(11) (a) For the purpose of distribution of the oil and natural gas production taxes from pre-1985 wells, the department shall each calendar quarter adjust the unit value determined under 15-36-323 according to the ratio that the oil and natural gas production taxes from pre-1985 wells collected during tbe calendar quarter for which the distribution occurs plus penalties and interest on delinquent oil and natural gas production taxes from pre-1985 wells bears to the total liability for the oil and natural gas production taxes from pre-1985 wells for the quarter for which the distribution occurs. The amount of oil and natural gas production taxes distributions must be calculated and distributed as follows:

(i) By the dates referred to in subsection (12), the department shall calculate and distribute to each eligible county the amount of oil and natural gas production taxes from pre-1985 wells for the quarter, determined by multiplying the unit value, as adjusted in this subsection (11)(a), by tbe units of production on which oil and natural gas production taxes from pre-1985 wells were owed for the calendar quarter for which tbe distribution occurs.

(ii) Any amount by which the total tax liability exceeds or is less than the total distributions determined in this subsection (11)(a) must be calculated and distributed in the following manner:

(A) The excess amount or shortage must be divided by the total distribution determined for tbat period to obtain an excess or shortage percentage.

(B) The excess percentage must be multiplied by the distribution to each taxing unit, and this amount must be added to the distribution to each respective taxing unit.

(C) The shortage percentage must be multiplied by tbe distribution to each taxing unit, and this amount must be subtracted from the distribution to each respective taxing unit.

HeinOnline -- 1999 vol. II 2263 1999

(b) Except as provided in subsection (11)(c), the county treasurer shall distribute the money received under subsection (12) from pre-1985 wells to the taxing units that levied mills in fiscal year 1990 against calendar year 1988 production in the same manner that all other property tax proceeds were distributed during fiscal year 1990 in the taxing unit, except that a distribution may not be made to a municipal taxing unit.

(c) The board of county commissioners of a county may direct the county treasurer to reallocate the distribution of oil and natural gas production tax money that would have gone to a taxing unit, as provided in subsection (11)(b), to another taxing unit or taxing units, other than an elementary school or high school, within the county under the following conditions:

(i) The county treasurer shall first allocate the oil and natural gas production taxes to the taxing units within the county in the same proportion that all other property tax proceeds were distributed in the county in fiscal year 1990.

(ii) If the allocation in subsection (11)(c)(i) exceeds the total budget for a taxing unit, the commissioners may direct the county treasurer to allocate the excess to any taxing unit within the county.

(d) The board of trustees of an elementary or high school district may reallocate the oil and natural gas production taxes distributed to the district by the county treasurer under the following conditions:

(i) The district shall first allocate the oil and natural gas production taxes to the budgeted funds of the district in the same proportion that all other property tax proceeds were distributed in the district in fiscal year 1990.

(ii) If the allocation under subsection (11)(d)(i) exceeds the total budget for a fund, the trustees may allocate the excess to any budgeted fund of the school district.

(e) For all production from post-1985 wells and horizontally drilled wells completed after December 31, 1993, the county treasurer shall distribute oil and natural gas production taxes received under subsections (2)(b), (3)(b)(ii), (4)(b)(ii), (5)(b), (6)(b), and (7)(b)(ii) between county and school taxing units in the relative proportions required by the levies for state, county, and school district purposes in the same manner as property taxes were distributed in the preceding fiscal year.

(f) The allocation to the county in subsection (11)(e) must be distributed by the county treasurer in the relative proportions required by the levies for county taxing units and in the same manner as property taxes were distributed in the preceding fiscal year.

(g) The money distributed in subsection (11)(e) that is required for the county mill levies for school district retirement obligations and transportation schedules must be depesited to the funds established for these purposes.

(h) The oil and natural gas production taxes distributed under subsection (11)(b) that are required for the 6-mill university levy imposed under 20-25-423 and for the county equalization levies imposed under 20-9-331 and 20-9-333, as those sections read on July 1, 1989, must be remitted by the county treasurer to the state treasurer.

(i) The oil and natural gas production taxes distributed under subsection (11)(e) that are required for the 6-mill university levy imposed under 20-25-423, for the county equalization levies imposed under 20-9-331 and 20-9-333, and for

HeinOnline -- 1999 vol. II 2264 1999

the state equalization aid levy imposed under 20-9-360 must be remitted by the county treasurer to tbe state treasurer.

(j) The amount of oil and natural gas production taxes remaining after the treasurer has remitted the amounts determined in subsections (11)(h) and (11)(i) is for the exclusive use and benefit of the county and school taxing units.

(12) The departtnent shall remit the amounts to be distributed in subsection (11) to the county treasurer by the following dates:

(a) On or before August 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending March 31 of the current year.

(b) On or before November 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending June 30 of the current year.

(c) On or before February 1 of each year, the departtnent shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending September 30 of the previous year.

(d) On or before May 1 of each year, the department sball remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending December 31 of the previous calendar year.

(13) The department shall provide to each county by May 31 of each year the amount of gross taxable value represented by all types of production taxed under 15-36-304 for tbe previous calendar year multiplied by 60%. The resulting value must he treated as taxable value for county classification purposes and for county bonding purposes.

(14) (a) In the event that the board of oil and gas conservation revises the privilege and license tax pursuant to 82-11-131, the department shall, by rule, change the formula under this section for distribution of taxes collected under 15-36-304. The revised formula must provide for the distribution of taxes in an amount equal to the rate adopted by the board of oil and gas conservation for the expenses of the board.

(b) Before the department adopts a rule pursuant to subsection (14)(a), it shall present the proposed rule to the revenue oversight committee.

(15) The distribution to taxing units under this section is statutorily appropriated as provided in 17-7-502."

Section 5. Coordination instruction. If House Bill No. 658 is not passed and approved, then the bracketed material in [this act] in the definition of "stripper oil" in 15-36-303 is void.

Section 6. Effective date. [This act] is effective on passage and approval.

Scction 7. Applicability. [This act] applies to oil produced and sold after June 30, 1999.

Approved April 30, 1999

HeinOnline -- 1999 vol. II 2265 1999

CHAPTER NO. 531

[HB 669]

AN ACT REVISING AND CLARIFYING THE VALUATION OF RAILROAD TRANSPORTATION PROPERTY FOR THE PURPOSES OF PROPERTY TAXATION; SPECIFYING THE METHODS TO BE USED BY THE DEPARTMENT OF REVENUE IN THE VALUATION OF RAILROAD TRANSPORTATION PROPERTY; PROVIDING DEFINITIONS; AMENDING SECTIONS 15-8-111, 15-23-101, AND 15-23-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-8-111, MCA, is amended to read:

"15-8-111. Assessment — market value standard — exceptions. (1) All taxable property must be assessed at 100% of its market value except as otherwise provided.

(2) (a) Market value is the value at which property would change bands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.

(b) If the department uses construction cost as one approximation of market value, the department shall fully consider reduction in value caused by depreciation, whether through physical depreciation, functional obsolescence, or economic obsolescence.

(c) Except as provided in subsection (3), the market value of special mobile equipment and agricultural tools, implements, and machinery is the average wholesale value shown in national appraisal guides and manuals or the value before reconditioning and profit margin. The department shall prepare valuation schedules showing the average wholesale value when a national appraisal guide does not exist.

(3) The department may not adopt a lower or different standard of value from market value in making the official assessment and appraisal of the value of property, except:

(a) the wholesale value for agricultural implements and machinery is the average wholesale value category as shown in Guides 2000, Northwest Region Official Guide, published by the North American equipment dealers association, St. Louis, Missouri. If the guide or the average wholesale value categery is unavailable, the department shall use a comparable publication or wholesale value category.

(b) for agricultural implements and machinery not listed in an official guide, the department shall prepare a supplemental manual in which the values reflect the same depreciation as those found in the official guide; and

(c) as otherwise authorized in Titles 15 and 61.

(4) For purposes of taxation, assessed value is the same as appraised value.

(5) The taxable value for all property is the percentage of market or assessed value established for each class of property.

HeinOnline -- 1999 vol. II 2266 1999

(6) The assessed value of properties in 15-6-131 through 15-6-133 *and 15-6-145* is as follows:

(a) Properties in 15-6-131, under class one, are assessed at 100% of the annual net proceeds after deducting the expenses specified and allowed hy 15-23-503 or, if applicahle, as provided in 15-23-515, 15-23-516, 15-23-517, or 15-23-518.

(h) Properties in 15-6-132, under class two, are assessed at 100% of the annual gross proceeds.

(c) Properties in 15-6-133, under class three, are assessed at 100% of the productive capacity of the lands when valued for agricultural purposes. All lands that meet the qualifications of 15-7-202 are valued as agricultural lands for tax purposes.

(d) Properties in 15-6-143, under class ten, are assessed at 100% of the forest productivity value of the land when valued as forest land.

(e) Railroad transportation properties in 15-6-145 are assessed based on the valuation formula described in 15-23-202.

(7) Land and the improvements on the land are separately assessed when any of the following conditions occur:

(a) ownership of the improvements is different from ownership of the land;

(b) the taxpayer makes a written request; or

(c) the land is outside an incorporated city or town."

Seetion 2. Section 15-23-101, MCA, is amended to read:

"15-23-101. Properties eentrally assessed. The department ~~of revenue~~ shall centrally assess each year:

(1) ~~the franchise, roadway, roadbeds, rails, rolling stock, and all other operating property~~ *the railroad transportation property* of railroads and railroad car companies operating in more than one county in the state or more tban one state;

(2) property owned by a corporation or other person operating a single and continuous property operated in more than one county or more than one state, including *but not limited to* telegraph, telephone, microwave, *and* electric power or transmission lines; natural gas or oil pipelines; canals, ditches, flumes, or like properties and including, if congress passes legislation that allows the state to tax property owned by an agency created by congress to transmit or distribute electrical energy, property constructed, owned, or operated by a public agency created by ~~the~~ congress to transmit or distribute electric energy produced at privately owned generating facilities (not including rural electric cooperatives);

(3) all property of scheduled airlines;

(4) the net proceeds of mines;

(5) the gross proceeds of coal mines; and

(6) property described in subsections (1) and (2) that is subject to the provisions of Title 15, chapter 24, part 12."

Section 3. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

HeinOnline -- 1999 vol. II 2267 1999

(1) (a) "Base value" means, except as provided in subsection (1)(b), the system value of railroad transportation property of a railroad in the preceding tax year.

(b) For tax year 1999, base value means the system value of railroad transportation property used to determine the railroad's Montana property taxes paid for the 1998 tax year.

(2) "Capitalization rate" means the capitalization rate reported by the surface transportation board, provided for in 49 U.S.C. 701, in its annual cost of capital report.

(3) "Change in earnings" means the value determined by dividing the average earnings for the 5 years immediately preceding the current tax year by the average earnings for the 5 years immediately preceding the previous tax year.

(4) "Change in the capitalization rate" means the value derived by dividing the current year capitalization rate by the preceding year capitalization rate.

(5) "Earnings" means income realized before deducting depreciation, interest expenses, lease expenses, and taxes.

(6) "Gross profit margin" means the ratio of earnings to operating revenue.

(7) "Leased property" means property that is subject to an agreement that transfers the use of the property to the lessee during the term of the lease and that is not capitalized on the lessee's balance sheet.

(8) "Operating revenue" means the amount of money that the railroad is entitled to receive or that accrues to its benefit from services rendered in transporting property or persons by rail.

(9) "System cost" means the total depreciated cost of all railroad transportation property, including leased property within the state and outside the state.

Section 4. Section 15-23-202, MCA, is amended to read:

"15-23-202. Assessment — how made. (1) The department ~~must~~ *shall* assess the ~~franchise, roadway, roadbed, rails, rolling stock, and all other operating properties~~ *railroad transportation property* of all railroads operated in more than one county or more than one state *as provided in this section.* ~~All rolling stock must be assessed in the name of the person owning, leasing, or using the same.~~ Assessment must be made to the person owning or leasing or using the ~~same~~ *property* and must be made upon the entire railroad within the state. ~~The depots, stations, shops, and buildings erected upon the space covered by the right-of-way and all other property owned or leased by such person, except as above provided, shall be assessed by the department.~~

(2) The department shall determine the value of the railroad system for the current year by multiplying the base value of the railroad by the value change factor determined under subsection (3).

(3) (a) The value change factor is the sum of the income change factor, weighted by 50%, the gross profit margin change factor, weighted by 25%, and the property change factor, weighted by 25%.

(b) The income change factor is determined by dividing the change in earnings by the change in the capitalization rate.

HeinOnline -- 1999 vol. II 2268 1999

(c) The gross profit margin change factor is determined by dividing the average gross profit margin for the 2 years immediately preceding the current tax year by the average gross profit margin for the 2 years immediately preceding the previous tax year.

(d) The property change factor is determined by dividing the system cost reported by the railroad for the tax year immediately preceding the current tax year by the system cost reported by the railroad for the tax year immediately preceding the previous tax year.

(4) The department shall apportion the system value of the railroad to Montana by multiplying the system value of the railroad determined under subsection (2) by the average of the allocation factor for the 2 years immediately preceding the current tax year. The allocation factor is determined under subsection (5).

(5) The allocation factor used to apportion the system value of the railroad to Montana is the average of the sum of:

(a) the ratio of track miles in the state to total system track miles;

(b) the ratio of revenue ton miles in the state to total system revenue ton miles;

(c) the ratio of gross investment in road and equipment in the state to total system gross investment in road and equipment;

(d) the ratio of operating revenue reported in the state to total system operating revenue; and

(e) the ratio of railroad car and locomotive miles in the state to total system railroad car and locomotive miles.

(6) The department shall take into account extenuating circumstances to adjust the assessed value of railroad property in the state. Occurrences that may result in an adjustment to the assessed value of railroad property include but are not limited to:

(a) extraordinary, unusual, or infrequent events that are material in nature and of a character different from the typical or customary business operations, that are not expected to recur frequently, and that are not normally considered in the evaluation of the operating results of a business; and

(b) material increases or decreases in income and property as a result of events such as writeoffs, writedowns, and changes in accounting methods or practices.

~~(2)~~*(7)* In determining the taxable value of railroad property, the department shall determine the percentage rate "R" provided for in 15-6-145 in order to achieve compliance with the requirements of the federal Railroad Revitalization and Regulatory Reform Act of 1976, as amended."

Section 5. Codification instruction. (1) [Section 3] is intended to be codified as an integral part of Title 15, chapter 23, part 2, and the provisions of Title 15, chapter 23, part 2, apply to [section 3].

(2) (a) Section 15-23-201 is intended to be renumbered as 15-23-204.

(b) Section 15-23-202 is intended to he renumbered as 15-23-205.

Section 6. Effective date. [This act] is effective on passage and approval.

Section 7. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

Approved April 30, 1999

HeinOnline -- 1999 vol. II 2269 1999

CHAPTER NO. 532

[SB 54]

AN ACT GENERALLY REVISING THE YOUTH COURT ACT; GRANTING GREATER AUTHORITY OVER CERTAIN JUVENILES TO THE DISTRICT COURT; GRANTING THE DEPARTMENT OF CORRECTIONS AUTHORITY TO DETERMINE AN EMERGENCY CAPACITY FOR STATE YOUTH CORRECTIONAL FACILITIES AND SYSTEMS; CREATING THE CRIMINALLY CONVICTED YOUTH ACT GRANTING ADDITIONAL DUE PROCESS TO JUVENILE CRIMINAL OFFENDERS; AMENDING SECTIONS 41-5-103, 41-5-121, 41-5-206, 41-5-332, 41-5-348, 41-5-1301, 41-5-1302, 41-5-1415, 41-5-1501, 41-5-1503, 41-5-1513, 41-5-1803, 46-24-211, AND 52-5-129, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-5-103, MCA, is amended to read:

"41-5-103. Definitions. As used in the Montana Youth Court Act, unless the context requires otherwise, the following definitions apply:

(1) "Adult" means an individual who is 18 years of age or older.

(2) "Agency" means any entity of state or local government authorized by law to be responsible for the care or rehabilitation of youth.

(3) "Assessment officer" means a person who is authorized by the court to provide initial intake and evaluation for a youth who appears to be in need of intervention or an alleged delinquent youth.

(4) "Commit" means to transfer to legal custody.

(5) "Correctional facility" means a public or private residential facility used for the placement of delinquent youth or individuals convicted of criminal offenses.

(6) "Court", when used without further qualification, means the youth court of the district court.

(7) "Criminally convicted youth" means a youth who has been convicted in a district court pursuant to 41-5-206.

~~(7)~~*(8)* "Custodian" means a person, other than a parent or guardian, to whom legal custody of the youth has been given but does not include a person who has only physical custody.

~~(8)~~*(9)* "Delinquent youth" means a youth who is adjudicated under formal proceedings under the Montana Youth Court Act as a youth:

(a) who has committed an offense that, if committed by an adult, would constitute a criminal offense; or

(b) who has been placed on probation as a delinquent youth or a youth in need of intervention and who has violated any condition of prohation.

~~(9)~~*(10)* "Department" means the department of corrections provided for in 2-15-2301.

~~(10)~~*(11)* "Detention" means the holding or temporary placement of a youth in the youth's home under home arrest or in a facility other than the youth's own home for:

(a) the purpose of ensuring the continued custody of the youth at any time after the youth is taken into custody and before final disposition of the youth's case; ~~or~~

(b) contempt of court or violation of a valid court order; *or*

(c) violation of a youth parole agreement.

~~(11)~~*(12)* "Detention facility" means a physically restricting facility designed to prevent a youth from departing at will. The term includes a youth detention facility, short-term detention center, and regional detention facility.

~~(12)~~*(13)* "Family" means the parents, guardians, legal custodians, and siblings or other youth with whom a youth ordinarily lives.

~~(12)~~*(14)* "Final disposition" means the implementation of a court order for the disposition or placement of a youth as provided in 41-5-1422, 41-5-1503, 41-5-1504, 41-5-1512, 41-5-1513, and 41-5-1522 through 41-5-1525.

~~(14)~~*(15)* "Foster home" means a private residence licensed by the department of public health and human services for placement of a youth.

~~(15)~~*(16)* "Guardian" means an adult:

(a) who is responsible for a youth and has the reciprocal rights, duties, and responsibilities with the youth; and

(b) whose status is created and defined by law.

~~(15)~~*(17)* "Habitual truancy" means recorded absences of 10 days or more of unexcused absences in a semester or absences without prior written approval of a parent or a guardian.

~~(17)~~*(18)* "Holdover" means a room, office, building, or other place approved by the board of crime control for the temporary detention and supervision of youth in a physically unrestricting setting for a period not to exceed 24 hours while the youth is awaiting a probable cause hearing, release, or transfer to an appropriate detention or shelter care facility. The term does not include a jail.

~~(18)~~*(19)* "Jail" means a facility used for the confinement of adults accused or convicted of criminal offenses. The term includes a lockup or other facility used primarily for the temporary confinement of adults after arrest but does not include a collocated juvenile detention facility that complies with 28 CFR, part 31.

~~(15)~~*(20)* "Judge", when used without further qualification, means the judge of the youth court.

~~(20)~~*(21)* (a) "Legal custody" means the legal status created by order of a court of competent jurisdiction that gives a person the right and duty to:

(i) have physical custody of the youth;

(ii) determine with whom the youth shall live and for what period;

(iii) protect, train, and discipline the youth; and

(iv) provide the youth with food, shelter, education, and ordinary medical care.

(b) An individual granted legal custody of a youth shall personally exercise the individual's rights and duties as guardian unless otherwise authorized by the court entering the order.

HeinOnline -- 1999 vol. II 2271 1999

~~(21)~~*(22)* "Necessary parties" includes the youth and the youth's parents, guardian, custodian, or spouse.

~~(22)~~*(23)* "Parent" means the natural or adoptive parent but does not include a person whose parental rights have been judicially terminated, nor does it include the putative father of an illegitimate youth unless the putative father's paternity is established by an adjudication or by other clear and convincing proof.

~~(22)~~*(24)* "Probable cause hearing" means the hearing provided for in 41-5-332.

~~(24)~~*(25)* "Regional detention facility" means a youth detention facility established and maintained by two or more counties, as authorized in 41-5-1804.

~~(25)~~*(26)* "Restitution" means payments in cash to the victim or with services to the victim or the general community when these payments are made pursuant to a consent adjustment, consent decree, or other youth court order.

~~(26)~~*(27)* "Running away from home" means that a youth has been reported to have run away from home without the consent of a parent or guardian or a custodian having legal custody of the youth.

~~(27)~~*(28)* "Secure detention facility" means a public or private facility that:

(a) is used for the temporary placement of youth or individuals accused or convicted of criminal offenses or as a sanction for contempt of court, violation of a parole agreement, or violation of a valid court order; and

(b) is designed to physically restrict the movements and activities of youth or other individuals held in lawful custody of the facility.

~~(26)~~*(29)* "Serious juvenile offender" means a youth who has committed an offense that would be considered a felony offense if committed by an adult and that is an offense against a person, an offense against property, or an offense involving dangerous drugs.

~~(26)~~*(30)* "Shelter care" means the temporary substitute care of youth in physically unrestricting facilities.

~~(30)~~*(31)* "Shelter care facility" means a facility used for the shelter care of youth. The term is limited to the facilities enumerated in 41-5-344.

~~(31)~~*(32)* "Short-term detention center" means a detention facility licensed by the department for the temporary placement or care of youth, for a period not to exceed 10 days excluding weekends and legal holidays, pending a probable cause hearing, release, or transfer of the youth to an appropriate detention facility, youth assessment center, or shelter care facility.

~~(32)~~*(33)* "State youth correctional facility" means a residential facility used for the placement and rehabilitation of delinquent youth, such as the Pine Hills youth correctional facility in Miles City.

~~(30)~~*(34)* "Substitute care" means full-time care of youth in a residential setting for the purpose of providing food, shelter, security and safety, guidance, direction, and, if necessary, treatment to youth who are removed from or are without the care and supervision of their parents or guardians.

~~(34)~~*(35)* "Victim" means:

(a) a person who suffers property, physical, or emotional injury as a result of an offense committed by a youth that would be a ~~felony~~ *criminal* offense if committed by an adult;

HeinOnline -- 1999 vol. II 2272 1999

(b) an adult relative of the victim as defined in subsection (34)(a) if the victim is a minor; and

(c) an adult relative of a homicide victim.

~~(35)~~*(36)* "Youth" means an individual who is less than 18 years of age without regard to sex or emancipation.

~~(36)~~*(37)* "Youth assessment" means a multidisciplinary assessment of a youth as provided in 41-5-1201.

~~(37)~~*(38)* "Youth assessment center" means a staff-secured location that is licensed by the department of public health and human services to hold a youth for up to 10 days for the purpose of providing an immediate and comprehensive community-based youth assessment to assist the youth and the youth's family in addressing the youth's behavior.

~~(38)~~*(39)* "Youth care facility" has the meaning provided in 41-3-1102.

~~(38)~~*(40)* "Youth court" means the court established pursuant to this chapter to hear all proceedings in which a youth is alleged to be a delinquent youth, a youth in need of intervention, or a youth in need of care and includes the youth court judge, probation officers, and assessment officers.

~~(40)~~*(41)* "Youth detention facility" means a secure detention facility licensed by the department for the temporary substitute care of youth that *is*:

(a) *(i)* ~~is~~ operated, administered, and staffed separately and independently of a jail; ~~and~~ *or*

(ii) a collocated secure detention facility that complies with 28 CFR, part 31; and

(b) ~~is~~ used exclusively for the lawful detention of alleged or adjudicated delinquent youth or as a sanction for contempt of court, violation of a parole agreement, or violation of a valid court order.

~~(41)~~*(42)* "Youth in need of care" has the meaning provided for in 41-3-102.

~~(42)~~*(43)* "Youth in need of intervention" means a youth who is adjudicated as a youth and who commits an offense prohibited by law that if committed by an adult would not constitute a criminal offense, including but not limited to a youth who:

(a) violates any Montana municipal or state law regarding alcoholic beverages;

(b) continues to exhibit behavior, including running away from home or habitual truancy, beyond the control of the youth's parents, foster parents, physical custodian, or guardian despite the attempt of the youth's parents, foster parents, physical custodian, or guardian to exert all reasonable efforts to mediate, resolve, or control the youth's behavior; or

(c) has committed any of the acts of a delinquent youth but whom the youth court, in its discretion, chooses to regard as a youth in need of intervention."

Section 2. Section 41-5-121, MCA, is amended to read:

"41-5-121. Youth placement committees — composition. (1) In each judicial district, the department shall establish a youth placement committee for the purposes of:

HeinOnline -- 1999 vol. II 2273 1999

(a) recommending an appropriate placement of a youth referred to the department under ~~41-5-1304~~ *41-5-1512 and 41-5-1513*; or

(b) recommending available community services or alternative placements whenever a change is required in the placement of a youth who is currently in the custody of the department under 41-5-1512 or 41-5-1513. However, the committee may not substitute its judgment for that of the superintendent of a state youth correctional facility regarding the discharge of a youth from the facility.

(2) The committee consists of not less than five members and must include persons who are knowledgeable about the youth, treatment and placement options, and other resources appropriate to address the needs of the youth. Members may include:

(a) two representatives of the department;

(b) a representative of the department of public health and human services;

(c) either the chief probation officer or the youth's probation officer;

(d) a mental health professional;

(e) a representative of a school district located within the boundaries of the judicial district who must have personal knowledge of and experience with the youth;

(f) if an Indian child or children are involved, someone, preferahly an Indian person, knowledgeable ahout Indian culture and family matters;

(g) a parent or guardian; and

(h) a youth services provider.

(3) Committee members serve without compensation.

(4) Notwithstanding the provisions of 41-5-123, the committee may be convened by the department or the probation officer of the youth court.

(5) If a representative of the school district within the boundaries of which the youth is recommended to be placed and will be attending school is not included on the committee, the person who convened the committee shall inform the school district of the final placement decision for the youth."

Seetion 3. Section 41-5-206, MCA, is amended to read:

"41-5-206. Filing in district court prior to formal proceedings in youth court. (1) The county attorney may, in the county attorney's discretion, file with the district court a motion for leave to file an information in the district court if:

(a) the youth charged was 12 years of age or older at the time of the conduct alleged to be unlawful and the unlawful act would if it had been committed by an adult constitute:

(i) sexual intercourse without consent as defined in 45-5-503;

(ii) deliberate homicide as defined in 45-5-102;

(iii) mitigated deliberate homicide as defined in 45-5-103; ~~or~~

(iv) assault on a peace officer or judicial officer as defined in 45-5-210; or

~~(iv)~~*(v)* the attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for either deliberate or mitigated deliberate homicide; or

(b) the youth charged was 16 years of age or older at the time of the conduct alleged to be unlawful and the unlawful act is one or more of the following:

(i) negligent homicide as defined in 45-5-104;

(ii) arson as defined in 45-6-103;

(iii) aggravated or felony assault as defined in 45-5-202;

(iv) robbery as defined in 45-5-401;

(v) burglary or aggravated burglary as defined in 45-6-204;

(vi) aggravated kidnapping as defined in 45-5-303;

(vii) possession of explosives as defined in 45-8-335;

(viii) criminal sale of dangerous drugs as defined in 45-9-101;

(ix) criminal production or manufacture of dangerous drugs as defined in 45-9-110;

(x) attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for any of the acts enumerated in subsections (1)(b)(i) through (1)(b)~~(x)~~*(ix)*;

(xi) use of threat to coerce criminal street gang membership or use of violence to coerce criminal street gang membership, as defined in 45-8-403;

(xii) escape as defined in 45-7-306.

(2) The county attorney shall file with the district court a petition for leave to file an information in district court if the youth was 17 years of age at the time the youth committed an offense listed under subsection (1).

(3) The district court shall grant leave to file the information if the court finds that there is probable cause to believe that the youth has committed the alleged offense and that, considering the seriousness of the offense and in the interests of community protection, the case should be filed in the district court.

(4) The filing of an information in district court terminates the jurisdiction of the youth court over the youth with respect to the acts alleged in the information. A youth may not be prosecuted in the district court for a criminal offense originally subject to the jurisdiction of the youth court unless the case has been filed in the district court as provided in this section. A case may be transferred to district court after prosecution as provided in ~~41-5-208 or~~ *41-5-208 or* 41-5-1605.

(5) An offense not enumerated in subsection (1) that arises during the commission of a crime enumerated in subsection (1) may be:

(a) tried in youth court;

(b) transferred to district court with an offense enumerated in subsection (1) upon motion of the county attorney and order of the district court judge.

(6) If a youth is found guilty in district court of any of the offenses enumerated in subsection (1)~~ and is sentenced to the state prison, the commitment must be to the department of corrections~~, *the court shall sentence the youth pursuant to [section 19], Title 45, and Title 46. A youth who is sentenced to the department or a state prison must be evaluated and placed by the department*

HeinOnline -- 1999 vol. II 2275 1999

in an appropriate juvenile or adult correctional facility. The department shall confine the youth in whatever institution that it considers proper, including a state youth correctional facility under the procedures of 52-5-111. However, a youth under 16 years of age may not be confined in a state prison facility. During the period of confinement, school-aged youth with disabilities must be provided an education consistent with the requirements of the federal Individuals with Disahilities Education Act, 20 U.S.C. 1400, et seq.

(7) A youth whose case is filed in the district court may not be detained or otherwise placed in a jail or other adult detention facility before final disposition of the youth's case unless:

(a) alternative facilities do not provide adequate security; and

(b) the youth is kept in an area that provides physical separation as well as sight and sound separation from adults accused or convicted of criminal offenses."

Section 4. Section 41-5-332, MCA, is amended to read:

"41-5-332. Custody — hearing for probable cause. (1) When a youth is taken into custody for questioning, a hearing to determine whether there is probable cause to believe the youth is a delinquent youth or a youth in need of intervention must he beld within 24 hours, excluding weekends and legal holidays. A hearing is not required if the youth is released prior to the time of the required hearing.

(2) The probable cause hearing required under subsection (1) may be held by the youth court, a justice of the peace, a municipal or city judge, or a magistrate having jurisdiction in the case as provided in 41-5-203. If the probable cause hearing is held by a justice of the peace, a municipal or city judge, or a magistrate, a record of the hearing must be made by a court reporter or by a tape recording of the hearing.

(3) A probable cause hearing may be conducted by telephone if other means of conducting the hearing are impractical. All written orders and findings of the court in a hearing conducted by telephone must bear the name of the judge or magistrate presiding in the case and the hour and date the order or findings were issued.

(4) A hearing is not required for a youth placed in detention for an alleged parole violation."

Section 5. Section 41-5-348, MCA, is amended to read:

"41-5-348. Place of detention. Placement in detention means placement in one of the following facilities:

(1) a short-term detention center; ~~or~~

(2) a youth detention facility, including a regional detention facility~~.~~; *or*

(3) a secure detention facility outside the state or operated by an Indian tribe that is under contract to the state or a subdivision of the state and that is in substantial compliance with the licensing requirements contained in rules adopted by the department."

Section 6. Information to be collected by juvenile probation officer or assessment officer. The juvenile probation officer or assessment officer shall collect the following information regarding a youth:

HeinOnline -- 1999 vol. II 2276 1999

(1) biographical data;

(2) a description of prior and current offenses, including criminal history;

(3) a listing of known or suspected associates;

(4) any gang or drug involvement;

(5) field investigation data;

(6) motor vehicle ownership and offense data, if any;

(7) whether the youth is a suspect in other criminal investigations;

(8) history of any victimization of others by the youth;

(9) the youth's status offense history;

(10) existence of active warrants;

(11) school, employment, and family histories;

(12) social and medical services histories; and

(13) prior conduct in a youth detention or correctional facility, if any.

Section 7. Section 41-5-1301, MCA, is amended to read:

"**41-5-1301. Informal disposition.** ~~(1)~~ After a preliminary inquiry under 41-5-1201, the probation officer or assessment officer upon determining that further action is required and that referral to the county attorney is not required may:

~~(a)~~*(1)* provide counseling, refer the youth and the youth's family to another agency providing appropriate services, or take any other action or make any informal adjustment that does not involve probation or detention; or

~~(b)~~*(2)* provide for treatment or adjustment involving probation or other disposition authorized under 41-5-1302 through 41-5-1304 if the treatment or adjustment is voluntarily accepted by the youth's parents or guardian and the youth, if the matter is referred immediately to the county attorney for review, and if the probation officer or assessment officer proceeds no further unless authorized by the county attorney.

~~(2) The juvenile probation officer or assessment officer shall collect the following information regarding a youth if the youth is alleged to be a delinquent youth and if the probation officer or assessment officer determines that the matter should be referred to the county attorney for filing a petition in youth court:~~

~~(a) biographical data;~~

~~(b) a description of prior and current offenses, including criminal history;~~

~~(c) a listing of known or suspected associates;~~

~~(d) any gang or drug involvement;~~

~~(e) field investigation data;~~

~~(f) motor vehicle ownership and offense data, if any;~~

~~(g) whether the youth is a suspect in other criminal investigations;~~

~~(h) history of any victimization of others by the youth;~~

~~(i) the youth's status offense history;~~

~~(j) existence of active warrants;~~

~~(k) school, employment, and family histories;~~

~~(l) social and medical services histories;~~

~~(m) prior conduct in a youth detention or correctional facility, if any.~~"

Section 8. Section 41-5-1302, MCA, is amended to read:

"**41-5-1302. Consent adjustment without petition.** (1) Before referring the matter to the county attorney and subject to the limitations in subsection (3), the probation officer or assessment officer may enter into a consent adjustment and give counsel and advice to the youth, the youth's family, and other interested parties if it appears that:

(a) the admitted facts bring the case within the jurisdiction of the court;

(b) counsel and advice without filing a petition would be in the best interests of the child, the family, and the public; and

(c) the youth may be a youth in need of intervention and the probation officer or assessment officer believes that the parents, foster parents, physical custodian, or guardian exerted all reasonable efforts to mediate, resolve, or control the youth's behavior and the youth continues te exhibit behavior beyond the control of the parents, foster parents, physical custodian, or guardian.

(2) Any probation or other disposition imposed under this section against a youth must conform to the following procedures:

(a) Every consent adjustment must be reduced to writing and signed by the youth and the youth's parents or the person having legal custody of the youth.

(b) If the probation officer or assessment officer believes *that* the youth is a youth in need of intervention, the probation officer or assessment officer shall determine tbat the parents, foster parents, physical custodian, or gnardian exerted all reasonable efforts to mediate, resolve, or control the youth's bebavior and *that* the youth continues to exhibit behavior beyond the control of the parents, foster parents, physical custodian, or guardian.

(c) Approval by the youth court judge is required if the complaint alleges commission of a felony or if the youth has been or will be in any way detained.

(3) A consent adjustment without petition under this section may not be used to dispose of a youth's alleged second or subsequent offense if ~~that:~~

(a) the youth has admitted commission of or has been adjudicated or sentenced for a prior offense *that* would be a felony if committed by an adult ~~or third or subsequent offense if;~~

(b) the second or subsequent offense would be a felony if committed by an adult and was committed within 3 years of a prior offense; or

(c) ~~that~~ *the second or subsequent* offense would be a misdemeanor if committed by an adult *and was committed within 3 years of a prior offense, other than a felony, unless the probation officer notifies the youth court and obtains written approval from the county attorney and the youth court judge.*

(4) For purposes of subsection (3), related offenses committed by a youth during the same 24-hour period must be considered a single offense."

Section 9. Section 41-5-1415, MCA, is amended to read:

"**41-5-1415. Admissibility of confession or illegally seized evidence.** In a proceeding alleging a youth to be a delinquent youth:

(1) an extrajudicial statement that would be constitutionally inadmissible in a criminal matter may not be received in evidence;

(2) evidence illegally seized or obtained may not be received in evidence to establish the allegations of a petition against a youth; *and*

(3) an extrajudicial admission or confession made by the youth out of court is insufficient to support a finding that the youth committed the acts alleged in the petition unless it is corroborated by other evidence~~; and~~

~~(4) upon a finding of an offense related to use of alcohol or illegal drugs, the court may order the youth to undergo urinalysis for the purpose of determining whether the youth is using alcoholic beverages or illegal drugs.~~"

Section 10. Section 41-5-1501, MCA, is amended to read:

"**41-5-1501. Consent decree with petition.** (1) (a) Subject to the provisions of subsection (2), after the filing of a petition under 41-5-1402 and before the entry of a judgment, the court may, on motion of counsel for the youth or on the court's own motion, suspend the proceedings and continue the youth under supervision under terms and conditions negotiated with probation services and agreed to by all necessary parties. The court's order continuing the ~~child~~ *youth* under supervision under this section is known as a "consent decree". Except as provided in subsection (1)(b), the procedures used and dispositions permitted under this section must conform to the procedures and dispositions specified in 41-5-1302 through 41-5-1304 relating to consent adjustments without petition and the responsibility of the youth's parents or guardians to pay a contribution for the costs of placement in substitute care.

(b) A youth may be placed in detention for up to 10 days on a space-available basis at the county's expense, which is not reimbursable under part 19 of this chapter.

(2) A consent decree under this section may not be used by the court unless the youth admits guilt for any charges of an offense set forth in the petition and accepts responsibility for the youth's actions.

(3) If the youth or the youth's counsel objects to a consent decree, the court shall proceed to findings, adjudication, and disposition of the case.

(4) If, either prior to discharge by probation services or expiration of the consent decree, a new petition alleging that the youth is a delinquent youth or a youth in need of intervention is filed against the youth or if the youth fails to fulfill the expressed terms and conditions of the consent decree, the petition under which the youth was continued under supervision may be reinstated in the discretion of the county attorney in consultation with probation services. In the event of reinstatement, the proceeding on the petition must be continued to conclusion as if the consent decree had never been entered.

(5) A youth who is discharged by probation services or who completes a period under supervision without reinstatement of the original petition may not again be proceeded against in any court for the same offense alleged in the petition, and the original petition must be dismissed with prejudice. This subsection does not preclude a civil suit against the youth for damages arising from the youth's conduct.

(6) In all cases in which the terms of the consent decree extend for a period in excess of 6 months, the probation officer shall at the end of each 6-month period submit a report that must be reviewed by the court.

HeinOnline -- 1999 vol. II 2279 1999

(7) A consent decree with petition under this section may not be used to dispose of a youth's alleged second or subsequent offense if that offense would be a felony if committed by an adult or third or subsequent offense if that offense would be a misdemeanor if committed by an adult *unless it is recommended by the county attorney and accepted by the youth court judge.*"

Section 11. Section 41-5-1503, MCA, is amended to read:

"**41-5-1503. Medical or psychological evaluation of youth — *urinalysis*.** (1) The youth court may order a youth to receive a medical or psychological evaluation at any time prior to final disposition if the youth waives the youth's constitutional rights in the manner provided for in 41-5-331. The county determined by the court as the residence of the youth is responsible for the cost of the evaluation, except as provided in subsection (2). A county may contract with the department or other public or private agencies to obtain evaluation services ordered by the court.

(2) The youth court shall determine the financial ability of the youth's parents or guardians to pay the cost of an evaluation ordered by the court under subsection (1). If they are financially able, the court shall order the youth's parents or guardians to pay all or part of the cost of the evaluation.

(3) Subject to 41-5-1512(15)(a), the youth court may not order an evaluation or placement of a youth at a state youth correctional facility unless the youth is found to be a delinquent youth or is alleged to have committed an offense that is listed under 41-5-206.

(4) An evaluation of a youth may not be performed at the Montana state hospital unless the youth is transferred to the district court under ~~41-5-208 or~~ *41-5-208 or* 41-5-1605 or the jurisdiction of the youth court is terminated following the filing of an information in district court pursuant to 41-5-206.

(5) In a proceeding alleging a youth to be a delinquent youth, upon a finding of an offense related to use of alcohol or illegal drugs, the court may order the youth to undergo urinalysis for the purpose of determining whether the youth is using alcoholic beverages or illegal drugs."

Section 12. Section 41-5-1513, MCA, is amended to read:

"**41-5-1513. Disposition — delinquent youth — restrictions.** (1) If a youth is found to be a delinquent youth, the youth court may enter its judgment making one or more of the following dispositions:

(a) any one or more of the dispositions provided in 41-5-1512;

(b) *subject to 41-5-1504, 41-5-1512(15)(a), and 41-5-1522,* commit the youth to the department for placement in a state youth correctional facility ~~or in a correctional facility or a program operated by the department;~~ *and recommend to the department that the youth not be released until the youth reaches 18 years of age. The court may not place a youth adjudicated delinquent in a state youth correctional facility for an offense that would be a misdemeanor if committed by an adult unless the court finds that the youth presents a danger to the public safety and that the placement is recommended by a mental health professional after evaluation of the youth.*

~~(c) subject to 41-5-1504, 41-5-1512(15)(a), and 41-5-1522, sentence a youth to one of the state youth correctional facilities established under 52-5-101 and, as part of the sentence, deny the youth eligibility for release without the express approval of the sentencing judge until the youth reaches 18 years of age. A youth~~

~~may not be sentenced to a state youth correctional facility unless the department informs the judge that space is available for the youth at that facility. Except as provided in subsection (2), the sentencing judge may not place limitations on the release unless recommended by the youth placement committee. The court may not place a youth adjudicated delinquent in a state youth correctional facility for an offense that would be a misdemeanor if committed by an adult, unless the court finds that the youth presents a danger to public safety and that the placement is recommended by a mental health professional after evaluation of the youth.~~

~~(d)~~*(c)* require a youth found to be a delinquent youth, as the result of the commission of an offense that would be a sexual offense or violent offense, as defined in 46-23-502, if committed by an adult, to register as a ~~sex~~ *sexual or violent* offender pursuant to Title 46, chapter 23, part 5. The youth court shall retain jurisdiction in a disposition under this subsection.

~~(e)~~*(d)* in the case of a delinquent youth who is determined by the court to be a serious juvenile offender, the judge may specify that the youth be placed in a state youth correctional facility, subject to the provisions of subsection (2), if the judge finds that the placement is necessary for the protection of the public. The court may order the department to notify the court within 5 working days before the proposed release of a youth from a youth correctional facility. Once a youth is committed to the department for placement in a state youth correctional facility, the department is responsible for determining an appropriate date of release or an alternative placement.

~~(f)~~*(e)* impose a fine as authorized by law if the violation alleged would constitute a criminal offense if committed by an adult.

(2) If a youth has been adjudicated for a sex offense, the youth court may require completion of sex offender treatment before a youth is discharged."

Section 13. Section 41-5-1803, MCA, is amended to read:

"41-5-1803. County responsibility to provide youth detention services. (1) Each county shall provide services for the detention of youth in facilities separate from adult jails.

(2) In order to fulfill its responsibility under subsection (1), a county may:

(a) establish, operate, and maintain a holdover, a short-term detention center, or a youth detention facility at county expense;

(b) provide shelter care facilities as authorized in 41-5-1801;

(c) contract with another county for the use of an available shelter care facility, holdover, short-term detention center, or youth detention facility;

(d) establish and operate a network of holdovers in cooperation with other counties;

(e) establish a regional detention facility; ~~or~~

(f) enter into an agreement with a private party under which the private party will own, operate, or lease a shelter care facility or youth detention facility for use by the county. The agreement may be made in substantially the same manner as provided for in 7-32-2232 and 7-32-2233.

(g) contract with another state, political subdivision of another state, or an Indian tribe for use of a secure detention facility. Secure detention facilities

HeinOnline -- 1999 vol. II 2281 1999

contracted with for the purposes of this subsection (2)(g) must be licensed or certified by a state or federal agency with applicable licensing or certifying authority, or the contracting county shall determine that the out-of-state or tribal detention facility substantially complies with the licensing requirements contained in rules adopted by the department.

(3) Each county or regional detention facility must be licensed hy the department in accordance with rules adopted under 41-5-1802."

Seetion 14. Section 46-24-211, MCA, is amended to read:

"46-24-211. Information concerning appeai or posteonviction remedies. If the defendant appeals, ~~or~~ pursues a postconviction remedy, *or the district court grants a hearing under [sections 17 through 20],* the attorney general, or the county attorney if the case has not been referred to the attorney general, shall promptly inform the victim of the notice of appeal, *hearing under [sections 17 through 20],* or postconviction petition, of the date, time, and place of any hearing, and of the decision."

Section 15. Section 52-5-129, MCA, is amended to read:

"52-5-129. Hearing on alleged violation of parole agreement — right to appeal outcome. (1) When it is alleged by a juvenile parole officer that a youth has violated the terms of the youth's parole agreement, the youth must be granted a hearing at the site of the alleged violation or in the county in which the youth is residing or is found within 10 days after notice has been served on the youth or the youth is detained, whichever is earlier. At the discretion of the hearings officer, this hearing may be held by means of interactive video transmission. The purpose of the hearing is to determine whether the youth committed the violation and, if so, whether the violation is of such a nature that the youth should be returned to the youth correctional facility from which the youth was released or whether a different plan for custody and supervision of the youth should be pursued by the department of corrections.

(2) The youth, upon advice of an attorney, may waive the right to a hearing.

(3) With regard to this hearing, the youth must be given:

(a) written notice of the alleged violation of the parole agreement, including notice of the purpose of the hearing;

(b) a disclosure of the evidence against the youth and the facts constituting the alleged violation;

(c) the opportunity to be heard in person or by interactive video transmission and to present witnesses and documentary evidence to controvert the evidence against the youth and to show that there are compelling reasons that justify or mitigate the violation;

(d) the opportunity to have the hearings officer subpoena witnesses;

(e) the right to confront and cross-examine adverse witnesses in person or by means of interactive video transmission;

(f) the right to be represented by an attorney;

(g) a record of the hearing; and

(h) notice that a written statement as to the evidence relied upon in reaching the final decision and the reasons for the final decision will be provided by the hearings officer.

HeinOnline -- 1999 vol. II 2282 1999

(4) The department shall provide a hearings officer to conduct the hearing. The department shall adopt rules necessary to effect a prompt and full review.

(5) If the hearings officer finds, by a preponderance of the evidence, that the youth did in fact commit the violation, the hearings officer shall make a recommendation to the department for the placement of the youth. In making this recommendation, the hearings officer may consider mitigating or aggravating circumstances. The youth or the youth's attorney may appeal the hearings officer's decision to the department director. The appeal must be made in writing within 5 days of the hearing. The department director or designee shall grant or deny the appeal within 5 days of receipt of the appeal.

(6) The youth may appeal the decision of the department director to the district court of the county in which the hearing was held by serving and filing a notice of appeal with the court within 10 days of the department director's decision. The youth may obtain a written transcript of the hearing from the department by giving written notice of appeal. The district court, upon receipt of a notice of appeal, shall order the department to promptly certify to the court a record of all proceedings before the department and shall proceed to a prompt hearing on the appeal based upon the record on appeal. The decision of the department may not be altered except for abuse of discretion or manifest injustice.

(7) Pending the hearing on a violation and pending the department's decision, a youth may not be detained except when the youth's detention or care is required to protect the person or property of the youth or of others or the youth may abscond or be removed from the community. The department shall determine the place and manner of detention *pursuant to 41-5-348* and is responsible for the cost of the detention. Procedures for taking into custody and detention of a youth charged with violation of the youth's parole agreement are as provided in 41-5-321~~, 41-5-331 through 41-5-334, and 41-5-344 through 41-5-349~~.

(8) If the decision is made to return the youth to the youth correctional facility from which the youth was released and the youth appeals that decision, the youth shall await the outcome of the appeal at the facility."

Section 16. Excessive juvenile population — confinement of juveniles in alternate placements. (1) The department shall determine the capacity for state youth correctional facilities. The department shall notify all district courts, sheriffs, and youth courts of the capacity for each state youth correctional facility by sending a report to each annually.

(2) If the population of a state youth correctional facility exceeds the capacity established by the department, the director of the department may declare that the capacity has been exceeded and temporarily stop admissions to the facility. The director shall notify each district court, sheriff, and youth court that delinquent or criminally convicted youth will not be accepted by the department for admission into the facility until the population is reduced to less than the capacity determined by the department in subsection (1).

(3) If the director of the department declares that the capacity has been exceeded, the department shall place delinquent youth committed to a state youth correctional facility or criminally convicted youth in alternate placements based on the needs of the delinquent youth or criminally convicted youth. If a youth is denied placement in a state youth correctional facility under this section, the

HeinOnline -- 1999 vol. II 2283 1999

department shall inform and seek approval of the district court of the intended alternative placement prior to placing the youth.

(4) The department may enter into contracts with the federal government, other states, local governments, public or private corporations, and other entities that have suitable facilities for confining delinquent youth or criminally convicted youth committed to the department, either because a state youth correctional facility has exceeded its capacity or because the department has no youth correctional facility that is adequate for certain delinquent youth or criminally convicted youth.

Section 17. Short title. [Sections 17 through 20] may be cited as the "Criminally Convicted Youth Act".

Section 18. Purpose. The criminally convicted youth act must be interpreted and construed to effectuate the following express legislative purposes:

(1) to protect the public;

(2) to hold youth who commit offenses that may be filed directly in district court pursuant to 41-5-206 accountable for their actions;

(3) to provide for the custody, assessment, care, supervision, treatment, education, rehabilitation, and work and skill development of youth convicted in district court; and

(4) to comply with the legislative purposes set forth in 41-5-102.

Section 19. Disposition of criminally convicted youth. (1) The district court, in sentencing a youth adjudicated in district court pursuant to 41-5-206, shall:

(a) impose any sentence allowed by the statute that established the penalty for the offense of which the youth is convicted as if the youth were an adult and any conditions or restrictions allowed by statute;

(b) retain jurisdiction over the case until the criminally convicted youth reaches the age of 21;

(c) order the department to submit a status report to the court, county attorney, defense attorney, and juvenile probation officer every 6 months until the youth attains the age of 21. The report must include a recommendation from the department regarding the disposition of the criminally convicted youth.

(2) The district court shall review the criminally convicted youth's sentence pursuant to [section 20] before the youth reaches the age of 21 if a hearing has not been requested under [section 20].

Section 20. Sentence review hearing. (1) When a youth has been convicted as an adult pursuant to the provisions of 41-5-206, except for offenses punishable by death or life imprisonment or when a sentence of 100 years could be imposed, the county attorney, defense attorney, or youth may, at any time before the youth reaches the age of 21, request a hearing to review the sentence imposed on the youth. The department shall notify the court of the youth's impending birthday no later than 90 days before the youth's 21st birthday.

(2) After reviewing the status report and upon motion for a hearing, the court shall determine whether to hold a criminally convicted youth sentence review hearing. If the court, in its discretion, determines that a sentence review hearing is warranted or is required under [section 19], the hearing must be held within

HeinOnline -- 1999 vol. II 2284 1999

90 days after the filing of the request or determination. The sentencing court or county attorney shall notify the victim of the offense pursuant to Title 46, chapter 24.

(3) The sentencing court shall review the department's records, youth court records, victim statements, and any other pertinent information.

(4) The sentencing court, after considering the criminal, social, psychological, and any other records of the youth; any evidence presented at the hearing; and any statements by the victim and by the parent or parents or guardian of the youth and any other advocates for the youth shall determine whether the criminally convicted youth has been substantially rehabilitated based upon a preponderance of the evidence.

(5) In the event that the sentencing court determines that the youth has been substantially rehabilitated, the court shall determine whether to:

(a) suspend all or part of the remaining portion of the sentence, impose conditions and restrictions pursuant to 46-18-201, and place the youth on probation under the direction of the department, unless otherwise specified;

(b) impose all or part of the remaining sentence and make any additional recommendations to the department regarding the placement and treatment of the criminally convicted youth; or

(c) impose a combination of options allowed under subsections (5)(a) and (5)(b), not to exceed the total sentence remaining.

(6) The sentencing court may revoke a suspended sentence of a criminally convicted youth pursuant to 46-18-203.

Section 21. Codification instruction. (1) [Section 6] is intended to be codified as an integral part of Title 41, chapter 5, part 12, and the provisions of Title 41, chapter 5, part 12, apply to [section 6].

(2) [Sections 16 through 20] are intended to be codified as an integral part of Title 41, chapter 5, and the provisions of Title 41, chapter 5, apply to [sections 16 through 20].

Approved April 30, 1999

CHAPTER NO. 533

[SB 59]

AN ACT GENERALLY REVISING FISH AND GAME LICENSING STATUTES; AUTHORIZING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO ESTABLISH HUNTING LICENSE PREFERENCE SYSTEMS; CLARIFYING WHEN A 12-YEAR-OLD PERSON MAY HUNT; ESTABLISHING ADDITIONAL APPLICATION FEES APPLICABLE TO RESIDENT AND NONRESIDENT HUNTING LICENSE APPLICANTS WHO CHOOSE TO PARTICIPATE IN A COMMISSION-ADOPTED PREFERENCE SYSTEM; ALLOWING A NONRESIDENT TO PAY $25 TO PARTICIPATE IN A PREFERENCE SYSTEM FOR DEER AND ELK PERMITS; AMENDING SECTIONS 87-1-301, 87-2-113, 87-2-401, 87-2-402, 87-2-404, 87-2-501, 87-2-504, 87-2-505, 87-2-507, 87-2-508, 87-2-510, 87-2-701, AND 87-2-711, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

HeinOnline -- 1999 vol. II 2285 1999

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-1-301, MCA, is amended to read:

"87-1-301. Powers of commission. (1) The commission shall:

(a) set the policies for the protection, preservation, and propagation of the wildlife, fish, game, furbearers, waterfowl, nongame species, and endangered species of tbe state and for the fulfillment of all other responsibilities of the department as provided by law;

(b) establish the hunting, fishing, and trapping rules of the department;

(c) establish the rules of the department governing the use of lands owned or controlled by the department and waters under the jurisdiction of the department;

(d) have the power within the department to estahlish wildlife refuges and hird and game preserves;

(e) approve all acquisitions or transfers by the department of interests in land or water;

(f) review and approve the budget of the department prior to its transmittal to tbe budget office; and

(g) review and approve construction projects whose estimated cost is more than $1,000 but less tban $5,000.

(2) The commission may adopt rules regarding the use and type of archery equipment that may be employed for hunting and fishing purposes, taking into account applicable standards as technical innovations in archery equipment change.

(3) The commission may adopt rules regarding the establishment of special licenses or permits, seasons, conditions, programs, or other provisions that the commission considers appropriate to promote or enhance hunting by Montana's youth.

(4) (a) Tbe commission may adopt rules regarding nonresident big game combination licenses to:

(i) separate deer licenses from nonresident elk combination licenses;

(ii) set the fees for the separated deer combination licenses and the elk combination licenses without the deer tag;

(iii) condition the use of the deer licenses; and

(iv) limit the numher of licenses sold.

(b) The commission may exercise the rulemaking authority in subsection (4)(a) when it is necessary and appropriate to regulate tbe barvest by nonresident big game combination license holders for the biologically sound management of big game populations of deer and elk and to control the impacts of those deer and elk populations on uses of private property.

(5) The commission may adopt rules establishing license preference systems to distributc hunting licenscs and permits:

(a) giving an applicant who has been unsuccessful for a longer period of time priority over an applicant who has been unsuccessful for a shorter period of time; and

(b) giving a qualifying landowner a preference in drawings. As used in this subsection (5)(b), "qualifying landowner" means the owner of land that provides some significant habitat benefit for wildlife, as determined by the commission. (Subsection (4) terminates October 1, 2001—sec. 6, Ch. 355, L. 1997.)"

Section 2. Section 87-2-113, MCA, is amended to read:

"**87-2-113. Drawing ~~fee~~ *and application fees.*** (1) When the department determines a drawing is necessary prior to issuance of hunting licenses for any game species during a hunting season, it shall collect a $3 per species drawing fee with each application submitted.

(2) (a) If a resident participates in a preference system adopted by the commission, the department shall collect an additional application fee of $2 for each application form to fund the administration of the preference system.

(b) If a nonresident participates in a preference system adopted by the commission, the department shall collect an additional application fee of $20 for each application form to fund the administration of the preference system.

~~(2)~~*(3)* ~~This fee~~ *Drawing fees collected pursuant to this section* must be deposited in the state special revenue fund to the credit of the department as set forth in 87-1-601.

~~(3)~~*(4)* The payment of a drawing fee confers no hunting rights or privileges.

~~(4)~~*(5)* The commission may waive the provisions of subsection (1) when a drawing is required for a special season under 87-1-304."

Section 3. Section 87-2-401, MCA, is amended to read:

"**87-2-401. Class A-1—resident upland game bird license.** Except as otherwise provided, a resident, as defined by 87-2-102, who is 12 years of age or older *or who will turn 12 years old before or during the season for which the license is issued* may, upon payment of a fee of $6, receive a Class A-1 license that entitles ~~the holder~~ *a holder who is 12 years of age or older* to hunt upland game birds and possess the carcasses of upland game birds as authorized by department rules."

Section 4. Section 87-2-402, MCA, is amended to read:

"**87-2-402. Class B-1—nonresident upland game bird license.** Except as otherwise provided in this chapter, a person who is not a resident, as defined in 87-2-102, but who is 12 years of age or older *or who will turn 12 years old before or during the season for which the license is issued*, upon payment of a fee of $55 may receive a Class B-1 license that entitles ~~the holder~~ *a holder who is 12 years of age or older* to hunt upland game birds and possess the carcasses of upland game birds as authorized by department rules."

Section 5. Section 87-2-404, MCA, is amended to read:

"**87-2-404. Three-day nonresident captive-reared bird hunting stamp.** A person who is 12 years of age or older *or who will turn 12 years old before or during the season for which the license is issued* and who is not a resident, as defined in 87-2-102, may, upon payment of a fee of $20, receive a 3-day nonresident shooting preserve bird hunting stamp that authorizes ~~the holder~~ *a holder who is 12 years of age or older* to hunt game specified under 87-4-522 on a shooting preserve licensed under 87-4-501 for 3 consecutive calendar days as indicated on the license."

Section 6. Section 87-2-501, MCA, is amended to read:

HeinOnline -- 1999 vol. II 2287 1999

"87-2-501. Class A-3, A-4, A-5, A-6, A-7—resident deer, elk, and bear licenses — special Class A-7 resident and nonresident license requirements and preference. (1) Except as otherwise provided in this chapter, a resident, as defined by 87-2-102, or a nonresident who wishes to purchase a Class A-7 elk license only and who ~~will be~~ *is* 12 years of age or older ~~prior to September 15 of~~ *or who will turn 12 years old before or during* the season for which the license is issued, upon payment of the proper fee or fees, is entitled to purchase one each of the following licenses at the prescribed cost that will entitle ~~the holder~~ *a holder who is 12 years of age or older* to hunt the game animal or animals authorized by the license held and to possess the carcasses of those game animals as authorized by department rules:

(a) Class A-3, deer A tag, $13;

(b) Class A-4, deer B tag, $8;

(c) Class A-5, elk tag, $16;

(d) Class A-6, black bear tag, $15;

(e) Class A-7, antlerless elk tag, $16.

(2) (a) The holder of a Class A-7 antlerless elk license *who is 12 years of age or older* is entitled to hunt antlerless elk in areas designated by the commission and at the times and upon the terms set forth by the commission.

(b) A person may not take more than one elk during any license year, and a person holding a Class A-7 antlerless elk tag may not take an elk during the same license year with a Class A-5 license or nonresident elk tag. The use of Class A-7 antlerless elk licenses does not preclude the department's use of special elk permits.

(c) A nonresident shall hold a nonresident Class B-10 license as a prerequisite to application for a Class A-7 license.

(3) Subject to the limitation of subsection (5), a person who owns or is contracting to purchase 640 acres or more of contignous land, at least some of which is used by elk, in a hunting district where Class A-7 licenses are awarded under this section must be issued, upon application, a Class A-7 license.

(4) An applicant who receives a Class A-7 license under subsection (3) may designate that the license be issued to an immediate family member or a person employed by the landowner. A corporation owning qualifying land under subsection (3) may designate one of its shareholders te receive the license.

(5) Fifteen percent of the Class A-7 licenses available each year under this section in a hunting district must be available to landowners under subsection (3)."

Section 7. Section 87-2-504, MCA, is amended to read:

"87-2-504. (Temporary) Class B-7 and B-8—nonresident deer licenses. (1) (a) Except as otherwise provided in this chapter, a person who is not a resident, as defined in 87-2-102, but who ~~will be~~ *is* 12 years of age or older ~~prior to September 15 of~~ *or who will turn 12 years old before or during* the season for which the license is issued and is a holder of a nonresident conservation license may, upon payment of the proper fee or fees and subject to the limitations prescribed by law and department regulation, be entitled to apply to the fish and game office, Helena, Montana, to purchase one each of the following licenses:

HeinOnline -- 1999 vol. II 2288 1999

(i) Class B-7, deer A tag, $175;

(ii) Class B-8, deer B tag, $75.

(b) The license entitles ~~the holder~~ *a holder who is 12 years of age or older* to hunt the game animal or animals authorized by the license and to possess the carcasses of those animals as authorized by commission rules.

(2) Unless purchased as part of a Class B-10 or Class B-11 license, a Class B-7 license may be assigned for use in a specific administrative region or regions or a portion of a specific administrative region or regions or in a specific hunting district or districts or a portion of a specific hunting district or districts. If purchased as part of a Class B-10 or Class B-11 license, the Class B-7 license is valid throughout the state, except as provided in 87-2-512(1)(d). Not more than 5,000 Class B-7 licenses may be sold in any license year.

(3) The commission may prescribe the use of and set quotas for the sale of Class B-8 licenses by hunting districts, portions of a hunting district, groups of districts, or administrative regions. (Terminates October 1, 2001—sec. 6, Ch. 355, L. 1997.)

87-2-504. (Effective October 1, 2001) Class B-7 and B-8—nonresident deer licenses. Except as otherwise provided in this chapter, a person who is not a resident, as defined in 87-2-102, but who ~~will be~~ *is* 12 years of age or older ~~prior to September 15 of~~ *or who will turn 12 years old before or during* the season for which the license is issued and is a holder of a nonresident conservation license may, upon payment of the proper fee or fees and subject to the limitations prescribed by law and department regulation, be entitled to apply to the fish and game office, Helena, Montana, to purchase one each of the following licenses: Class B-7, deer A tag, $150; Class B-8, deer B tag, $50; and will entitle ~~the holder~~ *a holder who is 12 years of age or older* to hunt the game animal or animals authorized by the license held and to possess the carcasses of those animals as authorized by department rules. Unless purchased as part of a B-10 or B-11 license, a Class B-7 license must be assigned for use in a specific administrative region or portion of a specific administrative region. If purchased as part of a Class B-11 license, the Class B-7 license is valid throughout the state. Not more than 5,000 Class B-7 licenses may be sold in any license year. Money received from the sale of Class B-7 licenses in excess of 1,700 must be used as provided in 87-1-242(1). (Terminates March 1, 2006—secs. 1, 2, Ch. 241, L. 1993.)

87-2-504. (Effective March 1, 2006) Class B-7 and B-8—nonresident deer licenses. Except as otherwise provided in this chapter, a person who is not a resident, as defined in 87-2-102, but who ~~will be~~ *is* 12 years of age or older ~~prior to September 15 of~~ *or who will turn 12 years old before or during* the season for which the license is issued and is a holder of a nonresident conservation license may, upon payment of the proper fee or fees and subject to the limitations prescribed by law and department regulation, be entitled to apply to the fish and game office, Helena, Montana, to purchase one each of the following licenses: Class B-7, deer A tag, $100; Class B-8, deer B tag, $50; and will entitle ~~the holder~~ *a holder who is 12 years of age or older* to hunt the game animal or animals authorized by the license held and to possess the carcasses of those animals as authorized by department rules. Unless purchased as part of a B-10 or B-11 license, a Class B-7 license must be assigned for use in a specific administrative region or portion of a specific administrative region. If purchased as part of a Class B-11 license, the Class B-7 license is valid throughout the state."

HeinOnline -- 1999 vol. II 2289 1999

Section 8. Section 87-2-505, MCA, is amended to read:

"87-2-505. (Temporary) Ciass B-10—nonresident big game combination license. *(1)* Except as otherwise provided in this chapter, a person *who is* not a resident, as defined in 87-2-102, but who ~~will be~~ *is* 12 years of age or older ~~prior to September 15 of~~ *or who will turn 12 years old before or during* tbe season for which tbe license is issued may, upon payment of the fee of $475 or upon payment of the fee established as provided in 87-1-268 if the license is one of the licenses reserved pursuant to 87-2-511 for applicants indicating their intent to use the services of a licensed outfitter and subject to the limitations prescribed by law and department regulation, apply to the fish and game office, Helena, Montana, to purchase a B-10 nonresident big game combination license tbat entitles ~~the holder~~ *a holder who is 12 years of age or older* to all the privileges of Class B, Class B-1, and Class B-7 licenses and an elk tag. This license includes the nonresident conservation license as prescribed in 87-2-202. Not more than 11,500 unreserved Class B-10 licenses may be sold in any 1 license year.

(2) A person who is not a resident, as defined in 87-2-102, who is unsuccessful in the Class B-10 big game combination license drawing may pay a fee of $25 to participate in a preference system for deer and elk permits established by the commission. (Terminates October 1, 2001—sec. 18, Ch. 459, L. 1995.)

87-2-505. (Effective October 1, 2001) Class B-10—nonresident big game combination license. *(1)* Except as otherwise provided in this chapter, a person *who is* not a resident, as defined in 87-2-102, but who ~~will be~~ *is* 12 years of age or older ~~prior to September 15 of~~ *or who will turn 12 years old before or during* the season for which the license is issued may, upon payment of the fee of $462 beginning March 1, 1992, and $475 beginning March 1, 1994, or upon payment of the fee of $472 beginning March 1, 1992, and $485 beginning March 1, 1994, if the license is one of the 5,600 licenses reserved pursuant to 87-2-511 for applicants indicating their intent to use the services of a licensed outfitter and subject to the limitations prescribed by law and department regulation, apply to the fish and game office, Helena, Montana, to purchase a B-10 nonresident big game combination license which shall entitle ~~the holder~~ *a holder who is 12 years of age or older* to all the privileges of Class B, Class B-1, and Class B-7 licenses, and an elk tag. This license includes the nonresident conservation license as prescribed in 87-2-202. Not more than 17,000 Class B-10 licenses may be sold in any one license year.

(2) A person who is not a resident, as defined in 87-2-102, who is unsuccessful in the Class B-10 big game combination license drawing may pay a fee of $25 to participate in a preference system for deer and elk permits established by the commission. (Terminates March 1, 2006—secs. 1, 2, Ch. 241, L. 1993.)

87-2-505. (Effectivc Mareh 1, 2006) Class B-10—nonresident big game combination license. *(1)* Except as otherwise provided in this chapter, a person not a resident, as defined in 87-2-102, but who ~~will be~~ *is* 12 years of age or older ~~prior to September 15 of~~ *or who will turn 12 years old before or during* the season for which the license is issued may, upon payment of the fee of $398 or upon payment of the fee of $408 if the license is one of the 5,600 licenses reserved pursuant to 87-2-511 for applicants indicating their intent to use the services of a licensed outfitter and subject to the limitations prescribed by law and department regulation, apply to the fish and game office, Helena, Montana, to purchase a B-10 nonresident big game combination license which shall entitle ~~the holder~~ *a holder who is 12 years of age or older* to all the privileges of Class B,

HeinOnline -- 1999 vol. II 2290 1999

Class B-1, and Class B-7 licenses, and an elk tag. This license includes the nonresident conservation license as prescribed in 87-2-202. Not more than 17,000 Class B-10 licenses may be sold in any one license year.

(2) A person who is not a resident, as defined in 87-2-102, who is unsuccessful in the Class B-10 big game combination license drawing may pay a fee of $25 to participate in a preference system for deer and elk permits established by the commission."

Section 9. Section 87-2-507, MCA, is amended to read:

"87-2-507. (Temporary) Class D-1—nonresident mountain lion license. Except as otherwise provided in this chapter, a person who is not a resident, as defined in 87-2-102, hut who is 12 years of age or older *or who will turn 12 years old before or during the season for which the license is issued,* upon payment of a fee of $320 may receive a Class D-1 license that entitles ~~the holder~~ *a holder who is 12 years of age or older* to hunt mountain lion and possess the carcass of the mountain lion as authorized by department rules. If a holder of a valid mountain lion license under this section kills a mountain lion, the licensee shall purchase a trophy license for a fee of $50 within 10 days after the date of kill. The trophy license authorizes the holder to possess and transport the trophy. (Terminates March 1, 2006—secs. 1, 2, Ch. 241, L. 1993.)

87-2-507. (Effective March 1, 2006) Class D-1—nonresident mountain lion license. Except as otherwise provided in this chapter, a person who is not a resident, as defined in 87-2-102, but who is 12 years of age or older *or who will turn 12 years old before or during the season for which the license is issued,* upon payment of a fee of $300 may receive a Class D-1 license that entitles ~~the holder~~ *a holder who is 12 years of age or older* to hunt mountain lion and possess the carcass of the mountain lion as authorized hy department rules. If a holder of a valid mountain lion license under this section kills a mountain lion, the licensee shall purchase a trophy license for a fee of $50 within 10 days after the date of kill. The trophy license authorizes the holder to possess and transport the trophy."

Section 10. Section 87-2-508, MCA, is amended to read:

"87-2-508. Class D-2—resident mountain lion license. Except as otherwise provided in this chapter, a person who is a resident, as defined in 87-2-102, and who is 12 years of age or older *or who will turn 12 years old before or during the season for which the license is issued,* upon payment of a fee of $15, may receive a Class D-2 license that entitles ~~the holder~~ *a holder who is 12 years of age or older* to hunt mountain lion and possess the carcass of the mountain lion as authorized hy department rules. If a holder of a valid mountain lion license under this section kills a mountain lion, the licensee shall purchase a trophy license for a fee of $50 within 10 days after the date of kill. The trophy license authorizes the holder to possess and transport the trophy."

Section 11. Section 87-2-510, MCA, is amended to read:

"87-2-510. (Temporary) Class B-11—nonresident deer combination license. (1) Except as otherwise provided in this chapter, a person *who is* not a resident, as defmed in 87-2-102, hut who ~~will be~~ *is* 12 years of age or older ~~prior to September 15 of~~ *or who will turn 12 years old before or during* the season for which the license is issued may, upon payment of a fee of $245 or upon payment of the fee established as provided in 87-1-268 if the license is one of those reserved pursuant to 87-2-511 for applicants indicating their intent to use the services of

HeinOnline -- 1999 vol. II 2291 1999

a licensed outfitter or upon payment of the fee of $250 if the license is one of those reserved pursuant to 87-2-511 for applicants indicating their intent to hunt with a resident sponsor on land owned by that sponsor and subject to the limitations prescribed by law and department regulation, apply to the fish and game office, Helena, Montana, to purchase a Class B-11 nonresident deer combination license that entitles ~~the holder~~ *a holder who is 12 years of age or older* to all the privileges of the Class B, Class B-1, and Class B-7 licenses. This license includes the nonresident wildlife conservation license as prescribed in 87-2-202.

(2) Not more than 2,300 unreserved Class B-11 licenses may be sold in any 1 license year.

(3) A person who is not a resident, as defined in 87-2-102, who is unsuccessful in the Class B-11 deer combination license drawing may pay a fee of $25 to participate in a preference system for deer and elk permits established by the commission. (Terminates October 1, 2001—sec. 18, Ch. 459, L. 1995.)

87-2-510. (Effective October 1, 2001) Class B-11—nonresident deer combination license. (1) Except as otherwise provided in this chapter, a person *who is* not a resident, as defined in 87-2-102, but who ~~will be~~ *is* 12 years of age or older ~~prior to September 15 of~~ *or who will turn 12 years old before or during* the season for which the license is issued may, upon payment of a fee of $245 or upon payment of the fee of $250 if the license is one of the 4,000 reserved pursuant to 87-2-511 for applicants indicating their intent either to use the services of a licensed outfitter or to hunt with a resident sponsor on land owned by that sponsor and subject to the limitations prescribed by law and department regulation, apply to the fish and game office, Helena, Montana, to purchase a Class B-11 nonresident deer combination license that entitles ~~the holder~~ *a holder who is 12 years of age or older* to all the privileges of the Class B, Class B-1, and Class B-7 licenses. This license includes the nonresident wildlife conservation license as prescribed in 87-2-202.

(2) Six thousand Class B-11 licenses are authorized for sale each license year.

(3) A person who is not a resident, as defined in 87-2-102, who is unsuccessful in the Class B-11 deer combination license drawing may pay a fee of $25 to participate in a preference system for deer and elk permits established by the commission. (Terminates March 1, 2006—secs. 1, 2, Ch. 241, L. 1993.)

87-2-510. (Effective March 1, 2006) Class B-11—nonresident deer combination license. (1) Except as otherwise provided in this chapter, a person *who is* not a resident, as defined in 87-2-102, but who ~~will be~~ *is* 12 years of age or older ~~prior to September 15 of~~ *or who will turn 12 years old before or during* the season for which the license is issued may, upon payment of a fee of $220 or upon payment of the fee of $225 if the license is one of the 4,000 reserved pursuant to 87-2-511 for applicants indicating their intent either to use the services of a licensed outfitter or to hunt with a resident sponsor on land owned by that sponsor and subject to the limitations prescribed by law and department regulation, apply to the fish and game office, Helena, Montana, to purchase a Class B-11 nonresident deer combination license that entitles ~~the holder~~ *a holder who is 12 years of age or older* to all the privileges of the Class B, Class B-1, and Class B-7 licenses. This license includes the nonresident wildlife conservation license as prescribed in 87-2-202.

(2) Six thousand Class B-11 licenses are authorized for sale each license year.

HeinOnline -- 1999 vol. II 2292 1999

(3) A person who is not a resident, as defined in 87-2-102, who is unsuccessful in the Class B-11 deer combination license drawing may pay a fee of $25 to participate in a preference system for deer and elk permits established by the commission."

Section 12. Section 87-2-701, MCA, is amended to read:

"87-2-701. (Temporary) Special licenses. (1) An applicant who ~~will be~~ *is* 12 years of age or older ~~prior to September 15 of~~ *or who will turn 12 years old before or during* the season for which the license is issued and is the holder of a resident wildlife conservation license or a nonresident wildlife conservation license may apply for a special license that, in the judgment of the department, is to be issued and shall pay the following fees:

(a) moose—resident, $75; nonresident, $475;

(b) mountain goat—resident, $75; nonresident, $475;

(c) mountain sheep—resident, $75; nonresident, $475;

(d) antelope—resident, $11; nonresident, $150;

(e) grizzly bear—resident, $50; nonresident, $300;

(f) black bear—nonresident, $120.

(2) If a holder of a valid special grizzly bear license *who is 12 years of age or older* kills a grizzly bear, the person shall purchase a trophy license for a fee of $25 within 10 days after date of kill. The trophy license authorizes the holder to possess and transport the trophy.

(3) Special licenses must be issued in a manner prescribed by the department. (Terminates March 1, 2006—secs. 1, 2, Ch. 241, L. 1993.)

87-2-701. (Effective March 1, 2006) Special licenses. (1) An applicant who ~~will be~~ *is* 12 years of age or older ~~prior to September 15 of~~ *or who will turn 12 years old before or during* the season for which the license is issued and is the holder of a resident wildlife conservation license or a nonresident wildlife conservation license may apply for a special license that, in the judgment of the department, is to be issued and shall pay the following fees:

(a) moose—resident, $75; nonresident, $455;

(b) mountain goat—resident, $75; nonresident, $455;

(c) mountain sheep—resident, $75; nonresident, $455;

(d) antelope—resident, $11; nonresident, $130;

(e) grizzly bear—resident, $50; nonresident, $300;

(f) black bear—nonresident, $100.

(2) If a holder of a valid special grizzly bear license *who is 12 years of age or older* kills a grizzly bear, the person shall purchase a trophy license for a fee of $25 within 10 days after date of kill. The trophy license authorizes the holder to possess and transport the trophy.

(3) Special licenses must be issued in a manner prescribed by the department."

Section 13. Section 87-2-711, MCA, is amended to read:

HeinOnline -- 1999 vol. II 2293 1999

"87-2-711. Class AAA—combination sports license. (1) A resident, as defined by 87-2-102, who ~~will be~~ *is* 12 years of age or older ~~before September 15 of~~ *or who will turn 12 years old before or during* the season for which the license is issued is entitled to:

(a) upon payment of the sum of $54, a combination sports license that permits ~~the holder~~ *a holder who is 12 years of age or older* to exercise all rights granted to holders of Class A, A-1, A-3, A-5, and resident conservation licenses as prescribed in 87-2-202; or

(b) upon payment of the sum of $64, a combination sports license that permits ~~the holder~~ *a holder who is 12 years of age or older* to exercise all rights granted in subsection (1)(a) and the additional rights granted to holders of a Class A-6 license.

(2) The department may furnish each holder of a combination sports license an appropriate decal."

Section 14. Effective date. [This act] is effective October 1, 2000.

Approved April 29, 1999

CHAPTER NO. 534

[SB 172]

AN ACT AUTHORIZING A 20 PERCENT TELEPHONE COMPANY LICENSE TAX CREDIT FOR ACCELERATED DEPLOYMENT OF ADVANCED TELECOMMUNICATIONS INFRASTRUCTURE IMPROVEMENTS; PROVIDING FOR A COMPETITIVE ADVANCED TELECOMMUNICATIONS INFRASTRUCTURE GRANT PROCESS; AND PROVIDING A DELAYED EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Advanced telecommunications infrastructure tax credit — definitions. As used in [sections 1 through 3], the following definitions apply:

(1) "Advanced telecommunications infrastructure" means high-speed, dedicated or switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology.

(2) "Department" means the department of commerce.

(3) "Telecommunications services provider" means a provider of telecommunications services tbat is registered with the state and owns or will construct advanced telecommunications infrastructure in this state.

Section 2. Advanced telecommunications infrastructure tax credit. (1) There is allowed a tax credit against the tax imposed by Title 15, chapter 53, for advanced telecommunications infrastructure improvements in the state made by a telecommunications services provider in an amount equal to 20% of the total amount of the infrastructure investment.

(2) The tax credit provided for in subsection (1) may not exceed a total of $2 million for all qualified telecommunications services providers in any consecutive 12-month period.

HeinOnline -- 1999 vol. II 2294 1999

(3) There is no carryback or carryforward of the credit allowed under this section, and the credit must be applied in the year the advanced telecommunications infrastructure improvements were made and may not be refunded if the taxpayer has no tax liability.

Section 3. Application to department — competitive grants — rulemaking. (1) In order to receive a tax credit against the tax imposed by Title 15, chapter 53, a telecommunications services provider shall apply to the department for consideration through a competitive grant program and certify that the proposed advanced telecommunications infrastructure project provides for improved telecommunications services access to a majority of customers in an unserved or underserved service area and meets other requirements as established by the department.

(2) The application to the department must include:

(a) a description of the advanced telecommunications infrastructure improvement project, including:

(i) expected costs and timelines for completing the project;

(ii) partnerships, consortiums, and interconnection agreements, if necessary, to complete the project; and

(iii) the area in which the advanced telecommunications infrastructure improvements are to be installed and the customers who will be served; and

(b) verification that the advanced telecommunications infrastructure improvements will contribute to greater access to advanced telecommunications services and enhance existing telecommunications infrastructure.

(3) The department shall adopt rules establishing a policy for granting telecommunications services providers an infrastructure tax credit. The rules must consider whether the advanced telecommunications infrastructure improvements:

(a) significantly enhance individual and business access to advanced telecommunications services at an economically reasonable cost;

(b) promote the development and transition to a fully competitive telecommunications marketplace;

(c) improve public and private K-12, university, and library access to advanced telecommunications services;

(d) are required to improve connections between communities in the state; and

(e) increase Montana health care systems' access to interactive telecommunications services.

(4) When the department has determined which telecommunications services providers qualify under the rules established in subsection (3), it shall notify the department of revenue of the telecommunications services providers that are eligible to receive the tax credit pursuant to [section 2].

Section 4. Coordination instruction. If House Bill No. 128 and this bill are both passed and approved, [sections 2 and 3] must read as follows:

"Seetion 2. Advanced teleeommunications infrastrueture tax credit. (1) There is allowed a tax credit against the tax imposed by [sections 1

through 19 of House Bill No. 128] for advanced telecommunications infrastructure improvements in the state made by a telecommunications services provider in an amount equal to 20% of the total amount of the infrastructure investment.

(2) The tax credit provided for in subsection (1) may not exceed a total of $2 million for all qualified telecommunications services providers in any consecutive 12-month period.

(3) There is no carryback or carryforward of the credit allowed under this section, and the credit must be applied in the year the advanced telecommunications infrastructure improvements were made and may not be refunded if the taxpayer has no tax liability.

Section 3. Application to department — competitive grants — rulemaking. (1) In order to receive a credit against the tax imposed by [sections 1 through 19 of House Bill No. 128], a telecommunications services provider shall apply to the department for consideration through a competitive grant program and certify that the proposed advanced telecommunications infrastructure project provides for improved telecommunications services access to a majority of customers in an unserved or underserved area and meets other requirements as established by the department.

(2) The application te the department must include:

(a) a description of the advanced telecommunications infrastructure improvement project, including:

(i) expected costs and timelines for completing the project;

(ii) partnerships, consortiums, and interconnection agreements, if necessary, to complete the project; and

(iii) the area in which the advanced telecommunications infrastructure improvements are to be installed and the customers who will be served; and

(b) verification that the advanced telecommunications infrastructure improvements will contribute to greater access to advanced telecommunications services and enhance existing telecommunications infrastructure.

(3) The department shall adopt rules establishing a policy for granting telecommunications services providers an infrastructure tax credit. The rules must consider whether the advanced telecommunications infrastructure improvements:

(a) significantly enhance individual and business access to advanced telecommunications services at an economically reasonable cost;

(b) promote the development and transition to a fully competitive telecommunications marketplace;

(c) improve public and private K-12, university, and library access to advanced telecommunications services;

(d) are required to improve connections between communities in the state; and

(e) increase Montana health care systems' access to interactive telecommunications services.

HeinOnline -- 1999 vol. II 2296 1999

(4) When the department has determined which telecommunications services providers qualify under the rules established in subsection (3), it shall notify the department of revenue of the telecommunications services providers that are eligible to receive the tax credit pursuant to [section 2]."

Section 5. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 15, and the provisions of Title 15 apply to [sections 1 through 3].

Section 6. Effective date. [This act] is effective July 1, 2000.

Section 7. Applicability. [This act] applies to tax years beginning after December 31, 1999.

Section 8. Termination. [This act] terminates July 1, 2004.

Approved April 30, 1999

CHAPTER NO. 535

[SB 192]

AN ACT CLARIFYING THAT INTERNET ACCESS SERVICES ARE NOT TAXABLE UNDER THE LICENSE TAX ON TELEPHONE COMPANIES; AMENDING SECTION 15-53-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, A RETROACTIVE APPLICABILITY DATE, AND A CONTINGENT TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-53-101, MCA, is amended to read:

"15-53-101. Definitions — rate of license tax on telephone companies. (1) As used in this section:

(a) "carrier access service" means the service a local exchange company, as defined in 53-19-302, provides to an interexchange carrier for the origination or termination of telecommunications; ~~and~~

(b) "internet access service" means a service that enables users to access content, information, electronic mail, or other services offered over the internet and may also include access to proprietary content, information, and other services as part of a package of services offered to consumers. The term does not include telecommunications services.

~~(b)~~*(c)* "telephone business" means the access and transport, for hire, of two-way communications from point of access to point of termination, both of which are within Montana, *but does not include internet access service.*

(2) A license tax of 1.8% is imposed upon the gross revenue in excess of $250 each quarter received by a person in Montana from telephone business in Montana. As used in this section, "gross revenue" does not include:

(a) carrier access service revenue;

(b) revenue from the sale of telephone services to another telephone service provider who uses the services to provide telephone service to the ultimate retail consumer who originates or terminates the transmission;

HeinOnline -- 1999 vol. II 2297 1999

(c) revenue from the sale, lease, repair, installation, or maintenance of equipment or from the provision of nontransmission-related services or activities; ~~or~~

(d) customer access line charges assessed under federal communications commission orders or rules*; or*

(e) revenue derived from internet access services, including identifiable internet access services provided by a telephone business.

(3) A bill or statement may itemize the tax imposed by subsection (2).

(4) The tax imposed by subsection (2) is due in quarterly installments for the quarters ending, respectively, March 31, June 30, September 30, and December 31 in each year."

Section 2. Coordination instruction — contingent termination. If House Bill No. 128 is passed and approved, then [this act] terminates January 1, 2000.

Section 3. Effective date. [This act] is effective on passage and approval.

Section 4. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

Approved April 30, 1999

CHAPTER NO. 536

[SB 199]

AN ACT REQUIRING A YOUTH DETENTION FACILITY TO PROVIDE AN EDUCATIONAL PROGRAM FOR YOUTH HELD IN THE FACILITY; ALLOWING A YOUTH DETENTION CENTER TO CONTRACT WITH A SCHOOL DISTRICT TO PROVIDE THE EDUCATIONAL PROGRAM; ESTABLISHING A METHOD OF FUNDING THE EDUCATIONAL PROGRAM; AMENDING SECTIONS 7-6-501, 41-5-1802, 41-5-1803, 41-5-1804, AND 41-5-1807, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. District obligation for students in youth detention facility. A school district is responsible for providing funding for the education of students of the district who are detained in a youth detention facility. The school district's obligation must be funded from the district's general fund.

Section 2. Section 7-6-501, MCA, is amended to read:

"7-6-501. Definitions. As used in 7-6-502 and this section, unless the context requires otherwise, the following definitions apply:

(1) "Detention" means the holding or temporary placement of a youth in a facility other than the youth's own home for the purpose of ensuring the continued custody of the youth at any time after the youth is taken into custody and before final disposition of the youth's case.

(2) "Juvenile detention program" means services to provide for the lawful detention or shelter care of youth. The term includes:

HeinOnline -- 1999 vol. II 2298 1999

(a) youth evaluations ordered hy the court under 41-5-1503, 41-5-1512, or 41-5-1513; ~~and~~

(b) programs for the transportation of youth to appropriate detention facilities or shelter care facilities; *and*

(c) an educational program for youth in need of that service.

(3) "Local government" has the same meaning as provided in 7-12-1103.

(4) "Shelter care" has the same meaning as provided in 41-5-103.

(5) "Youth" means an individual who is less than 18 years of age who is alleged to be a delinquent youth or youth in need of intervention as those terms are defined in 41-5-103."

Section 3. Section 41-5-1802, MCA, is amended to read:

"41-5-1802. Rules. The department shall adopt rules governing licensing procedures for regional and county detention facilities, *including the requirement that a youth detention facility provide an educational program for youth in need of that service.*"

Section 4. Section 41-5-1803, MCA, is amended to read:

"41-5-1803. County responsibiiity to provide youth detention services. (1) Each county shall provide services for the detention of youth in facilities separate from adult jails. *The term "services" includes an educational program for youth in need of that service.*

(2) In order to fulfill its responsibility under subsection (1), a county may:

(a) establish, operate, and maintain a holdover, a short-term detention center, or a youth detention facility at county expense;

(b) provide shelter care facilities as authorized in 41-5-1801;

(c) contract with another county for the use of an available shelter care facility, holdover, short-term detention center, or youth detention facility;

(d) establish and operate a network of holdovers in cooperation with other counties;

(e) establish a regional detontion facility; or

(f) enter into an agreement with a private party under which the private party will own, operate, or lease a shelter care facility or youth detention facility for use by the county. The agreement may be made in substantially the same manner as provided for in 7-32-2232 and 7-32-2233.

(3) Each county or regional detention facility must be licensed by the department in accordance with rules adopted under 41-5-1802.

(4) A county youth detention facility or a regional detention facility may contract with a school district for the provision of an educational program at the facility. The school district may use the facility as an alternative education site for the district. A contract authorized under this subsection must be made pursuant to the Interlocal Cooperation Act, Title 7, chapter 11, part 1, and must specify:

(a) that the school district is responsible for providing for the education of students enrolled in the school district;

HeinOnline -- 1999 vol. II 2299 1999

(b) that the youth detention facility is responsible for providing for the education of youth held in lawful custody in the facility;

(c) the educational program and personnel necessary to provide instruction at the facility. The district and the detention facility shall follow the requirements of the Individuals with Disabilities Education Act, 20 U.S.C. 1400, et seq., in making educational placement decisions for youth with disabilities.

(d) the amount of funding to be contributed by the facility and the school district toward payment of the cost of establishing, operating, and maintaining the educational program."

Section 5. Section 41-5-1804, MCA, is amended to read:

"41-5-1804. Regional detention facilities. (1) Two or more counties may, by contract, establish and maintain a regional detention facility.

(2) For the purpose of establishing and maintaining a regional detention facility, a county may:

(a) issue general obligation bonds for the acquisition, purchase, construction, renovation, and maintenance of a regional detention facility;

(b) levy and appropriate taxes, as permitted by law, to pay its share of the cost of equipping, operating, and maintaining the facility; and

(c) exercise all powers, under the limitations prescribed by law, necessary and convenient to carry out the purposes of 41-5-1803 and this section.

(3) Contracts authorized under subsection (1) must be made pursuant to the Interlocal Cooperation Act, Title 7, chapter 11, part 1.

(4) Contracts between counties participating in a regional detention facility must:

(a) specify the responsibilities of each county participating in the agreement;

(b) designate responsibility for operation of the regional detention facility;

(c) specify the amount of funding to be contributed by each county toward payment of the cost of establishing, operating, and maintaining the regional detention facility, including the necessary expenditures for the transportation of youth to and from the facility *but excluding the education costs funded by a school district pursuant to 41-5-1807*;

(d) include the applicable per diem charge for the detention of ~~youths~~ *youth* in the facility, as well as the basis for any adjustment in the charge; ~~and~~

(e) specify the number of beds to be reserved for the use of each county participating in the regional detention facility*; and*

(f) provide an educational program for youth held in the detention facility and in need of that service."

Section 6. Section 41-5-1807, MCA, is amended to read:

"41-5-1807. Responsibility for payment of detention costs. *(1)* Absent a contract or agreement between counties *and except as provided in subsection (2),* all costs for the detention of a youth in a county or regional detention facility, including medical costs incurred by the youth during detention, must be paid by the county at whose instance the youth is detained.

HeinOnline -- 1999 vol. II 2300 1999

(2) A detention facility providing an educational program for youth held in lawful custody at the facility is eligible to receive education funding calculated as follows:

(a) Before the end of each fiscal year, the facility shall compile the following information by school district:

(i) the number of youth detained in the facility over 9 consecutive days during the prior year; and

(ii) the total number of days the youth in subsection (2)(a)(i) were detained.

(b) The facility shall calculate the school district's obligation for educational services by multiplying the number of youth detained and the total number of days detained as provided in subsection (2) by $20 a day for each youth. The calculation must be sent to the school district no later than June 30. The school district shall transmit the amount calculated to the county treasurer of the county where the facility is located no later than July 15.

(c) The funds are to be used by the county for educational services provided by certified personnel in the detention facility located in the county and is subject to the requirements of Title 7, chapter 6, part 23."

Section 7. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 20, chapter 9, and the provisions of Title 20, chapter 9, apply to [section 1].

Section 8. Effective date. [This act] is effective on passage and approval.

Approved April 29, 1999

CHAPTER NO. 537

[SB 243]

AN ACT PROVIDING THAT IF A YOUTH IS PROSECUTED IN YOUTH COURT AND LATER TRANSFERRED TO DISTRICT COURT, THE YOUTH MAY NOT BE SENTENCED TO AN ADULT CORRECTIONAL FACILITY; REVISING THE PURPOSE OF THE YOUTH COURT ACT; REVISING THE EXTENDED JURISDICTION PROSECUTION ACT; PROVIDING THAT THE ACT DOES NOT APPLY TO CERTAIN OFFENSES; PROVIDING THAT THE COMBINED TIME OF SENTENCE UNDER AN EXTENDED JURISDICTION PROSECUTION MAY NOT EXCEED THE TIME OF IMPRISONMENT THAT AN ADULT COULD RECEIVE UNDER AN ADULT PROSECUTION; PROVIDING THAT PLACEMENT WITH THE DEPARTMENT OF CORRECTIONS CANNOT EXCEED THAT AMOUNT OF TIME THAT AN ADULT CAN BE SENTENCED TO THE DEPARTMENT; CLARIFYING THAT A SENTENCE UNDER THE EXTENDED JURISDICTION PROSECUTION ACT IS A SINGLE SENTENCE; AMENDING SECTIONS 41-5-102, 41-5-206, 41-5-208, 41-5-1602, 41-5-1604, AND 41-5-1605, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, juveniles who are 17 to 18 years of age frequently have difficulty completing their Youth Court sentences, particularly felony offenses, before they reach age 18; and

HeinOnline -- 1999 vol. II 2301 1999

WHEREAS, extending juvenile jurisdiction with the possibility of an adult sanction for failure to comply with the conditions of a stayed sentence or for additional criminal behavior by the youth has been shown to be an effective incentive in other states to rehabilitate juveniles to keep them out of the adult correctional system and allow them to pay restitution, finish treatment, and complete their education; and

WHEREAS, the maximum extension or period of jurisdiction may not exceed the period of an adult sentence without violating equal protection; and

WHEREAS, limiting section 41-5-208, MCA, supervision transfers after the youth reaches the age of 18 to additional community corrections programs of the Department of Corrections subject to the same adult sentence limit on supervision will also allow juveniles to complete their sentences, to be held accountable, and to avoid an adult conviction, without violating equal protection of the laws.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-5-102, MCA, is amended to read:

"41-5-102. Declaration of purpose. The Montana Youth Court Act must be interpreted and construed to effectuate the following express legislative purposes:

(1) to preserve the unity and welfare of the family whenever possible and to provide for the care, protection, and wholesome mental and physical development of a youth coming within the provisions of the Montana Youtb Court Act;

(2) to prevent and reduce youth delinquency through *a system that does not seek retribution but that provides:*

(a) immediate, consistent, enforceable, and avoidable consequences of youths' actions;

(b) ~~and to establish~~ a program of supervision, care, rehabilitation, detention, competency development, *and* community protection~~,~~ *for youth before they become adult offenders; and*

(c) in appropriate cases ~~and~~, ~~in appropriate cases,~~ restitution as ordered by the youth court;

(3) to achieve the purposes of subsections (1) and (2) in a family environment whenever possible, separating the youth from the parents only when necessary for the welfare of the youth or for the safety and protection of the community;

(4) to provide judicial procedures in which the parties are ~~assured~~ *ensured* a fair, accurate bearing and recognition and enforcement of their constitutional and statutory rights."

Section 2. Section 41-5-206, MCA, is amended to read:

"41-5-206. Filing in district court prior to formal proceedings in youth court. (1) The county attorney may, in the county attorney's discretion, file with the district court a motion for leave to file an information in the district court if:

(a) the youth charged was 12 years of age or older at the time of the conduct alleged to be unlawful and the unlawful act would if it had been committed by an adult constitute:

(i) sexual intercourse without consent as defined in 45-5-503;

(ii) deliberate homicide as defined in 45-5-102;

(iii) mitigated deliberate homicide as defined in 45-5-103; or

(iv) the attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for either deliberate or mitigated deliberate homicide; or

(b) the youth charged was 16 years of age or older at the time of the conduct alleged to be unlawful and the unlawful act is one or more of the following:

(i) negligent homicide as defined in 45-5-104;

(ii) arson as defined in 45-6-103;

(iii) aggravated or felony assault as defined in 45-5-202;

(iv) robbery as defined in 45-5-401;

(v) burglary or aggravated burglary as defined in 45-6-204;

(vi) aggravated kidnapping as defined in 45-5-303;

(vii) possession of explosives as defined in 45-8-335;

(viii) criminal sale of dangerous drugs as defined in 45-9-101;

(ix) criminal production or manufacture of dangerous drugs as defined in 45-9-110;

(x) attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for any of the acts enumerated in subsections (1)(b)(i) through (1)(b)(x);

(xi) use of threat to coerce criminal street gang membership or use of violence to coerce criminal street gang membership, as defined in 45-8-403.

(2) The county attorney shall file with the district court a petition for leave to file an information in district court if the youth was 17 years of age at the time the youth committed an offense listed under subsection (1).

(3) The district court shall grant leave to file the information if the court finds that there is probable cause to believe that the youth has committed the alleged offense and that, considering the seriousness of the offense and in the interests of community protection, the case should be filed in the district court.

(4) The filing of an information in district court terminates the jurisdiction of the youth court over the youth with respect to the acts alleged in the information. A youth may not be prosecuted in the district court for a criminal offense originally subject to the jurisdiction of the youth court unless the case has been filed in the district court as provided in this section. A case may be transferred to district court after prosecution as provided in 41-5-208 or 41-5-1605.

(5) An offense not enumerated in subsection (1) that arises during the commission of a crime enumerated in subsection (1) may be:

(a) tried in youth court;

(b) transferred to district court with an offense enumerated in subsection (1) upon motion of the county attorney and order of the district court judge.

(6) If a youth is found guilty in district court of any of the offenses enumerated in subsection (1) and is sentenced to the state prison, the commitment must be to the department of corrections *not to exceed the period of time allowed in 46-18-201.* The department shall confine the youth in whatever

HeinOnline -- 1999 vol. II 2303 1999

institution that it considers proper, including a state youth correctional facility under the procedures of 52-5-111. However, a youth under 16 years of age may not be confined in a state prison facility. During the period of confinement, school-aged youth with disabilities must be provided an education consistent with the requirements of the federal Individuals ~~with~~ *With* Disabilities Education Act, 20 U.S.C. 1400, et seq.

(7) A youth whose case is filed in the district court may not be detained or otherwise placed in a jail or other adult detention facility before final disposition of the youth's case unless:

(a) alternative facilities do not provide adequate security; and

(b) the youth is kept in an area that provides physical separation as well as sight and sound separation from adults accused or convicted of criminal offenses."

Section 3. Section 41-5-208, MCA, is amended to read:

"**41-5-208. Transfer of supervisory responsibility to district court after juvenile disposition — nonextended jurisdiction and nontransferred cases.** (1) After adjudication by the court of a case that was not transferred to district court under 41-5-206 and that was not prosecuted as an extended jurisdiction juvenile prosecution under part ~~11~~ *16* of this chapter, the court may, on the youth's motion or the motion of the county attorney, transfer jurisdiction to the district court and order the transfer of supervisory responsibility from juvenile probation services to adult probation services. A transfer under this section may be made to ensure continued compliance with the court's dispesition under 41-5-1512 or 41-5-1513 and may be made at any time after a youth reaches 18 years of age but before the youth reaches 21 years of age.

(2) Before transfer, the court shall hold a hearing on whether the transfer should be made. The hearing must be held in conformity with the rules on a hearing on a petition alleging delinquency, except that the hearing must be conducted by the court without a jury. The court shall give the youth, the youth's counsel, and the youth's parents, guardian, or custodian notice in writing of the time, place, and purpose of the hearing at least 10 days before the hearing. At the hearing, the youth is entitled to receive:

(a) written notice of the motion to transfer;

(b) an oppertunity to be heard in porson and to present witnesses and evidence;

(c) a written statement by the court of the evidence relied on and reasons for the transfer;

(d) tho right to cross-examine witnesses, unless the court finds geod cause for not allowing confrontation; and

(e) the right to counsel.

(3) After the hearing, if the court finds by a preponderance of the evidence that transfer of continuing supervisory responsibility to the district court is appropriate, the court shall order the transfer.

(4) If a youth whose case has been transferred to district court under this section violates a disposition previously imposed under 41-5-1512 or 41-5-1513,

HeinOnline -- 1999 vol. II 2304 1999

the district court may, after hearing, impose conditions as provided under 46-18-201 through 46-18-203.

(5) If, at the time of transfer, the youth is incarcerated in a state youth correctional facility, the district court may order that the youth, after reaching 18 years of age:

(a) be incarcerated in a state adult correctional facility, boot camp, or prerelease center; or

(b) be supervised by the department.

(6) The district court's jurisdiction over a case transferred under this section terminates when the youth reaches 25 years of age."

Section 4. Section 41-5-1602, MCA, is amended to read:

"41-5-1602. Extended jurisdiction juvenile prosecution — designation. (1) A youth court case involving a youth alleged to have committed an offense that would be a felony if committed by an adult, *except an offense punishable by death or life imprisonment or when a sentence of 100 years could be imposed,* is an extended jurisdiction juvenile prosecution if:

(a) the youth was at least 14 years of age at tbe time of the alleged offense, the county attorney requests that the case be designated an extended jurisdiction juvenile prosecution, a bearing is held under 41-5-1603, and the court designates tbe case as an extended jurisdiction juvenile prosecution;

(b) the county attorney designates in the delinquency petition that the proceeding is an extended jurisdiction juvenile prosecution and the youth is alleged to bave committed:

(i) an offense that is listed under 41-5-206, *except an offense punishable by death or life imprisonment or when a sentence of 100 years could be imposed*; or

(ii) any offense that would be a felony if committed by an adult, *except an offense punishable by death or life imprisonment or when a sentence of 100 years could be imposed,* in which tbe youth allegedly used a firearm, if the youth was at least 12 years of age at the time of tbe alleged offense; or

(c) after a hearing upon a motion for transfer of tbe matter of prosecution to tbe district court under 41-5-206, the court designatos the case as an extended jurisdiction juvenile prosecution.

(2) To enforce tbe court's disposition in an extended jurisdiction juvenile prosecution, the court shall retain jurisdiction as provided in 41-5-205."

Section 5. Section 41-5-1604, MCA, is amended to read:

"41-5-1604. Disposition in extendcd jurisdiction juvenile prosecutions. (1) *(a)* After designation as an extended jurisdiction juvenile prosecution, the case must proceed witb an adjudicatory hearing, as provided in 41-5-1502. If a youth in an extended jurisdiction juvenile prosecution admits to or is adjudicated to have committed an offense that would be a felony if committed by an adult, *except an offense punishable by death or life imprisonment or when a sentencc of 100 years could be imposed,* the court shall, *subject to subsection (1)(b), impose a single judgment consisting of*:

~~(a)~~*(i)* ~~impose~~ one or more juvenile dispositions under 41-5-1512 or 41-5-1513; and

HeinOnline -- 1999 vol. II 2305 1999

~~(b)~~*(ii)* ~~impose~~ any sentence allowed by the statute that establishes the penalty for the offense of which the youth is convicted and that would be permissible if the offender were an adult. The execution of the sentence imposed under this subsection must be stayed on the condition that the youth not violate the provisions of the disposition order and not commit a new offense.

(b) The combined period of time of a juvenile disposition under subsection (1)(a)(i) plus an adult sentence under subsection (1)(a)(ii) may not exceed the maximum period of imprisonment that could be imposed on an adult convicted of the offense or offenses that brought the youth under the jurisdiction of the youth court. This subsection does not limit the power of the department to enter into a parole agreement with the youth pursuant to 52-5-126.

(2) If a youth prosecuted as an extended jurisdiction juvenile after designation by the county attorney in the delinquency petition under 41-5-1602(1)(b) admits to or is adjudicated to have committed an offense that would be a felony if committed by an adult that is not an offense described in 41-5-1602(1)(b), *except an offense punishable by death or life imprisonment or when a sentence of 100 years could be imposed*, the court shall adjudicate the youth delinquent and order a disposition under 41-5-1513.

(3) If a youth in an extended jurisdiction juvenile prosecution admits to or is adjudicated to have committed an offense that would not be a felony if committed by an adult, the court ~~may impose, with the youth's consent, a disposition provided under subsection (1)(b). If the youth does not consent to disposition under subsection (1)(b), the court~~ shall impose a disposition as provided under subsection (1)(a)."

Section 6. Section 41-5-1605, MCA, is amended to read:

"41-5-1605. Revocation of stay — disposition. (1) If a court has imposed on a youth a sentence stayed under 41-5-1604~~(1)(b)~~*(1)(a)(ii)* and the youth violates the conditions of the stay or is alleged to have committed a new offense, the court may, without notice, direct that the youth be taken into immediate custody. The court shall notify the youth, the youth's counsel, and the youth's parents, guardian, or custodian in writing of the reasons alleged to exist for revocation of the stay of execution of the sentence.

(2) (a) ~~If the youth challenges the reasons for the revocation, the~~ *The* court shall hold a revocation hearing at which the youth is entitled to receive:

(i) written notice of the alleged violation;

(ii) evidence of the alleged violation;

(iii) an opportunity to be heard in person and to present witnesses and evidence;

(iv) the right to cross-examine witnesses, unless the court finds good cause for not allowing confrontation; and

(v) the right to counsel.

(b) After the revocation hearing, if the court finds by a preponderance of the evidence presented that the conditions of the stay have been violated or that the youth has committed a new offense, the court shall provide the youth with a written statement of the evidence relied on and reasons for revocation and shall:

(i) continue the stay and place the youth on probation;

HeinOnline -- 1999 vol. II 2306 1999

(ii) impose one or more dispositions under 41-5-1512 or 41-5-1513 if the youth is under 18 years of age; or

(iii) subject to 41-5-206(6) and (7) *and 41-5-1604(1)(b)*, order execution of the sentence imposed under 41-5-1604~~(1)(b)~~*(1)(a)(ii). The court shall order credit for any time served prior to revocation under a disposition under 41-5-1604(1)(a)(i).*

(3) Upon revocation and disposition under subsection (2)(b)(iii), the youth court shall transfer the case to the district court. Upon transfer, the offender's extended jurisdiction juvenile status is terminated and youth court jurisdiction is terminated. Ongoing supervision of the offender is with the department, rather than the youth court's juvenile probation services."

Section 7. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 8. Effective date. [This act] is effective on passage and approval.

Approved April 30, 1999

CHAPTER NO. 538

[SB 265]

AN ACT PROVIDING FOR EXPLORATION INCENTIVE CREDITS FOR ACTIVITIES INVOLVING EXPLORATION FOR MINERAL AND COAL DEPOSITS IN THE STATE; PROVIDING A TAX DEDUCTION FOR DONATED EXPLORATION INFORMATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Purpose and statement of policy. The legislature recognizes the critical importance of mineral development to the vitality of Montana's economy and the state's revenue base. The legislature also recognizes that there has been a decline in mineral exploration throughout the state. The purpose of [sections 1 through 10] is to encourage mineral exploration in Montana without adversely affecting tax revenue received from existing economic activity in the state.

Section 2. Definitions. For purposes of [sections 1 through 10], the following definitions apply:

(1) (a) "Certified expenditures" means those costs incurred for activities in direct support of exploration activity conducted at a specific exploration site for the purpose of determining the existence, location, extent, or quality of a mineral or coal deposit. The term includes:

(i) the costs of obtaining the approvals, permits, licenses, and certificates for an exploration activity referred to in [section 3];

(ii) direct labor costs and the cost of benefits for employees directly associated with work described in [section 3];

(iii) the cost of renting or leasing equipment from parties not affiliated with the person requesting and taking the credit;

HeinOnline -- 1999 vol. II 2307 1999

(iv) the reasonable costs of owning, maintaining, and operating equipment;

(v) insurance and bond premiums associated with the activities set out in subsections (1)(a)(i) through (1)(a)(vii);

(vi) payments to consultants and independent contractors; or

(vii) the general expense of operating the person's business, including the costs of materials and supplies, if those expenses and costs are directly attributable to the work described in [section 3].

(b) The term does not include return on investment, insurance or bond premiums not covered under subsection (1)(a)(v), or any other expense that the person has not incurred to complete work described in [section 3].

(2) "Credit" means the exploration incentive credit for activities involving mineral and coal depesits authorized by [sections 1 through 10].

(3) "Exploration activity data list" means, as applicable, a summary of work completed during the year that includes but is not limited to:

(a) the number of core or rotary drilling holes completed;

(b) chemical analytical data available; or

(c) aerial photographs or a tepographic or geologic map showing the location of the drill holes, sample locations, or the other exploration activities undertaken.

(4) "Geochemical methods" means geochemical data gathering methods, including the collection of soil, rock, water, air, vegetation, and similar samples and their chemical analyses.

(5) "Geophysical methods" means all geophysical data gathering methods used in mineral or coal exploration, including seismic, gravity, magnetic, radiometric, radar, and electromagnetic and other remote sensing measurements.

(6) "Mineral" means those substances defined as minerals by 82-4-303 and coal as defined by 82-1-111.

(7) (a) "Mining operation" includes all operating and nonoperating activities related to a mineral deposit interest and may be composed of one or more mining properties.

(b) In determining whether mining properties are part of the same mining operation, the department may consider whether the operation, in conducting mining activities on several mining properties, uses common personnel, supply and maintenance facilities, mining-related treatment processes, storage facilities, roads, pipelines, transpertation equipment, and mining techniques and technology and may also consider the extent to which the mineral deposit interest comprises a common mining property.

(8) "Person" means a sole proprietorship, corporation, partnership, small business corporation as defined in 15-31-201, or limited liability company as defined in 35-8-102.

(9) "Tax year" means the calendar year.

Section 3. Exploration incentive credit. (1) The department shall grant to a person a credit against the person's tax liability under Title 15, chapter 30 or 31, for the certified expenditures of each of the following exploration activities that are performed on land in the state for the purpose of determining the

existence, location, extent, or quality of a mineral or coal deposit, regardless of land ownership:

(a) surveying by geophysical or geochemical methods;

(b) drilling exploration holes;

(c) conducting underground exploration;

(d) surface trenching and bulk sampling; or

(e) performing or other exploratory work, including aerial photographs, geological and geophysical logging, sample analysis, and metallurgical testing.

(2) (a) Except as provided in subsection (3), credit may not be granted under subsection (1) for exploration activity described in subsection (1) that occurs after the construction commencement date of a new mine.

(b) For the purposes of this subsection (2), "construction commencement date of a new mine" means the date no later than which all of the following have occurred:

(i) there has been issued to the owner or an agent of the owner permits, leases, title and other rights in land, and other approvals, permits, licenses, and certificates by federal, state, and local agencies that a reasonable and prudent person would consider adequate to commence construction of a mine in the expectation that all other approvals, permits, licenses, and certificates necessary for the completion of the facilities will be obtained;

(ii) all approvals, permits, licenses, and certificates are in full force and effect and without any modification that might jeopardize the completion or continued construction of the mine; and

(iii) an order, judgment, decree, determination, or award of a court or administrative or regulatory agency enjoining, either temporarily or permanently, the construction or the continuation of construction of the mine is not in effect.

(3) In addition to the grant of a credit for a new mine under subsection (2), a credit may be granted under subsection (1) for exploration activity for a mine that had previously operated, that has ceasod to operate, and for which all previous mining approvals, permits, licenses, and certificates that allowod the previous operation are no longer in effect. However, a credit may not be granted under subsection (1) for exploration activity that occurs after the mine reopening date. For the purposes of this subsection (3), "mine reopening date" means the date not later than which all of the following have occurred:

(a) there has been issued to the owner or an agent of the owner permits, leases, title and other rights in land, and other approvals, permits, licenses, and certificates by federal, state, and local agencies that a reasonable and prudent porson would consider adequate to commence operation of the former mine in the expectation that all other approvals, permits, licenses, and certificates necessary for the completion of the facilities will be obtained;

(b) all approvals, permits, licenses, and certificates for the reopened mine are in full force and effect and without any modification that might jeopardize the reopening of the former mine; and

(c) an order, judgment, decree, determination, or award of a court or administrative or regulatory agency enjoining, either temperarily or permanently, the reopening of the former mine is not in effect.

HeinOnline -- 1999 vol. II 2309 1999

Section 4. Procedure for requesting and certifying eredit. To obtain the credit authorized by [sections 1 through 10], a person shall submit a request to the department for the credit as follows:

(1) On a form provided by the department, the person shall submit the request and a statement of expenditures for tlie previous calendar year not later than 60 days after the close of that calendar year.

(2) The request must:

(a) describe tbe work accomplished during the previous year, the number of employees, and the names and number of consultants; and

(b) provide a detailed list or ledger of expenditures related to the accomplishments described in subsection (2)(a) and an exploration activity data list.

(3) The person submitting the request is not required to transmit copies of receipts witli the request, but the statement of expenditures is subject to audit at tlie discretion of tbe department.

(4) If the department decides to audit tlie statement of expenditures, the department may require the person submitting the request to justify claims of expenditures with receipts and other reliable information.

(5) The department shall respond to the request by September 30 by certifying or not certifying tbe person's expenditures. If tlie department does not certify expenditures, the department sliall state tlie reasons for denial of certification and give tbe person making the request an opportunity to correct any deficiencies or to provide additional information. If the department certifies expenditures, tlie department shall spocify the exploration activity data list requirements for that year that must be presented to the department at the time of the taking of the credit.

(6) If the department neither certifies nor denies certification of expenditures by September 30, the expenditures are certified as submitted.

Section 5. Application of eredit. (1) In a tax year, a person may take a credit that was approved under [section 4] against taxes payable by the person. The credit may not exceed

50% of tlie person's tax liability under either Title 15, cbapter 30 or 31, for the tax year tliat is related to production from tbe mining operation at which the exploration activities occurred.

(2) If a person applies the credit against the person's tax liability under subsection (1), the department shall disallow application of the credit under that provision unless tlie person files with the person's tax return an accounting of the person's exploration activities for each mining operation tliat is included in the tax return and as to which the credit is being applied. The accounting of exploration activities required by this subsection must be made on a form prescribed by the department. On the form, the person sliall:

(a) identify the miming operations for which the credit is claimed; and

(b) set out the gross income attributable to the miming operations and other information about the miming operations that the department may require.

(3) A person may not apply the credit under this section if the application, when added to credits previously applied under this section, would exceed the total amount of the credits approved under [section 4].

HeinOnline -- 1999 vol. II 2310 1999

Section 6. Credit carryover. Except as its application is limited hy [sections 5 and 7], a portion of a credit that is not applied under [section 5] during a tax year may be carried forward to and applied during a subsequent tax year.

Section 7. Credit limitation. A credit for a specific exploration activity may not exceed $20 million and accrues at tbe rate of 50% of the certified expenditures each year. The credit must be applied within 15 tax years after the taking of the credit is approved under [section 4]. However, the tax year or years in which the credit is applied need not be:

(1) the tax year in which the person first incurs liability for payment of tax based on the person's activity that is the basis of the claim for the credit; or

(2) consecutive tax years.

Section 8. Credit assignment. A person may assign a credit to the person's successor in interest for the mining operation at wliich the exploration activities occur, but only if the successor in interest is a person qualified to obtain the credit under [section 3]. A credit may not be assigned except as permitted in this section.

Section 9. Record of credit use. For each mining operation, the department may require a person who submits a request to take the credit under [section 4] to provide with the request a record of:

(1) the person's past use of credits taken under [section 4] and [section 5]; and

(2) other information that the department requires to determine if approval of the taking of the credit by the person would exceed the limits on use of the credit under [sections 1 through 10].

Section 10. Deduction for donation of exploration information. (1) In addition to all other deductions from adjusted gross individual income allowed in computing taxable income under Title 15, chapter 30, or from gross corporate income allowed in computing net income under Title 15, chapter 31, part 1, a taxpayer may deduct documented expenses for the donation of mineral exploration information generated as part of the certified expenditures. The information must be donated to the Montana tech foundation to reside as part of the Montana tech research library, and the documented expenses must be based on the cost of recreating the donated information.

(2) The Montana tech foundation has the right to limit information accepted and deductions granted to that exploration activity data that is needed as part of the Montana tech research library.

(3) A deduction under this section may not exceed 20% of the actual value of the data if a tax credit for the same exploration activity data is taken under [sections 1 through 10].

Section 11. Codification instruction. [Sections 1 through 10] are intended to be codified as an integral part of Title 15, chapter 32, and the provisions of Title 15, chapter 32, apply to [sections 1 through 10].

Section 12. Effective date. [This act] is effective on passage and approval.

Section 13. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to December 31, 1998.

Approved April 30, 1999

HeinOnline -- 1999 vol. II 2311 1999

CHAPTER NO. 539

[SB 274]

AN ACT EXEMPTING SPACE VEHICLES AND BUSINESS PERSONAL PROPERTY USED TO DESIGN, MANUFACTURE, AND LAUNCH SPACE VEHICLES FROM PROPERTY TAXATION; AMENDING SECTION 15-6-201, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-6-201, MCA, is amended to read:

"15-6-201. Exempt categories. (1) The following categories of property are exempt from taxation:

(a) except as provided in 15-24-1203, the property of:

(i) the United States, except:

(A) if congress passes legislation that allows the state to tax property owned by the federal government or an agency created by congress; or

(B) as provided in 15-24-1103;

(ii) the state, counties, cities, towns, and school districts;

(iii) irrigation districts organized under the laws of Montana and not operating for profit;

(iv) municipal corporations;

(v) puhlic libraries; and

(vi) rural fire districts and other entities providing fire protection under Title 7, chapter 33;

(b) buildings, with land that they occupy and furnishings in the buildings, that are owned by a church and used for actual religious worship or for residences of the clergy, together with adjacent land reasonably necessary for convenient use of the buildings;

(c) property used exclusively for agricultural and horticultural societies, for educational purposes, and for nonprofit health care facilities, as defined in 50-5-101, licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3. A health care facility that is not licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3, is not exempt.

(d) property that is:

(i) owned and held by an association or corporation organized under Title 35, chapter 2, 3, 20, or 21;

(ii) devoted exclusively te use in connection with a cemetery or cemeteries for which a permanent care and improvement fund has been established as provided for in Title 35, chapter 20, part 3; and

(iii) not maintained and operated for private or corporate profit;

(e) property that is owned or property that is leased from a federal, state, or local governmental entity by institutions of purely public charity if the property is directly used for purely public charitable purposes;

(f) evidence of debt secured by mortgages of record upon real or personal proporty in the state of Montana;

HeinOnline -- 1999 vol. II 2312 1999

(g) public museums, art galleries, zoos, and observatories that are not used or beld for private or corporate profit;

(h) all housebold goods and furniture, including but not limited to clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by tbe owner for personal and domestic purposes or for furnishing or equipping the family residence;

(i) truck canopy covers or toppers and campers;

(j) a bicycle, as defined in 61-1-123, used by the owner for personal transportation purposes;

(k) motor homes;

(l) all watercraft;

(m) motor vehicles, land, fixtures, huildings, and improvements owned hy a cooperative association or nonprofit corporation organized to furnish potable water to its memhers or customers for uses other than the irrigation of agricultural land;

(n) tbe right of entry that is a property right reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise, or succession to enter land with a surface title that is held hy another to explore, prospect, or dig for oil, gas, coal, or minerals;

(o) (i) property that is owned and used by a corporation or association organized and operated exclusively for the care of persons with developmental disabilities, persons with mental illness, or persons with physical or mental impairments that constitute or result in substantial impediments to employment and that is not operated for gain or profit; and

(ii) property that is owned and used by an organization owning and operating facilities that are for the care of the retired, aged, or chronically ill and that are not operated for gain or profit;

(p) all farm buildings with a market value of less than $500 and all agricultural implements and machinery with a market value of less than $100;

(q) property owned by a nonprofit corporation that is organized to provide facilities primarily for training and practice for or competition in international sports and athletic events and that is not held or used for private or corporate gain or profit. For purposes of this subsection (1)(q), "nonprofit corporation" means an organization tbat is exempt from taxation under section 501(c) of the Internal Revenue Code and incorporated and admitted under tbe Montana Nonprofit Corporation Act.

(r) *(i)* the first $15,000 or less of market value of tools owned by the taxpayer that are customarily hand-held and tbat are used to:

~~(i)~~*(A)* construct, repair, and maintain improvements to real property; or

~~(ii)~~*(B)* repair and maintain machinery, equipment, appliances, or other personal property;

(ii) space vehicles and all machinery, fixtures, equipment, and tools used in the design, manufacture, launch, repair, and maintenance of space vehicles that are owned by businesses engaged in manufacturing and launching space vehicles in the state or that are owned by a contractor or subcontractor of that business and that are directly used for space vehicle design, manufacture, launch, repair, and maintenance;

HeinOnline -- 1999 vol. II 2313 1999

(s) harness, saddlery, and other tack equipment;

(t) a title plant owned by a title insurer or a title insurance producer, as those terms are defined in 33-25-105;

(u) timber as defined in 15-44-102;

(v) all trailers as defined in 61-1-111, semitrailers as defined in 61-1-112, pole trailers as defined in 61-1-114, and travel trailers as defined in 61-1-131;

(w) all vehicles registered under 61-3-456;

(x) (i) buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors, including buses, trucks, and truck tractors apportioned under Title 61, chapter 3, part 7; and

(ii) personal property that is attached to a bus, truck, or truck tractor that is exempt under subsection (1)(x)(i); and

(y) motorcycles and quadricycles.

(2) (a) For the purposes of subsection (1)(e), the term "institutions of purely public charity" includes any organization that meets the following requirements:

(i) The organization qualifies as a tax-exempt organization under the provisions of section 501(c)(3), Internal Revenue Code, as amended.

(ii) The organization accomplishes its activities through absolute gratuity or grants. However, the organization may solicit or raise funds by the sale of merchandise, memberships, or tickets to public performances or entertainment or by other similar types of fundraising activities.

(b) For the purposes of subsection (1)(g), the term "public museums, art galleries, zoos, and observatories" means governmental entities or nonprofit organizations whose principal purpose is to hold property for public display or for use as a museum, art gallery, zoo, or observatory. The exempt property includes all real and personal property reasonably necessary for use in connection with the public display or observatory use. Unless the property is leased for a profit to a governmental entity or nonprofit organization hy an individual or for-profit organization, real and personal property owned hy other persons is exempt if it is:

(i) actually used by the governmental entity or nonprofit organization as a part of its public display;

(ii) held for future display; or

(iii) used to house or store a public display.

(3) The following portions of the appraised value of a capital investment in a recognized nonfossil form of energy generation or low emission wood or biomass combustion devices, as defined in 15-32-102, are exempt from taxation for a period of 10 years following installation of the property:

(a) $20,000 in the case of a single-family residential dwelling;

(b) $100,000 in the case of a multifamily residential dwelling or a nonresidential structure."

Section 2. Applicability. [This act] applies to tax years beginning after December 31, 1999.

Approved April 30, 1999

HeinOnline -- 1999 vol. II 2314 1999

CHAPTER NO. 540

[SB 305]

AN ACT PROHIBITING A REQUIREMENT FOR PROJECT LABOR AGREEMENTS AND OTHER TYPES OF PREHIRE AGREEMENTS ON PUBLIC WORKS CONTRACTS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Prohibition — project labor agreement. (1) Except as otherwise provided in this chapter, the state or any political suhdivision that contracts for the construction, maintenance, repair, or improvement of public works may not require that a contractor, subcontractor, or material supplier or carrier engaged in the construction, maintenance, repair, or improvement of public works execute or otherwise become a party to any project labor agreement, collective bargaining agreement, prehire agreement, or other agreement with employees, their representatives, or any labor organization as a condition of bidding, negotiating, being awarded, or performing work on a public works contract.

(2) For the purposes of this section, "public works" means:

(a) a building, road, street, sewer, storm drain, water system, irrigation system, reclamation project, or other facility owned or to be contracted for by the state or a political subdivision and that is paid for in whole or in part with tax revenue paid by residents of the state; or

(b) any other construction service or nonconstruction service as defined in 18-2-401.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 18, chapter 2, part 4, and the provisions of Title 18, chapter 2, part 4, apply to [section 1].

Approved April 30, 1999

CHAPTER NO. 541

[SB 306]

AN ACT REVISING THE SHOWING REQUIRED IN AN AFFIDAVIT IN SUPPORT OF A MOTION FOR AN INTERIM PARENTING PLAN; AMENDING SECTION 40-4-220, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-4-220, MCA, is amended to read:

"40-4-220. Affidavit practice. (1) Unless the parties agree to an interim parenting plan or an amended parenting plan, the moving party seeking an interim parenting plan or amendment of a final parenting plan shall submit, together with the moving papers, an affidavit setting forth facts supperting the requested plan or amendment and shall give notice, together with a copy of the affidavit, to other parties to the proceeding, who may file opposing affidavits. The court shall deny the motion unless it finds tbat adequate cause for hearing the motion is established by the affidavits, based on the best interests of the child,

HeinOnline -- 1999 vol. III 2315 1999

in which case it shall set a date for hearing on an order to show cause why the requested plan or amendment should not he granted.

(2) (a) A party seeking an interim parenting plan may request that the court grant a temporary order providing for living arrangements for the child ex parte. The party shall make the request in the moving papers and shall submit an affidavit showing that:

(i) no previous parenting plan has been ordered by a court and it would be in the child's best interest under the standards of 40-4-212 if temporary living arrangements for the child were as proposed by the moving party; or

(ii) although a previous parenting plan has heen ordered, an emergency situation has arisen in the child's present environment that ~~is detrimental to the child's best interests~~ *endangers the child's physical, mental, or emotional health* and an immediate change in the parenting plan is necessary to protect the child.

(b) If the court finds from the affidavits suhmitted by the moving party that the interim parenting plan proposed by the moving party would be in the child's hest interest under the standards of 40-4-212 ~~or~~ *and* that the child's present environment ~~is detrimental to the child's best interest~~ *endangers the child's physical, mental, or emotional health* and *the child* would he protected by the interim parenting plan, the court shall make an order implementing the interim parenting plan proposed hy the moving party. The court shall require all parties to appear and show cause within 20 days from the execution of the interim parenting plan why the interim parenting plan should not remain in effect until further order of court."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved April 29, 1999

CHAPTER NO. 542

[SB 333]

AN ACT GENERALLY REVISING LAWS CONCERNING PAVED SECONDARY ROADS; REVISING THE APPORTIONMENT TO DISTRICTS OF CAPITAL CONSTRUCTION FUNDS FOR SECONDARY ROADS; REVISING THE FUNDING DISTRIBUTION FORMULA; ESTABLISHING A PRIORITIZATION PROCESS FOR CAPITAL CONSTRUCTION PROJECTS; REQUIRING THE DEPARTMENT OF TRANSPORTATION TO ASSUME MAINTENANCE RESPONSIBILITY FOR PAVED SECONDARY ROADS; AMENDING SECTIONS 60-2-203, 60-2-204, AND 60-3-206, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 60-2-203, MCA, is amended to read:

"60-2-203. Maintenance responsibility. *(1)* Tbe department shall ~~have the responsibility for maintenance of~~ *maintain* all public highways or portions ~~thereof~~ *of public highways* that it maintained on July 1, 1976.

(2) The department shall assume the maintenance responsibilities for paved secondary roads as roads are identified cooperatively by the department and the county or counties in which a paved secondary road or paved secondary road segment is located. The department may phase in maintaining the paved

secondary roads but must have completely assumed the responsibilities by January 1, 2001."

Section 2. Section 60-2-204, MCA, is amended to read:

"60-2-204. Maintenance agreements with local governments. ~~The~~ *Except as provided in 60-2-203, the* department may enter into an agreement with a local governing body to maintain portions of public highways within its boundaries upon terms and conditions as may be agreed upon~~, provided that~~. *However*, in the case of highways in the state maintenance system as referred to in 60-2-128 and 60-2-203:

(1) the department shall hear the entire cost of maintenance, operation, and construction work performed by the local governing body pursuant to these agreements; and

(2) the department is responsible for the entire cost of placement and maintenance of all traffic control devices involved in these agreements required by 61-8-203."

Section 3. Section 60-3-206, MCA, is amended to read:

"60-3-206. Apportionment of funds to secondary highway system. (1) Each fiscal year the department shall apportion *at least 65% of* the federal-aid highway funds allocated for the secondary highway system among the ~~counties~~ *districts for capital construction needs. The remainder of the funds must be used by the department for secondary highway system pavement preservation.* The proportion that each ~~county~~ *district* receives is computed on the following basis:

(a) ~~one-fourth~~ *30%* in the ratio of land area in each ~~county~~ *district* to the total land area in the state;

(b) ~~one-fourth~~ *35%* in the ratio of the rural population in each ~~county~~ *district* to the total rural population in the state;

(c) ~~one-fourth~~ *30%* in the ratio of the rural road mileage in each ~~county~~ *district* to the total rural road mileage in the state;

(d) ~~one-fourth~~ *5%* in the ratio of ~~value of rural lands~~ *the rural bridge square footage* in each ~~county~~ *district* to the total ~~value of rural lands~~ *rural bridge square footage* in the state.

(2) To the extent necessary to permit orderly programming and construction of projects, obligations in a ~~county~~ *district* may exceed the amount apportioned to that ~~county~~ *district if a majority of the boards of county commissioners of the counties in another district approve the donation of the extra amount.* The amount of excess obligations must be deducted from future apportionments to that ~~county~~ *recipient district and returned to the donor district.*

(3) For the purposes of this section, terms are defined as follows:

(a) *"Capital construction" means a highway or bridge project undertaken to improve struetural strength, increase capacity, or eliminate hazardous design features. A capital construction project may include paved or gravel road reconstruction and rehabilitation.*

(b) "District" means the transportation commission districts identified in 2-15-2502.

(c) "Pavement preservation" means a project undertaken to extend the useful life of a paved road.

HeinOnline -- 1999 vol. III 2317 1999

(d) "Rural bridge square footage" means the total square footage of all deck areas of structures 20 feet long or longer located on the roadways that are used to calculate rural road mileage as provided in subsection (3)(f).

(e) "Rural population" means *the* total ~~county~~ population *of all of the counties in a district* as reported in the latest decennial federal census less the population in cities over 5,000 persons and their unincorporated fringe urhan areas as determined hy the department, using the latest decennial federal census.

~~(b)~~*(f)* (i) "Rural road mileage" means all road mileage ~~outside of incorporated cities and towns~~ *on roads functionally classified and approved by the transportation commission as major collectors or minor arterials*, exclusive of road mileage on the primary highway system ~~and the national highway system, and those roads that are inside incorporated cities and towns and are functionally classified and approved by the commission as a major collector or a minor arterial, exclusive of road mileage on the primary system and the national highway system~~.

(ii) Road mileage *within national parks or road mileage* that lies within incorporated cities over 5,000 persons and their unincorporated fringe urban areas, whose population is determined by the department, using the latest decennial federal census, is not considered rural road mileage.

(iii) Rural road mileage reported by the road inventory of the department must be used in determining rural road mileage.

~~(c) "Value of rural lands" includes the value of state-owned lands from which the state derives grazing, timber, and agricultural income.~~

~~(i) The basis for the value of rural lands must be computed from the latest available information from the department of revenue.~~

~~(ii) The basis for the value of state-owned lands must be computed from the latest figures on the total grazing, timber, and agricultural lands in each county based on the most recent information available from the department of natural resources and conservation.~~

(4) For the purpose of determining secondary highway capital construction priorities within a district, each board of county commissioners in a district has one vote and the department has two votes. An existing paved secondary highway may not be converted to a graveled surface without the concurrence of the board of county commissioners in the county where the road is located."

Section 4. Effective date. [This act] is effective on passage and approval.

Approved April 30, 1999

CHAPTER NO. 543

[SB 334]

AN ACT REVISING LAWS RELATED TO OUTFITTERS; REVISING THE MEMBERSHIP AND APPOINTMENT PROCEDURES OF THE BOARD OF OUTFITTERS; DEFINING "NET CLIENT HUNTER USE" AND ESTABLISHING CRITERIA TO BE APPLIED BY THE BOARD OF OUTFITTERS AND THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS IN DETERMINING WHETHER AN EXPANSION OF NET CLIENT HUNTER

HeinOnline -- 1999 vol. III 2318 1999

USE IS ALLOWABLE; PROVIDING ADDITIONAL DEFINITIONS; ESTABLISHING FEES; PROVIDING FOR ALLOCATION OF THE REVENUE GENERATED BY THE FEES; AMENDING SECTIONS 2-15-1833, 37-47-101, 37-47-201, AND 37-47-306, MCA; AND PROVIDING EFFECTIVE DATES.

WHEREAS, private property rights and free market principles will result in a certain amount of ebb and flow of outfitter presence statewide or in any particular geographical region; and

WHEREAS, approval or denial of an outfitter's request for expansion of client service base is predicated upon the state's broad power to regulate for the public health, welfare, and safety, which includes wildlife held in public trust, public hunting, private property rights, and private enterprise; and

WHEREAS, approval or denial of a net client hunter use expansion request must provide due process for outfitters and the opportunity for public comment under the Montana Administrative Procedure Act, including agency response to those public comments; and

WHEREAS, implementing the regulations necessary to meet the Legislature's geal of a reduction in new hunting use of areas by outfitters when the new use will cause undue conflict with existing hunting uses in the areas, providing necessary due process to outfitters, and providing for and responding to public comment will require time, staff, and resources not currently available in agency budgets.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-1883, MCA, is amended to read:

"2-15-1883. Board of outfitters. (1) There is a board of outfitters.

(2) ~~(a)~~ The board consists of *the following* seven members to be appointed by the governor.~~:~~

~~(b) Five members must be licensed outfitters who are actively involved in the outfitting business. At least one of the outfitter members must be a person primarily engaged in the fishing outfitting business. Each outfitter member shall represent one of the five districts designated in 2-15-3402(2). Two qualified persons in each district must be nominated for appointment by the licensed outfitters residing in that district by submitting by mail a notarized ballot, in a form and manner prescribed by the board. The board shall also prescribe a procedure for selecting persons to be nominated by mail-in ballot. The two outfitters receiving the most votes must be nominated for appointment. The department of commerce is responsible for all notifications, reporting, and counting of ballots. Names of nominees must be submitted to the governor, who will select one outfitter from each district to be a board member.~~

~~(c) The governor shall also appoint one member who is an employee of the department of fish, wildlife, and parks and one member from the general public.~~

(a) one big game hunting outfitter;

(b) one fishing outfitter;

(c) two outfitters who are engaged in the fishing and hunting outfitting business;

(d) two sportspersons; and

(e) one member of the general public.

HeinOnline -- 1999 vol. III 2319 1999

(3) (a) A subcommittee composed of five members of the board shall review net client hunter use expansion requests as provided in [section 5], based on the criteria provided in [section 6], and report its determinations to the full board. A favorable vote of at least a majority of all members of the board is required to adopt any resolution, motion, or other decision.

(b) The subcommittee must consist of the two hunting outfitters, the two sportspersons, and the one member of the public serving on the board pursuant to subsection (2).

~~(3)~~*(4)* A vacancy on the board must be filled in the same manner as the original appointment.

~~(4)~~*(5)* The members shall serve staggered 3-year terms and take office on the day they are ~~elected~~ *appointed*.

~~(5)~~*(6)* The board is allocated to the department of commerce for administrative purposes only as prescribed in 2-15-121.

~~(5)~~*(7)* Each member of the board is entitled to receive compensation and travel expenses as provided for in 37-1-133."

Section 2. Section 37-47-101, MCA, is amended to read:

"37-47-101. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Accompany" means to go with or be together with a participant as an escort, companion, or other service provider, with an actual physical presence in the area where the activity is being conducted and within sight or sound of the participant at some time during the furnishing of service.

(2) *"Base of operations" means the primary physical location where an outfitter receives mail and telephone calls, conducts regular daily business, and bases livestock, equipment, and staff during the hunting season.*

(3) "Board" means the board of outfitters provided for in 2-15-1883.

(4) "Camp" means each individual facility or group of facilities that an outfitter uses to lodge a client for a client's trip or uses to lodge a client in the operating area designated in the outfitter's operations plan, including a motel, campground, bed and breakfast, lodge, tent camp, cabin, camper, trailer, or house.

~~(3)~~*(5)* "Consideration" means something of value given or done in exchange for something of value given or done by another.

~~(4)~~*(6)* "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

~~(5)~~*(7)* "Guide" means a person who is employed by or who has contracted independently with a licensed outfitter and who accompanies a participant during outdoor recreational activities that are directly related to activities for which the outfitter is licensed.

~~(6)~~*(8)* "License year" means that period beginning January 1 and ending December 31 of the same year.

~~(7)~~*(9) "Net client hunter use" or "NCHU" means the most actual clients served by an outfitter in any NCHU license category in any license year, as documented by verifiable client logs or other documents maintained by the board pursuant to 37-47-201(7).*

(10) "Nonresident" means a person other than a resident.

HeinOnline -- 1999 vol. III 2320 1999

~~(8)~~*(11)* "Outfitter" means any person, except a person providing services on real property that the person owns for the primary pursuit of hona fide agricultural interests, who for consideration provides any saddle or pack animal; facilities; camping equipment; vehicle, watercraft, or other conveyance; or personal service for any person to hunt, trap, capture, take, kill, or pursue any game, including fish, and who accompanies that person, either part or all of the way, on an expedition for any of these purposes or supervises a licensed guide or professional guide in accompanying that person.

~~(9)~~*(12)* "Participant" means a person using the services offered by a licensed outfitter.

~~(10)~~*(13)* "Professional guide" means a guide who has met experience, training, and testing qualifications for designation as a professional guide, as set by board rule.

~~(11)~~*(14)* "Resident" means a person who qualifies for a resident Montana hunting or fishing license under 87-2-102."

Section 3. Section 37-47-201, MCA, is amended to read:

"37-47-201. Powers and duties of board relating to outfitters, guides, and professional guides. The board shall:

(1) prepare and publish an information pamphlet that contains the names and addresses of all licensed outfitters. This pamphlet must be available for free distrihution as early as possihle during each calendar year but not later than the second Friday in March. The pamphlet must contain the names and addresses of only those outfitters who have a valid license for the current license year.

(2) cooperate with the federal government in matters of mutual concern regarding the business of outfitting and guiding in Montana;

(3) enforce the provisions of this cbapter and rules adopted pursuant to this chapter;

(4) establish outfitter standards, guide standards, and professional guide standards;

(5) adopt:

(a) rules of procedure;

(b) rules to administer and enforce this chapter, including rules prescribing all requisite qualifications for licensure as an outfitter, guide, or professional guide. Qualifications for outfitters must include training, testing, experience in activities similar to the service to be provided, knowledge of rules of governmental bodies pertaining to outfitting and condition and type of gear and equipment, and the filing of an operations plan.

(c) any reasonable rules, not in conflict with this chapter, necessary for safeguarding the public health, safety, and welfare, including evidence of qualification and licensure under this chaptor for any person practicing or offering to practice as an outfitter, guide, or professional guide;

(d) rules specifying standards for review and approval of proposed new operations plans involving hunting use or the propesed expansion of net client ~~hunting~~ *hunter* use, *as set forth in [sections 5 and 6],* under an outfittor's existing operations plan ~~in order to determine if the proposal will cause an undue conflict with existing hunting use of the area, constituting a threat to the public health, safety, or welfare. The board may not approve a new operations plan or the~~

HeinOnline -- 1999 vol. III 2321 1999

~~proposed expansion of net client hunting use under the existing operations plan if it finds that the proposal will cause an undue conflict with existing hunting use of the area~~. Approval is not required when part or all of an existing operations plan is transferred from one licensed outfitter to another licensed outfitter. Rules adopted pursuant to this section must provide for solicitation and consideration of comments from hunters and sportspersons in the area to be affected by the propesal who do not make use of outfitter services.

(e) rules establishing outfitter reporting requirements. The reports must be filed annually and report actual leased acreage actively used by clients during that year and actual leased acres unused by clients during that year, plus any other information designated by the board and developed in collaboration with the department of fish, wildlife, and parks or the review committee established in 87-1-269 that is considered necessary to evaluate the effectiveness of the hunter management and hunting access management programs.

(6) hold hearings and proceedings to suspend or revoke licenses of outfitters, guides, and professional guides for due cause~~.~~;

(7) maintain records of actual clients served by all Montana outfitters that fulfill the requirements of subsection (5)(e)."

Section 4. Section 37-47-306, MCA, is amended to read:

"**37-47-306. Fees.** (1) The board shall establish fees commensurate with costs as provided in 37-1-134.

(2) Applications must be accompanied by a license fee as specified by board rule.

(3) ~~If a nonresident resides in a state requiring residents of the state of Montana to pay in excess of the amount established by the board for a similar license, the fee for the nonresident outfitter's, guide's, or professional guide's license must be the same amount as the higher fee charged in the state where the nonresident resides.~~ *If a nonresident license applicant resides in a state that requires residents of the state of Montana to pay in excess of the amount established by the board for a similar license, then the fee for the nonresident outfitter's, guide's, or professional guide's license must be the same amount as the higher fee charged in the state where the nonresident license applicant resides. A nonresident hunting outfitter is subject to the same rules and regulations that apply to a resident hunting outfitter.*

(4) The license fees must be depesited in the state special revenue fund and must be used by the board to investigate the applicant, to enforce this part, and for administrative costs, subject to 37-1-101(6)."

Section 5. Request for net client hunter use expansion — operation — transfer of NCHU upon transfer of operations plan. (1) An outfitter who wishes to expand NCHU shall present an expansion request to the board. A newly licensed outfitter shall establish NCHU in the same manner as a licensed outfittor who requests an NCHU expansion unless the newly licensed outfitter is purchasing the business of an existing outfitter. The board shall evaluate the request based on the criteria provided in [section 6].

(2) For any expansion of NCHU approved by the board after March 1, 1996, the outfitter has 3 years from the date of the expansion approval to establish the new NCHU. Upon expiration of the third year, the outfitter's client base must be adjusted to reflect the highest number of clients actually served, up to but not exceeding the number of clients authorized by the NCHU expansion request.

HeinOnline -- 1999 vol. III 2322 1999

(3) An outfitter may exceed the NCHU in any given year by the following percentages without formally requesting an NCHU expansion:

(a) 10% for an outfitter with 1 to 50 clients;

(b) 8% for an outfitter with 51 to 100 clients; and

(c) 2% for an outfitter with 101 to 300 clients.

(4) When an expansion of NCHU is approved, the outfitter who is granted the expansion shall operate within the limits of the NCHU. The flexibility to exceed NCHU in any given year, as outlined in subsection (3), does not apply to an outfitter who has been previously granted an NCHU expansion.

(5) The NCHU of an existing outfitting business transfers with the operations plan for that business unless the business has not been in operation for at least 3 years. Upon the expiration of 3 years, the client base must be adjusted to reflect the highest number of clients served in any category during the preceding 3 years, not to exceed the total authorized by the NCHU.

Section 6. Criteria for board evaluation of NCHU expansion request — public comments. (1) The criteria listed in subsection (2) must be applied by the board in evaluating and deciding whether to grant an NCHU expansion request. The criteria must be considered in light of the cumulative effect of the current expansion request and any previously approved expansion requests. The board may not approve an expansion request unless, by a preponderance of the evidence, a reasonable person would conclude that the criteria support an expansion request.

(2) An NCHU expansion request may not be granted if any of the following criteria are established:

(a) The request creates closure of a public right-of-way.

(b) The requestor has current license restrictions imposed by the board or is currently subject to a disciplinary action imposed by the board.

(c) The requestor has been convicted or pleaded guilty to a violation of Montana hunting or fishing statutes, rules, or regulations in the last 3 years.

(d) Any information in the request is inaccurate or untrue.

(e) The request does not cover adequate land to ensure the personal safety of hunters.

(f) Sufficient wildlife is not available to support the proposed number of hunters covered under the request.

(g) The proposed expansion would create or exacerbate a game damage situation.

(h) The proposed expansion would restrict the current efforts of the department of fish, wildlife, and parks to manage area wildlife through permits issued to public hunters.

(3) Failure by a requestor to provide all pertinent information and documentation will result in the expansion request being deferred without action until the subsequent meeting of the board. If the requestor fails to provide the pertinent information and documentation before the subsequent board meeting, the request must be denied.

(4) Public comments concerning an NCHU expansion must be solicited and compiled by the department of fish, wildlife, and parks from affected recreation-

HeinOnline -- 1999 vol. III 2323 1999

ists and recreationist organizations, public land management agencies, affected landowners and landowner organizations, affected outfitters and outfitter organizations, and the general public. Public comment must he solicited through the issuance of press releases and by identification of proposed leased private land by its popular description. The department of fish, wildlife, and parks shall incorporate the public comments into the analysis of the expansion request required under subsection (5). In addition, the board shall consider the puhlic comments separately from the department of fish, wildlife, and parks' analysis.

(5) In considering an NCHU expansion request, the board sball also consider any analysis and comments submitted by the department of fish, wildlife, and parks. Departmental analysis may include hut is not limited to the following criteria:

(a) whether historic hunting data, such as the past occurrence of outfitting or public hunting, supports the request;

(b) whether negative impacts to the wildlife population will occur, given documented wildlife trends in the geographical region encompassed by the expansion request;

(c) whether public access or public hunting trends in the geographic region affected by the request will be negatively impacted;

(d) whether there have been past substantiated conflicts between the hunting public and outfitters or between individual outfitters and their clients in the local geographic region affected by the request;

(e) if the expansion will create a negative effect on wildlife habitat;

(f) if the expansion will have negative implications on hunting on public land, hunting access, or outfitting;

(g) whether analysis of existing data regarding wildlife, hunting access, or other relevant information supports the expansion request; and

(h) whether there will be impacts on previously available hunting access in the local geographic region affected hy tbe request, such as impact on the block management program.

(6) The outfitter making the expansion request shall address the criteria outlined in suhsection (5) to the best of the outfitter's knowledge. The analysis required in subsection (5) must be compiled using information supplied by the applicant, through public comment, and through any other available data.

(7) In making its final decision regarding an expansion request, the board shall respond in tbe decision notice to comments received by outlining tbe comment and delineating how, if at all, the comment was incorporated into tbe final decision. The board shall also consider whether:

(a) the expansion will open private or puhlic lands to public hunting that did not previously exist;

(b) the request addresses existing game damage by opening new puhlic equivalent hunting opportunities for both outfitters and the public; and

(c) the expansion would directly restrict puhlic access to public lands.

(8) For the purposes of this section, "right-of-way" means dedicated roads, such as county roads or forest service roads, or rights-of-way with historical use that have been established as legal public rights-of-way.

HeinOnline -- 1999 vol. III 2324 1999

Section 7. Fees in addition to annual license fee — allocation. (1) In addition to the fees required in 37-47-306 for an outfitter providing hunting services, the following fees apply:

(a) An outfitter shall pay an annual fee of $2 for each client served.

(b) An outfitter who is granted a net client hunter use expansion shall pay a fee of $500 for each new client added to that outfitter's operations plan.

(c) An outfitter who operates hunting camps in more than one department of fish, wildlife, and parks administrative region shall pay an annual fee of $5,000 for each camp that is located beyond a 100-mile radius of the outfitter's base of operations and that is in an administrative region other than the region containing the outfitter's base of operations. A fee is not required for the following:

(i) an outfitter's base of operations camp;

(ii) camps established before January 1, 1999;

(iii) camps established on public land when use is directly regulated by public land-use policies; or

(iv) camps on corporate timberlands where public access is not restricted.

(d) An outfitter who desires a net client hunter use expansion shall pay a nonrefundable fee of $2,000 for each expansion request.

(2) Fees collected pursuant to this section must be expended by the board, pursuant to the authority in 37-47-306, and by the department of fish, wildlife, and parks, pursuant to the authority in 87-1-601, and used to fund administrative costs related to implementation of this chapter. The fees collected must be allocated as follows:

(a) Revenue generated by the $2 fee imposed in subsection (1)(a) must be split equally between the board and the department of fish, wildlife, and parks.

(b) Revenue generated by the $500 fee imposed in subsection (1)(b) must be allocated between the board and the department of fish, wildlife, and parks in the following order:

(i) the amount necessary to cover the department's administrative expenses that exceed the revenue generated by subsection (2)(a); and

(ii) the remaining amount to be deposited in the state special revenue fund to the credit of the board.

(c) Revenue generated by the $5,000 fee imposed in subsection (1)(c) must be deposited in the state special revenue fund to the credit of the board.

(d) Revenue generated by the $2,000 fee imposed in subsection (1)(d) must be split equally between the board and the department of fish, wildlife, and parks.

Section 8. Codification instruction. [Sections 5 through 7] are intended to be codified as an integral part of Title 37, chapter 47, and the provisions of Title 37, chapter 47, apply to [sections 5 through 7].

Section 9. Effective dates. (1) [Section 1] is effective October 1, 1999.

(2) [Sections 2 through 8 and this section] are effective on passage and approval.

Approved April 30, 1999

HeinOnline -- 1999 vol. III 2325 1999

CHAPTER NO. 544

[SB 338]

AN ACT REVISING THE HUNTER MANAGEMENT AND HUNTING ACCESS ENHANCEMENT MANAGEMENT PROGRAMS; EXTENDING THE TERMINATION DATE REGARDING THOSE PROGRAMS AND EXTENDING THE MORATORIUM ON LICENSING OF NEW OUTFITTERS; CAPPING THE NUMBER OF AVAILABLE LAND-BASED HUNTING OUTFITTER LICENSES; REVISING THE ADVISORY AUTHORITY OF THE PROGRAM REVIEW COMMITTEE; INCREASING THE COST OF NONRESIDENT UPLAND GAME BIRD LICENSES AND PROVIDING THAT THE FEE INCREASE BE USED BY THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO ENCOURAGE PUBLIC ACCESS TO PRIVATE LANDS FOR HUNTING PURPOSES; PROVIDING THAT THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS ISSUE UP TO TWO RESIDENT-SPONSORED CLASS B-11 LICENSES TO TWO APPLICANTS SPONSORED BY ANY RESIDENT LANDOWNER WHO OWNS 640 OR MORE CONTIGUOUS ACRES AND REQUESTS THE LICENSES AS A RESIDENT SPONSOR; AMENDING SECTIONS 37-47-315, 87-1-269, 87-2-402, AND 87-2-511, MCA; AMENDING SECTION 18, CHAPTER 459, LAWS OF 1995; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 37-47-315, MCA, is amended to read:

"37-47-315. (Temporary) Moratorium on issuance of hunting outfitter licenses. The legislature finds it necessary to protect the hunting resource, public health, public safety, and public welfare. Therefore, the board shall establish and regulate a moratorium on the issuance of outfitter licenses for land-based hunting activities. An outfitter licensed on April 14, 1995, may receive a renewal license, if qualified, but the total number of land-based hunting outfitter licenses ~~issued after April 14, 1995,~~ may not exceed ~~the number in existence on April 14, 1995~~ *543*. (Terminates June 30, 1999—sec. 18, Ch. 459, L. 1995.)"

Section 2. Section 87-1-269, MCA, is amended to read:

"87-1-269. (Temporary) Report required — review committee. (1) The governor shall appoint a committee of persons interested in *issues related to hunters, landowners, and outfitters, including but not limited to* the ~~hunter management program, the~~ hunting access enhancement program, *landowner-hunter relations, outfitting industry issues,* ~~or~~ *and* other issues related to private lands and public wildlife ~~to review the success and progress of the hunter management program and the hunting access enhancement program~~. The committee must have ~~equal~~ *broad* representation of landowners, outfitters, and sportspersons ~~and be broadly representative of the various geographical areas of the state~~. The department may provide administrative assistance as necessary to ~~facilitate the efforts of~~ *assist* the review committee.

(2) The review committee shall report to the governor *and to the 57th legislature* regarding the success of ~~the hunter management program and~~ *various elements of* the hunting access enhancement program, *including a report of annual landowner participation, the number of acres annually enrolled in the program, hunter harvest success on enrolled lands, the number of qualified*

applicants who were denied enrollment because of a shortfall in funding, and an accounting of program expenditures, ~~including a report of annual landowner participation and the number of acres annually enrolled in the programs. The report may also include~~ *and make* suggestions for funding, modification, or improvement *needed to achieve the objectives* of the ~~programs~~ *program.* ~~If the review committee determines that expanding funding for programs for hunter management and hunting access enhancement is desirable, consideration must be given to providing the expanded funding through increases in resident hunting license fees.~~

(3) The director may appoint additional advisory committees that are considered necessary to assist in the implementation of the hunting access enhancement program and to advise the commission regarding the development of rules implementing the hunting access enhancement program. (Terminates October 1, 2001—sec. 18, Ch. 459, L. 1995.)"

Section 3. Section 87-2-402, MCA, is amended to read:

"87-2-402. Class B-1—nonresident upland game bird license. Except as otherwise provided in this chapter, a person who is not a resident, as defined in 87-2-102, but who is 12 years of age or older, upon payment of a fee of ~~$55~~ *$110* may receive a Class B-1 license that entitles the holder to hunt upland game birds and possess the carcasses of upland game birds as authorized by department rules."

Section 4. Section 87-2-511, MCA, is amended to read:

"87-2-511. (Temporary) Sale and use of Class B-10 and Class B-11 licenses. (1) The department shall offer the Class B-10 and Class B-11 licenses for sale on March 15, with a number of authorized Class B-10 and Class B-11 licenses, as determined under 87-1-268, reserved for applicants using the services of a licensed outfitter and 2,000 of the authorized Class B-11 licenses reserved for applicants indicating their intent to hunt with a resident sponsor on land owned by that sponsor, as provided in subsections (2) and (3).

(2) Each application for a resident-sponsored license under subsection (1) must contain a written affirmation by the applicant that the applicant intends to hunt with a resident sponsor and must indicate the name of the resident sponsor with whom the applicant intends to hunt. In addition, the application must be accompanied by a certificate that is signed by a resident sponsor and that affirms that the resident sponsor will:

(a) direct the applicant's hunting and advise the applicant of game and trespass laws of the state;

(b) submit to the department, in a manner prescribed by the department, complete records of who hunted with the resident sponsor, where they hunted, and what game was taken; and

(c) accept no monetary consideration for enabling the nonresident applicant to obtain a license or for providing any services or assistance to the nonresident applicant, except as provided in Title 37, chapter 47, and this title.

(3) The certificate signed by the resident sponsor pursuant to subsection (2) must also affirm that the sponsor is a landowner and that the applicant under the certificate will hunt only on land owned by the sponsor. ~~A~~ *If there is a sufficient number of licenses set forth in subsection (1), the department shall issue a license to one applicant sponsored by each resident landowner who owns 640 or*

HeinOnline -- 1999 vol. III 2327 1999

more contiguous acres. If enough licenses remain for a second applicant for each resident landowner sponsor, the department shall issue a license to the second applicant sponsored by each resident landowner. The department shall conduct a drawing for any remaining resident-sponsored licenses. If there is not a sufficient number of licenses set forth in subsection (1) to allow each resident landowner who owns 640 contiguous acres to sponsor one applicant, the department shall conduct a drawing for the resident-sponsored licenses. However, a resident sponsor of a Class B-11 license may submit no more than ~~20~~ *15* certificates of sponsorship in any license year ~~prior to expiration of the moratorium established in 37-47-315, after which no more than 10 certificates of sponsorship may be submitted in any license year~~.

(4) Each application for an outfitter-sponsored license under subsection (1) must contain a written affirmation by the applicant that the applicant will hunt with a licensed outfitter for all big game hunted by the applicant under the license and must indicate the name of the licensed outfitter with whom the applicant will hunt. In addition, the application must be accompanied by a certificate that is signed by a licensed outfitter and that affirms that the outfitter will:

(a) accompany the applicant;

(b) provide guiding services for the species hunted by the applicant;

(c) direct the applicant's hunting for all big game hunted by the applicant under the license and advise the applicant of game and trespass laws of the state;

(d) submit to the department, in a manner prescribed by the department, complete records of who hunted with the outfitter, where they hunted, and what game was taken; and

(e) accept no monetary consideration for enabling the nonresident applicant to obtain a license or for providing any services or assistance to the nonresident applicant, except as provided in Title 37, chapter 47, and this title.

(5) An outfitter-sponsored license under subsection (1) is valid only when used in compliance with the affirmations of the applicant and outfitter required under subsection (4). If the sponsoring outfitter is unavailable or if the applicant wishes to use the services of separate outfitters for hunting different species of game, an outfitter-sponsored license may be used with a substitute licensed outfitter, in compliance with the affirmations under subsection (4), upon advance written notification to the board by the sponsoring licensed outfitter or the substitute outfitter.

(6) A nonresident who hunts under the authority of a resident landowner-sponsored license shall conduct all deer hunting on the deeded lands of the sponsoring landowner.

(7) Any permits or tags secured as a result of obtaining a Class B-10 or Class B-11 license through an outfitter sponsor are valid only when hunting is conducted with a licensed outfitter.

(8) The department shall make the reserved outfitter-sponsored Class B-10 and Class B-11 licenses that remain unsold available as provided in 87-1-268.

(9) All Class B-10 and Class B-11 licenses that are not reserved under subsection (1) must be issued by a drawing ameng all applicants for the respective unreserved licenses. (Terminates October 1, 2001—sec. 18, Ch. 459, L. 1995.)

HeinOnline -- 1999 vol. III 2328 1999

87-2-511. (Effective October 1, 2001) Sale of Class B-10 and Class B-11 licenses. (1) The department shall offer the Class B-10 and Class B-11 licenses for sale on March 15, with 5,600 of the authorized Class B-10 licenses and 2,000 Class B-11 licenses reserved for applicants using the services of a licensed outfitter and 2,000 of the authorized Class B-11 licenses reserved for applicants indicating their intent to hunt with a resident sponsor on land owned by that sponsor, as provided in subsections (2) and (3).

(2) Each application for a resident-sponsored license under subsection (1) must contain a written affirmation by the applicant that the applicant intends to hunt with a resident sponsor and must indicate the name of the resident sponsor with whom the applicant intends to hunt. In addition, the application must be accompanied by a certificate that is signed by a resident sponsor and that affirms that the resident sponsor will:

(a) direct the applicant's hunting and advise the applicant of game and trespass laws of the state;

(b) submit to the department, in a manner prescribed by the department, complete records of who hunted with the resident sponsor, where they hunted, and what game was taken; and

(c) accept no monetary consideration for enabling the nonresident applicant to obtain a license or for providing any services or assistance to the nonresident applicant, except as provided in Title 37, chapter 47, and this title.

(3) The certificate signed by the resident sponsor pursuant to subsection (2) must also affirm that the sponsor is a landowner and that the applicant under the certificate will hunt only on land owned by the sponsor.

(4) Each application for an outfitter-sponsored license under subsection (1) must contain a written affirmation by the applicant that the applicant will hunt with a licensed outfitter for all big game hunted by the applicant under the license and must indicate the name of the licensed outfitter with whom the applicant will hunt. In addition, the application must be accompanied by a certificate that is signed by a licensed outfitter and that affirms that the outfitter will:

(a) accompany the applicant;

(b) provide guiding services for the species hunted by the applicant;

(c) direct the applicant's hunting for all big game hunted by the applicant under the license and advise the applicant of game and trespass laws of the state;

(d) submit to the department, in a manner prescribed by the department, complete records of who hunted with the outfitter, where they hunted, and what game was taken; and

(e) accept no monetary consideration for enabling the nonresident applicant to obtain a license or for providing any services or assistance to the nonresident applicant, except as provided in Title 37, chapter 47, and this title.

(5) An outfitter-sponsored license under subsection (1) is valid only when used in compliance with the affirmations of the applicant and outfitter required under subsection (4). If the sponsoring outfitter is unavailable or if the applicant wishes to use the services of separate outfitters for hunting different species of game, an outfitter-sponsored license may be used with a substitute licensed outfitter, in compliance with the affirmations under subsection (4), upon advance

HeinOnline -- 1999 vol. III 2329 1999

written notification to the board by the sponsoring licensed outfitter or the substitute outfitter.

(6) The department shall make the reserved Class B-10 and Class B-11 licenses that remain unsold on April 15 available to nonresident applicants without restriction as to hunting with a licensed outfitter or resident sponsor.

(7) All Class B-10 and Class B-11 licenses that are not reserved under subsection (1) and all unsold reserved licenses that are available under subsection (6) must be issued by a drawing among all applicants for the respective unreserved licenses."

Section 5. Allocation of license fee to hunting access enhancement program. The amount of $55 from the sale of each Class B-1 nonresident upland game bird license must be used by the department to encourage public access to private lands for hunting purposes in accordance with 87-1-265 through 87-1-267.

Section 6. Section 18, Chapter 459, Laws of 1995, is amended to read:

"**Section 18. Termination.** (1) [Sections 1 through 10] terminate ~~October 1, 2001~~ *March 1, 2006.*

(2) [Section 11] terminates ~~June 30, 1999~~ *July 1, 2002.*"

Section 7. Codification instruction. [Section 5] is intended to be codified as an integral part of Title 87, chapter 1, part 2, and the provisions of Title 87, chapter 1, part 2, apply to [section 5].

Section 8. Termination. [Section 5] terminates March 1, 2006.

Section 9. Effective dates. (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Sections 3, 5, and 8] are effective March 1, 2000.

Approved April 29, 1999

CHAPTER NO. 545

[SB 372]

AN ACT REVISING CERTAIN LAWS RELATING TO TERMINATION OF MARRIAGE, SEPARATION, AND CHILD CUSTODY; PROVIDING THAT FEES FOR FILING AN AMENDMENT TO FINAL PARENTING PLANS MAY NOT BE COLLECTED IF THE AMENDMENT IS NOT CONTESTED; PROVIDING THAT THE CLERK OF COURT NEED NOT KEEP SOCIAL SECURITY NUMBERS CONFIDENTIAL, UNLESS REQUESTED; PROVIDING THAT PARENTING PLANS BE KEPT CONFIDENTIAL ONLY UPON REQUEST; REVISING ASSET CRITERIA FOR SUMMARY DISSOLUTION PROCEDURES; ALLOWING PARTIES TO WAIVE EXCHANGE OF PRELIMINARY DISCLOSURE STATEMENTS; AMENDING SECTIONS 25-1-201, 40-4-105, 40-4-130, 40-4-204, 40-4-234, AND 40-4-252, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 25-1-201, MCA, is amended to read:

"**25-1-201. (Temporary) Fees of clerk of district court.** (1) The clerk of the district court shall collect the following fees:

(a) at the commencement of each action or proceeding, except a petition for dissolution of marriage, from the plaintiff or petitioner, $80; for filing a complaint in intervention, from the intervenor, $80; for filing a petition for dissolution of marriage, ~~a fee of~~ $150; for filing a petition for legal separation, ~~a fee of~~ $150; and for filing a petition for a contested amendment of a final parenting plan, ~~a fee of~~ $120;

(h) from each defendant or respondent, on appearance, $60;

(c) on the entry of judgment, from the prevailing party, $45;

(d) for preparing copies of papers on file in the clerk's office, 50 cents a page for the first five pages of each file, for each request, and 25 cents for each additional page;

(e) for each certificate, with seal, $2;

(f) for oath and jurat, with seal, $1;

(g) for a search of court records, 50 cents for each year searched, not to exceed a total of $25;

(h) for filing and docketing a transcript of judgment or transcript of the docket from all other courts, the fee for entry of judgment provided for in subsection (1)(c);

(i) for issuing an execution or order of sale on a foreclosure of a lien, $5;

(j) for transmission of records or files or transfer of a case to another court, $5;

(k) for filing and entering papers received by transfer from other courts, $10;

(l) for issuing a marriage license, $30;

(m) on the filing of an application for informal, formal, or supervised probate or for the appointment of a personal representative or the filing of a petition for the appointment of a guardian or conservator, from the applicant or petitioner, $70, which includes the fee for filing a will for probate;

(n) on the filing of the items required in 72-4-303 by a domiciliary foreign personal representative of the estate of a nonresident decedent, $55;

(o) for filing a declaration of marriage without solemnization, $30;

(p) for filing a motion for substitution of a judge, $100;

(q) for filing a petition for adoption, $75.

(2) Except as provided in subsections (3) through (10), 32% of all fees collected by the clerk of the district court must be deposited in and credited to the district court fund. If no district court fund exists, that portion of the fees must be deposited in the general fund for district court operations. The remaining portion of the fees must be remitted to the state general fund.

(3) In the case of a fee collected for issuing a marriage license or filing a declaration of marriage without solemnization, $23.60 must be deposited in and credited to the state general fund and $6.40 must be depesited in and credited to the county general fund.

(4) Of the fee for filing a petition for dissolution of marriage or legal separation, $75 must be deposited in the state general fund, $5 must be depesited in the children's trust fund account established by 41-3-702, $30 must be

HeinOnline -- 1999 vol. III 2331 1999

deposited in the partner and family member assault intervention and treatment fund established by 40-15-110, and $20 must be deposited in and credited to the district court fund. If no district court fund exists, the $20 must be deposited in the general fund for district court operations.

(5) (a) Before the porcentages contained in subsection (2) are applied and the fees depesited in the district court fund or the county general fund or remitted to the state, the clerk of the district court shall deduct from the following fees the amounts indicated:

(i) at the commencement of each action or proceeding and for filing a complaint in intervention, as provided in subsection (1)(a), $35;

(ii) from each defendant or respondent, on appearance, as provided in subsection (1)(b), $25;

(iii) on the entry of judgment, as provided in subsection (1)(c), $15; and

(iv) from the applicant or petitioner, on the filing of an application for probate or for the appointment of a personal representative or on the filing of a potition for appointment of a guardian or conservator, as provided in subsection (1)(m), $15.

(b) The clerk of the district court shall deposit the money deducted in subsection (5)(a) in the county general fund for district court operations unless the county has a district court fund. If the county has a district court fund, the money must be deposited in that fund.

(6) The fee for filing a motion for substitution of a judge, as provided in subsection (1)(p), must be remitted to the state general fund.

(7) Fees collected under subsections (1)(d) through (1)(i) must be deposited in the district court fund. If no district court fund exists, fees must be deposited in the general fund for district court operations.

(8) The clerk of the district court shall remit to the credit of the state general fund $20 of each fee collected under the provisions of subsections (1)(a) through (1)(c), (1)(m), and (1)(n) to fund a portion of judicial salaries.

(9) *(a)* The fee for filing a petition for a contested amendment of a parenting plan must be remitted by the clerk of the district court to the credit of the district court to defray the costs of the court-sanctioned educational program concerning the effects of dissolution of marriage on children, as required in 40-4-226, and to defray the expense of education when ordered for the investigation and preparation of a report concerning parenting arrangements, as provided in 40-4-215(2)(a).

(b) If the moving party files a statement signed by the nonmoving party agreeing not to contest an amendment of a final parenting plan at the time the petition for amendment is filed, the clerk of the district court may not collect from the moving party the fee for filing a petition for a contested amendment of a parenting plan under subsection (1)(a).

(10) The clerk of district court shall remit to the credit of the special revenue account established in 42-2-105 $70 of the filing fee required in subsection (1)(q), and $5 of the filing fee must be deposited in the district court fund. If no district court fund exists, fees must be deposited in the general fund for district court operations. (Terminates June 30, 1999—sec. 14, Ch. 484, L. 1997.)

HeinOnline -- 1999 vol. III 2332 1999

25-1-201. (Effective July 1, 1999) Fees of clerk of district court. (1) The clerk of the district court shall collect the following fees:

(a) at the commencement of each action or proceeding, except a petition for dissolution of marriage, from the plaintiff or petitioner, $80; for filing a complaint in intervention, from the intervenor, $80; for filing a petition for dissolution of marriage, ~~a fee of~~ $120; for filing a petition for legal separation, ~~a fee of~~ $120; and for filing a petition for a contested amendment of a final parenting plan, ~~a fee of~~ $120;

(b) from each defendant or respondent, on appearance, $60;

(c) on the entry of judgment, from the prevailing party, $45;

(d) for preparing copies of papers on file in the clerk's office, 50 cents a page for the first five pages of each file, for each request, and 25 cents for each additional page;

(e) for each certificate, with seal, $2;

(f) for oath and jurat, with seal, $1;

(g) for *a* search of court records, 50 cents for each year searched, not to exceed a total of $25;

(h) for filing and docketing a transcript of judgment or transcript of the docket from all other courts, the fee for entry of judgment provided for in subsection (1)(c);

(i) for issuing an execution or order of sale on a foreclosure of a lien, $5;

(j) for transmission of records or files or transfer of a case to another court, $5;

(k) for filing and entering papers received by transfer from other courts, $10;

(l) for issuing a marriage license, $30;

(m) on the filing of an application for informal, formal, or supervised probate or for the appointment of a personal representative or the filing of a petition for the appointment of a guardian or conservator, from the applicant or petitioner, $70, which includes the fee for filing a will for probate;

(n) on the filing of the items required in 72-4-303 by a domiciliary foreign personal representative of the estate of a nonresident decedent, $55;

(o) for filing a declaration of marriage without solemnization, $30;

(p) for filing a motion for substitution of a judge, $100;

(q) for filing a petition for adoption, $75.

(2) Except as provided in subsections (3) through (10), 32% of all fees collected by the clerk of the district court must be deposited in and credited to the district court fund. If no district court fund exists, that portion of the fees must be deposited in the general fund for district court operations. The remaining portion of the fees must be remitted to the state general fund.

(3) In the case of a fee collected for issuing a marriage license or filing a declaration of marriage without solemnization, $23.60 must be deposited in and credited to the state general fund and $6.40 must be deposited in and credited to the county general fund.

HeinOnline -- 1999 vol. III 2333 1999

(4) Of the fee for filing a petition for dissolution of marriage or legal separation, $75 must be depesited in the state general fund, $5 must be deposited in the children's trust fund account established by 41-3-702, and $20 must be deposited in and credited to the district court fund. If no district court fund exists, the $20 must be deposited in the general fund for district court operations.

(5) (a) Before the percentages contained in subsection (2) are applied and the fees deposited in the district court fund or the county general fund or remitted to the state, the clerk of the district court shall deduct from the following fees the amounts indicated:

(i) at the commencement of each action or proceeding and for filing a complaint in intervention, as provided in subsection (1)(a), $35;

(ii) from each defendant or respondent, on appearance, as provided in subsection (1)(b), $25;

(iii) on the entry of judgment, as provided in subsection (1)(c), $15; and

(iv) from the applicant or petitioner, on the filing of an application for probate or for the appeintment of a personal representative or on the filing of a petition for appointment of a guardian or conservator, as provided in subsection (1)(m), $15.

(b) The clerk of the district court shall depesit the money deducted in subsection (5)(a) in the county general fund for district court operations unless the county has a district court fund. If the county has a district court fund, the money must be deposited in that fund.

(6) The fee for filing a motion for substitution of a judge, as provided in subsection (1)(p), must be remitted to the state general fund.

(7) Fees collected under subsections (1)(d) through (1)(i) must be deposited in the district court fund. If no district court fund exists, fees must be deposited in the general fund for district court operations.

(8) The clerk of the district court shall remit to the credit of the state general fund $20 of each fee collected under the provisions of subsections (1)(a) through (1)(c), (1)(m), and (1)(n) to fund a portion of judicial salaries.

(9) *(a)* The fee for filing a petition for a contested amendment of a parenting plan must be remitted by the clerk of the district court to the credit of the district court to defray the costs of the court-sanctioned educational program concerning the effects of dissolution of marriage on children, as required in 40-4-226, and to defray the expense of education when ordered for the investigation and preparation of a report concerning parenting arrangements, as provided in 40-4-215(2)(a).

(b) If the moving party files a statement signed by the nonmoving party agreeing not to contest an amendment of a final parenting plan at the time the petition for amendment is filed, the clerk of the district court may not collect from the moving party the fee for filing a petition for a contested amendment of a parenting plan under subsection (1)(a).

(10) The clerk of district court shall remit to the credit of the special revenue account established in 42-2-105 $70 of the filing fee required in subsection (1)(q), and $5 of the filing fee must be depesited in the district court fund. If no district court fund exists, fees must be deposited in the general fund for district court operations."

Seetion 2. Section 40-4-105, MCA, is amended to read:

HeinOnline -- 1999 vol. III 2334 1999

"40-4-105. (Bracketed language terminates on occurrence of contingency or July 1, 1999) Procedure — commencement — pleadings — abolition of existing defenses. (1) The verified petition in a proceeding for dissolution of marriage or legal separation must allege that the marriage is irretrievably broken and must set forth:

(a) the age, occupation, and residence of each party and the party's length of residence in this state;

(b) the date of the marriage and the place at which it was registered;

(c) that the jurisdictional requirements of 40-4-104 exist and that the marriage is irretrievably broken in that either:

(i) the parties have lived separate and apart for a period of more than 180 days preceding the commencement of this proceeding; or

(ii) there is serious marital discord that adversely affects the attitude of one or both of the parties towards the marriage, and there is no reasonable prospect of reconciliation;

(d) the names, ages, and addresses of all living children of the marriage and whether the wife is pregnant;

(e) any arrangements as to support of the children and maintenance of a spouse;

(f) a proposed parenting plan, if applicable; and

(g) the relief sought.

(2) Either or both parties to the marriage may initiate the proceeding.

(3) If a proceeding is commenced by one of the parties, the other party must be served in the manner provided by the Montana Rules of Civil Procedure and may within 20 days after the date of service file a verified response. A decree may not be entered until 20 days after the date of service.

(4) Previously existing defenses to divorce and legal separation, including but not limited to condonation, connivance, collusion, recrimination, insanity, and lapse of time, are abolished.

(5) The court may join additional parties proper for the exercise of its authority to implement this chapter.

[(6) The social security number, if known, of a person subject to a decree of dissolution or a support order must be recorded in the records relating to the matter. ~~The~~ *At the request of a person subject to a decree of dissolution or a support order, the* recordkeeper shall keep the social security number from this source confidential, except that the number may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.] (Bracketed language terminates on occurrence of contingency or July 1, 1999—sec. 104, Ch. 552, L. 1997.)"

Section 3. Section 40-4-130, MCA, is amended to read:

"40-4-130. Summary dissolution — conditions necessary at commencement of proceedings. A marriage may be dissolved by the summary dissolution procedure specified in 40-4-130 through 40-4-136 if all of the following conditions exist on the date the proceeding is commenced:

(1) Each party has met the requirements of 40-4-104 with regard to dissolution of marriage.

HeinOnline -- 1999 vol. III 2335 1999

(2) Irreconcilable differences have caused the irretrievable breakdown of the marriage, and both parties agree that the marriage should he dissolved.

~~(3) There are no children from the relationship born before or during the marriage or adopted by the parties during the marriage, and the wife is not pregnant.~~

(3) The wife is not pregnant and:

(a) there are no children from the relationship born before or during the marriage or adopted by the parties during the marriage; or

(b) the parties have executed an agreed-upon parenting plan and the child support and medical support have been determined by judicial or administrative order for all children from the relationship born before or during the marriage or adopted by the parties during the marriage.

(4) (a) Except as provided in subsection (4)(b), neither party has any interest in real property.

(b) The limitation of subsection (4)(a) does not apply to the lease of a residence occupied by either party if the lease does not include an option to purchase and if it terminates within 1 year from the date of the filing of the petition.

(5) There are no unpaid, *unsecured* obligations in excess of ~~$4,000~~ *$8,000* incurred by either or both of the parties after the date of their marriage~~, excluding the amount of any unpaid obligations with respect to a motor vehicle with a rated carrying load in persons and property of 1 ton or less~~.

(6) The total fair market value of ~~property~~ assets, excluding ~~all encumbrances and motor vehicles with a rated carrying load in persons and property of 1 ton or less~~ *secured obligations*, is less than ~~$13,000~~ *$25,000*~~, and neither party has separate property assets in excess of $13,000, excluding all encumbrances and motor vehicles with a rated carrying load in persons and property of 1 ton or less~~.

(7) The parties have executed an agreement setting forth the division of assets and the assumption of liabilities and have ~~duly~~ executed any documents, title certificates, bills of sale, or other evidence of transfer necessary to effectuate the agreement.

(8) The parties waive any right to maintenance.

(9) The parties, upon entry of final judgment of dissolution of marriage, irrevocably waive their respective rights to appeal the terms of the dissolution and their rights to move for a new trial on the dissolution.

(10) The parties have read and state that they understand the contents of the summary dissolution brochure provided for in 40-4-136.

(11) The parties desire that the court dissolve the marriage."

Section 4. Section 40-4-204, MCA, is amended to read:

"40-4-204. ~~(Bracketed language terminates on occurrence of contingency or July 1, 1999)~~ Child support — orders to address health insurance — withholding of child support. (1) In a proceeding for dissolution of marriage, legal separation, maintenance, or child support, the court shall order either or both parents owing a duty of support to a child to pay an amount reasonable or necessary for the child's support, without regard to marital misconduct.

HeinOnline -- 1999 vol. III 2336 1999

(2) The court shall consider all relevant factors, including:

(a) the financial resources of the child;

(b) the financial resources of the parents;

(c) the standard of living that the child would have enjoyed bad the marriage not been dissolved;

(d) the physical and emotional condition of the child and the child's educational and medical needs;

(e) the age of the child;

(f) the cost of day care for the child;

(g) any parenting plan that is ordered or decided upon; and

(h) the needs of any porson, other than the child, whom either parent is legally obligated to support.

(3) (a) Whenever a court issues or modifies an order concerning child support, the court shall determine the child support obligation by applying the standards in tbis section and the uniform child support guidelines adepted by the department of public health and human services pursuant to 40-5-209. The guidelines must be used in all cases, including cases in which the order is entered upon the default of a party and those in which the parties have entered into an agreement regarding the support amount. A verified representation of the defaulting parent's income, based on the best information available, may be used when a parent fails to provide financial information for use in applying tbe guidelines. The amount determined under tlie guidelines is presumed to be an adequate and reasonable support award, unless the court finds by clear and convincing evidence tliat the application of tlie standards and guidelines is unjust to tbe child or to any of the parties or that it is inappropriate in that particular case.

(b) If the court finds that the guideline amount is unjust or inappropriate in a particular case, it shall state its reasons for that finding. Similar reasons must also be stated in a case in which the parties bave agreed to a support amount that varies from the guideline amount. Findinga that rebut and vary the guideline amount inust include a statement of the amount of support that would have ordinarily been ordered under the guidelines.

(c) If the court does not order a parent owing a duty of support to a child to pay any amount for the child's support, the court shall state its reasons for not ordering child support.

(d) Child support obligations established under this section are subject to the registration and processing provisions of chapter 5, part 9.

(4) Each temporary or final district court judgment, decree, or order establishing a child support obligation under this title and each modification of a final order for child support must include a medical support order as provided for in Title 40, chapter 5, part 8.

(5) (a) Unless the court makes a written exception under 40-5-315 or 40-5-411 and the exception is included in the support order, a support obligation established by judgment, decree, or order under this section, whether temporary or final, and each modification of an existing support obligation under 40-4-208 inust be enforced by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 3 or 4. A support order that omits the written

HeinOnline -- 1999 vol. III 2337 1999

exceptions provided in 40-5-315 or 40-5-411 or that provides for a payment arrangement inconsistent with this section is nevertheless subject to withholding for the payment of support without need for an amendment to the support order or for any further action by the court.

(b) If an obliger is exempt from immediate income withholding, the district court judgment or order must include a warning statement that if the obligor is delinquent in the payment of support, the obliger's income may be subject to income withholding procedures under Title 40, chapter 5, part 3 or 4. Failure to include a warning statement in a judgment or order does not preclude the use of withholding procedures.

(c) If a support order subject to income withholding is expressed in terms of a monthly obligation, the order may be annualized and withheld on a weekly or biweekly basis, corresponding to the obligor's regular pay peried. When an order is annualized and withheld on a weekly or biweekly basis under this section, the support withheld from the obliger may be retained by the obligee when it exceeds the obliger's monthly support obligation if the excess support is a result of annualized withholding.

(d) If an obliger is exempted from paying support through income withholding, the support order must include a requirement that whenever the case is receiving services under Title IV-D of the Social Security Act, support payments must be paid through the department of public health and human services as provided in 40-5-909.

(6) (a) Each district court judgment, decree, or order that establishes paternity or establishes or modifies a child support obligation must include a provision requiring the parties to promptly file with the court and to update, as necessary, information on:

(i) the party's identity, residential and mailing addresses, telephone numher, [social security number,] and driver's license number;

(ii) the name, address, and telephone number of the party's employer; and

(iii) if the child is covered by a health or medical insurance plan, the name of the insurance carrier or health benefit plan, the policy identification number, the names of the persons covered, and any other pertinent information regarding coverage or, if the child is not covered, information as to the availability of coverage for the child through the party's employer.

(b) The court shall keep the information provided under subsection (6)(a) confidential except that the information may be provided to the department of public health and human services for use in administering Title IV-D of the Social Security Act.

(c) The order must also require that in any subsequent child suppert enforcement action, upon sufficient showing that diligent effort has been made to ascertain the location of the party, the district court or the department of public health and human services, if the department is providing services under Title IV-D of the Social Security Act, may consider due process requirements for notice and service of process met with respect to the party upon delivery of written notice by regular mail to the most recent address of the party or the party's employer's address reported to the court.

(7) Each district court judgment, decree, or order establishing a final child support obligation under this part and each modification of a final order for child support must contain a statement that the order is subject to review and

HeinOnline -- 1999 vol. III 2338 1999

modification by the department of public health and human services upon the request of the department or a party under 40-5-271 through 40-5-273 when the department is providing services under Title IV-D of the Social Security Act for the enforcement of the order.

(8) (a) A district court judgment, decree, or order that establishes or modifies a child support obligation must include a provision requiring the child support obligation to he paid, without need for further court order:

(i) to the person with whom the child resides by legal order;

(ii) if the person with whom the child legally resides voluntarily or involuntarily relinquishes physical care and control of the child to another person, organization, or agency, to the person, organization, or agency to whom physical custody has been relinquished;

(iii) if any other person, organization, or agency is entitled by law, assignment, or similar reason to receive or collect the child support obligation, to the person, organization, or agency having the right to receive or collect tbe payment; or

(iv) to the court for the benefit of the minor child.

(b) When the department of public health and human services is providing services under Title IV-D of the Social Security Act, payment of support must be made through the department for distribution to the person, organization, or agency entitled to the payment.

(c) A judgment, decree, or order that omits the provision required by subsection (8)(a) is subject to the requirements of subsection (8)(a) without need for an amendment to the judgment, decree, or order or for any further action by the court.

(9) A judgment, decree, or order that establishes or modifies a child support obligation must include a provision that if a parent or guardian is the ohligee under a child support order and is obligated to pay a contribution for the same child under 41-3-406, 41-5-1304, or 41-5-1512, the parent or guardian assigns and transfers to the department of public health and human services all rights that the parent or guardian may have to child support that are not otherwise assigned under 53-2-613. ~~(Bracketed language terminates on occurrence of contingency or July 1, 1999 sec. 104, Ch. 552, L. 1997.)~~"

Section 5. Section 40-4-234, MCA, is amended to read:

"**40-4-234. Final parenting plan criteria.** (1) In every dissolution proceeding, proceeding for declaration of invalidity of marriage, parenting plan proceeding, or legal separation proceeding that involves a child, each parent or both parents jointly shall submit to the court, in geed faith, a proposed final plan for parenting the child, which may include the allocation of parenting functions. A final parenting plan must be incorporated into any final decree or amended decree, including cases of dissolution by default. As used in this section, parenting functions means those aspects of the parent-child relationship in which the parent makes decisions and performs functions necessary for the care and growth of the child, which may include:

(a) maintaining a loving, stable, consistent, and nurturing relationship with the child;

(b) attending to the daily needs of the child, such as feeding, physical care, development, and grooming, suporvision, spiritual growth and development,

HeinOnline -- 1999 vol. III 2339 1999

health care, day care, and engaging in other activities that are appropriate to the developmental level of the child and that are within the social and economic circumstances of the particular family;

(c) attending to adequate education for the child, including remedial or other education essential to the best interest of the child;

(d) ensuring the interactions and interrelationship of the child with the child's parents and siblings and with any other person who significantly affects the child's best interest; and

(e) exercising appropriate judgment regarding the child's welfare, consistent with the child's developmental level and the family's social and economic circumstances.

(2) Based on the best interest of the child, a final parenting plan may include, at a minimum, provisions for:

(a) designation of a parent as custodian of the child, solely for the purposes of all other state and federal statutes that require a designation or determination of custody, but the designation may not affect either parent's rights and responsibilities under the parenting plan;

(b) designation of the legal residence of both parents and the child, except as provided in 40-4-217;

(c) a residential schedule specifying the periods of time during which the child will reside with each parent, including provisions for holidays, birthdays of family members, vacations, and other special occasions;

(d) finances to provide for the child's needs;

(e) any other factors affecting the physical and emotional health and well-being of the child;

(f) periodic review of the parenting plan when requested by either parent or the child or when circumstances arise that are foreseen by the parents as triggering a need for review, such as attainment by the child of a certain age or if a change in the child's residence is necessitated;

(g) sanctions that will apply if a parent fails to follow the terms of the parenting plan, including contempt of court;

(h) allocation of parental decisionmaking authority regarding the child's:

(i) education;

(ii) spiritual development; and

(iii) health care and physical growth;

(i) the method by which future disputes concerning the child will be resolved between the parents, other than court action; and

(j) the unique circumstances of the child or the family situation that the parents agree will facilitate a meaningful, ongoing relationship between the child and parents.

(3) The court may in its discretion order the parties to participate in a dispute resolution process to assist in resolving any conflicts between the parties regarding adoption of the parenting plan. The dispute resolution process may include counseling or mediation by a specified person or agency, or court action.

HeinOnline -- 1999 vol. III 2340 1999

(4) Each parent may make decisions regarding the day-to-day care and control of the child while the child is residing with that parent, and either parent may make emergency decisions affecting the child's safety or health. When mutual decisionmaking is designated in the parenting plan but cannot he achieved regarding a particular issue, the parents shall make a good faith effort to resolve the issue through any dispute resolution process provided for in the final parenting plan.

(5) If a parent fails to comply with a provision of the parenting plan, the other parent's obligations under the parenting plan are not affected.

(6) ~~The~~ *At the request of either parent or appropriate party, the* court shall order that the parenting plan he sealed except for access by the parents, gnardian, or other person having custody of the child."

Section 6. Section 40-4-252, MCA, is amended to read:

"**40-4-252. Preliminary declaration of disclosure — penalty.** (1) Within 60 days of service of a petition for dissolution or nullity of marriage or for legal separation of the parties, each party shall serve on the other party a preliminary declaration of disclosure, executed under penalty of perjury. The parties may, by written stipulation or by oral stipulation made in open court, agree to *waive the exchange of or* change the time for exchango of preliminary declarations of disclosure.

(2) The preliminary declaration of disclosure may not be filed with the court, except on the court's order.

(3) The preliminary declaration of disclosure must set forth with sufficient particularity, which a person of reasonable and ordinary intelligence can ascertain, all of the following:

(a) tbe identity of all assets in which the declarant has or may have an interest and all liabilities for which the declarant is or may be liable, regardless of the characterization of an asset or liability; and

(b) the declarant's percentage of ownership in each asset and percentage of obligation for each liability when property is not solely owned by one or both of the parties. The preliminary declaration may also set forth the declarant's characterization of each asset or liability.

(4) A declarant may amend the declarant's preliminary declaration of disclosure without perınission of the court.

(5) Along with the preliminary declaration of disclosure, each party shall provide the other party with a completed income and expense declaration unless an income and expense declaration has already been provided and is current and valid.

(6) In addition to any other civil or criminal remedy available under law for the commission of perjury, the court may set aside the judgment, or part of the judgment, if the court discovers that a party has committed perjury in the preliminary declaration of disclosure."

Section 7. Effcctive date. [This act] is effective July 1, 1999.

Approved April 29, 1999

HeinOnline -- 1999 vol. III 2341 1999

CHAPTER NO. 546

[SB 421]

AN ACT CREATING THE SCENIC-HISTORIC BYWAYS PROGRAM; OUTLINING THE DUTIES OF THE ADVISORY COUNCIL; REQUIRING THE DEPARTMENT OF TRANSPORTATION TO ADOPT RULES REGARDING APPLICATION FORMS, PROCEDURES, AND CRITERIA THAT WILL BE USED TO DETERMINE ELIGIBILITY FOR PARTICIPATION IN THE SCENIC-HISTORIC BYWAYS PROGRAM; AMENDING SECTION 60-1-103, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 60-1-103, MCA, is amended to read:

"**60-1-103. General definitions.** Subject to additional definitions contained in this title that are applicable to specific chapters or sections and unless the context otherwise requires, ~~terms are defined as follows~~ *the following definitions apply*:

(1) "Abandonment" means cessation of use of right-of-way or an easement or cessation of activity on the right-of-way or easement with no intention to reclaim or use again. Abandonment is sometimes called vacation.

(2) "Bridge" means any bridge constructed by the department, together with all appurtenances, additions, alterations, improvements, and replacements and the approaches to the bridge, lands used in connection with the bridge, and improvements incidental or integral to the bridge.

(3) "Commission" means the transportation commission provided for in 2-15-2502.

(4) "Condemnation" means taking by exercise of the right of eminent domain.

(5) "Construction" means supervising, inspecting, actual building, and all expenses incidental to the construction or reconstruction of a highway, including locating, surveying, mapping, and costs of right-of-way or other interests in land and elimination of hazards at railway grade crossings.

(6) "Control of access" means the condition in which the right of owners or occupants of abutting land or other persons to access, light, air, or view in connection with a highway is fully or partially controlled by public authority.

(7) "County road" means any public highway opened, established, constructed, maintained, abandoned, or discontinued by a county in accordance with Title 7, chapter 14.

(8) "Department" means the department of transportation provided for in Title 2, chapter 15, part 25.

(9) "Director" means the director of transportation, a position provided for in 2-15-2501.

(10) "Easement" means a right acquired by public authority to use or control property for a designated purpose.

(11) "Eminent domain" means the right of the state to take private property for public use.

HeinOnline -- 1999 vol. III 2342 1999

(12) "Federal-aid highway" means a public highway that is a portion of any of the federal-aid highway systems.

(13) "Federal-aid highway systems" means all of the systems named as part of the systems and their urban extensions.

(14) "Federal-aid interstate system" means that system of public highways selected by the commission in cooperation with adjoining states, subject to the approval of the secretary of commerce, as provided in Title 23, U.S.C.

(15) "Federal-aid primary system" means that system of connected public highways designated by the commission, subject to the approval of the secretary of commerce, as provided in Title 23, U.S.C.

(16) "Federal-aid secondary system" means that system of public highways not in the federal-aid primary or interstate systems selected by the commission in cooperation with the boards of county commissioners, subject to the approval of the secretary of commerce, as provided in Title 23, U.S.C.

(17) "Fee simple" means an absolute estate or ownership in property, including unlimited power of alienation.

(18) "Highway" includes rights-of-way or other interests in land, embankments, retaining walls, culverts, sluices, drainage structures, bridges, railroad-highway crossings, tunnels, signs, guardrails, and protective structures.

(19) "Highway", "road", and "street", whether the terms appear together or separately or are preceded by the adjective "public", are general terms denoting a public way for purposes of vehicular travel and include the entire area within the right-of-way.

(20) "Highway authority" means the entity at any level of government authorized by law to construct and maintain highways.

(21) "Maintenance" means the preservation of the entire highway, including surface, shoulders, roadsides, structures, and traffic-control devices that are necessary for the safe and efficient use of the highway.

(22) "Public highways" means all streets, roads, highways, bridges, and related structures:

(a) built and maintained with appropriated funds of the United States or the state or any political subdivision of the state;

(b) dedicated to public use;

(c) acquired by eminent domain; or

(d) acquired by adverse use by the public, jurisdiction having been assumed by the state or any political subdivision of the state.

(23) "Right-of-way" is a general term denoting land, proporty, or any interest in land or property, usually in a strip, acquired for or devoted to highway purposes.

(24) "Scenic-historic byway" means a public road or segment of a public road that has been designated as a scenic-historic byway by the commission, as provided in [section 2].

(25) "State highway" means any public highway planned, laid out, altered, constructed, reconstructed, improved, repaired, maintained, or abandoned by the department."

HeinOnline -- 1999 vol. III 2343 1999

Section 2. Scenic-historic byways program — advisory council — expenditure of funds. (1) There is a scenic-historic byways program. The commission may designate roads to be included as part of the program and may add or delete roads from the program. The commission may not designate a road as a scenic-historic byway without the concurrence of the affected local governments and the agencies responsible for maintenance and operation of the road. A road or right-of-way across federal land that was granted by 43 U.S.C. 932 and recognized by 43 U.S.C. 1701 may be considered for inclusion in the program.

(2) Notwithstanding the provision of 2-15-122, the commission shall appoint an advisory council for the scenic-historic byways program.

(3) The advisory council is a technical oversight council composed of no more than 11 members who must have expertise in one or more of the subjects of tourism, visual assessment, Montana history, resource protection, economic development, transportation, or planning. One member of the advisory council must be a representative of the Montana chamber of commerce.

(4) The advisory council shall:

(a) assist the department and the commission in designing the program;

(b) review applications for nominating roads to the scenic-historic byways program; and

(c) recommend to the commission roads that should be included in or deleted from the scenic-historic byways program.

(5) The department, upon the direction of the commission, may expend any funds appropriated for or otherwise available to the scenic-historic byways program.

Section 3. Scenic-historic byways program — rules. (1) The department shall adopt rules to effectively administer the scenic-historic byways program. The rules must include the criteria that will be considered for designating a road for inclusion in the scenic-historic byways program.

(2) In developing the criteria, to be included in the rules, for designating a road for inclusion in the scenic-historic byways program, the advisory council, commission, and department shall specifically address:

(a) factors that allow each locality choosing to participate in or seeking participation in the scenic-historic byways program the opportunity to:

(i) enhance the experience of the traveling public;

(ii) stimulate or allow for economic development and new marketing strategies; or

(iii) preserve intrinsic resources for the benefit of future generations;

(b) a methodology by which a locality choosing to participate in or seeking participation in the scenic-historic byways program may participate in the national scenic byways program, described in section 1047 of Public Law 102-240;

(c) means by which a road may be excluded from designation as a scenic-historic byway by:

(i) an incorporated municipality for a road or segment of a road within its jurisdiction; or

HeinOnline -- 1999 vol. III 2344 1999

(ii) a landowner for a road or segment of a road adjacent to the landowner's private property;

(d) factors to be considered in assessing the intrinsic, scenic, historic, recreational, cultural, archaeological, educational, or natural qualities of the road nominated for inclusion in the scenic-historic byways program;

(e) factors to be considered in a locality's corridor management plan, including that the plan:

(i) serves as a visioning tool to provide direction for enhancing and marketing the corridor, but not as a land management document, zoning tool or mandate, highway improvement scoping or prioritization document, or highway management document;

(ii) accommodates commerce and commercial vehicles and maintains a safe and efficient level of highway services;

(iii) protects private property rights, including assurances that the private property rights of a person who owns land adjacent to or visible from the road are not in any way diminished by the road being designated a scenic-historic byway or are accommodated through mutually agreeable compensation;

(iv) precludes the locality having adopted the corridor management plan from establishing goals or commitments outside the locality's jurisdiction; and

(v) has accommodated all jurisdictions affected or to be affected by the designation of a road as a scenic-historic byway; and

(f) procedures to ensure that localities choosing te participate in the scenic-historic byways program:

(i) may exclude from designation any segment of a highway that is inconsistent with the state's criteria for designating scenic-histeric byways. Within an excluded segment, a locality may allow off-premises advertising in the form of billboards or painted signs, subject to applicable federal, state or local laws.

(ii) may use signago recognized as exceptions or as information signs in all areas along a designated route, provided that the signage complies with 23 U.S.C. 131, Title 60, chapter 5, part 5, Title 75, chapter 15, part 1, and all applicable, state or locally adopted rules, requirements, and restrictions.

Section 4. Effective dates. (1) Except as provided in subsection (2), [this act] is effective July 1, 1999.

(2) On passage and approval, the commission may establish and appoint members to a scenic-historic advisory council and the department may promulgete rules to effect the purposes of the scenic-historic byways program.

Section 5. Codification instruction. [Sections 2 and 3] are intended to be codified as an integral part of Title 60, chapter 2, and the provisions of Title 60, chapter 2, apply to [sections 2 and 3].

Section 6. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 30, 1999

HeinOnline -- 1999 vol. III 2345 1999

CHAPTER NO. 547

[SB 424]

AN ACT EXPANDING THE HOUSEHOLD INCOME THRESHOLD FOR ELIGIBILITY FOR THE ELDERLY HOMEOWNER AND RENTER PROPERTY TAX CREDIT; PHASING OUT THE CREDIT FOR CLAIMANTS WHOSE INCOME IS $35,000 OR MORE; PROVIDING THAT THE CREDIT MAY NOT BE CLAIMED BY A PERSON WHOSE HOUSEHOLD INCOME IS $45,000 OR MORE; AMENDING SECTIONS 15-30-171, 15-30-172, AND 15-30-176, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-30-171, MCA, is amended to read:

"15-30-171. Residential property tax eredit for elderly — definitions. As used in 15-30-171 through 15-30-179, the following definitions apply:

(1) "Claim period" means the tax year for individuals required to file Montana individual income tax returns and the calendar year for individuals not required to file returns.

(2) "Claimant" means a person who is eligihle to file a claim under 15-30-172.

(3) "Department" means the department of revenue.

(4) "Gross household income" means all income received by all individuals of a household while they are members of the household.

(5) "Gross rent" means the total rent in cash or its equivalent actually paid during the claim period by the renter or lessee for the right of occupancy of the homestead pursuant to an arm's-length transaction with the landlord.

(6) "Homestead" means:

(a) a single-family dwelling or unit of a multiple-unit dwelling that is suhject to property taxes in Montana and as much of the surrounding land, but not in excess of 1 acre, as is reasonably necessary for its use as a dwelling; or

(b) a single-family dwelling or unit of a multiple-unit dwelling that is rented from a county or municipal housing authority as provided in Title 7, chapter 15.

(7) "Household" means an association of persons who live in the same dwelling, sharing its furnishings, facilities, accommodations, and expenses. The term does not include hona fide lessees, tenants, or roomers and boarders on contract.

(8) "Household income" means the amount obtained by subtracting $6,300 from gross household income.

(9) "Income" means federal adjusted gross income, without regard to loss, as that quantity is defined in the Internal Revenue Code of the United States, plus ~~all nontaxable~~ *the following* income *to the extent it was not included in determining federal adjusted gross income*~~, including but not limited to~~:

(a) the gross amount of any pension or annuity, including Railroad Retirement Act benefits and veterans' disahility benefits;

(b) the amount of capital gains excluded from adjusted gross income;

(c) alimony;

(d) support money;

(e) nontaxable strike benefits;

(f) cash public assistance and relief;

(g) payments and interest on federal, state, county, and municipal bonds; ~~and~~

(h) all payments received under federal social security except social security income paid directly to a nursing home; *and*

(i) proceeds from the sale or other transfer of a capital asset, the gain on which was not recognized, remaining after subtracting the following:

(i) the property's adjusted basis;

(ii) payment of any indebtedness encumbering the property; and

(iii) the costs of sale.

(10) "Property tax billed" means taxes levied against the homestead, including special assessments and fees but excluding penalties or interest during the claim period.

(11) "Rent-equivalent tax paid" means 15% of the gross rent."

Section 2. Section 15-30-172, MCA, is amended to read:

"15-30-172. Residential preperty tax credit for elderly — eiigibility. (1) In order to be eligible to make a claim under 15-30-171 through 15-30-179, an individual:

(a) must have reached age 62 or older during tbe claim period for which relief is sought;

(b) must have resided in Montana for at least 9 months of that period;

(c) must have occupied one or more dwellings in Montana as an owner, renter, or lessee for at least 6 months of the claim period; and

(d) must have less than ~~$35,000~~ *$45,000* of gross household income.

(2) A person is not disqualified as a claimant if the person cbanges residences during the claim period, provided that the person occupies one or more dwellings in Montana as an owner, renter, or lessee for at least 6 months during the claim period."

Section 3. Section 15-30-176, MCA, is amended to read:

"15-30-176. Residential property tax credit for elderly — computation of relief. The amount of the tax credit granted under the provisions of 15-30-171 tbrough 15-30-179 is computed as follows:

(1) In the case of a claimant who owns tbe bomestead for which a claim is made, tbe credit is the amount of property tax billed less the deduction specified in subsection (4).

(2) In the case of a claimant who rents the homestead for which a claim is made, tbe credit is the amount of rent-equivalent tax paid less the deduction specified in subsection (4).

(3) In the case of a claimant who both owns and rents the homestead for which a claim is made, tbe credit is:

HeinOnline -- 1999 vol. III 2347 1999

(a) the amount of property tax billed on the owned portion of the homestead less the deduction specified in subsection (4); plus

(b) the amount of rent-equivalent tax paid on the rented portion of the homestead less the deduction specified in subsection (4).

(4) Property tax billed and rent-equivalent tax paid are reduced according to the following schedule:

Household income	Amount of reduction
$ 0-999	$0
1,000-1,999	$0
2,000-2,999	tbe product of .006 times the household income
3,000-3,999	the product of .016 times the household income
4,000-4,999	the product of .024 times the household income
5,000-5,999	the product of .028 times the household income
6,000-6,999	the product of .032 times the household income
7,000-7,999	the product of .035 times the household income
8,000-8,999	the product of .039 times the household income
9,000-9,999	the product of .042 times the household income
10,000-10,999	the product of .045 times the bousehold income
11,000-11,999	the product of .048 times the household income
12,000 & over	the product of .050 times the housebold income

(5) *For a claimant whose household income is $35,000 or more but less than $45,000, the amount of the credit is equal to the credit calculated under this section multiplied by the decimal equivalent of a percentage figure according to the following table:*

Gross household income	*Percentage of credit allowed*
$35,000-37,500	*40%*
37,501-40,000	*30%*
40,001-42,500	*20%*
42,501-44,999	*10%*
45,000 or more	*0%*

(6) The credit granted may not exceed $1,000."

Section 4. Effective date. [This act] is effective on passage and approval.

Section 5. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

Approved April 30, 1999

HeinOnline -- 1999 vol. III 2348 1999

CHAPTER NO. 548

[SB 429]

AN ACT EXEMPTING FROM LOCAL SUBDIVISION REGULATION CERTAIN LEASES OR RENTALS OF AIRPORT-RELATED LAND BY A CITY, COUNTY, STATE AGENCY, OR AIRPORT AUTHORITY; AND AMENDING SECTION 76-3-205, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-3-205, MCA, is amended to read:

"76-3-205. Exemption for *airport land and* state-owned lands — exception. *(1) A division of land created by lease or rental of contiguous airport-related land owned by a city, a county, the state, or a municipal or regional airport authority is not subject to the requirements of this chapter if the lease or rental is for onsite weather or air navigation facilities, the manufacture, maintenance, and storage of aircraft, or air carrier-related activities.*

(2) ~~The provisions of this chapter shall not apply to the~~ *A* division of state-owned land *is not subject to the requirements of this chapter* unless the division creates a second or subsequent parcel from a single tract for sale, rent, or lease for residential purposes after July 1, 1974."

Approved April 30, 1999

CHAPTER NO. 549

[SB 430]

AN ACT CLARIFYING THAT FEES RECEIVED BY AN OIL PRODUCER OR OPERATOR TO ADMINISTER ROYALTY PAYMENTS DOES NOT CONSTITUTE VALUE OF OIL PRODUCTION FOR TAX PURPOSES; AMENDING SECTION 15-36-305, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-36-305, MCA, is amended to read:

"15-36-305. Determination of gross value of product. *(1)* The total gross value of all oil or natural gas produced and sold each quarter must be determined by taking the total number of barrels or cubic feet of oil or natural gas produced and sold each month at the average value at the mouth of the well during the month that the oil or natural gas is produced and sold, as determined by the department. However, in computing the total number of barrels of oil or cubic feet of gas produced and sold, there must be deducted the amount of oil or gas used by the person in connection with the operation of the well from which the oil or gas is produced or for pumping the oil or gas from the well to a tank or pipeline.

(2) For the purposes of determining average value at the mouth of a well, a fee of up to 25 cents a barrel paid to the operator or producer to administer royalty payments, whether or not the fee is payable on a per barrel basis, may not be considered a part of the value of the oil."

Section 2. Effective date. [This act] is effective on passage and approval.

HeinOnline -- 1999 vol. III 2349 1999

Section 3. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

Approved April 30, 1999

CHAPTER NO. 550

[SB 454]

AN ACT REQUIRING A STATE PAYMENT TO POWELL COUNTY FOR LAND ON WHICH THE STATE CONDUCTS A FARMING OR RANCHING OPERATION; REQUIRING THE INTERIM LOCAL GOVERNMENT FUNDING AND STRUCTURE COMMITTEE TO CONDUCT A REVIEW OF STATE PAYMENTS IN LIEU OF TAXES; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

WHEREAS, the state makes payments in lieu of taxes for property from which the state derives grazing, agricultural, or forest income; and

WHEREAS, the state prison conducts a farming and ranching operation in Powell County that is not subject to payment in lieu of taxes.

THEREFORE, the Legislature finds that it is appropriate for the state prison ranch to make a payment to Powell County that is comparable to a payment in lieu of taxes.

Be it enacted by the Legislature of the State of Montana:

Section 1. Payment to Powell County. (1) The department of corrections shall allocate $46,000 each fiscal year from the proprietary enterprise fund established for the operation of the state prison ranch to the Powell County treasurer.

(2) The Powell County treasurer shall distribute the payment in the relative proportions required by the levies for state, county, school district, and municipal purposes in the same manner as property taxes are distributed.

Section 2. Review of state payments in lieu of taxes. The interim local government funding and structure committee created under [section 1 of House Bill No. 622] shall include in its study of funding local government a review of state payments in lieu of taxes to local governments from grazing, agricultural, and forest activities that are self-supporting or that compete with private enterprise.

Section 3. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 53, chapter 1, part 2, and the provisions of Title 53, chapter 1, part 2, apply to [section 1].

Section 4. Coordination instruction. If House Bill No. 622 is not passed and approved, then the interim revenue and taxation committee shall conduct the review of state payments in lieu of taxes required by [section 2].

Section 5. Effective date. [This act] is effective July 1, 1999.

Section 6. Termination. [This act] terminates June 30, 2001.

Approved April 29, 1999

CHAPTER NO. 551

[SB 487]

AN ACT CLARIFYING THAT SKIDABLE, PORTABLE, OR MOVABLE OIL FIELD EQUIPMENT IS CLASS EIGHT EQUIPMENT; AMENDING SECTION 15-6-138, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-6-138, MCA, is amended to read:

"15-6-138. Class eight property — description — taxable percentage. (1) Class eight property includes:

(a) all agricultural implements and equipment;

(b) all mining machinery, fixtures, equipment, tools that are not exempt under 15-6-201(1)(r), and supplies except those included in class five;

(c) all oil and gas production machinery, fixtures, equipment, including pumping units, oil field storage tanks, water storage tanks, water disposal injection pumps, gas compressor and dehydrator units, communication towers, gas metering shacks, treaters, gas separators, water flood units, gas boosters, and similar equipment that is skidable, portable, or movable, tools that are not exempt under 15-6-201(1)(r), and supplies except those included in class five;

~~(c)~~*(d)* all manufacturing machinery, fixtures, equipment, tools that are not exempt under 15-6-201(1)(r), and supplies except those included in class five;

~~(d)~~*(e)* all goods and equipment that are intended for rent or lease, except goods and equipment that are specifically included and taxed in another class;

~~(e)~~*(f)* special mobile equipment as defined in 61-1-104;

~~(f)~~*(g)* furniture, fixtures, and equipment, except that specifically included in another class, used in commercial establishments as defined in this section;

~~(g)~~*(h)* x-ray and medical and dental equipment;

~~(h)~~*(i)* citizens' band radios and mobile telephones;

~~(i)~~*(j)* radio and television broadcasting and transmitting equipment;

~~(j)~~*(k)* cable television systems;

~~(k)~~*(l)* coal and ore haulers;

~~(l)~~*(m)* theater projectors and sound equipment; and

~~(m)~~*(n)* all other property that is not included in any other class in this part, except that property that is subject to a fee in lieu of a property tax.

(2) As used in this section, "coal and ore haulers" means nonhighway vehicles that exceed 18,000 pounds per axle and that are primarily designed and used to transport coal, ore, or other earthen material in a mining or quarrying environment.

(3) "Commercial establishment" includes any hotel; motel; office; petroleum marketing station; or service, wholesale, retail, or food-handling business.

(4) Class eight property is taxed at:

~~(a) 7% of its market value for tax year 1997; and~~

HeinOnline -- 1999 vol. III 2351 1999

~~(b)~~ 6% of its market value ~~for tax years beginning after December 31, 1997~~."

Section 2. Effeetive date. [This act] is effective on passage and approval.

Section 3. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

Approved April 30, 1999

CHAPTER NO. 552

[SB 492]

AN ACT ALLOCATING THE RESOURCE INDEMNITY AND GROUND WATER ASSESSMENT TAX PROCEEDS TO MINERAL DEVELOPMENT RECLAMATION PROJECTS WHEN THE BALANCE IN THE RESOURCE INDEMNITY TRUST TOTALS $100 MILLION; REVISING THE DISTRIBUTION OF RESOURCE INDEMNITY AND GROUND WATER ASSESSMENT PROCEEDS; REQUIRING RECLAMATION AND DEVELOPMENT GRANT PRIORITIZATION FOR RECLAMATION PROJECTS; AMENDING SECTIONS 7-6-2225, 7-6-2226, 15-37-117, 15-38-106, 20-9-231, 85-1-604, 85-2-905, 90-2-1104, 90-2-1112, AND 90-2-1113, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-6-2225, MCA, is amended to read:

"7-6-2225. County hard-rock mine trust reserve account — expenditure restrictions. (1) The governing body of a county receiving an allocation under 15-37-117(1)~~(f)~~*(e)* shall establish a county hard-rock mine trust reserve account.

(2) Money received by a county pursuant to 15-37-117 or 90-6-331 must remain in the account and may not be appropriated by the governing body until:

(a) a mining operation has permanently ceased all mining related activity; or

(b) the number of persons employed full-time in mining activities by the mining operation is less than one-half of the average number of persons employed full-time in mining activities by the mining operation during the immediately preceding 5-year period.

(3) If the circumstances described in subsection (2)(a) or (2)(b) occur, the governing body of the county ~~must~~ *shall* allocate at least one-third of the funds proportionally to affected high school districts and elementary school districts in the county, and may use the remaining funds in the account to:

(a) pay for outstanding capital project bonds or other expenses incurred prior to the end of mining activity or the reduction in the mining work force described in subsection (2)(h);

(b) decrease property tax mill levies that are directly caused by the cessation or reduction of mining activity;

(c) promote diversification and development of the economic base within the jurisdiction of a local government unit;

(d) attract new industry to the impact area;

HeinOnline -- 1999 vol. III 2352 1999

(e) provide cash incentives for expanding the employment base of the area impacted by the changes in mining activity described in subsection (2); or

(f) provide grants or loans to other local government jurisdictions to assist with impacts caused by the changes in mining activity described in subsection (2).

(4) Except as provided in subsection (3)(b), money held in the account may not be considered as cash balance for the purpose of reducing mill levies.

(5) Money in the reserve account must be invested as provided by law. Interest and income from the investment of funds in the account must be credited to the account."

Section 2. Section 7-6-2226, MCA, is amended to read:

"7-6-2226. Metal mines tax reserve account. (1) The governing body of a county receiving tax collections under 15-37-117(1)~~(f)~~*(e)* may establish a metal mines tax reserve account to be used to hold the collections. The governing body may hold money in the account for any time period considered appropriate by the governing body. Money held in the account may not be considered as cash balance for the purpose of reducing mill levies.

(2) Money may be expended from the account for any purpose provided by law.

(3) Money in the account must be invested as provided by law. Interest and income from the investment of the metal mines tax reserve account must be credited to the account."

Section 3. Section 15-37-117, MCA, is amended to read:

"15-37-117. Disposition of metalliferous mines license taxes. (1) Metalliferous mines license taxes collected under the provisions of this part must, in accordance with the provisions of 15-1-501, be allocated as follows:

(a) to the credit of the general fund of the state, 58% of total collections each year;

(b) to the state special revenue fund to the credit of a hard-rock mining impact trust account, 1.5% of total collections each year;

(c) to the orphan share state special revenue account established in 75-10-743, 8.5% of total collections each year;

~~(d) to the ground water assessment account established in 85-2-905, 2.2% of total collections each year;~~

~~(e)~~*(d)* to the reclamation and development grants program state special revenue account, ~~4.8%~~ 7% of total collections each year; and

~~(f)~~*(e)* to the county or counties identified as experiencing fiscal and economic impacts, resulting in increased employment or local government costs, under an impact plan for a large-scale mineral development prepared and approved pursuant to 90-6-307, in direct proportion to the fiscal and economic impacts determined in the plan, or, if an impact plan has not been prepared, to the county in which the mine is located, 25% of total collections each year, to be allocated by the county commissioners as follows:

(i) not less than 40% to the county hard-rock mine trust reserve account established in 7-6-2225; and

HeinOnline -- 1999 vol. III 2353 1999

(ii) all money not allocated to the account pursuant to subsection (1)~~(f)~~*(e)*(i) to be further allocated as follows:

(A) 33 1/3% is allocated to the county for planning or economic development activities;

(B) 33 1/3% is allocated to the elementary school districts within the county that have been affected by the development or operation of the metal mine; and

(C) 33 1/3% is allocated to the high school districts within the county that have been affected by the development or operation of the metal mine.

(2) When an impact plan for a large-scale mineral development approved pursuant to 90-6-307 identifies a jurisdictional revenue disparity, the county shall distribute the proceeds allocated under subsection (1)~~(f)~~*(e)* in a manner similar to that provided for property tax sharing under Title 90, chapter 6, part 4.

(3) The department shall return to the county in which metals are produced the tax collections allocated under subsection (1)~~(f)~~*(e)*. The allocation to the county described by subsection (1)~~(f)~~*(e)* is a statutory appropriation pursuant to 17-7-502."

Section 4. Section 15-38-106, MCA, is amended to read:

"15-38-106. Payment of tax — records — collection of taxes — refunds. (1) The tax imposed by this chapter must be paid by each person to which the tax applies, on or before March 31, on the value of product in the year preceding January 1 of the year in which the tax is paid. The tax must be paid to the department at the time that the statement of yield for the preceding calendar year is filed with the department.

(2) The department shall, in accordance with the provisions of 15-1-501, deposit *in the following order:*

(a) 50% of the proceeds of the tax in the resource indemnity trust fund of the nonexpendable trust fund type~~;, except that:~~

~~(a) 14.1%~~

(b) $366,000 of the *remaining* proceeds ~~must be deposited~~ in the ground water assessment account established by 85-2-905; *and*

~~(b) 10% of the proceeds must be deposited in the renewable resource grant and loan program state special revenue account established by 85-1-604; and~~

~~(c) 30% of the proceeds must be deposited in the reclamation and development grants account established by 90-2-1104; and~~

~~(d) at the beginning of each fiscal year, there is allocated from the~~

(c) all remaining proceeds ~~of the tax up to $200,000 to be deposited~~ in the orphan share account established in 75-10-743.

(3) Each person to whom the tax applies shall keep records in accordance with 15-38-105, and the records are subject to inspection by the department upon reasonable notice during normal business hours.

(4) The department shall examine the statement and compute the taxes to be imposed, and the amount computed by the department is the tax imposed, assessed against, and payable by the taxpayer. If the tax found to be due is greater than the amount paid, the excess must be paid by the taxpayer to the department within 30 days after written notice of the amount of deficiency is mailed by the

HeinOnline -- 1999 vol. III 2354 1999

department to the taxpayer. If the tax imposed is less than the amount paid, the difference must be applied as a tax credit against tax liability for subsequent years or refunded if requested by the taxpayer."

Section 5. Section 15-38-106, MCA, is amended to read:

"15-38-106. Payment of tax — records — collection of taxes — refunds. (1) The tax imposed by this chapter must be paid by each person to which the tax applies, on or before March 31, on the value of product in the year preceding January 1 of the year in which the tax is paid. The tax must be paid to the department at the time that the statement of yield for the preceding calendar year is filed with the department.

(2) The department shall, in accordance with the provisions of 15-1-501, deposit *in the following order:* ~~the proceeds of the tax in the resource indemnity trust fund of the nonexpendable trust fund type, except that:~~

(a) ~~14.1%~~ *$366,000* of the proceeds ~~must be deposited~~ in the ground water assessment account established by 85-2-905;

~~(b) 10% of the proceeds must be deposited in the renewable resource grant and loan program state special revenue account established by 85-1-604; and~~

~~(c) 30% of the proceeds must be deposited in the reclamation and development grants account established by 90-2-1104; and~~

~~(d) at the beginning of each fiscal year, there is allocated from the~~

(b) 50% of the remaining proceeds ~~of the tax up to $200,000 to be deposited~~ in the orphan share account established in 75-10-743*; and*

(c) all remaining proceeds in the reclamation and development grants account established by 90-2-1104, for the purpose of making grants to be used for mineral development reclamation projects.

(3) Each person to whom the tax applies shall keep records in accordance with 15-38-105, and the records are subject to inspection by the department upon reasonable notice during normal business hours.

(4) The department shall examine the statement and compute the taxes to be imposed, and the amount computed by the department is the tax imposed, assessed against, and payable hy the taxpayer. If the tax found to be due is greater than the amount paid, the excess must be paid by the taxpayer to the department within 30 days after written notice of the amount of deficiency is mailed by the department to the taxpayer. If the tax imposed is less than the amount paid, the difference must be applied as a tax credit against tax liability for subsequent years or refunded if requested by the taxpayer."

Section 6. Section 20-9-231, MCA, is amended to read:

"20-9-231. Metal mines tax reserve fund. (1) The governing body of a local school district receiving tax collections under 15-37-117(1)~~(f)~~*(e)* may establish a metal mines tax reserve fund to be used to hold the collections. The governing body may hold money in the fund for any time period considered appropriate by the governing body. Money held in the fund may not be considered as fund balance for the purpose of reducing mill levies.

(2) Money may be expended from the fund for any purpose provided by law.

HeinOnline -- 1999 vol. III 2355 1999

(3) Money in the fund must he invested as provided hy law. Interest and income from tbe investment of the metal mines tax reserve fund must be credited to the fund.

(4) The fund must be financially administered as a nonbudgeted fund under tbe provisions of this title."

Section 7. Section 85-1-604, MCA, is amended to read:

"85-1-604. Renewable resource grant and loan program state special revenue account created — revenue allocated — limitations on appropriations from account. (1) There is a renewable resource grant and loan program state special revenue account within the state special revenue fund established in 17-2-102.

(2) Except to the extent that they are required to be credited to the renewable resource loan debt service fund pursuant to 85-1-603, there must be paid into the renewable resource grant and loan program state special revenue account:

(a) all revenue of the works and other money as provided in 85-1-332;

(b) the interest income of the resource indemnity trust fund as provided in and subject to the conditions of 15-38-202;

(c) the excess of the coal severance tax proceeds allocated by 85-1-603 to tbe renewable resource loan debt service fund above debt service requirements as provided in and subject to the conditions of 85-1-619; *and*

(d) any fees or cbarges collected by the department pursuant to 85-1-616 for the servicing of loans, including arrangements for obtaining security interests; ~~and~~

~~(e) the resource indemnity and ground water assessment tax proceeds as provided in 15-38-106(2)(b).~~

(3) Appropriations may be made from the renewable resource grant and loan program state special revenue account for tbe following purposes and subject to the following conditions:

(a) The amount of resource indemnity trust fund interest earnings allocated to the special revenue account under 15-38-202(2)(a)(ii) must be used for renewable resource grants.

(b) An amount less than or equal to that paid into the account under 85-1-332 and only that amount may be appropriated for the operation and maintenance of state-owned projects and works. If the amount of money available for appropriation under this subsection (3)(b) is greater than that necessary for operation and maintenance expenses, the excess may be appropriated as provided in subsection (3)(c).

(c) An amount less than or equal to that paid into the account from the resource indemnity trust account plus any excess from subsection (3)(b) and only that amount may be appropriated from the account for expenditures that meet the policies and objectives of the renewahle resource grant and loan program. If the amount of money available for appropriation under this subsection (3)(c) is greater than tbat necessary for operation and maintenance expenses, tbe excess may be appropriated as provided in subsection (3)(d).

(d) An amount less than or equal to that paid into the account from tbe sources provided for in subsections (2)(c) and (2)(d) and any excess from

HeinOnline -- 1999 vol. III 2356 1999

subsection (3)(c) and only that amount may be appropriated from the account for loans and grants for renewable resource projects; for purchase of liens and operation of property as provided in 85-1-615; for administrative expenses, including but not limited to the salaries and expenses of personnel, equipment, and office space; for the servicing of loans, including arrangements for obtaining security interests; and for other necessities incurred in administering the loans and grants."

Section 8. Section 85-2-905, MCA, is amended to read:

"85-2-905. Ground water assessment account. (1) There is a ground water assessment account within the special revenue fund established in 17-2-102. The Montana bureau of mines and geology is authorized to expend amounts from the account necessary to carry out the purposes of this part.

(2) The account may be used by the Montana bureau of mines and geology only to carry out the provisions of this part.

(3) Subject to the direction of the ground water assessment steering committee, the Montana bureau of mines and geology shall investigate opportunities for the participation and financial contribution of agencies of federal and local governments to accomplish the purposes of this part.

(4) There must be deposited in the account:

(a) at the beginning of each fiscal year, ~~14.1%~~ *$366,000* of the proceeds from the resource indemnity and ground water assessment tax, as authorized by 15-38-106, ~~and 2.2% of the proceeds from the metalliferous mines license taxes, as authorized by 15-37-117~~ *and $300,000 of the interest earnings from the resource indemnity trust fund, as authorized by 15-38-202*, unless at the beginning of the fiscal year the unobligated cash balance in the ground water assessment account:

(i) equals or exceeds $666,000, in which case an allocation may not be made and the proceeds must be deposited in the resource indemnity trust fund established by 15-38-201; or

(ii) is less than $666,000, in which case an amount equal to the difference between the unobligated cash balance and $666,000 must be allocated to the ground water assessment account and any remaining amount must be deposited in the resource indemnity trust fund established by 15-38-201;

(b) funds provided by state government agencies and by local governments to carry out the purposes of this part;

(c) proceeds allocated to the account as provided in 15-36-324 and 15-38-106; and

(d) funds provided by any other public or private sector organization or person in the form of gifts, grants, or contracts specifically designated to carry out the purposes of this part."

Section 9. Section 90-2-1104, MCA, is amended to read:

"90-2-1104. Reclamation and development grants account. (1) There is a reclamation and development grants special revenue account within the state special revenue fund established in 17-2-102.

(2) There must be paid into the reclamation and development grants account money allocated from:

HeinOnline -- 1999 vol. III 2357 1999

(a) the interest income of the resource indemnity trust fund under the provisions of 15-38-202;

(b) the resource indemnity and ground water assessment tax under the provisions of 15-38-106;

(c) ~~the~~ the metal mines license tax proceeds as provided in 15-37-117(1)~~(e)~~*(d)*; and

(d) the oil and gas production tax as provided in 15-36-324 and 15-38-106.

(3) Appropriations may be made from the reclamation and development grants account for the following purposes:

(a) grants for designated projects; and

(b) administrative expenses, including the salaries and expenses of personnel, equipment, office space, and other expenses necessarily incurred in the administration of the grants program. These expenses may be funded before funding of projects."

Section 10. Section 90-2-1112, MCA, is amended to read:

"90-2-1112. Eligibility requirements. (1) Except as provided under subsection (2), to be eligible for funding under the reclamation and development grants program, the proposed project must provide benefits in one or more of the following categories:

(a) reclamation of land, water, or other resources adversely affected by mineral development;

(b) mitigation of damage to public resources caused by mineral development;

(c) research, demonstration, or technical assistance to promote the wise use of Montana minerals, including efforts to make processing more environmentally compatible;

(d) investigation and remediation of sites where hazardous wastes or regulated substances threaten public health or the environment; and

(e) research to assess existing or potential environmental damage resulting from mineral development.

(2) If ~~sufficient eligible and qualified applications satisfying the mineral development objectives provided for in subsection (1) are not received or if~~ there is a crucial state need *to protect Montana's environment*, the department may evaluate and the governor may recommend that the legislature approve funding for projects *in addition to those described in subsection (1)* ~~that:~~

~~(a) enhance Montana's economy through the development of natural resources; or~~

~~(b) develop, promote, protect, or further Montana's total environment and public interest, including the general health, safety, welfare, and public resources of Montana citizens and communities.~~

(3) To be eligible for funding under the reclamation and development grants program, a project must:

(a) be technically and financially feasible;

(b) be the best cost-effective alternative to address a problem or attain an objective;

HeinOnline -- 1999 vol. III 2358 1999

(c) comply with statutory and regulatory standards protecting environmental quality; and

(d) be from an applicant able and willing to enter into a contract with the department for the implementation of the proposed project or activity.

(4) A project is not eligible for funding under the reclamation and development grants program to the extent that the project is eligible for and can reasonably be expected to receive funding from other state or federal reclamation programs or any other program or act that provides funding to accomplish remedial action for environmental damage or if the project is permitted under Title 82, chapter 4 or 11.

(5) A proposed project is not eligible for funding under the reclamation and development grants program if there is a liable party who would be relieved of financial or legal responsibility and who can reasonably be expected to be held responsible."

Section 11. Section 90-2-1113, MCA, is amended to read:

"90-2-1113. Evaluation criteria — priority. (1) Except as provided in ~~subsection~~ *subsections* (2) *and (3)*, the department shall consider the following criteria in evaluating eligible applications and in selecting projects to be recommended to the governor for funding:

(a) the degree to which the project will provide benefits in its eligibility category or categories;

(b) the degree to which the project will provide public benefits;

(c) the degree to which the project will promote, enhance, or advance the policies and purposes of the reclamation and development grants program;

(d) the degree to which the project will provide for the conservation of natural resources;

(e) the degree of need and urgency for the project;

(f) the extent to which the project sponsor or local entity is contributing to the costs of the project or is generating additional nonstate funds;

(g) the degree to which jobs are created for persons who need job training, receive public assistance, or are chronically unemployed; and

(h) any other criteria the department considers necessary to carry out the policies and purposes of the reclamation and development grants program.

(2) (a) Subject to the conditions of this part, the department shall give priority to grant requests, not to exceed *a total of* $600,000 ~~in total~~ for the biennium, from the board of oil and gas conservation. The board of oil and gas conservation shall use a grant that received priority under this subsection *(2)*(a) only for oil and gas reclamation projects. A grant may not be used for personnel costs or general operating expenses of the board of oil and gas conservation.

(b) Any unobligated fund balance of a grant that received priority under subsection (2)(a) remaining at the end of the current biennium must be included as part of the $600,000 limitation for the next biennium.

(c) The priority given to the board of oil and gas conservation under subsection (2)(a) does not preclude the board of oil and gas conservation from submitting additional grant requests. The department shall evaluate additional

HeinOnline -- 1999 vol. III 2359 1999

grant requests from the board of oil and gas conservation in accordance with the provisions of subsection (1).

(3) Subject to the conditions of this part, the department shall give priority to grant requests not to exceed a total of $800,000 for the biennium for abandoned mine reclamation projects. A grant may not be used for personnel costs or general operating expenses."

Section 12. Contingent voidness. (1) If House Bill No. 2 is not amended to reduce appropriations by $925,000 from the reclamation and development account and increase appropriations from the general fund by a like amount, then [section 4 of this act] is void.

(2) If Senate Bill No. 49 and [this act] are both passed and approved, then [sections 4 and 10] of Senate Bill No. 49 and [sections 1 through 3, 6, 7, and 9 of this act] are void, but [section 4] of Senate Bill No. 49 is effective if the funding switch described in subsection (1) of this section does not occur.

(3) If Senate Bill No. 249 and [this act] are both passed and approved, then [sections 1 through 9 of this act] are void.

Section 13. Effective dates. (1) Except as provided for in subsections (2) and (3), [this act] is effective July 1, 1999.

(2) [Section 5 of this act] is effective July 1 of the first year following the date that the governor by executive order certifies to the secretary of state that the resource indemnity trust fund balance has reached $100 million. The secretary of state shall notify the department of revenue, the department of administration, the code commissioner, and the legislative fiscal division of this certification.

(3) If the funding switch described in [section 12(1)] does not occur, then [section 8] is effective July 1 of the first year following the date that the governor by executive order certifies to the secretary of state that the resource indemnity trust fund balance has reached $100 million. The secretary of state shall notify the department of revenue, the department of administration, the code commissioner, and the legislative fiscal division of this certification.

Approved April 30, 1999

CHAPTER NO. 553

[SB 500]

AN ACT INCREASING FROM 4 PERCENT TO 10 PERCENT OF TAXABLE VALUATION THE MAXIMUM AMOUNT THAT MAY BE MAINTAINED BY A CITY OR TOWN BY USE OF A SPECIAL TAX IN A FIRE DEPARTMENT DISABILITY AND PENSION FUND; PROVIDING FOR SUBMITTING A TAX INCREASE TO THE ELECTORATE OF CITIES AND TOWNS UNDER CERTAIN CONDITIONS; AMENDING SECTIONS 19-18-503 AND 19-18-504, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19-18-503, MCA, is amended to read:

"19-18-503. Special tax levy for fund required. (1) The purpose of this section is to provide a means by which each disability and pension fund may be

HeinOnline -- 1999 vol. III 2360 1999

maintained at a level equal to *at least 4% but no more than 10%* of the taxable valuation of all taxable property within the limits of the city or town.

(2) Whenever the fund contains less than 4% of the taxable valuation of all taxable property within the limits of the city or town, the governing body of the city or town shall, at the time of the levy of the annual tax, levy a special tax as provided in 19-18-504. The special tax must be collected as other taxes are collected and, when so collected, must be paid into the disability and pension fund.

(3) If a special tax for the disability and pension fund is levied by a third-class city or town using the all-purpose mill levy, the special tax levy must be made in addition to the all-purpose levy."

Section 2. Section 19-18-504, MCA, is amended to read:

"19-18-504. Amount of special tax levy. Whenever the fund contains an amount ~~which~~ *that* is less than 4% of the taxable valuation of all taxable property in the city or town, the city *or town* council shall levy an annual special tax of not less than 1 mill and not more than 4 mills on each dollar of taxable valuation of all taxable property within the city or town. *When the fund contains an amount that is less than 10% but more than 4% of the taxable valuation of all taxable property in the city or town, the city or town council may, if authorized by the voters, levy an annual special tax of not less than 1 mill and not more than 4 mills on each dollar of taxable valuation.*"

Section 3. Effective date. [This act] is effective January 1, 2000.

Approved April 30, 1999

CHAPTER NO. 554

[SB 530]

AN ACT GENERALLY REVISING THE TAXATION OF OIL AND NATURAL GAS PRODUCTION; REVISING THE DEFINITION OF "QUALIFYING PRODUCTION" AND DEFINITIONS RELATED TO WELLS; SHORTENING THE TIME PERIOD FOR LOWER TAX RATES FOR QUALIFYING PRODUCTION; REVISING TAX RATES APPLIED TO OIL AND NATURAL GAS PRODUCTION; PROVIDING A TAX INCENTIVE FOR HORIZONTALLY COMPLETED NATURAL GAS WELLS; ESTABLISHING UNIFORM TAX RATES FOR NONWORKING INTEREST OWNERS; REVISING THE DISTRIBUTION OF OIL AND GAS PRODUCTION TAXES; PROVIDING A 1-YEAR PHASEIN OF CERTAIN PROVISIONS; AMENDING SECTIONS 15-36-303, 15-36-304, 15-36-324, 15-36-326, 17-7-502, 20-9-104, 20-9-161, 20-9-331, 20-9-333, 20-9-501, AND 20-9-507, MCA; REPEALING SECTIONS 15-36-323 AND 15-36-325, MCA; AND PROVIDING EFFECTIVE DATES, APPLICABILITY DATES, AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-36-303, MCA, is amended to read:

"15-36-303. Definitions. As used in this part, the following definitions apply:

(1) "Board" means the board of oil and gas conservation provided for in 2-15-3303.

(2) "Department" means department of revenue provided for in 2-15-1301;

(3) "Enhanced recovery project" means the use of any process for the displacement of oil from the earth other than primary recovery and includes the use of an immiscible, miscible, chemical, thermal, or biological process.

(4) "Existing enhanced recovery project" means an enhanced recovery project that began development before January 1, 1994.

(5) "Expanded enhanced recovery project" or "expansion" means the addition of injection wells or production wells, the recompletion of existing wells as horizontally completed wells, the change of an injection pattern, or otber operating changes to an existing enhanced recovery project that will result in the recovery of oil that would not otherwise be recovered. The project must be developed after December 31, 1993, and before January 1, 2002.

(6) "Gross taxable value", for tbe purpose of computing the oil and natural gas production tax, means the gross value of the product as determined in 15-36-305.

(7) "Horizontal drain hole" means that portion of a well bore with 70 degrees to 110 degrees deviation from the vertical and a horizontal projection within the common source of supply, as that term is defined by the board, that exceeds 100 feet.

(8) "Horizontally completed well" means:

(a) a well with one or more horizontal drain holes; and

(b) any other well classified by the board as a horizontally completed well.

(9) "Incremental production" means:

(a) the volume of oil produced by a new enhanced recovery project, by a well in primary recovery recompleted as a horizontally completed well, or by an expanded enhanced recovery project, which volume of production is in excess of the production decline rate established under the conditions existing before:

(i) the commencement of the recompletion of a well as a horizontally completed well;

(ii) expansion of tbe existing enhanced recovery project; or

(iii) commencing a new enhanced recovery project; or

(b) in the case of any project that had no taxable production prior to commencing the enhanced recovery project, all production of oil from the enhanced recovery project.

(10) "Natural gas" or "gas" means natural gas and other fluid hydrocarbons, other tban oil, produced at the wellhead.

(11) "New enhanced recovery project" means an enhanced recovery project that began development after December 31, 1993, and before January 1, 2002.

(12) "Nonworking interest owner" means any interest owner who does not share in the exploration, development, and operation costs of the lease or unit, except for production taxes.

(13) "Oil" means crude petroleum or mineral oil and other hydrocarbons, regardless of gravity, that are produced at the wellhead in liquid form and that are not the result of condensation of gas after it leaves the wellhead.

HeinOnline -- 1999 vol. III 2362 1999

(14) "Operator" or "producer" means a person who produces oil or natural gas within this state or who owns, controls, manages, leases, or operates within this state any well or wells from which any marketable oil or natural gas is extracted or produced.

(15) "Post-1985 well" means an oil or natural gas well drilled after June 30, 1985, *but before January 1, 1999,* other than horizontally completed or recompleted oil wells drilled after December 31, 1993, *but before January 1, 1999,* that produces oil or natural gas or a well that has not produced oil or natural gas during the 5 years immediately preceding the first month of qualifying as a post-1985 well.

(16) "Pre-1985 well" means an oil or natural gas well that was drilled before July 1, 1985.

(17) "Post-1999 well" means an oil or natural gas well drilled on or after January 1, 1999, that produces oil or natural gas or a well that has not produced oil or natural gas during the 5 years immediately preceding the first month of qualifying as a post-1999 well.

~~(17)~~*(18)* "Primary recovery" means the displacement of oil from the earth into the well hore by means of the natural pressure of the oil reservoir and includes artificial lift.

~~(18)~~*(19)* "Production decline rate" means the projected rate of future oil production, extrapolated by a method approved by the board, that must be determined for a project area prior to commencing a new or expanded enhanced recovery project or the recompletion of a well as a horizontally completed well. The approved production decline rate must be certified in writing to the department by the board. In that certification, the board shall identify tbe project area and shall specify the projected rate of future oil production by calendar year and by calendar quarter within each year. The certified rate of future oil production must be used to determine the volume of incremental production that qualifies for the tax rate imposed under 15-36-304(4)(d).

~~(19)~~*(20) (a)* "Qualifying production" means:

(i) tbe first 24 months of production of oil or natural gas from any post-1985 well drilled after March 31, 1995, *but before January 1, 1999,* or from a well that has not produced oil or natural gas during the 5 years immediately preceding the first month of qualifying production~~.~~*; or*

(ii) the first 12 months of production of oil or natural gas from a well drilled on or after January 1, 1999, or the first 18 months of production of oil or natural gas from a horizontally completed well drilled on or after January 1, 1999, or from a well that has not produced oil or natural gas during the 5 years immediately preceding the first month of qualifying production.

(b) Qualifying production does not include oil production from a horizontally recompleted well.

~~(20)~~*(21)* "Secondary recovery project" means an enhanced recovery project, otber than a tertiary recovery project, that commenced or was expanded after December 31, 1993, and before January 1, 2002, and meets each of the following requirements:

(a) The project must be certified as a secondary recovery project to the department by the board. The certification may be extended only after notice and hearing in accordance witlı Title 2, chapter 4.

HeinOnline -- 1999 vol. III 2363 1999

(b) The property to be affected by the project must be adequately delineated according to the specifications required by the board.

(c) The project must involve the application of secondary recovery methods that can reasonably be expected to result in an increase, determined by the board to be significant in light of all the facts and circumstances, in the amount of oil that may potentially be recovered. For purposes of this part, secondary recovery metheds include but are not limited to:

(i) the injection of water into the producing formation for the purposes of maintaining pressure in that formation or for the purpose of increasing the flow of oil from the producing formation to a producing well bore; or

(ii) any other method approved by the hoard as a secondary recovery method.

~~(21)~~*(22)* "Stripper exemption" means the first 3 barrels a day for petroleum and other mineral or crude oil produced by a stripper well if the average price per barrel of oil as reported in the Wall Street Journal for west Texas intermediate crude oil during a calendar quarter is less than $30 a barrel. If the price of oil is equal to or greater than $30 a barrel in a calendar quarter, there is no stripper exemption in that quarter. The average price per barrel is computed by dividing the sum of the daily price for west Texas intermediate crude oil as reported in the Wall Street Journal for the calendar quarter by the number of days on which the price was reported in the quarter.

~~(22)~~*(23)* "Stripper natural gas" means the natural gas produced from any well that produces less than 60,000 cubic feet of natural gas a day during the calendar year immediately preceding the current year. Production must he determined by dividing the amount of production from a lease or unitized area for the year immediately preceding the current calendar year by the number of producing wells in the lease or unitized area and by dividing the resulting quotient by 365.

~~(23)~~*(24)* "Stripper oil" means the oil produced from any well that produces less than 10 barrels a day for the calendar year immediately preceding the current year. Production must be determined by dividing the amount of production from a lease or unitized area for the year immediately preceding the current calendar year by the number of producing wells in the lease or unitized area and by dividing the resulting quotient by 365.

~~(24)~~*(25)* "Tertiary recovery project" means an enhanced recovery project, other than a secondary recovery project, using a tertiary recovery metbod that meets the following requirements:

(a) The project must be certified as a tertiary recovery project to the department by the board. The certification may be extended only after notice and hearing in accordance with Title 2, chapter 4.

(b) The property to be affected by the project must be adequately delineated in the certification according to the specifications required by the board.

(c) The project must involve the application of one or more tertiary recovery methods that can reasonably be expected to result in an increase, determined by the board to be significant in light of all the facts and circumstances, in tbe amount of crude oil tbat may potentially be recovered. For purposes of this part, tertiary recovery methods include but are not limited to:

(i) miscible fluid displacement;

(ii) steam drive injection;

HeinOnline -- 1999 vol. III 2364 1999

(iii) micellar/emulsion flooding;

(iv) in situ combustion;

(v) polymer augmented water flooding;

(vi) cyclic steam injection;

(vii) alkaline or caustic flooding;

(viii) carbon dioxide water flooding;

(ix) immiscible carbon dioxide displacement; or

(x) any other method approved by the board as a tertiary recovery method.

~~(25)~~*(26)* "Well" or "wells" means a single well or a group of wells in one field or production unit and under the control of one operator or producer.

~~(26)~~*(27)* "Working interest owner" means the owner of an interest in an oil or natural gas well or wells who bears any portion of the exploration, development, and operating costs of the well or wells."

Section 2. Section 15-36-303, MCA, is amended to read:

"15-36-303. Definitions. As used in this part, the following definitions apply:

(1) "Board" means the board of oil and gas conservation provided for in 2-15-3303.

(2) "Department" means department of revenue provided for in 2-15-1301;

(3) "Enhanced recovery project" means the use of any process for the displacement of oil from the earth other than primary recovery and includes the use of an immiscible, miscible, chemical, thermal, or biological process.

(4) "Existing enhanced recovery project" means an enhanced recovery project that began development before January 1, 1994.

(5) "Expanded enhanced recovery project" or "expansion" means the addition of injection wells or production wells, the recompletion of existing wells as horizontally completed wells, the change of an injection pattern, or other operating changes to an existing enhanced recovery project that will result in the recovery of oil that would not otherwise be recovered. The project must be developed after December 31, 1993, and before January 1, 2002.

(6) "Gross taxable value", for the purpose of computing the oil and natural gas production tax, means the gross value of the product as determined in 15-36-305.

(7) "Horizontal drain hole" means that portion of a well bore with 70 degrees to 110 degrees deviation from the vertical and a horizontal projection within the common source of supply, as that term is defined by the board, that exceeds 100 feet.

(8) "Horizontally completed well" means:

(a) a well with one or more horizontal drain holes; and

(b) any other well classified by the board as a horizontally completed well.

(9) "Incremental production" means:

HeinOnline -- 1999 vol. III 2365 1999

(a) the volume of oil produced hy a new enhanced recovery project, by a well in primary recovery recompleted as a horizontally completed well, or by an expanded enhanced recovery project, which volume of production is in excess of the production decline rate established under the conditions existing before:

(i) the commencement of the recompletion of a well as a horizontally completed well;

(ii) expansion of the existing enhanced recovery project; or

(iii) commencing a new enhanced recovery project; or

(b) in the case of any project that had no taxable production prior to commencing the enhanced recovery project, all production of oil from the enhanced recovery project.

(10) "Natural gas" or "gas" means natural gas and other fluid hydrocarhons, other than oil, produced at the wellhead.

(11) "New enhanced recovery project" means an enhanced recovery project that began development after December 31, 1993, and before January 1, 2002.

(12) "Nonworking interest owner" means any interest owner who does not share in the exploration, development, and operation costs of the lease or unit, except for production taxes.

(13) "Oil" means crude petroleum or mineral oil and other hydrocarbons, regardless of gravity, that are produced at the wellhead in liquid form and that are not the result of condensation of gas after it leaves the wellhead.

(14) "Operator" or "producer" means a person who produces oil or natural gas within this state or who owns, controls, manages, leases, or operates within this state any well or wells from which any marketable oil or natural gas is extracted or produced.

(15) ~~"Post-1985~~ *"Post-1999* well" means an oil or natural gas well drilled ~~after June 30, 1985, other than horizontally completed or recompleted oil wells drilled after December 31, 1993,~~ *on or after January 1, 1999,* that produces oil or natural gas or a well that has not produced oil or natural gas during the 5 years immediately preceding the first month of qualifying as a ~~post-1985~~ *post-1999* well.

(16) ~~"Pre-1985~~ *"Pre-1999* well" means an oil or natural gas well that was drilled before ~~July 1, 1985~~ *January 1, 1999.*

(17) "Primary recovery" means the displacement of oil from the earth into the well bore by means of the natural pressure of the oil reservoir and includes artificial lift.

(18) "Production decline rate" means the projected rate of future oil production, extrapolated hy a method approved hy the hoard, that must he determined for a project area prior to commencing a new or expanded enhancod recovery project or the recompletion of a well as a horizontally completed well. The approved production decline rate must be certified in writing to the department hy the board. In that certification, the hoard shall identify the project area and shall specify the projected rato of future oil production by calendar year and by calendar quarter within each year. The certified rate of future oil production must be used to determine the volume of incremental production that qualifies for the tax rate imposed under 15-36-304~~(4)(d)~~*(5)(e).*

HeinOnline -- 1999 vol. III 2366 1999

(19) "Qualifying production" means the first ~~24~~ *12* months of production of oil or natural gas from ~~any post-1985~~ *a* well drilled after ~~March 31, 1995~~ *December 31, 1998, or the first 18 months of production of oil or natural gas from a horizontally completed well drilled after December 31, 1998,* or from a well that has not produced oil or natural gas during the 5 years immediately preceding the first month of qualifying production. Qualifying production does not include oil production from a horizontally recompleted well.

(20) "Secondary recovery project" means an enhanced recovery project, other than a tertiary recovery project, that commenced or was expanded after Decemher 31, 1993, and before January 1, 2002, and meets each of the following requirements:

(a) The project must he certified as a secondary recovery project to the department by the board. The certification may be extended only after notice and hearing in accordance with Title 2, chapter 4.

(b) The property to be affected by the project must be adequately delineated according to the specifications required by the board.

(c) The project must involve the application of secondary recovery methods that can reasonably be expected to result in an increase, determined by the board to be significant in light of all the facts and circumstances, in the amount of oil that may potentially be recovered. For purposes of this part, secondary recovery methods include but are not limited to:

(i) the injection of water into the producing formation for the purposes of maintaining pressure in tbat formation or for the purpose of increasing the flow of oil from the producing formation to a producing well bore; or

(ii) any other method approved by the board as a secondary recovery method.

(21) "Stripper exemption" means the first 3 barrels a day for petroleum and other mineral or crude oil produced by a stripper well if the average price per barrel of oil as reported in the Wall Street Journal for west Texas intermediate crude oil during a calendar quarter is less than $30 a barrel. If the price of oil is equal to or greater than $30 a barrel in a calendar quarter, there is no stripper exemption in tbat quarter. The average price per barrel is computed hy dividing the sum of the daily price for west Texas intermediato crude oil as reported in the Wall Street Journal for the calendar quarter by the number of days on which the price was reported in the quarter.

(22) "Stripper natural gas" means the natural gas produced from any well that produces less than 60,000 cubic feet of natural gas a day during the calendar year immediately preceding the current year. Production must be determined by dividing tbe amount of production from a lease or unitized area for the year immediately preceding the current calendar year by the number of producing wells in the lease or unitized area and by dividing the resulting quotient by 365.

(23) "Stripper oil" means the oil produced from any well that produces less than 10 barrels a day for the calendar year immediately preceding the current year. Production must be determined by dividing the amount of production from a lease or unitized area for the year immediately preceding the current calendar year by the number of producing wells in the lease or unitized area and by dividing the resulting quotient by 365.

HeinOnline -- 1999 vol. III 2367 1999

(24) "Tertiary recovery project" means an enhanced recovery project, other than a secondary recovery project, using a tertiary recovery method that meets the following requirements:

(a) The project must he certified as a tertiary recovery project to the department by the hoard. The certification may be extended only after notice and hearing in accordance with Title 2, chapter 4.

(b) The property to he affected by the project must be adequately delineated in the certification according to the specifications required by the board.

(c) The project must involve the application of one or more tertiary recovery methods that can reasonably be expected te result in an increase, determined by the board to be significant in light of all the facts and circumstances, in the amount of crude oil that may potentially be recovered. For purposes of this part, tertiary recovery methods include but are not limited to:

(i) miscible fluid displacement;

(ii) steam drive injection;

(iii) micellar/emulsion flooding;

(iv) in situ combustion;

(v) polymer augmented water flooding;

(vi) cyclic steam injection;

(vii) alkaline or caustic flooding;

(viii) carbon dioxide water flooding;

(ix) immiscible carbon dioxide displacement; or

(x) any other method approved by the board as a tertiary recovery method.

(25) "Well" or "wells" means a single well or a group of wells in one field or production unit and under the control of one operator or producer.

(26) "Working interest owner" means the owner of an interest in an oil or natural gas well or wells who bears any portion of the exploration, development, and operating costs of the well or wells."

Seetion 3. Section 15-36-304, MCA, is amended to read:

"15-36-304. Production tax rates imposed on oil and natural gas. (1) The production of oil and natural gas is taxed as provided in this section. The tax is distributed as provided in 15-36-324.

(2) Natural gas is taxed on the gross taxable value of production based on tbe type of well and type of production according to the following schedule for working interest and nonworking interest owners:

	Working Interest	Nonworking Interest
(a) pre-1985 wells	18.55%	14.8%
(b) post-1985 wells		
(i) first 12 months of qualifying production	0.5%	14.8%

HeinOnline -- 1999 vol. III 2368 1999

(ii) next 12 months of qualifying production	12.5%	14.8%
(iii) after 24 months	15.15%	14.8%
(c) stripper natural gas pre-1985 and post-1985 wells	11%	14.8%
(d) post-1999 wells		
(i) first 12 months of qualifying production	*0.5%*	*14.8%*
(ii) after 12 months	*9%*	*14.8%*
(e) horizontally completed well production		
(i) first 18 months of qualifying production	*0.5%*	*14.8%*
(ii) afier 18 months	*9%*	*14.8%*

(3) The reduced tax rates under subsections (2)(b)(i) and (2)(b)(ii) on production for the first 24 months of natural gas production from a post-1985 well *and under subsection (2)(d)(i) on production for the first 12 months of natural gas production from a post-1999 well* begin following the last day of the calendar month immediately preceding the month in which natural gas is placed in a natural gas distribution system, provided that notification has been given to the department.

(4) The reduced tax rate under subsection (2)(e)(i) on production from a horizontally completed well for the first 18 months of production begins following the last day of the calendar month immediately preceding the month in which natural gas is placed in a natural gas distribution system, provided that notification has been given to the department.

~~(4)~~*(5)* Oil is taxed on the gross taxable value of production based on the type of well and type of production according to the following schedule for working interest and nonworking interest owners:

	Working Interest	Nonworking Interest
(a) primary recovery production		
(i) pre-1985 wells	13.9%	16.9%
(ii) post-1985 wells		
(A) first 12 months of qualifying production	0.5%	14.8%
(B) next 12 months of qualifying production	7.5%	14.8%
(C) after 24 months	12.5%	14.8%
(iii) post-1999 wells		

HeinOnline -- 1999 vol. III 2369 1999

(A) first 12 months of qualifying production	*0.5%*	*14.8%*
(B) after 12 months	*9%*	*14.8%*
(b) stripper oil production		
(i) pre-1985 wells	10.5%	16.9%
(ii) post-1985 wells	10.5%	14.8%
(iii) stripper exemption production		
(A) pre-1985 wells	5.5%	16.9%
(B) post-1985 wells	5.5%	14.8%
(c) horizontally completed well production		
(i) post-1985 wells		
~~(i)~~*(A)* first 18 months of qualifying production	0.5%	5.5%
~~(ii)~~*(B)* next 6 months of qualifying production	7.5%	12.5%
~~(iii)~~*(C)* after 24 months	12.5%	12.5%
(ii) post-1999 wells		
(A) first 18 months of qualifying production	*0.5%*	*14.8%*
(B) after 18 months	*9%*	*14.8%*
(d) incremental production		
(i) new or expanded secondary recovery production		
(A) pre-1985 wells	8.5%	16%
(B) post-1985 wells	8.5%	10.5%
(C) post-1999 wells	*8.5%*	*14.8%*
(ii) new or expanded tertiary production		
(A) pre-1985 wells	5.8%	15%
(B) post-1985 wells	5.8%	9.5%
(C) post-1999 wells	*5.8%*	*14.8%*
(e) horizontally recompleted well		
(i) first 18 months *of production*		
(A) post-1985 wells	5.5%	5.5%

(B) post-1985 wells	*5.5%*	*14.8%*
(ii) after 18 months		
(A) post-1985 wells	12.5%	12.5%
(B) post-1999 wells	*9%*	*14.8%*

~~(5)~~*(6)* (a) The reduced tax rates under subsections ~~(4)(a)(ii)(A)~~ *(5)(a)(ii)(A)* and ~~(4)(a)(ii)(B)~~ *(5)(a)(ii)(B)* for the first 24 months of oil production from a post-1985 well *and subsection (5)(a)(iii)(A) for the first 12 months of oil production from a post-1999 well* begin following the last day of the calendar month immediately preceding the month in which oil is pumped or flows, provided that notification has been given to the department.

(b) (i) The reduced tax rates under subsections ~~(4)(c)(i)~~ *(5)(c)(i)(A)* and ~~(4)(c)(ii)~~ *(5)(c)(i)(B)* on oil production from a horizontally completed well for the first 24 months of production *from a post-1985 well and under subsection (5)(c)(ii)(A) on oil production from a horizontally completed well for the first 18 months of production from a post-1999 well* begin following the last day of the calendar month immediately preceding the month in which oil is pumped or flows, provided that the well has been certified as a horizontally completed well to the department by the board.

(ii) The reduced tax ~~rate~~ *rates* under subsection ~~(4)(c)(i)~~ *(5)(e)(i)* on oil production from a horizontally recompleted well for the first 18 months of production *from a post-1985 well or post-1999 well* begins following the last day of the calendar month immediately preceding the month in which oil is pumped or flows, provided that the well has been certified as a horizontally recompleted well to the department by the board.

(c) Incremental production is taxed as provided in subsection ~~(4)(d)~~ *(5)(d)* if the average price ~~per~~ *for a* barrel of oil as reported in the Wall Street Journal for west Texas intermediate crude oil during a calendar quarter is less than $30 a barrel. If the price of oil is equal to or greater than $30 a barrel in a calendar quarter as determined in subsection ~~(5)(d)~~ *(6)(d)*, then incremental production from pre-1985 wells, ~~and~~ from post-1985 wells, *and from post-1999 wells* is taxed at the rate imposed on primary recovery production under subsections ~~(4)(a)(i) and (4)(a)(ii)(C)~~ *(5)(a)(i), (5)(a)(ii)(C), and (5)(a)(iii)(B)*, respectively, for production occurring in that quarter.

(d) For the purposes of subsection ~~(5)(c)~~ *(6)(c)*, the average price per barrel must be computed by dividing the sum of the daily price for west Texas intermediate crude oil as reported in the Wall Street Journal for the calendar quarter by the number of days on which the price was reported in the quarter.

~~(6)~~*(7)* The tax rates imposed under subsections (2) and ~~(4)~~ *(5)* on working interest owners and nonworking interest owners must be adjusted to include the privilege and license tax adopted by the board of oil and gas conservation pursuant to 82-11-131."

Section 4. Section 15-36-304, MCA, is amended to read:

"15-36-304. Production tax rates imposed on oil and natural gas. (1) The production of oil and natural gas is taxed as provided in this section. The tax is distributed as provided in 15-36-324.

HeinOnline -- 1999 vol. III 2371 1999

(2) Natural gas is taxed on the gross taxable value of production based on the type of well and type of production according to the following schedule for working interest and nonworking interest owners:

	Working Interest	Nonworking Interest
~~(a) pre-1985 wells~~	~~18.55%~~	~~14.8%~~
~~(b) post-1985 wells~~		
(a) (i) first 12 months of qualifying production	0.5%	14.8%
~~(ii) next 12 months of qualifying production~~	~~12.5%~~	~~14.8%~~
~~(iii)~~*(ii)* after ~~24~~ *12* months	~~15.15%~~	~~14.8%~~
(A) pre-1999 wells	*14.8%*	*14.8%*
(B) post-1999 wells	*9%*	*14.8%*
~~(c)~~*(b)* stripper natural gas ~~pre-1985 and post-1985~~ *pre-1999* wells	11%	14.8%
(c) horizontally completed well production		
(i) first 18 months of qualifying production	*0.5%*	*14.8%*
(ii) after 18 months	*9%*	*14.8%*

(3) The reduced tax rates under ~~subsections (2)(b)(i) and (2)(b)(ii)~~ *subsection (2)(a)(i)* on production for the first ~~24~~ *12* months of natural gas production from a ~~post-1985~~ well ~~begin~~ *begins* following the last day of the calendar month immediately preceding the month in which natural gas is placed in a natural gas distribution system, provided that notification has been given to the department.

(4) The reduced tax rate under subsection (2)(c)(i) on production from a horizontally completed well for the first 18 months of production begins following the last day of the calendar month immediately preceding the month in which natural gas is placed in a natural gas distribution system, provided that notification has been given to the department.

~~(4)~~*(5)* Oil is taxed on the gross taxable value of production based on the type of well and type of production according to the following schedule for working interest and nonworking interest owners:

	Working Interest	Nonworking Interest
(a) primary recovery production		
~~(i) pre-1985 wells~~	~~13.9%~~	~~16.9%~~
~~(ii) post-1985 wells~~		

~~(A)~~*(i)* first 12 months of qualifying production	0.5%	14.8%
~~(B) next 12 months of qualifying production~~	~~7.5%~~	~~14.8%~~
~~(C)~~*(ii)* after ~~24~~ *12* months	~~12.5%~~	~~14.8%~~
(A) pre-1999 wells	*12.5%*	*14.8%*
(B) post-1999 wells	*9%*	*14.8%*
(b) stripper oil production	*9%*	*14.8%*
~~(i) pre-1985 wells~~	~~10.5%~~	~~16.9%~~
~~(ii) post-1985 wells~~	~~10.5%~~	~~14.8%~~
~~(iii)~~*(c)* stripper exemption production	*5.5%*	*14.8%*
~~(A) pre-1985 wells~~	~~5.5%~~	~~16.9%~~
~~(B) post-1985 wells~~	~~5.5%~~	~~14.8%~~
~~(c)~~*(d)* horizontally completed well production		
(i) first 18 months of qualifying production	0.5%	~~5.5%~~ *14.8%*
(ii) ~~next 6 months of qualifying production~~	~~7.5%~~	~~12.5%~~
~~(iii)~~ after ~~24~~ *18* months	~~12.5%~~	~~12.5%~~
(A) pre-1999 wells	*12.5%*	*14.8%*
(B) post-1999 wells	*9%*	*14.8%*
~~(d)~~*(e)* incremental production		
(i) new or expanded secondary recovery production	*8.5%*	*14.8%*
~~(A) pre-1985 wells~~	~~8.5%~~	~~16%~~
~~(B) post-1985 wells~~	~~8.5%~~	~~10.5%~~
~~(ii) new or expanded tertiary production~~	~~5.8%~~	~~14.8%~~
~~(A) pre-1985 wells~~	~~5.8%~~	~~15%~~
~~(B) post-1985 wells~~	~~5.8%~~	~~9.5%~~
~~(e)~~*(f)* horizontally recompleted well		
(i) first 18 months	5.5%	~~5.5%~~ *14.8%*

(ii) after 18 months	~~12.5%~~	~~12.5%~~
(A) pre-1999 wells	*12.5%*	*14.8%*
(B) post-1999 wells	*9%*	*14.8%*

~~(5)~~*(6)* (a) The reduced tax rates under ~~subsections (4)(a)(ii)(A) and (4)(a)(ii)(B)~~ *subsection (5)(a)(i)* for the first ~~24~~ *12* months of oil production from a ~~post-1985~~ well ~~begin~~ *begins* following the last day of the calendar month immediately preceding the month in which oil is pumped or flows, provided that notification has been given to the department.

(b) (i) The reduced tax rates under ~~subsections (4)(c)(i) and (4)(c)(ii)~~ *subsection (5)(d)(i)* on oil production from a horizontally completed well for the first ~~24~~ *18* months of production ~~begin~~ *begins* following the last day of the calendar month immediately preceding the month in which oil is pumped or flows, provided that the well has been certified as a borizontally completed well to the department by the board.

(ii) Tbe reduced tax rate under subsection ~~(4)(c)(i)~~ *(5)(f)(i)* on oil production from a horizontally recompleted well for the first 18 months of production begins following the last day of the calendar month immediately preceding the month in which oil is pumped or flows, provided that the well has been certified as a horizontally recompleted well to the department by the board.

(c) Incremental production is taxed as provided in subsection ~~(4)(d)~~ *(5)(e)* if tbe average price per barrel of oil as reported in the Wall Street Journal for west Texas intermediate crude oil during a calendar quarter is less than $30 a barrel. If the price of oil is equal to or greater than $30 a barrel in a calendar quarter as determined in subsection ~~(5)(d)~~ *(6)(d)*, then incremental production from ~~pre-1985~~ *pre-1999* wells and from ~~post-1985~~ *post-1999* wells is taxed at the rate imposed on primary recovery production under subsections ~~(4)(a)(i)~~ *(5)(a)(ii)(A)* and ~~(4)(a)(ii)(C)~~ *(5)(a)(ii)(B)*, respectively, for production occurring in that quarter.

(d) For the purposes of subsection ~~(5)(c)~~ *(6)(c)*, the average price per barrel must be computed by dividing the sum of the daily price for west Texas intermediate crude oil as reported in the Wall Street Journal for the calendar quarter by the number of days on which the price was reported in the quarter.

~~(5)~~*(7)* The tax rates imposed under subsections (2) and ~~(4)~~ *(5)* on working interest owners and nonworking interest owners must be adjusted to include the privilege and license tax adopted by tbe board of oil and gas conservation pursuant to 82-11-131."

Section 5. Section 15-36-324, MCA, is amended to read:

"15-36-324. Distribution of taxes — rules. (1) For each calendar quarter, tbe department of revenue shall determine the amount of tax, late payment interest, and ponalty collected under this part. For purposes of distribution of the taxes to county and school taxing units, the department shall determine the amount of oil and natural gas production taxes paid on production from pre-1985 wells, post-1985 wells, *post-1999 wells,* and horizontally completed wells located in the taxing unit.

(2) Except as provided in subsections (3) through (5), oil production taxes must be distributed as follows:

HeinOnline -- 1999 vol. III 2374 1999

(a) The amount equal to 39.3% of the oil production taxes, including late payment interest and penalty, collected under this part must be distributed as provided in subsection ~~(8)~~ *(9)*.

(b) The remaining 60.7% of the oil production taxes, plus accumulated interest earned on the amount allocated under this subsection (2)(b), must be deposited in the state special revenue fund in the state treasury and transferred to the county and school taxing units for distribution as provided in subsection ~~(11)~~ *(12)*.

(3) (a) The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on production from post-1985 wells *and from post-1999 wells* occurring during the first 12 months of production must be distributed as provided in subsection ~~(9)~~ *(10)*.

(b) (i) The amount equal to 10.25% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on *qualifying* production from post-1985 wells occurring during the next 12 months of production must he distributed as provided in subsection ~~(9)~~ *(10)*.

(ii) The remaining 89.75% of the oil production taxes, plus accumulated interest earned on the amount allocated under this subsection (3)(b), must be deposited in the state special revenue fund in the state treasury and transferred to the county and school taxing units for distribution as provided in subsection ~~(11)~~ *(12)*.

(4) (a) The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected under this part on production from *working interest owners on* horizontally completed wells occurring during the first 18 months of production must be distributed as provided in subsection ~~(9)~~ *(10)*.

(b) (i) The amount equal to 10.25% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on production from *post-1985* horizontally completed wells occurring during the next 6 months of production must be distributed as provided in subsection ~~(9)~~ *(10)*.

(ii) The remaining 89.75% of the oil production taxes, plus accumulated interest earned on the amount allocated under this subsection (4)(b), must he deposited in the state special revenue fund in the state treasury and transferred to the county and school taxing units for distribution as provided in subsection ~~(11)~~ *(12)*.

(c) The amount equal to 100% of the oil production taxes, including late payment interest and ponalty, collected under this part *from working interest owners* on the incremental production from horizontally recompleted wells occurring during the first 18 months of production must be distributed as provided in subsection ~~(8)~~ *(9)*.

(5) (a) The amount equal to 13.8% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on stripper exemption production from pre-1985 wells, ~~and~~ post-1985 wells, *and post-1999 wells* must be distributed as provided in subsection ~~(9)~~ *(10)*.

(h) The remaining 86.2% of the oil production taxes, plus accumulated interest earned on the amount allocated under this subsection (5)(b), must be

HeinOnline -- 1999 vol. III 2375 1999

deposited in the state special revenue fund in the state treasury and transferred to the county and school taxing units for distrihution as provided in subsection ~~(11)~~ *(12)*.

(6) Except as provided in ~~subsection~~ *subsections* (7) *and (8)*, natural gas production taxes must be allocated as follows:

(a) The amount equal to 14% of the natural gas production taxes, including late payment interest and penalty, collected under this part must be distributed as provided in subsection ~~(10)~~ *(11)*.

(b) The remaining 86% of the natural gas production taxes, plus accumulated interest earned on the amount allocated under tbis subsection (6)(b), must be deposited in the state special revenue fund in the state treasury and transferred to the county and school taxing units for distribution as provided in subsection ~~(11)~~ *(12)*.

(7) (a) The amount equal to 100% of the natural gas production taxes, including late payment interest and penalty, collected from working interest owners under this part on production from post-1985 wells *and post-1999 wells* occurring during the first 12 months of production must be distributed as provided in subsection ~~(9)~~ *(10)*.

(b) (i) The amount equal to 6.25% of the natural gas production taxes, including late payment interest and penalty, collected from working interest owners on production from post-1985 wells occurring during the next 12 months of production must be distributed as provided in subsection ~~(9)~~ *(10)*.

(ii) The remaining 93.75% of tbe oil production taxes, plus accumulated interest earned on the amount allocated under tbis suhsection (7)(b), must be deposited in the state special revenue fund in the state treasury and transferred to the county and school taxing units for distribution as provided in subsection ~~(11)~~ *(12)*.

(8) The amount equal to 100% of natural gas production taxes, including late payment interest and penalty, collected from working interest owners on production from horizontally completed wells occurring during the first 18 months of production must be distributed as provided in subsection (10).

~~(8)~~*(9)* The department shall, in accordance with the provisions of 15-1-501, distribute the state portion of oil production taxes specified in subsections (2)(a) and (4)(c), including late payment interest and penalty collected, as follows:

(a) 86.21% to the state general fund;

(b) 5.17% to tbe state special revenue fund for the purpose of paying expenses of the board as provided in 82-11-135; and

(c) 8.62% to be distributed as provided hy 15-38-106(2).

~~(9)~~*(10)* The department shall distribute the state portion of oil and natural gas production taxes specified in subsections (3)(a), (3)(b)(i), (4)(a), (4)(b)(i), (5)(a), (7)(a), ~~and~~ (7)(b)(i), *and (8)*, including late payment interest and penalty collected, as follows:

(a) 37.5% to the state special revenue fund for the purpose of paying expenses of the board as provided in 82-11-135; and

(b) 62.5% to be distributed as provided by 15-38-106(2).

HeinOnline -- 1999 vol. III 2376 1999

~~(10)~~*(11)* The department shall, in accordance with the provisions of 15-1-501, distribute the state portion of natural gas production taxes specified in subsection (6)(a), including late payment interest and penalty collected, as follows:

(a) 76.8% to the state general fund;

(b) 8.7% to the state special revenue fund for the purpose of paying expenses of the board as provided in 82-11-135; and

(c) 14.5% to be distributed as provided by 15-38-106(2).

~~(11)~~*(12)* (a) For the purpose of distribution of the oil and natural gas production taxes from pre-1985 wells, the department shall each calendar quarter adjust the unit value determined under 15-36-323 according to the ratio that the oil and natural gas production taxes from pre-1985 wells collected during the calendar quarter for which the distribution occurs plus penalties and interest on delinquent oil and natural gas production taxes from pre-1985 wells bears to the total liability for the oil and natural gas production taxes from pre-1985 wells for the quarter for which the distribution occurs. The amount of oil and natural gas production taxes distributions must be calculated and distributed as follows:

(i) By the dates referred to in subsection ~~(12)~~ *(13)*, the department shall calculate and distribute to each eligible county the amount of oil and natural gas production taxes from pre-1985 wells for the quarter, determined by multiplying the unit value, as adjusted in this subsection ~~(11)(a)~~ *(12)(a)*, by the units of production on which oil and natural gas production taxes from pre-1985 wells were owed for the calendar quarter for which the distribution occurs.

(ii) Any amount by which the total tax liability exceeds or is less than the total distributions determined in this subsection ~~(11)(a)~~ *(12)(a)* must be calculated and distributed in the following manner:

(A) The excess amount or shortage must be divided by the total distribution determined for that period to obtain an excess or shortage percentage.

(B) The excess percentage must be multiplied by the distribution to each taxing unit, and this amount must be added to the distribution to each respective taxing unit.

(C) The shortage percentage must be multiplied by the distribution to each taxing unit, and this amount must be subtracted from the distribution to each respective taxing unit.

(b) Except as provided in subsection ~~(11)(c)~~ *(12)(c)*, the county treasurer shall distribute the money received under subsection ~~(12)~~ *(13)* from pre-1985 wells to the taxing units that levied mills in fiscal year 1990 against calendar year 1988 production in the same manner that all other property tax proceeds were distributed during fiscal year 1990 in the taxing unit, except that a distribution may not be made to a municipal taxing unit.

(c) The board of county commissioners of a county may direct the county treasurer to reallocate the distribution of oil and natural gas production tax money that would have gone to a taxing unit, as provided in subsection ~~(11)(b)~~ *(12)(b)*, to another taxing unit or taxing units, other than an elementary school or high school, within the county under the following conditions:

(i) The county treasurer shall first allocate the oil and natural gas production taxes to the taxing units within the county in the same proportion that all other property tax proceeds were distributed in the county in fiscal year 1990.

HeinOnline -- 1999 vol. III 2377 1999

(ii) If the allocation in subsection ~~(11)(e)(i)~~ *(12)(c)(i)* exceeds the total budget for a taxing unit, the commissioners may direct the county treasurer to allocate the excess to any taxing unit within the county.

(d) The board of trustees of an elementary or high school district may reallocate the oil and natural gas production taxes distributed to the district by the county treasurer under the following conditions:

(i) The district shall first allocate the oil and natural gas production taxes to the budgeted funds of the district in the same proportion that all other property tax proceeds were distributed in the district in fiscal year 1990.

(ii) If the allocation under subsection ~~(11)(d)(i)~~ *(12)(d)(i)* exceeds the total budget for a fund, the trustees may allocate the excess to any budgeted fund of the school district.

(e) For all production from post-1985 wells, *post-1999 wells,* and horizontally drilled wells completed after December 31, 1993, the county treasurer shall distribute oil and natural gas production taxes received under subsections (2)(b), (3)(b)(ii), (4)(b)(ii), (5)(b), (6)(b), and (7)(~~b~~)(ii) between county and school taxing units in the relative proportions required by the levies for state, county, and school district purposes in the same manner as property taxes were distributed in the preceding fiscal year.

(f) The allocation to the county in subsection ~~(11)(c)~~ *(12)(e)* must be distributed by the county treasurer in the relative proportions required by the levies for county taxing units and in the same manner as property taxes were distributed in the preceding fiscal year.

(g) The money distributed in subsection ~~(11)(c)~~ *(12)(e)* that is required for the county mill levies for school district retirement obligations and transportation schedules must be deposited to the funds established for these purposes.

(h) The oil and natural gas production taxes distributed under subsection ~~(11)(b)~~ *(12)(b)* that are required for the 6-mill university levy imposed under 20-25-423 and for the county equalization levies imposed under 20-9-331 and 20-9-333, as those sections read on July 1, 1989, must be remitted by the county treasurer to the state treasurer.

(i) The oil and natural gas production taxes distributed under subsection ~~(11)(c)~~ *(12)(e)* that are required for the 6-mill university levy imposed under 20-25-423, for the county equalization levies imposed under 20-9-331 and 20-9-333, and for the state equalization aid levy imposed under 20-9-360 must be remitted by the county treasurer to the state treasurer.

(j) The amount of oil and natural gas production taxes remaining after the treasurer has remitted the amounts determined in subsections ~~(11)(b)~~ *(12)(h)* and ~~(11)(i)~~ *(12)(i)* is for the exclusive use and benefit of the county and school taxing units.

~~(12)~~*(13)* The department shall remit the amounts to be distributed in subsection ~~(11)~~ *(12)* to the county treasurer by the following dates:

(a) On or before August 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending March 31 of the current year.

HeinOnline -- 1999 vol. III 2378 1999

(b) On or before Novemher 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending June 30 of the current year.

(c) On or before February 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending September 30 of the previous year.

(d) On or before May 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending December 31 of the previous calendar year.

~~(13)~~*(14)* Tbe department shall provide to each county by May 31 of each year tbe amount of gross taxable value represented by all types of production taxed under 15-36-304 for tbe previous calendar year multiplied by 60%. Tbe resulting value must be treated as taxable value for county classification purposes and for county bonding purposes.

~~(14)~~*(15)* (a) In the event that the board of oil and gas conservation revises the privilege and license tax pursuant to 82-11-131, the department shall, by rule, change the formula under this section for distribution of taxes collected under 15-36-304. The revised formula must provide for the distribution of taxes in an amount equal to the rate adopted by the board of oil and gas conservation for the expenses of the board.

(b) Before the department adopts a rule pursuant to subsection ~~(14)(a)~~ *(15)(a)*, it shall present the proposed rule to the revenue oversight committee.

~~(15)~~*(16)* The distribution to taxing units under this section is statutorily appropriated as provided in 17-7-502."

Section 6. Section 15-36-324, MCA, is amended to read:

"15-36-324. Distribution of taxes — rules. (1) For each calendar quarter, the department ~~of revenue~~ shall determine the amount of tax, late payment interest, and penalty collected under this part. For purposes of distribution of the taxes to county and school taxing units, the department shall determine the amount of oil and natural gas production taxes paid on production ~~from pre-1985 wells, post-1985 wells, and horizontally completed wells located~~ in the taxing unit.

(2) Except as provided in subsections (3) through (5), oil production taxes must be distributed as follows:

(a) The amount equal to 39.3% of the oil production taxes, including late payment interest and penalty, collected under this part must be distributed as provided in subsection ~~(8)~~ *(9)*.

(b) The remaining 60.7% of the oil production taxes, plus accumulated interest earned on the amount allocated under this subsection (2)(b), must be deposited in the state special revenue fund in the state treasury and transferred to the county and school taxing units for distribution as provided in subsection ~~(11)~~ *(12)*.

(3) ~~(a)~~ The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on *qualifying* production ~~from post-1985 wells~~ occurring during the first 12 months of production must be distributed as provided in subsection ~~(9)~~ *(10)*.

HeinOnline -- 1999 vol. III 2379 1999

~~(b) (i) The amount equal to 10.25% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on production from post-1985 wells occurring during the next 12 months of production must be distributed as provided in subsection (9).~~

~~(ii) The remaining 89.75% of the oil production taxes, plus accumulated interest earned on the amount allocated under this subsection (3)(b), must be deposited in the state special revenue fund in the state treasury and transferred to the county and school taxing units for distribution as provided in subsection (11).~~

(4) (a) The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected ~~under this part~~ *from working interest owners* on production from horizontally completed wells occurring during the first 18 months of production must be distributed as provided in subsection ~~(9)~~ *(10)*.

~~(b) (i) The amount equal to 10.25% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on production from horizontally completed wells occurring during the next 6 months of production must be distributed as provided in subsection (9).~~

~~(ii) The remaining 89.75% of the oil production taxes, plus accumulated interest earned on the amount allocated under this subsection (4)(b), must be deposited in the state special revenue fund in the state treasury and transferred to the county and school taxing units for distribution as provided in subsection (11).~~

~~(c)~~*(b)* The amount equal to 100% of the oil production taxes, including late payment interest and penalty, collected ~~under this part~~ *from working interest owners* on the incremental production from horizontally recompleted wells occurring during the first 18 months of production must be distributed as provided in subsection ~~(8)~~ *(9)*.

(5) (a) The amount equal to 13.8% of the oil production taxes, including late payment interest and penalty, collected from working interest owners on stripper exemption production ~~from pre-1985 wells and post-1985~~ wells must be distributed as provided in subsection ~~(9)~~ *(10)*.

(b) The remaining 86.2% of the oil production taxes, plus accumulated interest earned on tbe amount allocated under this subsection (5)(b), must be deposited in the state special revenue fund in the state treasury and transferred to the county and school taxing units for distribution as provided in subsection ~~(11)~~ *(12)*.

(6) Except as provided in ~~subsection~~ *subsections* (7) *and (8)*, natural gas production taxes must be allocated as follows:

(a) The amount equal to 14% of the natural gas production taxes, including late payment interest and penalty, collected under this part must be distributed as provided in subsection ~~(10)~~ *(11)*.

(b) The remaining 86% of the natural gas production taxes, plus accumulated interest earned on the amount allocated under this subsection (6)(b), must be deposited in the state special revenue fund in the state treasury and transferred to the county and scbool taxing units for distribution as provided in subsection ~~(11)~~ *(12)*.

HeinOnline -- 1999 vol. III 2380 1999

(7) ~~(a)~~ The amount equal to 100% of the natural gas production taxes, including late payment interest and penalty, collected from working interest owners under this part on production from ~~post-1985~~ wells occurring during the first 12 months of production must be distributed as provided in subsection ~~(9)~~ *(10)*.

~~(b) (i) The amount equal to 6.25% of the natural gas production taxes, including late payment interest and penalty, collected from working interest owners on production from post-1985 wells occurring during the next 12 months of production must be distributed as provided in subsection (9).~~

~~(ii) The remaining 93.75% of the oil production taxes, plus accumulated interest earned on the amount allocated under this subsection (7)(b), must be deposited in the state special revenue fund in the state treasury and transferred to the county and school taxing units for distribution as provided in subsection (11).~~

(8) *The amount equal to 100% of natural gas production taxes, including late payment interest and penalty, collected from working interest owners on production from horizontally completed wells occurring during the first 18 months of production must be distributed as provided in subsection (10).*

(9) The department shall, in accordance with the provisions of 15-1-501, distribute the state portion of oil production taxes specified in subsections (2)(a) and ~~(4)(c)~~ *(4)(b)*, including late payment interest and penalty collected, as follows:

(a) 86.21% to the state general fund;

(b) 5.17% to the state special revenue fund for the purpose of paying expenses of the board as provided in 82-11-135; and

(c) 8.62% to be distributed as provided by 15-38-106(2).

~~(9)~~*(10)* The department shall distribute the state portion of oil and natural gas production taxes specified in subsections (3)~~(a)~~, ~~(3)(b)(i)~~, (4)(a), ~~(4)(b)(i)~~, (5)(a), (7)~~(a)~~, and ~~(7)(b)(i)~~ *(8)*, including late payment interest and penalty collected, as follows:

(a) 37.5% to the state special revenue fund for the purpose of paying expenses of the board as provided in 82-11-135; and

(b) 62.5% to be distributed as provided by 15-38-106(2).

~~(10)~~*(11)* The department shall, in accordance with the provisions of 15-1-501, distribute the state portion of natural gas production taxes specified in subsection (6)(a), including late payment interest and penalty collected, as follows:

(a) 76.8% to the state general fund;

(b) 8.7% to the state special revenue fund for the purpose of paying expenses of the board as provided in 82-11-135; and

(c) 14.5% to be distributed as provided by 15-38-106(2).

~~(11)~~*(12)* (a) ~~For the purpose of distribution of the oil and natural gas production taxes from pre-1985 wells, the department shall each calendar quarter adjust the unit value determined under 15-36-323 according to the ratio that the oil and natural gas production taxes from pre-1985 wells collected during the calendar quarter for which the distribution occurs plus penalties and interest on delinquent oil and natural gas production taxes from pre-1985 wells bears to the total liability for the oil and natural gas production taxes from pre-1985 wells for~~

~~the quarter for which the distribution occurs. The amount of oil and natural gas production taxes distributions must be calculated and distributed as follows:~~

~~(i)~~ By the dates referred to in subsection ~~(12)~~ *(13)*, the department shall, *except as provided in subsection (12)(b),* calculate and distribute *oil and natural gas production taxes received under subsections (2)(b), (5)(b), and (6)(b)* to each eligible county ~~the amount of~~ *in proportion to the* oil and natural gas production taxes ~~from pre-1985 wells for the quarter, determined by multiplying the unit value, as adjusted in this subsection (11)(a), by the units of production on which oil and natural gas production taxes from pre-1985 wells were owed for the calendar quarter for which the distribution occurs~~ *received under subsections (2)(b), (5)(b), and (6)(b) that are attributable to production in that county.*

(b) The department shall distribute 5% of the oil and natural gas production taxes received under subsections (2)(b), (5)(b), and (6)(b) from pre-1999 wells to eligible counties in proportion to the underfunding that would have occurred from the tax liability distribution of pre-1985 oil and natural gas production taxes for production in calendar year 1997.

~~(ii) Any amount by which the total tax liability exceeds or is less than the total distributions determined in this subsection (11)(a) must be calculated and distributed in the following manner:~~

~~(A) The excess amount or shortage must be divided by the total distribution determined for that period to obtain an excess or shortage percentage.~~

~~(B) The excess percentage must be multiplied by the distribution to each taxing unit, and this amount must be added to the distribution to each respective taxing unit.~~

~~(C) The shortage percentage must be multiplied by the distribution to each taxing unit, and this amount must be subtracted from the distribution to each respective taxing unit.~~

~~(b)~~*(c)* Except as provided in subsection ~~(11)(c)~~ *(12)(d)*, the county treasurer shall distribute the money received under subsection (12)*(b)* ~~from pre-1985 wells~~ to the taxing units that levied mills in fiscal year 1990 against calendar year 1988 production in the same manner that all other property tax proceeds were distributed during fiscal year 1990 in the taxing unit, except that a distribution may not be made to a municipal taxing unit.

~~(c)~~*(d)* The board of county commissioners of a county may direct the county treasurer to reallocate the distribution of oil and natural gas production tax money that would have gone to a taxing unit, as provided in subsection ~~(11)(b)~~ *(12)(c)*, to another taxing unit or taxing units, other than an elementary school or high school, within the county under the following conditions:

(i) The county treasurer shall first allocate the oil and natural gas production taxes to the taxing units within the county in the same proportion that all other property tax proceeds were distributed in the county in fiscal year 1990.

(ii) If the allocation in subsection ~~(11)(c)(i)~~ *(12)(d)(i)* exceeds the total budget for a taxing unit, the commissioners may direct the county treasurer to allocate the excess to any taxing unit within the county.

~~(d)~~*(e)* The board of trustees of an elementary or high school district may reallocate the oil and natural gas production taxes distributed to the district by the county treasurer under the following conditions:

HeinOnline -- 1999 vol. III 2382 1999

(i) The district shall first allocate the oil and natural gas production taxes to the budgeted funds of the district in the same proportion that all other property tax proceeds were distributed in the district in fiscal year 1990.

(ii) If the allocation under subsection ~~(11)(d)(i)~~ *(12)(e)(i)* exceeds the total budget for a fund, the trustees may allocate the excess to any budgeted fund of the school district.

~~(e)~~*(f)* ~~For all production from post-1985 wells and horizontally drilled wells completed after December 31, 1993, the~~ *The* county treasurer shall distribute oil and natural gas production taxes received under ~~subsections (2)(b), (3)(b)(ii), (4)(b)(ii), (5)(b), (6)(b), and (7)(b)(ii)~~ *subsection (12)(a)* between county and school taxing units in the relative proportions required by the levies for state, county, and school district purposes in the same manner as property taxes were distributed in the preceding fiscal year.

~~(f)~~*(g)* The allocation to the county in subsection ~~(11)(e)~~ *(12)(f)* must be distributed by the county treasurer in the relative proportions required by the levies for county taxing units and in the same manner as property taxes were distributed in the preceding fiscal year.

~~(g)~~*(h)* The money distributed in subsection ~~(11)(e)~~ *(12)(f)* that is required for the county mill levies for school district retirement obligations and transportation schedules must be deposited to the funds established for these purposes.

~~(h)~~*(i)* The oil and natural gas production taxes distributed under subsection ~~(11)(b)~~ *(12)(c)* that are required for the 6-mill university levy imposed under 20-25-423 and for the county equalization levies imposod under 20-9-331 and 20-9-333, as those sections read on July 1, 1989, must he remitted by the county treasurer to the state treasurer.

~~(i)~~*(j)* The oil and natural gas production taxes distributed under subsection ~~(11)(c)~~ *(12)(f)* that are required for the 6-mill university levy imposed under 20-25-423, for the county equalization levies imposed under 20-9-331 and 20-9-333, and for the state equalization aid levy imposed under 20-9-360 must be remitted by the county treasurer to the state treasurer.

~~(j)~~*(k)* The amount of oil and natural gas production taxes remaining after the treasurer has remitted the amounts determined in subsections ~~(11)(h)~~ *(12)(i)* and ~~(11)(i)~~ *(12)(j)* is for the exclusive use and benefit of the county and school taxing units.

~~(12)~~*(13)* The department shall remit the amounts to be distributed in subsection ~~(11)~~ *(12)* to the county treasurer by the following dates:

(a) On or before August 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending March 31 of the current year.

(b) On or before November 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending June 30 of the current year.

(c) On or before February 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending September 30 of the previous year.

HeinOnline -- 1999 vol. III 2383 1999

(d) On or before May 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending December 31 of the previous calendar year.

~~(13)~~*(14)* The department shall provide to each county by May 31 of each year the amount of gross taxable value represented by all types of production taxed under 15-36-304 for the previous calendar year multiplied by 60%. The resulting value must be treated as taxable value for county classification purposes and for county bonding purposes.

~~(14)~~*(15)* (a) In the event that the board of oil and gas conservation revises the privilege and license tax pursuant to 82-11-131, the department shall, by rule, change the formula under this section for distribution of taxes collected under 15-36-304. The revised formula must provide for the distribution of taxes in an amount equal to the rate adopted by the board of oil and gas conservation for the expenses of the board.

(b) Before the department adopts a rule pursuant to subsection ~~(14)(a)~~ *(15)(a)*, it shall present the proposed rule to the revenue oversight committee.

~~(15)~~*(16)* The distribution to taxing units under this section is statutorily appropriated as provided in 17-7-502."

Section 7. Section 15-36-326, MCA, is amended to read:

"15-36-326. Oil and natural gas accelerated tax fund. (1) The county commissioners of a county that receives tax distributions under 15-36-325, *as that section read on December 31, 1999,* shall establish an oil and natural gas accelerated tax fund for the deposit of the distributions. The county commissioners may retain the money in the fund for any time period considered appropriate by the commissioners. Money retained in the fund may not be considered as fund balance for the purpose of reducing mill levies.

(2) Money may be expended from the fund for any purpose allowed by law.

(3) Money in the fund must be invested as provided by law. Interest and income earned on the investment of money in the fund must he credited to the fund.

(4) The oil and natural gas accelerated tax fund must be financially administered as a nonbudgeted fund under the provisions of Title 7, chapter 6, part 23."

Section 8. Section 17-7-502, MCA, is amended to read:

"17-7-502. (Temporary) Statutory appropriations — definition — requisites for validity. (1) A statutery appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

HeinOnline -- 1999 vol. III 2384 1999

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 3-5-901; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706; 15-30-195; 15-31-702; 15-36-324; ~~15-36-325,~~ 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-406; 16-1-411; 16-11-308; 17-3-106; 17-3-212; 17-3-222; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-6-709; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 20-8-107; 20-8-111; 20-26-1503; 22-3-1004; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 39-71-907; 39-71-2321; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 53-6-703; 53-24-206; 67-3-205; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-1-131; 80-2-103; 80-2-222; 80-4-416; 81-5-111; 82-11-161; 85-20-402; 87-1-513; 90-3-301; 90-4-215; 90-6-331; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined hy the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; pursuant te sec. 7(2), Ch. 29, L. 1995, the inclusion of 15-30-195 terminates July 1, 2001; pursuant to sec. 5, Ch. 461, L. 1997, the inclusion of 77-1-131 terminates October 1, 2003; and pursuant to secs. 13, 16(1), Ch. 549, L. 1997, the inclusion of 90-3-301 terminates July 1, 1999.)

17-7-502. (Effective July 1, 2008) Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 3-5-901; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-23-706; 15-30-195; 15-31-702; 15-36-324; ~~15-36-325,~~ 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; [16-1-406;] 16-1-411; 16-11-308; 17-3-106; 17-3-212; 17-3-222; 17-5-404; 17-5-804; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-6-709; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-205; 19-19-305; 19-19-506; 20-8-107; 20-9-361; 20-26-1503; 22-3-1004; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 32-1-537; 37-43-204; 37-51-501; 39-71-503; 39-71-907; 39-71-2321; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 50-5-232; 50-40-206; 53-6-150; 53-6-703; 53-24-206; 60-2-220; 67-3-205; 75-1-1101; 75-5-1108; 75-6-214; 75-5-1108; 75-6-214; 75-11-313; 77-1-505; 80-2-103; 80-2-222; 80-4-416; 81-5-111; 82-11-136; 82-11-161; 85-1-220; 85-20-402; 87-1-513; 90-4-215; 90-6-331; 90-7-220; 90-7-221; and 90-9-306.

HeinOnline -- 1999 vol. III 2385 1999

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant te the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the stato treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant to sec. 68(2), Ch. 422, L. 1997, this version becomes effective July 1, 2008.)"

Seetion 9. Section 20-9-104, MCA, is amended to read:

"20-9-104. General fund operating reserve. (1) At the end of each school fiscal year, the trustees of each district shall designato the portion of the general fund end-of-the-year fund balance that is to be earmarked as operating reserve for the purpose of paying general fund warrants issued by the district from July 1 to November 30 of the ensuing school fiscal year. Except as provided in subsections (5) and (6), the amount of the general fund balance that is earmarked as operating reserve may not exceed 10% of the final general fund budget for the ensuing school fiscal year.

(2) The amount held as operating reserve may not be used for property tax reduction in the manner permitted by 20-9-141(1)(b) for other receipts.

(3) Excess reserves as provided in subsection (5) may be appropriated to reduce the BASE budget levy, the over-BASE budget levy, or the additional levy provided by 20-9-353.

(4) Any portion of the general fund end-of-the-year fund balance that is not reserved under subsection (2) or reappropriatod under subsection (3) is fund balance reappropriated and must be used for proporty tax reduction as provided in 20-9-141(1)(b).

(5) The limitation of subsection (1) does not apply when the amount in excess of the limitation is equal to or less than the unused balance of any amount:

(a) (i) received in settlement of tax payments protested in a prior school fiscal year;

(ii) received in taxes from a prior school fiscal year as a result of a tax audit by the department of revenue or its agents;

(iii) received in delinquent taxes from a prior school fiscal year; ~~and~~ *or*

~~(iv) received as a local government severance tax payment for calendar year 1995 production as provided in 15-36-325; or~~

(b) a district was entitled to as a general bonus payment prior to July 1, 1994.

(6) The limitation of subsection (1) does not apply when the amount earmarked as oporating reserve is $10,000 or less."

Seetion 10. Section 20-9-161, MCA, is amended to read:

"20-9-161. Definition of budget amendment for budgeting purposes. As used in this title, unless the context clearly indicates otherwise, the term "budget amendment" for the purpose of school budgeting means an amendment to an adopted budget of the district for the following reasons:

HeinOnline -- 1999 vol. III 2386 1999

(1) an increase in the enrollment of an elementary or high school district that is beyond what could reasonably have heen anticipated at the time of the adoption of the budget for the current school fiscal year whenever, because of the enrollment increase, the district's budget for any or all of the regularly budgeted funds does not provide sufficient financing to properly maintain and support the district for the entire current school fiscal year;

(2) the destruction or impairment of any school property necessary to the maintenance of the school, by fire, flood, storm, riot, insurrection, or act of God, to an extent rendering school property unfit for its present school use;

(3) a judgment for damages against the district issued by a court after the adoption of the budget for tbe current year;

(4) an enactment of legislation after the adoption of the budget for the current year that imposes an additional financial obligation on the district;

(5) the receipt of:

(a) a settlement of taxes protested in a prior school fiscal year;

(b) taxes from a prior school fiscal year as the result of a tax audit by the department of revenue or its agents;

(c) delinquent taxes from a prior school fiscal year; ~~or~~

~~(d) local government severance tax payments for calendar year 1995 production as provided in 15-36-325(7);~~ and

~~(e)~~*(d)* a determination by the trustees that it is necessary to expend all or a portion of tlie taxes received under subsection (5)(a), (5)(b), *or* (5)(c)~~, or (5)(d)~~ for a project or projects that were deferred from a previous budget of the district; or

(6) any other unforeseen need of the district that cannot be postponed until the next school year without dire consequences affecting the safety of the students and district employees or the educational functions of the district."

Section 11. Section 20-9-331, MCA, is amended to read:

"20-9-331. Basic county tax for elementary equalization and other revenue for county equalization of elementary BASE funding program. (1) The county commissioners of each county shall levy an annual basic county tax of 33 mills on the dollar of the taxable value of all taxable proporty within the county, except for property subject to a tax or fee under 23-2-517, 23-2-803, 61-3-504, 61-3-521, 61-3-527, 61-3-529, 61-3-537, and 67-3-204, for the purposes of elementary equalization and state BASE funding program support. The revenue collected from this levy must be appertioned to the support of the elementary BASE funding programs of the school districts in the county and to the state general fund in the following manner:

(a) In order to determine the amount of revenue raised by this levy that is retained by the county, the sum of the estimated revenue identified in subsection (2) must be subtracted from the total of the BASE funding programs of all elementary districts of the county.

(b) If the basic levy and other revenue prescribed by this section produce more revenue than is required to repay a state advance for county equalization, the county treasurer shall remit tbe surplus funds to the state treasurer for deposit to the state general fund immediately upon occurrence of a surplus

HeinOnline -- 1999 vol. III 2387 1999

balance and each subsequent month, with any final remittance due no later than June 20 of the fiscal year for which the levy has been set.

(2) The revenue realized from the county's portion of the levy prescribed by this section and the revenue from the following sources must be used for the equalization of the elementary BASE funding program of the county as prescribed in 20-9-335, and a separate accounting must be kept of the revenue by the county treasurer in accordance with 20-9-212(1):

(a) the portion of the federal Taylor Grazing Act funds distributed to a county and designated for the elementary county equalization fund under the provisions of 17-3-222;

(b) the portion of the federal flood control act funds distributed to a county and designated for expenditure for the benefit of the county common schools under the provisions of 17-3-232;

(c) all money paid into the county treasury as a result of fines for violations of law, except money paid to a justice's court, and the use of which is not otherwise specified by law;

(d) any money remaining at the end of the immediately preceding school fiscal year in the county treasurer's accounts for the various sources of revenue established or referred to in this section;

(e) any federal or state money distributed to the county as payment in lieu of property taxation, including federal forest reserve funds allocated under the provisions of 17-3-213;

(f) gross proceeds taxes from coal under 15-23-703;

(g) oil and natural gas production taxes;

~~(h) anticipated local government severance tax payments for calendar year 1995 production as provided in 15-36-325;~~ and

~~(i)~~*(h)* anticipated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-504, 61-3-521, 61-3-527, 61-3-529, 61-3-537, and 67-3-204."

Section 12. Section 20-9-333, MCA, is amended to read:

"20-9-333. Basic county tax for high school equalization and other revenue for county equalization of high school BASE funding program. (1) The county commissioners of each county shall levy an annual basic county tax of 22 mills on the dollar of the taxable value of all taxable property within the county, except for property subject to a tax or fee under 23-2-517, 23-2-803, 61-3-504, 61-3-521, 61-3-527, 61-3-529, 61-3-537, and 67-3-204, for the purposes of high school equalization and state BASE funding program support. The revenue collected from this levy must be apportioned to the support of the BASE funding programs of high school districts in the county and to the state general fund in the following manner:

(a) In order to determine the amount of revenue raised by this levy that is retained by the county, the sum of the estimated revenue identified in subsection (2) must be subtracted from the sum of the county's high school tuition obligation and the total of the BASE funding programs of all high school districts of the county.

HeinOnline -- 1999 vol. III 2388 1999

(b) If the basic levy and other revenue prescribed by this section produce more revenue than is required to repay a state advance for county equalization, the county treasurer shall remit the surplus funds to the state treasurer for deposit to the state general fund immediately upon occurrence of a surplus balance and each subsequent month, with any final remittance due no later than June 20 of the fiscal year for which the levy has been set.

(2) The revenue realized from the county's portion of the levy prescribed in this section and the revenue from the following sources must be used for the equalization of the high school BASE funding program of the county as prescribed in 20-9-335, and a separate accounting must be kept of the revenue by the county treasurer in accordance with 20-9-212(1):

(a) any money remaining at the end of the immediately preceding school fiscal year in the county treasurer's accounts for the various sources of revenue established in this section;

(b) any federal or state money distributed to the county as payment in lieu of property taxation, including federal forest reserve funds allocated under the provisions of 17-3-213;

(c) gross proceeds taxes from coal under 15-23-703;

(d) oil and natural gas production taxes;

~~(e) anticipated local government severance tax payments for calendar year 1995 production as provided in 15-36-325;~~ and

~~(f)~~*(e)* anticipated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-504, 61-3-521, 61-3-527, 61-3-529, 61-3-537, and 67-3-204."

Section 13. Section 20-9-501, MCA, is amended to read:

"20-9-501. Retirement fund. (1) The trustees of a district employing personnel who are members of the teachers' retirement system or the public employees' retirement system or who are covered by unemployment insurance or who are covered by any federal social security system requiring employer contributions shall establish a retirement fund for the purposes of budgeting and paying the employer's contributions to the systems. The district's contribution for each employee who is a member of the teachers' retirement system must be calculated in accordance with Title 19, chapter 20, part 6. The district's contribution for each employee who is a member of the public employees' retirement system must be calculated in accordance with 19-3-316. The district's contributions for each employee covered by any federal social security system must be paid in accordance with federal law and regulation. The district's contribution for each employee who is covered by unemployment insurance must be paid in accordance with Title 39, chapter 51, part 11.

(2) The trustees of a district required to make a contribution to a system referred to in subsection (1) shall include in the retirement fund of the final budget the estimated amount of the employer's contribution. After the final retirement fund budget has been adopted, the trustees shall pay the employer contributions to the systems in accordance with the financial administration provisions of this title.

(3) When the final retirement fund budget has been adopted, the county superintendent shall establish the levy requirement by:

HeinOnline -- 1999 vol. III 2389 1999

(a) determining the sum of the money available to reduce the retirement fund levy requirement by adding:

(i) any anticipated money that may be realized in the retirement fund during the ensuing school fiscal year, including anticipated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-504, 61-3-521, 61-3-527, 61-3-529, 61-3-537, and 67-3-204;

(ii) oil and natural gas production taxes;

~~(iii) anticipated local government severance tax payments for calendar year 1995 production as provided in 15-36-325;~~

~~(iv)~~*(iii)* coal gross proceeds taxes under 15-23-703;

~~(v)~~*(iv)* any fund balance available for reappropriation as determined by subtracting the amount of the end-of-the-year fund balance earmarked as the retirement fund operating reserve for the ensuing school fiscal year hy the trustees from the end-of-the-year fund balance in the retirement fund. The retirement fund operating reserve may not be more than 35% of the final retirement fund budget for the ensuing school fiscal year and must be used for the purpose of paying retirement fund warrants issued by the district under the final retirement fund budget.

~~(vi)~~*(v)* any other revenue anticipated that may be realized in the retirement fund during the ensuing school fiscal year, excluding any guaranteed tax base aid.

(b) notwithstanding the provisions of subsection (8), subtracting the money available for reduction of the levy requirement, as determined in subsection (3)(a), from the budgeted amount for expenditures in the final retirement fund budget.

(4) The county superintendent shall:

(a) total the net retirement fund levy requirements separately for all elementary school districts, all high school districts, and all community college districts of the county, including any prorated joint district or special education cooperative agreement levy requirements; and

(b) report each levy requirement to the county commissioners on the fourth Monday of August as the respective county levy requirements for elementary district, high school district, and community college district retirement funds.

(5) The county commissioners shall fix and set the county levy in accordance with 20-9-142.

(6) The net retirement fund levy requirement for a joint elementary district or a joint high school district must be prorated to each county in which a part of the district is located in the same proportion as the district ANB of the joint district is distributed by pupil residence in each county. The county superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county as provided in 20-9-151.

(7) The net retirement fund levy requirement for districts that are members of special education cooperative agreements must be prorated to each county in which the district is located in the same proportion as the special education cooperative budget is prorated to the member school districts. The county superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county in the same manner as

HeinOnline -- 1999 vol. III 2390 1999

provided in 20-9-151, and the county commissioners shall fix and levy the net retirement fund levy for each county in the same manner as provided in 20-9-152.

(8) The county superintendent shall calculate the number of mills to be levied on the taxahle property in the county to finance the retirement fund net levy requirement by dividing the amount determined in subsection (4)(a) by the sum of:

(a) the amount of guaranteed tax base aid that the county will receive for each mill levied, as certified by the superintendent of public instruction; and

(b) the taxable valuation of the district divided by 1,000."

Section 14. Section 20-9-507, MCA, is amended to read:

"20-9-507. Miscellaneous programs fund. (1) The trustees of a district receiving money from local, stato, federal, or other sources provided in 20-5-324 other than money under the provisions of impact aid, as provided in 20 U.S.C. 7701, et seq., or federal money designated for deposit in a specific fund of the district shall establish a miscellaneous programs fund for the deposit of the money. The money may be a reimbursement of miscellaneous program fund expenditures already realized by the district, ~~a payment received as a local government severance tax payment for calendar year 1995 production as provided in 15-36-325,~~ indirect cost recoveries, or a grant of money for the financing of expenditures to be realized by the district for a special, approved program to be operated by the district. When tbe money is a reimbursement or a local government severance tax payment, the money may be expended at the discretion of the trustees for school purposes. When the money is a grant, the money must he expended according to the conditions of the program approval by the superintendent of public instruction or any other approval agent. Within the miscellaneous programs fund, the trustees shall maintain a separate accounting for each local, state, or federal grant project and the indirect cost recoveries.

(2) The financial administration of the miscellaneous programs fund must be in accordance with the financial administration provisions of this title for a nonbudgoted fund."

Section 15. Repealer. Sections 15-36-323 and 15-36-325, MCA, are repealed.

Section 16. Saving clause. [This act] does not affect rights and duties that matured, ponalties that were incurred, or proceedings that were begnn before [the effective date of this act].

Section 17. Coordination instruction. (1) If House Bill No. 658 is passed and approved and House Bill No. 661 is not passed and approved, then:

(a) the version of 15-36-304(5)(b) applicable between December 31, 1998, and December 31, 1999, must read as follows:

"(b) strippor oil production

(i) pre-1985 wells	10.5%	16.9%
(ii) post-1985 wells	10.5%	14.8%
(iii) stripper exemption production		
(A) pre-1985 wells	5.5%	16.9%

HeinOnline -- 1999 vol. III 2391 1999

(B) post-1985 wells	5.5%	14.8%
(iv) stripper well exemption production	0.5%	14.8%"

(b) the version of 15-36-304(5)(b) and (c) applicable after December 31, 1999, must read as follows:

"(b) stripper oil production	5.5%	14.8%
(c) stripper well exemption production	0.5%	14.8%"

(2) If House Bill No. 661 is passed and approved and House Bill No. 658 is not passed and approved, then:

(a) the version of 15-36-304(5)(b) applicable between December 31, 1998, and December 31, 1999, must read as follows:

"(b) stripper oil production

(i) first 1 through 10 barrels a day production	5.5%	14.8%
(ii) more than 10 barrels a day production	9.0%	14.8%"

(b) the version of 15-36-304(5)(b) applicable after December 31, 1999, must read as follows:

"(b) stripper oil production

(i) first 1 through 10 barrels a day production	5.5%	14.8%
(ii) more than 10 barrels a day production	9.0%	14.8%"

(c) in the version of 15-36-304(5) applicable after December 31, 1999, subsection (c) relating to stripper exemption production must be deleted and subsequent subsections must be renumbered.

(3) If both House Bill No. 658 and House Bill No. 661 are passed and approved, then:

(a) the version of 15-36-304(5)(b) applicable between December 31, 1998, and December 31, 1999, must read as follows:

"(b) stripper oil production

(i) first 1 through 10 barrels a day production	5.5%	14.8%
(ii) more than 10 barrels a day production	9.0%	14.8%
(iii) stripper well exemption production	0.5%	14.8%"

(b) the version of 15-36-304(5)(b) and (c) applicable after December 31, 1999, must read as follows:

"(b) stripper oil production

(i) first 1 through 10 barrels a day production	5.5%	14.8%

(ii) more than 10 barrels a day production	9.0%	14.8%
(c) stripper well exemption production	0.5%	14.8%"

Section 18. Effective dates. (1) [Sections 1, 3, 5, 16, 17, 19, 20 and this section] are effective on passage and approval.

(2) [Sections 2, 4, and 6 through 15] are effective January 1, 2000.

Section 19. Applicability. (1) Except as provided in subsections (2) and (3), [this act] applies to oil and natural gas produced and sold and to wells drilled after December 31, 1999.

(2) [Sections 1, 3, and 5] apply retroactively, within the meaning of 1-2-109, to oil and natural gas produced and sold and to wells drilled after December 31, 1998.

(3) [Section 17] applies to oil produced and sold after June 30, 1999.

Section 20. Termination. [Sections 1, 3, and 5] terminate December 31, 1999.

Approved April 30, 1999

CHAPTER NO. 555

[SB 532]

AN ACT EXEMPTING BUSINESS PERSONAL PROPERTY AND LIVESTOCK USED BY AN INDUSTRIAL DAIRY FROM PROPERTY TAXATION; EXEMPTING BUSINESS PERSONAL PROPERTY USED BY AN INDUSTRIAL MILK PROCESSOR FROM PROPERTY TAXATION; DEFINING "INDUSTRIAL DAIRY" AND "INDUSTRIAL MILK PROCESSOR"; PROVIDING THAT MILK AND MILK PRODUCTS PROCESSED BY AN INDUSTRIAL DAIRY OR AN INDUSTRIAL MILK PROCESSOR BE FOR EXPORT FROM THE STATE; AMENDING SECTIONS 15-6-136, 15-6-138, AND 15-6-201, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-6-136, MCA, is amended to read:

"15-6-136. Class six property — description — taxable percentage. (1) Class six property includes:

(a) livestock *that are not exempt under 15-6-201(1)(z)* and other species of domestic animals and wildlife raised in domestication or a captive environment, except for cats, dogs, and other household pets not raised for profit;

(b) items of personal property intended for rent or lease in the ordinary course of business if each item of personal property satisfies all of the following:

(i) the acquired cost of the personal property is less than $15,000;

(ii) the personal property is owned by a business whose primary business income is from rental or lease of personal property to individuals ~~wherein~~ *when* no one customer of the business accounts for more than 10% of the total rentals or leases during a calendar year;

HeinOnline -- 1999 vol. III 2393 1999

(iii) the lease of the personal property is generally on an hourly, daily, or weekly basis; and

(c) machinery and equipment used in canola seed oil processing facilities if:

(i) the operators of those facilities employ a minimum of 15 full-time employees; and

(ii) a canola seed oil processing facility locates in the state of Montana after July 25, 1989; and

(d) machinery and equipment used in a malting barley facility.

(2) "Canola seed oil processing facility" means a facility that:

(a) extracts oil from canola seeds, refines the crude oil to produce edible oil, formulates and packages the edible oil into food products, or engages in any one or more of those processes; and

(b) employs at least 15 employees in a full-time capacity.

(3) "Malting barley facility" means a facility and integral machinery and equipment used principally to malt malting barley and includes machinery and equipment to mix, blend, transport, transfer, or process the barley and malt at the facility.

(4) Class six property is taxed at 4% of its market value."

Section 2. Section 15-6-138, MCA, is amended to read:

"15-6-138. Class eight property — description — taxable percentage. (1) Class eight property includes:

(a) all agricultural implements and equipment *that are not exempt under 15-6-201(1)(z)*;

(b) all mining machinery, fixtures, equipment, tools that are not exempt under 15-6-201(1)(r), and supplies except those included in class five;

(c) all manufacturing machinery, fixtures, equipment, tools that are not exempt under 15-6-201(1)(r) *or (1)(z)*, and supplies except those included in class five;

(d) all goods and equipment that are intended for rent or lease, except goods and equipment that are specifically included and taxed in another class;

(e) special mobile equipment as defined in 61-1-104;

(f) furniture, fixtures, and equipment, except that specifically included in another class, used in commercial establishments as defined in this section;

(g) x-ray and medical and dental equipment;

(h) citizens' band radios and mobile telephones;

(i) radio and television broadcasting and transmitting equipment;

(j) cable television systems;

(k) coal and ore haulers;

(l) theater projectors and sound equipment; and

(m) all other property that is not included in any other class in this part, except that property that is subject to a fee in lieu of a property tax.

HeinOnline -- 1999 vol. III 2394 1999

(2) As used in this section, "coal and ore haulers" means nonhighway vehicles that exceed 18,000 pounds per axle and that are primarily designed and used to transport coal, ore, or other earthen material in a mining or quarrying environment.

(3) "Commercial establishment" includes any hotel; motel; office; petroleum marketing station; or service, wholesale, retail, or food-handling business.

(4) Class eight property is taxed at:

~~(a) 7% of its market value for tax year 1997; and~~

~~(b)~~ 6% of its market value ~~for tax years beginning after December 31, 1997~~."

Section 3. Section 15-6-201, MCA, is amended to read:

"15-6-201. Exempt categories. (1) The following categories of property are exempt from taxation:

(a) except as provided in 15-24-1203, the property of:

(i) the United States, except:

(A) if congress passes legislation that allows the state to tax property owned hy the federal government or an agoncy created by congress; or

(B) as provided in 15-24-1103;

(ii) the state, counties, cities, towns, and school districts;

(iii) irrigation districts organized under the laws of Montana and not operating for profit;

(iv) municipal corporations;

(v) public libraries; and

(vi) rural fire districts and other entities providing fire protection under Title 7, chapter 33;

(b) buildings, with land that they occupy and furnishings in the buildings, that are owned by a church and used for actual religious worship or for residences of the clergy, togother with adjacent land reasonably necessary for convenient use of tbe buildings;

(c) property used exclusively for agricultural and horticultural societies, for educational purposes, and for nonprofit health care facilities, as defined in 50-5-101, licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3. A health care facility that is not licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3, is not exempt.

(d) property that is:

(i) owned and held by an association or corporation organized under Title 35, chapter 2, 3, 20, or 21;

(ii) devoted exclusively to use in connection with a cemetery or cemeteries for which a permanent care and improvement fund has heen established as provided for in Title 35, chapter 20, part 3; and

(iii) not maintained and operated for private or corporate profit;

HeinOnline -- 1999 vol. III 2395 1999

(e) property that is owned or property that is leased from a federal, state, or local governmental entity by institutions of purely public charity if the property is directly used for purely public charitable purposes;

(f) evidence of debt secured by mortgages of record upon real or personal property in the state of Montana;

(g) public museums, art galleries, zoos, and observatories that are not used or held for private or corporate profit;

(h) all household goods and furniture, including but not limited to clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by the owner for personal and domestic purposes or for furnishing or equipping the family residence;

(i) truck canopy covers or toppers and campers;

(j) a bicycle, as defined in 61-1-123, used by the owner for personal transportation purposes;

(k) motor homes;

(l) all watercraft;

(m) motor vehicles, land, fixtures, buildings, and improvements owned by a cooperative association or nonprofit corporation organized to furnish potable water to its members or customers for uses other than the irrigation of agricultural land;

(n) the right of entry that is a property right reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise, or succession to enter land with a surface title that is held by another to explore, prospect, or dig for oil, gas, coal, or minerals;

(o) (i) property that is owned and used by a corporation or association organized and operated exclusively for the care of persons with developmental disabilities, persons with mental illness, or persons with physical or mental impairments that constitute or result in substantial impediments to employment and that is not operated for gain or profit; and

(ii) property that is owned and used by an organization owning and operating facilities that are for the care of the retired, aged, or chronically ill and that are not operated for gain or profit;

(p) all farm buildings with a market value of less than $500 and all agricultural implements and machinery with a market value of less than $100;

(q) property owned by a nonprofit corporation that is organized to provide facilities primarily for training and practice for or competition in international sports and athletic events and that is not held or used for private or corporate gain or profit. For purposes of this subsection (1)(q), "nonprofit corporation" means an organization that is exempt from taxation under section 501(c) of the Internal Revenue Code and incorporated and admitted under the Montana Nonprofit Corporation Act.

(r) the first $15,000 or less of market value of tools owned by the taxpayer that are customarily hand-held and that are used to:

(i) construct, repair, and maintain improvements to real property; or

(ii) repair and maintain machinery, equipment, appliances, or other personal property;

(s) harness, saddlery, and other tack equipment;

(t) a title plant owned by a title insurer or a title insurance producer, as those terms are defined in 33-25-105;

(u) timber as defined in 15-44-102;

(v) all trailers as defined in 61-1-111, semitrailers as defined in 61-1-112, pole trailers as defined in 61-1-114, and travel trailers as defined in 61-1-131;

(w) all vehicles registered under 61-3-456;

(x) (i) buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors, including buses, trucks, and truck tractors apportioned under Title 61, chapter 3, part 7; and

(ii) personal property that is attached to a bus, truck, or truck tractor that is exempt under subsection (1)(x)(i); ~~and~~

(y) motorcycles and quadricycles; *and*

(z) personal property used by an industrial dairy or an industrial milk processor and dairy livestock used by an industrial dairy.

(2) (a) For the purposes of subsection (1)(e), the term "institutions of purely public charity" includes any organization that meets the following requirements:

(i) The organization qualifies as a tax-exempt organization under the provisions of section 501(c)(3), Internal Revenue Code, as amended.

(ii) The organization accomplishes its activities through absolute gratuity or grants. However, the organization may solicit or raise funds by the sale of merchandise, memberships, or tickets to public performances or entertainment or by other similar types of fundraising activities.

(b) For the purposes of subsection (1)(g), the term "public museums, art galleries, zoos, and observatories" means governmental entities or nonprofit organizations whose principal purpose is to hold property for public display or for use as a museum, art gallery, zoo, or observatory. The exempt property includes all real and personal property reasonably necessary for use in connection with the public display or observatory use. Unless the property is leased for a profit to a governmental entity or nonprofit organization by an individual or for-profit organization, real and personal property owned by other persons is exempt if it is:

(i) actually used by the governmental entity or nonprofit organization as a part of its public display;

(ii) held for future display; or

(iii) used to house or store a public display.

(3) For the purposes of subsection (1)(z):

(a) "industrial dairy" means a large-scale dairy operation with 1,000 or more milking cows and includes the dairy livestock and integral machinery and equipment that the dairy uses to produce milk and milk products solely for export from the state, either directly by the dairy or after the milk or milk product has been further processed by an industrial milk processor. After export, any unprocessed milk must be further processed into other dairy products.

HeinOnline -- 1999 vol. III 2397 1999

(b) "industrial milk processor" means a facility and integral machinery used solely to process milk into milk products for export from the state.

~~(3)~~*(4)* The following portions of the appraised value of a capital investment in a recognized nonfossil form of energy generation or low emission wood or biomass combustion devices, as defined in 15-32-102, are exempt from taxation for a period of 10 years following installation of the property:

(a) $20,000 in the case of a single-family residential dwelling;

(b) $100,000 in the case of a multifamily residential dwelling or a nonresidential structure."

Section 4. Applicability. [This act] applies to industrial dairies and industrial milk processors established after June 30, 1999.

Approved April 30, 1999

CHAPTER NO. 556

[HB 174]

AN ACT GENERALLY REVISING THE TAXATION OF ELECTRICAL GENERATION FACILITIES TO COMPORT WITH THE EMERGING COMPETITIVE MARKETS IN THE SUPPLY OF ELECTRICITY; CREATING CLASS THIRTEEN PROPERTY TO INCLUDE ELECTRICAL GENERATION FACILITIES; PROVIDING A DEFINITION OF "ELECTRICAL GENERATION FACILITIES"; PROVIDING AN EXCEPTION FOR QUALIFYING SMALL POWER PRODUCTION FACILITIES; TAXING ALL ELECTRICAL GENERATION FACILITIES THAT WERE PREVIOUSLY TAXED UNDER CLASS NINE AS CLASS THIRTEEN PROPERTY; TAXING CLASS THIRTEEN PROPERTY AT 6 PERCENT OF ITS MARKET VALUE; IMPOSING A 0.015 CENT PER KILOWATT-HOUR WHOLESALE ENERGY TRANSACTION TAX ON THE TRANSMISSION OF ELECTRICITY IN THE STATE; PROVIDING EXEMPTIONS FROM THE WHOLESALE ENERGY TRANSACTION TAX; ALLOWING THE ELECTRIC ENERGY PRODUCERS' LICENSE TAX TO BE ITEMIZED ON A CUSTOMER'S BILL; PROVIDING FOR THE DISTRIBUTION OF WHOLESALE ENERGY TRANSACTION TAX REVENUE TO TAXING JURISDICTIONS; PROVIDING A STATUTORY APPROPRIATION FOR THE DISTRIBUTION OF TAX REVENUE TO TAXING JURISDICTIONS; REVISING THE CLASSIFICATION OF COUNTIES; REVISING THE DEBT LIMITS OF TAXING JURISDICTIONS; AMENDING SECTIONS 7-1-2111, 7-7-107, 7-7-2101, 7-7-2203, 7-7-4201, 7-7-4202, 7-14-2524, 7-14-2525, 7-16-2327, 7-16-4104, 15-6-141, 15-51-102, 17-7-502, 20-9-406, AND 69-8-211, MCA; AND PROVIDING EFFECTIVE DATES, APPLICABILITY DATES, AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 14] may be cited as the "Electrical Generation Tax Reform Act".

Section 2. Legislative findings and declaration of purpose. (1) The legislature finds that the restructuring of the electric utility industry in Montana implemented by Chapter 505, Laws of 1997, including the unbundling of services and the provision that allows Montana customers to choose their supplier of

HeinOnline -- 1999 vol. III 2398 1999

electricity and related services in a competitive market, renders the existing methed of property taxation of the electric utility industry an impediment to competition.

(2) The legislature further finds that the restructuring of the electric utility industry necessitates changes to the existing system of property taxation that include reducing the tax rate applied to electrical generation facilities and imposing a replacement tax in order to:

(a) avoid placing a supplier engaged in the business of generating, supplying, or selling electricity at a competitive advantage or disadvantage;

(b) preserve the revenue base of the existing property tax system for taxing jurisdictions in the state;

(c) minimize the shift in tax burden and the imposition of a higher tax burden on consumers of electricity; and

(d) minimize additional administrative costs and the burden of compliance.

(3) The legislature further finds that a reduction in the property tax rates applied to electrical generation facilities must be replaced by a wholesale energy transmission tax imposed on each kilowatt hour of electricity transmitted in the state.

(4) The legislature further finds that existing property tax rates applied to electrical transmission and distribution systems are appropriate for a regulated function.

(5) The legislature therefore declares that there is a compelling public need to modify the existing system of property taxation of electrical generation facilities and to impose a wholesale energy transaction tax on kilowatt hours of electricity transmitted in the state to ensure competitive neutrality and to provide replacement revenue te taxing jurisdictions in the state.

Seetion 3. Definitions. As used in [sections 1 through 14], unless the context requires otherwise, the following definitions apply:

(1) "Customer" or "purchaser" means a person who acquires for consideration electricity for use or consumption and not for resale.

(2) "Distribution services provider" means a person controlling or operating distribution facilities for distribution of electricity to the public. A distribution services provider includes a purchaser who takes electricity directly from a transmission line and a purchaser who generates electricity for the purchaser's own use but does not include electricity generated by the purchaser for noncommercial use or for agricultural use.

(3) "Person" means an individual, estate, trust, receiver, cooperative association, corporation, limited liability company, firm, partnership, joint venture, syndicate, or other entity, including any gas or electric utility owned or operated by a county, municipality, or other pelitical subdivision of the state.

(4) "Transmission services provider" means a person controlling or operating transmission facilities as that term is defined in 69-8-103.

Section 4. Wholesale energy transaction tax — rate of tax — exemptions — cost recovery. (1) (a) Except as provided in subsection (3), a wholesale energy transaction tax is imposed upon electricity transmitted within the state as provided in this section. The tax is imposed at a rate of 0.015 cent

HeinOnline -- 1999 vol. III 2399 1999

per kilowatt hour of electricity transmitted by a transmission services provider in the state.

(b) For electricity produced in the state for delivery outside of the state, the taxpayer is the person owning or operating the electrical generation facility producing the electricity. The transmission services provider shall collect the tax from the person based upon the kilowatt hours introduced onto transmission lines from the electrical generation facility. The amount of kilowatt hours subject to tax must be reduced by 5% to compensate for transmission line losses.

(c) For electricity produced in the state for delivery within the state, the taxpayer is the distribution services provider. The transmission services provider shall collect the tax based upon the amount of kilowatt hours of electricity delivered to the distribution services provider. The taxpayer may apply for a refund for overpayment of taxes pursuant to [section 13].

(d) For electricity produced outside the state for delivery inside the state, the taxpayer is the distribution services provider. The transmission services provider shall collect the tax based upon the amount of kilowatt hours of electricity delivered to the distribution services provider.

(e) For electricity delivered to a distribution services provider that is a rural electric cooperative for delivery te purchasers that have opted for customer choice under the provisions of Title 69, chapter 8, part 3, the taxpayer is the distribution services provider. The transmission services provider shall collect the tax based on the amount of kilowatt hours of electricity delivered to the distribution services provider that is attributable to customers that have opted for customer choice.

(f) For electricity delivered to a distribution services provider that prior to May 2, 1999, was owned by a public utility as defined in 69-3-101, the tax is imposed on the successor distribution services provider. The transmission services provider shall collect the tax based upon the amount of kilowatt hours of electricity delivered to the distrihution services provider.

(2) (a) If more than one transmission services provider transmits electricity, the last transmission services provider transmitting or delivering the electricity shall collect the tax.

(h) If the transmission services provider is an agency of the United States government, the distribution services provider receiving the electricity shall self-assess the tax subject to the provisions of [sections 1 through 14].

(c) If an electrical generation facility located within the state produces electricity for sale inside and outside the state, sales within the state are considered to have come from electricity produced within the state for purposes of the tax imposed by this section.

(3) (a) Electricity transmitted through the state that is not produced or delivered in the state is exempt from the tax imposed by this section.

(b) Electricity produced in the state hy an agency of the of the United States government for delivery outside of the state is exempt from the tax imposed hy this section.

(c) Electricity delivered to a distribution services provider that is a municipal utility described in 69-8-103(5)(b) or a rural electric cooperative organized under the provisions of Title 35, chapter 18, is exempt from the tax imposed hy this section.

HeinOnline -- 1999 vol. III 2400 1999

(d) Electricity delivered to a purchaser that receives its power directly from a transmission or distribution facility owned by an entity of the United States government on or before May 2, 1997, or electricity that is transmitted exclusively on transmission or distribution facilities owned by an entity of the United States government on or before May 2, 1997, is exempt from the tax imposed by this section.

(e) Electricity delivered by a distribution services provider to a customer with loads of 1,000 kilowatts or greater that was first served by a public utility after December 31, 1996, is exempt from the tax imposed by this section, provided that the customer purchases the electricity pursuant to a contract or contracts that establisb the purchase price or prices of electricity. The exemption allowed by this subsection (3)(e) does not apply to electricity purchased under a renewal or extension of an existing contract or existing contracts.

(4) A distribution services provider is allowed to recover the tax imposed by this section and the administrative costs to comply witb [sections 1 through 14] in its rates.

Section 5. Multistate exemption. A person, upon proof that tbe person has paid a tax in another state on the transmission of electricity, is allowed a credit against the tax imposed by [sections 1 through 14] if tbe tax has been paid in another state.

Section 6. Collection of wholesale energy transaction tax — disposition of revenue. (1) A transmission services provider shall collect the tax imposed under [section 4] from the taxpayer and pay the tax collected to the department. If the transmission services provider collects a tax in excess of the tax imposed by [section 4], both the tax and the excess must be remitted to the department.

(2) A self-assessing distribution services provider is subject to the provisions of [sections 1 through 14].

(3) The wholesale energy transaction tax collected under [sections 1 through 14] must be deposited in the general fund.

Section 7. Returns — payment — authority of department. (1) On or before the 30th day of the montb following the end of tbe calendar quarter in wbicb the tax imposed by [sections 1 through 14] is payable, a return, on a form provided by the department, and payment of the tax for the preceding calendar quarter must be filed with the department.

(2) Each person engaged in transmitting electricity in this state tbat is subject to the tax under [sections 1 through 14] sball file a return.

(3) (a) A person required to collect and pay to the department the tax imposed by [sections 1 through 14] shall keep records, render statements, make returns, and comply with the provisions of [sections 1 through 14] and the rules prescribed by the department. Each return or statement must include the information required by the rules of the department.

(b) For tbe purpose of determining compliance with tbe provisions of [sections 1 through 14], tbe department is authorized to examine or cause to be examined any books, papers, records, or memoranda relevant to making a determination of the amount of tax due, whether the books, papers, records, or memoranda are tbe property of or in the possession of tbe person filing tbe return or another person. In determining compliance, the department may use

HeinOnline -- 1999 vol. III 2401 1999

statistical sampling and other sampling techniques consistent with generally accepted auditing standards. The department may also:

(i) require the attendance of a person having knowledge or information relevant to a return;

(ii) compel the production of books, papers, records, or memoranda by the person required to attend;

(iii) implement the provisions of 15-1-703 if the department determines that the collection of the tax is or may be jeopardized because of delay;

(iv) take testimony on matters material to the determination; and

(v) administer oaths or affirmations.

(4) Pursuant to rules established by the department, returns may be computer-generated and electronically filed.

Section 8. Examination of return — adjustments — delivery of notices and demands. (1) If the department determines that the amount of tax due is different from the amount reported, the amount of tax computed on the basis of the examination conducted pursuant to [section 7] constitutes the tax to he paid.

(2) If the tax due exceeds the amount of tax reported as due on the taxpayer's return, the excess must be paid to the department within 30 days after notice of the amount and demand for payment is mailed or delivered to the person making the return unless the taxpayer files a timely objection as provided in 15-1-211. If the amount of the tax found due by the department is less than that reported as due on the return and has been paid, the excess must be credited or, if no tax liability exists or is likely to exist, refunded to the person making the return.

(3) The notice and demand provided for in this section must contain a statement of the computation of the tax and interest and must be:

(a) sent by mail to the taxpayer at the address given in the taxpayer's return, if any, or to the taxpayer's last-known address; or

(b) served personally upon the taxpayer.

(4) A taxpayer filing an objection to the demand for payment is subject to and governed by the uniform tax review procedure provided in 15-1-211.

Section 9. Penalties and interest for violation. (1) (a) A person who fails to file a return as required by [section 7] must be assessed a penalty as provided in [section 1 of House Bill No. 132]. The department may waive the penalty as provided in 15-1-206.

(b) A person who fails to file the return required by [section 7] and to pay the tax before the due date must be assessed penalty and interest as provided in [section 1 of House Bill No. 132]. The department may waive any penalty pursuant to 15-1-206.

(2) A person who purposely fails to pay the tax when due must be assessed an additional penalty as provided in [section 1 of House Bill No. 132].

Section 10. Authority to collect delinquent taxes. (1) (a) The department shall collect taxes that are delinquent as determined under [sections 1 through 14].

(b) If a tax imposed by [sections 1 through 14] or any portion of the tax is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7.

(2) In addition to any other remedy, in order to collect delinquent taxes after the time for appeal has expired, the department may direct tbe offset of tax refunds or other funds that are due to the taxpayer from the state, except wages subject to the provisions of 25-13-614 and retirement benefits.

(3) As provided in 15-1-705, the taxpayer has the right to a review on the tax liability prior to any offset by the department.

(4) The department may file a claim for stato funds on behalf of the taxpayer if a claim is required before funds are available for offset.

Section 11. Interest on deficiency — penalty. (1) Interest accrues on unpaid or delinquent taxes as provided in [section 1 of House Bill No. 132]. The interest must be computed from the date on which the return and tax were originally due.

(2) If tbe payment of a tax deficiency is not made within 60 days after it is due and payable and if the deficiency is due to negligence on the part of the taxpayer but without fraud, the penalty imposed by [section 1(1)(c) of House Bill No. 132] must be added to the amount of tbe deficiency.

Section 12. Limitations. (1) Except in the case of a person who purposely or knowingly, as those terms are defined in 45-2-101, files a false or fraudulent return violating the provisions of [sections 1 through 14], a deficiency may not be assessed or collected with respect to a month or quarter for which a return is filed unless tbe notice of additional tax proposed to be assessed is mailed to or personally served upon the taxpayer within 5 years from the date on which the return was filed. For purposes of this section, a return filed before the last day prescribed for filing is considered to be filed on the last day.

(2) If, before the expiration of the 5-year period prescribed in suhsection (1) for assessment of the tax, the taxpayer consents in writing to an assessment after expiration of the 5-year poriod, a deficiency may be assessed at any time prior to the expiration of the poriod consented to.

Section 13. Refunds — intercst — limitations. (1) A claim for a refund or credit as a result of overpayment of taxes collected under [sections 1 through 14] must be filed within 5 years of the date on which the return was due, without regard to any extension of time for filing.

(2) (a) Interest on an overpayment must be paid or credited at the same rate as the interest rate charged on [unpaid taxes as provided in [section 1 of House Bill No. 132]].

(b) Except as provided in subsection (2)(c), interest must be paid from the date on which the return was due or the date of overpayment, whicbever is later. Interest does not accrue during any period in which the processing of a claim is delayed more than 30 days because the taxpayer has not furnisbed necessary information.

(c) The department is not required to pay interest if:

(i) the overpayment is refunded or credited within 6 months of the date on which a claim was filed; or

(ii) the amount of overpayment and interest does not exceed $1.

HeinOnline -- 1999 vol. III 2403 1999

Section 14. Administration — rules. The department shall:

(1) administer and enforce the provisions of [sections 1 through 14];

(2) cause to be prepared and distributed forms and information that may be necessary to administer the provisions of [sections 1 through 14]; and

(3) adopt rules that may he necessary or appropriate to administer and enforce the provisions of [sections 1 through 14].

Section 15. Electrical generation property tax reduction — reimbursement to local taxing jurisdictions — statutory appropriation. (1) (a) The department shall calculate the amount of revenue lost to each local taxing jurisdiction, using previous year mill levies, because of the reduction in the tax rate from 12% to 6% applied to electrical generation facilities described in [section 27]. The department shall total the amounts for all taxing jurisdictions within the county that had electrical generation facilities on January 1, 1997.

(b) The calculation niust be based on tlie number of mills levied in each jurisdiction for the previous tax year. The amount of the reimbursement is equal to tlie difference of the amount determined by multiplying 12% of the assessed value of the electrical generation facilities described in [section 27] in tax year 1999 in the local taxing jurisdiction by the previous tax year mill levy in the jurisdiction and the amount determined by multiplying 6% of tlie assessed value of the electrical generation facilities described in [section 27] in the current tax year in tlie taxing jurisdiction by the previous tax year mill levy in the jurisdiction.

(2) Each fiscal year, beginning in the fiscal year beginning July 1, 2000, the department shall biannually remit to each county treasurer 50% of the amount of county property tax revenue lost because of tlie rate reduction of electrical generation facilities from 12% to 6%, as determined under subsection (1). The payment must be made on or before November 30 and May 31 of each fiscal year, as adjusted by the result of dissolved or combined taxing jurisdictions, as provided for in subsection (5).

(3) Upon receipt of the reimbursement from the department, the county treasurer shall distribute the reimbursement to each taxing jurisdiction as calculated by the department.

(4) (a) For the purposes of this section and subject to subsection (5), "local taxing jurisdiction" means a jurisdiction levying mills against electrical generation facilities and includes but is not limited to a county, city, consolidated county and city gevernment, school district, community college district, tax increment financing district, and miscellaneous taxing district. The term includes countywide mills levied for equalization of retirement under 20-9-501 or transportation under Title 20, chapter 10, part 1.

(b) The term does not include county or state school equalization levies provided for in 20-9-331, 20-9-333, and 20-9-360 or the 6-mill university levy. It also does not include any state levy for welfare programs provided for in 53-2-813.

(5) The following apply to taxing jurisdictions that were altered after tax year 1999:

(a) A taxing jurisdiction that existed in tax year 1999 and that no longer exists is not entitled to reimbursement under this section.

(b) A taxing jurisdiction that existed in tax year 1999 and that is split into two or more taxing jurisdictions or that is annexed to or is consolidated with

HeinOnline -- 1999 vol. III 2404 1999

another taxing jurisdiction is entitled to reimbursement based on the portion of 1999 taxable value within each new taxing jurisdiction. The department shall determine the portion of 1999 taxable value located in each taxing jurisdiction.

(c) A taxing jurisdiction that did not exist in tax year 2000 is not entitled to reimbursement under this section unless the jurisdiction was created as described in subsection (5)(b).

(6) The amounts necessary for the administration of this section are statutorily appropriated, as provided in 17-7-502, from the general fund to reimburse eligible taxing jurisdictions for reductions in tax rates on electrical generation facilities.

Section 16. Section 7-1-2111, MCA, is amended to read:

"7-1-2111. Classification of counties. (1) For the purpose of regulating the compensation and salaries of all county officers, not otherwise provided for, and for fixing the penalties of officers' bonds, the counties of this state must be classified according to the taxable valuation of the property in the counties upon which the tax levy is made, except for vehicles subject to taxation under 61-3-504, as follows:

(a) first class—all counties having a taxable valuation of $50 million or more;

(b) second class—all counties having a taxable valuation of $30 million or more and less than $50 million;

(c) third class—all counties having a taxable valuation of $20 million or more and less than $30 million;

(d) fourth class—all counties having a taxable valuation of $15 million or more and less than $20 million;

(e) fifth class—all counties having a taxable valuation of $10 million or more and less than $15 million;

(f) sixth class—all counties having a taxable valuation of $5 million or more and less than $10 million;

(g) seventh class—all counties having a taxable valuation of less than $5 million.

(2) As used in this section, "taxable valuation" means the taxable value of taxable property in the county as of the time of determination plus:

(a) that portion of the taxable value of the county on December 31, 1981, attributable to automobiles and trucks having a rated capacity of three-quarters of a ton or less;

(b) that portion of the taxable value of the county on December 31, 1989, attributable to automobiles and trucks having a manufacturer's rated capacity of more than three-quarters of a ton but less than or equal to 1 ton;

(c) that portion of the taxable value of the county on December 31, 1997, attributable to buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors;

(d) that portion of the taxable value of the county on December 31, 1997, attributable to trailers, pole trailers, and semitrailers with a declared weight of less than 26,000 pounds;

HeinOnline -- 1999 vol. III 2405 1999

(e) the value provided by the department of revenue under 15-36-324(13); ~~and~~

(f) 50% of the taxable value in the county on December 31, 1999, attributable to electrical generation property under 15-6-141; and

~~(f)~~*(g)* 6% of the taxable value of the county on January 1 of each tax year."

Section 17. Section 7-7-107, MCA, is amended to read:

"7-7-107. Limitation on amount of bonds for city-county consolidated units. (1) Except as provided in 7-7-108, ~~no~~ *a* city-county consolidated local government may *not* issue bonds for any purpose ~~which~~ *that*, with all outstanding indebtedness, ~~may exceed~~ *exceed* 39% of the taxable value of the property ~~therein~~ *in the local government* subject to taxation, as ascertained by the last assessment for state and county taxes, *plus an additional 50% of the taxable value attributable to electrical generation property under 15-6-141 within the local government for tax year 1999, multiplied by 39%.*

(2) The issuing of bonds for the purpose of funding or refunding outstanding warrants or bonds is not the incurring of a new or additional indebtedness but is merely the changing of the evidence of outstanding indebtedness."

Section 18. Section 7-7-2101, MCA, is amended to read:

"7-7-2101. Limitation on amount of county indebtedness. (1) A county may not become indebted in any manner or for any purpose in an amount, including existing indebtedness, in the aggregate exceeding 23% of the total of the taxable value of the property in the county subject to taxation~~,~~ plus:

(a) the value provided by the department of revenue in 15-36-324(13), as ascertained by the last assessment for state and county taxes previous to the incurring of the indebtedness~~, plus,~~;

(b) an additional 50% of the taxable value attributable to electrical generation property under 15-6-141 within the county for tax year 1999, multiplied by 23%; and

(c) ~~for indebtedness to be incurred during fiscal year 1997, an additional 11% of the taxable value of class eight property within the county for tax year 1995, for indebtedness to be incurred during fiscal year 1998, an additional 22% of the taxable value of class eight property within the county for tax year 1995, and~~ for indebtedness to be incurred during fiscal years 1999 through 2008, an additional 33% of the taxable value of class eight property within the county for tax year 1995, ~~in each case of class eight property,~~ multiplied by 23%.

(2) A county may not incur indebtedness or liability for any single purpose to an amount exceeding $500,000 without the approval of a majority of the electors of the county voting at an election to be provided by law, except as provided in 7-7-2402, 7-21-3413, and 7-21-3414.

(3) This section does not apply to the acquisition of conservation easements as set forth in Title 76, chapter 6."

Section 19. Section 7-7-2203, MCA, is amended to read:

"7-7-2203. Limitation on amount of bonded indebtedness. (1) Except as provided in subsections (2) ~~through (4)~~ *and (3)*, a county may not issue general obligation bonds for any purpose that, with all outstanding bonds and warrants

HeinOnline -- 1999 vol. III 2406 1999

except emergency bonds, will exceed 11.25% of the total of the taxable value of the property in the county~~,~~ plus:

(a) the value provided by the department of revenue under 15-36-324(13), to be ascertained by the last assessment for state and county taxes prior to the proposed issuance of bonds~~, plus,~~;

(b) ~~for general obligation bonds to be issued during fiscal year 1997, an additional 11% of the taxable value of class eight property within the county for tax year 1995, for general obligation bonds to be issued during fiscal year 1998, an additional 22% of the taxable value of class eight property within the county for tax year 1995, and~~ for general obligation bonds to be issued during fiscal years 1999 through 2008, an additional 33% of the taxable value of class eight property within the county for tax year 1995, ~~in each case of class eight property,~~ multiplied by 11.25%; *and*

(c) an additional 50% of the taxable value attributable to electrical generation property under 15-6-141 within the county for tax year 1999, multiplied by 11.25%.

~~(2) In addition to the bonds allowed by subsection (1), a county may issue bonds that, with all outstanding bonds and warrants, will not exceed 27.75% of the total of the taxable value of the property in the county subject to taxation, plus the value provided by the department of revenue under 15-36-324(13), when necessary to do so, to be ascertained by the last assessment for state and county taxes, plus, for bonds to be issued during fiscal year 1997, an additional 11% of the taxable value of class eight property within the county for tax year 1995, and for bonds to be issued during fiscal year 1998, an additional 22% of the taxable value of class eight property within the county for tax year 1995.~~

~~(3)~~*(2)* In addition to the bonds allowed by ~~subsections~~ *subsection* (1) ~~and (2)~~, a county may issue bonds for the construction or improvement of a ~~jail~~ *detention center* that will not exceed 12.5% of the taxable value of the property in the county subject to taxation, plus the adjustments permitted by ~~7-7-2101~~ *subsection (1).*

~~(4)~~*(3)* The limitation in subsection (1) does not apply to refunding bonds issued for the purpose of paying or retiring county bonds lawfully issued prior to January 1, 1932, or to bonds issued for the repayment of tax protests lost by the county."

Section 20. Section 7-7-4201, MCA, is amended to read:

"7-7-4201. Limitation on amount of bonded indebtedness. (1) Except as otherwise provided, a city or town may not issue bonds or incur other indebtedness for any purpose in an amount that with all outstanding and unpaid indebtedness will exceed 28% of the taxable value of the property in the city or town subject to taxation, to be ascertained by the last assessment for state and county taxes, plus~~,~~:

(a) ~~for bonds to be issued or other indebtedness to be incurred during fiscal year 1997, an additional 11% of the taxable value of class eight property within the city or town for tax year 1995, for bonds to be issued or other indebtedness to be incurred during fiscal year 1998, an additional 22% of the taxable value of class eight property within the city or town for tax year 1995, and~~ for bonds to be issued or other indebtedness to be incurred during fiscal years 1999 through 2008, an additional 33% of the taxable value of class eigbt property within the city or town for tax year 1995, ~~in each case of class eight property,~~ multiplied by 28%; *and*

HeinOnline -- 1999 vol. III 2407 1999

(b) an additional 50% of the taxable value attributable to electrical generation property under 15-6-141 within the city or town for tax year 1999, multiplied by 28%.

(2) The issuing of bonds for the purpose of funding or refunding outstanding warrants or bonds is not the incurring of a new or additional indebtedness but is merely the changing of the evidence of outstanding indebtedness.

(3) The limitation in subsection (1) does not apply to bonds issued for the repayment of tax protests lost by the city or town."

Section 21. Section 7-7-4202, MCA, is amended to read:

"7-7-4202. Special provisions relating to water and sewer systems. (1) Notwithstanding the provisions of 7-7-4201, for the purpose of constructing a sewer system, procuring a water supply, or constructing or acquiring a water system for a city or town that owns and controls the water supply and water system and devotes the revenue from the water supply and water system to the payment of the debt, a city or town may incur an additional indebtedness by borrowing money or issuing bonds.

(2) The additional total indebtedness that may be incurred by borrowing money or issuing bonds for the construction of a sewer system, for the procurement of a water supply, or for both of the purposes, including all indebtedness that is contracted and that is unpaid or outstanding, may not in the aggregate exceed 55% ~~over and above~~ *of* the ~~28%,~~ *debt limitation* referred to in 7-7-4201~~,~~ of the taxable value of the property in the city or town subject to taxation, to be ascertained by the last assessment for state and county taxes, plus~~,~~:

(a) ~~for indebtedness to be incurred during fiscal year 1997, an additional 11% of the taxable value of class eight property within the city or town for tax year 1995, for indebtedness to be incurred during fiscal year 1998, an additional 22% of the taxable value of class eight property within the city or town for tax year 1995, and~~ for indebtedness to be incurred during fiscal years 1999 through 2008, an additional 33% of the taxable value of class eight property within the city or town for tax year 1995, ~~in each case of class eight property,~~ multiplied by 55%*; and*

(b) an additional 50% of the taxable value attributable to electrical generation property under 15-6-141 within the city or town for tax year 1999, multiplied by 55%."

Section 22. Section 7-14-2524, MCA, is amended to read:

"7-14-2524. Limitation on amount of bonds issued — excess void. (1) Except as otherwise provided in 7-7-2203, 7-7-2204, and this section, a county may not issue bonds that, with all outstanding bonds and warrants except emergency bonds, will exceed 11.25% of the total of the taxable value of the property in the county~~,~~ plus:

(a) the value provided by the department of revenue under 15-36-324(13). The taxable property and the amount of taxes levied on new production, production from horizontally completed wells, and incremental production must be ascertained by the last assessment for state and county taxes prior to the issuance of the bonds.

(b) an additional 50% of the taxable value attributable to electrical generation property under 15-6-141 within the county for tax year 1999, multiplied by 11.25%.

HeinOnline -- 1999 vol. III 2408 1999

(2) A county may issue bonds that, with all outstanding bonds and warrants, will exceed 11.25% but will not exceed 22.5% of the total of the taxable value of the property, *plus an additional 50% of the taxable value attributable to electrical generation property under 15-6-141 within the county for tax year 1999, multiplied by the amount that exceeds 11.25% but does not exceed 22.5%*, plus the value provided by the department of revenue under 15-36-324(13) when necessary for the purpose of replacing, rebuilding, or repairing county buildings, bridges, or highways that have been destroyed or damaged by an act of God or by a disaster, catastrophe, or accident.

(3) The value of the bonds issued and all other outstanding indebtedness of the county may not exceed 22.5% of the total of the taxable value of the property within the county, ~~plus the value provided by the department of revenue under 15-36-324(13), as ascertained by the last preceding general assessment~~ *as adjusted in this section.*"

Section 23. Section 7-14-2525, MCA, is amended to read:

"**7-14-2525. Refunding agreements and refunding bonds authorized.** (1) Whenever the total indebtedness of a county exceeds 22.5% of the total of the taxable value of the property in the county, ~~plus the value provided by the department of revenue under 15-36-324(13)~~ *as adjusted in 7-14-2524*, and the board determines that the county is unable to pay the indebtedness in full, the board may:

(a) negotiate with the bondholders for an agreement under which the bondholders agree to accept less than the full amount of the bonds and the accrued unpaid interest in satisfaction of the bonds;

(b) enter into the agreement;

(c) issue refunding bonds for the amount agreed upon.

(2) These bonds may be issued in more than one series, and each series may be either amortization or serial bonds.

(3) The plan agreed upon between the board and the bondholders must be embodied in full in the resolution providing for the issuance of the bonds."

Section 24. Section 7-16-2327, MCA, is amended to read:

"**7-16-2327. Indebtedness for park purposes.** (1) Subject to the provisions of subsection (2), a county park board, in addition to powers and duties now given under law, may contract an indebtedness in behalf of a county, upon the credit of the county, in order to carry out its powers and duties.

(2) (a) The total amount of indebtedness authorized to be contracted in any form, including the then-existing indebtedness, may not at any time exceed 13% of the total of the taxable value of the taxable property in the county, *as ascertained by the last assessment for state and county taxes previous to the incurring of the indebtedness*, plus:

(i) the value provided by the department of revenue under 15-36-324(13), ~~ascertained by the last assessment for state and county taxes previous to the incurring of the indebtedness~~; *and*

(ii) an additional 50% of the taxable value attributable to electrical generation property under 15-6-141 within the county for tax year 1999, multiplied by 13%.

HeinOnline -- 1999 vol. III 2409 1999

(b) Money may not be borrowed on bonds issued for the purchase of lands and improving the land for any purpose until the proposition has been submitted to the vote of those qualified under the provisions of the state constitution to vote at the election in the affected county and a majority vote is cast in favor of the bonds."

Section 25. Section 7-16-4104, MCA, is amended to read:

"7-16-4104. Authorization for municipal indebtedness for various cultural, social, and recreational purposes. (1) A city or town council or commission may contract an indebtedness on behalf of the city or town, upon the credit of the city or town, by borrowing money or issuing bonds:

(a) for the purpose of purchasing and improving lands for public parks and grounds;

(b) for procuring by purchase, construction, or otherwise swimming pool facilities, athletic fields, skating rinks, playgrounds, museums, a golf course, a site and building for a civic center, a youth center, or *any* combination of these facilities; and

(c) for furnishing, equipping, repairing, or rehabilitating a swimming pool facility, athletic field, skating rink, playground, museum, golf course, civic center, or youth center.

(2) The total amount of indebtedness authorized to be contracted in any form, including the then-existing indebtedness, may not at any time exceed 16.5% of the taxable value of the taxable property of the city or town, as ascertained by the last assessment for state and county taxes previous to the incurring of the indebtedness, *plus an additional 50% of the taxable value attributable to electrical generation property under 15-6-141 within the city or town for tax year 1999, multiplied by 16.5%*. Money may not be borrowed for any purpose on bonds issued for the purchase of lands and improving the land until the proposition has been submitted to the vote of the qualified electors of the city or town and a majority vote is cast in favor of the proposition."

Section 26. Section 15-6-141, MCA, is amended to read:

"15-6-141. Class nine property — description — taxable percentage. (1) Class nine property includes:

(a) centrally assessed *allocations of an* electric power ~~companies' allocations~~ *company or centrally assessed allocations of an electric power company that owns or operates transmission or distribution facilities or both*, including, if congress passes legislation that allows the state to tax property owned by an agency created by congress to transmit or distribute electrical energy, allocations of properties constructed, owned, or operated by a public agency created by the congress to transmit or distribute electric energy produced at privately owned generating facilities, not including rural electric cooperatives. However, rural electric cooperatives' property used for the sole purpose of serving customers representing less than 95% of the electric consumers located within the incorporated limits of a city or town of more than 3,500 persons in which a centrally assessed electric power company also owns property is included. For purposes of this subsection (1)(a), "property used for the sole purpose" does not include a headquarters, office, shop, or other similar facility.

(b) allocations for centrally assessed natural gas companies having a major distribution system in this state; and

HeinOnline -- 1999 vol. III 2410 1999

(c) centrally assessed companies' allocations except:

(i) ~~electric power and natural gas companies'~~ *electrical generation facility* property *included in class thirteen*;

(ii) property owned by cooperative rural electric and cooperative rural telephone associations and classified in class five;

(iii) property owned by organizations providing telephone communications to rural areas and classified in class seven;

(iv) railroad transportation property included in class twelve; and

(v) airline transportation property included in class twelve.

(2) Class nine property is taxed at 12% of market value."

Section 27. Class thirteen property — description — taxable percentage. (1) Except as provided in subsections (2)(a) through (2)(d), class thirteen property includes:

(a) electrical generation facilities of a centrally assessed electric power company;

(b) electrical generation facilities owned or operated by an exempt wholesale generator or an entity certified as an exempt wholesale generator pursuant to section 32 of the Public Utility Holding Company Act of 1935, 15 U.S.C. 79z-5a; and

(c) noncentrally assessed electrical generation facilities owned or operated by any electrical energy producer.

(2) Class thirteen property does not include:

(a) property owned by cooperative rural electric cooperative associations classified under 15-6-135;

(b) property owned by cooperative rural electric cooperative associations classified under 15-6-137;

(c) allocations of electric power company property under 15-6-141; and

(d) electrical generation facilities included in another class of property.

(3) (a) For the purposes of this section, "electrical generation facilities" means any combination of a physically connected generator or generators, associated prime movers, and other associated property, including appurtenant land and improvements and personal property, that are normally operated together to produce electric power. The term includes but is not limited to generating facilities that produce electricity from coal-fired steam turbines, oil or gas turbines, or turbine generators that are driven by falling water.

(b) The term does not include electrical generation facilities used for noncommercial purposes or exclusively for agricultural purposes.

(c) The term also does not include a qualifying small power production facility, as that term is defined in 16 U.S.C. 796(17), that is owned and operated by a person not primarily engaged in the generation or sale of electricity other than electric power from a small power production facility and classified under 15-6-134 and 15-6-138.

(4) Class thirteen property is taxed at 6% of its market value.

Section 28. Section 15-51-102, MCA, is amended to read:

HeinOnline -- 1999 vol. III 2411 1999

"15-51-102. Payment of tax — ~~not to~~ *may* be ~~set out~~ *itemized* on customers' bills. The license tax ~~shall~~ *must* be remitted with the statement and paid on or before the 30th day of the month after each calendar quarter. ~~No~~ *A customer's* bill, *or* statement~~, or account rendered or given any customer by any organization affected by the provisions of this chapter shall set out or contain as a separate item any amount on account or by reason of the license tax imposed by this chapter~~ *may contain an itemized amount of the tax imposed by 15-51-101*."

Section 29. Section 17-7-502, MCA, is amended to read:

"17-7-502. (Temporary) Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 3-5-901; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; *[section 15];* 15-23-706; 15-30-195; 15-31-702; 15-36-324; 15-36-325; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-406; 16-1-411; 16-11-308; 17-3-106; 17-3-212; 17-3-222; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-6-709; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 20-8-107; 20-8-111; 20-26-1503; 22-3-1004; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 39-71-907; 39-71-2321; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 53-6-703; 53-24-206; 67-3-205; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-1-131; 80-2-103; 80-2-222; 80-4-416; 81-5-111; 82-11-161; 85-20-402; 87-1-513; 90-3-301; 90-4-215; 90-6-331; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; pursuant to sec. 7(2), Ch. 29, L. 1995, the inclusion of 15-30-195 terminates July 1, 2001; pursuant to sec. 5, Ch. 461, L. 1997, the inclusion of 77-1-131 terminates October 1, 2003; and pursuant to secs. 13, 16(1), Ch. 549, L. 1997, the inclusion of 90-3-301 terminates July 1, 1999.)

17-7-502. (Effective July 1, 2008) Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

HeinOnline -- 1999 vol. III 2412 1999

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 3-5-901; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; *[section 15];* 15-23-706; 15-30-195; 15-31-702; 15-36-324; 15-36-325; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; [16-1-406;] 16-1-411; 16-11-308; 17-3-106; 17-3-212; 17-3-222; 17-5-404; 17-5-804; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-6-709; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-205; 19-19-305; 19-19-506; 20-8-107; 20-9-361; 20-26-1503; 22-3-1004; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 32-1-537; 37-43-204; 37-51-501; 39-71-503; 39-71-907; 39-71-2321; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 50-5-232; 50-40-206; 53-6-150; 53-6-703; 53-24-206; 60-2-220; 67-3-205; 75-1-1101; 75-5-1108; 75-6-214; 75-5-1108; 75-6-214; 75-11-313; 77-1-505; 80-2-103; 80-2-222; 80-4-416; 81-5-111; 82-11-136; 82-11-161; 85-1-220; 85-20-402; 87-1-513; 90-4-215; 90-6-331; 90-7-220; 90-7-221; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant to sec. 68(2), Ch. 422, L. 1997, this version becomes effective July 1, 2008.)"

Seetion 30. Section 20-9-406, MCA, is amended to read:

"20-9-406. Limitations on amount of bond issue. (1) (a) Except as provided in subsection ~~(1)(c)~~ *(1)(d)*, the maximum amount for which an elementary district or a high school district may become indebted by the issuance of bonds, including all indebtedness represented by outstanding bonds of previous issues and registered warrants, is 45% of the taxable value of the property subject to taxation, to be ascertained by the last-completed assessment for state, county, and school taxes previous to the incurring of the indebtedness, plus~~,~~:

(i) ~~for bonds to be issued during fiscal year 1997, an additional 11% of the taxable value of class eight property within the district for tax year 1995, for bonds to be issued during fiscal year 1998, an additional 22% of the taxable value of class eight property within the district for tax year 1995, and~~ for bonds to be issued during fiscal years 1999 through 2008, an additional 33% of the taxable value of class eight property within the district for tax year 1995, ~~in each case of class eight property,~~ multiplied by 45%*; and*

HeinOnline -- 1999 vol. III 2413 1999

(ii) an additional 50% of the taxable value attributable to electrical generation property under 15-6-141 within the district for tax year 1999, multiplied by 45%.

(b) Except as provided in subsection ~~(1)(c)~~ *(1)(d)*, the maximum amount for which a K-12 school district, as formed pursuant to 20-6-701, may become indebted by the issuance of bonds, including all indebtedness represented by outstanding bonds of previous issues and registered warrants, is up to 90% of the taxable value of the property subject to taxation, to be ascertained by the last-completed assessment for state, county, and school taxes previous to the incurring of the indebtedness, plus~~,~~:

(i) ~~for bonds to be issued during fiscal year 1997, an additional 11% of the taxable value of class eight property within the district for tax year 1995, for bonds to be issued during fiscal year 1998, an additional 22% of the taxable value of class eight property within the district for tax year 1995, and~~ for bonds to be issued during fiscal years 1999 through 2008, an additional 33% of the taxable value of class eight property within the district for tax year 1995, ~~in each case of class eight property,~~ multiplied by 90%*; and*

(ii) an additional 50% of the taxable value attributable to electrical generation property under 15-6-141 within the district for tax year 1999, multiplied by 90%.

(c) The total indebtedness of the high school district with an attached elementary district must be limited to the sum of 45% of the taxable value of the property for elementary school program purposes and 45% of the taxable value of the property for high school program purposes, adjusted as provided in this section.

~~(c)~~*(d)* (i) The maximum amount for which an elementary district or a high school district with a district mill value per elementary ANB or per high school ANB that is less than the corresponding statewide mill value per elementary ANB or per high school ANB may become indebted by the issuance of bonds, including all indebtedness represented by outstanding bonds of previous issues and registered warrants, is 45% of the corresponding statewide mill value per ANB times 1,000 times the ANB of the district. For a K-12 district, the maximum amount for which the district may become indebted is 45% of the sum of the statewide mill value per elementary ANB times 1,000 times the elementary ANB of the district and the statewide mill value per high school ANB times 1,000 times the high school ANB of the district.

(ii) If mutually agreed upon by the affected districts, for the purpose of calculating its maximum bonded indebtedness under this subsection ~~(1)(c)~~ *(1)(d)*, a district may include the ANB of the district plus the number of students residing within the district for which the district or county pays tuition for attendance at a school in an adjacent district. The receiving district may not use out-of-district ANB for the purpose of calculating its maximum indebtedness if the out-of-district ANB has been included in the ANB of the sending district pursuant to the mutual agreement.

(2) The maximum amounts determined in subsection (1), however, may not pertain to indebtedness imposed by special improvement district obligations or assessments against the school district or to bonds issued for the repayment of tax protests lost by the district. All bonds issued in excess of the amount are void, except as provided in this section.

(3) When the total indebtedness of a school district has reached the limitations prescribed in this section, the school district may pay all reasonable

HeinOnline -- 1999 vol. III 2414 1999

and necessary expenses of the school district on a cash basis in accordance with the financial administration provisions of this chapter.

(4) Whenever bonds are issued for the purpose of refunding bonds, any money to the credit of the debt service fund for the payment of tbe bonds to be refunded is applied toward the payment of the bonds and the refunding bond issue is decreased accordingly."

Section 31. Section 69-8-211, MCA, is amended to read:

"69-8-211. Public utilities — transition costs and charges — rate moratorium. (1) Subject to the provisions of this section, the commission sball allow recovery of the following categories of transition costs:

(a) the unmitigable costs of qualifying facility contracts, including reasonable buyout or buydown costs, for which the contract price of generation is above the market price for generation;

(b) the unmitigahle costs of energy supply-related regulatory assets and deferred charges that exist because of current regulatory practices and that can be accounted for up to the effective date of tbe commission's final order regarding a public utility's transition plan, including costs, expenses, and reasonable fees related to issuing of transition bonds;

(c) the unmitigable transition costs related to public utility-owned generation and other power purchase contracts, except that recovery of those costs is limited to the amount accruing during the first 4 years after the commission enters an order pursuant to 69-8-202(3); and

(d) other transition costs as may qualify for recovery under this section.

(2) Transition costs as determined by the commission upon an affirmative showing by a public utility must meet the following requirements:

(a) Transition costs must reflect all reasonable mitigation by the public utility, including but not limited to good faith efforts to renegetiate contracts, buying out or buying down contracts, and refinancing through transition bonds.

(b) The value of all generation-related assets and liabilities and electricity supply costs must be reasonably demonstrable and must be considered on a net basis, and methods for determining value must include but are not limited to:

(i) estimating future market values of electricity and ancillary services provided by the assets;

(ii) appraisal by independent third-party professionals; or

(iii) a competitive hid sale.

(c) Investments and power purchase contracts must have been previously allowed in rates or, if not previously in rates, must be determined to be used and useful to ratepayers in connection with the commission's approval of the utility's transition plan.

(d) Unless otherwise provided for in this chapter, only costs related to existing investments and power purchase contracts identified in subsection (2)(c) and costs arising from those investments and power purchase contracts may be included as transition costs.

(3) (a) On commission approval of the amount of a public utility's transition costs, those costs must be recovered through the imposition of a transition charge.

HeinOnline -- 1999 vol. III 2415 1999

(b) A transition charge may not be collected from customers for:

(i) new or additional loads of 1,000 kilowatts or greater that were first served by the public utility after December 31, 1996; or

(ii) loads served by that customer's own generation.

(c) Subject to commission approval, a utility and a customer may agree to alter the customer's transition charge payment schedule. Public utilities may file with the commission tariffs for electric service rates that foster economic development or retention of existing customers within the state, including generally available rate schedules. Transition charges are the only charges that may be imposed upon a customer class to recover transition costs under this section. A separate exit fee may not be charged.

(4) Transition charges must be imposed within a transition cost recovery period approved by the commission on a case-by-case basis. Except for transition costs recovered under subsection (1)(c), categories of transition costs may have varying transition cost recovery periods.

(5) Approval of transition costs and collection of those transition costs through transition charges is a settlement of all transition costs claims by a public utility. A public utility seeking to recover transition costs through any means not authorized by this chapter may not collect transition charges with respect to these transition costs.

(6) Except as provided in subsection (7), public utilities shall implement a rate moratorium during the transition period as follows:

(a) From July 1, 1998, through June 30, 2000, public utilities may not charge rates higher than those rates in effect on July 1, 1998.

(b) From July 1, 2000, through June 30, 2002, and only for those customers subject to the provisions of 69-8-201(1)(b), public utilities may not increase that increment of rates normally allocated to electric supply-related costs above the increment associated with electric supply-related costs reflected in rates in effect on July 1, 1998. Beginning on July 1, 2000, public utilities may propose increases to those increments of rates normally allocated to transmission and distribution costs.

(7) Excepted from the provisions of subsection (6) are:

(a) increased costs related to universal system benefits programs greater than those currently in rates, including the treatment of universal system benefits program costs as an expense;

(b) increased costs necessary to implement full customer choice, including but not limited to metering, billing, and technology. Those costs must be recovered from the customers on whose behalf the increased costs are incurred.

(c) subject to commission approval, an extraordinary event resulting in either:

(i) a 4% annual revenue requirement increase from July 1, 1998, through June 30, 2000; or

(ii) an 8% power supply-related annual revenue requirement increase from July 1, 2000, through June 30, 2002;

(d) ~~portions of~~ the increase or decrease in the annual state and local property tax expense that ~~are greater than the payment or adjustment that results from~~

HeinOnline -- 1999 vol. III 2416 1999

~~applying the industry-recognized rates of inflation to the increase or decrease in the state and local property tax expense reflected in rates as of~~ *has occurred since* May 2, 1997.

(8) Notwithstanding subsections (6) and (7), during the transition period, public utilities may not charge rates or collect costs that include costs reallocated to transition costs at a level higher than the public utility would reasonably expect to recover in rates had the current regulatory system remained intact.

(9) Public utilities shall apply savings resulting under 69-8-503 toward the rate moratorium pursuant to subsection (6).

(10) During the 4-year transition period, public utilities may accelerate the amortization of accumulated deferred investment tax credits associated with transmission, distribution, and the general plant as an adjustment to earnings if electric earnings fall below 9.5% earned return on average equity. The public utility may include the flow through of investment tax credits so that the public utility's earned return on equity is maintained at 9.5%. Accumulated deferred investment tax credits amortized under this subsection may not be reflected in operating income for ratemaking purposes.

(11) The commission shall issue the accounting orders necessary to align rate moratorium timing and requirements to actual transition bonds savings."

Section 32. Codification instruction. (1) [Sections 1 through 14] are intended to be codified as an integral part of Title 15, and the provisions of Title 15 apply to [sections 1 through 14].

(2) [Section 15] is intended to be codified as an integral part of Title 15, chapter 1, part 1, and the provisions of Title 15, chapter 1, part 1, apply to [section 15].

(3) [Section 27] is intended to be codified as an integral part of Title 15, chapter 6, part 1, and the provisions of Title 15, chapter 6, part 1, apply to [section 27].

Section 33. Coordination instruction. If House Bill No. 132 is not passed and approved then:

(1) the bracketed language referring to unpaid taxes in [section 13(2)(a) of this act] is void and the phrase "delinquent taxes" must be inserted; and

(2) [sections 9 and 11 of this act] must read as follows:

"NEW SECTION. **Section 9. Penalties and interest for violation.** (1) (a) If a person, without purposely or knowingly violating any requirement imposed by [sections 1 through 14], fails to file a return and pay the tax on or before the due date, there must be imposed a penalty of 5% of the balance of debt unpaid with respect to the return as of the date due, but the penalty for failure to file a return by its due date may not be less than $20. The department may abate the penalty if the person establishes that the failure to file on time was due to reasonable cause and was not due to neglect by the taxpayer.

(b) If a person, without purposely or knowingly violating any requirement imposed by [sections 1 through 14], fails to pay a debt on or before the due date, there must be added to the debt a penalty of 10% of the debt, but not less than $20, and interest must accrue on the debt at a rate of 1% for each month or fraction of a month for the entire period that the debt remains unpaid. The department may abate the penalty if the person establishes that the failure to

HeinOnline -- 1999 vol. III 2417 1999

pay was due to reasonable cause and was not due to neglect by the taxpayer. The department shall adopt rules that define reasonable cause.

(2) If a person purposely or knowingly violates any requirement imposed by [sections 1 through 14] by failing to file a return or to pay a debt, there must be added to the debt an additional amount equal to 25% of the debt, but not less than $50, and interest at 1% for each month or fraction of a month during which the debt remains unpaid."

"NEW SECTION. **Section 11. Interest on deficiency — penalty.** (1) Interest accrues on unpaid or delinquent taxes at the rate of 1% for each month or fraction of a month during which the taxes remain unpaid. The interest must be computed from the date on which the return and tax were originally due.

(2) If the payment of a tax deficiency is not made within 60 days after it is due and payable and if the deficiency is due to negligence on the part of the taxpayer but without fraud, there must be added to the amount of the deficiency a penalty of 10% of the tax, but in no case less than $25."

Section 34. Coordination instruction. If House Bill No. 128 and [this act] are both passed and approved, then:

(1) [section 35] of House Bill No. 128, relating to the creation of class thirteen property, is void; and

(2) [section 27 of this act] must read as follows:

"NEW SECTION. **Section 27. Class thirteen property — description — taxable percentage.** (1) Except as provided in subsections (2)(a) through (2)(f), class thirteen property includes:

(a) electrical generation facilities of a centrally assessed electric power company;

(b) electrical generation facilities owned or operated by an exempt wholesale generater or an entity certified as an exempt wholesale generator pursuant to section 32 of the Public Utility Holding Company Act of 1935, 15 U.S.C. 79z-5a;

(c) noncentrally assessed electrical generation facilities owned or operated by any electrical energy producer; and

(d) allocations of centrally assessed telecommunications services companies.

(2) Class thirteen property does not include:

(a) property owned by cooperative rural electric cooperative associations classified under 15-6-135;

(b) property owned by cooperative rural electric cooperative associations classified under 15-6-137;

(c) allocations of electric power company property under 15-6-141;

(d) electrical generation facilities included in another class of property;

(e) property owned by cooperative rural telephone asseciations and classified in class five; and

(f) proporty owned by organizations providing telecommunications services and classified in class five.

(3) (a) For the purposes of this section, "electrical generation facilities" means any combination of a physically connected generator or generators, associated prime movers, and other associated property, including appurtenant

HeinOnline -- 1999 vol. III 2418 1999

land and improvements and personal property, that are normally operated together to produce electric power. The term includes hut is not limited to generating facilities that produce electricity from coal-fired steam turbines, oil or gas turbines, or turbine generators that are driven by falling water.

(b) The term does not include electrical generation facilities used for noncommercial purposes or exclusively for agricultural purposes.

(c) The term also does not include a qualifying small power production facility, as that term is defined in 16 U.S.C. 796(17), that is owned and operated by a person not primarily engaged in the generation or sale of electricity other than electric power from a small power production facility and classified under 15-6-134 and 15-6-138.

(4) Class thirteen property is taxed at 6% of its market value."

Section 35. Coordination instruction. If House Bill No. 128 and [this act] are both passed and approved, then:

(1) [section 44] of House Bill No. 128 is void; and

(2) [section 42] of House Bill No. 128 must read as follows:

"NEW SECTION. **Section 42. Effective dates.** (1) Except as provided in subsection (2), [this act] is effective January 1, 2000.

(2) For the purposes of promulgating administrative rules under [section 17], [section 17] and this section are effective on passage and approval."

Section 36. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 37. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 38. Effective dates. (1) Except as provided in subsection (2), [this act] is effective January 1, 2000.

(2) For the purposes of promulgating administrative rules under [section 14], [section 14 and this section] are effective on passage and approval.

Section 39. Applicability. (1) [Sections 1 through 14, 26 through 29, and 31] apply to tax years beginning after December 31, 1999.

(2) [Sections 15 through 25 and 30] apply to fiscal years beginning after June 30, 2000.

Section 40. Termination. [Section 4(3)(e)] terminates January 1, 2003.

Approved April 30, 1999

CHAPTER NO. 557

[HB 5]

AN ACT APPROPRIATING MONEY FOR CAPITAL PROJECTS FOR THE BIENNIUM ENDING JUNE 30, 2001; PROVIDING FOR OTHER MATTERS RELATING TO THE APPROPRIATIONS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

HeinOnline -- 1999 vol. III 2419 1999

Be it enacted by the Legislature of the State of Montana:

Section 1. Definitions. For the purposes of [sections 1 through 9], unless otherwise stated, the following definitions apply:

(1) "Capital project" means the acquisition of land or improvements or the planning, capital construction, renovation, furnishing, or major repair projects authorized in [sections 1 through 9].

(2) "LRBP" means the long-range building program account in the capital projects fund type.

(3) "Other funding sources" means money other than LRBP money, including special revenue fund money, that accrues to an agency under the provisions of law.

Section 2. Capital projects appropriations. (1) Except as provided in subsection (4)(c), the following money is appropriated for the indicated capital projects from the indicated sources to the department of administration, which is authorized to transfer the appropriated money among the necessary fund types for these projects:

Agency/Project	LRBP		Other Funding Sources
DEPARTMENT OF ADMINISTRATION			
Health and Safety Projects, Statewide	$730,000	$ 250,000	Auxiliary
Hazardous Material Remediation, Statewide	300,000		
Roof Replacements or Repairs, Statewide	521,000		
Facility Assessments, Statewide	100,000	50,000 100,000 50,000	State Special Revenue Federal Special Revenue Auxiliary
Capital Renovation		1,000,000	Capitol Land Grant Revenue
Renovate Haynes Gallery Area, Historical Society		1,000,000	Donations
DEPARTMENT OF CORRECTIONS			
Expand Women's Prison, MWP		6,475,000	Federal Special Revenue
Missoula Regional Correctional Facility Supplemental		526,497	Federal Special Revenue
Construct Reception Unit, MSP		5,500,000 170,000	Federal Special Revenue General Fund
DEPARTMENT OF FISH, WILDLIFE AND PARKS			
Bluewater Hatchery Renovations		200,000	State Special Revenue
Construct Fort Peck Fish Hatchery		14,640,000	Federal Special Revenue
DEPARTMENT OF MILITARY AFFAIRS			
Construct New Armory, Kalispell		3,900,000	Federal Special Revenue
Construct New Armory, Bozeman		4,600,000	Federal Special Revenue
MONTANA UNIVERSITY SYSTEM			
Sprinkle Library, UM-Missoula	657,000		
Ventilate and Update Fine Arts Building, UM-Missoula	450,000		
Boiler Upgrade and Ventilation, UM-Tech	530,000	120,000	Auxiliary

HeinOnline -- 1999 vol. III 2420 1999

Maintain HVAC Systems, MSU-Billings and COT-Billings	500,000		
Replace Steam Distribution Piping, UM-Dillon	800,000	400,000	Auxiliary
Upgrade Boiler Controls, UM-Missoula	125,000	100,000	Auxiliary
Roof Replacements or Repairs, University System	1,591,000		
Maintain Main Hall Exterior, UM-Dillon	225,000		
Renovate Cowan Hall, MSU-Northern	511,000		
Addition to Paxson Gallery, UM-Missoula		2,500,000	Higher Education Funds, Federal, Donations, Grants, Plant Funds
Applied Technology Center Feasibility Study, MSU-Northern	50,000		
Construct Nondenominational Chapel, UM-Tech		1,500,000	Donations
Forestry/Journalism Addition, UM-Missoula		10,000,000	Federal, Donations, Grants, Plant Funds
Native American Study Center, UM-Missoula		3,500,000	Higher Education Funds, Federal, Donations, Grants, Plant Funds
Life Sciences Building, UM-Missoula		23,000,000	Federal, State, Donations, Grants, Plant Funds
Rural Technology Education Center, UM-Dillon		350,000	Higher Education Funds, Federal, Donations, Grants, Plant Funds
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION			
Lincoln Unit Office/Quarters and Clearwater Egress	125,000		
DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES			
Sprinkle MMHNCC, Lewistown	300,000		
Construct Special Care Unit, Montana Veterans' Home		1,179,374	State Special Revenue
Improve Eastern Montana Veterans' Home		290,250	State Special Revenue
Improve Montana Veterans' Home		187,530	State Special Revenue
DEPARTMENT OF TRANSPORTATION			
Construct Equipment Storage Buildings and Roof Replacement at Helena Headquarters, Statewide		2,100,000	Highways State Special Revenue
Construct Core Drilling Building, Helena		1,000,000	Highways State Special Revenue

(2) In the event one or both of the national guard armories located in Bozeman and Whitefish, Montana, and approved in House Bill No. 14 for replacement are sold prior to construction of the new Bozeman and Kalispell armories, the proceeds of the sale that were deposited to the general fund are appropriated for replacement construction up to a maximum of $4,000,000 and the bond authority in House Bill No. 14 is reduced by a like amount.

HeinOnline -- 1999 vol. III 2421 1999

(3) The department of public health and human services is seeking federal funds for use in the construction of the special care unit, Montana veterans' home. If federal funds become available for this purpose, the department shall reimburse funds from the state special revenue account used to build the new unit. The total amount approved for the project from all sources is $1,179,374.

(4) (a) The 56th legislature authorizes four department of corrections' capital construction projects in the 2001 biennium. Funding for the projects is contained in House Bill No. 14 and subsection (1) of this section. The total project cost and the authorized funding for each project are as follows:

(i) $9,375,000 for the women's prison expansion in Billings, funded by $2,900,000 of general obligation bond proceeds authorized in House Bill No. 14 and by $6,475,000 of federal funds appropriated in subsection (1) of this section;

(ii) $2,225,000 for completing the Pine Hills youth correctional facility in Miles City, funded from general ohligation bond proceeds authorized in House Bill No. 14;

(iii) $5,670,000 to construct a reception unit at Montana state prison in Deer Lodge, funded by $170,000 of general fund money and hy $5,500,000 of federal funds appropriated in subsection (1) of this section; and

(iv) $3,000,000 for security improvements and expanding the Wallace building at Montana state prison in Deer Lodge, funded from general obligation bond proceeds authorized in House Bill No. 14.

(b) The 56th legislature notes that approximately $8,714,600 of federal department of justice funds are anticipated to become available for capital construction projects for the department of corrections in the 2001 hiennium. It is the intent of the 56th legislature that the federal funds he used to the maximum extent possible. It is further the intent of the 56th legislature that the priority for using these federal funds is:

(i) up to $6,475,000 for the women's prison expansion project, line-itemed in subsection (1);

(ii) up to $526,497 for the Missoula regional correctional facility supplemental; and

(iii) up to $5,500,000 for the construction of the reception unit at Montana state prison, line-itemed in subsection (1).

(c) (i) It is the intent of the legislature that the department of corrections may not accept federal funds for capital construction unless all conditions necessary to receive the federal dollars have been irrevocably met in advance of the expenditure of the federal funds.

(ii) It is further the intent of the legislature that federal spending authority for a capital construction project may be used only for the project identified in the law authorizing the project and may not be used for any other project.

(5) The appropriation for the Fort Peck fish hatchery in subsection (1) is contingent upon passage and approval of House Bill No. 20.

(6) The 56th legislature authorizes the construction of the rural technology education center at western Montana college of the university of Montana at a total project cost of $4,520,000. Suhsection (1) of this section contains $350,000 in other revenue authority for this project, and House Bill No. 14 contains $4,170,000 in general obligation hond authority for this project. In the event that

HeinOnline -- 1999 vol. III 2422 1999

other additional funds become available for this project during its construction, the general obligation bond authority in House Bill No. 14 must be reduced by a like amount and other revenue authority is increased by a like amount in subsection (1) of this section for the same purpose.

Section 3. Land acquisition appropriation. The following money is appropriated to the department of fish, wildlife, and parks in the indicated amounts for purposes of land acquisition, land leasing, easement purchase, or development agreement:

Agency/Project	LRBP	Other Funding Sources
Habitat Montana	$4,375,000	State Special Revenue
Fishing Access Site Acquisitions, Statewide	630,000	State Special Revenue
Bighorn Sheep Program	425,000	State Special Revenue

Seetion 4. Capital improvements. (1) The following money is appropriated to the department of fish, wildlife, and parks in the indicated amounts for the purpose of making capital improvements to statewide facilities:

Agency/Project	LRBP	Other Funding Sources
State Park Roads	$1,500,000	State Special Revenue
Future Fisheries Improvements	1,470,000	State Special Revenue
Cultural and Historic Parks	1,200,000	State Special Revenue
Wildlife Habitat Maintenance	825,000	State Special Revenue
Statewide Hatchery Maintenance	400,000	State Special Revenue
Administrative Facilities Repairs and Maintenance	829,650	State Special Revenue
Motorboat Recreation Parks	1,355,000 950,000	State Special Revenue Federal Special Revenue
Lewis and Clark Bicentennial	275,000	State Special Revenue
Capitol Complex Irrigation and Landscape	225,000	Capitol Land Grant Rovenuo
Fishing Access Site Protection, Statewide	700,000 75,000	State Special Revenue Federal Special Revenue
Waterfowl Stamp Program	263,000	State Special Revenue
Fishing Access Site Maintenance	325,000	State Special Revenue
Brewery Flats Completion	70,000	Federal Special Revenue
Tongue River Mitigation Inflation Indexing	275,000	State Special Revenue

(2) The following money is appropriated to the department of military affairs in the indicated amounts for the purpose of making capital improvements to statewide facilities:

Agency/Project	LRBP	Other Funding Sources
Federal Spending Authority	800,000	Federal Special Revenue
Washrack Waste Mitigation, Statewide	200,000	Federal Special Revenue
Secondary Containment Structures, Statewide	300,000	Federal Special Revenue
Construct Eastern Montana Veterans' Cemetery, Phase II	1,100,000	Federal Special Revenue

HeinOnline -- 1999 vol. III 2423 1999

(3) The following money is appropriated to the university of Montana in the indicated amount for the purpose of making capital improvements to campus facilities:

Agency/Project	LRBP	Other Funding Sources
General Spending Authority, UM	3,500,000	Higher Education Funds, Grants, Donations, Plant Funds

(4) The following money is appropriated to the department of transportation in the indicated amount for the purpose of making capital improvements to statewide facilities:

Agency/Project	LRBP	Other Funding Sources
Minor Maintenance and Improvements, Statewide	1,350,000	Highways State Special Revenue

(5) It is the intent of the 56th legislature that $50,000 of the line item for state parks roads in subsection (1) be reserved for significant occurrences because of hunting. The department of fish, wildlife, and parks shall report to the 57th legislature if and how the reserved funds were expended.

(6) It is the intent of the 56th legislature that the department of fish, wildlife, and parks spend no more than $50,000 for a feasibility study for the construction of the Miles City maintenance facility from the line item for administrative facilities repairs and maintenance in subsection (1). It is further intended that funds may not be expended for this purpose until other alternatives have been explored.

Section 5. Transfer of funds. The department of fish, wildlife, and parks is authorized to transfer money appropriated in [sections 1 through 4] among fund types.

Section 6. Planning and design. The department of administration may proceed with the planning and design of capital projects prior to the receipt of other funding sources. The department may use interaccount loans in accordance with 17-2-107 to pay planning and design costs incurred before the receipt of other funding sources.

Section 7. Capital projects — contingent funds. If a capital project is financed, in whole or in part, with appropriations contingent upon the receipt of other funding sources, the department of administration may not let the projects for bid until the agency has submitted a financial plan for approval by the director of the department of administration. A financial plan may not be approved by the director if:

(1) the level of funding provided under the financial plan deviates substantially from the funding level provided in [sections 1 through 4] for that project; or

(2) the scope of the project is substantially altered or revised from the preliminary plans presented for that project in the 2001 biennium long-range building program presented to the 56th legislature.

Section 8. Agreement with department of environmental quality. The department of environmental quality shall review capital projects authorized in [sections 2 through 4] for potential inclusion in the state energy conservation program. When review shows a capital project will result in energy improvements, that project must be submitted to the energy conservation program for cofunding consideration. Cofunding provided under the energy conservation

HeinOnline -- 1999 vol. III 2424 1999

program guidelines must be used to offset or add to the authorized funding for the project, and the amount will be dependent on the annual utility savings resulting from the facility improvement. Agencies must be notified of potential cofunding after the review.

Section 9. Legislative consent. The appropriations authorized in [sections 1 through 8] constitute legislative consent for the capital projects contained in [sections 1 through 8] within the meaning of 18-2-102.

Section 10. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 11. Effective date. [This act] is effective on passage and approval.

Approved May 6, 1999

CHAPTER NO. 558

[HB 13]

AN ACT PROVIDING FOR PAY AND BENEFITS FOR STATE EMPLOYEES IN THE STATEWIDE AND BLUE-COLLAR PAY PLANS; INCREASING THE LONGEVITY ALLOWANCE AT THE 15- AND 20-YEAR INCREMENTS; REVISING THE MILEAGE REIMBURSEMENT RATE; INCREASING THE STATE CONTRIBUTION TO THE EMPLOYEE GROUP BENEFIT PROGRAM; DIRECTING THE DEPARTMENT OF ADMINISTRATION TO DEVELOP AND IMPLEMENT AN ALTERNATIVE PAY AND CLASSIFICATION PLAN THROUGH DEMONSTRATION PROJECTS FOR CERTAIN CLASSES, OCCUPATIONS, AND WORK UNITS; PROVIDING FOR PAY INCREASES FOR LEGISLATORS; PROVIDING HEALTH INSURANCE BENEFITS FOR LEGISLATORS WHO ARE INVOLUNTARILY TERMINATED FROM LEGISLATIVE SERVICE BECAUSE OF TERM LIMITS; PROVIDING APPROPRIATIONS; AMENDING SECTIONS 2-18-101, 2-18-301, 2-18-303, 2-18-304, 2-18-312, 2-18-313, 2-18-315, 2-18-503, 2-18-703, AND 5-2-301, MCA; AND PROVIDING EFFECTIVE DATES AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-18-101, MCA, is amended to read:

"2-18-101. Definitions. As used in parts 1 through 3 and part 10 of this chapter, the following definitions apply:

(1) "Agency" means a department, board, commission, office, bureau, institution, or unit of state government recognized in the state budget.

(2) "Anniversary date", except as modified in part 3 of this chapter, means the month and day on which an employee began the most recent period of uninterrupted state service.

(3) "Base salary" means the amount of compensation paid to an employee, excluding:

(a) state contributions to group benefits provided in 2-18-703;

(b) overtime;

(c) fringe benefits as defined in 39-2-903; and

(d) the longevity allowance provided in 2-18-304.

(4) "Board" means the board of personnel appeals established in 2-15-1705.

(5) "Class" means one or more positions substantially similar with respect to the kind or nature of duties performed, responsibility assumed, and level of difficulty so that the same descriptive title may he used to designate each position allocated to the class, similar qualifications may be required of persons appointed to the positions in the class, and the same pay rate or pay grade may be applied with equity.

(6) "Class series benchmark" means a representative position within a class series that is used to illustrate the application of the job evaluation factors that are used to classify positions in the classification plan. A benchmark description describes the duties and responsibilities assigned and the factors applied to the class series benchmark.

(7) "Class specification" means a written descriptive statement of the duties and responsibilities characteristic of a class of positions and includes the education, experience, knowledge, skills, abilities, and qualifications necessary to perform the work of the class.

(8) "Compensation" means the annual or hourly wage or salary and includes the state contribution to group benefits under the provisions of 2-18-703.

(9) "Competencies" means sets of measurable and observable knowledge, skills, abilities, and behaviors that eontribute to success in a job.

~~(9)~~*(10)* "Department" means the department of administration created in 2-15-1001.

~~(10)~~*(11)* Except in 2-18-306, "employee" means any state employee other than an employee excepted under 2-18-103 or 2-18-104 from the statewide classification system.

~~(11)~~*(12)* "Entry salary" means the entry-level base salary for each grade provided in 2-18-312.

~~(12)~~*(13)* "Grade" means the number assigned to a pay range within a pay schedule in part 3 of this chapter.

~~(12)~~*(14)* "Joh sharing" means the sharing by two or more persons of a position.

~~(14)~~*(15)* "Market ratio" means an employee's base salary divided by the market salary for the employee's pay grade.

~~(10)~~*(16)* "Market salary" means the midpoint in a pay grade provided in 2-18-312, hased on the average base salary that other employers pay to employees in comparable occupations as determined hy the department's salary survey of the relevant labor market.

~~(10)~~*(17)* "Permanent employee" means an employee who is designated by an agency as permanent and who has attained or is eligible to attain permanent status.

~~(17)~~*(18)* "Permanent status" means the state an employee attains after satisfactorily completing an appropriate probationary period.

HeinOnline -- 1999 vol. III 2426 1999

~~(18)~~*(19)* "Personal staff" means those positions occupied by employees appointed by the elected officials enumerated in Article VI, section 1, of the Montana constitution or by the public service commission as a whole.

~~(19)~~*(20)* "Position" means a collection of duties and responsibilities currently assigned or delegated by competent authority, requiring the full-time, part-time, or intermittent employment of one person.

~~(20)~~*(21)* "Program" means a combination of planned efforts to provide a service.

~~(21)~~*(22)* "Seasonal employee" means a permanent employee who is designated by an agency as seasonal, who performs duties interrupted by the seasons, and who may be recalled without the loss of rights or benefits accrued during the preceding season.

~~(22)~~*(23)* "Short-term worker" means a person who:

(a) is hired by an agency for an hourly wage established by the agency;

(b) may not work for the agency for more than 90 days in a continuous 12-month period;

(c) is not eligible for permanent status;

(d) may not be hired into another position by the agency without a competitive selection process; and

(e) is not eligible to earn the leave and holiday benefits provided in part 6 or the group insurance benefits provided in part 7.

~~(22)~~*(24)* "Temporary employee" means an employee who:

(a) is designated as temporary by an agency for a definite period of time not to exceed 12 months;

(b) performs temporary duties or permanent duties on a temporary basis;

(c) is not eligible for permanent status;

(d) is terminated at the end of the employment period; and

(e) is not eligible to become a permanent employee without a competitive selection process."

Section 2. Section 2-18-301, MCA, is amended to read:

"2-18-301. Purpose and intent of part — rules. (1) The purpose of this part is to provide the market-based compensation necessary to attract and retain competent and qualified employees in order to perform the services that the state is required to provide to its citizens.

(2) It is the intent of the legislature that compensation plans for state employees, excluding those employees excepted under 2-18-103 or 2-18-104 and excluding employees compensated under 2-18-313 and 2-18-315, be based on an analysis of the labor market as provided by the department in a salary survey. The salary survey must be submitted to the office of budget and program planning as a part of the information required by 17-7-111.

(3) Except as provided in 2-18-110, pay adjustments and pay schedules provided for in 2-18-303 and in 2-18-312, 2-18-313, and 2-18-315 supersede any other plan or systems established through collective bargaining after the adjournment of the ~~55th~~ *56th* legislature.

HeinOnline -- 1999 vol. III 2427 1999

(4) Pay levels provided for in 2-18-312, 2-18-313, and 2-18-315 may not be increased through collective bargaining after adjournment of the ~~55th~~ *56th* legislature.

(5) Total funds required to implement the pay schedules provided for in 2-18-312, 2-18-313, and 2-18-315 for any employee group or bargaining unit may not be increased through collective bargaining over the amount appropriated hy the ~~55th~~ *56th* legislature.

(6) The department shall administer the pay program established hy the legislature on the basis of merit, internal equity, and competitiveness to external labor markets when fiscally able.

(7) The department may promulgate rules not inconsistent with the provisions of this part, collective bargaining statutes, or negotiated contracts to carry out the purposes of this part.

(8) Nothing in this part prohibits the board of regents from engaging in negotiations with the collective bargaining units representing the classified staff of the university system."

Section 3. Section 2-18-303, MCA, is amended to read:

"2-18-303. Procedures for using pay schedules. (1) The pay schedules provided in 2-18-312 must be implemented as follows:

(a) The pay schedules provided in 2-18-312 indicate the entry salary and market salary for each grade for positions classified under the provisions of part 2 of this chapter.

(b) Each employee newly hired by the state of Montana must be hired at the entry rate, except as provided in subsections ~~(7) and (8)~~ *(6) through (9)*.

(c) On the first day of the first complete pay period in fiscal year ~~1998~~ *2000*, each employee is entitled to the amount of the employee's base salary as it was on June 30, ~~1997~~ *1999*.

(d) ~~(i) Effective on the first day of the pay period that includes an employee's anniversary date during the fiscal years ending June 30, 1998, and June 30, 1999, an employee's market ratio must be compared to the target market ratio in the matrix that corresponds to the employee's grade level and completed years of uninterrupted state service.~~ *Effective on the first day of the pay period that includes an employee's anniversary date during the fiscal years ending June 30, 2000, and June 30, 2001, the employee's base salary must be increased by 3% or by a lesser amount so that the employee's base salary after the increase does not exceed the maximum salary of the pay grade as provided in subsection (1)(f). An employee's base salary increases resulting from subsection (1)(e) and this subsection may not exceed a maximum of 3% in each fiscal year.* For employees hired on or before September 30, 1994, the anniversary date is October 1.

~~(ii) The matrix for the target market ratios is as follows:~~

~~TARGET MARKET RATIOS~~

~~Grade~~	~~Years~~										
	~~0~~	~~1~~	~~2~~	~~3~~	~~4~~	~~5~~	~~6~~	~~7~~	~~8~~	~~9~~	~~10~~
~~4~~	~~0.844~~	~~0.874~~	~~0.904~~	~~0.935~~	~~0.967~~	~~0.999~~	~~1.000~~	~~1.000~~	~~1.000~~	~~1.000~~	~~1.000~~
~~5~~	~~0.842~~	~~0.871~~	~~0.900~~	~~0.930~~	~~0.961~~	~~0.992~~	~~1.000~~	~~1.000~~	~~1.000~~	~~1.000~~	~~1.000~~
~~6~~	~~0.840~~	~~0.868~~	~~0.896~~	~~0.925~~	~~0.955~~	~~0.985~~	~~1.000~~	~~1.000~~	~~1.000~~	~~1.000~~	~~1.000~~

~~7 0.838 0.865 0.892 0.920 0.949 0.978 1.000 1.000 1.000 1.000 1.000~~

~~7 0.838 0.865 0.892 0.920 0.949 0.978 1.000 1.000 1.000 1.000 1.000~~

~~7 0.838 0.865 0.892 0.920 0.949 0.978 1.000 1.000 1.000 1.000 1.000~~

~~10 0.832 0.857 0.882 0.908 0.934 0.961 0.988 1.000 1.000 1.000 1.000~~

~~11 0.830 0.854 0.878 0.903 0.928 0.954 0.980 1.000 1.000 1.000 1.000~~

~~12 0.828 0.851 0.875 0.899 0.924 0.949 0.975 1.000 1.000 1.000 1.000~~

~~13 0.826 0.849 0.872 0.896 0.920 0.945 0.970 0.996 1.000 1.000 1.000~~

~~14 0.824 0.846 0.869 0.892 0.915 0.939 0.963 0.988 1.000 1.000 1.000~~

~~15 0.822 0.844 0.866 0.888 0.911 0.934 0.958 0.982 1.000 1.000 1.000~~

~~16 0.820 0.841 0.863 0.885 0.907 0.930 0.953 0.977 1.000 1.000 1.000~~

~~17 0.818 0.839 0.860 0.882 0.904 0.926 0.949 0.972 0.996 1.000 1.000~~

~~18 0.816 0.836 0.857 0.878 0.899 0.921 0.943 0.966 0.989 1.000 1.000~~

~~19 0.814 0.834 0.854 0.875 0.896 0.917 0.939 0.961 0.984 1.000 1.000~~

~~20 0.812 0.831 0.851 0.871 0.892 0.913 0.935 0.957 0.979 1.000 1.000~~

~~21 0.810 0.829 0.849 0.869 0.889 0.910 0.931 0.953 0.975 0.997 1.000~~

~~22 0.808 0.827 0.846 0.866 0.886 0.906 0.927 0.948 0.970 0.992 1.000~~

~~23 0.808 0.827 0.846 0.866 0.886 0.906 0.927 0.948 0.970 0.992 1.000~~

~~24 0.804 0.822 0.841 0.860 0.879 0.899 0.919 0.940 0.961 0.982 1.000~~

~~25 0.802 0.820 0.838 0.857 0.876 0.895 0.915 0.935 0.956 0.977 0.999~~

~~(iii) On the first day of the pay period that includes an employee's anniversary date during the fiscal years ending June 30, 1998, and June 30, 1999, the employee's base salary must be increased to the greater of:~~

~~(A) the market salary for the employee's grade multiplied by the target ratio that corresponds to the employee's grade level and completed years of uninterrupted state service not to exceed 4%;~~

~~(B) if under subsection (1)(d)(iii)(A), progression from one target market ratio to the next exceeds 3%, then the employee's base salary increased by the amount of that progression plus 1%; or~~

~~(C) the employee's base salary as it was on the last day of the pay period immediately preceding the pay period that includes the employee's anniversary date, plus 1%.~~

(e) An employee's base salary may be no less than tbe entry salary for the employee's assigned grade.

(f) The maximum salary for each grade is determined hy subtracting the entry salary from the market salary and adding that amount to the market salary.

(2) The pay schedules provided in 2-18-312 and the provisions of subsection (1) of this section do not apply to those teachers or blue-collar occupations compensated under the pay schedules provided in 2-18-313 and 2-18-315.

(3) The pay schedules provided in 2-18-313 and 2-18-315 must be implemented as follows:

(a) (i) The pay schedules provided for in 2-18-313 indicate the annual compensation for teachers employed under the authority of the department of

corrections or the department of public health and human services for fiscal years ~~1998~~ *2000* and ~~1999~~ *2001*.

(ii) The compensation of each teacher on July 1, ~~1997~~ *1999*, is the same as it was on June 30, ~~1997~~ *1999*.

(iii) On the first day of the first pay period that includes October 1 of each fiscal year, a teacher employed under the authority of the department of public health and human services or the department of corrections before October 1, 1994, shall advance one step on the appropriate pay schedule adopted in 2-18-313. A teacher hired after October 1, 1994, shall advance on the teacher's actual anniversary date.

(b) (i) The pay schedules provided in 2-18-315 indicate the maximum hourly compensation for fiscal years ending June 30, ~~1998~~ *2000*, and June 30, ~~1999~~ *2001*, for employees in apprentice trades and crafts and other blue-collar occupations recognized in the state blue-collar classification plan who are members of units that have collectively bargained separate classification and pay plans.

(ii) The compensation of each employee on the first day of the first pay period in each fiscal year is that amount corresponding to the grade occupied on the last day of the preceding fiscal year.

(4) (a) (i) A member of a bargaining unit may not receive a pay increase until the employer's collective bargaining representative receives written notice that the employee's bargaining unit has ratified a completely integrated collective bargaining agreement covering the biennium ending June 30, ~~1999~~ *2001*.

(ii) If ratification of a completely integrated collective bargaining agreement, as required by subsection (4)(a)(i), is not completed by July 1, ~~1997~~ *1999*, retroactivity to that date may be negotiated.

(iii) If ratification of a completely integrated collective bargaining agreement, as required by subsection (4)(a)(i), is not completed by July 1, ~~1997~~ *1999*, members of the bargaining unit must continue to receive the compensation that they were receiving as of June 30, ~~1997~~ *1999*, until an agreement is ratified.

(b) Methods of administration not inconsistent with the purpose of this part and necessary to properly implement the pay schedules and adjustments provided in 2-18-312, 2-18-313, 2-18-315, and this section may be provided for in collective bargaining agreements.

(5) The current wage or salary of an employee may not be reduced by the implementation of the pay schedules provided for in 2-18-312, 2-18-313, and 2-18-315.

(6) The department may authorize a separate pay schedule for medical doctors if the rates provided in 2-18-312 are not sufficient to attract and retain fully licensed and qualified physicians ~~at the state institutions~~.

(7) (a) The department may develop and implement an alternative pay and classification plan through demonstration projects for certain classes, occupations, and work units. Pay for employees in the alternative pay and classification plan may be established and changed based on demonstrated competencies and accomplishments, on the labor market, and on other situations defined by the department.

(b) (i) The department may develop demonstration projects for protective service and public safety classes, information technology classes, brand inspector

classes in the department of livestock, managers in the department of commerce, counselors and resident care aides at the Montana chemical dependency center, health care facility surveyors at the department of public health and human services, classes in the department of revenue, and any other class or work unit appropriate for a demonstration project, as determined by the department.

(ii) To the extent that a project applies to employees within a collective bargaining unit, the implementation of the project is a negotiable subject under 39-31-305.

(iii) No employee whose position is excepted from the provisions of this section under this subsection (7)(b) will receive a pay increase for the fiscal years ending 2000 and 2001 less than that prescribed under this section.

~~(7)~~*(8)* The department may develop programs that enable the department to mitigate problems associated with difficult recruitment, retention, transfer, or other exceptional circumstances. To the extent that the program applies to employees within a collective bargaining unit, it is a negotiable subject under 39-31-305.

~~(8)~~*(9)* The department shall review the competitiveness of the compensation provided to all occupations under this part. If the department finds that substantial problems exist with recruitment and retention because of inadequate salaries when compared to competing employers, the department may establish criteria allowing an adjustment in pay or classification to mitigate the problems. To the extent that these adjustments apply to employees within a collective bargaining unit, the implementation of these adjustments is a negotiable subject under 39-31-305."

Section 4. Section 2-18-304, MCA, is amended to read:

"2-18-304. Longevity allowance. (1) (a) In addition to the compensation provided for in 2-18-303, 2-18-312, 2-18-313, or 2-18-315, each employee who has completed 5 years of uninterrupted state service must receive 1.5% of the employee's base salary multiplied by the number of completed, contiguous 5-year periods of uninterrupted state service.

(b) Beginning October 1, 1999, in addition to the longevity allowance provided under subsection (1)(a), each employee who has completed 15 years of uninterrupted state service or completed 20 years of uninterrupted state service must receive an additional 0.5% of the employee's base salary for each of those additional 5 years of uninterrupted service.

~~(b)~~*(c)* Service to the state is not interrupted by authorized leaves of absence.

(2) (a) For the purpose of determining years of service under this section, an employee must be credited with 1 year of service for each period of:

(i) 2,080 hours of service following the employee's date of employment; an employee must be credited with 80 hours of service for each biweekly pay period in which the employee is in a pay status or on an authorized leave of absence without pay, regardless of the number of hours of service in the pay period; or

(ii) 12 uninterrupted calendar months following the employee's date of employment in which the employee was in a pay status or on an authorized leave of absence without pay, regardless of the number of hours of service in any month. An employee of a school at a stato institution or the university system must be credited with 1 year of service if the employee is employed for an entire academic year.

HeinOnline -- 1999 vol. III 2431 1999

(b) State agencies, other than the university system and a school at a state institution, shall use the method provided in subsection (2)(a)(i) to calculate years of service under this section.

(3) For the purposes of calculating longevity, employment as a short-term worker does not apply toward years of service."

Section 5. Section 2-18-312, MCA, is amended to read:

"2-18-312. Statewide pay schedules ~~for fiscal years 1998 and 1999~~. (1) The statewide classification pay schedule for the period beginning on the first day of the first full pay period in fiscal year ~~1998~~ *2000*, is as follows:

~~Annual Hours 2080 Note: Does Not Include Insurance~~

~~Pay Matrix State Matrix Type Annual~~

~~Pay Range: Entry Salary to Market Salary~~

~~GRADE~~	~~ENTRY SALARY~~	~~MARKET SALARY~~
~~1~~	~~8,086~~	~~10,571~~
~~2~~	~~9,679~~	~~11,413~~
~~3~~	~~10,424~~	~~12,323~~
~~4~~	~~11,234~~	~~13,312~~
~~5~~	~~12,140~~	~~14,419~~
~~6~~	~~13,118~~	~~15,618~~
~~6~~	~~13,118~~	~~15,618~~
~~8~~	~~15,360~~	~~18,372~~
~~9~~	~~16,630~~	~~19,941~~
~~10~~	~~18,039~~	~~21,680~~
~~11~~	~~19,570~~	~~23,578~~
~~12~~	~~21,269~~	~~25,687~~
~~13~~	~~23,112~~	~~27,980~~
~~14~~	~~25,151~~	~~30,523~~
~~15~~	~~27,399~~	~~33,331~~
~~16~~	~~29,903~~	~~36,469~~
~~17~~	~~32,698~~	~~39,974~~
~~18~~	~~35,779~~	~~43,848~~
~~19~~	~~39,233~~	~~48,198~~
~~20~~	~~43,086~~	~~53,060~~

~~21 47,367 58,478~~

~~22 52,149 64,541~~

~~23 57,543 71,393~~

~~24 63,601 79,104~~

~~25 70,302 87,657~~

~~(2) Effective on the first day of the first full pay period in fiscal year 1999, the statewide classification pay schedule is as follows:~~

Annual Hours — 2080 Note: Does Not Include Insurance

Pay Matrix — State Matrix Type — Annual

Pay Range: Entry Salary to Market Salary

GRADE	ENTRY SALARY	MARKET SALARY
1	9,076	10,677
2	9,776	11,527
3	10,528	12,446
4	11,346	13,445
5	12,261	14,563
6	13,249	15,774
7	14,313	17,079
8	15,514	18,556
9	16,796	20,140
10	18,219	21,897
11	19,766	23,814
12	21,482	25,944
13	23,343	28,260
14	25,403	30,828
15	27,673	33,664
16	30,202	36,834
17	33,025	40,374
18	36,137	44,286
19	39,625	48,680
20	43,517	53,591

HeinOnline -- 1999 vol. III 2433 1999

21	47,841	59,063
22	52,670	65,186
23	58,118	72,107
24	64,237	79,895
25	71,005	88,534

(2) Effective on the first day of the pay period that includes October 1, 1999, the statewide classification pay schedule is as follows:

Annual Hours — 2080 *Note: Does Not Include Insurance*

Pay Matrix — State *Matrix Type — Annual*

Pay Range: Entry Salary to Market Salary

GRADE	*ENTRY SALARY*	*MARKET SALARY*
1	*9,075*	*10,677*
2	*9,776*	*11,527*
3	*10,529*	*12,447*
4	*11,346*	*13,445*
5	*12,262*	*14,562*
6	*13,283*	*15,814*
7	*14,383*	*17,164*
8	*15,631*	*18,695*
9	*16,964*	*20,342*
10	*18,445*	*22,171*
11	*20,064*	*24,172*
12	*21,859*	*26,397*
13	*23,810*	*28,827*
14	*25,975*	*31,520*
15	*28,365*	*34,507*
16	*31,032*	*37,848*
17	*34,014*	*41,585*
18	*37,222*	*45,614*
19	*40,814*	*50,140*
20	*44,824*	*55,199*

21	*49,275*	*60,836*
22	*54,251*	*67,140*
23	*59,860*	*74,271*
24	*66,163*	*82,291*
25	*73,135*	*91,189*

(3) Effective on the first day of the pay period that includes October 1, 2000, the statewide classification pay schedule is as follows:

Annual Hours — 2080 *Note: Does Not Include Insurance*

Pay Matrix — State *Matrix Type — Annual*

Pay Range: Entry Salary to Market Salary

GRADE	*ENTRY SALARY*	*MARKET SALARY*
1	*9,075*	*10,677*
2	*9,776*	*11,527*
3	*10,529*	*12,447*
4	*11,346*	*13,445*
5	*12,262*	*14,562*
6	*13,316*	*15,854*
7	*14,456*	*17,249*
8	*15,748*	*18,834*
9	*17,135*	*20,546*
10	*18,676*	*22,447*
11	*20,365*	*24,534*
12	*22,241*	*26,859*
13	*24,286*	*29,403*
14	*26,560*	*32,230*
15	*29,074*	*35,370*
16	*31,884*	*38,888*
17	*35,036*	*42,833*
18	*38,339*	*46,983*
19	*42,039*	*51,644*
20	*46,170*	*56,885*

HeinOnline -- 1999 vol. III 2435 1999

21	*50,754*	*62,660*
22	*55,877*	*69,154*
23	*61,655*	*76,498*
24	*68,147*	*84,760*
25	*75,329*	*93,924*"

Section 6. Section 2-18-313, MCA, is amended to read:

"2-18-313. Teachers' pay schedules. (1) The pay schedule for teachers for the period that includes ~~October 1, 1997, until the first day of the pay period that includes~~ October 1, ~~1998~~ *1999, until the first day of the pay period that includes October 1, 2000*, is as follows:

~~Annual Hours 2080 Note: Does Not Include Insurance~~

~~Term Twelve Months Matrix Type Annual~~

~~Education Level~~

~~STEP~~	~~BA~~	~~BA+1~~	~~BA+2~~	~~BA+3~~	~~MA~~	~~MA+1~~
~~1~~	~~23,642~~	~~24,351~~	~~25,082~~	~~25,834~~	~~26,609~~	~~27,407~~
~~2~~	~~24,351~~	~~25,082~~	~~25,834~~	~~26,609~~	~~27,407~~	~~28,230~~
~~3~~	~~25,082~~	~~25,834~~	~~26,609~~	~~27,407~~	~~28,230~~	~~29,077~~
~~4~~	~~25,834~~	~~26,609~~	~~27,407~~	~~28,230~~	~~29,077~~	~~29,949~~
~~5~~	~~26,609~~	~~27,407~~	~~28,230~~	~~29,077~~	~~29,949~~	~~30,847~~
~~6~~	~~27,407~~	~~28,230~~	~~29,077~~	~~29,949~~	~~30,847~~	~~31,773~~
~~7~~	~~28,230~~	~~29,077~~	~~29,949~~	~~30,847~~	~~31,773~~	~~32,726~~
~~8~~	~~29,077~~	~~29,949~~	~~30,847~~	~~31,773~~	~~32,726~~	~~33,708~~
~~9~~	~~29,949~~	~~30,847~~	~~31,773~~	~~32,726~~	~~33,708~~	~~34,719~~
~~10~~	~~30,847~~	~~31,773~~	~~32,726~~	~~33,708~~	~~34,719~~	~~35,761~~
~~11~~	~~31,773~~	~~32,726~~	~~33,708~~	~~34,719~~	~~35,761~~	~~36,833~~
~~12~~	~~32,726~~	~~33,708~~	~~34,719~~	~~35,761~~	~~36,833~~	~~37,938~~

~~(2) Effective on the first day of the pay period that includes October 1, 1998, the pay schedule for teachers is as follows:~~

Annual Hours — 2080 Note: Does Not Include Insurance

Term — Twelve Months Matrix Type — Annual

Education Level

STEP	BA	BA+~~1~~ *15*	BA+~~2~~ *30*	BA+~~3~~ *45*	~~MA~~ *BA+60*	~~MA+1~~ *BA+75*
~~1~~	~~23,642~~	~~24,351~~	~~25,082~~	~~25,834~~	~~26,609~~	~~27,407~~
~~2~~	~~24,351~~	~~25,082~~	~~25,834~~	~~26,609~~	~~27,407~~	~~28,230~~
~~3~~	~~25,082~~	~~25,834~~	~~26,609~~	~~27,407~~	~~28,230~~	~~29,077~~
~~4~~	~~25,834~~	~~26,609~~	~~27,407~~	~~28,230~~	~~29,077~~	~~29,949~~
~~5~~	~~26,609~~	~~27,407~~	~~28,230~~	~~29,077~~	~~29,949~~	~~30,847~~
~~6~~	~~27,407~~	~~28,230~~	~~29,077~~	~~29,949~~	~~30,847~~	~~31,773~~
~~7~~	~~28,230~~	~~29,077~~	~~29,949~~	~~30,847~~	~~31,773~~	~~32,726~~
~~8~~	~~29,077~~	~~29,949~~	~~30,847~~	~~31,773~~	~~32,726~~	~~33,708~~
~~9~~	~~29,949~~	~~30,847~~	~~31,773~~	~~32,726~~	~~33,708~~	~~34,719~~
~~10~~	~~30,847~~	~~31,773~~	~~32,726~~	~~33,708~~	~~34,719~~	~~35,761~~
~~11~~	~~31,773~~	~~32,726~~	~~33,708~~	~~34,719~~	~~35,761~~	~~36,833~~
~~12~~	~~32,726~~	~~33,708~~	~~34,719~~	~~35,761~~	~~36,833~~	~~37,938~~
~~13~~	~~33,708~~	~~34,719~~	~~35,761~~	~~36,833~~	~~37,938~~	~~39,077~~
1	*24,351*	*25,082*	*25,834*	*26,609*	*27,407*	*28,229*
2	*25,082*	*25,834*	*26,609*	*27,407*	*28,229*	*29,077*
3	*25,834*	*26,609*	*27,407*	*28,229*	*29,077*	*29,949*
4	*26,609*	*27,407*	*28,229*	*29,077*	*29,949*	*30,847*
5	*27,407*	*28,229*	*29,077*	*29,949*	*30,847*	*31,772*
6	*28,229*	*29,077*	*29,949*	*30,847*	*31,772*	*32,726*
7	*29,077*	*29,949*	*30,847*	*31,772*	*32,726*	*33,708*
8	*29,949*	*30,847*	*31,772*	*32,726*	*33,708*	*34,719*
9	*30,847*	*31,772*	*32,726*	*33,708*	*34,719*	*35,761*
10	*31,772*	*32,726*	*33,708*	*34,719*	*35,761*	*36,834*
11	*32,726*	*33,708*	*34,719*	*35,761*	*36,834*	*37,938*
12	*33,708*	*34,719*	*35,761*	*36,834*	*37,938*	*39,076*
13	*34,719*	*35,761*	*36,833*	*37,939*	*39,076*	*40,248*

(2) Effective on the first day of the pay period that includes October 1, 2000, the pay schedule for teachers is as follows:

Annual Hours — 2080 *Note: Does Not Include Insurance*

Term — Twelve Months *Matrix Type — Annual*

Education Level

STEP	*BA*	*BA + 15*	*BA + 30*	*BA + 45*	*BA + 60*	*BA + 75*
1	*25,082*	*25,834*	*26,609*	*27,407*	*28,229*	*29,076*
2	*25,834*	*26,609*	*27,407*	*28,229*	*29,076*	*29,949*
3	*26,609*	*27,407*	*28,229*	*29,076*	*29,949*	*30,848*
4	*27,407*	*28,229*	*29,076*	*29,949*	*30,848*	*31,773*
5	*28,229*	*29,076*	*29,949*	*30,848*	*31,773*	*32,726*
6	*29,076*	*29,949*	*30,848*	*31,773*	*32,726*	*33,708*
7	*29,949*	*30,848*	*31,773*	*32,726*	*33,708*	*34,719*
8	*30,848*	*31,773*	*32,726*	*33,708*	*34,719*	*35,761*
9	*31,773*	*32,726*	*33,708*	*34,719*	*35,761*	*36,833*
10	*32,726*	*33,708*	*34,719*	*35,761*	*36,833*	*37,939*
11	*33,708*	*34,719*	*35,761*	*36,833*	*37,939*	*39,076*
12	*34,719*	*35.761*	*36,833*	*37,939*	*39,076*	*40,248*
13	*35,761*	*36,834*	*37,938*	*39,077*	*40,248*	*41,456*"

Section 7. Section 2-18-315, MCA, is amended to read:

"**2-18-315. Blue-collar pay schedules.** (1) The pay schedule for blue-collar workers for the period from July 1, ~~1997~~ *1999*, until the first day of the pay period that includes October ~~1997~~ *1999* is as follows:

Annual Hours — 2080 Note: Does Not Include Insurance

Pay Matrix — Blue-Collar Matrix Type — Hourly

Grade	$/Hour
~~B1~~	~~9.995~~
~~B2~~	~~10.395~~
~~B3~~	~~10.795~~
~~B4~~	~~11.195~~
~~B4~~	~~11.195~~
~~B6~~	~~11.995~~

HeinOnline -- 1999 vol. III 2438 1999

~~B7~~	~~12.395~~
~~B8~~	~~12.795~~
~~B9~~	~~13.195~~
~~B10~~	~~13.595~~
~~B11~~	~~13.995~~
~~B12~~	~~14.395~~
~~B00~~	~~14.795~~
B1	*10.515*
B2	*10.915*
B3	*11.315*
B4	*11.715*
B5	*12.115*
B6	*12.515*
B7	*12.915*
B8	*13.315*
B9	*13.715*
B10	*14.115*
B11	*14.515*
B12	*14.915*
B00	*15.315*

(2) Effective on the first day of the pay period that includes Octoher 1, ~~1997~~ *1999*, until the first day of the pay period that includes October ~~1998~~ *2000*, the pay schedule for blue-collar workers is as follows:

Annual Hours — 2080 Note: Does Not Include Insurance

Pay Matrix — Blue-Collar Matrix Type — Hourly

Grade	$/Hour
~~B1~~	~~10.245~~
~~B2~~	~~10.645~~
~~B3~~	~~11.045~~
~~B4~~	~~11.445~~
~~B4~~	~~11.445~~

~~B6~~	~~12.245~~
~~B7~~	~~12.645~~
~~B8~~	~~13.045~~
~~B8~~	~~13.045~~
~~B10~~	~~13.845~~
~~B11~~	~~14.245~~
~~B12~~	~~14.645~~
~~B12~~	~~14.645~~
B1	*10.895*
B2	*11.295*
B3	*11.695*
B4	*12.095*
B5	*12.495*
B6	*12.895*
B7	*13.295*
B8	*13.695*
B9	*14.095*
B10	*14.495*
B11	*14.895*
B12	*15.295*
B00	*15.695*

(3) Effective on the first day of the pay period that includes October 1, ~~1998~~ *2000*, the pay schedule for blue-collar workers is as follows:

Annual Hours — 2080 Note: Does Not Include Insurance

Pay Matrix — Blue-Collar Matrix Type — Hourly

Grade	$/ Hour
~~B1~~	~~10.515~~
~~B2~~	~~10.915~~
~~B3~~	~~11.315~~
~~B3~~	~~11.315~~
~~B3~~	~~11.315~~

~~B6~~	~~12.515~~
~~B7~~	~~12.915~~
~~B8~~	~~13.315~~
~~B6~~	~~12.515~~
~~B10~~	~~14.115~~
~~B11~~	~~14.515~~
~~B12~~	~~14.915~~
~~B00~~	~~15.315~~
B1	*11.275*
B2	*11.675*
B3	*12.075*
B4	*12.475*
B5	*12.875*
B6	*13.275*
B7	*13.675*
B8	*14.075*
B9	*14.475*
B10	*14.875*
B11	*15.275*
B12	*15.675*
B00	*16.075*"

Section 8. Section 2-18-503, MCA, is amended to read:

"2-18-503. Mileage — allowance. (1) Members of the legislature, state officers and employees, jurors, witnesses, county agents, and all otber persons who may be entitled to mileage paid from public funds when using their own automobiles in the performance of official duties are entitled to collect mileage for the distance actually traveled by automobile and no more unless otherwise specifically provided by law.

(2) When the individual is authorized to operate a privately owned vehicle even though a government-owned or leased vehicle is available, a rate of 3 cents less per mile than the mileage rate allowed by the United States internal revenue service for the ~~preceding~~ *current* year must be paid.

(3) When a privately owned vehicle is used because a government-owned or leased vehicle is not available or because the use is in the best intorest of the governmental entity, a rate equal to the mileage allotment allowed by the United States internal revenue service for the ~~preceding~~ *current* year must be paid for

the first 1,000 miles and 3 cents less per mile for all additional miles traveled within a given calendar month.

(4) Members of the legislature, state officers and employees, jurors, witnesses, county agents, and all other persons who may be entitled to mileage paid from public funds, when using their own airplanes in the performance of official duties, are entitled to collect mileage for the nautical air miles actually traveled at a rate of twice the mileage allotment for automobile travel and no more unless specifically provided by law.

(5) This section does not alter 5-2-301.

(6) The department of administration shall prescribe policies necessary for the effective administration of this section for state government. The Montana Administrative Procedure Act, Title 2, chapter 4, does not apply to policies prescribed to administer this part."

Section 9. Section 2-18-703, MCA, is amended to read:

"**2-18-703. Contributions.** (1) Each agency, as defined in 2-18-601, shall contribute the amount specified in this section towards the group benefits cost.

(2) For employees defined in 2-18-701 and for members of the legislature, the employer contribution for group benefits is ~~$245 per~~ *$270 a* month for the ~~fiscal year ending June 30, 1998, and $270 a month for the fiscal year ending June 30, 1999~~ *period from July 1999 through December 1999, $285 a month for the period from January 2000 through December 2000,* and *$295 a month for January 2001 and* for each succeeding ~~fiscal year~~ *month. For employees of the Montana university system, the employer contribution for group benefits is $285 a month for the period from July 1999 through June 2000 and $295 a month for the period from July 2000 through June 2001 and for each succeeding month.* When a state employee is terminated to achieve a reduction in force, the continuation of contributions for group benefits beyond the termination date is subject to negotiation under 39-31-305. Permanent part-time, seasonal part-time, and temporary part-time employees who are regularly scheduled to work less than 20 hours a week are not eligible for the group benefit contribution. An employee who elects not to be covered by a state-sponsored group benefit plan may not receive the state contribution. A portion of the employer contribution for group benefits may be applied to an employee's costs for participation in Part B of medicare under Title XVIII of the Social Security Act, as amended, if the state group benefit plan is the secondary payer and medicare the primary payer.

(3) For employees of elementary and high school districts and of local government units, the employer's premium contributions may exceed but may not be less than $10 a month.

(4) Unused employer contributions for any state employee must be transferred to an account established for this purpose by the department of administration and upon transfer may be used to offset losses occurring to the group of which the employee is eligible to be a member.

(5) Unused employer contributions for any government employee may be transferred to an account established for this purpose by a self-insured government and upon transfer may be used to offset losses occurring to the group of which the employee is eligible to be a member or to increase the reserves of the group.

HeinOnline -- 1999 vol. III 2442 1999

(6) The laws prohibiting discrimination on the basis of marital status in Title 49 do not prohibit bona fide group insurance plans from providing greater or additional contributions for insurance benefits to employees with dependents than to employees without dependents or with fewer dependents."

Section 10. Section 5-2-301, MCA, is amended to read:

"5-2-301. Compensation and expenses for members while in session. (1) Except as provided in subsection (8), legislators are entitled to a salary commensurate to that of the daily rate of an entry grade 8 *10* classified state employee in effect when the regular session of the legislature in which they serve is convened under 5-2-103 for those days during which the legislature is in session. The president of the senate and the speaker of the house ~~shall~~ *must* receive an additional $5 a day in salary for those days during which the legislature is in session.

(2) Legislators may serve for no salary.

(3) Subject to subsection (4), legislators are entitled to a daily allowance, 7 days a week, during a legislative session, as reimbursement for expenses incurred in attending a session. Expense payments must stop when the legislature recesses for more than 3 days and resume when the legislature reconvenes.

(4) After November 15, and prior to December 15 of each even-numbered year, the department of administration shall conduct a survey of the allowance for daily expenses of legislators for the states of North Dakota, South Dakota, Wyoming, and Idaho. The department shall include the average daily expense allowance for Montana legislators in determining the average daily rate for legislators. The department shall include only states with specific daily allowances in the calculation of the average. If the average daily rate is greater than the daily rate for legislators in Montana, the average is the new daily rate for legislators for those days during which the legislature is in session. The expense allowance is effective when the next regular session of the legislature in which the legislators serve is convened under 5-2-103.

(5) Legislators are entitled to a mileage allowance as provided in 2-18-503 for each mile of travel to the place of the holding of the session and to return to their place of residence at the conclusion of the session.

(6) In addition to the mileage allowance provided for in subsection (5), legislators, upon submittal of an appropriate claim for mileage reimbursement to the legislative services division, are entitled to:

(a) three additional round trips to their place of residence during each regular session; and

(b) additional round trips as authorized by the legislature during special session.

(7) Legislators are not entitled to any additional mileage allowance under subsection (5) for a special session if it is convened within 7 days of a regular session.

(8) In lieu of the salary provided for in subsection (1) and the expense allowance provided for in subsection (4), a legislator may receive remuneration for services performed during a legislative session. A legislator choosing to receive remuneration for services performed shall file a request to receive payment under this subsection with the legislative services division. A legislator exercising the option to receive remuneration for services performed may not receive more

HeinOnline -- 1999 vol. III 2443 1999

remuneration than legislators paid pursuant to subsections (1) and (4). Remuneration for services performed must be reduced by an amount a day equal to the daily expense allowance for a legislator established under this section when the legislature recesses for more than 3 days."

Section 11. Continuation of health insurance for legislators. A legislator who is involuntarily terminated from performing service in either house of the legislature because of term limits is entitled to remain covered by the state's group health insurance plan and to the continuation of the employer's contributions to the employee's group health insurance plan for up to 6 months from the last day of the legislator's final term of office in that house. The provisions of this section are in addition to the rights and benefits provided under 2-18-704 and do not affect the right of a legislator to remain on the group health insurance plan after 6 months if the legislator is otherwise eligible under 2-18-704 to remain covered.

Section 12. Appropriations. The following money for the indicated fiscal years is appropriated to the listed agencies to implement the adjustments provided for in [sections 1 through 9]:

	Fiscal Year 2000		Fiscal Year 2001	
	General Fund	Other Funds	General Fund	Other Funds
Legislative Branch	106,820	25,563	256,094	60,984
Consumer Counsel	7,700		18,500	
Judiciary	42,255	11,808	102,438	28,320
University System	3,197,875	1,595,010	7,050,711	3,811,167
Office of Budget and Program Planning:				
for distribution to other agencies	3,060,987	5,236,444	7,385,909	12,412,723
personal services contingency	350,000	600,000	350,000	350,000

Section 13. Codification instruction. [Section 11] is intended to be codified as an integral part of Title 2, chapter 18, and the provisions of Title 2, chapter 18, apply to [section 11].

Section 14. Effective dates. (1) [Sections 1 through 7, and 9 through 13] are effective July 1, 1999.

(2) [Section 8 and this section] are effective on passage and approval.

Section 15. Retroactive applicability. [Section 8] applies retroactively, within the meaning of 1-2-109, to mileage expenses incurred on or after April 1, 1999.

Approved May 6, 1999

HeinOnline -- 1999 vol. III 2444 1999

CHAPTER NO. 559

[HB 20]

AN ACT ESTABLISHING A MULTISPECIES FISH HATCHERY NEAR FORT PECK DAM; CREATING THE WARM WATER GAME FISH SURCHARGE AND WARM WATER GAME FISH STAMP THAT WILL ALLOW A LICENSEE TO FISH IN DESIGNATED WATERS FOR WARM WATER GAME FISH; DEDICATING SURCHARGE REVENUE; CREATING ACCOUNTS AND PROVIDING FOR ADMINISTRATION OF THE ACCOUNTS BY THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS; PROHIBITING THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS FROM USING FOR THE HATCHERY MORE MONEY THAN IS IN THE ACCOUNTS ESTABLISHED FOR THE HATCHERY; AND PROVIDING A CONTINGENT VOIDNESS PROVISION.

Be it enacted by the Legislature of the State of Montana:

Section 1. Fort Peck multispecies fish hatchery established. (1) There is a multispecies fish hatchery near Fort Peck dam. The purpose of the hatchery is to provide healthy warm water game fish to improve the warm water fishing opportunities in Montana with minimal impact on cold water fish populations. Administration of the hatchery must be by the department, consistent with the department's authority provided for in 87-3-201.

(2) The multispecies hatchery is intended to use 96 acres of rearing ponds to produce warm water species. The hatchery is to employ land available through long-term lease from the U.S. army corps of engineers. It is intended that the hatchery use free, high-quality water from the dredge cut adjacent to Fort Peck dam. Electric power for the hatchery may be purchased from Fort Peck dam at the lowest available rate.

(3) Warm water species to be propagated at the hatchery may include largemouth bass (Micropterus salmoides), smallmouth bass (Micropterus dolomieui), walleye (Stizostedion vitreum), sauger (Stizostedion canadense), black crappie (Pomoxis nigromaculatus), white crappie (Pomoxis annularis), channel catfish (Ictalurus punctatus), yellow perch (Perca flavescens), northern pike (Esox lucius), tiger muskellunge, and bait fish, including cisco (Coregonus artedii). The hatchery may also include raceways for salmon.

(4) Costs for hatchery construction, operation, maintenance, and personnel are to be funded with revenue in the warm water game fish accounts established in [section 2]. It is intended that the hatchery be constructed in stages as revenue becomes available in the warm water game fish accounts established in [section 2].

Section 2. Warm water game fish surcharge and stamp — warm water game fish defined — aecounts established — dedieation of revenue to Fort Peck multispecies fish hatchery. (1) A person who is required to be licensed in order to fish in Montana and who desires to fish for warm water game fish in waters listed pursuant to subsection (9) shall, upon purchase of a Class A, Class B, Class B-4, or Class A-8 fishing license, pay a warm water game fish surcharge of $5. The surcharge is in addition to the license fee established for each class of license and entitles the holder to fish for warm water game fish as authorized by the department. Payment of the surcharge must be indicated by placement of a warm water game fish stamp on the fishing license.

HeinOnline -- 1999 vol. III 2445 1999

(2) A warm water game fish stamp is valid for the license year in which it is purchased.

(3) Revenue from the warm water game fish surcharge must be placed in the account created in subsection (5) and may be used only for the purposes set out in subsection (7).

(4) As used in this section, "warm water game fish" includes but is not limited to all species of the genera Stizostedion, Esox, Micropterus, and Lota and includes largemouth bass (Micropterus salmoides), smallmouth bass (Micropterus dolomieui), walleye (Stizostedion vitreum), sauger (Stizostedion canadense), black crappie (Pomoxis nigromaculatus), white crappie (Pomoxis annularis), channel catfish (Ictalurus punctatus), yellow perch (Perca flavescens), northern pike (Esox lucius), and tiger muskellunge.

(5) There is an account into which must be deposited:

(a) all proceeds from the warm water game fish surcharge established in subsection (1); and

(b) money received by the department in the form of gifts, grants, reimbursements, or appropriations from any source intended to be used for the Fort Peck multispecies fish hatchery.

(6) The department shall administer the account within the state special revenue fund established in 17-2-102.

(7) Subject to the provisions of subsection (8), revenue collected under subsection (5) must be used by the department for the construction, operation, maintenance, and personnel costs of the Fort Peck multispecies fish hatchery established in [section 1], which may include a cost-share agreement with the federal gevernment for construction of the Fort Peck multispecies fish hatchery, and beginning October 1, 2005, for the costs incurred in eradicating illegally introduced warm water species from Montana waters. No more than 15% of available revenue may be dedicated to eradication efforts.

(8) The department may not use any nonfederal funds for the hatchery authorized in [section 1] otber than those in the account provided for in subsection (5). There is an account in tbe federal special revenue fund into which must be deposited all federal money received for purpeses of the Fort Peck multispecies fish hatchery and from which the department may use funds for the hatchery authorized in [section 1].

(9) The department shall prepare a list of all waters into which fish from the Fort Peck multispecies fish hatchery will be planted. The waters designated in the list are tbe only waters for which a warm water game fish stamp is required.

Section 3. Contingent voidness. If federal funds are not committed for the purposes of [this act] by June 30, 2001, then [this act] is void.

Section 4. Codification instruction. [Sections 1 and 2] are intended to be codified as an integral part of Title 87, chapter 3, part 2, and the provisions of Title 87, cbapter 3, part 2, apply to [sections 1 and 2].

Approved May 5, 1999

HeinOnline -- 1999 vol. III 2446 1999

CHAPTER NO. 560

[HB 57]

AN ACT AUTHORIZING THE UNIVERSITY SYSTEM TO ELECT WORKERS' COMPENSATION UNDER PLAN NO. 1, PLAN NO. 2, OR PLAN NO. 3 TO IMPROVE HIGHER EDUCATION QUALITY FOR STUDENTS BY CONTROLLING COSTS AND UTILIZING SAVINGS; AMENDING SECTION 39-71-403, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE.

WHEREAS, throughout the 1990s, the Montana Legislature has directed the Montana University System to act more like a business; and

WHEREAS, during that time, the Legislature has continuously stressed the need to improve the quality of the University System; and

WHEREAS, the Legislature has urged the University System to take all possible steps to control costs and to utilize savings to improve the system's quality for student customers and to guarantee access for qualified Montana students; and

WHEREAS, the Board of Regents has identified the injection of competition into the University System's workers' compensation coverage as a positive step in controlling costs and in continuing the Board of Regents' efforts to operate as a public business.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 39-71-403, MCA, is amended to read:

"39-71-403. Plan three exclusive for state agencies — election of plan by ~~other~~ public corporations — financing of self-insurance fund — *exemption for university system* — *definition*. (1) ~~If~~ *Except as provided in subsection (5), if* a state agency is the employer, the terms, conditions, and provisions of compensation plan No. 3, state fund, are exclusive, compulsory, and obligatory upon both employer and employee. Any sums necessary to be paid under the provisions of this chapter by ~~any~~ *a* state agency are considered to be ordinary and necessary ~~expense~~ *expenses* of the agency. The agency shall make appropriation of and pay the sums into the state fund at the time and in the manner provided for in this chapter, notwithstanding that the state agency may have failed to anticipate the ordinary and necessary expense in ~~any~~ *a* budget, estimate of expenses, appropriations, ordinances, or otherwise.

(2) A public corporation, other than a state agency, may elect coverage under compensation plan No. 1, plan No. 2, or plan No. 3, separately or jointly with any other public corporation other than a state agency. A public corporation electing compensation plan No. 1 may purchase reinsurance or issue bonds or notes pursuant to subsection (3)(b). A public corporation electing compensation plan No. 1 is subject to the same provisions as a private employer electing compensation plan No. 1.

(3) (a) A public corporation, other than a state agency, that elects plan No. 1 may establish a fund sufficient to pay the compensation and benefits provided for in this chapter and chapter 72 and to discharge all liabilities that *are* reasonably ~~incur~~ *incurred* during the fiscal year for which the election is effective. Proceeds from the fund must be used only to pay claims covered by this chapter and chapter 72 and for actual and necessary expenses required for the efficient

administration of the fund, including debt service on any bonds and notes issued pursuant to subsection (3)(b).

(b) (i) A public corporation, other than a state agency, separately or jointly with another public corporation, other than a state agency, may issue and sell its bonds and notes for the purpose of establishing, in whole or in part, the self-insurance workers' compensation fund provided for in subsection (3)(a) and to pay the costs associated with the sale and issuance of the bonds. Bonds and notes may be issued in an amount not exceeding 3% of the taxable valuation of the public corporation as of the date of issue. The bonds and notes must be authorized by resolution of the governing body of the public corporation and are payable from an annual property tax levied in the amount necessary to pay principal and interest on the bonds or notes. This authority to levy an annual property tax exists despite any provision of law or maximum levy limitation to the contrary. The ~~revenues~~ *revenue* derived from the sale of the bonds and notes may not be used for any other purpose.

(ii) The bonds and notes:

(A) may be sold at public or private sale;

(B) do not constitute debt within the meaning of any statutory debt limitation; and

(C) may contain other terms and provisions as the governing body determines.

(iii) Two or more public corporations, other than state agencies, may agree to exercise their respective borrowing powers jointly under this subsection (3)(b) or may authorize a joint board to exercise the powers on their behalf.

(iv) The fund established from the proceeds of bonds and notes issued and sold under this subsection (3)(b) may, if sufficient, be used in lieu of a surety bond, reinsurance, specific and aggregate excess insurance, or any other form of additional security necessary to demonstrate the public corporation's ability to discharge all liabilities as provided in subsection (3)(a). Subject to the 3% of taxable valuation limitation in subsection (3)(b)(i), a public corporation may issue bonds and notes to establish a fund sufficient to discharge liabilities for periods greater than 1 year.

(4) All money in the fund established under subsection (3)(a) not needed to meet immediate expenditures must be invested by the governing body of the public corporation or the joint board created by two or more public corporations as provided in subsection (3)(b)(iii), and all proceeds of the investment must be credited to the fund.

(5) The provisions of subsection (1) do not apply to the Montana university system.

(6) As used in subsections (2) through (4), "public corporation" includes the Montana university system."

Section 2. Effective date. [This act] is effective July 1, 2000.

Approved May 5, 1999

HeinOnline -- 1999 vol. III 2448 1999

CHAPTER NO. 561

[HB 90]

AN ACT AUTHORIZING A SCHOOL DISTRICT TO ANTICIPATE THE AMOUNT OF CERTAIN NONLEVY REVENUE FOR COMPUTATION OF THE GENERAL FUND LEVY REQUIREMENT; CLARIFYING THE TAXABLE VALUATION USED TO CALCULATE THE NUMBER OF MILLS LEVIED; AUTHORIZING A DISTRICT TO IMPOSE A LEVY TO ELIMINATE ANY NEGATIVE FUND BALANCE AND RESTORE RESERVES TO THE PRIOR YEAR'S OPERATING RESERVE; AMENDING SECTION 20-9-141, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 20-9-141, MCA, is amended to read:

"20-9-141. Computation of general fund net levy requirement by county superintendent. (1) The county superintendent shall compute the levy requirement for each district's general fund on the basis of the following procedure:

(a) Determine the funding required for the district's final general fund budget less the sum of direct state aid and the special education allowable cost payment for the district by totaling:

(i) the district's nenisolated school BASE budget requirement to be met by a district levy as provided in 20-9-303; and

(ii) any general fund budget amount adopted by the trustees of the district under the provisions of 20-9-308 and 20-9-353, including any additional funding for a general fund budget that exceeds the maximum general fund budget.

(b) Determine the money available for the reduction of the property tax on the district for the general fund by totaling:

(i) the general fund balance reappropriated, as established under the provisions of 20-9-104;

(ii) *anticipated tuition payments for out-of-district pupils under the provisions of 20-5-321 through 20-5-323, except the amount of tuition received for a pupil who is a child with disabilities in excess of the amount received for a pupil without disabilities, as calculated under 20-5-323(2);*

(iii) anticipated revenue from corporation license taxes collected from financial institutions under the provisions of 15-31-702;

(iv) pursuant to subsection (4), anticipated revenue from coal proceeds under 15-23-703;

(v) anticipated oil and natural gas production taxes;

(vi) anticipated revenue from taxes and fees imposed under 61-3-504 and 61-3-537 in an amount that is no less than 75% of the previous year's revenue from th :se sources; and

(vii) amounts received in the last fiscal year for which revenue reporting was required for each of the following:

HeinOnline -- 1999 vol. III 2449 1999

~~(A) tuition payments for out-of-district pupils under the provisions of 20-5-321 through 20-5-323, except the amount of tuition received for a pupil who is a child with disabilities in excess of the amount received for a pupil without disabilities, as calculated under 20-5-323(2);~~

~~(B)~~ revenue from taxes and fees imposed under 23-2-517, 23-2-803, ~~61-3-504,~~ 61-3-521, 61-3-527, 61-3-529, ~~61-3-537,~~ and 67-3-204;

~~(C)~~*(B)* ~~oil and natural gas production taxes;~~

~~(D)~~ interest earned by the investment of general fund cash in accordance with the provisions of 20-9-213(4);

~~(E) revenue from corporation license taxes collected from financial institutions under the provisions of 15-31-702;~~ and

~~(F)~~*(C)* any other revenue received during the school fiscal year that may be used to finance the general fund, excluding any guaranteed tax base aid~~; and~~

~~(iii) pursuant to subsection (4), anticipated revenue from coal gross proceeds under 15-23-703.~~

(c) Notwithstanding the provisions of subsection (2), subtract the money available to reduce the property tax required to finance the general fund that has been determined in subsection (1)(b) from any general fund budget amount adopted by the trustees of the district, up to the BASE budget amount, to determine the general fund BASE budget levy requirement.

(d) Subtract any amount remaining after the determination in subsection (1)(c) from any additional funding requirement to be met by an over-BASE budget amount, a district levy as provided in 20-9-303, and any additional financing as provided in 20-9-353 to determine any additional general fund levy requirements.

(2) The county superintendent shall calculate the number of mills to be levied on the taxable property in the district to finance the general fund levy requirement for any amount that does not exceed the BASE budget amount for the district by dividing the amount determined in subsection (1)(c) by the sum of:

(a) the amount of guaranteed tax base aid that the district will receive for each mill levied, as certified by the superintendent of public instruction; and

(b) the *current total* taxable valuation of the district, *as certified by the department of revenue under 15-10-202*, divided by 1,000.

(3) The net general fund levy requirement determined in subsections (1)(c) and (1)(d) must be reported to the county commissioners on the fourth Monday of August by the county superintendent as the general fund net levy requirement for the district, and a levy must be set by the county commissioners in accordance with 20-9-142.

(4) For each school district, the department of revenue shall calculate and report to the county superintendent the amount of revenue anticipated for the ensuing fiscal year from revenue from coal gross proceeds under 15-23-703."

Section 2. Levy to eliminate negative fund balance in operating reserves. A school district in which actual collection of revenue identified in 20-9-141(1)(b) is less than the collection of revenue in the prior year may levy an amount that is sufficient to eliminate any negative fund balance and restore the district's reserves to the prior year's operating reserve as provided in 20-9-104(1).

HeinOnline -- 1999 vol. III 2450 1999

Section 3. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 20, chapter 9, part 1, and the provisions of Title 20, chapter 9, part 1, apply to [section 2].

Section 4. Effective date — applicability. [This act] is effective on passage and approval and applies to school budgets for the school fiscal year heginning July 1, 1999.

Section 5. Termination. [Section 2] terminates July 1, 2000.

Approved May 5, 1999

CHAPTER NO. 562

[HB 182]

AN ACT GENERALLY REVISING LAWS RELATING TO PUBLIC RETIREMENT; PROVIDING FOR THE PURCHASE OF SERVICE FOR PERIODS OF ILLNESS OR INJURY BY MEMBERS OF THE HIGHWAY PATROL OFFICERS' RETIREMENT SYSTEM AND THE SHERIFFS' RETIREMENT SYSTEM; PROVIDING THAT A STATUTORY REVOCATION THROUGH DIVORCE OR CONTRACT OF THE DISPOSITION OF PROPERTY IS INAPPLICABLE TO FUNDS GOVERNED BY A RETIREMENT SYSTEM LAW; AMENDING SECTIONS 2-15-1009, 7-32-4132, 19-2-302, 19-2-303, 19-2-403, 19-2-404, 19-2-406, 19-2-407, 19-2-408, 19-2-503, 19-2-505, 19-2-506, 19-2-507, 19-2-602, 19-2-701, 19-2-703, 19-2-801, 19-2-802, 19-2-1101, 19-3-103, 19-3-201, 19-3-319, 19-3-401, 19-3-403, 19-3-412, 19-3-505, 19-3-509, 19-3-512, 19-3-521, 19-3-904, 19-3-1005, 19-3-1015, 19-3-1103, 19-3-1106, 19-3-1204, 19-3-1210, 19-3-1501, 19-3-1605, 19-5-102, 19-5-401, 19-5-503, 19-5-701, 19-5-802, 19-5-901, 19-6-102, 19-6-503, 19-6-505, 19-6-612, 19-6-709, 19-6-710, 19-6-801, 19-6-802, 19-6-803, 19-7-102, 19-7-402, 19-7-503, 19-7-711, 19-7-802, 19-7-804, 19-7-1001, 19-8-102, 19-8-501, 19-8-712, 19-8-801, 19-8-901, 19-8-902, 19-8-1002, 19-8-1105, 19-9-103, 19-9-405, 19-9-702, 19-9-703, 19-9-706, 19-9-1007, 19-9-1009, 19-9-1101, 19-9-1102, 19-13-103, 19-13-104, 19-13-404, 19-13-604, 19-13-605, 19-13-607, 19-13-704, 19-13-903, 19-13-1007, 19-13-1010, 19-17-102, 19-17-106, 19-17-108, 19-17-204, 19-19-201, 19-19-205, AND 72-2-814, MCA; REPEALING SECTION 19-9-401, MCA; AND PROVIDING AN EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 2-15-1009, MCA, is amended to read:

"2-15-1009. Public employees' retirement board — terms — alioeation. (1) There is a public employees' retirement board.

(2) The board consists of six members appointed by the governor. The members are:

(a) three public employees who are active members of a public retirement system (not more than one of these members may be an employee of the same department);

(b) one retired public employee who is ~~an inactive~~ *a* member of tbe public employees' retirement system; and

(c) two members at large.

HeinOnline -- 1999 vol. III 2451 1999

(3) The term of office for each member is 5 years.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121. The board shall hire necessary employees as provided in 19-2-404.

(5) Members of the board must be compensated and receive travel expenses as provided for in 2-15-124."

Section 2. Section 7-32-4132, MCA, is amended to read:

"7-32-4132. Payment of partial salary amount of officer injured in performance of duty. (1) A member of a municipal law enforcement agency of a ~~first- or second-class~~ municipality *contracting for retirement coverage pursuant to 19-9-207* who is injured in the performance of the member's duties and who requires medical or other remedial treatment for injuries that render the member unable to perform the member's duties must be paid by the municipality the difference between the member's net salary, following adjustments for income taxes and pension contributions, and the amount received from workers' compensation until the disability has ceased, as determined by workers' compensation, or for a period not to exceed 1 year, whichever occurs first.

(2) To qualify for the partial salary payment provided for in subsection (1), the member of the law enforcement agency must be unable to perform the member's duties as a result of the injury."

Section 3. Section 19-2-302, MCA, is amended to read:

"19-2-302. Applicability. This chapter applies to the provisions and administration of the retirement ~~systems under~~ *plans established in* chapters 3, 5 through 9, and 13 of this title *and known as retirement systems*."

Section 4. Section 19-2-303, MCA, is amended to read:

"19-2-303. Definitions. Unless the context requires otherwise, for each of the retirement systems subject to this chapter, the following definitions apply:

(1) "Accumulated contributions" means the sum of all the regular and any additional contributions made by a member in a system, together with the regular interest on the contributions.

(2) "Active member" means a member who is a paid employee of an employer, is making the required contributions, and is properly reported to the ~~division~~ *board* for the most current reporting period.

(3) "Actuarial cost" means the amount determined by the board in a uniform and nondiscriminatory manner to represent the present value of the benefits to be derived from the additional service to be credited based on the most recent actuarial valuation for the system and the age, years until retirement, and current salary of the member.

(4) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the 1971 Group Annuity Mortality Table, with ages set back 4 years and an interest rate of 8% compounded annually.

(5) "Actuarial liabilities" means the excess of the present value of all benefits payable under a retirement system over the present value of future normal costs in that retirement system.

(6) "Actuary" means the actuary retained by the board in accordance with 19-2-405.

HeinOnline -- 1999 vol. III 2452 1999

(7) "Additional contributions" means contributions made by a member to purchase various types of optional service credit as allowed by the applicable retirement system.

(8) "Annuity" means equal and fixed payments for life that are the actuarial equivalent of a lump-sum payment under a retirement system and as such are not benefits paid by a retirement system and are not subject to periodic or one-time increases.

(9) "Benefit" means the service or disability retirement or survivorship benefit payment provided by a retirement system.

(10) "Board" means the public employees' retirement board provided for in 2-15-1009.

(11) "Contingent annuitant" means a person designated to receive a continuing monthly benefit after the death of a retired member.

(12) "Credited service" or "service credit" means the periods of time for which the required contributions have been made to a retirement system and that are used to calculate service or disability retirement or survivorship benefits under a retirement system.

(13) "Department" means the department of administration.

(14) "Designated beneficiary" means the person designated by a member or payment recipient to receive any survivorship benefits or lump-sum payments upon the death of the member or payment recipient, including annuities derived from the benefits or payments.

(15) "Disability" means a total inability of the member to perform the member's duties by reason of physical or mental incapacity. The disability must be incurred while the member is an active member and must be one of permanent duration or of extended and uncertain duration, as determined by the board on the basis of competent medical opinion.

~~(16) "Division" means the public employees' retirement division of the department of administration.~~

~~(17)~~*(16)* "Employee" means a person who is employed by an employer in any capacity and whose salary is *being* paid by the employer.

~~(18)~~*(17)* "Employer" means a governmental entity participating in a retirement system enumerated in 19-2-302 on behalf of its eligible employees.

~~(19)~~*(18)* "Essential elements of the position" means fundamental job duties. An element may be considered essential because of but not limited to the following factors:

(a) the position exists to perform the element;

(b) there are a limited number of employees to perform the element; or

(c) the element is highly specialized.

~~(20)~~*(19)* "Fiscal year" means any year commencing with July 1 and ending the following June 30.

~~(21)~~*(20)* "Inactive member" means a member who is not an active or retired member.

HeinOnline -- 1999 vol. III 2453 1999

~~(22)~~*(21)* "Member" means any person with accumulated contributions and service credited with a retirement system or receiving a retirement benefit on account of the person's previous service credited in a retirement system.

~~(22)~~*(22)* "Membership service" or "years of service" means the periods of service that are used to determine eligibility for retirement or other benefits.

~~(24)~~*(23)* "Normal cost" or "future normal cost" means an amount calculated under an actuarial cost method required to fund accruing benefits for members of a retirement system during any year in the future. Normal cost does not include any portion of the supplemental costs of a retirement system.

~~(25)~~*(24)* "Pension" means benefit payments for life derived from contributions to a system made from state- or employer-controlled funds.

~~(26)~~*(25)* "Pension trust fund" means a fund established to hold the contributions, income, and assets of a retirement system in public trust.

~~(27)~~*(26)* "Regular contributions" means contributions required from members under a retirement system.

~~(26)~~*(27)* "Regular interest" means interest at the rate set from time to time by the board.

~~(29)~~*(28)* "Retirement" or "retired" means the status of a member who has *been* terminated from service *for at least 30 days* and has received and accepted a retirement benefit from a retirement system.

~~(30)~~*(29)* "Retirement benefit" means the periodic benefit payable as a result of service, early, or disability retirement under a retirement system. An annuity is not a retirement benefit.

~~(31)~~*(30)* "Retirement system" ~~or~~, "system", *or "plan"* means one of the public employee retirement ~~systems~~ *plans* enumerated in 19-2-302 *and known as retirement systems*.

~~(32)~~*(31)* "Service" means employment of an employee in a position covered by a retirement system.

~~(33)~~*(32)* "Statutory beneficiary" means the surviving spouse or dependent child or children of a member of the highway patrol officers', municipal police officers', or firefighters' unified retirement system who are statuterily designated to receive benefits upon the death of the member.

~~(34)~~*(33)* "Supplemental cost" means an element of the total actuarial cost of a retirement system arising from benefits payable for service performed prior to the inception of the retirement system or prior to the date of contribution rate increases, changes in actuarial assumptions, actuarial losses, or failure to fund or otherwise recognize normal cost accruals or interest on supplemental costs. These costs are included in the unfunded actuarial liabilities of the retirement system.

~~(33)~~*(34)* "Survivorship benefit" means payments for life to the statutory or designated beneficiary of a deceased member who died while in service under a retirement system.

~~(33)~~*(35)* "Termination of employment" or "termination of service" means that the member has severed the employment relationship with the employer and has been paid all compensation due upon termination of employment, including but not limited to payment of accrued annual leave credits, as provided

in 2-18-617, and payment of accrued sick leave credits, as provided in 2-18-618. For purposes of this subsection, compensation as a result of legal action, court order, appeal, or settlement to which the board was not party is not a payment due upon termination.

~~(37)~~*(36)* "Unfunded actuarial liabilities" or "unfunded liabilities" means the excess of a retirement system's actuarial liabilities at any given point in time over the value of its cash and investments on that same date.

~~(38)~~*(37)* "Vested member" or "vested" means a member or the status of a member who has attained the minimum membership service requirements to be eligible for retirement benefits under a retirement system.

~~(38)~~*(38)* "Written application" means a written instrument, ~~duly executed~~ *specified by the board, properly executed,* and filed with the board ~~and containing~~ *that contains* all *the* information required by the board, including ~~such proofs of age as~~ *documentation* the board considers necessary."

Section 5. Section 19-2-403, MCA, is amended to read:

"19-2-403. Powers and duties of board. (1) The board shall administer the provisions of the chapters enumerated in 19-2-302.

(2) The board may establish rules that it considers proper for the administration and operation of the retirement systems and enforcement of the chapters under which each retirement system is established.

(3) The board shall establish uniform rules that are necessary to determine service credit for fractional years of service.

(4) The board shall determine who are employees within the meaning of each retirement system. The board is the sole authority for determining the conditions under which persons may become members of and receive benefits under the retirement systems.

(5) The board shall determine and may modify retirement benefits under the retirement systems.

(6) In matters of board discretion under the systems, the board shall treat all persons in similar circumstances in a uniform and nondiscriminatory manner.

(7) The board shall maintain records and accounts it determines necessary for the administration of the retirement systems.

(8) Upon the basis of the findings of the actuary pursuant to 19-2-405, the board shall adopt actuarial ~~tables~~ *rates* and rates of regular interest it determines appropriate for the administration of the retirement systems.

(9) The board shall review the sufficiency of benefits paid by the retirement system and recommend to the legislature those changes in benefits that may be necessary for retired members and their beneficiaries to maintain a stable standard of living.

(10) The board may implement third-party mailings under the provisions of 2-6-109. If third-party mailings are implemented, the board shall adopt rules governing means of implementation, including the specification of eligible third parties, appropriate materials, and applicable fees and procedures. Fees generated by third-party mailings must be deposited in an account in the state special revenue fund and must be appropriated to the board for the benefit of participants of retirement systems administered by the board.

HeinOnline -- 1999 vol. III 2455 1999

(11) In discharging duties, the board, a member of the board, or an authorized representative of the board may conduct hearings, administer oaths and affirmations, take depositions, certify to official acts and records, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records.

(12) The board may by rule or otherwise delegate to the board's executive director or any other staff member any of the powers or duties conferred by law upon the board except as otherwise provided by law and except for the adoption of rules and the issuance of final orders after hearings held pursuant to subsection (11) or the contested case procedure of the Montana Administrative Procedure Act."

Section 6. Section 19-2-404, MCA, is amended to read:

"19-2-404. Appointment and compensation of administrative staff. The board shall hire and fix the compensation of an ~~administrator~~ *executive director* and other necessary employees to assist the board in administering the retirement systems. The compensation of the ~~administrator~~ *executive director* and employees must be established in accordance with Title 2, chapter 18."

Section 7. Section 19-2-406, MCA, is amended to read:

"19-2-406. Determination of disability by board — compliance with federal law — conversion to service retirement benefit — rules. (1) The board shall determine whether a member has become disabled. In the discharge of its duty regarding determinations, the board, any member of the board, or any authorized representative of the board may order medical examinations, conduct hearings, administer oaths and affirmations, take depositions, certify to official acts *and records*, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records considered necessary as evidence in connection with a claim for disability retirement.

(2) The board shall adopt rules requiring employers to identify and explain the essential elements of a member's position, any accommodations that were or can be made in compliance with the Americans With Disabilities Act of 1990 (42 U.S.C. 12101, et seq.), and the effectiveness of the accommodations.

(3) The board shall retain medical personnel to advise it in assessing the nature and extent of disabling conditions while reviewing claims for disability retirement.

(4) The disability retirement benefit paid to a member must be converted to a service retirement benefit, without recalculation of the monthly benefit amount, when the member has attained the minimum age required for normal service retirement. The board shall notify the member in writing as to the change in status."

Section 8. Section 19-2-407, MCA, is amended to read:

"19-2-407. Report by ~~division~~ *board* to governor. As soon as practical after the close of each fiscal year, the ~~division~~ *board* shall file with the governor a report of its work for that fiscal year. The report must include a statement as to the accumulated cash and securities in the pension trust funds as certified by the state treasurer and the board of investments. The report must also include the most recent unpublished report of the actuary of the actuarial valuation of the assets and liabilities of each system."

HeinOnline -- 1999 vol. III 2456 1999

Section 9. Section 19-2-408, MCA, is amended to read:

"19-2-408. Administrative expenses. (1) The legislature finds that proper administration of the pension trust funds benefits both employers and members and continues to benefit members after retirement.

(2) The administrative expenses of the retirement systems administered by the board must he paid from the investment earnings on the pension trust fund of the puhlic employees' retirement system, except as provided in subsection (3). Before the fiscal yearend closing, the board sball compute the adniinistrative expenses attributable to each retirement systeiu administered by the board for the immediately preceding fiscal year and transfer that amount from each retirement system's pension trust fund to the pension trust fund of the public employees' retirement system. The total administrative expenses of the hoard, including the administration of the volunteer firefighters' pension plan. may not exceed 1.5% of the total retirement henefits paid.

(3) On January 1 of each year, each employer under the public employees' retirement system shall contribute on behalf of each member then in its service a membersbip fee of $1 in addition to other required contributions. The fees must be used for the purpose of defraying the administrative expense of chapters 2, 3, 5 through 9, and 13 and this chapter.

(4) The board may assess and ~~the division may~~ collect a fee froin the departinent of fish, wildlife, and parks for the purpose of defraying the expenses of administering chapter 8 of this title."

Section 10. Section 19-2-503, MCA, is amended to read:

"19-2-503. Management of pension trust funds. The pension trust funds must be managed as follows:

(1) The board is the trustee of all inoney collected for the retirement systems and has exclusive control of the adininistration of the pension trust funds except as otherwise provided by law.

(2) The department sball deposit in the state treasury all amounts received by ~~it~~ *the board* as provided in this chapter.

(3) The state treasurer is custodian of the pension trust funds, subject to the exclusive control of the board for administration and the board of investments for the investment of the funds."

Section 11. Section 19-2-505, MCA, is amended to read:

"19-2-505. Restrictions on use of funds. (1) Except as provided in this section, a member or an employee of the department or tbe board of investments may not:

(a) have any interest, direct or indirect, in the making of any investment or in the gains or profits accruing froin the pension trust funds;

(b) directly or indirectly, for tbe member or employee or as an agent or partner of others, horrow from the pension trust funds or deposits;

(c) in any manner use the pension trust funds except to make current and necessary payments that are authorized hy the ~~division~~ *board*; or

(d) become an endorser or surety as to or in any inanner an obligor for investments for the pension trust funds.

HeinOnline -- 1999 vol. III 2457 1999

(2) The assets of the retirement systems may not be used for or diverted to any purpose other than for the exclusive benefit of the members and their beneficiaries and for paying the reasonable administrative expenses of the retirement systems administered by the board.

(3) Retirement benefits not claimed within 5 years after the member's death are forfeited and revert to the retirement system trust fund."

Section 12. Section 19-2-506, MCA, is amended to read:

"19-2-506. Payment of contributions by employers — accompanying reports — penalty. (1) At a time prescribed by the rules of the board, each employer shall remit to the ~~division~~ *board* all contributions required of the employer and its employees under retirement systems subject to this chapter on the basis of covered compensation paid during the previous pay period.

(2) The board may collect payments delinquent under subsection (1) with an interest penalty at the rato of 9% a year or $10 a day, whichever is greater. The board may, in its discretion, waive the penalty. The collection may be made by either:

(a) an action in a court of competent jurisdiction against the employer; or

(b) deductions, at the request of the board, from any other money payable to the employer by any agency or fund of the state.

(3) Employers shall submit reports ~~of their covered payroll and contributions remitted~~ *to the board,* as the board requires by rule, *of compensation paid to both member and nonmember employees.*

(4) The chief administrative officer of each employer shall furnish monthly reports to the board showing any changes in status during the preceding month of the employer's members resulting from transfer, promotion, leave of absence, resignation, reinstatement, dismissal, or death. The chief administrative officer shall furnish additional information concerning the members that the board may require in the administration of the retirement systems, including the services of the employer's office and departments that the board may request in connection with claims by members for benefits under the retirement systems."

Section 13. Section 19-2-507, MCA, is amended to read:

"19-2-507. Transfer between funds. Any pension trust fund out of which payments are made under the provisions of this title may be reimbursed to the extent of the payments by transfer of a sufficient sum for the reimbursement from another pension trust fund or funds under the control of the ~~division~~ *board.* ~~The division shall certify to the department the amounts to be transferred and the funds from and to which the transfer is to be made, and the division shall make the transfer as directed in the certificate.~~"

Section 14. Section 19-2-602, MCA, is amended to read:

"19-2-602. Refund of member's contributions on termination of service. (1) Except as provided in this section~~, any~~ *and upon approval by the board of a written application of a member, a* member whose service has been discontinued, other than by death or retirement, must be paid the member's accumulated contributions ~~at the member's request~~.

(2) Upon the written ~~request~~ *application* of a terminating member, the ~~division~~ *board* shall make a direct rollover distribution as allowed under Internal Revenue Code section 401(a)(31) of the eligible portion of a refund of the

HeinOnline -- 1999 vol. III 2458 1999

member's accumulated contributions. The direct rollover distribution must be paid directly to an eligible retirement plan allowed under applicable federal law. The terminating member shall designate the eligible retirement plan on forms provided by the ~~division~~ *board*. Amounts of the member's accumulated contributions that are not eligible for direct rollover distribution must he paid to the terminating member. The terminating member is responsible to correctly designate an eligible retirement plan to receive the direct rollover distribution.

(3) The board may, in its discretion, withhold, for not more than 1 year after a member last rendered service, all or part of the member's accumulated contributions if after a previous discontinuance of service the member witbdrew all or part of the member's contributions and failed to redeposit the withdrawn amount in the pension trust fund.

(4) An employer who has an employment-related claim against a terminating member may, within 30 days after the date of termination, submit to the hoard a written ~~request~~ *application*, signed by the employer and the member, authorizing the payment of all or any part of the accumulated contributions of the member directly to the employer to satisfy the claim in whole or in part. The ~~request~~ *application*, if timely submitted, is sufficient authority for the ~~division~~ *board* to make the direct payment to the employer as part of the member's refund. The total of the payments made to the employer and those made to the member may not exceed the memher's accumulated contributions.

(5) Prior te termination of service, a member may not receive a refund of any portion of the member's accumulated contributions, except that a member who does not complete an installment payment schedule for purchasing service must be paid the member's additional contributions, including any regular interest earned on those additional contributions, upon the member's written ~~request~~ *application*."

Section 15. Section 19-2-701, MCA, is amended to read:

"**19-2-701. Service credit.** *(1) Service credit for all covered employment with each employer will be credited to a retirement system on a cumulative basis for all purposes, including but not limited to calculation of benefits and application of any maximum hour restrictions, limitations, or requirements. A member may not be credited with more than full-time service credit as a result of this cumulation of service credit.* Subject to the provisions of chapters 3, 5 through 9, and 13, a member must receive 1 month of service credit for each full month of service under rules adopted by the board.

(2) Service credits must be used in calculating a retirement or survivorship benefit.

(3) A retired member is not eligible to earn service credit."

Section 16. Section 19-2-703, MCA, is amended to read:

"**19-2-703. No duplication of benefits for same period of service.** A period of service of the member may not be credited in more than one retirement system enumerated in 19-2-302 for purposes of calculation of retirement ~~allowances~~ *benefits*."

Section 17. Section 19-2-801, MCA, is amended to read:

"**19-2-801. Designation of beneficiary.** In the absence of any statutory beneficiaries, desiguated heneficiaries are the natural persons, *charitable organizations, or trusts for the benefit of natural living persons* that the member

HeinOnline -- 1999 vol. III 2459 1999

or payment recipient designates on the membership card or other form provided by the ~~division~~ *board*. Unless otherwise provided by statute, a member or payment recipient may revoke the designation and name different designated beneficiaries by filing with the board a new membership card or other form provided by the ~~division~~ *board*."

Section 18. Section 19-2-802, MCA, is amended to read:

"19-2-802. Effect of no designation or no surviving designated beneficiary. (1) If a statutory or designated beneficiary does not survive the member or payment recipient, the estate of the member or payment recipient is entitled to any *accrued* lump-sum payment or *accrued* retirement benefit ~~accrued but~~ not received prior to the ~~statutory or designated beneficiary's~~ *member's or payment recipient's* death. If the estate would not be probated but for the amount due from the retirement system, all of the amount due must be paid directly, without probate, to the surviving next of kin of the deceased or the guardians of the survivor's estate, share and share alike.

(2) Payment must be made in the same order in which the following groups are listed:

(a) husband or wife;

(b) children;

(c) father and mother;

(d) grandchildren;

(e) brothers and sisters; or

(f) nieces and nephews.

(3) A payment may not be made to a person included in any of the groups listed in subsection (2) if at the date of payment there is a living person in any of the groups preceding the group of which the person is a member, as listed. Payment must be made upon receipt from the person of an affidavit, upon a form supplied by the ~~retirement division~~ *board*, that there are no living individuals in the groups preceding the group of which the person is a member and that the estate of the deceased will not be probated.

(4) The payment must be in full and complete discharge and acquittance of the board and system on account of the member's or payment recipient's death."

Section 19. Probate and nonprobate transfer statutes superseded. If a provision of this chapter conflicts with a provision of Title 72, chapter 2, part 8, the provision of this chapter supersedes the conflicting provision of Title 72, chapter 2, part 8.

Section 20. Section 19-2-1101, MCA, is amended to read:

"19-2-1101. Guaranteed annual benefit adjustment. (1) Subject to subsection (2), on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by 1.5%.

(2) (a) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less than a 1.5% annualized increase, then the recipient's benefit must be adjusted by an amount that will provide a total annualized increase of 1.5% in the benefit paid since the preceding January.

HeinOnline -- 1999 vol. III 2460 1999

(b) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the increases amount to more than a 1.5% annualized increase, then the benefit increase provided under this section must be 0%.

(3) Except as provided in subsection (2)(b), a benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if:

(a) the benefit's ~~initiation~~ *commencement* date is at least 36 months prior to January 1 of the year in which the adjustment is to be made;

(b) the benefit recipient is not an active member of a public retirement system covered by this title; and

(c) the member either:

(i) first became an active member on or after July 1, 1997; or

(ii) filed a voluntary, irrevocable election to be covered under this section. The election must be filed with the board prior to January 1, 1998, and requires an active member to pay an increased contribution rate from July 1, 1997, forward. A retired member or the member's survivor who is receiving a monthly benefit before July 1, 1997, shall also file the voluntary, irrevocable election no later than January 1, 1998, to be covered under this section.

(4) The board shall adopt rules to administer the provisions of this section."

Section 21. Section 19-3-103, MCA, is amended to read:

"19-3-103. Retirement system created. A retirement ~~system~~ *plan* is created and established to become effective July 1, 1945, and to be known as the public employees' retirement system. The ~~system~~ *plan* is governed by the provisions of chapter 2 and this chapter."

Section 22. Section 19-3-201, MCA, is amended to read:

"19-3-201. Contracts with political subdivisions. (1) Any municipal corporation, county, or public agency in the state may become a contracting employer and make all or specified groups of its employees members of the retirement system by a contract entered into between the board and the legislative body of the contracting employer. The contract may include any provisions that are consistent with chapter 2 and this chapter and necessary in the administration of the retirement system as it affects the contracting employer and its employees.

(2) The approval of the contract is subject to the following provisions, in addition to the other provisions of this chapter:

(a) The legislative body of the contracting employer shall adopt a resolution giving notice of intention to approve the contract and containing a summary of the major provisions of the retirement system. The contract may not be approved unless the employees proposed to be included in the retirement system adopt the proposal by a majority affirmative vote in a secret ballot. The ballot at the election must include the summary of the retirement system as set forth in the resolution. The election must be conducted as prescribed by the legislative body of the contracting employer. Approval of the contract must be by ordinance adopted by the affirmative vote of two-thirds of the members of the legislative body, ~~not less than~~ *within* 20 days after the adoption of the resolution or by an ordinance

HeinOnline -- 1999 vol. III 2461 1999

adopted by a majority vote of the electorate of the contracting employer voting on the contract.

(b) The contract must specify that all employees of the contracting employer or groups of employees as agreed to between the board and the contracting employer must become members. The groups of employees to be included must be by departments, duties, or other similar classifications and not by individual employees. The board may disapprove any classification into groups if, in its opinion, the classification affects adversely the interest of the retirement system. Membership in the retirement system is compulsory for all employees *who are* included under the contract and who are hired after the effective date of the contract.

(c) The contract may be amended in the manner prescribed in this section for the original approval of contracts. Groups of excluded employees may be subsequently included by amendment.

(3) The termination of the contract is subject to the following provisions, in addition to the other provisions of this chapter:

(a) The legislative body of a contracting employer shall adopt a resolution giving notice to its employees that it intends te terminate retirement coverage.

(b) All employees covered under the retirement system ~~shall receive~~ *must be given* notice of the termination resolution and be permitted to vote for or against the resolution by secret ballot.

(c) If a majority of covered employees votes for termination, the legislative body, ~~not less than~~ *within* 20 days after the approval of the resolution hy the employees, may adopt by a 2/3 majority a resolution terminating coverage under the system effective the last day of that month and forward the resolution and a certified copy of the election results to the board.

(d) Upon receipt of the termination resolution, the board may request an actuarial valuation of the liabilities of the terminating agency to the retirement system, and the board may withhold approval of the termination of contract until satisfactory arrangements are made to provide funding for any excess accrued liabilities not previously funded by the terminating agency."

Section 23. Section 19-3-319, MCA, is amended to read:

"19-3-319. State contributions for local government and school district employers. The state shall contribute monthly from the general fund to the pension trust fund a sum equal to 0.1% of the compensation of members employed by local government entities and school districts on and after July 1, 1997. The ~~division~~ *board* shall certify amounts due under this section on a monthly basis, and the state treasurer shall transfer those amounts to the pension trust fund within 1 week. The payment is statutorily appropriated as provided in 17-7-502."

Section 24. Section 19-3-401, MCA, is amended to read:

"19-3-401. Membership — inactive vested members — inactive nonvested members. (1) Except as otherwise provided in this chaptor, all employees shall become members on the first day of service. Each employer shall file with the board information affecting their employees' status as members of the retirement system as the board may require.

HeinOnline -- 1999 vol. III 2462 1999

(2) A member with at least 5 years of membership service who terminates service and does not take a refund of the member's accumulated contributions is an inactive vested member and retains the right to purchase service and to receive a service retirement benefit subject to the provisions of this chapter.

(3) A member with less than 5 years of membership service who terminates service and leaves the member's accumulated contributions in the pension trust fund is an inactive nonvested member and is not eligible for any benefits from the retirement system. An inactive nonvested member is eligible only for a refund of the member's accumulated contributions.

(4) ~~Every employee who reenters service shall become a member unless the employee has had an original election of exemption from membership and the employee's service was not interrupted by a break of more than 1 month. A seasonal employee who has had an original election of exemption from membership is not subject to the requirement regarding the break in service while continuing in the employee's original employment and employed on a seasonal basis, but upon termination of employment to accept new employment or absence of more than 1 month in returning to original employment in any ensuing season, the seasonal employee shall become a member of the retirement system upon reentry.~~ *A member who returns to service within 30 days of termination of service is an active member. Except as otherwise provided in this chapter, a member who terminates one service but remains in another service or subsequently reenters service is an active member.*

(5) Time during which an employee of a school district is absent from service during official vacation is counted as service in determining eligibility for membership under this chapter."

Section 25. Section 19-3-403, MCA, is amended to read:

"19-3-403. Exclusions from membership. The following persons may not become members of the retirement system:

(1) inmates of state institutions;

(2) persons in state institutions principally for the purpose of training but who receive compensation;

(3) independent contractors;

(4) persons who are members of any other retirement or pension system supported wholly or in part by funds of the United States government, any state government, or political subdivision of the state and who are receiving credit in the other system for service. It is the purpose of this subsection to prevent a person from receiving credit for the same service in two retirement systems supported wholly or in part by public funds, except when the service qualifies, is applied for, and is purchased pursuant to 19-3-503. A member of the retirement system who, because of employment by the state, is required to become a member of any other system described in this subsection is considered, solely for the purposes of making regular contributions, as permanently separated from service. Exclusion under this subsection is subject to the following exceptions:

(a) When an employer has entered into a collective bargaining agreement that includes provisions for payments or contributions by the employer in lieu of wages to a retirement or pension plan qualified by the internal revenue service for its employees, the employees remain eligible, if otherwise qualified, for membership in the retirement system.

HeinOnline -- 1999 vol. III 2463 1999

(b) For the purpose of this subsection (4), persons receiving pensions, retirement ~~allowances~~ *benefits*, or other payments from any source on account of employment other than as an employee are not considered, because of receipt, members of any other retirement or pension system.

(5) court commissioners, elected officials, or appointive members of any board or commission who serve the state or any contracting employer intermittently and who are paid on a per diem basis;

(6) full-time students employed at and attending the same public elementary school, high school, community college, or unit of the state university system, except that a person excluded from membership as a student of a public community college or a unit of the state university system who later becomes a member by otherwise becoming an employee may affirmatively exercise the option of qualifying the service excluded by this subsection by applying to the board in writing after becoming a member and become eligible to receive credited service for the excluded service under the provisions of 19-3-505."

Section 26. Section 19-3-412, MCA, is amended to read:

"19-3-412. Optional membership. (1) The following employees in covered employment may become members of the retirement system at their option at any time during their employment in a covered position by filing a membership card with the board:

(a) elected officials of the state or local governments who are paid on a salary or wage basis rather than on a per diem or other reimbursement basis;

(b) ~~part-time~~ employees serving in employment that does not *cumulatively* exceed a total of 960 hours of *covered* employment ~~covered by~~ *with all employers under* this chapter in any fiscal year;

(c) employees directly appointed by the governor;

(d) employees working 6 months or less for the legislative branch to perform work related to the legislative session;

(e) the chief administrative officer of any city or county;

(f) employees of county hospitals or rest homes in counties of the third, sixth, and seventh class.

(2) If an employee declines optional membership, the employee shall execute a statement waiving membership and the employer shall retain the statement. *An employee who declines optional membership may not receive membership credit or service credit for the employment for which membership was declined.*

(3) An employee who declined optional membership but later becomes a member may qualify service credit for the period of time beginning with the date of employment in which membership was declined to the commencement of membership. Qualification of service pursuant to this subsection must comply with 19-3-505.

(4) Membership in the retirement system is not optional for an employee who is already a member. Upon employment in a position for which membership is optional:

(a) a member who was an active member before the employment remains an active member;

(b) a member who was an inactive member before the employment becomes an active member; and

(c) a member who was a retired member before the employment is subject to part 11 of this chapter.

(5) An employee who declines membership while employed in a position for which membership is optional may not later become a member while still employed in that position. If, after a break in service of 30 days or more an employee who was a member in an optional membership position is reemployed in the same position or is employed in a different position for which membership is optional, the employee shall again choose or decline membership. However, if the break in service is less than 30 days, an employee who declined membership is bound by the employee's original decision to decline membership.

(6) An employee accepting a position that requires membership shall become a member even if the employee previously declined membership and did not have a 30-day break in service."

Section 27. Section 19-3-505, MCA, is amended to read:

"19-3-505. Qualification of previous employment with employer. (1) Subject to the provisions of this section, ~~any person~~ *a member* who has employment *for which optional membership was declined or employment* with an employer ~~that is not service~~ *prior to the employer's contract coverage* may ~~convert~~ *request to qualify* all or a portion of the employment ~~to~~ *as* membership service by filing written ~~notice~~ *application* with the board.

(2) (a) ~~The person~~ *If the board approves the application, the member* shall pay to the ~~retirement system~~ *board* the sum of the amount that the ~~person~~ *member* and the ~~person's~~ *member's* employer would have contrihuted during the period of ~~service~~ *employment* ~~converted~~ if the ~~employer~~ *employment* had been ~~an employer~~ covered by the retirement system and the regular interest that would have accumulated on the amount to the time of payment. However, the employer may pay the employer's portion, including accrued regular interest as provided in subsection (2)(b).

(b) The employer shall establish a policy as to the payment of retroactive employer contributions and apply this policy indiscriminately for all employees and former employees. All employee appeals of discrimination are subject to the determination of the board. All successful appeals obligate the employer to pay the employer and employee contributions with accrued interest for that employee filing the appeal with the hoard. Each appeal must be heard on its individual merits and may not bind the employer to pay all retroactive payments for all former and present employees.

(3) A member may secure service credit not previously credited by submitting salary information certified by the member's employer or former employer to the board. The board shall determine the eligibility of all service credit requests.

(4) Payment may he made in one sum at the time of filing notice or by making additional contributions on an installment basis before retirement. Failure to make regular monthly payments in any month in which the member receives normal compensation forfeits the person's right to make any furtber installment payments, unless permission is granted by the board."

Section 28. Section 19-3-509, MCA, is amended to read:

HeinOnline -- 1999 vol. III 2465 1999

"19-3-509. Qualification of other Montana public service. (1) (a) A member may, at any time before retirement, make a written election with the board to qualify as service in this retirement system all or any portion of the member's service credit in the highway patrol officers', sheriffs', game wardens', firefighters' unified, or municipal police officers' retirement system for which the member either has received or is eligible to receive a refund of membership contributions. To qualify this service, the member shall contribute to the pension trust fund the actuarial cost of granting the service in the public employees' retirement system, as determined by the board, based on the most recent actuarial valuation minus the employer contribution provided in subsection (1)(b). ~~This service may not be credited in more than one retirement system under Title 19.~~

(b) Upon receiving the member's payment under subsection (1)(a), the ~~division~~ *board* shall transfer from the member's former retirement system to the public employees' retirement system an amount equal to the employer contributions made during the member's service but no more than an amount equal to the normal cost contribution rate minus the employee contribution rate in the public employees' retirement system, according to the most recent actuarial valuation, based on the salaries earned by the employee as a member of the former system.

(2) (a) A member may, at any time before retirement, make a written election with the board to qualify any full-time public service employment performed for the state or a political subdivision of the state. The member shall provide salary and employment documentation certified by the member's former public employer. The board may grant service credit upon contribution by the employee of the actuarial cost of granting this service in the public employees' retirement system, as determined by the board, based on the most recent actuarial valuation of the system.

(b) The board is the sole authority under this subsection (2) in determining what constitutes full-time public service.

~~(c) This service may not be credited in more than one retirement system under Title 19.~~"

Section 29. Section 19-3-512, MCA, is amended to read:

"19-3-512. Qualification of service from other public retirement systems. (1) A member with 5 or more years of membership service in the public employees' retirement system may qualify:

(a) public service employment covered under a public retirement system other than a system provided for in Title 19 for which the member received a refund of the member's membership contribution; and

(b) public service employment that occurred before the public employer adopted a public retirement system.

(2) A member may not qualify more than 5 years of service under this section. To qualify this service, a member shall:

(a) at any time before retirement make a written election with the board to qualify the service; and

(b) contribute to the pension trust fund the actuarial cost of granting the service in the public employees' retirement system, as determined by the board based on the most recent actuarial valuation of the system.

HeinOnline -- 1999 vol. III 2466 1999

(3) Contributions to qualify service under this section may be made in a lump-sum payment or by making additional contributions in installments as agreed upon by the member and the board.

(4) Service qualified under this section may not be:

~~(a) credited in any other retirement system under Title 19; or~~

~~(b)~~ used to qualify a member to purchase military service under 19-3-503.

(5) Service qualified under this section may not be used in calculating a member's retirement benefit unless the member's last 5 years of service credit were earned under the public employees' retirement system. If a member's qualified service may not be used in calculating the member's retirement benefit, the member may choose to receive a refund of the accumulated contributions made to qualify the service."

Section 30. Section 19-3-521, MCA, is amended to read:

"19-3-521. Service credit for legislative members. A member of the legislature of Montana must be credited with membership service for that portion of each year for which the member pays ~~normal~~ *regular* contributions."

Section 31. Section 19-3-904, MCA, is amended to read:

"19-3-904. Amount of service retirement benefit. ~~(1)~~ The monthly amount of retirement benefit payable to a member following service retirement is the greater of subsection (1)~~(a)~~ or ~~(1)(b)~~ *(2)* as follows:

~~(a)~~*(1)* one fifty-sixth of the member's final average salary multiplied by the number of years of the member's total service credit; or

~~(b)~~*(2)* a monthly ~~annuity~~ *benefit* that is the actuarial equivalent of double the member's ~~accumulated~~ regular contributions *plus regular interest.*

~~(2) If a member dies after retirement and has not elected an optional retirement allowance provided for in 19-3-1501, the member's beneficiary will be paid the excess, if any, of the member's accumulated contributions on the day the member's retirement allowance commenced over the total of the retirement allowance payments made to the retired member.~~"

Section 32. Section 19-3-1005, MCA, is amended to read:

"19-3-1005. Application for disability retirement benefit. The board shall grant a disability retirement benefit to any member who has fulfilled the eligibility requirements of 19-3-1002 and filed the appropriate written application. An application may be filed on a member's behalf by the head of the office or department in which the member is or was last employed or by any other person on behalf of the member, or the board upon its own motion may make the application. Application must be made within 4 months after the member's ~~discontinuance of~~ *termination from* service unless the member is disabled continuously from the date of ~~discontinuance of~~ *termination from* service to the date of the application."

Section 33. Section 19-3-1015, MCA, is amended to read:

"19-3-1015. Medical examination of disability retiree — cancellation and reinstatement. (1) The board may, in its discretion, require a disabled member to undergo a medical examination. The examination must be made by a physician or surgeon appointed by the board, at a place mutually agreed upon by the retired member and the board. Upon the basis of the examination,

HeinOnline -- 1999 vol. III 2467 1999

the board shall determine whether the disabled member is unable, by reason of physical or mental incapacity, to perform the essential elements of either the position held by the member when the member retired or the position proposed to be assigned to the member. If the board determines the member is not incapacitated or if the member refuses to submit to a medical examination, the member's retirement benefit must be canceled.

(2) If the board determines that a disabled member should no longer be subject to medical review, the board may grant service retirement status to the member without recalculating the monthly benefit. The board shall notify the member in writing as to the change in status. If the disabled member disagrees with the board's determination, the member may ~~request~~ *make a written application to* the board to *request the board to* reconsider its action. The ~~request~~ *written application* for reconsideration must be made ~~in writing~~ within 60 days after receipt of the notice of the status change.

(3) (a) Except as provided in subsections (3)(b) and (3)(c), a member whose disability retirement benefit is canceled because the board has determined that the member is no longer incapacitated must be reinstated to the position held by the member immediately before the member's retirement or to a position in a comparable pay and benefit category with duties within the member's capacity if the member was an employee of the state or of the university. If the member was an employee of a contracting employer, the board shall notify the proper official of the contracting employer that the disability retirement benefit has been canceled and that the former employee is eligible for reinstatement to duty. The fact that the former employee was retired for disability may not prejudice any right to reinstatement to duty that the former employee may have or claim to have.

(b) A member who is employed by an employer terminates any right to reinstatement provided by this section.

(c) This section does not affect any requirement that the former employee meet or be able to meet professional certification and licensing standards unrelated to the disability and necessary for reinstatement to duty.

(4) If a member whose disability retirement benefit is canceled is not reemployed in a position subject to the retirement system, the member's service is considered, for the purposes of 19-2-602, to have been discontinued coincident with the commencement of the member's retirement benefit."

Section 34. Section 19-3-1103, MCA, is amended to read:

"19-3-1103. Disability benefit reduced by earnings — change in retirement status. (1) (a) If the recipient of a disability retirement benefit engages in a gainful occupation during any month other than in a position covered by the retirement system, the amount of the recipient's retirement benefit for that month must be reduced to an amount that, when added to the compensation earned by the recipient in that occupation, does not exceed the amount of the recipient's monthly compensation at the time of the recipient's retirement.

(b) ~~For the purpose of calculating a reduction under subsection (1)(a), the~~ *The* board, ~~at~~ *upon* the ~~request~~ *written application* of a recipient of a disability retirement benefit, may adjust the recipient's monthly compensation as it was at the time of retirement by an inflationary factor if the recipient has been receiving a disability retirement benefit for more than 36 consecutive months.

HeinOnline -- 1999 vol. III 2468 1999

(2) At the request of a recipient of a disability retirement benefit who is age 60 or older, the board may grant service retirement status to the recipient without recalculating the recipient's monthly benefit.

(3) Benefit adjustments granted by the legislature may not be included in calculations required under this section."

Section 35. Section 19-3-1106, MCA, is amended to read:

"19-3-1106. Limited reemployment — reduction of service retirement benefit upon exceeding limits — exception. (1) A retired member under 65 years of age who is receiving a service retirement benefit may return to employment covered by the retirement system for a period not to exceed 640 hours in any calendar year without returning to active service and without any effect to the retiree's retirement benefit. The retirement benefit for any retiree exceeding this 640-hour limitation in any calendar year after retirement must be temporarily reduced $1 for each $1 earned after working 640 hours in that calendar year.

(2) A retiree 65 years of age or older who returns to employment covered by the retirement system is either subject to the 640-hour limitation of subsection (1) or may earn in any calendar year an amount that, when added to the retiree's current annual retirement benefits, will not exceed the member's annualized final average salary, adjusted for inflation as of January 1 of the current calendar year, whichever limitation provides tbe higher limit on earned compensation to the retiree. Upon reaching the applicahle limitation, the retiree's benefits must be temporarily reduced $1 for each $1 of compensation earned in covered service beyond the applicable limitation during that calendar year.

(3) A retiree returning to employment covered by the retirement system *and the returning employee's employer* shall ~~report~~ *certify* to the board the number of hours worked by the retiree and the gross compensation paid to the retiree in that employment during any month after retirement.

(4) A retiree returning to employment covered by the retirement system may elect to return to active membership at any time during this period of covered employment.

(5) A retired member 70 1/2 years of age or older who returns to employment covered by the retirement system is not subject to the hour or earnings limitations in subsections (1) and (2) or the reporting requirements in subsection (3)."

Section 36. Section 19-3-1204, MCA, is amended to read:

"19-3-1204. Survivorship benefit elected by beneficiary. (1) A designated beneficiary eligible to receive a lump-sum death payment may elect, by written application, a survivorship benefit instead, if all of tbe following conditions are met:

(a) The member on behalf of whom the death benefit is payable had completed 5 years of membership service.

(b) The designated beneficiary is a natural person.

(c) The designated beneficiary elects the survivorship benefit within 90 days of receipt of notice from the board that the designated beneficiary is eligible to receive the lump-sum death payment.

(2) The designated beneficiary of a vested member may elect to receive a survivorship benefit in lieu of a lump-sum payment of the member's account.

HeinOnline -- 1999 vol. III 2469 1999

~~(2)~~*(3)* (a) If the designated beneficiary is a minor, the custodian designated in 19-2-803 may, on the minor's behalf, file a written application with the board.

(b) If an application is not filed on the minor's behalf *and no payment has been made*, the designated beneficiary may file a written application upon reaching the age of majority. For the purposes of this subsection *(3)*(b), the survivorship benefit provided for in 19-3-1205 must be calculated as if the member had died on the last day of the month before the month in which the application was filed."

Section 37. Section 19-3-1210, MCA, is amended to read:

"19-3-1210. Death payments to designated beneficiaries of retired members. If a retired member ~~receiving a regular retirement benefit~~ dies without designating a contingent annuitant under 19-3-1501, the member's designated beneficiary must be paid the ~~excess~~ *amount*, if any, of the member's accumulated contributions ~~on~~ *calculated as of* the day ~~that~~ the member's retirement ~~benefit commenced over~~ *minus* the total of ~~the~~ *any* retirement ~~benefit payments made to the retired member~~ *benefits already paid from the member's account*."

Section 38. Section 19-3-1501, MCA, is amended to read:

"19-3-1501. Optional forms of benefits. (1) The retirement benefit of a member or the survivorship benefit of a designated beneficiary who makes an election must be converted, in lieu of all other benefits under this chapter, into an optional retirement benefit that is the actuarial equivalent of the original benefit. The optional retirement benefit is initially payable during the member's or designated beneficiary's lifetime, with a subsequent benefit to the contingent annuitant whom the member or designated beneficiary nominated by written designation, executed and filed with the board on the application for benefits, as follows:

(a) Option 2—a continuation of the reduced amount after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(b) Option 3—a continuation of one-half of the reduced amount after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(c) Option 4—upon the initial payee's death, other actuarially equivalent amounts as may be approved by the board.

(2) Election of an optional retirement benefit must be by written application filed prior to the first payment of the benefit.

(3) If a benefit recipient or the recipient's contingent annuitant dies before the first payment has been made under option 2 or 3, the election of the option is automatically canceled.

(4) If a member dies after retirement and within 30 days from the date the member's election or changed election of an optional retirement benefit is received by the board, then the election is void and the death is considered as that of a member before retirement.

(5) (a) Upon written ~~request~~ *application* to the board, a retired member who is receiving an optional retirement benefit may designate a different contingent annuitant, select a different option, or convert the member's optional retirement benefit to a regular retirement benefit if:

HeinOnline -- 1999 vol. III 2470 1999

(i) the original contingent annuitant has died; or

(ii) the member has been divorced from the original contingent annuitant and the original contingent annuitant has not been granted the right to receive the optional retirement benefit as part of the divorce settlement.

(b) Upon receipt of the ~~request~~ *written application*, the board shall actuarially adjust the member's monthly retirement benefit to reflect the change."

Section 39. Section 19-3-1605, MCA, is amended to read:

"**19-3-1605. Guaranteed annual benefit adjustment.** (1) Subject to subsection (2), on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by 1.5%.

(2) (a) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less than a 1.5% annualized increase, then the recipient's benefit must be adjusted by an amount that will provide a total annualized increase of 1.5% in the benefit paid since the preceding January.

(b) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the increases amount to more than a 1.5% annualized increase, then the benefit increase provided under this section must be 0%.

(c) If a benefit recipient is a contingent annuitant receiving an optional benefit upon the death of the original payee that occurred since the preceding January, the new recipient's monthly benefit must be increased to 1.5% more than the amount that the contingent annuitant would have received had the contingent annuitant received a benefit during the preceding January.

(3) Except as provided in subsection (2)(b), a benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if:

(a) the benefit's ~~initiation~~ *commencement* date is at least 36 months prior to January 1 of the year in which the adjustment is to be made; and

(b) the benefit recipient is not an active member of a public retirement system covered by this title.

(4) The board shall adopt rules to administer the provisions of this section."

Section 40. Section 19-5-102, MCA, is amended to read:

"**19-5-102. Judges' retirement system established.** There is a retirement ~~system~~ *plan* known as the judges' retirement system, which is governed by the provisions of chapter 2 and this chapter."

Section 41. Section 19-5-401, MCA, is amended to read:

"**19-5-401. Payments into pension trust fund.** All appropriations made by the state of Montana, all contributions by members, and all interest on and increase of the investments and money in the pension trust fund must be paid to the ~~division~~ *board*, which shall credit the payments to the fund. These funds may be commingled with other pension trust funds of the ~~division~~ *board*, but separate accounts must be maintained for the judges' retirement system."

HeinOnline -- 1999 vol. III 2471 1999

Section 42. Section 19-5-503, MCA, is amended to read:

"19-5-503. Involuntary retirement benefit. (1) If a member is involuntarily discontinued from service after having completed 5 years of membership service but before reaching retirement age, the member shall, upon filing an application in the manner prescribed by the board, be paid an involuntary retirement benefit of equivalent actuarial value to the service retirement benefit payable under 19-5-502 then standing to the member's credit.

(2) ~~If a member elected or appointed to office prior to July 1, 1983, is involuntarily discontinued from service after having earned at least 12 years of service credit but before reaching service retirement age, the member must, upon filing an application in the manner prescribed by the board, be paid the service retirement benefit provided for in 19-5-502.~~

~~(3)~~ If a member elected or appointed to office after July 1, 1983, is ~~involuntarily~~ discontinued from service after having earned at least 12 years of service credit but before reaching service retirement age, the member may apply for and receive ~~an involuntary~~ *a* retirement benefit that is the actuarial equivalent of benefits pursuant to subsection (1)."

Section 43. Section 19-5-701, MCA, is amended to read:

"19-5-701. Optional forms of benefits. (1) The retirement benefit of a member or the survivorship benefit of a designated beneficiary who so elects, must be converted, in lieu of all other benefits under this chapter, into an optional retirement benefit that is the actuarial equivalent of the original benefit. The optional retirement benefit is initially payable during the member's or designated beneficiary's lifetime, with a subsequent benefit payable to the contingent annuitant that the member or designated beneficiary nominated by written designation, executed and filed with the board on the application for benefits, as follows:

(a) Option 2—a continuation of the reduced amount after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(b) Option 3—a continuation of one-half of the reduced amount after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(c) Option 4—upon the initial payee's death, other actuarially equivalent amounts as may be approved by the board.

(2) Election of an optional retirement benefit must be by written application filed prior to the first payment of the benefit.

(3) If a benefit recipient or the recipient's contingent annuitant dies before the first payment has been made under option 2 or 3, the election of the option is automatically canceled.

(4) If the member dies after retirement and within 30 days from the date the member's election or changed election of an optional retirement benefit is received by the board, the election is void and the death is considered as that of a member before retirement.

(5) (a) Upon written application to the board, a retired member who is receiving an optional retirement benefit may designate a different contingent annuitant, select a different option, or convert the member's optional retirement benefit to a regular retirement benefit if:

HeinOnline -- 1999 vol. III 2472 1999

(i) the original contingent annuitant has died; or

(ii) the member has been divorced from the original contingent annuitant and the original contingent annuitant has not been granted the right to receive the optional retirement benefit as part of the divorce settlement.

(b) Upon receipt of the written application, the board shall actuarially adjust the member's monthly retirement benefit to reflect the change."

Section 44. Section 19-5-802, MCA, is amended to read:

"19-5-802. Payments in case of death from other causes. (1) If a retired member ~~who is~~ not covered under 19-5-901 ~~and who did not choose an option 2, 3, or 4 form of retirement benefit payment~~ *dies without designating a contingent annuitant* under 19-5-701 ~~dies before receiving payments equal to the present value of the member's retirement benefit as it was at the time of the member's retirement, the balance must be paid to~~, the member's designated beneficiary ~~in a lump sum~~ *must be paid the amount, if any, of the member's accumulated contributions calculated as of the day of the member's retirement minus the total of any retirement benefits already paid from the member's account.* At the designated beneficiary's request, the lump sum may be paid as an actuarially equivalent annuity that will not be subject to increases for any purpose.

(2) ~~Upon the death of a retiree who did not choose an option 2, 3, or 4 form of retirement benefit payment~~ *If a retired member covered under 19-5-901 dies without designating a contingent annuitant* under 19-5-701 ~~and who is covered under 19-5-901~~, the member's designated beneficiary must be paid the ~~unpaid balance of the retiree's benefit. The benefit must be calculated by subtracting the total benefits paid to the member during the member's lifetime from the member's total amount of contributions and interest on account as that amount was on the day that the member retired~~ *amount, if any, of the member's accumulated contributions calculated as of the day of the member's retirement minus the total of any retirement benefits already paid from the member's account.*

(3) If a member dies before reaching retirement age, the member's designated beneficiary is entitled to a monthly survivorship benefit that is the actuarial equivalent of the involuntary retirement options provided in 19-5-503."

Section 45. Section 19-5-901, MCA, is amended to read:

"19-5-901. Guaranteed annual benefit adjustment. (1) Subject to subsection (2), on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by 1.5%.

(2) (a) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less than a 1.5% annualized increase, then the recipient's benefit must be adjusted by an amount that will provide a total annualized increase of 1.5% in the benefit paid since the preceding January.

(b) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the increases amount to more than a 1.5% annualized increase, then the benefit increase provided under this section must be 0%.

(c) If a benefit recipient is a contingent annuitant receiving an optional benefit upon the death of the original payee that occurred since the preceding January, the new recipient's monthly benefit must be increased to 1.5% more

HeinOnline -- 1999 vol. III 2473 1999

than the amount that the contingent annuitant would have received had the contingent annuitant received a benefit during the preceding January.

(3) Except as provided in subsection (2)(b), a benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if:

(a) the benefit's ~~initiation~~ *commencement* date is at least 36 months prior to January 1 of the year in which the adjustment is to be made;

(b) the benefit recipient is not an active member of a public retirement system covered by this title; and

(c) the member or benefit recipient either:

(i) first became an active member on or after July 1, 1997; or

(ii) filed a voluntary, irrevocable election to be covered under this section. The election must be filed with the board prior to January 1, 1998.

(4) The board shall adopt rules to administer the provisions of this section."

Section 46. Section 19-6-102, MCA, is amended to read:

"19-6-102. Highway patrol officers' retirement system established. There is a retirement ~~system~~ *plan* known as the highway patrol officers' retirement system, which is governed by the provisions of chapter 2 and this chapter."

Section 47. Section 19-6-503, MCA, is amended to read:

"19-6-503. Early retirement benefit for member discontinued from service other than for cause. If a member is discontinued from service other than for cause after having completed 5 years of membership service but before reaching retirement age, the member must, upon filing a written application with the ~~division~~ *board*, be paid an early retirement benefit that is of actuarial equivalent value to a service retirement based on a retirement age of 60."

Section 48. Section 19-6-505, MCA, is amended to read:

"19-6-505. Payment of retirement benefits. (1) The service retirement benefit must be paid to the retired member for the remainder of the member's life.

(2) Upon the retired member's death, the retirement benefit must be paid to the member's surviving spouse, if there is one.

(3) (a) If upon the retired member's death there is no surviving spouse or if the spouse dies, the retirement benefit must be paid as provided in subsection (3)(c) to the retired member's child, if there is one, for as long as the child remains a dependent child.

(b) If there is more than one dependent child, the retirement benefit must be paid as provided in subsection (3)(c) to the children collectively. When a child is no longer a dependent child, the pro rata payments to that child must cease and be made to the remaining child or children until all the children are no longer dependent.

(c) Payments to a dependent child must be made to the child's appointed guardian for the child's use.

(4) If ~~upon the~~ *a* retired ~~member's death there is no~~ *member dies without a* surviving spouse or dependent child and if the member had designated a

beneficiary as provided in 19-2-801, the designated beneficiary must be paid ~~an~~ *the* amount ~~equal to~~, *if any, of* the retired member's accumulated contributions ~~less any~~ *minus the total of any* retirement benefits *already* paid ~~to the member before the member's death~~ *from the member's account.*

(5) If the retired member did not designate a beneficiary or if the beneficiary predeceased the retired patrol officer, the amount provided in subsection (4) must be paid to the member's estate."

Section 49. Section 19-6-612, MCA, is amended to read:

"19-6-612. Medical examination of disability retiree —cancellation of benefit. (1) The board may require the recipient of a disability retirement benefit to undergo a medical examination. The examination must be made by a physician or surgeon at the recipient's place of residence or at another place mutually agreed on, at the board's expense. Upon the basis of the examination, the board shall determine whether the recipient can perform the essential elements of the position held by the recipient when the recipient retired. If the board determines that the recipient is not incapacitated, the recipient's disability retirement benefit must be canceled when the recipient is offered a position under subsection (3) or when, if a position is available, the recipient cannot be reinstated under subsection (3) for reasons unrelated to the disability. If the recipient refuses to submit to a medical examination, the recipient's disability retirement benefit must be canceled.

(2) If the board determines that a recipient of a disability retirement benefit should no longer be subject to medical review, the board may grant a service retirement status to the recipient without recalculating the recipient's monthly benefit. The board shall notify the recipient in writing as to the change in status. If the recipient disagrees with the board's determination, the recipient may *submit a written application to the board to* request the board to reconsider its action. The request for reconsideration must be made in writing within 60 days after receipt of the notice of the status change.

(3) (a) Except as provided in subsection (3)(b), a recipient whose disability retirement benefit is canceled because the board has determined that the recipient is no longer incapacitated must be reinstated to the position held by the recipient immediately before the recipient's retirement or to a position in a comparable pay and benefit category within the recipient's capacity, whichever is first open. The fact that the recipient was retired for disability may not prejudice any right to reinstatement to duty that the recipient may have or claim to have.

(b) This section does not affect any requirement that the former employee meet or be able to meet professional certification and licensing standards unrelated to the disability and necessary for reinstatement to duty.

(4) The department of justice may request a medical or psychological review as to the ability of the recipient to return to work as a member of the highway patrol. If the board's findings are upheld, the department of justice shall pay the cost of the review."

Section 50. Section 19-6-709, MCA, is amended to read:

"19-6-709. (Temporary) Supplemental benefits for certain retirees. (1) In addition to any retirement benefit payable under this chapter, a retired member or a survivor determined by the board to be eligible under subsection

HeinOnline -- 1999 vol. III 2475 1999

(2) must receive an annual lump-sum benefit payment beginning in September 1991 and each succeeding year as long as the member remains eligible.

(2) To be eligible for the benefits under this section, a person must be receiving a monthly benefit before July 1, 1991, may not be covered by 19-6-710, and must be:

(a) a retired member who is 55 years of age or older and who has been receiving a service retirement benefit for at least 5 years prior to the date of distribution;

(b) a survivor of a member who would have been eligible under subsection (2)(a); or

(c) a recipient of a disability or survivorship benefit under 19-6-601 or 19-6-901.

(3) A retired member otherwise qualified under this section who is employed in a position covered by a retirement system under Title 19 is ineligible to receive any lump-sum benefit payments provided for in this section until the member's service in the covered position is terminated. Upon termination of the member's covered service, the retired member becomes eligible in the next fiscal year succeeding the member's termination.

(4) (a) An amount equal to 25 cents of each motor vehicle registration fee provided for in 61-3-321(5) must be paid from the general fund to the pension trust fund at the end of each fiscal year. The payment is statutorily appropriated, as provided in 17-7-502, to the pension fund for payment of benefits to eligible recipients. The total funds must be distributed by the ~~division~~ *board* in lump-sum payments to eligible recipients along with their normal retirement benefit payment.

(b) The lump-sum payment must be distributed proportionally to all eligible recipients based on service credit at the time of retirement, subject to the following:

(i) a recipient under subsection (2)(c) is considered to have 20 years of service for the purposes of the distributions;

(ii) any recipient of a service retirement benefit exceeding the maximum monthly benefit under 19-6-707(2)(a) must have the recipient's service credit reduced 25% for the purposes of the distributions;

(iii) the maximum annual increase in the amount of supplemental benefits paid to each individual under this section is the percentage increase for the previous calendar year in the annual average consumer price index for urban wage earners and workers, compiled by the bureau of labor statistics of the United States department of labor or its successor agency.

(c) Any amount deposited in the pension trust fund under subsection (4)(a) for the payment of supplemental benefits under this section that exceeds the limitation of subsection (4)(b)(iii) must be used to amortize unfunded liabilities of the retirement system.

(5) Every 10 years following July 1, 1991, the ~~division~~ *board* shall review the size of the additional fee collected under 61-3-321(5) and paid to the pension trust fund in accordance with subsection (4)(a) and recommend to each legislature following the ~~division's~~ *board's* review any legislation necessary to reduce the fee

to the minimum amount necessary to provide the supplemental benefits provided by this section."

Section 51. Section 19-6-710, MCA, is amended to read:

"19-6-710. Guaranteed annual benefit adjustment. (1) Subject to subsection (2), on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by 1.5%.

(2) (a) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less than a 1.5% annualized increase, then the recipient's benefit must be adjusted by an amount that will provide a total annualized increase of 1.5% in the benefit paid since the preceding January.

(b) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the increases amount to more than a 1.5% annualized increase, then the benefit increase provided under this section must be 0%.

(3) Except as provided in subsection (2)(b), a benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if:

(a) the benefit's ~~initiation~~ *commencement* date is at least 36 months prior to January 1 of the year in which the adjustment is to be made;

(b) the benefit recipient is not an active member of a public retirement system covered by this title; and

(c) the member either:

(i) first became an active member on or after July 1, 1997; or

(ii) filed a voluntary, irrevocable election to be covered under this section. The election must be filed with the board prior to January 1, 1998, and requires an active member to pay an increased contribution rate from July 1, 1997, forward. A retired member or the member's survivor who is receiving a monthly benefit before July 1, 1997, shall also file the voluntary, irrevocable election no later than January 1, 1998, to be covered under this section.

(4) The board shall adopt rules to administer the provisions of this section."

Section 52. Section 19-6-801, MCA, is amended to read:

"19-6-801. Election to qualify military service. (1) A member with 15 years or more of service credit with the Montana highway patrol may, at any time prior to retirement, make a written election with the ~~division~~ *board* to qualify all or any portion of the member's active service in the armed forces of the United States for the purpose of calculating retirement benefits, up to a maximum of 5 years, if the member is not otherwise eligible to receive service credit for this same service pursuant to 19-2-705.

(2) To qualify this service:

(a) a member not covered by 19-6-710 shall contribute to the account the amount determined by the ~~division~~ *board* to be due based on the member's compensation and regular contribution rate as of the member's 16th year and as many succeeding years as are required to qualify this service, with interest from the date the member becomes eligible for this benefit to the date the member

HeinOnline -- 1999 vol. III 2477 1999

contributes. The member may not qualify more of this service than the member has service with the Montana highway patrol in excess of 15 years.

(b) a member covered by 19-6-710 shall contribute the actuarial cost of the service credit based on the most recent actuarial valuation of the system."

Section 53. Section 19-6-802, MCA, is amended to read:

"**19-6-802. Qualification of other Montana public service.** (1) (a) A member may, at any time before retirement, make a written election with the board to qualify all or any portion of the member's service in the public employees', sheriffs', game wardens', firefighters' unified, or municipal police officers' retirement system for which the member either has received or is eligible to receive a refund of the member's membership contributions. To qualify this service, the member shall contribute to the pension trust fund the actuarial cost of granting the service credit in the highway patrol officers' retirement system, as determined by the board, based on the most recent actuarial valuation minus the employer contribution provided in subsection (1)(b). ~~This service may not be credited in more than one retirement system under Title 19.~~

(b) Upon receiving the member's payment under subsection (1)(a), the division shall transfer from the member's former retirement system to the highway patrol officers' retirement system an amount equal to the employer contributions made during the member's service but no more than an amount equal to the normal contribution rate minus the employee contribution rate in the highway patrol officers' retirement system, according to the most recent actuarial valuation.

(2) (a) A member may, at any time before retirement, make a written election with the board to qualify any full-time public service employment performed for the state or a political subdivision of the state. The member shall provide compensation and employment documentation certified by the member's public employer. The board shall grant service credit subject to rules adopted by the board upon contribution by the employee of the actuarial cost of granting this service in the highway patrol officers' retirement system, as determined by the board, based on the most recent actuarial valuation of the system.

(b) The board is the sole authority under this subsection (2) in determining what constitutes full-time public service.

~~(c) This employment may not be credited in more than one retirement system under Title 19.~~"

Section 54. Section 19-6-803, MCA, is amended to read:

"**19-6-803. Election to qualify law enforcement service performed in another state.** (1) Except as provided in subsections (4) through (6), a member with 5 years or more of membership service in the retirement system may qualify 1 year of out-of-state law enforcement employment for each year of service credit under the retirement system, up to a maximum of 5 years, provided that the member is not eligible to receive a retirement benefit for that out-of-state law enforcement employment.

(2) To qualify this service, a member shall:

(a) at any time before the member's retirement, make a written election with the board to qualify the service; and

HeinOnline -- 1999 vol. III 2478 1999

(b) contribute to the pension trust fund the actuarial cost of granting the service in the retirement system, as determined by the board, based on:

(i) the member's compensation for the 12 months immediately preceding the date of the member's election to cover the service under the retirement system; and

(ii) the ~~total contribution~~ *actuarial* rate in effect at the time of purchase of service.

(3) Contributions to qualify service under this section may he made in a lump-sum payment or in installments as agreed upon by the member and the board.

(4) Service qualified under this section may not be~~:~~

~~(a) credited in any other retirement system under Title 19; or~~

~~(b)~~ used to qualify a memher to purchase military service under 19-6-801.

(5) Service qualified under this section may not be used in calculating a member's retirement henefit unless the last 5 years of service credit were earned under the retirement system. If a member's qualified service may not be used in calculating the member's retirement benefit, the member may choose to receive a refund of the contributions made to qualify tbe service.

(6) The combined total service qualified under this section and military service qualified under 19-6-801 may not exceed 5 years."

Seetion 55. Absence due to illness or injury. (1) Time, not to exceed 5 years, during which a member is absent from service because of injury or illness is considered membership service if, within 1 year after the end of the absence, the injury or illness is determined by the board to have arisen out of and in the course of the member's employment. However, the member may not earn service credits for this period unless the member complies with subsections (2) through (4), in which case the absence is considered as time spent in service for both service credits and membership service.

(2) After returning to service and while still in service, a member desiring service credit for the period of time referred to in subsection (1) shall file with the board a written application to pay the contributions under subsection (3).

(3) (a) A member eligible te earn service credits pursuant to subsection (1) shall contribute to the retirement system an amount equal to the contributions that would have been made by the meinber to the system during the inemher's period of absence on the basis of the memher's compensation immediately prior to the commencement of the member's absence plus regular interest accruing from 1 year from the dato after the member returns to service to the date the member contributes for the period of absence.

(b) If a member elects to contribute under subsection (3)(a), the employer shall contribute employer contributions for the peried of absence based on the salary as calculated in subsection (3)(a) and shall pay interest on the employer's contribution calculated in the same manner as interest on the employee's contribution under subsection (3)(a). An employer electing to make an interest payment shall do so for all employees similarly situated. If the employer elects not to pay the interest costs, this amount must be paid by the employee.

(4) A member loses the right to contribute for an absence under tbis section if all of the member's accumulated contributions have been refunded pursuant

HeinOnline -- 1999 vol. III 2479 1999

to 19-2-602. The member loses the right to contribute for the period of time during which retirement benefits have been received if the member retires during the absence.

Section 56. Section 19-7-102, MCA, is amended to read:

"19-7-102. Sheriffs' retirement system established. A retirement ~~system~~ *plan* is estahlished ~~for Montana members, which is~~ *and* known as the sheriffs' retirement system. ~~It is an actuarial reserve system for the payment of death, disability, and retirement benefits to members and to the beneficiaries of the members to provide for themselves and their dependents in the case of disability or death and upon retirement from active duty.~~ The ~~system~~ *plan* is governed by the provisions of chapter 2 and this chapter."

Section 57. Section 19-7-402, MCA, is amended to read:

"19-7-402. Sources of money in fund. The following money must be paid to the ~~division~~ *board*, which shall credit the payments to the pension trust fund:

(1) all contributions by the various counties as required by this chapter;

(2) all contributions by members as required by this chapter;

(3) all interest on and increase of the investments and money under this chapter; and

(4) any supplemental appropriation or revenue from a source or sources approved by the legislature or money received directly from the federal government for funding of law enforcement retirement systems."

Section 58. Section 19-7-503, MCA, is amended to read:

"19-7-503. Service retirement benefit. (1) The amount of any service retirement benefit granted to a member is 2.5% of the member's final average salary for each year of service credit.

(2) If a *retired* member dies ~~after retirement and had not elected an optional retirement benefit provided for in~~ *without designating a contingent annuitant under* 19-7-1001, the member's designated beneficiary must be paid the ~~excess~~ *amount*, if any, of the member's accumulated contributions ~~at the time of retirement less payments made to the retired member~~ *calculated as of the day of the member's retirement minus the total of any retirement benefits already paid from the member's account.*"

Section 59. Section 19-7-711, MCA, is amended to read:

"19-7-711. Guaranteed annual benefit adjustment. (1) Subject to subsection (2), on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by 1.5%.

(2) (a) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less than a 1.5% annualized increase, then the recipient's benefit must be adjusted by an amount that will provide a total annualized increase of 1.5% in the benefit paid since the preceding January.

(b) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the increases amount to more than a 1.5% annualized increase, then the benefit increase provided under this section must be 0%.

HeinOnline -- 1999 vol. III 2480 1999

(c) If a benefit recipient is a contingent annuitant receiving an optional benefit upon the death of the original payee that occurred since the preceding January, the new recipient's monthly benefit must be increased to 1.5% more than the amount that the contingent annuitant would have received had the contingent annuitant received a benefit during the preceding January.

(3) Except as provided in subsection (2)(b), a benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if:

(a) the benefit's ~~initiation~~ *commencement* date is at least 36 months prior to January 1 of the year in which the adjustment is to be made; and

(b) the benefit recipient is not an active member of a public retirement system covered by this title.

(4) The board shall adopt rules to administer the provisions of this section."

Section 60. Section 19-7-802, MCA, is amended to read:

"19-7-802. Qualification of other Montana public service. (1) (a) A member may, at any time before retirement, make a written election with the board to qualify all or any portion of the member's service in the public employees', highway patrol officers', firefighters' unified, game wardens', or municipal police officers' retirement system for which the member either has received or is eligible to receive a refund of the member's membership contributions. To qualify this service, the member shall contribute to the pension trust fund the actuarial cost of granting the service in the sheriffs' retirement system, as determined by the board, based on the most recent actuarial valuation minus the employer contribution provided in subsection (1)(b). ~~This service may not be credited in more than one retirement system under Title 19.~~

(b) Upon receiving the member's payment under subsection (1)(a), the ~~division~~ *board* shall transfer from the member's former retirement system to the sheriffs' retirement system an amount equal to the employer contributions made during the member's service but no more than an amount equal to the normal contribution rate minus the employee contribution rate in the sheriffs' retirement system, according to the most recent actuarial valuation, based on the compensation earned by the employee as a member of the former system.

(2) (a) A member may, at any time before retirement, make a written election with the board to qualify any full-time public service employment performed for the state or a political subdivision of the state. The member shall provide compensation and employment documentation certified by the member's public employer. The board shall grant service credit upon contribution by the employee of the actuarial cost of granting this service in the sheriffs' retirement system, as determined by the board, based on the most recent actuarial valuation of the system.

(b) The board is the sole authority under this subsection (2) in determining what constitutes full-time public service.

~~(c) This service may not be credited in more than one retirement system under Title 19.~~"

Section 61. Section 19-7-804, MCA, is amended to read:

"19-7-804. Election to purchase additional service. (1) Except as provided in subsection (6), at any time before retirement, a member may make

HeinOnline -- 1999 vol. III 2481 1999

a written election with the board to purchase 1 additional year of service credit for every 5 years of membership service.

(2) Service purchased under this section must be credited for the purpose of meeting retirement eligibility and for calculating retirement benefits.

(3) To qualify this service, a member shall:

(a) make a written election with the board to qualify the service; and

(b) contribute to the pension trust fund the actuarial cost of granting the service in the sheriffs' retirement system, as determined by the board, based on the most recent actuarial valuation of the system.

(4) Contributions to qualify service under this section may be made in a lump-sum payment or in installments as agreed upon by the member and the board. Payments must be completed prior to retirement.

(5) Service qualified under this section may not be:

~~(a) credited in any other retirement system under Title 19; or~~

~~(b)~~ used to qualify for the purchase of military service under 19-7-803.

(6) The combined total of additional years of service purchased under the provisions of 19-7-803 and this section may not exceed 5 years."

Section 62. Section 19-7-1001, MCA, is amended to read:

"19-7-1001. Optional forms of benefits. (1) The retirement benefit of a member or the survivorship benefit of a designated beneficiary who so elects must be converted, in lieu of all other benefits under this chapter, into an optional retirement benefit that is the actuarial equivalent of the original benefit. The optional retirement benefit is initially payable during the member's or designated beneficiary's lifetime with a subsequent benefit to the contingent annuitant that the member or designated beneficiary nominated by written ~~designation~~ *application*, executed and filed with the board ~~on~~ *with* the application for benefits, as follows:

(a) Option 2—a continuation of the reduced amount after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(b) Option 3—a continuation of one-half of the reduced amount after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(c) Option 4—upon the initial payee's death, other actuarially equivalent amounts as may be approved by the board.

(2) Election of an optional retirement benefit must be by written application filed prior to the first payment of the benefit.

(3) If a benefit recipient or the recipient's contingent annuitant dies before the first payment has been made under option 2 or 3, the election of the option is automatically canceled.

(4) If the member dies after retirement and within 30 days from the date the member's election or changed election of an optional retirement benefit is received by the board, the election is void and the death is considered as that of a member before retirement.

(5) (a) Upon written application to the board, a retired member who is receiving an optional retirement benefit may designate a different contingent

annuitant, select a different option, or convert the member's optional retirement benefit to a regular retirement benefit if:

(i) the original contingent annuitant has died; or

(ii) the member has been divorced from the original contingent annuitant and the original contingent annuitant has not been granted the right to receive the optional retirement benefit as part of the divorce settlement.

(b) Upon receipt of the written application, the board shall actuarially adjust the member's monthly retirement benefit to reflect the change."

Section 63. Section 19-8-102, MCA, is amended to read:

"19-8-102. Game wardens' and peace officers' retirement system established. There is a retirement ~~system~~ *plan* known as the game wardens' and peace officers' retirement system, which is governed by the provisions of chapter 2 and this chapter."

Section 64. Section 19-8-501, MCA, is amended to read:

"19-8-501. Contributions to pensiou trust fund. The following must be paid to tbe ~~division~~ *board* and must be credited to the pension trust fund:

(1) all contributions by the state from department of fish, wildlife, and parks money;

(2) all contributions by the state game wardens; and

(3) all interest on and increase of the investments and money in the pension trust fund."

Section 65. Section 19-8-712, MCA, is amended to read:

"19-8-712. Medical examination of disability retiree — cancellation of benefit. (1) The board, in its discretion, may require the recipient of a disability retirement henefit to undergo a medical examination. The examination must be made by a physician or surgeon at the recipient's place of residence or at another place mutually agreed on, at the board's expense. Upen the basis of the examination, the hoard shall determine, by reason of physical or mental capacity, whether the recipient can perform the essential elements of the position held by the recipient when the recipient retired. If the board determines that the recipient is not incapacitated, the recipient's disability retirement benefit must be canceled when the recipient is offered a pesition under subsection (3) or when, if a pesition is available, the recipient cannot be reinstated under subsection (3) for reasons unrelated to the disability. If the recipient refuses to submit to a medical examination, the recipient's disability retiroment henefit must be canceled when the recipient is notified of the determination of the board.

(2) If the board determines that a recipient of a disability retirement benefit should no longer be subject to medical review, the board may grant a service retirement status to the recipient without recalculating the recipient's monthly benefit. The board shall notify the recipient in writing as to the chango in status. If the recipient disagrees with the board's determination, the recipient may *submit a written application to the board to* request the board to reconsider its action. The request for reconsideration must be made in writing within 60 days after receipt of the notice of the status chango.

(3) (a) Except as provided in subsection (3)(b), a recipient whose disability retirement benefit is canceled because the board has determined that the

HeinOnline -- 1999 vol. III 2483 1999

recipient is no longer incapacitated must be reinstated to the position held by the recipient immediately before the recipient's retirement or to a position in a comparable pay and benefit category within the recipient's capacity, whichever is first open. The fact that the recipient was retired for disability may not prejudice any right to reinstatement to duty that the recipient may have or claim to have.

(b) This section does not affect any requirement that the former employee meet or be able to meet professional certification and licensing standards unrelated to the disability and necessary for reinstatement.

(4) The member's former employer may request a medical or psychological review as to the ability of the recipient to return to work as a peace officer. If the board's findings are upheld, the former employer shall pay the cost of the review."

Section 66. Section 19-8-801, MCA, is amended to read:

"**19-8-801. Optional forms of benefits.** (1) The retirement benefit of a member or the survivorship benefit of a designated beneficiary who so elects must be converted in lieu of all other benefits under this chapter into an optional retirement benefit that is the actuarial equivalent of the original benefit. The optional retirement benefit is initially payable during the member's or designated beneficiary's lifetime with a subsequent benefit to the contingent annuitant that the member or designated beneficiary nominated by written designation, executed and filed with the board on the application for benefits, as follows:

(a) Option 2—a continuation of the reduced amount after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(b) Option 3—a continuation of one-half of the reduced amount after the death of the initial payee and payable during the lifetime of the named contingent annuitant;

(c) Option 4—upon the initial payee's death, other actuarially equivalent amounts as may he approved by the board.

(2) Election of an optional retirement benefit must be by written application filed prior to the first payment of the benefit.

(3) If a benefit recipient or the recipient's contingent annuitant dies before the first payment has been made under option 2 or 3, the election of the option is automatically canceled.

(4) If the member dies after retirement and within 30 days from the date the member's election or changed election of an optional retirement benefit is received by the board, the election is void and the death is considered as that of a member before retirement.

(5) (a) Upon written application to the board, a retired member who is recciving an optional retirement benefit may designate a different contingent annuitant, selcct a different option, or convert the member's optional retirement benefit to a regular retirement bencfit if:

(i) the original contingent annuitant has died; or

(ii) the member has been divorced from the original contingent annuitant and the original contingent annuitant has not been granted the right to receive the optional retirement benefit as part of the divorce settlement.

HeinOnline -- 1999 vol. III 2484 1999

(b) Upon receipt of the written application, the board shall actuarially adjust the member's monthly retirement benefit to reflect the change."

Section 67. Section 19-8-901, MCA, is amended to read:

"19-8-901. Election to qualify military service. (1) A member with 15 years or more of service credit qualified under this chapter may, at any time prior to retirement, make a written ~~election~~ *application* with the board to qualify all or any portion of the member's active service in the armed forces of the United States for the purpose of calculating retirement benefits, up to a maximum of 5 years, if the member is not otherwise eligible to receive credit for this service.

(2) To qualify this service the member shall contribute to the pension trust fund the actuarial cost of granting the service, based on the most recent actuarial valuation of the system as determined by the board. The member may not qualify more years of military service than the member has years of service credits in excess of 15 years."

Section 68. Section 19-8-902, MCA, is amended to read:

"19-8-902. Qualification of other Montana public service. (1) (a) A member may, at any time before retirement, make a written election with the board to qualify all or any portion of the member's service credit in the public employees', highway patrol officers', firefighters' unified, sheriffs', or municipal police officers' retirement system for which the member either has received or is eligible to receive a refund of the member's accumulated contributions. To qualify this service, the member shall contribute to the pension trust fund the actuarial cost of granting the service in the game wardens' and peace officers' retirement system, as determined by the board, based on the most recent actuarial valuation of the system minus the employer contribution provided in subsection (1)(b). ~~This service may not be credited in more than one retirement system under Title 19.~~

(b) Upon receiving the member's payment under subsection (1)(a), the division shall transfer from the member's former retirement system to the game wardens' and peace officers' retirement system an amount equal to the employer contributions made during the member's service but no more than an amount equal to the normal contribution rate minus the employee contribution rate in the game wardens' and peace officers' retirement system, according to the most recent actuarial valuation, based on the salaries earned by the employee as a member of the former system.

(2) (a) A member may, at any time before retirement, make a written election with the board to qualify any full-time public service employment performed for the state or a political subdivision of the state. The member shall provide salary and employment documentation certified by the member's public employer. The board shall grant service credit subject to rules adopted by the board upon contribution by the employee of the actuarial cost of granting this service in the game wardens' and peace officers' retirement system, as determined by the board, based on the most recent actuarial valuation of the system.

(b) The board is the sole authority under this subsection (2) in determining what constitutes full-time public service.

~~(c) This service may not be credited in more than one retirement system under Title 19.~~"

Section 69. Section 19-8-1002, MCA, is amended to read:

HeinOnline -- 1999 vol. III 2485 1999

"19-8-1002. Postretirement death payments. If a member who retires on or after July 1, 1997, ~~and who has not chosen an option 2, 3, or 4 retirement benefit~~ *dies without designating a contingent annuitant* under 19-8-801 ~~dies before receiving an amount equal to the member's total amount of contributions and interest on account as that amount was at the time of the member's retirement, the balance must be paid to the member's designated beneficiary in a lump sum payment~~, *the member's designated beneficiary must be paid the amount, if any, of the member's accumulated contributions calculated as of the day of the member's retirement minus the total of any retirement benefits already paid from the member's account.*"

Section 70. Section 19-8-1105, MCA, is amended to read:

"19-8-1105. Guaranteed annual benefit adjustment. (1) Subject to subsection (2), on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by 1.5%.

(2) (a) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less than a 1.5% annualized increase, then the recipient's benefit must be adjusted by an amount that will provide a total annualized increase of 1.5% in the benefit paid since the preceding January.

(b) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the increases amount to more than a 1.5% annualized increase, then the benefit increase provided under this section must be 0%.

(c) If a benefit recipient is a contingent annuitant receiving an optional benefit upon the death of the original payee that occurred since the preceding January, the new recipient's monthly benefit must be increased to 1.5% more than the amount that the contingent annuitant would have received had the contingent annuitant received a benefit during the preceding January.

(3) Except as provided in subsection (2)(b), a benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if:

(a) the benefit's ~~initiation~~ *commencement* date is at least 36 months prior to January 1 of the year in which the adjustment is to be made; and

(b) the benefit recipient is not an active member of a public retirement system covered by this title.

(4) The board shall adopt rules to administer the provisions of this section."

Section 71. Section 19-9-103, MCA, is amended to read:

"19-9-103. Municipal police officers' retirement system established. ~~A~~ *There is a retirement plan known as the* municipal police officers' retirement system ~~is established, which~~. *The plan* is governed by the provisions of chapter 2 and this chapter."

Section 72. Section 19-9-405, MCA, is amended to read:

"19-9-405. Qualification of other Montana public service. (1) (a) A member may, at any time before retirement, make a written election with the board to qualify all or any portion of the member's service credit in the public employees', highway patrol officers', firefighters' unified, sheriffs', or game

HeinOnline -- 1999 vol. III 2486 1999

wardens' and peace officers' retirement system for which the member either has received or is eligible to receive a refund of the member's accumulated contributions. To qualify this service, the member shall contribute to the pension trust fund the actuarial cost of granting the service in the municipal police officers' retirement system, as determined by the board, based on the most recent actuarial valuation minus the employer contribution provided in subsection (1)(b). ~~This service may not be credited in more than one retirement system under Title 19.~~

(b) Upon receiving the member's payment under subsection (1)(a), the ~~division~~ *board* shall transfer from the member's former retirement system to the municipal police officers' retirement system an amount equal to the employer contributions made during the member's service but no more than an amount equal to the regular contribution rate minus the employee contribution rate in the municipal police officers' retirement system, according to the most recent actuarial valuation, based on the salaries earned by the employee as a member of the former system.

(2) (a) A member may, at any time before retirement, make a written election with the board to qualify any full-time public service employment performed for the state or a political subdivision of the state. The member shall provide salary and employment documentation certified by the member's public employer. The board shall grant service credit subject to rules adopted by the board upon contribution by the employee of the actuarial cost of granting this service in the municipal police officers' retirement system, as determined by the board, based on the employee's compensation earned during this period of service and the regular contribution rate according to the most recent actuarial valuation of the system.

(b) The board is the sole authority under this subsection (2) in determining what constitutes full-time public service.

~~(c) This service may not be credited in more than one retirement system under Title 19.~~"

Section 73. Section 19-9-702, MCA, is amended to read:

"**19-9-702. State contribution.** The state of Montana shall make its contributions from the general fund. The general fund contributions must be made annually after the end of each fiscal year but no later than November 1. The ~~division~~ *board* shall notify the state auditor by September 1 of each fiscal year of the annual compensation paid to all active members during the preceding fiscal year. The state's contribution is 29.37% of compensation paid to members. The contributions are statutorily appropriated as provided in 17-7-502."

Section 74. Section 19-9-703, MCA, is amended to read:

"**19-9-703. Employer contribution.** Each employer shall make its contribution through the city treasurer or other appropriate official out of money available to the city for that purpose. The employer's contribution, which must be paid monthly to the ~~division~~ *board*, is 14.41% of the compensation paid to all active members."

Section 75. Section 19-9-706, MCA, is amended to read:

"**19-9-706. Contributions based on total compensation when member receives disability compensation.** When a member receives compensation from both the member's employer and as benefits from the

HeinOnline -- 1999 vol. III 2487 1999

workers' compensation program under the provisions of 7-32-4132, the member's compensation reported by the employer is the same as if the member was in active service, and the member, employer, and state retirement contributions required by this chapter must be calculated and paid on that total compensation. ~~The service represented by these contributions must be credited in the same manner as provided in 19-9-401.~~"

Section 76. Section 19-9-1007, MCA, is amended to read:

"19-9-1007. Minimum benefit adjustment. (1) The benefits *that are* paid in each fiscal year to a retired member or the member's survivors and that are not covered by 19-9-1009 may not be less than one-half of the compensation that will be paid to newly confirmed police officers in the current fiscal year in the city or town from which the member retired.

(2) If the compensation of a newly confirmed police officer has not been set for the current fiscal year in time to make minimum benefit adjustments effective July 1, the division shall make any retroactive adjustments necessary to individual minimum benefits after the current compensation has been determined ~~and shall include these amounts in the next year's report for reimbursement at that time~~.

(3) If more than one dependent child is entitled to benefits under this section by virtue of the death of a common parent, the minimum benefit paid to the dependent children under this section must be determined as if there were one dependent child and the benefits must be paid to the dependent children collectively."

Section 77. Section 19-9-1009, MCA, is amended to read:

"19-9-1009. Guaranteed annual benefit adjustment. (1) Subject to subsection (2), on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by 1.5%.

(2) (a) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less than a 1.5% annualized increase, then the recipient's benefit must be adjusted by an amount that will provide a total annualized increase of 1.5% in the benefit paid since the preceding January.

(b) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the increases amount to more than a 1.5% annualized increase, then the benefit increase provided under this section must be 0%.

(3) Except as provided in subsection (2)(b), a benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if:

(a) the benefit's ~~initiation~~ *commencement* date is at least 36 months prior to January 1 of the year in which the adjustment is to be made;

(b) the benefit recipient is not an active member of a public retirement system covered by this title; and

(c) the member either:

(i) first became an active member on or after July 1, 1997; or

(ii) filed a voluntary, irrevocable election to be covered under this section. The election must be filed with the board prior to January 1, 1998, and requires an active member to pay an increased contribution rate from July 1, 1997, forward. A retired member or the member's survivor who is receiving a monthly henefit before July 1, 1997, shall also file the voluntary, irrevocable election no later than January 1, 1998, to be covered under this section.

(4) The board shall adopt rules to administer tbe provisions of this section."

Seetion 78. Section 19-9-1101, MCA, is amended to read:

"19-9-1101. Preretirement death benefits. (1) Upon the death of a member before retirement, tbe member's surviving spouse or dependent child is eligible for benefits equal to one-half of the member's final average compensation as provided in 19-9-804. *If the deceased member has completed over 20 years of membership service, the survivorship benefit must equal 2.5% of the member's final average compensation for each year of membership service.*

(2) Upon the death of an inactive nonvested member, the member's surviving spouse or dependent child is eligible for a refund of the member's accumulated contributions."

Section 79. Section 19-9-1102, MCA, is amended to read:

"19-9-1102. Payments in absence of spouse or child. If a *retired* member dies without leaving a surviving spouse or dependent child and if the member had designated a beneficiary in writing to the ~~division~~ *board as provided in 19-2-801*, the designated beneficiary must be paid ~~an~~ *the* amount ~~equal to~~, *if any, of* the member's accumulated contributions ~~less~~ *minus the total of* any retirement benefits *already* paid ~~to the member before the member's death~~ *from the member's account*. If the member did not designate a beneficiary or the designated beneficiary predeceased the member, ~~this~~ *the* amount must be paid to the member's estate."

Section 80. Section 19-13-103, MCA, is amended to read:

"19-13-103. Firefighters' unified retirement system established. A *retirement plan is established and known as the* firefighters' unified retirement system. *The plan* is ~~established and~~ governed by the provisions of chapter 2 and this chapter."

Section 81. Section 19-13-104, MCA, is amended to read:

"19-13-104. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) Any reference to "city" or "town" includes those jurisdictions that, before the effective date of a county-municipal consolidation, were incorporated municipalities, subsequent districts created for urban firefighting services, or the entire county included in the county-municipal consolidation.

(2) "Compensation" means:

(a) for a full-paid firefighter, the regnlar remuneration, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid by an employer for the firefighter's service as a firefighter;

(b) for a part-paid firefighter employed by a city of the second class:

HeinOnline -- 1999 vol. III 2489 1999

(i) 15% of the regular remuneration, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid on July 1 of each year to a newly confirmed, full-paid firefighter of the city that employs the part-paid firefighter; or

(ii) if that city does not employ a full-paid firefighter, 15% of the average regular remuneration, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid on July 1 of each year to all newly confirmed, full-paid firefighters employed by cities of the second class.

(3) "Dependent child" means a child of a deceased member who is:

(a) unmarried and under age 18; or

(b) unmarried, under age 24, and attending an accredited postsecondary educational institution as a full-time student in anticipation of receiving a certificate or degree.

(4) "Employer" means any city that is of the first or second class or that elects to join this retirement system under 19-13-211.

(5) "Final average compensation" means the monthly compensation of a member averaged over the last 36 months of the member's active service or, if the member has not been a member that long, over the period of the member's service. Lump-sum payments for annual leave paid to the member upon termination of service may be used to replace, on a month-for-month basis, the normal compensation for a month or months included in the calculation of final average compensation.

(6) "Firefighter" means a person employed as a full-paid or part-paid firefighter by an employer.

(7) "Full-paid firefighter" means a person appointed as a firefighter under 7-33-4106.

(8) "Minimum retirement date" means the first day of the month coinciding with or immediately following, if none coincides, the date on which a member becomes both age 50 or older and completes ~~10~~ *5* or more years of membership service.

(9) "Part-paid firefighter" means a person employed under 7-33-4109 who receives compensation in excess of $300 a year for service as a firefighter.

(10) "Prior plan" means the fire department relief association plan of a city that elects to join the retirement system under 19-13-211 or the fire department relief association plan of a city of the first or second class.

(11) "Retirement date" means the date on which the first payment of benefits is payable.

(12) "Surviving spouse" means the spouse married to a member at the time of the member's death."

Section 82. Section 19-13-404, MCA, is amended to read:

"19-13-404. Qualification of other Montana public service. (1) (a) A member may, at any time before retirement, make a written election with the board to qualify all or any portion of the member's service credit in the public employees', highway patrol officers', sheriffs', municipal police officers', or game wardens' and peace officers' retirement system for which the member either has

HeinOnline -- 1999 vol. III 2490 1999

received or is eligible to receive a refund of the member's accumulated contributions. To qualify this service, the member shall contribute to the pension trust fund the actuarial cost of granting the service in the firefighters' unified retirement system, as determined by the board, based on the most recent actuarial valuation minus the employer contribution provided in subsection (1)(b). ~~This service may not be credited in more than one retirement system under Title 19.~~

~~-~~(b) Upon receiving the member's payment under subsection (1)(a), the ~~division~~ *board* shall transfer from the member's former retirement system to the firefighters' unified retirement system an amount equal to the employer contributions made during the member's service, but no more than an amount equal to the normal contribution rate minus the employee contribution rate in the firefighters' unified retirement system, according to the most recent actuarial valuation, based on the compensation earned by the employee as a member of the former system.

(2) (a) A member may, at any time before retirement, make a written election with the board to qualify any full-time public service employment performed for the state or a political subdivision of the state. The member shall provide compensation and employment documentation certified by the member's public employer. The board shall grant service credit subject to rules adopted by the board upon contribution by the employee of the actuarial cost of granting this service in the firefighters' unified retirement system, as determined by the board, based on the most recent actuarial valuation of the system.

(b) The board is the sole authority under this subsection (2) in determining what constitutes full-time public service.

~~(c) This service may not be credited in more than one retirement system under Title 19.~~"

Section 83. Section 19-13-604, MCA, is amended to read:

"**19-13-604. State contribution.** The state shall make its contributions from the general fund. Payments must be made annually from the general fund to the pension trust fund after the end of each fiscal year but no later than November 1. The ~~division~~ *board* shall notify the state auditor of the annual compensation, excluding overtime, holiday payments, shift differential payments, compensatory time payments, and payments in lieu of sick leave, paid to all active members during the preceding year. The state's contribution is 32.61% of this total compensation. The contributions are statutorily appropriated as provided in 17-7-502."

Section 84. Section 19-13-605, MCA, is amended to read:

"**19-13-605. Employer contribution.** Each employer shall make its contribution on behalf of members through the city treasurer or other appropriate official from money available to the city for this purpose. The employer's contribution is 14.36% of the total compensation paid to members. All contributions are payable monthly to the ~~division~~ *board*, which shall, as soon as practicable after their receipt, deposit them in the pension trust fund."

Section 85. Section 19-13-607, MCA, is amended to read:

"**19-13-607. Other money credited as employer contributions.** All gifts, bequests, and emoluments given to an employer or member for the benefit of the retirement system or because of any member's service as a firefighter,

HeinOnline -- 1999 vol. III 2491 1999

except when specifically allowed to be retained by the memher by the member's employer, must be paid to the ~~division~~ *board*. The ~~division~~ *board* shall deposit them in the pension trust fund. The amounts are employer contributions but are in addition to the amounts required by 19-13-605."

Seetion 86. Section 19-13-704, MCA, is amended to read:

"19-13-704. Amount of serviee retirement benefit. (1) Except as provided in subsection (2), a member who retires with at least 5 years of membership service must receive a service retirement benefit equal to 2.5% of the member's final average compensation for each year of service credit.

(2) A memher hired before July 1, 1981, who does not elect to be covered under 19-13-1010 is entitled to the greater of:

(a) the benefit provided under subsection (1); or

(b) (i) if the member retires with less than 20 years of service, a benefit equal to 2% of the member's final monthly compensation for each year of service; or

(ii) if the member retires with 20 or more years of service, a benefit equal to 50% of the member's final monthly compensation plus 2% of the member's final monthly compensation for each year of service over 20 years.

(3) Upon a retired member's death, the benefit must be made to the surviving spouse. If there is no surviving spouse or if the surviving spouse dies and if the member leaves one or more dependent children, the children are entitled to receive the ~~allowance~~ *benefit* as long as they remain dependent children as defined in 19-13-104."

Section 87. Scction 19-13-903, MCA, is amended to read:

"19-13-903. Payments in absence of spouse or dependent child. If a member dies without leaving a surviving spouse or dependent child and if the member had desiguated a beneficiary in writing to the ~~division~~ *board as provided in 19-2-801*, the ~~division~~ *board* sball pay to the designated beneficiary ~~an~~ *the* amount, ~~equal to~~ *if any, of* the *retired* member's *accumulated* contributions ~~less~~ *minus the total of* any retirement benefits *already* paid ~~to~~ *from* the ~~member before the~~ member's ~~death~~ *account*. If the deceased member did not designate a beneficiary or the beneficiary predeceased the member, ~~this~~ *the* amount must be paid to the member's estate."

Section 88. Section 19-13-1007, MCA, is amended to read:

"19-13-1007. Minimum benefit adjustment. (1) The following applies to a member *with 10 or more years of service* who has not elected to be covered under 19-13-1010:

(a) For the member or the member's surviving spouse or dependent children, the service retirement benefit provided in 19-13-704, the disability retirement benefit provided in 19-13-803, and the survivorship benefit provided in 19-13-902 may not be less than one-half the monthly compensation paid to a newly confirmed, active firefighter of a city that last employed the member as a firefighter, as provided each year in the budget of that city.

(b) If after a member retires, the city that last employed the member no longer employs a full-paid firefighter, the member's or survivor's benefit under subsection (1)(a) must be adjusted on the basis of the average monthly compensation paid to all newly confirmed full-paid firefighters, as provided each

HeinOnline -- 1999 vol. III 2492 1999

year in the budgets of those cities that participate in the retirement system and employ a full-paid firefighter.

(2) If the employment of a vested member hired before July 1, 1981, who has not elected to be covered under 19-13-1010 is involuntarily discontinued because of the termination of employment of all full-paid firefighters in the city that employed the member, the member's service retirement benefit provided in 19-13-704 and the member's spouse's or dependent child's survivorship benefit provided in 19-13-902(1) may not be less than:

(a) if the member has earned 20 years or more of membership service, one-half the average monthly compensation paid to all newly confirmed, full-paid firefighters, as provided each year in the budgets of those cities that participate in the retirement system and employ a full-paid firefighter; or

(b) if the member has earned more than 5 but less than 20 years of membership service, 2.5% of the average monthly compensation paid to all newly confirmed, full-paid firefighters, as provided each year in the budgets of those cities that participate in the retirement system and employ a full-paid firefighter, for each year of the member's service."

Section 89. Section 19-13-1010, MCA, is amended to read:

"19-13-1010. Guaranteed annual benefit adjustment. (1) Subject to subsection (2), on January 1 of each year, the permanent monthly benefit payable during the preceding January to each recipient who is eligible under subsection (3) must be increased by 1.5%.

(2) (a) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the adjustments amount to less than a 1.5% annualized increase, then the recipient's benefit must be adjusted by an amount that will provide a total annualized increase of 1.5% in the benefit paid since the preceding January.

(b) If a recipient's benefit payable during the preceding January has been increased by one or more adjustments not provided for in this section and the increases amount to more than a 1.5% annualized increase, then the benefit increase provided under this section must be 0%.

(3) Except as provided in subsection (2)(b), a benefit recipient is eligible for and must receive the minimum annual benefit adjustment provided for in this section if:

(a) the benefit's ~~initiation~~ *commencement* date is at least 36 months prior to January 1 of the year in which the adjustment is to be made;

(b) the benefit recipient is not an active member of a public retirement system covered by this title; and

(c) the member either:

(i) first became an active member on or after July 1, 1997; or

(ii) filed a voluntary, irrevocable election to be covered under this section. The election must be filed with the board prior to January 1, 1998, and requires an active member to pay an increased contribution rate from July 1, 1997, forward. A retired member or the member's survivor who is receiving a monthly benefit before July 1, 1997, shall also file the voluntary, irrevocable election no later than January 1, 1998, to be covered under this section.

HeinOnline -- 1999 vol. III 2493 1999

(4) The board shall adopt rules to administer the provisions of this section."

Section 90. Section 19-17-102, MCA, is amended to read:

"19-17-102. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) "Active member" means a volunteer firefighter credited with service under this chapter during the most recently reportable fiscal year.

(2) "Benefit" means the pension, disability, or survivorship benefit provided under this chapter.

(3) "Board" means the public employees' retirement board provided for in 2-15-1009.

(4) "Claim" means a request from a member, surviving spouse, or dependent child for payment of medical or funeral expenses.

(5) "Department" means the department of administration.

(6) "Dependent child" means a child who is unmarried, who is under 18 years of age, and who is the child of a deceased member.

(7) "Disability" or "permanent total disability" means permanent total disability as defined in 39-71-116.

~~(8) "Division" means the public employees' retirement division of the department.~~

~~(9)~~*(8)* "Fire company" means a fire company organized in an unincorporated area, town, or village in accordance with 7-33-2311.

~~(10)~~*(9)* "Fiscal year" means the 12-month period that begins on July 1 and ends on June 30 of the following year.

~~(11)~~*(10)* "Member" means a volunteer firefighter who has service credited under this chapter.

~~(12)~~*(11)* "Pension trust fund" means the volunteer firefighters' pension trust fund established to pay benefits under this chapter.

~~(12)~~*(12)* "Retiree" or "retired member" means a member who is receiving full or partial participation benefits from the pension trust fund.

~~(14)~~*(13)* "Service" means cumulative periods of active membership that are credited only in full fiscal years.

~~(15)~~*(14)* "Supplemental insurance" means insurance that is carried by a fire company for the purposes of providing disability or death benefits and that is in addition to any insurance required by law, including workers' compensation insurance.

~~(10)~~*(15)* "Surviving spouse" means the spouse married to a member when the member dies.

~~(17)~~*(16)* "Survivorship benefit" means the monthly benefit paid to the surviving spouse or dependent child of a deceased member.

~~(18)~~*(17)* "Volunteer firefighter" means a person who is an active member of an eligible fire company and is not compensated for services as a firefighter."

Section 91. Section 19-17-106, MCA, is amended to read:

"19-17-106. Pension trust fund established — restrictions on use. (1) A pension trust fund is established and maintained for payment of claims and benefits provided under the Volunteer Firefighters' Compensation Act and the volunteer firefighters' pension plan.

(2) Except as provided in this section, a member or an employee of the department or the board of investments may not:

(a) have any interest, direct or indirect, in the making of any investment or in the gains or profits accruing from the pension trust fund;

(b) directly or indirectly, for the member or employee or as an agent or partner of others, borrow from the pension trust fund or deposits;

(c) in any manner use the pension trust fund except to make current and necessary payments that are authorized by the ~~division~~ *board*; or

(d) become an endorser or surety as to or in any manner an obliger for investments for the pension trust fund.

(3) The assets of the pension trust fund may not be used for or diverted to any purpose other than for the exclusive benefit of members, their surviving spouses, their dependent children, and qualified fire companies and for paying the reasonable administrative expenses of administering this chapter."

Section 92. Section 19-17-108, MCA, is amended to read:

"19-17-108. Credit for service as volunteer firefighter. (1) The annual period of service that may be credited under this chapter is the fiscal year. A fractional part of a year may not count toward the service required for participation in this system. To be eligible to receive credit for any particular year, a volunteer firefighter shall serve with a fire company throughout the entire fiscal year.

(2) The years of service are cumulative and need not be continuous. Separate periods of service properly credited with different fire companies in different fire districts must be credited toward a member's eligibility for full or partial benefits.

(3) A volunteer firefighter must receive credit for service during any fiscal year if:

(a) during the fiscal year, the volunteer firefighter completes a minimum of 30 hours of instruction in matters pertaining to firefighting under a formal program that has been formulated, supervised, and certified to the ~~division~~ *board* by the chief or ~~foreman~~ *supervisor* of the fire company;

(b) the fire company maintained firefighting equipment that is in serviceable condition and owns one or more buildings used for the storage of that equipment that all together are valued at $12,000 or more; and

(c) the fire company or the fire district served by it was rated in class 5, 6, 7, 8, 9, or 10 by the board of fire underwriters for the purpose of fire insurance premium rates."

Section 93. Section 19-17-204, MCA, is amended to read:

"19-17-204. Administrative expenses. Necessary expenses for the administration of the Volunteer Firefighters' Compensation Act and the volunteer firefighters' pension plan are a charge against the pension trust fund. The necessary administrative expenses attributable to this chapter must be paid from the investment earnings on the public employees' pension trust fund. Before

HeinOnline -- 1999 vol. III 2495 1999

fiscal yearend closing, the ~~division~~ *board* shall compute the expenses directly or proportionally attributable to this chapter over the past fiscal year and transfer that amount from the volunteer firefighters' pension trust fund to the public employees' pension trust fund."

Section 94. Section 19-19-201, MCA, is amended to read:

"19-19-201. Local boards of trustees of funds. (1) Each city or town ~~which~~ *that* has a police retirement fund must have a board of trustees of ~~such~~ *the* fund, except as provided in subsection (4).

(2) A board of trustees existing under subsection (1) must consist of the mayor, clerk, and attorney of the city or town and two members from the active list of police officers of the city or town.

(3) The two trustees who are also police officers shall serve terms of 2 years. They ~~shall~~ *must* be selected by a majority vote of the members of the police department on the active list of the city or town. One ~~shall~~ *must* be selected each year between May 1 and May 10, so that their terms are staggered. Immediately after the selection has been made, a certificate of election must be certified to the city clerk by the ~~chairman~~ *presiding officer of the board* and secretary of the meeting at which the selection was made.

(4) The board of trustees of the police retirement fund of a city ~~which~~ *that* elects to participate in the municipal police officers' retirement system under 19-9-207 is abolished as of the time that the transfer of the cash and securities and the certification required by that section is completed. The functions of the board are transferred as of the date of the election to the ~~department of administration and the~~ *public employees' retirement* board, as provided in the Municipal Police Officers' Retirement Act."

Section 95. Section 19-19-205, MCA, is amended to read:

"19-19-205. Actuarial valuation of police retirement fund. (1) The city treasurer shall submit to the ~~department of administration~~ *public employees' retirement board* before October 1 of each odd-numbered year all information requested by the ~~department~~ *public employees' retirement board* necessary to complete an actuarial valuation of the city's police retirement fund. The valuation must consider the actuarial soundness of the police retirement fund for the 2 preceding fiscal years.

(2) The valuation must be prepared by a qualified actuary selected hy the ~~department~~ *public employees' retirement board.* A qualified actuary is a member of the American academy of actuaries or of any organization considered by the department to have similar standards.

(3) In each fiscal year in which an actuarial valuation is prepared, the ~~department~~ *public employees' retirement board* shall submit to the state treasurer a request for payment of the expense incurred in securing the actuarial valuation. The expense may not exceed $6,000 in any fiscal year. The state treasurer shall make payment to the actuary from the general fund."

Section 96. Section 72-2-814, MCA, is amended to read:

"72-2-814. Revoeation of probate and nonprobate transfers by divorce — no revocation by otlier cbanges of circumstances. (1) As used in this section, the following definitions apply:

(a) "Disposition or appointment of property" includes a transfer of an item of property or any other benefit to a beneficiary designated in a governing instrument.

(b) "Divorce or annulment" means any divorce, annulment, or dissolution or declaration of invalidity of a marriage that would exclude the spouse as a surviving spouse within the meaning of 72-2-812. A decree of separation that does not terminate the status of husband and wife is not a divorce for purposes of this section.

(c) "Divorced individual" includes an individual whose marriage has been annulled.

(d) "Governing instrument" means a governing instrument executed by the divorced individual before the divorce or annulment of the individual's marriage to the individual's former spouse.

(e) "Relative of the divorced individual's former spouse" means an individual who is related to tbe divorced individual's former spouse by blood, adoption, or affinity and who, after the divorce or annulment, is not related to the divorced individual by blood, adoption, or affinity.

(f) "Revocable", with respect to a disposition, appointment, provision, or nomination, means one under which the divorced individual, at the time of the divorce or annulment, was alone empowered, by law or under the governing instrument, to cancel the designation in favor of the individual's former spouse or former spouse's relative, whether or not the divorced individual was then empowered to designate the divorced individual in place of the individual's former spouse or in place of the former spouse's relative and whether or not the divorced individual then had the capacity to exercise the power.

(2) Except *as to a retirement system established in Title 19 or* as provided hy the express terms of a governing instrument, a court order, or a contract relating to the division of the marital estate made between the divorced individuals before or after the marriage, divorce, or annulment, the divorce or annulment of a marriage:

(a) revokes any revocable:

(i) disposition or appointment of property made by a divorced individual to the individual's former spouse in a governing instrument and any disposition or appointment created by law or in a governing instrument to a relative of the divorced individual's former spouse;

(ii) provision in a governing instrument conferring a general or nongeneral power of appointment on the divorced individual's former spouse or on a relative of the divorced individual's former spouse; and

(iii) nomination in a governing instrument that nominates a divorced individual's former spouse or a relative of the divorced individual's former spouse to serve in any fiduciary or representative capacity, including a personal representative, executor, trustee, conservator, agent, or guardian; and

(b) severs the interests of the former spouses in property held by tbem at the tiine of the divorce or annulment as joint tenants with the right of survivorship and transforms the interests of the former spouses into tenancies in common.

(3) A severance under subsection (2)(b) does not affect any third-party interest in property acquired for value and in geod faith reliance on an apparent

HeinOnline -- 1999 vol. III 2497 1999

title by survivorship in the survivor of the former spouses unless a writing declaring the severance has been noted, registered, filed, or recorded in records appropriate to the kind and location of the property, which records are relied upon, in the ordinary course of transactions involving such property, as evidence of ownership.

(4) Provisions of a governing instrument are given effect as if the former spouse and relatives of the former spouse disclaimed all provisions revoked by this section or, in the case of a revoked nomination in a fiduciary or representative capacity, as if the former spouse and relatives of the former spouse died immediately before the divorce or annulment.

(5) Provisions revoked solely by this section are revived by the divorced individual's remarriage to the former spouse or by a nullification of the divorce or annulment.

(6) No change of circumstances other than as described in this section and in 72-2-813 effects a revocation.

(7) (a) A payor or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument affected by a divorce, annulment, or remarriago, or for having taken any other action in good faith reliance on the validity of the governing instrument, before the payor or other third party received written notice of the divorce, annulment, or remarriage. A payor or other third party does not have a duty or obligation to inquire as to the continued marital relationship between the decedent and a beneficiary or to seek any evidence with respect to a marital relationship. A payor or other third party is only liable for actions taken 2 or more business days after the actual receipt by the payor or other third party of written notice. The payor or other third party may be liable for actions taken pursuant to the governing instrument only if the form of service is that described in subsection (7)(b).

(b) The written notice must indicate the name of the decedent, the name of the person asserting an interest, the nature of the payment or item of property or other benefit, and a statement that a dissolution, annulment, or remarriage of the decedent and the designated beneficiary occurred. Written notice of the divorce, annulment, or remarriago under subsection (7)(a) must be mailed to the payor's or other third party's main office or home by certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of the divorce, annulment, or remarriage, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. In addition to the actions available under this section, the payor or other third party may take any action authorized by law or the governing instrument. If probate proceedings have not been commenced, the payor or other third party shall file with the court a copy of the written notice received by the payor or other third party, with the payment of funds or transfer or deposit of property. The court may not charge a filing fee to the payor or other third party for the payment to the court of amounts owed or transferred to or deposited with the court or any item of property. The court shall hold the funds or item of property and, upon its determination under this section, shall order

disbursement or transfer in accordance with the determination. A filing fee, if any, may, in the discretion of the court, be charged upon disbursement either to the recipient or against the funds or property on deposit with the court. Payments, transfers, or deposits made to or with the court discharge the payor or other third party from all claims for the value of amounts paid to or items of property transferred to or deposited with the court.

(8) (a) A bona fide purchaser who purchases property from a former spouse, relative of a former spouse, or any other person or who receives from a former spouse, relative of a former spouse, or any other person a payment or other item of property in partial or full satisfaction of a legally enforceable obligation is neither obligated under this section to return the payment, item of property, or benefit nor liable under this section for the amount of the payment or the value of the item of property or benefit. However, a former spouse, relative of a former spouse, or other person who, not for value, received a payment, item of property, or other benefit to which that porson is not entitled under this section is obligated to return the payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who is entitled to it under this section.

(b) If this section or any part of this section is preempted by federal law, other than the federal Employee Retirement Income Security Act of 1974, as amended, with respect to a payment, an item of property, or any other benefit covered by this section, a former spouse, relative of the former spouse, or any other person who, not for value, received a payment, item of property, or other benefit to which that person is not entitled under this section is obligated to return that payment, item of property, or benefit, or is personally liable for the amount of the payment or the value of the item of property or benefit, to the person who would have been entitled to it were this section or part of this section not preempted."

Section 97. Repealer. Section 19-9-401, MCA, is repealed.

Section 98. Codification instruction. (1) [Section 19] is intended to be codified as an integral part of Title 19, chapter 2, part 10, and the provisions of Title 19, chapter 2, part 10, apply to [section 19].

(2) [Section 19] is intended to be codified as an integral part of Title 19, chapter 20, part 5, and the provisions of Title 19, chapter 20, part 5, apply to [section 19].

(3) [Section 55] is intended to be codified as an integral part of Title 19, chapter 6, part 8, and the provisions of Title 19, chapter 6, part 8, apply to [section 55].

(4) [Section 55] is intended to be codified as an integral part of Title 19, chapter 7, part 8, and the provisions of Title 19, chapter 7, part 8, apply to [section 55].

Section 99. Coordination instruction. (1) If House Bill No. 79 and [this act] are both passed and approved, then:

(a) [section 3] of [this act] is void;

(b) subsection (30) of [section 4] of [this act], amending 19-2-303, must read as follows: ""Retirement system" or "system" means one of the public employee retirement systems enumerated in 19-2-302.";

(c) [section 21] of [this act], amending 19-3-103, is void; and

HeinOnline -- 1999 vol. III 2499 1999

(d) [section 24] of [this act], amending 19-3-401, must read as follows:

"**Seetion 24.** Section 19-3-401, MCA, is amended to read:

"**19-3-401. Membership — inactive vested members — inactive nonvested members.** (1) Except as otherwise provided in this chapter, all employees shall become members *of the defined benefit plan* on the first day of service. Each employer shall file with the board information affecting their employees' status as members ~~of the retirement system~~ as the board may require. *An employee may become a member of the defined contribution plan only as provided in [sections 42 through 64 of House Bill No. 79].*

(2) A member *of the defined benefit plan* with at least 5 years of membership service who terminates service and does not take a refund of the member's accumulated contributions is an inactive vested member and retains the right to purchase service and to receive a service retirement benefit subject to the provisions of this chapter.

(3) A member *of the defined benefit plan* with less than 5 years of membership service who terminates service and leaves the member's accumulated contributions in the pension trust fund is an inactive nonvested member and is not eligible for any benefits from the retirement ~~system~~ *plan*. An inactive nonvested member is eligible only for a refund of the member's accumulated contributions.

(4) ~~Every employee who reenters service shall become a member unless the employee has had an original election of exemption from membership and the employee's service was not interrupted by a break of more than 1 month. A seasonal employee who has had an original election of exemption from membership is not subject to the requirement regarding the break in service while continuing in the employee's original employment and employed on a seasonal basis, but upon termination of employment to accept new employment or absence of more than 1 month in returning to original employment in any ensuing season, the seasonal employee shall become a member of the retirement system upon reentry.~~ *A member of either the defined benefit plan or the defined contribution plan who returns to service within 30 days of termination of service is an active member. Except as otherwise provided in this chapter, a member of either the defined benefit plan or the defined contribution plan who terminates one service but remains in another service or subsequently reenters service is an active member.*

(5) Time during which an employee of a school district is absent from service during official vacation is counted as service in determining eligibility for membership under this chapter.""

(2) If House Bill No. 119 and [this act] are both passed and approved, then [section 14] of [this act], amending 19-2-602, must read as follows:

"**Seetion 14.** Section 19-2-602, MCA, is amended to read:

"**19-2-602. Refund of member's contributions on termination of service.** (1) Except as provided in this section, any member whose service has been discontinued, other than by death or retirement, must be paid the member's accumulated contributions ~~at the member's request.~~ *on written application by the member and board approval. Prior to termination of service, a member may not receive a refund of any portion of the member's accumulated contributions.*

HeinOnline -- 1999 vol. III 2500 1999

(2) A nonvested member who terminates from service with accumulated contributions of less than $200 must be paid the accumulated contributions in a lump sum as soon as administratively feasible after termination without a written application from the member.

(3) A nonvested member who terminates from service with accumulated contributions of $200 to $5,000 must be paid the accumulated contributions in a lump sum as soon as administratively feasible after termination, unless a written application is made pursuant to subsection (4).

~~(2)~~*(4)* Upon the written ~~request~~ *application* of a terminating member *with $200 or more of accumulated contributions*, tbe ~~division~~ *board* shall make a direct rollover distribution as allowed under Internal Revenue Code section 401(a)(31) of the eligible portion of a refund of the member's accumulated contributions. Tbe direct rollover distribution must be paid directly to an eligihle retirement plan allowed under applicable federal law. The terminating member shall designate the eligible retirement plan on forms provided hy the ~~division~~ *board*. Amounts of the member's accumulated contributions that are not eligible for direct rollover distribution must be paid to the terminating member. The terminating member is responsible to correctly designate an eligihle retirement plan to receive the direct rollover distribution.

~~(3) The board may, in its discretion, withhold, for not more than 1 year after a member last rendered service, all or part of the member's accumulated contributions if after a previous discontinuance of service the member withdrew all or part of the member's contributions and failed to redeposit the withdrawn amount in the pension trust fund.~~

~~(4) An employer who has an employment-related claim against a terminating member may, within 30 days after the date of termination, submit to the board a written request, signed by the employer and the member, authorizing the payment of all or any part of the accumulated contributions of the member directly to the employer to satisfy the claim in whole or in part. The request, if timely submitted, is sufficient authority for the division to make the direct payment to the employer as part of the member's refund. The total of the payments made to the employer and those made to the member may not exceed the member's accumulated contributions.~~

~~(5) Prior to termination of service, a member may not receive a refund of any portion of the member's accumulated contributions, except that a member who does not complete an installment payment schedule for purchasing service must be paid the member's additional contributions, including any regular interest earned on those additional contributions, upon the member's written request.~~""

Section 100. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings tbat were begun before [the effective dato of tbis act].

Section 101. Effective date. [This act] is effective July 1, 1999.

Section 102. Retroactive applicability. [Section 19] applies retroactively, within the meaning of 1-2-109, to July 1, 1997.

Approved May 6, 1999

HeinOnline -- 1999 vol. III 2501 1999

CHAPTER NO. 563

[HB 260]

AN ACT ENCOURAGING ECONOMIC DEVELOPMENT THROUGH INVESTMENT IN RESEARCH AND COMMERCIALIZATION PROJECTS; ESTABLISHING A RESEARCH AND COMMERCIALIZATION EXPENDABLE TRUST FUND; ESTABLISHING A COAL PRODUCER'S LICENSE TAX; ALLOCATING COAL PRODUCER'S LICENSE TAX REVENUE; PROVIDING FOR A CREDIT AGAINST COAL SEVERANCE TAXES FOR COAL PRODUCER'S LICENSE TAXES PAID; STATUTORILY APPROPRIATING COAL PRODUCER'S LICENSE TAXES TO SUPPORT RESEARCH AND COMMERCIALIZATION CENTERS AND TO BE USED AS MATCHING FUNDS; AMENDING SECTIONS 17-5-703, 17-5-709, AND 17-7-502, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, dedication to ongoing research and commercialization funding provides Montana with the opportunity to effectively compete in a rapidly changing global economy; and

WHEREAS, nonstate funding sources, including federal research and commercialization funding entities, seek a lasting commitment from the state to ensure that research and commercialization efforts are a funding priority in Montana; and

WHEREAS, the intention behind the coal severance tax and the coal tax permanent fund was to invest in the future of Montana and its citizens by strengthening the state's economic foundations; and

WHEREAS, productive economic possibilities, access to frontline research, and quality educational opportunities require an active and competitive research and commercialization base in Montana; and

WHEREAS, the development of a stable and diversified research and commercialization effort will help provide for a vibrant and diversified Montana economy.

Be it enacted by the Legislature of the State of Montana:

Section 1. Purpose — definition. (1) The purpose of establishing a research and commercialization expendable trust fund in [sections 2 and 3] is to:

(a) provide a predictable and stable source of funding for research and commercialization projects conducted in the state that demonstrates to both private and public sources, including federal research granting agencies, that Montana recognizes the important contributions that research and commercialization endeavors offer to the state's basic industries;

(b) expand and strengthen research efforts for the state's basic industries to increase their economic impact on the state's economy; and

(c) expand research efforts into areas beyond the scope of the state's basic industries to diversify and strengthen the state's economic security through the creation of technology-based operations and long-term quality jobs.

(2) As used in [sections 2 and 3], "research and commercialization center" means the campuses of the university of Montana or Montana state university, tribal colleges, colleges of technology, community colleges, agricultural research centers, or a private, nonprofit laboratory or research center.

HeinOnline -- 1999 vol. III 2502 1999

Section 2. Research and commercialization expendable trust. (1) There is a research and commercialization expendable trust fund within the state treasury. The purpose of the fund is to establish a permanent source of funding for research and commercialization projects to be conducted at research and commercialization centers in the state.

(2) The research and commercialization expendable trust fund must be invested by the board of investments. Earnings on the expendable trust fund must be deposited in the fund for distribution pursuant to [section 3(3) and (5)].

Section 3. Research and commercialization expendable trust — use. (1) The research and commercialization expendable trust fund provided for in [section 2] is statutorily appropriated, as provided in 17-7-502, to the board of research and commercialization technology, provided for in [section 9], for the purposes provided in this section.

(2) The establishment of the expendable trust fund in [section 2] is intended to enhance the economic growth opportunities for Montana and constitute a public purpose.

(3) The expendable trust fund may be used only for loans or for matching funds for grants from nonstate sources that are to be used for research and commercialization projects to be conducted at research and commercialization centers located in Montana. At least 20% of the investments made must be directed toward projects that enhance production agriculture. An amount allocated for matching funds must be matched by at least a 1-to-1 ratio.

(4) The board shall establish policies, procedures, and criteria that achieve the objectives in their research and commercialization strategic plan for the awarding of grants and loans. The criteria must include:

(a) the project's potential to diversify or add value to a traditional basic industry of the state's economy;

(b) whether the project shows promise for enhancing technology-based sectors of Montana's economy or promise for commercial development of discoveries;

(c) whether the project employs or otherwise takes advantage of existing research and commercialization strengths within the state's public university and private research establishment;

(d) whether the project involves a realistic and achievable research project design;

(e) whether the project develops or employs an innovative technology;

(f) verification that the project activity is located within the state;

(g) whether the project's research team possesses sufficient expertise in the appropriate technology area to complete the research objective of the project;

(h) verification that the project was awarded based on its scientific merits, following review by a recognized federal agency, philanthropic foundation, or other private funding source; and

(i) whether the project includes research opportunities for students.

(5) The board shall direct the state treasurer to distribute funds for approved projects. Unallocated interest and earnings from the expendable trust fund must be retained in the fund. Repayments of loans and any agreements authorizing

HeinOnline -- 1999 vol. III 2503 1999

the hoard to take a financial right to licensing or royalty fees paid in connection with the transfer of technology from a research and commercialization center to another nonstate organization or ownership of corporate stock in a private sector organization must be deposited in the fund.

(6) Tbe board sball refer grant applications to external peer review groups. The board sball compile a list of persons willing to serve on peer review groups for purposes of this section. The peer review group shall review the application and make a recommendation to the board as to whether tbe application for a grant sbould be approved. The board shall review the recommendation of the peer review group and either approve or deny a grant application.

(7) The board shall identify whether a grant or loan is to be used for basic researcb, applied research, or some combination of both. For the purposes of this section, "applied research" means research that is conducted to attain a specific benefit or solve a practical problem and "basic research" means research tbat is conducted to uncover the basic function or mechanism of a scientific question.

Section 4. Section 17-5-703, MCA, is amended to read:

"17-5-703. Coal severance tax trust funds. (1) The trust established under Article IX, section 5, of tbe Montana constitution is composed of the following funds:

(a) a coal severance tax bond fund into whicb tbe constitutionally dedicated receipts from the coal severance tax must be deposited;

(b) a treasure state endowment fund;

(c) a coal severance tax permanent fund;

(d) a coal severance tax income fund; and

(e) a coal severance tax school bond contingency loan fund.

(2) (a) The state treasurer shall determine, on July 1 of each year, the amount necessary to meet all principal and interest payments on bonds payable from the coal severance tax bond fund during the next 12 months and retain that amount in the coal severance tax bond fund.

(b) The amount in the coal severance tax bond fund in excess of the amount required in subsection (2)(a) must be transferred from that fund as provided in subsections (3) through (5).

(3) (a) ~~On January 21, 1992, and continuing as~~ *As* long as any school district bonds secured by state loans under 20-9-466 are outstanding, the state treasurer shall from time to time and as provided in subsection (3)(b) transfer from the coal severance tax bond fund to the coal severance tax school bond contingency loan fund any amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund.

(b) The state treasurer shall transfer the amount referred to in subsection (3)(a) until and unless the balance in the coal severance tax school bond contingency loan fund is equal to the amount due as principal of and interest on the school district bonds secured by stato loans under 20-9-466 during the next following 12 months.

(4) (a) Beginning July 1, 1993, and ending June 30, ~~2013~~ *2023*, the state treasurer shall quarterly transfer to tbe treasure state endowment fund ~~50%~~ *100%* of the amount in the coal severance tax bond fund in excess of the amount

that is specified in subsection (2) to be retained in the fund and in excess of amounts that are transferred pursuant to subsection (3).

(b) The state treasurer shall monthly transfer from the treasure state endowment fund to the treasure state endowment special revenue account the amount of earnings required to meet the obligations of the state that are payable from the account in accordance with 90-6-710. Earnings not transferred to the treasure state endowment special revenue account must be retained in the treasure state endowment fund.

(5) Any amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2)(a) to be retained in the fund and that is not otherwise allocated under this section must be deposited in the coal severance tax permanent fund."

Section 5. Section 17-5-709, MCA, is amended to read:

"17-5-709. Continued tax deposit limit on additional bonds. (1) *(a)* The legislature shall provide for the continued assessment, levy, collection, and deposit into the coal severance tax bond fund of the coal severance tax ~~which~~ *that*, together with ~~such~~ other ~~revenues~~ *revenue*, assets, and money ~~as~~ *that* may be deposited to one or more special bond funds pledged for the benefit of coal severance tax bonds, will be sufficient to produce an amount that is at least the amount necessary to pay, when due, the annual debt service charges on all outstanding coal severance tax bonds.

(b) The legislature shall provide for the continued assessment, levy, collection, and deposit into the coal producer's license tax bond account established in [section 17] of the coal producer's license taxes that, together with other revenue, assets, and money that may be deposited to one or more special bond funds pledged for the benefit of coal severance tax bonds, will be sufficient to produce an amount that when combined with the deposits in subsection (1)(a) is at least the amount necessary to pay, when due, the annual debt service charges on all outstanding coal severance tax bonds.

(2) The board of examiners may issue no coal severance tax bonds unless the aggregate amount of coal severance tax bonds outstanding, including the proposed issue and any other coal severance tax bonds authorized but not yet issued, can be serviced with no more than two-thirds of the annual deposits into the coal severance tax bond fund *and coal producer's license tax bond account established in [section 17]*, as determined by the average of the deposits during the preceding 3 fiscal years, together with the average of the aggregate amount of ~~revenues~~ *revenue*, assets, or money deposited in one or more special bond funds used to pay debt service on outstanding coal severance tax bonds during the preceding 3 fiscal years.

(3) The provisions of this section may not be modified so as to reduce the security for any coal severance tax bonds while ~~such~~ *the* bonds are outstanding."

Section 6. Section 17-7-502, MCA, is amended to read:

"17-7-502. (Temporary) Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agancy without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

HeinOnline -- 1999 vol. III 2505 1999

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 3-5-901; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706; 15-30-195; 15-31-702; 15-36-324; 15-36-325; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-406; 16-1-411; 16-11-308; 17-3-106; 17-3-212; 17-3-222; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-6-709; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 20-8-107; 20-8-111; 20-26-1503; 22-3-1004; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 39-71-907; 39-71-2321; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 53-6-703; 53-24-206; 67-3-205; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-1-131; 80-2-103; 80-2-222; 80-4-416; 81-5-111; 82-11-161; 85-20-402; 87-1-513; 90-3-301; *[sections 3 and 16];* 90-4-215; 90-6-331; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; pursuant to sec. 7(2), Ch. 29, L. 1995, the inclusion of 15-30-195 terminates July 1, 2001; pursuant to sec. 5, Ch. 461, L. 1997, the inclusion of 77-1-131 terminates October 1, 2003; and pursuant to secs. 13, 16(1), Ch. 549, L. 1997, the inclusion of 90-3-301 terminates July 1, 1999.)

17-7-502. (Effective July 1, 2008) Statutory appropriations — definition — requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 3-5-901; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-23-706; 15-30-195; 15-31-702; 15-36-324; 15-36-325; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; [16-1-406;] 16-1-411; 16-11-308; 17-3-106; 17-3-212; 17-3-222; 17-5-404; 17-5-804; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-6-709; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-205; 19-19-305; 19-19-506; 20-8-107; 20-9-361; 20-26-1503; 22-3-1004; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 32-1-537; 37-43-204;

HeinOnline -- 1999 vol. III 2506 1999

37-51-501; 39-71-503; 39-71-907; 39-71-2321; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 50-5-232; 50-40-206; 53-6-150; 53-6-703; 53-24-206; 60-2-220; 67-3-205; 75-1-1101; 75-5-1108; 75-6-214; 75-5-1108; 75-6-214; 75-11-313; 77-1-505; 80-2-103; 80-2-222; 80-4-416; 81-5-111; 82-11-136; 82-11-161; 85-1-220; 85-20-402; 87-1-513; *[sections 3 and 16];* 90-4-215; 90-6-331; 90-7-220; 90-7-221; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant to sec. 68(2), Ch. 422, L. 1997, this version becomes effective July 1, 2008.)"

Section 7. Credit against severance tax. A coal mine operator is entitled to a credit against the tax imposed under 15-35-103 in an amount equal to 101.5% of the amount of license tax paid under [section 8]. The credit may not be claimed for coal produced prior to July 1, 1999.

Section 8. Coal producer's license tax — definition. (1) There is imposed on each coal mine operator that is subject to the tax imposed under 15-35-103 a tax in an amount equal to 9.17% of the value of coal produced in the state.

(2) The proceeds of the tax must be allocated as provided for in [section 16].

(3) For purposes of this section, "value" has the meaning provided in 15-35-103.

Section 9. Quarterly statement and payment of tax. Each coal mine operator shall compute the license tax due on each quarter-year's worth of coal production on forms prescribed by the department. The statement must indicate the tonnage produced, the average Btu value of the production, the contract sales price received for the production, and other information that the department may require. Each coal mine operator shall provide a statement of the tons of coal sold to each purchaser for the quarter. The completed form in duplicate, with the tax payment, must be delivered to the department not later than 30 days following the close of the quarter. The form must be signed by the coal mine operator if the operator is an individual or by an officer of the operator if the operator is a business entity. A person operating more than one coal mine in this state may include all of the operator's mines in one statement. The department may grant a reasonable extension of time for filing statements and payment of taxes due upon good cause shown.

Section 10. Penalty for delinquent tax. The department shall add to the amount of all delinquent taxes a penalty as provided in [section 1 of House Bill No. 132]. The penalty amount may be waived by the department if reasonable cause for the failure or neglect to file the quarterly statement is provided to the department.

Section 11. Deficiency assessment — review — interest. (1) When the department determines that the amount of tax due is greater than the amount

HeinOnline -- 1999 vol. III 2507 1999

disclosed by a return, it shall mail to the taxpayer a notice, pursuant to 15-1-211, of the additional tax proposed to be assessed. The taxpayer may seek review of the determination pursuant to 15-1-211.

(2) A deficiency assessment bears interest until paid as provided in [section 1 of House Bill No. 132].

Section 12. Credit for overpayment — interest on overpayment. (1) If the department determines that the amount of tax, penalty, or interest due for any year is less than the amount paid, the amount of the overpayment must be credited against any tax, penalty, or interest then due from the taxpayer and the balance refunded to the taxpayer or its successor through reorganization, merger, or consolidation or to its shareholders upon dissolution.

(2) Except as provided in subsection (3), interest must be allowed on overpayments at the same rate that is charged on deficiency assessments provided in 15-35-112 due from the due date of the return or from the date of overpayment, whichever date is later, to the date the department approves refunding or crediting of the overpayment.

(3) (a) Interest may not accrue during any period that the processing of a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department for the purpose of verifying the amount of the overpayment.

(b) Interest is not allowed:

(i) if the overpayment is refunded within 6 months from the date the return is due or from the date the return is filed, whichever is later; or

(ii) if the amount of the interest is less than $1.

(c) A payment not made incident to a bona fide and orderly discharge of an actual tax liability or one reasonably assumed to be imposed by the coal producer's license tax may not be considered an overpayment with respect to which interest is allowable.

Section 13. Statute of limitations. (1) Except as otherwise provided in this section, a deficiency may not be assessed or collected with respect to the year for which a return is filed unless the notice of additional tax proposed to be assessed is mailed within 5 years from the date the return was filed. For the purposes of this section, a return filed before the last day prescribed for filing is considered as filed on the last day. If the taxpayer, before the expiration of the period prescribed for assessment of the tax, consents in writing to an assessment after that time, the tax may be assessed at any time prior to the expiration of the period agreed upon.

(2) A refund or credit may not be allowed or paid with respect to the year for which a return is filed after 5 years from the last day prescribed for filing the return or after 1 year from the date of the overpayment, whichever period expires later, unless before the expiration of the period the taxpayer files a claim for the refund or credit or the department has determined the existence of the overpayment and has approved the refund or credit. If the taxpayer has agreed in writing under the provisions of subsection (1) to extend the time within which the department may propose an additional assessment, the period within which a claim for refund or credit may be filed or a credit or refund allowed if a claim is not filed is automatically extended.

HeinOnline -- 1999 vol. III 2508 1999

(3) If a return is required to be filed and the taxpayer fails to file the return, the tax may be assessed or an action to collect the tax may be brought at any time. If a return is required to be filed and the taxpayer files a fraudulent return, the 5-year period provided for in subsection (1) does not begin until discovery of the fraud by the department.

Section 14. Procedure on failure to file statement. (1) If any person fails, neglects, or refuses to file any statement required by [sections 7 through 16] within the time required or fails to pay the tax required by [sections 7 through 16] on or before the date the payment is due, the department shall immediately after the time has expired proceed to inform itself as best it may regarding the amount of coal produced hy the person within tbis state during the quarter and during each month of the quarter and shall determine and fix the amount of the license taxes due to the state from that person for the quarter.

(2) The department shall add to the amount of all delinquent coal producer's license taxes a penalty as provided in [section 1 of House Bill No. 132].

Scction 15. Rulemaking authority. The department may adopt rules necessary for the tax administration under [sections 7 through 16].

Section 16. Coal producer's license tax allocation. Coal producer's license taxes collected pursuant to [section 8] must be deposited in the coal producer's license tax bond account established in [section 17] to pay debt service on outstanding bonds issued pursuant to Title 17, chapter 5, part 7. The state treasurer shall determine, on July 1 of each year, the amount necessary to meet all principal and interest payments on outstanding coal severance tax bonds and on outstanding coal severance tax school bond contingency loan bonds. If coal severance tax receipts retained in the coal severance tax bond fund and in the coal severance tax school bond contingency loan fund are insufficient to meet all principal and interest payments in that year, then the amount that is deficient must be retained in the coal producer's license tax bond account. At no time may the total amount retained in the coal severance tax bond fund, the coal severance tax school bond contingency loan fund, and the coal producer's license tax bond account exceed the amount necessary to make annual debt service payments for coal severance tax bonds and coal severance tax school bond contingency loan bonds. All coal producer's license tax revenue in excess of the amount retained for payment of annual debt service on outstanding coal severance tax bonds and coal severance tax school contingency loan bonds must be allocated as follows:

(1) for the fiscal year beginning July 1, 1999, and until June 30, 2001, $2.3 million each fiscal year is allocated to the treasure state endowment special revenue account provided for in 17-5-703(4)(b), and beginning July 1, 2001, $600,000 is allocated to that account each fiscal year;

(2) $2.5 million is allocated to the agriculture seed capital account, provided for in 90-9-301, to be used for purposes of Title 90, chapter 1, part 1, and Title 90, chapter 9, part 2;

(3) for fiscal year 2000, there is $450,000 allocated to the secretary of state for the Montana presidential preference primary election to he conducted in accordance with [House Bill No. 490];

(4) for fiscal year 2000, there is $150,000 and for fiscal year 2001 and future years, there is $600,000 allocated to the department of administration for tax increment financing industrial districts; and

HeinOnline -- 1999 vol. III 2509 1999

(5) the amount remaining after the allocation in subsections (1) and (2) is allocated as follows:

(a) 33.33% is allocated to the research and commercialization expendable trust fund established in [section 2];

(b) 16.99% is allocated to the long-range building program account established in 17-7-205;

(c) 11.15% is allocated to the account in the state special revenue fund provided for in 15-35-108(3) to be used as provided in that subsection;

(d) 1.70% is allocated to the nonexpendable trust for parks acquisition or management to be used as provided in Title 23, chapter 1, part 1;

(e) 1.27% is allocated to the debt service fund type to the credit of the renewable resource loan debt service fund;

(f) 0.86% is allocated to the cultural and aesthetic trust fund provided for in 15-35-108(6);

(g) beginning July 1, 1999, and ending June 30, 2007, 1.74% is allocated to the long-range building program fund in the debt service fund type to fund the bonds issued for the purchase of Virginia City and Nevada City property; and

(h) the remainder is allocated to the state general fund.

Section 17. Coal producer's license tax bond special revenue account — pledge. There is a coal producer's license tax bond account in the state special revenue fund. Money must be deposited in the account as provided in [section 16]. Money in the account is pledged to the payment of principal and interest on all coal severance tax bonds and on all coal severance tax school bond contingency loan bonds issued pursuant to Title 17, chapter 5, part 7. Money in the account that is not needed for the annual payment of debt service on outstanding bonds must be allocated as provided in [section 16].

Section 18. Board of research and commercialization technology. (1) There is a Montana board of research and commercialization technology.

(2) The board consists of six members. One member must be appointed by the president of the senate, one member must be appointed by the minority leader of the senate, one member must be appointed by the speaker of the house, one member must be appointed by the minority leader of the house, and two members must be appointed by the governor. One of the members appointed by the governor must be an enrolled member of a Montana tribal government.

(3) A member who ceases to live in the state is disqualified from membership, and the position becomes vacant. If a vacancy occurs, the position must be filled in the manner of the original appointment.

(4) The board shall hire an executive director and shall prescribe the executive director's salary and duties.

(5) (a) The board is a quasi-judicial entity subject to the provisions of 2-15-124, except that none of the members are required to be licensed to practice law in the state.

(b) The board shall elect a presiding officer from among its members at an annual election. The presiding officer may be reelected.

(c) Except for the original appointments, members shall serve 2-year terms.

(6) The board is attached to the department of commerce for administrative purposes only.

Seetion 19. Meetings — compensation. (1) The Montana board of research and commercialization technology may determine the time and place of its meetings but shall meet at least once each quarter.

(2) Each member of the board, except legislative members, is entitled to receive compensation of $50 a day plus travel expenses, pursuant to 2-18-501 through 2-18-503, for each day spent conducting official board business.

Section 20. Executive director — qnalifieations. (1) The Montana board of research and commercialization technology shall hire an executive director who is responsible for:

(a) managing staff;

(b) documenting and monitoring grants approved by the board according to performance benchmarks established by the board;

(c) reporting to the legislature and governor about investments made in research and commercialization activities and developments and opportunities in diversified research arenas;

(d) monitoring and promoting activities that increase the presence of Montana products in new and expanding markets;

(e) promoting and facilitating program strategies that add value to Montana products; and

(f) any additional responsibilities determined necessary and appropriate by the board.

(2) The executive director may hire additional staff as necessary within budgetary limitations as prescribed by the board.

Section 21. Initial board appointments. In order to implement staggered terms, the original appointments to the Montana board of research and commercialization technology must be for the following terms:

(1) the appointees of the president of the senate and minority leader of the house, 1 year;

(2) the appointees of the speaker of the house and the minority leader of the senate, 2 years; and

(3) the appointees of the governor to 1-year and 2-year terms respectively.

Section 22. Coordination instruction. If Senate Bill No. 220 is passed and approved, then [section 16 of this act] must read as follows:

"Section 16. Coal produeer's license tax allocation. Coal producer's license taxes collected pursuant to [section 8] must be deposited in the coal producer's license tax bond account established in [section 17] to pay debt service on outstanding bonds issued pursuant to Title 17, chapter 5, part 7. The state treasurer shall determine, on July 1 of each year, the amount necessary to meet all principal and interest payments on outstanding coal severance tax bonds and on outstanding coal severance tax school bond contingency loan bonds. If coal severance tax receipts retained in the coal severance tax bond fund and in the coal severance tax school bond contingency loan fund are insufficient to meet all principal and interest payments in that year, then the amount that is deficient

HeinOnline -- 1999 vol. III 2511 1999

must be retained in the coal producer's license tax bond account. At no time may the total amount retained in the coal severance tax bond fund, the coal severance tax school bond contingency loan fund, and the coal producer's license tax bond account exceed the amount necessary to make annual debt service payments for coal severance tax bonds and coal severance tax school bond contingency loan bonds. All coal producer's license tax revenue in excess of the amount retained for payment of annual debt service on outstanding coal severance tax bonds and coal severance tax school contingency loan bonds must he allocated as follows:

(1) for the fiscal year beginning July 1, 1999, and until June 30, 2001, $2.3 million each fiscal year is allocated to the treasure state endowment special revenue account provided for in 17-5-703(4)(b), and beginning July 1, 2001, $600,000 is allocated to that account each fiscal year;

(2) $2.5 million is allocated to the agriculture seed capital account, provided for in 90-9-301, to be used for purposes of Title 90, chapter 1, part 1, and Title 90, chapter 9, part 2;

(3) beginning July 1, 2001, $1.7 million each year is allocated to the treasure state endowment regional water system special revenue account provided for in [section 2 of Senate Bill No. 220];

(4) for fiscal year 2000, there is $450,000 allocated to the secretary of state for the Montana presidential preference primary election to be conducted in accordance with [House Bill No. 490];

(5) for fiscal year 2000, there is $150,000 and for fiscal year 2001 and future years, there is $600,000 allocated to the department of administration for tax increment financing industrial districts; and

(6) the amount remaining after the allocation in subsections (1) through (3) is allocated as follows:

(a) 33.33% is allocated to the research and commercialization expendable trust fund established in [section 2];

(b) 16.99% is allocated to the long-range building program account established in 17-7-205;

(c) 11.15% is allocated to the account in the state special revenue fund provided for in 15-35-108(3) to be used as provided in that subsection;

(d) 1.70% is allocated to the nonexpendable trust for parks acquisition or management to be used as provided in Title 23, chapter 1, part 1;

(e) 1.27% is allocated to the debt service fund type to the credit of the renewable resource loan debt service fund;

(f) 0.86% is allocated to the cultural and aesthetic trust fund provided for in 15-35-108(6);

(g) beginning July 1, 1999, and ending June 30, 2007, 1.74% is allocated to the long-range building program fund in the debt service fund type to fund the bonds issued for the purchase of Virginia City and Nevada City property; and

(h) the remainder is allocated to the state general fund."

Section 23. Codification instructions. (1) [Sections 1 through 3, 17, 19, and 20] are intended to be codified as an integral part of Title 90, chapter 3, and the provisions of Title 90, chapter 3, apply to [sections 1 through 3, 17, 19, and 20].

HeinOnline -- 1999 vol. III 2512 1999

(2) [Sections 7 through 16] are intended to be codified as an integral part of Title 15, and the provisions of Title 15 apply to [sections 7 through 16].

(3) [Section 18] is intended to be codified as an integral part of Title 2, chapter 15, part 18, and the provisions of Title 2, chapter 15, part 18, apply to [section 18].

Section 24. Coordination instruction. If House Bill No. 490 is not passed and approved, then:

(1) [section 16(3) and section 22(4)] are void; and

(2) [section 16(4) and section 22(5)] must read as follows:

"for fiscal year 2000 and future years, there is $600,000 allocated to the department of administration for tax increment financing industrial districts."

Section 25. Effective date. [This act] is effective July 1, 1999.

Approved May 6, 1999

CHAPTER NO. 564

[HB 310]

AN ACT ESTABLISHING DRUG-FREE AND CRIME-FREE SCHOOLS; REQUIRING THE YOUTH COURT TO NOTIFY A SCHOOL WHEN A JUVENILE PROBATION OFFICER HAS REASON TO BELIEVE THAT A YOUTH IS CURRENTLY INVOLVED IN DRUG USE OR OTHER CRIMINAL ACTIVITY BEARING ON THE SAFETY OF CHILDREN; AUTHORIZING A SCHOOL TO PROVIDE TO YOUTH COURT AND LAW ENFORCEMENT AUTHORITIES EDUCATION RECORDS THAT PERTAIN TO VIOLATIONS OF THE MONTANA YOUTH COURT ACT OR CRIMINAL LAWS BY PUPILS; AND AMENDING SECTIONS 41-5-215 AND 52-2-211, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-5-215, MCA, is amended to read:

"41-5-215. Youth court and department records — notification of school. (1) ~~Except as provided in subsection (2), all youth court records on file with the clerk of court, including reports~~ *Reports* of preliminary inquiries, petitions, motions, other filed pleadings, court findings, verdicts, orders, and decrees, are open to public inspection until the records are sealed under 41-5-216.

(2) Social, medical, and psychological records, youth assessment materials, predispositional studies, and supervision records of probationers are open only to the following:

(a) the youth court and its professional staff;

(b) representatives of any agency providing supervision and having legal custody of a youth;

(c) any other person, by order of the court, having a legitimate interest in the case or in the work of the court;

(d) any court and its probation and other professional staff or the attorney for a convicted party who had been a party to proceedings in the youth court when considering the sentence to be imposed upon the party;

HeinOnline -- 1999 vol. III 2513 1999

(e) the county attorney;

(f) the youth who is the subject of the report or record, after emancipation or reaching the age of majority;

(g) a member of a county interdisciplinary child information team formed under 52-2-211 who is not listed in this subsection (2);

(h) members of a local interagency staffing group provided for in 52-2-203;

(i) persons allowed access to the records referred to under 45-5-624(7); and

(j) persons allowed access under 42-3-203.

(3) (a) Notwithstanding the requirements of 20-5-321(1)(d) or (1)(e) and subject to the provisions of subsection (3)(b), the youth court shall notify the school district that the youth presently attends or the school district that the youth has applied to attend of a youth's suspected drug use or criminal activity, if after an investigation has been completed:

(i) the youth has admitted the allegation or a petition has been filed with the youth court; and

(ii) a juvenile probation officer has reason to believe that a youth is currently involved with drug use or other criminal activity that has a bearing on the safety of children.

(b) Notification under subsection (3)(a) may not be given for status offenses.

(c) A school district may not refuse to accept the student if refusal violates the federal Individuals With Disabilities Education Act or the federal Americans With Disabilities Act of 1990.

~~(3)~~*(4)* In all cases, a victim is entitled to all information concerning the identity and disposition of the youth, as provided in 41-5-1416.

~~(4)~~*(5)* The identity of a youth who for the second or subsequent time admits violating or is adjudicated as having violated a statute must be disclosed by youth court officials to the administrative officials of the school in which the youth is a student. ~~The administrative officials may enforce any~~. *The administrative officials may enforce* school disciplinary procedures that existed at the time of the admission or adjudication. The information may not be further disclosed and may not be made part of the student's permanent records.

(6) The school district may disclose, without consent, personally identifiable information from an education record of a pupil to the youth court and law enforcement authorities pertaining to violations of the Montana Youth Court Act or criminal laws by the pupil. The youth court or law enforcement authorities receiving the information shall certify in writing to the school district that the information will not be disclosed to any other party except as provided under state law without the prior consent of the parent or guardian of the pupil.

~~(5)~~*(7)* Any part of records information secured from records listed in subsection (2), when presented to and used hy the court in a proceeding under this chapter, must also he made available to the counsel for the parties to the proceedings.

~~(6)~~*(8)* After youth court and department records, reports of preliminary inquiries, predispositional studies, and supervision records of probationers are sealed, they are not open to inspection except, upon order of the youth court, for good cause to:

HeinOnline -- 1999 vol. III 2514 1999

(a) those persons and agencies listed in ~~subsection (2)~~ *subsections (2) and (3)*; and

(b) adult probation professional staff preparing a presentence report on a youth who has reached the age of majority."

Section 2. Section 52-2-211, MCA, is amended to read:

"52-2-211. County interdisciplinary child information team. (1) The following persons and agencies operating within a county may by written agreement form a county interdisciplinary child information team:

(a) the youth court;

(b) the county attorney;

(c) the department of public health and human services;

(d) the county superintendent of schools;

(e) the sheriff;

(f) the chief of any police force;

(g) the superintendents of public school districts; and

(h) the department of corrections.

(2) The persons and agencies signing a written agreement under subsection (1) may by majority vote allow the following persons to sign the written agreement and join the team:

(a) physicians, psychologists, psychiatrists, nurses, and other providers of medical and mental health care;

(b) entities operating private elementary and secondary schools;

(c) attorneys; and

(d) a person or entity that has or may have a legitimate interest in one or more children that the team will serve.

(3) (a) The members of the team or their designees may form one or more auxiliary teams for the purpose of providing service to a single child, a group of children, or children with a particular type of problem or for any other purpose. Auxiliary teams are subject to the written agreement.

(b) A member of an auxiliary team must be a person who has personal knowledge of or experience with the child or children in the member's respective field.

(4) The purpose of the team and written agreement is to facilitate the exchange and sharing of information that one or more team members may be able to use in serving a child in the course of their professions and occupations, including but not limited to abused or neglected children, delinquent youth, and youth in need of intervention. Information regarding a child that a team member supplies to other team members or that is disseminated to a team member under 41-3-205 or 41-5-215(2) *and (3)* may not be disseminated beyond the team.

(5) The terms of the written agreement must provide for the rules under which the team will operate, the method by which information will be shared, distributed, and managed, and any other matters necessary to the purpose and functions of the team.

HeinOnline -- 1999 vol. III 2515 1999

(6) The terms of the written agreement must state how the team will coordinate its efforts with interdisciplinary child protective teams as provided in 41-3-108 and youth placement committees as provided for in 41-5-121.

(7) To the extent that the county interdisciplinary child information team is involved in a proceeding that is held prior to adjudication of a youth in youth court, the team satisfies the requirements of 20 U.S.C. 1232g(b)(1)(E)(ii)(I) of the Family Educational Rights and Privacy Act of 1974. Montana school districts may release education records to the team. The terms of the written agreement described in subsection (5) must include a requirement that the officials and authorities to whom the information is disclosed certify in writing to the school district that is releasing the education records that the education records or information from the education records will not be disclosed to any other party without the prior written consent of the parent or guardian of the student."

Approved May 5, 1999

CHAPTER NO. 565

[HB 321]

AN ACT REQUIRING THE DEPARTMENT OF COMMERCE TO INSPECT ELEVATORS, ESCALATORS, DUMBWAITERS, INCLUDING DUMBWAITERS WITH AUTOMATIC TRANSFER DEVICES, MOVING WALKS, MATERIAL LIFTS, WHEELCHAIR LIFTS, AND STAIRWAY CHAIRLIFTS TO ENSURE COMPLIANCE WITH THE STATE BUILDING CODE; EXCEPTING PRIVATE RESIDENCES AND FARM AND RANCH OPERATIONS FROM THE REQUIREMENT; AND AMENDING SECTIONS 50-60-701, 50-60-702, AND 50-60-703, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-60-701, MCA, is amended to read:

"**50-60-701. Inspection of ~~passenger~~ elevators, ~~and~~ escalators, *dumbwaiters, including dumbwaiters with automatic transfer devices, moving walks, material lifts, wheelchair lifts, and stairway chairlifts* — fees.** (1) All ~~passenger~~ elevators, ~~and~~ escalators ~~in public places may~~, *dumbwaiters, including dumbwaiters with automatic transfer devices, moving walks, material lifts, wheelchair lifts, and stairway chairlifts must* be inspected by the department to ~~insure~~ *ensure* compliance with the requirements of the state building code. The department shall establish and charge a reasonable and uniform fee for the inspections that may not exceed the expense of providing the inspection.

(2) In lieu of inspection by the department, inspections ~~of passenger elevators and escalators~~ to ~~assure~~ *ensure* compliance with the state building code may be made by:

(a) a maintenance company representative certified by the department who regularly maintains or services the ~~elevator or escalator~~ equipment *subject to the provisions of this part*; or

(b) an insurance company representative certified by the department who regularly inspects ~~an elevator or escalator~~ *equipment, subject to the provisions of*

this part, that is insured by the company against public liability ~~and who~~ *if the company* maintains a service record ~~of the elevator or escalator~~ *on the equipment.*

(3) When an inspection ~~of a passenger elevator or escalator~~ is made pursuant to subsection (2), a copy of the condition report must be provided to the owner and must be sent to the department. The department may not charge more than $10 for receiving and processing a condition report for each ~~elevator or escalator~~ *individual piece of equipment* in ~~any~~ *a* building and for issuing ~~certificates~~ *a certificate* of inspection ~~therefor~~ *for the piece of equipment* if the certified maintenance or insurance company inspector doing the inspection certifies to the department that all deficient ~~elevator or escalator~~ conditions noted in the condition report have been corrected and ~~no follow-up~~ *that followup* by the department in that regard is *not* necessary.

(4) This section does not apply to private residences or to farm and ranch operations."

Section 2. Section 50-60-701, MCA, is amended to read:

"50-60-701. Inspection of ~~passenger~~ elevators, ~~and~~ escalators, *dumbwaiters, including dumbwaiters with automatic transfer devices, moving walks, material lifts, wheelchair lifts, and stairway chairlifts* — fees. (1) All ~~passenger~~ elevators, ~~and~~ escalators ~~in public places may~~, *dumbwaiters, including dumbwaiters with automatic transfer devices, moving walks, material lifts, wheelchair lifts, and stairway chairlifts must* be inspected by the department to ~~insure~~ *ensure* compliance with the requirements of the state building code. The department shall ~~establish and~~ charge a ~~reasonable and uniform~~ fee ~~for the inspections that may not exceed the expense of providing the inspection~~ *of $100 for inspection of an elevator and $70 for inspection of any other conveyance pursuant to this section.*

(2) In lieu of inspection by the department, inspections ~~of passenger elevators and escalators~~ to ~~assure~~ *ensure* compliance with the state building code may be made by:

(a) a maintenance company representative certified by the department who regularly maintains or services the ~~elevator or escalator~~ equipment *subject to the provisions of this part*; or

(b) an insurance company representative certified by the department who regularly inspects ~~an elevator or escalator~~ *equipment, subject to the provisions of this part, that is* insured by the company against public liability ~~and who~~ *if the company* maintains a service record ~~of the elevator or escalator~~ *on the equipment.*

(3) When an inspection ~~of a passenger elevator or escalator~~ is made pursuant to subsection (2), a copy of the condition report must be provided to the owner and must be sent to the department. The department may not charge more than $10 for receiving and processing a condition report for each ~~elevator or escalator~~ *individual piece of equipment* in ~~any~~ *a* building and for issuing ~~certificates~~ *a certificate* of inspection ~~therefor~~ *for the piece of equipment* if the certified maintenance or insurance company inspector doing the inspection certifies to the department that all deficient ~~elevator or escalator~~ conditions noted in the condition report have been corrected and ~~no follow-up~~ *that followup* by the department in that regard is *not* necessary.

(4) This section does not apply to private residences or to farm and ranch operations."

HeinOnline -- 1999 vol. III 2517 1999

Section 3. Section 50-60-702, MCA, is amended to read:

"50-60-702. Department to adopt inspection standards — certification of inspectors. (1) The department shall adopt standards for ~~passenger elevator and escalator inspections that assure~~ *inspection of equipment subject to the provisions of this part. The standards must ensure* compliance with the requirements of the state building code.

(2) The department shall adopt rules for the certification of maintenance and insurance company inspectors who may inspect ~~passenger elevators and escalators pursuant to 50-60-701~~ *equipment subject to the provisions of this part.*"

Section 4. Section 50-60-703, MCA, is amended to read:

"50-60-703. When inspection ~~of elevators not~~ necessary. ~~Elevators that do not carry passengers do not need to~~ *Equipment that is located in a building or structure that is subject to the provisions of this part and operated by an employee or the public must* be inspected by the department."

Section 5. Contingent voidness. [This act] is void if the necessary spending authority and additional 1.5 FTE assumed in the fiscal note are not included in House Bill No. 2.

Section 6. Effective date. [This act] is effective July 1, 1999.

Approved May 6, 1999

CHAPTER NO. 566

[HB 366]

AN ACT REVISING THE LAWS GOVERNING CHILD PROTECTIVE SERVICES; IMPLEMENTING THE FEDERAL ADOPTION AND SAFE FAMILIES ACT; CLARIFYING WHEN EFFORTS MUST BE MADE TO REUNIFY CHILDREN WITH ABUSIVE PARENTS; CLARIFYING WHEN PARENTAL RIGHTS MAY BE JUDICIALLY TERMINATED; AND AMENDING SECTIONS 41-3-101, 41-3-102, 41-3-108, 41-3-202, 41-3-203, 41-3-205, 41-3-303, 41-3-401, 41-3-403, 41-3-404, 41-3-406, 41-3-412, 41-3-607, 41-3-609, 41-3-1103, AND 42-2-608, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 41-3-101, MCA, is amended to read:

"41-3-101. Declaration of policy. (1) It is the policy of the state of Montana to:

(a) ensure that all youth are afforded an adequate physical and emotional environment to promote normal development;

(b) compel in proper cases the parent or guardian of a youth to perform the moral and legal duty owed to the youth;

(c) achieve these purposes in a family environment whenever possible;

(d) preserve the unity and welfare of the family whenever possible; ~~and~~

(e) ensure that there is no forced removal of a child from the family based solely on an unsubstantiated allegation of abuse or neglect; *and*

(f) recognize that a child is entitled to assert the child's constitutional rights.

HeinOnline -- 1999 vol. III 2518 1999

(2) It is the policy of this state to:

(a) protect, whenever possihle, family unity;

(b) provide for the protection of children whose health and welfare are or may be adversely affected and further threatened by the conduct of those responsible for their care and protection;

(c) require a department social worker to interview the parents of a child to which a potition pertains, if they are reasonably availahle, hefore the state may file a petition for temporary investigative authority and protective services and to require that a judge may not issue an order granting the potition, except an order for immediate protection of the youth, until the parents, if they are reasonably available, are given the opportunity to appear before the judge or have their statements, if any, presented to the judge for consideration before an order is granted; and

(d) ensure that whenever removal of a child from the home is necessary, the child is entitled to maintain ethnic, cultural, and religious heritage whenever appropriate.

(3) It is intended that the mandatory reporting of abuse or endangerment cases by professional people and other community members to the appropriate authority will cause the protective services of the state to seek to prevent further abuses, protect and enhance the welfare of these children, and preserve family life whenever appropriate.

(4) In implementing the policy of this section, whenever it is necessary to remove a child from the child's home, the department shall, when it is in the best interests of the child and when the home is approved by the department, place the child with the child's extended family, including adult siblings, grandparents, great-grandparents, aunts, and uncles, prior to placing the child in an alternative protective or residential facility. Prior to approving a home, the department shall investigate whether anyone living in the home has been convicted of a crime involving serious harm to children."

Section 2. Section 41-3-102, MCA, is amended to read:

"41-3-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Abandon", "abandoned", and "abandonment" mean:

(a) leaving a child under circumstances that make reasonable the belief that the parent does not intend to resume care of the child in the future;

(b) willfully surrendering physical custody for a period of 6 months and during that period not manifesting to the child and the person having physical custody of the child a firm intention to resume physical custody or to make permanent legal arrangements for the care of the child; or

(c) that the parent is unknown and has been unknown for a period of 90 days and that reasonable efforts to identify and locate the parent have failed.

~~(1)~~*(2)* "A person responsible for a child's welfare" means:

(a) the child's parent, guardian, foster parent or an adult who resides in the same home in which the child resides;

(b) a person providing care in a day-care facility;

HeinOnline -- 1999 vol. III 2519 1999

(c) an employee of a public or private residential institution, facility, home, or agency; or

(d) any other person responsible for the child's welfare in a residential setting.

~~(2)~~*(3)* "Abused or neglected" means the state or condition of a child who has suffered child abuse or neglect.

~~(3)~~*(4)* (a) "Adequate health care" means any medical care or nonmedical remedial health care recognized by an insurer licensed to provide disability insurance under Title 33, including the prevention of the withholding of medically indicated treatment or medically indicated psychological care permitted or authorized under state law.

(b) This chapter may not be construed to require or justify a finding of child abuse or neglect for the sole reason that a parent or legal guardian, due to religious beliefs, does not provide adequate health care for a child. However, this chapter may not be construed to limit the administrative or judicial authority of the state to ensure that medical care is provided to the child when there is imminent substantial risk of serious harm to the child.

~~(4)~~*(5)* "Best interests of the child" means the physical, mental, and ~~emotional~~ *psychological* conditions and needs of the child and any other factor considered by the court to be relevant to the child.

~~(5)~~*(6)* "Child" or "youth" means any person under 18 years of age.

~~(5)~~*(7)* (a) "Child abuse or neglect" means:

(i) *actual* harm to a child's health or welfare; or

(ii) ~~threatened~~ *substantial risk of* harm to a child's health or welfare.

(b) The term includes ~~harm or threatened harm to a child's health or welfare~~ *actual harm or substantial risk of harm* by the acts or omissions of a person responsible for the child's welfare.

(c) The term does not include self-defense, defense of others, or action taken to prevent the child from self-harm that does not constitute harm to a child's health or welfare.

~~(7)~~*(8)* "Department" means the department of public health and human services provided for in 2-15-2201.

~~(8) "Emotional abuse" means injury to the emotional well-being or intellectual or psychological capacity of a child, as evidenced by an identifiable and substantial impairment of a child's physical, mental, or emotional ability to function.~~

(9) "Harm to a child's health or welfare" means the harm that occurs whenever the parent or other person responsible for the child's welfare:

(a) inflicts or allows to be inflicted upon the child physical or ~~emotional abuse~~ *psychological abuse or neglect*;

(b) commits or allows to be committed sexual abuse or exploitation of the child;

(c) induces or attempts to induce a child into giving untrue testimony that the child or another child was abused or neglected by a parent or person responsible for the child's welfare;

HeinOnline -- 1999 vol. III 2520 1999

(d) causes malnutrition or failure to thrive or otherwise fails to supply the child with adequate food or fails to supply clothing, shelter, education, or adequate health care, though financially able to do so or offered financial or other reasonable means to do so;

(e) exposes or allows the child to be exposed to an unreasonable risk to the child's health or welfare by failing to intervene or eliminate the risk; *or*

(f) abandons the child ~~by leaving the child under circumstances that make reasonable the belief that the parent or other person does not intend to resume care of the child in the future or willfully surrenders physical custody for a period of 6 months and during that period does not manifest to the child and the person having physical custody of the child a firm intention to resume physical custody or to make permanent legal arrangements for the care of the child; or~~

~~(g) is unknown and has been unknown for a period of 90 days and reasonable efforts to identify and locate the parent or other person have failed~~.

(10) "Limited emancipation" means a status conferred on a youth by a court ~~after a dispositional hearing~~ in accordance with 41-3-406 under which the youth is entitled to exercise some but not all of the rights and responsibilities of a person who is 18 years of age or older.

(11) "Parent" means a biological or adoptive parent or stepparent.

(12) "Parent-child legal relationship" means the legal relationship that exists between a child and the child's birth or adoptive parents, as provided in Title 40, chapter 6, part 2, unless the relationship has been terminated by competent judicial decree as provided in 40-6-234, Title 42, or part 6 of this chapter.

(13) "Physical abuse" means *an intentional act, an intentional omission, or gross negligence resulting in* substantial skin bruising, internal bleeding, substantial injury to skin, subdural hematoma, ~~intentional~~ burns, bone fractures, extreme pain, permanent or temporary disfigurement, impairment of any bodily organ or function, or death ~~if the injury or death is not accidental~~.

(14) "Psychological abuse or neglect" means severe maltreatment through acts or omissions that are injurious to the child's emotional, intellectual, or psychological capacity to function, including acts of violence against another person residing in the child's home.

~~(14)~~*(15)* "Reasonable cause to suspect" means cause that would lead a reasonable person to believe that child abuse or neglect may have occurred or is occurring, based on all the facts and circumstances known to the person.

~~(15)~~*(16)* "Residential setting" means an out-of-home placement where the child typically resides for longer than 30 days for the purpose of receiving food, shelter, security, guidance, and, if necessary, treatment.

~~(16)~~*(17)* (a) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent, indecent exposure, deviate sexual conduct, *sexual abuse, ritual abuse,* or incest, as described in Title 45, chapter 5~~, part 5~~.

(b) Sexual abuse does not include any necessary touching of an infant's or toddler's genital area while attending to the sanitary or health care needs of that infant or toddler by a parent or other person responsible for the child's welfare.

~~(17)~~*(18)* "Sexual exploitation" means allowing, permitting, or encouraging a child to engage in a prostitution offense, as described in 45-5-601 through

HeinOnline -- 1999 vol. III 2521 1999

45-5-603, or allowing, permitting, or encouraging sexual abuse of children as described in 45-5-625.

~~(18)~~*(19)* "Social worker" means an employee of the department who, before the employee's field assignment, has been educated or trained ~~or is receiving education or training~~ in a program of social work or a related field that includes cognitive and family systems treatment or who has equivalent verified experience or verified training in the investigation of child abuse, neglect, and endangerment. This definition does not apply to any provision of this code that is not in this chapter.

~~(19) "Threatened harm to a child's health or welfare" means substantial risk of harm to the child's health or welfare.~~

(20) "Treatment plan" means a written agreement between the department and the parent or guardian or a court order that includes action that must be taken to resolve the condition or conduct of the parent or guardian that resulted in the need for protective services for the child. The treatment plan may involve court services, the department, and other parties, if necessary, for protective services.

(21) "Unfounded" means that after an investigation, the investigating person has determined that the reported abuse, neglect, or exploitation has not occurred.

~~(21)~~*(22)* (a) "Withholding of medically indicated treatment" means the failure to respond to an infant's life-threatening conditions by providing treatment, including appropriate nutrition, hydration, and medication, that, in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in ameliorating or correcting the conditions.

(b) The term does not include tbe failure to provide treatment, other than appropriate nutrition, hydration, or medication, to an infant when, in the treating physician's or physicians' reasonable medical judgment:

(i) the infant is chronically and irreversibly comatose;

(ii) the provision of treatment would:

(A) merely prolong dying;

(B) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or

(C) otherwise be futile in terms of the survival of the infant; or

(iii) the provision of treatment would be virtually futile in terms of the survival of the infant and the treatment itself under the circumstances would be inhumane. For purposes of this subsection ~~(21)~~ *(22)*, "infant" means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The reference to less than 1 year of age may not be construed to imply that treatment should be changed or discontinued when an infant reaches 1 year of age or to affect or limit any existing protections available under state laws regarding medical neglect of children 1 year of age or older.

~~(22)~~*(23)* "Youth in need of care" means a youth who ~~is~~ *has been adjudicated or determined, after a hearing, to be or to have been* abused or neglected."

Section 3. Section 41-3-108, MCA, is amended to read:

"**41-3-108. Child protective teams.** The county attorney, *county commissioners, guardian ad litem,* or ~~the~~ department ~~of public health and human services~~ may convene one or more temporary or permanent interdisciplinary child protective teams. These teams may assist in assessing the needs of, formulating and monitoring a treatment plan for, and coordinating services to the child and the child's family. The supervisor of child protective services in a local service area or the supervisor's designee shall serve as the team's coordinator. Members ~~shall~~ *must* include:

(1) a social worker;

(2) a member of a local law enforcement agency;

(3) a representative of the medical profession;

(4) a representative of a public school system;

~~(4)~~*(5)* a county attorney; and

~~(5)~~*(6)* if an Indian child or children are involved, someone, preferably an Indian person, knowledgeable about Indian culture and family matters."

Section 4. Section 41-3-202, MCA, is amended to read:

"**41-3-202. Action on reporting.** (1) Upon receipt of a report~~, as required by 41-3-201,~~ that a child is or has heen abused or neglected, a social worker, the county attorney, or a peace officer shall promptly conduct a thorough investigation into the circumstances surrounding the allegations of abuse or neglect of the child~~, which~~. *The investigation* may include an investigation at the home of the child involved, the child's scbool or day-care facility, or any other place where the child is present and into all other nonfmancial mattors that in the discretion of the investigator are relevant to the investigation. In conducting an investigation under this section, a social worker may not inquire into the financial status of the child's family or of any other person responsible for the child's care, except as necessary to ascertain eligihility for state or federal assistance programs or to comply with the provisions 41-3-411.

(2) An initial investigetion of alleged abuse or neglect may be conducted when an anonymous report is received. However, the investigation must within 48 hours develop independent, corroborative, and attributable information in order for the investigation to continue. Without the development of independent, corroborative, and attributable information, a child may not be removed from the home.

(3) The social worker is responsihle for assessing the family and planning for the child. If the child is treated at a medical facility, the social worker, county attorney, or peace officer, consistent with reasonable medical practice, has the right of access to the child for interviews, photographs, and securing physical evidence and has the right of access to relevant hospital and medical records pertaining to the child. If *a child interview is* considered ~~appropriate by~~ *necessary,* the social worker, county attorney, or peace officer ~~conducting an interview of the child, an employee of the school attended by the child involved may participate in any~~ *may conduct an* interview of the child. *The interview may be conducted in the presence of the parent or guardian or an employee of the school or day-care facility attended by the child.*

(4) ~~If~~ *Subject to 41-3-205(3), if* the child's interview is *audiotaped or* videotaped, an unedited *audiotape or* videotape with audio track must be made available, upon request, for unencumbered review by the family.

HeinOnline -- 1999 vol. III 2523 1999

(5) (a) If from the investigation the department has reasonable cause to suspect that the child suffered abuse or neglect, the department may provide protective services to the child pursuant to 41-3-301 and may provide protective services to any other child under the same care. The department shall:

(i) after interviewing the parent or guardian, if reasonably available, document its determination regarding abuse or neglect of a child; and

(ii) notify the child's family of its investigation and determination, unless the notification can reasonably be expected to result in harm to the child or other person.

(b) If from the investigation it is determined that the child has not suffered abuse or neglect and the initial report is determined to be unfounded, the department and the social worker, county attorney, or peace officer who conducted the investigation into the circumstances surrounding the allegations of abuse or neglect shall destroy all of their records concerning the report and the investigation. The destruction must be completed within 30 days of the determination that the child has not suffered abuse or neglect.

(6) The investigating social worker, within 60 days of commencing an investigation, shall also furnish a written report to the department and, upon request, to the family. Subject to subsection (5)(b), the department shall maintain a record system documenting investigations and determinations of child abuse and neglect cases.

(7) Any person reporting abuse or neglect that involves acts or omissions on the part of a public or private residential institution, home, facility, or agency is responsible for ensuring that the report is made to the department through its local office."

Section 5. Section 41-3-203, MCA, is amended to read:

"**41-3-203. Immunity from liability.** (1) Anyone investigating or reporting any incident of child abuse or neglect under 41-3-201 or 41-3-202, participating in resulting judicial proceedings, or furnishing hospital or medical records as required by 41-3-202 is immune from any liability, civil or criminal, that might otherwise be incurred or imposed unless the person was grossly negligent or acted in bad faith or with malicious purpose *or provided information knowing the information to be false.*

(2) A person who provides information pursuant to 41-3-201 that is substantiated by the department or a person who uses information received pursuant to 41-3-205 that is substantiated by the department to refuse to hire or to discharge a prospective or current employee, volunteer, or other person who through employment or volunteer activities may have unsupervised contact with children is immune from civil liability unless the person acted in bad faith or with malicious purpose."

Section 6. Section 41-3-205, MCA, is amended to read:

"**41-3-205. Confidentiality — disclosure exceptions.** (1) The case records of the department ~~of public health and human services~~ and its local affiliate, the county welfare department, the county attorney, and the court concerning actions taken under this chapter and all records concerning reports of child abuse and neglect must be kept confidential except as provided by this section. Except as provided in subsections (4) and (5), a person who permits or

HeinOnline -- 1999 vol. III 2524 1999

encourages the unauthorized dissemination of the contents of case records is guilty of a misdemeanor.

(2) Records may be disclosed to a court for in camera inspection if relevant to an issue before it. The court may permit public disclosure if it finds disclosure to be necessary for the fair resolution of an issue before it.

(3) Records, *including case notes, correspondence, evaluations, videotapes, and interviews, unless otherwise protected by this section or unless disclosure of the records is determined to be detrimental to the child or harmful to another person who is a subject of information contained in the records,* may ~~also~~ be disclosed to the following persons or entities in this state and any other state or country:

(a) a department, agency, or organization, including a federal agency, military enclave, or Indian tribal organization, that is legally authorized to receive, inspect, or investigate reports of child abuse or neglect and that otherwise meets the disclosure criteria contained in this section;

(b) a licensed youth care facility or a licensed child-placing agency that is providing services to the family or child who is the subject of a report in the records or to a person authorized by the department to receive relevant information for the purpose of determining the best interests of a child with respect to an adoptive placement;

(c) a health or mental health professional who is treating the family or child who is the subject of a report in the records;

(d) a parent, guardian, or person designated by a parent or guardian of the child who is the subject of a report in the records or other person responsible for the child's welfare, without disclosure of the identity of any person who reported or provided information on the alleged child abuse or neglect incident contained in the records;

(e) a child named in the records who was allegedly abused or neglected or the child's legal guardian or legal representative, including the child's guardian ad litem or attorney or a special advocate appointed by the court to represent a child in a pending case;

(f) the state protection and advocacy program as authorized by 42 U.S.C. 6042(a)(2)(B);

(g) approved foster and adoptive parents who are or may be providing care for a child;

(h) a person about whom a report has been made and that person's attorney, with respect to the relevant records pertaining to that person only and without disclosing the identity of the reporter or any other person whose safety may be endangered;

(i) an agency, including a probation or parole agency, that is legally responsible for the supervision of an alleged perpetrator of child abuse or neglect;

(j) a person, agency, or organization that is engaged in a bona fide research or evaluation project and that is authorized by the department to conduct the research or evaluation;

(k) the members of an interdisciplinary child protective team authorized under 41-3-108 or of a family group conference for the purposes of assessing the

needs of the child and family, formulating a treatment plan, and monitoring the plan;

(l) the coroner or medical examiner when determining the cause of death of a child;

(m) a child fatality review team recognized by the department;

(n) a department or agency investigating an applicant for a license or registration that is required to operate a youth care facility, day-care facility, or child-placing agency;

(o) a person or entity who is carrying out background, employment-related, or volunteer-related screening of current or prospective employees or volunteers who have or may have unsupervised contact with children through employment or volunteer activities. A request for information under this subsection (3)(o) must be made in writing. Disclosure under this subsection (3)(o) is limited to information that indicates a risk to children, persons with developmental disabilities, or older persons posed by the person about whom the information is sought, as determined by the department.

(p) the news media if disclosure is limited to confirmation of factual information regarding how the case was handled and if disclosure does not violate the privacy rights of the child or the child's parent or guardian, as determined by the department;

(q) an employee of the department or other state agency if disclosure of the records is necessary for administration of programs designed to benefit the child;

(r) an agency of an Indian tribe or the relatives of an Indian child if disclosure of the records is necessary to meet requirements of the federal Indian Child Welfare Act;

(s) a youth probation officer who is working in an official capacity with the child who is the subject of a report in the records;

(t) a county attorney, peace officer, or attorney who is hired by or represents the department, if disclosure is necessary for the investigation, defense, or prosecution of a case involving child abuse or neglect;

(u) a foster care review committee established under 41-3-1115 or, when applicable, a local citizen review board established under Title 41, chapter 3, part 10;

(v) a school employee participating in an interview of a child by a social worker, county attorney, or peace officer, as provided in 41-3-202;

(w) a member of a county interdisciplinary child information team formed under the provisions of 52-2-211;

(x) members of a local interagency staffing group provided for in 52-2-203;

(y) a member of a youth placement committee formed under the provisions of 41-5-121; or

(z) a principal of a school or other employee of the school district authorized by the trustees of the district to receive the information with respect to a student of the district who is a client of the department.

(4) A person who is authorized to receive records under this section shall maintain the confidentiality of the records and may not disclose information in

the records to anyone other than the persons described in subsection (3)(a). However, this subsection may not be construed to compel a family member to keep the proceedings confidential.

(5) A news organization or its employee, including a freelance writer or reporter, is not liable for reporting facts or statements made by an immediate family member under subsection (4) if the news organization, employee, writer, or reporter maintains the confidentiality of the child who is the subject of the proceeding.

(6) This section is not intended to affect the confidentiality of criminal court records or records of law enforcement agencies.

(7) Copies of records, evaluations, reports, or other evidence obtained or generated pursuant to this section that are provided to the parent, the guardian, or the parent or guardian's attorney must be provided without cost."

Section 7. Section 41-3-303, MCA, is amended to read:

"**41-3-303. Guardian ad litem.** (1) In every judicial proceeding, the court shall appoint for any child alleged to be abused or neglected a guardian ad litem. The department or any of its staff may not be appointed as the guardian ad litem in a judicial proceeding under this title. When necessary, the guardian ad litem may serve at public expense.

(2) The guardian ad litem is charged with the representation of the child's best interests. ~~The guardian ad litem has~~ *and shall perform* the following general duties:

(a) to conduct investigations ~~that the guardian ad litem considers necessary~~ to ascertain the facts constituting the alleged abuse or neglect;

(b) to interview or observe the child who is the subject of the proceeding;

(c) to have access to court, medical, psychological, law enforcement, social services, and school records pertaining to the child and the child's siblings and parents or custodians;

(d) to make written reports to the court concerning the child's welfare;

(e) to appear and participate in all proceedings to the degree necessary to adequately represent the child and make recommendations to the court concerning the child's welfare; ~~and~~

(f) to perform other duties as directed by the court*; and*

(g) if an attorney, to file motions, including but not limited to filing to expedite proceedings or otherwise assert the child's rights.

(3) Information contained in a report filed by the guardian ad litem or testimony regarding a report filed by the guardian ad litem is not hearsay when it is used to form the basis of the guardian ad litem's opinion as to the best interests of the child.

(4) Any party may petition the court for the removal and replacement of the guardian ad litem if the guardian ad litem fails to perform the duties of the appointment."

Section 8. Section 41-3-401, MCA, is amended to read:

"**41-3-401. Abuse and neglect petitions.** (1) The county attorney, attorney general, or an attorney hired by the county is responsible for filing all

petitions ~~alleging abuse or neglect~~ *under this chapter*. ~~The county attorney, the attorney general, or an attorney hired by the department with the written consent of the county attorney or the attorney general may require all state, county, and municipal agencies, including law enforcement agencies, to conduct the investigations and furnish reports that may be necessary.~~ *The petition must be accompanied by an affidavit by the department alleging that the child appears to have been abused, neglected, or abandoned and stating the basis for the allegation.*

(2) Upon receipt of a petition, except a petition for temporary investigative authority, the court shall set a date for an adjudicatory hearing on the petition. The petitions must be given preference by the court in setting hearing dates.

(3) A petition alleging abuse or neglect is a civil action brought in the name of the state of Montana. The Montana Rules of Civil Procedure apply except as modified in this part. Proceedings under a petition are not a bar to criminal prosecution.

(4) The parents or parent, guardian, or other person or agency having legal custody of the youth named in the petition, if residing in the state, must be served personally with a copy of the petition and summons at least 5 working days before the date set for hearing. If the person or agency cannot be served personally, the person or agency may be served by publication in the manner provided by the Montana Rules of Civil Procedure for other types of proceedings.

(5) If personal service cannot be made upon the parents or parent, guardian, or other person or agency having legal custody, the court shall appoint an attorney to represent the unavailable party when in the opinion of the court the interests of justice require.

(6) If a parent of the child is a minor, notice must be given to the minor parent's parents or guardian, and if there is no guardian, the court shall appoint one.

(7) Any person interested in any cause under this chapter has the right to appear. *Any foster parent, preadoptive parent, or relative caring for the child must be given legal notice by the attorney filing the petition of all judicial hearings for the child and must be given an opportunity to be heard. The right to appear or to be heard does not make that person a party to the action. Any foster parent, preadoptive parent, or relative caring for the child must be given notice of all reviews by the reviewing body.*

(8) Except when the proceeding is instituted or commenced at the request of the department ~~of public health and human services~~, a citation must be issued and served upen a representative of the department before the court hearing.

(9) The petition must:

(a) state the nature of the alleged abuse or neglect;

(b) state the full name, age, and address of the youth and the name and address of the youth's parents or guardian or person having legal custody of the youth;

(c) state the names, addresses, and relationship to the youth of all persons who are necessary parties to the action.

(10) The petition may ask for the following relief:

HeinOnline -- 1999 vol. III 2528 1999

(a) temporary investigative authority and protective services, as provided in 41-3-402;

(b) temporary legal custody, as provided in 41-3-406;

(c) termination of the parent-child legal relationship and permanent legal custody with the right to consent to adoption, as provided in 41-3-607; *or*

(d) any combination of the provisions of subsections (10)(a) through (10)(c) or any other relief that may be required for the best interests of the child.

(11) A request for a determination that reunification services need not be provided pursuant to 41-3-403 may be made in conjunction with the filing of a petition requesting relief, as provided for in subsection (10) of this section.

~~(11)~~*(12)* The petition may be modified for different relief at any time within the discretion of the court.

~~(12)~~*(13)* The court may at any time on its own motion or the motion of any party appoint counsel for any indigent party."

Section 9. Section 41-3-403, MCA, is amended to read:

"41-3-403. Order for immediate protection of youth. (1) (a) Upon the filing of a petition for temporary investigative authority and protective services, the court, after consideration of the parents' statements, if any, included with the petition and any accompanying affidavit or report to the court, may issue an order granting relief that may be required for the immediate protection of the youth.

(b) The order, along with the petition and supporting documents, must be served ~~by a peace officer or a representative of the department~~ *pursuant to the Montana Rules of Civil Procedure* on the person or persons named in the order. When the youth is placed in a medical facility or protective facility, the department shall notify the parents or parent, guardian, or other person having legal custody of the youth, at the time the placement is made or as soon after placement as possible.

(c) The order must require the person served to comply immediately with the terms of the order and to appear before the court issuing the order on the date specified for a show cause hearing. The show cause hearing must be conducted within 20 days of the issuance of the order by the judge or a master appointed by the judge. The person filing the petition has the burden of presenting evidence establishing probable cause for the issuance of the order. At the show cause hearing, the court shall provide an opportunity for a parent or guardian, if present, and any other person having relevant knowledge to provide relevant testimony. The court may consider all relevant evidence in accordance with the rules of civil procedure as modified by this part, but may in its discretion limit testimony and evidence to only that which is relevant to the issues of removal from the home and the child's need for continued protection. The court may amend the order. Except as otherwise provided in this part, the rules of civil procedure apply. Hearsay evidence of statements made by the affected youth is admissible at the hearing or at a contested case proceeding held pursuant to Title 2, chapter 4, part 6, that results from adverse licensing action taken by the department.

(d) If the child is not returned home after the show cause hearing, the person served may request that a local citizen review board, if available pursuant to part

HeinOnline -- 1999 vol. III 2529 1999

10, review the case within 30 days of the show cause hearing and make a recommendation to the district court, as provided in 41-3-1010.

(e) Upon a failure to comply or show cause, the court may hold the person in contempt or place temporary physical custody of the youth with the department until further order.

(2) ~~In~~ *At the conclusion of a show cause hearing, in* an order granting or denying relief, the court shall make a finding regarding the reasonableness of agency efforts to ~~rehabilitate the family to~~ prevent the child's removal from the home *or to make it possible to safely return the child to the child's home. In determining preservation or reunification services to be provided and in making reasonable efforts at providing preservation or reunification services, the child's health and safety are of paramount concern. Reasonable efforts to provide preservation or reunification services are not required if the court finds that the parent has:*

(a) subjected a child to aggravated circumstances, including but not limited to abandonment, torture, chronic abuse, or sexual abuse or chronic, severe neglect of a child;

(b) committed, aided, abetted, attempted, conspired, or solicited deliberate or mitigated deliberate homicide of a child;

(c) committed aggravated assault against a child;

(d) committed neglect of a child that resulted in serious bodily injury or death; or

(e) had parental rights to the child's sibling or other child of the parent involuntarily terminated, and the circumstances related to the termination of parental rights are relevant to the parent's ability to adequately care for the child at issue.

(3) Preservation or reunification services are not required for a putative father, as defined in 42-2-201, if the court makes a finding that the putative father has failed to do any of the following:

(a) contribute to the support of the child for an aggregate period of 1 year, although able to do so;

(b) establish a substantial relationship with the child. A substantial relationship is demonstrated by:

(i) visiting the child at least monthly when physically and financially able to do so; or

(ii) having regular contact with the child or with the person or agency having the care and custody of the child when physically and financially able to do so; and

(iii) manifesting an ability and willingness to assume legal and physical custody of the child if the child was not in the physical custody of the other parent.

(c) register with the putative father registry pursuant to Title 42, chapter 2, part 2, and the person has not been:

(i) adjudicated in Montana to be the father of the child for the purposes of child support; and

(ii) recorded on the child's birth certificate as the child's father.

HeinOnline -- 1999 vol. III 2530 1999

(4) If the court finds that preservation or reunification services are not necessary pursuant to subsection (2), a permanency hearing must be held within 30 days of that determination and reasonable efforts must be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

(5) If reasonable efforts have been made to prevent removal of a ehild from the home or to return a child to the child's home but continuation of the efforts is determined by the court to be inconsistent with the permanency plan for the child, the department shall make reasonable efforts to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are neccssary to finalize the permanent placement of the ehild. Reasonable efforts to place a child permanently for adoption or to make an alternative out-of-home permanent placement may be made concurrently with reasonable efforts to return a child to the child's homc.

~~(3)~~*(6)* The court may grant the following kinds of relief:

(a) right of entry by a peace officer or department worker;

(b) medical and psychological evaluation of the youth or parents, guardians, or person having physical or legal custody;

(c) requirement that the youth, parents, guardians, or person having physical or legal custody receive counseling services;

(d) placement of the youth in a temporary medical facility or a facility for protection of the youth;

(e) requirement that the parents, guardian, or other person having physical or legal custody furnish ~~services~~ *information* that the court may designate;

(f) inquiry into the financial ability of the parents, guardian, or other person having custody of the youth to contribute to the costs for the care, custody, and treatment of the youth and requirement of a contribution for those costs pursuant to the requirements of 41-3-411; *or*

(g) other temporary disposition that may be required in the best interests of the youth that does not require an expenditure of money by the department unless the department is notified and a court hearing is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all family, insurance, and other resources have been examined.

~~(4)~~*(7)* An order for temporary investigative authority and protective services may not be issued for a period longer than 90 days following the show cause hearing and must be limited to one extension of 90 days. Before the expiration of the time provided for in an order for temporary investigative authority and protective services, the county attorney, the attorney general, or an attorney hired by the county sball file a petition for one of tbe following:

(a) limited emancipation;

(b) temporary legal custody;

(c) termination of the parent-child legal relationship and permanent legal custody with the right to consent to adoption; or

(d) dismissal.

HeinOnline -- 1999 vol. III 2531 1999

~~(5)~~*(8)* Notwithstanding the above time limits, the court may continue an order for temporary investigative authority pending a hearing on a petition provided for in subsection ~~(4)~~ *(7)*.

~~(6)~~*(9)* If the time limitations of this section are not met, the court shall review the reasons for the failure and order an appropriate remedy that considers the best interests of the child."

Section 10. Section 41-3-404, MCA, is amended to read:

"41-3-404. Adjudicatory hearing — temporary disposition. (1) In the adjudicatory hearing on a petition under 41-3-401, the court shall determine by a preponderance of the evidence whether the youth is a youth in need of care and ascertain, as far as possible, the cause.

(2) The court shall hear evidence regarding the residence of the youth, the whereabouts of the parents, guardian, or nearest adult relative, and any other matters the court considers relevant in determining the status of the youth.

(3) In all civil and criminal proceedings relating to abuse or neglect, none of the privileges related to the examination or treatment of the child and granted in Title 26, chapter 1, part 8, except the attorney-client privilege granted by 26-1-803 and the mediator privilege granted by 26-1-811, apply.

(4) (a) If the court determines that the youth is not an abused or neglected child, the petition must be dismissed and any order made pursuant to 41-3-403 must be vacated.

(b) If the youth is adjudicated a youth in need of care, the court shall set a date for a dispositional hearing to be conducted within 30 days and order any necessary or required investigations. The court may issue a temporary dispositional order pending the dispositional hearing. The temporary dispositional order may provide for any of the forms of relief listed in 41-3-403~~(3)~~*(6)*."

Section 11. Section 41-3-406, MCA, is amended to read:

"41-3-406. Dispositional hearing — temporary legal custody. (1) If a youth is found to be a youth in need of care under 41-3-404, the court may enter its judgment, making any of the following dispositions to protect the welfare of the youth:

(a) permit the youth to remain with the youth's parent or guardian, subject to those conditions and limitations the court may prescribe;

(b) grant an order of limited emancipation to a youth who is 16 years of age or older, as provided in 41-3-408;

(c) transfer temporary legal custody to any of the following:

(i) the department;

(ii) a licensed child-placing agency that is willing and able to assume responsibility for the education, care, and maintenance of the youth and that is licensed or otherwise authorized by law to receive and provide care of the youth; or

(iii) a relative or other individual who is recommended by the department or a licensed child-placing agency designated by the court~~,~~ and *who* is found by the court to be qualified to receive and care for the youth;

HeinOnline -- 1999 vol. III 2532 1999

(d) order any party to the action to do what is necessary to give effect to the final disposition, including undertaking medical and psychological evaluations, treatment, and counseling that does not require an expenditure of money by the department unless the department is notified and a court hearing is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all family, insurance, and other resources have been examined.

(e) order further care and treatment as the court considers in the best interests of the child that does not require an expenditure of money by the department unless the department is notified and a court hearing is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all family, insurance, and other resources have been examined pursuant to 41-3-411.

(2) To grant temporary legal custody, the court shall make a finding that:

(a) ~~returning the child to the child's parent or guardian~~ *dismissing the petition* would create a substantial risk of harm to the child or detriment to the child's physical or ~~emotional~~ *psychological* well-being; and

(b) *unless there is a finding that reasonable efforts are not required pursuant to 41-3-403,* reasonable services have been provided to the parent or guardian to prevent the removal of the child from the home *or to make it possible for the child to safely return home.*

(3) ~~In making a finding regarding the risk of harm to the child or regarding detriment to the child, failure of the child's parent or guardian to participate in, to comply with, in whole or in part, or to meet the goals of a court-ordered treatment plan constitutes prima facie evidence that return of the child to the parent or guardian would be detrimental to the child's physical or emotional well-being.~~ *If reasonable efforts have been made to prevent removal of a child from the home or to return a child to the child's home but continuation of the efforts is determined by the court to be inconsistent with permanency for the child, the department shall make reasonable efforts to place the child in a timely manner in accordance with a permanent plan and to complete whatever steps are necessary to finalize the permanent placement of the child.*

(4) If the court finds that reasonable efforts are not necessary pursuant to subsection (2) or (3), a permanency hearing must be held within 30 days of that determination and reasonable efforts must be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child.

~~(4)~~*(5)* An order for temporary legal custody may be in effect for no longer than 6 months. Before the expiration of the order for temporary legal custody, the county attorney, the attorney general, or an attorney hired by the county shall petition for one of the following:

(a) an extension of temporary legal custody, *not to exceed a total of 6 months,* upon a showing that additional time is necessary for the parent or guardian to successfully complete a treatment plan;

(b) termination of the parent-child legal relationship and permanent legal custody with the right of adoption pursuant to 41-3-607; ~~or~~

(c) *long-term custody pursuant to 41-3-412; or*

(d) dismissal.

HeinOnline -- 1999 vol. III 2533 1999

~~(5)~~*(6)* The court may continue an order for temporary legal custody pending a hearing on a petition provided for in subsection ~~(4)~~ *(5)*.

~~(6)~~*(7)* If an extension of temporary legal custody is granted to the department, the court shall state the reasons why the child was not returned home and the conditions upon which the child may be returned home.

~~(7)~~*(8)* If the time limitations of this section are not met, the court shall review the reasons for the failure and order an appropriate remedy that considers the best interests of the child."

Section 12. Section 41-3-412, MCA, is amended to read:

"41-3-412. Permanency plan hearing. (1) A permanency plan hearing must be held by the court no later than 12 months after the initial ~~order is issued~~ *court finding that the ehild has becn subjected to abuse or neglect or 12 months after the child's first 60 days of removal from the home, whichever comes first,* unless the proceeding has been dismissed, the child was not removed from the home, or the child bas been returned to tbe child's parent or guardian. The permanency plan hearing may be combined with a hearing that is required in other sections of this part if held within the time limits of that section. If a permanency plan hearing is combined with another hearing, the requirements of the court related to the disposition of the otlier hearing must be met in addition to the requirements of this section.

(2) At least 3 days prior to the permanency plan hearing, the department and the guardian ad litem shall each submit a report regarding the child to the court for review. The report must contain the:

(a) efforts and progress demonstrated by the child's parent or guardian to complete a treatment plan;

(b) extent to which the parent or guardian cooperated and used the services provided;

(c) status of the child, including the child's mental, physical, and ~~emotional~~ *psychological* health; and

(d) plan for permanency for the child, *including specific times for achieving the plan.*

(3) At least 3 days prior to the permanency plan hearing, an attorney or advocate for a parent or guardian may submit an informational report to the court for review.

(4) If the court finds that the permanency plan is in the best interests of the child, the court shall:

~~(a)~~ order the department to take whatever steps are necessary to effectuate the terms of the plan, *including returning the child safely to the child's home,* and shall order the county attorney, the attorney general, or an attorney hired by the county to *file a* petition *to implement the plan with* the court within 30 days after the present hearing *unless a petition has already been filed.* ~~for one of the following:~~

~~(i) termination of parental rights;~~

~~(ii) temporary legal custody, not to exceed 6 months; or~~

~~(iii) dismissal; and~~

~~(b) in~~*(5) In* its discretion, *the court may* enter any other order that it determines to be in the best interests of the child *that does not conflict with the provisions in subsection (6) and* that does not require an expenditure of money by the department unless the department is notified and a court hearing is set in a timely manner on the proposed expenditure. The department is the payor of last resort after all family, insurance, and other resources have been examined.

~~(5)~~*(6)* If the permanency plan hearing results in ~~an order for a 6-month extension of temporary legal custody, upon the expiration of the temporary legal custody order and the filing of a petition by the department and if the court finds~~ *a finding* that reunification of the child with the child's parent or guardian is not in the best interests of the child, ~~the court shall order~~ *any subsequent petition filed must be one of the following*:

(a) termination of parental rights if the applicable requirements to terminate parental rights have been met; ~~or~~

(b) long-term custody of a child if the evidence demonstrates by a preponderance of the evidence, *which is reflected in specific findings by the court,* that:

(i) *the child has an emotional or mental handicap that is so severe that the child cannot function in a family setting and the best interests of the child are served by placement in a residential or group setting;*

(ii) the child is at least 16 years of age and is participating in an independent living program and that termination of parental rights is not in the best interests of the child;

(iii) the child's parent is incarcerated and circumstances, including placement of the child and continued, frequent contact with the parent, indicate that it would not be in the best interests of the child to terminate parental rights of that parent;

(iv) the child is in a group of siblings, at least one of whom meets the requirements of subsections (6)(b)(v)(A) through (6)(b)(v)(D), and the best interests of the child will be met by continued placement in the sibling group in long-term foster care; or

(v) the child is at least 12 years of age and meets the following criteria:

(A) the child has been adjudicated a youth in need of care;

~~(ii)~~*(B)* the department has made reasonable efforts to reunite the parent and child, further efforts by the department would likely be unproductive, and reunification of the child with the parent or guardian would be contrary to the best interests of the child;

~~(iii) the child has reached 12 years of age;~~

~~(iv)~~*(C)* termination of parental rights to the child is not in the child's best interests; and

~~(v)~~*(D)* the child has been in a placement in which the foster parent has committed to the long-term care and to a relationship with the child, and it is in the best interests of the child to remain in that placement.

~~(6)~~*(7)* The court may terminate long-term custody upon petition of the birth parents~~, those to whom legal custody has been transferred,~~ or the department if the court finds that the circumstances of the child or family have substantially changed and the best interests of the child are no longer being served."

HeinOnline -- 1999 vol. III 2535 1999

Section 13. Review hearing. Within 12 months of a finding that reunification is not in the best interests of the child, the court shall make additional findings regarding the department's reasonable efforts to make and finalize a permanent placement for the child.

Section 14. When petition to terminate parental rights required. (1) If a child has been in foster care under the custody of the state for 15 months of the most recent 22 months, the best interests of the child must be presumed to be served by termination of parental rights. If a child has been in foster care for 15 months of the most recent 22 months or if the court has found that reasonable efforts to preserve or reunify a child with the child's parent or guardian are not required pursuant to 41-3-403, a petition to terminate parental rights must be filed unless:

(a) the child is being cared for by a relative;

(b) the department has not provided the services considered necessary for the safe return of the child to the child's home; or

(c) the department has documented a compelling reason, available for court review, for determining that filing a petition to terminate parental rights would not be in the best interests of the child.

(2) Compelling reasons for not filing a petition to terminate parental rights include but are not limited to the following:

(a) There are insufficient grounds for filing a petition.

(b) There is adequate documentation that termination of parental rights is not the appropriate plan and not in the best interests of the child.

(3) If a child has been in foster care for 15 months of the most recent 22 months and a petition to terminate parental rights regarding that child has not been filed with the court, the department shall file a report to the court or review panel at least 3 days prior to the next hearing or review detailing the reasons that the petition was not filed.

(4) If a hearing results in a finding of abandonment or that the parent has subjected the child to any of the circumstances listed in 41-3-403(2)(a) through (2)(e) and that reasonable efforts to provide preservation or reunification are not necessary, unless there is an exception made pursuant to subsections (1)(a) through (1)(c) of this section, a petition to terminate parental rights must be filed within 60 days of the finding.

Section 15. Treatment plan — contents — changes. (1) Upon the stipulation of the parties or upon a judicial finding that a child is a youth in need of care, the court may order a treatment plan.

(2) Every treatment plan must contain the following information:

(a) the identification of the problems or conditions that resulted in the abuse or neglect of a child;

(b) the treatment goals and objectives for each condition or requirement established in the plan. If the child has been removed from the home, the treatment plan must include but is not limited to the conditions or requirements that must be established for the safe return of the child to the family.

(c) the projected time necessary to complete each of the treatment objectives;

HeinOnline -- 1999 vol. III 2536 1999

(d) the specific treatment objectives that clearly identify the separate roles and responsibilities of all parties addressed in the treatment plan; and

(e) the siguature of the parent or parents or guardian, unless the plan is ordered by the court.

(3) A treatment plan may include but is not limited to any of the following remedies, requirements, or conditions:

(a) the right of entry into the child's home for the purpose of assessing compliance with the terms and conditions of a treatment plan;

(b) the requirement of either the child or the child's parent or guardian to obtain medical or psychiatric diagnosis and treatment through a physician or psychiatrist licensed in the state of Montana;

(c) the requirement of either the child or the child's parent or gnardian to obtain psychological treatment or counseling;

(d) the requirement of either the child or the child's parent or guardian to obtain and follow through with alcohol or substance abuse evaluation and counseling, if necessary;

(e) the requirement that either the child or the child's parent or guardian be restricted from associating with or contacting any individual who may be the subject of a department investigation;

(f) the requirement that the child be placed in a temporary medical facility or a facility for protection of the youth;

(g) the requirement that the parent, gnardian, or other person having physical or legal custody furnish services that the court may designate.

(4) A treatment plan may not be altered, amended, continued, or terminated without the approval of the parent or parents or guardian pursuant to a stipulation and order or order of the court.

Section 16. Section 41-3-607, MCA, is amended to read:

"41-3-607. Petition for termination — separate hearing — right to counsel — no jury trial. (1) The termination of a parent-child legal relationship may be considered only after the filing of a petition pursuant to 41-3-401 alleging the factual grounds for termination pursuant to 41-3-609. If termination of a parent-child legal relationship is ordered, the court may transfer permanent legal custody of the child, with the right to consent to the child's adoption, to:

(a) the department;

(b) a licensed child-placing agency; or

(c) another individual who has been approved by the department and has received consent for the transfer of custody from the department or agency that has custody of the child.

(2) ~~After~~ *At the time that* a petition for termination of a parent-child relationship is filed, parents must be advised of the right to counsel, and counsel must be appointed ~~in accordance with 41-3-401~~ *for an indigent party*.

(3) A guardian ad litem must be appointed to represent the child's best interests in any hearing determining the involuntary termination of the parent-child legal relationship. The guardian ad litem shall continue to represent the child until the child is returned home or placed in an appropriate permanent

HeinOnline -- 1999 vol. III 2537 1999

placement. If a respondent parent is a minor, a guardian ad litem must be appointed to serve the minor parent in addition to any counsel requested by the parent.

(4) There is no right to a jury trial at proceedings held to consider the termination of a parent-child legal relationship."

Section 17. Section 41-3-609, MCA, is amended to read:

"41-3-609. Criteria for termination. (1) The court may order a termination of the parent-child legal relationship upon a finding that any of the following circumstances exist:

(a) the parents have relinquished the child pursuant to 42-2-402 and 42-2-412;

(b) the child has been abandoned by the parents ~~as set forth in 41-3-102~~;

(c) ~~the identity of the parent is unknown and has been unknown for a period of 90 days and reasonable efforts to identify and locate the parent have failed;~~

~~(d)~~ the parent is convicted of a felony in which sexual intercourse occurred or is a minor adjudicated a delinquent youth because of an act that, if committed by an adult, would be a felony in which sexual intercourse occurred and, as a result of the sexual intercourse, the child is born;

(d) the parent has subjected the child to any of the circumstances listed in 41-3-403(2)(a) through (2)(e);

(e) the putative father meets any of the criteria listed in 41-3-403(3)(a) through (3)(c); or

~~(e)~~*(f)* the child is an adjudicated youth in need of care and both of the following exist:

(i) an appropriate treatment plan that has been approved by the court has not been complied with by the parents or has not been successful; and

(ii) the conduct or condition of the parents rendering them unfit is unlikely to change within a reasonable time~~; or~~

~~(f) the parent has substantially failed to successfully complete or meet the goals of a treatment plan approved by the court and the child has been in an out-of-home placement for a cumulative total period of 1 year or longer~~.

(2) In determining whether the conduct or condition of the parents is unlikely to change within a reasonable time, the court shall enter a finding that continuation of the parent-child legal relationship will likely result in continued abuse or neglect or that the conduct or the condition of the parents renders the parents unfit, unable, or unwilling to give the child adequate parental care. In making the determinations, the court shall consider but is not limited to the following:

(a) emotional illness, mental illness, or mental deficiency of the parent of a duration or nature as to render the parent unlikely to care for the ongoing physical, mental, and emotional needs of the child within a reasonable time;

(b) a history of violent behavior by the parent;

(c) ~~a single incident of life-threatening or gravely disabling injury to or disfigurement of a child caused by the parent;~~

HeinOnline -- 1999 vol. III 2538 1999

~~(d)~~ excessive use of intoxicating liquor or of a narcotic or dangerous drug that affects the parent's ability to care and provide for the child; *and*

~~(e)~~*(d)* present judicially ordered long-term confinement of the parent~~;~~

~~(f) the injury or death of a child because of proven abuse or neglect; and~~

~~(g) any reasonable efforts by protective service agencies that have been unable to rehabilitate the parent.~~

(3) In considering any of the factors in subsection (2) in terminating the parent-child relationship, the court shall give primary consideration to the physical, mental, and emotional conditions and needs of the child. ~~The court shall review and, if necessary, order an evaluation of the child's or the parent's physical, mental, and emotional conditions.~~

(4) A treatment plan is not required under this part upon a finding by the court following hearing if:

(a) the parent meets the criteria of subsections (1)(a) through (1)(e);

~~(a)~~*(b)* two medical doctors or clinical psychologists submit testimony that the parent cannot assume the role of parent;

~~(b)~~*(c)* the parent is *or will be* incarcerated for more than 1 year and ~~a treatment plan is not practical considering the incarceration~~ *reunification of the child with the parent is not in the best interests of the child because of the child's circumstances, including placement options, age, and developmental, cognitive, and psychological needs*; or

~~(c)~~*(d)* the death or serious bodily injury, as defined in 45-2-101(64), of a child caused by abuse or neglect by the parent has occurred."

Section 18. Section 41-3-1103, MCA, is amended to read:

"**41-3-1103. Powers and duties of department.** (1) The department shall:

(a) administer all state and federal funds allocated to the department for youth foster homes, youth group homes, child-care agencies, and youth assessment centers for youth in need of care, as defined in 41-3-102;

(b) exercise licensing authority over all youth foster homes, youth group homes, child-care agencies, and youth assessment centers;

(c) collect and disseminate information relating to youth in need of care;

(d) provide for training of program personnel delivering services;

(e) in cooperation with youth care facility providers, develop and implement standards for youth care facilities;

(f) maintain adequate data on placements it funds in order to keep the legislature properly informed of the following:

(i) the number of youth in need of care in out-of-home care facilities;

(ii) the cost per facility for services rendered;

(iii) the type and level of care of services provided by each facility;

(iv) a profile of out-of-home care placements by level of care; and

(v) a profile of public institutional placements; and

HeinOnline -- 1999 vol. III 2539 1999

(g) administer all funds allocated to the department for residential alcohol and drug abuse treatment for indigent youths in need of care, indigent youths in need of intervention, and indigent delinquent youths who require treatment.

(2) The department may:

(a) enter into contracts with nonprofit corporations or associations or private organizations to provide substitute care for youth in need of care in youth care facilities;

(b) accept gifts, grants, and donations of money and property from public and private sources to initiate and maintain community-based services to youth;

(c) adopt rules to carry out the administration and purposes of this part.

(3) The department shall pay for room, board, clothing, personal needs, transportation, and treatment in youth foster care homes and youth group homes for youths committed to the department who need to be placed in the facilities. Payments for the clothing of a child placed in a youth foster home must be provided to the extent the child needs a basic wardrobe or has a special clothing need. Payments under this subsection may not exceed appropriations for the purposes of this subsection.

(4) The department may provide a subsidy for a guardianship of a child who is in the department's legal custody if the guardianship has been approved by the department in accordance with eligibility criteria established by department rule."

Section 19. Section 42-2-608, MCA, is amended to read:

"42-2-608. Finding of unfitness. (1) The court may terminate parental rights for purposes of making a child available for adoption on the grounds of unfitness if:

(a) the court makes a determination that the parent has been judicially deprived of custody of the child on account of abuse or neglect toward the child;

(b) the parent has in the state of Montana or in any other jurisdiction of the United States willfully abandoned the child, as defined in 41-3-102~~(7)(e)~~, in Montana or in any other jurisdiction of the United States;

(c) it is proven, to the satisfaction of the court, that the parent, if able, has not contributed to the support of the child for an aggregate period of 1 year before the filing of a petition for adoption;

(d) it is proven, to the satisfaction of the court, that the parent is in violation of a court order to support either the child that is the subject of the adoption proceedings or other children with the same birth mother;

(e) the parent has been found guilty by a court of competent jurisdiction of:

(i) aggravated assault on the adoptee, as provided in 45-5-202;

(ii) sexual assault on a child, as provided in 45-5-502;

(iii) sexual intercourse without consent, as provided in 45-5-503, if the victim was a child;

(iv) incest, as provided in 45-5-507, if the victim was a child;

(v) homicide of a child, as provided in 45-5-102 or 45-5-103;

(vi) sexual abuse of a child, as provided in 45-5-625; or

(vii) ritual abuse of a minor, as provided in 45-5-627;

HeinOnline -- 1999 vol. III 2540 1999

(f) the child bas been maintained hy a public or private children's institution, a charitable agency, a licensed child-placing agency, or the department for a period of 1 year without the parent contributing to the support of the child during that period, if able;

(g) a finding is made for a parent who is given proper notice of hearing:

(i) that the parent has been convicted of a crime of violence or of violating a restraining or protective order; and

(ii) the facts of the crime or violation and the parent's behavior indicate that the parent is unfit to maintain a relationship of parent and child with the child;

(h) a finding is made for a parent who is given proper notice of hearing and is a respondent to the petition to terminate parental rights and:

(i) by a preponderance of the evidence, it is found that termination is in the best interests of the child; and

(ii) upon clear and convincing evidence, it is found that one of the following grounds exists:

(A) if the child is not in the legal and physical custody of the other parent, that the respondent is not able or willing to promptly assume legal and physical custody of the child and to pay for the child's support in accordance with the respondent's financial means;

(B) if the child is in the legal and physical custody of the other parent and a stepparent who is the prospective adoptive parent, that the respondent is not able or willing to promptly establish and maintain contact with the child and to pay for the child's support in accordance with the respondent's financial means;

(C) placing the child in the respondent's legal and physical custody would pose a risk of substantial harm to the physical or psychological well-being of the child because the circumstances of the child's conception, the respondent's behavior during the mother's pregnancy or since the child's birth, or the respondent's behavior with respect to other children indicates that the respondent is unfit to maintain a relationship of parent and child with the child; or

(D) failure to terminate the relationship of parent and child would be detrimental to the child.

(2) In making a determination under subsection (1)(h)(ii)(D), the court shall consider any relevant factor, including the respondent's efforts to obtain or maintain legal and physical custody of the child, the role of other persons in thwarting the respondent's efforts to assert parental rights, the respondent's ability to care for the child, the age of the child, the quality of any previous relationship between the respondent and the child and between the respondent and any other children, the duration and suitability of the child's present custodial environment, and the effect of a change of physical custody on the child."

Section 20. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

Section 21. Codification instruction. (1) [Section 13] is intended to be codified as an integral part of Title 41, chapter 3, part 4, and the provisions of Title 41, chapter 3, part 4, apply to [section 13].

HeinOnline -- 1999 vol. III 2541 1999

(2) [Section 14] is intended to be codified as an integral part of Title 41, chapter 3, part 6, and the provisions of Title 41, chapter 3, part 6, apply to [section 14].

(3) [Section 15] is intended to be codified as an integral part of Title 41, chapter 3, part 4, and the provisions of Title 41, chapter 3, part 4, apply to [section 15].

Approved May 6, 1999

CHAPTER NO. 567

[HB 470]

AN ACT REVISING THE MAINTENANCE OF EFFORT NECESSARY TO DRAW DOWN THE TEMPORARY ASSISTANCE TO NEEDY FAMILIES BLOCK GRANT; APPROPRIATING UP TO $1 MILLION IN GENERAL FUND MONEY FOR THE MONTANA STATE HOSPITAL IN THE 2001 BIENNIUM FROM GENERAL FUND APPROPRIATIONS REVERTED IN FISCAL YEAR 1999; AMENDING SECTION 53-4-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-4-211, MCA, is amended to read:

"53-4-211. Administration of programs funded under temporary assistance for needy families block grant. (1) The department is authorized and is charged with the general administration and supervision of programs funded under the temporary assistance for needy families block grant under the powers, duties, and functions as prescribed in chapter 2 of this title.

(2) The state of Montana shall maintain a fiscal effort equivalent to at least ~~80%~~ *77%* of ~~the federally calculated~~ *its historic state expenditures, as defined in 42 U.S.C. 609(a)(7)(B)(iii), governing* maintenance of effort necessary to draw down the temporary assistance to needy families block grant."

Section 2. Appropriation for Montana state hospital. The department of public health and human services is appropriated up to $1 million in general fund money in the 2001 biennium from reversions of general fund money appropriated to the department in fiscal year 1999. The 2001 biennial general fund appropriation authorized by this section may not be greater than the amount of general fund money reverted by the department in fiscal year 1999. The appropriation may be used only for services provided by the Montana state hospital and may not be included in the base budget or present law budget for the 2003 biennium budget.

Section 3. Effective date. [This act] is effective on passage and approval.

Approved May 5, 1999

HeinOnline -- 1999 vol. III 2542 1999

CHAPTER NO. 568

[HB 533]

AN ACT ESTABLISHING A YOUTH COMBINATION SPORTS LICENSE TO ALLOW A RESIDENT MINOR TO FISH AND HUNT UPLAND AND MIGRATORY GAME BIRDS, DEER, AND ELK; PROVIDING PENALTIES FOR AN ADULT WHO USES A YOUTH COMBINATION SPORTS LICENSE; ALLOWING A RESIDENT MINOR TO FISH AND HUNT UPLAND AND MIGRATORY GAME BIRDS WITH ONLY A CONSERVATION LICENSE; AMENDING SECTIONS 87-2-411 AND 87-2-805, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE AND A TERMINATION DATE.

WHEREAS, Montana's youth sbould be encouraged to take advantage of Montana's abundant outdoor recreational opportunities; and

WHEREAS, a person who learns early in life to fish and hunt responsibly and ethically is likely to continue that behavior throughout the person's life; and

WHEREAS, Montana's fishing and hunting heritage will be preserved for future generations as more youth are introduced to those sports; and

WHEREAS, providing an affordable comhination license that allows a young person to fish and hunt upland game birds, deer, and elk will be an effective way to cultivate an appreciation for the state's wildlife resources among Montana's youth.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-2-411, MCA, is amended to read:

"87-2-411. License required to hunt migratory game birds. It is unlawful for any person ~~15~~ *16* years of age or older to hunt migratory game birds without first having obtained a valid migratory bird license from the department. The fee for the license is $5."

Section 2. Section 87-2-805, MCA, is amended to read:

"87-2-805. Persons under ~~fifteen~~ *eighteen* years of age — *youth combination sports license.* (1) Resident minors ~~from~~ *who are* 12 years *of age or older* ~~through 14~~ *and under 15* years of age may fish and may hunt upland *game* and migratory *game* birds during the open season with only a conservation license. *Resident minors who are 15 years of age may hunt migratory game birds with only a conservation license.* Resident minors *who are* under 12 years of age may fish without a license. ~~However, no~~ *A* nonresident person under ~~the age of~~ 15 years *of age* may *not* fish in or on any Montana waters without first having obtained a Class B or B-4 fishing license unless the nonresident person under ~~the age of~~ 15 years *of age* is in the company of an adult in possession of a valid Montana fishing license. The limit of fish for the nonresident person and the accompanying adult combined may not exceed the limit for one adult as established by law or by rule of the department.

~~(2) Residents, as defined by 87-2-102, under the age of 15 years may purchase Class A-3 and A-5 licenses at a price equal to one-half the fee paid by a resident who is 15 years of age or older and under 62 years of age~~

(2) A resident, as defined by 87-2-102, under 15 years of age may purchase Class A-3 and A-5 licenses at a price equal to one-half the fee paid by a resident who is 15 years of age or older and under 62 years of age.

HeinOnline -- 1999 vol. III 2543 1999

(3) (a) A resident who is 12 years of age or older and under 18 years of age may purchase a youth combination sports license at a price that, rounded to the nearest dollar, is 46% of the fee paid for the Class AAA combination sports license by a resident who is 18 years of age or older and under 62 years of age.

(b) The youth combination sports license includes:

(i) a conservation license;

(ii) a fishing license;

(iii) an upland game bird license;

(iv) an elk license; and

(v) a deer license.

(c) A resident who is 15 years of age or older and under 18 years of age may purchase a Class A fishing license at a price that is 50% of the fee paid by a resident who is 18 years of age or older and under 62 years of age.

(d) A resident who is 15 years of age or older and under 18 years of age may purchase a Class A-1 upland game bird license at 50% of the fee paid by a resident who is 18 years of age or older and under 62 years of age.

(e) A person who is 18 years of age or older who hunts or fishes using the youth combination sports license is guilty of a misdemeanor and shall be subject to any of the following penalties by the sentencing court:

(i) revocation of the person's hunting and fishing privileges for at least 5 years, revocation of the person's hunting and fishing privileges for more than 5 years, or revocation of the person's hunting and fishing privileges for life; and

(ii) a monetary fine of not less than $500 and not more than $5,000 in addition to the fine imposed on a person under this chapter for the specific hunting or fishing violation.

(f) This section does not prohibit a resident minor from purchasing any individual licenses for which the minor may be eligible under this chapter if the minor does not purchase the youth combination sports license."

Section 3. Effective date. [This act] is effective March 1, 2000.

Section 4. Termination. [This act] terminates February 29, 2002.

Approved May 5, 1999

CHAPTER NO. 569

[HB 626]

AN ACT REDUCING POTENTIAL CONFLICTS BETWEEN RECREATIONAL USERS OF MONTANA WATERS BY REVISING CERTAIN LAWS ON MOTORBOAT AND PERSONAL WATERCRAFT OPERATION; REVISING THE RESTRICTION ON OPERATION OF A VESSEL IN PROXIMITY TO AN ANGLER, WATERFOWL HUNTER, OR DIVER; DESIGNATING CERTAIN RIVER STRETCHES AS NO-WAKE ZONES; PROHIBITING THE USE OF PERSONAL WATERCRAFT ON DESIGNATED RIVER STRETCHES AND ON WATERS RESTRICTED BY RULE OF THE FISH, WILDLIFE, AND PARKS COMMISSION; ALLOWING THE FISH,

HeinOnline -- 1999 vol. III 2544 1999

WILDLIFE, AND PARKS COMMISSION TO ADOPT RULES FOR THE OPERATION OF PERSONAL WATERCRAFT AND THE RESOLUTION OF CONFLICTS BETWEEN USERS OF MOTORIZED AND NONMOTORIZED BOATS ON MONTANA WATERS; AND AMENDING SECTIONS 23-2-525, 23-2-531, AND 87-1-303, MCA; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Montana waters will experience a great increase in traffic by recreationists celebrating the bicentennial of the Lewis and Clark expedition and retracing the routes of the famous explorers; and

WHEREAS, the increased recreational use of Montana waters by every manner of recreationist, motorized as well as nonmotorized users, has led to a corresponding increase in conflicts between river users; and

WHEREAS, in other states, conflicts between recreational users of waters have escalated to the point of violence and even deaths of recreationists; and

WHEREAS, the use of personal watercraft has grown immensely in Montana, and the irresponsible use of personal watercraft conflicts with the ability of lakeshore cabin owners and homeowners to enjoy their pursuit of happiness through peaceful relaxation; and

WHEREAS, it is in the interests of public health, safety, welfare, and protection of property that measures be taken in Montana to reduce potential conflicts between recreational users of Montana waters before this state experiences similar problems.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-2-525, MCA, is amended to read:

"23-2-525. Restricted areas. (1) ~~No~~ *A* person ~~shall so~~ *may not* anchor a vessel or other obstacle for fishing or pleasure purposes on any body of water over which the state has jurisdiction in ~~such~~ a position ~~as to obstruct~~ *that obstructs* a passageway ordinarily used by other vessels.

(2) ~~No~~ *A* person ~~shall~~ *may not* operate a pleasure vessel within 20 feet of the exterior boundary of a water area ~~which~~ *that* is clearly marked by buoys or some other distinguishing device as a bathing or swimming area. Swimming areas ~~shall~~ *must* be marked with white buoys having international orange markings in conformance with the uniform state waterway marking system by the owners of ~~such~~ *the* areas.

(3) ~~No~~ *A* person ~~shall~~ *may not*~~, without permission,~~ operate ~~or knowingly permit any person to operate~~ a vessel within ~~50~~ *75* feet of a person engaged in fishing *or hunting waterfowl*, unless unavoidable. *If unavoidable, the vessel must be operated at not greater than no-wake speed or at a minimum speed necessary to maintain upstream progress while within 75 feet of the person engaged in fishing or hunting waterfowl.*

(4) (a) ~~No~~ *A* person ~~shall~~ *may not* purposely, knowingly, or negligently operate a motorboat upon the waters of this state within ~~100~~ *200* feet of a tow-float or buoy displaying a "diver-down" symbol, red with a white slash, on a flag.

(b) The motorboat may enter the ~~100-foot~~ *200-foot* safety zone by use of sail or oar. In an emergency or if there is insufficient water on either side of the ~~100-foot~~ *200-foot* safety zone to pass by and stay out of the zone, the operator may use power within the zone but may not exceed no-wake speed. The burden

HeinOnline -- 1999 vol. III 2545 1999

of proving that an emergency exists or that there is insufficient water is on the operator.

(c) The fish, wildlife, and parks commission may by rule determine areas where establishment of a ~~100-foot~~ *200-foot* safety zone is not allowed in order to provide for diver safety or the regulation of water traffic."

Section 2. Section 23-2-531, MCA, is amended to read:

"23-2-531. Personal watercraft operation. In addition to applicable provisions in this part, a person may not operate a personal watercraft:

(1) unless a person operating or riding on the vessel is wearing a United States coast guard approved type I, II, III, or V personal flotation device;

(2) if the vessel is equipped by the manufacturer with a lanyard type engine cutoff switch unless the lanyard is attached to the operator's person, clothing, or personal flotation device as is appropriate for the specific vessel;

(3) (a) except as provided for standup personal watercraft in subsection (3)(b) *or when towing a waterskier from or to a dock or shore*, at greater than no-wake speed within ~~100~~ *200* feet of a dock, swimmer, swimming raft, nonmotorized boat, or anchored vessel on a lake or ~~within 50 feet of a dock, swimmer, swimming raft, nonmotorized boat, or anchored vessel on a river, except as provided in 23-2-525(4)~~ *river*; ~~or~~

(b) at greater than ~~minimum maneuvering speed for a standup~~ *the minimum speed necessary to operate a* personal watercraft when leaving or returning directly from or to a dock or shore for the purpose of launching or docking; or

(4) *on any surface waters restricted in whole or in part by rule of the fish, wildlife, and parks commission;*

(5) in a reckless or negligent manner. Actions prohibited in 23-2-523 are considered reckless operation."

Section 3. Section 87-1-303, MCA, is amended to read:

"87-1-303. Rules for use of lands and waters. (1) The commission may adopt and enforce rules governing uses of lands that are acquired or held under easement by the commission or lands that it operates under agreement witb or in conjunction with a federal or state agency or private owner. The rules must be adopted in the interest of public health, public safety, and protection of property in regulating the use of tbese lands. All lease and easement agreements must itemize uses as listed in 87-1-209.

(2) The commission may adopt and enforce rules governing recreational uses of all public fishing reservoirs, public lakes, rivers, and streams that are legally accessible to the public or on reservoirs and lakes that it operates under agreement with or in conjunction with a federal or state agency or private owner. These rules must be adopted in the interest of public bealth, public safety, *public welfare,* and protection of property *and public resources* in regulating swimming, hunting, fishing, trapping, boating, including but not limited to boating speed regulations, the operation of motor-driven boats, *the operation of personal watercraft, the resolution of conflicts between users of motorized and nonmotorized boats,* waterskiing, surfboarding, picnicking, camping, sanitation, and use of firearms on the reservoirs, lakes, rivers, and streams or at designated areas along the shore of the reservoirs, lakes, rivers, and streams. Areas regulated pursuant to the authority contained in this scction must be areas that are legally

HeinOnline -- 1999 vol. III 2546 1999

accessible to the public. These rules are subject to review and approval by the department of public health and human services with regard to issues of public health and sanitation before becoming effective. Copies of the rules must show that endorsement."

Section 4. Designation of certain river stretches as no-wake waters — personal watercraft use prohibited. (1) In the interest of public health, safety, welfare, and protection of property and public resources, the use of personal watercraft is prohibited on the headwaters of the Missouri River downstream to its confluence with Prewett Creek, except in Missouri River reservoirs, and including all tributaries but not their reservoirs.

(2) The waters from Hauser dam downstream to Beaver Creek are limited to a controlled no-wake speed.

(3) This section does not apply to the use of the designated waters for search and rescue, official patrol, or scientific purposes.

(4) This section may not be construed to limit the authority of the commission or department to enact by administrative rule or to enforce any other restrictions on any surface waters in the interests of public health, safety, welfare, or protection of property or public resources or the resolution of conflicts between users of motorized and nonmotorized boats.

Section 5. Codification instruction. [Section 4] is intended to be codified as an integral part of Title 87, chapter 1, part 3, and the provisions of Title 87, chapter 1, part 3, apply to [section 4].

Section 6. Effective date. [This act] is effective June 1, 1999.

Approved May 5, 1999

CHAPTER NO. 570

[HB 648]

AN ACT REQUIRING THE DEPARTMENT OF JUSTICE TO ISSUE NEW NUMBER PLATES FOR MOTOR VEHICLES EVERY 4 YEARS BEGINNING JANUARY 1, 2000; AMENDING SECTION 61-3-332, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-3-332, MCA, is amended to read:

"61-3-332. Number plates. (1) A motor vehicle that is driven upon the streets or highways of Montana must display both front and rear number plates, bearing the distinctive number assigned to the vehicle. The number plates are in 10 series: one series for owners of motorcars, one for owners of motor vehicles of the motorcycle or quadricycle type, one for trailers, one for trucks, one for dealers in vehicles of the motorcycle or quadricycle type that bear the distinctive letters "MCD" or the letters "MC" and the word "DEALER", one for franchised dealers in new motorcars (including trucks and trailers) or new and used motorcars (including trucks and trailers) that bear the distinctive letter "D" or the word "DEALER", one for dealers in used motorcars only (including used trucks and trailers) that bear the distinctive letters "UD" or the letter "U" and the word "DEALER", one for dealers in trailers and/or semitrailers (new or used) that bear the distinctive letters "DTR" or the letters "TR" and the word "DEALER", one

for dealers in recreational vehicles that bear the distinctive letters "RV" or the letter "R" and the word "DEALER", and one for special license plates. All markings for the various kinds of dealers' plates must be placed on the number plates assigned to the dealer, in the position that the department designates.

(2) All number plates for motor vehicles must be issued for a ~~minimum~~ *maximum* period of 4 years, bear a distinctive marking, and be furnished by the state. In years when number plates are not issued, the department shall provide nonremovable stickers hearing appropriate registration numbers that must be affixed to the license plates in use.

(3) *(a)* Subject to the provisions of this section, the department shall create a new design for number plates as provided in this section, *and it shall manufacture the newly designed number plates for issuance after December 31, 1999, to replace at renewal, as required in 61-3-312 and 61-3-314, number plates that were displayed on motor vehicles before that date.*

(b) Beginning January 1, 2000, the department shall manufacture and issue new number plates every 4 years.

(4) In the case of motorcars and trucks, plates must be of metal 6 inches wide and 12 inches in length. The outline of the state of Montana must be used as a distinctive border on the license plates, and the word "Montana" and the year must be placed across the plates. Registration plates must be treated with a reflectorized background material according to specifications prescribed by the department.

(5) The distinctive registration numbers must begin with a number one or with a letter-number combination, such as "A 1" or "AA 1", or any other similar combination of letters and numbers. The distinctive registration number or letter-number combination assigned to the vehicle must appear on the plate preceded by the number of the county and appearing in horizontal order on the same horizontal baseline. The county number must be separated from the distinctive registration number by a separation mark unless a letter-number combination is used. The dimensions of the numerals and letters must be determined by the department, and all county and registration numbers must be of equal height.

(6) For the use of tax-exempt motor vehicles, in addition to the markings provided in this section, number plates must bear the following distinctive markings:

(a) For vehicles owned by the state, the department may designate the prefix number for the various state departments. All numbered plates issued to state departments must bear the words "State Owned", and a year number may not be indicated on the plates because these numbered plates are of a permanent nature and will be replaced by the department only when the physical condition of numbered plates requires it.

(b) For vehicles that are owned by the counties, municipalities, and special districts, as defined in 18-8-202, organized under the laws of Montana and not operating for profit, and that are used and operated by officials and employees in the line of duty and for vehicles on loan from the United States government or the state of Montana to, or owned by, the civil air patrol and used and operated by officials and employees in the line of duty, there must be placed on the number plates assigned, in a position that the department may designate, the letter "X" or the word "EXEMPT". Distinctive registration numbers for plates assigned to

HeinOnline -- 1999 vol. III 2548 1999

motor vehicles of each of the counties in the state and those of the municipalities and special districts that obtain plates within each county must begin with number one and be numbered consecutively. Because these number plates are of a permanent nature, they are subject to replacement by the department only when the physical condition of the number plates requires it and a year number may not be displayed on the number plates.

(7) On all number plates assigned to motor vehicles of the truck and trailer type, other than tax-exempt trucks and tax-exempt trailers, there must appear the letter "T" or the word "TRUCK" on plates assigned to trucks and the letters "TR" or the word "TRAILER" on plates assigned to trailers and housetrailers. The letters "MC" or the word "CYCLE" must appear on plates assigned to vehicles of the motorcycle or quadricycle type.

(8) Number plates issued to a passenger car, truck, trailer, or vehicle of the motorcycle or quadricycle type may be transferred only to a replacement passenger car, truck, trailer, or motorcycle- or quadricycle-type vehicle. A registration or license fee may not be assessed upon a transfer of a number plate under 61-3-317 and 61-3-335.

(9) For the purpose of this chapter, the several counties of the state are assigned numbers as follows: Silver Bow, 1; Cascade, 2; Yellowstone, 3; Missoula, 4; Lewis and Clark, 5; Gallatin, 6; Flathead, 7; Fergus, 8; Powder River, 9; Carbon, 10; Phillips, 11; Hill, 12; Ravalli, 13; Custer, 14; Lake, 15; Dawson, 16; Roosevelt, 17; Beaverhead, 18; Chouteau, 19; Valley, 20; Toole, 21; Big Horn, 22; Musselshell, 23; Blaine, 24; Madison, 25; Pondera, 26; Richland, 27; Powell, 28; Rosebud, 29; Deer Lodge, 30; Teton, 31; Stillwater, 32; Treasure, 33; Sheridan, 34; Sanders, 35; Judith Basin, 36; Daniels, 37; Glacier, 38; Fallon, 39; Sweet Grass, 40; McCone, 41; Carter, 42; Broadwater, 43; Wheatland, 44; Prairie, 45; Granite, 46; Meagher, 47; Liberty, 48; Park, 49; Garfield, 50; Jefferson, 51; Wibaux, 52; Golden Valley, 53; Mineral, 54; Petroleum, 55; Lincoln, 56. Any new counties must be assigned numbers by the department as they may be formed, beginning with the number 57.

(10) Each type of special license plate approved by the legislature, except collegiate license plates authorized in 61-3-463, must be a separate series of plates, numbered as provided in subsection (5), except that the county number must be replaced by a nonremovable design or decal designating the group or organization to which the applicant belongs. Unless otherwise specifically stated in this section, the special plates are subject to the same rules and laws as govern the issuance of regular license plates, must be placed or mounted on a vehicle owned by the person who is eligible to receive them, and must be removed upon sale or other disposition of the vehicle. The special license plates must be issued to national guard members, former prisoners of war, persons with disabilities, reservists, disabled veterans, survivors of the Pearl Harbor attack, veterans of the armed services, or veterans of the armed services who were awarded the purple heart medal, who comply with the following provisions:

(a) An active member of the Montana national guard may be issued special license plates with a design or decal displaying the letters "NG". The adjutant general shall issue to each active member of the Montana national guard a certificate authorizing the department to issue national guard plates, numbered in sets of two with a different number on each set, and the member shall surrender the plates to the department upon becoming ineligible to use them.

HeinOnline -- 1999 vol. III 2549 1999

(b) An active member of the reserve armed forces of the United States of America who is a resident of this state may be issued special license plates with a design or decal displaying the following: United States army reserve, AR (symbol); United States naval reserve, NR (anchor); United States air force reserve, AFR (symbol); and United States marine corps reserve, MCR (globe and anchor). The commanding officer of each armed forces reserve unit shall issue to each eligible member of the reserve unit a certificate authorizing the issuance of special license plates, numbered in sets of two with a different number on each set. The member shall surrender the plates to the department upon becoming ineligible to use them.

(c) (i) A resident of Montana who is a veteran of the armed forces of the United States and who is 100% disabled because of an injury that has been determined by the department of veterans affairs to be service-connected may, upon presentation to the department of proof of the 100% disability, be issued:

(A) a special license plate under this section with a design or decal displaying the letters "DV"; or

(B) one set of any other military-related plates that the disabled veteran is eligible to receive under this section.

(ii) The fee for original or renewal registration by a 100% disabled veteran for a passenger vehicle or a truck with a GVW-rated capacity of 1 ton or less is $5 and is in lieu of all other fees and taxes for that vehicle under this chapter.

(iii) Special license plates issued to a disabled veteran are not transferable to another person.

(iv) A disabled veteran is not entitled to a special disabled veteran's license plate for more than one vehicle.

(v) A vehicle lawfully displaying a disabled veteran's plate and that is conveying a 100% disabled veteran is entitled to the parking privileges allowed a person with a disability's vehicle under this title.

(d) A Montana resident who is a veteran of the armed forces of the United States and was captured and held prisoner by a military force of a foreign nation, documented by the veteran's service record, may upon application and presentation of proof be issued special license plates, numbered in sets of two with a different number on each set, with a design or decal displaying the words "ex-prisoner of war" or an abbreviation that the department considers appropriate.

(e) Except as provided in subsection (10)(c), upon payment of all taxes and fees required by parts 3 and 5 of this chapter and upon furnishing proof satisfactory to the department that the applicant meets the requirements of this subsection (10)(e), the department shall issue to a Montana resident who is a veteran of the armed services of the United States special license plates, numbered in sets of two with a different number on each set, designed to indicate that the applicant is a survivor of the Pearl Harbor attack if the applicant was a member of the United States armed forces on December 7, 1941, was on station on December 7, 1941, during the hours of 7:55 a.m. to 9:45 a.m. (Hawaii time) at Pearl Harbor, the island of Oahu, or offshore at a distance of not more than 3 miles, and received an honorable discharge from the United States armed forces. If special license plates issued under this subsection are lost, stolen, or mutilated, the recipient of the plates is entitled to replacement plates upon request and without charge.

HeinOnline -- 1999 vol. III 2550 1999

(f) A motor vehicle owner and resident of this state who is a veteran or the surviving spouse of a veteran of the armed services of the United States may be issued license plates inscribed as provided in subsection (10)(f)(i) if the veteran was separated from the armed services under other than dishonorable circumstances or was awarded the purple heart medal:

(i) Upon submission of a department of defense form 214(DD-214) or its successor or documents showing an other-than-dishonorable discharge or a reenlistment, proper identification, and other relevant documents to show an applicant's qualification under this subsection, there must be issued to the applicant, in lieu of the regular license plates prescribed by law, special license plates numbered in sets of two with a different number on each set. The plates must display:

(A) the word "VETERAN" and a symbol signifying the United States army, United States navy, United States air force, United States marine corps, or United States coast guard, according to the record of service verified in the application; or

(B) a symbol representing the purple heart medal.

(ii) Plates must be furnished by the department to the county treasurer, who shall issue them to a qualified veteran or to the veteran's surviving spouse. The plates must be placed or mounted on the vehicle owned by the veteran or the veteran's surviving spouse designated in the application and must be removed upon sale or other disposition of the vehicle.

(iii) Except as provided in subsection (10)(c), a veteran or surviving spouse who receives special license plates under this subsection (10)(f) is liable for payment of all taxes and fees required under parts 3 and 4 of this chapter and a special veteran's or purple heart medal license plate fee of $10. Upon an original application for a license under this subsection (10)(f), the county treasurer shall:

(A) deposit $3 of the special fee in the county general fund;

(B) remit $1 for deposit in the state general fund; and

(C) deposit the remainder of the special fee in the state special revenue account established in 10-2-603 for administration, construction, operation, and maintenance of the state veterans' cemeteries.

(iv) Upon subsequent annual renewal of registration, the county treasurer shall deposit all of the special fee as provided in subsection (10)(f)(iii)(C).

(g) A Montana resident who is eligible to receive a special parking permit under 49-4-301 may, upon written application on a form prescribed by the department, be issued a special license plate with a design or decal bearing a representation of a wheelchair as the symbol of a person with a disability.

(11) The provisions of this section do not apply to a motor vehicle, trailer, or semitrailer that is registered as part of a fleet, as defined in 61-3-712, and that is subject to the provisions of 61-3-711 through 61-3-733."

Seetion 2. Effective date. [This act] is effective July 1, 1999.

Section 3. Applicability. [This act] applies to the registration of motor vehicles and the display of license plates issued after Decemher 31, 1999.

Approved May 5, 1999

HeinOnline -- 1999 vol. III 2551 1999

CHAPTER NO. 571

[SB 81]

AN ACT ESTABLISHING THE CHILDREN'S HEALTH INSURANCE PROGRAM; PROHIBITING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES FROM USING FUNDS APPROPRIATED FOR THE PROGRAM TO EXPAND MEDICAID ELIGIBILITY CRITERIA; PROVIDING ELIGIBILITY CRITERIA; LISTING THE BENEFITS TO BE PROVIDED; ALLOWING THE DEPARTMENT TO ALTER ELIGIBILITY REQUIREMENTS IF FUNDING IS INSUFFICIENT; ALLOWING THE DEPARTMENT TO CONTRACT WITH INSURANCE PROVIDERS; ALLOWING THE DEPARTMENT TO ESTABLISH COST-SHARING MECHANISMS; PROVIDING RULEMAKING AUTHORITY AND GUIDELINES TO THE DEPARTMENT; ALLOWING DISCLOSURE OF INFORMATION NECESSARY FOR THE ADMINISTRATION OF THE PROGRAM; REQUIRING THAT RULES BE REVIEWED BY AN APPROPRIATE INTERIM COMMITTEE; REQUIRING THAT TOBACCO SETTLEMENT PROCEED FUNDS BE DEPOSITED INTO THE GENERAL FUND; APPROPRIATING TOBACCO SETTLEMENT PROCEEDS TO FUND THE PROGRAM; PROVIDING A CONTINGENT APPROPRIATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A CONTINGENT TERMINATION PROVISION.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 9] may be cited as the "Children's Health Insurance Program Act".

Section 2. Purpose — definition. (1) The purpose of [sections 1 through 9] is to create a program to provide health care to children who are not eligible for health care services under the Montana medicaid program. These health care services may be provided by the payment for health care through an insurance plan, a health maintenance organization, or a managed care plan.

(2) As used in [sections 3 through 9], "program" means the state children's health insurance program.

Section 3. Estahlishment and administration of program. The department of public health and human services may establish, administer, and monitor a program to provide health care to uninsured children. The department may not use money appropriated for this program to expand eligibility criteria for the Montana medicaid program.

Section 4. Eligihility for program — rulemaking. (1) To be considered eligible for the program, a child:

(a) must be 18 years of age or younger;

(b) except as provided in subsection (4), must have a combined family income at or below 150% of the federal poverty level;

(c) may not already be covered by private insurance that offers creditable coverage, as defined in 42 U.S.C. 300gg(c);

(d) may not be eligible for medicaid benefits; and

(e) must be a United States citizen or qualified alien and a Montana resident.

HeinOnline -- 1999 vol. III 2552 1999

(2) The department of public health and human services shall adopt rules that establish the program's criteria for residency. The criteria must conform as nearly as practicable with the residency requirements for medicaid eligibility.

(3) Subject to [section 8(3)], rules governing eligibility may also include financial standards and criteria for income and resources, treatment of resources, and nonfinancial criteria.

(4) If the department determines that there is insufficient funding for the program, it may lower the percentage of the federal poverty level established in subsection (1)(b) in order to reduce the number of persons who may be eligible to participate.

Section 5. Benefits provided. (1) Benefits provided to participants in the program include but are not limited to:

(a) inpatient and outpatient hospital services;

(b) physician and advanced practice registered nurse services;

(c) laboratory and x-ray services;

(d) well-child and well-bahy services;

(e) immunizations;

(f) clinic services;

(g) dental services;

(h) prescription drugs;

(i) mental health and substance abuse treatment services;

(j) hearing and vision exams; and

(k) eyeglasses.

(2) The department is specifically prohibited from providing payment for birth control contraceptives under this program.

Section 6. Department may contract for services. The department of public health and human services may contract with insurance companies or other entities to provide services for a set monthly or yearly fee based on the number of participants in the program and the types of services provided.

Section 7. Participant cost-sharing. The department of public health and human services may charge fees to participants in the program. The fees may include:

(1) monthly or yearly enrollment fees;

(2) minimum charges to he incurred or spent before benefits are paid;

(3) cost-sharing for individual benefits; and

(4) other types of chargos assessed as part of the program.

Section 8. Department to adopt rules — review by interim committee. (1) The department of public health and human services shall adopt rules necessary for the administration of the program, including rules governing the application process, termination, and confidentiality.

(2) The rules may include, as necessary:

(a) the amount, scope, and duration of specific services provided;

HeinOnline -- 1999 vol. III 2553 1999

(b) criteria to ensure that the services provided are medically necessary and cost-effective;

(c) provisions for participant cost-sharing, including, at the department's discretion:

(i) the establishment of enrollment fees, premiums, deductibles, and copayments; and

(ii) the process for setting the amounts of enrollment fees, premiums, deductibles, and copayments, taking into account a participant's family income and resources; and

(d) the type of professionals who may deliver services or direct the delivery of services and the qualifications required of those professionals.

(3) In adopting rules, the department shall consider the federal requirements on which the receipt of the federal share of program funds are contingent and may not include any provision that places that funding at risk.

(4) Rules adopted by the department pursuant to [sections 4 and 8] must be presented to and reviewed by an appropriate interim committee that examines issues related to children and families.

Section 9. Sharing of information. The department of public health and human services, health care providers, insurance companies, and other entities may share only health care information, medical records, income, and other participant eligibility information for the purposes of administering the program. The limitations on disclosure of information provided in 33-19-306 do not apply if they conflict with [sections 1 through 9]. To the extent possible, the information may not be disclosed in a manner that would violate the privacy of an individual or be released to any entity that is not necessary for the administration of the program.

Section 10. Tobacco settlement funds to general fund. Funds received from the tobacco settlement must be deposited in the general fund. Any funds appropriated for the children's health insurance program that remain unexpended at the end of the biennium must be transferred to the general fund.

Section 11. Appropriation. There is appropriated $8 million for the 2001 biennium from the general fund from money recovered by the state of Montana from January 1, 1999, through June 30, 2001, from any judgment, settlement, or fine received as a result of a criminal or civil claim against a tobacco company related to the production, marketing, or use of tobacco products. The appropriation must be used for the children's health insurance program established in [sections 1 through 9]. The appropriation may also be used to fund any increases in medicaid program costs resulting from the children's health insurance program outreach.

Section 12. Contingent appropriation. If money is not recovered as provided for in [section 11], the department of public health and human services is authorized to receive a general fund loan pursuant to 17-2-107 in the amount of $8 million for the purposes of the children's health insurance program provided for in [sections 1 through 9] for the 2001 biennium. The general fund loan must be repaid from any money recovered by the state of Montana, by June 30, 2001, from any judgment, settlement, or fine received as a result of a criminal or civil claim against a tobacco company related to the production, marketing, or use of tobacco products.

HeinOnline -- 1999 vol. III 2554 1999

Section 13. Codification instruction. [Sections 1 through 10] are intended to be codified as an integral part of Title 53, chapter 4, and the provisions of Title 53, chapter 4, apply to [sections 1 through 10].

Section 14. Effective date. [This act] is effective on passage and approval.

Section 15. Contingent termination. (1) [This act] terminates on the date that the director of the department of public health and human services certifies to the governor that the federal government has terminated the program or that federal funding for the program has been discontinued.

(2) The governor shall transmit a copy of the certification to the code commissioner.

(3) Any excess funds remaining upon the termination of the program must be transferred to the general fund.

Approved May 6, 1999

CHAPTER NO. 572

[SB 186]

AN ACT REVISING THE PLACES INSIDE OF WHICH A CONCEALED WEAPON MAY NOT BE CARRIED; AND AMENDING SECTION 45-8-328, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 45-8-328, MCA, is amended to read:

"**45-8-328. Carrying concealed weapon in a prohibited place — *penalty.*** (1) A person commits the offense of carrying a concealed weapon in a prohibited place if ~~he~~ *the person* purposely or knowingly carries a concealed weapon in:

(a) ~~a building owned or leased by the federal, state, or local government;~~ *portions of a building used for state or local government offices and related areas in the building that have been restricted;*

(b) a bank, credit union, savings and loan institution, or similar institution; ~~or~~ *during the institution's normal business hours. It is not an offense under this section to carry a concealed weapon while:*

(i) using an institution's drive-up window, automatic teller machine, or unstaffed night depository; or

(ii) at or near a branch office of an institution in a mall, grocery store, or other place unless the person is inside the enclosure used for the institution's financial services or is using the institution's financial services.

(c) a room in which alcoholic beverages are sold, dispensed, and consumed under a license issued under Title 16 for the sale of alcoholic beverages for consumption on the premises.

(2) It is not a defense that the person had a valid permit to carry a concealed weapon. A person convicted of the offense shall be imprisoned in the county jail for a term not to exceed 6 months or fined an amount not to exceed $500, or both."

Approved May 6, 1999

HeinOnline -- 1999 vol. III 2555 1999

CHAPTER NO. 573

[SB 271]

AN ACT PROVIDING LIMITS ON LIABILITY FOR EMPLOYERS WHO DISCLOSE INFORMATION ABOUT A FORMER OR CURRENT EMPLOYEE'S EMPLOYMENT-RELATED PERFORMANCE TO A PROSPECTIVE EMPLOYER; PROVIDING THAT AN EMPLOYER'S ANSWER TO A REQUEST FROM A DISCHARGED EMPLOYEE FOR THE REASONS FOR DISCHARGE MAY NOT LIMIT THE EMPLOYER'S RIGHT TO PRESENT A FULL DEFENSE IN ANY WRONGFUL DISCHARGE ACTION; AMENDING SECTION 39-2-801, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Limits on liability of nonpublie employer who discloses employment information. A nonpublic employer who discloses information about a former or current employee's employment-related performance to a prospective employer of the employee upen request of the prospective employer or former or current employee is not liable for civil damages for the disclosure or any consequences related to the disclosure unless the employer knowingly, purposely, or negligently disclosed information that was false. For the purposes of tliis section, the definitions of knowingly, purposely, and negligently are those contained in 45-2-101.

Section 2. Section 39-2-801, MCA, is amended to read:

"39-2-801. Employee to be furnished on demand with reason for discharge. *(1)* It is the duty of any person after having discharged any employee from ~~his~~ service, upon demand by ~~such~~ *the* discharged employee, to furnish ~~him~~ *the discharged employee* in writing a ~~full, succinct, and complete~~ statement of ~~the reason of his~~ *reasons for the* discbarge. ~~and~~ *Except as provided in subsection (3),* if ~~such~~ *the* person refuses ~~so~~ to do *so* within a reasonable time after ~~such~~ *the* demand, it is unlawful ~~thereafter~~ for ~~such~~ *the* person to furnish any statement of the ~~reason~~ *reasons* ~~of such~~ *for the* discharge to any person or in any way to blacklist or to prevent ~~such~~ *the* discharged person from procuring employment elsewhere, subject to the penalties and damages prescribed in this part.

(2) A written demand under this part must advise the person who discharged the employee of the possibility that the statements may be used in litigation.

(3) A response to the demand may be modified at any time and may not limit a person's ability to present a full defense in any action brought by the discharged employee. Failure to provide a response as required under subsection (1) may not limit a person's ability to present a full defense in any action brought by the discharged employee."

Scction 3. Codification instruetion. [Section 1] is intended to be codified as an integral part of Title 27, chapter 1, part 7, and tbe provisions of Title 27, chapter 1, part 7, apply to [section 1].

Seetion 4. Effective date — applicability. [This act] is effective on passage and approval and applies to employment-related information disclosed on or after [the effective date of this act].

Approved May 5, 1999

HeinOnline -- 1999 vol. III 2556 1999

CHAPTER NO. 574

[SB 361]

AN ACT REVISING DEFINITIONS AND TERMINOLOGY RELATED TO GAME FARMS AND GAME FARM ANIMALS TO MEAN ALTERNATIVE LIVESTOCK RANCHES AND ALTERNATIVE LIVESTOCK; INCREASING ANNUAL LICENSE RENEWAL FEES; REVISING LICENSING REQUIREMENTS, REQUIREMENTS FOR REMOVAL OF GAME ANIMALS FROM ALTERNATIVE LIVESTOCK RANCHES AND RULEMAKING REQUIREMENTS; RENAMING THE GAME FARM ADVISORY COUNCIL AS THE ALTERNATIVE LIVESTOCK ADVISORY COUNCIL AND REVISING COUNCIL DUTIES WITH REGARD TO REVIEW OF LICENSE APPLICATIONS; REQUIRING ADOPTION OF A PROGRAMMATIC REVIEW PROCESS TO ASSESS ENVIRONMENTAL IMPACTS ASSOCIATED WITH A NEW ALTERNATIVE LIVESTOCK RANCH; AMENDING SECTIONS 81-1-102, 81-2-102, 81-2-702, 81-3-102, 81-9-217, 87-4-406, 87-4-407, 87-4-408, 87-4-409, 87-4-410, 87-4-411, 87-4-412, 87-4-413, 87-4-414, 87-4-415, 87-4-416, 87-4-417, 87-4-418, 87-4-419, 87-4-420, 87-4-422, 87-4-423, 87-4-424, 87-4-426, 87-4-427, 87-4-428, AND 87-4-432, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Purpose. The legislature recognizes that the production of alternative livestock provides a viable economic opportunity for any private property owner as well as the traditional livestock producers who are interested in diversifying their ranch productivity.

Section 2. Section 81-1-102, MCA, is amended to read:

"81-1-102. Duties and powers of department — fees based on costs. (1) The department shall exercise general supervision over and, so far as possible, protect the livestock interests of the state from theft and disease and recommend legislation ~~which~~ *that*, in the judgment of the department, fosters this industry. The department may compel the attendance of witnesses, employ counsel to assist in the prosecution of violations of laws made for the protection of ~~the~~ livestock interests, and assist in the prosecution of persons charged with illegal branding or theft of livestock or any other crime under the laws of this state for the protection of stock owners. It may adopt rules governing the recording and use of livestock brands.

(2) The department shall by rule estahlish all fees that it is authorized to charge, commensurate with costs as provided in 37-1-134.

(3) The department shall perform the duties assigned to the department relating to the administration and regulation of ~~game farms as described in Title 87, chapter 4, part 4~~ *alternative livestock ranches*."

Section 3. Section 81-2-102, MCA, is amended to read:

"81-2-102. Powers of department. (1) The department may:

(a) supervise the sanitary conditions of livestock in this state, under the provisions of the constitution and statutes of this state and the rules adopted by the department. The department may quarantine a lot, yard, land, building, room, premises, enclosure, or other place or section in this state ~~which~~ *that* is or may be used or occupied by livestock and ~~which~~ *that* in the judgment of the

HeinOnline -- 1999 vol. III 2557 1999

department is infected or contaminated with an infectious, contagious, communicable, or dangerous disease or disease-carrying medium by which the disease may be communicated. The department may quarantine livestock in this state when the livestock is affected with or has been exposed to disease or disease-carrying medium. The department may prescribe treatments and enforce sanitary rules ~~which~~ *that* are necessary and proper to circumscribe, extirpate, control, or prevent the disease.

(b) foster, promote, and protect the livestock industry in this state by the investigation of diseases and other subjects related to ways and means of prevention, extirpation, and control of diseases or to the care of livestock and its products and to this end may establish and maintain a laboratory, may make or cause to be made biologic products, curatives, and preventative agents, and may perform any other acts and things as may be necessary or proper in the fostering, promotion, or protection of the livestock industry in this state;

(c) impose and collect ~~such~~ fees ~~as~~ *that* the department considers appropriate for the tests and services performed by it at the laboratory or elsewhere and for biologic products, curatives, and preventative agents made or caused to be made by the department. In fixing these fees, the department shall take into consideration the costs, both direct and indirect, of the tests, services, products, curatives, and agents. All fees ~~shall~~ *must* be deposited in the state special revenue fund for the use of the animal health functions of the department.

(d) adopt rules and orders ~~which~~ *that* it considers necessary or proper to prevent the introduction or spreading of infectious, contagious, communicable, or dangerous diseases affecting livestock *and alternative livestock* in this state and to this end may adopt rules and orders necessary or proper governing inspections and tests of livestock *and alternative livestock* intended for importation into this state before it may be imported into this state;

(e) adopt rules and orders ~~which~~ *that* it considers necessary or proper for the inspection, testing, and quarantine of all livestock *and alternative livestock* imported into this state;

(f) adopt rules and orders ~~which~~ *that* it considers necessary or proper for the supervision, inspection, and control of the standards and sanitary conditions of slaughterhouses, meat depots, meat and meat food products, dairies, milk depots, milk and its byproducts, barns, dairy cows, factories, and other places and premises where meat or meat foods, milk or its products, or any byproducts thereof intended for sale or consumption as food are produced, kept, handled, or stored. An authorized representative of the department may take samples of a product so produced, kept, handled, or stored for analysis or testing by the department. The records of the samples and their analysis and test, when identified as to the sample by the oath of the officer taking it and verified as to the analysis or test by the oath of the chemist or bacteriologist making it, are prima facie evidence of the facts set forth in them when offered in evidence in a prosecution or action at law or in equity for violation of ~~part 1, 2, or 3 of this chapter,~~ 81-9-201, 81-20-101, 81-21-102, 81-21-103, *part 1, 2, or 3 of this chapter,* or a rule or order of the board adopted thereunder. These standards, insofar as they relate to dairies or milk and its byproducts, may not include standards of weight or measurement.

(g) adopt rules and orders ~~which~~ *that* seem necessary or proper for the supervision and control of manufactured and refined foods for livestock and the manufacture, importation, sale, and method of using a biologic remedy or

HeinOnline -- 1999 vol. III 2558 1999

curative agent for the treatment of diseases of livestock. However, as far as practicable, the standards approved by the United States department of agriculture ~~shall~~ *must* be adopted.

(h) install an adequate system of meat inspection in accordance with 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236 ~~which shall~~ *that must* provide ways and means for shipping home-grown and home-killed meats into any city in this state. As far as practicable, the rules ~~shall~~ *must* conform with the meat-inspection requirements of the United States department of agriculture.

(i) slaugbter or cause to be slaughtered any livestock in this state known to be affected with or ~~which~~ *that* has been exposed to an infectious, contagious, communicable, or dangerous disease, when ~~such~~ *the* slaughter is necessary for the protection of other livestock, and destroy or cause to be destroyed all barns, stables, sheds, outbuildings, fixtures, furniture, or personal property infected with any ~~such~~ infectious, contagious, communicable, or dangerous disease when they cannot be thoroughly cleaned and disinfected and the destruction is necessary to prevent the spreading of the disease;

(j) indemnify the owner of any property destroyed by order of the department or pursuant to any rules adopted by the department under ~~part 1, 2, or 3 of this chapter,~~ 81-20-101, 81-21-102, 81-21-103, *or part 1, 2, or 3 of this chapter*;

(k) require persons, firms, and corporations engaged in the production or handling of meat, meat food products, dairy products, or any byproducts thereof to furnish statistics of the quantity and cost of the food and food products produced or handled and the name and address of persons supplying them any of the products.

(2) When in the exercise of its powers or the discharge of its duties it becomes necessary for employees of the department to investigate facts and conditions, they may administer oaths, take affidavits, and compel the attendance and testimony of witnesses."

Section 4. Section 81-2-702, MCA, is amended to read:

"81-2-702. Definitions. As used in this part, the following definitions apply:

(1) "Animals" means livestock, dogs, cats, rabbits, rodents, game animals, ~~game farm animals,~~ fur-bearing and wild animals, and poultry and other birds.

(2) "Biologics" means medicinal preparations made from living organisms and their products. The term includes but is not limited to serums, vaccines, antigens, and antitoxins.

(3) "Department" means the department of livestock.

(4) "Health certificate" means a legible record written on an official health certificate form of the state of origin or on an equivalent form of the U.S. department of agriculture attesting that the animals, animal semen, or animal biologics described on the certificate have been visually inspected by a federally accredited veterinarian and found to meet the entry requirements of the state of Montana.

(5) "Livestock" means cattle, horses, mules, asses, sheep, llamas, alpacas, bison, swine, ostriches, rheas, emus, ~~and~~ goats, *alternative livestock as defined in 87-4-406, and other animals for purposes of disease prevention, control, and eradication.*

HeinOnline -- 1999 vol. III 2559 1999

(6) "Permit" means an official document issued by the department after proper application that allows the movement of animals, animal semen, or animal biologics into Montana.

(7) "Poultry" means domesticated birds, including but not limited to chickens, turkeys, ducks, geese, guinea fowl, pigeons, and pheasants."

Section 5. Section 81-3-102, MCA, is amended to read:

"81-3-102. Recording of brands required — ~~game farm animals~~ *alternative livestock* to be marked — limit. (1) It is unlawful for a person to artificially brand, mark, or cause to be artificially branded or marked any domestic animal or livestock running at large on the public domain or open range or that may run or stray at large ~~or~~ on the public domain or open range, unless the artificial brand or mark has been recorded or rerecorded with the department in the name of the person within the period of 10 years immediately preceding the branding or marking.

(2) ~~Game farm animals~~ *Alternative livestock*, as defined in 87-4-406, ~~exclusive of carnivores and omnivores,~~ must be identified by use of a recorded whole herd mark or brand in compliance with the requirements of Title 87, chapter 4, and this chapter.

(3) No more than five brands may be recorded or rerecorded by one person."

Section 6. Section 81-9-217, MCA, is amended to read:

"81-9-217. Definitions. As used in 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236, the following definitions apply:

(1) "Adulterated" means the term applied to meat if:

(a) it bears or contains a poisonous or deleterious substance that may render it injurious to health, except that if the substance is not an added substance, the product may not be considered adulterated if the quantity of the substance is insufficient to ordinarily render it injurious to health;

(b) it bears or contains, by reason of administration of any substance to the meat, an added poisonous or added deleterious substance other than a color additive, a food additive, or a pesticide chemical in or on a raw agricultural commodity, any of which may in the board's judgment make the meat unfit for human food;

(c) it is in whole or in part a raw agricultural commodity and bears or contains a pesticide chemical that is unsafe as provided in the Federal Food, Drug and Cosmetic Act;

(d) it bears or contains a food additive that is unsafe as provided in the Federal Food, Drug and Cosmetic Act;

(e) it bears or contains a color additive that is unsafe as provided in the Federal Food, Drug and Cosmetic Act; ~~provided that~~ *however,* the meat that is not otherwise considered adulterated under subsection (1)(c), (1)(d), or (1)(e) ~~of this section~~ is considered adulterated if use of the pesticide chemical, food additive, or color additive in or on the article is prohibited by rule of the board;

(f) it consists in whole or in part of any filthy, putrid, or decomposed substance or is for any other reason unsound, unhealthful, unwholesome, or otherwise unfit for human food;

HeinOnline -- 1999 vol. III 2560 1999

(g) it has been prepared, packed, or held under unsanitary conditions whereby it may have become contaminated with filth or rendered injurious to health;

(h) it is in whole or in part the product of an animal, including poultry, that has died otherwise than by slaughter;

(i) its container is composed in whole or in part of any poisonous or deleterious substance that may render the contents injurious to health;

(j) it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect pursuant to 21 U.S.C. 348; or

(k) any valuable constituent has been in whole or in part omitted or abstracted ~~therefrom~~ *from the meat*, any substance has been substituted wholly or in part ~~therefor~~ *for meat*, damage or inferiority has been concealed in any manner, or any substance has been added to it or mixed or packed with it so as to increase its bulk or weight~~,~~ or make it appear better or of greater value than it is.

(2) "Chief" means the chief meat inspector appointed as provided in 81-9-226.

(3) "Federal Food, Drug and Cosmetic Act" means 21 U.S.C. 301 through 392, as that law ~~reads~~ *read* on October 1, 1987.

(4) "Livestock" means cattle, buffalo, sheep, swine, goats, rabbits, horses, mules or other equines, and ~~game farm animals~~ *alternative livestock*, as defined in 87-4-406, whether alive or dead.

(5) "Livestock product" or "poultry product" means a product capable of use as human food that is wholly or partially made from meat and is not specifically exempted by rule of the board.

(6) "Meat" means the edible flesh of livestock or poultry and includes livestock and poultry products.

(7) "Misbranded" means the term applied to meat:

(a) if its labeling is false or misleading in any particular;

(b) if it is offered for sale under the name of another food;

(c) if it is an imitation of a meat product, unless its label bears, in type of uniform size and prominence, the word "imitation" and immediately thereafter the name of the food being imitated;

(d) if its container is so made, formed, or filled as to be misleading;

(e) if it does not bear a label showing:

(i) the name and place of business of the manufacturer, packer, or distributor; and

(ii) an accurate statement of the quantity of the product in terms of weight, measure, or numerical count. The board may adopt rules exempting small meat packages, meat not in containers, and other reasonable variations.

(f) if any word, statement, or other information required by 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236 to appear on the label is not prominently placed ~~thereon~~ *on the label*, as compared with other words, statements, designs, or devices in the labeling, and is not stated in terms that render it likely to be

HeinOnline -- 1999 vol. III 2561 1999

read and understood by the ordinary individual under customary conditions of purchase and use;

(g) if it is represented as a food for which a definition and standard of identity or composition has been prescribed by the rules of the board, unless:

(i) it conforms to the definition and standard; and

(ii) its label bears the name of the food specified in the definition and standard and, ~~insofar as~~ *if* required by the rules, the common names of optional ingredients present in ~~such~~ *the* food, other than spices, flavoring, and coloring;

(h) if it is represented as a food for which a standard of fill of container has been prescribed by rules of the board and it falls below the standard of fill of container applicable ~~thereto~~ *to the food*, unless its label bears, in the manner and form ~~as~~ *that* the rules specify, a statement that it falls below the standard;

(i) if it is not subject to the provisions of subsection (7)(g), unless its label bears:

(i) the common or usual name of the food, if any; and

(ii) in case it is fabricated from two or more ingredients, the common or usual name of each ingredient, except that spices, flavorings, and colorings may, when authorized by the board, be designated as spices, flavorings, and colorings without naming each. To the extent that compliance with the requirements of this subsection *(7)(i)*(ii) is impracticable or results in deception or unfair competition, exemptions must be established by rules promulgated by the board.

(j) if it purports to be for special dietary uses, unless its label bears ~~such~~ information concerning its vitamin, mineral, and other dietary properties as the board, after consultation with the U.S. secretary of agriculture, by rule prescribes as necessary in order to fully inform purchasers as to its value for ~~such~~ *those* uses;

(k) if it bears or contains an artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact, provided that to the extent that compliance with the requirements of this subsection *(7)*(k) is impracticable, exemptions must be established by rules promulgated by the board; or

(l) if it fails to bear directly ~~thereon~~ *on the meat* and on its containers, as the board may by rule prescribe, the official inspection legend and establishment number of the establishment where the product was prepared and other information ~~as~~ *that* the board may require to ~~assure~~ *ensure* that it will not have false or misleading labeling and that the public will be informed of the manner of handling required to maintain the meat in a wholesome condition.

(8) "Official establishment" means an establishment licensed by the board at which inspection of the slaughter of livestock or poultry or the preparation of meat food products is maintained under 81-9-216 through 81-9-220 and 81-9-226 through 81-9-236.

(9) "Pesticide chemical", "food additive", "color additive", and "raw agricultural commodity" have the same meanings as provided in 21 U.S.C. 321.

(10) "Poultry" means any domesticated bird, whether alive or dead.

(11) "Prepared" means slaughtered, canned, salted, stuffed, rendered, boned, cut up, or otherwise manufactured or processed."

Section 7. Section 87-4-406, MCA, is amended to read:

HeinOnline -- 1999 vol. III 2562 1999

"**87-4-406. Definitions.** As used in this part, the following definitions apply:

(1) *"Alternative livestock" means a privately owned caribou, white-tailed deer, mule deer, elk, moose, antelope, mountain sheep, or mountain goat indigenous to the state of Montana, a privately owned reindeer, or any other cloven-hoofed ungulate as classified by the department. Black bear and mountain lion must be regulated pursuant to Title 87, chapter 4, part 8.*

(2) "Alternative livestock ranch" means the enclosed land area upon which alternative livestock may be kept for purposes of obtaining, rearing in captivity, keeping, or selling alternative livestock or parts of alternative livestock, as authorized under this part.

(3) "Cloven-hoofed ungulate" means an animal of the order Artiodactyla, except a member of the families suidae, camelidae, or hippopotamidae. The term does not include domestic pigs, domestic cows, domestic yaks, domestic sheep, domestic goats that are not naturally occurring in the wild in their country of origin, or bison.

~~(2)~~*(4)* "Department" means the department of fish, wildlife, and parks.

~~(3)~~*(5)* "Facilities" means perimeter fences and other enclosures that provide for the confinement, handling, and quarantine of ~~game farm animals~~ *alternative livestock*.

~~(4)~~*(6)* "Game animals" means game animals, as defined in 87-2-101, that are not the lawful property of any private person.

~~(5) "Game farm" means the enclosed land area upon which game farm animals may be kept for purposes of obtaining, rearing in captivity, keeping, or selling game farm animals or parts of game farm animals, as authorized under this part.~~

~~(6) "Game farm animal" means a privately owned caribou, black bear, mountain lion, white-tailed deer, mule deer, elk, moose, antelope, mountain sheep, or mountain goat indigenous to the state of Montana, a privately owned reindeer, or any other cloven-hoofed ungulate as classified by the department.~~

(7) "Person" means an individual, firm, corporation, association, or partnership."

Section 8. Section 87-4-407, MCA, is amended to read:

"**87-4-407. License required — penalty — seizure of illegally possessed animals.** (1) A person may not operate ~~a game farm~~ *an alternative livestock ranch* in this state without first obtaining ~~a game farm~~ *an alternative livestock ranch* license from the department.

(2) A person who operates ~~a game farm~~ *an alternative livestock ranch* without a license or possesses, transports, buys, or sells animals whose importation into the state is restricted pursuant to 87-4-424 is guilty of a misdemeanor and is subject to the penalties provided in 87-4-427(4).

(3) Any animal held in violation of subsection (2) or otherwise illegally possessed may be immediately seized by the department and is subject to dispesal by the department. Costs of seizure may be charged to the person in possession of the animal."

Section 9. Section 87-4-408, MCA, is amended to read:

HeinOnline -- 1999 vol. III 2563 1999

"**87-4-408. Jurisdiction.** (1) The department has primary jurisdiction over ~~game farms~~ *alternative livestock ranches* with regard to licensing, *reports, recordkeeping, exterior fencing,* ~~reports and recordkeeping, exterior fencing, classification of exotic species, removal of game animals under 87-4-410,~~ *classification of certain species under 87-4-424, removal of game animals under 87-4-410, unlawful capture under 87-4-418,* inspection under 87-4-413, and enforcement of the functions listed in this subsection.

(2) The department of livestock has primary jurisdiction over ~~game farms relating to marking, inspection, transportation, importation, quarantine, hold orders, interior facilities, and health and relating to~~ *alternative livestock ranches with regard to marking, inspection, transportation, importation, quarantine, hold orders, interior facilities, health, and* the enforcement of the functions listed in this subsection."

Section 10. Section 87-4-409, MCA, is amended to read:

"**87-4-409. Application for license — limitations on issuance.** (1) A person desiring to obtain ~~a game farm~~ *an alternative livestock ranch* license shall make written application to the department on forms provided by the department. The application ~~shall~~ *must* specify:

(a) the applicant's name;

(b) the applicant's address;

(c) the name and address of the individual who will be the principal manager of the ~~game farm~~ *alternative livestock ranch*;

(d) the exact legal description of the land upon which the ~~game farm~~ *alternative livestock ranch* is to be located, *including the number of acres composing the alternative livestock ranch,* together with the nature of the applicant's title to the land, whether in fee, under lease, by contract for deed, or otherwise;

(e) the species of ~~game farm animals~~ *alternative livestock* proposed to be kept or reared on the ~~game farm~~ *alternative livestock ranch*;

(f) the type of facilities contemplated and the location of perimeter fencing;

(g) the source from which the applicant intends to acquire the ~~game animals~~ *alternative livestock*;

(h) if the applicant is not a Montana resident, the name and address of a Montana resident designated by the applicant as the applicant's local agent;

(i) if the applicant is a corporation, the full names and addresses of all stockholders owning more than 10% of the stock in the corporation; *and*

(j) information demonstrating that the applicant is responsible; ~~and~~

~~(j) information demonstrating that the applicant is responsible~~.

(2) Within 30 days of receipt of an application, the department shall notify the applicant in writing whether the application:

(a) is in compliance and is accepted as complete; or

(b) is not in compliance and shall list any deficiencies that must be corrected before the application is in compliance. The department shall return any noncomplying application to the applicant, who may resubmit the application upon correction of the deficiencies.

HeinOnline -- 1999 vol. III 2564 1999

(3) When an application is considered completed, the department shall provide a copy of the application to the department of livestock.

~~(3)~~*(4)* Within 120 days of the acceptance of a complete application, the department shall notify the applicant of its proposed decision to approve, approve with stipulations, or deny the application. If the department determines that the preparation of an environmental impact statement is required hy Title 75, chapter 1, and hy department rules adopted pursuant to the Montana Environmental Policy Act, then the department has an additional 180 days to act on the completed application. If required fencing has not heen completed, the department shall approve the application suhject to completion and approval of the fencing. If the application is denied or approved with stipulations, the department shall specify the reasons for denial or stipulations."

Seetion 11. Section 87-4-410, MCA, is amended to read:

"87-4-410. Removal of game animals. (1) If game animals are present on the land that is to be covered hy ~~a game farm~~ *an alternative livestock ranch* license, the license must be issued but must be conditioned upon the applicant complying with this section.

(2) Before the fence surrounding any land to be covered by ~~a game farm~~ *an alternative livestock ranch* may be closed, all game animals must ~~to the extent possible~~ be driven from the land by the applicant, at the applicant's expense ~~and under the observation of a representative of the department~~.

(3) ~~If at the time the license is issued all game animals cannot be removed from the licensed land, the applicant and a representative of the department shall decide within 60 days the approximate number of remaining game animals of each indigenous species. This number is the "base number".~~

~~(4)~~ The department ~~may remove the base number of~~ *shall verify that all* game animals *have been removed* from the ~~game farm within 120 days from the date the number was determined~~ *alternative livestock ranch prior to licensing. If absolute verification is impossible because of site-specific circumstances, the applicant shall immediately notify the department if any game animals are present after the verification process is complete. The department shall remove any remaining game animals as soon as practicable.*

~~(5) If the department decides not to remove the game animals or if some game animals were not successfully removed, the public must be granted access to harvest those game animals during a special hunt set for that purpose during the next regularly scheduled hunting season.~~

~~(6) After compliance with this section, any animals from the base number that remain and their progeny belong to the licensee. Under certain circumstances, a licensee may request a waiver from the identification and marking of animals in the base number on a licensed game farm.~~"

Section 12. Section 87-4-411, MCA, is amended to read:

"87-4-411. License and renewal fees — deposit of fees. (1) The department shall charge an initial ~~game farm~~ *alternative livestock ranch* license fee and an annual renewal fee hased on the following scale:

(a) ~~a game farm~~ *an alternative livestock ranch* with 1 to 20 ~~game farm animals~~ *alternative livestock*, an initial license fee of $200 and an annual renewal fee of ~~$50~~ *$100*;

HeinOnline -- 1999 vol. III 2565 1999

(b) ~~a game farm~~ *an alternative livestock ranch* with 21 to 60 ~~game farm animals~~ *alternative livestock*, an initial license fee of $300 and an annual renewal fee of ~~$100~~ *$200*; and

(c) ~~a game farm~~ *an alternative livestock ranch* with more than 60 ~~game farm animals~~ *alternative livestock*, an initial license fee of $400 and an annual renewal fee of ~~$200~~ *$400*.

(2) In addition to the fees assessed under subsection (1), the department shall charge applicants a fee of $4 an acre based on the total number of acres indicated in the application for a license. In cases of an application for a license modification, the fee applies only if an acreage expansion is proposed.

~~(2)~~*(3) The department of livestock shall assess a fee, not to exceed $50, for each alternative livestock imported into the state.*

(4) ~~The~~ *(a) One-half of the* fees *collected pursuant to subseetion (1) and all of the fees collected pursuant to subsection (2)* must he deposited in the state special revenue fund for the use of the department for purposes of this part.

(b) One-half of the fees collected pursuant to subsection (1) and all import fees collected pursuant to subsection (3) must be deposited in the statc special revenue fund for the use of the department of livestock for purposes of this part."

Section 13. Section 87-4-412, MCA, is amended to read:

"87-4-412. Term of license — renewal — transferability. (1) ~~A game farm~~ *An alternative livestock ranch* license expires on ~~January 31~~ *March 1* of the year succeeding the year of issuance. Application for renewal must be made before a license expires. The department shall renew the license upon payment of the renewal fee if the licensee has complied with all recording and reporting requirements.

(2) ~~A game farm~~ *An alternative livestock ranch* license for a specific facility is transferable with the consent of the department. The department's consent must be given if:

(a) the transferee meets the requirements of 87-4-426(1);

(b) the ~~game farm~~ *alternative livestock ranch* and facilities are in compliance with requirements in place at the time the license was issued;

(c) the ~~game farm~~ *alternative livestock ranch* is not under quarantine by the department ~~of livestock~~;

(d) ~~game farm animals~~ *alternative livestock* to be transferred are not prohibited under this part and department rules; and

(e) the transfer is not proposed as a means to evade a requirement imposed on the licensee."

Section 14. Section 87-4-413, MCA, is amended to read:

"87-4-413. Inspection. (1) Upon receipt of an application for ~~a game farm~~ *an alternative livestock ranch* license, the department shall inspect the land proposed to be covered by the license.

(2) ~~After issuance of a game farm license, the~~ *The* department may inspect the ~~game farm~~ *alternative livestock ranch* or the licensee's ~~game farm~~ *alternative livestock ranch* ~~books~~ *records* on a scheduled basis or on ~~such other~~ *another* reasonable basis as may be determined necessary."

HeinOnline -- 1999 vol. III 2566 1999

Section 15. Section 87-4-414, MCA, is amended to read:

"87-4-414. ~~Game farm animals~~ *Alternative livestock* as private property — source — marking. (1) All ~~game farm animals~~ *alternative livestock* lawfully possessed on a licensed ~~game farm~~ *alternative livestock ranch* are private property for which the licensee is responsible as provided by law.

(2) The licensee may acquire, breed, grow, keep, pursue, handle, harvest, use, sell, or dispose of the ~~game farm animals~~ *alternative livestock* and their progeny in any quantity and at any time of year as long as the licensee complies with the requirements of this part.

(3) A licensee shall mark ~~each game farm animal~~ *alternative livestock* in a manner approved by the department ~~of livestock~~ *of livestock*, as required under subsection (4), and that indicates ownership and provides individual identification of animals for inspection, transportation, reporting, and taxation purposes.

(4) The department ~~of livestock~~ *of livestock* is responsible for the control, tracking, and distribution of identification tags used for the marking of ~~game farm animals~~ *alternative livestock*. The department ~~of livestock~~ *of livestock* shall require that all imported ~~game farm animals~~ *alternative livestock* are marked within 30 days of importation and that all other ~~game farm animals~~ *alternative livestock* are marked prior to January 1 of each year. Each ~~game farm animal~~ *alternative livestock* must be marked with identification that:

(a) is unique to the animal;

(b) is nontransferable;

(c) bas an emblem owned and registered by the department ~~of livestock~~ *of livestock* that is embossed on each identification tag; and

(d) allows for the identification of ~~game farm animals~~ *alternative livestock* from a distance.

(5) Upon the request of a licensee, the department ~~of livestock~~ *of livestock* may grant a temporary waiver as to the time for identification and to the manner of identification if necessary to address a special circumstance.

(6) ~~Game farm animals~~ *Alternative livestock* must be lawfully acquired by the licensee. ~~A game farm animal~~ *Alternative livestock* may be kept only on a licensed ~~game farm~~ *alternative livestock ranch*. A licensee who keeps ~~a game farm animal~~ *alternative livestock* owned by, leased to, or leased from another person shall comply with all of the requirements of this part as if the animal belonged to the licensee. Records and reports submitted by the licensee pursuant to 87-4-417 must identify any ~~game farm animal~~ *alternative livestock* kept by the licensee during the reporting period and the name and address of the owner or lessee.

(7) Except ~~for importation permits and health certificates required under 81-2-703~~ *as otherwise provided in this part*, laws applicable to game animals do not apply to ~~game farm animals~~ *alternative livestock* raised on a licensed ~~game farm~~ *alternative livestock ranch*."

Section 16. Section 87-4-415, MCA, is amended to read:

"87-4-415. Transportation, sale, and disposal of ~~game farm animals~~ *alternative livestock* — quarantine. (1) Prior to selling, transferring, transporting, or disposing of one or more ~~game farm animals~~ *alternative livestock*, the ~~game farm~~ *alternative livestock ranch* licensee shall ~~contact the department~~

HeinOnline -- 1999 vol. III 2567 1999

~~of livestock to~~ request an inspection *of the alternative livestock, which inspection must be completed* by a ~~department of livestock designated~~ *department of livestock designated* agent ~~for all game farm animals, except carnivores and omnivores. In the case of carnivores and omnivores, the game farm licensee shall contact the department to request an inspection by a department official.~~ All dead ~~game farm animals, except carnivores and omnivores,~~ *alternative livestock* must be reported to the department ~~of livestock~~ *of livestock* within 1 working day of the discovery of the death.

(2) *(a)* ~~(a)~~ Inspection under subsection (1)~~, except inspection of carnivores and omnivores,~~ must be conducted pursuant to 81-3-203(1) through (3) and must include the number, species, age, sex, and individual identification numbers of ~~game farm animals~~ *alternative livestock* transported or disposed of.

(b) A copy of the certificate of inspection must be provided by the department of livestock to the department within 10 days of inspection.

~~(b) A copy of the certificate of inspection must be provided by the department of livestock to the department within 10 days of the inspection.~~

(3) The department ~~of livestock~~ *of livestock* may quarantine or issue a hold order on any ~~game farm animal~~ *alternative livestock* pending inspection and health certification. The department shall ~~advise~~ *notify* the department of ~~livestock~~ *livestock* regarding the importation or transportation of any ~~game farm animal~~ *alternative livestock* that the department reasonably believes may be infected with a disease specific to wildlife."

Section 17. Section 87-4-416, MCA, is amended to read:

"87-4-416. Sale of ~~game parts, meats, and byproducts~~ *carcass and meat — regenerative parts excluded.* (1) ~~A game farm~~ *An alternative livestock ranch* licensee may sell or otherwise dispose of the carcass~~, parts, or byproducts~~ of ~~a~~ properly identified ~~game farm animal~~ *alternative livestock* taken from ~~a game farm~~ *an alternative livestock ranch* in accordance with the provisions of 87-4-415. A copy of the certificate of inspection must be attached to the carcass or container. Upon the attaching of the certificate of inspection, the carcass~~, parts, or byproducts~~ of the ~~game farm animal~~ *alternative livestock* may be transported within the state to the transferee named on the certificate of inspection.

(2) The licensee may sell ~~game farm animals~~ *alternative livestock* for meat upon compliance with all applicable health laws.

(3) The sale of regenerative parts that may be harvested is specifically excluded from the requirements of this section."

Section 18. Section 87-4-417, MCA, is amended to read:

"87-4-417. Records and reporting — rules. (1) Each ~~game farm~~ *alternative livestock ranch* licensee shall keep and maintain for 3 years accurate written records of all *alternative livestock* purchases, transfers, sales, births, and deaths ~~of game farm animals~~, *on forms provided by the department,* showing:

(a) the number of each species of ~~game farm animal~~ *alternative livestock* purchased by the ~~game farm~~ *alternative livestock ranch* licensee and from whom purchased;

(b) the number of each species of ~~game farm animal~~ *alternative livestock* transferred or sold, the date of transfer or sale, and the name and address of the person to whom the transfer or sale was made; and

HeinOnline -- 1999 vol. III 2568 1999

(c) individual identification of each ~~game farm animal~~ *alternative livestock* that was purchased, transferred, sold, or born or that died. However, a calf or fawn that dies prior to being marked pursuant to 87-4-414(4) need not be identified.

(2) Unless a different reporting frequency has been established pursuant to subsection (3), within 2 weeks after January 1 and July 1 of each year, the ~~game farm~~ *alternative livestock ranch* licensee shall file a report with the department, showing the number and species of ~~game farm animals~~ *alternative livestock* that were on hand as of January 1 and July 1 and the number and species of ~~game farm animals~~ *alternative livestock* that escaped, that were bought, sold, transferred, recaptured, or born, or that died during the reporting period.

(3) The department may establish by rule the conditions under which the frequency of reporting requirements may be reduced to one report a year or increased to three reports a year. The department may establish by rule the conditions under which a licensee may submit an abbreviated report. In adopting those rules, the department shall consider the number of animals present on ~~a game farm~~ *an alternative livestock ranch*, the number of reported transactions during previous reporting periods, a history of accurate recordkeeping, and a historical absence of violations."

Section 19. Section 87-4-418, MCA, is amended to read:

"**87-4-418. Unlawful capture.** ~~No~~ *A* person may *not* capture, take, or otherwise acquire any game animal in this state for use on ~~a game farm~~ *an alternative livestock ranch* ~~except as provided in 87-4-410~~."

Section 20. Section 87-4-419, MCA, is amended to read:

"**87-4-419. Escape from ~~game farm~~ *alternative livestock ranch* — effect.** (1) If ~~a game farm~~ *an alternative livestock* animal escapes from ~~a game farm~~ *an alternative livestock ranch*, the ~~game farm~~ *alternative livestock* licensee shall immediately notify the department of its escape and shall make every reasonable effort to recapture it. If the escaped animal cannot be recaptured within a reasonable time, the department may kill the animal. If recapture or killing of the animal is unsuccessful within a reasonable time, the animal becomes the property of the state.

(2) The department shall by rule adopt a definition of "reasonable time", as used in this section, taking into consideration specific seasonal issues related to breeding and disease."

Section 21. Section 87-4-420, MCA, is amended to read:

"**87-4-420. Taxation.** All ~~game farm animals~~ *alternative livestock* raised on ~~a game farm~~ *an alternative livestock ranch* may be assessed as personal property of the owner *similar to other livestock*."

Section 22. Section 87-4-422, MCA, is amended to read:

"**87-4-422. Rulemaking.** (1) The department may adopt and enforce rules that are necessary to implement the provisions of this part *over which the department has primary jurisdiction and to coordinate regulation of alternative livestock ranches with the department of livestock* ~~over which the department has primary jurisdiction and to coordinate regulation of game farms with the department of livestock~~.

HeinOnline -- 1999 vol. III 2569 1999

(2) *The department of livestock may adopt and enforce rules that are necessary to implement the provisions of this part over which the department of livestock has primary jurisdiction and to coordinate regulation of alternative livestock ranches with the department of fish, wildlife, and parks.* ~~The department of livestock may adopt rules addressing the transportation and importation of game farm animals, restrictions on importation, identification, sale of game farm animal parts, quarantine, hold orders, interior facilities, health regulations, and the care and maintenance of game farm animals.~~

~~(3) Rules promulgated pursuant to this part must be adopted in accordance with the Montana Negotiated Rulemaking Act, Title 2, chapter 5, part 1.~~"

Section 23. Section 87-4-423, MCA, is amended to read:

"**87-4-423. Revocation of license — procedure — disposition of animals.** (1) Proceedings for the revocation of a license or the discipline of a licensee must be based on a determination by the department, after an investigation, that there is good cause and a sufficient factual basis to believe that the licensee or the principal manager is responsible for one or more of the acts or omissions set out in 87-4-427(1).

(2) The department may initiate revocation or disciplinary proceedings against a licensee by specifying the grounds in writing to the licensee and providing an opportunity for a hearing as provided in 87-4-428.

(3) Upon discovery of a violation of recordkeeping or reporting requirements that is not a material violation or an attempt to deceive, the department shall give notice of the violation to the licensee, with a statement that the violation must be corrected within 30 days of the notice, unless a longer period is approved by the department. Upon failure of the licensee to correct the violation, the department may institute revocation proceedings.

(4) *(a)* ~~(a)~~ A licensee whose license is revoked shall lawfully dispose of any ~~game farm animal~~ *alternative livestock* held pursuant to the license. Lawfully acquired and held ~~game farm animals~~ *alternative livestock* may be disposed of by the licensee within 180 days of the license revocation or within a longer period if specified by the department in the revocation order. After the expiration of this period, the department shall seize and dispose of any ~~game farm animals~~ *alternative livestock* that have not been lawfully disposed of by the licensee. Any proceeds that remain after deducting the department's expenses revert to the licensee. Any unrecovered costs may be charged to the licensee.

(b) The department, when it is determined to be necessary by the state veterinarian appointed pursuant to 81-1-301, may require that diseased or potentially diseased alternative livestock be quarantined or destroyed.

~~(b) The department, when it is determined to be necessary by the state veterinarian appointed pursuant to 81-1-301, may require that diseased or potentially diseased game farm animals be quarantined or destroyed.~~"

Section 24. Section 87-4-424, MCA, is amended to read:

"**87-4-424. Classification — restrictions on importation of certain species.** (1) In order to properly regulate importation:

(a) the department shall classify cloven-hoofed ungulates that have been determined through scientific investigation to pose a threat to native wildlife or livestock through nonspecific genetic dilution or habitat degradation or competition caused by feral populations of escaped ~~game farm animals~~ *alternative*

livestock and shall notify the department of livestock of any changes in classification as they occur; and

(b) the department of livestock shall classify cloven-hoofed ungulates that have been determined through scientific investigation to pose a threat to native wildlife or livestock through parasites or disease.

(2) The department of livestock shall restrict from importation for purposes of ~~game farming~~ *alternative livestock ranching* any species or subspecies and their hybrids with native species that have been classified in accordance with subsection (1) as posing a threat to native wildlife or livestock. Importation permitted by the department of livestock must comply with the requirements of Title 81, chapter 2, part 7. Copies of import permits issued by the department of livestock must be shared with the department within 10 calendar days. Other pertinent documentation relating to importation must be shared as it becomes available."

Section 25. Section 87-4-426, MCA, is amended to read:

"87-4-426. Criteria for issuance of license — fencing and enclosure requirements — rules. (1) ~~A game farm~~ *An alternative livestock ranch* license ~~may~~ *must* be issued by the department ~~only~~ to an applicant:

(a) who owns or leases the premises on which the operations are to be conducted;

(b) who has not been or whose principal manager has not been convicted of or who has not forfeited bond of $100 or more for more than one violation of the fish and game laws or applicable regulations of any state or the United States within a 5-year period prior to application;

(c) who has not or whose principal manager has not at any time pleaded guilty to or been convicted of a felony, unless civil rights have been restored pursuant to law. A person may not apply for licensure during any time in which a deferred or suspended felony sentence is in effect.

(d) who is or whose principal manager is at least 18 years of age.

(2) ~~A game farm~~ *An alternative livestock ranch* license must be issued by the department if:

(a) the applicant has properly fenced the perimeter of the land upon which the ~~game farm~~ *alternative livestock ranch* is to be located with *the approval of the department and with* fencing designed and constructed to prevent the escape of the species of ~~game farm animal~~ *alternative livestock* kept on the ~~game farm~~ *alternative livestock ranch* and to prevent the entry of the same species of game animal or other native game animal species capable of interbreeding with or contracting diseases or parasites from ~~game farm animals~~ *alternative livestock*;

(b) the application is for a single location;

(c) *it is demonstrated that the applicant or the applicant's principal manager has the necessary skills to properly care for alternative livestock or intends to employ a person who has those necessary skills; and*

(d) ~~it is demonstrated that the applicant or the applicant's principal manager has the necessary skills to properly care for game farm animals or intends to employ a person who has those necessary skills; and~~

HeinOnline -- 1999 vol. III 2571 1999

~~(d)~~ the application has not been denied under this section or issued with stipulations under subsection (3).

(3) An application for ~~a game farm~~ *an alternative livestock ranch* license may be denied in its entirety or issued with stipulations if necessary to prevent puhlic safety hazards or significant negative impacts to Montana's wildlife resources. Denial of an application or stipulations attached to ~~a game farm~~ *an alternative livestock ranch* license must be based on one or more of the following potential impacts ascribed to the physical location of the proposed ~~game farm~~ *alternative livestock ranch*:

(a) substantial loss or destruction of critical seasonal game animal habitat or habitat of federally designated threatened or endangered species under the Endangered Species Act of 1973, 16 U.S.C. 1531, et seq., including but not limited to critical breeding, birthing, rearing, and wintering areas;

(b) blockage or disruption of major traditional seasonal migration corridors or major travel routes;

(c) unacceptable threat of introduction or transmission of serious diseases or parasites to native wildlife populations, as determined by the state veterinarian appointed pursuant to 81-1-301;

(d) unacceptable threat of escape of captive ~~game farm animal~~s *alternative livestock* and establishment of feral populations tbat would result in hahitat damage or competition with or genetic pollution of native wildlife populations;

(e) the creation of a significant threat to the safety of the general public and surrounding landowners by the shooting of ~~game farm animals~~ *alternative livestock*.

(4) If the department determines that it will propose, within the time allowed under 87-4-409(3), to deny ~~a game farm~~ *an alternative livestock ranch* license or issue a license with stipulations, the applicant must be given an opportunity to make changes to the application within 30 days of receipt of the department's written determination in order to mitigate or correct any prohlems or deficiencies. The department shall reconsider the application with the proposed changes within 30 days of receipt of changes to the application before granting, proposing to deny, or proposing to issue the license with stipulations.

(5) *(a)* An applicant may request that the ~~commission~~ *alternative livestock advisory council* review a department proposal to deny ~~a game farm~~ *an alternative livestock ranch* license or to issue a license with stipulations by petitioning the ~~commission~~ *alternative livestock advisory council* for review within 10 days of the department's proposed decision. The ~~commission~~ *alternative livestock advisory council* shall ~~decide whether~~ *issue a recommendation to the commission* to *either* grant the license, propose to deny the license, or issue the license with stipulations. ~~The commission's decision then becomes the department's proposed decision, subject to an opportunity for hearing under 87-4-428.~~

(b) Upon receipt of the alternative livestock advisory council's recommendation pursuant to subsection (5)(a), the commission shall decide whether to grant the license, propose to deny the license, or issue the license with stipulations. The commission decision then becomes the department's proposed decision, subject to an opportunity for hearing under 87-4-428.

(6) The department shall by rule establish:

HeinOnline -- 1999 vol. III 2572 1999

(a) criteria for the classification of amendments to an existing license as major or minor; and

(b) an expeditious amendment process for minor amendments."

Section 26. Section 87-4-427, MCA, is amended to read:

"87-4-427. Revocation of license — criteria — penalties. (1) The department may revoke any ~~game farm~~ *alternative livestock ranch* license or impose any of the penalties or conditions specified in subsection (3) if the licensee or the principal manager has committed or is responsible for any of the following acts or omissions:

(a) failure to operate ~~a game farm~~ *an alternative livestock ranch* according to the provisions of this part, rules adopted under this part, or stipulations of the ~~game farm~~ *alternative livestock ranch* license;

(b) making a materially false statement in the license application;

(c) having pleaded guilty to or been convicted of a felony, including a case in which the sentence is suspended or imposition of the sentence is deferred, unless civil rights have been restored pursuant to law;

(d) two convictions or bond forfeitures of $100 or more for violations of the fish and game laws or applicable regulations of any state or the United States within the preceding 5 years;

(e) negligent or willful misconduct of the ~~game farm~~ *alternative livestock ranch* operation, including but not limited to the unauthorized egress and ingress of game animal species or ~~game farm animals~~ *alternative livestock* that:

(i) threatens public safety;

(ii) endangers native game animal populations or habitat through the establishment of feral populations, genetic pollution, or competition for forage or habitat; or

(iii) increases the risk of transmission of disease to native wildlife and the ~~game farm animals~~ *alternative livestock* of others;

(f) a material and willful falsification of any required ~~game farm~~ *alternative livestock ranch* records or reports;

(g) the purposeful capture of wild animals within the perimeter fence of ~~a game farm~~ *an alternative livestock ranch*;

(h) repeated failure to maintain or repair required fences or facilities; or

(i) any other willful conduct or omission that creates a substantial threat to other ~~game farm animals~~ *alternative livestock* and operators or to native wildlife or habitat.

(2) If misconduct under subsection (1)(e) is negligent, the licensee must be given notice and 30 days to correct the misconduct and any adverse impacts of the misconduct. Negligent misconduct may be grounds for license revocation only if the misconduct is not corrected after the initial notice or if the misconduct is repeated.

(3) If the department finds, after opportunity for a hearing required under 87-4-428, that ~~a game farm~~ *an alternative livestock ranch* licensee or the principal manager is responsible for any act or omission set out in subsection (1), the

HeinOnline -- 1999 vol. III 2573 1999

department may in its discretion impose any one or more of the following penalties upon the licensee:

(a) revocation of the ~~game farm~~ *alternative livestock ranch* license for up to 5 years;

(b) imposition of a civil penalty not to exceed $5,000, restoration of any damage to native wildlife, or both;

(c) deferral of the revocation of a license subject to the completion of or adherence to specified conditions; or

(d) reprimand of a licensee.

(4) In addition to the revocation of a license or other penalties allowed by this section, a person who purposely or knowingly violates this part or a rule adopted pursuant to this part is subject to criminal prosecution and a fine of not more than $1,000, imprisonment in the county jail for not more than 1 year, or both. Any violation of 87-3-118 is subject to prosecution and penalties under that section."

Section 27. Section 87-4-428, MCA, is amended to read:

"87-4-428. Right to administrative hearing. (1) An applicant must be given notice and an opportunity for a hearing on a proposed denial or issuance with stipulations of ~~a game farm~~ *an alternative livestock ranch* license pursuant to 87-4-426 before the department may deny a license or grant a license with stipulations.

(2) A licensee must be given notice and an opportunity for a hearing before the department may refuse to renew a license, withhold consent to the transfer of a license, revoke a license, or discipline a licensee.

(3) The notice and an opportunity for a hearing and any judicial appeal must he conducted as provided in Title 2, chapter 4, parts 6 and 7."

Section 28. Section 87-4-432, MCA, is amended to read:

"87-4-432. ~~Game farm~~ *Alternative livestock* advisory council — appointment of members — duties. (1) There is ~~a game farm~~ *an alternative livestock* advisory council to advise the department ~~and the department of livestock~~ on the administration of ~~game farms~~ *alternative livestock ranches* in this state.

(2) The ~~game farm~~ *alternative livestock* advisory council is composed of five members, appointed by the governor as follows:

(a) one member of the board of livestock or the department of livestock;

(b) one member of the fish, wildlife, and parks commission or the department;

(c) one member who is a representative of the ~~game farm~~ *alternative livestock* industry;

(d) one member who is a veterinarian licensed to practice veterinary medicine in this state; and

(e) one member who is a representative of the sportspersons of Montana.

(3) Members of the ~~game farm~~ *alternative livestock* advisory council shall serve *staggered* 2-year terms. A member may serve one additional consecutive 2-year term.

HeinOnline -- 1999 vol. III 2574 1999

(4) The ~~game farm~~ *alternative livestock* advisory council is attached to the department and the department of livestock in an advisory capacity only, as defined in 2-15-102. The department and the department of livestock shall provide staff support and assistance necessary for the council to perform its functions.

~~(5) Council members are not entitled to compensation or travel expenses as provided in 2-15-122.~~"

Section 29. Programmatic environmental review. (1) The department, in cooperation with the department of livestock, shall, by July 1, 2001, conduct a programmatic review of environmental impacts that may be associated with the granting of a license to operate an alternative livestock ranch.

(2) In consultation with the department of livestock, the department shall select a contractor to prepare the programmatic environmental review, which must be in the form of an environmental impact statement.

(3) In addition to the department of livestock, the department shall seek the assistance and participation of other governmental agencies that have special expertise in areas that should be addressed in the programmatic.

(4) For an alternative livestock ranch license application that is received after July 1, 2001, the department shall conduct an environmental review, if required, using the programmatic and tiering environmental impacts to the programmatic.

Section 30. Contingent voidness. If the 1999 legislature does not appropriate $134,000 to the department of fish, wildlife, and parks and $67,050 to the department of livestock to fund the development of the programmatic review as required in [section 29 of this act], then [this act] is void.

Section 31. Effective dates. (1) Except as provided in subsection (2), [this act] is effective October 1, 1999.

(2) [Sections 29(1), (2), and (3)] and this section are effective July 1, 1999.

Approved May 5, 1999

CHAPTER NO. 575

[SB 406]

AN ACT AUTHORIZING THE FORMATION OF BUYING COOPERATIVES TO PURCHASE ELECTRICITY FOR RESIDENTIAL AND SMALL COMMERCIAL CUSTOMERS IN INVESTOR-OWNED DISTRIBUTION UTILITY SERVICE TERRITORIES IN WHICH THOSE CUSTOMERS CAN CHOOSE AN ELECTRICITY SUPPLIER; AUTHORIZING THE PUBLIC SERVICE COMMISSION TO DESIGNATE ONE OR MORE DEFAULT SUPPLIERS FOR ELECTRICITY WITHIN AN INVESTOR-OWNED DISTRIBUTION UTILITY'S SERVICE TERRITORY; AMENDING SECTIONS 69-8-103, 69-8-201, AND 69-8-403, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

WHEREAS, residential and small commercial customers of investor-owned distribution utilities in Montana need access to reliable electricity supply at equitable prices; and

HeinOnline -- 1999 vol. III 2575 1999

WHEREAS, the aggregation of residential and small commercial customers that do not have access to competitive electricity suppliers at equitable prices provides them with market power to secure electricity at the least cost; and

WHEREAS, allowing one or more default suppliers to aggregate residential and small commercial customers to purchase electricity maximizes economies of scale, increases administrative efficiency, and provides maximum benefits to all small electricity customers; and

WHEREAS, wholesale competition in electricity markets may be facilitated by allowing entities to compete for the opportunity to provide electricity supply to those residential and small commercial customers on an aggregated basis; and

WHEREAS, the formation of nonprofit electricity buying cooperatives enhances the chances of securing for small customers the greatest amount of electricity at the least cost from the federal power system; and

WHEREAS, the state of Montana desires that its residents have access to the benefits of competitive retail electricity markets and federal Power Marketing Administration electricity; and

WHEREAS, federal Power Marketing Administration power or benefits should he distributed as widely and equitably as possible among small customers of open-access public utilities in the state of Montana in a manner that promotes efficient development and operation of the competitive retail electricity markets; and

WHEREAS, the state of Montana benefits by enacting legislation this session that maximizes the chances of an electricity buying cooperative being able to purchase power for small customers from the Bonneville Power Administration at preferential rates for the subscription period that begins in 2001.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [Sections 1 through 28] may be cited as the "Electricity Buying Cooperative Act".

Section 2. Definitions. As used in [sections 1 through 28], unless the context requires otherwise, the following definitions apply:

(1) "Distribution utility" means the electricity distribution portion of a public utility as defined in 69-8-103.

(2) "Residential customer" means a residential customer of a distribution utility.

(3) "Small commercial customer" means, for a distribution utility, individual accounts of a commercial customer with an average monthly demand in the previous calendar year of less than 100 kilowatts or a new commercial customer with an estimated average monthly demand of less than 100 kilowatts.

(4) "Small customer" means a residential customer or small commercial customer of a distribution utility.

Section 3. Jurisdiction of public service commission. The public service commission has jurisdiction to choose and regulate a buying cooperative that obtains a default supplier license, as provided in 69-8-403. If a buying cooperative that has obtained a default supplier license has the opportunity to obtain federal power marketing administration power, the public service commission also has jurisdiction over the purchase and distribution of that power, as provided in 69-8-403.

HeinOnline -- 1999 vol. III 2576 1999

Section 4. Permissible purpose of incorporation. A buying cooperative may be organized under this chapter only for the purpose of supplying electricity to small customers as a default supplier, pursuant to 69-8-403.

Section 5. Powers of buying cooperative. A buying cooperative may:

(1) sue and he sued in its corporate name;

(2) have existence for as long as it serves its purpose;

(3) adopt a corporate seal and alter the seal at pleasure;

(4) own, possess, and enjoy as much real and personal property as is necessary for the transaction of its business and sell and dispose of the property;

(5) borrow money, or otherwise contract indebtedness, and pledge its property, both real and personal, to secure tbe payment of the borrowed money or contract for debt;

(6) enter into contracts and other obligations for the purchase and sale of electricity to its members;

(7) sell or otberwise dispose of electricity on tbe wbolesale market not consumed by its members;

(8) conduct its business and exercise all of its powers within or outside of this state;

(9) adopt, amend, and repeal bylaws; and

(10) except as probibited in [section 6], do and perform all other acts and things and have and exercise all other powers that may be necessary, convenient, or appropriate to accomplish tbe purpose for which the buying cooperative is organized.

Section 6. Restrictions on powers of buying cooperative. Notwithstanding any other provision of this chapter, a buying cooperative may not:

(1) construct, purchase, take, receive, or otherwise acquire or own, hold, equip, maintain, or operate electric generating plants or transmission or distribution lines or systems, except that a buying cooperative may enter into transmission or distribution agreements for the lease or use of capacity on transmission and distribution systems;

(2) purchase electricity for or sell electricity to commercial or industrial electric consumers having individual accounts with an average monthly demand in the previous calendar year of 100 kilowatts or more or a new commercial or industrial customer with an estimated average monthly demand of 100 kilowatts or more; or

(3) offer for sale any products other than electricity supply.

Section 7. Waiver of notice. (1) If [sections 1 through 28] or the buying cooperative's articles of incorporation or bylaws require that notice be given, a person may waive the notice if the waiver is in writing and signed by the person entitled to the notice whetber before or after tbe time fixed for the giving of the notice.

(2) If a person entitled to notice of a meeting attends the meeting, the person's attendance constitutes a waiver of notice of the meeting, except in the case when the person attends the meeting for the express purpose of objecting to

HeinOnline -- 1999 vol. III 2577 1999

the transaction of any business because the meeting was not lawfully called or convened.

Section 8. Name. (1) The name of each buying cooperative must include the phrase "electricity buying cooperative" and the abbreviation "inc."

(2) The name of a buying cooperative must distinguish it from the name of another corporation organized under the laws authorized to transact business in this state.

(3) The phrase "electricity buying cooperative" may not be used in the name of any corporation organized under the laws of or authorized to transact business in this state, except a buying cooperative transacting business in this state pursuant to [sections 1 through 28].

Section 9. Incorporators. Five or more individuals may organize a buying cooperative, as provided in [sections 1 through 28].

Section 10. Articles of incorporation. (1) The articles of incorporation of a buying cooperative must state in the caption that the articles of incorporation are executed pursuant to [sections 1 through 28], must he sigued by each of the incorporators, and niust state:

(a) the name of the cooperative;

(h) the address of its principal office;

(c) the names and addresses of the incorporators;

(d) the names and addresses of the persons who constitute its first board of trustees; and

(e) any provisions not inconsistent with [sections 1 through 28] considered necessary or advisable for the conduct of its business and affairs.

(2) In addition to provisions required in subsection (1), the articles of incorporation may also contain:

(a) provisions, not inconsistent with law, eliminating or limiting liability as provided in [sections 1 through 28];

(b) provisions for classifications of members in a buying cooperative; and

(c) provisions for issuance of nonvoting stock.

(3) A buying cooperative's articles of incorporation must be submitted to the secretary of state for filing, as provided in [section 27].

(4) It is not necessary to include in the articles of incorporation of a buying cooperative the purpose for which it is organized or any of the corporate powers vested in a buying cooperative under [sections 1 through 28].

Section 11. Amendment of articles of incorporation. A buying cooperative may amend its articles of incorporation by complying with the following requirements:

(1) The proposed amendment must first be:

(a) approved by the board of trustees and then be submitted to a vote of the members at any annual or special meeting of the membership; or

(b) submitted by a petition bearing not less than 20% of the members' signatures, in accordance with the same procedures as those provided for member initiatives provided in [section 17].

HeinOnline -- 1999 vol. III 2578 1999

(2) The notice of the meeting on the proposed amendment must be included in the proposed amendment. The proposed amendment, witb the changes that the members choose to make to the amendment, is considered to be approved on tbe affirmative vote of not less than two-thirds of those meinbers voting on the amendment at the meeting.

(3) Upon an approval of the amendment by the members, the articles of amendment must be executed on behalf of the buying cooperative by its president or vice president and its corporate seal must be affixed to the articles of amendment and attestod by its secretary. The articles of amendment must include in the caption that the articles of amendment are executed pursuant to [sections 1 through 28] and must stato:

(a) the name of tbe buying cooperative;

(b) tbe address of its principal office;

(c) the date of the filing of its articles of incorporation in the office of the secretary of state; and

(d) the amendment to its articles of incorporation.

(4) The president or vice president executing the articles of amendment shall also make and attach to tbe articles of amendment an affidavit stating that the provisions of this section were met.

(5) The articles of amendment and the affidavit must be submitted to the secretary of state for filing, as provided in [section 27].

Seetion 12. Change of principal office without amendment. A buying cooperative may, without amending its articles of incorporation, upon authorization of its board of trustees, cbange the location of its principal office. The buying cooperative shall file a certificate of change of principal office executed by its president or vice president, under its seal attested by its secretary, with the secretary of stato's office. The buying cooperative shall also file a certificate of change of principal office in each county office in which tbe buying cooperative's articles of incorporation or any prior certificate of change of principal office of the buying cooperative bas been filed. Tbe buying cooperative sball pay the change in location of principal office fee prescribed in [section 27]. Tbe buying cooperative shall also, within 30 days after the filing of the certificate of change of principal office in any county office, file certified copies of its articles of incorporation and all article of incorporation amendments if not already on file in the county office.

Section 13. Bylaws. The original bylaws of a buying cooperative must be adopted by its board of trustees. After adoption by the board of trustees, the bylaws may be adopted, amended, or repealed by its members or, except as authorized in a bylaw, by its board of trustees. A bylaw may not prevent the members from reassuring sole power to amend bylaws or prevent members from otherwise adopting, amending, or repealing bylaws. The bylaws must include the rights and duties of members and trustees and inay contain other provisions for the regulation and inanagement of tbe affairs of the cooperative not inconsistent with [sections 1 through 28] or with the articles of incorporation.

Section 14. Membership. (1) Membership in a buying cooperative is restricted to small customers of a distribution utility.

HeinOnline -- 1999 vol. III 2579 1999

(2) A member may join a buying cooperative hy the methods prescribed in the buying cooperative's bylaws or may be assigned to a buying cooperative by the public service commission, as provided by commission rule.

Scction 15. Nonliability of members, trustces, and officers. (1) The private property of the members of a buying cooperative is exempt from execution for the debts of the buying cooperative, and a member may not be liable or responsible for any debts of the buying cooperative.

(2) A trustee or officer of a buying cooperative or acting for a buying cooperative is not personally liable to the buying cooperative or its members for any actions taken or any failure to take any action as a trustee or officer unless:

(a) the trustee or officer fails to perform the trustee's or officer's responsibilities or duties, including those in compliance with [sections 18 and 19]; and

(b) the failure to perform constitutes willful misconduct or recklessness.

Section 16. Meetings of members. (1) An annual meeting of the members must be held at a time that must be provided in the bylaws.

(2) Special meetings of the members may be called by the board of trustees, by any three trustees, by not less than 20% of the members, or by the president.

(3) Meetings of members must be held at a place designated in the bylaws. In the absence of a provision in the bylaws that designates a meeting place, all meetings must be held at a place determined by the board of trustees.

(4) Except as otherwise provided, written or printed notice stating the time and place of each meeting of members and, in the case of a special meeting, the purpose or purposes for which the meeting is called must be given to each member, either personally or by mail, not less than 10 or more than 25 days before the date of the meeting.

(5) Five percent of all members present in person or 50 members present in person, whichever is fewer, constituto a quorum for the transaction of business at all meetings of the members, but the hylaws may prescribe the presence of a greater percentage or number of the members for a quorum. If less than a quorum is present at a meeting, a majority of those present in person may adjourn the meeting from time to time without further notice.

(6) Each member is entitled to one voto on each matter submitted to a vote at a meeting. Voting must be in person but, if the bylaws allow, voting may also he by proxy or by mail, or both or if the bylaws allow, by the method provided in [section 20]. If the bylaws provide for voting by proxy or by mail, the bylaws must also prescribe the conditions under which proxy or mail voting or both are to be exercised. In any event, a person may not vote as a proxy for more than three members at a meeting of the members.

Section 17. Initiative by members — approval of trustecs not required. (1) Notwithstanding any other provision of [sections 1 through 28], there must be submitted to the members of a buying cooperative any proposition embodied in a petition signed by not less than 20% of its members, together with any document submitted with the petition to give the effect to the proposition, either at a special meeting of the members held within 45 days after the presentation of the petition or, if the date of the next annual meeting of members falls within 90 days after the presentation or if the petition specifically requests, at the annual meeting.

HeinOnline -- 1999 vol. III 2580 1999

(2) The approval of the board of trustees is not required for any proposition or document submitted to the members pursuant to this section and approved by tbem, but any proposition or document is subject to all other applicable provisions of [sections 1 through 28]. The affidavit or affidavits required to be filed with this proposition or document pursuant to applicable provisions of [sections 1 through 28] must be modified to be in compliance with the provisions of this section.

Section 18. Board of trustees — number — qualifications — removal — compensation — joint memberships. (1) The business and affairs of a buying cooperative must be managed by or under the direction of a board of not less than five trustees, each of whom must be a member of the buying cooperative. The bylaws must prescribe the number of trustees, their qualifications, other than tbose provided for in [sections 1 through 28], the manner of holding meetings of the board of trustees and of the election of successors to trustees who resign, die, or are otherwise incapable of acting. The bylaws may also provide for the removal of trustees from office and for the election of their successors.

(2) Without approval of the membership, trustees:

(a) may not receive any salaries for their services as trustees, except trustees may receive the same insurance coverage provided to buying cooperative employees; and

(b) except in emergencies, may not be employed by the buying cooperative in a capacity involving compensation.

(3) The bylaws may provide that the board of trustees may establish a fixed sum, including expenses of attendance, if any, to be allowed for:

(a) attendance at each meeting of the board of trustees or any committee of the board of trustees; or

(b) representing the buying cooperative at a meeting or on business whenever representation has been approved by the board.

(4) If two or more persons bold a joint membership in a buying cooperative, one person, but not more than one person, from a joint membership may be elected a trustee.

(5) The policies of the buying cooperative may provide that benefits provided to employees may be extended to trustees.

Section 19. Trustees — term — quorum — powers. (1) The trustees of a buying cooperative named in articles of incorporation shall hold office until the next following annual meeting of the members or until their successors have been elected and qualified. At each annual meeting or, in case of failure to hold the annual meeting as specified in the bylaws, at a special meeting called for that purpose, the members shall elect trustees who may serve for 1-, 2-, or 3-year terms. Each trustee shall hold office for the term for which that trustee is elected or until the trustee's successor has been elected and qualified.

(2) A majority of the board of trustees constitutes a quorum.

(3) The board of trustees may exercise all of the powers of a buying cooperative, except those powers that are conferred upon the members by [sections 1 through 28] or by its articles of incorporation or bylaws.

Section 20. Voting districts. (1) Notwithstanding any other provisions of [sections 1 through 28], the bylaws may provide that the territory or geographic

HeinOnline -- 1999 vol. III 2581 1999

area in which a buying cooperative operates to serve its members, or a class or classes of members, must be divided into two or more voting districts and that in respect to each voting district:

(a) the members or the members of a membership class or classes residing in the voting district shall elect a designated number of trustees;

(b) the members or the members of a membership class or classes residing in the voting district shall elect a designated number of delegates; or

(c) the members or the members of a membership class or classes shall elect both trustees and delegates.

(2) This section does not restrict or prohibit a buying cooperative from using a combination of voting districts based on members or classes of members with a territory or geographical area or voting districts at large based on members or classes of members using one or more kinds of services or products provided by the buying cooperative.

(3) The bylaws must prescribe the manner in which the voting districts and the members or membership classes of those voting districts and the delegates and trustees, if any, elected from those voting districts shall function and the powers of the delegates, which may include the power to elect trustees and adopt, amend, or repeal the bylaws of a buying cooperative as provided in [sections 1 through 28].

(4) A member at a voting district meeting and a delegate at a meeting may not vote by proxy or by mail.

Section 21. Officers. The officers of a buying cooperative consist of a president, vice president, secretary, and treasurer who are elected annually by and from the board of trustees. A person may not continue to hold any of the above offices after that person has ceased to be a trustee. The offices of secretary and of treasurer may be held by the same person. The board of trustees may also elect or appoint other buying cooperative officers, agents, or employees that it considers necessary or advisable and shall prescribe the powers and duties of those other officers, agents, or employees. An officer may be removed from office and a successor elected in the manner prescribed in the bylaws.

Section 22. Authority to take acknowledgments. A person who is authorized to take acknowledgments under the laws of this state may not be disqualified from taking acknowledgments of instruments executed in favor of a buying cooperative or to which it is a party by reason of being an officer, trustee, director, or member of the buying cooperative.

Section 23. Refunds to members — retention of unclaimed refunds. (1) Revenue of a buying cooperative for any fiscal year must, unless otherwise determined by a vote of the members, be distributed by the buying cooperative to its members as patronage refunds, prorated in accordance with the patronage of the buying cooperative by the respective members paid for during the fiscal year, whenever the revenue exceeds the amount necessary to:

(a) defray expenses of the buying cooperative and of the operation and maintenance of its facilities during the fiscal year;

(b) pay interest and principal obligations of the buying cooperative coming due in the fiscal year;

HeinOnline -- 1999 vol. III 2582 1999

(c) finance or provide a reserve for the financing of the construction or acquisition by the buying cooperative of additional facilities to the extent determined by the board of trustees;

(d) provide a reasonable reserve for working capital; and

(e) provide a reserve for the payment of indebtedness of the buying cooperative maturing more than 1 year after the date of the incurrence of the indebtedness in an amount not less than the total of the interest and principal payments required to be made during the next fiscal year.

(2) This section may not be construed to prohibit the payment by a buying cooperative of all or any part of its indebtedness prior to the date when the payment becomes due.

(3) A buying cooperative shall, upon the action of the board of trustees, retain redeemed patronage refunds that are allocated to its members and that remain unclaimed for a period of 5 years after the end of the year in which the refunds are given. Unclaimed redeemed patronage refunds retained by the buying cooperative must he used for educational purposes.

Section 24. Disposition or encumbrance of property. (1) Except as provided in subsection (2), or other than as arises relating to the issuance of stock or for any sale, mortgaga, lease, transfer, or other disposition or encumbrance of property to any entity owned or controlled by the buying cooperative or in which the buying ceoperative holds a majority interest or for any disposition or encumbrance arising from or in connection with the issuance of shares of stock, if any is authorized, a buying cooperative may not sell, mortgage, lease, or otherwise dispose of or encumber all or any substantial portion of its property unless the sale, mortgage, lease, or other disposition or encumhrance is authorized at a duly held meeting of members of the buying cooperative by an affirmative vote of not less than two-thirds of all the memhers of the buying cooperative and unless the notice of the proposed sale, mortgage, lease, or other disposition or encumbrance is contained in the notice of the meeting.

(2) The board of trustees of a buying cooperative, without authorization by the members of the buying cooporative, has the full power and authority to authorize the execution and delivery of a mortgage or mortgages or a deed or deeds of trust upon or the pledging or encumbrancing of any or all of the property, assets, rights, privileges, licenses, franchises, and permits of the huying cooperative, whether acquired or to be acquired and wherever situated, as well as the revenue and income from the proporty, assets, rights, privileges, licenses, franchises, and permits of the buying cooperative, all upen the terms and conditions that the board of trustees determines, to secure any indebtedness of the buying cooperative or any entity owned or controlled by the buying cooperative or in which the huying cooperative owns a majority interest to the United States or any instrumentality or agency of the United States or to any other financing sources within the United States.

(3) Before a meeting is held te vote on authorization of disposition of buying cooperative proporty as provided in subsection (1), the board of trustees shall:

(a) have the proporty appraised by three appraisers chosen by the board and not associated with the buying cooperative or a proposed buyer of huying cooperative proporty;

HeinOnline -- 1999 vol. III 2583 1999

(b) notify all buying cooperative members, at least 90 days in advance, of a meeting to vote on disposition of buying cooperative property. Detailed proposals for disposition of the property must accompany the notice; and

(c) at least 30 days before the meeting, mail to all members any alternative proposal made by buying cooperative members if it has been submitted to the board and signed by 50 or more members.

(4) The vote on property disposition may take place at an annual meeting if the board notifies the members as provided in this section.

Section 25. Dissolution of buying cooperative that has not commenced business. (1) A buying cooperative that has not commenced business may dissolve voluntarily by delivering to the secretary of state articles of dissolution, executed on behalf of the buying cooperative by a majority of the incorporators. The articles of dissolution must state:

(a) the name of the buying cooperative;

(b) the address of its principal office;

(c) the date of its incorporation;

(d) that the buying cooperative has not commenced business;

(e) that the amount, if any, actually paid in on account of membership fees, less any part of the amount disbursed for necessary expenses, has been returned to those entitled to money;

(f) that there are not any unpaid buying cooperative debts; and

(g) that a majority of the incorporators elect that the buying cooperative be dissolved.

(2) The articles of dissolution must be submitted to the secretary of state for filing, as provided in [sections 1 through 28].

Section 26. Dissolution and winding up of buying cooperative that has commenced business. A buying cooperative that has commenced business may dissolve voluntarily and wind up its affairs in the following manner:

(1) The board of trustees shall first recommend that the buying cooperative be dissolved voluntarily, and after that, the proposition that the buying cooperative be dissolved must be submitted to the members of the buying cooperative at any annual or special meeting. The notice of the annual or special meeting must include the proposition. The proposed voluntary dissolution is considered approved upon the affirmative vote of not less than two-thirds of all of the members of the buying cooperative.

(2) Upon approval of the voluntary dissolution, a certificate of election to dissolve is executed on behalf of the buying cooperative by its president or vice president and its corporate seal must be affixed to the certificate and attested by its secretary or assistant secretary. The certificate must state the:

(a) name of the buying cooperative;

(b) address of its principal office;

(c) names and addresses of its trustees; and

(d) total number of members who voted for and against the voluntary dissolution of the buying cooperative. The president or vice president executing the certificate shall also make and annex to the certificate an affidavit stating

HeinOnline -- 1999 vol. III 2584 1999

that the provisions of this subsection were complied with. The certificate and affidavit must be submitted to the secretary of state for filing as provided in [sections 1 through 28].

(3) Upon the filing of the certificate provided for in subsection (2) and an affidavit with the secretary of state, the buying cooperative shall cease to carry on its business except to the extent necessary for winding up the business of the buying cooperative, but its corporate existence must continue until articles of dissolution have been filed by the secretary of state.

(4) After the filing of the certificate and affidavit with the secretary of state, the board of trustees shall immediately mail a notice of the winding up proceedings to each known creditor and claimant and publish the notice once a week for 2 successive weeks in a newspaper of general circulation in the county in which the principal office of the buying cooperative is located.

(5) The board of trustees has the full power to wind up and settle the affairs of the buying cooperative and shall proceed to collect the debts owing to the buying cooperative, convey and dispose of its property and assets, pay, satisfy, and discharge its debts, obligations, and liabilities, and do all other things required to liquidate its business and affairs, and after paying or adequately providing for the payment of all its debts, obligations, and liabilities, the board of trustees shall distribute the remainder of its property and assets among its members in proportion to the aggregate patronage of each buying cooperative member:

(a) during the period preceding the date of the filing of the certificate that encompasses the longest period of time in effect prior to the buying cooperative dissolution for determination of members who are entitled to the patronage refunds for the capital redemption period; or

(b) if the buying cooperative was not in existence for the period provided for in subsection (5)(a), then during the period of its existence.

(6) When all debts, liabilities, and obligations of the buying cooperative have been paid and discharged or adequate provision has been made in return for all debts, liabilities, and obligations and all of the remaining property and assets of the buying cooperative are distributed to the members pursuant to the provisions of this section, the board of trustees shall authorize the execution of articles of dissolution that must be executed on behalf of the buying cooperative by its president or vice president and its corporate seal must be affixed to the articles of dissolution and attested by its secretary. The articles of dissolution must include in the caption that the articles of dissolution are executed pursuant to [sections 1 through 28] and must state:

(a) the name of the buying cooperative;

(b) the address of the principal office of the buying cooperative;

(c) that the buying cooperative has up to this time filed with the secretary of state a certificate of election to dissolve and the date on which the certificate was filed;

(d) that all debts, obligations, and liabilities of the buying cooperative have been paid and discharged or that adequate provision has been made in return for all debts, obligations, and liabilities;

HeinOnline -- 1999 vol. III 2585 1999

(e) that all the remaining property and assets of the buying cooperative have been distributed among the members in accordance with the provisions of this section; and

(f) that there are not any actions or suits pending against the buying cooperative. The president or vice president executing the articles of dissolution shall also make and annex to the articles of dissolution an affidavit stating that the provisions of this subsection (6) were met. The articles of dissolution and affidavit, accompanied by proof of the publication required in this subsection, must be submitted to the secretary of state for filing as provided in [sections 1 through 28].

Section 27. Incorporation, amendment, and dissolution filings. (1) Articles of incorporation, amendment, or dissolution, when executed and accompanied by an affidavit that may be required by applicable provisions of [sections 1 through 28], must he presented to the secretary of state for filing. If the secretary of state finds that the articles presented conform to the requirements of [sections 1 through 28], the secretary of state shall upon the payment of the fees provided for in 35-18-502, file the articles, and upon the filing, the incorporation, amendment, or dissolution is legally effective.

(2) The secretary of state, immediately upon the filing of any articles pursuant to [sections 1 through 28], shall transmit a certified copy of the filing to the county clerk of the county in which the principal office of each buying cooperative or corporation affected hy the incorporation, amendment, or dissolution is located. The clerk of any county, upon receipt of the certified copy, shall file and index the certified copy in the records of the clerk's office. Failure of the secretary of state or of a clerk of a county to comply with the provisions of this section does not invalidate the articles.

(3) The provisions of this section also apply to certificates of election to dissolve and affidavits of compliance executed pursuant to [section 26].

Section 28. Exemption from taxes. Buying cooperatives transacting husiness in this state pursuant to [sections 1 through 28] are exempt from all excise and income taxes, other than any applicahle fees to fund the Montana consumer counsel and the puhlic service commission as provided in Title 69, chapter 1, parts 2 and 4.

Section 29. Section 69-8-103, MCA, is amended to read:

"69-8-103. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Aggregator" or "market aggregator" means an entity, licensed by the commission, that aggregates retail customers and purchases electric energy and takes title to electric energy as an intermediary for sale to retail customers.

(2) "Assignee" means any entity, including a corporation, partnership, board, trust, or financing vehicle, to which a utility assigns, sells, or transfers, other than as security, all or a portion of the utility's interest in or right to transition property. The term also includes an entity, corporation, public authority, partnership, trust, or financing vehicle to which an assignee assigns, sells, or transfers, other than as security, the assignee's interest in or right to transition property.

(3) "Board" means the board of investments created by 2-15-1808.

HeinOnline -- 1999 vol. III 2586 1999

(4) "Broker" or "marketer" means an entity, licensed hy the commission, that acts as an agent or intermediary in tlie sale and purchase of electric energy but that does not take title to electric energy.

(5) "Cooperative utility" means:

(a) a utility qualifying as an electric cooperative pursuant to Title 35, chapter 18; or

(b) an existing municipal electric utility as of May 2, 1997.

(6) "Customer" or "consumer" means a retail electric customer or consumer. Tbe university of Montana, pursuant to 20-25-201(1), and Montana state university, pursuant te 20-25-201(2), are each considered a single retail electric customer or consumer with a single individual load.

(7) "Default supplier" means a distribution services provider or a person that has received a default supplier license from the commission.

~~(7)~~*(8)* "Distribution facilities" means those facilities by and through wliich electricity is received from a transmission services provider and distributed to tlie customer and that are controlled or operated by a distribution services provider.

~~(8)~~*(9)* "Distribution services provider" means a person controlling or operating distribution facilities for distribution of electricity to the public.

~~(9)~~*(10)* "Electricity supplier" means any person, including aggregators, market aggregators, brokers, and marketers, offering to sell electricity to retail customers in the state of Montana.

~~(10)~~*(11)* "Financing order" means an order of the commission adopted in accordance with 69-8-503 that authorizes the imposition and collection of fixed transition amounts and tbe issuance of transition bonds.

~~(11)~~*(12)* (a) "Fixed transition amounts" means those nonbypassable rates or charges, including but not limited to:

(i) distribution;

(ii) connection;

(iii) disconnection; and

(iv) termination rates and charges that are authorized by the commission in a financing order to permit recovery of transition costs and the costs of recovering, reimbursing, financing, or refinancing the transition costs and acquiring transition property through a plan approved by the commission in tlie financing order, including the costs of issuing, servicing, and retiring transition bonds.

(b) If requested by the utility in the utility's application for a financing order, fixed transition amounts must include nonbypassable rates or charges to recover federal and stato taxes in which tlie transition cost recovery period is modified by the transactions approved in the financing order.

~~(12)~~*(13)* "Functionally separate" means a utility's separation of the utility's electricity supply, transmission, distribution, and unregulated retail energy services assets and operations.

~~(10)~~*(14)* "Local governing body" means a local board of trustees of a rural electric cooperative.

HeinOnline -- 1999 vol. III 2587 1999

~~(14)~~*(15)* "Low-income customer" means those energy consumer households and families with incomes at or helow industry-recognized levels that qualify those consumers for low-income energy-related assistance.

~~(15)~~*(16)* "Nonbypassable rates or charges" means rates or charges approved by the commission imposed on a customer to pay the customer's share of transition costs or universal system benefits program costs even if the customer has physically bypassed either the utility's transmission or distribution facilities.

~~(15)~~*(17)* "Pilot program" means a program using a representative sample of residential and small commercial customers to assist in developing and offering customer choice of electric supply for all residential and commercial customers.

~~(17)~~*(18)* "Puhlic utility" means any electric utility regulated by the commission pursuant to Title 69, chapter 3, on May 2, 1997, including the public utility's successors or assignees.

(19) "Small customer" means a residential customer or a small commercial customer who has an individual account with an average monthly demand in the previous calendar year of less than 100 kilowatts or a new commercial customer with an estimated average monthly demand of less than 100 kilowatts of a public utility distribution services provider that has opened access on its distribution system pursuant to [sections 1 through 28] or this chapter.

~~(15)~~*(20)* "Transition bondholder" means a holder of transition honds including trustees, collateral agents, and other entities acting for the henefit of that holder.

~~(19)~~*(21)* "Transition bonds" means any hond, debenture, note, interim certificate, collateral, trust certificate, or other evidence of indehtedness or ownership issued hy the hoard or other transition bonds issuer that is secured by or payable from fixed transition amounts or transition property. Proceeds from transition bonds must be used to recover, reimburse, finance, or refinance transition costs and to acquire transition property.

~~(20)~~*(22)* "Transition charge" means a nonbypassahle rate or charge to be imposed on a customer to pay the customer's share of transition costs.

~~(21)~~*(23)* "Transition cost recovery period" means the period beginning on July 1, 1998, and ending when a utility customer does not have any liability for payment of transition costs.

~~(22)~~*(24)* "Transition costs" means:

(a) a public utility's net verifiable generation-related and electricity supply costs, including costs of capital, that become unrecoverable as a result of the implementation of this chapter or of federal law requiring retail open access or customer choice;

(b) those costs that include but are not limited to:

(i) regulatory assets and deferred charges tbat exist hecause of current regulatory practices and can be accounted for up to the effective date of the commission's final order regarding a puhlic utility's transition plan and conservation investments made prior to universal system benefits charge implementation;

(ii) nonutility and utility power purchase contracts, including qualifying facility contracts;

(iii) existing generation investments and supply commitments or other obligations incurred before May 2, 1997, and costs arising from these investments and commitments;

(iv) the costs associated with renegotiation or buyout of the existing nonutility and utility power purchase contracts, including qualifying facilities and all costs, expenses, and reasonable fees related to issuing transition bonds; and

(v) the costs of refinancing and retiring of debt or equity capital of the public utility and associated federal and state tax liabilities or other utility costs for which the use of transition bonds would benefit customers.

~~(23)~~*(25)* "Transition period" means the period beginning on July 1, 1998, and ending on July 1, 2002, unless otherwise extended pursuant to this chapter, during which utilities may phase in customer choice of electricity supplier.

~~(24)~~*(26)* "Transition property" means the property right created by a financing order including without limitation the right, title, and interest of a utility, assignee, or other issuer of transition bonds to all revenue, collections, claims, payments, money, or proceeds of or arising from or constituting fixed transition amounts that are the subject of a financing order including those nonbypassable rates and other charges and fixed transition amounts that are authorized by the commission in the financing order to recover transition costs and the costs of recovering, reimbursing, financing, or refinancing the transition costs and acquiring transition property including the costs of issuing, servicing, and retiring transition bonds. Any right that a utility has in the transition property before the utility's sale or transfer or any other right created under this section or created in the financing order and assignable under this chapter or assignable pursuant to a financing order is only a contract right.

~~(23)~~*(27)* "Transmission facilities" means those facilities that are used to provide transmission services as determined by the federal energy regulatory commission and the commission.

~~(23)~~*(28)* "Transmission services provider" means a person controlling or operating transmission facilities.

~~(27)~~*(29)* "Universal system benefits charge" means a nonbypassable rate or charge to be imposed on a customer to pay the customer's share of universal system benefits program costs.

~~(28)~~*(30)* "Universal system benefits programs" means public purpose programs for:

(a) cost-effective local energy conservation;

(b) low-income customer weatherization;

(c) renewable resource projects and applications, including those that capture unique social and energy system benefits or provide transmission and distribution system benefits;

(d) research and development programs related to energy conservation and renewables;

(e) market transformation designed to encourage competitive markets for public purpose programs; and

(f) low-income energy assistance.

HeinOnline -- 1999 vol. III 2589 1999

~~(29)~~*(31)* "Utility" means any public utility or cooperative utility."

Section 30. Section 69-8-201, MCA, is amended to read:

"69-8-201. Public utility — transition to customer choice — waiver. (1) A public utility shall, except as provided in this section, adhere to the following deadlines:

(a) On or before July 1, 1998, all customers with individual loads greater than 1,000 kilowatts and for loads of the same customer with individual loads at a meter greater than 300 kilowatts that aggregate to 1,000 kilowatts or greater must have the opportunity to choose an electricity supplier.

(b) Subject to subsection (2), and as soon as is administratively feasible but before July 1, 2002, all other public utility customers must have the opportunity to choose an electricity supplier.

(2) (a) Except as provided for in subsection ~~(3)~~ *(4)*, the commission may determine that additional time is necessary for customers identified in subsection (1)(b); however, the implementation of full customer choice may not be delayed beyond July 1, 2004.

(b) A determination by the commission that additional time is necessary for subsection (1)(b) customers must be made at least 60 days in advance of the scheduled date and must be based on one or more of the following considerations:

(i) implementation would not be administratively feasible;

(ii) implementation would materially affect the reliability of the electric system; or

(iii) Montana customers or electricity suppliers would be disadvantaged due to lack of a competitive electricity supply market.

(3) The commission shall designate the public utility or one or more default suppliers to provide regulated default service for those small customers of a public utility that are not being served by a competitive electricity supplier. The transition advisory committee shall review and address the need for continued default supply service and make recommendation to the 57th legislature.

~~(3)~~*(4)* Except as provided in 69-5-101, 69-5-102, 69-5-104 through 69-5-112, and 69-8-402, a public utility currently doing business in Montana as part of a single integrated multistate operation, no portion of which lies within the basin of the Columbia River, may:

(a) defer compliance with this chapter until a time that the public utility can reasonably implement customer choice in the state of the public utility's primary service territory, except that the puhlic utility shall file a transition plan pursuant to 69-8-202 to provide transition to customer choice on or before July 1, 2002, and must have completed the transition period to customer choice by July 1, 2006; and

(b) petition the commission to delay the puhlic utility's transition plan filing until July 1, 2004.

~~(4)~~*(5)* Upon a request from a public utility with fewer than 50 customers, the commission shall waive compliance with the requirements of 69-8-104, 69-8-202 through 69-8-204, 69-8-208 through 69-8-211, 69-8-402, and this section."

Section 31. Section 69-8-403, MCA, is amended te read:

HeinOnline -- 1999 vol. III 2590 1999

"69-8-403. Commission authority — rulemaking authority. (1) Beginning on the effective date of a commission order regarding a public utility's transition plan, the commission shall regulate the puhlic utility's retail transmission and distribution services within the state of Montana, as provided in this chapter, and may not regulate the price of electricity supply except as electricity supply may be procured *as provided in this section:*

(a) ~~during the transition period~~ by ~~the~~ *one or more default suppliers for those customers not being served by a competitive supplier; or*

(b) by the distribution function of a public utility for those customers that ~~have not chosen an electricity supplier or for those customers that have not yet been assigned an electricity supplier~~ *are not being served by a competitive electricity supplier as provided by commission rules.* During the transition period, those procurements may include a cost-based contract from a supply affiliate or an unregulated division.

~~(2) If the transition period is extended for certain customers because the commission finds that workable competition in the electricity supply market does not exist, then the commission shall continue to regulate the provision of electricity supply by distribution services providers in accordance with 69-8-210.~~

~~(3)~~*(2)* The commission shall decide if there is workable competition in the electricity supply market by determining whether competition is sufficient to inhibit monopoly pricing or anticompetitive price leadership. In reaching a decision, the commission may not rely solely on market share estimates.

~~(4)~~*(3)* The commission shall license electricity suppliers and enforce licensing provisions pursuant to 69-8-404.

~~(5)~~*(4)* The commission shall promulgate rules that identify the licensees and ensure that the offered electricity supply is provided as offered and is adequate in terms of quality, safety, and reliability.

~~(6)~~*(5)* The commission shall establish just and reasonable rates through established ratemaking principles for public utility distribution and transmission services and shall regulate these services. The commission may approve rates and charges for electricity distribution and transmission services based on alternative forms of ratemaking such as performance-based ratemaking, on a demonstration by the public utility that the alternative method complies with this chapter, and on the public utility's transition plan.

~~(7)~~*(6)* The commission shall certify that a cooperative utility has adopted a transition plan that complies with this chapter. A cooperative utility's transition plan is considered certified 60 days after the cooperative utility files for certification.

~~(8)~~*(7)* The commission shall promulgate rules that protect consumers, distribution services providers, and electricity suppliers from anticompetitive and abusive practices.

(8) The commission shall license default suppliers and enforce default licensing provisions pursuant to [section 32].

(9) The commission shall promulgate rules for the licensing of default suppliers on or before December 1, 1999.

(10) Until the commission has determined that workable competition has developed for small customers, a default supplier's obligation to serve remains.

HeinOnline -- 1999 vol. III 2591 1999

~~(9)~~*(11)* In addition to promulgating rules expressly provided for in this chapter, the commission may promulgate any other rules necessary to carry out the provision of this chapter.

~~(10)~~*(12)* This chapter does not give the commission the authority to:

(a) regulate cooperative utilities in any manner other than reviewing certification filings for compliance with this chapter; or

(b) compel any change to a cooperative utility's certification filing made pursuant to this chapter."

Section 32. Default supplier license. (1) In developing licensing rules for default suppliers, the commission shall promote and facilitate the development of a competitive market for electricity supply.

(2) Default supplier licensing rules must ensure that:

(a) a default supplier may not purchase electricity for or sell electricity to commercial or industrial electric consumers having individual accounts with an average monthly demand in the previous calendar year of 100 kilowatts or more or to new commercial or industrial electric consumers having individual accounts with an estimated monthly demand of 100 kilowatts or more;

(b) a default supplier may not discount its commission-approved rates to retain or gain customers;

(c) a default supplier may not obligate customers to a contractual term or service;

(d) federal power marketing administration power or benefits acquired by a default supplier are distributed as widely and equitably as possible among small customers and in a manner that encourages competition;

(e) a default supplier, except when the default supplier is the distribution services provider, may not construct, purchase, take, receive, or otherwise acquire or own, hold, equip, maintain, or operate electric generating plants or transmission or distribution lines or systems, except that a default supplier may enter into transmission or distribution agreements for the lease or use of capacity on transmission and distribution systems owned by others to supply electricity to its customers in the state;

(f) a default supplier may not offer for sale any products other than electricity supply or provide electricity supply to members or custemers other than those residing in the state or sell electricity or otherwise engage in the marketing of electricity on the wholesale market, but may dispose of excess electricity associated with temporary load-energy imbalances.

(3) Except as provided in subsection (2)(e), a default supplier may provide only a single electricity supply service te all of its small customers. A default supplier may also offer an additional electricity supply service that includes a compenent of renewable energy.

(4) A default supplier may not offer other supply services unless the default supplier forms a separate entity.

Section 33. Default supplier — license revocation. The commission may revoke default supplier status for just cause on the commission's own investigation or upon complaint of an affected party, if it finds that the default supplier has violated the terms of default supplier status. Upon revocation,

HeinOnline -- 1999 vol. III 2592 1999

default supplier status reverts to the public utility, unless and until the commission grants new default supplier status to another person. The public utility must be given sufficient notice to acquire supply to serve this load and shall fully recover its costs of reentering the default supplier business.

Section 34. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 35. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 36. Codification instruction. (1) [Sections 1 through 28] are intended to be codified as an integral part of Title 35, and the provisions of Title 35 apply to [sections 1 through 28].

(2) [Sections 32 and 33] are intended to be codified as an integral part of Title 69, chapter 8, and the provisions of Title 69, chapter 8, apply to [sections 32 and 33].

Section 37. Effective date. [This act] is effective on passage and approval.

Approved May 5, 1999

CHAPTER NO. 576

[SB 482]

AN ACT REQUESTING AN INTERIM STUDY OF MORTGAGE LENDING AND THE ADVISABILITY OF REQUIRING LICENSURE FOR MORTGAGE LENDERS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the activities of lenders and brokers and the offering of financing for residential real property have a direct and immediate impact upon the housing industry, the neighborhoods and communities of this state, homeowners, and potential homeowners; and

WHEREAS, the Legislature finds that, for the protection of the citizens of this state and the stability of the Montana economy, reasonable standards governing the business practices of residential mortgage lenders and mortgage brokers are prudent puhlic pelicy; and

WHEREAS, the Legislature also finds that the obligations of lenders and mortgage brokers to consumers in connection with making, soliciting, processing, placing, or negetiating a residential mortgage loan warrant minimal but mindful regulation of the residential mortgaga lending process, including the solicitation, application, and making of a residential mortgage loan; and

WHEREAS, the Legislature also finds that it needs to develop greater expertise and understanding of the practices and safeguards that exist within the residential mortgage lending industry, particularly in the context of the needs of mortgage borrowers for clear, accurate, and complete information regarding residential mortgage transactions.

HeinOnline -- 1999 vol. III 2593 1999

Be it enacted by the Legislature of the State of Montana:

Section 1. Study of mortgage lending. (1) The legislative council is requested to assign to the appropriate interim committee a study of residential mortgage lending. The study must focus on:

(a) necessary protections for consumers seeking residential mortgage loans;

(b) determining if the residential mortgage lending industry is operating fairly, honestly, and efficiently and free from deceptive and anticompetitive practices;

(c) the current regulation of the residential mortgage lending industry and how current regulations:

(i) benefit Montana citizens by ensuring the availability of residential mortgage funding;

(ii) benefit responsible providers of residential mortgage loans and services; and

(iii) avoid or, at least, minimize requirements inconsistent with legitimate and responsible business practices in the residential mortgage lending industry;

(d) the advisability of legislatively imposing additional, clearer, fewer, or different requirements or restrictions on the mortgage lending industry; and

(e) the advisability of imposing or revising the licensure of residential mortgage lenders.

(2) If the study described in subsection (1) is assigned to an interim committee, the interim committee assigned to conduct the study shall complete its work on the study no later than September 15, 2000, and shall have prepared and distributed, as provided in 5-11-210, a report of its findings and conclusions. The report may include options for further legislative consideration, which may include recommendations in the form of proposed legislation.

Section 2. Authority to accept donation — appropriations. (1) The legislative council may accept gifts, grants, or other donations for the purpose of conducting the study provided for in [section 1].

(2) All gifts, grants, or donations received under subsection (1) must be deposited in a separate account and must be accounted for separately from other funds.

(3) There is appropriated $40,000 from the account established in subsection (2) to the legislative council for the purposes of conducting the study provided for in [section 1]. This appropriation is biennial.

(4) Any funds remaining in the account on June 30, 2001, that are not obligated for the purposes of the study provided for in [section 1], must be refunded to the donors of the funds in the proportion that each donor's donation bears to the total donations received.

Section 3. Effective date. [This act] is effective July 1, 1999.

Approved May 6, 1999

HeinOnline -- 1999 vol. III 2594 1999

CHAPTER NO. 577

[SB 534]

AN ACT GENERALLY REVISING LAWS REGARDING PUBLIC MENTAL HEALTH DELIVERY; REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO INCREMENTALLY IMPLEMENT A MENTAL HEALTH MANAGED CARE SYSTEM; REQUIRING A MENTAL HEALTH MANAGED CARE CONTRACTOR THAT ASSUMES RISK TO COMPLY WITH MEDICAID MANAGED CARE LAWS; PROVIDING FOR DEPARTMENT RESPONSIBILITIES; PROVIDING RULEMAKING AUTHORITY; CREATING THE OFFICE OF A MENTAL HEALTH MANAGED CARE OMBUDSMAN; AMENDING SECTIONS 33-1-102, 33-31-115, 33-31-202, 53-1-413, 53-6-131, 53-6-703, 53-6-704, 53-6-706, AND 53-6-709, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE.

WHEREAS, the Legislature is firmly committed to a managed care system for the delivery of public mental health services in an efficient and cost-effective manner and to ensuring access to services and quality of care; and

WHEREAS, in order for mental health managed care to be successful, care management must be carefully monitored and any contract for services must be enforced; and

WHEREAS, the state, service providers, and service recipients and their families must work cooperatively to ensure that the public mental health delivery system is successful; and

WHEREAS, the Legislature is committed to a transition from the existing contract to a competitive procurement of mental health managed care services.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 33-1-102, MCA, is amended to read:

"33-1-102. Compliance required — exceptions — health service corporations — health maintenance organizations — governmental insurance programs. (1) A person may not transact a business of insurance in Montana or a business relative to a subject resident, located, or to be performed in Montana without complying with the applicable provisions of this code.

(2) The provisions of this code do not apply with respect to:

(a) domestic farm mutual insurers as identified in chapter 4, except as stated in chapter 4;

(b) domestic benevolent associations as identified in chapter 6, except as stated in chapter 6; and

(c) fraternal benefit societies, except as stated in chapter 7.

(3) This code applies to health service corporations as prescribed in 33-30-102. The existence of the corporations is governed by Title 35, chapter 2, and related sections of the Montana Code Annotated.

(4) This code does not apply to health maintenance organizations or to managed care community networks, as defined in 53-6-702, to the extent that the existence and operations of those organizations are governed by chapter 31 or to the extent that the existence and operations of those networks are governed

HeinOnline -- 1999 vol. III 2595 1999

by Title 53, chapter 6, part 7. *The department of public health and human services is responsible to protect the interests of consumers by providing complaint, appeal, and grievance procedures relating to managed care community networks and health maintenance organizations under contract to provide services under Title 53, chapter 6.*

(5) This code does not apply to workers' compensation insurance programs provided for in Title 39, chapter 71, parts 21 and 23, and related sections.

~~(6) This code does not apply to the functions performed by a managed care contractor providing mental health services under the Montana medicaid program as established in Title 53, chapter 6.~~

(6) The department of public health and human services may limit the amount, scope, and duration of services for programs established under Title 53 that are provided under contract by entities subject to this title. The department of public health and human services may establish more restrictive eligibility requirements and fewer services than may be required by this title.

(7) This code does not apply to the state employee group insurance program established in Title 2, chapter 18, part 8.

(8) This code does not apply to insurance funded through the state self-insurance reserve fund provided for in 2-9-202.

(9) (a) This code does not apply to any arrangement, plan, or interlocal agreement between political subdivisions of this state in which the political subdivisions undertake to separately or jointly indemnify one another by way of a pooling, joint retention, deductible, or self-insurance plan.

(b) This code does not apply to any arrangement, plan, or interlocal agreement between political subdivisions of this state or any arrangement, plan, or program of a single political subdivision of this state in which the political subdivision provides to its officers, elected officials, or employees disability insurance or life insurance through a self-funded program."

Section 2. Section 33-31-115, MCA, is amended to read:

"33-31-115. Applicability to managed *health* care ~~community networks~~ *entity*. *(1)* A managed *health* care ~~community network~~ *entity*, as defined in 53-6-702, is governed by the provisions of Title 53, chapter 6, part 7, and by *the licensure and financial solvency provisions of* this chapter, but the commissioner may by rule reduce or eliminate a requirement of this chapter if the requirement is demonstrated to be unnecessary for the operation of a managed *health* care ~~community network~~ *entity*.

(2) The department of public health and human services may limit the amount, scope, and duration of services provided by a managed health care entity under contract for programs established under Title 53. These services may be less than services required by this title."

Section 3. Section 33-31-202, MCA, is amended to read:

"33-31-202. Issuance of certificate of authority. (1) The commissioner shall issue or deny a certificate of authority to any person filing an application pursuant to 33-31-201 within 180 days after receipt of the application. The commissioner shall grant a certificate of authority upon payment of the application fee prescribed in 33-31-212 if the commissioner is satisfied that each of the following conditions is met:

HeinOnline -- 1999 vol. III 2596 1999

(a) The persons responsible for the conduct of the applicant's affairs are competent and trustworthy.

(b) The health maintenance organization will effectively provide or arrange for the provision of basic health care services on a prepaid basis, through insurance or otherwise, except to the extent of reasonable requirements for copayments. This requirement does not apply to the *physical or mental* health care services provided by a health maintenance organization to a person receiving medicaid services under the Montana medicaid program as established in Title 53, chapter 6.

(c) The health maintenance organization is financially responsible and can reasonably be expected to meet its ohligations to enrollees and prospective enrollees. In making this determination, the commissioner may consider:

(i) the financial soundness of the arrangements for health care services and the schedule of charges used in connection with the services;

(ii) the adequacy of working capital;

(iii) any agreement with an insurer, a health service corporation, a government, or any other organization for ensuring the payment of the cost of health care services or the provision for automatic applicability of an alternative coverage in the event of discontinuance of the health maintenance organization;

(iv) any agreement with providers for the provision of health care services;

(v) any deposit of cash or securities submitted in accordance with 33-31-216; and

(vi) any additional information that the commissioner may reasonably require.

(d) The enrollees inust be afforded an opportunity to participate in matters of policy and operation pursuant to 33-31-222.

(e) Nothing in the proposed method of operation, as shown hy the information subinitted pursuant to 33-31-201 or by independent investigation, violates any provision of this chapter or rules adopted by the commissioner.

(2) The commissioner may deny a certificate of authority only if the requirements of 33-31-404 are complied with."

Seetion 4. Section 53-1-413, MCA, is amended to read:

"53-1-413. Deposit of payments and collections. (1) Except as provided in 90-7-220, 90-7-221, and this section, the department shall deposit payments and collections of charges for a resident's cost of care in the state treasury to the credit of the general fund.

(2) Payments and collections for services provided to residents of the Montana veterans' home must be deposited in the special revenue account for the benefit of the home. Payments and collections for services provided to residents of the Montana chemical dependency treatment center must be deposited in the state special revenue account for the facility.

(3) Subject to 90-7-221, payments from a managed care organization that is contracting with the department to administer a mental health managed care program for services provided by the Montana state hospital and the Montana mental health nursing care center must be deposited in the state special revenue

HeinOnline -- 1999 vol. III 2597 1999

account, subject to appropriation by the legislature for the benefit of those institutions.

(4) Medicaid payments for services provided by the Montana state hospital and the Montana mental health nursing care center must be deposited in the federal special revenue fund and are subject to appropriation for the benefit of the mental health managed care program."

Section 5. Section 53-6-131, MCA, is amended to read:

"53-6-131. Eligibility requirements. (1) Medical assistance under the Montana medicaid program may be granted to a person who is determined by the department of public health and human services, in its discretion, to be eligible as follows:

(a) The person receives or is considered to be receiving supplemental security income benefits under Title XVI of the Social Security Act, 42 U.S.C. 1381, et seq., and does not bave income or resources in excess of the applicable medical assistance limits or receive from FAIM financial assistance, as defined in 53-4-702, benefits under Title IV of the federal Social Security Act, 42 U.S.C. 601, et seq.

(b) The person would be eligible for assistance under a program described in subsection (1)(a) if that person were to apply for that assistance.

(c) The person is in a medical facility that is a medicaid provider and, but for residence in the facility, the person would be receiving assistance under one of the programs in subsection (1)(a).

(d) The person is under 19 years of age and meets the conditions of eligibility in the state plan, as defined in 53-4-201, other than with respect to age and school attendance.

(e) The person is under 21 years of age and in foster care under the supervision of the state or was in foster care under the supervision of the state and has been adopted as a hard-to-place child.

(f) The person meets the nonfinancial criteria of the categories in subsections (1)(a) through (1)(e) and:

(i) the person's income does not exceed the income level specified for federally aided categeries of assistance and the person's resources are within the resource standards of the federal supplemental security income program; or

(ii) the person, while having income greater than the medically needy income level specified for federally aided categories of assistance:

(A) has an adjusted income level, after incurring medical expenses, that does not exceed the medically needy income level specified for federally aided categories of assistance or, alternatively, has paid in cash to the department the amount by which the person's income exceeds the medically needy income level specified for federally aided categories of assistance; and

(B) has resources that are within the resource standards of the federal supplemental security income program.

(g) The person is a qualified pregnant woman or child as defined in 42 U.S.C. 1396d(n).

(2) The department may establish income and resource limitations. Limitations of income and resources must be within the amounts permitted by federal law for the medicaid program.

(3) The Montana medicaid program shall pay, as required by federal law, the premiums necessary for medicaid-eligible persons participating in the medicare program and may, within the discretion of the department, pay all or a portion of the medicare premiums, deductibles, and coinsurance for a qualified medicare-eligible person or for a qualified disabled and working individual, as defined in section 6408(d)(2) of the federal Omnibus Budget Reconciliation Act of 1989, Public Law 101-239, who:

(a) has income that does not exceed income standards as may be required by the Social Security Act; and

(b) has resources that do not exceed standards that the department determines reasonable for purposes of the program.

(4) The department may pay a medicaid-eligible person's expenses for premiums, coinsurance, and similar costs for health insurance or other available health coverage, as provided in 42 U.S.C. 1396b(a)(1).

(5) In accordance with waivers of federal law that are granted by the secretary of the U.S. department of health and human services, the department of public health and human services may grant eligibility for basic medicaid benefits as described in 53-6-101 to an individual receiving FAIM financial assistance, as defined in 53-4-702, as the specified caretaker relative of a dependent child under the FAIM project and to all adult recipients of medical assistance only who are covered under a group related to the program of FAIM financial assistance. A recipient who is pregnant, meets the criteria for disability provided in Title II of the Social Security Act, 42 U.S.C. 416, et seq., or is less than 21 years of age is entitled to full medicaid coverage as provided in 53-6-101.

(6) The department, under the Montana medicaid program, may provide, if a waiver is not available from the federal government, medicaid and other assistance mandated by Title XIX of the Social Security Act, 42 U.S.C. 1396, et seq., as may be amended, and not specifically listed in this part to categories of persons that may be designated by the act for receipt of assistance.

(7) Notwithstanding any other provision of this chapter, medical assistance must be provided to infants and pregnant women whose family income does not exceed 133% of the federal poverty threshold, as provided in 42 U.S.C. 1396a(a)(10)(A)(ii)(IX) and 42 U.S.C. 1396a(l)(2)(A)(i), and whose family resources do not exceed standards that the department determines reasonable for purposes of the program.

(8) Subject to appropriations, the department may cooperate with and make grants to a nonprofit corporation that uses donated funds to provide basic preventive and primary health care medical benefits to children whose families are ineligible for the Montana medicaid program and who are ineligible for any other health care coverage, are under 19 years of age, and are enrolled in school if of school age.

(9) A person described in subsection (7) must be provided continuous eligibility for medical assistance, as authorized in 42 U.S.C. 1396a(e)(5) through a(e)(7).

HeinOnline -- 1999 vol. III 2599 1999

(10) The department may establish resource and income standards of eligibility for mental health services that are more liberal than the resource and income standards of eligibility for physical health services. The standards for eligibility for mental health services may provide for eligibility for households *not eligible for medicaid* with family income that does not exceed 200% of the federal poverty threshold or that does not exceed a lesser amount determined in the discretion of the department. The department may by rule specify under what circumstances deductions for medical expenses should be used to reduce countable family income in determining eligibility. The department may also adopt rules establishing fees, *premiums, or copayments* to be charged recipients for services. The fees, *premiums, or copayments* may vary according to family income."

Section 6. Mental health managed care — contract — advisory council. (1) The department of public health and human services shall incrementally develop managed care systems for recipients of public mental health services. The department may contract with one or more persons for the management of comprehensive mental health services for medicaid recipients and for persons as specified in 53-6-131(10). The department may contract for the provision of these services by means of a fixed monetary or capitated amount per recipient. The department shall ensure that each contractor that assumes risk is required to comply with the provisions of Title 53, chapter 6, part 7, for the medicaid portion of the program.

(2) A managed care system is a program organized to serve the mental health needs of recipients in an efficient and cost-effective manner by managing the receipt of mental health care and services for a geographical or otherwise defined population of recipients through appropriate health care professionals. The management of mental health care services must provide for services in the most cost-effective manner through coordination and management of the appropriate level of care and appropriate level of services. The managed care system shall review and determine the appropriate level of services on an individual basis in order to ensure that access to care, quality of care, and the cost of the program are maintained.

(3) The department may enter into one or more contracts with managed care entities for the administration or delivery of mental health services. These contracts may be based upon a fixed monetary amount or a capitated amount per individual, and a contractor may assume all or a part of the financial risk of providing services to a set population of eligible individuals. The department may require the participation of recipients in managed care systems based upon geographical, financial, medical, or other factors that the department may determine are relevant to the development and efficient operation of the managed care systems.

(4) The department may establish eligibility requirements, resource and income standards, premiums, fees, and copayments. Eligible individuals may not have a family income that exceeds the amount established pursuant to 53-6-131(10).

(5) The department shall establish the amount, scope, and duration of services to be provided under the program. The services to be provided and eligibility requirements may be more limited than those in the medicaid program under chapter 6.

HeinOnline -- 1999 vol. III 2600 1999

(6) (a) The department shall form an advisory council, to be known as the mental health oversight advisory council, that is not subject to 2-15-122 to provide input to the department in the development and management of any public mental health system. The advisory council membership must include:

(i) one-half of the members as consumers of mental health services, including persons with serious mental illnesses who are receiving public mental health services, other recipients of mental health services, former recipients of public mental health services, and immediate family members of recipients of mental health services; and

(ii) advocates for consumers or family members of consumers, members of the public at large, providers of mental health services, legislators, department representatives, and a representative of the commissioner of insurance.

(b) The advisory council under this section may be administered so as to fulfill any federal advisory council requirements to obtain federal funds for this program.

(c) Geographic representation must be considered when appointing members to the advisory council in order to provide as wide a representation as possible.

(d) The advisory council shall provide a summary of each meeting and a copy of any recommendations made to the department to the legislative finance committee and any other designated appropriate legislative interim committee. The department shall provide the same committees with the department's rationale for not accepting or implementing any recommendation of the advisory council.

(7) The department shall formally evaluato contract performance with regard to specific outcome measures. The department shall explicitly identify performanco and outcome measures that contractors are required to achieve in order to comply with contract requirements and to continue the contract. The contract must provide for progressive intermediate sanctions that may be imposed for nonperformance. Tho evaluation must be performed at least annually.

Section 7. Mental health managed care — system elements. (1) The department of public health and human services shall develop a delivery system of mental health managed care from current providers or other entities that are able to provide administration or delivery of mental health services. A system of mental health managed care must include the following elements:

(a) specific outcome and performance measures for the administration or delivery of a continuum of mental health services in order to provide contract compliance monitoring;

(b) a fixed monetary or capitated paymont mechanism;

(c) a provision for local advisory councils that shall report to and meet on a regular basis with the advisory council provided for in [section 6(6)];

(d) provisions for appeal at the local level;

(e) a requirement that each contractor that assumes any financial risk shall comply with the provisions of Title 53, chapter 6, part 7, for the medicaid portion of the program;

(f) provisions that require documentation of evidence of the ability to provide services through an adequate provider network, as provided for in Title 33, chapter 36, and to comply with rules, regulations, and contract requirements;

HeinOnline -- 1999 vol. III 2601 1999

(g) a provision that, prior to final award of a contract, a successful bidder that serves adults shall enter into a contract with the Montana state hospital and the Montana mental health nursing care center that is consistent with 53-1-402, 53-1-413, and 90-7-312 and that includes financial incentives for the development and use of community-based services, rather than the use of the state institutional services;

(h) the services that must be provided for medicaid-eligible individuals;

(i) a provision to allow a spenddown by individuals to become eligible for medicaid;

(j) the services, which may include a pharmacy benefit, that must be provided to nonmedicaid-eligible individuals whose income levels are below 200% of the federal poverty level as provided for in 53-6-131(10);

(k) a provision that allows implementation of a specific sliding scale for premiums or copayments by nonmedicaid-eligible individuals taking into account income and percentage of poverty level;

(l) a provision for children who need mental health services that are provided under substantive interagency agreements between state agencies responsible for addictive and mental disorders, foster care, children with developmental disabilities, special education, and juvenile corrections; and

(m) requirements to ensure that the mental health managed care system will be operated in a cost-effective manner.

(2) Services for nonmedicaid-eligible individuals may be more limited than those services provided to medicaid-eligible individuals.

(3) The department shall contract with an independent professional consulting firm that is knowledgeable and experienced in developing managed mental health care systems. The department shall require, as part of the contract, that the consulting firm make regular reports to the legislative finance committee and any other appropriate legislative interim committee. Reports must be made at least every 6 months and must include information about the development and implementation of the new mental health managed care system.

(4) The term of a mental health managed care contract may not be more than 5 years. The department may implement care-managed fee-for-service reimbursement to provide mental health services as otherwise permitted by law during the transition from a single statewide contract for mental health managed care.

Section 8. Rulemaking authority. (1) The department shall adopt appropriate rules necessary for the administration of a program to provide mental health managed care services. The rules must establish eligibility criteria and may include but are not limited to financial standards and criteria for income and resources, treatment of resources, nonfinancial criteria, residency, application, termination, definition of terms, and confidentiality of applicant and recipient information.

(2) The department shall adopt rules establishing the amount, scope, and duration of services. The rules may also include but are not limited to ensuring that services are medically necessary and that the services are the most efficient and cost-effective available.

HeinOnline -- 1999 vol. III 2602 1999

(3) The department may adopt rules establishing rates of reimbursement of services provided under this part, selection and qualification of providers, and standards for managed care.

(4) Rules adopted by the department must take into account, when appropriate, the availability of appropriated funds, the actual costs of services, the quality of services, the professional knowledge and skills necessary for the delivery of services, and the availability of services.

Section 9. Section 53-6-703, MCA, is amended to read:

"53-6-703. Managed care community network. (1) A managed care community network shall comply with:

(a) the *licensure and financial solvency* requirements of Title 33, chapter 31, but the commissioner may by rule reduce or eliminate a requirement of Title 33, chapter 31, if the requirement is demonstrated to be unnecessary for the operation of the managed care community network; and

(b) the federal requirements for prepaid health plans as provided in 42 CFR, part 434.

(2) A managed care community network may contract with the department to provide any combination of medicaid-covered health care services that is acceptable to the department.

(3) A managed care community network shall demonstrate its ability to bear the financial risk of servicing enrollees under the program. The commissioner shall by rule adopt criteria for assessing the financial soundness of a network. ~~The rules must consider the extent to which a network is composed of providers who directly render health care and are located within the community in which they seek to contract rather than solely arrange or finance the delivery of health care.~~ The rules must consider risk-bearing and management techniques, as determined appropriate by the commissioner. The rules must also consider whether a network has sufficiently demonstrated its financial solvency and net worth. The commissioner's criteria must be based on sound actuarial, financial, and accounting principles. The commissioner is responsible for monitoring compliance with the rules.

(4) A managed care community network may not begin operation before the effective date of rules adopted by the commissioner under this part, the approval of any necessary federal waivers, and the completion of the review of an application submitted to the commissioner. The commissioner may charge the applicant an application review fee for the commissioner's actual cost of review of the application. The fees must be adopted by rule by the commissioner. Fees collected by the commissioner must be deposited in an account in the special revenue fund and are statutorily appropriated, as provided in 17-7-502, to the commissioner to defray the cost of application review.

(5) A health care delivery system that contracts with the department under the program may not be required to provide or arrange for any health care or medical service, procedure, or product that violates religious or moral teachings and beliefs if that health care delivery system is owned, controlled, or sponsored by or affiliated with a religious institution or religious organization but must comply with the notice requirements of 53-6-705(4)(c).

(6) The commissioner shall adopt rules to protect managed care community networks against financial insolvency. Managed care community networks are subject to health maintenance protections against financial insolvency contained

HeinOnline -- 1999 vol. III 2603 1999

in 33-31-216 in the event that a managed care community network is declared insolvent or bankrupt."

Section 10. Section 53-6-704, MCA, is amended to read:

"53-6-704. Different benefit packages. (1) The department may by rule provide for different benefit packages for different categories of persons enrolled in the program. Alcohol and substance abuse services, services for mental disorders, services related to children with chronic or acute conditions requiring longer-term treatment and followup, and rehabilitation care provided by a freestanding rehabilitation hospital or a rehabilitation unit may be excluded from a benefit package ~~if~~ *and* those services ~~are~~ *may be* made available through a separate delivery system. *If a service is excluded from the program but made available in a separate delivery system by a managed care entity, that managed care entity is subject to this part.* An exclusion does not prohibit the department from developing and implementing demonstration projects for categories of persons or services. Benefit packages for persons eligible for medical assistance under Title 53, chapter 6, parts 1 and 4, may be based on the requirements of those parts and must be consistent with the Title XIX of the Social Security Act. This part applies only to services purchased by the department.

(2) The program established by this part may be implemented by the department in various contracting areas at various times. The health care delivery systems and providers available under the program may vary throughout the state. ~~A~~ *Except as otherwise provided in a contract for mental health services, a* licensed managed health care entity must be permitted to contract in any geographic area for which it has a sufficient provider network and that otherwise meets the requirements of the state contract."

Section 11. Section 53-6-706, MCA, is amended to read:

"53-6-706. Requirements relating to enrollees. (1) All individuals enrolled in the program must be provided with a full written explanation of all fee-for-service and managed health care plan options as provided by rule. The department shall provide to enrollees, upon enrollment in the program and at least annually, notice of the process for requesting an appeal under the department's administrative appeal procedures. The department shall maintain a toll-free telephone number for program enrollees' use in reporting problems with managed health care entities.

(2) If an individual becomes eligible for participation in the program while the individual is hospitalized, the department ~~may not enroll~~ *may, but is not required to, enroll* the individual in the program ~~until after~~ *prior to* the ~~individual has been discharged~~ *individual's discharge* from the hospital. This subsection does not apply to a newborn infant whose mother is enrolled in the program.

(3) The department shall, by rule, establish rates for managed health care entities that:

(a) are ~~certified to be actuarially sound,~~ in accordance *with federal requirements and* with the department's current payment system;

(b) take into account any difference of cost to provide health care to different populations based on age and eligibility category. The rates for managed health care entities must be determined on a capitated basis.

(c) are based on treatment settings reasonably available to enrollees."

HeinOnline -- 1999 vol. III 2604 1999

Section 12. Section 53-6-709, MCA, is amended to read:

"53-6-709. Legislative auditor — oversight. (1) In order to prevent, detect, and eliminate fraud, waste, abuse, mismanagement, and misconduct and to determine that the program is administered fairly and effectively, the legislative auditor shall oversee ~~all aspects of~~ the managed care covered by this part.

(2) A medical provider may not be compelled to provide individual medical records of patients unless the records are provided in accordance with the provisions of the Government Health Care Information Act. State and local governmental agencies shall provide the requested information, assistance, or cooperation.

(3) All activities conducted by the legislative auditor must be conducted in a manner that ensures the preservation of evidence for use in criminal prosecutions. The legislative auditor may present for prosecution the findings of any activity to the office of the attorney general or to United States attorneys in Montana.

(4) The legislative auditor shall report all convictions, terminations, and suspensions taken against vendors, contractors, and health care providers to the department and to any agency responsible for licensing or regulating those persons or entities.

(5) The legislative auditor shall make periodic reports, findings, and recommendations regarding its oversight activities authorized by this section.

(6) This part does not limit investigations by the department that may otherwise he required by law or tbat may be necessary in the department's capacity as the central administrative authority responsible for administration of public aid programs in this state."

Section 13. Mental health managed care ombudsman. There is a mental health managed care ombudsman. The ombudsman must be appointed by the governor for a term of 4 years. The ombudsman is attached to the mental disabilities board of visitors for administrative purposes. The ombudsman shall represent the interests of consumers of services with the contractor or the department of public health and human services under the mental health provisions of Title 53, chapters 6 and 21.

Section 14. Inpatient hospital youth psyehiatric benefits. The department may authorize inpatient hospital youth psychiatric facilities to participate in the medicaid program for acute care inpatient hospital services. Payments made by the department must comply with all of tlie requirements of chapter 6, including but not limited to the determination of medical necessity, the diagnostic-related group rates established by the department for acute care inpatient hospital services, any travel restrictions, and exclusion of services not covered by the medicaid program.

Section 15. Transition. The department shall seek to continue its medicaid mental health managed care waiver as long as possible during the transition period to tlie new mental health managed care program as provided in [section 6]. If the state loses its existing medicaid waiver for mental health managed care, tlien it shall pursue appropriate waivers for tlie transition to a new mental health managed care system as provided in [section 6].

HeinOnline -- 1999 vol. III 2605 1999

Section 16. Codification instruction. (1) [Sections 6 through 8 and 15] are intended to be codified as an integral part of Title 53, chapter 21, and the provisions of Title 53, chapter 21, apply to [sections 6 through 8 and 15].

(2) [Section 13] is intended to be codified as an integral part of Title 2, chapter 15, part 2, and the provisions of Title 2, chapter 15, part 2, apply to [section 13].

(3) [Section 14] is intended to be codified as an integral part of Title 53, chapter 6, part 1, and the provisions of Title 53, chapter 6, part 1 apply to [section 14].

Section 17. Effective date. [This act] is effective on passage and approval.

Section 18. Termination. [Section 14] terminates June 30, 2001.

Approved May 6, 1999

CHAPTER NO. 578

[HB 2]

AN ACT APPROPRIATING MONEY TO VARIOUS STATE AGENCIES FOR THE BIENNIUM ENDING JUNE 30, 2001; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Short title. [This act] may be cited as "The General Appropriations Act of 1999".

Section 2. First level expenditures. The agency and program appropriation tables in the legislative fiscal analyst narrative accompanying this hill, showing first level expenditures and funding for the 2001 biennium, are adopted as legislative intent.

Section 3. Severability. If any section, subsection, sentence, clause, or phrase of [this act] is for any reason held unconstitutional, the decision does not affect the validity of the remaining portions of [this act].

Section 4. Appropriation control. An appropriation item designated as "Biennial" may be spent in either year of the biennium. An appropriation item designated "Restricted" may be used during the biennium only for the purpose designated by its title and as presented to the legislature. An appropriation item designated "One Time Only" or "OTO" may not be included in the present law base for the 2003 biennium. The office of budget and program planning shall establish a separate appropriation on the statewide budgeting and accounting system for any item designated as "Biennial", "Restricted", "One Time Only", or "OTO". The office of budget and program planning shall establish at least one appropriation on the statewide budgeting and accounting system for any appropriation that appears as a separate line item in [this act].

Section 5. Program definition. As used in [this act], "program" has the same meaning as defined in 17-7-102, is consistent with the management and accountability structure established on the statewide budgeting and accounting system, and is identified as a major suhdivision of an agency ordinally numbered with an arabic numeral.

Section 6. Personal services funding — 2003 hiennium. (1) Except as provided in subsection (2), present law and new propesal funding budget requests

HeinOnline -- 1999 vol. III 2606 1999

for the 2003 biennium submitted under Title 17, chapter 7, part 1, by each executive, judicial, and legislative branch agency must include funding of first level personal services separate from funding of other expenditures. The funding of first level personal services by accounting entity or equivalent for each fiscal year must be shown at the fourth reporting level or equivalent in the hudget request for the 2003 hiennium submitted by October 30 to the legislative fiscal analyst by the office of hudget and program planning.

(2) The provisions of subsection (1) do not apply to the Montana university system.

Section 7. Personal services line item. Funds appropriated for personal services or indicated in legislative intent as having been appropriated for personal services may not he expended under any other category except for contract services (expenditure object 2102 or its successor), when the amount of the contract services transferred will be used to directly substitute for use of personal services. Any transfer of funds from personal services to contract services must be reported in writing to the legislative finance committee. The provisions of this section do not apply to the Montana university system.

Section 8. Goals, benchmarks, and objectives. Each department, the Montana university system, and, when appropriate, each division of each department shall place their respective specific and measurable goals, benchmarks, and objectives for each year of the 2001 hiennium on their respective internet websites or, when appropriate, on the state's internet website. Beginning July 1, 1999, and every 6 months thereafter, each department and the Montana university system shall report progress on the appropriate wehsite in meeting the goals, benchmarks, and objectives and what changes, if any, were made to ensure that those goals, benchmarks, and objectives are attained.

Section 9. Unified computer budget summary. The office of hudget and program planning shall provide to the legislature no later than November 15, 2000, by agoncy and program, a report showing information technology-related actual and adjusted expenditures in fiscal year 2000 and budgeted amounts for each year of the 2003 biennium. The expenditure categeries included must be by mutual agreement with the legislative fiscal analyst and the legislative finance committee through the state information technology study required under [section 12]. The office of hudget and program planning shall present information that allows a reasonable determination of associated fundimg for each agency, program, and reporting level or equivalent report compenent.

Section 10. Use of Montana- and American-based companies. It is the intent of the legislature that agencies of state government make every effort to purchase goods and services first from Montana-based and then from American-based and located companies and subsidiaries.

Section 11. Consumer price index changes. If the federal government reformulates the consumer price index, each state agency that uses the consumer price index as an integral part of any contract, grant, benefit, rate, reimbursement, payment, or negotiation shall use the reformulated index unless otherwise prohibited hy law.

Section 12. Interim information technology management study. (1) To address legislative concerns regarding state agencies' investments in and expenditures for information technology hardware, software, and services, the

HeinOnline -- 1999 vol. III 2607 1999

legislative finance committee shall undertake a study of state information technology. The study may include a review and assessment of the following:

(a) management review and approval processes for information technology planning and budgeting;

(b) governance structures established to provide policy direction for information technology;

(c) adequacy and appropriateness of existing policy regarding asset replacement cycles;

(d) current level of interagency coordination of information technology deployment to minimize costs, reduce duplication, maximize efficiencies, and provide the greatest possible services to the citizens of Montana;

(e) past and current levels and trends with regard to information technology expenditures, with appropriate comparisons to other states and industry sectors;

(f) methods used to develop rates for proprietary-funded agencies providing information technology services; and

(g) current information technology statutes, rules, and policies.

(2) The study should include recommendations to the office of budget and program planning for presentation of information technology budget information that enables the legislature to make policy decisions that result in establishment of and adjustment in computer-related expenditures by agency and program and within fund types. The office of budget and program planning shall present this information to the legislature in the form recommended by the legislative finance committee.

(3) The information described in [section 9] and in subsection (2) of this section must be reviewed by the joint appropriations subcommittee on long-range planning, or other legislative committee as designated, composed of members of the house appropriations and senate finance and claims committees formed specifically to address statewide computer issues.

The committee shall report its findings and recommendations to the governor and to the 57th legislature.

Section 13. Tobacco settlement proceeds. Up to $30 million received by the state of Montana from any judgment, settlement, or fine received as a result of a criminal or civil claim against a tobacco company related to the production, marketing, or use of tobacco products that is in excess of the amounts appropriated by the 56th legislature must be set aside for revenue stabilization in the general fund. The amount is classified as unreserved, designated general fund balance.

Section 14. Totals not appropriations. The totals shown in [this act] are for informational purposes only and are not appropriations.

Section 15. Effective date. [This act] is effective July 1, 1999.

Section 16. Appropriations. The following money is appropriated for the respective fiscal years:

HeinOnline -- 1999 vol. III 2608 1999

	Fiscal 2000						Fiscal 2001					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
A. GENERAL GOVERNMENT AND TRANSPORTATION												
LEGISLATIVE BRANCH (1104)												
1. Legislative Services (20)	3,666,443	991,817	0	0	0	4,658,260	3,735,579	441,236	0	0	0	4,176,815
2. Legislative Committees and Activities (21) (Biennial)	576,435	0	0	0	0	576,435	0	0	0	0	0	0
a. Districting and Apportionment Commission (Biennial/OTO)	50,316	0	0	0	0	50,316	0	0	0	0	0	0
3. Fiscal Analysis and Review (27)	1,009,775	0	0	0	0	1,009,775	1,033,891	0	0	0	0	1,033,891
a. Legislative Request Work (Biennial)	5,000	0	0	0	0	5,000	0	0	0	0	0	0
b. Legislative Finance Committee Interim Studies (Restricted/Biennial/OTO)	35,000	0	0	0	0	35,000	0	0	0	0	0	0
4. Audit and Examination (28)	1,689,046	1,271,941	0	0	0	2,960,987	1,713,212	1,221,541	0	0	0	2,934,753
Total	7,032,015	2,263,758	0	0	0	9,295,773	6,482,682	1,662,777	0	0	0	8,145,459
CONSUMER COUNSEL (1112)												
1. Administration Program (01)	0	1,067,191	0	0	0	1,067,191	0	1,080,293	0	0	0	1,080,293
Total	0	1,067,191	0	0	0	1,067,191	0	1,080,293	0	0	0	1,080,293
JUDICIARY (2110)												
1. Supreme Court Operations (01)	2,626,354	0	75,000	0	0	2,701,354	2,628,601	0	75,000	0	0	2,703,601
a. Legislative Audit (Restricted/Biennial)	27,041	0	0	0	0	27,041	0	0	0	0	0	0
b. District Court Clerk Training (Restricted)	9,000	0	0	0	0	9,000	9,000	0	0	0	0	9,000

HeinOnline -- 1999 vol. III 2609 1999

	Fiscal 2000						Fiscal 2001					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
c. Imaging Services (Restricted/Biennial)	35,000	0	0	0	0	35,000	35,000	0	0	0	0	35,000
d. Court Assessment Program (OTO)	35,239	0	108,725	0	0	143,964	35,239	0	108,725	0	0	143,964
e. HB 41 - Extend Surcharge for Court Information Technology	0	995,676	0	0	0	995,676	0	995,676	0	0	0	995,676
2. Boards and Commissions (02)	245,070	0	0	0	0	245,070	245,051	0	0	0	0	245,051
a. Judicial Standards Commission (Biennial)	5,000	0	0	0	0	5,000	5,000	0	0	0	0	5,000
3. Law Library (03)	648,661	0	0	0	0	648,661	647,448	0	0	0	0	647,448
4. District Court Operations (04)	4,214,905	0	0	0	0	4,214,905	4,193,037	0	0	0	0	4,193,037
a. SB 273 - Create 22nd Judicial District/Add Judge to 11th and 20th Districts	123,000	0	0	0	0	123,000	287,500	0	0	0	0	287,500
b. HB 244 - Pay for Retired Judges Called to Service	26,946	0	0	0	0	26,946	26,946	0	0	0	0	26,946
5. Water Courts Supervision (05)	0	636,739	0	0	0	636,739	0	629,998	0	0	0	629,998
a. Telephone System (OTO)	0	10,000	0	0	0	10,000	0	0	0	0	0	0
6. Clerk of Court (06)	271,774	0	0	0	0	271,774	270,200	0	0	0	0	270,200
Total	8,267,990	1,642,415	183,725	0	0	10,094,130	8,383,022	1,625,674	183,725	0	0	10,192,421

Item 1c is intended to provide imaging services for all programs in the department.

The supreme court is encouraged to work with the department of public health and human services to develop joint rules, regulations, and procedures for the foster care review process.

The supreme court is requested to report to the 57th legislature regarding policies and procedures established by the citizen review board program to:

(1) operate the citizen review boards; and

(2) clarify the oversight role of the citizen review boards.

HeinOnline -- 1999 vol. III 2610 1999

	Fiscal 2000						Fiscal 2001					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
MONTANA CHIROPRACTIC LEGAL PANEL (2115)												
1. Legal Panel Operations (01)	0	17,266	0	0	0	17,266	0	17,193	0	0	0	17,193
Total	0	17,266	0	0	0	17,266	0	17,193	0	0	0	17,193
GOVERNOR'S OFFICE (3101)												
1. Executive Office Program (01)	1,172,374	233,352	0	0	0	1,405,726	1,127,148	239,542	0	0	0	1,366,690
a. Legislative Audit (Restricted/Biennial)	24,788	0	0	0	0	24,788	0	0	0	0	0	0
2. Mansion Maintenance Program (02)	75,172	0	0	0	0	75,172	72,411	0	0	0	0	72,411
3. Air Transportation Program (03)	164,060	15,903	0	0	0	179,963	145,836	15,874	0	0	0	161,710
4. Office of Budget and Program Planning (04)	993,777	0	0	0	0	993,777	988,317	0	0	0	0	988,317
a. Legislative Audit (Restricted/Biennial)	18,929	0	0	0	0	18,929	0	0	0	0	0	0
b. Vacancy Savings and Emergency Contingency Account (Restricted/Biennial/OTO)	1,000,000	0	0	0	0	1,000,000	0	0	0	0	0	0
5. Indian Affairs (05)	118,057	0	0	0	0	118,057	113,163	0	0	0	0	113,163
6. Lieutenant Governor (12)	203,541	0	0	0	0	203,541	202,297	0	0	0	0	202,297
7. Citizens' Advocate Office (16)	67,198	0	14,658	0	0	81,856	62,025	0	14,618	0	0	76,643
8. Mental Disabilities Board of Visitors (20)	166,620	9,180	0	0	0	175,800	166,609	9,180	0	0	0	175,789
a. SB 534 - Mental Health Managed Care Ombudsman (Restricted)	58,926	0	29,463	0	0	88,389	55,593	0	27,796	0	0	83,389

HeinOnline -- 1999 vol. III 2611 1999

	Fiscal 2000						Fiscal 2001					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
Total	4,063,442	258,435	44,121	0	0	4,365,998	2,933,399	264,596	42,414	0	0	3,240,409

Item 4b is an emergency and contingency biennial account to be managed by the office of budget and program planning to respond to contingencies related to emergencies and public safety. Requests for use of this account must be analyzed by the budget office and approved by the governor. Approved expenditures must be reported to the legislative finance committee.

Item 8a is contingent upon passage and approval of Senate Bill No. 534. Funds in item 8a may be used only to fund the mental health managed care ombudsman function created in Senate Bill No. 534.

COMMISSIONER OF POLITICAL PRACTICES (3202)

1. Administration (01)	270,804	0	0	0	0	270,804	264,090	0	0	0	0	264,090
a. Legislative Audit (Restricted/Biennial)	4,507	0	0	0	0	4,507	0	0	0	0	0	0
b. Legal Fees (Restricted/Biennial)	148,000	0	0	0	0	148,000	0	0	0	0	0	0
Total	423,311	0	0	0	0	423,311	264,090	0	0	0	0	264,090

The legislature recognizes that the appropriation for legal fees for the commissioner of political practices may not be sufficient to meet all costs in the 2001 biennium and that the commissioner may have to seek supplemental authority to pay those costs.

OFFICE OF THE STATE AUDITOR (3401)

1. Central Management (01)	183,128	265,392	0	0	0	448,520	0	446,747	0	0	0	446,747
a. Legislative Audit (Restricted/Biennial)	0	3,718	0	0	0	3,718	0	0	0	0	0	0
2. Insurance Program (03)	745,488	1,665,040	0	0	0	2,410,528	0	2,386,176	0	0	0	2,386,176
a. Legislative Audit (Restricted/Biennial)	0	16,360	0	0	0	16,360	0	0	0	0	0	0
b. Contract Examinations (Restricted)	0	117,600	0	0	0	117,600	0	181,500	0	0	0	181,500
c. HB 536 - Establish Fixed Annual Assessment for Montana Comprehensive Health Association (Restricted/Biennial)	2,000,000	0	0	0	0	2,000,000	0	0	0	0	0	0

HeinOnline -- 1999 vol. III 2612 1999

	Fiscal 2000						Fiscal 2001					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
3. Securities (04)	399,563	115,541	0	0	0	515,104	405,615	99,616	0	0	0	505,231
a. Legislative Audit (Restricted/Biennial)	4,710	0	0	0	0	4,710	0	0	0	0	0	0
b. Contract Examinations (Restricted)	0	12,000	0	0	0	12,000	0	12,000	0	0	0	12,000
c. SB 128 - Make tho Montana Living Trust Act Permanent	0	18,475	0	0	0	18,475	0	24,026	0	0	0	24,026
Total	3,332,889	2,214,126	0	0	0	5,547,015	405,615	3,150,065	0	0	0	3,555,680

Based upon passage and approval of Senate Bill No. 132, the state auditor's office shall transfer $399,814 at the end of fiscal year 2000 and $563,567 at the end of fiscal year 2001 to the general fund from the insurance fee state special revenue fund for the purposes of maintaining the general fund balance.

Item 2c is contingent upon passage and approval of House Bill No. 536.

The state auditor shall establish the following goals for the new fraud investigator FTE position:

(1) In fiscal year 2000, the investigator shall open 10 fraud investigations.

(2) In fiscal year 2001, the investigator shall open an additional 10 investigations, must have closed at least two investigations, and must have recovered at least $100,000 in fines.

The office shall notify the office of budget and program planning and the legislative fiscal division at the end of each fiscal year about the degree to which the goals were met.

DEPARTMENT OF TRANSPORTATION (5401)

1. General Operations Program (01)	0	13,275,988	462,132	0	0	13,738,120	0	13,255,403	457,568	0	0	13,712,971
a. Legislative Audit (Restricted/Biennial)	0	101,405	0	0	0	101,405	0	0	0	0	0	0
b. American Association of State Highway and Transportation Officials Training (OTO)	0	16,030	0	0	0	16,030	0	16,030	0	0	0	16,030
c. Computer Equipment and Software (OTO)	0	509,062	0	0	0	509,062	0	391,512	0	0	0	391,512
d. Investigative Services (Restricted/Biennial)	0	62,500	0	0	0	62,500	0	62,500	0	0	0	62,500
e. Electronic Commerce (Biennial)	0	45,230	0	0	0	45,230	0	54,595	0	0	0	54,595

HeinOnline -- 1999 vol. III 2613 1999

	Fiscal 2000						Fiscal 2001					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
f. Advisory Commission (Biennial/OTO)	0	12,370	0	0	0	12,370	0	12,370	0	0	0	12,370
g. SB 401 - Agricultural Use Fuel Tax Refunds (OTO)	0	14,105	0	0	0	14,105	0	24,199	0	0	0	24,199
2. Construction Program (02) (Biennial)	0	75,257,770	259,849,785	0	0	335,107,555	0	72,410,530	244,823,494	0	0	317,234,024
a. Safety Management Development System (Biennial/OTO)	0	25,000	225,000	0	0	250,000	0	0	0	0	0	0
b. Microfilm Conversion Contract (Biennial/OTO)	0	350,000	0	0	0	350,000	0	0	0	0	0	0
c. Contractor Payment System (Biennial/OTO)	0	20,000	80,000	0	0	100,000	0	10,000	40,000	0	0	50,000
d. Construction Management System (Biennial/OTO)	0	20,000	80,000	0	0	100,000	0	5,000	20,000	0	0	25,000
e. Computer System for Contract Plans (Biennial/OTO)	0	100,000	0	0	0	100,000	0	25,000	0	0	0	25,000
f. Preconstruction Management System (Biennial/OTO)	0	50,000	200,000	0	0	250,000	0	50,000	200,000	0	0	250,000
3. Maintenance Program (03) (Biennial)	0	59,351,443	10,353,000	0	0	69,704,448	0	60,167,143	10,353,000	0	0	70,520,143
a. Rest Area Year-Round Conversion (Biennial/OTO)	0	324,000	0	0	0	324,000	0	0	0	0	0	0
b. Road Reporting and Traveler Services (Biennial/OTO)	0	200,767	101,349	0	0	302,116	0	196,116	102,269	0	0	298,385
c. Noxious Weed Control (Restricted/Biennial)	0	842,100	0	0	0	842,100	0	842,100	0	0	0	842,100
d. Maintenance Manual Update (Biennial/OTO)	0	37,500	0	0	0	37,500	0	37,500	0	0	0	37,500
e. SB 333 - Maintenance for Paved Secondaries	0	2,980,616	0	0	0	2,980,616	0	9,609,085	1,352,914	0	0	10,961,999
4. Motor Carrier Services Division (22)	0	4,788,099	0	0	0	4,788,099	0	4,771,335	0	0	0	4,771,335
a. Internet Permit Program (OTO)	0	30,000	0	0	0	30,000	0	17,000	0	0	0	17,000

HeinOnline -- 1999 vol. III 2614 1999

	Fiscal 2000						Fiscal 2001					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
5. Aeronautics Program (40)	0	529,008	69,615	0	0	598,623	0	527,122	69,615	0	0	596,737
a. Airport Development Grants (Biennial)	0	450,000	0	0	0	450,000	0	0	0	0	0	0
b. SB 205 - Aviation Gasoline License Tax Increase	0	295,400	0	0	0	295,400	0	295,400	0	0	0	295,400
6. Transportation Planning Division (50)	250,000	1,605,828	8,382,085	0	0	10,237,913	250,000	1,625,827	8,613,093	0	0	10,488,920
a. Computer Equipment (OTO)	0	6,000	24,000	0	0	30,000	0	0	0	0	0	0
b. Urban Transportation Plan Update (OTO)	0	24,000	96,000	0	0	120,000	0	16,000	64,000	0	0	80,000
c. Census Transportation Planning Package (OTO)	0	0	0	0	0	0	0	1,800	7,200	0	0	9,000
d. State Truck Activities Reporting System (Biennial/OTO)	0	25,027	100,108	0	0	125,135	0	24,851	99,403	0	0	124,254
e. Montana State Rail Plan Update (OTO)	0	14,600	65,400	0	0	80,000	0	0	0	0	0	0
f. Acquiring Vehicles and Equipment for Disadvantaged (Restricted)	0	75,000	0	0	0	75,000	0	75,000	0	0	0	75,000
g. Rail Transportation Technical Assistance (Restricted/Biennial/OTO)	0	100,000	0	0	0	100,000	0	0	0	0	0	0
Total	250,000	161,538,853	280,088,474	0	0	441,877,327	250,000	164,523,418	266,202,556	0	0	430,975,974

Item 1g is contingent upon passage and approval of Senate Bill No. 401.

Item 3e is contingent upon passage and approval of Senate Bill No. 333.

Item 5b is contingent upon passage and approval of Senate Bill No. 205.

The department may adjust appropriations in the construction, maintenance, and transportation planning programs between state special and federal special revenue fund types if the total state special revenue authority for these programs is not increased by more than 10% of the total appropriations established by the legislature for each program. All transfers between fund types must be fully explained and justified on budget documents submitted to the office of budget and program planning, and all fund transfers of more than $1 million in any 30-day period must be communicated to the legislative finance committee in a written report.

The equipment program may charge rates necessary to establish and maintain a 60-day working capital balance te operate the program.

HeinOnline -- 1999 vol. III 2615 1999

	Fiscal 2000						Fiscal 2001					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

Up to $75,000 of the amount of the appropriations in item 6f is contingent upon receiving a transfer of the equivalent amount of funds from the department of public health and human services and is restricted to acquiring vehicles and other equipment used to provide services to the transportation disadvantaged.

All federal special revenue appropriations in the department are biennial appropriations.

It is the goal of the department to assist and help provide the opportunity for current or previous families achieving independence in Montana (FAIM) participants to receive highway construction jobs. The department's goal is for 200 FAIM participants to be employed on highway construction jobs by the end of fiscal year 2000 and for 300 FAIM participants to be employed on highway construction jobs by the end of fiscal year 2001.

It is the goal of the department to assist and help provide the opportunity for current or previous FAIM participants from tribal reservations to receive highway construction jobs that are located off of tribal reservations. The department's goal is for 100 FAIM tribal member participants to be employed on off-reservation highway construction jobs by the end of fiscal year 2000 and for 200 FAIM tribal member participants to be employed on off-reservation highway construction jobs by the end of fiscal year 2001.

The legislature has considered and chosen not to fund the production of Montana state highway maps with revenue from highway users fees and motor fuel taxes. It is the intent of the legislature that funding for Montana state highway maps come from lodging facilities use tax revenue in the department of commerce.

DEPARTMENT OF REVENUE (5801)

1.	Director's Office (01)											
	2,355,709	574	805	137,746	0	2,194,834	2,378,407	0	0	137,746	0	2,516,153
	a. Legislative Audit (Restricted/Biennial)											
	114,926	0	0	0	0	114,926	0	0	0	0	0	0
2.	Information Technology (02)											
	1,625,271	0	178,505	318,537	0	2,122,313	1,621,609	0	178,174	318,537	0	2,118,320
3.	Resource Management (05)											
	1,034,443	0	0	198,009	0	1,232,452	1,032,954	0	0	198,009	0	1,230,963
4.	Compliance Valuation and Resolution (08)											
	19,747,173	251,874	1,860,660	0	0	21,859,707	19,189,828	251,624	1,857,503	0	0	21,298,955
	a. HB 128 - Revise Taxation of Telecommunications											
	76,923	0	0	0	0	76,923	64,673	0	0	0	0	64,673
	h. HB 337 - Revise Universal System											
	22,256	0	0	0	0	22,256	19,208	0	0	0	0	19,208
	c. SB 270 - County Charges for Office Space											
	233,867	0	0	0	0	233,867	326,410	0	0	0	0	326,410
Total												
	25,210,568	252,448	2,039,970	654,292	0	28,157,278	24,633,089	251,624	2,035,677	654,292	0	27,574,682

Item 4a is contingent upon passage and approval of House Bill No. 128. If House Bill No. 15 is passed and approved, the appropriation contained in item 4a is one-time only.

HeinOnline -- 1999 vol. III 2616 1999

	Fiscal 2000						Fiscal 2001					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
Item 4b is contingent upon passage and approval of House Bill No. 337.												
Item 4c is contingent upon passage and approval of Senate Bill No. 270.												
To implement efficiencies within the department and to reflect the elimination of the OFLT, the department is to identify to the office of budget and program planning and the legislative fiscal division the position numbers of 12 FTE at the beginning of fiscal year 2000 and an additional 17 FTE at the beginning of fiscal year 2001 for elimination. The department shall provide this information by July 1 each fiscal year.												
Because of the elimination of the statutory appropriation of tobacco education fees and the de-earmarking of the fees to the general fund by House Bill No. 69, item 1 has been increased by $750 in general fund money in fiscal year 2000 and by $750 in general fund money in fiscal year 2001. If House Bill No. 69 is not passed and approved in a form that eliminates the statutory appropriation and de-earmarks the fees, then the general fund amounts in item 1 are reduced by $750 in fiscal year 2000 and by $750 in fiscal year 2001.												
DEPARTMENT OF ADMINISTRATION (6101)												
1. Governor-Elect Program (02)												
a. Governor-Elect Expenses (Restricted)	0	0	0	0	0	0	50,000	0	0	0	0	50,000
2. Accounting and Management Support Program (03)	1,079,899	9,402	32,327	40,307	0	1,161,935	1,050,950	11,376	32,332	36,745	0	1,131,403
a. Legislative Audit (Restricted/Biennial)	44,849	0	0	0	0	44,849	0	0	0	0	0	0
b. Actuarial Study for Police Retirement Fund (Restricted/Biennial)	6,000	0	0	0	0	6,000	0	0	0	0	0	0
3. Architecture and Engineering Program (04)	0	1,019,358	0	0	0	1,019,358	0	1,017,560	0	0	0	1,017,560
a. Legislative Audit (Restricted/Biennial)	0	1,628	0	0	0	1,628	0	0	0	0	0	0
b. Legal Fees (OTO)	0	3,314	0	0	0	3,314	0	3,641	0	0	0	3,641
4. Procurement and Printing Division (06)	494,997	0	0	0	0	494,997	493,664	0	0	0	0	493,664
5. Information Services Division (07)	651,322	0	0	0	0	651,322	669,103	0	0	0	0	669,103
a. Geographic Information Systems Cadastral Expenses (OTO)	9,158	0	750,000	0	0	759,158	9,158	0	750,000	0	0	759,158
6. General Services Program (08)	341,760	0	0	0	0	341,760	356,350	0	0	0	0	356,350

HeinOnline -- 1999 vol. III 2617 1999

	Fiscal 2000						Fiscal 2001					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
7. State Personnel Division (23)	1,159,394	0	0	0	0	1,159,394	1,154,821	11,000	0	0	0	1,165,821
8. State Tax Appeal Board (37)	384,501	0	0	0	0	384,501	383,793	0	0	0	0	383,793
Total	4,171,880	1,033,702	782,327	40,307	0	6,028,216	4,167,839	1,043,577	782,332	36,745	0	6,030,493

The legislature also encourages the executive to explore ways to recruit Montana college students to work in the MT PRRIME operations bureau, including ways to offer college credits or other methods as allowed by law.

If the Helena school district is willing to rent space to the department of administration in the Ray Bjork school, the department may collect up to $11,000 from agencies based on the number of Helena FTE for the purpose of establishing and supporting a day-care center.

APPELLATE DEFENDER COMMISSION (6102)

1. Appellate Defender (01)	0	186,140	0	0	0	186,140	0	185,100	0	0	0	185,100
Total	0	186,140	0	0	0	186,140	0	185,100	0	0	0	185,100
TOTAL SECTION A	52,752,095	170,474,334	283,138,617	694,599	0	507,059,645	47,519,736	173,804,317	269,246,704	691,037	0	491,261,794

HeinOnline -- 1999 vol. III 2618 1999

	Fiscal 2000						Fiscal 2001					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
B HEALTH AND HUMAN SERVICES												
DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES (6901)												
1. Public Assistance (02)	17,542,658	3,913,310	76,480,628	0	0	97,936,596	17,425,072	3,901,577	78,539,235	0	0	99,865,884
a. Federal Temporary Assistance for Needy Families Block Grant (Biennial)	0	0	33,724,228	0	0	33,724,228	0	0	0	0	0	0
b. Food Stamp Contract	184,499	0	184,499	0	0	368,998	183,787	0	183,787	0	0	367,574
c. HB 69 - Low-Income Energy Assistance and Home Weatherization (Restricted/OTO)	0	0	299,991	0	0	299,991	0	0	299,991	0	0	299,991
d. Mentana Food Bank Processing Project (Restricted)	40,000	0	0	0	0	40,000	40,000	0	0	0	0	40,000
2. Child and Family Services Division (03)	18,774,309	3,039,346	16,990,374	0	0	38,804,029	19,274,112	3,067,555	17,486,836	0	0	39,828,503
a. Provider Rate Increase - Foster Care	98,961	13,548	57,866	0	0	170,375	204,926	27,639	119,794	0	0	352,359
b. Direct Care Worker Wage Increase (Restricted)	1,321,056	206,403	749,516	0	0	2,276,975	2,679,389	416,934	1,524,320	0	0	4,620,643
c. SB 258 - Revise Domestic Abuse Laws	0	148,123	0	0	0	148,123	0	148,123	0	0	0	148,123
3. Director's Office (04)	625,009	996,832	655,013	0	0	2,276,854	624,047	998,094	652,701	0	0	2,274,842
4. Child Support Enforcement Division (05)	655,367	2,349,586	6,172,696	0	0	9,177,649	667,379	2,301,580	6,141,405	0	0	9,110,364
5. Health Policy and Services Division (07)	42,579,222	10,192,722	166,780,401	0	0	219,552,345	43,523,754	9,891,740	174,138,555	0	0	227,554,049
a. Health Services for Low-Income Children (Biennial)	100,000	0	0	0	0	100,000	100,000	0	0	0	0	100,000
b. Medicaid Nonhospital Provider Rate Increase	168,810	0	437,548	0	0	606,358	333,373	0	891,361	0	0	1,224,734
c. Tobacco Prevention and Control	0	0	504,465	0	0	504,465	0	0	499,968	0	0	499,968

HeinOnline -- 1999 vol. III 2619 1999

	Fiscal 2000						Fiscal 2001					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
d. Chronic Disease Epidemiologist	0	0	40,675	0	0	40,675	0	0	36,396	0	0	36,396
e. Trauma System Development	0	0	239,093	0	0	239,093	0	0	238,770	0	0	238,770
f. SB 81 - Establish Children's Health Insurance Program (CHIP)	0	0	15,116,017	0	0	15,116,017	0	0	15,248,042	0	0	15,248,042
g. Establish Tobacco Prevention and Control Program	3,500,000	0	0	0	0	3,500,000	3,500,000	0	0	0	0	3,500,000
6. Quality Assurance Division (08)	1,262,178	404,783	3,758,765	0	0	5,425,726	1,256,274	411,638	3,748,977	0	0	5,416,889
7. Operations and Technology Division (09)	10,058,262	2,300,814	13,590,365	0	0	25,949,441	10,153,468	2,311,884	13,781,268	0	0	26,246,620
a. Legislative Audit (Restricted/Biennial)	82,783	41,391	171,479	0	0	295,653	0	0	0	0	0	0
b. Legacy System Renovation (Biennial/OTO)	25,000	22,651	117,832	0	0	165,483	25,000	11,325	58,917	0	0	95,242
8. Disability Services Division (10)	40,261,689	72,691	54,755,954	0	0	95,090,334	40,012,285	72,554	58,172,673	0	0	98,257,512
a. Provider Rate Increase - DD	303,934	0	245,048	0	0	548,982	611,225	0	497,718	0	0	1,108,943
b. Direct Care Worker Wage Increase (Restricted)	463,474	0	446,526	0	0	910,000	919,275	0	900,725	0	0	1,820,000
c. Eastmont Human Services Equipment (OTO)	44,720	0	0	0	0	44,720	32,960	0	0	0	0	32,960
d. Vocational Rehabilitation 4% Tuition Increase	27,723	0	102,430	0	0	130,153	57,108	0	211,006	0	0	268,114
e. Developmental Disabilities Emergency Capacity (OTO)	25,000	0	61,820	0	0	86,820	25,000	0	61,820	0	0	86,820
f. Donated Dental (OTO)	25,000	0	0	0	0	25,000	25,000	0	0	0	0	25,000
9. Senior and Long-Term Care Division (22)	39,364,384	2,708,509	113,647,210	0	0	155,720,103	39,530,761	2,684,595	117,311,073	0	0	159,526,429
a. Direct Care Worker Wage Increase (Restricted)	1,249,421	0	2,817,163	0	0	4,066,584	2,536,944	0	5,896,668	0	0	8,433,612

HeinOnline -- 1999 vol. III 2620 1999

	Fiscal 2000						Fiscal 2001					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
b. Provider Rate Increase - Nursing Homes	265,226	0	687,451	0	0	952,677	523,848	0	1,400,647	0	0	1,924,495
c. Provider Rate Increase - Waiver Services	40,528	0	105,048	0	0	145,576	79,648	0	212,961	0	0	292,609
d. Provider Rate Increase - Aging Services	54,178	0	0	0	0	54,178	108,897	0	0	0	0	108,897
e. Provider Rate Increase - Home-Based Services	56,542	0	146,555	0	0	203,097	120,819	0	323,043	0	0	443,862
10. Addictive and Mental Disorders Division (33)	6,760,479	1,654,529	6,617,461	0	0	15,032,469	7,031,100	1,672,906	6,670,246	0	0	15,374,252
a. State Incentive Grant (OTO)	0	0	2,996,448	0	0	2,996,448	0	0	2,996,474	0	0	2,996,474
b. Provider Rate Increases (CD, PASAAR)	1,808	1,342	4,074	0	0	7,224	3,634	1,376	4,873	0	0	9,883
c. Mental Health Managed Care Contracts	38,596,391	16,787,185	36,396,080	0	0	91,779,656	39,189,563	16,320,408	38,428,016	0	0	93,937,987
d. Medicaid Matching Funds - Community CD Pilot Programs (Restricted/Biennial)	0	0	150,000	0	0	150,000	0	0	150,000	0	0	150,000
Total	224,558,611	44,853,765	555,250,719	0	0	824,663,095	230,798,648	44,239,928	546,828,266	0	0	821,866,842

The department shall present a report to the appropriate legislative committee every 6 months of the 2001 biennium on the governor's council on children and families. The report must contain, at a minimum, the goals, functions, expenditures, and funding of the council.

Expenditures for all provider rate increases approved by the legislature must be limited to the dollar amounts appropriated rather than a percentage increase. The department will be in compliance with this provision if:

(1) it estimates the total cost for each medicaid service category in June prior to the beginning of each fiscal year of the 2001 biennium; and

(2) the percentage increase or base adjustments approved by the department are limited to the dollar amount appropriated for each provider rate increase.

The department shall distribute the funds in items 2b, 8b, and 9a in a way that provides reasonable assurance that the funds are used solely for direct care wage and benefit increases. Not all providers must receive the same rate of increase each year of the biennium. Funds appropriated in items 2b, 8b, and 9a must be used for direct care worker wage increases and family foster care rate increases. Funds in items 2b, 8b, and 9a may not be used to fund other programs.

The department may add FTE instead of contracting for services if it certifies to the office of budget and program planning that FTE are more cost-effective than contracting. FTE added through this language are modified FTE and may not be included in the 2003 biennium base budget.

HeinOnline -- 1999 vol. III 2621 1999

	Fiscal 2000					Fiscal 2001				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

Items 2, 4, 6, and 8 have been reduced by $304,433 in total funds in the 2001 biennium to reflect a reduction in the personal service budgets of these divisions. It is the intent of the legislature that the following positions be eliminated from the department because they have been vacant at least 10 months:

Position No.	Title	Last Filled
00430	case aide	06/20/97
05200	child support enforcement technician	12/12/97
05136	child support investigator	11/14/97
05173	child support investigator	11/28/97
08130	auditor	04/10/98
95103	resident care aide	01/24/97

All state and federal prevention funds identified in the unified prevention budget under the department, department of labor and industry, department of justice, office of public instruction, board of crime control, department of corrections, office of state coordinator of Indian affairs, and children's trust fund must be reviewed and commented on by the interagency coordinating council for state prevention programs (ICC) before being expended.

The department shall place all goals, benchmarks, and objectives for each division on the department's website. Beginning July 1, 1999, and every 12 months thereafter, the divisions shall review and report on the website their progress in meeting their goals, benchmarks, and objectives.

Benefits for temporary assistance for needy families (TANF) are set at 40.5% of the poverty rate for each year of the biennium.

The provider rate increase for child care should reflect local markets.

If families achieving independence in Montana (FAIM) caseloads increase to a level greater than the projected level of 7,612 for the 2001 biennium or if the department is unable to meet federally mandated work participation requirements because of the lack of resources, the department may access excess TANF funds held by the federal government and referred to by the state to be Montana's "TANF reserve" to fund services that further the goals of FAIM. Therefore, there is appropriated TANF reserve funds up to $8.35 million for the biennium. Prior to accessing these funds, the department shall review with the office of budget and program planning current FAIM caseload statistics and trends in caseload.

The department shall present a plan to the 57th legislature to create a uniform statewide system of funding for the TANF maintenance of effort, eligibility determination for cash assistance, food stamps, and medicaid programs, and foster care program costs. This plan must provide a predictable and adequate source of funding und eliminate the historic distinction in funding human services costs between assumed and nonassumed counties. The department shall include county commissioners and select members of the appropriate legislative committee in development of the plan.

Item 1 includes $493,522 in general fund money in fiscal year 2000 and $493,523 in fiscal year 2001 to replace lost federal matching funds for food stamps, medicaid, and the former aid to families with dependent children. The department is appealing the loss of these federal funds. If the department is successful in the appeal, the appropriation in item 1 is reduced by $493,522 in general fund money in fiscal year 2000 and $493,523 in fiscal year 2001.

Item 1 includes a reduction of $1,750,000 in general fund money in fiscal year 2000 and $2,105,177 in fiscal year 2001 and an increase in federal TANF funds of a like amount in each fiscal year. This funding switch is contingent on passage of House Bill No. 470.

HeinOnline -- 1999 vol. III 2622 1999

	Fiscal 2000					Fiscal 2001				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

Contingent upon passage and approval of House Bill No. 551, item 1 must be reduced in proportion to the number of Native American tribes authorized to operate their own TANF program, up to $6,706,697 in federal special revenue funds in both fiscal year 2000 and fiscal year 2001.

Because of the elimination of the statutory appropriation for low-income energy assistance and home weatherization in House Bill No. 69, item 1c appropriates $299,991 in federal special revenue funds in fiscal year 2000 and $299,991 in federal special revenue funds in fiscal year 2001. If House Bill No. 69 is not passed and approved in a form that eliminates the statutory appropriation, then ths federal special revenue appropriations in item 1c are void.

Item 1d is for the processing of donated food to be used by the Montana food bank network.

The human and community services division is authorized to use up to $2.96 million in TANF funds for the biennium for expenditures related to the following efforts:

(1) The division shall increase job training, recruitment, and support service efforts in order to secure highway construction or equivalent paying jobs for 200 FAIM recipients in fiscal year 2000 and another 300 FAIM recipients in fiscal year 2001. The dollars must follow the client.

(2) The division shall provide FAIM recipients funds to purchase items including but not limited to car insurance, car repairs, gasoline, and special work clothes.

The division shall direct up to $1.5 million of the $2.96 million toward efforts specified in subsection (1). If the division is not able to use all of the $1.5 million for those efforts, the division may redirect remaining funds to the purpose specified in subsection (2).

The division shall report progress every 6 months on the department's internet virtual pavilion site.

TANF block grant funds of $100,900 each year of the 2001 biennium are appropriated for the purpose of enhancing the adult basic education program for FAIM financial assistance participants. The funds are to be used to provide adult basic education, adult literacy programs, and learning disability assessment, identification, and followup services for FAIM financial assistance participants.

It is the intent of the legislature that the department provide quarterly reports beginning July 1, 1999, to the appropriate legislative committee, as identified in Senate Bill No. 11, and make the reports available on the internet through the department's virtual pavilion. The reports must include:

(1) the human and community services division's means for identifying FAIM recipients who may be qualified for social security disability and supplemental security income (SSI);

(2) the number of FAIM recipients who might meet SSI criteria:

(3) the division's progress in getting people moved from FAIM to SSI; and

(4) the number of FAIM recipients actually moved from FAIM to SSI.

The department may use, in addition to other FAIM dollars, up to $300,000 in TANF funds for the biennium to determine SSI eligibility, including psychological examinations, and to move those who are SSI eligible from FAIM to SSI.

The goal for the number of TANF cash assistance cases is 4,900 in fiscal year 2000 and 4,400 in fiscal year 2001. To meet these goals, the department shall:

(1) assist a minimum of two tribes in leaving the state's FAIM welfare reform program and assist them in running their own welfare reform program;

(2) assist TANF clients in obtaining better paying jobs in highway construction or equivalent paying jobs; and

(3) move both tribal and nontribal FAIM clients that meet social security disability and SSI criteria from FAIM to SSI.

HeinOnline -- 1999 vol. III 2623 1999

	Fiscal 2000						Fiscal 2001					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

Contingent on the receipt of the social security contribution account reversion to the general fund under 19-1-602(4), general fund money of $17,000 is appropriated in fiscal year 2000 for the Montana food bank network to use as setup funds in the use of Montana state prison's meat processing plant for the processing of meat donated to the Montana food bank. This money is to be used for this purpose only.

The department may not use general fund money to support a program developed to facilitate noncustodial parents' access to their children. It is the intent of the legislature that the child and family services division coordinate participation in this program with the child support enforcement division.

The legislature approved funding for 2 new FTE in item 2. These 2 FTE may not be transferred to any other division.

Item 2 includes a reduction of $16,051 in general fund money in fiscal year 2000, a reduction of $3,159 in state special revenue funds in fiscal year 2000, a reduction of $9,224 in federal special revenue funds in fiscal year 2000, a reduction of $19,261 in general fund money in fiscal year 2001, a reduction of $3,791 in state special revenue funds in fiscal year 2001, and a reduction of $11,069 in federal special revenue funds in fiscal year 2001. These reductions are contingent upon the passage and approval of House Bill No. 180.

Item 2 has been reduced by $352,903 in total funds in the 2001 biennium, including $204,373 in general fund money, to reflect a reduction in the personal services budget of this division. It is the intent of the legislature that position number 92303 be eliminated from the department because 5 of the 6 FTE in position 92303 are also funded under position number 99972501.

Item 2c is contingent upon passage and approval of Senate Bill No. 258.

The department shall work with the supreme court to develop joint rules, regulations, and procedures for the foster care review process.

Item 4 includes general fund money of $655,367 in fiscal year 2000 and $667,379 in fiscal year 2001 to replace a shortfall in state special revenue from child support collections. This appropriation is one-time only.

Beginning July 1, 1999, and every 6 months thereafter, the child support enforcement division shall make a report available on the internet through the department's virtual pavilion on its progress in collecting child support on tribal reservations.

The child support enforcement division (CSED) may not charge the handling fee provided for under 40-5-210(3).

General fund costs of medicaid benefits may not exceed:

(1) a 2.5% annual compounded rate of growth in fiscal year 2000 from the fiscal year 1998 base amount of $99,317,700; and

(2) 3.5% in fiscal year 2001 from the fiscal year 1998 base amount of $99,317,700.

The department is authorized to use up to $50,000 of general fund money from other appropriations within the department for expenditures related to disease outbreaks and other public health emergencies that may occur during the 2001 biennium.

The department shall provide detailed information on the services provided and results of MIAMI programs on reservations to the appropriate legislative committee by September 1, 2000.

The department shall prepare and present a report to the appropriate legislative committee on activities funded by the federal abstinence education grant. The department should present the report at the first committee meeting convened after the end of fiscal year 2000. The report must:

(1) enumerate and explain how grant funds were expended by type of expenditure in fiscal year 1999 and fiscal year 2000;

(2) explain the status of training for communities and other entities;

HeinOnline -- 1999 vol. III 2624 1999

	Fiscal 2000					Fiscal 2001				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

(3) explain other information pertinent to federal grant requirements and outcomes; and

(4) identify measurable program goals and objectives for fiscal year 2001 and the 2003 biennium.

Item 5 includes $62,899,987 in fiscal year 2000 and $63,781,717 in fiscal year 2001 for medicaid-funded hospital services.

Funds in item 5a must be used to contract with public or private entities for the administration and provision of primary and preventive health care benefits to children who are uninsured and not eligible for medicaid benefits. To qualify, the family income may be no greater than 185% of the federal poverty level. Funds in item 5a may be allocated only to those programs that have established a statewide network of medical providers who have agreed to accept reimbursement at a rate lower than would normally be charged for their services. Funds in item 5a may not be used to pay the state share of children's health insurance program costs.

Implementation of the resource-based relative value scale (RBRVS) provider rate system must be phased in over the 2001 biennium. The department shall use funds in item 5b to raise rates paid to those codes that are paid the lowest percentage of medicare reimbursement. The department shall freeze reimbursement for all other procedure codes previously decreased under the phasein of the RBRVS reimbursement system at the fiscal year1999 level of reimbursement.

The department shall use $430,000 of funds each year of the biennium in item 5c to increase grants to local governments and communities.

Item 5d includes funds for a chronic disease epidemiologist FTE. If the federal grant funds supporting this position decline or are eliminated, the department shall reduce the FTE from its budget request for the 2003 biennium. Federal grants supporting this position include the behavieral risk surveillance grant, the diabetes control grant, the tobacco control grant, and the tumor registry grant.

If federal grant funds supporting item 5e decline or are discontinued, the department shall remove funding for the FTE supported by this federal grant in its 2003 biennium budget request.

Item 5f is contingent upon passage and approval of Senate Bill No. 81.

If the federal tumor registry grant is not received, it is the intent of the legislature that no general fund money be approved for tumor registry and that the general fund appropriation in item 7 be reduced by $77,810 in fiscal year 2000 and $77,810 in fiscal year 2001.

Item 7 includes $676,680 in fiscal year 2000 and $676,343 in fiscal year 2001 for laboratory services. It is the intent of the legislature that the department not increase fees if revenue is not sufficient to fund the amounts appropriated,

The disability services division is authorized to pursue up to $2 million in federal funding over the biennium to enhance and improve services to persons with developmental disabilities. These additional federal funds may be expended by the division on services as long as those actions do not require or commit the state to additional general fund expenditures beyond the amount appropriated for the 2001 biennium by the legislature for the developmental disabilities community.

Item 8 contains an appropriation of $7,581,094 in federal funds each year of the biennium for the Title XX grant. If the department receives less funds in the Title XX grant than the appropriated amount, the department shall transfer up to $2.3 million in general fund money over the biennium from medicaid appropriations in the department to the disability services division. General fund money transferred to offset the Title XX shortfall must be used to serve individuals being moved from state institutions to community services and individuals from the community waiting list.

Item 8 contains an appropriation of $7,581,094 in federal funds each year of the biennium for the Title XX grant. If the department receives less funds in the Title XX grant than the appropriated amount, up to $2.8 million in TANF funds for the biennium must be transferred to the disability services division. The TANF funds transferred to offset the Title XX shortfall must be used to serve individuals being moved from state institutions to community services and individuals from the community waiting list. The department shall use all of the $2.3 million in general fund money that the department is directed to transfer from medicaid appropriations in the department to the disability services division before using any transferred TANF funds.

HeinOnline -- 1999 vol. III 2625 1999

	Fiscal 2000						Fiscal 2001					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

Item 8 contains an appropriation of $7,581,094 in federal funds each year of the biennium for the Title XX grant. If the department receives less funds in the Title XX grant than the appropriated amount, $43,000 in general fund money is appropriated for fiscal year 2001 to implement a means test for TANF eligibility determination.

Provider, consumer, and department representatives of the strategic planning across Montana followup committee shall provide a written report every 6 months to the legislative fiscal division on the progress of the design and implementation of the individualized community support approach to service delivery in the developmental disabilities system.

The disability services division is directed to develop a proposal by June of 2000 to be reviewed by the children, families, health, and human services committee that considers the following options:

(1) moving individuals from the Montana developmental center and Eastmont human services center to community settings if it is determined that a person may benefit from services in a community setting and if the services appropriate for the person's needs are available;

(2) based on the population remaining at both institutions, determine if an institution could be closed;

(3) if an institution is proposed to be closed, explore and recommend alternative uses for that institution; and

(4) develop a reduction in force plan that takes into consideration a reasonable way to reduce the staff at the institutions through normal attrition and planned layoffs and calculate the cost for paying out sick leave, vacation, and severance pay.

Item 8 contains a general fund appropriation of $27,723 in fiscal year 2000 and $57,108 in fiscal year 2001 for anticipated increases by the board of regents in tuition of 4%. If the board of regents approves college tuition increases of less than 4%, the general fund appropriation is reduced a proportionate amount.

Up to $1 million of the general fund share from lien and estate recoveries pursuant to Title 53, chapter 6, part 1, in excess of the first $600,000, and up to $2 million in federal funds is appropriated over the biennium on a one-time basis in the amount of 50% to the medicaid home and community waiver program and 50% to the medicaid nursing home program. Lien and estate funds allocated to the medicaid nursing home program must be used for staff training, bonuses for direct care staff, or other one-time benefits for staff.

The department may supplement funds appropriated for nursing home rate increases with funds appropriated for increased nursing home bed days in order to address the increased staffing needs associated with caring for a more difficult nursing home patient population and to avoid inappropriate decreases in the department's current nursing home reimbursement formula, as long as total program expenditures do not exceed the appropriation for nursing homes.

Because of the elimination of the statutory appropriation of tobacco education fees and the de-earmarking of the fees to the general fund by House Bill No. 69, item 10 has been increased by $750 in general fund money in fiscal year 2000 and by $750 in general fund money in fiscal year 2001. If House Bill No. 69 is not passed and approved in a form that eliminates the statutory appropriation and de-earmarks the fees, then the general fund amounts in item 10 are reduced by $750 in fiscal year 2000 and by $750 in fiscal year 2001.

Money appropriated in item 10c may not be expended unless the department has given the 180-day notice of termination provided in the mental health access plan contract.

Money appropriated in item 10c may be used to implement the mental health care plan provided for in Senate Bill No. 534, contingent upon passage and approval of Senate Bill No. 534.

If Senate Bill No. 534 is not passed and approved, item 10 is increased by $58,926 in general fund money and $29,463 in federal special revenue funds in fiscal year 2000 and $55,593 in general fund money and $27,796 in federal special revenue funds in fiscal year 2001.

Funds in item 10d must be used to fund pilot community outpatient chemical dependency medicaid programs. Funds in item 10d may not be used for another purpose or transferred to other programs. The department shall provide an evaluation and documentation of outcomes of the pilot programs to the legislative finance committee no later than September 1, 2000.

The department shall incrementally implement Senate Bill No. 534, contingent upon passage and approval of Senate Bill No. 534.

HeinOnline -- 1999 vol. III 2626 1999

	Fiscal 2000					Fiscal 2001				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

The department shall institute copayments for persons served in the mental health managed care program as allowed under 53-6-131(10).

The department shall encourage successful contractors to also serve persons who need mental health services but who are not eligible for services under the state mental health managed care plan. The department shall encourage successful contractors to establish fee schedules at the discretion of the contractor to serve persons ineligible for services under the state mental health managed care plan.

The department shall provide for consumer involvement and input in developing requests for proposals, evaluating proposals, and implementing the mental health managed care contracts.

The department shall establish and include outcome measures in the mental health managed care contracts.

The department shall explicitly identify in its mental health managed care plan how the Montana state hospital will be integrated into the mental health managed care contracts, how all services provided by the Montana state hospital will be funded, and how rates and charges for all services at the Montana state hospital will be established. The department shall provide this information to the legislative finance committee and other appropriate legislative committees no later than July 1, 1999.

The department shall establish a process that allows for public input and comment. The process must specify defined times and opportunities for public input when interested persons may comment on any request for proposals for the mental health managed care program, related contracts that the department may let, state mental health managed care policies, transition to the mental health managed care program, implementation of the new program, and oversight of the program. The department shall consider public comment and input that it receives.

The department shall provide biweekly reports to interested persons and the public on the implementation of Senate Bill No. 534, contingent upon passage and approval of Senate Bill No. 534.

The office of the governor shall provide oversight of the implementation of Senate Bill No. 534, contingent upon passage and approval of Senate Bill No. 534.

In accordance with 17-8-103, the department may not spend more general fund money for mental health managed care services than was appropriated in [this act].

If the occupancy date for the new Montana state hospital is delayed beyond October 1, 1999, the department and the department of administration shall pursue the assessment of any penalties allowable under the construction contract because of contractor liability for delays. The department is appropriated up to $700,000 in state special revenue funds over the biennium from penalties collected from the contractor.

TOTAL SECTION B											
224,558,611	44,853,765	555,250,719	0	0	824,663,095	230,798,648	44,239,928	546,828,266	0	0	821,866,842

HeinOnline -- 1999 vol. III 2627 1999

	Fiscal 2000						Fiscal 2001					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
C. NATURAL RESOURCES AND COMMERCE												
DEPARTMENT OF FISH, WILDLIFE, AND PARKS (5201)												
1. Administration and Finance Division (01)	0	3,970,834	540,168	0	0	4,511,002	0	3,990,737	538,266	0	0	4,529,003
a. Legislative Audit (Restricted/Biennial)	0	53,632	9,465	0	0	63,097	0	0	0	0	0	0
b. Information Technology—Budget Allocation System (Biennial/OTO)	0	250,000	0	0	0	250,000	0	0	0	0	0	0
c. Mule Deer Permit Hunting (Biennial)	0	30,000	0	0	0	30,000	0	30,000	0	0	0	30,000
d. Automated Licensing System (Biennial)	0	1,156,059	1,443,516	0	0	2,599,575	0	0	0	0	0	0
e. Information Technology (Biennial)	0	401,000	100,000	0	0	501,000	0	0	0	0	0	0
f. Legislative Contract Authority (Restricted/OTO)	0	0	50,000	0	0	50,000	0	0	50,000	0	0	50,000
g. SB 59 - Hunting License Preference Systems	0	89,885	0	0	0	89,885	0	373,000	0	0	0	373,000
2. Field Services Division (02)	0	4,800,418	679,120	0	0	5,479,538	0	4,771,251	677,982	0	0	5,449,233
a. Public Wildlife Interface (Restricted/Biennial)	0	65,000	0	0	0	65,000	0	0	0	0	0	0
b. Legislative Contract Authority (Restricted/OTO)	0	0	30,000	0	0	30,000	0	0	30,000	0	0	30,000
c. Leasing of Winter Habitat (Restricted/Biennial)	0	200,000	0	0	0	200,000	0	0	0	0	0	0
d. SB 171 - Address Property Boundary Identification Problems (OTO)	0	45,500	0	0	0	45,500	0	38,000	0	0	0	38,000
e. SB 334 - Analyze Net Client Hunter Use for Board of Outfitters	0	83,490	0	0	0	83,490	0	83,034	0	0	0	83,034
f. SB 338 - Increased Upland Game Bird Fees for Block Management	0	522,500	0	0	0	522,500	0	522,500	0	0	0	522,500

HeinOnline -- 1999 vol. III 2628 1999

	Fiscal 2000						Fiscal 2001					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
3. Fisheries Division (03)	0	3,118,291	3,432,925	0	0	6,551,216	0	3,049,634	3,358,013	0	0	6,407,647
a. Equipment (Restricted/OTO)	0	28,364	55,092	0	0	83,456	0	34,114	72,342	0	0	106,456
b. Hatchery Trucks (Restricted)	0	12,000	36,000	0	0	48,000	0	6,250	18,750	0	0	25,000
c. Legislative Contract Authority (Restricted/OTO)	0	0	1,851,019	0	0	1,851,019	0	0	1,851,019	0	0	1,851,019
d. Echo Lake Fish Planting (OTO)	0	30,000	0	0	0	30,000	0	30,000	0	0	0	30,000
4. Law Enforcement Division (04)	132,688	5,694,766	227,230	0	0	6,054,684	128,730	5,648,466	225,213	0	0	6,002,409
a. Game Farm Environmental Assessment/Environmental Impact Statement (Biennial)	0	208,000	0	0	0	208,000	0	0	0	0	0	0
b. Legislative Contract Authority (Restricted/OTO)	0	0	10,000	0	0	10,000	0	0	10,000	0	0	10,000
c. Alternative Livestock Programmatic Environmental Impact Statement (Biennial/OTO)	0	134,000	0	0	0	134,000	0	0	0	0	0	0
5. Wildlife Division (05)	0	3,089,053	3,271,320	0	0	6,360,373	0	3,037,711	3,252,687	0	0	6,290,398
a. Upland Game Bird Habitat (Restricted/Biennial)	0	1,335,000	0	0	0	1,335,000	0	0	0	0	0	0
b. Predator Research (Restricted/OTO)	0	29,979	89,921	0	0	119,900	0	29,979	89,921	0	0	119,900
c. Big Horn Sheep Operations (Restricted))	0	84,287	0	0	0	84,287	0	84,287	0	0	0	84,287
d. Blackfooted Ferret Reintroduction (OTO)	0	18,750	56,250	0	0	75,000	0	18,750	56,250	0	0	75,000
e. Legislative Contract Authority (Restricted/OTO)	0	0	220,500	0	0	220,500	0	0	220,500	0	0	220,500
f. HB 478 - Analyze Impacts of Limiting Nonresident Upland Game Bird Licenses (Biennial/OTO)	0	50,000	50,000	0	0	100,000	0	0	0	0	0	0
6. Parks Division (06)	285,620	4,344,630	867,852	0	0	5,498,102	285,620	4,288,717	867,876	0	0	5,442,213

HeinOnline -- 1999 vol. III 2629 1999

	Fiscal 2000						Fiscal 2001					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
a. Land and Water Conservation Fund (Restricted/OTO)	0	0	50,000	0	0	50,000	0	0	50,000	0	0	50,000
b. Fishing Access Sito and Motorboat Site Maintenance (Restricted/OTO)	0	0	51,000	0	0	51,000	0	0	51,000	0	0	51,000
c. Snowmobile Equipment (Biennial)	0	335,000	0	0	0	335,000	0	0	0	0	0	0
d. Legislative Contract Authority (Restricted/OTO)	0	0	25,000	0	0	25,000	0	0	25,000	0	0	25,000
e. Chief Plenty Coups/Pictograph Cave State Parks Rehabilitation (Restricted/Biennial/OTO)	0	600,000	0	0	0	600,000	0	0	0	0	0	0
7. Conservation Education Division (08)	2,698	1,540,877	437,513	0	0	1,981,088	2,698	1,534,116	437,538	0	0	1,974,352
a. Shooting Range Grant Program (Biennial)	0	119,800	0	0	0	119,800	0	0	0	0	0	0
b. Off-Highway Vehicle Education (Restricted/OTO)	0	6,700	0	0	0	6,700	0	6,700	0	0	0	6,700
c. Aquatic Education (Restricted/OTO)	0	0	189,705	0	0	189,705	0	0	202,423	0	0	202,423
d. Legislative Contract Authority (Restricted/OTO)	0	0	20,000	0	0	20,000	0	0	20,000	0	0	20,000
e. SB 381 - Remedial Hunter Educatiou Program (OTO)	0	60,000	0	0	0	60,000	0	60,000	0	0	0	60,000
8. Department Management (09)	0	2,605,290	689,124	0	0	3,294,414	0	2,586,369	686,190	0	0	3,272,559
a. Montana Cadastral Database Project (Restricted/OTO)	0	9,000	0	0	0	9,000	0	9,000	0	0	0	9,000
b. Legislative Contract Authority (Restricted/OTO)	0	0	150,000	0	0	150,000	0	0	150,000	0	0	150,000
Total	421,006	35,122,105	14,632,720	0	0	50,175,831	417,048	30,232,615	12,940,970	0	0	43,590,633

The appropriations for legislative contract authority are subject to all of the following provisions:

(1) Legislative contract authority applies only to federal funds.

HeinOnline -- 1999 vol. III 2630 1999

	Fiscal 2000						Fiscal 2001					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

(2) Expenditures must be reported on state accounting records and kept separate from present law operations. In preparing the 2003 biennium budget for legialative consideration, the office of budget and program planning may not include the expenditures from this item in the present law base.

(3) A report must be submitted by the department te the legialative fiscal division following the end of each fiscal year of the biennium. The report must include a listing of projects with the related amount of expenditures and FTE for each project.

If Senate Bill No. 59 is not passed und approved, the appropriations in item 1g are void.

Item 2c is to be used to lease winter habitat for big game ou private lands. Owners of land leased with this money may not outfit on the leased land. This item is to be funded from the wildlife habitat account.

If Senate Bill No. 334 is not passed and approved, the appropriations in item 2e are void.

If Senate Bill No. 338 is not passed and approved in a form increasing upland game bird license fees and allocating the increase to the block management program, then the appropriations in item 2f are void.

For the 2001 biennium, the paddlefish roe program is to be funded entirely with proceeds from the sale of paddlefish roe and not subsidized from the general license account.

Because of the de-earmarking of recreational use fines by House Bill No. 69, item 4 has been reduced by $4,848 in state special revenue funds in fiscal year 2000 and by $4,848 in state special revenue funds in fiscal year 2001 and general fund amounts have been increased by the same amounts. If House Bill No. 69 is not passed and approved in a form that de-earmarks the state special revenue funds, then the general fund amounts in item 4 are reduced by $4,848 in fiscal year 2000 and by $4,848 in fiscal year 2001 and the state special revenue amounts are increased by the same amounts.

If House Bill No. 478 is not passed and approved, then the appropriations in item 5f are void.

No more than $30,000 each year of the appropriation provided in item 5a is to be used for the purpose of 87-1-247(2)(a).

The appropriation in item 6e is funded from state park trust interest and state park fees. If money is not sufficient to fund this and continuing appropriations, this appropriation has priority and the department shall delay expenditures from continuing appropriations. Of the amount appropriated in item 6e, $500,000 must be used at the Chief Plenty Coups state park to rehabilitate historical buildings, renovate the cemetery, bring the museum and displays up to museum standards, renovate park infrastructure, and curato historic artifacts. The remaining amount of $100,000 must be used at the Pictograph Cave state park to preserve and protect the pictographs and the pictograph wall.

Item 7e is contingent upon passage and approval of Senate Bill No. 381.

The department is to report to the natural resources and commerce appropriations subcommittee of the 57th legialature on projects funded with federal Sikes Act money and state match money. The report is to include an analysis of the viability for continuance of the program and a list of projects funded with the money.

DEPARTMENT OF ENVIRONMENTAL QUALITY (5301)

1. Central Management Program (10)												
	15,001	0	0	0	0	15,001	15,001	0	0	0	0	15,001
a. Database Development (Restricted/Biennial/OTO)												
	250,000	0	0	0	0	250,000	0	0	0	0	0	0

HeinOnline -- 1999 vol. III 2631 1999

	Fiscal 2000						Fiscal 2001					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
2. Planning, Prevention and Assistance Division (20)	1,887,148	979,360	5,606,832	0	0	8,473,340	1,880,188	977,052	5,643,137	0	0	8,500,377
a. Particulate Matter 2.5 Monitoring (Restricted/OTO)	0	0	267,961	0	0	267,961	0	0	267,981	0	0	267,981
b. Federal Clean Water Action Plan (Restricted/OTO)	0	0	1,220,303	0	0	1,220,303	0	0	1,221,159	0	0	1,221,159
c. Air Quality Database Conversion (Restricted/OTO)	0	0	50,000	0	0	50,000	0	0	50,000	0	0	50,000
3. Enforcement Division (30)	500,130	183,367	402,426	0	0	1,085,923	497,419	183,099	399,953	0	0	1,080,471
4. Remediation Division (40)	0	2,663,300	1,576,754	0	0	4,240,054	0	2,644,880	1,599,052	0	0	4,243,932
a. Leaking Underground Storage Tank Trust Contracted Services (Restricted/Biennial/OTO)	0	0	300,000	0	0	300,000	0	0	300,000	0	0	300,000
b. Underground Storage Tank One-Stop Licensing (Restricted/OTO)	0	12,000	0	0	0	12,000	0	12,000	0	0	0	12,000
c. Abandoned Mine Reclamation (Biennial)	0	0	4,179,549	0	0	4,179,549	0	0	4,290,642	0	0	4,290,642
d. Leaking Underground Storage Tank Trust Program (Biennial)	0	137,082	928,973	0	0	1,066,055	0	136,866	925,035	0	0	1,061,901
e. Orphan Share Program (Biennial)	0	500,000	0	0	0	500,000	0	500,000	0	0	0	500,000
f. Underground Storage Tank Database Development (Restricted/OTO)	0	22,073	16,250	0	0	38,323	0	22,073	16,250	0	0	38,323
g. Underground Storage Tank Database Development (Restricted/Biennial/OTO)	0	0	14,277	0	0	14,277	0	0	14,277	0	0	14,277
5. Permitting and Compliance Division (50)	1,075,905	7,157,701	3,012,973	0	0	11,246,579	1,069,772	7,122,190	3,004,816	0	0	11,196,778
a. Subdivision Application Review (Restricted)	0	113,408	0	0	0	113,408	0	106,831	0	0	0	106,831
b. Subdivision Database (Restricted/OTO)	0	50,000	0	0	0	50,000	0	40,000	0	0	0	40,000
c. Subdivision Contracts/Operating (Restricted)	0	93,000	0	0	0	93,000	0	97,000	0	0	0	97,000

HeinOnline -- 1999 vol. III 2632 1999

	Fiscal 2000						Fiscal 2001					
	Goneral Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
d. Hard-Rock Bond Forfeitures (Restricted/Biennial)	0	57,000,000	0	0	0	57,000,000	0	0	0	0	0	0
e. Hard-Rock Database Conversions (Restricted/OTO)	0	200,000	0	0	0	200,000	0	200,000	0	0	0	200,000
f. Major Facility Siting Act Projects (Restricted/Biennial)	0	78,675	0	0	0	78,675	0	0	0	0	0	0
g. Montana Environmental Policy Act Projects (Restricted/Biennial)	0	1,000,000	0	0	0	1,000,000	0	0	0	0	0	0
h. Pega..s Gold Bond Litigation (Restricted/Biennial)	116,000	0	0	0	0	116,000	78,000	0	0	0	0	78,000
i. Water Protection Database (Restricted/OTO)	0	68,250	6,750	0	0	75,000	0	1,820	180	0	0	2,000
j. Asbestos Database (Restricted/OTO)	0	23,000	0	0	0	23,000	0	23,000	0	0	0	23,000
k. Hazardous Waste Database (Restricted/OTO)	0	6,200	13,800	0	0	20,000	0	6,200	13,800	0	0	20,000
l. Hazardous Waste Office Configuration (Restricted/OTO)	0	11,007	18,743	0	0	29,750	0	0	0	0	0	0
m. Coal, Uranium, Open Cut Database (Restricted/OTO)	1,000	11,500	37,500	0	0	50,000	1,000	11,500	37,500	0	0	50,000
n. Drinking Water SRF Database (Restricted/OTO)	0	0	120,000	0	0	120,000	0	0	120,000	0	0	120,000
o. SB 166 - Payment of Certain Abandoned Vehicle Removal Charges	0	207,822	0	0	0	207,822	0	205,022	0	0	0	205,022
6. Petroleum Tank Release Compensation Board (90)	0	616,356	0	0	0	616,356	0	614,768	0	0	0	614,768
Total	3,845,184	71,134,101	17,771,091	0	0	92,750,376	3,541,380	12,904,301	17,903,782	0	0	34,349,463

The department is appropriated up to $172,000 of additional federal spending authority during each year of the 2001 biennium for the purpose of cemplying with the clean water action plan when the use of the funds is identified and when the funds become available from EPA. These funds are awarded through the water pollution 106 section of the EPA performance partnership grant.

If the $285,000 leng-term advance due to the environmental quality protection fund is not repaid in fiscal year 1999, appropriations for the 2001 biennium from this account are restricted to this account only for purposes of 75-10-704 and may not be transferred for other uses.

HeinOnline -- 1999 vol. III 2633 1999

	Fiscal 2000						Fiscal 2001					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

Because of the de-earmarking of alternative energy revenue by House Bill No. 69, item 2 has been reduced by $74,979 in state special revenue funds in fiscal year 2000 and by $74,969 in state special revenue funds in fiscal year 2001 and general fund amounts have been increased by the same amounts. If House Bill No. 69 is not passed and approved in a form that de-earmarks the state special revenue funds, then the general fund amounts in item 2 are reduced by $74,979 in fiscal year 2000 and by $74,969 in fiscal year 2001 and the state special revenue amounts are increased by the same amounts.

DEPARTMENT OF LIVESTOCK (5603)

1.	Contralized Services Program (01)											
	98,256	921,700	46,561	0	0	1,066,517	97,040	902,793	48,170	0	0	1,048,003
	a. Legislative Audit (Restricted/Biennial)											
	2,929	24,608	1,758	0	0	29,295	0	0	0	0	0	0
2.	Diagnostic Laboratory Program (03)											
	155,926	1,062,539	0	0	0	1,218,465	158,702	1,047,648	0	0	0	1,206,350
3.	Disease Control Program (04)											
	0	698,743	0	0	0	698,743	0	657,814	0	0	0	657,814
	a. Bison Control (Restricted/OTO)											
	0	177,823	225,000	0	0	402,823	0	178,143	225,000	0	0	403,143
	b. Alternative Livestock Programmatic Environmental Impact Statement (Biennial/OTO)											
	0	67,000	0	0	0	67,000	0	0	0	0	0	0
4.	Milk and Egg Program (05)											
	0	242,088	20,668	0	0	262,756	0	240,989	20,670	0	0	261,659
5.	Inspection and Control Program (06)											
	0	2,599,746	0	0	0	2,599,746	0	2,523,012	0	0	0	2,523,012
	a. Brand Rerecord (Restricted/OTO)											
	0	44,633	0	0	0	44,633	0	43,798	0	0	0	43,798
	b. Record Rebinding (Restricted/OTO)											
	0	8,000	0	0	0	8,000	0	0	0	0	0	0
6.	Predator Control Program (08)											
	0	512,201	0	0	0	512,201	0	512,201	0	0	0	512,201
7.	Meat and Poultry Inspection Program (10)											
	396,423	1,772	396,611	0	0	794,806	404,657	1,762	404,845	0	0	811,264
	a. Leased Vehicles (Restricted/OTO)											
	28,982	0	28,983	0	0	57,965	26,982	0	26,983	0	0	53,965
	b. Inspector Training (Restricted/OTO)											
	1,154	0	1,155	0	0	2,309	1,154	0	1,155	0	0	2,309

HeinOnline -- 1999 vol. III 2634 1999

	Fiscal 2000						Fiscal 2001					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
8. Milk Control Bureau (37)	0	175,084	0	0	0	175,084	0	174,246	0	0	0	174,246
Total	683,670	6,535,937	720,736	0	0	7,940,343	688,535	6,282,406	726,823	0	0	7,697,764

The department shall record separately all operating expenses, equipment, and capital expenditures related to bison control for all programs in which any resources are expended for that purpose on the statewide budgeting and accounting system in a manner so that those expenditures can be readily derived and shall create a summary report. The department shall provide an annual report, by program, to the legislative fiscal analyst and the office of budget and program planning of all direct expenditures related to bison control.

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION (5706)

1. Trust Land Management Division (04)	4,848	7,410,798	12,413	0	0	7,428,059	4,848	7,423,647	12,386	0	0	7,440,881
a. Crow Land Exchange (Restricted/OTO)	0	0	100,035	0	0	100,035	0	0	100,017	0	0	100,017
2. Centralized Services (21)	1,784,716	180,339	108,512	0	0	2,073,567	1,787,999	173,667	96,844	0	0	2,058,510
a. Legislative Audit (Restricted/Biennial)	72,110	0	0	0	0	72,110	0	0	0	0	0	0
b. Field Office Network (Restricted/OTO)	83,625	3,000	0	0	0	86,625	0	0	0	0	0	0
3. Oil and Gas Conservation Division (22)	0	1,183,283	0	0	0	1,183,283	0	1,171,221	0	0	0	1,171,221
4. Conservation and Resource Development Division (23)	1,286,199	1,237,142	176,074	0	0	2,699,415	1,285,405	1,239,527	176,015	0	0	2,700,947
a. Conservation Districts—Federal Riparian/Wetland (Restricted/OTO)	0	0	30,000	0	0	30,000	0	0	0	0	0	0
b. Vison 2005, Irrigated Acres (Restricted/OTO)	150,000	0	0	0	0	150,000	150,000	0	0	0	0	150,000
c. Eastern Plains Resource Conservation and Development Grant to Conservation Districts (Restricted/OTO)	0	25,000	0	0	0	25,000	0	25,000	0	0	0	25,000
d. HB 444 - Montana Grass Conservation Commission (Biennial)	45,000	45,000	0	0	0	90,000	0	0	0	0	0	0
5. Water Resources Division (24)	5,628,297	1,039,827	129,954	0	0	6,798,078	5,613,436	1,048,766	129,964	0	0	6,792,166

HeinOnline -- 1999 vol. III 2635 1999

	Fiscal 2000						Fiscal 2001					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
a. Water Well Bond Forfeitures (Restricted/OTO)	0	16,000	0	0	0	16,000	0	16,000	0	0	0	16,000
b. Water Rights Inspections (Restricted/OTO)	0	85,856	0	0	0	85,856	0	85,868	0	0	0	85,868
c. Bair and Nevada Creek Dam Study (Restricted/Biennial/OTO)	0	550,000	0	0	0	550,000	0	0	0	0	0	0
d. Federal Emergency Management Agency Flood Mitigation Assistance (Restricted/OTO)	47,500	0	130,000	0	0	177,500	47,500	0	130,000	0	0	177,500
e. Broadwater Arbitration (Restricted/Biennial/OTO)	0	300,000	0	0	0	300,000	0	0	0	0	0	0
f. Rocky Boy's/North Central Water System (Biennial/OTO)	0	100,000	0	0	0	100,000	0	0	0	0	0	0
g. Fort Peck/Dry Prairie Water System (Biennial/OTO)	0	100,000	0	0	0	100,000	0	0	0	0	0	0
6. Reserved Water Rights Compact Commission (25)	667,105	0	0	0	0	667,105	663,884	0	0	0	0	663,884
7. Forestry Division (35)	5,556,982	2,653,293	855,745	0	0	9,066,020	5,559,698	2,637,511	862,924	0	0	9,060,133
a. Communication Equipment (Restricted/OTO)	7,240	0	0	0	0	7,240	0	0	0	0	0	0
b. Nursery Spending Authority (Restricted/OTO)	0	10,000	0	0	0	10,000	0	10,000	0	0	0	10,000
c. Protective Fire Gear (Restricted/OTO)	13,333	6,667	0	0	0	20,000	13,333	6,667	0	0	0	20,000
d. Federal Fire Reimbursements (Restricted)	0	0	350,000	0	0	350,000	0	0	350,000	0	0	350,000
e. Forest Health Monitoring Program (OTO)	0	0	39,000	0	0	39,000	0	0	78,000	0	0	78,000
Total	15,346,955	14,946,205	1,931,733	0	0	32,224,893	15,126,103	13,837,874	1,936,150	0	0	30,900,127

The department may combine trust land management division (program 04) and forestry division (program 35) data for accounting and financial reporting purposes beginning July 1, 1999. It is understood that the 2003 biennium budget for these two programs will be presented separately.

HeinOnline -- 1999 vol. III 2636 1999

	Fiscal 2000					Fiscal 2001				
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

The department shall attempt to keep its fiscal year revenue/cost ratio for timber sales at or above 2:1 by reducing timber sale costs or general administration costs of the timber sales program. The department shall report to the natural resources appropriations subcommittee of the 57th legislature on the revenue/cost ratio for the last 2 fiscal years and, if any ratio is below 2:1, shall explain to the subcommittee why costs were not reduced to obtain a ratio of at least 2:1.

The department is authorized to decrease state special revenue money in the underground injection control program and increase federal special revenue money by a like amount when the amount of federal EPA funds available for the program becomes known. Any federal special revenue funds are to be spent before state special revenue funds.

The department is appropriated up to $700,000 for the 2001 bienuium from the account established in 76-14-112 for rangeland loans during the 2001 biennium.

The department is appropriated up to $600,000 for the 2001 biennium from the state special revenue account established in 85-1-604 for the purchase of prior liens on property held as loan security as required by 85-1-618.

During the 2001 biennium, up to $1 million of funds currently in or to be deposited in the Broadwater replacement and renewal account are appropriated to the department for repairing or replacing equipment at the Broadwater hydropower facility.

During the 2001 biennium, up to $20,000 of interest earned on the Broadwater water users account is appropriated to the department for the purpose of repair, improvement, or rehabilitation of the Broadwater-Missouri diversion project.

During the 2001 biennium, up to $500,000 of funds currently in or to be deposited in the state project hydropower earnings account are appropriated for the purpose of repairing, improving, or rehabilitating department state water projects.

During the 2001 biennium, up to $100,000 of excess loan loss reserve money in the water pollution control state revolving fund is appropriated to make grants to aid in the feasibility of projects as anthorized in 75-5-1113(3)(b) of House Bill No. 74.

During the 2001 biennium, up to $100,000 of excess loan loss reserve money in the drinking water state revolving fund is appropriated to make grants to aid in the feasibility of projects as authorized in 75-6-224(3)(b) of House Bill No. 74.

Because of the de-earmarking of recreational use fines by House Bill No. 69, item 1 has been reduced by $4,848 in state special revenue funds in fiscal year 2000 and by $4,848 in state special revenue funds in fiscal year 2001 and general fund amounts have been increased by the same amounts. If House Bill No. 69 is not passed and approved in a form that de-earmarks the state special revenue funds, then the general fund amounts in item 1 are reduced by $4,848 in fiscal year 2000 and by $4,848 in fiscal year 2001 and the state special revenue amounts are increased by the same amounts.

Because of the de-earmarking of water adjudication fees by House Bill No. 69, item 2 has been reduced by $2,136 in state special revenue funds in fiscal year 2000 and by $2,057 in state special revenue funds in fiscal year 2001 and general fund amounts have been increased by the same amounts. If House Bill No. 69 is not passed and approved in a form that de-earmarks the state special revenue funds, then the general fund amounts in item 2 are reduced by $2,136 in fiscal year 2000 and by $2,057 in fiscal year 2001 and the state special revenue amounts are increased by the same amounts.

Because of the elimination of the statutory appropriation for the Yellowstone ground water area water compact by House Bill No. 69, item 5 has been increased by $23,000 in federal special revenue funds in fiscal year 2000 and by $23,000 in federal special revenue funds in fiscal year 2001. If House Bill No. 69 is not passed and approved in a form that eliminates the statutory appropriation, then the federal special revenue amounts in item 5 are reduced by $23,000 in fiscal year 2000 and by $23,000 in fiscal year 2001.

Because of the de-earmarking of water adjudication fees by House Bill No. 69, item 5 has been reduced by $2,500 in state special revenue funds in fiscal year 2000 and by $2,500 in state special revenue funds in fiscal year 2001 and general fund amounts have been increased by the same amounts. If House Bill No. 69 is not passed and approved in a form that de-earmarks the state special revenue funds, then the general fund amounts in item 5 are reduced by $2,500 in fiscal year 2000 and by $2,500 in fiscal year 2001 and the state special revenue amounts are increased by the same amounts.

HeinOnline -- 1999 vol. III 2637 1999

	Fiscal 2000						Fiscal 2001					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

Item 7d are those funds received from nonstate entities for the use of department personnel and for equipment to assist them in managing emergency incidents, such as fire suppression activities. Only funds up to $100,000 received as reimbursement of personnel expenses credited against the department's operational budget and up to $250,000 of funds received as payment under equipment use agreements are considered fire reimbursement funds. All other funds received must be deposited in the general fund. It is the intent of the legislature that funds reimbursed for the use of department equipment be expended for the repair, maintenance, and replacement of equipment that supports the state-county cooperative fire program. The department shall report fire reimbursement expenditures on stato accounting records, and the records must be separate from present law operations.

DEPARTMENT OF AGRICULTURE (6201)

1.	Central Management Division (15)											
	209,945	313,320	92,576	32,044	0	647,885	195,754	308,576	91,974	31,787	0	628,091
	a. Legislative Audit (Restricted/Biennial)											
	31,548	0	0	0	0	31,548	0	0	0	0	0	0
	b. Programmer/Analyst (Restricted/OTO)											
	17,427	26,063	7,670	2,654	0	53,814	14,528	23,507	6,737	2,380	0	47,152
2.	Agricultural Sciences Division (30)											
	61,945	4,817,176	420,303	0	0	5,299,424	63,628	4,750,250	420,735	0	0	5,234,613
	a. Environmental Protection Agency Grants (OTO)											
	0	0	150,000	0	0	150,000	0	0	150,000	0	0	150,000
	b. Laboratory Computer and Rewiring (OTO)											
	0	25,000	0	0	0	25,000	0	0	0	0	0	0
	c. SB 164 - Noxious Weed Trust (Restricted)											
	0	77,063	0	0	0	77,063	0	154,125	0	0	0	154,125
	d. SB 183 - Agricultural Seed (Restricted)											
	0	23,000	0	0	0	23,000	0	23,000	0	0	0	23,000
	e. SB 394 - State Organic Certifiestion Program (Restricted)											
	0	47,955	0	0	0	47,955	0	77,725	0	0	0	77,725
3.	Agricultural Development Division (50)											
	244,002	3,530,520	48,136	251,704	0	4,074,362	239,528	3,554,347	48,054	251,122	0	4,093,051
	a. Cooperative Development Center -MSU-Northern (Restricted/Biennial)											
	0	0	600,000	0	0	600,000	0	0	0	0	0	0
	b. Rail Transportation Technical Assistance (Restricted/Biennial/OTO)											
	0	50,000	0	0	0	50,000	0	0	0	0	0	0
	c. SB 342 - Agricultural Heritage Preservation (Restricted/Biennial/OTO)											
	1,000,000	0	0	0	0	1,000,000	0	0	0	0	0	0

HeinOnline -- 1999 vol. III 2638 1999

	Fiscal 2000						Fiscal 2001					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
Total	1,564,867	8,910,097	1,318,685	286,402	0	12,080,051	513,438	8,891,530	717,500	285,289	0	10,407,757

Item 2c is contingent upon passage and approval of Senate Bill No. 164.

Item 2d is contingent upon passage and approval of Senate Bill No. 183.

If House Bill No. 260 is passed and approved, $65,000 each fiscal year of state special revenue money appropriated in House Bill No. 260 must be used for a cooperative development center at MSU-Northern.

Item 3c is contingent upon passage and approval of Senate Bill No. 342.

It is the view of the legislature that:

(1) the state of Montana has great potential for the growing of alternative crops;

(2) producers are not always aware of the potential for growing alternative crops;

(3) state government can and should assist producers in meeting the potential of growing alternative crops.

Therefore, all appropriate entities of state government are directed to work cooperatively to develop policies and provide guidance and assistance to Montana producers to enable them to maximize the use of lands to grow alternative crops, including but not limited to pharmaceutical crops, in an environmentally sound manner.

DEPARTMENT OF COMMERCE (6501)

1. Weights and Measures Bureau (02)	0	631,087	0	0	0	631,087	0	619,804	0	0	0	619,804
a. Legislative Audit (Restricted/Biennial)	0	1,195	0	0	0	1,195	0	0	0	0	0	0
2. Banking and Financial Division (36)	0	1,522,083	0	0	0	1,522,083	0	1,541,681	0	0	0	1,541,681
a. Legislative Audit (Restricted/Biennial)	0	2,565	0	0	0	2,565	0	0	0	0	0	0
b. SB 482 - Mortgage Lender Regulation	0	57,000	0	0	0	57,000	0	44,000	0	0	0	44,000
c. HB 526 - Deferred Deposit Lending Regulation	0	67,000	0	0	0	67,000	0	62,700	0	0	0	62,700
3. Professional and Occupational Licensing Bureau (39)	0	4,977,864	0	0	0	4,977,864	0	4,971,458	0	0	0	4,971,458
a. Legal Contingency (Restricted/OTO)	0	70,000	0	0	0	70,000	0	70,000	0	0	0	70,000

HeinOnline -- 1999 vol. III 2639 1999

	Fiscal 2000						Fiscal 2001					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
b. Oracle Programming (Restricted/Biennial/OTO)	0	531,780	0	0	0	531,780	0	0	0	0	0	0
c. SB 334 - Revise Board of Outfitters	0	56,845	0	0	0	56,845	0	51,345	0	0	0	51,345
d. SB 445 - Beaverhead/Big Hole Outfitter Tag and River Use	0	16,545	0	0	0	16,545	0	16,410	0	0	0	16,410
4. Economic Development Division (51)	1,087,634	199,711	3,652,716	0	0	4,940,061	1,083,601	199,718	3,652,804	0	0	4,936,123
a. Legislative Audit (Restricted/Biennial)	5,598	0	0	0	0	5,598	0	0	0	0	0	0
b. Census 2000 (Restricted/OTO)	11,664	0	0	0	0	11,664	37,262	0	0	0	0	37,262
c. Made in Montana Trade Show (Restricted)	0	15,000	0	0	0	15,000	0	15,000	0	0	0	15,000
d. Manufacturing Extension Grant Match (OTO)	60,000	0	0	0	0	60,000	60,000	0	0	0	0	60,000
e. SB 172 - Telephone License Tax Credit	10,000	0	0	0	0	10,000	5,000	0	0	0	0	5,000
5. Montana Promotion Division (52)	0	730,000	0	0	0	730,000	0	750,000	0	0	0	750,000
a. Legislative Audit (Restricted/Biennial)	0	15,939	0	0	0	15,939	0	0	0	0	0	0
6. Community Development Bureau (60)	376,524	1,798,904	8,320,963	0	0	10,496,391	381,106	1,495,771	8,315,918	0	0	10,192,795
a. Legislative Audit (Restricted/Biennial)	5,994	0	0	0	0	5,994	0	0	0	0	0	0
b. Hard-Rock Mining Impact Account Reserve (Restricted)	0	100,000	0	0	0	100,000	0	100,000	0	0	0	100,000
7. Local Government Services Audit and Systems Bureau (62)	373,089	0	0	0	0	373,089	372,079	0	0	0	0	372,079
a. Legislative Audit (Restricted/Biennial)	766	0	0	0	0	766	0	0	0	0	0	0
8. Building Codes Bureau (65)	0	2,987,734	0	0	0	2,987,734	0	3,043,186	0	0	0	3,043,186

HeinOnline -- 1999 vol. III 2640 1999

	Fiscal 2000						Fiscal 2001					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
a. Legislative Audit (Restricted/Biennial)	0	5,475	0	0	0	5,475	0	0	0	0	0	0
b. HB 245 - Affordable Housing Building Codes	0	27,200	0	0	0	27,200	0	27,200	0	0	0	27,200
9. Housing Division (74)	0	0	21,848,946	0	0	21,848,946	0	0	22,626,615	0	0	22,626,615
a. Legislative Audit (Restricted/Biennial)	0	0	10,885	0	0	10,885	0	0	0	0	0	0
b. Section 8 Housing Contract Expiration (Restricted)	0	0	8,150,811	0	0	8,150,811	0	0	10,594,110	0	0	10,594,110
c. Section 8 Housing Contract Administration (Restricted)	0	0	215,832	0	0	215,832	0	0	171,676	0	0	171,676
10. Board of Investments (75)	0	30,000	0	0	0	30,000	0	30,000	0	0	0	30,000
11. Board of Horse Racing (78)	0	237,550	0	0	0	237,550	0	236,655	0	0	0	236,655
a. Legislative Audit (Restricted/Biennial)	0	410	0	0	0	410	0	0	0	0	0	0
12. Consumer Affairs (79)	153,565	87,131	0	0	0	240,696	149,616	71,982	0	0	0	221,598
a. Legislative Audit (Restricted/Biennial)	276	0	0	0	0	276	0	0	0	0	0	0
b. SB 27 - Telemarketing Fraud Prevention Act	115,393	0	0	0	0	115,393	100,295	25,000	0	0	0	125,295
Total	2,200,503	14,169,018	42,200,153	0	0	58,569,674	2,188,959	13,371,910	45,361,123	0	0	60,921,992

The department is appropriated in each of the fiscal years 2000 and 2001 up to $1 million of state special revenue that is deposited in the foreign capital depository account for the purpose of processing charter applications and for the chartering, examination, and regulation of each foreign capital depository that obtains a charter under the provisions of 32-8-205.

Item 2b is contingent upon passage and approval of Senate Bill No. 482 in a form that provides for regulation of mortgage lenders.

Item 2c is contingent upon passage and approval of House Bill No. 526.

Item 3c is contingent upon passage and approval of Senate Bill No. 334.

HeinOnline -- 1999 vol. III 2641 1999

	Fiscal 2000						Fiscal 2001					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

Item 3d is contingent upon passage and approval of Senate Bill No. 445.

Item 4e is contingent upon passage and approval of Senate Bill No. 172.

Item 8b is contingent upon passage and approval of House Bill No. 245.

The appropriation in item 9b is restricted to providing federal housing grants and for providing administrative assistance to existing housing assistance recipients as their housing and urban development administration section 8 contracts expire and are renegotiated as tenant-based assistance. The addition of funding for up to 1.5 FTE in fiscal year 2000 and up to 2.5 FTE in fiscal year 2001 is contingent upon the housing division experiencing the anticipated volume of expiring contracts. The FTE may not be added until the workload justifies the addition.

The appropriation in item 9c is restricted to administering housing and urban development (HUD) administration housing assistance payment contracts that HUD anticipates no longer administering but passing to others through devolution. The appropriation, including funding for up to 4.5 FTE in each year, is contingent upon the housing division being the successful bidder for this function.

It is the intent of the legislature that funding for the production and distribution of Montana state highway maps come from lodging facilities use tax revenue.

It is the intent of the legislature that the department use at least $200,000 of tourism promotion funds each fiscal year for the Lewis and Clark bicentennial commission.

The department shall set goals for each of the next 2 years for improving the following outcome indicators of the state's economy:

(1) percent increase in per capita earnings;

(2) percent increase in personal income;

(3) percent increase in the number of livable wage jobs;

(4) percent increase in manufacturing employment;

(5) percent increase in economic value of agriculture;

(6) percent decrease in number of multiple jobholders;

(7) percent increase in value of the livestock industry; and

(8) percent increase in revenue generated from film and advertisement production.

The department shall work with all economic development programs, the private sector, and others to reach these outcome goals. The outcome goals for each of the next 2 years must be set and listed on the department's internet website by July 1, 1999. The website must be updated every 6 months to show the progress toward meeting these outcome goals.

Item 12b is contingent upon passage and approval of Senate Bill No. 27.

TOTAL SECTION C											
24,062,185	150,817,463	78,575,118	286,402	0	253,741,168	22,475,463	85,520,636	79,586,348	285,289	0	187,867,736

HeinOnline -- 1999 vol. III 2642 1999

	Fiscal 2000						Fiscal 2001					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
D CORRECTIONS AND PUBLIC SAFETY												
CRIME CONTROL DIVISION (4107)												
1. Justice System Support Service (01)	776,282	0	560,030	0	0	1,336,312	775,917	0	560,064	0	0	1,335,981
a. Juvenile Detention Centers (Biennial)	1,134,942	0	0	0	0	1,134,942	1,134,942	0	0	0	0	1,134,942
b. Crime Victim Compensation (Biennial)	611,600	0	317,000	0	0	928,600	611,600	0	317,000	0	0	928,600
c. Federal Grants Pass Through (Biennial)	0	0	9,154,405	0	0	9,154,405	0	0	9,154,405	0	0	9,154,405
Total	2,522,824	0	10,031,435	0	0	12,554,259	2,522,459	0	10,031,469	0	0	12,553,928

All remaining federal pass-through grant appropriations for the 1999 biennium are authorized to continue into fiscal year 2000 and fiscal year 2001.

DEPARTMENT OF JUSTICE (4110)												
1. Legal Services Division (01)	2,556,389	275,537	210,042	0	0	3,041,968	2,530,940	274,960	204,279	0	0	3,010,179
2. Gambling Control Division (07)	504,014	1,970,162	0	0	0	2,474,176	499,736	1,953,785	0	0	0	2,453,521
a. Out-of-Country Travel (Restricted)	0	15,000	0	0	0	15,000	0	15,000	0	0	0	15,000
b. HB 109 - Establish Automated Video Gambling Accounting and Reporting System (Biennial)	380,000	560,000	0	0	0	940,000	0	0	0	0	0	0
3. Motor Vehicle Division (12)	7,657,546	403,053	0	0	0	8,060,599	7,498,142	403,053	0	0	0	7,901,195
a. HB 540 - Light Vehicle Registration Fee Referendum (Biennial/OTO)	279,469	0	0	0	0	279,469	0	0	0	0	0	0
b. HB 648 - Issue New License Plates (Biennial/OTO)	45,000	0	0	0	0	45,000	0	0	0	0	0	0
4. Highway Patrol Division (13)	1,042,073	14,741,652	819,838	0	0	16,603,563	1,083,606	14,826,203	817,968	0	0	16,727,777

HeinOnline -- 1999 vol. III 2643 1999

	Fiscal 2000						Fiscal 2001					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
5. Division of Criminal Investigation (18)	2,185,944	356,207	1,280,437	0	0	3,822,588	2,186,417	341,578	1,285,488	0	0	3,813,483
6. County Attorney Payroll (19)	1,582,054	0	0	0	0	1,582,054	1,618,318	0	0	0	0	1,618,318
7. Law Enforcement Academy Division (22)	1,076,716	50,000	100,000	0	0	1,226,716	1,056,371	50,000	100,000	0	0	1,206,371
8. Central Services Division (28)	229,237	283,328	0	10,494	0	523,059	228,877	282,882	0	10,478	0	522,237
a. Legislative Audit (Restricted/Biennial)	23,797	29,205	0	1,081	0	54,083	0	0	0	0	0	0
9. Justice Information Systems Division (29)	2,448,776	697,260	530,654	10,214	0	3,686,904	2,468,273	697,238	365,879	10,214	0	3,541,604
10. Extradition and Transportation of Prisoners (30)	163,934	0	0	0	0	163,934	163,939	0	0	0	0	163,939
11. Forensic Science Division (32)	1,868,208	303,205	175,002	0	0	2,346,415	1,863,165	300,912	174,721	0	0	2,338,798
Total	22,043,157	19,684,609	3,115,973	21,789	0	44,865,528	21,197,784	19,145,611	2,948,335	20,692	0	43,312,422

Legislative contract authority applies only to federal and private funds.

Legislative contract authority expenditures must be reported on state accounting records and kept separate from present law operations. In preparing the 2003 biennium executive budget, the office of budget and program planning may not include expenditures from this item in the present law base.

A report must be submitted by the department to the legislative fiscal analyst following the end of each fiscal year, listing legislaiive contract authority grants received and the amount of expenditures and FTE for each grant.

The legislature recognizes that the cost associated with litigation in which the legal services division is required to provide representation to the state of Montana may exceed the appropriation provided. In that event, the department may need to request a supplemental appropriation from the 2001 legislature to adequately represent the state.

There is appropriated from the highway patrol retirement clearing account for payments to the Montana highway patrol pension fund the amount required for this transfer, not to exceed $750,000 each fiscal year.

Item 2b contains funding for the automated accounting and reporting system. The general fund appropriation of $380,000 reflects the first year of a 5-year general fund commitment for this project. It is the intent of the legislature that an annnal general fund commitment of $380,000 be continued in each year of the 2003 biennium. It is also acknowledged that 1 additional FTE and related operating costs will be necessary in fiscal year 2002.

The appropriation in item 3a is contingent upon the passage of the public referendum in November of 2000 that calls for the replacement of the current system for taxation of light vehicles with a registration fee.

HeinOnline -- 1999 vol. III 2644 1999

	Fiscal 2000						Fiscal 2001					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
PUBLIC SERVICE REGULATION (4201)												
1. Public Service Regulation Program (01)	0	2,336,048	18,647	0	0	2,354,695	0	2,294,851	19,393	0	0	2,314,244
a. Legislative Audit (Restricted/Biennial)	0	15,774	0	0	0	15,774	0	0	0	0	0	0
b. Consultants (Biennial)	0	100,000	0	0	0	100,000	0	0	0	0	0	0
Total	0	2,451,822	18,647	0	0	2,470,469	0	2,294,851	19,393	0	0	2,314,244

It is the intent of the legislature that remaining funds up to $650,000 collected for the Montana universal access program in fiscal year 1998 and fiscal year 1999 be carried forward into the 2001 biennium, to be used only for functions of that program.

DEPARTMENT OF CORRECTIONS (6401)												
1. Administration and Support Services (01)	13,488,665	105,019	0	55,151	0	13,648,835	13,764,942	99,541	0	50,308	0	13,914,791
a. Legislative Audit (Restricted/Biennial)	76,167	0	0	0	0	76,167	0	0	0	0	0	0
b. Victims Officer (OTO)	0	0	31,890	0	0	31,890	0	0	31,673	0	0	31,673
c. Montana Children's Trust Fund Account (Restricted/OTO)	50,000	0	0	0	0	50,000	50,000	0	0	0	0	50,000
2. Community Corrections (02)	30,587,900	222,505	279,539	0	0	31,089,944	30,846,182	229,705	260,761	0	0	31,336,648
a. Prerelease Sex Offender Beds (Restricted/OTO)	73,000	0	0	0	0	73,000	73,730	0	0	0	0	73,730
b. Equipment (OTO)	7,823	0	0	0	0	7,823	0	0	0	0	0	0
3. Secure Facilities (03)	28,236,682	1,369,815	268,072	0	0	29,874,569	28,458,652	1,370,363	321,341	0	0	30,150,356
a. Adult Contract Beds (Biennial/Restricted)	13,473,786	0	0	0	0	13,473,786	16,571,624	0	0	0	0	16,571,624
4. Montana Correctional Enterprises (04)	1,038,639	0	0	290,213	0	1,328,852	1,046,166	0	0	290,419	0	1,336,585

HeinOnline -- 1999 vol. III 2645 1999

	Fiscal 2000						Fiscal 2001					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
a. Industries Present Law Increase (OTO)	22,004	0	0	124,687	0	146,691	21,974	0	0	124,517	0	146,491
b. SB 454 - Powell County Treasurer	0	0	0	46,000	0	46,000	0	0	0	46,000	0	46,000
c. HB 648 - Issue New License Plates in Fiscal Year 2000 (Biennial/OTO)	2,059,661	0	0	0	0	2,059,661	0	0	0	0	0	0
Total	89,114,327	1,697,339	579,501	516,051	0	91,907,218	90,833,270	1,699,609	613,775	511,244	0	93,657,898

The department shall report to the 2001 legislature by January 15, 2001, on the use of sex offender treatment in prerelease centers and the effectiveness of the prerelease sex offender treatment.

The department is authorized to distribute any savings realized by participation in the juvenile placement pilot project to the judicial districts that generate these savings.

The department is directed to transfer 8 FTE from the operations of Montana stete prison to the Pine Hills youth correctional facility.

The Montana children's trust fund shall provide a report to the 57th legislature on how the funds appropriated were expended and on the outcomes and results of the 2001 biennium activities.

The department shall procure merchandise and supplies for resale at the Montana state prison canteen from Montana taxpaying vendors whenever possible.

DEPARTMENT OF LABOR AND INDUSTRY (6602)

1. Job Service Division (01)	593,105	7,033,446	24,440,281	8,155	0	32,074,987	592,234	7,011,695	22,923,622	8,053	0	30,535,604
a. Jobs for Montana Graduates (OTO)	279,492	0	0	0	0	279,492	279,254	0	0	0	0	279,254
2. Unemployment Insurance Division (02)	0	282,060	4,840,386	0	434,383	5,556,829	0	281,648	4,832,953	0	431,805	5,546,406
a. Unemployment Insurance Increased Workload (OTO)	0	0	98,846	0	0	98,846	0	0	98,167	0	0	98,167
3. Commissioner's Office/Centralized Services Division (03)	153,176	769,982	496,726	38,357	0	1,458,241	152,713	767,707	495,386	38,252	0	1,454,058
4. Employment Relations Division (04)	880,964	5,800,876	424,440	0	0	7,106,280	879,709	5,980,332	422,773	0	0	7,282,814
a. Human Rights Administrative Office (OTO)	16,817	0	3,934	0	0	20,751	16,708	0	3,919	0	0	20,627

HeinOnline -- 1999 vol. III 2646 1999

	Fiscal 2000						Fiscal 2001					
	General Fund	Stete Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
5. Montana Community Services (07)	24,895	5,000	1,920,961	0	0	1,950,856	24,894	5,000	1,960,281	0	0	1,990,175
6. Workers' Compensation Court (09)	0	389,976	0	0	0	389,976	0	388,824	0	0	0	388,824
a. Judge and Hearings Examiner Payout (Restricted/OTO)	0	33,500	0	0	0	33,500	0	0	0	0	0	0
Totel	1,948,449	14,314,840	32,225,574	46,512	434,383	48,969,758	1,945,512	14,435,206	30,737,101	46,305	431,805	47,595,929

All anticipated revenue from the workers' compensation assessment of 2.6% is included in items 1, 3, 4, and 6. If the 2.6% cap on the workers' compensation assesament is not removed, the department may redistribute the workers' compensation regulation revenue among all divisions to allocate corresponding personal services reductions, except that the workers' conipensation court appropriation may not be changed.

Items 1 through 4 include employment security account funds. Item 4 is contingent upon passage and approval of House Bill No. 282. House Bill No. 282 increases the amount allocated te the employment security account by $404,000 in fiscal year 2000 and $596,000 in fiscal year 2001. The increase has been added te item 4. However, the agency may distribute the increase throughout the programs as necessary.

The appropriations in the job service division, centralized services division, and employment relations division include anticipated available funds from the employment security account. As such, the legislature has considered replacing, and has specifically chosen not te replace, any reduced employment security funds with general fund money. It is therefore the legislature's intent that the programs affected reduce operations to the level requiced to operate within the appropriation and that the department not seek a supplemental appropriation from the next legislature except in the case of an unexpected or unanticipated emergency.

Item 2 includes capital project funds of $434,383 in fiscal year 2000 and $431,805 in fiscal year 2001 and a decrease in federal funds of $343,096 in fiscal year 2000 and $343,096 in fiscal year 2001 for telephone claims annualization. This appropriation is one-time only.

Item 3 includes $21,848 in general fund money, a reduction of $11,132 in state special revenue funds, a reduction of $8,185 in federal funds, and a reduction of $2,531 in proprietary funds in both fiscal year 2000 and fiscal year 2001 for a one-time only human rights cost allocation adjustment.

Item 4 includes $65,852 in general fund money, a reduction of $57,292 in state special revenue funds, a reduction of $1,976 in federal funds, and a reduction of $6,584 in proprietary funds in both fiscal year 2000 and fiscal year 2001 for a one-time only human rights cost allocation adjustment.

Item 4 includes $62,300 in general fund meney and a reduction of $62,300 in federal funds in fiscal year 2000 and fiscal year 2001 for a one-time only general fund replacement of lost federal funds.

Because of the de-earmarking of prevailing wage penalties by House Bill No. 69, item 4 has been reduced by $2,000 in stete special revenue funds in fiscal year 2000 and by $2,000 in stete special revenue funds in fiscal year 2001 and general fund amounts have been increased by the same amounts. If House Bill No. 69 is not passed and approved in a form that de-earmarks the state special revenue funds, then the general fund amounts in item 4 are reduced by $2,000 in fiscal year 2000 and by $2,000 in fiscal year 2001 and the state special revenue amounts are increased by the same amounts.

Excluding the state match, it is the legislature's intent that the welfare-to-work program not be supported with state funds if the federal government reduces or terminates its support.

The department may not use general fund money to support the one-stop workforce center system or the unemployment insurance telephone claims center.

HeinOnline -- 1999 vol. III 2647 1999

	Fiscal 2000						Fiscal 2001					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

It is the legislature's intent that the centralized services functions of the department be provided to the department's programs and that the rates charged for these functions be the rates agreed upon by the United States department of labor federal cost negotiator. The applied rate for fiscal year 2000 may not exceed 9.6% of a program's actual personal services costs incurred in that fiscal year and in fiscal year 2001 may not exceed 8.9% of a program's actual personal services costs incurred in that fiscal year.

It is the legislature's intent that the input/output control operations functions continue to provide the services to department users. The charge an hour to the users may be no more than $50 an hour for the 2001 biennium. This rate must be analyzed throughout the biennium, and particular consideration must be given to the time spent providing this function to the customers and to the cash balance of the fund.

DEPARTMENT OF MILITARY AFFAIRS (6701)

1.	Operations Support (01)											
	332,031	0	33,636	0	0	365,667	331,222	0	33,405	0	0	364,627
	a. Legislative Audit (Restricted/Biennial)											
	1,442	0	0	0	0	1,442	0	0	0	0	0	0
	b. Montana Guard Scholarship Program (Restricted/Biennial/OTO)											
	250,000	0	0	0	0	250,000	0	0	0	0	0	0
	c. Montana National Guard Challenge Program (Restricted/Biennial/OTO)											
	840,000	0	1,960,000	0	0	2,800,000	760,000	0	1,820,000	0	0	2,580,000
2.	Army National Guard Program (12)											
	1,120,858	25,000	3,363,662	0	0	4,509,520	1,137,782	25,000	3,381,010	0	0	4,543,792
	a. Legislative Audit (Restricted/Biennial)											
	4,283	0	11,581	0	0	15,864	0	0	0	0	0	0
	b. Armory Programmed Painting (OTO)											
	137,627	0	0	0	0	137,627	137,627	0	0	0	0	137,627
3.	Air National Guard Program (13)											
	211,297	0	1,812,886	0	0	2,024,183	210,888	0	1,812,549	0	0	2,023,437
	a. Legislative Audit (Restricted/Biennial)											
	912	0	7,381	0	0	8,293	0	0	0	0	0	0
4.	Disastor Coordination Response (21)											
	447,759	18,804	1,039,113	0	0	1,505,676	502,623	18,791	979,324	0	0	1,500,738
	a. Legislative Audit (Restricted/Biennial)											
	1,082	0	6,129	0	0	7,211	0	0	0	0	0	0
5.	Veterans' Affairs Program (31)											
	646,897	147,404	0	0	0	794,301	643,155	147,139	0	0	0	790,294
	a. Legislative Audit (Restricted/Biennial)											
	2,888	357	0	0	0	3,245	0	0	0	0	0	0

HeinOnline -- 1999 vol. III 2648 1999

	Fiscal 2000						Fiscal 2001					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
b. World War II Memorial (OTO)	66,000	0	0	0	0	66,000	0	0	0	0	0	0
c. Eastern Montana Veterans' Administration Cemetery Equipment (Biennial/OTO)	0	0	150,000	0	0	150,000	0	0	0	0	0	0
Total	4,063,076	191,565	8,384,388	0	0	12,639,029	3,723,297	190,930	8,026,288	0	0	11,940,515

If federal authorities determine that federal money may not be used to pay for audit costs in item 2a, general fund money up to $11,537 is appropriated to pay those costs.

If federal authorities determine that federal money may not be used to pay for audit costs in item 3a, general fund money up to $7,391 is appropriated to pay those costs.

TOTAL SECTION D	119,691,833	38,340,175	54,355,518	584,352	434,383	213,406,261	120,222,322	37,766,207	52,376,361	578,241	431,805	211,374,936

HeinOnline -- 1999 vol. III 2649 1999

E. EDUCATION

OFFICE OF SUPERINTENDENT OF PUBLIC INSTRUCTION (3501)

	Fiscal 2000						Fiscal 2001					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
1. OPI Administration (06)	4,239,798	472,878	0	0	0	4,712,676	4,222,349	472,325	0	0	0	4,694,674
a. Computers (OTO)	6,143	0	0	0	0	6,143	0	0	0	0	0	0
b. Federal Funds (Biennial)	0	0	6,230,195	0	0	6,230,195	0	0	6,336,765	0	0	6,336,765
c. Improving Montana Schools (Restricted/Biennial/OTO)	314,499	0	0	0	0	314,499	475,768	0	0	0	0	475,768
d. School to Work (Biennial)	0	0	161,827	0	0	161,827	0	0	87,286	0	0	87,286
e. Automated System Development (Restricted/Biennial/OTO)	183,035	0	0	0	0	183,035	177,279	0	0	0	0	177,279
f. FFA Executive Secretary (Restricted)	30,718	0	0	0	0	30,718	30,532	0	0	0	0	30,532
2. Distribution to Public Schools (09)	0	1,000,003	0	0	0	1,000,003	0	1,000,003	0	0	0	1,000,003
a. General Fund (Biennial)	4,286,640	0	0	0	0	4,286,640	4,790,775	0	0	0	0	4,790,775
b. School District Federal Aid (Biennial)	0	0	70,085,027	0	0	70,085,027	0	0	72,580,875	0	0	72,580,875
c. Transportation Aid (Restricted/Biennial)	10,709,950	0	0	0	0	10,709,950	10,809,950	0	0	0	0	10,809,950
d. Timber Harvest for Technology (Restricted/Biennial/OTO)	1,640,000	0	0	0	0	1,640,000	1,760,000	0	0	0	0	1,760,000
e. Base Aid (Restricted/Biennial)	407,429,061	0	0	0	0	407,429,061	401,495,784	0	0	0	0	401,495,784
f. New Teachers for Reduced Class Size (Restricted/Biennial/OTO)	0	0	5,630,000	0	0	5,630,000	0	0	0	0	0	0
g. Comprehensive School Reform (Restricted/Biennial/OTO)	0	0	554,925	0	0	554,925	0	0	663,061	0	0	663,061

HeinOnline -- 1999 vol. III 2650 1999

	Fiscal 2000						Fiscal 2001					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
h. School to Work (Biennial)	0	0	2,720,000	0	0	2,720,000	0	0	2,340,000	0	0	2,340,000
i. In-State Treatment (Biennial)	974,897	0	0	0	0	974,897	974,897	0	0	0	0	974,897
j. Adult Basic Education (Biennial)	250,000	0	0	0	0	250,000	250,000	0	0	0	0	250,000
k. Secondary Vocational Education (Biennial)	714,999	0	0	0	0	714,999	714,999	0	0	0	0	714,999
l. Gifted and Talented (Biennial)	150,000	0	0	0	0	150,000	150,000	0	0	0	0	150,000
m. Special Education (Biennial)	32,974,268	0	0	0	0	32,974,268	33,468,883	0	0	0	0	33,468,883
Total	463,904,008	1,472,881	85,381,974	0	0	550,758,863	459,321,216	1,472,328	82,007,987	0	0	542,801,531

Items 1b and 1c are biennial appropriations.

The office of public instruction may distribute funds from the appropriation in item 2i to public school districts for the purpose of providing educational costs of day-treatment services.

Items 2a through 2m are biennial appropriations.

Item 2d is for school technology as provided in 20-9-534. The amount expended may not exceed the amount paid into the general fund under the provisions of 20-9-343(3)(a)(ii).

The superintendent of public instruction is authorized to use up to $30,000 in general fund money for the 2001 biennium from the appropriation in item 1 for national board certification stipends to Montana public school teachers who obtain certification from the national board for professional teaching standards.

An equal one-time stipend of $5,000 or less for each teacher, as authorized by the superintendent of public instruction, may be provided to each public school teacher who obtains certification from the national board for professional teaching standards if the teacher is:

(1) a full-time employee of a Montana public school district, as defined in 20-6-101, of an education cooperative, as described in 20-7-451, or of the Montana school for the deaf and blind, as described in 20-8-101;

(2) a full-time classroom teacher, librarian, or other full-time employee serving in an assignment covered by national board certification assessment; and

(3) certified to teach in Montana under the provisions of 20-4-103.

A teacher is eligible for the stipend in the school year beginning July 1 after the teacher obtains certification from the national board for professional teaching standards.

HeinOnline -- 1999 vol. III 2651 1999

	Fiscal 2000						Fiscal 2001					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
BOARD OF PUBLIC EDUCATION (5101)												
1. Administration (01)	134,023	11,252	0	0	0	145,275	133,525	11,216	0	0	0	144,741
a. Legislative Audit (Restricted/Biennial)	1,452	126	0	0	0	1,578	0	0	0	0	0	0
b. Standards Adoption (OTO)	7,384	616	0	0	0	8,000	7,384	616	0	0	0	8,000
2. Advisory Council (03)	0	172,534	0	0	0	172,534	0	172,042	0	0	0	172,042
a. Legislative Audit (Restricted/Biennial)	0	1,577	0	0	0	1,577	0	0	0	0	0	0
Total	142,859	186,105	0	0	0	328,964	140,909	183,874	0	0	0	324,783
SCHOOL FOR THE DEAF AND BLIND (5113)												
1. Administration Program (01)	270,526	0	0	0	0	270,526	269,373	0	0	0	0	269,373
a. Legislative Audit (Restricted/Biennial)	26,140	0	0	0	0	26,140	0	0	0	0	0	0
2. General Services Program (02)	304,020	0	0	0	0	304,020	303,490	0	0	0	0	303,490
a. Maintenance Pickup (Restricted/OTO)	15,000	0	0	0	0	15,000	0	0	0	0	0	0
3. Student Services (03)	919,806	0	24,644	0	0	944,450	915,383	0	24,644	0	0	940,027
4. Education (04)	1,630,201	228,068	56,750	0	0	1,915,019	1,629,160	228,068	56,750	0	0	1,913,978
a. Frequency Modulator Training Systems (Restricted/OTO)	73,206	0	0	0	0	73,206	0	0	0	0	0	0
b. Interpreters Salary Increase (Restricted)	7,965	0	0	0	0	7,965	16,331	0	0	0	0	16,331

HeinOnline -- 1999 vol. III 2652 1999

	Fiscal 2000						Fiscal 2001					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
Total	3,246,864	228,068	81,394	0	0	3,556,326	3,133,737	228 068	81,394	0	0	3,443,199
MONTANA ARTS COUNCIL (5114)												
1. Promotion of the Arts (01)	257,899	132,440	0	0	0	390,339	261,791	129,399	0	0	0	391,190
a. Legislative Audit (Restricted/Biennial)	18,028	0	0	0	0	18,028	0	0	0	0	0	0
b. Federal Grants (Biennial)	0	0	426,471	0	0	426,471	0	0	416,673	0	0	416,673
Total	275,927	132,440	426,471	0	0	834,838	261,791	129,399	416,673	0	0	807,863
All funds in item 1b are biennial appropriations.												
MONTANA STATE LIBRARY COMMISSION (5115)												
1. State Library Operations (01)	1,660,096	181,673	1,300,694	0	0	3,142,463	1,404,012	182,173	750,685	0	0	2,336,870
a. Legislative Audit (Restricted/Biennial)	15,774	0	0	0	0	15,774	0	0	0	0	0	0
b. Periodical Electronic Database (Biennial/OTO)	100,000	100,000	0	0	0	200,000	100,000	100,000	0	0	0	200,000
c. E-Rate Discount (OTO)	0	13,266	0	0	0	13,266	0	0	0	0	0	0
2. Natural Resource Information System (07)	45,278	493,254	45,000	0	0	583,532	44,972	478,962	45,000	0	0	568,934
a. Legislative Contract Authority (Biennial)	0	150,000	350,000	0	0	500,000	0	0	0	0	0	0
Total	1,821,148	938,193	1,695,694	0	0	4,455,035	1,548,984	761,135	795,685	0	0	3,105,804

Item 1 includes biennial appropriations of $251,138 in general fund money and $950,000 in federal funds for grants to local libraries.

Item 1b is provided to give local libraries the option to:

HeinOnline -- 1999 vol. III 2653 1999

	Fiscal 2000						Fiscal 2001					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

(1) use their share of the funding, along with a local match, to participate in a statewide periodical electronic database; or

(2) use their share of the funding to purchase periodicals or books locally.

Funding to local libraries is based upon the formula used by the state library commission to identify the cost for each library to participate. The state library commission shall provide funds to participating libraries in accordance with 22-1-103.

Item 2a includes $500,000 for legislative contract authority as a biennial appropriation, subject to the following provisions:

(1) Legislative contract authority applies only to state special revenue funds received from the Montana university system, federal funds, and private funds.

(2) Legislative contract authority expenditures must be reported on the state accounting system. The records must be separate from present law operations. In preparing the 2003 biennium budget for legislative consideration, the office of budget and program planning may not include the expenditures from this item in the present law base.

(3) A report must be submitted by the state library commission to the legislative fiscal division following the end of each fiscal year of the biennium. The report must include a listing of projects with the related amount of expenditures for each project.

MONTANA HISTORICAL SOCIETY (5117)

1.	Administration Program (01)											
	730,041	210,408	55,900	0	0	996,349	738,711	208,046	55,464	0	0	1,002,221
	a. Legislative Audit (Restricted/Biennial)											
	20,363	0	0	0	0	20,363	0	0	0	0	0	0
	b. Security Equipment (OTO)											
	20,000	0	0	0	0	20,000	0	0	0	0	0	0
2.	Library Program (02)											
	546,188	4,289	0	68,627	0	619,104	532,934	4,289	0	55,468	0	592,691
	a. Purchase Storage Units (OTO)											
	13,612	0	0	0	0	13,612	3,200	0	0	0	0	3,200
3.	Museum Program (03)											
	274,587	21,278	0	9,017	0	304,882	268,593	21,218	0	9,031	0	298,842
	a. Curator (OTO)											
	31,898	0	0	0	0	31,898	31,651	0	0	0	0	31,651
4.	Publications (04)											
	53,652	0	0	724,691	0	778,343	53,650	0	0	716,520	0	770,170
	a. Legislative Audit (Restricted/Biennial)											
	0	0	0	811	0	811	0	0	0	0	0	0
5.	Historical Sites Preservation (06)											
	22,368	0	461,561	0	0	483,929	22,836	0	459,878	0	0	482,714

HeinOnline -- 1999 vol. III 2654 1999

	Fiscal 2000						Fiscal 2001					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
a. Legislative Audit (Restricted/Biennial)	600	0	5,267	0	0	5,867	0	0	0	0	0	0
b. Antiquities Database Development (OTO)	20,321	20,750	0	0	0	41,071	20,265	20,689	0	0	0	40,954
Total	1,733,630	256,725	522,728	803,146	0	3,316,229	1,671,840	254,242	515,342	781,019	0	3,222,443
MONTANA UNIVERSITY SYSTEM, INCLUDING OFFICE OF THE COMMISSIONER OF HIGHER EDUCATION AND EDUCATIONAL UNITS AND AGENCIES (5100)												
1. OCHE — Administration (01)	1,126,823	0	0	0	0	1,126,823	1,120,527	0	0	0	0	1,120,527
a. Legislative Audit (Restricted/Biennial)	24,788	0	0	0	0	24,788	0	0	0	0	0	0
b. Performance Audit (Restricted/Biennial/OTO)	80,000	0	0	0	0	80,000	0	0	0	0	0	0
2. OCHE — Student Assistance (02)	7,451,310	0	140,599	0	0	7,591,909	7,649,469	0	140,599	0	0	7,790,068
3. OCHE — Dwight D. Eisenhower Mathematics and Science Education Act (03)	0	0	264,449	0	0	264,449	0	0	264,449	0	0	264,449
4. OCHE — Community College Assistance (04)	5,559,000	0	0	0	0	5,559,000	5,559,000	0	0	0	0	5,559,000
a. Legislative Audit (Restricted/Biennial)	32,640	0	0	0	0	32,640	0	0	0	0	0	0
5. OCHE — Talent Search (06)	93,760	0	473,736	0	0	567,496	93,760	0	539,583	0	0	633,343
6. OCHE — C.D. Perkins Administration (08)	80,000	0	8,890,000	0	0	8,970,000	80,000	0	8,090,000	0	0	8,170,000
7. OCHE — Appropriation Distribution Transfers (09)	91,239,751	14,809,000	0	0	0	106,048,751	91,265,210	15,280,000	0	0	0	106,545,210
a. Legislative Audit (Restricted/Biennial)	366,851	0	0	0	0	366,851	0	0	0	0	0	0
b. Agricultural Experiment Station	8,639,885	0	0	0	0	8,639,885	8,561,006	0	0	0	0	8,561,006
c. Extension Service	3,765,089	0	0	0	0	3,765,089	3,762,536	0	0	0	0	3,762,536

HeinOnline -- 1999 vol. III 2655 1999

	Fiscal 2000						Fiscal 2001					
	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
d. Montana Beef Network (Restricted/Biennial/OTO)	90,000	0	0	0	0	90,000	90,000	0	0	0	0	90,000
e. Forestry and Conservation Experiment Station	840,714	0	0	0	0	840,714	840,044	0	0	0	0	840,044
f. Bureau of Mines and Geology	1,441,082	656,000	0	0	0	2,097,082	1,438,306	656,000	0	0	0	2,094,306
g. Fire Services Training School	334,868	0	0	0	0	334,868	363,403	0	0	0	0	363,403
h. Nonbeneficiary Students at the Tribal Colleges (Restricted/OTO)	417,000	0	0	0	0	417,000	417,000	0	0	0	0	417,000
8. OCHE — Guaranteed Student Loan (12)	0	0	28,073,718	0	0	28,073,718	0	0	29,332,010	0	0	29,332,010
a. Legislative Audit (Restricted/Biennial)	0	0	3,718	0	0	3,718	0	0	3,718	0	0	3,718
9. OCHE — Board of Regents (13)	43,825	0	0	0	0	43,825	43,825	0	0	0	0	43,825
Total	121,627,386	15,465,000	37,846,220	0	0	174,938,606	121,284,086	15,936,000	38,370,359	0	0	175,590,445

Items 1 through 3, 5 through 7a, 8, and 9 are a single biennial lump-sum appropriation.

Audit costs for the office of the commissioner of higher education are estimated to be $32,224.

Total audit costs are estimated to be $64,000 for the community colleges for the biennium. The general fund appropriation for each community college provides 51% of the total audit costs in fiscal year 2000. The remaining 49% of these costs must be paid from funds other than those appropriated in item 4a. Audit costs for the biennium may not exceed $20,000 each for Dawson and Miles community colleges and $24,000 for Flathead Valley community college.

Total Summitnet costs are estimated to be $25,000 each year for the community colleges. The general fund appropriation for the community colleges provides 51% of the total Summitnet costs. The remaining 49% of these costs must be paid from funds other than those appropriated in item 4. Summitnot costs for each year may not exceed $8,000 each for Dawson and Miles community colleges and $9,000 for Flathead Valley community college.

The general fund appropriation in item 4 is calculated to fund education in the community colleges for an estimated 2,180 resident FTE students each year. If total annual resident FTE student enrollment in the community colleges is greater than 2,180, the community colleges shall serve the additional students without a state general fund contribution. If actual resident FTE student enrollment is less than 2,180 in either year, the commissioner of higher education shall revert $2,550 in general fund money from the appropriation in item 4 to the state for each estimated FTE student who did not enroll.

Because certain employee benefit plans require a large number of individual premiums for a variety of benefit options, because the portion of these premiums paid by the state is statutorily established in 2-18-703, and because the employee-paid portion of those premiums must be adjusted from time to time to maintain employee group benefit plans on an actuarially

HeinOnline -- 1999 vol. III 2656 1999

	Fiscal 2000						Fiscal 2001					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

sound basis, the legislature defines rates and fees for Montana university system employee benefit programs to mean the state contribution toward employee group benefits provided for in 2-18-703 and the employee contribution toward employee group benefits necessary to maintain the employee group benefit plans on an actuarially sound basis.

The general fund and millage appropriation in item 7 is calculated to fund education in the 4-year units and the colleges of technology for an estimated 24,622 resident FTE students in fiscal year 2000 and 24,871 resident FTE students in fiscal year 2001. If actual resident student enrollment is greater than the estimated number for the biennium, the university system shall serve the additional students without a state general fund contribution. If actual resident student enrollment is less than the estimated number for the biennium, the commissioner of higher education shall revert $1,837 in general fund money to the state for each estimated FTE student who did not enroll.

Revenue appropriated to the Montana university system units and colleges of technology includes: (1) state special revenue from interest earnings of $1,608,019 each year of the 2001 biennium; and (2) tuition and other revenue of $107,921,502 in fiscal year 2000 and $112,194,076 in fiscal year 2001. These amounts are appropriated for current unrestricted operating expenses as a biennial lump-sum appropriation and are in addition to the funds shown in item 7.

Item 7 includes $399,060 in each year of the biennium that must be transferred to the energy conservation program account and used to retire the general obligation bonds sold to fund energy improvements through the state building energy conservation program. The costs of this transfer in each year of the biennium are: university of Montana-Missoula, $207,300; Montana tech of the university of Montana, $28,000; Montana state university-northern, $97,000; Montana state university-Billings, $56,000; and western Montana college of the university of Montana, $10,760.

Total audit costs are estimated to be $549,842 for the university system other than the office of the commissioner of higher education. Each unit shall pay a percentage of these costs from funds other than those appropriated in item 7a.

At the direction of the legislative audit committee, the legislative auditor shall conduct at least three performance audits of university and college of technology campus physical plant and grounds and maintenance operations during the 2001 biennium. When deciding which campuses to audit, the legislative audit committee shall consider comments from representatives from each campus, the commissioner of higher education, and the architecture and engineering division. The legislative audit committee shall rank each campus in order of audit priority, considering maintenance needs, current maintenance and physical plant expenditures, and other information that the committee considers relevant. The commissioner of higher education shall pay the audit costs of up to $80,000 from the one-time only, biennial general fund appropriation restricted to that purpose. The legislative auditor shall report the results of the performance audits to the legislative audit committee and to the public prior to the 2001 legislative session.

The legislature recommends that a minimum of 13% of the total current unrestricted operating funds for the units and the colleges of technology be spent on operations and maintenance in program 7 because an increasing level of deferred maintenance has followed: (1) construction of a substantial number of new buildings in recent years; and (2) a decline in the proportional amount of the current unrestricted funds spent on operations and maintenance. This percentage is recommended to ensure more timely maintenance that should result in a lower level of deferred maintenance in university system buildings.

University system units are defined in 17-7-102(13). For all university system units, except the office of the commissioner of higher education, all funds (other than plant funds appropriated in House Bill No. 5 relating to long-range building and current unrestricted operating funds) are appropriated contingent on approval of the comprehensive program budget by the board of regents by October 1 of each year. For all university system 4-year units and colleges of technology, all funds, other than funds appropriated in House Bill No. 5 for long-range building programs, are appropriated as a lump sum for the biennium contingent upon approval of the comprehensive program budget by the board of regents by October 1 of each year. The board of regents shall allocate the appropriations to the individual units according to board policy. The budget must contain detailed revenue and expenditure and anticipated fund balances of current funds, loan funds, endowment funds, and plant funds. After the board of regents approves operating budgets, transfers between units may be made only with the approval of the board of regents. Requests for transfer and related justification must be submitted to the office of budget and program planning and to the legislative fiscal analyst prior to approval by the board of regents. All movement of funds between the current unrestricted subfund and the designated subfund accounts must be clearly identified in the state budgeting and accounting system.

All university system units, except the office of the commissioner of higher education, shall account for expenditures consistently within programs and funds across all units and shall use the national center for higher education management systems program classifications structure, along with the college and university business administration (CUBA) system, as a minimum standard for achieving consistency.

HeinOnline -- 1999 vol. III 2657 1999

	Fiscal 2000						Fiscal 2001					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total

The Montana university system, except the office of the commissioner of higher education and the community colleges, shall provide the office of budget and program planning and the legislative fiscal division with banner training and online electronic access to the entire university system's banner information system by May 1, 2000, except:

(1) the ability to change data;

(2) portions of the banner information system that are the property of third parties (such as alumni associations or foundations); and

(3) information pertaining to individual students or individual employees that is protected by Article II, sections 9 and 10, of the Montana constitution, 20-25-515, or the Family Educational Rights and Privacy Act, 20 U.S.C. 1232g.

Items 1 through 3 in no way limit the power of the budget director or the legislative fiscal analyst to receive and examine copies of any state government information, including confidential records, in accordance with 5-12-303 and 17-1-132.

By fiscal yearend 2000 and thereafter:

(1) the actual personal services data for all funds on banner must tie te the actual expenditures as recorded on the state accounting and human resource systems; and

(2) the budgeted personal services for current unrestricted operating funds on banner must tie to the operating plan for expenditure of funds appropriated in [this act] and other bills, as approved by the board of regents.

The Montana university system shall provide the electronic data required to upload buman resource data for the current unrestricted operating funds into the MBARS system by program number, cost center, and position, including but not limited to the budgeted salary and benefits, grade and step, FTE, position title and position type, longevity dates and increments, yeare of service, benefit factors, workers' compensation code, final ending hourly salary, and class code.

The Montana university system shall present a report to the legislative education committee establisbed in Senate Bill No. 11 in the first quarter of each fiscal year that provides the average actual instruction program cost per student credit hour for the most recently completed fiscal year and the supporting information per unit. The averages and the detail per unit must be provided as follows:

(1) lower division, which includes freshmen and sophomore classes;

(2) upper division, which includes junior and senior classes;

(3) graduate I level, which includes classes for those with a bachelor's degree who are working on a master's degree; and

(4) graduate II level, which includes classes for those with a master's degree who are working on a higher degree.

Revenue appropriated to the agricultural experiment station includes: (1) state special revenue from interest earnings of $79,332 each year of the 2001 biennium; (2) federal revenue of $1,986,061 in fiscal year 2000 and $2,045,643 in fiscal year 2001; and (3) proprietary revenue from sales of $975,379 in fiscal year 2000 and $972,946 in fiscal year 2001. These amounts are appropriated for current unrestricted operating expenses and are in addition te the funds shown in item 7b.

Revenue appropriated to the extension service each year of the biennium includes: (1) state special revenue from interest earnings of $40,739; and (2) federal revenue of $2,187,516. These amounts are appropriated for current unrestricted operating expenses and are in addition to the funds shown in item 7c.

General fund money of $90,000 each year of the 2001 biennium in item 7d is a biennial, one-time only appropriation for one staff person and for expenses for the Montana beef network within the extension service.

HeinOnline -- 1999 vol. III 2658 1999

	Fiscal 2000						Fiscal 2001					
General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total	General Fund	State Special Revenue	Federal Special Revenue	Proprietary	Other	Total
Interest revenue of $4,923 in fiscal year 2000 and $4,959 in fiscal year 2001 is appropriated to the forestry and conservation experiment station for current unrestricted operating expenses. This amount is in addition to that shown in item 7e.											
Proprietary revenue of $59,000 each year of the biennium is appropriated to the bureau of mines and geology for current unrestricted operating expenses. This amount is in addition to that shown in item 7f.											
Interest revenue of $4,097 each year of the biennium is appropriated to the fire services training school for current unrestricted operating expenses. This amount is in addition to that shown in item 7g.											
TOTAL SECTION E											
592,751,822	18,679,412	125,954,481	803,146	0	738,188,861	587,362,563	18,965,046	122,187,440	781,019	0	729,296,068
TOTAL STATE FUNDING											
1,013,816,546	423,165,149	1,097,274,453	2,368,499	434,383	2,537,059,030	1,008,378,732	360,296,134	1,070,225,119	2,335,586	431,805	2,441,667,376

HeinOnline -- 1999 vol. III 2659 1999

Section 17. Rates. Internal service fund type fees and charges established by the legislature for the 2001 biennium in compliance with 17-7-123(6)(b) are as follows:

SECRETARY OF STATE (3201)	2001 Biennium
1. Administrative Rules of Montana Fees	
a. Administrative Rules of Montana	$350.00/set
b. Quarterly Updates of ARM	$250.00/year
c. Extra Titles	$50.00/book
d. Quarterly Updates of Extra Titles	$50.00/year/title
e. Montana Administrative Register	$300.00
f. Agency Filing Fee for Pages for Register Publication	$35.00/page
2. Records Management Fees (based on 2-6-203)	
a. **16MM Microfilm** Less than 250,000	$30.00
Nontypical extreme weight & size	$36.75
8 ½ x 11"; 8 ½ x 14" paperwork	$25.00
8 ½ x 11"; 11 x 14" computer printout	$22.05
Extreme size & weight variance	$27.50
Cards - fixed weight & color	$15.00
Cards - mixed weight & color	$25.00
h. **35MM Microfilm** L (per 12 x 12") aerial photos	$65.00
16 x 20" bound books	$60.00
24 x 34" newspapers	$110.00
24 x 34" bound newspapers	$130.00
48 x 48" blueprints/maps	$275.00
c. **105MM Microfilm** 8 ½ x 11" paperwork	$65.00
8 ½ x 11"; 11 x 14" computer printout	$73.50
Cards (per 1000)	$73.50
Minimum filming charge	$37.50
d. **Film Processing** 16mm, 100 foot roll	$3.45
16mm, 215 foot roll	$6.76
35mm, 100 foot roll	$6.05

16mm, 3M cartridges	$4.50
e. **Film Inspecting** 100 foot roll inspection	$3.50
215 foot roll inspection	$4.98
film splicing	$0.75
3M cartridge loading	$2.25
f. **Duplication** 16mm, 100 foot roll	$6.48
16mm, 215 foot roll	$12.41
35mm, 100 foot roll	$8.77
105mm, microfiche or jackets	$0.15
Reader/printer copies	$0.50
Photocopies/own labor	$0.10
Photocopies/our labor	$0.50
16mm, 100 foot roll	$9.45
35mm, 100 foot roll	$13.85
g. **Jacket Loading** 16mm, 5 channel jacket	$0.30
Agency's own jacket	$0.275
35mm, 1 & 2 channel jacket	$0.30
Loading 16mm aperture card	$0.25
Jacket title	$0.25
Jacket notching	$0.05
h. **Miscellaneous** Fiche title	$0.25
Indexing and document prep/hour	$14.00
Camera rental/day	$95.00
i. **Supplies** NMl reader hulbs	$10.75
16mm, 100 foot roll film	$6.68
16mm, 215 foot roll film	$12.95
35mm, 100 foot roll film	$12.95
j. **Records Center Services**	
Storage hy square foot/month	$0.19
Storage by cubic foot	$0.2950

Retrievals	$1.00
Emergency retrievals	$5.00
Large retrievals, delivery, interfiling	$16.00
Records disposal/hour	$16.00
Shredding confidential records/hour	$21.95

k. **Records Center Boxes**

Records storage box: standard size A	$1.34
Drawings & map storage boxes size C	$1.34

DEPARTMENT OF JUSTICE (4110)	Fiscal Year 2000	Fiscal Year 2001
1. Agency Legal Services		
a. Attorney (per hour)	$62	$62
b. Investigator/Paralegal (per hour)	$35	$35

DEPARTMENT OF TRANSPORTATION (5401)

1. State Motor Pool		
a. Class 02	$0.381/mile	$0.348/mile
b. Class 06	$0.291/mile	$0.275/mile
c. Class 07	$0.34/mile	$0.32/mile
d. Class 12	$0.365/mile	$0.353/mile
e. Daily rate	$9.20/day	$8.70/day

A daily rate charge will be assessed if a vehicle runs under approximately 33 miles a day (1,000 miles a month). The larger of either the daily rate or the applicable per-mile rate is charged.

2. Equipment Program

The equipment program's rate structure includes both assigned time rates and usage rates for 121 classes of equipment used by other programs within the department. Because of the enterprise-like nature of this program's operations and the large number of individual rates, the legislature defines rates as the following:

The equipment program may charge rates necessary to establish and maintain a 60-day working capital reserve to operate the program.

DEPARTMENT OF REVENUE (5801)

1. Customer Service Center	
a. One-Stop Licensing	$4.51 per license
b. Input Manual Cash	$1.21 per document

c. Input Mail	$0.19 per document
d. Capture Image	$3.91 per document
e. Capture Paper	$4.97 per document
f. Validation	$0.18 per document
g. Retention	$0.21 per document
h. Coupon Payment	$0.25 per document
i. Bad Debt Collection	10% of the amount collected

DEPARTMENT OF ADMINISTRATION (6101)

1. Accounting and Management Support

a. Network Support per Computer	$668	$685
b. Programming per Hour	60-day working capital reserve	60-day working capital reserve
c. Mailer Warrants (Per Warrant)	$0.50277	$0.50143
d. Nonmailers (Per Warrant)	$0.18230	$0.18190
e. Emergency Warrants (Per Warrant)	$3.3019	$3.3006
f. Duplicate Warrants (Per Warrant)	$0.50360	$0.50320
g. Direct Deposits (Per Warrant)	$0.09540	$0.09380
h. Procord Program	60-day working capital reserve	60-day working capital reserve

i. Legal Services Unit — Share of Total Revenue Each Program or Division Will Pay

Program or Division	Share
Information Services Division	27%
Teachers' Retirement Division	20%
Employee Benefits Program	26%
Risk Management and Tort Defense Program	2%
Architecture and Engineering Program	18%
General Services Division	7%
Total	100%

2. General Services Program (per square foot)

a. Office Rental Rate	$5.13	$5.37
b. Warehouse Rental Rate	$2.12	$2.12

3. Professional Development Center

a. Workshops	$50.91/hr	$52.84/hr

4. Information Services Division

a. 60-day working capital, except that the data network rate may not exceed $64.59 per connection per month.

b. MT PRRIME Operations Bureau	Amount Allocated in Agency Budgets
	Fiscal year 2000: $2,680,238; Fiscal year 2001: $2,722,253

5. Procurement and Printing

a. Publications & Graphics	60-day working capital reserve
b. Central Stores	60-day working capital reserve
c. Natural Gas Procurement	break-even (no reserve)
d. Statewide Fueling Network	60-day working capital reserve
e. Mail Program	60-day working capital reserve

6. Mail Program

a. Deadhead Mail	Amount Allocated in Agency Budgets
	Fiscal Year 2000: $163,704; Fiscal Year 2001: $163,704
b. Regular Mail	60-day working capital reserve

7. Payroll	60-day working capital

8. Risk Management	Total Amounts Allocated to Agencies	
a. General Liability	$3,834,842	$3,834,842
b. Auto Liability	1,244,420	1,244,419
c. Property	1,147,684	1,147,684
d. Airport/Aircraft	122,108	122,108
e. All Other Lines	202,742	212,029

9. Because state employee benefit plans require a large number of individual premiums for a variety of benefit options, because the portion of these premiums paid by the state is statutorily established in 2-18-703, and because the employee-paid portion of these premiums must be adjusted from time to time to meet the

requirements of 2-18-812(1) to maintain state employee group benefit plans on an actuarially sound basis, the legislature defines "rates and fees" for state employee benefit programs to mean the state contribution toward employee group benefits provided for in 2-18-703 and the employee contribution toward employee group benefits necessary to meet the requirements of 2-18-812(1).

DEPARTMENT OF FISH, WILDLIFE, AND PARKS (5201)

1. Administration and Finance (% markup)		
a. Warehouse Overhead	4%	4%
2. Vehicle Account Rates Per Mile		
a. Sedans	$0.15	$0.15
b. Suburban - 4X4 (New)	0.36	0.37
c. Van 1/2 Ton	0.16	0.16
d. Van 1/2 Ton Window	0.22	0.23
e. Pickup 1/2T 2X4 V8	0.29	0.30
f. Pickup 1/2T 4X4 V8	0.22	0.22
g. Pickup 3/4T 4X4 V8	0.16	0.17
h. Pickup 1/2T 4X4 6 Cyl	0.22	0.23
i. Bronco 4X4 6 Cyl	0.20	0.21
j. Pickup 1/2T 4X4 Smalls	0.21	0.27
k. Pickup 3/4T 4X4 HD	0.23	0.24
l. Pickup 3/4T 4X4 HD XC	0.28	0.29
m. Pickup 3/4T 4X4 460	0.30	0.31
n. Pickup 3/4T 4X4 MD	0.20	0.21
o. Pickup 3/4T 4X4 MD XC	0.24	0.26
p. Pickup 3/4T 4X4 LD XC	0.24	0.26
3. Aircraft Per Hour Rates		
a. 2 Place Single-Engine Aircraft	59.78	68.74
b. Parnavia	245.83	258.12
c. Turbine Helicopter	271.50	312.23
4. Parks - Capitol Grounds Maintenance	$0.3446/sq. ft.	$0.3446/sq. ft.
5. Duplicating - Number of copies (includes paper)		
a. 1 to 20	.045	.050

HeinOnline -- 1999 vol. III 2665 1999

b. 21 to 100	.030	.035
c. 101 to 1000	.025	.030
d. 1001 to 5000	.020	.025

6. Bindery

a. Collating Machine (per sheet)	$.005	$.005
b. Stapling Hand (per set)	.015	.015
c. Saddle Stitch (per set)	.030	.030
d. Folding (per sheet)	.005	.005
e. Punching - 3 hole (per sheet)	.001	.001
f. Cutting (per min)	.550	.550

DEPARTMENT OF ENVIRONMENTAL QUALITY (5301)
(admin. formula negotiated with fed. govt.)

1. Central Management

a. Expenses Against Personal Services	23.0%	23.0%

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION (5706)

1. Air Operations Program

a. Fixed Wing (per hour)	$90	$90
b. Light Helicopters (per hour)	$345	$345
c. Medium Helicopters (per hour)	$850	$850

DEPARTMENT OF COMMERCE (6501)

1. Professional and Occupational Licensing

a. House Bill No. 2 Programs Recharge Rate	35.61%	35.68%

2. Local Government Services Bureau

a. LGA Administrators Recharge	1.33%	1.33%

3. Board of Investments

For purposes of [this act], the legislature defines "rates" as the total collections necessary to operate the board of investments as follows:

a. BOI Administration Charge (total)	$2,150,000	$2,000,000

4. Director's Office/Management Services

a. Federal Programs IDC Rate	9.85%	9.85%

h. State Programs IDC Rate	9.85%	9.85%

DEPARTMENT OF CORRECTIONS (6401)

1. Montana Corrections Enterprises		
a. Laundry Rate to MSP	$0.37/lb	$0.37/lh
b. Laundry Rate to MSH	0.36/lb	0.36/lb
c. Laundry Rate to MDC	0.46/lb	0.46/lb

DEPARTMENT OF LABOR AND INDUSTRY (6602)

1. Centralized Services Division		
a. Cost Allocation Plan	9.6%	8.9%

Applied against actual personal services costs incurred

2. Information Services Bureau		
a. Input/Output Function	≤ $50/hr	≤ $50/hr
3. Career Information System		
a. User Fees-MCIS License Revenue (total)	$1,500	$1,500

$1,500 larger schools - discounts for smaller

OFFICE OF PUBLIC INSTRUCTION (3501)

1. OPI Indirect Cost Pool		
a. Indirect Cost Draws	17%	17%

OPI funds its indirect cost pool with 17% of all personal services and operations expenditures in its administration program.

MONTANA UNIVERSITY SYSTEM (5100)

Because certain employee benefit plans require a large number of individual premiums for a variety of benefit options, because the portion of these premiums paid by the state is statutorily established in 2-18-703, and because the employee-paid portion of these premiums must be adjusted from time to time to maintain employee group benefit plans on an actuarially sound basis, the legislature defines "rates and fees" for Montana university system employee benefit programs to mean the state contribution toward employee group benefits provided for in 2-18-703 and the employee contribution toward employee group benefits necessary to maintain the employee group benefit plans on an actuarially sound basis.

Approved May 10, 1999

HeinOnline -- 1999 vol. III 2667 1999

CHAPTER NO. 579

[HB 127]

AN ACT GENERALLY REVISING CHILD SUPPORT LAWS TO IMPROVE SERVICES; ELIMINATING OBSOLETE PROVISIONS; CONFORMING THE PROVISION FOR JURISDICTION OVER A NONRESIDENT TO FEDERAL FULL FAITH AND CREDIT REQUIREMENTS; MAKING THE DEFINITIONS OF "SUPPORT ORDER" CONSISTENT WITH EACH OTHER; CONFORMING WARRANT FOR DISTRAINT PROVISIONS WITH A MONTANA SUPREME COURT DECISION; ALLOWING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO SUBSTITUTE A SUPPORT ORDER MADE IN ACCORDANCE WITH THE CHILD SUPPORT GUIDELINES FOR AN ADMINISTRATIVE DEFAULT ORDER; ALLOWING FOR AMENDMENT OF AN ADMINISTRATIVE SUPPORT ORDER; REVISING PROVISIONS FOR SERVICE OF PROCESS; PROVIDING FOR DEPARTMENT RECEIPT OF INFORMATION BY PARTIES TO A SUPPORT ORDER; DELETING THE REQUIREMENT THAT AN ALTERNATIVE ARRANGEMENT FOR CHILD SUPPORT BE SIGNED BY THE PARTIES; DELETING THE REQUIREMENT FOR A MONTHLY MEDICAID REIMBURSEMENT IF PARENTS ARE NOT ELIGIBLE FOR HEALTH INSURANCE AT REASONABLE COST; AMENDING SECTIONS 40-4-210, 40-5-201, 40-5-202, 40-5-207, 40-5-210, 40-5-224, 40-5-225, 40-5-247, 40-5-253, 40-5-273, 40-5-315, 40-5-403, 40-5-701, 40-5-806, 40-5-807, AND 40-5-901, MCA; REPEALING SECTIONS 40-5-211, 40-5-212, AND 40-5-223, MCA; AND PROVIDING EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-4-210, MCA, is amended to read:

"40-4-210. Child support jurisdiction — nonresidcnt individual. A ~~court of this state that is competent to decide child support matters may exercise~~ *(1) In a proceeding to cstablish or modify a child support order, a district court may acquire* personal jurisdiction over a nonresident individual or the individual's guardian or conservator ~~in a child support determination in the initial or modification decree~~ if:

~~(1)~~*(a)* the individual is personally served with notice within this state in accordance with Rule 4B, Montana Rules of Civil Procedure;

~~(2)~~*(b)* the individual submits to the jurisdiction of this state by consent, by entering a general appearance, or by filing a responsive document that has the effect of waiving any contest to personal jurisdiction;

~~(3)~~*(c)* the individual has resided with the child within this state;

~~(4)~~*(d)* the child was adopted within this state when at least one parent was a resident;

~~(5)~~*(e)* the individual resided in this state and provided prenatal expenses or support for the child;

~~(6)~~*(f)* the child resides in this state as a result of the acts or directives of the individual;

~~(7)~~*(g)* the individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse; or

HeinOnline -- 1999 vol. III 2668 1999

~~(8)~~*(h)* there is any other basis consistent with the constitutions of this state and the United States for the exercise of the personal jurisdiction.

(2) A district court shall recognize and, if petitioned to do so, enforce according to its terms a child support order issued by a court or administrative agency of another state if the order was made consistent with the full faith and credit provisions of 28 U.S.C. 1738B.

(3) A district court may not establish a subsequent child support order that conflicts with an existing order entitled to recognition under subsection (2) or, except as provided in subsection (6), modify an existing order entitled to recognition under subsection (2).

(4) In interpreting a child support order issued in another state, including the duration of current payments and other obligations of support, a district court shall apply the law of the issuing state.

(5) In an action to enforce arrears under a child support order issued in another state, a district court shall apply the statute of limitations of this state or of the issuing state, whichever provides the longer period of limitation.

(6) A district court has jurisdiction to modify a child support order issued by a court or administrative agency of another state only after meeting the requirements of 40-5-194 and the standards for modification of interstate support orders set out in 28 U.S.C. 1738B."

Section 2. Section 40-5-201, MCA, is amended to read:

"40-5-201. Definitions. As used in this part, the following definitions apply:

(1) "Alleged father" means a person who is alleged to have engaged in sexual intercourse with a child's mother during a possible time of conception of the child or a person who is presumed to be a child's father under the provisions of 40-6-105.

(2) (a) "Child" means:

(i) ~~any~~ *a* person under 18 years of age who is not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States;

(ii) ~~any~~ *a* person under 19 years of age and still in high school;

(iii) ~~or any~~ *a* person who is mentally or physically incapacitated if the incapacity began prior to the person's 18th birthday*; or*

(iv) ~~and~~ *in a IV-D case, a person* for whom:

~~(i)~~*(A)* support rights are assigned under 53-2-613;

~~(ii)~~*(B)* a public assistance payment has been made;

~~(iii)~~*(C)* the department is providing support enforcement services under 40-5-203; or

~~(iv)~~*(D)* the department has received a referral for interstate services from an agency of another state under the provisions of the Uniform ~~Reciprocal Enforcement of Support Act (URESA)~~ *Interstate Family Support Act*, the Revised Uniform Reciprocal Enforcement of Support Act ~~(RURESA)~~, ~~or~~ the Uniform ~~Interstate Family~~ *Reciprocal Enforcement of* Support Act ~~(UIFSA)~~, or Title IV-D of the Social Security Act.

HeinOnline -- 1999 vol. III 2669 1999

(b) The term may not be construed to limit the ability of the department to enforce a support order according to its terms when the order provides for support to extend beyond the child's 18th birthday.

(3) "Department" means the department of public health and human services.

(4) "Director" means the director of the department of public health and human services or the director's authorized representative.

(5) "Guidelines" means the child support guidelines adopted pursuant to 40-5-209.

(6) "Hearings officer" or "hearings examiner" means the hearings officer appointed by the department for the purposes of this chapter.

(7) "Need" means the necessary costs of food, clothing, shelter, and medical care for the support of a child or children.

(8) "Obligee" means:

(a) a person to whom a duty of support is owed and who is receiving support enforcement services under this part; or

(b) a public agency of this or another state having the right to receive current or accrued support payments.

(9) "Obligor" means a person, including an alleged father, who owes a duty of support.

(10) "Parent" means the natural or adoptive parent of a child.

(11) "Paternity blood test" means a test that demonstrates through examination of genetic markers either that an alleged father is not the natural father of a child or that there is a probability that an alleged father is the natural father of a child. The genetic markers may be identified from a person's blood or tissue sample. The blood or tissue sample may be taken by blood drawing, buccal swab, or any other method approved by the American association of blood banks. Paternity blood tests may include but are not limited to the human leukocyte antigen test and DNA probe technology.

(12) "Public assistance" means any type of monetary or other assistance for a child, including medical and foster care benefits. The term includes payments to meet the needs of a relative with whom the child is living, if assistance has been furnished with respect to the child by a state or county agency of this state or any other state.

(13) "Support debt" or "support obligation" means the amount created by:

(a) the failure to provide for the medical, health, and support needs of a child under the laws of this or any other state or under a support order; ~~or~~

(b) a support order for spousal maintenance of the custodial parent; *or*

(c) fines, fees, penalties, interest, and other funds and costs that the department is authorized under this chapter to collect by the use of any procedure available for the payment, enforcement, and collection of child support or spousal maintenance or support.

(14) "Support order" means an order, whether temporary or final, that:

(a) provides for the payment of a specific amount of money, expressed in periodic increments or as a lump-sum amount, for the support of the child,

including an amount expressed in dollars for medical and health needs, child care, education, recreation, clothing, transportation, and other related expenses and costs specific to the needs of the child; ~~and~~

(b) is issued hy:

(i) a district court of this state;

(ii) a court of appropriate jurisdiction of another state, Indian tribe, or foreign country;

(iii) an administrative agency pursuant to proceedings under this part; or

(iv) an administrative agency of another state, Indian tribe, or foreign country with a hearing function and process similar to those of the department under this part; *and*

(c) when the context requires, includes:

(i) judgments and orders providing periodic payments for the maintenance or support of the custodial parent of a child receiving services under this chapter; and

(ii) amounts for the recovery of fines, fees, penalties, interest, and other funds and costs that the department is authorized under this chapter to collect by the use of any procedure available for the payment, enforcement, and collection of child support or spousal maintenance or support.

(15) "IV-D" means the provisions of Title IV-D of the Social Security Act and the regnlations promulgated under the act."

Seetion 3. Section 40-5-202, MCA, is amended to read:

"40-5-202. Department of puhlic health and human services — powers and duties regarding collection of support debt. (1) The department may take action under the provisions of this chapter, the abandonment or nonsupport statutes, the Uniform Parentage Act established in Titie 40, chapter 6, part 1, and other appropriate state and federal statutes to provide IV-D services if the department:

(a) receives a referral on behalf of the child from an agency providing services to the child under the provisions of Title 41, Title 52, or Title 53;

(b) is providing services under 40-5-203; or

(c) receives an interstate referral, whether under the Revised Uniform Reciprocal Enforcement of Support Act, the Uniform Interstato Family Support Act, or an interstate action hy a Title IV-D agency of another state.

(2) A verified statement, filed by the department, that it is providing services is prima facie evidence of its authority to act. Upon filing, the department may, on behalf of itself or on behalf of the obligee, obligor, or child, initiate, participate in, intervene in, or exercise any remedy available in a judicial or an administrative action on the same basis as any other party.

(3) Whether acting on its own behalf or on behalf of the obligee, obligor, or child, the department and its attorneys serve the public interest in ensuring that children are supported by their parents, rather than maintained by public assistance. The department does not represent the interests of any individual person, and its attorneys represent only the department. An attorney-client relationship is not created between department attorneys and any person or

HeinOnline -- 1999 vol. III 2671 1999

entity other than the department. The obligoe, obligor, and child may obtain the services of a private attorney to represent their interests. The existence or appearance of a private attorney as counsel of record for the obligee, obligor, or child does not affect the department's right to act or provide services under this chapter. This chapter does not require the department to provide a private attorney for, or to pay for a private attorney for, an obligee, obligor, or child.

(4) The department has the power of attorney to act in the name of any obligee to endorse and cash any drafts, checks, money orders, or other negotiable instruments received by the department on behalf of a child.

(5) (a) If the department is providing IV-D services, the department must be afforded notice and an opportunity to participate as an independent party in any proceeding relating to paternity, to termination of parental rights, or to the establishment, enforcement, or modification of a support obligation, whether initiated by the obligee, the obligor, or the child.

(b) The notice must reasonably inform the department of the issues to be determined in the proceeding, the names of the parties and the child, and the identity and location of the tribunal in which the issues will be determined. The notice is for informational purposes only and is not intended as a substitute for procedures necessary under the Montana Rules of Civil Procedure to establish personal jurisdiction over the department. Whether or not the department is given notice, an agreement, judgment, decree, or order is void as to any interest of the department that is or may be affected by the agreement, judgment, decree, or order if the department was not joined as a party in the manner provided in the Montana Rules of Civil Procedure.

(c) The notice must be personally served on the department. Within 20 days after service of the notice, the department may:

(i) decline to enter the proceeding as a party, in which case the proceeding may continue without the department's participation;

(ii) inform the tribunal that a substantial interest of the department could be adversely affected hy the proceeding, in which case the proceeding may not continue without joining the department as a necessary party in the manner provided in the Montana Rules of Civil Procedure; or

(iii) inform the tribunal that prior to the filing of the proceeding, the department initiated an administrative proceeding under this chapter in which the parties and some or all of the issues are the same as those in the proceeding before the tribunal. The tribunal shall then discontinue the proceeding as to the common issues until administrative remedies have been exhausted.

(6) (a) When the department is providing services, a recipient or former recipient of public assistance who assigned support rights under 42 U.S.C. 602(a)(26) *or 42 U.S.C. 608(a)(3)* or a collection agency acting on behalf of the recipient or former recipient may collect only that part of a delinquent support amount that accrued after termination of public assistance. The recipient, former recipient, or collection agency may not commence or maintain an action against or make an agreement with the obligor te recover an assigned delinquent support amount unless the department, in writing:

(i) releases or relinquishes its assigned interest;

(ii) declares the support debt owed the department to be satisfied, in which case the balance of the delinquent amount is released; or

(iii) consents to the action or agreement.

(b) If a recipient, former recipient, or collection agency collects or receives value for any part of an assigned delinquent support amount and the department has not given its consent or released or relinquished its assigned interest, the recipient, former recipient, or collection agency shall make prompt and full restitution to the department. If prompt and full restitution is not made, the department may send a written demand to the recipient, former recipient, or collection agency, and if prompt and full restitution is not made within 20 days of the date of the written demand, the recipient, former recipient, or collection agency is liable for damages equal to double the amount collected or value received. The amount of damages may be determined and assessed by the department under the contested case provisions of the Montana Administrative Procedure Act. The damages may be collected by the department by any method or remedy available for the enforcement of child support owed by an obligor parent.

(c) This subsection (6) does not limit the right of a person to recover money not assigned. If there are competing proceedings against an obligor for collection of delinquent support, the collection of support assigned to the department takes priority over the obligor's income and assets.

(7) An applicant for or recipient of services may not act to the prejudice of the department's rights while the services are being provided.

(8) Unless the department has consented to the agreement in writing, if public assistance is being or has been paid for a child, an agreement between an obligee and an obligor or a judgment, decree, or order adopting the agreement does not act to reduce or terminate any rights of the department to establish a support order or to recover a support debt from the obligor, even if the agreement, judgment, decree, or order purports to:

(a) relieve or terminate the obligor's support duty;

(b) waive, modify, compromise, or discharge the support debt;

(c) prepay future support obligations or settle past, present, or future support obligations; or

(d) permit the obligor to pay past, present, or future support obligations:

(i) with noncash contributions;

(ii) by the payment of other debts or obligations, such as vehicle, rent, and mortgage payments; or

(iii) by making contributions to a trust or other account or payments toward an asset if the contributed amounts are unavailable to the department.

(9) The department may petition a court or an administrative agency for modification of any order on the same basis as a party to that action is entitled to do.

(10) The department is subrogated to the right of the child or obligee to maintain any civil action or execute any administrative remedy available under the laws of this or any other state to collect a support debt. This right of subrogation is in addition to and independent of the assignment under 42 U.S.C. 602(a)(26) and the support debt created by 40-5-221.

HeinOnline -- 1999 vol. III 2673 1999

(11) If public assistance is being or has been paid, the department is subrogated to the debt created by a support order and any money judgment is considered to be in favor of the department. This subrogation is an addition to any assignment made under 42 U.S.C. 602(a)(26) and applies to the lesser of:

(a) the amount of public assistance paid; or

(b) the amount due under the support order.

(12) The department may adopt and enforce the rules necessary to carry out the provisions of this part.

(13) While providing services under this chapter and in order to carry out the purposes mentioned in this chapter, the department, through its director or the director's authorized representatives, may:

(a) administer oaths;

(b) certify official acts and records;

(c) issue investigative and hearing subpoenas;

(d) order discovery before and after a hearing;

(e) hold prehearing and settlement conferences;

(f) compel the attendance of witnesses and the production of books, accounts, documents, and evidence;

(g) conduct proceedings supplementary to and in aid of a writ of execution or warrant for distraint, including *a hearing on a claim that property is exempt from execution and* the examination of an obligor or other person in the manner provided for the taking of a deposition in a civil action; and

(b) perfect service of investigative and hearing subpeenas by certified mail or in the manner prescribed for service of a summons in a civil action in accordance with the Montana Rules of Civil Procedure.

(14) In addition to any other requirement for service provided by the Montana Rules of Civil Procedure, if a person is required to give notice to, serve, or provide a written response to the department under this chapter, the notice, service, or response must be made to the department's child support enforcement division.

(15) The department may collect any funds received under this chapter, and wrongfully retained, by the obligor through any remedy available for collection of child suppert.

(16) A hearing on a claim that property is exempt from execution must initially be conducted by teleconference methods and is subject to the Montana Administrative Procedure Act. At the request of a party or upon a showing that a party's case is substantially prejudiced by the lack of an in-person hearing, the hearings officer shall grant a de novo in-person hearing."

Section 4. Section 40-5-207, MCA, is amended to read:

"**40-5-207. Department authorized to enforce maintenance awards.** If ~~a judgment or order creating a~~ *the department is providing* child support ~~obligation also contains a judgment or order for the support of a spouse or former spouse who is the custodial parent of the child, the department may collect and enforce spousal support under this part~~ *enforcement services, the department may also, using any remedy available to it, collect and enforce any judgment or order for the maintenance or support of the child's custodial parent.*"

HeinOnline -- 1999 vol. III 2674 1999

Section 5. Section 40-5-210, MCA, is amended to read:

"40-5-210. Standardized fee schedule — rules. (1) The department may charge an application fee to each person applying for services under 40-5-203, except that the fee may not be charged to persons who receive continuing services under 40-5-203(3). The application fee may be:

(a) a flat dollar amount; or

(b) an amount based on a sliding fee schedule that is based on the applicant's income level.

(2) If paternity is established or presumed under 40-5-234 for the alleged father, the fees for paternity blood testing may be recovered from the parent, whether the alleged father or the mother, denying paternity of the alleged father. The total amount of the paternity blood testing fee may not exceed the actual costs of the paternity blood tests. A bill for a paternity blood test is admissible in evidence without third-party foundation testimony.

(3) The department may *not* charge a handling fee for ~~each~~ payment of support collected ~~on behalf of any~~ *and distributed to an* obligee who is not a recipient of public assistance. ~~The department may withhold the fee from the support payment before distribution to the obligee.~~

(4) The department may charge an obligor a late payment fee for each late payment of support collected on behalf of any obligee.

(5) The department may establish a fee schedule in order to recover costs and expenses in excess of the application, handling, and late fees. The fees must be commensurate with costs or an average of the expenditures related to specific or routine activities.

(a) The department shall develop procedures for determining whether it is appropriate for either the obligor or the obligee to be responsible for payment of the fee. In developing the procedures, the department shall consider federal regulations promulgated under Title IV-D of the Social Security Act.

(b) In an action to establish paternity or to establish or enforce a child support obligation, whether in district court or by administrative process, the department must be awarded costs in the amount established in the fee schedule as part of any judgment, decree, or order whenever the department:

(i) is a prevailing party in the action; or

(ii) is not a party but incurs expenses and costs related to the action.

(6) The department may collect the fees awarded under this section by one of the following means:

(a) if the fee is owed by an obliger, the fee may be:

(i) collected through any remedy available to the department for the collection of child support arrearages; or

(ii) deducted from any payments made by the obligor before the payment is distributed to the obligee. Credit for the payment must be reduced by the amount of the deduction for the fee. The deduction for fees may not reduce any current support due to the obligee. The deduction for a late payment fee may not reduce any current or past-due support due to the obligee.

HeinOnline -- 1999 vol. III 2675 1999

(b) if the fee is owed by the obligee, the fee may be collected separately through any remedy available to the department for the collection of child support ~~or the department may withhold the fee amount out of any payment collected on behalf of the obligee. The obligor must receive full credit for the payment as if the withholding of fees did not occur~~ *or, if the fee has been assessed and deducted from the collection by an entity other than the department, the department may withhold the fee amount out of any payment collected on behalf of the obligee. The obligor must receive full credit for the payment as if the withholding of fees did not occur.*

(7) The department, upon a showing of necessity, may waive or defer any fee assessed under this section.

(8) The department may adopt rules necessary to implement fee schedules under this section.

(9) The fees and costs charged and collected under this section must be paid monthly into the state treasury to the credit of the child support enforcement division special revenue fund and must be accompanied by a detailed statement of the amounts collected.

(10) A district court may not order the department to charge or collect fees, except as authorized under this section and rules implementing this section."

Section 6. Section 40-5-224, MCA, is amended to read:

"40-5-224. Finding of support liability based upon payment of public assistance — ~~warrant for distraint~~ *support lien* — bond to release warrant — action to collect. (1) If the department reasonably believes that the obligor is not a resident of this state or is about to move from this state or has hidden, absconded, or left~~,~~ or has removed or is about to remove, secrete, waste, or otherwise dispose of property that could be made subject to collection action to satisfy the support debt, the department may issue a ~~warrant for distraint~~ *support lien* pursuant to ~~40-5-247~~ *40-5-248* during the pendency of ~~the fair hearing or after the hearing, whether or not appealed~~ *a collection action initiated by a notice under this chapter.* Further action may not be taken on the ~~warrant~~ *lien* until final determination ~~after fair hearing or appeal~~ *of the collection action.* The department shall make and file in the record of the ~~fair hearing~~ *pending collection action* an affidavit stating the reasons upon which the belief is founded. The obligor may furnish a bond, not to exceed the amount of the support debt, during pendency of the ~~hearing or after the hearing~~ *collection action*, and in that case, ~~warrants~~ *liens* issued must be released. If the ~~decision resulting from the hearing is~~ *collection action is resolved* in favor of the obligor, ~~all warrants~~ *any lien* issued *under this section* must be *amended or* released.

(2) The department may commence action under the provisions of this part to collect the support debt on the date of issuance of the decision resulting from ~~the hearing~~ *a collection action or upon the obligor's failure to timely request a hearing in a pending collection action."*

Section 7. Section 40-5-225, MCA, is amended to read:

"40-5-225. Notice of financial responsibility — temporary and final support obligations — administrative procedure. (1) In the absence of an existing support order, when the requirements of this section are met, the department may enter an order requiring a child's parent or parents to pay an

HeinOnline -- 1999 vol. III 2676 1999

amount each month for the support of the child. The support order must include a medical support order as required by 40-5-208.

(2) An action to establisb a support order must be commenced by serving a notice of financial responsibility on the parent or parents. The notice must include a statement:

(a) of the names of the child, the obligee, and, if different than the obligee, the child's guardian or caretaker relative;

(b) of the dollar amount of the support obligation to be paid each month for the child;

(c) that in addition to child support, the parent or parents may be ordered to provide for the child's medical support needs;

(d) that any party may request a hearing to contest the amount of child support shown in the notice or to contest the establishment of a medical support order;

(e) that if a party does not timely file a request for hearing, support, including medical support, will be ordered as declared in the notice or in accordance with the child support guidelines adopted under 40-5-209;

(f) that if a party does request a hearing, the other parties may refuse to participate in the proceedings~~, however,~~ *and that* the child support and medical support order will be determined using the information available to the department or provided at the hearing;

(g) that a party's refusal to participate is a consent to entry of a child support and medical support order consistent with the department's determination; and

(h) that the parties are entitled to a fair hearing under 40-5-226.

(3) If a support action is pending in district court and a temporary or permanent support obligation has not been ordered or if a paternity action is pending and there is clear and convincing evidence of paternity based on paternity blood tests or other evidence, the department may enter an order requiring a child's parent or parents to pay an amount each montb for the temporary support of the child pending entry of a support order by the district court. The temporary support order must include a medical support order as required by 40-5-208.

(4) An action to establish a temporary support order must be commenced by serving a notice of temporary support obligation on the parent or parents. In addition to the statements required in subsection (2), the notice must include a statement that:

(a) a party may request a hearing to show that a temporary support obligation is inappropriate under the circumstances; and

(b) the temporary support order will terminate upon the entry of a final support order or an order of nonpaternity. If the final order is retroactive, any amount paid for a particular period under tbe temporary support order must he credited against the amounts due under the final order for the same period, but excess amounts may not be refunded. If an order of nonpaternity is issued or if the final support order states that periodic support obligation is not proper, the obligee shall refund to the obligor any improper amounts paid under the temporary support order, plus any costs *that* the ~~obligee [~~obligor] incurs in recovering the amount to be refunded.

HeinOnline -- 1999 vol. III 2677 1999

(5) (a) If a temporary support order is entered or if proceedings are commenced under this section for a married obligor, the department shall vacate any support order or dismiss any proceeding under this part if it finds that the parties to the marriago have:

(i) reconciled without the marriago having been dissolved;

(ii) made joint application to the department to vacate the order or dismiss the proceeding; and

(iii) provided proof that the marriago has been resumed.

(b) The department may not vacate a support order or dismiss a proceeding under this subsection (5) if it determines that the rights of a third person or the child are affected. The department may issue a new notice of temporary support obligation under this section if the parties subsequently separate.

(6) A notice of financial responsibility and tbe notice of temporary support obligation may be served either by certified mail or in the manner prescribed for the service of a summons in *a* civil action in accordance with the Montana Rules of Civil Procedure.

(7) If prior to service of a notice under this section, the department has sufficient financial information, the department's allegation of the obligor's monthly support responsibility, whether temporary or final, must be based on the child support guidelines established under 40-5-214. If the information is unknown to the department, the allegations of the parent's or parents' monthly support responsibility must be based on the greater of:

(a) the maximum amount of public assistance that could be payable to the child under Title 53 if the child were otberwise eligible for assistance; or

(b) the child's actual need as allegod by tbe custodial parent, guardian, or caretaker of the child.

(8) (a) A party who objects to a notice of financial responsibility or notice of temporary support obligation may file a written request for *a* hearing with the department:

(i) within 20 days from the date of service of a notice of financial responsibility; and

(ü) within 10 days from the date of service of a notice of temporary support ohligation.

(b) If the department receives a timely request for a hearing, it shall conduct one under 40-5-226.

(c) If the department does not receive a timely request for a hearing, it shall order the parent or parents to pay child support and to provide for the child's medical needs as stated in tlie notice. The child support obligation must be the amount stated in the notice or determined in accordance with the child support guidelines adopted under 40-5-209.

(9) If the department is unable to enter an obligation in accordance with the child support guidelines because of default of a party, the department may, upon notice to the parties to the original order, substitute a support order made in accordance with the guidelines for the defaulted order.

HeinOnline -- 1999 vol. III 2678 1999

(10) After establishment of an order under this section, the department may initiate a subsequent action on the original order to establish a support obligation for another child of the same parents.

~~(9)~~*(11)* A child support and medical support order under subsection (1) continues until the child attains 18 years of age or the child's graduation from high school, whichever occurs later, but not later than the child's 19th birthday, unless the child is sooner emancipated by court order. A temporary support obligation established under subsection (3) continues until terminated as provided in subsection (5) or until the temporary order is superseded by a final order, judgment, or decree."

Section 8. Section 40-5-247, MCA, is amended to read:

"40-5-247. Warrant for distraint — effect — satisfaction of support lien — redemption. (1) (a) The department may issue a warrant for distraint to execute support liens established by 40-5-248 or to enforce and collect any money obligation authorized under this chapter.

(b) The warrant must be an order, under official seal of the department, directed to a sheriff of any county of the state or to any levying officer authorized by law to enforce a district court judgment. The order must command the recipient to levy upon and sell nonexempt real and personal property to satisfy the support lien upon which the warrant is based. *The warrant must include notice of:*

(i) the existence of exemptions from execution;

(ii) the procedure by which an exemption may be claimed; and

(iii) the right to request a hearing to determine an exemption claim.

(c) A warrant must be signed by the director of the department or the director's designee.

(d) The warrant must be for the amount of the support lien or the amount of any other money obligation determined under this chapter, including interest and fees, if any.

(e) A warrant for distraint has the same effect as a writ of execution issued by a district court to enforce money judgments.

(2) (a) A warrant for distraint may be sent by the department to the sheriff or levying officer. Upon receipt of the warrant, the sheriff or levying officer shall proceed to execute upon the warrant in the same manner as prescribed for execution upon a judgment.

(b) A copy of the warrant must be mailed to the obligor at the obligor's last-known address at or promptly after the time of seizure.

(c) Within 10 days after the date of the mailing of the warrant to the obligor, an obligor claiming an exemption may request a hearing to determine the existence of the exemption. The department shall convene a contested case hearing to determine the claimed exemption. An order entered under this section is a final agency order, subject to judicial review under Title 2, chapter 4, part 7.

~~(b)~~*(d)* A sheriff or levying officer shall return a warrant, along with any funds collected, within 90 days of the receipt of the warrant.

~~(c)~~*(e)* Funds resulting from execution upon the warrant must first be applied to the sheriff's or levying officer's costs, any superior liens, the support lien, or

HeinOnline -- 1999 vol. III 2679 1999

other money obligation and to any inferior liens. Any amounts in excess of this distribution must be paid to the obligor.

~~(d)~~*(f)* If the warrant is returned not fully satisfied, the department has the same remedies to collect the deficiency as are available for any civil judgment.

(3) A sheriff's or levying officer's levy against real and personal property of the obligor is not limited to property in possession of persons or other entities given notice of a support lien under 40-5-242.

(4) (a) Upon receiving payment in full of the unpaid warrant amount plus penalty and fees, if any, and accumulated interest, the department shall release the warrant.

(b) Upon receiving partial payment of the unpaid warrant amount or if the department determines that a release or partial release of the warrant will facilitate the collection of the unpaid amount, penalty, and interest, the department may release or may partially release the warrant for distraint. The department may release the warrant if it determines that the warrant is unenforceable.

(5) An obligor or other person or entity having an interest in real or personal property levied upon by a warrant for distraint at any time prior to sale of the property may pay the amount of the support lien or other money obligation and any costs incurred by the sheriff or levying officer serving the warrant. Upon payment in full, the property must be restored to the obligor or other person and all proceedings on the warrant must cease.

(6) An obligor or other person or entity having an interest in real property levied upon and sold by a sheriff or levying officer pursuant to a warrant for distraint may, within 240 days after sale of the property, redeem the property by making payment to the purchaser in the amount paid by the purchaser plus interest at the statutory interest rate payable on judgments recovered in the district court.

(7) At any time after distraint of property under a warrant for distraint, the department may release all or part of the seized property without liability if payment of the support lien or other money obligation is assured or if the action will facilitate collection of the support lien or other money obligation. The release or return does not operate to prevent future action to collect the warrant amount from the same or other property.

(8) The department may issue a warrant for distraint to collect a support lien or other money obligation under this section at any time within the statutory limitation period for enforcing and collecting delinquent child support.

(9) The use of the warrant for distraint is not exclusive, and the department may use any other remedy provided by law for the collection of child support amounts."

Section 9. Section 40-5-253, MCA, is amended to read:

"40-5-253. Administrative findings and order — administrative remedies — judicial review. (1) It is the intent of this part that administrative findings and orders be subject to judicial review, but administrative remedies must be exhausted prior to judicial review. The administrative procedures described in this part are subject to review in the appropriate district court. Except as provided in subsections (3) through (5), the review must be conducted pursuant to the Montana Administrative Procedure Act. Upon a showing by the

HeinOnline -- 1999 vol. III 2680 1999

department that administrative remedies have not been exhausted, the district court shall refuse review until the remedies are exhausted.

(2) This part may not be construed to abridge or in any way affect the obligor's right to counsel during any and all judicial or administrative proceedings pursuant to this part.

(3) A petition for judicial review is an original action and may not be filed under a preexisting cause number or joined with any other action.

(4) A summons must be issued and served under Rule 4, Montana Rules of Civil Procedure, upon the *child support enforcement division of the* department and each party, along with the petition for judicial review. *The division may be served through any of its employees.* The district court does not obtain jurisdiction unless the petition for judicial review is served on all parties within 30 days after the petition is filed with the district court.

(5) The district court shall set a briefing schedule for a petition for judicial review. A reference in a brief to the administrative record must be to a particular part of the record, suitably designated, and to specific pages of that part of the record. Intelligible abbreviations may be used. A reference to an exhibit must be to the pages of the transcript on which the exhibit is identified, offered in evidence, and received or rejected. After briefs have been filed~~,~~ and upon motion of a party, the district court may order oral argument."

Section 10. Section 40-5-273, MCA, is amended to read:

"40-5-273. Administrative review of child support orders — modifying orders. (1) A review application setting forth facts meeting any of the criteria for review of a child support order established in 40-5-272 must be scheduled for an administrative review. Unless the department determines under rules of the department that an in-person review is necessary, the review must be conducted by teleconferencing methods. A notice that an administrative review will be conducted must be served *either personally or by certified mail* on the obligor and the obligee. *If service is by certified mail, the department must receive a return receipt signed by the person to whom the notice was mailed for the service to be effective.* The notice must include the following information as an exception to 2-4-601:

(a) a statement of the purpose, objectives, and possible consequences of the review;

(b) a statement of the right of the obligor and the obligee to request the department to issue subpoenas compelling the appearance of witnesses and the production of documents for a hearing; and

(c) a requirement that the obliger and the obligee provide the department with telephone numbers at which they and their witnesses may be contacted for the review.

(2) The department may issue an order commanding the obligor or the obligee, or both, to produce financial information. The order must be ~~personally~~ served *either personally or by certified mail* with the notice that a review will be conducted. *If service is by certified mail, the department must receive a return receipt signed by the person to whom the order was mailed for the service to be effective.* The department may also issue subpoenas ordering the parties to produce information in their possession about the obliger and the obligee that

HeinOnline -- 1999 vol. III 2681 1999

may be reasonably necessary for application of the guidelines. Any information so obtained by the department must be provided to the parties before a hearing.

(3) The requested modification of the order must be determined on the evidence submitted to the department under the following conditions:

(a) If an applicant other than the department fails to provide a telephone number for the review or fails to be at the number provided when telephoned for the review, the failure may be considered a withdrawal of the application.

(b) If a party other than the applicant fails to provide a telephone number for the review or fails to be at the number provided when telephoned for the review, the failure is considered to mean that the party does not oppose the modification.

(c) If the department is the applicant and if either the obligor or the obligee, or both, fails to provide a telephone number for the review or fails to be at the number provided when telephoned for the review, the failure may be considered an admission that the party or parties do not oppose the modification.

(4) (a) An order entered under the circumstances described in subsection (3)(a), (3)(b), or (3)(c) becomes final within 30 days of issuance unless a party provides the hearings officer an affidavit showing good cause for failure to provide a telephone number or failure to be available when telephoned.

(b) A proposed modification consent order or notice of proposed modification becomes final 30 days after issuance unless during that period a party files with the department a written request for further administrative proceedings.

(c) The department shall grant a modification hearing if it receives a timely written request by a party aggrieved by the department's determination. The hearing is subject to the provisions of this section relating to a review. The department may adopt rules regulating the fair and efficient conduct of the hearing. Unless the department determines under department rules that an in-person hearing is necessary, the hearing must be conducted by teleconferencing methods.

(5) A provision of law may not be construed to mean that an obligor or an obligee is a client of the department, and the department is not considered a party to the action.

(6) (a) In addition to the powers and duties provided by other law, the department shall, to ensure the equitable determination of a support obligation, during a review:

(i) question witnesses in a nonadversarial manner to elicit full disclosure of all pertinent facts;

(ii) introduce evidence on behalf of the parties;

(iii) apply the guidelines to the facts elicited from the review; and

(iv) inquire as to any circumstances that may require variance from the guidelines.

(b) If a party is represented by legal counsel, the department may allow the counsel to present that party's case.

(7) The department shall determine a support obligation in accordance with the guidelines and shall issue a modifying order. A stipulation by the parties in a proceeding under this section may not be contested before entry of the final

HeinOnline -- 1999 vol. III 2682 1999

department order. If the department determines that the difference between the existing support order and the amount determined under the guidelines is negligible under rules issued by the department, the modifying order may not change the amount of the support obligation. Even though the review may indicate that a modification of the support obligation is appropriate, the department may not modify the support order if the department determines, after the review, that to do so would not be in the best interests of the child under the rules issued by the department. An increase in child support is presumed to be in the best interests of the child unless, after a review, either the obligor or the obligee demonstrates it would not be in the best interests of the child. The modifying order may modify the underlying support order from the date of service of a notice that an administrative review will be conducted under this section and may modify the underlying order from the date found to be the date that the amount required for support decreased. The obligee may be ordered to repay the obligor for any support amount overpayment found to have been paid since the date that the amount required for support decreased. If the case is a IV-D case, the department shall, on request of the obligor, enforce the obligee's repayment of the overpaid amount using any procedure provided in this chapter for payment, enforcement, and collection of child support or a delinquency.

(8) The department shall consider whether or not health insurance for the child is available and shall include an appropriate requirement for the provision of the child's health insurance needs in a modifying order in accordance with part 8 of this chapter.

(9) In addition to complying with other requirements of law, the modifying order must include ~~the following notices and warnings~~ *provisions*:

(a) that ~~the obligor shall keep the department informed of the name and address of the obligor's current employer and information on health insurance available to the obligor through the obligor's employment or other group insurance; and~~ *each party, other than the department, is required to promptly file with the department and update, as necessary, information on:*

(i) the identity of the party;

(ii) the party's social security number;

(iii) the party's residential and mailing addresses;

(iv) the party's telephone number;

(v) the party's driver's license number;

(vi) the name, address, and telephone number of the party's employer; and

(vii) if the child is covered by a health or medical insurance plan, the name of the insurance carrier or medical insurance plan, the policy identification number, the names of the persons covered, and any other pertinent information regarding coverage or, if the child is not covered, information as to availability of coverage for the child through the obligor's and obligee's employers;

(b) that in a subsequent child support enforcement action, upon sufficient showing that diligent effort has been made to ascertain the location of a party, the department's due process requirements for notice and service of process are met with respect to the party upon delivery of written notice by regular mail to the most recent known address of the party or the party's employer's address reported to the department; and

HeinOnline -- 1999 vol. III 2683 1999

~~(b)~~*(c)* that the modifying order is subject to future administrative review and modification by the department upon the request of the department or a party under 40-5-271 through 40-5-273 when the department is providing services under IV-D.

(10) The department shall keep information provided under subsection (9)(a) confidential except as necessary for purposes of Title IV-D of the Social Security Act.

~~(10)~~*(11)* An order entered under this section by the department is a final agency decision, subject to judicial review pursuant to the Montana Administrative Procedure Act, except as provided in 40-5-253. An order entered under this section must notify the parties that the order is subject to judicial review under Title 2, chapter 4, part 7. A final order entered under a stipulation of parties waives the stipulating parties' right to judicial review.

~~(11)~~*(12)* The parties to the support order and the department when it is providing services under IV-D may enforce the support order or modify that order independently, as provided in 40-4-208 and 53-2-613(4)(d)."

Section 11. Section 40-5-315, MCA, is amended to read:

"40-5-315. Immediate income deductions. (1) Notwithstanding any provision in this part requiring a delinquency as a prerequisite to an order for income deductions, except as provided in subsection (2), the income of a person obligated to pay child support by an order of a district court issued after October 1, 1991, is subject to an immediate deduction order on the effective date of the order.

(2) An obligor's income is not subject to deduction under this section in any case in which the district court finds:

(a) that there is good cause not to require immediate deduction; or

(b) that there is an alternative arrangement between the parties for the payment of support that provides sufficient security to ensure compliance with the arrangement.

(3) (a) For the purposes of subsection (2), a finding of good cause not to require immediate deduction must, at a minimum, be based on:

(i) a written determination and explanation by the district court as to why implementation of immediate deductions is not in the best interests of the child; and

(ii) in cases involving the modification of support orders, proof of timely payment of previously ordered support.

(b) As used in subsection (2)(b), "alternative arrangement" means a written agreement ~~that is signed by~~ *between* the obligor and obligee and, in cases in which there is an assignment of support rights under 53-2-613, ~~signed by~~ the department of public health and human services ~~and~~ that has been approved and entered into the record by the district court that issued or modified the support order.

(4) The clerk of court shall administer immediate income deductions under this section. The clerk of court, at any time after docketing the support order or modification of a support order, at the request of the obligee, and without need for amendment to the support order or for any further action by the district court, shall issue the order for income deductions for service upon the obligor's payor.

HeinOnline -- 1999 vol. III 2684 1999

The deduction order must direct the payor to promptly deliver the amount deducted to the department of public health and human services, as provided in 40-5-909, for distribution to the obligee.

(5) Deductions under this section may be terminated only when:

(a) the obligation to pay support has terminated and all arrearages are paid in full;

(b) the obliger requests termination and the obligee and obliger have entered into an alternative arrangement as set forth in subsection (2)(b); or

(c) the department of public health and human services has superseded the deduction order under authority of Title 40, chapter 5, part 4.

(6) If a delinquency occurs subsequent to issuance of an immediate deduction order or if arrearages occur prior to beginning the deductions, the arrearages may be added to the deduction order only after compliance with the notice of hearing requirements of 40-5-305.

(7) (a) After October 1, 1991, whenever a support order is registered as provided by 40-5-184 or other law, the support order is subject to immediate orders to deduct income under this section.

(b) Withholding income under this section must be imposed when an obligor has income derived from within this state and the support order was issued in another state.

(8) This section applies only to support orders that are not being enforced by the department of public health and human services under Title IV-D of the Social Security Act. The withholding of income for support orders being enforced by the department is provided for in Title 40, chapter 5, part 4, and those procedures, if applicable, supersede the provisions of this section."

Section 12. Section 40-5-403, MCA, is amended to read:

"**40-5-403. Definitions.** As used in this part, the following definitions apply:

(1) "Alternative arrangement" means a written agreement ~~signed by~~ *between* the obligor and obligee, and ~~signed by~~ the department in the case of an assignment of rights under 53-2-613, that has been approved and entered in the record of the court or administrative authority issuing or modifying the support order.

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

(3) "Employer" includes a payor.

(4) "Income" means any form of periodic payment to a person, regardless of source, including commissions, bonuses, workers' compensation, disability payments, payments under a pension or retirement program, interest, and earnings and wages. However, income does not include:

(a) any amount required by law to be withheld, other than creditor claims, including federal, state, and local taxes and social security; and

(b) any amounts exempted from judgment, execution, or attachment by federal or state law.

(5) "Obligee" means either a person to whom a duty of support is owed or a public agency of this or another state to which a person has assigned the right to receive current and accrued support payments.

HeinOnline -- 1999 vol. III 2685 1999

(6) "Obligor" means a person who owes a duty to make payments under a support order.

(7) "Payor" means any payor of income to an obligor on a periodic basis and includes any person, firm, corporation, association, employer, trustee, political subdivision, state agency, or any agent thereof who is subject to the jurisdiction of the courts of this state under Rule 4B of the Montana Rules of Civil Procedure.

(8) "Support order" has the meaning provided in 40-5-201."

Section 13. Section 40-5-701, MCA, is amended to read:

"40-5-701. Definitions. As used in this part, the following definitions apply:

(1) (a) "Child" means:

(i) a porson under 18 years of age who is not emancipated, self-supporting, married, or a member of the armed forces of the United States;

(ii) a person under 19 years of age who is still in high school;

(iii) a person who is mentally or pbysically incapacitated when the incapacity began prior to that person reaching 18 years of age; and

(iv) in IV-D cases, a person for whom:

(A) support rights are assigned under 53-2-613;

(B) a public assistance payment has been made;

(C) the department is providing support enforcement services under 40-5-203; or

(D) the department has received a referral for interstate services from an agency of another state under the provisions of the Uniform Interstate Family Support Act, the Revised Uniform Reciprocal Enforcement of Support Act, the Uniform Reciprocal Enforcement of Support Act, or Title IV-D of the Social Security Act.

(b) The term may not be construed to limit the ability of the department to enforce a support order according to its terms when the order provides for support extending beyond the time the child reaches 18 years of age.

(2) "Delinquency" means a support debt or support obligation due under a support order in an amount greater than or equal to 6 months' support payments as of the date of service of a notice of intent to suspend a license.

(3) "Department" means the department of public health and human services.

(4) "IV-D case" means a case in which the department is providing support enforcement services as a result of:

(a) an assignment of support rights under 53-2-613;

(b) a payment of public assistance;

(c) an application for support enforcement services under 40-5-203; or

(d) a referral for interstate services from an agency of another state under the provisions of the Uniform Reciprocal Enforcement of Support Act, the Revised Uniform Reciprocal Enforcement of Support Act, the Uniform Interstate Family Support Act, or Title IV-D of the Social Security Act.

HeinOnline -- 1999 vol. III 2686 1999

(5) "License" means a license, certificate, registration, permit, or any other authorization issued by an agency of the state of Montana granting a person a rigbt or privilege to engage in a business, occupation, profession, recreational activity, or any other privilege that is subject to suspension, revocation, forfeiture, termination, or a declaration of ineligibility to purchase by the licensing authority prior to its date of expiration.

(6) "Licensing authority" means any department, division, board, agency, or instrumentality of this state that issues a license.

(7) "Obligee" means:

(a) a person to whom a support debt or support obligation is owed; or

(b) a public agency of this or another state that has the right to receive current or accrued support payments or that is providing support enforcement services under this chapter.

(8) "Obligor" means a person who owes a duty of support or who is subject to a subpoena or warrant in a paternity or child support proceeding.

(9) "Order suspending a license" means an order issued by a support enforcement entity to suspend a license. The order must contain the name of the obligor, the type of license, and, if known, the social security number of the obliger.

(10) "Payment plan" includes hut is not limited to a plan approved by the support enforcement entity that provides sufficient security to ensure compliance with a support order and that incorporates voluntary or involuntary income withholding under part 3 or 4 of this chapter or a similar plan for periodic payment of a support debt and, if applicable, current and future support.

(11) "Recreational activity" means an activity for which a license or permit is issued by the department of fish, wildlife, and parks under Title 87, chapter 2, part 6 or 7, except 87-2-708 or 87-2-711, or under 87-2-505, 87-2-507, 87-2-508, or 87-2-510.

(12) "Subpoena" means a writ or order issued by a district court or the department in a proceeding or as part of an investigation related to the paternity or support of a child that commands a person to appear at a particular place and time to testify or produce documents or things under the person's control.

(13) "Support debt" or "support obligation" means the amount created by *the failure to provide or pay*:

(a) ~~the failure to provide~~ support to a child under the laws of this or any other state or *under* a support order; ~~or~~

(b) ~~a support order for~~ *court-ordered* spousal maintenance ~~if the judgment or order requiring payment of maintenance also contains a judgment or order requiring payment of child support for a child for whom the person awarded maintenance is the~~ *or other court-ordered support for the child's* custodial parent; *or*

(c) fines, fees, penalties, interest, and other funds and costs that the support enforcement entity is authorized to collect by the use of any procedure available to the entity for the payment, enforcement, and collection of child support or spousal maintenance or support.

(14) "Support enforcement entity" means:

HeinOnline -- 1999 vol. III 2687 1999

(a) in IV-D cases, the department; or

(b) in all other cases, the district court that entered the support order or a district court in which the support order is registered.

(15) *(a)* "Support order" means an order that provides a determinable amount for temporary or final periodic payment of a support debt or support obligation and that may include payment of a determinable or indeterminable amount for insurance covering the child issued by:

~~(a)~~*(i)* a district court of this state;

~~(b)~~*(ii)* a court of appropriate jurisdiction of another state, an Indian tribe, or a foreign country;

~~(c)~~*(iii)* an administrative agency pursuant to proceedings under Title 40, chapter 5, part 2; or

~~(d)~~*(iv)* an administrative agency of another state with a hearing function and process similar to those of the department.

(b) If an action for child support is commenced under this part and the context so requires, support order also includes:

(i) judgments and orders providing periodic payments for the maintenance or support of the child's custodial parent; and

(ii) amounts for the recovery of fines, fees, penalties, interest, and other funds and costs that the support enforcement entity is authorized to collect by the use of any procedure available to the entity for the payment, enforcement, and collection of child support or spousal maintenance or support.

(16) "Suspension" includes the withdrawal, withholding, revocation, forfeiture, or nonissuance of a license and license privileges.

(17) "Warrant" means a bench warrant, a warrant to appear, an order to show cause, or any other order issued by the district court relating to the appearance of a party in a paternity or child support proceeding."

Section 14. Section 40-5-806, MCA, is amended to read:

"40-5-806. Contents of medical support order. (1) A medical support order may specify terms for individual insurance coverage and, to the extent of options within an available health benefit plan, the terms for plan coverage, including:

(a) minimum required policy limits;

(b) minimum required coverage;

(c) maximum terms for deductibles or required copayments; and

(d) other significant terms.

(2) If a child is already covered by individual insurance or a health benefit plan, if the child does not have existing coverage but coverage can be obtained under a health benefit plan that is available to the primary parent, or if the child does not have existing coverage and coverage for the child under a plan is available to the other parent, then the medical support order must require participation in that plan unless:

(a) the cost of continuing coverage or the cost of the health benefit plan is not reasonable or cost-beneficial; or

HeinOnline -- 1999 vol. III 2688 1999

(b) another plan or individual insurance is available that will better serve the interests of the parties.

(3) If health benefit plans are available to both parents at a combined cost that is reasonable or cost-beneficial and with benefits that are complementary or compatible as primary and secondary coverage, the medical support order must require both parents to provide coverage for the child.

(4) If, at the time of the medical support order, coverage for the child in a health benefit plan is not available to either parent, the parent other than the primary parent must be required to obtain individual insurance coverage for the child. If the cost of individual insurance is not reasonable or cost-effective, the parent other than the primary parent must be required to obtain individual insurance or a health benefit plan at such time in the future that it becomes available to that parent at reasonable cost. The requirements in this subsection (4) to obtain a plan are not enforceable if:

(a) the primary parent has obtained individual insurance or a health benefit plan for the child and both parents have agreed in writing to share the costs of maintaining the coverage; or

(b) the other parent persuades the tribunal that the cost of available health benefit plans is not reasonahle or cost-beneficial.

(5) This section also applies when a child is placed with a third-party custodian, unless a parent has obtained individual insurance or a plan for the child and both parents have agreed in writing to share the costs of maintaining the coverage or a parent persuades the tribunal that the cost of available individual insurance and plans is not reasonable or cost-heneficial. For purposes of this subsection, the primary parent is considered to be the parent with whom the child resided for the most 24-hour periods in the 12 months prior to placement with the third-party custodian.

(6) The medical support order must also provide that the cost of individual insurance or the health benefit plan, any copayments and deductibles required under the coverage, and all medical expenses for the child that are not covered by individual insurance or the plan must be shared hetween parents in accordance with the child support guidelines. If the order fails to desiguate each parent's share, each parent is liable for 50% of the costs and expenses.

~~(7) (a) Except as provided in subsection (7)(b), if the cost of individual insurance or a health benefit plan is not reasonable or cost-beneficial or if a plan is not otherwise available and if the child is a recipient of medical assistance under Title XIX of the federal Social Security Act or later becomes a recipient of medical assistance:~~

~~(i) when the child is a recipient together with a parent, the medical support order must require the other parent to pay $50 per month;~~

~~(ii) when the child is not a recipient with a parent, the medical support order must require each parent to pay $50 per month; and~~

~~(iii) when the child is a recipient with both parents, neither parent has an obligation under this subsection (7)(a).~~

~~(b) The tribunal may order the parent or parents to pay a greater or lesser amount each month as the tribunal finds appropriate to the circumstances.~~

HeinOnline -- 1999 vol. III 2689 1999

~~(c) The amounts ordered to be paid under this subsection (7) must be paid to the department for return to the appropriate state treasury fund to help offset the costs of the medical assistance program.~~

~~(8)~~*(7)* The costs of providing individual insurance or a health benefit plan may not be used as a direct offset to the child support obligation. However, as provided by the child support guidelines, the costs may be considered in making or modifying a child support order.

~~(8)~~*(8)* (a) Individual insurance or a health benefit plan is presumed to be available at reasonable cost if:

(i) an amount payable for individual insurance or health benefit plan premiums does not exceed 25% of the obligated parent's total parental child support obligation when calculated under the child support guidelines without credit for the medical support obligation; or

(ii) a health benefit plan is available through an employer or other group organization for which the premium is partially or entirely paid by the employer or other group organization.

(b) The presumption under subsection ~~(8)(a)~~ *(8)(a)* may be rebutted by clear and convincing evidence, and the tribunal has the discretion to:

(i) order individual insurance or health benefit plan coverage when the amount of the premium may be greater than the presumptive amount; or

(ii) not order coverage when the amount of the premium is less than the presumptive amount."

Section 15. Section 40-5-807, MCA, is amended to read:

"40-5-807. Mandatory provisions of medical support order. (1) Unless the tribunal expressly specifies otherwise, a medical support order must include terms directed toward the provisions of 40-5-806(2) through ~~(9)~~ *(8)*, even though a provision contained in those subsections may not apply to the parent's circumstances at the time the order is entered. The terms may be established as alternatives or contingencies that provide that if circumstances later change, the health needs of the child will continue to be met under one of the subsections without need for modification of the medical support order or other action by the tribunal that issued the order or any other tribunal of competent jurisdiction.

(2) If circumstances change and a parent believes that corresponding changes in costs are not reasonable or cost-beneficial, the parent may move to petition any appropriate tribunal for relief.

(3) If a health benefit plan is provided through an employer, union, or other group, the medical support order must also include provisions necessary to entitle the order to recognition as a qualified medical child support order."

Section 16. Section 40-5-901, MCA, is amended to read:

"40-5-901. (Bracketed language terminates on occurrence of contingency or July 1, 1999) Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

[(1) "Date of hire" means the first day that an employee starts work for which the employee is owed compensation by the payor of income.]

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

HeinOnline -- 1999 vol. III 2690 1999

[(3) (a) "Employee" means a person 18 years of age or older who performs labor in this state for an employer in this state for compensation and for whom the employer withholds federal or state tax liabilities from the employee's compensation.

(b) The term does not include an employee of a federal or state agency performing intelligence or counterintelligence functions if the head of the agency has determined that reporting pursuant to 40-5-922 with respect to the employee could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission.]

(4) "Employer" means a person, firm, corporation, association, governmental entity, or labor organization that engages an employee for compensation and withholds federal or state tax liabilities from the employee's compensation.

(5) "Foreign support order" means a support order entered or last modified by a court or administrative agency of another state, the District of Columbia, the Commonwealth of Puerto Rico, a territory or insular possession subject to the jurisdiction of the United States, an Indian tribe, or a foreign jurisdiction.

(6) "Income withholding" generally means procedures for directing a payor to withhold from an obligor's income an amount sufficient to pay the obligor's support obligation and to defray arrears that are or may become due. Specifically:

(a) when preceded by "IV-D", income withholding means the procedures set out in Title 40, chapter 5, part 4; and

(b) when preceded by "non IV-D", income withholding means those cases in which an immediate income-withholding order is issued under 40-5-315 after January 1, 1994.

(7) "Interstate case" means a case referred to the department by, or from the department to, another IV-D agency.

[(8) "Labor organization" means a labor union, union local, union affiliate, or union hiring hall.]

(9) "Obligee" means the payee under a support order or a person or agency entitled to receive support payments.

(10) "Obliger" means a person who is obligated to pay support under a support order.

(11) "Payor" means:

(a) an employer or person engaged in a trade or business in this state who engages an employee for compensation; or

(b) when used in context with income withholding, means a person, firm, corporation, association, employer, trustee, political subdivision, state agency, or agent paying income to an obligor on a periodic basis.

[(12) "Rehire" means the first day, following a termination of employment, that an employee begins to again perform work or provide services for a payor. Termination of employment does not include temperary separations from employment, such as unpaid medical leave, an unpaid leave of absence, or a temporary or seasonal layoff.]

(13) "Support order" means a judgment, decree, or order, whether temporary or final, that:

HeinOnline -- 1999 vol. III 2691 1999

(a) is for the benefit of a child or a state agency;

(b) provides for monetary support, health care, arrearages, or reimbursement;

(c) may include related costs and fees, interest, and similar other relief; and

(d) may include an order for maintenance *or other support* to be paid to a ~~former spouse when the former spouse is the~~ *child's* custodial parent ~~of a child for whom child support is awarded~~.

(14) "IV-D" or "IV-D case" means a case in which the department is providing services under the provisions of Title IV-D of the Social Security Act and the regulations promulgated under that act. A IV-D case also includes a case in which the department is collecting a support debt assigned to this or another state under Title IV-D. (Bracketed language terminates on occurrence of contingency or July 1, 1999—sec. 104, Ch. 552, L. 1997.)"

Section 17. Repealer. Sections 40-5-211, 40-5-212, and 40-5-223, MCA, are repealed.

Section 18. Effective dates. (1) Except as provided in subsection (2), [this act] is effective October 1, 1999.

(2) [Sections 3 and 8 through 11 and this section] are effective on passage and approval.

Approved May 10, 1999

CHAPTER NO. 580

[HB 337]

AN ACT GENERALLY REVISING UNIVERSAL SYSTEM BENEFITS ELECTRIC LAWS; DEFINING "INTERESTED PERSON", "LARGE CUSTOMER", AND "QUALIFYING LOAD" FOR UNIVERSAL SYSTEM BENEFITS PROGRAMS PURPOSES; ESTABLISHING UNIVERSAL SYSTEM BENEFITS RATES FROM JANUARY 1, 1999, THROUGH JULY 1, 2003; ELIMINATING ACCESS RECIPROCITY BETWEEN DISTRIBUTION SERVICES PROVIDERS; ESTABLISHING UNIVERSAL SYSTEM BENEFITS PROGRAMS FUNDS; ESTABLISHING THE DEPARTMENT OF ENVIRONMENTAL QUALITY AND THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES AS FUND ADMINISTRATORS AND PROVIDING EACH AGENCY WITH RULEMAKING AUTHORITY TO ADMINISTER THE FUNDS; REQUIRING THE DEPARTMENT OF REVENUE TO REVIEW UNIVERSAL SYSTEM BENEFITS PROGRAMS CREDITS IF THE CREDITS ARE CHALLENGED; PROVIDING THE DEPARTMENT OF REVENUE WITH RULEMAKING AUTHORITY; AMENDING SECTIONS 18-4-132, 69-8-103, 69-8-402, AND 69-8-411, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 18-4-132, MCA, is amended to read:

"18-4-132. Application. (1) This chapter applies to expenditure of public funds irrespective of their source, including federal assistance money, by this state acting through a gevernmental body, as defined in 18-4-123, under any

contract. This chapter does not apply to either grants or contracts between the state and its political subdivisions or other governments, except as provided in part 4. This chapter also applies to the disposal of state supplies. This chapter or rules adopted pursuant to this chapter do not prevent any governmental body or political subdivision from complying with the terms and conditions of any grant, gift, bequest, or cooperative agreement.

(2) This chapter does not apply to construction contracts.

(3) This chapter does not apply to expenditures of or the authorized sale or disposal of equipment purchased with money raised by student activity fees designated for use by the student associations of the university system.

(4) This chapter does not apply to contracts entered into by the Montana state lottery that have an aggregate value of less than $250,000.

(5) This chapter does not apply to employment of:

(a) a registered professional engineer, surveyor, real estate appraiser, or registered architect;

(b) a physician, dentist, pharmacist, or other medical, dental, or health care provider;

(c) an expert witness hired for use in litigation, a hearings officer hired in rulemaking and contested case proceedings under the Montana Administrative Procedure Act, or an attorney as specified by executive order of the governor;

(d) consulting actuaries;

(e) a private consultant employed by the student associations of the university system with money raised from student activity fees designated for use by those student associations;

(f) a private consultant employed by the Montana state lottery;

(g) a private investigator licensed by any jurisdiction; or

(h) a claims adjuster.

(6) (a) This chapter does not apply to electric energy purchase contracts by the university of Montana or the Montana state university, as defined in 20-25-201.

(b) Any savings accrued by the university of Montana or Montana state university in the purchase or acquisition of energy must be retained by the board of regents of higher education for university allocation and expenditure."

Section 2. Section 69-8-103, MCA, is amended to read:

"69-8-103. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Aggregator" or "market aggregator" means an entity, licensed by the commission, that aggregates retail customers, ~~and~~ purchases electric energy, and takes title to electric energy as an intermediary for sale to retail customers.

(2) "Assignee" means any entity, including a corporation, partnership, board, trust, or financing vehicle, to which a utility assigns, sells, or transfers, other than as security, all or a portion of the utility's interest in or right to transition property. The term also includes an entity, corporation, public authority, partnership, trust, or financing vehicle to which an assignee assigns, sells, or transfers, other than as security, the assignee's interest in or right to transition property.

HeinOnline -- 1999 vol. III 2693 1999

(3) "Board" means the board of investments created by 2-15-1808.

(4) "Broker" or "marketer" means an entity, licensed by the commission, that acts as an agent or intermediary in the sale and purchase of electric energy but that does not take title to electric energy.

(5) "Cooperative utility" means:

(a) a utility qualifying as an electric cooperative pursuant to Title 35, chapter 18; or

(b) an existing municipal electric utility as of May 2, 1997.

(6) "Customer" or "consumer" means a retail electric customer or consumer. The university of Montana, pursuant to 20-25-201(1), and Montana state university, pursuant to 20-25-201(2), are each considered a single retail electric customer or consumer with a single individual load.

(7) "Distribution facilities" means those facilities by and through which electricity is received from a transmission services provider and distributed to the customer and that are controlled or operated by a distribution services provider.

(8) "Distribution services provider" means a ~~person controlling or operating~~ *utility owning* distribution facilities for distribution of electricity to the public.

(9) "Electricity supplier" means any person, including aggregators, market aggregators, brokers, and marketers, offering to sell electricity to retail customers in the state of Montana.

(10) "Financing order" means an order of the commission adopted in accordance with 69-8-503 that authorizes the imposition and collection of fixed transition amounts and the issuance of transition bonds.

(11) (a) "Fixed transition amounts" means those nonbypassable rates or charges, including but not limited to:

(i) distribution;

(ii) connection;

(iii) disconnection; and

(iv) termination rates and charges that are authorized by the commission in a financing order to permit recovery of transition costs and the costs of recovering, reimbursing, financing, or refinancing the transition costs and *of* acquiring transition property through a plan approved by the commission in the financing order, including the costs of issuing, servicing, and retiring transition bonds.

(b) If requested by the utility in the utility's application for a financing order, fixed transition amounts must include nonbypassable rates or charges to recover federal and state taxes in which the transition cost recovery period is modified by the transactions approved in the financing order.

(12) "Functionally separate" means a utility's separation of the utility's electricity supply, transmission, distribution, and unregulated retail energy services assets and operations.

(13) "Interested person" means a retail electricity customer, the consumer counsel established in 5-15-201, the commission or a utility.

HeinOnline -- 1999 vol. III 2694 1999

(14) "Large customer" means, for universal system benefits programs purposes, a customer with an individual load greater than a monthly average of 1,000 kilowatt demand in the previous calendar year for that individual load.

~~(13)~~*(15)* "Local governing body" means a local board of trustees of a rural electric cooperative.

~~(14)~~*(16)* "Low-income customer" means those energy consumer households and families with incomes at or below industry-recognized levels tbat qualify those consumers for low-income energy-related assistance.

~~(15)~~*(17)* "Nonbypassable rates or charges" means rates or charges *that are* approved by the commission *and* imposed on a customer to pay the customer's share of transition costs or universal system benefits ~~program~~ *programs* costs even if the customer has physically bypassed either the utility's transmission or distribution facilities.

~~(15)~~*(18)* "Pilot program" means a program using a representative sample of residential and small commercial customers to assist in developing and offering customer choice of ~~electric~~ *electricity* supply for all residential and commercial customers.

~~(17)~~*(19)* "Public utility" means any electric utility regulated by the commission pursuant to Title 69, chapter 3, on May 2, 1997, including the public utility's successors or assignees.

(20) "Qualifying load" means, for payments and credits associated with universal system benefits programs, all nonresidential demand-metered accounts of a large customer within the utility's service territory in which the customer qualifies as a large customer.

~~(15)~~*(21)* "Transition bondholder" means a holder of transition bonds, including trustees, collateral agonts, and other entities acting for the benefit of that holder.

~~(19)~~*(22)* "Transition bonds" means any bond, debenture, note, interim certificate, collateral, trust certificate, or other evidence of indebtedness or ownership issued by the board or other transition bonds issuer that is secured by or payable from fixed transition amounts or transition property. Proceeds from transition bonds must be used to recover, reimburse, finance, or refinance transition costs and to acquire transition property.

~~(20)~~*(23)* "Transition charge" means a nonbypassable rate or charge to be imposed on a customer to pay the customer's share of transition costs.

~~(21)~~*(24)* "Transition cost recovery period" means the period beginning on July 1, 1998, and ending when a utility customer does not have any liability for payment of transition costs.

~~(22)~~*(25)* "Transition costs" means:

(a) a public utility's net verifiable generation-relatod and electricity supply costs, including costs of capital, that become unrecoverable as a result of the implementation of this chapter or of federal law requiring retail open access or customer choice;

(b) those costs that include but are not limited to:

(i) regulatory assets and deferred chargos that exist because of current regulatory practices and can be accounted for up to the effective date of the

commission's final order regarding a public utility's transition plan and conservation investments made prior to universal system benefits charge implementation;

(ii) nonutility and utility power purchase contracts, including qualifying facility contracts;

(iii) existing generation investments and supply commitments or other obligations incurred before May 2, 1997, and costs arising from these investments and commitments;

(iv) the costs associated with renegotiation or buyout of the existing nonutility and utility power purchase contracts, including qualifying facilities and all costs, expenses, and reasonable fees related to issuing transition bonds; and

(v) the costs of refinancing and retiring of debt or equity capital of the public utility and associated federal and state tax liabilities or other utility costs for which the use of transition bonds would benefit customers.

~~(23)~~*(26)* "Transition period" means the period beginning on July 1, 1998, and ending on July 1, 2002, unless otherwise extended pursuant to this chapter, during which utilities may phase in customer choice of electricity supplier.

~~(24)~~*(27)* "Transition property" means the property right created by a financing order, including without limitation the right, title, and interest of a utility, assignee, or other issuer of transition bonds to all revenue, collections, claims, payments, money, or proceeds of or arising from or constituting fixed transition amounts that are the subject of a financing order, including those nonbypassable rates and other charges and fixed transition amounts that are authorized by the commission in the financing order to recover transition costs and the costs of recovering, reimbursing, financing, or refinancing the transition costs and acquiring transition property, including the costs of issuing, servicing, and retiring transition bonds. Any right that a utility has in the transition property before the utility's sale or transfer or any other right created under this section or created in the financing order and assignable under this chapter or assignable pursuant to a financing order is only a contract right.

~~(25)~~*(28)* "Transmission facilities" means those facilities that are used to provide transmission services as determined by the federal energy regulatory commission and the commission.

~~(26)~~*(29)* "Transmission services provider" means a person controlling or operating transmission facilities.

~~(27)~~*(30)* "Universal system benefits charge" means a nonbypassable rate or charge to be imposed on a customer to pay the customer's share of universal system benefits ~~program~~ *programs* costs.

~~(25)~~*(31)* "Universal system benefits programs" means public purpose programs for:

(a) cost-effective local energy conservation;

(b) low-income customer weatherization;

(c) renewable resource projects and applications, including those that capture unique social and energy system benefits or *that* provide transmission and distribution system benefits;

(d) research and development programs related to energy conservation and renewables;

(e) market transformation designed to encourage competitive markets for public purpose programs; and

(f) low-income energy assistance.

~~(29)~~*(32)* "Utility" means any public utility or cooperative utility."

Section 3. Section 69-8-402, MCA, is amended to read:

"69-8-402. Universal system benefits programs. (1) Universal system benefits programs are established for the state of Montana to ensure continued funding of and new expenditures for energy conservation, renewable resource projects and applications, and low-income energy assistance during the transition period and into the future.

(2) Beginning January 1, 1999, 2.4% of each utility's annual retail sales revenue in Montana for the calendar year ending December 31, 1995, is established as the ~~annual~~ *initial* funding level for universal system benefits programs. *To collect this amount of funds on an annualized basis in 1999, the commission shall establish rates for utilities subject to its jurisdiction and the governing boards of cooperatives shall establish rates for the cooperatives.* ~~Unless modified~~ *Except* as provided in subsection (7), ~~this funding level remains~~ *these universal system benefits charge rates must remain* in effect until July 1, 2003.

(a) The recovery of all universal system benefits programs costs imposed pursuant to this section is authorized through the imposition of a universal system benefits charge assessed at the meter for each local utility system customer as provided in this section.

(b) Utilities must receive credit toward annual funding requirements for a utility's internal programs or activities that qualify as universal system benefits programs, including those portions of expenditures for the purchase of power that are for the acquisition or support of renewable energy, conservation-related activities, or low-income energy assistance, and for *large* customers' programs or activities as provided in subsection (7). *The department of revenue shall review claimed credits of the utilities and large customers pursuant to [section 7].*

(c) A ~~utility~~ *utility's distribution services provider* at which the sale of power for final ~~end-use~~ *end use* occurs is the utility that receives credit for the universal system benefits ~~program~~ *programs* expenditure.

(d) A customer's distribution services provider shall collect universal system benefits funds less any allowable credits.

~~(d)~~*(e)* For a utility to receive credit for low-income related expenditures, the activity must have taken place in Montana.

~~(e)~~*(f)* If a utility's or a *large* customer's credit for internal activities does not satisfy the annual funding provisions of subsection (2), then the utility shall make a payment to the universal system benefits fund *established in [section 5]* for any difference.

(3) Cooperative utilities may collectively pool their statewide credits to satisfy their annual funding requirements for universal system benefits programs and low-income energy assistance.

HeinOnline -- 1999 vol. III 2697 1999

(4) A utility's transition plan must describe how the utility proposes to provide for universal system benefits programs, including the methodologies, such as cost-effectiveness and need determination, used to measure the utility's level of contribution to each program.

(5) A utility's minimum annual funding requirement for low-income energy and weatherization assistance is established at 17% of the utility's annual universal system benefits funding level and is inclusive within the overall universal system benefits funding level.

(a) A utility must receive credit toward the utility's low-income energy assistance annual funding requirement for the utility's internal low-income energy assistance programs or activities.

(b) If a utility's credit for internal activities does not satisfy its annual funding requirement, then the utility shall make a payment for any difference to the universal *low-income* energy assistance fund *established in [section 5].*

(6) An individual customer may not bear a disproportionate share of the local utility's funding requirements, and a sliding scale must he implemented to provide a more equitahle distribution of program costs.

(7) (a) A *large* customer ~~with loads greater than 1,000 kilowatts shall~~:

(i) *shall* pay a universal system benefits ~~program~~ *programs* charge *with respect to the large customer's qualifying load* equal to the lesser of:

(A) $500,000, less the *large* customer credits provided for in this subsection (7); or

(B) the product of 0.9 mills per kilowatt hour multiplied by the *large* customer's *total* kilowatt hour purchases, less *large* customer credits *with respect to that qualifying load* provided for in this subsection (7);

(ii) *must* receive credit toward that *large* customer's ~~annual~~ universal system benefits charge for internal expenditures and activities that qualify as a universal system benefits ~~program~~ *programs* expenditure, and these internal expenditures must include but not be limited to:

(A) expenditures that result in a reduction in the consumption of electrical energy in the *large* customer's facility; and

(B) those portions of expenditures for the purchase of power at retail or wholesale that are for the acquisition or support of renewable energy or conservation-related activities.

(b) ~~Customers~~ *Large customers* making these expenditures must receive a credit against the *large* customer's ~~annual~~ universal system benefits charge, except that any of those amounts exponded in a calendar year that exceed that *large* customer's universal system benefits charge for the calendar year must be used as a credit against those charges in future years until the total amount of those expenditures has been credited against that *large* customer's universal system benefits charges.

(8) A public utility shall prepare and submit an annual summary report of the public utility's activities relating to all universal system benefits programs to the commission, *the department of revenue,* and the transition advisory committee provided for in 69-8-501. A cooperative utility shall prepare and submit annual summary reports of activities to the cooperative utility's respective local governing body, the statewide cooperative utility office, and the

HeinOnline -- 1999 vol. III 2698 1999

transition advisory committee. *The statewide cooperative utility office shall prepare and submit an annual summary report of the activities of individual cooperative utilities, including a summary of the pooling of statewide credits, as provided in subsection (3), to the department of revenue and to the transition advisory committee.* The annual report *of a public utility or of the statewide cooperative utility office* must include but is not limited to:

(a) the types of internal utility and customer programs being used to satisfy the provisions of this chapter;

(b) the level of funding for those programs relative to the annual funding requirements prescribed in subsection (2); and

(c) any payments made to the statewide funds in the event that internal funding was below the prescribed annual funding requirements.

(9) A utility or large customer filing for a credit shall develop and maintain appropriate documentation to support the utility's or the large customer's claim for the credit.

(10) (a) A large customer claiming credits for a calendar year shall submit an annual summary report of its universal system benefits programs activities and expenditures to the department of revenue and to the large customer's utility. The annual report of a large customer must identify each qualifying project or expenditure for which it has claimed a credit and the amount of the credit. Prior approval by the department of revenue or the utility is not required, except as provided in subsection (10)(b).

(b) If a large customer claims a credit that the department of revenue disallows in whole or in part, the large customer is financially responsible for the disallowance. A large customer and the large customer's utility may mutually agree that credits claimed by the large customer be first approved by the utility. If the utility approves the large customer credit, the utility may be financially responsible for any subsequent disallowance."

Section 4. Section 69-8-411, MCA, is amended to read:

"69-8-411. ~~Reciprocity~~ *Nondiscriminatory access — reciprocity.* ~~(1)~~ Except as provided in 69-8-311, all electricity suppliers must be afforded open, fair, and nondiscriminatory access to customers and a comparable opportunity to compete.

~~(2) A distribution services provider or the distribution services provider's affiliates may not use another distribution services provider's facilities in the state of Montana to sell electricity to customers in the state of Montana unless the first distribution services provider or the distribution services provider's affiliates offer comparable and nondiscriminatory access to the distribution services provider's distribution facilities.~~ *A distribution services provider or the distribution services provider's affiliates may not use another distribution services provider's facilities in the state of Montana to sell electricity to customers in the state of Montana unless the first distribution services provider or the distribution services provider's affiliates offer comparable and nondiscriminatory access to the distribution services provider's distribution facilities within the state of Montana."*

Section 5. Funds established — fund administrators designated — purpose of funds — department rulemaking authority to administer funds. (1) If, pursuant to 69-8-402(2)(f) or (5)(b), there is any positive difference

HeinOnline -- 1999 vol. III 2699 1999

between credits and the annual funding requirement, the department of revenue shall establish one or both of the following funds:

(a) a fund to provide for universal system benefits programs other than low-income energy assistance. The department of environmental quality shall administer this fund.

(b) a fund to provide universal low-income energy assistance. The department of public health and human services shall administer this fund.

(2) The purpose of these funds is to fund universal system benefits programs.

(3) The department of environmental quality and the department of public health and human services may adopt rules that administer and expend the money in each respective fund based on an annual statewide funding assessment that identifies funding needs in universal system benefits programs. The annual assessment must take into account existing utility and large customer universal system benefits programs expenditures.

Section 6. Department rulemaking authority. (1) The department of revenue shall adopt rules on or before September 1, 1999, specifying acceptable universal system benefits programs credits and expenditures and adopting procedures for challenged credits.

(2) Rules adopted pursuant to this part must be adopted in accordance with the Montana Negotiated Rulemaking Act, Title 2, chapter 5, part 1.

(3) Universal system benefits programs credits claimed or expenditures made prior to the adoption of the rules under subsection (1) must be allowed and are not subject to the requirements of [section 7].

Section 7. Universal system benefits programs credit review process. (1) All annual reports required pursuant to 69-8-402(8) and (10) must be filed with the department of revenue on March 1 of each year.

(2) Except as provided in [section 6], upon a challenge by an interested person, the department of revenue shall ensure that the credit claimed is consistent with this chapter. An interested person may file comments challenging the claim, including supporting documentation, with the department of revenue. A challenge of any claimed credit must be filed within 60 days of the department of revenue's receipt of the credit claimant's annual reports required pursuant to 69-8-402(8) and (10).

(3) Claimed credits are presumed to be correct unless challenged by an interested person. If a challenge is filed by an interested person, the department of revenue shall conduct an initial review of a challenged credit and shall make a determination as to the likelihood that the challenged credit qualifies for universal system benefits programs. If the department of revenue finds that the challenged credit is not likely to qualify for universal system benefits programs, the department of revenue shall formally review the challenge; otherwise, the department of revenue shall dismiss the challenge and provide a statement of the reasons supporting dismissal of the challenge. The department of revenue may request additional information from the credit claimant or interested person. The department of revenue shall complete the initial review within 30 days of the challenge.

(4) If the department of revenue determines that a formal review of a challenged credit is necessary, the department of revenue shall provide public notice of the opportunity to comment to the credit claimant and interested

HeinOnline -- 1999 vol. III 2700 1999

persons. The department of revenue may also schedule an oral hearing. If a hearing is scheduled, the department of revenue shall provide puhlic notice of the hearing to the credit claimant and interested persons.

(5) For a formal credit review challenge, the following procedures apply:

(a) The credit claimant shall provide documentation supporting the credit claimed to the department of revenue and to all interested persons, subject to department of revenue protective orders for confidential or sensitive materials, upon a showing of a privacy interest by the credit claimant.

(b) The department of revenue shall make all materials related to the claim, the challenge, and the submitted comments available to the credit claimant and for public inspection and photocopying, subject to any department of revenue protective orders.

(c) The credit claimant may respond in writing to any comments and other documents filed by an interested person.

(d) The department of revenue may ask for additional detailed information to implement this section.

(6) Upon completing a formal review of a challenged credit, the department of revenue shall make a decision to certify or to deny the credit claimed, providing a statement of the reasons supporting the department of revenue's decision. The formal review of a challenged credit, including the department of revenue's final decision, must be completed within 60 days of the department of revenue's public notice of the opportunity to comment on the challenged credit.

Section 8. Codification instruction. [Sections 5 through 7] are intended to be codified as an integral part of Title 69, chapter 8, part 4, and the provisions of Title 69, chapter 8, part 4, apply to [sections 5 through 7].

Section 9. Effective date. [This act] is effective on passage and approval.

Approved May 10, 1999

CHAPTER NO. 581

[HB 566]

AN ACT AUTHORIZING AN INTERIM STUDY OF METHODS FOR A STATE LAW ALTERNATIVE METHOD FOR FIREARMS RECORDS CHECKS OF PURCHASERS; RESERVING TO THE STATE THE GOVERNMENTAL RIGHT TO SUE FIREARMS AND AMMUNITION MANUFACTURERS, TRADE ASSOCIATIONS, AND DEALERS TO THE STATE IN CERTAIN TYPES OF CASES; REVISING LAWS RELATING TO CONCEALED WEAPONS PERMITS, SILENCERS, AND THE POSSESSION OF A WEAPON IN A SCHOOL BUILDING WITH THE PURPOSE TO COMMIT A CRIMINAL OFFENSE; AND AMENDING SECTIONS 45-8-321, 45-8-322, 45-8-337, AND 45-8-361, MCA.

WHEREAS, the Second Amendment to the Constitution of the United States provides that "the right of the people to keep and bear arms sball not be infringed"; and

WHEREAS, documents written by the founding fathers clearly indicate that tbe right to keep and bear arms includes the keeping and bearing of firearms for

HeinOnline -- 1999 vol. III 2701 1999

personal use and protection unrelated to the necessity of a well-regulated militia to the security of a free state; and

WHEREAS, Article II, section 12, of the Montana Constitution provides that the "right of any person to keep or bear arms in defense of his own home, person, and property . . . shall not be called in question"; and

WHEREAS, Article II, section 3, of the Montana Constitution grants all persons the inalienable right of defending their lives and liberties and protecting property; and

WHEREAS, the Legislature seeks to facilitate the exercise of the above rights, expedite the purchase of firearms, and further the protection of the lives and property of the people.

Be it enacted by the Legislature of the State of Montana:

Section 1. Interim study for state law alternative method of complying with national instant criminal background check system. (1) An interim study is authorized to recommend legislation for the 57th regular legislative session to implement a valid state law alternative method of complying with the national instant criminal background check system requirements prior to transfer of a firearm. The study should focus on the development of cost-effective, minimally intrusive options for implementation of a state law alternative method that would comply with the exception provided under 27 CFR 178.102(d) pursuant to the federal Brady Handgun Violence Prevention Act.

(2) The legislative council is requested to assign the interim study authorized under this section to the appropriate interim committee.

Section 2. Governmental right to sue firearms or ammunition manufacturer, trade association, or dealer in tort or for abatement or injunctive relief. The governmental right to bring suit against a firearms or ammunition manufacturer, trade association, or dealer for abatement, injunctive relief, or tort damages resulting from or relating to the design, manufacture, marketing, or sale of firearms or ammunition sold to the public is reserved exclusively to the state and may not be exercised by a local governmental unit. The state may sue under this section on its own behalf or on behalf of a local governmental unit, or both.

Section 3. Section 45-8-321, MCA, is amended to read:

"45-8-321. Permit to carry concealed weapon. (1) A county sheriff shall, within 60 days after the filing of an application, issue a permit to carry a concealed weapon to the applicant. The permit is valid for 4 years from the date of issuance. An applicant must be a United States citizen who is 18 years of age or older and who holds a valid Montana driver's license or other form of identification issued by the state that has a picture of the person identified. An applicant must have been a resident of the state for at least 6 months. Except as provided in subsection (2), this privilege may not be denied an applicant unless the applicant:

(a) is ineligible under Montana or federal law to own, possess, or receive a firearm;

(b) has been charged and is awaiting judgment in any state of a state or federal crime that is punishable by incarceration for 1 year or more;

(c) has been convicted in any state or federal court of a crime punishable by more than 1 year of incarceration or, regardless of the sentence that may be

HeinOnline -- 1999 vol. III 2702 1999

imposed, a crime that includes as an element of the crime an act, attempted act, or threat of intentional homicide, violence, bodily or serious bodily harm, unlawful restraint, sexual abuse, or sexual intercourse or contact without consent;

(d) has been convicted under 45-8-327 or 45-8-328, unless the applicant has been pardoned or 5 years have elapsed since the date of the conviction;

(e) has a warrant of any state or the federal government out for the applicant's arrest;

(f) has been adjudicated in a criminal or civil proceeding in any state or federal court to be an unlawful user of an intoxicating substance and is under a court order of imprisonment or other incarceration, probation, suspended or deferred imposition of sentence, treatment or education, or other conditions of release or is otherwise under state supervision;

(g) has been adjudicated in a criminal or civil proceeding in any state or federal court to be mentally ill, mentally defective, or mentally disabled and is still subject to a disposition order of that court; or

(h) was dishonorably discharged from the United States armed forces.

(2) The sheriff may deny an applicant a permit to carry a concealed weapon if the sheriff has reasonable cause to believe that the applicant is mentally ill, mentally defective, or mentally disabled or otherwise may be a threat to the peace and good order of the community to the extent that the applicant should not be allowed te carry a concealed weapon. At the time an application is denied, the sheriff shall, unless the applicant is the subject of an active criminal investigation, give the applicant a written statement of the reasonable cause upon which the denial is based.

(3) An applicant for a permit under this section must, as a condition to issuance of the permit, be required by the sheriff to demonstrate familiarity with a firearm by:

(a) completion of a hunter education or safety course approved or conducted by the department of fish, wildlife, and parks or a similar agency of another state;

(b) completion of a firearms safety or training course approved or conducted by the department of fish, wildlife, and parks, a similar agency of another state, a national firearms association, a law enforcement agency, an institution of higher education, or an organization that uses instructors certified by a national firearms association;

(c) completion of a law enforcement firearms safety or training course offered to or required of public or private law enforcement personnel and conducted or approved by a law enforcement agency;

(d) possession of a license from another state to carry a firearm, concealed or otherwise, that is granted by that state upon completion of a course described in subsections (3)(a) through (3)(c); or

(e) evidence ~~that the sheriff may or may not accept~~ that the applicant, during military service, was found to be qualified to operate ~~handguns~~ *firearms, including handguns*.

(4) A photocopy of a certificate of completion of a course described in subsection (3), an affidavit from the entity or instructor that conducted the course attesting to completion of the course, or a copy of any other document that attests

to completion of the course and can be verified through contact with the entity or instructor that conducted the course creates a presumption that the applicant has completed a course described in subsection (3).

(5) If the sheriff and applicant agree, the requirement in subsection (3) of demonstrating familiarity with a firearm may be satisfied by the applicant's passing, to the satisfaction of the sheriff or of any person or entity to which the sheriff delegates authority to give the test, a physical test in which the applicant demonstrates the applicant's familiarity with a firearm."

Section 4. Section 45-8-322, MCA, is amended to read:

"45-8-322. Application, renewal, permit, and fees. (1) The application form must be readily available at the sheriff's office and must read as follows:

CONCEALED WEAPON PERMIT APPLICATION

To he completed hy each person making application:

RESIDENT OF MONTANA AT LEAST 6 MONTHS	( ) Yes	( ) No
CITIZEN OF THE UNITED STATES	( ) Yes	( ) No
18 YEARS OF AGE OR OLDER	( ) Yes	( ) No

PLEASE TYPE OR PRINT

Full name: .....
Last First Middle

Alias/Maiden/Nickname: .....

Address: Home: ..... Zip .....

Employer: ..... Zip .....

Phone: ...../...../.....
Home Employer Message

Place of birth: ..... Date of birth: .....

Driver's license #: ..... Issuing state: .....

Social Security #.....

Sex ..... Ht. ..... Wt. ..... Eyes ..... Hair .....

LIST EACH FORMER EMPLOYER OR BUSINESS ENGAGED IN FOR THE LAST 5 YEARS:

Employer or husiness name	Address	Dates of employment
1.	.....	.....
2.	.....	.....
3.	.....	.....
4.	.....	.....
5.	.....	.....
6.	.....	.....

HeinOnline -- 1999 vol. III 2704 1999

LIST EACH PLACE IN WHICH YOU HAVE LIVED FOR THE LAST 5 YEARS:

	City	State	Dates of residence
1.	.....	.....	.....
2.	.....	.....	.....
3.	.....	.....	.....
4.	.....	.....	.....
5.	.....	.....	.....
6.	.....	.....	.....

MILITARY SERVICE, BRANCH FROM ..... TO .....

TYPE OF DISCHARGE ..... RANK UPON DISCHARGE .....

HAVE YOU EVER BEEN ARRESTED FOR OR CONVICTED OF A CRIME OR FOUND GUILTY IN A COURT-MARTIAL PROCEEDING?

( ) YES ( ) NO

IF YES, COMPLETE THE FOLLOWING (Exceptions: minor traffic violations) (Attach additional sheet if necessary):

	City	State	Charge	Date
1.	.....	.....	.....	.....
2.	.....	.....	.....	.....
3.	.....	.....	.....	.....
4.	.....	.....	.....	.....
5.	.....	.....	.....	.....
6.	.....	.....	.....	.....

LIST THREE PERSONS WHOM YOU HAVE KNOWN FOR AT LEAST 5 YEARS THAT WILL BE CREDIBLE WITNESSES TO YOUR GOOD MORAL CHARACTER AND PEACEABLE DISPOSITION (DO NOT include relatives or present/past employers):

	Name	Address	Phone
1.	.....	.....	.....
2.	.....	.....	.....
3.	.....	.....	.....

~~IN COMPLETE DETAIL, PLEASE EXPLAIN YOUR REASONS FOR REQUESTING THIS PERMIT (Attach additional sheet if necessary):~~

.....

.....

.....

.....

.....

.....

HeinOnline -- 1999 vol. III 2705 1999

PLEASE EXPLAIN YOUR REASONS FOR REQUESTING THIS PERMIT (Attach additional sheet if necessary):

.....

.....

.....

.....

.....

.....

I, the undersigned applicant, swear that the foregoing information is true and correct to the best of my knowledge and belief and is given with the full knowledge that any misstatement ~~contained herein~~ may be sufficient cause for denial or revocation of a permit to carry a concealed weapon. I ~~hereby~~ authorize any person having information concerning me that relates to the information requested by this application and the requirements for a concealed weapon permit, either public record or otherwise, to furnish it to the sheriff to whom this application is made.

.....
Signature

.....
Date of application

This application must be signed in the presence of the sheriff or ~~his~~ *a* designee.

(2) The application must be in triplicate. The applicant must he given the original at the time the completed application is filed with the sheriff, the sheriff shall keep a copy for at least 4 years, and a copy must, within 7 days of the sheriff's receipt of the application, be mailed to the chief of police if the applicant resides in a city or town with a police force.

(3) The fee for issuance of a pormit is $50. The permit must be renewed for additional 4-year periods upon payment of a $25 fee por renewal and upon request for renewal made within 90 days before expiration of the pormit. The permit and each renewal must be in triplicate, in a form prescribed by the department of justice, and must at a mimimum include the name, address, physical description, signature, driver's license or state identification card number, and a picture of the permittee. *A person in the United States armed forces satisfies the requirement of submitting a picture if the person submits pictures of the front of the person's military identification card and the person's Montana driver's license.* The pormit must state that federal and state laws on possession of firearms and other weapons differ and that a person who violates the federal law may be prosecuted in federal court and the Montana permit will not be a defense. The permittee must be given the original, and the sheriff shall keep a copy and send a copy to the department of justice, which shall keep a central repositery record of all pormits. Replacement of a lost pormit must be treated as a renewal under this subsection.

(4) The sheriff shall conduct a ~~criminal record and~~ background check of an applicant *to determine whether the applicant is eligible for a permit under*

HeinOnline -- 1999 vol. III 2706 1999

45-8-321, may require an applicant to submit ~~his~~ *the applicant's* fingerprints, and may charge the applicant $5 for fingerprinting.

(5) Permit, background, and fingerprinting fees may be retained by the sheriff and used to implement 45-8-321 through 45-8-325.

(6) A state or local government law enforcement agency or other agency or any of its officers or employees may not request a permittee to voluntarily submit information in addition to that required on an application and permit."

Section 5. Section 45-8-337, MCA, is amended to read:

"45-8-337. Possession *of unregistered silencer or of bomb or similar device* prima facie evidence of unlawful purpose. Possession ~~of a silencer or~~ *of a silencer that is not registered under federal law or* of a bomb or similar device charged or filled with one or more explosives is prima facie evidence of a purpose to use the same to commit an offense."

Section 6. Section 45-8-361, MCA, is amended to read:

"45-8-361. Possession or allowing possession of weapon in school building — exceptions — penalties — seizure and forfeiture or return authorized — definitions. (1) A person commits the offense of possession of a weapon in a school building if the person purposely and knowingly possesses, carries, or stores a weapon in a school building.

(2) A parent or guardian of a minor commits the offense of allowing possession of a weapon in a school building if the parent or guardian purposely and knowingly permits the minor to possess, carry, or store a weapon in a school building.

(3) (a) Subsection (1) does not apply to law enforcement personnel.

(b) The trustees of a district may grant persons and entities advance permission to possess, carry, or store a weapon in a school building.

(4) (a) A person convicted under this section shall be fined an amount not to exceed $500, imprisoned in the county jail for a term not to exceed 6 months, or both. The court shall consider alternatives to incarceration that are available in the community.

(b) (i) A weapon in violation of this section may be seized and, upon conviction of the person possessing or permitting possession of the weapon, may be forfeited to the state or returned to the lawful owner.

(ii) If a weapon seized under the provisions of this section is subsequently determined to have been stolen or otherwise taken from the owner's possession without permission, the weapon must be returned to the lawful owner.

(5) As used in this section:

(a) "school building" means all buildings owned or leased by a local school district that are used for instruction or for student activities. The term does not include a home school provided for in 20-5-109.

(b) "weapon" means any type of firearm, a knife with a blade 4 or more inches in length, a sword, a straight razor, a throwing star, nun-chucks, ~~or~~ *or* brass or other metal knuckles. *The term also includes any other article or instrument possessed with the purpose to commit a criminal offense.*"

Approved May 10, 1999

HeinOnline -- 1999 vol. III 2707 1999

CHAPTER NO. 582

[SB 97]

AN ACT GENERALLY REVISING THE LAWS RELATING TO LOCAL PLANNING AND SUBDIVISION REVIEW; CHANGING THE TERMS "MASTER PLAN", "COMPREHENSIVE PLAN", AND "COMPREHENSIVE DEVELOPMENT PLAN" AS USED IN TITLE 76 TO "GROWTH POLICY"; REQUIRING CERTAIN ELEMENTS AND AUTHORIZING ADDITIONAL ELEMENTS TO BE ADDRESSED IN GROWTH POLICIES; REQUIRING URBAN RENEWAL PLANS TO BE CONSISTENT WITH GROWTH POLICIES; MODIFYING PROVISIONS RELATING TO SUMMARY REVIEW OF SUBDIVISIONS; MODIFYING PROVISIONS RELATING TO REVIEW OF MINOR SUBDIVISIONS BY PLANNING BOARDS; MODIFYING PROVISIONS RELATING TO EXEMPTION FROM THE ENVIRONMENTAL ASSESSMENT REQUIREMENT FOR SUBDIVISIONS; AUTHORIZING GOVERNING BODIES TO ESTABLISH AN EXEMPTION FROM REVIEW OF CERTAIN CRITERIA FOR SUBDIVISIONS WHEN CERTAIN REQUIREMENTS ARE MET; AMENDING SECTIONS 7-2-4734, 7-15-4206, 7-15-4213, 76-1-103, 76-1-106, 76-1-107, 76-1-110, 76-1-601, 76-1-602, 76-1-603, 76-1-604, 76-1-605, 76-1-606, 76-2-201, 76-2-203, 76-2-206, 76-2-304, 76-2-310, 76-2-311, 76-3-210, 76-3-504, 76-3-505, 76-3-601, 76-3-604, 76-3-605, 76-3-608, 76-3-621, 76-4-111, 76-4-122, 76-4-123, 76-4-124, 76-4-127, AND 76-9-104, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-2-4734, MCA, is amended to read:

"7-2-4734. Standards to be met before annexation can occur. A municipal governing body may extend the municipal corporate limits to include any area ~~which~~ *that* meets the following standards:

(1) ~~It~~ *The area* must be contiguous to the municipality's boundaries at the time the annexation proceeding is begun.

(2) No part of the area may be included within the boundary of another incorporated municipality.

(3) ~~It~~ *The area* must be included within and the proposed annexation must conform to a ~~comprehensive plan as prescribed in~~ *growth policy adopted pursuant to* Title 76, chapter 1.

(4) No part of the area may be included within the boundary, as existing at the inception of ~~such~~ *the* attempted annexation, of any fire district organized under any of the provisions of part 21, chapter 33, if the fire district was originally organized at least 10 years prior to the inception of ~~such~~ attempted annexation. However, a single-ownership piece of land may be transferred from a fire district to a municipality by annexation as provided in 7-33-2127."

Section 2. Section 7-15-4206, MCA, is amended to read:

"7-15-4206. Definitions. The following terms, wherever used or referred to in ~~this part or~~ part 43 *or this part*, ~~shall~~ have the following meanings unless a different meaning is clearly indicated by the context:

(1) "Agency" or "urban renewal agency" ~~shall mean~~ *means* a public agency created by 7-15-4232.

HeinOnline -- 1999 vol. III 2708 1999

(2) "Blighted area" ~~shall mean~~ *means* an area ~~which~~ *that* is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, and crime; substantially impairs or arrests the sound growth of the city or its environs; retards the provision of housing accommodations; or constitutes an economic or social liability ~~and/or~~ *or* is detrimental or constitutes a menace to the public health, safety, welfare, and morals in its present condition and use, by reason of:

(a) the substantial physical dilapidation; deterioration; defective construction, material, and arrangement; ~~and/or~~ *or* age obsolescence of buildings or improvements, whether residential or nonresidential;

(b) inadequate provision for ventilation, light, proper sanitary facilities, or open spaces as determined by competent appraisers on the basis of an examination of the building standards of the municipality;

(c) inappropriate or mixed uses of land or buildings;

(d) high density of population and overcrowding;

(e) defective or inadequate street layout;

(f) faulty lot layout in relation to size, adequacy, accessibility, or usefulness;

(g) excessive land coverage;

(h) unsanitary or unsafe conditions;

(i) deterioration of site;

(j) diversity of ownership;

(k) tax or special assessment delinquency exceeding the fair value of the land;

(l) defective or unusual conditions of title;

(m) improper subdivision or obsolete platting;

(n) the existence of conditions ~~which~~ *that* endanger life or property by fire or other causes; or

(o) any combination of ~~such~~ *the* factors *listed in this subsection (2).*

(3) "Bonds" ~~shall mean~~ *means* any bonds, notes, or debentures (including refunding obligations) ~~herein~~ authorized to be issued *pursuant to part 43 or this part.*

(4) "Clerk" ~~shall mean~~ *means* the clerk or other official of the municipality who is the custodian of the official records of ~~such~~ *the* municipality.

(5) "Federal government" ~~shall include~~ *means* the United States of America or any agency or instrumentality, corporate or otherwise, of the United States of America.

(6) "Local governing body" ~~shall mean~~ *means* the council or other legislative body charged with governing the municipality.

(7) "Mayor" ~~shall mean~~ *means* the chief executive of a city or town.

(8) "Municipality" ~~shall mean~~ *means* any incorporated city or town in the state.

(9) "Neighborhood development program" means the yearly activities or undertakings of a municipality in an urban renewal area or areas if the

HeinOnline -- 1999 vol. III 2709 1999

municipality ~~shall elect~~ *elects* to undertake activities on an annual increment basis.

(10) "Obligee" ~~shall include~~ *means* any bondholder or agent or trustee for any bondholder or lessor demising to the municipality property used in connection with an urban renewal project or any assignee or assignees of ~~such~~ *the* lessor's interest or any part ~~thereof~~ *of the interest* and the federal government when it is a party to any contract with the municipality.

(11) "Person" ~~shall mean~~ *means* any individual, firm, partnership, corporation, company, association, joint-stock association, or school district and ~~shall include~~ *includes* any trustee, receiver, assignee, or other person acting in a similar representative capacity.

(12) "Public body" ~~shall mean~~ *means* the state or any municipality, township, board, commission, district, or any other subdivision or public body of the state.

(13) "Public officer" ~~shall mean~~ *means* any officer who is in charge of any department or branch of the government of the municipality relating to health, fire, building regulations, or to other activities concerning dwellings in the municipality.

(14) "Real property" ~~shall include~~ *means* all lands, including improvements and fixtures ~~thereon~~ *on the land*, ~~and~~ *all* property of any nature appurtenant ~~thereto~~ *to the land* or used in connection ~~therewith~~ *with the land,* and every estate, interest, right, and use, legal or equitable, ~~therein~~ *in the land*, including terms for years and liens by way of judgment, mortgage, or otherwise.

(15) "Redevelopment" may include:

(a) acquisition of a blighted area or portion ~~thereof~~ *of the area*;

(b) demolition and removal of buildings and improvements;

(c) installation, construction, or reconstruction of streets, utilities, parks, playgrounds, and other improvements necessary for carrying out in the area the urban renewal provisions of this part in accordance with the urban renewal plan; and

(d) making the land available for development or redevelopment by private enterprise or public agencies (including sale, initial leasing, or retention by the municipality itself) at its fair value for uses in accordance with the urban renewal plan.

(16) "Rehabilitation" may include the restoration and renewal of a blighted area or portion ~~thereof~~ *of the area* in accordance with an urban renewal plan by:

(a) carrying out plans for a program of voluntary or compulsory repair and rehabilitation of buildings or other improvements;

(b) acquisition of real property and demolition or removal of buildings and improvements ~~thereon~~ *on the property* ~~where~~ *when* necessary to eliminate unhealthful, unsanitary, or unsafe conditions; *to* lessen density; *to* reduce traffic hazards; *to* eliminate obsolete or other uses detrimental to the public welfare; to otherwise remove or prevent the spread of blight or deterioration; or to provide land for needed public facilities;

(c) installation, construction, or reconstruction of streets, utilities, parks, playgrounds, and other improvements necessary for carrying out in the area the urban renewal provisions of this part; and

HeinOnline -- 1999 vol. III 2710 1999

(d) the disposition of any property acquired in ~~such~~ *the* urban renewal area (including sale, initial leasing, or retention by the municipality itself) at its fair value for uses in accordance with ~~such~~ *the* urban renewal plan.

(17) "Urban renewal area" means a blighted area ~~which~~ *that* the local governing body designates as appropriate for an urban renewal project or projects.

(18) "Urban renewal plan" means a plan~~, as it exists from time to time,~~ for one or more urban renewal areas or for an urban renewal project~~, which~~. *The* plan:

(a) ~~shall~~ *must* conform to ~~the~~ *any* comprehensive plan ~~or parts thereof for the municipality as a whole~~ *and the growth policy if one has been adopted pursuant to Title 76, chapter 1*; and

(b) ~~shall~~ *must* be sufficiently complete to indicate, on a yearly basis or otherwise:

(i) ~~such~~ *any* land acquisition, demolition, and removal of structures; redevelopment; improvements; and rehabilitation ~~as may be~~ *that is* proposed to be carried out in the urban renewal area;

(ii) zoning and planning changes, if any, *including changes to the growth policy if one has been adopted pursuant to Title 76, chapter 1*;

(iii) land uses, maximum densities, building requirements; and

(iv) the plan's relationship to definite local objectives respecting appropriate land uses, improved traffic, public transportation, public utilities, recreational and community facilities, and other public improvements.

(19) "Urban renewal project" may include undertakings or activities of a municipality in an urban renewal area for the elimination and for the prevention of the development or spread of blight and may involve redevelopment in an urban renewal area, rehabilitation or conservation in an urban renewal area, or any combination or part ~~thereof~~ *of redevelopment, rehabilitation, or conservation* in accordance with an urban renewal plan."

Section 3. Section 7-15-4213, MCA, is amended to read:

"7-15-4213. Review of urban renewal plan by planning commission. (1) Prior to its approval of an urban renewal project, the local governing body shall submit the urban renewal project plan to the planning commission of the municipality for review and recommendations as to its conformity with the comprehensive plan or parts ~~thereof~~ *of the plan* for the development of the municipality as a whole *and with the growth policy if a growth policy has been adopted pursuant to Title 76, chapter 1*.

(2) The planning commission shall submit its written recommendations with respect to the proposed urban renewal plan to the local governing body within 60 days after receipt of ~~it~~ *the plan*."

Seetion 4. Section 76-1-103, MCA, is amended to read:

"76-1-103. Definitions. As used in this chapter, the following definitions apply:

(1) "City" includes incorporated cities and towns.

HeinOnline -- 1999 vol. III 2711 1999

(2) "City council" means the chief legislative body of a city or incorporated town.

(3) "Governing body" or "governing bodies" means the governing body of any governmental unit represented on a planning board.

(4) ~~"Master plan"~~ *"Growth policy"* means ~~a~~ *and is synonymous with, a* comprehensive development plan, *master plan, or comprehensive plan* ~~or any of its parts such as a plan of land use and zoning, of thoroughfares, of sanitation, of recreation, and of other related matters~~ *that meets the requirements of 76-1-601.*

(5) "Mayor" means mayor of a city.

(6) "Neighborhood plan" means a plan for a geographic area within the boundaries of the jurisdictional area that addresses one or more of the elements of the growth policy in more detail.

~~(6)~~*(7)* "Person" means any individual, firm, or corporation.

~~(7)~~*(8)* "Planning board" means a city planning board, a county planning board, or a joint city-county planning board.

~~(8)~~*(9)* "Plat" means a subdivision of land into lots, streets, and areas, marked ~~upon the earth and represented on paper~~ *on a map or plan*, and includes replats or amended plats.

~~(6)~~*(10)* "Public place" means any tract owned by the state or its subdivisions.

~~(10)~~*(11)* "Streets" includes streets, avenues, boulevards, roads, lanes, alleys, and all public ways.

~~(11)~~*(12)* "Units of government" means any federal, state, or regional unit of government or any county, city, or town.

~~(12)~~*(13)* "Utility" means any facility used in rendering service ~~which~~ *that* the public has a right to demand."

Section 5. Section 76-1-106, MCA, is amended to read:

"76-1-106. Role of the planning board. (1) To ~~assure~~ *ensure* the promotion of public health, safety, morals, convenience, *or* order~~,~~ or the general welfare and for the sake of efficiency and economy in the process of community development, the planning board shall prepare a ~~master plan~~ *growth policy* and shall serve in an advisory capacity to the local governing bodies establishing the planning board.

(2) The planning board may also propose policies for:

(a) subdivision plats;

(b) the development of public ways, public places, public structures, and public and private utilities;

(c) the issuance of improvement location permits on platted and unplatted lands; *or*

(d) the laying out and development of public ways and services to platted and unplatted lands."

Section 6. Section 76-1-107, MCA, is amended to read:

"76-1-107. Role of planning board in relation to subdivisions and plats. *(1)* ~~The~~ *Except as provided in subsection (2), the* governing body of any city, town, or county ~~which~~ *that* has formed a planning board and adopted a

HeinOnline -- 1999 vol. III 2712 1999

~~comprehensive plan~~ *growth policy pursuant to this chapter* and subdivision regulations pursuant to ~~this chapter and~~ chapter 3 shall seek the advice of the appropriate planning board in all matters pertaining to the approval or disapproval of plats or subdivisions.

(2) The planning board may delegate to its staff its responsibility under subsection (1) to advise the governing body on any or all proposed minor subdivisions."

Section 7. Section 76-1-110, MCA, is amended to read:

"76-1-110. Cooperation with planning board by state and local governments. Whenever the board undertakes the preparation of a ~~master plan~~ *growth policy*, the departments and officials of state, city, county, and separate taxing units operating within lands under the jurisdiction of the board shall make available, upon the request of the board, ~~such~~ information, documents, and plans ~~as~~ *that* have been prepared or, upon the request of the board, shall provide ~~such~~ *any* information ~~as~~ *that* relates to the board's activity."

Section 8. Section 76-1-601, MCA, is amended to read:

"76-1-601. ~~Master plan~~ *Growth policy* — contents. *(1)* The planning board shall prepare and propose a ~~master plan~~ *growth policy* for the *entire* jurisdictional area. The plan may propose ordinances or resolutions for possible adoption by the appropriate governing body. ~~The plan may~~

(2) A growth policy must include:

~~(1) careful and comprehensive surveys and studies of existing conditions and the probable future growth of the city and its environs or of the county;~~

~~(2) maps, plats, charts, and descriptive material presenting basic information, locations, extent, and character of any of the following:~~

~~(a) history, population, and physical site conditions;~~

~~(b) land use, including the height, area, bulk, location, and use of private and public structures and premises;~~

~~(c) population densities;~~

~~(d) community centers and neighborhood units;~~

~~(e) blighted and slum areas;~~

~~(f) streets and highways, including bridges, viaducts, subways, parkways, alleys, and other public ways and places;~~

~~(g) sewers, sanitation, and drainage, including handling, treatment, and disposal of excess drainage waters, sewage, garbage, refuse, and other wastes;~~

~~(h) flood control and prevention;~~

~~(i) public and private utilities, including water, light, heat, communication, and other services;~~

~~(j) transportation, including rail, bus, truck, air, and water transport and their terminal facilities;~~

~~(k) local mass transit, including motor and trolley bus; street, elevated, or underground railways; and taxicabs;~~

~~(l) parks and recreation, including parks, playgrounds, reservations, forests, wildlife refuges, and other public grounds, spaces, and facilities of a recreational nature;~~

~~(m) public buildings and institutions, including governmental administration and service buildings, hospitals, infirmaries, clinics, penal and correctional institutions, and other civic and social service buildings;~~

~~(n) education, including location and extent of schools, colleges, and universities;~~

~~(o) land utilization, including areas for manufacturing and industrial uses, concentration of wholesale business, retail business, and other commercial uses, residential uses, and areas for mixed uses;~~

~~(p) conservation of water, soil, agricultural, and mineral resources;~~

~~(q) any other factors which are a part of the physical, economic, or social situation within the city or county;~~

~~(3) reports, maps, charts, and recommendations setting forth plans for the development, redevelopment, improvement, extension, and revision of the subjects and physical situations of the city or county set out in subsection (2) so as to substantially accomplish the object of this chapter as set out in 76-1-101 and 76-1-102;~~

~~(4) a long-range development program of public works projects, based on the recommended plans of the planning board, for the purpose of eliminating unplanned, unsightly, untimely, and extravagant projects and with a view to stabilizing industry and employment and the keeping of such program up-to-date for all separate taxing units within the city or county, respectively, for the purpose of assuring efficient and economic use of public funds;~~

~~(5) recommendations setting forth the development, improvement, and extension of areas, if any, to be set aside for use as trailer courts and sites for mobile homes.~~

(a) community goals and objectives;

(b) maps and text describing an inventory of the existing characteristics and features of the jurisdictional area, including:

(i) land uses;

(ii) population;

(iii) housing needs;

(iv) economic conditions;

(v) local services;

(vi) public facilities;

(vii) natural resources; and

(viii) other characteristics and features proposed by the planning board and adopted by the governing bodies;

(c) projected trends for the life of the growth policy for each of the following elements:

(i) land use;

(ii) population;

(iii) housing needs;

(iv) economic conditions;

(v) local services;

(vi) natural resources; and

(vii) other elements proposed by the planning board and adopted by the governing bodies;

(d) a description of policies, regulations, and other measures to be implemented in order to achieve the goals and objectives established pursuant to subsection (2)(a);

(e) a strategy for development, maintenance, and replacement of public infrastructure, including drinking water systems, wastewater treatment facilities, sewer systems, solid waste facilities, fire protection facilities, roads, and bridges;

(f) an implementation strategy that includes:

(i) a timetable for implementing the growth policy;

(ii) a list of conditions that will lead to a revision of the growth policy; and

(iii) a timetable for reviewing the growth policy at least once every 5 years and revising the policy if necessary;

(g) a statement of how the governing bodies will coordinate and cooperate with other jurisdictions that explains:

(i) if a governing body is a city or town, how the governing body will coordinate and cooperate with the county in which the city or town is located on matters related to the growth policy;

(ii) if a governing body is a county, how the governing body will coordinate and cooperate with cities and towns located within the county's boundaries on matters related to the growth policy;

(h) a statement explaining how the governing bodies will:

(i) define the criteria in 76-3-608(3)(a); and

(ii) evaluate and make decisions regarding proposed subdivisions with respect to the criteria in 76-3-608(3)(a); and

(i) a statement explaining how public hearings regarding proposed subdivisions will be conducted.

(3) A growth policy may:

(a) include one or more neighborhood plans. A neighborhood plan must be consistent with the growth policy.

(b) establish minimum criteria defining the jurisdictional area for a neighborhood plan;

(c) address the criteria in 76-3-608(3)(a);

(d) evaluate the effect of subdivision on the criteria in 76-3-608(3)(a);

(e) describe zoning regulations that will be implemsnted to address the criteria in 76-3-608(3)(a); and

(f) identify geographic areas where the governing body intends to authorize an exemption from review of the criteria in 76-3-608(3)(a) for proposed subdivisions pursuant to 76-3-608.

(4) The planning board may propose and the governing bodies may adopt additional elements of a growth policy in order to fulfill the purpose of this chapter."

Section 9. Section 76-1-602, MCA, is amended to read:

"76-1-602. Public hearing on proposed ~~master plan~~ *growth policy*. (1) Prior to the suhmission of the proposed ~~master plan~~ *growth policy* to the governing bodies, the board shall give notice and hold a puhlic hearing on the ~~plan~~ *growth policy*.

(2) At least 10 days prior to the date set for hearing, the board shall publish in a newspaper of general circulation in the jurisdictional area a notice of the time and place of the hearing."

Section 10. Section 76-1-603, MCA, is amended to read:

"76-1-603. Adoption of ~~master plan~~ *growth policy* by planning board. After consideration of the recommendations and suggestions elicited at the public hearing, the planning board shall by resolution recommend the proposed ~~master plan~~ *growth policy* and any proposed ordinances and resolutions for its implementation to the governing bodies of the gevernmental units represented on the board."

Section 11. Section 76-1-604, MCA, is amended to read:

"76-1-604. Adoption, rovision, or rejection of ~~master plan~~ *growth policy*. (1) The governing bodies shall adopt a resolution of intention to adopt, revise, or reject the proposed ~~plan~~ *growth policy* or any of its parts.

(2) If the governing bodies adopt a resolution of intention to adopt the proposed ~~plan~~ *growth policy* or any of its parts, they ~~may, in their discretion,~~ *may, in their discretion,* submit to the qualified electors of the jurisdictional area ~~included within~~ *covered by* the proposed ~~plan~~ *growth policy* at the next primary or general election or at a special election the referendum question of whether or not the ~~plan~~ *growth policy* should be adopted. A special election must be held in conjunction with a regular or primary election. Except as provided in this section, the provisions of Title 7, chapter 5, part 1, apply to the referendum election.

(3) The governing hodies may adopt, revise, or repeal a ~~master plan~~ *growth policy* under this section.

(4) The qualified electors of the jurisdictional area included within the ~~master plan~~ *growth policy* may by initiative or referendum, as provided in 7-5-131 through 7-5-137, adopt, revise, or repeal a ~~master plan~~ *growth policy* under this section."

Section 12. Section 76-1-605, MCA, is amended to read:

"76-1-605. Use of adopted ~~master plan~~ *growth policy*. After adoption of the ~~master plan~~ *growth policy*, the city council, ~~the~~ board of county commissioners, or other governing body within the territorial jurisdiction of the board ~~shall~~ *must* be guided by and give consideration to the general policy and pattern of development set out in the ~~master plan~~ *growth policy* in the:

HeinOnline -- 1999 vol. III 2716 1999

(1) autborization, construction, alteration, or abandonment of public ways, public places, public structures, or public utilities;

(2) authorization, acceptance, or construction of water mains, sewers, connections, facilities, or utilities;

(3) adoption of subdivision controls; *and*

(4) adoption of zoning ordinances or resolutions."

Section 13. Section 76-1-606, MCA, is amended to read:

"76-1-606. Effect of ~~master plan~~ *growth policy* on subdivisions and plats. (1) ~~Where~~ *When* a ~~master plan~~ *growth policy* has been approved, the city council may by ordinance or the board of county commissioners may by resolution require subdivision plats to conform to the provisions of the ~~master plan~~ *growth policy*. Certified copies of ~~such~~ *the* ordinance ~~shall~~ *must* be filed with the city or town clerk and with the county clerk and recorder of the county.

(2) ~~Thereafter:~~

~~(a)~~ *When the city council has adopted an ordinance pursuant to subsection (1),* a plat involving lands within the corporate limits of the city and covered by ~~said master plan~~ *the growth policy* ~~shall~~ *may* not he filed without first presenting it to the planning board, which shall make a report to the city council advising as to compliance or noncompliance of the plat with the ~~master plan~~ *growth policy*. The city council ~~shall have~~ *has* the final authority to approve the filing of ~~such~~ *a* plat *within the city limits.*

~~(b)~~*(3) When the board of county commissioners has adopted a resolution pursuant to subsection (1),* a plat involving lands outside the corporate limits of the city and covered by ~~said master plan~~ *a growth policy* ~~shall~~ *may* not be filed without first presenting it to the planning board, which shall make a report to the board of county commissioners advising as to compliance or noncompliance of the plat with the ~~master plan~~ *growth policy*. The board of county commissioners ~~shall have~~ *has* the final authority to approve the filing of ~~such~~ *the* plat.

(4) The planning board may delegate to its staff its responsibility to report to the city council or the board of county commissioners under subsection (2) or (3).

~~(3) Nothing herein contained shall~~

(5) This section may not be interpreted to limit the present powers of ~~the~~ city or county governments.

(6) The requirements of this section must be met ~~but shall be an additional requirement~~ before any plat may be filed of record or entitled to he recorded."

Section 14. Section 76-2-201, MCA, is amended to read:

"76-2-201. County zoning authorizcd. For the purpose of promoting the *public* health, safety, morals, and goneral welfare ~~of the people in cities and towns and counties whose governing bodies have adopted a comprehensive development plan for jurisdictional areas pursuant to chapter 1, the boards~~ *a board* of county commissioners ~~in such counties~~ *that has adopted a growth policy for the entire jurisdictional area pursuant to chapter 1* ~~are~~ *is* authorized to adopt zoning regulations for all or parts of ~~such~~ *the* jurisdictional ~~areas~~ *area* in accordance with the provisions of this part."

Section 15. Section 76-2-203, MCA, is amended to read:

HeinOnline -- 1999 vol. III 2717 1999

"76-2-203. Criteria and guidelines for zoning regulations. *(1)* ~~The zoning~~ *Zoning* regulations ~~shall~~ *must* be made in accordance with ~~a comprehensive development plan~~ *the growth policy* and ~~shall~~ *must* be designed to lessen congestion in the streets; to secure safety from fire, panic, and other dangers; to promote *public* health and general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; *and* to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.

(2) ~~Such zoning~~ *Zoning* regulations ~~shall~~ *must* be made with reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout ~~such~~ *the* jurisdictional area.

(3) ~~The zoning~~ *Zoning* regulations ~~shall~~ *must*, as nearly as possible, be made compatible with the zoning ordinances of the municipality within the jurisdictional area."

Section 16. Section 76-2-206, MCA, is amended to read:

"76-2-206. Interim zoning map or regulation. (1) ~~If a~~ *The board of county commissioners may adopt an interim zoning map or regulation as an emergency measure in order to promote the public health, safety, morals, and general welfare if:*

(a) the purpose of the interim zoning map or regulation is to classify and regulate those uses and related matters that constitute the emergency; and

(b) the county ~~is~~*:*

(i) is conducting or in good faith intends to conduct studies within a reasonable time; or

(ii) has held or is holding ~~a~~ bearing for the purpose of considering *any of the following:*

(A) a ~~master plan~~ *growth policy;* ~~or~~

(B) zoning regulations; or

(C) an amendment, extension, or addition to ~~either~~ *a growth policy or to zoning regulations* pursuant to this part~~, the board of county commissioners in order to promote the public health, safety, morals, and general welfare may adopt as an emergency measure a temporary interim zoning map or temporary interim zoning regulation, the purpose of which shall be to classify and regulate uses and related matters as constitutes the emergency~~.

(2) ~~Such~~ *An* interim resolution ~~shall~~ *must* be limited to 1 year from the date it becomes effective. The board of county commissioners may extend ~~such~~ *the* interim resolution for 1 year, but not more than one ~~such~~ extension may be made."

Section 17. Section 76-2-304, MCA, is amended to read:

"76-2-304. Purposes of zoning. (1) ~~Such~~ *Zoning* regulations ~~shall~~ *must* be made in accordance with a ~~comprehensive plan~~ *growth policy* and designed to lessen congestion in the streets; to secure safety from fire, panic, and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of

HeinOnline -- 1999 vol. III 2718 1999

population; *and* to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.

(2) ~~Such~~ *Zoning* regulations ~~shall~~ *must* be made with reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout ~~such~~ *the* municipality."

Section 18. Section 76-2-310, MCA, is amended to read:

"76-2-310. Extension of municipal zoning and subdivision regulations beyond municipal boundaries. (1) ~~The local~~ *Except as provided in 76-2-312 and except in locations where a county has adopted zoning or subdivision regulations, a* city or town council or other legislative body ~~which~~ *that* has adopted a ~~master plan~~ *growth policy* pursuant to chapter 1 may extend the application of its zoning or subdivision regulations~~, or both,~~ beyond its limits in any direction ~~but not in a county which has adopted such regulations within the contemplated area.~~ *subject to the following limits:*

~~(2)~~ (a) A *up to 3 miles beyond the limits of a* city of the first class as defined in 7-1-4111*;* ~~may not extend the application of its zoning or subdivision regulations, or both, more than 3 miles beyond its limits,~~

(b) up to 2 miles beyond the limits of a city of the second class ~~may not so extend more than 2 miles beyond its limits,~~; and

(c) up to 1 mile beyond the limits of a city or town of tbe third class ~~may not so extend more than 1 mile beyond its limits~~.

~~(b)~~*(2)* ~~Where~~ *When* two or more noncontiguous cities have boundaries so near to one another as to create an area of potential conflict in the event that all cities concerned should exercise the full powers conferred by ~~this section,~~ 76-2-302, ~~and~~ 76-2-311, *and this section,* then the extension of zoning or subdivision regulations, or both, by these cities ~~shall~~ *must* terminate at a boundary line agreed upon by the cities ~~so concerned~~."

Section 19. Section 76-2-311, MCA, is amended to read:

"76-2-311. Administration of regulations in extended area. (1) ~~Any~~ *A* city or town council or other legislative body may ~~thereafter~~ enforce ~~such~~ regulations *adopted pursuant to 76-2-310* ~~in the area to the same extent~~, as if ~~such~~ *the* proporty were situated within its corporate limits, until the county board adopts a ~~master plan~~ *growth policy* pursuant to chapter 1 and accompanying zoning or subdivision resolutions~~, or both, which~~ *that* include the area.

(2) As a prerequisite to the exercise of this power, a city-county planning board whose jurisdictional area includes the area to he regulated must be formed or an existing city planning hoard must be increased to include two representatives from the unincorporated area ~~which~~ *that* is to he affected. These representatives ~~shall~~ *must* be appointed by the board of county commissioners. ~~Such representation, however, shall~~ *Representation must* cease when the county board adopts a ~~master plan~~ *growth policy* pursuant to chapter 1 and accompanying zoning or subdivision resolutions~~, or both, which~~ *that* include the area."

Section 20. Section 76-3-210, MCA, is amended to read:

HeinOnline -- 1999 vol. III 2719 1999

"76-3-210. Subdivisions exempted from requirement of an environmental assessment. (1) Subdivisions totally within a ~~master planning area~~ *jurisdictional area that has adopted all of the following are considered to be in the public interest and are exempt from the requirement of an environmental assessment:*

(a) a growth policy adopted pursuant to chapter 1 ~~wherein~~;

(b) zoning regulations pursuant to ~~part 3 of chapter 2 or~~ 76-2-201 *or chapter 2, part 3;* and

(c) a ~~long-range development program of~~ *strategy for development, maintenance, and replacement of* public ~~works projects~~ *infrastructure* pursuant to 76-1-601 ~~have been adopted are deemed to be in the public interest and exempt from the requirement of an environmental assessment~~.

(2) (a) ~~When a~~ *A planning board established pursuant to chapter 1 may exempt a proposed subdivision within its jurisdictional area from the requirement for completion of any portion of the environmental assessment if:*

(i) the subdivision is proposed in an area for which a ~~master plan~~ *growth policy* has been adopted pursuant to chapter 1 and the proposed subdivision will be in compliance with the ~~plan~~ *growth policy;* or

(ii) ~~when~~ the subdivision will contain fewer than 10 parcels and less than 20 acres~~, a planning board established pursuant to chapter 1 and having jurisdiction over the area involved may exempt the subdivider from the completion of all or any portion of the environmental assessment~~.

(b) When ~~such~~ an exemption is granted *under this subsection (2),* the planning board shall prepare and certify a written statement of the reasons for granting the exemption. A copy of this statement ~~shall~~ *must* accompany the preliminary plat of the subdivision when it is submitted for review.

(c) Where ~~no~~ *a* properly established planning board having jurisdiction ~~exists~~ *does not exist,* the governing body may grant exemptions as specified in this subsection (2)."

Section 21. Section 76-3-504, MCA, is amended to read:

"76-3-504. Minimum requirements for subdivision regulations. The subdivision regulations adopted under this chapter ~~shall~~ *must,* at a minimum:

(1) *except as provided in 76-3-210 or 76-3-609(3),* require the subdivider to submit to the governing body an environmental assessment as prescribed in 76-3-603;

(2) establish procedures consistent with this chapter for the submission and review of subdivision plats;

(3) prescribe the form and contents of preliminary plats and the documents to accompany final plats;

(4) provide for the identification of areas that, because of natural or human-caused hazards, are unsuitable for subdivision development and prohibit subdivisions in these areas unless the hazards can be eliminated or overcome by approved construction techniques;

(5) prohibit subdivisions for building purposes in areas located within the floodway of a flood of 100-year frequency as defined by Title 76, chapter 5, or determined to be subject to flooding by the governing body;

HeinOnline -- 1999 vol. III 2720 1999

(6) prescribe standards for:

(a) the design and arrangement of lots, streets, and roads;

(b) grading and drainage;

(c) subject to the provisions of 76-3-511, water supply and sewage and solid waste disposal that, at a minimum, meet the regulations adopted by the department of environmental quality under 76-4-104;

(d) the location and installation of utilities;

(7) provide procedures for the administration of the park and open-space requirements of this chapter;

(8) provide for the review of preliminary plats by affected public utilities and those agencies of local, state, and federal government having a substantial interest in a proposed subdivision. A utility or agency review may not delay the governing body's action on the plat beyond the time limits specified in this chapter, and the failure of any agency to complete a review of a plat may not be a basis for rejection of the plat by the governing body."

Section 22. Section 76-3-505, MCA, is amended to read:

"76-3-505. Provision for summary review of *minor* subdivisions. *(1)* Local subdivision regulations must include procedures for the summary review and approval of subdivision plats containing five or fewer parcels when proper access to all lots is provided, when no land in the subdivision will be dedicated to public use for parks or playgrounds, and when the plats have been approved by the department of environmental quality whenever approval is required by part 1 of chapter 4; however, reasonable local regulations may contain additional requirements for summary approval.

(2) (a) Except when required by local subdivision regulations, proposed subdivisions eligible for summary review under this section that are located entirely within the jurisdictional area covered by a growth policy adopted pursuant to chapter 1 and zoning regulations adopted pursuant to chapter 2, part 2 or 3, are exempt from:

(i) the requirement to hold a hearing on the preliminary plat pursuant to 76-3-605; and

(ii) review by the governing body of the criteria in 76-3-608(3)(a).

(b) The governing body shall approve, conditionally approve, or disapprove a proposed subdivision that is eligible for review under this subsection (2) within 35 days of submission of the subdivision application."

Section 23. Section 76-3-601, MCA, is amended to read:

"76-3-601. Submission of preliminary plat for review. (1) Except when a plat is eligible for ~~summary approval~~ *expedited review pursuant to 76-3-505*, the subdivider shall present to the governing body or to the agent or agency designated by the governing body the preliminary plat of the proposed subdivision for local review. The preliminary plat must show all pertinent features of the proposed subdivision and all proposed improvements.

(2) (a) When the proposed subdivision lies within the boundaries of an incorporated city or town, the preliminary plat must be submitted to and approved by the city or town governing body.

HeinOnline -- 1999 vol. III 2721 1999

(b) When the proposed subdivision is situated entirely in an unincorporated area, the preliminary plat must be submitted to and approved by the governing body of the county. However, if the proposed subdivision lies within 1 mile of a third-class city or town, ~~or~~ within 2 miles of a second-class city, or within 3 miles of a first-class city, the county governing body shall submit the preliminary plat to the city or town governing body or its designated agent for review and comment. If the proposed subdivision is situated within a rural school district, as described in 20-9-615, the county governing body shall provide an informational copy of the preliminary plat to school district trustees.

(c) If the proposed subdivision lies partly within an incorporated city or town, the proposed plat must be submitted to and approved by both the city or town and the county governing bodies.

(d) When a proposed subdivision is also proposed to be annexed to a municipality, the governing body of the municipality shall coordinate the subdivision review and annexation procedures to minimize duplication of hearings, reports, and other requirements whenever possible.

(3) The provisions of 76-3-604, 76-3-605, ~~and~~ 76-3-608 through 76-3-610, and this section do not limit the authority of certain municipalities to regulate subdivisions beyond their corporate limits pursuant to 7-3-4444."

Section 24. Section 76-3-604, MCA, is amended to read:

"76-3-604. Reviow of preliminary plat. (1) The governing body or its designated agent or agoncy shall review the preliminary plat to determine whether it conforms to the local ~~master plan~~ *growth policy* if one has been adopted pursuant to chapter 1, to the provisions of this chapter, and to rules prescribed or adopted pursuant to this chapter.

(2) The governing body shall approve, conditionally approve, or ~~rejeet~~ *disapprove* the preliminary plat within 60 days of its presentation unless the subdivider consents to an extension of the review period.

(3) If the governing body ~~rejects~~ *disapproves* or conditionally approves the preliminary plat, it shall forward one copy of the plat to the subdivider accompanied by a letter over the appropriate signature stating the reason for ~~rejection~~ *disapproval* or enumerating the conditions ~~which~~ *that* must be met to ~~assure~~ *ensure* approval of the final plat."

Section 25. Section 76-3-605, MCA, is amended to read:

"76-3-605. Hearing on preliminary plat. (1) ~~The~~ *Except as provided in 76-3-505, the* governing body or its authorized agont or agency shall hold a public hearing on the preliminary plat and shall consider all relevant evidence relating to the public healtb, safety, and welfare, including the environmental assessment *if required*, to determine whether the plat should be approved, conditionally approved, or disapproved by the governing body.

(2) When a proposod subdivision is also proposed to be annexed to a municipality, the governing body of the municipality shall hold joint hearings on the preliminary plat and annexation whenever possible.

(3) Notice of ~~such~~ *the* hearing ~~shall~~ *must* be given by publication in a newspaper of general circulation in the county not less tban 15 days prior to the date of the hearing. The subdivider, each proporty owner of record, and each purchaser under contract for deed of property immediately adjoining the land

HeinOnline -- 1999 vol. III 2722 1999

included in the plat ~~shall~~ *must* also be notified of the hearing by registered or certified mail not less than 15 days prior to the date of the hearing.

(4) When a hearing is held by an agent or agency designated by the governing body, the agent or agency shall act in an advisory capacity and recommend to the governing body the approval, conditional approval, or disapproval of the plat. This recommendation must be submitted to the governing body in writing not later than 10 days after the public hearing."

Section 26. Section 76-3-608, MCA, is amended to read:

"76-3-608. Criteria for local government review. (1) The basis for the governing body's decision to approve, conditionally approve, or disapprove a subdivision is whether the preliminary plat, applicable environmental assessment, public hearing, planning board recommendations, or additional information demonstrates that development of the subdivision meets the requirements of this chapter. A governing body may not deny approval of a subdivision based solely on the subdivision's impacts on educational services.

(2) The governing body shall issue written findings of fact that weigh the criteria in subsection (3), as applicable.

(3) A subdivision proposal must undergo review for the following primary criteria:

(a) *except when the governing body has established an exemption pursuant to subsection (7) or except as provided in 76-3-505,* the effect on agriculture, agricultural water user facilities, local services, the natural environment, wildlife and wildlife habitat, and public health and safety;

(b) compliance with:

(i) the survey requirements provided for in part 4 of this chapter;

(ii) the local subdivision regulations provided for in part 5 of this chapter; and

(iii) the local subdivision review procedure provided for in this part;

(c) the provision of easements for the location and installation of any planned utilities; and

(d) the provision of legal and physical access to each parcel within the subdivision and the required notation of that access on the applicable plat and any instrument of transfer concerning the parcel.

(4) The governing body may require the subdivider to design the subdivision to reasonably minimize potentially significant adverse impacts identified through the review required under subsection (3). The governing body shall issue written findings to justify the reasonable mitigation required under this subsection (4).

(5) (a) In reviewing a subdivision under subsection (3) and when requiring mitigation under subsection (4), a governing body may not unreasonably restrict a landowner's ability to develop land, but it is recognized that in some instances the unmitigated impacts of a proposed development may be unacceptable and will preclude approval of the plat.

(b) When requiring mitigation under subsection (4), a governing body shall consult with the subdivider and shall give due weight and consideration to the expressed preference of the subdivider.

HeinOnline -- 1999 vol. III 2723 1999

(6) (a) When a minor subdivision is proposed in an area where a ~~master plan~~ *growth policy* has been adopted pursuant to chapter 1 and the proposed subdivision will comply with the ~~plan~~ *growth policy*, the subdivision is exempt from the review criteria contained in subsection (3)(a) but is subject to applicable zoning regulations.

(b) In order for a ~~master plan~~ *growth policy* to serve as the basis for the exemption provided by this subsection (6), the ~~plan~~ *growth policy* must~~, at a minimum, contain:~~

~~(i) housing, transportation, and land use elements sufficient for the governing body to protect public health, safety, and welfare; and~~

~~(ii) a discussion of physical constraints on development that exist within the area encompassed by the proposed subdivision~~ *meet the requirements of 76-1-601.*

(7) The governing body may exempt subdivisions that are entirely within the boundaries of designated geographic areas from the review criteria in subsection (3)(a) if all of the following requirements have been met:

(a) the governing body has adopted a growth policy pursuant to chapter 1 that:

(i) addresses the criteria in subsection (3)(a);

(ii) evaluates the effect of subdivision on the criteria in subsection (3)(a);

(iii) describes zoning regulations that will be implemented to address the criteria in subsection (3)(a); and

(iv) identifies one or more geographic areas where the governing body intends to authorize an exemption from review of the criteria in subsection (3)(a); and

(b) the governing body has adopted zoning regulations pursuant to chapter 2, part 2 or 3, that:

(i) apply to the entire area subject to the exemption; and

(ii) address the criteria in subsection (3)(a), as described in the growth policy."

Section 27. Section 76-3-621, MCA, is amended to read:

"**76-3-621. Park dedication requirement.** (1) Except as provided in subsections (2), (3), and (6), a subdivider shall dedicate to the governing body a cash or land donation equal to:

(a) 11% of the area of the land proposed to be subdivided into parcels of one-half acre or smaller;

(b) 7.5% of the area of the land proposed to be subdivided into parcels larger than one-half acre and not larger than 1 acre;

(c) 5% of the area of the land proposed to be subdivided into parcels larger than 1 acre and not larger than 3 acres; and

(d) 2.5% of the area of the land proposed to be subdivided into parcels larger than 3 acres and not larger than 5 acres.

(2) When a subdivision is located totally within an area for which density requirements have been adopted pursuant to a ~~master plan~~ *growth policy* under ~~Title 76,~~ chapter 1~~,~~ or pursuant to zoning regulations under ~~Title 76,~~ chapter 2, the governing body may establish park dedication requirements based on the community need for parks and the development densities identified in the ~~plans~~ *growth policy* or regulations. Park dedication requirements established under

HeinOnline -- 1999 vol. III 2724 1999

this subsection are in lieu of those provided in subsection (1) and may not exceed 0.03 acres per dwelling unit.

(3) A park dedication may not be required for:

(a) a minor subdivision;

(b) land proposed for subdivision into parcels larger than 5 acres;

(c) subdivision into parcels that are all nonresidential;

(d) a subdivision in which parcels are not created, except when that subdivision provides permanent multiple spaces for recreational camping vehicles, mobile homes, or condominiums; or

(e) a subdivision in whicb only one additional parcel is created.

(4) The governing body, in consultation with the subdivider and the planning board or park board tbat has jurisdiction, may determine suitable locations for parks and playgrounds and, giving due weight and consideration to the expressed preference of the subdivider, may determine whether the park dedication must be a land donation, cash donation, or a combination of both. When a combination of land donation and cash donation is required, the cash donation may not exceed the proportional amount not covered by the land donation.

(5) (a) In accordance with the provisions of subsections (5)(b) and (5)(c), the governing body shall use the dedicated money or land for development, acquisition, or maintenance of parks to serve the subdivision.

(b) The governing body may use the dedicated money to acquire, develop, or maintain, within its jurisdiction, parks or recreational areas or for the purcbase of public open space or conservation easements only if:

(i) the park, recreational area, open space, or conservation easement is within a reasonably close proximity to the proposed subdivision; and

(ii) the governing body has formally adopted a park plan tbat establishes the needs and procedures for use of the money.

(c) The governing body may not use more than 50% of the dedicated money for park maintenance.

(6) The local governing body shall waive the park dedication requirement if:

(a) (i) the preliminary plat provides for a planned unit development or other development witb land permanently set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside in tbe development; and

(ii) the area of the land and any improvements set aside for park and recreational purposes equals or exceeds the area of the dedication required under subsection (1);

(b) (i) the preliminary plat provides long-term protection of critical wildlife habitat; cultural, historical, or natural resources; agricultural interests; or aesthetic values; and

(ii) tlie area of the land proposed to be subdivided, by virtue of providing long-term protection provided for in subsection (6)(b)(i), is reduced by an amount equal to or exceeding the area of the dedication required under subsection (1); or

HeinOnline -- 1999 vol. III 2725 1999

(c) the area of the land proposed to be subdivided, by virtue of a combination of the provisions of subsections (6)(a) and (6)(b), is reduced by an amount equal to or exceeding the area of the dedication required under subsection (1).

(7) For the purposes of this section:

(a) "cash donation" is the fair market value of the unsubdivided, unimproved land; and

(b) "dwelling unit" means a residential structure in which a person or persons reside."

Section 28. Section 76-4-111, MCA, is amended to read:

"76-4-111. Exemption for certain condominiums and subdivisions. (1) Condominiums constructed on land divided in compliance with the Montana Subdivision and Platting Act and this part are exempt from provisions of this part.

(2) Whenever a parcel of land has previously been reviewed under either department requirements or local health requirements and has received approval for a given number of living units for rental or lease, the construction of the same or a fewer number of condominium units on that parcel is not subject to the provisions of this part, provided that no new extension of a public water supply system or a public sewage disposal system is required as defined in this part.

(3) Subdivisions located within ~~master planning~~ *jurisdictional* areas *that have adopted growth policies pursuant to chapter 1* and first- or second-class municipalities that will be provided with municipal facilities for the supply of water and disposal of sewage and solid waste are not subject to the provisions of this part; except that, if the municipal facilities for water supply or sewage disposal to serve the subdivision constitute either an extension of a public water supply system or a public sewage disposal system, the subdivision must be reviewed in accordance with the provisions of 76-4-105, 76-4-124, and 76-4-127."

Section 29. Section 76-4-122, MCA, is amended to read:

"76-4-122. Filing or recording of noncomplying map or plat prohibited. (1) The county clerk and recorder ~~shall~~ *may* not file or record any map or plat showing a subdivision unless it complies with the provisions of this part.

(2) A county clerk and recorder may not accept a subdivision plat for filing until one of the following conditions has been met:

(a) *whenever reviewing authority approval is necessary,* the person wishing to file the plat has obtained approval of the local health officer having jurisdiction and has filed the approval with the reviewing authority, and the reviewing authority has indicated by stamp or certificate that it has approved the plat and plans and specifications and that the subdivision is *not* subject to ~~no~~ *a* sanitary restriction ~~whenever reviewing authority approval is necessary~~; or

(b) whenever reviewing authority approval is not necessary, the person wishing to file the plat has obtained a certificate from the governing body that the subdivision is inside ~~a master planning area~~ *the jurisdictional area of a growth policy adopted pursuant to chapter 1* or a class 1 or class 2 municipality and will be provided with municipal facilities for the supply of water and disposal of sewage and solid waste."

Section 30. Section 76-4-123, MCA, is amended to read:

HeinOnline -- 1999 vol. III 2726 1999

"76-4-123. Review and approval required outside master planning areas and class 1 and class 2 municipalities. Outside ~~master planning~~ *of jurisdictional* areas *that have adopted growth policies* ~~adopted~~ pursuant to chapter 1 and class 1 and class 2 municipalities as provided in 76-4-124, a person may not file a subdivision plat with a county clerk and recorder, make disposition of a lot within a subdivision, erect any facility for the supply of water or disposal of sewage or solid waste, erect a building or shelter in a subdivision ~~which~~ *that* requires facilities for the supply of water or disposal of sewage or solid waste, or occupy a permanent building in a subdivision until the reviewing authority has indicated that the subdivision is *not* subject to ~~no~~ *a* sanitary restriction."

Section 31. Section 76-4-124, MCA, is amended to read:

"76-4-124. Type of review and approval required within master plauning areas and class 1 and class 2 municipalities. (1) Within ~~master planning~~ *jurisdictional* areas *that have adopted growth policies* ~~adopted~~ pursuant to chapter 1 or within a class 1 or class 2 municipality as defined in 7-1-4111, a subdivision, including a development of condominiums, is not subject to sanitary restrictions when the local governing body certifies that municipal facilities for the supply of water and disposal of sewage and solid waste will be provided for the subdivision as provided in 76-4-127. In this case, reviewing authority approval is not necessary.

(2) To the extent that municipal facilities for the supply of water or disposal of sewago or solid waste are not to be provided for a subdivision as certified to by the governing body, the person wishing to subdivide must obtain reviewing authority approval as provided in 76-4-122(2)(a)."

Section 32. Section 76-4-127, MCA, is amended to read:

"76-4-127. Notice of certification that water and waste services will be provided by local government. (1) When a subdivision is reviewed under the provisions of 76-4-124, the local governing body shall, within 20 days after receiving preliminary plat approval under the Montana Subdivision and Platting Act, send notice of certification to the reviewing authority that a subdivision has been submitted for approval and that municipal facilities for the supply of water and disposal of sewage and solid waste will be provided for the subdivision.

(2) The notice of certification ~~shall~~ *must* include the following:

(a) tbe name and address of tbe applicant;

(b) a copy of the preliminary plat or a final plat ~~where~~ *when* a preliminary plat is not necessary;

(c) the number of proposed parcels in the subdivision;

(d) a copy of any applicable zoning ordinances in effect;

(e) bow construction of the sewage disposal and water supply systems or extensions will be financed;

(f) a copy of the ~~master plan~~ *growth policy*, when applicable, if one has not yet been submitted to the reviewing authority;

(g) the relative location of the subdivision to the city or town; and

(h) certification that adequate municipal facilities for the supply of water and disposal of sewage and solid waste are available or will be provided within 1 year after the notice of certification is issued."

HeinOnline -- 1999 vol. III 2727 1999

Section 33. Section 76-9-104, MCA, is amended to read:

"76-9-104. Zoning — effect on shooting ranges. A planning district ~~master plan~~ *growth policy*, recommendation, resolution, rule, or zoning designation may not:

(1) prevent the operation of an existing shooting range as a nonconforming use;

(2) prohibit the establishment of new shooting ranges, but it may regulate the construction of shooting ranges to specified zones; or

(3) prevent the erection or construction of safety improvements on existing shooting ranges."

Section 34. Name change — directions to code commissioner. Except for [section 4 of this act], wherever a reference to "master plan", "comprehensive plan", or "comprebensive development plan" appears in legislation that is enacted or amended by the 1999 legislature and when any of those terms refer to the plan authorized by Title 76, chapter 1, the code commissioner is directed to change the term to an appropriate reference to a "growth policy".

Section 35. Saving clanse. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of tbis act].

Section 36. Transition — applicability. A governing body that adopts a master plan pursuant to Title 76, chapter 1, before October 1, 1999, may adopt zoning regulations that are consistent with the master plan pursuant to Title 76, chapter 2, part 2 or 3, until October 1, 2001. The requirements for a growth policy in [section 8], amending 76-1-601, apply to the adoption of zoning regulations pursuant to Title 76, chapter 2, part 2 or 3, after October 1, 2001.

Approved May 10, 1999

CHAPTER NO. 583

[SB 111]

AN ACT EXEMPTING INTANGIBLE PERSONAL PROPERTY FROM PROPERTY TAXATION; PHASING IN THE EXEMPTION FOR PROPERTY THAT IS CENTRALLY ASSESSED; REQUIRING RULEMAKING TO DETERMINE THE VALUATION METHODOLOGY FOR INTANGIBLE PERSONAL PROPERTY; REQUIRING REPORTS TO THE LEGISLATURE; AMENDING SECTIONS 15-1-101, 15-8-201, 15-8-404, 15-8-405, 15-8-406, 15-8-407, 15-23-101, 15-23-202, AND 15-23-303, MCA; REPEALING SECTION 15-8-403, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES.

Be it enacted by the Legislature of the State of Montana:

Seetion 1. Intangible personal property exemption. (1) Except as provided in subsection (3), intangible personal property is exempt from taxation.

(2) For the purposes of this section, "intangible personal property" means personal property tbat is not tangible personal property and that:

HeinOnline -- 1999 vol. III 2728 1999

(a) has no intrinsic value hut is the representative or evidence of value, including but not limited to certificates of stock, bonds, promissary notes, licenses, copyrights, patents, trademarks, contracts, software, and franchises; or

(b) lacks physical existence, including but not limited to goodwill.

(3) The exemption for intangible personal property that is centrally assessed, other than property under 15-23-101(4) and (5), must be phased in over 3 years beginning in tax year 2000. Ten percent of the intangible personal property is exempt for tax year 2000, and two-thirds of the intangible personal property is exempt for tax year 2001. Centrally assessed intangible personal property is fully exempt from taxation in tax year 2002 and thereafter.

(4) The department shall adopt administrative rules prior to valuation determinations for tax year 2000 that specify the valuation methodology for centrally assessed intangible personal property. To the extent that the unit value includes intangible personal property, that value must be removed from the unit value according to the provisions in subsection (3).

(5) The department must report intangible personal property annually to the revenue and taxation interim committee of the Montana legislature and to the Montana legislature meeting in the year 2001.

Section 2. Section 15-1-101, MCA, is amended to read:

"15-1-101. Definitions. (1) Except as otherwise specifically provided, when terms mentioned in this section are used in connection with taxation, they are defined in the following manner:

(a) The term "agricultural" refers to:

(i) the production of food, feed, and fiber commodities, livestock and poultry, bees, fruits and vegetables, and sod, ornamental, nursery, and horticultural crops that are raised, grown, or produced for commercial purposes; and

(ii) the raising of domestic animals and wildlife in domestication or a captive environment.

(b) The term "assessed value" means the value of property as defined in 15-8-111.

(c) The term "average wholesale value" means the value to a dealer prior to reconditioning and the profit margin shown in national appraisal guides and manuals or the valuation schedules of the department.

(d) (i) The term "commercial", when used to describe property, means property used or owned by a business, a trade, or a corporation as defined in 35-2-114 or used for the production of income, except property described in subsection (1)(d)(ii).

(ii) The following types of property are not commercial:

(A) agricultural lands;

(B) timberlands and forest lands;

(C) single-family residences and ancillary improvements and improvements necessary to the function of a bona fide farm, ranch, or stock operation;

(D) mobile homes and manufactured homes used exclusively as a residence except when held by a distributor or dealer as stock in trade;

(E) all property described in 15-6-135; and

HeinOnline -- 1999 vol. III 2729 1999

(F) all property described in 15-6-136.

(e) The term "comparable property" means property that:

(i) has similar use, function, and utility;

(ii) is influenced by the same set of economic trends and physical, governmental, and social factors; and

(iii) has the potential of a similar highest and best use.

(f) The term "credit" means solvent debts, secured or unsecured, owing to a person.

(g) (i) "Department", except as provided in subsection (1)(g)(ii), means the department of revenue provided for in 2-15-1301.

(ii) In chapters 70 and 71, department means the department of transportation provided for in 2-15-2501.

(h) The terms "gas" and "natural gas" are synonymous and mean gas as defined in 82-1-111(2). The terms include all natural gases and all other fluid hydrocarbons, including methane gas or any other natural gas found in any coal formation.

(i) The term "improvements" includes all buildings, structures, fences, and improvements situated upon, erected upon, or affixed to land. When the department determines that the permanency of location of a mobile home, manufactured home, or housetrailer has been established, the mobile home, manufactured home, or housetrailer is presumed to be an improvement to real property. A mobile home, manufactured home, or housetrailer may be determined to be permanently located only when it is attached to a foundation that cannot feasibly be relocated and only when the wheels are removed.

(j) The term "leasehold improvements" means improvements to mobile homes and mobile homes located on land owned by another person. This property is assessed under the appropriate classification, and the taxes are due and payable in two payments as provided in 15-24-202. Delinquent taxes on leasehold improvements are a lien only on the leasehold improvements.

(k) The term "livestock" means cattle, sheep, swine, goats, horses, mules, asses, llamas, alpacas, bison, ostriches, rheas, emus, and domestic ungulates.

(l) The term "manufactured home" means a residential dwelling built in a factory in accordance with the United States department of housing and urban development code and the federal Manufactured Home Construction and Safety Standards. A manufactured home does not include a mobile home, as defined in 61-1-501 and in subsection (1)(m) of this section, a housetrailer, as defined in 61-1-501, or a mobile home or housetrailer constructed before the federal Manufactured Home Construction and Safety Standards went into effect on June 15, 1976.

(m) The term "mobile home" means forms of housing known as "trailers", "housetrailers", or "trailer coaches" exceeding 8 feet in width or 45 feet in length, designed to be moved from one place to another by an independent power connected to them, or any trailer, housetrailer, or trailer coach up to 8 feet in width or 45 feet in length used as a principal residence.

(n) The term "personal property" includes everything that is the subject of ownership but that is not included within the meaning of the terms "real estate"

HeinOnline -- 1999 vol. III 2730 1999

and "improvements" *and "intangible personal property" as that term is defined in [section 1].*

(o) The term "poultry" includes all chickens, turkeys, geese, ducks, and other birds raised in domestication to produce food or feathers.

(p) The term "property" includes money, credits, bonds, stocks, franchises, and all other matters and things, real, personal, and mixed, capable of private ownership. This definition may not be construed to authorize the taxation of the stocks of a company or corporation when the property of the company or corporation represented by the stocks is within the state and has been taxed.

(q) The term "real estate" includes:

(i) the possession of, claim to, ownership of, or right to the possession of land;

(ii) all mines, minerals, and quarries in and under the land subject to the provisions of 15-23-501 and Title 15, chapter 23, part 8;

(iii) all timber belonging to individuals or corporations growing or being on the lands of the United States; and

(iv) all rights and privileges appertaining to mines, minerals, quarries, and timber.

(r) "Recreational" means hunting, fishing, swimming, boating, waterskiing, camping, biking, hiking, and winter sports, including but not limited to skiing, skating, and snowmobiling.

(s) "Research and development firm" means an entity incorporated under the laws of this state or a foreign corporation authorized to do business in this state whose principal purpose is to engage in theoretical analysis, exploration, and experimentation and the extension of investigative findings and theories of a scientific and technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes.

(t) The term "stock in trade" means any mobile home, manufactured home, or housetrailer that is listed by the dealer as inventory and that is offered for sale, is unoccupied, and is not located on a permanent foundation. Inventory does not have to be located at the business location of a dealer or a distributor.

(u) The term "taxable value" means the percentage of market or assessed value as provided for in Title 15, chapter 6, part 1.

(2) The phrase "municipal corporation" or "municipality" or "taxing unit" includes a county, city, incorporated town, township, school district, irrigation district, or drainage district or a person, persons, or organized body authorized by law to establish tax levies for the purpose of raising public revenue.

(3) The term "state board" or "board" when used without other qualification means the state tax appeal board."

Section 3. Section 15-8-201, MCA, is amended to read:

"15-8-201. General assessment day. (1) The department shall, between January 1 and the second Monday of July in each year, ascertain the names of all taxable inhabitants and assess all property subject to taxation in each county.

(2) The department shall assess property to:

HeinOnline -- 1999 vol. III 2731 1999

(a) the person by whom it was owned or claimed or in whose possession or control it was at midnight of the preceding January 1; or

(b) except in the case of land splits, the new owner if the provisions of 15-7-304 have been met and the transfer certificate has been received and processed prior to determining the taxes that are due as provided in 15-10-305(2).

(3) The department shall also ascertain and assess all mobile homes arriving in the county after midnight of the preceding January 1.

(4) A mistake in the name of the owner or supposed owner of real property does not invalidate the assessment.

(5) The procedure provided by this section does not apply to:

(a) motor vehicles;

(b) motor homes, travel trailers, and campers;

(c) watercraft;

(d) livestock;

(e) property defined in 61-1-104 as special mobile equipment that is subject to assessment for personal property taxes on the date that application is made for a special mobile equipment plate;

(f) mobile homes and manufactured homes held by a distributor or dealer as stock in trade; and

(g) property subject to the provisions of 15-16-203.

~~(6) Credits must be assessed as provided in 15-1-101(1)(f).~~"

Section 4. Section 15-8-404, MCA, is amended to read:

"**15-8-404. Property of particular types of firms.** (1) The personal property belonging to the business of a merchant or of a manufacturer must be listed in the town or district where ~~his~~ *the* business is carried on.

(2) The personal property of express, transportation, and stage companies must be listed and assessed in the county, town, or district where ~~such~~ *the* property is usually kept.

(3) The personal property ~~and franchises~~ of gas and water companies must be listed and assessed in the county, town, or district where the principal works are located. Gas and water mains and pipes laid in roads, streets, or alleys are personal property."

Scetion 5. Section 15-8-405, MCA, is amended to read:

"**15-8-405. Street railroads, bridges, and ferries.** Street railroads, ~~and~~ bridges, and ferries ~~and their franchises~~ owned by persons or corporations must be listed and assessed in the county, town, or district where ~~such~~ *the* property or any portion ~~thereof~~ *of the property* is located~~,~~. ~~and the~~ *The* track of the railroad and the bridge are personal property."

Section 6. Section 15-8-406, MCA, is amended to read:

"**15-8-406. Assessment of public utilities in one county.** Railroads operated or situated in one county; telegraph, telephone, and electric light lines and similar properties situated in one county ~~and their franchises~~; and canals, ditches, and flumes situated in one county ~~and the franchises of the same~~ must be listed and assessed in the county in which ~~such~~ *the* property is located~~,~~. ~~and~~

HeinOnline -- 1999 vol. III 2732 1999

~~the~~ *The* department ~~of revenue must~~ *shall* require the owner of ~~such~~ *the* property or ~~his~~ *the owner's* agent or any officer of a corporation owning the ~~same~~ *the property* to make a verified statement containing a list of the number of miles ~~such~~ *on which the* property is operated or situated in the county and the value ~~thereof~~ *of the property*."

Section 7. Section 15-8-407, MCA, is amended to read:

"**15-8-407. Railroads ~~and other franchises~~.** ~~(1)~~ The ~~franchise,~~ roadway, roadbed, rails, rolling stock, and all other operating property of ~~all railroads~~ *a railroad* operated in more tban one county or more tban one state must be assessed by the department of revenue as ~~hereinafter~~ provided *in Title 15, chapter 23, part 2.*

~~(2) Other franchises, if granted by the authorities of a county or city, must be assessed in the county or city within which they were granted; if granted by any other authority, they must be assessed in the county in which the corporations, firms, or persons owning or holding them have their principal place of business.~~"

Section 8. Section 15-23-101, MCA, is amended to read:

"**15-23-101. Properties centrally assessed.** The department ~~of revenue~~ sball centrally assess each year:

(1) the ~~franchise,~~ roadway, roadbeds, rails, rolling stock, and all other operating property of railroads and railroad car companies operating in more than one county in the state or more than one state;

(2) property owned by a corporation or other person operating a single and continuous property operated in more than one county or more than one state, including telegraph, telephone, microwave, electric power or transmission lines; natural gas or oil pipelines; canals, ditches, flumes, or like properties and including, if congress passes legislation that allows the state to tax property owned by an agency created by congress to transmit or distribute electrical energy, property constructed, owned, or operated by a public agency created by the congress to transmit or distribute electric energy produced at privately owned generating facilities, ~~(~~not including rural electric cooperatives~~)~~;

(3) all property of scheduled airlines;

(4) the net proceeds of mines;

(5) the gross proceeds of coal mines; and

(6) property described in subsections (1) and (2) that is subject to the provisions of Title 15, chapter 24, part 12."

Section 9. Section 15-23-202, MCA, is amended to read:

"**15-23-202. Assessment — how made.** (1) The department ~~must~~ *shall* assess the ~~franchise,~~ roadway, roadbed, rails, rolling stock, and all other operating properties of ~~all railroads~~ *a railroad* operated in more than one county or more than one state. All rolling stock must be assessed in the name of the person owning, leasing, or using ~~the same~~ *it*. Assessment must be made to the person owning or leasing or using the ~~same~~ *rolling stock* and must be made upon the entire railroad within the state. The depots, stations, shops, and buildings erected upon the space covered by the right-of-way and all other property owned or leased by ~~such~~ *a* person~~, except as above provided, shall~~ *must* be assessed by the department.

HeinOnline -- 1999 vol. III 2733 1999

(2) In determining the taxable value of railroad property, the department shall determine the percentage rate "R" provided for in 15-6-145 in order to achieve compliance with the requirements of the federal Railroad Revitalization and Regulatory Reform Act of 1976, as amended."

Section 10. Section 15-23-303, MCA, is amended to read:

"15-23-303. Assessment of property — apportionment to counties. The department ~~must~~ *shall* assess all ~~the properties~~ *property* described in 15-23-301, but franchises ~~granted by the United States must~~ *may* not be assessed. The value of ~~such~~ ~~properties~~ *property* for assessment purposes ~~shall~~ *must* be determined upon ~~such~~ factors ~~as~~ *that* the department considers proper."

Section 11. Repealer. Section 15-8-403, MCA, is repealed.

Section 12. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 15, chapter 6, part 2, and the provisions of Title 15, chapter 6, part 2, apply to [section 1].

Section 13. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

Section 14. Effective date — applicability. [This act] is effective on passage and approval and [sections 1 through 7 and 11 through 13] apply to property tax years beginning after December 31, 1999. [Sections 8, 9, and 10] apply to property tax years beginning after December 31, 2002.

Approved May 10, 1999

CHAPTER NO. 584

[SB 184]

AN ACT GENERALLY REVISING PROPERTY TAX LAWS; ESTABLISHING A PROCEDURE BY WHICH MILL LEVIES MUST BE ESTABLISHED IN ORDER TO COMPLY WITH TAX LIMITATIONS; PROVIDING AN EXEMPTION FOR A PORTION OF THE VALUE OF CERTAIN CLASS FOUR PROPERTY; PHASING IN THE VALUE CHANGE IN CLASS FOUR PROPERTY OVER 4 YEARS; PHASING IN A RATE REDUCTION FOR CLASS TEN PROPERTY; ALLOWING AN EXTENSION OF 1999 STATUTORY DEADLINES RELATING TO PROPERTY TAXES; PROVIDING FOR PERIODIC REAPPRAISAL ON A 6-YEAR CYCLE AND THE PHASING IN OF NEW VALUES; PROVIDING FOR REIMBURSEMENT TO LOCAL GOVERNMENTS, SCHOOLS, AND TAX INCREMENT DISTRICTS FOR LOSS OF PROPERTY TAX REVENUE; PROVIDING FOR AN INTERIM LOCAL GOVERNMENT FUNDING AND STRUCTURE STUDY COMMITTEE AND AN INTERIM COURT FUNDING AND STRUCTURE STUDY COMMITTEE; PROVIDING APPROPRIATIONS; AMENDING SECTIONS 2-9-212, 7-1-112, 7-1-114, 7-1-2103, 7-1-4123, 7-3-184, 7-3-1104, 7-3-1227, 7-3-1310, 7-3-1311, 7-6-2319, 7-6-2321, 7-6-2501, 7-6-2502, 7-6-2511, 7-6-2512, 7-6-2513, 7-6-2522, 7-6-4232, 7-6-4259, 7-6-4261, 7-6-4401, 7-6-4406, 7-6-4407, 7-6-4421, 7-6-4438, 7-6-4452, 7-6-4453, 7-11-1106, 7-11-1112, 7-14-111, 7-14-232, 7-14-1111, 7-14-1131, 7-14-2101, 7-14-2205, 7-14-2501, 7-14-2502, 7-14-2503, 7-14-2801, 7-14-2807, 7-14-4703, 7-14-4713, 7-14-4734, 7-15-4281, 7-15-4324, 7-16-101, 7-16-2102, 7-16-2108, 7-16-2109, 7-16-2205, 7-16-2411, 7-16-2423,

HeinOnline -- 1999 vol. III 2734 1999

7-16-2431, 7-16-2443, 7-16-4105, 7-16-4113, 7-16-4114, 7-21-3203, 7-21-3410, 7-21-3432, 7-21-3433, 7-22-2142, 7-22-2222, 7-22-2306, 7-22-2432, 7-22-2512, 7-32-4117, 7-33-2109, 7-33-2209, 7-33-4111, 7-33-4130, 7-34-102, 7-34-2122, 7-34-2133, 7-34-2417, 7-35-2122, 13-13-230, 15-1-402, 15-2-301, 15-6-134, 15-6-143, 15-6-201, 15-7-102, 15-7-103, 15-7-111, 15-7-403, 15-8-111, 15-10-204, 15-10-205, 15-10-401, 15-10-402, 15-16-117, 15-16-203, 15-23-214, 15-24-1402, 15-24-1501, 15-24-1603, 15-36-323, 20-3-205, 20-3-324, 20-7-705, 20-7-714, 20-9-131, 20-9-141, 20-9-142, 20-9-151, 20-9-152, 20-9-168, 20-9-331, 20-9-333, 20-9-360, 20-9-404, 20-10-147, 20-15-305, 20-15-311, 20-15-313, 20-15-314, 20-15-326, 20-25-423, 20-25-439, 22-1-304, 22-1-316, 23-4-303, 41-5-1804, 50-2-111, 50-2-114, 53-2-322, 53-2-813, 53-20-208, 67-10-402, 67-11-201, 67-11-301, 67-11-302, 75-10-112, 76-1-111, 76-1-403, 76-1-404, 76-1-405, 76-1-406, 76-1-407, 76-2-102, 76-5-1116, 76-6-109, 76-15-501, 76-15-516, 76-15-518, 76-15-623, 81-8-504, 85-3-422, 85-7-206, 85-7-307, 85-7-1953, 85-7-1973, 85-7-2104, 85-7-2117, 85-7-2134, 85-7-2136, 85-8-601, 85-8-615, 85-8-618, 90-5-112, AND 90-6-403, MCA; AMENDING SECTION 1, SENATE BILL NO. 79, 1999; REPEALING SECTIONS 7-6-2514, 7-6-4405, AND 15-10-412, MCA; PROVIDING AN IMMEDIATE EFFECTIVE DATE, A TERMINATION DATE, AND A RETROACTIVE APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Procedure for calculating levy. (1) A governmental entity that is authorized to impose mills may impose a mill levy sufficient to gonerate the amount of property taxes actually assessed in the prior year, even if that levy is greater than the levy established by law. The maximum number of mills that a governmental entity may impose is establisbed by calculating tlie number of mills required to generate tbe amount of property tax actually assessed in tbe governmental unit in the prior year based on the current year taxable value, less the value of newly taxable property.

(2) A governmental entity may apply the levy calculated pursuant to subsection (1) plus any additional levies authorized by the voters to all property in tlie governmental unit, including newly taxable property.

(3) For purposes of this section, newly taxable property includes:

(a) annexation of real property and improvements into a taxing unit;

(b) construction, expansion, or remodeling of improvements;

(c) transfer of property into a taxing unit;

(d) subdivision of real property;

(e) reclassification of property;

(f) transfer of property from tax-exempt to taxable status; and

(g) revaluations caused by expansion, addition, replacement, or remodeling of improvements.

(4) Subsection (1) does not apply to school district general fund levies and the school district levy for tuition obligations established in 20-5-324(5).

(5) For purposes of subsection (1), taxes imposed do not include net or gross proceeds taxes received under 15-6-131 and 15-6-132.

(6) In determining the maximum number of mills in subsection (1), the governmental entity shall take into account any change from the prior year in

HeinOnline -- 1999 vol. III 2735 1999

the amount of statutory reimbursements for changes in the property tax laws. It may increase the number of mills to account for a decrease in reimbursements and shall decrease the number of mills to fully account for any increase in reimbursements.

(7) The department shall calculate the number of mills to be imposed for purposes of [section 1 of Senate Bill No. 79], 20-9-331, 20-9-333, 20-9-360, 20-25-423, 20-25-439, and 53-2-813. However, the number of mills calculated by the department may not exceed the mill levy limits established in those sections.

(8) The department may adopt rules to implement this section. The rules may include a method for calculating the percentage of change in valuation for purposes of determining the elimination of property, new improvements, or newly taxable property in a governmental unit.

Section 2. Section 2-9-212, MCA, is amended to read:

"2-9-212. Political subdivision tax levy to pay premiums. ~~Notwithstanding any provisions of law to the contrary~~ *Subject to [section 1]*, a political subdivision, except for a school district, may levy an annual property tax in the amount necessary to fund the premium for insurance, deductible reserve fund, and self-insurance reserve fund as ~~herein~~ authorized *in this section* and to pay the principal and interest on bonds or notes issued pursuant to 2-9-211(5)~~, even though as a result of such levy the maximum levy as otherwise restricted by law is exceeded thereby, provided that the revenues derived therefrom may not be used for any other purpose~~."

Section 3. Section 7-1-112, MCA, is amended to read:

"7-1-112. Powers requiring delegation. A local government with self-government powers is prohibited the exercise of the following powers unless the power is specifically delegated by law:

(1) the power to authorize a tax on income or the sale of goods or services, except that, *subject to [section 1],* this section ~~shall~~ *may* not be construed to limit the authority of a local government to levy any other tax or establish the rate of any other tax;

(2) the power to regulate private activity beyond its geographic limits;

(3) the power to impose a duty on another unit of local government, except that nothing in this limitation ~~shall affect~~ *affects* the right of a self-government unit to enter into and enforce an agreement on interlocal cooperation;

(4) the power to exercise any judicial function, except as an incident to the exercise of an independent self-government administrative power;

(5) the power to regulate any form of gambling, lotteries, or gift enterprises."

Section 4. Section 7-1-114, MCA, is amended to read:

"7-1-114. Mandatory provisions. (1) A local government with self-government powers is subject to the following provisions:

(a) all state laws providing for the incorporation or disincorporation of cities and towns; for the annexation, disannexation, or exclusion of territory from a city or town; for the creation, abandonment, or boundary alteration of counties; and for city-county consolidation;

(b) Title 7, chapter 3, part 1;

HeinOnline -- 1999 vol. III 2736 1999

(c) all laws establishing legislative procedures or requirements for units of local government;

(d) all laws regulating the election of local officials;

(e) all laws that require or regulate planning or zoning;

(f) any law directing or requiring a local government or any officer or employee of a local government to carry out any function or provide any service;

(g) any law regulating the budget, finance, or borrowing procedures and powers of local governments, except that the mill levy limits established by ~~state law do not~~ *[section 1]* apply;

(h) Title 70, chapters 30 and 31.

(2) These provisions are a prohibition on the self-government unit acting other than as provided."

Section 5. Section 7-1-2103, MCA, is amended to read:

"7-1-2103. County powers. A county has power to:

(1) sue and be sued;

(2) purchase and hold lands within its limits;

(3) make ~~such~~ contracts and purchase and hold ~~such~~ personal property ~~as~~ *that* may be necessary to the exercise of its powers;

(4) make ~~such~~ orders for the disposition or use of its property ~~as~~ *that* the interests of its inhabitants require;

(5) *subject to [section 1],* levy and collect ~~such~~ taxes for the purposes under its exclusive jurisdiction ~~as~~ *that* are authorized by ~~this code or by special statutes~~ *law*."

Section 6. Section 7-1-4123, MCA, is amended to read:

"7-1-4123. Legislative powers. A municipality with general powers has the legislative power, subject to the provisions of state law, to adopt, amend, and repeal ordinances and resolutions required to:

(1) preserve peace and order and secure freedom from dangerous or noxious activities;

(2) secure and promote the general public health and welfare;

(3) provide any service or perform any function authorized or required by state law;

(4) exercise any power granted by state law;

(5) *subject to [section 1],* levy any tax authorized by state law;

(6) appropriate public funds;

(7) impose a special assessment reasonably related to the cost of any special service or special benefit provided hy the municipality or impose a fee for the provision of a service;

(8) grant franchises; and

(9) provide for its own organization and the management of its affairs."

Section 7. Section 7-3-184, MCA, is amended to read:

HeinOnline -- 1999 vol. III 2737 1999

"**7-3-184. Financial administration.** (1) A study commission shall prepare a budget for each fiscal year it is in existence and submit it to the local governing body for approval.

(2) (a) ~~For the support of the study commission~~ *Subject to [section 1],* for each fiscal year the study commission is in existence, each local government under study ~~shall~~ *may* appropriate an amount necessary to fund the study~~, not to exceed 1 mill, and the local government may levy up to 1 mill in excess of all other mill levies authorized by law to fund the appropriation for the support of the study commission~~.

(b) The local government shall provide office and meeting space and clerical assistance to the study commission. The cost of clerical assistance and other in-kind services provided by the local government may be used to partially fulfill the appropriation ~~requirement~~ *provision* of subsection (2)(a).

(c) The local government may ~~in its discretion~~ provide additional funds and other assistance.

(3) The study commission may apply for and accept available private, state, and federal money and may accept donations from any source.

(4) All money received by the study commission ~~shall~~ *must* be deposited with the local government finance administrator. The finance administrator is authorized to disburse appropriated money of the study commission on the study commission's order after approval of the budget by the governing body. Unexpended money of the study commission does not revert to the general fund of the local government at the end of the fiscal year hut carries over to the study commission's appropriation for the following fiscal year. Upon tormination of the study commission, unexpended money reverts to the general fund of the local government."

Section 8. Section 7-3-1104, MCA, is amended to read:

"**7-3-1104. Gencral powers of consolidated local governments.** A consolidatod local gevernment ~~shall have~~ *has* and may exercise all powers that are conferred on counties, cities, or towns by the constitution and laws of the state. ~~The~~ *Subject to [section 1], the* consolidated local gevernment may levy all taxes ~~which~~ *that* counties, cities, and towns are authorized to levy."

Section 9. Section 7-3-1227, MCA, is amended to read:

"**7-3-1227. Petition for initiative.** (1) Any proposed ordinance, except an ordinance making ~~a tax levy or~~ *an* appropriation, may be submitted to the commission by petition signed by 10% of the qualified electors of the municipality whose names appear on the register of voters on the date when the proposed ordinance is submitted to the commission.

(2) All petition papers circulated with respect to any proposed ordinance ~~shall~~ *must* be uniform in character and ~~shall~~ *must* contain the proposed ordinance in full.

(3) Proposed ordinances for repealing any existing ordinance or ordinances, in whole or in part, may be submitted to the commission as provided in 7-3-1227 through 7-3-1229 for initiating ordinances."

Section 10. Section 7-3-1310, MCA, is amended to read:

"**7-3-1310. Limitation on tax levy.** (1) ~~No~~ *An* ordinance, *conforming to [section 1],* making the annual tax levy ~~shall~~ *must* be passed fixing the rate to be

HeinOnline -- 1999 vol. III 2738 1999

levied upon all property within the municipality to defray current expenses~~, including salaries otherwise unprovided for, in excess of the maximum levies prescribed by law for general fund purposes in the county and the cities and towns which have been consolidated into a single government~~.

(2) ~~The tax limit provided by subsection (1) shall apply only to taxes for the purposes therein specified.~~ Taxes required ~~by this part or part 12~~ to be levied on account of the debt of the municipality or any district ~~thereof and special taxes authorized by this part or part 12 or by the general laws of the state shall~~ *are* not ~~be~~ affected by ~~such~~ *the* limits~~, nor shall such taxes be considered in determining the limits of taxation fixed by subsection (1)~~."

Section 11. Section 7-3-1311, MCA, is amended to read:

"7-3-1311. Authority for special taxes and special service districts. (1) ~~The~~ *Subject to [section 1], a* municipality ~~shall have the power and authority to~~ *may* levy special taxes for all purposes ~~which~~ *that* counties, cities, and towns are authorized to levy by general laws of the state, and all of the provisions of ~~such~~ *those* laws ~~shall be~~ *are* applicable to and ~~shall~~ govern and control the municipality in the levying and collection of ~~such~~ *the* special taxes.

(2) ~~The~~ *Subject to [section 1], the* commission may by ordinance designate clearly specified districts in or for which special services are to be performed and may levy upon the property in ~~any such~~ *the* district ~~such~~ *a* tax, in addition to any taxes authorized by 7-3-1310(1), as may be necessary with other available funds and grants to pay the cost of ~~such~~ *the* special service or services. The boundaries of special service districts ~~shall~~ *must* be regnlarly reviewed by tbe comnissioners and may be adjusted upon recommendation by an authorized planning body in response to changing population patterns. ~~In no case shall such~~ *An* additicnal levy *under this section may not* be more than 20 mills."

Section 12. Section 7-6-2319, MCA, is amended to read:

"7-6-2319. Determination of fund requirements to be met by tax levy — exception. (1) Following the determinations required by 7-6-2318, the board shall determine the amount to be raised by tax levy for each fund by adding the cash balance in the fund at tbe close of the preceding fiscal year and the amount of the estimated revenue to accrue to the fund during the current fiscal year. It sball then deduct the total amount obtained from the total amount of the appropriations and authorized expenditures from the fund as determined by the board. The amount remaining is the amount necessary to be raised for tbe fund by tax levy during the current fiscal year.

(2) The board may add to the amount necessary to be raised for any fund by tax levy during the current fiscal year an additional amount as a reserve to meet expenditures to be made from the fund during the months of July to November of the next fiscal year. The amount that may be added to any fund as the reserve may not exceed one-third of the total amount appropriated and authorized to be spent from the fund during the current fiscal year, after deducting from the amount of the appropriations and authorized expenditures the total amount appropriated and authorized to be spent for election expenses and payment of emergency warrants.

(3) The total ameunt to be raised by tax levy for any fund during the current fiscal year, including the amount of the reserve and any amount for payment of election expenses and emergency warrants, may not exceed the total amount ~~which~~ *that* may be raised for the fund by a tax levy ~~which~~ *that* does not exceed

HeinOnline -- 1999 vol. III 2739 1999

the maximum levy permitted by law to be made for the fund *and that complies with [section 1].*

(4) This section does not apply to a county that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6."

Section 13. Section 7-6-2321, MCA, is amended to read:

"7-6-2321. Fixing of tax levy — exception. (1) On or before the second Monday in August and after the approval and adoption of the final budget, the board of county commissioners shall fix the tax levy for each fund at a rate ~~which~~ *that* will raise the amount set out in the budget as the amount necessary to be raised by tax levy for the fund during the current fiscal year. The taxable valuation of the county for the current fiscal year must be the basis for determining the amount of the tax levy for each fund. ~~Each~~ *Subject to [section 1], each* tax levy must be at a rate not higher than is required on that basis, without including any amount for anticipated tax delinquency, to produce the amount set out in the budget, without including any amount for anticipated tax delinquency, that is the amount to he raised by tax levy.

(2) The tax levy must be made in the manner provided by 15-10-201.

(3) This section does not apply to a county that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6."

Section 14. Section 7-6-2501, MCA, is amended to read:

"7-6-2501. Authorization for county mill levy. ~~The~~ *Subject to [section 1], the* board of county commissioners ~~has jurisdiction and power, under such limitations and reservations as are prescribed by law, to~~ *may* levy ~~such~~ *a* tax annually on the taxable property of the county for county purposes as may be necessary to defray ~~the~~ current expenses ~~thereof, including the salaries otherwise unprovided for,~~ not exceeding 27 mills on each dollar of the taxable valuation for any ~~one~~ *1* year for counties of the fourth, fifth, sixth, and seventh classes and 25 mills on each dollar of the taxable valuation for any ~~one~~ *1* year for counties of the first, second, and third classes and ~~to~~ *may* levy ~~such~~ taxes as are required to be levied by special or local statutes."

Section 15. Section 7-6-2502, MCA, is amended to read:

"7-6-2502. Responsibility of county commissioners to fix tax rate and levy tax. ~~The~~ *Subject to [section 1], the* board of county commissioners of each county ~~must~~ *shall*, on the second Monday in August, fix the rate of county taxes and designate the number of mills on each dollar of valuation of property for each fund and ~~must~~ *shall* levy taxes upon the taxable property of the county."

Section 16. Section 7-6-2511, MCA, is amended to read:

"7-6-2511. County levy for district court expenses. ~~The~~ *Subject to [section 1], the* governing hody of each county may each year levy and collect a tax on the taxable property of the county for all district court costs, except those listed in 3-5-211, 3-5-213, and 3-5-215. The tax may not exceed 6 mills in the first- and second-class counties, 5 mills in third- and fourth-class counties, and 4 mills in fifth-, sixth-, and seventh-class counties. ~~These expenses~~ *District court costs* include but are not limited to salary and benefits for court clerks, court reporters, youth probation officers, and other employees of the district court."

Section 17. Section 7-6-2512, MCA, is amended to read:

HeinOnline -- 1999 vol. III 2740 1999

"7-6-2512. County tax levy for health care facilities. (1) ~~The~~ *Subject to [section 1], the* board of county commissioners may, annually at the time of levying county taxes, fix and levy a tax, not to exceed 10 mills on each dollar of taxable valuation of property, upon all property within the county to erect, furnish, equip, expand, improve, maintain, and operate county-owned or county-operated health care facilities created under 7-8-2102, 7-34-2201, and 7-34-2502. "Health care facilities" as used in this section has the meaning as defined in 7-34-2201. The combined total numher of mills levied under this section and for the county poor fund under 53-2-322 may not exceed 18 mills. A higher levy may be made upon compliance with 7-6-2531 through 7-6-2537, *[section 1],* or 53-2-322. If a hospital district is created under Title 7, chapter 34, part 21, the mill levy authorized by this section may not be imposed on property within that hospital district.

(2) If a county issues bonds under 7-34-2411 to finance or refinance the costs of a health care facility, the board of county commissioners may covenant to levy the tax authorized by this section during the term of the bonds, to the extent necessary, and to apply the collections of the tax to the costs of erecting, furnishing, equipping, expanding, improving, maintaining, and operating the health care facility or facilities of the county or the payment of principal of or interest on the bonds. The pledge of the taxes to the payment of the bonds may not cause the bonds to be considered indebtedness of the county for the purpose of any statutory limitation or restriction. The pledge may be made by the board only upon authorization of a majority of the electors of the county voting on the pledge at a general or special election as provided in 7-34-2414."

Section 18. Section 7-6-2513, MCA, is amended to read:

"7-6-2513. County public safety levy — purpose. ~~The~~ *Subject to [section 1], the* board of county commissioners may, annually at the time of levying county taxes, fix and levy a tax on all property within the county for the purpose of providing for the public safety of citizens. The tax must be used to support county law enforcement services and to maintain county detention centers. Money received from the tax must he placed in a special account to be used for the purposes of this section."

Section 19. Section 7-6-2522, MCA, is amended to read:

"7-6-2522. All-purpose levy — maximum. (1) The all-purpose levy is an annual levy upon the taxable value of all property in the county subject to taxation for county purposes in lieu of the levies specified in 7-6-2523. ~~The~~ *Subject to [section 1], the* all-purpose levy may not exceed the lesser of:

(a) 55 mills on the dollar; or

(b) the total number of mills levied in the prior year pursuant to the levies set forth in 7-6-2523 as certified by the department of revenue under 15-10-202.

(2) If the county governing body determines that the interests of the county would be served by an all-purpose levy, it shall specify its intent to impose the all-purpose levy in the resolution approving and adopting the annual budget."

Section 20. Section 7-6-4232, MCA, is amended to read:

"7-6-4232. Fixing of tax levy — exception. (1) On or before the second Monday in August and after the approval and adoption of the final budget, the council shall, *subject to [section 1],* fix the tax levy for each fund at a rate, not exceeding limits prescribed by law, that will raise the amount set out in the budget as the amount necessary to be raised by tax levy for that fund during the

HeinOnline -- 1999 vol. III 2741 1999

current fiscal year. The taxable valuation of the city for the current fiscal year must he the hasis for determining the amount of the tax levy for each fund, and each tax levy must be at a rate not higher than is required on that basis, without including any amount for anticipated tax delinquency, to raise the amount set out in the budget.

(2) If the council considers that a levy made for a bond sinking or interest fund will not provide a sufficient amount to pay all bond principal and interest becoming due during the current fiscal year or within 6 months after the current fiscal year because of anticipated tax delinquency, the council may fix the levy at a rate it considers necessary to raise the amount for making the payments of principal and interest over and above the anticipated tax delinquency.

(3) Each levy must he made in the manner provided by 15-10-201.

(4) This section does not apply to a municipality that has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6."

Section 21. Section 7-6-4259, MCA, is amended to read:

"7-6-4259. Budgets of appointed boards and commissions — exemption for bonds. (1) ~~With~~ *Subject to [section 1] and with* respect to tax and fee money, the proposed budget of and the number of mills to be assessed by any board, commission, or other governing entity, except a board of trustees of a public library and an airport authority, appointed by a local government are subject to approval by that local government.

(2) If a board, commission, or other governing entity, other than a port authority created under Title 7, chapter 14, part 11, issues bonds and pledges to the payment of the bonds~~,~~ *those* taxes, revenue, or fees in accordance with the statutes authorizing the issuance of the bonds, the taxes, revenue, or fees and the levy or appropriation of the taxes, revenue, or fees are not subject to approval by the local government appointing the board, commission, or governing entity."

Section 22. Section 7-6-4261, MCA, is amended to read:

"7-6-4261. Determination of fund requirements to be met by tax levy. (1) Following the determinations required by 7-6-4260, the governing body shall determine the amount to be raised for each fund for which a tax levy is to be made by adding the cash balance in excess of outstanding unpaid warrants at the close of the preceding fiscal year and the amount of the estimated ~~revenues~~ *revenue*, if any, to accrue to the fund during the current fiscal year. It shall then deduct the total amount obtained from the total amount of the appropriations and authorized expenditures from the fund as determined by the governing body in the budget adopted and approved. The amount remaining is the amount necessary to be raised for any fund hy tax levy during the current fiscal year.

(2) ~~The~~ *Subject to [section 1], the* governing body may add to the amount necessary te be raised for any fund by tax levy during the current fiscal year an additional amount as a reserve to meet expenditures to be made from the fund during the months of July to November of the next fiscal year. The undesignated amount held as a reserve may not exceed one-half of the total amount appropriated and authorized to be spent from the fund during the current fiscal year, after deducting from the amount of the appropriations and authorized expenditures the total amount appropriated and authorized to be spent for election expenses and payment of emergency and other outstanding warrants.

HeinOnline -- 1999 vol. III 2742 1999

(3) The total amount to be raised by tax levy for any fund during the current fiscal year, including the amount of the reserve, may not exceed the total amount that may he raised for tbe fund by a tax levy that does not exceed the maximum levy permitted by law to he made for the fund.

(4) This section does not apply to a municipality tbat has adopted the alternative accounting method provided for in Title 7, chapter 6, part 6."

Section 23. Section 7-6-4401, MCA, is amended to read:

"**7-6-4401. General taxing power of municipalities.** ~~The~~ *Subject to [section 1], the* city or town council ~~has power to~~ *may* levy and collect taxes for general and special purposes on all property within the ~~town or~~ city *or town* subject to taxation under tbe laws of the state."

Section 24. Section 7-6-4406, MCA, is amended to read:

"**7-6-4406. Authority to levy special taxes and assessments.** ~~The~~ *Subject to [section 1], the* council may ~~also~~ assess and levy the special taxes or assessments provided for in this title."

Section 25. Section 7-6-4407, MCA, is amended to read:

"**7-6-4407. Resolution to fix annual tax levy.** (1) ~~The~~ *Subject to [section 1], the* council ~~must~~ *shall*:

(a) on or before the second Monday of August of each year, by resolution determine the amount of tbe city or town taxes for all purposes to be levied and assessed on the taxable property in the city or tewn for the current fiscal year; and

(b) on or before the fourth Monday of August of each year, by resolution determine the amount of school district taxes for all purposes to be levied and assessed on tbe taxable property in the city or town for the current fiscal year.

(2) (a) Except as provided in subsection (2)(b), tbe city or town clerk ~~must~~ *shall* at once certify to tbe county clerk a copy of the resolution, and the county treasurer ~~must~~ *shall* collect the taxes as provided in this part.

(b) In cities where the council has provided by ordinance for the collection of the taxes by the city treasurer, the city clerk ~~must~~ *shall* certify a copy of the resolution to the city treasurer."

Section 26. Section 7-6-4421, MCA, is amended to read:

"**7-6-4421. Authorization for tax levy and collection by municipality.** (1) ~~The~~ *Subject to [section 1], the* council has power to annually levy and collect taxes on all the property in the city or town taxable for state and county purposes and may by ordinance provide for the levy and collection of the ~~same~~ *taxes*.

(2) Until the passage of ~~such~~ *the* ordinance, the levy and collection of municipal taxes are and the proceedings for ~~such~~ *those* purposes must be as provided in this part."

Section 27. Section 7-6-4438, MCA, is amended to read:

"**7-6-4438. Tax levy and expeuditures for municipal and administrative purposes when limits on municipal indebtedness exceeded.** (1) ~~All~~ *Subject to [section 1],* taxes levied and collected for municipal and administrative purposes by any city or town in which the indebtedness equals

HeinOnline -- 1999 vol. III 2743 1999

or exceeds the limit allowed by statute may be used in payment of current expenses during the fiscal year for which the taxes were levied~~,~~ as if a special levy had been made for each of the purposes. The council of ~~any such~~ *the* city or town may designate the amount of the general levy applicable to each of the purposes. The amount ~~so~~ designated constitutes a special fund for the special purpose of paying the expenses incurred for the purpose. The expenses ~~shall be~~ *are* payable *only* out of the fund ~~and not otherwise~~.

~~(2) However, the aggregate of all taxes authorized for general municipal and administrative purposes may not exceed 1.5% annually of the taxable value of all property subject to taxation in the city or town.~~

~~(3)~~*(2)* ~~Any~~ *Subject to [section 1], a* city, the indebtedness of which equals or exceeds the limit allowed by statute, may levy and collect special taxes for municipal and administrative purposes, and the city council in making special levies shall designate the amount ~~thereof~~ for each of the purposes~~, and each~~. *Each* tax, when collected, constitutes a fund out of which the expenses incurred for the purpose for which the tax was levied ~~shall~~ *must* be paid. The expenses incurred for any particular purpose ~~shall~~ *may* be paid *only* out of the *specified* fund ~~provided therefor and not otherwise~~."

Section 28. Section 7-6-4452, MCA, is amended to read:

"**7-6-4452. Maximum all-purpose mill levy.** ~~Except~~ *Subject to [section 1] and except* as provided ~~elsewhere~~ *by law*, ~~the~~ cities and towns ~~of the state of Montana~~ may make an all-purpose annual levy upon the taxable value of all the property in the cities and towns subject to taxation for municipal purposes in lieu of the multiple levies ~~now~~ authorized by statute. The total of the all-purpose levy may not exceed 65 mills on the dollar."

Section 29. Section 7-6-4453, MCA, is amended to read:

"**7-6-4453. Certain special mill levies also available.** (1) The all-purpose mill levy ~~shall not and may~~ *does* not include the levies imposed for bonded indebtedness, to pay judgments or tax protest refunds, or for special improvement district revolving funds of municipalities~~, which~~. *Subject to [section 1], additional* levies may be made in addition to the all-purpose levy, as provided in subsection (2). Sections 7-6-4451 through 7-6-4455 ~~shall~~ *may* not be construed as repealing those statutes providing for multiple separate levies.

(2) Extraordinary levies otherwise authorized to pay for bonded indebtedness, judgments, tax protest refunds, or special improvement district revolving funds may be made by ~~such~~ municipalities in addition to ~~such~~ *the* all-purpose levy provided for in 7-6-4451 through 7-6-4455.

(3) In a third-class city or town, the all-purpose mill levy may not include the special tax levy for the firefighters' disability and pension fund provided for in 19-18-503. This special tax levy must be made in addition to the all-purpose mill levy."

Section 30. Section 7-11-1106, MCA, is amended to read:

"**7-11-1106. Ordinance and petition requirements.** An ordinance or petition for an ordinance to authorize a multijurisdictional service district must include:

(1) the name of the proposed district;

(2) the services to be provided by the proposed district;

HeinOnline -- 1999 vol. III 2744 1999

(3) a statement of convenience and necessity;

(4) a boundary map of the proposed district;

(5) estimated costs of services and methods of financing the district;

(6) the method of administering the proposed district; and

(7) *subject to [section 1],* the maximum property tax mill levy for proporty taxes in the district."

Seetion 31. Section 7-11-1112, MCA, is amended to read:

"7-11-1112. Financing. (1) ~~Local~~ *Subject to [section 1], local* governments organizing a multijurisdictional service district are authorized to levy property taxes in an amount not to exceed that authorized for the district in 7-11-1106~~,~~ and to appropriate funds derived from other than general tax revenues for the operation of the district. ~~Property~~ *Subject to [section 1], property* taxes levied for a library established under this part as a multijurisdictional service must be added to taxes levied under 22-1-304.

(2) A property tax levied for the purpose of financing the district must, for all agricultural property having an area greater than 10 acres, be levied only on the principal residential dwelling, if any, on ~~such~~ *the* property."

Seetion 32. Section 7-14-111, MCA, is amended to read:

"7-14-111. Transportation for senior citizens and persons with disabilitics. (1) ~~A~~ *Subject to [section 1], a* county, urban transportation district, or municipality may, in addition to all other property tax levies authorized by law, levy up to 1 mill of property taxes to fund special transportation services for senior citizens and persons with disabilities.

(2) The proceeds of the levy may be used to:

(a) contract with public or private transportation providers for services to senior citizens and individuals with disabilities; or

(b) augment or subsidize provisions for the transportation of senior citizens and individuals with disabilities provided by public transportation providers.

(3) If the taxing jurisdiction determines that it is not in tbe best interest of senior citizens and individuals with disabilities to use the tax levy as provided for in subsection (2), the taxing jurisdiction may use the proceeds of the levy to establish and operate an independent transportation system for senior citizens and individuals with disabilities.

(4) Counties, urban transportation districts, and municipalities are encouraged to enter into interlocal agreements to provide regional transportation services to senior citizens and persons with disabilities and may create regional advisory committees to coordinate regional transportation services."

Seetion 33. Section 7-14-232, MCA, is amended to read:

"7-14-232. Mill levy autborized — limitation. (1) ~~The~~ *Subject to [section 1], the* commissioners shall annually, at the time of levying county taxes, fix and levy a tax in mills upon all property within ~~said~~ *the* transportation district clearly sufficient to raise the amount certified by the board.

(2) The tax ~~so~~ levied for all district purposes other than payment of bonded indebtedness ~~shall~~ *may* not in any year exceed 12 mills on each dollar of taxable valuation of property within ~~said~~ *the* district."

HeinOnline -- 1999 vol. III 2745 1999

Section 34. Section 7-14-1111, MCA, is amended to read:

"7-14-1111. General powers of authority. An authority has all the powers necessary or convenient to carry out the purposes of this part, including but not limited to the power to:

(1) *subject to [section 1],* request annually the amount of tax to be levied by tbe governing body for port purposes, which request the governing body may in its discretion approve for port purposes;

(2) sue and be sued, have a seal, and have perpetual succession;

(3) execute ~~sueh~~ contracts and other instruments and take ~~sueh~~ other action ~~as~~ *that* may be necessary or convenient to carry out the purposes of this part;

(4) plan, establish, acquire, develop, construct, purchase, enlarge, improve, maintain, equip, operate, regulate, and protect transportation, storage, or other facilities. For ~~sueh~~ *these* purposes an authority may, by purchase, gift, devise, lease, or otherwise, acquire real or personal property or any interest ~~therein~~ *in property*, including easements.

(5) establish comprehensive port zoning regulations in accordance witlı the laws of this state;

(6) acquire, by purchase, gift, devise, lease, or otherwise, existing transportation, storage, or other facilities ~~as~~ *that* may be necessary or convenient to carry out the purposes of this part. However, an autbority may not acquire or take over any transportation, storage, or other facility owned or controlled by another authority, county, municipality, or public agency without tbe consent of ~~sueh~~ *the* authority, county, municipality, or public agency.

(7) provide financial and other support to organizations in its jurisdiction, including corporations organized under tbe provisions of the development corporation act in Title 32, chapter 4, whose purpose is to promote, stimulate, develop, and advance the general welfare, economic development, and prosperity of its jurisdiction and of the state and its citizens by stimulating, assisting in, and supporting the growth of all kinds of economic activity, including tbe creation, expansion, modernization, retention, and relocation of new and existing businesses and industry in the state, all of which will tend to promote business development, maintain the economic stability and prosperity of the state, and thus provide maxiınum opportunities for employment and improvement in the standards of living of citizens of tbe state."

Section 35. Section 7-14-1131, MCA, is amended to read:

"7-14-1131. Municipal tax levy. ~~The~~ *Subject to [section 1], the* port authority may request annually from the governing bodies the amount of tax to be levied by each municipality participating in the creation of the port authority, and the municipality may levy the amount requested, pursuant to provisions of law autborizing cities and otber political subdivisions of this state to levy taxes. The levy made may not exceed tbe maximum levy permitted by 67-10-402 for port purposes or any lower limit that ıuay have been established by the municipality or municipalities in the resolution creating the authority. The municipality shall collect the taxes requested by a port authority that it has authorized in the same manner as other taxes are levied and collected and make payment to the port authority. The proceeds of ~~sueh~~ *thc* taxes when and as paid to the port authority must be deposited in a special account or accounts in which other ~~revenues~~ *revenue* of the authority ~~are~~ *is* deposited and ıuay be expended by

the authority as provided for in this part. Prior to the issuance of bonds under 7-14-1133 and 7-14-1134, the port authority or the municipality may by resolution covenant and agree that the total amount of ~~such~~ taxes then authorized by law, or ~~such~~ *the* portion ~~thereof as~~ *of the taxes that* may be specified by the resolution, will be requested, levied, and deposited annually as provided in this section until the bonds and interest ~~thereon~~ are fully paid."

Section 36. Section 7-14-2101, MCA, is amended to read:

"7-14-2101. General powers of county relating to roads and bridges. (1) The board of county commissioners, under ~~such~~ limitations and restrictions as are prescribed by law, may:

(a) (i) lay out, maintain, control, and manage county roads and bridges within the county;

(ii) *subject to [section 1],* levy taxes ~~therefor~~ *for county roads and bridges within the county* as provided by law;

(b) (i) in the exercise of sound discretion, jointly with other counties, lay out, maintain, control, manage, and improve county roads and bridges in adjacent counties, wholly or in ~~such~~ part as may be agreed upon between the boards of the counties concerned;

(ii) *subject to [section 1],* levy taxes ~~therefor~~ *for roads and bridges in adjacent counties* as provided by law;

(c) (i) enter into agreements for adjusted annual contributions over not more than 6 years toward the cost of joint highway or bridge construction projects entered into in cooperation with other counties, the state, or the United States;

(ii) *subject to [section 1],* place ~~such a~~ *a joint* project in the budget and levy taxes ~~therefor~~ *for the project* as provided by law.

(2) (a) Unless the context requires otherwise, county road means any public highway opened, established, constructed, maintained, abandoned, or discontinued by a county in accordance with this chapter.

(b) Unless the context requires otherwise, bridge includes rights-of-way or other interest in land, abutments, superstructures, piers, and approaches except dirt fills."

Section 37. Section 7-14-2205, MCA, is amended to read:

"7-14-2205. Construction of bridge in municipality — election. (1) Before undertaking the construction in any city or town of any bridge, the cost of which exceeds $10,000, the board of county commissioners shall submit to the qualified electors of the county at a general election or a special election held in conjunction with a regular or primary election the question of whether the bridge is to be constructed and paid for by the county.

(2) (a) If the electors vote in favor of construction, the board may issue and sell bonds of the county in the amount authorized for the construction of the bridge. Bonds must be issued under the regulations that apply to other bonds of the county.

(b) The bridge must be constructed using the proceeds of the bond sale.

(3) ~~If~~ *Subject to [section 1], if* the cost of the bridge does not exceed the amount authorized to be raised by a special tax, it may be levied as provided in 7-14-2503."

HeinOnline -- 1999 vol. III 2747 1999

Section 38. Section 7-14-2501, MCA, is amended to read:

"7-14-2501. General road tax authorized. (1) ~~To~~ *Subject to [section 1] and to* raise revenue for the construction, maintenance, or improvement of public highways, each board of county commissioners may levy a general tax upon the taxable property in the county of not more than 20 mills, except in *counties of the* fourth, fifth, sixth, and seventh class ~~counties~~, which may levy not more than 23 mills, payable to the county treasurer. The tax ~~from freeholders shall~~ *must* be collected the same as other taxes~~, and from nonfreeholders,~~ as the board may direct.

(2) This section ~~shall~~ *does* not apply to incorporated cities and towns ~~which~~ *that* by ordinance provide for the levy of a ~~like~~ tax for road, street, or alley purposes.

(3) All money collected under this section ~~shall belong to~~ *must be deposited in* the county road fund."

Section 39. Section 7-14-2502, MCA, is amended to read:

"7-14-2502. Special bridge tax authorized — combined ferry and bridge fund. (1) ~~Each~~ *Subject to [section 1], a* board may levy a special tax not to exceed 8 mills on all taxable property in the county for the purpose of constructing, maintaining, and repairing free public bridges, which includes those bridges within the municipalities.

(2) ~~An~~ *Subject to [section 1], an* additional levy for these purposes may be made under the following conditions:

(a) In any county where the taxable value of property in that county is $20 million or less, the board may, if necessary, levy 1 mill.

(b) In counties where the taxable value of property in that county is not less than $20 million or more than $40 million, the board may, if necessary, levy 2 mills.

(3) For the purposes of this section, a free public bridge is defined as any drainage structure located on, over, or through any road or highway.

(4) These taxes must be levied and collected in the same manner as other taxes. Except when the county has a combined ferry and bridge fund, the money ~~shall~~ *must* be kept as a special bridge fund, subject to the order of the board for use as ~~herein~~ provided *in this section*, and ~~shall~~ *may* not be transferable to any other fund.

(5) If a county owns or operates a public ferry, the board may combine into a single fund the revenue from the county public ferry tax levy authorized in 7-14-2807, the revenue from the special municipal bridge levy authorized in 7-14-2503, and the revenue from the levy authorized by this section. The fund may be used for any lawful purpose authorized for bridges in this part or in Title 7, chapter 14, part 22, or for public ferries in Title 7, chapter 14, part 28."

Section 40. Section 7-14-2503, MCA, is amended to read:

"7-14-2503. Special municipal bridge tax authorized. ~~Each~~ *Subject to [section 1], a* board may levy a special tax not to exceed 5 mills on the taxable property in the county to defray the costs of any bridge required to be constructed and maintained by the county in any city or town."

Section 41. Section 7-14-2801, MCA, is amended to read:

HeinOnline -- 1999 vol. III 2748 1999

"7-14-2801. General powers of county relating to ferries. The board of county commissioners, under ~~such~~ limitations and restrictions as are prescribed by law, may:

(1) lay out, maintain, control, and manage county ferries within the county and, *subject to [section 1],* levy taxes ~~therefor~~ *for county ferries* as provided by law;

(2) in the exercise of sound discretion, jointly with other counties, lay out, maintain, control, manage, and improve county ferries in adjacent counties, wholly or in ~~such~~ part as may be agreed upon between the boards of the counties concerned, and *subject to [section 1],* levy taxes ~~therefor~~ as provided by law."

Section 42. Section 7-14-2807, MCA, is amended to read:

"7-14-2807. Tax levy for public ferry — combined ferry and bridge fund. (1) ~~If~~ *Subject to [section 1], if* a county owns or operates a public ferry, the board of county commissioners may levy a special tax, not to exceed 2 mills on the dollar, on the taxable property of the county for the purpose of constructing, maintaining, and repairing public ferries.

(2) The board may combine the revenue from the tax authorized in this section with ~~revenues~~ *revenue* from taxes to support bridges as provided in 7-14-2502."

Section 43. Section 7-14-4703, MCA, is amended to read:

"7-14-4703. Provision for payment of damages due to creation of pedestrian mall. When the public interest or convenience requires, the governing body of a municipality may pay, from general funds of the municipality or other available money or from the proceeds of assessments levied on lands benefited by the establishment of a pedestrian mall, the damages, if any, allowed or awarded to any property owner by reason of the establishment of a pedestrian mall. The resolution of intention must contain a statement that, *subject to [section 1],* an assessment will be levied to pay the whole or a stated portion of ~~such~~ damages, if any, allowed or awarded to any property owner by reason of the establishment of ~~such~~ *the* pedestrian mall."

Section 44. Section 7-14-4713, MCA, is amended to read:

"7-14-4713. Estimates of expenses — tax levy. (1) The governing body shall:

(a) make annual statements and estimates of the expenses of the district ~~which shall be~~ *that are* provided for by the levy and collection of ad valorem taxes upon the taxable value of all the real and personal property in the district;

(b) publish notice ~~thereof~~ *of the estimates*; and

(c) have hearings on the statements and estimates and adopt them as provided for incorporated cities and towns by 7-12-4104, 7-12-4106, 7-12-4110, 7-12-4112, 7-12-4113, and 7-12-4117.

(2) ~~The~~ *Subject to [section 1], the* governing body, on or before the second Monday in August of each year, shall fix, levy, and assess the amount to be raised by ad valorem taxes upon all of the property of the district. All statutes providing for the levy and collection of state and county taxes, including the collection of delinquent taxes and sale of property for nonpayment of taxes, ~~shall be~~ *are* applicable to the district taxes provided for under this section."

Section 45. Section 7-14-4734, MCA, is amended to read:

HeinOnline -- 1999 vol. III 2749 1999

"7-14-4734. Expense estimate — assessments and tax levy. (1) The governing body shall:

(a) make annual statements and estimates of the expenses of the district ~~which shall be~~ *that are* provided for by the levy and collection of ad valorem taxes upon the assessed value of all the real and personal property in the district;

(b) publish notice ~~thereof~~ *of the estimates*; and

(c) have hearings ~~thereon~~ and adopt an ordinance ~~thereon~~ *on the estimates* at the times and in the manner provided for incorporated cities and towns by the applicable portions of 7-12-4175.

(2) ~~The~~ *Subject to [section 1], the* governing body, on or before the second Monday in August of each year, shall fix, levy, and assess the amount to be raised by ad valorem taxes upon all of the property of the district. All statutes providing for the levy and collection of state and county taxes, including the collection of delinquent taxes and sale of property for nonpayment of taxes, are applicable to the district taxes provided for under this section.

(3) ~~No~~ *An* assessment for district purposes against the property within ~~such~~ *the* district may *not* exceed 12 mills upon each dollar of taxable valuation in any tax year."

Section 46. Section 7-15-4281, MCA, is amended to read:

"7-15-4281. Financial authority in connection with urban renewal. (1) ~~Every~~ *A* municipality shall have power to:

(a) borrow money and apply for and accept advances, loans, grants, contributions, and any other form of financial assistance *for the purposes of this part and enter into and carry out contracts in connection with the financial assistance* from*:*

(i) the federal government;

(ii) ~~from~~ the state, a county, or any other public body; or

(iii) ~~from~~ any sources, public or private~~, for the purposes of this part and enter into and carry out contracts in connection therewith~~;

(b) *(i)* appropriate ~~such~~ funds and make ~~such~~ expenditures as may be necessary to carry out the purposes of this part*;* and

(ii) subject to [section 1] and in accordance with state law, levy taxes and assessments for ~~such~~ *the* purposes *of this part*;

(c) invest any urban renewal project funds held in reserves or sinking funds or any ~~such~~ funds ~~which~~ *that* are not required for immediate disbursement in property or securities in which mutual savings banks may legally invest funds subject to their control;

(d) adopt, in accordance with state law, annual budgets for the oporation of an urban renewal agency, department, or office vested with urban renewal project powers under 7-15-4231;

(e) enter, in accordance with state law, into agreements, which may extend over any period, with agencies or departments vested with urban renewal project powers under 7-15-4231 respecting action te be taken by ~~such~~ *the* municipality pursuant to any of the powers granted by ~~this part or~~ part 43 *or this part*;

HeinOnline -- 1999 vol. III 2750 1999

(f) close, vacate, plan, or replan streets, roads, sidewalks, ways, or other places and plan or replan, zone or rezone any part of the municipality in accordance with state law.

(2) A municipality may include in any application or contract for financial assistance with the federal government for an urban renewal project ~~such~~ *the* conditions imposed pursuant to federal laws ~~as~~ *that* the municipality may ~~deem~~ *consider* reasonable and appropriate and ~~which~~ *that* are not inconsistent with the purposes of ~~this part and~~ part 43 *and this part.*"

Section 47. Section 7-15-4324, MCA, is amended to read:

"**7-15-4324. Special bond provisions when tax increment financing is involved.** (1) Bonds issued under this part for which a tax increment is pledged pursuant to 7-15-4282 through 7-15-4292 ~~shall~~ *must* be designed to mature not later than 25 years from their date of issue and ~~shall~~ *must* mature in ~~such~~ years and amounts *so* that the principal and interest due on the bonds in each year ~~shall~~ *may* not exceed the estimated tax increment, *payments in lieu of taxes or other amounts agreed to be paid by the property owners in a district,* and other estimated ~~revenues~~ *revenue*, including proceeds of the bonds available for payment of interest ~~thereon~~ *on the bonds*, pledged to their payment to be received in ~~such~~ *that* year.

(2) The governing body, in the resolution or ordinance authorizing the bonds, shall determine the estimated tax increment, *payments in lieu of taxes or other amounts agreed to be paid by the property owners in a district,* and other ~~revenues~~ *revenue*, if any, for each year the bonds are to be outstanding. In calculating the costs under 7-15-4288 for which the bonds are issued, the municipality may include an amount sufficient to pay interest on the bonds prior to receipt of tax increments pledged and sufficient for the payment ~~thereof~~ *of the bonds* and to fund any reserve fund in respect of the bonds."

Section 48. Section 7-16-101, MCA, is amended to read:

"**7-16-101. Creation of funds for recreational and other activities of elderly by local governments.** (1) ~~The~~ *Subject to [section 1], the* governing body of a city, county, town, or municipality may in its discretion establish a fund to promote, establish, and maintain recreational, educational, and other activities of the elderly by a levy of up to 1 mill on each dollar of taxable property~~, which~~. *The* tax levy ~~shall be~~ *is* in addition to all other tax levies.

(2) The governing body ~~shall have the power~~ *may*, by resolution, ~~to~~ make expenditures from the fund as it may from time to time determine. Expenditures ~~shall~~ *must* be made for the promotion and development of recreational, educational, and other activities of the elderly, including motivation of the use of the talents of the elderly.

(3) The governing body may make payment of expenditures to nonprofit corporations or associations engaged in aiding the activities."

Section 49. Section 7-16-2102, MCA, is amended to read:

"**7-16-2102. Authorization for tax levy for parks and certain cultural, social, and recreational facilities.** (1) ~~The~~ *Subject to [section 1], the* board of county commissioners may annually levy on the taxable property of the county, in the same manner and at the same time as other county taxes are levied, a special tax, not to exceed 2 mills on each dollar of the taxable valuation for any ~~one~~ *1* year, for the purpose of maintaining, operating, and equipping

HeinOnline -- 1999 vol. III 2751 1999

parks, cultural facilities, and any county-owned civic center, youth center, recreation center, recreational complex, or any combination ~~thereof~~ *of purposes, parks, and facilities.*

(2) (a) The board of county commissioners ~~must~~ *shall* submit the question of imposing or the continued imposition of the property tax mill levy provided in subsection (1) to the electors of the county at the next general election if a petition requesting ~~such~~ an election, signed by at least 15% of the resident taxpayers of the county, is filed with the county clerk. The petition must be filed with the county clerk at least 90 days prior to the date of the general election.

(b) The question ~~will~~ *must* be submitted substantially as follows:

☐ FOR the imposition (or continued imposition) of a property tax, not to exceed 2 mills, for county parks and for county-owned cultural, social, and recreational facilities.

☐ AGAINST the imposition (or continued imposition) of a property tax for county parks and for county-owned cultural, social, and recreational facilities.

(c) The board of county commissioners shall levy ~~such a~~ *the* tax for the 2 subsequent fiscal years if the question for the imposition of the tax is approved by a majority of the electors voting on the question.

(3) All laws applicable to the collection of county taxes ~~shall~~ apply to the collection of the tax provided ~~herein~~ *for in this section.*"

Section 50. Section 7-16-2108, MCA, is amended to read:

"7-16-2108. Authorization to levy tax and establish fund for establishment and maintenance of programs and employee training for day-care facilities. (1) ~~The~~ *Subject to [section 1], the* governing body of a county, city, town, or municipality may ~~in its discretion~~ establish a fund to establish and maintain programs for the operation of licensed day-care centers and homes within the geographic boundaries of the governing body by a levy of up to 1 mill on each dollar of taxable property ~~of said governing body~~ *within the county, city, town, or municipality.* The tax levy ~~shall be~~ *is* in addition to all other tax levies.

(2) The governing body ~~shall have the power~~ *may*, by resolution, ~~to~~ make expenditures from the fund as it may from time to time determine, provided that expenditures ~~shall~~ *must* be made solely for the establishment, maintenance, and development of programs for and training of operators and employees of day-care centers and homes."

Section 51. Section 7-16-2109, MCA, is amended to read:

"7-16-2109. Single tax for county fair activities, county parks, and certain cultural, social, and recreational facilities — restriction. (1) ~~Except~~ *Subject to [section 1] and except* as provided in subsection (2), the county commissioners of a county who have levied taxes pursuant to both 7-16-2102 and 7-21-3410 before January 1, 1993, may combine the two taxes into a single tax that may not exceed 3 1/2 mills on each dollar of the taxable valuation for any 1 year for the purpose of maintaining, operating, and equipping county fair activities, county parks, cultural facilities, and any county-owned civic center, youth center, recreation center, recreational complex, or any combination ~~thereof~~ *of purposes, activities, and facilities.* The money collected may be distributed among the activities and facilities as determined by the county commissioners.

HeinOnline -- 1999 vol. III 2752 1999

(2) (a) The board of county commissioners shall submit the question of imposing or continuing the imposition of the single tax provided for in subsection (1) to the electors of the county at the next general election if a petition requesting a vote on the single tax, signed by at least 15% of the resident taxpayers of the county, is filed with the county clerk at least 90 days prior to the date of the general election.

(b) The question must be submitted substantially as follows:

☐ FOR imposition (or continued imposition) of a property tax, not to exceed 3 1/2 mills, for county fair activities, county parks, and county-owned cultural, social, and recreational facilities.

☐ AGAINST imposition (or continued imposition) of a property tax, not to exceed 3 1/2 mills, for county fair activities, county parks, and county-owned cultural, social, and recreational facilities.

(c) The board of county commissioners shall levy the tax for the 2 subsequent fiscal years if the imposition or continued imposition of the single tax is approved by a majority of the electors voting on the question."

Section 52. Section 7-16-2205, MCA, is amended to read:

"**7-16-2205. Authorization for mill levy.** (1) The board of county commissioners of any county owning, acquiring, contributing, or making a grant to any museum, facility for the arts and the humanities, or collection of exhibits as set forth in 7-16-2202:

(a) (i) may make an appropriation in its annual budget for the upkeep, care, maintenance, operation, and support of the museum, facility, or collection;

(ii) may make an appropriation in its annual budget for a grant program for private, nonprofit museums and private, nonprofit facilities for the arts and the humanities; and

(b) in order to ~~meet and take care of~~ *fund* the appropriation or grant program, may, *subject to [section 1]*, annually levy a tax not to exceed 2 mills on each dollar of the taxable valuation of the property subject to taxation in the county.

(2) The levy must be made at the same time as other levies are made for county and school purposes.

(3) The proceeds from the collection of the levy must be kept in a special fund by the county treasurer and used, at the discretion of the board of county commissioners, solely for the purpose for which the levy was made."

Section 53. Section 7-16-2411, MCA, is amended to read:

"**7-16-2411. Creation of county park district.** (1) Proceedings for the creation of a county park district may be initiated by:

(a) a petition signed by not less than 10% of the qualified electors of the proposed park district; or

(b) a resolution of intent adopted by the county governing body, calling for the creation of a county park district.

(2) The petition or resolution must contain:

(a) the boundaries of the proposed district;

HeinOnline -- 1999 vol. III 2753 1999

(b) *subject to [section 1],* the proposed maximum property tax mill levy that could be levied on property owners within the district for the operation of the district; and

(c) the proposed number of members of the county park district commission. The number of members must be an odd number and may not be less than three.

(3) When the territory to be included in the proposed district lies in more than one county, a petition must be presented to the governing body of each county in which the territory lies. Each petition must be signed by not less than 10% of the qualified electors of the territory within the county proposed to be included in the district.

(4) Upon receipt of a petition for the creation of a county park district, the county clerk shall examine it and within 15 days either reject the petition if it is insufficient under the provisions of subsection (1), (2), or (3) or certify that the petition is sufficient and present it to the county governing body at its next meeting.

(5) The text of the petition or resolution must be published as provided in 7-1-2121 in each county in which the territory of the proposed district lies.

(6) At the hearing, the county governing body shall hear:

(a) testimony of all interested persons on whether a county park district should be created;

(b) testimony regarding the proposed boundary, property tax mill levy, and number of members of the district commission; and

(c) any other matter relating to the proposed district.

(7) After the hearing, if the county governing body determines that the propesed park district should he created, it shall by resolution set the boundaries of the proposed park district, the maximum mill levy for the proposed park district, and the numher of members to be on the district commission. The resolution must also call for an election on the question of whether to create the county park district. The election must be held in conjunction with a regular or primary election, provided that at least 75 days have elapsed between the adoption of the resolution and the election."

Seetion 54. Section 7-16-2423, MCA, is amended to read:

"7-16-2423. Powers of county park distriet commission. A county park district commission has all pewers necessary for the betterment, operation, maintenance, and administration of park and recreation land within the territory of the district. In the exercise of this general grant of powers, the county park district commission may:

(1) employ or contract with adminiistrative, professional, and other personnel necessary for the operation of the district;

(2) lease, purchase, or contract for the purcbase of personal property, including property ~~which~~ *that* after purchase constitutes a fixture on real property;

(3) lease, purchase, or contract for the purchase of buildings and facilities on lands controlled hy the district and equip, operate, and maintain ~~such~~ *the* huildings and facilities;

HeinOnline -- 1999 vol. III 2754 1999

(4) adopt by resolution rules for the operation and administration of all parks and recreational facilities under its control;

(5) impose by resolution and collect charges for ~~such~~ services and facilities provided by the district ~~as~~ *that* the commission considers necessary for the prudent operation of the district;

(6) *subject to [section 1],* establish a property tax mill levy for the operation of the district as provided in 7-16-2431;

(7) enter into agreements with any public or private entity or person for the operation of parks or recreational areas either by the district on behalf of the landowner or by another entity on hehalf of the district;

(8) with the concurrence of the county governing body or bodies, accept donations of land or recreational-type easements on land within the district for park or recreational purposes on behalf and in the name of the county or counties;

(9) accept donations and devises of money or personal property."

Section 55. Section 7-16-2431, MCA, is amended to read:

"7-16-2431. District budget — property tax levy. (1) The county park district commission shall annually prepare a budget for the ensuing fiscal year and present the budget to the governing body of each county with territory included in the district at the regular budget meetings as prescribed in Title 7, chapter 6, part 23, and certify the amount of money necessary for the operation of the district for the ensuing fiscal year.

(2) ~~The~~ *Subject to [section 1], the* county governing body shall, annually at the time of levying county taxes, fix and levy a tax in mills on all taxable property within the district sufficient to raise the amount certified by the county park district commission. The tax levied may not in any year exceed the maximum amount approved by the electorate in 7-16-2411 or 7-16-2432."

Section 56. Section 7-16-2443, MCA, is amended to read:

"7-16-2443. Effect of dissolution. (1) If dissolution of a county park district is authorized by a majority of the electorate of the district, the county governing body shall order the dissolution and file the order with the county clerk. The dissolution is effective upon the earlier of the following:

(a) 6 months after the date of filing of the order; or

(b) certification by the members of the county park commission that all debts and obligations of the district have been paid, discharged, or irrevocably settled.

(2) If debts or obligations of the district remain unsatisfied after the dissolution of the district, the county governing body shall, *subject to [section 1] and* for as long as necessary, levy a property tax, in an amount not to exceed the voted maximum authorized by the district, on all taxable property that is in the territory formerly comprising the district, to be used to discharge the debts of the former district. If the electors of the district lowered the maximum amount to be levied for the operation of the district within 2 calendar years prior to the election authorizing the dissolution, the county governing body ~~is authorized to~~ *may, subject to [section 1],* levy a property tax not to exceed the maximum levy authorized prior to the reduction of the maximum levy for the dischargo of the district's obligations.

HeinOnline -- 1999 vol. III 2755 1999

(3) Any assets of the district remaining after all debts and obligations have been discharged become the property of the county."

Section 57. Section 7-16-4105, MCA, is amended to read:

"7-16-4105. Authorization to levy tax for various cultural, social, and recreational facilities. ~~For~~ *Subject to [section 1] and for* the purpose of procuring, equipping, and maintaining public parks, swimming pools, skating rinks, playgrounds, civic centers, youth centers, museums, and ~~combinations thereof~~ *combination of purposes and facilities*, the council or commission in any city or town may levy, in addition to the levy for general municipal or administrative purposes, an amount not exceeding 7 mills on the dollar on the taxable value of the property to be taxed ~~of~~ *in* the city or town."

Section 58. Section 7-16-4113, MCA, is amended to read:

"7-16-4113. Tax levy for band concerts. ~~For~~ *Subject to [section 1] and for* the purpose of providing band concerts, the council or other governing body in any city of the first, second, or third class or of any incorporated town may assess and levy, in addition to the levy for general municipal or administrative purposes, an amount not to exceed 1 mill on the dollar on the taxable value of the property of the city or town subject to taxation."

Section 59. Section 7-16-4114, MCA, is amended to read:

"7-16-4114. Authorization to levy tax and estahlish fund for establishment and maintenance of programs and employee training for day-care facilities. (1) ~~The~~ *Subject to [section 1], the* governing body of a county, city, town, or municipality may ~~in its discretion~~ establish a fund to establish and maintain programs for the operation of licensed day-care centers and homes within the geographic boundaries of the governing body by a levy of up to 1 mill on each dollar of taxable property ~~of said governing body~~ *in the county, city, town, or municipality*. The tax levy ~~shall be~~ *is* in addition to all other tax levies.

(2) The governing body ~~shall have the power~~ *may*, by resolution, ~~to~~ make expenditures from the fund as it may from time to time determine, provided that expenditures ~~shall~~ *must* be made solely for the establishment, maintenance, and development of programs for and training of operators and employees of day-care centers and homes."

Section 60. Section 7-21-3203, MCA, is amended to read:

"7-21-3203. Support of extension work in agriculture and home economies. (1) The county commissioners of any county may appropriate money from the general funds of the county treasury or from funds provided by special levy~~, which the county commissioners are hereby authorized to make at the same time as other levies for county purposes,~~ for the purpose of carrying on extension work in agriculture and home economics within the county in cooperation with Montana state university-Bozeman and the United States department of agriculture. *Subject to [section 1], the county commissioners may impose the levy for the purpose of this section at the same time as other levies for county purposes are imposed.*

(2) The amount of ~~such~~ *an* appropriation in any county, its method of expenditure, the responsibility for the direction of the work, and the procedure of appointing agents and the compensation and conditions of service of ~~such~~ agents ~~shall~~ *must* be covered in memoranda of agreement between the county commissioners and Montana state university-Bozeman."

HeinOnline -- 1999 vol. III 2756 1999

Section 61. Section 7-21-3410, MCA, is amended to read:

"7-21-3410. Funding of county fair activities. (1) The board of county commissioners ~~of their respective counties~~ may appropriate annually, out of the general fund of the county treasury and to the county fair commission, a sum not to exceed $3,500, to be expended by the county fair commission for the purpose of holding a county fair ~~and/or~~ *or* junior fair and for advertising the products and resources of ~~their~~ *the* county.

(2) ~~In~~ *Subject to [section 1] and in* addition to ~~the appropriation above provided for~~ or in lieu ~~thereof~~ *of the appropriation provided for in subsection (1)*, the county commissioners ~~of any county in Montana shall have the power to~~ *may* levy an ad valorem tax of 1 1/2 mills or less on each dollar of taxable property in ~~such~~ *the* county for the purpose of securing, equipping, maintaining, and operating a county fair ~~and/or~~ *or* a junior fair, including the purchase of land ~~for such purposes~~ and the erection of ~~such~~ buildings and other appurtenances as may be necessary.

(3) The funds derived from ~~such~~ *the* appropriation or tax levy ~~shall~~ *must* be kept in a separate fund by the county treasurer and ~~shall~~ *must* be paid out by the treasurer on order signed by the president and secretary of the fair commission."

Section 62. Section 7-21-3432, MCA, is amended to read:

"7-21-3432. Effect of failure of county commissioners to meet or take action. If the county commissioners fail to hold the joint meeting or fail to take any action, then the budget certified by the secretary of the fair district ~~shall be~~ *is* approved without further action and, *subject to [section 1]*, the sums of money apportioned to the county ~~shall~~ *must* be the sums to be raised by special levy for this purpose."

Section 63. Section 7-21-3433, MCA, is amended to read:

"7-21-3433. Authorization for mill levy. (1) For the purpose of raising the ~~revenues~~ *revenue provided for in 7-21-3432*, the board of county commissioners of each county in the district shall, *subject to [section 1]*, annually make a levy to raise the required sum apportioned to the respective county.

(2) ~~However, the~~ *The* levy ~~shall~~ *provided for in subsection (1) may* not exceed 1 mill on the dollar of the taxable value of all the taxable property in the county, except in the case of the county in which the fair is being conducted. In ~~this~~ *that* county, the levy ~~shall~~ *may* not exceed 1 1/2 mills on the dollar of taxable property in the county."

Section 64. Section 7-22-2142, MCA, is amended to read:

"7-22-2142. Sources of money for noxious weed fund. (1) The commissioners may create the noxious weed fund and provide sufficient money in the fund for the board to fulfill its duties, as specified in 7-22-2109, by:

(a) appropriating money from the general fund of the county;

(b) *subject to [section 1] and* at any time fixed by law for levy and assessment of taxes, levying a tax not exceeding 2 mills on the dollar of total taxable valuation in the county. The tax levied under this subsection must be identified on the assessment as the tax that will be used for noxious weed control.

(c) levying a tax in excess of 2 mills if authorized by a majority of the qualified electors voting in an election held for this purpose pursuant to 7-6-2531 through 7-6-2536.

HeinOnline -- 1999 vol. III 2757 1999

(2) The proceeds of the noxious weed control tax must be used solely for the purpose of managing noxious weeds in the county and must be designated to the noxious weed fund.

(3) Any proceeds from work or chemical sales must revert to the noxious weed fund and must be available for reuse within that fiscal year or any subsequent year.

(4) The commissioners may accept any private, state, or federal gifts, grants, contracts, or other funds to aid in the management of noxious weeds within the district. These funds must be placed in the noxious weed fund."

Section 65. Section 7-22-2222, MCA, is amended to read:

"7-22-2222. Mill levy authorized. To administer and implement a rodent abatement program, the governing body may, *subject to [section 1],* levy a tax, not to exceed 2 mills, on the taxable value of the horticultural, farming, grazing, forest, and railroad lands within the district. The proceeds of the levy are to be placed in the district fund."

Section 66. Section 7-22-2306, MCA, is amended to read:

"7-22-2306. Financing of insect pest control program. (1) The governing body of the county shall annually determine the amount of the warrants drawn on the general fund for the purposes of controlling insect pests under a control program approved by the department of agriculture.

(2) ~~In~~ *Subject to [section 1], in* the succeeding year, the governing body shall levy a tax for the purpose of insect pest extermination sufficient to reimburse the general fund for the money paid out on the warrants. The tax ~~shall~~ *must* be levied upon all the property in the county and ~~shall~~ *may* not exceed 3 mills on each dollar of taxable value.

(3) If there is no money in the general fund with which to pay ~~such~~ *the* warrants, they ~~shall~~ *must* be registered and bear interest in the same manner as other county warrants. In this case, the interest ~~shall~~ *must* be computed and added to the amount for which ~~such~~ *the* tax is levied."

Section 67. Section 7-22-2432, MCA, is amended to read:

"7-22-2432. Financing of mosquito control district — levy of district taxes — limit on mill levy — fee on structures. (1) ~~The~~ *Subject to [section 1], the* board of county commissioners of any county within which a mosquito control board has been created shall finance the operation of the district by levying a tax not exceeding 5 mills on the dollar of the total taxable valuation in the district on all property situated within the district at the time fixed by law for levy and assessment of taxes.

(2) Instead of or in addition to imposing the levy authorized in subsection (1), the county commissioners may, upon an affirmative vote of a majority of the qualified voters residing in the mosquito control district, collect an annual fee from the owners of structures that are benefited by the mosquito control services offered by the district. The schedule of fees is as follows:

(a) up to $20 per single-unit dwelling;

(b) up to $20 per unit in a duplex dwelling;

(c) up to $5 per unit in a multiple-unit dwelling;

(d) up to $75 per commercial establishment;

HeinOnline -- 1999 vol. III 2758 1999

(e) up to $50 on each irrigated parcel of property that does not contain a dwelling; and

(f) up to $15 on each nonirrigated parcel of property that does not contain a dwelling.

(3) A countywide mosquito control district may he financed by a property tax pursuant to suhsection (1) or a fee under subsection (2), hut not hy both a tax and a fee.

(4) The fees provided for in suhsection (2) must be collected with the general taxes of the county. The assessments are a lien on the property assessed.

(5) The proceeds from the tax and the fees must be placed in a separate fund with the county treasurer of the county and must he used solely for the purpose for which the mosquito control district was created."

Section 68. Section 7-22-2512, MCA, is amended to read:

"7-22-2512. Finaneing of vertebrate pest management program — tax. (1) A governing body may:

(a) appropriate from the county general fund an amount not in excess of $10,000 annually and transfer it to the county vertebrate pest management fund; and

(b) *subject to [section 1],* levy a vertebrate pest management tax not to exceed 2 mills on the taxahle valuation of all agricultural, horticultural, grazing, and timher lands and their improvements. Land within a rodent control district may not he taxed in any given year under both 7-22-2222 and this section for the control of rodents as defined in 7-22-2207. Land within a rodent control district may he taxed under this section only a dollar amount that is proportional to the part of the vertebrate pest program's projected fiscal year budget ~~which~~ *that* is allocated to the management and suppression of vertehrate pests other than rodents.

(2) The tax provided for in subsection (1) must be collected as other county taxes and credited to the county vertebrate pest managoment fund."

Section 69. Section 7-32-4117, MCA, is amended to read:

"7-32-4117. Group insuranee for ~~policemen~~ *police officers* — funding. (1) Cities of all classes, if they provide insurance for other city employees under Title 2, chapter 18, part 7, shall:

(a) provide the same insurance to their respective ~~policemen~~ *police officers*;

(b) notwithstanding Title 2, chapter 18, part 7, pay no less than the premium rate in effect as of July 1, 1980, for insurance coverage for ~~policemen~~ *police officers* and their dependents;

(c) provide for collective bargaining or other agreement processes to negotiate additional premium payments beyond the amount guaranteed hy subsection (1)(b).

(2) In compliance with 1-2-112 *and subject to [section 1],* the administration of this section is declared a public purpose of a city, which may he paid out of the general fund of the governing body and financed by a levy not to exceed 2 mills on the taxable value of property within the city er town."

Seetion 70. Section 7-33-2109, MCA, is amended to read:

HeinOnline -- 1999 vol. III 2759 1999

"**7-33-2109. Tax levy, debt incurrence, and bonds authorized.** (1) At the time of the annual levy of taxes, the board of county commissioners may, *subject to [section 1],* levy a special tax upon all property within a rural fire district for the purpose of buying or maintaining fire protection facilities and apparatus, including emergency response apparatus, for the district or for the purpose of paying to a city, town, or private fire service the consideration provided for in any contract with the council of the city, town, or private fire service for the purpose of furnishing fire protection service to property within the district. The tax must be collected as are other taxes.

(2) The board of county commissioners or the trustees, if the district is governed by trustees, may pledge the income of the district, subject to the requirements and limitations of 7-33-2105(3), to secure financing necessary to procure equipment and buildings to house the equipment.

(3) In addition to the levy authorized in subsection (1), a district may borrow money by the issuance of bonds to provide funds for the payment of all or part of the cost of buying or maintaining fire protection facilities and apparatus, including emergency response apparatus, for the district.

(4) The amount of debt incurred pursuant to subsection (2) and the amount of bonds issued pursuant to subsection (3) and outstanding at any time may not exceed 18% of the taxable value of the property in the district as ascertained by the most recent assessment for state and county taxes prior to the incurrence of debt or the issuance of the bonds.

(5) The bonds must be authorized, sold, and issued and provisions must be made for their payment in the manner and subject to the conditions and limitations prescribed for the issuance of bonds by counties under Title 7, chapter 7, part 22."

Section 71. Section 7-33-2209, MCA, is amended to read:

"**7-33-2209. Finance of fire control activities.** (1) The county governing body ~~is authorized to~~ *may* appropriate funds for the purchase, care, and maintenance of firefighting equipment or for the payment of wages in prevention, detection, and suppression of fires.

(2) ~~If~~ *Subject to [section 1], if* the general fund is budgeted to the full limit, the county governing body may, at any time fixed by law for levy and assessment of taxes, levy a tax of up to 2 mills or at a rate that will raise $15,000, whichever is higher."

Section 72. Section 7-33-4111, MCA, is amended to read:

"**7-33-4111. Tax levy for volunteer fire departments.** For the purpose of supporting volunteer fire departments in any city or town ~~which~~ *that* does not have a paid fire department and for the purpose of purchasing the necessary equipment for them, the council in any city or town may, *subject to [section 1],* levy, in addition to other levies permitted by law, a special tax not exceeding 4 mills upon all of the property of the city or town subject to taxation."

Section 73. Section 7-33-4130, MCA, is amended to read:

"**7-33-4130. Group insurance for firefighters — funding.** (1) Cities of the first and second class, if they provide insurance for other city employees under Title 2, chapter 18, part 7, shall:

(a) provide the same insurance to their respective firefighters;

HeinOnline -- 1999 vol. III 2760 1999

(h) pay no less than the premium rate in effect as of July 1, 1980, for insurance coverage for firefighters and their dependents notwithstanding the provisions of Title 2, chapter 18, part 7;

(c) provide for collective hargaining or other agreement processes to negotiate additional premium payments heyond the amount guaranteed hy suhsection (1)(h).

(2) ~~Those~~ *Subject to [seetion 1], those* incorporated cities and towns ~~which~~ *that* require additional funds to finance the provisions of this section may levy on property, hy the amount required to meet these provisions, a tax not to exceed 2 mills on the dollar upon all property in the respective city or town. This levy ~~shall~~ *must* be collected in the same manner and at the same time as other taxes are levied."

Section 74. Section 7-34-102, MCA, is amended to read:

"7-34-102. Special mill levy permitted. (1) ~~In~~ *Subject to [section 1] and in* addition to all other levies authorized hy law, each county, city, or town may levy an annual tax up to 1 mill on the dollar of the taxable value of all taxahle property within the county, city, or town to defray the costs incurred in providing ambulance service.

(2) In addition to the levy authorized by suhsection (1), a county, city, or town may levy an additional 2 mills for the support of ambulance services if, at a regularly scheduled election, the electorate of the county, city, or town approves the imposition of the additional levy."

Section 75. Section 7-34-2122, MCA, is amended to read:

"7-34-2122. Powers of district. A hospital district ~~shall have~~ *has* all powers necessary and convenient to the acquisition, betterment, operation, maintenance, and administration of ~~such~~ hospital facilities ~~as~~ *that* its board of trustees ~~shall deem~~ *considers* necessary and expedient. ~~Without limitation on the foregoing~~ *In addition to the* general grant of powers, a hospital district, acting by its board of trustees, may:

(1) employ nursing, administrative, and other personnel, legal counsel, engineers, architects, accountants, and other qualified persons, who may be paid for their services by monthly salaries, hourly wages, and pension benefits or by ~~such~~ fees ~~as~~ *that* may he agreed upon;

(2) cause reports, plans, studies, and recommendations to be prepared;

(3) lease, purchase, and contract for the purchase of real and personal property by option, contract for deed, or otherwise and acquire real or personal property by gift;

(4) lease or construct, equip, ~~and~~ furnish, *and maintain* necessary buildings and grounds ~~and maintain the same~~;

(5) adopt, hy resolution, rules for the operation and administration of ~~any and all~~ hospital facilities under its control and for the admission of persons ~~thereto~~ *to the facilitics*;

(6) impose by resolution and collect charges for all services and facilities provided and made available by it;

(7) *subjeet to [section 1],* levy taxes as ~~hereinafter~~ prescribed *in this part*;

HeinOnline -- 1999 vol. III 2761 1999

(8) borrow money by the issuance of its bonds as ~~hereinafter~~ prescribed *in this part*;

(9) borrow money by the issuance of notes;

(10) procure insurance against liability of the district or its officers and employees, or both, for torts committed within the scope of their official duties, whether governmental or proprietary, and against damage to or destruction of any of its facilities, equipment, or other property;

(11) sell or lease any of its facilities or equipment as may be ~~deemed~~ *considered* expedient;

(12) cause audits to be made of its accounts, books, vouchers, and funds by competent public accountants; *and*

(13) provide educational benefits to qualified individuals, including the payment of tuition, room and board, educational materials, and stipends and the repayment of student loans in return for an agreement by those persons to provide services to the district."

Section 76. Section 7-34-2133, MCA, is amended to read:

"7-34-2133. Levy of district taxes — limit on mill levy. (1) ~~The~~ *Subject to [section 1], the* board of county commissioners ~~must~~ *shall*, annually at the time of levying county taxes, fix and levy a tax ~~(in mills)~~ upon all property within ~~said~~ *the* hospital district clearly sufficient to raise the amount certified by the board of hospital trustees under 7-34-2132.

(2) The tax ~~so~~ levied for all hospital district purposes other than payment of bonded indebtedness ~~shall~~ *may* not in any year exceed 3 mills on each dollar of taxable valuation of property within ~~said~~ *the* district."

Section 77. Section 7-34-2417, MCA, is amended to read:

"7-34-2417. Special tax levy authorized. In the event the bonds are not paid or are not expected to be paid from ordinary revenue of the facility, a county that has issued bonds under 7-34-2411 for a health care facility may, *subject to [section 1],* levy taxes on all taxable property within the county in the manner provided for public hospital districts under 7-34-2133, 7-34-2134, 7-34-2135(1), and 7-34-2136, up to a maximum of 3 mills not submitted to a vote of the people and 3 additional mills approved by a vote of the people."

Section 78. Section 7-35-2122, MCA, is amended to read:

"7-35-2122. County tax levy. ~~The~~ *Subject to [section 1], the* board of county commissioners ~~must~~ *shall*, annually at the time of levying county taxes, fix and levy upon all property within the cemetery district an amount sufficient to raise the amount certified by the board of cemetery trustees to be raised by a tax on the property of the district. The tax may not exceed 4 mills on each dollar of taxable valuation on the property of the district."

Section 79. Section 13-13-230, MCA, is amended to read:

"13-13-230. Authorization to increase county mill levy. ~~Each~~ *Subject to [section 1], a* county may levy an amount not exceeding 1 mill as may be necessary to finance the additional cost of administering a special absentee election board program pursuant to 13-13-225 through 13-13-229. ~~Such~~ *The* mill levy may not be included as part of any existing mill levy or special mill levy assessed by the county. The amount of any mill levy adopted under this section

HeinOnline -- 1999 vol. III 2762 1999

must be reasonably related to the actual cost of providing services as required by 13-13-225 through 13-13-229."

Section 80. Section 15-1-402, MCA, is amended to read:

"15-1-402. Payment of taxes under protest. (1) The person upon whom a property tax or fee is being imposed under this title may, before the property tax or fee becomes delinquent, pay under written protest that portion of the property tax or fee protested. The protested payment must:

(a) be made to the officer designated and authorized to collect it;

(b) specify the grounds of protest; and

(c) not exceed the difference between the payment for the immediately preceding tax year and the amount owing in the tax year protested unless a different amount results from the specified grounds of protest, which may include but are not limited to changes in assessment due to reappraisal under 15-7-111.

(2) A person appealing a property tax or fee pursuant to chapter 2 or 15 shall pay the tax or fee under protest when due in order to receive a refund. If the tax or fee is not paid under protest when due, the appeal may continue but a tax or fee may not be refunded as a result of the appeal.

(3) If a protested property tax or fee is payable in installments, a subsequent installment portion considered unlawful by the state tax appeal board need not be paid and an action or suit need not be commenced to recover the subsequent installment. The determination of the action or suit commenced to recover the first installment portion paid under protest determines the right of the party paying the subsequent installment to have it or any part of it refunded to the party or the right of the taxing authority to collect a subsequent installment not paid by the taxpayer plus interest from the date the subsequent installment was due.

(4) All property taxes and fees paid under protest to a county or municipality must be deposited by the treasurer of the county or municipality to the credit of a special fund to be designated as a protest fund and must be retained in the protest fund until the final determination of any action or suit to recover the taxes and fees unless they are released at the request of the county, municipality, or other local taxing jurisdiction pursuant to subsection (5). This section does not prohibit the investment of the money of this fund in the state unified investment program or in any manner provided in Title 7, chapter 6. The provision creating the special protest fund does not apply to any payments made under protest directly to the state.

(5) The governing board of a taxing jurisdiction affected by the payment of taxes under protest in the second and subsequent years that a tax protest remains unresolved may demand that the treasurer of the county or municipality pay the requesting taxing jurisdiction all or a portion of the protest payments to which it is entitled, except the amount paid by the taxpayer in the first year of the protest. The decision in a previous year of a taxing jurisdiction to leave protested taxes in the protest fund does not preclude it from demanding in a subsequent year any or all of the payments to which it is entitled, except the first-year protest amount.

(6) (a) If action before the county tax appeal board, state tax appeal board, or district court is not commenced within the time specified or if the action is commenced and finally determined in favor of the department of revenue, county,

HeinOnline -- 1999 vol. III 2763 1999

municipality, or treasurer of the county or the municipality, the amount of the protested portions of the property tax or fee must be taken from the protest fund and deposited to the credit of the fund or funds to which the property tax belongs, less a pro rata deduction for the costs of administration of the protest fund and related expenses charged the local government units.

(b) If the action is finally determined adversely to the department of revenue, a county, a municipality, or the treasurer of a county or a municipality, then the treasurer shall, upon receiving a certified copy of the final judgment in the action from the state tax appeal board or from the district or supreme court, as appropriate, if the final action of the state tax appeal board is appealed in the time prescribed, refund to the person in whose favor the judgment is rendered the amount of the protested portions of the property tax or fee deposited in the protest fund, and not released pursuant to subsection (5), as the person holding the judgment is entitled to recover, together with interest from the date of payment under protest, at the greater of:

(i) the rate of interest generated from the pooled investment fund provided for in 17-6-203 for the applicable period; or

(ii) 6% a year.

(c) If the amount retained in the protest fund is insufficient to pay all sums due the taxpayer, the treasurer shall apply the available amount first to tax repayment, then interest owed, and lastly to costs.

(d) If the protest action is decided adversely to a taxing jurisdiction and the amount retained in the protest fund is insufficient to refund the tax payments and costs to which the taxpayer is entitled and for which local government units are responsible, the treasurer shall bill and the taxing jurisdiction shall refund to the treasurer that portion of the taxpayer refund, including tax payments and costs, for which the taxing jurisdiction is proratably respensible.

(e) In satisfying the requirements of subsection (6)(d), the taxing jurisdiction is allowed not more than 1 year from the beginning of the fiscal year following a final resolution of the protest. The taxpayer is entitled to interest on the unpaid balance at the greater of the rates referred to in subsections (6)(b)(i) and (6)(b)(ii) from the date of payment under protest until the date of final resolution of the protest and at the combined rate of the federal reserve discount rate quoted from the federal reserve bank in New York, New York, on the date of final resolution, plus four percentage points, from the date of final resolution of the protest until refund is made.

(7) A taxing jurisdiction may satisfy the requirements of this section by use of funds from one or more of the following sources:

(a) *subject to [section 1],* imposition of a property tax to be collected by a special tax protest refund levy;

(b) the general fund, except that amount generated by the all-purpose mill levy, or any other funds legally available to the governing body; and

(c) proceeds from the sale of bonds issued by a county, city, or school district for the purpose of deriving revenue for the repayment of tax protests lost by the taxing jurisdiction. The governing body of a county, city, or school district is authorized to issue the bonds pursuant to procedures established by law. The bonds may be issued without being submitted to an election. ~~Property~~ *Subject to [section 1], property* taxes may be levied to amortize the bonds."

HeinOnline -- 1999 vol. III 2764 1999

Section 81. Section 15-2-301, MCA, is amended to read:

"15-2-301. Appeal of county tax appeal board decisions. (1) The county tax appeal board shall mail a copy of its decision to the taxpayer and to the property assessment division of the department of revenue. If the appearance provisions of 15-15-103 have been complied with, a person or the department on behalf of the state or any municipal corporation aggrieved by the action of the county tax appeal board may appeal to the state board by filing with the state tax appeal board a notice of appeal within 30 calendar days after the receipt of the decision of the county hoard. The notice must specify the action complained of and the reasons assigned for the complaint. Notice of acceptance of an appeal must be given to the county tax appeal board by the state tax appeal board. The state board shall set the appeal for hearmg either in its office in the capital or the county seat as the board considers advisable to facilitate the performance of its duties or to accommodate parties in interest. The board shall give to the appellant and to the respondent at least 15 calendar days' notice of the time and place of the hearing.

(2) At tbe time of giving notice of acceptance of an appeal, the state board may require the county board to certify to it the minutes of the proceedings resulting in the action and all testimony taken in connection with its proceedings. The state board may, in its discretion, determine the appeal on the record if all parties receive a copy of the transcript and are permitted to submit additional sworn statements, or the stato board may hear further testimony. For the purpose of expediting its work, the state board may refer any appeal to one of its members or to a designated hearings officer. The board member or hearings officer may exercise all the pewers of the board in conducting a hearing and shall, as soon as possible after the hearing, report the proceedings, together witb a transcript or a tape recording of the hearing, to the board. The state board shall determine the appeal on the record.

(3) On all hearings at county seats throughout the state, the stato board or tbe member or hearings officer designated to conduct a hearing may employ a competent person to electronically record the testimony received. Tbe cost of electronically recording testimony may be paid out of the general appropriation for the board.

(4) In connection with any appeal under this section, tbe state board is not bound by common law and statutory rules of evidence or rules of discovery and may affirm, reverse, or modify any decision. To the extent that this section is in conflict with the Montana Administrative Procedure Act, this section supersedes that act. Tbe state tax appeal board may not amend or repeal any administrative rule of the department. The state tax appeal board shall give an administrative rule full effect unless tbe board finds a rule arbitrary, capricious, or otherwise unlawful.

(5) The decision of the state tax appeal board is final and binding upon all interested parties unless reversed or modified by judicial review. Proceedings for judicial review of a decision of the state tax appeal board under this section are subject to tbe provisions of 15-2-303 and the Montana Administrative Procedure Act to the extent that it does not conflict with 15-2-303.

(6) Sections 15-6-134 and 15-7-111 may not be construed to prevent the department from implementing an order to change the valuation of property."

Section 82. Section 15-6-134, MCA, is amended to read:

HeinOnline -- 1999 vol. III 2765 1999

"15-6-134. Class four property — description — taxable percentage. (1) Class four property includes:

(a) *subject to 15-6-201(1)(z) and (1)(aa) and subsections (1)(f) and (1)(g) of this section,* all land, except that specifically included in another class;

(b) *subject to 15-6-201(1)(z) and (1)(aa) and subsections (1)(f) and (1)(g) of this section,* all improvements, including trailers, manufactured homes, or mobile homes used as a residence, except those specifically included in another class;

(c) the first $100,000 or less of the *taxable* market value of any improvement on real property, including trailers, manufactured homes, or mobile homes, and appurtenant land not exceeding 5 acres owned or under contract for deed and actually occupied for at least 7 months a year as the primary residential dwelling of any person whose total income from all sources, including net business income and otherwise tax-exempt income of all types but not including social security income paid directly to a nursing home, is not more than $15,000 for a single person or $20,000 for a married couple or a head of household, as adjusted according to subsection (2)(b)(ii). For the purposes of this subsection (1)(c), net business income is gross income less ordinary operating expenses but before deducting depreciation or depletion allowance, or both.

(d) all golf courses, including land and improvements actually and necessarily used for that purpose, that consist of at least nine holes and not less than 3,000 lineal yards; ~~and~~

(e) *subject to 15-6-201(1)(z),* all improvements on land that is eligible for valuation, assessment, and taxation as agricultural land under 15-7-202, including 1 acre of real property beneath improvements on land described in 15-6-133(1)(c). The 1 acre must be valued at market value.

(f) (i) single-family residences, including trailers, manufactured homes, or mobile homes;

(ii) rental multifamily dwelling units;

(iii) appurtenant improvements to the residences or dwelling units, including the parcels of land upon which the residences and dwelling units are located and any leasehold improvements; and

(iv) vacant residential lots; and

(g) (i) commercial buildings and the parcels of land upon which they are situated; and

(ii) vacant commercial lots.

(2) Class four property is taxed as follows:

(a) (i) Except as provided in 15-24-1402 or 15-24-1501 and subsection (2)(a)(ii) of this section, property described in subsections (1)(a), (1)(b), ~~and~~ (1)(e), *(1)(f), and (1)(g)* of this section is taxed at ~~3.86%~~ *3.794%* of its *taxable* market value *in tax year 1999.*

(ii) The taxable percentage rate in subsection (2)(a)(i) must be adjusted downward by subtracting ~~0.022~~ *0.0835* percentage points each year until the tax rate is equal to or less than ~~2.78%~~ *3.46%.*

(b) (i) Property qualifying under the property tax assistance program in subsection (1)(c) is taxed at the rate provided in subsection (2)(a)(ii) of its market

HeinOnline -- 1999 vol. III 2766 1999

value multiplied by a percentage figure based on income and determined from the following table:

Income Single Person Head of Housebold	Income Married Couple	Percentage Multiplier
$0 - $ 6,000	$0 - $ 8,000	20%
6,001 - 9,200	8,001 - 14,000	50%
9,201 - 15,000	14,001 - 20,000	70%

(ii) The income levels contained in the table in subsection (2)(b)(i) must be adjusted for inflation annually by the department of revenue. The adjustment to the income levels is determined by:

(A) multiplying the appropriate dollar amount from the table in subsection (2)(b)(i) by the ratio of the PCE for the second quarter of the year prior to the year of application to the PCE for the second quarter of 1995; and

(B) rounding the product thus obtained to the nearest whole dollar amount.

(iii) "PCE" means the implicit price deflator for personal consumption expenditures as published quarterly in the Survey of Current Business by the bureau of economic analysis of the U.S. department of commerce.

(c) Property described in subsection (1)(d) is taxed at one-half the taxable percentage rate established in subsection (2)(a)(i).

(3) Within the meaning of comparable property, as defined in 15-1-101, property assessed as commercial property is comparable only to other property assessed as commercial property and property assessed as other than commercial property is comparable only to other property assessed as other than commercial property."

Section 83. Section 15-6-143, MCA, is amended to read:

"15-6-143. Class ten property — description — taxable percentage. (1) Class ten property includes all forest lands as defined in 15-44-102.

(2) Class ten property is taxed at 0.79% of its forest productivity value *in tax year 1999, and the rate is reduced by 0.11% each year until the property is taxed at 0.35% of its forest productivity value.*"

Section 84. Section 15-6-201, MCA, is amended to read:

"15-6-201. Exempt categories. (1) The following categories of property are exempt from taxation:

(a) except as provided in 15-24-1203, the property of:

(i) the United States, except:

(A) if congress passes legislation that allows the state to tax property owned by the federal government or an agency created by congress; or

(B) as provided in 15-24-1103;

(ii) the state, counties, cities, towns, and school districts;

(iii) irrigation districts organized under the laws of Montana and not operating for profit;

HeinOnline -- 1999 vol. III 2767 1999

(iv) municipal corporations;

(v) public libraries; and

(vi) rural fire districts and other entities providing fire protection under Title 7, chapter 33;

(b) buildings, with land that they occupy and furnishings in the buildings, that are owned by a church and used for actual religious worship or for residences of the clergy, together with adjacent land reasonably necessary for convenient use of the buildings;

(c) property used exclusively for agricultural and horticultural societies, for educational purposes, and for nonprofit health care facilities, as defined in 50-5-101, licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3. A health care facility that is not licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3, is not exempt.

(d) property that is:

(i) owned and held by an association or corporation organized under Title 35, chapter 2, 3, 20, or 21;

(ii) devoted exclusively to use in connection with a cemetery or cemeteries for which a permanent care and improvement fund has been established as provided for in Title 35, chapter 20, part 3; and

(iii) not maintained and operated for private or corporate profit;

(e) property that is owned or property that is leased from a federal, state, or local governmental entity by institutions of purely public charity if the property is directly used for purely public charitable purposes;

(f) evidence of debt secured by mortgages of record upon real or personal property in the state of Montana;

(g) public museums, art galleries, zoos, and observatories that are not used or held for private or corporate profit;

(h) all household goods and furniture, including but not limited to clocks, musical instruments, sewing machines, and wearing apparel of members of the family, used by the owner for personal and domestic purposes or for furnishing or equipping the family residence;

(i) truck canopy covers or toppers and campers;

(j) a bicycle, as defined in 61-1-123, used by the owner for personal transportation purposes;

(k) motor homes;

(l) all watercraft;

(m) motor vehicles, land, fixtures, buildings, and improvements owned by a cooperative association or nonprofit corporation organized to furnish potable water to its members or customers for uses other than the irrigation of agricultural land;

(n) the right of entry that is a property right reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise, or succession to enter land with a surface title that is held by another to explore, prospect, or dig for oil, gas, coal, or minerals;

HeinOnline -- 1999 vol. III 2768 1999

(o) (i) property that is owned and used by a corporation or association organized and operated exclusively for the care of persons with developmental disabilities, persons with mental illness, or persons with physical or mental impairments that constitute or result in substantial impediments to employment and that is not operated for gain or profit; and

(ii) property that is owned and used by an organization owning and operating facilities that are for the care of the retired, aged, or chronically ill and that are not operated for gain or profit;

(p) all farm buildings with a market value of less than $500 and all agricultural implements and machinery with a market value of less than $100;

(q) property owned by a nonprofit corporation that is organized to provide facilities primarily for training and practice for or competition in international sports and athletic events and that is not held or used for private or corporate gain or profit. For purposes of this subsection (1)(q), "nonprofit corperation" means an organization that is exempt from taxation under section 501(c) of the Internal Revenue Code and incorporated and admitted under the Montana Nonprofit Corporation Act.

(r) the first $15,000 or less of market value of tools owned by the taxpayer that are customarily hand-held and that are used to:

(i) construct, repair, and maintain improvements to real property; or

(ii) repair and maintain machinery, equipment, appliances, or other personal property;

(s) harness, saddlery, and other tack equipment;

(t) a title plant owned by a title insurer or a title insurance producer, as those terms are defined in 33-25-105;

(u) timber as defined in 15-44-102;

(v) all trailers as defined in 61-1-111, semitrailers as defined in 61-1-112, pole trailers as defined in 61-1-114, and travel trailers as defined in 61-1-131;

(w) all vehicles registered under 61-3-456;

(x) (i) buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors, including buses, trucks, and truck tractors apportioned under Title 61, chapter 3, part 7; and

(ii) personal property that is attached to a bus, truck, or truck tractor that is exempt under subsection (1)(x)(i); ~~and~~

(y) motorcycles and quadricycles;

(z) the following percentage of the market value of residential property as described in 15-6-134(1)(e) and (1)(f):

(i) 16% for tax year 1999;

(ii) 23% for tax year 2000;

(iii) 27.5% for tax year 2001; and

(iv) 31% for tax year 2002 and succeeding tax years;

(aa) the following percentage of the markct value of commercial property as described in 15-6-134(1)(g);

(i) 6.5% for tax year 1999;

(ii) 9% for tax year 2000;

(iii) 11% for tax year 2001; and

(iv) 13% for tax year 2002 and succeeding tax years; and

(bb) the percentage of valuation of land calculated pursuant to 15-7-111(4).

(2) (a) For the purposes of subsection (1)(e), the term "institutions of purely public charity" includes any organization that meets the following requirements:

(i) The organization qualifies as a tax-exempt organization under the provisions of section 501(c)(3), Internal Revenue Code, as amended.

(ii) The organization accomplishes its activities through absolute gratuity or grants. However, the organization may solicit or raise funds hy the sale of merchandise, memberships, or tickets to public performances or entertainment or by other similar types of fundraising activities.

(h) For the purposes of subsection (1)(g), the term "puhlic museums, art galleries, zoos, and observatories" means governmental entities or nonprofit organizations whose principal purpose is to hold property for public display or for use as a museum, art gallery, zoo, or observatory. The exempt property includes all real and personal property reasonably necessary for use in connection with the public display or observatory use. Unless tbe property is leased for a profit to a governmental entity or nonprofit organization by an individual or for-profit organization, real and personal property owned by other persons is exempt if it is:

(i) actually used by the governmental entity or nonprofit organization as a part of its public display;

(ii) held for future display; or

(iii) used to house or store a public display.

(3) The following pertions of the appraised value of a capital investment in a recognized nonfossil form of energy goneration or low emission wood or biomass combustion devices, as defmed in 15-32-102, are exempt from taxation for a period of 10 years following installation of the property:

(a) $20,000 in the case of a single-family residential dwelling;

(b) $100,000 in the case of a multifamily residential dwelling or a nonresidential structure."

Section 85. Section 15-7-102, MCA, is amended to read:

"15-7-102. Notice of classification and appraisal to owners — appeals. (1) (a) The department shall mail to each owner or purchaser under contract for deed a notice of the classification of the land owned or being purchased and the appraisal of the improvements on the land only if one or more of the following changes pertaining to the land or improvements have been made since the last notice:

(i) chango in ownership;

(ii) chango in classification;

(iii) except as provided in subsection (1)(b), change in valuation; or

(iv) addition or subtraction of personal property affixed to the land.

HeinOnline -- 1999 vol. III 2770 1999

(b) After the first year, the department is not required to mail the notice provided for in subsection (1)(a)(iii) if the change in valuation is the result of an *annual* incremental change in valuation caused by the phasing in of a reappraisal *under 15-7-111 or the application of the exemption under 15-6-201 or caused by an incremental change in the tax rate.*

(c) The notice must include the following for the taxpayer's informational purposes:

(i) the total amount of mills levied against the property in the prior year; and

(ii) a statement that the notice is not a tax bill.

(d) Any misinformation provided in the information required hy subsection (1)(c) does not affect the validity of the notice and may not be used as a basis for a challenge of the legality of the notice.

(2) (a) Except as provided in subsection (2)(c), the department shall assign each assessment to the correct owner or purchaser under contract for deed and mail the notice of classification and appraisal on a standardized form, adopted hy the department, containing sufficient information in a comprehensible manner designed to fully inform the taxpayer as to the classification and appraisal of the property and of changes over the prior tax year.

(b) The notice must advise the taxpayer that in order to be eligible for a refund of taxes from an appeal of the classification or appraisal, the taxpayer is required to pay the taxes under protest as provided in 15-1-402.

(c) The department is not required to mail the notice of classification and appraisal to a new owner or purchaser under contract for deed unless the department has received the transfer certificate from the clerk and recorder as provided in 15-7-304 and has processed the certificate before the notices required by subsection (2)(a) are mailed. The date of mailing is the date reported to the county tax appeal board pursuant to 15-15-101.

(3) If the owner of any land and improvements is dissatisfied with the appraisal as it reflects the market value of the property as determined by the department or with the classification of the land or improvements, the owner may request an assessment review by submitting an objection in writing to the department, on forms provided by the department for that purpose, within 30 days after receiving the notice of classification and appraisal from the department. The review must be conducted informally and is not subject to the contested case procedures of the Montana Administrative Procedure Act. As a part of the review, the department may consider the actual selling price of the property, independent appraisals of the property, and other relevant information presented by the taxpayer in support of the taxpayer's opinion as to the market value of the property. The department shall give reasonable notice to the taxpayer of the time and place of the review. After the review, the department shall determine the correct appraisal and classification of the land or improvements and notify the taxpayer of its determination. In the notification, the department shall state its reasons for revising the classification or appraisal. When the proper appraisal and classification have been determined, the land must be classified and the improvements appraised in the manner ordered hy the department.

(4) Whether a review as provided in subsection (3) is held or not, the department may not adjust an appraisal or classification upon the taxpayer's objection unless:

HeinOnline -- 1999 vol. III 2771 1999

(a) the taxpayer has submitted an objection in writing; and

(b) the department has stated its reason in writing for making the adjustment.

(5) A taxpayer's written objection to a classification or appraisal and the department's notification to the taxpayer of its determination and the reason for that determination are public records. The department shall make the records available for inspection during regular office hours.

(6) If any property owner feels aggrieved by the classification or appraisal made by the department after the review provided for in subsection (3), the property owner has the right to first appeal to the county tax appeal board and then to the state tax appeal board, whose findings are final subject to the right of review in the courts. The appeal to the county tax appeal board must be filed within 30 days after notice of the department's determination is mailed to the taxpayer. A county tax appeal board or the state tax appeal board may consider the actual selling price of the property, independent appraisals of the property, and other relevant information presented by the taxpayer as evidence of the market value of the property. If the county tax appeal board or the state tax appeal board determines that an adjustment should be made, the department shall adjust the base value of the property in accordance with the board's order."

Section 86. Section 15-7-103, MCA, is amended to read:

"15-7-103. Classification and appraisal — general and uniform methods. (1) It is the duty of the department of revenue to implement the provisions of 15-7-101 through 15-7-103 by providing:

(a) for a general and uniform method of classifying lands in the state for the purpose of securing an equitable and uniform basis of assessment of ~~said~~ lands for taxation purposes;

(b) for a general and uniform method of appraising city and town lots;

(c) for a general and uniform method of appraising rural and urban improvements;

(d) for a general and uniform method of appraising timberlands.

(2) All lands ~~shall~~ *must* be classified according to their use or uses and graded within each class according to soil and productive capacity. In ~~such~~ *the* classification work, use ~~shall~~ *must* be made of soil surveys and maps and all other pertinent available information.

(3) All lands must be classified by parcels or subdivisions not exceeding 1 section each, by the sections, fractional sections, or lots of all tracts of land that have been sectionized by the United States government, or by metes and bounds, whichever yields a true description of the land.

(4) All agricultural lands must be classified and appraised as agricultural lands without regard to the best and higbest value use of adjacent or neighboring lands.

(5) In any periodic revaluation of taxable property completed under the provisions of 15-7-111 ~~after January 1, 1986~~, all property classified in 15-6-134 must be appraised on *the taxable portion of* its market value in the same year. The department shall publish a rule specifying the year used in the appraisal.

HeinOnline -- 1999 vol. III 2772 1999

(6) All sewage disposal systems and domestic use water supply systems of all dwellings may not be appraised, assessed, and taxed separately from the land, house, or other improvements in which they are located. In no event may the sewage disposal or domestic water supply systems be included twice by including them in the valuation and assessing them separately."

Section 87. Section 15-7-111, MCA, is amended to read:

"15-7-111. Periodic revaluation of certain taxable property. (1) The department of revenue shall administer and supervise a program for the revaluation of all taxable property within classes three, four, and ten. All other property must be revalued annually. The revaluation of class three, four, and ten property is complete on Decemher 31, 1996. The amount of the change in valuation from the 1996 base year for each property in classes three, four, and ten must be phased in each year at the rate of ~~2%~~ *25%* of the ~~total~~ change in valuation *from December 31, 1998, to the appropriate percentage of taxable market value for each class.*

(2) The department shall value and phase in the value of newly constructed, remodeled, or reclassified property in a manner consistent with the valuation within the same class and the values established pursuant to subsection (1). The department shall adopt rules for determining the assessed valuation and phased-in value of new, remodeled, or reclassified property within the same class.

(3) Beginning January 1, ~~2007~~ *2001*, the department of revenue shall administer and supervise a program for the revaluation of all taxable property within classes three, four, and ten. A comprehensive written reappraisal plan must be promulgated by the department. The reappraisal plan adopted must provide that all class three, four, and ten property in each county is revalued by January 1, ~~2010~~ *2003*, and each succeeding ~~3~~ *6* years. *The resulting valuation changes must be phased in for each year until the next reappraisal. If a percentage of change for each year is not established, then the percentage of phasein for each year is 16.66%.* The department shall furnish a copy of the plan and all amendments to the plan to the board of county commissioners of each county.

(4) (a) If the value of an individual property is equal to or less than 75% of the appraised value of the improvements situated on the land, then the assessed value of the land is the land's appraised value as phascd in under subsection (1) and the other provisions of subsection (1) do not apply.

(b) Subject to subsection (4)(c), if the value of an individual property is greater than 75% of the appraised value of the improvements situated on the land, then the value of the land must be determined as follows:

(i) the department shall calculate the average value of improvements in the state;

(ii) if the value of the improvements on an individual property is greater than the state average value of improvements, then the land is valued at 75% of the appraised value of the improvements situated on the land and the remainder of the land value is exempt from taxation; and

(iii) if the value of the improvements on an individual property is less than or equal to the state average value of improvements, then the land is valued at 75% of the appraised value of the improvements situated on the land and the remainder of the land value is exempt from taxation.

HeinOnline -- 1999 vol. III 2773 1999

(c) The value of land upon which improvements are situated may not exceed the phased-in value of the land.

(5) For purposes of subsection (4), the following definitions apply:

(a) "average value of improvements" means the statewide arithmetie mean of the appraised value of all improvements that have a market value in excess of $7,500;

(b) "improvements" means residential dwellings and includes housetrailers, mobile homes, and manufactured homes;

(c) "land" includes contiguous parcels or lots under single ownership up to 5 acres."

Section 88. Section 15-7-403, MCA, is amended to read:

"15-7-403. Rollback tax — computation. (1) (a) ~~If~~ *Subject to [section 1], if* land and improvements appraised as residential as a result of an application filed under 15-7-402 are changed to industrial or commercial use, the property is subject to a rollback tax in addition to the property tax levied on the property. The rollback tax is a lien on the property and is due and payable hy the owner of the property at the time of the change in use.

(b) As used in this section, "rollback" means the period preceding the change in use, not to exceed 5 years, during which the property was appraised as residential.

(2) The department shall determine the amount of rollhack tax due on the property by:

(a) determining the taxable value of the property as industrial or commercial property;

(b) multiplying this value by the sum of the annual mill levies applied in the taxing jurisdiction in which the land is located during the rollhack period; and

(c) subtracting from this figure the actual property tax paid on the property during this peried."

Section 89. Section 15-8-111, MCA, is amended to read:

"15-8-111. Assessment — market value standard — exccptions. (1) All taxahle property must be assessed at 100% of its market value except as otherwise provided.

(2) (a) Market value is the value at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.

(b) If the department uses construction cost as one approximation of market value, the departinent shall fully consider reduction in value caused by depreciation, whether through physical depreciation, functional obsolescence, or economic obsolescence.

(c) Except as provided in subsection (3), the market value of special mobile equipment and agricultural tools, implements, and machinery is the average wholesale value shown in national appraisal guides and manuals or the value before reconditioning and profit margin. The department shall prepare valuation schedules showing the average wholesale value when a national appraisal guide does not exist.

HeinOnline -- 1999 vol. III 2774 1999

(3) The department may not adopt a lower or different standard of value from market value in making the official assessment and appraisal of the value of property, except:

(a) the wholesale value for agricultural implements and machinery is the average wholesale value category as shown in Guides 2000, Northwest Region Official Guide, published by the North American equipment dealers association, St. Louis, Missouri. If the guide or the average wholesale value category is unavailable, the department shall use a comparable publication or wholesale value category.

(b) for agricultural implements and machinery not listed in an official guide, the department shall prepare a supplemental manual in which the values reflect the same depreciation as those found in the official guide; and

(c) as otherwise authorized in Titles 15 and 61.

(4) For purposes of taxation, assessed value is the same as appraised value.

(5) The taxable value for all property is the percentage of market or assessed value established for each class of property.

(6) The assessed value of properties in 15-6-131 through ~~15-6-133~~ *15-6-134 and 15-6-143* is as follows:

(a) Properties in 15-6-131, under class one, are assessed at 100% of the annual net proceeds after deducting the expenses specified and allowed by 15-23-503 or, if applicable, as provided in 15-23-515, 15-23-516, 15-23-517, or 15-23-518.

(b) Properties in 15-6-132, under class two, are assessed at 100% of the annual gross proceeds.

(c) Properties in 15-6-133, under class three, are assessed at 100% of the productive capacity of the lands when valued for agricultural purposes. All lands that meet the qualifications of 15-7-202 are valued as agricultural lands for tax purposes.

(d) Properties in 15-6-134, under class four, are assessed at the applicable percentage of market value minus any portion of market value that is exempt from taxation under 15-6-201(1)(z), (1)(aa), and (1)(bb).

~~(d)~~*(e)* Properties in 15-6-143, under class ten, are assessed at 100% of the forest productivity value of the land when valued as forest land.

(7) Land and the improvements on the land are separately assessed when any of the following conditions occur:

(a) ownership of the improvements is different from ownership of the land;

(b) the taxpayer makes a written request; or

(c) the land is outside an incorporated city or town."

Section 90. Section 15-10-204, MCA, is amended to read:

"15-10-204. Resolution or ordinance for increase over certified millage. ~~No millage~~ *Millage* in excess of the department of revenue's certified millage may *not* be levied until a resolution or ordinance is approved by the governing board of the taxing authority~~, which~~. *The* resolution or ordinance must be approved by the taxing authority according to the following procedure:

HeinOnline -- 1999 vol. III 2775 1999

(1) The taxing authority shall publish notice of its intent to exceed the department's certified millage in the same manner that it gives notice of hearings on its preliminary or proposed budget for the forthcoming fiscal year. The notice must state that the taxing authority will meet on a day, at a time and place fixed in the notice, which must be approximately 7 days after the day that the notice is published, for the purpose of hearing comments regarding the proposed increase and to explain the reasons for the proposed increase. The meeting may coincide with the meeting on the tentative budget as required by law.

(2) After the public hearing has been held in accordance with the ~~above~~ procedures *provided in subsection (1)*, the taxing authority may, *subject to [section 1]*, adopt a resolution or ordinance levying a millage rate in excess of the certified millage. If the resolution or ordinance adopting ~~such~~ *the* millage rate is not approved on the day of the public hearing, the day, time, and place at which the resolution or ordinance will be scheduled for consideration and approval by the taxing authority must be announced at the public hearing. If the resolution or ordinance is to be considered at a day and time that is more than 2 weeks from the public hearing, the taxing authority ~~must~~ *shall* again publish notice in the same manner as provided in subsection (1)."

Section 91. Section 15-10-205, MCA, is amended to read:

"15-10-205. Approval and copies of resolution or ordinance. The resolution or ordinance approved in the manner provided for in this part must he forwarded to the county treasurer and the department. Millage in excess of the department's certified millage may not be levied until the resolution or ordinance to levy required in 15-10-204 is approved by the governing board of the taxing authority *and as provided in [section 1]* and *is* submitted to the department."

Section 92. Section 15-10-401, MCA, is amended to read:

"15-10-401. Declaration of policy. (1) The state of Montana's reliance on the taxation of property to support education and local government has placed an unreasonahle burden on the owners of all classes of property described in Title 15, chapter 6, part 1.

(2) Except as provided in ~~15-10-412~~ *[section 1]*, the people of the state of Montana declare that it is the policy of the state of Montana that no further property tax increases be imposed on property. In order to reduce volatility in property taxation and in order to reduce taxpayer uncertainty, it is the policy of the legislature to develop alternatives to market value for purposes of taxation."

Section 93. Section 15-10-402, MCA, is amended to read:

"15-10-402. Property tax limited to 1996 levels. Except as provided in ~~15-10-412~~ *[section 1]*, the amount of taxes levied on property described in Title 15, chapter 6, part 1, may not, for any taxing jurisdiction, exceed the amount levied for tax year 1996."

Section 94. Section 15-16-117, MCA, is amended to read:

"15-16-117. Personal property — treasurer's duty to collect certain taxes. (1) The county treasurer shall demand payment of poor fund taxes, authorized by 53-2-322, and road taxes, authorized by 7-14-2206 or 7-14-2501 through 7-14-2504, ~~of every~~ *from each* person liable for the taxes whose name does not appear on the property tax record. On the neglect or refusal of a person

HeinOnline -- 1999 vol. III 2776 1999

to pay the taxes, the treasurer shall collect the taxes by seizure and sale of any property owned by the person.

(2) ~~These~~ *Subject to [section 1], these* taxes must be added in the property tax record to other property taxes of persons paying taxes upon real and personal property and must be paid to the county treasurer at the time of payment of other taxes.

(3) The procedure for the sale of property by the county treasurer for the taxes is regulated by 15-16-119 and 15-17-911.

(4) The provisions of this section do not apply to property for which delinquent property taxes have been suspended or canceled under the provisions of Title 15, chapter 24, part 17."

Section 95. Section 15-16-203, MCA, is amended to read:

"15-16-203. Assessment of property previously exempt. (1) ~~Real~~ *Subject to [section 1], real* property or improvements exempt from taxation under Title 15, chapter 6, that during a tax year become the property of a person subject to taxation must be assessed and taxed from the date of change from a nontaxable status to a taxable status.

(2) As provided in subsection (3), the county treasurer shall adjust the tax that would have been due and payable for the current year on the property under 15-16-102 if the property was not exempt.

(3) To determine the amount of tax due for previously exempt property, the county treasurer shall multiply the amount of tax levied and assessed on the original taxable value of the property for the year by the ratio that the number of days in the year that the property will be in taxable status bears to 365.

(4) If the property has not been assessed and taxed during the taxable year because of exemption, the department shall prepare a special assessment for the property and the county treasurer shall determine the amount of taxes that would have been due under subsection (2).

(5) Upon determining the amount of tax due, the county treasurer shall notify the person to whom the tax is assessed, in the same manner as notification is provided under 15-16-101(2), of the amount due and the date or dates on which the taxes due are payable as provided in 15-16-102."

Section 96. Section 15-23-214, MCA, is amended to read:

"15-23-214. Determination of tax — payment. (1) ~~On~~ *Subject to [section 1] and on* or before the third Monday in October, the department of revenue shall compute the tax on railroad car company property by multiplying the taxable value of the property by the average levy.

(2) After determining the tax, the department shall send to the last-known address of each railroad car company subject to taxation a written notice, postage prepaid, showing the amount of taxes due for the current year and any delinquent amount for prior years. The notice must include the taxable value of the property and the average levy used to compute the tax.

(3) The tax is due and payable to the department under the provisions of 15-16-102. A tax not received by the department within the time requirements of 15-16-102 is delinquent and subject to penalty and interest under that section."

Section 97. Section 15-24-1402, MCA, is amended to read:

HeinOnline -- 1999 vol. III 2777 1999

"15-24-1402. New or expanding industry — assessment — notification. (1) In the first 5 years after a construction permit is issued, qualifying improvements or modernized processes that represent new industry or expansion of an existing industry, as designated in the approving resolution, must he taxed at 50% of their taxahle value. ~~Each~~ *Subject to [section 1], each* year thereafter, the percentage must be increased by equal percentages until tbe full taxable value is attained in the 10th year. In subsequent years, the property must be taxed at 100% of its taxable value.

(2) (a) In order for a taxpayer to receive the tax benefits described in subsection (1), the governing body of the affected county or the incorporated city or town must have approved by separate resolution for each project, following due notice as defined in 76-15-103 and a public hearing, the use of the schedule provided for in subsection (1) for its respective jurisdiction. The governing body may not grant approval for the project until all of the applicant's taxes have been paid in full. Taxes paid under protest do not preclude approval.

(b) ~~The~~ *Subject to [section 1], the* governing body may end the tax benefits by majority vote at any time, but the tax benefits may not be denied an industrial facility that previously qualified for the benefits.

(c) The resolution provided for in subsection (2)(a) must include a definition of the improvements or modernized processes that qualify for the tax treatment that is to be allowed in the taxing jurisdiction. The resolution may provide that real property other than land, personal property, improvements, or any combination thereof is eligible for the tax benefits described in subsection (1).

(3) The taxpayer shall apply to the department for the tax treatment allowed under subsection (1). The application by the taxpayer must first be approved by the governing body of the appropriate local taxing jurisdiction, and the governing body shall indicate in its approval that the property of the applicant qualifies for the tax treatment provided for in this section. Upon receipt of the form with the approval of the governing body of the affected taxing jurisdiction, the department shall make the assessment change pursuant to this section.

(4) The tax benefit described in subsection (1) applies only to the number of mills levied and assessed for local high school district and elementary school district purposes and to the number of mills levied and assessed by the governing body approving the benefit over which the governing bedy has sole discretion. The benefit described in subsection (1) may not apply to levies or assessments required under Title 15, chapter 10, 20-9-331, 20-9-333, or 20-9-360 or otherwise required under state law.

(5) Prior to approving the resolution under this section, the governing body shall notify by certified mail all taxing jurisdictions affected by the tax benefit."

Section 98. Section 15-24-1501, MCA, is amended to read:

"15-24-1501. Remodeling, reconstruction, or expansion of buildings or structures — assessment provisions — levy limitations. (1) Subject to *[section 1] and* the authority contained in subsection (4) *of this section*, remodeling, reconstruction, or expansion of existing buildings or structures, which increases their taxable value by at least 2 1/2% as determined by the department, may receive tax benefits during the construction period and for the following 5 years in accordance with subsections (2) through (4) and the following schedule. The percentages must be applied as provided in subsections (3) and (4)

HeinOnline -- 1999 vol. III 2778 1999

and are limited to the increase in taxable value caused by remodeling, reconstruction, or expansion:

Construction period	0%
First year following construction	20%
Second year following construction	40%
Third year following construction	60%
Fourth year following construction	80%
Fifth year following construction	100%
Following years	100%

(2) In order to confer the tax benefits described in subsection (1), the governing body of the affected county or, if the construction will occur within an incorporated city or town, the governing body of the incorporated city or town ~~must~~ *shall* approve by resolution for each remodeling, reconstruction, or expansion project the use of the schedule provided for in subsection (1) or a schedule adopted pursuant to subsection (4).

(3) The tax benefit described in subsection (1) applies only to the number of mills levied and assessed for high school district and elementary school district purposes and to the number of mills levied and assessed by the local governing body approving the benefit. The benefit described in subsection (1) may not apply to statewide levies.

(4) A local government may, in the resolution required by subsection (2), modify the percentages contained in subsection (1) that apply to the first year following construction through the fourth year following construction. A local government may not modify the percentages contained in subsection (1) that apply to the fifth year following construction or years following the fifth year. A local government may not modify the time limits contained in subsection (1). The modifications to the percentages in subsection (1) adopted by a local government apply uniformly to each remodeling, reconstruction, or expansion project approved by the governing body."

Section 99. Section 15-24-1603, MCA, is amended to read:

"15-24-1603. Historic property tax abatement — levy limitations. (1) ~~A~~*Subject to [section 1], a* historic property undergoing rehabilitation, restoration, expansion, or new construction that meets criteria established by the review process described in 15-24-1605 or 15-24-1606 may receive a tax abatement during the construction period, not to exceed 12 months, and for up to 5 years following completion of the construction in accordance with subsections (2) and (3). The tax abatement is limited to 100% of the increase in taxable value caused by the rehabilitation, restoration, expansion, or new construction.

(2) In order to confer the tax benefits described in subsection (1), the governing body of the county or incorporated city or town where the improvement occurs shall establish by resolution the process for the use of the tax abatement provisions described in subsection (1).

(3) Property that receives a tax benefit under this part is not entitled to any other exemption or special valuation provided by Montana law during the period of the abatement.

(4) (a) The tax abatoment applies only to the number of mills levied:

HeinOnline -- 1999 vol. III 2779 1999

(i) for high school and elementary school district purposes; and

(ii) by the local governing body approving the abatement.

(b) The abatement may not apply to statewide levies."

Section 100. Section 15-36-323, MCA, is amended to read:

"15-36-323. Calculation of unit value. For the purposes of distribution of oil and natural gas production taxes to county and school taxing units for production from pre-1985 wells, the department shall determine the unit value of oil and natural gas for each taxing unit as follows:

(1) Subject to the conditions of subsection (3), the unit value for oil for each taxing unit is the quotient obtained by dividing the net proceeds taxes calculated on oil produced and sold in that taxing unit in calendar year 1988 by the number of barrels of oil produced in that taxing unit during 1988, excluding post-1985 wells.

(2) Subject to the conditions of subsection (3), the unit value for natural gas is the quotient obtained by dividing the net proceeds taxes calculated on natural gas produced and sold in that taxing unit in calendar year 1988 by the numher of cubic feet of natural gas produced in that taxing unit during 1988, excluding post-1985 wells.

(3) The amount of net proceeds taxes calculated under subsections (1) and (2) may not include the amount of taxes that are attributable to a voted levy~~, as described in 15-10-412(7),~~ for which additional mills were levied in fiscal year 1990."

Section 101. Section 20-3-205, MCA, is amended to read:

"20-3-205. Powers and duties. The county superintendent has general supervision of the schools of the county within the limitations prescribed by this title and shall perform the following duties or acts:

(1) determine, establish, and reestablish trustee nominating districts in accordance with the provisions of 20-3-352, 20-3-353, and 20-3-354;

(2) administer and file the oaths of members of the boards of trustees of the districts in the county in accordance with the provisions of 20-3-307;

(3) register the teacher or specialist certificates or emergency authorization of employment of any person employed in the county as a teacher, specialist, principal, or district superintendent in accordance with the provisions of 20-4-202;

(4) act on each tuition and transportation obligation submitted in accordance with the provisions of 20-5-323 and 20-5-324;

(5) file a copy of the audit report for a district in accordance with the provisions of 20-9-203;

(6) classify districts in accordance with the provisions of 20-6-201 and 20-6-301;

(7) keep a transcript and reconcile the district boundaries of the county in accordance with the provisions of 20-6-103;

(8) fulfill all responsibilities assigned under the provisions of this title regulating the organization, alteration, or abandonment of districts;

(9) act on any unification proposition and, if approved, establish additional trustee nominating districts in accordance with 20-6-312 and 20-6-313;

(10) estimate the average number belonging (ANB) of an opening school in accordance with the provisions of 20-6-502, 20-6-503, 20-6-504, or 20-6-506;

(11) process and, when required, act on school isolation applications in accordance with the provisions of 20-9-302;

(12) complete the budgets, compute the budgeted ~~revenues~~ *revenue* and tax levies, file final budgets and budget amendments, and fulfill other responsibilities assigned under the provisions of this title regulating school budgeting systems;

(13) submit an annual financial report to the superintendent of public instruction in accordance with the provisions of 20-9-211;

(14) monthly, unless otherwise provided by law, order the county treasurer to apportion state money, county school money, and any other school money subject to apportionment in accordance with the provisions of 20-9-212, 20-9-335, 20-9-347, 20-10-145, or 20-10-146;

(15) act on any request to transfer average number belonging (ANB) in accordance with the provisions of 20-9-313(3);

(16) calculate the estimated budgeted general fund sources of revenue in accordance with the general fund revenue provisions of the general fund part of this title;

(17) compute the ~~revenues~~ *revenue* and, *subject to [section 1], compute* the district and county levy requirements for each fund included in each district's final budget and report the computations to the board of county commissioners in accordance with the provisions of the general fund, transportation, bonds, and other school funds parts of this title;

(18) file and forward bus driver certifications, transportation contracts, and state transportation reimbursement claims in accordance with the provisions of 20-10-103, 20-10-143, or 20-10-145;

(19) for districts that do not employ a district superintendent or principal, recommend library book and textbook selections in accordance with the provisions of 20-7-204 or 20-7-602;

(20) notify the superintendent of public instruction of a textbook dealer's activities when required under the provisions of 20-7-605 and otherwise comply with the textbook dealer provisions of this title;

(21) act on district requests to allocate federal money for indigent children for school food services in accordance with the provisions of 20-10-205;

(22) perform any other duty prescribed from time to time by this title, any other act of the legislature, the policies of the board of public education, the policies of the board of regents relating to community college districts, or the rules of the superintendent of public instruction;

(23) administer the oath of office to trustees without the receipt of pay for administering the oath;

(24) keep a record of official acts, preserve all reports submitted to the superintendent under the provisions of this title, preserve all books and instructional equipment or supplies, keep all documents applicable to the

HeinOnline -- 1999 vol. III 2781 1999

administration of the office, and surrender all records, books, supplies, and equipment to the next superintendent;

(25) within 90 days after the close of the school fiscal year, publish an annual report in the county newspaper stating the following financial information for the school fiscal year just ended for each district of the county:

(a) the total of the cash balances of all funds maintained by the district at the beginning of the year;

(b) the total receipts that were realized in each fund maintained hy the district;

(c) the total expenditures that were made from each fund maintained by the district; and

(d) the total of the cash balances of all funds maintained by the district at the end of the school fiscal year; and

(26) hold meetings for the members of the trustees from time to time at which matters for the good of the districts must be discussed."

Section 102. Section 20-3-324, MCA, is amended to read:

"20-3-324. Powers and duties. As prescribed elsewhere in this title, the trustees of each district shall:

(1) employ or dismiss a teacher, principal, or other assistant upon the recommendation of the district superintendent, the county high school principal, or other principal as the board considers necessary, accepting or rejecting any recommendation as the trustees in their sole discretion determine, in accordance with the provisions of Title 20, chapter 4;

(2) employ and dismiss administrative personnel, clerks, secretaries, teacher aides, custodians, maintenance personnel, school bus drivers, food service personnel, nurses, and any other personnel considered necessary to carry out the various services of the district;

(3) administer the attendance and tuition provisions and govern the pupils of the district in accordance with the provisions of the pupils chapter of this title;

(4) call, conduct, and certify the elections of the district in accordance with the provisions of the school elections chapter of this title;

(5) participate in the teachers' retirement system of the state of Montana in accordance with the provisions of the teachers' retirement system chapter of Title 19;

(6) participate in district boundary change actions in accordance with the provisions of the districts chapter of this title;

(7) organize, open, close, or acquire isolation status for the schools of the district in accordance with the provisions of the school organization part of this title;

(8) adopt and administer the annual budget or a budget amendment of the district in accordance with the provisions of the school budget system part of this title;

(9) conduct the fiscal business of the district in accordance with the provisions of the school financial administration part of this title;

(10) *subject to [section 1],* establish the ANB, BASE budget levy, over-BASE budget levy, additional levy, operating reserve, and state impact aid amounts for the general fund of the district in accordance with the provisions of the general fund part of this title;

(11) establish, maintain, budget, and finance the transportation program of the district in accordance with the provisions of the transportation parts of this title;

(12) issue, refund, sell, budget, and redeem the bonds of the district in accordance with the provisions of the bonds parts of this title;

(13) when applicable, establish, financially administer, and budget for the tuition fund, retirement fund, building reserve fund, adult education fund, nonoperating fund, school food services fund, miscellaneous programs fund, building fund, lease or rental agreement fund, traffic education fund, impact aid fund, interlocal cooperative agreement fund, and other funds as authorized by the state superintendent of public instruction in accordance with the provisions of the other school funds parts of this title;

(14) when applicable, administer any interlocal cooperative agreement, gifts, legacies, or devises in accordance with the provisions of the miscellaneous financial parts of this title;

(15) hold in trust, acquire, and dispose of the real and personal property of the district in accordance with the provisions of the school sites and facilities part of this title;

(16) operate the schools of the district in accordance with the provisions of the school calendar part of this title;

(17) establish and maintain the instructional services of the schools of the district in accordance with the provisions of the instructional services, textbooks, vocational education, and special education parts of this title;

(18) establish and maintain the school food services of the district in accordance with the provisions of the school food services parts of this title;

(19) make reports from time to time as the county superintendent, superintendent of public instruction, and board of public education may require;

(20) retain, when considered advisable, a physician or registered nurse to inspect the sanitary conditions of the school or the general health conditions of each pupil and, upon request, make available to any parent or guardian any medical reports or health records maintained by the district pertaining to the child;

(21) for each member of the trustees, visit each school of the district not less than once each school fiscal year to examine its management, conditions, and needs, except trustees from a first-class school district may share the responsibility for visiting each school in the district;

(22) procure and display outside daily in suitable weather on school days at each school of the district an American flag that measures not less than 4 feet by 6 feet;

(23) provide that an American flag that measures approximately 12 inches by 18 inches be prominently displayed in each classroom in each school of the district, except in a classroom in which the flag may get soiled. This requirement is waived if the flags are not provided by a local civic group.

HeinOnline -- 1999 vol. III 2783 1999

(24) adopt and administer a district policy on assessment for placement of any child who enrolls in a school of the district from a nonpuhlic school that is not accredited, as required in 20-5-110;

(25) upon request and in compliance with confidentiality requirements of state and federal law, disclose to interested parties school district student assessment data for any test required hy the board of public education; and

(26) perform any other duty and enforce any other requirements for the government of the schools prescribed by this title, the policies of the board of public education, or the rules of the superintendent of public instruction."

Seetion 103. Section 20-7-705, MCA, is amended to read:

"20-7-705. Adult education fund. (1) A separate adult education fund must be established when an adult education program is operated by a district or community college district. The financial administration of the fund must comply with the budgeting, financing, and expenditure provisions of the laws governing the schools.

(2) Whenever the trustees of a district establish an adult education program under the provisions of 20-7-702, they shall establish an adult education fund under the provisions of this section. The adult education fund is the depository for all district money received by the district in support of the adult education program. Federal and state adult education program money must be deposited in the miscellaneous programs fund.

(3) ~~The~~ *Subject to [section 1], the* trustees of a district may authorize the levy of a tax of not more than 1 mill on the district, except that trustees of a county high school district may, whether or not the county high school district is unified with an elementary district under the provisions of 20-6-312, authorize a levy of not more than 2 mills on the district and a K-12 school district formed under the provisions of 20-6-701 may authorize a levy of not more tban 3 mills on the district, for the operation of an adult education program.

(4) Whenever the trustees of a district decide to offer an adult education program during the ensuing school fiscal year, they shall budget for the cost of the program in the adult education fund of the final hudget. Any expenditures in suppert of the adult education program under the final adult education budget must be made in accordance with the financial administration provisions of this title for a budgeted fund.

(5) When a tax levy for an adult education program is included as a revenue item on the final adult education budget, the county superintendent shall report the levy requirement to the county commissioners on the fourth Monday of August and a levy on the district must he made by the county commissioners in accordance with 20-9-142."

Section 104. Section 20-7-714, MCA, is amended to read:

"20-7-714. County adult literacy programs — authorization to levy tax and establish fund. (1) (a) ~~The~~ *Subject to [section 1], the* governing body of a county may, in its discretion, establish a fund and levy up to 1 mill on each dollar of taxable property in the county for the suppert of county literacy programs that give first priority to providing direct instruction to adults. The tax levy is in addition to all other tax levies and is subject to limitations on property taxes set forth in 15-10-402.

HeinOnline -- 1999 vol. III 2784 1999

(b) The fund may be used only for the support of adult literacy programs within the county.

(2) (a) If a county levies a property tax for adult literacy programs, the county governing body shall appoint a county adult literacy board to administer the expenditure of funds from the county adult literacy fund established in subsection (1).

(b) The county adult literacy board shall coordinate all adult literacy programs receiving county adult literacy funds. The board may adopt policies concerning program standards and financial accountability for organizations receiving adult literacy funds. The board may require that adult literacy programs match adult literacy funds with federal, state, or private money. The board may, with the concurrence of the appropriate county officials, arrange for county in-kind services to support adult literacy programs.

(c) County adult literacy funding may be expended only on literacy programs for persons who are 16 years of age or older and who are not regularly enrolled, full-time pupils for the purposes of ANB computation."

Section 105. Section 20-9-131, MCA, is amended to read:

"20-9-131. Final budget meeting. (1) On the second Monday in August, at the time and place noticed pursuant to 20-9-115, the trustees of each district shall meet to consider all budget information and any attachments required by law.

(2) The trustees may continue the meeting from day to day but shall adopt the final budgot for the district and, *subject to [section 1],* determine the amounts to be raised by tax levies for the district not later than the fourth Monday in August and before the fixing of the tax levies for each district. Any taxpayer in the district may attend any portion of the trustees' meeting and be heard on the budget of the district or on any item or amount contained in the budget."

Section 106. Section 20-9-141, MCA, is amended to read:

"20-9-141. Computation of general fund net levy requirement by county superintendent. (1) ~~The~~ *Subject to [section 1], the* county superintendent shall compute tbe levy requirement for each district's general fund on the basis of tbe following procedure:

(a) Determine the funding required for the district's final general fund budget less the sum of direct state aid and the special education allowable cost payment for the district by totaling:

(i) the district's nonisolated school BASE budget requirement to be met by a district levy as provided in 20-9-303; and

(ii) any general fund budget amount adopted by the trustees of the district under the provisions of 20-9-308 and 20-9-353, including any additional funding for a general fund budget that exceeds the maximum general fund budget.

(b) Determine the money available for the reduction of the property tax on the district for the general fund by totaling:

(i) the general fund balance reappropriated, as established under the provisions of 20-9-104;

(ii) amounts received in the last fiscal year for which revenue reporting was required for each of the following:

HeinOnline -- 1999 vol. III 2785 1999

(A) tuition payments for out-of-district pupils under the provisions of 20-5-321 through 20-5-323, except the amount of tuition received for a pupil who is a child with disabilities in excess of the amount received for a pupil without disahilities, as calculated under 20-5-323(2);

(B) revenue from taxes and fees imposed under 23-2-517, 23-2-803, ~~61-3-504,~~ 61-3-521, 61-3-527, 61-3-529, ~~61-3-537,~~ and 67-3-204;

(C) *anticipated* oil and natural gas production taxes *and reimbursements for lost taxes*;

(D) interest earned by the investment of general fund cash in accordance with the provisions of 20-9-213(4);

(E) revenue from corporation license taxes collected from financial institutions under the provisions of 15-31-702; and

(F) any other *anticipated* revenue received during the school fiscal year that may be used to finance the general fund, ~~excluding~~ *including any reimbursements for property tax reductions but not including* any guaranteed tax base aid; ~~and~~

(iii) pursuant to subsection (4), anticipated revenue from coal gross proceeds under 15-23-703;

(iv) anticipated revenue from reimbursements for property tax reductions; and

(v) anticipated revenue from taxes imposed under 61-3-504 and 61-3-537.

(c) Notwithstanding the provisions of subsection (2), subtract the money available to reduce the property tax required to finance the general fund that has been determined in subsection (1)(b) from any general fund budget amount adopted by the trustees of the district, up to the BASE budget amount, to determine the general fund BASE budget levy requirement.

(d) Subtract any amount remaining after the determination in subsection (1)(c) from any additional funding requirement to be met by an over-BASE budget amount, a district levy as provided in 20-9-303, and any additional financing as provided in 20-9-353 to determine any additional general fund levy requirements.

(2) ~~The~~ *Subject to [section 1], the* county superintendent shall calculate the number of mills to be levied on the taxable property in the district to finance the general fund levy requirement for any amount that does not exceed the BASE budget amount for the district by dividing the amount determined in subsection (1)(c) by the sum of:

(a) the amount of guaranteed tax base aid that the district will receive for each mill levied, as certified by the superintendent of public instruction; and

(b) the taxable valuation of the district divided by 1,000.

(3) The net general fund levy requirement determined in subsections (1)(c) and (1)(d) must be reported to the county commissioners on the fourth Monday of August by the county superintendent as the general fund net levy requirement for the district, and a levy must be set by the county commissioners in accordance with 20-9-142.

(4) For each school district, the department of revenue shall calculate and report to the county superintendent the amount of revenue anticipated for the ensuing fiscal year from revenue from coal gross proceeds under 15-23-703."

Section 107. Section 20-9-142, MCA, is amended te read:

HeinOnline -- 1999 vol. III 2786 1999

"20-9-142. Fixing and levying taxes by board of county commissioners. On the fourth Monday in August, the county superintendent shall place before the board of county commissioners the final adopted budget of the district. ~~It~~ *Subject to [section 1], it* is the duty of the board of county commissioners to fix and levy on all the taxable value of all the real and personal property within the district all district and county taxation required to finance, within the limitations provided by law, the final budget."

Section 108. Section 20-9-151, MCA, is amended to read:

"20-9-151. Budgeting procedure for joint districts. (1) The trustees of a joint district shall adopt a budget according to the school budgeting laws and send a copy of ~~such~~ *the* budget to the county superintendent of each county in which a part of the joint district is located. After approval by the trustees of the joint district the final budgets of joint districts ~~shall~~ *must* be filed in the office of the county superintendent of each county in which a part of a joint district is located.

(2) The county superintendents receiving the budget of a joint district shall jointly compute the estimated budget ~~revenues~~ *revenue* and determine the number of mills ~~which~~ *that* need to be levied in the joint district for each fund for which a levy is to be made. The superintendent of public instruction shall establish a communication procedure to facilitate the joint estimation of ~~revenues~~ *revenue* and determination of the tax levies.

(3) After determining, in accordance with law *and subject to [section 1]*, the number of mills ~~which~~ *that* need to be levied for each fund included on the final budget of the joint district, a joint statement of the required mill levies ~~shall~~ *must* be prepared and signed by the county superintendents involved in the computation. A copy of the statement ~~shall~~ *must* be delivered to the board of county commissioners of each county in which a part of the joint district is located not later than the Friday immediately preceding the second Monday in August."

Section 109. Section 20-9-152, MCA, is amended to read:

"20-9-152. Fixing and levying taxes for joint districts. (1) At the time of fixing levies for county and school purposes on the second Monday in August, the board of county commissioners of each county in which a part of a joint district is located shall, *subject to [section 1]*, fix and levy taxes on that portion of the joint district located in ~~such~~ *each* board's county at the number of mills for each ~~such~~ levy recommended by the joint statement of the county superintendents.

(2) The board of county commissioners shall include in the amounts to be raised by the county levies for schools all the amounts required for the final budget of each part of a joint district located in the county, in accordance with the recommendations of the county superintendent."

Section 110. Section 20-9-168, MCA, is amended to read:

"20-9-168. Emergency budget amendment tax levy. When a budget amendment has been adopted by the board of trustees under 20-9-161(2) and a district does not have sufficient funds, including insurance proceeds and reserves, to finance the budget amendment, the district may, *subject to [section 1]*, levy a tax in the ensuing school year to fund the expenditures authorized by the budget amendment. The amount levied may not exceed the unfunded amount of the budget amendment."

Section 111. Section 20-9-331, MCA, is amended to read:

HeinOnline -- 1999 vol. III 2787 1999

"20-9-331. Basic county tax for elementary equalization and other revenue for county equalization of elementary BASE funding program. (1) ~~The~~ *Subject to [section 1], the* county commissioners of each county shall levy an annual basic county tax of 33 mills on the dollar of the taxable value of all taxable property within the county, except for property subject to a tax or fee under 23-2-517, 23-2-803, 61-3-504, 61-3-521, 61-3-527, 61-3-529, 61-3-537, and 67-3-204, for the purposes of elementary equalization and state BASE funding program support. The revenue collected from this levy must be apportioned to the support of the elementary BASE funding programs of the school districts in the county and to the state general fund in the following manner:

(a) In order to determine the amount of revenue raised by this levy that is retained by the county, the sum of the estimated revenue identified in subsection (2) must be subtracted from the total of the BASE funding programs of all elementary districts of the county.

(b) If the basic levy and other revenue prescribed by this section produce more revenue than is required to repay a state advance for county equalization, the county treasurer shall remit the surplus funds to the state treasurer for deposit to the state general fund immediately upon occurrence of a surplus balance and each subsequent month, with any final remittance due no later than June 20 of the fiscal year for which the levy has been set.

(2) The revenue realized from the county's portion of the levy prescribed by this section and the revenue from the following sources must be used for the equalization of the elementary BASE funding program of the county as prescribed in 20-9-335, and a separate accounting must be kept of the revenue by the county treasurer in accordance with 20-9-212(1):

(a) the portion of the federal Taylor Grazing Act funds distributed to a county and designated for the elementary county equalization fund under the provisions of 17-3-222;

(b) the portion of the federal flood control act funds distributed to a county and designated for expenditure for the benefit of the county common schools under the provisions of 17-3-232;

(c) all money paid into the county treasury as a result of fines for violations of law, except money paid to a justice's court, and the use of which is not otherwise specified by law;

(d) any money remaining at the end of the immediately preceding school fiscal year in the county treasurer's accounts for the various sources of revenue established or referred to in this section;

(e) any federal or state money distributed to the county as payment in lieu of property taxation, including federal forest reserve funds allocated under the provisions of 17-3-213;

(f) gross proceeds taxes from coal under 15-23-703;

(g) oil and natural gas production taxes;

(h) anticipated local government severance tax payments for calendar year 1995 production as provided in 15-36-325; and

(i) anticipated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-504, 61-3-521, 61-3-527, 61-3-529, 61-3-537, and 67-3-204."

Section 112. Section 20-9-333, MCA, is amended to read:

HeinOnline -- 1999 vol. III 2788 1999

"20-9-333. Basic county tax for high school equalization and other revenue for county equalization of high school BASE funding program. (1) ~~The~~ *Subject to [section 1], the* county commissioners of each county shall levy an annual basic county tax of 22 mills on the dollar of the taxable value of all taxable property within the county, except for property subject to a tax or fee under 23-2-517, 23-2-803, 61-3-504, 61-3-521, 61-3-527, 61-3-529, 61-3-537, and 67-3-204, for the purposes of high school equalization and state BASE funding program support. The revenue collected from this levy must be apportioned to the support of the BASE funding programs of high school districts in the county and to the state general fund in the following manner:

(a) In order to determine the amount of revenue raised by this levy that is retained by the county, the sum of the estimated revenue identified in subsection (2) must be subtracted from the sum of the county's high school tuition obligation and the total of the BASE funding programs of all high school districts of the county.

(b) If the basic levy and other revenue prescribed by this section produce more revenue than is required to repay a state advance for county equalization, the county treasurer shall remit the surplus funds to the state treasurer for deposit to the state general fund immediately upon occurrence of a surplus balance and each subsequent month, with any final remittance due no later than June 20 of the fiscal year for which the levy has been set.

(2) The revenue realized from the county's portion of the levy prescribed in this section and the revenue from the following sources must be used for the equalization of the high school BASE funding program of the county as prescribed in 20-9-335, and a separate accounting must be kept of the revenue by the county treasurer in accordance with 20-9-212(1):

(a) any money remaining at the end of the immediately preceding school fiscal year in the county treasurer's accounts for the various sources of revenue established in this section;

(b) any federal or state money distributed to the county as payment in lieu of property taxation, including federal forest reserve funds allocated under the provisions of 17-3-213;

(c) gross proceeds taxes from coal under 15-23-703;

(d) oil and natural gas production taxes;

(e) anticipated local government severance tax payments for calendar year 1995 production as provided in 15-36-325; and

(f) anticipated revenue from property taxes and fees imposed under 23-2-517, 23-2-803, 61-3-504, 61-3-521, 61-3-527, 61-3-529, 61-3-537, and 67-3-204."

Section 113. Section 20-9-360, MCA, is amended to read:

"20-9-360. State equalization aid levy. ~~There~~ *Subject to [section 1], there* is a levy of 40 mills imposed by the county commissioners of each county on all taxable property within the state, except property for which a tax or fee is required under 23-2-517, 23-2-803, 61-3-504, 61-3-521, 61-3-527, 61-3-529, 61-3-537, and 67-3-204. Proceeds of the levy must be remitted to the state treasurer and must be deposited to the credit of the state general fund for state equalization aid to the public schools of Montana."

Section 114. Section 20-9-404, MCA, is amended to read:

HeinOnline -- 1999 vol. III 2789 1999

"**20-9-404. Contracts and bonds for joint construction.** The trustees of a school district may enter into a contract with the trustees of any school district within the county or with any school district in an adjoining county to provide for the joint construction of a facility upon terms and conditions mutually agreed upon between the districts. The trustees of any district executing a contract in accordance with this section may, *subject to [section 1]*, levy taxes and issue honds for the purpose of constructing the facilities authorized by this section."

Section 115. Section 20-10-147, MCA, is amended to read:

"**20-10-147. Bus depreciation reserve.** (1) The trustees of a district owning a bus or a two-way radio used for purposes of transportation, as defined in 20-10-101, or for purposes of conveying pupils to and from school functions or activities may establish a bus depreciation reserve fund to be used for the conversion, remodeling, or rebuilding of a bus or for the replacement of a bus or radio.

(2) Whenever a bus depreciation reserve fund is established, the trustees may include in the district's budget, in accordance with the school budgeting provisions of this title, an amount each year that does not exceed 20% of the original cost of a bus or a two-way radio. The amount budgeted may not, over time, exceed 150% of the original cost of a bus or two-way radio. The annual revenue requirement for each district's bus depreciation reserve fund, determined within the limitations of this section, must be reported by the county superintendent to the county commissioners on the fourth Monday of August as the bus depreciation reserve fund levy requirement for that district, and *subject to [section 1]*, a levy must be made by the county commissioners in accordance with 20-9-142.

(3) Any expenditure of bus depreciation reserve fund money must be within the limitations of the district's final bus depreciation reserve fund budget and the school financial administration provisions of this title and may be made only to convert, remodel, or rebuild buses or to replace the buses or radios for which the bus depreciation reserve fund was created.

(4) Whenever the trustees of a district maintaining a bus depreciation reserve fund sell all of the district's buses and consider it to be in the best interest of the district to transfer any portion or all of the bus depreciation reserve fund balance to any other fund maintained by the district, the trustees shall submit the proposition to the electors of the district. The electors qualified to vote at the election shall qualify under 20-20-301, and the election must be called and conducted in the manner prescribed by this title for school elections. If a majority of those electors voting at the election approve the proposed transfer from the bus depreciation reserve fund, the transfer is approved and the trustees shall immediately order the county treasurer to make the approved transfer."

Section 116. Section 20-15-305, MCA, is amended to read:

"**20-15-305. Adult education tax levy.** A community college ~~shall be~~ *is* considered a district for the purposes of adult education and under the provisions for adult education may, *subject to [section 1]*, levy a 1-mill tax for the support of its adult education program when the superintendent of public instruction approves ~~such~~ *the* program."

Section 117. Section 20-15-311, MCA, is amended to read:

"**20-15-311. Funding sources.** The annual operating budget of a community college district ~~shall~~ *must* be financed from the following sources:

(1) the estimated ~~revenues~~ *revenue* to be realized from student tuition and fees, except ~~those~~ *revenue* related to community service courses as defined by the board of regents;

(2) *subject to [section 1],* a mandatory mill levy on the community college district;

(3) *subject to [section 1],* the 1-mill adult education levy authorized under provisions of 20-15-305;

(4) the state general fund appropriation;

(5) an optional voted levy on the community college district that ~~shall~~ *must* be submitted to the electorate in accordance with general school election laws;

(6) all other income, revenue, balances, or reserves not restricted by a source outside the community college district to a specific purpose;

(7) income, revenue, balances, or reserves restricted by a source outside the community college district to a specific purpose. Student fees paid for community service courses as defined by the board of regents ~~shall be~~ *are* considered restricted to a specific purpose;

(8) income from a political subdivision that is designated a community college service region under 20-15-241."

Section 118. Section 20-15-313, MCA, is amended to read:

"**20-15-313. Tax levy.** On the second Monday in August, the board of county commissioners of any county where a community college district is located shall, *subject to [section 1],* fix and levy a tax on all the real and personal property within the community college district at the rate required to finance the mandatory mill levy prescribed by ~~subsection (1)(b) of~~ 20-15-312*(1)(b)* and the voted levy prescribed by ~~subsection (5) of~~ 20-15-311*(5)* if one has been approved by the voters. When a community college district has territory in more than one county, the board of county commissioners in each county shall fix and levy the community college district tax on all the real and personal property of the community college district situated in its county."

Section 119. Section 20-15-314, MCA, is amended to read:

"**20-15-314. Tax levy for community college service region.** A *Subject to [section 1], a* governing body designating a community college service region as provided in 20-15-241 may levy a tax on all real and personal property within the region at a rate required to finance the services offered by a community college district for the region. The levy is in addition to any other levies allowed by law and is not subject to any statutory or charter limitations on levies *other than [section 1].* The levy must be made at the same time and in the same manner as the general levy of the political subdivision designating the region is made, and the ~~revenues~~ *revenue* generated ~~thereby~~ must be collected at the same time and in the same manner. Within 30 days of collection, the appropriate ~~revenues~~ *revenue* must be transmitted to the participating community college district."

Section 120. Section 20-15-326, MCA, is amended to read:

"**20-15-326. Determination of available financing — fixing and levying property taxation for emergency budget.** (1) After the last day of

HeinOnline -- 1999 vol. III 2791 1999

the fiscal year for which an emergency budget has been adopted, the board of trustees shall determine the amount of the cash balance that is available to finance the emergency budget's outstanding warrants or registered warrants for each fund included on the emergency budget. The available amount of the cash balance of each fund must be determined by deducting from the county treasurer's yearend cash balance for the fund the outstanding warrants or registered warrants issued under the regularly adopted final budget for the fund and the cash reserve for the fund that the trustees have established, within the limitations of law, for the following fiscal year.

(2) The county treasurer shall prepare and deliver a statement on the financial cash status of each fund included on an emergency budget for a district that had an emergency budget during the preceding year to the board of county commissioners by the first Monday in August. The statement for each district emergency budget must include:

(a) the total amount of emergency warrants that are registered against each fund of the district; and

(b) the additional amount of money that is required to finance the registered warrants and interest on the warrants and that must be raised by a tax levy.

(3) For each fund of the emergency budget of each district requiring a tax levy as established by subsection (2)(b), the board of county commissioners shall, *subject to [section 1] and* at the time all other district and county taxes are fixed and levied, levy a tax on the taxable property of each applicable district that will raise sufficient financing to pay the amount established by the county treasurer."

Section 121. Section 20-25-423, MCA, is amended to read:

"20-25-423. State tax levy — support of public education institutions. ~~The~~ *Subject to [section 1], the* legislature shall levy a property tax of not more than 6 mills on the taxable value of all real and personal property each year for 10 years beginning with the year 1999. All revenue from this property tax levy must be appropriated for the support, maintenance, and improvement of the Montana university system."

Section 122. Section 20-25-439, MCA, is amended to read:

"20-25-439. Vocational-technical education — mill levy required. (1) ~~The~~ *Subject to [section 1], the* boards of county commissioners of Cascade, Lewis and Clark, Missoula, Silver Bow, and Yellowstone Counties shall in each calendar year levy a tax of 1 1/2 mills on the dollar value of all taxable property, real and personal, located within the respective county.

(2) The funds from the mill levy must be deposited in the general fund and must be distributed for vocational-technical education on the basis of budgets approved by the board of regents."

Section 123. Section 22-1-304, MCA, is amended to read:

"22-1-304. Tax levy — special library fund — bonds. (1) ~~The~~ *Subject to [section 1], the* governing body of any city or county ~~which~~ *that* has established a public library may levy in the same manner and at the same time as other taxes are levied a special tax in the amount necessary to maintain adequate public library service, not to exceed 5 mills on the dollar, upon all property in ~~such~~ *the* county ~~which~~ *that* may be levied by the governing body of ~~such~~ *the* county and not to exceed 7 mills on the dollar upon all property in ~~such~~ *the* city ~~which~~ *that* may be levied by the governing body of ~~such~~ *the* city.

HeinOnline -- 1999 vol. III 2792 1999

(2) (a) The governing body of any city or county may by resolution submit the question of exceeding the maximum tax levy provided in subsection (1) to a vote of the qualified electors ~~thereof~~ at the next ~~general~~ *appropriate* election. ~~Such~~ *The* resolution must be adopted at least 75 days prior to the ~~general~~ election at which the question will be voted on.

(b) Upon *a* petition heing filed with the governing hody and signed by not less than 5% of the resident taxpayers of any city or county requesting an election for the purpose of exceeding the maximum mill levy, the governing body shall submit to a vote of the qualified electors ~~thereof~~ at the next ~~general~~ election the question of exceeding the maximum mill levy. ~~Such~~ *The* petition must he delivered to the governing body at least 90 days prior to the ~~general~~ election at which the question will be voted on.

(c) The question ~~shall~~ *must* be suhmitted by ballots upon which the words "FOR exceeding the ... mill maximum levy and authorizing an additional ... mill(s) for the lihrary" and "AGAINST exceeding the ... mill maximum lihrary levy" ~~shall~~ appear, with a square hefore each proposition and a direction to insert an "X" mark in the square before one or the other of the propositions.

(d) The votes cast for the adoption or rojection of the question must he canvassed, and:

(i) if a majority of the voters voting on the question vote to exceed the maximum mill levy, the governing body shall levy the additional tax for the year in which the vote was taken; or

(ii) if a majority of the voters voting on the question vote to not exceed the maximum mill levy, the maximum mill levy may not be exceeded.

(3) The municipal tax authorized in this section is in addition to all other taxes authorized by law and is not within the all-purpose mill levy established by 7-6-4451 through 7-6-4453.

(4) The proceeds of ~~such~~ *the* tax ~~shall~~ constitute a separate fund called the public library fund and ~~shall~~ *may* not be used for any purpose except those of the public library.

(5) ~~No money shall~~ *Money may not* he paid out of the public library fund by the treasurer of the city or county except by order or warrant of the board of library trustees.

(6) Bonds may be issued by the governing body in the manner prescribed by law for tlie erection and equipment of public lihrary buildings and the purchase of land ~~therefor~~ *for public library buildings*."

Section 124. Section 22-1-316, MCA, is amended to read:

"22-1-316. Joint city-county library. (1) A county and any city or cities within the county, by action of tlieir respective governing hodies, may join in establishing and maintaining a joint city-county library under the terms of a contract agreed upon by all parties.

(2) Tlie expenses of a joint city-county lihrary ~~shall~~ *must* be apportioned between or among the county and cities on ~~such a~~ *the* basis ~~as shall be~~ agreed upon in the contract.

(3) ~~The~~ *Subject to [section 1], the* governing body of any city or county entering into a contract may levy a special tax as provided in 22-1-304 for the estahlishment and operation of a joint city-county lihrary.

HeinOnline -- 1999 vol. III 2793 1999

(4) The treasurer of the county or of a participating city within the county, as ~~shall be~~ provided in the contract, ~~shall have~~ *has* custody of the funds of the joint city-county library, and the other treasurers of the county or cities joining in the contract shall transfer quarterly to ~~him~~ *the designated treasurer* all ~~moneys~~ *money* collected for the joint city-county library.

(5) The contract ~~shall~~ *must* provide for the disposition of property upon dissolution of the joint city-county library."

Section 125. Section 23-4-303, MCA, is amended to read:

"23-4-303. Licensee's right to withhold deposits. ~~In the event any~~ *Subject to [section 1], if a* government or governmental agency imposes a levy on a licensee by a special tax on the money ~~so~~ deposited under the parimutuel system or upon or against ~~his~~ *a licensee's* receipts ~~therefrom~~, the ~~said~~ licensee may withhold in addition to the ~~aforesaid~~ percent and breakage *provided for in 23-4-302* the amount of the tax ~~so~~ levied."

Section 126. Section 41-5-1804, MCA, is amended to read:

"41-5-1804. Regional detention facilities. (1) Two or more counties may, by contract, estahlish and maintain a regional detention facility.

(2) For the purpose of establishing and maintaining a regional detention facility, a county may:

(a) issue general obligation honds for the acquisition, purchase, construction, renovation, and maintenance of a regional detention facility;

(b) *subject to [section 1],* levy and appropriate taxes, as permitted by law, to pay its share of the cost of equipping, operating, and maintaining the facility; and

(c) exercise all powers, under the limitations prescribed by law, necessary and convenient to carry out the purposes of 41-5-1803 and this section.

(3) Contracts authorized under subsection (1) must be made pursuant to the Interlocal Cooperation Act, Title 7, chapter 11, part 1.

(4) Contracts hetween counties participating in a regional detention facility must:

(a) specify the responsibilities of each county participating in the agreement;

(b) designate responsibility for operation of the regional detention facility;

(c) specify the amount of funding to be contributed by each county toward payment of the cost of establishing, operating, and maintaining the regional detention facility, including the necessary expenditures for the transportation of youth to and from the facility;

(d) include the applicable per diem charge for the detention of youths in the facility, as well as the basis for any adjustment in the charge; and

(e) specify the number of beds to be reserved for the use of each county participating in the regional detention facility."

Section 127. Section 50-2-111, MCA, is amended to read:

"50-2-111. City-county board appropriations. If a city-county board is created, it is financed by one of the following methods:

(1) (a) The county commissioners and governing body of each participating city may mutually agree upon the division of expenses.

HeinOnline -- 1999 vol. III 2794 1999

(b) The county's part of the total expenses is financed by an appropriation from the general fund of the county after approval of a budget in the way provided for other county offices and departments under Title 7, chapter 6, part 23.

(c) Each participating city's part of the total expenses is financed by an appropriation from the general fund of the city after approval of a budget in the way provided for other city offices and departments under Title 7, chapter 6, part 42.

(d) All money must be deposited with the county treasurer who shall disburse the money as county funds.

(2) (a) The county commissioners and governing body of each participating city may mutually agree upon the division of the expenses.

(b) ~~The~~ *Subject to [section 1], the* county's part of the total expenses is financed by a special levy of not more than 5 mills on the taxable valuation of all property outside the incorporated limits of each participating city after approval of a budget in the way provided for other county offices and departments under Title 7, chapter 6, part 23. If the 5-mill levy is not sufficient to fund the county's share, the county commissioners may supplement it with an appropriation from the county general fund.

(c) ~~Each~~ *Subject to [section 1], each* participating city's part of the total expenses is financed by a special levy of not more than 5 mills on the taxable valuation of all property within the incorporated limits of the city after approval of a budget in the way provided for other city offices and departments under Title 7, chapter 6, part 42.

(d) All money must be deposited with the county treasurer who shall disburse the money as county funds.

(e) The special levies authorized by this subsection are in addition to all other levies authorized by law."

Section 128. Section 50-2-114, MCA, is amended to read:

"50-2-114. Special mill levy. ~~If~~ *Subject to [section 1], if* the general fund of a city or county is not sufficient to meet the approved budget, a levy of not more than 1 mill may be made on the taxable valuation of all property in the city or county in addition to all other levies authorized by law. This section does not apply when the board has been financed under 50-2-111(2)."

Section 129. Section 53-2-322, MCA, is amended to read:

"53-2-322. County to levy taxes, budget, and make expenditures for public assistance activities. (1) ~~The~~ *Subject to [section 1], the* board of county commissioners in each county shall levy 13.5 mills for the county poor fund as provided by law or so much of that amount as may be necessary. The board may levy up to an additional 12 mills if approved by the voters in the county. ~~A~~ *Subject to [section 1], a* county shall levy sufficient mills to reimburse the state for any administrative or operational costs in excess of the administrative and operational costs for the previous fiscal year. The department of public health and human services shall notify the counties of the number of mills required to be levied. Once an additional levy has been approved, the amount of the approved levy may continue to be levied without voter approval.

(2) The board shall budget and expend so much of the funds in the county poor fund for:

HeinOnline -- 1999 vol. III 2795 1999

(a) public assistance as necessary to reimburse the department for the county's proportionate share of the administrative costs and of all public assistance costs;

(b) salaries, travel expenses, and indirect costs, as provided in 52-1-110, of protective services employees of the department; and

(c) the county's proportionate share of any other public assistance activity that may be carried on jointly by the state and the county.

(3) The amounts set up in the budget for the reimbursements to the department must be sufficient to make all of these reimbursements in full. The budget must make separate provision for each public assistance activity and for salaries, travel expenses, and indirect costs for protective services activities of the department. Proper accounts must be established for the funds for all the activities.

(4) The department shall submit to the counties, no later than May 10, the most current county participation percentages that are necessary to establish preliminary county budgets. As soon as the county proposed budget provided for in 7-6-2315 has been agreed upon, a copy must be mailed to the department, and at any time before the final adoption of the budget, the department shall make recommendations with regard to changes in any part of the budget relating to the county poor fund as considered necessary in order to enable the county to discharge its obligations under the public assistance laws.

(5) The department shall promptly examine the county proposed budget in order to ascertain if the amounts provided for reimbursements to the department are likely to be sufficient and shall notify the county clerk of its findings. The board shall make changes in the amounts provided for reimbursements, if any are required, in order that the county will be able to make the reimbursements in full.

(6) The board of county commissioners may not make any transfer from the amounts budgeted for reimbursing the department without having first obtained a statement in writing from the department to the effect that the amount to be transferred will not be required during the fiscal year for the purposes for which the amounts were provided in the budget.

(7) The county poor fund, irrespective of the source of any part of the fund, may not be used directly or indirectly for the erection or improvement of any county building ~~so~~ *as* long as the fund is needed for paying the county's proportionate share of public assistance and protective services, as described in 52-1-110, or its proportionate share of any other public assistance activity that may be carried on jointly by the state and the county. Expenditures for improvement of any county buildings used directly for care of the poor, except a county hospital or county nursing home, may be made out of money in the county poor fund, whether the money was produced by the mill levy provided for in subsection (1) or from any additional levy authorized by law. The expenditure may be authorized only when any county building used for the care of the poor must be improved in order to meet legal standards required for the building by the department and when the expenditure has been approved by the department.

(8) Money in the county poor fund may be used as matching funds for the receipt of federal money."

Seetion 130. Section 53-2-813, MCA, is amended to read:

HeinOnline -- 1999 vol. III 2796 1999

"53-2-813. Mill levy for counties transferring public assistance and protective services. (1) For the purpose of this part *and subject to [section 1]*, 9 mills must be levied annually in those counties opting for state assumption.

(2) For a county electing state assumption, the proceeds of the mill levy established in subsection (1) must be deposited in the state special revenue fund in the state treasury to the credit of the department of public health and human services."

Section 131. Section 53-20-208, MCA, is amended to read:

"53-20-208. Contributions of counties and municipalities. (1) The boards of county commissioners of the several counties and the governing bodies of municipalities of this state may, in their discretion, contribute to any developmental disabilities facility approved by the department, without regard to whether ~~they are~~ *the facility is* within or outside of their respective jurisdictions. ~~The~~ *Subject to [section 1], the* boards of county commissioners of the counties may levy a tax up to but not to exceed 1 mill on each dollar of taxable property within the county~~, which shall be~~ *. The tax is* in addition to all other county tax levies. All proceeds of the tax, if levied, ~~shall~~ *must* be used for the sole purpose of support of developmental disabilities services.

(2) For the purpose of carrying out the provisions of this section, boards of county commissioners and governing bodies of municipalities may appropriate out of the general fund of their respective counties or municipalities."

Section 132. Section 67-10-402, MCA, is amended to read:

"67-10-402. Tax levy. (1) ~~For~~ *Subject to [section 1] and for* the purpose of establishing, constructing, equipping, maintaining, and operating airports, landing fields, and ports under the provisions of this chapter and as provided in Title 7, chapter 14, part 11, the county commissioners or the city or town council may each year assess and levy, in addition to the annual levy for general administrative purposes or the all-purpose levy authorized by 7-6-4451 and 7-6-4452, a tax on the dollar of taxable value of the property of said county, city, or town:

(a) not to exceed 2 mills for airports and landing fields; and

(b) not to exceed 2 mills for ports.

(2) In the event of a jointly established airport, landing field, or port, the county commissioners and the council or councils involved shall determine in advance the levy necessary for ~~such~~ *those* purposes and the proportion each political subdivision joining in the venture ~~must~~ *is required to* pay.

(3) ~~No property~~ *Property* within any political subdivision may *not* be subject to a tax pursuant to this section at an annual rate in excess of 2 mills for airports, landing fields, or ports unless it is found that the levy is insufficient for the purposes enumerated. In ~~such a~~ *that* case the commissioners and councils ~~acting~~ are authorized and empowered to contract an indebtedness on behalf of ~~such~~ *the* county, city, or town~~, as the case may be, upon the credit thereof~~ by borrowing money or issuing bonds for ~~such~~ *those* purposes~~, provided that no~~ *. However,* bonds may *not* be issued ~~for such purpose~~ until the proposition has been submitted to the qualified electors and *approved by* a majority vote ~~cast therefor~~, except as provided in subsection (4).

HeinOnline -- 1999 vol. III 2797 1999

(4) For the purpose of establishing a reserve fund to resurface, overlay, or improve existing runways, taxiways, and ramps, the governing bodies may set up annual reserve funds in their annual budget if:

(a) the reserve is approved by the governing bodies during the normal budgeting procedure;

(b) the necessity to resurface or improve ~~said~~ runways by overlays or similar methods every so many years is based upon competent engineering estimates; and

(c) the funds are expended at least within each 10-year period.

(5) The reserve fund may not exceed at any time a competent engineering estimate of the cost of resurfacing or overlaying the existing runways, taxiways, and ramps of any one airport for each fund. The governing body of the airport or port, if in its judgment it considers it advantageous, may invest the fund in any interest-bearing deposits in a state or national bank insured by the FDIC or obligations of the United States of America, either short-term or long-term. Interest earned from ~~such~~ *the* investments must be credited to the operations and maintenance budget of the airport or port governing body. ~~The above provisions, notwithstanding other budget control measures and due~~ *Due* to the uniqueness of the subject matter, *the provisions of this section* are declared necessary in the interests of the public health and safety."

Section 133. Section 67-11-201, MCA, is amended to read:

"67-11-201. General powers of authority. An authority ~~shall have~~ *has* all the powers necessary or convenient to carry out the purposes of this chapter, including, *subject to [section 1],* the power to certify annually to the governing bodies creating it the amount of tax to be levied by ~~said~~ *the* governing bodies for airport purposes and including but not limited to the power to:

(1) sue and be sued, have a seal, and have perpetual succession;

(2) execute ~~such~~ contracts and other instruments and take such other action as may be necessary or convenient to carry out the purposes of this chapter;

(3) plan, establish, acquire, develop, construct, purchase, enlarge, improve, maintain, equip, operate, regulate, and protect airports and air navigation facilities, within this state and within any adjoining state, including the acquisition, construction, installation, equipment, maintenance, and operation at ~~such~~ *the* airports or buildings and other facilities for the servicing of aircraft or for comfort and accommodation of air travelers and the purchase and sale of supplies, goods, and commodities ~~as~~ *that* are incident to the operation of its airport properties. For ~~such~~ *the authorized* purposes, an authority may, by purchase, gift, devise, lease, eminent domain proceedings, or otherwise, acquire property, real or personal, or any interest ~~therein~~ *in property*, including easements in airport hazards or land outside the boundaries of an airport or airport site, ~~as~~ *that* is necessary to permit the removal, elimination, obstruction-marking, or obstruction-lighting of airport hazards or to prevent the establishment of airport hazards.

(4) establish comprehensive airport zoning regulations in accordance with the laws of this state;

(5) acquire, by purchase, gift, devise, lease, eminent domain proceedings, or otherwise, existing airports and air navigation facilities; provided, however, an authority ~~shall~~ *may* not acquire or take over any airport or air navigation facility

HeinOnline -- 1999 vol. III 2798 1999

owned or controlled by another authority, a municipality, or public agency of this or any other state without the consent of ~~such~~ *the* authority, municipality, or public agency;

(6) establish or acquire and maintain airports in, over, and upon any public waters of this state~~,~~ *or* any submerged lands under ~~such~~ public waters, provided that the authority has obtained the approval of the owner or agency that controls the water, and construct and maintain terminal buildings, landing floats, causeways, roadways, and bridges for approaches to or connecting with any ~~such~~ airport and landing floats and breakwaters for the protection ~~thereof~~ *of the airport.*"

Section 134. Section 67-11-301, MCA, is amended to read:

"**67-11-301. Municipal tax levy.** The airport authority may certify annually to the governing bodies the amount of tax to be levied by each municipality participating in the creation of the airport authority, and *subject to [section 1],* the municipality shall levy the amount certified, pursuant to provisions of law authorizing cities and other political subdivisions of this state to levy taxes for airport purposes. The levy ~~made shall~~ *may* not exceed the maximum levy permitted by the laws of this state for airport purposes or any ~~such~~ lower limit ~~as~~ *that* may have been established by the municipality or municipalities in the resolution creating the authority. The municipality shall collect the taxes certified by an airport authority in the same manner as other taxes are levied and collected and make payment to the airport authority. The proceeds of ~~such~~ *the* taxes when and as paid to the airport authority ~~shall~~ *must* be deposited in a special account or accounts in which other ~~revenues~~ *revenue* of the authority are deposited and may be expended by the authority as provided for in this chapter. Prior to the issuance of bonds under 67-11-303, the airport authority or the municipality may by resolution covenant and agree that the total amount of ~~such~~ *the* taxes then authorized by law~~,~~ or ~~such~~ *the* portion ~~thereof~~ *of the taxes* as may be specified by the resolution~~,~~ will, *subject to [section 1],* be certified, levied, and deposited annually ~~as herein provided~~ until the bonds and interest ~~thereon~~ are fully paid."

Section 135. Section 67-11-302, MCA, is amended to read:

"**67-11-302. County tax levy.** ~~In~~ *Subject to [section 1], in* counties supporting airports or airport authorities, a levy as provided for in 67-10-402 may be made for ~~such~~ *airport authority* purposes."

Section 136. Section 75-10-112, MCA, is amended to read:

"**75-10-112. Powers and duties of local government.** A local government may:

(1) plan, develop, and implement a solid waste management system consistent with the state's solid waste plan and propose modifications to the state's solid waste plan;

(2) upon adoption of the state plan by the board, pass an ordinance or resolution to exempt the local jurisdiction from complying with the state plan and subsequent rules implementing the state plan. The ordinance or resolution must include a means to provide solid waste disposal to the citizens of the jurisdiction as required in part 2 of this chapter.

(3) employ appropriate personnel to carry out the provisions of this part;

HeinOnline -- 1999 vol. III 2799 1999

(4) purchase, rent, or execute leasing agreements for equipment and material necessary for the implementation of a solid waste management system;

(5) cooperate with and enter into agreements with any persons in order to implement an effective solid waste management system;

(6) receive gifts, grants, or donations or acquire by gift, deed, or purchase land necessary for the implementation of any provision of this part;

(7) enforce the rules of the department or a local board of health pertaining to solid waste management through the appropriate county attorney;

(8) apply for and utilize state, federal, or other available money for developing or operating a solid waste management system;

(9) borrow from any lending agency funds available for assistance in planning a solid waste management system;

(10) *subject to [section 1],* finance a solid waste management system through the assessment of a tax as authorized hy state law;

(11) sell on an installment sales contract or lease to a person all or a portion of a solid waste management system that the local gevernment plans, designs, or constructs, for the consideration and upon the terms established by the local governments and consistent with the loan requirements set forth in this part and rules adopted to implement this part;

(12) procure insurance against any loss in connection with property, assets, or activities;

(13) mortgago or otherwise encumber all or a portion of a solid waste management system when the local government finds that the action is necessary to implement the purposes of this part, as long as the action is consistent with the loan requirements set forth in this part and rules adopted to implement this part;

(14) bold or dispose of real property and, subject to agreements with lessors and lessees, develop or alter the property by making improvements or betterments for the purpose of enhancing the value and usefulness of the property;

(15) finance, design, construct, own, and operate a solid waste management system or contract for any or all of the powers authorized under this part;

(16) control the disposition of solid waste generated within the jurisdiction of a local government;

(17) enter into long-term contracts with local governments and private entities for:

(a) financing, designing, constructing, and operating a solid waste management system;

(b) marketing all raw or processed material recovered from solid waste;

(c) marketing energy products or byproducts resulting from processing or utilization of solid waste;

(18) finance an areawide solid waste management system through the use of any of the sources of revenue available to the implementation entity for public works projects, by the use of revenue bonds issued by the city or county, or by fees levied hy a solid waste managoment district, whichever is appropriate;

(19) enter into interlocal agreements in order to achieve and implement the powers enumerated in this part;

(20) regulate the siting and operation of container sites."

Section 137. Section 76-1-111, MCA, is amended to read:

"76-1-111. Representation of county or additional cities or towns on existing boards. (1) Any city, county, or town or any combination ~~thereof~~ *of cities, counties, or towns* wishing to be represented upon an existing planning board may, by agreement of the governing body or bodies then represented ~~upon~~ *on* the board, obtain representation ~~thereon~~ *on the board* and share in the membership duties and costs of the board upon a basis agreeable to the governing body or bodies creating the board.

(2) The membership as well as the jurisdictional area of any board may be increased to provide for representation and planning of any additional cities, counties, or towns seeking representation.

(3) Any city, county, or town ~~which~~ *that* becomes represented upon an existing planning board pursuant to this section may appropriate funds for expenses necessary to cover the costs of ~~such~~ representation. ~~The~~ *Subject to [section 1], the* governing bodies of any *represented* city or county ~~so being represented~~ may levy on all property ~~which~~ *that* is added to the jurisdictional area of an existing board by ~~such~~ representation a tax for planning board purposes under procedures set forth in Title 7, chapter 6, part 23 or part 42, whichever is applicable~~;~~. ~~provided such~~ *The* tax ~~shall~~ *may* not exceed the maximum levy authorized in 76-1-402 through 76-1-407."

Section 138. Section 76-1-403, MCA, is amended to read:

"76-1-403. Tax levy by county for certain county planning districts authorized. When a county planning board has been established, the board of county commissioners may create a planning district ~~which shall~~ *that must* include ~~that~~ *the* property ~~which~~ *that* lies outside the limits of the jurisdictional area as established pursuant to 76-1-504 through 76-1-507 or as modified pursuant to 76-1-501 through 76-1-503 in counties where a city-county planning board has been established as well as that property ~~which~~ *that* lies outside the limits of any incorporated cities and towns. ~~The~~ *Subject to [section 1], the* board of county commissioners may levy on all property located within ~~such~~ *the* planning district a tax not to exceed the maximum levy authorized by 76-1-405 for planning board purposes, under procedures set forth in Title 7, chapter 6, part 23."

Section 139. Section 76-1-404, MCA, is amended to read:

"76-1-404. Tax levy by county for city-county planning board authorized. When a city-county planning board has been established, the board of county commissioners may create a planning district ~~which shall~~ *that must* include ~~that~~ *the* property within the jurisdictional areas as established pursuant to 76-1-504 through 76-1-507 ~~which~~ *that* lies outside the limits of any incorporated cities and towns. ~~The~~ *Subject to [section 1], the* board of county commissioners may levy on all property located within ~~such~~ *the* planning district a tax for planning board purposes, under procedures set forth in Title 7, chapter 6, part 23~~;~~. ~~provided such~~ *The* tax ~~shall~~ *may* not exceed the maximum levy authorized in 76-1-405."

Section 140. Section 76-1-405, MCA, is amended to read:

HeinOnline -- 1999 vol. III 2801 1999

"76-1-405. Maximum county mill levy — authorization for levy. ~~The~~ *Subject to [section 1], the* tax levy for planning board purposes ~~shall be~~ *is further* limited as follows:

(1) A county of the first class, as defined in 7-1-2111, may levy a tax not to exceed 2 mills.

(2) A county of the second class may levy a tax not to exceed 3 mills.

(3) A county of the third class may levy a tax not to exceed 4 mills.

(4) A county of the fourth class may levy a tax not to exceed 5 mills.

(5) Counties of the fifth, sixth, and seventh classes may levy a tax not to exceed 6 mills."

Section 141. Section 76-1-406, MCA, is amended to read:

"76-1-406. Tax levy by municipalities authorized. ~~The~~ *Subject to [section 1], the* governing body of any city or town represented ~~upon~~ *on* a planning board may levy a tax upon the property located within ~~such~~ *the* city or town for planning board purposes, under procedures set forth in Title 7, chapter 6, part 42~~, provided such~~ *. The* tax ~~shall~~ *may* not exceed the maximum levy authorized in 76-1-407."

Section 142. Section 76-1-407, MCA, is amended to read:

"76-1-407. Maximum city mill levy. ~~The~~ *Subject to [section 1], the* tax levy for planning board purposes ~~shall be~~ *is further* limited as follows:

(1) A city of the first class, as defined in 7-1-4111, may levy a tax not to exceed 2 mills.

(2) A city of the second class may levy a tax not to exceed 4 mills.

(3) A city of the third class may levy a tax not to exceed 6 mills.

(4) A town may levy a tax not to exceed 6 mills."

Section 143. Section 76-2-102, MCA, is amended to read:

"76-2-102. Organization and operation of commission. (1) The *planning and zoning* commission ~~is to consist~~ *consists* of the three county commissioners, the county surveyor, and a county official appointed by the county commissioners. Members of the commission shall serve without compensation other than reimbursement for ~~duly~~ authorized expenses and must be residents of the county in which they serve.

(2) The commission may appoint necessary employees and fix their compensation with the approval of the board of county commissioners, select a presiding officer to serve for 1 year, appoint a secretary to keep permanent and complete records of its proceedings, and adopt rules governing the transaction of its business.

(3) ~~The~~ *Subject to [section 1], the* finances necessary for the transaction of the planning and zoning commission's business and to pay the expenses of the employees and justified expenses of the members of the board must be paid from a levy of not to exceed 1 mill on the taxable valuation of the real property within the district."

Section 144. Section 76-5-1116, MCA, is amended to read:

HeinOnline -- 1999 vol. III 2802 1999

"76-5-1116. Determination of fees and charges. (1) In fixing ~~such~~ *the* rate, fee, toll, or rent for water furnished for household use, domestic use, irrigation use, industrial use, and municipal use and for water used for streamflow stabilization, the governing body shall charge a fee sufficient to pay the proportionate share of the repairs, maintenance, and operating expenses as ~~such~~ *the* use bears in economic value to the total economic value of the total use of ~~said~~ *the* facilities of the project or projects. The economic value is to be determined by the governing body.

(2) For the benefits received by areas within the boundaries of the project or projects for flood prevention, flood control, and pollution abatement, the governing body shall determine a reasonable valuation or charge~~,~~. ~~which~~ *The* valuation or charge ~~shall~~ *must* be certified by ~~them~~ *the governing body* to the county commissioners prior to the time general taxes are levied and assessed. ~~It shall be the obligation of~~ *Subject to [section 1],* the county commissioners ~~to~~ *shall* levy a special assessment as provided for in 76-5-1113 and 76-5-1114 against ~~such~~ *the* area or areas sufficient to provide ~~revenues~~ *revenue* for the repairs, maintenance, and operating expenses of the project.

(3) For recreation use the governing body shall first determine the share of the costs of operation, repairs, and depreciation to be charged against ~~such~~ *recreation* uses and from this figure shall subtract the estimated amount of fees and tolls collected for ~~such~~ *recreation* uses. The deficiency, if any, ~~shall~~ *must* be certified to the county commissioners ~~in the same way as the charges for flood prevention, flood control, etc.,~~ and *subject to [section 1],* special assessments ~~shall~~ *must* be levied hy the county commissioners in the manner ~~set out herein~~ *provided in this section.*"

Section 145. Section 76-6-109, MCA, is amended to read:

"76-6-109. Powers of public bodies. (1) A puhlic body ~~shall have~~ *has* all the powers necessary or convenient to carry out the purposes and provisions of this chapter, including the following powers in addition to others granted by this chapter:

(a) to borrow funds and make expenditures necessary to carry out the purposes of this chapter;

(b) to advance or accept advances of public funds;

(c) to apply for and accept and utilize grants and any other assistance from the federal government and any other public or private sources, to give ~~such~~ security as may be required, to enter into and carry out contracts or agreements in connection with the assistance, and to include in any contract for assistance from the federal government ~~such~~ conditions imposed pursuant to federal laws as the public body may ~~deem~~ *consider* reasonable and appropriate and ~~which~~ *that* are not inconsistent with the purposes of this chapter;

(d) to make and execute contracts and other instruments necessary or convenient to the exercise of its powers under this chapter;

(e) in connection with the real property acquired or designated for the purposes of this chapter, to provide or to arrange or contract for the provision, construction, maintenance, operation, or repair by any person or agency, public or private, of services, privileges, works, streets, roads, public utilities, or other facilities or structures that may be necessary to the provision, preservation, maintenance, and management of the property as open-space land;

HeinOnline -- 1999 vol. III 2803 1999

(f) to insure or provide for the insurance of any real or personal property or operations of the public body against any risks or hazards, including the power to pay premiums on the insurance;

(g) to demolish or dispose of any structures or facilities ~~which~~ *that* may be detrimental to or inconsistent with the use of real property as open-space land; and

(h) to exercise any or all of its functions and powers under this chapter jointly or cooperatively with public bodies of one or more states, if they are ~~so~~ authorized by state law, and with one or more public bodies of this state and to enter into agreements for joint or cooperative action.

(2) For the purposes of this chapter, the state or a city, town, other municipality, or county may:

(a) appropriate funds;

(b) *subject to [section 1],* levy taxes and assessments according to existing codes and statutes not to exceed 1 mill;

(c) issue and sell its general obligation bonds in the manner and within the limitations prescribed by the applicable laws of the state; and

(d) exercise its powers under this chapter through a board or commission or through ~~such~~ *the* office or officers ~~as~~ *that* its governing body by resolution determines or as the governor determines in the case of the state."

Section 146. Section 76-15-501, MCA, is amended to read:

"76-15-501. Financial management. A conservation district and the supervisors ~~thereof shall~~ *of the district* have the power to:

(1) borrow money and incur indebtedness and issue bonds or other evidence of ~~such~~ indebtedness;

(2) also refund or retire an indebtedness or lien that may exist against the district or property ~~thereof~~ *of the district*;

(3) fix and revise as necessary and collect rates, fees, tolls, rents, or other charges for the use of or for services, facilities, and materials furnished or provided, and ~~revenues~~ *revenue* from these sources may be expended in carrying out the purposes and previsions of this chapter;

(4) *subject to [section 1],* cause taxes to be levied in the same manner provided for in this part for the purpose of paying any obligation of the district and to accomplish the purposes of this chapter in the manner ~~herein~~ provided *in this chapter*;

(5) apply for and receive federal revenue sharing funds in order to carry out the purposes and provisions of this chapter;

(6) establish a conservation practice loan program as provided in this part."

Section 147. Section 76-15-516, MCA, is amended to read:

"76-15-516. Levy of regular and special assessments. (1) ~~The~~ *Subject to [section 1], the* board of county commissioners of each county in which any portion of the district lies may, annually at the time of levying county taxes, levy an assessment on the taxable real property within the district. The levy must be known as the ".... (name of district) conservation district regular assessment"

HeinOnline -- 1999 vol. III 2804 1999

and must be sufficient to raise the amount reported to the county commissioners in the estimate of the supervisors.

(2) Subject to the conditions of *[section 1],* 76-15-531, and 76-15-532, the board of county commissioners of each county in which any portion of the district lies may, annually at the time of levying county taxes, levy an assessment on the taxable real property within the district. The levy must be known as the ".... (name of district) conservation district special administrative assessment" and must be sufficient to raise the amount reported to the county commissioners in the estimate of the supervisors.

(3) ~~The~~ *Subject to [section 1], the* board of county commissioners of each county in which any portion of a project area lies may, annually at the time of levying county taxes, levy an assessment not to exceed 3 mills on the taxable real property within the project area. The levy must be known as ".... (name of the project area) special assessment" and must be sufficient to raise the amount reported to the county commissioners in the estimate of the supervisors."

Section 148. Section 76-15-518, MCA, is amended to read:

"76-15-518. Certification of assessment to department of revenue — entry on property tax record. ~~The~~ *Subject to [section 1], the* board of county commissioners of each county in which any portion of the district is situated may levy the assessment provided in ~~this part or~~ part 6 *or this part.* The assessment must be certified to the department of revenue and entered on the property tax record of each county."

Section 149. Section 76-15-623, MCA, is amended to read:

"76-15-623. Administration of special assessment. (1) ~~When~~ *Subject to [section 1], when* the board or boards of supervisors have determined that a special assessment is necessary, the board of county commissioners of ~~such~~ *the* county in which there lies any portion of a project area shall annually at the time of levying county taxes levy a special assessment of the taxable real property in the project area, not to exceed 3 mills. ~~It shall~~ *The levy must* be known as the "....(name of district) soil and water conservation district special assessment" and ~~shall~~ *must* be sufficient to raise the income reported to it in the estimate of the supervisors.

(2) Each lot or parcel of land to be assessed ~~shall~~ *must* be assessed with that part of the amount of money required ~~which~~ *that* its taxable valuation bears to the total taxable valuation of all the lands to be assessed."

Section 150. Section 81-8-504, MCA, is amended to read:

"81-8-504. Tax levy authorized. For the purpose of defraying the costs of such purebred livestock shows and ~~such~~ purebred livestock sales, the county commissioners are authorized ~~and empowered~~, *subject to [section 1],* to levy annually a tax not to exceed one-fourth mill on the taxable property of the county, in excess of the amount levied for county purposes~~;~~. ~~which~~ *The* taxes ~~shall~~ *must* be paid into the general fund of the county."

Section 151. Section 85-3-422, MCA, is amended to read:

"85-3-422. Tax certified by weather modification authority — disposition of proceeds. (1) The authority may certify annually to the board of county commissioners a tax of not to exceed 2 mills upon the taxable valuation of the property in the county for a weather modification fund. ~~The~~ *Subject to [section 1], the* tax must be levied by the board of county commissioners and may

HeinOnline -- 1999 vol. III 2805 1999

be levied in excess of the mill levy limit fixed hy law for taxes for general county purposes. The weather modification fund may be used only for weather modification activities as provided by 85-3-424. The tax certified by the authority is limited to the period of existence of the authority.

(2) The money in the weather modification fund must be invested to earn interest at the rate most advantageous to the fund, consistent with law and prudent business practice."

Section 152. Section 85-7-206, MCA, is amended to read:

"**85-7-206. Basis and apportionment of annual tax.** ~~The~~ *Subject to [section 1], the* annual tax levy and the apportionment and distribution of the total amount required to be raised in any year ~~shall be had and done~~ *must be determined and imposed* in accordance with the provisions and limitations of law applicable to irrigation districts organized under the provisions of parts 1 and 15 of this chapter."

Section 153. Section 85-7-307, MCA, is amended to read:

"**85-7-307. Tax levy.** ~~The~~ *Subject to [section 1], the* annual tax levy and the apportionment and distribution of the total amount required to be raised in any year ~~shall be had and done~~ *must be determined and imposed* in accordance with the provisions and limitations of law applicable to other irrigation districts organized under parts 1 and 15 of this chapter."

Section 154. Section 85-7-1953, MCA, is amended to read:

"**85-7-1953. Amount owed United States — lien and special tax.** All amounts to be paid to the United States under any contract made ~~hereunder~~ *pursuant to this part* between the district and the United States ~~shall be~~ *are* a general obligation of the district, and ~~said~~ *the* amounts to be paid to the United States ~~shall be~~ *are* a lien upon the irrigation system of the district. ~~All~~ *Subject to [section 1], all* lands ~~now~~ within the district or ~~hereafter embraced within~~ *added to* the district ~~shall~~ *must* be subject to a special tax or assessment for the payment of all amounts to be paid to the United States under ~~any such~~ *the* contract between the district and the United States~~,~~ ~~and said~~ *The* special tax or assessment ~~shall constitute~~ *constitutes* a first and prior lien on the land against which *the tax or assessment is* levied to the same extent and with like force and effect as taxes levied for state and county purposes."

Section 155. Section 85-7-1973, MCA, is amended to read:

"**85-7-1973. Amount owed the state — lien and special tax.** All amounts owed to the state under any contract made under 85-7-1971 through 85-7-1975 between the district and the state of Montana establish a general obligation of the district for payment, and any amounts to be paid to the state of Montana constitute a lien upon the irrigation system of the district. ~~All~~ *Subject to [section 1], all* lands now within the district or ~~hereafter embraced within~~ *added to* the district are subject to a special tax or assessment for the payment of all amounts owed to the state under ~~such~~ *the* contract between the district and the state of Montana~~,~~ ~~and this~~ *The* special tax or assessment constitutes a first and prior lien on the land against which it is levied to the same extent and with the same force and effect as taxes levied for state and county purposes."

Section 156. Section 85-7-2104, MCA, is amended to read:

"**85-7-2104. Annual tax levy — apportionment when tracts divided.** (1) (a) On or before the second Monday in July each year, the board of

HeinOnline -- 1999 vol. III 2806 1999

commissioners of each irrigation district organized under parts 1 and 15 shall ascertain:

(i) the total amount required to be raised in that year for the general administrative expenses of the district, including the cost of maintenance and repairs; and

(ii) the total amount to be raised that year for interest on and principal of the outstanding bonded or other indebtedness of the district for which bonds of the district have not been deposited with the United States as provided in 85-7-1906.

(b) ~~The~~ *Subject to [section 1], the* board shall levy against each 40-acre tract or fractional lot, as designated by United States government survey, or platted lot if land is subdivided in lots and blocks (or where land is owned in less than 40-acre tracts or in less than the platted lot, against each tract) ~~of land~~ in the district, that portion of the respective total amounts to be raised which the total irrigable area of any tract or lot bears to the total irrigable area of the lands in the district, so that each acre of irrigable land in the district is assessed and required to pay the same amount as every other acre of irrigable land in the district, unless otherwise specifically provided by the board. The board may also charge the administrative charge authorized in 85-7-2103(1).

(c) Indebtedness under subsection (1) includes debt incurred under any contract between the district and the United States but excludes any indebtedness incurred by the district on behalf of a subdistrict.

(2) (a) On or before the second Monday in July each year, the board of commissioners of each irrigation district organized under parts 1 and 15 for which a subdistrict has been created pursuant to 85-7-404 shall determine the total amount to be raised that year for interest and principal payments on the outstanding bonded or other indebtedness of the district incurred on behalf of the subdistrict.

(b) The board shall levy against each 40-acre tract or fractional lot, as designated by United States government survey, or platted lot if land is subdivided in lots and blocks (or where land is owned in less than 40-acre tracts or in less than the platted lot, against each tract) in the subdistrict, the portion of the total amount to be raised apportioned according to the ratio of the total irrigable area of the tract or lot to the total irrigable area of the lands in the subdistrict, so that each acre of irrigable land in the subdistrict is assessed and required to pay the same amount as every other acre of irrigable land in the subdistrict, unless otherwise specifically provided by the board. The board may also charge the administrative charge authorized in 85-7-2103(1).

(3) In the event that the ownership of any 40-acre tract or other subdivision of land in the district or subdistrict is divided after a special tax or assessment against the land has been levied, each of the owners of a tract or subdivision is entitled to have the special tax or assessment equitably apportioned to and against the divisions of the tract or subdivision, so that each owner is enabled to pay a special tax or assessment against the owner's portion of the tract or subdivision and have the land discharged from the lien. The charge against any separately owned tract of land may not be less than $5."

Section 157. Section 85-7-2117, MCA, is amended to read:

"85-7-2117. Conclusiveness of tax or assessment. In determining the proper and just tax or assessment to be levied against any land for district

HeinOnline -- 1999 vol. III 2807 1999

purposes, the finding of the board of commissioners of the district, in the absence of fraud or mistake *and subject to [section 1],* ~~shall be~~ *are* conclusive and final, except as ~~herein~~ otherwise provided *in this part.*"

Section 158. Section 85-7-2134, MCA, is amended to read:

"85-7-2134. Levy of taxes and assessments by county commissioners. If for any reason a levy of taxes or assessments ~~shall~~ *is* not ~~be~~ made for any irrigation district in any year by the board of commissioners of ~~such~~ *the* district within the time provided by 85-7-2104, the board of county commissioners of the county in which ~~such~~ *the* district is situated shall, not later than the second Monday in August, ascertain the total amount to be raised for all purposes of ~~said~~ *the* district~~,~~. *Subject to [section 1], the board of county commissioners shall* make the levy ~~which~~ *that* should have been made by *the* board of commissioners of ~~such~~ *the* district~~,~~ and *shall* furnish the county clerk ~~of such county~~ with a list of the lands and the amount of taxes or assessments as provided in 85-7-2136~~,~~. ~~and such~~ *The* levy ~~so made shall have~~ *has* the same force and effect as though made by the board of commissioners of ~~such~~ *the* district. This section ~~shall apply~~ *applies* only to irrigation districts having a bonded indebtedness and actually in possession of a dependable water supply system and furnishing substantial amounts of water to bona fide users."

Section 159. Section 85-7-2136, MCA, is amended to read:

"85-7-2136. Collection of taxes or assessment. (1) ~~On~~ *Subject to [section 1] and on* or before the third Monday in August of each year, the board of commissioners shall furnish to the department of revenue a correct list of all the district lands in the county, together with the amount of the total taxes or assessments against the lands for district purposes. The department of revenue shall immediately upon receipt of the list enter the assessment roll in the property tax record of the county for each year.

(2) The county treasurer of each county in which any irrigation district is located, in whole or in part, shall collect and receipt for all taxes and assessments levied by the district, in the same manner and at the same time as is required in the collection of taxes upon real estate for county purposes as provided in 15-16-102. The treasurer shall receive from any taxpayer, at any time, the amount due on account of any district assessments of any kind, whether other taxes on the same real estate are paid or not.

(3) During the water delivery season, as determined by the irrigation district commissioners, the county treasurer shall make available to the board of commissioners of an irrigation district notice of the receipt of payments of district assessments by 9 a.m. on the day following receipt of those payments.

(4) If requested in writing by a board of commissioners of an irrigation district, the county treasurer may receive assistance from an employee of the irrigation district or a commissioner of the district for the purpose of collecting district assessments as provided in 15-16-102, investing district funds as directed by the board of commissioners of the district, and preparing district assessment notices.

(5) When any real estate on account of which the district taxes and assessments have been levied has been sold to the county and tax certificate of sale is held by the county, the taxpayer may pay to the treasurer at any time any semiannual installment of the district tax or assessment, together with the penalty and interest to date of payment on the installment. However, the

HeinOnline -- 1999 vol. III 2808 1999

payment may not he considered a redemption of the property from the tax sale but must be credited on account of any redemption that may he made. In case of any payment pursuant to this suhsection, a separate tax receipt must ~~issue,~~ *be issued* showing exactly what assessments have been paid~~,~~ and ~~must show~~ *showing* that no other tax on the real estate has been received by the treasurer. The county treasurer may not collect, receive, or receipt for any taxes levied for county purposes upon real estate situated wholly or in part within any irrigation district upon which an assessment for the purposes of the irrigation district has been levied unless the assessment levied for irrigation district purposes is *either* paid as permitted in this section and the receipt for the payment *is* presented to the county treasurer at the time the taxes are paid~~,~~ or paid at the ~~same~~ time *the irrigation district taxes are paid.*"

Seetion 160. Section 85-8-601, MCA, is amended to read:

"**85-8-601. Certification and collection of district taxes.** (1) ~~On~~ *Subject to [section 1] and on* or before the third Monday in August of each year, the commissioners shall certify to the department of revenue a correct list of all the district lands in each county and the owners of the lands, together with a statement of the amount of the total tax or assessment against the lands for district purposes for that year. The department of revenue shall immediately enter the assessment roll in the property tax record of the county for each year.

(2) The county treasurer of each county in which a drainage district is located, in whole or in part, shall collect and receipt for all taxes and assessments levied by the district~~,~~ in the same manner and at the same time as is required in the collection of taxes upon real estate for county purposes as provided in 15-16-102. However, the treasurer must receive from any taxpayer, at any time, the amount due on account of any district assessments of any kind, whether other taxes on the same real estate are paid or not. When any real estate on account of which the district taxes and assessments have been levied has been sold to the county and tax certificate of sale is held by tbe county, the taxpayer may pay to the treasurer at any time any semiannual installment of the district tax or assessment, together with the penalty and interest to date of payment on the installment. However, the payment may not be considered a redemption of the property from the tax sale, but must be credited on account of any redemption that may later be made. In case of any payment pursuant to this subsection, a separate tax receipt must be issued showing exactly what assessments have been paid and sbowing that no other tax on the real estate has been received by the treasurer. However, the county treasurer may not collect, receive, or receipt for any taxes levied for county purposes upon real estate situated wholly or in part within any drainage district upon which an assessment for the purposes of the drainage district has been levied unless the assessment levied for the drainage district purposes is either paid as provided in this section and the receipt is presented to the county treasurer at the time tbe real estate taxes are paid or paid at the time the drainage district taxes are paid."

Section 161. Section 85-8-615, MCA, is amended to read:

"**85-8-615. Proeedure to levy additional assessments.** ~~If~~ *Subject to [section 1], if* in the first assessment for construction the commissioners ~~shall have~~ reported to the court a smaller sum than is needed to complete the work of construction or if in any year an additional sum is necessary to pay the lawful indebtedness of ~~said~~ *the* drainage district, further or additional assessments on the land (including improvements where benefited) and corporations benefited,

HeinOnline -- 1999 vol. III 2809 1999

proportioned on the last assessment of benefits ~~which~~ *that* has been approved by the court, ~~shall~~ *must* be made by the commissioners of ~~said~~ *the* drainage district under the order of the court. ~~or presiding judge thereof; provided, however~~ *However*, ~~that~~ the total assessments for original construction and any additional assessments, other than for maintenance, incidental expense, and interest on bonds, ~~shall, in no event,~~ *may not* exceed the total assessments of benefits as provided in 85-8-342. Notice of the hearing of the application for ~~such~~ *the* additional assessment ~~shall~~ *must* be published at least once each week for 3 consecutive weeks in one newspaper published in each county in which ~~said~~ *the* lands, or any part ~~thereof~~ *of the lands*, within ~~said~~ *the* district are situated~~,~~. ~~which~~ *The* further or additional assessment may be made payable in installments as specified in 85-8-611 and ~~shall~~ *must* be treated and collected in the same manner as the original assessments for construction confirmed by the court in ~~said~~ *the* drainage district."

Section 162. Section 85-8-618, MCA, is amended to read:

"**85-8-618. Assessment of unasscssed, benefited lands.** Whenever any lands from which surface or seepage water enters any drain or upon which or through which surface or seepage water has been prevented from flowing because of the construction of any drain have not been included within the drainage district ~~which~~ *that* constructed ~~such~~ *the* drains or drain or the owner of any irrigation ditch or canal from which water seeps, drains, or wastes to, upon, or through lands included within a drainage district has not been assessed for the cost of construction of the drainage system of ~~said~~ *the* drainage district, the commissioners of ~~such~~ *the* district may report ~~said~~ *the* facts to the court and ask that ~~said~~ *the* lands~~, describing them,~~ be brought into ~~said~~ *the* district and assessed for their proportionate share of the cost of the drainage system. ~~of said drainage district and~~ *Subject to [section 1], the report may* ask that the owner of any ~~such~~ irrigation ditch or canal be assessed its proportionate share of the costs of construction of ~~such~~ *the* drainage system. ~~Thereupon, the~~ *The* same proceedings as set out in 85-8-421 through 85-8-424 for the determination and levy of assessments against drained lands outside of *the* drainage district receiving benefits from the drainage of ~~said~~ *the* district ~~shall be had~~ *must be commenced* to determine the proper assessments, if any, to be levied ageinst ~~said~~ *the* lands and the owner of ~~such~~ *the* irrigation ditch or canal to aid in payment of costs of construction."

Scction 163. Section 90-5-112, MCA, is amended to read:

"**90-5-112. Economic developmen' levy.** (1) ~~The~~ *Subject to [section 1], the* governing body of a city, county, or town is authorized to levy up to 1 mill upon the taxable value of all the property in the city, county, or town subject to taxation for the purpose of economic development. The governing body may:

(a) submit the question of the mill levy to the qualified voters voting in a city, county, or town election; or

(b) approve the mill levy by a vote of the governing body.

(2) Funds derived from this levy may be used for purchasing land for industrial parks, constructing buildings to house manufacturing and processing operations, conducting preliminary feasibility studies, promoting economic development opportunities in a particular area, and other activities generally associated with economic development. These funds may not be used to directly

HeinOnline -- 1999 vol. III 2810 1999

assist an industry's operations by loan or grant or to pay the salary or salary supplements of government employees.

(3) The governing body of the county, city, or town may use the funds derived from this levy to contract with local development companies and other associations or organizations capable of implementing the economic development function.

~~(4) A tax authorized by a vote of the electorate, as provided in subsection (1)(a), may be levied for a period not to exceed 6 years and is not subject to the provisions of Title 15, chapter 10, part 4.~~

(4) A tax authorized by a vote of the electorate, as provided in subsection (1)(a), may be levied for a period not to exceed 6 years."

Section 164. Section 90-6-403, MCA, is amended to read:

"90-6-403. Jurisdictional revenue disparity — conditioned exemption and reallocation of certain taxable valuation. (1) When an impact plan for a largo-scale mineral development approved pursuant to 90-6-307 identifies a jurisdictional revenue disparity, the board shall promptly notify the developer, all affected local government units, and the department of revenue of the disparity. Except as provided in ~~this section and~~ 90-6-404 *and this section*, the increase in taxable valuation of the mineral development that occurs after the issuance and validation of a permit under 82-4-335 is not subject to the usual application of county and school district property tax mill levies. This increase in taxable valuation must be allocated to local government units as provided in 90-6-404. The increase in taxable valuation allocated as provided in 90-6-404 is subject to *[section 1] and* tbe application of property tax mill levies in the local government unit to which it is allocated. *The increase in taxable valuation allocated to the local government unit is considered newly taxable property in the recipient local government unit as provided in [section 1].*

(2) ~~The~~ *Subject to [section 1], the* total taxable valuation of a large-scale mineral development remains subject to the statewide mill levies and basic county levies for elementary and high school BASE funding programs as provided in 20-9-331 and 20-9-333.

(3) The provisions of subsection (1) remain in effect until the large-scale mineral development ceases operations or until the existence of the jurisdictional revenue disparity ceases, as determined by the board."

Seetion 165. Extension of 1999 deadlincs relating to property taxation. As a result of the change in the phasein of reappraisal for class three, four, and ten property enacted by the 56th legislature, it may not be possible to comply with certain statutory deadlines relating to appraisals, assessments, reimbursements, budgets, and collection of property taxes. The stato appraisal and assessment process may be delayed, which in turn may cause delays for the tax appeal boards and local government taxing jurisdiction budgeting and collection processes. Therefore, for tax year 1999, all deadlines are extended as necessary and reasonable, except that the time limits allowed for filing an appeal remain the same as provided by law in order to allow for the orderly and efficient assessment and collection of taxes.

Section 166. Section 1, Senate Bill No. 79, 1999, is amended to read:

"Section 1. Tax levy for university system. Subject to the provisions of 20-25-423 *and [section 1]*, there is levied upon the taxable value of all real estate

HeinOnline -- 1999 vol. III 2811 1999

and personal property subject to taxation in the state of Montana 6 mills or so much of 6 mills as is necessary to raise the amount appropriated by the legislature from the state special revenue fund for the support, maintenance, and improvement of the Montana university system, as provided in referendum measure No. 113, passed by a vote of the people at the general election held November 3, 1998. The funds raised from the levy must be deposited in the state special revenue fund."

Section 167. Reimbursement to counties, cities, towns, and consolidated city-county governments for losses in revenue. (1) (a) The department of revenue shall determine the amount of tax and other revenue lost by each local government unit as a result of the enactment of House Bill No. 128, House Bill No. 174, House Bill No. 420, House Bill No. 658, Senate Bill No. 200, and Senate Bill No. 530 for fiscal year 2000 and for fiscal year 2001. The determination must be made by August 15, 1999, for fiscal year 2000, and by March 15, 2000, for fiscal year 2001. The department shall use fiscal year 1998 as its base year for each determination.

(b) As used in this section, "local government unit" means a county, city, or town capable of levying mills, consolidated city-county government, school district, miscellaneous district, or other local district that levies mills. The term does not include the state.

(c) The department shall determine the amount of tax and other revenue due each local government unit for fiscal year 1998 from the following sources:

(i) property taxes levied by each local government unit within each county or consolidated city-county government for fiscal year 1998, but excluding any mills levied by the state pursuant to [section 1 of Senate Bill No. 79], 20-9-331, 20-9-333, 20-9-360, 20-25-439, and 53-2-813; and

(ii) oil and gas production taxes levied and distributed as provided for in Title 15, chapter 36.

(2) The department shall calculate for each local government unit for fiscal year 1998 the amount of tax and other revenue that would have been due each local government unit from the sources listed in subsection (1) if House Bill No. 128, House Bill No. 174, House Bill No. 420, House Bill No. 658, Senate Bill No. 200, and Senate Bill No. 530 had been in effect for fiscal year 1998.

(3) In making the calculation provided for in subsection (2), the department shall take into account any benefit to a local government unit that levied mills against electrical generation property in fiscal year 1998 from any increase in the assessed value of electrical generation property stemming from the sale of electrical generation assets subsequent to tax year 1997.

(4) (a) Each county, city, town, and consolidated city-county government that in aggregate lost tax revenue in a particular year, based on the difference between the calculation in subsections (1)(c) and (2), must receive the same percentage of the appropriation for local government reimbursements as the appropriation bears to the total amount of loss for all local government units in this state. Payments must be made in two similar installments for each fiscal year on or about December 15 and June 15. Each county, city, town, and consolidated city-county government is authorized to distribute the revenue received among its funds and districts according to current year mill levies. Except as provided in subsections (4)(b), each tax increment financing district must receive the

HeinOnline -- 1999 vol. III 2812 1999

benefit of the reimbursement based on the loss to the incremental taxable value of the district.

(b) A tax increment financing district that consists of an industrial district created under 7-15-4299 may not receive any reimbursement under subsection (4)(a).

(5) The amount of loss calculated in subsection (2), converted to taxable value by multiplying by the applicable mill levy, shall be added to the taxable value of taxing units to determine their bonding limits.

(6) (a) A charter form of local government that has a charter provision that prohibits an increase in the number of mills that may be levied to compensate for the loss of taxable value, as authorized in [section 1], is entitled to further reimbursement in addition to that computed under subsections (1) through (5) of this section.

(b) The amount of reimbursement is equal to the difference between the amount of the reimbursement calculated under subsections (1) through (5) and the amount of property tax imposed in tax year 1998. If the amount appropriated for the reimbursement under this subsection (6) is insufficient to fully fund all the jurisdictions entitled to reimbursement, the payments must be prorated to the jurisdictions. The payments must be made with the payments made under subsections (1) through (5).

Section 168. Local government and court funding and strueture committees — membership — purpose. (1) There is an interim local government funding and structure committee composed of 10 members. The members must include:

(a) two members from the house of representatives, one from each party, appointed by the speaker of the house;

(b) two members from the senate one from each party, appointed by the senate committee on committees; and

(c) the following members appointed by the governor:

(i) two representatives of counties;

(ii) two representatives of cities and towns;

(iii) one county treasurer; and

(iv) one member from the state executive branch of government.

(2) The names of the committee members must be certified to the department of administration by July 1, 1999.

(3) There is an interim court funding and structure committee composed of 10 members. The members must include:

(a) two members from the house of representatives, one from each party, appointed by the speaker of the house;

(b) two members from the senate, one from each party, appointed by the senate committee on committees;

(c) one member appointed by the chief justice of the Montana supreme court; and

(d) the following members appointed by the governor:

(i) one member representing cities and towns;

(ii) one member representing counties;

(iii) one member representing the Montana judges association;

(iv) one member representing the Montana magistrates association; and

(v) one clerk of court.

(4) The names of the committee members must be certified to the department of administration by July 1, 1999.

(5) (a) The members of each committee shall select a presiding officer and may appoint other officers as considered necessary.

(b) The committees may adopt rules of procedure for conducting meetings.

(c) The presiding officer of each committee shall schedule meetings and shall direct the staff of the department of administration to give notice of the time and place of meetings to the committee members and to the public.

(6) (a) The purpose of the committees is to conduct a study of funding local government, including the courts, to ascertain the best method of allocating current and future resources, while providing a complementary funding relationship between local government and state government. This complementary funding relationship must provide stable and reliable revenue streams to local governments, including the courts. The study must explore regional concepts, as well as further lifting of local government revenue restrictions and de-earmarking of revenue to local governments. The complementary funding relationship must meet the criteria set forth in the following vision statement, adopted by the local government funding and school finance visioning group:

"We are dedicated to partnerships among the state, counties, cities, and school districts that are based on mutual trust and respect for local authority. This partnership will enable all governments to respond to the demands of their citizens in the 21st century through a mix of taxes and fees that is understandable, equitable, stable, and adequate. The collection and distribution system for these taxes and fees will be simple, efficient, accurate, and timely."

(b) The committees shall coordinate their work and shall report to each other after each meeting. The two committees shall meet together at least once every 6 months.

(c) (i) The committees shall make interim reports to the governor, the chief justice, and the leadership of each house of the legislature every 6 months.

(ii) The committees shall submit a written report to the legislature not lator than December 1, 2000, that must include recommendations and proposed bill drafts necessary to implement any legislative proposals to streamline the functions of local government, including courts and a complementary funding structure between state and local governments.

(7) (a) Each committee is authorized to request directly from any agency, board, or commission any relevant information, suggestions, estimates, and statistics, and each agency, board, or commission shall furnish requested information to the best of its ability.

(b) The committees are attached to the department of administration for administrative and staff purposes. Further, the committees may request

HeinOnline -- 1999 vol. III 2814 1999

assistance from or the use of the resources of the legislative, judicial, and executive branch agencies to accomplish their studies.

(8) (a) Except as provided in subsection (8)(b), members of the committees must be reimbursed in accordance with 2-18-501 through 2-18-503 for actual and necessary expenses incurred in attending meetings or conducting committee business.

(b) Legislators serving on the committees must be reimbursed and compensated as provided for in 5-2-302 for actual and necessary expenses incurred in attending meetings or conducting committee business.

Section 169. Funding — appropriations. (1) The committees established in [section 168] may receive gifts, grants, and donations. The money received must be used for fulfilling the duties of the committees, for reimbursing the expenses of committee members, or for providing staff for the committees. The money received must be placed in a special revenue fund account to the credit of the department of administration.

(2) In addition to any funds received pursuant to subsection (1), there is appropriated $55,000 from the general fund to the committees created pursuant to the provisions of [section 168] for the biennium for the operating expenses and personnel expenses of the committees.

(3) There is appropriated to the office of public instruction from the general fund $1,980,000 for BASE aid for the biennium ending June 30, 2001.

(4) There is appropriated to the office of public instruction from the general fund $2,229,934 for state reimbursements for motor vehicle fee reductions under 61-3-509.

(5) There is transferred from the general fund $691,246 for the fiscal year ending June 30, 2000, and $1,774,042 for the fiscal year ending June 30, 2001, to the state special revenue fund referenced in [section 1 of Senate Bill No. 79].

(6) There is appropriated from the general fund $12,900,000 for the fiscal year ending June 30, 2000, and $54,934,392 for the fiscal year ending June 30, 2001, to the department of revenue for the reimbursements calculated in [section 167(1) through (5)].

(7) There is appropriated from the general fund $1.5 million for the biennium ending June 30, 2001, to the department of revenue for the costs of administration.

(8) There is appropriated from the general fund $2.15 million for the biennium ending June 30, 2001, to the department of revenue for the reimbursements calculated in [section 167(6)].

(9) There is appropriated from the general fund $600,000 to the department of revenue for the biennium ending June 30, 2001, for reimbursement to tax increment financing districts created pursuant to 7-15-4299.

(10) The governor shall include the sum of the reimbursements in this section in the present law base budget prepared for the 57th legislative session.

Section 170. Coordination instruction. (1) If any of the following is passed and approved in a form that contains a reimbursement mechanism for local government, then:

(a) in House Bill No. 128:

HeinOnline -- 1999 vol. III 2815 1999

(i) [sections 19 and 20], third reading copy, are void;

(ii) [section 18] must read as follows:

"NEW SECTION. **Section 18. Distribution of retail telecommunications excise tax revenue.** After retaining an allowance for refunds, retail telecommunications excise tax revenue collected hy the department must be deposited in the state general fund."

(b) in House Bill No. 174, [section 15] of the second reading second house copy is void; and

(c) in Senate Bill No. 200, [sections 1 and 26] of the enrolled bill, are void; and

(d) in House Bill No. 658 or Senate Bill No. 530, any section that contains a reimbursement mechanism for local government is void.

(2) If Senate Bill No. 260 and [this act] are both passed and approved, then [section 3] of Senate Bill No. 260, amending 61-3-509, must read as follows:

"**61-3-509. Disposition of taxes.** (1) Except as provided in subsection (2), the county treasurer shall, after deducting the district court fee, credit all taxes on motor vehicles and fees in lieu of tax on motorcycles, quadricycles, motor homes, travel trailers, campers, trailers, pole trailers, semitrailers, buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors collected under 61-3-504, 61-3-521, 61-3-527, 61-3-529, and 61-3-537, to a motor vehicle suspense fund. At some time between March 1 and March 10 of each year and every 60 days after that date, tbe county treasurer shall distribute the money in the motor vehicle suspense fund. *Except for taxes collected under 61-3-504, the county treasurer shall distribute the money in the fund* in the relative proportions required by the levies for state, county, school district, and municipal purposes in the same manner as personal property taxes are distributed. *For money in the fund collected under 61-3-504, the county treasurer shall disregard the statewide mills levied for the university system and the mills levied for state equalization aid under 20-9-360 in determining distribution proportions of the money and may not distribute money from 61-3-504 to the state for either levy. If the distribution of money collected under 61-3-504 to a school district general fund results in a lower revenue than the district received in fiscal year 1999 and the district has, for all years after fiscal year 1999, received less revenue than in fiscal year 1999, then the district general fund is entitled to state reimbursement for the amount of the difference between the fiscal year 1999 revenue and the prior school fiscal year revenue under 61-3-504. Prior to January 31, the office of public instruction shall distribute to each school district an amount equal to the state reimbursement for the prior school year.*

(2) The county treasurer shall deduct as a district court fee ~~7%~~ *10%* of the amount of the ~~2%~~ tax collected on ligbt vehicles *under 61-3-504(1).* The county treasurer shall credit the fee for district courts to a separate suspense account and shall forward the amount in the account to the state treasurer at the time that the county treasurer distributes money from the motor vehicle suspense fund. The state treasurer shall credit amounts received under this subsection to the state special revenue fund to be used for purposes of state funding of district court expenses as provided in 3-5-901."

(3) If Senate Bill No. 260 and [this act] are passed and approved and amend 20-9-141, then section 20-9-141 in House Bill No. 90 is void and section 20-9-141 must read as follows:

HeinOnline -- 1999 vol. III 2816 1999

"Section 20-9-141, MCA is amended to read:

"20-9-141. Computation of general fund net levy requirement by county superintendent. (1) The county superintendent shall compute the levy requirement for each district's general fund on the basis of the following procedure:

(a) Determine the funding required for the district's final general fund budget less the sum of direct state aid and the special education allowable cost payment for the district by totaling:

(i) the district's nonisolated school BASE budget requirement to be met by a district levy as provided in 20-9-303; and

(ii) any general fund budget amount adopted hy the trustees of the district under the provisions of 20-9-308 and 20-9-353, including any additional funding for a general fund budget that exceeds the maximum general fund budget.

(b) Determine the money available for the reduction of the property tax on the district for the general fund by totaling:

(i) the general fund balance reappropriated, as established under the provisions of 20-9-104;

(ii) ~~amounts received in the last fiscal year for which revenue reporting was required for each of the following:~~ *amounts received in the last fiscal year for which revenue reporting was required for each of the following:*

(A) revenue from taxes and fees imposed under 23-2-517, 23-2-803, 61-3-521, 61-3-527, 61-3-529, and 67-3-204;

(B) interest earned by the investment of general fund cash in accordance with the provisions of 20-9-213(4); and

(C) any other revenue received during the school fiscal year that may be used to finance the general fund, excluding any guaranteed tax base aid;

~~(A)~~*(iii) anticipated* tuition payments for out-of-district pupils under the provisions of 20-5-321 through 20-5-323, except the amount of tuition received for a pupil who is a child with disabilities in excess of the amount received for a pupil without disabilities, as calculated under 20-5-323(2);

~~(B)~~*(iv) anticipated* revenue from taxes and fees imposed under ~~23-2-517, 23-2-803,~~ 61-3-504~~, 61-3-521, 61-3-527, 61-3-529,~~ *and* 61-3-537, ~~and 67-3-204~~ *which for the fiscal year beginning July 1, 2000, may not be less than 75% of the previous year's revenue from these sources*;

~~(C)~~*(v) anticipated* oil and natural gas production taxes;

(vi) pursuant to subsection (4), anticipated revenue from coal gross proceeds under 15-23-703 and property tax reimbursements under 15-1-111, 15-1-112, and [section 167]; and

~~(D) interest earned by the investment of general fund cash in accordance with the provisions of 20-9-213(4);~~

~~(E)~~*(vii) anticipated* revenue from corporation license taxes collected from financial institutions under the provisions of 15-31-702~~; and~~

~~(F) any other revenue received during the school fiscal year that may be used to finance the general fund, excluding any guaranteed tax base aid; and~~

HeinOnline -- 1999 vol. III 2817 1999

~~(iii) pursuant to subsection (4), anticipated revenue from coal gross proceeds under 15-23-703.~~

(c) Notwithstanding the provisions of subsection (2), subtract the money available to reduce the property tax required to finance the general fund that has heen determined in subsection (1)(b) from any general fund budget amount adopted by the trustees of the district, up to the BASE budget amount, to determine the general fund BASE budget levy requirement.

(d) Subtract any amount remaining after the determination in subsection (1)(c) from any additional funding requirement to be met by an over-BASE budget amount, a district levy as provided in 20-9-303, and any additional financing as provided in 20-9-353 to determine any additional general fund levy requirements.

(2) The county superintendent shall calculate the number of mills to he levied on the taxable property in the district to finance the general fund levy requirement for any amount that does not exceed the BASE budget amount for the district by dividing the amount determined in subsection (1)(c) by the sum of:

(a) the amount of guaranteed tax base aid that the district will receive for each mill levied, as certified by the superintendent of public instruction; and

(b) the *current total* taxable valuation of the district, *as certified by the department of revenue under 15-10-202,* divided by 1,000.

(3) The net general fund levy requirement determined in subsections (1)(c) and (1)(d) must be reported to the county commissioners on the fourth Monday of August by the county superintendent as the general fund net levy requirement for the district, and a levy must be set by the county commissioners in accordance with 20-9-142.

(4) For each school district, the department of revenue shall calculate and report to the county superintendent the amount of revenue anticipated for the ensuing fiscal year from revenue from coal gross proceeds under 15-23-703 *and property tax reimbursements under 15-1-111, 15-1-112, and [section 167].*""

(4) If Senate Bill No. 454 is passed and approved, but House Bill No. 622 is not passed and approved, then Senate Bill No. 454 [section 2 of the reference copy] must read as follows:

"NEW SECTION. **Section 2. Review of state payments in lieu of taxes.** The interim local government funding and structure committee created under [section 168 of the reference copy of Senate Bill No. 184] shall include in its study of funding local government a review of state payments in lieu of taxes to local governments from grazing, agricultural, and forest activities that are self-supporting or that compete with private enterprise."

(5) If House Bill No. 622 and [this act] are both passed and approved and hoth bills commission local government and court funding and structure studies that are substantially the same, then House Bill No. 622 is void.

Section 171. Repealer. Sections 7-6-2514, 7-6-4405, and 15-10-412, MCA, are repealed.

Section 172. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

HeinOnline -- 1999 vol. III 2818 1999

Section 173. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 15, chapter 10, part 4, and the provisions of Title 15, chapter 10, part 4, apply to [section 1].

Section 174. Effective date. [This act] is effective on passage and approval.

Section 175. Retroactive applicability. [Sections 1 through 164] apply retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 1998.

Section 176. Termination. [Section 167] terminates December 31, 2001.

Approved May 10, 1999

CHAPTER NO. 585

[SB 205]

AN ACT INCREASING THE AVIATION GASOLINE LICENSE TAX FROM 3 CENTS TO 4 CENTS A GALLON; PROVIDING THAT 50 PERCENT OF THE 1 CENT INCREASE COLLECTED FROM PASSENGER AIR CARRIERS BE DEPOSITED IN THE STATE SPECIAL REVENUE FUND TO THE CREDIT OF THE DEPARTMENT OF TRANSPORTATION FOR AIRPORT PAVEMENT PRESERVATION PROJECTS; EXCLUDING FUEL SOLD TO THE FEDERAL DEFENSE FUEL SUPPLY CENTER; AMENDING SECTIONS 15-70-204, 15-70-205, 15-70-221, AND 67-1-301, MCA; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-70-204, MCA, is amended to read:

"15-70-204. (Temporary) Gasoline license tax — rate. (1) Every distributor shall pay to the department ~~of transportation~~ a license tax for the privilege of engaging in and carrying on business in this state in an amount equal to:

(a) ~~3~~ *4* cents for each gallon of aviation fuel, *other than fuel sold to the federal defense fuel supply center,* which is allocated to the department ~~of transportation~~ as provided by 67-1-301; and

(b) *27 cents, beginning July 1, 1994,* for each gallon of all other gasoline distributed by the distributor within the state and upon which the gasoline license tax has not been paid by any other distributor:

~~(i) 24 cents per gallon beginning July 1, 1993; and~~

~~(ii) 27 cents per gallon beginning July 1, 1994~~.

(2) Gasoline exported may not be included in the measure of the distributor's license tax unless the distributor is not licensed and is not paying the tax to the state the fuel is destined for.

(3) Alcohol that is blended or is to be blended with gasoline to be sold as gasohol is subject to a tax per gallon equal to the license tax imposed on nonaviation gasoline distributors under subsection (1). (Terminates on occurrence of contingency—sec. 17, Ch. 642, L. 1993.)

HeinOnline -- 1999 vol. III 2819 1999

15-70-204. (Effective ou occurrence of contingency) Gasoline license tax — rate. (1) Every distributor shall pay to the department ~~of transportation~~ a license tax for the privilege of engaging in and carrying on business in this state in an amount equal to:

(a) 2 cents for each gallon of aviation fuel, which is allocated to the department ~~of transportation~~ as provided by 67-1-301; and

(b) *27 cents, beginning July 1, 1994,* for each gallon of all other gasoline distributed by the distributor within the state and upon which the gasoline license tax has not been paid by any other distributor:

~~(i) 24 cents per gallon beginning July 1, 1993; and~~

~~(ii) 27 cents per gallon beginning July 1, 1994~~.

(2) Gasoline exported may not be included in the measure of the distributor's license tax unless the distributor is not licensed and is not paying the tax to the state the fuel is destined for.

(3) Alcohol that is blended or is to be blended with gasoline to be sold as gasohol is subject to a tax per gallon equal to the license tax imposed on nonaviation gasoline distributors under subsection (1)."

Section 2. Section 15-70-205, MCA, is amended to read:

"15-70-205. (Temporary) Distributor's statement and payment — confidentiality. (1) Each distributor shall, not later than the 25th day of each calendar month, render a true signed statement to the department ~~of transportation~~ of all gasoline distributed and received by the distributor in this state during the preceding calendar month and containing any other information that the department may reasonably require in order to administer the gasoline license tax law. The statement must be accompanied by a payment in an amount equal to the tax imposed by 15-70-204 less any refund credit issued under 15-70-226 and less 1% of the total tax that may be deducted by the distributor as an allowance for collecting the tax. An allowance may not be deducted from the ~~3-cent~~ *4-cent* tax on aviation fuel.

(2) A distributor engaged in or carrying on a business at more than one place or location in this state may include all places of business in one statement.

(3) The department or a deputy, assistant, agent, clerk, or other employee of the department may not publish or otherwise disseminate information contained in a statement required under this section in a form that allows identification of a distributor or a purchaser of gasoline. This section may not be construed to prohibit:

(a) the delivery to a distributor or the distributor's authorized representative of a certified copy of any return or report filed in connection with the tax;

(b) the inspection by the attorney general or other legal representative of the state of the report or return of a distributor who brings an action to set aside or review the tax based on the report or return or against whom an action or proceeding has been instituted in accordance with the provisions of Title 15;

(c) the publication of statistics classified to prevent the identification of particular reports or returns and the items in the reports or returns;

(d) the inspection by the commissioner of internal revenue of the United States or the proper officer or any representative of either officer of the report or return of any distributor or the furnishing to the officer or authorized

HeinOnline -- 1999 vol. III 2820 1999

representative of an abstract of the report or return, but permission must be granted or information must be furnished to the officer or the officer's representative if the statutes of the United States or the other state grant substantially similar privileges to the proper officer of this state charged with the administration of this chapter or *must be* in compliance with 15-70-121 and 15-70-122; or

(e) the compliance of the department with any order of a court of competent jurisdiction. (Terminates on occurrence of contingency—sec. 17, Ch. 642, L. 1993.)

15-70-205. (Effective on occurrence of contingency) Distributor's statement and payment — confidentiality. (1) Each distributor shall, not later than the 25th day of each calendar month, render a true signed statement to the department ~~of transportation~~ of all gasoline distributed and received by the distributor in this state during the preceding calendar month and containing any other information that the department may reasonably require in order to administer the gasoline license tax law. The statement must be accompanied by a payment in an amount equal to the tax imposed by 15-70-204 less any refund credit issued under 15-70-226 and less 1% of the total tax that may be deducted by the distributor as an allowance for collecting the tax. An allowance may not be deducted from the 2-cent tax on aviation fuel.

(2) A distributor engaged in or carrying on a business at more than one place or location in this state may include all places of business in one statement.

(3) The department or a deputy, assistant, agent, clerk, or other employee of the department may not publish or otherwise disseminate information contained in a statement required under this section in a form that allows identification of a distributor or a purchaser of gasoline. This section may not be construed to prohibit:

(a) the delivery to a distributor or the distributor's authorized representative of a certified copy of any return or report filed in connection with the tax;

(b) the inspection by the attorney general or other legal representative of the state of the report or return of a distributor who brings an action to set aside or review the tax based on the report or return or against whom an action or proceeding has been instituted in accordance with the provisions of Title 15;

(c) the publication of statistics classified to prevent the identification of particular reports or returns and the items in the reports or returns;

(d) the inspection by the commissioner of internal revenue of the United States or the proper officer or any representative of either officer of the report or return of any distributor or the furnishing to the officer or authorized representative of an abstract of the report or return, but permission must be granted or information must be furnished to the officer or the officer's representative if the statutes of the United States or the other state grant substantially similar privileges to the proper officer of this state charged with the administration of this chapter or *must be* in compliance with 15-70-121 and 15-70-122; or

(e) the compliance of the department with any order of a court of competent jurisdiction."

Section 3. Section 15-70-221, MCA, is amended to read:

HeinOnline -- 1999 vol. III 2821 1999

"**15-70-221. (Temporary) Refund or credit authorized.** (1) A person who purchases and uses any gasoline on which the Montana gasoline license tax has been paid for denaturing alcohol to he used in gasohol, for operating or propelling stationary gasoline engines or tractors used off the public highways and streets, or for any commercial use other than propelling vehicles upon any of the public highways or streets of this state is allowed a refund of the amount of tax paid directly or indirectly on the gasoline. The refund may not exceed the tax paid or to be paid to the state. Except as provided in subsection (5) ~~or (6)~~, a refund is not allowed for the tax per gallon upon aviation fuel allocated to the department of transportation by 67-1-301.

(2) A distributor who pays the gasoline license tax to this state erroneously is allowed a credit or refund of the amount of tax paid.

(3) (a) A distributor is entitled to a credit for the tax paid to the department on those sales of gasoline with a tax liability of $200 or greater for which the distributor has not received consideration from or on behalf of the purchaser and for which the distributor has not forgiven any liability. The distributor may not have declared the accounts of the purchaser worthless more than once during a 3-year period, and the distributor must have claimed those accounts as bad debts for federal income tax purposes.

(b) If a credit has been granted under this subsection (3), any amount collected on the accounts that were declared worthless must be reported to the department and the tax due must be prorated on the collected amount and must be paid to the department.

(c) The department may require a distributor to submit periodic reports listing accounts that are delinquent for 90 days or more.

(4) A person who purchases and exports for sale, use, or consumption outside Montana gasoline on which the Montana gasoline tax has been paid is entitled to a credit or refund of the amount of tax paid unless the person is not licensed and is not paying the tax to the state the fuel is destined for. The credit or refund will be made upon completion of the information reports required under 15-70-209 and presentation to the department of proof of delivery outside Montana as it may by rule require.

(5) A scheduled passenger air carrier certified under 14 CFR, part 121 or 135, may claim a refund of 2 cents on each gallon of aviation fuel purchased by the carrier on which the Montana gasoline license tax has been paid.

~~(6) A Montana refinery or distributor who sells JP-4 or JP-8 jet fuel to the federal defense fuel supply center is entitled to a credit or refund of 2 cents a gallon for each gallon that is sold to the supply center and on which the gasoline license tax has been paid.~~ (Terminates on occurrence of contingency—sec. 17, Ch. 642, L. 1993.)

15-70-221. (Effective on occurrence of contingency) Refund or credit authorized. (1) A person who purchases and uses any gasoline on which the Montana gasoline license tax has been paid for denaturing alcohol to be used in gasohol, for operating or propelling stationary gasoline engines or tractors used off the public highways and streets, or for any commercial use other than propelling vehicles upon any of the public highways or streets of this state is allowed a refund of the amount of tax paid directly or indirectly on the gasoline. The refund may not exceed the tax paid or to be paid to the state. Except as

provided in subsection (5) ~~or (6)~~, a refund is not allowed for the tax per gallon upon aviation fuel allocated to the department of transportation by 67-1-301.

(2) A distributor who pays the gasoline license tax to this state erroneously is allowed a credit or refund of the amount of tax so paid.

(3) (a) A distributor is entitled to a credit for the tax paid to the department on those sales of gasoline with a tax liability of $200 or greater for which the distributor has not received consideration from or on behalf of the purchaser and for which the distributor has not forgiven any liability. The distributor may not have declared the accounts of the purchaser wortbless more than once during a 3-year period, and the distributor must have claimed those accounts as bad dehts for federal income tax purposes.

(b) If a credit has been granted under this subsection (3), any amount collected on the accounts that were declared worthless must be reported to the department and the tax due must be prorated on the collected amount and must be paid to the department.

(c) The department may require a distributor to submit periodic reports listing accounts that are delinquent for 90 days or more.

(4) A person who purchases and exports for sale, use, or consumption outside Montana gasoline on which the Montana gasoline tax has been paid is entitled to a credit or refund of the amount of tax paid unless the person is not licensed and is not paying the tax to the state the fuel is destined for. The credit or refund will be made upon completion of the information reports required under 15-70-209 and presentation to the department of proof of delivery outside Montana as it may by rule require.

(5) A scheduled passenger air carrier certified under 14 CFR, part 121 or 135, may claim a refund of 1 cent on each gallon of aviation fuel purcbased by the carrier on which the Montana gasoline license tax has been paid.

~~(6) A Montana refinery or distributor who sells JP-4 or JP-8 jet fuel to the federal defense fuel supply center is entitled to a credit or refund of 1 cent a gallon for each gallon that is sold to the supply center and on which the gasoline license tax has been paid.~~"

Section 4. Section 67-1-301, MCA, is amended to read:

"**67-1-301. (Temporary) Money — receipt and disbursement.** (1) All costs and expenses of administering this title, including tbe salaries of employees of the department engaged in functions pertaining to aeronautics, the expenses of members of the board, and all other disbursements necessary to carry out the purposes of this title, must be paid out of the following revenue:

(a) all gifts and all legislative appropriations to the department for aeronautics;

(b) all money received from any branch or department of the federal government or from other sources for the purposes mentioned in this title or for the furtherance of aeronautics generally in this state.

(2) All money collected under subsection (1) must be deposited in the state treasury to the credit of the department.

(3) When the airport loan program is terminated, any balance of the bond proceeds that is not loaned must remain in the state special revenue fund to be invested, and the income must be used to retire the outstanding debt on the reinaining bond proceeds.

HeinOnline -- 1999 vol. III 2823 1999

(4) (a) The following amounts must be deposited from the proceeds of the ~~3-cent-per-gallon~~ *4-cent-a-gallon* tax imposed on aviation fuel by 15-70-204(1):

(i) in the state special revenue fund to the credit of the department, an amount equal to the proceeds of ~~1 cent~~ *2 cents* a gallon collected under 15-70-204(1) for the sole purpose of carrying out its functions pertaining to aeronautics;

(ii) in the aeronautical loan account created in 67-1-305 to the credit of the department, an amount equal to the proceeds of 1 cent a gallon for loans to local governments and state agencies; and

(iii) in a separate account in the state special revenue fund to the credit of the department~~;~~*:*

(A) an amount equal to the proceeds of 1 cent a gallon to provide grants to municipalities for airport development or improvement programs and to provide navigational aids, safety improvements, weather reporting services, and other aeronautical services for airports and landing fields and for the state's airways*; and*

(B) 25% of the amount collected from scheduled passenger air carriers certified under 14 CFR, part 121 or 135.

(b) Money deposited in the account created in 67-1-305 may, with the approval of the board, be used only to provide loans to local governments and state agencies for aeronautical purposes, including airport improvement. The board shall establish procedures, including the interest rate charged, for providing loans. Proceeds of all repayments of loans, including interest, made under this subsection *(4)*(b) must be deposited in the account created in 67-1-305.

(c) Money deposited in the separate account established in subsection (4)(a)(iii) may, with the approval of the board, be used only to provide grants to municipalities for airport development or improvement programs and to provide navigational aids, safety improvements, weather reporting services, and other aeronautical services for airports and landing fields and for the state's airways. The board shall establisb procedures for the awarding of grants.

(5) Except as provided in 15-70-221, the gasoline license tax imposed by the laws of this state on aviation fuel purchased and used for the operation of airplanes or aircraft may not be refunded.

(6) Of the amount of aviation fuel tax collected from the scheduled passenger air carriers certified under 14 CFR, part 121 or 135, 25% must be deposited in the separate account provided for in 67-1-305 to be used only for pavement preservation on airports served by these air carriers. (Terminates on occurrence of contingency—sec. 17, Ch. 642, L. 1993.)

67-1-301. (Effective on occurrence of contingency) Money — receipt and disbursement. (1) All costs and expenses of administering this title, including the salaries of employees of the department engaged in functions pertaining to aeronautics, the expenses of members of the board, and all other disbursements necessary to carry out the purposes of this title, must be paid out of the following revenue:

(a) all gifts and all legislative appropriations to the department for aeronautics;

(b) all money received from any branch or department of the federal government or from other sources for the purposes mentioned in this title or for the furtherance of aeronautics generally in this state.

HeinOnline -- 1999 vol. III 2824 1999

(2) All money collected under subsection (1) must be deposited in the state treasury to the credit of the department.

(3) When the airport loan program is terminated, any balance of the bond proceeds that is not loaned must remain in the state special revenue fund to be invested, and the income must be used to retire the outstanding debt on the remaining bond proceeds.

(4) (a) The following amounts must be deposited from the proceeds of the 2-cent-per-gallon tax imposed on aviation fuel by 15-70-204(1):

(i) in the state special revenue fund to the credit of the department, an amount equal to the proceeds of 1 cent a gallon collected under 15-70-204(1) for the sole purpose of carrying out its functions pertaining to aeronautics; and

(ii) in a separate account in the state special revenue fund to the credit of the department, an amount equal to the proceeds of 1 cent a gallon for grants to municipalities and for other aeronautical purposes as provided in subsection (4)(b).

(b) Money deposited in the separate account established in subsection (4)(a)(ii) may, with the approval of the board, be used only to provide grants to municipalities for airport development or improvement programs and to provide navigational aids, safety improvements, weather reporting services, and other aeronautical services for airports and landing fields and for the state's airways. The board shall establish procedures for the awarding of grants.

(5) Except as provided in 15-70-221, the gasoline license tax imposed by the laws of this state on aviation fuel purchased and used for the operation of airplanes or aircraft may not be refunded."

Section 5. Effective date. [This act] is effective July 1, 1999.

Approved May 10, 1999

CHAPTER NO. 586

[SB 270]

AN ACT ALLOWING A COUNTY TO CHARGE THE DEPARTMENT OF REVENUE FOR SPACE PROVIDED IN A COUNTY COURTHOUSE OR OTHER COUNTY BUILDING; LIMITING THE AMOUNT THAT CAN BE CHARGED; AND AMENDING SECTION 15-8-102, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-8-102, MCA, is amended to read:

"15-8-102. County to furnish office space — *allowable charge.* The county commissioners of each county shall provide existing office space in the county courthouse *or other county building* for use by the department's ~~assessment and appraisal~~ staff, if space is reasonably available. *A county may charge the department a rate that does not exceed the rental rate that the department of administration charges state agencies for space in state buildings.* If space is not reasonably available in the courthouse *or other county building*, the department may contract for the procurement of suitable space. *For purposes of this section, "county building" includes a city-county building or a building maintained by a consolidated government.*"

Approved May 10, 1999

HeinOnline -- 1999 vol. III 2825 1999

CHAPTER NO. 587

[SB 356]

AN ACT REQUIRING THAT ONE MEMBER OF THE TRANSPORTATION COMMISSION HAVE SPECIFIC KNOWLEDGE OF INDIAN CULTURE AND TRIBAL TRANSPORTATION NEEDS; AMENDING SECTION 2-15-2502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY PROVISION.

Be it enacted by the Legislature of the State of Montana:

Seetion 1. Section 2-15-2502, MCA, is amended to read:

"2-15-2502. Transportation commission. (1) There is a transportation commission composed of five members. One member must be a resident of and appointed from each of these districts, each composed of the counties named:

(a) District 1. Lincoln, Flathead, Sanders, Lake, Mineral, Missoula, Ravalli, Granite, Powell;

(b) District 2. Deer Lodge, Silver Bow, Beaverhead, Madison, Gallatin, Meagher, Broadwater, Jefferson, Park;

(c) District 3. Glacier, Toole, Liberty, Hill, Blaine, Pondera, Teton, Chouteau, Cascade, Lewis and Clark;

(d) District 4. Carter, Powder River, Fallon, Custer, Rosebud, Garfield, Phillips, Valley, McCone, Prairie, Dawson, Wibaux, Richland, Roosevelt, Daniels, Sheridan;

(e) District 5. Golden Valley, Stillwater, Carbon, Big Horn, Yellowstone, Musselshell, Judith Basin, Fergus, Petroleum, Treasure, Wheatland, Sweet Grass.

(2) Of the members appointed from districts 1, 3, 4, and 5, at least one must have specific knowledge of Indian culture and tribal transportation needs. The member provided for under this subsection must be selected by the governor after consultation with the Montana members of the Montana-Wyoming tribal leaders council.

~~(2)~~*(3)* Two members may not be residents of the same district at the time of appointment or during their respective terms of office.

~~(3)~~*(4)* Not more than three members may at the time of appointment or during their respective terms be members of the same political party.

~~(4)~~*(5)* An elective state official or state officer, during the term of office to which elected or appointed, or a state employee may not be a member of the commission.

~~(5)~~*(6)* A resolution, motion, or other decision of the commission may not be adopted or passed without the favorable vote of at least three members.

~~(6)~~*(7)* The commission is allocated to the department of transportation for administrative purposes only as prescribed in 2-15-121.

~~(7)~~*(8)* The commission is designated as a quasi-judicial board for purposes of 2-15-124; however, the provision of 2-15-124(1) that at least one member of a quasi-judicial board be an attorney does not apply to the commission.

~~(6)~~*(9)* The commission may adopt rules necessary for its government.

HeinOnline -- 1999 vol. III 2826 1999

~~(9)~~*(10)* The director of transportation or the director's designee shall act as liaison between the commission and the department."

Section 2. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

Section 3. Effective date. [This act] is effective on passage and approval.

Section 4. Applicability. [This act] applies to the next appointment period for transportation commission membership.

Approved May 10, 1999

CHAPTER NO. 588

[SB 499]

AN ACT AMENDING THE WATER QUALITY ACT TO ENSURE CONSISTENCY WITH FEDERAL REQUIREMENTS; AMENDING NONDEGRADATION SIGNIFICANCE CRITERIA; REVISING ACTIVITIES FOR WHICH SHORT-TERM EXEMPTIONS FROM WATER QUALITY STANDARDS MAY BE AUTHORIZED; AMENDING NONDEGRADATION REQUIREMENTS FOR OUTSTANDING RESOURCE WATERS; PROVIDING FOR SHORT-TERM TURBIDITY STANDARDS; AMENDING SECTIONS 75-5-301, 75-5-308, 75-5-316, 75-5-317, AND 75-5-401, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-5-301, MCA, is amended to read:

"75-5-301. Classification and standards for state waters. Consistent with the provisions of 80-15-201 and this chapter, the hoard shall:

(1) establish the classification of all state waters in accordance with their present and future most beneficial uses, creating an appropriate classification for streams that, due to sporadic flow, do not support an aquatic ecosystem that includes salmonid or nonsalmonid fish;

(2) (a) formulate and adopt standards of water quality, giving consideration to the economics of waste treatment and prevention. When rules are adopted regarding temporary standards, they must conform with the requirements of 75-5-312.

(b) Standards adopted by the board must meet the following requirements:

(i) for carcinogens, the water quality standard for protection of human health must be the value associated with an excess lifetime cancer risk level, assuming continuous lifetime exposure, not to exceed 1 x 10-3 in the case of arsenic and 1 x 10-5 for other carcinogens. However, if a standard established at a risk level of 1 x 10-3 for arsenic or 1 x 10-5 for other carcinogens violates the maximum contaminant level ohtained from 40 CFR, part 141, then the maximum contaminant level must be adopted as the standard for that carcinogen.

(ii) standards for the protection of aquatic life do not apply to ground water.

(3) review, from time to time at intervals of not more than 3 years and, to the extent permitted by this chapter, revise established classifications of waters and adopted standards of water quality;

HeinOnline -- 1999 vol. III 2827 1999

(4) adopt rules governing the granting of mixing zones, requiring that mixing zones granted by the department be specifically identified and requiring that mixing zones have:

(a) the smallest practicable size;

(b) a minimum practicable effect on water uses; and

(c) definable boundaries;

(5) adopt rules implementing the nondegradation policy established in 75-5-303, including but not limited to rules that:

(a) provide a procedure for department review and authorization of degradation;

(b) establish criteria for the following:

(i) determining important economic or social development; and

(ii) weighing the social and economic importance to the public of allowing the proposed project against the cost to society associated with a loss of water quality;

(c) establish criteria for determining whether a proposed activity or class of activities, in addition to those activities identified in 75-5-317, will result in nonsignificant changes in water quality for any parameter in order that those activities are not required to undergo review under 75-5-303(3). These criteria must be established in a manner that generally:

(i) equates significance with the potential for harm to human health, *a beneficial use,* or the environment;

(ii) considers both the quantity and the strength of the pollutant;

(iii) considers the length of time the degradation will occur;

(iv) considers the character of the pollutant so that greater significance is associated with carcinogens and toxins that bioaccumulate or biomagnify and lesser significance is associated with substances that are less harmful or less persistent.

(d) provide that changes of nitrate as nitrogen in ground water are nonsignificant if the discharge will not cause degradation of surface water and the predicted concentration of nitrate as nitrogen at the boundary of the ground water mixing zone does not exceed:

(i) 7.5 milligrams per liter for nitrate as nitrogen sources other than domestic sewage;

(ii) 5.0 milligrams per liter for domestic sewage effluent discharged from a conventional septic system;

(iii) 7.5 milligrams per liter for domestic sewage effluent discharged from a septic system using level two treatment, which must be defined in the rules; or

(iv) 7.5 milligrams per liter for domestic sewage effluent discharged from a conventional septic system in areas where the ground water nitrate as nitrogen level exceeds 5.0 milligrams per liter primarily from sources other than human waste.

(6) to the extent practicable, ensure that the rules adopted under subsection (5) establish objective and quantifiable criteria for various parameters. These criteria must, to the extent practicable, constitute guidelines for granting or

HeinOnline -- 1999 vol. III 2828 1999

denying applications for authorization to degrade high-quality waters under the policy established in 75-5-303(2) and (3).

(7) adopt rules to implement this section."

Section 2. Section 75-5-308, MCA, is amended to read:

"75-5-308. Short-term water authorizations — water quality standards. *(1) Because these activities promote the public interest, the* ~~The~~ department may, *if necessary,* authorize short-term exemptions from the water quality standards ~~or short-term use that exceeds the water quality standards for the purposes of allowing construction,~~ *for the following activities:*

(a) emergency ~~environmental~~ remediation~~,~~ *activities that have been approved, authorized, or required by the department; and*

(b) ~~pesticide~~ application~~,~~ *of a pesticide that is registered by the United States environmental protection agency pursuant to 7 U.S.C. 136(a) when it is used to control nuisance aquatic organisms or to eliminate* ~~elimination of~~ undesirable and nonnative aquatic species~~, and treatment of water for the protection of public health~~.

(2) ~~The~~ *An* authorization must include conditions that minimize, to the extent ~~possible~~ *practicable,* the magnitude of any ~~standard violation~~ *change in the concentration of the parameters affected by the activity* and the length of time during which any ~~standard violation~~ *change* may occur. The authorization *must also include* conditions *that prevent significant risk to public health and that ensure that existing and designated uses of state water are protected and maintained upon completion of the activity* ~~must maximize the protection of state waters by ensuring the maintenance of beneficial uses immediately after the term of the authorization~~. Authorizations issued under this section may include conditions that require water quality or quantity monitoring and reporting. In the performance of its responsibilities under this section, the department may negotiate operating agreements with other departments of state government that are intended to minimize duplication in review of activities eligible for authorizations under this section.

(3) An authorization to use a pesticide does not relieve a person from the duty to comply with Title 80, chapters 8 and 15. The department may not authorize an exemption from water quality standards for an activity that requires a discharge permit under rules adopted by the board pursuant to 75-5-401."

Section 3. Section 75-5-316, MCA, is amended to read:

"75-5-316. Outstanding resource water classification — rules — criteria — limitations — procedure. (1) As provided under the provisions of 75-5-301 and this section, the board may adopt rules regarding the classification of waters as outstanding resource waters. ~~Neither this section nor rules adopted pursuant to this section apply to an activity that is identified as nonsignificant under 75-5-301(5)(c) and that is exempted from nondegradation review required under 75-5-303.~~

(2) The department may not:

(a) grant an authorization to degrade under 75-5-303 in outstanding resource waters; or

(b) ~~grant an authorization to degrade if that authorization would cause significant degradation, as defined by board rules adopted under 75-5-301(5), in outstanding resource waters~~ *allow a new or increased point source discharge that*

HeinOnline -- 1999 vol. III 2829 1999

would result in a permanent change in the water quality of an outstanding resource water.

(3) (a) A person may petition the board for rulemaking to classify waters as outstanding resource waters. The board shall initially review a petition against the criteria identified in subsection (3)(c) to determine whether the petition contains sufficient credible information for the board to accept the petition.

(b) The board may reject a petition without further review if it determines that the petition does not contain the sufficient credible information required by subsection (3)(a). If the board rejects a petition under this subsection (3)(b), it shall specify in writing the reasons for the rejection and the petition's deficiencies.

(c) The board may not adopt a rule classifying state waters as outstanding resource waters until it accepts a petition and finds that, based on a preponderance of the evidence:

(i) the waters identified in the petition constitute an outstanding resource based on the criteria provided in subsection (4);

(ii) the classification is necessary to protect the outstanding resource identified under subsection (3)(a); and

(iii) there is no other effective process available that will achieve the necessary protection.

(4) The board shall consider the following criteria in determining whether certain state waters are outstanding resource waters. However, the board may determine that compliance with one or more of these criteria is insufficient to warrant classification of the water as an outstanding resource water. The board shall consider:

(a) whether the waters have been designated as wild and scenic;

(b) the presence of endangered or threatened species in the waters;

(c) the presence of an outstanding recreational fishery in the waters;

(d) whether the waters provide the only source of suitable water for a municipality or industry;

(e) whether the waters provide the only source of suitable water for domestic water supply; and

(f) other factors that indicate outstanding environmental or economic values not specifically mentioned in this subsection (4).

(5) After acceptance of a petition, the board shall require the preparation of an environmental impact statement, as provided under Title 75, chapter 1, part 2, when classification as an outstanding resource water may cause significant adverse impacts to the environment, including significant adverse impacts to social or economic values.

(6) The board shall consult with other relevant state agencies when reviewing outstanding resource water classification petitions.

(7) (a) In accordance with 2-4-315, the board may deny an accepted outstanding resource water classification petition if it finds that:

(i) the requirements of subsection (3) have not been met; or

(ii) based on information available to the board from the environmental impact statement or otherwise, approving the outstanding resource waters

classification petition would cause significant adverse environmental, social, or economic impacts.

(b) If the board denies the petition, it shall identify its reasons for petition denial.

(8) A rule classifying state waters as outstanding resource waters under this section may he adopted but is not effective until approved by the legislature.

(9) The board may not postpone or deny an application for an authorization to degrade state waters under 75-5-303 hased on pending:

(a) hoard action on an outstanding resource water classification petition regarding those waters; or

(b) legislative approval of board action designating those waters as outstanding resource waters."

Section 4. Section 75-5-317, MCA, is amended to read:

"75-5-317. Nonsignificant activities. (1) The categories or classes of activities identified in subsection (2) cause changes in water quality that are nonsignificant hecause of their low potential for harm to human health or the environment and their conformance with the guidance found in 75-5-301(5)(c).

(2) The following categories or classes of activities are not subject to the provisions of 75-5-303:

(a) existing activities that are nonpoint sources of pollution as of April 29, 1993;

(b) activities that are nonpoint sources of pollution initiated after April 29, 1993, when reasonable land, soil, and water conservation practices are applied and existing and anticipated beneficial uses will be fully protected;

(c) use of agricultural chemicals in accordance with a specific agricultural chemical ground water management plan promulgated under 80-15-212, if applicable, or in accordance with an environmental protection agency-approved label and when existing and anticipated uses will be fully protected;

(d) changes in existing water quality resulting from an emergency or remedial activity that is designed to protect public health or the environment and is approved, authorized, or required by the department;

(e) changes in existing *ground* water quality resulting from treatment of a public water supply system, as defined in 75-6-102, or a public sewago system, as defined in 75-6-102, by chlorination or other similar means that is designed to protect the public health or the environment and that is approved, authorized, or required by the department;

(f) the use of drilling fluids, sealants, additives, disinfectants, and rehabilitation chemicals in water well or monitoring well drilling, development, or abandonment, if used according to department-approved water quality protection practices *and if no discharge to surface water will occur*;

(g) short-term changes in existing water quality resulting from activities authorized by the department pursuant to 75-5-308;

(h) land application of animal waste, domestic septage, or waste from public sewage treatment systems containing nutrients when the wastes are applied to the land in a beneficial manner, application rates are based on agronomic uptake of applied nutrients, and other parameters will not cause degradation;

HeinOnline -- 1999 vol. III 2831 1999

(i) incidental leakage of water from a public water supply system, as defined in 75-6-102, or from a public sewage system, as defined in 75-6-102, utilizing best practicable control technology designed and constructed in accordance with Title 75, chapter 6;

(j) discharges of water *to ground water* from water well or monitoring well tests, hydrostatic pressure and leakage tests, or wastewater from the disinfection or flushing of water mains and storage reservoirs, conducted in accordance with department-approved water quality protection practices;

(k) oil and gas drilling, production, abandonment, plugging, and restoration activities *that do not result in discharges to surface water and that are* performed in accordance with Title 82, chapter 10, or Title 82, chapter 11;

(l) short-term changes in existing water quality resulting from ordinary and everyday activities of humans or domesticated animals, including but not limited to:

(i) such recreational activities as boating, hiking, hunting, fishing, wading, swimming, and camping;

(ii) fording of streams or other bodies of water by vehicular or other means; and

(iii) drinking from or fording of streams or other bodies of water by livestock and other domesticated animals;

(m) coal and uranium prospecting *that does not result in a discharge to surface water, that does not involve a test pit located in surface water or that may affect surface water, and that is* performed in accordance with Title 82, chapter 4;

(n) solid waste management systems, motor vehicle wrecking facilities, and county motor vehicle graveyards licensed and operating in accordance with Title 75, chapter 10, part 2, or Title 75, chapter 10, part 5;

(o) hazardous waste management facilities permitted and operated in accordance with Title 75, chapter 10, part 4;

(p) metallic and nonmetallic mineral exploration *that does not result in a discharge to surface water and that is* permitted under and performed in accordance with Title 82, chapter 4, parts 3 and 4;

(q) ~~nonpoint sources of pollution that cause short-term changes in existing water quality resulting from:~~

~~(i) activities authorized under Title 75, chapter 7, part 1; or~~

~~(ii) customary activities involving the use of water established by an existing water right or permit recognized under Montana law~~ *stream-related construction projects or stream enhancement projects that result in temporary changes to water quality but do not result in long-term detrimental effects and that have been authorized pursuant to [section 5]*;

(r) diversions or withdrawals of water established and recognized under Title 85, chapter 2;

~~(r)~~*(s)* the maintenance, repair, or replacement of dams, diversions, weirs, or other constructed works that are related to existing water rights and that are within wilderness areas so long as existing and anticipated beneficial uses are protected and as long as the changes in existing water quality relative to the project are short term; and

HeinOnline -- 1999 vol. III 2832 1999

~~(s)~~*(t)* any other activity that is nonsignificant because of its low potential for harm to human health or to the environment and its conformance with the guidance found in 75-5-301(5)(c)."

Section 5. Short-term water qnality standards for turbidity. (1) Upon authorization by the department or the department of fish, wildlife, and parks pursuant to subsection (4), the short-term water quality standards for total suspended sediment and turbidity resulting from stream-related construction activities or stream enhancement projects are the narrative standards for total suspended sediment adopted by the board under 75-5-301. If a short-term narrative standard is authorized under this section, the numeric standard for turbidity adopted by the board under 75-5-301 does not apply to the affected water body during the term of the narrative standard.

(2) The department shall review each application for short-term standards on a case-by-case basis to determine whether there are reasonable alternatives that preclude the need for a narrative standard. If the department determines that the numeric standard for turbidity adopted by the board under 75-5-301 cannot be achieved during the term of the activity and that there are no reasonable alternatives to achieve the numeric standard, the department may authorize the use of a narrative standard for a specified term.

(3) Each authorization issued by the department must include conditions that minimize, to the extent practicable, the magnitude of any change in water quality and the length of time during which any change may occur. The authorization must also include site-specific conditions that ensure that the activity is not harmful, detrimental, or injurious to public health and the uses of state waters and that ensure that existing and designated beneficial uses of state water are protected and maintained upon completion of the activity. The department may not authorize short-term narrative standards for activities requiring a discharge permit under rules adopted by the board pursuant to 75-5-401. Authorizations issued under this section may include conditions that require water quality or quantity monitoring and reporting.

(4) In the performance of its responsibilities under this section, the department may negotiate operating agreements with other departments of state government that are intended to minimize duplication in review of activities eligible for authorizations under this section. The department of fish, wildlife, and parks may, in accordance with subsections (1), (2), and (3), authorize short-term water quality standards for total suspended sediment and turbidity for any stream construction project that it reviews under Title 75, chapter 7, part 1, or Title 87, chapter 5, part 5.

Section 6. Section 75-5-401, MCA, is amended to read:

"75-5-401. Board rules for permits ~~—ground-water-exclusions —~~ *ground water exclusions.* (1) Except as provided in subsection (5), the board shall adopt rules:

(a) governing application for permits to discharge sewage, industrial wastes, or other wastes into state surface waters and ground waters, including rules requiring the filing of plans and specifications relating to the construction, modification, or operation of disposal systems;

(b) governing the issuance, denial, modification, or revocation of permits. The board may not require a permit for a water conveyance structure or for a natural spring if the water discharged to state waters does not contain industrial

HeinOnline -- 1999 vol. III 2833 1999

waste, sewage, or other wastes. ~~Discharge to surface water of ground water that is not altered from its ambient quality does not constitute a discharge requiring a permit under this part and is not degradation if:~~

~~(i) the discharge does not contain industrial waste, sewage, or other wastes;~~

~~(ii) the water discharged does not cause the receiving waters to exceed applicable standards for any parameters; and~~

~~(iii) to the extent that the receiving waters in their ambient state exceed standards for any parameters, the discharge does not increase the concentration of the parameters.~~ *Discharge to surface water of ground water that is not altered from its ambient quality does not constitute a discharge requiring a permit under this part if:*

(i) the discharge does not contain industrial waste, sewage, or other wastes;

(ii) the water discharged does not cause the receiving waters to exceed applicable standards for any parameters; and

(iii) to the extent that the receiving waters in their ambient state exceed standards for any parameters, the discharge does not increase the concentration of the parameters.

(2) The rules must allow the issuance or continuance of a permit only if the department finds that operation consistent with the limitations of the permit will not result in pollution of any state waters, except that the rules may allow the issuance of a temporary permit under which pollution may result if the department ensures that the permit contains a compliance schedule designed to meet all applicable effluent standards and water quality standards in the shortest reasonable period of time.

(3) The rules must provide that the department may revoke a permit if the department finds that the holder of the permit has violated its terms, unless the department also finds that the violation was accidental and unforeseeable and that the holder of the permit corrected the condition resulting in the violation as soon as was reasonably possible.

(4) The board may adopt rules governing reclamation of sites disturbed by construction, modification, or operation of permitted activities for which a hond is voluntarily filed by a permittee pursuant to 75-5-405, including rules for the establishment of criteria and procedures governing release of the bond or other surety and release of portions of a bond or other surety.

(5) Discharges of sewage, industrial wastes, or other wastes into state ground waters from the following activities or operations are not subject to the ground water permit requirements adopted under subsections (1) through (4):

(a) discharges or activities at wells injecting fluids associated with oil and gas exploration and production regnlated under the federal underground injection control program;

(b) disposal by solid waste management systems licensed pursuant to 75-10-221;

(c) individuals disposing of their own normal household wastes on their own property;

(d) hazardous waste management facilities permitted pursuant to 75-10-406;

(e) water injection wells, reserve pits, and produced water pits used in oil and gas field operations and approved pursuant to Title 82, chapter 11;

HeinOnline -- 1999 vol. III 2834 1999

(f) agricultural irrigation facilities;

(g) storm water disposal or storm water detention facilities;

(h) subsurface disposal systems for sanitary wastes serving individual residences;

(i) in situ mining of uranium facilities controlled under Title 82, chapter 4, part 2;

(j) mining operations subject to operating permits or exploration licenses in compliance with The Strip and Underground Mine Reclamation Act, Title 82, chapter 4, part 2, or the metal mine reclamation laws, Title 82, chapter 4, part 3; or

(k) projects reviewed under the provisions of the Montana Major Facility Siting Act, Title 75, chapter 20.

(6) Notwithstanding the provisions of 75-5-301(4), mixing zones for activities excluded from permit requirements under subsection (5) of this section must be established by the permitting agency for those activities in accordance with 75-5-301(4)(a) through (4)(c).

(7) Notwithstanding tbe exclusions set forth in subsection (5), any excluded source that the department determines may be causing or is likely to cause violations of ground water quality standards may be required to submit monitoring information pursuant to 75-5-602.

(8) The board may adopt rules identifying other activities or operations from which a discharge of sewage, industrial wastes, or other wastes into state ground waters is not subject to the ground water permit requirements adopted under subsections (1) through (4)."

Section 7. Codification instruction. [Section 5] is intended to be codified as an integral part of Title 75, chapter 5, part 3, and the provisions of Title 75, chapter 5, part 3, apply to [section 5].

Section 8. Saving clause. (1) [This act] does not affect a right to conduct a construction activity in accordance with a short-term exemption granted pursuant to 75-5-308 before [the effective date of this act].

(2) A discharge from a facility or source that discharged to surface water prior to [the effective date of this act] and that was exempt from 75-5-303 pursuant to 75-5-317(2)(e), (2)(k), or (2)(p) or 75-5-401(1)(b) as those sections read prior to [the effective date of this act] continues to be exempt from 75-5-303 as long as the facility or source has not since [the effective date of this act] been expanded in a manner that increases the volume of discharge or the concentration or nature of pollutants in the discharge.

Section 9. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 10. Effeetive date. [This act] is effective on passage and approval.

Approved May 10, 1999

HeinOnline -- 1999 vol. III 2835 1999

CHAPTER NO. 589

[SB 441]

AN ACT REQUIRING THE DEPARTMENT OF REVENUE, UNDER CERTAIN CONDITIONS, TO USE TWO OF THE THREE METHODS OF DETERMINING THE MARKET VALUE OF PROPERTY, WHICH INCLUDE THE CAPITALIZATION OF NET INCOME METHOD, THE SALES OF COMPARABLE PROPERTY METHOD, AND THE COST-LESS-DEPRECIATION METHOD, THAT PROVIDE A SIMILAR MARKET VALUE AS THE BETTER INDICATORS OF MARKET VALUE; AMENDING SECTION 15-8-111, MCA; AND PROVIDING AN APPLICABILITY DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-8-111, MCA, is amended to read:

"15-8-111. Assessment — market value standard — exceptions. (1) All taxable property must be assessed at 100% of its market value except as otherwise provided.

(2) (a) Market value is the value at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.

(b) If the department uses construction cost as one approximation of market value, the department shall fully consider reduction in value caused by depreciation, whether through physical depreciation, functional obsolescence, or economic obsolescence.

(c) If the department uses the capitalization of net income method as one approximation of market value and sufficient, relevant information on comparable sales and construction cost exists, the department shall rely upon the two methods that provide a similar market value as the better indicators of market value.

~~(c)~~*(d)* Except as provided in subsection (3), the market value of special mobile equipment and agricultural tools, implements, and machinery is the average wholesale value shown in national appraisal guides and manuals or the value before reconditioning and profit margin. The department shall prepare valuation schedules showing the average wholesale value when a national appraisal guide does not exist.

(3) The department may not adopt a lower or different standard of value from market value in making the official assessment and appraisal of the value of property, except:

(a) the wholesale value for agricultural implements and machinery is the average wholesale value category as shown in Guides 2000, Northwest Region Official Guide, published by the North American equipment dealers association, St. Louis, Missouri. If the guide or the average wholesale value category is unavailable, the department shall use a comparable publication or wholesale value category.

(b) for agricultural implements and machinery not listed in an official guide, the department shall prepare a supplemental manual in which the values reflect the same depreciation as those found in the official guide; and

(c) as otherwise authorized in Titles 15 and 61.

HeinOnline -- 1999 vol. III 2836 1999

(4) For purposes of taxation, assessed value is the same as appraised value.

(5) The taxable value for all property is the percentage of market or assessed value established for each class of property.

(6) The assessed value of properties in 15-6-131 through 15-6-133 is as follows:

(a) Properties in 15-6-131, under class one, are assessed at 100% of the annual net proceeds after deducting the expenses specified and allowed by 15-23-503 or, if applicable, as provided in 15-23-515, 15-23-516, 15-23-517, or 15-23-518.

(b) Properties in 15-6-132, under class two, are assessed at 100% of the annual gross proceeds.

(c) Properties in 15-6-133, under class three, are assessed at 100% of the productive capacity of the lands when valued for agricultural purposes. All lands that meet the qualifications of 15-7-202 are valued as agricultural lands for tax purposes.

(d) Properties in 15-6-143, under class ten, are assessed at 100% of the forest productivity value of the land when valued as forest land.

(7) Land and the improvements on the land are separately assessed when any of the following conditions occur:

(a) ownership of the improvements is different from ownership of the land;

(b) the taxpayer makes a written request; or

(c) the land is outside an incorporated city or town."

Section 2. Applicability. [This act] applies on and after January 1, 2000, to tax years beginning after December 31, 1999.

Approved May 2, 1999

HeinOnline -- 1999 vol. III 2837 1999

HeinOnline -- 1999 vol. III 2838 1999

RESOLUTIONS

Passed by the

FIFTY-SIXTH LEGISLATURE
IN REGULAR SESSION

Held at Helena, the Seat of Government
January 4, 1999, through April 21, 1999

COMPILED BY MONTANA
LEGISLATIVE SERVICES DIVISION

HeinOnline -- 1999 vol. III 2839 1999

HeinOnline -- 1999 vol. III 2840 1999

Senate Joint Resolutions

SENATE JOINT RESOLUTION NO. 1

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REVISING THE JOINT LEGISLATIVE RULES.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the following Joint Rules be adopted:

JOINT RULES OF THE MONTANA SENATE AND HOUSE OF REPRESENTATIVES

CHAPTER 10

Administration

10-10. Time of meeting. Each house may order its time of meeting.

10-20. Legislative day — duration. (1) If either house is in session on a given day, that day constitutes a legislative day.

(2) A legislative day for a house ends either 24 hours after that house convenes for the day or at the time the house convenes for the following legislative day, whichever is earlier.

10-30. Schedules. The presiding officer of each house shall coordinate its schedule to accommodate the workload of the other house.

10-40. Adjournment — recess — meeting place. A house may not, without the consent of the other, adjourn or recess for more than 3 days or to any place other than that in which the two houses are sitting (Montana Constitution, Art. V, Sec. 10(5)).

10-50. Access of press. Subject to the presiding officer's discretion on issues of decorum and order, an accredited press representative may not be prohibited from photographing, televising, or recording a legislative meeting or hearing.

10-60. Conflict of interest. A member who has a personal or private interest in any measure or bill proposed or pending before the Legislature shall disclose the fact to the house to which the member belongs.

10-70. Telephone calls. (1) Leng-distance telephone calls made by a member while the Legislature is in session or while the member is in travel status are considered official legislative business. These include but are not limited to calls made to constituencies, places of business, and family members.

(2) Session staff, including aides and interns, may use telephones for long-distance calls only if specifically authorized to do so by their legislative sponsor or supervisor. Sponsoring members and supervisors are accountable for use of state telephones by their staff, including aides and interns, and may not authorize others to use state phones.

HeinOnline -- 1999 vol. III 2841 1999

(3) Permanent staff of the Legislature shall comply with executive branch rules applying to the use of state telephones.

10-80. Joint employees. The presiding officers of each house, acting together, shall:

(1) hire joint employees; and

(2) review a dispute or complaint involving the competency or decorum of a joint employee, and dismiss, suspend, or retain the employee.

10-85. Harassment prohibited. (1) Legislators and legislative employees have the right to work free of harassment on account of race, color, sex, culture, social origin or condition, or religious ideas when performing services in furtherance of legislative responsibilities, whether the offender is an employer, employee, legislator, lobbyist, or member of the public.

(2) A violation of this policy must be reported to the party leader in the appropriate house if the offended party is a legislator or to the presiding officer if the offended party is the party leader. The presiding officer may refer the matter to the rules committee of the applicable house, and the offender is subject to discipline or censure, as appropriate.

(3) If the offended party is an employee, the violation must be reported to the employee's supervisor or, if the offender is the supervisor, the report should be made to the chief clerk of the house of representatives or to the secretary of the senate, as appropriate.

(4) If the offended party is a supervisor, the violation must be reported to the chief clerk of the house of representatives or to the secretary of the senate, as appropriate.

(5) The chief clerk or the secretary shall report the violation to the presiding officer. The presiding officer may refer the matter to the rules committee. If the offender is an employee, the employee is subject to discipline or discharge.

10-90. Legislative interns. Qualifications for legislative interns are specified in Title 5, chapter 6, MCA.

10-100. Legislative Services Division. (1) The staff of the Legislative Services Division shall serve both houses as required.

(2) Staff members shall:

(a) maintain personnel files for legislative employees; and

(b) prepare payrolls for certification and signature by the presiding officer and prepare a monthly financial report.

10-110. Compensation of legislative employees. The Legislature by joint resolution shall prescribe the compensation of the employees of each house.

10-120. Engrossing and enrolling staff — duties. (1) The Legislative Services Division shall provide all engrossing and enrolling staff.

(2) The duties of the engrossing and enrolling staff are:

(a) to engross or enroll any bill or resolution delivered to them within 48 hours after it has been received, unless further time is granted in writing by the presiding officer of the house in which the bill originated; and

(b) to correct clerical errors, absent the objection of the sponsor of a bill, resolution, or amendment and the Secretary of the Senate or the Chief Clerk of

HeinOnline -- 1999 vol. III 2842 1999

the House of Representatives in any bill or amendment originating in the house by which the Clerk or Secretary is employed. The following kinds of clerical errors may be corrected:

(i) errors in spelling;

(ii) errors in numbering sections;

(iii) additions or deletions of underlining or lines through matter to be stricken;

(iv) material copied incorrectly from the Montana Code Annotated;

(v) errors in outlining or in internal references;

(vi) an error in a title caused by an amendment;

(vii) an error in a catchline caused by an amendment;

(viii) errors in references to the Montana Code Annotated; and

(ix) other nonconformities of an amendment with Bill Drafting Manual form.

(3) The engrossing and enrolling staff shall give notice in writing of the clerical correction to the Secretary of the Senate or the Chief Clerk of the House and to the sponsor of the bill or amendment. The sponsor shall sign the clerical form to acknowledge notification of the clerical correction. The signed form must be filed in the office of the amendments coordinator. A party receiving notice may register an objection to the correction by filing the objection in writing within 24 hours after receipt of the notice.

(4) If a committee is the sponsor of a bill or resolution, any committee member designated by the chair may be the principal sponsor for the purpose of this section. If a committee has proposed an amendment, the chair is the principal sponsor for the purpose of this section.

10-130. Bills. (1) A bill draft request must be sponsored by a member of the Legislature.

(2) A bill must be:

(a) printed on paper with numbered lines;

(b) numbered at the foot of each page (except page 1);

(c) introduced in duplicate; and

(d) for the original copy, covered with a cover page of a substantial material.

(3) In a section amending an existing statute, matter to be stricken out must be indicated with a line through the words or part to be deleted, and new matter must be underlined.

(4) Sections of the Montana Code Annotated repealed or amended in a bill must be stated in the title.

(5) Introduced bills must be reproduced on white paper and distributed to members.

(6) An introduced bill may not be withdrawn.

10-140. Voting. (1) A bill may not become a law except by vote of the constitutionally required majority of all the members present and voting in each house (Montana Constitution, Art. V, Sec. 11(1)). On final passage, the vote must

HeinOnline -- 1999 vol. III 2843 1999

be taken by ayes and noes and the names of those voting entered on the journal (Montana Constitution, Art. V, Sec. 11(2)).

(2) Any vote in one house on a hill proposing an amendment to The Constitution of the State of Montana under circumstances in which there exists the mathematical possibility of obtaining the necessary two-thirds vote of the Legislature will cause the bill to progress as though it had received the majority vote.

10-150. Recording and publication of voting. (1) Every vote of each member on each substantive question in the Legislature, in any committee, or in Committee of the Whole must be recorded and made public. On final passage of any hill or joint resolution, the vote must he taken by ayes and noes and the names entered on the journal.

(2) (a) Roll call votes must be taken by ayes and noes and the names entered on the journal on adopting an adverse committee report and on those motions made in Committee of the Whole to:

(i) amend;

(ii) recommend passage or nonpassage;

(iii) recommend concurrence or nonconcurrence; or

(iv) indefinitely postpone.

(h) The text of all proposed amendments must be recorded.

(3) A roll call vote must he taken on nonsubstantive questions on the request of two members who may, on any vote, request that the ayes and noes be spread upon the journal.

(4) Roll call votes and other votes that are to be made public but are not specifically required to be spread upon the journal must be entered in the minutes of the appropriate committee or of the appropriate house (Montana Constitution, Art. V, Sec. 11(2)). A copy of the minutes must he filed with the Montana Historical Society.

10-160. Journal. Each house shall:

(1) supply the Legislative Services Division with the contents of the daily journal to be stored on an automated system;

(2) examine its journal and order correction of any errors; and

(3) distribute a daily journal to all members.

10-170. Journals — authentication — availability. (1) The journal of the Senate must be authenticated by the signature of the President and the journal of the House of Representatives hy the signature of the Speaker.

(2) The Legislative Services Division shall make the completed journals available to the public (sections 5-11-201 through 5-11-203, MCA).

CHAPTER 30

Committees

30-10. Committee chair. Except as provided in Joint Rule 30-50, the chair of the Senate committee is the chair of all joint committees.

30-20. Voting in joint committees. (1) Except for Rules Committees and conference committees, a member of a joint committee votes individually and not by the house te which the committee member belongs.

HeinOnline -- 1999 vol. III 2844 1999

(2) Because the Rules Committees and conference committees are joint meetings of separate committees, in those committees the committees from each house vote separately. A majority of each committee must agree before any action may be taken, unless otherwise specified by individual house rules.

30-30. Conference committees. (1) If either house requests a conference and appoints a committee for the purpose of discussing an amendment on which the two houses cannot agree, the other house shall appoint a committee for the same purpose. The time and place of all conference committee meetings must be agreed upon by their chairs and announced from the rostrum. This announcement is in order at any time. Failure to make this announcement does not affect the validity of the legislation being considered.

(2) A conference committee, having conferred, shall report to the respective houses the result of its conference. A conference committee shall confine itself to consideration of the disputed amendment. The committee may recommend:

(a) acceptance or rejection of each disputed amendment in its entirety; or

(b) further amendment of the disputed amendment.

(3) If either house requests a free conference committee and the other house concurs, appointments must be made in the same manner as above. A free conference committee may discuss a bill in its entirety and is not confined to a particular amendment.

30-40. Conference committee — enrolling. A conference committee report shall give clerical instructions for a corrected reference bill and for enrolling by referring to the reference bill version.

30-50. Committee consideration of appropriation bills. (1) All bills providing for an appropriation of public money may first be considered by a joint committee composed of the members of the Senate Committee on Finance and Claims and the House Committee on Appropriations, and then by each separately.

(2) Meetings of the joint committee must be held upon call of the chair of the House Committee on Appropriations, who is chair of the joint committee.

(3) The committee chair of the Senate Committee on Finance and Claims or of the House Committee on Appropriations may be a voting member in the joint subcommittees if:

(a) either house has fewer members on the joint subcommittees;

(b) the chair represents the house with fewer members on the subcommittees; and

(c) the chair is present for the vote.

30-60. Estimation of revenue. The Revenue Oversight Committee shall introduce a House joint resolution for the purpose of estimating revenue that may be available for appropriation by the Legislature.

CHAPTER 40

Legislation

40-10. Amendment to state constitution. A bill must be used to propose an amendment to The Constitution of the State of Montana. The bill is not subject to the veto of the Governor (Montana Constitution, Art. VI, Sec. 10(1)).

HeinOnline -- 1999 vol. III 2845 1999

40-20. Appropriation bills. (1) All appropriation bills must originate in the House of Representatives.

(2) Appropriation bills for the operation of the Legislature must be introduced by the chair of the House Committee on Appropriations.

40-30. Effective dates. (1) Except as provided in subsections (2) through (4), a statute takes effect on October 1 following its passage and approval unless a different time is prescribed in the enacting legislation.

(2) A law appropriating public funds for a public purpose takes effect on July 1 following its passage and approval unless a different time is prescribed in the enacting legislation.

(3) A statute providing for the taxation or imposition of a fee on motor vehicles takes effect on the first day of January following its passage and approval unless a different time is prescribed in the enacting legislation.

(4) A joint resolution takes effect on its passage unless a different time is prescribed therein (sections 1-2-201 and 1-2-202, MCA).

40-40. Bill requests and introduetion — limits and procedures. (1) Prior to a regular session, a person entitled to serve in that session, hereafter referred to as a "member", is entitled to request bill drafting services from the Legislative Services Division, subject to the following limits:

(a) Prior to 5 p.m. on December 5 preceding a regular session of the Legislature, a member may request an unlimited number of bills and resolutions to be prepared by the Legislative Services Division for introduction in the regular session.

(b) (i) Except as provided in subsection (1)(b)(ii), after 5 p.m. on December 5, a member may request no more than seven bills or resolutions to be prepared by the Legislative Services Division. At least five of the seven bills or resolutions must be requested before the regular session convenes.

(ii) For the 56th legislative session, after 11 a.m. on December 18, a member may request no more than four bills or resolutions to be prepared hy the Legislative Services Division. At least two of the four bills or resolutions must be requested before the regular session convenes. A bill or resolution requested between 5 p.m. on Decemher 5 and 11 a.m. on December 18 is exempt from this subsection (1)(h)(ii).

(c) After December 5, a member, in the member's discretion, may grant to any other member any of the remaining bill or resolution requests the granting member has not used. A bill requested by an individual may not be transferred to another legislator but may be introduced by another legislator.

(d) These limitations on bill and resolution requests do not apply to:

(i) Code Commissioner bills;

(ii) a bill or resolution requested by a standing committee; and

(iii) a bill or resolution requested by a member at the request of a newly elected state official if so desiguated.

(2) The staff of the Legislative Services Division shall work on bill draft requests in the order received. After a member has requested the drafting of five bills, the sixth bill request and all subsequent hill requests of that member must receive a lower drafting priority than all other bills of members not in excess of

HeinOnline -- 1999 vol. III 2846 1999

five per member. A bill requested pursuant to subsection (5) must receive a lower drafting priority tban all bills requested by members, unless the requesting member assigns that request to the member's five-request priority. A legislator draft must receive priority at each step of the drafting process. A legislator draft must be delivered to the Legislative Services Division by the 20th legislative day or the request is canceled. The Speaker of the House, the minority leader of the House, the President of the Senate, and the minority leader of the Senate may each direct the staff of tbe Legislative Services Division to assign a higher priority to 10 draft requests. The staff of the Legislative Services Division shall assign a higher priority to any bill draft request when jointly directed by:

(a) the President of tbe Senate, the minority leader of the Senate, tbe Speaker of the House, and the minority leader of the House; or

(b) the House and the Senate.

(3) Bills and resolutions must be reviewed by the staff of the Legislative Services Division prior to introduction for proper format, style, and legal form. The staff of the Legislative Services Division shall store bills on the automated bill drafting equipment and shall print and deliver them in duplicate to the requesting members. The original bill cover must be signed to indicate review by the Legislative Services Division. A bill may not be introduced unless it is so signed.

(4) During a session, a bill may be introduced by endorsing it witb the name of a member and presenting it in duplicate to the Chief Clerk of tbe House of Representatives or the Secretary of the Senate. Bills or joint resolutions may be sponsored jointly by Senate and House members. A jointly sponsored bill must be introduced in the house in which the member whose name appears first on the bill is a member. The chief joint sponsor's name must appear immediately to the right of the first sponsor's name. In each session of the Legislature, bills, joint resolutions, and simple resolutions must be numbered consecutively in separate series in the order of their receipt.

(5) (a) Any bill proposed by an interim or statutory legislative committee or introduced by request of an administrative or executive agency or department must be so indicated by placing after the names of tbe sponsors the phrase "By Request of the..... (Name of committee or agency)". The phrase may not be added to an introduced bill and may not be placed on a bill whose subject matter was requested by an agency or statutory or interim committee prior to the convening of the session. A bill draft request submitted at the request of an agency or committee prior to December 23 must be requested by an individual member by December 23 or the request is placed on hold. After December 23, an agency or committee bill must be requested by an individual member. Except as provided in subsection (5)(b), an agency or committee bill request must be preintroduced or the request is canceled. Preintroduction must occur no later than 5 p.m. on the fifth working day prior to the convening of a legislative session. Preintroduction is accomplished when the Legislative Services Division receives a signed preintroduction form.

(b) The preintroduction requirement does not apply to an office held by an elected official during the official's first year in that office or to bills requested by a joint select or joint special committee appointed prior to the convening of the legislative session to address a specific issue.

HeinOnline -- 1999 vol. III 2847 1999

(6) Bills may be preintroduced, numbered, and reproduced prior to a legislative session by the staff of the Legislative Services Division. Actual signatures of persons entitled to serve as members in the ensuing session may appear on the face of the preintroduced bill, or signatures may be obtained on a consent form from the Legislative Services Division and the sponsor's name printed on the bill. Additional sponsors may be added on motion of the chief sponsor at any time prior to a standing committee report on the bill. These names will be forwarded to the Legislative Services Division to be included on the face of the bill following standing committee approval.

40-50. Schedules for drafting requests and bill introduction. The following schedules must be followed for submission of drafting requests and introduction of bills and resolutions.

	Request Deadline 5:00 P.M. Legislative Day
• General Bills and Resolutions	10
• Revenue Bills	17
• Committee Bills and Resolutions	36
• Committee Revenue Bills	62
• Committee Bills implementing provisions of a general appropriation act	75
• Bills and Resolutions must be introduced within 2 legislative days after delivery.	
• Appropriation Bills	No Deadline
• Interim study resolutions	75
• Resolutions to express confirmation of appointments	No Deadline
• Bills repealing or directing the amendment or adoption of administrative rules and joint resolutions advising or requesting the repeal, amendment, or adoption of administrative rules	No Deadline

40-60. Joint resolutions. (1) A joint resolution must be adopted by both houses and is not approved by the Governor. It may be used to:

(a) express desire, opinion, sympathy, or request of the Legislature;

(b) request, but not require, a legislative entity to conduct an interim study;

(c) adopt, amend, or repeal the joint rules;

(d) set salaries and other terms of employment for legislative employees;

(e) approve construction of a state building under section 18-2-102 or 20-25-302, MCA;

(f) deal with disasters and emergencies under Title 10, specifically as provided in sections 10-3-302(3), 10-3-303(3), 10-3-303(4), and 10-3-505(5), MCA;

(g) submit a negotiated settlement under section 39-31-305(3), MCA;

HeinOnline -- 1999 vol. III 2848 1999

(h) declare or terminate an energy emergency under section 90-4-310, MCA;

(i) ratify or propose amendments to the United States Constitution; or

(j) advise or request the repeal, amendment, or adoption of a rule in the Administrative Rules of Montana.

(2) A joint resolution may not be used for purposes of congratulating or recognizing an individual or group achievement. Recognition of individual or group achievements is handled on special orders of the day.

(3) Except as otherwise provided in these rules or The Constitution of the State of Montana, a joint resolution is treated in all respects as a bill.

(4) A copy of every joint resolution must be transmitted after adoption to the Secretary of State by the Secretary of the Senate or the Chief Clerk of the House.

40-65. Appropriation required for bills requesting interim studies. A bill including a request for an interim study may not be transmitted to the Governor unless the bill contains an appropriation sufficient to conduct the study. A fiscal note may be requested for a bill requesting an interim study if the appropriation does not appear to be sufficient.

40-70. Bills with same purpose — vetoes. (1) A bill may not be introduced or received in a house after that house, during that session, has finally rejected a bill designed to accomplish the same purpose, except with the approval of the Rules Committee of the house in which the bill is offered for introduction or reception.

(2) Failure to override a veto does not constitute final rejection.

40-80. Reproduction of full statute required. A statute may not be amended or its provisions extended by reference to its title only, but the statute section that is amended or extended must be reproduced or published at length.

40-90. Bills — original purpose. A law may not be passed except by bill. A bill may not be so altered or amended on its passage through either house as to change its original purpose (Montana Constitution, Art. V, Sec. 11(1)).

40-100. Fiscal notes. (1) As provided in Title 5, chapter 4, part 2, MCA, all bills reported out of a committee of the Legislature having a potential effect on the revenues, expenditures, or fiscal liability of the state, local governments, or public schools, except appropriation measures carrying specific dollar amounts, must include a fiscal note incorporating an estimate of the fiscal effect. The Legislative Services Division staff shall indicate at the top of each bill prepared for introduction that a fiscal note may be necessary under this rule. Fiscal notes must be requested by the presiding officer of either house, who, at the time of introduction or after adoption of substantive amendments to an introduced bill, shall determine the need for the note, based on the Legislative Services Division staff recommendation.

(2) Unless the chief sponsor directs otherwise, the Legislative Services Division shall make available an electronic copy of any bill for which it has been determined a fiscal note may be necessary to the Budget Director immediately after the bill has been prepared for introduction and delivered to the requesting member. The Budget Director may proceed with the preparation of a fiscal note in anticipation of a subsequent formal request. A bill with financial implications for a local government or school district must comply with subsection (4).

HeinOnline -- 1999 vol. III 2849 1999

(3) The Budget Director, in cooperation with the governmental entity or entities affected by the bill, is responsible for the preparation of the fiscal note. Except as provided in subsection (4), tbe Budget Director shall return the fiscal note within 6 days unless further time is granted by the presiding officer or committee making the request, based upon a written statement from the Budget Director that additional time is necessary to properly prepare the note.

(4) (a) A bill that may require a local government or school district to perform an activity or provide a service or facility that requires the direct expenditure of additional funds without a specific means to finance the activity, service, or facility in violation of section 1-2-112 or 1-2-113, MCA, must be accompanied, at the time that the bill is presented for introduction, by an estimate of all direct and indirect fiscal impacts on the local government or school district. The estimate of the fiscal impacts must be prepared by the Budget Director in cooperation with a local government or school district affected by the bill.

(b) The Budget Director bas 8 days to prepare the estimate unless further time is granted by the presiding officer, based upon a written statement from the Budget Director that additional time is necessary to properly prepare the estimate. Upon completion of the estimate, the Budget Director shall submit it to the presiding officer and the chief sponsor of the bill.

(5) A completed fiscal note must he submitted by the Budget Director to the presiding officer who requested it. The presiding officer shall notify the bill's chief sponsor of the completed fiscal note and request the chief sponsor's signature. The chief sponsor bas 1 legislative day after delivery to review the fiscal note and to discuss the findings with the Budget Director, if necessary. After the legislative day has elapsed, all fiscal notes must be reproduced and placed on the members' desks, either with or without the chief sponsor's signature.

(6) A fiscal note must, if possible, show in dollar amounts:

(a) the estimated increase or decrease in revenues or expenditures;

(b) costs that may he absorbed without additional funds; and

(c) long-range financial implications.

(7) The fiscal note may not include any comment or opinion relative to merits of the bill. However, technical or mechanical defects in the bill may be noted.

(8) A fiscal note also may be requested, through the presiding officer, on a bill and on an amended bill by:

(a) a committee considering the bill;

(b) a majority of the members of the house in which the bill is to be considered, at the time of second reading; or

(c) the chief sponsor

(9) The Budget Director shall make available on request to any member of the Legislature all background information used in developing a fiscal note.

(10) If a bill requires a fiscal note, the bill may not be reported from a committee for second reading unless the bill is accompanied by the fiscal note.

40-110. Sponsor's fiscal note. (1) If a sponsor elects to request the preparation of a sponsor's fiscal note pursuant to section 5-4-204, MCA, the

sponsor shall make the election as provided and return the completed sponsor's fiscal note to the presiding officer within 4 days of the election.

(2) The presiding officer may grant additional time to the sponsor for preparation of the sponsor's fiscal note.

(3) Upon receipt of the completed sponsor's fiscal note, the presiding officer shall refer it to the committee hearing the bill. If the bill is printed, the note must be identified as a sponsor's fiscal note, reproduced, and placed on the members' desks.

(4) The Legislative Services Division shall provide forms for preparation of sponsors' fiscal notes and shall print the completed sponsors' fiscal notes on a different color paper than the fiscal notes prepared by the Budget Director.

40-120. Substitute bills. (1) A committee may recommend that every clause in a bill be changed and that entirely new material be substituted so long as the new material is relevant to the title and subject of the original bill. The substitute bill is considered an amendment and not a new bill.

(2) The proper form of reporting a substitute bill hy a committee is to propose amendments to strike out all of the material following the enacting clause, to substitute the new material, and to recommend any necessary changes in the title of the hill.

(3) If a committee report is adopted that recommends a substitute for a bill originating in the other house, the substitute bill must be printed and reproduced.

40-130. Reading of bills. Prior to passage, a bill, other than a bill requested by a joint select or joint special committee as provided in 40-40(5)(h), must be read three times in the house in which it is under consideration. It may be read either by title or hy summary of title.

40-140. Second reading — bill reproduction. (1) If the majority of a house adopts a recommendation for the passage of a bill originating in that house after the bill has been returned from a committee with amendments, the bill must be reproduced on yellow paper with all amendments incorporated into the copies.

(2) If a bill has been returned from a committee without amendments, only the first sheet must be reproduced on yellow paper, and the remainder of the text may be incorporated by reference to the preceding version of the entire bill.

(3) A hill requested by and heard by a joint select or joint special committee, as provided in 40-40(5)(b), may be referred directly to second reading. If the bill is passed by the house of origin, the bill must be transmitted to the other house, and if the bill was not amended, it may be placed on second reading without the need for referral to a committee.

40-150. Engrossing. (1) When a bill has been reported favorably by Committee of the Whole of the house in which it originated and the report has been adopted, the bill must be engrossed. Committee of the Whole amendments must be included in the engrossed bill. The bill must be placed on the calendar for third reading on the legislative day after receipt.

(2) Copies of the engrossed bill to be distributed to members are reproduced on blue paper. If a bill is unamended hy the Committee of the Whole and contains no clerical errors, it is not required to be reprinted. Only the first sheet must be reproduced on blue paper, with the remainder of the text incorporated by reference to the preceding version of the entire bill.

HeinOnline -- 1999 vol. III 2851 1999

(3) If a bill is amended by a standing committee in the second house, the amendments must be included in a tan-colored bill and distributed in the second house for second reading consideration. If the bill is amended in Committee of the Whole, the amendments must be included in a salmon-colored reference bill and distributed in the second house for third reading. If the bill passes on third reading, copies of the reference bill must be distributed in the original house. The original house may request from the second house a specified number of copies of the amendments to be printed.

40-160. Enrolling. (1) When a bill has passed both houses, it must be enrolled. An original and two duplicate printed copies of the bill must be enrolled, free from all errors, with a margin of two inches at the top and one inch on each side. In sections amending existing statutes, new matter must be underlined and deleted matter must be shown as stricken.

(2) When the enrolling is completed, the bill must be examined by the sponsor.

(3) The correctly enrolled bill must be delivered to the presiding officer of the house in which the bill originated. The presiding officer shall sign the original and two copies of each bill not later than the next legislative day after it has been reported correctly enrolled, unless the hill is delivered on the last legislative day, in which case the presiding officer shall sign it that day. The fact of signing must be announced by the presiding officer and entered upon the journal no later than the next legislative day. At any time after the report of a bill correctly enrolled and before the signing, if a member signifies a desire to examine the bill, the member must he permitted to do so. The bill then must be transmitted to the other house where the same procedure must be followed.

(4) A bill that has passed both houses of the Legislature by the 90th day may be:

(a) enrolled;

(h) clerically corrected by the presiding officers, if necessary;

(c) signed by the presiding officers; and

(d) delivered to the Governor or, in the case of a bill proposing a referendum, to the Secretary of State, not later than 5 working days after the 90th legislative day.

(5) All journal entries authorized under this rule must be entered on the journal for the 90th day.

(6) The original and two copies signed by the presiding officer of each house must be presented to the Governor or the Secretary of State, as applicable, in return for a receipt. A report then must be made to the house of the day of the presentation, which must be entered on the journal.

(7) The original must he filed with the Secretary of State. Signed copies with chapter numbers assigned pursuant to section 5-11-204, MCA, must be filed with the Clerk of the Supreme Court and the Legislative Services Division.

40-170. Amendment by second house. (1) Amendments to a bill by the second house may not be further amended by the house in which the bill originated, but must be either accepted or rejected. If the amendments are rejected, a conference committee may be requested by the house in which the bill originated. If the amendments are accepted and the bill is of a type requiring

HeinOnline -- 1999 vol. III 2852 1999

more than a majority vote for passage, the bill again must be placed on third reading in the house of origin.

(2) The vote on third reading after concurrence in amendments is the vote of the house of origin that must be used to determine if the required number of votes has been cast.

40-180. Final action on a bill. (1) When a bill being heard by the second house has received its third reading or has been rejected, the second house must transmit it as soon as possible to the original house with notice of the second house's action.

(2) A bill that reduces revenue and that contains a contingent voidness provision may not be transmitted to the Governor unless there is an identified corresponding reduction in an appropriation contained in the general appropriations act.

40-190. Transmittal of bills between houses. (1) Each house shall transmit to the other with any bill all relevant papers.

(2) When a House bill is transmitted to the Senate, the Secretary of the Senate shall give a dated receipt for the bill to the Chief Clerk of the House. When a Senate bill is transmitted to the House of Representatives, the Chief Clerk of the House shall give a dated receipt to the Secretary of the Senate.

40-200. Transmittal deadlines. (1) (a) A bill or amendment transmitted after the deadline established in this subsection (1) may be considered by the receiving house only upon approval of two-thirds of its members present and voting. If the receiving house does not so vote, the bill or amendment must be held pending in the house to which it was transmitted.

(b) (i) A bill, except for an appropriation bill, a revenue bill, or amendments considered by joint committee, must be transmitted from one house to the other on or before the 45th legislative day.

(ii) Amendments, except to appropriation bills and revenue bills, must be transmitted from one house to the other on or before the 73rd legislative day.

(c) (i) Revenue bills originating in the Senate must be transmitted to the House on or before the 71st legislative day.

(ii) House amendments to Senate revenue bills must be transmitted by the House to the Senate on or before the 82nd legislative day.

(iii) Revenue bills originating in the House must be transmitted to the Senate on or before the 71st legislative day.

(iv) Senate amendments to House revenue bills must be transmitted by the Senate to the House on or before the 82nd legislative day.

(v) A revenue bill is one that either increases or decreases revenue.

(d) (i) Appropriation bills and any bill implementing provisions of a general appropriation bill must be transmitted to the Senate on or before the 67th legislative day.

(ii) Senate amendments to appropriation bills must be transmitted by the Senate to the House on or before the 80th legislative day.

HeinOnline -- 1999 vol. III 2853 1999

(2) (a) A joint resolution introduced for the purpose of estimating revenue available for appropriation by the Legislature must be transmitted no later than the 60th legislative day.

(b) Amendments to the resolutions must he transmitted to the house of origin no later than the 82nd legislative day.

(3) Bills repealing or directing the amendment or adoption of administrative rules and joint resolutions advising or requesting the repeal, amendment, or adoption of administrative rules may he transmitted at any time during a session.

(4) Interim study resolutions must be transmitted from one house to the other on or before the 85th legislative day.

40-210. Governor's veto. (1) Except as provided in 40-65 and 40-180, each bill passed by the Legislature must be submitted to the Governor for the Governor's signature. This does not apply to:

(a) bills proposing amendments to The Constitution of the State of Montana;

(b) hills ratifying proposed amendments to the United States Constitution;

(c) resolutions; and

(d) referenduin measures of the Legislature.

(2) If the Governor does not sign or veto the bill within 10 days after its delivery, the hill hecomes law.

(3) The Governor shall return a vetoed bill to the Legislature with a statement of reasons for the veto.

(4) If after receipt of a veto message, two-thirds of the memhers of each house present approve the bill, it becomes law.

(5) If the Legislature is not in session when the Governor vetoes a bill, the Governor sball return the bill with reasons for the veto to the Legislature as provided by law. The Legislature may be polled on a bill that it approved by two-thirds of the members present or it may be reconvened to reconsider any bill so vetoed (Montana Constitution, Art. VI, Sec. 10).

(6) The Governor may veto items in appropriation bills, and in these instances the procedure must he the same as upon veto of an entire bill (Montana Constitution, Art. VI, Sec. 10).

40-220. Response to Governor's veto. (1) When the presiding officer receives a veto message, the presiding officer shall read it to the members over the rostrum. After the reading, a member may move that the Governor's veto be overridden.

(2) A vote on the motion is determined by roll call. If two-thirds of the members present vote "aye", the veto is overridden. If two-thirds of the memhers present do not vote "aye", the veto is sustained.

40-230. Governor's recommendations for amendment. (1) The Governor may return any bill to the Legislature with recoinmendations for amendment.

(2) If the Legislature passes the bill in accordance with the Governor's recommendations, it shall return the bill to the Governor for reconsideration. The Governor may not return a bill to the Legislature a second time for amendment.

HeinOnline -- 1999 vol. III 2854 1999

(3) If the Governor returns a bill to the originating house with recommendations for amendment, the house shall reconsider the bill under its rules relating to amendments offered in Committee of the Whole.

(4) The bill then is subject to the following procedures:

(a) The originating house shall transmit to the second house, for consideration under its rules relating to amendments in Committee of the Whole, the bill and the originating house's approval or disapproval of the Governor's recommendations.

(b) If both houses approve the Governor's recommendations, the bill must be returned to the Governor for reconsideration.

(c) If both houses disapprove the Governor's recommendations, the bill must be returned to the Governor for reconsideration.

(d) If one house disapproves the Governor's recommendations and the other house approves, then either house may request a conference committee, which may be a free conference committee.

(i) If both houses adopt a conference committee report, the bill in accordance with the report must be returned to the Governor for reconsideration.

(ii) If a conference committee fails to reach agreement or if its report is not adopted by hoth houses, the Governor's recommendations must be considered not approved and the bill must be returned to the Governor for further consideration.

CHAPTER 60

Rules

60-10. Suspension of joint rule — change in rules. (1) A joint rule may be repealed or amended only with the concurrence of both houses, under the procedures adopted by each house for the repeal or amendment of its own rules.

(2) A joint rule governing the procedure for handling bills may be temporarily suspended by the consent of two-thirds of the members of either house, insofar as it applies to the house suspending it.

(3) Any Rules Committee report recommending a change in the joint rules must be referred to the other house. Any new rule or any change in the rules of either house must be transmitted to the other house for informational purposes.

(4) Upon adoption of any change, the Secretary of the Senate and the Chief Clerk of the House of Representatives shall provide the office of the Legislative Services Division:

(a) one copy of all motions or resolutions amending Senate, House, or joint rules; and

(b) copies of all minutes and reports of the Rules Committees.

60-20. Reference to Mason's Manual. Mason's Manual of Legislative Procedure (1989) governs the proceedings of the Senate and the House of Representatives in all cases not covered by these rules.

60-30. Publication and distribution of joint rules. (1) The Legislative Services Division shall codify and publish in one volume:

(a) the rules of the Senate;

(b) the rules of the House of Representatives; and

(c) the joint rules of the Senate and the House of Representatives.

(2) After the rules have been published, the Legislative Services Division shall distribute copies as directed by the Senate and the House of Representatives.

Adopted January 25, 1999

SENATE JOINT RESOLUTION NO. 2

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE BOARD OF PUBLIC EDUCATION TO INTEGRATE BASIC ECONOMIC AND CONSUMER PRINCIPLES AND PERSONAL FINANCIAL PLANNING COURSEWORK INTO THE MODEL LEARNER GOALS OR CONTENT AND PERFORMANCE STANDARDS ESTABLISHED FOR MONTANA'S PUBLIC SCHOOLS.

WHEREAS, average life expectancy for Americans has increased throughout the 20th century, and the average length of retirement has increased from 5 years at the beginning of the century to 17 years today; and

WHEREAS, retirees today need a monthly income of about 80% of salary earned during their final year of work to live comfortably in retirement; and

WHEREAS, the increasing use of defined contribution retirement plans, deferred compensation plans, individual retirement accounts, and other saving plans requires increased financial planning knowledge; and

WHEREAS, the adequacy of a person's income in retirement rests increasingly on the shoulders of the individual; and

WHEREAS, those most vulnerable to poverty in their retirement years will be those who failed to plan for financial adequacy in retirement; and

WHEREAS, securing adequate retirement income requires financial planning and action throughout a person's worklife; and

WHEREAS, a 1997 national survey of high school seniors, which was conducted by the Dean of Business at Marquette University, demonstrated that most high school seniors lack the financial knowledge needed to manage their lives and that their knowledgo was weakest in the survey category of saving and investing; and

WHEREAS, of the students surveyed, 62% answered that they would have no liability for credit card charges if their card were stolen and used by a thief, only 32% knew that the interest on their savings account might be subject to income tax, and 85% believed that a U.S. savings bond, a savings account, or a checking account would have a higher rate of growth than stocks over 18 years; and

WHEREAS, the Legislature recognizes that Article X, section 9, subsection (3), of the Montana Constitution provides the Board of Public Education with general supervision of the public school system.

HeinOnline -- 1999 vol. III 2856 1999

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Board of Public Education be strongly urged to integrate basic economic and consumer principles and personal financial planning coursework, including retirement planning principles, into the model learner goals or content and performance standards established for Montana's public schools.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the Board of Public Education, the Office of Public Instruction, the Montana School Boards Association, the Montana Rural Education Association, the School Administrators of Montana, the Montana Federation of Teachers, and the Montana Education Association.

Adopted February 11, 1999

SENATE JOINT RESOLUTION NO. 3

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA RECOMMENDING THAT STATE AGENCIES SERVE AS ROLE MODELS FOR THE IMPLEMENTATION AND REFINEMENT OF BEST MANAGEMENT PRACTICES TO REDUCE NONPOINT SOURCE POLLUTION OF MONTANA'S WATERS; AND RECOMMENDING THAT RELEVANT AGENCIES REPORT RELATED PROGRESS AND ACCOMPLISHMENTS TO THE ENVIRONMENTAL QUALITY COUNCIL PRIOR TO THE NEXT LEGISLATIVE SESSION.

WHEREAS, all Montanans share a responsibility for the protection and enhancement of the capability of Montana's waters to support their designated uses; and

WHEREAS, some land user groups are demonstrating their commitment to that responsibility by collectively developing and implementing voluntary strategies to address water quality protection on lands associated with their industry; and

WHEREAS, Montana's forestry industry is an example of a land user group that has a track record of developing and implementing voluntary best management practices to protect water quality; and

WHEREAS, 10 years of implementation of the voluntary forestry best management practices program, including its strong training and audit components, has resulted in: (1) increased understanding of members of the forest products industry of the impact that their activities might have on water quality; (2) development, implementation, evaluation, and continued refinement of forestry-related practices that can provide cost-effective protection of water quality; (3) a high level of compliance, industrywide, with these voluntary practices; and (4) effective protection of water quality associated with forestry activities on both private and public land; and

WHEREAS, Montana's state agencies should serve as role models for the protection of Montana's water resources and could learn from the efforts of the forestry industry in developing and implementing protective practices.

HeinOnline -- 1999 vol. III 2857 1999

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That Montana state agencies with land management or development responsibilities, including responsibilities for road construction and maintenance, be strongly urged to serve as role models for the broad and effective implementation and refinement of best management practices to reduce nonpoint source water pollution in Montana. Activities in this regard may include but are not limited to:

(1) evaluating their current land management and development practices, including those related to roads, parking areas, and trails, to determine what practices are currently used to reduce the potential for nonpoint source water pollution as a direct or indirect result of their management or development activities;

(2) determining what additional practices could be applied that would further reduce the likelihood of nonpoint source pollution of Montana's waters; and

(3) coordinating internally and with other agencies to share current and potential new techniques, training staff on the implementation of these techniques, and otherwise enhancing the statewide application and efficiency of best management practices for purposes of reducing nonpoint source water pollution in Montana, thereby further enhancing Montana's ability to support the designated uses of its waters.

BE IT FURTHER RESOLVED, that the Environmental Quality Council make a priority of requesting Montana state agencies with land management or land development responsibilities to report to the Council prior to the next legislative session on the respective agencies' progress and accomplishments related to implementing and refining best management practices to control nonpoint source pollution of Montana's waters.

Adopted March 22, 1999

SENATE JOINT RESOLUTION NO. 4

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA AUTHORIZING THE PERMANENT PLACEMENT OF CERTAIN MEMORIALS IN THE CAPITOL.

WHEREAS, section 2-17-804(1)(b), MCA, requires the Capitol Complex Advisory Council to advise the Legislature on the placement of busts, statues, memorials, monuments, or art displays of a permanent nature within public areas of the Capitol Complex, including the executive residence and the original Governor's mansion; and

WHEREAS, the Capitol Complex Advisory Council recommends the permanent placement of a memorial to distinguished members of the House of Representatives and recognition displays to recognize major donors to the Capitol restoration project.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That a House of Representatives memorial be permanently placed in the Capitol to be inscribed with the names of Representatives whose careers were

HeinOnline -- 1999 vol. III 2858 1999

marked by distinguished service to the people of Montana, that names to be inscribed be designated by the House of Representatives on referral from the House Legislative Administration Committee, and that the Capitol Complex Advisory Council consult with the House Legislative Administration Committee on the design and placement of the memorial.

(2) That donors to the Capitol restoration project be recognized in a permanent manner for their contributions to the project, that the form of recognition be developed as a priority item in the revision of the Capitol area master plan under section 2-17-805, MCA, and that the design and location of recommended recognition displays be reviewed and approved by the Capitol Complex Advisory Council.

Adopted March 31, 1999

SENATE JOINT RESOLUTION NO. 5

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE UNITED STATES CONGRESS AND THE EXECUTIVE BRANCH OF THE UNITED STATES GOVERNMENT TO TAKE ACTION TO REQUIRE COVERAGE OF THE COST OF LONG-TERM CARE AND PRESCRIPTION DRUGS BY THE FEDERAL MEDICARE PROGRAM.

WHEREAS, the ever-increasing cost of prescription drugs and long-term care is beyond the income of most senior citizens; and

WHEREAS, 30 years ago the average monthly Social Security check would more than cover a month's stay in a nursing home as well as pay the cost of prescription drugs, while today the average monthly Social Security check will not pay for 1 week's stay in a nursing home; and

WHEREAS, prescription drugs can be purchased in either Mexico or Canada for one-fourth to one-third of the cost in the United States; and

WHEREAS, the cost of research and development of prescription drugs in the United States is so high that pharmaceutical companies must sell their product for as great a price as the market will bear in order to recoup some of those research and development costs; and

WHEREAS, billions of dollars are wasted because Congress will not allow Medicare to use competitive bidding in ordering supplies and equipment; and

WHEREAS, according to gevernment estimates, Medicare improperly paid approximately $23 billion in the 1997 fiscal year because of fraud and abuse.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the United States Congress is urged to enact legislation to place long-term care and prescription drugs in the Medicare program and that in order to pay for these changes to the Medicare program, a serious effort to eliminate fraud and abuse be inaugurated and that Congress give Medicare the right to use competitive bidding for purchasing prescription drugs and other supplies.

HeinOnline -- 1999 vol. III 2859 1999

(2) That the federal government is urged to take serious measures to eliminate fraud and abuse wherever it may be found in the expenditure of federal tax dollars.

(3) That the United States Congress review the necessity for statutes and regulations that contribute to the high cost of research and development of prescription drugs in the United States and revise or eliminate those statutes and regulations that cause or contribute to the high cost of research and development of those drugs.

BE IT FURTHER RESOLVED, that the Secretary of State send a copy of this resolution to the President of the United States, the Speaker of the United States House of Representatives, the President of the United States Senate, and to each member of the Montana Congressional Delegation.

Adopted March 22, 1999

SENATE JOINT RESOLUTION NO. 7

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING CONGRESS TO FUND A FEASIBILITY STUDY AND IMPLEMENT THE STUDY'S FINDINGS TO RESOLVE PROBLEMS IN BILLINGS ASSOCIATED WITH THE RAILROAD TRACKS THAT DIVIDE THE CITY.

WHEREAS, Montana Rail Link railroad tracks pass through and divide Billings, Montana's largest city; and

WHEREAS, the railroad tracks and train traffic result in motor vehicle gridlock several times a day; and

WHEREAS, the railroad tracks interrupt the free flow of traffic on Montana Highway 3, which is part of the national highway system, and its connection to Interstate 90; and

WHEREAS, the tracks and the gridlock that results have generated public medical and safety concerns; and

WHEREAS, the Billings community proposes a feasibility study to resolve the problems that the railroad tracks present; and

WHEREAS, this resolution has the full support of the Billings City Council; the Yellowstone County Commissioners; the City-County Planning Board; Montana Rail Link; and the adjacent neighborhood task force, representing the South Park Task Force, the North Elevation Task Force, the North Park Task Force, and the Central Terry Park Task Force.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Montana Legislature request the U.S. Congress to provide the funding necessary to conduct a feasibility study and implement the study's findings to resolve the problems presented by the railroad tracks that divide the city of Billings.

Adopted April 1, 1999

HeinOnline -- 1999 vol. III 2860 1999

SENATE JOINT RESOLUTION NO. 9

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF THE STATE'S LAWS AND PROCEDURES THAT GOVERN THE DEVELOPMENT, ADMINISTRATION, AND ENFORCEMENT OF CONTRACTS WITH PRIVATE SECTOR VENDORS TO COMPLETE GOVERNMENT PROJECTS OR DELIVER GOVERNMENT SERVICES.

WHEREAS, a national trend toward privatization of government services has led many states to closely examine and refine their contracting laws and procedures; and

WHEREAS, the State of Montana is relying to an ever-greater degree on numerous types of services provided through contracts with private sector vendors; and

WHEREAS, the Department of Administration and other entities have indicated that there is a large body of new information deriving from other states' contract development and administration experiences that may he of great value to the Legislature and the State of Montana; and

WHEREAS, Montana's large-scale contracts with private sector vendors include a diverse range of services, such as prisons, managed care, and information technology; and

WHEREAS, tbe success or failure of government programs provided by private sector vendors hinges on the ability of the state to effectively develop, negotiate, and enforce contracts with the private sector; and

WHEREAS, risks to state resources are inherent in the contracting process; and

WHEREAS, both the Joint Oversight Committee on State Management Systems and the Legislative Finance Committee have expressed concerns ahout an absence of adequate protection of the state's interests throughout the contracting process; and

WHEREAS, it is a responsibility of the Legislature to examine whether adequate, consistent policies and procedures are in place to ensure that appropriate contracting practices are in use.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Legislative Council be requested to designate an appropriate interim committee to review the laws and practices associated with the state's contracting with private sector vendors.

(2) That the study include but not be limited to the following:

(a) a thorough review of current law governing contracting, procurement, and contract enforcement;

(b) a thorough review of current state agency contracting, procurement, and enforcement procedures;

(c) an examination of how other states have addressed increases in the scale and scope of contracts with private sector vendors, including other states'

HeinOnline -- 1999 vol. III 2861 1999

experiences with centralizing state procurement, contracting, and contract enforcement responsibilities in special review boards, commissions, and councils;

(d) a review of recent Montana experiences with contracting for services and contract enforcement, paying particular attention to large-scale contracts and the lessons learned from the experiences;

(e) an examination of the possibilities for providing agencywide consistency in the contracting process and enhancing protection of the state's interests in contract negotiation and enforcement; and

(f) an examination of the current level of review and technical support provided during the development of a contract.

(3) That the Legislative Services Division provide the primary staff support to the committee that is assigned this study, but that the committee be strongly encouragod to enlist staff assistance from the entire Legislative Branch.

(4) That the committee assigned this study report to the 57th Legislature and the Governor its findings and recommendations. The report may include but is not limited to the following:

(a) lessons learned as a result of the state's experiences with largo-scale contracts;

(b) recommendations for improving and standardizing the state's contracting laws and procedures to provide adequate enforcement of contract provisions and ensure protection of state interests; and

(c) any legislation the committee requests to implement its recommendations.

Adopted April 9, 1999

SENATE JOINT RESOLUTION NO. 10

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA RECOGNIZING THE STELLAR CAREER OF MIKE MANSFIELD AND THE ESSENTIAL SUPPORT OF HIS WIFE MAUREEN AND AUTHORIZING THE PLACEMENT OF A COMMEMORATIVE STATUE ON THE CAPITOL COMPLEX.

WHEREAS, Mike Mansfield served as majority leader in the United States Senate longer than any other person in the history of the republic; and

WHEREAS, Mike Mansfield subsequently also established a longevity record as United States Ambassador to Japan, serving in both the Carter and Reagan administrations; and

WHEREAS, Mike Mansfield's statesmanship helped guide America through an extraordinary period in our nation's history, a period in which the country was drawn into three wars, weathered domestic turmoil pitting race against race and generation against generation, and finally overcame an agonizing crisis of confidence in its leadership that saw the resignation of a president at its nadir and fulfilled its turn upward with American triumpb against the global tyranny of communism; and

HeinOnline -- 1999 vol. III 2862 1999

WHEREAS, in an era of widespread skepticism of government and governmental leaders, Mike Mansfield stood always above suspicion, exemplary of the notion tbat governmental public service is indeed a noble calling; and

WHEREAS, Mike Mansfield reflected in this statement about his native state, the nourishment of his roots of greatness,"[t]he minds of Montanans dwell not only upon community and state, but upon the nation and the world and on the essential unity of all. And this sense of unity is buttressed by the harsh uncertainties of an all powerful environment which has taught us to draw together in a mutual concern for one another . . ."; and

WHEREAS, by his own account, Senator and Ambassador Mike Mansfield could not have served his state and his nation so ably or won the recognition or achieved the positions that be has without the support of his wife Maureen Hayes Mansfield; and

WHEREAS, Mike Mansfield has said tbat his three great loves are his wife Maureen, Montana, and the United States Senate; and

WHEREAS, Senator and Ambassador Mike Mansfield of Montana, national and international statesman, always the insigbtful and visionary thinker, well known and revered on the national and international stage, remains always and affectionately known to his fellow Montanans simply and eloquently as "Mike".

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That a statue be permanently placed on tbe Capitol complex in Helena, Montana, to recognize the accomplishments and contributions of United States Senator and Ambassador Mike Mansfield to the State of Montana and the nation and to recognize that those accomplishments and contributions could not have occurred without the support of his wife Maureen Hayes Mansfield; and

BE IT FURTHER RESOLVED, tbat the Capitol Complex Advisory Council approve the design and placement of the statue.

Adopted March 31, 1999

SENATE JOINT RESOLUTION NO. 11

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING AN INVESTIGATION INTO THE CAUSES OF ONGOING DEPRESSED MARKET PRICES FOR AGRICULTURAL PRODUCTS; AND URGING THE INITIATION OF ACTIONS THAT WILL STABILIZE THE NATION'S FOOD PRODUCERS, MAIN STREET BUSINESSES, AND RURAL AMERICA AS A WHOLE.

WHEREAS, an economic emergency has been created by ongoing depressed prices in the marketplace for agricultural products; and

WHEREAS, an investigation into the causes of the depressed prices is warranted; and

WHEREAS, actions should be initiated to stabilize the nation's food producers, main street businesses, and rural America as a whole.

HeinOnline -- 1999 vol. III 2863 1999

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That a full investigation be undertaken into the causes of ongoing depressed prices in the marketplace for agricultural products, including a full examination of market competitiveness in livestock and crops and a re-examination of trade agreements.

BE IT FURTHER RESOLVED, that actions be initiated that will stabilize the nation's food producers, main street businesses, and rural America as a whole, including:

(1) emergency price supports and a safety net system for all agricultural products, to be lifted only when international and domestic markets are reformed in a way that renders them open, public, and competitive and when domestic prices for agricultural products are determined to be above the cost of production as calculated by the U.S. Department of Agriculture;

(2) fair compensation for lost agricultural income, as called for under trade compensation and assistance programs of the Agricultural Trade Act of 1978 and the Federal Agricultural Improvement and Reform Act of 1996 (FAIR Act), for all existing and future sanctions;

(3) further support for risk management tools and education, such as the pilot projects for forward contracts and the use of hedges and options, and development and funding of a more effective yield and income insurance program by Congress and the administration;

(4) vigorous antitrust investigations into the concentration of ownership in meat packing, grain handling, and retail trade, including a complete investigation of the possible effects of the proposed Cargill-Continental merger;

(5) expansion and development of new international markets for agricultural products and ensuring that agricultural producers have advisory status at any agricultural trade negetiations, with a priority on price transparency of the Canadian Wheat Board;

(6) reductions of regulations and taxes to enable farmers and ranchers to be more profitable;

(7) country of origin labeling;

(8) limiting use of the U.S. Department of Agriculture stamp to products produced in the United States;

(9) mandatory price reporting of livestock and grain;

(10) moving responsibility for enforcement of the federal Packers and Stockyards Act from the U.S. Department of Agriculture to the U.S. Department of Justice;

(11) inspections of imported agricultural products to ensure that imported products meet standards equivalent to United States standards for food safety, environmental protection, and worker protection; and

(12) ensuring that farm and ranch producers are represented at the 1999 World Trade Organization.

BE IT FURTHER RESOLVED, that the Secretary of State send a copy of this resolution to the members of the Montana Congressional Delegation.

Adopted April 1, 1999

HeinOnline -- 1999 vol. III 2864 1999

SENATE JOINT RESOLUTION NO. 12

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA OBJECTING TO ANY ATTEMPT BY THE FEDERAL GOVERNMENT TO TAKE FROM THE STATES, TERRITORIES, COMMONWEALTHS, AND THE DISTRICT OF COLUMBIA, ANY OF THE PROCEEDS OF THE TOBACCO SETTLEMENT RECENTLY REACHED WITH THE TOBACCO COMPANIES AND URGING THE U.S. CONGRESS TO ACT TO PREVENT FURTHER ASSERTION OF THAT CLAIM.

WHEREAS, on November 23, 1998, 46 states, U.S. territories, commonwealths, and the District of Columbia reached a multibillion dollar settlement with six tobacco companies to end pending civil actions brought by the states claiming as damages money spent treating residents for injuries caused by smoking; and

WHEREAS, the United States has asserted a claim to over one-half of the settlement money, claiming that much of the money to be received by the states amounts to Medicaid overpayments and, as such, can be "recouped" by the federal government; and

WHEREAS, the record-setting settlement was achieved by the states, territories, commonwealths, and the District of Columbia through their efforts and their efforts alone, the federal government having played no role whatsoever in the proceedings leading to the settlement or the settlement negotiations; and

WHEREAS, having played no role in the lawsuits and settlements, any attempt by the United States to "recoup" the damages paid by the tobacco companies amounts to a seizure of money to which the states, territories, commonwealths, and the District of Columbia have a moral and legal claim; and

WHEREAS, there is bipartisan support forming in the U.S. Congress for the introduction of legislation to keep the United States from making good on its claim for recoupment; and

WHEREAS, strong support should be shown by Montana for the Congressional efforts to prevent the United States from further asserting ownership of the settlement proceeds.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Montana Legislature convey to the U.S. Senate and House of Representatives its strong opposition to the taking by the federal government of any of the proceeds of the tobacco settlement.

BE IT FURTHER RESOLVED, that the Legislature requests the Congress to enact legislation to keep the U.S. Department of Health and Human Services from further asserting or making good on a claim to the settlement proceeds.

BE IT FURTHER RESOLVED, that the Legislature requests the Montana Congressional Delegation to work closely with those members of Congress who will sponsor legislation to see that the proceeds of the settlement be paid to and retained by the states.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the President of the United States Senate, the Speaker of the United

HeinOnline -- 1999 vol. III 2865 1999

States House of Representatives, and the members of Montana's Congressional Delegation.

Adopted March 22, 1999

SENATE JOINT RESOLUTION NO. 14

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN APPROPRIATE INTERIM COMMITTEE TO STUDY SENTENCING STATUTES, SENTENCING DATA INFORMATION COLLECTION AND MANAGEMENT, AND ISSUES RELATED TO SENTENCING.

WHEREAS, the Montana Sentencing Commission was formed in 1995 and after 18 months of study recommended continued work to develop an accurate database of criminal justice information and criminal sentencing practices, to determine what impacts sentencing laws and practices have on the state's criminal justice system and correctional resources, and to evaluate Montana's sentencing laws in order to achieve a simpler, more understandable sentencing system that results in consistent, effective, and fair administration of laws; and

WHEREAS, the 55th Legislature authorized a Correctional Standards and Oversight Committee for the 1997-1998 interim that continued to study sentencing issues and monitor the development of a sentencing database; and

WHEREAS, the Correctional Standards and Oversight Committee recommended legislation in the 1999 Legislature for an initial revision of statutes on criminal sentencing procedures in order to assist a future review of Titles 45 and 46, MCA; and

WHEREAS, the Correctional Standards and Oversight Committee report on the policies on good time credits indicated the belief that the Legislature needed to provide clearer statutory direction and parameters for sentencing and that an effort to review and revise sentencing statutes may be in order; and

WHEREAS, the 1995 Legislature adopted changes to sentencing laws that included ending good time credits for offenders and the dangerous offender law and enacted the two-strikes and three-strikes laws without critical data or analysis of the potential impact on the judicial system or correctional populations or resources; and

WHEREAS, the Legislature has appropriated significant funding to the Department of Corrections for technological purposes and the Legislative Finance Committee, the Legislative Audit Division, the Joint Oversight Committee on Management Systems, and the Correctional Standards and Oversight Committee have all raised concerns regarding the expenditure of those funds and the lack of progress and integration with other databases; and

WHEREAS, the Department of Justice and the Supreme Court Administrator's Office are also involved in criminal justice information management projects requiring oversight to ensure that integration and cooperation occurs among all agencies involved with court and criminal justice information; and

HeinOnline -- 1999 vol. III 2866 1999

WHEREAS, certain members of the judiciary have asked for clearer direction from the Legislature and for the ability to use judicial discretion and creative sanctions in the sentencing of offenders.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee to:

(1) develop a felony crime seriousness ranking that provides for public safety and appropriate restoration of the victim and that can serve as the basis of a rational sentencing policy in Montana;

(2) review the sentencing statutes in Titles 45 and 46, MCA, and statutes in other titles of the MCA that contain criminal sentences and determine the extent to which the current sentence ranges and penalties conform te Article II, section 28, of the Montana Constitution, the correctional and sentencing policy in 46-18-101, MCA, and the crime seriousness ranking;

(3) assess the impact of mandatory minimum sentences, truth-in-sentencing laws, two-strikes and three-strikes laws, and the elimination of good time credits on the criminal justice system, including the impacts on sentencing practices and correctional resources in the state;

(4) consider requiring a period of mandatory postrelease supervision for any offender who is incarcerated and estimate the impact of that policy on the parole resources of the state;

(5) examine the effect of allowing deferred sentences for crimes that must be committed two, three, or four times before reaching felony status;

(6) review the provisions for and the use of sentence enhancements;

(7) examine the current statutory provisions for sentence review by the sentence review hoard of the Supreme Court and assess the adequacy of those provisions and of the resources available for sentence review;

(8) review the use of correctional resources in the state, including but not limited to intermediate sanctions such as probation, intensive supervision, and prerelease centers, as well as the use of parole and the amount of time served in prison or jail out of the total sentence imposed;

(9) report the results of its work and recommend to the 57th Legislature changes needed in Titles 45 and 46, MCA, to achieve a consistent, effective, and rational sentencing system and to maximize the use of available correctional resources in the state, including intermediate sanctions, minimum security correctional facilities, and sentence review resources;

(10) review and monitor the implementation of databases that involve court and criminal justice data to ensure that integration and cooperation is occurring and that the databases being developed will provide the Legislature with information on sentencing practices, sentence disparities, offender populations, the use of correctional facilities, intermediate sanctions, parole, and other information needed for the Legislature to make informed policy decisions on the state's correctional and sentencing statutes and their fiscal impact on corrections and on funding for the crimimal justice system and corrections programs.

BE IT FURTHER RESOLVED, that for the purposes of this study, subcommittees of the committee shall include, to the extent allowed by law, participants in the criminal justice system, including judges, probation and parole

HeinOnline -- 1999 vol. III 2867 1999

officers, law enforcement, victims, prosecutors, defense attorneys, the department of corrections, the board of crime control, county commissioners, and other interested parties.

BE IT FURTHER RESOLVED, that the Legislative Council may accept gifts, grants, donations, and other funding that may become available to assist in this study.

BE IT FINALLY RESOLVED, that the committee hold public meetings around the state to gather public response and opinions on its work and recommendations for inclusion in the committee's deliberations, report, and recommendations.

Adopted April 16, 1999

SENATE JOINT RESOLUTION NO. 15

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT THE LEGISLATIVE COUNCIL DIRECT THE APPROPRIATE INTERIM COMMITTEE TO STUDY THE CURRENT LEVEL OF BENEFITS PAID TO INJURED WORKERS UNDER THE WORKERS' COMPENSATION ACT AND THE FREQUENCY OF INDEMNITY CLAIMS UNDER THE WORKERS' COMPENSATION ACT; AND REQUIRING A REPORT OF THE FINDINGS OF THE STUDY AND RECOMMENDATIONS TO THE 57TH LEGISLATURE.

WHEREAS, since 1993, Montana's workers' compensation premium rates have decreased at a far greater pace than in the surrounding region and loss costs have been reduced by 46% since 1994; and

WHEREAS, despite the reduction in premium rates, Montana's average loss cost rates are currently 195% of tbe average in the region, which includes the states of Arizona, Colorado, Idaho, New Mexico, Oregon, South Dakota, and Utah; and

WHEREAS, because Montana has one of the lowest average weekly wage levels in the region, the state's maximum permanent partial weekly benefit of $205.50 is the lowest maximum indemnity benefit amount in the region; and

WHEREAS, despite the lowest maximum permanent partial indemnity benefit level in the region, Montana pays out 86% of the regional claim payment average for each 100,000 workers; and

WHEREAS, although the frequency of permanent partial claims has decreased from 1,468 for each 100,000 workers in 1994 to 832 for each 100,000 workers in 1996, the frequency of tbese claims is approximately twice the regional averago of 473 for each 100,000 workers; and

WHEREAS, the high frequency of claims, especially for permanent partial injury claims, may be directly related to the facts that Montana's economy is more concentrated in higher hazard employments, that the Montana economy provides fewer opportunities for alternative work or light duty once a worker is injured, and that Montana has the bighest percentage of individuals holding multiple jobs, making reemployment after an injury at the same wage levels less likely.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

HeinOnline -- 1999 vol. III 2868 1999

(1) That the appropriate interim committee study the current workers' compensation benefit levels for permanent total, permanent partial, and temporary total indemnity claims and the frequency of claims for each lost time claim.

(2) That the appropriate interim committee provide a report to the 57th Legislature of the committee's recommendations on whether any adjustment of workers' compensation benefit levels is advisable and its recommendations for reducing the frequency of all injury claims, with particular focus on reducing the high number of permanent partial indemnity claims.

Adopted April 8, 1999

SENATE JOINT RESOLUTION NO. 16

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE EDUCATION INTERIM COMMITTEE TO STUDY THE ADMINISTRATION AND FUNDING OF THE MONTANA UNIVERSITY SYSTEM; AND REQUIRING A REPORT TO THE 57TH LEGISLATURE.

WHEREAS, an educated society is essential for a prosperous and cultured country; and

WHEREAS, currently, funding for higher education in Montana emphasizes institutions over students; and

WHEREAS, tuition and fees for residents enrolled in the Montana University System have risen 100% in the last 10 years; and

WHEREAS, the loan debt for Montana students has also risen 100%; and

WHEREAS, Montana taxpayers deserve the most efficient use of their tax dollars; and

WHEREAS, local communities should have the ability to provide the support to their institutions of higher education that they consider appropriate.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Education Interim Committee be requested to study the administration and the funding of the Montana University System, including but not limited to:

(1) evaluating the effectiveness of the current system of providing lump-sum funding to the Montana University System;

(2) identifying alternative funding systems, such as delivering funding in the form of student scholarships;

(3) identifying funding systems for higher education in other states and comparing them to the Montana system; and

(4) exploring practical methods of providing greater participation in policymaking and control of expenditures by communities in which higher education institutions are located.

BE IT FURTHER RESOLVED, that the study be conducted in consultation with representatives from all segments of the Montana University System.

HeinOnline -- 1999 vol. III 2869 1999

BE IT FURTHER RESOLVED, that the Committee report its findings, conclusions, and recommendations to the 57th Legislature.

Adopted April 13, 1999

SENATE JOINT RESOLUTION NO. 18

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT THE ENVIRONMENTAL QUALITY COUNCIL CONDUCT AN INTERIM STUDY OF THE MONTANA ENVIRONMENTAL POLICY ACT.

WHEREAS, with the enactment of the Montana Environmental Policy Act (MEPA) 28 years ago, the Legislature intended to ensure that state agencies think about the consequences of their actions before they act and that Montanans be informed of and be allowed to participate in state agencies' decisions that affect Montanans and the quality of Montana's human environment; and

WHEREAS, although the purposes of MEPA are laudable, MEPA itself has not been comprehensively reviewed and the implementation of MEPA has not been extensively analyzed and updated since 1988; and

WHEREAS, the 56th Legislature has debated the need for significant policy changes to MEPA; and

WHEREAS, many legislators and interested parties concluded that the magnitude and complexity of MEPA implementation and policy issues deserve careful and deliberative study; and

WHEREAS, the Environmental Quality Council (EQC) has longstanding and statutorily required involvement in MEPA issues and has demonstrated strong bipartisan expertise in analyzing and reviewing MEPA policy and implementation.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the EQC be requested to give priority to the study of MEPA with the geals of:

(a) evaluating and improving the MEPA process;

(b) ensuring that the MEPA process results in state agencies making timely, efficient, informed, cost-effective, legally defensible, and ultimately better decisions; and

(c) ensuring that the MEPA process results in government accountability and that Montanans are informed of and participate in state agency decisions.

(2) That the EQC, in consultation with any affected parties, seek to identify whether the current implementation of MEPA is achieving its intended purpose in fulfilling the policy set forth in statute.

(3) That the study consider a broad range of MEPA issues, including but not limited to a review and analysis of:

(a) the existing implementation of MEPA;

(b) the issues raised and debated in House Bill No. 142 and Senate Bill No. 413 during the 56th legislative session;

HeinOnline -- 1999 vol. III 2870 1999

(c) any identifiable costs and benefits to agencies, permit applicants, citizens, and the human environment resulting from compliance with the policy and purpose of MEPA;

(d) suggestions for improving the MEPA process;

(e) whether citizens are effectively participating in the MEPA decision-making process; and

(f) the successful and efficient implementation of other similar national and state laws.

(4) That the EQC actively solicit the participation of Montana citizens, groups and individuals whose state-regulated activities are subject to MEPA review, state and local officials, and any other persons or groups with interest in the outcome of the study.

(5) That state agencies responsible for implementing MEPA fully cooperate and assist the EQC in this study.

(6) That the EQC, prior to September 30, 2000, he requested to:

(a) prepare a report of its findings and conclusions; and

(b) identify options and make recommendations, including legislation if appropriate, to the Governor and to the 57th Legislature.

Adopted April 16, 1999

SENATE JOINT RESOLUTION NO. 20

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA SUPPORTING THE BALANCE OF THE NEEDS OF NATIVE ANADROMOUS FISH AND RESIDENT FISH AND WILDLIFE THROUGH THE USE OF SCIENCE-BASED INTEGRATED RULE CURVES.

WHEREAS, the Legislature of the State of Montana is a member of the Legislative Council on River Governance, which also includes the States of Idaho, Washington, and Oregen; and

WHEREAS, the purpose of the Legislative Council on River Governance is to assert state legislative duty and authority over natural resources and river governance and to unite states for a proactive agenda of legislative action and communications; and

WHEREAS, the State of Idaho has requested the support of the members of the Legislative Council on River Governance for healthy stocks of native anadromous fish and for opposing flow augmentation and the removal of dams on the Snake River and its tributaries; and

WHEREAS, the State of Montana, like the State of Idaho, has a vested interest in federal and regional decisions concerning water flows in the Columbia River Basin that could affect the Clark Fork and Kootenai Rivers; and

WHEREAS, the State of Montana, like the State of Idaho, supports the continued multiple use of the Columbia River tributaries for fish and wildlife, hydropower generation, irrigation, transportation, flood control, municipal use, and recreation; and

HeinOnline -- 1999 vol. III 2871 1999

WHEREAS, the State of Montana, like the State of Idaho, recognizes the importance of multiple uses of water within the Columbia River Basin; and

WHEREAS, the State of Montana, like the state of Idaho, has concerns about the impacts of anadromous fish enhancement efforts on resident fisheries and water within the respective states; and

WHEREAS, the State of Montana, like the State of Idaho, believes that the native anadromous fish decline is due to many factors, some of which are diminished babitat, increased predation, unfavorable ocean conditions, hatchery practices, harvest impacts, and changing climatic conditions, as well as hydropower generating dams; and

WHEREAS, the State of Montana, like the State of Idabo, recognizes the need to protect and enbance native anadromous fish populations and will work to accomplish this while also protecting tbe needs of the citizens of each state; and

WHEREAS, integrated rule curves for the operation of Libby Dam and Hungry Horse Dam improve dam operational practices to provide more favorable biological conditions for resident fish in those reservoirs and affected river reaches and help balance conditions for anadromous and resident fish so tbat the recovery of one is not pursued at the expense of the other; and

WHEREAS, integrated rule curves were developed by the State of Montana and the Confederated Salish and Kootenai Tribes, adopted by the Northwest Power Planning Council in its fish and wildlife program, and were ordered on January 19, 1999, by Federal Magistrate Bart Erickson of Missoula to be considered by the United States Army Corps of Engineers and the Bureau of Reclamation at each relevant stage of decisionmaking processes, including in-season decisions, regarding the operation of Hungry Horse and Libby Dams.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That federal and state enhancement efforts for native anadromous fish must be undertaken in a manner that protects state sovereignty over water resources and balances tbe needs of anadromous fish with tbe needs of resident fish and wildlife. In Montana, this balance is best achieved through implementation of integrated rule curves at Libby and Hungry Horse Dams.

BE IT FURTHER RESOLVED, tbat tbe State of Montana support the State of Idaho's call for further study of tbe effectiveness of flow augmentation for anadromous fish recovery.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of tbis resolution to the Montana Congressional Delegation, the Idaho State Legislature, and the directors of the National Marine Fisheries Service, the United States Army Corps of Engineers, and the United States Bureau of Reclamation.

Adopted April 16, 1999

SENATE JOINT RESOLUTION NO. 21

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF OPTIONS THAT COULD BE IMPLEMENTED BY LOCAL GOVERNMENTS TO PROVIDE INCENTIVES FOR CLUSTER DEVELOPMENT AND PRESERVATION OF AGRICULTURAL LAND OR

HeinOnline -- 1999 vol. III 2872 1999

OPEN SPACE; AUTHORIZING THE COMMITTEE TO REQUEST ASSISTANCE IN THE CONDUCT OF THE STUDY; AND REQUIRING THE COMMITTEE TO REPORT ON ITS FINDINGS AND RECOMMENDATIONS.

WHEREAS, agricultural land is increasingly being taken out of production for development and becoming unavailable for agricultural production or open space; and

WHEREAS, farmers and ranchers are often forced to sell their land to generate sufficient income to retire; and

WHEREAS, cluster development can facilitate the preservation of agricultural land or open space; and

WHEREAS, cluster development can reduce costs for infrastructure and provision of services by concentrating building sites on smaller lots so that services and utilities can be concentrated in a smaller area; and

WHEREAS, local governments need mechanisms to encourage development approaches that minimize costs to local citizens and that promote effective and efficient provision of public services; and

WHEREAS, local governments need mechanisms to encourage preservation of agricultural land or open space.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate legislative interim committee to study potential options that could be implemented by local governments on a voluntary basis to provide incentives for cluster development and preservation of agricultural land or open space. The committee shall consider options that have been used successfully in Montana and in other states. The study must include:

(1) an evaluation of incentives for preservation of agricultural land or open space, including transferable development rights programs; and

(2) an evaluation of incentives for cluster development, including transferable development rights programs.

BE IT FURTHER RESOLVED, that the committee assigned to conduct the study:

(1) may request assistance from any agency of state government, from any representative of local government, and from interested and knowledgeable citizens and organizations; and

(2) shall report to the Governor and to the 57th Legislature, as provided in 5-11-210, on its findings and recommendations, including recommendations for legislation, if appropriate.

Adopted April 19, 1999

HeinOnline -- 1999 vol. III 2873 1999

HeinOnline -- 1999 vol. III 2874 1999

Senate Resolutions

SENATE RESOLUTION NO. 1

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA ADOPTING AND REVISING THE SENATE RULES.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the following rules be adopted:

RULES OF THE MONTANA SENATE

CHAPTER 1

Administration

S10-10. Officers of the Senate. The officers of tbe Senate are the officers listed and elected in accordance with Title 5, chapter 2, part 2, MCA.

S10-20. Term of office. The term of office for the officers and employees of the Senate established by law shall be until the succeeding Legislature is organized. Nothing in this rule shall be construed to mean the staff will be full-time employees during an interim.

S10-30. President pro tempore and other officers. (1) The Senate shall, at the beginning of each regular session, and at such other times as may be necessary, elect a Senator President pro tempore.

(2) The Senate shall choose its other officers and shall be tbe judge of the elections, returns, and qualifications of tbe Senators.

S10-40. Voting by presiding officer. Any Senator, when acting as presiding officer of the Senate, shall vote as any other Senator.

S10-50. Presiding officer and duties. (1) The presiding officer of the Senate shall be the President of the Senate who shall be chosen in accordance with law.

(2) The President shall take the chair on every legislative day at the hour to which the Senate adjourned at the last sitting.

(3) The President may name a Senator to perform the duties of the chair when the President pro tempore is not present in the Senate chamber. The Senator who is named is vested during such time with all the powers of the President.

(4) The President shall have general control over the assignment of rooms for the Senate and shall preserve order and decorum. The President may order the galleries and lobbies cleared in case of disturbance or disorderly conduct.

(5) The President shall issue cards to the media to allow floor access, and reporters holding such passes shall be subject to placement on the floor by the President. The President may administer this rule through the office of the Secretary of tbe Senate.

HeinOnline -- 1999 vol. III 2875 1999

(6) The President shall sign all necessary certifications of the Senate, including enrolled bills and resolutions, journals, subpoenas, and payrolls. The President's signature must be attested by the Secretary of the Senate.

(7) The President shall approve the calendar for each legislative day.

(8) The President is the chief administrative officer of the Senate, with authority for the general supervision of all Senate employees. The President may seek the advice and counsel of the Legislative Administration Committee.

(9) The President of the Senate is the authorized approving authority of the Senate during the term of election to that office.

(10) The President shall refer bills to committee upon introduction or reception in the office of the Secretary of the Senate.

S10-60. Succession. (1) In case of the absence or disqualification of the President, the President pro tempore of the Senate shall perform the duties of the President until the vacancy is filled or the disability removed.

(2) Whenever the President pro tempore of the Senate is of the opposite political party from that of the President, the following procedure applies:

(a) If the President dies while in office, the members of the President's political party shall have the right to immediately nominate and elect an acting President of the same party.

(b) If the President is absent for two or more legislative days or at any time after the 85th legislative day or at any time during special session of the Legislature but able and desirous of appointing an acting President to act when the President is absent, the President may do so, or the members of the President's political party shall have the right to immediately nominate and elect an acting President of the same party.

(c) An acting President of the Senate shall have the powers of the President and supersede the powers of the President pro tempore.

S10-70. President-elect. The President-elect nominated by the appropriate party caucus held in accordance with section 5-2-201, MCA, shall have the responsibility and authority to assume the duties of President of the Senate.

S10-80. Legislative Administration Committee duties. (1) The Legislative Administration Committee shall consider matters relating to legislative administration, staffing patterns, budgets, equipment, operations, and expenditures.

(2) The committee shall have authority to act in the interim to prepare for future legislative sessions.

(3) The committee shall approve contracts for purchase or lease of equipment and supplies for the Senate, subject to the approval of the President.

(4) The committee shall consider disputes or complaints involving the competency or decorum of legislative employees referred to it by the President and recommend dismissal, suspension and/or retention of such employees.

(5) The chair of the Legislative Administration Committee may, upon approval of the President, have purchase orders and requisitions prepared and forwarded to the accounting office in the Legislative Services Division.

HeinOnline -- 1999 vol. III 2876 1999

S10-90. Senate employees. (1) In addition to the employees appointed by the President in accordance with section 5-2-221, MCA, the Senate shall employ staff recommended by the leadership and the Legislative Administration Committee as necessary to perform the functions of the Senate.

(2) A standing committee chair shall designate a secretary to take and transcribe minutes of committee meetings. A committee secretary is immediately responsible to the chair, but shall work under the overall direction of the Secretary of the Senate, subject to authority of the committee chair.

(3) (a) The President and floor leaders may each appoint a private secretary.

(b) The whips may each appoint a private secretary whose duties will include assisting other staff on an assigned basis when authorized by their respective whip.

S10-100. Secretary of the Senate and duties. The Secretary of the Senate works under the direction of the President. The responsibilities of the Secretary of the Senate include:

(1) performing the duties prescribed by law or other provisions of these rules;

(2) serving as parliamentary advisor to the Senate;

(3) compiling and maintaining the calendar for approval by the President;

(4) keeping the leadership informed on the progress and workload of the Senate;

(5) transmitting bills with appropriate messages to the House of Representatives as instructed by action of the Senate;

(6) keeping and maintaining records of the Senate; and

(7) supervision of the Senate employees, except as otherwise provided.

S10-110. Sergeant-at-Arms duties. Under the direction of the President, the Sergeant-at-Arms shall:

(1) maintain order as directed by the President or chair of the Committee of the Whole;

(2) enforce the lobbying rules of the Senate;

(3) supervise the employees assigned to the Sergeant's office;

(4) receive, distribute, and maintain supplies, equipment, and other inventory of the Senate, along with records of purchase and disposal in accordance with law;

(5) perform such duties as required by other rules and the Senate.

S10-120. Legislative aides. Each Senator may designate one person of legal age to serve as an aide during the session. Exceptions to this policy may be approved by the Rules Committee. The Senator shall register an aide with the Secretary of the Senate and arrange for the purchase of a name tag with the Sergeant-at-Arms.

S10-130. Senate journal. (1) The Senate shall keep and authenticate a journal of its proceedings as required by law and the rules.

(2) The Secretary of the Senate will supervise the preparation of the journal under the direction of the President.

HeinOnline -- 1999 vol. III 2877 1999

(3) In addition to the proceedings required by law to be recorded, the journal must include:

(a) committee reports;

(b) every motion, the name of the Senator presenting it, and its disposition;

(c) the introduction of legislation in the Senate;

(d) consideration of legislation subsequent to introduction;

(e) roll call votes;

(f) messages from the Governor and the House of Representatives;

(g) every amendment, the name of the Senator presenting it, and its disposition;

(h) the names of Senators and their votes on any question upon a request by two Senators before a vote is taken; and

(i) any other records the Senate directs by rule or action.

(4) The Secretary of the Senate shall provide such information as may be necessary for the preparation of the daily journal for printing by the Legislative Services Division. Upon approval by the President, the daily journal must be reproduced and distributed.

(5) Any Senator may examine the daily journal and propose corrections. Without objection by the Senate, the President may direct the correction to be made.

(6) The President shall authenticate the original daily journal, from time to time, and the Secretary of the Senate shall, as appropriate, deliver it to the Legislative Services Division to be prepared for publication and distribution in accordance with law.

CHAPTER 2

Decorum

S20-10. Questions of order. The President of the Senate shall decide all questions of order, subject to an appeal by any Senator seconded by two other Senators. No Senator may speak more than once on an appeal without the consent of a majority of the Senate.

S20-20. Questions of privilege. Questions of privilege in order of precedence are those:

(1) affecting the collective rights, safety, dignity, or integrity of the proceedings of the Senate; and

(2) affecting the rights, reputation, or conduct of individual Senators in their capacity as Senators.

S20-30. Recognition by chair. A Senator desiring to speak shall rise and address the presiding officer, and once being recognized, shall speak standing in place. The presiding officer may grant permission for a speaker to speak from elsewhere in the chamber. When two or more Senators rise at the same time, the presiding officer shall name the order of the speakers.

S20-40. Senators called to order. When a Senator has been called to order, the Senator shall sit down until the presiding officer determines whether the

HeinOnline -- 1999 vol. III 2878 1999

Senator is in order or not. If the Senator is called to order for words spoken in debate, the language excepted to shall be taken down in writing by the Secretary of the Senate.

S20-50. Communications to Senate. A communication to the Senate shall be addressed to the President and shall bear the name of the person submitting it. The President shall decide if the communication hears including in the calendar.

S20-60. Floor privileges. (1) When the Senate is in session no person is permitted in the chambers except:

(a) legislators;

(b) legislative officers and employees whose presence is necessary for the conduct of business of the session;

(c) accredited members of the news media; and

(d) former legislators (not currently registered as lobbyists).

(2) The President may make exceptions for visiting dignitaries.

(3) Beginning 1 hour before and ending one-half hour after adjournment, no person is permitted in the chambers except those authorized as exceptions under subsection (1).

S20-70. Distribution of materials on floor. No materials may be distributed on the Senators' desks in the chamher unless the material bears the signature of the hearer and a Senator and has been approved by the President.

CHAPTER 3

Committees

S30-10. Committee appointments. (1) The Senate shall elect a Committee on Committees consisting of six members. If the Senate is evenly divided between parties, the committee shall consist of six Senators, three from each party.

(2) The Committee on Committees shall, with the approval of the Senate, appoint the members of Senate standing committees, select committees, and joint committees.

(3) The President of the Senate shall appoint all conference committees and special committees, with the advice of the floor leaders.

(4) The Senate may change the membership of any committee on 1 day's notice.

S30-20. Standing committees. The standing committees of the Senate are as follows:

(1) Agriculture, Livestock, and Irrigation

(2) Bills and Journal

(3) Business and Industry

(4) Education and Cultural Resources

(5) Ethics

(6) Finance and Claims

(7) Fish and Game

HeinOnline -- 1999 vol. III 2879 1999

(8) Highways and Transportation

(9) Judiciary

(10) Labor and Employment Relations

(11) Legislative Administration

(12) Local Government

(13) Natural Resources

(14) Public Health, Welfare, and Safety

(15) Rules

(16) State Administration

(17) Taxation

S30-30. Members of Select Committee on Long-Range Planning. Members of the Select Committee on Long-Range Planning may participate and vote as members of the Committee on Finance and Claims on issues considered by them as members of the select committee.

S30-40. Ex officio members. Each floor leader is an ex officio member of all committees in order to establish a quorum.

S30-50. Chair's duties. (1) The chair of a committee is the presiding officer of that committee and is responsible for maintaining order within the committee room and its environs, scheduling hearings and executive action, supervising committee work, and authenticating committee reports and minutes by signing them.

(2) After adjournment of the session, the chair shall turn the original and two complete copies of the minutes over to the Secretary of the Senate who shall deliver them unbound to the Legislative Services Division librarian who will arrange to have them copied on microform. A microform copy will be provided to the Legislative Services Division and the State Law Library of Montana. The Legislative Fiscal Analyst will receive a microform copy of the minutes of the Committee on Finance and Claims. After microforming, the original minutes will be delivered to the Montana Historical Society.

S30-60. Committee reports to Senate. (1) Reports of standing committees shall be read on Order of Business No. 2, and no debate may be had on any report unless a minority report has been submitted.

(2) Committee reports may recommend approval or disapproval, with or without amendment. They may not be reported to the Senate without recommendation.

(3) Any Senator seeking a reconsideration of the Senate's action on the adoption of a committee report shall do so on Order of Business No. 6 by motion to reconsider. Any Senator may make such motion and need not have voted on the prevailing side. This rule applies notwithstanding any joint rule to the contrary.

(4) The Rules Committee and conference committees may report at any time, except during a call of the Senate or when a vote is being taken.

S30-70. Pairs. Pairs in standing committee are prohibited. Standing and select committees may by a majority vote of the committee authorize Senators

HeinOnline -- 1999 vol. III 2880 1999

to vote in absentia while engaged in other legislative business. Authorization for such voting shall be reflected in the committee minutes.

S30-80. Committee hearings. (1) No bill or resolution shall be considered or become a law unless referred to a committee and returned therefrom.

(2) A bill may be rereferred at any time before its passage.

S30-90. Notice of committee hearings — exceptions. (1) Notice of a committee hearing must be made by posting the date, time, and subject of the hearing in a conspicuous public place not less than 3 legislative days in advance of the hearing. This 3-day notice requirement does not apply to hearings scheduled:

(a) prior to the 3rd legislative day;

(b) less than 7 legislative days before the transmittal deadline applicable to the subject of the hearing; or

(c) to consider confirmation of a gubernatorial appointment received less than 10 legislative days before the last scheduled day of a legislative session.

(2) When a committee hearing is scheduled with less than 3 days' notice, the committee chair shall use all practical means to disseminate notice of the hearing to the public.

(3) Notice of conference committee hearings must be given as provided in Joint Rule 30-30.

S30-100. Majority/minority reports. If the members of a committee cannot agree on a report, the majority and minority of the committee present at a committee meeting may submit separate reports. Only one minority report may be submitted. Such reports shall be entered at length on the journal, unless otherwise ordered by the Senate.

S30-110. Reconsideration in committee. Except for the Committee of the Whole, a committee may at any time prior to submitting a report to the Secretary of the Senate reconsider its previous action on legislation.

S30-120. Committee requested legislation. (1) At least three-fourths of all the members of a standing committee must have voted in favor of the question to allow the committee to request the introduction of legislation.

(2) The chair of a committee shall introduce, or shall designate a member of the committee to introduce, legislation requested by the committee.

(3) When a committee has proposed an amendment, the chair is the principal sponsor.

S30-130. Ethics Committee. (1) The Ethics Committee shall meet only upon the call of the chair after the referral of an issue from the Rules Committee. The Rules Committee may be convened to consider the referral of a matter to the Ethics Committee upon the request of a Senator. The Rules Committee shall prepare a written statement of the specific question or issue to be addressed by the Ethics Committee. The issues referred to the Ethics Committee must be related to the actions of a Senater during a legislative session.

(2) The matters that may be referred to the Ethics Committee are:

(a) a violation of:

(i) 2-2-103;

HeinOnline -- 1999 vol. III 2881 1999

(ii) 2-2-104;

(iii) 2-2-111;

(iv) 2-2-112;

(b) the use or threatened use of a Senator's position for personal or personal business benefit or advantage; or

(c) any other violation of law hy a Senator whiIe acting in the capacity of Senator.

(3) If there is a recommendation from the Etbics Committee, the recommendation is made to the Senate.

CHAPTER 4

Legislation

S40-10. Types of legislation. The only types of legislation that may be introduced in the Senate are those that have been drafted and approved by the Legislative Services Division and signed by a Senator. The types of legislation allowed include:

(1) bills of any subject, except appropriations;

(2) joint resolutions, which may:

(a) express desire, opinion, sympathy, or request of the Legislature;

(b) request an interim study by a legislative subcommittee;

(c) adopt or amend the joint rules;

(d) set salaries and other terms of employment for legislative employees; and

(e) accomplish other legislative duties required by law; and

(3) simple resolutions, which may:

(a) adopt or amend Senate rules;

(b) provide for the internal affairs of the Senate;

(c) express confirmation of the Governor's appointments;

(d) make recommendations concerning the districting and apportionment plan as provided by Article V, section 14(4), of the Montana Constitution.

S40-20. Introduction. (1) Upon receiving a bill or resolution in duplicate from a Senator, the Secretary of the Senate shall assign an appropriate sequential number, which constitutes introduction of the legislation.

(2) Bills and resolutions may be preintroduced, assigned to committee, and printed prior to the legislative session. The Legislative Services Division shall be responsible for assuring the preintroduction intent from each Senator and presenting such legislation to the Secretary of the Senate.

(3) Upon referral to committee, the Secretary of the Senate shall publicly post a listing of the bill or resolution by a summary of its title, together with a notation of the committee to which it has been assigned.

S40-30. Additional sponsors. (1) Additional sponsors may be added on motion of the chief sponsor at any time prior to a standing committee report on

HeinOnline -- 1999 vol. III 2882 1999

the bill or resolution. Forms for adding sponsors will be supplied on request by the Secretary of the Senate.

(2) Upon passage of the motion, the names of the additional sponsors will be printed in the journal and the form containing the signatures of the additional sponsors will be forwarded to the Legislative Services Division with the original bill for the inclusion of the names in subsequent printings of the bill or resolution.

S40-40. Reading limitations. (1) Every bill shall be read three times prior to passage, either by title or by summary of title as provided in these rules.

(2) No bill or resolution shall have more than one reading on the same day except the last legislative day.

(3) No amendment may be offered on third reading.

S40-50. Rules for questions requiring other than a majority vote. (1) When a question requires more than a majority vote for final passage, a majority vote is sufficient to decide any question relating to the question prior to third reading.

(2) Any vote in the Senate on a bill proposing an amendment to the Montana Constitution under circumstances in which there exists the mathematical possibility of obtaining the necessary two-thirds vote of the Legislature will cause the bill to progress as though it had received the majority vote.

(3) If a bill has been amended in the House of Representatives and the amendments are accepted by the Senate, the bill shall again be placed on third reading in the Senate to determine if the required number of votes has been cast.

S40-60. Scheduling for second reading. (1) All bills and resolutions that have been reported by a committee, accepted by the Senate, and reproduced shall be scheduled for consideration by Committee of the Whole.

(2) Until the 50th legislative day, 1 day must elapse between receiving the legislation from printing and scheduling for second reading for consideration by Committee of the Whole.

(3) Legislation shall be arranged on the agenda in numerical order unless bills are grouped as companion bills or are placed in order otherwise by the Senate or Committee of the Whole.

CHAPTER 5

Floor Action

S50-10. Attendance. Unless excused, Senators shall be present at every sitting of the Senate and shall vote on questions put before the Senate.

S50-20. Orders of business. After prayer, roll call, and report on the journal, the order of business of the Senate is as follows:

(1) communications and petitions;

(2) reports of standing committees;

(3) reports of select committees;

(4) messages from the Governor;

(5) messages from the House of Representatives;

(6) motions;

HeinOnline -- 1999 vol. III 2883 1999

(7) first reading and commitment of bills;

(8) second reading of bills (Committee of tbe Whole);

(9) third reading of bills;

(10) unfinished business;

(11) special orders of the day; and

(12) announcement of committee meetings.

To revert to or pass to a new order of business requires only a majority vote. Unless otherwise specified in the motion to recess, the Senate shall revert to Order of Business No. 1 when reconvening after a recess.

S50-30. Limitations on debate. No Senator may speak more tban twice on any one motion or question without unanimous consent of the Senate, unless the Senator has introduced or proposed tbe motion or question under debate, in which case the Senator may speak twice and also close the debate. However, a Senator who has spoken may not speak again on the same motion or question to the exclusion of a Senator who has not spoken.

S50-40. Procedure upon offering a motion. (1) When a motion is offered it shall be restated by the presiding officer. If requested by the presiding officer or a Senator, it shall be reduced to writing, presented at the rostrum, and read aloud by the Secretary.

(2) A motion may be withdrawn by the Senator offering it at any time before it is amended or voted upon.

S50-50. Precedencc of motions. (1) When a question is under debate only the following privileged and subsidiary motions shall be made:

(a) to adjourn;

(b) for a call of the Senate;

(c) to recess;

(d) question of privilege;

(e) to lay on the table;

(f) for the previous question;

(g) to postpone to a certain day;

(h) to refer or commit;

(i) to amend; and

(j) to postpone indefinitely.

(2) The motions listed in subsection (1) of this section have precedence in the order listed.

(3) A question may be indefinitely postponed by a majority roll call of all Senators present and voting. When a bill or resolution is postponed indefinitely, it is finally rejected and may not be acted upen again during the biennium except upon a motion of reconsideration.

(4) No motion or proposition on a subject different from that under consideration shall be admitted under color of amendment or substitute.

S50-60. Nondebatable motions. The following motions are not debatable:

(1) to adjourn;

HeinOnline -- 1999 vol. III 2884 1999

(2) for a call of the Senate;

(3) to recess;

(4) for parliamentary inquiry;

(5) for suspension of the rules;

(6) to lay on the tahle;

(7) for the previous question;

(8) to limit, extend the limits of, or to close debate;

(9) to amend an undehatable motion;

(10) to divide a question;

(11) to pass business in Committee of the Whole;

(12) to take from the table;

(13) a decision of the presiding officer, unless appealed or unless the presiding officer submits the question to the Senate for advice or decision; and

(14) all incidental motions, such as motions relating to voting or other questions of a general procedural nature.

S50-70. Amending motions. No more than one amendment and no more than one substitute motion may be made to a motion. This rule permits the main motion and two modifying motions.

S50-80. Previous question. (1) Except as provided in suhsection (2) of this rule, the effect of calling for the previous question, if adopted, is to close debate immediately, to prevent the offering of amendments or other subsidiary motions, and to bring to vote promptly the immediately pending main question and the adhering subsidiary motions, whether on appeal or otherwise.

(2) When the previous question is ordered on any debatable question on which there has been no debate, the question may be debated for one-half hour, one-half of such time to be given to the proponents and one-half to the opponents.

(3) A call of the Senate is not in order after the previous question is ordered unless it appears upon an actual count hy the presiding officer that a quorum is not present.

S50-90. Reconsideration. (1) Any Senator may, on the day the vote was taken or on the next day the Senate is in session, move to reconsider the question.

(2) A motion to reconsider may not he withdrawn after such next legislative day without the unanimous consent of the Senate, and thereafter any Senator may call it up for consideration; however, a motion to reconsider made after the 54th day of the session shall be disposed of when made.

(3) A motion to recall a bill from the House of Representatives constitutes notice to reconsider and shall be acted on as a motion to reconsider. A motion to reconsider or to recall a bill from the House of Representatives may he made only under Order of Business No. 6 and, under that order of business, takes precedence over all motions except motions to recess or adjourn.

(4) When a motion to reconsider is laid on the table, a two-thirds majority is required to take it from the table. When a motion to reconsider fails, the question is finally and conclusively settled.

HeinOnline -- 1999 vol. III 2885 1999

(5) If a motion to reconsider third reading action is carried, there shall be no further action until the succeeding legislative day.

S50-100. Dividing a question. A Senator may move to divide a question if it includes two or more propositions so distinct in substance that if one thing is taken away a substantive question will remain.

S50-110. Conference committee reports. When a conference committee report is filed with the Secretary of the Senate, the same shall be read under Order of Business No. 3, select committees, and placed on the calendar the succeeding legislative day for consideration on second reading. If recommended favorably by the Committee of the Whole, it may be considered on third reading the same legislative day.

S50-160. Voting on second reading. (1) On Order of Business No. 8, in addition to other methods, a recorded vote may be made in the following manner: the chair may call for a voice vote to accept or reject a question. If the vote is other than unanimous, the chair may ask that the lesser number on the question indicate their vote by standing. The Secretary will then record the vote of those standing. The chair may then rule that unless excused those not standing and present have voted on the prevailing side of the question and that their vote be recorded as such. If there was a unanimous voice vote, all those present will be recorded as having voted for the question.

(2) Except as provided in subsection (3), if a motion to recommend that a bill "do pass" or "be concurred in" fails in the Committee of the Whole, the obverse, i.e., a recommendation that the bill "do not pass" or "he not concurred in", is considered to have passed. If a motion to recommend that a bill "do not pass" or "be not concurred in" fails in the Committee of the Whole, the obverse, i.e., a recommendation that the bill "do pass" or "be concurred in", is considered to have passed.

(3) If a motion under subsection (2) fails on a tie vote, the bill remains on second reading.

S50-130. Committee of the Whole amendments. (1) All Committee of the Whole amendments shall be prepared, stipulating the date and time of preparation and staff approval, and delivered to the Secretary of the Senate for reading before the amendment is voted on.

(2) Each amendment, rejected or adopted, shall be printed in the journal, along with the name of the sponsor and the vote on each.

S50-140. Motions in Committee of the Whole. (1) All proper motions on second reading are debatable.

(2) The only motions in order during Committee of the Whole are to:

(a) amend;

(b) recommend passage or nonpassage;

(c) recommend concurrence or nonconcurrence;

(d) indefinitely postpone;

(e) pass consideration;

(f) rise;

(g) rise and report; or

(h) rise and report progress and ask leave to sit again.

HeinOnline -- 1999 vol. III 2886 1999

S50-150. Committee of the Whole — generally. (1) The committee may not appoint subcommittees.

(2) The committee may not punish its members for misconduct, but may report disorder to the Senate.

S50-160. Voting on second reading. On Order of Business No. 8, in addition to other methods, a recorded vote may be made in the following manner: the chair may call for a voice vote to accept or reject a question. If the vote is other than unanimous, the chair may ask that the lesser number on the question indicate their vote by standing. The Secretary will then record the vote of those standing. The chair may then rule that unless excused those not standing and present have voted on the prevailing side of the question and that their vote be recorded as such. If there was a unanimous voice vote, all those present will be recorded as having voted for the question.

S50-170. Third reading procedure. (1) All legislation passing second reading shall be placed on third reading the day following the receipt of the engrossing or other appropriate printing report.

(2) On Order of Business No. 9 the Secretary shall read the title and the President shall state the question as follows: "Senate bill number (or other appropriate identification)..... having been read three several times, the question is, shall the bill (or other appropriate identification) pass the Senate?"

(3) If an electronic voting system is used, the President shall state "Those in favor vote yes and those opposed vote no" and the Secretary will sound the signal and open the board for voting. After a reasonable pause the presiding officer asks "Has every member voted?" (reasonable pause), "Does any member wish to change his or her vote?" (reasonable pause), "The Secretary will record the vote."

S50-180. Senate voting. (1) A roll call vote shall be taken on the request of two Senators, if the request occurs before the vote is taken.

(2) On a roll call vote the names of the Senators shall be called alphabetically, unless an electronic voting system is used. A Senator may not vote or change a vote after the decision is announced from the chair. A Senator may not explain a vote until after the decision is announced from the chair.

S50-190. Pairs. (1) Two Senators may pair on a question that will be determined by a majority vote. On a question requiring a two-thirds vote for adoption, three Senators may pair, with two Senators for the question and one Senator against. Pairing is permitted only when one of the paired Senators is excused when the vote is taken.

(2) An agreement to pair must be in writing and dated and signed by the Senators agreeing to be bound, and must specify the duration of the pair. When an agreement to pair is filed with the Secretary of the Senate, it shall bind the Senators signing until the expiration of time for which it was signed, unless the paired Senators sooner appear and ask that the agreement be canceled.

(3) Pairs in Committee of the Whole are prohibited.

S50-200. Call of the Senate. (1) In the absence of a quorum, a majority of Senators present may compel the attendance of absent Senators by ordering a call of the Senate.

(2) If a quorum is present, five Senators may order a call of the Senate.

HeinOnline -- 1999 vol. III 2887 1999

(3) On a call of the Senate, a Senator who refuses to attend may be arrested by the Sergeant-at-Arms or any other person, as the majority of such Senators present shall direct. When the attendance of an absent Senator is secured and the Senate refuses to excuse the Senator's absence, the Senator shall not he paid any expense payments while absent and is liable for the expenses incurred in procuring the Senator's attendance.

(4) During a call of tbe Senate, all business shall be suspended. After a call has been ordered, no motion is in order except a motion to adjourn or remove the call. The call may be removed by a two-thirds vote.

CHAPTER 6

Rules

S60-10. Senate rules. (1) A motion to amend or adopt a rule of the Senate shall he referred to the Rules Committee without debate. A rule of the Senate may be amended or adopted only with the concurrence of a majority of the Senate and after 1 day's notice.

(2) A rule may be suspended temporarily by a two-thirds vote.

S60-20. Mason's Manual of Legislative Procedure. Mason's Manual of Legislative Procedure (1989) governs the proceedings of the Senate in all cases not covered by these rules.

S60-30. Quorum. A majority of the Senate shall constitute a quorum to do business, but a smaller number may adjourn from day to day and compel the attendance of absent Senators, in such manner and under such penalties as the Senate may prescribe (Montana Constitution, Art. V, Sec. 10(2)).

CHAPTER 7

Nominations from the Governor

S70-10. Nominations. (1) The Governor shall nominate and, by and with the consent of the Senate, appoint all officers whose offices are established by the Montana Constitution or which may be created by law and for whom appointment or election is not otherwise provided.

(2) If during a recess of the Senate a vacancy occurs in any such office, the Governor shall appeint some fit person to dischargo the duties thereof until the next meeting of the Senate, when the Governor shall nominate a person to fill such office.

S70-20. Introduction and first reading of nominations. (1) Nominations received from the Governor are:

(a) received by the President;

(b) delivered to the Secretary of the Senate;

(c) read under Order of Business No. 4, messagos from the Governor; and

(d) referred to committee.

(2) The above procedure constitutes introduction and first reading of the nominations.

(3) The Secretary shall distribute a copy of the list of nominations to each Senator.

HeinOnline -- 1999 vol. III 2888 1999

§70-30. Committee process. (1) (a) The committee shall research each nominee and may request biographical information from the Governor for each nominee if none has been provided.

(b) The committee chair shall submit a bill draft request for a simple resolution te include the nominees specified by the committee chair. These bill draft requests will not count against any bill draft request limit imposed on members. When the resolution has heen prepared and introduced, the committee shall hold a hearing on the resolution after appropriate public notice has been made.

(2) Following the hearings, the committee shall issue preliminary standing committee reports to be distributed to each Senator, stating the committee's recommendations concerning the nominees.

(3) (a) If a Senator wishes to have an individual nominee, or group of nominees, considered by the Senate separately from the group of nominees recommended by the committee, the Senator may request of the chair of the committee that the nominee or nominees be considered by a separate resolution.

(b) A Senator must request separate consideration of a nominee within 3 days of receipt of the preliminary standing committee report. The committee chair shall honor this request.

(4) After waiting 3 days from the day of distribution of the preliminary standing committee report, the committee chair shall issue a final standing committee report and deliver the report to the Secretary of the Senate.

(a) If a nominee is to be separated from the resolution, the final standing committee report shall include an amendment deleting that nominee.

(b) When a nominee has been separated at the request of a Senator, the committee chair shall submit a bill draft request for a simple resolution to include only the nominee so separated. When the resolution has been prepared and introduced, the committee shall take executive action on the resolution. When a hearing on the separated nomination was held prior to the committee's preliminary standing committee report, no additional hearing need be held before the committee takes action on the separate resolution. After the committee's executive action, the committee chair shall issue a standing committee report.

(5) If a resolution contains only one nominee, the committee shall dispense with the preliminary standing committee report and shall issue a final standing committee report to be distributed to each Senator stating the committee's recommendation concerning the nominee.

(6) The Secretary will read the reports under Order of Business No. 2, reports of standing committees.

(7) Thereafter, the resolution must be placed on Order of Business No. 11 the next legislative day for consideration by the Senate. Motions to approve or disapprove of the resolution are in order and may be debated.

Appendix A

List of Questions Requiring Other Than a Majority Vote

The following questions require the vote specified:

(1) a call of the Senate with a quorum (five Senators);

HeinOnline -- 1999 vol. III 2889 1999

(2) a motion to lift a call of the Senate (two-thirds of the members present and voting);

(3) a motion to amend or suspend rules (two-thirds);

(4) a motion to override the Governor's veto (two-thirds);

(5) a motion to approve a hill to appropriate the principal of the coal trust fund (three-fourths of each house);

(6) a motion to approve a bill to appropriate highway revenue as described in Article VIII, section 6, of the Montana Constitution for purposes other than therein described (three-fifths of each house);

(7) a motion to approve a bill proposing to amend the Montana Constitution (two-thirds of the entire Legislature); and

(8) an appeal of the ruling of the presiding officer (one Senator, seconded by two other Senators).

Adopted January 11, 1999

SENATE RESOLUTION NO. 2

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CLARIFYING CERTAIN SENATE RULES.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the following changes he made to the Senate rules adopted in Senate Resolution No. 1:

S30-60. Committee reports to Senate. (1) Reports of standing committees shall be read on Order of Business No. 2, and no debate may be had on any report unless a minority report has been submitted. A minority report is submitted after a majority report.

(2) Committee reports may recommend approval or disapproval, with or without amendment. They may not be reported to the Senate without recommendation.

(3) Any Senator seeking a reconsideration of the Senate's action on the adoption of a committee report shall do so on Order of Business No. 6 by motion to reconsider. Any Senator may make such motion and need not have voted on the prevailing side. This rule applies notwithstanding any joint rule to the contrary.

(4) The Rules Committee and conference committees may report at any time, except during a call of the Senate or when a vote is heing taken.

S50-90. Reconsideration. (1) Any Senator may, on tbe day the vote was taken or on the next day the Senate is in session, move to reconsider the question. A motion to reconsider is a debatable motion, but the debate is limited to the motion. The debate on a motion to reconsider may not address the substance of the matter for which reconsideration is sought.

(2) A motion to reconsider may not be withdrawn after such next legislative day without the unanimous consent of the Senate, and thereafter any Senator

HeinOnline -- 1999 vol. III 2890 1999

may call it up for consideration; however, a motion to reconsider made after the 54th day of the session shall be disposed of when made.

(3) A motion to recall a bill from the House of Representatives constitutes notice to reconsider and shall be acted on as a motion to reconsider. A motion to reconsider or to recall a bill from the House of Representatives may be made only under Order of Business No. 6 and, under that order of business, takes precedence over all motions except motions to recess or adjourn.

(4) When a motion to reconsider is laid on the table, a two-thirds majority is required to take it from the table. When a motion to reconsider fails, the question is finally and conclusively settled.

(5) If a motion to reconsider third reading action is carried, there shall be no further action until the succeeding legislative day.

S50-120. Second reading. (1) The Senate may resolve itself into a Committee of the Whole for consideration of business on second reading, by approval of a motion for that purpose.

(2) After a Committee of the Whole has been formed, the President shall appoint a chair to preside.

(3) All legislation considered in the Committee of the Whole shall be read by a summary of its title. Proposed amendments shall be considered; then the bill shall be considered in its entirety.

(4) Prior to adoption of the Committee of the Whole report, a Senator may move to segregate legislation. If the motion prevails, the legislation remains on second reading.

(5) When a Committee of the Whole report on legislation is rejected, the legislation shall remain on second reading.

S50-160. Voting on second reading. (1) On Order of Business No. 8, in addition to other methods, a recorded vote may be made in the following manner: the chair may call for a voice vote to accept or reject a question. If the vote is other than unanimous, the chair may ask that the lesser number on the question indicate their vote by standing. The Secretary will then record the vote of those standing. The chair may then rule that unless excused those not standing and present have voted on the prevailing side of the question and that their vote be recorded as such. If there was a unanimous voice vote, all those present will be recorded as having voted for the question.

(2) A motion on second reading must be disposed of by a positive vote.

S50-210. House amendments to Senate legislation. (1) When the House has properly returned Senate legislation with House amendments, the Senate shall announce the amendments on Order of Business No. 5 and the President shall place them on second reading for debate. The President may rerefer Senate legislation with House amendments to a committee for a hearing if the House amendments constitute a significant change in the Senate legislation. The second reading vote is limited to consideration of the House amendments.

(2) If the Senate accepts House amendments, the Senate shall place the final form of the legislation on third reading to determine if the legislation, as amended, is passed or if the required vote is obtained.

HeinOnline -- 1999 vol. III 2891 1999

(3) If the Senate rejects the House amendments, the Senate may request the House to recede from its amendments or may direct appointment of a conference committee and request the House to appoint a like committee.

Appendix A

List of Questions Requiring Other Than a Majority Vote

The following questions require the vote specified:

(1) a call of the Senate with a quorum (five Senators);

(2) a motion to lift a call of the Senate (two-thirds of the members present and voting);

(3) a motion to amend or suspend rules (two-thirds);

(4) a motion to override the Governor's veto (two-thirds);

(5) a motion to approve a bill to appropriate the principal of the coal trust fund (three-fourths of each house);

(6) a motion to approve a bill to appropriate highway revenue as described in Article VIII, section 6, of the Montana Constitution for purposes other than therein described (three-fifths of each house);

(7) a motion to approve a bill proposing to amend the Montana Constitution (two-thirds of tbe entire Legislature);

(8) an appeal of the ruling of the presiding officer (one Senator, seconded by two other Senators); and

(9) a motion to approve a bill conferring immunity from suit as described in Article II, section 18, of the Montana Constitution (two-thirds).

Adopted February 2, 1999

SENATE RESOLUTION NO. 3

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION AND APPOINTMENT, MADE BY THE CHIEF JUSTICE OF THE MONTANA SUPREME COURT AND SUBMITTED TO THE SENATE, OF THE HONORABLE C. BRUCE LOBLE AS CHIEF WATER JUDGE.

WHEREAS, the Chief Justice of the Montana Supreme Court has made the nomination, below designated, pursuant to an Order of the Court, dated June 23, 1997; and

WHEREAS, the appointment has been submitted to the Senate, to wit:

C. Bruce Loble as Chief Water Judge for the State of Montana, for a 4-year term of office commencing July 1, 1997, and ending June 30, 2001.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the 56th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nomination.

HeinOnline -- 1999 vol. III 2892 1999

BE IT FURTHER RESOLVED, that the Secretary of the Senate immediately deliver a copy of this resolution, certified hy the President and Secretary of the Senate, to the Secretary of State and a copy, certified by the Secretary of the Senate, to tbe Governor pursuant to section 5-5-303, MCA.

Adopted February 12, 1999

SENATE RESOLUTION NO. 4

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATIONS OF APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED JANUARY 14, 1999, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the nominations of appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

(1) As members of the Air Pollution Control Advisory Council, in accordance with section 2-15-2106, MCA:

Mr. Dave Noell, Billings, Montana, appointed for a term at the pleasure of the Governor.

Mr. Cliff Cox, Winston, Montana, appointed for a term at the pleasure of the Governor.

Mr. Mitchell Leu, Columbia Falls, Montana, appointed for a term at the pleasure of the Governor.

Mr. Dean Johnson, Glendive, Montana, appointed for a term at the pleasure of tbe Governor.

Dr. Brad Black, Libby, Montana, appointed for a term at the pleasure of the Governor.

Dr. Edward Peretti, Butte, Montana, appointed for a term at the pleasure of the Governor.

Ms. Diane Lorenzen, Jefferson City, Montana, appointed for a term at the pleasure of the Governor.

Mr. Mike Machler, Billings, Montana, appointed for a term at the pleasure of the Governor.

Mr. Dennis Alexander, Helena, Montana, appointed for a term at the pleasure of the Governor.

Ms. Sandra Fisher, Billings, Montana, appointed for a term at the pleasure of the Governor.

(2) As members of the Alternative Health Care Board, in accordance with section 2-15-1840, MCA:

Ms. Kathee Dunham, Arlee, Montana, appointed for a term ending September 1, 2002.

Ms. Dolly Browder, Missoula, Montana, appointed for a term ending September 1, 2001.

HeinOnline -- 1999 vol. III 2893 1999

Dr. Nancy Dunne-Boggs, Missoula, Montana, appointed for a term ending September 1, 1999.

Ms. Ann Pasha, Highwood, Montana, appointed for a term ending September 1, 2002.

(3) As members of the Board of Architects, in accordance with section 2-15-1871, MCA:

Ms. Pamela Hill, Bozeman, Montana, appointed for a term ending March 27, 2001.

Mr. Thomas Geelan, Havre, Montana, appointed for a term ending March 27, 2001.

(4) As members of the Board of Athletics, in accordance with section 2-15-1882, MCA:

Ms. Anita Vandolah, Conrad, Montana, appointed for a term ending April 25, 2000.

Mr. Gary Langley, Helena, Montana, appointed for a term ending April 25, 2001.

(5) As members of the State Banking Board, in accordance with section 2-15-1803, MCA:

Mr. James Drummond, Bozeman, Montana, appointed for a term ending July 1, 2000.

Ms. Barbara Skelton, Butte, Montana, appointed for a term ending July 1, 2000.

Mr. Rich Pavlonnis, Great Falls, Montana, appointed for a term ending July 1, 2001.

Mr. Ted Goodwin, Billings, Montana, appointed for a term ending July 1, 2001.

(6) As members of the Board of Barbers, in accordance with section 2-15-1856, MCA:

Ms. Rebecca Buckmaster, East Helena, Montana, appointed for a term ending July 1, 2000.

Mr. Max DeMars, Big Timber, Montana, appointed for a term ending July 1, 2001.

(7) As a member of the Board of Chiropractors, in accordance with section 2-15-1847, MCA:

Dr. Gregory Hoell, Bozeman, Montana, appointed for a term ending January 1, 2001.

(8) As members of the Board of Clinical Laboratory Science Practitioners, in accordance with section 2-15-1863, MCA:

Ms. Sonja Bennett, Billings, Montana, appointed for a term ending April 16, 2001.

Ms. Loraine Kay Crull, Missoula, Montana, appointed for a term ending April 16, 2001.

HeinOnline -- 1999 vol. III 2894 1999

Dr. David Walker, Kalispell, Montana, appointed for a term ending April 16, 2001.

(9) As members of the Board of Cosmetologists, in accordance with section 2-15-1857, MCA:

Ms. Pam Lemieux, Helena, Montana, appointed for a term ending July 1, 2001.

Ms. Darlene Battaiola, Butte, Montana, appointed for a term ending July 1, 2001.

Ms. Mary Lou Nelson, Plentywood, Montana, appointed for a term ending July 1, 2001.

Ms. Karen Underwood, Billings, Montana, appointed for a term ending July 1, 2001.

Ms. Verna Dupuis, Bozeman, Montana, appointed for a term ending July 1, 2001.

Mr. John Reichelt, Billings, Montana, appointed for a term ending July 1, 1999.

(10) As members of the Board of Dentistry, in accordance with section 2-15-1842, MCA:

Ms. Julie Fullerton, Lolo, Montana, appointed for a term ending March 29, 2002.

Dr. George Olsen, Missoula, Montana, appointed for a term ending March 29, 2003.

(11) As members of the State Electrical Board, in accordance with section 2-15-1874, MCA:

Ms. Louise Glimm, Conrad, Montana, appointed for a term ending July 1, 2002.

Mr. Todd Stoddard, Dillon, Montana, appointed for a term ending July 1, 2003.

Mr. Joe Wolfe, Jr., Helena, Montana, appointed for a term ending July 1, 2000.

(12) As members of the Board of Funeral Service, in accordance with section 2-15-1853, MCA:

Mr. Niles Nelson, Libby, Montana, appointed for a term ending July 1, 2002.

Ms. Jean Ruppert, Butte, Montana, appointed for a term ending July 1, 2002.

Mr. Jered Scherer, Billings, Montana, appointed for a term ending July 1, 2002.

Mr. Douglas Lowry, Big Timber, Montana, appointed for a term ending July 1, 2003.

(13) As members of the Board of Hail Insurance, in accordance with section 2-15-3003, MCA:

Mr. Larry Barbie, Inverness, Montana, appointed for a term ending April 18, 2000.

Mr. Keith Arntzen, Hilger, Montana, appointed for a term ending April 18, 2001.

HeinOnline -- 1999 vol. III 2895 1999

(14) As members of the Board of Hearing Aid Dispensers, in accordance with section 2-15-1850, MCA:

Dr. Scott Pargot, Clancy, Montana, appointed for a term ending July 1, 2000.

Mr. Dudley Anderson, Missoula, Montana, appointed for a term ending July 1, 2000.

Ms. Marlene Tash, Dillon, Montana, appointed for a term ending July 1, 2000.

Ms. Cindy Burk, Helena, Montana, appointed for a term ending July 1, 2000.

Mr. David King, Billings, Montana, appointed for a term ending July 1, 2001.

(15) As members of the Preservation Review Board, in accordance with section 2-15-1512, MCA:

Ms. Gloria Weisgerher, Missoula, Montana, appointed for a term ending October 1, 2001.

Mr. Douglas Johnson, Corvallis, Montana, appointed for a term ending October 1, 2002.

Ms. Theo Hugs, Ft. Smith, Montana, appointed for a term ending October 1, 2002.

(16) As members of the Board of Trustees of the Montana Historical Society, in accordance with section 22-3-104, MCA:

Ms. Lee Rostad, Martinsdale, Montana, appointed for a term ending July 1, 1999.

Mr. Steve Browning, Helena, Montana, appointed for a term ending July 1, 2001.

Ms. Mary Murphy, Bozeman, Montana, appointed for a term ending July 1, 2002.

Mr. Don Wetzel, Billings, Montana, appointed for a term ending July 1, 2002.

Mr. William Holt, Lolo, Montana, appointed for a term ending July 1, 2003.

Dr. Thomas Foor, Missoula, Montana, appointed for a term ending July 1, 2003.

Ms. Vicki McCarthy, Billings, Montana, appointed for a term ending July 1, 2003.

Mr. Bob Morgan, Clancy, Montana, appointed for a term ending July 1, 2001.

(17) As members of the Board of Horseracing, in accordance with section 2-15-1881, MCA:

Ms. Susan Austin, Kalispell, Montana, appointed for a term ending January 20, 2001.

Ms. Lou Wojciechowski, Billings, Montana, appointed for a term ending January 20, 2001.

Mr. Bill Brown, Butte, Montana, appointed for a term ending January 20, 2001.

Mr. Joe Erickson, Cascade, Montana, appointed for a term ending January 20, 2001.

HeinOnline -- 1999 vol. III 2896 1999

(18) As members of the Board of Investments, in accordance with section 2-15-1808, MCA:

Mr. Tim Ryan, Great Falls, Montana, appointed for a term ending July 1, 2000.

Ms. Joy Ott, Billings, Montana, appointed for a term ending January 1, 2001.

(19) As members of the Board of Landscape Architects, in accordance with section 2-15-1872, MCA:

Ms. Janet Thomas, Hobson, Montana, appointed for a term ending July 1, 2001.

Ms. Shelly Engler, Bozeman, Montana, appeinted for a term ending July 1, 2001.

Mr. Robert Broughton, Hamilton, Montana, for a term ending July 1, 2002.

Mr. Lester (Buzz) Field, Townsend, Montana, appointed for a term ending July 1, 2002.

(20) As members of the State Library Commission, in accordance with section 22-1-101, MCA:

Ms. Rosemary Garvey, Butte, Montana, appointed for a term ending May 22, 2000.

Mr. David Johnson, Billings, Montana, appointed for a term ending May 22, 2000.

Ms. Mary Doggett, White Sulphur Springs, Montana, appointed for a term ending May 22, 2001.

(21) As members of the Board of Medical Examiners, in accordance with section 2-15-1841, MCA:

Dr. Kay Dorr, Glasgow, Montana, appointed for a term ending September 1, 2001.

Mr. Daniel Muniak, Jordan, Montana, appointed for a term ending September 1, 2001.

Ms. Linda Melick, Lewistown, Montana, appointed for a term ending September 1, 2001.

Dr. Daniel Brooke, Miles City, Montana, appointed for a term ending September 1, 2001.

Ms. Debby Barrett, Dillon, Montana, appointed for a term ending September 1, 2001.

Dr. Anne Williams, Glasgow, Montana, appointed for a term ending September 1, 2002.

Dr. Donald Grewell, Billings, Montana, appointed for a term ending September 1, 2002.

Dr. David Huebner, Great Falls, Montana, appointed for a term ending September 1, 2002. (22) As members of the Montana Arts Council, in accordance with section 22-2-102, MCA:

Ms. Ann Cogswell, Great Falls, Montana, appointed for a term ending February 1, 2003.

HeinOnline -- 1999 vol. III 2897 1999

Ms. Diane Klein, Kalispell, Montana, appointed for a term ending February 1, 2003.

Mr. Richard Halmes, Billings, Montana, appointed for a term ending February 1, 2003.

Ms. Sody Jones, Billings, Montana, appointed for a term ending February 1, 2003.

Ms. Jackie Parsons, Browning, Montana, appointed for a term ending February 1, 2003.

(23) As members of the Board of Nursing, in accordance with section 2-15-1844, MCA:

Ms. Kim Powell, Missoula, Montana, appointed for a term ending July 1, 2001.

Ms. Lorena Erickson, Corvallis, Montana, appointed for a term ending July 1, 2002.

Pastor Steven Rice, Miles City, Montana, appointed for a term ending July 1, 2002.

Ms. Jeanine Thomas, Ronan, Montana, appointed for a term ending July 1, 2002.

Ms. Rita Harding, Billings, Montana, appointed for a term ending July 1, 2002.

(24) As members of the Board of Nursing Home Administrators, in accordance with section 2-15-1845, MCA:

Ms. Jaena Richards, Deer Lodge, Montana, appointed for a term ending May 28, 2002.

Mr. Douglas Faus, Chester, Montana, appointed for a term ending May 28, 2003.

(25) As members of the Board of Occupational Therapy Practice, in accordance with section 2-15-1859, MCA:

Ms. Alice O'Donnell, Anaconda, Montana, appointed for a term ending December 31, 2001.

Ms. Elspeth Richards, Missoula, Montana, appointed for a term ending December 31, 2002.

Ms. Barbara Tamietti, Stockett, Montana, appointed for a term ending December 31, 2002.

(26) As members of the Board of Oil and Gas Conservation, in accordance with section 2-15-3303, MCA:

Mr. Allen Kolstad, Chester, Montana, appointed for a term ending January 1, 2001.

Mr. Stanley Lund, Reserve, Montana, appointed for a term ending January 1, 2001.

Mr. George Galuska, Billinge, Montana, appointed for a term ending January 1, 2001.

Mr. David Ballard, Billings, Montana, appointed for a term ending January 1, 2001.

HeinOnline -- 1999 vol. III 2898 1999

(27) As members of the Board of Pardons and Parole, in accordance with section 2-15-2302, MCA:

Mr. Mark Fournier, Great Falls, Montana, appointed for a term ending January 1, 2003.

Ms. Maureen Neihart, Billings, Montana, appointed for a term ending January 1, 2002.

(28) As members of the Board of Pharmacy, in accordance with section 2-15-1843, MCA:

Ms. Sherry Lersbak, Troy, Montana, appointed for a term ending July 1, 2002.

Ms. Colette Bernica, Great Falls, Montana, appointed for a term ending July 1, 2003.

(29) As a member of the Board of Physical Therapy Examiners, in accordance with section 2-15-1858, MCA:

Ms. Beverly Hancock, Billings, Montana, appointed for a term ending July 1, 2000.

(30) As members of the Board of Plumbers, in accordance with section 2-15-1875, MCA:

Mr. Jerry Lyford, Kalispell, Montana, appointed for a term ending May 4, 2002.

Mr. Duane Steinmetz, Billings, Montana, appointed for a term ending May 4, 2002.

Mr. Gene Mahn, Lincoln, Montana, appointed for a term ending May 4, 2001.

(31) As members of the Board of Private Security Patrol Officers and Investigators, in accordance with section 2-15-1891, MCA:

Mr. Gary Gray, Great Falls, Montana, appointed for a term ending August 1, 2001.

Mr. Michael Ames, Colstrip, Montana, appointed for a term ending August 1, 2001.

Mr. Stephen Blackwell, Missoula, Montana, appointed for a term ending August 1, 2000.

Mr. Gary Racine, Cut Bank, Montana, appointed for a term ending August 1, 2000.

Mr. Gary Dent, Conrad, Montana, appointed for a term ending August 1, 2000.

(32) As members of the Board of Professional Engineers and Professional Land Surveyors, in accordance with section 2-15-1873, MCA:

Mr. Steve Wright, Columbia Falls, Montana, appointed for a term ending July 1, 2002.

Mr. Richard Ainsworth, Missoula, Montana, appointed for a term ending July 1, 2002.

Ms. Janet Markle, Glasgow, Montana, appointed for a term ending July 1, 2002.

HeinOnline -- 1999 vol. III 2899 1999

Mr. Daniel McCauley, Helena, Montana, appointed for a term ending July 1, 2001.

Mr. David Hummel, Billings, Montana, appointed for a term ending July 1, 2001.

Dr. Warren Scarrah, Bozeman, Montana, appointed for a term ending July 1, 1999.

(33) As members of the Board of Psychologists, in accordance with section 2-15-1851, MCA:

Mr. Mike Mullowney, Absarokee, Montana, appointed for a term ending October 1, 2002.

Dr. Marian Martin, Billings, Montana, appointed for a term ending September 1, 2003.

(34) As members of the Board of Public Accountants, in accordance with section 2-15-1866, MCA:

Ms. Irma Paul, Helena, Montana, appointed for a term ending July 1, 2002.

Ms. Beryl Argall Stover, Missoula, Montana, appointed for a term ending July 1, 2003.

(35) As a member of the Board of Public Education, in accordance with section 2-15-1508, MCA:

Ms. Diane Fladmo, Glendive, Montana, appointed for a term ending February 1, 2005.

(36) As members of the Board of Radiologic Technologists, in accordance with section 2-15-1848, MCA:

Ms. Jane Christman, Dutton, Montana, appointed for a term ending July 1, 2000.

Ms. Debbie Hepp, Great Falls, Montana, appointed for a term ending July 1, 2001.

Dr. Daniel Alzheimer, Helena, Montana, appointed for a term ending July 1, 2001.

(37) As members of the Board of Real Estate Appraisers, in accordance with section 2-15-1868, MCA:

Ms. Lori Cole, Billings, Montana, appointed for a term ending May 1, 2001.

Mr. Bill Northcutt, Joliet, Montana, appointed for a term ending May 1, 2001.

Mr. A. Farrell Rose, Helena, Montana, appointed for a term ending May 1, 2000.

Ms. Jeannie Flechsenhar, Cascade, Montana, appointed for a term ending May 1, 2000.

(38) As a member of the Board of Realty Regulation, in accordance with section 2-15-1867, MCA:

Mr. Terry Hilgendorf, Great Falls, Montana, appointed for a term ending May 9, 2002.

(39) As members of the Board of Regents, in accordance with section 2-15-1508, MCA:

HeinOnline -- 1999 vol. III 2900 1999

Mr. Richard Roehm, Bozeman, Montana, appointed for a term ending Fehruary 1, 2005.

Ms. Kimberly Cunningham, Billings, Montana, appointed for a term ending June 1, 1999.

(40) As a member of the Board of Respiratory Care Practitioners, in accordance with section 2-15-1860, MCA:

Mr. Gregory Paulauskis, Great Falls, Montana, appointed for a term ending January 1, 2001.

(41) As members of the Board of Sanitarians, in accordance with 2-15-1861, MCA:

Ms. Denise Moldroski, Bozeman, Montana, appointed for a term ending July 1, 2000.

Mr. Ted Kylander, Billings, Montana, appointed for a term ending July 1, 2001.

(42) As members of the Board of Speech-Language Pathologists and Audiologists, in accordance with section 2-15-1849, MCA:

Ms. Sheila Skinner, Belgrade, Montana, appointed for a term ending December 31, 2001.

Mr. Jeffrey Griffin, Great Falls, Montana, appointed for a term ending December 31, 2001.

Ms. Teri Bean, Helena, Montana, appointed for a term ending December 31, 2001.

(43) As members of the Board of Directors of the State Compensation Insurance Fund, in accordance with section 2-15-1019, MCA:

Mr. Herb Leuprecht, Butte, Montana, appointed for a term ending April 28, 2001.

Mr. James Brouelette, Stevensville, Montana, appointed for a term ending April 28, 2001.

Mr. Jack Morgenstern, Lewistown, Montana, appointed for a term ending April 28, 2001.

Ms. Lorretta Lynde, Helena, Montana, appointed for a term ending April 28, 1999.

Mr. Brian Donahue, Billings, Montana, appointed for a term ending April 28, 2001.

(44) As members of the Board of Veterans' Affairs, in accordance with section 2-15-1205, MCA:

Mr. George Hageman, Jordan, Montana, appointed for a term ending May 18, 2002.

Ms. Karen Furu, Bozeman, Montana, appointed for a term ending May 18, 2003.

(45) As members of the Board of Veterinary Medicine, in accordance with section 2-15-1852, MCA:

HeinOnline -- 1999 vol. III 2901 1999

Dr. Jean Lindley, Miles City, Montana, appointed for a term ending July 31, 2003.

Dr. Robert Lee, Choteau, Montana, appointed for a term ending July 31, 2002.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of tbe 56th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nominations and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted March 25, 1999

SENATE RESOLUTION NO. 5

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATIONS OF APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATION DATED FEBRUARY 3, 1999, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the nominations of appointments, below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

(1) As members of the Board of Aeronautics, in accordance with section 2-15-2506, MCA:

Mr. Craig Denney, Park City, Montana, appointed for a term ending January 1, 2003.

Mr. John Rabenberg, Fort Peck, Montana, appointed for a term ending January 1, 2003.

Mr. Bob Palmersheim, Fromberg, Montana, appointed for a term ending January 1, 2003.

(2) As a member of the Board of Chiropractors, in accordance with section 2-15-1847, MCA:

Dr. Patrick Montgomery, Missoula, Montana, appointed for a term ending January 1, 2002.

(3) As members of the Coal Board, in accordance with section 2-15-1821, MCA:

Mr. John Sutton, Butte, Montana, appointed for a term ending January 1, 2003.

Ms. Janice Riebhoff, Belgrade, Montana, appointed for a term ending January 1, 2003.

Ms. Linda Jo Price, Lewistown, Montana, appointed for a term ending January 1, 2003.

(4) As a member of the Board of Environmental Review, in accordance with section 2-15-3502, MCA:

HeinOnline -- 1999 vol. III 2902 1999

Ms. Kim Lacey, Glasgow, Montana, appointed for a term ending December 31, 2003.

(5) As members of the Fish, Wildlife, and Parks Commission, in accordance with section 2-15-3402, MCA:

Mr. Tim Mulligan, Whitehall, Montana, appointed for a term ending January 1, 2003.

Ms. Darlyne Dascher, Fort Peck, Montana, appointed for a term ending January 1, 2003.

(6) As members of the Health Facility Authority, in accordance with section 2-15-1815, MCA:

Ms. Sheryl Hayden, Kalispell, Montana, appointed for a term ending January 1, 2003.

Mr. Sidney "Kent" Brubaker, Terry, Montana, appointed for a term ending January 1, 2003.

Mr. Greg Hanson, Missoula, Montana, appointed for a term ending January 1, 2003.

(7) As a member of the Board of Horseracing, in accordance with section 2-15-1881, MCA:

Dr. Skip Score, Helena, Montana, appointed for a term ending January 20, 2002.

(8) As members of the Board of Housing, in accordance with section 2-15-1814, MCA:

Ms. Teresa Lightbody, Helena, Montana, appointed for a term ending January 1, 2003.

Ms. Waneeta Farris, Forsyth, Montana, appointed for a term ending January 1, 2003.

Mr. Bob Thomas, Stevensville, Montana, appointed for a term ending January 1, 2003.

(9) As members of the Commission for Human Rights, in accordance with section 2-15-1706, MCA:

Mr. Jack Copps, Seeley Lake, Montana, appointed for a term ending January 1, 2003.

Ms. Kathy Ogren, Missoula, Montana, appointed for a term ending January 1, 2003.

(10) As members of the Board of Investments, in accordance with section 2-15-1808, MCA:

Dr. Maureen Fleming, Missoula, Montana, appointed for a term ending January 1, 2003.

Mr. Douglas Bardwell, Huson, Montana, appointed for a term ending January 1, 2003.

Mr. Calvin Wilson, Busby, Montana, appointed for a term ending January 1, 2003.

HeinOnline -- 1999 vol. III 2903 1999

Mr. F. Lee Robinson, Malta, Montana, appointed for a term ending January 1, 2003.

(11) As a member of the Board of Labor Appeals, in accordance with section 2-15-1704, MCA:

Ms. Carol Donaldson, Polson, Montana, appointed for a term ending January 1, 2003.

(12) As members of the Board of Milk Control, in accordance with section 2-15-3105, MCA:

Dr. Robert Clyde Greer, Bozeman, Montana, for a term ending January 1, 2003.

Mr. Michael Kleese, Stevensville, Montana, appointed for a term ending January 1, 2003.

(13) As a member of the Montana Arts Council, in accordance with section 22-2-102, MCA:

Ms. Jennifer Earle Seifert, Troy, Montana, for a term ending February 1, 2000.

(14) As members of the Board of Oil and Gas Conservation, in accordance with section 2-15-3303, MCA:

Mr. Jack King, Billings, Montana, appointed for a term ending January 1, 2003.

Ms. Elaine Mitchell, Cut Bank, Montana, appointed for a term ending January 1, 2003.

Mr. Denzil Young, Baker, Montana, appointed for a term ending January 1, 2003.

(15) As a member of the Board of Pardons and Parole, in accordance with section 2-15-2302, MCA:

Mr. Patrick Fleming, Butte, Montana, appointed for a term ending January 1, 2003.

(16) As members of the Board of Personnel Appeals, in accordance with section 2-15-1705, MCA:

Ms. Mary Vagner, Missoula, Montana, appointed for a term ending January 1, 2003.

Mr. Joe Dwyer, Billings, Montana, appointed for a term ending January 1, 2003.

Mr. Lloyd Doney, East Helena, Montana, appointed for a term ending January 1, 2003.

(17) As Commissioner of Political Practices, in accordance with section 13-37-102, MCA:

Ms. Linda Vaughey, Helena, Montana, appointed for a term ending January 1, 2005.

(18) As a member of the Board of Public Assistance, in accordance with section 2-15-2203, MCA:

HeinOnline -- 1999 vol. III 2904 1999

Mr. John Larson, Clancy, Montana, appointed for a term ending January 1, 2003.

(19) As a member of the Board of Realty Regulation, in accordance with section 2-15-1867, MCA:

Ms. Vicky Hammond, Missoula, Montana, appointed for a term ending May 9, 2001.

(20) As a member of the Board of Regents of Higher Education, in accordance with section 2-15-1508, MCA:

Ms. Lynn Morrison-Hamilton, Havre, Montana, appointed for a term ending February 1, 2006.

(21) As members of the Hard Rock Mining Impact Board, in accordance with section 2-15-1822, MCA:

Ms. Mary Taylor, Thompson Falls, Montana, appointed for a term ending January 1, 2003.

Ms. Betty Aye, Broadus, Montana, appointed for a term ending January 1, 2003.

(22) As members of the Board of Science and Technology Development, in accordance with section 2-15-1818, MCA:

Ms. Susan Riplett, Billings, Montana, appointed for a term ending June 30, 1999.

Mr. Dolph Harris, Sidney, Montana, appointed for a term ending June 30, 1999.

(23) As a member of the State Tax Appeal Board, in accordance with section 15-2-101, MCA:

Ms. Jan Brown, Helena, Montana, appointed for a term ending January 1, 2001.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 56th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nominations and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 13, 1999

SENATE RESOLUTION NO. 6

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATION AND APPOINTMENT MADE BY THE GOVERNOR AND SUBMITTED TO THE SENATE OF HONORABLE RICHARD A. SIMONTON AS DISTRICT JUDGE, SEVENTH JUDICIAL DISTRICT, GLENDIVE, MONTANA.

HeinOnline -- 1999 vol. III 2905 1999

WHEREAS, the Governor of the State of Montana has made the nomination, below designated, of an appointment that has been submitted to the Senate by the Governor, to wit:

Richard A. Simonton, as District Judge, Seventh Judicial District, Glendive, Montana, to replace District Judge Dale Cox, retired.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the 56th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nomination.

BE IT FURTHER RESOLVED, that the Secretary of the Senate immediately deliver a copy of this resolution, certified by the President and Secretary of the Senate, to the Secretary of State and a copy, certified by the Secretary of the Senate, to the Governor pursuant to section 5-5-303, MCA.

Adopted April 13, 1999

SENATE RESOLUTION NO. 7

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA CONCURRING IN, CONFIRMING, AND CONSENTING TO THE NOMINATIONS OF APPOINTMENTS MADE BY THE GOVERNOR AND SUBMITTED BY WRITTEN COMMUNICATIONS DATED APRIL 5 AND APRIL 9, 1999, TO THE SENATE.

WHEREAS, the Governor of the State of Montana has made the nominations of appointments below designated, that have been submitted to the Senate by the Governor pursuant to section 5-5-302, MCA:

(1) As a member of the Board of Architects, in accordance with section 2-15-1871, MCA:

Mr. Eugene Vogl, Billings, Montana, for a term ending March 27, 2002.

(2) As a member of the Board of Athletics, in accordance with section 2-15-1882, MCA:

Mr. John Kinna, Fairfield, Montana, for a term ending April 25, 2002.

(3) As members of the Board of County Printing, in accordance with section 2-15-1811, MCA:

Ms. Marianne Roose, Eureka, Montana, for a term ending April 1, 2001.

Ms. Julie Jordan, Miles City, Montana, for a term ending April 1, 2001.

Ms. Nancy Clark, Ryegate, Montana, for a term ending April 1, 2001.

Mr. Verle Rademacher, White Sulphur Springs, Montana, for a term ending April 1, 2001.

Mr. Curtis Starr, Malta, Montana, for a term ending April 1, 2001.

(4) As members of the Board of Dentistry, in accordance with section 2-15-1842, MCA:

Dr. Michael McCarthy, Billings, Montana, for a term ending March 29, 2004.

Ms. Deana Standley, Great Falls, Montana, for a term ending March 29, 2004.

HeinOnline -- 1999 vol. III 2906 1999

(5) As members of the Board of Environmental Review, in accordance with section 2-15-3502, MCA:

Ms. Susan Kirby Brooke, Bozeman, Montana, for a term ending December 31, 2001.

Mr. Joseph Russell, Kalispell, Montana, for a term ending December 31, 2003.

(6) As a member of the Board of Hail Insurance, in accordance with section 2-15-3003, MCA:

Ms. Rebecca McCabe, Ekalaka, Montana, for a term ending April 14, 2002.

(7) As members of the Board of Livestock, in accordance with section 2-15-3102, MCA:

Mr. Bob Lee, Judith Gap, Montana, for a torm ending March 1, 2005.

Mr. Jeremy Kinross-Wright, Big Timber, Montana, for a term ending March 1, 2005.

Mr. Jerry Leep, Manhattan, Montana, for a term ending March 1, 2005.

(8) As a member of the Board of Medical Examiners, in accordance with section 2-15-1841, MCA:

Dr. Katherine Markette, Missoula, Montana, for a term ending September 1, 2000.

(9) As a member of the Board of Nursing, in accordance with section 2-15-1844, MCA:

Ms. Vickie Badgley, Stevensville, Montana, for a term ending July 1, 2000.

(10) As members of the Board of Optemetry, in accordance with section 2-15-1846, MCA:

Dr. Larry Obie, Havre, Montana, for a term ending April 3, 2003.

Ms. Charliene Staffanson, Deer Lodge, Montana, for a term ending April 3, 2003.

(11) As a member of the Board of Professional Engineers and Professional Land Surveyors, in accordance with section 2-15-1873, MCA:

Ms. Paulette Ferguson, Missoula, Montana, for a term ending July 1, 1999.

(12) As a member of the Board of Public Education, in accordance with section 2-15-1508, MCA:

Mr. Randal Morris, Butte, Montana, for a term ending February 1, 2006.

(13) As members of the Board of Social Work Examiners and Professional Counselors, in accordance with section 2-15-1854, MCA:

Judge Richard Simonton, Glendive, Montana, for a term ending January 1, 2003.

Ms. Antionette Rosell, Billings, Montana, for a term ending January 1, 2003.

Dr. Leta Livoti, Helena, Montana, for a term ending January 1, 2003.

(14) As members of the Board of Directors of the State Compensation Insurance Fund, in accordance with section 2-15-1019, MCA:

Mr. Tom Horn, Cohagen, Montana, for a term ending April 28, 2003.

HeinOnline -- 1999 vol. III 2907 1999

Ms. Lorretta Lynde, Helena, Montana, for a term ending April 28, 2003.

(15) As a member of the State Tax Appeal Board, in accordance with section 15-2-101, MCA:

Ms. JereAnn Nelson, Helena, Montana, for a term ending January 1, 2005.

(16) As a member of the Transportation Commission, in accordance with section 2-15-2502, MCA:

Ms. Nancy Espy, Broadus, Montana, for a term ending January 1, 2003.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the Regular Session of the 56th Legislature of the State of Montana does hereby concur in, confirm, and consent to the above nominations and that the Secretary of the Senate immediately deliver a copy of this resolution to the Secretary of State and to the Governor pursuant to section 5-5-303, MCA.

Adopted April 19, 1999

HeinOnline -- 1999 vol. III 2908 1999

House Joint Resolutions

HOUSE JOINT RESOLUTION NO. 1

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA SUPPORTING THE FUNDING OF PUBLIC EDUCATION THAT IS COMMENSURATE WITH THE GROWTH OF MONTANA'S ECONOMY AND INFLATION, THAT ADEQUATELY COMPENSATES TEACHERS, AND THAT MEETS THE STATE'S OBLIGATION UNDER ARTICLE X, SECTION 1(3), OF THE MONTANA CONSTITUTION TO FUND THE STATE'S SHARE OF THE COST OF THE BASIC ELEMENTARY AND SECONDARY SCHOOL SYSTEM.

WHEREAS, the public education system in Montana is vital to the future of the state's communities and economy; and

WHEREAS, Montana public school children consistently rank among the top students nationally and internationally on standardized academic tests; and

WHEREAS, the quality of Montana teachers and small class sizes relate directly to the excellent academic performance of Montana students; and

WHEREAS, Montana teachers now earn an average of $9,000 less than the national average paid to teachers; and

WHEREAS, raising teacher salaries will keep Montana competitive with other states and assist our quality teachers to remain in Montana; and

WHEREAS, although Montana voters have historically shown their commitment to public education hy their broad support of local school levies, current state law imposes a maximum hudget spending limitation on all school districts, prohibiting school districts from expending more than a maximum amount for each student regardless of local support for such expenditures; and

WHEREAS, as a result of these spending limits, approximately 27.5% of Montana's school districts have reached the allowahle maximum budget amount; and

WHEREAS, school districts have a need for funding for building maintenance, construction or reconstruction, technology acquisition, textbooks, classroom supplies, and library materials; and

WHEREAS, the Montana Legislature is committed to the constitutional goal of providing a system of hasic quality education and the guarantee of equality of educational opportunity to each person.

NOW, THERLFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislature is committed to providing Montana's system of puhlic education with funding that is commensurate with the growth in Montana's economy and inflation, that increases Montana teacher salaries to a level that is competitive with other states in the nation, and that meets the state's obligation under Article X, section 1(3), of the Montana Constitution to fund the state's share of the cost of the hasic elementary and secondary school system and to

HeinOnline -- 1999 vol. III 2909 1999

providing funding for building maintenance, construction or reconstruction, technology acquisition, textbooks, classroom supplies, and library materials.

Adopted March 24, 1999

HOUSE JOINT RESOLUTION NO. 2

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA ESTABLISHING AN OFFICIAL ESTIMATE OF THE STATE'S ANTICIPATED REVENUE FOR EACH YEAR OF THE 2000-01 BIENNIUM FOR THE PURPOSE OF ACHIEVING A BALANCED BUDGET AS MANDATED BY ARTICLE VIII, SECTION 9, OF THE MONTANA CONSTITUTION; ACCEPTING THE JUNE 30, 1998, GENERAL FUND BALANCE THAT WAS ESTABLISHED BASED ON GENERALLY ACCEPTED ACCOUNTING PRINCIPLES; ESTABLISHING OFFICIAL ESTIMATES OF CERTAIN NONGENERAL FUND REVENUE; AND REQUESTING THE GOVERNOR'S OFFICE OF BUDGET AND PROGRAM PLANNING TO USE THE REVENUE ESTIMATES CONTAINED IN THIS RESOLUTION AS OFFICIAL REVENUE ESTIMATES FOR FISCAL YEARS 1999-2000 AND 2000-01.

WHEREAS, Article VI, section 9, of tbe Montana Constitution requires the Governor to submit to the Legislature a budget for the ensuing fiscal period, containing in detail for all operating funds the proposed expenditures and estimated revenue of the state; and

WHEREAS, Article VIII, section 9, of the Montana Constitution prohibits the Legislature from appropriating funds in excess of the anticipated revenue of the state; and

WHEREAS, section 5-18-107(5), MCA, requires the Revenue Oversight Committee to estimate the amount of revenue projected to be available for legislative appropriation and to introduce legislation setting forth the Committee's current revenue estimate for the biennium; and

WHEREAS, tbe Legislature intends that its revenue estimates and the underlying assumptions used to derive those estimates be used by all agencies in the development of fiscal notes; and

WHEREAS, section 5-12-302(7), MCA, requires the Legislative Fiscal Analyst to assist the Revenue Oversight Committee in its revenue estimating duties; and

WHEREAS, the Revenue Oversight Committee obtains the assistance of Executive Branch agencies in the development of the revenue estimates; and

WHEREAS, the Revenue Oversight Committee has improved tbe process of developing its revenue estimates; and

WHEREAS, the Revenue Oversight Committee has adopted revenue estimates for specific nongeneral fund sources that aro significant in the development of the state budget for the 2001 biennium; and

WHEREAS, the Revenue Oversight Committee adopted an estimate of capital gains tax revenue associated with the sale of electrical generation facilities; and

HeinOnline -- 1999 vol. III 2910 1999

WHEREAS, the timing of the capital gains related to the sale of the electrical generation facilities and the actual tax liabilities of the electric utilities selling the generation facilities are difficult to determine with certainty; and

WHEREAS, Montana is one of 46 states to sign an agreement with tobacco companies that secures for the states a financial settlement related to illegal activities of the tobacco companies; and

WHEREAS, Montana's share of the financial settlement has been calculated to he $66.8 million over the next 3 years; and

WHEREAS, final approval of the agreement and potential federal claims on Montana's share of the settlement may affect the timing and actual amount of settlement proceeds; and

WHEREAS, the complexity of revenue forecasting and the diversity of sources from which state revenue is obtained make it difficult to project revenue in order to prepare a halanced budget for the ensuing biennium; and

WHEREAS, the amount of estimated revenue affects policy decisions of the Executive Branch and the Legislative Branch; and

WHEREAS, the revenue estimates and underlying assumptions contained in this resolution provide the basis for a comprehensive analysis of the state's financial condition; and

WHEREAS, it is in the best interests of the state that revenue estimates be discussed and arrived at in public hearings at which all interested parties may attend and participate.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the state general fund revenue for fiscal years 1999, 2000, and 2001 be estimated to be $1,068,122,000, $1,128,363,000, and $1,125,835,000, respectively.

BE IT FURTHER RESOLVED, that the Legislature accept for budget purposes the unreserved fund balance of $44,309,000 for the general fund, prepared according to generally accepted accounting principles as published in the audited state financial statements as of June 30, 1998.

BE IT FURTHER RESOLVED, that because of the uncertainty associated with the estimated capital gains tax revenue, that estimate is shown separately in the resolution as general fund revenue available for one-time appropriation.

BE IT FURTHER RESOLVED, that because factors beyond the control of Montana may affect the timing and actual amount, the anticipated amount of tobacco settlement money available for appropriation from the general fund is shown separately.

BE IT FURTHER RESOLVED, that the Governor's Office of Budget and Program Planning use the revenue estimates and the underlying assumptions contained in this resolution as the official revenue estimates for fiscal years 1999-2000 and 2000-01.

GENERAL FUND REVENUE

The projections for total general fund revenue during the 2000-01 biennium are based on an assumption of a continuation of Montana law as it existed on

HeinOnline -- 1999 vol. III 2911 1999

January 1, 1999. The revenue estimates contained in the following tables are based on the assumptions stated previously in this resolution, the assumptions listed in the tables that follow the general fund estimates, and the assumptions contained in the revenue detail report prepared by the Legislative Fiscal Division. Actual individual tax income collections for fiscal year 1999 are currently exceeding projected collections. The adjustment to estimated individual income tax collections for fiscal year 1999 does not impact the assumptions of other projections.

Current Law

General Fund Revenue Estimates

(In Millions of Dollars)

Source of Revenue	Actual FY 1998	Estimated FY 1999	Estimated FY 2000	Estimated FY 2001
Individual Income Tax	$444.161	$472.703	$475.687	$496.634
55-Mill Property Tax	128.709	132.880	138.698	138.258
40-Mill Property Tax	72.793	71.592	75.105	79.560
Corperation Income Tax	69.725	67.380	65.206	65.739
Common School Interest & Income	41.130	41.437	42.657	42.583
Permanent Trust Interest Earnings	40.746	40.528	41.022	41.941
Insurance Premiums Tax	36.813	37.445	38.629	39.226
All Other Revenue	25.428	31.235	18.067	18.055
U.S. Federal Royalty	22.241	19.039	18.492	18.245
TCA Interest Earnings	18.247	17.425	14.621	14.733
Inheritance Tax	15.727	17.679	16.733	17.878
Video Gaming Tax	12.256	12.748	13.389	14.030
Motor Vehicle License Fee	10.778	10.957	11.191	11.406
Institution Reimbursements	10.335	11.314	9.697	10.041
Cigsrette Tax	9.544	9.676	9.810	9.946
Coal Severance Tax	8.849	8.854	8.480	8.041
Oil Severance Tax	8.140	6.392	6.768	7.531
Lottery Profit	6.564	5.424	6.537	6.464
Liquor Excise Tax	6.412	6.517	6.628	6.744
Nursing Facilities Fee	6.200	6.090	5.981	5.874
Telephone License Tax	5.773	6.052	6.344	6.650
Liquor Profits	5.400	5.582	5.667	5.754
Electric Energy License Tax	4.402	4.564	4.567	4.606
Investment Licenses	4.036	4.393	4.691	4.978
Highway Patrol Fines	3.801	3.965	4.136	4.814
Driver's License Fee	2.828	2.846	2.242	1.925
Metaliiferous Mines Tax	2.307	2.869	3.525	3.356

Contractor's Gross Receipts Tax	2.291	2.573	3.176	3.520
Railroad Car Tax	2.054	2.110	2.130	2.153
Tobacco Tax	1.779	1.882	1.995	2.116
Long-Range Bond Excess	1.746	0.456	0.432	0.410
Natural Gas Severance Tax	0.974	1.100	1.124	1.109
Wine Tax	0.930	0.982	1.039	1.099
1.5-Mill Property Tax	0.849	1.075	1.107	1.141
Beer Tax	0.358	0.358	0.362	0.366
Total General Fund	1,034.382	1,053.122	1,060.935	1,096.426
One-Time Capital Gains Tax on Generation Assets	0.000	0.000	30.000	0.000
Tobacco Settlement Revenue	0.000	0.000	37.428	29.409
Grand Total General Fund	$1,034.382	$1,068.122	$1,128.363	$1,125.835

SIGNIFICANT ASSUMPTIONS FOR GENERAL FUND REVENUE ESTIMATES

Revenue Oversight Committee

Year	Assumption	1998	1999	2000	2001
Individual Income Tax					
CY	Taxpayer Population (Percent Change)	1.10%	1.50%	2.00%	2.00%
	Income Indicators				
CY	Wage and Salary (Percent Change)	4.30%	4.05%	4.56%	4.67%
CY	Net Farm Income (Percent Change)	0.00%	0.00%	0.00%	0.00%
CY	Interest Income (Percent Change)	2.10%	1.60%	2.50%	3.40%
CY	Dividend Income (Percent Change)	1.00%	4.00%	5.10%	5.10%
CY	Rent/Royalty/Partnership Income (Percent Change)	2.70%	4.90%	4.30%	5.20%
CY	Net Business Income (Percent Change)	0.00%	0.00%	0.00%	0.00%
CY	Capital Gains/Losses (Percent Change)	0.00%	0.00%	5.00%	5.00%
CY	Supplemental Gains (Percent Change)	0.00%	0.00%	0.00%	0.00%
CY	Social Security Income (Percent Change)	12.58%	12.58%	12.58%	12.58%
CY	IRA Income (Percent Change)	8.86%	8.86%	8.86%	8.86%
CY	Pension Income (Percent Change)	8.86%	8.86%	8.86%	8.86%
CY	Other Income (Percent Change)	0.00%	0.00%	0.00%	0.00%
CY	Additions to Income (Percent Change)	0.77%	0.85%	1.20%	1.36%
CY	IRA Deduction (Percent Change)	3.44%	3.44%	3.44%	3.44%
CY	Reductions to Income (Percent Change)	1.20%	1.46%	1.94%	2.13%
	Deductions From Income				
CY	Medical Costs (Percent Change)	5.40%	6.00%	6.90%	7.10%

CY	Property Tax (Percent Change)	8.83%	8.83%	8.83%	8.83%
CY	Motor Vehicle Tax (Percent Change)	3.70%	-1.80%	4.20%	5.40%
CY	Homo Mortgage (Percent Change)	7.65%	7.65%	7.65%	7.65%
CY	Contributions (Percent Change)	7.68%	7.68%	7.68%	7.68%
	Credits				
CY	Home Owner/Renter Credit (Millions)	$8.824	$9.053	$9.288	$9.350
CY	Credit for Taxes Paid in Other States (Percent Change)	10.00%	10.00%	10.00%	10.00%
CY	All Other Credits (Percent Change)	1.10%	1.50%	2.00%	2.00%
	Other Individual Income Tax Assumptions				
FY	Penalty & Interest (Millions)	$3.917	$4.500	$4.950	$4.950
FY	Income Tax Audit Collections (Millions)	$8.825	$10.000	$11.000	$11.000
FY	Amended Returns (Millions)	$1.359	$2.000	$2.000	$2.000
FY	Federal Tax Reform (Millions)	$0.000	$0.000	$3.037	$3.745
CY	Nonresident Tax Liability (Millions)	$26.287	$27.132	$28.248	$29.571
CY	Calendar Year to Fiscal Year Conversion	52.1%/47.9%	52.1%/47.9%	52.1%/47.9%	52.1%/47.9%
FY	Fiscal Year 1998 Base (Millions)	$438.161			
Property Taxes: Taxable Value and Other Property Tax Indicators					
	Taxable Value—40-Mill, 55-Mill, and 1.5-Mill Levies (and 6-Mill and 9-Mill Levies)				
FY	Property Class One (Millions)	$6.862	$7.625	$7.677	$7.689
FY	Property Class Two (Millions)	$9.044	$8.781	$8.189	$6.316
FY	Property Class Three (Millions)	$143.780	$143.007	$143.007	$143.007
FY	Property Class Four (Millions)	$920.067	$952.059	$986.477	$1,002.455
FY	Property Class Five (Millions)	$34.034	$34.068	$34.068	$34.068
FY	Property Class Six (Millions)	$21.958	$28.833	$28.833	$28.833
FY	Property Class Seven (Millions)	$1.616	$1.784	$1.784	$1.784
FY	Property Class Eight (Millions)	$220.432	$203.383	$212.501	$222.027
FY	Property Class Nine (Millions)	$481.958	$494.535	$508.164	$521.422
FY	Property Class Ten (Millions)	$7.449	$7.678	$7.879	$8.104
FY	Property Class Twelve (Millions)	$68.029	$65.266	$65.266	$65.266
	Other 40-Mill, 55-Mill, and 1.5-Mill Levies (and 6-Mill and 9-Mill) Indicators				
FY	Tax Increment Finance (Millions)	$30.186	$48.065	$48.065	$48.065
FY	Property Tax Abatement (Millions)	$10.571	$9.071	$9.071	$9.071
	Other 40-Mill Levy Indicaters				
FY	Nonlevy Revenue (Millions)	$7.994	$8.731	$9.424	$10.181
FY	SB 417 and Other Adjustments (Millions)	($12.201)	($13.260)	($12.713)	($11.300)
	Other 55-Mill Levy Indicators				
FY	Nonlevy Revenue (Millions)	$23.066	$24.110	$28.978	$25.396

FY	SB 417 and Other Adjustments (Millions)	$0.274	$1.463	$0.274	$0.274
FY	Federal Forest Receipts (Millions)	$2.190	$2.641	$1.654	$1.654
FY	Volume of Timber (Millions of Board Feet)	0.212	NA	0.160	0.160
FY	Timber Price (Per Board Foot)	$161.580	NA	$161.580	$161.580
FY	Forest Revenue Allocation (Percentage)	25.59%	25.59%	25.59%	25.59%
	Other 1.5-Mill Levy Indicators				
FY	Nonlevy Revenue (Millions)	$0.123	$0.134	$0.138	$0.144
FY	SB 417 and Other Adjustments (Millions)	$0.000	$0.000	$0.000	$0.000
	Other Property Tax Indicators				
FY	Value of Light Vehicles (Millions)	$3,792.656	$4,151.286	$4,547.867	$4,983.633
FY	Flat Fee—Heavy Trucks and Buses (Millions)	$2.357	$4.700	$4.770	$4.842
Corporation License Tax					
FY	MT Corporate Taxable Income (Millions)	$1,089.502	$1,070.793	$1,047.188	$1,056.237
FY	Penalty and Interest (Millions)	$1.469	$1.646	$1.646	$1.646
FY	Corporate Income Tax Audits (Millions)	$2.919	$3.084	$2.300	$2.300
Insurance Premiums Tax and License Fees					
FY	General Fund Fee Revenue (Millions)	$2.243	$2.345	$2.477	$2.619
FY	Miscellaneous Receipts (Millions)	$0.476	$0.476	$0.476	$0.476
FY	Genetics Fee (Millions)	$0.574	$0.563	$0.567	$0.568
FY	Promiums Tax (Millions)	$37.685	$37.515	$37.638	$37.613
FY	Offsets (Millions)	$3.030	$2.654	$1.729	$1.251
FY	Refunds (Millions)	$0.663	$0.800	$0.800	$0.800
Federal Mineral Royalty					
CY	Oil Production (Milliens of Borrels)	2.833	2.802	2.751	2.691
CY	Coal Production (Millions of Tons)	26.395	24.633	23.864	22.512
CY	Natural Gas Production (MMCF)	11.318	11.845	11.803	11.726
CY	Oil Price (Per Barrel)	$13.822	$13.477	$16.226	$17.790
CY	Coal Price (Per Ton)	$9.401	$9.449	$9.622	$9.636
CY	Natural Gas Price (Per MCF)	$2.333	$2.523	$2.508	$2.492
CY	Oil Royalty Rate (Percentage)	11.00%	10.99%	11.00%	10.98%
CY	Coal Royalty Rate (Percentage)	12.29%	12.33%	12.31%	12.30%
CY	Natural Gas Royalty Rate (Percentage)	12.32%	12.85%	12.34%	12.35%
CY	Other Reyalties (Millions)	$4.681	$0.352	$0.352	$0.352
CY	Rent & Bonus (Millions)	$2.020	$2.020	$2.020	$2.020
CY	Administration Fee (Millions)	$1.021	$1.034	$1.034	$1.034

HeinOnline -- 1999 vol. III 2915 1999

Treasurer's Cash Account					
FY	TCA Average Balance w/TRANS (Millions)	$291.934	$300.000	$265.500	$265.500
FY	TCA Average Yield (Percent)	6.06%	5.81%	5.51%	5.55%
FY	TRANS Issue Size (Millions)	$110.700	$68.600	$90.000	$90.000
Inheritance Tax					
FY	Annual Change in Tax (Percent Change)	7.99%	12.42%	-5.35%	6.84%
Video Gaming Tax					
FY	Video Machine Net Income (Millions)	$243.439	$254.964	$267.782	$280.601
Motor Vehicle License Fee — General Fund Allocations					
FY	Motor Vehicle Registration Fee (Millions)	$5.864	$5.954	$6.094	$6.237
FY	Recording of Liens Fee (Millions)	$0.618	$0.627	$0.634	$0.636
FY	Title Fee (Millions)	$1.359	$1.380	$1.411	$1.434
FY	Personal License Plate Fee (Millions)	$0.657	$0.674	$0.702	$0.731
FY	New License Plate Fee (Millions)	$0.463	$0.463	$0.461	$0.460
FY	Computer Fee (Millions)	$1.244	$1.235	$1.307	$1.326
FY	Highway Patrol Fee (Millions)	$0.281	$0.281	$0.281	$0.231
FY	Other Fees (Millions)	$0.293	$0.295	$0.301	$0.300
Institution Reimbursements					
FY	Private Payments (Millions)	$1.636	$1.974	$2.235	$2.276
FY	Insurance Payments (Millions)	$0.383	$0.295	$0.370	$0.369
FY	Medicaid Payments (Millions)	$9.122	$9.829	$10.002	$10.308
FY	Medicare Payments (Millions)	$0.073	$0.088	$0.077	$0.077
FY	County Paymente (Millions)	$0.000	$0.250	$0.000	$0.000
FY	Debt Service MT Developmental Center (Millions)	($0.878)	($1.078)	($1.077)	($1.079)
FY	Debt Service MT State Hospital (Millions)	$0.000	$0.000	($1.910)	($1.909)
Cigarette Tax					
FY	Cigarette Packs (Millions)	75.779	81.518	82.655	83.795
FY	Effective Tax Rate Per Pack (Cents)	17.46	16.47	16.47	16.47
Coal Severance Tax					
CY	Severance Tax Coal Production (Million Tons)	34.605	34.331	31.200	29.843
CY	Montana Contract Sales Price (Weighted CSP/Ton)	$6.301	$6.672	$6.889	$6.927
Oil Severance Tax					
CY	Severance Tax Oil Production (Million Barrels)	16.006	15.829	15.543	15.207
CY	Montana Oil Price (Weigbted Price/Barrel)	$12.02	$11.72	$14.11	$15.47
CY	Exempt Value of Production (Millions)	$6.755	$7.632	$9.123	$9.309
CY	Effective Tax Rate (Percentage)	11.26%	11.14%	11.05%	10.97%

Lottery Profit					
FY	Total Lottery Sales (Millions)	$29.775	$29.843	$29.910	$29.978
FY	Lottery Interest Earnings (Millions)	$0.251	$0.247	$0.251	$0.256
FY	Other Revenue (Millions)	$0.088	$0.094	$0.091	$0.092
FY	Lottery Operating Budget (Millions)	$6.510	$7.851	$6.718	$6.852
FY	Lottery Prizes (Millions)	$16.971	$16.907	$16.997	$17.010
Liquor Excise Tax					
FY	Liquor Units (Millions)	4.714	4.714	4.714	4.714
FY	Dollars Per Unit	$9.858	$10.004	$10.176	$10.352
FY	Liquor Discounts and Commissions (Millions)	$4.908	$4.981	$5.067	$5.154
Nursing Facilities Fee					
FY	Bed Days (Millions)	2.214	2.175	2.136	2.098
Telephone License Tax					
FY	Total Taxable Gross Receipts (Millions)	$320.741	$336.197	$352.397	$369.378
Liquor Profits					
FY	Cost of Goods Sold (Millions)	$29.128	$29.863	$30.377	$30.903
FY	Liquor Operating Costs (Millions)	$0.904	$0.982	$1.009	$1.038
FY	Other Income (Millions)	$0.024	$0.024	$0.024	$0.024
Electric Energy Producers' License Tax					
FY	Kilowatt Hours Produced (Millions)	22,727.116	23,009.099	22,926.755	23,073.843
FY	Credits for Loan Interest Rate Differential (Millions)	$0.076	$0.038	$0.019	$0.010
Investment License Fees					
FY	License Registration (Percent Change)	8.37%	7.53%	6.78%	6.10%
Highway Patrol Fines					
FY	Highway Patrol Fines (Percent Change)	4.31%	4.31%	4.31%	4.31%
Driver's License Fees					
FY	Driver's License Fees (Millions)	$2.401	$2.408	$1.887	$1.615
FY	Duplicate License Fees (Millions)	$0.060	$0.060	$0.060	$0.060
FY	Motorcycle Endorsement Fees (Millions)	$0.014	$0.016	$0.012	$0.011
FY	Interstate Commercial Vehicle Endorsement (Millions)	$0.290	$0.296	$0.232	$0.196
FY	Intrastate Commercial Vehicle Endorsement (Millions)	$0.065	$0.066	$0.051	$0.043
Metal Mines Tax					
CY	Copper Production (Million lb)	94.073	84.726	84.726	84.726
CY	Silver Production (Million oz)	1.632	1.502	2.580	0.947
CY	Gold Production (Million oz)	0.278	0.269	0.221	0.209
CY	Load Production (Million lb)	15.732	15.992	7.576	0.000
CY	Zinc Production (Million lb)	47.486	54.438	12.708	0.000

HeinOnline -- 1999 vol. III 2917 1999

CY	Molybdenum Production (Million lb)	10.209	9.252	9.252	9.252
CY	Palladium Production (Million oz)	0.357	0.505	0.532	0.874
CY	Platinum Production (Million oz)	0.113	0.159	0.168	0.276
CY	Nickel Production (Million lb)	0.000	0.000	0.000	0.000
CY	Rhodium Production (Million oz)	0.002	0.002	0.002	0.002
CY	Sapphire Production (Million oz)	1.235	1.235	1.235	1.235
CY	Iron Oxide Production (Million lb)	0.010	0.010	0.010	0.010
CY	Copper Price (Per lb)	$0.730	$0.750	$0.770	$0.790
CY	Silver Price (Per oz)	$4.950	$5.000	$5.110	$5.190
CY	Gold Price (Per oz)	$290.000	$298.000	$306.000	$316.000
CY	Lead Price (Per lb)	$0.340	$0.340	$0.340	$0.340
CY	Zinc Price (Per lb)	$0.470	$0.470	$0.470	$0.470
CY	Molybdenum Price (Per lb)	$3.680	$3.680	$3.680	$3.680
CY	Palladium Price (Per oz)	$145.000	$225.000	$225.000	$225.000
CY	Platinum Price (Per oz)	$360.000	$360.000	$360.000	$360.000
CY	Nickel Price (Per lb)	$3.800	$3.800	$3.800	$3.800
CY	Rhodium Price (Per oz)	$550.000	$550.000	$550.000	$550.000
CY	Sapphire Price (Per oz)	$0.500	$0.500	$0.500	$0.500
CY	Iron Oxide Price (Per lb)	$34.000	$34.000	$34.000	$34.000
FY	Effective Tax Rate (Percent)	1.56%	1.56%	1.56%	1.56%
Contractor's Gross Receipts Tax					
FY	Tax Before Credits (Millions)	$4.967	$5.332	$6.312	$6.733
FY	Net to General Fund After Credits (Percentage)	53.89%	51.74%	49.68%	47.70%
Railroad Car Tax					
CY	Total MT Market Value of Fleets (Millions)	$94.051	$94.022	$94.094	$94.123
CY	Taxable Percentage	6.17%	6.17%	6.17%	6.17%
CY	95% of Industrial & Commercial Mill Levy	363.539	367.174	370.846	374.554
Tobacco Products Tax					
FY	Value of Tobacco Products	$14.409	$15.230	$16.145	$17.117
Natural Gas Severance Tax					
CY	Severance Tax Natural Gas Production (MMCF)	51.087	51.203	51.022	50.690
CY	Montana Natural Gas Price (Weighted Price/MCF)	$1.636	$1.732	$1.721	$1.710
CY	Exempt Value of Production (Millions)	$4.536	$4.808	$4.760	$4.698
CY	Effective Tax Rate (Percentage)	13.13%	13.10%	13.08%	13.07%
Wine Tax					
FY	Wine Liters (Millions)	5.942	6.285	6.648	7.032

HeinOnline -- 1999 vol. III 2918 1999

Beer Tax					
FY	Beer Barrels (Millions)	0.773	0.780	0.788	0.795

SELECTED NONGENERAL FUND REVENUE

The projections for selected nongeneral fund revenue during the 2000-01 biennium are based on an assumption of a continuation of Montana law as it existed on January 1, 1999. The revenue estimates contained in the following table are based on the assumptions stated previously in this resolution, the assumptions listed in the tables that follow the nongeneral fund estimates, and the assumptions contained in the revenue detail report prepared by the Legislative Fiscal Division.

Current Law

Selected Nongeneral Fund Revenue Estimates

(In Millions of Dollars)

Source of Revenue	1998 Actual	1999 Estimated	2000 Estimated	2001 Estimated
Diesel Tax	$47.889	$48.094	$48.301	$48.509
Diesel Storage Tank Fee	2.092	1.449	1.455	1.461
Gas Tax	123.597	124.766	125.948	125.641
Gas Storage Tank Fee	3.915	3.720	3.754	3.788
Nongeneral Fund GVW Fees	30.038	31.418	32.479	33.300
Resource Indemnity Trust Tax	2.667	2.216	2.327	2.382
Arts Trust Interest Earnings	0.308	0.308	0.315	0.329
Capitol Land Grant Interest and Income	0.916	0.700	0.928	0.894
Deaf and Blind Trust Interest and Income	0.226	0.229	0.238	0.247
Parks Trust Interest Earnings	1.066	1.096	1.124	1.152
Pine Hills Interest and Income	0.273	0.291	0.300	0.310
Resource Indemnity Trust Earnings	7.556	7.617	7.675	7.737
Treasure State Endowment Interest Earnings	4.250	4.907	5.456	5.989
6-Mill Property Tax	14.702	14.660	14.809	15.280
9-Mill Property Tax	7.510	7.502	7.728	7.960

SELECTED ASSUMPTIONS FOR NONGENERAL FUND REVENUE ESTIMATES

Revenue Oversight Committee

Year	Assumption	1998	1999	2000	2001
Diesel Tax					
FY	Gallons of Diesel (Millions)	192.323	193.150	193.980	194.814
FY	Refunds (Millions)	($4.947)	($4.969)	($4.990)	($5.011)

Gasoline Tax					
FY	Gallons of Gasoline (Millions)	491.421	495.942	500.505	505.109
FY	Refunds (Millions)	$4.012	$4.049	$4.086	$4.124
FY	Tribal Distribution	$3.748	$3.751	$3.751	$3.751
FY	Alcohol Incentive (Millions)	$0.000	$0.000	$0.000	$1.500
GVW Fees					
FY	GVW Fees (Millions)	$7.568	$3.182	$8.182	$3.182
FY	Form 3 GVW Fees (Millions)	$0.890	$1.018	$0.998	$0.983
FY	Trip Permit Fees (Millions)	$0.558	$0.558	$0.558	$0.558
FY	County GVW Fees (Millions)	$0.921	$7.159	$7.326	$7.384
FY	County New Car Sales Tax (Millions)	$10.814	$11.410	$12.297	$13.073
FY	Overweight Trip Permit Fees (Millions)	$1.452	$1.385	$1.418	$1.435
FY	Special Permit Fees (Millions)	$0.386	$0.852	$0.855	$0.859
FY	Temporary Fuel Permits (Millions)	$0.106	$0.106	$0.106	$0.106
FY	Other Fees (Millions)	$0.672	$0.748	$0.738	$0.720
Other 6-Mill Levy Indicators (See General Fund Property Tax Assumptions for Other Detail)					
FY	Nonlevy Revenue (Millions)	$2.731	$2.824	$2.761	$2.890
FY	SB 417 and Other Adjustments (Millions)	$0.000	$0.129	$0.000	$0.000
Other 9-Mill Levy Indicators (See General Fund Property Tax Assumptions for Other Detail)					
FY	Nonlevy Revenue (Millions)	$0.874	$0.953	$0.983	$1.019
FY	SB 417 and Other Adjustments (Millions)	$0.000	$0.000	$0.000	$0.000

Adopted April 14, 1999

HOUSE JOINT RESOLUTION NO. 3

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE ENVIRONMENTAL QUALITY COUNCIL TO COORDINATE WITH OTHER APPROPRIATE AGENCIES TO STUDY THE NEED FOR AND UTILITY OF TAX AND OTHER TYPES OF FINANCIAL INCENTIVES TO ENCOURAGE VOLUNTARY CLEANUP AND REDEVELOPMENT OF CONTAMINATED PROPERTIES WITHIN MONTANA.

WHEREAS, there are properties in Montana where use is limited because of environmental contamination of soil, air, surface water, or ground water; and

WHEREAS, the expense of cleanup and the uncertainty over potential liability for contamination are common barriers to redevelopment and reuse of these properties, especially for small businesses; and

WHEREAS, although a federal tax incentive program exists to encourage redevelopment of contaminated properties, only certain types of properties, with certain characteristics, convey eligibility for tax credits under the federal program; and

HeinOnline -- 1999 vol. III 2920 1999

WHEREAS, there appears to be increased interest in Montana in potentially redeveloping contaminated properties; and

WHEREAS, as in other states, additional state tax credits or other financial incentives might increase the likelihood that contaminated properties in Montana could be cleaned up and redeveloped into income-supporting community amenities, rather than lying idle and unaddressed; and

WHEREAS, Montana needs policy mechanisms that simultaneously improve and contribute to the long-term integrity of the environment, the economy, and the communities in which we all live.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislature request the Environmental Quality Council to make a priority of coordinating with the Departments of Environmental Quality, Commerce, and Revenue to conduct a study to determine the need for and potential utility of tax and other types of financial incentives to encourage voluntary cleanup and redevelopment of contaminated properties within Montana. Incentives should be structured in a way to ensure that only persons with no prior connection to a property, and who did not contribute to its contamination, are eligible to benefit from the incentives. Potential study components may include:

(1) the number, type, and distribution of contaminated properties in Montana and the severity of their contamination in relation to public health, safety, or welfare or environmental risks;

(2) how existing state policies and programs contribute to or restrict redevelopment of contaminated properties in Montana;

(3) what gaps or disincentives there may be in current environmental or financial policies that limit the ability of Montanans to simultaneously improve their environment, economy, and communities through the redevelopment of contaminated properties;

(4) the scope, applicability, use, and benefits or drawbacks of the federal tax incentive program in Montana, including any potential conflicts with state policy or inherent limitations on applicability to property types in Montana;

(5) what can be learned from the experiences of other states attempting to resolve similar issues;

(6) what level of public investment is justified to encourage redevelopment; and

(7) what administrative or legislative options should be suggested to the Legislature and others to enhance the availability of tax or other financial incentives to encourage voluntary cleanup and redevelopment of contaminated properties in Montana.

Adopted March 10, 1999

HOUSE JOINT RESOLUTION NO. 4

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA OBJECTING TO THE RELEASE OF GRIZZLY BEARS INTO THE SELWAY-BITTERROOT

HeinOnline -- 1999 vol. III 2921 1999

WILDERNESS AND FRANK CHURCH RIVER-OF-NO-RETURN WILDERNESS; URGING AN END TO CONTROL OF GRIZZLY BEAR POPULATION MANAGEMENT BY THE UNITED STATES FISH AND WILDLIFE SERVICE AND THE RETURN OF GRIZZLY BEAR MANAGEMENT TO THE FISH AND GAME AGENCIES OF THE AFFECTED STATES; REQUESTING REMOVAL OF THE GRIZZLY BEAR FROM THE LIST OF THREATENED OR ENDANGERED SPECIES BASED UPON EVIDENCE OF POPULATION VIABILITY; AND URGING THE ACCEPTANCE OF LIABILITY FOR DAMAGES FROM THE GRIZZLY BEAR RECOVERY PROGRAM BY THE UNITED STATES GOVERNMENT IF INTRODUCTION MEASURES ARE UNDERTAKEN SUCCESSFULLY.

WHEREAS, it is widely believed that the grizzly bear is classified as "threatened" or "endangered" only as a result of an arhitrary designation of habitat areas by the United States Fish and Wildlife Service (USFWS) and that the grizzly bear is, in reality, neither "threatened" nor "endangered" because the State of Montana successfully maintained a viable, breeding population of grizzly bears for years prior to the arbitrary USFWS classification; and

WHEREAS, grizzly bear populations continue to thrive, breeding and maintaining their populations in suitable habitat in other areas; and

WHEREAS, the habitat in the Selway-Bitterroot Wilderness is considered to he an inadequate ecosystem for supporting grizzly hears; and

WHEREAS, predation by grizzly bears is known to impose uncompensated costs and hazards to livestock growers and other citizens; and

WHEREAS, enforcement by federal agencies of arbitrary and capricious rules and regulations devised to exclude any real or imagined intrusion or disturbance to grizzly bears in recovery areas has caused the loss of many millions of dollars in personal and corporate income, the loss of many jobs, the displacement of families, the loss of needed revenue to the State of Montana, and the virtual closing of large areas of national forest land in Montana to traditional uses, such as lumbering, driving for pleasure, gathering firewood, and berry picking; and

WHEREAS, the Selway-Bitterroot and Frank Church River-of-No-Return wilderness complex is the only remaining wilderness in the geographical area where wilderness travelers can pursue a wilderness experience without fear of encountering grizzly bears; and

WHEREAS, introduction of grizzly bears into the Selway-Bitterroot Wilderness will complicate or further frustrate efforts to increase populations of anadromous salmon tbat traditionally spawn in the rivers and streams of the Selway-Bitterroot Wilderness; and

WHEREAS, introduction of grizzly bears into the Selway-Bitterroot and Frank Church River-of-No-Return wilderness complex will further increase the rate of bear predation of the northern Idaho elk herd, a herd tbat is an important asset to outfitters, guides, and residents of western Montana and northern Idaho; and

WHEREAS, social benefits derived from the bear introduction program are drastically out of proportion to the costs to the public of capturing, transporting, examining, releasing, monitoring, and otherwise managing an introduced population of grizzly bears, and those funds are more urgently needed to help finance real and essential social programs; and

HeinOnline -- 1999 vol. III 2922 1999

WHEREAS, programs undertaken under the authority of Public Law 93-205, the federal Endangered Species Act of 1973, including the grizzly bear recovery program, place the lives, property, and freedom of local citizens and visitors in jeopardy of the wrath of the United States government in the event of accidental or mistaken actions by citizens that could be judged as infringement on a listed species or the habitat of a listed species and further expand the body of laws and regulations of which United States citizens might become victims when applied.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That grizzly bears not be released into the Selway-Bitterroot and Frank Church River-of-No-Return wilderness complex as part of the federal grizzly bear recovery program.

(2) That control of grizzly bear populations by the United States Fish and Wildlife Service be ended and that the management of grizzly bears within the borders of Montana and Idaho be returned to the fish and wildlife agencies of those respective states.

(3) That the grizzly bear be removed from the list of threatened or endangered species, based on evidence of the viability of grizzly bear populations in Montana, Idaho, Wyoming, Alaska, and Canada.

(4) That if the United States gevernment persists in its proposal to introduce grizzly bears into the Selway-Bitterroot and Frank Church River-of-No-Return wilderness complex and succeeds in placing grizzly bears in those areas, the United States government be held financially liable for any damages to livestock and other domestic animals and to property, for loss of life, and for personal injury arising from the actions of the grizzly bears and of United States government agents engaged in the grizzly bear recovery program, including economic losses suffered by individuals or communities as a result of actions related to the program.

(5) That the Secretary of State send copies of this resolution to the members of the Montana and Idaho Congressional Delegations, the Director of the United States Fish and Wildlife Service, the President of the United States Senate, and the Speaker of the United States House of Representatives.

Adopted March 27, 1999

HOUSE JOINT RESOLUTION NO. 5

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE UNITED STATES CONGRESS TO REPEAL A FEDERAL ACT KNOWN AS THE BRADY LAW.

WHEREAS, in 1994, the United States Congress passed a law known as the Brady Law; and

WHEREAS, the Brady Law imposes federal restrictions on the ability of the people of Montana to obtain personal firearms; and

WHEREAS, the people of Montana have a long and honorable tradition of law-abiding ownership and use of firearms; and

HeinOnline -- 1999 vol. III 2923 1999

WHEREAS, the unquestioned ability of lawful Montana citizens to obtain personal firearms has always been a significant feature of the culture of the people of Montana and a personal and individual right; and

WHEREAS, the people of Montana do not lightly accept outside influence that imposes significant changes on Montana traditions, culture, and individual and state rights; and

WHEREAS, Article II, section 12, of the Montana Constitution states that "The right of any person to keep or bear arms in defense of his own home, person, and property, or in aid of the civil power when thereto legally summoned, shall not be called in question, but nothing herein contained shall be held to permit the carrying of concealed weapons"; and

WHEREAS, the Attorney General of the State of Montana has said in reference to the Brady Law in his amicus appearance in Printz v. United States: "... Congress has unconstitutionally attempted to make the States mere administrative subdivisions of the federal government contrary to the sovereign powers reserved to them by the Tenth Amendment"; and

WHEREAS, the Brady Law is unnecessary for the people of Montana, is unwanted in Montana, is erosive of the authority reserved to Montana by the 10th amendment to the United States Constitution, is hostile to the spirit and intent of Montana's Compact with the United States, and is in conflict with the Montana Constitution; and

WHEREAS, there are problems with instant check systems, compilations of information on citizens, and fees levied for the checks.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That Congress is hereby notified that Montana is a claimant of its full sovereignty, the rights reserved to Montana by the United States Constitution, and the rights and prerogatives contained in and implied by Montana's Compact with the United States and is therefore urged to repeal the Brady Law.

(2) That the Secretary of State send copies of this resolution to the Montana Congressional Delegation with a request that this resolution be entered in the Congressional Record.

Adopted March 27, 1999

HOUSE JOINT RESOLUTION NO. 6

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE BOARD OF INVESTMENTS TO REACH THE STATUTORY LIMIT FOR INVESTING THE AVAILABLE COAL TAX TRUST FUNDS IN MONTANA ECONOMIC ACTIVITIES.

WHEREAS, the Board of Investments has an obligation to invest the revenue received from the coal severance tax in a reasonable manner that secures the greatest return on the investment; and

WHEREAS, by law, the Board of Investments is allowed to direct 25% of the permanent coal tax trust fund toward Montana investment opportunities; and

HeinOnline -- 1999 vol. III 2924 1999

WHEREAS, many Montana businesses are seeking an opportunity to expand their economic enterprises and elevate their contributions to the state's future economic success; and

WHEREAS, a coordinated effort among public and private entities will provide the Board of Investments with a diversified collection of qualified Montana companies worthy of the Board's assistance; and

WHEREAS, reaching the maximum statutory limit for investing in Montana businesses that add value to the state's basic industries provides the necessary opportunities for businesses to create quality, long-term career opportunities that will strengthen, diversify, and stabilize the Montana economy.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Board of Investments be encouraged to increase the amount of the coal tax trust fund invested in Montana enterprises in order to reach the maximum statutory limit for prudent and productive investment in Montana's economic future.

BE IT FURTHER RESOLVED, that copies of this resolution be sent by the Secretary of State to the Board of Investments.

Adopted March 27, 1999

HOUSE JOINT RESOLUTION NO. 7

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA SUPPORTING THE AMERICAN LAND SOVEREIGNTY PROTECTION ACT; AND REQUIRING THE SECRETARY OF STATE TO TRANSMIT COPIES OF THE RESOLUTION.

WHEREAS, the United Nations has designated 67 sites in the United States as World Heritage Sites or Biosphere Reserves, which altogether are about equal in size to the State of Colorado, the eighth largest state; and

WHEREAS, Article IV, section 3, of the United States Constitution provides that the United States Congress shall make all needed regulations governing lands belonging to the United States; and

WHEREAS, many of the United Nations' designations include property inholdings and contemplate "buffer zones" of adjacent land; and

WHEREAS, some international land designations, such as those under the United States Biosphere Reserves Program and the Man and the Biosphere Program of the United Nations Educational, Scientific, and Cultural Organization, operate under independent national committees, such as the United States National Committee for the Man and Biosphere Program, that have no legislative directives or authorization from Congress; and

WHEREAS, these international designations as presently handled are an open invitation to the international community to interfere in domestic economies and land-use decisions; and

HeinOnline -- 1999 vol. III 2925 1999

WHEREAS, local citizens and public officials concerned about job creation and resource-based economies usually have no say in the designation of land near their homes for inclusion in an international land-use program; and

WHEREAS, former Assistant Secretary of the Interior George T. Frampton, Jr., and the President used the fact that Yellowstone National Park had been designated as a World Heritage Site as justification for intervening in the environmental impact statement process and blocking possible development of an underground mine on private land in Montana outside of the park; and

WHEREAS, a recent designation of a portion of Kamchatka as a World Heritage Site was followed immediately hy efforts from environmental groups to block investment insurance for development projects on Kamchatka that are supported by the local communities; and

WHEREAS, these international designations could be used to harass or block any commercial activity, including pipelines, railroads, and power transmission lines; and

WHEREAS, the President and the Executive Branch of the United States have, by executive order and other agreements, implemented these designations without approval by Congress; and

WHEREAS, actions by the President in applying international agreements to lands owned by the United States may circumvent Congress; and

WHEREAS, Congressman Don Young introduced in the 105th Congress House Resolution No. 901, entitled the "American Land Sovereignty Protection Act of 1997", that required the explicit approval of Congress prior to restricting any use of the land of the United States under international agreements.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Montana Legislature support the American Land Sovereignty Protection Act of 1997 that reaffirms the constitutional authority of the United States Congress as the elected representatives of the people over the federally owned land of the United States.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the Speaker of the United States House of Representatives, the President Pro Tempore of the United States Senate, each member of Montana's Congressional Delegation, and each member of Alaska's Congressional Delegation.

Adopted March 26, 1999

HOUSE JOINT RESOLUTION NO. 8

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA OPPOSING DESIGNATION OF ANY RIVER IN MONTANA AS AN AMERICAN HERITAGE RIVER UNDER THE FEDERAL AMERICAN HERITAGE RIVERS INITIATIVE.

WHEREAS, the President of the United States has, by Executive Order 13061, created the American Heritage Rivers initiative; and

HeinOnline -- 1999 vol. III 2926 1999

WHEREAS, the initiative allows a local river community to nominate its river for designation by the President as an American Heritage River; and

WHEREAS, the initiative provides no meaningful protection of state or private property along designated rivers; and

WHEREAS, the initiative creates a new layer of federal bureaucracy and engages 12 federal agencies in its implementation.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Montana Legislature oppose the nomination or designation of any river in Montana as an American Heritage River under the American Heritage Rivers initiative.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the President of the United States, the Vice President of the United States, the President Pro Tempore of the Senate of the U.S. Congress, the Speaker of the House of Representatives of the U.S. Congress, the Chair of the Council on Environmental Quality, and the Montana Congressional Delegation.

Adopted March 23, 1999

HOUSE JOINT RESOLUTION NO. 9

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE FORMAL ESTABLISHMENT OF SISTER RELATIONS BETWEEN THE STATE OF MONTANA AND THE GOVERNMENT OF GUANGXI ZHUANG AUTONOMOUS REGION TO ENCOURAGE COOPERATION, FRIENDSHIP, UNDERSTANDING, AND COMMUNICATION.

WHEREAS, the Montana Legislature recognizes the cultural, educational, and economic benefits of establishing and maintaining international relations; and

WHEREAS, sister relations will promote communication and exchanges between the people of Montana and Guangxi Zhuang Autonomous Region; and

WHEREAS, in 1994, the Governor of Montana signed a communique that set forth the basis for mutual cooperation between the State of Montana and the people of Guangxi Zhuang Autonomous Region, People's Republic of China; Kumamoto Prefecture, Japan; and the Province of Ch'ungch'ongnam-do, Korea; and

WHEREAS, exchanges at the local level can serve to build the foundation for mutual understanding and cooperation between the United States of America and the People's Republic of China.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Montana Legislature endorses the formal establishment of sister relations between the State of Montana and the government of Guangxi Zhuang Autonomous Region.

HeinOnline -- 1999 vol. III 2927 1999

BE IT FURTHER RESOLVED, that the Legislature encourages cooperation between the institutes of higher education in Montana and Guangxi Zhuang Autonomous Region.

BE IT FURTHER RESOLVED, that the Legislature hopes that this relationship will foster lasting friendship, understanding, and communication between the people of Montana and Guangxi Zhuang Autonomous Region.

Adopted March 3, 1999

HOUSE JOINT RESOLUTION NO. 11

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA ENCOURAGING THAT ANY NEW OR REVISED FEDERAL POLICY RECOGNIZE AND INCORPORATE WESTERN STATE AUTHORITIES AND INTERESTS IN WATER RESOURCE POLICIES AND ISSUES.

WHEREAS, the western states of the United States are critically dependent upon present and future water resources for their quality of life and economic base; and

WHEREAS, the western states are geographically, hydrologically, and economically diverse and distinct from each other and from the eastern states; and

WHEREAS, the western states have developed and customized a system of water allocation under the prior appropriation doctrine in response to the arid conditions of the region; and

WHEREAS, water resources in many of the major interstate river basins in the West are apportioned and administered through interstate and other compacts or court decrees between two or more states; and

WHEREAS, there has been a long-standing policy of federal deference to the states in the areas of water resources administration, management, allocation, and protection; and

WHEREAS, the western states have extensive experience in managing water resources, both surface and ground water supplies, and recognize the importance of protecting their water resources for present and future beneficial uses; and

WHEREAS, all western states have a system of law for allocation of water rights, and there is broad consensus within the federal system that states should continue to have the exclusive responsibility to create and administer water rights; and

WHEREAS, state water law provides for public participation and is based upon the allocation, transfer, and protection of water resources in the public interest; and

WHEREAS, the number of federal agencies involved in some aspect of water policy or management continues to increase, adding duplication, confusion, and conflicting missions to the historic state systems; and

WHEREAS, the U.S. Congress often considers legislation related to water resources management, some of which contains elements that could increase the

HeinOnline -- 1999 vol. III 2928 1999

federal role in water administration and conflict with the state's responsibility for water programs.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That Montana's Congressional Delegation be respectfully requested to advocate to the appropriate federal agencies that any new or revised federal legislation or policy should:

(1) recognize that water resources administration, management, allocation, and protection are primarily the responsibility of the states and that federal policy should be supportive of this role of the western states;

(2) provide flexibility for states to continue to develop and refine water resource programs appropriate for their own circumstances, taking into consideration items such as hydrology, existing water rights, potential development of the area, interstate and other compact obligations, and the public interest;

(3) require all federal agencies to conduct their activities in accordance with, and in support of, state water resource programs and state water law; and

(4) recognize and cooperate with the states' prerogative and ability to manage, administer, and develop their water resources.

BE IT FURTHER RESOLVED that the Secretary of State send copies of this resolution to the President of the United States, the Vice President of the United States, the President Pro Tempore of the Senate of the U.S. Congress, the Speaker of the House of Representatives of the U.S. Congress, and the Montana Congressional Delegation.

Adopted March 22, 1999

HOUSE JOINT RESOLUTION NO. 12

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE COMMITTEE ON INDIAN AFFAIRS TO STUDY A PROPOSAL TO CREATE A STATE COMMISSION ON INDIAN AFFAIRS; AND REQUIRING A REPORT TO THE 57TH LEGISLATURE.

WHEREAS, there is a need to better achieve mutual goals through an improved relationship between the sovereign governments of the Indian tribes of Montana and the state of Montana; and

WHEREAS, there is a need to eliminate the many misunderstandings or misconceptions that exist on both sides by providing a forum for mutual education and discussion; and

WHEREAS, the current structure of a single Coordinator of Indian Affairs is insufficient to address these needs and to facilitate the government-to-government relationship affirmed by Governor Racicot in 1993; and

WHEREAS, other states have created Indian affairs commissions to serve as vehicles for the improvement and advancement of state-tribal relations.

HeinOnline -- 1999 vol. III 2929 1999

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Committee on Indian Affairs, or another appropriate interim committee, be requested to study a proposal to create a state commission on Indian affairs.

BE IT FURTHER RESOLVED, that the study be conducted in consultation with the Coordinator of Indian Affairs and the Montana-Wyoming Tribal Leaders Council.

BE IT FURTHER RESOLVED, that the Committee, or anotber appropriate interim committee, report its findings, conclusions, and recommendations to the 57th Legislature.

Adopted March 20, 1999

HOUSE JOINT RESOLUTION NO. 13

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE BOARD OF PUBLIC EDUCATION, THE OFFICE OF PUBLIC INSTRUCTION, AND SCHOOL DISTRICT TRUSTEES TO ENSURE THAT SCHOOL DISTRICT PERSONNEL TRAINED IN FIRST AID AND CPR BE PRESENT IN EVERY PUBLIC SCHOOL AND REQUESTING THE OFFICE OF PUBLIC INSTRUCTION TO REPORT ON THESE EFFORTS TO THE 57TH LEGISLATURE.

WHEREAS, the health and safety of children are one of the top priorities for parents and school districts; and

WHEREAS, even under the best of circumstances, accidents and disease do occur; and

WHEREAS, when accidents and disease occur, school personnel must be prepared to act affirmatively to protect life and limb; and

WHEREAS, in 1979, the National Parent Teacber Association (PTA) recommended that at least two persons in every school be trained in cardiopulmonary resuscitation (CPR); and

WHEREAS, the Montana PTA has prioritized legislation that provides for each public school to have persons on staff trained in first aid and CPR.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Board of Public Education, tbe Office of Public Instruction, and school district trustees be encouraged to design and implement continuing education coursework in first aid and CPR for school personnel.

(2) That the Board of Public Education, the Office of Public Instruction, and school district trustees make every effort to ensure tlıat identified personnel trained in first aid and CPR be present in every public school in Montana.

(3) That the Office of Public Instruction report to the 57tlı Legislature on tbe success of tlıe efforts to train school personnel in first aid and CPR and to ensure the presence of traıned personnel in every public school.

Adopted March 24, 1999

HeinOnline -- 1999 vol. III 2930 1999

HOUSE JOINT RESOLUTION NO. 14

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA ENCOURAGING THE SUPERINTENDENT OF PUBLIC INSTRUCTION AND LOCAL SCHOOL DISTRICTS TO ADOPT THE EDDIE EAGLE ELEMENTARY GUN SAFETY EDUCATION PROGRAM.

WHEREAS, the loss of a child as the result of a firearm accident is a tragic event, made even more so because it is often preventable; and

WHEREAS, the citizens of Montana, as responsible firearms owners, must be diligent in the education of our children on the hazards of misbandling a firearm; and

WHEREAS, tbe Eddie Eagle Elementary Gun Safety Education Program teaches tbe fundamentals of firearm safety to children through a simple and clear lifesaving message that children are taught to remember and act upon when they see a firearm; and

WHEREAS, in 1997, the Montana Legislature enacted House Bill No. 314, encouraging school districts to establish and maintain a firearms safety education course; and

WHEREAS, the Eddie Eagle Elementary Gun Safety Education Program is a nationally recognized firearms safety program tbat has been taugbt to over 6 million children since 1988 and has been recognized by tbe National Safety Council as the Outstanding Community Service Program for 1993.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That tbe Superintendent of Public Instruction be encouraged to promote tbe use of the Eddie Eagle Elementary Gun Safety Education Program in our scbools to help prevent firearm-related accidents among children.

BE IT FURTHER RESOLVED, that local school districts all across Montana be encouraged to implement the provisions of House Bill No. 314 through tbe adoption of the Eddie Eagle Elementary Gun Safety Education Program in their schools.

BE IT FURTHER RESOLVED, that the Secretary of State send a copy of this resolution to tbe Superintendent of Puhlic Instruction and to the Montana School Boards Association for dissemination to local school districts.

Adopted March 24, 1999

HOUSE JOINT RESOLUTION NO. 15

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING MONTANA TO PARTICIPATE IN, SUPPORT, AND ENCOURAGE THE LOCATION OF A 21ST CENTURY SPACEPORT AND TECHNOLOGY FACILITY IN MONTANA, TO NURTURE AN ECONOMIC AND REGULATORY ENVIRONMENT THAT WILL ATTRACT VENTURESTAR AND ITS SPACE-RELATED BUSINESSES TO MONTANA, AND TO WELCOME

HeinOnline -- 1999 vol. III 2931 1999

LOCKHEED MARTIN, ITS PARTNERS, AND OTHER SPACE-RELATED INDUSTRIES TO MONTANA.

WHEREAS, every generation that dares to take a first step in a bold new venture changes the world; and

WHEREAS, Lockheed Martin and its partners, including NASA, have embarked on a bold new venture to produce and operate the VentureStar spaceplane, which will change how we travel to and from space; and

WHEREAS, the International Space Station (ISS) is one of the largest and most complex multinational scientific endeavors ever undertaken; and

WHEREAS, Montana's northern latitude and elevation is ideal for launches above 45 degrees inclination to the ISS and other Low Earth Orbits (LEO), including polar; and

WHEREAS, the current fleet of American spacelift vehicles is expensive to operate and maintain and other countries have reduced the cost per pound to orbit to a cost that is below that of American providers; and

WHEREAS, the United States has made it a national priority to compete, reduce operational costs, and maintain our ability to use space as a national asset so that others cannot exert dominance over this vital resource; and

WHEREAS, Lockheed Martin has asked for Requests for Qualification be submitted by interested states as potential launch and landing sites or spaceports and Montana has submitted four site proposals; and

WHEREAS, Montana's environment is ideal for providing cost-effective spacelift operations and for building a major launch and landing facility because of a sparse population; less vulnerability to large earthquakes; a slow steady wind, dry climate, and clear skies to maximize launch window availability and offer conditions that reduce corrosion concerns and costs; minimal lightning concerns; no hurricanes; and very few tornados or other severe weather patterns; and

WHEREAS, the geology of Montana makes earthquake damage a remote possibility while providing a good base for construction of a major launch and landing facility; and

WHEREAS, the cost of utilities is very competitive because the cost of electricity in Montana is among the lowest in the nation, the cost of natural gas in Montana is far below the national average, and water is inherently inexpensive and abundant; and

WHEREAS, Montana is also within reasonable traveling distance of other high-technology centers along the Rocky Mountain Front from Edmonton to Colorado Springs; and

WHEREAS, Montana's workforce is well-educated, embraces a strong work ethic, and demonstrates a concern for community, state, and company success that is unequaled; and

WHEREAS, the Montana university system is highly regarded for its engineering and business programs with rapidly expanding high-technology programs, which produce talented graduates eager to find worthy employment so they can remain in Montana; and

WHEREAS, Montana attracts dedicated employees who want to raise their families in the safe and wholesome lifestyle that Montana provides; and

HeinOnline -- 1999 vol. III 2932 1999

WHEREAS, the funds managed by the Montana Board of Investments, the Montana Coal Tax Trust Fund, and other capital resources, which together exceed several billion dollars, can help provide a strong economic foundation to spur new business growth and improve Montana's infrastructure; and

WHEREAS, the people of Montana seek to diversify and expand the economy of Montana to better position the state to withstand the market swings of a world economy; and

WHEREAS, the assets and objectives of Montana, combined with the needs and objectives of Lockheed Martin, its partners, and the VentureStar, can create a dynamic partnership for a spaceport in Montana; and

WHEREAS, it is the intent of the Legislature and of the Governor that Montana's state agencies concentrate their resources in a spirit of cooperation with private business to bring the VentureStar and other space-related industries to Montana; and

WHEREAS, it is the intent of the Legislature that the Board of Investments give special consideration to all projects that would further the goal of hringing VentureStar to Montana.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the people of Montana embrace the opportunity to become a partner in helping to lower the costs of space access and endeavor to nurture an economic and regulatory environment that will attract VentureStar and its space-related businesses and industries to Montana.

BE IT FURTHER RESOLVED, that the people of Montana welcome Lockheed Martin, Sverdrup, Allied Signal, Boeing, BF Goodrich Aerospace, NASA, Skunk Works, the 15 nations of the International Space Station Consortium, and VentureStar as partners and family to their 21st Century home, Montana.

Adopted March 27, 1999

HOUSE JOINT RESOLUTION NO. 17

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE FEDERAL GOVERNMENT TO TAKE CERTAIN ACTIONS CONCERNING THE INTERIOR COLUMBIA BASIN ECOSYSTEM MANAGEMENT PROJECT.

WHEREAS, the President of the United States, by Executive Order, initiated the Interior Columbia Basin Ecosystem Management Project (ICBEMP) to create a scientifically sound, legally defensible, ecosystem management plan; and

WHEREAS, the ICBEMP was to be a broad-scale, 12-month project that would give general direction to public land managers for ecosystem management but has become a top-down, highly prescriptive set of management directives; and

WHEREAS, the managoment direction provided by the ICBEMP does not match the purpose and need statements made in the environmental impact

HeinOnline -- 1999 vol. III 2933 1999

statement (EIS), which were to restore and maintain a healthy forest, to provide sustainable and predictable levels of products and services, and to support economic and social needs of people, cultures, and communities; and

WHEREAS, the Columbia Basin ecosystem is a very diverse and complex environment, and basinwide standards could be a detriment to some or all forest-dependent and range-dependent economies; and

WHEREAS, experts maintain that the ICBEMP violates the Multiple-Use Sustained-Yield Act of 1960, the National Forest Management Act of 1976, the Forest and Rangeland Renewable Resource Planning Act of 1974, the Regulatory Flexibility Act, and the Small Business Regulatory Enforcement Fairness Act of 1996; and

WHEREAS, the ICBEMP was intended to be a scientifically sound management plan but has become politically based on selective science, which supports predetermined preservation goals with a top-down, one-size-fits-all, highly prescriptive set of management objectives and standards; and

WHEREAS, the recent interim roadless policy proposed by federal agencies indicates a strong desire to create de facto wilderness areas and circumvent the authority of Congress (in direct violation of the previously listed laws) and indicates the political direction incorporated into the ICBEMP, which obfuscates the tireless, good faith efforts of local representatives who participated in the ICBEMP process; and

WHEREAS, public lands administered by the U.S. Forest Service and U.S. Bureau of Land Management (BLM) are to be managed for multiple use for the benefit of the citizens of the United States, and road closures proposed within the ICBEMP EIS preferred alternative will severely limit the multiple use of millions of acres of public land; and

WHEREAS, current road closures already dramatically limit physical and financial abilities to control noxious weeds, and the ICBEMP-proposed further closures pose a serious threat of further and more serious weed encroachment into Montana's forests and grasslands; and

WHEREAS, the ICBEMP has become a political document, rather than a resource management planning document; and

WHEREAS, the ICBEMP contains too many economic assumptions and too few economic projections based on accurate information; and

WHEREAS, implementation of the ICBEMP will directly affect management of 16 BLM districts and 30 national forests, all in the western United States; and

WHEREAS, the ICBEMP coverage extends to 104 counties and 144 million acres of land (72 million acres of which are private), and the ICBEMP implementation will directly and indirectly affect the livelihoods of millions of citizens in the planning area; and

WHEREAS, a major component of the basic economies of about two-thirds of the affected rural and natural resource-dependent counties would be directly and potentially severely impacted by implementation of the ICBEMP; and

WHEREAS, the citizens of Montana, Montana's local government units, and Montana's communities have a direct interest in public land management that produces payments in lieu of taxes and (most importantly) forest receipts that

HeinOnline -- 1999 vol. III 2934 1999

generate revenue to the federal treasury and significantly contribute to funding public schools and roads; and

WHEREAS, it is questionable whether Congress will fund the ICBEMP implementation, and the impacts of inadequate implementation funding would be significantly more disastrous for natural resources than if implementation were fully funded; and

WHEREAS, the citizens of the United States and communities throughout the western United States depend on the stewardship, sustained yield, and even-flow production of goods and services from multiple-use management of public lands located in those states; and

WHEREAS, there is increasing national and world demand for renewable, recyclable goods and services, including recreation, wildlife, fisheries, food, fiber, clean air, and clean water; and

WHEREAS, in Montana, the U.S. Forest Service has reduced timber harvest by over 50% since 1950, even though wood is the preferred raw material for home building, and transferred global environmental consequences were never discussed or considered when decisions were being made to reduce budgets; and

WHEREAS, domestic raw materials production is being increasingly restricted in the United States, even in light of rising domestic consumption and the United States' position as a massive net importer of raw materials; and

WHEREAS, decisions are being made on a daily basis and at all levels of government to restrict raw materials production, almost always on environmental grounds, yet consumption is virtually never discussed; and

WHEREAS, the ICBEMP draft documents fail to adequately and truthfully define and disclose the economic, environmental, and social conditions of Montana's communities and local government units and the future effects on these entities of implementation of the proposed ecosystem management practices; and

WHEREAS, the ICBEMP represents a top-down management paradigm that reduces or eliminates effective local input to natural resource management and environmental decisionmaking; and

WHEREAS, the ICBEMP has become a 6-year, over $40 million project, with no end in sight.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the federal government be strongly urged to:

(1) terminate the ICBEMP and issue no Record of Decision on the ICBEMP;

(2) forward the accurate ecosystem management data developed through the ICBEMP to relevant BLM district managers and U.S. Forest Service forest supervisors;

(3) ensure that all public comments on the ICBEMP be incorporated into the public record for the ICBEMP;

(4) forward to district managers and supervisors the public comments provided on the ICBEMP for the managers' and supervisors' consideration related to updates to the land and resource management plans required by federal law; and

HeinOnline -- 1999 vol. III 2935 1999

(5) coordinate plan revisions between adjoining management units to provide consistency and connectivity and to consider cumulative impacts in dealing with broad-scale issues that affect multiple jurisdictions.

BE IT FURTHER RESOLVED, that federal natural resource planning and environmental management feature site-specific management decisions made by local decisionmakers, local citizenry, and parties directly and personally affected by these decisions for our public lands.

BE IT FURTHER RESOLVED, that the federal government acknowledge that the alternatives presented in the ICBEMP EIS are inconsistent with but should be consistent with the balanced "Purpose of and Need for Action" statements in the same documents, which are:

(1) "restore and maintain long-term ecosystem health and ecological integrity" (i.e., restore and maintain a healthy forest); and

(2) "support economic and/or social needs of people, cultures, and communities, and provide sustainable and predictable levels of products and services from our public lands administered by the Forest Service or BLM ...".

BE IT FURTHER RESOLVED, that copies of this resolution be sent by the Secretary of State to the President of the United States, the Vice President of the United States, the Secretary of Agriculture, the Secretary of the Interior, the presiding officers of the Appropriations Committees of the U.S. Senate and U.S. House, the Montana Congressional Delegation, the Chief of the Forest Service, and the Director of the Bureau of Land Management.

Adopted March 24, 1999

HOUSE JOINT RESOLUTION NO. 18

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA DIRECTING THE ASSIGNMENT TO AN APPROPRIATE INTERIM COMMITTEE OF A STUDY OF THE POSSIBILITY OF BROADCASTING THE DELIBERATIONS OF THE MONTANA LEGISLATURE.

WHEREAS, the citizens of Montana have a vested interest in the policy issues confronting their elected representatives; and

WHEREAS, broadcasting legislative deliberations in other states has proved to be an effective means of educating and informing the citizenry; and

WHEREAS, there are currently few sources from which Montana's citizens can obtain information about legislative deliberations, virtually none of which is an unfiltered source; and

WHEREAS, the opportunity exists for the Legislature to enhance its standing in the public's eye by providing direct observation of public policy deliberations; and

WHEREAS, the new millennium promises new and enhanced opportunities for providing broadcast coverage of the deliberations of the Montana Legislature; and

WHEREAS, as the citizens of Montana increasingly seek better, faster, clearer, and unfiltered information about public policy, the Legislature will have

HeinOnline -- 1999 vol. III 2936 1999

the need to understand the possibilities, obstacles, and other issues associated with providing that information, including the broadcasting of legislative deliberations.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate legislative interim committee to study the general issue of broadcasting legislative deliberations. The study should include:

(1) examining the economic feasibility of broadcasting legislative deliberations, including identifying practical opportunities and approaches for financing;

(2) developing recommendations for designing the scope of the project, including programming, production, broadcasting, transmission, and distribution; and

(3) developing an outline for the management, administration, and governance of broadcasting legislative proceedings.

BE IT FURTHER RESOLVED, that the committee to which the study is assigned should look to approaches taken in the numerous other states that, in some form, broadcast legislative deliberations and should encourage the participation of private and public media representatives who have knowledgo of similar activities and who may have current or future interest in broadcasting the deliberations of the Montana Legislature.

BE IT FURTHER RESOLVED, that the committee report its findings, conclusions, and recomendations to the 57th Legislature and, as appropriate, recommend any necessary legislation and identify options for further legislative consideration.

Adopted April 1, 1999

HOUSE JOINT RESOLUTION NO. 19

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE FULL FUNDING OF PAYMENTS IN LIEU OF TAXES ON FEDERAL LAND IN MONTANA, THE PROPER HARVEST OF THE ALLOWABLE SALE QUOTA FOR TIMBER, AND A RENEWAL OF THE FEDERAL GOVERNMENT'S COMPACT WITH STATE AND LOCAL GOVERNMENTS TO CONTRIBUTE A FAIR SHARE OF TAXES ON FEDERAL LAND IN MONTANA.

WHEREAS, the stability of Montana's economy has historically been dependent on use of our abundant natural resources; and

WHEREAS, the natural resource harvest has contributed billions of dollars to Montana's economy by providing employment opportunities to members of our communities and by supporting our business communities; and

WHEREAS, revenue from industries related to natural resource harvest has produced taxes for the support of local and state governments; and

WHEREAS, the federal government has long recognized the importance of supporting local governments in counties where the United States controls

HeinOnline -- 1999 vol. III 2937 1999

management of public lands by reimbursing state and local governments by payments in lieu of taxes (PILT); and

WHEREAS, a variety of federal legislation, such as the Forest Reserve Act of 1890 sought to make equitable distribution to counties and to the education system of 25% of net proceeds derived by the sale of resources harvested on federal land; and

WHEREAS, the federal government is now reducing the volume of timber cut in relation to the allowable sale quotas (ASQ), redistributing funds historically contained in the 25% fund (outfitter fees), reducing its commitment to full funding of PILT, which was reduced from 100% in 1994 to 53% in 1998, and redefining its commitment to states and counties (a decoupling effort to overturn the 1890 Forest Reserve Act); and

WHEREAS, this effort has and will cause irreparable financial harm to state and local governments, our natural resource industries, and employment opportunities for Montanans.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislature of the State of Montana petition the U.S. Congress to ensure a full commitment by the federal government to full funding of PILT, a commitment toward the proper harvest of the natural resource base by way of already adopted ASQ, and a renewal of its compact with states and local governments to contribute the federal government's fair share in taxes on land present in Montana but retained by the federal government.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the President of the United States, the Secretary of State of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, the Western Governors' Association, and the Montana Congressional Delegation.

Adopted March 20, 1999

HOUSE JOINT RESOLUTION NO. 20

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA ENCOURAGING SCHOOLS ACCREDITED BY THE BOARD OF PUBLIC EDUCATION TO COOPERATE AND COORDINATE WITH STATE AND LOCAL EMERGENCY SERVICES AGENCIES IN IDENTIFYING LOCAL HAZARDS, DESIGNING APPROPRIATE DRILLS, AND DEVELOPING SCHOOL EMERGENCY MANAGEMENT PLANS.

WHEREAS, the Montana Legislature passed House Bill No. 183 in the 1997 Legislative Session with substantial bipartisan support; and

WHEREAS, House Bill No. 183 provided greater flexibility to school districts in identifying local hazards and designing appropriate drills to address those hazards; and

WHEREAS, city, county, and state emergency services agencies have indicated that they possess the resources necessary to provide technical

HeinOnline -- 1999 vol. III 2938 1999

assistance free of charge to school districts and have further indicated their willingness to provide technical assistance to school districts free of charge; and

WHEREAS, the Montana Legislature believes that school districts should take advantage of this expertise in exercising the additional flexibility provided to them under House Bill No. 183 in identifying local hazards and designing appropriate drills to address those hazards.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That each school accredited by the Board of Public Education be strongly encouraged to use the expertise of city, county, and state emergency services agencies in identifying local hazards that exist within the boundaries of its school district and in designing drills to address those hazards when the expertise is made available by emergency services agencies free of charge.

(2) That schools accredited by the Board of Public Education, along with city, county, and state emergency services agencies, be strongly encouraged to cooperate and coordinate in developing school emergency management plans.

(3) That schools accredited by the Board of Public Education be strongly encouraged to regularly review and, if necessary, update adopted emergency management plans.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the Board of Public Education, the Office of Public Instruction, the Montana School Boards Association, the Montana Rural Education Association, the School Administrators of Montana, the Montana Education Association, and the Montana Federation of Teachers.

Adopted March 22, 1999

HOUSE JOINT RESOLUTION NO. 21

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA ENCOURAGING SCHOOL DISTRICTS TO IMPLEMENT INTERGENERATIONAL SCHOOL VOLUNTEER PROGRAMS.

WHEREAS, it is important for a community to provide support to parents and teachers in fulfilling their responsibilities for the nurturing and education of children; and

WHEREAS, promoting activities between community members and school-age youth enriches the lives of both groups; and

WHEREAS, there are many members of a community, both young and old, who are willing and able to work with school children both in school and nonschool settings.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That school district trustees be encouraged to develop and implement an intergenerational school volunteer program for members of the community and for school children from kindergarten through grade 12.

HeinOnline -- 1999 vol. III 2939 1999

(2) That the volunteer program enhance the academic, problem-solving, interpersonal, and citizenship skills of school children by using volunteers from the community who possess those skills and abilities that would benefit school children.

(3) That the volunteer program include activities for volunteers aimed at enriching the lives of school children and school activities aimed at enriching the lives of volunteers.

(4) That school district trustees be encouraged to work with community organizations in developing the program and recruiting the volunteers.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the Superintendent of Public Instruction, the Board of Public Education, and the Montana School Boards Association for dissemination to school districts.

Adopted March 22, 1999

HOUSE JOINT RESOLUTION NO. 22

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING HOSPITALS AND HEALTH CARE FACILITIES TO PROVIDE HEALTH CONSUMERS WITH SIMPLE AND STRAIGHTFORWARD BILLING INFORMATION TO ASSIST CONSUMERS IN UNDERSTANDING THE TRUE COSTS OF HEALTH CARE AND THE GOODS AND SERVICES THAT THEY RECEIVE.

WHEREAS, because the billing requirements for various federal and other insurance programs determine how charges are applied to medical goods and services received in hospitals; and

WHEREAS, it is difficult for many patients to understand the billing information that is unrelated to their care because of the complexity; and

WHEREAS, hospitals and other health care facilities must apportion indirect costs, such as liability, nursing staff, administrative, and other costs, that are beyond the control or direction of the patient to the billing costs for each patient; and

WHEREAS, health care costs continue to rise at a pace higher than the general inflation rate and consume a greater portion of household assets, especially as the population ages; and

WHEREAS, a health care consumer should be able to receive thorough and straightforward information regarding the expenses that are accrued receiving health care goods and services, especially inpatient costs, for which a patient is expected to pay.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That a patient is entitled to receive, upon request, an itemized billing of goods and services received in a hospital or health care facility. If the itemized billing is listed using a code system, the code should also include the specific name of the coded category and other explanatory language if necessary to help the patient understand the charges billed.

HeinOnline -- 1999 vol. III 2940 1999

(2) That hospitals and health care facilities should, to the best of their ability, explain the charges and what is included within each category charged to any patient seeking additional information.

(3) That hospitals and health care facilities or their respective organizations develop consumer information that explains to a patient all of the costs that are not directly related to a patient's experience that must go into their billing practices and how those costs are apportioned to the various charges on a patient's bill.

Adopted March 9, 1999

HOUSE JOINT RESOLUTION NO. 23

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA EXPRESSING SUPPORT FOR RETAINING THE HISTORIC NAME OF POMPEYS PILLAR AND RESISTING A REQUEST TO CHANGE IT.

WHEREAS, a New York resident has petitioned the United States Board on Geographic Names for the purpose of historical accuracy to change the name of many natural creeks, rivers, falls, and the Pompeys Pillar National Historic Landmark; and

WHEREAS, the request is to change the name of Pompeys Pillar to Pompey Tower, the name first used in Captain William Clark's journal; and

WHEREAS, the name was changed in the very first publishing of the journal by an editor who was the only person to have interviewed Captain Meriwether Lewis and Captain Clark; and

WHEREAS, both Captain Lewis and Captain Clark tended to use multiple spellings for the same words throughout their journals; and

WHEREAS, reflecting these proposed name changes on signs, maps, books, and other printed material would be very expensive; and

WHEREAS, changes of this kind would only serve to create more confusion for future historians; and

WHEREAS, almost 1,000 signatures of individuals opposed to the proposed changes were obtained by residents of Montana and the Pompeys Pillar Community in a matter of only 2 weeks.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the members of the 56th Legislature request that the Montana Department of Natural Resources and Conservation convey these arguments to the United States Board on Geographic Names and ask that the New York resident's petition for historical changes be denied and that the current names be retained.

Adopted March 12, 1999

HeinOnline -- 1999 vol. III 2941 1999

HOUSE JOINT RESOLUTION NO. 24

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA ENCOURAGING GOVERNOR RACICOT AND THE DEPARTMENT OF COMMERCE TO INCLUDE REPRESENTATION FROM THE MONTANA TRIBAL COMMUNITY ON TRADE MISSIONS AND ON STATE BOARDS AND COMMISSIONS PROMOTING MONTANA'S GROWTH AND DEVELOPMENT.

WHEREAS, economic development is a primary concern of Governor Marc Racicot and the 56th Montana Legislature; and

WHEREAS, economic development is vitally important to Montana's Indian people residing on reservations where 50 to 70% unemployment is the rule, not the exception; and

WHEREAS, Montana's Indian people make up 7% of the state's population but are often invisible in the economic development proposals brought forward by state officials; and

WHEREAS, tourism is Montana's second largest industry; and

WHEREAS, the seven reservations in Montana offer visitors an opportunity to experience the rich cultural diversity of our Indian nations; and

WHEREAS, the state of Montana and the tribes of Montana share a common desire to strengthen the state's economic system, to increase and expand industry, to strengthen small businesses, and to create an economic environment that strengthens our families by improving their quality of life; and

WHEREAS, we must strengthen the state-tribal partnership and collaboration in order to bring economic prosperity to our state.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That Governor Marc Racicot and the Montana Department of Commerce be encouraged to include representation from the Montana tribal community on state trade missions to foreign nations and on state boards and commissions involved in the promotion of economic development in the state.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to Governor Marc Racicot, Dr. Peter Blouke of the Department of Commerce, each tribal government located on the seven Montana reservations and to the Little Shell Band of Chippewa.

Adopted March 27, 1999

HOUSE JOINT RESOLUTION NO. 25

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA ENCOURAGING THE MONTANA DEPARTMENT OF TRANSPORTATION AND LOCAL GOVERNMENTS TO ESTABLISH A UNIFORM SPEED LIMIT OF 15 MILES AN HOUR IN SCHOOL ZONES.

HeinOnline -- 1999 vol. III 2942 1999

WHEREAS, the safety of children is of paramount importance to parents, school officials, and the community at large; and

WHEREAS, children, when walking to and from school or playing on a school playground, are often distracted and do not pay close attention to traffic; and

WHEREAS, some children must walk to school on roads without sidewalks, forcing them to walk on the shoulders of the road; and

WHEREAS, Montana law allows a city or county government to lower the speed limit to 15 miles an hour in a school zone; and

WHEREAS, some local officials are reluctant to lower the speed limit in a school zone because they believe that they lack the authority to lower the speed limit on a particular road or highway.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That city and county governments he encouraged to lower the speed limit to 15 miles an hour in school zones located on roads under their jurisdiction in order to protect our children.

(2) That the Montana Department of Transportation he encouraged to lower the speed limit to 15 miles an hour in school zones located on roads under the jurisdiction of the Department in order to protect our children.

BE IT FURTHER RESOLVED, that copies of this resolution be sent by the Secretary of State to the Montana Department of Transportation, the Montana League of Cities and Towns, the Montana Association of Counties, and the Montana School Boards Association.

Adopted March 17, 1999

HOUSE JOINT RESOLUTION NO. 26

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT THE CURRENT FEDERAL GOVERNMENT POLICIES ON NATIONAL FOREST ROAD CLOSURES AND OBLITERATION BE SUSPENDED AND THAT CONGRESS REAFFIRM ITS DIRECTIVES THAT FOREST LANDS BE MANAGED IN ACCORDANCE WITH FOREST PLANS THAT PROVIDE FOR MULTIPLE-USE MANAGEMENT.

WHEREAS, there are 737 million acres of forested land covering approximately one-third of the United States, a nation that has created the largest legally protected wilderness system in the world, while at the same time sustaining a highly productive and efficient wood products industry; and

WHEREAS, the federal government owns approximately two-thirds of the land in western Montana and these lands are primarily administered by the U.S. Forest Service; and

WHEREAS, the management of federal lands has a direct impact on economic and recreational opportunities and the quality of life for thousands of Montana residents; and

HeinOnline -- 1999 vol. III 2943 1999

WHEREAS, Congress has declared in the federal Multiple-Use Sustained-Yield Act of 1960 that national forests are established and must be utilized for outdoor recreation, range, timber, watershed, and wildlife and fishery purposes; and

WHEREAS, the national forest road system represents a significant capital infrastructure investment and a valuable existing forest asset for forest managers and the public, providing access for a multitude of recreational opportunities, for emergency response efforts, and for resource management, protection, and improvement activities; and

WHEREAS, the federal government continues to close roads to public access by motorized vehicles and, in early 1998, the forest service proposed and is now planning to implement an 18-month moratorium on all new road building in roadless areas pending a review of its road management policies; and

WHEREAS, one stated purpose of the moratorium is to close or obliterate existing roads, thus creating additional defacto roadless areas contrary to the interests of Montana's citizens; and

WHEREAS, the scheduled destruction of nearly 2,000 miles of roads in the 10 national forests in Montana can have significant environmental, economic, and cultural impacts upon the fabric of many Montana communities and its citizens; and

WHEREAS, 650 miles of forest system roads in the Flathead National Forest alone have been scheduled for obliteration and 200 miles have already been destroyed; and

WHEREAS, destruction or obliteration of existing forest system roads can cause short-term and long-term increased discharges of sediment to streams, adversely affecting certain sensitive or endangered fish species and resulting in further restrictions on other multiple-use activities.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the 56th Montana Legislature opposes the current administration's policy on national forest road closure and obliteration and urges the immediate suspension of road closure and obliteration activities.

(2) That existing roads are a valuable and necessary capital investment in public lands that should not be lost or destroyed.

(3) That forest plans specifying multiple-use management for timber harvest, outdoor recreation, range, watershed, and fish and wildlife values should be given priority as the appropriate and necessary management guidance to the forest service.

BE IT FURTHER RESOLVED, that copies of this resolution be sent by the Secretary of State to the Montana Congressional Delegation, the Secretary of the federal Department of Interior, the Secretary of the federal Department of Agriculture, the Director of the United States Forest Service, the Director of the United States Fish and Wildlife Service, the President of the United States Senate, the Speaker of the United States House of Representatives, and the President and Vice President of the United States.

Adopted March 19, 1999

HeinOnline -- 1999 vol. III 2944 1999

HOUSE JOINT RESOLUTION NO. 27

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT CONGRESS, THE BUREAU OF RECLAMATION, AND THE WESTERN AREA POWER ADMINISTRATION BE ENCOURAGED TO KEEP ENERGY RATES STABLE FOR MONTANA'S VITALLY IMPORTANT MISSOURI BASIN IRRIGATION POWER AND DEVELOPMENT PROJECTS.

WHEREAS, the Pick-Sloan Missouri Basin Program (P-SMBP) is a federal project initiated in 1944 to provide low-cost pumping power to irrigation developments; and

WHEREAS, the P-SMBP irrigation development in Montana has successfully contributed to Montana's economic well being; and

WHEREAS, the Bureau of Reclamation and the Western Area Power Administration, responding to external pressures, are poised to implement a significant increase in energy rates from 2.5 mills a kilowatt hour to 11 to 15 mills a kilowatt hour for Montana irrigation districts operating P-SMBP projects; and

WHEREAS, the Bureau of Reclamation and the Western Area Power Administration, responding to external pressures, are preparing to transfer wheeling responsibility on nonfederal transmission systems outside the P-SMBP, thus becoming the direct responsibility of the irrigators.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That Congress, the Bureau of Reclamation, and the Western Area Power Administration be encouraged to keep energy rates stable or at their current level of 2.5 mills a kilowatt hour and to maintain all wheeling responsibilities within the P-SMBP.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the Montana Congressional Delegation and to the directors of the Bureau of Reclamation and the Western Area Power Administration.

Adopted March 19, 1999

HOUSE JOINT RESOLUTION NO. 28

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE UNITED STATES CONGRESS AND PRESIDENT BILL CLINTON TO INCREASE FUNDING FOR SPECIAL EDUCATION TO MEET THE FEDERAL COMMITMENT UNDER THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT.

WHEREAS, special education programs serving students with disabilities provide essential services to children and their families; and

WHEREAS, state and local educational agencies are mandated by federal law to provide a free appropriate public education for children with disabilities; and

HeinOnline -- 1999 vol. III 2945 1999

WHEREAS, costs associated with serving children with disabilities continue to rise, and meeting those substantial costs requires a strong partnership between local, state, and federal governments; and

WHEREAS, underfunding of special education programs affects the quality of services provided to children with disabilities; and

WHEREAS, underfunding results in local school districts redirecting resources that could otherwise be used for all children; and

WHEREAS, the federal commitment to states and localities under the federal Individuals with Disabilities Education Act to contribute 40% of the excess costs of providing a free appropriate public education has never been fulfilled; and

WHEREAS, despite recent large increases in federal special education funding, the federal share is still less than one-half the original commitment to states and localities.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislature of the State of Montana urges the United States Congress and President Bill Clinton to increase funding for special education so that the statutory goal of providing up to 40% of the national average per-pupil expenditure required to serve children and youth with disabilities be achieved within the next 3 years.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to President Bill Clinton, the members of the Montana Congressional Delegation, the National Conference of State Legislatures, the Board of Public Education, and the Superintendent of Public Instruction.

Adopted March 25, 1999

HOUSE JOINT RESOLUTION NO. 29

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF LAWS AFFECTING LOCAL GOVERNMENTS AND LOCAL OFFICIALS; AUTHORIZING THE COMMITTEE TO REQUEST ASSISTANCE IN THE CONDUCT OF THE STUDY; REQUESTING THAT DRAFT LEGISLATION BE PREPARED TO PROVIDE CONSISTENCY IN THE CONDUCT OF COUNTY AND CITY BUSINESS; AND REQUESTING A COMPREHENSIVE DESCRIPTION OF THE COMMITTEE'S FINDINGS AND CONCLUSIONS.

WHEREAS, the 21st century promises local governments new challenges, new requirements, reaffirmed and new expectations, and new opportunities; and

WHEREAS, Montana's local governments and local officials labor under state laws that are often anachronisms left behind from the 19th century; and

WHEREAS, the Legislature is the branch of government authorized and duty-bound to provide clear, modern, effective, and flexible guidelines, in the form of laws, to pilot local governments and local officials in carrying out the duties and responsibilities that citizens have come to expect; and

HeinOnline -- 1999 vol. III 2946 1999

WHEREAS, the Legislature recognizes its responsibilities in light of providing clear statutory authority and direction to local governments and local officials; and

WHEREAS, the Legislature wishes to embark on a collaborative effort to modernize state laws affecting local governments and local officials.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate legislative committee to:

(1) develop an understanding of the origins of state laws affecting local government and how the original intent may no longer be relevant or necessary or may be so corrupted through piecemeal change as to have become negated;

(2) work with individuals who are knowledgeable about and experienced in the practical, legal, financial, intergovernmental, and related issues confronting local governments and local officials; and

(3) develop a comprehensive set of goals and objectives that should be contained in and reflected by the duties, responsibilities, and authority accorded to local governments and local officials in the 21st century.

BE IT FURTHER RESOLVED, that the committee designated by the Legislative Council to conduct the study of local government be requested to prepare proposed legislation that will provide consistency in simple administrative matters, including:

(1) requirements for public notice and public hearings. In its investigation of matters involving public notification and public hearings, the committee should consider the availability and use of technology, including potential availability and uses.

(2) requirements for records management, including storage and retention;

(3) local elections;

(4) contracting and bidding; and

(5) other matters generally regarding the conduct of county and city business.

BE IT FURTHER RESOLVED, that the committee may request assistance from any agency of state government, from any local government or any representative of local government, from the Montana University System, or from knowledgeable citizens.

BE IT FURTHER RESOLVED, that the committee, prior to September 15, 2000, be requested to:

(1) prepare a comprehensive delineation of its findings and conclusions; and

(2) identify options, including legislation if appropriate, for consideration by the 57th Legislature.

Adopted March 22, 1999

HeinOnline -- 1999 vol. III 2947 1999

HOUSE JOINT RESOLUTION NO. 31

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE DEPARTMENT OF ADMINISTRATION TO DEVELOP A POLICY AND PROVIDE FOR TRAINING ON THE APPROPRIATE USE BY STATE AGENCIES OF PRERECORDED VOICE MENU ANSWERING SYSTEMS.

WHEREAS, state agencies are employed to do the public's business; and

WHEREAS, people seeking to contact agency personnel are increasingly frustrated by the use of prerecorded voice menu answering systems; and

WHEREAS, the inappropriate use of prerecorded voice menu systems results in many people having to wait while numerous and often complex menu options are presented; and

WHEREAS, in many cases, the menu presented either fails to offer an option to speak to a real person or the option to speak to a real person is offered only as the last choice on the menu; and

WHEREAS, there are appropriate uses of voice menu systems that avoid these negative consequences of using this technology; and

WHEREAS, a consistent and user-friendly policy for state agencies on the appropriate use of prerecorded voice menu answering systems that ensures that state agency personnel are instructed on how to use voice menu answering systems is desirable to better serve the public and improve customer service and public relations; and

WHEREAS, the Department of Administration has expressed a willingness to develop, in cooperation with the Information Technology Advisory Council, a coordinated and enforceable policy that would help agencies avoid the negative applications of voice menu systems; and

WHEREAS, government agencies should be responsive to the needs of the public and provide person-to-person customer service whenever possible.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Department of Administration be encouraged to develop, in cooperation with the Information Technology Advisory Council, a consistent and enforceable policy on state agency use of prerecorded voice menu answering systems.

BE IT FURTHER RESOLVED, that the policy should clearly specify what is or is not an appropriate use of a prerecorded voice menu answering system, the maximum length of recorded messages, and that a caller be offered the ability to talk to a real person.

BE IT FURTHER RESOLVED, that the Secretary of State send a copy of this resolution to each department of state government.

Adopted March 20, 1999

HeinOnline -- 1999 vol. III 2948 1999

HOUSE JOINT RESOLUTION NO. 33

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE LEGISLATIVE COUNCIL TO DESIGNATE AN APPROPRIATE INTERIM COMMITTEE TO STUDY SOURCES AND LEVELS OF FUNDING FOR THE CONSERVATION AND MANAGEMENT OF FISH AND WILDLIFE RESOURCES AND TO STUDY THE HISTORIC AND CURRENT RESPONSIBILITIES OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS.

WHEREAS, for nearly a century, hunters and anglers have accepted significant financial responsibility for conservation and management of wildlife in Montana; and

WHEREAS, license fees and federal excise taxes on sporting equipment have funded programs that protect wildlife habitat, ensure sound management, and provide recreational access for hunting and fishing; and

WHEREAS, in years past, when fish and wildlife management consisted mainly of counting game populations, setting seasons, and enforcing bag limits, it was appropriate that hunters and anglers paid the bill; and

WHEREAS, fish and wildlife managers must do more today than provide for the needs of hunters and anglers; and

WHEREAS, federal decisions on the listing of threatened and endangered species can have major impacts on Montana's fish and wildlife, as well as on the state's economy, and the Montana Department of Fish, Wildlife, and Parks needs to gather information about and manage nongame wildlife, initiate and monitor habitat protection measures, negotiate with federal agencies, and litigate issues to protect the state's rights and interests; and

WHEREAS, subdivision of rural lands is increasing the frequency and severity of life-threatening and property-damaging conflicts between people and wildlife and the Department of Fish, Wildlife, and Parks needs to respond to calls for assistance in mitigating those conflicts; and

WHEREAS, while the number of hunters and anglers who buy licenses is relatively stable, wildlife management costs continue to increase and current projections suggest that the general license fund balance will decline through fiscal year 2004; and

WHEREAS, future Legislatures will have to wrestle with tough issues such as whether to close the fiscal gap by drastically cutting spending, raising license fees, or finding alternative sources to pay the costs of fish and wildlife conservation in Montana; and

WHEREAS, the Legislature finds that it is clearly in the best interests of all Montanans, especially hunters and anglers, that a diverse group of Montanans should explore various sources of funding for fish and wildlife management programs and determine whether hunters and anglers should continue to accept primary financial responsibility for fish and wildlife management programs that may not directly benefit the fish and wildlife populations typically pursued by hunters and anglers.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee to:

HeinOnline -- 1999 vol. III 2949 1999

(1) examine the historic, current, and anticipated sources and levels of funding for the conservation and management of the state's fish and wildlife resources;

(2) examine the historic responsibilities of the Department of Fish, Wildlife, and Parks for fish and wildlife management and conservation;

(3) examine the changing demands placed on the Department of Fish, Wildlife, and Parks for management of nontraditional programs, such as those for threatened and endangered species; and

(4) consider options and alternative sources to more appropriately fund necessary programs if it is determined that hunting and fishing license revenue is paying for those programs to the benefit of all Montanans.

BE IT FURTHER RESOLVED, that the committee is encouraged to:

(1) solicit the participation of the Montana Department of Fish, Wildlife, and Parks;

(2) actively seek the involvement of Montana's hunters and anglers;

(3) appoint suhcommittees as necessary; and

(4) use the staff resources of the Legislative Branch and the various agencies of state government, as well as the expertise that may he available from within the Montana University System, hunter and angler groups, and elsewhere.

BE IT FURTHER RESOLVED, that the committee assigned to conduct the study shall:

(1) prepare, prior to September 15, 2000, a detailed report of its findings and conclusions on the issues assigned to it by this resolution; and

(2) submit the report to the Governor and the Legislature, as provided in 5-11-210.

BE IT FURTHER RESOLVED, that if the committee identifies and agrees to make recommendations for further legislative consideration, those recommendations must be included in the report.

Adopted April 12, 1999

HOUSE JOINT RESOLUTION NO. 34

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE LEGISLATIVE COUNCIL TO DESIGNATE AN APPROPRIATE INTERIM COMMITTEE TO STUDY USE OF THE POWER OF EMINENT DOMAIN AND THE EXISTING STATUTES RELATED TO EMINENT DOMAIN AND REQUIRING THAT COMMITTEE TO REPORT ON ITS FINDINGS AND RECOMMENDATIONS.

WHEREAS, eminent domain rights were first granted in 1877 for the development of utilities that served the public interest; and

WHEREAS, use of the power of eminent domain is not well-understood; and

WHEREAS, many landowners believe that their property rights are not protected by Montana's statutes governing eminent domain; and

WHEREAS, there are different rights and responsibilities associated with an easement in gross and an appurtenant easement; and

WHEREAS, options for expanding or limiting rights under easements are not effectively used; and

HeinOnline -- 1999 vol. III 2950 1999

WHEREAS, the condemnation proceedings undertaken to exercise the power of eminent domain are intended to be a last resort for failed negotiations; and

WHEREAS, there were several proposals to the 56th Legislature to revise laws governing eminent domain.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee to:

(1) study implementation of existing eminent domain statutes, including the following:

(a) the frequency and distribution of condemnation actions in Montana;

(b) the types of interest in real property condemned in Montana; and

(c) the extent to which rights-of-way obtained through the use of eminent domain are being resold or re-leased for other uses than the original purpose for which the land was condemned and the degree to which the original landowner is compensated for those new uses; and

(2) study the adequacy of the current statutes with respect to the following specific aspects of use of the power of eminent domain:

(a) due process;

(b) just compensation;

(c) burden of proof standards;

(d) the abandonment process;

(e) rights of reentry;

(f) reversions;

(g) methods for acquiring property or the use of property, including types of easements and restrictions on easements;

(h) multiple use of easements; and

(3) determine the need for and potential benefit of revising the laws related to eminent domain.

BE IT FURTHER RESOLVED, that the committee is encouraged to:

(1) invite participation by and involvement of interested and knowledgeable persons including property owners, industry representatives, representatives of environmental organizations, and representatives of state and local government entities; and

(2) actively seek participation by citizens from all parts of Montana.

BE IT FURTHER RESOLVED, that the committee assigned to conduct the study shall report to the 57th Legislature, as provided in 5-11-210, on its findings and recommendations, including recommendations for legislation, if appropriate.

Adopted April 12, 1999

HOUSE JOINT RESOLUTION NO. 35

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT THE LEGISLATIVE FINANCE COMMITTEE BE ASSIGNED TO STUDY AND OVERSEE THE PRIVATIZATION OF MANAGED MENTAL HEALTH CARE.

HeinOnline -- 1999 vol. III 2951 1999

WHEREAS, the recent experience with the contract for managed mental health services in Montana has brought to the public awareness that closer oversight is required by the Legislative Branch; and

WHEREAS, tbe lessons learned by the 56th Legislature should be used to monitor the transition from the existing system to the development of the new proposed managed care system; and

WHEREAS, a continuous dialogue between the Legislature, the Department of Public Health and Human Services, the consumers and providers of mental bealth services, and all other interested persons is vital to developing an understanding of the system's evolution for the next legislative session; and

WHEREAS, as representatives of the citizens of tlie State of Montana, it is vital for the Legislature to monitor the provision of mental health services in this state.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Finance Committee be assigned the duties of studying further development of and monitoring the transitions in the public mental health care system. The study may include but is not limited to the following items as prioritized by the Legislative Finance Committee:

(1) review of any contracts or contract amendments for public mental health services for the citizens of Montana;

(2) review of the plans for readiness testing for and implementation of any new contracts;

(3) provision of a forum for the public, providers of public mental health services, recipients of public mental bealth services and their families, community mental health centers, advocacy groups, and any interested persons to voice their opinions and concerns regarding the provision of public mental health services;

(4) review of the Department of Public Health and Human Services staffing levels, contract auditing and compliance capabilities and performance, and any imposition of sanctions;

(5) review of the access to claims data by and the quantity and quality of claims data of the Department of Public Health and Human Services;

(6) receipt and review of any consulting or evaluation studies performed on any part of the public mental health service program, including federal documents regarding compliance with federal requirements;

(7) request and review of any contractor's financial condition and status;

(8) review of any budget proposals that require a sbifting of funds within the budget appropriated by the Legislature or any supplemental requests that are presented to the Legislature in order to determine impacts on policy geals and objectives;

(9) review of eligibility and entitlement provisions for public mental health services, including how the medically needy categery is served and financed;

(10) review of Department of Public Health and Human Services proposals and contingency plans in the event tbat a new contract is not able to be entered into or if new contracts are impaired or terminated;

(11) review of outcome measures, performance standards, and quality assurance plans and contract enforcement of these measures, standards, and plans;

HeinOnline -- 1999 vol. III 2952 1999

(12) review of effects of the provision or restriction of public mental health services to special populations and any intended or unintended consequences on other state or local agencies in relation to an impact on:

(a) physical health and medical costs incurred by public and private programs;

(b) outpatient and residential treatment services to youth who are abused or neglected and in need of care, youth in need of intervention, and delinquent youth; and

(c) other institutional populations under state jurisdiction that require public mental health services and that may require services at the Montana State Hospital or the Montana Mental Health Nursing Care Center; and

(13) review of the Department of Public Health and Human Services' determination of provider network adequacy, including the number, type, and geographic distribution of all providers rendering covered services.

BE IT FURTHER RESOLVED, that the Legislative Finance Committee and its staff work closely with the Legislative Audit Committee and other appropriate interim committees and their staffs to coordinate the administration of the appropriate functions and expertise to fulfill the goals of this resolution. The Legislative Finance Committee may appoint members of the Legislative Audit Committee and other interim committees as voting members of any subcommittee assigned to this task.

Adopted April 15, 1999

HOUSE JOINT RESOLUTION NO. 36

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA HONORING THE LIFE AND CAREER OF J.D. HOLMES.

WHEREAS, Joseph Defrees Helmes, more widely known as J.D. Holmes, served the people of Montana as the Associated Press Capitol correspondent, exemplifying the conduct and appearance of the Capitol journalist, during a career spanning 30 years; and

WHEREAS, during that period, he covered 16 regular and 6 special sessions of the Montana Legislature; and

WHEREAS, over the same period, he reported the actions of five Montana governors: John Bonner, Hugo Aronson, Don Nutter, Tim Babcock, and Tom Judge; and

WHEREAS, he served the people of Montana in an exemplary manner by providing accurate and unbiased reporting of actions and activities of their state government, facts attested to by Governor Tim Babcock who praised him as, "the fairest person I ever knew," adding, "when he wrote something, yeu didn't have to worry about its accuracy"; and

WHEREAS, his capable news gathering and tracking of state expenditures and taxes were such that public officials relied upon them to make important public policy decisions at a time when his notes were the sole source of such information, a fact reflected in a statement by former Representative Francis

HeinOnline -- 1999 vol. III 2953 1999

Bardanouve who recalled that Holmes, "knew more about how much money we spent than we did"; and

WHEREAS, J.D. Holmes once discovered a significant error in the budget action of the Legislature, which resulted in a special session that year; and

WHEREAS, in 1991, the Legislature recognized the exemplary service of J.D. Holmes by summoning him to the well of the House of Representatives to accord him highest honors and a certificate attesting to his many contributions to the benefit of his fellow citizens—a presentation that packed the House chambers with members of the House and Senate and citizens from throughout the state; and

WHEREAS, the journalistic services of J.D. Holmes transcended the reporting of events and he achieved the status of having been the invaluable recorder of history who was called upon often in life to fill in otherwise forgotten detail and meaning by reference to his meticulous recordings of the significant roles and actions of state officials, now saved for posterity with his "little black book" archived in the State Historical Society, and his work remains a lode of information; and

WHEREAS, J.D. Holmes exemplified outstanding citizenship throughout his life; and

WHEREAS, he became a citizen soldier when he left Montana to serve honorably in the U.S. Army during World War II; and

WHEREAS, his citizenship is further reflected in his generous help in building Frontier Park in Helena, supporting the success of Grandstreet Theater in Helena, benefiting individual artists and art in Montana through his support and legislative representation, and helping many individuals get started in business as a volunteer counselor with the Senior Corps of Retired Executives and the Small Business Administration; and

WHEREAS, J.D. Holmes's foundation was found in his family, whose members he served as husband and father with lifelong security and positive leadership; and

WHEREAS, his younger daughter Vicki, as a young child, expressed eloquently the sense of the man as he was known to so many in these words engraved upon a birthday present plaque: "Honest Press Man".

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That, following Capitol renovation, the Press Room on the third floor of the Montana Capitol be named "The J.D. Holmes Press Room" to permanently honor the professionalism and citizenship exemplified by the life of Joseph Defrees Holmes.

Adopted April 19, 1999

HOUSE JOINT RESOLUTION NO. 37

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE LEGISLATIVE COUNCIL TO APPOINT AN APPROPRIATE INTERIM COMMITTEE TO STUDY WOMEN'S PRISON ISSUES.

HeinOnline -- 1999 vol. III 2954 1999

WHEREAS, since May of 1998, Montana women inmates have been placed in out-of-state contract beds in Gallup, New Mexico, and in regional correctional facilities because of extraordinary growth in the population of the women's correctional system; and

WHEREAS, transferring women inmates to out-of-state prisons and to regional correctional facilities for incarceration focuses primarily on the housing needs and insufficiently on the rehabilitation or treatment needs of women inmates; and

WHEREAS, out-of-state and regional placement of women inmates compromises maintaining contact with their families, job training, and educational opportunities needed for the women to successfully make the transition back into society; and

WHEREAS, the classification of the women inmates, the calculation of their term of incarceration, and the ability of the women to prepare for and attend timely parole hearings needs to be reviewed in light of the great distances placed between the women inmates and the administration of the Montana Women's Prison and the Board of Pardons and Parole; and

WHEREAS, studying the smaller population of women inmates presents an opportunity to study a sample of the correctional system as a whole and shed further light on the administration of justice within the correctional system.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That an appropriate interim committee be assigned to study women's prison issues, including but not limited to the following:

(1) reviewing the classification system and the extent to which it takes into consideration the unique characteristics of women inmates and whether nonviolent inmates are treated at the appropriate levels of incarceration;

(2) reviewing the length of stay, the calculation of parole eligibility and discharge dates, and the timeliness of parole hearings for women inmates at the Montana Women's Prison and in any out-of-state or regional contract placements;

(3) reviewing the lack of utilizing puhlic and private training and educational programs for women offenders, such as AmeriCorps and Job Training Partnership Act of 1982 (JTPA) programs;

(4) exploring any evidence of abuse of legal and illegal drugs and use of legal drugs within the Montana Women's Prison and any out-of-state or regional placements and the availability and quality of chemical dependency and mental health treatment programs and aftercare; and

(5) examiming the ability of the system to funnel women inmates into the least restrictive environment during their incarceration in order to be able to access training and education to enhance their future ability to obtain and maintain employment, to learn parenting skills, be reunited with their families, and become productive members of society, and to prevent recidivism.

Adopted April 17, 1999

HeinOnline -- 1999 vol. III 2955 1999

HOUSE JOINT RESOLUTION NO. 38

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE LEGISLATIVE COUNCIL TO DESIGNATE AN APPROPRIATE INTERIM COMMITTEE TO STUDY, REPORT ITS FINDINGS, AND DEVELOP LEGISLATION ADDRESSING JUVENILE PROBATION OFFICER EMPLOYMENT AND SALARY ISSUES.

WHEREAS, the Montana Legislature, through the Montana Youth Court Act, has prioritized balanced and restorative justice for Montana youth; and

WHEREAS, juvenile probation officers are the primary front-line workers in the Montana youth justice system, and their jobs are challenging, important, and very demanding; and

WHEREAS, Montana juvenile probation officer salaries are set by District Court Judges, but the salaries are paid by counties through the county budget process, subject to County Commissioner approval; and

WHEREAS, the duality in the salary structure along with differences in each county's tax base has created wide discrepancies in pay rates for chief and deputy juvenile probation officers; and

WHEREAS, the state, through the Legislature, set a static statutory maximum and minimum on juvenile probation officer salaries, which created distortions in the distribution of juvenile probation officer pay across the salary range; and

WHEREAS, juvenile probation officers work at the pleasure of the court, which suggests the appropriateness of state participation in funding their salaries; and

WHEREAS, the community-based nature of youth justice programs improves the effectiveness of the programs and suggests merit in preserving the county and judicial district character of juvenile probation officer employment and salary decisionmaking.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim legislative committee to:

(1) examine the funding and employment mechanisms currently in place for Montana juvenile probation officers;

(2) analyze options for addressing pay discrepancies;

(3) report its study findings and conclusions to the 57th Legislature; and

(4) develop, in cooperation with the Montana Juvenile Probation Officers Association, the Montana Association of Counties, the Montana Supreme Court Administrator, the Montana

Department of Administration, and other appropriate agencies, entities, and individuals, legislation to enact a more functional and consistent pay system for Montana juvenile probation officers.

Adopted April 17, 1999

HeinOnline -- 1999 vol. III 2956 1999

House Resolutions

HOUSE RESOLUTION NO. 1

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REVISING THE HOUSE RULES.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the following rules be adopted:

RULES OF THE MONTANA HOUSE OF REPRESENTATIVES

CHAPTER 1

Administration

H10-10. House officers. (1) House officers include a Speaker, a Speaker pro tempore, majority and minority floor leaders, and majority and minority whips (section 5-2-221, MCA).

(2) A majority of representatives voting elects the Speaker and Speaker pro tempore from the House membership. A majority of each caucus voting nominates House members to the remaining offices, and those nominees are considered to have been elected by a majority vote of the House.

H10-20. Speaker's duties. (1) The Speaker is the presiding officer of the House, with authority for administration, order, decorum, and the interpretation and enforcement of rules in all House deliberations.

(2) The Speaker shall see that all members conduct themselves in a civil manner in accordance with accepted standards of parliamentary conduct. The Speaker may, when necessary, order the Sergeant-at-Arms to clear the aisles and seat the members of the House so that business may be conducted in an orderly manner.

(3) Signs, placards, or other objects of a similar nature are not permitted in the rooms, lobby, gallery, or on the floor of the House. The Speaker may order the galleries, lobbies, or hallway cleared in case of disturbance or disorderly conduct.

(4) The Speaker shall appoint and may remove the members of all standing and select committees not otherwise specified by law or rule. For the Rules Committee, the Speaker shall determine the total number of members and the party division, but each party shall appoint its own members. The Speaker may appoint an additional at-large member to the Rules Committee from either party.

(5) The Speaker shall sign all necessary certifications by the House, including enrolled bills and resolutions, journals (section 5-11-201, MCA), subpoenas, and payrolls.

(6) The Speaker shall arrange the agendas for second and third readings each legislative day. Representatives may amend the agendas as provided in H40-130.

HeinOnline -- 1999 vol. III 2957 1999

(7) The Speaker is the chief officer of the House, with authority for all House employees. The Speaker may seek the advice and counsel of the Legislative Administration Committee regarding employees.

(8) The Speaker may name any member to perform the duties of the chair. If the House is not in session and the Speaker pro tempore is not available, the Speaker shall name a member who shall call the House to order and preside during the Speaker's absence.

H10-30. Speaker-elect. During the transition period between the party organization caucuses and the election of House officers, the Spoaker-elect has the responsibilities and authority appropriate to organize the House (section 5-2-202, MCA). Authority includes approving presession expenditures.

H10-40. Speaker pro temporo duties. The Spoaker pro tempore shall, in the absence or inability of the Speaker, call the House to order and perform all other duties of the chair in presiding over the deliberations of the House and shall perform other duties and exercise other responsibilities as may be assigned by the Speaker.

H10-50. Legislative Administration Committee duties. (1) The Legislative Administration Committee shall consider matters relating to legislative administration, staffing patterns, budgets, equipment, operations, and expenditures.

(2) The committee shall have authority to act in the interim to prepare for future legislative sessions. It may delegate specific duties to a legislative agency.

(3) The committee shall approve contracts for purchase or lease of equipment and supplies for the House, subject to the approval of the Speaker.

(4) The committee shall comprise the House membership of the Joint Legislative Administration Committee.

H10-60. Employees. (1) The Speaker shall appoint a Chief Clerk, Sergeant-at-Arms, and Chaplain, subject to confirmation of the House (section 5-2-221, MCA).

(2) The Speaker shall recommend to the Legislative Administration Committee employment of necessary staff.

(3) The secretary for a standing or select committee is generally responsible to the committee chair but shall work under the direction of the Chief Clerk.

(4) The Speaker and majority and minority floor leaders may each appoint a private secretary.

H10-70. Chief Clerk's duties. The Chief Clerk, under the supervision of the Speaker, is the chief administrative officer of the House and is responsible to:

(1) supervise all House employees;

(2) have custody of all records and documents of the House;

(3) supervise the handling of legislation in the House, the House journal, and other House publications; deliver to the Secretary of State at the close of each session the House journal, bill and resolution records, and all original House bills and joint resolutions; collect minutes and exhibits from all House committees and subcommittees and deliver them, unbound, to the Legislative Services Division librarian, who shall arrange to have them copied in an archivable format.

HeinOnline -- 1999 vol. III 2958 1999

A copy will be provided to the Legislative Services Division and the State Law Library of Montana. The Legislative Fiscal Analyst will receive a copy of the minutes from the appropriation committee and subcommittees. After copying, the original minutes will be delivered to the Montana Historical Society.

H10-80. Sergeant-at-Arms duties. The Sergeant-at-Arms shall:

(1) under the direction of the Speaker and the Chief Clerk, have charge of and maintain order in the House, its lobbies, galleries, and hallways and all other rooms in the Capitol assigned for the use of the House;

(2) be present whenever the House is in session and at any other time as directed by the presiding officer;

(3) execute the commands of the House and serve the writs and processes issued by the authority of the House and directed by the Speaker;

(4) supervise assistants to the Sergeant-at-Arms, who shall aid in the performance of prescribed duties and who have the same authority, subject to the control of the Speaker;

(5) clear the floor and anteroom of the House of all persons not entitled to the privileges of the floor prior to the convening of each session of the House;

(6) bring in absent members when so directed under a call of the House;

(7) enforce the distribution of any printed matter in the House chambers and anteroom in accordance with H20-80;

(8) enforce parking regulations applicable to areas of the Capitol complex under the control of the House;

(9) supervise the doorkeeper; and

(10) supervise the pages.

H10-90. Legislative aides. (1) A legislative aide is a person specifically designated by a representative to assist that representative in performing legislative duties. A representative may sponsor one legislative aide a session by written notification to the Sergeant-at-Arms.

(2) No representative may designate a second legislative aide in the same session without the approval of the House Rules Committee.

(3) A legislative aide must be of legal age unless otherwise approved by the House Rules Committee.

(4) The Sergeant-at-Arms shall issue distinctive identification tags to legislative aides. The cost must be paid by the sponsoring representative.

H10-100. Legislative interns. A legislative intern is a person designated under Title 5, chapter 6, MCA.

H10-110. House journal. (1) The House shall keep a journal, which is the official record of House actions (Montana Constitution, Art. V, Sec. 10). The journal must be prepared under the direction of the Speaker.

(2) Records of the following proceedings must be entered on the journal:

(a) the taking and subscription of the constitutional oath by representatives (Montana Constitution, Art. III, Sec. 3; 5-2-214);

(b) committee reports;

HeinOnline -- 1999 vol. III 2959 1999

(c) messages from the Governor;

(d) messages from the Senate;

(e) every motion, the name of the representative presenting it, and its disposition;

(f) the introduction of legislation in the House;

(g) consideration of legislation subsequent to introduction;

(h) on final passage of legislation, the names of the representatives and their vote on the question (Montana Constitution, Art. V, Sec. 11);

(i) roll call votes; and

(j) upon a request by two representatives before a vote is taken, the names of the representatives and their votes on the question.

(3) The Chief Clerk shall provide to the Legislative Services Division such information as may be required for the publication of the daily journal.

(4) Any representative may examine the daily journal and propose corrections. The Speaker may direct a correction to be made when suggested subject to objection by the House.

(5) The Speaker shall authenticate the House journal after the close of the session (section 5-11-201, MCA).

(6) The Legislative Services Division shall publish and distribute the House journal (sections 5-11-202 and 5-11-203, MCA). The title of each bill must be listed in the index of the published session journal.

H10-120. Votes recorded and public. Every vote of each representative on each substantive question in the House, in any committee, or in Committee of the Whole must be recorded and made public (Montana Constitution, Art. V, Sec. 11).

H10-130. Duration of legislative day. A legislative day ends either 24 hours after the House convenes for that day or at the time the House convenes for the following legislative day, whichever is earlier.

CHAPTER 2

Decorum

H20-10. Addressing the House — recognition. (1) When a member desires to speak to or address any matter to the House, the member should rise and respectfully address the Speaker or the presiding officer.

(2) The Speaker or presiding officer may ask, "For what purpose does the member rise?" or "For what purpose does the member seek recognition?" and may then decide if recognition is to be granted. There is no appeal from the Speaker's or presiding officer's decision.

H20-20. Questions of order and privilege. (1) The Speaker shall decide all questions of order and privilege, subject to an appeal by any representative seconded by two representatives. The question on appeal is, "Shall the decision of the chairman be sustained?".

(2) Responses to parliamentary inquiries and decisions of recognition may not be appealed.

HeinOnline -- 1999 vol. III 2960 1999

(3) Questions of order and privilege, in order of precedence, are:

(a) those affecting the collective rights, safety, dignity, and integrity of the House; and

(b) those affecting the rights, reputation, and conduct of individual representatives.

(4) A member may not address the House on a question of privilege between the time:

(a) an undebatahle motion is offered and the vote is taken on the motion;

(b) the previous question is ordered and the vote is taken on the proposition included under the previous question; or

(c) a motion to lay on the table is offered and the vote is taken on the motion.

H20-30. Limits on lobbying. Lobbying on the House floor and in the anteroom is prohibited during a daily session, 2 hours before the session, and 2 hours after the session.

H20-40. Admittance to the House floor. (1) The following persons may be admitted to the House floor during a daily session: present and former legislators; legislative employees necessary for the conduct of the session; accredited news staff; and members' spouses and children. The Speaker may allow exceptions to this rule.

(2) Only a member may sit in a member's chair when the House is in session.

H20-50. Dilatory motions or questions. The House has a right to protect itself from dilatory motions or questions used for the purpose of delaying or obstructing business. The presiding officer shall decide if motions (except a call of the House) or questions are dilatory. This decision may be appealed to the House.

H20-60. Opening and order of business. The opening of each legislative day must include an invocation, the pledge of allegiance, and roll call. Following the opening, the order of business of the House is as follows:

(1) communications and petitions;

(2) reports of standing committees;

(3) reports of select committees;

(4) messages from the Senate;

(5) messages from the Governor;

(6) first reading and commitment of bills;

(7) second reading of bills;

(8) third reading of bills;

(9) motions;

(10) unfinished business;

(11) special orders of the day; and

(12) announcement of committee meetings.

HeinOnline -- 1999 vol. III 2961 1999

H20-70. Lobbying by employees. (1) A legislative employee, intern, or aide of either house is prohibited from lobbying, although a legislative committee may request testimony from a person so restricted.

(2) The Speaker or the Legislative Administration Committee may discipline or discharge any House employee violating this prohibition. The Speaker or the committee may withdraw the privileges of any House aide or intern violating this prohibition.

H20-80. Papers distributed on desks. A paper concerning proposed legislation may not be placed on representatives' desks unless it is authorized by a member and permission has been granted by the Speaker. The Sergeant-at-Arms shall direct its distribution.

H20-90. Violation of rules. (1) If a member, in speaking or otherwise, violates the rules of the House, the Speaker shall, or the majority or minority floor leader may, call the member to order, in which case the member called to order must be seated immediately.

(2) The member called to order may move for an appeal to the House and if the motion is seconded by two members, the matter must be submitted to the House for determination by majority vote. The motion is nondebatable.

(3) If the decision of the House is in favor of the member called to order, the member may proceed. If the decision is against the member, the member may not proceed.

(4) If a member is called to order, the matter may be referred to the Rules Committee by the minority or majority leader. The Committee may recommend to the House that the member be censured or be subject to other action. The House shall act upon the recommendation of the Committee.

CHAPTER 3

Committees

H30-10. House standing committees — appointments. (1) The Speaker shall determine the total number of members and the party division and shall appoint the members to the following standing committees: Agriculture; Appropriations; Business and Labor; Education; Ethics; Fish, Wildlife, and Parks; Transportation; Human Services; Judiciary; Legislative Administration; Local Government; Natural Resources; Rules; State Administration; State/Federal Relations; and Taxation.

(2) The Speaker shall appoint the chairman, vice chairman, and minority vice chairman of each standing committee while retaining the authority to remove and replace any chairman, vice chairman, or minority vice chairman at any time. The appointment or removal of a minority vice chairman requires the consent of the minority leader. The Speaker shall give notice of each appointment to the Chief Clerk for publication.

(3) The Speaker may, in the Speaker's discretion or as authorized by the House, create and appoint select committees, designating the chairman and vice chairman of the select committee. Select committees may request or receive legislation in the same manner as a standing committee and are subject to the rules of standing committees.

HeinOnline -- 1999 vol. III 2962 1999

H30-20. Chairman's duties. The principal duties of the chairman of standing or select committees are to:

(1) preside over meetings of the committee and to put all questions;

(2) maintain order and decide all questions of order subject to appeal to the committee;

(3) supervise and direct staff of the committee;

(4) have the committee secretary keep the official record of the minutes;

(5) sign reports of the committee and submit them promptly to the Chief Clerk;

(6) appoint subcommittees to perform on a formal or an informal basis; and

(7) inform the Speaker of committee activity.

H30-30. Quorum — officers as members. (1) A quorum of a committee is a majority of the members of the committee. A quorum of a committee must be present at a meeting to act officially. A quorum of a committee may transact business, and a majority of the quorum, even though it is a minority of the committee, is sufficient for committee action.

(2) The Speaker, majority leader, and minority leader are ex-officio, nonvoting members of all House committees. They may count toward establishing a quorum.

H30-40. Meetings. (1) All meetings of committees must be open to the public at all times, subject always to the power and authority of the chairman to maintain safety, order, and decorum. The date, time, and place of committee meetings must be posted.

(2) A committee or subcommittee may be assembled for:

(a) a public hearing at which testimony is to be heard and at which official action may be taken on bills, resolutions, or otber matters;

(b) a formal meeting at which the committees may discuss and take official action on bills, resolutions, or other matters without testimony; or

(c) a work session at which the committee may discuss bills, resolutions, or other matters but take no formal action.

(3) All committees meet at the call of the chairman or upon the request of a majority of the members of the committee directed to and with the approval of the Speaker.

(4) All committees shall provide for and give public notice, reasonably calculated to give actual notice to interested persons, of the time, place, and subject matter of regular and special meetings. All committees are encouraged to provide at least 3 legislative days notice to members of committees and the general public. However, a meeting may be beld upon notice appropriate to the circumstances.

(5) A committee may not meet during the time the House is in session without leave of the Speaker. Any member attending such a meeting must be considered excused to attend business of the House subject to a call of the House.

(6) All meetings of committees must be recorded and the transcribed minutes must be available to the public within a reasonable time after the meeting. The official record must contain at least the following information:

HeinOnline -- 1999 vol. III 2963 1999

(a) the time and place of each meeting of the committee;

(b) committee members present, excused, or absent;

(c) the names and addresses of persons appearing before the committee, whom each represents, and whether the person is a proponent, opponent, or other witness;

(d) all motions and their disposition;

(e) the results of all votes;

(f) references to the recording log, sufficient to serve as an index to the original recording; and

(g) testimony and exhibits suhmitted in writing.

H30-50. Procedures. (1) The chairman shall notify the sponsor of any bill pending before the committee of the time and place it will be considered.

(2) A standing or select committee may not take up referred legislation unless the sponsor or one of the cosponsors is present or unless the sponsor has given written consent.

(3) The committee shall act on each bill in its possession:

(a) by reporting the bill out of the committee:

(i) with the recommendation that it be referred to another committee;

(ii) favorably as to passage; or

(iii) unfavorably; or

(b) by tabling tbe measure in committee.

(4) The committee may not report a bill to the House without recommendation.

(5) The committee may recommend that a bill on which it has made a favorable recommendation by unanimous vote be placed on the consent calendar.

(6) In reporting a measure out of committee, a committee shall include in its report:

(a) the measure in the form reported out;

(b) the recommendation of the committee;

(c) an identification of all substantive changes; and

(d) a fiscal note, if required.

(7) If a measure is withdrawn from a committee and brought to the House floor for debate on second reading on that day without a committee recommendation, the bill does not include amendments formally adopted by the committee.

(8) A second to any motion offered in a committee is not required in order for the motion to be considered by the committee.

(9) The vote of each member on all committee actions must be recorded. All motions may be adopted only on the affirmative vote of a majority of the members voting.

HeinOnline -- 1999 vol. III 2964 1999

(10) A motion to take a bill from tbe table may be adopted by the affirmative vote of a majority of the members present at any meeting of tbe committee.

(11) An action formally taken by a committee may not be altered in the committee except by reconsideration and furtber formal action of the committee.

(12) A committee may reconsider any action as long as the matter remains in the possession of the committee. A committee member need not have voted with the prevailing side in order to move reconsideration.

(13) Any legislation requested by a committee requires three-fourtbs of all members of tbe committee to vote in favor of tbe question to allow the committee to request the drafting or introduction of legislation. Votes requesting drafting and introduction of committee legislation may be taken jointly or separately.

(14) The chairman sball decide points of order.

(15) The privileges of committee members include the following:

(a) to participate freely in committee discussions and debate;

(b) to offer motions;

(c) to assert points of order and privilege;

(d) to question witnesses upon recognition by the chairman;

(e) to offer any amendment to any bill; and

(f) to vote, either by being present or by proxy, using a standard form or through the vice chairman or minority vice cbairman.

(16) Any meeting of a committee held through the use of telephone or other electronic communication must be conducted in accordance with Chapter 3 of the House Rules.

(17) A committee may consolidate into one bill any two or more related bills referred to it whenever legislation may be simplified by the consolidation.

(18) Committee procedure must be informal, but when any questions arise on committee procedure, the rules or practices of the House are applicable except as stated in the House Rules.

H30-60. Public testimony. (1) Testimony from proponents, opponents, and informational witnesses must be allowed on every bill or resolution before a standing or select committee. All persons, other than the sponsor, offering testimony shall complete a "Witness Form" and submit it to the committee secretary.

(2) Any person wishing to offer testimony to a committee hearing a bill or resolution must be given a reasonable opportunity to do so, orally or in writing. Written testimony may not be required of any witness, but all witnesses must be encouraged to submit a statement in writing for the committee's official record.

(3) The chairman may order the committee room cleared of visitors if there is disorderly conduct. During committee meetings, visitors may not speak unless called upon by tbe chairman. Restrictions on time available for testimony may be announced.

(4) The number of people in a committee room may not exceed the maximum posted by the State Fire Marshall. The cbairman sball maintain that limit.

HeinOnline -- 1999 vol. III 2965 1999

(5) In any committee meeting, the use of cameras, television, radio, or any form of telecommunication equipment is allowed, but the chairman may designate the areas of the hearing room from which the equipment must be operated.

CHAPTER 4

Legislation

H40-10. Introduction deadlines. (1) Except as provided in subsection (2), if a representative accepts drafted legislation from the Legislative Services Division after the deadline for introduction, the representative may not introduce that legislation after 48 hours from the time the bill was accepted from the Legislative Services Division.

(2) No bill or resolution may be introduced any later than 5 p.m. 5 legislative days prior to the appropriate transmittal deadline.

H40-20. House resolutions. (1) A House resolution is used to adopt or amend House rules, make recommendations on the districting and apportionment plan (Montana Constitution, Art. V, Sec. 14), express the sentiment of the House, or assist House operations.

(2) As to drafting, introduction, and referral, a House resolution is treated as a bill. A House resolution may be requested and introduced at any time. Final passage of a House resolution is determined by the Committee of the Whole report. A House resolution does not progress to third reading.

(3) The Chief Clerk shall transmit a copy of each passed House resolution to the Senate and the Secretary of State.

H40-30. Cosponsors. (1) Prior to submitting legislation to the Chief Clerk for introduction, the chief sponsor may add representatives and senators as cosponsors by having them sign the copies.

(2) After legislation is submitted for introduction but before the legislation returns from the first House committee, the chief sponsor may add or remove cosponsors by filing a cosponsor form with the Chief Clerk. This filing must be noted by the Chief Clerk for the record on Order of Business No. 11.

H40-40. Introduction — receipt. (1) During a session, proposed House legislation may be introduced in the House by submitting it in duplicate, endorsed with the signature of a representative as chief sponsor, to the Chief Clerk for introduction. In each session of the Legislature, the proposed legislation must be numbered consecutively by type in the order of receipt. Submission and numbering of properly endorsed legislation constitutes introduction.

(2) Preintroduction of legislation prior to a session under provisions of the joint rules constitutes introduction in the House.

(3) Acknowledgment by the Chief Clerk of receipt of legislation or other matters transmitted from the Senate for consideration by the House constitutes introduction of the Senate legislation in the House or receipt by the House for purposes of applying time limits contained in the House rules. All legislation may be referred to a committee prior to being read across the rostrum as provided in H40-50.

(4) Acknowledgment by the Chief Clerk of receipt of messages from the Senate or other elected officials constitutes receipt by the House for purposes of

HeinOnline -- 1999 vol. III 2966 1999

any applicable time limit. Senate legislation or messages received from tbe Senate or elected officials are subject to all other rules.

H40-50. First reading. Legislation properly introduced or received in the House must be announced across the rostrum and public notice provided. This announcement constitutes first reading, and no debate or motion is in order except that a representative may question adherence to rules. Acknowledgment by tbe Chief Clerk of receipt of legislation transmitted from the Senate commences the time limit for consideration of tbe legislation. All legislation received by the House may be referred to a committee prior to being read across the rostrum.

H40-60. One reading per day. Except on the final legislative day, legislation may receive no more than one reading per legislative day. On the final legislative day, legislation may receive more tban one reading.

H40-70. Referral. (1) The Speaker shall refer to a House committee all properly introduced House legislation and transmitted Senate legislation.

(2) Legislation may not receive final passage and approval unless it has been referred to a House committee.

H40-80. Rereferral. (1) Except as provided in subsection (2), legislation tbat is in the possession of the House and that has not been finally disposed of may be rereferred to a House committee by House motion approved by not less than three-fifths of the members present and voting.

(2) Legislation that is in the possession of the House and tbat has been reported from a committee with a do pass or be concurred in recommendation may be rereferred to a House committee by a majority vote.

H40-90. Legislation withdrawn from committee. Legislation may be withdrawn from a House committee by House motion approved hy not less than three-fifths of the members present and voting.

H40-100. Standing committee reports. (1) A House standing committee recommendation of "do pass" or "be concurred in" must be announced across the rostrum and, if there is no objection to form, is considered adopted.

(2) A recommendation of "do not pass" or "be not concurred in" must be announced across the rostrum and, on the following legislative day, may be debated and adopted or rejected on Order of Business No. 2. A motion to reject an adverse committee report must be approved by not less than three-fifths of the members voting. Failure to adopt a motion to reject an adverse committee report constitutes adoption of the report.

(3) If the House rejects an adverse committee report, the bill progresses to second reading, as scheduled by the Speaker, with any amendments recommended by the committee.

H40-110. Consent calendar procedure. (1) Noncontroversial bills and simple and joint resolutions may be recommended for the consent calendar hy a standing committee and processed according to the following provisions:

(a) To be eligible for the consent calendar, the legislation must receive a unanimous vote by the members of the standing committee in attendance (do pass, do pass as amended). In addition, a motion must be made and passed unanimously to place the legislation on the consent calendar and this action

HeinOnline -- 1999 vol. III 2967 1999

reflected in the committee report. Appropriation or revenue bills may not be recommended for the consent calendar.

(b) The legislation must then be sent to be processed and reproduced as a third reading version and specifically marked as a "consent calendar" item.

(2) Other legislation may be placed on the consent calendar by agreement between the Speaker and the minority leader following a positive recommendation by a standing committee. The legislation must be sent to be processed as a second reading version but must be specifically announced and posted as a "consent calendar" item.

(3) Legislation must be posted immediately (as soon as it is received appropriately printed) on the consent calendar and must remain there for 1 legislative day before consideration under Order of Business No. 11, special orders of the day. At that time, the presiding officer shall announce consideration of the consent calendar and allow "reasonable time" for questions and answers upon request. No debate is allowed.

(4) If any one representative submits a written objection to the placement of legislation on the consent calendar, the legislation must be removed from the consent calendar and added to the regular second reading board.

(5) Consent calendar legislation will be considered on Order of Business No. 8, third reading of bills, following the regular third reading agenda, as separately noted on the agenda.

(6) Legislation on the consent calendar must be considered individually with the roll call vote spread on the journal as the final vote in the House.

(7) Legislation passed on the consent calendar must then be transmitted to the Senate. Legislation must be appropriately printed prior to transmittal.

H40-120. Legislation requiring other than a majority vote. Legislation that requires other than a majority vote for final passage needs only a majority vote for any action that is taken prior to third reading and that normally requires a majority vote.

H40-130. Amending House second and third reading agendas. (1) A majority of representatives present may rearrange or remove legislation from either the second or third reading agenda on that legislative day.

(2) Legislation may be added to the second or third reading agenda on that legislative day on a motion approved by not less than three-fifths of the members present and voting.

H40-140. Second reading. (1) Legislation returned from committee may be placed on second reading unless otherwise ordered by the House.

(2) The House shall form itself into a Committee of the Whole to consider business on second reading. The Committee of the Whole may debate legislation, attach amendments, and recommend approval or disapproval of legislation.

(3) Except on the final legislative day, at least 1 legislative day must elapse between the time legislation is reported from committee and the time it is considered on second reading.

(4) If a motion to recommend that a bill "do pass" or "be concurred in" fails in the Committee of the Whole, the obverse, i.e., a recommendation that the bill "do not pass" or "be not concurred in", is considered to have passed. If a motion

HeinOnline -- 1999 vol. III 2968 1999

to recommend that a bill "do not pass" or "be not concurred in" fails in the Committee of the Whole, the obverse, i.e., a recommendation that the bill "do pass" or "be concurred in", is considered to have passed.

(5) An amendment attached to legislation by the Committee of the Whole remains unless removed by further legislative action.

(6) When the Committee of the Whole reports to the House, the House shall adopt or reject the Committee of the Whole report. If the House rejects the Committee of the Whole report, the legislation remains on second reading, as amended by the Committee of the Whole, unless the House orders otherwise.

(7) A representative may move to segregate legislation from the Committee of the Whole report before the report is adopted. Segregated legislation, as amended by the Committee of the Whole, must be placed on second reading unless the House orders otherwise.

H40-150. Amendments in the Committee of the Whole. (1) All Committee of the Whole amendments must be checked by the House amendments coordinator for format, style, clarity, consistency, and other factors, in accordance with the most recent Bill Drafting Manual published by the Legislative Services Division, before the amendment may be accepted at the rostrum. The amendment form must include the date and time the amendment is submitted for that check.

(2) An amendment submitted to the rostrum for consideration by the Committee of the Whole must be marked as checked by the amendments coordinator and signed by a representative. Unless the majority leader, the minority leader, and sponsor agree, amendments must be printed and placed on the members' desks prior to consideration.

(3) An amendment may not be proposed until the sponsor has opened on a bill.

(4) A copy of every amendment rejected by the Committee of the Whole must be kept as part of the official records.

(5) An amendment may not change the original purpose of the bill.

H40-160. Motions in the Committee of the Whole. (1) When the House resolves itself into a Committee of the Whole, the only motions in order are to:

(a) amend;

(b) recommend passage or nonpassage;

(c) recommend concurrence or nonconcurrence;

(d) reconsider;

(e) pass consideration;

(f) call for cloture;

(g) rise, rise and report, or rise and report progress and beg leave to sit again; and

(h) to change the order in which legislation is placed on the agenda.

(2) Subsections (1)(d) through (1)(g) are nondebatable but may be amended. Once a motion under subsection (1)(b) or (1)(c) is made, a contrary motion is not in order.

HeinOnline -- 1999 vol. III 2969 1999

(3) If a quorum of representatives is not present during second reading, the Committee of the Whole may conduct no business on legislation and a motion for a call of the House without a quorum is in order.

H40-170. Limits on debate in the Committee of the Whole. (1) A representative may not speak more than once on the motion and may speak for no more than 5 minutes. The representative who makes the motion may speak a second time for 5 minutes in order to close.

(2) After at least two proponents and two opponents have spoken on a question and 30 minutes have elapsed, a motion to call for cloture is in order. Approval by not less than two-thirds of the members present and voting is required to sustain a motion for cloture. Notwithstanding the passage of a motion to end debate, the sponsor of the motion on which debate was ended may close.

(3) By previous agreement of the majority leader and the minority floor leader:

(a) a lead proponent and a lead opponent may be granted additional time to speak on a bill;

(b) a bill or resolution may be allocated a predetermined amount of time for debate and number of speakers.

H40-180. Special provisions for debate on the general appropriations bill. (1) The Appropriations Committee chairman, in presenting the bill, is not subject to the 5-minute speaking limitation.

(2) Each appropriations subcommittee chairman shall fully present their portion of the bill. A subcommittee chairman is not subject to the 5-minute speaking limitation.

(3) After the presentation by the subcommittee chairman, the respective section of the bill is open for debate, questions, and amendments.

(4) An amendment that affects more than one section of the bill must be offered when the first section affected is considered.

(5) Following completion of the debate on each section, that section is closed and may not be reopened except by majority vote.

(6) If a member moves to reopen a section for amendment, only the amendment of that member may be entertained. Another member wishing to amend the same section shall make a separate motion to reopen the section.

(7) Debate on the motion to reopen a section is limited to the question of reopening the section. The amendment itself may not be debated at that time. This limitation does not prohibit the member from explaining the amendment to be considered.

(8) A motion for cloture is not in order during debate on the general appropriations bill.

H40-190. Engrossing. (1) After legislation is passed on second reading, it must be engrossed within 48 hours under the direction of the Speaker. The Speaker may grant additional time for engrossing.

(2) When the legislation that has passed second reading has been correctly engrossed, it may be placed on third reading on the following legislative day. On the final legislative day, the correctly engrossed legislation may be placed on third reading on the same legislative day.

HeinOnline -- 1999 vol. III 2970 1999

H40-200. Third reading. (1) All bills, joint resolutions, and Senate amendments to House bills and resolutions passing second reading must be placed on third reading the day following the receipt of the engrossing or other appropriate printing report.

(2) Legislation on third reading may not be amended or debated.

(3) The Speaker shall state the question on legislation on third reading. If a majority of the representatives voting does not approve the legislation, it fails to pass third reading.

H40-210. Senate legislation in the House. Senate legislation properly transmitted to the House must be treated as House legislation.

H40-220. Senate amendments to House legislation. (1) When the Senate has properly returned House legislation with Senate amendments, the House shall announce the amendments on Order of Business No. 4, and the Speaker shall place them on second reading for debate. The Speaker may rerefer House legislation with Senate amendments to a committee for a hearing if the Senate amendments constitute a significant change in the House legislation. The second reading vote is limited to consideration of the Senate amendments.

(2) If the House accepts Senate amendments, the House shall place the final form of the legislation on third reading to determine if the legislation, as amended, is passed or if the required vote is obtained.

(3) If the House rejects the Senate amendments, the House may request the Senate to recede from its amendments or may direct appointment of a conference committee and request the Senate to appoint a like committee.

H40-230. Conference committee reports. (1) When a House conference committee files a report, the report must be announced under Order of Business No. 3.

(2) The House may debate and adopt or reject the conference committee report on second reading on any legislative day. The House may reconsider its action in rejecting a conference committee report under rules for reconsideration, H50-160.

(3) If both the House and the Senate adopt the same conference committee report on legislation requiring more than a majority vote for final passage, the House, following approval of the conference committee report on third reading, shall place the final form of the legislation on third reading to determine if the required vote is obtained.

(4) If the House rejects a conference committee report, the committee continues to exist unless dissolved by the Speaker or by motion. The committee may file a subsequent report.

(5) A House conference committee may confer regarding matters assigned to it with any Senate conference committee with like jurisdiction and submit recommendations for consideration of the House.

H40-240. Enrolling. (1) When House legislation has passed both houses, it must be enrolled within 48 hours under the direction of the Speaker. The Speaker may grant additional time for enrolling.

(2) The chief sponsor of the legislation shall examine the enrolled legislation and, if it has no enrolling errors, shall, within 1 legislative day, certify the legislation as correctly enrolled.

HeinOnline -- 1999 vol. III 2971 1999

(3) The correctly enrolled legislation must be delivered to the Speaker, who shall sign the legislation.

(4) After the legislation has been reported correctly enrolled but before it is signed, any representative may examine the legislation.

H40-250. Governor's amendments. (1) When the Governor returns a bill with recommended amendments, the House shall announce the amendments under Order of Business No. 5.

(2) The House may debate and adopt or reject the Governor's recommended amendments on second reading on any legislative day.

(3) If both the House and the Senate accept the Governor's recommended amendments on a bill that requires more than a majority vote for final passage, the House shall place the final form of the legislation on third reading to determine if the required vote is obtained.

H40-260. Governor's veto. (1) When the Governor returns a bill with a veto, the House shall announce the veto under Order of Business No. 5.

(2) On any legislative day, a representative may move to override the Governor's veto by a two-thirds vote under Order of Business No. 9.

CHAPTER 5

Floor Actions

H50-10. Attendance. (1) A representative, unless excused, is required to be present at every sitting of the House.

(2) A representative may request in writing to be excused for a specified cause by his party leader. This excused absence is not a leave with cause from a call of the House.

H50-20. Quorum. (1) A quorum of the House is fifty-one representatives (Montana Constitution, Art. V, Sec. 10).

(2) Any representative may question the lack of a quorum at any time a vote is not being taken. The question is nondebatable, may not be amended, and is resolved by a roll call.

(3) The House may conduct no business without a quorum, except that representatives present may convene, compel tbe attendance of absent representatives, or adjourn.

H50-30. Call of the House without a quorum. (1) In the absence of a quorum, a majority of the representatives present may compel tbe attendance of absent representatives through a call of the House without a quorum. The motion for the call is nondebatable, may not be amended, and is in order at any time it has been established that a quorum is not present.

(2) During a call of the House, all business is suspended. No motion is in order except a motion to adjourn or to remove the call.

(3) When a quorum has been achieved under the call, the call is automatically lifted. The call may also be lifted by adjournment or by two-thirds of the representatives present and voting.

HeinOnline -- 1999 vol. III 2972 1999

H50-40. Call of the House with a quorum. (1) If a quorum is present but at least one representative is excused or absent, one-third of the representatives present and voting may order a call of the House with a quorum.

(2) The motion for a call is nondebatable, may not be amended, and is in order at any time a vote is not being taken, except that a call of the House with a quorum is not allowed in the Committee of the Whole.

(3) During a call of the House, all business is suspended. No motion is in order except a motion to adjourn or to remove the call.

(4) When all representatives are present, except those on leave with cause, the call is automatically lifted. The call may also be lifted by adjournment or by two-thirds of the representatives present and voting.

H50-50. Leave with cause. (1) During a call of the House, a representative with an overriding medical or personal reason may request a leave with cause.

(2) If the representative is present at the time of the call, the Speaker may approve a request for a leave with cause.

(3) If the representative is not present at the time of the call, two-thirds of the representatives present and voting may approve a request for leave with cause.

(4) During a call of the House, a representative on leave with cause may not cast an absentee vote.

H50-60. Motions. (1) Any representative may propose a motion allowed by the rules for the order of business under which the motion is offered for the consideration of the House. Unless otherwise specified in rule or law, a majority of representatives voting is necessary and sufficient to decide a motion.

(2) Seconds to motions on the House floor are not required.

(3) Absentee votes are not allowed on votes that are specified as "representatives present and voting".

H50-70. Limits on debate of debatable motions. (1) Except for the representative who places a debatable motion before the body, no representative may speak more than once on the question unless a unanimous House consents. The representative who places the motion may close.

(2) No representative may speak for more than 10 minutes on the same question, except that a representative may have 5 minutes to close.

H50-80. Nondebatable motions. (1) A representative has the right to understand any question before the House and, usually under the administration of the presiding officer, may ask questions to exercise this right.

(2) The following motions are nondebatable:

(a) to adjourn;

(b) for a call of the House;

(c) to recess or rise;

(d) for parliamentary inquiry;

(e) to table or take from the table;

(f) to call for the previous question or cloture;

HeinOnline -- 1999 vol. III 2973 1999

(g) to amend a nondebatable motion;

(h) to divide a question;

(i) to postpone consideration to a day certain;

(j) to suspend the rules;

(k) all incidental motions, such as motions relating to voting or of a general procedural nature; and

(l) to appeal a call to order.

H50-90. Questions. A representative may, through the presiding officer, ask questions of another representative during a floor session. There is no limit on questions and answers, except as provided in H20-50.

H50-100. Amending motions — limitations. (1) A representative may move to amend the specific provisions of a motion without changing its substance.

(2) No more than one motion to amend a motion is in order at any one time.

(3) A motion for a call of the House, for the previous question, to table, or to take from the table may not be amended.

H50-110. Substitute motions. (1) When a question is before the House, no substitute motion may be made except the following, which have precedence in the order listed:

(a) to adjourn;

(b) for a call of the House;

(c) to recess or rise;

(d) for a question of privilege;

(e) to table;

(f) to call for the previous question or cloture;

(g) to postpone consideration to a day certain;

(h) to refer to a committee; and

(i) to propose amendments.

(2) Nothing in this section allows a motion that would not otherwise be allowed under a particular order of business.

(3) No more than one substitute motion is in order at any one time.

H50-120. Withdrawing motions. A representative who proposes a motion may withdraw it before it is voted on or amended.

H50-130. Dividing a question. A representative may request to divide a question as a matter of right if it includes two or more propositions so distinct that they can be separated and if at least one substantive question remains after one substantive question is removed.

H50-140. Previous question. (1) If a majority of representatives present and voting adopts a motion for the previous question, debate is closed on the question and it must be brought to a vote. The Speaker may not entertain a motion to end debate unless at least one proponent and one opponent have spoken on the question.

HeinOnline -- 1999 vol. III 2974 1999

(2) Notwithstanding the passage of a motion to end debate, the sponsor of the motion on which dehate was ended may close.

H50-150. Questions requiring other than a majority vote. The following questions require the vote specified for each condition:

100 House Members

(1) a motion to override the Governor's veto (two-thirds);

(2) a motion to approve a bill to appropriate the principal of the coal severance tax trust fund (three-fourths);

(3) a motion to approve a bill to appropriate highway revenue, as described in Article VIII, section 6, of tbe Montana Constitution, for purposes other than therein described (three-fifths);

(4) a motion to approve a bill to authorize creation of state debt (two-thirds);

(5) a motion to temporarily suspend a joint rule governing the procedure for handling bills (two-thirds).

Members Present and Voting

(1) a call of the House with a quorum (one-third);

(2) a motion to lift a call of the House (two-thirds);

(3) a motion to rerefer a bill from one committee to another pursuant to Rule 40-80(1) (three-fifths);

(4) a motion to withdraw a bill from a committee (three-fifths);

(5) a motion to add legislation to the second or third reading agenda (three-fifths);

(6) a motion to remove legislation from its normal progress through the House as provided under these rules and reassign it unless otherwise specifically provided by these rules (three-fiftbs);

(7) a motion to change a vote (unanimous);

(8) a motion to call for cloture (two-thirds);

(9) a motion to take from the table in Committee of the Whole (three-fifths).

Members Voting

(1) a motion to amend or suspend rules (two-thirds);

(2) a motion to overturn an adverse committee report (three-fifths);

(3) a motion to record a vote (one representative);

(4) a motion to spread a vote on the journal (two representatives);

(5) an appeal of the ruling of the presiding officer (three representatives);

(6) a motion to speak more than once on a debatable motion (unanimous vote);

(7) a motion to appeal the presiding officer's interpretation of the rules to the House Rules Committee (15 representatives).

Entire Legislature

(1) a motion to approve a bill proposing to amend the Montana Constitution (two-thirds of the entire Legislature).

HeinOnline -- 1999 vol. III 2975 1999

H50-160. Reconsideration. (1) Any representative may, within 1 legislative day of a vote, move to reconsider the House vote on any matter still within the control of the House.

(2) A motion for reconsideration, unless tabled or replaced hy a substitute motion, must be disposed of when made.

(3) When a motion for reconsideration fails, the question is finally settled. A motion for reconsideration may not he renewed or reconsidered.

(4) A motion to recall legislation from the Senate constitutes a motion to reconsider and is subject to tbe same rules.

(5) A motion for reconsideration is not in order on a vote to postpone to a day certain or to table legislation.

(6) There may he only one reconsideration vote on a specific issue on a legislative day.

H50-170. Renewing procedural motions. The House may renew a procedural motion if further House business has intervened.

H50-180. Tabling. (1) Under Order of Business No. 9, a representative may move to table any question, motion, or legislation before the House except the question of a quorum or a call of the House. The motion is nondebatable and may not be amended.

(2) When a matter has been tahled, a representative may move to take it from the table under Order of Business No. 9 on any legislative day.

H50-190. Voting. (1) The representatives shall vote to decide any motion or question properly before the House. Each representative has one vote.

(2) The House may, without ohjection, use a voice vote on procedural motions that are not required to be recorded in the journal. If a representative rises and objects, the House shall record the vote.

(3) The House shall record the vote on all substantive questions. If the voting system is inoperable, the Chief Clerk shall record the representatives' votes by other means.

(4) A member who is present shall vote unless the member has disclosed a conflict of interest to the House.

H50-200. Changing a vote. (1) A representative may move to change the representative's vote within 1 legislative day of the vote. The motion is nondebatable. All of the members present and voting shall consent to the change.

(2) The representative making the motion shall first specify the bill number, the question, and the original vote tally. A vote may not be changed if it would affect the outcome of legislation.

(3) A vote change must be entered into the journal as a notation that the member's vote was changed. The original printed vote will not be reprinted to reflect the change.

(4) An error caused by a malfunction of the voting system may be corrected without a vote.

H50-210. Absentee votes. (1) An excused representative may file an absentee vote authorization form to vote during the excused absence on any vote for which absentee voting is allowed.

HeinOnline -- 1999 vol. III 2976 1999

(2) An excused representative shall sign an absentee vote authorization form that specifies the motion and the desired vote.

(3) The absentee vote authorization form must be handed in at the rostrum by the party whip or designated representative before voting on the motion has commenced.

(4) The absentee vote authorization may be revoked before the vote by the member who signed the authorization.

H50-220. Recess. The House may stand at ease or recess under any order of business by order of the Speaker or a majority vote. The recess may be ended at the call of the chair or at a time specified.

H50-230. Adjournment for a legislative day. (1) A representative may move that the House adjourn for that legislative day. The motion is nondebatable and may be made under any order of business except Order of Business No. 7.

(2) A motion to adjourn for a legislative day must specify a date and time for the House to convene on the subsequent legislative day.

H50-240. Adjournment sine die. A representative may move that the House adjourn for the session. The motion is nondebatable and may be made under any order of business except Order of Business No. 7.

CHAPTER 6

Motions

H60-10. Proposal for consideration. (1) Every question presented to the House or a committee must be submitted as a definite proposition.

(2) A representative has the right to understand any question before the House and, under the authority of the presiding officer, may ask questions to exercise this right.

H60-20. Nondebatable motions. The following motions, in addition to any other motion specifically designated, must be decided without debate:

(1) to adjourn;

(2) for a call of the House;

(3) to recess or rise;

(4) for parliamentary inquiry;

(5) to table or to take from the table;

(6) to call for the previous question or for cloture;

(7) to amend a nondebatable motion;

(8) to divide a question;

(9) to postpone consideration to a day certain;

(10) to suspend the rules; and

(11) all incidental motions, such as motions relating to voting or of a general procedural nature.

H60-30. Motions allowed during debate. (1) When a question is under debate, only the following motions are in order. The motions have precedence in the following order:

HeinOnline -- 1999 vol. III 2977 1999

(a) to adjourn;

(b) for a call of the House;

(c) to recess or rise;

(d) for a question of privilege;

(e) to table or take from the table;

(f) to call for the previous question or cloture;

(g) to postpone consideration to a day certain;

(h) to refer or rerefer; and

(i) to propose amendments.

(2) This section does not allow a motion that would not otherwise be allowed under a particular order of business.

(3) Only one substitute motion is in order at any time.

H60-40. Motions to adjourn or recess. (1) A motion to adjourn or recess is always in order, except:

(a) when the House is voting on another motion;

(b) when the previous question has been ordered and before the final vote;

(c) when a member entitled to the floor has not yielded for that purpose; or

(d) when business has not been transacted after the defeat of a motion to adjourn or recess.

(2) The vote hy which a motion to adjourn or recess is carried or fails is not subject to a motion to reconsider.

H60-50. Motion to table. (1) A motion to table, if carried, has the effect of postponing action on the proposition to which it was applied until superseded by a motion to take from the table.

(2) The vote by which a motion to table is carried or fails cannot be reconsidered.

(3) A motion to table is not in order after the previous question has been ordered.

H60-60. Motion to postpone. A motion to postpone to a day certain may be amended and is debatable within narrow limits. The merits of the proposition that is the subject of the motion to postpone may not be debated.

H60-70. Motion to refer. When a motion is made to refer a subject to a standing committee or select committee, the question on the referral to a standing committee must be put first.

H60-80. Terms of debate on motion to refer or rerefer. (1) A motion to refer or rerefer is debatable within narrow limits. The merits of the proposition that is the subject of the motion may not be debated.

(2) A motion to refer or rerefer with instructions is fully debatable.

H60-100. Moving the previous question after a motion to table. (1) If a motion to table is made directly to a main motion, a motion for the previous question is not in order.

(2) If an amendment to a main motion is pending and a motion to table is made, the previous question may be called on the main motion, the pending amendment, and the motion to table the amendment.

H60-110. Standard motions. The following are standard motions:

(1) moving House bills or resolutions on second reading, "Mister/Madam Chairman, I move that when this committee does rise and report after having under consideration House Bill ___, that it recommend the same (do pass)/(do pass as amended)/(do not pass)."

(2) moving Senate bills and Senate amendments to House hills, "Mister/Madam Chairman, I move that when this committee does rise and report after having under consideration Senate Bill ___/Senate amendments to House Bill ___, that it recommend the same (be concurred in)/(be not concurred in)."

(3) Committee of the Whole floor amendments, "Mister/Madam Chairman, I move that House Bill ___/Senate Bill ___ be amended and request that the amendment be posted and deemed read."

(4) introducing visitors, "Mister/Madam Speaker/Chairman, I request that we be off the record and out of the journal."

(5) changing a vote, "Mister Speaker, I would like my vote changed on House Bill ___/Senate Bill ___ from (yes/no) to (yes/no). The question on the bill was ( ) with a vote tally of ____for and ____ against."

(6) question another representative, "Mister/Madam Speaker/Chairman, would Representative ___ yield to a question?"

CHAPTER 7

Rules

H70-10. House rules. (1) The House may adopt, through a House resolution passed by a majority of its members, rules to govern its proceedings.

(2) After adoption of the House rules, two-thirds of the representatives voting must vote in favor of the question to amend the rules.

(3) The Speaker shall refer to the House Rules Committee all resolutions for House rules.

(4) The House Rules Committee shall report all resolutions for House rules within 1 legislative day of referral.

H70-20. Tenure of rules. Rules adopted by the House remain in effect until removed by House resolution or until a new House is elected and takes office.

H70-30. Suspension of rules. The House may suspend a House rule on a motion approved by not less than two-thirds of the members voting.

H70-40. Supplementary rules. Mason's Manual of Legislative Procedure (1989) geverns House proceedings in all cases not covered by House rules.

H70-50. Interpreting rules. The Speaker shall interpret all questions on House rules, subject to appeal by any fifteen representatives to the House Rules Committee. Unless the delay would cause legislation to fail to meet a scheduled deadline, the House Rules Committee may consider and report on the appeal on the next legislative day. The decision of the House Rules Committee may be appoaled to the House by any representative.

HeinOnline -- 1999 vol. III 2979 1999

H70-60. Joint rules superseded. A House rule, insofar as it relates to the internal proceedings of the House, supersedes a joint rule.

Adopted January 16, 1999

HOUSE RESOLUTION NO. 2

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT THE FEDERAL GOVERNMENT REPEAL RESTRICTIONS ON THE PRODUCTION OF INDUSTRIAL HEMP AS AN AGRICULTURAL AND INDUSTRIAL PRODUCT.

WHEREAS, agriculture is the largest source of income for Montanans; and

WHEREAS, a devastating drop in prices for agricultural products is threatening the survival of Montana farm families; and

WHEREAS, it is a current major economic goal to diversify the agriculture of Montana; and

WHEREAS, although industrial hemp is often mistakenly associated with marijuana, it is a different plant, with little or no tetrahydrocannabinol or narcotic properties, so Montana farmers should not be prohibited from expanding agricultural practices to the growing of industrial hemp; and

WHEREAS, in over 30 countries, including Canada, England, France, Germany, Japan, and Australia, existing international treaties provide for the agricultural production and sale of industrial hemp as a valuable agricultural product; and

WHEREAS, industrial hemp has been used in the manufacture of paper, paints, clothing, plastics, cosmetics, food, fuel, and animal feed and can grow to maturity in 100 days without the necessity of pesticides; and

WHEREAS, current United States federal policy prevents the American agricultural production of industrial hemp while foreign hemp is being imported, at a loss of millions of dollars to American farm families; and

WHEREAS, current federal policy is inconsistent with international agricultural policy and places an unnecessary financial restriction on the Montana agricultural community.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That tbe House of Representative of the State of Montana urge the federal government to repeal restrictions on the production of industrial hemp as an agricultural and industrial product.

BE IT FURTHER RESOLVED, that the Secretary of State send a copy of this resolution to all appropriate federal agencies that have authority over the current policy prohibiting the production of industrial hemp.

Adopted February 17, 1999

HeinOnline -- 1999 vol. III 2980 1999

BALLOT ISSUES

HeinOnline -- 1999 vol. III 2981 1999

HeinOnline -- 1999 vol. III 2982 1999

INITIATIVE REFERENDUM NO. 114

In 1996, Montana voters passed Initiative 125, prohibiting—except from certain non-profit corporations with no for-profit corporate members—direct corporate spending toward the support or defeat of ballot issues, and setting voluntary spending limits for ballot issue committees. The 1997 legislature passed House Bill 575, amending I-125 to prohibit all contributions to ballot issue campaigns by corporations, partnerships, associations, and tax-exempt organizations, except from a separate political fund created through voluntary contributions from shareholders, employees, or members. It amends the definition of "expenditures" by political committees, for purposes of voluntary spending limits, to remove reference to loans received by committees.

Initiative No. 114 was approved by the following vote at the General Election held November 3, 1998:

For:	161,476
Against:	144,425

The text of the Initiative follows:

Be it enacted by the People of the State of Montana:

Section 1. Section 13-35-227, MCA, is amended to read:

"13-35-227. Prohibited contributions from corporations *for candidates or political parties.* (1) (a) ~~Except as provided in subsection (4), a~~ *A* corporation may not make a contribution or an expenditure in connection with a candidate~~, a ballot issue,~~ or a political committee ~~which~~ *that* supports or opposes a candidate~~, a ballot issue,~~ or a political party.

(b) For purposes of this section, "corporation" refers to for-profit and nonprofit corporations.

(2) A person, candidate, or political committee may not accept or receive a corporate contribution described in subsection (1).

(3) This section does not prohibit the establishment or administration of a separate, segregated fund to be used for making political contributions or expenditures if the fund consists only of voluntary contributions solicited from ~~an individual who is a shareholder, an employee, or a member~~ *individuals who are shareholders, employees, or members* of the corporation.

~~(4) The provisions of subsection (1) prohibiting corporate contributions to or expenditures in connection with a ballot issue do not apply to a nonprofit corporation formed for the purpose, among others, of promoting political ideas and that:~~

~~(a) does not engage in business activities;~~

~~(b) has no shareholders or other affiliated persons who have a private claim on the corporation's assets or earnings;~~

~~(c) does not accept foreign or domestic for profit corporations as members; and~~

~~(d) does not accept in the aggregate more than 5% annually of its total revenue from foreign or domestic for profit corporations.~~

~~(5)~~*(4)* A person who violates this section is subject to the civil penalty provisions of 13-37-128."

HeinOnline -- 1999 vol. III 2983 1999

Section 2. Prohibited contributions for ballot issues. (1) A business corporation, nonprofit corporation, religious corporation, professional corporation, business trust, limited liability company, close corporation, partnership, limited partnership, mining partnership, cooperative association, agricultural association, cooperative agricultural marketing association, rural cooperative, utility association, or other association or organization exempt from taxation under 15-31-102 or 26 U.S.C. 501(c) may not make a contribution or an expenditure in connection with a ballot issue or to a political committee that supports or opposes a ballot issue.

(2) A person or political committee may not accept or receive a contribution described in subsection (1).

(3) This section does not prohibit the establishment or administration of a separate, segregated fund to be used for making political contributions or expenditures if the fund consists only of voluntary contributions solicited from individuals who are shareholders, employees, or members of an organization described in subsection (1).

(4) A person who violates this section is subject to the civil penalty provided in 13-37-128.

Section 3. Section 13-37-250, MCA, is amended to read:

"**13-37-250. Voluntary spending limits.** (1) (a) ~~Beginning January 1, 1997, the~~ *The* following statement may be used in printed matter and in broadcast advertisements and may appear in the voter information pamphlet prepared by the secretary of state: "According to the Office of the Commissioner of Political Practices, ... is in compliance with the voluntary expenditure limits established under Montana law."

(b) The treasurer of each political committee, as defined in 13-1-101(12)(b), who files a certification on a ballot issue pursuant to 13-37-201 may also file with the commissioner a sworn statement that the committee will not exceed the voluntary expenditure limits of this section. If a sworn statement is made, it must be filed with the commissioner within 30 days of the certification of the political committee.

(c) A political committee that has not filed a sworn statement with the commissioner may not distribute any printed matter or pay for any broadcast claiming to be in compliance with the voluntary expenditure limits of this section.

(d) A political committee may not use evidence of compliance with the voluntary expenditure limits of this section to imply to the public that the committee has received endorsement or approval by the state of Montana.

(2) For the purposes of this section, the expenditures made by a political committee consist of the aggregate total of the following during the calendar year:

(a) ~~all loans made or received by the committee;~~

~~(b)~~ all committee *loans or* expenditures made by check or cash; and

~~(c)~~*(b)* the dollar value of all in-kind contributions made or received by the committee.

(3) In order to be identified as a political committee in compliance with the voluntary expenditure limits of this section, the committee's expenditures, as described in subsection (2), may not exceed $150,000.

HeinOnline -- 1999 vol. III 2984 1999

(4) ~~Beginning January 1, 1997, any~~ *A* political committee that files with the commissioner a sworn statement to abide by the voluntary expenditure limits of this section but that exceeds those limits shall pay a fine of $5,000 to the commissioner. This money must be deposited in a separate fund to be used to support the enforcement programs of the office of the commissioner."

Section 4. Codification instruction. [Section 2] is intended to be codified as an integral part of Title 13, chapter 35, part 2, and the provisions of Title 13, chapter 35, part 2, apply to [section 2].

Section 5. Effective date. [This act] is effective on passage and approval.

INITIATIVE REFERENDUM NO. 134

This initiative would repeal the Montana Retail Motor Fuel Marketing Act. The Act was passed in 1991 to prevent fuel dealers from selling fuel below cost to drive out competition from smaller independent dealers and distributors. It prohibits selling fuel for less than the price the seller paid, plus overhead and labor costs, if the effect of the below-cost pricing is to destroy or injure competitors or competition. A gas station cannot sell fuel for less than the wholesale price it pays plus a 6% markup, unless its cost of doing business is actually less than the 6% markup.

Initiative No. 134 was approved by the following vote at the General Election held November 3, 1998:

For:	172,081
Against:	146,629

The text of the Initiative follows:

Be it enacted by the People of the State of Montana:

Section 1. Repealer. Sections 30-14-801, 30-14-802, 30-14-803, 30-14-804, 30-14-805, and 30-14-806, MCA, are repealed.

Section 2. Effective date. If approved by the electorate, this act is effective January 1, 1999.

INITIATIVE REFERENDUM NO. 137

Cyanide leach mineral processing is the procedure used in mining operations that applies a cyanide-based solution over gold or silver ore to remove the precious metals from the waste rock, so the metals can be recovered. This measure would prohibit new open-pit gold and silver mines in Montana that use heap and vat cyanide leach processing. Any open-pit mines currently operating and permitted to use cyanide leach processing could continue to do so, but this measure would prohibit any expansion of these mines. If approved, this measure would be effective immediately.

Initiative No. 137 was approved by the following vote at the General Election held November 3, 1998:

For:	169,991
Against:	155,034

The text of the Initiative follows:

HeinOnline -- 1999 vol. III 2985 1999

Be it enacted by the People of the State of Montana:

Section 1. Cyanide Heap and Vat Leach Open Pit Gold and Silver Mining Prohibited. (1) Open pit mining for gold or silver using heap leaching or vat leaching with cyanide ore-processing reagents is prohibited.

(2) A mine described in section 1 is operating on November 3, 1998 may continue operating under its existing operating permit, but the permit may not be amended to allow its operations to be expanded.

Section 2. Codification instruction. Section 1 is intended to be codified in Title 82, chapter 4, part 3.

Section 3. Effective date. This act is effective upon approval by the electorate.

HeinOnline -- 1999 vol. III 2986 1999

INDEX TO

APPROPRIATIONS

HeinOnline -- 1999 vol. III 2987 1999

HeinOnline -- 1999 vol. III 2988 1999

INDEX TO APPROPRIATIONS

Administration, Department of
- capital projects, Ch. 518, Ch. 557
- general appropriation, Ch. 578
- supplemental, Ch. 328
- tax increment financing industrial districts, Ch. 2, Special Laws of June 1999(Appendix)

Agriculture, Department of — general appropriation, Ch. 578

Appellate Defender Commission, general appropriation, Ch. 578

Budget and Program Planning, Office of — state employee pay plans, Ch. 558

Capital projects, Ch. 518, Ch. 557

Children's health insurance program, Ch. 571

Commerce, Department of
- general appropriation, Ch. 578
- governor's local coal impact review council, Ch. 376
- local government infrastructure project grants, treasure state endowment special revenue account interest earnings for, Ch. 517
- supplemental, Ch. 328
- venture star project, grants to local governments submitting proposals to locate project in Montana, Ch. 443

Consumer counsel
- general appropriation, Ch. 578
- state employee pay plans, Ch. 558

Corrections, Department of
- capital projects, Ch. 518, Ch. 557
- general appropriation, Ch. 578

Court Funding and Structure Study Committee, Interim, Ch. 584

Crime Control, Division of
- general appropriation, Ch. 578
- supplemental, Ch. 328

Cultural and aesthetic project grants, Ch. 329

Deaf and Blind, Montana School for the — general appropriation, Ch. 578

District court reimbursement, supplemental, Ch. 32

Enterprise funds, certain funds to he subject to, Ch. 20

Environmental Quality, Department of
- general appropriation, Ch. 578
- oil overcharge money, Ch. 49, Ch. 50
- state building energy conservation program bond proceeds, Ch. 50
- supplemental, Ch. 328

HeinOnline -- 1999 vol. III 2989 1999

Feed bill, Ch. 1; Ch. 2, Special Laws of June 1999(Appendix)

Fish, Wildlife, and Parks — Department of
bull trout and cutthroat trout enhancement program, Ch. 529
capital projects, Ch. 557
general appropriation, Ch. 578
shooting ranges, grants for estahlishment and improvement, Ch. 475
supplemental, Ch. 328

General Appropriations Act of 1999, Ch. 578

Governor, general appropriation, Ch. 578

Higher Education, Commissioner of — general appropriation, Ch. 578

Historical Society
cultural and aesthetic project grants, Ch. 329
general appropriation, Ch. 578

Judges' Retirement System, supplemental, Ch. 32

Judicial branch
general appropriation, Ch. 578
state employee pay plans, Ch. 558
supplemental, Ch. 328

Justice, Department of
general appropriation, Ch. 578
natural resource damage assessment and litigation, Ch. 504
protective service professionals, pay increases, Ch. 392
supplemental, Ch. 32, Ch. 328

Labor and Industry, Department of
capital projects, Ch. 518
general appropriation, Ch. 578
silicosis benefits, increase, Ch. 142
supplemental, Ch. 32, Ch. 328

Legislative Branch
general appropriation, Ch. 578
state employee pay plans, Ch. 558

Legislative Services Division, Ch. 1; Ch. 2, Special Laws of June 1999(Appendix)
electric utility industry restructuring, transition advisory committee — gifts, grants, or other donations for, Ch. 372

Legislature, Ch. 1; Ch. 2, Special Laws of June 1999(Appendix)

Livestock, Department of
alternative livestock programmatic environmental impact statement program (biennial/OTO), technical adjustment, Ch. 2, Special Laws of June 1999(Appendix)
general appropriation, Ch. 578
supplemental, Ch. 328

Local Government Funding and Structure Study Committee, Interim, Ch. 584

Military Affairs, Department of
capital projects, Ch. 518, Ch. 557

HeinOnline -- 1999 vol. III 2990 1999

Military Affairs, Department of (Continued)
general appropriation, Ch. 578
supplemental, Ch. 328

Montana Arts Council
cultural and aesthetic project grants, Ch. 329
general appropriation, Ch. 578
supplemental, Ch. 328

Montana Chiropractic Legal Panel, general appropriation, Ch. 578

Natural Resources and Conservation, Department of
capital projects, Ch. 557
crow tribe-Montana compact, settlement funds, Ch. 1, Special Laws of June 1999(Appendix)
general appropriation, Ch. 578
reclamation and development grants and projects, Ch. 419
renewable resource grant and loan program grants and loans, Ch. 255, Ch. 418
supplemental, Ch. 32, Ch. 328

Oil overcharge money, Ch. 49, Ch. 50

Political practices, commissioner of
general appropriation, Ch. 578
supplemental, Ch. 32

Program transfers, subsequent transfer of money transferred to another fiscal year prohibited, Ch. 6

Public Education, Board of — general appropriation, Ch. 578

Public Health and Human Services, Department of
capital projects, Ch. 557
general appropriation, Ch. 578
Montana state hospital
services provided by, Ch. 567
severance benefits for certain employees, Ch. 489
oil overcharge money, Ch. 49
supplemental, Ch. 328

Public Service Regulation, Department of — general appropriation, Ch. 578

Reappropriation, Ch. 50

Revenue, Department of
general appropriation, Ch. 578
information technology general obligation bond proceeds, Ch. 519
property tax revenue loss reimbursement, Ch. 584

Reversion, Ch. 328, Ch. 329, Ch. 419

Schools, per-ANB and basic entitlements increases and special education, Ch. 211

State auditor, general appropriation, Ch. 578

State Library Commission
general appropriation, Ch. 578
supplemental, Ch. 328

HeinOnline -- 1999 vol. III 2991 1999

State-Tribal Economic Development Commission, Ch. 512

Statutory
- agricultural commodity research and market development account money, Ch. 83
- coal producer's license tax, Ch. 563
- district court grant program and certain expenses, Ch. 394
- electrical generation facility tax reduction, reimbursement for eligible taxing jurisdictions, Ch. 556
- fire, mitigating disasters and emergencies caused by — combined with appropriation for mitigating disasters caused by all other causes, Ch. 55
- local government taxing jurisdictions, reimbursements for pbased-in rate reduction and elimination of class 6 property and exemptions and phased-in rate reduction for
- renewable resource grant and loan program account interest to Montana state university-northern, elimination, Ch. 497
- research and commercialization expendable trust fund, Ch. 563
- review provisions revised, Ch. 8
- revision of laws generally, Ch. 389
- teachers' retirement system guaranteed annual benefit adjustments, state contribution, Ch. 360

Superintendent of public instruction
- general appropriation, Ch. 578
- property tax revenue loss reimbursement, Ch. 584

Supplemental, Ch. 32, Ch. 328

Transportation, Department of
- capital projects, Ch. 557
- general appropriation, Ch. 578
- supplemental, Ch. 328

University system
- capital projects, Ch. 518, Ch. 557
- general appropriation, Ch. 578
- information technology general obligation bond proceeds, Ch. 519
- state employee pay plans, Ch. 558

HeinOnline -- 1999 vol. III 2992 1999

GENERAL INDEX

HeinOnline -- 1999 vol. III 2993 1999

HeinOnline -- 1999 vol. III 2994 1999

GENERAL INDEX

A

ABORTION
- Removal or clarification of certain provisions declared invalid by judiciary, removing restrictions on place of performing and on advertising, and revising definition of "partial-birth abortion", Ch. 479

ACCOUNTANTS
- Examination procedures modified, Ch. 230

ADMINISTRATION, DEPARTMENT OF
- Alternative pay and classification plan, development and implementation, Ch. 558
- Appropriations, Ch. 328, Ch. 518, Ch. 557, Ch. 578; Ch. 2, Special Laws of June 1999(Appendix)
- Construction contracts, pecuniary interest prohibitions revised, Ch. 303
- Deferred compensation, administration transferred from, Ch. 471
- Internal service fund type fees and charges for 2001 biennium, Ch. 578
- Motor vehicles, state-owned or leased — rules to be adopted for acceptable uses, Ch. 226
- Public Employees' Retirement Board, loan for defined contribution plan startup costs, Ch. 471
- State debt collection, authority transferred from, Ch. 105
- Voice menu answering systems, department urged to develop policy and provide for training on appropriate use, HJR 31

ADMINISTRATIVE CODE COMMITTEE
- Elimination, Ch. 19

ADMINISTRATIVE PROCEDURE
- Occupational health provisions, contested case hearing provisions clarified, Ch. 25
- Settlement authority and procedure of state agencies revised and providing for deposit and use of proceeds, Ch. 451

ADMINISTRATIVE RULES
- Economic impact statement on rule proposal upen request of 15 legislators, provision for, Ch. 46
- Family impact notes, provisions for, Ch. 339
- Monetary amount that persons are required to pay or will receive, proposals for — inclusion in propesal notice of estimate of number of paying or receiving persons and cumulative amount that persons will pay or receive, Ch. 41
- Occupational health provisions, rulemaking provisions clarified, Ch. 25
- Review responsibilities revised, Ch. 19

ADOPTION
- Revision of laws generally, Ch. 257
- Subsidized adoption provisions revised, Ch. 21

ADULTS
Foster care facilities, licensing to provide residential services to certain persons and certification of appropriateness for residential placement amended, Ch. 133

AERONAUTICS, See also SPACE headings
Airlines, newly acquired aircraft and supporting equipment — valuation for tax purposes revised, Ch. 140
Aviation gasoline license tax, increase and exclusion for fuel sold to federal defense fuel supply center, Ch. 585

AERONAUTICS, BOARD OF
Appointments to, SR 5

AEROSPACE TRANSPORTATION AND TECHNOLOGY DISTRICT
Establishment authorized, Ch. 269

AGING AND AGED PERSONS
Abuse, sexual abuse, neglect, or exploitation provisions — revision generally, Ch. 196
Live-in home companionship services for individuals unable to care for themselves, exemption from minimum wage and overtime provisions, Ch. 179
Long-term planning, statewide and community — establishment, Ch. 435
Residential property tax credit
definition of "income" revised, Ch. 445
provisions revised, Ch. 547

AGRICULTURAL COMMODITY RESEARCH AND MARKET DEVELOPMENT ENABLING ACT, Ch. 83

AGRICULTURAL HERITAGE PROGRAM AND COMMISSION, Ch. 456

AGRICULTURAL MARKETING ASSOCIATIONS
Revision of laws generally, Ch. 130

AGRICULTURAL SEEDS
Revision of laws generally, Ch. 345

AGRICULTURE
Agricultural products — investigation into causes of ongeing depressed market prices and urging initiation of actions to stabilize nation's food producers, main street businesses, and rural america as whole, SJR 11
Agriculture in Montana schools program, income tax checkoff system — threshold amount that triggers termination revised, Ch. 321
Cluster development and preservation of agricultural land or open space, requesting interim study of options that could be implemented by local governments to provide incentives for, SJR 21
Crop dusting liens, 30 days' notice of intent prior to filing — provision removed, Ch. 152
Farm vehicles on certain highways, flag vehicle escort to follow, Ch. 449
Gasoline tax and special fuel tax refunds, definition of "agricultural use" providod and provisions revised, Ch. 461
Industrial hemp as agricultural and industrial product, federal government requested to repeal restrictions on production of, HR 2

HeinOnline -- 1999 vol. III 2996 1999

AGRICULTURE (Continued)

Inspection of elevators, escalators, dumbwaiters, moving walks, material lifts, wheelchair lifts, and stairway chairlifts to ensure compliance with state building code — exception from requirements, Ch. 565
Pipelines, in-state — exemption from facility siting when used exclusively for irrigation of agricultural crops, Ch. 13
Powell County, state payment for land on which state conducts farming or ranching operation, Ch. 550
State land leasing methods revised, Ch. 5
Taxation, See generally TAXATION, PROPERTY
Unemployment insurance, "agricultural labor" definition clarified, Ch. 61

AGRICULTURE, DEPARTMENT OF
Appropriations, Ch. 578
Commercial feeds, rulemaking authority clarified and publication of report to be discretionary rather than mandatory, Ch. 396
Organic certification program, requirements for establishment, Ch. 172
Pesticides, restricted pesticide purchaser's license or permit — rules concerning dealer verification, Ch. 65

AIR POLLUTION CONTROL ADVISORY COUNCIL
Appointments to, SR 4

AIRPORTS AND LANDING FIELDS
Alcoholic beverage license lessee, eligibility to offer certain gamhling activities, Ch. 263
Pavement preservation projects, funding through aviation gasoline license tax increase, Ch. 585
Suhdivision regulation, local — exemption for certain leases or rentals of airport-related land when, Ch. 548

AIR QUALITY
Portahle emission source permit transfers exempted from Environmental Policy Act and deposit requirements for construction and operating permit fees changed, Ch. 221

ALCOHOLIC BEVERAGES
Beer and wine licenses
off-premises, investigation prior to issuance — provision changed, Ch. 54
restaurant licenses, provisions revised, Ch. 324
Beer hrewers, deleting distinction between in-state and out-of-state hrewers in sale of certain beer through wholesalers, Ch. 192
Beer brewers or beer importers and beer wholesalers, agreements between — mandatory provisions revised, Ch. 194
Gambling activities, certain publicly owned licenses are eligible to offer, Ch. 263
Liquor licenses
anniversary dates provided for licensees, Ch. 54
application, notary requirement removed, Ch. 54
business entities owning, approval required prior to changing business entity's ownership and prior to changing husiness entity, Ch. 148
corporate licenses, individuals controlling oporation of — qualification requirements, Ch. 148

HeinOnline -- 1999 vol. III 2997 1999

ALCOHOLIC BEVERAGES (Continued)
Liquor licenses (Continued)
security interests clarified, requiring notice of default, and providing for transfer of ownership or lapse to nonuse status of defaulted licenses, Ch. 280
virginia city and nevada city, purchased with — transfer and administration provided for, Ch. 251
Resort retail all-beverages licenses, issuance requirements clarified and gambling machine permits limited, Ch. 325
Small brewers allowed to charge for samples of beer manufactured on premises and limitations, Ch. 116
Table wine suppliers and distributors, agreements between — mandatory provisions revised, Ch. 194
Taxes, fees, and other assessments — penalty and interest determinations simplified, Ch. 427

ALTERNATIVE HEALTH CARE BOARD
Appointments to, SR 4

AMERICAN LAND SOVEREIGNTY PROTECTION ACT
Support for, HJR 7

AMUSEMENT RIDES
Regulation of operators, responsibilities of passengers and operators, and injury reports by passengers, Ch. 370

ANATOMICAL GIFTS
Vehicle registration applications, voluntary checkoff for donation, Ch. 94

ANTIQUITIES
Historically significant buildings or monuments in counties or cities and towns, authorizing sale or donation of property to nonprofit organization or group for restoration or preservation, Ch. 202

APPELLATE DEFENDER COMMISSION
Appropriation, Ch. 578

APPROPRIATIONS, See INDEX TO APPROPRIATIONS, printed separately in this volume

ARCHITECTS, BOARD OF
Appointments to, SR 4, SR 7

ARTS AND CULTURE
Cultural and aesthetic grant awards and appropriations, Ch. 329

ASBESTOS
Enforcement of abatement provisions, revision generally, Ch. 293

ASSUMED BUSINESS NAME REGISTRATION
Revision of laws generally, Ch. 229

ATHLETICS, BOARD OF
Appointments to, SR 4, SR 7

ATTORNEY GENERAL
Bankruptcy and debt collection proceedings, representation of state, Ch. 72
Crow Tribe-Montana Compact, agreement concerning, Ch. 1, Special Laws of June 1999(Appendix)

HeinOnline -- 1999 vol. III 2998 1999

ATTORNEY GENERAL (Continued)

Initiative petitions, determination of legal sufficiency and providing for judicial review, Ch. 191

ATTORNEYS AT LAW

Supreme court rules governing admission to bar and practice of law, elimination of conflicting statutes, Ch. 198

B

BALLOT ISSUES, See also ELECTIONS

Corporations, associations, and tax-exempt organizations — expenditures for, prohibited, Initiated Referendum No.1(Appendix)

Initiative petitions — determination of legal sufficiency, prohibiting approval of those legally insufficient, and providing for judicial review, Ch. 191

Motor vehicles, replacement of current system of taxation with registration fee on light vehicles and eliminating sales tax on new vehicles, Ch. 515

Paid signature gatherers, employers of — financial disclosure reports to be filed, Ch. 117

State compensation insurance fund assets, constitutional amendment to allow investment, Ch. 516

University system 6-mill levy, imposition, Ch. 2

Voter information pamphlet, arguments for inclusion in — content clarified and revising appointment of committees preparing, Ch. 374

BANK DEPOSITS AND COLLECTIONS

Public fund deposits, letter of credit from federal home loan bank allowed as collateral, Ch. 158

BANKING BOARD, STATE

Appointments to, SR 4

BANKRUPTCY

Attorney general's duty made permanent to represent state in proceedings, Ch. 72

BANKS AND TRUST COMPANIES

Lawful business, other types — expanding powers to engage in, Ch. 100

BARBERS, BOARD OF

Appointments to, SR 4

BICYCLE TRAILS AND FOOTPATHS

State special revenue fund for funding, eliminating use, Ch. 297

BIRTH

Breastfeeding — local government prohibited from adopting ordinances prohibiting and providing that breastfeeding may not be considered a nuisance, indecent exposure, sexual conduct, or obscenity, Ch. 299

BLINDNESS OR LOW VISION, PERSONS WITH

Blind hunters, designated companion to assist, Ch. 382

BOATS AND BOATING

Personal watercraft — revision of law relating to franchising, sale, and warranty, Ch. 384

HeinOnline -- 1999 vol. III 2999 1999

BOATS AND BOATING (Continued)

Recreational users of state waters, revision of boat and personal watercraft operation to reduce conflicts, Ch. 569

BONDS AND BOND ISSUES
Bond Validating Act, application extended, Ch. 9
City or town bonds, majority vote of electors required for issuance, Ch. 190
Coal severance tax bonds, issuance for renewable resource projects, Ch. 255
General obligation bond provisions, revision generally, Ch. 3
Information technology general obligation bonds, issuance and appropriation of proceeds, Ch. 519
Libraries, purposes clarified, Ch. 333
Long-range building program bonds, issuance for capital projects, Ch. 518
Renewable resource grant and loan program, general obligation bond issue amount increased, Ch. 14
Spaceport infrastructure development projects, general obligation bonds to pay costs, Ch. 269
State building energy conservation program bonds, authorization and appropriation of proceeds, Ch. 50
Water pollution control state revolving fund, general obligation bonds authorized to provide matching funds, Ch. 73

BUDGET AND BUDGETING
Agency program budgets to contain prioritized plan for reduction of base budgets by 15%, Ch. 332
Enterprise funds, requirements for certain funds revised, Ch. 20
General fund loans for budget amendment purposes, clarification of provision, Ch. 11

BUDGET AND PROGRAM PLANNING, OFFICE OF
Appropriation, Ch. 558
Revenue estimates for each year of the 2000-01 biennium, HJR 2
Small business registration and licensing plan, board of review — budget director's participation eliminated, Ch. 7
Workers' compensation old fund liability tax, certification of termination — revision of statutes impacted by, Ch. 184

BUILDING CODES COUNCIL
Establishment, Ch. 473

BUILDINGS AND BUILDING REGULATIONS, See also CAPITOL AND OTHER STATE BUILDINGS
Affordable housing and land use initiative, implementation of recommendations, Ch. 473
Codes
central registry of authoritative interpretations, Ch. 473
inspection of elevators, escalators, dumbwaiters, moving walks, material lifts, wheelchair lifts, and stairway chairlifts to ensure compliance with state code, Ch. 565
Construction site health and safety provisions, building inspector's responsibility for enforcement removed, Ch. 232
County courthouse or other county building, county allowed to charge department of revenue for space provided in, Ch. 586
Medical gas piping, clarifying enforcement provisions, Ch. 486

BUILDINGS AND BUILDING REGULATIONS (Continued)

Single-family dwelling construction plans, providing statewide approval of model plans and checklist for examination, Ch. 473
Smoking and nonsmoking areas in local government buildings, provisions revised, Ch. 274

BUSINESS IMPROVEMENT DISTRICTS
Parking Commissions, allowing board of directors to be appointed as members of, Ch. 189

C

CAMPING AND CAMPGROUNDS
State parks and fishing access sites, motorized camping disallowed when, Ch. 474

CAPITAL COMPANIES
Small business investment company provisions revised to ensure compliance with federal law and authorizing additional companies, Ch. 410

CAPITOL AND OTHER STATE BUILDINGS
Mansfield, Mike — recognizing stellar career, the essential support of his wife maureen, and authorizing placement of commemorative statue on capitol complex, SJR 10
Memorials, permanent placement of certain memorials in capitol complex, SJR 4
State building energy conservation program, bond issue to fund and approval of projects, Ch. 50

CEMETERIES
Desecration as criminal offense, Ch. 141

CESSPOOLS, SEPTIC TANKS, OR PRIVIES
Repeal of certain provisions, Ch. 378

CHAPTER NUMBER TO BILL NUMBER TABLE, See TABLE OF CHAPTER NUMBER TO BILL NUMBER, printed separately in this volume

CHEMICAL DEPENDENCY
Driving under the influence
assessment of chemical dependency prior to sentencing, court's authority clarified and clarifying that assessment is separate from education or treatment, Ch. 455
initial imprisonment, offender allowed to serve in state-approved public or private treatment facility when, Ch. 391
Insurance benefit, mandatory — changing inpatient, outpatient, and lifetime benefits and excluding medical detoxification, Ch. 477

CHILD ABUSE AND NEGLECT
District court reimbursement program to pay for certain state district court expenses incurred in proceedings, Ch. 394
Endowment for children, removal of limitation on amount of money deposited in, Ch. 356
Prevention program, income tax checkoff system — threshold amount that triggers termination revised, Ch. 321

HeinOnline -- 1999 vol. III 3001 1999

CHILD ABUSE AND NEGLECT (Continued)

Protective services — laws revised and implementation of federal adoption and safe families act, reunification of children with abusive parents clarified, and judicial termination of parental rights clarified, Ch. 566
Youth in need of care, appointment of guardian for — petition, revocation, and financial suhsidies, Ch. 428

CHILD CUSTODY
Natural parents and third parties, revision of laws relating to parenting matters between, Cb. 414
Parenting plans
fees for filing amendments may not be collected if amendment not contested and confidentiality provisions revised, Ch. 545
interim plan, revising showing required in affidavit in support of motion for, Ch. 541
Uniform Child Custody Jurisdiction and Enforcement Act to replace Uniform Child Custody Jurisdiction Act, Ch. 91

CHILDREN AND FAMILIES, JOINT OVERSIGHT COMMITTEE ON
Elimination, Ch. 19

CHILDREN'S HEALTH INSURANCE PROGRAM
Enactment of Children's Health Insurance Program Act and providing funding for, Ch. 571
Simplified application and process for eligibility for various health care programs, requiring development and implementation of, Ch. 215

CHILD SUPPORT
Federal requirements, removal of termination provisions related to, Ch. 27
Individual retirement account assets to the extent of contribution limits, exemption from execution and exception, Ch. 262
Revision of laws generally, Ch. 571

CHINA, PEOPLE'S REPUBLIC OF
Sister relations between Montana and Government of Guangxi Zhuang, establishment urged, HJR 9

CHIROPRACTIC AND CHIROPRACTORS
Licensing of chiropractors from other states without examination, provision repealed, Ch. 265

CHIROPRACTORS, BOARD OF
Appointments to, SR 4, SR 5

CIGARETTES OR TOBACCO PRODUCTS
Importation for sale or distribution of products manufactured for use outside United States unlawful, Ch. 465

CITIES AND TOWNS, See also LOCAL GOVERNMENT
Annexation hearing in conjunction with zoning hearing, modifying procedures for conducting, Ch. 355
Electricity supplier to residential and commercial customers of public utility — allowing cities, counties, and consolidated governments to be default suppliers, Ch. 185
Health, city-county boards — authority for joint creation extended to all classes of cities, Ch. 47

CITIES AND TOWNS (Continued)

Historically significant buildings or monuments, authorizing sale or donation of property to nonprofit organization or group for restoration or preservation, Ch. 202
Infractions, creation of category of and procedures for enforcement, Ch. 249
Infrastructure development and maintenance costs, counties authorized to voluntarily appropriate and transfer funds for, Ch. 86
Newly incorporated city or town, county to retain property within as part of tax base for purpose of levying taxes for maintenance, Ch. 353
Park maintenance districts, creation authorized, Ch. 510
Police officers' training expenses, contracts for reimbursement if minimum service requirement not fulfilled, Ch. 337
Violations, decriminalization and creating category of municipal infractions, Ch. 249
Water rights in waters classified as "A-Closed", criteria for presumption of nonabandonment, Ch. 213
Zoning regulation changes, protest provisions modified, Ch. 492

CITY-COUNTY CONSOLIDATED GOVERNMENTS
Electricity supplier to residential and commercial custemers of public utility — allowing cities, counties, and consolidated governments to be default suppliers, Ch. 185
Gasoline and vehicle fuel tax revenue, approval of revised boundaries for purpose of allocation, Ch. 415

CITY COURTS
Appeal, notice of — dismissal for failure to timely file required undertaking, Ch. 393
Fines, assignment of collection to privato persons or entities, Ch. 63
Misdemeanor cases, defendant not limited to single jury trial — clarification, Ch. 346

CITY FINANCE
Bond issues, majority vote of electors of city or town required for issuance, Ch. 190
Debt limit for cultural, social, and recreational purpeses — class eight property included, Ch. 136
Fire department relief association disability and pension fund, tax levy to fund — maximum amount of taxable valuation increased, Ch. 553
General obligations, provisions for issuance and revision of present provisions, Ch. 139

CITY OFFICERS OR EMPLOYEES
Economic development organizations, nonprofit — allowing employees to be considered as city employees for purpose of participation in health insurance contracts or plans, Ch. 186
Election of officers for newly incorporated city or town, requirements revised, Ch. 162

CITY OR TOWN CLERK
Sewer charges, delinquent — notice requirement changed and allowing delinquent sewer service assessment list to be filed with department of revenue, Ch. 423

HeinOnline -- 1999 vol. III 3003 1999

CITY TREASURER
Sewer charges, delinquent — notice requirement changed and allowing delinquent sewer service assessment list to be filed with department of revenue, Ch. 423

CIVIL PROCEDURE
User surcharge for funding of court information technology
motor vehicle speed limit violations, fines and bond forfeitures — nonapplicability, Ch. 4, Special Laws of June 1999(Appendix)
termination date extended, Ch. 71

CLINICAL LABORATORY SCIENCE PRACTITIONERS, BOARD OF
Appointments to, SR 4

COAL BOARD
Appointments to, SR 5

COAL TRUST FUNDS
Economic activities, investment in — urging board of investments to reach statutory limit, HJR 6
Health facility authority authorized to administer specific amount from permanent fund for capital projects, Ch. 160
Natural resource damage program, appropriation for, Ch. 504
Science and Technology, Board of — investments made from trust fund, repayment to be redeposited in permanent fund with interest, Ch. 66
Treasure state endowment regional water system fund, allocation for, Ch. 495

CODE COMMISSIONER BILL, Ch. 51

CODE SECTIONS AFFECTED, See TABLE OF CODE SECTIONS AFFECTED, printed separately in this volume

COLLECTIVE BARGAINING
State agency reorganization, significant — public employer representative to petition to redetermine appropriate unit upon, Ch. 176
University system group benefit plan design or modification and establishment of employee premium levels are not mandatory subjects for, Ch. 256

COLUMBIA BASIN ECOSYSTEM MANAGEMENT PROJECT, INTERIOR
Urging federal government to take certain actions concerning, HJR 17

COMMERCE, DEPARTMENT OF
Appropriations, Ch. 328, Ch. 376, Ch. 443, Ch. 517, Ch. 578
Banks, state-chartered — approval to come under national banking regulations, Ch. 100
Building codes
education program, administration and funding, Ch. 473
inspection of elevators, escalators, dumbwaiters, moving walks, material lifts, wheelchair lifts, and stairway chairlifts to ensure compliance with state code, Ch. 565
Condominiums, role in investigating and enforcing unit ownership act eliminated, Ch. 12
Deferred Deposit Loan Act, administration, Ch. 404
Employee ownership development services, responsibility revised, Ch. 10

COMMERCE, DEPARTMENT OF (Continued)

Indian tribes, economic development — clarification of responsibilities, Ch. 512
Internal service fund type fees and charges for 2001 biennium, Ch. 578
Medical gas piping, adoption of certain provisions of national fire protection association code, Ch. 486
Microbusiness development corporations receiving development loans, department to have first lien on all funds and receivables of corporation, Ch. 521
Science and Technology, Board of — investments by, management transferred to board of investments, Ch. 66
Small business licensing coordination provisions, administration responsibilities transferred from, Ch. 54
Tribal representation requested on trade missions and on state boards and commissions promoting state growth and development, HJR 24
Visitor information centers, signs identifying—design requirements, Ch. 417

COMMERCIAL FEEDS
Revision of provisions generally, Ch. 396

COMMUNITY COLLEGE DISTRICTS AND TRUSTEES
Retirement fund levy, imposition only on property within district, Ch. 379

COMMUNITY SERVICE
Revision of provisions generally, Ch. 150

COMPUTERS, See INFORMATION TECHNOLOGY

CONDOMINIUMS
Regulation of units prior to construction eliminated and departmental role in investigating and enforcing Unit Ownership Act eliminated, Ch. 12

CONSERVATION DISTRICTS
Governing body, election or appointment provisions revised, Ch. 254
Revision of provisions generally, Ch. 23

CONSTITUTION OF MONTANA, AMENDMENT
State compensation insurance fund assets, to allow investment, Ch. 516

CONSUMER COUNSEL
Appropriations, Ch. 558, Ch. 578

CONSUMER LOAN BUSINESSES
Clarification of persons that may engage in, establishing loan prepayment charge guidelines, increasing bad check charge, and modifying open-end loan past due provisions, Ch. 270

CONSUMER PROTECTION
Auto glass installation and other repairs — information given by insurers clarified, unfair trade practice established, claims provisions, and discrimination prohibited, Ch. 526
Deferred Deposit Loan Act, Ch. 404
Home Inspection Trade Practices Act, Ch. 276
Hospitals and health care facilities urged to provide consumers with simple and straightforward billing information, HJR 22
Telemarketing Registration and Fraud Prevention Act, Ch. 342

HeinOnline -- 1999 vol. III 3005 1999

CONTRACTS
Construction contracts requiring lien or bond waiver prohibited, Ch. 119
Prompt payment of contractors and subcontractors required, providing interest for delayed payments, allowing costs and attorney fees in actions to enforce payment, and allowing other remedies, Ch. 470

COOPERATIVE MARKETING ASSOCIATIONS
Revision of laws generally, Ch. 130

CORPORATIONS, See also TAXATION, CORPORATIONS
Ballot issue expenditures prohibited, Initiated Referendum No.1(Appendix)
Debts, suing or defending suits on — allowing representation in small claims court by corporate director or officer, Ch. 207
Dissolution or withdrawal certificate, provision for and clarifying that dissolution does not relieve corporation of tax liabilities, Ch. 69
Foreign corporations contracting with state, certificate of authority requirements, Ch. 363
Revision of laws generally, Ch. 229

CORRECTIONAL FACILITIES
Boot camp incarceration program, commitments to — revision of laws, Ch. 505
Clinics, dentists allowed to work in, Ch. 230
Corrections officers — establishment of standards for, certification revocation or suspension, training standards, appropriate basic course attendance required, and termination provisions, Ch. 315
Crimes committed while in official detention, certain criminal offenses apply to and are not limited to crimes committed in state prison, Ch. 126
Private prison facilities, provisions clarified, Ch. 491
Probation, parole, and clemency, See PROBATION, PAROLE, AND CLEMENCY
Regional correctional facilities, provisions clarified, Ch. 491
Sexual assault or sexual intercourse without consent victims — consent ineffective if victim is incarcerated in facility and perpetrator has supervisory or disciplinary authority over victim, unless act is part of lawful search, Ch. 84
State prison ranch, state payment to powell county for operation of, Ch. 550
Women's prison issues, interim study requested, HJR 37
Youth correctional facilities and systems, emergency capacity — authority to determine, Ch. 532
Youth court
youth prosecuted in and later transferred to district court, youth may not be sentenced to adult correctional facility, Ch. 537
youth transferred to district court and found guilty of certain offenses may be committed for longer tban 5 years to department of corrections, Ch. 390

CORRECTIONS, DEPARTMENT OF
Appropriations, Ch. 518, Ch. 557, Ch. 578
Commitments to, revision of laws, Ch. 505
Correctional facilities, responsibilities, See generally CORRECTIONAL FACILITIES

HeinOnline -- 1999 vol. III 3006 1999

CORRECTIONS, DEPARTMENT OF (Continued)

Death penalty execution witnesses, approval required, Ch. 387
Health care or rehabilitative services providers, complaints of unprofessional conduct by persons incarcerated under legal custody of department — submission to review team prior to being filed with licensing board, Ch. 375
Internal service fund type fees and charges for 2001 biennium, Ch. 578
Juveniles, intervention in delinquency pilot program — extension and additional accounts for judicial districts authorized, Ch. 161
Mentally ill persons in custody of, transfer provisions provided, Ch. 247
Sexual and violent offender registration requirements, application of level designations — requirements, Ch. 358
Youth court responsibilities, See generally YOUTH COURT

COSMETOLOGISTS, BOARD OF
Appointments to, SR 4

COUNTIES, See also LOCAL GOVERNMENT
Actions against, clarifying place of trial for, Ch. 128
Barking dog control, ordinances for, Ch. 238
Cities or towns
infrastructure development and maintenance costs, authorization to voluntarily appropriate and transfer funds for, Ch. 86
newly incorporated, county to retain property within as part of tax base for purpose of levying taxes for maintenance of property, Ch. 353
Contracts
purchase of vehicles, machinery, equipment, materials or supplies — bid requirements changed, Ch. 239
resident bidding preference provided, Ch. 252
Courthouse or other county building, county allowed to charge department of revenue for space provided in, Ch. 586
Economic development organizations, nonprofit — allowing employees to be considered as county employees for purpose of participation in health insurance contracts or plans, Ch. 186
Electricity supplier to residential and commercial customers of public utility — allowing cities, counties, and consolidated governments to be default suppliers, Ch. 185
Historically significant buildings or monuments, authorizing sale or donation of property to nonprofit organization or group for restoration or preservation, Ch. 202
Junk vehicle value determinations, responsibility transferred to, Ch. 513
Land
access across public land to private and public land, continuation ensured, Ch. 107
tax deed, acquired by — donation to nonprofit corporations, Ch. 248
Noxious Weed Management Advisory Council, membership revised to include county representatives, Ch. 493
Powell County, state payment for land on which state conducts farming or ranching operation, Ch. 550
Veterans' burial laws, clarification, Ch. 210

HeinOnline -- 1999 vol. III 3007 1999

COUNTY ATTORNEY
Salary
discretionary longevity adjustment, provision for, Ch. 411
state's and county's share, payment provisions revised, Ch. 75
COUNTY CLERK AND RECORDER
Burial plots, recording of sale required, Ch. 336
Construction liens and notice of right to claim, electronic filing allowed, Ch. 357
Property tax reduction applications to be submitted to, Ch. 56
State construction contracts, surety bond filing requirement eliminated, Ch. 303
Tax sale certificate cancellation and certificate of redemption, filing or recording with, Ch. 446
COUNTY COMMISSIONERS, BOARD OF
County road improvement districts, authority expanded, Ch. 319
County roads and bridges
duties clarified, Ch. 440
levy of taxes for establishment and maintenance, clarification, Ch. 320
Detention facility inmate medical costs, funding, Ch. 500
Health, county board of — discretion allowed in setting number of members, Ch. 163
Land acquired by tax deed, donation to nonprofit corporations, Ch. 248
COUNTY CORONER
Death penalty executions, pronouncement of death by — required, Ch. 387
COUNTY FINANCE
City or town park maintenance district, assessment of fee for operation, Ch. 510
County roads and bridges, levy of taxes for establishment and maintenance — clarification, Ch. 320
Detention facility inmate medical costs, funding, Ch. 500
Motor vehicles
local option fee, imposition allowed with voter approval, Ch. 515
local option vehicle tax, increase in permissible tax rate allowed, Ch. 180
Puhlic assistance levy, transfer of funds for purpose of, Ch. 180
COUNTY OFFICERS
Consolidation of offices, eligibility of persons for office, Ch. 60
Deputies, affidavit as to services provided — requirement of signing before receiving paycheck eliminated, Ch. 114
COUNTY PRINTING, BOARD OF
Appointments to, SR 7
COUNTY ROAD IMPROVEMENT DISTRICTS
County commissioners, board of — authority expanded to include road construction in districts and clarifying type of road that can be included, Ch. 319
COUNTY ROADS AND BRIDGES
Levy of taxes for establishment and maintenance, clarification, Ch. 320
Revision of county road laws, generally, Ch. 440

HeinOnline -- 1999 vol. III 3008 1999

COUNTY ROADS AND BRIDGES (Continued)

Weed control, landowner's liability for alternative measures when objecting to weed district control measures, Ch. 433

COUNTY SHERIFF
Execution, sale of property — allowing payment to be accepted by method other than cash, Ch. 89
Motor vehicles, abandoned — responsibilities revised, Ch. 513
Personal property taxes, revision of laws relating to levy and sale for collection, Ch. 197

COURT FUNDING AND STRUCTURE STUDY COMMITTEE, INTERIM, Ch. 584

COURTS GENERALLY
Financial accounts to be kept in interest-bearing accounts in financial institutions and interest used to help defray court's administration costs, Ch. 393

CRIME CONTROL, BOARD OF
Detention centers and holding facilities, inspection program requirements, Ch. 508
Probation and parole officers, corrections officers, and commercial vehicle inspectors — establishment of standards for, certification revocation or suspension, training standards, appropriate basic course attendance required, and termination provisions, Ch. 315

CRIME CONTROL, DIVISION OF
Appropriations, Ch. 328, Ch. 578

CRIMES
Aggravating circumstances, determination to include certain crimes committed in facilities other than the state prison in deer lodge, Ch. 491
Amount required to he involved in various crimes before penalties are enhanced, increase and increase of possible fine for those crimes when amount involved is less than $1,000, Ch. 397
Assault, offenses of
assault with bodily fluid, offense created, Ch. 388
felony assault, renaming to "assault with a weapon" and penalty increased, Ch. 432
minor, assault on — creation of offense, Ch. 432
revision of certain provisions relating to, Ch. 432
Breastfeeding — local government prohibited from adopting ordinances prohibiting and providing that breastfeeding may not be considered a nuisance, indecent exposure, sexual conduct, or obscenity, Ch. 299
Commission while in official detention, certain offenses apply to and are not limited to crimes committed in state prison, Ch. 126
Criminal incitement, offense of — creation and elements to be consistent with constitutional mandates, Ch. 350
Criminal syndicalism, offense of — revision, Ch. 350
Desecration of places of worship, cemeteries, or public memorials as criminal offense, Ch. 141
Drugs, dangerous
criminal distribution, revision of certain provisions relating to, Ch. 432

CRIMES (Continued)
Drugs, dangerous (Continued)
precursors, criminal possession of — list of precursors expanded, Ch. 24
Indecent exposure, offense of — revision, Ch. 288
Machine guns and silencers, provisions revised, Ch. 466
Negligent homicide, incarceration penalty increased, Ch. 381
Schools, notification of youth involved in drug use or other criminal activity and schools to provide education records pertaining to violation of criminal laws by pupils, Ch. 564
Sex offenses, revision of certain laws relating to and providing that reasons other than solely sexual gratification can form hasis for, Ch. 288
Sexual assault — consent of victim ineffective if victim is incarcerated in correctional, detention, or treatment facility and perpetrator has supervisory or disciplinary authority over victim, unless act is part of lawful search, Ch. 84
Sexual intercourse without consent — consent of victim ineffective if victim is incarcerated in correctional, detention, or treatment facility and perpetrator has supervisory or disciplinary authority over victim, unless act is part of lawful search, Ch. 84
Sexual or violent offender registration
addresses to be criminal justice information and dissemination when, Ch. 219
definitions changed and providing that certain offenders may not petition for order relieving them from duty to register after 10 years of registration, Ch. 227
plea agreements subjecting offenders to, authorization and level designation requirements, Ch. 358
real estate brokers and salespersons, disclosure laws revised regarding proximity of offender, Ch. 99
Telephones, interception of communication over any type of telephone as criminal offense, Ch. 354

CRIME VICTIMS AND WITNESSES
Criminal justice policy, principles revised to include public safety and victim restitution, Constitutional Amendment No.33(Appendix)
Surcharge upon criminal convictions, additional imposed for financing local advocate programs and administrative expenses of assessing court, Ch. 398

CRIMINAL JUSTICE INFORMATION
"Fingerprints" defined for purposes of, Ch. 147
National Crime Prevention and Privacy Compact, adoption, Ch. 220
Sexual or violent offender addresses to be, Ch. 219

CRIMINAL JUSTICE POLICY
Principles revised to include public safety and victim restitution, Constitutional Amendment No. 33(Appendix)

CRIMINALLY CONVICTED YOUTH ACT, Ch. 532

CRIMINAL PROCEDURE
Constitutionally protected material, clarification of the showing necessary for the discovery of, Ch. 318
DNA testing provisions, expanding group of porsons subject to and defining terms, Ch. 147

HeinOnline -- 1999 vol. III 3010 1999

CRIMINAL PROCEDURE (Continued)

Guilty verdict or finding of, new trial ordered if required in interest of justice, Ch. 301
Jeopardy attaches when jury is empaneled and sworn, clarification, Ch. 110
Plea of nolo contendere, specific provisions provided, Ch. 395
Sentencing, See SENTENCING AND SENTENCES
Sexual and violent offender registration, authorizing plea agreements subjecting offenders to, Ch. 358
Surcharge upon criminal convictions, additional imposed for financing local victim and witness advocate programs, Ch. 398
Telephone service providers, court order allowing use of pen register or trap and trace device in criminal investigations, Ch. 97
User surcharge for funding of court information technology
motor vehicle speed limit violations, fines and bond forfeitures — nonapplicability, Ch. 4, Special Laws of June 1999(Appendix)
termination date extended, Ch. 71

D

DAIRIES AND DAIRY PRODUCTS
Tax exemption for business personal property and livestock used by industrial dairy and exemption for business personal property used by industrial milk processor, Ch. 555

DAY CARE
Licenses and registration certificates, issuance for 3-year periods allowed when, Ch. 135

DEAF AND BLIND, MONTANA SCHOOL FOR THE
Appropriation, Ch. 578

DEATH CERTIFICATES
Social security number required unless federal government exempts Montana from requirement, Ch. 27

DEATH PENALTY
Execution of sentence, pronouncement of death by county coroner required and witness provisions revised, Ch. 387
Offenders less than 18 years of age at time of commission of a capital offense, abolishment for, Ch. 523

DEFERRED COMPENSATION
Administration transferred to Public Employees' Retirement Board, Ch. 471

DEFERRED DEPOSIT LOAN ACT, Ch. 404

DENTAL HYGIENISTS
Charitable purposes, care or assistance for — limits on liability, Ch. 406

DENTISTRY AND DENTISTS
Charitable purposes, care or assistance for — limits on liability, Ch. 406
Clinics, health centers, or programs for health services for homeless — allowing dentists to work in and substituting word "forfeit" for "revoke" in statutes, Ch. 230

HeinOnline -- 1999 vol. III 3011 1999

DENTISTRY, BOARD OF
Appointments to, SR 4, SR 7

DENTURITRY AND DENTURISTS
Revision of provisions generally, Ch. 230

DETENTION CENTERS
Health care or rehabilitative services providers, complaints of unprofessional conduct by persons detained in center — submission to review team prior to being filed with licensing board, Ch. 375
Inspection program provided for centers and holding facilities, Ch. 508
Juvenile detention officers employed in juvenile detention centers, exemption from basic detention officer training under certain conditions, Ch. 469
Medical costs of inmates, funding for, Ch. 500
Mental disorders, certain persons with — criteria for diversion from detention center clarified, Ch. 247
Sexual assault or sexual intercourse without consent victims — consent ineffective if victim is incarcerated in facility and perpetrator has supervisory or disciplinary authority over victim, unless act is part of lawful search, Ch. 84
Youth detention facilities, educational program for youth held in — requirements, Ch. 536

DEVELOPMENTAL DISABILITIES, PERSONS WITH
Abuse, sexual abuse, neglect, or exploitation provisions — revision generally, Ch. 196
Adult foster care facilities, licensing to provide residential services to certain persons, Ch. 133

DISABILITIES, PERSONS WITH
Driver's license applicants, requirements, Ch. 309
Hunters, disabled — license provisions revised and designated companion to assist blind hunter, Ch. 382
Hunting, allowing adoption of rules to promote or enhance, Ch. 373
Live-in home companionship services for individuals unable to care for themselves, exemption from minimum wage and overtime provisions, Ch. 179
Parking permits, determination of disability may be performed by licensed advanced practice registered nurse, Ch. 156

DISCRIMINATION
Auto glass replacement services, prohibiting discrimination against insured customers for, Ch. 526
Genetic traits as basis for issuance of insurance, prohibiting, Ch. 334

DISEASES
Infectious, emergency services providers' exposure to — clarification of provisions, Ch. 146
Renal, treatment and financial assistance to persons needing — revision of provisions, Ch. 92

DISSOLUTION OF MARRIAGE
Civil filing fees that fund partner and family member assault intervention and treatment fund account, termination date eliminated, Ch. 311

DISSOLUTION OF MARRIAGE (Continued)

Individual retirement account assets to the extent of contribution limits, exemption from execution and exception, Ch. 262
Parenting plans, fees for filing amendments may not be collected if amendment not contested and confidentiality provisions revised, Ch. 545
Retirement system funds, statutory revocation through dissolution inapplicable to, Ch. 562
Social security numbers need not be confidential and waiver of exchange of preliminary disclosure statements allowed, Ch. 545
Summary dissolution procedures, asset criteria revised, Ch. 545

DISTRICT COURTS
Child abuse and neglect proceedings, reimbursement program to pay for certain state district court expenses incurred in, Ch. 394
Civil legal assistance for indigent victims of domestic violence account, establishment and increasing certain fees to fund, Ch. 386
Judicial districts, 22nd district created and providing additional judges for 11th and 20th districts, Ch. 454
Juveniles, granting greater authority over, Ch. 532
Light vehicle tax reduction, distribution to district court fund unchanged, Ch. 180
Reimbursement, supplemental appropriation, Ch. 32
Simonton, Richard A. — appointment as district judge of seventh judicial district in glendive, SR 6
Standing masters, appointment allowed and compensation to be paid by counties, Ch. 167
Wage claims cases, appeal of department of labor and industry hearings examiners' decisions, Ch. 442
Youth court
foster care placements, contingency for payment from reimbursement fund eliminated when, Ch. 394
youth prosecuted in and later transferred to district court, youth may not be sentenced to adult correctional facility, Ch. 537
youth to be tried as adult in district court, hearing to be held before making decision, Ch. 523
youth transferred from and found guilty of certain offenses may be committed for longer than 5 years to department of corrections, Ch. 390

DNA TESTING
Expanding group of persons subject to and defining terms, Ch. 147

DOGS
County regulation of barking dogs, Ch. 238

DOMESTIC VIOLENCE, See PARTNER OR FAMILY MEMBER ASSAULT VICTIMS

DOUBLE JEOPARDY
Criminal prosecutions, jeopardy attaches when jury is empaneled and sworn — clarification, Ch. 110

DRAINAGE DISTRICTS
Contracts awarded by competitive bids, minimum value increased, Ch. 96

DROUGHT ADVISORY COMMITTEE
Meeting date and report deadline requirements changed, Ch. 17
DRUGS AND CONTROLLED SUBSTANCES AND DEVICES
Dangerous drugs
ambulatory surgical facilities, registration as entities allowed to possess — requiring adoption of rules for, Ch. 273
criminal distribution, revision of certain provisions relating to, Ch. 432
ephedrine, immediate accessibility by licensed physician allowed, Ch. 253
precursors to, criminal possession — list of precursors expanded, Ch. 24
Medicare program, congress and executive branch of united states government urgod to take action to require coverage of long-term care and prescription drug costs by, SJR 5
Schools, notification of youth involved in drug use or other criminal activity, Ch. 564
DUE PROCESS
Criminally Convicted Youth Act, additional due process granted by, Ch. 532

E

ECONOMIC DEVELOPMENT
Certified communities program, tribal government participation allowed, Ch. 268
Native American Economic Development Act of 1999, Ch. 512
Nonprofit organizations, allowing employees to be considered as city or county employees for purpose of participation in health insurance contracts or plans, Ch. 186
EFFECTIVE DATES, SPECIAL, See TABLES OF EFFECTIVE DATES, printed separately in this volume
ELECTION ADMINISTRATOR
Internet, registration and voting actions for overseas olectors — authorization, Ch. 80
Write-in candidates, declarations for nomination or of intent — filing provisions, Ch. 40
ELECTIONS, See also BALLOT ISSUES; SCHOOL ELECTIONS
Absentee voting
certain restrictions removed, Ch. 151
federal write-in ballot provisions for overseas united states service members clarified and allowing transmission envelope to be used as voter registration form and as application for regular absentee ballot when, Ch. 164
Campaign laws declared to be invalid — clarifying applicability, eliminating restrictions on seeking votes on election day, and eliminating negligent misrepresentation of candidate's voting record as crime, Ch. 352
City or town
bond issues, majority vote of electors required for issuance, Ch. 190
officers for newly incorporated city or town, requirements revised, Ch. 162

HeinOnline -- 1999 vol. III 3014 1999

ELECTIONS (Continued)

Fire department relief association disability and pension fund, tax levy increase submitted to electorate when, Ch. 553
Internet, registration and voting actions for overseas electors — authorization, Ch. 80
Motor vehicles, local option vehicle tax — for imposition, Ch. 180
Municipal general obligations, authorization for limited amounts without submitting to electors, Ch. 139
National Voter Registration Act, revising laws relating to implementation of, Ch. 208
Precinct officers, filing and vote counting requirements revised, Ch. 129
President and vice president of United States, revising requirements for nomination of certain candidates for, Ch. 193
Voter registration form — removing requirement that form explaining qualifications, deadlines, and purge information be distributed with, Ch. 39
Write-in candidates, declarations for nomination or of intent — filing provisions, Ch. 40

ELECTRICAL BOARD, STATE
Appointments to, SR 4
Job site, failure of person to display license at — compliance officers to issue citations and collect fines, Ch. 402
Temporary practice permits, renewal permitted on case-by-case basis, Ch. 203

ELECTRICAL GENERATION TAX REFORM ACT, Ch. 556

ELECTRICIANS
Job site, failure to display license at — citation and fine provisions, Ch. 402

ELECTRICITY BUYING COOPERATIVE ACT, Ch. 575

ELECTRONIC FUNDS TRANSFERS
Gasoline and vehicle fuels tax payments and associated fees, penalties, and interest — use of transfers when, Ch. 77

ELECTRONIC TRANSACTIONS WITH STATE AGENCIES AND LOCAL GOVERNMENT UNITS ACT, Ch. 365

EMERGENCIES AND EMERGENCY POWERS
Fire, mitigating disasters and emergencies caused by — statutory appropriation combined with appropriation for mitigating disasters caused by all other causes, Ch. 55
Schools encouraged to cooperate and coordinate with emergency services agencies in identifying local bazards, designing appropriate drills, and developing emergency management plans, HJR 20
State Emergency Response Commission, membership provisions revised and provision for presiding officers, Ch. 45
Telephone company's release of information to emergency communications systems personnel, clarification, Ch. 242

EMERGENCY MANAGEMENT ASSISTANCE COMPACT
Adoption, Ch. 175

HeinOnline -- 1999 vol. III 3015 1999

EMERGENCY MEDICAL SERVICES
American Red Cross, state employees as volunteers providing disaster relief volunteer service — granting of paid leave for, Ch. 225
Infectious diseases, exposure to — clarification of provisions, Ch. 146

EMINENT DOMAIN
Interim study of use of power of and existing statutes related to, HJR 34

ENERGY
State building energy conservation program, bond issue to fund and approval of projects, Ch. 50

ENGINEERS AND LAND SURVEYORS
Real property improvements, actions arising from — land surveying included and subject to limitations on, Ch. 62

ENVIRONMENTAL CONTROL EASEMENT ACT, Ch. 503

ENVIRONMENTAL PROTECTION
Air quality portable emission source permit transfers, exemption from review process, Ch. 221
Environmental Policy Act, interim study requested, SJR 18
Environmental quality protection fund, recovered funds from natural resource damage assessment and litigation — deposit prohibited, Ch. 504
Transfer of ownership clarified, environmental statements or review action or challenge limitations, and exemptions created for state land actions, Ch. 223

ENVIRONMENTAL QUALITY COUNCIL
Contaminated properties, requesting coordination with other agencies to study need for and utility of tax and other financial incentives to encourage voluntary cleanup and redevelopment of, HJR 3
Environmental Policy Act, interim study requested, SJR 18
Streamside corridor and riparian management, coordination of best management practice educational information, Ch. 275
Water policy duties, adding assistance with interagency coordination, Ch. 275
Water pollution, nonpoint source — recommending that state agencies serve as role models for implementation and refinement of best management practices to reduce and recommending relevant agencies report progress and accomplishments to council, SJR 3

ENVIRONMENTAL QUALITY, DEPARTMENT OF
Appropriations, Ch. 49, Ch. 50, Ch. 328, Ch. 578
Hazardous wastes, duties and responsibilities, See generally HAZARDOUS WASTES
Internal service fund type fees and charges for 2001 biennium, Ch. 578
Occupational health provisions, responsibilities transferred from, Ch. 25
Plumbers, Board of — membership on, Ch. 57
Research and information responsibilities, incorporating use of new technology, Ch. 511
Septage disposal, authority for establishing requirements and licensure of persons engaged in, Ch. 378
Underground storaga tanks
closure of certain tanks authorized, Ch. 506

ENVIRONMENTAL QUALITY, DEPARTMENT OF (Continued)
Underground storage tanks (Continued)
licensing and permitting responsibilities transferred from, Ch. 54
Utilities, universal system benefits programs funds — administration, Ch. 580
Water quality monitoring, assessment, and TMDL development — requirements expanded for consultations with statewide TMDL advisory group, Ch. 93

ENVIRONMENTAL REVIEW, BOARD OF
Appointments to, SR 5, SR 7
Water quality and public water supply, repeal of provisions related to control of certain funds, Ch. 195

ESTATES AND PROBATE, See also TAXATION, ESTATES
Court information technology, user surcharge for funding — termination date extended, Ch. 71
Nonprobate transfer provisions, public retirement system provisions to supersede, Ch. 562
Public administrator who is appointed conservator of estate, compensation revised, Ch. 235
Revision of provisions generally, Ch. 290
Small estates for which personal property can be collected by affidavit, value increased, Cb. 234

ESTOPPEL
Unemployment insurance benefits, collateral estoppel provision provided to prohibit decisions pertaining to benefits from being used in related disputes, Ch. 442

EXAMINERS, BOARD OF
General obligation bonds, creation of necessary funds and accounts for issuance, Ch. 3

EXECUTION
Individual retirement account assets to the extent of contribution limits, exemption from and exception, Ch. 262
Motor vehicles, exemption — value increased, Ch. 237
Revision of provisions generally, Ch. 89

F

FACILITY SITING
Pipelines, in-state — exemption when used exclusively for irrigation of agricultural crops, Ch. 13

FINGERPRINTS
Criminal justice information, defined for purposes of, Ch. 147

FIREARMS, See generally WEAPONS

FIRE DEPARTMENT RELIEF ASSOCIATIONS
Disability and pension fund, tax levy to fund — maximum amount of taxable valuation increased and submitting tax increase to electorate when, Ch. 553

HeinOnline -- 1999 vol. III 3017 1999

FIRE DEPARTMENTS AND FIREFIGHTERS
Insurance, group disability — renewal or continuation of coverage for spouse or dependents when firefighter dies within course and scope of employment, Ch. 178

FIRES AND FIRE PROTECTION
Mitigating disasters and emergencies caused by, statutory appropriation combined with appropriation for mitigating disasters caused by all other causes, Ch. 55
Rural fire district and rural fire service area governing bodies, election or appointment provisions revised, Ch. 254

FIREWORKS
Sale allowed on December 30 and 31, 1999, Ch. 284

FISH AND WILDLIFE
Bull trout and cutthroat trout enhancement program, creation, Ch. 529
Falconers prohibited from using certain listed species for sport of falconry, Ch. 383
Fishing
legion of valor members allowed to fish with conservation license, Ch. 35
vessels, restriction of operation in proximity of anglers or divers revised, Ch. 569
Fishing access sites
fishing license fee revenue for operation and maintenance, termination date extended on requirement, Ch. 109
maintenance or development project provisions revised and motorized camping and use of certain off-highway vehicles disallowed when, Ch. 474
Fish pond licenses for persons owning or lawfully controlling an artificial lake or pond or private fish pond, Ch. 108
Fish, supporting balance of needs of native anadromous fish and resident fish and wildlife through the use of science-based integrated rule curves, SJR 20
Fort Peck multispecies fish hatchery, establishment, Ch. 559
Future fisheries improvement program, termination date extended and review panel membership revised, Ch. 529
Game farms and game farm animals changed to alternative livestock ranches and alternative livestock, Ch. 574
Grizzly bears — objecting to release into selway-bitterroot wilderness and frank church river-of-no-return wilderness, urging end to population management control by united states fish and wildlife service, urging return of management to state agencies, requesting removal from threatened or endangered species list, and urging acceptance of liability for damages from recovery
Hunter education laws, revision generally, Ch. 499
Hunter management and hunting access enhancement management programs, revision, Ch. 544
Hunting
disabilities, persons with — allowing adoption of rules to promote or enhance hunting by, Ch. 373

FISH AND WILDLIFE (Continued)
Hunting (Continued)
disabled hunters, license provisions revised and designated companion to assist blind hunter, Ch. 382
landowner permission required for all hunting and requiring development of land ownership maps identifying boundaries, Ch. 48
motion-tracking devices, electronic — use prohibited, Ch. 366
12-year-old persons, by — clarification, Ch. 533
vessels, restriction of operation in proximity of waterfowl hunters revised, Ch. 569
violations, penalties revised, Ch. 499
Illegally killing or possessing game animals, restitution and penalties revised, Ch. 502
Licenses and licensing
applications to include social security number, Ch. 29
class B-11 resident-sponsored deer combination licenses, issuance revised, Ch. 544
disabled hunters, provisions revised, Ch. 382
fishing license fees reserved for fishing access sites, allocations and prioritization and expenditure — termination date extended and report required, Ch. 109
hunting, preference system — establishment and fee for nonresidents participating in system for deer and elk permits, Ch. 533
upland game bird licenses, nonresident
cost increased and use of revenue, Ch. 544
limiting number sold, awarding through drawing, rules for group license applications, and fee increase, Ch. 525
youth combination sports license, establishment, Ch. 568
Nongame wildlife programs, income tax checkoff system — threshold amount that triggers termination revised, Ch. 321
Outfitters and guides, See OUTFITTERS AND GUIDES
Red Rock Lakes National Wildlife Refuge and Wilderness Area, reserved water rights compact between united states fish and wildlife service and state of Montana, Ch. 347
Resources conservation and management, request for interim committee to study sources and levels of funding for and to study historic and current departmental responsibilities, HJR 33
Roadside menageries and zoos, provisions revised and creating wild animal menageries, Ch. 322
Shooting ranges, grants for establishment and improvement, Ch. 475
Species, sensitive or rare — requiring implementation of programs that assist in maintenance or recovery and requiring balance with economic and social impacts when entering federal agreements or commenting on federal recovery plans, Ch. 369
Warm water game fish surcharge and stamp, creation and use, Ch. 559
FISH, WILDLIFE, AND PARKS COMMISSION, See also FISH AND WILDLIFE
Appointments to, SR 5
Disabilities, persons with — allowing adoption of rules to promote or enhance hunting by, Ch. 373
Orders and rules, providing penalties for violators, Ch. 499
Personal watercraft, rules for operation and prohibition of use, Ch. 569

HeinOnline -- 1999 vol. III 3019 1999

FISH, WILDLIFE, AND PARKS — DEPARTMENT OF, See also FISH AND WILDLIFE
Appropriations, Ch. 328, Ch. 475, Ch. 529, Ch. 557, Ch. 578
Blackfoot River use and conflict, comprehensive study to be made, Ch. 272
Bull trout and cutthroat trout enbancement program, administration, Ch. 529
Game Wardens' and Peace Officers' Retirement System, administrative fee eliminated, Ch. 286
Hunter education class for adults, establishment, Ch. 499
Internal service fund type fees and charges for 2001 biennium, Ch. 578
Orders and rules, providing penalties for violators, Ch. 499
Outfitters and guides, See OUTFITTERS AND GUIDES
Resources conservation and management, request for interim committee to study sources and levels of funding for and to study historic and current departmental responsibilities, HJR 33
Species, sensitive or rare — requiring implementation of programs that assist in maintenance or recovery and requiring balance with economic and social impacts when entering federal agreements or commenting on federal recovery plans, Ch. 369
Warm water game fish surcharge accounts, administration, Ch. 559
Water leasing program, instream flow — term extended, Ch. 123
Water project lands, allowed lease terms for public recreational use extended, Ch. 121

FLATHEAD BASIN COMMISSION
Governor's staff appointee to serve as executive director — requirement removed, allowing hiring of staff, and eliminating account, Ch. 243

FOOD AND FOOD PRODUCTS
Bread, butter, milk, flour, and like products — unnecessary regulations limiting unit size eliminated, Ch. 15

FOOD ESTABLISHMENTS
Beer and wine license provisions revised, Ch. 324

FOOTPATHS AND BICYCLE TRAILS
State special revenue fund for funding, eliminating use, Ch. 297

FORCIBLE ENTRY OR FORCIBLE OR UNLAWFUL DETAINER
Summons and complaint, revising time for appearing and answering, Ch. 231

FOREIGN CAPITAL DEPOSITORIES
Assessment payments, distribution to individual income taxpayers for income tax relief, Ch. 501

FORESTS AND FORESTRY
Federal land — urging full funding of payments in lieu of taxes, the proper harvest of allowable sale quota for timber, and renewal of compact with state and local governments to contribute fair share of taxes on, HJR 19
National forest road closures and obliteration, requesting current federal policies be suspended and that congress reaffirm directives that forest lands be managed in accordance with plans that provide for multiple-use managoment, HJR 26

HeinOnline -- 1999 vol. III 3020 1999

FORESTS AND FORESTRY (Continued)
Off-highway vehicles, use allowed on certain forest development roads and exempting certain young drivers from licensing requirements, Ch. 95
State lands, forest land report by board of land commissioners to trust beneficiaries — requirements, Ch. 462
State trust lands, timber conservation license in lieu of sale of timber, Ch. 224
Timber slash, control and management requirements revised, Ch. 279
FORT PECK DAM
Multispecies fish batchery near, establishment, Ch. 559
FRATERNAL BENEFIT SOCIETIES
Genetic information — standards for collection, use, and disclosure, Ch. 334
FUNERALS
Funeral service laws revised and funeral plan trusts established, Ch. 336
FUNERAL SERVICE, BOARD OF
Appointments to, SR 4

G

GAMBLING
Alcobolic beverage licenses
publicly owned, eligibility for certain gambling activities, Ch. 263
resort area all-beverages licenses, resort area gambling machine permits limited, Ch. 325
Casino night, casb prizes allowed and limitation on and allowing night to be held on two separate occasions, Ch. 171
Video gambling machines, automated accounting and reporting system, Ch. 424
GAME FARM ADVISORY COUNCIL
Renaming as Alternative Livestock Advisory Council, Ch. 574
GAME WARDENS
Insurance, group disability — renewal or continuation of coverage for spouse or dependents when officer dies within course and scope of employment, Ch. 178
GAME WARDENS' AND PEACE OFFICERS' RETIREMENT SYSTEM
Optional benefits, certain benefits to revert back to regular retirement benefits upon member's request if contingent annuitant dies or marriage is dissolved and settlement or family law order does not entitle them to optional benefit, Ch. 217
GAS, See OIL AND GAS; TAXATION, GASOLINE AND VEHICLE FUELS
GENERAL APPROPRIATIONS ACT OF 1999, Cb. 578
GENETIC INFORMATION
Insurance — standards for collection, use, and disclosure in issuance, Ch. 334
GOVERNOR
Appointments by, SR 4, SR 5, SR 6, SR 7
Appropriation, Ch. 578

HeinOnline -- 1999 vol. III 3021 1999

GOVERNOR (Continued)

Concealed weapon permit reciprocity agreements, authority eliminated, Ch. 476
Crow Tribe-Montana Compact, agreement concerning, Ch. 1, Special Laws of June 1999(Appendix)
Flathead Basin Commission appointee to serve as executive director of commission, requirement removed, Ch. 243
Local Coal Impact Review Council, creation, Ch. 376
Organic certification program, plan for establishment — submission to federal government, Ch. 172
State-Tribal Economic Development Commission, Ch. 512
Tribal representation requested on trade missions and on state boards and commissions promoting state growth and development, HJR 24
Wild medicinal plants, moratorium on harvest or removal from stato lands — notification and memorandum of understanding requirements, Ch. 380

GRAZING
State land leasing methods revised, Ch. 5

GRAZING DISTRICTS
Revision of provisions generally and creation of Montana Grass Conservation Commission, Ch. 401

GUARDIANS AND GUARDIANSHIP
Minor, appointment for — circumstances clarified, Ch. 290
Youth in need of care, appeintment for — petition, revocation, and financial subsidies, Ch. 428

GUEST RANCHES
Seasonal establishment and small establishment, definitions revised as they apply to licensing provisions, Ch. 264

H

HAIL INSURANCE, BOARD OF
Appointments to, SR 4, SR 7

HARD ROCK MINING IMPACT BOARD
Appointments to, SR 5

HAZARDOUS WASTES
Corrective action order authority provided to Department of Environmental Quality, Ch. 425
Environmental Control Easement Act, Ch. 503
Hazardous waste/CERCLA special revenue account, recovered funds from natural resource damage assessment and litigation — deposit prohibited, Ch. 504
Health, local boards of — authorization to adopt and enforce institutional controls at federal superfund sites and at sites regulated under CERCLA, Ch. 137
Petroleum tank release cleanup fund, reimbursement from — eligibility requirements modified, Ch. 420
Remedial actions, institutional control provisions established and orphan share clarified, Ch. 437

HAZARDOUS WASTES (Continued)

Underground storage tanks
inspections required, closure of certain tanks authorized, and fee increased for certain tanks, Ch. 506
installer licensing and permitting to include tank inspectors, Ch. 506
licensing and permitting responsibilities transferred, Ch. 54

HEALTH CARE FACILITIES
Ambulatory surgical facilities, registration as entities allowed to possess dangerous drugs — requiring adoption of rules for, Ch. 273
Billing information, facilities urged to provide consumers with simple and straightforward information, HJR 22
Revision of provisions generally, Ch. 98

HEALTH CARE INFORMATION
Cap on amount health care provider may charge for copying, Ch. 300
Constitutionally protected material, clarification of the showing necessary for the discovery of, Ch. 318
Insurance institutions, insurance producers, or insurance-support organizations — restricting disclosure, Ch. 212
Workers' compensation claims, clarification of disclosure related to, Ch. 480

HEALTH CARE PROFESSIONALS
Motor vehicles — exemption from foreign vehicle registration for persons practicing in rural, medically underserved areas, Ch. 246

HEALTH FACILITY AUTHORITY
Appointments to, SR 5
Coal tax trust fund, authority to administer specific amount for capital projects, Ch. 160

HEALTH INSURANCE, See INSURANCE, DISABILITY

HEALTH, LOCAL BOARDS OF
City-county boards, authority for joint creation extended to all classes of cities, Ch. 47
County commissioners, board of — discretion allowed in setting number of members of county board of health, Ch. 163
Federal superfund sites and sites regulated under CERCLA, authorization to adopt and enforce institutional controls at, Ch. 137

HEALTH MAINTENANCE ORGANIZATIONS
Charges, explanation of determination to be provided by insurer, Ch. 134
Comprehensive Health Association
notification requirement, providing, Ch. 173
membership required, Ch. 528
Genetic information — standards for collection, use, and disclosure, Ch. 334
Peace officers, game wardens, firefighters, or volunteer firefighters dying within course and scope of employment — renewal or continuation of coverage for spouse or dependents, Ch. 178
Phenylketonuria, coverage revised to include all inborn errors of metabolism and requiring coverage for medical foods, medical supplies, prescription drugs, and certain corrective lenses, Ch. 434

HEALTH SERVICE CORPORATIONS
Charges, explanation of determination to be provided by insurer, Ch. 134

HeinOnline -- 1999 vol. III 3023 1999

HEALTH SERVICE CORPORATIONS (Continued)

Genetic information — standards for collection, use, and disclosure, Ch. 334
Naturopathic physicians, coverage for services provided by, Ch. 459
Peace officers, game wardens, firefighters, or volunteer firefighters dying within course and scope of employment — renewal or continuation of coverage for spouse or dependents, Ch. 178

HEARING AID DISPENSERS
Dispensing fees revised, Ch. 230

HEARING AID DISPENSERS, BOARD OF
Appointments to, SR 4

HIGHER EDUCATION, COMMISSIONER OF
Appropriation, Ch. 578
University system employee group benefit plans, development authorized, Ch. 256
Vocational and technical education state plan, requiring superintendent of public instruction and commissioner to work cooperatively on, Ch. 460

HIGHWAY PATROL OFFICERS' RETIREMENT SYSTEM
Purchase of service for periods of illness or injury, provision for, Ch. 562

HIGHWAYS
Construction and work zones, speed limit signs — posting requirements revised, Ch. 430
Contracts for highway projects with bidders whose operations are not headquartered in United States prohibited unless reciprocity agreement is in place and exception, Ch. 306
Federal surface transportation program, authorizing use of federal secondary highway and urban highway funds for, Ch. 298
Financial districts, apportioned primary highway system funds — allowing transfer within and between, Ch. 177
Motor vehicle regulations, See generally MOTOR VEHICLES AND TRAFFIC REGULATIONS
Scenic-historic byways program, creation, Ch. 546
Secondary roads, paved — revision of laws concerning, Ch. 542
Visitor information centers, signs identifying — requirements, Ch. 417
Weed control
highway nonrestricted account, transfer from — for, Ch. 493
landowner's liability for alternative measures when objecting to weed district control measures, Ch. 433

HISTORICAL SOCIETY
Appropriations, Ch. 329, Ch. 578
Board of trustees, appointments to, SR 4

HISTORIC SITES
Historically significant buildings or monuments in counties or cities and towns, authorizing sale or donation of property to nonprofit organization or group for restoration or preservation, Ch. 202

HOLMES, J.D.
Resolution honoring life and career, HJR 36

HOME INSPECTION TRADE PRACTICES ACT, Ch. 276

HORSERACING, BOARD OF
Appointments to, SR 4, SR 5

HOSPITAL DISTRICTS
Governing body, election or appointment provisions revised, Ch. 254

HOUSE BILL TO CHAPTER NUMBER TABLE, See TABLE OF HOUSE BILL TO CHAPTER NUMBR, printed separately in this volume

HOUSING, BOARD OF
Affordable housing loan fund, establishment and administration, Ch. 312
Appointments to, SR 5
Rental housing for lower-income tenants, allocation of low-income housing tax credits to owner to qualify property tax exemption, Ch. 452

HOUSING LOAN FUND, AFFORDABLE, Ch. 312

HUMAN RIGHTS, COMMISSION FOR
Appointments to, SR 5

I

INDIAN AFFAIRS, COMMITTEE ON
Elimination, Ch. 19
Indian Affairs, State Commission on — request to study proposal to create, HJR 12

INDIAN AFFAIRS, STATE COORDINATOR OF
Economic development, assistance to tribes — clarification of responsibilities, Ch. 512

INDIANS
Crow Tribe-Montana Compact, Ch. 3, Special Laws of June 1999(Appendix) implementation, Ch. 1, Special Laws of June 1999(Appendix)
Cultural heritage, state's recognition and commitment to establish educational goals that will preserve cultural integrity — implementation of constitutional provisions, Ch. 527
Economic development, certified communities program — participation allowed, Ch. 268
Family assistance plan under Personal Responsibility and Work Opportunity Reconciliation Act of 1996, state funding provided to tribes that implement, Ch. 509
Native American Economic Development Act of 1999, Ch. 512
Procurement, state — cooperative purchasing provisions to include participation by tribal procurement unit, Ch. 200
"Squaw" — state agencies to identify all geographic features and places using the term and to remove from maps, signs, or markers when updating or replacing and providing for appointment of advisory group to develop replacement names, Ch. 307
Trade missions and state boards and commissions promoting state growth and development, request for tribal representation on, HJR 24
Transportation Commission membership revised to include one member having specific knowledge of indian culture and tribal transportation needs, Ch. 587

INDIANS (Continued)

Treasure state endowment program, participation allowed, Ch. 268
Wild medicinal plants, moratorium on harvest or removal from state lands — notification and memorandum of understanding requirements, Ch. 380

INDUSTRIAL DISTRICTS, TAX INCREMENT FINANCING, Ch. 563
Appropriation, Ch. 2, Special Laws of June 1999(Appendix)

INDUSTRIAL HEMP
Agricultural and industrial product, as — federal government requested to repeal restrictions on production of, HR 2

INFORMATION TECHNOLOGY
Construction liens, electronic filing of lien and notice of right to claim, Ch. 357
Courts, user surcharge for funding — termination date extended, Ch. 71
Driving records contained in computer storage devices, use of certified reproductions allowed, Ch. 309
Elections
registration and voting actions through internet for overseas electors authorized, Ch. 80
write-in candidates, filing of declarations for nomination or of intent, Ch. 40
Electronic transactions with state agencies and local government units, provision for, Ch. 365
Environmental Quality, Department of — research and information responsibilities, incorporating use of new technology, Ch. 511
General obligation bonds issued for projects and appropriation of proceeds, Ch. 519
Legislative Finance Committee, interim information technology management study, Ch. 578
Public records, public access to nonprint records — revision of laws related to, Ch. 405
State agencies using electronic mail to accept public comment electronically and dissemination of electronic mail address and documents required and fees prohibited, Ch. 484
Telecommunications services, avoidance of chargos for — providing that it is a crime to publish certain information by computer to aid in, Ch. 354
Telemedicine certificate, requirements and exceptions, Ch. 371
Telephone company license tax, internet access services not taxable under, Ch. 535
Workers' compensation insurers, submittal of reports, Ch. 377

INSURANCE
Fraud provisions, automobile glass — violator of prohibition against offering form of incentive or rebate to pay deductible related to sale, repair, or replacement subject to, Ch. 174
Information and privacy protection provisions, revision, Ch. 212
Revision of laws generally, Ch. 472
Service contract insurance, mechanical breakdown insurance, prepaid legal plan, involuntary unemployment insurance, gap insurance, and gap amount — definitions provided, Ch. 472
Violations of insurance code, statute of limitations provided for actions for, Ch. 331

HeinOnline -- 1999 vol. III 3026 1999

INSURANCE, CASUALTY
Automobile glass
installation and other repairs — information given by insurers clarified, unfair trade practice established, claims provisions, and discrimination prohibited, Ch. 526
prohibition against offering form of incentive or rebate to pay deductible related to sale, repair, or replacement —clarification, Ch. 174
Cancellation or nonrenewal prohibited on basis of single loss when, Ch. 364
INSURANCE, COMMISSIONER OF, See also specific INSURANCE heading
Comprehensive Health Association Board, membership authority and provisions revised, Ch. 173
Life insurance policy and sales illustrations and annuity disclosure, adoption of rules pertaining to, Ch. 76
INSURANCE, DISABILITY
Charges, explanation of determination to be provided by insurer, Ch. 134
Chemical dependency benefits, mandatory — changing inpatient, outpatient, and lifetime benefits and excluding medical detoxification, Ch. 477
Children's health insurance program
enactment of children's health insurance program act and providing funding for, Ch. 571
simplified application and process for eligibility for various health care programs, requiring development and implementation, Ch. 215
Child support, parents ineligible for health insurance — monthly medicaid reimbursement requirement deleted, Ch. 579
Comprehensive Health Association and board
establishing fixed annual assessment amount, allowing borrowing from board of investments, allocating tobacco settlement funds for programs, and requiring health maintenance organizations to be members, Ch. 528
provisions revised and providing notification requirement for health maintenance organizations, Ch. 173
Economic development organizations, nonprofit — allowing employees to be considered as city or county employees for purpose of participation in health insurance contracts or plans, Ch. 186
Genetic information — standards for collection, use, and disclosure, Ch. 334
Group disability or group hospital or medical service plans, conversion provisions revised, Ch. 228
Health care treatment decisions, responsibilities of health carriers and managed care entities, Ch. 482
Legislators involuntarily terminated because of term limits, continuation of health insurance benefits, Ch. 558
Mental illness, severe — parity of coverage for, Ch. 348
Multiple employee welfare arrangements, applicability of mandatory coverage for inborn errors of metabolism, Ch. 434
Naturopathic physicians, addition to freedom of choice in selection provision, Ch. 459
Peace officers, game wardens, firefighters, or volunteer firefighters dying within course and scope of employment — renewal or continuation of coverage for spouse or dependents, Ch. 178

HeinOnline -- 1999 vol. III 3027 1999

INSURANCE, DISABILITY (Continued)

Phenylketonuria — coverage revised to include all inborn errors of metabolism and requiring coverage for medical foods, medical supplies, prescription drugs, and certain corrective lenses, Ch. 434
Small employer health insurance
carriers prohibited from considering as eligible employees those who have waived coverage because of other existing health insurance coverage, Ch. 87
individual health benefit plan, not applicable if eligible employee or dependent is reimbursed by small employer for any part of plan premiums when, Ch. 403
reinsurance program and board eliminated and providing transition for persons already ceded to reinsurance program, Ch. 103
State employee group benefits, state contribution increased, Ch. 558

INSURANCE, LIFE
Policy and sales illustrations and annuity disclosure, adoption of rules pertaining to, Ch. 76

INSURANCE PRODUCERS, ADJUSTERS, CONSULTANTS, AND ADMINISTRATORS
Continuing education, course review and late renewal fees — establishing in statute rather than by rule, Ch. 316
Information and privacy protection provisions, revision, Ch. 212

INSURANCE, PROPERTY
Automobile glass
installation and other repairs — information given by insurers clarified, unfair trade practice established, claims provisions, and discrimination prohibited, Ch. 526
prohibition against offering form of incentive or rebate to pay deductible related to sale, repair, or replacement — clarification, Ch. 174
Cancellation or nonrenewal prohibited on basis of single loss when, Ch. 364

INSURERS REGULATION GENERALLY
Fees and license fees, replacement with flat fee, Ch. 316
Genetic information — standards for collection, use, and disclosure, Ch. 334
Investments by, revision of provisions generally, Ch. 304

INTERIM STUDIES
Cluster development and preservation of agricultural land or open space, options that could be implemented by local governments to provide incentives for, SJR 21
Committee functions and process revised, Ch. 19
Competition by state political subdivisions with private sector, effects of, Ch. 478
Contracts with private sector vendors, of state's laws and procedures that govern, SJR 9
Eminent domain, use of power of and existing statutes related to, HJR 34
Firearms records checks of purchasers, methods for state law alternative method for, Ch. 581
Fish and wildlife resources conservation and management, sources and levels of funding for and historic and current departmental responsibilities, HJR 33

HeinOnline -- 1999 vol. III 3028 1999

INTERIM STUDIES (Continued)

Indian Affairs, Committee on — proposal to create a state commission on indian affairs, HJR 12
Judicial districts, necessity of redistricting, Ch. 338
Juvenile probation officer employment and salary issues, HJR 38
Legislative deliberations, possibility of broadcasting, HJR 18
Local governments and local officials, of laws affecting, HJR 29
Mortgage lending and requiring licensure for lenders, Ch. 576
Sentencing statutes, data information collection and management, and issues related to, SJR 14
State information technology management, by legislative finance committee, Ch. 578
University system, education interim committee to study administration and funding of, SJR 16
Women's prison issues, HJR 37
Workers' compensation, current level of benefits paid to injured workers and the frequency of indemnity claims, SJR 15

INTERNET, See generally INFORMATION TECHNOLOGY

INVESTMENTS, BOARD OF
Appointments to, SR 4, SR 5
Coal tax trust funds, investment in economic activities — urging board to reach statutory limit, HJR 6
Comprehensive Health Association, borrowing from board allowed, Ch. 528
Infrastructure loan amounts — reducing minimum amount, reduction in minimum number of jobs created, and increase in maximum amount, Ch. 64
Positions for which board may establish salaries clarified and authority to repair property owned by board eliminated , Ch. 330
Science and Technology, Board of — investments by, management transferred from department of commerce, Ch. 66

IRRIGATION
Pipelines, in-state — exemption from facility siting when used exclusively for irrigetion of agricultural crops, Ch. 13

IRRIGATION DISTRICTS
Board of control, member at large may be nonlandowner representative of person or entity receiving water from a member district, Ch. 143
Governing body, election or appointment provisions revised, Ch. 254

J

JOB CREATION LOAN PROGRAM
Job credit interest rate reduction for participation, requirement removed that only small businesses may receive, Ch. 64

JUDGES AND JUSTICES, See also specific court
Retired judges or justices called for duty, compensation revised, Ch. 233

HeinOnline -- 1999 vol. III 3029 1999

JUDGES' RETIREMENT SYSTEM
Appropriation, Ch. 32
Optional benefits, certain benefits to revert back to regular retirement benefits upon member's request if contingent annuitant dies or marriage is dissolved and settlement or family law order does not entitle them to optional benefit, Ch. 217

JUDGMENTS AND DECREES
Legislative caucus litigation, judgment for costs and fees — appropriation for, Ch. 1
Lien foreclosure, lienholder required to pay attorney fees in addition to costs if lienholder rejects defendant's offer of judgment, Ch. 240
Public contracts, providing that state's liability for interest and attorney fees provided in chapter 508, laws of 1997, is retroactive to and applies to contracts in effect on may 1, 1997, Ch. 413
Statute of limitations for commencement of action upon, conformance to other limitation periods when rendered in court not of record, Ch. 101

JUDICIAL BRANCH
Appropriations, Ch. 328, Ch. 558, Ch. 578

JUDICIAL DISTRICTS
Redistricting, interim study of necessity, Ch. 338
22nd judicial district, creation and providing additional judges for 11th and 20th districts, Ch. 454

JURIES AND JURORS
City or justice's courts, misdemeanor cases — defendant not limited to single jury trial, Ch. 346
Clarification of provisions and out-of-date provisions deleted, Ch. 241
Criminal prosecutions, jeopardy attaches when jury is empaneled and sworn — clarification, Ch. 110

JUSTICE, DEPARTMENT OF
Alcoholic beverages, duties and responsibilities, See generally ALCOHOLIC BEVERAGES
Appropriations, Ch. 32, Ch. 328, Ch. 392, Ch. 504, Ch. 578
Gambling, responsibilities, See generally GAMBLING
Internal service fund type fees and charges for 2001 biennium, Ch. 578
Motor vehicles, responsibilities, See generally MOTOR VEHICLES AND TRAFFIC REGULATIONS
Protective service professionals, pay increases, Ch. 392

JUSTICES' COURTS
Appeal, notice of — dismissal for failure to timely file required undertaking, Ch. 393
Jurisdiction, dollar amount increased and criminal jurisdiction revised, Ch. 393
Justices of the peace
allowable number increased, Ch. 393
term of office clarified, Ch. 90
Misdemeanor cases, defendant not limited to single jury trial — clarification, Ch. 346

HeinOnline -- 1999 vol. III 3030 1999

L

LABOR AND EMPLOYMENT
Disputes, employment-related — revision of processes for resolving, Ch. 442
Employee ownership development services, departmental responsihility revised, Ch. 10
Employer who discloses information about former or current employee's employment-related performance to prospective employer, limits on liability, Ch. 573
Live-in home companionship services for individuals unable to care for themselves, exemption from minimum wage and overtime provisions, Ch. 179
Ridesharing arrangements, immunity for employers for injuries or damages sustained by employees in, Ch. 385
Veterans' employment preference provisions revised, Ch. 168
Wage claim disputes, revision of processes for resolving, Ch. 442
Wrongful discharge, employer's right to present full defense not limited by answer to discharged employee's request for reasons for discharge, Ch. 573

LABOR AND INDUSTRY, COMMISSIONER OF
Small business registration and licensing plan, board of review — commissioner's participation eliminated, Ch. 7

LABOR AND INDUSTRY, DEPARTMENT OF
Appropriations, Ch. 32, Ch. 142, Ch. 328, Ch. 518, Ch. 578
Independent contractor status application, jurisdiction transferred from, Ch. 442
Internal service fund type fees and charges for 2001 biennium, Ch. 578
Occupational disease compensation and benefit issues, jurisdiction transferred from, Ch. 442
Occupational health provisions, responsibilities transferred to, Ch. 25
Workers' compensation and benefit issues, jurisdiction transferred from, Ch. 442

LABOR APPEALS, BOARD OF
Appointment to, SR 5

LAKES
Fish pond licenses for persons owning or lawfully controlling an artificial lake or pond or private fish pond, Ch. 108
Red Rock Lakes National Wildlife Refuge and Wilderness Area, reserved water rights compact between united states fish and wildlife service and state of Montana, Ch. 347

LAND COMMISSIONERS, BOARD OF
Forest land report to trust beneficiaries, requirements, Ch. 462

LANDLORD AND TENANT
Abandoned mobile homes, providing landlord with method of disposal after notice to owner and lienholder, Ch. 483

LANDSCAPE ARCHITECTS, BOARD OF
Appointments to, SR 4

HeinOnline -- 1999 vol. III 3031 1999

LAND USE PLANNING
Cluster development and preservation of agricultural land or open space, requesting interim study of options that could be implemented by local governments to provide incentives for, SJR 21

LAW
Montana Code Annotated, revision and clarification generally, Ch. 51

LAW ENFORCEMENT
Motor vehicle accidents, dollar amount of property damage increased for written report requirements, Ch. 115
Reserve officer residency requirements amended, Ch. 82
Schools, notification of youth involved in drug use or other criminal activity and schools to provide education records to law enforcement when, Ch. 564
Sexual or violent offender addresses, dissemination allowed when, Ch. 219
Special services officers, provision for, Ch. 82
Telephone service providers, court order allowing use of pen register or trap and trace device in criminal investigations, Ch. 97

LEGISLATIVE AUDITOR
Motor vehicles, state-owned — ethanol purchase records, review requirement eliminated, Ch. 70

LEGISLATIVE BRANCH
Appropriations, Ch. 558, Ch. 578

LEGISLATIVE COUNCIL
Eminent domain, request for interim committee to study of use of power of and existing statutes related to, HJR 34
Fish and wildlife resources conservation and management, request for interim committee to study sources and levels of funding for and to study historic and current departmental responsibilities, HJR 33
Juvenile probation officer employment and salary issues, request for interim committee to study, HJR 38
Women's prison issues, request for interim committee to study, HJR 37
Workers' compensation, request for interim committee to study current level of benefits paid to injured workers and the frequency of indemnity claims, SJR 15

LEGISLATIVE FINANCE COMMITTEE
Comprehensive Health Association, semiannual report required, Ch. 528
Managed mental health care, privatization — to study and oversee, HJR 35
State information technology management, interim study, Ch. 578

LEGISLATIVE SERVICES DIVISION
Appropriations, Ch. 1, Ch. 372; Ch. 2, Special Laws of June 1999(Appendix)

LEGISLATURE
Administrative rules
proposals, economic impact statement upon request of 15 legislators, Ch. 46
review responsibilities revised, Ch. 19
Appropriations, Ch. 1; Ch. 2, Special Laws of June 1999(Appendix)

HeinOnline -- 1999 vol. III 3032 1999

LEGISLATURE (Continued)

Broadcasting deliberations, interim study requested, HJR 18
Caucus litigation, judgment for costs and fees — appropriation, Ch. 1
Chief water judge, appointment by supreme court — senate concurrence, SR 3
Electric utility industry restructuring, transition advisory committee — legislative membership increased, Ch. 372
Family impact notes, provisions for, Ch. 339
Governor's appointments, senate concurrence, SR 4, SR 5, SR 6, SR 7
Health insurance benefits for legislators involuntarily terminated because of term limits, provision for, Ch. 558
Interim committee functions revised, Ch. 19
Interim studies, See INTERIM STUDIES
Interstate organizations, membership flexibility provided, Ch. 19
Pay increase, Ch. 558
Pay option of remuneration for services performed, elimination, Ch. 44
Retirement benefits for members terminated because of term limits, Ch. 471
Retirement contributions for members reaching term limits in year 2000, Ch. 1
Revenue, Department of — settlement by, may not bind future legislature, Ch. 451
Rules to govern proceedings
house of representatives, HR 1
joint rules, SJR 1
senate, SR 1
clarification of certain rules, SR 2
Teachers' Retirement System, membership rights of legislators clarified, Ch. 111
Water rights, large-scale changes — legislative affirmance requirement limited to changes for out-of-state transportation and use, Ch. 42

LETTERS OF CREDIT
Public fund deposits, letter of credit from federal home loan bank allowed as collateral, Ch. 158

LIBRARIES
Interlibrary loans specified as not eligible for reimbursement and federation provisions revised, Ch. 183
Mill levy election provision revised and bond issue purposes clarified, Ch. 333

LIENS
Agisters' liens to include towing and storage liens, Ch. 169
Construction liens, provisions revised, Ch. 357
Crop dusting liens, 30 days' notice of intent prior to filing — provision removed, Ch. 152
Foreclosure, lienholder required to pay attorney fees in addition to costs if lienholder rejects defendant's offer of judgment and providing lien may not be released until costs and attorney fees are paid, Ch. 240
Mobile homes, abandoned — providing landlord with method of disposal after notice to owner and lienholder, Ch. 483
Towing and storage charges, possessory lien created for, Ch. 169
Underground storage tank closure, for costs incurred, Ch. 506

HeinOnline -- 1999 vol. III 3033 1999

LIMITED LIABILITY COMPANIES
Foreign limited liability companies contracting with state, certificate of authority requirements, Ch. 363
Revision of laws generally, Ch. 229
Uniform Limited Liability Company Act, adoption, Ch. 302

LIVESTOCK
Alternative livestock ranches and alternative livestock, game farms and game farm animals to mean and provisions for, Ch. 574; Ch. 2, Special Laws of June 1999(Appendix)
Brucellosis vaccination requirements revised, Ch. 153
Dairies, industrial — tax exemption for business personal property and livestock used by, Ch. 555
Grazing districts, trespassing livestock procedures and fee revised, Ch. 401
Herd districts, annexing contiguous properties into existing district — petition process for, Ch. 138

LIVESTOCK ADVISORY COUNCIL, ALTERNATIVE
Creation and duties, Ch. 574

LIVESTOCK, BOARD OF
Appointments to, SR 7

LIVESTOCK, DEPARTMENT OF
Appropriations, Ch. 328, Ch. 578; Ch. 2, Special Laws of June 1999(Appendix)
Small business registration and licensing plan, board of review — director's participation included, Ch. 7

LIVING TRUSTS
Provisions made permanent, Ch. 149

LOCAL GOVERNMENT, See also CITIES AND TOWNS; COUNTIES
Breastfeeding — prohibited from adopting ordinances prohibiting and providing that breastfeeding may not be considered a nuisance, indecent exposure, sexual conduct, or obscenity, Ch. 299
Business equipment tax reduction, reimbursement for revenue loss — computation clarified, Ch. 245
Class 6 property, phased-in rate reduction and elimination — reimbursement to local taxing jurisdictions, Ch. 285
Class 8 property, exemptions and phased-in rate reduction — reimbursement to local taxing jurisdictions, Ch. 285
Cluster development and preservation of agricultural land or open space, requesting interim study of options that could he implemented by local governments to provide incentives for, SJR 21
Electronic transactions with state agencies and local government units, provision for, Ch. 365
Federal land — urging full funding of payments in lieu of taxes, the proper harvest of allowable sale quota for timber, and renewal of compact with state and local governments to contribute fair share of taxes on, HJR 19
Hard-rock mining impacts, provisions revised, Ch. 464
Indebtedness limitations revised to offset class 6 property tax rate reductions, Ch. 285
Infrastructure project grants, Ch. 517

LOCAL GOVERNMENT (Continued)

Interim study of laws affecting local governments and local officials, HJR 29
Property tax revenue loss, reimbursement, Ch. 584
School zones, uniform speed limit of 15 mph — department of transportation and local governments encouraged to establish, HJR 25
Smoking and nonsmoking areas in buildings, provisions revised, Ch. 274
Venture star project, grants to local governments submitting proposals to locate project in Montana, Ch. 443

LOCAL GOVERNMENT FUNDING AND STRUCTURE STUDY COMMITTEE, INTERIM, Ch. 584
Review of state payments in lieu of taxes, Ch. 550

LODGING FACILITY USE TAX, See TAXATION, SALES

LONG-RANGE BUILDING PROGRAM
Bonds, issuance authorized, Ch. 518

LONG-TERM CARE
Medicare program, congress and executive hranch of united states government urged to take action to require coverago of long-term care and prescription drug costs by, SJR 5

LOTTERY, STATE
Taxation of winnings, clarification, Ch. 31

LOWER INCOME, PERSONS OF
Affordable housing loan fund, establishment and administration, Ch. 312
Domestic violence account, civil legal assistance for indigent victims of — establishment and funding, Ch. 386
Public assistance, See PUBLIC ASSISTANCE
Rental housing for lower-income tenants, property tax exemption when, Ch. 452

M

MALPRACTICE, MEDICAL
Telemedicine, jurisdiction of medical legal panel, Ch. 371

MANSFIELD, MIKE
Recognition of stellar career, the essential support of his wife Maureen, and authorizing placement of commemorative statue on capitol complex, SJR 10

MAUSOLEUM-COLUMBARIUM ACT, Ch. 283

MEDIATION
Confidentiality in proceedings provided and creating mediation privilego for mediators and parties te, Ch. 481
Employment-related issues — required prior to contested case proceedings for cases involving wage and hour, uninsured employer fund, and independent contractor issues, Ch. 442

MEDICAID, See PUBLIC ASSISTANCE

MEDICAL EXAMINERS, BOARD OF
Appointments to, SR 4, SR 7

HeinOnline -- 1999 vol. III 3035 1999

MEDICARE
Congress and executive branch of United States government urged to take action to require coverage of long-term care and prescription drug costs by, SJR 5

MEDICINE AND MEDICAL CARE
Automated external defibrillators (AEDS), provisions for use by public and private entities, Ch. 335
Medical gas piping, clarifying enforcement provisions, Ch. 486
Telemedicine certificate, requirements and exceptions, Ch. 371
Wild medicinal plants, moratorium on harvest or removal from state lands, Ch. 380

MENTAL HEALTH MANAGED CARE OMBUDSMAN, OFFICE OF
Creation, Ch. 577

MENTAL ILLNESS OR INCAPACITY
Corrections, Department of — transfer provisions for persons in custody of, Ch. 247
Detention centers, diversion from of certain persons with mental disorders — criteria clarified, Ch. 247
Discharge planning, financial resources statement required, Ch. 247
Driver's license applicants, requirements, Ch. 309
Foster parents experiencing death of foster child, outpatient counseling services, Ch. 127
Health care facility, definition clarified to exclude offices of private physical or mental health care professionals for licensure purposes, Ch. 98
Insurance coverage, parity for severe mental illness, Ch. 348
Mental health corporations, removal as entity allowed to join public employee retirement systems, Ch. 58
Mental health managed care system, incremental implementation and requiring contractor to comply with medicaid managed care laws, Ch. 577
Nonresident commitment, time provisions amended, Ch. 247
Privatization of managed mental health care, legislative finance committee to study and oversee, HJR 35
Voluntary admission and forms, requirements revised, Ch. 247

MICROBUSINESS DEVELOPMENT
Deposit requirements for interest earnings on loans, department of commerce to have first lien on funds and receivables of corporation receiving loan, and corporation allowed to choose accountant for annual audit, Ch. 521
Indian reservations, enabling program to serve qualified organization operating on, Ch. 512

MIDWIVES
Resuscitation certification required, Ch. 230

MILITARY AFFAIRS
Absentee ballot provisions for oversees service members, federal provisions clarified and allowing transmission envelope to be used as voter registration form and as application for regular absentee ballot when, Ch. 164

MILITARY AFFAIRS (Continued)

National guard
federal laws, regulations, forms, precedents, and usages, including uniform code of military justice — adoption of most recent version for use by, Ch. 33
license plates for veterans, Ch. 344
Power of attorney family care powers, 6-month limitation not applicable to certain members, Ch. 104
Public Employees' Retirement System, qualification of certain active military service, Ch. 494

MILITARY AFFAIRS, DEPARTMENT OF
Appropriations, Ch. 328, Ch. 518, Ch. 557, Ch. 578
Emergency Management Assistance Compact, administration by disaster and emergency services division, Ch. 175

MILK CONTROL, BOARD OF
Appointments to, SR 5

MINES AND MINING, See also TAXATION, MINERALS
Cyanide heap leach and vat leach open-pit gold and silver mining
continuation of operations begun prior to november 3, 1998, Ch. 457
prohibition, Initiative No.137(Appendix)
Dredge operation exemptions clarified, Ch. 507
Exploration incentive credits for activities involving exploration for mineral and coal deposits and tax deduction provided for donated exploration information, Ch. 538
Governor's Local Coal Impact Review Council, creation, Ch. 376
Hard-rock mining impacts, provisions revised, Ch. 464
Mercury and ore-processing reagents and solvents, use limited by metal miners, Ch. 507
Metal mine reclamation provisions, revision generally and including phosphate mining regulation, Ch. 507
Opencut mining, revision of provisions generally and soil and peat mining regulation transferred to, Ch. 507
Reclamation projects, allocating resource indemnity and ground water assessment tax proceeds to, Ch. 552

MINORS, See also CHILD headings
Fishing and hunting, youth combination sports license established, Ch. 568
Foster parents experiencing death of foster child, mental health outpatient counseling services, Ch. 127
Hunting by 12-year-old persons, clarification, Ch. 533
Off-highway vehicles used on forest development roads, exempting certain young drivers from driver's license requirements, Ch. 95

MINT AND MINT OIL PRODUCTION
Mint Committee, powers clarified for contracting to promote research of and market development for mint, Cb. 22

MISSOULA MEMORIAL ROSE GARDEN
Designation as State Veterans' Memorial Rose Garden and as a State Korean Conflict Veterans' Memorial, Ch. 296

HeinOnline -- 1999 vol. III 3037 1999

MOBILE HOMES, TRAILERS, AND TRAILER PARKS
Abandoned mobile homes, landlords provided with method of disposal after notice to owner and lienholder, Ch. 483

MONTANA AGRICULTURAL HERITAGE ACT, Ch. 456

MONTANA ARTS COUNCIL
Appointments to, SR 4, SR 5
Appropriations, Ch. 328, Ch. 329, Ch. 578

MONTANA CHIROPRACTIC LEGAL PANEL
Appropriation, Ch. 578

MONTANA DEFERRED DEPOSIT LOAN ACT, Ch. 404

MONTANA ELECTRONIC TRANSACTIONS WITH STATE AGENCIES AND LOCAL GOVERNMENT UNITS ACT, Ch. 365

MONTANA GRASS CONSERVATION COMMISSION
Creation and duties, Ch. 401

MONTANA HERITAGE PRESERVATION AND DEVELOPMENT COMMISSION
Liquor licenses purchased with Virginia City and Nevada City to be held by, Ch. 251

MONTANA STATE HOSPITAL
Function amended, Ch. 247
Services provided by, appropriation, Ch. 567
Severance benefits for certain employees, Ch. 489

MONTANA STATE UNIVERSITY-NORTHERN
Renewable resource grant and loan program account interest to, elimination and allowing establishment of trust fund prior to termination, Ch. 497

MONTANA TELEMARKETING REGISTRATION AND FRAUD PREVENTION ACT, Ch. 342

MONTANA UNIVERSITY SYSTEM INTERUNIT BENEFITS ADVISORY COMMITTEE
Creation, Ch. 256

MORTGAGE LENDING AND LENDERS
Interim study requested of lending and requiring licensure for lenders, Ch. 576

MORTGAGES
Foreclosure suits, clarifying types of acts or proceedings that are not prohibited by the one-action limitation, Ch. 349

MORTICIANS, FUNERAL DIRECTORS, AND CREMATORY FACILITIES
Funeral service laws revised and funeral plan trusts established, Ch. 336

MOTOR CARRIERS
Commercial vehicle inspectors — establishment of standards for, certification revocation or suspension, training standards, appropriate basic course attendance required, and termination provisions, Ch. 315
Garbage carriers hauling garbage on highway allowed to exceed total gross weight limitations, Ch. 216

HeinOnline -- 1999 vol. III 3038 1999

MOTOR FUEL MARKETING ACT, RETAIL
Repeal, Initiative No.134(Appendix)
MOTOR VEHICLES AND TRAFFIC REGULATIONS
Abandoned vehicles, county sheriff and city police responsibilities revised, Ch. 513
Accidents, dollar amount of property damage increased for report requirements, Ch. 115
Automobile glass
installation and other repairs — information given by insurers clarified, unfair trade practice established, claims provisions, and discrimination prohibited, Ch. 526
prohibition against offering form of incentive or rebate to pay deductible related to sale, repair, or replacement —clarification, Ch. 174
Commercial driver testing program, third-party — granting permanency, Ch. 292
Construction and work zones, speed limit signs — posting requirements revised, Ch. 430
Dealers and wholesalers, revision of provisions generally, Ch. 409
Dealers, manufacturers, distributors, and certain other parties — revision and clarification of provisions governing, Ch. 313
Driver's licenses
applications to include social security number, Ch. 29
ignition interlock device as condition for probationary license upon second or subsequent violation of driving under the influence, Ch. 258
noncommercial and commercial drivers, revision of provisions, Ch. 309
off-highway vehicles used on forest development roads, exempting certain young drivers from requirements, Ch. 95
Driving records contained in computer storage devices, use of certified reproductions allowed, Ch. 309
Driving under the influence
alcohol concentration, excessive
penalties revised, Ch. 391
second, third, or subsequent offenses clarified, Ch. 309
chemical dependency, assessment prior to sentencing— court's authority clarified and clarifying that assessment is separate from education or treatment, Ch. 455
fourth offense, penalties revised, Ch. 391
ignition interlock device as condition for probationary license upon second or subsequent violation of, Ch. 258
temporary driving permit issued to arrested persons, clarification of when effective, Ch. 287
Emergency vehicles, authorized and emergency service vehicles — provisions revised, Ch. 520
Execution, exemption — value increased, Ch. 237
Farm vehicles on certain highways, flag vehicle escort to follow, Ch. 449
Fleet vehicles, tax reduction, Ch. 180
Habitual traffic offender provisions, "moving violation" defined for, Ch. 309
Highway hazards, provisions revised, Ch. 520

HeinOnline -- 1999 vol. III 3039 1999

MOTOR VEHICLES AND TRAFFIC REGULATIONS (Continued)

Ignition interlock device as condition for probationary license upon second or subsequent violation of driving under tbe influence, Ch. 258
Junk vehicle value determinations, responsibility transferred from state to counties, Ch. 513
License plates
ex-prisoners of war, fee exemption and retention of plates by surviving spouse, Ch. 79
national guard veterans or legion of valor members, Ch. 344
new plates, requiring issuance every 4 years beginning january 1, 2000, Ch. 570
Lien filing, electronic — scope and duration of pilot program expanded, Ch. 260
Light vehicles, registration fee to replace current system of taxation, Ch. 515
Light vehicle tax
ex-prisoners of war, exemption, Ch. 79
reduction, Ch. 180
Local option fee, imposition by counties allowed with voter approval, Ch. 515
Local option vehicle tax, increase of permissible tax rate allowed and requiring vote for imposition, Ch. 180
Motorcycles
fee in lieu of tax revised and permanent registration allowed when, Ch. 515
safety training program transferred to board of regents of higher education, Ch. 181
New motor vehicle sales tax, repeal, Ch. 515
Off-highway vehicles
forest development roads, use allowed on certain roads and exempting certain young drivers from licensing requirements, Ch. 95
franchising, sale, and warranty — revision of law relating to, Ch. 384
state parks and fishing access sites, use of certain vehicles disallowed, Ch. 474
Parking permits, determination of disability may be performed by licensed advanced practice registered nurse, Ch. 156
Quadricycles, fee in lieu of tax revised and permanent registration allowed when, Ch. 515
Registration
ex-prisoners of war, fee exemption, Ch. 79
fee to replace current system of taxation, Ch. 515
health care professionals practicing in rural, medically underserved areas — exemption from foreign vehicle registration, Ch. 246
organ and tissue donations, voluntary checkoff on applications, Ch. 94
Ridesharing arrangements, immunity for employers for injuries or damages sustained by employees in, Ch. 385
Slow-moving vehicles on interstate or four-lane highways to travel in right lane as far to right as possible, Ch. 449
Speed limit
construction and work zones, signs — posting requirements revised, Ch. 430

HeinOnline -- 1999 vol. III 3040 1999

MOTOR VEHICLES AND TRAFFIC REGULATIONS (Continued)
Speed limit (Continued)
imposition, elimination of fuel conservation limit, altering limits set by local authorities, increase in nighttime limit, and special limit on u.s. bighway 93, Ch. 43
school zones, uniform speed limit of 15 mph — department of transportation and local governments encouraged to establisb, HJR 25
violations, fines and hond forfeitures — court surcharge not applicable, Ch. 4, Special Laws of June 1999(Appendix)
State-owned or leased
acceptable uses, rules to be adopted for, Ch. 226
clarification of identification requirements, departmental responsibilities, and other state agency responsibilities, Ch. 431
ethanol-blended fuel requirements, Ch. 70
Tax appeal procedure, establishment, Ch. 85
Tow trucks, commercial — provisions revised, Ch. 520
Trailers and semitrailers, restriction eliminated on cargo unit of rocky mountain double vehicle combination exceeding 48 feet in length and establishment of nondivisible load permit fee, Ch. 317
Wrecking facilities and graveyards, disposal fees — abandoned vehicle removal charges to be paid from, when, Ch. 513

MUNICIPAL COURTS
Fines, assignment of collection to private persons or entities, Cb. 63

N

NATIONAL CRIME PREVENTION AND PRIVACY COMPACT, Ch. 220

NATIONAL GUARD, See MILITARY AFFAIRS

NATIVE AMERICAN ECONOMIC DEVELOPMENT ACT OF 1999, Ch. 512

NATURAL RESOURCES AND CONSERVATION, DEPARTMENT OF
Appropriations, Ch. 32, Ch. 255, Ch. 328, Ch. 418, Ch. 419, Ch. 557, Ch. 578; Ch. 1, Special Laws of June 1999(Appendix)
Grazing district responsibilities transferred from, Ch. 401
Internal service fund type fees and charges for 2001 biennium, Ch. 578
Timber slash, fire hazard reduction rules to be adopted, Ch. 279
Trust land management functions, funding authorized, Ch. 122
Water use, responsibilities, See generally WATER USE

NATUROPATHY AND NATUROPATHIC PHYSICIANS
Disability insurance, addition to freedom of choice in providers provision and health service corporations to cover services provided by, Ch. 459

NONPROFIT CORPORATIONS
County land acquired by tax deed, donation to, Ch. 248
Revision of laws generally, Ch. 229

NOTARIES PUBLIC
Liquor license and nursery license applications, notary requirement removed, Ch. 54

NURSERIES AND NURSERYMEN
License application, notary requirement removed, Ch. 54

NURSING AND NURSES
Charitable purposes, care or assistance for — limits on liability, Ch. 406
Parking permits, determination of disability may be performed by licensed advanced practice registered nurse, Ch. 156
NURSING, BOARD OF
Appointments to, SR 4, SR 7
NURSING HOME ADMINISTRATORS, BOARD OF
Appointments to, SR 4

O

OCCUPATIONAL DISEASE
Compensation and benefit issues, jurisdiction transferred, Ch. 442
Continued employment, authorization of determination of advisability, Ch. 377
Environmental Quality, Department of — responsibilities transferred to department of labor and industry, Ch. 25
Mandatory functions made permissive when and administrative rulemaking and contested case hearing provisions revised, Ch. 25
OCCUPATIONAL THERAPY AND OCCUPATIONAL THERAPISTS
Workers' compensation provisions to provide conduct of functional capacities evaluation by, Ch. 218
OCCUPATIONAL THERAPY PRACTICE, BOARD OF
Appointments to, SR 4
OFF-HIGHWAY VEHICLES, See MOTOR VEHICLES AND TRAFFIC REGULATIONS
OIL AND GAS, See also TAXATION, MINERALS
Closure of wells, authorizing use of surety bond as method of guarantee to ensure, Ch. 278
Federal royalty audits and related functions, authorization of contracts for, Ch. 314
Makoshika State Park, exploration and development prohibited and exceptions, Ch. 522
Oil field equipment, property tax classification clarified, Ch. 551
Oil overcharge money, appropriations, Ch. 49, Ch. 50
Reclamation and development grant funds used for personnel costs or operating expenses, restriction revised, Ch. 59
OIL AND GAS CONSERVATION, BOARD OF
Appointments to, SR 4, SR 5
OPTOMETRY AND OPTOMETRISTS
Charitable purposes, care or assistance for — limits on liability, Ch. 406
Practice of, scope revised to allow use of certain drugs and to allow treatment of glaucoma, Ch. 34
OPTOMETRY, BOARD OF
Appointments to, SR 7
ORGANIC CERTIFICATION PROGRAM, STATE
Establishment, requirements for, Ch. 172

HeinOnline -- 1999 vol. III 3042 1999

OSTEOPATHY AND OSTEOPATHS
Charitable purposes, care or assistance for — limits on liability, Ch. 406
OUTFITTERS AND GUIDES
Licensing moratorium extended and capping number of available land-based bunting licenses, Ch. 544
Net client hunter use — definition, establishing criteria to be applied in determining whether expansion is allowable, and establishing fees, Ch. 543
Seasonal establishment and small establishment, definitions revised as they apply to licensing provisions, Ch. 264
OUTFITTERS, BOARD OF
Membership and appointment procedures revised and criteria established to be applied to net client hunter use, Ch. 543

P

PARDONS AND PAROLE, BOARD OF
Appointments to, SR 4, SR 5
Initial appearance by prisoner before board, clarification, Ch. 450
Public access to records, clarification, Ch. 450
Rulemaking authorized for video hearings, progress reviews, and revocation and clemency proceedings, Ch. 450
PARENT AND CHILD
Breastfeeding — local government prohibited from adopting ordinances prohibiting and providing that breastfeeding may not be considered a nuisance, indecent exposure, sexual conduct, or obscenity, Ch. 299
Estates, definition of parent-child relationship clarified, Ch. 290
PARKING COMMISSIONS
Business Improvement District board of directors allowed to be appointed as members of, Ch. 189
PARKS AND RECREATION
Cabin site leases on water project lands, expired provision deleted, Ch. 121
City or town
debt limit for cultural, social, and recreational purposes — class eight property included, Ch. 136
park maintenance districts, creation authorized, Ch. 510
County park district governing body, election or appointment provisions revised, Ch. 254
Fish, Wildlife, and Parks — Department of, allowed lease terms for public recreational use on water project lands extended, Ch. 121
Golf courses
alcoholic beverage licenses issued to, lessee's eligibility to offer certain gambling activities, Ch. 263
lineal yards requirement changed for tax purposes, Ch. 436
"Good neighbor policy" on public recreational lands, implementation, Ch. 474
Recreational users of state waters, revision of boat and personal watercraft operation to reduce conflicts, Ch. 569

HeinOnline -- 1999 vol. III 3043 1999

PARKS AND RECREATION (Continued)

State parks
maintenance or development project provisions revised and motorized camping and use of certain off-highway vehicles disallowed when, Ch. 474
makoshika state park, oil and gas exploration and development prohibited and exceptions, Ch. 522
protection, preservation, and restoration of historical, cultural, and natural assets — designation of those most at risk and as priorities for, Ch. 266

PARTNER OR FAMILY MEMBER ASSAULT VICTIMS
Civil legal assistance for indigent victims of domestic violence account, establishment and funding, Ch. 386
Revision of laws relating to, Ch. 311

PEACE OFFICERS
Driver's licenses, suspended — seizure during investigative stop or arrest allowed, Ch. 309
Insurance, group disability — renewal or continuation of coverage for spouse or dependents when officer dies within course and scope of employment, Ch. 178
Justice, Department of — compliance specialists as peace officers and duties, Ch. 409

PERSONNEL APPEALS, BOARD OF
Appointments to, SR 5
Collective bargaining, public employer representative to petition to redetermine appropriate unit upon significant reorganization of state agency, Ch. 176
Wage claim disputes, elimination of appellate role, Ch. 442

PESTS AND PESTICIDES
Revision of laws generally, Ch. 65
Waste pesticide and pesticide container collection, disposal, and recycling program — termination date extended and elimination of voluntary waste pesticide reporting system, Ch. 362

PETROLEUM PRODUCTS
Dealers' licenses, anniversary dates provided, Ch. 54

PETROLEUM TANK RELEASE COMPENSATION BOARD
Membership restructured and authority revised, Ch. 259

PHARMACY, BOARD OF
Amhulatory surgical facilities, registration as entities allowed to possess dangerous drugs — requiring adoption of rules for, Ch. 273
Appointments to, SR 4

PHENYLKETONURIA
Insurance coverage revised to include all inborn errors of metaholism and requiring coverage for medical foods, medical supplies, prescription drugs, and certain corrective lenses, Ch. 434

PHYSICAL THERAPY EXAMINERS, BOARD OF
Appointment to, SR 4

HeinOnline -- 1999 vol. III 3044 1999

PHYSICIANS AND SURGEONS
Charitable purposes, care or assistance for — limits on liability, Ch. 406
Ephedrine, immediate accessibility by licensed physician allowed, Ch. 253
License requirements revised, Ch. 230
Telemedicine certificate, requirements and exceptions, Ch. 371
Workers' compensation, worker may choose initial treating physician even if preferred provider organization is in place, Ch. 468

PIPELINES
Facility siting, in-state pipelines exempt when used exclusively for irrigation of agricultural crops, Ch. 13

PLANNING BOARDS
Growth policy provisions, Ch. 582

PLUMBERS, BOARD OF
Appointments to, SR 4
Job site, failure of person to display license at — compliance officers to issue citations and collect fines, Ch. 402
Membership revised, Ch. 57
Temporary practice permits, renewal permitted on case-by-case basis, Ch. 203

PLUMBING AND PLUMBERS
Job site, failure to display license at — citation and fine provisions, Ch. 402
License to perform work, clarification of requirements, Ch. 361

PODIATRY AND PODIATRISTS
Charitable purposes, care or assistance for — limits on liability, Ch. 406

POLICE
Motor vehicles, abandoned — responsibilities revised, Ch. 513
Training expenses, contracts for reimbursement of city or town if minimum service requirement not fulfilled, Ch. 337

POLICE OFFICERS' RETIREMENT SYSTEM, STATE PLAN
Member contribution reduced and providing for election on guaranteed annual benefit adjustments, Ch. 463

POLITICAL PRACTICES, COMMISSIONER OF
Appointment, SR 5
Appropriations, Ch. 32, Ch. 578
Paid signature gatherers, employers of — financial disclosure reports to be filed, Ch. 117

POMPEYS PILLAR
Expression of support for retaining historic name and resisting request to change it, HJR 23

POSTSECONDARY EDUCATION POLICY AND BUDGET, JOINT COMMITTEE ON
Elimination, Ch. 19

POWER OF ATTORNEY
Family care powers — 6-month limitation not applicable to certain national guard, active military forces, and federal reserve members, Ch. 104

HeinOnline -- 1999 vol. III 3045 1999

PRESERVATION REVIEW BOARD
Appointments to, SR 4

PRISONS AND PRISONERS, See CORRECTIONAL FACILITIES

PRIVATE SECURITY PATROL OFFICERS AND INVESTIGATORS, BOARD OF
Appointments to, SR 4

PROBATION AND PAROLE OFFICERS
Establishment of standards for, certification revocation or suspension, training standards, appropriate basic course attendance required, and termination provisions, Ch. 315
Juvenile probation officer employment and salary issues, interim study requested, HJR 38
Probationers or parolees, arrest powers revised, Ch. 505
Schools, notification of youth involved in drug use or other criminal activity, Ch. 564

PROBATION, PAROLE, AND CLEMENCY
Arrest of probationers or parolees, powers revised, Ch. 505
Parole and revocation hearings, telephone and interactive videoconferencing provisions, Ch. 450
Probation violator prison diversion program, Ch. 505
Rulemaking authorized for video hearings, progress reviews, and revocation and clemency proceedings, Ch. 450
Supervisory fees for probationer or parolee, Ch. 505

PROFESSIONAL AND OCCUPATIONAL LICENSING AND REGULATION
Detention centers, persons detained in and persons incarcerated under custody of department of corrections — complaints of unprofessional conduct by licensed or certified health care or rehabilitative services providers to be submitted to review team prior to being filed with licensing board, Ch. 375
Revision of provisions generally, Ch. 230

PROFESSIONAL ENGINEERS AND PROFESSIONAL LAND SURVEYORS, BOARD OF
Appointments to, SR 4, SR 7

PROPERTY, PERSONAL, See also TAXATION, PROPERTY
Small estates for which personal property can be collected by affidavit, value increased, Ch. 234
Towing and storage charges, possessory lien created for, Ch. 169

PROPERTY, REAL, See also TAXATION, PROPERTY
Access across public land to private and public land, continuation ensured, Ch. 107
County land acquired by tax deed, donation to nonprofit corporations, Ch. 248
Environmental Control Easement Act, Ch. 503
Federal land — urging full funding of payments in lieu of taxes, the proper harvest of allowable sale quota for timber, and renewal of compact with state and local governments to contribute fair share of taxes on, HJR 19

PROPERTY, REAL (Continued)

Hunting, landowner permission required for all hunting and requiring development of land ownership maps identifying boundaries, Ch. 48
Improvements, actions arising from — land surveying included and subject to limitations on, Ch. 62

PSYCHOLOGISTS, BOARD OF
Appointments to, SR 4
Private practice psychologist, additional added to, Ch. 230

PUBLIC ACCOUNTANTS, BOARD OF
Appointments to, SR 4

PUBLIC ASSISTANCE
Assignment of monetary and medical support to Department of Public Health and Human Services, provisions revised, Ch. 29
County public assistance levy, transfer of funds for purpose of, Ch. 180
Families achieving independence in Montana (FAIM) project
sanctions, establishing limits on and providing for study of effect of policies on low-income families, Ch. 458
workers' compensation for individual participating at worksite in employment training, Ch. 124
Indian tribes implementing a family assistance plan under Personal Responsibility and Work Opportunity Reconciliation Act of 1996, state funding provided, Ch. 509
Medicaid
children's health insurance program, funds appropriated for — use to expand medicaid eligibility criteria prohibited, Ch. 571
children, simplified application and process for eligibility for medical assistance or medical benefits — requiring development and implementation, Ch. 215
child support, parents ineligible for health insurance — monthly medicaid reimbursement requirement deleted, Ch. 579
medical savings accounts in conjunction with, pilot project testing — termination date extended, Ch. 28
Needy families block grant, revising maintenance of effort necessary to draw down the temporary assistance to, Ch. 567
Nonassumed counties' shares of expenditures, revisions relating to, Ch. 341
Workers' compensation, exclusion of benefits from definition of wages for purposes of, Ch. 124

PUBLIC ASSISTANCE, BOARD OF
Appointment to, SR 5

PUBLIC CONTRACTS
Competitive sealed proposals, clarifying procedure for opening, Ch. 416
Construction contracts
awarding to contractors registered in Montana clarified, pecuniary interest prohibitions revised, surety bond filing revised, and exemption from certain laws governing, Ch. 303
bidders whose operations are not headquartered in united states, contracts prohibited unless reciprocity agreement is in place and exception, Ch. 306

HeinOnline -- 1999 vol. III 3047 1999

PUBLIC CONTRACTS (Continued)
Construction contracts (Continued)
bid request responses to include bid security from individual authorized to submit security, unit price, and signature of individual authorized to submit bid, Ch. 282
contractor's money withheld, interest to be paid to contractor, Ch. 222
lien or bond waiver, requiring — prohibited, Ch. 119
penalty for violation of special conditions and labor practice provisions revised, Ch. 78
prompt payment of contractors and subcontractors required, providing interest for delayed payments, allowing costs and attorney fees in actions to enforce payment, and allowing other remedies, Ch. 470
subcontractors allowed to participate in making required deposit obligations and to receive share of interest earned on, Ch. 222
time for final acceptance and final payment, Ch. 439
County contracts
purchase of vehicles, machinery, equipment, materials or supplies — bid requirements changed, Ch. 239
resident bidding preference provided, Ch. 252
Drainage district contracts awarded by competitive bids, minimum value increased, Ch. 96
Highway project contracts with bidders whose operations are not headquartered in United States prohibited unless reciprocity agreement is in place and exception, Ch. 306
Judgment on, providing that state's liability for interest and attorney fees provided in chapter 508, laws of 1997, is retroactive to and applies to contracts in effect on may 1, 1997, Ch. 413
Prevailing wage laws
construction services performed on contracts, scope clarified, Ch. 289
human services contracts by the department of public health and human services, exclusion from, Ch. 30
Private sector vendors, state contracts with — interim study requested of state laws and procedures that govern, SJR 9
Procurement, state
cooperative purchasing provisions to include participation by tribal procurement unit, Ch. 200
small business purchasing act, general revision, Ch. 271
workers' compensation insurance-related services, exemption, Ch. 407
Project labor agreements and other types of prehire agreements, prohibiting requirements for, Ch. 540
School districts, exemption from nonconstruction services job classifications, Ch. 496
Security requirements for building or construction projects, amount increased, Ch. 112
Settlement authority and procedure of state agencies revised and providing for deposit and use of proceeds, Ch. 451
PUBLIC EDUCATION, BOARD OF
Appointments to, SR 4, SR 7
Appropriation, Ch. 578

HeinOnline -- 1999 vol. III 3048 1999

PUBLIC EDUCATION, BOARD OF (Continued)

Basic economic and consumer principles and personal financial planning coursework, integration into model learner goals or content and performance standards for public schools urged, SJR 2
School personnel trained in first aid and CPR to be present in every public school, urging, HJR 13

PUBLIC EMPLOYEE RETIREMENT SYSTEMS, COMMITTEE ON
Elimination, Ch. 19

PUBLIC EMPLOYEES' RETIREMENT BOARD
Deferred compensation program, administration transferred to, Ch. 471
Defined contribution plan, implementation and administration, Ch. 471

PUBLIC EMPLOYEES' RETIREMENT GENERALLY
Administrative expenses, fees assessed for — revision, Ch. 286
Internal Revenue Code requirements, revisions for compliance with, Ch. 58
Revision of provisions generally, Ch. 562
State or university employees whose positions are eliminated by reduction in force, privatization, or agency reorganization — provision indefinitely extended for employer to help purchase retirement service, Ch. 118

PUBLIC EMPLOYEES' RETIREMENT SYSTEM
Defined contribution plan provisions, Ch. 471
Military service, qualification of certain active service, Ch. 494
Optional benefits, certain benefits to revert back to regular retirement benefits upon member's request if contingent annuitant dies or marriage is dissolved and settlement or family law order does not entitle them to optional benefit, Ch. 217

PUBLIC HEALTH AND HUMAN SERVICES, DEPARTMENT OF
Aging, statewide and community issues — biennial report required, Ch. 435
Appropriations, Ch. 49, Ch. 328, Ch. 489, Ch. 557, Ch. 567, Ch. 578
Automated external defibrillators (AEDS), provisions for use by public and private entities, Ch. 335
Child abuse and neglect, responsibilities, See generally CHILD ABUSE AND NEGLECT
Children's Health Insurance Program Act, enactment and responsibilities, Ch. 571
Children's programs for medical assistance, medical benefits, health care benefits or coverage, and health care services programs — requiring development and implementation of simplified application and process for, Ch. 215
Child support order to be substituted for administrative default order, allowing, Ch. 579
Day care licenses and registration certificates, issuance for 3-year periods allowed when, Ch. 135
Human services contracts, exclusion from prevailing wage laws, Ch. 30
Infectious diseases, emergency services providers' exposure to — rules concerning notification and recordkeeping, Ch. 146
Montana State Hospital, services provided by — appropriation, Ch. 567
Plumbers, Board of — membership eliminated, Ch. 57
Public assistance, responsibilities, See generally PUBLIC ASSISTANCE

HeinOnline -- 1999 vol. III 3049 1999

PUBLIC HEALTH AND HUMAN SERVICES, DEPARTMENT OF (Continued)
Renal diseases, treatment and financial assistance to persons needing — revision of provisions, Ch. 92
Utilities, universal system henefits programs funds — administration, Ch. 580

PUBLIC LAND
Access across public land to private and public land, continuation ensured, Cb. 107

PUBLIC MEMORIALS
Desecration as criminal offense, Ch. 141

PUBLIC OFFICERS OR EMPLOYEES
American Red Cross, state employees as volunteers providing disaster relief volunteer service — granting of paid leave for, Ch. 225
Flexible spending account program, revision of provisions, Ch. 88
Pay and benefits for state employees, longevity allowance increased, mileage reimbursement rate revised, group benefit state contribution increased, and development and implementation of alternative pay and classification plan, Ch. 558
Phenylketonuria, mandatory coverage for inborn errors of metabolism — applicability to state and local government employees, Ch. 434

PUBLIC PARTICIPATION IN GOVERNMENT
Public's right to, provisions revised, Ch. 416

PUBLIC RECORDS
Access by public to nonprint records, revision of laws related to, Ch. 405
Constitutional right of puhlic to examine, clarification and exclusions, Ch. 485
Right of public to examine, provisions revised, Ch. 416

PUBLIC SERVICE COMMISSION
Telecommunications carrier charging for product or service not autborized or received by customer, providing for imposition of penalties for unauthorized changes or charges, Ch. 244
Telephone calls, rate caps for certain calls — authority provided, Ch. 155
Utilities, duties, See generally UTILITIES

PUBLIC SERVICE REGULATION, DEPARTMENT OF
Appropriation, Ch. 578

PYRAMID PROMOTION SCHEMES
Prohibition and criminal penalties, Ch. 74

R

RADIOLOGIC TECHNOLOGISTS, BOARD OF
Appointments to, SR 4

RAILROADS
Billings, problems associated with railroad tracks dividing city — congress requested to fund feasibility study and to implement study's findings to resolve, SJR 7

HeinOnline -- 1999 vol. III 3050 1999

REAL ESTATE APPRAISAL AND APPRAISERS
Standards, clarification, Ch. 230

REAL ESTATE APPRAISERS, BOARD OF
Appointments to, SR 4

REAL ESTATE BROKERS AND SALESPERSONS
Licensing provisions revised, Ch. 170
Sexual or violent offenders, proximity of — disclosure laws revised, Ch. 99

REALTY REGULATION, BOARD OF
Appointments to, SR 4, SR 5
Subdivisions, out-of-state sales of in-state — registration requirements deleted, Ch. 170

RECLAMATION AND DEVELOPMENT GRANTS PROGRAM
Appropriation, Ch. 419
Oil and gas reclamation projects, grant funds used for personnel costs or operating expenses — restriction revised, Ch. 59
Reclamation projects, grant prioritization required, Ch. 552

RECREATION, See PARKS AND RECREATION

REGENTS OF HIGHER EDUCATION, BOARD OF
Appointments to, SR 4, SR 5
Carl D. Perkins Act vocational education programs, designation as eligible agency for administering, Ch. 460
Motorcycle safety training program transferred to, Cb. 181
Student member, codifying procedure used for selection, Ch. 206

REGIONAL WATER AND WASTEWATER AUTHORITY ACT, Ch. 498

RENAL DISEASES
Treatment and financial assistance to persons needing, revision of provisions, Ch. 92

RENEWABLE RESOURCE GRANT AND LOAN PROGRAM
Appropriations for grants and loans, Cb. 255, Ch. 418
General obligation bond issue amount increased, Ch. 14
Renewable resource grant and loan account, statutory appropriation of interest to Montana state university-nortbern — elimination and allowing establishment of trust fund prior to termination, Ch. 497

RESEARCH AND COMMERCIALIZATION CENTERS, PROJECTS, AND TRUST FUND
Coal producer's license tax, allocation, Ch. 563

RESOLUTIONS
Agricultural products — investigation into causes of ongoing depressed market prices and urging initiation of actions to stabilize nation's food producers, main street businesses, and rural america as whole, SJR 11
American Land Sovereignty Protection Act, support for, HJR 7
Billings, problems associated with railroad tracks dividing city — congress requested to fund feasibility study and to implement study's findings to resolve, SJR 7
Brady Law, urging congress to repeal, HJR 5

HeinOnline -- 1999 vol. III 3051 1999

RESOLUTIONS (Continued)

Capitol Complex, permanent placement of certain memorials authorized, SJR 4
Chief water judge, appointment by supreme court — senate concurrence, SR 3
China, People's Republic of — sister relations between Montana and gevernment of guangxi zhuang, establishment urged, HJR 9
Cluster development and preservation of agricultural land or open space, requesting interim study of options that could be implemented by local governments to provide incentives for, SJR 21
Columbia Basin Ecosystem Management Project, Interior — urging federal government to take certain actions concerning, HJR 17
Contracts with private sector vendors, interim study requested of state laws and procedures that govern, SJR 9
Eddie Eagle Elementary Gun Safety Education Program, superintendent of public instruction and school districts encouraged to adopt, HJR 14
Eminent domain, request for interim study of use of power of and existing statutes related to, HJR 34
Environmental Policy Act, environmental quality council requested to conduct interim study of, SJR 18
Environmental Quality Council requested to coordinate with other agencies to study need for and utility of tax and other financial incentives to encourage voluntary cleanup and redevelopment of contaminated properties, HJR 3
Federal land — urging full funding of payments in lieu of taxes, the proper harvest of allowable sale quota for timber, and renewal of compact with state and local governments to contribute fair share of taxes on, HJR 19
Fish and wildlife resources conservation and management, request for interim committee to study sources and levels of funding for and to study historic and current departmental responsibilities, HJR 33
Fish, supporting balance of needs of native anadromous fish and resident fish and wildlife through the use of science-based integrated rule curves, SJR 20
Governor's appointments, senate concurrence, SR 4, SR 5, SR 6, SR 7
Grizzly bears — objecting to release into selway-bitterroot wilderness and frank church river-of-no-return wilderness, urging end to population management control by united states fish and wildlife service, urging return of management to state agencies, requesting removal from threatened or endangered species list, and urging acceptance of liability for damages from recovery
Holmes, J. D. — honoring life and career, HJR 36
Hospitals and health care facilities urged to provide consumers with simple and straightforward billing information, HJR 22
Indian Affairs, Committee on — request to study proposal to create a state commission on indian affairs, HJR 12
Industrial hemp as agricultural and industrial product, federal government requested to repeal restrictions on production of, HR 2
Investments, Board of — urging statutory limit be reached for investing coal tax trust funds in economic activities, HJR 6
Juvenile probation officer employment and salary issues, interim study requested, HJR 38

HeinOnline -- 1999 vol. III 3052 1999

RESOLUTIONS (Continued)

Legislature
broadcasting deliberations, requesting interim study for, HJR 18
rules to govern proceedings
house of representatives, HR 1
joint rules, SJR 1
senate, SR 1
clarification of certain rules, SR 2
Local governments and local officials, request for interim study of laws affecting, HJR 29
Managed mental health care, privatization — legislative finance committee to study and oversee, HJR 35
Mansfield, Mike — recognizing stellar career, the essential support of his wife maureen, and authorizing placement of commemorative statue on capitol complex, SJR 10
Medicare program, congress and executive branch of united states government urged to take action to require coverage of long-term care and prescription drug costs by, SJR 5
Missouri Basin irrigation power and development projects — requesting congress, bureau of reclamation, and western area power administration be encouraged to keep energy rates stable for, HJR 27
National forest road closures and obliteration, requesting current federal policies be suspended and that congress reaffirm directives that forest lands be managod in accordance with plans that provide for multiple-use management, HJR 26
Poinpeys Pillar, expression of support for retaining historic name and resisting request to chango it, HJR 23
Public Education, Board of — basic economic and consumer principles and personal financial planning coursework, integration into model learner goals or content and performance standards for public schools urged, SJR 2
Public education — supporting funding that is commensurate with growth of Montana's economy and inflation, that adequately compensates teachers, and that meets state's constitutional obligation, HJR 1
Revenue estimates for each year of the 2000-01 biennium, HJR 2
Rivers in Montana, american heritage river designation opposed, HJR 8
School districts encouraged to implement intergenerational school volunteer programs, HJR 21
School personnel trained in first aid and CPR to be present in every public school, urging, HJR 13
Schools encouraged to cooperate and coordinate with emergency services agencies in identifying local hazards, designing appropriate drills, and developing emergency management plans, HJR 20
School zones, department of transportation and local governments encouraged to establish uniform speed limit of 15 mph in, HJR 25
Sentencing statutes, data information collection and management, and issues related to — interim study requested, SJR 14
Simonton, Richard A. — appointment as district judgo of seventh judicial district in glendive, SR 6

HeinOnline -- 1999 vol. III 3053 1999

RESOLUTIONS (Continued)

Spaceport and technology facility in Montana — urging participation in, support, and encouragement for location of and to nurture economic and regulatory environment to attract venturestar and space-related businesses to Montana, and to welcome lockheed-martin and other space-related industries to Montana, HJR 15
Special education, urging congress and president clinton to increase funding to meet federal commitment under the individuals with disabilities education act, HJR 28
Tobacco settlement proceeds, opposition to taking by federal government and requesting federal legislation to see that proceeds be paid to and retained by the states, SJR 12
Tribal representation requested on trade missions and on state boards and commissions promoting state growth and development, HJR 24
University system, education interim committee requested to study administration and funding, SJR 16
Voice menu answering systems, urging department of administration to develop policy and provide for training on appropriate use, HJR 31
Water pollution, nonpoint source — recommendation that state agencies serve as role models for implementation and refinement of best management practices to reduce and recommendation that relevant agencies report progress and accomplishments to environmental quality council, SJR 3
Water resource policies and issues, encouraging new or revised federal policy to recognize and incorporate western state authorities and interests in, HJR 11
Women's prison issues, interim study requested, HJR 37
Workers' compensation, request for interim study of current level of benefits paid to injured workers and the frequency of indemnity claims, SJR 15

RESPIRATORY CARE PRACTITIONERS, BOARD OF
Appointment to, SR 4

RESTAURANTS
Beer and wine license provisions revised, Ch. 324

RETAIL TELECOMMUNICATIONS EXCISE TAX ACT, Ch. 426

REVENUE, DEPARTMENT OF
Alcoholic beverages, duties, See generally ALCOHOLIC BEVERAGES
Appropriations, Ch. 519, Ch. 578, Ch. 584
County courthouse or other county building, county allowed to charge for space provided in, Ch. 586
Dispute resolution and review procedures established and office of dispute resolution provided, Ch. 36
Internal service fund type fees and charges for 2001 biennium, Ch. 578
Oil and gas, federal royalty audits and related functions — authorization of contracts for, Ch. 314
Settlement by department may not bind future legislature, Ch. 451
Sewer service assessments, delinquent — allowing list to be filed with department, Ch. 423
Small business licensing coordination provisions, administration responsibilities transferred to, Ch. 54

HeinOnline -- 1999 vol. III 3054 1999

REVENUE, DEPARTMENT OF (Continued)

Solid waste management district boards, information to be provided to use in determining rates for service charges, Ch. 261
State debt collection, authority transferred to, Ch. 105
Taxation duties, See generally TAXATION beadings
Underground storage tank licensing and permitting, responsibilities transferred to, Ch. 54
Utilities, universal system benefits programs credits — review required when and rulemaking authority provided, Ch. 580

REVENUE ESTIMATES FOR EACH YEAR OF THE 2000-01 BIENNIUM, HJR 2

REVENUE OVERSIGHT COMMITTEE
Elimination, Ch. 19

RIVERS AND STREAMS
American Heritage River, designation of any river as — opposition, HJR 8
Bitterroot River Basin subbasins temporarily closed to further appropriations and reservations and exceptions, Ch. 205
Blackfoot River use and conflict, comprehensive study to be made, Ch. 272
Clark Fork River Basin
appropriation for natural resource damage assessment and litigation, Ch. 504
temporary closure to further appropriations and reservations for consumptive uses and exceptions, Ch. 281
Conservation districts, authorization to execute duties and responsibilities relating to streambed preservation, Ch. 23
Missouri Basin irrigation power and development projects — requesting congress, bureau of reclamation, and western area power administration be encouraged to keep energy rates stable for, HJR 27
No-wake zones, designation of certain river stretches as, Ch. 569
Personal watercraft, use prohibited on designated river stretches, Ch. 569
State parks and fishing access sites, motorized camping disallowed when, Ch. 474
Streamside corridor and riparian management, coordination of best management practice educational information by environmental quality council, Ch. 275

S

SALES
Pyramid promotion schemes prohibited, criminal penalties provided, and multilevel distribution companies to file notice of activity and consent to service of process with securities commissioner, Ch. 74

SANITARIANS, BOARD OF
Appointments to, SR 4
Meeting requirements changed, Ch. 230

SCHOOL DISTRICTS AND TRUSTEES, See also SCHOOL FINANCE; SCHOOLS; SCHOOL TRANSPORTATION; TEACHERS
Cessation of district, cash disposition requirements revised, Ch. 214

SCHOOL DISTRICTS AND TRUSTEES (Continued)

Contracts for nonconstruction services, exemption from job classifications, Ch. 496
District superintendent, report requirements revised, Cb. 343
Eddie Eagle Elementary Gun Safety Education Program, superintendent of public instruction and school districts encouraged to adopt, HJR 14
Election of trustees
acclamation, by — declaration authorized when, Ch. 132
date changed, Ch. 514
First aid and CPR, school personnel trained in to be present in every public school — urging, HJR 13
Insurance settlements, deposit requirements, Ch. 343
Joint construction of facility, contract autborization, Ch. 166
Loss of money by trustees, individual liability clarified, Cb. 310
Meeting and reporting dates adjusted to conform to May election date, Ch. 514
Meetings of trustees, changing one of the months for holding from july to august, Ch. 467
Professional services rendered to, bidding requirements clarified, Cb. 368
Speech-language pathologists, unlicensed — hiring allowed under certain conditions, Ch. 367
Surplus state property, donation to school districts for classroom use authorized, Ch. 441
Volunteer programs, intergenerational — development encouraged, HJR 21
Youth detention facilities, educational program for youth held in — requirements, Ch. 536

SCHOOL ELECTIONS
Regular school election and trustee election date, establishing first tuesday after first monday in may as, Ch. 514

SCHOOL FINANCE
Average number belonging (ANB) provisions, clarifying calculation, Ch. 343
BASE aid payment schedule revised, Ch. 308
Basic entitlement, increase, Ch. 211
Budget, maximum — exceeding and loss of ANB, requiring reduction of current general fund budget by percentage of ANB decrease, Ch. 514
Building fund, establishment or crediting when insurance settlements for destroyed property received, Ch. 343
Cessation of district, cash disposition requirements revised, Ch. 214
Direct state aid percentage, increase, Ch. 211
General fund budget exceeding maximum general fund budget, provisions revised, Ch. 359
General fund levy, computation provisions revised, Ch. 561
Guaranteed tax base aid percentage, decrease, Ch. 211
Insurance settlements, deposit requirements, Ch. 343
Investment of funds, authorization for district to pool and independently invest for compliance with investment laws, Ch. 102
Joint construction of facility, contract authorization, Ch. 166
Levy election, limited to one in calendar year, Ch. 514
Operating reserve, levy to eliminate negative fund balance and restore reserves, Ch. 561

HeinOnline -- 1999 vol. III 3056 1999

SCHOOL FINANCE (Continued)

Per-ANB entitlement, increase, Ch. 211
Property tax, local — vote required for increase, Ch. 359
Property tax revenue loss, reimbursement, Ch. 584

SCHOOLS
Basic economic and consumer principles and personal financial planning coursework, integration by board of public education into model learner goals or content and performance standards for public schools urged, SJR 2
County high school principal, report requirements revised, Ch. 343
Definitions related to, revision, Ch. 343
Disabilities, child with — clarifying county payment of tuition and transportation costs, Ch. 343
Drug use or other criminal activity, youth involved in — notification to school and school to provide education records to youth court and law enforcement when, Ch. 564
Emergency services agencies — schools encouraged to cooperate and coordinate with in identifying local hazards, designing appropriate drills, and developing emergoncy management plans, HJR 20
Indians' cultural heritage, state's recognition and commitment to establish educational goals that will preserve cultural integrity — implementation of constitutional provisions, Ch. 527
Public education — resolution supporting funding that is commensurate with growth of Montana's economy and inflation, that adequately compensates teachers, and that meets state's constitutional obligation, HJR 1
Revision of provisions generally, Ch. 343
Special education
congress and president clinton urged to increase funding to meet federal commitment under the individuals with disabilities education act, HJR 28
cooperatives, hiring of unlicensed speech-languago pathologists allowed under certain conditions, Ch. 367
Speed limit in school zones, department of transportation and local governments encouraged to establish uniform limit of 15 mph, HJR 25
Surplus state property, donating to school districts for classroom use authorized, Ch. 441
Volunteer programs, intergenerational — development encouraged, HJR 21
Weapon possession law, clarification of offense of possession of weapon in building, Ch. 581

SCHOOL TRANSPORTATION
Buses, additional — allowing district to purchase from bus depreciation reserve fund, Ch. 157
Disabilities, child with — clarifying county payment of costs for, Ch. 343
Transportation groups, references updated and transportation budget provisions revised, Ch. 343

SCIENCE AND TECHNOLOGY, BOARD OF
Appointments to, SR 5
Investments made from coal severance tax trust fund, repayment to be redeposited in coal severance tax permanent fund with interest, Ch. 66

HeinOnline -- 1999 vol. III 3057 1999

SECRETARY OF STATE
Electronic data certification authority or repository, registration of persons acting as, Ch. 365
Fees collected by, clarification of deposit requirement and crediting of account income and interest, Ch. 125
Foreign corporations and foreign limited liability companies contracting with state, notification to contracting parties of certificate of authority requirements, Ch. 363
Initiative petitions, prohibiting approval of those legally insufficient, Ch. 191
Internal service fund type fees and charges for 2001 biennium, Ch. 578
Telecommunications carriers or other entities prohibited from charging for product or service not authorized or received by customer, revocation of repeat violator's right to transact business, Ch. 244
Write-in candidates, declarations for nomination or of intent — filing provisions, Ch. 40

SECURED TRANSACTIONS
Revision of provisions generally and replacement of article 9 of Uniform Commercial Code with most recent version, Ch. 305

SECURITIES AND SECURITY REGULATION
Agricultural marketing associations, offer or sale of securities — exempt transaction under securities laws, Ch. 130
Broker-dealers, employment-related information — clarifying qualified privilege for mandatory reporting, Ch. 267
Living trust provisions made permanent, Ch. 149
Multilevel distribution companies to file notice of activity and consent to service of process with securities commissioner, Ch. 74
Public fund deposits, letter of credit from federal home loan bank allowed as collateral, Ch. 158
Revision of laws generally, Ch. 472

SENATE BILL TO CHAPTER NUMBER TABLE, See TABLE OF SENATE BILL TO CHAPTER NUMBER, printed separately in this volume

SENTENCING AND SENTENCES
Interim study requested of statutes, data information collection and management, and issues related to, SJR 14
Revision and clarification of certain statutes, Ch. 52
Surcharge upon criminal convictions, additional imposed for financing local victim and witness advocate programs and administrative expenses of assessing court, Ch. 398

SESSION LAW TABLES, See TABLE OF SESSION LAWS AFFECTED and TABLE OF SESSION LAW TO CODE, printed separately in this volume

SEWAGE DISPOSAL AND SEWER SYSTEMS
County water or sewer districts
financing, revision and clarification of laws and authorizing levy of special assessments to pay improvement costs, Ch. 351
governing body, election or appointment provisions revised, Ch. 254

HeinOnline -- 1999 vol. III 3058 1999

SEWAGE DISPOSAL AND SEWER SYSTEMS (Continued)

Delinquent sewer charges, notice requirement changed and allowing delinquent sewer service assessment list to be filed with department of revenue, Ch. 423
Septage disposal, requirements established and requiring licensure of persons engaged in, Ch. 378

SHERIFFS' RETIREMENT SYSTEM
Optional benefits, certain benefits to revert back to regular retirement benefits upon member's request if contingent annuitant dies or marriage is dissolved and settlement or family law order does not entitle them to optional benefit, Ch. 217
Purchase of service for periods of illness or injury, provision for, Ch. 562

SILICOSIS BENEFITS
Increase, appropriation for, Ch. 142

SMALL BUSINESSES
Board of Review, composition revised, Ch. 7
Job creation loan program, requirement removed that only small businesses may receive job credit interest rate reduction for participation, Ch. 64
Licensing coordination provisions, administration responsibilities transferred, Ch. 54
Registration and licensing, additional state agencies to participate and transfer of funds authorized, Ch. 7
Small business investment company provisions, revision to ensure compliance with federal law and authorizing additional companies, Ch. 410
Small employer health insurance
carriers prohibited from considering as eligible employees those who have waived coverage because of other existing health insurance coverage, Ch. 87
reinsurance program and board eliminated and providing transition for persons already ceded to reinsurance program, Ch. 103
Solid waste management district charges for home-based business in family residential unit, rate limited, Ch. 159
State purchasing, general revision of small business purchasing act, Ch. 271

SMALL CLAIMS COURTS
Corporations suing or defending suits on debts, allowing representation in court by corporate director or officer, Ch. 207

SMOKING AND SMOKERS
Local government buildings, smoking and nonsmoking areas — provisions revised, Ch. 274

SNOWMOBILES
Franchising, sale, and warranty — revision of law relating to, Ch. 384
Safety and liability statutes revised, Ch. 145

SOCIAL SECURITY
Death certificates, number required unless federal government exempts Montana from requirement, Ch. 27
Dissolution of marriage decree and support order, confidentiality of numbers only upon request, Ch. 545

HeinOnline -- 1999 vol. III 3059 1999

SOCIAL SECURITY (Continued)

Driver's license and fish and wildlife license applications to include number, Ch. 29
Medicare program, congress and executive branch of united states gevernment urged to take action to require coverage of long-term care and prescription drug costs by, SJR 5

SOCIAL WORK EXAMINERS AND PROFESSIONAL COUNSELORS, BOARD OF
Appointments to, SR 7

SOLID WASTE MANAGEMENT
Container site, definition revised, Ch. 294
District boards, department of revenue to provide information to use in determining rates for service charges, Ch. 261
Garbage carriers hauling garbage on highway allowed to exceed total gross weight limitations, Ch. 216
Home-based business in family residential unit, rate of charges by district limited, Ch. 159

SPACEPORT AND TECHNOLOGY FACILITY
Urging participation in, support, and encouragement for location of spaceport and technology facility in Montana, and to nurture economic and regulatory environment to attract venturestar and space-related businesses to Montana, and to welcome lockheed-martin and other space-related industries to Montana, HJR 15

SPACEPORT INFRASTRUCTURE DEVELOPMENT PROJECTS
General obligation bonds to pay costs, Ch. 269

SPACE VEHICLES
Property tax exemption for vehicles and business personal property used to design, manufacture, and launcb, Ch. 539

SPACE, VENTURE STAR PROJECT
Grants to local governments submitting proposals to locate project in Montana, Ch. 443

SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS
School districts and special education cooperatives, hiring of unlicensed pathologists allowed under certain conditions, Ch. 367

SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS, BOARD OF
Appointments to, SR 4

SPEED LIMIT, See MOTOR VEHICLES AND TRAFFIC REGULATIONS

STATE AUDITOR
Appropriation, Ch. 578

STATE DEBT COLLECTION
Attorney general's duty to represent state in proceedings to include, Ch. 72
Revision of provisions generally and authority transferred to Department of Revenue, Ch. 105

STATE EMPLOYEES, See generally PUBLIC OFFICERS OR EMPLOYEES

HeinOnline -- 1999 vol. III 3060 1999

STATE FINANCE
Dedicated revenue
review provisions revised, Ch. 8
revision of laws generally, Ch. 389
STATE GOVERNMENT
American Red Cross, state employees as volunteers providing disaster relief volunteer service — granting of paid leave for, Ch. 225
Collective bargaining, public employer representative to petition to redetermine appropriate unit upon significant reorganization of agency, Ch. 176
Competition by political subdivisions with private sector, effects of — interim study requested, Ch. 478
Electronic mail — using to accept public comment electronically, dissemination of electronic mail address and documents required, and fees prohibited, Ch. 484
Electronic transactions with state agencies and local government units, provision for, Ch. 365
Federal land — urging full funding of payments in lieu of taxes, the proper harvest of allowable sale quota for timber, and renewal of compact with state and local governments to contribute fair share of taxes on, HJR 19
Firearms and ammunition manufacturers, trade associations, or dealers — right to sue in certain types of cases, Ch. 581
License or permit applications, notice of estimated turnaround time to he included, Ch. 53
Lodging facility use tax, revising distribution of tax revenue paid for in-state lodging and providing tax be returned to fund from which paid, Ch. 490
Motor vehicles, state-owned or leased, See MOTOR VEHICLES AND TRAFFIC REGULATIONS
Retirement service for employees whose positions are eliminated by reduction in force, privatization, or agency reorganization — provision indefinitely extended for employer to help purchase, Ch. 118
Settlement authority and procedure of state agencies revised and providing for deposit and use of proceeds, Ch. 451
"Squaw" — identification of all geographic features and places using term and removal from maps, signs, or markers when updating or replacing and providing for appointment of advisory group to develop replacement names, Ch. 307
Surplus state property, donation to school districts for classroom use authorized, Ch. 441
Tribal representation requested on trade missions and on state boards and commissions promoting state growth and development, HJR 24
Voice menu answering systems, department of administration urged to develop policy and provide for training on appropriate use, HJR 31
STATE LANDS
Access across public land to private and public land, continuation ensured, Ch. 107
Agricultural leases, methods of leasing revised, Ch. 5

HeinOnline -- 1999 vol. III 3061 1999

STATE LANDS (Continued)

Easement across, application for — allowing survey prepared using data collected through use of alternative survey methods to accompany, Ch. 277
Environmental Policy Act, actions taken under — exemptions created, Ch. 223
Forest land report by Board of Land Commissioners to trust beneficiaries, requirements, Ch. 462
Grazing leases, methods of leasing revised, Ch. 5
Invalid provisions, removal, Ch. 18
Isolated state land classifications, reciprocal access agreements for management, Ch. 182
Powell County, state payment for land on which state conducts a farming or ranching operation, Ch. 550
Resource development account deduction of 3 %, termination date removed, Ch. 16
Timber conservation license in lieu of sale of timber, Ch. 224
Trust land management functions, funding authorized, Ch. 122
Wild medicinal plants, moratorium on harvest or removal from, Ch. 380

STATE LIBRARY COMMISSION
Appointments to, SR 4
Appropriations, Ch. 328, Ch. 578
Library federation base grant distribution and board of trustees, rules for — adoption authorized, Ch. 183

STATE MANAGEMENT SYSTEMS, COMMITTEE ON
Elimination, Ch. 19

STATE PARKS, See PARKS AND RECREATION

STATE-TRIBAL ECONOMIC DEVELOPMENT COMMISSION
Establishment and appropriation, Ch. 512

STATUTES OF LIMITATION
Insurance code violations, provided for actions for, Ch. 331
Judgment or decree rendered in court not of record, commencement of action upon — conformance to other limitation periods, Ch. 101
Real property improvements, actions arising from — land surveying included and subject to limitations on, Ch. 62

STREET MAINTENANCE DISTRICTS
Definitions of "maintenance" and "improvements" expanded or clarified and notice requirements for assessments clarified, Ch. 188

SUBDIVISIONS
Airport-related land, certain leases or rentals — exemption from local regulation when, Ch. 548
Growth policy provisions, Ch. 582
Out-of-state sales of in-state subdivisions, registration with board of realty regulation — requirement deleted, Ch. 170
Preliminary plat or minor subdivision, clarifying time limits for governing body to take action on, Ch. 236
Water rights delivery system easements in proposed subdivisions, provision for, Ch. 201

HeinOnline -- 1999 vol. III 3062 1999

SUBPOENAS
Constitutionally protected material, clarification of the showing necessary for the discovery of, Ch. 318

SUPERINTENDENT OF PUBLIC INSTRUCTION
Appropriations, Ch. 578, Ch. 584
Eddie Eagle Elementary Gun Safety Education Program, superintendent and school districts encouraged to adopt, HJR 14
Internal service fund type fees and charges for 2001 biennium, Ch. 578
Motorcycle safety training program transferred from, Ch. 181
School personnel trained in first aid and CPR to be present in every public school, urging, HJR 13
State surplus property, procedures to be implemented to ensure notice of availability and equal access and fair distribution to school districts, Ch. 441
Vocational and technical education state plan, requiring superintendent and commissioner of higher education to work cooperatively on, Ch. 460

SUPREME COURT
Admission to bar and practice of law, rules governing — elimination of conflicting statutes, Ch. 198
Chief water judge, appointment by — senate concurrence, SR 3
Civil legal assistance for indigent victims of domestic violence account, procedures for distribution and accountability of money from, Ch. 386

T

TABLES
The following is a list of supplementary tables printed separately in this volume:
CHAPTER NUMBER TO BILL NUMBER
CODE SECTIONS AFFECTED
EFFECTIVE DATES BY CHAPTER NUMBER and BY EFFECTIVE DATE
HOUSE BILL TO CHAPTER NUMBER
SENATE BILL TO CHAPTER NUMBER
SESSION LAWS AFFECTED
SESSION LAW TO CODE

TAX APPEAL BOARDS
County, session and meeting dates changed and property tax reduction applications to be submitted to county clerk and recorder, Ch. 56
State, appointments to, SR 5, SR 7

TAXATION, CORPORATIONS
Dissolution of corporation does not relieve corporation of tax liabilities, Ch. 69
Exploration incentive credits for activities involving exploration for mineral and coal deposits and deduction provided for donated exploration information, Ch. 538
Federal tax adjustments or amended returns filed, amended Montana return required, Ch. 68
Research expenses and research payments, qualified — credit for, Ch. 444

HeinOnline -- 1999 vol. III 3063 1999

TAXATION, ESTATES
Inheritance tax, exemption for stepchildren extended, Ch. 290
Joint tenancy, application for determination of tax in — expanding exemption to include lineal descendants and stepchildren of decedent, Ch. 113

TAXATION, GASOLINE AND VEHICLE FUELS
Aviation gasoline license tax, increase and exclusion for fuel sold to federal defense fuel supply center, Ch. 585
Consolidated city-county government, approval of revised boundaries for purpose of tax revenue allocation, Ch. 415
Dyed diesel fuel pumps, marking, Ch. 295
Electronic funds transfers may be used for payment of taxes and associated fees, penalties, and interest when, Ch. 77
Gasoline tax and special fuel tax refunds, definition of "agricultural use" provided and provisions revised, Ch. 461
License renewal fee for wholesale distributors eliminated and elimination of licensing requirement applicable to persons selling gasoline or fuel for which refunds may be claimed, Ch. 37
Liquefied petroleum gas and compressed natural gas dealers, change in frequency of filing returns, Ch. 38
Revision of provisions generally to clarify language, Ch. 340

TAXATION, GENERAL PROVISIONS
Contaminated properties, requesting environmental quality council to coordinate with other agencies to study need for and utility of tax and other financial incentives to encourage voluntary cleanup and redevelopment of, HJR 3
Electric energy producers' license tax, itemization on customer's bill — allowing, Ch. 199, Ch. 556
First-time home buyer savings accounts, pay-on-death beneficiary and service fee deduction allowed, Ch. 429
Medical care savings accounts — pay-on-death beneficiary designated, service fee deduction allowed, and account administrator's responsibility clarified, Ch. 429
Settlement authority and procedure of state agencies revised and providing for deposit and use of proceeds, Ch. 451
State debt collection, offset of taxes owed to other entities against Montana tax refunds, Ch. 105
Telecommunications, advanced telecommunications infrastructure tax credit, Ch. 534
Telephone company license tax
advanced telecommunications infrastructure tax credit, Ch. 534
internet access services not taxable under, Ch. 535
repeal of provisions, Ch. 426
Uniform provisions for assessing penalties for late filed tax returns, reports, or statements and for assessing penalty and interest for delinquent taxes and fees and waiver of penalty provisions revised, Ch. 427

HeinOnline -- 1999 vol. III 3064 1999

TAXATION, INDIVIDUAL INCOME
Checkoff system for nongame wildlife, agriculture in Montana schools, and child abuse and neglect prevention programs — threshold amount that triggers termination revised, Ch. 321
Credits
exploration incentive credits for activities involving exploration for mineral and coal deposits, Ch. 538
research expenses, qualified — for, Ch. 444
Deductions
mineral and coal deposits, exploration for — for donated exploration information, Ch. 538
net operating loss from a trade or business, revision, Ch. 487
Estate or trust income based on taxable distribution of the estate or trust, revision, Ch. 447
Federal tax adjustments or amended returns filed, amended Montana return required, Ch. 68
Filing of returns, automatic extensions of time provided, Ch. 26
Foreign capital depository assessment payments, distribution to individual income taxpayers for tax relief, Ch. 501
IRA converted to Roth IRA, married taxpayers allowed to file separate returns to defer conversion amount, Ch. 327
Lottery winnings, clarification, Ch. 31
Nonresidents, threshold filing requirement to be same as for residents, Ch. 67
TAXATION, MINERALS
Coal producer's license tax, establishment and allocation of proceeds, Ch. 563; Ch. 2, Special Laws of June 1999(Appendix)
Coal severance tax bonds, issuance for renewable resource projects, Ch. 255
Coal severance tax, credit for coal producer's license taxes paid, Ch. 563, See also COAL TRUST FUNDS
Crow Tribe, disposition of production taxes collected on coal owned in trust for, Ch. 1, Special Laws of June 1999(Appendix)
Mines, metal — gross proceeds, definition of "receipts received" revised to include transportation costs as deduction for determining tax, Ch. 524
Mines, metal — license tax
definition of "receipts received" revised to include transportation costs as deduction for determining tax, Ch. 524
proceeds, allocations revised, Ch. 144, Ch. 464
Oil and natural gas production tax
pre-1985 and post-1985 wells, report requirements clarified, Ch. 530
revision, Ch. 554
stripper oil production, definition revised and tax rate reduced, Ch. 530
stripper well exemption, Ch. 488
Oil producer or operator, fees received to administer royalty payments does not constituto value of oil production for tax purposes, Ch. 549
Resource indemnity trust and ground water assessment tax
allocation of proceeds revised and distribution of proceeds or trust fund interest earnings changed, Ch. 144, Ch. 552
bull trout and cutthroat trout enhancement program, trust fund interest to fund, Ch. 529

HeinOnline -- 1999 vol. III 3065 1999

TAXATION, PROPERTY
Agricultural property used to produce unrelated business taxable income does not qualify as property used purely for public charitable purposes of qualifying for exemption, Ch. 438
Airlines, newly acquired aircraft and supporting equipment — valuation revised, Ch. 140
Appraisal, market value of property as indicated by sales of comparable property method or cost-less-depreciation method to be used, Ch. 589
Assessment revision, eliminating need to process new tax bill or to issue refund as result of — when, Ch. 448
Business equipment, rate reduction reimbursement to local governments — computation clarified, Ch. 245
City or town newly incorporated, county to retain property within as part of tax base for purpose of levying taxes for maintenance of property, Ch. 353
Class 4, exemption for portion of value of certain property and phasing in value change, Ch. 584
Class 6, pbased-in rate reduction and elimination and reimbursement to local taxing jurisdictions, Ch. 285
Class 8
cultural, social, and recreational purposes — debt limit for, class eight property included, Ch. 136
exemptions, phased-in rate reduction, and reimbursement to local taxing jurisdictions, Ch. 285
oil field equipment, specific — clarification of classification, Ch. 551
Class 10, rate reduction and pbasein of reduction, Ch. 584
Community college district retirement fund levy, imposition only on property within district, Ch. 379
Dairies, industrial and industrial milk processors — exemption for business personal property and livestock used by, Ch. 555
Delinquent taxes, penalty provisions revised, Ch. 427
Elderly residential property tax credit
definition of "income" revised, Ch. 445
provisions revised, Ch. 547
Electrical Generation Tax Reform Act, Cb. 556
Environmental control easements, certain interest held by grantee exempt, Ch. 503
Golf courses, lineal yards requirement changed, Ch. 436
Intangible personal property, exemption, Ch. 583
Mill levies, establisbing procedure for establishment in order to comply with tax limitations, Ch. 584
Motor vehicles
light vehicles and fleet vehicles, reduction in tax, Ch. 180
light vehicles, registration fee to replace current system of taxation, Ch. 515
light vehicle tax, ex-prisoners of war — exemption, Ch. 79
local option vehicle tax, increase of permissible tax rate allowed and requiring vote for imposition, Ch. 180
tax appeal procedure, establishment, Ch. 85

TAXATION, PROPERTY (Continued)

Personal property , revision of laws relating to sheriff's levy and sale for collection of taxes, Ch. 197
Railroad transportation property, revision and clarification of valuation, Ch. 531
Reappraisal cycle revised and phasing in of new values, Ch. 584
Rental housing for lower-income tenants, exemption when, Ch. 452
Revenue loss — reimbursement to local governments, schools, and tax increment districts, Ch. 584
Revision of laws generally, Ch. 584
Space vehicles and business personal property used to design, manufacture, and launch — exemption for, Ch. 539
Tax deeds
county land acquired by, donation to nonprofit corporations, Ch. 248
process revised, Ch. 446
Telecommunications services providers, provisions revised and excise tax imposed, Ch. 426
University system, 6-mill levy
continuation, Legislative Referendum No.113(Appendix)
imposition, Ch. 4, Ch. 408
submission to electorate, Ch. 2
transfer of funds for purpose of, Ch. 180
Veterans' clubhouse exemption, clarification, Ch. 204
Wholesale energy transaction tax on transmission of electricity in state, Ch. 556

TAXATION, SALES
Lodging facility use tax paid for in-state lodging, revenue distribution revised and providing tax be returned to fund from which paid, Ch. 490
Motor vehicles, new car sales tax repealed, Ch. 515

TEACHERS
Certificate fees for teachers and specialists, allocation revised, Ch. 165
Notice and hearing time limit provisions clarified, Ch. 514
Public education — supporting funding that is commensurate with growth of Montana's economy and inflation, that adequately compensates teachers, and that meets state's constitutional obligation, HJR 1

TEACHERS' RETIREMENT BOARD
Internal Revenue Code requirements, revisions for compliance with, Ch. 111

TEACHERS' RETIREMENT SYSTEM
Guaranteed annual benefit adjustment provided, employee contribution rates increased, state contribution provided, minimum monthly benefit allowance provided, and current postretirement adjustment provisions eliminated, Ch. 360
Internal Revenue Code requirements, revisions for compliance with, Ch. 111

TELECOMMUNICATIONS SERVICES
Avoidance of charges for, providing that it is a crime to publish certain information by computer to aid in, Ch. 354

HeinOnline -- 1999 vol. III 3067 1999

TELECOMMUNICATIONS SERVICES (Continued)

Carriers or other entities prohibited from charging for product or service not authorized or received by customer, providing penalties for unauthorized changes or charges, and revocation of repeat violator's right to transact business, Ch. 244
Small telecommunications provider, definition changed and providing for rate decreases and regulatory flexibility, Ch. 154
Taxation provisions revised and excise tax imposed, Ch. 426
Telephone company license tax credit for advanced telecommunications infrastructure improvements, Ch. 534
Universal service fund, extending, Ch. 187

TELEMARKETING REGISTRATION AND FRAUD PREVENTION ACT, Ch. 342

TELEMEDICINE
Practice of, certificate requirements and exceptions, Ch. 371

TELEPHONE AND TELEGRAPH
Criminal investigations, court order allowing providers to use pen register or trap and trace device, Ch. 97
Emergency communications systems personnel, release of information to — clarification, Ch. 242
Interception of communication over any type of telephone as criminal offense, Ch. 354
Internet access services not taxable under telephone company license tax, Ch. 535
Motor vehicle dealers to install and maintain listed service, Ch. 409
Operator service providers charging exorbitant rates for intrastate phone calls, allowing aggrieved customers a course of action against, Ch. 155
Parole and revocation hearings, telephone and interactive videoconferencing provisions, Ch. 450
Telephone company license tax, See TAXATION, GENERAL PROVISIONS

TOBACCO SETTLEMENT PROCEEDS
Children's health insurance program, allocation for, Ch. 571
Comprehensive Health Association programs, allocation for, Ch. 528
General fund, set aside for revenue stabilization in, Ch. 578
Opposition to taking by federal government and requesting federal legislation to see that proceeds be paid to and retained hy the states, SJR 12
Reserve fund for payment of certain claims by manufacturers who have not previously settled with the state, creation, Ch. 412

TOURISM
Visitor information centers, signs identifying — requirements, Ch. 417

TRADE REGULATION AND COMPETITION
Automobile glass, unfair trade practices
installation and other repairs — information given by insurers clarified, unfair trade practice established, claims provisions, and discrimination prohibited, Ch. 526
violation of prohibition against offering form of incentive or rebate to pay deductible related to sale, repair, or replacement, Ch. 174

HeinOnline -- 1999 vol. III 3068 1999

TRADE REGULATION AND COMPETITION (Continued)

Bread, butter, milk, flour, and like products — unnecessary regulations limiting unit size eliminated, Ch. 15
Home Inspection Trade Practices Act, Ch. 276
Trade secrets, public's constitutional right to examine documents does not extend to, Ch. 485
Tribal representation requested on trade missions and on state boards and commissions promoting state growth and development, HJR 24

TRANSPORTATION COMMISSION
Appointment to, SR 7
Federal surface transportation program, authorizing use of federal secondary highway and urban highway funds for, Ch. 298
Financial districts, allowing transfer of apportioned primary highway system funds within and between, Ch. 177
Highway or construction project contracts with bidders whose operations are not beadquartered in United States prohibited unless reciprocity agreement is in place and exception, Ch. 306
Membership revised to include one member having specific knowledge of indian culture and tribal transportation needs, Ch. 587

TRANSPORTATION, DEPARTMENT OF
Airport pavement preservation projects, funding through aviation gasoline license tax increase, Ch. 585
Appropriations, Ch. 328, Ch. 557, Ch. 578
Gasoline and vebicle fuels, responsibilities, See generally TAXATION, GASOLINE AND VEHICLE FUELS
Highways, duties, See generally HIGHWAYS
Internal service fund type fees and charges for 2001 biennium, Ch. 578
Motor vehicles, responsibilities, See generally MOTOR VEHICLES AND TRAFFIC REGULATIONS
School zones, uniform speed limit of 15 mph — department and local governments encouraged to estab ish, HJR 25
Visitor information centers, signs identifying — requirements for erection, Ch. 417

TRANSPORTATION DISTRICTS, URBAN
Governing body, election or appointment provisions revised, Ch. 254

TREASURE STATE ENDOWMENT PROGRAM
Awarding funding under, criteria and priorities revised, Ch. 453
Local government infrastructure project grants, special revenue account interest earnings for, Ch. 517
Regional water system fund for drinking water systems, coal trust fund allocation for, Ch. 495
Tribal government participation allowed, Ch. 268

TREASURY FUNDS AND ACCOUNTS
Enterprise funds, budget requirements revised, Ch. 20
General fund loans, repayment with interest and loans for budget amendment purposes — clarification of provisions, Ch. 11
Investment trust fund types, inclusion witbin fiduciary fund category, Ch. 291

HeinOnline -- 1999 vol. III 3069 1999

TREASURY FUNDS AND ACCOUNTS (Continued)

Long-term loans to be made from funds other than general fund if possible, Ch. 291
Negative balance at any point in fiscal year allowed in fund types rather tban accounting entities, Ch. 291

TRUSTS
Funeral plan trusts, establishment, Ch. 336
Living trust provisions made permanent, Ch. 149
Revision of provisions generally, Ch. 290

U

UNDERGROUND STORAGE TANKS, See HAZARDOUS WASTES

UNEMPLOYMENT INSURANCE
Collateral estoppel provision provided to prohibit decisions pertaining to benefits from being used in related disputes, Ch. 442
Labor provisions, specific — revision, Ch. 61
Part-time workers, benefit eligibility revised, Ch. 400
Tax rates and revenue collectod from employers, revision and reallocation, Ch. 399

UNIFORM CHILD CUSTODY JURISDICTION ACT
Replacement, Ch. 91

UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT, Ch. 91

UNIFORM LIMITED LIABILITY COMPANY ACT, Ch. 302

UNIVERSITY SYSTEM
Appropriations, Ch. 518, Ch. 519, Ch. 557, Ch. 558, Ch. 578
Clinics, dentists allowed to work in, Ch. 230
Employee group benefit plans, development authorized, Ch. 256
Interim study of administration and funding, SJR 16
Internal service fund type fees and charges for 2001 biennium, Ch. 578
Public Employees' Retirement System, defined contribution plan provisions, Ch. 471
Retirement service for employees whose positions are eliminated by reduction in force, privatization, or agency reorganization — provision indefinitely extended for employer to help purchase, Ch. 118
6-mill levy
continuation, Legislative Referendum No.113(Appendix)
imposition, Ch. 4, Cb. 408
submission to electorate, Ch. 2
transfer of funds for purpose of, Ch. 180
Workers' compensation plans no. 1, no. 2, or no. 3 — election authorized, Ch. 560

URBAN RENEWAL
Growth policy provisions, plans to be consistent with, Ch. 582

HeinOnline -- 1999 vol. III 3070 1999

UTILITIES, See also generally TAXATION, GENERAL PROVISIONS; TAXATION, PROPERTY
Cities, counties, and consolidated governments allowed to be default electricity supplier to residential and commercial customers of public utility, Ch. 185
Construction and work zones, speed limit signs — posting requirements revised, Ch. 430
Electricity Buying Cooperative Act, Ch. 575
Electric utility industry restructuring, transition advisory committee — legislative membership increased and appropriation for, Ch. 372
Injuries, minor — reporting to public service commission, requirement eliminated, Ch. 81
Investor-owned distribution utility service territories, formation of buying cooperatives and designation of default supplier for electricity within, Ch. 575
Net metering for certain energy systems, authorization, Ch. 323
Universal system benefits electric laws, revision generally, Ch. 580
UTILITIES, RURAL COOPERATIVE
Telecommunications excise tax, retail — collection when, Ch. 426

V

VENTURE STAR PROJECT
Grants to local governments submitting proposals to locate project in Montana, Ch. 443
VENUE
Counties, actions against — clarifying place of trial for, Ch. 128
VETERANS
Burial laws, clarification, Ch. 210
Employment preference provisions revised, Ch. 168
Legion of valor members
fishing with conservation license allowed, Ch. 35
motor vehicle license plates for, Ch. 344
Missoula Memorial Rose Garden, designation as state veterans' memorial rose garden and as a state korean conflict veterans' memorial, Ch. 296
National guard veterans, motor vehicle license plates for, Ch. 344
Property tax exemption for clubhouses or buildings, clarification, Ch. 204
VETERANS' AFFAIRS, BOARD OF
Appointments to, SR 4
VETERINARY MEDICINE AND VETERINARIANS
Certified transcripts required and examination provisions revised, Ch. 230
VETERINARY MEDICINE, BOARD OF
Appointments to, SR 4
VIRGINIA CITY AND NEVADA CITY
Liquor licenses purchased with, transfer and administration provided for, Ch. 251

HeinOnline -- 1999 vol. III 3071 1999

VOCATIONAL EDUCATION
Carl D. Perkins Act vocational education programs, designation of board of regents of higher education as eligible agency for administering, Ch. 460

VOCATIONAL-TECHNICAL EDUCATION
State plan, requiring superintendent of public education and commissioner of higher education to work cooperatively on, Ch. 460

W

WAR
Ex-prisoners of war — exemption from motor vehicle light vehicle tax, registration and license plate fees, and allowing retention of plates by surviving spouse, Ch. 79

WATER QUALITY
Federal requirements, amendment of water quality act to ensure consistency with, Ch. 588
Information, requiring public availability to compilation of updates by electronic access, Ch. 511
Monitoring, assessment, and TMDL development — requirements expanded for consultations with statewide TMDL advisory group, Ch. 93
Nondegradation significance criteria and nondegradation requirements for outstanding resource waters, amendment, Ch. 588
Nonpoint source pollution, recommending that state agencies serve as role models for implementation and refinement of best management practices to reduce and recommending relevant agencies report progress and accomplishments to environmental quality council, SJR 3
Revision of specific provisions, Ch. 195
Standards, short-term exemptions revised and short-term turbidity standards provided, Ch. 588
Water pollution control state revolving fund
general obligation bonds authorized to provide matching funds for, Ch. 73
revision of laws generally, Ch. 421

WATER SUPPLY, PUBLIC
Drinking water state revolving fund, revision of laws generally, Ch. 421
Drinking water systems, treasure state endowment regional water system fund for, Ch. 495
Facility approval, requiring rules restricting design and construction criteria changes for 36 months following, Ch. 511
Regional Water and Wastewater Authority Act, Ch. 498
Revision of specific provisions, Ch. 195
Wastewater treatment operator provisions, revision, Ch. 195

WATER USE
Appropriation provisions, revision generally, Ch. 422
Appropriation rights, large-scale changes — legislative affirmance requirement limited to changes for out-of-state transportation and use, Ch. 42
Bitterroot River Basin subbasins temporarily closed to further appropriations and reservations and exceptions, Ch. 205

HeinOnline -- 1999 vol. III 3072 1999

WATER USE (Continued)

Cabin site leases on water project lands, expired provision deleted, Ch. 121
Canal projects, obsolete statutory directives and procedures removed and purchase preference for water users' associations applied to all department projects proposed for disposal, Ch. 120
Chief water judge, appointment by supreme court — senate concurrence, SR 3
Clark Fork River Basin, temporary closure to further appropriations and reservations for consumptive uses and exceptions, Ch. 281
Conservation districts, authorization for involvement in water project development, Ch. 23
Crow Tribe-Montana Compact, Ch. 3, Special Laws of June 1999(Appendix) implementation, Ch. 1, Special Laws of June 1999(Appendix)
Envirenmental Quality Council, assistance with interagency coordination added to water policy duties, Ch. 275
Fish, Wildlife, and Parks — Department of, allowed lease terms for public recreational use on water project lands extended, Ch. 121
Ground water source of 35 gallons a minute or less, person developing on another person's land — notification of landowner in advance of proposed development and appropriation, Ch. 250
Leasing of salvage water, instream flow leasing program term extended, longer term for conservation projects, and increase in number of stream reaches that can be leased from, Ch. 123
Missouri Basin irrigation power and development projects — requesting congress, bureau of reclamation, and western area power administration be encouraged to keep energy rates stable for, HJR 27
Municipal water rights in waters classified as "A-Closed", criteria for presumption of nonabandonment, Ch. 213
Power sale restrictions for power generated by state facility, removal, Ch. 209
Recreational users of state waters, revision of boat and personal watercraft operation to reduce conflicts, Ch. 569
Red Rock Lakes National Wildlife Refuge and Wilderness Area, reserved water rights compact between united states fish and wildlife service and state of Montana, Ch. 347
Subdivisions, water rights delivery system easements in proposed subdivisions — provision for, Ch. 201
Water resource policies and issues, encouraging new or revised federal policy to recognize and incorporate western state authorities and interests in, HJR 11

WEAPONS
Brady Law, urging congress to repeal, HJR 5
Concealed weapons
nonresidents having permit issued by their state may carry concealed weapon in this state, Ch. 476
permit provisions revised, Ch. 581
places inside of which weapon may not be carried, revision, Ch. 572
Eddie Eagle Elementary Gun Safety Education Program, suporintendent of public instruction and school districts encouraged to adopt, HJR 14
Governmental right to sue firearms and ammunition manufacturers, trade associations, or dealers in certain cases, Ch. 581

HeinOnline -- 1999 vol. III 3073 1999

WEAPONS (Continued)

Machine guns and silencers, provisions revised, Ch. 466
Records checks of purchasers, interim study of methods for state law alternative method for, Ch. 581
School weapon possession law, clarification of offense of possession of weapon in building, Ch. 581
Silencers, provisions revised, Ch. 466, Ch. 581

WEEDS AND WEED CONTROL
Highways and roads, along — landowner's liability for alternative measures when objecting to weed district control measures, Ch. 433
Noxious Weed Management Advisory Council, membership revised, Ch. 493
Noxious weed management provisions revised, alternative funding sources provided, and cap increased for noxious weed management trust, Ch. 493

WEIGHTS, MEASURES, AND COMMODITY GRADES
Bread, butter, milk, flour, and like products — unnecessary regulations limiting unit size eliminated, Ch. 15

WORKERS' COMPENSATION
Benefit theft, authorizing collection of penalty for, Ch. 442
Compensation and benefit issues, jurisdiction transferred, Ch. 442
Construction industry premium rates, revising starting point of credit scale for computing, Ch. 131
Families achieving independence in Montana (FAIM) project, coverage for individual participating at worksite in employment training, Ch. 124
Health care information, clarification of disclosure related to claims, Ch. 480
Independent contractor status application, jurisdiction transferred, Ch. 442
Interim study of current level of benefits paid to injured workers and the frequency of indemnity claims, request for, SJR 15
Mediation
benefits prior to or following, provisions revised, Ch. 377
contested case proceedings for cases involving wage and hour, uninsured employer fund, and independent contractor issues — required prior to, Ch. 442
Occupational therapist, provision for conduct of functional capacities evaluation by, Ch. 218
Old fund liability tax, certification of termination — revision of statutes impacted by, Ch. 184
Physician, initial treating — worker may choose even if preferred provider organization is in place, Ch. 468
Plan No. 1, direct payment by employer — university system, authorization for election, Ch. 560
Plan No. 2, insurance of liability
costs of regulatory assessment as policyholder surcharge based on premium, identification required, Ch. 377
university system, election — authorization, Ch. 560
Plan No. 3, state fund
board of directors, appointments to, SR 4, SR 7
constitutional amendment to allow investment of assets, Ch. 516
costs of regulatory assessment as policyholder surcharge based on premium, identification required, Ch. 377
revision of specific provisions, Ch. 407

HeinOnline -- 1999 vol. III 3074 1999

WORKERS' COMPENSATION (Continued)
Plan No. 3, state fund (Continued)
university system, election — authorization, Ch. 560
Preferred provider requirements, providing written notice to injured worker after date of injury, Ch. 468
Public assistance benefits, exclusion from definition of wages, Ch. 124
Revision of provisions generally, Ch. 377
Uninsured employers' fund provisions, revision generally, Ch. 377

WORKERS' COMPENSATION COURT
Jurisdiction transferred to for compensation and benefit issues, independent contractor status application, occupational disease compensation and benefit issues, and authorizing collection of penalty for benefit theft, Ch. 442

WORSHIP, PLACES OF
Desecration as criminal offense, Ch. 141

Y

YOUTH CARE FACILITIES
Foster parents experiencing death of foster child, mental health outpatient counseling services, Ch. 127

YOUTH COURT
Detention facilities, educational program for youth held in — requirements, Ch. 536
District court
prosecution in youth court and later transferred to district court, youth may not be sentenced to adult correctional facility, Ch. 537
youth to be tried as adult in, hearing to be held before making decision, Ch. 523
youth transferred to and found guilty of certain offenses may be committed for longer than 5 years to department of corrections, Ch. 390
Extended Jurisdiction Prosecution Act, revision of provisions, Ch. 537
Foster care placements, contingency for payment from district court reimbursement fund eliminated when, Ch. 394
Intervention in delinquency pilot program, extension and additional accounts for judicial districts authorized, Ch. 161
Juvenile home arrest officer, term defined and provisions for, Ch. 326
Purpose statement of Youth Court Act revised, Ch. 537
Records, disposition revised and definitions provided, Ch. 106
Revision of laws generally, Ch. 532
Schools, notification of youth involved in drug use or other criminal activity and school to provide education records to youth court when, Ch. 564
Youth correctional facilities and systems, emergency capacity — authority to determine, Ch. 532

HeinOnline -- 1999 vol. III 3075 1999

- Z -

ZONING
Annexation hearing in conjunction with zoning hearing, modifying procedures for conducting, Ch. 355
Municipal regulation changes, protest provisions modified, Ch. 492

TABLE

OF

CODE SECTIONS AFFECTED

HeinOnline -- 1999 vol. III 3077 1999

HeinOnline -- 1999 vol. III 3078 1999

CODE SECTIONS AFFECTED

This table was compiled before the codification process was completed. It does not reflect certain sections affected by short form amendments. All other substantive changes are reflected. Those sections for which renumbering is not attributed to a particular chapter and bill number were renumbered by the Code Commissioner under the authority of 1-11-204(3)(b).

Title-Ch.-Sec.	Action	Chapter	Bill #
1-1-207	amended	Ch. 491	SB 33
1-1-517	enacted	Ch. 296	SB 352
1-1-518	enacted	Ch. 296	SB 352
2-3-301	enacted	Ch. 484	HB 616
2-4-102	amended	Ch. 19	SB 11
2-4-110	amended	Ch. 19	SB 11
2-4-302	amended	Ch. 19	SB 11
	amended	Ch. 41	HB 194
2-4-305	amended	Ch. 19	SB 11
2-4-306	amended	Ch. 19	SB 11
2-4-307	amended	Ch. 19	SB 11
2-4-308	amended	Ch. 9	SB 11
2-4-311	amended	Ch. 19	SB 11
2-4-312	amended	Ch. 19	SB 11
2-4-313	amended	Ch. 19	SB 11
2-4-401	repealed	Ch. 19	SB 11
2-4-402	amended	Ch. 19	SB 11
2-4-404	amended	Ch. 19	SB 11
2-4-405	amended	Ch. 19	SB 11
	amended	Ch. 46	HB 198
	amended	Ch. 339	HB 625
2-4-406	amended	Ch. 19	SB 11
2-4-410	amended	Ch. 19	SB 11
2-4-412	amended	Ch. 19	SB 11
2-4-603	amended	Ch. 451	SB 46
2-6-101	amended	Ch. 485	HB 620
2-6-102	amended	Ch. 485	HB 620
2-6-103	amended	Ch. 125	SB 136
2-6-104	amended	Ch. 485	HB 620
2-6-109	amended	Ch. 305	SB 153
2-6-110	amended	Ch. 405	HB 578
2-9-212	amended	Ch. 584	SB 184
2-9-316	amended	Ch. 23	HB 284
2-11-103	amended	Ch. 51	HB 38
2-15-115	enacted	Ch. 53	HB 66
2-15-149	enacted	Ch. 307	HB 412
2-15-210	enacted	Ch. 577	SB 534
2-15-213	amended	Ch. 243	HB 539
2-15-215	amended	Ch. 243	HB 539
2-15-217	amended	Ch. 512	HB 670
2-15-501	amended	Ch. 72	HB 94
2-15-503	enacted	Ch. 72	HB 94
2-15-1009	amended	Ch. 471	HB 79
	amended	Ch. 562	HB 182

HeinOnline -- 1999 vol. III 3079 1999

Title-Ch.-Sec.	Action	Chapter	Bill #
2-15-1508	amended	Ch. 206	HB 509
2-15-1530	enacted	Ch. 256	HB 421
2-15-1808	amended	Ch. 330	HB 32
2-15-1819	enacted	Ch. 563	HB 260
2-15-1851	amended	Ch. 230	SB 108
2-15-1875	amended	Ch. 57	HB 101
2-15-1883	amended	Ch. 543	SB 334
2-15-2007	renumbered 2-15-2507	Ch. 51	HB 38
2-15-2108	amended	Ch. 259	HB 617
2-15-2502	amended	Ch. 587	SB 356
2-15-2507	formerly 2-15-2007	Ch. 51	HB 38
2-15-3308	amended	Ch. 17	HB 51
2-15-3312	enacted	Ch. 456	SB 342
2-15-3313	enacted	Ch. 456	SB 342
2-15-3314	enacted	Ch. 456	SB 342
2-15-3315	enacted	Ch. 456	SB 342
2-15-3316	enacted	Ch. 456	SB 342
2-15-3317	enacted	Ch. 456	SB 342
2-15-3318	enacted	Ch. 456	SB 342
2-15-3319	enacted	Ch. 456	SB 342
2-15-3320	enacted	Ch. 456	SB 342
2-15-3321	enacted	Ch. 456	SB 342
2-15-3322	enacted	Ch. 456	SB 342
2-16-403	amended	Ch. 51	HB 38
2-16-405	amended	Ch. 51	HB 38
2-16-619	amended	Ch. 51	HB 38
2-17-202	amended	Ch. 441	HB 584
2-17-402	amended	Ch. 431	HB 189
2-17-411	amended	Ch. 431	HB 189
2-17-413	repealed	Ch. 431	HB 189
2-17-414	amended	Ch. 70	HB 23
2-17-421	amended	Ch. 226	SB 57
	amended	Ch. 431	HB 189
2-17-422	amended	Ch. 431	HB 189
2-17-423	amended	Ch. 431	HB 189
2-17-424	enacted	Ch. 226	SB 57
2-17-431	repealed	Ch. 431	HB 189
2-17-803	amended	Ch. 51	HB 38
2-18-101	amended	Ch. 558	HB 13
2-18-301	amended	Ch. 558	HB 13
2-18-303	amended	Ch. 558	HB 13
2-18-304	amended	Ch. 558	HB 13
2-18-312	amended	Ch. 558	HB 13
2-18-313	amended	Ch. 558	HB 13
2-18-315	amended	Ch. 558	HB 13
2-18-503	amended	Ch. 558	HB 13
2-18-627	enacted	Ch. 225	HB 583
2-18-702	amended	Ch. 186	HB 250
2-18-703	amended	Ch. 558	HB 13
2-18-704	amended	Ch. 434	HB 266
	amended	Ch. 471	HB 79
2-18-809	amended	Ch. 88	SB 120
2-18-812	amended	Ch. 88	SB 120
	amended	Ch. 334	HB 111
2-18-820	enacted	Ch. 558	HB 13
2-20-101	enacted	Ch. 365	HB 188
2-20-102	enacted	Ch. 365	HB 188

HeinOnline -- 1999 vol. III 3080 1999

Title-Ch.-Sec.	Action	Chapter	Bill #
2-20-103	enacted	Ch. 365	HB 188
2-20-104	enacted	Ch. 365	HB 188
2-20-105	enacted	Ch. 365	HB 188
2-20-106	enacted	Ch. 365	HB 188
2-20-107	enacted	Ch. 365	HB 188
2-20-108	enacted	Ch. 365	IIB 188
2-20-109	enacted	Ch. 365	HB 188
2-20-110	enacted	Ch. 365	HB 188
2-20-111	enacted	Ch. 365	HB 188
3-1-120	enacted	Ch. 393	HB 204
3-2-714	enacted	Ch. 386	SB 505
3-5-101	amended	Ch. 454	SB 273
3-5-102	amended	Ch. 454	SB 273
3-5-123	enacted	Ch. 167	SB 60
3-5-124	enacted	Ch. 167	SB 60
3-5-125	enacted	Ch. 167	SB 60
3-5-126	enacted	Ch. 167	SB 60
3-5-211	amended	Ch. 51	HB 38
3-5-604	amended	Ch. 394	HB 207
3-5-901	amended	Ch. 394	HB 207
3-7-204	amended	Ch. 389	HB 69
3-7-222	amended	Ch. 389	HB 69
3-7-302	amended	Ch. 389	HB 69
3-10-101	amended	Ch. 393	HB 204
3-10-205	amended	Ch. 90	SB 231
3-10-301	amended	Ch. 393	HB 204
3-10-303	amended	Ch. 393	HB 204
3-15-402	amended	Ch. 241	HB 382
3-15-403	amended	Ch. 241	HB 382
3-15-404	amended	Ch. 241	HB 382
3-15-405	enacted	Ch. 241	HB 382
3-15-501	amended	Ch. 241	HB 382
3-15-502	repealed	Ch. 241	HB 382
3-15-503	amended	Ch. 241	HB 382
3-15-505	repealed	Ch. 241	HB 382
3-15-506	amended	Ch. 241	HB 382
3-15-507	amended	Ch. 241	HB 382
5-2-301	amended	Ch. 44	HB 56
	amended	Ch. 558	HB 13
5-2-304	amended	Ch. 111	HB 118
5-2-503	amended	Ch. 19	SB 11
5-2-504	amended	Ch. 19	SB 11
5-3-106	amended	Ch. 416	SB 82
5-4-301	amended	Ch. 51	HB 38
5-4-501	enacted	Ch. 339	HB 625
5-4-502	enacted	Ch. 339	HB 625
5-4-503	enacted	Ch. 339	HB 625
5-4-504	enacted	Ch. 339	HB 625
5-4-505	enacted	Ch. 339	HB 625
5-5-202	amended	Ch. 19	SB 11
5-5-211	amended	Ch. 19	SB 11
5-5-212	amended	Ch. 19	SB 11
5-5-213	amended	Ch. 19	SB 11
5-5-214	amended	Ch. 19	SB 11
5-5-215	amended	Ch. 19	SB 11
5-5-223	enacted	Ch. 19	SB 11
5-5-224	enacted	Ch. 19	SB 11

HeinOnline -- 1999 vol. III 3081 1999

Title-Ch.-Sec.	Action	Chapter	Bill #
5-5-225	enacted	Ch. 19	SB 11
5-5-226	enacted	Ch. 19	SB 11
5-5-227	enacted	Ch. 19	SB 11
5-5-228	enacted	Ch. 19	SB 11
5-11-101	amended	Ch. 19	SB 11
5-11-105	amended	Ch. 19	SB 11
5-11-107	amended	Ch. 19	SB 11
5-11-301	amended	Ch. 19	SB 11
5-11-302	repealed	Ch. 19	SB 11
5-11-701	repealed	Ch. 19	SB 11
5-11-702	repealed	Ch. 19	SB 11
5-11-703	repealed	Ch. 19	SB 11
5-11-704	repealed	Ch. 19	SB 11
5-12-302	amended	Ch. 19	SB 11
	amended	Ch. 51	HB 38
5-14-101	repealed	Ch. 19	SB 11
5-14-102	repealed	Ch. 19	SB 11
5-14-103	repealed	Ch. 19	SB 11
5-14-104	repealed	Ch. 19	SB 11
5-16-102	amended	Ch. 19	SB 11
5-18-101	repealed	Ch. 19	SB 11
5-18-102	repealed	Ch. 19	SB 11
5-18-103	repealed	Ch. 19	SB 11
5-18-104	repealed	Ch. 19	SB 11
5-18-105	repealed	Ch. 19	SB 11
5-18-106	repealed	Ch. 19	SB 11
5-18-107	amended	Ch. 19	SB 11
	amended	Ch. 46	HB 198
5-18-108	repealed	Ch. 19	SB 11
5-18-109	repealed	Ch. 19	SB 11
5-18-110	repealed	Ch. 19	SB 11
5-18-115	repealed	Ch. 19	SB 11
5-19-101	repealed	Ch. 19	SB 11
5-19-102	repealed	Ch. 19	SB 11
5-19-103	repealed	Ch. 19	SB 11
5-19-104	repealed	Ch. 19	SB 11
5-19-105	repealed	Ch. 19	SB 11
5-19-106	repealed	Ch. 19	SB 11
5-19-107	repealed	Ch. 19	SB 11
5-19-108	repealed	Ch. 19	SB 11
5-20-201	repealed	Ch. 19	SB 11
5-20-202	repealed	Ch. 19	SB 11
5-20-203	repealed	Ch. 19	SB 11
5-20-204	repealed	Ch. 19	SB 11
5-20-205	repealed	Ch. 19	SB 11
5-20-206	repealed	Ch. 19	SB 11
5-20-207	repealed	Ch. 19	SB 11
5-20-208	repealed	Ch. 19	SB 11
5-21-101	repealed	Ch. 19	SB 11
5-21-102	repealed	Ch. 19	SB 11
5-21-103	repealed	Ch. 19	SB 11
5-21-104	repealed	Ch. 19	SB 11
5-21-105	repealed	Ch. 19	SB 11
5-22-101	repealed	Ch. 19	SB 11
5-22-102	repealed	Ch. 19	SB 11
5-23-101	repealed	Ch. 19	SB 11
5-23-102	repealed	Ch. 19	SB 11

Title-Ch.-Sec.	Action	Chapter	Bill #
5-23-103	repealed	Ch. 19	SB 11
5-23-104	repealed	Ch. 19	SB 11
5-23-105	repealed	Ch. 19	SB 11
5-23-106	repealed	Ch. 19	SB 11
5-23-107	repealed	Ch. 19	SB 11
5-23-108	repealed	Ch. 19	SB 11
5-23-109	repealed	Ch. 19	SB 11
7-1-112	amended	Ch. 584	SB 184
7-1-114	amended	Ch. 584	SB 184
7-1-115	enacted	Ch. 581	HB 566
7-1-201	amended	Ch. 254	SB 488
7-1-2103	amended	Ch. 584	SB 184
7-1-2111	amended	Ch. 426	HB 128
	amended	Ch. 556	HB 174
7-1-4001	enacted	Ch. 470	SB 490
7-1-4123	amended	Ch. 584	SB 184
7-1-4124	amended	Ch. 249	SB 348
7-1-4150	enacted	Ch. 249	SB 348
7-1-4151	enacted	Ch. 249	SB 348
7-1-4152	enacted	Ch. 249	SB 348
7-2-2301	repealed	Ch. 51	HB 38
7-2-2302	repealed	Ch. 51	HB 38
7-2-2303	repealed	Ch. 51	HB 38
7-2-2311	repealed	Ch. 51	HB 38
7-2-2312	repealed	Ch. 51	HB 38
7-2-2313	repealed	Ch. 51	HB 38
7-2-2314	repealed	Ch. 51	HB 38
7-2-2315	repealed	Ch. 51	HB 38
7-2-2316	repealed	Ch. 51	HB 38
7-2-2317	repealed	Ch. 51	HB 38
7-2-2318	repealed	Ch. 51	HB 38
7-2-2319	repealed	Ch. 51	HB 38
7-2-4106	amended	Ch. 162	HB 228
7-2-4111	enacted	Ch. 353	SB 294
7-2-4734	amended	Ch. 582	SB 97
7-3-184	amended	Ch. 584	SB 184
7-3-1104	amended	Ch. 584	SB 184
7-3-1227	amended	Ch. 584	SB 184
7-3-1310	amended	Ch. 584	SB 184
7-3-1311	amended	Ch. 584	SB 184
7-4-2201	amended	Ch. 60	HB 151
7-4-2502	amended	Ch. 75	HB 123
7-4-2503	amended	Ch. 411	SB 233
7-4-2506	amended	Ch. 51	HB 38
	repealed	Ch. 114	HB 360
7-4-2512	amended	Ch. 51	HB 38
7-4-2631	amended	Ch. 365	SB 153
7-5-2301	amended	Ch. 239	HB 338
	amended	Ch. 252	SB 415
7-5-2302	repealed	Ch. 239	HB 338
	amended	Ch. 252	SB 415
7-5-2304	amended	Ch. 239	HB 338
7-5-2309	enacted	Ch. 252	SB 415
7-5-4304	amended	Ch. 139	HB 476
7-5-4306	amended	Ch. 139	HB 476
7-6-501	amended	Ch. 536	SB 199
7-6-2225	amended	Ch. 144	SB 49

HeinOnline -- 1999 vol. III 3083 1999

Title-Ch.-Sec.	Action	Chapter	Bill #
7-6-2226	amended	Ch. 144	SB 49
7-6-2317	amended	Ch. 51	HB 38
7-6-2319	amended	Ch. 584	SB 184
7-6-2321	amended	Ch. 584	SB 184
7-6-2335	enacted	Ch. 86	SB 95
7-6-2501	amended	Ch. 584	SB 184
7-6-2502	amended	Ch. 584	SB 184
7-6-2511	amended	Ch. 584	SB 184
7-6-2512	amended	Ch. 584	SB 184
7-6-2513	amended	Ch. 584	SB 184
7-6-2514	repealed	Ch. 584	SB 184
7-6-2522	amended	Ch. 584	SB 184
7-6-2541	enacted	Ch. 500	SB 417
7-6-4232	amended	Ch. 584	SB 184
7-6-4259	amended	Ch. 584	SB 184
7-6-4261	amended	Ch. 584	SB 184
7-6-4401	amended	Ch. 584	SB 184
7-6-4405	repealed	Ch. 584	SB 184
7-6-4406	amended	Ch. 584	SB 184
7-6-4407	amended	Ch. 584	SB 184
7-6-4421	amended	Ch. 584	SB 184
7-6-4438	amended	Ch. 584	SB 184
7-6-4452	amended	Ch. 584	SB 184
7-6-4453	amended	Ch. 584	SB 184
7-7-107	amended	Ch. 285	SB 200
	amended	Ch. 426	HB 128
	amended	Ch. 556	HB 174
7-7-108	amended	Ch. 285	SB 200
7-7-2101	amended	Ch. 285	SB 200
	amended	Ch. 426	HB 128
	amended	Ch. 556	HB 174
7-7-2203	amended	Ch. 51	HB 38
	amended	Ch. 285	SB 200
	amended	Ch. 426	HB 128
	amended	Ch. 556	HB 174
7-7-4101	amended	Ch. 139	HB 476
7-7-4104	enacted	Ch. 139	HB 476
7-7-4201	amended	Ch. 426	HB 128
	amended	Ch. 556	HB 174
7-7-4202	amended	Ch. 426	HB 128
	amended	Ch. 556	HB 174
7-7-4235	amended	Ch. 190	HB 443
7-8-2211	amended	Ch. 202	HB 353
	amended	Ch. 239	HB 338
7-8-2212	amended	Ch. 202	HB 353
7-8-2213	amended	Ch. 202	HB 353
7-8-2301	amended	Ch. 248	SB 207
7-8-4201	amended	Ch. 202	HB 353
7-11-104	amended	Ch. 86	SB 95
7-11-1102	amended	Ch. 86	SB 95
7-11-1106	amended	Ch. 584	SB 184
7-11-1112	amended	Ch. 584	SB 184
7-12-4001	enacted	Ch. 510	HB 586
7-12-4401	amended	Ch. 188	HB 336
7-12-4405	amended	Ch. 188	HB 336
7-12-4426	amended	Ch. 188	HB 336
7-13-231	amended	Ch. 261	SB 239

HeinOnline -- 1999 vol. III 3084 1999

Title-Ch.-Sec.	Action	Chapter	Bill #
7-13-232	amended	Ch. 159	HB 17
7-13-2221	amended	Ch. 351	SB 269
7-13-2258	amended	Ch. 254	SB 488
7-13-2262	amended	Ch. 254	SB 488
7-13-2280	enacted	Ch. 351	SB 269
7-13-2281	enacted	Ch. 351	SB 269
7-13-2282	enacted	Ch. 351	SB 269
7-13-2283	enacted	Ch. 351	SB 269
7-13-2284	enacted	Ch. 351	SB 269
7-13-2285	enacted	Ch. 351	SB 269
7-13-2286	enacted	Ch. 351	SB 269
7-13-2287	enacted	Ch. 351	SB 269
7-13-2288	enacted	Ch. 351	SB 269
7-13-2289	enacted	Ch. 351	SB 269
7-13-2301	amended	Ch. 351	SB 269
7-13-4309	amended	Ch. 423	HB 99
7-14-111	amended	Ch. 584	SB 184
7-14-212	amended	Ch. 254	SB 488
7-14-232	amended	Ch. 584	SB 184
7-14-1111	amended	Ch. 584	SB 184
7-14-1131	amended	Ch. 584	SB 184
7-14-2101	amended	Ch. 320	SB 226
	amended	Ch. 440	HB 560
	amended	Ch. 584	SB 184
7-14-2103	amended	Ch. 440	HB 560
7-14-2113	amended	Ch. 43	SB 133
7-14-2127	amended	Ch. 440	HB 560
7-14-2205	amended	Ch. 584	SB 184
7-14-2501	amended	Ch. 584	SB 184
7-14-2502	amended	Ch. 584	SB 184
7-14-2503	amended	Ch. 584	SB 184
7-14-2524	amended	Ch. 285	SB 200
	amended	Ch. 426	HB 128
	amended	Ch. 556	HB 174
7-14-2525	amended	Ch. 285	SB 200
	amended	Ch. 426	HB 128
	amended	Ch. 556	HB 174
7-14-2615	amended	Ch. 107	HB 352
7-14-2801	amended	Ch. 584	SB 184
7-14-2807	amended	Ch. 584	SB 184
7-14-2901	amended	Ch. 319	SB 225
7-14-4609	amended	Ch. 189	HB 411
7-14-4610	amended	Ch. 189	HB 411
7-14-4703	amended	Ch. 584	SB 184
7-14-4713	amended	Ch. 584	SB 184
7-14-4734	amended	Ch. 584	SB 184
7-14-4901	enacted	Ch. 107	HB 352
7-15-4206	amended	Ch. 582	SB 97
7-15-4213	amended	Ch. 582	SB 97
7-15-4281	amended	Ch. 584	SB 184
7-15-4283	amended	Ch. 269	HB 555
7-15-4288	amended	Ch. 269	HB 555
7-15-4296	enacted	Ch. 269	HB 555
7-15-4301	amended	Ch. 269	HB 555
7-15-4324	amended	Ch. 584	SB 184
7-16-101	amended	Ch. 584	SB 184
7-16-2102	amended	Ch. 584	SB 184

HeinOnline -- 1999 vol. III 3085 1999

Title-Ch.-Sec.	Action	Chapter	Bill #
7-16-2108	amended	Ch. 584	SB 184
7-16-2109	amended	Ch. 584	SB 184
7-16-2205	amended	Ch. 584	SB 184
7-16-2327	amended	Ch. 285	SB 200
	amended	Ch. 426	HB 128
	amended	Ch. 556	HB 174
7-16-2411	amended	Ch. 510	HB 586
	amended	Ch. 584	SB 184
7-16-2412	amended	Ch. 510	HB 586
7-16-2421	amended	Ch. 254	SB 488
7-16-2423	amended	Ch. 510	HB 586
	amended	Ch. 584	SB 184
7-16-2431	amended	Ch. 510	HB 586
	amended	Ch. 584	SB 184
7-16-2443	amended	Ch. 510	HB 586
	amended	Ch. 584	SB 184
7-16-4104	amended	Ch. 136	HB 210
	amended	Ch. 426	HB 128
	amended	Ch. 556	HB 174
7-16-4105	amended	Ch. 584	SB 184
7-16-4113	amended	Ch. 584	SB 184
7-16-4114	amended	Ch. 584	SB 184
7-21-3203	amended	Ch. 584	SB 184
7-21-3410	amended	Ch. 584	SB 184
7-21-3432	amended	Ch. 584	SB 184
7-21-3433	amended	Ch. 584	SB 184
7-22-2142	amended	Ch. 584	SB 184
7-22-2144	amended	Ch. 51	HB 38
7-22-2153	amended	Ch. 433	HB 221
7-22-2222	amended	Ch. 584	SB 184
7-22-2306	amended	Ch. 584	SB 184
7-22-2432	amended	Ch. 584	SB 184
7-22-2512	amended	Ch. 584	SB 184
7-23-2110	enacted	Ch. 238	HB 325
7-32-201	amended	Ch. 82	SB 1
7-32-203	amended	Ch. 82	SB 1
7-32-222	enacted	Ch. 82	SB 1
7-32-234	amended	Ch. 82	SB 1
7-32-239	enacted	Ch. 82	SB 1
7-32-4117	amended	Ch. 584	SB 184
7-32-4132	amended	Ch. 562	HB 182
7-32-4139	enacted	Ch. 337	HB 192
7-33-2106	amended	Ch. 254	SB 488
7-33-2109	amended	Ch. 584	SB 184
7-33-2209	amended	Ch. 584	SB 184
7-33-2403	amended	Ch. 254	SB 488
7-33-4111	amended	Ch. 584	SB 184
7-33-4130	amended	Ch. 584	SB 184
7-34-102	amended	Ch. 584	SB 184
7-34-2102	amended	Ch. 98	SB 116
7-34-2117	amended	Ch. 254	SB 488
7-34-2121	amended	Ch. 254	SB 488
7-34-2122	amended	Ch. 584	SB 184
7-34-2133	amended	Ch. 584	SB 184
7-34-2201	amended	Ch. 98	SB 116
7-34-2417	amended	Ch. 584	SB 184
7-35-2122	amended	Ch. 584	SB 184

HeinOnline -- 1999 vol. III 3086 1999

Title-Ch.-Sec.	Action	Chapter	Bill #
7-35-4104	repealed	Ch. 18	HB 80
10-1-104	amended	Ch. 33	HB 36
10-2-501	amended	Ch. 210	SB 70
10-2-502	repealed	Ch. 210	SB 70
10-2-503	amended	Ch. 210	SB 70
10-2-505	repealed	Ch. 210	SB 70
10-2-601	amended	Ch. 51	HB 38
10-2-701	formerly 35-21-901	Ch. 51	HB 38
10-2-702	formerly 35-21-902	Ch. 51	HB 38
10-2-703	formerly 35-21-903	Ch. 51	HB 38
10-3-111	amended	Ch. 520	HB 129
10-3-203	amended	Ch. 389	HB 69
10-3-312	amended	Ch. 55	HB 75
10-3-1001	enacted	Ch. 175	HB 173
10-3-1002	enacted	Ch. 175	HB 173
10-3-1003	enacted	Ch. 175	HB 173
10-3-1203	amended	Ch. 520	HB 129
10-3-1204	amended	Ch. 45	HB 89
10-3-1216	amended	Ch. 520	HB 129
10-3-1217	amended	Ch. 520	HB 129
10-4-301	amended	Ch. 389	HB 69
10-4-311	amended	Ch. 389	HB 69
13-1-101	amended	Ch. 208	HB 632
13-1-104	amended	Ch. 514	SB 460
13-1-112	amended	Ch. 51	HB 38
13-2-122	amended	Ch. 51	HB 38
13-2-203	amended	Ch. 39	HB 141
13-2-212	amended	Ch. 164	HB 362
13-2-221	amended	Ch. 51	HB 38
13-2-222	amended	Ch. 208	HB 632
13-2-402	amended	Ch. 208	HB 632
13-10-201	amended	Ch. 40	HB 175
13-10-211	amended	Ch. 40	HB 175
	amended	Ch. 129	SB 291
13-10-504	amended	Ch. 193	HB 585
13-10-601	amended	Ch. 193	HB 585
13-13-201	amended	Ch. 151	SB 140
13-13-211	amended	Ch. 151	SB 140
13-13-212	amended	Ch. 164	HB 362
13-13-222	amended	Ch. 151	SB 140
13-13-225	amended	Ch. 151	SB 140
13-13-229	amended	Ch. 151	SB 140
13-13-230	amended	Ch. 584	SB 184
13-13-232	amended	Ch. 151	SB 140
13-13-271	amended	Ch. 164	HB 362
13-13-273	amended	Ch. 164	HB 362
13-13-276	amended	Ch. 80	HB 241
13-13-277	amended	Ch. 80	HB 241
13-13-278	amended	Ch. 80	HB 241
13-15-202	amended	Ch. 129	SB 291
13-27-111	enacted	Ch. 117	HB 468
13-27-112	enacted	Ch. 117	HB 468
13-27-113	enacted	Ch. 117	HB 468
13-27-202	amended	Ch. 191	HB 508
13-27-204	amended	Ch. 51	HB 38
13-27-206	amended	Ch. 51	HB 38
13-27-207	amended	Ch. 51	HB 38

HeinOnline -- 1999 vol. III 3087 1999

Title-Ch.-Sec.	Action	Chapter	Bill #
13-27-208	amended	Ch. 191	HB 508
13-27-302	amended	Ch. 51	HB 38
13-27-307	amended	Ch. 51	HB 38
13-27-312	amended	Ch. 191	HB 508
13-27-316	amended	Ch. 191	HB 508
13-27-402	amended	Ch. 374	HB 502
13-27-406	amended	Ch. 374	HB 502
13-27-407	amended	Ch. 374	HB 502
13-27-410	amended	Ch. 208	HB 632
13-35-233	repealed	Ch. 352	SB 292
13-36-203	amended	Ch. 51	HB 38
13-37-131	amended	Ch. 352	SB 292
13-37-250	amended	Ch. 51	HB 38
15-1-101	amended	Ch. 285	SB 200
	amended	Ch. 583	SB 111
15-1-112	amended	Ch. 51	HB 38
	amended	Ch. 245	SB 15
15-1-201	amended	Ch. 314	SB 14
15-1-206	amended	Ch. 68	SB 53
	amended	Ch. 427	HB 132
15-1-211	amended	Ch. 36	HB 137
	amended	Ch. 451	SB 46
15-1-216	enacted	Ch. 427	HB 132
15-1-217	enacted	Ch. 427	HB 132
15-1-230	amended	Ch. 19	SB 11
15-1-402	amended	Ch. 448	HB 659
	amended	Ch. 584	SB 184
15-1-406	amended	Ch. 36	HB 137
15-1-501	amended	Ch. 426	HB 128
15-2-301	amended	Ch. 584	SB 184
15-6-134	amended	Ch. 436	HB 405
	amended	Ch. 584	SB 184
15-6-135	amended	Ch. 51	HB 38
	amended	Ch. 426	HB 128
15-6-136	repealed 1/1/2003	Ch. 285	SB 200
	amended	Ch. 285	SB 200
	amended	Ch. 555	SB 532
15-6-137	amended	Ch. 426	HB 128
15-6-138	repealed contingently	Ch. 285	SB 200
	amended	Ch. 285	SB 200
	amended	Ch. 551	SB 487
	amended	Ch. 555	SB 532
15-6-141	amended	Ch. 426	HB 128
	amended	Ch. 556	HB 174
15-6-143	amended	Ch. 584	SB 184
15-6-151	renumbered 15-6-191		
15-6-152	renumbered 15-6-192		
15-6-156	enacted	Ch. 556	HB 174
	amended	Ch. 556	HB 174
15-6-191	formerly 15-6-151		
15-6-192	formerly 15-6-152		
15-6-201	amended	Ch. 285	SB 200
	amended	Ch. 438	HB 513
	amended	Ch. 539	SB 274
	amended	Ch. 555	SB 532
	amended	Ch. 584	SB 184
15-6-203	amended	Ch. 204	HB 418

HeinOnline -- 1999 vol. III 3088 1999

Title-Ch.-Sec.	Action	Chapter	Bill #
15-6-207	amended	Ch. 285	SB 200
15-6-217	enacted	Ch. 246	SB 71
15-6-218	enacted	Ch. 583	SB 111
15-6-220	enacted	Ch. 285	SB 200
15-6-221	enacted	Ch. 452	SB 167
15-7-102	amended	Ch. 56	HB 82
	amended	Ch. 584	SB 184
15-7-103	amended	Ch. 584	SB 184
15-7-111	amended	Ch. 584	SB 184
15-7-403	amended	Ch. 584	SB 184
15-8-102	amended	Ch. 586	SB 270
15-8-111	amended	Ch. 531	HB 669
	amended	Ch. 584	SB 184
	amended	Ch. 589	SB 441
15-8-115	amended	Ch. 85	SB 88
15-8-201	amended	Ch. 583	SB 111
15-8-202	amended	Ch. 85	SB 88
15-8-301	amended	Ch. 285	SB 200
15-8-309	amended	Ch. 427	HB 132
15-8-403	repealed	Ch. 583	SB 111
15-8-404	amended	Ch. 583	SB 111
15-8-405	amended	Ch. 583	SB 111
15-8-406	amended	Ch. 583	SB 111
15-8-407	amended	Ch. 583	SB 111
15-10-107	enacted	Ch. 408	SB 79
	amended	Ch. 584	SB 184
15-10-204	amended	Ch. 584	SB 184
15-10-205	amended	Ch. 584	SB 184
15-10-401	amended	Ch. 584	SB 184
15-10-402	amended	Ch. 584	SB 184
15-10-412	repealed	Ch. 584	SB 184
15-10-420	enacted	Ch. 584	SB 184
15-15-101	amended	Ch. 56	HB 82
15-15-102	amended	Ch. 56	HB 82
15-15-103	amended	Ch. 56	HB 82
	amended	Ch. 85	SB 88
15-15-201	enacted	Ch. 85	SB 88
	amended	Ch. 85	SB 88
15-16-101	amended	Ch. 448	HB 659
15-16-102	amended	Ch. 448	HB 659
15-16-117	amended	Ch. 584	SB 184
15-16-119	amended	Ch. 197	SB 214
15-16-203	amended	Ch. 584	SB 184
15-16-401	amended	Ch. 197	SB 214
15-16-603	amended	Ch. 85	SB 88
15-16-605	amended	Ch. 448	HB 659
15-17-323	amended	Ch. 51	HB 38
15-17-911	amended	Ch. 197	SB 214
15-18-113	amended	Ch. 446	HB 656
15-18-212	amended	Ch. 446	HB 656
15-18-217	enacted	Ch. 446	HB 656
15-18-218	enacted	Ch. 446	HB 656
15-23-101	amended	Ch. 531	HB 669
	amended	Ch. 583	SB 111
15-23-102	amended	Ch. 36	HB 137
15-23-107	amended	Ch. 36	HB 137
15-23-201	renumbered 15-23-204	Ch. 531	HB 669

HeinOnline -- 1999 vol. III 3089 1999

Title-Ch.-Sec.	Action	Chapter	Bill #
15-23-202	amended and renumbered 15-23-205	Ch. 531	HB 669
	amended	Ch. 583	SB 111
15-23-203	enacted	Ch. 531	HB 669
15-23-204	formerly 15-23-201	Ch. 531	HB 669
15-23-205	formerly 15-23-202	Ch. 531	HB 669
15-23-214	amended	Ch. 584	SB 184
15-23-303	amended	Ch. 583	SB 111
15-23-401	amended	Ch. 140	HB 479
15-23-403	amended	Ch. 140	HB 479
15-23-801	amended	Ch. 524	HB 420
15-24-301	amended	Ch. 246	SB 71
	amended	Ch. 285	SB 200
15-24-303	amended	Ch. 285	SB 200
15-24-602	amended	Ch. 51	HB 38
15-24-901	repealed 1/1/2003	Ch. 285	SB 200
15-24-902	amended	Ch. 285	SB 200
15-24-903	amended	Ch. 285	SB 200
15-24-904	amended	Ch. 285	SB 200
	amended	Ch. 427	HB 132
15-24-920	repealed 1/1/2003	Ch. 285	SB 200
15-24-922	amended	Ch. 285	SB 200
15-24-926	repealed 1/1/2003	Ch. 285	SB 200
15-24-927	repealed 1/1/2003	Ch. 285	SB 200
15-24-931	repealed 1/1/2003	Ch. 285	SB 200
15-24-1207	amended	Ch. 427	HB 132
15-24-1401	amended	Ch. 51	HB 38
15-24-1402	amended	Ch. 584	SB 184
15-24-1501	amended	Ch. 584	SB 184
15-24-1603	amended	Ch. 584	SB 184
15-24-2402	amended	Ch. 51	HB 38
15-30-101	amended	Ch. 31	SB 106
15-30-105	amended	Ch. 31	SB 106
15-30-111	amended	Ch. 327	SB 522
	amended	Ch. 447	HB 657
15-30-117	amended	Ch. 487	HB 651
15-30-142	amended	Ch. 67	SB 52
	amended	Ch. 427	HB 132
15-30-144	amended	Ch. 26	SB 28
15-30-168	enacted	Ch. 444	HB 638
15-30-171	amended	Ch. 445	HB 652
15-30-172	amended	Ch. 547	SB 424
15-30-176	amended	Ch. 547	SB 424
15-30-192	enacted	Ch. 501	SB 426
15-30-195	amended	Ch. 389	HB 69
15-30-204	amended	Ch. 184	HB 167
15-30-207	amended	Ch. 184	HB 167
15-30-209	amended	Ch. 427	HB 132
15-30-210	amended	Ch. 184	HB 167
15-30-241	amended	Ch. 427	HB 132
15-30-248	amended	Ch. 184	HB 167
	amended	Ch. 442	HB 592
15-30-303	amended	Ch. 461	SB 401
15-30-304	amended	Ch. 68	SB 53
	amended	Ch. 184	HB 167
15-30-321	amended	Ch. 427	HB 132
15-30-323	amended	Ch. 427	HB 132
15-31-121	amended	Ch. 51	HB 38

HeinOnline -- 1999 vol. III 3090 1999

Title-Ch.-Sec.	Action	Chapter	Bill #
15-31-124	amended	Ch. 51	HB 38
15-31-143	amended	Ch. 69	SB 84
15-31-150	enacted	Ch. 444	HB 638
15-31-506	amended	Ch. 68	SB 53
15-31-509	amended	Ch. 68	SB 53
15-31-510	amended	Ch. 427	HB 132
15-31-543	amended	Ch. 427	HB 132
15-31-545	amended	Ch. 427	HB 132
15-31-552	amended	Ch. 69	SB 84
15-31-702	amended	Ch. 51	HB 38
15-32-501	enacted	Ch. 538	SB 265
15-32-502	enacted	Ch. 538	SB 265
15-32-503	enacted	Ch. 538	SB 265
15-32-504	enacted	Ch. 538	SB 265
15-32-505	enacted	Ch. 538	SB 265
15-32-506	enacted	Ch. 538	SB 265
15-32-507	enacted	Ch. 538	SB 265
15-32-508	enacted	Ch. 538	SB 265
15-32-509	enacted	Ch. 538	SB 265
15-32-510	enacted	Ch. 538	SB 265
15-34-101	enacted	Ch. 563	HB 260
15-34-102	enacted	Ch. 563	HB 260
15-34-103	enacted	Ch. 563	HB 260
15-34-104	enacted	Ch. 563	HB 260
15-34-105	enacted	Ch. 563	HB 260
15-34-110	enacted	Ch. 563	HB 260
15-34-111	enacted	Ch. 563	HB 260
15-34-112	enacted	Ch. 563	HB 260
15-34-115	amended	Ch. 563	HB 260
	enacted	Ch. 563	HB 260
15-34-116	enacted	Ch. 563	HB 260
15-35-103	amended	Ch. 51	HB 38
15-35-105	amended	Ch. 427	HB 132
15-35-108	amended	Ch. 389	HB 69
15-35-112	amended	Ch. 427	HB 132
15-35-113	amended	Ch. 427	HB 132
15-35-201	repealed	Ch. 51	HB 38
15-35-202	repealed	Ch. 51	HB 38
15-35-203	repealed	Ch. 51	HB 38
15-35-204	repealed	Ch. 51	HB 38
15-35-205	repealed	Ch. 51	HB 38
15-36-303	amended	Ch. 488	HB 658
	amended	Ch. 530	HB 661
	amended	Ch. 554	SB 530
15-36-304	amended	Ch. 488	HB 658
	amended	Ch. 530	HB 661
	amended	Ch. 554	SB 530
15-36-305	amended	Ch. 549	SB 430
15-36-311	amended	Ch. 427	HB 132
	amended	Ch. 530	HB 661
15-36-313	amended	Ch. 427	HB 132
15-36-314	amended	Ch. 51	HB 38
	amended	Ch. 427	HB 132
15-36-315	amended	Ch. 51	HB 38
	amended	Ch. 427	HB 132
15-36-323	repealed 1/1/2000	Ch. 554	SB 530
	amended	Ch. 584	SB 184

HeinOnline -- 1999 vol. III 3091 1999

Title-Ch.-Sec.	Action	Chapter	Bill #
15-36-324	amended	Ch. 19	SB 11
	amended	Ch. 488	HB 658
	amended	Ch. 530	HB 661
	amended	Ch. 554	SB 530
15-36-325	amended	Ch. 427	HB 132
	repealed 1/1/2000	Ch. 554	SB 530
15-36-326	amended	Ch. 554	SB 530
15-37-105	amended	Ch. 427	HB 132
15-37-108	amended	Ch. 427	HB 132
15-37-109	amended	Ch. 427	HB 132
15-37-114	amended	Ch. 427	HB 132
15-37-115	amended	Ch. 427	HB 132
15-37-117	amended	Ch. 144	SB 49
	amended	Ch. 464	SB 502
15-37-205	amended	Ch. 427	HB 132
15-37-210	amended	Ch. 427	HB 132
15-37-211	amended	Ch. 427	HB 132
15-38-106	amended	Ch. 144	SB 49
	amended	Ch. 552	SB 492
15-38-107	amended	Ch. 427	HB 132
15-38-202	amended	Ch. 144	SB 49
	amended	Ch. 497	SB 301
	amended	Ch. 529	HB 647
15-50-101	amended	Ch. 51	HB 38
15-50-309	amended	Ch. 427	HB 132
15-51-102	amended	Ch. 199	HB 196
	amended	Ch. 556	HB 174
15-51-103	amended	Ch. 427	HB 132
15-51-109	amended	Ch. 427	HB 132
15-51-110	amended	Ch. 427	HB 132
15-51-111	amended	Ch. 427	HB 132
15-53-101	repealed 1/1/2000	Ch. 426	HB 128
	amended	Ch. 535	SB 192
15-53-102	repealed 1/1/2000	Ch. 426	HB 128
15-53-103	repealed 1/1/2000	Ch. 426	HB 128
15-53-104	repealed 1/1/2000	Ch. 426	HB 128
15-53-105	repealed 1/1/2000	Ch. 426	HB 128
	amended	Ch. 427	HB 132
15-53-106	repealed 1/1/2000	Ch. 426	HB 128
	amended	Ch. 427	HB 132
15-53-111	repealed 1/1/2000	Ch. 426	HB 128
	amended	Ch. 427	HB 132
15-53-112	repealed 1/1/2000	Ch. 426	HB 128
15-53-113	repealed 1/1/2000	Ch. 426	HB 128
15-53-114	repealed 1/1/2000	Ch. 426	HB 128
15-53-115	repealed 1/1/2000	Ch. 426	HB 128
15-53-127	enacted	Ch. 426	HB 128
15-53-128	enacted	Ch. 426	HB 128
15-53-129	enacted	Ch. 426	HB 128
15-53-130	enacted	Ch. 426	HB 128
15-53-135	enacted	Ch. 426	HB 128
15-53-136	enacted	Ch. 426	HB 128
15-53-137	enacted	Ch. 426	HB 128
15-53-138	enacted	Ch. 426	HB 128
15-53-139	enacted	Ch. 426	HB 128
15-53-140	enacted	Ch. 426	HB 128
15-53-145	enacted	Ch. 426	HB 128

HeinOnline -- 1999 vol. III 3092 1999

Title-Ch.-Sec.	Action	Chapter	Bill #
15-53-146	enacted	Ch. 426	HB 128
15-53-147	enacted	Ch. 426	HB 128
15-53-148	enacted	Ch. 426	HB 128
15-53-149	enacted	Ch. 426	HB 128
15-53-150	enacted	Ch. 426	HB 128
15-53-155	enacted	Ch. 426	HB 128
15-53-156	enacted	Ch. 426	HB 128
	amended	Ch. 584	SB 184
15-53-201	enacted	Ch. 534	SB 172
15-53-202	amended	Ch. 534	SB 172
	enacted	Ch. 534	SB 172
15-53-203	enacted	Ch. 534	SB 172
	amended	Ch. 534	SB 172
15-59-106	amended	Ch. 427	HB 132
15-59-112	amended	Ch. 427	HB 132
15-59-113	amended	Ch. 427	HB 132
15-60-204	amended	Ch. 427	HB 132
15-60-208	amended	Ch. 427	HB 132
15-61-102	amended	Ch. 51	HB 38
15-61-202	amended	Ch. 429	HB 186
15-61-204	amended	Ch. 429	HB 186
15-62-204	amended	Ch. 51	HB 38
15-63-202	amended	Ch. 429	HB 186
15-63-204	amended	Ch. 429	HB 186
15-65-115	amended	Ch. 427	HB 132
15-65-116	amended	Ch. 427	HB 132
15-65-121	amended	Ch. 490	HB 674
15-65-131	amended	Ch. 490	HB 674
15-70-101	amended	Ch. 415	SB 504
15-70-112	amended	Ch. 77	HB 172
15-70-113	amended	Ch. 77	HB 172
15-70-114	amended	Ch. 77	HB 172
15-70-115	amended	Ch. 77	HB 172
15-70-123	amended	Ch. 340	HB 630
15-70-201	amended	Ch. 461	SB 401
15-70-202	amended	Ch. 37	HB 138
15-70-203	repealed	Ch. 37	HB 138
15-70-204	amended	Ch. 585	SB 205
15-70-205	amended	Ch. 77	HB 172
	amended	Ch. 585	SB 205
15-70-209	amended	Ch. 340	HB 630
15-70-210	amended	Ch. 340	HB 630
15-70-221	amended	Ch. 340	HB 630
	amended	Ch. 585	SB 205
15-70-223	amended	Ch. 37	HB 138
	amended	Ch. 461	SB 401
15-70-224	amended	Ch. 340	HB 630
15-70-225	amended	Ch. 340	HB 630
15-70-234	amended	Ch. 19	SB 11
15-70-301	amended	Ch. 461	SB 401
15-70-341	amended	Ch. 37	HB 138
15-70-342	repealed	Ch. 37	HB 138
15-70-343	amended	Ch. 340	HB 630
15-70-344	amended	Ch. 77	HB 172
15-70-352	amended	Ch. 77	HB 172
15-70-356	amended	Ch. 340	HB 630
15-70-362	amended	Ch. 461	SB 401

HeinOnline -- 1999 vol. III 3093 1999

Title-Ch.-Sec.	Action	Chapter	Bill #
15-70-363	amended	Ch. 340	HB 630
15-70-364	amended	Ch. 340	HB 630
15-70-371	enacted	Ch. 295	SB 346
15-70-704	amended	Ch. 38	HB 139
15-70-714	amended	Ch. 38	HB 139
15-72-101	enacted	Ch. 556	HB 174
15-72-102	enacted	Ch. 556	HB 174
15-72-103	enacted	Ch. 556	HB 174
15-72-104	enacted	Ch. 556	HB 174
15-72-105	enacted	Ch. 556	HB 174
15-72-106	enacted	Ch. 556	HB 174
15-72-110	enacted	Ch. 556	HB 174
15-72-111	enacted	Ch. 556	HB 174
15-72-112	enacted	Ch. 556	HB 174
15-72-113	enacted	Ch. 556	HB 174
15-72-114	enacted	Ch. 556	HB 174
15-72-115	enacted	Ch. 556	HB 174
15-72-116	enacted	Ch. 556	HB 174
15-72-117	enacted	Ch. 556	HB 174
16-1-403	amended	Ch. 427	HB 132
16-1-404	amended	Ch. 389	HB 69
16-1-409	amended	Ch. 427	HB 132
16-1-411	amended	Ch. 427	HB 132
16-3-213	amended	Ch. 116	HB 442
16-3-214	amended	Ch. 116	HB 442
16-3-222	amended	Ch. 194	HB 615
16-3-230	amended	Ch. 192	HB 522
16-3-416	amended	Ch. 194	HB 615
16-4-111	amended	Ch. 324	SB 446
16-4-115	amended	Ch. 54	HB 73
16-4-202	amended	Ch. 51	HB 38
	amended	Ch. 325	SB 453
16-4-205	amended	Ch. 251	SB 386
16-4-207	amended	Ch. 51	HB 38
16-4-305	enacted	Ch. 251	SB 386
16-4-401	amended	Ch. 148	SB 127
16-4-402	amended	Ch. 54	HB 73
16-4-407	amended	Ch. 54	HB 73
16-4-415	enacted	Ch. 148	SB 127
16-4-420	amended	Ch. 324	SB 446
16-4-501	amended	Ch. 54	HB 73
16-4-801	enacted	Ch. 280	SB 452
16-10-306	enacted	Ch. 465	SB 533
16-10-403	amended	Ch. 51	HB 38
16-11-143	amended	Ch. 427	HB 132
16-11-203	amended	Ch. 427	HB 132
16-11-308	amended	Ch. 389	HB 69
16-11-401	enacted	Ch. 412	SB 359
16-11-402	enacted	Ch. 412	SB 359
16-11-403	enacted	Ch. 412	SB 359
17-1-501	amended	Ch. 8	SB 50
17-1-503	amended	Ch. 8	SB 50
17-1-505	amended	Ch. 8	SB 50
	amended	Ch. 51	HB 38
17-1-508	amended	Ch. 8	SB 50
	amended	Ch. 51	HB 38
17-2-102	amended	Ch. 291	HB 645

Title-Ch.-Sec.	Action	Chapter	Bill #
17-2-105	amended	Ch. 11	SB 34
17-2-107	amended	Ch. 11	SB 34
	amended	Ch. 291	HB 645
17-2-111	amended	Ch. 8	SB 50
17-3-212	amended	Ch. 389	HB 69
17-3-222	amended	Ch. 51	HB 38
17-3-1003	amended	Ch. 122	SB 48
17-4-101	amended	Ch. 105	HB 168
17-4-105	amended	Ch. 105	HB 168
17-4-111	amended	Ch. 105	HB 168
17-5-205	amended	Ch. 9	HB 55
17-5-703	amended	Ch. 495	SB 220
17-5-709	amended	Ch. 563	HB 260
17-5-1604	amended	Ch. 498	SB 302
17-6-103	amended	Ch. 158	SB 317
17-6-201	amended	Ch. 330	HB 32
	amended	Ch. 471	HB 79
17-6-308	amended	Ch. 66	HB 480
	amended	Ch. 160	HB 44
17-6-309	amended	Ch. 64	HB 237
17-6-311	amended	Ch. 64	HB 237
17-6-318	amended	Ch. 64	HB 237
17-6-406	amended	Ch. 512	HB 670
17-6-407	amended	Ch. 512	HB 670
	amended	Ch. 521	HB 302
17-6-408	amended	Ch. 512	HB 670
17-6-511	amended	Ch. 19	SB 11
17-7-111	amended	Ch. 20	SB 55
	amended	Ch. 332	HB 64
17-7-123	amended	Ch. 20	SB 55
17-7-139	amended	Ch. 6	SB 17
17-7-140	amended	Ch. 19	SB 11
17-7-402	amended	Ch. 11	SB 34
17-7-502	amended	Ch. 51	HB 38
	amended	Ch. 83	SB 18
	amended	Ch. 360	HB 72
	amended	Ch. 389	HB 69
	amended	Ch. 497	SB 301
	amended	Ch. 554	SB 530
	amended	Ch. 563	HB 260
17-8-101	amended	Ch. 20	SB 55
18-1-102	amended	Ch. 306	SB 330
18-1-301	amended	Ch. 222	SB 240
18-1-404	amended	Ch. 413	SB 463
18-1-413	amended	Ch. 451	SB 46
18-2-101	amended	Ch. 470	SB 490
18-2-103	amended	Ch. 303	HB 649
18-2-106	amended	Ch. 303	HB 649
18-2-107	amended	Ch. 122	SB 48
18-2-123	enacted	Ch. 470	SB 490
18-2-201	amended	Ch. 112	HB 349
	amended	Ch. 303	HB 649
18-2-302	amended	Ch. 282	SB 471
18-2-303	enacted	Ch. 282	SB 471
18-2-306	enacted	Ch. 439	HB 532
18-2-316	enacted	Ch. 222	SB 240

HeinOnline -- 1999 vol. III 3095 1999

Title-Ch.-Sec.	Action	Chapter	Bill #
18-2-401	amended	Ch. 30	SB 77
	amended	Ch. 289	SB 365
	amended	Ch. 496	SB 229
18-2-403	amended	Ch. 289	SB 365
18-2-407	amended	Ch. 389	HB 69
18-2-425	enacted	Ch. 540	SB 305
18-2-432	amended	Ch. 78	HB 200
18-3-110	amended	Ch. 51	HB 38
18-4-132	amended	Ch. 407	SB 68
	amended	Ch. 580	HB 337
18-4-226	amended	Ch. 441	HB 584
18-4-242	amended	Ch. 51	HB 38
18-4-304	amended	Ch. 416	SB 82
18-4-401	amended	Ch. 200	HB 201
18-5-301	repealed 6/30/2003	Ch. 271	HB 581
18-5-302	repealed 6/30/2003	Ch. 271	HB 581
18-5-303	repealed 6/30/2003	Ch. 271	HB 581
	amended	Ch. 271	HB 581
18-5-304	amended	Ch. 271	HB 581
	repealed 6/30/2003	Ch. 271	HB 581
18-5-305	repealed 6/30/2003	Ch. 271	HB 581
	amended	Ch. 271	HB 581
18-5-306	repealed	Ch. 271	HB 581
18-5-307	repealed	Ch. 271	HB 581
18-5-308	repealed 6/30/2003	Ch. 271	HB 581
18-6-101	amended	Ch. 441	HB 584
18-8-202	amended	Ch. 51	HB 38
19-1-102	amended	Ch. 58	HB 119
19-1-202	amended	Ch. 58	HB 119
19-1-602	amended	Ch. 58	HB 119
19-2-302	amended	Ch. 471	HB 79
19-2-303	amended	Ch. 58	HB 119
	amended	Ch. 471	HB 79
	amended	Ch. 562	HB 182
19-2-401	amended	Ch. 471	HB 79
19-2-403	amended	Ch. 471	HB 79
	amended	Ch. 562	HB 182
19-2-404	amended	Ch. 562	HB 182
19-2-405	amended	Ch. 471	HB 79
19-2-406	amended	Ch. 471	HB 79
	amended	Ch. 562	HB 182
19-2-407	amended	Ch. 471	HB 79
	amended	Ch. 562	HB 182
19-2-408	amended	Ch. 286	SB 5
	amended	Ch. 471	HB 79
	amended	Ch. 562	HB 182
19-2-409	amended	Ch. 471	HB 79
19-2-501	amended	Ch. 471	HB 79
19-2-503	amended	Ch. 471	HB 79
	amended	Ch. 562	HB 182
19-2-504	amended	Ch. 471	HB 79
19-2-505	amended	Ch. 58	HB 119
	amended	Ch. 471	HB 79
	amended	Ch. 562	HB 182
19-2-506	amended	Ch. 562	HB 182
19-2-507	amended	Ch. 562	HB 182

HeinOnline -- 1999 vol. III 3096 1999

Title-Ch.-Sec.	Action	Chapter	Bill #
19-2-602	amended	Ch. 58	HB 119
	amended	Ch. 562	HB 182
19-2-603	amended	Ch. 471	HB 79
19-2-701	amended	Ch. 562	HB 182
19-2-703	amended	Ch. 562	HB 182
19-2-704	amended	Ch. 58	HB 119
19-2-705	repealed	Ch. 58	HB 119
19-2-706	amended	Ch. 58	HB 119
	amended	Ch. 118	HB 494
	amended	Ch. 471	HB 79
19-2-707	enacted	Ch. 58	HB 119
19-2-708	enacted	Ch. 58	HB 119
19-2-709	enacted	Ch. 58	HB 119
19-2-710	enacted	Ch. 471	HB 79
19-2-801	amended	Ch. 562	HB 182
19-2-802	amended	Ch. 562	HB 182
19-2-902	amended	Ch. 58	HB 119
	amended	Ch. 471	HB 79
19-2-906	amended	Ch. 471	HB 79
19-2-907	amended	Ch. 471	HB 79
19-2-908	amended	Ch. 58	HB 119
	amended	Ch. 471	HB 79
19-2-909	amended	Ch. 471	HB 79
19-2-1001	amended	Ch. 58	HB 119
19-2-1002	amended	Ch. 471	HB 79
19-2-1003	amended	Ch. 471	HB 79
19-2-1005	amended	Ch. 471	HB 79
19-2-1006	amended	Ch. 58	HB 119
	amended	Ch. 471	HB 79
19-2-1007	amended	Ch. 58	HB 119
	amended	Ch. 471	HB 79
19-2-1010	amended	Ch. 58	HB 119
19-2-1015	enacted	Ch. 562	HB 182
19-2-1101	amended	Ch. 562	HB 182
19-2-1102	enacted	Ch. 471	HB 79
19-3-103	amended	Ch. 471	HB 79
19-3-108	amended	Ch. 58	HB 119
	amended	Ch. 471	HB 79
19-3-112	enacted	Ch. 471	HB 79
19-3-201	amended	Ch. 471	HB 79
	amended	Ch. 562	HB 182
19-3-203	amended	Ch. 471	HB 79
19-3-315	amended	Ch. 471	HB 79
19-3-316	amended	Ch. 51	HB 38
	amended	Ch. 471	HB 79
19-3-318	amended	Ch. 58	HB 119
19-3-319	amended	Ch. 562	HB 182
19-3-401	amended	Ch. 471	HB 79
	amended	Ch. 562	HB 182
19-3-403	amended	Ch. 562	HB 182
19-3-412	amended	Ch. 51	HB 38
	amended	Ch. 58	HB 119
	amended	Ch. 562	HB 182
19-3-503	amended	Ch. 58	HB 119
	amended	Ch. 494	SB 195
19-3-504	amended	Ch. 58	HB 119

HeinOnline -- 1999 vol. III 3097 1999

Title-Ch.-Sec.	Action	Chapter	Bill #
19-3-505	amended	Ch. 58	HB 119
	amended	Ch. 562	HB 182
19-3-509	amended	Ch. 51	HB 38
	amended	Ch. 562	HB 182
19-3-512	amended	Ch. 58	HB 119
	amended	Ch. 562	HB 182
19-3-513	amended	Ch. 58	HB 119
	amended	Ch. 494	SB 195
19-3-520	repealed	Ch. 58	HB 119
19-3-521	amended	Ch. 562	HB 182
19-3-522	enacted	Ch. 471	HB 79
19-3-904	amended	Ch. 562	HB 182
19-3-909	enacted	Ch. 471	HB 79
19-3-1005	amended	Ch. 562	HB 182
19-3-1015	amended	Ch. 562	HB 182
19-3-1016	enacted	Ch. 471	HB 79
19-3-1103	amended	Ch. 562	HB 182
19-3-1106	amended	Ch. 562	HB 182
19-3-1112	enacted	Ch. 471	HB 79
19-3-1204	amended	Ch. 562	HB 182
19-3-1210	amended	Ch. 562	HB 182
19-3-1212	enacted	Ch. 471	HB 79
19-3-1501	amended	Ch. 217	SB 457
	amended	Ch. 562	HB 182
19-3-1502	enacted	Ch. 471	HB 79
19-3-1605	amended	Ch. 562	HB 182
19-3-2101	enacted	Ch. 471	HB 79
19-3-2102	enacted	Ch. 471	HB 79
19-3-2103	enacted	Ch. 471	HB 79
19-3-2104	enacted	Ch. 471	HB 79
19-3-2105	enacted	Ch. 471	HB 79
19-3-2111	enacted	Ch. 471	HB 79
19-3-2112	enacted	Ch. 471	HB 79
19-3-2113	enacted	Ch. 471	HB 79
19-3-2114	enacted	Ch. 471	HB 79
19-3-2115	enacted	Ch. 471	HB 79
19-3-2116	enacted	Ch. 471	HB 79
19-3-2117	enacted	Ch. 471	HB 79
19-3-2121	enacted	Ch. 471	HB 79
19-3-2122	enacted	Ch. 471	HB 79
19-3-2123	enacted	Ch. 471	HB 79
19-3-2124	enacted	Ch. 471	HB 79
19-3-2125	enacted	Ch. 471	HB 79
19-3-2126	enacted	Ch. 471	HB 79
19-3-2131	enacted	Ch. 471	HB 79
19-3-2132	enacted	Ch. 471	HB 79
19-3-2133	enacted	Ch. 471	HB 79
19-3-2134	enacted	Ch. 471	HB 79
19-5-102	amended	Ch. 562	HB 182
19-5-103	amended	Ch. 233	HB 244
19-5-401	amended	Ch. 562	HB 182
19-5-409	amended	Ch. 58	HB 119
19-5-503	amended	Ch. 562	HB 182
19-5-701	amended	Ch. 217	SB 457
	amended	Ch. 562	HB 182
19-5-802	amended	Ch. 562	HB 182
19-5-901	amended	Ch. 562	HB 182

HeinOnline -- 1999 vol. III 3098 1999

Title-Ch.-Sec.	Action	Chapter	Bill #
19-6-101	amended	Ch. 58	HB 119
19-6-102	amended	Ch. 562	HB 182
19-6-503	amended	Ch. 562	HB 182
19-6-505	amended	Ch. 562	HB 182
19-6-612	amended	Ch. 562	HB 182
19-6-709	amended	Ch. 562	HB 182
19-6-710	amended	Ch. 562	HB 182
19-6-801	amended	Ch. 58	HB 119
	amended	Ch. 562	HB 182
19-6-802	amended	Ch. 51	HB 38
	amended	Ch. 562	HB 182
19-6-803	amended	Ch. 58	HB 119
	amended	Ch. 562	HB 182
19-6-804	amended	Ch. 58	HB 119
19-6-810	enacted	Ch. 562	HB 182
19-7-101	amended	Ch. 58	HB 119
19-7-102	amended	Ch. 562	HB 182
19-7-402	amended	Ch. 562	HB 182
19-7-503	amended	Ch. 562	HB 182
19-7-711	amended	Ch. 562	HB 182
19-7-802	amended	Ch. 51	HB 38
	amended	Ch. 562	HB 182
19-7-803	amended	Ch. 58	HB 119
19-7-804	amended	Ch. 58	HB 119
	amended	Ch. 562	HB 182
19-7-810	enacted	Ch. 562	HB 182
19-7-1001	amended	Ch. 217	SB 457
	amended	Ch. 562	HB 182
19-8-101	amended	Ch. 58	HB 119
19-8-102	amended	Ch. 562	HB 182
19-8-105	amended	Ch. 51	HB 38
19-8-301	amended	Ch. 491	SB 33
19-8-501	amended	Ch. 562	HB 182
19-8-712	amended	Ch. 562	HB 182
19-8-801	amended	Ch. 217	SB 457
	amended	Ch. 562	HB 182
19-8-901	amended	Ch. 562	HB 182
19-8-902	amended	Ch. 562	HB 182
19-8-904	amended	Ch. 58	HB 119
19-8-905	amended	Ch. 58	HB 119
19-8-1002	amended	Ch. 562	HB 182
19-8-1105	amended	Ch. 562	HB 182
19-9-103	amended	Ch. 562	HB 182
19-9-104	amended	Ch. 58	HB 119
19-9-401	repealed	Ch. 562	HB 182
19-9-403	amended	Ch. 58	HB 119
19-9-405	amended	Ch. 562	HB 182
19-9-411	amended	Ch. 58	HB 119
19-9-702	amended	Ch. 562	HB 182
19-9-703	amended	Ch. 562	HB 182
19-9-706	amended	Ch. 562	HB 182
19-9-710	amended	Ch. 463	SB 434
19-9-1007	amended	Ch. 562	HB 182
19-9-1009	amended	Ch. 562	HB 182
19-9-1010	enacted	Ch. 463	SB 434
19-9-1101	amended	Ch. 562	HB 182
19-9-1102	amended	Ch. 562	HB 182

HeinOnline -- 1999 vol. III 3099 1999

Title-Ch.-Sec.	Action	Chapter	Bill #
19-13-103	amended	Ch. 562	HB 182
19-13-104	amended	Ch. 58	HB 119
	amended	Ch. 562	HB 182
19-13-403	amended	Ch. 58	HB 119
19-13-404	amended	Ch. 562	HB 182
19-13-405	amended	Ch. 58	HB 119
19-13-604	amended	Ch. 562	HB 182
19-13-605	amended	Ch. 562	HB 182
19-13-607	amended	Ch. 562	HB 182
19-13-704	amended	Ch. 562	HB 182
19-13-903	amended	Ch. 562	HB 182
19-13-1007	amended	Ch. 562	HB 182
19-13-1010	amended	Ch. 562	HB 182
19-17-102	amended	Ch. 562	HB 182
19-17-106	amended	Ch. 562	HB 182
19-17-108	amended	Ch. 562	HB 182
19-17-204	amended	Ch. 562	HB 182
19-18-503	amended	Ch. 553	SB 500
19-18-504	amended	Ch. 553	SB 500
19-19-201	amended	Ch. 562	HB 182
19-19-205	amended	Ch. 562	HB 182
19-20-101	amended	Ch. 111	HB 118
19-20-106	amended	Ch. 111	HB 118
19-20-212	enacted	Ch. 111	HB 118
19-20-302	amended	Ch. 111	HB 118
19-20-404	amended	Ch. 111	HB 118
19-20-405	amended	Ch. 111	HB 118
19-20-412	repealed	Ch. 111	HB 118
19-20-413	repealed	Ch. 111	HB 118
19-20-414	amended	Ch. 111	HB 118
19-20-415	enacted	Ch. 111	HB 118
19-20-416	enacted	Ch. 111	HB 118
19-20-417	enacted	Ch. 111	HB 118
19-20-502	amended	Ch. 111	HB 118
19-20-510	enacted	Ch. 562	HB 182
19-20-602	amended	Ch. 111	HB 118
	amended	Ch. 360	HB 72
19-20-603	amended	Ch. 111	HB 118
19-20-604	enacted	Ch. 360	HB 72
19-20-622	enacted	Ch. 360	HB 72
19-20-702	amended	Ch. 111	HB 118
19-20-703	amended	Ch. 111	HB 118
19-20-704	repealed	Ch. 111	HB 118
19-20-707	repealed	Ch. 111	HB 118
19-20-708	repealed	Ch. 111	HB 118
19-20-709	repealed	Ch. 111	HB 118
19-20-710	amended	Ch. 111	HB 118
19-20-711	repealed	Ch. 360	HB 72
19-20-712	repealed	Ch. 360	HB 72
19-20-713	repealed	Ch. 360	HB 72
19-20-714	repealed	Ch. 360	HB 72
19-20-716	amended	Ch. 111	HB 118
19-20-718	enacted	Ch. 111	HB 118
19-20-719	enacted	Ch. 360	HB 72
19-20-801	amended	Ch. 111	HB 118
19-20-802	amended	Ch. 111	HB 118
19-20-804	amended	Ch. 111	HB 118

Title-Ch.-Sec.	Action	Chapter	Bill #
19-20-901	amended	Ch. 111	HB 118
19-20-902	amended	Ch. 111	HB 118
19-20-1003	enacted	Ch. 111	HB 118
19-21-102	amended	Ch. 471	HB 79
19-21-201	amended	Ch. 471	HB 79
19-21-202	amended	Ch. 471	HB 79
19-21-203	amended	Ch. 471	HB 79
19-50-101	amended	Ch. 471	HB 79
19-50-102	amended	Ch. 471	HB 79
19-50-201	amended	Ch. 471	HB 79
19-50-202	amended	Ch. 471	HB 79
19-50-203	amended	Ch. 471	HB 79
19-50-206	repealed	Ch. 471	HB 79
20-1-501	enacted	Ch. 527	HB 528
20-1-502	enacted	Ch. 527	HB 528
20-1-503	enacted	Ch. 527	HB 528
20-3-106	amended	Ch. 343	SB 69
20-3-205	amended	Ch. 584	SB 184
20-3-209	amended	Ch. 343	SB 69
20-3-211	amended	Ch. 51	HB 38
20-3-304	amended	Ch. 514	SB 460
20-3-305	amended	Ch. 514	SB 460
20-3-306	amended	Ch. 132	SB 325
20-3-307	amended	Ch. 132	SB 325
20-3-313	enacted	Ch. 132	SB 325
20-3-321	amended	Ch. 514	SB 460
20-3-322	amended	Ch. 467	HB 348
20-3-324	amended	Ch. 584	SB 184
20-3-332	amended	Ch. 310	SB 134
20-4-109	amended	Ch. 165	HB 414
20-4-207	amended	Ch. 514	SB 460
20-4-211	repealed	Ch. 527	HB 528
20-4-212	repealed	Ch. 527	HB 528
20-4-213	repealed	Ch. 527	HB 528
20-4-214	repealed	Ch. 527	HB 528
20-4-402	amended	Ch. 343	SB 69
20-5-321	amended	Ch. 51	HB 38
20-5-323	amended	Ch. 51	HB 38
20-5-324	amended	Ch. 51	HB 38
20-6-413	amended	Ch. 214	SB 288
20-6-501	amended	Ch. 343	SB 69
20-6-608	amended	Ch. 343	SB 69
20-6-621	amended	Ch. 18	HB 80
20-7-328	enacted	Ch. 460	SB 393
20-7-329	enacted	Ch. 460	SB 393
20-7-330	enacted	Ch. 460	SB 393
20-7-401	amended	Ch. 51	HB 38
20-7-402	amended	Ch. 51	HB 38
20-7-403	amended	Ch. 51	HB 38
20-7-411	amended	Ch. 51	HB 38
20-7-420	amended	Ch. 51	HB 38
	amended	Ch. 343	SB 69
20-7-421	amended	Ch. 51	HB 38
20-7-422	amended	Ch. 51	HB 38
20-7-435	amended	Ch. 51	HB 38
20-7-461	amended	Ch. 51	HB 38
20-7-462	amended	Ch. 51	HB 38

Title-Ch.-Sec.	Action	Chapter	Bill #
20-7-501	amended	Ch. 181	SB 428
20-7-502	amended	Ch. 181	SB 428
20-7-504	amended	Ch. 181	SB 428
20-7-510	amended and renumbered 20-25-1003	Ch. 181	SB 428
20-7-511	amended and renumbered 20-25-1004	Ch. 181	SB 428
20-7-512	amended and renumbered 20-25-1005	Ch. 181	SB 428
20-7-513	amended and renumbered 20-25-1006	Ch. 181	SB 428
20-7-514	amended and renumbered 20-25-1007	Ch. 181	SB 428
	amended	Ch. 409	SB 113
20-7-705	amended	Ch. 584	SB 184
20-7-714	amended	Ch. 584	SB 184
20-9-104	amended	Ch. 554	SB 530
20-9-130	enacted	Ch. 536	SB 199
20-9-131	amended	Ch. 584	SB 184
20-9-134	amended	Ch. 343	SB 69
20-9-140	enacted	Ch. 561	HB 90
20-9-141	amended	Ch. 51	HB 38
	amended	Ch. 180	SB 260
	amended	Ch. 584	SB 184
20-9-142	amended	Ch. 584	SB 184
20-9-151	amended	Ch. 584	SB 184
20-9-152	amended	Ch. 584	SB 184
20-9-161	amended	Ch. 554	SB 530
20-9-166	amended	Ch. 343	SB 69
20-9-168	amended	Ch. 584	SB 184
20-9-204	amended	Ch. 368	HB 304
20-9-212	amended	Ch. 102	SB 246
20-9-213	amended	Ch. 102	SB 246
20-9-231	amended	Ch. 144	SB 49
20-9-306	amended	Ch. 211	SB 100
20-9-307	amended	Ch. 343	SB 69
20-9-308	amended	Ch. 514	SB 460
20-9-311	amended	Ch. 343	SB 69
20-9-313	amended	Ch. 343	SB 69
20-9-331	amended	Ch. 554	SB 530
	amended	Ch. 584	SB 184
20-9-333	amended	Ch. 554	SB 530
	amended	Ch. 584	SB 184
20-9-341	amended	Ch. 122	SB 48
20-9-344	amended	Ch. 308	SB 31
20-9-353	amended	Ch. 514	SB 460
20-9-360	amended	Ch. 584	SB 184
20-9-366	amended	Ch. 211	SB 100
20-9-367	amended	Ch. 211	SB 100
20-9-368	amended	Ch. 211	SB 100
20-9-404	amended	Ch. 166	HB 419
	amended	Ch. 584	SB 184
20-9-405	amended	Ch. 166	HB 419
20-9-406	amended	Ch. 285	SB 200
	amended	Ch. 426	HB 128
	amended	Ch. 556	HB 174
20-9-501	amended	Ch. 379	SB 151
	amended	Ch. 554	SB 530
20-9-507	amended	Ch. 554	SB 530
20-9-508	amended	Ch. 343	SB 69
20-9-601	amended	Ch. 122	SB 48
20-10-101	amended	Ch. 51	HB 38

HeinOnline -- 1999 vol. III 3102 1999

Title-Ch.-Sec.	Action	Chapter	Bill #
20-10-111	amended	Ch. 343	SB 69
20-10-143	amended	Ch. 343	SB 69
20-10-145	amended	Ch. 343	SB 69
20-10-147	amended	Ch. 157	SB 299
	amended	Ch. 584	SB 184
20-15-203	amended	Ch. 51	HB 38
20-15-305	amended	Ch. 584	SB 184
20-15-311	amended	Ch. 584	SB 184
20-15-313	amended	Ch. 584	SB 184
20-15-314	amended	Ch. 584	SB 184
20-15-326	amended	Ch. 584	SB 184
20-15-403	amended	Ch. 18	HB 80
20-20-105	amended	Ch. 514	SB 460
20-20-401	amended	Ch. 514	SB 460
20-20-416	amended	Ch. 132	SB 325
20-25-422	amended	Ch. 122	SB 48
20-25-423	amended	Ch. 584	SB 184
20-25-439	amended	Ch. 584	SB 184
20-25-1001	enacted	Ch. 181	SB 428
20-25-1002	enacted	Ch. 181	SB 428
20-25-1003	formerly 20-7-510	Ch. 181	SB 428
20-25-1004	formerly 20-7-511	Ch. 181	SB 428
20-25-1005	formerly 20-7-512	Ch. 181	SB 428
20-25-1006	formerly 20-7-513	Ch. 181	SB 428
20-25-1007	formerly 20-7-514	Ch. 181	SB 428
20-25-1301	enacted	Ch. 256	HB 421
20-25-1302	enacted	Ch. 256	HB 421
20-25-1303	enacted	Ch. 256	HB 421
20-25-1304	enacted	Ch. 256	HB 421
20-25-1310	enacted	Ch. 256	HB 421
20-26-1501	amended	Ch. 389	HB 69
20-26-1502	amended	Ch. 389	HB 69
20-26-1503	amended	Ch. 389	HB 69
22-1-304	amended	Ch. 333	HB 107
	amended	Ch. 584	SB 184
22-1-316	amended	Ch. 584	SB 184
22-1-328	amended	Ch. 183	HB 125
22-1-330	amended	Ch. 183	HB 125
22-1-402	amended	Ch. 183	HB 125
22-1-404	amended	Ch. 183	HB 125
22-1-413	amended	Ch. 183	HB 125
23-1-126	enacted	Ch. 474	HB 314
23-1-127	enacted	Ch. 474	HB 314
23-1-128	enacted	Ch. 474	HB 314
23-1-130	enacted	Ch. 266	HB 316
23-1-301	amended	Ch. 150	SB 131
23-2-525	amended	Ch. 569	HB 626
23-2-531	amended	Ch. 569	HB 626
23-2-540	enacted	Ch. 384	SB 331
23-2-619	amended	Ch. 384	SB 331
23-2-651	amended	Ch. 145	SB 87
23-2-652	amended	Ch. 145	SB 87
23-2-653	amended	Ch. 145	SB 87
23-2-654	amended	Ch. 145	SB 87
23-2-656	repealed	Ch. 145	SB 87
23-2-818	amended	Ch. 384	SB 331
23-2-821	amended	Ch. 95	HB 467

HeinOnline -- 1999 vol. III 3103 1999

Title-Ch.-Sec.	Action	Chapter	Bill #
23-4-303	amended	Ch. 584	SB 184
23-5-115	amended	Ch. 416	SB 82
23-5-116	amended	Ch. 416	SB 82
	amended	Ch. 424	HB 109
23-5-119	amended	Ch. 263	SB 419
23-5-602	amended	Ch. 424	HB 109
23-5-610	amended	Ch. 424	HB 109
23-5-621	amended	Ch. 424	HB 109
23-5-637	enacted	Ch. 424	HB 109
23-5-638	enacted	Ch. 424	HB 109
23-5-710	amended	Ch. 171	SB 351
25-1-201	amended	Ch. 386	SB 505
	amended	Ch. 545	SB 372
25-2-126	amended	Ch. 128	SB 230
25-10-302	amended	Ch. 305	SB 153
25-13-211	enacted	Ch. 89	SB 203
25-13-212	enacted	Ch. 89	SB 203
25-13-213	enacted	Ch. 89	SB 203
25-13-301	amended	Ch. 89	SB 203
25-13-402	amended	Ch. 89	SB 203
25-13-608	amended	Ch. 262	SB 404
25-13-609	amended	Ch. 237	HB 308
25-13-701	amended	Ch. 51	HB 38
25-13-708	amended	Ch. 89	SB 203
25-13-709	amended	Ch. 89	SB 203
25-30-102	amended	Ch. 63	HB 233
25-31-119	amended	Ch. 51	HB 38
25-33-208	enacted	Ch. 393	HB 204
25-35-505	amended	Ch. 207	HB 227
25-35-508	amended	Ch. 51	HB 38
25-35-602	amended	Ch. 51	HB 38
25-35-606	amended	Ch. 51	HB 38
26-1-811	repealed	Ch. 481	HB 593
26-1-813	enacted	Ch. 481	HB 593
27-1-306	amended	Ch. 51	HB 38
	amended	Ch. 472	HB 100
27-1-704	amended	Ch. 51	HB 38
27-1-718	amended	Ch. 397	HB 255
27-1-721	amended	Ch. 499	SB 381
27-1-735	amended	Ch. 242	HB 437
27-1-736	amended	Ch. 406	SB 36
27-1-737	enacted	Ch. 573	SB 271
27-1-740	enacted	Ch. 385	SB 477
27-1-741	enacted	Ch. 370	HB 396
27-1-742	enacted	Ch. 370	HB 396
27-1-743	enacted	Ch. 370	HB 396
27-1-744	enacted	Ch. 370	HB 396
27-1-745	enacted	Ch. 370	HB 396
27-2-201	amended	Ch. 101	SB 191
27-2-208	amended	Ch. 62	HB 214
28-2-723	enacted	Ch. 119	HB 514
28-2-2101	enacted	Ch. 470	SB 490
28-2-2102	enacted	Ch. 470	SB 490
28-2-2103	enacted	Ch. 470	SB 490
28-2-2104	enacted	Ch. 470	SB 490
28-2-2105	enacted	Ch. 470	SB 490
28-2-2106	enacted	Ch. 470	SB 490

HeinOnline -- 1999 vol. III 3104 1999

Title-Ch.-Sec.	Action	Chapter	Bill #
28-2-2107	enacted	Ch. 470	SB 490
30-1-105	amended	Ch. 305	SB 153
30-1-201	amended	Ch. 305	SB 153
30-1-206	amended	Ch. 305	SB 153
30-2-103	amended	Ch. 305	SB 153
30-2-210	amended	Ch. 305	SB 153
30-2-326	amended	Ch. 305	SB 153
30-2-502	amended	Ch. 305	SB 153
30-2-716	amended	Ch. 305	SB 153
30-2A-103	amended	Ch. 305	SB 153
30-2A-303	amended	Ch. 305	SB 153
30-2A-307	amended	Ch. 305	SB 153
30-2A-309	amended	Ch. 305	SB 153
30-4-208	amended	Ch. 305	SB 153
30-5-118	enacted	Ch. 305	SB 153
30-7-503	amended	Ch. 305	SB 153
30-8-113	amended	Ch. 305	SB 153
30-8-116	amended	Ch. 305	SB 153
30-8-120	amended	Ch. 305	SB 153
30-8-331	amended	Ch. 305	SB 153
30-8-332	amended	Ch. 305	SB 153
30-8-510	amended	Ch. 305	SB 153
30-9-102	repealed 7/1/2001	Ch. 305	SB 153
30-9-103	repealed 7/1/2001	Ch. 305	SB 153
30-9-104	repealed 7/1/2001	Ch. 305	SB 153
30-9-105	repealed 7/1/2001	Ch. 305	SB 153
30-9-106	repealed 7/1/2001	Ch. 305	SB 153
30-9-107	repealed 7/1/2001	Ch. 305	SB 153
30-9-108	repealed 7/1/2001	Ch. 305	SB 153
30-9-109	repealed 7/1/2001	Ch. 305	SB 153
30-9-110	repealed 7/1/2001	Ch. 305	SB 153
30-9-112	repealed 7/1/2001	Ch. 305	SB 153
30-9-113	repealed 7/1/2001	Ch. 305	SB 153
30-9-114	repealed 7/1/2001	Ch. 305	SB 153
30-9-115	repealed 7/1/2001	Ch. 305	SB 153
30-9-116	repealed 7/1/2001	Ch. 305	SB 153
30-9-122	enacted	Ch. 305	SB 153
30-9-123	enacted	Ch. 305	SB 153
30-9-124	enacted	Ch. 305	SB 153
30-9-125	enacted	Ch. 305	SB 153
30-9-126	enacted	Ch. 305	SB 153
30-9-127	enacted	Ch. 305	SB 153
30-9-128	enacted	Ch. 305	SB 153
30-9-129	enacted	Ch. 305	SB 153
30-9-130	enacted	Ch. 305	SB 153
30-9-201	repealed 7/1/2001	Ch. 305	SB 153
30-9-202	repealed 7/1/2001	Ch. 305	SB 153
30-9-203	repealed 7/1/2001	Ch. 305	SB 153
30-9-204	repealed 7/1/2001	Ch. 305	SB 153
30-9-205	repealed 7/1/2001	Ch. 305	SB 153
30-9-206	repealed 7/1/2001	Ch. 305	SB 153
30-9-207	repealed 7/1/2001	Ch. 305	SB 153
30-9-208	repealed 7/1/2001	Ch. 305	SB 153
30-9-211	enacted	Ch. 305	SB 153
30-9-212	enacted	Ch. 305	SB 153
30-9-213	enacted	Ch. 305	SB 153
30-9-214	enacted	Ch. 305	SB 153

HeinOnline -- 1999 vol. III 3105 1999

Title-Ch.-Sec.	Action	Chapter	Bill #
30-9-215	enacted	Ch. 305	SB 153
30-9-216	enacted	Ch. 305	SB 153
30-9-217	enacted	Ch. 305	SB 153
30-9-218	enacted	Ch. 305	SB 153
30-9-219	enacted	Ch. 305	SB 153
30-9-220	enacted	Ch. 305	SB 153
30-9-301	repealed 7/1/2001	Ch. 305	SB 153
30-9-302	repealed 7/1/2001	Ch. 305	SB 153
30-9-303	repealed 7/1/2001	Ch. 305	SB 153
30-9-304	repealed 7/1/2001	Ch. 305	SB 153
30-9-305	repealed 7/1/2001	Ch. 305	SB 153
30-9-306	repealed 7/1/2001	Ch. 305	SB 153
30-9-307	repealed 7/1/2001	Ch. 305	SB 153
30-9-308	repealed 7/1/2001	Ch. 305	SB 153
30-9-309	repealed 7/1/2001	Ch. 305	SB 153
30-9-310	repealed 7/1/2001	Ch. 305	SB 153
30-9-311	repealed 7/1/2001	Ch. 305	SB 153
30-9-312	repealed 7/1/2001	Ch. 305	SB 153
30-9-313	repealed 7/1/2001	Ch. 305	SB 153
30-9-314	repealed 7/1/2001	Ch. 305	SB 153
30-9-315	repealed 7/1/2001	Ch. 305	SB 153
30-9-316	repealed 7/1/2001	Ch. 305	SB 153
30-9-317	repealed 7/1/2001	Ch. 305	SB 153
30-9-318	repealed 7/1/2001	Ch. 305	SB 153
30-9-321	enacted	Ch. 305	SB 153
30-9-322	enacted	Ch. 305	SB 153
30-9-323	enacted	Ch. 305	SB 153
30-9-324	enacted	Ch. 305	SB 153
30-9-325	enacted	Ch. 305	SB 153
30-9-326	enacted	Ch. 305	SB 153
30-9-327	enacted	Ch. 305	SB 153
30-9-328	enacted	Ch. 305	SB 153
30-9-329	enacted	Ch. 305	SB 153
30-9-330	enacted	Ch. 305	SB 153
30-9-331	enacted	Ch. 305	SB 153
30-9-332	enacted	Ch. 305	SB 153
30-9-333	enacted	Ch. 305	SB 153
30-9-334	enacted	Ch. 305	SB 153
30-9-335	enacted	Ch. 305	SB 153
30-9-336	enacted	Ch. 305	SB 153
30-9-337	enacted	Ch. 305	SB 153
30-9-338	enacted	Ch. 305	SB 153
30-9-339	enacted	Ch. 305	SB 153
30-9-340	enacted	Ch. 305	SB 153
30-9-341	enacted	Ch. 305	SB 153
30-9-342	enacted	Ch. 305	SB 153
30-9-343	enacted	Ch. 305	SB 153
30-9-344	enacted	Ch. 305	SB 153
30-9-345	enacted	Ch. 305	SB 153
30-9-346	enacted	Ch. 305	SB 153
30-9-347	enacted	Ch. 305	SB 153
30-9-348	enacted	Ch. 305	SB 153
30-9-349	enacted	Ch. 305	SB 153
30-9-350	enacted	Ch. 305	SB 153
30-9-351	enacted	Ch. 305	SB 153
30-9-352	enacted	Ch. 305	SB 153
30-9-353	enacted	Ch. 305	SB 153

Title-Ch.-Sec.	Action	Chapter	Bill #
30-9-354	enacted	Ch. 305	SB 153
30-9-355	enacted	Ch. 305	SB 153
30-9-356	enacted	Ch. 305	SB 153
30-9-357	enacted	Ch. 305	SB 153
30-9-358	enacted	Ch. 305	SB 153
30-9-359	enacted	Ch. 305	SB 153
30-9-360	enacted	Ch. 305	SB 153
30-9-361	enacted	Ch. 305	SB 153
30-9-362	enacted	Ch. 305	SB 153
30-9-401	repealed 7/1/2001	Ch. 305	SB 153
30-9-402	repealed 7/1/2001	Ch. 305	SB 153
30-9-403	repealed 7/1/2001	Ch. 305	SB 153
30-9-404	repealed 7/1/2001	Ch. 305	SB 153
30-9-405	repealed 7/1/2001	Ch. 305	SB 153
30-9-406	repealed 7/1/2001	Ch. 305	SB 153
30-9-407	repealed 7/1/2001	Ch. 305	SB 153
30-9-409	repealed 7/1/2001	Ch. 305	SB 153
30-9-410	repealed 7/1/2001	Ch. 305	SB 153
30-9-411	repealed 7/1/2001	Ch. 305	SB 153
30-9-412	repealed 7/1/2001	Ch. 305	SB 153
30-9-421	repealed 7/1/2001	Ch. 305	SB 153
30-9-423	repealed 7/1/2001	Ch. 305	SB 153
30-9-431	repealed 7/1/2001	Ch. 305	SB 153
30-9-441	enacted	Ch. 305	SB 153
30-9-442	enacted	Ch. 305	SB 153
30-9-443	enacted	Ch. 305	SB 153
30-9-444	enacted	Ch. 305	SB 153
30-9-445	enacted	Ch. 305	SB 153
30-9-446	enacted	Ch. 305	SB 153
30-9-447	enacted	Ch. 305	SB 153
30-9-448	enacted	Ch. 305	SB 153
30-9-449	enacted	Ch. 305	SB 153
30-9-501	repealed 7/1/2001	Ch. 305	SB 153
30-9-502	repealed 7/1/2001	Ch. 305	SB 153
30-9-503	repealed 7/1/2001	Ch. 305	SB 153
30-9-504	repealed 7/1/2001	Ch. 305	SB 153
30-9-505	repealed 7/1/2001	Ch. 305	SB 153
30-9-506	repealed 7/1/2001	Ch. 305	SB 153
30-9-507	repealed 7/1/2001	Ch. 305	SB 153
30-9-508	repealed 7/1/2001	Ch. 305	SB 153
30-9-511	repealed 7/1/2001	Ch. 305	SB 153
30-9-521	enacted	Ch. 305	SB 153
30-9-522	enacted	Ch. 305	SB 153
30-9-523	enacted	Ch. 305	SB 153
30-9-524	enacted	Ch. 305	SB 153
30-9-525	enacted	Ch. 305	SB 153
30-9-526	enacted	Ch. 305	SB 153
30-9-527	enacted	Ch. 305	SB 153
30-9-528	enacted	Ch. 305	SB 153
30-9-529	enacted	Ch. 305	SB 153
30-9-530	enacted	Ch. 305	SB 153
30-9-531	enacted	Ch. 305	SB 153
30-9-532	enacted	Ch. 305	SB 153
30-9-533	enacted	Ch. 305	SB 153
30-9-534	enacted	Ch. 305	SB 153
30-9-535	enacted	Ch. 305	SB 153
30-9-536	enacted	Ch. 305	SB 153

HeinOnline -- 1999 vol. III 3107 1999

Title-Ch.-Sec.	Action	Chapter	Bill #
30-9-537	enacted	Ch. 305	SB 153
30-9-538	enacted	Ch. 305	SB 153
30-9-539	enacted	Ch. 305	SB 153
30-9-540	enacted	Ch. 305	SB 153
30-9-541	enacted	Ch. 305	SB 153
30-9-542	enacted	Ch. 305	SB 153
30-9-543	enacted	Ch. 305	SB 153
30-9-544	enacted	Ch. 305	SB 153
30-9-545	enacted	Ch. 305	SB 153
30-9-546	enacted	Ch. 305	SB 153
30-9-547	enacted	Ch. 305	SB 153
30-9-601	enacted	Ch. 305	SB 153
30-9-602	enacted	Ch. 305	SB 153
30-9-603	enacted	Ch. 305	SB 153
30-9-604	enacted	Ch. 305	SB 153
30-9-605	enacted	Ch. 305	SB 153
30-9-606	enacted	Ch. 305	SB 153
30-9-607	enacted	Ch. 305	SB 153
30-9-608	enacted	Ch. 305	SB 153
30-9-609	enacted	Ch. 305	SB 153
30-9-610	enacted	Ch. 305	SB 153
30-9-611	enacted	Ch. 305	SB 153
30-9-612	enacted	Ch. 305	SB 153
30-9-613	enacted	Ch. 305	SB 153
30-9-614	enacted	Ch. 305	SB 153
30-9-615	enacted	Ch. 305	SB 153
30-9-616	enacted	Ch. 305	SB 153
30-9-617	enacted	Ch. 305	SB 153
30-9-618	enacted	Ch. 305	SB 153
30-9-619	enacted	Ch. 305	SB 153
30-9-620	enacted	Ch. 305	SB 153
30-9-621	enacted	Ch. 305	SB 153
30-9-622	enacted	Ch. 305	SB 153
30-9-623	enacted	Ch. 305	SB 153
30-9-624	enacted	Ch. 305	SB 153
30-9-625	enacted	Ch. 305	SB 153
30-9-626	enacted	Ch. 305	SB 153
30-9-627	enacted	Ch. 305	SB 153
30-9-628	enacted	Ch. 305	SB 153
30-10-103	amended	Ch. 472	HB 100
30-10-104	amended	Ch. 472	HB 100
30-10-105	amended	Ch. 130	SB 296
	amended	Ch. 472	HB 100
30-10-107	amended	Ch. 416	SB 82
	amended	Ch. 472	HB 100
30-10-115	amended	Ch. 51	HB 38
	amended	Ch. 472	HB 100
30-10-201	amended	Ch. 472	HB 100
30-10-209	amended	Ch. 51	HB 38
30-10-210	amended	Ch. 472	HB 100
30-10-310	amended	Ch. 267	HB 523
30-10-324	enacted	Ch. 74	HB 121
30-10-325	enacted	Ch. 74	HB 121
30-10-326	enacted	Ch. 74	HB 121
30-12-402	repealed	Ch. 15	HB 30
30-12-403	repealed	Ch. 15	HB 30
30-12-404	repealed	Ch. 15	HB 30

HeinOnline -- 1999 vol. III 3108 1999

Title-Ch.-Sec.	Action	Chapter	Bill #
30-12-405	repealed	Ch. 15	HB 30
30-13-203	amended	Ch. 229	HB 264
30-13-207	amended	Ch. 229	HB 264
30-13-209	amended	Ch. 229	HB 264
30-13-210	amended	Ch. 229	HB 264
30-13-211	amended	Ch. 229	HB 264
30-14-142	amended	Ch. 342	SB 27
30-14-225	amended	Ch. 174	HB 154
	amended	Ch. 526	HB 506
30-14-1001	enacted	Ch. 276	SB 210
30-14-1002	enacted	Ch. 276	SB 210
30-14-1003	enacted	Ch. 276	SB 210
30-14-1004	enacted	Ch. 276	SB 210
30-14-1005	enacted	Ch. 276	SB 210
30-14-1401	enacted	Ch. 342	SB 27
30-14-1402	enacted	Ch. 342	SB 27
30-14-1403	enacted	Ch. 342	SB 27
30-14-1404	enacted	Ch. 342	SB 27
30-14-1405	enacted	Ch. 342	SB 27
30-14-1406	enacted	Ch. 342	SB 27
30-14-1407	enacted	Ch. 342	SB 27
30-14-1408	enacted	Ch. 342	SB 27
30-14-1409	enacted	Ch. 342	SB 27
30-14-1410	enacted	Ch. 342	SB 27
30-14-1411	enacted	Ch. 342	SB 27
30-14-1412	enacted	Ch. 342	SB 27
30-14-1413	enacted	Ch. 342	SB 27
30-14-1414	enacted	Ch. 342	SB 27
30-16-103	amended	Ch. 54	HB 73
30-16-201	amended	Ch. 51	HB 38
30-16-301	amended	Ch. 54	HB 73
30-16-302	amended	Ch. 7	SB 26
30-16-303	amended	Ch. 7	SB 26
31-1-233	amended	Ch. 472	HB 100
31-1-701	enacted	Ch. 404	HB 526
31-1-702	enacted	Ch. 404	HB 526
31-1-703	enacted	Ch. 404	HB 526
31-1-704	enacted	Ch. 404	HB 526
31-1-705	enacted	Ch. 404	HB 526
31-1-711	enacted	Ch. 404	HB 526
31-1-712	enacted	Ch. 404	HB 526
31-1-713	enacted	Ch. 404	HB 526
31-1-714	enacted	Ch. 404	HB 526
31-1-715	enacted	Ch. 404	HB 526
31-1-721	enacted	Ch. 404	HB 526
31-1-722	enacted	Ch. 404	HB 526
31-1-723	enacted	Ch. 404	HB 526
31-1-724	enacted	Ch. 404	HB 526
31-1-725	enacted	Ch. 404	HB 526
32-1-105	amended	Ch. 100	SB 162
32-1-109	amended	Ch. 100	SB 162
32-1-362	amended	Ch. 100	SB 162
32-1-422	amended	Ch. 100	SB 162
	amended	Ch. 410	SB 169
32-1-429	enacted	Ch. 100	SB 162
32-1-432	amended	Ch. 100	SB 162
32-1-440	amended	Ch. 51	HB 38

HeinOnline -- 1999 vol. III 3109 1999

Title-Ch.-Sec.	Action	Chapter	Bill #
32-1-492	amended	Ch. 100	SB 162
32-5-103	amended	Ch. 270	HB 558
	amended	Ch. 404	HB 526
32-5-301	amended	Ch. 270	HB 558
32-5-407	amended	Ch. 270	HB 558
32-5-506	amended	Ch. 270	HB 558
32-8-314	amended	Ch. 51	HB 38
32-8-403	amended	Ch. 51	HB 38
33-1-102	amended	Ch. 577	SB 534
33-1-213	enacted	Ch. 472	HB 100
33-1-214	enacted	Ch. 472	HB 100
33-1-215	enacted	Ch. 472	HB 100
33-1-216	enacted	Ch. 472	HB 100
33-1-217	enacted	Ch. 472	HB 100
33-1-311	amended	Ch. 472	HB 100
33-1-409	amended	Ch. 416	SB 82
33-1-411	amended	Ch. 472	HB 100
33-1-701	amended	Ch. 331	HB 47
33-2-109	amended	Ch. 472	HB 100
33-2-117	amended	Ch. 316	SB 132
33-2-126	amended	Ch. 316	SB 132
33-2-202	amended	Ch. 304	SB 107
33-2-213	amended	Ch. 304	SB 107
33-2-502	amended	Ch. 304	SB 107
	amended	Ch. 472	HB 100
33-2-521	amended	Ch. 472	HB 100
33-2-531	amended	Ch. 304	SB 107
33-2-534	amended	Ch. 304	SB 107
33-2-603	amended	Ch. 304	SB 107
33-2-701	amended	Ch. 316	SB 132
	amended	Ch. 472	HB 100
33-2-708	amended	Ch. 316	SB 132
33-2-801	repealed	Ch. 304	SB 107
33-2-802	repealed	Ch. 304	SB 107
33-2-803	repealed	Ch. 304	SB 107
33-2-804	repealed	Ch. 304	SB 107
33-2-805	repealed	Ch. 304	SB 107
33-2-806	repealed	Ch. 304	SB 107
	amended	Ch. 472	HB 100
33-2-811	repealed	Ch. 304	SB 107
33-2-812	repealed	Ch. 304	SB 107
33-2-813	repealed	Ch. 304	SB 107
33-2-814	repealed	Ch. 304	SB 107
33-2-815	repealed	Ch. 304	SB 107
33-2-816	repealed	Ch. 304	SB 107
33-2-817	repealed	Ch. 304	SB 107
33-2-818	repealed	Ch. 304	SB 107
33-2-819	repealed	Ch. 304	SB 107
33-2-820	repealed	Ch. 304	SB 107
33-2-821	repealed	Ch. 304	SB 107
33-2-822	repealed	Ch. 304	SB 107
33-2-823	repealed	Ch. 304	SB 107
33-2-824	repealed	Ch. 304	SB 107
33-2-825	repealed	Ch. 304	SB 107
33-2-826	repealed	Ch. 304	SB 107
33-2-827	repealed	Ch. 304	SB 107
33-2-828	repealed	Ch. 304	SB 107

Title-Ch.-Sec.	Action	Chapter	Bill #
33-2-829	repealed	Ch. 304	SB 107
33-2-830	repealed	Ch. 304	SB 107
33-2-831	repealed	Ch. 304	SB 107
33-2-832	repealed	Ch. 304	SB 107
33-2-833	repealed	Ch. 304	SB 107
33-2-841	repealed	Ch. 304	SB 107
33-2-842	repealed	Ch. 304	SB 107
33-2-843	repealed	Ch. 304	SB 107
33-2-851	repealed	Ch. 304	SB 107
33-2-852	repealed	Ch. 304	SB 107
33-2-1116	amended	Ch. 416	SB 82
33-2-1217	amended	Ch. 304	SB 107
33-2-1311	repealed	Ch. 472	HB 100
33-2-1701	amended	Ch. 416	SB 82
33-3-202	amended	Ch. 316	SB 132
	amended	Ch. 472	HB 100
33-3-203	amended	Ch. 316	SB 132
33-3-307	amended	Ch. 472	HB 100
33-3-432	amended	Ch. 304	SB 107
33-4-101	amended	Ch. 472	HB 100
33-4-203	amended	Ch. 472	HB 100
33-4-311	amended	Ch. 472	HB 100
33-4-313	amended	Ch. 472	HB 100
33-4-505	amended	Ch. 316	SB 132
33-5-402	amended	Ch. 472	HB 100
33-6-101	amended	Ch. 304	SB 107
33-7-526	repealed	Ch. 472	HB 100
33-10-102	amended	Ch. 472	HB 100
33-12-101	enacted	Ch. 304	SB 107
33-12-102	enacted	Ch. 304	SB 107
33-12-103	enacted	Ch. 304	SB 107
33-12-104	enacted	Ch. 304	SB 107
33-12-105	enacted	Ch. 304	SB 107
33-12-106	enacted	Ch. 304	SB 107
33-12-107	enacted	Ch. 304	SB 107
33-12-108	enacted	Ch. 304	SB 107
33-12-109	enacted	Ch. 304	SB 107
33-12-110	enacted	Ch. 304	SB 107
33-12-111	enacted	Ch. 304	SB 107
33-12-112	enacted	Ch. 304	SB 107
33-12-201	enacted	Ch. 304	SB 107
33-12-202	enacted	Ch. 304	SB 107
33-12-203	enacted	Ch. 304	SB 107
33-12-204	enacted	Ch. 304	SB 107
33-12-205	enacted	Ch. 304	SB 107
33-12-206	enacted	Ch. 304	SB 107
33-12-207	enacted	Ch. 304	SB 107
33-12-208	enacted	Ch. 304	SB 107
33-12-209	enacted	Ch. 304	SB 107
33-12-210	enacted	Ch. 304	SB 107
33-12-211	enacted	Ch. 304	SB 107
33-12-212	enacted	Ch. 304	SB 107
33-12-301	enacted	Ch. 304	SB 107
33-12-302	enacted	Ch. 304	SB 107
33-12-303	enacted	Ch. 304	SB 107
33-12-304	enacted	Ch. 304	SB 107
33-12-305	enacted	Ch. 304	SB 107

Title-Ch.-Sec.	Action	Chapter	Bill #
33-12-306	enacted	Ch. 304	SB 107
33-12-307	enacted	Ch. 304	SB 107
33-12-308	enacted	Ch. 304	SB 107
33-12-309	enacted	Ch. 304	SB 107
33-12-310	enacted	Ch. 304	SB 107
33-12-311	enacted	Ch. 304	SB 107
33-12-312	enacted	Ch. 304	SB 107
33-15-308	amended	Ch. 134	HB 156
33-15-336	amended	Ch. 472	HB 100
33-15-1105	amended	Ch. 364	HB 155
33-15-1107	amended	Ch. 472	HB 100
33-16-102	amended	Ch. 472	HB 100
33-16-104	amended	Ch. 472	HB 100
33-16-205	amended	Ch. 416	SB 82
33-16-1021	amended	Ch. 472	HB 100
33-16-1022	amended	Ch. 472	HB 100
33-17-211	amended	Ch. 316	SB 132
33-17-212	amended	Ch. 316	SB 132
	amended	Ch. 472	HB 100
33-17-214	amended	Ch. 316	SB 132
33-17-216	amended	Ch. 316	SB 132
33-17-221	amended	Ch. 316	SB 132
33-17-231	amended	Ch. 316	SB 132
33-17-236	amended	Ch. 472	HB 100
33-17-301	amended	Ch. 316	SB 132
33-17-505	amended	Ch. 316	SB 132
	amended	Ch. 472	HB 100
33-17-507	amended	Ch. 472	HB 100
33-17-1203	amended	Ch. 472	HB 100
33-17-1204	amended	Ch. 316	SB 132
33-17-1205	amended	Ch. 316	SB 132
33-18-221	amended	Ch. 526	HB 506
33-18-222	amended	Ch. 526	HB 506
33-18-223	amended	Ch. 526	HB 506
33-18-224	amended	Ch. 526	HB 506
33-18-301	amended	Ch. 472	HB 100
33-18-901	enacted	Ch. 334	HB 111
33-18-902	enacted	Ch. 334	HB 111
33-18-903	enacted	Ch. 334	HB 111
33-18-904	enacted	Ch. 334	HB 111
33-18-1006	amended	Ch. 472	HB 100
	amended	Ch. 526	HB 506
33-19-104	amended	Ch. 212	SB 103
33-19-202	amended	Ch. 212	SB 103
33-19-204	amended	Ch. 212	SB 103
33-19-306	amended	Ch. 212	SB 103
33-20-101	amended	Ch. 76	HB 171
33-20-121	amended	Ch. 472	HB 100
33-20-150	enacted	Ch. 76	HB 171
33-20-603	amended	Ch. 304	SB 107
33-20-1201	amended	Ch. 472	HB 100
33-20-1310	amended	Ch. 416	SB 82
33-22-101	amended	Ch. 178	SB 99
	amended	Ch. 472	HB 100
33-22-111	amended	Ch. 459	SB 388
	amended	Ch. 472	HB 100
33-22-131	amended	Ch. 434	HB 266

Title-Ch.-Sec.	Action	Chapter	Bill #
33-22-136	enacted	Ch. 178	SB 99
33-22-140	amended	Ch. 472	HB 100
33-22-307	amended	Ch. 472	HB 100
33-22-508	amended	Ch. 228	SB 369
33-22-514	amended	Ch. 472	HB 100
33-22-523	amended	Ch. 472	HB 100
33-22-524	amended	Ch. 472	HB 100
33-22-701	amended	Ch. 348	SB 219
33-22-702	amended	Ch. 348	SB 219
33-22-703	amended	Ch. 477	HB 512
33-22-704	amended	Ch. 348	SB 219
33-22-705	amended	Ch. 477	HB 512
33-22-706	enacted	Ch. 348	SB 219
33-22-801	repealed	Ch. 472	HB 100
33-22-802	repealed	Ch. 472	HB 100
33-22-803	repealed	Ch. 472	HB 100
33-22-804	repealed	Ch. 472	HB 100
33-22-805	repealed	Ch. 472	HB 100
33-22-806	repealed	Ch. 472	HB 100
33-22-811	repealed	Ch. 472	HB 100
33-22-812	repealed	Ch. 472	HB 100
33-22-813	repealed	Ch. 472	HB 100
33-22-814	repealed	Ch. 472	HB 100
33-22-815	repealed	Ch. 472	HB 100
33-22-816	repealed	Ch. 472	HB 100
33-22-1501	amended	Ch. 173	HB 136
33-22-1503	amended	Ch. 173	HB 136
	amended	Ch. 528	HB 536
33-22-1504	amended	Ch. 173	HB 136
	amended	Ch. 528	HB 536
33-22-1513	amended	Ch. 528	HB 536
33-22-1514	amended	Ch. 528	HB 536
33-22-1515	amended	Ch. 173	HB 136
33-22-1516	amended	Ch. 173	HB 136
33-22-1521	amended	Ch. 173	HB 136
33-22-1524	enacted	Ch. 528	HB 536
33-22-1803	amended	Ch. 103	SB 347
	amended	Ch. 472	HB 100
33-22-1804	amended	Ch. 403	HB 504
33-22-1809	amended	Ch. 472	HB 100
33-22-1811	amended	Ch. 87	SB 115
	amended	Ch. 472	HB 100
33-22-1813	amended	Ch. 472	HB 100
33-22-1815	amended	Ch. 472	HB 100
33-22-1816	amended	Ch. 472	HB 100
33-22-1818	repealed 7/1/2001	Ch. 103	SB 347
33-22-1819	amended	Ch. 103	SB 347
	repealed 7/1/2001	Ch. 103	SB 347
33-23-212	amended	Ch. 472	HB 100
33-25-211	amended	Ch. 304	SB 107
33-27-115	amended	Ch. 304	SB 107
33-30-107	amended	Ch. 472	HB 100
33-30-201	amended	Ch. 472	HB 100
33-30-1007	amended	Ch. 228	SB 369
33-30-1017	enacted	Ch. 459	SB 388
33-31-102	amended	Ch. 434	HB 266

HeinOnline -- 1999 vol. III 3113 1999

Title-Ch.-Sec.	Action	Chapter	Bill #
33-31-111	amended	Ch. 178	SB 99
	amended	Ch. 334	HB 111
	amended	Ch. 348	SB 219
	amended	Ch. 434	HB 266
	amended	Ch. 472	HB 100
33-31-115	amended	Ch. 577	SB 534
33-31-202	amended	Ch. 472	HB 100
	amended	Ch. 577	SB 534
33-31-211	amended	Ch. 472	HB 100
33-31-215	amended	Ch. 304	SB 107
33-31-216	amended	Ch. 472	HB 100
33-31-301	amended	Ch. 472	HB 100
33-31-401	amended	Ch. 472	HB 100
33-35-306	amended	Ch. 434	HB 266
33-37-101	enacted	Ch. 482	HB 607
33-37-102	enacted	Ch. 482	HB 607
33-37-103	enacted	Ch. 482	HB 607
33-37-104	enacted	Ch. 482	HB 607
33-37-105	enacted	Ch. 482	HB 607
33-37-106	enacted	Ch. 482	HB 607
35-1-308	amended	Ch. 229	HB 264
35-1-313	amended	Ch. 229	HB 264
35-1-525	amended	Ch. 229	HB 264
35-1-931	amended	Ch. 229	HB 264
35-1-933	amended	Ch. 229	HB 264
35-1-934	amended	Ch. 229	HB 264
35-1-935	amended	Ch. 69	SB 84
35-1-944	amended	Ch. 69	SB 84
35-1-1026	amended	Ch. 363	HB 150
35-1-1027	amended	Ch. 363	HB 150
35-1-1032	amended	Ch. 229	HB 264
35-1-1207	amended	Ch. 229	HB 264
35-2-226	amended	Ch. 229	HB 264
35-2-309	amended	Ch. 229	HB 264
35-2-429	amended	Ch. 51	HB 38
35-3-210	enacted	Ch. 229	HB 264
35-8-102	amended	Ch. 302	SB 435
35-8-103	amended	Ch. 229	HB 264
35-8-104	amended	Ch. 229	HB 264
35-8-108	enacted	Ch. 229	HB 264
35-8-109	enacted	Ch. 302	SB 435
35-8-110	enacted	Ch. 302	SB 435
35-8-111	enacted	Ch. 302	SB 435
35-8-201	amended	Ch. 302	SB 435
35-8-202	amended	Ch. 229	HB 264
	amended	Ch. 302	SB 435
35-8-203	amended	Ch. 229	HB 264
35-8-208	amended	Ch. 302	SB 435
35-8-209	amended	Ch. 302	SB 435
35-8-215	enacted	Ch. 302	SB 435
35-8-216	enacted	Ch. 302	SB 435
35-8-217	enacted	Ch. 302	SB 435
35-8-218	enacted	Ch. 302	SB 435
35-8-219	enacted	Ch. 302	SB 435
35-8-303	repealed	Ch. 302	SB 435
35-8-304	amended	Ch. 302	SB 435
35-8-306	enacted	Ch. 302	SB 435

Title-Ch.-Sec.	Action	Chapter	Bill #
35-8-307	enacted	Ch. 302	SB 435
35-8-310	enacted	Ch. 302	SB 435
35-8-401	repealed	Ch. 302	SB 435
35-8-402	repealed	Ch. 302	SB 435
35-8-403	repealed	Ch. 302	SB 435
35-8-404	repealed	Ch. 302	SB 435
35-8-405	amended	Ch. 302	SB 435
35-8-410	enacted	Ch. 302	SB 435
35-8-411	enacted	Ch. 302	SB 435
35-8-501	amended	Ch. 302	SB 435
35-8-502	amended	Ch. 302	SB 435
35-8-504	enacted	Ch. 302	SB 435
35-8-601	amended	Ch. 302	SB 435
35-8-602	repealed	Ch. 302	SB 435
35-8-605	amended	Ch. 302	SB 435
35-8-703	amended	Ch. 302	SB 435
35-8-704	repealed	Ch. 302	SB 435
35-8-705	amended	Ch. 302	SB 435
35-8-706	repealed	Ch. 302	SB 435
35-8-707	enacted	Ch. 302	SB 435
35-8-801	amended	Ch. 302	SB 435
	repealed	Ch. 302	SB 435
35-8-802	repealed	Ch. 302	SB 435
35-8-803	enacted	Ch. 302	SB 435
35-8-804	enacted	Ch. 302	SB 435
35-8-805	enacted	Ch. 302	SB 435
35-8-808	enacted	Ch. 302	SB 435
35-8-809	enacted	Ch. 302	SB 435
35-8-811	enacted	Ch. 302	SB 435
35-8-812	enacted	Ch. 302	SB 435
35-8-901	amended	Ch. 302	SB 435
35-8-902	amended	Ch. 302	SB 435
35-8-904	amended	Ch. 302	SB 435
35-8-905	amended	Ch. 302	SB 435
35-8-906	amended	Ch. 302	SB 435
35-8-907	repealed	Ch. 302	SB 435
35-8-908	amended	Ch. 302	SB 435
35-8-909	amended	Ch. 302	SB 435
35-8-911	enacted	Ch. 302	SB 435
35-8-912	enacted	Ch. 302	SB 435
35-8-913	enacted	Ch. 302	SB 435
35-8-1001	amended	Ch. 363	HB 150
35-8-1002	amended	Ch. 363	HB 150
35-8-1102	repealed	Ch. 302	SB 435
35-8-1103	enacted	Ch. 302	SB 435
35-8-1104	enacted	Ch. 302	SB 435
35-8-1201	amended	Ch. 302	SB 435
35-8-1202	enacted	Ch. 302	SB 435
35-8-1203	enacted	Ch. 302	SB 435
35-8-1205	enacted	Ch. 302	SB 435
35-8-1210	enacted	Ch. 302	SB 435
35-8-1211	enacted	Ch. 302	SB 435
35-8-1302	amended	Ch. 302	SB 435
35-12-505	amended	Ch. 229	HB 264
35-12-507	amended	Ch. 229	HB 264
35-17-103	amended	Ch. 130	SB 296
35-17-202	amended	Ch. 130	SB 296

Title-Ch.-Sec.	Action	Chapter	Bill #
35-17-203	amended	Ch. 130	SB 296
35-17-301	amended	Ch. 130	SB 296
35-17-302	amended	Ch. 130	SB 296
35-17-304	amended	Ch. 130	SB 296
35-17-312	amended	Ch. 130	SB 296
35-17-314	amended	Ch. 130	SB 296
35-17-315	amended	Ch. 130	SB 296
35-18-503	amended	Ch. 426	HB 128
35-19-101	enacted	Ch. 575	SB 406
35-19-102	enacted	Ch. 575	SB 406
35-19-103	enacted	Ch. 575	SB 406
35-19-104	enacted	Ch. 575	SB 406
35-19-105	enacted	Ch. 575	SB 406
35-19-106	enacted	Ch. 575	SB 406
35-19-107	enacted	Ch. 575	SB 406
35-19-108	enacted	Ch. 575	SB 406
35-19-201	enacted	Ch. 575	SB 406
35-19-202	enacted	Ch. 575	SB 406
35-19-203	enacted	Ch. 575	SB 406
35-19-204	enacted	Ch. 575	SB 406
35-19-205	enacted	Ch. 575	SB 406
35-19-301	enacted	Ch. 575	SB 406
35-19-302	enacted	Ch. 575	SB 406
35-19-303	enacted	Ch. 575	SB 406
35-19-304	enacted	Ch. 575	SB 406
35-19-305	enacted	Ch. 575	SB 406
35-19-306	enacted	Ch. 575	SB 406
35-19-307	enacted	Ch. 575	SB 406
35-19-308	enacted	Ch. 575	SB 406
35-19-309	enacted	Ch. 575	SB 406
35-19-310	enacted	Ch. 575	SB 406
35-19-311	enacted	Ch. 575	SB 406
35-19-312	enacted	Ch. 575	SB 406
35-19-313	enacted	Ch. 575	SB 406
35-19-314	enacted	Ch. 575	SB 406
35-19-315	enacted	Ch. 575	SB 406
35-21-801	enacted	Ch. 283	SB 501
35-21-802	enacted	Ch. 283	SB 501
35-21-803	enacted	Ch. 283	SB 501
35-21-804	enacted	Ch. 283	SB 501
35-21-805	enacted	Ch. 283	SB 501
35-21-810	enacted	Ch. 283	SB 501
35-21-811	enacted	Ch. 283	SB 501
35-21-812	enacted	Ch. 283	SB 501
35-21-820	enacted	Ch. 283	SB 501
35-21-821	enacted	Ch. 283	SB 501
35-21-822	enacted	Ch. 283	SB 501
35-21-825	enacted	Ch. 283	SB 501
35-21-826	enacted	Ch. 283	SB 501
35-21-827	enacted	Ch. 283	SB 501
35-21-828	enacted	Ch. 283	SB 501
35-21-831	enacted	Ch. 283	SB 501
35-21-832	enacted	Ch. 283	SB 501
35-21-833	enacted	Ch. 283	SB 501
35-21-834	enacted	Ch. 283	SB 501
35-21-840	enacted	Ch. 283	SB 501
35-21-845	enacted	Ch. 283	SB 501

Title-Ch.-Sec.	Action	Chapter	Bill #
35-21-846	enacted	Ch. 283	SB 501
35-21-847	enacted	Ch. 283	SB 501
35-21-848	enacted	Ch. 283	SB 501
35-21-849	enacted	Ch. 283	SB 501
35-21-850	enacted	Ch. 283	SB 501
35-21-851	enacted	Ch. 283	SB 501
35-21-901	renumbered 10-2-701	Ch. 51	HB 38
35-21-902	renumbered 10-2-702	Ch. 51	HB 38
35-21-903.	renumbered 10-2-703	Ch. 51	HB 38
37-1-305	amended	Ch. 203	HB 390
37-1-307	amended	Ch. 230	SB 108
37-1-308	amended	Ch. 375	HB 580
37-1-317	amended	Ch. 230	SB 108
	amended	Ch. 402	HB 461
37-1-331	enacted	Ch. 375	HB 580
37-1-411	amended	Ch. 230	SB 108
37-1-412	amended	Ch. 230	SB 108
37-1-413	enacted	Ch. 230	SB 108
37-3-103	amended	Ch. 335	HB 126
37-3-301	amended	Ch. 371	HB 399
37-3-305	amended	Ch. 230	SB 108
37-3-341	enacted	Ch. 371	HB 399
37-3-342	enacted	Ch. 371	HB 399
37-3-343	enacted	Ch. 371	HB 399
37-3-344	enacted	Ch. 371	HB 399
37-3-345	enacted	Ch. 371	HB 399
37-3-346	enacted	Ch. 371	HB 399
37-3-347	enacted	Ch. 371	HB 399
37-3-348	enacted	Ch. 371	HB 399
37-3-349	enacted	Ch. 371	HB 399
37-4-103	amended	Ch. 230	SB 108
37-4-307	amended	Ch. 230	SB 108
37-4-406	amended	Ch. 230	SB 108
37-6-107	amended	Ch. 98	SB 116
37-10-101	amended	Ch. 34	HB 85
37-12-305	repealed	Ch. 265	HB 277
37-13-316	amended	Ch. 51	HB 38
37-15-103	amended	Ch. 367	HB 301
37-15-301	amended	Ch. 367	HB 301
37-15-313	amended	Ch. 367	HB 301
37-16-304	amended	Ch. 230	SB 108
37-18-302	amended	Ch. 230	SB 108
37-18-303	amended	Ch. 230	SB 108
37-19-101	amended	Ch. 336	HB 153
37-19-824	amended	Ch. 336	HB 153
37-19-826	repealed	Ch. 336	HB 153
37-19-827	enacted	Ch. 336	HB 153
37-19-828	enacted	Ch. 336	HB 153
37-19-829	enacted	Ch. 336	HB 153
37-27-201	amended	Ch. 230	SB 108
37-27-205	amended	Ch. 230	SB 108
37-29-301	amended	Ch. 230	SB 108
37-29-305	amended	Ch. 230	SB 108
37-29-401	amended	Ch. 230	SB 108
37-29-404	amended	Ch. 230	SB 108
37-40-201	amended	Ch. 230	SB 108
37-41-101	repealed 1/1/2000	Ch. 378	SB 126

HeinOnline -- 1999 vol. III 3117 1999

Title-Ch.-Sec.	Action	Chapter	Bill #
37-41-103	repealed 1/1/2000	Ch. 378	SB 126
37-41-104	repealed 1/1/2000	Ch. 378	SB 126
37-41-105	repealed 1/1/2000	Ch. 378	SB 126
37-41-201	repealed 1/1/2000	Ch. 378	SB 126
37-41-202	repealed 1/1/2000	Ch. 378	SB 126
37-41-205	repealed 1/1/2000	Ch. 378	SB 126
37-41-211	repealed 1/1/2000	Ch. 378	SB 126
37-41-212	repealed 1/1/2000	Ch. 378	SB 126
37-42-103	amended	Ch. 195	SB 72
37-42-302	amended	Ch. 195	SB 72
37-42-304	amended	Ch. 195	SB 72
37-42-308	amended	Ch. 195	SB 72
37-47-101	amended	Ch. 543	SB 334
37-47-201	amended	Ch. 543	SB 334
37-47-306	amended	Ch. 543	SB 334
37-47-315	amended	Ch. 544	SB 338
37-47-316	enacted	Ch. 543	SB 334
37-47-317	enacted	Ch. 543	SB 334
37-47-318	enacted	Ch. 543	SB 334
37-50-308	amended	Ch. 230	SB 108
37-51-105	enacted	Ch. 99	SB 155
37-51-306	amended	Ch. 170	SB 189
37-51-310	amended	Ch. 170	SB 189
37-51-313	amended	Ch. 170	SB 189
37-51-314	amended	Ch. 170	SB 189
37-51-321	amended	Ch. 170	SB 189
37-54-403	amended	Ch. 230	SB 108
37-61-101	repealed	Ch. 198	SB 222
37-61-202	repealed	Ch. 198	SB 222
37-61-204	repealed	Ch. 198	SB 222
37-61-205	repealed	Ch. 198	SB 222
37-61-206	repealed	Ch. 198	SB 222
37-61-208	repealed	Ch. 198	SB 222
37-61-209	repealed	Ch. 198	SB 222
37-68-301	amended	Ch. 402	HB 461
37-68-311	amended	Ch. 203	HB 390
37-68-313	amended	Ch. 402	HB 461
37-68-315	amended	Ch. 402	HB 461
37-68-316	enacted	Ch. 402	HB 461
37-69-102	amended	Ch. 361	HB 98
37-69-301	amended	Ch. 361	HB 98
	amended	Ch. 402	HB 461
37-69-306	amended	Ch. 203	HB 390
37-69-308	amended	Ch. 402	HB 461
37-69-310	enacted	Ch. 402	HB 461
37-69-319	amended	Ch. 402	HB 461
37-69-403	enacted	Ch. 486	HB 641
39-2-801	amended	Ch. 573	SB 271
39-3-201	amended	Ch. 442	HB 592
39-3-207	amended	Ch. 442	HB 592
39-3-212	amended	Ch. 442	HB 592
39-3-216	amended	Ch. 442	HB 592
39-3-217	repealed	Ch. 442	HB 592
39-3-406	amended	Ch. 179	SB 245
39-8-207	amended	Ch. 472	HB 100
39-9-401	amended	Ch. 377	SB 117
	amended	Ch. 442	HB 592

HeinOnline -- 1999 vol. III 3118 1999

Title-Ch.-Sec.	Action	Chapter	Bill #
39-29-102	amended	Ch. 168	SB 90
39-29-103	amended	Ch. 168	SB 90
39-29-104	amended	Ch. 168	SB 90
39-31-202	amended	Ch. 176	HB 474
39-51-110	enacted	Ch. 442	HB 592
39-51-204	amended	Ch. 61	HB 179
39-51-301	amended	Ch. 61	HB 179
39-51-302	amended	Ch. 61	HB 179
39-51-310	amended	Ch. 442	HB 592
39-51-404	amended	Ch. 399	HB 282
39-51-409	amended	Ch. 399	HB 282
39-51-1109	amended	Ch. 36	HB 137
	amended	Ch. 442	HB 592
39-51-1213	amended	Ch. 399	HB 282
39-51-1218	amended	Ch. 399	HB 282
39-51-1301	amended	Ch. 427	HB 132
39-51-2101	amended	Ch. 400	HB 395
39-51-2108	amended	Ch. 61	HB 179
39-51-2202	amended	Ch. 400	HB 395
39-51-2302	amended	Ch. 61	HB 179
39-51-2303	amended	Ch. 61	HB 179
39-51-2304	amended	Ch. 61	HB 179
39-51-3105	amended	Ch. 61	HB 179
39-51-3107	enacted	Ch. 61	HB 179
39-51-3206	amended	Ch. 61	HB 179
39-71-116	amended	Ch. 51	HB 38
39-71-118	amended	Ch. 124	SB 114
39-71-123	amended	Ch. 124	SB 114
	amended	Ch. 377	SB 117
39-71-201	amended	Ch. 377	SB 117
39-71-225	amended	Ch. 377	SB 117
39-71-304	amended	Ch. 442	HB 592
39-71-315	amended	Ch. 442	HB 592
39-71-316	amended	Ch. 442	HB 592
39-71-317	amended	Ch. 442	HB 592
39-71-401	amended	Ch. 442	HB 592
39-71-403	amended	Ch. 560	HB 57
39-71-415	amended	Ch. 442	HB 592
39-71-432	amended	Ch. 377	SB 117
39-71-501	amended	Ch. 377	SB 117
39-71-502	repealed	Ch. 377	SB 117
	amended	Ch. 389	HB 69
39-71-503	amended	Ch. 377	SB 117
	amended	Ch. 389	HB 69
39-71-510	amended	Ch. 377	SB 117
39-71-517	amended	Ch. 377	SB 117
39-71-519	amended	Ch. 377	SB 117
39-71-525	enacted	Ch. 377	SB 117
39-71-601	amended	Ch. 442	HB 592
39-71-605	amended	Ch. 218	SB 466
	amended	Ch. 377	SB 117
39-71-610	amended	Ch. 377	SB 117
	amended	Ch. 442	HB 592
39-71-613	amended	Ch. 442	HB 592
39-71-704	amended	Ch. 442	HB 592
39-71-725	amended	Ch. 377	SB 117
39-71-901	amended	Ch. 389	HB 69

HeinOnline -- 1999 vol. III 3119 1999

Title-Ch.-Sec.	Action	Chapter	Bill #
39-71-905	amended	Ch. 377	SB 117
39-71-907	amended	Ch. 389	HB 69
39-71-915	amended	Ch. 377	SB 117
39-71-1004	amended	Ch. 377	SB 117
39-71-1032	amended	Ch. 442	HB 592
39-71-1101	amended	Ch. 468	HB 430
39-71-1102	amended	Ch. 468	HB 430
39-71-2211	amended	Ch. 131	SB 396
39-71-2315	amended	Ch. 407	SB 68
39-71-2321	amended	Ch. 184	HB 167
	amended	Ch. 389	HB 69
39-71-2323	amended	Ch. 407	SB 68
39-71-2330	amended	Ch. 407	SB 68
39-71-2341	amended	Ch. 407	SB 68
39-71-2352	amended	Ch. 184	HB 167
39-71-2505	repealed	Ch. 184	HB 167
39-71-2507	repealed	Ch. 184	HB 167
39-72-403	amended	Ch. 442	HB 592
39-72-405	amended	Ch. 377	SB 117
39-72-601	amended	Ch. 442	HB 592
39-72-602	amended	Ch. 442	HB 592
39-72-607	amended	Ch. 442	HB 592
39-72-608	amended	Ch. 377	SB 117
	amended	Ch. 442	HB 592
39-72-609	repealed	Ch. 442	HB 592
39-72-610	repealed	Ch. 442	HB 592
39-72-611	repealed	Ch. 442	HB 592
39-72-612	repealed	Ch. 442	HB 592
39-72-613	repealed	Ch. 442	HB 592
39-72-714	amended	Ch. 377	SB 117
40-1-105	amended	Ch. 91	HB 24
40-4-103	amended	Ch. 91	HB 24
40-4-105	amended	Ch. 545	SB 372
40-4-130	amended	Ch. 545	SB 372
40-4-210	amended	Ch. 579	HB 127
40-4-211	amended	Ch. 414	SB 486
40-4-220	amended	Ch. 541	SB 306
40-4-221	amended	Ch. 414	SB 486
40-4-227	enacted	Ch. 414	SB 486
40-4-228	enacted	Ch. 414	SB 486
40-4-234	amended	Ch. 545	SB 372
40-4-252	amended	Ch. 545	SB 372
40-4-303	amended	Ch. 481	HB 593
40-5-201	amended	Ch. 579	HB 127
40-5-202	amended	Ch. 579	HB 127
40-5-207	amended	Ch. 579	HB 127
40-5-210	amended	Ch. 579	HB 127
40-5-211	repealed	Ch. 579	HB 127
40-5-212	repealed	Ch. 579	HB 127
40-5-223	repealed	Ch. 579	HB 127
40-5-224	amended	Ch. 579	HB 127
40-5-225	amended	Ch. 51	HB 38
	amended	Ch. 579	HB 127
40-5-242	amended	Ch. 305	SB 153
40-5-247	amended	Ch. 579	HB 127
40-5-248	amended	Ch. 305	SB 153
40-5-253	amended	Ch. 579	HB 127

Title-Ch.-Sec.	Action	Chapter	Bill #
40-5-273	amended	Ch. 51	HB 38
	amended	Ch. 579	HB 127
40-5-315	amended	Ch. 579	HB 127
40-5-403	amended	Ch. 579	HB 127
40-5-413	amended	Ch. 51	HB 38
40-5-701	amended	Ch. 579	HB 127
40-5-806	amended	Ch. 579	HB 127
40-5-807	amended	Ch. 579	HB 127
40-5-901	amended	Ch. 579	HB 127
40-7-101	amended	Ch. 91	HB 24
40-7-102	repealed	Ch. 91	HB 24
40-7-103	amended	Ch. 91	HB 24
40-7-104	repealed	Ch. 91	HB 24
40-7-105	amended	Ch. 91	HB 24
40-7-106	amended	Ch. 91	HB 24
40-7-107	amended	Ch. 91	HB 24
40-7-108	amended	Ch. 91	HB 24
40-7-109	amended	Ch. 91	HB 24
40-7-110	amended	Ch. 91	HB 24
40-7-111	repealed	Ch. 91	HB 24
40-7-112	amended	Ch. 91	HB 24
40-7-113	repealed	Ch. 91	HB 24
40-7-114	repealed	Ch. 91	HB 24
40-7-115	repealed	Ch. 91	HB 24
40-7-116	repealed	Ch. 91	HB 24
40-7-117	repealed	Ch. 91	HB 24
40-7-118	repealed	Ch. 91	HB 24
40-7-119	amended	Ch. 91	HB 24
40-7-120	repealed	Ch. 91	HB 24
40-7-121	repealed	Ch. 91	HB 24
40-7-122	repealed	Ch. 91	HB 24
40-7-123	repealed	Ch. 91	HB 24
40-7-124	repealed	Ch. 91	HB 24
40-7-125	amended	Ch. 91	HB 24
40-7-134	enacted	Ch. 91	HB 24
40-7-135	enacted	Ch. 91	HB 24
40-7-136	enacted	Ch. 91	HB 24
40-7-137	enacted	Ch. 91	HB 24
40-7-138	enacted	Ch. 91	HB 24
40-7-139	enacted	Ch. 91	HB 24
40-7-140	enacted	Ch. 91	HB 24
40-7-201	enacted	Ch. 91	HB 24
40-7-202	enacted	Ch. 91	HB 24
40-7-203	enacted	Ch. 91	HB 24
40-7-204	enacted	Ch. 91	HB 24
40-7-301	enacted	Ch. 91	HB 24
40-7-302	enacted	Ch. 91	HB 24
40-7-303	enacted	Ch. 91	HB 24
40-7-304	enacted	Ch. 91	HB 24
40-7-305	enacted	Ch. 91	HB 24
40-7-306	enacted	Ch. 91	HB 24
40-7-307	enacted	Ch. 91	HB 24
40-7-308	enacted	Ch. 91	HB 24
40-7-309	enacted	Ch. 91	HB 24
40-7-310	enacted	Ch. 91	HB 24
40-7-311	enacted	Ch. 91	HB 24
40-7-312	enacted	Ch. 91	HB 24

HeinOnline -- 1999 vol. III 3121 1999

Title-Ch.-Sec.	Action	Chapter	Bill #
40-7-313	enacted	Ch. 91	HB 24
40-7-314	enacted	Ch. 91	HB 24
40-7-315	enacted	Ch. 91	HB 24
40-7-316	enacted	Ch. 91	HB 24
40-7-317	enacted	Ch. 91	HB 24
40-15-102	amended	Ch. 432	HB 203
40-15-202	amended	Ch. 311	SB 258
40-15-301	amended	Ch. 311	SB 258
41-3-101	amended	Ch. 566	HB 366
41-3-102	amended	Ch. 566	HB 366
41-3-108	amended	Ch. 566	HB 366
41-3-202	amended	Ch. 566	HB 366
41-3-203	amended	Ch. 566	HB 366
41-3-205	amended	Ch. 566	HB 366
41-3-303	amended	Ch. 566	HB 366
41-3-401	amended	Ch. 428	HB 180
	amended	Ch. 566	HB 366
41-3-403	amended	Ch. 566	HB 366
41-3-404	amended	Ch. 481	HB 593
	amended	Ch. 566	HB 366
41-3-406	amended	Ch. 428	HB 180
	amended	Ch. 566	HB 366
41-3-412	amended	Ch. 428	HB 180
	amended	Ch. 566	HB 366
41-3-413	enacted	Ch. 566	HB 366
41-3-420	enacted	Ch. 566	HB 366
41-3-421	enacted	Ch. 428	HB 180
41-3-604	enacted	Ch. 566	HB 366
41-3-607	amended	Ch. 428	HB 180
	amended	Ch. 566	HB 366
41-3-609	amended	Ch. 395	HB 209
	amended	Ch. 566	HB 366
41-3-705	amended	Ch. 356	SB 470
41-3-1103	amended	Ch. 127	SB 197
	amended	Ch. 428	HB 180
	amended	Ch. 566	HB 366
41-3-1160	enacted	Ch. 127	SB 197
41-3-1161	enacted	Ch. 127	SB 197
41-5-102	amended	Ch. 537	SB 243
41-5-103	amended	Ch. 106	HB 176
	amended	Ch. 326	SB 481
	amended	Ch. 532	SB 54
41-5-121	amended	Ch. 532	SB 54
41-5-206	amended	Ch. 432	HB 203
	amended	Ch. 523	HB 374
	amended	Ch. 532	SB 54
	amended	Ch. 537	SB 243
41-5-208	amended	Ch. 537	SB 243
41-5-215	amended	Ch. 106	HB 176
	amended	Ch. 564	HB 310
41-5-216	amended	Ch. 106	HB 176
41-5-217	repealed	Ch. 106	HB 176
41-5-321	amended	Ch. 326	SB 481
41-5-332	amended	Ch. 326	SB 481
	amended	Ch. 532	SB 54
41-5-347	amended	Ch. 51	HB 38
41-5-348	amended	Ch. 532	SB 54

HeinOnline -- 1999 vol. III 3122 1999

Title-Ch.-Sec.	Action	Chapter	Bill #
41-5-355	enacted	Ch. 532	SB 54
41-5-1210	enacted	Ch. 532	SB 54
41-5-1301	amended	Ch. 532	SB 54
41-5-1302	amended	Ch. 532	SB 54
41-5-1415	amended	Ch. 532	SB 54
41-5-1501	amended	Ch. 523	HB 374
	amended	Ch. 532	SB 54
41-5-1503	amended	Ch. 532	SB 54
41-5-1513	amended	Ch. 532	SB 54
41-5-1602	amended	Ch. 537	SB 243
41-5-1604	amended	Ch. 537	SB 243
41-5-1605	amended	Ch. 537	SB 243
41-5-1802	amended	Ch. 536	SB 199
41-5-1803	amended	Ch. 532	SB 54
	amended	Ch. 536	SB 199
41-5-1804	amended	Ch. 536	SB 199
	amended	Ch. 584	SB 184
41-5-1807	amended	Ch. 536	SB 199
41-5-2501	enacted	Ch. 532	SB 54
41-5-2502	enacted	Ch. 532	SB 54
41-5-2503	enacted	Ch. 532	SB 54
41-5-2510	enacted	Ch. 532	SB 54
42-1-105	amended	Ch. 257	HB 455
42-2-206	amended	Ch. 257	HB 455
42-2-217	amended	Ch. 257	HB 455
42-2-412	amended	Ch. 257	HB 455
42-2-607	amended	Ch. 257	HB 455
42-2-608	amended	Ch. 51	HB 38
	amended	Ch. 566	HB 366
42-2-609	amended	Ch. 257	HB 455
42-2-610	amended	Ch. 257	HB 455
42-2-619	amended	Ch. 257	HB 455
42-3-203	amended	Ch. 257	HB 455
42-3-212	amended	Ch. 257	HB 455
42-3-213	amended	Ch. 257	HB 455
42-4-302	amended	Ch. 257	HB 455
42-4-303	amended	Ch. 257	HB 455
42-4-304	amended	Ch. 257	HB 455
42-4-305	repealed	Ch. 257	HB 455
42-4-309	amended	Ch. 257	HB 455
42-4-310	amended	Ch. 257	HB 455
42-5-101	amended	Ch. 257	HB 455
42-5-109	amended	Ch. 257	HB 455
42-5-202	amended	Ch. 257	HB 455
42-10-102	amended	Ch. 21	SB 93
42-10-103	amended	Ch. 21	SB 93
42-10-106	amended	Ch. 21	SB 93
42-10-107	amended	Ch. 21	SB 93
42-10-108	amended	Ch. 21	SB 93
42-10-109	amended	Ch. 21	SB 93
42-10-110	repealed	Ch. 21	SB 93
44-4-203	amended	Ch. 416	SB 82
44-4-301	amended	Ch. 315	SB 22
44-4-302	amended	Ch. 315	SB 22
	amended	Ch. 469	HB 482
44-4-303	enacted	Ch. 469	HB 482
44-5-103	amended	Ch. 147	SB 112

HeinOnline -- 1999 vol. III 3123 1999

Title-Ch.-Sec.	Action	Chapter	Bill #
44-5-301	amended	Ch. 416	SB 82
44-5-601	enacted	Ch. 220	HB 106
44-5-602	enacted	Ch. 220	HB 106
44-6-101	amended	Ch. 147	SB 112
44-6-102	amended	Ch. 147	SB 112
44-6-103	amended	Ch. 147	SB 112
44-12-206	amended	Ch. 389	HB 69
45-2-101	amended	Ch. 288	SB 257
	amended	Ch. 354	SB 326
	amended	Ch. 395	HB 209
	amended	Ch. 397	HB 255
45-5-102	amended	Ch. 432	HB 203
	amended	Ch. 523	HB 374
45-5-104	amended	Ch. 381	SB 215
45-5-201	amended	Ch. 432	HB 203
45-5-202	amended	Ch. 432	HB 203
45-5-206	amended	Ch. 432	HB 203
45-5-212	enacted	Ch. 432	HB 203
45-5-213	enacted	Ch. 432	HB 203
45-5-214	enacted	Ch. 388	HB 54
45-5-222	amended	Ch. 395	HB 209
45-5-501	amended	Ch. 84	SB 32
45-5-502	amended	Ch. 84	SB 32
45-5-503	amended	Ch. 84	SB 32
	amended	Ch. 523	HB 374
45-5-504	amended	Ch. 288	SB 257
45-5-621	amended	Ch. 395	HB 209
45-5-627	amended	Ch. 432	HB 203
45-6-101	amended	Ch. 397	HB 255
45-6-103	amended	Ch. 397	HB 255
45-6-104	amended	Ch. 141	HB 492
45-6-301	amended	Ch. 397	HB 255
45-6-307	amended	Ch. 354	SB 326
45-6-309	amended	Ch. 397	HB 255
45-6-311	amended	Ch. 397	HB 255
45-6-312	amended	Ch. 397	HB 255
45-6-313	amended	Ch. 397	HB 255
45-6-316	amended	Ch. 397	HB 255
45-6-317	amended	Ch. 397	HB 255
45-6-325	amended	Ch. 397	HB 255
45-7-210	amended	Ch. 397	HB 255
45-8-105	amended	Ch. 350	SB 236
45-8-212	amended	Ch. 395	HB 209
45-8-213	amended	Ch. 354	SB 326
45-8-301	amended	Ch. 466	SB 472
45-8-302	amended	Ch. 466	SB 472
45-8-305	amended	Ch. 466	SB 472
45-8-306	repealed	Ch. 466	SB 472
45-8-307	amended	Ch. 466	SB 472
45-8-308	repealed	Ch. 466	SB 472
45-8-309	repealed	Ch. 466	SB 472
45-8-317	amended	Ch. 476	HB 459
45-8-318	amended	Ch. 491	SB 33
45-8-321	amended	Ch. 581	HB 566
45-8-322	amended	Ch. 581	HB 566
45-8-328	amended	Ch. 572	SB 186
45-8-329	amended	Ch. 476	HB 459

Title-Ch.-Sec.	Action	Chapter	Bill #
45-8-337	amended	Ch. 466	SB 472
	amended	Ch. 581	HB 566
45-8-361	amended	Ch. 581	HB 566
45-8-405	amended	Ch. 432	HB 203
45-9-101	amended	Ch. 432	HB 203
45-9-103	amended	Ch. 432	HB 203
45-9-107	amended	Ch. 24	SB 6
45-9-109	amended	Ch. 432	HB 203
45-9-112	amended	Ch. 432	HB 203
45-9-113	amended	Ch. 432	HB 203
45-9-205	amended	Ch. 52	HB 48
46-1-202	amended	Ch. 395	HB 209
46-4-301	amended	Ch. 318	SB 221
46-4-401	enacted	Ch. 97	SB 8
46-4-402	enacted	Ch. 97	SB 8
46-4-403	enacted	Ch. 97	SB 8
46-4-404	enacted	Ch. 97	SB 8
46-4-405	enacted	Ch. 97	SB 8
46-7-102	amended	Ch. 346	SB 190
46-11-503	amended	Ch. 110	SB 201
46-12-201	amended	Ch. 395	HB 209
46-12-204	amended	Ch. 395	HB 209
46-12-210	amended	Ch. 395	HB 209
46-12-211	amended	Ch. 395	HB 209
46-12-212	amended	Ch. 395	HB 209
46-13-108	amended	Ch. 395	HB 209
46-13-109	amended	Ch. 395	HB 209
46-14-311	amended	Ch. 395	HB 209
46-16-103	amended	Ch. 395	HB 209
46-16-105	amended	Ch. 395	HB 209
46-16-702	amended	Ch. 301	SB 416
46-17-201	amended	Ch. 346	SB 190
46-17-203	amended	Ch. 395	HB 209
46-17-303	amended	Ch. 63	HB 233
46-17-311	amended	Ch. 346	SB 190
46-17-402	amended	Ch. 63	HB 233
46-18-104	amended	Ch. 395	HB 209
46-18-201	amended	Ch. 52	HB 48
	amended	Ch. 395	HB 209
	amended	Ch. 432	HB 203
	amended	Ch. 505	HB 115
46-18-202	amended	Ch. 52	HB 48
	amended	Ch. 147	SB 112
46-18-203	amended	Ch. 52	HB 48
46-18-204	amended	Ch. 395	HB 209
46-18-205	enacted	Ch. 52	HB 48
46-18-219	amended	Ch. 52	HB 48
	amended	Ch. 432	HB 203
46-18-220	amended	Ch. 52	HB 48
	amended	Ch. 126	SB 188
	amended	Ch. 491	SB 33
46-18-222	amended	Ch. 52	HB 48
46-18-225	amended	Ch. 52	HB 48
46-18-231	amended	Ch. 52	HB 48
	amended	Ch. 395	HB 209
	amended	Ch. 432	HB 203

HeinOnline -- 1999 vol. III 3125 1999

Title-Ch.-Sec.	Action	Chapter	Bill #
46-18-236	amended	Ch. 398	HB 257
	amended	Ch. 411	SB 233
46-18-251	amended	Ch. 398	HB 257
46-18-303	amended	Ch. 52	HB 48
	amended	Ch. 126	SB 188
	amended	Ch. 491	SB 33
46-18-502	amended	Ch. 52	HB 48
46-19-103	amended	Ch. 387	HB 53
	amended	Ch. 491	SB 33
46-23-103	amended	Ch. 450	SB 20
46-23-108	repealed	Ch. 450	SB 20
46-23-109	enacted	Ch. 450	SB 20
46-23-110	enacted	Ch. 450	SB 20
46-23-201	amended	Ch. 491	SB 33
46-23-202	amended	Ch. 450	SB 20
46-23-215	amended	Ch. 147	SB 112
	amended	Ch. 491	SB 33
46-23-217	amended	Ch. 491	SB 33
46-23-218	amended	Ch. 450	SB 20
46-23-302	amended	Ch. 51	HB 38
46-23-502	amended	Ch. 227	SB 63
	amended	Ch. 432	HB 203
46-23-506	amended	Ch. 227	SB 63
46-23-508	amended	Ch. 219	HB 76
46-23-509	amended	Ch. 358	HB 59
46-23-512	enacted	Ch. 358	HB 59
46-23-1011	amended	Ch. 52	HB 48
	amended	Ch. 505	HB 115
46-23-1012	amended	Ch. 505	HB 115
46-23-1023	amended	Ch. 505	HB 115
46-23-1024	amended	Ch. 505	HB 115
46-23-1031	amended	Ch. 505	HB 115
46-23-1033	enacted	Ch. 505	HB 115
46-24-203	amended	Ch. 395	HB 209
46-24-211	amended	Ch. 532	SB 54
49-4-301	amended	Ch. 156	SB 290
49-4-303	amended	Ch. 156	SB 290
49-4-305	amended	Ch. 156	SB 290
50-2-101	amended	Ch. 137	HB 331
50-2-104	amended	Ch. 163	HB 230
50-2-106	amended	Ch. 47	HB 319
50-2-111	amended	Ch. 584	SB 184
50-2-114	amended	Ch. 584	SB 184
50-2-116	amended	Ch. 137	HB 331
50-3-109	amended	Ch. 51	HB 38
50-5-101	amended	Ch. 98	SB 116
	amended	Ch. 133	HB 70
50-5-216	amended	Ch. 133	HB 70
50-5-301	amended	Ch. 98	SB 116
50-6-501	enacted	Ch. 335	HB 126
50-6-502	enacted	Ch. 335	HB 126
50-6-503	enacted	Ch. 335	HB 126
50-6-504	enacted	Ch. 335	HB 126
50-6-505	enacted	Ch. 335	HB 126
50-6-506	enacted	Ch. 335	HB 126
50-15-121	amended	Ch. 416	SB 82
50-15-122	amended	Ch. 416	SB 82

HeinOnline -- 1999 vol. III 3126 1999

Title-Ch.-Sec.	Action	Chapter	Bill #
50-15-403	amended	Ch. 27	SB 30
50-16-504	amended	Ch. 300	SB 399
50-16-526	amended	Ch. 300	SB 399
50-16-527	amended	Ch. 480	HB 557
50-16-536	amended	Ch. 300	SB 399
50-16-540	enacted	Ch. 300	SB 399
50-16-541	amended	Ch. 300	SB 399
50-16-545	amended	Ch. 300	SB 399
50-16-701	amended	Ch. 146	SB 101
50-16-702	amended	Ch. 146	SB 101
50-16-703	amended	Ch. 146	SB 101
50-16-704	amended	Ch. 146	SB 101
50-16-705	amended	Ch. 146	SB 101
50-16-711	amended	Ch. 146	SB 101
50-19-501	enacted	Ch. 299	SB 398
50-20-102	amended	Ch. 479	HB 530
50-20-109	amended	Ch. 479	HB 530
50-20-401	amended	Ch. 479	HB 530
50-31-103	amended	Ch. 172	SB 394
50-31-203	amended	Ch. 172	SB 394
50-31-221	repealed contingently	Ch. 172	SB 394
50-31-222	repealed contingently	Ch. 172	SB 394
50-31-223	repealed contingently	Ch. 172	SB 394
50-31-231	repealed contingently	Ch. 172	SB 394
50-32-229	amended	Ch. 253	SB 438
50-32-314	enacted	Ch. 273	SB 478
50-32-405	amended	Ch. 432	HB 203
50-37-106	amended	Ch. 284	SB 521
50-40-201	amended	Ch. 274	HB 212
50-44-102	amended	Ch. 92	HB 170
50-51-102	amended	Ch. 264	SB 439
50-60-103	amended	Ch. 473	HB 245
50-60-106	amended	Ch. 473	HB 245
50-60-115	enacted	Ch. 473	HB 245
50-60-116	enacted	Ch. 473	HB 245
50-60-117	enacted	Ch. 473	HB 245
50-60-118	enacted	Ch. 473	HB 245
50-60-201	amended	Ch. 473	HB 245
50-60-203	amended	Ch. 486	HB 641
50-60-301	amended	Ch. 473	HB 245
50-70-103	amended	Ch. 25	SB 21
50-70-105	amended	Ch. 25	SB 21
50-70-110	repealed	Ch. 25	SB 21
50-70-111	amended	Ch. 25	SB 21
50-77-106	repealed	Ch. 232	HB 229
50-78-102	amended	Ch. 51	HB 38
52-2-211	amended	Ch. 564	HB 310
52-2-721	amended	Ch. 135	HB 190
52-3-101	amended	Ch. 435	HB 275
52-3-103	amended	Ch. 435	HB 275
52-3-503	amended	Ch. 435	HB 275
52-3-504	amended	Ch. 435	HB 275
52-3-802	amended	Ch. 196	SB 176
52-3-803	amended	Ch. 196	SB 176
52-3-804	amended	Ch. 196	SB 176
52-3-811	amended	Ch. 196	SB 176
52-3-812	amended	Ch. 196	SB 176

HeinOnline -- 1999 vol. III 3127 1999

Title-Ch.-Sec.	Action	Chapter	Bill #
52-3-813	amended	Ch. 196	SB 176
52-3-815	amended	Ch. 196	SB 176
52-3-825	amended	Ch. 196	SB 176
52-5-129	amended	Ch. 532	SB 54
53-1-102	amended	Ch. 491	SB 33
53-1-103	amended	Ch. 491	SB 33
53-1-104	amended	Ch. 491	SB 33
53-1-108	amended	Ch. 491	SB 33
53-1-202	amended	Ch. 491	SB 33
53-1-208	enacted	Ch. 550	SB 454
53-1-413	amended	Ch. 577	SB 534
53-2-304	amended	Ch. 341	HB 676
53-2-322	amended	Ch. 584	SB 184
53-2-613	amended	Ch. 29	SB 76
53-2-813	amended	Ch. 584	SB 184
53-4-210	enacted	Ch. 509	HB 551
53-4-211	amended	Ch. 341	HB 676
	amended	Ch. 567	HB 470
53-4-246	amended	Ch. 341	HB 676
53-4-603	amended	Ch. 124	SB 114
53-4-704	enacted	Ch. 124	SB 114
53-4-717	amended	Ch. 458	SB 353
53-4-721	enacted	Ch. 458	SB 353
53-4-1001	enacted	Ch. 571	SB 81
53-4-1002	enacted	Ch. 571	SB 81
53-4-1003	enacted	Ch. 571	SB 81
53-4-1004	enacted	Ch. 571	SB 81
53-4-1005	enacted	Ch. 571	SB 81
53-4-1006	enacted	Ch. 215	SB 364
53-4-1007	enacted	Ch. 571	SB 81
53-4-1008	enacted	Ch. 571	SB 81
53-4-1009	enacted	Ch. 571	SB 81
53-4-1010	enacted	Ch. 571	SB 81
53-4-1011	enacted	Ch. 571	SB 81
53-6-131	amended	Ch. 21	SB 93
	amended	Ch. 577	SB 534
53-6-170	enacted	Ch. 577	SB 534
53-6-703	amended	Ch. 577	SB 534
53-6-704	amended	Ch. 577	SB 534
53-6-706	amended	Ch. 577	SB 534
53-6-709	amended	Ch. 577	SB 534
53-20-208	amended	Ch. 584	SB 184
53-21-111	amended	Ch. 247	SB 124
53-21-130	amended	Ch. 247	SB 124
53-21-134	amended	Ch. 247	SB 124
53-21-138	amended	Ch. 247	SB 124
53-21-180	amended	Ch. 247	SB 124
53-21-188	repealed	Ch. 247	SB 124
53-21-204	amended	Ch. 58	HB 119
53-21-601	amended	Ch. 247	SB 124
53-21-701	enacted	Ch. 577	SB 534
53-21-702	enacted	Ch. 577	SB 534
53-21-703	enacted	Ch. 577	SB 534
53-21-704	enacted	Ch. 577	SB 534
53-30-101	amended	Ch. 491	SB 33
53-30-132	amended	Ch. 491	SB 33
53-30-151	amended	Ch. 491	SB 33

HeinOnline -- 1999 vol. III 3128 1999

Title-Ch.-Sec.	Action	Chapter	Bill #
53-30-303	amended	Ch. 395	HB 209
53-30-401	amended	Ch. 505	HB 115
53-30-403	amended	Ch. 505	HB 115
53-30-503	amended	Ch. 491	SB 33
53-30-504	amended	Ch. 491	SB 33
53-30-507	amended	Ch. 491	SB 33
53-30-602	amended	Ch. 491	SB 33
53-30-603	amended	Ch. 491	SB 33
60-1-103	amended	Ch. 546	SB 421
60-1-201	amended	Ch. 440	HB 560
60-2-107	amended	Ch. 107	HB 352
	amended	Ch. 440	HB 560
60-2-112	amended	Ch. 306	SB 330
60-2-114	enacted	Ch. 282	SB 471
60-2-115	enacted	Ch. 439	HB 532
60-2-127	amended	Ch. 298	SB 397
60-2-203	amended	Ch. 542	SB 333
60-2-204	amended	Ch. 542	SB 333
60-2-243	enacted	Ch. 417	SB 89
60-2-601	enacted	Ch. 546	SB 421
60-2-602	enacted	Ch. 546	SB 421
60-3-205	amended	Ch. 177	HB 561
60-3-206	amended	Ch. 542	SB 333
60-3-303	amended	Ch. 297	SB 355
61-1-132	amended	Ch. 409	SB 113
61-1-141	enacted	Ch. 409	SB 113
61-1-314	amended	Ch. 409	SB 113
61-1-321	enacted	Ch. 409	SB 113
61-1-514	enacted	Ch. 409	SB 113
61-2-302	amended	Ch. 258	HB 527
61-3-101	amended	Ch. 409	SB 113
	amended	Ch. 416	SB 82
61-3-103	amended	Ch. 409	SB 113
61-3-109	amended	Ch. 260	SB 13
61-3-206	amended	Ch. 409	SB 113
61-3-301	amended	Ch. 409	SB 113
61-3-303	amended	Ch. 94	HB 454
61-3-321	amended	Ch. 79	HB 231
61-3-332	amended	Ch. 79	HB 231
	amended	Ch. 344	SB 137
	amended	Ch. 570	HB 648
61-3-407	amended	Ch. 344	SB 137
61-3-426	amended	Ch. 79	HB 231
61-3-432	amended	Ch. 409	SB 113
61-3-446	amended	Ch. 344	SB 137
61-3-448	amended	Ch. 51	HB 38
61-3-457	enacted	Ch. 79	HB 231
61-3-501	amended	Ch. 409	SB 113
61-3-502	amended	Ch. 409	SB 113
61-3-504	amended	Ch. 79	HB 231
	amended	Ch. 180	SB 260
61-3-506	amended	Ch. 51	HB 38
61-3-508	amended	Ch. 409	SB 113
61-3-509	amended	Ch. 584	SB 184
61-3-537	amended	Ch. 180	SB 260
61-3-602	amended	Ch. 409	SB 113
61-3-707	amended	Ch. 246	SB 71

HeinOnline -- 1999 vol. III 3129 1999

Title-Ch.-Sec.	Action	Chapter	Bill #
61-3-721	amended	Ch. 51	HB 38
61-4-101	amended	Ch. 51	HB 38
	amended	Ch. 409	SB 113
61-4-102	amended	Ch. 409	SB 113
61-4-103	repealed	Ch. 409	SB 113
61-4-104	amended	Ch. 409	SB 113
61-4-105	amended	Ch. 409	SB 113
61-4-107	amended	Ch. 409	SB 113
61-4-108	amended	Ch. 409	SB 113
61-4-120	amended	Ch. 409	SB 113
61-4-122	enacted	Ch. 409	SB 113
61-4-123	enacted	Ch. 409	SB 113
61-4-124	enacted	Ch. 409	SB 113
61-4-125	enacted	Ch. 409	SB 113
61-4-126	enacted	Ch. 409	SB 113
61-4-129	enacted	Ch. 409	SB 113
61-4-201	amended	Ch. 313	SB 367
	amended	Ch. 384	SB 331
61-4-202	amended	Ch. 384	SB 331
61-4-204	amended	Ch. 313	SB 367
	amended	Ch. 384	SB 331
61-4-205	amended	Ch. 384	SB 331
	amended	Ch. 409	SB 113
61-4-208	amended	Ch. 313	SB 367
61-4-222	amended	Ch. 384	SB 331
61-4-402	amended	Ch. 384	SB 331
61-5-102	amended	Ch. 309	SB 94
61-5-103	amended	Ch. 309	SB 94
61-5-104	amended	Ch. 95	HB 467
61-5-105	amended	Ch. 309	SB 94
61-5-106	amended	Ch. 309	SB 94
61-5-107	amended	Ch. 29	SB 76
	amended	Ch. 309	SB 94
61-5-108	amended	Ch. 309	SB 94
61-5-110	amended	Ch. 181	SB 428
	amended	Ch. 309	SB 94
61-5-111	amended	Ch. 29	SB 76
	amended	Ch. 309	SB 94
61-5-112	amended	Ch. 309	SB 94
61-5-113	amended	Ch. 309	SB 94
61-5-118	amended	Ch. 292	SB 122
61-5-119	enacted	Ch. 309	SB 94
61-5-120	enacted	Ch. 309	SB 94
61-5-121	amended	Ch. 181	SB 428
61-5-125	amended	Ch. 309	SB 94
61-5-207	amended	Ch. 309	SB 94
61-5-208	amended	Ch. 258	HB 527
	amended	Ch. 309	SB 94
	amended	Ch. 455	SB 251
61-6-112	amended	Ch. 309	SB 94
61-6-122	amended	Ch. 309	SB 94
61-6-123	amended	Ch. 309	SB 94
61-6-125	amended	Ch. 309	SB 94
61-6-141	repealed	Ch. 309	SB 94
61-7-108	amended	Ch. 115	HB 371
61-7-109	amended	Ch. 115	HB 371
61-8-303	amended	Ch. 43	SB 133

Title-Ch.-Sec.	Action	Chapter	Bill #
61-8-304	repealed	Ch. 43	SB 133
61-8-305	repealed	Ch. 43	SB 133
61-8-306	repealed	Ch. 43	SB 133
61-8-307	repealed	Ch. 43	SB 133
61-8-309	amended	Ch. 43	SB 133
61-8-310	amended	Ch. 43	SB 133
61-8-312	amended	Ch. 43	SB 133
61-8-314	amended	Ch. 430	HB 187
61-8-402	amended	Ch. 287	SB 179
61-8-404	amended	Ch. 51	HB 38
61-8-410	amended	Ch. 455	SB 251
61-8-442	amended	Ch. 258	HB 527
61-8-714	amended	Ch. 455	SB 251
61-8-718	repealed	Ch. 43	SB 133
61-8-725	enacted	Ch. 43	SB 133
61-8-731	amended	Ch. 391	HB 116
	amended	Ch. 455	SB 251
61-8-732	amended	Ch. 455	SB 251
61-9-402	amended	Ch. 520	HB 129
61-9-415	amended	Ch. 449	SB 10
61-9-416	amended	Ch. 520	HB 129
61-9-431	enacted	Ch. 520	HB 129
61-10-102	amended	Ch. 449	SB 10
61-10-124	amended	Ch. 317	SB 154
61-10-144	amended	Ch. 216	SB 374
61-10-148	amended	Ch. 389	HB 69
61-10-214	amended	Ch. 409	SB 113
61-11-101	amended	Ch. 455	SB 251
61-11-103	repealed	Ch. 43	SB 133
61-11-105	amended	Ch. 416	SB 82
61-11-203	amended	Ch. 43	SB 133
	amended	Ch. 309	SB 94
	amended	Ch. 395	HB 209
61-11-204	amended	Ch. 309	SB 94
61-12-303	amended	Ch. 472	HB 100
61-12-401	amended	Ch. 513	SB 166
61-12-402	amended	Ch. 513	SB 166
61-12-403	amended	Ch. 513	SB 166
61-12-404	amended	Ch. 513	SB 166
67-1-301	amended	Ch. 585	SB 205
67-10-402	amended	Ch. 584	SB 184
67-11-201	amended	Ch. 584	SB 184
67-11-301	amended	Ch. 584	SB 184
67-11-302	amended	Ch. 584	SB 184
69-3-107	amended	Ch. 81	HB 274
69-3-843	amended	Ch. 187	HB 306
69-3-844	amended	Ch. 187	HB 306
69-3-845	amended	Ch. 187	HB 306
69-3-860	repealed 1/1/2000	Ch. 426	HB 128
69-3-861	amended	Ch. 426	HB 128
69-3-901	amended	Ch. 154	SB 227
69-3-903	amended	Ch. 154	SB 227
69-3-904	amended	Ch. 154	SB 227
69-3-906	amended	Ch. 154	SB 227
69-3-907	amended	Ch. 154	SB 227
69-3-910	enacted	Ch. 154	SB 227
69-3-1101	enacted	Ch. 155	SB 289

HeinOnline -- 1999 vol. III 3131 1999

Title-Ch.-Sec.	Action	Chapter	Bill #
69-3-1102	enacted	Ch. 155	SB 289
69-3-1103	enacted	Ch. 155	SB 289
69-3-1104	enacted	Ch. 155	SB 289
69-3-1105	enacted	Ch. 155	SB 289
69-3-1106	enacted	Ch. 155	SB 289
69-3-1301	amended	Ch. 244	HB 598
69-3-1303	amended	Ch. 244	HB 598
69-3-1305	amended	Ch. 244	HB 598
69-3-1409	amended	Ch. 19	SB 11
69-8-103	amended	Ch. 323	SB 409
	amended	Ch. 575	SB 406
	amended	Ch. 580	HB 337
69-8-201	amended	Ch. 575	SB 406
69-8-203	amended	Ch. 185	HB 211
69-8-211	amended	Ch. 556	HB 174
69-8-402	amended	Ch. 580	HB 337
69-8-403	amended	Ch. 575	SB 406
69-8-411	amended	Ch. 580	HB 337
69-8-412	enacted	Ch. 580	HB 337
69-8-413	enacted	Ch. 580	HB 337
69-8-414	enacted	Ch. 580	HB 337
69-8-416	enacted	Ch. 575	SB 406
69-8-417	enacted	Ch. 575	SB 406
69-8-501	amended	Ch. 372	HB 404
69-8-503	amended	Ch. 305	SB 153
69-8-601	enacted	Ch. 323	SB 409
69-8-602	enacted	Ch. 323	SB 409
69-8-603	enacted	Ch. 323	SB 409
69-8-604	enacted	Ch. 323	SB 409
69-14-112	amended	Ch. 51	HB 38
70-1-301	amended	Ch. 51	HB 38
70-20-103	amended	Ch. 51	HB 38
70-21-203	amended	Ch. 51	HB 38
70-23-102	amended	Ch. 12	SB 51
70-23-201	repealed	Ch. 12	SB 51
70-23-202	repealed	Ch. 12	SB 51
70-23-203	repealed	Ch. 12	SB 51
70-23-204	repealed	Ch. 12	SB 51
70-23-205	repealed	Ch. 12	SB 51
70-23-206	repealed	Ch. 12	SB 51
70-23-308	amended	Ch. 12	SB 51
70-23-1001	repealed	Ch. 12	SB 51
70-23-1002	repealed	Ch. 12	SB 51
70-24-430	amended	Ch. 305	SB 153
70-24-432	amended	Ch. 483	HB 614
	enacted	Ch. 483	HB 614
70-27-113	amended	Ch. 231	HB 27
70-27-114	amended	Ch. 231	HB 27
70-27-115	repealed	Ch. 231	HB 27
70-27-117	amended	Ch. 231	HB 27
70-28-207	amended	Ch. 51	HB 38
71-1-222	amended	Ch. 349	SB 232
71-1-306	amended	Ch. 51	HB 38
71-3-124	amended	Ch. 240	HB 361
71-3-125	amended	Ch. 305	SB 153
71-3-131	amended	Ch. 240	HB 361
71-3-205	amended	Ch. 305	SB 153

HeinOnline -- 1999 vol. III 3132 1999

Title-Ch.-Sec.	Action	Chapter	Bill #
71-3-206	amended	Ch. 305	SB 153
71-3-408	amended	Ch. 305	SB 153
71-3-531	amended	Ch. 357	SB 476
71-3-532	amended	Ch. 357	SB 476
71-3-535	amended	Ch. 357	SB 476
71-3-704	amended	Ch. 305	SB 153
71-3-713	amended	Ch. 305	SB 153
71-3-808	amended	Ch. 305	SB 153
71-3-902	amended	Ch. 152	SB 187
71-3-908	amended	Ch. 305	SB 153
71-3-1201	amended	Ch. 169	SB 165
72-2-124	amended	Ch. 290	SB 473
72-2-221	amended	Ch. 290	SB 473
72-2-222	amended	Ch. 290	SB 473
72-2-524	amended	Ch. 51	HB 38
72-2-811	amended	Ch. 290	SB 473
72-2-814	amended	Ch. 562	HB 182
72-3-104	amended	Ch. 51	HB 38
72-3-613	amended	Ch. 290	SB 473
72-3-1101	amended	Ch. 234	HB 283
72-5-103	amended	Ch. 104	HB 52
72-5-222	amended	Ch. 290	SB 473
72-15-301	amended	Ch. 235	HB 296
72-16-447	amended	Ch. 19	SB 11
72-16-448	amended	Ch. 19	SB 11
72-16-450	amended	Ch. 19	SB 11
72-16-502	amended	Ch. 113	HB 357
72-16-503	amended	Ch. 113	HB 357
72-31-201	amended	Ch. 51	HB 38
72-33-211	enacted	Ch. 290	SB 473
72-34-113	amended	Ch. 290	SB 473
72-34-114	amended	Ch. 290	SB 473
72-34-205	amended	Ch. 290	SB 473
72-34-207	enacted	Ch. 290	SB 473
72-35-306	amended	Ch. 290	SB 473
72-37-101	repealed	Ch. 336	HB 153
72-37-102	repealed	Ch. 336	HB 153
72-37-103	repealed	Ch. 336	HB 153
72-37-104	repealed	Ch. 336	HB 153
75-1-201	amended	Ch. 223	HB 142
75-1-324	amended	Ch. 19	SB 11
75-2-211	amended	Ch. 221	SB 64
75-2-220	amended	Ch. 427	HB 132
75-2-221	amended	Ch. 221	SB 64
75-2-508	amended	Ch. 293	SB 314
75-2-514	amended	Ch. 293	SB 314
75-2-515	enacted	Ch. 293	SB 314
75-2-516	enacted	Ch. 293	SB 314
75-2-517	enacted	Ch. 293	SB 314
75-2-518	enacted	Ch. 293	SB 314
75-2-519	enacted	Ch. 293	SB 314
75-5-212	amended	Ch. 511	HB 596
75-5-301	amended	Ch. 195	SB 72
	amended	Ch. 588	SB 499
75-5-308	amended	Ch. 588	SB 499
75-5-316	amended	Ch. 588	SB 499
75-5-317	amended	Ch. 588	SB 499

HeinOnline -- 1999 vol. III 3133 1999

Title-Ch.-Sec.	Action	Chapter	Bill #
75-5-318	enacted	Ch. 588	SB 499
75-5-401	amended	Ch. 588	SB 499
75-5-501	repealed	Ch. 195	SB 72
75-5-516	amended	Ch. 427	HB 132
75-5-702	amended	Ch. 93	HB 392
75-5-703	amended	Ch. 93	HB 392
75-5-1102	amended	Ch. 498	SB 302
75-5-1106	amended	Ch. 421	HB 74
75-5-1113	amended	Ch. 421	HB 74
75-5-1121	amended	Ch. 421	HB 74
75-5-1122	amended	Ch. 73	HB 110
75-6-103	amended	Ch. 511	HB 596
75-6-109	amended	Ch. 195	SB 72
75-6-112	amended	Ch. 195	SB 72
75-6-202	amended	Ch. 498	SB 302
75-6-211	amended	Ch. 421	HB 74
75-6-224	amended	Ch. 421	HB 74
75-6-225	amended	Ch. 421	HB 74
75-6-227	enacted (1995)	Ch. 553 (1995)	HB 493
	amended	Ch. 421	HB 74
75-6-301	enacted	Ch. 498	SB 302
75-6-302	enacted	Ch. 498	SB 302
75-6-303	enacted	Ch. 498	SB 302
75-6-304	enacted	Ch. 498	SB 302
75-6-305	enacted	Ch. 498	SB 302
75-6-306	enacted	Ch. 498	SB 302
75-6-310	enacted	Ch. 498	SB 302
75-6-311	enacted	Ch. 498	SB 302
75-6-312	enacted	Ch. 498	SB 302
75-6-313	enacted	Ch. 498	SB 302
75-6-320	enacted	Ch. 498	SB 302
75-6-321	enacted	Ch. 498	SB 302
75-6-322	enacted	Ch. 498	SB 302
75-6-323	enacted	Ch. 498	SB 302
75-6-324	enacted	Ch. 498	SB 302
75-6-325	enacted	Ch. 498	SB 302
75-6-326	enacted	Ch. 498	SB 302
75-6-327	enacted	Ch. 498	SB 302
75-6-328	enacted	Ch. 498	SB 302
75-6-329	enacted	Ch. 498	SB 302
75-7-306	repealed	Ch. 243	HB 539
75-10-103	amended	Ch. 294	SB 321
75-10-112	amended	Ch. 584	SB 184
75-10-425	enacted	Ch. 425	HB 113
75-10-503	amended	Ch. 513	SB 166
75-10-532	amended	Ch. 513	SB 166
75-10-701	amended	Ch. 437	HB 486
75-10-715	amended	Ch. 437	HB 486
75-10-721	amended	Ch. 437	HB 486
75-10-727	enacted	Ch. 437	HB 486
75-10-728	enacted	Ch. 437	HB 486
75-10-743	amended	Ch. 51	HB 38
75-10-1201	enacted	Ch. 378	SB 126
75-10-1202	enacted	Ch. 378	SB 126
75-10-1203	enacted	Ch. 378	SB 126
75-10-1210	enacted	Ch. 378	SB 126
75-10-1211	enacted	Ch. 378	SB 126

HeinOnline -- 1999 vol. III 3134 1999

Title-Ch.-Sec.	Action	Chapter	Bill #
75-10-1212	enacted	Ch. 378	SB 126
75-10-1220	enacted	Ch. 378	SB 126
75-10-1221	enacted	Ch. 378	SB 126
75-10-1222	enacted	Ch. 378	SB 126
75-10-1223	enacted	Ch. 378	SB 126
75-11-201	amended	Ch. 506	HB 158
75-11-202	amended	Ch. 506	HB 158
75-11-203	amended	Ch. 506	HB 158
75-11-204	amended	Ch. 506	HB 158
75-11-211	amended	Ch. 506	HB 158
75-11-212	amended	Ch. 506	HB 158
75-11-214	enacted	Ch. 506	HB 158
75-11-218	amended	Ch. 506	HB 158
75-11-223	amended	Ch. 506	HB 158
75-11-302	amended	Ch. 420	HB 58
75-11-308	amended	Ch. 420	HB 58
75-11-314	amended	Ch. 37	HB 138
75-11-318	amended	Ch. 259	HB 617
75-11-504	amended	Ch. 506	HB 158
75-11-505	amended	Ch. 506	HB 158
75-11-509	enacted	Ch. 506	HB 158
75-11-512	amended	Ch. 506	HB 158
75-11-517	enacted	Ch. 506	HB 158
75-20-104	amended	Ch. 13	SB 141
76-1-103	amended	Ch. 582	SB 97
76-1-106	amended	Ch. 582	SB 97
76-1-107	amended	Ch. 582	SB 97
76-1-110	amended	Ch. 582	SB 97
76-1-111	amended	Ch. 584	SB 184
76-1-403	amended	Ch. 584	SB 184
76-1-404	amended	Ch. 584	SB 184
76-1-405	amended	Ch. 584	SB 184
76-1-406	amended	Ch. 584	SB 184
76-1-407	amended	Ch. 584	SB 184
76-1-601	amended	Ch. 582	SB 97
76-1-602	amended	Ch. 582	SB 97
76-1-603	amended	Ch. 582	SB 97
76-1-604	amended	Ch. 582	SB 97
76-1-605	amended	Ch. 582	SB 97
76-1-606	amended	Ch. 582	SB 97
76-2-102	amended	Ch. 584	SB 184
76-2-201	amended	Ch. 582	SB 97
76-2-203	amended	Ch. 582	SB 97
76-2-206	amended	Ch. 582	SB 97
76-2-303	amended	Ch. 355	SB 423
76-2-304	amended	Ch. 582	SB 97
76-2-305	amended	Ch. 492	SB 96
76-2-310	amended	Ch. 582	SB 97
76-2-311	amended	Ch. 582	SB 97
76-3-205	amended	Ch. 548	SB 429
76-3-210	amended	Ch. 582	SB 97
76-3-504	amended	Ch. 201	HB 205
	amended	Ch. 582	SB 97
76-3-505	amended	Ch. 582	SB 97
76-3-601	amended	Ch. 582	SB 97
76-3-604	amended	Ch. 236	HB 300
	amended	Ch. 582	SB 97

Title-Ch.-Sec.	Action	Chapter	Bill #
76-3-605	amended	Ch. 582	SB 97
76-3-608	amended	Ch. 582	SB 97
76-3-609	amended	Ch. 236	HB 300
76-3-621	amended	Ch. 582	SB 97
76-4-111	amended	Ch. 582	SB 97
76-4-122	amended	Ch. 582	SB 97
76-4-123	amended	Ch. 582	SB 97
76-4-124	amended	Ch. 582	SB 97
76-4-127	amended	Ch. 582	SB 97
76-4-1101	repealed	Ch. 170	SB 189
76-4-1102	repealed	Ch. 170	SB 189
76-4-1103	repealed	Ch. 170	SB 189
76-4-1104	repealed	Ch. 170	SB 189
76-4-1105	repealed	Ch. 170	SB 189
76-4-1106	repealed	Ch. 170	SB 189
76-4-1107	repealed	Ch. 170	SB 189
76-4-1108	repealed	Ch. 170	SB 189
76-4-1109	repealed	Ch. 170	SB 189
76-4-1110	repealed	Ch. 170	SB 189
76-4-1111	repealed	Ch. 170	SB 189
76-4-1112	repealed	Ch. 170	SB 189
76-4-1113	repealed	Ch. 170	SB 189
76-4-1114	repealed	Ch. 170	SB 189
76-4-1115	repealed	Ch. 170	SB 189
76-4-1116	repealed	Ch. 170	SB 189
76-4-1117	repealed	Ch. 170	SB 189
76-5-1116	amended	Ch. 584	SB 184
76-6-109	amended	Ch. 584	SB 184
76-7-101	enacted	Ch. 503	SB 462
76-7-102	enacted	Ch. 503	SB 462
76-7-103	enacted	Ch. 503	SB 462
76-7-104	enacted	Ch. 503	SB 462
76-7-105	enacted	Ch. 503	SB 462
76-7-106	enacted	Ch. 503	SB 462
76-7-107	enacted	Ch. 503	SB 462
76-7-201	enacted	Ch. 503	SB 462
76-7-202	enacted	Ch. 503	SB 462
76-7-203	enacted	Ch. 503	SB 462
76-7-204	enacted	Ch. 503	SB 462
76-7-205	enacted	Ch. 503	SB 462
76-7-206	enacted	Ch. 503	SB 462
76-7-207	enacted	Ch. 503	SB 462
76-7-208	enacted	Ch. 503	SB 462
76-7-209	enacted	Ch. 503	SB 462
76-7-210	enacted	Ch. 503	SB 462
76-7-211	enacted	Ch. 503	SB 462
76-7-212	enacted	Ch. 503	SB 462
76-7-213	enacted	Ch. 503	SB 462
76-9-104	amended	Ch. 582	SB 97
76-13-401	amended	Ch. 279	SB 412
76-13-403	amended	Ch. 279	SB 412
76-13-408	amended	Ch. 279	SB 412
76-13-409	amended	Ch. 279	SB 412
76-13-410	amended	Ch. 279	SB 412
76-13-411	amended	Ch. 279	SB 412
76-13-412	amended	Ch. 279	SB 412
76-13-414	amended	Ch. 279	SB 412

Title-Ch.-Sec.	Action	Chapter	Bill #
76-13-415	amended	Ch. 279	SB 412
76-15-303	amended	Ch. 254	SB 488
76-15-320	amended	Ch. 23	HB 284
76-15-403	amended	Ch. 23	HB 284
76-15-501	amended	Ch. 23	HB 284
	amended	Ch. 584	SB 184
76-15-516	amended	Ch. 584	SB 184
76-15-518	amended	Ch. 584	SB 184
76-15-623	amended	Ch. 584	SB 184
76-16-103	amended	Ch. 401	HB 444
76-16-106	amended	Ch. 401	HB 444
76-16-107	amended	Ch. 401	HB 444
76-16-108	amended	Ch. 401	HB 444
76-16-109	amended	Ch. 401	HB 444
76-16-111	amended	Ch. 401	HB 444
76-16-112	enacted	Ch. 401	HB 444
76-16-113	enacted	Ch. 401	HB 444
76-16-201	amended	Ch. 401	HB 444
76-16-202	amended	Ch. 401	HB 444
76-16-203	amended	Ch. 401	HB 444
76-16-204	amended	Ch. 401	HB 444
76-16-206	amended	Ch. 401	HB 444
76-16-207	amended	Ch. 401	HB 444
76-16-208	amended	Ch. 401	HB 444
76-16-209	amended	Ch. 401	HB 444
76-16-210	amended	Ch. 401	HB 444
76-16-211	amended	Ch. 401	HB 444
76-16-212	amended	Ch. 401	HB 444
76-16-302	amended	Ch. 401	HB 444
76-16-303	amended	Ch. 401	HB 444
76-16-304	amended	Ch. 401	HB 444
76-16-307	amended	Ch. 401	HB 444
76-16-308	amended	Ch. 401	HB 444
76-16-311	amended	Ch. 401	HB 444
76-16-315	amended	Ch. 401	HB 444
76-16-316	amended	Ch. 401	HB 444
76-16-319	amended	Ch. 401	HB 444
76-16-323	amended	Ch. 401	HB 444
76-16-325	amended	Ch. 401	HB 444
76-16-403	amended	Ch. 401	HB 444
76-16-406	amended	Ch. 401	HB 444
76-16-413	amended	Ch. 401	HB 444
76-16-414	amended	Ch. 401	HB 444
77-1-107	enacted	Ch. 107	HB 352
77-1-108	enacted	Ch. 122	SB 48
77-1-109	enacted	Ch. 122	SB 48
77-1-121	enacted	Ch. 223	HB 142
77-1-131	amended	Ch. 389	HB 69
77-1-135	enacted	Ch. 380	SB 178
77-1-136	enacted	Ch. 380	SB 178
77-1-137	enacted	Ch. 380	SB 178
77-1-138	enacted	Ch. 380	SB 178
77-1-139	enacted	Ch. 380	SB 178
77-1-223	enacted	Ch. 462	SB 411
77-1-224	enacted	Ch. 462	SB 411
77-1-225	enacted	Ch. 462	SB 411
77-1-617	enacted	Ch. 182	HB 96

HeinOnline -- 1999 vol. III 3137 1999

Title-Ch.-Sec.	Action	Chapter	Bill #
77-2-102	amended	Ch. 277	SB 276
77-2-106	amended	Ch. 18	HB 80
77-2-211	amended	Ch. 18	HB 80
77-2-303	amended	Ch. 18	HB 80
77-2-311	amended	Ch. 18	HB 80
77-3-132	amended	Ch. 18	HB 80
77-3-321	repealed	Ch. 18	HB 80
77-5-115	repealed	Ch. 182	HB 96
77-5-208	enacted	Ch. 224	HB 485
77-5-213	repealed	Ch. 18	HB 80
77-6-501	amended	Ch. 5	SB 7
77-6-506	amended	Ch. 5	SB 7
80-2-103	amended	Ch. 389	HB 69
80-5-102	repealed	Ch. 345	SB 183
80-5-103	renumbered 80-5-125		
80-5-104	repealed	Ch. 345	SB 183
80-5-105	amended	Ch. 345	SB 183
	renumbered 80-5-134		
80-5-107	repealed	Ch. 345	SB 183
80-5-108	renumbered 80-5-126		
80-5-109	renumbered 80-5-127		
80-5-110	amended	Ch. 345	SB 183
	renumbered 80-5-128		
80-5-111	renumbered 80-5-129		
80-5-112	repealed	Ch. 345	SB 183
80-5-113	repealed	Ch. 345	SB 183
80-5-120	amended	Ch. 345	SB 183
80-5-121	amended	Ch. 345	SB 183
	renumbered 80-5-133		
80-5-122	renumbered 80-5-138		
80-5-123	enacted	Ch. 345	SB 183
80-5-124	enacted	Ch. 345	SB 183
80-5-125	formerly 80-5-103		
80-5-126	formerly 80-5-108		
80-5-127	formerly 80-5-109		
80-5-128	formerly 80-5-110		
80-5-129	formerly 80-5-111		
80-5-130	formerly 80-5-202		
80-5-131	enacted	Ch. 345	SB 183
80-5-132	formerly 80-5-208		
80-5-133	formerly 80-5-121		
80-5-134	formerly 80-5-105		
80-5-135	formerly 80-5-204		
80-5-136	formerly 80-5-207		
80-5-137	enacted	Ch. 345	SB 183
80-5-138	formerly 80-5-122		
80-5-139	formerly 80-5-206		
80-5-140	formerly 80-5-301		
80-5-141	formerly 80-5-302		
80-5-142	formerly 80-5-303		
80-5-143	formerly 80-5-304		
80-5-144	formerly 80-5-305		
80-5-202	amended	Ch. 345	SB 183
	renumbered 80-5-130		
80-5-204	renumbered 80-5-135		
80-5-205	repealed	Ch. 345	SB 183

HeinOnline -- 1999 vol. III 3138 1999

Title-Ch.-Sec.	Action	Chapter	Bill #
80-5-206	amended	Ch. 345	SB 183
	renumbered 80-5-139		
80-5-207	amended	Ch. 345	SB 183
	renumbered 80-5-136		
80-5-208	amended	Ch. 345	SB 183
	renumbered 80-5-132		
80-5-301	amended	Ch. 345	SB 183
	renumbered 80-5-140		
80-5-302	renumbered 80-5-141		
80-5-303	renumbered 80-5-142		
80-5-304	renumbered 80-5-143		
80-5-305	amended	Ch. 345	SB 183
	renumbered 80-5-144		
80-7-106	amended	Ch. 54	HB 73
80-7-805	amended	Ch. 493	SB 164
80-7-810	amended	Ch. 493	SB 164
80-7-811	amended	Ch. 493	SB 164
80-7-814	amended	Ch. 493	SB 164
80-7-822	enacted	Ch. 493	SB 164
80-8-111	repealed contingently	Ch. 362	HB 130
80-8-112	repealed contingently	Ch. 362	HB 130
80-8-116	amended	Ch. 65	HB 391
80-8-117	enacted	Ch. 65	HB 391
80-8-207	amended	Ch. 65	HB 391
80-9-101	amended	Ch. 396	HB 232
80-9-103	amended	Ch. 396	HB 232
80-9-105	amended	Ch. 396	HB 232
80-9-201	amended	Ch. 396	HB 232
80-9-202	amended	Ch. 396	HB 232
80-9-204	amended	Ch. 396	HB 232
80-9-205	amended	Ch. 396	HB 232
80-9-206	amended	Ch. 396	HB 232
80-9-207	amended	Ch. 396	HB 232
80-9-301	amended	Ch. 396	HB 232
80-9-302	amended	Ch. 396	HB 232
80-9-303	amended	Ch. 396	HB 232
80-9-304	amended	Ch. 396	HB 232
80-11-403	amended	Ch. 22	HB 254
80-11-501	enacted	Ch. 83	SB 18
80-11-502	enacted	Ch. 83	SB 18
80-11-503	enacted	Ch. 83	SB 18
80-11-504	enacted	Ch. 83	SB 18
80-11-510	enacted	Ch. 83	SB 18
80-11-511	enacted	Ch. 83	SB 18
80-11-512	enacted	Ch. 83	SB 18
80-11-513	enacted	Ch. 83	SB 18
80-11-515	enacted	Ch. 83	SB 18
80-11-516	enacted	Ch. 83	SB 18
80-11-517	enacted	Ch. 83	SB 18
80-11-518	enacted	Ch. 83	SB 18
80-11-519	enacted	Ch. 83	SB 18
80-11-601	enacted	Ch. 172	SB 394
80-11-602	enacted	Ch. 172	SB 394
81-1-102	amended	Ch. 574	SB 361
81-2-102	amended	Ch. 574	SB 361
81-2-702	amended	Ch. 574	SB 361
81-2-801	repealed	Ch. 153	SB 196

HeinOnline -- 1999 vol. III 3139 1999

Title-Ch.-Sec.	Action	Chapter	Bill #
81-2-805	repealed	Ch. 153	SB 196
81-3-102	amended	Ch. 574	SB 361
81-4-301	amended	Ch. 138	HB 373
81-4-307	amended	Ch. 51	HB 38
81-4-310	enacted	Ch. 138	HB 373
81-4-510	amended	Ch. 51	HB 38
81-7-303	amended	Ch. 285	SB 200
81-7-603	amended	Ch. 285	SB 200
81-8-504	amended	Ch. 584	SB 184
81-9-217	amended	Ch. 574	SB 361
81-23-302	amended	Ch. 416	SB 82
82-4-303	amended	Ch. 507	HB 183
82-4-305	amended	Ch. 507	HB 183
82-4-310	amended	Ch. 507	HB 183
82-4-335	amended	Ch. 507	HB 183
82-4-338	amended	Ch. 507	HB 183
82-4-341	amended	Ch. 507	HB 183
82-4-349	amended	Ch. 507	HB 183
82-4-390	amended	Ch. 457	SB 345
82-4-402	amended	Ch. 507	HB 183
82-4-403	amended	Ch. 507	HB 183
82-4-405	amended	Ch. 507	HB 183
82-4-422	amended	Ch. 507	HB 183
82-4-423	amended	Ch. 507	HB 183
82-4-427	amended	Ch. 507	HB 183
82-4-431	amended	Ch. 507	HB 183
82-4-432	amended	Ch. 507	HB 183
82-4-433	amended	Ch. 507	HB 183
82-4-434	amended	Ch. 507	HB 183
82-4-441	amended	Ch. 507	HB 183
82-11-127	amended	Ch. 522	HB 341
82-11-163	amended	Ch. 278	SB 362
82-15-105	amended	Ch. 54	HB 73
85-1-211	amended	Ch. 120	SB 29
85-1-332	amended	Ch. 144	SB 49
85-1-509	amended	Ch. 209	SB 40
85-1-604	amended	Ch. 144	SB 49
85-1-605	amended	Ch. 498	SB 302
85-1-624	amended	Ch. 14	HB 29
85-1-631	amended	Ch. 144	SB 49
85-1-802	amended	Ch. 121	SB 44
85-2-105	amended	Ch. 275	HB 458
85-2-123	amended	Ch. 389	HB 69
85-2-213	amended	Ch. 389	HB 69
85-2-225	amended	Ch. 389	HB 69
85-2-227	amended	Ch. 213	SB 235
85-2-232	amended	Ch. 389	HB 69
85-2-241	repealed	Ch. 389	HB 69
85-2-302	amended	Ch. 422	HB 95
85-2-306	amended	Ch. 250	SB 371
85-2-308	amended	Ch. 422	HB 95
85-2-309	amended	Ch. 422	HB 95
85-2-310	amended	Ch. 422	HB 95
85-2-312	amended	Ch. 422	HB 95
85-2-339	enacted	Ch. 281	SB 468
85-2-344	enacted	Ch. 205	HB 429
85-2-402	amended	Ch. 42	SB 9

HeinOnline -- 1999 vol. III 3140 1999

Title-Ch.-Sec.	Action	Chapter	Bill #
85-2-419	amended	Ch. 123	SB 98
85-2-436	amended	Ch. 123	SB 98
85-2-437	amended	Ch. 123	SB 98
85-2-438	amended	Ch. 123	SB 98
85-2-905	amended	Ch. 552	SB 492
85-3-422	amended	Ch. 584	SB 184
85-7-206	amended	Ch. 584	SB 184
85-7-307	amended	Ch. 584	SB 184
85-7-1611	amended	Ch. 143	HB 571
85-7-1702	amended	Ch. 254	SB 488
85-7-1953	amended	Ch. 584	SB 184
85-7-1973	amended	Ch. 584	SB 184
85-7-2104	amended	Ch. 584	SB 184
85-7-2117	amended	Ch. 584	SB 184
85-7-2134	amended	Ch. 584	SB 184
85-7-2136	amended	Ch. 584	SB 184
85-8-361	amended	Ch. 96	HB 531
85-8-601	amended	Ch. 584	SB 184
85-8-615	amended	Ch. 584	SB 184
85-8-618	amended	Ch. 584	SB 184
85-20-402	amended	Ch. 389	HB 69
85-20-801	enacted	Ch. 347	SB 216
87-1-102	amended	Ch. 499	SB 381
	amended	Ch. 502	SB 458
87-1-111	amended	Ch. 502	SB 458
87-1-112	amended	Ch. 395	HB 209
	amended	Ch. 502	SB 458
87-1-113	amended	Ch. 502	SB 458
87-1-114	amended	Ch. 499	SB 381
	amended	Ch. 502	SB 458
87-1-115	enacted	Ch. 502	SB 458
87-1-120	enacted	Ch. 499	SB 381
87-1-121	enacted	Ch. 499	SB 381
87-1-125	enacted	Ch. 499	SB 381
87-1-201	amended	Ch. 369	HB 379
87-1-269	amended	Ch. 544	SB 338
87-1-270	enacted	Ch. 544	SB 338
87-1-273	amended	Ch. 529	HB 647
87-1-276	enacted	Ch. 475	HB 389
87-1-277	enacted	Ch. 475	HB 389
87-1-278	enacted	Ch. 475	HB 389
87-1-279	enacted	Ch. 475	HB 389
87-1-283	enacted	Ch. 529	HB 647
87-1-301	amended	Ch. 373	HB 435
	amended	Ch. 533	SB 59
87-1-303	amended	Ch. 569	HB 626
87-1-306	enacted	Ch. 569	HB 626
87-1-601	amended	Ch. 389	HB 69
87-1-803	amended	Ch. 502	SB 458
87-1-804	amended	Ch. 502	SB 458
87-2-102	amended	Ch. 499	SB 381
87-2-105	amended	Ch. 499	SB 381
87-2-106	amended	Ch. 29	SB 76
87-2-113	amended	Ch. 533	SB 59
87-2-202	amended	Ch. 29	SB 76
87-2-401	amended	Ch. 533	SB 59

HeinOnline -- 1999 vol. III 3141 1999

Title-Ch.-Sec.	Action	Chapter	Bill #
87-2-402	amended	Ch. 525	HB 478
	amended	Ch. 533	SB 59
	amended	Ch. 544	SB 338
87-2-404	amended	Ch. 533	SB 59
87-2-411	amended	Ch. 568	HB 533
87-2-501	amended	Ch. 533	SB 59
87-2-504	amended	Ch. 533	SB 59
87-2-505	amended	Ch. 533	SB 59
87-2-507	amended	Ch. 533	SB 59
87-2-508	amended	Ch. 533	SB 59
87-2-510	amended	Ch. 533	SB 59
87-2-511	amended	Ch. 544	SB 338
87-2-701	amended	Ch. 533	SB 59
87-2-711	amended	Ch. 533	SB 59
87-2-801	amended	Ch. 35	HB 93
87-2-802	amended	Ch. 491	SB 33
87-2-803	amended	Ch. 382	SB 241
87-2-805	amended	Ch. 568	HB 533
87-2-903	amended	Ch. 427	HB 132
87-3-118	amended	Ch. 502	SB 458
87-3-134	enacted	Ch. 366	HB 215
87-3-235	enacted	Ch. 559	HB 20
87-3-236	enacted	Ch. 559	HB 20
87-3-304	amended	Ch. 48	SB 171
87-3-308	enacted	Ch. 48	SB 171
87-4-406	amended	Ch. 322	SB 384
	amended	Ch. 574	SB 361
87-4-407	amended	Ch. 574	SB 361
87-4-408	amended	Ch. 574	SB 361
87-4-409	amended	Ch. 574	SB 361
87-4-410	amended	Ch. 574	SB 361
87-4-411	amended	Ch. 574	SB 361
87-4-412	amended	Ch. 574	SB 361
87-4-413	amended	Ch. 574	SB 361
87-4-414	amended	Ch. 574	SB 361
87-4-415	amended	Ch. 574	SB 361
87-4-416	amended	Ch. 574	SB 361
87-4-417	amended	Ch. 574	SB 361
87-4-418	amended	Ch. 574	SB 361
87-4-419	amended	Ch. 574	SB 361
87-4-420	amended	Ch. 574	SB 361
87-4-422	amended	Ch. 574	SB 361
87-4-423	amended	Ch. 574	SB 361
87-4-424	amended	Ch. 574	SB 361
87-4-426	amended	Ch. 574	SB 361
87-4-427	amended	Ch. 574	SB 361
87-4-428	amended	Ch. 574	SB 361
87-4-431	enacted	Ch. 574	SB 361
87-4-432	amended	Ch. 574	SB 361
87-4-433	enacted	Ch. 574	SB 361
87-4-603	amended	Ch. 108	HB 387
87-4-801	amended	Ch. 322	SB 384
87-4-802	amended	Ch. 322	SB 384
87-4-803	amended	Ch. 322	SB 384
87-4-804	enacted (5), (6)	Ch. 322	SB 384
	amended	Ch. 322	SB 384
87-4-805	repealed	Ch. 322	SB 384

Title-Ch.-Sec.	Action	Chapter	Bill #
87-4-806	amended	Ch. 322	SB 384
87-5-205	amended	Ch. 383	SB 293
90-1-105	amended	Ch. 512	HB 670
90-1-116	amended	Ch. 268	HB 524
90-1-130	enacted	Ch. 512	HB 670
90-1-131	enacted	Ch. 512	HB 670
90-1-132	enacted	Ch. 512	HB 670
90-1-133	enacted	Ch. 512	HB 670
90-1-134	enacted	Ch. 512	HB 670
90-1-135	enacted	Ch. 512	HB 670
90-2-1104	amended	Ch. 144	SB 49
90-2-1112	amended	Ch. 552	SB 492
90-2-1113	amended	Ch. 59	HB 120
	amended	Ch. 552	SB 492
90-3-1001	enacted	Ch. 563	HB 260
90-3-1002	enacted	Ch. 563	HB 260
90-3-1003	enacted	Ch. 563	HB 260
90-3-1004	enacted	Ch. 563	HB 260
90-3-1005	enacted	Ch. 563	HB 260
90-3-1006	enacted	Ch. 563	HB 260
90-4-103	amended	Ch. 389	HB 69
90-4-106	amended	Ch. 389	HB 69
90-4-109	amended	Ch. 389	HB 69
90-4-215	amended	Ch. 389	HB 69
90-4-605	amended	Ch. 50	HB 12
90-4-607	amended	Ch. 50	HB 12
90-5-112	amended	Ch. 584	SB 184
90-5-305	amended	Ch. 10	SB 4
90-6-131	enacted	Ch. 312	SB 349
90-6-132	enacted	Ch. 312	SB 349
90-6-133	enacted	Ch. 312	SB 349
90-6-134	enacted	Ch. 312	SB 349
90-6-135	enacted	Ch. 312	SB 349
90-6-136	enacted	Ch. 312	SB 349
90-6-302	amended	Ch. 464	SB 502
90-6-304	amended	Ch. 389	HB 69
90-6-310	amended	Ch. 464	SB 502
90-6-331	amended	Ch. 389	HB 69
	amended	Ch. 464	SB 502
90-6-403	amended	Ch. 584	SB 184
90-6-404	amended	Ch. 464	SB 502
90-6-701	amended	Ch. 268	HB 524
	amended	Ch. 498	SB 302
90-6-709	enacted	Ch. 268	HB 524
90-6-710	amended	Ch. 453	SB 170
90-6-715	enacted	Ch. 495	SB 220
90-7-202	amended	Ch. 160	HB 44
90-8-104	amended	Ch. 410	SB 169
90-8-106	amended	Ch. 410	SB 169
90-8-201	amended	Ch. 410	SB 169
90-8-202	amended	Ch. 410	SB 169
90-8-203	amended	Ch. 410	SB 169
90-8-204	amended	Ch. 410	SB 169
90-8-301	amended	Ch. 410	SB 169
90-8-302	amended	Ch. 410	SB 169
90-8-303	amended	Ch. 410	SB 169
90-8-304	amended	Ch. 410	SB 169

HeinOnline -- 1999 vol. III 3143 1999

Title-Ch.-Sec.	Action	Chapter	Bill #
90-8-305	amended	Ch. 410	SB 169
90-8-311	amended	Ch. 19	SB 11
	amended	Ch. 410	SB 169
90-8-312	amended	Ch. 410	SB 169
90-8-313	amended	Ch. 410	SB 169
90-8-321	amended	Ch. 410	SB 169
90-9-202	amended	Ch. 512	HB 670
90-11-102	amended	Ch. 512	HB 670
90-14-102	amended	Ch. 150	SB 131
90-14-103	amended	Ch. 150	SB 131
90-14-104	amended	Ch. 150	SB 131
90-14-105	amended	Ch. 150	SB 131
90-14-106	amended	Ch. 150	SB 131
90-14-108	amended	Ch. 150	SB 131

HeinOnline -- 1999 vol. III 3144 1999

TABLE

OF

SESSION LAWS AFFECTED

HeinOnline -- 1999 vol. III 3145 1999

HeinOnline -- 1999 vol. III 3146 1999

SESSION LAWS AFFECTED

Laws Affected	Action	Chapter	Bill #
Laws of 1989			
Ch. 658, sec. 11	amended	Ch. 123	SB 98
Laws of 1991			
Ch. 552, sec. 2	amended	Ch. 419	HB 7
Ch. 740, sec. 4, 7	amended	Ch. 123	SB 98
Laws of 1993			
Ch. 465, sec. 14	amended	Ch. 362	HB 130
Ch. 581, sec. 12	amended	Ch. 321	SB 380
Laws of 1995			
Ch. 12, sec. 1	amended	Ch. 321	SB 380
Ch. 53, sec. 12	repealed	Ch. 292	SB 122
Ch. 196, sec. 4	repealed	Ch. 72	HB 94
Ch. 361, sec. 4	amended	Ch. 71	HB 41
Ch. 428, sec. 2, 4	amended	Ch. 109	SB 91
Ch. 454, sec. 2	amended	Ch. 419	HB 7
Ch. 459, sec. 18	amended	Ch. 544	SB 338
Ch. 463, sec. 5	amended	Ch. 529	HB 647
Ch. 553, sec. 16	amended	Ch. 421	HB 74
Ch. 584, sec. 27	repealed	Ch. 437	HB 486
Laws of 1997			
Ch. 82, sec. 1	repealed	Ch. 72	HB 94
Ch. 90, sec. 4	amended	Ch. 260	SB 13
Ch. 108, sec. 2	amended	Ch. 419	HB 7
Ch. 154, sec. 5, 6	amended	Ch. 504	HB 92
Ch. 247, sec. 4	repealed	Ch. 16	HB 35
Ch. 348, sec. 18	repealed	Ch. 149	SB 128
Ch. 349, sec. 41	amended	Ch. 187	HB 306
Ch. 380, sec. 13	amended	Ch. 28	SB 62
Ch. 464, sec. 3	amended	Ch. 290	SB 473
Ch. 484, sec. 14	repealed	Ch. 311	SB 258
Ch. 505, sec. 45	amended	Ch. 372	HB 404
Ch. 550, sec. 73, 82	amended	Ch. 161	HB 65
Ch. 552, sec. 104	amended	Ch. 27	SB 30

HeinOnline -- 1999 vol. III 3148 1999

TABLE

OF

SENATE BILL

TO

CHAPTER NUMBER

HeinOnline -- 1999 vol. III 3149 1999

HeinOnline -- 1999 vol. III 3150 1999

SENATE BILL

TO

CHAPTER NUMBER

Bill No.	Chapter No.
SB 1	82
SB 4	10
SB 5	286
SB 6	24
SB 7	5
SB 8	97
SB 9	42
SB 10	449
SB 11	19
SB 13	260
SB 14	314
SB 15	245
SB 17	6
SB 18	83
SB 20	450
SB 21	25
SB 22	315
SB 23	516
SB 26	7
SB 27	342
SB 28	26
SB 29	120
SB 30	27
SB 31	308
SB 32	84
SB 33	491
SB 34	11
SB 36	406
SB 40	209
SB 44	121
SB 46	451
SB 48	122
SB 49	144
SB 50	8
SB 51	12
SB 52	67
SB 53	68
SB 54	532
SB 55	20
SB 56	4
SB 57	226
SB 59	533
SB 60	167
SB 62	28
SB 63	227
SB 64	221
SB 68	407
SB 69	343
SB 70	210
SB 71	246
SB 72	195
SB 76	29
SB 77	30
SB 79	408
SB 80	2
SB 81	571
SB 82	416
SB 84	69
SB 87	145
SB 88	85
SB 89	417
SB 90	168
SB 91	109
SB 93	21
SB 94	309
SB 95	86
SB 96	492
SB 97	582
SB 98	123
SB 99	178
SB 100	211
SB 101	146
SB 103	212
SB 106	31
SB 107	304
SB 108	230
SB 111	583
SB 112	147
SB 113	409
SB 114	124
SB 115	87
SB 116	98
SB 117	377
SB 120	88
SB 122	292
SB 124	247
SB 126	378
SB 127	148
SB 128	149
SB 131	150
SB 132	316
SB 133	43
SB 134	310
SB 136	125

HeinOnline -- 1999 vol. III 3151 1999

Bill No.	Chapter No.
SB 137	344
SB 140	151
SB 141	13
SB 151	379
SB 153	305
SB 154	317
SB 155	99
SB 162	100
SB 164	493
SB 165	169
SB 166	513
SB 167	452
SB 169	410
SB 170	453
SB 171	48
SB 172	534
SB 176	196
SB 178	380
SB 179	287
SB 183	345
SB 184	584
SB 186	572
SB 187	152
SB 188	126
SB 189	170
SB 190	346
SB 191	101
SB 192	535
SB 194	3
SB 195	494
SB 196	153
SB 197	127
SB 199	536
SB 200	285
SB 201	110
SB 203	89
SB 205	585
SB 207	248
SB 210	276
SB 214	197
SB 215	381
SB 216	347
SB 219	348
SB 220	495
SB 221	318
SB 222	198
SB 225	319
SB 226	320
SB 227	154
SB 229	496
SB 230	128
SB 231	90
SB 232	349
SB 233	411
SB 235	213
SB 236	350
SB 239	261
SB 240	222
SB 241	382
SB 243	537
SB 245	179
SB 246	102
SB 251	455
SB 257	288
SB 258	311
SB 260	180
SB 265	538
SB 269	351
SB 270	586
SB 271	573
SB 273	454
SB 274	539
SB 276	277
SB 288	214
SB 289	155
SB 290	156
SB 291	129
SB 292	352
SB 293	383
SB 294	353
SB 296	130
SB 299	157
SB 301	497
SB 302	498
SB 305	540
SB 306	541
SB 314	293
SB 317	158
SB 321	294
SB 325	132
SB 326	354
SB 330	306
SB 331	384
SB 333	542
SB 334	543
SB 338	544
SB 342	456
SB 345	457
SB 346	295
SB 347	103
SB 348	249
SB 349	312
SB 351	171
SB 352	296
SB 353	458
SB 355	297
SB 356	587
SB 359	412
SB 361	574
SB 362	278
SB 364	215
SB 365	289
SB 367	313
SB 369	228

HeinOnline -- 1999 vol. III 3152 1999

Bill No.	Chapter No.
SB 371	250
SB 372	545
SB 374	216
SB 380	321
SB 381	499
SB 384	322
SB 386	251
SB 388	459
SB 393	460
SB 394	172
SB 396	131
SB 397	298
SB 398	299
SB 399	300
SB 401	461
SB 404	262
SB 406	575
SB 409	323
SB 411	462
SB 412	279
SB 415	252
SB 416	301
SB 417	500
SB 419	263
SB 421	546
SB 423	355
SB 424	547
SB 426	501
SB 428	181
SB 429	548
SB 430	549
SB 434	463
SB 435	302
SB 438	253
SB 439	264
SB 441	589
SB 446	324
SB 452	280
SB 453	325
SB 454	550
SB 457	217
SB 458	502
SB 460	514
SB 462	503
SB 463	413
SB 466	218
SB 468	281
SB 470	356
SB 471	282
SB 472	466
SB 473	290
SB 476	357
SB 477	385
SB 478	273
SB 481	326
SB 482	576
SB 486	414
SB 487	551
SB 488	254
SB 490	470
SB 492	552
SB 499	588
SB 500	553
SB 501	283
SB 502	464
SB 504	415
SB 505	386
SB 521	284
SB 522	327
SB 530	554
SB 532	555
SB 533	465
SB 534	577

HeinOnline -- 1999 vol. III 3153 1999

HeinOnline -- 1999 vol. III 3154 1999

TABLE

OF

HOUSE BILL

TO

CHAPTER NUMBER

HeinOnline -- 1999 vol. III 3155 1999

HeinOnline -- 1999 vol. III 3156 1999

HOUSE BILL

TO

CHAPTER NUMBER

Bill No.	Chapter No.
HB 1	1
HB 2	578
HB 3	32
HB 4	328
HB 5	557
HB 6	418
HB 7	419
HB 8	255
HB 9	329
HB 10	49
HB 11	517
HB 12	50
HB 13	558
HB 14	518
HB 15	519
HB 17	159
HB 20	559
HB 23	70
HB 24	91
HB 27	231
HB 29	14
HB 30	15
HB 32	330
HB 35	16
HB 36	33
HB 38	51
HB 41	71
HB 44	160
HB 47	331
HB 48	52
HB 51	17
HB 52	104
HB 53	387
HB 54	388
HB 55	9
HB 56	44
HB 57	560
HB 58	420
HB 59	358
HB 64	332
HB 65	161
HB 66	53
HB 69	389
HB 70	133
HB 71	359
HB 72	360
HB 73	54
HB 74	421
HB 75	55
HB 76	219
HB 79	471
HB 80	18
HB 81	390
HB 82	56
HB 85	34
HB 89	45
HB 90	561
HB 92	504
HB 93	35
HB 94	72
HB 95	422
HB 96	182
HB 98	361
HB 99	423
HB 100	472
HB 101	57
HB 106	220
HB 107	333
HB 109	424
HB 110	73
HB 111	334
HB 113	425
HB 115	505
HB 116	391
HB 118	111
HB 119	58
HB 120	59
HB 121	74
HB 123	75
HB 125	183
HB 126	335
HB 127	579
HB 128	426
HB 129	520
HB 130	362
HB 132	427
HB 135	392
HB 136	173
HB 137	36
HB 138	37
HB 139	38
HB 141	39
HB 142	223
HB 150	363

HeinOnline -- 1999 vol. III 3157 1999

Bill No.	Chapter No.
HB 151	60
HB 153	336
HB 154	174
HB 155	364
HB 156	134
HB 158	506
HB 167	184
HB 168	105
HB 170	92
HB 171	76
HB 172	77
HB 173	175
HB 174	556
HB 175	40
HB 176	106
HB 179	61
HB 180	428
HB 182	562
HB 183	507
HB 185	508
HB 186	429
HB 187	430
HB 188	365
HB 189	431
HB 190	135
HB 192	337
HB 194	41
HB 196	199
HB 198	46
HB 200	78
HB 201	200
HB 203	432
HB 204	393
HB 205	201
HB 207	394
HB 209	395
HB 210	136
HB 211	185
HB 212	274
HB 214	62
HB 215	366
HB 221	433
HB 227	207
HB 228	162
HB 229	232
HB 230	163
HB 231	79
HB 232	396
HB 233	63
HB 237	64
HB 241	80
HB 244	233
HB 245	473
HB 250	186
HB 254	22
HB 255	397
HB 257	398
HB 260	563
HB 264	229
HB 266	434
HB 274	81
HB 275	435
HB 277	265
HB 282	399
HB 283	234
HB 284	23
HB 296	235
HB 300	236
HB 301	367
HB 302	521
HB 304	368
HB 306	187
HB 308	237
HB 310	564
HB 314	474
HB 316	266
HB 319	47
HB 321	565
HB 325	238
HB 331	137
HB 336	188
HB 337	580
HB 338	239
HB 339	338
HB 341	522
HB 348	467
HB 349	112
HB 352	107
HB 353	202
HB 357	113
HB 360	114
HB 361	240
HB 362	164
HB 366	566
HB 371	115
HB 373	138
HB 374	523
HB 379	369
HB 382	241
HB 387	108
HB 389	475
HB 390	203
HB 391	65
HB 392	93
HB 395	400
HB 396	370
HB 399	371
HB 404	372
HB 405	436
HB 411	189
HB 412	307
HB 414	165
HB 418	204
HB 419	166

HeinOnline -- 1999 vol. III 3158 1999

Bill No.	Chapter No.
HB 420	524
HB 421	256
HB 429	205
HB 430	468
HB 435	373
HB 437	242
HB 442	116
HB 443	190
HB 444	401
HB 454	94
HB 455	257
HB 458	275
HB 459	476
HB 461	402
HB 467	95
HB 468	117
HB 470	567
HB 474	176
HB 476	139
HB 478	525
HB 479	140
HB 480	66
HB 482	469
HB 485	224
HB 486	437
HB 492	141
HB 494	118
HB 495	142
HB 502	374
HB 504	403
HB 506	526
HB 508	191
HB 509	206
HB 512	477
HB 513	438
HB 514	119
HB 515	478
HB 522	192
HB 523	267
HB 524	268
HB 526	404
HB 527	258
HB 528	527
HB 530	479
HB 531	96
HB 532	439
HB 533	568
HB 536	528
HB 539	243
HB 540	515
HB 551	509
HB 555	269
HB 557	480
HB 558	270
HB 560	440
HB 561	177
HB 566	581
HB 571	143
HB 578	405
HB 580	375
HB 581	271
HB 583	225
HB 584	441
HB 585	193
HB 586	510
HB 592	442
HB 593	481
HB 596	511
HB 598	244
HB 607	482
HB 614	483
HB 615	194
HB 616	484
HB 617	259
HB 620	485
HB 621	443
HB 625	339
HB 626	569
HB 629	272
HB 630	340
HB 632	208
HB 638	444
HB 641	486
HB 644	376
HB 645	291
HB 647	529
HB 648	570
HB 649	303
HB 651	487
HB 652	445
HB 656	446
HB 657	447
HB 658	488
HB 659	448
HB 660	489
HB 661	530
HB 669	531
HB 670	512
HB 674	490
HB 676	341

HeinOnline -- 1999 vol. III 3160 1999

TABLE

OF

CHAPTER NUMBER

TO

BILL NUMBER

HeinOnline -- 1999 vol. III 3161 1999

HeinOnline -- 1999 vol. III 3162 1999

CHAPTER NUMBER

TO

BILL NUMBER

Chapter No.	Bill No.	Chapter No.	Bill No.
Ch. 1	HB 1	Ch. 48	SB 171
Ch. 2	SB 80	Ch. 49	HB 10
Ch. 3	SB 194	Ch. 50	HB 12
Ch. 4	SB 56	Ch. 51	HB 38
Ch. 5	SB 7	Ch. 52	HB 48
Ch. 6	SB 17	Ch. 53	HB 66
Ch. 7	SB 26	Ch. 54	HB 73
Ch. 8	SB 50	Ch. 55	HB 75
Ch. 9	HB 55	Ch. 56	HB 82
Ch. 10	SB 4	Ch. 57	HB 101
Ch. 11	SB 34	Ch. 58	HB 119
Ch. 12	SB 51	Ch. 59	HB 120
Ch. 13	SB 141	Ch. 60	HB 151
Ch. 14	HB 29	Ch. 61	HB 179
Ch. 15	HB 30	Ch. 62	HB 214
Ch. 16	HB 35	Ch. 63	HB 233
Ch. 17	HB 51	Ch. 64	HB 237
Ch. 18	HB 80	Ch. 65	HB 391
Ch. 19	SB 11	Ch. 66	HB 480
Ch. 20	SB 55	Ch. 67	SB 52
Ch. 21	SB 93	Ch. 68	SB 53
Ch. 22	HB 254	Ch. 69	SB 84
Ch. 23	HB 284	Ch. 70	HB 23
Ch. 24	SB 6	Ch. 71	HB 41
Ch. 25	SB 21	Ch. 72	HB 94
Ch. 26	SB 28	Ch. 73	HB 110
Ch. 27	SB 30	Ch. 74	HB 121
Ch. 28	SB 62	Ch. 75	HB 123
Ch. 29	SB 76	Ch. 76	HB 171
Ch. 30	SB 77	Ch. 77	HB 172
Ch. 31	SB 106	Ch. 78	HB 200
Ch. 32	HB 3	Ch. 79	HB 231
Ch. 33	HB 36	Ch. 80	HB 241
Ch. 34	HB 85	Ch. 81	HB 274
Ch. 35	HB 93	Ch. 82	SB 1
Ch. 36	HB 137	Ch. 83	SB 18
Ch. 37	HB 138	Ch. 84	SB 32
Ch. 38	HB 139	Ch. 85	SB 88
Ch. 39	HB 141	Ch. 86	SB 95
Ch. 40	HB 175	Ch. 87	SB 115
Ch. 41	HB 194	Ch. 88	SB 120
Ch. 42	SB 9	Ch. 89	SB 203
Ch. 43	SB 133	Ch. 90	SB 231
Ch. 44	HB 56	Ch. 91	HB 24
Ch. 45	HB 89	Ch. 92	HB 170
Ch. 46	HB 198	Ch. 93	HB 392
Ch. 47	HB 319	Ch. 94	HB 454

HeinOnline -- 1999 vol. III 3163 1999

Chapter No.	Bill No.	Chapter No.	Bill No.
Ch. 95	HB 467	Ch. 152	SB 187
Ch. 96	HB 531	Ch. 153	SB 196
Ch. 97	SB 8	Ch. 154	SB 227
Ch. 98	SB 116	Ch. 155	SB 289
Ch. 99	SB 155	Ch. 156	SB 290
Ch. 100	SB 162	Ch. 157	SB 299
Ch. 101	SB 191	Ch. 158	SB 317
Ch. 102	SB 246	Ch. 159	HB 17
Ch. 103	SB 347	Ch. 160	HB 44
Ch. 104	HB 52	Ch. 161	HB 65
Ch. 105	HB 168	Ch. 162	HB 228
Ch. 106	HB 176	Ch. 163	HB 230
Ch. 107	HB 352	Ch. 164	HB 362
Ch. 108	HB 387	Ch. 165	HB 414
Ch. 109	SB 91	Ch. 166	HB 419
Ch. 110	SB 201	Ch. 167	SB 60
Ch. 111	HB 118	Ch. 168	SB 90
Ch. 112	HB 349	Ch. 169	SB 165
Ch. 113	HB 357	Ch. 170	SB 189
Ch. 114	HB 360	Ch. 171	SB 351
Ch. 115	HB 371	Ch. 172	SB 394
Ch. 116	HB 442	Ch. 173	HB 136
Ch. 117	HB 468	Ch. 174	HB 154
Ch. 118	HB 494	Ch. 175	HB 173
Ch. 119	HB 514	Ch. 176	HB 474
Ch. 120	SB 29	Ch. 177	HB 561
Ch. 121	SB 44	Ch. 178	SB 99
Ch. 122	SB 48	Ch. 179	SB 245
Ch. 123	SB 98	Ch. 180	SB 260
Ch. 124	SB 114	Ch. 181	SB 428
Ch. 125	SB 136	Ch. 182	HB 96
Ch. 126	SB 188	Ch. 183	HB 125
Ch. 127	SB 197	Ch. 184	HB 167
Ch. 128	SB 230	Ch. 185	HB 211
Ch. 129	SB 291	Ch. 186	HB 250
Ch. 130	SB 296	Ch. 187	HB 306
Ch. 131	SB 396	Ch. 188	HB 336
Ch. 132	SB 325	Ch. 189	HB 411
Ch. 133	HB 70	Ch. 190	HB 443
Ch. 134	HB 156	Ch. 191	HB 508
Ch. 135	HB 190	Ch. 192	HB 522
Ch. 136	HB 210	Ch. 193	HB 585
Ch. 137	HB 331	Ch. 194	HB 615
Ch. 138	HB 373	Ch. 195	SB 72
Ch. 139	HB 476	Ch. 196	SB 176
Ch. 140	HB 479	Ch. 197	SB 214
Ch. 141	HB 492	Ch. 198	SB 222
Ch. 142	HB 495	Ch. 199	HB 196
Ch. 143	HB 571	Ch. 200	HB 201
Ch. 144	SB 49	Ch. 201	HB 205
Ch. 145	SB 87	Ch. 202	HB 353
Ch. 146	SB 101	Ch. 203	HB 390
Ch. 147	SB 112	Ch. 204	HB 418
Ch. 148	SB 127	Ch. 205	HB 429
Ch. 149	SB 128	Ch. 206	HB 509
Ch. 150	SB 131	Ch. 207	HB 227
Ch. 151	SB 140	Ch. 208	HB 632

HeinOnline -- 1999 vol. III 3164 1999

Chapter No.	Bill No.	Chapter No.	Bill No.
Ch. 209	SB 40	Ch. 266	HB 316
Ch. 210	SB 70	Ch. 267	HB 523
Ch. 211	SB 100	Ch. 268	HB 524
Ch. 212	SB 103	Ch. 269	HB 555
Ch. 213	SB 235	Ch. 270	HB 558
Ch. 214	SB 288	Ch. 271	HB 581
Ch. 215	SB 364	Ch. 272	HB 629
Ch. 216	SB 374	Ch. 273	SB 478
Ch. 217	SB 457	Ch. 274	HB 212
Ch. 218	SB 466	Ch. 275	HB 458
Ch. 219	HB 76	Ch. 276	SB 210
Ch. 220	HB 106	Ch. 277	SB 276
Ch. 221	SB 64	Ch. 278	SB 362
Ch. 222	SB 240	Ch. 279	SB 412
Ch. 223	HB 142	Ch. 280	SB 452
Ch. 224	HB 485	Ch. 281	SB 468
Ch. 225	HB 583	Ch. 282	SB 471
Ch. 226	SB 57	Ch. 283	SB 501
Ch. 227	SB 63	Ch. 284	SB 521
Ch. 228	SB 369	Ch. 285	SB 200
Ch. 229	HB 264	Ch. 286	SB 5
Ch. 230	SB 108	Ch. 287	SB 179
Ch. 231	HB 27	Ch. 288	SB 257
Ch. 232	HB 229	Ch. 289	SB 365
Ch. 233	HB 244	Ch. 290	SB 473
Ch. 234	HB 283	Ch. 291	HB 645
Ch. 235	HB 296	Ch. 292	SB 122
Ch. 236	HB 300	Ch. 293	SB 314
Ch. 237	HB 308	Ch. 294	SB 321
Ch. 238	HB 325	Ch. 295	SB 346
Ch. 239	HB 338	Ch. 296	SB 352
Ch. 240	HB 361	Ch. 297	SB 355
Ch. 241	HB 382	Ch. 298	SB 397
Ch. 242	HB 437	Ch. 299	SB 398
Ch. 243	HB 539	Ch. 300	SB 399
Ch. 244	HB 598	Ch. 301	SB 416
Ch. 245	SB 15	Ch. 302	SB 435
Ch. 246	SB 71	Ch. 303	HB 649
Ch. 247	SB 124	Ch. 304	SB 107
Ch. 248	SB 207	Ch. 305	SB 153
Ch. 249	SB 348	Ch. 306	SB 330
Ch. 250	SB 371	Ch. 307	HB 412
Ch. 251	SB 386	Ch. 308	SB 31
Ch. 252	SB 415	Ch. 309	SB 94
Ch. 253	SB 438	Ch. 310	SB 134
Ch. 254	SB 488	Ch. 311	SB 258
Ch. 255	HB 8	Ch. 312	SB 349
Ch. 256	HB 421	Ch. 313	SB 367
Ch. 257	HB 455	Ch. 314	SB 14
Ch. 258	HB 527	Ch. 315	SB 22
Ch. 259	HB 617	Ch. 316	SB 132
Ch. 260	SB 13	Ch. 317	SB 154
Ch. 261	SB 239	Ch. 318	SB 221
Ch. 262	SB 404	Ch. 319	SB 225
Ch. 263	SB 419	Ch. 320	SB 226
Ch. 264	SB 439	Ch. 321	SB 380
Ch. 265	HB 277	Ch. 322	SB 384

HeinOnline -- 1999 vol. III 3165 1999

Chapter No.	Bill No.	Chapter No.	Bill No.
Ch. 323	SB 409	Ch. 380	SB 178
Ch. 324	SB 446	Ch. 381	SB 215
Ch. 325	SB 453	Ch. 382	SB 241
Ch. 326	SB 481	Ch. 383	SB 293
Ch. 327	SB 522	Ch. 384	SB 331
Ch. 328	HB 4	Ch. 385	SB 477
Ch. 329	HB 9	Ch. 386	SB 505
Ch. 330	HB 32	Ch. 387	HB 53
Ch. 331	HB 47	Ch. 388	HB 54
Ch. 332	HB 64	Ch. 389	HB 69
Ch. 333	HB 107	Ch. 390	HB 81
Ch. 334	HB 111	Ch. 391	HB 116
Ch. 335	HB 126	Ch. 392	HB 135
Ch. 336	HB 153	Ch. 393	HB 204
Ch. 337	HB 192	Ch. 394	HB 207
Ch. 338	HB 339	Ch. 395	HB 209
Ch. 339	HB 625	Ch. 396	HB 232
Ch. 340	HB 630	Ch. 397	HB 255
Ch. 341	HB 676	Ch. 398	HB 257
Ch. 342	SB 27	Ch. 399	HB 282
Ch. 343	SB 69	Ch. 400	HB 395
Ch. 344	SB 137	Ch. 401	HB 444
Ch. 345	SB 183	Ch. 402	HB 461
Ch. 346	SB 190	Ch. 403	HB 504
Ch. 347	SB 216	Ch. 404	HB 526
Ch. 348	SB 219	Ch. 405	HB 578
Ch. 349	SB 232	Ch. 406	SB 36
Ch. 350	SB 236	Ch. 407	SB 68
Ch. 351	SB 269	Ch. 408	SB 79
Ch. 352	SB 292	Ch. 409	SB 113
Ch. 353	SB 294	Ch. 410	SB 169
Ch. 354	SB 326	Ch. 411	SB 233
Ch. 355	SB 423	Ch. 412	SB 359
Ch. 356	SB 470	Ch. 413	SB 463
Ch. 357	SB 476	Ch. 414	SB 486
Ch. 358	HB 59	Ch. 415	SB 504
Ch. 359	HB 71	Ch. 416	SB 82
Ch. 360	HB 72	Ch. 417	SB 89
Ch. 361	HB 98	Ch. 418	HB 6
Ch. 362	HB 130	Ch. 419	HB 7
Ch. 363	HB 150	Ch. 420	HB 58
Ch. 364	HB 155	Ch. 421	HB 74
Ch. 365	HB 188	Ch. 422	HB 95
Ch. 366	HB 215	Ch. 423	HB 99
Ch. 367	HB 301	Ch. 424	HB 109
Ch. 368	HB 304	Ch. 425	HB 113
Ch. 369	HB 379	Ch. 426	HB 128
Ch. 370	HB 396	Ch. 427	HB 132
Ch. 371	HB 399	Ch. 428	HB 180
Ch. 372	HB 404	Ch. 429	HB 186
Ch. 373	HB 435	Ch. 430	HB 187
Ch. 374	HB 502	Ch. 431	HB 189
Ch. 375	HB 580	Ch. 432	HB 203
Ch. 376	HB 644	Ch. 433	HB 221
Ch. 377	SB 117	Ch. 434	HB 266
Ch. 378	SB 126	Ch. 435	HB 275
Ch. 379	SB 151	Ch. 436	HB 405

Chapter No.	Bill No.	Chapter No.	Bill No.
Ch. 437	HB 486	Ch. 494	SB 195
Ch. 438	HB 513	Ch. 495	SB 220
Ch. 439	HB 532	Ch. 496	SB 229
Ch. 440	HB 560	Ch. 497	SB 301
Ch. 441	HB 584	Ch. 498	SB 302
Ch. 442	HB 592	Ch. 499	SB 381
Ch. 443	HB 621	Ch. 500	SB 417
Ch. 444	HB 638	Ch. 501	SB 426
Ch. 445	HB 652	Ch. 502	SB 458
Ch. 446	HB 656	Ch. 503	SB 462
Ch. 447	HB 657	Ch. 504	HB 92
Ch. 448	HB 659	Ch. 505	HB 115
Ch. 449	SB 10	Ch. 506	HB 158
Ch. 450	SB 20	Ch. 507	HB 183
Ch. 451	SB 46	Ch. 508	HB 185
Ch. 452	SB 167	Ch. 509	HB 551
Ch. 453	SB 170	Ch. 510	HB 586
Ch. 454	SB 273	Ch. 511	HB 596
Ch. 455	SB 251	Ch. 512	HB 670
Ch. 456	SB 342	Ch. 513	SB 166
Ch. 457	SB 345	Ch. 514	SB 460
Ch. 458	SB 353	Ch. 515	HB 540
Ch. 459	SB 388	Ch. 516	SB 23
Ch. 460	SB 393	Ch. 517	HB 11
Ch. 461	SB 401	Ch. 518	HB 14
Ch. 462	SB 411	Ch. 519	HB 15
Ch. 463	SB 434	Ch. 520	HB 129
Ch. 464	SB 502	Ch. 521	HB 302
Ch. 465	SB 533	Ch. 522	HB 341
Ch. 466	SB 472	Ch. 523	HB 374
Ch. 467	HB 348	Ch. 524	HB 420
Ch. 468	HB 430	Ch. 525	HB 478
Ch. 469	HB 482	Ch. 526	HB 506
Ch. 470	SB 490	Ch. 527	HB 528
Ch. 471	HB 79	Ch. 528	HB 536
Ch. 472	HB 100	Ch. 529	HB 647
Ch. 473	HB 245	Ch. 530	HB 661
Ch. 474	HB 314	Ch. 531	HB 669
Ch. 475	HB 389	Ch. 532	SB 54
Ch. 476	HB 459	Ch. 533	SB 59
Ch. 477	HB 512	Ch. 534	SB 172
Ch. 478	HB 515	Ch. 535	SB 192
Ch. 479	HB 530	Ch. 536	SB 199
Ch. 480	HB 557	Ch. 537	SB 243
Ch. 481	HB 593	Ch. 538	SB 265
Ch. 482	HB 607	Ch. 539	SB 274
Ch. 483	HB 614	Ch. 540	SB 305
Ch. 484	HB 616	Ch. 541	SB 306
Ch. 485	HB 620	Ch. 542	SB 333
Ch. 486	HB 641	Ch. 543	SB 334
Ch. 487	HB 651	Ch. 544	SB 338
Ch. 488	HB 658	Ch. 545	SB 372
Ch. 489	HB 660	Ch. 546	SB 421
Ch. 490	HB 674	Ch. 547	SB 424
Ch. 491	SB 33	Ch. 548	SB 429
Ch. 492	SB 96	Ch. 549	SB 430
Ch. 493	SB 164	Ch. 550	SB 454

HeinOnline -- 1999 vol. III 3167 1999

Chapter No.	Bill No.
Ch. 551	SB 487
Ch. 552	SB 492
Ch. 553	SB 500
Ch. 554	SB 530
Ch. 555	SB 532
Ch. 556	HB 174
Ch. 557	HB 5
Ch. 558	HB 13
Ch. 559	HB 20
Ch. 560	HB 57
Ch. 561	HB 90
Ch. 562	HB 182
Ch. 563	HB 260
Ch. 564	HB 310
Ch. 565	HB 321
Ch. 566	HB 366
Ch. 567	HB 470
Ch. 568	HB 533
Ch. 569	HB 626
Ch. 570	HB 648
Ch. 571	SB 81
Ch. 572	SB 186
Ch. 573	SB 271
Ch. 574	SB 361
Ch. 575	SB 406
Ch. 576	SB 482
Ch. 577	SB 534
Ch. 578	HB 2
Ch. 579	HB 127
Ch. 580	HB 337
Ch. 581	HB 566
Ch. 582	SB 97
Ch. 583	SB 111
Ch. 584	SB 184
Ch. 585	SB 205
Ch. 580	SB 270
Ch. 587	SB 356
Ch. 588	SB 499
Ch. 589	SB 441

TABLES

OF

EFFECTIVE DATES

BY CHAPTER NUMBER

and

BY EFFECTIVE DATE

HeinOnline -- 1999 vol. III 3169 1999

HeinOnline -- 1999 vol. III 3170 1999

EFFECTIVE DATES

BY CHAPTER NUMBER

Chapter No.			Bill No.		Effective Date
Ch.	1		HB	1	01/14/1999
Ch.	2		SB	80	02/02/1999
					contingent upon voter approval
Ch.	3		SB	194	02/05/1999
Ch.	4		SB	56	02/08/1999
Ch.	5		SB	7	07/01/1999
Ch.	6		SB	17	07/01/1999
Ch.	7		SB	26	02/11/1999
Ch.	8		SB	50	10/01/1999
Ch.	9		HB	55	02/12/1999
Ch.	10		SB	4	02/16/1999
Ch.	11		SB	34	07/01/1999
Ch.	12		SB	51	10/01/1999
Ch.	13		SB	141	02/16/1999
Ch.	14		HB	29	07/01/1999
Ch.	15		HB	30	02/17/1999
Ch.	16		HB	35	02/17/1999
Ch.	17		HB	51	02/17/1999
Ch.	18		HB	80	10/01/1999
Ch.	19		SB	11	02/17/1999
Ch.	20		SB	55	02/17/1999
Ch.	21		SB	93	10/01/1999
Ch.	22		HB	254	07/01/1999
Ch.	23		HB	284	02/18/1999
Ch.	24		SB	6	10/01/1999
Ch.	25		SB	21	07/01/1999
Ch.	26		SB	28	02/18/1999
Ch.	27	§§ 1 and 3	SB	30	02/18/1999
		§ 2			01/01/2001 unless prior to that date the director of the Dept of PHHS certifies to the Governor and the Secretary of State in writing that the federal government has granted this state an exemption from the requirement to have a social security number on a death certificate and the exemption covers the poriod 01/01/2001 through 07/01/2001, in which case (section 2) is void.
Ch.	28		SB	62	10/01/1999
Ch.	29	§§ 1, 6, and 7	SB	76	02/18/1999
		§§ 4 and 5			07/01/1999
		§§ 2 and 3			10/01/2000
Ch.	30		SB	77	02/18/1999
Ch.	31		SB	106	10/01/1999
Ch.	32		HB	3	02/24/1999
Ch.	33		HB	36	10/01/1999
Ch.	34		HB	85	10/01/1999
Ch.	35		HB	93	10/01/1999

HeinOnline -- 1999 vol. III 3171 1999

Chapter No.			Bill No.		Effective Date
Ch.	36		HB	137	02/24/1999
Ch.	37		HB	138	02/24/1999
Ch.	38		HB	139	07/01/1999
Ch.	39		HB	141	02/24/1999
Ch.	40		HB	175	02/24/1999
Ch.	41		HB	194	07/01/1999
Ch.	42		SB	9	02/24/1999
Ch.	43		SB	133	05/28/1999
Ch.	44		HB	56	03/08/1999
Ch.	45		HB	89	10/01/1999
Ch.	46		HB	198	07/01/1999
Ch.	47		HB	319	10/01/1999
Ch.	48		SB	171	07/01/1999
Ch.	49		HB	10	07/01/1999
Ch.	50		HB	12	07/01/1999
Ch.	51	§§ 1-3, 5, 6, 8, 11-17, 24-26, 28-40, 42-55, 62-71, 73-77, 79-87, 89, 91, 93, 95, 96, and 98-101	HB	38	03/15/1999
		§§ 4, 7, 9, 10, 18-23, 27, 41, 56-61, 78, 88, 90, 92, 94, and 97			01/01/2000
		§ 72			07/01/2001
Ch.	52		HB	48	10/01/1999
Ch.	53		HB	66	10/01/1999
Ch.	54		HB	73	03/15/1999
Ch.	55		HB	75	03/15/1999
Ch.	56		HB	82	10/01/1999
Ch.	57		HB	101	03/15/1999
Ch.	58	§§ 3, 45, and 47	HB	119	03/15/1999
		§§ 1, 2, 4-6, provisions in 7 not specified below, 8-44, and 46			07/01/1999
		§ 7 provisions providing for the making of contributions required to purchase service by employer pickup			On the date that the internal revenue service determines in a private letter ruling that the creation and use of the employer pickup method of making contributions provided in that section comply with the requirements of the Internal Revenue Code regarding a qualified retirement plan.
Ch.	59		HB	120	07/01/1999
Ch.	60		HB	151	10/01/1999
Ch.	61		HB	179	07/01/1999
Ch.	62		HB	214	10/01/1999
Ch.	63		HB	233	10/01/1999
Ch.	64		HB	237	03/15/1999
Ch.	65		HB	391	07/01/1999
Ch.	66		HB	480	07/01/1999
Ch.	67		SB	52	03/15/1999
Ch.	68		SB	53	03/15/1999
Ch.	69		SB	84	03/15/1999
Ch.	70		HB	23	10/01/1999

HeinOnline -- 1999 vol. III 3172 1999

Chapter No.		Bill No.		Effective Date
Ch. 71		HB	41	03/16/1999
Ch. 72		HB	94	06/30/1999
Ch. 73		HB	110	03/16/1999
Ch. 74		HB	121	10/01/1999
Ch. 75		HB	123	03/16/1999
Ch. 76		HB	171	10/01/1999
Ch. 77		HB	172	10/01/1999
Ch. 78		HB	200	10/01/1999
Ch. 79		HB	231	01/01/2000
Ch. 80		HB	241	03/16/1999
Ch. 81		HB	274	03/16/1999
Ch. 82		SB	1	10/01/1999
Ch. 83		SB	18	03/16/1999
Ch. 84		SB	32	10/01/1999
Ch. 85		SB	88	03/16/1999
Ch. 86		SB	95	03/16/1999
Ch. 87		SB	115	10/01/1999
Ch. 88		SB	120	07/01/1999
Ch. 89		SB	203	03/16/1999
Ch. 90		SB	231	03/16/1999
Ch. 91		HB	24	10/01/1999
Ch. 92		HB	170	07/01/2000
Ch. 93		HB	392	03/17/1999
Ch. 94		HB	454	07/01/1999
Ch. 95		HB	467	10/01/1999
Ch. 96		HB	531	07/01/1999
Ch. 97		SB	8	10/01/1999
Ch. 98		SB	116	10/01/1999
Ch. 99		SB	155	03/17/1999
Ch. 100		SB	162	10/01/1999
Ch. 101		SB	191	10/01/1999
Ch. 102		SB	246	07/01/1999
Ch. 103	§§ 2 and 4	SB	347	03/17/1999
	§§ 1 and 3			07/01/2001
Ch. 104		HB	52	03/18/1999
Ch. 105		HB	168	07/01/1999
Ch. 106		HB	176	10/01/1999
Ch. 107	§§ 2-6	HB	352	03/18/1999
	§ 1			Effective on the date of the Montana Supreme Court decision that invalidates subsection (4)(a) of 77-1-130; otherwise this section is void.
Ch. 108		HB	387	03/18/1999
Ch. 109		SB	91	03/18/1999
Ch. 110		SB	201	10/01/1999
Ch. 111	§§ 1-3, 4(1-4,6,7), 5-18, 20-29	HB	118	07/01/1999
	§§ 4(5) and 19			Are effective on the later of July 1, 1999, or the date that the IRS determines in a private letter ruling that the creation and use of the excess benefit arrangement provided in those sections comply with the requirements of the IRS code regarding a qualified retirement plan.

HeinOnline -- 1999 vol. III 3173 1999

Chapter No.		Bill No.		Effective Date
Ch. 112		HB	349	10/01/1999
Ch. 113		HB	357	03/19/1999
Ch. 114		HB	360	03/19/1999
Ch. 115		HB	371	01/01/2000
Ch. 116		HB	442	03/19/1999
Ch. 117	§§ 3(2), 4, and 5	HB	468	03/19/1999
	§§ 1, 2, and 3(1)			10/01/1999
Ch. 118		HB	494	07/01/1999
Ch. 119		HB	514	03/19/1999
Ch. 120		SB	29	03/19/1999
Ch. 121		SB	44	03/19/1999
Ch. 122		SB	48	07/01/1999
Ch. 123		SB	98	03/19/1999
Ch. 124		SB	114	07/01/1999
Ch. 125		SB	136	07/01/1999
Ch. 126		SB	188	10/01/1999
Ch. 127		SB	197	07/01/1999
Ch. 128		SB	230	10/01/1999
Ch. 129		SB	291	10/01/1999
Ch. 130		SB	296	10/01/1999
Ch. 131		SB	396	07/01/1999
Ch. 132		SB	325	03/23/1999
Ch. 133		HB	70	07/01/1999
Ch. 134		HB	156	10/01/1999
Ch. 135		HB	190	10/01/1999
Ch. 136		HB	210	03/23/1999
Ch. 137		HB	331	03/23/1999
Ch. 138		HB	373	10/01/1999
Ch. 139		HB	476	03/23/1999
Ch. 140		HB	479	03/23/1999
Ch. 141		HB	492	10/01/1999
Ch. 142		HB	495	07/01/1999
Ch. 143		HB	571	03/23/1999
Ch. 144		SB	49	07/01/1999
Ch. 145		SB	87	03/23/1999
Ch. 146	§§ 5 and 7	SB	101	03/23/1999
	§§ 1-4 and 6			10/01/1999
Ch. 147		SB	112	03/23/1999
Ch. 148		SB	127	03/23/1999
Ch. 149		SB	128	03/23/1999
Ch. 150		SB	131	10/01/1999
Ch. 151		SB	140	10/01/1999
Ch. 152		SB	187	03/23/1999
Ch. 153		SB	196	10/01/1999
Ch. 154		SB	227	10/01/1999
Ch. 155		SB	289	10/01/1999
Ch. 156		SB	290	03/23/1999
Ch. 157		SB	299	07/01/1999
Ch. 158		SB	317	10/01/1999
Ch. 159		HB	17	03/24/1999
Ch. 160		HB	44	07/01/1999
Ch. 161		HB	65	03/24/1999
Ch. 162		HB	228	03/24/1999
Ch. 163		HB	230	10/01/1999
Ch. 164		HB	362	03/24/1999
Ch. 165		HB	414	07/01/1999
Ch. 166		HB	419	07/01/1999

HeinOnline -- 1999 vol. III 3174 1999

Chapter No.		Bill No.		Effective Date
Ch. 167		SB	60	07/01/1999
Ch. 168		SB	90	10/01/1999
Ch. 169		SB	165	10/01/1999
Ch. 170		SB	189	03/24/1999
Ch. 171		SB	351	10/01/1999
Ch. 172	§§ 1, 2, 6, and 7	SB	394	03/24/1999
	§§ 3-5			Effective upon implementation of a state organic certification program pursuant to (section 1(3)).
Ch. 173		HB	136	07/01/1999
Ch. 174		HB	154	10/01/1999
Ch. 175		HB	173	03/25/1999
Ch. 176		HB	474	03/25/1999
Ch. 177		HB	561	10/01/1999
Ch. 178		SB	99	03/25/1999
Ch. 179		SB	245	03/25/1999
Ch. 180	§§ 1, 3, 5, 6	SB	260	10/01/1999
	§§ 2, 4			01/01/2000
Ch. 181		SB	428	07/01/1999
Ch. 182		HB	96	03/26/1999
Ch. 183	§§ 2 and 6	HB	125	03/26/1999
	§§ 1, 3-5			10/01/1999
Ch. 184		HB	167	03/26/1999
Ch. 185		HB	211	03/26/1999
Ch. 186		HB	250	10/01/1999
Ch. 187		HB	306	03/26/1999
Ch. 188		HB	336	10/01/1999
Ch. 189		HB	411	10/01/1999
Ch. 190		HB	443	03/26/1999
Ch. 191		HB	508	10/01/1999
Ch. 192		HB	522	10/01/1999
Ch. 193		HB	585	10/01/1999
Ch. 194		HB	615	10/01/1999
Ch. 195		SB	72	03/26/1999
Ch. 196		SB	176	10/01/1999
Ch. 197		SB	214	10/01/1999
Ch. 198		SB	222	03/26/1999
Ch. 199		HB	196	10/01/1999
Ch. 200		HB	201	03/29/1999
Ch. 201		HB	205	10/01/1999
Ch. 202		HB	353	03/29/1999
Ch. 203		HB	390	10/01/1999
Ch. 204		HB	418	03/29/1999
Ch. 205		HB	429	03/29/1999
Ch. 206		HB	509	10/01/1999
Ch. 207		HB	227	10/01/1999
Ch. 208		HB	632	03/30/1999
Ch. 209		SB	40	03/30/1999
Ch. 210		SB	70	03/30/1999
Ch. 211	§§ 1, 4, 6, 8, and 9	SB	100	07/01/1999
	§§ 2, 3, 5, and 7			07/01/2000
Ch. 212		SB	103	01/01/2000
Ch. 213		SB	235	03/30/1999
Ch. 214		SB	288	03/30/1999
Ch. 215		SB	364	03/30/1999
Ch. 216		SB	374	10/01/1999
Ch. 217		SB	457	10/01/1999

HeinOnline -- 1999 vol. III 3175 1999

Chapter No.		Bill No.	Effective Date
Ch. 218		SB 466	03/30/1999
Ch. 219		HB 76	10/01/1999
Ch. 220		HB 106	10/01/1999
Ch. 221	§§ 1 and 3	SB 64	03/31/1999
	§ 2		07/01/1999
Ch. 222		SB 240	07/01/1999
Ch. 223		HB 142	04/01/1999
Ch. 224		HB 485	04/01/1999
Ch. 225		HB 583	04/01/1999
Ch. 226		SB 57	04/01/1999
Ch. 227		SB 63	10/01/1999
Ch. 228		SB 369	10/01/1999
Ch. 229		HB 264	04/02/1999
Ch. 230	§§ 8, 11, 23, and 24	SB 108	04/02/1999
	§§ 1-6, 9-10, 12-22		10/01/1999
	§ 7		10/01/2001
Ch. 231		HB 27	10/01/1999
Ch. 232		HB 229	04/05/1999
Ch. 233		HB 244	07/01/1999
Ch. 234		HB 283	10/01/1999
Ch. 235		HB 296	10/01/1999
Ch. 236		HB 300	04/05/1999
Ch. 237		HB 308	10/01/1999
Ch. 238		HB 325	10/01/1999
Ch. 239		HB 338	04/05/1999
Ch. 240		HB 361	10/01/1999
Ch. 241		HB 382	10/01/1999
Ch. 242		HB 437	04/05/1999
Ch. 243		HB 539	07/01/1999
Ch. 244		HB 598	10/01/1999
Ch. 245		SB 15	04/05/1999
Ch. 246		SB 71	07/01/1999
Ch. 247		SB 124	04/05/1999
Ch. 248		SB 207	10/01/1999
Ch. 249		SB 348	10/01/1999
Ch. 250		SB 371	07/01/1999
Ch. 251		SB 386	04/05/1999
Ch. 252		SB 415	10/01/1999
Ch. 253		SB 438	04/05/1999
Ch. 254		SB 488	10/01/1999
Ch. 255		HB 8	04/05/1999
Ch. 256		HB 421	07/01/1999
Ch. 257		HB 455	04/05/1999
Ch. 258		HB 527	10/01/1999
Ch. 259		HB 617	07/01/1999
Ch. 260		SB 13	04/05/1999
Ch. 261		SB 239	10/01/1999
Ch. 262		SB 404	10/01/1999
Ch. 263		SB 419	04/05/1999
Ch. 264		SB 439	10/01/1999
Ch. 265		HB 277	04/06/1999
Ch. 266		HB 316	10/01/1999
Ch. 267		HB 523	10/01/1999
Ch. 268		HB 524	10/01/1999
Ch. 269		HB 555	04/06/1999
Ch. 270		HB 558	10/01/1999

HeinOnline -- 1999 vol. III 3176 1999

Chapter No.			Bill No.		Effective Date
Ch.	271	§§ 1-4(1), and 5	HB	581	04/06/1999
		§ 4(2)			06/30/2003
Ch.	272		HB	629	10/01/1999
Ch.	273		SB	478	04/06/1999
Ch.	274		HB	212	07/01/1999
Ch.	275		HB	458	10/01/1999
Ch.	276		SB	210	10/01/1999
Ch.	277		SB	276	10/01/1999
Ch.	278		SB	362	10/01/1999
Ch.	279		SB	412	07/01/1999
Ch.	280		SB	452	04/07/1999
Ch.	281		SB	468	04/08/1999
Ch.	282		SB	471	10/01/1999
Ch.	283		SB	501	10/01/1999
Ch.	284		SB	521	10/01/1999
Ch.	285	§§ 1, 11, 12, 15, 22, 26, 28-32	SB	200	04/11/1999
		§§ 3-9, and 23			07/01/2000
		§§ 2, 10, 13, 14, 16-21, 24, 25, and 27(1)			01/01/2003
		§§ 13(1)(aa) - (1) (ll) and 27(2)			These sections are effective if the tax rate in (section 12), amending 15-6-138, reaches zero.
Ch.	286		SB	5	07/01/1999
Ch.	287		SB	179	10/01/1999
Ch.	288		SB	257	10/01/1999
Ch.	289		SB	365	07/01/1999
Ch.	290		SB	473	04/09/1999
Ch.	291		HB	645	07/01/1999
Ch.	292		SB	122	07/01/1999
Ch.	293		SB	314	10/01/1999
Ch.	294		SB	321	10/01/1999
Ch.	295		SB	346	07/01/1999
Ch.	296		SB	352	10/01/1999
Ch.	297		SB	355	07/01/1999
Ch.	298		SB	397	10/01/1999
Ch.	299		SB	398	10/01/1999
Ch.	300		SB	399	10/01/1999
Ch.	301		SB	416	10/01/1999
Ch.	302		SB	435	04/12/1999
Ch.	303		HB	649	04/14/1999
Ch.	304		SB	107	07/01/1999
Ch.	305		SB	153	07/01/2001
Ch.	306		SB	330	04/14/1999
Ch.	307		HB	412	10/01/1999
Ch.	308		SB	31	07/01/1999
Ch.	309	§§ 11 and 13	SB	94	04/15/1999
		§§ 1-10, 12, and 14-25			10/01/1999
Ch.	310		SB	134	04/15/1999
Ch.	311		SB	258	04/15/1999
Ch.	312		SB	349	07/01/1999
Ch.	313		SB	367	04/15/1999
Ch.	314		SB	14	10/01/1999
Ch.	315		SB	22	10/01/1999
Ch.	316		SB	132	01/01/2000
Ch.	317		SB	154	04/16/1999
Ch.	318		SB	221	04/16/1999

HeinOnline -- 1999 vol. III 3177 1999

Chapter No.		Bill No.		Effective Date
Ch. 319		SB	225	10/01/1999
Ch. 320		SB	226	10/01/1999
Ch. 321		SB	380	04/16/1999
Ch. 322		SB	384	10/01/1999
Ch. 323		SB	409	07/01/1999
Ch. 324		SB	446	04/16/1999
Ch. 325		SB	453	10/01/1999
Ch. 326		SB	481	07/01/1999
Ch. 327		SB	522	04/14/1999
Ch. 328		HB	4	04/19/1999
Ch. 329		HB	9	07/01/1999
Ch. 330		HB	32	07/01/1999
Ch. 331		HB	47	10/01/1999
Ch. 332		HB	64	10/01/1999
Ch. 333		HB	107	10/01/1999
Ch. 334		HB	111	10/01/1999
Ch. 335	§§ 4 and 9	HB	126	04/19/1999
	§§ 1-3, and 5-8			07/01/1999
Ch. 336		HB	153	10/01/1999
Ch. 337		HB	192	10/01/1999
Ch. 338		HB	339	04/19/1999
Ch. 339		HB	625	04/19/1999
Ch. 340		HB	630	10/01/1999
Ch. 341		HB	676	07/01/1999
Ch. 342	§§ 2(3), 16, and 17	SB	27	04/19/1999
	§§ 1, 2(1)-(2), 3-15			10/01/1999
Ch. 343		SB	69	07/01/1999
Ch. 344		SB	137	01/01/2000
Ch. 345		SB	183	07/01/1999
Ch. 346		SB	190	04/19/1999
Ch. 347		SB	216	10/01/1999
Ch. 348		SB	219	01/01/2000
Ch. 349		SB	232	10/01/1999
Ch. 350		SB	236	04/19/1999
Ch. 351		SB	269	04/19/1999
Ch. 352		SB	292	10/01/1999
Ch. 353		SB	294	04/19/1999
Ch. 354		SB	326	10/01/1999
Ch. 355		SB	423	10/01/1999
Ch. 356		SB	470	10/01/1999
Ch. 357		SB	476	10/01/1999
Ch. 358		HB	59	10/01/1999
Ch. 359		HB	71	07/01/1999
Ch. 360		HB	72	07/01/1999
Ch. 361		HB	98	10/01/1999
Ch. 362	§§ 1 and 3	HB	130	04/20/1999
	§ 2			Effective when the Department of Agriculture certifies that funds in the account in 80-8-112 are completely expended.
Ch. 363		HB	150	04/20/1999
Ch. 364		HB	155	10/01/1999
Ch. 365	§§ 10, 12, and 13	HB	188	04/20/1999
	§§ 1-9, and 11			07/01/1999
Ch. 366		HB	215	10/01/1999
Ch. 367		HB	301	04/20/1999
Ch. 368		HB	304	04/20/1999

HeinOnline -- 1999 vol. III 3178 1999

Chapter No.		Bill No.		Effective Date
Ch. 369		HB	379	04/20/1999
Ch. 370		HB	396	10/01/1999
Ch. 371	§§ 10-12	HB	399	10/01/2000
	§§ 1-9			Are effective on passage and approval (04/20/1999) for the purpose of proposing rules that will be adopted on or after October 1, 2000, and are effective for all other purposes on October 1, 2000.
Ch. 372	§§ 1 and 4	HB	404	04/20/1999
	§§ 2 and 3			07/01/1999
Ch. 373		HB	435	04/20/1999
Ch. 374		HB	502	10/01/1999
Ch. 375		HB	580	07/01/1999
Ch. 376		HB	644	07/01/1999
	§ 3(2)			The Governor may solicit applications from persons wishing to serve on the Governor's local coal impact review council at any time following passage and approval (04/20/1999) of (this act).
Ch. 377	§§ 2, 3, 23-27	SB	117	04/20/1999
	§§ 1, 4-15, and 17-22			07/01/1999
	§ 16			07/01/2000
Ch. 378	§§ 1, 2, 4, 5, 7, 10, 11, 13, and 14	SB	126	04/20/1999
	§§ 3, 6, 8, 9, and 12			01/01/2000
Ch. 379		SB	151	04/20/1999
Ch. 380		SB	178	04/20/1999
Ch. 381		SB	215	10/01/1999
Ch. 382		SB	241	10/01/1999
Cb. 383		SB	293	04/20/1999
Ch. 384		SB	331	10/01/1999
Ch. 385		SB	477	10/01/1999
Ch. 386		SB	505	07/01/1999
Ch. 387		HB	53	10/01/1999
Ch. 388		HB	54	10/01/1999
Ch. 389		HB	69	07/01/1999
Ch. 390		HB	81	10/01/1999
Ch. 391		HB	116	10/01/1999
Ch. 392		HB	135	07/01/1999
Ch. 393		HB	204	10/01/1999
Ch. 394		HB	207	07/01/1999
Ch. 395		HB	209	10/01/1999
Ch. 396		HB	232	10/01/1999
Ch. 397		HB	255	10/01/1999
Ch. 398		HB	257	07/01/1999
Ch. 399		HB	282	10/01/1999
Ch. 400		HB	395	07/01/1999
Ch. 401		HB	444	07/01/1999
Ch. 402		HB	461	07/01/1999
Ch. 403		HB	504	10/01/1999
Ch. 404		HB	526	10/01/1999
Ch. 405		HB	578	10/01/1999

HeinOnline -- 1999 vol. III 3179 1999

Chapter No.		Bill No.		Effective Date
Ch. 406		SB 36		04/21/1999
Ch. 407	§§ 1, 2, and 6	SB 68		04/21/1999
	§§ 3-5			07/01/1999
Ch. 408		SB 79		04/21/1999
Ch. 409	§§ 4, 32-34	SB 113		04/21/1999
	§§ 1-3, and 5-31			10/01/1999
Ch. 410		SB 169		04/21/1999
Ch. 411		SB 233		07/01/1999
Ch. 412		SB 359		04/21/1999
Ch. 413		SB 463		04/21/1999
Ch. 414		SB 486		10/01/1999
Ch. 415		SB 504		07/01/1999
Ch. 416		SB 82		10/01/1999
Ch. 417		SB 89		10/01/1999
Ch. 418	§§ 2-7	HB 6		04/23/1999
	§ 1			07/01/1999
Ch. 419		HB 7		07/01/1999
Ch. 420		HB 58		04/23/1999
Ch. 421		HB 74		04/23/1999
Ch. 422		HB 95		04/23/1999
Ch. 423		HB 99		10/01/1999
Ch. 424	§§ 1, 2, and 7-10	HB 109		04/22/1999
	§§ 3-5			07/01/1999
	§ 6			01/01/2006
Ch. 425		HB 113		10/01/1999
Ch. 426	§§ 17 and 42	HB 128		04/23/1999
	§§ 1-16, 18-41, 43, and 44			01/01/2000
Ch. 427	§§ 2 and 57	HB 132		07/01/1999
	§§ 1 and 3-56			01/01/2000
Ch. 428		HB 180		10/01/1999
Ch. 429		HB 186		10/01/1999
Ch. 430		HB 187		10/01/1999
Ch. 431		HB 189		10/01/1999
Ch. 432		HB 203		10/01/1999
Ch. 433	§ 1(1,2, and 3(a)) and 2	HB 221		04/22/1999
	§ 1(3)(b)			10/01/1999
Ch. 434		HB 266		01/01/2000
Ch. 435		HB 275		10/01/1999
Ch. 436		HB 405		04/22/1999
Ch. 437		HB 486		04/23/1999
Ch. 438		HB 513		10/01/1999
Ch. 439		HB 532		10/01/1999
Ch. 440		HB 560		10/01/1999
Ch. 441		HB 584		04/23/1999
Ch. 442		HB 592		04/23/1999
Ch. 443		HB 621		04/22/1999
Ch. 444		HB 638		04/22/1999
Ch. 445		HB 652		04/22/1999
Ch. 446		HB 656		04/22/1999
Ch. 447		HB 657		04/22/1999
Ch. 448		HB 659		04/22/1999
Ch. 449		SB 10		10/01/1999
Ch. 450		SB 20		04/22/1999
Ch. 451		SB 46		04/22/1999
Ch. 452		SB 167		04/22/1999
Ch. 453		SB 170		07/01/1999
Ch. 454		SB 273		07/01/1999

HeinOnline -- 1999 vol. III 3180 1999

Chapter No.			Bill No.		Effective Date
Ch.	455		SB	251	10/01/1999
Ch.	456		SB	342	07/01/1999
Ch.	457		SB	345	04/23/1999
Ch.	458		SB	353	07/01/1999
Ch.	459		SB	388	01/01/2000
Ch.	460		SB	393	07/01/1999
Ch.	461		SB	401	07/01/1999
Ch.	462		SB	411	07/01/1999
Ch.	463	§§ 2(3)(b)(ii)(A) and 4	SB	434	04/22/1999
		§§ 1, 2(1, 2, 3(a), (b)(i), (ii)(B), 4, and 5), and 3			01/01/2000
Ch.	464		SB	502	04/22/1999
Ch.	465		SB	533	10/01/1999
Ch.	466		SB	472	10/01/1999
Ch.	467		HB	348	04/26/1999
Ch.	468		HB	430	10/01/1999
Ch.	469		HB	482	04/26/1999
Ch.	470		SB	490	10/01/1999
Ch.	471	§§ 3, 11, 20-22, 43(2) and (3), 44, 45, 55(1)-(3) and (7), 60, 61, 64, 65, 72, 75-81	HB	79	04/27/1999
		§§ 34, 41(1)(a), (1)(b), and (2)-(6), 46, 62, 63, and 66-71, 73, and 74			07/01/1999
		§§ 1 and 42			10/01/1999
		§§ 2, 4-10, 12-19, 23-33, 35-40, 41(1)(c), 43(1), 47-54, 55(4)-(6), and 56-59			Effective contingent upon certification, as provided in (section 65), that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier.
Ch.	472	§§ 1-4, 31, 66, and 70-73	HB	100	04/27/1999
		§§ 5-30, 32-34, 36-65, 67-69			10/01/1999
		§ 35			01/01/2000
Ch.	473		HB	245	10/01/1999
Ch.	474		HB	314	10/01/1999
Ch.	475		HB	389	07/01/1999
Ch.	476		HB	459	10/01/1999
Ch.	477		HB	512	01/01/2000
Ch.	478		HB	515	04/27/1999
Ch.	479		HB	530	10/01/1999
Ch.	480		HB	557	04/27/1999
Ch.	481		HB	593	10/01/1999
Ch.	482		HB	607	10/01/1999
Ch.	483		HB	614	07/01/1999
Ch.	484		HB	616	07/01/2000
Ch.	485		HB	620	10/01/1999
Ch.	486		HB	641	04/27/1999
Ch.	487		HB	651	04/27/1999
Ch.	488		HB	658	04/27/0999
Ch.	489		HB	660	04/27/1999
Ch.	490		HB	674	07/01/1999
Ch.	491		SB	33	04/27/1999

HeinOnline -- 1999 vol. III 3181 1999

Chapter No.		Bill No.		Effective Date
Ch. 492		SB	96	10/01/1999
Ch. 493		SB	164	07/01/1999
Ch. 494		SB	195	07/01/1999
Ch. 495		SB	220	07/01/1999
Ch. 496		SB	229	04/27/1999
Ch. 497	§§ 1 and 4	SB	301	07/01/1999
	§ 5			10/01/1999
	§§ 2 and 3			07/01/2014
Ch. 498		SB	302	04/27/1999
Ch. 499	§§ 1-4, 6, and 8-11	SB	381	07/01/1999
	§§ 5 and 7			07/01/2001
Ch. 500		SB	417	10/01/1999
Ch. 501		SB	426	04/27/1999
Ch. 502		SB	458	10/01/1999
Ch. 503		SB	462	07/01/1999
Ch. 504	§§ 2-7	HB	92	04/28/1999
	§ 1			07/01/1999
Ch. 505		HB	115	04/28/1999
Ch. 506	§§ 1-11, and 13-16	HB	158	04/28/1999
	§ 12			01/01/2000
Ch. 507		HB	183	04/28/1999
Ch. 508	§§ 1-3, and 5-14	HB	185	04/28/1999
	§ 4			10/01/2003
Ch. 509		HB	551	04/28/1999
Ch. 510		HB	586	10/01/1999
Ch. 511		HB	596	07/01/1999
Ch. 512	§§ 1-6, and 8-19	HB	670	04/28/1999
	§ 7			07/01/1999
Ch. 513		SB	166	07/01/1999
Ch. 514	§§ 5 and 11	SB	460	04/28/1999
	§§ 1-4, and 6-10			07/01/1999
Ch. 515	§§ 1-11, 14-45, and 47-52	HB	540	12/31/2000
				On approval by electorate
	§§ 12, 13, and 46			01/01/2001
Ch. 516		SB	23	01/01/2001
				On approval by electorate
Ch. 517	§§ 3-6	HB	11	04/29/1999
	§§ either 1 or 2			07/01/1999
Ch. 518		HB	14	04/29/1999
Ch. 519		HB	15	04/30/1999
Ch. 520		HB	129	10/01/1999
Ch. 521		HB	302	10/01/1999
Ch. 522		HB	341	04/29/1999
Ch. 523		HB	374	10/01/1999
Ch. 524		HB	420	04/30/1999
Ch. 525		HB	478	03/01/2000
Ch. 526		HB	506	10/01/1999
Ch. 527		HB	528	04/29/1999
Ch. 528	§§ 1, 4(1)-(4), (5)(a)(c), (6), and 5-9	HB	536	04/30/1999
	§§ 2, 3, and the bracketed language in (section 4(5)(b))			01/01/2000
Ch. 529	§§ 1, 2, 4-9	HB	647	07/01/1999
	§ 3			07/01/2001
Ch. 530		HB	661	04/30/1999
Ch. 531		HB	669	04/30/1999
Ch. 532		SB	54	10/01/1999

HeinOnline -- 1999 vol. III 3182 1999

Chapter No.		Bill No.	Effective Date
Ch. 533		SB 59	10/01/2000
Ch. 534		SB 172	07/01/2000
Ch. 535		SB 192	04/30/1999
Ch. 536		SB 199	04/29/1999
Ch. 537		SB 243	04/30/1999
Ch. 538		SB 265	04/30/1999
Ch. 539		SB 274	10/01/1999
Ch. 540		SB 305	10/01/1999
Ch. 541		SB 306	04/29/1999
Ch. 542		SB 333	04/30/1999
Ch. 543	§§ 2-9	SB 334	04/30/1999
	§ 1		10/01/1999
Ch. 544	§§ 1-2, 4, 6, 7, and 9	SB 338	04/30/1999
	§§ 3, 5, and 8		03/01/2000
Ch. 545		SB 372	07/01/1999
Ch. 546		SB 421	10/01/1999
Ch. 547		SB 424	04/30/1999
Ch. 548		SB 429	10/01/1999
Ch. 549		SB 430	04/30/1999
Ch. 550		SB 454	07/01/1999
Ch. 551		SB 487	04/30/1999
Ch. 552	§§ 1-4, 6, 7, and 9-13	SB 492	07/01/1999
	§ 5		Effective July 1 of the first year following the date that the Governor by executive order certifies to the Secretary of State that the resource indemnity trust fund balance has reached $100 million. The Secretary of State shall notify the department of revenue, the department of administration, the code commissioner, and the legislative fiscal division of this certification.
	§ 8		If the funding switch described in (section 12(1)) does not occur, then (section 8) is effective July 1 of the first year following the date that the Governor by executive order certifies to the Secretary of State that the resource indemnity trust fund balance has reacbed $100 million. The Secretary of State shall notify the department of revenue, the department of administration, the code commissioner, and the legislative fiscal division of the certification.
Ch. 553		SB 500	01/01/2000
Ch. 554	§§ 1, 3, 5, 16-20	SB 530	04/30/1999
	§§ 2, 4, and 6-15		01/01/2000
Ch. 555		SB 532	10/01/1999
Ch. 556	§ 14, and 38	HB 174	04/30/1999
	§§ 1-13, 15-37, 39, and 40		01/01/2000
Ch. 557		HB 5	05/06/1999
Ch. 558	§§ 8 and 14	HB 13	05/06/1999
	§§ 1-7, and 9-13		07/01/1999
	§ 15		10/01/1999

HeinOnline -- 1999 vol. III 3183 1999

Chapter No.		Bill No.		Effective Date
Ch. 559		HB	20	10/01/1999
Ch. 560		HB	57	07/01/2000
Ch. 561		HB	90	05/05/1999
Ch. 562		HB	182	07/01/1999
Ch. 563		HB	260	07/01/1999
Ch. 564		HB	310	10/01/1999
Ch. 565		HB	321	07/01/1999
Ch. 566		HB	366	10/01/1999
Ch. 567		HB	470	05/05/1999
Ch. 568		HB	533	03/01/2000
Ch. 569		HB	626	06/01/1999
Ch. 570		HB	648	07/01/1999
Ch. 571		SB	81	05/06/1999
Ch. 572		SB	186	10/01/1999
Ch. 573		SB	271	05/05/1999
Ch. 574	§§ 29(1), (2), and (3), and 31	SB	361	07/01/1999
	§§ 1-28, 29(4), and 30			10/01/1999
Ch. 575		SB	406	05/05/1999
Ch. 576		SB	482	07/01/1999
Ch. 577		SB	534	05/06/1999
Ch. 578		HB	2	07/01/1999
Ch. 579	§§ 3, 8-11, and 18	HB	127	05/10/1999
	§§ 1, 2, 4-7, and 12-17			10/01/1999
Ch. 580		HB	337	05/10/1999
Ch. 581		HB	566	10/01/1999
Ch. 582		SB	97	10/01/1999
Ch. 583		SB	111	05/10/1999
Ch. 584		SB	184	05/10/1999
Ch. 585		SB	205	07/01/1999
Ch. 586		SB	270	10/01/1999
Ch. 587		SB	356	05/10/1999
Ch. 588		SB	499	05/10/1999
Ch. 589		SB	441	10/01/1999

HeinOnline -- 1999 vol. III 3184 1999

TABLE OF EFFECTIVE DATES

BY DATE

Effective Date	Chapter No.	Bill No.
01/14/1999	Ch. 1	HB 1
02/02/1999	Ch. 2	SB 80
	contingent upon voter approval	
02/05/1999	Ch. 3	SB 194
02/08/1999	Ch. 4	SB 56
02/11/1999	Ch. 7	SB 26
02/12/1999	Ch. 9	HB 55
02/16/1999	Ch. 10	SB 4
02/16/1999	Ch. 13	SB 141
02/17/1999	Ch. 15	HB 30
02/17/1999	Ch. 16	HB 35
02/17/1999	Ch. 17	HB 51
02/17/1999	Ch. 19	SB 11
02/17/1999	Ch. 20	SB 55
02/18/1999	Ch. 23	HB 284
02/18/1999	Ch. 26	SB 28
02/18/1999	Ch. 27	SB 30
	§§ 1 and 3	
02/18/1999	Ch. 29	SB 76
	§§ 1, 6, and 7	
02/18/1999	Ch. 30	SB 77
02/24/1999	Ch. 32	HB 3
02/24/1999	Ch. 36	HB 137
02/24/1999	Ch. 37	HB 138
02/24/1999	Ch. 39	HB 141
02/24/1999	Ch. 40	HB 175
02/24/1999	Ch. 42	SB 9
03/08/1999	Ch. 44	HB 56
03/15/1999	Ch. 51	HB 38
	§§ 1-3, 5, 6, 8, 11-17, 24-26, 28-40, 42-55, 62-71, 73-77, 79-87, 89, 91, 93, 95, 96, and 98-101	
03/15/1999	Ch. 54	HB 73
03/15/1999	Ch. 55	HB 75
03/15/1999	Ch. 57	HB 101
03/15/1999	Ch. 58	HB 119
	§§ 3, 45, and 47	
03/15/1999	Ch. 64	HB 237
03/15/1999	Ch. 67	SB 52
03/15/1999	Ch. 68	SB 53
03/15/1999	Ch. 69	SB 84
03/16/1999	Ch. 71	HB 41
03/16/1999	Ch. 73	HB 110
03/16/1999	Ch. 75	HB 123
03/16/1999	Ch. 80	HB 241
03/16/1999	Ch. 81	HB 274
03/16/1999	Ch. 83	SB 18
03/16/1999	Ch. 85	SB 88
03/16/1999	Ch. 86	SB 95

Effective Date	Chapter No.	Bill No.
03/16/1999	Ch. 89	SB 203
03/16/1999	Ch. 90	SB 231
03/17/1999	Ch. 93	HB 392
03/17/1999	Ch. 99	SB 155
03/17/1999	Ch. 103	SB 347
	§§ 2 and 4	
03/18/1999	Ch. 104	HB 52
03/18/1999	Ch. 107	HB 352
	§§ 2-6	
03/18/1999	Ch. 108	HB 387
03/18/1999	Ch. 109	SB 91
03/19/1999	Ch. 113	HB 357
03/19/1999	Ch. 114	HB 360
03/19/1999	Ch. 116	HB 442
03/19/1999	Ch. 117	HB 468
	§§ 3(2), 4, and 5	
03/19/1999	Ch. 119	HB 514
03/19/1999	Ch. 120	SB 29
03/19/1999	Ch. 121	SB 44
03/19/1999	Ch. 123	SB 98
03/23/1999	Ch. 132	SB 325
03/23/1999	Ch. 136	HB 210
03/23/1999	Ch. 137	HB 331
03/23/1999	Ch. 139	HB 476
03/23/1999	Ch. 140	HB 479
03/23/1999	Ch. 143	HB 571
03/23/1999	Ch. 145	SB 87
03/23/1999	Ch. 146	SB 101
	§§ 5 and 7	
03/23/1999	Ch. 147	SB 112
03/23/1999	Ch. 148	SB 127
03/23/1999	Ch. 149	SB 128
03/23/1999	Ch. 152	SB 187
03/23/1999	Ch. 156	SB 290
03/24/1999	Ch. 159	HB 17
03/24/1999	Ch. 161	HB 65
03/24/1999	Ch. 162	HB 228
03/24/1999	Ch. 164	HB 362
03/24/1999	Ch. 170	SB 189
03/24/1999	Ch. 172	SB 394
	§§ 1, 2, 6, and 7	
03/25/1999	Ch. 175	HB 173
03/25/1999	Ch. 176	HB 474
03/25/1999	Ch. 178	SB 99
03/25/1999	Ch. 179	SB 245
03/26/1999	Ch. 182	HB 96
03/26/1999	Ch. 183	HB 125
	§§ 2 and 6	
03/26/1999	Ch. 184	HB 167
03/26/1999	Ch. 185	HB 211
03/26/1999	Ch. 187	HB 306
03/26/1999	Ch. 190	HB 443
03/26/1999	Ch. 195	SB 72
03/26/1999	Ch. 198	SB 222
03/29/1999	Ch. 200	HB 201
03/29/1999	Ch. 202	HB 353
03/29/1999	Ch. 204	HB 418

HeinOnline -- 1999 vol. III 3186 1999

Effective Date	Chapter No.	Bill No.
03/29/1999	Ch. 205	HB 429
03/30/1999	Ch. 208	HB 632
03/30/1999	Ch. 209	SB 40
03/30/1999	Ch. 210	SB 70
03/30/1999	Ch. 213	SB 235
03/30/1999	Ch. 214	SB 288
03/30/1999	Ch. 215	SB 364
03/30/1999	Ch. 218	SB 466
03/31/1999	Ch. 221	SB 64
	§§ 1 and 3	
04/01/1999	Ch. 223	HB 142
04/01/1999	Ch. 224	HB 485
04/01/1999	Ch. 225	HB 583
04/01/1999	Ch. 226	SB 57
04/02/1999	Ch. 229	HB 264
04/02/1999	Ch. 230	SB 108
	§§ 8, 11, 23, and 24	
04/05/1999	Ch. 232	HB 229
04/05/1999	Ch. 236	HB 300
04/05/1999	Ch. 239	HB 338
04/05/1999	Ch. 242	HB 437
04/05/1999	Ch. 245	SB 15
04/05/1999	Ch. 247	SB 124
04/05/1999	Ch. 251	SB 386
04/05/1999	Ch. 253	SB 438
04/05/1999	Ch. 255	HB 8
04/05/1999	Ch. 257	HB 455
04/05/1999	Ch. 260	SB 13
04/05/1999	Ch. 263	SB 419
04/06/1999	Ch. 265	HB 277
04/06/1999	Ch. 269	HB 555
04/06/1999	Ch. 271	HB 581
	§§ 1-4(1), and 5	
04/06/1999	Ch. 273	SB 478
04/07/1999	Ch. 280	SB 452
04/08/1999	Ch. 281	SB 468
04/09/1999	Ch. 290	SB 473
04/11/1999	Ch. 285	SB 200
	§§ 1, 11, 12, 15, 22, 26, 28-32	
04/12/1999	Ch. 302	SB 435
04/14/1999	Ch. 303	HB 649
04/14/1999	Ch. 306	SB 330
04/14/1999	Ch. 327	SB 522
04/15/1999	Ch. 309	SB 94
	§§ 11 and 13	
04/15/1999	Ch. 310	SB 134
04/15/1999	Ch. 311	SB 258
04/15/1999	Ch. 313	SB 367
04/16/1999	Ch. 317	SB 154
04/16/1999	Ch. 318	SB 221
04/16/1999	Ch. 321	SB 380
04/16/1999	Ch. 324	SB 446
04/19/1999	Ch. 328	HB 4
04/19/1999	Ch. 335	HB 126
	§§ 4 and 9	
04/19/1999	Ch. 338	HB 339
04/19/1999	Ch. 339	HB 625

Effective Date	Chapter No.	Bill No.
04/19/1999	Ch. 342	SB 27
	§§ 2(3), 16, and 17	
04/19/1999	Ch. 346	SB 190
04/19/1999	Ch. 350	SB 236
04/19/1999	Ch. 351	SB 269
04/19/1999	Ch. 353	SB 294
04/20/1999	Ch. 362	HB 130
	§§ 1 and 3	
04/20/1999	Ch. 363	HB 150
04/20/1999	Ch. 365	HB 188
	§§ 10, 12, and 13	
04/20/1999	Ch. 367	HB 301
04/20/1999	Ch. 368	HB 304
04/20/1999	Ch. 369	HB 379
04/20/1999	Ch. 372	HB 404
	§§ 1 and 4	
04/20/1999	Ch. 373	HB 435
04/20/1999	Ch. 377	SB 117
	§§ 2, 3, 23-27	
04/20/1999	Ch. 378	SB 126
	§§ 1, 2, 4, 5, 7, 10, 11, 13, and 14	
04/20/1999	Ch. 379	SB 151
04/20/1999	Ch. 380	SB 178
04/20/1999	Ch. 383	SB 293
04/21/1999	Ch. 406	SB 36
04/21/1999	Ch. 407	SB 68
	§§ 1, 2, and 6	
04/21/1999	Ch. 408	SB 79
04/21/1999	Ch. 409	SB 113
	§§ 4, 32-34	
04/21/1999	Ch. 410	SB 169
04/21/1999	Ch. 412	SB 359
04/21/1999	Ch. 413	SB 463
04/22/1999	Ch. 424	HB 109
	§§ 1, 2, and 7-10	
04/22/1999	Ch. 433	HB 221
	§ 1(1,2, and 3(a)) and 2	
04/22/1999	Ch. 436	HB 405
04/22/1999	Ch. 443	HB 621
04/22/1999	Ch. 444	HB 638
04/22/1999	Ch. 445	HB 652
04/22/1999	Ch. 446	HB 656
04/22/1999	Ch. 447	HB 657
04/22/1999	Ch. 448	HB 659
04/22/1999	Ch. 450	SB 20
04/22/1999	Ch. 451	SB 46
04/22/1999	Ch. 452	SB 167
04/22/1999	Ch. 463	SB 434
	§§ 2(3)(b)(ii)(A) and 4	
04/22/1999	Ch. 464	SB 502
04/23/1999	Ch. 418	HB 6
	§§ 2-7	
04/23/1999	Ch. 420	HB 58
04/23/1999	Ch. 421	HB 74
04/23/1999	Ch. 422	HB 95
04/23/1999	Ch. 426	HB 128
	§§ 17 and 42	

HeinOnline -- 1999 vol. III 3188 1999

Effective Date	Chapter No.	Bill No.
04/23/1999	Ch. 437	HB 486
04/23/1999	Ch. 441	HB 584
04/23/1999	Ch. 442	HB 592
04/23/1999	Ch. 457	SB 345
04/26/1999	Ch. 467	HB 348
04/26/1999	Ch. 469	HB 482
04/27/1999	Ch. 471	HB 79
	§§ 3, 11, 20-22, 43(2) and (3), 44, 45, 55(1)-(3) and (7), 60, 61, 64, 65, 72, 75-81	
04/27/1999	Ch. 472	HB 100
	§§ 1-4, 31, 66, and 70-73	
04/27/1999	Ch. 478	HB 515
04/27/1999	Ch. 480	HB 557
04/27/1999	Ch. 486	HB 641
04/27/1999	Ch. 487	HB 651
04/27/1999	Ch. 488	HB 658
04/27/1999	Ch. 489	HB 660
04/27/1999	Ch. 491	SB 33
04/27/1999	Ch. 496	SB 229
04/27/1999	Ch. 498	SB 302
04/27/1999	Ch. 501	SB 426
04/28/1999	Ch. 504	HB 92
	§§ 2-7	
04/28/1999	Ch. 505	HB 115
04/28/1999	Ch. 506	HB 158
	§§ 1-11, and 13-16	
04/28/1999	Ch. 507	HB 183
04/28/1999	Ch. 508	HB 185
	§§ 1-3, and 5-14	
04/28/1999	Ch. 509	HB 551
04/28/1999	Ch. 512	HB 670
	§§ 1-6, and 8-19	
04/28/1999	Ch. 514	SB 460
	§§ 5 and 11	
04/29/1999	Ch. 517	HB 11
	§§ 3-6	
04/29/1999	Ch. 518	HB 14
04/29/1999	Ch. 522	HB 341
04/29/1999	Ch. 527	HB 528
04/29/1999	Ch. 536	SB 199
04/29/1999	Ch. 541	SB 306
04/30/1999	Ch. 519	HB 15
04/30/1999	Ch. 524	HB 420
04/30/1999	Ch. 528	HB 536
	§§ 1, 4(1)-(4), (5)(a)(c), (6), and 5-9	
04/30/1999	Ch. 530	HB 661
04/30/1999	Ch. 531	HB 669
04/30/1999	Ch. 535	SB 192
04/30/1999	Ch. 537	SB 243
04/30/1999	Ch. 538	SB 265
04/30/1999	Ch. 542	SB 333
04/30/1999	Ch. 543	SB 334
	§§ 2-9	
04/30/1999	Ch. 544	SB 338
	§§ 1-2, 4, 6, 7, and 9	
04/30/1999	Ch. 547	SB 424

Effective Date	Chapter No.	Bill No.
04/30/1999	Ch. 549	SB 430
04/30/1999	Ch. 551	SB 487
04/30/1999	Ch. 554	SB 530
	§§ 1, 3, 5, 16-20	
04/30/1999	Ch. 556	HB 174
	§ 14, and 38	
05/05/1999	Ch. 561	HB 90
05/05/1999	Ch. 567	HB 470
05/05/1999	Ch. 573	SB 271
05/05/1999	Ch. 575	SB 406
05/06/1999	Ch. 557	HB 5
05/06/1999	Ch. 558	HB 13
	§§ 8 and 14	
05/06/1999	Ch. 571	SB 81
05/06/1999	Ch. 577	SB 534
05/10/1999	Ch. 579	HB 127
	§§ 3, 8-11, and 18	
05/10/1999	Ch. 580	HB 337
05/10/1999	Ch. 583	SB 111
05/10/1999	Ch. 584	SB 184
05/10/1999	Ch. 587	SB 356
05/10/1999	Ch. 588	SB 499
05/28/1999	Ch. 43	SB 133
06/01/1999	Ch. 569	HB 626
06/30/1999	Ch. 72	HB 94
07/01/1999	Ch. 5	SB 7
07/01/1999	Ch. 6	SB 17
07/01/1999	Ch. 11	SB 34
07/01/1999	Ch. 14	HB 29
07/01/1999	Ch. 22	HB 254
07/01/1999	Ch. 25	SB 21
07/01/1999	Ch. 29	SB 76
	§§ 4 and 5	
07/01/1999	Ch. 38	HB 139
07/01/1999	Ch. 41	HB 194
07/01/1999	Ch. 46	HB 198
07/01/1999	Ch. 48	SB 171
07/01/1999	Ch. 49	HB 10
07/01/1999	Ch. 50	HB 12
07/01/1999	Ch. 58	HB 119
	§§ 1, 2, 4-6, provisions in 7 other than those providing for the making of contributions required to purchase service by employer pickup, 8-44, and 46	
07/01/1999	Ch. 59	HB 120
07/01/1999	Ch. 61	HB 179
07/01/1999	Ch. 65	HB 391
07/01/1999	Ch. 66	HB 480
07/01/1999	Ch. 88	SB 120
07/01/1999	Ch. 94	HB 454
07/01/1999	Ch. 96	HB 531
07/01/1999	Ch. 102	SB 246
07/01/1999	Ch. 105	HB 168
07/01/1999	Ch. 111	IIB 118
	§§ 1-3, 4(1-4,6,7), 5-18, 20-29	
07/01/1999	Ch. 118	HB 494

HeinOnline -- 1999 vol. III 3190 1999

Effective Date	Chapter No.	Bill No.
07/01/1999	Ch. 122	SB 48
07/01/1999	Ch. 124	SB 114
07/01/1999	Ch. 125	SB 136
07/01/1999	Ch. 127	SB 197
07/01/1999	Ch. 131	SB 396
07/01/1999	Ch. 133	HB 70
07/01/1999	Ch. 142	HB 495
07/01/1999	Ch. 144	SB 49
07/01/1999	Ch. 157	SB 299
07/01/1999	Ch. 160	HB 44
07/01/1999	Ch. 165	HB 414
07/01/1999	Ch. 166	HB 419
07/01/1999	Ch. 167	SB 60
07/01/1999	Ch. 173	HB 136
07/01/1999	Ch. 181	SB 428
07/01/1999	Ch. 211	SB 100
	§§ 1, 4, 6, 8, and 9	
07/01/1999	Ch. 221	SB 64
	§ 2	
07/01/1999	Ch. 222	SB 240
07/01/1999	Ch. 233	HB 244
07/01/1999	Ch. 243	HB 539
07/01/1999	Ch. 246	SB 71
07/01/1999	Ch. 250	SB 371
07/01/1999	Ch. 256	HB 421
07/01/1999	Ch. 259	HB 617
07/01/1999	Ch. 274	HB 212
07/01/1999	Ch. 279	SB 412
07/01/1999	Ch. 286	SB 5
07/01/1999	Ch. 289	SB 365
07/01/1999	Ch. 291	HB 645
07/01/1999	Ch. 292	SB 122
07/01/1999	Ch. 295	SB 346
07/01/1999	Ch. 297	SB 355
07/01/1999	Ch. 304	SB 107
07/01/1999	Ch. 308	SB 31
07/01/1999	Ch. 312	SB 349
07/01/1999	Ch. 323	SB 409
07/01/1999	Ch. 326	SB 481
07/01/1999	Ch. 329	HB 9
07/01/1999	Ch. 330	HB 32
07/01/1999	Ch. 335	HB 126
	§§ 1-3, and 5-8	
07/01/1999	Ch. 341	HB 676
07/01/1999	Ch. 343	SB 69
07/01/1999	Ch. 345	SB 183
07/01/1999	Ch. 359	HB 71
07/01/1999	Ch. 360	HB 72
07/01/1999	Ch. 365	HB 188
	§§ 1-9, and 11	
07/01/1999	Ch. 372	HB 404
	§§ 2 and 3	
07/01/1999	Ch. 375	HB 580
07/01/1999	Ch. 376	HB 644
07/01/1999	Ch. 377	SB 117
	§§ 1, 4-15, and 17-22	
07/01/1999	Ch. 386	SB 505

Effective Date	Chapter No.	Bill No.
07/01/1999	Ch. 389	HB 69
07/01/1999	Ch. 392	HB 135
07/01/1999	Ch. 394	HB 207
07/01/1999	Ch. 398	HB 257
07/01/1999	Ch. 400	HB 395
07/01/1999	Ch. 401	HB 444
07/01/1999	Ch. 402	HB 461
07/01/1999	Ch. 407	SB 68
	§§ 3-5	
07/01/1999	Ch. 411	SB 233
07/01/1999	Ch. 415	SB 504
07/01/1999	Ch. 418	HB 6
	§ 1	
07/01/1999	Ch. 419	HB 7
07/01/1999	Ch. 424	HB 109
	§§ 3-5	
07/01/1999	Ch. 427	HB 132
	§§ 2 and 57	
07/01/1999	Ch. 453	SB 170
07/01/1999	Ch. 454	SB 273
07/01/1999	Ch. 456	SB 342
07/01/1999	Ch. 458	SB 353
07/01/1999	Ch. 460	SB 393
07/01/1999	Ch. 461	SB 401
07/01/1999	Ch. 462	SB 411
07/01/1999	Ch. 471	HB 79
	§§ 34, 41(1)(a), (1)(b), and (2)-(6), 46, 62, 63, and 66-71, 73, and 74	
07/01/1999	Ch. 475	HB 389
07/01/1999	Ch. 483	HB 614
07/01/1999	Ch. 490	HB 674
07/01/1999	Ch. 493	SB 164
07/01/1999	Ch. 494	SB 195
07/01/1999	Ch. 495	SB 220
07/01/1999	Ch. 497	SB 301
	§§ 1 and 4	
07/01/1999	Ch. 499	SB 381
	§§ 1-4, 6, and 8-11	
07/01/1999	Ch. 503	SB 462
07/01/1999	Ch. 504	HB 92
	§ 1	
07/01/1999	Ch. 511	HB 596
07/01/1999	Ch. 512	HB 670
	§ 7	
07/01/1999	Ch. 513	SB 166
07/01/1999	Ch. 514	SB 460
	§§ 1-4, and 6-10	
07/01/1999	Ch. 517	HB 11
	§§ either 1 or 2	
07/01/1999	Ch. 529	HB 647
	§§ 1, 2, 4-9	
07/01/1999	Ch. 545	SB 372
07/01/1999	Ch. 550	SB 454
07/01/1999	Ch. 552	SB 492
	§§ 1-4, 6, 7, and 9-13	
07/01/1999	Ch. 558	HB 13
	§§ 1-7, and 9-13	

Effective Date	Chapter No.	Bill No.
07/01/1999	Ch. 562	HB 182
07/01/1999	Ch. 563	HB 260
07/01/1999	Ch. 565	HB 321
07/01/1999	Ch. 570	HB 648
07/01/1999	Ch. 574	SB 361
	§§ 29(1), (2), and (3), and 31	
07/01/1999	Ch. 576	SB 482
07/01/1999	Ch. 578	HB 2
07/01/1999	Ch. 585	SB 205
10/01/1999	Ch. 8	SB 50
10/01/1999	Ch. 12	SB 51
10/01/1999	Ch. 18	HB 80
10/01/1999	Ch. 21	SB 93
10/01/1999	Ch. 24	SB 6
10/01/1999	Ch. 28	SB 62
10/01/1999	Ch. 31	SB 106
10/01/1999	Ch. 33	HB 36
10/01/1999	Ch. 34	HB 85
10/01/1999	Ch. 35	HB 93
10/01/1999	Ch. 45	HB 89
10/01/1999	Ch. 47	HB 319
10/01/1999	Ch. 52	HB 48
10/01/1999	Ch. 53	HB 66
10/01/1999	Ch. 56	HB 82
10/01/1999	Ch. 60	HB 151
10/01/1999	Ch. 62	HB 214
10/01/1999	Ch. 63	HB 233
10/01/1999	Ch. 70	HB 23
10/01/1999	Ch. 74	HB 121
10/01/1999	Ch. 76	HB 171
10/01/1999	Ch. 77	HB 172
10/01/1999	Ch. 78	HB 200
10/01/1999	Ch. 82	SB 1
10/01/1999	Ch. 84	SB 32
10/01/1999	Ch. 87	SB 115
10/01/1999	Ch. 91	HB 24
10/01/1999	Ch. 95	HB 467
10/01/1999	Ch. 97	SB 8
10/01/1999	Ch. 98	SB 116
10/01/1999	Ch. 100	SB 162
10/01/1999	Ch. 101	SB 191
10/01/1999	Ch. 106	HB 176
10/01/1999	Ch. 110	SB 201
10/01/1999	Ch. 112	HB 349
10/01/1999	Ch. 117	HB 468
	§§ 1, 2, and 3(1)	
10/01/1999	Ch. 126	SB 188
10/01/1999	Ch. 128	SB 230
10/01/1999	Ch. 129	SB 291
10/01/1999	Ch. 130	SB 296
10/01/1999	Ch. 134	HB 156
10/01/1999	Ch. 135	HB 190
10/01/1999	Ch. 138	HB 373
10/01/1999	Ch. 141	HB 492
10/01/1999	Ch. 146	SB 101
	§§ 1-4 and 6	
10/01/1999	Ch. 150	SB 131

Effective Date	Chapter No.	Bill No.
10/01/1999	Ch. 151	SB 140
10/01/1999	Ch. 153	SB 196
10/01/1999	Ch. 154	SB 227
10/01/1999	Ch. 155	SB 289
10/01/1999	Ch. 158	SB 317
10/01/1999	Ch. 163	HB 230
10/01/1999	Ch. 168	SB 90
10/01/1999	Ch. 169	SB 165
10/01/1999	Ch. 171	SB 351
10/01/1999	Ch. 174	HB 154
10/01/1999	Ch. 177	HB 561
10/01/1999	Ch. 180	SB 260
	§§ 1, 3, 5, 6	
10/01/1999	Ch. 183	HB 125
	§§ 1, 3-5	
10/01/1999	Ch. 186	HB 250
10/01/1999	Ch. 188	HB 336
10/01/1999	Ch. 189	HB 411
10/01/1999	Ch. 191	HB 508
10/01/1999	Ch. 192	HB 522
10/01/1999	Ch. 193	HB 585
10/01/1999	Ch. 194	HB 615
10/01/1999	Ch. 196	SB 176
10/01/1999	Ch. 197	SB 214
10/01/1999	Ch. 199	HB 196
10/01/1999	Ch. 201	HB 205
10/01/1999	Ch. 203	HB 390
10/01/1999	Ch. 206	HB 509
10/01/1999	Ch. 207	HB 227
10/01/1999	Ch. 216	SB 374
10/01/1999	Ch. 217	SB 457
10/01/1999	Ch. 219	HB 76
10/01/1999	Ch. 220	HB 106
10/01/1999	Ch. 227	SB 63
10/01/1999	Ch. 228	SB 369
10/01/1999	Ch. 230	SB 108
	§§ 1-6, 9-10, 12-22	
10/01/1999	Ch. 231	HB 27
10/01/1999	Ch. 234	HB 283
10/01/1999	Ch. 235	HB 296
10/01/1999	Ch. 237	HB 308
10/01/1999	Ch. 238	HB 325
10/01/1999	Ch. 240	HB 361
10/01/1999	Ch. 241	HB 382
10/01/1999	Ch. 244	HB 598
10/01/1999	Ch. 248	SB 207
10/01/1999	Ch. 249	SB 348
10/01/1999	Ch. 252	SB 415
10/01/1999	Ch. 254	SB 488
10/01/1999	Ch. 258	HB 527
10/01/1999	Ch. 261	SB 239
10/01/1999	Ch. 262	SB 404
10/01/1999	Ch. 264	SB 439
10/01/1999	Ch. 266	HB 316
10/01/1999	Ch. 267	HB 523
10/01/1999	Ch. 268	HB 524
10/01/1999	Ch. 270	HB 558

HeinOnline -- 1999 vol. III 3194 1999

Effective Date	Chapter No.	Bill No.
10/01/1999	Ch. 272	HB 629
10/01/1999	Ch. 275	HB 458
10/01/1999	Ch. 276	SB 210
10/01/1999	Ch. 277	SB 276
10/01/1999	Ch. 278	SB 362
10/01/1999	Ch. 282	SB 471
10/01/1999	Ch. 283	SB 501
10/01/1999	Ch. 284	SB 521
10/01/1999	Ch. 287	SB 179
10/01/1999	Ch. 288	SB 257
10/01/1999	Ch. 293	SB 314
10/01/1999	Ch. 294	SB 321
10/01/1999	Ch. 296	SB 352
10/01/1999	Ch. 298	SB 397
10/01/1999	Ch. 299	SB 398
10/01/1999	Ch. 300	SB 399
10/01/1999	Ch. 301	SB 416
10/01/1999	Ch. 307	HB 412
10/01/1999	Ch. 309	SB 94
	§§ 1-10, 12, and 14-25	
10/01/1999	Ch. 314	SB 14
10/01/1999	Ch. 315	SB 22
10/01/1999	Ch. 319	SB 225
10/01/1999	Ch. 320	SB 226
10/01/1999	Ch. 322	SB 384
10/01/1999	Ch. 325	SB 453
10/01/1999	Ch. 331	HB 47
10/01/1999	Ch. 332	HB 64
10/01/1999	Ch. 333	HB 107
10/01/1999	Ch. 334	HB 111
10/01/1999	Ch. 336	HB 153
10/01/1999	Ch. 337	HB 192
10/01/1999	Ch. 340	HB 630
10/01/1999	Ch. 342	SB 27
	§§ 1, 2(1)-(2), 3-15	
10/01/1999	Ch. 347	SB 216
10/01/1999	Ch. 349	SB 232
10/01/1999	Ch. 352	SB 292
10/01/1999	Ch. 354	SB 326
10/01/1999	Ch. 355	SB 423
10/01/1999	Ch. 356	SB 470
10/01/1999	Ch. 357	SB 476
10/01/1999	Ch. 358	HB 59
10/01/1999	Ch. 361	HB 98
10/01/1999	Ch. 364	HB 155
10/01/1999	Ch. 366	HB 215
10/01/1999	Ch. 370	HB 396
10/01/1999	Ch. 374	HB 502
10/01/1999	Ch. 381	SB 215
10/01/1999	Ch. 382	SB 241
10/01/1999	Ch. 384	SB 331
10/01/1999	Ch. 385	SB 477
10/01/1999	Ch. 387	HB 53
10/01/1999	Ch. 388	HB 54
10/01/1999	Ch. 390	HB 81
10/01/1999	Ch. 391	HB 116
10/01/1999	Ch. 393	HB 204

Effective Date	Chapter No.	Bill No.
10/01/1999	Ch. 395	HB 209
10/01/1999	Ch. 396	HB 232
10/01/1999	Ch. 397	HB 255
10/01/1999	Ch. 399	HB 282
10/01/1999	Ch. 403	HB 504
10/01/1999	Ch. 404	HB 526
10/01/1999	Ch. 405	HB 578
10/01/1999	Ch. 409	SB 113
	§§ 1-3, and 5-31	
10/01/1999	Ch. 414	SB 486
10/01/1999	Ch. 416	SB 82
10/01/1999	Ch. 417	SB 89
10/01/1999	Ch. 423	HB 99
10/01/1999	Ch. 425	HB 113
10/01/1999	Ch. 428	HB 180
10/01/1999	Ch. 429	HB 186
10/01/1999	Ch. 430	HB 187
10/01/1999	Ch. 431	HB 189
10/01/1999	Ch. 432	HB 203
10/01/1999	Ch. 433	HB 221
	§ 1(3)(b)	
10/01/1999	Ch. 435	HB 275
10/01/1999	Ch. 438	HB 513
10/01/1999	Ch. 439	HB 532
10/01/1999	Ch. 440	HB 560
10/01/1999	Ch. 449	SB 10
10/01/1999	Ch. 455	SB 251
10/01/1999	Ch. 465	SB 533
10/01/1999	Ch. 466	SB 472
10/01/1999	Ch. 468	HB 430
10/01/1999	Ch. 470	SB 490
10/01/1999	Ch. 471	HB 79
	§§ 1 and 42	
10/01/1999	Ch. 472	HB 100
	§§ 5-30, 32-34, 36-65, 67-69	
10/01/1999	Ch. 473	HB 245
10/01/1999	Ch. 474	HB 314
10/01/1999	Ch. 476	HB 459
10/01/1999	Ch. 479	HB 530
10/01/1999	Ch. 481	HB 593
10/01/1999	Ch. 482	HB 607
10/01/1999	Ch. 485	HB 620
10/01/1999	Ch. 492	SB 96
10/01/1999	Ch. 497	SB 301
	§ 5	
10/01/1999	Ch. 500	SB 417
10/01/1999	Ch. 502	SB 458
10/01/1999	Ch. 510	HB 586
10/01/1999	Ch. 520	HB 129
10/01/1999	Ch. 521	HB 302
10/01/1999	Ch. 523	HB 374
10/01/1999	Ch. 526	HB 506
10/01/1999	Ch. 532	SB 54
10/01/1999	Ch. 539	SB 274
10/01/1999	Ch. 540	SB 305
10/01/1999	Ch. 543	SB 334
	§ 1	

HeinOnline -- 1999 vol. III 3196 1999

Effective Date	Chapter No.	Bill No.
10/01/1999	Ch. 546	SB 421
10/01/1999	Ch. 548	SB 429
10/01/1999	Ch. 555	SB 532
10/01/1999	Ch. 558	HB 13
	§ 15	
10/01/1999	Ch. 559	HB 20
10/01/1999	Ch. 564	HB 310
10/01/1999	Ch. 566	HB 366
10/01/1999	Ch. 572	SB 186
10/01/1999	Ch. 574	SB 361
	§§ 1-28, 29(4), and 30	
10/01/1999	Ch. 579	HB 127
	§§ 1, 2, 4-7, and 12-17	
10/01/1999	Ch. 581	HB 566
10/01/1999	Ch. 582	SB 97
10/01/1999	Ch. 586	SB 270
10/01/1999	Ch. 589	SB 441
01/01/2000	Ch. 51	HB 38
	§§ 4, 7, 9, 10, 18-23, 27, 41, 56-61, 78, 88, 90, 92, 94, and 97	
01/01/2000	Ch. 79	HB 231
01/01/2000	Ch. 115	HB 371
01/01/2000	Ch. 180	SB 260
	§§ 2, 4	
01/01/2000	Ch. 212	SB 103
01/01/2000	Ch. 316	SB 132
01/01/2000	Ch. 344	SB 137
01/01/2000	Ch. 348	SB 219
01/01/2000	Ch. 378	SB 126
	§§ 3, 6, 8, 9, and 12	
01/01/2000	Ch. 426	HB 128
	§§ 1-16, 18-41, 43, and 44	
01/01/2000	Ch. 427	HB 132
	§§ 1 and 3-56	
01/01/2000	Ch. 434	HB 266
01/01/2000	Ch. 459	SB 388
01/01/2000	Ch. 463	SB 434
	§§ 1, 2(1, 2, 3(a), (b)(i), (ii)(B), 4, and 5), and 3	
01/01/2000	Ch. 472	HB 100
	§ 35	
01/01/2000	Ch. 477	HB 512
01/01/2000	Ch. 506	HB 158
	§ 12	
01/01/2000	Ch. 528	HB 536
	§§ 2, 3, and the bracketed language in (section 4(5)(b))	
01/01/2000	Ch. 553	SB 500
01/01/2000	Ch. 554	SB 530
	§§ 2, 4, and 6-15	
01/01/2000	Ch. 556	HB 174
	§§ 1-13, 15-37, 39, and 40	
03/01/2000	Ch. 525	HB 478
03/01/2000	Ch. 544	SB 338
	§§ 3, 5, and 8	
03/01/2000	Ch. 568	HB 533
07/01/2000	Ch. 92	HB 170

Effective Date	Chapter No.	Bill No.
07/01/2000	Ch. 211	SB 100
	§§ 2, 3, 5, and 7	
07/01/2000	Ch. 285	SB 200
	§§ 3-9, and 23	
07/01/2000	Ch. 377	SB 117
	§ 16	
07/01/2000	Ch. 484	HB 616
07/01/2000	Ch. 534	SB 172
07/01/2000	Ch. 560	HB 57
10/01/2000	Ch. 29	SB 76
	§§ 2 and 3	
10/01/2000	Ch. 371	HB 399
	§§ 10-12	
10/01/2000	Ch. 533	SB 59
12/31/2000	Ch. 515	HB 540
	§§ 1-11, 14-45, and 47-52, on approval by electorate	
01/01/2001	Ch. 27	SB 30
	§ 2, unless prior to that date the director of the Dept of PHHS certifies to the Governor and the Secretary of State in writing that the federal government has granted this state an exemption from the requirement to have a social security number on a death certificate and the exemption covers the period 01/01/2001 through 07/01/2001, in which case (section 2) is void.	
01/01/2001	Ch. 515	HB 540
	§§ 12, 13, and 46	
01/01/2001	Ch. 516	SB 23
	On approval by electorate	
07/01/2001	Ch. 51	HB 38
	§ 72	
07/01/2001	Ch. 103	SB 347
	§§ 1 and 3	
07/01/2001	Ch. 305	SB 153
07/01/2001	Ch. 499	SB 381
	§§ 5 and 7	
07/01/2001	Ch. 529	HB 647
	§ 3	
10/01/2001	Ch. 230	SB 108
	§ 7	
01/01/2003	Ch. 285	SB 200
	§§ 2, 10, 13, 14, 16-21, 24, 25, and 27(1)	
06/30/2003	Ch. 271	HB 581
	§ 4(2)	
10/01/2003	Ch. 508	HB 185
	§ 4	
01/01/2006	Ch. 424	HB 109
	§ 6	
07/01/2014	Ch. 497	SB 301
	§§ 2 and 3	

Effective Date	Chapter No.	Bill No.
?	Ch. 58	HB 119
	§ 7 provisions providing for the making of contributions required to purchase service by employer pickup are effective on the date that tho Internal Revenue Service determines in a private letter ruling that the creation and use of the empleyer pickup method of making contributions provided in that section comply with the requirements of the Internal Revenue Code regarding a qualified retirement plan.	
?	Ch. 111	HB 118
	§§ 4(5) and 19 are effective on the later of July 1, 1999, or the date that the IRS determines in a private letter ruling that the creation and use of the excess benefit arrangement provided in those sections comply with the requirements of the IRS code regarding a qualified retirement plan.	
?	Ch. 107	HB 352
	§ 1 is effectivo on the date of the Montana Supreme Court decision that invalidates subsection (4)(a) of 77-1-130; otherwise this section is void.	
?	Ch. 172	SB 394
	§§ 3-5 is effective upon implementation of a state organic certifcation program pursuant to section 1(3).	
?	Ch. 285	SB 200
	§§ 13(1)(aa) - (1) (ll) and 27(2) are effective if the tax rate in (section 12), amending 15-6-138, reaches zero.	
?	Ch. 362	HB 130
	§ 2 is effective when the department of agriculture certifies that funds in the account in 80-8-112 are completely expended.	
?	Ch. 371	HB 399
	§§ 1-9 are effective on passage and approval (4/20/1999) for the purpose of proposing rules that will be adopted on or after October 1, 2000, and are effective for all other purposes on October 1, 2000.	
?	Ch. 376	HB 644
	§ 3(2) — The Governor may solicit applications from persons wishing to serve on the Governor's local coal impact review council at any time following passage and approval (04/20/1999) of (this act).	

HeinOnline -- 1999 vol. III 3199 1999

Effective Date	Chapter No.	Bill No.
?	Ch. 471	HB 79
	§§ 2, 4-10, 12-19, 23-33, 35-40, 41(1)(c), 43(1), 47-54, 55(4)-(6), and 56-59 are effective contingent upon certification, as provided in (section 65), that the defined contribution retirement plan is ready to become operational or on July 1, 2002, whichever is earlier.	
?	Ch. 552	SB 492
	§ 5 is effective July 1 of the first year following the date that the Governor by executive order certifies to the Secretary of State that the resource indemnity trust fund balance has reached $100.	
	§ 8 — If the funding switch described in (section 12(1) does not occur, then (section 8) is effective July 1 of the first year following the date that the Governor by executive order certifies to the commissioner, and the legislative fiscal division of the certification.	

HeinOnline -- 1999 vol. III 3200 1999

TABLE

OF

SESSION LAW TO CODE

HeinOnline -- 1999 vol. III 3201 1999

HeinOnline -- 1999 vol. III 3202 1999

SESSION LAW

TO

CODE

Ch.	Sec.	MCA
1	1	Appropriation
	2	Effective date
2	1	Voided by sec. 4, Ch. 2 (contingent voidness)
	2	Voided by sec. 4, Ch. 2 (contingent voidness)
	3	Voided by sec. 4, Ch. 2 (contingent voidness)
	4	Voided by sec. 4, Ch. 2 (contingent voidness)
	5	Voided by sec. 4, Ch. 2 (contingent voidness)
	6	Voided by sec. 4, Ch. 2 (contingent voidness)
3	1	17-1-204 Voided by sec. 16, Ch. 3 (contingent voidness)
	2	17-5-402 Voided by sec. 16, Ch. 3 (contingent voidness)
	3	17-5-415 Voided by sec. 16, Ch. 3 (contingent voidness)
	4	17-5-501 Voided by sec. 16, Ch. 3 (contingent voidness)
	5	17-5-802 Voided by sec. 16, Ch. 3 (contingent voidness)
	6	17-5-803 Voided by sec. 16, Ch. 3 (contingent voidness)
	7	75-5-1121 Voided by sec. 16, Ch. 3 (contingent voidness)
	8	75-6-225 Voided by sec. 16, Ch. 3 (contingent voidness)
	9	75-10-623 Voided by sec. 16, Ch. 3 (contingent voidness)
	10	85-1-617 Voided by sec. 16, Ch. 3 (contingent voidness)
	11	85-1-619 Voided by sec. 16, Ch. 3 (contingent voidness)
	12	85-1-620 Voided by sec. 16, Ch. 3 (contingent voidness)
	13	90-4-611 Voided by sec. 16, Ch. 3 (contingent voidness)
	14	Voided by sec. 16, Ch. 3 (contingent voidness)
	15	Voided by sec. 16, Ch. 3 (contingent voidness)
	16	Voided by sec. 16, Ch. 3 (contingent voidness)
	17	Voided by sec. 16, Ch. 3 (contingent voidness)
4	1	Voided by sec. 3, Ch. 408 (coordination section)
	2	Voided by sec. 3, Ch. 408 (coordination section)
	3	Voided by sec. 3, Ch. 408 (coordination section)
	4	Voided by sec. 3, Ch. 408 (coordination section)
	5	Voided by sec. 3, Ch. 408 (coordination section)
	6	Voided by sec. 3, Ch. 408 (coordination section)
5	1	77-6-501
	2	77-6-506
	3	Saving clause
	4	Effective date
	5	Applicability
6	1	17-7-139
	2	Effective date
7	1	30-16-302
	2	30-16-303
	3	Effective date
8	1	17-1-501
	2	17-1-503
	3	17-1-505
	4	17-1-508
	5	17-2-111
9	1	17-5-205
	2	Effective date
10	1	90-5-305
	2	Effective date
11	1	17-2-105
	2	17-2-107
	3	17-7-402
	4	Effective date
12	1	70-23-102
	2	70-23-308
	3	Repealer
13	1	75-20-104
	2	Effective date
14	1	85-1-624
	2	Two-thirds vote required
	3	Effective date
15	1	Repealer
	2	Effective date

HeinOnline -- 1999 vol. III 3203 1999

Ch.	Sec.	MCA
16	1	Repealer
	2	Effective date
17	1	2-15-3308
	2	Effective date
18	1	20-6-621
	2	20-15-403
	3	77-2-106
	4	77-2-211
	5	77-2-303
	6	77-2-311
	7	77-3-132
	8	Repealer
19	1	2-4-102
	2	2-4-110
	3	2-4-302
	4	2-4-305
	5	2-4-306
	6	2-4-307
	7	2-4-308
	8	2-4-311
	9	2-4-312
	10	2-4-313
	11	2-4-402
	12	2-4-404
	13	2-4-405
	14	2-4-406
	15	2-4-410
	16	2-4-412
	17	5-2-503
	18	5-2-504
	19	5-5-202
	20	5-5-211
	21	5-5-212
	22	5-5-213
	23	5-5-214
	24	5-5-215
	25	5-5-223
	26	5-5-224
	27	5-5-225
	28	5-5-226
	29	5-5-227
	30	5-5-228
	31	5-11-101
	32	5-11-105
	33	5-11-107
	34	5-11-301
	35	5-12-302
	36	5-16-102
	37	5-18-107
	38	15-1-230
	39	15-36-324
	40	15-70-234
	41	17-6-511
	42	17-7-140
	43	69-3-1409
	44	72-16-447
	45	72-16-448
	46	72-16-450
	47	75-1-324
	48	90-8-311
	49	Repealer
	50	Transitional provision
	51	Codification instruction
	52	Effective date
20	1	17-7-111
	2	17-7-123
	3	17-8-101
	4	Effective date
	5	Applicability
21	1	42-10-102
	2	42-10-103
	3	42-10-106
	4	42-10-107
	5	42-10-108
	6	42-10-109
	7	53-6-131
	8	Repealer
22	1	80-11-403
	2	Effective date
23	1	2-9-316
	2	76-15-320
	3	76-15-403
	4	76-15-501
	5	Two-thirds vote required — contingent voidness
	6	Effective date
	7	Retroactive applicability
24	1	45-9-107
25	1	50-70-103
	2	50-70-105
	3	50-70-111
	4	Repealer
	5	Saving clause
	6	Severability
	7	Effective date
26	1	15-30-144
	2	Effective date — retroactive applicability
27	1	Sec. 104, Ch. 552, L. 1997
	2	50-15-403
	3	Effective dates — contingent voidness
28	1	Sec. 13, Ch. 380, L. 1997
29	1	53-2-613
	2	61-5-107
	3	61-5-111
	4	87-2-106
	5	87-2-202
	6	Effective dates
	7	Applicability
30	1	18-2-401
	2	Effective date — applicability
31	1	15-30-101
	2	15-30-105

HeinOnline -- 1999 vol. III 3204 1999

Ch.	Sec.	MCA
32	1	Time limits
	2	Totals not appropriations
	3	Appropriations
	4	Effective date
33	1	10-1-104
34	1	37-10-101
35	1	87-2-801
36	1	15-1-211
	2	15-1-406
	3	15-23-102
	4	15-23-107
	5	39-51-1109
	6	Applicability
	7	Effective date
37	1	15-70-202
	2	15-70-223
	3	15-70-341
	4	75-11-314
	5	Repealer
	6	Effective date
	7	Retroactive applicability
38	1	15-70-704
	2	15-70-714
	3	Effective date
39	1	13-2-203
	2	Effective date
40	1	13-10-201
	2	13-10-211
	3	Effective date
41	1	2-4-302
	2	Effective date
42	1	85-2-402
	2	Effective date
43	1	7-14-2113
	2	61-8-303
	3	61-8-725
	4	61-8-309
	5	61-8-310
	6	61-8-312
	7	61-11-203
	8	Severability
	9	Codification instruction
	10	Repealer
	11	Effective date
44	1	5-2-301
	2	Effective date
45	1	10-3-1204
	2	Applicability
46	1	2-4-405
	2	5-18-107
	3	Effective date
47	1	50-2-106
48	1	87-3-304
	2	87-3-308
	3	Codification instruction
	4	Effective date
49	1	Policy
	2	Definitions
	3	Deposit of oil overcharge revenue
	4	Matching funds for low-income energy assistance — appropriation
	5	Low-income home weatherization — appropriation
	6	Affordable, efficient housing plan book —appropriation
	7	Food bank network transportation — appropriation
	8	Transportation to nutrition sites — appropriation
	9	Low-income weatherization — appropriation
	10	Montana public and private organizations becoming consortium partners — appropriation
	11	Carryover — reappropriations
	12	Conditions applied to appropriations
	13	Appropriations prioritized
	14	Coordination instruction
	15	Effective date
50	1	90-4-605
	2	90-4-607
	3	Stripper-well payments — reappropriation — definition — priority
	4	Appropriations of bond proceeds
	5	Approval of energy conservation projects — definition
	6	Bond authorization — appropriation of bond proceeds
	7	Requirements for approval of state debt
	8	Effective date
51	1	2-11-103
	2	2-16-403
	3	2-16-405
	4	2-16-619
	5	2-17-803
	6	3-5-211
	7	5-4-301
	8	5-12-302
	9	7-4-2506
	10	7-4-2512
	11	7-6-2317
	12	7-7-2203
	13	7-22-2144

HeinOnline -- 1999 vol. III 3205 1999

Ch.	Sec.	MCA
	14	10-2-601
	15	13-1-112
	16	13-2-122
	17	13-2-221
	18	13-27-204
	19	13-27-206
	20	13-27-207
	21	13-27-302
	22	13-27-307
	23	13-36-203
	24	13-37-250
	25	15-1-112
	26	15-6-135
	27	15-17-323
	28	15-24-602
	29	15-24-1401
	30	15-24-2402
	31	15-31-121
	32	15-31-124
	33	15-31-702
	34	15-35-103
	35	15-36-314
	36	15-36-315
	37	15-50-101
	38	15-61-102
	39	15-62-204
	40	16-4-202
	41	16-4-207
	42	16-10-403
	43	17-1-505
	44	17-1-508
	45	17-3-222
	46	17-7-502
	47	18-3-110
	48	18-4-242
	49	18-8-202
	50	19-3-316
	51	19-3-412
	52	19-3-509
	53	19-6-802
	54	19-7-802
	55	19-8-105
	56	20-15-203
	57	25-13-701
	58	25-31-119
	59	25-35-508
	60	25-35-602
	61	25-35-606
	62	27-1-306
	63	27-1-704
	64	30-10-115
	65	30-10-209
	66	30-16-201
	67	32-1-440
	68	32-8-314
	69	32-8-403
	70	35-2-429
	71	37-13-316
	72	39-71-116
	73	40-5-225
	74	40-5-273
	75	40-5-413
	76	41-5-347
	77	42-2-608
	78	46-23-302
	79	50-3-109
	80	50-78-102
	81	61-3-448
	82	61-3-506
	83	61-3-721
	84	61-4-101
	85	61-8-404
	86	69-14-112
	87	70-1-301
	88	70-20-103
	89	70-21-203
	90	70-28-207
	91	71-1-306
	92	72-2-524
	93	72-3-104
	94	72-31-201
	95	75-10-743
	96	81-4-307
	97	81-4-510
	98	Repealer
	99	Instructions to code commissioner
		20-3-211
		20-5-321
		20-5-323
		20-5-324
		20-7-401
		20-7-402
		20-7-403
		20-7-411
		20-7-420
		20-7-421
		20-7-422
		20-7-435
		20-7-461
		20-7-462
		20-9-141
		20-10-101
	100	Effective dates
	101	Retroactive applicability
52	1	45-9-205
	2	46-18-201
	3	46-18-205
	4	46-18-202
	5	46-18-203
	6	46-18-219
	7	46-18-220
	8	46-18-222
	9	46-18-225

Ch.	Sec.	MCA
	10	46-18-231
	11	46-18-303
	12	46-18-502
	13	46-23-1011
	14	Codification instruction
53	1	2-15-115
	2	Codification instruction
54	1	16-4-115
	2	16-4-402
	3	16-4-407
	4	16-4-501
	5	30-16-103
	6	30-16-301
	7	80-7-106
	8	82-15-105
	9	Effective date
55	1	10-3-312
	2	Effective date
56	1	15-7-102
	2	15-15-101
	3	15-15-102
	4	15-15-103
57	1	2-15-1875
	2	Effective date
58	1	19-1-102
	2	19-1-202
	3	19-1-602
	4	19-2-303
	5	19-2-505
	6	19-2-602
	7	19-2-704
	8	19-2-706
	9	19-2-707
	10	19-2-708
	11	19-2-709
	12	19-2-902
	13	19-2-908
	14	19-2-1001
	15	19-2-1006
	16	19-2-1007
	17	19-2-1010
	18	19-3-108
	19	19-3-318
	20	19-3-412
	21	19-3-503
	22	19-3-504
	23	19-3-505
	24	19-3-512
	25	19-3-513
	26	19-5-409
	27	19-6-101
	28	19-6-801
	29	19-6-803
	30	19-6-804
	31	19-7-101
	32	19-7-803
	33	19-7-804
	34	19-8-101
	35	19-8-904
	36	19-8-905
	37	19-9-104
	38	19-9-403
	39	19-9-411
	40	19-13-104
	41	19-13-403
	42	19-13-405
	43	53-21-204
	44	Repealer
	45	Codification instruction
	44	Coordination instruction
	47	Effective dates — contingent effective date
59	1	90-2-1113
	2	Effective date
60	1	7-4-2201
61	1	39-51-3107
	2	39-51-204
	3	39-51-301
	4	39-51-302
	5	39-51-2108
	6	39-51-2302
	7	39-51-2303
	8	39-51-2304
	9	39-51-3105
	10	39-51-3206
	11	Codification instruction
	12	Saving clause
	13	Severability
	14	Effective date
62	1	27-2-208
63	1	25-30-102
	2	46-17-303
	3	46-17-402
64	1	17-6-309
	2	17-6-311
	3	17-6-318
	4	Effective date
65	1	80-8-116
	2	80-8-117
	3	80-8-207
	4	Codification instruction
	5	Effective date
66	1	17-6-308
	2	Effective date
67	1	15-30-142
	2	Effective date
	3	Retroactive applicability
68	1	15-1-206
	2	15-30-304
	3	15-31-506
	4	15-31-509
	5	Effective date
	6	Retroactive applicability
69	1	15-31-143

Ch.	Sec.	MCA
	2	15-31-552
	3	35-1-935
	4	35-1-944
	5	Effective date
70	1	2-17-414
71	1	Sec. 4, Ch. 361, L. 1995
	2	Effective date
72	1	2-15-501
	2	2-15-503
	3	Repealer
	4	Codification instruction
	5	Effective date
73	1	75-5-1122
	2	Two-thirds vote required
	3	Effective date
74	1	30-10-324
	2	30-10-325
	3	30-10-326
	4	Codification instruction
75	1	7-4-2502
	2	Effective date
76	1	33-20-150
	2	33-20-101
	3	Codification instruction
77	1	15-70-112
	2	15-70-113
	3	15-70-114
	4	15-70-115
	5	15-70-205
	6	15-70-344
	7	15-70-352
78	1	18-2-432
79	1	61-3-321
	2	61-3-332
	3	61-3-426
	4	61-3-504
	5	61-3-457
	6	Codification instruction
80	1	13-13-276
	2	13-13-277
	3	13-13-278
	4	Effective date
81	1	69-3-107
	2	Effective date
82	1	7-32-222
	2	7-32-239
	3	7-32-201
	4	7-32-203
	5	7-32-234
	6	Codification instruction
83	1	80-11-501
	2	80-11-502
	3	80-11-503
	4	80-11-504
	5	80-11-510
	6	80-11-511
	7	80-11-512
	8	80-11-513
	9	80-11-515
	10	80-11-516
	11	80-11-517
	12	80-11-518
	13	80-11-519
	14	17-7-502
	15	Codification instruction
	16	Effective date
84	1	45-5-501
	2	45-5-502
	3	45-5-503
85	1	15-15-201
	2	15-8-115
	3	15-8-202
	4	15-15-103
	5	15-16-603
	6	Coordination instruction
	7	Codification instruction
	8	Effective date
	9	Retroactive applicability
86	1	7-6-2335
	2	7-11-104
	3	7-11-1102
	4	Codification instruction
	5	Effective date
87	1	33-22-1811
88	1	2-18-809
	2	2-18-812
	3	Effective date
89	1	25-13-211
	2	25-13-212
	3	25-13-213
	4	25-13-301
	5	25-13-402
	6	25-13-708
	7	25-13-709
	8	Codification instruction
	9	Effective date
	10	Applicability
90	1	3-10-205
	2	Effective date
91	1	40-1-105
	2	40-4-103
	3	40-7-101
	4	40-7-103
	5	40-7-105
	6	40-7-106
	7	40-7-107
	8	40-7-108
	9	40-7-109
	10	40-7-110
	11	40-7-112
	12	40-7-119
	13	40-7-125
	14	40-7-134
	15	40-7-135

HeinOnline -- 1999 vol. III 3208 1999

Ch.	Sec.	MCA
	16	40-7-136
	17	40-7-137
	18	40-7-138
	19	40-7-139
	20	40-7-140
	21	40-7-201
	22	40-7-202
	23	40-7-203
	24	40-7-204
	25	40-7-301
	26	40-7-302
	27	40-7-303
	28	40-7-304
	29	40-7-305
	30	40-7-306
	31	40-7-307
	32	40-7-308
	33	40-7-309
	34	40-7-310
	35	40-7-311
	36	40-7-312
	37	40-7-313
	38	40-7-314
	39	40-7-315
	40	40-7-316
	41	40-7-317
	42	Application and construction
	43	Repealer
	44	Transitional provision
	45	Notification to tribal governments
	46	Codification instruction
	47	Severability
92	1	50-44-102
	2	Effective date
93	1	75-5-702
	2	75-5-703
	3	Effective date
94	1	61-3-303
	2	Effective date
95	1	23-2-821
	2	61-5-104
96	1	85-8-361
	2	Effective date
	3	Applicability
97	1	46-4-401
	2	46-4-402
	3	46-4-403
	4	46-4-404
	5	46-4-405
	6	Codification instruction
98	1	7-34-2102
	2	7-34-2201
	3	37-6-107
	4	50-5-101
	5	50-5-301
	6	Saving clause
	7	Applicability
99	1	37-51-105
	2	Codification instruction
	3	Effective date
100	1	32-1-105
	2	32-1-109
	3	32-1-362
	4	32-1-422
	5	32-1-432
	6	32-1-492
	7	32-1-429
	8	Codification instruction
101	1	27-2-201
102	1	20-9-212
	2	20-9-213
	3	Effective date
103	1	33-22-1803
	2	33-22-1819
	3	Repealer
	4	Effective dates
104	1	72-5-103
	2	Effective date
	3	Retroactive applicability
105	1	17-4-101
	2	17-4-105
	3	17-4-111
	4	Saving clause
	5	Effective date
	6	Applicability
106	1	41-5-103
	2	41-5-215
	3	41-5-216
	4	Repealer
107	1	77-1-107
	2	7-14-4901
	3	7-14-2615
	4	60-2-107
	5	Codification instruction
	6	Effective date — contingent effective date
108	1	87-4-603
	2	Effective date
109	1	Sec. 4, Ch. 428, L. 1995
	2	Sec. 2, Ch. 428, L. 1995
	3	Effective date
110	1	46-11-503
111	1	5-2-304
	2	19-20-101
	3	19-20-106
	4	19-20-212
	5	19-20-302
	6	19-20-404
	7	19-20-405
	8	19-20-414
	9	19-20-415
	10	19-20-416
	11	19-20-417

HeinOnline -- 1999 vol. III 3209 1999

Ch.	Sec.	MCA
	12	19-20-502
	13	19-20-602
	14	19-20-603
	15	19-20-702
	16	19-20-703
	17	19-20-710
	18	19-20-716
	19	19-20-718
	20	19-20-801
	21	19-20-802
	22	19-20-804
	23	19-20-901
	24	19-20-902
	25	19-20-1003
	26	Repealer
	27	Codification instruction
	28	Saving clause
	29	Effective date — contingent effective dates
112	1	18-2-201
113	1	72-16-502
	2	72-16-503
	3	Effective date
	4	Retroactive applicability
114	1	Repealer
	2	Effective date
115	1	61-7-108
	2	61-7-109
	3	Effective date
116	1	16-3-213
	2	16-3-214
	3	Effective date
117	1	13-27-111
	2	13-27-112
	3	13-27-113
	4	Codification instruction
	5	Effective dates
118	1	19-2-706
	2	Effective date
119	1	28-2-723
	2	Codification instruction
	3	Effective date — applicability
120	1	85-1-211
	2	Effective date
121	1	85-1-802
	2	Effective date
122	1	77-1-108
	2	77-1-109
	3	17-3-1003
	4	18-2-107
	5	20-9-341
	6	20-9-601
	7	20-25-422
	8	Codification instruction
	9	Effective date
123	1	85-2-419
	2	85-2-436
	3	85-2-437
	4	85-2-438
	5	Sec. 11, Ch. 658, L. 1989
	6	Sec. 4, Ch. 740, L. 1991
	7	Sec. 7, Ch. 740, L. 1991
	8	Effective date
	9	Termination
124	1	39-71-118
	2	39-71-123
	3	53-4-603
	4	53-4-704
	5	Codification instruction
	6	Effective date
	7	Applicability
125	1	2-6-103
	2	Effective date
126	1	46-18-220
	2	46-18-303
127	1	41-3-1160
	2	41-3-1161
	3	41-3-1103
	4	Codification instruction
	5	Effective date
128	1	25-2-126
129	1	13-10-211
	2	13-15-202
130	1	30-10-105
	2	35-17-103
	3	35-17-202
	4	35-17-203
	5	35-17-301
	6	35-17-302
	7	35-17-304
	8	35-17-312
	9	35-17-314
	10	35-17-315
131	1	39-71-2211
	2	Effective date
132	1	20-3-313
	2	20-3-306
	3	20-3-307
	4	20-20-416
	5	Codification instruction
	6	Effective date
133	1	50-5-101
	2	50-5-216
	3	Effective date
134	1	33-15-308
135	1	52-2-721
136	1	7-16-4104
	2	Effective date
137	1	50-2-101
	2	50-2-116
	3	Effective date
138	1	81-4-301
	2	81-4-310
	3	Codification instruction

Ch.	Sec.	MCA
139	1	7-5-4304
	2	7-5-4306
	3	7-7-4101
	4	7-7-4104
	5	Codification instruction
	6	Effective date
140	1	15-23-401
	2	15-23-403
	3	Effective date
	4	Retroactive applicability
141	1	45-6-104
142	1	Appropriation
	2	Effective date
143	1	85-7-1611
	2	Effective date
144	1	7-6-2225
	2	7-6-2226
	3	15-37-117
	4	15-38-106
	5	15-38-202
	6	20-9-231
	7	85-1-332
	8	85-1-604
	9	85-1-631
	10	85-2-905 Voided by sec. 12(2), Ch. 552 (coordination section)
	11	90-2-1104
	12	Coordination instruction
	13	Effective date
145	1	23-2-651
	2	23-2-652
	3	23-2-653
	4	23-2-654
	5	Repealer
	6	Effective date
146	1	50-16-701
	2	50-16-702
	3	50-16-703
	4	50-16-704
	5	50-16-705
	6	50-16-711
	7	Effective dates
147	1	44-5-103
	2	44-6-101
	3	44-6-102
	4	44-6-103
	5	46-18-202
	6	46-23-215
	7	Retroactive applicability
	8	Effective date
148	1	16-4-415
	2	16-4-401
	3	Codification instruction
	4	Effective date
149	1	Repealer
	2	Effective date
150	1	23-1-301
	2	90-14-102
	3	90-14-103
	4	90-14-104
	5	90-14-105
	6	90-14-106
	7	90-14-108
	8	Notification to tribal governments
151	1	13-13-201
	2	13-13-211
	3	13-13-222
	4	13-13-225
	5	13-13-229
	6	13-13-232
152	1	71-3-902
	2	Effective date
153	1	Repealer
154	1	69-3-901
	2	69-3-903
	3	69-3-904
	4	69-3-906
	5	69-3-907
	6	69-3-910
	7	Codification instruction
155	1	69-3-1101
	2	69-3-1102
	3	69-3-1103
	4	69-3-1104
	5	69-3-1105
	6	69-3-1106
	7	Codification instruction
156	1	49-4-301
	2	49-4-303
	3	49-4-305
	4	Effective date
157	1	20-10-147
	2	Effective date
158	1	17-6-103
159	1	7-13-232
	2	Effective date
	3	Applicability
160	1	17-6-308
	2	90-7-202
	3	Effective date
161	1	Sec. 73, Ch. 550, L. 1997
	2	Sec. 82, Ch. 550, L. 1997
	3	Effective date
	4	Retroactive applicability
162	1	7-2-4106
	2	Effective date
163	1	50-2-104
164	1	13-2-212
	2	13-13-212
	3	13-13-271
	4	13-13-273
	5	Effective date
165	1	20-4-109

HeinOnline -- 1999 vol. III 3211 1999

Ch.	Sec.	MCA
	2	Effective date
166	1	20-9-404
	2	20-9-405
	3	Effective date — applicability
167	1	3-5-123
	2	3-5-124
	3	3-5-125
	4	3-5-126
	5	Codification instruction
	6	Effective date
168	1	39-29-102
	2	39-29-103
	3	39-29-104
169	1	71-3-1201
170	1	37-51-306
	2	37-51-310
	3	37-51-313
	4	37-51-314
	5	37-51-321
	6	Repealer
	7	Effective date
171	1	23-5-710
172	1	80-11-601
	2	80-11-602
	3	50-31-103
	4	50-31-203
	5	Repealer
	6	Codification instruction
	7	Effective dates
173	1	33-22-1501
	2	33-22-1503
	3	33-22-1504
	4	33-22-1513 Voided by sec. 8, Ch. 528 (coordination section)
	5	33-22-1515
	6	33-22-1516
	7	33-22-1521
	8	Effective date
174	1	30-14-225
175	1	10-3-1001
	2	10-3-1002
	3	10-3-1003
	4	Codification instruction
	5	Two-thirds vote required
	6	Effective date
176	1	39-31-202
	2	Effective date
177	1	60-3-205
178	1	33-22-136
	2	33-22-101
	3	33-31-111
	4	Codification instruction
	5	Effective date
179	1	39-3-406
	2	Effective date
180	1	20-9-141
	2	61-3-504
	3	61-3-509 Voided by sec. 170(2), Ch. 584 (coordination section)
	4	61-3-537
	5	Fund transfers
	6	Applicability
181	1	20-25-1001
	2	20-25-1002
	3	20-7-501
	4	20-7-502
	5	20-7-504
	6	20-7-510 (renum. 20-25-1003)
	7	20-7-511 (renum. 20-25-1004)
	8	20-7-512 (renum. 20-25-1005)
	9	20-7-513 (renum. 20-25-1006)
	10	20-7-514 (renum. 20-25-1007)
	11	61-5-110
	12	61-5-121
	13	Transfer of fund balance and equipment
	14	Codification instruction
	15	Effective date
182	1	77-1-617
	2	Repealer
	3	Codification instruction
	4	Effective date
183	1	22-1-328
	2	22-1-330
	3	22-1-402
	4	22-1-404
	5	22-1-413
	6	Effective dates
184	1	15-30-204
	2	15-30-207
	3	15-30-210
	4	15-30-248
	5	15-30-304
	6	39-71-2321
	7	39-71-2352
	8	Repealer
	9	Effective date
185	1	69-8-203
	2	Effective date
186	1	2-18-702
187	1	69-3-843
	2	69-3-844
	3	69-3-845
	4	Sec. 41, Ch. 349, L. 1997
	5	Effective date
	6	Termination
188	1	7-12-4401
	2	7-12-4405
	3	7-12-4426
189	1	7-14-4609
	2	7-14-4610
190	1	7-7-4235
	2	Effective date
191	1	13-27-202

HeinOnline -- 1999 vol. III 3212 1999

Ch.	Sec.	MCA
	2	13-27-208
	3	13-27-312
	4	13-27-316
	5	Applicability
192	1	16-3-230
193	1	13-10-504
	2	13-10-601
194	1	16-3-222
	2	16-3-416
195	1	37-42-103
	2	37-42-302
	3	37-42-304
	4	37-42-308
	5	75-5-301
	6	75-6-109
	7	75-6-112
	8	Repealer
	9	Severability
	10	Effective date
196	1	52-3-802
	2	52-3-803
	3	52-3-804
	4	52-3-811
	5	52-3-812
	6	52-3-813
	7	52-3-815
	8	52-3-825
197	1	15-16-119
	2	15-16-401
	3	15-17-911
	4	Applicability
198	1	Repealer
	2	Effective date
199	1	15-51-102
	2	Applicability
200	1	18-4-401
	2	Notification to tribal governments
	3	Effective date
201	1	76-3-504
202	1	7-8-2211
	2	7-8-2212
	3	7-8-2213
	4	7-8-4201
	5	Effective date
203	1	37-1-305
	2	37-68-311
	3	37-69-306
204	1	15-6-203
	2	Effective date
	3	Retroactive applicability
205	1	85-2-344
	2	Codification instruction
	3	Effective date
	4	Applicability
206	1	2-15-1508
207	1	25-35-505
208	1	13-1-101
	2	13-2-222
	3	13-2-402
	4	13-27-410
	5	Effective date
209	1	85-1-509
	2	Effective date
210	1	10-2-501
	2	10-2-503
	3	Repealer
	4	Effective date — applicability
211	1	20-9-306
	2	20-9-306
	3	20-9-366
	4	20-9-367
	5	20-9-367
	6	20-9-368
	7	20-9-368
	8	Appropriations
	9	Effective dates — applicability
	10	Termination
212	1	33-19-104
	2	33-19-202
	3	33-19-204
	4	33-19-306
	5	Effective date
213	1	85-2-227
	2	Severability
	3	Effective date
214	1	20-6-413
	2	Effective date
215	1	53-4-1006
	2	Codification instruction
	3	Coordination instruction
	4	Effective date
216	1	61-10-144
217	1	19-3-1501
	2	19-5-701
	3	19-7-1001
	4	19-8-801
218	1	39-71-605
	2	Effective date
219	1	46-23-508
220	1	44-5-601
	2	44-5-602
	3	Codification instruction
221	1	75-2-211
	2	75-2-221
	3	Effective dates
222	1	18-1-301
	2	18-2-316
	3	Codification instruction
	4	Effective date
	5	Applicability
223	1	75-1-201
	2	77-1-121
	3	Codification instruction

HeinOnline -- 1999 vol. III 3213 1999

Ch.	Sec.	MCA
	4	Effective date
	5	Retroactive applicability
224	1	77-5-208
	2	Saving clause
	3	Codification instruction
	4	Effective date
225	1	2-18-627
	2	Codification instruction
	3	Effective date
226	1	2-17-424
	2	2-17-421
	3	Codification instruction
	4	Effective date
227	1	46-23-502
	2	46-23-506
228	1	33-22-508
	2	33-30-1007
	3	Applicability
229	1	30-13-203
	2	30-13-207
	3	30-13-209
	4	30-13-210
	5	30-13-211
	6	35-1-308
	7	35-1-313
	8	35-1-525
	9	35-1-931
	10	35-1-933
	11	35-1-934
	12	35-1-1032
	13	35-1-1207
	14	35-2-226
	15	35-2-309
	16	35-3-210
	17	35-8-103
	18	35-8-104
	19	35-8-108
	20	35-8-202
	21	35-8-203
	22	35-12-505
	23	35-12-507
	24	Codification instruction
	25	Effective date
230	1	2-15-1851
	2	37-1-307
	3	37-1-317
	4	37-1-413
	5	37-1-411
	6	37-1-412
	7	37-3-305
	8	37-4-103
	9	37-4-307
	10	37-4-406
	11	37-16-304
	12	37-18-302
	13	37-18-303
	14	37-27-201
	15	37-27-205
	16	37-29-301
	17	37-29-305
	18	37-29-401
	19	37-29-404
	20	37-40-201
	21	37-50-308
	22	37-54-403
	23	Codification instruction
	24	Effective dates
231	1	70-27-113
	2	70-27-114
	3	70-27-117
	4	Repealer
232	1	Repealer
	2	Effective date
233	1	19-5-103
	2	Effective date
234	1	72-3-1101
235	1	72-15-301
236	1	76-3-604
	2	76-3-609
	3	Effective date
	4	Applicability
237	1	25-13-609
238	1	7-23-2110
	2	Codification instruction
239	1	7-5-2301
	2	7-5-2304
	3	7-8-2211
	4	Repealer
	5	Effective date
240	1	71-3-124
	2	71-3-131
241	1	3-15-405
	2	3-15-402
	3	3-15-403
	4	3-15-404
	5	3-15-501
	6	3-15-503
	7	3-15-506
	8	3-15-507
	9	Repealer
	10	Codification instruction
242	1	27-1-735
	2	Effective date
243	1	2-15-213
	2	2-15-215
	3	Repealer
	4	Notification to tribal government
	5	Effective date
244	1	69-3-1301
	2	69-3-1303
	3	69-3-1305
245	1	15-1-112
	2	Effective date

HeinOnline -- 1999 vol. III 3214 1999

Ch.	Sec.	MCA
	3	Retroactive applicability
246	1	15-24-301
	2	15-6-217
	3	61-3-707
	4	Codification instruction
	5	Effective date
247	1	53-21-111
	2	53-21-130
	3	53-21-134
	4	53-21-138
	5	53-21-180
	6	53-21-601
	7	Repealer
	8	Effective date
248	1	7-8-2301
	2	Severability
249	1	7-1-4124
	2	7-1-4150
	3	7-1-4151
	4	7-1-4152
	5	Codification instruction
250	1	85-2-306
	2	Effective date
251	1	16-4-305
	2	Transfer of certain liquor licenses to Montana heritage preservation and development commission
	3	16-4-205
	4	Codification instruction
	5	Effective date
252	1	7-5-2309
	2	7-5-2301
	3	7-5-2302
	4	Codification instruction
	5	Saving clause
253	1	50-32-229
	2	Effective date
254	1	7-1-201
	2	7-13-2258
	3	7-13-2262
	4	7-14-212
	5	7-16-2421
	6	7-33-2106
	7	7-33-2403
	8	7-34-2117
	9	7-34-2121
	10	76-15-303
	11	85-7-1702
255	1	Approval of renewable resource projects and authorizations to provide loans
	2	Projects not completing requirements — projects reauthorized
	3	Coal severance tax bonds authorized
	4	Creation of state debt — appropriation of coal severance tax — bonding provisions
	5	Condition of loans
	6	Interest rates on loans
	7	Private and discount purchase of loans
	8	Appropriations established
	9	Severability
	10	Effective date
256	1	20-25-1301
	2	20-25-1302
	3	20-25-1303
	4	2-15-1530
	5	20-25-1304
	6	20-25-1310
	7	Codification instruction
	8	Effective date
257	1	42-1-105
	2	42-2-206
	3	42-2-217
	4	42-2-412
	5	42-2-607
	6	42-2-609
	7	42-2-610
	8	42-2-619
	9	42-3-203
	10	42-3-212
	11	42-3-213
	12	42-4-302
	13	42-4-303
	14	42-4-304
	15	42-4-309
	16	42-4-310
	17	42-5-101
	18	42-5-109
	19	42-5-202
	20	Repealer
	21	Effective date
258	1	61-2-302
	2	61-5-208
	3	61-8-442
259	1	2-15-2108
	2	75-11-318
	3	Effective date
260	1	61-3-109
	2	Sec. 4, Ch. 90, L. 1997
	3	Effective date
261	1	7-13-231
262	1	25-13-608
	2	Applicability
263	1	23-5-119
	2	Effective date
264	1	50-51-102
265	1	Repealer
	2	Effective date

HeinOnline -- 1999 vol. III 3215 1999

Ch.	Sec.	MCA
266	1	23-1-130
	2	Codification instruction
267	1	30-10-310
268	1	90-1-116
	2	90-6-701
	3	90-6-709
	4	Notification to tribal governments
	5	Codification instruction
269	1	7-15-4283
	2	7-15-4288
	3	7-15-4301
	4	7-15-4296
	5	Authorization of bonds
	6	Legislative consent
	7	Requirement for approval of state debt
	8	Codification instruction
	9	Severability
	10	Effective date
270	1	32-5-103
	2	32-5-301
	3	32-5-407
	4	32-5-506
271	1	18-5-303
	2	18-5-304
	3	18-5-305
	4	Repealer
	5	Effective dates
272	1	Blackfoot River study
273	1	50-32-314
	2	Codification instruction
	3	Effective date
274	1	50-40-201
	2	Effective date
275	1	85-2-105
	2	Streamside corridor and riparian management — coordination and dissemination of best management practice information
	3	Termination
276	1	30-14-1001
	2	30-14-1002
	3	30-14-1003
	4	30-14-1004
	5	30-14-1005
	6	Codification instruction
277	1	77-2-102
278	1	82-11-163
	2	Saving clause
279	1	76-13-401
	2	76-13-403
	3	76-13-408
	4	76-13-409
	5	76-13-410
	6	76-13-411
	7	76-13-412
	8	76-13-414
	9	76-13-415
	10	Severability
	11	Effective date
	12	Applicability
280	1	16-4-801
	2	Codification instruction
	3	Effective date
281	1	85-2-339
	2	Codification instruction
	3	Coordination instruction
	4	Effective date
	5	Applicability
	6	Termination
282	1	18-2-302
	2	18-2-303
	3	60-2-114
	4	Codification instruction
	5	Applicability
283	1	35-21-801
	2	35-21-802
	3	35-21-803
	4	35-21-804
	5	35-21-805
	6	35-21-810
	7	35-21-811
	8	35-21-812
	9	35-21-820
	10	35-21-821
	11	35-21-822
	12	35-21-825
	13	35-21-826
	14	35-21-827
	15	35-21-828
	16	35-21-831
	17	35-21-832
	18	35-21-833
	19	35-21-834
	20	35-21-840
	21	35-21-845
	22	35-21-846
	23	35-21-847
	24	35-21-848
	25	35-21-849
	26	35-21-850
	27	35-21-851
	28	Codification instruction
284	1	50-37-106
	2	Termination
285	1	Voided by sec. 170(1)(c), Ch. 584 (coordination section)
	2	15-6-220
	3	7-7-107
	4	7-7-108
	5	7-7-2101

HeinOnline -- 1999 vol. III 3216 1999

Ch.	Sec.	MCA
	6	7-7-2203
	7	7-14-2524
	8	7-14-2525
	9	7-16-2327
	10	15-1-101
	11	15-6-136
	12	15-6-138
	13	15-6-201
	14	15-6-207
	15	15-8-301
	16	15-24-301
	17	15-24-303
	18	15-24-902
	19	15-24-903
	20	15-24-904
	21	15-24-922
	22	17-7-502 Voided by sec. 170(1)(c), Ch. 584 (coordination section)
	23	20-9-406
	24	81-7-303
	25	81-7-603
	26	Voided by sec. 170(1)(c), Ch. 584 (coordination section)
	27	Repealer
	28	Codification instruction
	29	Saving clause
	30	Severability
	31	Effective dates
	32	Coordination
286	1	19-2-408
	2	Effective date
287	1	61-8-402
288	1	45-2-101
	2	45-5-504
289	1	18-2-401
	2	18-2-403
	3	Effective date — applicability
290	1	72-2-124
	2	72-2-221
	3	72-2-222
	4	72-2-811
	5	72-3-613
	6	72-5-222
	7	72-34-113
	8	72-34-114
	9	72-34-205
	10	72-35-306
	11	72-33-211
	12	72-34-207
	13	Sec. 3, Ch. 464, L. 1997
	14	Codification instruction
	15	Effective date
291	1	17-2-102
	2	17-2-107
	3	Effective date
292	1	61-5-118
	2	Repealer
	3	Effective date
293	1	75-2-508
	2	75-2-514
	3	75-2-515
	4	75-2-516
	5	75-2-517
	6	75-2-518
	7	75-2-519
	8	Voided by sec. 10(2), Ch. 293 (coordination section)
	9	Codification instruction
	10	Coordination instruction
	11	Saving clause
	12	Severability
294	1	75-10-103
	2	Saving clause
295	1	15-70-371
	2	Codification instruction
	3	Effective date
296	1	1-1-518
	2	1-1-517
	3	Codification instruction
297	1	60-3-303
	2	Effective date
298	1	60-2-127
299	1	50-19-501
	2	Codification instruction
300	1	50-16-540
	2	50-16-504
	3	50-16-526
	4	50-16-536
	5	50-16-541
	6	50-16-545
	7	Codification instruction
301	1	46-16-702
302	1	35-8-102
	2	35-8-109
	3	35-8-110
	4	35-8-111
	5	35-8-201
	6	35-8-202
	7	35-8-208
	8	35-8-215
	9	35-8-216
	10	35-8-217
	11	35-8-218
	12	35-8-219
	13	35-8-209
	14	35-8-304
	15	35-8-306
	16	35-8-307
	17	35-8-310
	18	35-8-405
	19	35-8-410
	20	35-8-411
	21	35-8-501

HeinOnline -- 1999 vol. III 3217 1999

Ch.	Sec.	MCA
	22	35-8-502
	23	35-8-504
	24	35-8-601
	25	35-8-605
	26	35-8-703
	27	35-8-707
	28	35-8-705
	29	35-8-801 Voided by sec. 56, Ch. 302 (repealer section)
	30	35-8-803
	31	35-8-804
	32	35-8-805
	33	35-8-808
	34	35-8-809
	35	35-8-811
	36	35-8-812
	37	35-8-901
	38	35-8-902
	39	35-8-904
	40	35-8-905
	41	35-8-906
	42	35-8-908
	43	35-8-909
	44	35-8-911
	45	35-8-912
	46	35-8-913
	47	35-8-1103
	48	35-8-1104
	49	35-8-1201
	50	35-8-1202
	51	35-8-1203
	52	35-8-1205
	53	35-8-1210
	54	35-8-1211
	55	35-8-1302
	56	Repealer
	57	Codification instruction
	58	Severability
	59	Saving clause
	60	Effective date
303	1	18-2-103
	2	18-2-106
	3	18-2-201
	4	Exemption of certain projects — conditions
	5	Effective date
	6	Termination
304	1	33-12-101
	2	33-12-102
	3	33-12-103
	4	33-12-104
	5	33-12-105
	6	33-12-106
	7	33-12-107
	8	33-12-108
	9	33-12-109
	10	33-12-110
	11	33-12-111
	12	33-12-112
	13	33-12-201
	14	33-12-202
	15	33-12-203
	16	33-12-204
	17	33-12-205
	18	33-12-206
	19	33-12-207
	20	33-12-208
	21	33-12-209
	22	33-12-210
	23	33-12-211
	24	33-12-212
	25	33-12-301
	26	33-12-302
	27	33-12-303
	28	33-12-304
	29	33-12-305
	30	33-12-306
	31	33-12-307
	32	33-12-308
	33	33-12-309
	34	33-12-310
	35	33-12-311
	36	33-12-312
	37	33-2-202
	38	33-2-213
	39	33-2-502
	40	33-2-531
	41	33-2-534
	42	33-2-603
	43	33-2-1217
	44	33-3-432
	45	33-6-101
	46	33-20-603
	47	33-25-211
	48	33-27-115
	49	33-31-215
	50	Repealer
	51	Codification instruction
	52	Effective date
305	1	30-9-122
	2	30-9-123
	3	30-9-124
	4	30-9-125
	5	30-9-126
	6	30-9-127
	7	30-9-128
	8	30-9-129
	9	30-9-130
	10	30-9-211
	11	30-9-212
	12	30-9-213
	13	30-9-214
	14	30-9-215
	15	30-9-216

HeinOnline -- 1999 vol. III 3218 1999

Ch.	Sec.	MCA
	16	30-9-217
	17	30-9-218
	18	30-9-219
	19	30-9-220
	20	30-9-321
	21	30-9-322
	22	30-9-323
	23	30-9-324
	24	30-9-325
	25	30-9-326
	26	30-9-327
	27	30-9-328
	28	30-9-329
	29	30-9-330
	30	30-9-331
	31	30-9-332
	32	30-9-333
	33	30-9-334
	34	30-9-335
	35	30-9-336
	36	30-9-337
	37	30-9-338
	38	30-9-339
	39	30-9-340
	40	30-9-341
	41	30-9-342
	42	30-9-343
	43	30-9-344
	44	30-9-345
	45	30-9-346
	46	30-9-347
	47	30-9-348
	48	30-9-349
	49	30-9-350
	50	30-9-351
	51	30-9-352
	52	30-9-353
	53	30-9-354
	54	30-9-355
	55	30-9-356
	56	30-9-357
	57	30-9-358
	58	30-9-359
	59	30-9-360
	60	30-9-361
	61	30-9-362
	62	30-9-441
	63	30-9-442
	64	30-9-443
	65	30-9-444
	66	30-9-445
	67	30-9-446
	68	30-9-447
	69	30-9-448
	70	30-9-449
	71	30-9-521
	72	30-9-522
	73	30-9-523
	74	30-9-524
	75	30-9-525
	76	30-9-526
	77	30-9-527
	78	30-9-528
	79	30-9-529
	80	30-9-530
	81	30-9-531
	82	30-9-532
	82	30-9-533
	84	30-9-534
	85	30-9-535
	86	30-9-536
	87	30-9-537
	88	30-9-538
	89	30-9-539
	90	30-9-540
	91	30-9-541
	92	30-9-542
	93	30-9-543
	94	30-9-544
	95	30-9-545
	96	30-9-546
	97	30-9-547
	98	30-9-601
	99	30-9-602
	100	30-9-603
	101	30-9-604
	102	30-9-605
	103	30-9-606
	104	30-9-607
	105	30-9-608
	106	30-9-609
	107	30-9-610
	108	30-9-611
	109	30-9-612
	110	30-9-613
	111	30-9-614
	112	30-9-615
	113	30-9-616
	114	30-9-617
	115	30-9-618
	116	30-9-619
	117	30-9-620
	118	30-9-621
	119	30-9-622
	120	30-9-623
	121	30-9-624
	122	30-9-625
	123	30-9-626
	124	30-9-627
	125	30-9-628
	126	2-6-109
	127	7-4-2631
	128	25-10-302
	129	30-1-105

HeinOnline -- 1999 vol. III 3219 1999

Ch.	Sec.	MCA
	130	30-1-201
	131	30-1-206
	132	30-2-103
	133	30-2-210
	134	30-2-326
	135	30-2-502
	136	30-2-716
	137	30-2A-103
	138	30-2A-303
	139	30-2A-307
	140	30-2A-309
	141	30-4-208
	142	30-7-503
	143	30-8-113
	144	30-8-116
	145	30-8-120
	146	30-8-331
	147	30-8-332
	148	30-8-510
	149	40-5-242
	150	40-5-248
	151	69-8-503
	152	70-24-430
	153	71-3-125
	154	71-3-205
	155	71-3-206
	156	71-3-408
	157	71-3-704
	158	71-3-713
	159	71-3-808
	160	71-3-908
	161	30-5-118
	162	Security interest perfected before effective date
	163	Security interest unperfected before effective date
	164	Effectiveness of action taken before effective date of act
	165	When initial financing statement suffices as continuation statement
	166	Persons entitled to file initial financing statement or continuation of statement
	167	Priority
	168	Repealer
	169	Savings previsions
	170	Codification instruction
	171	Effective date
306	1	18-1-102
	2	60-2-112
	3	Contingent voidness
	4	Effective date
307	1	2-15-149
	2	Notification to tribal governments
	3	Codification instruction
308	1	20-9-344
	2	Effective date
	3	Applicability
309	1	61-5-119
	2	61-5-120
	3	61-5-102
	4	61-5-103
	5	61-5-105
	6	61-5-106
	7	61-5-107
	8	61-5-108
	9	61-5-110
	10	61-5-111
	11	61-5-112
	12	61-5-113
	13	61-5-125
	14	61-5-207
	15	61-5-208
	16	61-6-112
	17	61-6-122
	18	61-6-123
	19	61-6-125
	20	61-11-203
	21	61-11-204
	22	Repealer
	23	Codification instruction
	24	Effective dates
	25	Applicability
310	1	20-3-332
	2	Effective date
311	1	40-15-202
	2	40-15-301
	3	Repealer
	4	Effective date
312	1	90-6-131
	2	90-6-132
	3	90-6-133
	4	90-6-134
	5	90-6-135
	6	90-6-136
	7	Notification to tribal governments
	8	Codification instruction
	9	Effective date
313	1	61-4-201
	2	61-4-204
	3	61-4-208
	4	Saving clause
	5	Effective date
314	1	15-1-201
	2	Notification to tribal governments
315	1	44-4-301
	2	44-4-302
316	1	33-2-117
	2	33-2-126
	3	33-2-701

HeinOnline -- 1999 vol. III 3220 1999

Ch.	Sec.	MCA
	4	33-2-708
	5	33-3-202
	6	33-3-203
	7	33-4-505
	8	33-17-211
	9	33-17-212
	10	33-17-214
	11	33-17-216
	12	33-17-221
	13	33-17-231
	14	33-17-301
	15	33-17-505
	16	33-17-1204
	17	33-17-1205
	18	Effective date
317	1	61-10-124
	2	Effective date
318	1	46-4-301
	2	Effective date
319	1	7-14-2901
320	1	7-14-2101
321	1	Sec. 12, Ch. 581, L. 1993
	2	Sec. 1, Ch. 12, L. 1995
	3	Effective date
	4	Retroactive applicability
322	1	87-4-406
	2	87-4-801
	3	87-4-802
	4	87-4-803
	5	87-4-804
	6	87-4-806
	7	87-4-804(5),(6)
	8	Repealer
	9	Codification instruction
323	1	69-8-601
	2	69-8-103
	3	69-8-602
	4	69-8-603
	5	69-8-604
	6	Applicability
	7	Codification instruction
	8	Effective date
324	1	16-4-111
	2	16-4-420
	3	Effective date
	4	Applicability
325	1	16-4-202
	2	Retroactive applicability
326	1	41-5-103
	2	41-5-321
	3	41-5-332
	4	Effective date
327	1	15-30-111
	2	Effective date
	3	Retroactive applicability
328	1	Time limits
	2	Totals not appropriations
	3	Appropriations
	4	Effective date
329	1	Appropriation of cultural and aesthetic grant funds —priority of disbursement
	2	Appropriation of general fund and cultural and aesthetic grant funds
	3	Reversion of granted money
	4	Reduction of grants
	5	Effective date
330	1	2-15-1808
	2	17-6-201
	3	Effective date
331	1	33-1-701
332	1	17-7-111
333	1	22-1-304
334	1	2-18-812
	2	33-31-111
	3	33-18-901
	4	33-18-902
	5	33-18-903
	6	33-18-904
	7	Codification instruction
	8	Saving clause
	9	Severability
335	1	37-3-103
	2	50-6-501
	3	50-6-502
	4	50-6-503
	5	50-6-504
	6	50-6-505
	7	50-6-506
	8	Two-thirds vote required
	9	Effective dates
336	1	37-19-101
	2	37-19-824
	3	37-19-827
	4	37-19-828
	5	37-19-829
	6	Repealer
	7	Codification instruction
337	1	7-32-4139
	2	Codification instruction
338	1	Study of necessity of redistricting state judicial districts
	2	Effective date
339	1	5-4-501
	2	5-4-502
	3	5-4-503
	4	5-4-504
	5	5-4-505
	6	2-4-405
	7	Effective date
	8	Termination
340	1	15-70-123

HeinOnline -- 1999 vol. III 3221 1999

Ch.	Sec.	MCA
	2	15-70-209
	3	15-70-210
	4	15-70-221
	5	15-70-224
	6	15-70-225
	7	15-70-343
	8	15-70-356
	9	15-70-363
	10	15-70-364
341	1	53-2-304
	2	53-4-211
	3	53-4-246
	4	Notification to tribal governments
	5	Effective date
	6	Termination date
342	1	30-14-1401
	2	30-14-1402
	3	30-14-1403
	4	30-14-1404
	5	30-14-1405
	6	30-14-1406
	7	30-14-1407
	8	30-14-1408
	9	30-14-1409
	10	30-14-1410
	11	30-14-1411
	12	30-14-1412
	13	30-14-1413
	14	30-14-1404
	15	30-14-142
	16	Codification instruction
	17	Effective dates
343	1	20-3-106
	2	20-3-209
	3	20-4-402
	4	20-6-501
	5	20-6-608
	6	20-7-420
	7	20-9-134
	8	20-9-166
	9	20-9-307
	10	20-9-311
	11	20-9-313
	12	20-9-508
	13	20-10-111
	14	20-10-143
	15	20-10-145
	16	Effective date — applicability
344	1	61-3-332
	2	61-3-407
	3	61-3-446
	4	Effective date — applicability
345	1	80-5-105 (renum. 80-5-134)
	2	80-5-110 (renum. 80-5-128)
	3	80-5-120
	4	80-5-121 (renum. 80-5-133)
	5	80-5-202 (renum. 80-5-130)
	6	80-5-206 (renum. 80-5-139)
	7	80-5-207 (renum. 80-5-136)
	8	80-5-208 (renum. 80-5-132)
	9	80-5-301 (renum. 80-5-140)
	10	80-5-305 (renum. 80-5-144)
	11	80-5-123
	12	80-5-137
	13	80-5-131
	14	80-5-124
	15	Arbitration study
	16	Repealer
	17	Codification instruction
	18	Effective date
346	1	46-7-102
	2	46-17-201
	3	46-17-311
	4	Effective date
347	1	85-20-801
	2	Codification instruction
348	1	33-22-706
	2	33-22-701
	3	33-22-702
	4	33-22-704
	5	33-31-111
	6	Codification instruction
	7	Severability
	8	Saving clause
	9	Effective date
349	1	71-1-222
350	1	45-8-105
	2	Effective date
	3	Applicability
351	1	7-13-2221
	2	7-13-2280
	3	7-13-2281
	4	7-13-2282
	5	7-13-2283
	6	7-13-2284
	7	7-13-2285
	8	7-13-2286
	9	7-13-2287
	10	7-13-2288
	11	7-13-2289
	12	7-13-2301
	13	Codification instruction
	14	Effective date
352	1	13-37-131
	2	Repealer
353	1	7-2-4111
	2	Codification instruction
	3	Effective date
	4	Retroactive applicability
354	1	45-2-101
	2	45-6-307
	3	45-8-213
355	1	76-2-303

Ch.	Sec.	MCA
356	1	41-3-705
357	1	71-3-531
	2	71-3-532
	3	71-3-535
358	1	46-23-512
	2	46-23-509
	3	Codification instruction
359	1	20-9-308 Voided by sec. 10(2), Ch. 514 (coordination section)
	2	20-9-353 Voided by sec. 10(2), Ch. 514 (coordination section)
	3	Effective date — applicability
360	1	19-20-719
	2	19-20-604
	3	17-7-502
	4	19-20-602
	5	19-20-622
	6	Repealer
	7	Codification instruction
	8	Nonseverability
	9	Effective date
	10	Contingent termination
361	1	37-69-102
	2	37-69-301
362	1	Sec. 14, Ch. 465, L. 1993
	2	Repealer
	3	Effective dates
363	1	35-1-1026
	2	35-1-1027
	3	35-8-1001
	4	35-8-1002
	5	Severability
	6	Effective date
	7	Retroactive applicability
364	1	33-15-1105
	2	Applicability
365	1	2-20-101
	2	2-20-102
	3	2-20-103
	4	2-20-104
	5	2-20-105
	6	2-20-106
	7	2-20-107
	8	2-20-108
	9	2-20-109
	10	2-20-110
	11	2-20-111
	12	Saving clause
	13	Effective dates
366	1	87-3-134
	2	Codification instruction
367	1	37-15-103
	2	37-15-301
	3	37-15-313
	4	Effective date
	5	Termination
	6	Retroactive applicability
368	1	20-9-204
	2	Effective date — applicability
369	1	87-1-201
	2	Effective date
370	1	27-1-741
	2	27-1-742
	3	27-1-743
	4	27-1-744
	5	27-1-745
	6	Codification instruction
371	1	37-3-341
	2	37-3-342
	3	37-3-343
	4	37-3-344
	5	37-3-345
	6	37-3-346
	7	37-3-347
	8	37-3-348
	9	37-3-349
	10	37-3-301
	11	Codification instruction
	12	Effective dates
372	1	69-8-501
	2	Transition advisory committee on electric utility industry restructuring appropriation
	3	Sec. 45, Ch. 505, L. 1997
	4	Effective dates
373	1	87-1-301
	2	Effective date
374	1	13-27-402
	2	13-27-406
	3	13-27-407
375	1	37-1-308
	2	37-1-331
	3	Codification instruction
	4	Effective date
376	1	Governor's local coal impact review council — purpose — report — authority to accept donations
	2	Appropriation
	3	Effective date
	4	Termination
377	1	39-9-401
	2	39-71-123
	3	39-71-201
	4	39-71-201
	5	39-71-225
	6	39-71-432
	7	39-71-501
	8	39-71-503
	9	39-71-510
	10	39-71-517
	11	39-71-519
	12	39-71-605
	13	39-71-610

HeinOnline -- 1999 vol. III 3223 1999

Ch.	Sec.	MCA
	14	39-71-725
	15	39-71-905
	16	39-71-915
	17	39-71-1004
	18	39-72-405
	19	39-72-608
	20	39-72-714
	21	39-71-525
	22	Repealer
	23	Codification instruction
	24	Severability
	25	Effective dates
	26	Retroactive applicability
	27	Termination
378	1	75-10-1201
	2	75-10-1202
	3	75-10-1210
	4	75-10-1211
	5	75-10-1212
	6	75-10-1220
	7	75-10-1221
	8	75-10-1222
	9	75-10-1223
	10	75-10-1203
	11	Transfer of funds
	12	Repealer
	13	Codification instruction
	14	Effective dates
379	1	20-9-501
	2	Effective date
380	1	77-1-135
	2	77-1-136
	3	77-1-137
	4	77-1-138
	5	77-1-139
	6	Effective date
	7	Termination
381	1	45-5-104
382	1	87-2-803
383	1	87-5-205
	2	Effective date
384	1	23-2-540
	2	23-2-619
	3	23-2-818
	4	61-4-201
	5	61-4-202
	6	61-4-204
	7	61-4-205
	8	61-4-222
	9	61-4-402
	10	Codification instruction
385	1	27-1-740
	2	Two-thirds vote required
386	1	25-1-201
	2	3-2-714
	3	Effective date
	4	Codification instruction
387	1	46-19-103
388	1	45-5-214
389	1	3-7-204
	2	3-7-222
	3	3-7-302
	4	10-3-203
	5	10-4-301
	6	10-4-311
	7	15-30-195
	8	15-35-108
	9	16-1-404
	10	16-11-308
	11	17-3-212
	12	17-7-502
	13	18-2-407
	14	20-26-1501
	15	20-26-1502
	16	20-26-1503
	17	39-71-502
	18	39-71-503
	19	39-71-901
	20	39-71-907
	21	39-71-2321
	22	44-12-206
	23	61-10-148
	24	77-1-131
	25	80-2-103
	26	85-2-123
	27	85-2-213
	28	85-2-225
	29	85-2-232
	30	85-20-402
	31	87-1-601
	32	90-4-103
	33	90-4-106
	34	90-4-109
	35	90-4-215
	36	90-6-304
	37	90-6-331
	38	Repealer
	39	Effective date
390	1	46-18-201 Voided by sec. 2, Ch. 390; sec. 11, Ch. 505 (coordination sections)
	2	Voided by sec. 2, Ch. 390 (coordination section)
391	1	61-8-731
392	1	Appropriation for pay increases — conditions — definition
	2	Coordination instruction
	3	Effective date
393	1	3-1-120
	2	25-33-208
	3	3-10-101
	4	3-10-301
	5	3-10-303
	6	Codification instruction

HeinOnline -- 1999 vol. III 3224 1999

Ch.	Sec.	MCA
394	1	3-5-604
	2	3-5-901
	3	Effective date
395	1	41-3-609
	2	45-2-101
	3	45-5-222
	4	45-5-621
	5	45-8-212
	6	46-1-202
	7	46-12-201
	8	46-12-204
	9	46-12-210
	10	46-12-211
	11	46-12-212
	12	46-13-108
	13	46-13-109
	14	46-14-311
	15	46-16-103
	16	46-16-105
	17	46-17-203
	18	46-18-104
	19	46-18-201
	20	46-18-204
	21	46-18-231
	22	46-24-203
	23	53-30-303
	24	61-11-203
	25	87-1-112
396	1	80-9-101
	2	80-9-103
	3	80-9-105
	4	80-9-201
	5	80-9-202
	6	80-9-204
	7	80-9-205
	8	80-9-206
	9	80-9-207
	10	80-9-301
	11	80-9-302
	12	80-9-303
	13	80-9-304
	14	Applicability
397	1	27-1-718
	2	45-2-101
	3	45-6-101
	4	45-6-103
	5	45-6-301
	6	45-6-309
	7	45-6-311
	8	45-6-312
	9	45-6-313
	10	45-6-316
	11	45-6-317
	12	45-6-325
	13	45-7-210
398	1	46-18-236
	2	46-18-251
	3	Effective date
399	1	39-51-404
	2	39-51-409
	3	39-51-1213
	4	39-51-1218
	5	Applicability
400	1	39-51-2101
	2	39-51-2202
	3	Effective date — applicability
	4	Termination
401	1	76-16-103
	2	76-16-106
	3	76-16-107
	4	76-16-108
	5	76-16-109
	6	76-16-111
	7	76-16-201
	8	76-16-202
	9	76-16-203
	10	76-16-204
	11	76-16-206
	12	76-16-207
	13	76-16-208
	14	76-16-209
	15	76-16-210
	16	76-16-211
	17	76-16-212
	18	76-16-302
	19	76-16-303
	20	76-16-304
	21	76-16-307
	22	76-16-308
	23	76-16-311
	24	76-16-315
	25	76-16-316
	26	76-16-319
	27	76-16-323
	28	76-16-325
	29	76-16-403
	30	76-16-406
	31	76-16-413
	32	76-16-414
	33	76-16-112
	34	76-16-113
	35	Codification instruction
	36	Effective date
402	1	37-1-317
	2	37-68-301
	3	37-68-313
	4	37-68-315
	5	37-69-301
	6	37-69-308
	7	37-69-319
	8	37-69-310
	9	37-68-316
	10	Codification instruction
	11	Effective date

HeinOnline -- 1999 vol. III 3225 1999

Ch.	Sec.	MCA
403	1	33-22-1804
	2	Saving clause
404	1	31-1-701
	2	31-1-702
	3	31-1-703
	4	31-1-704
	5	31-1-705
	6	31-1-711
	7	31-1-712
	8	31-1-713
	9	31-1-714
	10	31-1-715
	11	31-1-721
	12	31-1-722
	13	31-1-723
	14	31-1-724
	15	31-1-725
	16	32-5-103
	17	Codification instruction
	18	Severability
405	1	2-6-110
406	1	27-1-736
	2	Effective date
	3	Applicability
407	1	18-4-132
	2	39-71-2315
	3	39-71-2323
	4	39-71-2330
	5	39-71-2341
	6	Effective dates
408	1	15-10-107
	2	Codification instruction
	3	Coordination instruction
	4	Effective date
	5	Retroactive applicability
	6	Termination
409	1	61-1-321
	2	61-1-141
	3	61-1-514
	4	61-4-122
	5	61-4-123
	6	61-4-124
	7	61-4-125
	8	61-4-126
	9	20-7-514
	10	61-1-132
	11	61-1-314
	12	61-3-101
	13	61-3-103
	14	61-3-206
	15	61-3-301
	16	61-3-432
	17	61-3-501
	18	61-3-502
	19	61-3-508
	20	61-3-602
	21	61-4-101
	22	61-4-102
	23	61-4-129
	24	61-4-104
	25	61-4-105
	26	61-4-107
	27	61-4-108
	28	61-4-120
	29	61-4-205
	30	61-10-214
	31	Repealer
	32	Codification instruction
	33	Effective dates
	34	Applicability
410	1	32-1-422
	2	90-8-104
	3	90-8-106
	4	90-8-201
	5	90-8-202
	6	90-8-203
	7	90-8-204
	8	90-8-301
	9	90-8-302
	10	90-8-303
	11	90-8-304
	12	90-8-305
	13	90-8-311
	14	90-8-312
	15	90-8-313
	16	90-8-321
	17	Saving clause
	18	Effective date
	19	Applicability
411	1	7-4-2503
	2	46-18-236
	3	Effective date
	4	Termination
412	1	16-11-401
	2	16-11-402
	3	16-11-403
	4	Codification instruction
	5	Effective date
413	1	18-1-404
	2	Effective date
414	1	40-4-211
	2	40-4-221
	3	40-4-227
	4	40-4-228
	5	Codification instruction
415	1	15-70-101
	2	Effective date
416	1	5-3-106
	2	18-4-304
	3	23-5-115
	4	23-5-116
	5	30-10-107
	6	33-1-409
	7	33-2-1116

HeinOnline -- 1999 vol. III 3226 1999

Ch.	Sec.	MCA
	8	33-2-1701
	9	33-16-205
	10	33-20-1310
	11	44-4-203
	12	44-5-301
	13	50-15-121
	14	50-15-122
	15	61-3-101
	16	61-11-105
	17	81-23-302
417	1	60-2-243
	2	Codification instruction
418	1	Appropriations from renewable resource grant and loan state special revenue account
	2	Conditions of grants
	3	Conditions for grants
	4	Appropriations established
	5	Contingent appropriations
	6	Severability
	7	Effective dates
419	1	Appropriations for reclamation and development grants
	2	Approvod grant projects
	3	Coordination of fund sources for grants programs projects
	4	Condition of grants
	5	Other appropriations
	6	Sec. 2, Ch. 552, L. 1991
	7	Sec. 2, Ch. 454, L. 1995
	8	Sec. 2, Ch. 108, L. 1997
	9	Reversion of funds
	10	Severability
	11	Effective date
420	1	75-11-302
	2	75-11-308
	3	Saving clause
	4	Effective date
	5	Applicability
421	1	75-5-1106
	2	75-5-1113
	3	75-5-1121
	4	75-6-227 (En. sec. 16, Ch. 553, L. 1995)
	5	75-6-211
	6	75-6-224
	7	75-6-225
	8	Codification instruction
	9	Two-thirds vote required
	10	Effective date
	11	Retroactive applicability
422	1	85-2-302
	2	85-2-308
	3	85-2-309
	4	85-2-310
	5	85-2-312
	6	Severability
	7	Notification to tribal governments
	8	Effective date
423	1	7-13-4309
424	1	23-5-637
	2	23-5-638
	3	23-5-116
	4	23-5-602
	5	23-5-610
	6	23-5-610
	7	23-5-621
	8	Codification instruction
	9	Effective dates
	10	Termination
425	1	75-10-425
	2	Codification instruction
426	1	15-53-127
	2	15-53-128
	3	15-53-129
	4	15-53-130
	5	15-53-135
	6	15-53-136
	7	15-53-137
	8	15-53-138
	9	15-53-139
	10	15-53-140
	11	15-53-145
	12	15-53-146
	13	15-53-147
	14	15-53-148
	15	15-53-149
	16	15-53-150
	17	15-53-155
	18	15-53-156
	19	Voided by sec. 170(1)(a)(i), Ch. 584 (coordination section)
	20	Voided by sec. 170(1)(a)(i), Ch. 584 (coordination section)
	21	7-1-2111
	22	7-7-107
	23	7-7-2101
	24	7-7-2203
	25	7-7-4201
	26	7-7-4202
	27	7-14-2524
	28	7-14-2525
	29	7-16-2327
	30	7-16-4104
	31	15-1-501
	32	15-6-135
	33	15-6-137
	34	15-6-141
	35	Voided by sec. 34(1), Ch. 556 (coordination section)
	36	17-7-502 Voided by sec. 170(1)(a)(i), Ch. 584 (coordination section)

HeinOnline -- 1999 vol. III 3227 1999

Ch.	Sec.	MCA
	37	20-9-406
	38	35-18-503
	39	69-3-861
	40	Repealer
	41	Codification instruction
	42	Voided by sec. 35(2), Ch. 556 (coordination section)
	43	Applicability
	44	Voided by sec. 35(1), Ch. 556 (coordination section)
427	1	15-1-216
	2	15-1-217
	3	15-1-206
	4	15-8-309
	5	15-24-904
	6	15-24-1207
	7	15-30-142
	8	15-30-209
	9	15-30-241
	10	15-30-321
	11	15-30-323
	12	15-31-510
	13	15-31-543
	14	15-31-545
	15	15-35-105
	16	15-35-112
	17	15-35-113
	18	15-36-311
	19	15-36-313
	20	15-36-314
	21	15-36-315
	22	15-36-325
	23	15-37-105
	24	15-37-108
	25	15-37-109
	26	15-37-114
	27	15-37-115
	28	15-37-205
	29	15-37-210
	30	15-37-211
	31	15-38-107
	32	15-50-309
	33	15-51-103
	34	15-51-109
	35	15-51-110
	36	15-51-111
	37	15-53-105
	38	15-53-106
	39	15-53-111
	40	15-59-106
	41	15-59-112
	42	15-59-113
	43	15-60-204
	44	15-60-208
	45	15-65-115
	46	15-65-116
	47	16-1-403
	48	16-1-409
	49	16-1-411
	50	16-11-143
	51	16-11-203
	52	39-51-1301
	53	75-2-220
	54	75-5-516
	55	87-2-903
	56	Codification instruction
	57	Effective dates — applicability
428	1	41-3-401
	2	41-3-406
	3	41-3-412
	4	41-3-421
	5	41-3-607
	6	41-3-1103
	7	Notification to tribal governments
	8	Codification instruction
429	1	15-61-202
	2	15-61-204
	3	15-63-202
	4	15-63-204
430	1	61-8-314
431	1	2-17-402
	2	2-17-411
	3	2-17-421
	4	2-17-422
	5	2-17-423
	6	Repealer
432	1	40-15-102
	2	41-5-206
	3	45-5-102
	4	45-5-201
	5	45-5-212
	6	45-5-202
	7	45-5-213
	8	45-5-206
	9	45-5-627
	10	45-8-405
	11	45-9-101
	12	45-9-103
	13	45-9-109
	14	45-9-112
	15	45-9-113
	16	46-18-201
	17	46-18-219
	18	46-18-231
	19	46-23-502
	20	50-32-405
	21	Codification instruction
433	1	7-22-2153
	2	Effective dates
434	1	2-18-704
	2	33-22-131
	3	33-31-102
	4	33-31-111

HeinOnline -- 1999 vol. III 3228 1999

Ch.	Sec.	MCA
	5	33-35-306
	6	Effective date — applicability
435	1	52-3-101
	2	52-3-103
	3	52-3-503
	4	52-3-504
	5	Termination
436	1	15-6-134
	2	Effectivo date
	3	Retroactive applicability
437	1	75-10-701
	2	75-10-715
	3	75-10-721
	4	75-10-727
	5	75-10-728
	6	Repealer
	7	Codification instruction
	8	Effective date
438	1	15-6-201
	2	Applicability
439	1	18-2-306
	2	60-2-115
	3	Codification instruction
	4	Applicability
440	1	7-14-2101
	2	7-14-2103
	3	7-14-2127
	4	60-1-201
	5	60-2-107
441	1	2-17-202
	2	18-4-226
	3	18-6-101
	4	Effective date
442	1	15-30-248
	2	39-3-201
	3	39-3-207
	4	39-3-212
	5	39-3-216
	6	39-9-401
	7	39-51-110
	8	39-51-310
	9	39-51-1109
	10	39-71-304
	11	39-71-315
	12	39-71-316
	13	39-71-317
	14	39-71-401
	15	39-71-415
	16	39-71-601
	17	39-71-610
	18	39-71-613
	19	39-71-704
	20	39-71-1032
	21	39-72-403
	22	39-72-601
	23	39-72-602
	24	39-72-607
	25	39-72-608
	26	Repealer
	27	Codification instruction
	28	Severability
	29	Effective date
	30	Applicability
	31	Retroactive applicability
443	1	Appropriation — conditions
	2	Effective date
444	1	15-31-150
	2	15-30-168
	3	Codification instruction
	4	Effective date
	5	Retroactive applicability
445	1	15-30-171
	2	Coordination instruction
	3	Effective date
	4	Retroactive applicability
446	1	15-18-113
	2	15-18-212
	3	15-18-217
	4	15-18-218
	5	Codification instruction
	6	Effective date — applicability
447	1	15-30-111
	2	Effective date
	3	Retroactive applicability
448	1	15-1-402
	2	15-16-101
	3	15-16-102
	4	15-16-605
	5	Effective date — applicability — retroactive applicability
449	1	61-9-415
	2	61-10-102
450	1	46-23-103
	2	46-23-202
	3	46-23-218
	4	46-23-109
	5	46-23-110
	6	Repealer
	7	Codification instruction
	8	Effective date
451	1	2-4-603
	2	15-1-211
	3	18-1-413
	4	Effective date
	5	Applicability
452	1	15-6-221
	2	Codification instruction
	3	Applicability
	4	Effective date
453	1	90-6-710
	2	Saving clause
	3	Effective date
	4	Applicability
454	1	3-5-101

HeinOnline -- 1999 vol. III 3229 1999

Ch.	Sec.	MCA
	2	3-5-102
	3	Effective date
	4	Transition — applicability
455	1	61-5-208
	2	61-8-410
	3	61-8-714
	4	61-8-731
	5	61-8-732
	6	61-11-101
456	1	2-15-3312
	2	2-15-3313
	3	2-15-3314
	4	Montana agricultural heritage commission — initial appointments
	5	2-15-3315
	6	2-15-3316
	7	2-15-3317
	8	2-15-3318
	9	2-15-3319
	10	2-15-3320
	11	2-15-3321
	12	2-15-3322
	13	Codification instruction
	14	Effective date
	15	Termination
457	1	82-4-390
	2	Effective date
458	1	53-4-717
	2	53-4-721
	3	Codification instruction
	4	Effective date
459	1	33-22-111
	2	33-30-1017
	3	Codification instruction
	4	Effective date
460	1	20-7-328
	2	20-7-329
	3	20-7-330
	4	Codification instruction
	5	Effective date
	6	Termination
461	1	15-30-303
	2	15-70-201
	3	15-70-223
	4	15-70-301
	5	15-70-362
	6	Effective date
	7	Termination
462	1	77-1-223
	2	77-1-224
	3	77-1-225
	4	Codification instruction
	5	Effective date
463	1	19-9-710
	2	19-9-1010
	3	Codification instruction
	4	Saving clause
	5	Effective dates
464	1	15-37-117
	2	90-6-302
	3	90-6-310
	4	90-6-331
	5	90-6-404
	6	Effective date
465	1	16-10-306
	2	Codification instruction
466	1	45-8-301
	2	45-8-302
	3	45-8-305
	4	45-8-307
	5	45-8-337
	6	Repealer
467	1	20-3-322
	2	Effective date
468	1	39-71-1101
	2	39-71-1102
469	1	44-4-303
	2	44-4-302
	3	Codification instruction
	4	Effectivo date
	5	Termination
470	1	7-1-4001
		18-2-123
	2	18-2-101
	3	28-2-2101
	4	28-2-2102
	5	28-2-2103
	6	28-2-2104
	7	28-2-2105
	8	28-2-2106
	9	28-2-2107
	10	Unfunded mandate superseded
	11	Applicability
471	1	2-15-1009
	2	2-18-704
	3	17-6-201
	4	19-2-302
	5	19-2-303
	6	19-2-401
	7	19-2-403
	8	19-2-405
	9	19-2-406
	10	19-2-407
	11	19-2-408
	12	19-2-409
	13	19-2-501
	14	19-2-503
	15	19-2-504
	16	19-2-505
	17	19-2-603
	18	19-2-902
	19	19-2-906
	20	19-2-907

HeinOnline -- 1999 vol. III 3230 1999

Ch.	Sec.	MCA
	21	19-2-908
	22	19-2-909
	23	19-2-1001 Voided by sec. 46(2), Ch. 58 (coordination section)
	24	19-2-1002
	25	19-2-1003
	26	19-2-1005
	27	19-2-1006
	28	19-2-1007
	29	19-3-103
	30	19-3-108
	31	19-3-201
	32	19-3-203
	33	19-3-315
	34	19-3-316
	35	19-3-401
	36	19-21-102
	37	19-21-201
	38	19-21-202
	39	19-21-203
	40	19-2-710
		19-2-1102
		19-3-522
		19-3-909
		19-3-1016
		19-3-1112
		19-3-1212
		19-3-1502
	41	19-3-112
	42	19-3-2101
	43	19-3-2102
	44	19-3-2103
	45	19-3-2104
	46	19-3-2105
	47	19-3-2111
	48	19-3-2112
	49	19-3-2113
	50	19-3-2114
	51	19-3-2115
	52	19-3-2116
	53	19-3-2117
	54	19-3-2121
	55	19-3-2122
	56	19-3-2123
	57	19-3-2124
	58	19-3-2125
	59	19-3-2126
	60	19-3-2131
	61	19-3-2132
	62	19-3-2133
	63	19-3-2134
	64	Board to seek commissioner's ruling or opinion
	65	Rulemaking — implementation — certification that plan is effective
	66	Payment of local government administration expenses
	67	19-50-101
	68	19-50-102
	69	19-50-201
	70	19-50-202
	71	19-50-203
	72	19-2-706
	73	Repealer
	74	Loans — repayment
	75	Codification instruction
	76	Coordination instruction
	77	Saving clause
	78	Severability
	79	Effective dates
	80	Contract of employment — applicability
	81	Termination
472	1	27-1-306
	2	30-10-103
	3	30-10-104
	4	30-10-105
	5	30-10-107
	6	30-10-115
	7	30-10-201
	8	30-10-210
	9	31-1-233
	10	33-1-311
	11	33-1-411
	12	33-2-109
	13	33-2-502
	14	33-2-521
	15	33-2-701
	16	33-2-806
	17	33-3-202
	18	33-3-307
	19	33-4-101
	20	33-4-203
	21	33-4-311
	22	33-4-313
	23	33-5-402
	24	33-10-102
	25	33-15-336
	26	33-15-1107
	27	33-16-102
	28	33-16-104
	29	33-16-1021
	30	33-16-1022
	31	33-17-212
	32	33-17-236
	33	33-17-505
	34	33-17-507
	35	33-17-1203
	36	33-18-301
	37	33-18-1006
	38	33-20-121
	39	33-20-1201

HeinOnline -- 1999 vol. III 3231 1999

Ch.	Sec.	MCA
	40	33-22-101
	41	33-22-111
	42	33-22-140
	43	33-22-307
	44	33-22-514
	45	33-22-523
	46	33-22-524
	47	33-22-1803
	48	33-22-1809
	49	33-22-1811
	50	33-22-1813
	51	33-22-1815
	52	33-22-1816
	53	33-23-212
	54	33-30-107
	55	33-30-201
	56	33-31-111
	57	33-31-202
	58	33-31-211
	59	33-31-216
	60	33-31-301
	61	33-31-401
	62	39-8-207
	63	61-12-303
	64	33-1-213
	65	33-1-214
	66	33-1-215
	67	33-1-216
	68	33-1-217
	69	Repealer
	70	Codification instruction
	71	Severability
	72	Saving clause
	73	Effective dates
473	1	50-60-115
	2	50-60-116
	3	50-60-117
	4	50-60-118
	5	50-60-103
	6	50-60-106
	7	50-60-201
	8	50-60-301
	9	Codification instruction
474	1	23-1-126
	2	23-1-127
	3	23-1-128
	4	Codification instruction
475	1	87-1-276
	2	87-1-277
	3	87-1-278
	4	87-1-279
	5	Appropriation
	6	Severability
	7	Codification instruction
	8	Effective date
	9	Termination
476	1	45-8-317
	2	45-8-329
477	1	33-22-703
	2	33-22-705
	3	Effective date — applicability
478	1	Study of government competition with private sector
	2	Effective date
479	1	50-20-102
	2	50-20-109
	3	50-20-401
	4	Severability
480	1	50-16-527
	2	Effective date
481	1	26-1-813
	2	40-4-303
	3	41-3-404
	4	Repealer
	5	Codification instruction
482	1	33-37-101
	2	33-37-102
	3	33-37-103
	4	33-37-104
	5	33-37-105
	6	Codification instruction
	7	Severability
	8	33-37-106
483	1	70-24-432
	2	Codification instruction
	3	Coordination instruction
	4	Effective date
484	1	2-3-301
	2	Effective date
485	1	2-6-101
	2	2-6-102
	3	2-6-104
	4	Severability
486	1	50-60-203
	2	37-69-403
	3	Codification instruction
	4	Effective date
487	1	15-30-117
	2	Coordination instruction
	3	Saving clause
	4	Effective date
	5	Retroactive applicability
488	1	15-36-303
	2	15-36-304
	3	15-36-324
	4	Coordination instruction
	5	Effective date — applicability
489	1	Severance benefits for certain state hospital employees
	2	Appropriation
	3	Effective date
490	1	15-65-121
	2	15-65-131

HeinOnline -- 1999 vol. III 3232 1999

Ch.	Sec.	MCA
	3	Effective date — applicability
491	1	1-1-207
	2	19-8-301
	3	45-8-318
	4	46-18-220
	5	46-18-303
	6	46-19-103
	7	46-23-201
	8	46-23-215
	9	46-23-217
	10	53-1-102
	11	53-1-103
	12	53-1-104
	13	53-1-108
	14	53-1-202
	15	53-30-101
	16	53-30-132
	17	53-30-151
	18	53-30-503
	19	53-30-504
	20	53-30-507
	21	53-30-602
	22	53-30-603
	23	87-2-802
	24	Saving clause
	25	Effective date
	26	Retroactive applicability
492	1	76-2-305
	2	Saving clause
493	1	80-7-805
	2	80-7-810
	3	80-7-811
	4	80-7-814
	5	80-7-822
	6	Effective date
	7	Termination
494	1	19-3-503
	2	19-3-513
	3	Effective date
	4	Termination
495	1	17-5-703
	2	90-6-715
	3	Codification instruction
	4	Coordination instruction
	5	Effective date
	6	Termination
496	1	18-2-401
	2	Effective date — applicability
497	1	15-38-202
	2	15-38-202
	3	17-7-502
	4	Effective dates
	5	Termination
498	1	75-6-301
	2	75-6-302
	3	75-6-304
	4	75-6-305
	5	75-6-306
	6	75-6-310
	7	75-6-311
	8	75-6-312
	9	75-6-313
	10	75-6-320
	11	75-6-321
	12	75-6-322
	13	75-6-323
	14	75-6-324
	15	75-6-325
	16	75-6-326
	17	75-6-327
	18	75-6-328
	19	75-6-329
	20	75-6-303
	21	17-5-1604
	22	75-5-1102
	23	75-6-202
	24	85-1-605
	25	90-6-701
	26	Severability
	27	Effective date
499	1	27-1-721
	2	87-1-102
	3	87-1-114
	4	87-2-102
	5	87-2-105
	6	87-1-120
	7	87-1-121
	8	87-1-125
	9	Codification instruction
	10	Saving clause
	11	Effective dates
500	1	7-6-2541
	2	Codification instruction
501	1	15-30-192
	2	Codification instruction
	3	Effective date
	4	Applicability
502	1	87-1-115
	2	87-1-102
	3	87-1-111
	4	87-1-112
	5	87-1-113
	6	87-1-114
	7	87-1-803
	8	87-1-804
	9	87-3-118
	10	Codification instruction
503	1	76-7-101
	2	76-7-102
	3	76-7-103
	4	76-7-104
	5	76-7-105
	6	76-7-106
	7	76-7-107

HeinOnline -- 1999 vol. III 3233 1999

Ch.	Sec.	MCA
	8	76-7-201
	9	76-7-202
	10	76-7-203
	11	76-7-204
	12	76-7-205
	13	76-7-206
	14	76-7-207
	15	76-7-208
	16	76-7-209
	17	76-7-210
	18	76-7-211
	19	76-7-212
	20	76-7-213
	21	Codification instruction
	22	Effective date
504	1	Natural resource damage program appropriation — rate of interest
	2	Sec. 5, Ch. 154, L. 1997
	3	Sec. 6, Ch. 154, L. 1997
	4	Loan agreement
	5	Three-fourths vote
	6	Effective dates
	7	Retroactive applicability
505	1	46-18-201
	2	46-23-1011
	3	46-23-1012
	4	46-23-1033
	5	46-23-1023
	6	46-23-1024
	7	46-23-1031
	8	53-30-401
	9	53-30-403
	10	Codification instruction
	11	Coordination instruction
	12	Effective date
	13	Applicability
506	1	75-11-201
	2	75-11-202
	3	75-11-203
	4	75-11-204
	5	75-11-211
	6	75-11-212
	7	75-11-218
	8	75-11-223
	9	75-11-214
	10	75-11-504
	11	75-11-517
	12	75-11-509
	13	75-11-505
	14	75-11-512
	15	Codification instruction
	16	Effective dates
507	1	82-4-303
	2	82-4-305
	3	82-4-310
	4	82-4-335
	5	82-4-338
	6	82-4-341
	7	82-4-349
	8	82-4-402
	9	82-4-403
	10	82-4-405
	11	82-4-422
	12	82-4-423
	13	82-4-427
	14	82-4-431
	15	82-4-432
	16	82-4-433
	17	82-4-434
	18	82-4-441
	19	Coordination instruction
	20	Saving clause
	21	Severability
	22	Effective date
	23	Applicability
508	1	Voided by sec. 12, Ch. 508 (contingent voidness)
	2	Voided by sec. 12, Ch. 508 (contingent voidness)
	3	Voided by sec. 12, Ch. 508 (contingent voidness)
	4	Voided by sec. 12, Ch. 508 (contingent voidness)
	5	7-32-2222 Voided by sec. 12, Ch. 508 (contingent voidness)
	6	7-32-2241 Voided by sec. 12, Ch. 508 (contingent voidness)
	7	44-4-301 Voided by sec. 12, Ch. 508 (contingent voidness)
	8	44-4-302 Voided by sec. 12, Ch. 508 (contingent voidness)
	9	50-1-202 Voided by sec. 12, Ch. 508 (contingent voidness)
	10	50-1-203 Voided by sec. 12, Ch. 508 (contingent voidness)
	11	50-2-118 Voided by sec. 12, Ch. 508 (contingent voidness)
	12	Voided by sec. 12, Ch. 508 (contingent voidness)
	13	Voided by sec. 12, Ch. 508 (contingent voidness)
	14	Voided by sec. 12, Ch. 508 (contingent voidness)
509	1	53-4-210
	2	Notification to tribal governments
	3	Codification instruction
	4	Effective date
510	1	7-16-2411
	2	7-16-2412
	3	7-16-2423
	4	7-16-2431
	5	7-16-2443

HeinOnline -- 1999 vol. III 3234 1999

Ch.	Sec.	MCA
	6	7-12-4001
	7	Codification instruction
511	1	75-5-212
	2	75-6-103
	3	Severability
	4	Effective date
512	1	90-1-130
	2	90-1-131
	3	90-1-132
	4	90-1-133
	5	90-1-134
	6	90-1-135
	7	Appropriation
	8	2-15-217
	9	17-6-406
	10	17-6-407
	11	17-6-408
	12	90-1-105
	13	90-9-202
	14	90-11-102
	15	Severability
	16	Codification instruction
	17	Notification to tribal gevernments
	18	Effective dates
	19	Termination
513	1	61-12-401
	2	61-12-402
	3	61-12-403
	4	61-12-404
	5	75-10-503
	6	75-10-532
	7	Effective date
514	1	13-1-104
	2	20-3-304
	3	20-3-305
	4	20-3-321
	5	20-4-207
	6	20-9-308
	7	20-9-353
	8	20-20-105
	9	20-20-401
	10	Coordination instruction
	11	Effective date — applicability
515	1-52	Light vehicle registration fee referendum
516	1	Art. VIII, sec. 13, Mont. Const.
	2	Effective date
	3	Submission to electorate
517	1	Voided by sec. 5, Ch. 517 (contingent voidness)
	2	Appropriations from treasure state endowment special revenue account
	3	Approval of grants — completion of appropriation
	4	Conditions and manner of disbursement of grant funds
	5	Contingent voidness
	6	Effective dates
518	1	Definitions
	2	Appropriation of bond proceeds and other funds
	3	Authorization of bonds
	4	Agreement with department of labor and industry
	5	Agreement with department of environmental quality
	6	Planning and design
	7	Capital projects — contingent funds
	8	Legislative consent
	9	17-7-211 Voided by Governor's amendatory veto
	10	Requirements for approval of state debt
	11	Severability
	12	Effective date
	13	Termination
519	1	Definition
	2	Appropriation of bond proceeds and approval of information technology project
	3	Authorization of bonds
	4	Planning and design
	5	Expenditures
	6	Two-thirds vote required
	7	Severability
	8	Effective date
520	1	10-3-111
	2	10-3-1203
	3	10-3-1216
	4	10-3-1217
	5	61-9-402
	6	61-9-416
	7	61-9-431
	8	Codification instruction
521	1	17-6-407
522	1	82-11-127
	2	Severability
	3	Effective date
523	1	41-5-206
	2	41-5-1501
	3	45-5-102
	4	45-5-503
524	1	15-23-801
	2	Effective date — retroactive applicability
525	1	87-2-402
	2	Effective date
	3	Termination
526	1	30-14-225
	2	33-18-221

HeinOnline -- 1999 vol. III 3235 1999

Ch.	Sec.	MCA
	3	33-18-222
	4	33-18-223
	5	33-18-224
	6	33-18-1006
	7	Severability
527	1	20-1-501
	2	20-1-502
	3	20-1-503
	4	Repealer
	5	Notification to tribal governments, school districts, and university system
	6	Codification instruction
	7	Effective date
528	1	33-22-1524
	2	33-22-1503
	3	33-22-1504
	4	33-22-1513
	5	33-22-1514
	6	Allocation of funds
	7	Codification instruction
	8	Coordination instruction
	9	Effective dates
529	1	87-1-283
	2	Funding of future fisheries improvement program's bull trout and cutthroat trout enhancement program
	3	15-38-202
	4	87-1-273
	5	Appropriation
	6	Sec. 5, Ch. 463, L. 1995
	7	Codification instruction
	8	Effective dates
	9	Termination
530	1	15-36-303
	2	15-36-304
	3	15-36-311
	4	15-36-324
	5	Coordination instruction
	6	Effective date
	7	Applicability
531	1	15-8-111
	2	15-23-101
	3	15-23-203
	4	15-23-202 (renum. 15-23-205)
	5	Codification instruction
	6	Effective date
	7	Retroactive applicability
532	1	41-5-103
	2	41-5-121
	3	41-5-206
	4	41-5-332
	5	41-5-348
	6	41-5-1210
	7	41-5-1301
	8	41-5-1302
	9	41-5-1415
	10	41-5-1501
	11	41-5-1503
	12	41-5-1513
	13	41-5-1803
	14	46-24-211
	15	52-5-129
	16	41-5-355
	17	41-5-2501
	18	41-5-2502
	19	41-5-2503
	20	41-5-2510
	21	Codification instruction
533	1	87-1-301
	2	87-2-113
	3	87-2-401
	4	87-2-402
	5	87-2-404
	6	87-2-501
	7	87-2-504
	8	87-2-505
	9	87-2-507
	10	87-2-508
	11	87-2-510
	12	87-2-701
	13	87-2-711
	14	Effective date
534	1	15-53-201
	2	15-53-202
	3	15-53-203
	4	Coordination instruction
	5	Codification instruction
	6	Effective date
	7	Applicability
	8	Termination
535	1	15-53-101
	2	Coordination instruction — contingent termination
	3	Effective date
	4	Retroactive applicability
536	1	20-9-130
	2	7-6-501
	3	41-5-1802
	4	41-5-1803
	5	41-5-1804
	6	41-5-1807
	7	Codification instruction
	8	Effective date
537	1	41-5-102
	2	41-5-206
	3	41-5-208
	4	41-5-1602
	5	41-5-1604
	6	41-5-1605
	7	Severability
	8	Effective date
538	1	15-32-501

HeinOnline -- 1999 vol. III 3236 1999

Ch.	Sec.	MCA
	2	15-32-502
	3	15-32-503
	4	15-32-504
	5	15-32-505
	6	15-32-506
	7	15-32-507
	8	15-32-508
	9	15-32-509
	10	15-32-510
	11	Codificatien instruction
	12	Effective date
	13	Retroactive applicability
539	1	15-6-201
	2	Applicability
540	1	18-2-425
	2	Codification instruction
541	1	40-4-220
	2	Effective date
542	1	60-2-203
	2	60-2-204
	3	60-3-206
	4	Effective date
543	1	2-15-1883
	2	37-47-101
	3	37-47-201
	4	37-47-306
	5	37-47-316
	6	37-47-317
	7	37-47-318
	8	Codification instruction
	9	Effective dates
544	1	37-47-315
	2	87-1-269
	3	87-2-402
	4	87-2-511
	5	87-1-270
	6	Sec. 18, Ch. 459, L. 1995
	7	Codificatien instructien
	8	Termination
	9	Effective dates
545	1	25-1-201
	2	40-4-105
	3	40-4-130
	4	40-4-204
	5	40-4-234
	6	40-4-252
	7	Effective date
546	1	60-1-103
	2	60-2-601
	3	60-2-602
	4	Effective dates
	5	Codificatien instruction
	6	Severability
547	1	15-30-171 Voided by sec. 2, Ch. 445 (coordinatien section)
	2	15-30-172
	3	15-30-176
	4	Effective date
	5	Retroactive applicability
548	1	76-3-205
549	1	15-36-305
	2	Effective date
	3	Retroactive applicability
550	1	53-1-208
	2	Review of state payments in lieu of taxes
	3	Codification instruction
	4	Coordination instruction
	5	Effective date
	6	Termination
551	1	15-6-138
	2	Effective date
	3	Retroactive applicability
552	1	7-6-2225 Voided by sec. 12(2), Ch. 552 (contingent voidness)
	2	7-6-2226 Voided by sec. 12(2), Ch. 552 (contingent voidness)
	3	15-37-117 Voided by sec. 12(2), Ch. 552 (contingent voidness)
	4	15-38-106 Voided by sec. 12(1), Ch. 552 (contingent voidness)
	5	15-38-106
	6	20-9-231 Voided by sec. 12(2), Ch. 552 (contingent voidness)
	7	85-1-604 Voided by sec. 12(2), Ch. 552 (contingent veidness)
	8	85-2-905
	9	90-2-1104 Voided by sec. 12(2), Ch. 552 (contingent voidness)
	10	90-2-1112
	11	90-2-1113
	12	Contingent voidness
	13	Effective dates
553	1	19-18-503
	2	19-18-504
	3	Effective date
554	1	15-36-303
	2	15-36-303
	3	15-36-304
	4	15-36-304
	5	15-36-324
	6	15-36-324
	7	15-36-326
	8	17-7-502
	9	20-9-104
	10	20-9-161
	11	20-9-331
	12	20-9-333
	13	20-9-501
	14	20-9-507
	15	Repealer
	16	Saving clause
	17	Coordination instruction
	18	Effective dates

HeinOnline -- 1999 vol. III 3237 1999

Ch.	Sec.	MCA
	19	Applicability
	20	Termination
555	1	15-6-136
	2	15-6-138
	3	15-6-201
	4	Applicability
556	1	15-72-101
	2	15-72-102
	3	15-72-103
	4	15-72-104
	5	15-72-105
	6	15-72-106
	7	15-72-110
	8	15-72-111
	9	15-72-112
	10	15-72-113
	11	15-72-114
	12	15-72-115
	13	15-72-116
	14	15-72-117
	15	Voided by sec. 170(1)(b), Ch. 584 (coordination section)
	16	7-1-2111
	17	7-7-107
	18	7-7-2101
	19	7-7-2203
	20	7-7-4201
	21	7-7-4202
	22	7-14-2524
	23	7-14-2525
	24	7-16-2327
	25	7-16-4104
	26	15-6-141
	27	15-6-156
	28	15-51-102
	29	17-7-502
	30	20-9-406
	31	69-8-211
	32	Codification instruction
	33	Coordination instruction
	34	Coordination instruction
	35	Coordination instruction
	36	Saving clause
	37	Severability
	38	Effective dates
	39	Applicability
	40	Termination
557	1	Definitions
	2	Capital projects appropriations
	3	Land acquisition appropriation
	4	Capital improvements
	5	Transfer of funds
	6	Planning and design
	7	Capital projects — contingent funds
	8	Agreement with department of environmental quality
	9	Legislative consent
	10	Severability
	11	Effective date
558	1	2-18-101
	2	2-18-301
	3	2-18-303
	4	2-18-304
	5	2-18-312
	6	2-18-313
	7	2-18-315
	8	2-18-503
	9	2-18-703
	10	5-2-301
	11	2-18-820
	12	Appropriations
	13	Codification instruction
	14	Effective dates
	15	Retroactive applicability
559	1	87-3-235
	2	87-3-236
	3	Contingent voidness
	4	Codification instruction
560	1	39-71-403
	2	Effective date
561	1	20-9-141 Voided by sec. 170(3), Ch. 584 (coordination section)
	2	20-9-140
	3	Codification instruction
	4	Effective date — applicability
	5	Termination
562	1	2-15-1009
	2	7-32-4132
	3	19-2-302 Voided by sec. 99(1)(a), Ch. 562 (coordination section)
	4	19-2-303
	5	19-2-403
	6	19-2-404
	7	19-2-406
	8	19-2-407
	9	19-2-408
	10	19-2-503
	11	19-2-505
	12	19-2-506
	13	19-2-507
	14	19-2-602
	15	19-2-701
	16	19-2-703
	17	19-2-801
	18	19-2-802
	19	19-2-1015 19-20-510
	20	19-2-1101
	21	19-3-103 Voided by sec. 99(1)(c), Ch. 562 (coordination section)
	22	19-3-201

HeinOnline -- 1999 vol. III 3238 1999

Ch.	Sec.	MCA
	23	19-3-319
	24	19-3-401
	25	19-3-403
	26	19-3-412
	27	19-3-505
	28	19-3-509
	29	19-3-512
	30	19-3-521
	31	19-3-904
	32	19-3-1005
	33	19-3-1015
	34	19-3-1103
	35	19-3-1106
	36	19-3-1204
	37	19-3-1210
	38	19-3-1501
	39	19-3-1605
	40	19-5-102
	41	19-5-401
	42	19-5-503
	43	19-5-701
	44	19-5-802
	45	19-5-901
	46	19-6-102
	47	19-6-503
	48	19-6-505
	49	19-6-612
	50	19-6-709
	51	19-6-710
	52	19-6-801
	53	19-6-802
	54	19-6-803
	55	19-6-810
		19-7-810
	56	19-7-102
	57	19-7-402
	58	19-7-503
	59	19-7-711
	60	19-7-802
	61	19-7-804
	62	19-7-1001
	63	19-8-102
	64	19-8-501
	65	19-8-712
	66	19-8-801
	67	19-8-901
	68	19-8-902
	69	19-8-1002
	70	19-8-1105
	71	19-9-103
	72	19-9-405
	73	19-9-702
	74	19-9-703
	75	19-9-706
	76	19-9-1007
	77	19-9-1009
	78	19-9-1101
	79	19-9-1102
	80	19-13-103
	81	19-13-104
	82	19-13-404
	83	19-13-604
	84	19-13-605
	85	19-13-607
	86	19-13-704
	87	19-13-903
	88	19-13-1007
	89	19-13-1010
	90	19-17-102
	91	19-17-106
	92	19-17-108
	93	19-17-204
	94	19-19-201
	95	19-19-205
	96	72-2-814
	97	Repealer
	98	Codification instruction
	99	Coordination instruction
	100	Saving clause
	101	Effective date
	102	Retroactive applicability
563	1	90-3-1001
	2	90-3-1002
	3	90-3-1003
	4	17-5-703 Voided by sec. 4, Ch. 495 (coordination section)
	5	17-5-709
	6	17-7-502
	7	15-34-104
	8	15-34-101
	9	15-34-102
	10	15-34-103
	11	15-34-110
	12	15-34-105
	13	15-34-111
	14	15-34-112
	15	15-34-116
	16	15-34-115
	17	90-3-1004
	18	2-15-1819
	19	90-3-1005
	20	90-3-1006
	21	Initial board appointments
	22	Coordination instruction
	23	Codification instructions
	24	Coordination instruction
	25	Effective date
564	1	41-5-215
	2	52-2-211
565	1	50-60-701 Voided by sec. 5, Ch. 565 (contingent voidness)
	2	50-60-701 Voided by sec. 5, Ch. 565 (contingent voidness)

Ch.	Sec.	MCA
	3	50-60-702 Voided by sec. 5, Ch. 565 (contingent voidness)
	4	50-60-703 Voided by sec. 5, Ch. 565 (contingent voidness)
	5	Voided by sec. 5, Ch. 565 (contingent voidness)
	6	Voided by sec. 5, Ch. 565 (contingent voidness)
566	1	41-3-101
	2	41-3-102
	3	41-3-108
	4	41-3-202
	5	41-3-203
	6	41-3-205
	7	41-3-303
	8	41-3-401
	9	41-3-403
	10	41-3-404
	11	41-3-406
	12	41-3-412
	13	41-3-413
	14	41-3-604
	15	41-3-420
	16	41-3-607
	17	41-3-609
	18	41-3-1103
	19	42-2-608
	20	Notification to tribal gevernments
	21	Codification instruction
567	1	53-4-211
	2	Appropriation for Montana state hospital
	3	Effective date
568	1	87-2-411
	2	87-2-805
	3	Effective date
	4	Termination
569	1	23-2-525
	2	23-2-531
	3	87-1-303
	4	87-1-306
	5	Codification instruction
	6	Effective date
570	1	61-3-332
	2	Effective date
	3	Applicability
571	1	53-4-1001
	2	53-4-1002
	3	53-4-1003
	4	53-4-1004
	5	53-4-1005
	6	53-4-1007
	7	53-4-1008
	8	53-4-1009
	9	53-4-1010
	10	53-4-1011
	11	Appropriation
	12	Contingent appropriation
	13	Codification instruction
	14	Effective date
	15	Contingent termination
572	1	45-8-328
573	1	27-1-737
	2	39-2-801
	3	Codification instruction
	4	Effective date — applicability
574	1	87-4-431
	2	81-1-102
	3	81-2-102
	4	81-2-702
	5	81-3-102
	6	81-9-217
	7	87-4-406
	8	87-4-407
	9	87-4-408
	10	87-4-409
	11	87-4-410
	12	87-4-411
	13	87-4-412
	14	87-4-413
	15	87-4-414
	16	87-4-415
	17	87-4-416
	18	87-4-417
	19	87-4-418
	20	87-4-419
	21	87-4-420
	22	87-4-422
	23	87-4-423
	24	87-4-424
	25	87-4-426
	26	87-4-427
	27	87-4-428
	28	87-4-432
	29	87-4-433
	30	Contingent voidness
	31	Effective dates
575	1	35-19-101
	2	35-19-102
	3	35-19-103
	4	35-19-104
	5	35-19-201
	6	35-19-202
	7	35-19-203
	8	35-19-105
	9	35-19-106
	10	35-19-301
	11	35-19-302
	12	35-19-303
	13	35-19-304
	14	35-19-107
	15	35-19-204
	16	35-19-305

HeinOnline -- 1999 vol. III 3240 1999

Ch.	Sec.	MCA
	17	35-19-306
	18	35-19-307
	19	35-19-308
	20	35-19-309
	21	35-19-310
	22	35-19-205
	23	35-19-311
	24	35-19-312
	25	35-19-313
	26	35-19-314
	27	35-19-315
	28	35-19-108
	29	69-8-103
	30	69-8-201
	31	69-8-403
	32	69-8-416
	33	35-19-417
	34	Severability
	35	Saving clause
	36	Codification instruction
	37	Effective date
576	1	Study of mortgage lending
	2	Authority to accept donation — appropriations
	3	Effective date
577	1	33-1-102
	2	33-31-115
	3	33-31-202
	4	53-1-413
	5	53-6-131
	6	53-21-701
	7	53-21-702
	8	53-21-703
	9	53-6-703
	10	53-6-704
	11	53-6-706
	12	53-6-709
	13	2-15-210
	14	53-6-170
	15	53-21-704
	16	Codification instruction
	17	Effective date
	18	Termination
578	1	Short title
	2	First level expenditures
	3	Severability
	4	Appropriation control
	5	Program definition
	6	Personal services funding — 2003 biennium
	7	Personal services line item
	8	Goals, benchmarks, and objectives
	9	Unified computer budget summary
	10	Uso of Montana- and American-based companies
	11	Consumer price index changes
	12	Interim information technology management study
	13	Tobacco settlement proceeds
	14	Totals not appropriations
	15	Effective date
	16	Appropriations
	17	Rates
579	1	40-4-210
	2	40-5-201
	3	40-5-202
	4	40-5-207
	5	40-5-210
	6	40-5-224
	7	40-5-225
	8	40-5-247
	9	40-5-253
	10	40-5-273
	11	40-5-315
	12	40-5-403
	13	40-5-701
	14	40-5-806
	15	40-5-807
	16	40-5-901
	17	Repealer
	18	Effective dates
580	1	18-4-132
	2	69-8-103
	3	69-8-402
	4	69-8-411
	5	69-8-412
	6	69-8-413
	7	69-8-414
	8	Codification instruction
	9	Effective date
581	1	Interim study for state law alternative method of complying with national instant criminal background check system
	2	7-1-115
	3	45-8-321
	4	45-8-322
	5	45-8-337
	6	45-8-361
582	1	7-2-4734
	2	7-15-4206
	3	7-15-4213
	4	76-1-103
	5	76-1-106
	6	76-1-107
	7	76-1-110
	8	76-1-601
	9	76-1-602
	10	76-1-603
	11	76-1-604
	12	76-1-605

HeinOnline -- 1999 vol. III 3241 1999

Ch.	Sec.	MCA
	13	76-1-606
	14	76-2-201
	15	76-2-203
	16	76-2-206
	17	76-2-304
	18	76-2-310
	19	76-2-311
	20	76-3-210
	21	76-3-504
	22	76-3-505
	23	76-3-601
	24	76-3-604
	25	76-3-605
	26	76-3-608
	27	76-3-621
	28	76-4-111
	29	76-4-122
	30	76-4-123
	31	76-4-124
	32	76-4-127
	33	76-9-104
	34	Name change — directions to code commissioner
	35	Saving clause
	36	Transition — applicability
583	1	15-6-218
	2	15-1-101
	3	15-8-201
	4	15-8-404
	5	15-8-405
	6	15-8-406
	7	15-8-407
	8	15-23-101
	9	15-23-202
	10	15-23-303
	11	Repealer
	12	Codification instruction
	13	Saving clause
	14	Effective date — applicability
584	1	15-10-420
	2	2-9-212
	3	7-1-112
	4	7-1-114
	5	7-1-2103
	6	7-1-4123
	7	7-3-184
	8	7-3-1104
	9	7-3-1227
	10	7-3-1310
	11	7-3-1311
	12	7-6-2319
	13	7-6-2321
	14	7-6-2501
	15	7-6-2502
	16	7-6-2511
	17	7-6-2512
	18	7-6-2513
	19	7-6-2522
	20	7-6-4232
	21	7-6-4259
	22	7-6-4261
	23	7-6-4401
	24	7-6-4406
	25	7-6-4407
	26	7-6-4421
	27	7-6-4438
	28	7-6-4452
	29	7-6-4453
	30	7-11-1106
	31	7-11-1112
	32	7-14-111
	33	7-14-232
	34	7-14-1111
	35	7-14-1131
	36	7-14-2101
	37	7-14-2205
	38	7-14-2501
	39	7-14-2502
	40	7-14-2503
	41	7-14-2801
	42	7-14-2807
	43	7-14-4703
	44	7-14-4713
	45	7-14-4734
	46	7-15-4281
	47	7-15-4324
	48	7-16-101
	49	7-16-2102
	50	7-16-2108
	51	7-16-2109
	52	7-16-2205
	53	7-16-2411
	54	7-16-2423
	55	7-16-2431
	56	7-16-2443
	57	7-16-4105
	58	7-16-4113
	59	7-16-4114
	60	7-21-3203
	61	7-21-3410
	62	7-21-3432
	63	7-21-3433
	64	7-22-2142
	65	7-22-2222
	66	7-22-2306
	67	7-22-2432
	68	7-22-2512
	69	7-32-4117
	70	7-33-2109
	71	7-33-2209
	72	7-33-4111
	73	7-33-4130
	74	7-34-102
	75	7-34-2122

HeinOnline -- 1999 vol. III 3242 1999

Ch.	Sec.	MCA
	76	7-34-2133
	77	7-34-2417
	78	7-35-2122
	79	13-13-230
	80	15-1-402
	81	15-2-301
	82	15-6-134
	83	15-6-143
	84	15-6-201
	85	15-7-102
	86	15-7-103
	87	15-7-111
	88	15-7-403
	89	15-8-111
	90	15-10-204
	91	15-10-205
	92	15-10-401
	93	15-10-402
	94	15-16-117
	95	15-16-203
	96	15-23-214
	97	15-24-1402
	98	15-24-1501
	99	15-24-1603
	100	15-36-323
	101	20-3-205
	102	20-3-324
	103	20-7-705
	104	20-7-714
	105	20-9-131
	106	20-9-141
	107	20-9-142
	108	20-9-151
	109	20-9-152
	110	20-9-168
	111	20-9-331
	112	20-9-333
	113	20-9-360
	114	20-9-404
	115	20-10-147
	116	20-15-305
	117	20-15-311
	118	20-15-313
	119	20-15-314
	120	20-15-326
	121	20-25-423
	122	20-25-439
	123	22-1-304
	124	22-1-316
	125	23-4-303
	126	41-5-1804
	127	50-2-111
	128	50-2-114
	129	53-2-322
	130	53-2-813
	131	53-20-208
	132	67-10-402
	133	67-11-201
	134	67-11-301
	135	67-11-302
	136	75-10-112
	137	76-1-111
	138	76-1-403
	139	76-1-404
	140	76-1-405
	141	76-1-406
	142	76-1-407
	143	76-2-102
	144	76-5-1116
	145	76-6-109
	146	76-15-501
	147	76-15-516
	148	76-15-518
	149	76-15-623
	150	81-8-504
	151	85-3-422
	152	85-7-206
	153	85-7-307
	154	85-7-1953
	155	85-7-1973
	156	85-7-2104
	157	85-7-2117
	158	85-7-2134
	159	85-7-2136
	160	85-8-601
	161	85-8-615
	162	85-8-618
	163	90-5-112
	164	90-6-403
	165	Extension of 1999 deadlines relating to property taxation
	166	15-10-107
	167	Reimbursement to counties, cities, towns, and consolidated city-county governments for losses in revenue
	168	Local government and court funding and structure committees — membership — purpose
	169	Funding — appropriations
	170	Coordination instruction
	171	Repealer
	172	Severability
	173	Codification instruction
	174	Effective date
	175	Retroactive applicability
	176	Termination
585	1	15-70-204
	2	15-70-205
	3	15-70-221
	4	67-1-301
	5	Effective date
586	1	15-8-102

HeinOnline -- 1999 vol. III 3243 1999

Ch.	Sec.	MCA
587	1	2-15-2502
	2	Notification to tribal governments
	3	Effective date
	4	Applicability
588	1	75-5-301
	2	75-5-308
	3	75-5-316
	4	75-5-317
	5	75-5-318
	6	75-5-401
	7	Codification instruction
	8	Saving clause
	9	Severability
	10	Effective date
589	1	15-8-111
	2	Applicability

1998 BALLOT ISSUES

Init. Ref.	Sec.	MCA
114	1	13-35-227
	2	13-35-236
	3	13-37-250
	4	Codification instruction
	5	Effective date
134	1	Repealer
	2	Effective date
137	1	82-4-390
	2	Codification instruction
	3	Effective date

HeinOnline -- 1999 vol. III 3246 1999

SESSION LAWS

Enacted by the

FIFTY-SIXTH LEGISLATURE
IN SPECIAL SESSION

Held at Helena, the Seat of Government
June 15 and 16, 1999

Explanatory Note: Section 5-11-205, MCA, provides that new parts of existing statutes be printed in italics and that deleted provisions be shown as stricken.

COMPILED BY MONTANA
LEGISLATIVE SERVICES DIVISION

HeinOnline -- 1999 vol. III 3247 1999

HeinOnline -- 1999 vol. III 3248 1999

TITLE CONTENTS

SENATE AND HOUSE BILLS

Chapter		Page
1	*(House Bill No. 1; Stovall)* IMPLEMENTING THE CROW-MONTANA RESERVED WATER RIGHTS COMPACT; PROVIDING FOR THE PAYMENT OF SETTLEMENT FUNDS INTO AN ESCROW FUND; ESTABLISHING CONDITIONS TO BE CONTAINED IN AN ESCROW AGREEMENT UNDER WHICH THE FUNDS MAY BE HELD AND BE PAID TO THE CROW TRIBE IN SATISFACTION OF THE STATE'S OBLIGATIONS UNDER THE COMPACT AND IN CONSIDERATION OF THE TRIBE'S AGREEMENT TO RELEASE CERTAIN CLAIMS AGAINST THE STATE; AUTHORIZING THE GOVERNOR AND ATTORNEY GENERAL TO ENTER INTO AN AGREEMENT WITH THE CROW TRIBE AND THE UNITED STATES TO SETTLE CERTAIN CLAIMS AND UNDER WHICH THE STATE MAY MAKE CERTAIN PAYMENTS AND PAY TO THE CROW TRIBE THE FUTURE PROCEEDS OF ANY PRODUCTION TAXES LEVIED UNDER STATE LAW ON THE PRODUCTION OF COAL OWNED BY THE UNITED STATES IN TRUST FOR THE CROW TRIBE; APPROPRIATING FUNDS TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; AND PROVIDING AN EFFECTIVE DATE	3251
2	*(House Bill No. 2; Zook)* APPROPRIATING MONEY FOR THE OPERATION OF THE FIRST SPECIAL SESSION OF THE 56TH LEGISLATURE CONVENING JUNE 15, 1999, AND FOR OTHER RELATED LEGISLATIVE PURPOSES; PROVIDING TECHNICAL CORRECTIONS IN RELATION TO CERTAIN APPROPRIATIONS MADE DURING THE REGULAR SESSION OF THE 56TH LEGISLATURE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	3254
3	*(Senate Bill No. 1; Cole)* RATIFYING A RESERVED WATER RIGHTS COMPACT BETWEEN THE CROW TRIBE AND THE STATE OF MONTANA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE .	3254
4	*(Senate Bill No. 2; Lynch)* CLARIFYING THAT SURCHARGES FOR COURT INFORMATION TECHNOLOGY AND PROSECUTING ATTORNEY SALARIES DO NOT APPLY TO CERTAIN SPEEDING FINES AND BOND FORFEITURES; AMENDING SECTION 61-8-725, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE	3290

HeinOnline -- 1999 vol. III 3250 1999

CHAPTER NO. 1

[HB 1]

AN ACT IMPLEMENTING THE CROW-MONTANA RESERVED WATER RIGHTS COMPACT; PROVIDING FOR THE PAYMENT OF SETTLEMENT FUNDS INTO AN ESCROW FUND; ESTABLISHING CONDITIONS TO BE CONTAINED IN AN ESCROW AGREEMENT UNDER WHICH THE FUNDS MAY BE HELD AND BE PAID TO THE CROW TRIBE IN SATISFACTION OF THE STATE'S OBLIGATIONS UNDER THE COMPACT AND IN CONSIDERATION OF THE TRIBE'S AGREEMENT TO RELEASE CERTAIN CLAIMS AGAINST THE STATE; AUTHORIZING THE GOVERNOR AND ATTORNEY GENERAL TO ENTER INTO AN AGREEMENT WITH THE CROW TRIBE AND THE UNITED STATES TO SETTLE CERTAIN CLAIMS AND UNDER WHICH THE STATE MAY MAKE CERTAIN PAYMENTS AND PAY TO THE CROW TRIBE THE FUTURE PROCEEDS OF ANY PRODUCTION TAXES LEVIED UNDER STATE LAW ON THE PRODUCTION OF COAL OWNED BY THE UNITED STATES IN TRUST FOR THE CROW TRIBE; APPROPRIATING FUNDS TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Findings and purpose. (1) It is the policy of the state of Montana to seek negotiated settlements of federal and Indian reserved water rights claims in Montana under Title 85, chapter 2, part 7.

(2) Pursuant to this policy, the commission commenced negotiations with the Crow Tribe regarding the Tribe's water rights claims on November 12, 1981.

(3) A water rights compact has been agreed to between the commission and the elected representatives of the government of the Crow Tribe that, among other things, provides an allocation of water to the Crow Tribe and provides protection for certain water rights recognized under state law in Montana.

(4) As consideration for the Crow Tribe's agreement to protect certain water rights recognized under state law in Montana and to release certain legal claims asserted against the state, the state of Montana has undertaken an obligation to make certain payments for the benefit of the Crow Tribe and has agreed that any future production taxes collected by the state on production of coal owned by the United States in trust for the Crow Tribe will be paid to the Crow Tribe.

(5) The commission's agreement to the compact and the state's obligation to make payments to the Crow Tribe thereunder is conditioned, among other things, upon the final approval of the compact as set forth in the compact and as required by state, federal, and tribal law and upon the execution and delivery by the Crow Tribe of sufficient releases for the legal claims that the Crow Tribe has agreed to release.

(6) The purposes of [sections 1 through 4] are to provide for the implementation of the compact, to provide a mechanism for settlement of certain claims against the state, and to provide a means to fund the state's financial obligations for the upcoming biennium under its water rights compact with the Crow Tribe.

Section 2. Definitions. As used in [sections 1 through 4], the following definitions apply:

(1) "Commission" means the reserved water rights compact commission.

(2) "Compact" means the Crow-Montana water rights compact as approved by the legislature in [LC 1].

(3) "Department" means the department of natural resources and conservation.

Section 3. Payment of settlement funds into escrow — requirements for escrow agreement — notice from attorney general. (1) The department shall enter into an agreement with the Crow Tribe and, if necessary under federal or tribal law, the United States, selecting an escrow agent to hold any funds paid by the state prior to the time they become payable to the Crow Tribe under this section. When an escrow agent has been selected, the department shall negotiate the terms of an escrow agreement with the Crow Tribe, the escrow agent, and if necessary under federal or tribal law, the United States. The terms of the agreement must govern the holding of the funds paid pursuant to the settlement. The escrow agreement must provide that any costs and fees payable for the management of the escrow fund will be borne by the fund, that the funds placed in the escrow account will be invested and held at interest in trust for the Crow Tribe, and that the contents of the fund will become payable to the order of the Crow Tribe only upon the occurrence of all of the following conditions:

(a) the compact has been approved by the Congress of the United States in a form satisfactory to the commission;

(b) the compact has been approved by the Crow Tribe in the manner provided by federal and tribal law, including approval of any tribal referendum presently or later required by federal or tribal law;

(c) the compact has been approved by the Montana water court for inclusion in the final decrees in all affected basins, and the order of approval has been affirmed on appeal or the time for appeal from the water court's approval has expired; and

(d) the Crow Tribe and the United States have furnished releases, pleadings, and proposed orders, in forms acceptable to the attorney general, with respect to all claims, including but not limited to claims for costs and attorney fees, asserted in the civil action captioned Crow Tribe of Indians v. State of Montana et al., Cause No. CV-78-110-BLG-JDS (D. Mont.), or any appeal pending in that action.

(2) Within 20 days after all conditions set forth in subsections (1)(a) through (1)(d) have been satisfied, the attorney general shall provide written notice of the satisfaction of the conditions to the escrow agent. The escrow agreement must provide that upon receipt of the written notice provided in this section, the escrow agent shall pay the funds in escrow to the order of the Crow Tribe. This section does not preclude the Crow Tribe from entering into an agreement with the escrow agent or any other entity for the holding of the funds in trust for the Crow Tribe for a period in excess of that provided in this section.

(3) The escrow agreement must provide that in the event the conditions set forth in subsection (1) do not occur within any time limits set in the compact, as those limits may be extended pursuant to the compact by agreement of the parties and the approval of the legislature, or if any party to the compact terminates the compact as provided in the compact prior to payment of the funds to the Crow Tribe as provided in subsection (2), the contents of the escrow fund, including

HeinOnline -- 1999 vol. III 3252 1999

funds paid into the escrow fund by the state and any interest earned on the escrow fund, will revert to the state.

Section 4. Settlement of litigation — disposition of production taxes collected on coal owned in trust for Crow Tribe. (1) The governor and attorney general may enter into an agreement with the Crow Tribe and the United States for the settlement of the civil action captioned Crow Tribe of Indians v. State of Montana et al., Cause No. CV-78-110-BLG-JDS (D. Mont.), or any appeal pending in that action.

(2) The agreement may:

(a) include a release of all claims asserted by the Crow Tribe and the United States in the action, including but not limited to claims for costs and attorney fees;

(b) provide payments as authorized in the compact and [sections 1 through 4]; and

(c) include an agreement by which the proceeds of any production taxes levied under Montana law on the severance or production of coal owned by the United States in trust for the Crow Tribe are to be paid to the Crow Tribe.

Section 5. Appropriation of settlement funds — timing of payments. (1) There is appropriated to the department of natural resources and conservation from the general fund $1.5 million in fiscal year 2000 and $1.5 million in fiscal year 2001, together with any interest earned on the amounts appropriated between July 1, 1999, and the date the funds are paid into escrow as provided in subsection (2) at the rate of interest earned on the permanent coal severance tax trust fund, for the purpose of funding the first 2 years' payments under the compact and the completion of the settlement provided for in [section 4].

(2) On July 1, 1999, or as soon after that date as the escrow agreement provided for in [section 3] is reached, the department of natural resources and conservation shall pay the funds appropriated for fiscal year 2000, together with any interest on the appropriated funds, into the escrow account established pursuant to [section 3]. On July 1, 2000, or as soon after that date as the escrow agreement provided for in [section 3] is reached, the department of natural resources and conservation shall pay the funds appropriated for fiscal year 2001, together with any interest on the appropriated funds, into the escrow account established pursuant to [section 3].

Section 6. Coordination instruction. If [LC 1] is not passed and approved, then [this act] is void.

Section 7. Nonseverability. It is the intent of the legislature that each part of [this act] is essentially dependent upon every other part, and if one part is held unconstitutional or invalid, all other parts are invalid.

Section 8. Codification instruction. [Sections 1 through 4] are intended to be codified as an integral part of Title 85, chapter 20, and the provisions of Title 85, chapter 20, apply to [sections 1 through 4].

Section 9. Effective date. [This act] is effective upon the later of:

(1) passage and approval of [this act]; or

(2) passage and approval of [LC 1].

Approved June 22, 1999

HeinOnline -- 1999 vol. III 3253 1999

CHAPTER NO. 2

[HB 2]

AN ACT APPROPRIATING MONEY FOR THE OPERATION OF THE FIRST SPECIAL SESSION OF THE 56TH LEGISLATURE CONVENING JUNE 15, 1999, AND FOR OTHER RELATED LEGISLATIVE PURPOSES; PROVIDING TECHNICAL CORRECTIONS IN RELATION TO CERTAIN APPROPRIATIONS MADE DURING THE REGULAR SESSION OF THE 56TH LEGISLATURE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Appropriation for special session. The following amounts are appropriated from the general fund to the legislative branch (agency 1104) for the fiscal year ending June 30, 1999, for costs of the special legislative session of June 1999:

1. Senate (25)	$29,000
2. House of Representatives (26)	50,000
3. Legislative Services Division (22)	2,000

Section 2. Technical adjustment to department of livestock appropriation. There is appropriated $50 from the general fund to the department of livestock, alternative livestock programmatic environmental impact statement program (biennial/OTO), to meet the requirement of section 30, Chapter 574, Laws of 1999 (Senate Bill No. 361), that the 1999 legislature appropriate a total of $67,050 lest Senate Bill No. 361 be void.

Section 3. Appropriation for Chapter 563, Laws of 1999. There is appropriated to the department of administration $600,000 for fiscal year 2000 and $600,000 for fiscal year 2001 from coal producer's license tax proceeds allocated to the department in section 16(4), Chapter 563, Laws of 1999. The appropriation is for tax increment financing industrial districts.

Section 4. Effective date. [This act] is effective on passage and approval.

Approved June 22, 1999

CHAPTER NO. 3

[SB 1]

AN ACT RATIFYING A RESERVED WATER RIGHTS COMPACT BETWEEN THE CROW TRIBE AND THE STATE OF MONTANA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Crow Trihe-Montana compact ratified. The compact entered into hy the State of Montana and the Crow Tribe and filed with the Secretary of State of the State of Montana under the provisions of 85-2-702 on June__, 1999, is ratified. The compact is as follows:

WATER RIGHTS COMPACT ENTERED INTO BY THE STATE OF MONTANA, THE CROW TRIBE, AND THE UNITED STATES OF AMERICA

This Compact is entered into by and among the State of Montana, the Crow Tribe, and the United States of America for the purpose of settling any and all existing water rights claims of or on hehalf of the Crow Tribe of Indians in the State of Montana.

ARTICLE I - RECITALS

WHEREAS, in 1975, the United States, on hehalf of the Crow Trihe, brought suit in the United States District Court for the District of Montana to obtain a final determination of the Tribe's water rights, see, U.S. v. Big Horn Low Line Canal Company, et al., No. CIV-75-34-BLG (filed April 17, 1975); and

WHEREAS, Congress consented to state court jurisdiction over the quantification of claims to water rights held by the United States of America in trust for the Tribe; see, "the McCarran Amendment", 43 U.S.C. §666(a)(1)(1952); Colorado River Water Conservation Dist. v. United States, 424 U.S. 800 (1976); Arizona v. San Carlos Apache Tribe, 463 U.S. 545 (1983); and

WHEREAS, the State of Montana initiated a general stream adjudication pursuant to the provisions of Chapter 697, Laws of Montana 1979, which includes Crow tribal water rights; and

WHEREAS, the United States has filed claims on behalf of the Crow Tribe in the general stream adjudication initiated by the State of Montana; and

WHEREAS, the lands and waters constituting the Crow Indian Reservation and Tribal Interests in the Ceded Strip were part of the area recognized as the territory of the Crow Indians under the Treaty of Fort Laramie of Septemher 17, 1851 and also were part of the area set apart for the Crow Tribe under the Treaty of Fort Laramie of May 7, 1868; and

WHEREAS, for the purposes of this Compact, the priority date for the Trihal Water recognized is May 7, 1868, which is the senior water right on the water sources covered by this Compact;

WHEREAS, the Montana Reserved Water Rights Compact Commission, under 85-2-702(1), MCA, is authorized to negotiate settlement of water rights claims filed by Indian tribes or on their behalf by the United States claiming reserved waters within the State of Montana; and

WHEREAS, the federal district court litigation was stayed in 1983 pending the outcome of Montana State court water adjudication proceedings, see, Northern Cheyenne Tribe v. Adsit, 721 F.2d 1187, 1189 (9th Cir. 1983); and

WHEREAS, the adjudication of Crow tribal water rights in the state court proceedings has been suspended while negotiations are proceeding to conclude a compact resolving all water rights claims of the Crow Tribe within the State of Montana; and

WHEREAS, the Crow Tribal Council, or its duly designated representatives, have authority to negotiate this Compact pursuant to Resolution No. 99-33; and

WHEREAS, the United States Attorney General, or a duly designated official of the United States Department of Justice, has authority to execute this Compact

on behalf of the United States pursuant to the authority to settle litigation contained in 28 U.S.C. Sections 516-17 (1993); and

WHEREAS, the Secretary of the Interior, or a duly designated official of the United States Department of the Interior, has authority to execute this Compact on behalf of the United States Department of the Interior pursuant to 43 U.S.C. Section 1457 (1986, Supp. 1992), inter alia; and

WHEREAS, the Crow Tribe, the State of Montana, and the United States agree that the Tribal Water Right described in this Compact shall be in satisfaction of all the Tribe's water rights claims within the State of Montana; and

WHEREAS, it is in the best interest of all Parties that the water rights claims of the Crow Tribe be settled through agreement between and among the Tribe, the State of Montana, and the United States; and

WHEREAS, in settling the water rights claims of the Crow Tribe the Parties do not intend to alter or amend or to adopt or preclude any interpretation of the Yellowstone River Compact (Act of October 10, 1951, ch. 629, 65 Stat.663 (1951));

NOW THEREFORE, the Parties agree to enter into this Compact for the purpose of settling the water rights claims of the Crow Tribe within the State of Montana.

ARTICLE II - DEFINITIONS

The following definitions shall apply for purposes of this Compact:

1. "Acre-foot" or "AF" means the amount of water necessary to cover one acre to a depth of one foot and is equivalent to 43,560 cubic feet.

2. "Acre Feet Per Year" or "AFY" means the quantity of water to which the Tribe has a right each year measured in acre feet over a period of a year.

3. "Adverse Affect" or "Adversely Affect" means interference with or to interfere with the reasonable exercise of a water right.

4. "Bighorn River Basin" means Water Court Basin 43P, the mainstem of the Bighorn River and its tributaries (exclusive of the Little Bighorn River and its tributaries) within Montana to its confluence with the Yellowstone River, as depicted on the map attached as Appendix 2.

5. "Bighorn Lake" means the body of water impounded on the Bighorn River by Yellowtail Dam, Yellowtail Unit, Lower Bighorn Division, Pick-Sloan Missouri Program, Montana.

6. "Board" means the Crow - Montana Compact Board established by Section F, of Article IV of this Compact.

7. "Ceded Strip" means the area covered by Article III of the Act of April 27, 1904 (33 Stat.352), as depicted on the map attached as Appendix 5.

8. "Change in Use" as applied to the Tribal Water Right, means a change in the point of diversion, the place of use, the purpose of use, or the place or the means of storage.

9. "Clarks Fork Yellowstone River Basin" means Water Court Basin 43D, the mainstem of the Clarks Fork Yellowstone River and its tributaries from the Montana-Wyoming border to its confluence with the Yellowstone River, as depicted on the map attached as Appendix 2.

10. "Crow Irrigation Project" means the irrigation project authorized by the Act of March 3, 1891 (26 Stat. 989, 1040) managed by the United States, Department of the Interior, Bureau of Indian Affairs, as of the date this Compact has been ratified by the Montana legislature, consisting of the following project units: Agency, Big Horn, Forty Mile, Lodge Grass #1, Lodge Grass #2, Pryor, Reno, Soap Creek, and Upper Little Horn; and including land held in trust by the United States for the Tribe or a Tribal member within the Bozeman Trail and Two Leggins districts which are managed by private irrigation associations as of the date this Compact has been ratified by the Montana legislature.

11. "DNRC" means the Montana Department of Natural Resources and Conservation, or any successor agency.

12. "Effective Date" means the date on which the Compact is ratified by the Crow Tribal Council, by the Montana legislature, and by the Congress of the United States, whichever date is latest.

13. "Groundwater" means any water that is beneath the ground surface.

14. "Little Bighorn River Basin" means Water Court Basin 43O, the mainstem of the Little Bighorn River and its tributaries from the Montana-Wyoming border to its confluence with the Bighorn River, as depicted on the map attached as Appendix 2.

15. "Natural Flow" means water that would exist in the Bighorn River and its tributaries in the absence of human intervention.

16. "Parties" means the Tribe, the State, and the United States.

17. "Person" means an individual or any other entity, public or private, including the State, the Tribe, and the United States and all officers, agents, and departments of each of the above.

18. "Pryor Creek Basin" means Water Court Basin 43E, the mainstem of Pryor Creek and its tributaries from its headwaters to its confluence with the Yellowstone River, as depicted on the map attached as Appendix 2.

19. "Recognized Under State Law" when referring to a water right, means a water right arising under Montana law or a water right held by a nonmember of the Tribe on land not held in trust by the United States for the Tribe or a Tribal member.

20. "Release" means to discharge water from storage, or the discharge of water from storage.

21. "Reservation" means the Crow Indian Reservation consisting of the area as presently set apart for the Crow Tribe pursuant to the following Treaty and laws: Article 2 of the Fort Laramie Treaty of May 7, 1868 (15 Stat. 649); the Act of April 11, 1882 (22 Stat. 42); the Act of March 3, 1891 (26 Stat. 989); the Act of April 27, 1904 (33 Stat.352); the Act of August 31, 1937 (50 Stat. 884); and, the Act of November 2, 1994 (108 Stat. 4636), as depicted on the map attached as Appendix 4.

22. "Rosebud Creek Basin" means Water Court Basin 42A, the mainstem of Rosebud Creek and its tributaries from its headwaters to its confluence with the Yellowstone River, as depicted on the map attached as Appendix 2.

23. "Secretary" means the Secretary of the United States Department of the Interior, or his or her duly authorized representative.

24. "Shoshone River Basin" means Water Court Basin 43N, the mainstem of the Shoshone River and its trihutaries within Montana, as depicted on the map attached as Appendix 2.

25. "State" means the State of Montana and all officers, agents, departments, and political subdivisions thereof.

26. "Tongue River Basin" means Water Court Basin 42B, the mainstem of the Tongue River and its tributaries from the Montana-Wyoming horder to ahove and including Hanging Woman Creek, as depicted on the map attached as Appendix 2.

27. "Transfer" as applied to the Trihal Water Right, means to authorize a person to use all or any part of the Tribal Water Right through a service contract, lease, or other similar agreement of limited duration.

28. "Trihal Water Resources Department" or "TWRD" means the Crow Tribal Water Resources Department, or any successor agency.

29. "Tribal Interests in the Ceded Strip" means all present and acquired interests in real property, including mineral interests, held in trust by the United States for the Tribe or Tribal members within the Ceded Strip, consisting of: Crow Indian allotments held in trust by the United States for the Tribe or Tribal members; interests restored to the Tribe pursuant to the Act of May 19, 1958 (72 Stat. 121), as modified by the Act of August 14, 1958 (72 Stat. 575); and other interests held in trust hy the United States for the Trihe or Tribal memhers.

30. "Trihal Water Right" means the right of the Crow Tribe, including any Tribal member, to divert, use, or store water as described in Article III of this Compact.

31. "Tribe" means the Crow Tribe and all officers, agents, and departments thereof.

32. "United States" means the federal government and all officers, agencies, and departments thereof.

33. "Yellowstone River Basin between Bighorn River and Tongue River" means Water Court Basin 42KJ, the mainstem of the Yellowstone River and its tributaries between Bighorn River and Tongue River, as depicted on the map attached as Appendix 2.

34. "Yellowstone River Basin between Clarks Fork Yellowstone River and Bighorn River" means Water Court Basin 43Q, the mainstem of the Yellowstone River and its tributaries between Clarks Fork Yellowstone River and Bighorn River, as depicted on the map attached as Appendix 2.

ARTICLE III - TRIBAL WATER RIGHT

A. Basin 43P: Bighorn River.

1. Quantification - Source - Volume.

a. Natural Flow. The Tribe has a quantified water right to the Natural Flow of the Bighorn River for current uses developed as of the dato this Compact has heen ratified by the Montana legislature and new development within the Reservation of 500,000 AFY. The use of this right is suhject to Sections A.6. and A.8.a., of Article III, and the terms and conditions of the streamflow and lake level management plan agreed to in accordance with Section A.7., of Article III.

(1). The Tribe has a right to divert or use or to authorize the diversion or use of water from the Natural Flow of the Bighorn River within the Reservation, subject to the terms and conditions in Section C., of Article IV.

(2). The Tribe may change the source of water from the Natural Flow of the Bighorn River to surface flow or storage of any tributary within the Bighorn River Basin within the Reservation or to Groundwater within the Bighorn River Basin within the Reservation, subject to the terms and conditions in Section C.2.a., of Article IV.

(3). The use of the Tribal Water Right on units of the Crow Irrigation Project that divert water from the Bighorn River as part of that project is a use of the Natural Flow Trihal Water Right set forth in Section A.1.a., of Article III, in the Bighorn River Basin, and the use of this water shall be subject to federal law.

b. Storage in Bighorn Lake.

(1). Suhject to the approval of, and any terms and conditions specified by, Congress and to the terms and conditions of the streamflow and lake level management plan agreed to in accordance with Section A.7., of Article III, the Tribe shall be entitled to an allocation of 300,000 AFY of water stored in Bighorn Lake. The Tribe and the State agree to seek as a part of that allocation the following:

(a). not more than 150,000 AFY of the allocation provided in Section A.1.b.(1)., of Article III may be used or diverted as authorized by the Tribe, subject to the terms and conditions in Section C., of Article IV; provided that, not more than 50,000 AFY may be used outside tbe Reservation subject to the terms and conditions in Section C.2.c., of Article IV. This storage allocation is in addition to the Natural Flow Tribal Water Right provided in Section A.1.a., of Article III.

(b). not less than 150,000 AFY of the allocation provided in Section A.1.b.(1) of Article III shall only be:

(i) managed so as to be available as a Release during low flow periods pursuant to streamflow and lake level management plan agreed to under Section A.7., of Article III; or

(ii) used for beneficial purposes including diversions for consumptive uses in years of excess Natural Flows and excess storage, if any, when unappropriated or unallocated water is available, and subject to the terms and conditions in Section C., of Article IV.

(2). All other water stored in Bighorn Lake, except for the 6,000 AFY currently allocated by contract to the Montana Power Company, or its successor-in-interest, and the 30,000 AFY allocated by Congress to the Northern Cheyenne Tribe, shall be used only for flood control, production of power, maintenance of instream flows, maintenance of lake levels and carryover storage, consistent with Section A.7., of Article III and federal law.

2. Priority Date.

a. Natural Flow. The priority date of the Natural Flow Tribal Water Right set forth in Section A.1.a., of Article III shall be May 7, 1868.

b. Storage. The priority date of the Tribal Water Right to waters stored in Bighorn Lake set forth in Section A.1.h.(1)., of Article III shall be the priority date of the water right held hy the Bureau of Reclamation as decreed or to be decreed by the Montana Water Court pursuant to 85-2-234, MCA.

HeinOnline -- 1999 vol. III 3259 1999

3. Period of Use. The period of use of this water right shall be from January 1 through December 31 of each year.

4. Points and Means of Diversion. Subject to the terms and conditions in Article IV, and except for the 50,000 AFY that may be used outside the Reservation as provided in Section A.1.b.(1).(a)., of Article III, the Tribe may divert or permit the diversion of this water right from any place and by any means within tbe Reservation for use within the Reservation, provided that, any diversion structure of the Tribal Water Right upstream of tbe Two Leggins diversion on the Bighorn River will be constructed to bypass streamflows established or modified pursuant to Section A.7., of Article III.

5. Purposes. Subject to tbe terms and conditions in Article IV, the Tribal Water Right may be used for any purpose within tbe Reservation allowed by Tribal and federal law.

6. Protection of Water Rights Recognized Under State Law.

a. Except as provided in Section G.2., of Article III, water rights Recognized Under State Law in the Bighorn River Basin with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV, are protected from:

(1). an assertion of senior priority in the exercise of current uses of the Tribal Water Right developed as of the date this Compact has been ratified by the Montana legislature.

(2). new development of the Tribal Water Right after the date this Compact bas been ratified hy the Montana legislature. New development of the Tribal Water Right shall be exercised as junior in priority to water rights Recognized Under State Law in the Bighorn River Basin with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV.

b. The protection of water rights Recognized Under State Law set forth in Sections A.6.a.(1). and (2)., of Article III extends to: valid existing water rights as decreed or to be decreed by the Montana Water Court pursuant to 85-2-234, MCA; permits issued by DNRC; state water reservations issued by the Montana Board of Natural Resources and Conservation or DNRC (except for Water Reservation No. 1781-r (g)); water rights exempt from filing in the state adjudication pursuant to 85-2-222, MCA; and, water rights excepted from the permit process pursuant to 85-2-306, MCA. With the exception of rights exempt from filing in the state adjudication pursuant to 85-2-222, MCA, and rights excepted from the permit process pursuant to 85-2-306, MCA, a list of existing water rights as currently claimed and permits and reservations issued is attached as Appendix 3. Appendix 3 sball be modified by decrees resolving claims on the affected basin. Prior to issuance of the final decree, water rights protected shall be as recognized under state law, and all remedies available under state law shall be applicable. Appendix 3 may be modified due to clerical error or omission or to make Appendix 3 consistent with modifications in accordance with 85-2-237, 85-2-314, or 85-2-316(10) through (13), MCA.

c. Administration and distribution between State and Tribal water uses within the Reservation shall be as provided in Section A.4., of Article IV.

d. New development, Change in Use, or Transfer of the Tribal Water Right shall not Adversely Affect the exercise of water rights Recognized Under State

Law in the Bighorn River Basin with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV. Measures to prevent Adverse Affect may include Release of water from Bighorn Lake.

e. Existing uses of the Tribal Water Right shall not be Adversely Affected by new development, Change in Use, or Transfer of the Tribal Water Right, except that the Tribe may allow Adverse Affect on uses of the Tribal Water Right on Tribally owned land.

7. Streamflow and Lake Level Management Plan. Pursuant to this Compact, the Tribe, the Secretary, and the State shall develop a streamflow and lake level management plan for the Bighorn River, from the Yellowtail Afterbay Dam to a point immediately upstream of the Two Leggins diversion, and for Bighorn Lake. The streamflow and lake level management plan shall be agreed to within one (1) year after this Compact has been ratified by the Montana legislature. If the streamflow and lake level management plan is not agreed to by the Tribe, the Secretary, or the State the provisions of Section A.4.d., of Article VII apply. The streamflow and lake level management plan is not required to be implemented until the Effective Date of this Compact. The streamflow and lake level management plan may be modified at any time with the consent of the Tribe, the Secretary, and the State. The Montana legislature intends that the streamflow management plan should provide enforceable mechanisms that protect the long-term biological viability of the blue ribbon wild trout fishery on the Bighorn River from the Yellowtail Afterbay Dam to the Two Leggins diversion.

8. Basin Closure within the Bighorn River Basin.

a. In the Bighorn River Basin, DNRC shall not process or grant an application for an appropriation after this Compact has been ratified by the Montana legislature, provided that, in accordance with the terms and conditions in Section D.1., of Article IV, the DNRC may issue a certificate of water right or permit for use on fee land for:

(1). an appropriation of Groundwater by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less, not to exceed 10 acre-feet per year, unless the appropriation is a combined appropriation from the same source from two or more wells or developed springs exceeding the limitation.

(2). an appropriation of water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 acre-feet and the appropriation is less than 30 acre-feet per year and is from a source other than a perennial flowing stream.

(3). temporary emergency appropriations as provided in 85-2-113(3), MCA.

b. The basin closure applies only to appropriations not excepted from the permit process, as provided in Section D.1., of Article IV, issued under state law and is not a limit on new development of the Tribal Water Right as set forth in this Compact.

c. The basin closure applies only to new appropriations not excepted from the permit process, as provided in Section D.1., of Article IV, and is not a limit on change of use or transfers of water rights Recognized Under State Law, subject to the terms and conditions in Section D.2., of Article IV.

HeinOnline -- 1999 vol. III 3261 1999

B. Basin 43O: Little Bighorn River.

1. Quantification - Source - Volume.

a. The Tribe has a water right for all surface flow, Groundwater, and storage within the Little Bighorn River Basin, except as provided for in Sections B.6., and B.7.a., of Article III, and except for water apportioned to Wyoming, if any, as determined by a court of competent jurisdiction or Congress. Development of the Tribal Water Right shall be subject to the terms and conditions in Section C., of Article IV.

b. The use of the Tribal Water Right on units of the Crow Irrigation Project that divert water in the Little Bighorn River Basin as part of that project is a use of the Tribal Water Right set forth in Section B.1.a., of Article III, and the use of this water shall be subject to federal law. Water stored in Willow Creek Reservoir also is a use of the Tribal Water Right.

2. Priority Date. The priority date of the Tribal Water Right set forth in Section B.1., of Article III shall be May 7, 1868.

3. Period of Use. The period of use of this water right shall be from January 1 through December 31 of each year.

4. Points and Means of Diversion. Subject to the terms and conditions in Article IV, the Tribe may divert or permit the diversion of the Tribal Water Right from any place and by any means within the Little Bighorn River Basin within the Reservation for use within the Reservation or in connection with Tribal Interests in the Ceded Strip subject to the terms and conditions in Section F., of Article III and Section C.2.b., of Article IV.

5. Purposes. Subject to the terms and conditions in Article IV, the Tribal Water Right may be used within the Reservation for any purpose allowed by Tribal and federal law.

6. Protection of Water Rights Recognized Under State Law.

a. Except as provided in Section G.2., of Article III, water rights Recognized Under State Law in the Little Bighorn River Basin with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV, are protected from:

(1). an assertion of senior priority in the exercise of current uses of the Tribal Water Right developed as of the date this Compact has been ratified by the Montana legislature.

(2). new development of the Tribal Water Right after the date this Compact has been ratified by the Montana legislature. New development of the Tribal Water Right shall be exercised as junior in priority to water rights Recognized Under State Law in the Little Bighorn Basin with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV.

b. The protection of water rights Recognized Under State Law set forth in Sections B.6.a.(1). and (2)., of Article III extends to: valid existing water rights as decreed or to be decreed by the Montana Water Court pursuant to 85-2-234, MCA; permits issued by DNRC; state water reservations issued by the Montana Board of Natural Resources and Conservation or DNRC (except for Water Reservation No. 1781-r (g)); water rights exempt from filing in the state adjudication pursuant to 85-2-222, MCA; and, water rights excepted from the

permit process pursuant to 85-2-306, MCA. With the exception of rights exempt from filing in the state adjudication pursuant to 85-2-222, MCA, and rights excepted from the permit process pursuant to 85-2-306, MCA, a list of existing water rights as currently claimed and permits and reservations issued is attached as Appendix 3. Appendix 3 shall be modified by decrees resolving claims on the affected basin. Prior to issuance of the final decree, water rights protected shall be as recognized under state law, and all remedies available under state law shall be applicable. Appendix 3 may be modified due to clerical error or omission or to make Appendix 3 consistent with modifications in accordance with 85-2-237, 85-2-314, or 85-2-316(10) through (13), MCA.

c. Administration and distribution between State and Tribal water uses within the Reservation shall be as provided in Section A.4., of Article IV.

d. New development, Change in Use, or Transfer of the Tribal Water Right shall not Adversely Affect the exercise of water rights Recognized Under State Law in the Little Bighorn River Basin with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV.

e. Existing uses of the Tribal Water Right shall not be Adversely Affected by new development, Change in Use, or Transfer of the Tribal Water Right, except that the Tribe may allow Adverse Affect on uses of the Tribal Water Right on Tribally owned land.

7. Basin Closure within the Little Bighorn River Basin.

a. In the Little Bighorn River Basin, DNRC shall not process or grant an application for an appropriation after this Compact has been ratified by the Montana legislature, provided that, in accordance with the terms and conditions in Section D.1., of Article IV, DNRC may issue a certificate of water right or permit for use on fee land for:

(1). an appropriation of Groundwater by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less, not to exceed 10 acre-feet per year, unless the appropriation is a combined appropriation from the same source from two or more wells or developed springs exceeding the limitation.

(2). an appropriation of water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 acre-feet and the appropriation is less than 30 acre-feet per year and is from a source other than a perennial flowing stream.

(3). temporary emergency appropriations as provided in 85-2-113(3), MCA.

b. The basin closure applies only to new appropriations not excepted from the permit process, as provided in Section D.1., of Article IV, issued under state law and is not a limit on new development of the Tribal Water Right as set forth in this Compact.

c. The basin closure applies only to new appropriations not excepted from the permit process, as provided in Section D.1., of Article IV, and is not a limit on change of use or transfers of water rights Recognized Under State Law, subject to the terms and conditions in Section D.2., of Article IV.

HeinOnline -- 1999 vol. III 3263 1999

C. Basin 43E: Pryor Creek.

1. Quantification - Source - Volume.

a. The Tribe has a water right for all surface flow, Groundwater, and storage within the Pryor Creek Basin within the Reservation, except as provided for in Sections C.6. and C.7.a., of Article III. Development of the Tribal Water Right sball be subject to the terms and conditions in Section C., of Article IV.

b. The use of the Tribal Water Right on units of the Crow Irrigation Project that divert water in the Pryor Creek Basin as part of that project is a use of the Tribal Water Right set forth in Section C.1.a., of Article III, and the use of this water shall be subject to federal law.

2. Priority Date. The priority date of the Tribal Water Right set forth in Section C.1., of Article III shall be May 7, 1868.

3. Period of Use. The period of use of this water right shall be from January 1 through December 31 of each year.

4. Points and Means of Diversion. Subject to the terms and conditions in Article IV, the Tribe may divert or permit the diversion of the Tribal Water Right from any place and by any means within the Pryor Creek Basin within the Reservation for use within the Reservation.

5. Purposcs. Subject to the terms and conditions in Article IV, the Tribal Water Right may be used within the Reservation for any purpose allowed hy Tribal and federal law.

6. Proteetion of Water Rights Recognized Under State Law.

a. Except as provided in Section G.2., of Article III, water rights Recognized Under State Law in the Pryor Creek Basin with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV, are protected from:

(1). an assertion of senior priority in the exercise of current uses of the Tribal Water Right developed as of the date this Compact has been ratified by the Montana legislature.

(2). new development of the Tribal Water Right after the date this Compact has heen ratified by the Montana legislature. New development of the Tribal Water Right shall be exercised as junior in priority to water rights Recognized Under State Law in the Pryor Creek Basin with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV.

b. The protection of water rights Recognized Under State Law set forth in Sections C.6.a.(1). and (2)., of Article III extends to: valid existing water rights as decreed or to be decreed by tbe Montana Water Court pursuant to 85-2-234, MCA; permits issued by DNRC; state water reservations issued by the Montana Board of Natural Resources and Conservation or DNRC; water rights exempt from filing in the state adjudication pursuant to 85-2-222, MCA; and, water rights excepted from the permit process pursuant to 85-2-306, MCA. With the exception of rights exempt from filing in the state adjudication pursuant to 85-2-222, MCA, and rights excepted from the permit process pursuant to 85-2-306, MCA, a list of existing water rights as currently claimed and permits and reservations issued is attached as Appendix 3. Appendix 3 shall be modified by decrees resolving claims on the affected basin. Prior to issuance of the final decree, water rights

protected shall be as recognized under state law, and all remedies available under state law shall be applicable. Appendix 3 may be modified due to clerical error or omission or to make Appendix 3 consistent with modifications in accordance with 85-2-237, 85-2-314, or 85-2-316(10) through (13), MCA.

c. Administration and distribution between State and Tribal water uses within the Reservation shall be as provided in Section A.4., of Article IV.

d. New development, Change in Use, or Transfer of the Tribal Water Right shall not Adversely Affect the exercise of water rights Recognized Under State Law in the Pryor Creek Basin with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV.

e. Existing uses of the Tribal Water Right shall not he Adversely Affected by new development, Change in Use, or Transfer of the Tribal Water Right, except that the Tribe may allow Adverse Affect on uses of the Tribal Water Right on Tribally owned land.

7. Basin Closure within the Pryor Creek Basin.

a. In the Pryor Creek Basin, DNRC shall not process or grant an application for an appropriation after this Compact has been ratified by the Montana legislature, provided that, in accordance with the terms and conditions in Section D.1., of Article IV, DNRC may issue a certificate of water right or permit for use on fee land for:

(1). an appropriation of Groundwater by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less, not to exceed 10 acre-feet per year, unless the appropriation is a combined appropriation from the same source from two or more wells or developed springs exceeding the limitation.

(2). an appropriation of water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 acre-feet and the appropriation is less than 30 acre-feet per year and is from a source other than a perennial flowing stream.

(3). temporary emergency appropriations as provided in 85-2-113(3), MCA.

b. The basin closure applies only to new appropriations not excepted from the permit process, as provided in Section D.1., of Article IV, issued under state law and is not a limit on new development of the Tribal Water Right as set forth in this Compact.

c. The basin closure applies only to new appropriations not excepted from the permit process, as provided in Section D.1., of Article IV, and is not a limit on change of use or transfers of water rights Recognized Under State Law, subject to the terms and conditions in Section D.2., of Article IV.

D. Basin 42A: Rosebud Creek.

1. Quantification - Souree - Volume. The Tribe has a water right for all surface flow, Groundwater, and storage within the Rosebud Creek Basin within the Reservation, except as provided for in Sectiens D.6. and D.7., of Article III. Development of the Tribal Water Right shall be subject to the terms and conditions in Section C., of Article IV.

2. Priority Date. The priority date of the Tribal Water Right set forth in Section D.1., of Article III shall be May 7, 1868.

HeinOnline -- 1999 vol. III 3265 1999

3. Period of Use. The period of use of this water right shall be from January 1 through December 31 of each year.

4. Points and Means of Diversion. Subject to the terms and conditions in Article IV, the Tribe may divert or permit the diversion of the Tribal Water Right from any place and by any means within the Rosebud Creek Basin for use within the Reservation.

5. Purposes. Subject to the terms and conditions in Article IV, the Tribal Water Right may be used within the Reservation for any purpose allowed by Tribal and federal law.

6. Protection of Water Rights Recognized Under State Law.

a. Within the Reservation. Except as provided in Section G.2., of Article III, water rights Recognized Under State Law in the Rosebud Creek Basin within the Reservation with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV, are protected from:

(1). an assertion of senior priority in the exercise of current uses of the Tribal Water Right developed as of the date this Compact has been ratified by the Montana legislature.

(2). new development of the Tribal Water Right after the date this Compact has been ratified by the Montana legislature. New development of the Tribal Water Right shall be exercised as junior in priority to water rights Recognized Under State Law in the Rosebud Creek Basin with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV.

b. The protection of water rights Recognized Under State Law set forth in Sections D.6.a.(1). and (2)., of Article III extends to: valid existing water rights as decreed or to be decreed by the Montana Water Court pursuant to 85-2-234, MCA; permits issued by DNRC; state water reservations issued by the Montana Board of Natural Resources and Conservation or DNRC; water rights exempt from filing in the state adjudication pursuant to 85-2-222, MCA; and, water rights excepted from the permit process pursuant to 85-2-306, MCA. With the exception of rights exempt from filing in the state adjudication pursuant to 85-2-222, MCA, and rights excepted from the permit process pursuant to 85-2-306, MCA, a list of existing water rights as currently claimed and permits and reservations issued within the Reservation is attached as Appendix 3. Appendix 3 shall be modified by decrees resolving claims on the affected basin. Prior to issuance of the final decree, water rights protected shall be as recognized under state law, and all remedies available under state law shall be applicable. Appendix 3 may be modified due to clerical error or omission or to make Appendix 3 consistent with modifications in accordance with 85-2-237, 85-2-314, or 85-2-316(10) through (13), MCA.

c. Administration and distribution between State and Tribal water uses within the Reservation shall be as provided in Section A.4., of Article IV.

d. Outside the Reservation. Except as provided in Section G.2., of Article III, water rights Recognized Under State Law in the Rosebud Creek Basin outside the Reservation are protected from an assertion of senior priority in the exercise of the Crow Tribal Water Right to the same extent provided in the Northern Cheyenne - Montana Compact, Sections A.3.c.i. and ii., of Article II, 85-20-301,

MCA. Protection from an assertion of senior priority in the exercise of the Crow Tribal Water Right for the Northern Cheyenne Tribal Water Right shall only be as provided in Section D.7., of Article III.

e. New development, Change in Use, or Transfer of the Tribal Water Right shall not Adversely Affect the exercise of water rights Recognized Under State Law in the Rosebud Creek Basin within the Reservation with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV, or outside the Reservation to the same extent provided in the Northern Cheyenne - Montana Compact, Section A.3.c.i. and ii., of Article II, 85-20-301, MCA.

f. Existing uses of the Tribal Water Right shall not be Adversely Affected by development, Change in Use, or Transfer of the Tribal Water Right, except that the Tribe may allow Adverse Affect of uses of the Tribal Water Right on Tribally owned land.

7. Protection of Northern Cheyenne Tribal Water Rights within the Northern Cheyenne Reservation.

a. Except as provided in Section G.2., of Article III, the Northern Cheyenne Tribal Water Right, recognized in the Northern Cheyenne - Montana Compact, Section A.3.a., of Article II, 85-20-301, MCA, is protected from an assertion of senior priority in the exercise of the Crow Tribal Water Right.

b. New development, Change in Use, or Transfer of the Crow Tribal Water Right shall not Adversely Affect the exercise of the Northern Cheyenne Tribal Water Right, recognized in the Northern Cheyenne - Montana Compact, Section A.3.a., of Article II, 85-20-301, MCA.

8. Basin Closure within the Rosebud Creek Basin within the Reservation.

a. In the Rosebud Creek Basin upstream from the point that Rosebud Creek or any tributary of Rosebud Creek leaves the Reservation, DNRC shall not process or grant an application for an appropriation after this Compact has been ratified by the Montana legislature, provided that, in accordance with the terms and conditions in Section D.1., of Article IV, DNRC may issue a certificate of water right or permit for use on fee land for:

(1). an appropriation of Groundwater by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less, not to exceed 10 acre-feet per year, unless the appropriation is a combined appropriation from the same source from two or more wells or developed springs exceeding the limitation.

(2). an appropriation of water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 acre-feet and the appropriation is less than 30 acre-feet per year and is from a source other than a perennial flowing stream.

(3). temporary emergency appropriations as provided in 85-2-113(3), MCA.

b. The basin closure applies only to new appropriations not excepted from the permit process, as provided in Section D.1., of Article IV, issued under state law and is not a limit on new development of the Tribal Water Right as set forth in this Compact.

HeinOnline -- 1999 vol. III 3267 1999

c. The basin closure applies only to new appropriations not excepted from the permit process, as provided in Section D.1., of Article IV, and is not a limit on change of use or transfers of water rights Recognized Under State Law, subject to the terms and conditions in Section D.2., of Article IV.

E. Youngs Creek drainage, Squirrel Creek drainage, Tanner Creek drainage, Dry Creek drainage, and Spring Creek drainage within Tongue River Basin; Sarpy Creek drainage within Yellowstone River Basin between Bighorn River and Tongue River; Cottonwood Creek drainage, Five Mile Creek drainage, and Bluewater Creek drainage within Clarks Fork Yellowstone River Basin; Sage Creek drainage within Shoshone River Basin; and, Fly Creek drainage, Blue Creek drainage, Dry Creek drainage, and Bitter Creek drainage within Yellowstone River Basin between Clarks Fork Yellowstone River and Bighorn River.

1. Quantification - Souree - Volume. Tlie Tribe has a water right for all surface flow, Groundwater, and storage within the Reservation within Youngs Creek drainage, Squirrel Creek drainage, Tanner Creek drainage, Dry Creek drainage, and Spring Creek drainage within Tongne River Basin; Sarpy Creek drainage within Yellowstone River Basin between Bighorn River and Tongue River; Cottonwood Creek drainage, Five Mile Creek drainage, and Bluewater Creek drainage within Clarks Fork Yellowstone River Basin; Sage Creek drainage within Shoshone River Basin; and, Fly Creek drainage, Blue Creek drainage, Dry Creek drainage, and Bitter Creek drainage within Yellowstone River Basin between Clarks Fork Yellowstone River and Bighorn River, except as provided in Sections E.6. and E.7.a., of Article III. Development of the Tribal Water Right shall be subject to the terms and conditions in Section C., Article IV.

2. Priority Date. The priority date of the Tribal Water Right set forth in Section E.1., of Article III shall be May 7, 1868.

3. Period of Use. The period of use of this water right shall be from January 1 through December 31 of each year.

4. Points and Means of Diversion. Subject to the terms and conditions in Article IV, tlie Tribe may divert or permit the diversion of the Tribal Water Right from any place and by any means within the drainages listed in Section E.1., of Article III within the Reservation for use within the Reservation.

5. Purposes. Subject to the terms and conditions in Article IV, the Tribal Water Right may be used for any purpose within tlie Reservation allowed by Tribal and federal law.

6. Protection of Water Rights Recognized Under State Law.

a. Except as provided in Section G.2., of Article III, water riglits Recognized Under State Law in the drainages listed in Section E.1., of Article III, with a priority date before this Compact has been ratified hy the Montana legislature or excepted rights that are provided in Section D.1., of Article IV, are protected from:

(1). an assertion of senior priority in the exercise of current uses of the Tribal Water Right developed as of tlie date this Compact has been ratified by the Montana legislature.

(2). new development of the Tribal Water Right after the date this Compact has been ratified by the Montana legislature. New development of the Tribal

Water Right shall be exercised as junior in priority to water rights Recognized Under State Law in the drainages listed in Section E.1., of Article III with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV.

b. The protection of water rights Recognized Under State Law set forth in Sections E.6.a.(1). and (2)., of Article III extends only to: valid existing water rights as decreed or to be decreed by the Montana Water Court pursuant to 85-2-234, MCA; permits issued by DNRC; state water reservations issued by the Montana Board of Natural Resources and Conservation or DNRC; water rights exempt from filing in the state adjudication pursuant to 85-2-222, MCA; and, water rights excepted from the permit process pursuant to 85-2-306, MCA. With the exception of rights exempt from filing in the state adjudication pursuant to 85-2-222, MCA, and rights excepted from the permit process pursuant to 85-2-306, MCA, a list of existing water rights as currently claimed and permits and reservations issued is attached as Appendix 3. Appendix 3 shall be modified by decrees resolving claims on the affected basins. Prior to issuance of the final decree, water rights protected shall be as recognized under state law, and all remedies available under state law shall be applicable. Appendix 3 may be modified due to clerical error or omission or to make Appendix 3 consistent with modifications in accordance with 85-2-237, 85-2-314, or 85-2-316(10) through (13), MCA.

c. Administration and distribution between State and Tribal water uses within the Reservation shall be as provided in Section A.4., of Article IV.

d. New development, Change in Use, or Transfer of the Tribal Water Right shall not Adversely Affect the exercise of water rights Recognized Under State Law in each drainage listed in Section E.1., of Article III, with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV.

e. Existing uses of the Tribal Water Right shall not be Adversely Affected by development, Change in Use, or Transfer of the Tribal Water Right, except that the Tribe may allow Adverse Affect of uses of the Tribal Water Right on Tribally owned land.

7. Basin Closure within the Reservation.

a. In the drainages listed in Section E.1., of Article III, upstream from the point that each stream or its tributaries leaves the Reservation, DNRC shall not process or grant an application for an appropriation after this Compact has been ratified by the Montana legislature, provided that, in accordance with the terms and conditions in Section D.1., of Article IV, DNRC may issue a certificate of water right or permit for use on fee land for:

(1). an appropriation of Groundwater by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less, not to exceed 10 acre-feet per year, unless the appropriation is a combined appropriation from the same source from two or more wells or developed springs exceeding the limitation.

(2). an appropriation of water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 acre-feet and the appropriation is less than 30 acre-feet per year and is from a source other than a perennial flowing stream.

(3). temporary emergency appropriations as provided in 85-2-113(3), MCA.

b. The basin closure applies only to new appropriations not excepted from the permit process, as provided in Section D.1., of Article IV, issued under state law and is not a limit on new development of the Tribal Water Right as set forth in this Compact.

c. The basin closure applies only to new appropriations not excepted from the permit process, as provided in Section D.1., of Article IV, and is not a limit on change of use or transfers of water rights Recognized Under State Law, subject to the terms and conditions in Section D.2., of Article IV.

F. Tribal Water Right in the Ceded Strip.

1. Quantification - Source - Volume.

a. Tribal Interests in the Ceded Strip. As part of the Tribal Water Right, the Tribe has a right to divert a total of 47,000 AFY from surface flow, Groundwater, or storage within the Ceded Strip from portions of the Sarpy Creek drainage and Yellowstone River within Yellowstone River Basin between Bighorn River and Tongue River; Fly Creek drainage and Yellowstone River within Yellowstone River Basin between Clarks Fork Yellowstone River and Bighorn River; Pryor Creek Basin; and Bighorn River Basin for use in connection with Tribal Interests in the Ceded Strip; and, water imported to the Ceded Strip from the Little Bighorn River Basin for use in connection with Tribal Interests in the Ceded Strip. Diversion and use shall be subject to the terms and conditions in Sections C.1.c. and C.1.d., of Article IV.

(1). This 47,000 AFY is in addition to the Tribal Water Right set forth in Sections A.1., B.1., C.1., and E.1., of Article III, except that any diversion of this right from surface flow, Groundwater, or storage within the Bighorn River Basin shall be deducted from the Tribal Water Right as set forth in Section A.1., of Article III.

(2). No more than 47,000 AFY may be diverted and used in connection with Tribal Interests in the Ceded Strip from all water sources, provided that:

(a). no more than 2,500 AFY from all water sources including the Yellowstone River may be diverted upstream from the confluence of the Bighorn River and the Yellowstone River.

(b). no more than 7,000 AF may be diverted from all sources including the Yellowstone River in any month, provided that, aggregate uses from all sources not exceed 47,000 AFY.

b. Use limited to within the Ceded Strip. The Tribal Water Right of 47,000 AFY for use in connection with Tribal Interests in the Ceded Strip shall be used only within the Ceded Strip and shall not be considered a Change in Use or Transfer outside the Reservation for purposes of Section C.2.c., of Article IV.

c. Any portion of the 50,000 AFY set forth in Section A.1.b.(1).(a)., of Article III which may be used outside the Reservation may also be used in connection with Tribal Interests in the Ceded Strip in addition to the Tribal Water Right of 47,000 AFY set forth in Section F.1.a., of Article III.

2. Priority Date. The priority date of the Tribal Water Right set forth in Section F.1.a., of Article III shall be May 7, 1868.

3. Period of Use. The period of use of this water right shall be from January 1 through December 31 of each year.

4. Points and Means of Diversion. Subject to the terms and conditions in Article IV, the Tribe may divert or permit the diversion of the Tribal Water Right from any place and by any means for use in connection with Tribal Interests in the Ceded Strip within the Ceded Strip.

5. Purposes. Subject to the terms and conditions in Article IV, the Tribal Water Right for use in connection with Tribal Interests in the Ceded Strip may be used for beneficial purposes allowed by Tribal, federal and state law.

6. Protection of Water Rights Recognized Under State Law.

a. Except as provided in Section G.2., of Article III, water rights Recognized Under State Law affected by the exercise of the Tribal Water Right in the Ceded Strip with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV, are protected from:

(1). an assertion of senior priority in the exercise of current uses of the Tribal Water Right developed as of the date this Compact has been ratified by the Montana legislature.

(2). new development of the Tribal Water Right after the date this Compact has been ratified by the Montana legislature. New development of the Tribal Water Right shall be exercised as junior in priority to water rights Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV.

b. The protection of water rights Recognized Under State Law set forth in Sections F.6.a.(1). and (2)., of Article III extends to: valid existing water rights as decreed or to he decreed by the Montana Water Court pursuant to 85-2-234, MCA; permits issued by DNRC; state water reservations issued by the Montana Board of Natural Resources and Conservation or DNRC (except for Water Reservation Nos. 1781-r and 10006-r); water rights exempt from filing in the state adjudication pursuant to 85-2-222, MCA; and, water rights excepted from the permit process pursuant to 85-2-306, MCA. With the exception of rights exempt from filing in the state adjudication pursuant to 85-2-222, MCA, and rights excepted from the permit process pursuant to 85-2-306, MCA, a list of existing water rights as currently claimed and permits and reservations issued is attached as Appendix 3. Appendix 3 shall be modified by decrees resolving claims on the affected basins. Prior to issuance of the final decree, water rights protected shall be as recognized under state law, and all remedies available under state law shall be applicable. Appendix 3 may be modified due to clerical error or omission or to make Appendix 3 consistent with modifications in accordance with 85-2-237, 85-2-314, or 85-2-316(10) through (13), MCA.

c. New development, Change in Use, or Transfer of the Tribal Water Right shall not Adversely Affect the exercise of water rights Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV.

d. Existing uses of the Tribal Water Right shall not be Adversely Affected hy new development, Change in Use, or Transfer of the Tribal Water Right, except that the Tribe may allow Adverse Affect on uses of the Tribal Water Right on Tribally owned land.

HeinOnline -- 1999 vol. III 3271 1999

G. Additional Rights to Water. As part of the water rights specifically set forth in Sections A., B., C., D., E., and F., of Article III, the Tribe has a right to water from the following sources:

1. Appurtenant Water Rights. For land within the Reservation acquired after the Effective Date of this Compact, the Tribe has the right to the use of any water right acquired as an appurtenance to the land. At such time that the acquired land is transferred to trust status, the water right appurtenant to the land acquired shall become part of and not in addition to the Tribal Water Right quantified in this Compact with a May 7, 1868 priority date, provided that, the acquired water right shall retain any protections set forth in this Compact. The Tribe shall notify DNRC of any acquisition of water in the Tribe's annual report and shall identify the water right acquired, as set forth in Section E.1., of Article IV. Any water right acquired shall be added as decreed by the Montana Water Court to the list of current uses of the Tribal Water Right as provided in Section E.2., of Article IV.

2. Exempt Rights.

a. Religious or cultural uses of the Tribal Water Right by Crow Tribal members within the Reservation in de minimis amounts shall be allowed without prior review by DNRC.

b. In accordance with the terms and conditions in Section C.1., of Article IV, TWRD may authorize development of the Tribal Water Right for:

(1). an appropriation of Groundwater by means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less, not to exceed 10 acre-feet per year, unless the appropriation is a combined appropriation from the same source from two or more wells or developed springs exceeding the limitation.

(2). an appropriation of water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 acre-feet and the appropriation is less than 30 acre-feet per year and is from a source other than a perennial flowing stream.

(3). temporary emergency appropriations necessary to protect lives or property.

c. Uses of the Tribal Water Right provided for in Sections G.2.a. and G.2.h., of Article III, are not subject to protection of water rights Recognized Under State Law provided in Sections A.6., B.6., C.6., D.6., D.7., E.6., and F.6., of Article III, or streamflows established or modified pursuant to Section A.7., of Article III.

H. Proposed Decree. For purposes of entry in the Montana Water Court, the proposed decree of the Tribal Water Right set forth in Article III is attached as Appendix 1. If there are differences between Appendix 1 and the Final Decree, the Final Decree shall control.

ARTICLE IV - IMPLEMENTATION OF TRIBAL WATER RIGHT

A. General Provisions.

1. Trust Status of Tribal Water Right. The Tribal Water Right shall be held in trust by the United States.

2. Tribal Water Right: Administration.

a. Subject to the limitations imposed by this Compact and federal law, the use of the Tribal Water Right shall be administered by the Tribe through TWRD within the Reservation, in the Ceded Strip, and outside the Reservation. Disputes, not within the jurisdiction of the Compact Board set forth in F.4., of Article IV, concerning use of the Tribal Water Right in the Ceded Strip and outside the Reservation which raise issues concerning the application of state or federal law shall be resolved in a court of competent jurisdiction. Those disputes concerning use of the Tribal Water Right in tbe Ceded Strip and outside the Reservation which do not raise issues concerning the application of state or federal law shall be within the exclusive jurisdiction of the Tribe. Subject to the limitations imposed by this Compact, the Tribe shall have the final and exclusive jurisdiction to resolve all disputes concerning the Tribal Water Right between holders of water rights under the Tribal Water Right. TWRD shall develop policies and procedures for monitoring water use, diversions, and maintaining records of water use and development consistent with this Compact. The current water use and diversions and new development shall be identified by location and quantity.

b. Administration and enforcement of the Tribal Water Right shall be pursuant to a Tribal water code, which shall be developed and adopted by the Tribe within two (2) years following the Effective Date of this Compact pursuant to any requirements set forth in the Constitution of the Crow Tribe. Pending the adoption of the Tribal water code, the administration and enforcement of the Tribal Water Right shall be by the Secretary of tbe Interior.

c. The Tribe shall not administer any water right Recognized Under State Law.

d. Administration, operation and maintenance, and delivery of the Tribal Water Right on tlie Crow Irrigation Project shall be conducted by the United States Department of the Interior, Bureau of Indian Affairs, in accordance with applicable federal laws. Portions of the Project within the Bozeman Trail and Two Leggins Districts shall be administered in accordance with applicable law.

3. Water Rights Recognized Under State Law: Administration.

a. The State shall administer and enforce all water rights Recognized Under State Law to the use of surface flows, Groundwater, and storage within or outside the Reservation. The State shall bave the final and exclusive jurisdiction to resolve all disputes between holders of water rights Recognized Under State Law.

b. Tbe State shall not administer or enforce any part of the Tribal Water Right.

c. For water rights Recognized Under State Law, if any, utilizing water delivered by the Crow Irrigation Project, administration and distribution of such water shall be conducted by the United States Department of the Interior, Bureau of Indian Affairs, in accordance with applicable federal laws.

4. Distribution of Water Between the Parties. When water availability is insufficient to satisfy all water rights under the Tribal Water Right and all water rights Recognized Under State Law within tbe Reservation, administration and distribution shall be as follows:

a. distribution between the water administered by the Tribe and the United States for current uses of the Tribal Water Right within tbe Reservation developed as of the date this Compact has been ratified by the Montana

legislature and the water for water rights Recognized Under State Law within the Reservation with a priority date before this Compact has been ratified hy the Montana legislature shall be on an equitable basis in proportion to the amount of water required for Tribal water use as listed pursuant to Section E.2., of Article IV, and the amount of water required for water rights Recognized Under State Law, provided that, the Parties recognize that distribution may not be on a precise proportional basis due to the need to take into account the physical constraints of water delivery. Administration and distribution by the Tribe, the United States, and tbe State withim their proportional shares shall be pursuant to Tribal, federal, and state law respectively, and shall be coordinated as necessary. This distribution shall not modify the right of a holder of a water right Recognized Under State Law to seek enforcement of such water right against other water rights Recognized Under State Law in priority without the agreement of the water right holder.

b. future development of the Tribal Water Right after this Compact has been ratified by the Montana legislature shall be enforced as junior in priority to the water rights subject to a proportional distribution as set forth in Section A.4.a., of Article IV.

c. nothing in Section A.4.a., of Article IV shall prevent water users from agreeing to an alternative water distribution plan on the basis of individual water rights pursuant to applicable state, Tribal, or federal law.

5. Subsequent Federal or State Law. Administration under Sections A.2.d., A.3.a. and A.3.c., of Article IV sball be as set forth in this Compact except as may otherwise be determined by a court of competent jurisdiction or established by Congress.

B. Use of the Tribal Water Right.

1. Persons Entitled to Use the Tribal Water Rigbt. The Tribal Water Right may be used by the Tribe, Tribal members, or Persons authorized by the Tribe, provided tbat, the Tribe may not limit or deprive Indians residing on the Reservation or in the Ceded Strip of any right, pursuant to 25 U.S.C. § 381, to a just and equal portion of the Tribal Water Right set forth in Article III.

2. Effect of Non-Use of the Tribal Water Right. State law doctrines relating to the use of water rights, including but not limited to relinquishment, forfeiture or abandonment, do not apply to the Tribal Water Right. Thus, non-use of all or any of the Tribal Water Right described in Article III shall not constitute a relinquishment, forfeiture or abandonment of such rights.

C. Tribal Water Right: New Development, Change in Use, or Transfer.

1. New Development of Surface Flow, Groundwater, or Storage of the Tribal Water Right.

a. New Development of Surface Flow, Groundwater, or Storage Within the Reservation. After the Effective Date of this Compact, the Tribe may develop or authorize new development of surface flow, Groundwater, or storage of the Tribal Water Right within the Reservation; provided that, such development shall not Adversely Affect a water right Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV.

b. Prerequisite Administrative Procedure within the Reservation. The following procedure for determining whether new development of surface flow, Groundwater, or storage of the Tribal Water Right within the Reservation will

have an Adverse Affect on water rights Recognized Under State Law shall he followed prior to seeking relief from the Compact Board:

(1). Application for new development of a surface flow, Groundwater, or storage use within the Reservation shall be made to TWRD.

(2). TWRD sball review tbe application and make a determination of whether the new development will have an Adverse Affect on water rights Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV. Upon request by TWRD, DNRC shall provide information on state water rights as recorded in the DNRC database to TWRD.

(3). If TWRD determines that the new development will have an Adverse Affect on a water right Recognized Under State Law with a priority date before this Compact bas been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV, TWRD shall deny the application. If TWRD determines that the new development will not have an Adverse Affect on a water right Recognized Under State Law with a priority date before this Compact has been ratified hy the Montana legislature or excepted rights that are provided in Section D.1., of Article IV, TWRD shall forward the application with its determination to DNRC.

(4). If, hased upon the evidence, DNRC agrees with TWRD's determination, DNRC shall notify TWRD. If, however, based upon the evidence, DNRC cannot agree with TWRD's determination, DNRC shall publisb notice of the application once in a newspaper of general circulation in the area of the source and shall serve notice by first-class mail on any holder of a water right Recognized Under State Law who, according to the records of the DNRC, has a water right with a priority date hefore this Compact has heen ratified by the Montana legislature or excepted rights tbat are provided in Section D.1., of Article IV, and may be affected by the proposed development. DNRC shall notify TWRD within ninety (90) days of DNRC's determination.

(5). DNRC and TWRD should attempt to resolve any disagreement on TWRD's determination of no Adverse Affect on a cooperative hasis. If DNRC or a holder of a water right Recognized Under State Law with a priority date before this Compact has been ratified by tbe Montana legislature or excepted rights that are provided in Section D.1., of Article IV, disagree with the determination of no Adverse Affect, DNRC or the water right holder may seek relief from the Compact Board.

(6). In any proceeding concerning the effect of new Groundwater development of the Tribal Water Right within the Reservation either before TWRD, DNRC, or before the Compact Board, the following sball apply:

(a). Wells Less than 100 Feet: For new Groundwater wells to be completed at a depth beneath the surface of less than 100 feet, the applicant shall hear the burden of showing no Adverse Affect to a water right Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV.

(b). 100 Feet or Deeper Wells: For new Groundwater wells to be completed at a depth heneath the surface of 100 feet or deeper, the owner of a water right Recognized Under State Law with a priority date hefore this Compact has heen ratified by the Montana legislature or excepted rights that are provided in Section

D.1., of Article IV, shall bear the burden of showing Adverse Affect to the water right.

(7). In any proceeding concerning the effect of new storage development of the Tribal Water Right within the Reservation either before TWRD, DNRC, or before the Compact Board, the following shall apply:

(a). Storage Over 50 AF: For new storage facilities with a planned constructed capacity of more tban 50 AF, the applicant shall bear the burden of showing no Adverse Affect to a water right Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV.

(b). Storage 50 AF or Less: For new storage facilities with a planned constructed capacity of 50 AF or less, the owner of the water right Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights tbat are provided in Section D.1., of Article IV, shall bear the burden of sbowing Adverse Affect to the water right.

c. New Development of Surface Flow, Groundwater, or Storage for Use in Connection with Tribal Interests in the Ceded Strip. After the Effective Date of this Compact, the Tribe may develop or authorize new development, from surface flow, Groundwater, or storage, of the Tribal Water Right as set forth in Section F., of Article III and subject to the terms and conditions in Section F.1., of Article III for use in connection with Tribal Interests in the Ceded Strip; provided that, such development shall not Adversely Affect a water right Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rigbts that are provided in Section D.1., of Article IV.

d. Prerequisite Administrative Procedure within the Ceded Strip. The following procedure for determining whether new development of surface flow, Groundwater, or storage of the Tribal Water Right for use in connection with Tribal Interests in the Ceded Strip will have an Adverse Affect on water rights Recognized Under State Law sball be followed prior to seeking relief from the Compact Board:

(1). Application for new development of surface flow, Groundwater, or storage of the Tribal Water Rigbt for use in connection with Tribal Interests in the Ceded Strip shall be made to TWRD.

(2). TWRD shall review the application and make a determination of whether the new development will have an Adverse Affect on water rights Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV or pursuant to 85-2-306, MCA. Upon request by TWRD, DNRC sball provide information on state water rights as recorded in the DNRC database to TWRD.

(3). If TWRD determines that the new development will have an Adverse Affect on a water right Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV or pursuant to 85-2-306, MCA, TWRD shall deny the application. If TWRD determines tbat the new development will not have an Adverse Affect on a water right Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV or pursuant to

85-2-306, MCA, TWRD shall forward the application with its determination to DNRC.

(4). If, based upon the evidence, DNRC agrees with TWRD's determination, DNRC shall notify TWRD. If, however, based upon the evidence, DNRC cannot agree with TWRD's determination, DNRC shall publish notice of the application once in a newspaper of general circulation in the area of the source and shall serve notice by first-class mail on any holder of a water rigbt Recognized Under State Law who, according to tbe records of tbe department, has a water right with a priority date before this Compact has been ratified by tbe Montana legislature or excepted rights that are provided in Section D.1., of Article IV or pursuant to 85-2-306, MCA, and may be affected by the proposed development. DNRC sball notify TWRD within ninety (90) days of DNRC's determination.

(5). DNRC and TWRD should attempt to resolve any disagreement on TWRD's determination of no Adverse Affect on a cooperative basis. If DNRC or a holder of a water right Recognized Under State Law with a priority date before this Compact bas been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV or pursuant to 85-2-306, MCA, disagree with the determination of no Adverse Affect, DNRC or tbe water right holder may seek relief from the Compact Board.

(6). In any proceeding concerning the effect of new Groundwater development of tbe Tribal Water Right for use in connection with Tribal Interests in the Ceded Strip either before TWRD, DNRC, or before the Compact Board, the following shall apply:

(a). Wells Less tban 100 Feet: For new Groundwater wells to be completed at a depth beneath the surface of less than 100 feet, the applicant shall bear the burden of showing no Adverse Affect to a water right Recognized Under State Law with a priority date before this Compact has been ratified by tbe Montana legislature or exempt rights that are provided in Section D.1., of Article IV or pursuant to 85-2-306, MCA.

(b). 100 Feet or Deeper Wells: For new Groundwater wells to be completed at a depth beneath tbe surface of 100 feet or deeper, the owner of a water right Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV or pursuant to 85-2-306, MCA, shall bear the burden of showing Adverse Affect to the water right.

(7). In any proceeding concerning the effect of new storage development of the Tribal Water Right for use in connection with Tribal Interests in the Ceded Strip eitber before TWRD, DNRC, or before the Compact Board, the following shall apply:

(a). Storage Over 50 AF: For new storage facilities with a planned constructed capacity of more tban 50 AF, the applicant shall bear the burden of showing no Adverse Affect to a water right Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rights that are provided in Section D.1., of Article IV or pursuant to 85-2-306, MCA.

(b). Storage 50 AF or Less: For new storage facilities with a planned constructed capacity of 50 AF or less, the owner of the water right Recognized Under State Law with a priority date before this Compact has been ratified by the Montana legislature or excepted rigbts that are provided in Section D.1., of

HeinOnline -- 1999 vol. III 3277 1999

Article IV or pursuant to 85-2-306, MCA, shall bear the burden of showing Adverse Affect to the water right.

e. Groundwater Development of the Tribal Water Right Exempt from the Showing of No Adverse Affect. The following wells are exempt from the requirement of showing no Adverse Affect:

(1). Wells developed as of the date this Compact has been ratified by the Montana legislature are exempt from the burden to show no Adverse Affect. These wells may he replaced, repaired or rehabilitated to the original constructed capacity. A comprebensive list of wells developed as of the date this Compact has been ratified by the Montana legislature shall be kept on file in TWRD offices as part of the requirement to list current uses of the Tribal Water Right in Section E.2., of Article IV.

(2). An authorized use of Groundwater hy means of a well or developed spring with a maximum appropriation of 35 gallons per minute or less, not to exceed 10 acre-feet per year, unless the appropriation is a combined appropriation from the same source from two or more wells or developed springs exceeding the limitation.

f. Storage Development of the Tribal Water Right Exempt from the Showing of No Adverse Affect. The following storage facilities are exempt from the requirement of showing no Adverse Affect:

(1). Facilities storing the Tribal Water Right developed as of the date this Compact has been ratified by the Montana legislature are exempt from the burden to show no Adverse Affect. These storage facilities may he replaced, repaired or rehabilitated to the original constructed capacity. A comprehensive list of storage facilities developed as of the date this Compact has been ratified by the Montana legislature shall be kept on file in TWRD offices as part of the requirement to list current uses of the Tribal Water Right in Section E.2., of Article IV.

(2). An authorized use of water for use hy livestock if the maximum capacity of the impoundment or pit is less than 15 acre-feet and the appropriation is less tban 30 acre-feet per year and is from a source other than a perennial flowing stream.

2. Change in Use or Transfer of the Trihal Water Right.

a. Change in Use or Transfer of the Tribal Water Right Within the Reservation. Unless otherwise stated in this Compact, tbe Tribe may make or authorize a Change in Use or Transfer of a water right set forth in Article III of this Compact within the Reservation; provided that, such Change in Use or Transfer shall not Adversely Affect a water right Recognized Under State Law with a priority date before the date of the Change in Use or Transfer. Determination of Adverse Affect shall be made following the same procedure used for review of new surface flow, Groundwater, or storage development of the Tribal Water Rigbt set forth in Sections C.1.a. and C.1.b., of Article IV.

b. Change in Use or Transfer of the Tribal Water Right Within the Ceded Strip. Unless otherwise stated in this Compact, the Tribe may make or authorize a Change in Use or Transfer of the Tribal Water Right set forth in Section F.1.a., of Article III within the Ceded Strip; provided that, such Change in Use or Transfer shall not Adversely Affect a water right Recognized Under State Law with a priority date hefore the date of the Change in Use or Transfer. Determination of Adverse Affect shall be made following the same procedure used

for review of new surface flow, Groundwater, or storage development of the Tribal Water Right within the Ceded Strip set forth in Sections C.1.c. and C.1.d., of Article IV.

c. Change in Use or Transfer of the Tribal Water Right Outside the Reservation. Except as otherwise provided in this Compact, the Tribe, pursuant to federal law, may make or authorize a Change in Use or a Transfer of the Tribal Water Right for up to 50,000 acre-feet of water as provided in Section A.1.b.(1).(a)., of Article III, for use outside the Reservation; provided that, any Transfer shall be for a term not to exceed 100 years, and may include provisions authorizing renewal for an additional term not to exceed 100 years; and provided that, no such Transfer shall be a permanent alienation of the water Transferred. Any Change in Use or Transfer of any such water right involving a point of diversion or place of use located outside the Reservation shall be considered a use outside the Reservation, except as provided in Section F., of Article III and Section C.2.b., of Article IV; and, further provided that, any use of Tribal water rights described in this Compact outside the Reservation shall not be deemed to convert such rights to rights arising under state law, and non-use of such rights outside the Reservation shall not constitute a relinquishment, forfeiture, or abandonment of the rights. The Tribe may change the point of diversion or purpose or place of use of the Tribal Water Right back to the Reservation without reduction in the amount of water provided in the Compact.

(1). Applicable Law. No person may initiate a use, Change in Use, or Transfer of a Tribal water right set forth in this Compact outside the Reservation without first complying with applicable state law. Approval of an application for a use, Change in Use, or Transfer outside the Reservation by the State shall be conditioned on a valid Tribal authorization for such uso, Change in Use, or Transfer by the Tribe. The applicant shall provide DNRC with proof of a valid Tribal authorization prior to initiating the use, Change in Use, or Transfer.

(2). Diversion Facilities. With respect to diversion or transportation facilities located outside the Reservation which are to be used in connection with the exercise of a water right set forth in this Compact, the Tribe or Persons using such water right shall apply for all permits, certificates, variances and other authorizations required by state laws regulating, conditioning or permitting the siting, construction, operation, alteration or use of any equipment, device, facility or associated facility proposed to use or transport water. A diversion or use of water in the exercise of such water right may be made only after all permits, certificates, variances or other autborizations applied for pursuant to this paragraph bave been obtained.

D. Water Rights Recognized Under State Law: Ncw Development, Change in Use, or Transfer.

1. Limit on New Development. DNRC shall not process or grant an application for an appropriation after this Compact has been ratified by the Montana legislature within the Reservation, and outside the Reservation in Bighorn River Basin and in Pryor Creek Basin, provided that, the Department may issue certificates of water right or permits for use on fee land for:

a. An appropriation of Groundwater by means of a well or developed spring with a maximum appropriation of 35 gallons por minute or less, not to exceed 10 acre-feet per year, unless the appropriation is a combined appropriation from the same source from two or more wells or developed springa exceeding the limitation.

HeinOnline -- 1999 vol. III 3279 1999

b. An appropriation of water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 acre-feet and the appropriation is less than 30 acre-feet per year and is from a source other than a perennial flowing stream.

c. Temporary emergency appropriations as provided in 85-2-113(3), MCA.

2. Change in Use or Transfer of Water Rights Recognized Under State Law within the Rcservation. The State may authorize a change in use or transfer of a water right Recognized Under State Law within the Reservation in accordance with state law, provided that, such change or transfer shall not Adversely Affect a use of the Tribal Water Right existing at the time of the application for cbange in use or transfer.

a. Prerequisite Administrative Procedure. Tbe following procedure for determining whetber a change in use or transfer of a water rigbt Recognized Under State Law within tbe Reservation will have an Adverse Affect on an existing water right developed or authorized prior to the date of application for cbange of use or transfer under the Tribal Water Right shall be followed prior to seeking relief from the Compact Board:

(1). Application for a change in use or transfer of a water rigbt Recognized Under State Law within the Reservation shall be made to DNRC.

(2). DNRC shall review the application and make a determination of whether the change in use or transfer of a water right Recognized Under State Law within the Reservation will have an Adverse Affect on a water right developed or authorized under the Tribal Water Right. Upon request by DNRC, TWRD shall provide information on developed and autborized Tribal Water Rights as recorded by TWRD to DNRC.

(3). If DNRC determines that the change in use or transfer of a water rigbt Recognized Under State Law witbin the Reservation will have an Adverse Affect on a water right developed or authorized under the Tribal Water Right, DNRC shall deny the application. If DNRC determines that the change in use or transfer of a water right Recognized Under State Law within the Reservation will not have an Adverse Affect on a water right developed or authorized under the Tribal Water Right, DNRC shall forward the application with its determination to TWRD.

(4). If, based upon the evidence, TWRD agrees with DNRC's determination, TWRD shall notify DNRC. If, however, based upon the evidence, TWRD cannot agree with DNRC's determination, TWRD shall publish notice of the application once in a newspaper of general circulation in the area of the source and shall serve notice by first-class mail on any Tribal Water Right holder who, according to the records of TWRD, has a water right developed or authorized before the application date and may be affected by the proposed change in use or transfer of a water right Recognized Under State Law within the Reservation. TWRD shall notify DNRC within ninety (90) days of TWRD's determination.

(5). TWRD and DNRC should attempt to resolve any disagreement on DNRC's determination of no Adverse Affect on a cooperative basis. If TWRD or a holder of a water right developed or authorized under the Tribal Water Right disagree with the determination of no Adverse Affect, TWRD or the Tribal Water Right holder may seek relief from the Compact Board.

E. Rcporting Requirements.

1. On an annual basis DNRC shall provide the Tribe and the United States with a listing of all uses of surface flow, Groundwater, or storage for which a certificate of water right or permit has been issued or a change in use or transfer

has been approved hy DNRC within the Reservation, in the Ceded Strip, and in drainages affected by tbis Compact.

2. Within one (1) year after this Compact has been ratified by the Montana legislature, the TWRD and the United States shall provide the DNRC with a report listing all current uses of the Tribal Water Right, including uses by Tribal members, existing as of the date this Compact has been ratified by the Montana legislature. DNRC may request additional information from TWRD or the United States to assist in reviewing the report. DNRC must approve or disapprove of the listing of all current uses of the Tribal Water Right within six (6) months after receipt of the report.

3. On an annual basis TWRD shall provide the DNRC and the United States with a listing of all new development of the Tribal Water Right described in this Compact within the Reservation, in the Ceded Strip, and outside the Reservation, and of all Changes in Use or Transfers of water rights within and outside the reservation since the last report.

4. TWRD, DNRC, and the United States may agree to modify the reporting requirements set forth in Sections D.1. and D.3., of Article IV. Such modification is pursuant to, and shall not be deemed a modification of, this Compact.

5. All reporting to the United States under this subsection shall be made to the Billings Area Office of the Bureau of Indian Affairs.

F. Enforcement: Crow-Montana Compact Board.

1. Establishment of Board. There is hereby established the Crow-Montana Compact Board. The Board shall consist of three members: one member selected by the Governor of the State of Montana; one memher appointed by the Crow Tribal Chairman; and one member selected by the other two members. All members shall be appointed within six (6) months of the Effective Date of this Compact and within thirty (30) days of the date any vacancy occurs. If an appointment is not timely made by the Governor, the Director of DNRC or his/her designee shall fill the State's position. If an appointment is not timely made by the Crow Trihal Chairman, the Director of TWRD or his/her designee shall fill the Tribe's position. Each memher shall serve a five-year term and shall be eligible for reappointment. The initial term of each member shall be staggered with one member serving a five-year term, one a four-year term, and one a three-year term. The initial term of each member shall be chosen by lot. Expenses of the members appointed by the State and the Tribe shall be borne hy the entity appointing the member. The expenses of the third memher and all other expenses shall be borne equally by the Tribe and the State, subject to the availability of funds.

2. Membership. Should the two appointed members fail to agree on the selection of a third member within sixty (60) days of the date of appointment of the second member, or within thirty (30) days after any vacancy occurs, the following procedure shall be utilized:

a. Within five (5) days thereafter each memher shall nominate three persons to serve as a member of the Board;

b. Within fifteen (15) days thereafter each member shall reject two of the persons nominated by the other member;

HeinOnline -- 1999 vol. III 3281 1999

c. Within five (5) days thereafter, the remaining two nominees shall be submitted to the Dean of the University of Montana School of Law who shall select the third member from the two nominees.

3. Quorum and Vote Required. Two members of the Board shall constitute a quorum if reasonable notice of the time, place, and purpose of the meeting, hearing, or other proceeding has been provided in advance to the absent member. All Board decisions shall be by a majority of the Board, shall be in writing and, together with any dissenting opinions, shall be served on all parties in the proceeding before the Board, and on the Parties to this Compact.

4. Jurisdiction of the Board. The Crow-Montana Compact Board shall have jurisdiction to resolve controversies over the right to the use of water as between the Parties or holders of water rights developed or authorized under the Tribal Water Right and holders of water rights Recognized Under State Law. Such controversies shall include, but shall not be limited to, disputes as to the meaning of this Compact.

5. Prerequisite Administrative Procedures.

a. Any holder of a water right Recognized Under State Law concerned that a new development, Change in Use, or Transfer of the Tribal Water Right is inconsistent with the Compact shall first contact the Billings Regional Office of DNRC. If DNRC and TWRD are unable to resolve the issue in a manner acceptable to the water right holder within a reasonable time through discussion, DNRC or the water right holder may seek relief through the Compact Board. The Tribe agrees to allow DNRC reasonable access onto Tribal land or to assist DNRC in obtaining reasonable access onto the land of the Tribal Water Right holder to observe the challenged new development, Change in Use, or Transfer.

b. Any Tribal Water Right holder concerned that a new development, change in use, or transfer of water by a holder of a water right Recognized Under State Law is inconsistent with the Compact shall first contact TWRD. If TWRD and DNRC are unable to resolve the issue in a manner acceptable to the Tribal Water Right holder within a reasonable time through discussion, TWRD or the Tribal Water Right holder may seek relief through the Compact Board. DNRC agrees to assist TWRD in obtaining reasonable access onto the land of the holder of the water right Recognized Under State Law to observe the challenged development, change in use, or transfer.

c. TWRD and DNRC may jointly develop supplemental procedures as necessary or appropriate. Such supplemental procedures are pursuant to, and shall not be deemed a modification of, this Compact.

6. Powers and Duties. The Board shall hold hearings upon notice in proceedings before it and shall have the power to administer oaths, take evidence and issue subpoenas to compel attendance of witnesses or production of documents or other evidence, and to appoint technical experts. The Tribe and the State shall enforce the Board's subpoenas in the same manner as prescribed by the laws of the Tribe and the State for enforcing a subpoena issued by the courts of each respective sovereign in a civil action. The parties to the controversy may present evidence and cross examine any witnesses. The Board shall determine the controversy and grant any appropriate relief, including a temporary order; provided that, the Board shall have no power to award money damages, costs, or attorneys' fees. All decisions of the Board shall be by majority vote and in writing. The Board shall adopt necessary rules and regulations to carry out its responsibilities within six (6) months after its first meeting. All records of the Board shall be open to public inspection, except as otherwise ordered by the Board.

HeinOnline -- 1999 vol. III 3282 1999

7. Review and Enforcement of Board Decisions.

a. Decisions by the Board shall be effective immediately, unless stayed by the Board. Unless otherwise provided by Congress, only the United States and parties to the proceedings before the Board may appeal any final decision by the Board to a court of competent jurisdiction within thirty (30) days of such decision. The hearing on appeal sball be a trial de novo. The notice of appeal shall be filed with the Board and served personally or by registered mail upon all parties to the proceeding before the Board.

b. Unless an appeal is filed within thirty (30) days of a final decision of the Board, as provided in Section F.7.a., of Article IV, any decision of the Board shall be recognized and enforced by any court of competent jurisdiction on petition of the Board, or any party before the Board in the proceeding in which the decision was made.

c. A court of competent jurisdiction in which a timely appeal is filed pursuant to Section F.7.a., of Article IV, or in which a petition to confirm or enforce is filed pursuant to Section F.7.b., of Article IV, may order such temporary or permanent relief as it considers just and proper.

d. An appeal may be taken from any decision of the court in which a timely appeal is filed pursuant to Section f.7.a., of Article IV, or in which a petition to confirm or enforce is filed pursuant to Section F.7.b., of Article IV, in the manner and to tbe same extent as from orders or judgments of the court in a civil action.

e. In any appeal or petition to confirm or enforce the Board's decision, the Board shall file with the court the record of the proceedings before the Board within sixty (60) days of filing of a notice of appeal.

8. Waiver of Immunity. The Tribe and tbe State hereby waive their respective immunities from suit, including any defense the State shall have under the Eleventh Amendment of tbe Constitution of tbe United States, in order to permit tbe resolution of disputes under this Compact hy the Crow-Montana Compact Board, and the appeal or judicial enforcement of Board decisions as provided herein, except that such waivers of sovereign immunity by the Tribe or the State shall not extend to any action for money damages, costs, or attorneys' fees. The Parties agree that only Congress can waive the immunity of the United States. The participation of the United States in the proceedings of the Compact Board shall he as provided by Congress.

ARTICLE V - DISCLAIMERS AND RESERVATIONS

A. No Effect on Other Tribal Rights or Other Fcderal Reserved Water Rights.

1. Except as provided in Sections A.1.b.(2). and D.7., of Article III, the relationsbip between the Tribal Water Right described herein and any rights to water of any other Indian Tribe or its members, or of the United States on bebalf of such Tribe or its members shall be determined by the rule of priority.

2. Nothing in this Compact may be construed or interpreted as a precedent to establish the nature, extent, or manner of administration of tbe rights to water of any other Indian tribes or their members outside of the Crow Reservation.

3. Nothing in this Compact is otherwise intended to affect or abrogate a right or claim of an Indian Tribe other than the Crow Tribe.

4. Except as otberwise provided herein and authorized by Congress, nothing in this Compact may be construed or interpreted in any manner to establish the

HeinOnline -- 1999 vol. III 3283 1999

nature, extent, or manner of administration of the reserved rights to water of any other federal agency or of any other federal lands. Such reserved rights will be subject to the rule of priority in their use.

B. General Disclaimer. Nothing in this Compact shall be so construed or interpreted:

1. As a precedent for the litigation of reserved water rights or the interpretation or administration of future compacts between the United States and the State, or the United States and any other state;

2. To preclude the acquisition or exercise of a right Recognized Under State Law to the use of water by any member of the Tribe outside the Reservation by purchase of such right or by acquisition of land, or by application to the State;

3. To determine the relative rights inter sese of Persons using water under the authority of the State or the Tribe;

4. To limit in any way the rights of the Parties or any other person to litigate any issues or questions not resolved by this Compact;

5. To authorize the taking of a water right which is vested under state or federal law;

6. To create or deny substantive rights through headings or captions used in this Compact;

7. To address or prejudge whether or how, in any interstate apportionment, the Tribe's water right shall be counted as part of the waters apportioned to the State;

8. To prohibit the Tribe, or the United States on behalf of the Tribe, from objecting in any general stream adjudication in Montana Water Court to any claims to water rights;

9. To constitute a waiver of sovereign immunity by the Tribe, State, or United States, except as is expressly set forth in this Compact;

10. Unless otherwise provided by Congress, to prevent the United States, as trustee for the Tribe or Tribal members, or the Tribe itself, from filing an action in any court of competent jurisdiction, to prevent any party from interfering with the enjoyment of the Tribal Water Right;

11. To impair, amend, or alter rights under existing state or federal law;

12. To affect or determine the applicability of any state or federal law, including, without limitation, environmental and public safety laws, on activities of the Tribe or Tribal members within the Reservation or in connection with Tribal Interests in the Ceded Strip;

13. To alter or amend any provision or to adopt or preclude any interpretation of the Yellowstone River Compact, Act of October 10, 1951, ch. 629, 65 Stat. 663 (1951);

14. To alter or abridge any right reserved to the Crow Tribe of Indians under Article 4 of the May 7, 1868 Treaty of Fort Laramie; or

15. To prejudice any right that Tribal members may have to secure a portion of the Tribal Water Right from the Tribe.

C. Rights Reserved. The Parties expressly reserve all rights not granted, recognized or relinquished in this Compact.

D. Obligations of United States Contingent.

1. Notwithstanding any other language in this Compact, except as authorized under other provisions of federal law, the obligations of the United States under this Compact shall be contingent on authorization by Congress.

2. The State and the Tribe recognize that this Compact has not been reviewed and approved by tbe United States or any agency thereof and ratification by the Montana legislature or ratification by the Tribal Council in no manner binds or restricts the discretion of tbe United States in the negotiation of all related matters, including hut not limited to, coal severance tax, Section 2 of the Crow Allotment Act (41 Stat. 751), water rights, and State and Federal contribution or cost share.

E. Expenditures of Money Contingent. The expenditure or advance of any money or the performance of any work by the United States or the Tribe pursuant to this Compact which may require appropriation of money by Congress or allotment of funds shall be contingent on such appropriation or allotment being made.

ARTICLE VI - CONTRIBUTIONS TO SETTLEMENT

A. State Contribution to Settlement.

1. Tbe State agrees to contribute the sum of $15 million, in equal annual installments for a period of no more than fifteen years beginning July 1, 1999, to a fund for the use and benefit of the Tribe.

2. Payment of the State's contributions for the benefit of the Tribe is contingent on the final approval of this Compact by the Tribe and Congress, the final inclusion of the rights set forth in the Compact in decrees by the Montana Water Court and the expiration of the time for appeal from all orders effecting such inclusion or the affirmance of the decrees or orders on appeal, the provision of releases of claims as provided in Section A.4., of Article VI, and the fulfillment of any other conditions to the effectiveness of the Compact.

3. Until all conditions for payment are fulfilled, the State and the Tribe agree that any payments due shall be paid into an interest-hearing escrow account, to be held without distribution of principal or interest until all conditions for payment to the Tribe are satisfied.

4. The Tribe agrees that the State's contribution will be dedicated to economic development and water and sewer infrastructure within the Crow Reservation. The Tribe further agrees that tbe State's contributions as set forth in Section A.1., of Article VI and any other agreements that may be set forth in a separate coal severance tax settlement agreement between the State and Tribe should be considered as fully satisfying any cost-share obligation on the part of the State for this Compact. The Trihe further agrees that the State's contributions and agreements herein are full and adequate consideration for the Tribe's agreements as set forth in this Compact, and that the State's contributions, together with any other agreements that may be set forth in a separate coal severance tax settlement agreement between the State and the Tribe, are full and adequate consideration for the release of all claims by the Tribe and the United States in the civil action captioned Crow Tribe of Indians v. State of Montana, Cause No. CV-78-110-BLG-JDS (D. Mont.). The Tribe further agrees that in consideration of the State's contributions and other agreements set forth in a separate coal severance tax settlement agreement, tbe Tribe will provide releases of all claims, including any pleadings or proposed orders

HeinOnline -- 1999 vol. III 3285 1999

necessary to implement or otherwise give effect to the releases, in that action in a form acceptable to the Attorney General of the State.

B. Federal Legislation. The Trihe and the State agree to support federal legislation ratifying this Compact that will accomplish the following:

1. Bighorn Lake Water Supply. The State and the Tribe agree to support federal legislation that will provide an allocation of storage water in Bighorn Lake, as described in Section A.1.b., of Article III and which will reallocate the water in Bighorn Lake as set forth in Section A.1.b.(1).(b).(i)., of Article III. The priority date for the allocation shall be the date of the water right held by the Bureau of Reclamation as decreed or to he decreed by the Montana Water Court pursuant to 85-2-234, MCA. This allocation shall he held in trust for the Tribe by the United States and will he part of the Tribal Water Right.

2. Right to Participate in Future Projects to Import Water. The Tribe shall bave the right to initiate or participate in any project to augment the water supply in the Basins listed in Sections B., C., D. and E., of Article III, by transferring water from another drainage, and to have any such augmentation project deliver any entitlement of the Tribe to water to a point within the Reservation designated by the Trihe.

3. Federal Court Jurisdiction. That the federal courts shall have jurisdiction to enforce the provisions of this Compact and to hear appeals from and enforce decisions of tbe Compact Board in accordance with Section F.7., of Article IV.

C. Fcderal Contributions to Settlcment. Federal contributions te settlement shall be as provided hy Congress.

ARTICLE VII - FINALITY, SETTLEMENT OF CLAIMS, EFFECTIVENESS OF COMPACT, AND WAIVER OF CLAIMS

A. Ratifieation and Effectivcness of Compact.

1. This Compact shall become Effective on the date it is ratified by the Tribe, by tbe State, and by the Congress of the United States, whichever date is latest. Upon ratification of this Compact by the Trihe and by the State, whichever is later, the terms of this Compact may not be altered, voided, or modified in any respect without the consent of hoth the Tribe and the State. Once ratified by Congress, the Tribe, and the State, the Compact may not he modified without the consent of tbe Tribe, the State, and the United States.

2. Notwithstanding any other provision in this Compact, the Tribe reserves the right to withdraw as a Party to this Compact:

a. If Congress has not ratified this Compact within four (4) years from the date the Compact is ratified by the State;

b. If appropriations are not authorized by Congress within four (4) years of the date the Compact is ratified by the Tribe;

c. If the Tribe and the United States do not reach agreement on the federal contribution to settlement;

d. If appropriations are not made in the manner contemplated by the federal legislation ratifying the Compact; or

e. If the Trihe and the United States do not reach agreement on settlement of issues regarding Section 2 of the Crow Allotment Act (41 Stat.751).

3. The Tribe may exercise its right to withdraw by sending to the Governor of the State of Montana and to the Secretary of the Interior by certified mail a resolution of the Crow Tribal Council stating the Tribe's intent to withdraw and specifying a withdrawal date not sooner than thirty (30) days from the date of the resolution. On the date designated in the resolution for Tribal withdrawal, this Compact shall become null and void without further action by any Party, and the Parties agree to resume negotiation in good faith for quantification of the water rights of the Crow Tribe and entry of a decree in a court of competent jurisdiction.

4. Notwithstanding any other provision in this Compact, the State reserves the right to withdraw as a Party to this Compact:

a. If the Trihe and Congress have not ratified this Compact within five (5) years from the date the Compact is ratified by the State;

b. If Congress requires a state contribution to settlement tbat exceeds the contributions described in Section A., of Article VI;

c. If Congress resolves issues under Section 2 of the Crow Allotment Act (41 Stat. 751) in a manner Adversely Affecting water rights Recognized Under State Law;

d. If a streamflow and lake level managoment plan pursuant to Section A.7., of Article III is not agreed to within one (1) year after this Compact has been ratified by the Montana legislature or any extended deadline agreed to by the State, or if federal legislation is inconsistent with the streamflow and lake level management plan; or

e. If the Department of Natural Resources and Conservation does not approve the list of current uses of the Tribal Water Right pursuant to Section E.2., of Article IV.

5. The State may exercise its right to withdraw by sending to the Crow Tribal Chairman and to the Secretary of the Interior a letter delivered by certified mail from the Governor of the State of Montana stating the State's intent to withdraw and specifying a withdrawal date not sooner than thirty (30) days from the date of the letter. On the date designated in the letter for State withdrawal, this Compact shall become null and void without further action by any Party, and the Parties agree to resume negotiation in good faith for quantification of the water rights of the Crow Tribe and entry of a decree in a court of competent jurisdiction.

6. Notwithstanding any other provision in this Compact, the Department of the Interior reserves the right to refuse to support federal legislation ratifying this Compact.

7. The Parties understand and accept that federal financial contributions to the Compact may not be budgoted until October of the year following the year of enactment of the Compact.

B. Incorporation Into Decrees and Disposition of Federal Suit.

1. The Tribe, the State, and the United States agree to defend the provisions and purposes of this Compact including the quantification set forth in Article III, from all challenges and attacks in all proceedings pursuant to this Section B., of Article VII.

2. Within one hundred eighty (180) days of the date this Compact is ratified by the Crow Trihal Council, the State of Montana, and Congress, whichever is latest, the Tribe, the State, or the United States shall file, in the general stream

adjudication initiated by the State of Montana, pursuant to the provisions of 85-2-702(3), MCA, a motion for entry of the proposed decree set forth in Appendix 1 as the decree of the water rights held by the United States in trust for the Crow Tribe. If the Montana Water Court does not approve the proposed decree submitted with the motion within three years following the filing of the motion, the Compact shall be voidable by agreement of the State and the Tribe. If the Montana Water Court approves the proposed decree within three years, but the decree is subsequently set aside by the Montana Water Court or on appeal, the Compact shall be voidable by agreement of the State and the Tribe. Any effect of the failure of approval or setting aside of the decree on the approval, ratification, and confirmation by the United States shall be as provided by Congress. The Parties understand and agree that the submission of this Compact to a state court or courts, as provided for in this Compact, is solely to comply with the provisions of 85-2-702(3), MCA, and does not expand the jurisdiction of the state court or expand in any manner the waiver of sovereign immunity of the United States in the McCarran Amendment, 43 U.S.C. §666, or other provision of federal law.

3. Consistent with 3-7-224, MCA, setting forth the jurisdiction of the chief water judge, for the purposes of 85-2-702(3), MCA, the review by the Montana Water Court shall be limited to Article III, and Appendix 1, and may extend to other sections of the Compact only to the extent that they relate to the determination of existing water rights. The final decree shall consist of Article III as displayed in Appendix 1, and such other information as may be required by 85-2-234, MCA. Nevertheless, pursuant to 85-2-702(3), MCA, the terms of the entire Compact must be included in the preliminary decree without alteration for the purpose of notice.

4. Upon the issuance of a final decree by the Montana Water Court, or its successor, and the completion of any direct appeals therefrom, or upon the expiration of the time for filing any such appeal, the United States, the Tribe, and the State shall execute and file joint motions pursuant to Rule 41(a), Fed. R. Civ. P., to dismiss the Tribe's claims, and any claims made by the United States as trustee for the Tribe, in U.S. v. Big Horn Low Line Canal Company, et al., No. CIV-75-34-BLG (filed April 17, 1975) (hereinafter referred to as "Low Line Canal") and such claims may only be refiled if the Tribe exercises its option to withdraw as a Party to the Compact pursuant to Section A.3., of Article VII. This Compact shall be filed as a consent decree in Low Line Canal only if, prior to the dismissal of Low Line Canal as provided in Section B., of Article VII, it is finally determined in a judgment binding upon the State of Montana that the state courts lack jurisdiction over, or that the state court proceedings are inadequate to adjudicate, some or all of the water rights asserted in Low Line Canal.

C. Settlement of Water Right Claims. The water rights and other rights confirmed to the Tribe in this Compact are in full and final satisfaction of the water right claims of the Tribe and the United States on behalf of the Tribe and its members, including federal reserved water rights claims based on Winters v. United States, 207 U.S. 564 (1908). In consideration of the rights confirmed to the Tribe in this Compact, and of performance by the State of Montana and the United States of all actions required by this Compact, including entry of a final order issuing the decree of the reserved water rights of the Tribe held in trust by the United States as quantified in the Compact and displayed in Appendix 1, the Tribe and the United States as trustee for the Tribe and Tribal members hereby waive, release, and relinquish any and all claims to water rights or to the use of

water within the State of Montana existing on the date this Compact is ratified by the State, the Tribe, and Congress and conditional upon a final decree, whichever date is later.

D. Binding Effect. After the Effective Date of this Compact, its terms shall he binding:

1. Upon the State and any person or entity of any nature whatsoever using, claiming or in any manner asserting any right under the authority of the State to the use of water in the State of Montana; provided that, the validity of consent, ratification, or authorization by the State is to be determined by Montana law;

2. Upon the Tribe, Tribal members, and any person or entity of any nature whatsoever using, claiming or in any manner asserting any right to the use of the Tribe's water right, or any right arising under any doctrine of reserved or aboriginal water rights for the Tribe or a Tribal member, or any right arising under tribal law; provided that, the validity of consent, ratification or authorization by the Tribe is to be determined by tribal law; and

3. Upon the United States and any person or entity of any nature whatsoever using, claiming or in any manner asserting any right under the authority of the United States to the use of water in the State of Montana; provided that, the validity of consent, ratification or authorization by the United States is to be determined by federal law.

E. Waiver of Claims or Objections.

1. After the Effective Date of this Compact, the Tribe, any individual claiming a right to use water based on or derived from the Tribe, and the United States on behalf of the Tribe or a Tribal member, shall be prohibited from objecting to, or bringing a claim against, the claim or holder of a right to use water based on the laws of the State of Montana, and any carriage, storage, or delivery facilities and rights of way associated therewith, based on the assertion that such right is invalid because 85-2-301(4), MCA, is invalid as applied to such right, or that such right is inconsistent with or otherwise impairs any right reserved by the Tribe under Article 4 of the May 7, 1868 Treaty of Fort Laramie. If and to the extent necessary to effectuate the intent of this paragraph the Tribe, any individual claiming a right to use water based on or derived from the Tribe, and the United States on behalf of the Tribe shall be deemed to have waived and relinquished any claims or objections they may have against a holder of a right to use water based on the laws of the State of Montana, and any carriage, storage, or delivery facilities and rights of way associated therewith, based on the aforementioned law and Treaty.

2. Waiver of claims by the Tribe against the United States shall be as provided by Congress.

ARTICLE VIII - LEGISLATION

The State and Tribe agree to seek enactment of any legislation necessary to effectuate the provisions and purposes of this Compact, and to defend the provisions and purposes of this Compact from all challenges and attacks; provided that, no provision of the Compact shall be modified as to substance except as may be provided herein.

IN WITNESS WHEREOF the representatives of the State of Montana, the Crow Tribe, and the United States have signed this Compact on the ____ day of____, 19____.

Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 85, chapter 20, and the provisions of Title 85, chapter 20, apply to [section 1].

Section 3. Effective date. [This act] is effective on passage and approval.

Approved June 22, 1999

CHAPTER NO. 4

[SB 2]

AN ACT CLARIFYING THAT SURCHARGES FOR COURT INFORMATION TECHNOLOGY AND PROSECUTING ATTORNEY SALARIES DO NOT APPLY TO CERTAIN SPEEDING FINES AND BOND FORFEITURES; AMENDING SECTION 61-8-725, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 161-8-725, MCA, is amended to read:

"61-8-725. Penalty for violation of speed limits — no record for certain violations. (1) ~~Subject to subsection (2), a~~ *A* person violating the speed limit imposed pursuant to 61-8-303 ~~is guilty of a misdemeanor and~~ shall be fined in accordance with the following schedule:

Amount of Fine	MPH in Excess of Speed Limit
$ 20	1 - 10 (daytime)
20	1 - 10 (nighttime)
40	11 - 20
70	21 - 30
100	31+

(2) A violation of a speed limit imposed pursuant to 61-8-303 *is not a criminal offense within the meaning of 3-1-317, 45-2-101, 46-18-236, 61-8-104, and 61-8-711 and* may not be recorded or charged against a driver's record, and an insurance company may not hold a violation of a speed limit against the insured or increase premiums because of the violation if the speed limit is exceeded by no more than:

(a) 10 miles an hour during the daytime; or

(b) 5 miles an hour during the nighttime.

(3) The surcharge provided for in 3-1-317 may not be imposed for a violation of 61-8-303."

Section 2. Effective date. [This act] is effective on passage and approval.

Approved June 22, 1999

HeinOnline -- 1999 vol. III 3290 1999

INDEX

Index entries for the June 1999 Special Session are included in the 1999 regular session's Index to Appropriations (p. 2987) and General Index (p. 2993).

CODE SECTIONS AFFECTED

Title-Ch.-Sec.	Action	Chapter	Bill #
61-8-725	amended	Ch. 4	SB 2
85-20-901	enacted	Ch. 3	SB 1
85-20-902	enacted	Ch. 1	HB 1
85-20-903	enacted	Ch. 1	HB 1
85-20-904	enacted	Ch. 1	HB 1
85-20-905	enacted	Ch. 1	HB 1

BILL NUMBER TO CHAPTER NUMBER

Bill No.	Chapter No.
HB 1	Ch. 1
HB 2	Ch. 2
SB 1	Ch. 3
SB 2	Ch. 4

EFFECTIVE DATES

Chapter No.	Bill No.	Effective Date
Ch. 1	HB 1	06/22/1999
Ch. 2	HB 2	06/22/1999
Ch. 3	SB 1	06/22/1999
Ch. 4	SB 2	06/22/1999

HeinOnline -- 1999 vol. III 3291 1999

TABLE OF SESSION LAW TO CODE

Ch.	Sec.	MCA
1	1	85-20-902
	2	85-20-903
	3	85-20-904
	4	85-20-905
	5	Appropriation of settlement funds — timing of payments
	6	Coordination instruction
	7	Nonseverability
	8	Codification instruction
	9	Effective date
2	1	Appropriation for special session
	2	Technical adjustment to department of livestock appropriation
	3	Appropriation for Chapter 563, Laws of 1999
	4	Effective date
3	1	85-20-901
	2	Codification instruction
	3	Effective date
4	1	61-8-725
	2	Effective date